**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held March 25, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Joint Statement

David W. Sweet, Vice Chairman, Joint Statement

John F. Coleman, Jr.

Ralph V. Yanora

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| Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Consolidation of Proceedings and Approval of Act 129 Phase IV Energy Efficiency and Conservation Plan | M-2020-3020820  M-2020-3020821  M-2020-3020822  M-2020-3020823 |
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**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition (Joint Petition) of Metropolitan Edison Company (Met Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn) (collectively, FirstEnergy, FirstEnergy Companies or the Companies) for consolidation of proceedings and approval of their Act 129 Phase IV Energy Efficiency and Conservation Plan (Plan)[[1]](#footnote-2) filed on November 30, 2020. Also, before the Commission is the Joint Petition for Full Settlement of All Issues (Joint Settlement or Settlement) filed by the Companies, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE‑PA), the Community Action Association of Pennsylvania (CAAP), the Industrials,[[2]](#footnote-3) and the Pennsylvania State University (PSU) (collectively, Joint Petitioners) on February 16, 2021. Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Emily I. DeVoe (collectively, the ALJs) certified the record in this proceeding on March 2, 2021. For the reasons fully delineated herein, we will approve the Settlement, grant FirstEnergy’s Petition, and approve the Plan.

# Background

## Act 129[[3]](#footnote-4)

On October 15, 2008, Act 129 of 2008 (Act 129 or Act) was signed into law with an effective date of November 14, 2008. Among other requirements, Act 129 directed the Commission to adopt an Energy Efficiency and Conservation (EE&C) Program, under which each of the Commonwealth’s largest electric distribution companies (EDCs) was required to implement a cost-effective EE&C plan to reduce energy consumption and demand. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt an EE&C plan to reduce energy demand and consumption within its service territory. Initially, Act 129 required each affected EDC to adopt an EE&C plan to reduce electric consumption by at least one percent of its expected consumption for June 1, 2009 through May 31, 2010, by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption was to be reduced by a minimum of three percent. Also, by May 31, 2013, peak demand was to be reduced by a minimum of four-and-a-half percent of each EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007 through May 31, 2008.

The Act required the Commission to develop and adopt an EE&C Program by January 15, 2009 and set out specific issues the EE&C Program must address. 66 Pa. C.S. § 2806.1(a). The Commission’s EE&C Program was to include the following:

(1) A procedure for approving EE&C Plans.

(2) A process to evaluate and verify the results of each EE&C Plan and the EE&C Program as a whole.

(3) A process to analyze the costs and benefits of each EE&C Plan in accordance with a total resource cost (TRC) Test.

(4) A process to analyze how the EE&C Program as a whole and each EE&C Plan will enable the EDCs to meet or exceed the consumption and peak demand reduction requirements.

(5) Standards to ensure that each EE&C Plan uses a variety of measures that are applied equitably to all customer classes.

(6) A process through which recommendations can be made for the employment of additional measures.

(7) A procedure to require and approve the competitive bidding of all contracts with conservation service providers (CSPs).

(8) A procedure through which the Commission will review and modify, if necessary, all contracts with CSPs prior to execution.

(9) A requirement for the participation of CSPs in the implementation of all or part of an EE&C Plan.

(10) A procedure to ensure compliance with the requirements of Sections 2806.1(c) & (d).

(11) A cost recovery mechanism to ensure that measures approved are financed by the customer class that directly receives the energy and conservation benefits.

On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 (*Phase I Implementation Order*), which established the standards each plan must meet, and which provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of the EE&C plans. The Commission subsequently approved an EE&C plan (and, in some cases, modifications to the plan) for each affected EDC.

Another requirement of Act 129 directed the Commission to evaluate the costs and benefits of the Commission’s EE&C Program and of the EDCs’ approved EE&C plans by November 30, 2013, and every five years thereafter. The Act provided that the Commission must adopt additional incremental reductions in consumption and peak demand if it determines that the benefits of the EE&C Program exceed its costs.

Consistent with the above, on August 3, 2012, the Commission issued an Implementation Order at Docket Nos. M-2012-2289411 and M-2008-2069887 (*Phase II Implementation Order*), which established required standards for Phase II EDC EE&C plans (including the additional incremental reductions in consumption that each EDC must meet) and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of the EDCs’ Phase II EE&C plans. Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets to be met by May 31, 2016. The Commission subsequently approved a Phase II EE&C Plan (and, in some cases, modifications to the plan) for each affected EDC.

The Commission also subsequently issued an Implementation Order on June 19, 2015, at Docket No. M-2014-2424864 (*Phase III Implementation Order*) for Phase III of the EE&C Program. The Commission determined in its *Phase III Implementation Order* that additional reductions in consumption and peak demand were cost-effective and therefore prescribed reductions in consumption and peak demand targets to be met by May 31, 2021. The Commission subsequently approved a Phase III EE&C Plan (and, in some cases, modifications to the plan) for each affected EDC.

On March 12, 2020, the Commission issued a Tentative Implementation Order (*Phase IV Tentative Implementation Order*) at Docket No. M-2020-3015228 for Phase IV of the EE&C Program. Following the submittal and review of comments, on June 18, 2020, the Commission issued the *Phase IV Implementation Order* at that same docket number. Among other things, the *Phase IV Implementation Order* established standards each plan must meet, including consumption reduction and demand reduction targets, and provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of the EDCs’ EE&C plans for the period from June 1, 2021 through May 31, 2026.

On April 22, 2020, Industrial Energy Consumers of Pennsylvania (IECPA) filed a Petition to Suspend Implementation of the Act 129 Phase IV Requirements and For Other Relief at Docket Nos. P-2020-3019562 and M-2020-3015228. (IECPA Act 129 Petition). By Order entered October 29, 2020, the Commission denied IECPA’s Act 129 Petition.

## The Companies

Met Ed, Penelec, and West Penn are each wholly owned subsidiaries of FirstEnergy, a diversified energy company headquartered in Akron, Ohio. Met Ed provides service to approximately 575,000 electric utility customers in eastern Pennsylvania. Penelec provides service to approximately 585,000 electric utility customers in central and western Pennsylvania. West Penn provides service to approximately 730,000 electric utility customers in western Pennsylvania. Penn Power is a wholly owned subsidiary of Ohio Edison Company, which, in turn, is a wholly owned subsidiary of FirstEnergy. Penn Power provides service to approximately 170,000 electric utility customers in western Pennsylvania. Joint Petition at 2.

# History of the Proceeding

In the *Phase IV Implementation Order*, we adopted an EE&C plan approval process that included the publishing of a notice of each proposed plan in the *Pennsylvania Bulletin* within twenty days of the filing of the plan, as well as the posting of each proposed plan on the Commission’s website. Answers, along with comments and recommendations, were to be filed within twenty days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan filed in November 2020 was to be assigned to an ALJ for an evidentiary hearing within sixty‑five days after the plan was filed, after which, the Parties had ten days to file briefs. The EDC then had ten days to submit a revised plan or reply comments or both. The ALJ was directed to then certify the record to the Commission. The Commission will then approve or reject all or part of a plan at a public meeting within 120 days of the plan filing. *Phase IV Implementation Order* at 86-88.

Also, in the *Phase IV Implementation Order*, we directed each EDC to file its proposed Phase IV EE&C plan on November 30, 2020. *Phase IV Implementation Order* at 89. FirstEnergy timely filed a Joint Petition for approval of its Act 129 Phase IV EE&C Plan on November 30, 2020. Notice of the filing was published in the *Pennsylvania Bulletin* on January 2, 2021, at 51 *Pa.B*. 116; and on January 9, 2021, at 51 *Pa.B*. 252.[[4]](#footnote-5) Additionally, the Joint Petition and Plans were posted on the Commission’s website at <http://www.puc.pa.gov>.[[5]](#footnote-6) Also on November 30, 2020, the Companies filed a *Joint Petition for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans Phase IV of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company*. The petitions were assigned to ALJs Hoyer and DeVoe.

The following Parties filed Notices of Intervention or Petitions to Intervene, which were not contested, and were granted by the ALJs without objection: the OCA; the OSBA; CAUSE‑PA; CAAP; the Industrials; and PSU.

A prehearing conference was held as scheduled on January 5, 2021. The Companies, the OCA, the OSBA, CAUSE-PA, CAAP, MEIUG, PICA, and WPPII were represented at the conference. At the outset of the conference, the request to consolidate these four proceedings for hearing was granted. There were no objections to this request. Also, on January 5, 2021, the Commission issued a Telephonic Evidentiary Hearing Notice scheduling a hearing for January 22, 2021.

On January 8, 2021, CAUSE-PA, CAAP, the OCA, and the OSBA filed a Joint Expedited Motion for Extension of Procedural Schedule.[[6]](#footnote-7)

On January 11, 2021, the ALJs issued an Interim Order directing the Parties to: (1) file responses, if any, to the Motion by Wednesday, January 13, 2021, and (2) file responses, if any, to the Proposed Revised Schedule, detailed in the Interim Order, by Wednesday, January 13, 2021.

The Companies, the OCA, the OSBA, and CAUSE-PA timely filed responses to the January 11, 2021 Order.

On January 14, 2021, Chief Administrative Law Judge Charles Rainey (CALJ Rainey) issued an Order Denying the Joint Expedited Motion for Extension of Procedural Schedule. CALJ Rainey’s Order provided that: evidentiary hearings would occur on or before February 8, 2021; briefs were to be filed on or before February 18, 2021; reply comments/revised plans were to be filed by March 1, 2021; and the record was to be certified by March 2, 2021.

On January 15, 2021, ALJs Hoyer and DeVoe emailed the Parties advising that, in light of CALJ Rainey’s Order, they were suspending the litigation schedule and cancelling the evidentiary hearing scheduled for January 22, 2021. The email directed the Parties to confer regarding a litigation schedule.

On January 21, 2021, Comments to the Companies’ Phase IV Plan were filed by the Pennsylvania Coalition of Local Energy Efficiency Contractors (CLEEC). On January 22, 2021, Comments to the Companies’ Phase IV Plan were filed by Daikin U.S. Corporation (Daikin), Energy Efficiency for All Pennsylvania Coalition (PA‑EEFA),[[7]](#footnote-8) Community Action Committee of the Lehigh Valley (CACLV), Keystone Energy Efficiency Alliance (KEEA). On January 25, 2021 Comments to the Companies’ Phase IV Plan were filed by Ceres.

On January 26, 2021, an Interim Order was entered adopting a revised litigation schedule, which included a hearing date of February 5, 2021.

On February 5, 2021, the hearing convened as scheduled. The Companies, the OCA, the OSBA, CAAP, CAUSE-PA, the Industrials, and PSU were represented by counsel. The Parties waived cross-examination, and their testimonies and exhibits were admitted into the record without objection.

On February 16, 2021, the Companies, the OCA, the OSBA, CAUSE-PA, CAAP, the Industrials, and PSU filed their Joint Settlement. Attached to the Settlement was: (1) Amended Rider F Language as Appendix A; (2) the Companies’ Statement in Support as Appendix B; (3) the OCA’s Statement in Support as Appendix C; (4) the OSBA’s Statement in Support as Appendix D; (5) CAAP’s Statement in Support as Appendix E; (6) CAUSE-PA’s Statement in Support as Appendix F; and (7) the Industrials’ Statement in Support as Appendix G. PSU’s signature page to the Settlement and its Statement in Support were filed separately on February 17, 2021. PSU’s Statement in Support is marked as Appendix H to the Settlement.

On March 1, 2021, the Companies and the Industrials filed Reply Comments. Also, on March 1, 2021, the Companies filed a Revised Phase IV Plan.

On March 2, 2021, ALJs Hoyer and DeVoe issued the Order Certifying Record to the Commission (*Certification Order*).[[8]](#footnote-9)

# Description of the Plan and the Joint Settlement

As noted above, the Joint Settlement was filed on February 16, 2021, resolving all issues. The Plan, as modified by the Joint Settlement, is summarized below.

## Joint Settlement

The specific terms of the Settlement relating to the Companies’ EE&C Plan are set forth in Paragraphs 29 through 41 of the Settlement, which are shown below in full as they appear in the Joint Settlement:

**B. RESIDENTIAL LOW-INCOME PROGRAM**

1. The Companies agree to decrease their Limited Income School Education subprogram megawatt hour (“MWh”) savings by 30% and will target an equivalent increase in MWh savings from insulation, air sealing, duct sealing, heat pumps and residential heat pump water heaters delivered through the Low-Income Weatherization and/or Low-Income Multifamily subprograms in the aggregate, respectively, over the proposed Plan targets, based on having available program budgets.
2. The Companies agree to target a proportional number of low-income schools through the general residential Energy Efficient Homes School Education subprogram, based on available program budget.
3. The Companies agree to remove Water Coolers, Water Heaters, Variable Speed Pool Pumps, and Electric Vehicle Charging Cords from their Low-Income Energy Efficiency Program Appliances rebate offering and to reallocate the associated budget to prioritize higher levels of the remaining equipment efficiency through both marketing and providing enhanced tiered incentives.
4. The Companies will target the installation of 75 heat pump water heaters and/or ductless mini-split heat pumps annually under their Low-Income Energy Efficiency Program, at no upfront cost to the customer, pending available program budget and suitable housing stock.
5. The Companies will continue to coordinate their low‑income energy efficiency programs with other programs in their service territory and will present and solicit input on their coordination efforts with stakeholders on an annual basis throughout Phase IV implementation.
6. The Companies will continue to implement their low‑income programs after meeting the low-income carve-outs subject to the Commission-approved budget for the Phase IV programs.

35. The Companies will develop a list of available housing rehabilitation providers in their service territories that they will provide to households served through their Act 129 programs when health and safety issues are identified in the home that cannot be remediated through the Companies’ existing programming. The Companies will work with their universal service program administrators to help create and maintain the list for use by the Companies’ Low-Income Conservation Service Provider (“CSP”).

**C. RESIDENTIAL PROGRAM**

36. The Companies agree to decrease their Residential Behavioral and Limited Income Behavioral subprogram MWh savings by 13% each and will target equivalent increases in MWh savings from the Residential Energy Efficient Products Appliances and/or Residential Multifamily subprograms in the aggregate, and the Low-Income Weatherization and/or Low-Income Multifamily subprograms in the aggregate, respectively, over the proposed Plan targets, based on having available program budgets. These funds will be used to fund insulation, air sealing, duct sealing, heat pumps, residential heat pump water heaters, and residential appliances.

**D. SMALL AND LARGE COMMERCIAL/INDUSTRIAL PROGRAMS**

37. For Phase III pre-approved projects that have not been completed prior to the conclusion of Phase III, applications will be processed as part of the same Phase IV programs without re-application, consistent with the Companies’ review and eligibility requirements.

38. To the extent that the Companies change CSPs for Phase IV, the Companies will provide advance notice of such change through both their program website and program allies.

39. The Companies will conduct a review of the application process with their Phase IV CSPs to identify and make improvements, as warranted.

**E. PJM PEAK DEMAND**

40. Upon request from any signatory to the Settlement and subject to execution of a confidentiality agreement, following the filing of each energy efficiency annual report, the Companies will provide the aggregate amount of energy efficiency resources offered and cleared in all PJM Interconnection LLC (“PJM”) forward capacity market auctions that occurred during the applicable Plan year, as well as the applicable auction clearing prices.

**F. COST RECOVERY**

1. The Companies will amend their Rider F language as shown in **Appendix A** attached to this Joint Petition.

*See* Settlement at 6-8.

In addition to the specific terms to which the Joint Petitioners have agreed, the Joint Settlement contains other general terms and conditions typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agree that the Joint Settlement is conditioned upon the Commission’s approval of all the terms and conditions contained therein without modification. The Joint Settlement establishes the procedure by which any of the Joint Petitioners may withdraw from the Settlement and proceed to litigate this case, if the Commission should act to modify or reject the Settlement. In addition, the Joint Petitioners assert that although the Joint Settlement is proffered to settle the instant case, it may not be cited as precedent in any future proceeding, except to the extent required to implement any term specifically agreed to by the Joint Petitioners. Further, the Joint Petitioners submit that the Joint Settlement is made without any admission against, or prejudice to, any position which any of the Joint Petitioners might adopt in future proceedings, except to the extent necessary to effectuate or enforce any term specifically agreed to in the Settlement before us. Joint Settlement ¶¶ 46-50 at 9-10. Moreover, the Joint Petitioners state that if the Commission adopts the Joint Settlement without modification, then they: (1) will not initiate or join in any challenge to the Settlement; (2) will not take any positions that run contrary to the Settlement; and (3) will waive their right to appeal or to seek reconsideration, rehearing, reargument, or clarification of the Commission Order approving the Settlement. *Id.* ¶ 50 at 10.

## The Plan

FirstEnergy states that its proposed Plan includes a portfolio of energy efficiency programs and demand reduction programs, which are designed to achieve each of the Companies’ specific electric consumption and peak demand reduction targets for the Phase IV period, as set forth in the *Phase IV Implementation Order*. According to FirstEnergy, its portfolio of EE&C programs is targeted to a variety of customer segments, including: (1) residential (with programs specifically targeted to the low‑income sector); (2) small commercial and industrial (C&I); and (3) large C&I. The Company explains that its small and large C&I programs will also serve the governmental/nonprofit/institutional (GNI) sector.[[9]](#footnote-10) FirstEnergy claims that it has selected measures to be included in its Plans, estimated participation levels and corresponding program and measure savings and costs, and developed program budgets within the mandated spending limitations established under Act 129. Specifically, FirstEnergy submits that its Plan is designed to do the following:

1. Assist each company in achieving the required reductions in energy consumption and coincident peak demand set forth in our *Phase IV Implementation Order* within the statutory two percent budget cap;

2. Assist each company in achieving at least fifteen percent of the prescribed consumption reduction targets each year of Phase IV;

3. Offer both residential and non-residential customers comprehensive programs and/or measures;

4. Assist the Companies in obtaining a minimum of 5.8% of their consumption reduction requirements from the low-income sector through low-income customer programs targeted directly to low-income customers or through low-income participation in multifamily housing programs;

5. Include specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines in proportion to that sector’s share of the total energy usage in their respective service territories by including measures that are at least proportional to low-income sector energy usage in the program targeted directly to low-income customers; and;

6. Equitably provide a variety of measures to all customer classes.

*See* Joint Petitionat 10-12.

FirstEnergy asserts that its Plan is generally an extension of the programs and measures included in the Companies’ Phase III Plans,[[10]](#footnote-11) with modifications to the programs, the elimination of several programs, subprograms and measures, as well as the addition of new program measures. Programs for residential customers include an energy efficient products program, an energy efficient homes program, and an energy efficiency program targeted to low-income customers. Programs for small and large C&I customers include a C&I energy solutions for business program which is targeted to both classes of C&I customers. As previously noted, the Companies’ small and large C&I programs will also serve the GNI sector. Each of the above programs include numerous subprograms. Additionally, FirstEnergy notes that, like the Phase III Plans, the Phase IV Plan continues the use of incentive level ranges. Under this approach, the Companies have the ability to adjust rebate levels within the range as market conditions warrant, provided that these adjustments do not increase program costs beyond approved budgets and that the Companies discuss potential changes with interested stakeholders before making any such changes. However, FirstEnergy clarifies that its Companies will not begin offering incentives and rebates to its customers until Commission approval of its Plan. Further, FirstEnergy avers that it will ensure that such rebates apply only to those measures that are installed and are commercially operable after May 31, 2021, and before May 31, 2026. Joint Petition at 10-11, 13-14, 18.

FirstEnergy states that its Plan includes cost estimates for the development and implementation of all measures. FirstEnergy avers that it has proposed a cost‑recovery tariff mechanism in accordance with Section 1307 of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. § 1307, that is designed to ensure full and current recovery of all reasonable and prudent costs, including administrative costs, as well as incremental costs incurred in developing, provisioning, managing, and obtaining Commission approval of the Plan. FirstEnergy asserts that the total costs of the Companies’ Plan to be recovered will not exceed the spending limitations outlined on page 120 of our *Phase IV Implementation Order.*  Joint Petition at 13, 14, 15.

FirstEnergy proposes to recover these costs through a Phase IV Energy Efficiency and Conservation Charge (Phase IV EE&C-C) Rider, which will ensure that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measures. The Companies’ Plan includes first-year cost estimates for implementation of all measures, along with proposed rates to be charged through these riders during the first program year (i.e., June 1, 2021 through May 31, 2022) of the Phase IV period. The rates included in the Phase IV EE&C-C Riders will be calculated separately for residential, commercial, and industrial customers for each company according to the provisions of the rider. The rates will be billed throughout the Phase IV period and will be expressed and billed as a price per kilowatt-hour charge, except for the industrial customer class. The rates for this class will be expressed on the basis of an individual customer’s peak load contribution in kilowatts. Joint Petition at 14-15.

The Phase IV EE&C-C Riders are to become effective for services rendered on or after June 1, 2021 through the end of the Phase IV Period on May 31, 2026. The Phase IV EE&C-C Rider rates will remain in effect for a period of one year (June 1 through the following May 31), unless revised on an interim basis and approved by the Commission. If conditions warrant, the Companies may request Commission approval of interim revisions to the Phase IV EE&C-C rates to become effective thirty days from the date of the filing. Application of the Phase IV EE&C-C rates will be subject to annual review and audit by the Commission. Additionally, for the initial computational period and the following period (i.e., June 1, 2021 through May 31, 2022), the Companies will include a reconciliation factor that is intended to account for any final Phase III related costs. Joint Petition at 15-16.

# Discussion

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993);](file:///C:/research/buttonTFLink) *see also, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C:/research/buttonTFLink)

## Legal Standards

Because the Joint Petitioners have reached a settlement, the Joint Petitioners have the burden to prove that the Joint Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort, and expense of litigating a case. Act 129 cases often are expensive to litigate, and the reasonable cost of such litigation is an operating expense recoverable in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions, and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the Companies’ customers. For this and other sound reasons, settlements are encouraged by long‑standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*. Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

## Phase IV Conservation and Demand Reduction

### Overall Conservation Requirements

**a. Requirements**

The *Phase IV Implementation Order* established the Phase IV energy consumption reduction targets that each of the FirstEnergy Companies must meet by May 31, 2026, as follows:

|  |  |  |
| --- | --- | --- |
| **EDC** | **Percent of 2009/10 Reference Load** | **Phase IV Consumption Reduction Targets (MWh)** |
| Met Ed | 3.1% | 463,215 |
| Penelec | 3.0% | 437,676 |
| Penn Power | 2.7% | 128,909 |
| West Penn | 2.4% | 504,951 |

*Phase IV Implementation Order* at 18; *See also* Joint Petition at 8. Consumption reductions are measured using a savings approach. *Phase IV Implementation Order* at 49. Each EDC was directed to develop a plan that was designed to achieve at least fifteen percent of the target amount in each program year. *Id.* at 22.

In the *Phase IV Implementation Order*, the Commission expressed concern that the carryover of all excess savings from phase to phase of the EE&C Program will lead to a scenario in whichEDCs meet most, if not all, of their reduction targets simply with carryover savings. As a result, the Commission concluded that EDCs are allowed to carry-over only excess savings obtained in Phase III for application toward Phase IV targets. *Phase IV Implementation Order* at 44-45.

**b. Disposition**

The Companies’ Plan proposes total energy savings for Met Ed, Penelec, Penn Power, and West Penn of 464,367 MWh, 447,386 MWh, 129,062 MWh, and 468,673 MWh, respectively, by the end of Program Year 17 (May 31, 2026).[[11]](#footnote-12) The following table outlines the yearly consumption reduction targets that the Companies propose to obtain in each of the Program Years of Phase IV.[[12]](#footnote-13)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Proposed Percentage of Consumption Reduction Target Amounts to be met each Program Year**[[13]](#footnote-14) | | | | | |
|  | **Program Year 13** | **Program Year 14** | **Program Year 15** | **Program Year 16** | **Program Year 17** |
| **Met Ed** | 19% | 20% | 21% | 20% | 20% |
| **Penelec** | 19% | 21% | 21% | 21% | 20% |
| **Penn Power** | 19% | 20% | 21% | 20% | 20% |
| **West Penn** | 18% | 18% | 19% | 19% | 19% |

FirstEnergy Plan at Appendix B, Table 2.[[14]](#footnote-15)

In review of FirstEnergy’s Plan, we find that it projects total energy savings that will meet or exceed the prescribed Phase IV energy consumption reduction targets set forth in our *Phase IV Implementation Order.* Additionally, we find that the Plan complies with our directive that any carryover savings be limited only to savings actually obtained in Phase III. Moreover, we find that the Plan satisfies our directive in that it is designed to achieve at least fifteen percent of the total energy savings amount in each Phase IV program year.

### Overall Demand Reduction Requirements

**a. Requirements**

Act 129 required the Commission, by November 30, 2013, to compare total costs of the EDCs’ EE&C Plans to the total savings in energy and capacity costs to retail customers or other costs as determined by the Commission. If the Commission determined that the benefits of the plans exceeded the costs, the Act required the Commission to set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand, or an alternative reduction approach approved by the Commission. Any such reductions in peak demand must be measured from the EDC’s peak demand for the period from June 1, 2011 through May 31, 2012. *See* 66 Pa. C.S. § 2806.1(d)(2); *Phase IV Implementation Order* at 50.

Phase I of the EE&C Program included demand reduction (DR) requirements. 66 Pa. C.S. § 2806.1(d). The Commission did not believe it had the information necessary at the time to definitively determine that a demand reduction program would be cost-effective as part of Phase II. Consequently, Phase II did not include DR requirements. *Phase II Implementation Order* at 32-33. For Phase III, the Commission concluded that it had sufficient information to determine that DR requirements would be cost-effective in the service territories of six of the seven EDCs (all EDCs except Penelec). *Phase III Implementation Order* at 34-35. The prescribed Phase III peak demand reduction targets were designed around dispatchable demand response (DDR) programs. However, for Phase IV, the Commission concluded that peak demand reductions (PDRs) can only be met with coincident reductions in peak demand from energy efficiency programs. *Phase IV Implementation Order* at 59, 61-62, 85. The Commission noted that coincident peak demand reductions from energy efficiency measures can be recognized in PJM’s Forward Capacity Market (FCM). We stated that proceeds from bidding these demand resources can reduce the EE&C plan funding that must be collected via riders. *Id.* at 62.

The peak demand reduction targets for each of the FirstEnergy Companies are as follows:

|  |  |  |
| --- | --- | --- |
| **EDC** | **Phase IV Peak Demand Reductions Target (MW)** | **Revised Percent of 2007-2008 Reference Load** |
| Met Ed | 76 | 2.9% |
| Penelec | 80 | 3.3% |
| Penn Power | 20 | 2.0% |
| West Penn | 86 | 2.5% |

*Phase IV Implementation Order* at 80. Peak demand reductions are measured using the demonstrated savings approach. *Id.* at 82. Each EDC was directed to develop a plan that was designed to achieve at least fifteen percent of the target amount in each program year. *Id.* at 81.

The Commission also directed each EDC to submit an EE&C Plan that states the measures, programs, and customer classes from which PDRs would be nominated to PJM, along with the projected MW totals. We noted that a component of the EE&C Plan review will be to confirm the details of each EDC’s plan to bid peak demand reductions from energy efficiency into PJM’s FCM. Additionally, we stated that EDCs should carefully consider their nomination levels and adopt a conservative bidding strategy to limit the likelihood of deficiency charges or nominated resources not clearing. *Phase IV Implementation Order* at 74-75, 138. Further, we stated that while EDCs are free to offer voluntary DDR programs in Phase IV, peak demand reductions from DDR events will not contribute towards the EDCs’ Phase IV compliance targets. Accordingly, we stated that no carryover of Phase III peak demand savings into Phase IV of Act 129 will be permitted. *Id.* at 84, 85-86.

**b. Disposition**

The Companies’ Plan projects Phase IV peak demand reductions for Met Ed, Penelec, Penn Power, and West Penn of 84.0 MW, 81.5 MW, 24.8 MW, and 88.8 MW, respectively. FirstEnergy Plan at Appendix B, Table 3. Our review of the Plan indicates that each Company projects average annual PDR that will meet or exceed the prescribed Phase IV PDR targets set forth in our *Phase IV Implementation Order*.

Next, FirstEnergy states in its Plan that the Companies plan to offer a portion of their peak demand reductions into PJM’s FCM from the portfolio of programs and measures that are eligible for PJM. FirstEnergy explains that the Companies will base their actual offer values on their experience evaluating programs for PJM capacity market participation, taking into account capacity ownership rights, Evaluation, Measurement and Verification (EM&V) results and costs, changing PJM market rules, and other variables to balance the risk and cost of capacity market participation with the anticipated revenue. The Companies anticipate measures being offered primarily from lighting, HVAC equipment, refrigeration, water heating, and custom project programs. FirstEnergy Plan at 26. The Companies provided estimated ranges of the PJM Summer and Winter MW energy efficiency potential for each PJM delivery year based on the MWh savings as projected in the Plan. *Id.* at Appendix C, Table 3. We find that this satisfies our directive in our *Phase IV Implementation Order* that the Companies must provide a description of their strategy and approach to bid peak demand reductions from energy efficiency programs into PJM’s FCM.

Additionally, in the Joint Settlement, FirstEnergy has agreed that upon request from any signatory to the Settlement, and subject to execution of a confidentiality agreement, following the filing of each annual EE&C report, the Companies will provide the aggregate amount of energy efficiency resources offered and cleared in all PJM FCM auctions that occurred during the applicable Plan year, as well as the applicable auction clearing prices. Joint Settlement ¶40 at 8. We find that this provision of the Joint Settlement will allow interested parties to evaluate whether the Companies’ bids are consistent with the *Phase IV Implementation Order* and is in the public interest and should be adopted.

Based on the foregoing, we find that FirstEnergy’s Plan is designed to adequately achieve compliance with the overall coincidental peak demand reduction requirements for each Company. Further, we find that Paragraph 40 of the Joint Settlement, addressing PJM Peak Demand, will provide useful information to the Joint Petitioners about the Companies’ nomination process and participation results, while helping ensure that such sensitive information is protected. *See* FirstEnergy Statement in Support at 13.

### Requirements for a Variety of Programs Equitably Distributed

**a. Requirements**

The *Phase IV Implementation Order* did not require a proportionate distribution of measures among customer classes. However, it did require that each customer class be offered at least one program. *Phase IV Implementation Order* at 91‑93. In addition, the Commission required that EE&C Plans include at least one comprehensive program for residential customers and at least one comprehensive program for non-residential customers. *Id.* at 23-24.

**b. Disposition**

FirstEnergy’s Plan contains 5 different programs for each Company distributed across all customer classes. For each of its 4 Companies, First Energy proposes: (1) 3 programs and 108 measures for residential and low‑income customers; (2) 1 program and 113 measures for small C&I customers; and (3) 1 program and 93 measures for large C&I customers. FirstEnergy Plan at 38-40, 72-74, and 91-92. FirstEnergy also notes that its programs and measures for small and large C&I customers will also serve the GNI sector. *Id.* at 75-77, 83, 93-96, 101.

Met Ed proposes to spend 29% of its total Plan budget on residential (exclusive of low-income) programs, 12% on residential low‑income programs, 29% on small C&I programs, and 29% on large C&I programs. In total, Met Ed will spend 42% of its total plan budget on residential programs and 58% on non-residential programs. FirstEnergy Plan at Appendix B, Table 6.

Penelec proposes to spend 27% of its total Plan budget on residential (exclusive of low-income) programs, 14% on residential low-income programs, 34% on small C&I programs, and 25% on large C&I programs. In total, Penelec will spend 41% of its total plan budget on residential programs and 59% on non-residential programs. FirstEnergy Plan at Appendix B, Table 6.

Penn Power proposes to spend 35% of its total Plan budget on residential (exclusive of low-income) programs, 12% on residential low-income programs, 30% on small C&I programs, and 23% on large C&I programs. In total, Penn Power will spend 47% of its total plan budget on residential programs and 53% on non-residential programs. FirstEnergy Plan at Appendix B, Table 6.

Finally, West Penn proposes to spend 33% of its total Plan budget on residential (exclusive of low-income) programs, 14% on residential low-income programs, 29% on small C&I programs, and 24% on large C&I programs. In total, West Penn will spend 47% of its total plan budget on residential programs and 53% on non‑residential programs. FirstEnergy Plan at Appendix B, Table 6.

Additionally, during this proceeding, the Parties litigated several issues regarding the Plan’s measures, including whether the Plan offers a sufficient amount of direct install and comprehensive measures. The Parties reached a resolution of these issues, as set forth in Paragraphs 29, 30, 32, and 36 of the Settlement as outlined, *supra,* and discussed, in detail, elsewhere in this Opinion and Order*.* We find that these Settlement provisions bolster the comprehensive program and measure offerings set forth in the Companies’ Plan.

Namely, in the Overview section of its Plan, First Energy states that the Plan “incorporates both near-term and longer-term energy saving opportunities for all customers, including single and prescriptive measures, multiple prescriptive and custom measures, direct install, and comprehensive whole home/whole building solutions.” FirstEnergy Plan at 13. Additionally, in Section 3.1.4 of its Plan, FirstEnergy elaborates on the delivery of the comprehensive programs it will offer to its residential and non‑residential customers. More specifically, FirstEnergy states that the Companies offer comprehensive measures to residential customers including whole house treatments through the Residential Energy Efficiency Homes Program and the Low-Income Energy Efficiency Program. The Energy Efficient Homes Program includes home audits with additional incentives for comprehensive home retrofits as well as incentives for efficient new home construction. These residential home retrofit and new construction measures engage builders, developers, contractors, and program allies in providing comprehensive measures across the residential sector. In addition, FirstEnergy explains that the Companies offer comprehensive measures to the commercial, industrial and GNI customer sectors through energy audits, custom building, and custom measures. The services include audits with incentives for retrofit of major building end-uses such as lighting and HVAC, incentives for building shell improvements, and incentives for comprehensive process improvements. *Id.* at 35-36.

In consideration of the above, we are of the opinion that the Companies’ Plan meets the requirement that each customer class be offered at least one program. We further conclude that the Plan satisfies the requirement that at least one comprehensive program be offered to residential customers and at least one comprehensive program be offered to non-residential customers. The record indicates that the Companies’ Plan contains five different programs distributed across all customer classes. The Plan further specifies that the Companies will offer both residential and non-residential customers comprehensive programs and measures. Therefore, we conclude that the Companies’ Plan complies with the provisions of 66 Pa. C.S. § 2806.1(a)(5) and the *Phase IV Implementation Order,* which require that EE&C Plans include a variety of EE&C measures and that these measures be provided equitably to all classes of customers*.*

### Government/Educational/Non-Profit Requirement

**a. Requirements**

Act 129 required in its initial phase of implementation that EE&C Plans obtain a minimum of ten percent (10%) of all consumption and peak demand reduction requirements from units of the federal, state, and local governments, including municipalities, nonprofit entities, school districts, and institutions of higher education (GNI carve-out). 66 Pa. C.S. § 2806.1(b)(1)(i)(B). No such stipulation was required for subsequent phases of implementation. For Phase II, the Commission prescribed a similar requirement for the EE&C Program. In Phase III, the Commission required that each EDC must obtain at least 3.5% of all consumption reduction requirements from GNI entities. For Phase IV, the Commission did not require a specific carve-out for the GNI sector, finding that the results of the energy efficiency and peak demand reduction (EEPDR) Potential Study performed by the Phase III Statewide Evaluator (SWE) indicated that the GNI sector is expected to produce a significant share in Phase IV consumption reductions at a comparable acquisition cost to the broader small and large C&I customer classes without a specific compliance target. Namely, the Commission found that in contrast to the low‑income sector, which would likely be underserved without a carve-out, the GNI sector can be adequately served by measures offered to other non-residential customers. However, the Commission proposed that the EDCs report savings achieved for the GNI sector in Phase IV and that the EDCs’ EE&C plans highlight how the GNI sector will be served. *Phase IV Implementation Order* at 37‑39, 43.

**b. Disposition**

As previously noted, FirstEnergy states in its Joint Petition that its small and large C&I programs will also serve the GNI sector. In its Plan, FirstEnergy elaborates that it continues to target and provide program services to GNI customers through the Energy Solutions for Business programs. FirstEnergy Plan at 75-77, 83, 93‑96, and 101. FirstEnergy states that the Energy Solutions for Business, Small and Large C&I programs include subprograms and measures aimed at serving GNI customers, including direct install, single and multiple prescriptive measures, custom projects, and Energy Management services. FirstEnergy insists that special efforts will be made to target the GNI customers for participation in these programs in recognition of their unique decision making and financing processes for making capital improvements to facilities. FirstEnergy claims that marketing and outreach will specifically target GNI entities within the Companies’ service territories depending upon the subprogram offering and will include the leveraging of existing Companies’ relationships and employing experienced vendors who have expertise in working with GNI accounts. *Id.* at 108. Additionally, in its Reply Comments filed in this proceeding, FirstEnergy asserts that its Companies will track the GNI information necessary to report the savings achieved for the GNI sector in Phase IV. FirstEnergy R. Comments at 7.

We find that FirstEnergy’s Plan satisfies our requirement, set forth in the *Phase IV Implementation Order* that the EDCs’ EE&C plans must highlight how the GNI sector will be served. Moreover, we reinforce our directive that the Companies are to report the savings achieved for the GNI sector in their annual reports.

### Low Income Program Requirements

**a. Requirements**

For Phase IV, as in all prior phases of Act 129, the Commission proposed that each EDC EE&C Plan include specific energy efficiency measures for households at or below 150% of the Federal Poverty Income Guidelines (FPIG), in proportion to that sector’s share of the total energy usage in the EDC’s service territory. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(G).[[15]](#footnote-16) In addition, the Commission required that each EDC obtain a minimum of 5.8 percent of its total consumption target from the low-income sector.[[16]](#footnote-17) Savings counted toward this target can only come from specific programs solely directed at low‑income customers or low‑income-verified participants in multifamily housing programs. Savings from non‑low-income programs, such as general residential programs, cannot be counted toward these targets.[[17]](#footnote-18) Additionally, the Commission stated that the EDCs will be allowed to carryover low-income carve-out savings only if they have carryover savings for the entire portfolio of programs in Phase III and only if they have low-income carve-out savings attained in Phase III in excess of their Phase III carve-out targets for application towards Phase IV targets. *Phase IV Implementation Order* at 27‑28.

The *Phase IV Implementation Order* set forth the following Phase IV proportionate number of measures and the low-income savings targets that each of the FirstEnergy Companies must meet by May 31, 2026:

|  |  |  |
| --- | --- | --- |
| **EDC** | **Proportionate Number of Measures** | **Low-Income Savings Target (MWh)** |
| **Met Ed** | 8.79 | 26,866 |
| **Penelec** | 10.23 | 25,385 |
| **Penn Power** | 10.64 | 7,477 |
| **West Penn** | 8.79 | 29,287 |

*Phase IV Implementation Order* at 35.

**b. Disposition**

FirstEnergy’s Plan identifies 64 of 172 measures (or 37% of total measures) that specifically target low-income customers.[[18]](#footnote-19) FirstEnergy Plan at 142. Notably, this percentage is greater than the Companies’ estimates of total energy usage attributable to low-income customers in the FirstEnergy Companies’ service territories, which ranges from 8.79% to 10.64%. *See* *Id.* at 141, Table 13. We find the Companies’ Plan to be in compliance with the requirement that an EE&C plan include a number of low-income measures in proportion to the low-income households’ usage of total energy usage in each of the Companies’ service territories.

In the Plan, Met Ed, Penelec, Penn Power, and West Penn propose total energy savings from low-income customers of 27,552 MWh, 27,019 MWh, 8,026 MWh and 30,387 MWh, respectively, by the end of Program Year 17 (May 31, 2026).[[19]](#footnote-20) FirstEnergy Plan at Appendix B, Table 2.[[20]](#footnote-21) Under the Joint Settlement, the Companies will continue to implement their low-income programs after meeting their low-income carve-outs, subject to Commission approval of the program budget for Phase IV. Joint Settlement ¶ 34 at 6.

In the Joint Settlement, the Companies have agreed to decrease their Limited Income School Education subprogram MWh savings by 30% and will target an equivalent increase in MWh savings from insulation, air sealing, duct sealing, heat pumps, and residential heat pump water heaters delivered through the Low-Income Weatherization and/or Low-Income Multifamily subprograms in the aggregate, respectively, over their Plan targets, based on having available program budgets. The Companies also agree: (1) to target a proportional number of low-income schools through the general residential Energy Efficient Homes School Education subprogram, based on available program budget; (2) to remove Water Coolers, Water Heaters, Variable Speed Pool Pumps, and Electric Vehicle Charging Cords from their Low-Income Energy Efficiency Program Appliances rebate offering and to reallocate the associated budget to prioritize higher levels of the remaining equipment efficiency through both marketing and providing enhanced tiered incentives; and (3) to install 75 heat pump water heaters and/or ductless mini-split heat pumps annually under their Low-Income Energy Efficiency Program, at no upfront cost to the customer, pending available program budget and suitable housing stock. Joint Settlement ¶¶ 29-32 at 6.

Additionally, the Joint Settlement indicates that the Companies will place a greater emphasis on coordinating their Act 129 low-income energy efficiency programs with other available programs in their service territories and will present and solicit input from stakeholders on an annual basis throughout Phase IV implementation. Joint Settlement ¶ 33 at 6. Furthermore, the Companies will develop a list of available housing rehabilitation providers in their service territories that they will provide to households served through their Act 129 programs when health and safety issues are identified in the home that cannot be remediated through the Companies’ existing programming. Joint Settlement ¶ 35 at 7.

We find that the above Joint Settlement provisions are consistent with the public interest and should be adopted. As the OCA expresses, these terms of the Joint Settlement place more emphasis on the coordination of the low-income programs and address issues related to low-income and multifamily housing programs; which will ensure the Companies maximize the use of ratepayer dollars in conjunction with available federal funds and other energy efficiency programs. *See* OCA Statement in Support at 9. We also agree with CAUSE-PA that in their Initial Plan, as proposed, the Companies placed too little focus on comprehensive energy savings initiatives and derived too much of their low-income savings targets through behavioral, educational, and other low impact measures that do not produce lasting and measurable bill savings for low-income consumers. In our view, the Joint Settlement addresses this concern by requiring the Companies to measurably increase their reliance on comprehensive direct install measures to achieve the low-income savings requirements. *See* CAUSE-PA Statement in Support at 4.

Finally, we find that FirstEnergy’s Plan includes programs that are anticipated to obtain at least 5.8% of the total consumption reduction requirement from low‑income customers.

### Proposals for Improvement of Plan

The Commission’s EE&C Program must include “procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption.” 66 Pa. C.S. § 2806.1(a)(6).

As previously noted, Daikin, PA-EEFA, CLEEC, CACLV, KEEA, and Ceres (collectively, Commenting Parties) each filed Comments to the Companies’ Plan on or about January 21, 2021. In their Comments, the Commenting Parties make recommendations regarding: (1) the inclusion of more comprehensive and direct install measures; (2) improved programming to better reach multifamily housing providers; (3) health and safety measures; (4) the provision of EE&C services to GNI customers; (5) the use of community-based organizations under the Companies’ Low-Income Energy Efficiency Program; (6) the coordination of programs with the anticipated influx of Regional Greenhouse Gas Initiative funds; (7) Fuel Switching; (8) adapting the Plan’s program approaches to account for the impact of COVID-19; and (9) the use of inverter HVAC equipment. *See* FirstEnergy R. Comments at 2-12.

We note that through the Joint Settlement, FirstEnergy agrees to adopt or investigate and study several improvements proposed by the Parties to the Settlement.  All Parties to this proceeding either agreed to the Settlement or did not oppose the Settlement. The proposed improvements set forth in the Comments have been addressed either in the Companies’ Plan as revised by the Settlement or in the *Phase IV Implementation Order* and associated proceedings*.[[21]](#footnote-22)* In addition, there are no remaining contested issues related to these proposed improvements. Therefore, we will not address the Comments that were filed in this Opinion and Order.  Finally, we note that while none of the Commenting Parties were Parties to the Settlement, they also did not oppose the Settlement.

## Cost Issues

In the *Phase IV Implementation Order*, we stated as follows:

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S. § 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S. § 2806.1(b)(1)(i)(K).

The Act dictates that the total cost of any plan must not exceed two percent of the EDC’s total annual revenue as of December 31, 2006, excluding Low‑Income Usage Reduction Programs established under 52 Pa. Code § 58 (relating to residential Low-Income Usage Reduction Programs). 66 Pa. C.S. § 2806.1(g). Finally, all EDCs, including those subject to generation or other rate caps, must recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k).

*Phase IV Implementation Order* at 119.

### Plan Cost Issues

**a. Determination of Allowable Costs**

**i. Phase IV Allowable Costs**

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C Plan but limits such costs to an amount not to exceed two percent of the EDC’s total annual revenue as of December 31, 2006, excluding Low‑Income Usage Reduction Programs established under 52 Pa. Code Ch. 58. 66 Pa. C.S. § 2806.1(g). The level of costs that an EDC will be permitted to recover in implementing its EE&C program was established in the Phase I proceedings. For the FirstEnergy Companies the cap for each Company is as follows: Met Ed $24,866,894; Penelec $22,974,742; Penn Power $6,659,789; and West Penn $23,562,602. These are annual budgetary limitations, rather than a budget for all of Phase IV. *Phase IV Implementation Order* at 119-20.

The two percent cost caps for all of Phase IV for Met Ed, Penelec, Penn Power, and West Penn total $124,334,470, $114,873,710, $33,298,945, and $117,813,010, respectively. *Phase IV Implementation Order* at 120. The total projected costs for the Companies as set forth in their Phase IV Plan are $124,284,000 for Met Ed; $114,816,000 for Penelec; $33,288,000 for Penn Power; and $117,756,000 for West Penn. FirstEnergy Plan at Appendix B, Table 12. As the total projected costs for each of the Companies in their Phase IV Plan are less than their associated two percent cost caps, we find that they comply with the two percent cost cap requirement. Therefore, we shall approve these amounts.

**ii. Application of Excess Phase III Budget**

EDCs cannot use excess Phase III funds to implement Phase IV programs. After June 1, 2021, the EDCs can only use Phase III budgets to close out program delivery, EM&V, and reporting obligations for measures installed and commercially operable on or before May 31, 2021. Similarly, EDCs may continue to spend their Phase IV budgets even if their consumption and/or peak demand reduction goals are met before the end of Phase IV. EDCs can spend their Phase IV budgets past May 31, 2026 only to account for those program measures installed and commercially operable on or before May 31, 2026, and to finalize the CSP and administrative fees related to Phase IV. The Commission’s Bureau of Audits will subsequently reconcile Phase IV funds collected by the EDCs compared to Phase IV expenditures and direct the EDCs to refund any over-collections to the appropriate rate classes.  *Phase IV Implementation Order* at 128-29, 132.

Our review of the record indicates that the Companies comply with the directive in our *Phase IV Implementation Order* which prohibits the use of excess Phase III funds to implement Phase IV programs. FirstEnergy Plan at Appendix C, Tables 1-1 to 1-5. Similarly, the Plan contains language indicating that the Companies will not begin offering incentives and rebates to customers until after Commission approval of the Plan and will initiate controls to ensure that the rebates apply only to those measures installed and commercially operable after May 31, 2021, and before June 1, 2026. *Id.* at 23-24.

**iii. Rebate Application Deadlines**

The *Phase IV Implementation Order* required EDCs to include rebate deadlines in their Phase IV EE&C Plans. Although the Commission believes that EDCs and their stakeholders are in the best position to determine the appropriate deadlines, the Commission suggested that 180 days be the maximum deadline. The Commission proposed that, if an EDC includes a deadline for rebates longer than 180 days in their EE&C Plan, that the EDC has the burden to provide clear and reasonable rationale for the longer timeframe. *Phase IV Implementation Order* at 132. The Companies’ Plan includes language specifying that, in general, the maximum deadline for rebates is 180 days after purchase. FirstEnergy Plan at 46, 55, 67-68.

In view of the above, we find the Companies’ Plan to be consistent with the directives in our *Phase IV Implementation Order* with respect to the determination of allowable costs. Additionally, we find the Companies’ Plan to be consistent with the directives regarding the application of excess Phase III budget, and rebate application deadlines.

### Cost Effectiveness/Cost-Benefit Issues

The Act requires an EDC to demonstrate that its plan is cost-effective, using the TRC Test approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The TRC Test to be used for evaluating Phase IV EE&C Plans was approved by our *2021 TRC Test Order*.

In our *Phase IV Implementation Order*, we maintained the practice used in each prior Act 129 Phase where Net-to-Gross (NTG) ratio research results are used for modifications to existing programs, as well as for planning purposes for future phases. Furthermore, we proposed that compliance in Phase IV be determined using gross verified savings. Additionally, we proposed that the EDCs include in their EE&C Plans net TRC ratios, as well as gross TRC ratios, based on the best available estimates of NTG research for a given program type. Ultimately, however, compliance with the directive to offer a cost-effective portfolio will continue to be based on the gross TRC ratio. We recognized that prospective NTG adjustments would be speculative but concluded that adequate data should be available after a decade of EE&C program implementation and evaluation to produce a reasonable projection. We further concluded that the inclusion of NTG-based TRC ratios would provide all stakeholders with additional information regarding the effectiveness of EE&C measures and programs. *Phase IV Implementation Order* at 108-09.

The Companies’ Plan shows cost-benefit ratios for Met-Ed, Penelec, Penn Power, and West Penn of 1.5, 1.5, 1.3, and 1.3, respectively, for the Plan’s Energy Efficiency Measures. FirstEnergy Plan at Appendix B, Table 1. As such, we find the Plan to be cost-effective from an Energy Efficiency standpoint.

The Plan also includes both a gross TRC ratio and a net TRC ratio for each program for each Company. FirstEnergy Plan at Appendix B, Tables 13-1 and 13-2. Additionally, the Companies note in their plan that they included estimated NTG ratios based on previous program evaluations or other experience in planning and in performing cost-effectiveness calculations on a net basis as prescribed in the *2021 TRC Test Order*. The Companies state that such ratios depend on assumptions regarding the effects from free ridership, spillover, and rebound effects. The Companies caution that estimates for these factors are difficult to quantify, are subjective, and can change over time. As such, the Companies point out that in evaluating any TRC results that incorporate NTG ratios, it is imperative that stakeholders recognize the speculative nature of such ratios. FirstEnergy Plan at 137-38. On review of the record evidence, we find that the Companies have satisfied the requirement outlined in our *Phase IV Implementation Order* which instructed EDCs to include net TRC ratios and gross TRC ratios. As such, we find that the Companies’ Plan, as a whole, is cost-effective.

### Cost Allocation Issues

66 Pa. C.S. § 2806.1(a)(11) requires that EE&C measures be financed by the same customer class that receives the energy and conservation benefits of those measures. In the *Phase IV Implementation Order*, we stated:

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it benefits. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, we proposed that the EDC be required to allocate those costs to each of its customer classes that will benefit from the measures or programs to which the costs relate. Those costs that demonstrably and exclusively relate to measures or programs that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures or programs that are applicable to more than one class, or that can be shown to provide system-wide benefits, should be allocated using reasonable and generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles.

*Phase IV Implementation Order* at 134 (note omitted).

Upon review of the Companies’ Plan and Phase IV Energy Efficiency and Conservation Charge Riders, we find that the Plan and Riders adequately address how the Companies will allocate those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits.

### Cost Recovery Issues

The Act allows an EDC to recover from customers, on a full and current basis, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k)(1). Each EDC’s plan must include a proposed cost-recovery tariff mechanism, in accordance with 66 Pa. C.S. § 1307 (relating to sliding scale of rates; adjustments), to fund all measures and to ensure a full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H).

In the *Phase IV Implementation Order*, the Commission adopted a standardized cost recovery and reconciliation process that will enable the EDCs and ratepayers to compare the cost recovery of program expenditures of all EDCs on an equal basis. We also concluded that it is beneficial to the EDCs and ratepayers that, with the implementation of Phase IV, the annual surcharge should be based on the projected program costs that the EDC anticipates will be incurred over the surcharge application year to attain the conservation targets. Additionally, we found that actual expenses incurred should be reconciled to actual revenues received. For transparency purposes, we directed that the 1307(e) reconciliation statement should clearly identify PJM FCM proceeds as cost reductions and PJM FCM deficiency charges as cost increases. We concluded that these measures would mitigate the over- or under-recovery of costs during the surcharge application period. *Phase IV Implementation Order* at 141‑42.

To further standardize the filing process, we directed EDCs to file the annual rate adjustment for the rate by May 1, to become effective June 1. Concurrent with the annual rate adjustment, the EDCs will submit, in a separate filing, the annual reconciliation statement thirty days following the end of the reconciliation period in accordance with Section 1307(e) of the Code, 66 Pa. C.S. § 1307(e). In order to transition from Phase III, ending May 31, 2021, to Phase IV, beginning on June 1, 2021, we proposed that each EDC reconcile its total actual recoverable EE&C Plan expenditures incurred through March 31, 2021, with its actual EE&C Plan revenues received through March 31, 2021.[[22]](#footnote-23) In addition, we directed each EDC to include, as part of the calculation of the Phase IV rates to become effective June 1, 2021, as clearly identified separate line items, projections of the expenses to finalize any measures installed and commercially operable on or before May 31, 2021; expenses to finalize any contracts; and other Phase III administrative obligations. The Phase III rate that becomes effective June 1, 2020, will remain effective through May 31, 2021. We further directed the revenues and expenses of the remaining two months of Phase III (i.e., April 2021 and May 2021); expenses to finalize any measures installed and commercially operable on or before May 31, 2021; expenses to finalize any contracts; and other Phase III administrative obligations to be included, as clearly identified separate line items, in the reconciliation for the period April 1, 2021 through March 31, 2022. *Phase IV Implementation Order* at 142-43.

Each EDC was directed to set forth the standardized reconciliation process and the calculation of the annual surcharge in a supplement or supplements to the EDC’s tariff to become effective June 1, 2021, and to be accompanied by a full and clear explanation as to their operation and applicability to each customer class. The EE&C rates are subject to continuous Commission review and audit as well as reconciliation reports in accordance with Section 1307(e) of the Code, 66 Pa. C.S. § 1307(e). *Phase IV Implementation Order* at 143.

The Companies propose a Phase IV EE&C-C Rider to recover their costs related to their Phase IV Plan. The Companies included Phase IV EE&C-C tariff supplements as part of FirstEnergy Statement No. 3. As previously noted, Appendix A to the Joint Settlement includes amended language to this rider. The Companies propose to recover their costs in a manner similar to that used in Phase III, with minor exceptions. In the Phase III EE&C-C Riders, the Companies had a separate class for non-profit customers. These customers will now be shifted to the Commercial Customer Class, as there is no longer a requirement for a specific GNI savings target in the Phase IV Plan. Additionally, in the Penn Power Phase III EE&C-C Rider, Rate Schedule GS-Large was included in the Commercial Customer Class. To be consistent with the other Companies’ rider class classifications, Penn Power GS-Large will be moved into the Industrial Customer Class for Phase IV. FirstEnergy Plan at Attachment B; FirstEnergy St. No. 3 at 5.

In addition, the Companies’ proposed Phase IV EE&C-C Riders include a component in the rate formula for the PJM FCM proceeds/charges, to offset the E-Factor. The Riders state that a credit for any PJM FCM revenues (net of costs associated with auction participation and including replacement capacity charges, capacity deficiency charges and any unavoidable PJM charges) will be assigned to the specific customer class associated with the kW values of the EE&C programs and measures that cleared in the PJM FCM for each delivery period. Joint Settlement at Appendix A.

Based on our review of the Companies’ cost recovery mechanism as contained in its Plans and Phase IV Energy Efficiency and Conservation Charge Riders, we believe the Companies have fully complied with our directives set forth in the *Phase IV Implementation Order.* Accordingly, we shallapprove the Companies’ cost recovery mechanisms.

## Conservation Service Provider Issues

In the *Phase IV Implementation Order*, and as required by Act 129, the Commission required that all Phase IV CSP contracts be competitively bid. *See* 66 Pa. C.S. § 2806.1(a)(7). As a result, the Commission required EDCs to file their Phase IV request for proposal (RFP) procedures for Commission review and approval. EDCs were encouraged to file their proposed RFP process by August 30, 2020. If Commission staff did not comment on the proposed process within fifteen days of its filing, the EDC was permitted to use that process. *Phase IV Implementation Order* at 111-14. The FirstEnergy companies filed their RFP process on July 14, 2020 and Commission staff approved this process by Secretarial Letter dated July 16, 2020 at Docket Nos. M-2020-3020820, M-2020-3020821, M-2020-3020822, and M‑2020‑3020823.

In Section 4.3 of their Plan, the Companies state that they will contract with one or more CSP(s) to implement the portfolio of programs in their Plan. The CSP(s) will be responsible for the start-up and ongoing management of new programs including staffing, development of website(s),[[23]](#footnote-24) promotional strategies, and processes ensuring quality and other controls supporting successful program transition and implementation. The CSP(s) will support consumer education initiatives and be the interface with the customer on many of the programs being offered. The CSP(s) will also be responsible for program set-up. FirstEnergy Plan at 120-21. In the Joint Settlement, the Companies also agreed that: (1) to the extent that they change CSPs for Phase IV, they will provide advance notice of such change through both their program website and program allies; and (2) they will conduct a review of the application process with their Phase IV CSPs to identify and make improvements, as warranted. Joint Settlement ¶¶ 38-39 at 7.

The Companies have issued RFPs for EM&V activities, and a tracking and reporting system. Additionally, in early 2021, the Companies anticipate issuing RFPs for residential sector programs and subprograms implementation vendors and C&I sector program implementation vendors. The Companies plan to award contracts with all program implementation CSPs in early 2021, pending Commission approval of both the programs and the proposed CSP contracts. FirstEnergy Plan at 120-21.

In review of the record evidence, we find that the Companies’ Plan provisions set forth in Section 4.3 for the selection and the utilization of CSPs are consistent with the requirements of Act 129 and the *Phase IV Implementation Order*. Additionally, we find the above provisions of the Settlement related to the use of CSPs to be in the public interest.

## Implementation and Evaluation Issues

### Implementation Issues

The Act requires the Commission to establish procedures to ensure compliance with the consumption and peak demand reduction requirements of the Act. 66 Pa. C.S. § 2806.1(a)(9). The Companies’ Program Management and Implementation Strategies are contained in Section 4 of their Plan. This section states that generally, the Companies will have overall administration and oversight of their plans. Specific activities that the Companies will oversee include plan development, execution of marketing campaigns, quality assurance and quality control, and tracking and reporting activities. The Companies will also utilize third‑party vendors, CSPs, consultants, program allies, and other entities engaged in energy-efficiency to perform various program implementation and support duties. These duties include assistance with plan design and implementation, marketing, application and rebate processing, EM&V, and the installation of the tracking and reporting tool. FirstEnergy Plan at 109.

On the basis of our review of the Companies’ Plan, we shall approve the implementation and management strategies contained in Section 4 of the Plan, having found them to be reasonable and consistent with Act 129 and the *Phase IV Implementation Order*.

### Monitoring, Reporting and Evaluation Issues

The Commission’s EE&C Program is to include an evaluation process including a process to monitor and verify data collection, quality assurance, and the results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s Plan is to “explain how quality assurance and performance will be measured, verified and evaluated.” 66 Pa. C.S. § 2806.1(b)(1)(i)(C). Each EDC is required to submit an annual report to the Commission relating to the results of its EE&C Plan. 66 Pa. C.S. § 2806.1(i)(1).

For Phase IV, the Commission directed EDCs to file semiannual reports on January 15 of each year, which are to provide information regarding the first two quarters of the program year. Additionally, EDCs are to submit a final annual report by September 30 of each year, with reported savings for the program year, a cost‑effectiveness evaluation (*i.e*., the TRC Test), a process evaluation, as well as other items required by Act 129 and Commission Orders. The reports are to be submitted to the Commission’s Secretary’s Bureau at each EDC’s respective Phase IV Docket Number. The EDCs are also required to post these reports on their respective websites. *Phase IV Implementation Order* at 100-02.

The Companies’ monitoring and reporting strategies are contained in Sections 5 and 6 of their Plan. In Section 5, the Companies indicate that they have issued an RFP for the creation of a tracking and reporting system to provide the necessary reports, including semiannual and annual reports, across all FirstEnergy operating companies. The comprehensive system will have the ability to monitor the progress of the various programs being offered and generate the reports required by the Commission. The tracking and reporting system also will have the ability to track a customer through program-specific statuses and to provide customized reports using a report writing tool. The Companies will utilize summaries, dashboards, or other reporting formats to monitor program performance on an on-going basis. FirstEnergy Plan at 123-24.

The Companies also indicate that they will comply with the Commission’s reporting requirements as prescribed in the *Phase IV Implementation Order*, including both the semiannual and annual reports. FirstEnergy states that the Companies will contract with a CSP to implement a tracking and reporting system to provide the required reports for all the Companies. The format and content will be consistent with that defined by the Commission and the SWE. The tracking and reporting system will be web based, thus requiring an internet connection for access. Additionally, the system will be designed to allow for varying levels of security-controlled access, and access for others, such as Commission staff and the SWE, will be provided as required. FirstEnergy Plan at 125.

In Section 6, the Companies describe how quality assurance will be measured, verified, and evaluated. Additionally, the Companies present examples of specific steps they took toward quality assurance and quality control during the design phase of the plans. These steps included:

* Using qualified and experienced personnel, including the Companies’ expert consultants, to assist with the design of EE&C programs
* Selecting EE&C measures that are compliant with the requirements of the Pennsylvania Technical Reference Manual or otherwise proven in the industry
* Using proven approaches that are designed to reach both the energy savings and demand reduction targets set for each Company
* Communicating with interested parties and other stakeholders on EE&C program design and objectives throughout the program development process
* Validating EE&C program assumptions with the Companies’ expert consultant and implementation team

FirstEnergy Plan at 126.

The Companies also state that, during the implementation phase of their Plan, they will acquire selected program implementation CSPs to present processes that accurately document and verify data used to support energy savings and peak load reductions. The Companies also will perform their own quality assurance processes, including evaluation of CSP systems, either directly or through third-party evaluators, to ensure the accuracy and reliability of the reported data and savings. Moreover, the Companies will use an EM&V CSP to develop and implement EM&V processes and procedures. FirstEnergy Plan at 126-30.

On the basis of our review of the Companies’ Plan, we shall approve the monitoring and reporting strategies contained in Sections 5 and 6 of the Plan, having found them to be reasonable and consistent with Act 129 and the *Phase IV Implementation Order*.

## Other Issues

### Impact of COVID-19

In the *Phase IV Implementation Order,* we considered and rejected concerns about the impact of the COVID-19 pandemic. Among other things, we concluded that incorporating a process for adjusting reduction targets within Phase IV would be speculative and premature. Therefore, we declined to establish a process to revise these targets. *Phase IV Implementation Order* at 13, 18, 20, 48, 85, 89-94, 144‑145. We likewise will not discuss this matter further in this Opinion and Order.

# Conclusion

For the reasons set forth, *supra*,and based on our review of the record and the applicable law, we will grant FirstEnergy’s Joint Petition for Approval of its Phase IV Energy Efficiency and Conservation Plan, approve the Joint Petition for Full Settlement, and approve FirstEnergy’s Phase IV EE&C Plan, as revised by the Joint Settlement, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

* + 1. That the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for consolidation of proceedings and approval of Act 129 Phase IV Energy Efficiency and Conservation Plan, filed on November 30, 2020, is granted, consistent with this Opinion and Order.
    2. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are permitted to implement their revised Phase IV Energy Efficiency and Conservation Plan, as filed on March 1, 2021, consistent with this Opinion and Order.
    3. That the Joint Petition for Full Settlement of All Issues, filed by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Community Action Association of Pennsylvania, the Met‑Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the West Penn Power Industrial Intervenors, and the Pennsylvania State University, filed on February 16, 2021, is approved.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: March 25, 2021

ORDER ENTERED: March 25, 2021

1. As noted herein, the Companies filed a revised plan on March 1, 2021 to reflect the Joint Settlement reached in this proceeding. Accordingly, the term “Plan” will be used to refer to the Plan, as amended to date, while the November 30, 2020 plan will be referred to as the Initial Plan. The Plan is a joint Plan covering all four FirstEnergy Companies. [↑](#footnote-ref-2)
2. The Industrials include the Met‑Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA), and the West Penn Power Industrial Intervenors (WPPII). [↑](#footnote-ref-3)
3. This section has been gleaned from pages 2-5 of the Commission’s *Phase IV Implementation Order*. *See Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228 (June 18, 2020) (*Phase IV Implementation Order*). [↑](#footnote-ref-4)
4. It is unclear as to why the notice was republished on January 9, 2021. The notice as published on January 9, 2021, provides that comments and recommendations are to be filed within 20 days, which is January 29, 2021. [↑](#footnote-ref-5)
5. Each of the four Companies’ Petitions have a separate docket number because of anticipated separate compliance filings in the future among the four companies. These docket numbers were assigned regarding the respective companies as follows: (1) Met Ed, M-2020-3020820; (2) Penelec, M-2020-3020821; (3) Penn Power, M-2020-3020822; and (4) West Penn, M-2020-3020823. [↑](#footnote-ref-6)
6. This Motion was also filed at Docket No. M-2020-3020824 (Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan), Docket No. M-2020-3020830 (Petition of PECO Energy Company for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan), and Docket No. M-2020-3020818 (Petition of Duquesne Light Company for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan). [↑](#footnote-ref-7)
7. The following members of PA-EEFA joined in their Comments: ACTION‑Housing, The Green & Healthy Homes Initiative (GHHI), KEEA, The National Housing Trust, Regional Housing Legal Services (RHLS), and Sierra Club. KEEA also filed its own Comments to FirstEnergy’s Plan. [↑](#footnote-ref-8)
8. Pages 5 through 10 of the *Certification Order* provide the complete list of documents that comprise the evidentiary record in this proceeding. [↑](#footnote-ref-9)
9. Unlike in Phase III, no GNI savings carve-out was established for Phase IV. *See Phase IV Implementation Order* at 43. [↑](#footnote-ref-10)
10. In prior Phases, each FirstEnergy Company filed a separate EE&C Plan. [↑](#footnote-ref-11)
11. In addition, First Energy estimates Phase III Carryover savings of 41,447 MWh, 43,242 MWh, 39,276 MWh, and 60,705 MWh for Met Ed, Penelec, Penn Power, and West Penn, respectively. This will result in overall total energy savings of 505,814 MWh, 490,628 MWh, 168,338 MWh, and 529,378 MWh for Met Ed, Penelec, Penn Power, and West Penn, respectively. FirstEnergy Plan at Appendix B, Table 2. [↑](#footnote-ref-12)
12. As the Plan projects obtaining consumption savings in excess of the target and these annual percentages are projected to meet the Plan’s projected consumption savings, they exceed the consumption target by an equivalent percentage. [↑](#footnote-ref-13)
13. The dates for the Program Years are as follows: Program Year 13 (June 1, 2021 through May 31, 2022), Program Year 14 (June 1, 2022 through May 31, 2023), Program Year 15 (June 1, 2023 through May 31, 2024), Program Year 16 (June 1, 2024 through May 31, 2025), and Program Year 17 (June 1, 2025 through May 31, 2026). [↑](#footnote-ref-14)
14. As previously noted, the Companies’ Plan is a joint Plan covering all four FirstEnergy Companies. However, there are four separate sets of Appendices attached to the end of the Plan, one for each of the Companies. Therefore, when we reference an Appendix in this Opinion and Order, we are referencing four separate Appendices. [↑](#footnote-ref-15)
15. *See Report of the Act 129 Low-Income Working Group* at Docket No. M‑2009-2146801, Table 1 at page 6, that was adopted by the Commission in an April 27, 2010 Secretarial Letter at the same Docket. [↑](#footnote-ref-16)
16. In Phase III, the Commission required that each EDC obtain a minimum of five-and-one-half percent of its total consumption target from the low-income sector*. Phase III Implementation Order* at 62-63 and 69. In the *Phase IV Implementation Order,* we noted that while the Phase IV target is slightly higher in terms of percentage, the Phase IV target is lower for all EDCs in terms of MWh due to the higher portfolio-level acquisition costs used to set the Phase IV targets. *Phase IV Implementation Order* at 36. [↑](#footnote-ref-17)
17. We are not proposing a low-income carve-out for the peak demand reduction requirements. [↑](#footnote-ref-18)
18. Of these 172 measures, the 108 non-low-income measures do not double count measures offered in multiple sectors, multiple tiers, or demand response measures. [↑](#footnote-ref-19)
19. The Companies’ proposed total energy savings includes projected participation of low-income households living in multifamily housing. [↑](#footnote-ref-20)
20. As noted, *supra*,the total energy savings numbers can be found in Appendix B, Table 2 for each Company. [↑](#footnote-ref-21)
21. *See also* 2021 Total Resource Cost (TRC) Test, Docket No. M‑2019‑3006868 (Order entered December 19, 2019) (*2021 TRC Test Order*). [↑](#footnote-ref-22)
22. Due to the timing of the filing, the reconciliation statement will contain 10 months of revenues and expenses. The remaining two months of Program Year 12 (*i.e*., June 1, 2020 through May 31, 2021) will be reconciled with the Program Year 13 revenues and expenses. [↑](#footnote-ref-23)
23. The Companies note that while FirstEnergy personnel will manage the overall content on the Companies’ public internet domain, [www.firstenergycorp.com](http://www.firstenergycorp.com), the CSP(s) will be responsible for generally managing their section of the site and updating it as necessary. [↑](#footnote-ref-24)