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April 7, 2025

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Energy Efficiency and Conservation Program; Docket No. M-2025-3052826

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission are the Comments of the Industrial Energy Consumers of Pennsylvania ("IECPA") to the Tentative Implementation Order in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Sincerely,

A handwritten signature in cursive script that reads 'Charis Mincavage'.

Charis Mincavage
MCNEES WALLACE & NURICK LLC

Counsel to the Industrial Energy Consumers of Pennsylvania

c: Joseph Sherrick, Bureau of Technical Utility Services (josherrick@pa.gov) Word Version
Tiffany Tran, Law Bureau (tiftran@pa.gov) Word Version

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation Program : Docket No. M-2025-3052826

**COMMENTS OF THE
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

I. INTRODUCTION

On February 20, 2025, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued its Tentative Implementation Order outlining the Commission's proposals to address the issues set forth in Section 2806.1(a)¹ of Act 129 of 2008 ("Act 129") for establishing Phase V of the Energy Efficiency and Conservation ("EE&C") Program.² The Phase V TIO proposes establishing additional incremental reductions in electric consumption and peak demand for Pennsylvania's four largest electric distribution companies ("EDCs").³ The Commission's proposals incorporate the findings of the Statewide Evaluator's ("SWE") Pennsylvania Act 129 Phase V Energy Efficiency ("EE") and Peak Demand Reduction ("PDR") Market Potential Study ("SWE Report") and the Pennsylvania Act 129 Phase V Demand Response ("DR") Potential Study ("SWE DR Report"), which were released to the public on February 21, 2025.⁴

On March 8, 2025, notice of the Phase V TIO was published in the *Pennsylvania Bulletin*. The notice requested that interested parties submit Comments in response to the Phase V TIO within 30 days of its publication in the *Pennsylvania Bulletin*, or by April 7, 2025.

¹ 66 Pa. C.S. § 2806.1(a).

² *Energy Efficiency and Conservation Program*, Docket No. M-2025-3052826, Tentative Implementation Order (Feb. 20, 2025) ("Phase V Tentative Implementation Order" or "Phase V TIO").

³ *Id.* at 9.

⁴ *Id.* at 8-9.

The Industrial Energy Consumers of Pennsylvania ("IECPA")⁵ is an association of energy-intensive industrial consumers taking electric distribution service from regulated utilities in Pennsylvania, including Duquesne Light Company ("Duquesne"); FirstEnergy Pennsylvania Electric Company ("FE PA"); PECO Energy Company ("PECO"); and PPL Electric Utilities Corporation ("PPL"). IECPA members include commercial and industrial customers that have participated in various proceedings before this Commission, including the various phases of each of the EE&C Plan proceedings.

IECPA submits these Comments in response to the Phase V TIO in the above-referenced matter on issues of particular importance to its members. Specifically, IECPA addresses the Commission's proposal to limit excess carryover savings that an EDC can apply towards its Phase V targets to a maximum of 20% of the EDC's portfolio and low-income targets. The fact that IECPA does not address each and every matter raised by the Phase V Tentative Implementation Order should not be construed as either support for or opposition to those issues as stated in the Phase V TIO, and IECPA reserves the right to respond to other parties' Comments as they pertain to any element of the TIO.

II. COMMENTS

As part of its Phase V TIO, the Commission proposes to modify the excess carryover savings that EDCs can apply towards Phase V targets by limiting such savings to a maximum of 20% of the EDC's respective portfolios and low-income targets.⁶ This modification is significant, especially since the PUC previously found that a cap on carryover savings was unnecessary for

⁵ For purposes of this proceeding, IECPA's membership consists of: Air Products & Chemicals, Inc.; Airgas USA, LLC; Benton Foundry, Inc.; East Penn Manufacturing Company; Electralloy, a G.O. Carlson, Inc., Co.; Keystone Cement Company; Kimberly-Clark Corporation; Knouse Foods Cooperative, Inc.; Linde, Inc.; Merck & Co., Inc.; Messer LLC; Nestle Purina PetCare Company; Pixelle Specialty Solutions LLC; Proctor & Gamble Paper Products Company; United States Gypsum Company.

⁶ Phase V TIO, p. 31.

Phases I-IV.⁷ IECPA submits that the reasoning for rejecting the cap in previous Phases continues to apply for purposes of Phase V. Moreover, even if the PUC were to choose to impose a cap in Phase V, a 20% cap is unreasonably low. As discussed more fully herein, because applying a 20% cap on carryover savings would unreasonably and negatively impact ratepayers with only speculative public interest benefits, IECPA submits that EDCs should be permitted to carryover all savings from Phase IV without the application of any cap. In other words, the PUC should continue the status quo with respect to this issue. Assuming, *arguendo*, however, that the Commission determines that a cap on carryover savings is required, the cap should be set at no less than 75%.

In its Final Order implementing Phase IV of the EE&C Program, the PUC responded to arguments that any carryover savings should be capped, with one stakeholder proposing a 25% cap and another stakeholder proposing a 50% cap.⁸ At that time, the PUC found that, as with Phases I through III, capping the amount of any carryover savings in Phase IV was "not necessary," in part because "not limiting carryover provides the EDCs with more flexibility and willingness to take risks with certain measures."⁹

For Phase V, the Commission aims to "address concerns expressed by Act 129 stakeholders" by proposing that EDCs can utilize carryover savings up to a maximum of 20% of their respective portfolios and low-income targets.¹⁰ The TIO reasons that this approach will encourage EDCs to continue the full implementation of programs and not allow programs to go

⁷ *Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228, Implementation Order (June 18, 2020), p. 46 ("Phase IV Implementation Order" or "Phase IV IO").

⁸ *Id.* at 45.

⁹ *Id.* at 46.

¹⁰ Phase V TIO, p. 31.

dark, as well as address stakeholder concerns regarding a scenario in which target attainment can be significantly achieved via excess carryover savings.¹¹

IECPA submits that the Commission's reasoning in Phases I-IV -- that not limiting carryover savings provides EDCs with more flexibility and willingness to take risks with certain measures -- continues to resonate for Phase V.¹² In light of the fact that Pennsylvania is entering into the fifth phase of Act 129, the ability of EDCs to maintain flexibility is especially important to avoid harming ratepayers through potentially increased EE&C charges due to inflexibility on the part of EDCs.

For the purposes of Phase V, the Commission suggests that the 20% cap will encourage EDCs to continue implementing programs fully and prevent them from going dark.¹³ In actuality, however, ratepayers will be penalized by remitting costs through Phase IV of the EE&C program without fully recognizing the program savings these costs yielded. By allowing only 20% of Phase IV carryover savings, ratepayers are effectively being fined through potentially increased costs in Phase V that Phase IV carryover savings could have offset.

Moreover, the PUC proposes this cap as a means to address stakeholder concerns "regarding a scenario in which target attainment can be significantly achieved via excess carryover savings."¹⁴ Pursuant to the Implementation Order in Phase IV, none of the stakeholders indicated that an EDC attained its target via excess carryover savings.¹⁵ Similarly, the PUC's TIO for Phase V does not suggest that such a scenario will definitively occur in the future. If, perhaps, this

¹¹ *Id.* at 31-32.

¹² Phase IV IO, p. 46.

¹³ Phase V TIO, p. 31.

¹⁴ *Id.* at 31-32.

¹⁵ Phase IV IO, p. 44.

type of target attainment was to occur in Phase V, the PUC could consider applying such a cap in a potential future phase. At this time, however, imposing a cap to account for such a scenario is premature.

In addition, according to the PUC's Implementation Order in Phase IV, only two stakeholders raised the issue of capping carryover savings. One of the stakeholders proposed a 50% cap, while another stakeholder proposed a 25% cap.¹⁶ In this instance, the PUC is suggesting a 20% cap, which is lower than either of those suggested by stakeholders in the previous proceeding, to address concerns that have not yet seemed to arise.¹⁷ As indicated previously, IECPA is concerned that ratepayers will be unfairly harmed by limiting the amount of carryover savings for Phase V. In this instance, ratepayers will have been charged costs in Phase IV for purposes of EE&C programs; however, because carryover savings will be limited at 20%, ratepayers may be required to remit more costs in Phase V than if carryover savings were not capped at 20%.

Because a cap has not been applied to the other EE&C phases, IECPA submits that a cap is not needed for Phase V. If, assuming *arguendo*, the PUC decides to move forward with a cap on carryover savings, the cap should be set higher than 20% because even the limited number of stakeholders seeking a cap in Phase IV proposed caps higher than 20%. In fact, IECPA submits that, to the extent a cap is deemed appropriate, it should be set at no lower than 75%, given that this would be the first phase to utilize a cap. In other words, the PUC should effectively apply the principles of gradualism when setting any potential cap on carryover savings in Phase V.

¹⁶ *Id.* at 45.

¹⁷ Phase V TIO, pp. 31-32.

III. CONCLUSION

WHEREFORE, the Industrial Energy Consumers of Pennsylvania respectfully requests that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: April 7, 2025