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April 7, 2025

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

Re: Comments of the Energy Association of Pennsylvania to Act 129 Phase V Tentative Implementation Order, Docket No. M-2025-3052826

Dear Secretary Chiavetta:

Enclosed for filing are the comments of the Energy Association of Pennsylvania to the Tentative Implementation Order in the above-referenced proceeding.

Sincerely,

A handwritten signature in blue ink, which appears to read 'Donna M.J. Clark'.

Donna M.J. Clark
Vice President & General Counsel

Enclosure

CC: Tiffany Tran (tiftran@pa.gov)
Joseph Sherrick (josherrick@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**Comments of the
Energy Association of Pennsylvania
To Act 129 Phase V Tentative Implementation Order**

I. Introduction

On February 20, 2025, the Public Utility Commission (“PUC” or “Commission”) entered a Tentative Implementation Order Re: Energy Efficiency and Conservation Program (“TIO”) to present its evaluation of the cost-effectiveness of a possible Phase V Energy Efficiency and Conservation (“EE&C”) Program pursuant to Act 129 of 2008 (Act 129), 66 Pa. C. S. §§ 2806.1 and 2806.2 and to propose additional incremental reductions in electric consumption and peak demand for the four Pennsylvania electric distribution companies subject to Act 129¹. The Commission seeks public input on the evaluation of the EE&C Program based on the Statewide Evaluator (“SWE”) Energy Efficiency and Peak Demand Reduction (“EEPDR”) and Demand Reduction (“DR”) Potential studies; the proposed additional mandatory reductions in consumption and peak demand for each Act 129 EDC as determined by the SWE²; and on the proposals identified in the TIO addressing the design and implementation of the Phase V EE&C Program.

¹ Duquesne Light Company (“Duquesne”), FirstEnergy Pennsylvania Electric Company (“FE”), PECO Energy Company (“PECO”), and PPL Electric Utilities (“PPL”), collectively referred to herein as “EDCs”.

² See Table 1 at page 8 of the TIO.

The Energy Association of Pennsylvania (“EAP” or “Association”) is a non-profit trade association whose members include the EDCs. It provides these comments in addition to and in support of the comments offered by the EDCs and its other members who may provide input in this proceeding.

EAP supports the initiation of a new five-year Phase V EE&C Program which will begin operating on June 1, 2026 and end on May 31, 2031. EAP agrees in general with the conclusion of the Commission that sufficient achievable program potential remains to support a cost-effective EE&C Program. As detailed below, however, EAP has significant comments on a number of the proposals set forth in the TIO, including the approach, methodology, and assumptions adopted by the Statewide Evaluator in both its EEPDR Potential study and its DR Potential study. EAP contends that these foundational studies are biased, and, as a result, asks the Commission to re-examine its determination regarding, *inter alia*, acquisition costs and the consumption reduction and peak demand reduction mandatory targets proposed in the TIO.

EAP does not make this request lightly. Many of the stakeholders, their individual representatives, and Commission staff have been involved in the implementation of Act 129 EE&C Programs over the last fifteen years. All involved recognize the constraints imposed by the prescriptive nature of the statutory framework which not only necessitates a seamless move between phases and dictates mandatory specific targets for EDCs but also disallows the Commission from exercising discretion and considering best efforts when determining compliance. Act 129 is punitive and offers no positive incentives for innovation or performance that exceeds targets. Concurrently, EAP agrees that the EE&C Programs have matured over time and EDCs should be able to focus on more comprehensive measures. The approach taken by the Commission and the SWE in developing acquisition costs, targets and proposals for Phase V will

have the opposite effect, however, creating further constraints and barriers that will impede EDC flexibility in development and implementation of Phase V EE&C plans. EAP believes that the Commission and SWE can make the modifications discussed below within the timeframe established for the issuance of a Final Implementation Order and that the resulting EE&C Program and individual EE&C plans will meet the objectives established by the General Assembly in the preamble to Act 129.

II. Assumptions and Methodologies Used in the SWE EEPDR and DR Potential Studies Are Based on Uncertain Premises and Are Overly Complex Leading to an Unacceptable Level of Uncertainty and Risk in the Recommended Acquisition Costs and Targets for the Reduction of Electric Consumption and Peak Demand During Phase V

A. Background

The SWE began its analysis of whether a Phase V EE&C Program would be required under Act 129 by undertaking baseline studies for the residential and non-residential customer sectors in 2023.³ Subsequently, the SWE completed the EEPDR⁴ and DR⁵ Potential studies in 2024 which were released to the public via Secretarial Letter on or about February 28, 2025, approximately one week after the entry of the instant TIO. The EEPDR and DR Potential studies comprise the foundation for the Commission's determination that sufficient cost-effective

³ “[B]aseline studies represent a thorough assessment of current electricity usage and electrical energy consuming equipment installed in Pennsylvania.” TIO at page 10-11. Baseline studies were released to the public during the first quarter of 2023. *See also* Pennsylvania Act 129 2023 Residential Baseline Study submitted by the SWE in March 2024 and Pennsylvania Act 129 2023 Non-Residential Baseline Study submitted by the SWE in February 2024. Available on the Commission's website at:

https://www.puc.pa.gov/media/2883/2023_pa_residential_baseline_study.pdf

and https://www.puc.pa.gov/media/2884/2023_pa_non-residential_baseline_study.pdf, respectively.

⁴ The purpose of the EEPDR Potential Study is to determine the cost-effective, achievable electric energy efficiency and associated coincident peak demand potential for the EDCs so as to inform the Commission's decision regarding a potential Phase V of the Act 129 EE&C Program.

⁵ The purpose of the DR Potential Study is “to determine the amount of cost-effective DR [achievable]potential available in each of the four EDC's service territories.” TIO at p. 36. A crucial input in determining the DR achievable potential, and the cost to acquire it, is the assumed program design. *Id.*

achievable program potential exists in the marketplace to support a new Act 129 phase. The Potential studies further recommend for Commission consideration statewide and individualized acquisition costs, proposed consumption and peak demand reduction targets for each EDC, and also a low-income consumption reduction target that the Commission established as an additional non-statutory requirement in the initial EE&C Program.

While EDCs provided data to the SWE for both the baseline studies and the potential studies, there is little opportunity for substantive input on the assumptions adopted and methodologies employed by the SWE as it conducts its analysis until the issuance of the TIO. As EAP has underscored in its comments to tentative implementation orders issued in earlier phases, the performance of the studies, the timing for access to the final completed studies by stakeholders for review, and the issuance of the tentative implementation order for comment does not allow for input of alternative approaches or ideas to the studies.⁶ With the succeeding phase beginning the day after the close of the prior phase, the time permitted for completing, assessing, sharing, and challenging these key studies is truncated. Eliminating the gap between phases is a laudable goal in that it avoids inefficiencies, and the costs associated with allowing a program to “go dark” and reopen following a hiatus. The downside is that there is no time for stakeholder input as study methodology and assumptions are determined or for consideration of stakeholder challenges where, as here, the studies are released close to or after the date of the issuance of the tentative implementation order. It is not until the point at which comments to the TIO are submitted that EAP, EDCs, the statutory advocates and other stakeholders can question or

⁶ Cite to EAP TIO Comments in Phase III and Phase IV.

challenge the fundamental assumptions and methodologies used by the SWE in the studies and the impact those SWE decisions have on crucial Commission determinations.

EAP further contends that the stakeholder meeting held in late January 2025 before the finalized studies were released to the public is not adequate. It lacks the type of notice and opportunity for input that is typically provided in situations where a regulatory agency plans to act, the act will create compliance obligations for the regulated entity, and subsequent failure to fulfill those obligations has meaningful consequences⁷. The stakeholder meeting at which the SWE provides a high level review of the Potential studies and is available to answer questions is not a substitute for (1) a process that allows input to the SWE prior to the initiation of the study, or (2) a process which provides time following the release of the completed study for consideration and formal response by stakeholders prior to the entry of a tentative implementation order or (3) a process which provides time for the Commission to consider the report of its consultant, i.e., the SWE, as well as the reports of EDC or other stakeholder experts.

EAP recognizes the statutory time constraints that did not allow space for an additional process dedicated to the transparent and open development of Phase V potential studies. EAP urges the Commission to use the instant TIO proceeding to simplify the assumptions/methodology employed by the SWE, eliminating considerations that have a high degree of uncertainty or limit plan design options, thus reducing flexibility. A recalculation of acquisition costs and reduction targets without allocating a portion of the budget to measures such as CHP or solar PV and without championing specific ways to achieve demand reduction

⁷ The EEPDR and DR Potential studies are final at the time of the stakeholder meeting and were completed without any discussion from EDCs or other interested parties regarding, for example, “lessons learned” from the prior phase, the current marketplace where there are numerous energy efficiency programs for consumers to choose from, and new policies such as beneficial electrification which do not readily align with the electric-use reduction policies that were the foundation of Act 129.

such as daily load-shifting measures, as detailed below, would provide the flexibility the Commission desires for plan design and reduce the risk of noncompliance.

B. EAP Requests the Commission Reconsider SWE Assumptions for EEPDR Potential Study and Revise Approach to Consumption Reduction Targets

As with any study, the SWE made certain assumptions in order to organize its analysis of the data. In the EEPDR Potential study, the SWE determined there remains sufficient achievable program potential and suggested specific consumption reduction targets for Commission consideration which will become Act 129 mandates under the final TIO. A blend of Traditional Energy Efficiency (“EE”) which also considered the significantly higher acquisition costs for low-income measures, Combined Heat and Power (“CHP”) and Solar photovoltaic (“PV”) measures, with budgets based on the 2% cap, constituted the EE potential in the EEPDR Potential study. TIO at pages 12 - 15.

EAP maintains that the approach and “blend” of measures assumed by the SWE lowered acquisition costs and resulted in proposed Phase V targets that are too high under a statutory framework where the dollars available to spend on measures have remained static since 2008 and the cost of measures has increased due to inflation, supply chain issues and other economic factors. EAP contends that acquisition costs and consumption reduction/coincident peak demand reduction targets should be developed based on EE measures (including the higher cost direct install measures for low-income customers) which have a demonstrated track record for participation during past phases. Modeling used to establish acquisition costs and targets by the SWE in potential studies is not the place to incorporate complex measures, applicable to a subset of customers with fixed budgets and incentives, such as CHP and solar PV, where participation has fluctuated and non-Act 129 incentives, such as federally funded rebates and tax credits, are in jeopardy. Conflating the establishment of acquisition costs and targets with plan design works

to constrain the very flexibility that the Commission is looking to provide EDCs in the TIO. Using more conservative and proven assumptions to develop acquisition costs and targets will avoid creating undue reliance on specific measures while not precluding the Commission from encouraging EDCs to include CHP and solar PV as well as other comprehensive measures in the design of EDC Act 129 plans.

1. EAP contends that acquisition costs are too low, in part, because the historic costs relied upon will not necessarily be available in the marketplace during Phase V.

SWE's use of historic costs, i.e., early Phase IV costs, to set acquisition costs for Phase V in the EEPDR study ignores cost increases over the last few years due to supply chain issues and also does not account for the inflation that has occurred in the last few years of Phase IV. Neither is there any attempt to project inflation in Phase V nor any effort to factor in the likelihood that federal tax credits might expire or the impacts of federal tariffs. There is no certainty that "early Phase IV costs" will be available during Phase V; in fact, recent policy changes at the federal level have only increased the certainty that prices will be impacted by tariffs, federal programs offering rebates for EE and/or DR will be withdrawn and tax credits will expire. Such uncertainty should be considered as the Commission finalizes the TIO.

2. SWE inclusion of CHP measures in both the "blend" for determining Phase V potential and in its calculation of acquisition costs and consumption reduction targets belies the general recognition that CHP projects are complex and unpredictable.

The SWE included CHP in the measure blend that forms the base for determining Phase V cost-effective achievable program potential. TIO at page 12. To include CHP in the mix of measures which help establish achievable program potential and then to "factor" CHP "into the portfolio-level acquisition costs and savings target since it is an eligible measure" which was allocated a share of the budget in the Phase IV analysis appears arbitrary and unreasonable in

light of the recognition by both the SWE and the Commission that “CHP projects are large, complex projects with unpredictable timing”. TIO at page 23.

EAP believes that its inclusion increases risk and artificially lowers the acquisition costs. There is no requirement that all “eligible” measures be factored into the analyses of potential, acquisition costs and the consumption reduction targets. The complexity and unpredictability attributable to CHP, including participation, project size, and costs, warrant its exclusion from the determination of portfolio-level acquisition costs and the savings targets. EAP maintains, however, that the elimination of CHP with its low acquisition costs and high degree of uncertainty from the calculation of acquisition costs or savings targets does not prevent an EDC from including CHP measures in its plan design. Developing acquisition costs and targets in a reasonable manner based on the factual circumstance provides enhanced flexibility in plan design.

3. SWE inclusion of PV measures in both the “blend” for determining Phase V potential and in its calculation of acquisition costs and consumption reduction targets belies the uncertainty surrounding policies such as net metering and federal tax credits.

Whether the budget allocation is 5% or 9%⁸, EAP raises the same concerns with including PV in the analysis of establishing portfolio level acquisition costs and savings target as it did for CHP. EAP believes that basing acquisition costs on the cost of traditional EE, including the higher acquisition cost for low-income measures, would improve flexibility in plan design.

Establishing acquisition costs which (1) consider inflation based on an estimated rate for the Phase V time period, (2) consider the impact of supply chain issues and tariffs on the cost of

⁸ Compare text at page 12 of the TIO which states that a 5% budget allocation was assumed for PV with Table 8 at page 20 of the TIO which allocates 9% of the budget to PV.

equipment, and (3) account for the uncertainty surrounding federal tax credits helps to ensure acquisition costs which are reasonable. Suppressed acquisition costs used to increase Phase V targets will not lead to innovation; instead, they increase compliance risk and reign-in creativity. On the other hand, conservative targets supported by realistic acquisition costs account for risk and uncertainty, enabling EDCs to include comprehensive measures in EE&C plans. EAP urges the Commission to reconsider SWE recommendations and include in its final determination of consumption reduction targets for Phase V the impacts of inflation, supply chain issues and tariffs, and the likely expiration of federal tax credits.

C. SWE Assumptions for DR Potential Study

Similar to EAP's concerns with the EEPDR Potential Study, EAP questions the assumptions relied upon by the SWE to determine the cost-effective DR achievable potential available in each of the EDC's service territories. No input was sought from the EDCs, the statutory advocates or other interested parties until the January 29, 2025 stakeholder meeting which was held prior to the public release of the full DR Potential study. The DR Potential study was final and key decisions regarding program design had been made so as to establish the "amount of DR potential achievable within Phase V, and the cost to acquire it" without any substantive public input. TIO at page 36.

Limiting input from interested parties on key parameters, such as an assumed DR program design for the purpose of calculating DR potential achievable available within a phase and acquisition costs, severely limits design flexibility. While the Commission states that the goal is "to establish targets and policies that provide the EDCs with flexibility in addition to achieving the desired technical and economic outcomes", EAP contends that the opposite occurs. *See*, TIO at page 45. In order to meet the exacting requirements of a statute which requires

precise and nearly perfect performance to avoid massive penalties⁹, EDC EE&C plans inevitably mirror the program designs and measure selections modeled by the SWE in potential studies. This is the case with respect to achieving peak demand reduction targets, particularly when the program design modeling includes five (5) months of daily dispatchable demand response measures to achieve the targets.

Determining a program design to model the cost-effective reduction of peak demand in a straightforward and achievable fashion has been a historical challenge under Act 129. *See discussion* in TIO at pages 7 – 8 recounting that there were no peak demand reductions requirements in the Act 129 Phase II EE&C Program due to the difficulty in timely determining whether the statutorily dictated design had been cost-effective, that peak demand reduction requirements in Phase III were restored and included dispatchable demand response programs operated independently of PJM, and that, for the current phase, peak demand targets are based on achieving peak demand reductions coincident to energy efficiency rather than from dispatchable demand response programs. *See also*, TIO at pages 36 – 37 describing the complexities of the Phase III dispatchable demand response program design modeled by the SWE in potential studies and implemented by the EDCs in Act 129 Phase III EE&C plans and the complication in utilizing the Phase IV model for the purpose of determining Phase V DR reductions based on definitional and allocation modifications in the 2026 Technical Reference Manual Final Order, Docket No. M-2023-3044491 (adopted September 12, 2024) and in the

⁹ EAP contends that, with respect to penalties attributable to a failure to achieve a DR target in phases subsequent to Phase I, the Commission can exercise discretion with respect to the imposition of penalties relating to compliance and need not impose the penalties set forth at 66 Pa. C. S. § 2806.1(f). EAP believes that, just as the Commission has discretion to propose alternative DR programs that do not require further peak demand reductions in the 100 hours of greatest demand after the initial phase of Act 129 EE&C Programs, the statutory language arguably allows the PUC to impose penalties under 66 Pa. C. S. § 3301 rather than Section 2806.1(f) of the Public Utility Code. The Commission in proposing an alternative DR programs may propose alternative compliance penalties.

2026 Total Resource Cost Test Final Order, Docket No. M-2024-3048998 (adopted November 7, 2024).

EAP maintains that the assumptions and modeling methodologies employed by the SWE in the Phase V DR Potential study to recommend targets are overly complex, involving untried measures such as daily load-shifting programs and new calculation requirements such as the averaging of winter and summer peak demand to determine savings and compliance. TIO at pages 37 – 44. The recommendations in the Phase V DR Potential Study for DR program design, acquisition costs and targets coupled with the proposals in the TIO multiply the compliance risk for EDCs unnecessarily¹⁰. EAP questions whether the investment of EDC resources to achieve demand reduction during Phase V pursuant to the prescriptive manner laid out in the DR Potential Study and the TIO is reasonable. DR has been and can be achieved in a much less complex fashion and EAP urges the Commission to consider a different pathway to reducing peak demand in Phase V.

In addition to the increased risk surrounding the proposal to average winter and summer peak demand to determine savings and compliance for Phase V, EAP believes that the choice to include certain daily load-shifting measures with a statewide TRC ratio of 0.8 or higher as part of the modeling for Phase V is anathema to the overall goal of Act 129. Act 129 established an EE and consumption reduction program which after its initial iteration provided the Commission with some discretion regarding the inclusion of peak demand reduction targets. As recognized by

¹⁰ In this regard, EAP questions the reasoning behind using an average of an EDC's gross verified summer peak demand reduction and winter peak demand reduction in determining compliance with the peak demand reduction targets. EAP does not agree that all EDCs will be able to offset underperformance in one season with overperformance in another season. Demand reduction programs are dependent on participation which is difficult to predict and not controllable by EDCs despite a variety of measure offerings and generous incentives. Compare discussion in TIO at page 47.

the Commission daily load-shifting programs provide no reduction in energy consumption and the decision to allocate Phase V budget dollars to daily-load shifting programs in the context of determining potential and establishing peak demand reduction targets prioritizes peak demand reduction over reductions in overall electric energy consumption. TIO at page 43. EAP believes that this contradiction supports an approach similar to that followed by the Commission in either Phase II or the current phase of Act 129 EE&C Programs.

Accordingly and as a consequence of the difficulties and uncertainties that have plagued earlier phases when targets for DR have required or favored implementation of dispatchable demand reduction programs, EAP suggests that either the Commission forego mandated DR targets based on dispatchable demand reduction for Phase V or reduce the DR targets (and the allocation of funds) to avoid complexities and minimize the expenditure of funds on shifting load rather than reducing consumption. At the same time, EAP supports both a continuation of evaluation, measurement and verification (“EM&V”) during Phase V regarding DR obtained coincident to EE and the inclusion of voluntary programs involving daily load-shifting measures as part of an EDC EE&C plan to inform future phases of Act 129 programs.

III. EAP Seeks Modifications to Proposed Allocations to Fund Portfolio Components Identified in EEPDR and DR Potential Studies and Thereby Adjust Phase V Targets

Collectively, the EEPDR and DR Potential studies identified five (5) portfolio components, i.e., Market Rate EE, Low-Income EE¹¹, Solar, CHP, and Demand Reduction and calculated acquisition costs for each component. See Table 8 on page 20 of the TIO. The Commission recognized that its “assumed allocation of funding to the five components will

¹¹ See discussion supra at page 16 for EAP’s proposal to allocate a budget amount to low-income households and require a mix of measures, focusing on comprehensive measures, rather than requiring an exact percentage reduction in consumption or demand for low-income customers.

materially impact the targets” and further stated that “the target development exercise [becomes] a question of funding allocation across the five portfolio components.” TIO at pages 19 - 20.

As described above, EAP does not believe that either CHP or solar PV should be distinct components in the modeling methodology used to establish potential, acquisition costs or reduction/savings targets mandated in Phase V of Act 129. *Infra.* at pages 6 - 8. EAP would limit the components to two, i.e., Market Rate EE and Low-Income EE, or at the most three, i.e., Market Rate EE, Low-Income EE and Demand Response with DR potential/targets modeled on demand reduction coincident to reductions in EE. EAP would then calculate acquisition costs considering inflation rates during the past two years of Phase IV, a projected rate of inflation for Phase V, and the negative economic impact of supply chain issues and tariffs on equipment needs for EE and DR measures. In addition, the analysis of acquisition costs should reflect the uncertainty of federally-funded programs and tax credits.

Calculating acquisition costs and then savings targets without reflecting inflation, supply chain disruptions and the impact of tariffs or the current uncertainty that federally funded programs and tax credits aimed at consumption reduction will continue lessens the validity of the SWE potential studies’ results. Fewer components, higher acquisition costs together with revised budget allocations would produce different proposed targets. EAP believes those targets would more accurately reflect the market conditions and uncertainties that will impact the success of Phase V and provide flexibility for EDCs to include both established and more comprehensive measures. While such modifications may result in higher consumption reduction targets for the component Market Rate EE, the pathway to compliance would be more predictable and less risky.

Further, EAP maintains that basing the target on Market Rate EE achieved in Phase V by eliminating the components for solar PV, CHP and the elimination or reduction of DR via dispatchable demand response programs is a more advantageous result for EDC customers and thereby the Commonwealth because this approach would allocate budget to prioritize traditional energy efficiency and conservation.

IV. EAP Opposes EEPDR Potential Study Portfolio Design Assumption That Would Constrain Use of Front-Of-The-Meter Measures in Plan Design

While suggesting that EDCs have flexibility to design Phase V EE&C Plans without adhering to the program and measure mix modeled by the SWE in the potential studies, Commission acknowledges that “there are several fundamental portfolio design assumptions in the SWE’s EEPDR Potential Study that reflect the policy preferences of the Commission....” TIO at page 28. The Commission specifically “proposes to limit Phase V EE&C Plans to customer-sited measures.” *Id.* at page 30. In addition to reducing an EDC’s flexibility to design its own EE&C Plan, this is a change from earlier phases of Act 129 which allowed front-of-the-meter measures such as voltage reduction programs to contribute to savings targets.

EAP asks the Commission to reverse this new position concerning front-of-the-meter measures “which admittedly lower customer energy consumption and therefore bills”. *Id.* EDCs should have the flexibility to propose such measures in their EE&C Plan despite the Commission concern that front-of-the-meter measures do not necessarily include ratepayer participation or awareness. While such measures might be viewed as related to the operation of the distribution grid, they do result in energy efficiency and further the Act 129 goal of conservation.

V. EAP Seeks Reversal of Proposal That Limits EDC Ability to Carryover Accumulated Excess Savings of Consumption and Peak Demand Reduction Requirements

For Phase V, Commission proposes to again allow “EDCs to count only those savings attained in Phase IV in excess of their MWH or MW targets for application towards their Phase V targets.” TIO at page 31. Additionally, “as a change from prior phases”, PUC proposes “that the EDCs can utilize carryover up to a maximum of 20% of their respective portfolios and low-income targets.” *Id.* Further and with respect to peak demand reduction, the Commission proposes “to allow EDCs to ‘carryover’ 50% of the excess peak demand savings acquired in Phase IV and apply it towards Phase V peak demand targets. TIO at page 48. EAP opposes the newly proposed limitations on carryover, contending that the limitations are arbitrary and the justification hollow. Act 129 EE&C Programs are mature and processes such as allowing carryover have been in place for multiple years. EDCs already continue to implement programs for the length of the phase, assuming continuing participation and adequate budget. Thus, there is no need to make this change to prod EDCs to not “allow programs to ‘go dark’.” TIO at page 31. Further, the concern “that target attainment can be significantly achieved via excess carryover savings” does not reflect past experience. EAP believes that such a limitation will actually work against the goal of avoiding the shuttering of programs and is an inefficient use of ratepayer dollars which fund Act 129 programs.

VI. EAP Supports Coordination with Other State Conservation Programs

The Commission proposes coordination with several conservation programs including those funded by the IRA (HER and HEAR managed by DEP’s Home Energy Office), programs pursuant to the AEPS Act with credits administered by InClima and regulated by the PUC, LIURP and LIHEAP, DEP’s Agricultural EE Rebate Program, DEP’s Healthy Electrified Commercial Kitchen Rebate Program and DEP’s Reducing Industrial Sector Emission in

Pennsylvania (RISE PA) Program. EDCs already work to coordinate Act 129 programs with other state administered programs that operate to assist participants in lowering electric energy usage so as to reduce customer electric utility bills. EAP supports coordination with programs that do not limit EDCs' ability to count savings towards Act 29 goals, both consumption reduction and peak demand reduction, as appropriate.

A. Braided Funding

EAP supports the Commission determination that “EDCs may claim the full gross verified savings for any EE&C project they support.” TIO at page 55. Concurrently, EAP agrees that EDCs should attempt to braid or stack funding from other state administered conservation programs for the benefit of customers participating in Phase V EE&C plans. For reasons discussed above, however, EAP does not agree with assumptions used by the SWE in potential studies that overstate the certainty that federal weatherization or beneficial electrification funding for low-income households will continue to be available throughout Phase V or that federal tax credits supportive of solar PV and/or battery storage will be extended.

EAP further disputes the way in which such assumptions were used to justify low-income targets for Phase V that are higher than Phase IV. EAP urges the Commission to consider replacing the low-income target which requires a specific targeted reduction in consumption for low-income households with a budget amount that is dedicated to low-income measures. Dedication of a specific value of funds will enable increased flexibility for EDCs to include comprehensive measures in the Commission required program for the low-income sector of an EDC's residential rate class.

B. Heat Pumps and Other Fuel Switching

EAP agrees with the Commission’s statement that “beneficial electrification programming that encourages customers to replace fossil fuel equipment with electric equipment runs counter to the objectives of the Act and should not be included in Phase V EE&C Plans.” TIO at page 56. And also agrees with the Commission’s suggestion that “each EDC include in its EE&C Plan high efficiency heat pump and heat pump water heater measures” which could be available to participants in the HEAR program. TIO at page 57. EAP understands that if a HEAR participant meets the eligibility requirements of an EDC for a high efficiency heat pump or heat pump water heater measure offered under Act 129, that household or person would be participating in both programs and verified savings would count for Act 129 compliance.

C. EAP Does Not Support the Development of a Data Sharing Program Between EDCs and State Agencies Offering Energy Conservation Programs Via the TIO

EAP does not agree that the development of a data sharing program between EDCs and other state agencies offering energy conservation programs should be discussed, determined or implemented in connection with the finalization of an implementation order for the Act 129 Phase V EE&C Program. Such an endeavor is too complex to be resolved in the current proceeding focused on resolving a multitude of issues relating to Act 129 Phase V. Moreover, the premise of the Commission’s proposal, i.e., that there is an “expected increase in external (to Act 129) funding sources”, is less certain than it was earlier this year when the TIO may have been drafted.

D. EAP Does Not Agree that EDCs Should Offer Support via Act 129 with AEPS Registration

The Commission maintains that Act 129 programs should contribute more Alternative Energy Credits (AECs) than current registration patterns indicate. The Commission reasons that registration under the AEPS would provide additional recurring revenue to certain Act 129

participants in addition to the upfront EDC Act 129 rebate. The additional AECs could also help drive down the cost of compliance for the EDCs. TIO at page 58.

EAP opposes the proposal that “each EDC include in its EE&C Plan a process to help facilitate AEPS registration for C&I participants of Act 129 programs to register their EE projects and take advantage of ... market prices.” TIO at page 58. The Commission suggests certain processes that an EDC might include in the measure and further states that “EDCs should not retain the rights to AECs or earn proceeds from the sale of AECs. Those proceeds should flow to the participant or project developer to help offset their project costs.” TIO at pages 58 – 59. EAP maintains that the decision to include such a support measure in an EDC EE&C Plan is for the EDC, not the Commission. Such a proposal does not align with flexibility for plan design, nor does it appear to provide measurable and verifiable savings that can be counted towards compliance.

E. EAP Opposes a Requirement that EDCs Co-Fund IRA-Required Audits

Stating that the IRA-funded Home Efficiency Rebate (HER) program requires prospective participants to complete American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRE) Level 2 audits, which are “a significant upfront investment” that “may or may not result in identification of savings opportunities”, and that such prospective participants “may or may not move forward with some or all of the savings opportunities identified due to limited access to capital or other considerations”, the Commission proposes that it is reasonable for Act 129 EDCs to “co-fund ASHRAE Level 2 audits or other technical scoping studies for sites they believe are likely to provide a return on the upfront investment.” TIO at page 59. The Commission opines that “[i]n exchange for sharing the cost of the upfront audit,

the EDCs should be entitled to provide rebates or direct installation for all eligible electric measures and claim the full associated savings towards Phase V targets.” *Id.*

The SWE analyzed this proposal in its EEPDR Potential Study, modeling a \$5 million statewide Phase V funding allocation to ASHRAE Level 2 audits which resulted in a decrease in Act 129 savings statewide. Concurrently, the SWE EEPDR Potential Study analysis also revealed an increase in savings statewide “due to the presence of HER and HEAR funding.” The Commission justifies this proposal by concluding that the SWE analyses “suggest that the incremental savings attributable to the expected availability of external funding would more than offset the loss of program budgets attributable to co-funding.”

Like the proposal to require the inclusion of a measure to support AEPS registration in the EDCs’ Phase V EE&C Plans, EAP opposes a requirement to include the co-funding of an ASHRAE Level 2 audit for HER participants in the EDCs’ Phase V EE&C Plans. This proposal undermines statements in the TIO that EDCs have considerable flexibility in plan design. It would direct the EDC to dedicate Act 129 funds for an expensive audit required by the federal government for participation in its IRA-funded HER programs with little assurance of acquiring any savings.

F. Coordinated Marketing Campaigns Should Not Be an Act 129 Requirement

EAP contends that a coordinated marketing campaign with other conservation providers should not be an Act 129 EE&C Plan requirement. The Commission maintains that EDCs and other EE program administrators should consider joint marketing campaigns that highlight the availability of multiple funding sources. It is difficult to envision how those efforts would translate to savings which can be counted towards Act 129 compliance. EAP believes that EDCs

may be wary of spending limited budget funds on a “measure” that does not have a pathway to verifiable savings.

VII. Plan Approval Process

A. EAP Request an Adjustment to the Phase V Timeline

EAP notes that there is approximately 20% less time in the Phase V timeline than in the Phase IV timeline between the date the Final Implementation Order is scheduled for inclusion on the PUC Public Meeting agenda, i.e., June 18, 2025, and the date proposed for filing EE&C Plans, i.e., November 1, 2025. EAP requests that the Commission extend the date for filing EE&C Plans until November 18, 2025. This would provide EDCs with five months after the contemplated issuance of the Final Implementation Order on June 18, 2025 to file its proposed Phase V EE&C Plan.

B. EAP and the EDCs Propose an Additional “Notification Process” to Further Expedite EE&C Plan Changes Related to Budget and Measure Adjustments

Act 129 requires a procedure to make recommendations for additional measures to allow an EDC to improve its EE&C Plan, 66 Pa. C. S. § 2806.1(a)(6). The statute also permits the Commission, following an adequate period for implementation, to direct an EDC to modify or terminate any part of its plan in order to remove a measure that will not achieve the required reductions in a cost-effective manner, 66 Pa. C. S. § 2806.1 (b)(2). In the TIO, the Commission proposes a procedure, also adopted in earlier phases, to recommend measures to improve an EDC plan. The procedure is in addition to the opportunity that interested parties will have during the plan approval process to make plan recommendations.

With respect to an approved plan, the TIO details a procedure that permits EDCs, stakeholders, and the statutory advocates, to propose plan changes in connection with the EDC

annual report filing required at 66 Pa. C. S. § 2806.1(i)(1). TIO at page 66. EDCs will have twenty (20) days to respond to a recommendation offered by an interested party, after which the Commission will either rule on the recommendation or send it to an Administrative Law Judge (ALJ) for further proceedings. The TIO further states that an EDC or stakeholder may at any time petition the Commission to rescind or amend its prior order approving an EDC EE&C Plan pursuant to Commission regulations, 52 Pa. Code §§ 5.41 and 5.572. *Id.*

Additionally, the TIO recounts that the Commission, via a Minor Plan Change Order, Docket No. M-2008-2069887 (June 10, 2011), delegated authority to the staff to approve, modify or reject minor plan changes proposed by EDCs. The Minor Plan Change Order sought to expedite the review of EDC “minor plan changes” and defined that term. Subsequently, in Phase II, the Commission expanded the definition to include additional “minor plan changes” that were then subject to an expedited review process delegated to staff. See, TIO at pages 67-68 and EE&C Program Implementation Order (Phase II), Docket No. M-2012-2289411 (August 3, 2012) at page 91. No further changes were adopted in either Phase III or Phase IV.

Given the maturity of the Act 129 EE&C Program process, the experience of the Commission, its staff, EDCs, the statutory advocates and interested parties, and the need for implementation flexibility, EAP and the EDCs propose an addition to the expedited process used for minor plan changes to include a notification process. As further detailed in PECO’s comments, EAP and the EDCs are proposing that EDCs be permitted to make plan changes through a notification process when (1) the cumulative value of the budget transfers across programs and/or rate classes resulting from all previously-approved changes and the proposed changes (the “Cumulative Change Value”) does not exceed 10% of the EDC’s total EE&C plan budget for the Phase; and (2) for any program year, the Cumulative Change Value does not

exceed 5% of the EDC's total EE&C plan budget for the Phase.¹² The notification process would involve filing a document summarizing the planned changes by program or rate class (as appropriate), including the effective date of the changes, and serving that document on all parties to the EDC's Phase V EE&C plan proceeding. The notification process would permit EDCs to quickly and cost-efficiently implement relatively modest plan changes to improve the performance of particular programs.

The notification process requested by EAP and the EDCs would help ensure that Act 129 EE&C plans are responsive to market changes that occur within a phase. It would allow EDCs to optimize ratepayer-funded energy efficiency investments in real-time, enable rapid reallocation of monetary resources to the high-impact measures that reduce consumption and peak demand, and would streamline a process that currently stifles program flexibility due to the amount of time it takes to navigate the plan change process. Budget adjustments could be achieved with minimal disruption to existing program commitments inasmuch as it is envisioned that funds would be moved from sectors and programs that were not experiencing anticipated participation or were subject to market changes that negatively impacted TRC ratio/cost-effectiveness.

C. Competitive Bidding Requirements and Approval of CSP Contracts

Act 129 requires that contracts with CSPs be competitively bid. 66 Pa. C. S. § 2806.1(a)(7). Plus, the Commission is required to review all contracts prior to execution. 66 Pa. C. S. § 2806.1(a)(8). For Phase V, “the Commission proposes maintaining the status quo by requiring EDCs to file CSP RFP competitive bidding procedures and to bid all CSP contracts [without exception]” TIO at page 80. EAP respectfully requests that the Commission allow an exception to the

¹² In addition to budget transfers between programs and rate classes, plan changes qualifying for the notification process could include, but are not limited to, adding a measure, eliminating a measure, or changing the conditions of a measure in alignment and supported by the TRM, evaluation guidance, or Interim Measure Protocols.

requirement to bid all CSP contracts for Phase V with regard to those CSPs that provide services such as EM&V which involve the administration of the approved Act 129 Phase V EE&C Plan.

VIII. Conclusion

Based on the foregoing, EAP respectfully requests that the Commission look to include and expand flexibility in plan design and implementation for the Phase V EE&C Program. EAP maintains that many of the considerations and measures which formed the basis for analysis in the EEPDR Potential Study and the DR Potential Study limit flexibility and suppress acquisition costs. Initially, EAP would have the Commission reexamine and modify the various assumption and calculation methodologies used in the potential studies to recalculate and modify acquisition costs proposed for the Act 129 Phase V Program. As acquisition costs for Phase V are finalized, EAP urges the Commission to consider inflation, cost increases for equipment due to supply chain issues, the imposition of federal tariffs and the reality that federal programs providing rebates for energy efficiency and/or federal tax credits may no longer be available during Phase V. None of which were admittedly considered by the SWE.

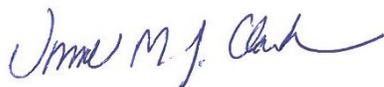
EAP also asks the Commission to reconsider the budget allocations proposed, reduce the number of components included in the setting of consumption reduction targets, and either eliminate a DR target for Phase V or greatly reduce the allocation to account for the historical complexities and limitations experienced in Act 129 EE&C Programs that rely to some extent on dispatchable demand reduction measures. EAP asks the Commission to rework its allocation proposal and allocate the majority, if not all of the budget, to Market Rate/Traditional EE and Low-Income EE. The exclusion of CHP and solar PV in that analysis does not prevent EDCs from including such measures in individual EDC EE&C Plans. Further, EAP maintains that the

10% budget allocation to calculate DR targets for Phase V cannot be justified where the analysis includes untried daily load-shifting programs. EAP believes that either no separate target for DR should be advanced for Phase V or the budget allocation should be substantially lower to reduce the complexity and risk associated with dispatchable demand reduction measures historically.

EAP further proposed in its comments an addition to the minor plan change process which involves a streamlined notification process for budget adjustments and a limited number of measure modifications. EAP asks that the Commission adopt this proposal.

Further, with respect to a number of new requirements related to coordinating Act 129 measures with other state agency energy efficiency and conservation programs, while EAP and the EDCs support coordination, there is no support for extra plan requirements that spend Act 129 funds but have limited opportunity to obtain measurable and verified compliance savings.

Respectfully submitted,



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