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April 22, 2025

Matthew L. Homsher, 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 Homsher:

Attached for filing with the Pennsylvania Public Utility Commission are the Reply 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](mailto:josherrick@pa.gov)) Word Version  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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**I. INTRODUCTION**

The Industrial Energy Consumers of Pennsylvania ("IECPA")<sup>1</sup> submit these Reply Comments in response to select Comments filed by other parties regarding the Pennsylvania Public Utility Commission's ("PUC" or "Commission") February 20, 2025, Tentative Implementation Order ("TIO"), which outlines the Commission's proposed approach to address the issues set forth in Section 2806.1<sup>2</sup> of Act 129 of 2008 ("Act 129") for Phase V of the Energy Efficiency and Conservation ("EE&C") Program.<sup>3</sup>

Pursuant to the Commission's Phase V TIO, IECPA submits these Reply Comments in response to a matter of particular importance to its members.<sup>4</sup> Specifically, IECPA reacts to the Energy Advocates'<sup>5</sup> proposal to require Electric Distribution Companies ("EDCs") to spend their full Phase IV budgets regardless of whether an EDC has already attained its Phase IV goals.<sup>6</sup> If

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<sup>1</sup> A description of IECPA, inclusive of a list of IECPA's members, is set forth in IECPA's Comments in this proceeding.

<sup>2</sup> 66 Pa. C.S. § 2806.1(a).

<sup>3</sup> *Energy Efficiency and Conservation Program*, Tentative Implementation Order, Docket No. M-2025-3052826 (Feb. 20, 2025) ("Phase V Tentative Implementation Order" or "Phase V TIO").

<sup>4</sup> Simply because IECPA's Reply Comments do not respond to all of the issues set forth in the other parties' Comments does not mean that IECPA is in agreement with these issues.

<sup>5</sup> Other parties' Comments raised this issue in addition to the Energy Advocates, including: the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") and the Tenant Union Representative Network ("TURN") (collectively, "Low Income Advocates"); and the Keystone Energy Efficiency Alliance ("KEEA"). Because these parties' arguments are substantially similar, IECPA's Reply Comments focus on the Energy Advocates' Comments for ease of reference.

<sup>6</sup> *Energy Efficiency and Conservation Program*, Joint Comments of the Energy Advocates, Docket No. M-2025-3052826 (Apr. 8, 2025), p. 5 ("Energy Advocates Comments").

an EDC fails to do so, the Energy Advocates submit that the EDC should be required to roll-over any unspent Phase IV funds in order provide additional funding in Phase V.<sup>7</sup> Because this proposal is contrary to Act 129, is divergent from the legislation implementing these EE&C programs, and will result in unjust and unreasonable rates for the customers who are paying for these EE&C programs, IECPA submits that this proposal must be rejected.

## **II. REPLY COMMENTS**

Although the PUC's Phase V TIO recognizes that Act 129 contains important spending limitations to protect ratepayers,<sup>8</sup> the Energy Advocates seem to suggest that certain legislative requirements can be overlooked.<sup>9</sup> Importantly, Act 129 does not contain any language requiring an EDC to spend the entirety of its EE&C budget, which ensures that ratepayers are not charged costs for programs not required to meet Act 129 goals. Moreover, Act 129 limits explicitly the costs EDCs can spend in a particular phase, which helps to ensure that ratepayers, who are funding EE&C programs, are protected from remitting costs beyond those required in the Act. Forcing EDCs to spend the entirety of their budget or roll-over unspent costs into a different phase ignores the ratepayer protections effectively codified in Act 129. Accordingly, any such argument to the contrary must be rejected.

Under Act 129, the total cost of any EDC's EE&C plan cannot exceed 2% of the EDC's total annual revenue as of December 31, 2006.<sup>10</sup> Moreover, an EDC is only permitted to recover reasonable and prudent costs incurred in providing or managing an EE&C plan.<sup>11</sup> In addition, Act

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<sup>7</sup> *Id.*

<sup>8</sup> Phase V TIO, pp. 16-17.

<sup>9</sup> Energy Advocates Comments, p. 5.

<sup>10</sup> 66 Pa. C.S. § 2806.1(g).

<sup>11</sup> *Id.* at § 2806.1(k)(1).

129 requires that EE&C measures approved under a plan are financed by the same customer class that will receive the direct energy and conservation benefits.<sup>12</sup> In other words, Act 129 includes certain guardrails to protect ratepayers financing these EE&C plans.

The PUC's Phase V TIO also recognizes this point by finding that, regardless of any changes that have occurred since the inception of Act 129, legal constraints prevent the PUC from approving spending levels that exceed an EDC's overall cap budget.<sup>13</sup> With that said, the Commission also provides that an EDC may exceed its annual budget cap provided the EDC remains within the five-year program spending limits.<sup>14</sup> In other words, the PUC's Phase V TIO recognizes the legal parameters to protect ratepayers while still providing flexibility for EDCs' programs.

In its Comments, the Energy Advocates argue that EDCs should be required to spend their full Act 129 budgets (within the five-year cost cap).<sup>15</sup> If they do not, the Energy Advocates recommend that the EDCs be required to carry over any unspent budget remaining at the end of Phase IV and add it to the funding available for Phase V programs.<sup>16</sup> The Energy Advocates claim this modification is nothing more than a simple "policy adjustment," while in reality, the Energy Advocates are seeking to disregard the requirements of Act 129. In fact, the Energy Advocates offer nothing in Act 129 that permits such a redistribution of funds.

As previously noted, Act 129 specifically protects ratepayers through provisions such as the cap on an EDC's EE&C spending and the need for cost recovery to be based on principles of

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<sup>12</sup> *Id.* at § 2806.1(a)(11)

<sup>13</sup> Phase V TIO, pp. 16-17.

<sup>14</sup> *Id.*, p. 17.

<sup>15</sup> Energy Advocates Comments, p. 5.

<sup>16</sup> *Id.*

cost causation. In this instance, however, the Energy Advocates are proposing something more than a simple "policy adjustment" and instead are seeking to inappropriately modify the statutory requirements of Act 129. Act 129 does not require EDCs to spend the entirety of their plans' budget. Rather, Act 129 provides the budget cap with the focus remaining on the EDCs meeting certain goals. Requiring an EDC to spend all of its budget regardless of whether its goals have already been met takes away a vital ratepayer protection statutorily required in Act 129.

Moreover, Act 129 specifically places caps on the EDCs' plans for each phase, thereby ensuring that an unreasonable collection, or, in the Energy Advocates' proposal, an unreasonable overcollection, does not occur. Nothing in Act 129 provides that EDCs must or are even permitted to roll over unused costs from a previous phase. Through the Energy Advocates' proposal, rolling over unused costs from previous phases effectively violates the requirements of Act 129, which limits the amount that an EDC can spend for purposes of a plan. Because the Energy Advocates cannot provide any legal basis for its proposal, it must be rejected.

Accordingly, the Energy Advocates can provide nothing more than a policy argument in an attempt to contravene the legal requirements of Act 129, which have been adhered to by the PUC for the past four EE&C phases. Because the Energy Advocates' proposal to roll-over unspent costs in future phases would ignore the cap upon which ratepayers rely to fund EE&C programs, the Energy Advocates' proposal would be unjust and unreasonable. Moreover, the Energy Advocates' proposal to require EDCs to spend the entirety of their current budget is a policy fiction solely of the Energy Advocates' own making. As such, any proposals to require EDCs to spend the entirety of their current EE&C budgets or to roll over any unspent EE&C budgets must be rejected by this Commission as unjust, unreasonable, and inappropriate.

### III. CONCLUSION

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

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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