



July 3, 2025

VIA E-File

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Harrisburg, PA 17120

**RE: Act 129 Energy Efficiency and Conservation Program - Phase V
Docket No. M-2025-3052826**

Dear Secretary Homsher,

Attached for filing, please find the *Petition of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network (TURN) (collectively "Low Income Advocates") for Reconsideration and Modification of the Commission's June 18, 2025, Implementation Order* in the above referenced matter.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
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A handwritten signature in black ink, appearing to read "John W. Sweet", is written over a horizontal line.

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation : Docket No. M-2025-3052826
Program – Phase V :

Certificate of Service

I hereby certify that I have this day served copies of the **Petition of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and Tenant Union Representative Network (TURN) for Reconsideration and Modification of the Commission’s June 18, 2025 Implementation Order** upon the parties of record in the above captioned proceedings in accordance with the requirements of 52 Pa. Code § 1.54.

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July 3, 2025

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation : Docket No. M-2025-3052826
Program – Phase V :

PETITION OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA) AND TENANT UNION REPRESENTATIVE NETWORK (TURN) FOR RECONSIDERATION, CLARIFICATION, AND MODIFICATION OF THE COMMISSION’S JUNE 18, 2025 IMPLEMENTATION ORDER

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I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code §§ 5.41 and 5.572, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)¹ and the Tenant Union Representative Network (TURN)² (collectively the Low Income Advocates), hereby petition the Commission for reconsideration and clarification of its June, 18 2025 Implementation Order.

Specifically, the Low Income Advocates assert on reconsideration that the Commission erred as a matter of law and fact by overlooking the effect of its Phase V planning timeline on the due process rights of interested parties. In addition, the Commission overlooked the importance of creating a thorough evidentiary record necessary for the Commission to adequately review complex energy efficiency and conservation (EE&C) plans.

As explained more thoroughly below, we urge the Commission to reconsider, modify, and clarify the procedural schedule established in its Implementation Order to strengthen the evidentiary review process and timeline. Doing so will improve the ability of the parties to create a comprehensive evidentiary record and improve the Commission's ability to make an informed decision as to each Phase V EE&C Plan. The critical modifications and clarifications outlined below will not impair the Electric Distribution Companies' (EDCs) planning or filing timeline and will not add time or resources to the review process. However, these modifications will prevent

¹ CAUSE-PA is an unincorporated association of low-income Pennsylvanians from all corners of the state that advocates on behalf of its members to families of limited economic means across the state are able to connect and maintain safe and affordable water, electric, heating and telecommunication services to their home. CAUSE-PA was an active party in the Phase II, Phase III, and Phase IV implementation and plan review proceedings, and, through its counsel, has long been an engaged participant in Act 129 stakeholder meetings, working groups, and other processes.

² TURN is a not-for-profit organization with moderate- and low-income tenant members. All of TURN's members are either customers of or dependent on service from the public utilities of this Commonwealth. TURN has intervened in numerous matters before the Commission.

uncertainty and avoid a multitude of potential conflicts that – if unaddressed – will unnecessarily impinge on the due process review of Phase V EE&C Plans.

In support thereof, the Low Income Advocates assert the following:

II. BACKGROUND

1. Since its effective date in November 2008, Act 129 has required the Commission to create an Energy Efficiency and Conservation (EE&C) Program that is designed to reduce electricity consumption for all rate classes.³ The Act requires each EDC with at least 100,000 customers to adopt an EE&C Plan to reduce electric consumption in its service territory, subject to the review, approval, and oversight of the Commission.⁴
2. On February 20, 2025, the Commission entered a Tentative Implementation Order (TIO) at this docket, setting forth its proposed parameters for Phase V of the Act 129 EE&C Program.⁵
3. The Low Income Advocates filed extensive comments in this proceeding on April 7, 2025.⁶
4. The Low Income Advocates filed reply comments in this proceeding on April 22, 2025.⁷

³ 66 Pa. C.S. § 2806.1.

⁴ 66 Pa. C.S. § 2806.1(b)

⁵ TIO at 5.

⁶ Comments were also filed by Coalition for Equitable Energy and Housing in PA (CEEH-PA); Building Decarbonization Coalition, Center for Coalfield Justice, Clean Air Council, Conservation Voters of PA, Energy Efficiency Alliance, Green Building United, Jewish Earth Alliance – PA, Natural Resources Defense Council, PA Solar & Storage Industries Association (PASSIA), Celentano Energy Services, PennEnvironment, Pennsylvania Interfaith Power & Light, Pennsylvania Solar Center, Pennsylvania Sustainable Business Network, POWER Interfaith, Physicians for Social Responsibility Pennsylvania, Sierra Club Pennsylvania Chapter, Vote Solar, and the Pennsylvania Utility Law Project (collectively Energy Advocates); The Commission on Economic Opportunity (CEO) and Pennsylvania Weatherization Providers Task Force (WPTF); The Pennsylvania Department of Environmental Protection (DEP); Keystone Energy Efficiency Alliance (KEEA); Northeast Energy Efficiency Partnerships (NEEP); Philadelphia Solar Energy Association, Pennsylvania Solar Center, Pennsylvania Solar and Storage Industries Association, and Evergreen Action (collectively Clean Energy Advocates); Oracle Utilities Opower; RMI; Uplight; Advanced Energy United (AEU); The Office of Consumer Advocate (OCA); The Office of Small Business Advocate (OSBA); Industrial Energy Consumers of Pennsylvania ("IECPA"); Energy Association of Pennsylvania (EAP); PPL Electric Utilities Corporation (PPL); Duquesne Light Company (DLC); PECO Energy Company (PECO); FirstEnergy Pennsylvania Electric Company (FE PA).

⁷ Reply comments were also filed by Oracle, FE PA, UPLIGHT, UGI, IECPA, EAP, KEAA, PPL Electric, Sierra Club, DLC, CEO, WPTF, EnergyHub, OCA, Renew Home, PECO, and OSBA.

5. On June 18, 2025, the Commission issued its Final Implementation Order (FIO), establishing the parameters from which each EDC must develop its Phase V Act 129 EE&C Plans. The FIO includes both substantive and procedural parameters for Phase V, including the process through which EDC EE&C Plans will be reviewed and approved by the Commission.

III. LEGAL STANDARD

A. *Standard for Review*

6. The Commission has articulated its standard for granting reconsideration or clarification of a Commission order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(f), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . .

What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.⁸

Absent presentation of new or novel arguments, or considerations which were overlooked, it is unlikely that the Commission will be persuaded that its initial decision was an error of law or fact requiring reconsideration.⁹ Notably, requests for clarification are not subject to the *Duick* requirements that the requesting party present a new and novel argument because clarification does not seek to change or modify the Commission's order.¹⁰

⁸ *Duick v. Pa. Gas & Water Co.*, 56 Pa. P.U.C. 553, 559 (1982).

⁹ *Id.*

¹⁰ See *Petition of Duquesne Light Company for Clarification of Interim Guidelines for Eligible Customer Lists*, P-2023-3043362, M-2010-2183412, Statement of Vice Chair Kimberly Barrow (Jan. 18, 2024).

7. The Low Income Advocates’ requests for reconsideration, clarification, and revision outlined in this Petition satisfy *Duick*, in that the Petition raises substantive and procedural issues that were overlooked by the Commission and identifies errors of law and fact that must be addressed. Given the implication of these errors on the due process rights of interested stakeholders, the ability of the parties to create a thorough record, and the Commission’s ability to reach a well-informed decision regarding complex EE&C Plans, reconsideration is not only warranted – it is imperative.

B. Due Process Standards

8. The Commission, as an administrative body, is bound by the due process provisions of constitutional law and the principles of common fairness.¹¹ Due process requires notice and a meaningful opportunity to be heard on the issues.¹² “The fundamental requirement of due process is the opportunity to be heard at a *meaningful time* and in a *meaningful manner*.”¹³
9. Procedural due process applies when an administrative agency takes administrative action that “is adjudicatory in nature and involves substantial property rights.”¹⁴
10. In determining if a violation of procedural due process has occurred, courts must consider whether due process is required and, if so, what type of process is due.¹⁵

¹¹ Bridgewater Borough v. Pennsylvania Public Utility Commission, 181 Pa. Superior Ct. 84, 101, 124 A. 2d 165; McCormick v. Pennsylvania Public Utility Commission, 151 Pa. Superior Ct. 196, 201, 30 A. 2d 327. Paradise v. Pennsylvania Public Utility Commission, 184 Pa. Superior Ct. 8, 132 A. 2d 754.

¹² Popowsky v. Pa. PUC, 805 A.2d 637, 643(Pa. Commw. 2002); Smith v. PA. PUC, 192 Pa. Superior Ct. 424 (1960).

¹³ Mathews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) (emphasis added) (internal quotation marks omitted).

¹⁴ Conestoga Nat'l Bank of Lancaster v. Patterson, 275 A.2d 6, 9 (Pa. 1971) (citation omitted).

¹⁵ Popowsky v. Pa. PUC, 805 A.2d 637, 643(Pa. Commw. 2002); Smith v. PA. PUC, 192 Pa. Superior Ct. 424 (1960); Evans v. Pa. PUC, 2021 Pa. Commw. Unpub. LEXIS 519, *24, 264 A.3d 833 (Commw. Ct., 2021).

11. “An important attribute of procedural due process is the foundational notion, created by the Supreme Court of the United States, that above all else, procedural due process is a *flexible* concept, not a ‘technical’ one ‘with fixed content unrelated to time, place and circumstances. In procedural due process cases, this attribute places the focus on fundamental fairness as applied in *each* particular factual situation.’”¹⁶
12. The type of process due is determined by considering the private interest at stake, the value of additional procedural safeguards, and the government's interest in proceeding without providing such procedures.¹⁷ The courts have developed a longstanding multipart test for procedural due process, which examines (1) whether a private interest is affected by state action; (2) the risk of deprivation and “the probability that the additional procedure sought by claimant will significantly improve the accuracy of the state procedure”; and (3) the interest of the state, “which include the nature of the government function and the added expense of the additional procedure sought.”¹⁸
13. Applying the procedural due process test to this proceeding, there are substantial interests at stake, there is a high risk of deprivation, and the proposed modifications and clarifications to the Commission’s procedure will significantly improve the accuracy of the Commission’s review – without added time or expense. The Low Income Advocates’ members, and low-income consumers in general, have a substantial financial and property interest in the review of Phase V EE&C Plans to ensure the proposed programs include robust and comprehensive low-income efficiency programs that are accessible to low-

¹⁶ John L. Gedid, Procedural Due Process in Pennsylvania: How the Commonwealth Court Clarified an Ambiguous Concept, 20 Widener L. J. 26 (2010),

<https://commonwealthlawwidener.elsevierpure.com/ws/portalfiles/portal/39841408/fulltext.pdf>.

¹⁷ Pa. Coal Mining Ass'n v. Ins. Dep't, 471 Pa. 437, 370 A.2d 685, 691 (Pa. 1977) (citing Mathews v. Eldridge, 424 U.S. 319, 334-35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).

¹⁸ Gedid at 39 (citing Mathews v. Eldridge, 424 U.S. 319 (1976)).

income consumers and are fully compliant with all applicable regulatory and statutory requirements. Low-income consumers face disproportionately high energy burden, and are more likely to face acute energy insecurity, which heightens their need for efficiency services through Act 129 programs.¹⁹ At the same time, the Commission has a substantial interest and, in fact, a statutory obligation to ensure Act 129 programs are thoroughly investigated and subject to rigorous review to determine whether they are just and reasonable in furtherance of the public interest – and consistent with all applicable statutes, regulations, and policies established in the FIO. If the Commission fails to modify and clarify the procedural process, the risk of deprivation to the rights of stakeholders and the ability of the Commission to reach an informed decision will be high. With simple modifications to further define and clarify the timeline for formal evidentiary hearings, the Commission will substantially improve the ability of stakeholders to be meaningfully heard – without adding time or resources to the overall review process.

IV. REQUEST FOR RECONSIDERATION AND CLARIFICATION

A. The Commission erred as a matter of law and fact in overlooking the effect of its Phase V planning timeline and procedural review on the due process rights of interested parties and the creation of a thorough evidentiary record necessary for the Commission to adequately review complex energy efficiency and conservation (EE&C) plans.

14. In its TIO, the Commission proposed to maintain its prior EE&C Plan approval process from Phases II-IV. In doing so, the Commission explained its intent to establish an EE&C Plan approval process that “balanced the desire to respect feedback from all interested

¹⁹ Low Income Advocate Comments at 9-18 (providing an extensive analysis of the overwhelming and largely unmet need for comprehensive, whole-home efficiency programs to help reduce disproportionately high energy burdens and corresponding high rates of energy insecurity across Pennsylvania’s low income population.)

parties with the need to complete the process within the statutory time constraints.”²⁰

Namely, that the Commission is required to rule on each EE&C Plan within 120 days of plan submission.²¹

15. Specifically, the Commission’s TIO proposed that EDCs file their EE&C Plans by November 1, 2025, with an initial Commission decision issued within 120 days.²² To meet this timeline, the TIO proposed the following interim procedural deadlines:

- The Commission will publish a notice of each proposed plan in the Pennsylvania Bulletin within 20 days of its filing.
- An answer along with comments and recommendations would be filed within 20 days of the publication of the notice.
- Each plan will be referred to an Administrative Law Judge (“ALJ”), to establish a discovery schedule and schedule evidentiary hearings.
- Hearings must be completed on or before the 65th day after plans are filed, or January 5, 2026.
- Parties will have 10 days thereafter to file briefs.
- The EDCs will have 10 days to file a revised plan or reply comments or both.
- The ALJ must certify the record to the Commission, after which the Commission would approve or reject each plan, in whole or in part, within 120 days of the EDC’s initial filing.²³

16. The Commission stated its belief that this process “balances the needs of all stakeholders while recognizing the time constraints and resource allocation required in the litigation of the Plans.”²⁴

17. As a practical matter, the initial November 1, 2025, filing deadline falls on a Saturday. So, under the initial TIO proposal, EE&C Plans would have been due by Monday, November 3, 2025, and the Commission’s initial decision approving or rejecting the Plans would need

²⁰ TIO at 61.

²¹ 66 Pa. C.S. § 2806.1(e)(2)

²² TIO at 64, Table 16.

²³ Id. at 62-63.

²⁴ Id. at 63.

to be issued by Tuesday, March 3, 2026. 20 days after the initial Plan filing deadline would be Sunday, November 23, 2025, which means that notice would need to be published in the Pennsylvania Bulletin by Saturday, November 22, 2025, and formal answers and comments would be due 20 days thereafter – or December 12, 2025. Of particular note, the Commission did not specify a timeframe between the referral to the ALJ and the scheduling of a prehearing conference establishing the discovery and litigation schedule. In past Phases, with the exception of Phase IV, prehearing conferences were not held until after the answer and comment period. Thus, without amendment of the prior process, the formal evidentiary process would begin sometime after December 12, 2025, and evidentiary hearings would conclude on or before January 7, 2026 – *leaving, at most, just 14 business days for parties to conduct and review discovery and develop the evidentiary record in each of the four EE&C Plan proceedings*. Of course, this assumes prehearing conferences would be scheduled in each of the four EE&C Plan proceedings on the first business day after the close of the formal Answer period. Given the overlap of counsel representing stakeholders in multiple proceedings, the ability to hold prehearing conferences all on the same day is unlikely. (See paragraph 37, below, for a comparative table of the deadlines associated with the process and timeline in the TIO and FIO, as well as the Low Income Advocates’ proposed procedural amendments).

18. In our initial comments, the Low Income Advocates pointed out that – absent modifications to the formal evidentiary process – the short timeframe between referral to the ALJ and conclusion of evidentiary hearings was insufficient to conduct discovery and develop an appropriate record.²⁵ We explained that numerous procedural issues have arisen in prior

²⁵ Low Income Advocate Comments at 63-64; see FIO at 197.

Act 129 Phases as a result of the concurrent filing of multiple complex plans, the truncated statutory approval timeframe, and the lengthy and unnecessary delay in the start of formal evidentiary review and the exchange of formal discovery necessary to understand the contours of each EDC's proposed EE&C Plan.²⁶ We specifically pointed out that, in Phase IV, plans were filed November 30 and prehearing conferences were not held until the second week in January – leaving parties just two weeks to conduct discovery, analyze the plans, and develop formal written testimony and recommendations.²⁷

19. The Low Income Advocates made several recommendations for modest procedural adjustments to the Phase V Plan approval process to help improve the formal review process and facilitate the development of a stronger and more complete evidentiary record for the Commission to review. Our recommendations included:
 - a. Refer Plans to the OALJ immediately upon filing so that a prehearing conference can be held promptly at the conclusion of the formal answer period.²⁸
 - b. Shorten the Answer period to 15 days.
 - c. Establish an interim process for granting petitions to intervene and discovery modifications – permitting the discovery process to commence as soon as possible after plans are filed.²⁹
20. In their respective comments, EAP, FE PA, Duquesne Light, and PPL advocated for extension of the due date for Phase V EE&C plan filing. EAP proposed a revised due date of November 18, 2025, which was supported by FE PA, Duquesne Light, and PECO, while

²⁶ Low Income Advocate Comments at 63-65.

²⁷ Id. at 64; PECO Ph. IV EE&C Plan, M-2020-3020830 was filed November 30, 2020. The Prehearing Conference was not scheduled until January 8, 2021, with direct testimony due January 14, 2021. First Energy Ph IV EE&C Plans, M-2020-3020820, M-2020-3020821, M-2020-3020822, M-2020-3020823, were filed November 30, 2020. The Prehearing Conference was not scheduled until January 5, 2021, with direct testimony due January 13, 2021.

²⁸ We noted, specifically, that referral to the OALJ and commencement of the formal review process should proceed in parallel with the public comment period, allowing investigation to commence through formal discovery during the comment period without interfering with the public comment period.

²⁹ Low Income Advocate Comments at 64-65; see FIO at 193-194.

PPL proposed a revised due date of November 30, 2025.³⁰ In support of this proposal, EAP and the EDCs argued that the Commission’s proposal in the TIO provided less time than the Phase IV timeline between the date of the FIO and the proposed EE&C plan filing date.³¹

21. In our reply comments, the Low Income Advocates opposed extending the plan date filing *unless the Commission also adopted our recommended amendments to the plan approval process to expedite the formal review process independent from the public comment period.*

We explained:

Extending the deadline for EDC plan submission would further truncate the ability of stakeholders to meaningfully investigate the justness and reasonableness of the EDCs’ plans – in turn eroding the Commission’s ability to meaningfully review and oversee these crucially important programs.³²

We further explained that, at the time, November was still seven months away (now five months away), and that EDC planning is already underway based on the blueprint provided in the Commission’s TIO.³³ As we explained, *“Adding several additional weeks for utilities to design their plans would not meaningfully add to this lengthy preparation period, but it would serve to further erode the already constrained due process review.”*³⁴

22. Similarly in its reply comments, the OCA requested that if a filing extension is granted, the Commission adjust future date requirements accordingly.³⁵

³⁰ FIO at 196-197 (citing EAP Comments at 20, DLC Comments at 15, FE PA Comments at 27, PECO Comments at 28).

³¹ Id. at 196-197.

³² Low Income Advocates Reply Comments at 18-19.

³³ Id. at 18.

³⁴ Id. at 18-19.

³⁵ OCA Reply Comments at 8.

23. In its FIO the Commission accepted the EAP and EDC proposal to extend the due date for Phase V EE&C plan filing – opting, without explanation, to approve the later date of November 30, 2025, recommended by PPL.³⁶ The Commission summarily rejected the recommendations of the Low Income Advocates and the OCA to adjust the subsequent deadlines, simply stating: “The revised schedule aligns with the Phase IV planning timeline.”³⁷ The Commission also referenced its earlier noted concern that changes to the timeline “could jeopardize the timely launch of Phase V EE&C plans and lead to adverse outcomes.”³⁸ However, the Commission made no attempt to analyze the practical impact of the extension on all of the subsequent deadlines for review of Phase V plans, nor did it acknowledge the severe due process constraints in the Phase IV process highlighted in the Low Income Advocates’ initial and reply comments (and discussed further below).
24. It is critical to the due process rights of non-company stakeholders that the Commission avoid the procedural pitfalls from prior phases and create a more just and equitable process that provides a *meaningful* opportunity to review the EDCs’ Phase V Plans.
25. In rejecting the Low Income Advocates’ proposal to amend the evidentiary process, the Commission overlooked the ramifications of its approved process and timeline on the due process rights of consumers and other interested stakeholders and, in turn, the practical impact its decision will have on the creation of an evidentiary record from which the Commission can base its decision. As explained below, this oversight raises substantial due process concerns. Thus, the Low Income Advocates submit that its Petition meets the *Duick*

³⁶ FIO at 197.

³⁷ Id.

³⁸ Id. (In dismissing the Low Income Advocates recommended amendments to the Phase V Planning (section D.2), the Commission vaguely references its earlier rationale regarding its disposition on the Phase V Approval Process (section D.1)).

standard, setting forth numerous policy and legal arguments not previously considered by the Commission or otherwise overlooked which substantially impact the rights of interested parties and the duties of the Commission.

26. First, the Commission provides no justification for extending the Plan filing deadline to November 30, as opposed to the November 18 deadline proposed by EAP and supported by three of the four EDCs.³⁹ Nor does it provide any analysis of its decision not to amend the subsequent deadlines in the Commission's proposed approval process, or how those subsequent deadlines would interact with the multitude of state and federal holidays in December and January. Indeed, in setting the deadline for Sunday, November 30, 2025 (a day on which the Commission is closed), the Commission overlooked even the most basic fact that the actual filing deadline (the date on which the entire rest of the timeline is based)⁴⁰ will actually fall on Monday, December 1, 2025.
27. While the Low Income Advocates are not advocating for a reversal of the Commission's decision to extend the EDC EE&C plan filing deadline, we nevertheless assert that the Commission's failure to justify its decision to adopt a November 30 deadline, without also adjusting the procedural process to address the practical concerns raised by the Low Income Advocates and the OCA, constitutes an error of law and fact.
28. If the Commission's FIO is allowed to stand without explicit modification to the publication period, formal Answers may not be due until Friday, January 9, 2026, which means that prehearing conferences would commence on or after Monday, January 12, the first business day after Answers are due. Evidentiary hearings will be set to conclude in all four Phase V Plans on or before Wednesday, February 4, 2026, 65 days after the EE&C Plans are filed.

³⁹ Id.

⁴⁰ Id. at 192.

As a practical matter, this leaves just 15 business days (or less) for parties to conduct formal discovery and develop a formal evidentiary record from which the Commission can base its final determination in each of the Phase V EE&C plan proceedings.

29. The Commission overlooked the impact this compressed procedural schedule will have on the ability of stakeholders to conduct timely discovery and develop an evidentiary record in each case. The Commission’s procedural rules provide that “a party to the Commission proceeding may conduct discovery.”⁴¹ While the rules further provide that the right to discovery attaches after an adverse pleading is filed, and an Answer is clearly an adverse pleading, there is substantial uncertainty about whether this right attaches for a non-statutory stakeholder until after they are granted status as a formal party in the case through a ruling on their petition to intervene. As a matter of comity, utilities often – though not always – comply with requests for discovery before a petition to intervene is granted, and this should certainly be encouraged. But, given the lack of clarity in the rules, there is no guarantee that a stakeholder will be able to conduct discovery until after their intervention is approved – an occurrence most often reserved for the prehearing conference. Without explicit modification to the Commission’s procedural process and timeline for review established in its FIO, non-statutory stakeholders may not be able to conduct discovery until January 12 – just 15 business days before the Commission’s deadline for evidentiary hearings.
30. Critically, even for statutory parties, the Commission’s standard timeframe for discovery is 20 calendar days unless expressly modified.⁴² Absent a specific order from the Commission to the contrary, approval of petitions to intervene and discovery modifications are typically

⁴¹ 52 Pa. Code 5.331. While the rules provide that the right to discovery attaches when an adverse pleading is filed, and an Answer is clearly an adverse pleading, that right only attaches for a “party.” Until granted, non-statutory stakeholders who file a Petition to Intervene may not be considered a party to the proceeding.

⁴² 52 Pa. Code § 5.342(d).

not imposed until a prehearing conference is held. Without explicit Commission direction, the Low Income Advocates are concerned that the parties will not be able to conduct discovery in time to inform their direct and rebuttal testimony in each case.

31. In failing to adjust the timeline for Phase V review to ensure petitions to intervene are granted in a timely manner, the Commission overlooked the impact on the ability for non-statutory stakeholders to conduct discovery within a reasonable timeframe – truncating the due process rights of stakeholders to meaningfully participate in litigation and limiting the ability of the parties to create a detailed record from which the Commission can rest its decision. This constitutes an error of law and fact.
32. The Commission’s FIO also fails to acknowledge that the Low Income Advocates’ procedural recommendations would not extend the overall 120-day statutory deadline for Commission review – nor would it disrupt the interim 65-day deadline the Commission established in its TIO and FIO for the conclusion of evidentiary hearings or the subsequent briefing deadlines. To the contrary, the Low Income Advocates’ recommendations would *expedite* the formal evidentiary process by having it run in parallel and alongside the comment phase rather than after the comment phase – allowing discovery to begin much earlier in the process, and in turn allowing for a more meaningful review of the Phase V plans *within* the 120-day statutory review period and the other interim parameters established in the Commission’s FIO.
33. The Commission’s conclusion that its Phase V procedural timeline (including its 30-day filing extension) is justified merely because it follows the Phase IV procedural timeline overlooks critical facts regarding procedural issues that occurred during that phase. In Phase IV, the Commission’s decision to extend the Plan filing deadline, coupled with its failure to

adjust the publication, answer, and discovery timeline, detrimentally impacted the ability of stakeholders to fully participate in the Phase IV review process.⁴³ By failing to adopt the procedural modifications recommended by the Low Income Advocates, the Commission risks repeating the same mistakes from Phase IV – impacting the due process rights of consumers and other interested stakeholders again in Phase V.⁴⁴

34. The Commission has a duty and obligation to scrutinize EE&C Plans to ensure that they are a just and reasonable expenditure of ratepayer funds and are compliant with all applicable statutory and regulatory laws.⁴⁵ Considering the technical detail and complexity of these plans, it behooves the Commission to ensure that the parties and the ALJs are able to develop a complete and detailed evidentiary record for their review.

35. Of particular note, in the FIO, the Commission declines to provide prescriptive guidance on several complex and novel issues, opting instead to assign them for review in EDC-specific plan proceedings, including:

- a. The definition of “comprehensive measures,”⁴⁶
- b. EDC proposals to incentivize fuel switching,⁴⁷
- c. Data sharing, customer consent, and cyber security practices,⁴⁸
- d. Coordination of marketing efforts,⁴⁹
- e. Determining an equitable variety of measures,⁵⁰

⁴³ See Phase IV Energy Efficiency and Conservation Program, Docket M-2020-3015228, Joint Expedited Motion for Extension of Procedural Schedule of CAUSE-PA, NRDC, OCA, OSBA, the Commission on Economic Opportunity, the Community Action Association of Pennsylvania, the Sustainable Energy Fund of Central Eastern PA, and TURN (filed January 8, 2021).

⁴⁴ Low Income Comments at 63-64; Low Income Advocate Reply Comments at 18-19.

⁴⁵ 66 Pa. C.S. § 1301.

⁴⁶ FIO at 52.

⁴⁷ Id. at 174.

⁴⁸ Id. at 181.

⁴⁹ Id. at 190.

⁵⁰ Id. at 200.

f. Proposed rebate application deadlines.⁵¹

In granting such wide latitude and deference to the EDCs, it is incumbent upon the Commission to maximize the procedural review process and, in turn, facilitate the creation of a robust evidentiary record from which it can fairly and objectively assess these novel and complex issues.

36. For the reasons outlined above, the Low Income Advocates submit that the Commission erred as a matter of law and fact when it failed to consider the practical implications of its proposed procedural review process and timeline on the due process rights of consumers and other stakeholders. To cure these errors, we respectfully request that the Commission reconsider, clarify, and amend its Phase V procedural review process and timeline as follows:

- a. **Order notice to be published in the Pennsylvania Bulletin on or before Saturday, December 13, 2025 – 12 days after the December 1 Plan filing deadline established in the Commission’s FIO.**⁵²

In its FIO, the Commission failed to provide a date certain for which the plans will be published in the Pennsylvania Bulletin, which will initiate the public comment period – as well as the answer period, which is vital to a timely initiation of the formal evidentiary process. Providing a definitive date for publication will help provide certainty to stakeholders who plan to either comment on the plans or participate in the litigated plan proceedings. It will also help avoid the pitfalls faced by the Commission in Phase IV, where the plans were not published in the Bulletin until January 2, 2021 – leading to a procedural due process concerns wherein evidentiary hearings were

⁵¹ *Id.* at 244.

⁵² To be published in the Bulletin by December 13, 2025, notice must be submitted to the Legislative Reference Bureau by December 3, 2025. *See* Pennsylvania Bulletin 2025 Publication Schedule, available at: <https://www.pacodeandbulletin.gov/downloads/BulletinSchedule.pdf>.

scheduled to conclude before answers and petitions for intervention were actually due.⁵³ Requiring publication in the Pennsylvania Bulletin by December 13 will maximize the limited time available to investigate the EDC's Phase V Plans.

- b. Require that the public comment and litigation track run concurrently and in parallel, but on separate timelines, which will allow the formal litigation to commence, while also allowing adequate time for public comment outside the litigated proceeding.**

The Commission should allow the public comment and litigation tracks to occur at the same time, but on separate timelines, rather than only starting litigation after the comment period ends. This modification will allow the formal evidentiary process to commence in a timely manner, without impinging on the ability of the public to comment on the EDC's proposed plans. Indeed, there is no justification for delaying the start of the formal evidentiary process until the close of the public comment hearing. It is common practice in rate proceedings, acquisitions, and other utility plan proceedings for the Commission to oversee a public input process on a parallel track with a more extensive formal evidentiary process within the same docketed proceeding.

⁵³ See Energy Efficiency and Conservation Program, Docket M-2020-3015228, Joint Expedited Motion for Extension of Procedural Schedule of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSEPA), Natural Resources Defense Council, the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission on Economic Opportunity, the Community Action Association of Pennsylvania, the Sustainable Energy Fund of Central Eastern Pennsylvania, and the Tenant Union Representative Network (January 8, 2021).

- c. **Establish a 30-day deadline from the date of publication (January 12, 2026) for public comment on each of the EDC Phase V Plans, avoiding conflict with the New Year holiday.**

Separating the public comment and litigation tracks will allow the Commission to establish an extended public comment period - without extending or interfering with the 120-day Phase V Planning Timeline. By extending the public comment period to 30 days, the Commission can promote public participation in the process and avoid conflicts with the winter holidays.

- d. **Establish a 10-day deadline from the date of publication (December 23, 2025) for formal Answers and Petitions to Intervene and require EDCs to serve their Plans on interested stakeholders on the date of initial filing.**

Separating the litigation track and the public comment track and running them in parallel will also allow the Commission to shorten the deadline for formal answers and petitions to intervene. By setting a date certain for publication of December 13, 2025, and shortening the answer period to 10 days from the date of publication, the OALJ can timely rule on petitions to intervene and other procedural details, allowing investigation to commence without undue delay. While we are mindful of providing sufficient time for intervention, we note that December 23, 2025 is 22 days from the date of plan filing and, thus, is consistent with the standard 20-day timeframe for responding to petitions under the Commission's regulations.⁵⁴ To ensure that potential parties are provided adequate notice and opportunity to intervene, the Commission should require EDCs to publicly post all documents on their external websites. EDCs

⁵⁴ 52 Pa. Code § 5.61(a) ("Unless a different time is prescribed by statute, the Commission, or the presiding officer, answers to complaints and petitions shall be filed with the Commission within 20 days after the date of service.")

should also be required to serve a copy of their initial filing or a publicly accessible link on all parties and interested stakeholders that filed comments or reply comments in this proceeding, as well as the active parties in the EDC's Phase IV Act 129 proceeding. EDCs should advise stakeholders of the deadline to file formal answers and/or petitions to intervene.

- e. **Refer the EE&C Plans to the Office of Administrative Law Judge (OALJ) immediately upon filing and require Prehearing Conferences to be scheduled no later than January 6, 2025.**

As explained above, a crucial issue overlooked by the Commission in its FIO is the practical impact of the procedural schedule on the rights of non-statutory stakeholders while their petitions to intervene are pending review. We urge the Commission to reconsider its decision and refer the EE&C Plans to the OALJ immediately upon filing. In turn, we urge the Commission to set a deadline of no later than January 6 for prehearing conferences in each of the EE&C Plan proceedings. Establishing a date-certain deadline for prehearing conferences would provide flexibility to the ALJs and the parties to schedule around the winter holidays, while avoiding the acute procedural problems that arose in Phase IV. Providing January 6 as a deadline for prehearing conferences will provide, at least, an additional five business days to develop the evidentiary record. While we acknowledge that five additional business days will not provide the length of time truly needed to fully investigate and analyze each EDC's EE&C Plans, this brief extension of the window for litigation will extend the narrow litigation timeframe by approximately 33% (from 15 business days to 20 business

days). This additional time will be gained without interfering with the 120-day statutory deadline for the Commission to issue a decision in the case.

- f. **Clarify that the right to discovery commences with the filing of a Petition to Intervene or, alternatively, establish an expedited timeline to review and approve Petitions to Intervene and impose discovery modifications prior to the prehearing conference.**

As explained above, whether the discovery rules apply to intervenors that have not yet been granted full party status is not clear.⁵⁵ This lack of clarity leaves intervenors at the behest of EDCs to comply with discovery requests before their petition to intervene is granted, as it is unclear whether compliance with such requests can be compelled. To address this issue, in our initial comments, we recommended that the Commission establish an interim process for granting petitions to intervene and discovery modifications – permitting the discovery process to commence as soon as possible after plans are filed.⁵⁶ The Commission failed to address these due process concerns and summarily rejected these recommendations without justification. We respectfully request that the Commission reconsider its decision to reject these reasonable recommendations and amend its FIO to clarify that discovery rights attach when a stakeholder files an Answer and Petition to Intervene or – alternatively – establish an expedited timeframe for OALJ to review and approve Petitions to Intervene.

⁵⁵ 52 Pa. Code 5.331. While the rules provide that the right to discovery attaches when an adverse pleading is filed, and an Answer is clearly an adverse pleading, that right only attaches for a “party.” Until granted, stakeholders who file a Petition to Intervene are not a party to the proceeding.

⁵⁶ Low Income Advocate Comments at 65.

g. Impose discovery modifications shortening the timeframe for response to 10 calendar days.

The challenges in developing a full record in the EE&C plan proceedings within a severely compressed timeframe, outlined above, are compounded by the fact that the standard timeframe for response to discovery is 20 days – unless and until modified by the Commission or an ALJ. Thus, with only 65 days allotted between publication of the plans in the Bulletin and the completion of evidentiary hearings, there is not sufficient time to receive responses to follow up discovery prior to the due date for direct testimony. Thus, the Low Income Advocates respectfully recommend that the Commission modify its discovery rules to establish a 10-day turnaround for discovery served between the date of filing and the prehearing conference. Thereafter, the Commission should defer to the presiding ALJ to make further modifications to discovery deadlines “as justice requires”, consistent with the Commission’s evidentiary rules.⁵⁷ In combination with the procedural modifications outlined above, establishing an initial 10-day deadline for discovery will help to provide the parties with a meaningful opportunity to investigate each EE&C Plan and develop a robust evidentiary record.

37. To help illustrate the practical issues outlined above, the following table provides a breakdown of the critical deadlines included in the Commission’s TIO and FIO – as well as the modifications offered above. As demonstrated, the amendments outlined in the prior paragraph would increase the number of business days for formal evidentiary proceedings

⁵⁷ 52 Pa. Code § 5.321(b) (discretion of presiding officer).

by at least 5 days, without extending the 65-day deadline set for the conclusion of evidentiary hearings.

| Milestone | TIO Procedural Timeline | FIO Procedural Timeline | Low Income Advocates' Recommended Procedural Timeline on Reconsideration |
|---|--|--|---|
| Plan Filing Deadline | Nov. 3 (M) | Dec. 1 (M) | Dec. 1 (M) |
| Publication, Pa. Bulletin | Nov. 22 (Sa) | Dec. 20 (Sa) | Dec. 13 (Sa) |
| Public Comment | Dec. 12 (F) | Jan. 9 (F) | Jan. 12 (M) |
| Formal Answer/Intervention | Dec. 12 (F) | Jan. 9 (F) | Dec. 23 (Tu) |
| Prehearing Conference | On/After Dec. 15 (M) | On/After Jan. 12 (M) | On/Before Jan. 6 (Tu) |
| Close of Evidentiary Hearing <i>(65 days from Plan filing)</i> | Jan. 7 (W) | Feb. 4 (W) | Feb. 4, 2025 (W) |
| Business Days from Prehearing Conference to Close of Evidentiary Hearing | 14 days (max) | 15 days (max) | 20 days (max) |

The Low Income Advocates' proposed amendments to the Commission's procedural process and timeline for Phase V EE&C Plan review are crucial to maximizing the time available for evidentiary review and, in turn, the ability of the parties to create an appropriately detailed record from which the Commission can make an informed decision.

V. CONCLUSION

WHEREFORE, for the reasons enumerated above, CAUSE-PA and TURN respectfully request that the Commission reconsider, clarify, and revise its June 18, 2025 Implementation Order consistent with our above recommendations.

Respectfully submitted,

On Behalf of CAUSE-PA



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Date: July 3, 2025

VERIFICATION

I, Elizabeth R. Marx, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Date: July 3, 2025