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April 17, 2012

VIA HAND DELIVERY
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
PO Box 3265
Harrisburg, PA 17105-3265

RE: Re: Act 129 Energy Efficiency and Conservation Program Phase Two, Docket No. M-2012-2289411; **COMMENTS OF THE SUSTAINABLE ENERGY FUND OF CENTRAL EASTERN PENNSYLVANIA**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are an original and three (3) copies of the Comments of the Sustainable Energy Fund of Central Eastern Pennsylvania.

If you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully,

Craig R. Burgraff
Counsel for Sustainable Energy Fund of Central Eastern Pennsylvania

CRB/alh
Enclosure

cc: Megan Good, Bureau of Technical Utility Services (megagood@pa.gov)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Act 129 Energy Efficiency and Conservation Program Phase Two	: :	Docket No. M-2012-2289411

COMMENTS OF THE SUSTAINABLE ENERGY FUND OF CENTRAL EASTERN PENNSYLVANIA

The Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), by and through its attorneys in this matter, Hawke McKeon & Sniscak LLP, files the following Comments in the above-captioned proceeding.

I. INTRODUCTION

On October 15, 2008, House Bill 2200 was signed into law as Act 129 with an effective date of November 14, 2008.[1] Among other things, Act 129 required Energy Efficiency and Conservation ("EE&C") plans for Pennsylvania's largest electric distribution companies ("EDCs") and required that the Public Utility Commission ("Commission") evaluate the costs and benefits of the EE&C plans by November 31, 2013. Act 129 further directed that the Commission must set new incremental consumption and peak demand reductions if the benefits of the program and plans exceed the cost.[2] Regarding electricity consumption, Section 2806.1(c)(3) provides:

> By November 30, 2013, and every five years thereafter, the commission shall evaluate the costs and benefits of the program established under

[1] 2008, October 15, P.L. 1592, No. 129 ("Act 129").
[2] 66 Pa C.S. §§ 2806.1(c)(3) and (d)(2).

> subsection (a) and of approved energy efficiency and conservation plans submitted to the program. The evaluation shall be consistent with a total resource cost test or a cost-benefit analysis determined by the commission. If the commission determines that the benefits of the program exceed the costs, the commission shall adopt additional incremental reductions in consumption.[3]

Regarding peak electric demand, Section 2806.1(d)(2) provides:

> By November 30, 2013, the commission shall compare the total costs of energy efficiency and conservation plans implemented under this section to the total savings in energy and capacity costs to retail customers in this Commonwealth or other costs determined by the commission. If the commission determines that the benefits of the plans exceed the costs, the commission shall set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the Commission.[4]

In accordance with these directions, the Commission has begun the process of evaluating the cost-effectiveness of the various EDC EE&C plans and determining whether additional incremental consumption and peak demand reduction targets will be adopted and, if so, what those incremental reduction targets shall be.

To this end, the Commission issued a March 1, 2012 Secretarial Letter seeking comments on enumerated topics. The Commission held a stakeholder meeting on March 16, 2012 to provide interested parties an opportunity to give preliminary views on the topics and identify additional issues and concerns regarding design of future EE&C plans. The SEF attended the stakeholder meeting. The SEF submits the following comments in response to the Commission's Act 129 initiative.

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[3] Act 129 requires a minimum 1% reduction in total annual weather normalized consumption of the retail customers of each EDC by May 31, 2011, and a minimum 3% reduction by May 31, 2013. 66 Pa. C.S. § 2806.1(c)(2).

[4] Act 129 requires a minimum of 4.5% reduction of weather normalized annual system peak demand in the 100 hours of highest demand by retail customers by May 31, 2013. 66 Pa. C.S. § 2806.1(d)(1).

II. COMMENTS

Sustainable energy is the provisioning of energy to meet today's needs without compromising the ability of future generations of Pennsylvanians to meet their needs. It is with this paradigm that SEF provides Comments on the issues identified in the March 1, 2012 Secretarial Letter.

The decision by the Commission to engage the Commonwealth in a Phase II of Act 129 is a significant matter since this action could commit more than $1 billion[5] in ratepayer resources to be managed by EDCs over a five-year period to achieve further incremental reductions in energy consumption and demand. The General Assembly established and was guided by three public policy findings related to the EE&C program and EE&C plans. These findings are:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment.

(2) It is in the public interest to adopt energy efficiency and conservation measures to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric services to all residents.

[5] Based on the originally approved EDC annual expenditures the projected aggregated expenditures for a five year program is $1,225.5 million. Original EDC approved expenditures are: Alleghany $23.6 million, Duquesne $19.5 million, MetEd $24.9 million, Penelec $22.9 million, PennPower $6.7 million, PECO $85.4 million and PPL $61.5 million.

(3) It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.[6]

As defined by these public policy findings, the Commonwealth's EE&C program is about much more than simply reaching 1%, 3% or other energy consumption goals. It is about reaching the goals in such a way as to provide for affordable, efficient and environmentally sustainable electric service at the least cost.

The SEF recommends the Commission establish the following three global philosophies for EE&C program and EE&C plans going forward.

- Ratepayers Preference

  The EE&C plans are funded by ratepayers for the ratepayers benefit. EDCs manage these programs on behalf of ratepayers. Decisions should not default to or preference the EDC, but rather the ratepayers who fund and are to benefit from the program.

- Customer Betterment

  If a customer is willing to go above and beyond a utility program, the incentive available for the minimum activity should be available to the customer who is willing to do more. For example, if a utility offers an incentive to install an incandescent bulb but the customer would prefer to install a LED bulb, a bulb that provides equivalent purpose and further reduces energy consumption, the customer should be eligible for the Compact Fluorescent Light ("CFL") rebate. To not do so creates an economic disincentive for early adopters encouraging them not to engage in newer technologies which may be more expensive. If the ratepayer is willing to go further at his or her own expense, that behavior should be supported, not discouraged.

- Fuel Neutrality

[6] Preamble to Act 129, 66 Pa C.S. § 2806.1 Historical and Statutory Notes.

Fuel neutrality is the attribute of a program that provides for customer choice among competing energy sources and technologies for a particular energy need. The result of fuel neutrality is a sponsoring entities' program being structured in a manner where one energy source is not supported or favored over another. The basic tenant is that EDC plans should be structured in such a way as to support consumer choice within the context of the plan's objectives, rather than the objectives of the sponsoring entity(s), which in Pennsylvania is the EDC.

Pennsylvania's Alternative Energy Portfolio Standards Act[7] created under Act 213 demonstrates both fuel neutrality and the lack thereof. In this regard, Tier I includes eleven (11) different energy sources: solar photovoltaic, solar thermal, wind, low-impact hydropower, geothermal energy, biologically derived methane gas fuel cells, biomass energy , coal mine methane , black liquor and large scale hydropower. With the exception of solar photovoltaic, the remaining ten (10) resources all compete equally, consequently the energy source and technology is not chosen by the program sponsor, the Commonwealth, but by the program participants. The exception, solar photovoltaic, is an example of the lack of fuel neutrality since it creates an enhanced economic benefit for solar photovoltaic that other technologies cannot participate in, consequently creating an economic advantage for a specific technology. Fuel neutrality leaves fuel choice decisions to the customer, not the sponsoring entity, in this case the EDC.

For example, if an EDC (sponsoring entity) offers a heat pump water heater program that focuses on replacing traditional electric resistance water heaters with heat pump water heaters, ratepayers should have the option of receiving an energy proportional rebate[8] to replace the electric resistance water heating equipment with the technology and energy source of their choice. The customers' choices for heating water may include a variety of energy sources and technologies such as high-efficiency natural gas water heaters, combined heat and power solutions, biomass solutions as well as solar thermal solutions. Through utilization of energy proportional rebates, the cost per MWh eliminated is the same across all services and technologies.

Given these parameters, the SEF provides the following Comments to the specific issues enumerated in the March 1, 2012 Secretarial Letter as well as several additional issues.

1. **Planning Timeline.**

During the March 16, 2012 stakeholder meeting, parties expressed timeline concerns created by simultaneous filing of EDC Phase II plans. SEF recommends staggering EDC plan filing submission deadlines by 2 weeks to relieve some of the resource constraints. For example:

[7] 2004, November 30, P.L. 1672, No. 213; 73 P.S. § 1648.1 *et seq.*

[8] Energy proportional incentives provide identical financial incentives based on avoided MWs and MWhs.

EDC	Plan Submission Date
Duquesne	October 15, 2012
First Energy EDC's	November 1, 2012
PECO	November 15, 2012
PPL Electric Utilities	November 30, 2012

2. **Length of Second EE&C Program.**

SEF recommends to the Commission that it bifurcate the Commonwealth's Act 129 EE&C program from the EDC's EE&C plans.

Act 129 contains certain anomalies with regard to energy efficiency and conservation. With regard to the EE&C program, Act 129 requires the Commission to adopt a program and each qualifying EDC to implement a cost-effective EE&C plan. The Commission is to evaluate the costs and benefits of the program, as well as all approved EE&C plans by November 13, 2013, and every five years thereafter. If the Commission determines that the benefits of the program exceed the costs, the Commission is required to adopt additional required incremental reductions in consumption for the next five years.[9]

Act 129's requirements for peak demand are similar, requiring a cost/benefit analysis and the requirement for the Commission to establish additional incremental requirements for the reduction in peak demand if the benefits exceed the costs. Act 129, however, requires that any additional reduction shall be accomplished no later than May 31, 2017. This apparently is due to Act 129's requirement that the measuring period of additional reduction in peak demand is the EDC's peak demand for the period from June 1, 2011 through May 31, 2012.[10]

With regard to EE&C plans, Act 129 established a shorter period of time for each plan. It required the submission of EE&C plans by applicable EDCs by July 1, 2009, with the plans to meet certain consumption goals by May 31, 2011 and May 31, 2013, and peak demand goals by

[9] 66 Pa. C.S. § 2806.1(c)(3).
[10] 66 Pa. C.S. § 2806.1(d)(2).

May 31, 2013, both shorter periods than the five year program period.[11] In addition, Act 129 provides the Commission with latitude regarding EE&C plans. While Act 129 states that a new plan shall be filed every five years, the Commission has the discretion to determine a period other than every five years.[12]

On a prospective basis, this anomaly creates certain problems regarding the length of second EE&C plans as the Commission recognized in its March 1, 2012 Secretarial Letter. On the one hand, given the evolving energy efficiency marketplace, a shorter term for the second plans enables a quicker response to changes in the market. On the other hand, shorter term plans lead to increased administrative costs.

SEF recommends that the statutory review requirement of five years for the Commission's EE&C program be retained. However, SEF believes that the EDCs should be allowed the discretion to file Phase II EE&C plans encompassing a three (3) year minimum or four (4) year maximum time frame. This will allow a better matching of programs to changing market conditions. While there would be a five year target for goals, the Commission can review annual programs within those goals. In addition, this staggering of the Commission's EE&C program and the EDC plans would better balance resources and provide greater certainty for market participants.

3. **Inclusion of Demand Response and Curtailment.**

Although SEF supports the concept and goals of Demand Response and Curtailment programs, achieving these goals in the current regulatory environment should be accomplished

[11] 66 Pa. C.S. §§ 2806.1(c)(1) and (2) and 2806.1(d)(1).
[12] 66 Pa. C.S. § 2806.1(b)(1)(ii).

by emphasizing measures that promote long-term reduction in peak coincidence factors, while de-emphasizing measures that promote short-term impacts on peak demand.

Most demand response programs were designed for vertically integrated utilities. However, the current environment is one in which generation capacity is no longer controlled by vertically integrated utilities but rather by capacity markets managed by the Independent System Operator. It is simply problematic to force many current demand programs onto a competitive market.

As the Commission noted, the initial EE&C plans included a multi-year energy efficiency program with what is essentially a one-year demand response program that will be implemented during the summer of 2012.[13] This is problematic at best since it promotes short-term load control programs versus longer-term demand response programs. The results of this are two-fold.

First, this approach leads to unwanted cost/benefit results. For example, PPL in its recently proposed modifications to its EE&C plan proposed to increase the projected cost of the Direct Load Control Program from $11 to $12 million.[14] PPL's focus of the program appears to be directed to meeting its 2013 demand reduction goal. However, the benefit to cost ratio for residential customers with the increased funding falls from an abysmal 0.20 to a microscopic 0.13.[15] Thus, for PPL, the Direct Load Control Program will result in ratepayers spending $8.8 million for a return of $1.1 million, or $8.80 for each $1 saved.[16] The measure is not cost-effective.

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[13] March 1, 2012 Secretarial Letter at 3.
[14] Petition of PPL Electric Utilities Corporation for Approval of Changes to its Act 129 Energy Efficiency and Conservation Plat at 37. ("PPL Petition")
[15] PPL Petition, EE&C Plan Black-line at 124.
[16] *Id.*

Second, utilities are provided a perverse incentive in that it is in their best interest to only run programs during limited measurement periods. In addition, program design favors those programs that minimize distribution revenue reductions. For example, although Direct Load Control will cost ratepayers $8.80 for $1 of benefit, PPL benefits since these programs provide minimal revenue disruption. PPL proposed to apply its Direct Load Control Program during the summer period from June 1 to September 30. A control devise installed on a customer's air conditioner/heat pump unit allows the unit to be cycled during peak periods with customer incentives provided.[17] Thus, PPL's revenue stream is protected to a greater extent than under measures having a long-term impact on peak demand versus being able to push a button and curtail on a hot day. Unlike energy efficiency and renewable energy measures that have high peak coincidence factors that reduce energy consumption and consequently distribution revenues whenever they are operated, Curtailment and Direct Load Control methods and programs as executed by PPL have failed to provide ratepayers benefits that exceed program costs.

The SEF recommends that the existing demand reduction scheme should be abandoned in future EE&C plans. The measures employed by the utilities are only temporary and are expensive when compared to other measures.

SEF recommends the Commission establish a Demand Reduction goal that can be reached through the installation of long-term energy efficiency and conservation measures with a high peak contribution factor as opposed to a percentage number of MW.

[17] PPL Statement No. 2 at 89; Docket No. R-2011-2264771.

4. **Aligning EDC Targets & Funding Using Dollars per MWh of Expected Reductions.**

The SEF offers no comments.

5. **Inclusion of a Reduction Target Carve-Out for the Government, Educational and Non-Profit Sector.**

The SEF supports the inclusion of the statutorily required minimum 10% carve-out.

6. **Low Income Carve-Out and Commercially Metered Multi Family Dwellings.**

Unlike all other EDC Act 129 program offerings that may have significant economic and/or environmental consequences, the efficacy of the EDCs Low Income program(s) are of great human consequence. To place this in context, the U.S. Department of Housing and Urban Development has stated:

> First, utility bills burden the poor and can cause homelessness. The burden on the poor is more than four *times* the average 4% others pay. 26% of evictions were due to utility cut-offs in St. Paul, MN.[18]

The efficacy of these programs in achieving their goals is not, therefore, that of a bureaucratic exercise but rather one of human impact. The SEF believes that it is of upmost importance that the current measurement method of "offering measures" be replaced with one of measuring results.

The SEF supports the continued inclusion of a Low Income sector carve-out and believes that the intent of §2806.1 (b)(1)(i)(G) was to create a results based carve-out since that subsection required that the number of measures should be proportionate to those households

[18] US Department of Housing and Urban Develop retrieved January 23, 2010 at http://portal.hud.gov/portal/page/HUD/topics/energy

share of the total energy use in the EDC territory. For example, if low income ratepayers represent 8% of an EDC's total annual consumption and the EDC's EE&C plan annual consumption reduction goal is 100,000 MWh, then the EDC's consumption reduction attributable to Low Income ratepayers should be 8,000 MWh. Simply offering measures is an ineffective measure of an EE&C plan's impact on low income ratepayers.

The SEF supports the Commission's proposed third option, namely structuring the low-income carve-out to designate a percentage of energy savings to be achieved from this section. In addition, SEF believes that until the 150% of poverty market is saturated, a discussion of raising that limit to 200% or 250% is premature.

Finally, the SEF believes that master metered low income housing should be treated as residential service for purposes of EE&C plan administration.

Prior to the ban of master metering in new construction in Section 113 of the Public Utility Regulatory Policy Act (PURPA) of 1978[19], it was common practice to master meter mobile home parks and multi-tenant buildings. Although this practice has been significantly reduced, 59% of multi-family buildings in the United States were constructed prior to 1980.[20]

The following is an excerpt from The Low-Income Home Energy Assistance Program Pennsylvania Advocates Manual 2008-2009 Edition[21] regarding master metering:

> Special challenges may arise for the advocate when confronted with a client who receives utility service via a master metering arrangement. Master metering occurs when a landlord or mobile

[19] 16 USCA § 113 states: "To the extent determined appropriate under Section 115(d), master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purpose of this Title.
[20] US Census Bureau, Housing and Household Economic Statistics Division table 8 revised December 17, 2004.
[21] The manual can be retrieved at http://www.rhls.org/pdf/2009_LIHEAP_Manual.pdf .

> home park owner receives utility service in his/her own name for a property in which multiple tenants live. The landlord divides the cost for the utility bill among the tenants by some formula or calculation and then passes on the assigned cost to each tenant. What is unique is that the billing is not precisely calibrated to individual use.

As a result, households residing in master metered mobile home parks and multi-unit buildings would be counted as commercial, not residential customers resulting in an under-counting of households. Today 20.6% of renter occupied units with income below the poverty level have the cost of electric service included in rent, other fees or obtained for free.[22] Therefore, it is reasonable to conclude that, due to the age of Pennsylvania's housing stock, a significant number of low income customers in Pennsylvania would live in multi-tenant master metered buildings and not be included in the number of residential customers as reported by each utility.

The result is that the intent of the General Assembly is not being met. As noted earlier, the number of measures are to be proportionate to those households share of the total energy usage in the service territory. In addition, these low-income customers may be ineligible for certain rebates since they are not considered a residential user.

The ultimate solution to this situation is, in each EDCs future rate case, to create a residential multi-metered rate as a component of each EDC's residential rate class with a similar revenue requirement and transfer any master metered facility with more than 50% residential usage to this class. This will simplify the determination of energy use by low-income ratepayers and will allow for straight forward delivery of EE&C measures to low-income citizens in master metered buildings.

[22] US Census Bureau American Housing Survey for the United States: 2007 issued 2008 table 4-13.

(7) Transition Issues.

The SEF offers no comments.

(8) Other Act 129 Design Issues.

a. **Net-to-Gross Adjustments, Lack Thereof.** The true efficacy of EDC EE&C programs will not be known until net-to-gross adjustments are made to utility outcomes. The current method of ignoring net-to-gross adjustments is providing (a) a false sense of accomplishment and (b) allowing some utilities to "meet" their goals by "gaming" the system. For example, PPL sent letters to owners of solar photovoltaic facilities that were already installed and operating asking if they would like a rebate. One of these ratepayers contacted the SEF directly about the rebate offer since the SEF had previously been involved in the funding of the ratepayer's solar system. The system was installed and operational. Since the purpose of rebates is to encourage customers to engage in an activity they otherwise would not engage in, offering the rebate post-installation is counter to the purpose of the rebate.

This rebate offer had no impact on the ratepayer's desire to install a system as it was already installed. Conversely, however, if the customer accepted the rebate, PPL would benefit since it would be able to count the associated energy consumption reductions towards its reduction goals. The result of this is that PPL's ratepayers are harmed financially for PPL's benefit. Essentially, without net-to-gross adjustments, the current system is susceptible to gaming at ratepayer expense.

This type of behavior is counter-productive and a waste of ratepayer resources. It is untenable that ratepayers must incur the cost for net-to-gross adjustments but without

these adjustments EDC's would be allowed to continue this behavior with no protection for ratepayers.

b. **Financing and On-Bill Programs versus Only Rebates. Interest Rate Buy-Downs, Credit Enhancements.**

SEF recommends that EDC's engage third party financial entities to provide an "On-Bill" financing program for small commercial and industrial customers including GNI customers.

Inclusion of an on-bill financing program for small commercial and industrial customers including not for profit enterprises would significantly increase program participation rates by reducing barriers such as the significant upfront costs of many energy efficiency improvements, lengthy payback periods, uncertainty about occupancy and upfront costs being more real than theoretical savings.

On-bill financing is like a loan in that a customer can borrow money to make energy efficient improvements and make monthly payments. Unlike a traditional loan, however, the outstanding finance balance would run with the meter and the customer would be liable for payment of the charges under an on-bill financing under the same conditions as any other charges for basic utility service including, but not limited to, the customer's service being subject to disconnection for nonpayment in accordance with the rules of the Commission. The financing is structured so that the monthly payment is less than the projected energy savings thereby reducing the customers overall electric bill. In this way, the customer is essentially paying for the energy improvements through the reduction in energy consumption resulting from the improvement.

All fixed price energy efficiency, fuel switching, and renewable energy measures in excess of $1,000 and less than $25,000 where finance payments over 5 years would be less than the anticipated energy savings should be eligible. To participate in the program a small commercial and industrial customer would need to have one year of acceptable bill payment history with the EDC.

EDC's would inform all new customers at a location where energy efficiency and/or renewable energy measures have been installed as to the existence of any unbilled charges remaining for that location.

A customer's obligation to pay for the measure(s) would end when the customer closes their account. If the customer is the owner or lessor of the premise, the customer would be required to inform all prospective purchasers or renters of the location that there is an unexpired finance obligation running with the meter and that such customer would become responsible for the remaining balance.

III. CONCLUSION

The Sustainable Energy Fund respectfully requests that the Commission consider and adopt the foregoing Comments and take any other actions that are deemed appropriate.

Respectfully submitted,

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Counsel for the Sustainable Energy Fund of Central Eastern Pennsylvania

DATED: April 17, 2012

VERIFICATION

I, John M. Costlow, on behalf of the Sustainable Energy Fund of Central Eastern Pennsylvania, verify that the facts contained in the Comments are true and correct to the best of my knowledge, information and belief. This Verification is made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

John M. Costlow
Director of Technical Services
The Sustainable Energy Fund of Central Eastern Pennsylvania

Dated: April 16, 2012