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June 25, 2012

VIA HAND-DELIVERY

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

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SECRETARY'S BUREAU

**RE: Act 129 Energy Efficiency and Conservation Program
Tentative Implementation Order
Docket Nos. M-2012-2289411 and M-2008-2069887**

Dear Secretary Chiavetta:

Enclosed for filing, please find an original and three copies of the Comments of the Energy Association of Pennsylvania ("EAP") in the above-referenced docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M. J. Clark".

Donna M. J. Clark
Vice President and General Counsel

CC: Robert F. Powelson, Chairman
John F. Coleman, Vice Chairman
Pamela A. Witmer, Commissioner
Wayne E. Gardner, Commissioner
James H. Cawley, Commissioner
Megan Good (Word format via email)
Kriss Brown (Word format via email)

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation Program : Docket No. M-2012-2289411
: M-2008-2069887
:
Tentative Implementation Order :

COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA

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I. Introduction

Act 129 of 2008 required the Pennsylvania Public Utility Commission (“PUC” or “Commission”) to establish an energy efficiency and conservation program and, in turn, directed each electric distribution company (“EDC”) with at least 100,000 customers to adopt a PUC approved plan to reduce energy demand and consumption within its service territory. Pursuant to its approved energy efficiency and conservation plan (“EE&C Plan”), each EDC is charged with reducing electric consumption by May 31, 2011 by at least one percent (1%) of its June 1, 2009 through May 31, 2010 consumption adjusted for weather and extraordinary loads. By May 31, 2013, the total annual weather normalized consumption is to be reduced by a minimum of three percent (3%). Additionally, peak demand, measured against an EDC’s peak demand from June 1, 2007 through May 31, 2008, is to be reduced by a minimum of four-and-a-half percent (4.5%) of the EDC’s annual system peak demand in the 100 hours of highest demand. Following the conclusion of this initial program, and every five years thereafter, the PUC is charged with assessing the cost-effectiveness of the energy efficiency and conservation program. If benefits

exceed costs, the Commission must adopt additional incremental reductions in energy demand and consumption.

The PUC initiated the process of evaluating the initial program through the issuance of a Secretarial Letter on March 1, 2012 which sought comments on a number of topics instrumental in designing and implementing a second Act 129 program. Topics ranged from the determination of further incremental reduction targets in a subsequent Act 129 program and of whether initial program carve-outs remained applicable to a discussion of plan length, the schedules for plan filings and issuance of updated TRC and TRM orders. To facilitate input from a wide range of interested parties, the Commission held a stakeholder meeting on March 16, 2012 to gather input on issues outlined in the Secretarial Letter and to identify additional issues regarding program design. Stakeholders uniformly sought to avoid a “gap” between plan measures aimed at energy consumption reduction and generally acknowledged the need for a smooth transition between the initial program and a second Act 129 program. In order to avoid consumer confusion and the added expense of shutting down a plan measure only to subsequently re-introduce it into the market after June 1, 2013, a majority of the stakeholders along with the EDCs subject to Act 129 supported a continuation of measures after initial consumption targets had been achieved. Participants differed most notably in their positions on whether demand reduction measures would prove to be cost effective following implementation during the summer of 2012.

Thereafter on May 10, 2012, the Commission issued a Tentative Implementation Order seeking public comment on proposed parameters for the next round of Act 129 EE&C Plans. The Order was necessarily issued prior to the completion of the statutorily required cost/benefit analyses of EE&C Plans and considers whether additional incremental reductions in energy

demand and consumption would apply in the event that the cost/benefit analyses demonstrate that benefits exceed costs. As with the introduction of the initial EE&C Plans, the timeframes for resolving key program components are compact, underscoring the need for continued collaboration between the stakeholders and flexibility in implementation. Further, a number of core Act 129 issues, i.e. the reduction mandates for targets, the continuation of government/education/nonprofit and low-income carve-outs and the applicability of statutory penalties which are tentatively addressed in this process will have substantive impact in individual EE&C Plan filings and proceedings.

The Energy Association of Pennsylvania (“EAP” or “Association”) welcomes the opportunity to provide comments on behalf of its EDC members subject to the provisions of Act 129.¹ These comments are organized to follow the outline in the “Discussion” section of the Tentative Order. EAP will provide input on the specific issues raised by the Commission and welcomes the opportunity to work with the Commission and stakeholders on improving and streamlining this regulatory program in its second iteration. EAP notes that each of its EDC members subject to Act 129 will provide additional individualized comments.

II. Comments

A. Evaluation of EE&C Program and Additional Targets

1. Evaluation of EE&C Program

EAP generally agrees that the Electric Energy Efficiency Potential for Pennsylvania Final Report (“Potential Report”) compiled by GDS as the statewide evaluator (“SWE”) demonstrates that opportunities for continued cost-effective consumption reduction savings exist based on an

¹ Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities Corporation and West Penn Power Company.

annual spending cap of 2006 annual revenues for each of the seven Pennsylvania EDCs subject to the Act 129 program. EAP accepts that the Potential Report suggests that the benefits of the initial Act 129 program (“Phase I”) as they relate to reductions in energy consumption will exceed program costs and believes that it is prudent to consider at this time additional incremental reductions in energy consumption for a second Act 129 program term (“Phase II”).

2. Proposed Additional Incremental Reductions in Consumption

a. Length of Program

EAP does not have any comments on the length of the Phase II Act 129 Program.

b. Baseline for Targets

EAP agrees with the decision of the Commission to use each EDC’s expected load as forecasted by the Commission for June 1, 2009 through May 31, 2010 as the baseline for measuring savings in Phase II.

c. Reduction Targets

With respect to the specific reduction targets outlined in the Potential Report, EAP is concerned that the targets identified will be difficult to achieve for a number of reasons.

First, EAP believes that the acquisition costs used by the SWE do not accurately reflect the changed circumstances that are certain to exist in Phase II and that consequently the reduction targets are too high based on statutory budget constraints. EAP believes acquisition costs will increase in Phase II from the current 18¢/kwh and that the reduction targets do not accurately reflect those increased costs. For example, based on changes in federal law², savings attributable to lighting will be 25 to 40% less than in Phase I, requiring a greater expenditure of budget to achieve the same level savings for lighting in Phase II. Savings from residential

² 121 STAT. 1492 PUBLIC LAW 110–140—DEC. 19, 2007, known as The Energy Independence and Security Act of 2007.

lighting programs in Phase I were 52% of the total verified savings as reported in the SWE: Act 129 Annual Report for Program Year 1: June 1, 2009 – May 31, 2010. Lighting measures are certain to be offered in Phase II EE&C Plans and EAP believes they will continue to represent a substantial percentage of overall savings. The acquisition cost estimates used by the SWE in the Potential Report will necessarily result in more budget dollars being dedicated to lighting measures in Phase II to meet the proposed targets. Further, if acquisition costs do not reflect the changed circumstances for lighting or other factors that increase costs over time, such as inflation, EDCs will need to rely heavily upon inexpensive measures to meet the targets rather than develop measures and strategies for more comprehensive measures with higher acquisition costs as advocated by stakeholders.

Second, EAP believes that the impact of the annual TRM updates which have consistently resulted in downward adjustments to savings calculations must be considered in setting consumption reduction targets. Experience in Phase I demonstrates that as technology improves and statutes/codes are modified to raise baselines, the savings values upon which EDCs relied in designing their current PUC approved EE&C Plan decrease. This, in turn, necessitates modifications to meet the target set under Act 129. This circumstance, i.e. meshing decreasing savings values into a previously approved EE&C Plan, is particularly difficult to manage under Act 129 with its fixed budgets, specific dates for meeting targets and large penalties.

EAP offers that a partial solution may be to determine compliance by considering whether the EDC used its best efforts to achieve a fixed percentage of the three-year consumption reduction targets set forth in the Potential Report. A separate approach would be to determine consumption reduction targets in subsequent Act 129 Programs in connection with an

on the record proceeding which would allow for consideration of additional evidence on assumptions and information presented in the current or future market potential reports.³

d. Aligning Targets and Funding

EAP does not offer specific comments on the Commission decision to calculate the consumption reduction requirements in Phase II based on a full expenditure of 2% of 2006 annual revenue in each year of Phase II. EAP requests that the factors discussed above in Section A.2.c., among others, be considered by the Commission in addressing targets for subsequent Act 129 Programs.

3. Peak Demand Reductions

a. Exclusion of Peak Demand Reduction Obligations for Phase II

EAP agrees with the Commission decision to exclude peak demand reduction obligations from its proposal outlining Phase II targets and to consider further demand reductions in subsequent Act 129 programs only after it receives the results of the study outlined in its March 4, 2011 Secretarial Letter.

b. Interim Demand Response Programs

EAP notes the Commission's recommendation to encourage the continuation of particular demand response programs such as load curtailment apart from the Act 129 programs and believes that a key consideration for EDC participation must be cost-effectiveness and a cost/benefit analysis which indicates that the benefits support cost recovery from ratepayers.

³ Findings of fact necessary to support the decision of an administrative agency, such as the Commission, must be based on substantial evidence. *Met-Ed Indus. Users Group V. Pa. P.U.C.*, 960 A.2d 189, 193 n. 2 (Pa. Cmwlth. 2008). The substantial evidence test requires that fact finding be based exclusively on evidence admitted to the record in an administrative proceeding. *Kyu Son Yi v. State Board of Veterinary Medicine*, 960 A.2d 864, 870-871 (Pa. Cmwlth. 2008).

c. Amending the Top 100 Hours Methodology for Future Phases

EAP agrees with the Commission decision to include in the ongoing demand response study being conducted by the SWE a recommendation of a “potentially more optimal peak demand reduction program design” but notes that the determination to mandate demand reduction targets in a subsequent Act 129 program depends on whether the current design is cost-effective. See 62 Pa. C. S. §2806.1(d)(2).

4. Carve-Out for Government, Educational and Nonprofit Entities

a. Prescription of a Government/Education/Nonprofit Carve-out

EAP agrees that proposing a carve-out for the government/educational/nonprofit sector in Phase II similar to that mandated by the statute in the Act 129 Phase I program is within the discretion of the Commission and agrees that Act 129 does not provide authority to assess penalties for failure to achieve the 10% carve-out under 66 Pa. C. S. § 2806.1(f).

EAP does not comment here on the appropriateness of assessing penalties against an EDC under Chapter 33 of the Pennsylvania Public Utility Code, 66 Pa. C. S. §3301(a) in the event that the government/educational/nonprofit sector in a particular EDC service territory does not meet the ten percent (10%) carve-out for consumption reduction as set forth in a future Phase II EE&C Plan. EAP does believe that any examination of savings achieved by this sector under a Phase II Act 129 Program which seeks to assess penalties would involve a consideration of a myriad of factors including the best efforts of the EDC to obtain that level of savings from this sector and the state of the economy as it impacts the ability/willingness of these entities to spend limited dollars on particular consumption reduction measures between June 1, 2013 and May 31, 2016.

b. Inclusion of Multifamily Housing

EAP agrees with the suggestion that a renewed emphasis on measures aimed at achieving energy consumption savings in multifamily housing units may help to achieve any Phase II carve-out for the government/educational/nonprofit sector. Such measures and the anticipated energy savings may also inure to the benefit of low-income utility customers and improve participation from the commercial ratepayer class in Act 129 programs. EAP believes that the key to inclusion of a multifamily measure in Phase II EE&C Plans is to encourage flexibility in the development of strategies and measures aimed at this type of housing stock while recognizing that any measure must be cost-effective with incentives/rebates that do not tax the budget for the sector.

c. Inclusion of On-Bill Financing

Generally, EAP opposes the inclusion of utility on-bill financing programs as a means of providing customers with low-cost financing for energy efficiency projects. EAP would encourage customers “who do not qualify for conventional financing” to participate in programs such as those offered through the Keystone HELP Loan Program to fund their portion of the expense attributable to installation of energy efficiency measures. EAP would further urge public entities to explore opportunities afforded by the Guaranteed Energy Savings Act, 62 Pa. C. S. §§3751-3758, a 1998 state law which enables “government units” to hire energy service companies to assist in achieving energy conservation savings with fees for evaluation, design, implementation and installation of the measure paid over a period of time not to exceed 15 years from the savings attributable to the measure. See 62 Pa. C. S. §3754(c).

As suggested by the Commission, a working group to “explore the various models, identify possible financial partnerships and determine the application feasibility to each customer

class” could identify possible benefits of on-bill financing. EAP also believes that any working group must carefully examine the costs to utilities and ratepayers of imposing such programs upon the industry and the impact on the market which currently exists to finance energy savings measures in homes, businesses and government facilities. EAP would welcome the opportunity to participate in such a working group.

5. Low-Income Measures

a. Prescription of a Low-Income Carve-Out

EAP agrees that proposing a carve-out for the low-income sector in Phase II similar to that mandated by the statute in the Act 129 Phase I program is within the discretion of the Commission and agrees that Act 129 does not provide authority to assess penalties for failure to achieve that carve-out under 66 Pa. C. S. § 2806.1(f). EAP, however, asks the Commission to reconsider its proposal to further prescribe the carve-out by requiring that, in addition to providing a proportionate number of measures for this sector, each EDC Phase II EE&C Plan “obtain a minimum of four-and-a-half percent (4.5%) of the Phase II consumption reduction target.”

While EAP understands the continued emphasis on savings for the low-income sector in any Phase II Act 129 Program, EAP is concerned that this additional requirement does not account for existing programs outside of Act 129, such as LIURP or Weatherization Assistance Programs (“WAP”) administered by the Pennsylvania Department of Community and Economic Development. All regulated utilities, including those subject to Act 129, devote substantial resources funded by ratepayers to energy conservation programs which specifically benefit low-income customers. Under Act 129, low-income measures are fully funded by residential ratepayers who also fund LIURP and, through their federal tax dollars, WAP.

The Association is not suggesting that the need for improved energy efficiency among these customers is different or less important than among non-low-income residential customers. EAP maintains that the Commission must balance the increased acquisition costs which will be incurred based on this additional requirement in light of the limited Act 129 budget, the number of existing conservation programs aimed at assisting this customer group and the greater proportion of the Act 129 budget which will inevitably be devoted to achieving this new requirement. EAP submits that this balancing does not support additional prescriptive requirements as a way to bolster the low-income carve-out.

Further, the Potential Report does not determine a market potential for the low-income sector and EAP seeks clarification with respect to the Commission's proposal that sufficient market potential exists to meet the additional mandate. The Association urges the Commission to facilitate savings among low-income households by affording EDCs increased flexibility to generate savings from this sector of the residential customer class as opposed to prescribing a specific percentage of savings to be achieved.

Further, as stated above in its comments to the government/educational/nonprofit carve-out, EAP believes it is premature to determine whether the Commission would assess penalties under Chapter 33 of the Public Utility Code for failure to achieve a low-income carve-out in Phase II. EAP anticipates that if the PUC were considering penalties it would examine the best efforts of the utility to achieve any target.

b. 250% of the Federal Poverty Income Level Guidelines

In the event that a Final Implementation Order prescribes that each EDC EE&C Phase II Plan achieve 4.5% of its mandated consumption reduction from the low-income sector in addition to providing a proportionate number of measures to low-income customers, EAP

supports the Commission proposal that EDCs have the flexibility to expand the low-income sector to include households up to 250% of the Federal Poverty Income Guidelines and to count savings attained from low income participation in non-low-income programs.

6. Accumulated Savings in Excess of Reduction Requirements

EAP supports the Commission recommendation to permit savings achieved in excess of the energy consumption reduction targets during Phase I to accrue and be applied towards meeting energy consumption reduction targets established for Phase II. The Association asks the Commission to further clarify that such savings should be applied in Phase II at the particular customer sector level where achieved in Phase I.

B. Plan Approval Process

Initially, EAP states that, as with Phase I, the schedule and timeframe for the drafting, filing, approval and implementation of the Phase II EE&C Plans is aggressive particularly when considering that certain key components, i.e. the plan template, a 2012 Total Resource Cost Test Order, the 2013 Update to the Technical Reference Manual and a Phase II Conservation Service Provider Order, will not be available until shortly before or after the proposed filing date for the Phase II EE&C Plans in November 2012. Additionally, the proposed timeframe, while assuring a seamless transition between Phase I and Phase II Act 129 Programs, dictates that certain analyses required under the statute will not be completed until after the Phase II EE&C Plans have been filed, i.e. the cost/benefit analyses required under 66 Pa. C. S. §§2806.1(c)(3) and (d)(2). The downside of tight timeframes, however, must be weighed against the various inefficiencies that would be experienced if particular measures were to “go dark” or a lag existed between Act 129 Programs.

EAP supports the decision of the Commission to proceed in proposing parameters for Phase II in advance of the completion of Phase I and prior to the completion of the evaluations required under Act 129. EAP further appreciates the prudence exhibited by the Commission in determining that insufficient information exists at this time to decide whether demand reductions in Phase I have been cost-effective so as to warrant additional incremental requirements for demand reduction in Phase II. See, 66 Pa. C.S. §2806.1 (d)(2). EAP believes that a similar caution is warranted in establishing specific energy consumption reduction targets and in crafting the process for approval of the Phase II EE&C Plans and subsequent modifications offered by stakeholders or EDCs. EAP urges the Commission to insert flexibility into the targets and approval/modification processes to the greatest extent possible, taking into account the need for EDC certainty in drafting and implementing plans and the due process concerns of all parties to Act 129 proceedings.

For example, EDCs worked with PUC staff during Phase I to develop a streamlined process for considering minor plan changes which was adopted on June 9, 2011 in the Minor Plan Change Order at Docket M-2008-2069887. As discussed below under section G of these comments, EAP asks the Commission to support a further shortening of the timeframe for approval of minor plan changes following notice to interested parties and an opportunity to pose an objection. The additional streamlining sought is appropriate, particularly where, as here, parties have been participating in regular meetings held by the EDCs to continually gather stakeholder input and those same parties are provided an opportunity to object to minor plan changes.

Likewise, with respect to determining consumption reduction targets in Phase II in the context of a Tentative Order process, EAP urges the Commission to consider flexibility in either

fixing the targets for Phase II or in measuring future compliance. Initially, EAP and its EDC members subject to Act 129 have concerns about the acquisition costs used by the SWE in the Potential Report to calculate energy consumption reduction targets. As stated above in section A of these comments, the acquisition costs used are low, causing the targets to be overstated. At the same time, it is both crucial to facilitate a seamless transition between Phase I and Phase II and to set the consumption reduction targets prior to the drafting, filing and review of Phase II EE&C Plans. EAP suggests that, in this circumstance where the Commission seeks to establish a new mandate through a public comment process, flexibility in application is warranted and one solution would be to base compliance on using best efforts to achieve a percentage of the targets set forth in the Potential Report.

1. Phase II EE&C Plan Approval Process

EAP appreciates the Commission statement that the EE&C Plans are “evolutionary in nature as the Act provides for modification of those plans after approval.” Tentative Implementation Order at p. 31. Further, EAP emphasizes that not only have the EDCs engaged in discussions with the statutory advocates and stakeholders in the pre-filing stage of developing EE&C Plans for both Phase I and now Phase II, but EDCs have regularly engaged stakeholders throughout the implementation of the Plans. This dialogue has helped inform plan modifications proposed by the EDCs during Phase I and has facilitated improvements in application processes and the introduction of new measures to the TRM.

EAP supports the Commission decision to eliminate an automatic public input hearing on the Phase II EE&C Plans, believing that the due process is provided in the approval proceedings outlined on p. 32 of the Tentative Implementation Order.

2. Phase II Planning Timeline

The proposed timeline demonstrates the difficulty of managing the numerous pieces that are part of the Act 129 regulatory puzzle. EAP suggests that where possible the Commission consider issuing orders in advance of the proposed dates to allow maximum time for inclusion of PUC decisions into Phase II EE&C Plans and permit EDCs to advance filing and/or implementation of Phase II measures where possible.

3. Additional Phase II Orders

EAP again asks that where possible the date for issuance of the final orders in these key areas be accelerated. Of immediate concern is the date for issuance of the EE&C Plan Filing Template which is slated to occur on September 24 approximately 5 weeks prior to the anticipated November 1 date for filing the Phase II EE&C Plans. Finalizing the format for the plan is an important piece in the drafting, particularly if the template will be substantially different from the format used by the EDCs in 2009 and if new information is required. Early release of the template may allow for a voluntary staggered filing of EE&C Plans, beginning before the November 1 date.

Recognizing that an earlier release date for these additional Phase II orders may not be possible, EAP again stresses the need for retaining flexibility in how targets are met and for allowing flexibility to the EDCs in developing, implementing and addressing market conditions during the Phase II Act 129 Program.

C. Plan Effectiveness Evaluation Process

1. Statewide Evaluator

EAP looks forward to working with the Commission to address the requirements for a Phase II Statewide Evaluator and urges the Commission to consider ways to streamline the RFP process and/or continue the existing contract with GDS. Additionally, EAP agrees that SWE funding should be handled as it is currently in Phase I.

2. Technical Reference Manual

EAP acknowledges that the Commission supports annual updates to the TRM so as to include the most current information regarding the deemed savings for measures included in the manual. EAP also agrees that the process currently employed which provides for input initially through the Technical Working Group (“TWG”) and then again through the issuance of a tentative order is geared to allow optimum input from all interested parties prior to finalizing the update. EAP further understands the difficulty in perfectly aligning the 2013 TRM Update with the filing of the Phase II EE&C Plans.

Recognizing these principles, EAP suggests that with respect to application of the annual update, the Commission would necessarily consider the impact that changes in the calculation of deemed savings or EM&V protocol criteria have on the ability of an EDC to then meet targets under an approved EE&C Plan. The approved EE&C Plan was based on the then current assumptions/deemed savings contained in the applicable TRM. Aligning the approved Plan with an Annual TRM Update calls for flexibility either in the effective date for the revision or in determining compliance where a particular modification substantially changes the value of deemed savings. In Phase I, the Commission balanced the need to have up-to-date information in the TRM with the ability of the EDC to rely upon a prior Order approving its EE&C Plan by

extending the effective date for particular modifications to the TRM. EAP asks, at a minimum, that such flexibility continue.

EAP further believes that the procedural issues which arise from the continuing update of the TRM may be addressed by injecting flexibility into the process for determining compliance. The potential for assessing a penalty for non-compliance under circumstances where the value of deemed savings and/or the methodology for determining the value of savings are not constants raises concerns of fundamental fairness. This is particularly evident here where the EE&C Plans are implemented pursuant to a final order following a due process proceeding and targets must be hit at a specific point in time. While interim plan modifications are permissible following a second due process proceeding, it may not always be possible to achieve the modification in sufficient time to ameliorate the impact of the change in the TRM. A solution which can work in tandem with annual updates to the TRM and the ability to modify the EE&C Plan is to base compliance on whether the EDC has used best efforts to achieve a set % of the target. Such an approach may offset the substantive due process concerns that have been raised in Phase I regarding updates to the TRM while meeting the Commission directive to use the most current information regarding deemed savings and EM&V protocol.

3. EDC Annual and Quarterly Reporting

EAP agrees with the Commission proposal to adhere to the annual and quarterly reporting schedule established in the May 25, 2011 Secretarial Letter.

D. Cost-Benefit Analysis Approval Process

1. 2013 TRC Test

· As requested, EAP will submit any comments to the 2013 TRC in response to that Tentative Order which was issued on May 24, 2012.

2. Net-to-Gross Adjustment

EAP agrees with the Commission proposal that any net-to-gross (“NTG”) adjustments in Phase II be used solely for program design and implementation and not for compliance purposes. As noted by the Commission in the Tentative Implementation Order, “...NTG research and adjustments prove to be costly endeavors, with results that are often imperfect, ...”. Order at p. 47. Adding a NTG component to the compliance analysis under Act 129 would interject a highly subjective factor into an assessment which at present offers little opportunity for discretion or flexibility.

E. Process to Analyze How the Program and Each Plan will Enable EDCs to Meet Reduction Requirements

While EAP agrees generally with the Commission suggestion to continue the savings approach in its evaluation of whether an EDC has met the Phase II consumption reduction target, it incorporates its discussion in Section A above at pp. 4-6 and in Section B at p. 13.

F. Standards to Ensure that a Variety of measures are Applied Equitably to all Customer Classes

EAP supports the flexibility accorded to the EDCs by the Commission to determine the optimal mix of measures for each customer class under 66 Pa. C.S. §2806.1(a)(5).

G. Process to Make Recommendations for Additional Measures

EAP offers comments only on the expedited review process for approving minor plan changes which was adopted by the Commission in Phase I in its Minor Plan Change Order on June 9, 2011 at Docket M-2008-2069887. Initially, EAP requests that the Commission consider further streamlining the current expedited review process as suggested by PECO in its comments to the PUC March 1, 2012 Secretarial Letter. Allowing defined minor changes to become effective upon 15 days calendar notice to all interested parties unless an objection is filed complies with procedural due process considerations while providing a less cumbersome method for the implementation of changes which may have originated or been vetted at a stakeholder meeting.

As support for the PECO proposal, EAP includes as an attachment to its comments a chart delineating examples of how other jurisdictions accommodate flexibility in mid-plan changes. EAP is not recommending that the Commission adopt a particular process outlined in the attachment but offers the list as support for both an expanded definition of “minor changes” under the current Order and evidence of the flexibility afforded in other states to initiate changes in a manner suggested by PECO, i.e. the option in New Hampshire to make budget transfers between programs following a two week comment period wherein no objections have been filed.

Additionally, the ability to quickly implement changes reflective of market conditions is one of the hallmarks of a successful energy efficiency program as noted in a best practices report commissioned by the California Best Practices Project Advisory Committee.⁴ The report noted the importance of a balanced portfolio containing a diverse set of programs which can be adapted for different markets with a variety of maturity levels using distinct delivery strategies and

⁴ National Energy Efficiency Best Practices Study (Vol. P1 – Portfolio Best Practices Report) – <http://www.eebestpractices.com/pdf/portfolio.pdf>

stressed the importance of flexibility to make changes at any time, so that initiatives can be continually adjusted and rebalanced to meet current market circumstances.⁵

Admittedly this study involved the review of programs which use non-utility administrators and which have soft targets and no penalties, but the reasons cited in support of mid-plan changes are relevant to Pennsylvania, i.e. changes in end-user and market acceptance of existing technologies as compared to initial forecasts, introduction of new technologies, changing codes and standards, and the desire to test new approaches. Each of these “challenges” may provide an opportunity for improvement of the EE&C Plan mid-stream both in the development of measures responsive to the market and in the expenditure of ratepayer dollars to achieve real savings. While the current Minor Plan Change Order was a first step in addressing the need for a proactive approach to a changing market, EAP believes a further streamlining of the process is in order based on the experience and knowledge gained in Phase I.

H. Procedures to Require Competitive Bidding and Approval of Contracts with CSPs

EAP urges the Commission to reconsider its requirement that EDCs use a competitive RFP process similar to that employed in Phase I. As acknowledged by the Commission, the schedule for Phase II plan design and implementation is again aggressive. Order at p. 53. Eliminating the need to rebid all existing CSP contracts may ease schedule concerns and may obviate the need for EDCs to engage in RFP processes in January of 2013 in advance of Phase II

⁵ See also, Energy Efficiency Guidebook for Public Power Communities (Chapter 6) which provides, “*To ensure the best use of available funding, portfolio managers should have leeway to adapt strategies in response to changing market conditions ... For example, a utility that has devoted significant resources to a residential new construction program in a booming housing market would be well-advised to shift resources to other programs if the housing market goes into a slump. In addition, program implementation experience and evaluation results will indicate areas where mid-stream adjustments to program strategy may be necessary.*”

<http://www.ecw.org/publicpowerguidebook/content.php?chapterid=6§ionid=6>

EE&C Plan approvals. Additionally, all of the existing CSP contract have been competitively bid and meet the statutory requirement. 66 Pa. C.S. §2806.1(a)(7).

Further, a key concern of all stakeholders (EDCs, statutory advocates, community leaders and various energy efficiency vendors) is the waste and inefficiency associated with allowing programs to lapse or “go dark”. Current CSPs would help ease the transition from Phase I to Phase II in a variety of areas, including the continuation of relationships with current trade allies and retailers and the immediate availability of trained personnel and developed systems to continue existing measures, process applications and track and report data.

EAP believes that discretion should be afforded EDCs in Phase II with respect to retaining existing CSPs not only for the reasons stated above but for financial reasons as well. EDC costs attributable to the bidding process would be saved. CSP costs associated with the start-up of the initial contract, i.e. hiring and training personnel, purchasing equipment and engineering processes, will have been amortized over the initial contract. EDCs have worked closely with current CSPs and have the experience and knowledge to determine whether a new contract should be negotiated with an existing CSP or a RFP is needed to find a new provider. Finally, Commission involvement and oversight continues even where the EDC elects to retain an existing CSP. Any new contract would be reviewed and approved prior to its execution consistent with Commission policy. See also, 66 Pa. C. S. § 2806.1(a)(8).

I. Procedures to Ensure Compliance with Consumption Reduction Requirements

EAP generally agrees with the means outlined in Section I of the Tentative Order to ensure compliance with consumption reduction requirements as they relate to an after-the-fact examination of EM&V data and the continued use of a SWE. EAP again notes its concerns

regarding the specific consumption reduction targets proposed by the Commission, the assumptions used in the Potential Report particularly as they relate to projected acquisition costs, and the continuation of annual updates of the TRM during Phase II. See discussion above at pp. 4-6 and 13.

Further, EAP reiterates its suggestion that the Commission consider basing compliance on whether an EDC has used best efforts to achieve a set percentage of the consumption reduction target in Phase II. The statute does not prescribe set reduction targets for subsequent Act 129 Programs nor did the legislature, in the case of reductions in consumption, provide a precise date for the attainment of further energy savings. In directing the Commission to “adopt additional required incremental reductions in consumption” following a determination that the benefits of the program exceed the costs, the General Assembly did not preclude the Commission from exercising its expertise to propose a means of meeting the new target which would insert discretion into the determination. Considering best efforts and setting the compliance standard at a percentage of the target will not dilute the legislative intent to establish an energy efficiency and conservation program in the Commonwealth. Nor will it lessen the impact of the penalty provision as an “incentive”.⁶

J. Participation of Conservation Service Providers

EAP does not have any comments to offer on this section.

⁶ EAP reserves its right to provide comments regarding the general applicability of 62 Pa. C.S. § 2806.1(f)(2)(i) to subsequent Act 129 programs.

K. EDC Cost Recovery

1. Determination of Allowable Costs

a. Phase II Allowable Costs

EAP does not offer any comments on this section.

b. Application of Excess Phase I Budget

EAP agrees with the proposal to provide EDCs with the full use of their Phase II budgets regardless of whether they exceeded the Phase I consumption reduction targets but to require the return of any excess Phase I budget collected to the ratepayer. EAP requests clarification that the determination of “excess Phase I budget” will allow for recognition that Phase I expenses will continue to accrue after May 31, 2013 for measures installed prior to that date.

2. Allocation of Costs to Customer Classes

a. Bidding Energy Efficiency Resources into the PJM Capacity Market.

EAP is not confident that, in the context of Act 129 and when prudent, EDCs would have the ability to bid energy efficiency resources meeting PJM criteria and requirements into the appropriate PJM capacity market for the reasons set forth in the comments of its EDC members subject to Act 129.

b. Other Allocation of Costs Issues

EAP does not have any comments to offer on this section.

3. Cost Recovery Tariff Mechanism

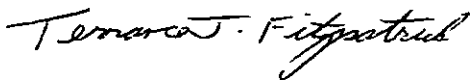
EAP continues to agree with the comments originally set forth by its EDC members subject to Act 129 and by OCA in response to the March 1 Secretarial Letter and does not recommend a different “standardized” reconciliation process or inclusion of interest on over-or under-recoveries. EAP does not agree with the proposal set forth by the Commission in this

regard inasmuch as the straightforward recovery mechanism approved for Phase I was supported by the statutory advocates, worked well and provides for a one-time reconciliation at the completion of the Phase I Act 129 Program.

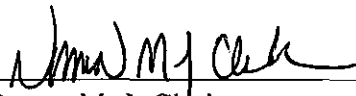
III. Conclusion

EAP requests that the Commission incorporate the modifications and suggestions set forth in its comments in finalizing the Implementation Order for Phase II, particularly as they relate to the determination of Phase II consumption reduction targets, the use of the TRM annual updates in Phase II, the requirement that all current CSP contracts be automatically rebid, and the adoption of procedures for modifying approved Phase II EE&C Plans. EAP believes that injecting flexibility into this regulatory program and its standards for implementation and compliance is critical to assuring that plans remain cost-effective and responsive to changing markets and new energy efficiency technology.

Respectfully submitted,



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Date: June 25, 2012

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ATTACHMENT A

To Comments of the Energy Association of Pennsylvania
(Docket No. M-2012-2289411)

Massachusetts (MA) ¹	<p>MA Department of Public Utilities (DPU) permits certain limited midterm EE Plan modifications that are considered “minor” and provides a process for modifications that are considered time sensitive or necessary to address lost opportunities. <u>DPU-09-116 through DPU 09-210 (January 28, 2010)</u></p> <p>DPU currently conducting a Commission Investigation via a strawman proposal suggesting additional adjustments for a more streamlined process for mid-term modifications. <u>DPU 22-120, Phase II (May 25, 2012)</u></p>
Maryland (MD) ²	<p>MD Public Services Commission provides limited modification to the extent that, “A Company may wish to modify an incentive as stated to optimize the cost-effectiveness and program attractiveness specific to its own region, we authorize Staff to approve requests by Companies to adjust incentives for products and services listed in Appendices A and B up to a maximum of plus or minus 10%, to the extent the adjustments are consistent with these objectives. A Company wishing to deviate by more than 10% must receive advance approval from the Commission.”</p>
California (CA) ³	<p>Public Utilities Commission of CA adopted fund shifting rules to permit mid-term changes to programs and categories via reporting requirements corresponding to the category of modification being proposed.</p> <p><u>As modified by D.09-09-047, D.05-09-043, D.06-12-013, D.07-10-032, and Assigned Commissioner Ruling dated December 22, 2011 in R.09-11-014.</u></p>
Arizona (AZ)	<p>AZ Corporation Commission recommended that companies be allowed to shift funding from measure to measure, or from less active to more active programs, for up to 25% of the budget originally allocated to the less active program. Budget shifting may only be done within, and not between, the Residential and Non-Residential program sectors. Staff also recommended that the Company be allowed to increase the overall Implementation Plan budget by up to 5%, if the increases are allocated to Commission-approved cost-effective measures and programs. <u>Docket No. E-04204A-11-0056 (Pages 46-47).</u></p>
New Hampshire (NH) ⁴	<p>NH Public utilities Commission provides for a limited movement of funds within a sector and <u>“budget transfers to or from individual programs of 20% of the individual program’s budget or less” without Commission consultation or approval. Notice to the Staff and interested parties are required.</u>⁵</p> <p>Budget transfers to or from individual programs greater than 20% of the individual program’s budget are required to be filed with the Commission. <u>Staff and interested parties may file any comments with the Commission within two weeks of the filing. If no action has been taken by Staff and interested parties, the budget transfer request shall be deemed approved unless the Commission notifies the company of the need for a more in-depth review within thirty (30) days of the filing.</u> <u>NHPUC Docket No. DE 10-188 (Page 10).</u></p>

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¹ <http://www.env.state.ma.us/dpu/docs/electric/09-116/12810dpuord.pdf>

² <http://wcbapp.psc.state.md.us/Intranet/home.cfm>

³ <http://docs.cpuc.ca.gov/efile/RULINGS/156187.pdf>

⁴ <https://www.puc.nh.gov/Electric/NH%20EnergyEfficiencyPrograms/10-188/10-188%202010-08-03%202011-2012%20It%20Grid-UES%20Gas%20Efficiency%20Proposal.pdf>

⁵ DE 10-188-Energy North Natural Gas, Inc. d/b/a National Grid NH (December 7, 2011)
<http://www.puc.state.nh.us/Regulatory/Docketbk/2010/10-188.html>