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June 25, 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

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)
Kriss Brown, Law Bureau (kribrown@pa.gov)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**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 subsection (a) and of approved energy efficiency and conservation plans submitted to the program. The evaluation shall be consistent with a total

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

> 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, on April 17, 2012, filed Comments responding to issues raised in the March 1, 2012 Secretarial Letter.

As indicated in the March 1, 2012 Secretarial Letter, the Commission tasked the statewide evaluation ("SWE") to conduct a market potential study to inform the Commission and

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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).

all interested parties of its findings regarding the energy savings potential remaining in the large EDCs service territories. The Commission also asked the SWE to conduct a baseline study for the residential, commercial and industrial sectors in Pennsylvania. These studies gathered data from on-site surveys conducted by engineers to characterize the energy usage and electric energy efficiency opportunities in the Commonwealth for the seven (7) large EDCs.

The baseline studies formed the basis for the SWE's Electric Energy Efficiency Potential for Pennsylvania Final Report ("Potential Report") that was released on May 11, 2012. On that date, the Commission also entered its Tentative Implementation Order.[5] In the May 11 Order, the Commission presented its evaluation of the cost-effectiveness of the EE&C Program and any proposed additional required incremental reductions in consumption. In addition, it continued its proposals addressing the issues delineated in Section 2806.1(a) of Act 129. The Commission provided for comments and reply comments on the evaluation of the EE&C Program, the proposed additional required incremental reduction in consumption and the proposals addressing the design and implementation of the next round of EE&C Programs.

II. COMMENTS

The SEF provides the following Comments to the specific issues in the May 11 Order.

1. Level of Phase II Consumption Reduction Targets

Section A.1 of the May 11 Order reviews the SWE's Potential Report results of its evaluation of the EE&C Program. Scenario 1 of the review of program potential contained in the study considered an annual spending ceiling that limits the annual program spending to 2% of 2006 annual revenue.[6] The Potential Study also used the same baseline period load forecasts that

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[5] Energy Efficiency and Conservation Program, Docket Nos. M-2012-2289411 and M-2008-2069887 (May 11, 2012)("May 11 Order")

[6] Potential Report at 5 in the Commission's Energy Consumption and Peak Demand Production Targets Order of March 26, 2009 at Docket No. M-2008-2069887.

were established for Phase I.[7] Based on the spending cap of 2% of 2006 annual revenues for annual program spending and using the previously established load forecasts, the Potential Study concluded that continuing electric energy efficiency programs in a Phase II of Act 129 will continue to be cost-effective for Pennsylvania ratepayers.[8] The statewide estimated program potential electricity savings for Scenario 1 amount to 3,313,247 Mwh on a cumulative basis by 2016 (a 2.3% reduction in projected 2010 baseline Mwh sales).[9] If the program is extended until 2018, the statewide estimated program potential savings amount to 5,414,343 Mwh on a cumulative annual basis (a 3.7% reduction in projected 2010 baseline Mwh sales).[10]

The Commission proposed the continuation of measuring the consumption reductions against the EDCs expected load as forecasted by the Commission for June 1, 2009 through May 31, 2010 (2009/2010 energy year forecast).[11] The Commission also proposed to adopt a three-year consumption reduction requirement for Phase II that is based upon the 2009/2010 energy forecasts. Specifically, the Commission proposed to adopt the three-year consumption reduction requirements as contained in the SWE's market potential report as expected at Table 1 of the May 11 Order.[12] These reductions range from a high of 2.9% for PECO to a low of 1.6% for West Penn, but essentially rotate around the 2.3% found in the Potential Study. The Commission proposed using the full two percent (2%) of 2006 annual revenue for each year of Phase II, consistent with Section 1 of the Potential Study. The Commission did not address further peak demand reduction targets, preferring to await information on the cost-effectiveness of demand response programs.

[7] Energy Consumption and Peak Period Reduction Targets Order at Docket No. M-2008-2069887 (March 30, 2009).
[8] Potential Report at Section 1-1.
[9] *Id.*
[10] *Id.*
[11] May 11 Order at 11-12.
[12] *Id.* at 13

The Commission's May 11 Order is not in the best interest of the ratepayers as it relies on information from the Potential Report, which is critically flawed. The Potential Report prepared by GDS Associates, Inc. and Nexant (1) lacks transparency; (2) utilizes flawed assumptions; and (3) excluded an entire class of energy conservation measures from the technical potential. As such, the consumption targets proposed by the Commission are understated and will lead to an inadequate result for Phase II.

a. Transparency

Although the report's authors cite the transparency[13] of the process, the process was not transparent outside of a small group. For example the Excel model utilized by the Potential Report's authors was not available for review.

b. Assumptions

The Potential Report for Pennsylvania utilizes flawed assumptions. The SWE did not use the best available data but instead used assumptions that decreased the program potential. For example, footnote 32 on page 29 of the Potential Report notes that "Adjustment factors of 25% were made to the CPITD [Cumulative Program Inception to Date] cost data presented below for the final incentive and administrative cost inputs into the potential models to account for uncertainty about future costs."

From June 2009 through May 2012, the basket of goods used for the consumer price index (CPI) rose from $229.930 to $245.709 or an increase of 6.8% over the previous three years[14]. On June 20, 2012, the Federal Reserve Board and the Federal Open Market Committee reduced its inflation forecast for 2012 to an annual rate of 1.2% to 1.7%. Additionally, the Federal Reserve Board projects inflation of 1.5% to 2.0% for 2013 and 2014.

[13] Potential Report at 41.

[14] U.S. Bureau of Labor Statistics retrieved June 20, 2012 http://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0100SA0,CUUS0100SA0

The 25% adjustment is not reasonable or just and is without merit.

Additionally the Potential Report's authors relied upon data from the regulated EDCs for determination of measure cost. For example, on page 149 of the Potential Report the authors use $4,050 as the cost incremental/full measure cost. However, on page 198 for that same measure but a different EDC, the authors cite $8,164 as the measure's cost. For this measure the report's authors cite the Ohio TRM and ACEEE for the $4,050[15] but for same measure at $8,164 the authors cite an e-mail from PPL[16].

A further drawback to the support for only a 2.3% consumption savings target for Phase II is a further critical flaw in the Potential Report. The Potential Report is critically flawed since it excludes an entire class of energy conservation measures from the technical potential. The study excludes fuel switching as a potential source of cost effective energy conservation. Utilities such as PPL Electric, PECO and UGI Electric all offered fuel switching programs in their Energy Efficiency and Conservation Plan. This exclusion by the report's authors reduces the technical and ultimately the program potential for the Commonwealth and each EDC. Consequently, this report is flawed in that its program potential is less than the actual potential available.

The result of this failure is that the Potential Report did not consider other programs that contribute to greater savings. Again, this failure acts to discount the proper amount of consumption savings for Phase II. As the SWE acknowledged, there may be "reasonable alternative assumptions that would yield somewhat different results."[17]

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[15] Potential Report at 155.
[16] Id. 203.
[17] Potential Report at 4.

c. Recommendation

The SEF recommends that the Commission adopt consumption reduction targets of 1% per year, as proposed by several commentators in this case.[18] This level over the three year Phase II timeline proposal reflects the flawed assumptions of the Potential Report and equals Act 129's 3% requirement.

2. The Commission should move expeditiously to create a third-party On-Bill financing working group.

In Section A.4.c. of the May 11 Order, the Commission correctly finds that On-Bill financing and repayment programs have the potential to overcome the barriers to capital intensive projects that would otherwise be unattainable for many customers within all sectors. Therefore, the Commission finds that On-Bill financing or repayment programs warrant further consideration, and recommends that a working group be convened to explore issues surrounding On-Bill financing proposals.

SEF supports the creation of an On-Bill Financing and On-Bill Repayment working group. SEF has proposed and supported third-party On-Bill financing programs in PPL Electric Utilities Corporation ("PPL") initial EE&C Plan filing and PPL's recent Petition for approval of changes to that plan, and in its April 17, 2012 Comments regarding Phase II at this docket. SEF encourages the Commission to conduct the working group over the summer and conclude it prior to the EDC plan submissions so that, at a minimum, pilot programs will be included in the EE&C plans. With some EDC's aversion to On-Bill programs, SEF is concerned that if the work

[18] May 11 Order at 12.

of the working group is not completed prior to EDC submissions, the EDC's will utilize the working group as a reason not to engage in On-Bill programs.

3. The Commission should not summarily restrict Net-to-Gross application to program design and implementation

The SEF has consistently recommended in the Total Resource Cost ("TRC") test docket that the Commission employ Net-to-Gross ("NTG") research to adjust the gross verified savings that are used for compliance purposes to determine whether an EDC has met its mandated Act 129 reduction targets. The Commission has consistently failed to direct such usage and again fails to direct such usage in the May 11 Order.

On May 29, 2009, the Commission circulated a TRC test proposal among interested parties in the Act 129 process at the EE&C Implementation Order docket[19] seeking comments relative to TRC testing. The Commission, in their absence of data specific to Act 129 programs, proposed not to require NTG adjustments for the first year.[20] The Commission also noted that it would direct EDCs to initially study the degree to which free-riders, take-back effects, spillover effects, or other factors that affect the NTG adjustment are present for the more prevalent efficiency measures that are implemented pursuant to their EE&C plans. Those EDC studies were to be conducted and overseen by a statewide evaluator should the Commission decide to contract for statewide evaluation service.[21] The results of the study would be used to determine if NTG adjustments should be made in the future.

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[19] Energy Efficiency and Conservation Program, Docket No. M-2008-2069887 (January 16, 2009)("EE&C Implementation Order").

[20] Implementation of Act 129 of 2008 – Total Resource Costs (TRC) Test, Docket No. M-2009-2108601 (June 23, 2009), corrected by errata on Page 7 in October 19, 2009. ("2009 TRC Test Order"). The Commission still correctly noted that an NTG adjustment would adjust cost-effectiveness results so that the results would only reflect those energy efficiency gains that are attributed to and are a direct result of the energy efficiency program in question. 2009 TRC Test Order at 25.

[21] Id. at 25-26.

After reviewing comments, the Commission determined that it would go forward without a NTG ratio (and adjustment) for the first year. It convened a stakeholder process to examine the issues associated with developing an NTG ratio rather than direct the EDCs to study the matter.[22]

On May 6, 2011, the Commission issued a Tentative Order at Docket No. M-2009-2108601 seeking comments on proposed further requirements to the Pennsylvania TRC test for use through May 31, 2013 and, to a lesser extent, on the use of the TRC test beginning June 1, 2013.[23] The Commission proposed to direct the EDCs to develop and conduct NTG studies and that the NTG studies be funded out of the EDCs' Act 129 2% program budgets. Pursuant to the RFP contract, the SWE would coordinate the development and approved of common methodologies for EDCs' NTG studies. The results of the studies would be reported to the SWE and utilized by the EDCs to determine when a measure on program should be removed from the EE&C portfolio because it is no longer cost effective to other incentives. The Commission did not propose, for the June 1, 2009 through May 31, 2013 period, that the NTG research be used to adjust the gross verified energy savings that are used for compliance purposes.[24]

The SEF, on June 3, 2011, submitted Comments to the May 6, 2011 Order. In those Comments, the SEF disagreed with the Commission's continued reluctance to require development of and to apply NTG research during the four-year term of the current EE&C plans to effectively measure the efficacy of those plans. The SEF recommended that, for the four year period, NTG research be used to adjust the gross verified savings that are used for compliance purposes to determine whether an EDC has met its mandated Act 129 reduction targets. This

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[22] Id. at 27.
[23] Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test 2011 Revisions, Docket No. M-2009-2108609 (May 6, 2011) ("May 6, 2011 Order").
[24] Id. at 18.

recommendation was based upon the clear intent of Act 129, and the fact that gross savings are not in totality savings that are specifically or uniquely attributable to the program or measure.[25]

The SEF also pointed out that the proposals advanced in the May 6, 2011 Order failed to advance the need to quantify NTG results if it was to completely meet the economic efficiency goals of Act 129. The Commission did not discuss the results, if any, of its stakeholder process,[26] but simply continued to require no affirmative action on the NTG issue and compounded the problem by proposing an extension of savings measured at the gross savings level for the entire EE&C plan period.

The Commission entered its Final Order in this docket on August 2, 2011.[27] In that order, the Commission rejected SEF's suggestion to use NTG to determine compliance targets from June 1, 2009 to May 31, 2013.[28] The Commission did agree that NTG research is appropriate for directing Act 129 program design and implementation. It directed EDCs to collect data necessary to determine the NTG ratio for their programs and to apply the ratio when determining the cost-effectiveness of future modifications of existing programs. For those EDCs that had collected sufficient NTG data to calculate NTG ratios, as determined by the SWE, they were to use those ratios to immediately calculate the TRC for future Act 129 program modifications or changes. For those EDCs that had not collected NTG data to date, they should from the effective date of the order begin collecting NTG data and apply NTG ratios after six (6) months from the effective date of the order for Act 129 program modifications or changes. The Commission directed that NTG research necessary to develop NTG ratios should be funded

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[25] SEF Comments at Docket No. M-2009-2108601 (June 3, 2011) at 4-5.
[26] SEF noted it was unclear on whether a stakeholder process was initiated. SEF was unaware of any process and was not notified if there was one. Id. at 6.
[27] Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test 2011 Revisions, Docket No. M-2009-2108601 (August 2, 2011)("August 2, 2011 Final Order").
[28] The Commission noted that the stakeholder group only included EDCs and the SWE, with no other participation. Id. at 24.

outside of the EDCs Act 129 program budgets.[29] Certain EDCs requested that the Commission decide that NTG would only be used for program design and implementation decisions and not for savings target compliance if there were Act 129 programs after 2013. The Commission stated that it would wait until further data and input was available before making such a decision and would not adopt at that time a position about the use of NTG ratios for determining compliance with savings targets after 2013.[30]

Despite the fact that EDC NTG research data was to be completed and NTG ratios applied after six months of August 2, 2011, or February 2, 2012, the Commission in the May 11 Order simply notes that many EDCs have only completed preliminary NTG research, and a full year of NTG research data will not be available until the EDCs' Program Year 3 Final Annual Reports are submitted (November 15, 2012). The failure of EDCs to meet the Commission's August 2, 2011 Final Order allows the Commission to use the lack of Pennsylvania – specific data as a reason not to support an adjustment to NTG. Due to the lack of this data, the Commission proposes to again only allow NTG adjustments to be treated the same way for all of Phase II as they were treated for Phase I, namely that NTG research only be used to direct Act 129 program design and implementation, but not for compliance purposes.[31] The Commission proposes that EDCs continue to use net verified savings in their TRC test for program planning purposes and proposes that compliance in Phase II be determined using gross verified savings.

SEF submits that this proposal is unreasonable and represents an inappropriate regulatory response. It is inappropriate to allow the EDCs to fail to meet the Commission's direction requiring the calculation of NTG ratios by February 2012, and then rely on this failure and the attendant lack of Pennsylvania-specific data to continue to refuse to allow NTG data for

[29] Id. at 25.
[30] Id. at 26.
[31] May 11 Order at 45.

compliance purposes for an additional three years during all of Phase II. The lack of data will now be relied upon as a basis for not addressing the Act 129 compliance issue for seven years, which is simply unfathomable and certainly not a basis of sound regulation.[32]

The SEF recommends that, at the least, the Commission follow its decision in the August 2, 2011 Final Order and not rush to judgment and summarily dismiss the use of NTG for compliance purposes for all of Phase II without awaiting further data and input, which it apparently expects by November 15, 2012. To do otherwise is unreasonable.

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.

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Respectfully submitted,

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Counsel for the Sustainable Energy Fund of Central Eastern Pennsylvania

DATED: June 25, 2012

[32] The EDCs, prior to undertaking the NTG studies, were to submit a summary of their NTG study scope and methods, including estimated costs, for stakeholder comments and a prudency review. SEF has no knowledge indicating that even this preliminary process ever occurred. August 2, 2011 Final Order at 25.

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: June 25, 2012