BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation Program Phase III	**Docket No. M-2014-2424864**

REPLY COMMENTS OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA

Submitted to the Tentative Implementation Order Entered
March 11, 2015

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA

Harry S. Geller, Esq., PA ID: 22415
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

May 15, 2015

I. INTRODUCTION

These reply comments are submitted on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") in response to initial comments of various parties to the Pennsylvania Public Utility Commission's ("Commission" or "PUC") Tentative Implementation Order ("Tentative Order"), entered on March 11, 2015 at Docket No. M-2014-2424864, regarding Act 129 ("The Act") Energy Efficiency and Conservation Program Phase Three ("Phase Three" or "Phase III").

CAUSE-PA thanks the Commission for this opportunity to provide reply comment and limits our response to certain critical issues and proposals raised in the initial comment period which we believe will negatively impact the ability of low-income households to achieve verified, long-term energy savings and improved health and welfare.

II. BACKGROUND

On April 27, 2015, CAUSE-PA filed initial comments in response to the Commission's March 11, 2015 Tentative Implementation Order, expressing its support for the Commission's proposed 5.5% savings target for the residential low income sector carve-out, including a requirement that 2% of low income savings be derived from direct install measures. CAUSE-PA suggested that the direct-install measure requirement be increased to 3% to ensure program equity and proportionality. CAUSE-PA further commented in support of a specific savings target for affordable multifamily buildings and for continuation of a 10% carve-out for government, education, and non-profit sector. CAUSE-PA also commended the Commission for its proposal to create a multifamily work group, and urged the Commission to convene the work group as early as possible after the entry of its Phase III Implementation Order to ensure that work group recommendations can be included in Phase III Plans.

Initial comments were also filed by the Office of Consumer Advocate (OCA), the Energy Efficiency for All Coalition (EEFA), the Keystone Energy Efficiency Alliance (KEEA), the Pennsylvania Weatherization Task Force, Citizens for Pennsylvania's Future (PennFuture), the Clean Air Council (CAC), the Environmental Defense Fund (EDF), the Sierra Club, the National Resource Defense Council (NRDC), the Home Performance Coalition, Northeast Energy Efficiency Partnerships (NEEP), Regional Housing Legal Services (RHLS), the Philadelphia Weatherization and Conservation Collaborative (PWCC), Honeywell International, Johnson Controls, United Technologies Corporation, Ingersoll Rand, Schneider Electric, Whirlpool Corporation, Strategic Energy Group (SEG), the Sustainable Energy Fund (SEF), the Energy Association of Pennsylvania (EAP), the Pennsylvania State University, the Industrial Customer Groups, PPL Electric Utilities Corporation, the Office of Small Business Advocate, PECO Energy Company, Duquesne Light Company, FirstEnergy, the Pennsylvania Department of Environmental Protection, the Demand Response Supporters, and Citizen Power, Inc.

III. COMMENTS

CAUSE-PA has reviewed the initial comments submitted in this proceeding, and submits the following responses thereto:

- The low income residential sector carve-out should continue to be based on achieved energy savings, as opposed to a budgetary carve-out, to fulfill the intent of the legislature to guarantee that EE&C measures – and the resulting savings achieved from those measures - are provided equitably to all classes of customers.

- Act 129 EE&C programming for low income residential customers should be coordinated with - not consolidated or subsumed into - other low income weatherization and energy efficiency programming.

- The Government, Education, and Non-Profit Carve-Out should continue at its Phase II level of 10% to allow for the adoption and integration of meaningful programming for affordable multifamily housing properties.

- The findings of the third party Statewide Evaluator, with regard to acquisition costs and savings potential accepted in the TO, should not be supplanted by alternative, unsubstantiated EDC methodologies.

- The proposal to include on-bill financing programs within Phase III should be rejected, as such programming would violate critical statutory and regulatory consumer protections and would impose incongruous and inappropriate financial regulatory duties on utilities – without any evidence of the potential for such programs to produce consistent, verified savings for the borrower or other ratepayers.

Each of these responsive positions is addressed, in turn, below.

(A) The low income residential sector carve-out should continue to be based on achieved energy savings, as opposed to a budgetary carve-out, to fulfill the intent of the legislature to guarantee that EE&C measures – and the resulting savings achieved from those measures - are provided equitably to all classes of customers.

The OCA, the Energy Efficiency for All Coalition, KEEA, NEEP, the PA Weatherization Task Force, PennFuture, the Clean Air Council, the Sierra Club, NRDC, RHLS, PWCC, Citizen Power, the City of Philadelphia, and the Environmental Defense Fund each lend explicit support in comments for continuation of a savings-based target for low-income customers. However, to varying degrees, the Energy Association, FirstEnergy, PECO, and PPL argue in their respective comments that the low income residential sector savings target should be reduced or transformed into a spending / budget requirement. (See First Energy Comments at 25; PPL Comments at 6-7; PECO Comments at 30[1]; Energy Ass'n Comments at 5-6). These commenters further argue that any Phase III low income savings targets should be a "non-mandatory goal." The Energy Association explains that "rather than a consumption reduction carve-out, the Commission

[1] Notably, PECO was explicit in that it "fully supports a continued focus on consumption reduction from the low-income sector" and concludes that the 5.5% savings reduction target is reasonable. PECO Comments at 28. However, PECO nonetheless asserts that the 2% direct install component "should be based on spending, not savings." Id.

[should] consider a target based on a budget amount or % of funding which would eliminate any inequity associated with a prescribed carve-out among the EDCs and account for the fact that EDCs fund 100% of the acquisition cost for low-income customers to participate in Act 129 programs." (Energy Ass'n at 5).

The language of Act 129 is explicit that Act 129 programming "*shall* include: … Standards to ensure that each plan includes a variety of energy efficiency and conservation measures and will provide measures *equitably to all classes of customers*." 66 Pa. C.S. § 2806.1(a)(5) (emphasis added). Presumably, the Energy Association was drawing from this provision of the law to argue that a budget allocation for low income sector programming would be more "equitable" because it would divide the budget into equal parts between various ratepayers.

Equity – in the sense envisioned by the legislature – is not established solely by dividing dollars and cents equally amongst ratepayers. Rather, the term "equity" - or "equitable" - takes into account the circumstances faced by each of the various participants in a given situation, and adjusts accordingly to ensure the outcome "denotes the spirit and the habit of fairness, justness, and right dealing."[2] In the context of Act 129, it is critical to factor in the unique circumstances faced by low income customers to arrive at an equitable distribution of measures to achieve targeted savings. As the OCA explained in comments:

> Low income customers, even though the least able to bear the cost, are asked to pay the additional charges on their bills to support the energy efficiency programs delivered to all residential customers. While bearing the costs, low income customers are often least able to take advantage of the programs, particularly general programs that may require a cash outlay by the participant. (OCA Comments at 14).

[2] Blacks Law Dictionary Online, 2d ed, http://thelawdictionary.org/equity/.

Low income customers pay in to the rates supporting Act 129 programming, but due to their lack of financial resources to pay for up-front costs, have largely been unable to access the same level of measures, services, and savings that are made available to non-low income ratepayers. Nevertheless, in Phases I and II, savings were attributed to low income consumers based on presumed participation in general residential programming, despite the fact that low income customers were likely unable to participate due to their lack of up-front capital.

Achieving *equity* in Act 129 programming for low income customers necessitates a larger financial investment to ensure equitable results in terms of savings achieved. Indeed, low income customers start at much higher energy burdens – ranging upwards of 20% of the household's income[3] – which means that efficiency and conservation programs to address this population's energy burden must be more comprehensive and, thus, more costly, to bring their energy burden to parity with other residential customers.

As the legislature stated in the preamble to Act 129, it is the fundamental goal of the Act to promote the health, safety and prosperity of all residents through the delivery of energy efficiency and conservation measures:

> 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. … It is [therefore] in the public interest to adopt energy efficiency and conservation measures to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth *and ensures affordable and available electric service to all residents*.

[3] LIHEAP-eligible households pay between 17 and 22 percent of their income on energy costs. Economic Opportunity Studies, Meg Power, The Burden of Residential Energy Bills on Low-Income Consumers (Mar. 20, 2008), http://www.opportunitystudies.org/repository/File/energy_affordability/Forecast_Burdens_08.pdf.

To ensure that this essential goal of the Act is fulfilled, it is critical that the Commission continue to require that EDCs achieve a percentage of savings attributable directly to the low-income customer class.

(B) Act 129 EE&C programming for low income residential customers should be coordinated with, not consolidated or subsumed into, other low income weatherization and energy efficiency programming.

Several commenters, to varying degree, suggest or imply in their comments that Act 129 programming for low income customers should be "consolidated" into - or that the savings should be prescribed relative to - other low income energy efficiency and weatherization programs, such as the Low Income Usage Reduction Program (LIURP) and the Weatherization Assistance Program (WAP). KEEA suggests that "consolidating programs to the greatest extent possible could significantly increase participation" (KEEA Comments at 17), though it does not offer further explanation for how consolidation would translate into increased participation. First Energy and PPL argue the opposite: That there aren't enough low income households in their respective territories to participate in both LIURP and Act 129, and that savings should therefore be prescribed relative to participation in the other programs. (FirstEnergy Comments at 25-27; PPL Comments at 34, 52-54). Both of these perspectives are flawed.

First, CAUSE-PA is in full support of efforts to *coordinate* low income programs, as coordination is key to ensuring that the needs of vulnerable customers are addressed holistically, without duplication of extraneous costs. However, we oppose *consolidation* of low income programming – as well as proposals to determine savings relative to other programming – as these approaches chip away at the holistic package of services delivered to vulnerable customers. We submit that *consolidation* is contrary to statutory and regulatory provisions, and would serve to undermine the Commission's clear public policy goals to ensure the delivery of universal services to all Pennsylvanians.

Since 1988, EDCs have been required to maintain a LIURP to help decrease the incidence of payment trouble and, in turn, to reduce demand and improve the health, safety and comfort levels of program recipients.[4] The funding and structure for LIURP is proscribed the Pennsylvania Code at Title 52, Chapter 58. Two decades later, in 2008, the legislature passed Act 129, which required EDCs to submit Energy Efficiency and Conservation Plans that contained "specific energy efficiency measures for households at or below 150% of the federal poverty income guidelines."[5] The Act declared that the EDCs were required to "coordinate measures under this clause with other programs administered by the Commission or another federal or state agency."[6] But, to be absolutely sure that its intent for separately funded, but coordinated programs would be honored, the legislature further declared: "The expenditures of an Electric Distribution Company under this clause **shall be in addition to expenditures made under 52 Pa. Code Ch. 58 (relating to residential low income usage reduction programs)**."[7]

The law is crystal clear on this point: LIURP and Act 129 must coordinate efforts to achieve savings for low income populations; however, Act 129 low income programming must be in addition to – and not consolidated with or subsumed by LIURP.

Second, in response to FirstEnergy and PPL comments, CAUSE-PA strongly asserts that there is no shortage of low income homes that are capable of being served. In assailing the modest low income carve-out included in the Commission's TO, PPL argues that there are just 313,000

[4] 52 Pa. Code §§ 58.1, .3.
[5] 66 Pa. C.S. § 2806.1(b)(1)(G).
[6] 66 Pa. C.S. § 2806.1(b)(1)(G).
[7] 66 Pa. C.S. § 2806.1(b)(1)(G) (emphasis added).

low income customers in its service territory, and that the majority of these customers have either already received LIURP and Act 129 services (104,000), failed to get landlord authorization, (63,000), refused participation (78,000), lived in master-metered properties (31,000), or walked away from the job/moved (15,000). (PPL Comments at 52). Each of these figures was based on assumptions and unsubstantiated percentages, not actual data extrapolated from its LIURP and Act 129 programs.[8] To accept PPL figures, one must also accept that any household which received LIURP services at any time would be precluded from receiving future Act 129 services; that the acceptance of any Act 129 measure within a 7 year period, including receipt of a light bulb, would preclude a household from receiving further Act 129 services; and that there is no duplication in the quantification of the number of households in each of the five separate categories PPL references. After engaging in mental gymnastics based on assumed figures, PPL reached a conclusion that it had only 54,000 low income homes left to serve, claiming it would need to reach 100% penetration of Act 129 programs to fulfill the Commission's low-income savings target. (PPL Comments at 52).

PPL's claim that there are not enough customers to serve through both Act 129 and LIURP is incongruous, and not based on any solid, verifiable data. Indeed, a look at the actual data shows that poverty levels across the state are at historic highs. From 2009 to 2013, an average of 13.3% of Pennsylvanians survived on an income at or below the federal poverty level (FPL).[9] After rising for four consecutive years (2008-2011), Pennsylvania's poverty rate has finally leveled off at 13.7% in 2013 – or approximately 1.8 million people.[10] 2014 poverty data is not yet available to

---

[8] See PPL Comments at n.47-52 (explaining that each of the figures presented in the chart are based on various assumptions. Only one figure – the assumed percentage of refusals – was purported to be "based on PPL Electric's actual experience." Id. n.49.

[9] US Census Bureau, Pennsylvania QuickFacts, http://quickfacts.census.gov/qfd/states/42000.html.

[10] Coalition Against Hunger, Pennsylvania Poverty Numbers, http://www.hungercoalition.org/story/recent-data-confirms-millions-pennsylvanians-continue-struggle-hunger (breaking down census data released on September 18,

examine whether this trend has continued. However, it is clear that the poverty rate remains well above the pre-recession rate of 11.6% in 2007. Remember, this is the percentage of Pennsylvanians at or below 100% of poverty – the number of individuals at 150% of FPL are even higher. A look at the spread of poverty across the state – county by county – reveals that the poverty rate is consistently above 11% in all but a handful of counties.[11]

FirstEnergy attempted to engage in a breakdown of low income populations in a manner similar to PPL, but focused its arguments on the fact that its four distribution companies have "fewer customers at 150%" than the other EDCs. (FirstEnergy Comments at 28). This argument is significantly flawed, given that the savings targets are based on a percentage of savings – not the number of customers. FirstEnergy has fewer customers, as its service territories span more rural areas of the state. But the percentage of those living in poverty in FirstEnergy's service territories are above the statewide average – ranging in some counties (including Forest and Centre) as high as 24%, and in other counties (including Crawford, Erie, McKean, and Potter), over 15%.[12]

In CAUSE-PA's experience, LIURP and Act 129 programming reach just a small percentage of the low income customers in each service territory. To the extent there are customer impediments to a receipt of Act 129 energy efficiency services, CAUSE-PA asserts that EDC initiative in developing program design and education about the benefits of energy efficiency will significantly reduce those barriers. Proper coordination with other programs, and adoption of more holistic programming – as set forth by the Commission in its TO – would address many of the health and safety issues encountered in the field. Promotional efforts and partnerships are critical

---

2014, for Pennsylvania).

[11] UCCB, Poverty USA, Poverty Map, http://www.povertyusa.org/the-state-of-poverty/poverty-map-county/.

[12] Id.

to addressing many misconceptions about the programs. In essence, utilities need to overcome the fear that "free" programming comes with a foreboding catch. For example, before joining CAUSE-PA, one member thought that they would lose control over the temperature in their home if they participated in a program to replace their thermostat and, thus, chose not to participate in the program because loss of control over the temperature of her home would have aggravated her medical conditions. This perception is deeply troubling, and it is not unique. Indeed, utilities have a long way to go before they reach saturation of low income programming and, thus, should be encouraged to begin addressing the barriers to participation through program design, rather than through reduced commitments.

(C) The Government, Education, and Non-Profit Carve-Out should continue at its Phase II level of 10% to allow for the adoption and integration of meaningful programming for affordable multifamily housing properties.

CAUSE-PA argued in its initial comments that the EDCs should be required to continue to achieve 10% of its portfolio of savings from the Government, Education, and Non-Profit (GNEP) sector. We stand firmly on that conclusion and do not reiterate those arguments here. However, we highlight for the Commission, in reply to several commenters' appeals to eliminate or further reduce GNEP savings targets, that maintaining this carve-out at 10% is critical to the adoption and implementation of meaningful programming for affordable multifamily housing, which has been chronically underserved in Act 129 programming to date.

FirstEnergy notes in its comments that "the [Tentative] Order acknowledged the increasing acquisition costs of providing certain measures to the G/E/NP sector [and] recognized 'unique circumstances that create barriers to participation in programs'," but argues that the Commission should have adjusted the targets further downward "to reflect any budget or acquisition cost premium for the G/E/NP sector" as a result of addressing these unique circumstances. (FirstEnergy

Comments at 23). The Energy Association sponsored similar comments, arguing against any GENP savings target. (Energy Association Comments at 4-5).

In response to these arguments, CAUSE-PA asserts that many of the "unique circumstances" which create barriers to participation in GENP sector programming are not cost-related as suggested by FirstEnergy, and further reduction in the savings target is not warranted. If anything, an increase in savings to restore GENP to 10% is in order, based on the significant potential savings and historical lack of programming for multifamily housing.[13] One of the primary barriers in reaching the GENP sector is the inability of EDCs to identify qualifying buildings. Another common barrier is the ability to provide meaningful incentives for multifamily building owners which account for the split incentives between building owners and tenants. Collaboration with the Pennsylvania Housing Finance Agency would help to both identify appropriate projects and build attractive programming. At the same time, it could reduce programming costs and increase participation by leveraging existing finance programs and stringent energy efficiency standards with which affordable housing providers must already comply.

On May 14, 2015 – just one day before submission of these Comments – Governor Wolf announced funding for 39 new multifamily housing developments across Pennsylvania, which will provide a total of 1,864 new affordable rental housing units.[14] These developments would all qualify for GENP programming, and could also be used to reach low income savings targets, as these developments will necessarily include affordable units for low income families. An EDC could coordinate with PHFA to develop a program to help pay for some of the stringent Passive

[13] See CAUSE-PA Comments at 13-16.

[14] Press Release, *Governor Wolf Announces Tax Credits and PennHOMES Funding for Affordable Multifamily Developments in Pennsylvania* (May 14, 2015), http://www.phfa.org/forms/press_releases/2015/051415_PHFA_LIHTCawards.pdf.

House[15] design specifications that developers of affordable multifamily properties must meet, thereby eliminating many of the administrative and advertising costs of reaching this customer base. Working with PHFA would provide EDCs with a ready-made market, and may open the door to future leveraging of state and/or federal financing dollars to achieve even greater savings.

Addressing the unique barriers to reaching the GENP sector is not necessarily overcome solely through increased budget spending and enhanced cost allocations; rather, using innovative and collaborative approaches can just as easily be employed to ensure that this hard-to-reach sector is able to meaningfully benefit from Act 129 programs. Thus, it is critical for the Commission to retain its existing carve-out for GENP – with emphasis placed on addressing multifamily housing – to ensure that this traditionally hard-to-reach sector is able to enjoy the benefits of Act 129 programming.

(D) The findings of the third party Statewide Evaluator, with regard to acquisition costs and savings potential accepted in the TO, should not be supplanted by alternative, unsubstantiated EDC methodologies.

The Energy Association and EDCs, particularly PPL, PECO, and First Energy, focused their comments in large part on challenging the efficacy of the SWE's estimated acquisition costs versus the projected savings – particularly with respect to low income sector programming – claiming that the SWE's methodology and forecasting was so off the mark that the Commission should either (1) not impose any savings targets, or (2) adopt the findings from alternative potential studies conducted by the EDCs. FirstEnergy, PPL, and PECO claim that the actual acquisition costs for low income programming, *when employing their alternative methodology*, ranges from

[15] For more on Passive House building specifications, see Passive House Institute US, http://www.phius.org/home-page. PHFA awards additional points to developers who meet these stringent building codes, making adoption of these measures essential to secure highly competitive tax credit dollars. See Affordable Housing Finance, Developers Get Aggressive with Passive House Design (March 10, 2015), http://www.housingfinance.com/news/developers-get-aggressive-with-passive-house-design_o.

7.8% to 25% of the overall Act 129 budget. (See FirstEnergy Comments at 23 (25%); PECO Comments at 2 (7.8%); PPL Comments at 36 (23%)). These methodological challenges are misplaced, and their alternative findings should not supplant the proposal put forth by the Commission in its TO based on impartial and substantiated SWE findings.

In response to these commenters, CAUSE-PA first points out that there is always a margin of error inherent in economic forecasting, and further that the margin of error can – and does – fall on either side of the equation. The SWE explained these limitations at the start of its report:

> While the SWE Team has sought to use the best and most current available data, there are assumptions for which a reasonable alternative would yield slightly different results. Furthermore, while the lists of energy efficiency measures examined in this study represent most commercially available measures, these measure lists are not exhaustive. Finally, the SWE Team did not attempt to place a dollar value on some difficult-to-quantify non-energy benefits arising from the installation of some measures, such as increased comfort or increased safety. These non-energy benefits may affect some customers' choices to implement one or more measures that may otherwise have been less cost-effective or only marginally cost-effective.[16]

In other words, the study cannot encapsulate every commercially available measure – nor can it account for all possible savings. Indeed, "reasonable alternative[s] would yield slightly different results."

The purpose of having an independent evaluator to study the statewide energy efficiency savings potential is to ensure that the methodology is objective, transparent, and balanced. The Commission should not now be swayed by arguments to adopt alternative methodology which may – in the independent evaluator's words – "yield slightly different results." Such a finding would be contrary to the Commission's mission to strike a balance between the interests of utility shareholders, ratepayers, and the public. Indeed, the Commission has taken all appropriate steps

[16] Statewide Evaluation Team, Pa. Energy Efficiency Potential Study, at 3 (Feb. 2015).

to mitigate the margin of error inherent in economic forecasting by imposing far lower savings target for each sector carve-out then the potential savings estimated by the SWE.

There are many ways to address remaining uncertainties about the ability to meet the targets set in the Tentative Order, while staying within the 2% budget cap. The Commission could allow EDCs the flexibility to use remaining Phase II budgets to supplement high acquisition costs. Increased coordination and collaboration both internally within the EDC and externally with other utility and government-run weatherization and energy efficiency programming would also assist in lowering costs because it would allow EDCs to share labor, administrative, and promotion costs, thereby lowering overall savings acquisition costs.

CAUSE-PA encourages the Commission to retain its proposed TO based upon the methodologies employed by the SWE in its independent and objective potential study, and to emphasize and encourage the EDCs who assert skepticism to focus on adopting creative alternatives and leveraging opportunities for collaboration to ensure that Phase III continues to incrementally build on the savings achieved in Phases I and II.

(E) The proposal to include on-bill financing programs within Phase III should be rejected, as such programming would violate critical statutory and regulatory consumer protections and would impose incongruous and inappropriate financial regulatory duties on utilities – without any evidence of the potential for such programs to produce consistent, verified savings for the borrower, the lender, or other ratepayers.

The Keystone Energy Efficiency Alliance (KEEA) and the Sustainable Energy Fund of Central Pennsylvania (SEF) each commented that the Commission should include an on-bill financing (OBF) mechanism as a method to fund Act 129 Energy Efficiency programming. KEEA went further, suggesting that the Commission should mandate adoption of at least one pilot program.

CAUSE-PA is vehemently opposed to the adoption of OBF, as it violates statutory and regulatory consumer protections, and would impose inappropriate regulatory duties and oversight responsibilities on utilities and the Commission, respectively. In turn, there is no data to suggest that the success of such a program would warrant the risk of immeasurable hardship that OBF may impose on customers. Each of these concerns is addressed, in turn. However, as a preliminary matter, it is important to note that the Commission has already addressed this issue in detail and has expended significant time and resources into exploration of on bill financing, and in the end concluded that none of the model OBF programs were viable in Pennsylvania without significant additional modifications.[17]

i. Statutory and Regulatory Laws Prohibit On Bill Financing

First, CAUSE-PA points to Act 129, which requires that programming be cost-effective.[18] To date, there is no support on the record in this proceeding – or in past proceedings -- for concluding that OBF is a cost effective delivery mechanism for energy efficiency and conservation measures in Pennsylvania. Indeed, the On Bill Financing Work Group Report, issued in October, 2013, concluded that the models presented for analysis in the Work Group were not proven to be cost effective:

> Specific program design details and parameters remain unresolved. Such unresolved details include cost concerns related to utility billing system upgrades, cost recovery, and Act 129 TRC and CSP applicability.[19]

In addition to unresolved cost concerns, there is also the distinct risk that offering additional financing to those unable to afford up-front energy efficiency costs, will heap additional debt onto

---

[17] Pa PUC, *The On-Bill Financing Working Group Staff Report*, Docket No. M-2012-2289411 (Oct. 31, 2013) (hereinafter OBWG Report).
[18] 66 Pa. C.S. § 2806.1.
[19] OBWG Report, at 22-23.

already distressed households, businesses, and organizations, resulting in higher risk of foreclosure and/or termination of services. CAUSE-PA asserts that requiring adoption of an OBF pilot program, in light of the issuance of a Commission Report questioning the cost effectiveness of such programming, would violate the very core of Act 129 to adopt programming which "ensures affordable and available electric service to all residents."[20]

OBF programming would also directly conflict with critical statutory and regulatory consumer protection provisions, and may result in illegal termination of service for vulnerable customers or, in the alternative, increased uncollectible expenses that will be passed through to ratepayers.

To explain, one of the applicable hooks designed to incentivize lenders to participate in OBF programs, thereby ensuring cost-effective lending terms, is the ability to terminate utility service of the contracting party in the event of default. But several statutory and regulatory protections make such an approach impermissible. :

- "*[S]ervice may not be terminated nor will a termination notice be sent for any of the following reasons*: … (3) *Nonpayment, in whole or in part, or nonbasic charges for leased or purchased merchandise, appliances or special services including*, but not limited to, merchandise and appliance installation fees; rental and repair costs; meter testing fees; special construction charges; and *other nonrecurring or recurring charges that are not essential to delivery or metering service*." 52 Pa. Code § 56.83 (emphasis added).
- A low-income tenant or occupant may not be terminated during the winter months (December 1 through March 31). 52 Pa. Code § 56.100.
- Public utilities are limited in its ability to discontinue service to any tenant or occupant where the landlord fails to pay. 66 Pa. C.S. §§ 1521-1533 (Discontinuance of Service to Leased Premises Act).

[20] Act 129, Preamble § 2.

To proceed with any OBF initiative or to require or encourage EDCs to adopt an OBF pilot, the Commission would need to seek statutory changes and/or revise its regulations to allow termination for a landlord's default, thereby creating enormous risk of physical and financial harm for both current and future tenants, occupants, and owners. Alternatively, the Commission could prohibit utilities from terminating service for nonpayment, which in turn would result in higher interest rates, lower achievable savings, disinterested lenders, and potentially higher costs for uncollectible accounts. Pursuing either of these actions is not in the public interest, and runs contra to the intent of Act 129 and the mission of the Commission to balance utility and public interests.

ii. On Bill Financing Would Create Inappropriate Regulatory Duties and Oversight Responsibilities on the Utilities and the Commission, Respectively

Utilities are not in the lending business, and the Commission is not versed in lending oversight. But requiring – or even encouraging – adoption of an OBF program would place utilities and the Commission in the thick of interpreting and implementing this nuanced and legally complex area of law. Indeed, there remains a plethora of questions with respect to the application of finance laws and consumer protections to an OBF program.

- What notice would be required pursuant to the Truth in Lending Act for customers adopting OBF?
- What would happen to the OBF if the property is sold? Would the new owner assume the financing obligation? What notice requirements would apply to the new customer?
- What if savings are not delivered?
- What is the repayment obligation due to fire / flood / destruction of property?
- Would the lender / utility be able to attach a lien to the property?
- Would OBF affect the ability to access universal service programs?

These questions are just the tip of the iceberg in establishing the details of an OBF pilot program.

During the extensive meetings and deliberations of the OBF Working Group, the EDCs and other parties made a significant and convincing argument that the development of the technical, legal, regulatory and programming framework to conduct an OBF pilot would necessitate investments of financial resources and time equivalent to that of a full scale program and would not be an efficient or practical expense under Act 129. CAUSE-PA asserts that utilities and the Commission are not equipped with appropriate legal authority, resources or expertise to execute and oversee an OBF program, and therefore should not incorporate voluntary or mandatory OBF programming into its Phase III Implementation Order as either a pilot or fully implemented program.

iii. On Bill Financing Has Not Been Successful In Early-Adoption States

We have discussed the inaptness of OBF for Pennsylvania in detail. But, in addition to being contrary to Pennsylvania law and policy, CAUSE-PA notes that there is no evidence that OBF programs have been successful in other states. KEEA points to a New Jersey program, which integrated OBF into a multifamily retrofit program, as support for its request that Pennsylvania also adopt OBF programming. However, merely suggesting that other states have pursued an OBF initiative, without further exploration of the success of those programs in delivering cost-effective savings, is insufficient to form the basis for adoption of a dubious consumer-lending program.

A look into OBF programming across the nation reveals that the savings possible from OBF are significantly limited, while the challenges presented by such programming are great. A study of 18 residential efficiency financing programs in the United States and Canada "revealed a number of important limitations of most existing [financing] programs." These limitations, and an explanation of each, are excerpted below:[21]

---

[21] M. Fuller, *Enabling Investments in Energy Efficiency: A study of programs that eliminate first cost barriers for the residential sector* (2008), *available at*

- *Limited Applicability for Households Most in Need*

  It is relatively easy to provide a loan program for those who are educated, motivated, and credit-worthy – but these are exactly the people who are least in need of financing. There has been little success in addressing the financial barriers faced by those most in need of financing, including those with the highest energy cost burdens as a percentage of income, low or fixed incomes, and poor credit, or those in rental housing.

- *Low Participation Rates*

  Despite the 150+ loan programs for residential energy efficiency in the United States, only a tiny fraction of the population has been reached. Most of the programs examined reached less than 0.1% of their "potential" customers in 2007, implying that in many cases their impact is marginal at best.

- *Difficulty Assuring that Savings Will Exceed Payments*

  Assuring that the measures financed will actually have a positive cash flow (i.e. savings are greater than loan payments each month) is critical. This is especially true for low- and moderate-income people, it is essential that energy efficiency is not an additional burden for this population. Currently most programs do not offer a rigorous assessment of expected savings or any guarantee for vulnerable populations, and the average loan term of five to seven years is often not long enough to achieve positive cash flow or many improvements that would yield substantial energy savings.

- *Limited Support for Deep Energy Retrofits*

  While basic weatherization and lighting might save 5% to 15% of energy use, more extensive retrofits might save 20% to 50% and usually will last much longer. However, these measures also often have longer payback periods and require financing with a term of 10 to 20 years to match savings. Most programs offer terms of five to seven years.

- *Inability of Programs to Cover Their Costs*

  Expecting programs to be self-supporting typically results in highly limited applicability and impact. Most of the higher-volume programs reviewed are likely serving participants who have higher incomes and access to other (albeit less attractive) sources of funding.

---

http://www.nclc.org/images/pdf/energy_utility_telecom/obf/ResFinancingStudy_EffVT_FullerUCBerkeley2008f.pdf.

The study found that - in addition to the problems faced by all energy efficiency financing programs, OBF programs raise additional issues:

> First, changing the billing system to allow for on-bill financing appears to be difficult for some utilities. Second, repayment allocation is an issue when customers partially pay their bills. If a third-party source of capital is used for the OBF program, the gas or electric charge will usually be paid first, which increases the risk to the lender. Third, using OBF for improvements that save non-utility fields, such as heating oil, may be confusing for a customer who has an electricity-only utility bill. Finally, the commitment of the utility to the OBF program is critical. OBF is very difficult to maintain if the utility is not completely committed, because the payments have to run through their systems. Utilities' concerns need to be thoroughly addressed before they are required by regulatory bodies to offer financing programs.

The inability to guarantee savings to match the amount borrowed is such an extreme issue, and central to the overall goal of Act 129 to provide cost-effective energy efficiency programming, that it warrants further exploration. In a study of energy efficiency financing in California, estimated that a 20% usage reduction would require a loan of between $14-15,000.[22] Assuming a loan term of 10 years, at a modest 6% interest charge, the debt service would total approximately $155.43/month.[23] This debt service amount – which according to the study would represent just 20% energy savings – exceeds the average monthly bill for most residential customers.[24]

In all, CAUSE-PA asserts that, given Pennsylvania's current legal restrictions, it would be wholly inappropriate for the Commission to require utilities to foray into this aspect of the finance industry. Indeed, without significant evidence of the savings potential, it is simply not worth the additional time and energy that such an attempt would require. For these reasons, we urge the

---

[22] Harcourt, Brown, & Carey, *Energy Efficiency Financing in California: Needs and Gaps: Preliminary Assessment and Recommendations* (July 2011).
[23] *Id.*
[24] *Id.*

Commission to unequivocally reject requests to incorporate on-bill financing programs, pilot or otherwise, as part of Act 129 Phase III Implementation Order.

IV. CONCLUSION

CAUSE-PA respectfully urges the Commission to adopt the recommendations cited above to ensure that Phase III is able to achieve equitable savings for all customers. We look forward to the Commission's Phase III Implementation Order, and to working with the Commission, EDCs, and other interested stakeholders to develop meaningful programming for low income customers.

Respectfully Submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA

Harry S. Geller

Harry S. Geller, Esq., PA ID: 22415
Elizabeth R. Marx, Esq. PA ID 309014
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

May 15, 2015