COMMONWEALTH OF PENNSYLVANIA

April 27, 2020

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Energy Efficiency and Conservation Program / Docket No. M-2020-3015228

Dear Secretary Chiavetta:

Enclosed please find the Comments, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

An electronic copy will be served on the parties indicated below.

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

Sincerely,

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Enclosures

cc: Joseph Sherrick, josherrick@pa.gov
Adam Young, adyoung@pa.gov

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program	:	**Docket No. M-2020-3015228**

COMMENTS OF THE OFFICE OF SMALL BUSINESS ADVOCATE

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Date: April 27, 2020

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation Program	:	**Docket No. M-2020-3015228**

COMMENTS OF THE OFFICE OF SMALL BUSINESS ADVOCATE TO THE TENTATIVE IMPLEMENTATION ORDER

I. INTRODUCTION

At the public meeting held March 12, 2020, the Pennsylvania Public Utility Commission ("Commission") issued a *Tentative Implementation Order* in the above-captioned matter seeking comments from interested stakeholders on the Commission's proposed required consumption and peak demand reductions for each electric distribution company ("EDC") as well as guidelines for implementing Phase IV of the energy efficiency and conservation ("EE&C") program. The *Tentative Implementation Order* directed comments from interested parties to be filed within 30 days of its publication in the *Pennsylvania Bulletin*. On March 28, 2020, the *Tentative Implementation Order* was published accordingly. The Office of Small Business Advocate ("OSBA") submits the following comments pursuant to the *Tentative Implementation Order*.

II. COMMENTS

In the OSBA's view, the key aspects of Act 129 with respect to EE&C and demand reduction ("DR") programs are twofold. First, the programs must be economically efficient, in that they must pass the total resource cost ("TRC") test. Second, while EDCs are permitted to recover their prudently incurred cost on a full and reconcilable basis, minimum reduction goals are specified, penalties are imposed for failure to meet the goals, and maximum spending limits are applied, all in order to discourage excessive or wasteful spending by the EDCs.

Programs which pass the TRC test generally provide an overall economic benefit, because the benefits of the program in the form of avoided energy costs exceed the costs of the program. However, the benefits flow primarily to participants in the program, while the costs are borne by all ratepayers. Thus, Act 129 EE&C and Demand Response programs all generally require that ratepayers who do not benefit from these programs cross-subsidize those customers who do participate.[1] While these subsidies are deemed necessary to induce consumer behavior that is economically efficient, it must be recognized that these subsidies are inherently inequitable.

In this context, the OSBA offers the following comments regarding three aspects of the Commission's *Tentative Implementation Order*.

A. Demand Reduction Programs

1. At pages 31 to 35 of the *Tentative Implementation Order*, the Commission summarized the cost effective potential for Phase IV as determined by the Statewide Evaluator's ("SWE") *Pennsylvania Act 129 Phase IV Energy Efficiency and Peak Demand Reduction Market Potential Study*[2] ("*EEPDR Potential Study*") and *Pennsylvania Act 129 Phase IV Demand Response Potential Study*[3] ("*DDR Potential Study*"). Based on the findings in the *EEPDR*

[1] Because Act 129 specifies that each rate class must pay for the EE&C and DR programs from which it benefits, the subsidies are *intra-class* subsidies. However, the Commission has generally allowed EDCs to establish broad rate class groups, within which the subsidies occur.

[2] *Pennsylvania Act 129 - Phase IV Energy Efficiency and Peak Demand Reduction Market Potential Study Report,* submitted by Optimal Energy, Inc., *et. al.*, February 28, 2020 (Released March 2, 2020 via Secretarial Letter, at Docket No. M-2020-3015229).

[3] *Pennsylvania Act 129 - Phase IV Demand Response Potential Study*, submitted by Demand Side Analytics, Inc., *et. al.*, February 2020 (Released March 2, 2020 via Secretarial Letter, at Docket No. M-2020-3015229).

Potential Study and the *DDR Potential Study*, the Commission concluded that peak demand reduction targets do not have to be met exclusively through Dispatchable Demand Response ("DDR") Programs.[4]

2. The OSBA supports the Commission's determination regarding DDR Programs.

3. In particular, the OSBA agrees with the Commission's recognition that "Coincident peak demand reductions from EE measures are longer lasting than DDR programming and will persist for years after Phase IV has ended."[5] The OSBA similarly supports the Commission's view that utility EE&C programs should be focused on longer-term savings measures.

4. Furthermore, the OSBA agrees with the Commission's finding that coincident demand reductions from EE measures can be recognized in PJM's Forward Capacity Market ("FCM").[6] The OSBA is therefore supportive of the Commission's proposal that, for Phase IV, the EDCs be required to nominate at least a portion of the expected peak demand reductions of the EE&C Plan as a capacity resource in PJM's FCM.

5. Finally, the OSBA agrees with the Commission that the proceeds from resources that clear in the PJM FCM be used to reduce Act 129 surcharges and collections for customer classes from which the savings were acquired.[7] These proceeds are *benefits* associated with the EE&C programs. They should therefore *not* be used as an offset to costs, as part of an effort to expand the overall size and scope of the EE&C subsidies.

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[4] *Tentative Implementation Order* ("*TIO*"), issued March 12, 2020, at p. 35.
[5] *TIO*, at p. 34.
[6] *TIO*, at p. 35.
[7] *TIO*, at p. 75.

B. Government, Non-Profit, and Institutional Entities ("GNI") Carve-out

5. At pages 18 to 21 of the *Tentative Implementation Order*, the Commission proposes to eliminate the previous "carve-out" for government, non-profit, and institutional ("GNI") customers.[8]

6. As a general rule, the EDC general service rate classes which serve small and medium sized business customers also serve a variety of other entities, including GNI customers. Thus, while Act 129 limits cross-subsidization to intra-class effects, the potential for significant cross-subsidization within the general service rate classes exists, notably between GNI and business customers. The OSBA observes that this concern has been raised in the past by both OSBA and by industrial customer groups.

7. The OSBA supports the elimination of the GNI carve-out. Nevertheless, the OSBA continues to have concerns that the potential exists for EDCs to assign a disproportionate amount of the program costs to government or other non-business customers. Such behavior could occur for a variety of reasons, including the possibility that these entities were less inclined to undertake EE&C improvements without incentives, or that the EDCs desire to curry favor with local governments, or simple public relations benefits. As the Commission recognizes, all of the EDCs met their GNI targets, and all but one substantially met the targets.[9] Further, the OSBA agrees with the Commission that the EDCs should include plans for the GNI sector in their Phase IV plans, and that the EDCs report savings for that sector in their reports.[10]

8. In order to address concerns about cross-subsidization, the OSBA respectfully requests that, in addition to eliminating the GNI carve-out, the Commission require utilities to

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[8] *TIO*, at p. 20.
[9] *TIO*, at Table 8.
[10] *TIO*, at p. 21.

monitor and report in their semi-annual and final annual EE&C reports: (1) how much of their non-residential load in each rate class is accounted for by GNI customers and, (2) how much of the non-residential EE&C spending for each rate class is dedicated to GNI customers. Such reporting requirements will provide the Commission and stakeholders with the information necessary to evaluate whether there exists over-subsidization of GNI customers at the expense of small businesses, and, if so, to correct the over-subsidization.

C. Benefit-Cost Analysis Approval Process

9. At pages 53 to 56 of the *Tentative Implementation Order*, the Commission proposes to continue using a Net-to-Gross ("NTG") ratio research as part of the EE&C planning process, and that compliance with energy savings targets continue to be measured using an NTG ratio of unity. For Phase IV, the Commission indicates that it plans to require EDCs to include in their EE&C Plans both net TRC ratios and gross TRC ratios, based on the best available estimates of NTG research for a given program type.[11]

10. The OSBA supports the Commission's Phase IV proposal for an expansion of the use of NTG ratios in the EE&C Plans as directionally reasonable. As the Commission indicates in its 2021 TRC Test Final Order, "*. . . Act 129 programs are, in fact, a government policy designed to encourage investments in energy efficiency* ***that would not happen absent policy intervention.***"[12] The Commission therefore clearly believes that net benefits is the appropriate standard for EE&C programs, even if it has not yet explicitly incorporated that belief into its quantitative testing.

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[11] *TIO*, at p. 55.

[12] Pennsylvania Public Utility Commission, Final Order, Docket No. M-2019-3006868, Order Entered December 19, 2019 ("2021 TRC Test Final Order"), p. 21, emphasis added.

11. The OSBA adds that, all other factors being equal, free ridership (i.e., low NTG ratios) will be higher when subsidies represent a large portion of the program costs. The OSBA has long argued that a goal of the Commission with regard to EE&C programs should be to reasonably balance the need to meet energy reduction targets with the desire to minimize cross-subsidies between EE&C program participants and non-participants. The OSBA concludes that careful consideration of NTG ratios and avoidance of undue free-ridership by EDCs in their EE&C plan development is an important aspect for addressing that goal. The OSBA encourages the Commission to continue expanding its use of NTG ratios in its regulation of EE&C programs in the Commonwealth.

III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission issue a Final Implementation Order consistent with the OSBA's comments above.

Respectfully submitted,

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Dated: April 27, 2020