



Judith D. Cassel  
(717) 703-0804  
[jdcassel@hmslegal.com](mailto:jdcassel@hmslegal.com)

Micah R. Bucy  
(717) 703-0813  
[mrbcuy@hmslegal.com](mailto:mrbcuy@hmslegal.com)

---

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 [www.hmslegal.com](http://www.hmslegal.com)

April 27, 2020

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (Filing Room)  
Harrisburg, Pennsylvania 17105

Re: Comments of The Sustainable Energy Fund of Central Eastern Pennsylvania to the Pennsylvania Public Utility Commission's Act 129, Phase IV Tentative Implementation Order; Docket No. M-2020-3015228

Dear Secretary Chiavetta:

Enclosed for filing with the Commission are the Comments of the Sustainable Energy Fund of Central Eastern Pennsylvania.

If you have any questions concerning this filing, please do not hesitate to contact my office.

Best regards,

Judith D. Cassel  
Micah R. Bucy  
Mariah R. Turner  
*Counsel for The Sustainable Energy Fund of  
Central Eastern Pennsylvania*

Enclosure(s)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy and Efficiency Conservation  
Program

:  
:  
:  
:

Docket No. M-2020-3015228

---

**COMMENTS OF THE SUSTAINABLE ENERGY FUND  
OF CENTRAL EASTERN PENNSYLVANIA  
ON THE TENTATIVE IMPLEMENTATION ORDER**

---

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

**I. INTRODUCTION**

Act 129, which was signed into law on October 15, 2008, among other things, mandated that Pennsylvania’s largest electric distribution companies (“EDCs”) adopt Energy Efficiency and Conservation Plans (“EE&C Plans”)<sup>1</sup> and required the Pennsylvania Public Utility Commission (“Commission”) to evaluate, on a recurring five (5) year basis, whether the benefits of Act 129’s EE&C Plans exceed the costs of the program, and if the benefits exceeded the cost: “adopt additional required incremental reductions in consumption.”<sup>2</sup>

---

<sup>1</sup> 66 Pa.C.S. §2806.1(a).

<sup>2</sup> 66 Pa.C.S. § 2806.1(c)(3).

Since the enactment of Act 129 the Commission has overseen three separate phases: Phase I, Phase II, and the current Phase III. Act 129’s Phase III is set to expire May 31, 2021.<sup>3</sup> In anticipation of the expiration of Phase III, the Commission tasked the Phase III Statewide Evaluator (“SWE”) to perform an independent energy efficiency and peak demand reduction study<sup>4</sup> to assist in the Commission’s determination of whether to implement a Phase IV to Act 129 pursuant to 66 Pa.C.S. § 2806.1(c)(3). The SWE’s study found that electric consumption reduction programs will continue to be cost effective; the study was released to the public via Secretarial Letter on March 2, 2020.<sup>5</sup>

On March 12, 2020, at its regularly scheduled public meeting, the Commission issued its Tentative Implementation Order (“Tentative Order”) for Phase IV in which it concluded that the benefits of the EE&C Plans continue to exceed the costs which warrants additional required incremental reductions in electric consumption.<sup>6</sup> Notice of the Commission’s Tentative Order was published in the Pennsylvania Bulletin on March 28, 2020 and the public was advised that comments would be accepted until April 27, 2020 and that reply comments would be accepted until May 12, 2020.<sup>7</sup>

---

<sup>3</sup> See *Phase III Final Implementation Order*, page 12, at Docket No. M-2014-2424864, entered June 19, 2015.

<sup>4</sup> See *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. *Pennsylvania Act 129 - Phase IV Demand Response Potential Study*, submitted by Demand Side Analytics, Inc., *et. al.*, February 2020.

<sup>5</sup> See *Release of the Act 129 Statewide Evaluator Energy Efficiency and Peak Demand Reduction Market Potential and Demand Response Potential Studies and Stakeholder Meeting Announcement* Secretarial Letter, at Docket No. M-2020-3015229, served March 2, 2020.

<sup>6</sup> See *Phase IV Tentative Implementation Order*, page 12—13, at Docket No. M-2020-3015228, entered Mar. 12, 2020.

<sup>7</sup> 50 Pa.B. 1917 (Mar. 28, 2020).

## II. COMMENTS

### A. **The Proposed Phase IV Consumption Reduction Targets Should Be Increased By 12.5%**

The SEF urges the Commission to reconsider the savings targets for Phase IV and consider increasing each EDC's target by 12.5%. Commissioner Place astutely noted that historically, an EE&C Plan's actual acquisition costs versus its projected costs were nearly 30% lower during Phase II (\$217/MWh projected vs. \$151/MWh actual) and are currently 26% lower in Phase III (\$197/MWh projected vs. \$145/MWh actual).<sup>8</sup> Because an EE&C Plan's budget is limited to 2% of an EDC's baseline revenue,<sup>9</sup> the amount an EDC pays to implement an energy savings program directly correlates to an EDC's potential energy savings.

Given that the actual acquisition costs during Phase II and thus far in Phase III have proven to be significantly lower than projections, SEF believes the SWE's assumption for average projected acquisition costs are high. The SWE's inflated assumption of projected costs results in consumption reduction targets that are too low. SEF believes, based on the Phase II and Phase III historical data, that the energy consumption targets should be increased by 12.5% for each EDC. Doing so will still provide EDCs with an attainable target without unnecessarily putting EDCs at risk of being penalized under 66 Pa. C.S. § 2806.1(f)(2).

---

<sup>8</sup> *Phase IV Tentative Implementation Order*, Statement of Commissioner Place, page 1, at Docket No. M-2020-3015228, entered Mar. 12, 2020.

<sup>9</sup> 66 Pa.C.S. §2806.1(g).

**B. Safeguards Should Be Created To Protect GNI Customers Against EDC's Discriminatory Policies**

SEF requests the Commission mandate EDCs establish safeguards in their EE&C Plans to protect against the discrimination of small GNI Sector customers. Whether the Commission eliminates the GNI carve-out as it currently proposes (or includes it in Phase IV), the Commission should implement procedures to ensure that sub-segments of the GNI Sector, specifically small GNI Sector Customers, are provided an equal opportunity to participate in all EDCs' EE&C Plans. By way of example, in Phase III PPL Electric capped GNI savings once it achieved the 3.5% carve-out target. Once PPL Electric achieved the target it waitlisted all others in that customer segment seeking to participate in the company's EE&C Plan. For these waitlisted customers, those that fall under the classification of GNI and under the Small C&I Sectors such as multi-family public housing, the unfairness of PPL Electric's policy was further exacerbated when the company reduced its goal of Small C&I. These customers were barred from any meaningful participation in the company's plan. The policies which are discriminatory in nature should be curtailed by the Commission and the SEF requests steps be taken, including, but not limited to, a carve-out for these specific customers.

**C. The Commission Should Establish Specific Consumption Reduction Targets With Respect To Street Lights**

Should the Commission eliminate the GNI carve-out from Phase IV, it should nevertheless afford local government special treatment with respect to street lighting because local governments are not being served proportionately to their potential. A 2015 study by the Northeast Energy Efficiency Partnership (NEEP) found 329 GWh in potential annual energy savings for Pennsylvania while also identifying a number of barriers to achieving those savings. Primarily

among these barriers were that EDCs own the equipment and generate significant income from their operation<sup>10</sup> (PPL has generated \$24MM). EDC ownership of and profitability from the operation of streetlights disincentivizes EDCs to offer local governments savings absent a Commission mandate. The SEF requests the Commission set targets for consumption reduction associated with the operation of street lighting which might include a more favorable path for municipalities to acquire ownership of street lights.

#### **D. The Commission Should Limit Phase III Savings That Can Be Carried Over To Phase IV**

SEF recommends the Commission cap excess Phase III savings that can be used in Phase IV to 25% of the excess Phase III savings. In order to avoid stalling the effectiveness of any savings, this 25% of excess savings should only be applied to the first year of Phase IV. As Commissioner Place indicates, if EDCs were permitted to carry over all of their excess Phase III savings into Phase IV some would have achieved as much as 75% of the proposed Phase IV consumption reduction targets before ever implementing any programs. Permitting such a generous carry-over runs counter to the intent of Act 129 and acts to disincentivize EDCs to implement new and innovative programs that enable long-term savings, including comprehensive programs the Commission believes EDCs should pursue.<sup>11</sup> SEF believes an appropriate balance needs to be struck that recognizes and incentivizes EDCs to continue implementing consumption reduction programs for the remainder of Phase III while also protecting the primary intent of Act

---

<sup>10</sup> Northeast Energy Efficiency Partnerships, LED Street Lighting Assessment and Strategies for the Northeast and Mid-Atlantic, page 52 (Jan. 2015), available at [https://neep.org/sites/default/files/resources/DOE\\_LED%20Street%20Lighting%20Assessment%20and%20Strategies%20for%20the%20Northeast%20and%20Mid-Atlantic\\_1-27-15.pdf](https://neep.org/sites/default/files/resources/DOE_LED%20Street%20Lighting%20Assessment%20and%20Strategies%20for%20the%20Northeast%20and%20Mid-Atlantic_1-27-15.pdf).

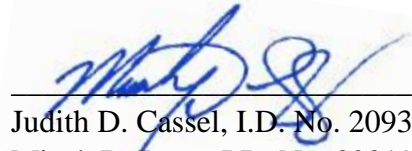
<sup>11</sup> *Phase IV Tentative Implementation Order*, Statement of Commissioner Place, page 1, at Docket No. M-2020-3015228, entered Mar. 12, 2020.

129, continuous incremental consumption reduction. SEF believes that permitting an EDC to carry over 25% of excess Phase III savings and apply it to Year 1 of Phase IV strikes that delicate balance because it provides the EDC a cushion to adjust to the new requirements of Phase IV while protecting the intent of Act 129 by requiring the EDC to pursue reduction in Phase IV, Years 2-5.

### **III. CONCLUSION**

SEF thanks the Commission for the opportunity to submit these comments to the Phase IV Tentative Implementation Order and looks forward to a successful partnership with all stakeholders. SEF respectfully requests that the Commission issue a Final Order reflecting the comments expressed herein.

Respectfully submitted,



Judith D. Cassel, I.D. No. 209393  
Micah R. Bucy, I.D. No. 320196  
Mariah R. Turner, I.D. No. 327840  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
P: (717) 236-1300  
F: (717) 236-4841  
E: [jdcassel@hmslegal.com](mailto:jdcassel@hmslegal.com)  
[mrbcy@hmslegal.com](mailto:mrbcy@hmslegal.com)  
[mrtturner@hmslegal.com](mailto:mrtturner@hmslegal.com)

*Counsel for The Sustainable Energy  
Fund of Central Eastern Pennsylvania*

Date: April 27, 2020