McNees Wallace & Nurick LLC

100 Pine Street ● PO Box 1166 ● Harrisburg, PA 17108-1166
Tel: 717.232.8000 ● Fax: 717.237.5300

Kenneth R. Stark
Direct Dial: 717.237.5378
kstark@mcneeslaw.com

April 27, 2020

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

VIA ELECTRONIC FILING

RE: Energy Efficiency and Conservation Program; M-2020-3015228

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") are the Comments of the Pennsylvania Energy Consumer Alliance ("PECA"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customers"), in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By Kenneth R. Stark

Kenneth R. Stark

Counsel to the Pennsylvania Energy Consumer Alliance,
Met-Ed Industrial Users Group, Penelec Industrial
Customer Alliance, Philadelphia Area Industrial Energy
Users Group, PP&L Industrial Customer Alliance, and
West Penn Power Industrial Intervenors

c: Joseph Sherrick, Bureau of Technical Utility Services (via E-Mail)
Adam Young, Law Bureau (via E-Mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE
PENNSYLVANIA ENERGY CONSUMER ALLIANCE,
MET-ED INDUSTRIAL USERS GROUP,
PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP,
PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND
WEST PENN POWER INDUSTRIAL INTERVENORS

I. INTRODUCTION

On March 12, 2020, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued its Tentative Implementation Order outlining the Commission's proposals to address the issues set forth at Section 2806.1(a)[1] of Act 129 of 2008 ("Act 129") for establishing Phase IV of the Energy Efficiency and Conservation ("EE&C") Program.[2] The Tentative Implementation Order proposes to establish additional incremental reductions in electric consumption and peak demand for Pennsylvania's seven largest electric distribution companies ("EDCs"). The Commission's proposals incorporate the findings of the Act 129 Statewide Evaluator ("SWE") Energy Efficiency ("EE") and Peak Demand Reduction ("PDR") Market Potential Study Report ("SWE Report") and the Demand Response ("DR") Potential Study ("SWE DR Report"), which were released to the public on March 2, 2020.

---

[1] 66 Pa. C.S. § 2806.1(a).

[2] *Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228, Tentative Implementation Order (Mar. 12, 2020) ("Tentative Implementation Order").

The Pennsylvania Energy Consumer Alliance ("PECA"), Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Philadelphia Area Industrial Energy Users Group ("PAIEUG"), PP&L Industrial Customer Alliance ("PPLICA"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customers") submit these Comments in response to the Tentative Implementation Order. The Industrial Customers' members include commercial, institutional, and industrial customers of electricity that have participated in various proceedings before this Commission, including the EE&C Plan proceedings for their respective EDCs. Because the cost of electricity (including regulatory costs such as EE&C surcharges) is a substantial portion of the operating budgets of the members of the Industrial Customers, the Commission's proposal to implement a Phase IV of the EE&C Program is of particular concern, especially during this current economic downturn caused by the COVID-19 pandemic ("COVID-19" or "the pandemic"). Because COVID-19 has detrimentally impacted the nation's economy and the economic well-being of businesses and consumers throughout Pennsylvania, the Industrial Customers request the Commission to delay the implementation of Phase IV by at least one year, if not longer.

If the Commission proceeds with Phase IV, the Industrial Customers request that Large Commercial and Industrial ("C&I") customer classes not be included in a Phase IV or that the Commission give large customers an opportunity to opt out of participation in Phase IV. Based on the SWE's findings, as presented in the EE and DR Studies and adopted in the Tentative Implementation Order, insufficient evidence exists to support a Phase IV EE&C program that includes EE measures for Large C&I customers. Accordingly, the Commission lacks the necessary evidentiary record to conclude that it is just and reasonable to continue to require Large

C&I customers to pay the surcharges to fund Phase IV, especially when there has not been a demonstration that the benefits of participation are commensurate with program costs.

EE&C Programs have been conducted for eleven years. Many larger customers have historically derived little value from such measures at significant cost during Phases I, II, and III of the EE&C Program. The SWE's conclusions with respect to Large C&I market potential are not based on a thorough analysis of this customer sector and do not reflect the cost assumptions necessary to determine whether Large C&I programs are truly cost effective. The Commission's proposal to implement Phase IV will result in the unnecessary expenditure of Large C&I customer funds that adversely impacts businesses and their employees, consumers, and Pennsylvania's economy during a very challenging and unprecedented time.

Under Act 129, the Commission must make periodic decisions regarding whether and to what extent consumers must continue to pay for a centralized, EDC-administered energy efficiency and demand reduction program. The funding for the Act 129 programs comes from ratepayers, including all of the costs of the EDC's administrative teams, marketing and advertising, Conservation Service Provider ("CSP") payments, customer grants, SWE compensation, and all other expenses of the Act 129 programs. As a result, the Commission has a duty to evaluate whether the programs for each class are cost-effective and in the public interest. Each $10,000 that a customer contributes to Act 129 is $10,000 that the customer does not have for its own energy efficiency initiatives or other business needs, such as ensuring necessary cash flow during this current economic climate to avoid furloughing or laying off employees. The PUC's regulatory efforts must focus on safe and reliable service at just and reasonable rates. *See* 66 Pa. C.S. §§ 1301, 1501. Act 129 goals, while important, can be delayed for a year or longer.[3]

[3] On April 22, 2020, the Industrial Energy Consumers of Pennsylvania ("IECPA") filed a Petition to Suspend Implementation of the Act 129 Phase IV Requirements and for Other Relief. *See* Docket Nos. M-2020-3015228, M-

The Industrial Customers urge the Commission to delay Phase IV for one year or, in the alternative, to eliminate Phase IV EE&C Program initiatives and commensurate charges for Large C&I customers. In the event, however, that the Commission proceeds with Phase IV and requires participation by Large C&I Customers, the Industrial Customers are providing substantive Comments regarding the Tentative Implementation Order proposals. Importantly, these Comments should not be construed as an endorsement of the continuation of the EE&C Plans for Large C&I customers.

II. COMMENTS

Act 129 requires that the Commission establish and adopt an energy efficiency and conservation program requiring EDCs to implement cost-effective energy efficiency and conservation plans that reduce energy demand and consumption within their service territories.[4] Act 129 does not expressly require or encourage the Commission to continue this program in perpetuity. In fact, Act 129 expressly states that the "reductions in consumption required by the commission shall be accomplished no later than May 31, 2017," thereby confirming that the Commission is no longer under a mandate to conduct further phases of the program.[5] Furthermore, when the provisions of Act 129 are read in conjunction with Sections 501 and 1301 of the Public Utility Code,[6] it becomes clear that the Commission has the discretion to discontinue or, at the very least, postpone the implementation of this program.

2020-3019262, and P-2020-3019562. The Industrial Customers support suspending the implementation of Phase IV and will be filing an answer in support of IECPA's petition, raising many of the points expressed in these comments.

[4] 66 Pa. C.S. § 2806.1

[5] *See* 66 Pa. C.S. § 2806.1(d).

[6] 66 Pa. C.S. §§ 501, 1301. Under Pennsylvania law, the PUC must read the provisions of the Public Utility Code *in pari materia* when exercising is discretionary powers. *See Shenango Twp. v. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (citing 1 Pa. C.S. § 1932 (Statutes in pari materia)).

The Commission has broad powers to regulate public utility service within the Commonwealth, which includes discretion as to how and *whether* to enforce its regulations, orders, and the intent behind these rules and regulations.[7] The Commission also has the responsibility to ensure that rates made, demanded, or received by public utilities are just and reasonable.[8] The Commission recently exercised its discretionary powers on March 20, 2020, when the PUC issued an emergency order ("March 20 Emergency Order") in response to Governor Wolf's proclamation of disaster emergency, suspending certain regulatory and statutory deadlines as well as modifying service and filing requirements.[9] In doing so, the Commission explained that issuing the emergency order "is both necessary and appropriate . . . to prevent any regulatory statute or rule . . . from unreasonably interfering with the public interest."[10]

Just as COVID-19 necessitated exercise of the Commission's discretionary powers to make certain operational and regulatory changes in order to continue serving the public, the pandemic also caused deep changes and continuing ripple effects dating back to the Commission's Implementation Order for Phase IV on March 12, 2020, which was prior to the PUC's March 20 Emergency Order. Accordingly, and in light of the ongoing and enduring detrimental effects of COVID-19 on Large C&I customers, the Industrial Customers ask that Commission use its

---

[7] *Id*. at § 501(a) ("the commission shall have full power and authority . . . to enforce, execute and carry out, by its regulations, orders, or otherwise . . . the provisions of this part and the full intent thereof; and shall have the power to rescind or modify any such regulations and order.").

[8] 66 Pa. C.S. § 1301(a) ("Every rate made, demanded, or received by any public utility . . . shall be just and reasonable.").

[9] *See Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, p. 3, Docket No. M-2020-3019262 (issued Mar. 20, 2020).

[10] *See id.* at 3.

discretion to postpone the implementation of Phase IV of the EE&C Program for at least one year.[11]

Beyond the impact of COVID-19, the Commission should not require participation by Large C&I customers in Phase IV because the costs of participation have not been demonstrated to be just, reasonable, and commensurate with the program benefits. The SWE's analysis of EE market potential reflects limited sampling of Large C&I customers, fails to address necessary cost assumptions for program participation, and fails to consider that it is more cost effective for Large C&I customers to undertake their own facility-specific EE upgrades and measures.

The Commission should delay Phase IV for one year or, in the alternative, to eliminate Phase IV EE&C Program initiatives/surcharges for Large C&I customers. However, if the Commission proceeds with Phase IV and requires participation by Large C&I Customers, the Industrial Customers will provide Comments regarding the Tentative Implementation Order proposals. These Comments should not be construed as an endorsement of the continuation of the EE&C Plans for Large C&I customers.

A. The Commission Should Delay Implementation of Phase IV For at Least One Year Due to the Impact of the Coronavirus Pandemic on the Economy and Power Demand.

The economic and social circumstances that existed when the Commission issued the Tentative Implementation Order no longer exist, and the economic and energy markets face unprecedented uncertainty.[12] In the relatively short time that has passed since the issuance of the

[11] In the "Act 129 EE&C Phase IV Tentative Planning Timeline" posted on the PUC's website, the PUC recognizes that the proposed timeline is tentative and "is not binding on the Commission." *See* Energy Efficiency and Conservation (EE&C) Program Phase IV, http://www.puc.pa.gov/filing_resources/issues_laws_regulations/act_129_information/energy_efficiency_and_conservation_ee_c_program.aspx (last accessed Apr. 26, 2020).

[12] *See, e.g., Order Granting Application of Consolidated Rail Corporation for the alteration of two at-grade crossings where Center Street (State Route 2013) (AAR 529 185 A) and Locust Street (AAR 529 184 T) intersect Conrail's Blacklick Secondary Track between MP 11.0 and MP 12.0, LC 202137, in Ebensburg Borough, Cambria County, Pennsylvania*, Docket No. A-00111313 (where the Commission adopted a recommended decision, in part, rescinding

PUC's Tentative Implementation Order, the impact of COVID-19 has magnified, causing continuing economic uncertainty in demand for goods and service at large and in demand for power for multiple industrial and commercial sectors nationwide.[13] The demand forecasts relied on by the SWE in its modeling have less value, given the unexpected decreases in demand and shifts in demand from some commercial and industrial sectors to residential sectors. PJM reported a 4% decrease in overall electricity demand during March,[14] and a noted shift in the daily load curve as businesses closed or moved their employees to "work from home" solutions.[15] In mid-April, PJM observed that peak load was 8-9% lower than expected (a drop in 7,500 Megawatts) as well as an average weekday reduction of 7% in energy consumption (a drop in 140 Gigawatt-

---

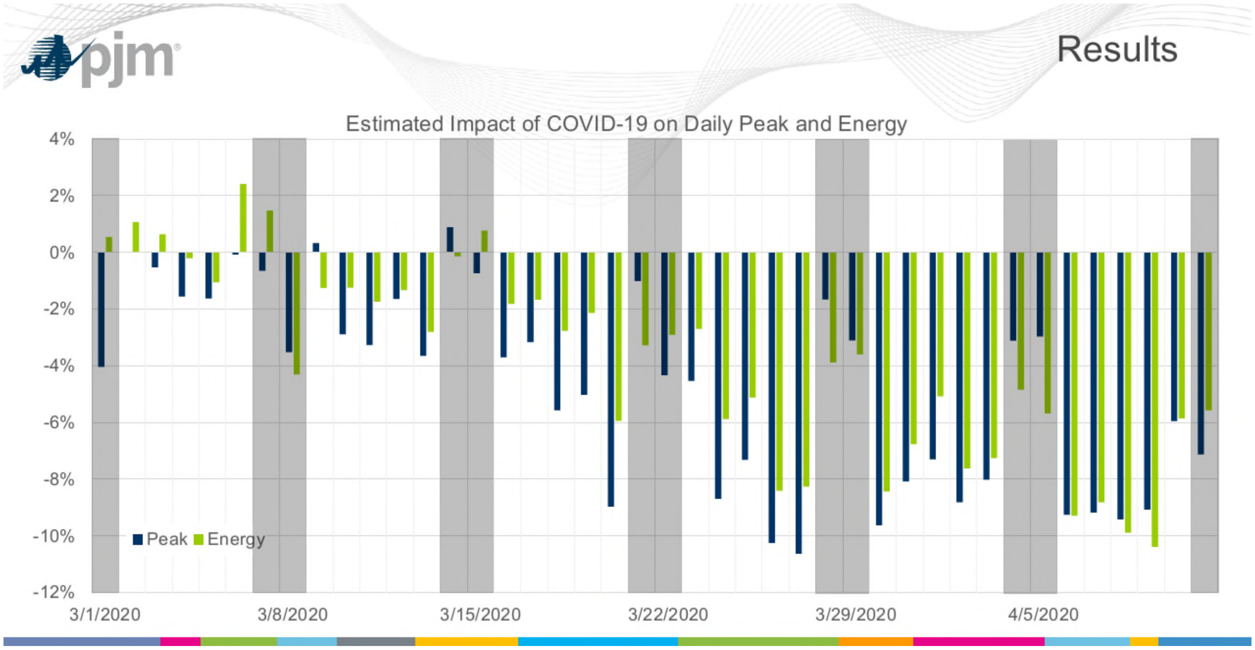
the Commission's 1994 Order in the same matter in recognition of changes in circumstances that occurred since the initial application was filed).

[13] *See, e.g.*, Kassia Micek et al., *Factbox: Power demand, prices begin to slip as coronavirus stay-home orders spread*, S&P GLOBAL PLATTS, Apr. 1, 2020, 10:59 PM, https://www.spglobal.com/platts/en/market-insights/latest-news/electric-power/040120-factbox-power-demand-prices-begin-to-slip-as-coronavirus-stay-home-orders-spread?utm_source=sailthru&utm_medium=email&utm_campaign=issue:%202020-04-02%20utility%20dive%20newsletter%20%5bissue:26560%5d&utm_term=utility%20dive; Karl-Erik Stromsta, *'It's Like a Snow Day Every Day': Coronavirus Threatens Commercial Renewables Demand*, GREENTECH MEDIA, Mar. 25, 2020, https://www.greentechmedia.com/articles/read/its-like-a-snow-day-every-day-coronavirus-threatens-commercial-renewables-demand; Darrell Proctor, *Power Industry Weighs Impacts of Coronavirus*, POWERMAG, Mar. 18, 2020, https://www.powermag.com/power-industry-weighs-impacts-of-coronavirus/; Robert Walton, *Clearer picture of coronavirus-driven grid load declines emerges in US after weeks of lockdowns*, UTILITY DIVE, Apr. 9, 2020, https://www.utilitydive.com/news/clearer-picture-of-coronavirus-driven-grid-load-declines-emerges-in-us-afte/575777/.

[14] Roger Conrad, *Electricity Demand in the Time of COVID-19*, FORBES, Mar. 30, 2020, 7:30 AM, https://www.forbes.com/sites/greatspeculations/2020/03/30/electricity-demand-in-the-time-of-covid-19/#669fe57a7e86; Will Englund, *See how covid-19 is reshaping the electric rhythms of New York City*, THE WASHINGTON POST, Apr. 19, 2020, 7:09 AM, https://www.washingtonpost.com/business/2020/04/19/electricity-new-york/ (In New York City, "Electricity demand . . . is running 18 percent lower at this weekday morning hour than on a typical spring morning . . . . As the sun rises in the sky, usage picks up, but it's a slower, flatter curve.")

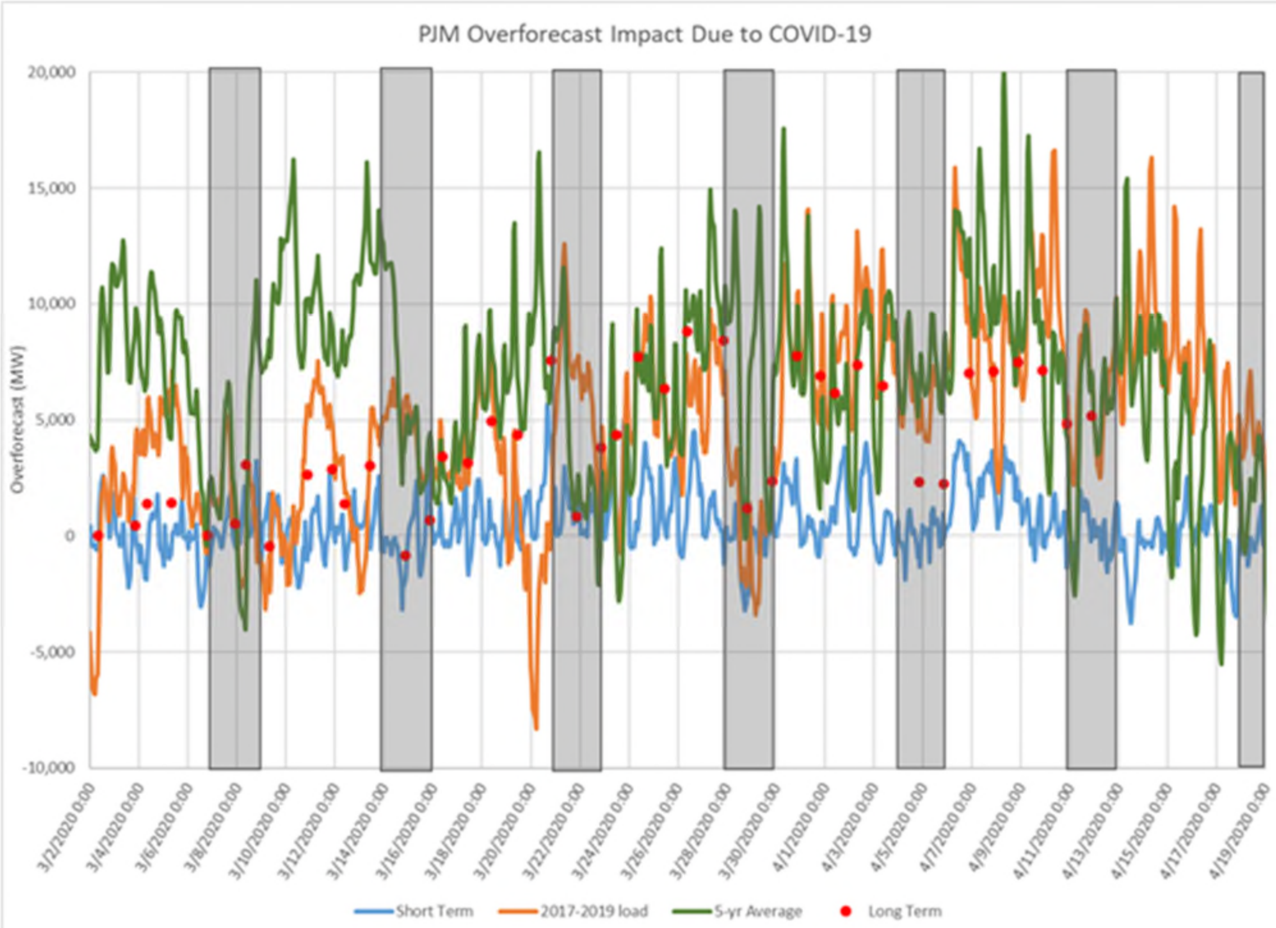
[15] As of the beginning of April, PJM has reported drops in load compared to the five-year historic average. The most recent update on demand/load estimates on the PJM website reveals that between March 14, 2020, and April 19, 2020 there has been a reduction in peak demand between 3.2% and 14.6% from the Rolling Average of the last five years. *See* https://www.pjm.com/committees-and-groups/committees/oc.aspx (last accessed Apr. 23, 2020). PJM's analyses are ongoing, given that the data is preliminary. More time will be needed for the grid operator, utilities, utility commissions, and stakeholders to understand the full weather-normalized impact of COVID-19 on energy usage and demand.

hours per day).[16] The below chart provides a snapshot of the estimated impact of COVID-19 on the daily peak demand and energy consumption from early March to early April 2020.



Based on PJM's current data, the Industrial Customers compiled the below chart that shows the forecast error from the three operations models (5-year average, Short-Term Neural Networks, and the Load/Weather relationship based on 2017-2019 data) and the peak-hour error of the PJM Long-Term model.

[16] *See* COVID-19 Update on Recent Load Impacts, Planning Committee (Apr, 14, 2020) at Slide 4, *available at* https://pjm.com/-/media/committees-groups/committees/pc/2020/20200414/20200414-item-11-recent-load-impacts-of-covid-19.ashx?la=en (last accessed Apr. 27, 2020).



The first two weeks of March were generally not impacted by COVID19, given the lack of school closings or stay at home orders; however, the models reveal a significant impact on power demand and energy usage later in March and in early April, reflecting a weekday impact on a reduction in peak demand of approximately 5,000-10,000 MW (6-12%) for that time period. Those changes reflect the tip of the iceberg on what has happened in April and will continue to evolve in the upcoming months, potentially resulting in long-term changes in demand patterns due to an enduring increase in remote working and social distancing, coupled with a slowdown in the global and national economy. Critically, the Commission's proposed electric consumption reduction targets do not account for these new and unprecedented shifts and changes in energy usage and demand.

At a more granular level, certain industries are realizing increased production and increased energy use while other industries are realizing decreased production and decreased energy use. Generally, power demand has begun to drop across the country as multiple states issue stay-home orders to halt the spread of COVID-19. From February 2020 through March 2020, the United States realized a reduction in electric load, ranging from 3 percent (3%) to 11 percent (11%).[17] Commercial demand is already decreasing as stores and restaurants are shuttering their business nationwide.[18] Those closures disrupt the product markets for other businesses and manufacturers. The automotive industry (and the suppliers to that industry) are facing production cuts due to decreased vehicle sales. Even businesses that continue to operate face uncertainty as customers are increasingly delaying payments or becoming insolvent. Colleges and universities have converted to remote learning, with some facing calls (and lawsuits) to refund tuition, room, and board payments. Similarly, hospitals are facing mounting costs related to the pandemic, while also being forced to furlough employees due to the decline in elective surgeries and non-emergency visits. Because the COVID-19 virus mitigation measures may need to continue into the Fall and Winter, clarity as to when these situations may change remains unclear. Some expectations predict that COVID-19 may result in a national or global recession, causing "flat-to-negative power demand growth"[19] and "potentially resulting in lasting damage to the US economy."[20] From a

[17] *See*, The Brattle Group, "Impact of COVID-19 on the US Energy Industry: February/March Assessment," by J. Figueroa, T. Counts, F. Graves, B. Mudge, and S. Pant (2020) (explaining that a bit less than half of the electric load reduction was due to COVID-19 while other reduction could be attributed to seasonal weather and pricing patterns).

[18] On the west coast, utilities have already begun reporting decreases in power demand with one district outside of Seattle reporting a three percent decrease in electricity demand on March 16, 2020. *See* Darrell Proctor, *Power Industry Weighs Impacts of Coronavirus*, POWERMAG, Mar. 18, 2020, https://www.powermag.com/power-industry-weighs-impacts-of-coronavirus/.

[19] Karl-Erik Stromsta, *'It's Like a Snow Day Every Day': Coronavirus Threatens Commercial Renewables Demand*, GREENTECH MEDIA, Mar. 25, 2020, https://www.greentechmedia.com/articles/read/its-like-a-snow-day-every-day-coronavirus-threatens-commercial-renewables-demand.

[20] *See*, The Brattle Group, "Impact of COVID-19 on the US Energy Industry: February/March Assessment," by J. Figueroa, T. Counts, F. Graves, B. Mudge, and S. Pant (2020) (hereinafter "Brattle Report").

demand perspective, the C&I sector will likely experience the most impact from the pandemic, triggering power demand to fall as businesses continue to close and scale back operations.[21]

The pandemic has caused multiple states, including Pennsylvania, to issue stay at home orders. As the Commission is aware, Pennsylvania's stay at home order issued by Governor Wolf on March 19, 2020, required all non-life sustaining businesses to close their physical locations for an intended period of two weeks. As of the drafting of these Comments, the stay home order has been extended through May 8, 2020; however, the stay at home order will be likely be extended for at least portions of Pennsylvania beyond that date. Upon the lifting of stay home order, social distancing practices will continue for the indefinite future. Furthermore, consistent with the Governor's directives, many businesses will likely require or encourage remote work for days to weeks after the lifting of the stay at home order to help ensure public safety and the health of their employees. Many Large C&I customers are impacted by the stay at home order because they have closed their physical locations, and many have been unable to continue operations remotely. While the Industrial Customers recognize and appreciate the Commission's efforts in the Tentative Implementation Order to focus on the cost and benefits of a new EE&C Program, the Industrial Customers urge the Commission to delay Phase IV by at least a year because it remains unclear as to whether many businesses and institutions can continue to sustain themselves during and after the pandemic. Delaying implementation of Phase IV for at least one year would provide all Pennsylvania customers – including the Large C&I class – with some respite in the face of an uncertain future.

[21] *See* WOOD MACKENZIE, CORONAVIRUS (COVID-19) AND ITS IMPACT ON COMMODITIES (2020); Brattle Report at Slide 26.

The Industrial Customers recognize that the Energy Efficiency contractors are also facing uncertain economic times, especially since many "on-site" efforts cannot be continued during the COVID-19 restrictions. Many businesses, whether by governmental order by public health guidance, may be reluctant to have contractors on site (and the cost of having contractors on site may be higher as a result of social distancing best practices). In this scenario, it is possible that the funds currently being collected by the EDCs through the surcharges are not being used due to COVID-19. The Industrial Customers would not object to allowing those funds to be used to continue the Phase III programs, if Phase IV is delayed, as long as customers are not required to pay additional surcharges to support such continuation. Alternatively, the surcharges could be eliminated immediately to provide customers with reductions to their electricity bills during this public health and resulting economic crisis.

Because of the overarching implications of COVID-19 on the Pennsylvania economy, the energy sector, and the participants in any EE&C programs, the Industrial Customers submit that the PUC should use its discretion to delay the implementation of Phase IV for at least one year. Such delay would represent only a minor modification to the EE&C programs while providing significant relief to many of the participants in these programs during these uncertain and economically stressful times.

B. The Commission Should Not Require Participation by Large C&I Customers in Phase IV Because the Costs of Participation Have Not Been Demonstrated to Be Just, Reasonable, and Commensurate with the Program Benefits.

One of the primary goals of Act 129 is cost reduction for consumers based on cost causation principles. Cost causation principles require that customers should only pay for the costs that they cause or for the benefits they receive within their customer class.[22] Pennsylvania's Large C&I

[22] The principle of cost causation requires that "all approved rates reflect to some degree the costs actually caused by the customer who must pay them." *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *see also, e.g.*,

consumers have invested tens of millions of dollars in Phases I, II, and III.[23] The Act 129 investments are compounded by the investments that many companies have made in the last twenty to thirty years to operate more efficiently in order to survive in their competitive industries. Because of caps on compensation levels and other program requirements, the types of customized projects that large customers pursue are often not fully recovered by Act 129 measures. For example, a large customer may pursue an efficiency project in order to reduce costs that would then benefit the organization's overall strategic interests. Conversely, an Act 129 grant, to the extent it is even available, is seen simply as a way to recoup a portion of the program costs. In other words, Act 129 grants do not motivate large consumers to implement EE programs.

The SWE's analysis cannot and should not serve as a substitute for the Commission's reasoned judgment regarding the cost-effectiveness of the EE&C Program. Absent demonstration of the Commission's well-reasoned internal analysis of the costs and benefits for Phase IV, the Industrial Customers submit that the continuation of the EE&C Program is contrary to the legislative intent of Act 129 and Section 1301's "just and reasonable" mandate.[24] The SWE Report is not sufficient to demonstrate that cost-effective energy efficiency is available from the Large C&I class. The report is not based on a thorough analysis of this customer sector and does not reflect the cost assumptions necessary to determine whether Large C&I programs are truly cost-

---

BNP Paribas v. FERC, 743 F.3d 264, 267-68 (D.C. Cir. 2014); *Black Oak Energy v. FERC*, 725 F.3d 230, 237 (D.C. Cir. 2013). Under cost causation, "costs are to be allocated to those who cause the costs to be incurred and reap the resulting benefits." *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 85 (D.C. Cir. 2014); *see also, e.g.*, *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004).

[23] *See generally* Energy Efficiency and Conservation (EE&C) Program, http://www.puc.pa.gov/filing_resources/issues_laws_regulations/act_129_information/energy_efficiency_and_conservation_ee_c_program.aspx (last accessed Apr. 26, 2020). The SWE usually breaks out the expected program costs for each customer class segment. For example, the SWE predicts $766.9 million in program costs for Phase IV. *See* SWE Report at p. 35, Table 22. The PUC will then hold proceedings to evaluate cost recovery, among other things, for each of the EDC's EE&C plans.

[24] *See* 66 Pa. C.S. § 1301.

effective.[25] Critically, the SWE's studies and the Tentative Implementation Order do not account for the significantly changed economic circumstances (and new economic forecasts) and power demand patterns as a result of COVID-19.[26]

The SWE's analysis of EE market potential does not support the continuation of the EE&C Program for Large C&I customers. The evidence offered by the SWE does not account for the current economic climate, and the SWE's analysis presents an incomplete picture with respect to the remaining available cost-effective measures for Large C&I customers. Instead of accounting for the perspective of a Large C&I customer as a potential individual program participant, the SWE measures cost-effectiveness and benefits from an overall regulatory perspective. More importantly, the Large C&I customers differ from other customer classes in that they have ample incentive to pursue EE projects without the existence of a centralized and more economically inefficient EDC-administered program.[27] Small changes in energy prices translate into large changes in costs for Large C&I customers. The overwhelming majority of Large C&I customers participate in the retail supply market and use its price signals to optimize their pursuit of EE, consistent with Large C&I productivity goals while maximizing free cash flow and minimizing debt. These incentives predate retail choice, as manufacturing has been facing fierce competitive

[25] *See* Energy Efficiency and Peak Demand Reduction Market Potential Study Report at 35-39. There is insufficient detail in the report addressing Large C&I program potential. The SWE's assumptions, methods, and details used to arrive at the figures presented are, therefore, unclear and cannot represent an accurate reflection of cost assumptions.

[26] The Energy Efficiency and Peak Demand Reduction Market Potential Study Report and Phase IV Demand Response Potential Study were released in February 2020—well in advance of the impact of the COVID-19 Pandemic in the United States.

[27] *See* Alexandra B. Klass, *Regulating the Energy "Free Riders,"* 100 B.U.L. Rev. 581 (Boston Univ. Law Review Mar. 2020) (discussing free riders and criticism of energy efficiency programs); Arik Levinson, *Energy Efficiency Standards Are More Regressive Than Energy Taxes: Theory and Evidence*, University of Chicago (published online Jan. 23, 2019), ***available at*** https://faculty.georgetown.edu/aml6/pdfs&zips/RegressiveMandates.pdf (last accessed Apr. 27, 2020).

pressures for many years due to the competitive world global economy, and Large C&I customers have continuously evaluated EE as a strategy to address those pressures.

Large C&I customers already set goals in furtherance of energy efficiency. In fact, energy efficiency is one of the primary strategies that businesses and manufacturers in this Commonwealth use to reduce energy costs. Most non-residential customers in Pennsylvania purchase electric supply from Electric Generation Suppliers ("EGSs") and, in those negotiations, Large C&I customers receive market signals regarding the value of energy efficiency efforts. Those price signals inform business decisions regarding the pursuit of efficiency and conservation projects. Cost-conscious consumers make decisions every day to upgrade lighting, replace motors, replace heating, improve ventilating and air conditioning ("HVAC") systems, and explore complex industrial process enhancements to remain competitive. Large C&I businesses have been the early adopters of such energy efficiency upgrades for many years prior to and during Act 129. Requiring companies and institutions to contribute to a fourth phase of EE&C funding diverts key resources that these companies and institutions could use for EE or other vital business objectives (such as maintaining their operations and their current employee complement) to remain vibrant employers in Pennsylvania. Large C&I Customers should not, therefore, be forced to participate in Phase IV when the costs of participation in the program have not been demonstrated to be just and reasonable, especially during a contracted economy with an uncertain future.

As noted above, the SWE Report does not thoroughly address Large C&I issues, the picture remains incomplete with respect to the remaining EE measures available to Large C&I customers, and Large C&I customers have been pursuing EE measures prior to the implementation of Act 129 and would continue to do so even without the requirements of Act 129, as such measures are necessary for cost conscious business decisions. The SWE's analysis fails to establish a sufficient nexus between the benefits of the EE&C program for Large C&I customers and the costs to those customers.[28] In light of the foregoing, the Industrial Customers respectfully request that the Commission exclude Large C&I customers from the Commission's Energy Efficiency and Peak Demand Reduction proposal for Phase IV.

C. Should the Commission Proceed with Phase IV and Require Large C&I Participation in Phase IV, Industrial Customers Provide the Following Recommendations.

The Industrial Customers agree with aspects of the Tentative Implementation Order and appreciate the Commission's determination not to include a DR component in Phase IV, especially given that such a program would not likely be utilized by large customers who already participate in PJM's emergency load management programs.[29] The Industrial Customers also support streamlining the EDC reporting processes (to help minimize program cost),[30] proposing competitive bidding procedures for CSPs,[31] and disallowing EDCs from using Phase III funds for Phase IV plans.[32] The Industrial Customers also strongly support the PUC's proposal to use PJM capacity market proceeds to reduce Act 129 customer surcharges and collections from customer classes from which savings were acquired.[33] While agreeing with those aspects of the Tentative Implementation Order, Industrial Customers urge the Commission to take the following actions (as discussed more fully herein):

---

[28] *See KN Energy*, 968 F.2d at 1300; *BNP Paribas*, 743 F.3d at 267-68; *Black Oak Energy*, 725 F.3d at 237; *South Carolina*, 762 F.3d at 85.

[29] Tentative Implementation Order, pp. 34-35.

[30] *Id*. at 49-51.

[31] *Id*. at 57-61.

[32] *Id*. at 68-70. If Phase IV is delayed, the remaining Phase III funds could be used during the bridge year without the continued collection of the Phase III surcharges.

[33] *Id*. at 43-44.

- Clarify the assumptions used to arrive at the proposed reduction targets and consider less costly reduction targets as appropriate;
- Ensure that the mandated targets reflecting energy efficiency-based peak demand reductions do not conflict with the EDC's obligation to offer a balanced plan;
- Not require EDCs to nominate any portion of peak demand reductions achieved by their EE portfolio in PJM's capacity auctions, given the uncertainty and potential increased costs in the PJM capacity market;
- Reconsider its proposal regarding carryover savings;
- Discontinue measures that have a TRC value of less than 1.0 (as required by cost causation principles);
- Remove rebate structures from the expedited review process;
- Require EDCs to provide justification regarding the use of a CSP to perform EE&C plan functions; and
- Disallow EDCs to utilize the full Phase IV budget, regardless of phase III spending and targets achieved.

1. The Commission Should Both Clarify the Assumptions Used to Arrive at the Proposed Reduction Targets and Consider Less Costly Reduction Targets As Appropriate.

The Commission proposed a five-year consumption reduction requirement for each EDC for Phase IV, requesting that each EDC design its EE&C Plan to achieve at least 15% of the EDC's consumption reduction target in each program year.[34] The Commission further proposes that the consumption reduction requirement be limited to the Commission's review and approval of the EE&C Plans and not be a target subject to penalty provisions of Act 129. The Tentative

[34] *Id.* at 14-15.

Implementation Order does not provide any clarification as to whether there is a portfolio and/or class allocation assumption for each EDC reduction target. The Industrial Customers therefore request that the Commission clarify the assumptions utilized to arrive at these proposed targets.

As part of the EE&C Plans, the PUC asked EDCs to consider implementing a comprehensive mix of programs for residential and non-residential classes. The PUC also stressed that an individual program does not need to be cost-effective so long as the EE&C Plan is cost-effective as a whole. The Industrial Customers contend that these parameters result in an inappropriate application of Act 129, which directs the Commission to terminate or modify any measure that is not cost-effective, *i.e.* with a TRC value of less than 1.0.[35]

The TRC test is met when the benefit to cost ratio is 1.0 or greater. In defining "total resource cost test," Section 2806.1(m) explicitly states the test is met if, over the life of the plan, "the net present value of the avoided monetary cost of supplying electricity [*i.e.*, the benefit] is greater than the net present value of the monetary cost of energy efficiency conservation measures."[36] Therefore, the TRC cost test is met when the benefit to cost ratio is 1.0 or greater. Section 2806.1(c)(3) requires the Commission to terminate an EDC plan that is not cost-effective.

Act 129 requires termination or modification of any measure with a TRC value of less than 1.0. Using the TRC for the totality of an EDC's EE&C Plan would mask those measures with a TRC value below 1.0. Accordingly, the Commission should adhere to Act 129's statutory requirements for cost-effectiveness and ensure that each program measure meets the minimum TRC value.

---

[35] *See* 66 Pa. C.S. § 2806.1(a)(3) (requiring a cost-benefit analysis in accordance with a TRC approved by the Commission), § 2806.1(b)(2) (directing the Commission to terminate or modify "any part" of an EDC's plan if it is not cost-effective), § 2806.1(c)(3) (requiring the Commission to evaluate program costs and benefits in accordance with the TRC test), § 2806.1(m) (definition of total resource cost test).

[36] 66 Pa. C.S. § 2806.1(m).

2. The Commission Should Ensure that the Mandated Targets Reflecting Energy Efficiency-Based Peak Demand Reductions Do Not Conflict with the EDC's Obligation to Offer a Balanced Plan.

Unlike the Phase III EE&C Plan, the Tentative Implementation Order omits a dispatched demand response program but replaces it with peak demand reductions that could significantly increase EDCs' reliance on Large C&I EE&C measures. Because the Commission has not provided sufficient information to assess the impacts of the proposed peak demand reduction on individual customer sectors, the Industrial Customers request that the Commission eliminate the proposed reduction targets from the Phase IV Plan.

The Tentative Implementation Order determined that the net benefits of pursuing reductions from dispatchable demand did not outweigh the costs.[37] Accordingly, the Tentative Implementation Order proposes to eliminate the dispatchable demand response program, but it proposes to preserve peak demand targets for each EDC.[38] To develop such targets, the Commission relied on the SWE's determination of market potential for energy-efficiency-based demand response. As a result, the Commission proposes the following peak demand reductions for the applicable EDCs:

Proposed Phase IV Peak Demand Reductions[39]	
Duquesne:	67 MW
Met-Ed:	85 MW
Penelec:	91 MW
Penn Power:	22 MW
West Penn:	95 MW
PECO:	276 MW
PPL:	244 MW

[37] Tentative Implementation Order, p. 32.

[38] *Id.* at 32.

[39] *Id.* at 8.

The Industrial Customers are concerned that the Commission has not offered sufficient information to assess the impact of these Energy Efficiency-based peak demand reductions upon customers.

Specifically, the SWE Report lacks sufficient detail as to the derivation of the peak demand reduction targets.[40] With regard to the per-Megawatt-hour ("MWh") Energy Efficiency reductions, the SWE Report provides breakdown of the market potential for various customer sectors within each EDC's service territory.[41] Corresponding detail supporting the peak demand reduction targets is entirely absent from the report.

As a result, the Industrial Customers cannot determine whether the proposed peak demand reduction targets are reasonable or consistent with the statutory language requiring the EDCs to offer diverse alternatives for all customers of all rate classes.[42] Therefore, if the Commission elects to proceed with Phase IV, the peak demand reduction targets should be removed from the program.

3. Given the Uncertainty in the PJM Capacity Market and the Potential Cost Increases to Consumers, the PUC Should Not Require EDCs to Nominate Any Portion of Peak Demand Reductions Achieved by Their EE Portfolio in PJM's Capacity Auctions.

The Commission proposed to require each EDC to nominate a portion of the peak demand reductions achieved by its EE portfolio as a capacity resource in PJM's forward capacity auctions.[43] As a result, even though the Commission eliminated DR programs, EDCs must still comply with peak demand reduction targets. EDCs that fail to meet the peak demand reduction targets will be subject to penalties pursuant to 66 Pa. C.S. § 2806.1(f). The Commission will,

---

[40] SWE Report, p. 57.

[41] *Id.* at 27-38.

[42] *See* 66 Pa. C.S. §§ 2806.1(a)(5), (b)(1)(i)(I).

[43] Tentative Implementation Order, pp. 35, 73-75.

therefore, require EDCs to provide a plan to bid peak demand reductions from EE resources into PJM's capacity market.

Given the uncertainty and potential cost increases associated with ongoing reforms in and legal challenges to PJM's capacity market relating to the Minimum Offer Pricing Rule ("MOPR"), the Industrial Customers request that the Commission not require or encourage EDCs to bid any portions of peak demand reductions achieved by their Act 129 EE portfolio in PJM capacity market auctions. On April 16, 2020, the Federal Energy Regulatory Commission ("FERC") issued an Order on Rehearing and Clarification affirming that new State-Subsidized Energy Efficiency resources that submit offers into PJM's capacity market will be subject to an expanded MOPR and associated default offer price floor.[44] When such resources are subsidized, FERC found that EE resources offering into the capacity market have the ability to impact and suppress capacity market prices.[45] In FERC's PJM capacity market MOPR proceeding, the PUC had argued that its Act 129 demand and EE programs should not be considered State Subsidies subject to the MOPR.[46] However, FERC denied the PUC's request and stated that the PUC would have to demonstrate that its EE program is cost effective under the "Competitive Exemption" to the MOPR.[47] Demonstrating the EE program's cost-effectiveness under the "Competitive Exemption" could be burdensome and difficult. If the PUC cannot demonstrate its EE programs are competitive, then any capacity market offer from a new EE resource associated with an Act 129 Program will be considered subsidized and subject to a default minimum price floor (that is likely higher than the

[44] "Order on Rehearing and Clarification," *Calpine Corp. et al. v. PJM Interconnection, L.L.C. et al.*, 171 FERC ¶ 61,035 (Apr. 16, 2020) (hereinafter "April 2020 MOPR Order").

[45] April 2020 MOPR Order at P 54, PP 255-256, fn. 446; *see also* "Order Establishing Just and Reasonable Rate," *Calpine Corp. et al. v. PJM Interconnection, L.L.C. et al.*, 169 FERC ¶ 61,239, at P 54 (Dec. 19, 2010).

[46] April 2020 MOPR Order at P 248.

[47] *Id.* at P 259.

EE resource's offer price absent such price mitigation).[48] As a result, capacity prices borne by customers could increase were a subsidized EE resource's offer to clear.[49] Accordingly, any increase in capacity costs for all customers would need to be considered in the TRC for an EE&C project, further complicating the cost-benefit analysis of a particular EE&C project/plan.

Additionally, the means by which PJM administratively accounts for Energy Efficiency in its auction process must also be accounted for in the Commission's cost-benefit analysis. The Independent Market Monitor ("IMM") for PJM has explained that the way PJM accounts for Energy Efficiency in its auctions results in Energy Efficiency participating as a supply resource that increases customer costs due to PJM's use of an EE "add back mechanism" when determining PJM's Reliability Requirement and the amount of cleared capacity. In its State of the Market Report, the IMM recommended that:

> … energy efficiency resources (EE) not be included on the supply side of the capacity market, because PJM's load forecasts now account for future EE, unlike the situation when EE was first added to the capacity market. However, the [IMM] recommends that the PJM load forecast method should be modified so that EE impacts immediately affect the forecast without the long lag times incorporated in the current forecast method. If EE is not included on the supply side, there is no reason to have an add back mechanism. If EE remains on the supply side, the implementation of the EE add back mechanism should be modified to ensure that market clearing prices are not affected.[50]

Given the manner in which EE is processed in PJM's capacity market and the uncertainty triggered by the expansion of default price floor offers for subsidized resources, the Commission should not require EDCs to bid their EE reductions in PJM's capacity market. Aside from the cost

---

[48] The FERC directed PJM to submit a new compliance filing (due June 1) proposing Tariff revisions to set the default offer price floor for new energy efficiency resources at the Net Cost of New Entry and existing energy efficiency resources at Net Avoidable Cost Rate. April 2020 MOPR Order at P 197.

[49] While a significant increase in capacity prices and auction revenues may not occur in the near-term, the PUC must evaluate the long-term impact, especially given the proposed five-year length of Phase IV.

[50] Monitoring Analytics, 2019 State of the Market Report for PJM, at p. 38-39 (2020), *available at* https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2019.shtml (last accessed Apr. 24, 2020).

and administrative uncertainty, the PJM capacity market will be subject to legal uncertainty well into the future, as numerous parties have already appealed FERC's MOPR orders to the D.C. Circuit and the Seventh Circuit Courts of Appeal.[51] Further, Industrial Customers note some states with certain generation policies are even considering exiting the PJM capacity market.[52] During these difficult and uncertain economic times, the Commission should avoid overly complicating any Act 129 Program (and increasing costs to consumers) by requiring EDCs to participate in PJM's capacity market with respect to EE reductions.

Accordingly, the Industrial Customers ask the Commission to not finalize its proposal to require EDCs to bid their EE reductions into PJM's capacity market.[53]

4. The Commission Should Reconsider Its Proposal Regarding Carryover Savings.

For Phase IV, the Commission proposes that EDCs be allowed to apply the savings EDCs attained in Phase III in excess of the Phase III targets for application toward EDCs' Phase IV targets.[54] Those carryover savings may only be savings attained in Phase III. The PUC expressed concern that a program could "go dark" if targets are achieved solely through multiple phase carryover savings. [55]

---

[51] *See generally* FERC Docket Nos. EL16-49-000. The Illinois Commerce Commission has appealed FERC's orders to the Seventh Circuit while the following entities, among others, have appealed FERC's orders to the D.C. Circuit: American Public Power Association and American Municipal Power, Inc.; NextEra Desert Center Blythe, LLC; North Caroline Electric Membership Corp.; New Jersey Division of Rate Counsel (on behalf of other state consumer advocates); and Energy Harbor LLC.

[52] On March 27, 2020, the New Jersey Board of Public Utilities launched an investigation to evaluate alternatives to participation in PJM's capacity market. *See* BPU Docket No. EO20030203 (available at https://www.bpu.state.nj.us/bpu/pdf/boardorders/2020/202003); *see also* https://www.utilitydive.com/news/new-jersey-looks-to-exit-pjm-capacity-market-worried-the-mopr-will-impede/575160/ (last accessed Apr. 26, 2020).

[53] If the Commission proceeds to require EDCs to bid their EE reductions into PJM's capacity market, the Industrial Customers understand that any bidding requirement imposed on the EDCs should not prevent customers from making their own EE offerings into the PJM capacity market, should they wish to do so.

[54] Tentative Implementation Order, at 22-23

[55] *Id.* at 23.

Given that consumers ultimately bear the costs associated with energy and demand reductions, preventing EDCs from banking accumulated savings in excess of reduction requirements from previous phases deprives consumers of the benefits of previously paid-for efficiency reductions. The Industrial Customers urge the Commission to reconsider its proposal to limit carryover savings to savings actually achieved in Phase III in order to provide ratepayers with the maximum value of previously achieved efficiency savings.

5. In Adherence to Cost Causation Principles, the Commission Should Not Continue Measures that Have a TRC Value of Less than 1.0.

Act 129 requires the Commission to establish standards to ensure that each EDC's EE&C Plan includes a variety of measures and that each plan will provide the measures equitably to all customer classes. 66 Pa. C.S. § 2806.1(a)(5). The Commission believes the EDCs must offer a well-reasoned and balanced set of measures that are tailored to usage and to the potential for savings and reductions for each customer class. According to the Commission, while it is possible that the most cost-effective programs may not come proportionally from each class, all customers will benefit from the overall reasonable mix of programs because the programs have "the best potential to impact future energy prices."[56]

With the collapse of energy demand due to COVID-19, the Industrial Customers question whether this conclusion is appropriate. The Commission has been reluctant to quantify "price suppression" effects in the Total Resource Cost test.[57] At this time, the supply/demand balance in the energy markets has been substantially altered, and available generation supply exceeds demand. Incremental decrease in demand achieved through a potential Phase IV will not substantially further depress future prices. In the Tentative Implementation Order, the

[56] *Id*. at 44.

[57] *See 2021 Total Resource Cost (TRC) Test*, Docket No. M-2019-3006868, at p. 52-55 (Order entered Dec. 19, 2019).

Commission does not articulate how a reasonable mix of programs impacts energy prices or justify the use of such a general approach if certain classes are benefiting more from the program than others.

Section 2806.1(b)(2) explicitly states:

> The commission shall direct an electric distribution company to modify or terminate any part of a plan approved under this section if, after an adequate period of implementation, the commission determines that an energy efficiency or conservation measure in the plan will not achieve the required reductions in consumption in a cost-effective manner under subsections (c) and (d).[58]

The measures for many customer classes have remained constant (or substantially similar) during Phases I, II and III. These three phases constitute a sufficient implementation period to determine what measures will be cost-effective and demonstrate TRC values over 1.0. The Commission must adhere to the express language of Act 129 by omitting or removing any measures with TRC values below 1.0. For these reasons, Industrial Customers respectfully ask the Commission to refrain from approving or continuing measures that have TRC values of less than 1.0 as required by Sections 2806.1(a)(2) and 2806.1(c)(3) of Act 129,[59] even if that means that a particular class does not have any measures as part of the Plan.

6. The Commission Should Remove Rebate Structures from the Expedited Review Process.

Act 129 requires the PUC to establish procedures through which recommendations can be made as to additional measures that will enable an EDC to improve its plan.[60] The Tentative Implementation Order proposes to adopt the Phase III expedited review process for minor EE&C

---

[58] 66 Pa. C.S. § 2806.1(b)(2).

[59] 66 Pa. C.S. § 2806.1(a)(3) (requiring a cost-benefit analysis in accordance with a TRC approved by the Commission), § 2806.1(c)(3) (requiring the Commission to evaluate program costs and benefits in accordance with the TRC test); *see also* 66 Pa. C.S. § 2806.1(b)(2) (providing the Commission with the authority to terminate an EDC's plan if it is not cost-effective), § 2806.1(m) (definition of total resource cost test).

[60] 66 Pa. C.S. § 2806.1(a)(6).

Plan changes.[61] The expedited process allows for review of proposed changes to rebate structure or amount, as long as the change does not increase the overall costs to that customer class. The Industrial Customers respectfully request that the Commission remove consideration of rebate structures from the expedited review process. Changes to rebate structures can result in vastly different compensation levels for customers implementing the same measures based on the timing of these customers' applications to the EDC. Because changes in rebates implicates intraclass cost subsidization, as well as fundamental fairness and equity issues, consideration of rebate structures should be subject to the more robust comment and review activity that exists for "non-minor" changes.

7. The Commission Should Require EDCs to Provide Justification Regarding the Use of a CSP to Perform EE&C Plan Functions.

Act 129 compels the PUC to establish procedures to require EDCs to competitively bid all contracts with CSPs.[62] As in prior phases, the PUC proposes to require that all Phase IV contracts be competitively bid and that EDCs file CSP Request for Proposal ("RFP") bidding procedures. CSPs may perform some or all functions of an EE&C Plan. As in previous Phases, the Commission would require EDCs to provide detailed justification regarding the use (or non-use) of a CSP to perform EE&C Plan functions.[63]

The Industrial Customers support the Commission's proposal and further recommend that CSP costs for each EE&C measure be reported by the EDCs in their annual reports and be separately stated from any compensation that is provided to the customers of the CSP service. Payments to CSPs for other services should be publicly available and classified as administrative

---

[61] *Id*. at 45-47.

[62] 66 Pa. C.S. § 2806.1(a)(7).

[63] Tentative Implementation Order, pp. 57-61.

costs for reporting purposes. The Commission should further consider cost-effectiveness as a component of evaluating an EDC's justification for use or non-use of CSPs for EE&C measures. CSP-related costs should be included in the EDCs' estimates of all EE&C program administrative costs to ensure the Commission's determination of allowable costs is just and reasonable. The Industrial Customers further submit that EDCs should not be permitted to recover any costs for acts that are inconsistent with their EE&C Plans. Finally, the Industrial Customers recommend that the CSP contract review process be public and transparent.

Importantly, the Commission recognized that any Commission approval of an EDC-proposed contract does not constitute a determination that the filing is in the public interest and that the associated costs/expenses are reasonable and prudent for purposes of cost recovery.[64] The Commission explained that those issues will be addressed in appropriate cost recovery proceedings. The Industrial Customers respectfully request that the PUC clarify and explain the nature of those cost recovery proceedings and when they would take place.

8. The Commission Should Not Allow EDCs to Utilize the Full Phase IV Budget, Regardless of Phase III Spending and Targets Achieved.

As in prior phases, the PUC proposes to allow the EDCs to utilize the full Phase IV budget, regardless of Phase III spending and consumption reduction target attainment.[65] The Commission believes it would be more beneficial to all parties, including ratepayers, for EDCs to be allowed to spend Phase III budgets to attain savings in excess of compliance targets – which could then be used in Phase IV for compliance – without a commensurate reduction in Phase IV budgets. The Industrial Customers submit that the Commission's proposal is unreasonable and inconsistent with principles of cost-effectiveness. EDCs' EE&C budgets are statutorily capped at a maximum value

[64] *Id*. at 61.

[65] Tentative Implementation Order, p. 69.

only; no minimum budget is statutorily prescribed. The Commission has flexibility to reduce the budget to levels appropriate to achieve the energy and efficiency objectives of Act 129. Reducing the Phase IV budget, rather than allowing for the maximum statutory cap regardless of Phase III spending and attainment, would be consistent with the intent of the statute, which requires the Commission to examine energy efficiency and conservation as separate regulatory objectives. Moreover, unless the Commission modifies its proposal regarding the carry-forward of kilowatt-hour ("kWh") savings, customers will not benefit from EDCs' spending their full Phase III budgets. The Industrial Customers, therefore, urge the Commission to reconsider its Phase IV EE&C budget proposal and ensure that any adopted budget is consistent with the objectives of Act 129 and cost-causation principles.

III. CONCLUSION

Since the Commission issued the Implementation Order for Phase IV, the economic climate has changed significantly and will continue fluctuating for the foreseeable future due to COVID-19. Across the country and in this Commonwealth, commercial and industrial businesses have been forced to shutter their operations and furlough employees due to stay home orders. Decreased operations in the commercial and industrial sectors[66] have led to nationwide decreases in power demand. The pandemic could cause nationwide and global recessions, resulting in flat-to-negative power demand and lasting damage to the economy of the United States and the Commonwealth of Pennsylvania. The Commission should, therefore, exercise its discretion pursuant to Section 501 of the Public Utility Code[67] to postpone the implementation of Phase IV for at least one year in

---

[66] Initial studies indicate significant declines in Gross Domestic Product from the manufacturing and construction sectors for Quarter 2 of 2020. *See* Brattle Report at Slide 10.

[67] 66 Pa.C.S. § 501.

order to provide some respite to all Pennsylvania customers in the face of an already tumultuous business environment.

Further, Large C&I customers should not be forced to participate in Phase IV when the costs of participation in the program have not been demonstrated to be just and reasonable or commensurate with the benefits of the program. The Industrial Customers, therefore, respectfully ask the Commission not to mandate participation in Phase IV for the Large C&I customer classes.

Assuming, however, that the Commission does move forward with Phase IV and require the participation of Large C&I customers, the Industrial Customers respectfully request that the Commission address the concerns set forth herein by the Industrial Customers with respect to the proposed requirements in the Commission's Tentative Implementation Order.

WHEREFORE, Pennsylvania Energy Consumer Alliance, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Philadelphia Area Industrial Energy Users Group, PP&L Industrial Customer Alliance, and West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By Kenneth R. Stark

Pamela C. Polacek (Attorney I.D. #78276)
Kenneth R. Stark (Attorney I.D. #312945
Jo-Anne Thompson (Attorney I.D. #325956)
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
Phone: 717.232.8000
Fax: 717.237.5300
ppolacek@mcneeslaw.com
kstark@mcneeslaw.com
jthompson@mcneeslaw.com

Counsel to the
Pennsylvania Energy Consumer Alliance,
Met-Ed Industrial Users Group,
Penelec Industrial Customer Alliance,
Philadelphia Area Industrial Energy Users Group,
PP&L Industrial Customer Alliance, and
West Penn Power Industrial Intervenors

Dated: April 27, 2020