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May 5, 2020

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

VIA ELECTRONIC FILING

RE: Petition of the Industrial Energy Consumers of Pennsylvania to Suspend Implementation of the Act 129 Phase IV Requirements and for Other Relief; P-2020-3019562

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Answer 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 Support of the Industrial Energy Consumers of Pennsylvania's Petition 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

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: Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA E-MAIL

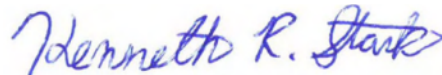
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Dated this 5th day of May 2020 at Mechanicsburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF THE INDUSTRIAL :
ENERGY CONSUMERS OF :
PENNSYLVANIA TO SUSPEND : P-2020-3019562
IMPLEMENTATION OF THE ACT 129 :
PHASE IV REQUIREMENTS AND FOR :
OTHER RELIEF.

**ANSWER 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**

Pursuant to Section 5.61 of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Regulations, 52 Pa. Code § 5.61, 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”) hereby file this Answer in Support of Industrial Energy Consumers of Pennsylvania’s (“IECPA”) petition to suspend implementation of Act 129 Phase IV requirements and request for other relief (“IECPA Petition” or “Petition”) that IECPA filed with the Commission on April 22, 2020.

BACKGROUND

On March 12, 2020, the 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 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 (“EEPDR Study”) and the Demand Response (“DR”) Potential Study, which were released to the public on March 2, 2020.

On March 13, 2020, the Commission issued an emergency order in response to Governor Tom Wolf’s Proclamation of Disaster Emergency in response to the COVID-19 pandemic. In that emergency order, the Commission ordered public utilities under its jurisdiction to cease terminating service during the pendency of the Proclamation of Disaster Emergency.³

On March 19, 2020, Governor Wolf, in an effort to curtail the spread of the coronavirus, issued an order prohibiting the physical operation of businesses in the Commonwealth that are not life-sustaining. Subsequently, the Governor issued an amended order on March 20, 2020, and further clarifications. During the Proclamation of Emergency, schools and many businesses closed their physical operations. To the extent feasible, Commonwealth citizens are instructed remain in their places of residence.

On March 20, 2020, the Commission issued an emergency order suspending certain

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”).

³ *See Public Utility Service Termination Moratorium – Proclamation of Disaster Emergency – COVID-19*, Docket No. M-2020-3019244 (issued Mar. 13, 2020).

regulatory and statutory deadlines and modifying service and filing requirements.⁴ The Commission physically closed its office locations and implemented telework for its entire staff in response to the COVID-19 pandemic. The Commission explained that, under the Governor’s Proclamation of Disaster Emergency, “it is both necessary and appropriate to provide this flexibility [in delegating authority to bureau directors and modifying certain deadlines and requirements] to ensure operations continue as smoothly as possible and to prevent any regulatory statute or rule ... from unreasonably interfering with the public interest.”⁵

As of the drafting of this Answer, the Governor’s stay home order had been extended through May 8, 2020; however, the stay 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, increased levels of remote working, and a slowdown in overall economic demand will continue for the indefinite future.

On March 20, 2020, the Commission issued a Secretarial Letter announcing the cancellation of the Act 129 stakeholder meeting regarding the SWE’s studies that was scheduled for March 25, 2020.⁶

On April 22, 2020, IECPA filed the Petition requesting that the Commission suspend or delay the implementation of the Phase IV EE&C requirements for at least 270 days and that the Commission extend the Phase III EE&C period for a 270-day period. IECPA requested other relief to consumers and utilities, including an immediate reduction of at least 50% in the EE&C

⁴ See *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (issued Mar. 20, 2020) (hereinafter “March 20 Emergency Order”).

⁵ March 20 Emergency Order at p. 3.

⁶ *Cancellation Notice for the Act 129 Statewide Evaluator Energy Efficiency and Peak Demand Reduction Market Potential & Demand Response Potential Studies Stakeholder Meeting*, Docket No. M-2020-3015229 (issued Mar. 20, 2020).

surcharges imposed on customers during Act 129 Phase III and waiver of all penalties applicable to an EDC's failure to meet Phase III energy or peak demand reductions.

On April 27, 2020, stakeholders and interested parties, including the Industrial Customers, filed initial comments in response to the Commission's Tentative Implementation Order's proposed Phase IV Act 129 requirements. Many parties in their comments raised concerns regarding the impact of COVID-19 on Phases III and IV of the Commission's Act 129 Program. Like the Industrial Customers and IECPA, the Office of Consumer Advocate ("OCA") requested the Commission to delay or suspend implementation of Act 129 Phase IV due to the economic circumstances and shifts in power demand and energy consumption stemming from the COVID-19 pandemic.⁷ In requesting to delay implementation of Phase IV, the OCA explained that many of the assumptions underlying the SWE's Energy Efficiency and Peak Demand Study were based on 2018 baseline data that are "no longer relevant or valid under today's circumstances."⁸

On April 28, 2020, the Industrial Customers filed a Petition to Intervene in this proceeding and explained that their members, which include commercial, institutional, and industrial customers of electricity, are concerned about the Commission's proposal to implement a Phase IV during the current economic downturn caused by the COVID-19 pandemic.

ANSWER IN SUPPORT OF PETITION

Because COVID-19 has detrimentally impacted the economic well-being of businesses and consumers throughout Pennsylvania and materially impacted power demand and energy consumption patterns, the Industrial Customers support IECPA's Petition to suspend

⁷ See *Act 129 Energy Efficiency and Conservation Program Implementation Phase IV*, Docket No. M-2020-3015228, OCA Comments at 1-5 (filed Apr. 27, 2020), Industrial Customers Comments at 6-12 (filed Apr. 27, 2020), IECPA Comments at 1-3 (requesting suspension of Phase IV).

⁸ OCA Comments at 2.

implementation of Act 129 Phase IV. The Industrial Customers also support IECPA's requested 270-day extension of Phase III, the requested immediate reduction of at least 50% in the EE&C surcharges imposed on customers during the duration Phase III, and waiver of all penalties applicable to an EDC's failure to meet Phase III energy or peak demand reduction requirements.

First, this Answer explains the Commission's discretion and authority under Act 129 and the Public Utility Code to grant the relief requested by IECPA. Next, this Answer provides more context regarding the changed power consumption and demand patterns and changed economic circumstances that justify indefinite suspension of Phase IV and immediate reductions to Phase III EE&C program surcharges. Critically, when the economy does recover, it will not occur with the flip of a switch in just a few weeks from now. Instead, the economy will more gradually recover over time, like turning on the lights with a dimmer. The degree and pace by which the dimmer may be illuminated remains unknown and will vary greatly by industry, economic sector and subsector, and geographic region. Because COVID-19 has caused "fundamental damage" to some of the nation's largest industries, the Institute for Supply Management concludes there will not be a "sharp rebound" in the economy because it will take a while to rebuild.⁹

A. The Commission Has Clear Statutory Authority and Discretion to Suspend Phase IV and Order a Reduction in Surcharges of at Least 50% for Phase III.

In its Petition, IECPA explained that the Commission is not under any statutory obligation to implement Phase IV on the schedule proposed by the Commission in the Tentative

⁹ "Coronavirus Prompts Biggest U.S. Manufacturing Pullback Since Last Recession," Wall Street Journal (May 1, 2020), available at https://www.wsj.com/articles/u-s-factory-sector-contracted-in-april-11588343731?emailToken=5d735b62a9e6fe394b496d1cd80e84e4X1/8LzDoDohNdPJF1aeyOxr0rLn/sW4zcGwQA G272Bb1qtMZI33Ms+THWkHKqW8v+HELziorfy0dpaRJ5X5W2xsdk9/bQLLfhq/1XakSxeU%3D&reflink=article_email_share (last accessed May 5, 2020) (quoting Tim Fiore) (hereinafter "WSJ May 1 2020 Manufacturing Article").

Implementation Order.¹⁰ 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.”¹¹ As explained in the Industrial Customers’ Comments to the Tentative Implementation Order,¹² the Commission has statutory authority to suspend Act 129 Phase IV for a year or longer. 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.¹³ Act 129 does not expressly require or encourage the Commission to continue this program in perpetuity, especially if the program measures are not cost-justified and do not have a Total Resource Cost (“TRC”) value of 1.0 or greater.¹⁴ 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.¹⁵

When the provisions of Act 129 are read in conjunction with Sections 501 and 1301 of the Public Utility Code,¹⁶ it becomes clear that the Commission has the discretion to discontinue

¹⁰ IECPA Petition at 4-5.

¹¹ 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 May 5, 2020).

¹² See Industrial Customers Comments, Docket No. M-2020-3015228, at 4-6 (filed Apr. 27, 2020).

¹³ 66 Pa. C.S. § 2806.1.

¹⁴ 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).

¹⁵ See 66 Pa. C.S. § 2806.1(d).

¹⁶ 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 its 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*)).

or, at the very least, postpone the implementation of Phase IV of the program. 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.¹⁷ Under Section 703(g) of the Public Utility Code, the Commission retains authority to amend its prior orders due to changed circumstances.¹⁸ The Commission has the responsibility to ensure that rates made, demanded, or received by public utilities are just and reasonable.¹⁹ Those rates include EE&C surcharges.

The Commission recently exercised its discretionary powers when it issued the 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.²⁰ 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.”²¹

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 in the national and state economy and in state and regional electric consumption and demand.

¹⁷ *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.”).

¹⁸ 66 Pa. C.S. § 703(g).

¹⁹ 66 Pa. C.S. § 1301(a) (“Every rate made, demanded, or received by any public utility ... shall be just and reasonable.”).

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

²¹ *See id.* at 3.

B. The Change in Electric Consumption and Demand Patterns Due to Changed Economic and Social Circumstances Necessitates Suspension of Phase IV Because the Commission Cannot Rely on Studies Using 2018 Baseline Data and Other Pre-COVID-19 Data.

In its Petition, IECPA explains that the Commission’s Tentative Implementation Order’s proposed reduction targets and goals were based on 2018 baseline studies of electricity usage and demand.²² In its comments to the Tentative Implementation Order, the OCA concluded that because the SWE’s Energy Efficiency and Peak Demand Reduction (“EEPDR”) Potential Study used 2018 as a baseline and used avoided cost data from a period prior to COVID-19 stay home orders, the studies relied on by the Commission in the Tentative Implementation Order are “no longer relevant or valid under today’s circumstances.”²³ Therefore, the OCA concluded that “moving forward with setting targets for an Act 129 Phase IV EE&C/DR Program and attempting to design programs under the changed economic, health and safety circumstances would not be a prudent and reasonable use of resources at this time.”²⁴ The Industrial Customers agree.

The SWE performed 2018 baseline studies for both the residential and non-residential sectors to form the basis of the EEPDR Potential Study.²⁵ In evaluating energy use for the residential sector, the SWE used the Census’ Public Use Microdata Sample for the five-year averages of from the American Community Survey for 2012-2016.²⁶ Given the recent shifts and changes in residential demand and energy consumption, such data may no longer be valid. In

²² IECPA Petition at 2 (citing Tentative Implementation Order at 9).

²³ OCA Comments at 2.

²⁴ *Id.* at 3.

²⁵ Tentative Implementation Order at 9 (citing *Pennsylvania Act 129 2018 Residential Baseline Study*, submitted by NMR Group, Inc., February 12, 2019. http://www.puc.pa.gov/Electric/pdf/Act129/SWE-Phase3_Res_Baseline_Study_Rpt021219.pdf and *Pennsylvania Act 129 2018 Non-Residential Baseline Study*, submitted by Demand Side Analytics *et al.*, February 2019. http://www.puc.pa.gov/Electric/pdf/Act129/SWE-Phase3_NonRes_Baseline_Study_Rpt021219.pdf).

²⁶ Act 129 Non-Residential Baseline Study at p. 14, Appendix A, Table 169.

evaluating the non-residential sector, the SWE used monthly billed kilowatt-hour (“kWh”) and monthly peak kilowatt (“kW”) data from June 2016 to May 2017 from Large C&I customers.²⁷ The SWE explained it disaggregated “the historic energy sales and peak demand into contributions by sector and segment” to form the “basis for the distribution of the electric sales forecast in the Market Potential Study.”²⁸ The peak demand and energy consumption patterns from late 2016 to early 2017 may no longer be sufficiently predictive of peak demand and energy consumption patterns for the rest of 2020 and beyond for both residential and non-residential customers.²⁹

There are a number of data points used by the SWE and referenced by the Commission in the Tentative Implementation Order (and the preceding *2021 TRC Test Final Order*) that may no longer be valid and therefore should be revisited prior to implementing Phase IV. The Commission explained that the SWE used the Act 129 Pennsylvania-specific cost-effectiveness criteria, including the most recent EDC avoided cost projections for electricity.³⁰ The Commission further explained that the avoided cost projections were calculated pursuant to the Commission’s 2021 TRC Test Final Order.³¹ The TRC Test is used to determine whether consumers receive more benefits (in reduced capacity, energy, transmission, and distribution costs) than the implementation costs of the EE&C plans.³² In the 2021 TRC Test Final Order, the Commission explained that the TRC Test includes a number of avoided costs of supplying

²⁷ Act 129 Non-Residential Baseline Study at p. 16.

²⁸ *Id.*

²⁹ See IECPA Petition at 7-8 (noting changes in residential and Large C&I electricity demand).

³⁰ Tentative Implementation Order at 9 (citing *the 2021 TRC, Avoided Cost Calculator* at <http://www.puc.pa.gov/pcdocs/1648144.xlsx>).

³¹ Tentative Implementation Order at 9 (citing *2021 TRC Test Final Order*, Docket No. M-2019-3006868 at <http://www.puc.pa.gov/pcdocs/1648126.docx>).

³² *2021 TRC Test Final Order* at 5.

electricity, such as “the reduction in generation valued at marginal cost for the periods when there is a consumption reduction, and the avoided cost of generation, transmission, and distribution capacity for measures that reduce peak demand.”³³ The Commission also used the avoided cost of supplying fossil fuel and water in its algorithms for calculating TRC benefits.³⁴ The TRC test costs also include the costs of the various EDC EE&C/DR programs, such as program administrative costs and the EDC’s use of a Conservation Service Provider (“CSP”).³⁵ The TRC Test requires EDCs to “make numerous financial and technical costs of operating an electric power system, future market structures, and the time-value of money.”³⁶ These assumptions and the historic costs,³⁷ which are at the heart of Act 129’s cost-benefit analysis, need to be reevaluated prior to implementing a new program phase, given the significant change in circumstances caused by COVID-19.

The economic and energy markets face unprecedented uncertainty.³⁸ In the relatively short time that has passed since the issuance of the PUC’s Tentative Implementation Order, the

³³ *2021 TRC Test Final Order* at 5.

³⁴ *Id.*

³⁵ *Id.* at 5-6.

³⁶ *Id.* at 9.

³⁷ Critically, the Commission in the 2021 TRC Test Final Order (which the Commission relied on in the Tentative Implementation Order) examined and relied on a number of other data points that need to be re-examined, such as:

- For the avoided cost of electric energy, the 2021 TRC Test Final Order would use a methodology in Calendar Years 2022 through 2025 that relies on zonal adjustment for prices based on “the ratio of zone-specific real-time load-weighted average LMP against the Western Hub real-time load-weighted average for years 2018 and 2019.” *2021 TRC Test Final Order* at 32.
- The Commission would use generation equipment heat rates using 2018 source data. *Id.* at 38.
- Quantifying water and fossil fuel impacts, among other things, would be based on a 2018 guidance memo. *Id.* at Appendix C.

³⁸ 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 the Commission’s 1994 Order in the same matter in recognition of changes in circumstances that occurred since the initial application was filed).

impact of COVID-19 has magnified, causing continuing economic uncertainty in demand for goods and services at large and in demand for power for multiple industrial and commercial sectors nationwide.³⁹ The United States economy shrank at a rate of 4.8% during the first quarter of 2020 due to the COVID-19 pandemic.⁴⁰ Overall, manufacturing in the United States has contracted at its sharpest rate since the last recessionary period in April 2009.⁴¹ The demand and energy sales 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. The International Energy Agency expects a 6% drop in energy demand for the rest of 2020, including a 5% drop in demand for electricity – the greatest drop in electricity demand since the Great Depression.⁴² PJM reported an overall drop in electricity demand during March,⁴³ and noted a shift in the daily load curve as businesses closed or moved

³⁹ 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/>.

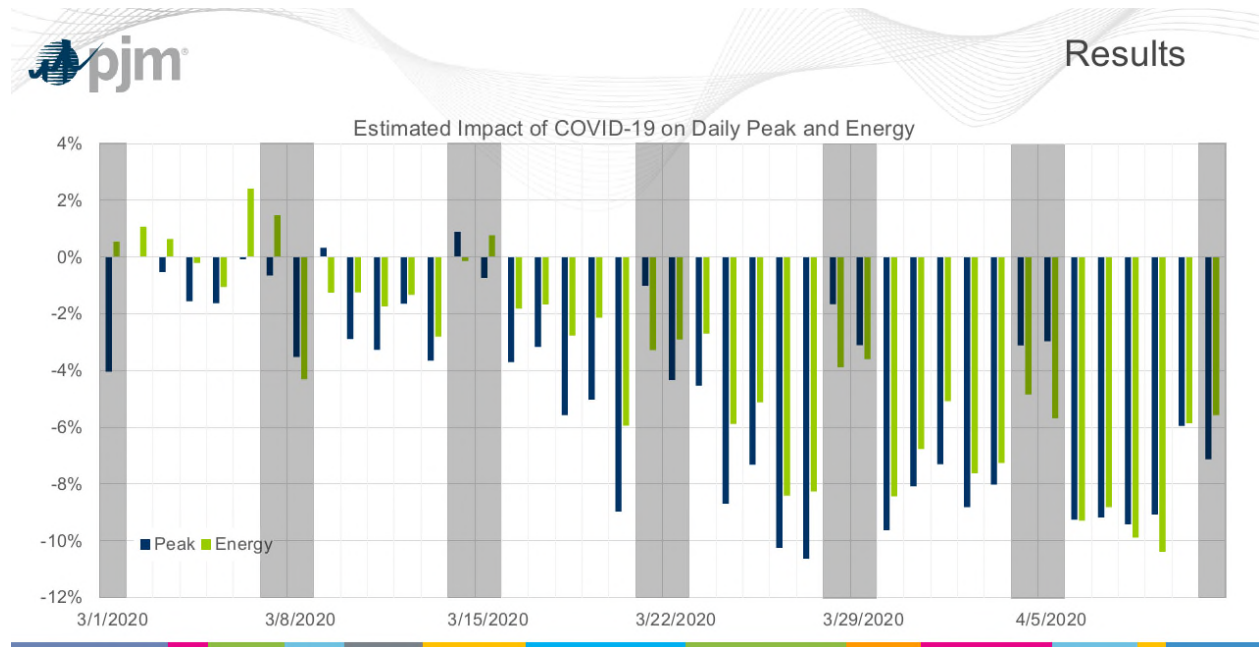
⁴⁰ See <https://www.inquirer.com/economy/united-states-us-economy-first-quarter-numbers-2020-coronavirus-covid-19-20200429.html> (last accessed May 5, 2020).

⁴¹ WSJ May 1, 2020 Manufacturing Article.

⁴² See “Energy demand, hit by coronavirus crisis, is set to see record drop this year, IEA says,” CNBC, available at <https://www.cnbc.com/2020/04/30/energy-demand-set-to-fall-the-most-on-record-this-year-amid-coronavirus-pandemic-iea-says.html> (last accessed May 5, 2020).

⁴³ 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.”)

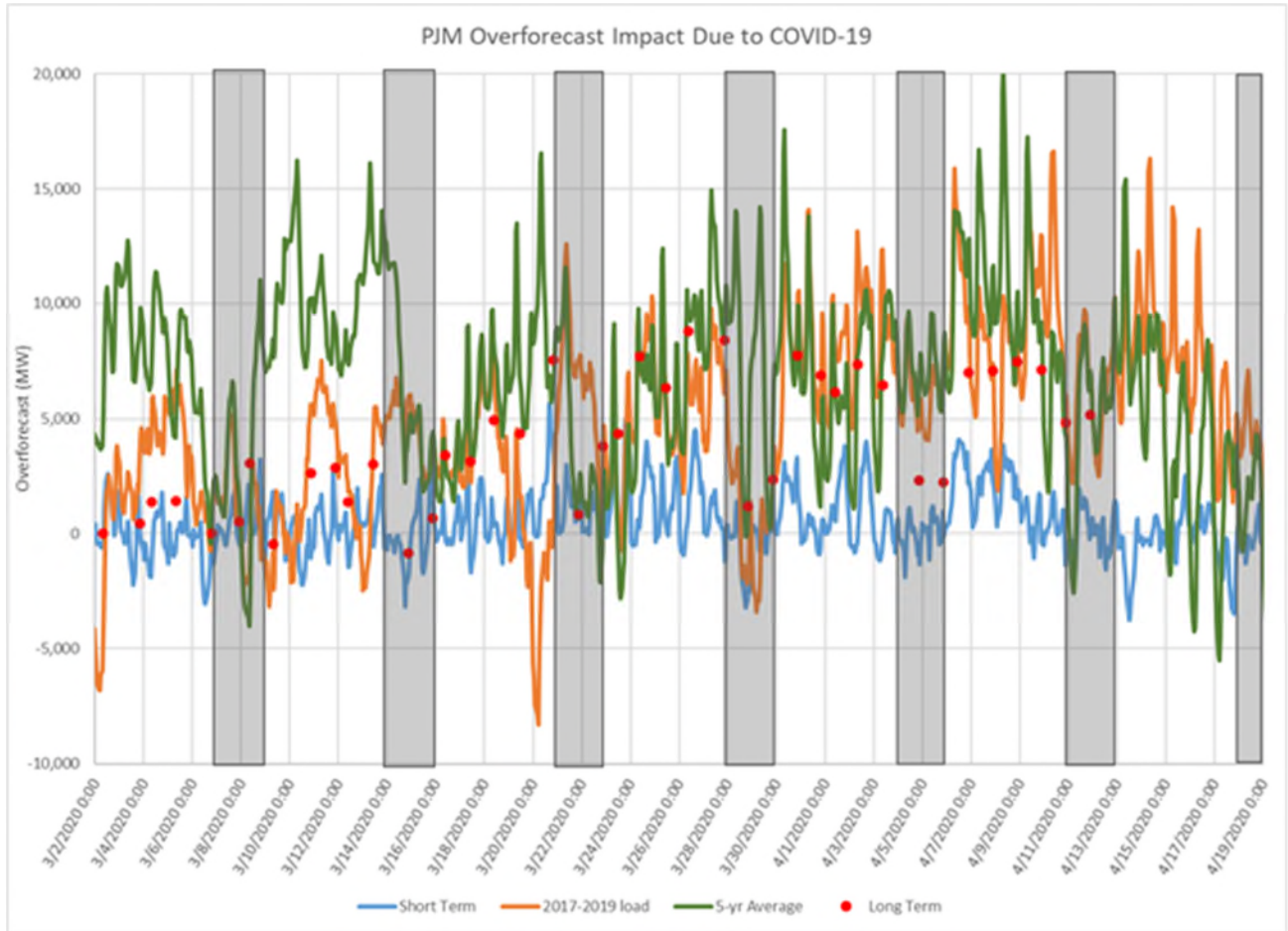
their employees to “work from home” solutions.⁴⁴ In mid-April, PJM observed that peak load was 8-9% lower than expected (a drop in 7,500 Megawatts) as well as an average weekday reduction of 7% in energy consumption (a drop in 140 Gigawatt-hours per day).⁴⁵ The below chart provides a snapshot of the 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.

⁴⁴ 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 May 5, 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.

⁴⁵ 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 May 5, 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 of 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 Phase IV electric consumption reduction targets do not account for these new and unprecedented shifts and changes in energy usage and demand.

Manufacturing output for April 2020 “fell the most on record as firms shut down and canceled orders to halt the spread of the coronavirus.”⁴⁶ Economists predict that economic output will fall at a seasonally adjusted annual rate of 25.3% in the April to June period.⁴⁷ 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 issued 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%).⁴⁸ Consumer spending fell 7.5% in March 2020, the sharpest monthly decline since 1959.⁴⁹ Commercial demand is already decreasing as office buildings, stores, and restaurants are shuttering their business nationwide.⁵⁰ Those closures disrupt the product markets for other businesses and manufacturers. The “ripple effect” may continue for many months or years, as it will take a long time for industries to rebuild and for consumers to feel comfortable going out again.⁵¹

The automotive industry is facing production cuts due to decreased vehicle sales. This impacts suppliers to the automotive industry, including manufacturers of steel, aluminum, and other metals. The steel industry has been deeply impacted, necessitating layoffs and the idling of

⁴⁶ WSJ May 1, 2020 Manufacturing Article.

⁴⁷ *Id.*

⁴⁸ 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).

⁴⁹ WSJ May 1, 2020 Manufacturing Article.

⁵⁰ 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/>.

⁵¹ WSJ May 1, 2020 Manufacturing Article.

a furnace in Monongahela Valley region outside Pittsburgh,⁵² while other plants have been forced to shut down for other economic reasons.⁵³ Even businesses that continue to operate face uncertainty as customers are increasingly delaying payments or becoming insolvent.

Institutional customers also are struggling to cope with the economic implications of COVID-19. Colleges and universities have converted to remote learning, with some facing calls (and lawsuits)⁵⁴ to refund tuition, room, and board payments. It is not clear when students will return to their schools and campuses. The economic loss for colleges and universities is staggering, likely leading to permanent closures of less competitive and financially strapped institutions.⁵⁵ 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.⁵⁶

Because the COVID-19 virus mitigation measures may need to continue into the Fall and Winter, clarity as to when these situations may stabilize remains unclear. Some expectations predict that COVID-19 may result in a national or global recession, causing “flat-to-negative power demand growth”⁵⁷ and “potentially resulting in lasting damage to the US economy.”⁵⁸

⁵² See <https://www.post-gazette.com/business/pittsburgh-company-news/2020/04/30/U-S-Steel-posts-another-loss-in-first-quarter-Stelco-Mon-Valley-Edgar-Thomson/stories/202004300173> (last accessed May 5, 2020).

⁵³ See <https://www.post-gazette.com/business/pittsburgh-company-news/2020/03/31/ATI-s-Midland-plant-steel-tariffs-allegheeny-technologies/stories/202003310142> (last accessed May 5, 2020).

⁵⁴ See, e.g., https://www.bloomberg.com/news/articles/2020-05-01/angry-undergrads-studying-online-sue-for-billions-in-refunds?utm_campaign=news&utm_medium=bd&utm_source=applenews; see also https://www.purdueexponent.org/campus/article_38a637d4-7b53-11ea-8ec5-d3641472594f.html (last accessed May 5, 2020).

⁵⁵ See <https://abcnews.go.com/Business/coronavirus-pandemic-brings-staggering-losses-colleges-universities/story?id=70359686> (last accessed May 5, 2020).

⁵⁶ See, e.g., <https://www.hfma.org/topics/accounting-and-financial-reporting/article/covid-19-outbreak-will-negatively-impact-us-hospital-finances.html> (last accessed May 5, 2020).

⁵⁷ 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>.

From a 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.⁵⁹

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 this Answer, the stay home order has been extended through May 8, 2020; however, the stay at home order will likely be extended for more densely populated portions of Pennsylvania beyond that date. 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. Upon the lifting of stay home order, social distancing practices and decreased economic demand 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.

For the reasons expressed herein and in their Comments to the Tentative Implementation Order, the Industrial Customers support IECPA's Petition to suspend Phase IV. While IECPA sought a 270-day extension, the Industrial Customers also submit that the Commission has the authority to suspend the phase indefinitely and return to any EE&C program measures after the economic and electricity consumption and demand patterns stabilize. Given the lack of clarity as to when many businesses and institutions can resume operations sustain themselves during and

⁵⁸ 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").

⁵⁹ See WOOD MACKENZIE, CORONAVIRUS (COVID-19) AND ITS IMPACT ON COMMODITIES (2020); Brattle Report at Slide 26.

after the pandemic, the Commission could delay implementation of Phase IV for at least a year to provide all consumers – from residential to small business to Large C&I – with some respite in the face of an uncertain future.

Additionally, stakeholders have not had an opportunity to fully discuss the impact of COVID-19 on the SWE’s studies and the Tentative Implementation Order.⁶⁰ Because the Commission had to cancel the Act 129 stakeholder meeting that was scheduled for March 25, 2020, due to COVID-19, Commission staff and stakeholders have not been able to engage in a fluid dialogue and discussion regarding the Tentative Implementation Order (prior to any finalization of the proposals in that order) as in past Act 129 program phases.⁶¹ The truncated stakeholder process further supports delaying and suspending implementation of Phase IV.

C. The Change in Circumstances Due to COVID-19 Justifies a Reduction of at Least 50% in the Surcharges for the Duration of Phase III and a Waiver of Penalties Applicable to Any EDC’s Failure to Meet Phase III Energy/Demand Reductions.

1. A Reduction of at Least 50% in Phase III Surcharges for the Duration of the Phase Is Just and Reasonable.

Given the “uncertain and challenging economic conditions” and the disconnect between EE&C program surcharges and actual consumption and peak demand data, IECPA requests a reduction of at least 50% in the surcharges for the duration of Phase III.⁶² In its comments to the Tentative Implementation Order, the OCA observed that the “immediate impacts of these

⁶⁰ See Energy Association of Pennsylvania Comments, Docket No. M-2020-3015228, at 3.

⁶¹ See *Cancellation Notice for the Act 129 Statewide Evaluator Energy Efficiency and Peak Demand Reduction Market Potential & Demand Response Potential Studies Stakeholder Meeting*, Docket No. M-2020-3015229 (issued Mar. 20, 2020).

⁶² IECPA Petition at 9-10.

changes [caused by COVID-19] on our economic circumstances is not fully known.”⁶³ OCA then highlighted the number of unemployment claims filed in Pennsylvania since the onset of COVID-19;⁶⁴ as of May 5, 2020, approximately 1.7 million claims had been filed since March 15, 2020.⁶⁵ OCA notes that the financial repercussions of COVID-19 will impact the desire of EE programs from homes and businesses as well as the ability to participate and invest in those programs.⁶⁶ OCA also observed that new health and safety measures, such as personal protective equipment, social distancing, and limited on-site work will be in force for the foreseeable future.⁶⁷

Given pervasive and ongoing health and safety concerns, both OCA and IECPA conclude that the Commission should focus on safely delivering Phase III EE and DR programs instead of focusing on Phase IV right now.⁶⁸ Energy Efficiency contractors are facing uncertain economic times, especially since many “on-site” efforts cannot be continued during the COVID-19 restrictions.⁶⁹ Many businesses, whether by governmental order or by public health guidance, may be reluctant to have contractors on site (and the cost of having contractors on site may be

⁶³ OCA Comments at 3.

⁶⁴ *See id.* at 3.

⁶⁵ *See* “Unemployment Compensation Claim Statistics & COVID-19,” PA Office of Unemployment Compensation, available at <https://www.uc.pa.gov/COVID-19/Pages/UC-Claim-Statistics.aspx> (last accessed May 5, 2020).

⁶⁶ OCA Comments at 3-4; *see also* FirstEnergy Companies Comments, Docket No. M-2020-3015228, at 15.

⁶⁷ OCA Comments at 5.

⁶⁸ *Id.* at 5-6; IECPA Petition at 11.

⁶⁹ *See* Petition to Amend the Commission’s June 19, 2015 Implementation Order in Docket No. M-2014-2424864 of the Energy Association of Pennsylvania, Docket No. P-2020-_____ (filed May 1, 2020) (seeking an amendment of the order governing Act 129 Phase III DR reduction targets due to the impact of COVID-19 on the ability of EDCs to implement DR programs). At the time of finalizing this Answer, the EAP Petition had not received a P docket number, but is docketed in M-2014-2424864.

higher because of social distancing best practices). Many EDCs have suspended non-emergency work on their ongoing Phase III Act 129 program.⁷⁰

Under these circumstances, it is possible that the funds currently being collected by the EDCs through the surcharges are not being used due to COVID-19 or that the surcharges do not reasonably reflect any DR and EE benefits that will be provided.⁷¹ Reducing the surcharges by 50% or more would provide customers with immediate financial relief via reduced electricity bills during this public health and resulting economic crisis. Reducing the regulatory charges on the bills of Large C&I customers would help Large C&I customers by increasing portions of cash flow that can be directed toward critical operations and toward efforts to maintain their employee complement and avoid permanent harm, such as closure and layoffs.

The economic and social circumstances that existed when the Commission issued its orders establishing the TRC Test for Phase III and the Phase III reduction targets no longer exist. Given this change in circumstances, the Commission is under no obligation to continue Phase III exactly as planned and envisioned when it issued its Final Implementation Order on June 11, 2015,⁷² and the subsequent orders on each of the EDC's Phase III plans.⁷³ Instead, the Commission may change its course in response to changed circumstances.⁷⁴ The Commission,

⁷⁰ OCA Comments at 5; *see* Duquesne Light Co. "Duquesne") Comments, Docket No. M-2020-3015228, at 9 (explaining that the ability to implement all Phase III programs has been affected by COVID-19).

⁷¹ *See* IECPA Petition at 9-10.

⁷² *See Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Final Implementation Order entered June 11, 2015).

⁷³ Act 129 Phase III information is available on the Commission's web site at http://www.puc.pa.gov/filing_resources/issues_laws_regulations/act_129_information/energy_efficiency_and_conservation_ee_c_program.aspx (last accessed May 5, 2020).

⁷⁴ *See* 66 Pa. C.S. §§ 501, 703; *West Penn Power v. Pa. PUC*, 659 A.2d 1055, 1065 (Pa. Cmwlth. Ct. 1995) (explaining the PUC's discretion to amend its prior orders under appropriate circumstances); *see also Metro Transp. Co. v. Pa. PUC*, 563 A.2d 228, 231 (Pa. Cmwlth. 1988); *see also 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

in its supervisory authority over public utilities, enjoys the necessary powers to enforce, execute, and carry out its regulations and orders.⁷⁵ Therefore, the Industrial Customers support IECPA's requested 270-day extension of Phase III along with an immediate reduction to EE&C program surcharges by at least 50% for the duration of Phase III. As a result of extending Phase III, the Commission would need to suspend implementation of Phase IV that is set to commence on June 1, 2021. Extending Phase III and granting the request for a reduction of at least 50% of the Phase III EE&C program surcharges is in the public interest, balances the needs of the utilities and consumers, and is consistent with the Commission's powers and duty to ensure that all public utility rates are "just and reasonable."⁷⁶

2. Waiver of Penalties Applicable to Any EDC's Failure to Meet Phase III Energy Consumption and Demand Reductions Is Warranted.

Like IECPA, the Industrial Customers recognize that the Commission, in its role of balancing the needs of utilities with the needs of consumers, may need to protect a revenue stream for the costs that the utilities have already incurred in pursuit of Phase III targets.⁷⁷ If the utilities' EE contractors are unable to conduct on-site work for the foreseeable future or if the utilities are unable to meet their Phase III targets due to COVID-19, then the utilities should not be penalized. Waiving the Act 129 penalties is justified in these circumstances, and the Commission has the discretion and authority to do so.

As to the imposition of penalties under Act 129, Section 2806.1(f)(2) states that an EDC shall be subject to penalties for failure to achieve reductions as required by Sections 2806.1(c)

Commission adopted a recommended decision, in part, rescinding the Commission's 1994 Order in the same matter in recognition of changes in circumstances that occurred since the initial application was filed).

⁷⁵ 66 Pa. C.S. § 501; *Columbia Gas of Pa. v. Pa. PUC*, 521 A.2d 105, 108 (Pa. Cmwlth. Ct. 1987).

⁷⁶ See 66 Pa. C.S. § 1301.

⁷⁷ See IECPA Petition at 10.

and 2806.1(d).⁷⁸ Importantly, Sections 2806.1(c) and (d) in Act 129 regarding PUC-ordered reductions in consumption and peak demand do not expressly require further reduction requirements. As to reductions in consumption, the Commission must “adopt additional required incremental reductions in consumption” only *if* the Commission “determines that the benefits of the program exceed the costs.”⁷⁹ Therefore, the Commission can determine that any further efforts and costs incurred to reach the reduction targets for the duration of Phase III do not provide sufficient benefits. As to reductions in peak demand, Act 129 only requires reductions in consumption to be accomplished “no later than May 31, 2017.”⁸⁰ The current Phase III reductions therefore are only required by Commission order, not by statute. Due to a change in circumstances and under Section 703(g) of the Public Utility Code,⁸¹ the Commission has the power and discretion to amend its prior order – the Phase III Final Implementation Order issued on June 11, 2015.⁸²

Accordingly, the Industrial Customers ask the Commission to provide an immediate reduction of at least 50% in the Phase III EE&C program surcharges, extend Phase III for 270 days, and waive penalties for any EDC’s failure to meet Phase III energy consumption and peak demand reduction requirements.

⁷⁸ 66 Pa. C.S. § 2806.1(f)(2).

⁷⁹ 66 Pa. C.S. § 2806.1(c)(3).

⁸⁰ 66 Pa. C.S. § 2806.1(d)(2).

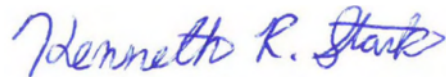
⁸¹ 66 Pa. C.S. § 703(g).

⁸² See *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Final Implementation Order entered June 11, 2015).

WHEREFORE, the Industrial Customers respectfully request that the Commission grant IECPA's Petition to suspend Phase IV of Act 129, to order an immediate reduction of at least 50% of the surcharges for the duration of Phase III of Act 129, and grant other relief as discussed herein.

Respectfully submitted,

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