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May 12, 2020

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

Re: Act 129 Phase IV Tentative Implementation Order, Docket M-2020-3015228

Dear Secretary Chiavetta:

Enclosed for filing at the above-referenced docket, please find the reply comments of the Energy Association of Pennsylvania to the Act 129 Phase IV Tentative Implementation Order.

Sincerely,

A handwritten signature in blue ink that reads "Donna M.J. Clark".

Donna M.J. Clark
Vice President & General Counsel

Enclosure

CC: Joseph Sherrick, Bureau of Technical Utility Services (email only)
Adam Young, Law Bureau (email only)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation Program

:

Docket No. M-2020-3015228

**Reply Comments of the
Energy Association of Pennsylvania
To Act 129 Phase IV Tentative Implementation Order**

I. Introduction

The Energy Association of Pennsylvania (“EAP” or “Association”) filed comments on April 27, 2020 to the Act 129 Phase IV Tentative Implementation Order, Docket M-2020-3015228 (“Phase IV TIO”) entered by the Pennsylvania Public Utility Commission (“PUC” or “Commission”) on March 12, 2020 which supplement and support comments filed by its electric distribution company (“EDC”) members subject to the obligations of Act 129 of 2008¹. EAP files these reply comments to further support the positions and analysis provided by the EDCs and in opposition to many of the suggestions proffered by other stakeholders. EAP recommends and encourages the Commission to steer a course which maintains the timeline for the completion of the current Energy Efficiency & Conservation (“EE&C”) Program,² does not

¹ EAP members subject to Act 129 include Duquesne Light Company (“Duquesne”); Metropolitan Edison Company (“Met-Ed”); PECO Energy Company (“PECO”); Pennsylvania Electric Company (“Penelec”); Pennsylvania Power Company (“Penn Power”); PPL Electric Utilities (“PPL”) and West Penn Power Company (“West Penn Power”) and are herein referred to collectively as the EDCs.

² EAP opposes suggestions made by the Office of Consumer Advocate and other commentators to extend Phase III, maintaining that an extension is not necessary and it raises a number of complex issues involving, *inter alia*, the extension of contracts for the Statewide Evaluator (“SWE”) and numerous Conservation Service Providers (“CSPs”), the treatment of savings achieved in the extended period, and modifications to measures/program design and corresponding budgets.

delay the start of the next EE&C Program slated to begin on June 1, 2021,³ and establishes a process to consider modification of mandated targets and requirements where unforeseen circumstances hinder the ability of an EDC to achieve its compliance obligations under its approved EE&C Plan⁴.

II. EAP Supports a Phase IV Implementation Order Which Maximizes EDC Flexibility to Design Innovative and Comprehensive Energy Efficiency & Conservation Plans

In general, EAP opposes commentator proposals that increase the complexity and number of mandates and prescriptive requirements for inclusion in the next phase of the Act 129 Energy Efficiency & Conservation (“EE&C”) Program, i.e. Phase IV. Not only do such proposals unreasonably increase the penalty risk inherent in Act 129, they undercut the flexibility afforded by the statute to EDCs to develop and design EE&C Plans. Increasing the number of “musts” and dictating the specifics of program design inhibits the development of the comprehensive programs sought by the Commission⁵ and the EDCs.

The fact that EAP is not separately addressing each suggestion made by commentators should not be viewed as support for those positions. For example, EAP does not support suggestions to increase the proposed reduction mandates for electric consumption and demand or

³ EAP does not agree with comments filed by OCA, the Industrial Energy Consumers of Pennsylvania (“IECPA”) or the Pennsylvania Energy Consumer Alliance (“PECA”) that seek to delay the start of Phase IV. Likewise, EAP contends that the relief sought by IECPA in its Petition to Suspend Implementation of The Act 129 Phase IV Requirements and for Other Relief, Docket P-2020-3019562 does not offer an efficient or cost-effective resolution to the impacts of the COVID-19 pandemic.

⁴ See, EAP Comments to Act 129 Phase IV Tentative Implementation Order at Section II. A. pp. 4 – 7. See also, Comments of Duquesne Light Co. at p.2, fn. 4; Comments of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. at pp. 15-16; Comments of PECO Energy Co. at pp. 7-8; and Comments of PPL Electric Utilities Corp. at p. 1.

⁵ See, Phase IV TIO at p. 8. (“[T]he EE&C Programs have matured enough so that EDCs can increase their focus on more comprehensive measures which tend to require greater implementation timeframes.”)

to decrease the proposed acquisition costs; EAP does not support suggestions to increase the carve-outs for the low-income sector or to establish new targets for multifamily units or to burden low-income programs with numerous prescriptive requirements and goals; EAP does not support suggestions to maintain the current Government/Nonprofit/Institutional carve-out or to continue Phase III mandated Demand Reduction (“DR”) program design into Phase IV; and EAP does not support using “excess” Phase III budgets to increase Phase IV targets or impose other requirements or randomly reducing carryover savings achieved in Phase III by 50%.

EAP urges the Commission to refrain from adding to the number and specificity of the requirements already embedded in Act 129. EAP believes that, as implementation of Act 129 enters Phase IV, Commission policy direction should broadly encourage the EDCs to continue to work with their stakeholders to develop plans that provide innovative programs, encourage customer participation, and lead to cost-effective and measurable savings.

III. EAP Supports a Timely Start to Phase IV on June 1, 2021 and Recommends Establishment of a Process to Revise Mandated Requirements Following EE&C Plan Approval

The comments filed by EAP and the EDCs recognize the uncertainties and impacts that the coronavirus (“COVID-19”) pandemic has had and will continue to have on the planning and implementation of the next phase of the EE&C Program slated to begin on June 1, 2021. Those comments recognize that the baseline studies and the market potential studies, which underpin the recommendations for mandated targets and requirements detailed in the Phase IV TIO, do not account for current unforeseen circumstances. And, acknowledge and detail concerns regarding the current and future impacts of the pandemic on the economy, the viability of businesses and the willingness of consumers to participate in the energy efficiency marketplace. Unlike a

number of commentators, however, neither EAP nor the EDCs recommend or support a delay in the start of Phase IV nor an extension, stoppage or slowdown of Phase III.

Instead, the Association and EDCs offer a better solution that envisions the timely completion of Phase III EE&C Plans and adheres to the Commission's timetable for the start of Phase IV. The solution provides a way to address the many COVID-19 related uncertainties and variables identified by commentators to the Phase IV TIO without upending Pennsylvania's existing Act 129 EE&C Program and incurring unnecessary incremental costs. The solution is to establish in Phase IV a process that would enable an EDC to petition for an amendment to adjust mandatory targets and other requirements in the event that unforeseen circumstances negatively impact an EDC's ability to meet its compliance obligations. Proactively establishing such a process is within the statutory authority of the Commission and would immediately offset the concerns and complexities raised by suggestions to extend the current phase or delay the start of Phase IV.⁶

The various COVID-19 related concerns raised by commentators to the Phase IV TIO add support for the resolution proposed by EAP and underscore the benefit of developing a straightforward administrative procedure for EDCs to seek approval to adjust mandatory requirements under force majeure circumstances in future phases of Act 129 EE&C Programs. Establishing such a procedure at this time would boost confidence that the orderly and timely transition between phases need not be disrupted even when, as now or in the foreseeable future, it is not possible to identify or accurately evaluate and quantify all risks arising from unforeseen circumstances such as those created by the COVID-19 pandemic and its continuing impact on

⁶ See, *supra*. at fn. 2. Extending Phase III would not only create complexity in regard to the implementation of the ongoing EE&C Plans, it would prolong the market uncertainty identified by commentators that stems from the impact of the COVID-19 pandemic and related unforeseen circumstances.

the economy. Further, EAP believes that the inclusion of such an interim procedure in the final Phase IV implementation order would effectively balance the heightened compliance risk that exists under the current Act 129 penalty framework⁷ in the wake of evolving unforeseen circumstances where, as here, the Commission has no discretion to consider the reasonableness of EDC efforts when determining compliance.

IV. Conclusion

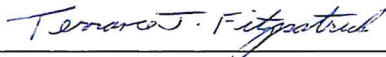
EAP maintains that proposals to add additional mandates, requirements and complexity to the Phase IV EE&C Program do not align with either the policy objectives of the General Assembly when it enacted Act 129 of 2008 or the evolving economic and societal uncertainties created by the COVID-19 pandemic. Overly aggressive fixed targets for consumption and demand reduction coupled with prescriptive program design rules and decreasing acquisition cost assumptions in Phase IV will result in EE&C Plans that are less comprehensive than desired by the Commission, EDCs and stakeholders and will unnecessarily and unfairly increase the compliance risk for EDCs.

In contrast, a final implementation order which establishes a process for EDCs to address force majeure circumstances and to adjust mandated targets and requirements that govern an approved EE&C Plan will provide a more efficient way to move forward with a Phase IV EE&C Program that provides necessary flexibility during uncertain times. Accordingly, EAP

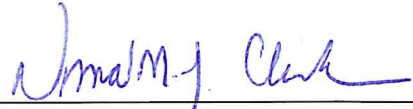
⁷ See, 66 Pa. C.S. § 2806.1(f)(2)(i). EAP notes that a number of commentators including IECPA, PECA and the Keystone Energy Efficiency Alliance also recognize the asymmetrical penalty risk imposed by Act 129 and, at times, have advocated to change the mandatory minimum penalty structure of Act 129 and replace it with 66 Pa. C.S. § 3301(a) which provides the Commission with discretion to assess penalties.

respectfully asks the Commission to incorporate the proposed resolution in its Phase IV Final Implementation Order.

Respectfully submitted,



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