

May 12, 2020

VIA E-File

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Act 129 Energy Efficiency and Conservation Program Phase IV
Docket No. M-2020-3015228

Joint Reply Comments of the Pennsylvania Energy Efficiency for All Coalition

Dear Secretary Chiavetta,

Please find the Joint Reply Comments of ACTION Housing, Inc., Community Legal Services of Philadelphia, Inc., Green & Healthy Homes Initiative, Housing Alliance of Pennsylvania, Keystone Energy Efficiency Alliance, National Housing Trust, Natural Resources Defense Council, Pennsylvania Utility Law Project, and Regional Housing Legal Services (collectively, the Pennsylvania Energy Efficiency for All Coalition (PA-EEFA)), which are submitted for filing in the above noted proceeding.

Please contact me or any of the undersigned coalition representatives with questions.

Respectfully submitted,



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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Act 129 Energy Efficiency and Conservation Program Phase IV :
: **Docket No. M-2020-3015228**

JOINT REPLY COMMENTS OF

ACTION HOUSING, INC.

COMMUNITY LEGAL SERVICES OF PHILADELPHIA, INC.

GREEN & HEALTHY HOMES INITIATIVE

HOUSING ALLIANCE OF PENNSYLVANIA

KEYSTONE ENERGY EFFICIENCY ALLIANCE

NATIONAL HOUSING TRUST

NATURAL RESOURCES DEFENSE COUNCIL

PENNSYLVANIA UTILITY LAW PROJECT

REGIONAL HOUSING LEGAL SERVICES

(Collectively PA ENERGY EFFICIENCY FOR ALL COALITION (PA-EEFA))

May 12, 2020

I. INTRODUCTION

On March 12, 2020, the Pennsylvania Public Utility Commission (Commission or PUC) issued a Tentative Implementation Order for the Phase IV Act 129 Energy Efficiency and Conservation Program. Notice of the Tentative Implementation Order was published in the Pennsylvania Bulletin on March 28, 2020.¹ Comments to the Tentative Order were due within 30 days of publication, with reply comments due 15 days thereafter.

The Pennsylvania Energy Efficiency for All Coalition (PA-EEFA), consisting of the above-named organizations, filed comments in this proceeding on April 27, 2020. These reply comments are submitted by PA-EEFA in response to specific points raised by other parties in their comments to the Act 129 Phase IV Tentative Implementation Order (Tentative Order). The omission of reply comments on any specific points raised by other parties should not be construed as support for or agreement with those points.

II. COMMENTS

A. Reject Proposals to Delay Implementation of Phase IV

In response to the Commission's Tentative Order for Phase IV of Act 129, several parties representing industrial energy users presented essentially similar positions, commenting that the uncertainty created by the Covid-19 pandemic is so significant that a delayed implementation of Phase IV is warranted.² Industrial Customers said that the "economic and social circumstances

¹ 50 Pa.B. 1917

² With respect to the arguments of the industrial parties, PA-EEFA notes that their positions are consistent with IECPA's long-standing view that "as a fundamental principle...the Commission should implement an opt-out for the largest industrial and manufacturing customers in the Commonwealth." In other words, Covid-19 or business as

that existed when the Commission issued the Tentative Implementation Order no longer exist”³ and “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.”⁴ The Industrial Energy Consumers of Pennsylvania (“IECPA”) similarly “recommends that the implementation of Phase IV requirements be suspended for a 270-day period in order to permit Pennsylvania electric distribution companies (“EDCs”), their customers, and the Pennsylvania public to begin meaningful recovery from the current pandemic, as much as is possible, before additional EE&C-related programs and expenditures are put in place.”⁵

While the effect of the pandemic in Pennsylvania and the nation is undeniably profound, and will hurt vulnerable low-income Pennsylvanians most directly, PA-EEFA asserts that the solution is not to step away from the planning process for Phase IV. Instead, now is the time to get to work to ensure that energy efficiency programming will be available to help struggling families and businesses to reduce energy costs and save money. Energy efficiency is not only a job creator, it is by definition “cost effective,” meaning Pennsylvanians derive more benefits than the costs paid.

The Office of Consumer Advocate (“OCA”) also proposes a delayed implementation of Phase IV. But unlike the Industrial Customers and IECPA, the OCA proposes that “the Commission require EDCs to continue with Phase III, seeking to achieve the Phase III targets through next year, and continuing to target achievement of savings at the same general pace as was

usual, these organizations do not support the Commission’s position on the value that Act 129 provides to the state.

³ Industrial Customers at 6.

⁴ Industrial Customers at 11.

⁵ IECPA at 2.

done in Phase III (approximately 15% of the Phase III target level for each year) until a Phase IV can commence.”⁶ The OCA recommends deferring Phase IV because “the data underlying the EEPDR Potential Study simply does not reflect the likely economic impacts of the COVID-19 pandemic”⁷ including “whether the economy will rebound when COVID-19 is contained,”⁸ and whether “the loss of income, even in the short term...may make customers hesitant to invest in energy efficiency.”⁹ The OCA also acknowledges that “the length of time new health and safety measures need to be in place are unknown at this time” and that it is further unknown “whether customers will even be willing to accept energy efficiency services on their premises even with health and safety precautions.”¹⁰

PA-EEFA appreciates the points raised by the OCA and acknowledges both that Pennsylvania is experiencing profound impacts due to the COVID-19 pandemic and that there is uncertainty about the specific impacts of the pandemic as it continues to unfold.¹¹ However, it is already abundantly clear that low-income families and communities of color are being hit much harder than others, both in terms of the economic fallout and health impacts associated with the pandemic and the pandemic response. PA-EEFA respectfully disagrees with the suggestion of the parties cited above that the best response to these uncertainties is a delay in the planning and implementation of Phase IV. Rather, planning for Phase IV should continue, giving a high priority to maximizing the availability of efficiency services to low and moderate-income families, more

⁶ OCA at 6.

⁷ OCA at 4.

⁸ OCA at 4.

⁹ OCA at 4.

¹⁰ OCA at 5.

¹¹ Many of PA-EEFA’s members are on the front lines of the economic response, and are hard at work providing resources, representation, advice, and counsel to low income families who are struggling to make ends meet through this unprecedented time. We know all too well the deep economic impact that COVID-19 has had in all corners of the state, and the need to deliver critical assistance programming to help consumers stay home, stay healthy, and stay safe.

of whom will struggle to meet their energy burden than before the pandemic. PA-EEFA asserts that the following points should be considered:

1. PA-EEFA does not agree that all of the current Phase III programs can continue to operate as planned, and in the short term it will be particularly challenging for comprehensive residential and low income programs to deliver appreciable bill savings to consumers when doing so would require program staff and contractors to conduct work in customers' homes. Because significant changes must be made in response to the pandemic to ensure that programs are safely serving those most in need, simply continuing with Phase III for an additional year is not plausible, nor would it require less planning or a reduced need to adjust programs based on incomplete information than would continuing with Phase IV as planned. Indeed, exploring the changes that should be made through the ongoing Phase IV planning process will be critical to ensure that meaningful energy efficiency programming is available through Phase IV.
2. The specific extent and duration of the changes caused by the pandemic are not known, though all early indications suggest that the impact will be staggering and long-lived. PA-EEFA agrees that more will be known about the public health and economic consequences of the pandemic a year from now, but the pace of recovery will likely still be highly uncertain. Rather than suspend planning for Phase IV, PA-EEFA recommends that EDCs reflect emerging data and protocols in their plans through the development period.
3. The uncertainty can, to a degree, be accommodated by the Commission in its Final Order by reflecting the likely reality that, for some programs, a gradual re-building and ramp-up will be required, with lower savings expected in PY-13, and year over year increases as the economy rebuilds, including an assumption that higher program incentives will likely be required.¹² The Commission can assume that re-introducing programs that will rely on in-person site work will be similar to the launch of any new program, regardless of whether that occurs in Phase III (or a continuation thereof) or in Phase IV. For these programs, larger incentives and more market support will likely be necessary. The SWE's proposed costs already reflect assumptions about more comprehensive programs, and thus reflect higher costs per MWh saved, but the Commission can further direct the SWE to propose modified Phase IV savings targets based on assumed higher costs for some programs in PY- X and PY-Y, and these can be incorporated into the Final Order.

¹² Note that incentive amounts will not change TRC cost-effectiveness results because the TRC reflects total costs regardless of who they are paid by, rather than EDC-paid incentive costs.

There is at least one additional modification the Commission could make in its Final Order that would provide additional flexibility to the EDCs should the evidence lead to projections that it will not be possible to meet the Phase IV savings targets. In its initial Comments, PECO suggests that the Commission incorporate a Force Majeure provision in the Final Order to provide a mechanism for the EDCs to come back to the Commission to request modified goals in the course of Phase IV if it finds that it will not be able to achieve the required savings targets due to forces beyond its control, such as the pandemic. PA-EEFA supports such a provision, in theory, provided EDCs must file appropriate notice of any proposed savings reduction with the Commission, and that parties are able to intervene and provide evidence in any proceedings.

Alternatively, the Commission could also consider structuring Phase IV to have a shorter duration, say two or three years instead of five, acknowledging it as a transitional program period during an initial period of economic recovery, with the presumption of a Phase V to follow.

B. Reject Suggestions to Reduce the Low-income Carve-Out or Change it to a Spending Requirement

In its Tentative Order, the Commission proposed the continuation of a low-income savings carve-out that would require the EDCs to achieve a minimum of 5.8% of portfolio savings through low-income energy efficiency programs. This is, on average, 22% less than the Phase III low-income carve-out. Duquesne Light recommends that “in lieu of a savings target, the Commission instead set an investment target, requiring a portion of the program budget to be spent on the low-income sector.”¹³ PECO similarly states that “employing a spending requirement for low-income direct install measures would be more effective than a low-income savings carve-out.”¹⁴ PECO

¹³ Duquesne at 7.

¹⁴ PECO at 5.

further suggests that “the 5.8% carve-out would not afford the Company a reasonable amount of flexibility in program design because it would require PECO to reach 100% of the Company’s low-income potential, as determined by the SWE,”¹⁵ despite the proposed carve-out for PECO being 30% below its Phase III low-income carve-out. In fact, PECO’s statement is incorrect because, due to the budget caps, the potential for low-income savings is actually greater than the savings figure proposed by the SWE. The SWE’s 5.8% is the amount of low-income savings that it estimates can be achieved with approximately 13% of the portfolio budget, which is less than 100% of the low-income potential. The other EDCs’ low-income carve-out targets are also well-below the savings that could be achieved in the absence of constrained budgets. Duquesne also cites a number of concerns with the SWE’s estimate of achievable low-income potential, despite the fact that the proposed savings target is 22% less than its Phase III low-income carve-out.

In contrast, the OCA suggests “that this [low-income] consumption reduction target may be understated”¹⁶ because “the acquisition costs in the EEPDR Potential Study may be high, thus impacting the level of achievable savings.”¹⁷ PA-EEFA agrees that absent specific direction as to what the EDCs are required to do with respect to “comprehensive savings” the proposed Phase IV acquisition costs may be too high, which would indicate that more savings could be achieved within the available budgets.

As noted in the Tentative Order and the SWE’s potential study, and referenced in PA-EEFA’s comments, the acquisition costs used by the SWE in Phase IV are higher than in Phase III to reflect the costs of complying with the Commission’s stated preference for comprehensive

¹⁵ PECO at 5.

¹⁶ OCA at 13.

¹⁷ OCA at 13.

savings. In light of this, PPL’s position that its “ability to meet the 5.8% low-income savings carve-out under the Tentative Implementation Order...depends on future availability of relatively low-cost measures, including LED lighting”¹⁸ seems misplaced. Indeed, PPL reported that “prior to the COVID-19 outbreak, PPL Electric projected that it would have approximately 20,000 MWh/yr of low-income carryover savings from Phase III to Phase IV.”¹⁹ This would mean that PPL would have achieved approximately 107,000 MWh of LI savings in Phase III, yet it says that it would not be able to achieve 72,500 MWh in LI savings with essentially the same budget in Phase IV. PA-EEFA urges the Commission to be skeptical of such claims and maintains that the EDCs should be required to achieve a 6.5% low-income carve out as recommended in its comments.

Support for a 6.5% low-income carve-out also comes from CAUSE-PA.²⁰ Further, the Commission on Economic Opportunity recommends that “the savings to be obtained from low-income customers be increased above 5.8%.”²¹ The Pennsylvania Weatherization Providers Task Force also supports “an increased low-income carve-out.”²²

PA-EEFA appreciates and agrees with the Pennsylvania Weatherization Providers Task Force comment that “a continuation of an emphasis placed on multifamily housing”²³ is critically important, especially with respect to affordable multifamily housing that serves low-income Pennsylvanians. However, based on its understanding that the potential energy savings from low-income multifamily housing was captured in the overall low-income potential rather than in the Government, Non-profit, and Institutional category, PA-EEFA maintains that a specific savings requirement for low-income multifamily housing within the low-income carve-out would be an

¹⁸ PPL at 9.

¹⁹ PPL at 8.

²⁰ CAUSE-PA at 8.

²¹ CEO at 2.

²² Wx Providers at 2.

²³ Wx Providers at 1.

appropriate mechanism for assuring that the sector receives adequate opportunities to participate in Act 129 Phase IV programs.

C. 50% Administrative Costs Limit

In its comments, Oracle states:

Home Energy Reports are inherently different from other efficiency measures. Recipients can generate savings without any participant cost (or rebated incentive). As a result, it's possible that the entire program cost could be lumped into "administration" for this purpose. In many states, behavioral engagement is included in another category, either technical assistance or vendor costs (not administration).²⁴

Consistent with Oracle's position, PECO states that "Common costs (e.g., measurement and verification costs, education, and marketing) should be excluded from any incentive / non-incentive allocation requirement."²⁵ PA-EEFA acknowledges that there are limits for administrative costs in other jurisdictions, but suggests that the meaningfulness of these limits is inconsistent because there is no uniformity in how different types of costs are categorized in different jurisdictions.

PA-EEFA recommends that the imposition of any metric for comparing the ratio of incentive to non-incentive costs should be grounded in empirical evidence that it will lead to a better value for ratepayers, such as by providing MWh savings at a lower total cost than alternative investments. It would not be in customers' best interest if a ratio requirement were to unreasonably cause EDCs to limit the use of innovative, cost-effective programs. The Commission should also consider the possibility that a ratio requirement could have perverse consequences, such as leading program administrators to increase incentive amounts beyond what is needed, thereby increasing overall program costs, simply to comply with the requirement.

²⁴ Oracle at pdf p.4.

²⁵ PECO at 11-12.

D. LIURP Coordination

In response to the Commission’s request for recommendations to improve coordination between LIURP and Act 129 low-income programs, PECO states that it “ believes that it has already achieved an appropriate level of coordination between the programs to benefit customers” such that “mandating specific coordination requirements for EDCs regarding Act 129 and LIURP programs as part of the Final Implementation Order is unnecessary.”²⁶ The First Energy companies similarly state that they have been “harmonizing, coordinating and leveraging their LIURP and Act 129 low-income offerings and funding and intend to continue those efforts during Phase IV” so that “the Companies recommend that the Commission not require different approaches towards harmonizing the Companies’ Act 129 low-income and LIURP offerings.”²⁷ CAUSE-PA recommends the Commission “require EDCs to make a greater and more explicit effort to coordinate Act 129 low-income programming with other sources of low-income energy efficiency assistance, including...LIURP, the Weatherization Assistance Program (WAP), the LIHEAP Crisis Interface Program, and other gas and water utility programs that serve customers within the EDC’s service territory.”²⁸ And, Pennsylvania Weatherization Providers Task Force suggests a “requirement that EDCs contract for Act 129 with the Task Force members that provide their LIURP services.”²⁹

PA-EEFA agrees with CAUSE-PA’s premise that utility customers will best be served by an approach that coordinates services across the full range of organizations and agencies that provide low-income energy efficiency services in Pennsylvania. The coordination efforts of

²⁶ PECO at 6.

²⁷ First Energy at 16-17.

²⁸ CAUSE-PA at 15.

²⁹ Wx Providers at 2.

PECO, First Energy, and other EDCs notwithstanding, it is not sufficient for the Commission to merely take the EDCs at their word without a more fulsome look at how implementation can best be coordinated both within and across utilities and with other related programming. PA-EEFA suggests that the Commission direct parties to engage in focused work group-style discussions with Commission Staff, the EDCs, and other stakeholders on how the optimum level of coordination can best be achieved. This may be best to occur as part of or in coordination with the ongoing LIURP rulemaking process. PA-EEFA further suggests the Commission require a report from the work group to lay out its recommendations and that it be completed by a specified date.

E. Cross-Subsidization

The Office of Small Business Advocate recommends the Commission require EDCs in their EE&C reports to provide data on program participation by GNI customers, even in the absence of a GNI carve-out, to “provide the Commission and stakeholders with the information necessary to evaluate whether there exists over-subsidization of GNI customers at the expense of small businesses,³⁰ and, if so, to correct the over-subsidization.”³¹ PA-EEFA does not object to OSBA’s recommendation for the EDCs to provide additional data on participation by GNI customers, though we suggest that further delineation within the sector will be important to understand which groups *within* the carve-out are being served. GNI covers a broad swath of the commercial and industrial classes, and participation in GNI programs may well be concentrated in certain subsets within this broad sector. Specifically, and given the availability of capital to make energy efficiency investments, it is likely that large government and institutional projects have

³⁰ PA-EEFA notes that non-profit organizations are, in fact, businesses that have been granted tax-exempt status, and that they are often but not always small. While it may be useful to consider non-profit businesses as a sector, small non-profits should not be viewed as potentially taking program resources *away* from small for-profit businesses.

³¹ OSBA at 5.

been and will continue to be served by the EDCs' programs, rather than smaller non-profits.

Program administrators in other jurisdictions, such as neighboring New Jersey, implement programs that are specifically targeted to smaller non-residential customers, with eligibility that is defined by usage and demand criteria. These programs are typically framed as being required to ensure that the unique barriers of under-served customer segments are addressed, so that these smaller customers have reasonable opportunities to participate in energy efficiency. In the absence of specific guidance on GNI customers, it may be reasonable for the EDCs that do not currently implement programs targeted to serve small non-profit and for-profit entities to consider them in their Phase IV plans, especially given the financial distress that many small businesses may find themselves in during and after the pandemic.

F. Measure-level Cost-Effectiveness

PECA states that the Commission should “ensure that each program measure meets the minimum TRC value.”³² However, treatment of cost-effectiveness testing in Phase IV has already been considered by the Commission, which determined that “screening cost-effectiveness at the measure level could lead to adverse outcomes where EDCs are forced to limit the scope of efficiency projects within homes and businesses based on assumptions about avoided costs and incremental measure costs that each carry a degree of uncertainty.”³³ Further, by definition, the measures that were included in the SWE's economic potential analysis, and thus in the achievable potential analysis, are cost-effective according to the TRC test defined by the Phase IV TRC Order.³⁴ As further stated by the Commission in its Final TRC Order “if low-income programs

³² PECA at 18.

³³ 2021 Total Resource Cost (TRC) Test, Docket No. M-2019-3006868, Final Order, at 16-17 (order entered Dec. 12, 2019).

³⁴ Potential Study at 18.

were required to be cost-effective, a likely outcome is that low income households would be underserved by Act 129 residential programs despite funding them via rate recovery. This would be a regressive policy, given that energy costs make up a larger share of low-income household budgets than they do for market rate residential households.”³⁵ PA-EEFA supports the Commission’s position on cost-effectiveness requirements and recommends that it be upheld.

III. CONCLUSION

As discussed in these reply comments, PA-EEFA respectfully recommends that the Commission move forward with Phase IV planning with a focus on increasing the availability of energy efficiency programming for communities that are hardest hit by the pandemic, and assumptions that a re-building of programs that include site visits and retrofit work will be required in the early years of Phase IV.

³⁵ 2021 Total Resource Cost (TRC) Test, Docket No. M-2019-3006868, Final Order, at 35 (order entered Dec. 12, 2019).

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