



May 12, 2020

Via Electronic Filing

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

Re: Act 129 Implementation Phase IV
Docket No. M-2020-3015228

Dear Secretary Chiavetta,

Enclosed for filing in the above-referenced proceeding, please find the Reply Comments of the Environmental Stakeholders. Should you have any questions, please contact me at dmcDougall@earthjustice.org. 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,

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Act 129 Implementation :
Phase IV : Docket No. M-2020-3015228
:

REPLY COMMENTS OF THE ENVIRONMENTAL STAKEHOLDERS

Sierra Club, Natural Resources Defense Council (“NRDC”), Citizens for Pennsylvania’s Future (“PennFuture”), Clean Air Council, Philadelphia Climate Works, POWER, and 350 Philadelphia (hereinafter “Environmental Stakeholders”) respectfully submit these reply comments (“Reply Comments”) in response to the Pennsylvania Public Utility Commission’s (“Commission”) Tentative Implementation Order (“Tentative Order”) on Phase IV of the Act 129 Energy Efficiency and Conservation Program dated March 12, 2020, for the Commission’s consideration in preparing its Final Implementation Order (“Final Order”).¹

I. COVID-19, Pennsylvania’s Recovery, and Phase IV

A. Background

As the Commission has recognized, the Commonwealth is currently experiencing a disaster emergency caused by the COVID-19 pandemic.² On March 6, 2020, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency (“Proclamation”), declaring “the existence of a disaster emergency throughout the Commonwealth.”³ On March 20, 2020, the Commission issued an Emergency Order (“Emergency Order” or “Order”) providing for (1) the

¹ Tentative Implementation Order, Commission Docket M-2020-3015228 (Mar. 12, 2020) (“Tentative Order”).

² Emergency Order at 1, Commission Docket No. M-2020-3019262: *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements* (Mar. 20, 2020) (“Emergency Order”).

³ Proclamation of Disaster Emergency at 2, Commonwealth of Pennsylvania – Office of the Governor (Mar. 6, 2020) (“Proclamation”).

“Suspension of Regulatory and Statutory Deadlines” and (2) the “Modification of Filing and Service Requirements.”⁴

With respect to deadlines, the Emergency Order provides that all “statutory and regulatory deadlines” may be extended during the pendency of the Proclamation of the Disaster Emergency (and may be extended by an additional thirty days following termination of Proclamation of the Disaster Emergency).⁵ Deadline extensions shall not exceed 90 days “except upon expedited certification of the question by the Chief Administrative Law Judge or Bureau Director to the Commission.”⁶ The Emergency Order also provided for service and filing of documents by electronic means during the pendency of the Proclamation of Disaster Emergency.⁷

B. Comments

In their initial comments, certain parties noted that due to the COVID-19 pandemic, the Pennsylvania economy has slowed, and called for using the Emergency Order to suspend and/or delay Phase IV of Act 129’s implementation.⁸ The Environmental Stakeholders agree that Pennsylvania families and businesses are experiencing profound economic impacts due to the pandemic, but respectfully submit that delaying or suspending implementation of Act IV would only compound these problems. By contrast, continued implementation of Act 129 will help the state’s economic recovery by (1) ensuring that efficiency services are available to Pennsylvanians as many struggle with higher energy burdens and most spend more time at home, and for (2) generating the jobs necessary to lay the foundation for economic recovery.

⁴ Emergency Order at 1.

⁵ *Id.* at 4.

⁶ *Id.*

⁷ *Id.*

⁸ See Comments of Industrial Energy Consumers of Pennsylvania, Commission Docket M-2020-3015228, (Apr. 27, 2020) (“IECPA Comments”).

A continued Phase IV planning process could allow for progress towards achieving savings and protecting jobs right away while providing for the adjustment of targets over time if the facts warranted such adjustments. There is indeed time to continue to plan and to adjust those plans in light of developing information about the economy. According to the “Phase IV Planning Timeline” in the Tentative Order, the primary upcoming deadlines are that (1) the Commission plans to issue a Final Implementation Order on June 18, 2020, (2) EDCs must file compliance plans by November 30, 2020, (3) the Commission plans to rule on EDC compliance plans by March 2021, and (4) that Phase IV begins on June 1, 2021.⁹ Notably, Phase IV is not set to begin for over a year.

The primary parties involved in working on Phase IV planning for the next year are Commission staff, consultants, and electric distribution company (“EDC”) employees. To the extent that any of these parties may require the extension of a particular deadline for a particular period, such an extension could be granted by means a petition in a straightforward fashion. The parties proposing preemptive suspension of all Phase IV planning have not shown that suspension would offer any advantages over such an approach, and doing so would certainly slow progress towards the development of deliverable Phase IV programs.

More broadly, it is important to recognize that Act 129’s decade-long track record of success demonstrates the pivotal role of energy efficiency in driving growth in the Commonwealth, even during difficult economic periods. Since the initiation of Phase I of Act 129’s implementation in 2009, Act 129 has delivered significant savings for Pennsylvania ratepayers year after year, as demonstrated by the following chart:

Figure 1. Pennsylvania Ratepayer Savings Achieved By Act 129

⁹ Tentative Order at 43.

Phase	Years	Pennsylvania Ratepayer Savings Achieved By Act 129
I	June 1, 2009 - May 31, 2013	\$4,192,389,000 ¹⁰
II	June 1, 2013 - May 31, 2016	\$2,197,271,000 ¹¹
III	June 1, 2016 - June 1, 2021	\$1,785,950,000 (to date) ¹²

Simply put, as Figure 1 indicates, Act 129 has proven itself, through all of the economic cycles of the last decade, including the Great Recession in 2009, to be a consistent engine of utility bill savings for Pennsylvanians. Act 129 has also fueled the growth of energy efficiency jobs in Pennsylvania, which represent a thriving sector of Pennsylvania’s economy. In 2018, the most recent year for which figures are available, there were 68,820 energy efficiency jobs in Pennsylvania,¹³ up from 53,175 in 2015.¹⁴

II. Electric-to-Fossil Fuel-Switching

The Environmental Stakeholders note and appreciate the detailed analysis of electric-to-fossil fuel-switching that is contained in the comments of the Keystone Energy Efficiency Alliance (“KEEA”) on the Tentative Order.¹⁵ As KEEA correctly notes, Act 129 requires that EDCs develop “cost effective” plans “to reduce energy demand and consumption,”¹⁶ but the statute does not allow for any undue preference towards fossil fuels.¹⁷ This is important because the Public Utility Code requires that all rates approved by the Commission must be “just and reasonable.”¹⁸

¹⁰ Act 129 Statewide Evaluator, First Annual Report - Phase I: June 1 2009–May 31, 2013, at 16 (Mar. 4, 2013).

¹¹ Act 129 Statewide Evaluator, *Phase II Final Report*, at 31 (Feb. 28, 2017).

¹² SWE Annual Report: Act 129 Program Year 8, at XI (Feb. 28, 2018); SWE Annual Report: Act 129 Program Year 9, at 12 (Feb. 28, 2019); SWE Annual Report: Act 129 Program Year 10, at 12 (Feb. 19, 2020) (“Annual Report Year 10”).

¹³ *Clean Energy Driving Pennsylvania’s Job Growth*, E2, (June 18, 2019), <https://e2.org/reports/clean-jobs-pennsylvania-2019/>.

¹⁴ Sarah Lehmann, *et al*, *Energy Efficiency Jobs in America*, E2, at 12 (Dec. 2016), https://www.e2.org/wp-content/uploads/2016/12/EnergyEfficiencyJobsInAmerica_FINAL.pdf.

¹⁵ Comments of the Keystone Energy Efficiency Alliance, at 19, Commission Docket No. M-2020-3015228 (Apr. 27, 2020) (“KEEA Comments”).

¹⁶ 66 Pa. Stat. and Cons. Stat. Ann. § 2806.1(a).

¹⁷ KEEA Comments at 20.

¹⁸ 66 Pa. Stat. and Cons. Stat. Ann. § 1301(a).

However, the policy of allowing EDCs to credit towards their kilowatt-hour reduction targets kilowatts-hours that are reduced by electric-to-fossil fuel-switching is unduly preferential towards fossil fuels, because it does not factor in energy consumed through the use of fossil fuels as a replacement. This blind spot—effectively a loophole—in the implementation of a program that has, as noted above, a statutory mandate “to reduce energy demand and consumption”¹⁹ cannot be considered just and reasonable.

This problem of undue preference is exacerbated, as KEEA observes, where an EDC is affiliated with a natural gas distribution company (“NGDC”), as in the case of PECO.²⁰ Here, not only can the EDC benefit from kilowatt-hour reductions creditable towards Act 129 targets, but its affiliated NGDC can profit from the increased natural gas sales.²¹ Reflecting this asymmetry, as KEEA notes, is the disparity in incentives in PECO’s Phase III Act 129 implementation plan: It provides a \$1500 rebate for electric-to-fossil fuel switching for heating but only a \$285 rebate for upgrading an inefficient old electric heating unit to modern high-efficiency electric heating unit.²²

This undue preference for fossil fuels amounts to a subsidy, at ratepayer expense, to the natural gas industry. Under current rules, ratepayer funds, appropriated under a statute that requires the reduction of “energy demand and consumption,”²³ can be spent by EDCs on the installation of fossil-fueled equipment that reduces electricity consumption, but may or may not reduce total energy consumption. As reflected in the disparate PECO incentives discussed above, EDCs can use ratepayer funds to generously subsidize the installation of fossil-fueled equipment

¹⁹ 66 Pa. Stat. and Cons. Stat. Ann. § 2806.1(a).

²⁰ KEEA Comments at 21.

²¹ *Id.*

²² *Id.*

²³ 66 Pa. Stat. and Cons. Stat. Ann. § 2806.1(a).

because EDCs can credit all of the reduced electricity use towards its kilowatt-hour reduction targets, and the replacement fossil-fueled energy use is “off the books” as far as Act 129’s targets are concerned. As noted in the Comments of the Environmental Stakeholders, the use of fossil fuel-based equipment is higher in greenhouse gas emissions and impedes state and municipal clean energy objectives.²⁴

As KEEA notes, this undue preference could be corrected through an amendment to the Technical Resource Manual (the “TRM”), which KEEA recommends be completed concurrently with the Phase IV planning process so that this bias is not carried forward further.²⁵ However, to ensure timely resolution of this issue, the Commission can and should disallow the use of electric-to-fossil fuel switching in EDCs’ energy efficiency and conservation (“EE&C”) plans in its Final Order on Phase IV. Under the Public Utility Code, the Commission has both the duty and the authority to ensure that its rates are just and reasonable,²⁶ and Act 129 is clear that it does not allow for any undue preference towards fossil fuels.²⁷

III. Low-Income and Multi-Family Measures

The Environmental Stakeholders note and appreciate the detailed analysis of low-income and multi-family housing issues that is contained in the comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”);²⁸ the Pennsylvania Energy Efficiency for All Coalition (“PA-EEFA”);²⁹ and the Housing Alliance of Pennsylvania.³⁰

²⁴ Comments of Environmental Stakeholders, at 8, Commission Docket No. M-2020-3015228 (Apr. 27, 2020).

²⁵ KEEA Comments at 21.

²⁶ 66 Pa. Stat. and Cons. Stat. Ann. § 1301(a); 66 Pa. Stat. and Cons. Stat. Ann. § 501(a).

²⁷ 66 Pa. Stat. and Cons. Stat. Ann. § 2806.1(a).

²⁸ Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Commission Docket No. M-2020-3015228 (Apr. 27, 2020).

²⁹ Joint Comments of PA Energy Efficiency for All Coalition, Commission Docket No. M-2020-3015228 (Apr. 27, 2020).

³⁰ Comments of the Housing Alliance of Pennsylvania, Commission Docket No. M-2020-3015228 (Apr. 2020).

The Environmental Stakeholders would like to reiterate their support for including in the Commission’s Final Order on Phase IV implementation a robust low-income carveout; for comprehensive “whole home” measures delivered by direct installation to low-income ratepayers; and for measures to facilitate energy efficiency in multi-family housing. Specifically, Environmental Stakeholders support: (1) the proposal of CAUSE-PA and PA-EEFA that the low-income carveout be set at a minimum of 6.5%; (2) the proposal of PA-EEFA to use excess Phase III budgets to expand the availability of comprehensive energy efficiency programs to low-income consumers; and (3) the proposal of CAUSE-PA and PA-EEFA that 20% of the low-income carveout should be achieved through energy efficiency measures in low-income multi-family housing.

The Environmental Stakeholders also urge the Commission’s close attention to the report entitled “Analysis of the Reach of the Act 129 Energy Efficiency and Conservation Program to Low-Income Multi-family Housing” filed by the Housing Alliance of Pennsylvania, a PA-EEFA member (the “Act 129 Low-Income Multi-Family Housing Report”).³¹ The Environmental Stakeholders agree with the two principal recommendations of the Act 129 Low-Income Multi-Family Housing Report: (1) requiring EDCs to include standardized reporting of progress in deploying energy efficiency measures in multi-family housing in their Act 129 annual reports; and (2) including in reporting on multi-family housing energy efficiency measures information on the number of units and buildings of multi-family subsidized housing, including the names of specific housing authorities and developments where permission to do so is granted.³² These recommendations will help ensure the data is available to make more progress on overcoming the barriers to energy efficiency in the low-income multi-family context.

³¹ *Id.*

³² *Id.* at 2.

The Environmental Stakeholders note that in addition to direct benefits for ratepayers, measures to improve the energy efficiency of low-income and multifamily housing are also climate justice measures, because they contribute to a just transition to the clean energy system needed to mitigate and adapt to climate change.³³

IV. Conclusion

Act 129 is one of the most successful regulatory programs in the Commonwealth in terms of year-after-year success in delivering millions of dollars in savings to ordinary Pennsylvanians. Phase IV planning should be continued, and not suspended, in order to ensure that those savings continue to flow, and to help lay the foundation for economic recovery and job growth in Pennsylvania. It is also urgent that the Commission include in its Final Order a requirement that EDCs exclude the use of electric-to-fossil fuel switching from their EE&C plans, in order to close the fossil fuel loophole and ensure that ratepayer funds are used to achieve real energy savings for Pennsylvanians. In closing, the Environmental Stakeholders respectfully request that the Commission consider these Reply Comments in its preparation of its Final Order on Phase IV of the Act 129 Energy Efficiency and Conservation Program.

³³ Daniel Aldana Cohen, *A successful climate plan must also tackle the housing crisis*, The Guardian (Oct. 1, 2019) <https://www.theguardian.com/commentisfree/2019/oct/01/a-successful-climate-plan-must-also-tackle-the-housing-crisis>

Dated: May 12, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing electronically-filed document upon the parties, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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