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May 12, 2020

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

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Reply Comments of the Industrial Energy Consumers of Pennsylvania, in the above-referenced matter.

This document was filed electronically with the Commission on this date. All parties are being served a copy of this document in accordance with the enclosed Certificate of Service.

Please contact me if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By

Derrick Price Williamson
Barry A. Naum

BAN/sds
Enclosures
c: Joseph Sherrick, Bureau of Technical Utility Services (via E-mail)
Adam Young, Law Bureau (via E-mail)
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA

On March 28, 2020, the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Tentative Implementation Order in the above-referenced docket was published in the *Pennsylvania Bulletin*. The Tentative Implementation Order requested that interested parties submit Comments within 30 days of its publication in the *Pennsylvania Bulletin*, or by April 27, 2020.

On April 27, 2020, a number of interested stakeholders, including the Industrial Energy Consumers of Pennsylvania ("IECPA"), submitted Comments as directed by the Tentative Implementation Order.

IECPA[1] is an association of energy-intensive industrial consumers of electricity taking service from regulated utilities in Pennsylvania, including Duquesne Light Company ("Duquesne"); Metropolitan Edison Company ("Met-Ed"); PECO Energy Company ("PECO");

[1] For the purpose of this matter, IECPA's membership consists of: Air Products & Chemicals, Inc.; AK Steel Corporation; ArcelorMittal USA LLC; Arconic, Inc.; Benton Foundry, Inc.; Carpenter Technology Corporation; Domtar Paper Company, LLC; East Penn Manufacturing Company; Keystone Cement; Knouse Foods Cooperative, Inc.; Marathon Petroleum Corporation; Praxair, Inc.; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

Pennsylvania Electric Company ("Penelec"); Pennsylvania Power Company ("Penn Power"); PPL Electric Utilities Corporation ("PPL"); and West Penn Power Company ("West Penn").[2] IECPA offers these Reply Comments in response to some positions and recommendations of other stakeholders, as submitted in their April 27 Comments. The fact that IECPA does not address each and every issue or recommendation raised by other stakeholders should not be construed as either support or opposition to those positions.

A. COVID-19 Issues

As noted in its Comments, IECPA previously filed with the Commission a Petition for Suspension of the Phase IV Implementation and Other Relief ("Petition"), now docketed at Docket No. P-2020-3019562, on the basis of the unknown and uncertain economic conditions that will result from the present novel-coronavirus and COVID-19 pandemic. A number of other stakeholders also acknowledged in their Comments the impact that the current pandemic poses in relation to EE&C programs generally and Phase IV in particular.

IECPA appreciates the observations of the other stakeholders, as well as the fact that the current economic situation produces a variety of responses and recommendations as to the proper role that Energy Efficiency and Conservation ("EE&C") programs may play in the Commonwealth's recovery. Given that this issue has been reserved for separate deliberation, IECPA will not respond to those recommendations here; however, understanding that the issues in the Phase IV proceeding necessarily overlap the broader questions raised by its Petition, IECPA simply reiterates its Comments here as they relate to the impact of the pandemic on the Phase IV programs.

[2] Met-Ed, Penelec, Penn Power, and West Penn are referred to collectively as the "FirstEnergy Companies."

B. Budgets and Savings Issues

1. <u>General Phase IV Budget Issues</u>

Based on IECPA's review of the various Comments submitted on the Tentative Implementation Order, it appears that most stakeholders do not take significant issue with the overall proposed budgets that the Commission has established for Phase IV. That said, a handful of stakeholders have recommended that Phase IV budgets should be increased. For example, the Keystone Energy Efficiency Alliance ("KEEA") recommends that Phase IV budgets for "total costs" should be increased by $300 million in order to account for inflation and that Electric Distribution Companies ("EDCs") should continue to invest in EE&C programs, if cost-effective, even after their established targets have been met (which could mean spending in excess of budget). KEEA Comments, pp. 5-6.

IECPA disagrees with this recommendation, and any other recommendation to increase each EDC's budget for Phase IV, which would necessarily increase the amount of contribution that each ratepayer will be required to provide to support such elevated budgets. The Pennsylvania General Assembly established the necessary budgets for EE&C programs, as well as the potential savings targets and EDC penalties associated with these budgets, when it passed Act 129. Certainly, the legislature was aware of the impact of inflation at that time and could have addressed that in the provisions of the act if it wanted to do so. Thus far, all EDCs subject to Act 129 requirements have been able to operate within those bounds, and the Commission should not second-guess the legislature's analysis and intent in the act by increasing costs to EDCs and their customers.

On another note, IECPA shares the Office of Consumer Advocate's ("OCA") concern that the cost of projected Phase IV programs will be doubled as compared with the Phase III programs, but projected savings will only comprise approximately 79 percent of those achieved under the prior phase. See generally OCA Comments, pp. 6-12. The fact that these programs continue to cost more to ratepayers while providing proportionally fewer direct benefits, likely due to the need for these programs to target more costly energy savings and peak demand reductions now that the "low hanging fruit" has been plucked, demonstrates the need for Pennsylvania and the Commission to rethink necessity and scope of these programs going forward.

2. Use of Excess Phase III and Phase IV Budgets and Savings

A number of stakeholders submitted Comments addressing the question of whether EDCs should be permitted to carry-over excess budgets and savings from their Phase III programs once Phase III targets have been met. Regarding excess budgets, the Tentative Implementation Order states that while EDCs should be permitted to use excess budgets in Phase III to achieve savings beyond their targets, they should not be able to use excess Phase III budgets to fund Phase IV programs, particularly when any excess budgets remaining (after paying necessary costs to finalize Phase II measures) can be used to refund customers for payments made in pursuit of Phase III targets. Tentative Implementation Order, pp. 69-70. The Tentative Implementation Order also applies this principle to the use of excess budgets after Phase IV targets have been met, further restricting the use of these excess funds toward Phase V programs and requiring refund to customers (again, after reconciliation of costs and the finalization of installed and commercially operable measures). Id. at 70. With respect to excess savings, the Tentative Implementation Order provides that EDCs should be able to carry-over excess energy and demand savings actually achieved during Phase III in order to meet their Phase IV targets. Id. at 23.

Some stakeholders disagree with the approach presented by the Tentative Implementation Order, presumably on the basis that a limitation on the carry-over of excess budgets and the ability to carry-over excess savings would limit the amount of energy savings and peak demand reduction that might be achieved in Phase IV (and beyond). For example, KEEA recommends that the EDCs be required to invest their full Phase IV budgets in ongoing and supplemental programs irrespective of whether energy savings and peak demand targets have been met, and opposes the refund of any excess budgets to customers. KEEA Comments, pp. 8-10. The Pennsylvania Energy Efficiency for All Coalition ("PA-EEFA") appears to agree with KEEA on this point, recommending that EDCs be <u>required</u> to invest excess budgets in further energy savings and demand reduction and opposing any refund of excess funds to customers. PA-EEFA Comments, pp. 20-21.

Although appreciating the objectives that these and other parties may advocate regarding their desire to see more investment in energy efficiency and peak load reduction, IECPA agrees with the approach employed by the Commission as it relates to the use of excess budgets and savings. The Tentative Implementation Order effectively balances the requirements of Act 129 with the realization that these programs, including all of the savings produced by them, are derived from funds contributed by ratepayers through EE&C surcharges. If the mandates under Act 129 are achieved, then both EDCs and ratepayers should have the opportunity to receive some benefit of the EDCs efficiently meeting their targets.

Regarding the specific question of the potential carry-over of excess peak demand savings from Phase III energy programs to meet Phase IV demand reduction targets, certain parties recommend that the EDCs be permitted to do so, whether those savings are from Phase III demand or energy efficiency programs. <u>See</u> <u>generally</u>, <u>e.g.</u>, Comments of Energy Association of Pennsylvania ("EAP"); FirstEnergy Companies; PECO; PPL. IECPA supports this proposal as a reasonable measure to assist the EDCs with their Phase IV peak demand reduction management, particularly given the aggressive targets that the Commission has tentatively established in this regard.

C. Peak Demand Reduction Issues

1. Overall Peak Demand Reduction Targets

Numerous parties submitted Comments addressing the Tentative Implementation Order's requirement that each EDC must satisfy 100 percent of the estimated available reduction determined by the *Pennsylvania Act 129 Phase IV Energy Efficiency and Peak Demand Reduction Market Potential Study* and *Pennsylvania Act 129 Phase IV Demand Response Potential Study* ("EEPDR"). For example, the EDCs all seem to agree that this peak demand reduction standard is to too aggressive and may not be reasonable for the EDCs to meet, which could result in penalties under the Act 129 requirements for failure to achieve targets. See, e.g., Comments of EAP, Duquesne, the FirstEnergy Companies, PECO. PPL also notes that the proposed Phase IV implementation of residential and small commercial peak demand requirements poses an additional problem insofar as EDCs may have no experience in managing programs of that sort. See PPL Comments, p. 12. Reiterating the fact that assumptions underlying the EEPDR Potential Study are likely no longer reliable under current conditions, IECPA agrees with the EDCs that the Commission should revise the peak reduction targets for Phase IV. IECPA is particularly concerned that maintaining these targets under the present circumstances may force the EDCs to invest in peak reduction programs for customers that are costly and inefficient.

2. Mandatory Nomination of Peak Demand Reductions

One position that seems to have garnered universal agreement among various stakeholder interests who addressed the issue is the opposition to the Tentative Implementation Order's mandate that EDCs nominate a portion of peak demand reductions achieved through Phase IV programs as capacity resources in the PJM Interconnection, LLC ("PJM") Forward Capacity

Market ("FCM").[3] See generally, e.g., Comments of PECA, et al.; Duquesne; FirstEnergy Companies; PECO; KEEA; Pennsylvania Energy Efficiency Providers ("PA EE Providers"). For the reasons stated in their Comments, IECPA agrees with these parties that EDC bidding of peak demand reductions should be voluntary, particularly to the extent that uncertainties exists with PJM's treatment of these resources under its revised Minimum Offer Price Rule ("MOPR"). See, e.g., EAP Comments, p. 21; and PA EE Providers Comments, pp. 2-3. IECPA also agrees with KEEA that there are numerous qualified commercial and industrial ("C&I") customers who will continue to independently participate in PJM markets in this manner at a lower cost and risk to ratepayers than the EDCs' bidding of these resources.

3. Use of Proceeds from Successful PJM Bidding

With its Tentative Implementation Order, the Commission preempted arguments that the proceeds from an EDCs' successful bidding of peak demand resources in the PJM market should be used to augment Phase IV programs and spending, stating that these proceeds should instead be used to offset customer charges. Despite this clear statement, some stakeholders have still argued that these proceeds should be used to expand Phase IV programs. See generally, e.g., Comments of KEEA; Environmental Stakeholders; the Pennsylvania Energy Efficiency for All Coalition ("PA-EEFA"). KEEA in particular recommends that instead of crediting consumers with EE&C surcharge offsets, revenues obtained from successful PJM bids of C&I should be "invested in supplementary energy efficiency programs that benefit C&I customers" and that successful bids from residential resources should similarly be invested in supplementary residential programs. KEEA Comments, p. 18. For its part, PA-EEFA appears to suggest that, regardless of whether the proceeds result from residential or C&I peak demand reductions, all

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

proceeds should be used "to address health and safety needs" of low-income customers. PA-EEFA Comments, p. 20.

As a general principle, IECPA reiterates that the Tentative Implementation Order's consideration of this issue is generally correct, and that if customers within a given class contribute peak demand reductions that are subsequently nominated into the PJM FCM, producing proceeds to EDCs, then those proceeds absolutely must be used to reduce the EE&C charges for those customers. In the event that the Commission may revise its consideration in this regard to address concerns related to residential customers, IECPA submits that such a revision as it pertains to C&I peak load reduction revenues remains inappropriate. Certainly, under no circumstances should proceeds obtained from successful bids of C&I load reduction nominations be used to the benefit of other classes in any way.

IECPA also reiterates its opinion and recommendation that these successful PJM FCM bidding proceeds should be allocated and returned, in the form of reduced EE&C charges, to the individual customers who provide the peak demand reductions that clear the PJM FCM. In this regard, though it is not entirely clear, it appears that the PA EE Providers may agree. Although commenting that "[i]f these revenues were returned to ratepayers, participant costs would increase and degrade the effectiveness of the energy efficiency project that they currently support," the PA EE Providers correctly note that "revenues derived from the FCM are shared by participants and used to underwrite participant costs and thereby enhance project value." PA EE Providers Comments, p. 1. If understanding this position correctly, then IECPA agrees to the extent that returning the proceeds to a <u>broad class of ratepayers</u> would create the unintended result that the PA EE Providers identify. Thus, IECPA believes that this is precisely why such proceeds should be returned directly to the individual customers (i.e., the "participants") who actually provide the peak demand reductions.

4. Revenue Sharing Mechanism

Although seemingly agreeing with the Tentative Implementation Order's intent that proceeds obtained from successful bids of peak capacity reductions in the PJM FCM be used to offset customer charges, the FirstEnergy Companies also recommend that the Commission adopt a "revenue sharing" mechanism whereby EDCs would receive 20 percent of the share of the proceeds provided by PJM for successful FCM bids. According to the FirstEnergy Companies, this revenue sharing mechanism would "encourage and optimize PJM participation in the most prudent manner and create a 'win-win' opportunity for customers, stakeholders, and the utilities" and "balances the risk and potential benefits of auction participation for the Companies and ratepayers and helps ensure that the interests of the Companies and their customers are properly aligned." FirstEnergy Companies Comments, p. 12. IECPA disagrees with this suggestion and requests that the Commission disregard the proposal.

Act 129 and the Commission's regulations and EE&C implementation orders have established mandatory peak demand savings targets and all EDCs in Pennsylvania have an obligation to invest ratepayer resources prudently. 66 Pa. C.S. § 2806.1(b); see also 66 Pa. C.S. § 1319(a)(2).[4] There is no evidence that EDCs in Pennsylvania need additional motivation to

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[4] 66 Pa. C.S. § 1319. Financing of energy supply alternatives.

(a) Recovery of certain additional expenses.--If:

(1) a natural gas or electric public utility elects to establish a conservation or load management program and that program is approved by the commission after a determination by the commission that the program is prudent and cost-effective; or

(2) the commission orders a natural gas or electric public utility to establish a conservation or load management program that the commission determines to be prudent and cost-effective;

participate in PJM or to develop a peak load reduction program "prudently." The "win-win" opportunity that is presented by the Tentative Implementation Order's proposed return of proceeds to customers (with the caveat stated previously that the proper return is directly to participating customers) is that customers gain the value of slightly reduced EE&C charges while EDCs receive the benefit of peak demand savings that they need to satisfy their Phase IV targets (and avoid paying significant penalties for failure to do so). These are the properly allocated benefits of PJM FCM participation, and nothing more is needed to incentivize EDCs (or their shareholders) for this participation. Furthermore, as correctly noted by KEEA, customers that choose to implement peak load reductions "have already absorbed the upfront costs and risks to ratepayers." KEEA Comments, p. 17. Thus, the FirstEnergy Companies' argument that a further "balancing of risks" is necessary is inapt and should be disregarded.

D. General C&I Program Participation and Issues

In their Comments, PECA, et al., requests that large C&I customers not be included in the Phase IV programs or, alternatively, that large C&I customers be provided an opportunity to "opt-out" of participation in Phase IV. PECA, et al., Comments, p. 2. According to these parties, "[m]any larger customers have historically derived little value from [EE&C] measures at significant cost during Phases I, II, and III of the EE&C Program" and the Commission's implementation of Phase IV "will result in the unnecessary expenditure of Large C&I customer funds that adversely impacts businesses and their employees, customers, and Pennsylvania's

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the commission shall allow the public utility to recover all prudent and reasonable costs associated with the development, management, financing and operation of the program, provided that such prudent and reasonable costs shall be recovered only in accordance with appropriate accounting principles. Nothing in this section shall permit the recovery of costs in a manner prohibited by section 1315 (relating to limitation on consideration of certain costs for electric utilities). Nothing in this section shall permit the recovery of the cost of producing, generating, transmitting, distributing or furnishing electricity or natural gas.

(emphasis added)

economy during a very challenging and unprecedented time." Id. at 2. This is consistent with the IECPA's findings and the experience of IECPA's membership, and also with the findings of the Office of Small Business Advocate ("OSBA"), who noted that "while the costs are borne by all ratepayers," the benefits of EE&C programs flow primarily to participants," resulting in a cross-subsidization that is "inherently inequitable." OSBA Comments, p. 2.

As noted in IECPA's Comments, the presence of continuing EE&C programs and significant surcharges, accompanied by the absence of an "opt-out" provision, presents a particular challenge to large C&I ratepayers in Pennsylvania that have to compete with businesses in more favorable regulatory environments that recognize the individual efforts of C&I ratepayers and do not mandate participation in an EDC administered program and the imposition of these substantial costs. Therefore, IECPA supports the request of PECA, et al., to exclude large C&I customers from Phase IV or to otherwise provide an opportunity for them to opt out of the various EDC programs.

Conversely, other stakeholders have offered Comments suggesting that the proper treatment of C&I customers and C&I programs is to increase investment and perhaps strengthen mandatory participation by customers. For example, the Advanced Energy Management Alliance ("AEMA") stated, in relation to C&I demand response programs, that elimination of these programs "would result in an overall increase to these customers' anticipated bills at what is likely to be a critical juncture for economic recovery." AEMA Comments, p. 4. With respect to these programs, AEMA further posits that the potential peak load savings from the C&I sector "is the largest and usually the most cost-effective for or potential demand response" and that "including Large C&I [demand response ("DR")] would result in a DR plus EE portfolio that has greater net benefits than an EE-only portfolio." Id. at 10, 12.

IECPA does not dispute that EE&C programs target to large C&I customers have the potential to decrease energy consumption and peak demand significantly, but this is because of the large amount of energy and demand that these customers consume and require on each EDC's system. Given these large consumption and demand requirements, any reduction is going to -- on a raw number basis -- substantially contribute to system savings disproportionately to other customer sectors. What this fails to acknowledge, however, is that large C&I EE&C programs, whether targeted to energy efficiency or demand response, impose significant costs on all customers within the class, who pay surcharges based on peak load contribution, irrespective of whether individual customers are actually able to directly benefit from the incentives of these programs. Thus, contrary to the belief that elimination of large C&I programs would increase these customers' bills, the elimination of massive surcharge costs (which often comprise a significant portion of a large C&I customer's operating expenses) would be a direct cost benefit to these customers. IECPA submits that, particularly in the current economic environment, such a measure would be far more beneficial to individual customers, and to the Pennsylvania economy as a whole, than increasing mandatory funding of EDC programs. Furthermore, these customers -- who are generally sophisticated and constantly look for ways to further control their costs -- could invest that foregone surcharge expense in directly applicable energy efficiency and peak load reduction measures at their facilities, which would undeniably provide the same system-wide savings benefits to all ratepayers that are prized by supporters of costly EDC-managed programs that necessarily pick winners and losers.

It is for this reason that IECPA continues to support an "opt-out" provision, or alternatively, the elimination of large C&I programs as PECA, et al., advocates. For individual large C&I customers, whose businesses are directly engaged in building (and re-building) the Pennsylvania economy, and particularly for those that are unable to directly benefit from incentives under EE&C programs, these alternatives provide demonstrably better options.

WHEREFORE, the Industrial Energy Consumers of Pennsylvania respectfully requests that the Pennsylvania Public Utility Commission consider these Reply Comments, and IECPA's previously filed Comments, in determining the next steps regarding implementation of the Phase IV Energy Efficiency and Conservation programs throughout Pennsylvania.

Respectfully submitted,

By ______________________________

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Dated: May 12, 2020

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

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Dated: May 12, 2020