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| **PENNSYLVANIA****PUBLIC UTILITY COMMISSION****Harrisburg, PA 17120** |
| Public Meeting held March 25, 2021 |
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| Commissioners Present:Gladys Brown Dutrieuille, Chairman, Joint StatementDavid W. Sweet, Vice Chairman, Joint StatementJohn F. Coleman, Jr.Ralph V. Yanora |
| Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Phase IV Plan | M-2020-3020818  |

**Table of Contents**

[I. Background 1](#_Toc66354605)

[A. Act 129 1](#_Toc66354606)

[B. The Company 4](#_Toc66354607)

[II. Procedural History 4](#_Toc66354608)

[III. Description of the Plan 9](#_Toc66354609)

[IV. Discussion 11](#_Toc66354610)

[A. Legal Standards 12](#_Toc66354611)

[B. Phase IV Conservation and Peak Demand Reduction Requirements 13](#_Toc66354612)

[1. Overall Conservation Requirements 13](#_Toc66354613)

[2. Peak Demand Reduction Requirements 14](#_Toc66354614)

[3. Comprehensive Programs 16](#_Toc66354615)

[4. Government/Non-Profit/Institutional Requirement 17](#_Toc66354616)

[5. Low-Income Program Requirements 17](#_Toc66354617)

[6. Proposal for Improvement of Plan 19](#_Toc66354618)

[C. Cost Issues 20](#_Toc66354619)

[1. Plan Cost Issues 20](#_Toc66354620)

[2. Cost Effectiveness/Cost-Benefit Issues 22](#_Toc66354621)

[3. Cost Allocation Issues 24](#_Toc66354622)

[4. Cost Recovery Tariff Issues 25](#_Toc66354623)

[D. Conservation Service Provider Issues 28](#_Toc66354624)

[E. Implementation and Evaluation Issues 29](#_Toc66354625)

[1. Implementation Issues 29](#_Toc66354626)

[2. Monitoring, Reporting and Evaluation Issues 29](#_Toc66354627)

[F. COVID-19 Impacts on Reduction Targets 31](#_Toc66354628)

[G. Joint Petition for Full Settlement 31](#_Toc66354629)

[1. Introduction 31](#_Toc66354630)

[2. Terms and Conditions of the Full Settlement 32](#_Toc66354631)

[3. Positions of the Parties 36](#_Toc66354632)

[4. Disposition 43](#_Toc66354633)

[VI. Conclusion 45](#_Toc66354634)

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition (Petition) of Duquesne Light Company (Duquesne or the Company) for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan (Phase IV Plan) filed on November 30, 2020. Also before the Commission is the Joint Petition for Full Settlement (Settlement) filed by Duquesne, the Office of Consumer Advocate (OCA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Community Action Association of Pennsylvania (CAAP), (collectively, the Joint Petitioners) on February 18, 2021. As discussed, *infra,* on March 1, 2021, Duquesne submitted a revised Phase IV Energy Efficiency and Conservation Plan (*Revised Phase IV Plan*).In accordance with the Commission’s Order in *Energy Efficiency and Conservation Program*, Docket No. M- 2020-3015228 (Order entered June 18, 2020) (*Phase IV Implementation Order*), Administrative Law Judges (ALJs) Mark Hoyer and Emily DeVoe certified the record in this proceeding on March 2, 2021. For the reasons fully delineated herein, we will approve the Settlement, grant Duquesne’s Petition and approve the Revised Plan.

# I. Background

## A. Act 129

On October 15, 2008, Act 129 of 2008 (Act 129 or Act) was signed into law with an effective date of November 14, 2008. Among other requirements, Act 129 directed the Commission to adopt an Energy Efficiency and Conservation (EE&C) Program, under which each of the Commonwealth’s largest electric distribution companies (EDCs) were required to implement a cost-effective EE&C plan to reduce energy consumption and demand. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt an EE&C plan to reduce energy demand and consumption within its service territory. Initially, Act 129 required each affected EDC to adopt an EE&C plan to reduce electric consumption by at least 1% of its expected consumption for June 1, 2009 through May 31, 2010, by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption was to be reduced by a minimum of 3%. Also, by May 31, 2013, peak demand was to be reduced by a minimum of 4.5% of each EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007 through May 31, 2008.

On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 (*Phase I Implementation Order*), which established the standards each plan must meet, and which provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of the EE&C plans. The Commission subsequently approved an EE&C plan (and, in some cases, modifications to the plan) for each affected EDC.

Another requirement of Act 129 directed the Commission to evaluate the costs and benefits of the Commission’s EE&C Program and of the EDCs’ approved EE&C plans by November 30, 2013, and every five years thereafter. The Act provided that the Commission must adopt additional incremental reductions in consumption and peak demand if it determines that the benefits of the EE&C Program exceed its costs.

The Commission subsequently issued an Implementation Order at Docket Nos. M-2012-2289411 and M-2008-2069887 (*Phase II Implementation Order*), which established required standards for Phase II EDC EE&C plans (including the additional incremental reductions in consumption that each EDC must meet) and provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of the EDCs’ Phase II EE&C plans. Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets. The Commission subsequently approved a Phase II EE&C Plan (and, in some cases, modifications to the plan) for each affected EDC.

On March 11, 2015, the Commission issued a Tentative Implementation Order (*Phase III Tentative Implementation Order*) at Docket No. M-2014-2424864 for Phase III of the EE&C Program. Following the submittal and review of comments, on June 19, 2015, the Commission issued an Implementation Order at that same docket number (*Phase III Implementation Order*). Among other things, the *Phase III Implementation Order* established standards each plan must meet and provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of EDC EE&C plans for the period from June 1, 2016 through May 31, 2021.

On March 12, 2020, the Commission adopted a Phase IV Tentative Implementation Order at Docket No. M-2020-3015228 (entered March 12, 2020) (*Phase IV Tentative Implementation Order*). Comments in response to the *Phase IV Tentative Implementation Order* were due April 27, 2020. Reply comments were due May 12, 2020.

On June 18, 2020, the Commission issued an Implementation Order at Docket No. M-2020-3015228 (*Phase IV Implementation Order*), which, among other things, established required standards for Phase IV EDC EE&C plans (including the additional incremental reductions in consumption that each EDC must meet) and provided guidance on the procedures to be followed for submittal, review, and approval of all aspects of the EDCs’ Phase IV EE&C plans. In addition, the *Phase IV Implementation Order* established targets for consumption reduction, peak demand reduction and low-income consumption reduction for each company.

## B. The Company

Duquesne is a public utility as the term is defined under Section 102 of the Public Utility Code (Code), 66 Pa. C.S. § 102, certificated by the Commission to provide electric service in the City of Pittsburgh and in Allegheny and Beaver Counties in Pennsylvania. Duquesne is also an EDC and a default service provider as those terms are defined under Section 2803 of the Code. 66 Pa. C.S. § 2803. Duquesne provides electric distribution service to approximately 600,000 customers in its service territory.

# II. Procedural History

On June 18, 2020, the Commission entered the *Phase IV Implementation* *Order* with respect to the Energy Efficiency and Conservation Program at Docket No. M‑2020-3015228. In the *Phase IV Implementation Order*, the Commission adopted a timeline for Phase IV of the Program which called for, *inter alia*, EDCs to file EE&C Phase IV Plans by November 30, 2020, and a Commission ruling on the EE&C Plans in March 2021.

On November 30, 2020, Duquesne filed the above-captioned Petition with the Commission pursuant to Act 129, 66 Pa. C.S. §§ 2806.1 and 2806.2 and the Commission’s *Phase IV Implementation Order*. Notice of the filing was published in the *Pennsylvania Bulletin* on January 2, 2021, 51 *Pa.B*. 116 and on January 9, 2021, 51 *Pa. B*. 252.[[1]](#footnote-2)

On December 11, 2020, CAUSE-PA filed a Petition to Intervene.

On December 21, 2020, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, Public Statement, and Verification, as well as a Notice of Appearance.

On December 21, 2020, CAAP filed a Petition to Intervene.

On December 31, 2020, the OCA filed a Notice of Intervention, Public Statement, and Verification, as well as a Notice of Appearance.

A prehearing conference was held as scheduled on January 6, 2021. Duquesne, the OCA, the OSBA, CAUSE-PA and CAAP were represented at the conference.

No Party objected to the Petitions to Intervene of CAUSE-PA and CAAP, and the Petitions were granted during the prehearing conference.

A Prehearing Order was entered on January 7, 2021, setting a litigation schedule and discovery rule modifications and detailing other matters. Also, on January 7, 2021, the Commission issued a Hearing Notice scheduling an evidentiary hearing for January 22, 2021.

On January 8, 2021, CAUSE-PA, CAAP, the OCA, and OSBA filed a Joint Expedited Motion for Extension of Procedural Schedule (Motion).[[2]](#footnote-3)

On January 11, 2021, the ALJs issued an Interim Order directing the Parties to: (1) file responses, if any, to the Motion by Wednesday, January 13, 2021, and (2) file responses, if any, to the Office of Administrative Law Judge’s Proposed Revised Schedule detailed in the January 11, 2021 Order by Wednesday, January 13, 2021.

Duquesne, CAUSE-PA, the OCA, and OSBA timely filed responses to the January 11, 2021 Order.

On January 14, 2021, Chief Administrative Law Judge Charles Rainey (CALJ Rainey) issued an Order Denying the Joint Expedited Motion for Extension of Procedural Schedule. CALJ Rainey’s Order provided that: evidentiary hearings occur on or before February 8, 2021, briefs are to be filed on or before February 18, 2021, reply comments/revised plans are to be filed by March 1, 2021, and the record is to be certified by March 2, 2021.

On January 15, 2021, the ALJs emailed the Parties advising that, in light of Chief Rainey’s Order, they were suspending the litigation schedule and cancelling the evidentiary hearing scheduled for January 22, 2021. The email directed the Parties to confer regarding a litigation schedule and that the ALJs would meet with the Parties at 8:00 a.m. on January 19, 2021 to set a new litigation schedule and hearing date.

A conference was convened on January 19, 2021 at 8:00 a.m.[[3]](#footnote-4) Both the ALJs and all the Parties, except for OSBA, were present. The Parties presented an agreed upon litigation schedule and later confirmed by email that OSBA was in agreement with the schedule as well. The revised schedule was adopted via an Interim Order entered January 26, 2021.

On January 19, 2021, the Commission issued a Notice rescheduling the evidentiary hearing for February 8, 2021 at 10:00 a.m.

On January 20, 2021, Peoples Natural Gas Company LLC (Peoples) filed a Petition to Intervene. On January 25, 2021, Duquesne advised the ALJs by email that it had no objection to the Petition to Intervene.

On January 22, 2021, comments to the Company’s Phase IV Plan were filed by Daikin Industries Ltd., Energy Efficiency for All Pennsylvania Coalition of Pennsylvania (PA-EEFA), Keystone Energy Efficiency Alliance (KEEA). On January 25, 2021, Ceres also filed comments to the Company’s Phase IV Plan.

On January 26, 2021, an Interim Order was entered adopting the litigation schedule discussed at the January 19, 2021 prehearing conference and granting Peoples’ Petition to Intervene.

On February 5, 2021, Duquesne, the OCA, CAUSE-PA, Peoples, and CAAP (Stipulating Parties), filed a Joint Stipulation for Admission of Testimony and Exhibits into the Evidentiary Record (Joint Stipulation).[[4]](#footnote-5) Each of the Stipulating Parties stipulated to the authenticity of the statements and exhibits listed in the Joint Stipulation and requested that they be admitted into the record of this proceeding on the terms and conditions set forth in the Joint Stipulation.

Also, on February 5, 2021, the Company’s counsel emailed the ALJs advising that all parties agreed to waive cross-examination and had reached a settlement in this matter. Counsel also requested that the evidentiary hearing be cancelled.

By Notice dated February 5, 2021, the evidentiary hearing was cancelled.

An Interim Order was entered on February 8, 2021, adopting the Joint Stipulation and admitting the testimonies and exhibits listed in the Joint Stipulation into the record.

On February 18, 2021, Duquesne, CAUSE-PA, CAAP, and the OCA (Joint Petitioners) filed a Joint Petition for Full Settlement (Settlement or Joint Petition for Settlement). The Joint Petition for Settlement indicates that the Settlement has been agreed to or not opposed by all active Parties to this proceeding. Also, on February 18, 2021, OSBA filed a Letter of Non-Opposition to the Joint Petition for Settlement.

On March 1, 2021, Duquesne filed its *Revised Phase IV Plan* with the Commission and served the Parties with the *Revised Phase IV Plan*.

 By Order Certifying the Record dated March 2, 2021, ALJs Hoyer and DeVoe provided a history of the proceeding; delineated the transcripts, statements and exhibits admitted into the record; and certified the record to the Commission for consideration and disposition.

# III. Description of the Plan

 The *Phase* *IV Implementation Order* established a Phase IV consumption reduction target for Duquesne of 348,126 MWh over a five-year period from June 1, 2021 through May 31, 2026, and a peak demand reduction target of 62 MW. *Phase IV Implementation Order* at 8. In its *Revised Phase IV Plan*, Duquesne explained that its plan includes programs that are being continued as previously implemented, modified based on previous years’ experience implementing them, and newly added programs. *Revised Phase IV Plan* at 10. Duquesne provided the following summary of its proposed programs:

**Residential Appliance Recycling Program –** This program encourages residential customers to turn in their older operating refrigerators and freezers to be recycled. To encourage participation in this program, an Incentive Rebate is offered for the removal of an older, working unit.

**Residential Downstream Incentives Program –** This program provides access to both printed and internet based educational materials, as well as financial incentives in the form of energy efficiency product rebates. The downstream rebate program model has been expanded to include market rate customer comprehensive audits, direct install measures and residential energy efficiency kits.

**Residential Midstream Incentives Program –** This program provides incentives for HVAC, hot water, and auxiliary equipment through participating distributors and to residential HVAC distributors to offset the higher cost. The residential customer receives the benefit of the rebate at the point of sale through the participating distributors or through installation of the equipment by a contractor.

**Residential Upstream Incentives Program –** This program will offer point of sale rebates on qualified energy efficient lighting products and appliances. The residential customer receives the benefit of the rebate at the point of sale through the participating retailers.

**Residential Behavioral Energy Efficiency (R-BEEP) –** The program sends via direct mail R-BEEP reports that compare recipient customers’ energy use to customers with similar home type and size. R-BEEP provides for comparison of the last two months of energy consumption by (1) the most efficient of the peer group, (2) the R-BEEP recipient, and (3) the entire peer group.

**Residential Low-Income Energy Efficiency Program (LIEEP) –** This program is a direct-install program where walk-through and comprehensive audits are performed, energy efficiency education is provided, and energy efficient products and equipment are installed at no cost to income qualified households.

**Low-Income Behavioral Efficiency Program (LI-BEEP) –** Specialized low income home energy reports are provided to a targeted income qualified customer population of approximately 15,600 customers each year of the Phase IV performance period.

**Small Business Direct Install Program –** This program is a direct install program that offers Duquesne’s small business customers the opportunity to retrofit existing equipment with more energy efficient technologies.

**Small Business Solutions Program –** Program components include energy use auditing, provision of targeted financing and incentives, project management and retrofit measure installation, training, and technical assistance.

**Small Business Midstream Solutions Program –** This program provides incentives directly to distributors and manufacturers, rather than to end users, for efficient products, offsetting the higher costs and effectively driving uptake of the most efficient equipment options.

**Small Business Virtual Commissioning Program –** This program leverages advanced metering infrastructure (AMI) data analytics to identify and qualify customers with significant potential for energy savings. Once identified, prospects are offered personalized remote engagement by phone and email to help them understand their energy usage and are provided with instructions for self-correction.

**Large Business Solutions Program –** This program provides a set of simple solutions for customers interested in reducing their energy consumption by installing highly efficient technologies and improving operational processes that produce verifiable energy and demand savings. This program influences the selection of high-efficiency equipment in retrofit, new construction, and end-of-life equipment replacement scenarios.

**Large Business Midstream Solutions Program –** This program moves incentives up the supply chain to the distributors and manufacturers that have the greatest influence on equipment sales.

**Large Business Virtual Commissioning Program –** This program targets large Commercial and Industrial (C&I) customers with demand equal to or greater than 300 kW. This program uses AMI data analytics to identify and qualify customers with significant potential for energy savings. Once identified, customers are offered personalized remote engagement by phone and email to help them understand their energy usage and are provided with instructions for self-correction.

*See Revised Phase IV Plan* at 25-79.

# IV. Discussion

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. [Consolidated Rail Corporation v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) see also, generally, [University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## A. Legal Standards

Because the Joint Petitioners have reached a settlement, the Joint Petitioners have the burden to prove that the Settlement is in the public interest. Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. Settlement terms often are preferable to those achieved at the conclusion of a fully litigated proceeding. In addition, a full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort, and expense of litigating a case. Act 129 cases often are expensive to litigate, and the reasonable cost of such litigation is an operating expense recoverable in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony, cross-examining witnesses in lengthy hearings, and preparing and serving briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assoc.*, *supra*. Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*,489 Pa. 109, 413 A.2d 1037 (1980).

## B. Phase IV Conservation and Peak Demand Reduction Requirements

### 1. Overall Conservation Requirements

The *Phase IV Implementation Order* established a Phase IV energy consumption reduction target of 348,126 MWh for Duquesne, which was based on a 2.5% reduction in the Company’s expected load as forecasted by the Commission for the period June 1, 2009 through May 31, 2010. *Phase IV Implementation Order* at 8, 18. Consumption reductions are measured using a savings approach. *Id.* at 49. Each EDC was directed to develop a plan that was designed to achieve at least 15% of the target amount in each program year. *Id.* at 20. The 15% target requirement is limited to the Commission’s review and approval of the EE&C Plan and is not a target subjected to the penalty provisions set forth in § 2806.1(f) of Act 129. *Id.*

In the *Phase IV Implementation Order*, the Commission expressed concern that the carryover of all excess savings from phase to phase of the EE&C Program will lead to a scenario in whichEDCs meet most, if not all, of its reduction target simply with carryover savings. As a result, the Commission concluded that EDCs are allowed to carry-over only excess savings obtained in Phase III for application toward Phase IV targets. *Phase IV Implementation Order* at 46.

Duquesne is required to achieve a total cumulative energy reduction of at least 348,126 by May 31, 2026, with at least 15% of the savings compliance target being achieved in each of the five program years. *Phase IV Implementation Order* at 8, 20. Duquesne’s *Revised Phase IV Plan* is designed to achieve an overall consumption reduction of 370,178,065 kWh. No Party raised an issue regarding the Plan’s ability to achieve the consumption reduction target. Duquesne Statement in Support at 5; *Revised Phase IV Plan* at 19.

### 2. Peak Demand Reduction Requirements

Peak demand for Phase IV is addressed at 66 Pa. C.S. § 2806.1(d)(2), which requires the Commission, by November 30, 2013, to compare the total costs of EE&C plans to total savings in energy and capacity costs to retail customers. If the Commission determines that the benefits of the plans exceed the costs, the Commission shall set additional incremental requirements for reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the Commission. Any such reductions must be measured from the EDC’s peak demand for the period from June 1, 2011 through May 31, 2012. *Phase IV Implementation Order* at 82.

For Phase IV of Act 129, the Commission proposed that peak demand reductions (PDRs) from energy efficiency (EE) measures be measured using the savings approach described in Section A.7: Measuring Annual Consumption Reductions of the *Phase IV Implementation Order*, and the definition of peak demand from Phases II and III, as documented in the 2021 TRM.[[5]](#footnote-6) *Phase IV Implementation Order* at 82.

The Commission does not allow a peak demand carryover from Phase III to Phase IV. The *Phase IV Implementation Order* states:

Phase III of Act 129 included a PDR target that could only be met with dispatchable demand response (DDR) programs. Phase IV of Act 129 includes a PDR target that can only be met with coincident reductions in peak demand from energy efficiency programs. No EDC accumulated savings in excess of a Phase III EEPDR target because no such target existed. Because the nature of the PDR targets in Phase III and Phase IV are inherently different, we believe it would be inappropriate to count surplus Phase III MW achievements from dispatchable demand response programs towards a Phase IV PDR target. Therefore, carryover of Phase III peak demand savings into Phase IV of Act 129 will not be permitted.

*Phase IV Implementation Order* at 85-86.

The demand reduction (DR) target for Duquesne is 62 MW, which is a 2.5% reduction in peak demand. *Phase IV Implementation Order* at 80. No Party raised an issue regarding the Plan’s ability to achieve the demand reduction target.

The *Phase IV Implementation Order* directs EDCs to nominate a portion of the expected peak demand savings in their Phase IV EE&C Plans into PJM’s Forward Capacity Market (FCM). The Order states that cost recovery from the customer class providing the capacity will be adjusted to reflect the proceeds or penalties from this activity. The *Phase IV Implementation Order* provides further that utilities should “carefully consider their nomination levels and adopt a conservative bidding strategy to limit the likelihood of deficiency charges or nominated resources not clearing.” *Phase IV Implementation Order* at 136-141.

In accordance with the Settlement, Duquesne proposes to offer a portion of the peak demand reductions from its *Revised Phase IV Plan* into PJM’s FCM from the portfolio of programs and measures that are eligible for PJM as provided in PJM Manuals 18 and 18B or their successors. Duquesne intends to create a single EE Resource modeled in PJM’s Capacity Exchange system representing commercial (office, retail or healthcare) interior lighting. Duquesne intends to nominate EE Resource demand reductions beginning with PJM’s Base Residual Auction (BRA) for delivery year 2025/2026, which is expected to occur in early 2023. Duquesne proposes to combine documented energy savings and demand reductions with modeled annual hourly load shapes to calculate demand reductions during summer and winter performance hours. Duquesne plans to nominate up to 2 MW into PJM’s FCM beginning with the BRA for delivery year 2025/2026, and continue in each successive BRA, applicable during Phase IV. *Revised Phase IV Plan* at 11-12.

As part of the Settlement, Duquesne agreed that: (1) delivery year 2025/2026 will be the first delivery year for which it may bid peak demand savings into the PJM FCM; (2) Duquesne will only bid those nonresidential peak demand savings that, in its judgement, are among the lowest risk of yielding a PJM penalty; (3) Duquesne will not bid residential peak demand savings into the FCM; (4) Duquesne will allocate proceeds and penalties associated with FCM as described in Section 7.7 of the Phase IV Plan; and (5) Duquesne will include a FCM component in Rider 15A of its retail tariff as depicted in Exhibit DBO-1R in Duquesne St. 2-R. Settlement at ¶¶ 39-42.

### 3. Comprehensive Programs

The *Phase IV Implementation Order* did not require a proportionate distribution of measures among customer classes. However, it did require that each customer class be offered at least one program. *Phase IV Implementation Order* at 92. In addition, the Commission required that EE&C Plans include at least one comprehensive program for residential customers and at least one comprehensive program for non-residential customers. *Id.* at 23-24.

Duquesne submits that its *Revised Phase IV Plan* offers at least one comprehensive program for residential customers and at least one for non-residential customers. Duquesne Statement in Support at 3. Duquesne provides that its Residential Programs and Small Commercial Direct Install Programs are comprehensive measures. *Revised Phase IV Plan* at 23.

### 4. Government/Non-Profit/Institutional Requirement

Act 129 required that Phase I EE&C Plans obtain a minimum of 10% of all consumption and peak demand reduction requirements from units of the Federal, State, and local governments, including municipalities, school districts, institutions of higher education and non-profit entities (GNI sector). 66 Pa. C.S. § 2806.1(b)(1)(i)(B). The Commission did not allow a specific carve-out for the GNI sector for Phase IV of Act 129. The Commission stated that it would require that the EDCs report savings achieved for the GNI sector in Phase IV and that the EDCs’ EE&C plans highlight how the GNI sector will be served. *Phase IV Implementation Order* at 37, 39-40. The Commission also found that the EDCs and their stakeholders are in the best position to determine the appropriate programs in each territory. *Id.*

 Duquesne provides that the GNI sector will be served via the small business and large business programs as described *supra*. *Revised Phase IV Plan* at 79-80.

### 5. Low-Income Program Requirements

For Phase IV, as in all prior phases of Act 129, the Commission proposed that each EDC EE&C Plan include specific energy efficiency measures for households at or below 150% of the Federal Poverty Income Guidelines, in proportion to that sector’s share of the total energy usage in the EDC’s service territory. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(G).[[6]](#footnote-7) The Commission proposed for Phase IV that the EDCs provide a proportionate number of measures equivalent to the low-income sector’s share of usage as previously required in Phases II and III of the program. The Commission provided Duquesne’s Low-Income savings targets as 8.40 Proportionate Number of Measures, and 18,566 MWh. The *Phase IV Implementation Order* requires that 5.3% of Duquesne’s Phase IV consumption savings must come from low-income households. Duquesne provides that its *Revised Phase IV Plan* has a total of 329 measures, of which 30 measures are for the low-income sector, providing this sector with a proportion of measures in excess of their share of the Company’s total load. *Phase IV Implementation Order* at 27, 35, 36; Duquesne Statement in Support at 6.

The Commission declined to set a multi-family low-income reduction target. The *Phase IV Implementation Order* states:

In regards to comments concerning multifamily properties, the Commission reiterates that savings from multifamily housing, up to the percentage of verified low‑income households living in the multifamily housing, are eligible for the low‑income carve-out (see Section A.3) and notes that all EDC EE&C portfolios in Phase III include multifamily offerings.

We disagree with the suggestions to set specific targets, such as targets for multifamily properties or street lighting, as this will result in increased administrative burden and potentially hinder the EDCs’ flexibility to design a mix of programs to meet Phase IV overall targets.

*Phase IV Implementation Order* at 43.

The low-income programs were part of the Settlement and modifications to the low-income program projected savings and budgets are discussed in more detail *infra.*

### 6. Proposal for Improvement of Plan

The Company’s EE&C Program must include “procedures to make recommendations as to additional measures that will enable an electric distribution company to improve its plan and exceed the required reductions in consumption.” 66 Pa. C.S. § 2806.1(a)(6). *Phase IV Implementation Order* at 94.

Duquesne notes that program refinement is continuous, resulting from experience gained through program implementation and adherence to quality assurance procedures. Programs and processes are subject to program implementation process evaluations performed by an independent Evaluation, Measurement and Verification (EM&V) contractor. Duquesne provides that customer and stakeholder input are solicited during regularly scheduled Act 129 EE&C Program stakeholder meetings. Duquesne notes that changes to programs will be requested through the applicable Commission process, if necessary. Duquesne states that it will also monitor and report on existing programs at its stakeholders’ meeting. *Revised Phase IV Plan* at 14.

We note that through the Settlement, Duquesne agrees to adopt or investigate and study several improvements proposed by the Parties to the Settlement. All parties to this proceeding either agreed to the Settlement or did not oppose the Settlement. As these proposed improvements are addressed in the Company’s Plan as revised by the Settlement and as there are no remaining contested issues related to these proposed improvements, we will not discuss the Comments that were filed in this Opinion and Order. While none of the Commenters were parties to the Settlement, they also did not oppose the Settlement.

## C. Cost Issues

In the *Phase IV Implementation Order*, we stated:

The Act directs the Commission to establish a cost recovery mechanism that ensures that approved measures are financed by the customer class that receives the direct energy and conservation benefit of the measure. 66 Pa. C.S. § 2806.1(a)(11). All EDC plans must include cost estimates for implementation of all measures. 66 Pa. C.S. § 2806.1(b)(1)(i)(F). Each plan must also include a proposed cost‑recovery tariff mechanism, in accordance with Section 1307 (relating to sliding scale or rates; adjustments), to fund all measures and to ensure full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission. 66 Pa. C.S. § 2806.1(b)(1)(i)(H). In addition, each plan must include an analysis of administrative costs. 66 Pa. C.S. § 2806.1(b)(1)(i)(K).

The Act dictates that the total cost of any plan must not exceed two percent of the EDC’s total annual revenue as of December 31, 2006, excluding LIURP, established under 52 Pa. Code § 58 (relating to residential Low Income Usage Reduction Programs). 66 Pa. C.S. § 2806.1(g). Finally, all EDCs, including those subject to generation or other rate caps, must recover on a full and current basis from customers, through a reconcilable adjustment clause under Section 1307, all reasonable and prudent costs incurred in the provision or management of its plan. 66 Pa. C.S. § 2806.1(k).

*Phase IV Implementation Order* at 119.

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### 1. Plan Cost Issues

The Act allows an EDC to recover all prudent and reasonable costs relating to the provision or management of its EE&C Plan but limits such costs to an amount not to exceed 2% of the EDC’s total annual revenue as of December 31, 2006, excluding Low‑Income Usage Reduction Programs established under 52 Pa. Code Ch. 58. 66 Pa. C.S. § 2806.1(g). The level of costs that an EDC will be permitted to recover in implementing its EE&C program was established in the Phase I proceedings. For Duquesne, the cap is $19,545,951.58. The Phase IV 5-Year budget limit is $97,729,760. *Phase IV Implementation Order* at 120.

For Phase IV of Act 129:

* EDCs will have access to the full Phase IV budget, regardless of Phase III spending and consumption reduction target attainment.
* On June 1, 2021, EDCs will only use Phase III budgets to close out program delivery, EM&V, and reporting obligations for measures installed and commercially operable on or before May 31, 2021. EDCs may not use Phase III funds for Phase IV plans.
* EDCs may continue spending Phase IV budgets on their EE&C Program even if they attain their consumption reduction and PDR targets before May 31, 2026.

*Phase IV Implementation Order* at 132*.*

For Phase IV of Act 129, rebate application deadlines shall be handled as follows:

* EDCs are required to develop deadlines for the maximum number of days between a measure in-service date and rebate application date for each program. These deadlines should be clearly presented within each Phase IV EE&C Plan.
* EDCs shall include clear deadlines on all rebate forms.
* Program delivery Conservation Service Provider (CSP) contracts will clearly delineate responsibilities for maintaining up-to-date forms and website information in the event of rebate deadline changes.

*Phase IV Implementation Order* at 133.

### 2. Cost Effectiveness/Cost-Benefit Issues

Act 129 requires an analysis of the costs and benefits of each EE&C Plan, in accordance with a Total Resource Cost (TRC) Test approved by the Commission. *See* 66 Pa. C.S. § 2806.1(a)(3). The Act also requires an EDC to demonstrate that its plan is cost‑effective using the TRC Test and that the plan provides a diverse cross-section of alternatives for customers of all rate classes. *See* 66 Pa. C.S. § 2806.1(b)(1)(i)(I). The Act defines “total resource cost test” as “a standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of [EE] conservation measures.” 66 Pa. C.S. § 2806.1(m).[[7]](#footnote-8) The purpose of using the TRC Test to evaluate the EDCs’ specific programs is to track the relationship between the benefits to the Commonwealth and the costs incurred to obtain those benefits. The TRC Test has historically been a regulatory test. Sections 2806.1(c)(3) and 2806.1(d)(2), 66 Pa. C.S. §§ 2806.1(c)(3) and (d)(2), as well as the definition of the TRC Test in Section 2806.1(m), 66 Pa. C.S. § 2806.1(m), provide that the TRC Test be used to determine whether ratepayers, as a whole, received more benefits (in reduced capacity, energy, transmission, and distribution costs) than the implementation costs of the EDCs’ EE&C Plans. *Phase IV Implementation Order* at 104.

The 2021 TRC Test Final Order[[8]](#footnote-9) was adopted at the December 19, 2019 Public Meeting at Docket No. M‑2019‑3006868. The 2021 TRC Test Final Order provides comprehensive guidance on all aspects of Act 129 benefit-cost calculations for Phase IV of Act 129. *Id.*

The Commission will maintain the practice, used in Phases I, II, and III, of using a Net-to-Gross (NTG) ratio for making modifications to programs during the phase, and for planning purposes for future phases. For Phase IV of Act 129, the Commission proposed maintaining the practice used in the prior phases where NTG research results are used for modifications to existing programs, as well as for planning purposes for future phases. Furthermore, we proposed that compliance in Phase IV be determined using gross verified savings. Additionally, we proposed that the EDCs include in their EE&C Plans net TRC ratios, as well as gross TRC ratios, based on the best available estimates of NTG research for a given program type. We recognized that prospective NTG adjustments would be speculative but conclude that adequate data should be available after a decade of EE&C program implementation and evaluation to produce a reasonable projection. The inclusion of NTG-based TRC ratios would provide all stakeholders with additional information regarding the effectiveness of EE&C measures and programs. No alternative proposals or comments opposing the proposed handling of the Net-to-Gross Adjustment for Phase IV of Act 129 were submitted by stakeholders. Therefore, for Phase IV of Act 129, NTG adjustments will be handled as proposed in the *Phase IV Tentative Implementation Order*. EDCs will continue to conduct NTG research for planning purposes and report both gross and net TRC ratios in their annual reports and EE&C plans. However, compliance with the directive to offer a cost-effective portfolio will continue to be based on the gross TRC ratio. *Id* at 109.

The results of the TRC are expressed as the net present value and benefit/cost (B/C) ratio. Duquesne provides that the *Revised Phase IV Plan* has an overall B/C score of 1.29. According to Duquesne, the Plan is cost effective as a whole. Duquesne Statement of Support at 9-10.

### 3. Cost Allocation Issues

66 Pa. C.S. § 2806.1(a)(11) requires that EE&C measures be financed by the same customer class that receives the energy and conservation benefits of those measures. In the *Phase IV Implementation Order*, we stated:

In order to ensure that all approved EE&C measures are financed by the customer classes that receive the benefit of such measures, it will be necessary to first assign the costs relating to each measure to those classes to whom it benefits. Therefore, once the EDC has developed an estimate of its total EE&C costs as directed above, the EDC is required to allocate those costs to each of its customer classes that will benefit from the measures to which the costs relate. Those costs that demonstrably and exclusively relate to measures or programs that have been dedicated to a specific customer class should be assigned solely to that class. Those costs that relate to measures that are applicable to more than one class, or that can be shown to provide system-wide benefits, should be allocated using reasonable and generally acceptable cost of service principles as are commonly utilized in base rate proceedings. Administrative costs should also be allocated using reasonable and generally acceptable cost-of-service principles.

*Phase IV Implementation Order* at 134 (note omitted).

Duquesne proposes to implement four surcharges to recover costs as closely as possible to the customer class receiving the benefit. According to Duquesne, this segmentation of customers aligns program costs with the current tariffed rates for distribution service. *Revised Phase IV Plan* at 107.

### 4. Cost Recovery Tariff Issues

In the *Phase IV Implementation Order*, we stated:

The Act allows all EDCs to recover, on a full and current basis from customers, through a reconcilable adjustment clause under 66 Pa. C.S. § 1307, all reasonable and prudent costs incurred in the provision or management of its plan. The Act also requires that each EDC’s plan include a proposed cost‑recovery tariff mechanism, in accordance with 66 Pa. C.S. § 1307 (relating to sliding scale of rates; adjustments), to fund all measures and to ensure a full and current recovery of prudent and reasonable costs, including administrative costs, as approved by the Commission.

The Commission proposed the use of a standardized reconciliation that will enable the EDCs and ratepayers to compare the cost recovery of program expenditures of all EDCs on an equal basis. We also concluded that it is beneficial to the EDCs and ratepayers that, with the implementation of Phase IV, the annual surcharge should be based on the projected program costs that the EDC anticipates will be incurred over the surcharge application year to attain the conservation targets.

The development of the surcharge using the projected program costs rather than the authorized budget amount will mitigate over- or under-recoveries of costs during the surcharge application period. Additionally, we find that actual expenses incurred should be reconciled to actual revenues received. Furthermore, for transparency purposes, the 1307(e) reconciliation statement should clearly identify PJM FCM proceeds as cost reductions and PJM FCM deficiency charges as cost increases. A reconciliation methodology based upon actual expenditures is pursuant to Section 1307(e) of the Public Utility Code, 66 Pa. C.S. § 1307(e) and allows for the provision of interest on over- or under-recoveries. We concluded that these measures will mitigate the over- or under-recovery of costs during the surcharge application period. As such, consistent with our determination in the Phase III Final Implementation Order,[[9]](#footnote-10) the Commission proposed for Phase IV to not require the provision of interest on over- or under‑recoveries.

To further standardize the filing process, we proposed that the EDCs file by May 1, the annual rate adjustment for the rate to become effective June 1. Concurrent with the annual rate adjustment, the EDCs would submit, in a separate filing, the annual reconciliation statement thirty days following the end of the reconciliation period in accordance with Section 1307(e) of the Public Utility Code, 66 Pa. C. S. § 1307(e).

The Commission agrees with comments filed on this topic in prior proceedings that surcharges should be combined into a single surcharge and tariff with the implementation of Phase IV. In order to transition from Phase III, ending May 31, 2021, to Phase IV, beginning on June 1, 2021, we proposed that each EDC reconcile its total actual recoverable EE&C Plan expenditures incurred through March 31, 2021, with its actual EE&C Plan revenues received through March 31, 2021.[[10]](#footnote-11) In addition, each EDC should include, as part of the calculation of the Phase IV rates to become effective June 1, 2021, as clearly identified separate line items, projections of the expenses to finalize any measures installed and commercially operable on or before May 31, 2021; expenses to finalize any contracts; and other Phase III administrative obligations. The Phase III rate that becomes effective June 1, 2020 will remain effective through May 31, 2021. The revenues and expenses of the remaining two months of Phase III (i.e., April 2021 and May 2021); expenses to finalize any measures installed and commercially operable on or before May 31, 2021; expenses to finalize any contracts; and other Phase III administrative obligations should be included, as clearly identified separate line items, in the reconciliation for the period April 1, 2021 through March 31, 2022.

We proposed that the standardized reconciliation process and the calculation of the annual surcharge will be set forth by each EDC in a supplement or supplements to the EDC’s tariff to become effective June 1, 2021, be accompanied by a full and clear explanation as to their operation and applicability to each customer class. The EE&C rates are subject to continuous Commission review and audit as well as reconciliation reports in accordance with Section 1307(e) of the Public Utility Code, 66 Pa. C.S. § 1307(e). Lastly, we proposed that under no circumstances will an EDC be permitted to recover, in the automatic adjustment clause, any EE&C Plan-related costs that have been claimed and permitted recovery in base rates. As no comments were received on this topic, the Commission adopts the cost recovery tariff mechanism as proposed.

*Phase IV implementation Order at 141-143.*

Duquesne provides that, in compliance with the *Phase IV Implementation Order*, Duquesne will combine the Phase III and Phase IV surcharges into a single surcharge and tariff. Duquesne is proposing to revise the Phase III Rider No. 15a, “Energy Efficiency and Conservation,” to its tariff. The tariff sets forth the monthly surcharge rates by customer class to recover the program budgets. Duquesne explains that the proposed cost recovery method is different for residential, small/medium C&I and large C&I customer classes, so that a formula and description of the formula is defined for each customer class surcharge. Four surcharges are defined to recover costs as reasonably close as possible for each customer class and segment within the class, i.e., commercial or industrial customers. The formulas are in accordance with the provisions of a Section 1307 cost recovery surcharge and include reconciliation of over or under collections. Duquesne states that it will not impose any interest on over or under collections, per the *Phase IV Implementation Order*. Duquesne Statement in Support at 12-13.

Duquesne notes that the OCA raised an issue regarding how Duquesne will address costs associated with the close-out of EE&C Phase III following the beginning of Phase IV. That issue is addressed in the Settlement reached by the Parties. No other Party raised any issues regarding Duquesne Light’s proposed Cost Recovery Mechanism. Duquesne Statement in Support at 13.

## D. Conservation Service Provider Issues

In the *Phase IV Implementation Order*, the Commission required that all Phase IV CSP contracts be competitively bid. As a result, the Commission required EDCs to file their Phase IV request for proposal (RFP) procedures for Commission review and approval. *Phase IV Implementation Order* at 111-112. EDCs were encouraged to file their proposed RFP process by August 30, 2020. If Commission staff did not comment on the proposed process within fifteen days of its filing, the EDC was permitted to use that process. *Id.* at 112. Furthermore, the Commission noted that it will require the EDCs to rebid all CSP contracts for Phase IV. However, the Commission also approved an EDC’s use of its approved Phase III RFP process, if desired. *Id*. at 114.

Duquesne filed its RFP process on August 28, 2020, and Commission staff approved this process by email dated December 11, 2020.

According to Duquesne, its *Phase IV Revised Plan* implements programs in an effective and economical manner by balancing utility resources with contracted resources. Duquesne provides that CSPs and subcontractors with expertise and experience in program implementation and operations are deployed under agreements with Duquesne. Some CSPs will operate as turnkey delivery contractors, while others will provide specific program functions across multiple programs. Duquesne submits that management responsibility for meeting goals still rests with Duquesne. Duquesne Statement in Support at 13.

## E. Implementation and Evaluation Issues

### Implementation Issues

The Act requires the Commission to establish procedures to ensure compliance with the consumption and peak demand reduction requirements of the Act. 66 Pa. C.S. § 2806.1(a)(9). Duquesne’s Program Management and Implementation Strategies are contained in Section 4 of the Revised Phase IV Plan. Duquesne provides that it implements programs effectively and economically. To achieve this, Duquesne maintains that it uses CSPs with expertise and experience in program implementation and operations. Duquesne explains that program implementation requires significant planning and operation management functions. Duquesne explains further that each contractor is managed and integrated into an organized and cohesive operation where program procedural guidelines are developed and followed. According to Duquesne, documentation is maintained, and electronic data structures are developed and managed. *Revised Phase IV Plan* at 81.

### Monitoring, Reporting and Evaluation Issues

The Commission’s EE&C Program is to include an evaluation process including a process to monitor and verify data collection, quality assurance and the results of each plan and the program. 66 Pa. C.S. § 2806.1(a)(2). Consistent with this requirement, each EDC’s Plan is to “explain how quality assurance and performance will be measured, verified and evaluated.” 66 Pa. C.S. § 2806.1(b)(1)(i)(C). Each EDC is required to submit an annual report to the Commission relating to the results of its EE&C Plan. 66 Pa. C.S. § 2806.1(i)(1).

For Phase IV, the Commission directed EDCs to file semiannual reports on January 15 of each year, which are to provide information regarding the first two quarters of the program year. Additionally, EDCs are to submit a final annual report by September 30 of each year, with reported savings for the program year, a cost‑effectiveness evaluation (TRC Test), a process evaluation, as well as other items required by Act 129 and Commission Orders. The reports are to be submitted to the Commission’s Secretary’s Bureau at each EDC’s respective Phase IV Docket Number. The EDCs are also required to post these reports on their respective websites. *Phase IV Implementation Order* at 100-102.

Duquesne’s monitoring and reporting strategies are contained in Sections 5 and 6 of the *Revised Phase IV Plan*. In Section 5, Duquesne indicates that its Program Management and Reporting System (PMRS) provides information reported to the Commission’s appointed Act 129 EE&C Statewide Evaluator (SWE). Duquesne provides program activity reports in form and format specified by the SWE pursuant to SWE semiannual, annual, and numerous ad hoc data requests. *Revised Phase IV Plan* at 90.

In Section 6, Duquesne describes how quality assurance will be measured, verified, and evaluated. Duquesne provides that all CSPs under contract to implement Duquesne energy efficiency programs are required by contract statements of work to provide a Program Management Plan (PMP). The PMP presents the program rationale, assumptions, approval, processes, and other key material in an integrated form. *Revised Phase IV Plan* at 99.

Additionally, Duquesne explains that procedures are in place to ensure prospective projects receive appropriate and consistent review prior to approval and incentive payment processing. Residential incentive application processing is accomplished via fulfillment services provided by a fulfillment contractor. Duquesne avers that this comprises verification to ensure the customer is a Duquesne customer, the product information is correct and the product is eligible under the program to receive incentives, and invoices corroborate product identification and are dated within the eligible program period. Duquesne explains that C&I project and customer incentive processing varies depending upon the type and size of the project. Duquesne Statement in Support at 14.

## F. COVID-19 Impacts on Reduction Targets

We note that the Commission received comments regarding the potential impact of the COVID-19 pandemic on the Phase IV programs during the development of the *Phase IV Implementation Order*. The Commission declined to establish a process to revise the targets in the *Phase IV Implementation Order*, considering it speculative and premature. Therefore, we decline to discuss this matter here. *Phase IV Implementation Order* at 144-145.

## G. Joint Petition for Full Settlement

### 1. Introduction

As stated above, on February 18, 2021, the Joint Petitioners filed the Joint Petition for Settlement. The Joint Petitioners state that the Settlement has been agreed to, or is not opposed by all active Parties in this proceeding. According to the Joint Petitioners, the Settlement is in the public interest and should be approved by the Commission without modification. The Settlement provides for the approval of Duquesne’s Revised Phase IV EE&C Plan with certain modifications and clarifications, as agreed upon by the Joint Petitioners.

### 2. Terms and Conditions of the Full Settlement

The Settlement consists of the Joint Petition containing the terms and conditions of the Settlement, and four appendices. Appendices A through D to the Settlement are the Statements of Duquesne, CAUSE-PA, the OCA, and CAAP in Support of the Joint Petition for Settlement.

The essential terms and conditions of the Settlement are set forth in Section III, as follows:

1. The following terms of Settlement reflect a carefully balanced compromise of the interests of all of the Joint Petitioners in this proceeding. The Joint Petitioners agree that the Settlement, as a whole, provides a reasonable resolution of the issues raised by the various parties in the previously submitted Notices of Intervention, Petitions to Intervene, and Testimony, and that approval of the Settlement is in the public interest.
2. The Joint Petitioners respectfully request that Duquesne Light’s revised Phase IV EE&C Plan be approved subject to the terms and conditions of this Settlement as specified below.
3. Duquesne Light shall modify its Phase IV Plan to allocate the projected costs and kWh savings for Low-Income Energy Efficiency Program (“LIEEP”) and Low-Income Behavioral Energy Efficiency Program (“LI-BEEP”) measure categories as follows:

|  |  |  |
| --- | --- | --- |
| **Measure Category** | ***Phase IV Plan as Filed 11/30/20*** | ***Phase IV Plan as Revised*** |
| **Est. kWh Savings** | **% of Sector Savings** | **Est. Cost** | **Est. kWh Savings** | **% of Sector Savings** | **Est. Cost** |
| Appliances | 1,000,059 | 3.5%  | $1,569,344 | 1,261,185 | 5.9% | $1,914,089 |
| Space cooling & heating / water heating | 440,489 | 1.5% | $1,457,443 | 770,856 | 3.6% | $2,468,256 |
| Building Shell | 595,895 | 2.1% | $1,090,379 | 957,677 | 4.5% | $1,662,280 |
| EE Kits | 1,083,612 | 3.8% | $684,109 | 1,625,418 | 7.7% | $891,239 |
| Lighting | 18,266,093 | 63.2% | $9,517,344 | 11,971,667 | 56.4% | $7,805,755 |
| Audits |   |   | $245,145 |   |  | $245,145 |
| LI-BEEP | 7,500,000 | 26.0% | $1,115,174 | 4,655,160 | 21.9% | $692,175 |
| Total | 28,886,149 | 100.0% | $15,678,939 | 21,241,964 | 100.0% | $15,678,939 |

1. Duquesne Light will track the numbers of, and reasons for, LIEEP jobs that do not move forward, separately tracked for low income single-family, master-metered multifamily, and individually-metered multifamily properties.
2. Duquesne Light will track the total number of LIEEP baseload and heating jobs, separated by the following segments: 1) low-income single family tenants; 2) low-income single family homeowners; 3) low-income master-metered multifamily tenants; and 4) low-income individually-metered multifamily tenants.
3. Duquesne Light will also track the average LIEEP job costs and energy savings.
4. Duquesne Light will provide the information specified in Paragraphs 32, 33, and 34, above, in its Income Eligible Advisory Group (“IEAG”) working group meetings.
5. Duquesne Light will discuss opportunities with the IEAG for increased coordination with community-based organization (“CBOs”), and other weatherization, energy efficiency, or housing remediation assistance programs in DLC’s service territory, and will consider in good faith the IEAG’s recommendations.
6. Duquesne Light shall modify its Phase IV Plan to allocate the projected costs and kWh savings for non-low income residential program measure categories as follows:

|  |  |  |
| --- | --- | --- |
|  | ***Phase IV Plan as Filed 11/30/20*** | ***Phase IV Plan as Revised*** |
| **Measure Category** | **Est. kWh Savings** | **% of Sector Savings** | **Est. Cost** | **Est. kWh Savings** | **% of Sector Savings** | **Est. Cost** |
| Appliance Recycling | 8,447,770 | 8.80% | $1,756,574 | 12,439,431 | 13.80% | $2,586,620 |
| Downstream Rebates | 23,698,780 | 24.67% | $5,619,083 | 23,698,780 | 26.3% | $5,619,083 |
| Midstream Rebates | 596,319 | 0.62% | $214,043 | 596,319 | 0.7% | $214,043 |
| Upstream Rebates | 13,605,083 | 14.16% | $3,761,058 | 13,605,083 | 15.1% | $3,761,058 |
| R-BEEP | 49,700,000 | 51.74% | $4,165,713 | 39,797,494 | 44.2% | $3,335,667 |
| Total | 96,047,953 | 100.00% | $15,516,471 | 90,137,107 | 100.0% | $15,516,471 |

1. Duquesne Light will invest a portion of the 2% of costs allocated for its Pilot Program to explore measures for the residential sector that are reasonably cost-effective, achievable, implementable, and allowable under applicable law and Commission directives. Duquesne Light will hold at least one stakeholder meeting in the first program year of Phase IV, and additional meeting(s) as warranted, to discuss potential new measures and associated budgets, which may include residential fuel-switching, for low income and non-low income residential customers. Duquesne Light shall identify measures to be implemented through the Pilot Program by the end of Program Year 14, and shall implement such measures at full scale before the end of Phase IV, to the extent such measures remain reasonably cost-effective, achievable, implementable, and allowable under applicable law and Commission directives.
2. Duquesne Light agrees that delivery year 2025/2026 shall be the first delivery year for which it may bid peak demand savings into the PJM Forward Capacity Market (“FCM”).
3. Duquesne Light will only bid those nonresidential peak demand savings that, in its judgment, are among the lowest risk of yielding a PJM penalty. Duquesne Light currently anticipates that such peak demand savings will result from nonresidential interior lighting measures. Duquesne Light shall not bid residential peak demand savings into the FCM.
4. Duquesne Light will allocate proceeds and penalties associated with FCM as described in Section 7.7 of the Phase IV Plan.
5. Duquesne Light will include a FCM component in Rider 15A of its retail tariff as depicted in Exhibit DBO-1R to Duquesne Light Statement No. 2-R.
6. Duquesne Light shall separately track Phase III costs incurred after June 1, 2021, and shall report such costs as separate line items in its 1307(e) EEC surcharge reconciliations.
7. Duquesne Light shall separately track any proceeds and penalties associated with FCM participation, and shall report such proceeds/penalties as separate line items in its 1307(e) EEC surcharge reconciliations.

Settlement at 6-9.

 In addition to the specific terms to which the Joint Petitioners have agreed, the Settlement contains certain general, miscellaneous terms. The Settlement is conditioned upon the Commission’s approval of the terms and conditions without modification. The Settlement establishes the procedure by which any of the Joint Petitioners may withdraw from the Settlement and proceed to litigate this case if the Commission should act to disapprove or modify the Settlement. Settlement at 10, ¶ 50. In addition, the Settlement states that it does not constitute an admission against, or prejudice to, any position which any Joint Petitioner might adopt during subsequent litigation, including further litigation of this case. Settlement at 10, ¶ 49.

 Further, the Settlement provides that if the Commission adopts the Settlement without modification, the Joint Petitioners waive their individual rights to file Exceptions, requests for modification or clarification, and/or appeals with regard to the Settlement. Settlement at 11, ¶ 56. The Joint Petitioners request that the Commission approve this Settlement, including all terms and conditions thereof, without modification and that Duquesne be permitted to implement its proposed Phase IV EE&C Plan, as modified by the Settlement. Settlement at 12.

### 3. Positions of the Parties

The Joint Petitioners assert that, consistent with the requirements set forth in Act 129 and the Commission’s *Phase IV Implementation Order*, Duquesne’s Phase IV Plan covers the period from June 1, 2021 through May 31, 2026 and (a) includes measures to achieve or exceed the required reductions and states the manner in which the consumption reductions will be achieved or exceeded; (b) complies with the designated expenditure cap of 2% of 2006 Annual Revenues over the five-year plan; (c) achieves a total cumulative energy reduction of at least 348,126 MWh by May 31, 2026, with at least 15% of the savings compliance target being achieved in each of the five program years; (d) achieves a minimum of 5.3% of the total required reductions from the low-income customer sector by May 31, 2026; (e) includes a proportionate number of energy efficiency measures for low-income households as compared to those households’ share of the total energy usage in the service territory; (f) offers at least one comprehensive program for residential customers and at least one comprehensive program for non-residential customers; (g) achieves peak demand reductions of at least 62 MW; (h) includes a contract with one CSP; (i) includes an analysis of administrative costs of the plan; (j) includes a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307; and (k) demonstrates that the Phase IV Plan is cost-effective based on the Commission’s TRC Test. Settlement at 2-3.

As stated above, the Commission is required to review proposed settlements to determine if they are in the public interest. In the instant proceeding, the Joint Petitioners unanimously assert that the proposed Settlement is in the best interests of all Parties and Duquesne’s customers. *Id*. at 10. The Joint Petitioners further assert that approval of the Settlement will avoid further administrative, and possible appellate, proceedings, thereby avoiding substantial costs to the Joint Petitioners, the Commission, and Duquesne’s customers. *Id* at 9.

Each of the four Joint Petitioners prepared a Statement in Support of the Settlement (Statements). The Statements, which are appended to the Joint Petition as Appendices A through D, are summarized below.

Duquesne submits that, given the diverse interests of the Joint Petitioners, the fact that they have fully resolved their respective issues provides strong evidence that the proposed Settlement is reasonable and in the public interest. Duquesne asserts that it provided responses to numerous interrogatories and requests for production of documents and provided additional information regarding its Phase IV Plan to the Parties during informal discussions. According to Duquesne, the Settlement represents a carefully balanced compromise among the Joint Petitioners, who believe that its approval is in the public interest. Duquesne Statement in Support at 1-2.

Duquesne submits that its proposed Phase IV Plan complies with the Commission’s *Phase IV Implementation Order*, including the expenditure cap of $97.73 million, the allocation of costs to the customer class that receives the benefits of the EE&C measures, and the requirement that the portfolio be cost-effective based on the Commission’s TRC Test. Duquesne states that its originally filed Phase IV Plan included a total of twelve programs designed to achieve an overall consumption reduction target of 383,733,096 kWh. According to Duquesne, the Plan includes measures for each of its customer classes, as required. Duquesne Statement in Supportat 4-5.

Duquesne notes that both CAUSE-PA and the OCA raised concerns with the effectiveness of the LI-BEEP low-income program. Duquesne submits that the OCA witness Ms. Stacy Sherwood recommended that the Plan’s residential portfolio reflect a lower reliance on behavioral programs (R-BEEP and LI-BEEP, also known as Home Energy Reports), on the grounds that: (1) savings from behavioral measures might be lower than expected due to the impacts of COVID-19; and (2) behavioral measures yield “short-lived” savings realized over a maximum of two years. Duquesne Statement in Support at 16 (citing OCA St. 1 at 14-15). According to Duquesne, CAUSE-PA witness Mr. Jim Grevatt expressed similar concerns regarding LI-BEEP and recommended that behavioral measures comprise no more than 5% of the Plan’s low-income savings target. Duquesne Statement in Support at 16 (citing CAUSE-PA St. 1 at 25, Table 2). Duquesne explains that Ms. Sherwood did not propose a corresponding target for behavioral measures and suggested that LI-BEEP funds may be better invested in LIEEP. CAUSE‑PA advocated expanding the budgets for comprehensive building shell and heating, cooling, and water heating measures. Duquesne Statement in Support at 16.

With regard to the specific terms of the proposed Settlement, Duquesne states that, in response to concerns with the effectiveness of the Low-Income Home Energy Reports Program raised by both CAUSE-PA and the OCA, the Company has agreed to significant modifications to this program. Under the terms of the Settlement, Duquesne notes that the Company will do the following:

1. Reduce the budget for the Residential (non-low income) Home Energy Reports Program from $4,165,713 to $3,335,667.
2. Reduce the budget for the Low Income Home Energy Report Program from $1,115,174 to $692,175.
3. Reduce the projected kWh savings attributable to the Low Income Home Energy Report Program from 7,500,000 to 4,655,160.

Duquesne Statement in Support at 17-19.

Duquesne states that it agreed to track information related to LIEEP projects. Specifically, Duquesne will track the numbers of, and reasons for, LIEEP jobs that do not move forward, separately tracked for low-income single-family, master-metered multifamily, and individually-metered multifamily properties. Duquesne will track the total number of LIEEP baseload and heating jobs, separated by the following segments: (1) low-income single-family tenants; (2) low-income single-family homeowners; (3) low-income master-metered multifamily tenants; and (4) low-income individually-metered multifamily tenants. Duquesne will also track the average LIEEP job costs and energy savings. Duquesne will provide the information specified above in its Income Eligible Advisory Group (IEAG) working group meetings. Duquesne provides that it will discuss opportunities with the IEAG for increased coordination with Community-based Organizations (CBOs), and other weatherization, energy efficiency, or housing remediation assistance programs in Duquesne’s service territory, and will consider in good faith the IEAG’s recommendations. Duquesne Statement in Support at 17-18 citing Settlement at ¶¶ 29-34).

In response to the OCA’s suggestion that Duquesne focus on long-lived, deep savings measures rather than R-BEEP, Duquesne modified its projected costs and savings. Duquesne submits that it agreed to invest a portion of the 2% of costs allocated for its Pilot Program to explore measures for the residential sector that are reasonably cost-effective. Duquesne will hold at least one stakeholder meeting in the first program year and additional meetings as warranted to discuss potential new measures and associated budgets, which may include residential fuel switching, for low-income and non-low income residential customers. Duquesne Statement in Support at 19-20 (citing Settlement at ¶ 38).

With regard to its proposed plan to bid savings into PJM’s FCM, Duquesne has agreed to several commitments for its plan. Duquesne agrees that delivery year 2025/2026 will be the first delivery year for which it may bid peak demand savings into the FCM. Duquesne will only bid nonresidential peak demand savings that it considers low risk of yielding a PJM penalty. Duquesne Statement in Support at 20 (citing Settlement ¶ 37).

Duquesne shall not bid residential peak demand savings into the FCM. *See* Settlement ¶ 38. Furthermore, Duquesne will allocate proceeds and penalties associated with FCM as described in Revised Phase IV Plan Section 7.7, and will include a FCM component in Rider 15A of its retail tariff as depicted in Exhibit DBO-1R to Duquesne Light Statement 2-R. Duquesne Statement in Support at 20-21 (citing Settlement ¶¶ 39‑40).

In response to the OCA’s concerns with the tracking of Phase III costs incurred after June 1, 2021, Duquesne agreed to separately track Phase III costs incurred after June 1, 2021 and report such costs as separate line items in its 1307(e) EEC surcharge reconciliations. Duquesne also will separately track any proceeds and penalties associated with FCM participation and shall report such proceeds/penalties as separate line items in its 1307(e) EEC surcharge reconciliations. Duquesne Statement in Support at 21 (citing Settlement ¶¶ 41-42).

 In its Statement, CAUSE-PA submits that the proposed terms and conditions of the Settlement are in the public interest and should be approved. CAUSE-PA Statement in Support at 1. CAUSE-PA states that the Settlement addresses issue of concern of CAUSE-PA, balances the interests of the Parties, and fairly resolves a number of important issues in the proceeding. CAUSE-PA provides that, if approved, the Settlement will avoid substantial litigation and associated costs, and will eliminate the possibility of further appeals and associated costs. *Id*. at 2.

CAUSE-PA supports the reallocation of approximately $2 million into more durable, comprehensive measures that will result in greater direct bill savings for low-income customers. CAUSE-PA Statement in Support at 4 (citing Settlement ¶ 31). CAUSE-PA provides that its witness, Mr. Grevatt recommended that the Company shift the relative percent of savings derived from lighting and LI-BEEP measures to measures that would result in more long-lived and increased direct bill savings for low-income households. CAUSE-PA Statement in Support at 4 (citing CAUSE-PA St. 1 at 26).

CAUSE-PA notes that the Settlement also provides that the Company will increase its tracking of LIEEP jobs that do not move forward by single family, multifamily, and meter type. CAUSE-PA submits that these Settlement provisions improve Duquesne’s tracking and recording of LIEEP jobs and helps to ensure the Commission, the Company, interested parties, and stakeholders are provided additional data to evaluate the effectiveness and savings achieved through the Plan’s low-income measures. According to CAUSE-PA, this additional data tracking will help in evaluating whether customers benefit from LIEEP, regardless of whether they are homeowners or tenants and regardless of meter type. CAUSE-PA Statement in Support at 5 (citing Settlement ¶ 32).

Additionally, CAUSE-PA submits that the Settlement requires the Company to discuss opportunities with its IEAG for increased coordination with CBOs, as well as other weatherization, energy efficiency, or housing remediation assistance programs and to consider in good faith IEAG’s recommendations. CAUSE-PA Statement in Support at 6 (citing Settlement ¶ 36).

Finally, CAUSE-PA notes that the Company will invest a portion of the 2% of costs allocated for its Pilot Program to explore measures for the residential sector that are reasonably cost-effective, achievable, implementable, and allowable under applicable law and Commission directives. The Company is required to hold at least one stakeholder meeting in the first program year and additional meetings as warranted to discuss new measures and potential budgets. CAUSE-PA notes that the Company is required to identify measures to be implemented through the Pilot Program by the end of Program Year 14 and to implement these measures at full scale before the end of Phase IV. CAUSE-PA asserts that this provision represents a reasonable compromise that appropriately balances the interest of the Parties and stakeholders in this proceeding. CAUSE-PA Statement in Support at 6-7 (citing Settlement ¶ 38).

In its Statement in Support, the OCA provides that its Witness, Ms. Sherwood expressed concerns that savings from the R-BEEP and LI-BEEP programs may be lower than expected due to the impacts of COVID-19 and limited ability for participants to lower their at-home usage since more people are working and taking classes from home. The OCA recommended that Duquesne explore deeper savings programs to prudently invest ratepayers’ funds to meet the Commission recommendation that there be a comprehensive focus on longer-lived deep savings measures. OCA Statement in Support at 4-5 (citing OCA St. 1 at 14-15). The OCA notes that the Settlement addresses these concerns by reducing the Company’s reliance on the Home Energy Reports. Specifically, the Settlement provides that the Company will reduce the Residential Behavior kWh savings from 51.74% to 44.2%. OCA Statement in Support at 5 (citing Settlement at ¶ 37). The OCA notes that along with the reduction in savings projections for the Home Energy Reports, the Settlement also requires the Company to invest 2% of its Pilot Program costs on residential measures that will be implemented in Phase IV. OCA Statement in Support at 5 (citing Settlement at ¶ 38).

Next, the OCA recommended that Duquesne develop a more detailed approach to its proposed bidding of demand reduction resources into the PJM FCM, including which measures will be bid in and how Duquesne will shield ratepayers from realizing penalties. The OCA provides that the Settlement provisions address these concerns because Duquesne agrees to bid only non-residential peak demand savings that Duquesne deems lowest risk. OCA Statement in Support at 6-7 (citing Settlement at ¶ 40).

Finally, the OCA contends that the Settlement adopts its recommendation to clarify how it will treat Phase III costs by separately tracking and reporting them in its 1307(e) surcharge reconciliations. The OCA provides that the separate tracking of Phase III costs incurred after June 1, 2021 is in the public interest as it ensures the appropriate use of the Phase III budget. OCA Statement in Support at 7 (citing Settlement at ¶ 43).

CAAP notes in its Statement in Support, that its witness Ms. Susan Moore’s testimony supported the recommendation of CAUSE-PA and addressed the need for more comprehensive, long-lasting measures to be provided to low-income ratepayers. CAAP submits that the Company has agreed to increase the number of comprehensive measures in the low-income portion of its plan. CAAP provides that the Settlement as it relates to measures available to low-income customers will result in lower energy use and utility costs for those vulnerable customers. CAAP provides further that those additional measures that promote conservation will benefit the public generally. CAAP Statement in Support at 1-2.

### Disposition

As stated above, all Parties to this proceeding either support, or do not oppose, the terms of the proposed Settlement. The Settlement provides for certain modifications to the Phase IV Plan initially proposed by Duquesne and represents a compromise among the Joint Petitioners that resolves all of the issues that have been raised in this proceeding. Based on our review of the record, we conclude that the proposed Settlement is in the public interest and shall approve it without modification.

We are in agreement with the Joint Petitioners that the proposed Settlement represents a reasonable compromise and resolution of the issues that the Joint Petitioners raised in this proceeding. In the instant proceeding, the Joint Petitioners unanimously assert that the proposed Settlement is in the best interests of Duquesne and its customers and reflects a carefully balanced compromise of the interests of all of the Joint Petitioners. Settlementat 6. The Joint Petitioners further assert, and we agree, that approval of the Settlement will avoid further administrative, and possible appellate, proceedings, thereby avoiding substantial costs to the Joint Petitioners and to Duquesne’s customers by lending certainty to the outcome of this proceeding. *Id*. at 9-10.

In addition, we conclude that Duquesne’s *Revised Phase IV Plan* filed pursuant to the Settlement is in the public interest because it conforms to the Commission’s previously described requirements as set forth in Act 129 and our *Phase IV Implementation Order*. We find that consistent with these requirements, Duquesne’s *Revised Phase IV Plan*: (a) includes measures to achieve or exceed the required reductions and states the manner in which the consumption reductions will be achieved or exceeded; (b) complies with the designated expenditure cap of 2% of 2006 Annual Revenues over the five-year plan; (c) achieves a total cumulative energy reduction of at least 348,126 MWh by May 31, 2026, with at least 15% of the savings compliance target being achieved in each of the five program years; (d) achieves a minimum of 5.3% of the total required reductions from the low-income customer sector by May 31, 2026; (e) includes a proportionate number of energy efficiency measures for low-income households as compared to those households’ share of the total energy usage in the service territory; (f) offers at least one comprehensive program for residential customers and at least one comprehensive program for non-residential customers; (g) achieves peak demand reductions of at least 62 MW; (h) includes a contract with one CSP; (i) includes an analysis of administrative costs of the plan; (j) includes a reconcilable adjustment clause tariff mechanism in accordance with 66 Pa. C.S. § 1307; and (k) demonstrates that the Phase IV Plan is cost-effective based on the Commission’s TRC Test.

On the basis of our review of Duquesne’s *Revised Phase IV Plan*, we shall approve the Plan, having found it to be reasonable and consistent with Act 129 and the *Phase IV Implementation Order*.

# VI. Conclusion

For the reasons set forth, *supra,* and based on our review of the record and the applicable law, we will grant Duquesne’s Petition for Approval of its Energy Efficiency and Conservation Phase IV Plan, approve the Petition for Full Settlement, and approve Duquesne’s Revised Phase IV EE&C Plan, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Phase IV Plan is granted, consistent with this Opinion and Order.
2. That Duquesne Light Company is permitted to implement its revised Energy Efficiency and Conservation Phase IV Plan, as filed on March 1, 2021, consistent with this Opinion and Order.
3. That the Joint Petition for Full Settlement filed on February 18, 2021 is approved.
4. That any directive, requirement, disposition, or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

** BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: March 25, 2021

ORDER ENTERED: March 25, 2021

1. It is unclear as to why the notice was republished on January 9, 2021. The notice, as published on January 9, 2021, provides that comments and recommendations are to be filed within 20 days, which is January 29, 2021. [↑](#footnote-ref-2)
2. This Motion was also filed at Docket No. M-2020-3020824 (Petition of PPL Electric Utilities Corporation for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan), Docket No. M-2020-3020830 (Petition of PECO Energy Company for Approval of its Act 129 Phase IV Energy Efficiency and Conservation Plan), and Docket Nos. M-2020-3020820, M-2020-3020821, M‑2020‑3020822, and M-2020-3020823 (Consolidated Petitions of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Act 129 Phase IV Energy Efficiency and Conservation Plans). [↑](#footnote-ref-3)
3. Due to the short period of time between the scheduling of the conference and the conference itself, a court reporter was not scheduled, and the conference was held off the record. The ALJs discussed only procedural matters with the Parties. [↑](#footnote-ref-4)
4. In his February 5, 2021 email to the ALJs, the Company’s counsel advised that, although OSBA is not a party to the Joint Stipulation, it had no objection to it. [↑](#footnote-ref-5)
5. *See 2021 Technical Reference Manual, Volume 1* at page 10. <http://www.puc.pa.gov/pcdocs/1631001.docx>. [↑](#footnote-ref-6)
6. *See Report of the Act 129 Low-Income Working Group* at Docket No. M‑2009-2146801, Table 1 at page 6, that was adopted by the Commission in an April 27, 2010 Secretarial Letter at the same Docket. [↑](#footnote-ref-7)
7. After November 30, 2013, and every five years thereafter, the Commission is to evaluate the costs and benefits of the program established under 66 Pa. C.S. § 2806.1(a) and of approved EE&C plans using a total resource cost test or a cost-benefit analysis of our determination. 66 Pa. C.S. § 2806.1(c)(3). [↑](#footnote-ref-8)
8. <http://www.puc.pa.gov/pcdocs/1648126.docx>. [↑](#footnote-ref-9)
9. *See Phase III Implementation Order* at page 149. [↑](#footnote-ref-10)
10. Due to the timing of the filing, the reconciliation statement will contain 10 months of revenues and expenses. The remaining two months of Program Year 12 will be reconciled with the Program Year 13 revenues and expenses. [↑](#footnote-ref-11)