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| PUC logo | COMMONWEALTH OF PENNSYLVANIA  PENNSYLVANIA PUBLIC UTILITY COMMISSION  P.O. BOX 3265, HARRISBURG, PA 17105-3265 | **IN REPLY PLEASE REFER TO OUR FILE**  M‑2014-2424864 |

**October 23, 2014**

TO ALL INTERESTED PARTIES:

Re: Act 129 Energy Efficiency and Conservation Program Phase III

Docket No. M-2014-2424864

On October 15, 2008, House Bill 2200 was signed into law as Act 129 with an effective date of November 14, 2008. Among other things, Act 129 required an Energy Efficiency & Conservation (EE&C) program (Program or EE&C program) for the Commonwealth’s largest electric distribution companies (EDCs) and required that the Pennsylvania Public Utility Commission (Commission) evaluate the costs and benefits of the EE&C program by November 31, 2013. Act 129 further directs that the Commission must set new incremental consumption and peak demand reductions, if the benefits of the Program and the various EDC plans exceed the costs.[[1]](#footnote-1) In accordance with these directives, the Commission, in its August 2, 2012 Implementation Order,[[2]](#footnote-2) prescribed additional energy consumption reduction targets for the EDCs, to be accomplished by May 31, 2016.[[3]](#footnote-3) The Commission has begun the process of evaluating the cost-effectiveness of a potential Phase III EE&C Program and determining whether additional incremental consumption reduction targets, as well as new peak demand reduction targets, will be adopted and, if so, what those targets shall be.

The Commission believes that advanced planning will enable a smooth and coordinated transition from Phase II to a possible third phase and will also minimize any harmful or disruptive breaks between the phases, should the Commission set additional consumption and peak demand reductions. At the same time, the Commission is interested in leveraging the knowledge and experience gained to-date in order to improve the EE&C Program, thereby maximizing ratepayer benefits.

With this Secretarial Letter, we seek comments on a number of important topics that will be instrumental in designing and implementing a potential Phase III of the EE&C Program. Recognizing that the Statewide Evaluator (SWE)[[4]](#footnote-4) will be providing various analyses and recommendations to assist the Commission in making determinations regarding a potential Phase III, we also welcome stakeholder comments on the relevant issues related to a potential Phase III. Comments are due December 19, 2014.

In addition, the Commission will hold a stakeholder meeting on Tuesday, December 2, 2014, from 1:30 to 3:30 P.M. in Hearing Room 1 of the Commonwealth Keystone Building, 400 North Street, Harrisburg, Pennsylvania, 17120. This meeting will provide interested parties an opportunity to identify additional issues and concerns regarding the design of a potential Phase III of the EE&C Program and to address any questions regarding the topics and issues presented herein.

Further, the Commission anticipates releasing, in the first quarter of 2015, the energy efficiency and demand response market potential studies conducted by the SWE, as well as a Tentative Implementation Order that will propose, among other things, any future incremental consumption and peak demand reduction targets and guidelines for Phase III EE&C plans, if required.

Below are specific issues and topics for which we are seeking stakeholder comments. We welcome comments on other issue or topics not outlined below.

**1. Length of Phase III EE&C Program**

**a. Length of Phase III**

For planning purposes, the Commission must determine the number of years that a third phase of the EE&C Program should run. Several factors to consider when evaluating the length of an EE&C Program term are:

* The accuracy of forecast data;
* The evolving energy efficiency marketplace;
* The evolving demand response marketplace;
* Consumers’ tendencies to adopt efficiency measures;
* Changes in Federal legislation and regulations that set minimum efficiency standards; and
* The administrative costs incurred by all parties in designing, filing, litigating and implementing the EE&C Program

While the Commission determined in its Phase II Implementation Order that a shorter period, specifically three years, was appropriate for Phase II of the EE&C Program in order to, among other things, “accommodate a contingency for dealing with a potential peak demand reduction target that must be accomplished by May 31, 2017, if the Commission determines that such a peak demand reduction program is cost-effective,”[[5]](#footnote-5) we are considering whether a longer program length would be more appropriate for a potential Phase III. Specifically, based on the experiences of all stakeholders, we would like to confirm whether the shorter Phase II term provided for some administrative difficulties and less efficient use of resources. Accordingly, the Commission is considering a five-year term for Phase III, to operate from June 1, 2016, through May 31, 2021. We request comments on the optimal length of a possible Phase III, such as a three-, four-, five- or six-year length.[[6]](#footnote-6)

**b. Inclusion of an Incremental Progress Requirement**

In its Phase II Implementation Order, the Commission declined the request from certain stakeholders to require annual consumption reduction targets. However, we did see the value in ensuring that the EDCs make incremental progress toward their consumption reduction targets. Accordingly, we required the EDCs to submit EE&C Plans that were designed to achieve at least 25% of the target amount in each program year.[[7]](#footnote-7) Should the Commission provide such a directive in Phase III? If so, the attainment of what percentage of the target amount should be required annually?

**2. Inclusion of Peak Demand Reduction Requirements**

Because Act 129 requires the Commission to conduct a cost-benefit analysis before establishing any additional peak demand reduction targets, the Commission directed the SWE to conduct a study of the Phase I peak demand program and to provide recommendations on whether the Phase I and/or future peak demand reduction programs can be implemented cost-effectively. In a May 17, 2013 Secretarial Letter, the Commission released the *Act 129 Demand Response Study – Final Report*, at Docket No. M-2012-2289411. The Commission held a stakeholder meeting on June 11, 2013, to provide stakeholders with an overview of the SWE’s findings and recommendations. The Commission released publicly the SWE’s analysis in conjunction with a Tentative Order outlining the cost-effectiveness of Phase I peak demand reduction programs and proposing a potential future peak demand reduction program.[[8]](#footnote-8) In February 2014, following a review of stakeholder comments, the Commission directed the SWE to perform a Demand Response Potential Study using the proposed residential direct load control and commercial and industrial load curtailment models outlined within the order.[[9]](#footnote-9) This study is anticipated to be completed in December 2014.

While we recognize that the SWE has not provided its final analysis regarding peak demand potential in Pennsylvania, we believe it beneficial to solicit feedback on certain issues surrounding a potential peak demand reduction program, should it be determined that it is cost-effective. Specifically, we solicit comments on the following:

1. If the SWE determines that there is cost-effective peak demand reduction potential available within the Act 129 framework, the EDCs would be required to meet a May 31, 2017 peak demand reduction target. Should the EDCs be required to continue peak demand reduction programs past the May 31, 2017 target? If so, should there be annual reduction requirements or an average annual reduction requirement over the entire period?
2. If the SWE determines that there is cost-effective peak demand reduction potential available within the Act 129 framework, the EDCs’ budgets would need to be split between consumption reduction and peak demand reduction initiatives. How should the budget be split between the two initiatives?
3. If the SWE determines that there is cost-effective peak demand reduction potential available within the Act 129 framework but would require the majority (*e.g.*, 75%; 80%; 90%, etc.) of the EDCs’ budgets, should the EDCs still be required to achieve peak demand reduction targets?
4. If the SWE determines that there is cost-effective peak demand reduction potential available within the Act 129 framework but only for a certain sector (*e.g.*, through residential direct load control programs), can the Commission prescribe a peak demand reduction target? In other words, can the Commission prescribe a target if it can only be met through measures offered to certain rate classes instead of across all rate classes? If so, should the Commission do so?
5. If the SWE determines that there is cost-effective peak demand reduction potential available within the Act 129 framework but only for a certain EDC service territory, can the Commission prescribe a peak demand reduction target? In other words, can the Commission prescribe a target for only one of the EDCs? If so, should the Commission do so?
6. If the SWE determines that there is *no* cost-effective peak demand reduction potential within the Act 129 framework, should the Commission again, as in Phase II, allow the EDCs to utilize all of their budgets for consumption reduction programs? Should the EDCs again, as in Phase II, be allowed to include voluntary peak demand reduction programs within their EE&C plans, so long as those programs are cost-effective and the EDCs can still meet their consumption reduction requirements?

Again, recognizing that we still await the SWE’s final analysis regarding the cost-effective peak demand reduction potential within the Act 129 framework, we also welcome comments on any other issues related to the potential prescription of peak demand reduction targets for Phase III.

**3. Inclusion of a Reduction Target Carve-out for the Government, Educational and Non-Profit Sector**

In Phase I, Act 129 required each EE&C Plan to obtain at least ten percent (10%) of the required reductions in consumption and peak demand from units of Federal, State and Local government, including municipalities, school districts, institutions of higher education and non-profit entities (government/educational/non-profit sector or G/E/NP sector).[[10]](#footnote-10) In implementing Phase II of the EE&C Program, the Commission again required the EDCs to obtain a minimum of 10% of all consumption reduction requirements from the government/educational/non-profit sector.[[11]](#footnote-11) The Commission also encouraged the EDCs to give special emphasis and consideration to multifamily housing and to reach out to the Pennsylvania Housing Finance Agency (PHFA) for assistance and coordination in these efforts.[[12]](#footnote-12)

The Commission has directed the SWE to determine, in both the energy efficiency and the demand response potential studies, the potential for consumption and peak demand reductions in the G/E/NP sector. However, we request feedback on the following questions in advance of the SWE’s determinations regarding G/E/NP potential:

1. If the SWE determines that there is cost-effective consumption and/or peak demand reduction potential in the G/E/NP sector within the Act 129 framework, should the Commission include a carve-out for reductions in that sector?
2. If so, should it be:
   1. The same 10% carve-out as prescribed in Phases I and II?
   2. A percentage of the overall savings, as in Phases I and II?
   3. A sector carve-out based on that sector’s potential in each EDC’s service territory? This option may result in different savings carve-outs for each EDC.
   4. Some other methodology?
3. If there is a G/E/NP carve-out, should the Commission again, as in Phase II, encourage the EDCs to give special emphasis and consideration to multifamily housing and to reach out to PHFA for assistance and coordination in these efforts? If so, should the Commission require multifamily properties to be owned by a non-profit or government entity to qualify under the G/E/NP sector, or should we simply require, as in Phase II, that the properties be financed under a Federal or State affordable housing program and have long-term use restrictions in place?

**4. Inclusion of a Reduction Target Carve-out for the Low-Income Sector**

In Phase I, Act 129 required each EE&C Plan to include specific measures for households at or below 150% of the federal poverty income guidelines (FPIG), in proportion to that sector’s share of the total energy usage in the EDC’s service territory.[[13]](#footnote-13) In implementing Phase II of the EE&C Program, the Commission required the EDCs to obtain a minimum of four-and-a-half percent (4.5%) of consumption reductions from the low-income sector.[[14]](#footnote-14) Additionally, the Commission permitted the EDCs to include savings from multifamily housing, up to the percentage of customers living in the multifamily housing with incomes at or below 150% of the FPIG, towards the 4.5% goal.[[15]](#footnote-15)

The Commission has directed the SWE to determine, in both its energy efficiency and demand response potential studies, the potential for consumption and peak demand reductions in the low-income sector. However, we request feedback on the following questions in advance of the SWE’s determinations regarding low-income potential:

1. If the SWE determines that there is cost-effective consumption and/or peak demand reduction potential in the low-income sector within the Act 129 framework, should the Commission include a carve-out for reductions in that sector?
2. If so, should it be:
   1. The proportionate number of measures requirement as prescribed in Phase I?
   2. The same 4.5% savings carve-out as prescribed in Phase II?
   3. A different percentage of the overall savings?
   4. A sector carve-out based on that sector’s potential in each EDC’s service territory? This option may result in different sector savings carve-outs for each EDC.
   5. Some other methodology?
3. If there is a low-income carve-out, should the Commission again, as in Phase II, allow the EDCs to include savings from multifamily housing, up to the percentage of customers living in the multifamily housing with incomes at or below 150% of the FPIG, toward the goal?

**5. Inclusion of Whole-House Measures**

In its Phase II Implementation Order, the Commission recognized the benefits of more comprehensive measures, including whole house treatments, and, therefore, required the EDCs to develop EE&C plans that contained at least one comprehensive measure for residential and small commercial rate classes.[[16]](#footnote-16) Should the Commission provide such a directive in Phase III? If so, should it be amended to require more than one measure?

**6. EDCs’ Phase III Budgets**

**a. Accumulated Savings in Excess of Reduction Requirements**

In implementing Phase II, the Commission recognized that many of the EDCs had surpassed their Phase I consumption reduction requirement of 3% before the end of the Phase, while still having budget available for the continued provision of measures. The Commission allowed the EDCs to continue spending their budgets to provide Phase I measures until the expiration of Phase I. We also allowed those consumption reductions in excess of the 3% goal to be applied to the EDCs’ Phase II targets.[[17]](#footnote-17) The Commission requests comments on such procedures going into Phase III. Specifically:

1. Should the Commission allow for the continued spending of Phase II budgets after targets are met?
2. Should we allow the EDCs to apply any excess consumption reductions from Phase II towards their Phase III consumption reduction requirements?

**b. Finalizing Phase II Spending**

During its review of the EDCs’ Phase I reports and the Phase II EE&C Plans, the Commission encountered an issue in which a measure may have been installed and commercially operable before the end of Phase I, but a rebate application had not been submitted to the EDC until a significant amount of time afterwards, affecting the timing with regard to the EDCs closing their Phase I books. Additionally, questions were raised regarding whether deadlines should be set for rebate applications following the in-service date of the measure. Lastly, issues arose regarding residual Phase I expenses to recover and/or revenue to refund to customers. The Commission solicits feedback on the following:

1. Should the Commission prescribe a deadline for the submission of rebate applications following the in-service date of the measure? For example, rebate applications would need to be submitted within 180 days from the in-service date of the measure to qualify for a rebate.
   1. Or, should an EDC be required to develop application deadlines specific to its programs?
2. Should the Commission prescribe a deadline for the submission of rebate applications for measures installed at the end of a Phase? For example, rebate applications would need to be submitted within 90 days of the end of a Phase in order for the EDC to finalize its spending from that Phase.
   1. If so, should it be the same deadline as utilized for measures installed in the beginning or middle of a Phase?
   2. Or, should the EDCs be required to develop their own program-specific deadlines within their plans?
3. What is an appropriate length of time for the EDCs to “true-up” their costs/budgets for Phase II? Should the Commission consider allowing the EDCs to roll all residuals of Phase II into their Phase III surcharges, for true-up purposes only, instead of keeping a Phase II surcharge in place while the Phase III rate is effective?

**7. Updating of the Technical Reference Manual**

In Phase I and II, the Commission deemed it appropriate to implement an annual updating process for the Technical Reference Manual (TRM).[[18]](#footnote-18) The Commission seeks feedback on the following:

1. Should the Commission maintain an annual TRM updating process for Phase III?
2. If not, how often should the TRM be updated?
3. Is the updating schedule dependent on the length of Phase III? For example, if the Commission implements a three-year phase vs. a six-year phase, would that affect how often we should update the TRM?

**8.** **Updating the Total Resource Cost Test**

In Phase I and II, the Commission established and subsequently reviewed the Total Resource Cost Test (TRC Test) methodology.[[19]](#footnote-19) We seek feedback on the following:

1. Should the Commission establish a periodic review and updating process for the TRC Test methodology in Phase III?
2. How often should the TRC Test methodology be reviewed?
3. Should a periodic review and updating of the TRC Test methodology process schedule be dependent on the length of Phase III? For example, if the Commission implements a three-year phase vs. a five-year phase, would that affect how often we should review the TRC Test methodology and consider updates?
4. In our Phase I and Phase II Implementation Orders, we declined, among other things, the requests from certain stakeholders to require inclusion of societal benefits in the TRC equation and analysis. We have seen no reasons emerge during the span of the two phases to change such a determination and do not intend to revisit those issues again in this process of addressing Phase III issues based on any theories or arguments that have heretofore already been made. If, however, there are new data, theories, or arguments are available, they may be presented in comments along with other relevant comments.

Having set forth herein a number of questions upon which stakeholder may comment, the Commission directs that this Secretarial Letter shall be published on the Commission’s website[[20]](#footnote-20) and be served upon the parties at Docket No. M-2012-2289411.

The Commission further directs that the Secretary shall deposit a notice of this Secretarial Letter with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

Interested parties may file written comments at this docket. Comments are due on or before December 19, 2014, and must reference Docket Number M-2014-2424864. One original signed copy of comments shall be filed with the Commission’s Secretary at: Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. Alternatively, comments may be filed electronically through the Commission’s e-filing system, in which case no paper copy needs to be filed with the Secretary provided that the comments are less than 250 pages.

The Commission directs that a Word formatted copy of all comments shall be electronically mailed to Megan G. Good at [megagood@pa.gov](mailto:megagood@pa.gov) and Kriss Brown at [kribrown@pa.gov](mailto:kribrown@pa.gov). Attachments may not exceed three megabytes.

If you have any questions regarding this Secretarial Letter, please contact Megan Good at 717-425-7583 or [megagood@pa.gov](mailto:megagood@pa.gov).

 Sincerely,

Rosemary Chiavetta

Secretary

cc: Chairman’s Office

Vice Chairman’s Office

Commissioners’ Offices

Jan Freeman, Executive Director

Mary Beth Osborne, Director of Regulatory Affairs

Bohdan Pankiw, Chief Counsel

Robert Young, Deputy Chief Counsel

Kriss Brown, Assistant Counsel

Paul Diskin, Director, Technical Utility Services

Darren Gill, Deputy Director, Technical Utility Services

Joseph Sherrick, Supervisor, Technical Utility Services

Megan Good, Analyst, Technical Utility Services

1. *See* 66 Pa.C.S. §§ 2806.1(c) and (d). [↑](#footnote-ref-1)
2. *See Energy Efficiency and Conservation Program* Implementation Order, Docket Nos. M-2012-2289411 and M‑2008-2069887 (August 3, 2012) (Phase II Implementation Order). [↑](#footnote-ref-2)
3. Phase II of the Act 129 EE&C Program occurs between June 1, 2013, and May 31, 2016. [↑](#footnote-ref-3)
4. GDS Associates, *et al.* [↑](#footnote-ref-4)
5. *See* Phase II Implementation Order at 22. [↑](#footnote-ref-5)
6. Act 129 requires the Commission to evaluate the costs and benefits of the EE&C Program at least every five years. *See* 66 Pa.C.S. § 2806.1(c)(3). If the program were longer than five years, the Commission could still evaluate the program during the fifth year, thus giving an additional year to conduct the evaluation, set new targets and to develop and approve EDC plans. [↑](#footnote-ref-6)
7. *Id.* at 28. [↑](#footnote-ref-7)
8. *See Energy Efficiency and Conservation Program* Tentative Order. Docket Nos. M-2012-2289411 and M-2008-2069887 (November 14, 2013). [↑](#footnote-ref-8)
9. *See Energy Efficiency and Conservation Program* Final Order. Docket Nos. M-2012-2289411 and M‑2008‑2069887 (February 20, 2014). [↑](#footnote-ref-9)
10. *See* 66 Pa.C.S. § 2806.1(b)(1)(i)(B). [↑](#footnote-ref-10)
11. *See* Phase II Implementation Order at 45. [↑](#footnote-ref-11)
12. *See* Phase II Implementation Order at 49 and 50. [↑](#footnote-ref-12)
13. *See* 66 Pa.C.S. § 2806.1(b)(1)(i)(G). [↑](#footnote-ref-13)
14. *See* Phase II Implementation Order at 54. [↑](#footnote-ref-14)
15. *Ibid.* [↑](#footnote-ref-15)
16. *See* Phase II Implementation Order at 20. [↑](#footnote-ref-16)
17. *Id.* at 58 and 59. [↑](#footnote-ref-17)
18. *See Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standards for the Participation of Demand Side Management Resources – Technical Reference Manual Update* Final Order. Docket No. M‑00051865. (June 1, 2009) at page 17. *See*  Phase II Implementation Order at 72. [↑](#footnote-ref-18)
19. *See Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test* Order. Docket No. M‑2009-2108601. (June 18, 2009). *See*  *Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test 2011 Revisions* Final Order. Docket No. M‑2009-2108601. (August 2, 2011). *See 2012 PA Total Resource Cost (TRC) Test; 2009 PA Total Resource Cost Test* Order. Docket No. M‑2009-2108601. (August 30, 2012). [↑](#footnote-ref-19)
20. <http://www.puc.pa.gov/filing_resources/issues_laws_regulations/act_129_information/energy_efficiency_and_conservation_ee_c_program.aspx>. [↑](#footnote-ref-20)