

PENNSYLVANIA UTILITY LAW PROJECT

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July 9, 2012

Via E-Filing

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Act 129 Energy Efficiency and Conservation Program Phase Two
Docket No. M-2012-2289411**

Dear Secretary Chiavetta:

Please accept the Reply Comments of Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") in Response to Comments filed to the Tentative Implementation Order entered on May 11, 2012 to Docket No. M-2012-2289411.

Thank you for your assistance, and please feel free to contact me directly should you have any questions.

Very truly yours,

**PENNSYLVANIA UTILITY LAW PROJECT
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Cc: Megan Good
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Act 129 Energy Efficiency and Conservation Program Phase Two :
: **Docket No. M-2012-2289411**
:

**REPLY COMMENTS
OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND
ENERGY EFFICIENCY IN PENNSYLVANIA**

Concerning the Tentative Implementation Order Entered May 11, 2012

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I. INTRODUCTION¹

These reply comments are submitted on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) to comments filed to Docket No. M-2012-2289411 concerning the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Tentative Implementation Order (“Tentative Order” or “T.O”), entered on May 11, 2012 regarding Act 129 Energy Efficiency and Conservation Program Phase Two (“Phase Two”).

CAUSE-PA is a statewide unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA supports the creation and development of effective energy conservation and energy efficiency programs targeted to assist low-income Pennsylvanians. These programs are an essential component for obtaining and maintaining long term electricity affordability as well as the continued fostering of a household’s health and welfare.

CAUSE-PA, through its attorneys,² has actively participated as a stakeholder in meetings convened by the Commission and by individual Electric Distribution Companies (“EDC”s) and has commented upon the Secretarial Letter and Tentative Implementation Order regarding Phase Two of Act 129. These reply comments address comments of various parties which were submitted to the Commission regarding the proposed scope of low income and multifamily housing components in Phase Two.

¹ We gratefully acknowledge the assistance of Bryce L. Robertson, a Villanova Law student who assisted in the drafting of these Comments on behalf of CAUSE-PA.

² The Pennsylvania Utility Law Project (“PULP”), is a specialized project of the non-profit Pennsylvania Legal Aid Network. PULP provides statewide representation, advice, and support in energy and utility matters on behalf of low-income, residential utility customers and low-income advocacy organizations such as CAUSE-PA.

II. SUMMARY OF REPLY COMMENTS

1. The designation of an energy savings target for the low-income program sector is within the Commission's authority.
2. The designation of a 4.5% energy savings target for the low-income program sector is an appropriate goal.
3. Eligibility for the low-income program sector is limited by Act 129 to households with incomes at or below 150% Federal Poverty Level ("FPL").
4. The Commission has authority to subject an EDC that fails to meet the low-income sector requirement as outlined in the Act and this implementation order to the penalties pursuant to Chapter 33 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 3301(a).
5. Low-income households should be specifically excluded from participation in on-bill financing.
6. The Commission should clarify that energy efficiency services provided to multifamily properties within the government/educational/nonprofit sector should be directed to buildings serving limited-income households.
7. The Commission should designate specific funding and savings targets to the energy efficiency services provided to multifamily properties within the government/educational/nonprofit sector which serve households of limited incomes.

III. REPLY COMMENTS:

Low-Income Sector Issues

a. General Statement

The energy savings benefits to be achieved through an effective, meaningful and targeted Phase Two low-income program are unique and of greater significance and serve a greater number of public benefit goals than any other Act 129 program.³ In its initial Comments, CAUSE-PA noted these benefits and highlighted its reasons for the Final Order to clearly designate a savings goal of 4.5% targeted from consumers with incomes at or below 150% FPL. Although each of the parties who submitted comments to the T.O. supported the continuation of a low-income carve out, the EDC's⁴ supported a final order which would be so broadly stated and toothless that it would result in a low-income program devoid of substance and integrity. CAUSE-PA strongly urges the Commission to withstand these attempts to gut the low-income segment. According to these EDCs, a low-income program is fine, so long as no parameters are imposed. They argue for:

- No requirement to achieve designated targeted low-income energy savings levels;
- No requirement to achieve measured savings within low-income programs;
- No requirement to limit the targeted low-income program population to at or below 150% FPL;

³ Among these benefits are the provision of energy savings services to: those least able to afford to obtain them; households inhabiting the oldest and most energy inefficient housing; households receiving Customer Assistance Program (CAP) benefits subsidized by other ratepayers; households in greatest danger of bad debt accrual and service termination; households designated by the electric Choice Act and Commission Policy statements to be those targeted for receipt of energy conservation services; and households who are best able to obtain through Act 129 participation, the coordinated benefits of LIHEAP, DOE weatherization, and LIURP.

⁴ PECO, PPL, Duquesne, First Energy.

- No requirement to income qualify any participants from within the general population;
- No requirements to provide any higher incentives or rebates to “general population” participants;
- No ability, through its general sanctioning powers within Pennsylvania Public Utility Code, 66 Pa. C.S. § 3301(a), for the Commission to hold an EDC accountable for failing to achieve targeted savings reduction.

In these Reply Comments, CAUSE-PA responds to these proposed limitations and reasserts its earlier comments, incorporated herein, supporting a robust and deep Phase Two low-income program comprising a 4.5% savings reduction goals targeted to be achieved from a low-income population at or below 150% FPL.

b. The designation of an energy savings target for the low-income program sector is within the Commission’s authority.

CAUSE-PA strongly supports the intent of the Tentative Implementation Order to incorporate targeted energy savings levels into its low-income sector goals in order to ensure that low-income households receive its share of the energy savings levels which accrue to all consumers of electricity through Act 129. The Commission, through its designation of a targeted savings level, has incorporated a standard that is compatible with the intent of the Act as a portion of the overall consumption reduction requirements under 66 Pa. C.S. § 2806.1(c) and (d) and with the intent embodied within Act’s dedicated low-income section, 66 Pa. C.S. § 2806.1(b)(1)(i)(G). Furthermore, the setting of targeted savings parallels the approach taken within the government, non-profit and educational section 66 Pa. C.S. § 2806.1(b)(1)(i)(B), the only other specific carve-out designated within the Act. Finally, contrary to the assertion of the

EDCs, that the Commission is limited in setting of targeted low-income goals, such a determination by the Commission is fully compatible with the Commission's authority under the powers assigned to it in Act 129. The Act contains a general obligation in addition to the specific obligations enumerated in its subsections:

The Commission shall, by January 15, 2009, adopt an Energy Efficiency and Conservation Program to require Electric Distribution Companies to adopt and implement cost-effective Energy Efficiency and Conservation Plans to reduce energy demand and consumption within the service territory of each Electric Distribution Company in this Commonwealth.

66 Pa. C.S. § 2806.1 (a).

The Commission is thus vested with authority to designate low-income savings goals in furtherance of this general statutory responsibility to reduce energy demand and consumption within the service territory of each EDC. A number of the EDCs would limit the Commission's authority to pursue low-income energy savings within only the narrowest of lines, i.e. to an Act 129 low-income energy efficiency program which is tasked to achieve only a proportion of measures. However, such an interpretation should be rejected. Although obtaining a proportional level of measures is the only criterion specifically required under the statute, the proportional measures standard is the floor below which no EDC can go and is neither the optimal nor best standard by which the Commission should measure successful energy efficiency for low-income households. The Commission certainly retains the ability to provide additional clarity to obtaining low-income energy savings through the assertion of targeted savings levels. The Act 129 Low-Income Working Group made significant progress in this direction during phase I.

- c. **The designation of a 4.5% energy savings target for the low-income program sector is an appropriate goal.**

A number of the EDCs have questioned the Commission's determination that EE&C Plans obtain a minimum of four-and-a-half percent (4.5%) of the consumption reduction requirements, which the Commission proposed in Section A of the Tentative Order, in addition to the requirement that each EE&C plan include specific Energy Efficiency (EE) 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 Electric Distribution Company's ("EDC's") service territory.⁵ The EDCs concerns are unfounded.

As CAUSE-PA noted in its earlier comments, the Commission's targeted 4.5% low income sector energy savings level is a readily achievable, conservative figure for the population at or below 150% FPL.. Moreover, each of the EDCs has already demonstrated that this is an achievable level. The Commission in determining 4.5% as the energy saving level to be achieved in Phase Two, considered the following data: "Phase I EE&C Plan portfolio savings projections; the current portfolio status of cumulative program inception to date (CPITD) low-income savings in proportion to total CPITD savings through program year three, quarter three; current and final EE&C budget allocation figures; and input from the SWE's Market Potential Study."⁶

Furthermore, EDCs have not only demonstrated their capability to achieve the targeted goal, but to exceed it substantially.⁷ For example, in Phase I of Act 129 all EDCs achieved an average of 4.57% portfolio savings ratios for the carve-out, which was defined as at or below 150% FPL. Additionally, all but one EDC achieved at least a 5% savings ratio, with several having savings ratios beyond 20% for the low-income segment.⁸

⁵ See 66 Pa.C.S. § 2806.1(b)(1)(i)(G).

⁶ PUC Tentative Implementation Order at 24.

⁷ Id.

⁸ Id.

In its earlier comments, CAUSE-PA, based upon the Detailed Recommendation 1 and Table 1 of the *Report of the Act 129 Low-Income Working Group*⁹, asserted that there was a concrete basis for the Commission to determine and establish proportional energy savings goals in the low income program sector and recommended that, based upon the Working Group Report, the targeted level of Low-Income household usage as a percentage of total consumption be established at 7.84%-9.51% among the EDCs. Setting energy reduction goals at those levels would have been consistent with the statutory intent to achieve proportional energy reduction within the low-income sector, defined as consisting of households with incomes at or below 150% FPL. The 4.5% figure is therefore significantly lower than the energy savings potentially available from that low-income segment. The Tentative Order therefore proposes standards which are objectively based, may reasonably be expected and should be included within the Final Order.

d. The low-income program sector eligibility level is designated by Act 129 as serving households with incomes at or below 150% FPL.

The Commission proposed in its Tentative Order to permit each EDC to have the flexibility and discretion to voluntarily expand the income eligibility level of low-income programs to include households up to 250% Federal Poverty Income Guidelines. The Commission believes that providing the EDCs with the ability to serve to households in the 151-250% range of the federal poverty guidelines¹⁰ would provide the EDCs with greater flexibility to reach the 4.5% energy savings targets. In their comments, the EDCs, although objecting to the Commission's designation of any targeted savings levels, welcome the ability to voluntary serve households within the 151-250% FPL as low-income program participants. Contrary to their desires and

⁹ Report of the Act 129 Low-Income Working Group Docket No. M-2009-214680, March 19, 2010

¹⁰ See, Tentative Implementation Order at 25-26.

preferences, the EDC's should not be provided with unchecked discretionary ability to expand the statutorily designated low-income eligibility levels.

As stated within its initial comments, CAUSE-PA respectfully asserts that energy efficiency savings targeted to low-income households must remain targeted to households with incomes at or below 150% FPL. CAUSE-PA has requested that the Commission revisit its proposal and determine that, until the currently targeted population base of those at or below 150% of federal poverty are fully served and their energy efficiency needs met, the 150% income level should be maintained.

There are significant reasons for retaining the Phase One low-income eligibility levels unchanged. CAUSE-PA enumerated these reasons in detail in its initial comments. Those comments remain valid as a response to those supporting an expansion of eligibility, and are incorporated herein. In summary they are:

- An expansion of the low-income program sector to any level beyond 150% FPL is questionable within the language of the statute. in that 66 Pa.C.S. § 2806.1(b)(1)(i)(G) specifically designates that the low-income sector EE&C programs are to be directed to households with incomes at or below 150% FPIG.
- There has been neither a demonstrated indication nor an analysis showing that the needs of the statutorily targeted group of households with incomes at or below 150% FPL have been fully addressed and met.
- Prematurely expanding low-income carve-out eligibility levels before the energy efficiency needs of the core population group have been fully met would adversely low-income households at or below 150% FPL
- Households at or below 150% of the FPL remain most in need of additional assistance.
- Households at or below 150% FPL are CAP-eligible households whose benefits are paid for by other ratepayers. These households should receive full energy efficiency services prior to any others.
- Expanding the level of enrollment eligibility and thus the numbers of households eligible to receive free services in Phase Two, while maintaining the overall phase

one 2% funding cap will lead to either a reduced level of energy efficiency services provided to each household or to fewer households in the lowest income households being served.

- It is impractical and imprudent to expand services to a larger population group for whom the scope of service territory energy usage and cost of treatment is unknown.
- e. **The Commission has authority to subject an EDC that fails to meet the low-income sector requirement as outlined in the Act and within the Final Implementation Order to the penalties pursuant to Chapter 33 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 3301(a).**

A number of EDCs have challenged the authority of the Commission to subject an EDC that fails to meet the low-income sector energy savings targets, as outlined in the Act and within the Final Implementation Order, to the penalties pursuant to Chapter 33 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 3301(a). CAUSE-PA believes that such a challenge is unfounded in that the Commission, as discussed within these Reply Comments, in paragraph b. above, obtains its power to set low-income energy savings targets pursuant to Act 129 as well as pursuant to its Chapter 5 grant of general powers.

General powers

(a) Enforcement of provisions of part.--In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.

(b) Administrative authority and regulations.--The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.

(c) Compliance.--Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to

any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.
66 Pa. C.S. § 501

CAUSE-PA submits that pursuant to this general grant of powers, the Commission retains the ability to enforce its Act 129 Phase Two Implementation Order through its § 3301(a) penalty power, EDC arguments attempting to limit the scope of the Commission's broad oversight powers and to restrict the ability of the Commission to enforce its Orders notwithstanding.

f. Low-income households should be specifically excluded from participation in on-bill financing.

In the Tentative Order the Commission indicated that the possible benefits of on-bill financing or repayment programs warrant further consideration, and recommended that a working group be convened to explore the various models, identify possible financial partnerships and determine the application feasibility to each of the customer classes. In Comments submitted to the Tentative Order, EDCs stated their concerns and opposition to any potential role within the process. In addition, CAUSE-PA indicated its reasons for why it does not support either on-bill financing or on-bill repayment programs for residential customers, particularly low-income residential customers. CAUSE-PA incorporates those comments herein. Furthermore, a number of parties indicated support for the working group process to be initiated in order to explore the feasibility and potential benefits of such programs. While CAUSE-PA does not challenge the possibility that convening a working group to review potential benefits and models of financing options for Commercial and Industrial ratepayers may have some value, there have been no arguments advanced within this docket to justify any

inclusion of low-income residential consumers within the scope of a Work Group organized to explore and determine the application and feasibility to of on-bill financing.

As each of the CAUSE-PA Comments submitted to the Secretarial Letter and to the Tentative Implementation Order have indicated, households at 150% of the federal poverty guideline lack sufficient income to pay for all of their essential needs. There have been no valid reasons put forward by any party submitting comments which would suggest that it would be good public policy to incorporate into a potential work group the subject of low-income households participating in on-bill financing. To the contrary, the obvious difficulties and risks inherent in any process of extending additional debt to low-income households is manifest and should be avoided. Given this reality it is difficult to see any legitimate rationale to have low-income customers assume additional debt for energy efficiency improvements. These households simply cannot afford necessities, let alone additional financing. CAUSE-PA respectfully requests that the Commission clarify that low-income households are to be **specifically excluded** from consideration by any Work Group convened for this purpose.

g. The Commission should clarify that energy efficiency services provided to multifamily properties within the government/educational/nonprofit sector should be directed to buildings serving households of limited incomes.

In its Comments, PPL specifically requested that the Commission clarify to whom energy efficiency services provided to multifamily properties within the government/ nonprofit sector should be directed.¹¹ CAUSE-PA joins in this request for clarification and encourages the Commission take this opportunity to indicate that services provided to multifamily properties within the government/educational/nonprofit sector should be limited to housing with long term use restrictions limited to households with incomes at or below 60% of the area median income.

. As the Pennsylvania Housing Finance Agency (“PHFA”), National Housing Trust (“NHT”), Regional Housing Legal Services (“RHLS”) and PWCC have each indicated, there is significant reason and opportunity for the Commission to target selected PHFA related multifamily properties which provide affordable rents for additional energy efficiency opportunities.

In addition, CAUSE-PA fully supports the targeting of energy efficiency upgrades in multifamily rental housing as a cost-effective means to reduce energy consumption, maintain housing affordability, and create healthier, more comfortable living environments for limited income and low-income families. Many of CAUSE-PA’s members are renters and some reside in low-income, multifamily residential buildings.

Energy efficiency improvements in these buildings will supplement the benefits which are provided directly to low-income ratepayers (which should continue through existing low-income utility programs) and otherwise benefit low- and moderate-income residents through reduced utility costs and increased affordable housing opportunities. In properties where

¹¹ PPL Comments at 17.

owners pay the utility bill, energy efficiency improvements will lower operating costs, reducing the need for owners to raise rents. All Pennsylvania taxpayers will benefit through reduced demand on the state's energy system and increased economic output.

- h. The Commission should designate specific funding and savings targets to the energy efficiency services provided to multifamily properties within the government/educational/nonprofit sector which serve households of limited incomes.**

The Commission proposes that multifamily housing be given special emphasis and consideration within the government/educational/nonprofit sector. However, no specific budget or energy savings level is targeted. A number of parties filing comments see this as a deficiency in the Tentative Order. CAUSE-PA agrees and requests that the Commission include specific budget and energy savings targets within the Final Order.

CAUSE-PA is concerned that that without a specifically designated energy savings target or budgetary allocation, this important new initiative will run the danger of being neglected or at best receive limited attention. We therefore strongly urge the Commission to require that multifamily housing be addressed in each EDC plan and to include specifically designated savings targets and budget amounts in the Final Order.

IV. CONCLUSION

CAUSE-PA thanks the Commission for the opportunity to submit these Reply Comments to the Phase Two Tentative Implementation Order and looks forward to a successful Phase Two. CAUSE-PA respectfully requests that the Commission issue a Final Order reflecting the comments expressed herein and which incorporates a low income carve out containing specified energy savings of at least 4.5% specifically targeted only to low-income households at or below 150% FPL; that the Commission specifically exclude the consideration of low-income residential customers from participation in any on-bill financing program; that the Commission direct that

each EDC achieve specifically targeted savings and allocate a sufficient budget to multifamily properties serving the low-income; and as noted within our Comments, encourage each EDC to develop and execute an innovative approach to the issue of de facto electric heating.

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