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PA PUBLIC UTILITY COMMISSION
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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor, Room N201
Harrisburg, Pennsylvania 17102

RE: Comments of the Energy Association of Pennsylvania to the Tentative Order Dated November 14, 2013 Re: ACT 129 Energy Efficiency and Conservation Program. Docket No. M-2012-2289411 and M-2009-2069887

Dear Secretary Chiavetta:

Enclose for filing, please find the Comments of the Energy Association of Pennsylvania ("EAP") in the above-referenced docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Donna M.J. Clark".

Donna M.J. Clark
Vice President and General Counsel

Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Energy Efficiency and Conservation : Docket No. M-2012-2289411
Program : M-2009-2069887
 :

**COMMENTS OF THE
ENERGY ASSOCIATION OF PENNSYLVANIA
TO TENTATIVE ORDER DATED NOVEMBER 14, 2013**

I. INTRODUCTION

Act 129 of 2008 (“Act 129”) established a mandatory energy efficiency and conservation (“EE&C”) program in Pennsylvania, which required, *inter alia*, all electric distribution companies (“EDCs”) with at least 100,000 customers to implement an EE&C plan approved by the Pennsylvania Public Utility Commission (“PUC” or “Commission”) and to achieve retail energy consumption savings of at least one percent (1%) by May 31, 2011 and of at least three percent (3%) by May 31, 2013.¹ Act 129 also directed that the approved EE&C plans as implemented result in peak demand savings of at least four-and-a-half percent (4.5%) by May 31, 2013 over the 100 hours of highest demand as measured against specific EDC peak demand during the period of June 1, 2007 to May 31, 2008.² Failure to meet either of these mandates could result in the imposition of penalties by the Commission.³

¹ 66 Pa.C.S. § 2806.1(c).

² 66 Pa.C.S. § 2806.1(d).

³ 66 Pa.C.S. § 2806.1(f).

The statute requires the Commission to assess the cost-effectiveness of the consumption savings by November 30, 2013, “and every five years thereafter”⁴ and to establish additional mandatory incremental reductions in consumption “[i]f the Commission determines that the benefits of the program exceed the costs”.⁵ Further, and with respect to peak demand savings achieved during the initial EE&C plans, Act 129 requires that by November 30, 2013 the Commission compare the total costs of peak demand reduction required under 66 Pa. C.S. §2806.1(d) with “the total savings in energy and capacity costs to retail customers in this Commonwealth or other costs determined by the Commission.”⁶ The statute provides that “[i]f the Commission determines that the benefits of the plans exceed the cost, the Commission shall set additional incremental requirements for the reduction in peak demand for the 100 hours of greatest demand or an alternative reduction approved by the Commission.”⁷ Any required future peak demand reductions are to be accomplished no later than May 31, 2017.⁸

To assist the Commission in its effort to determine whether the demand reduction programs implemented in the initial EDC EE&C plans (“Phase I”) were cost-effective, the Commission directed the Act 129 Statewide Evaluator (“SWE”) to conduct a study (“DR Study”) which was initially made available pursuant to a Secretarial Letter on May 17, 2013.⁹ Following a subsequent meeting of stakeholders on June 11, 2013, the Commission directed the SWE to supplement the initial DR study with a Preliminary Wholesale Price Suppression and

⁴ 66 Pa. C.S. § 2806.1(c)(3).

⁵ 66 Pa. C.S. §2806.1(d)(2).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ The Commission determined that the programs implemented by the EDCs to achieve energy consumption savings were cost effective and mandated further targets in its August 3, 2012 Implementation Order which are to be met between June 1, 2013 and May 31, 2016, i.e. Phase II of Act 129. The Commission did not establish additional peak demand reduction requirements in August of 2012 because the required cost-effectiveness assessment of Phase I programs could not be completed at that time. *See*, 2012 Implementation Order at p. 38.

Prospective Total Resource Cost (“TRC”) Test Analysis of Phase I peak demand programs which the SWE completed on November 1, 2013.

On November 14, 2013, the Commission entered the instant Tentative Order, requesting public comments on the amended Act 129 Demand Response Study which included the Preliminary Wholesale Price Suppression and Prospective TRC Analysis (“Amended DR Study”) prepared by the SWE to assess the cost-effectiveness of demand reduction programs implemented in the Phase I EDC EE&C plans. While the Amended DR Study confirmed the initial conclusion reached by the SWE that demand reduction programs implemented in Phase I were not cost-effective, the Commission now seeks input regarding an alternative mandatory peak demand reduction program to be studied for inclusion in a subsequent phase of Act 129. Tentative Order at p. 2. In general, the Commission asks whether the cost-effectiveness of these programs could be improved if a different methodology for measuring cost/benefits and an alternative approach to demand reduction program design were employed in a future Phase III of Act 129 EE&C plans.

The Energy Association of Pennsylvania (“EAP” or “Association”) represents and promotes the interests of electric and natural gas distribution utilities operating in the Commonwealth. EAP respectfully submits these comments to the Tentative Order on behalf of its EDC members subject to Act 129.¹⁰ EAP offers general comments and defers to its members to respond specifically to the more technical aspects of the contemplated demand reduction programs and proposed assessment methodologies outlined in the Amended DR Study.

¹⁰ Duquesne Light Company (Duquesne); Metropolitan Edison Company (Met-Ed); PECO Energy Company (PECO); Pennsylvania Electric Company (Penelec); Pennsylvania Power Company (Penn Power); PPL Electric Utilities (PPL); and West Penn Power Company (West Penn Power)

II. COMMENTS

Initially, the Association maintains that, based on the statute and the results of the Amended DR Study, future demand reduction programs are not required or justified under Act 129. In particular, EAP contends that curtailment programs for large commercial and industrial customers should not be required in any future EE&C plans since such customers participate in vibrant existing PJM programs; continuing a requirement that EDCs pay for uneconomic DR resources will have an impact on those competitive market programs.¹¹

In the event that the PUC alternatively concludes that future demand reduction targets are warranted, EAP agrees with the conclusion of the SWE that the top 100 hour methodology of measuring demand reduction performance should be eliminated and that a different “trigger” should replace the Phase I requirement of reducing peak demand in the 100 hours of highest demand. EAP further maintains that any future demand reduction target must be established in a manner which is equitable and does not disproportionately subject one EDC to an increased penalty risk.

EAP questions the need to conduct a further demand potential study for future phases of Act 129 based on the SWE finding that demand reduction programs in Phase I were not cost-effective. EAP further suggests that based on the analysis to date, and given PJM market changes, it is not prudent to devote additional resources to conduct a full Wholesale Price Suppression study.

Finally, if the Commission determines that further demand reduction mandates are justified, it is critical that the timeframe and schedule for the next phase of EE&C plans be

¹¹ While not as vibrant as demand response programs for large commercial and industrial customers, electric generation suppliers, load aggregators, and curtailment service providers can currently implement direct load control programs for residential customers and bid them into PJM’s emergency and economic load response programs.

established so as to provide a fair opportunity for continued stakeholder input within the statutory framework and adequate time to complete program development and full implementation by June 1, 2016 so as to meet the compliance deadline of May 31, 2017.

A. FUTURE DEMAND REDUCTION MANDATES ARE NOT WARRANTED.

Based on the results of the Amended DR Study, recent PJM demand response program rule changes¹² and the clear statutory language of Act 129, future demand reduction mandates and compliance targets are neither justified nor required. EAP contends that the statute directs the Commission to establish additional demand reduction targets **if** it is first determined that the benefits of the demand reduction programs implemented in Phase I EE&C plans exceed the costs. *See*, 66 Pa. C.S. §2806.1(d)(2). EAP does not read the statutory language to authorize the PUC to establish further peak demand reduction targets “if the Commission determines that there is an alternative model that is cost-effective....” *Compare* Tentative Order at p. 28 with 66 Pa. C.S. §2806.1(d)(2) which provides that **if** the benefits of peak demand reduction programs exceed costs, the Commission shall set additional incremental peak demand reduction targets either for the 100 hours of greatest demand or based on an alternative reduction methodology approved by the Commission. Future mandated demand reduction targets with the possibility of subsequent penalties would only be required if the demand reduction programs in Phase I had proven to be cost-effective.

Assuming that the General Assembly intended to continue **mandated** demand reduction programs funded with ratepayer dollars following a determination that those programs were not cost-effective in Phase I is not a reasonable reading of the statutory language. This seems particularly evident when recalling that the idea for reducing peak demand in the “100 hours of

¹² *See*, FERC filing (Docket No. ER14-504-000).

greatest demand” as set forth in Act 129 was a novel approach to designing peak demand reduction programs at that time. The fact that the methodology detailed in Act 129 did not prove to be a cost-effective approach to demand reduction in Pennsylvania¹³ does not necessarily negate the benefits of demand reduction as a tool to meet supply in times of peak usage but neither does it support the continued imposition of program mandates and targets based on “recommendations that **potentially** make for cost-effective residential DLC [direct load control], and commercial and industrial LC [load control] models.” Tentative Order at p. 28.

The language enacted by the General Assembly in section 2806.1(d)(2) directs the Commission to conduct a one-time cost/benefit analysis of programs implemented to reduce peak demand during Phase I of Act 129. Only then is the Commission required to establish additional mandates which must be achieved by May 31, 2017. EAP maintains that a reasonable reading of that section coupled with the fact that the Commission’s expert has determined that the Phase I demand reduction programs were not cost-effective would be to conclude that no further mandate is warranted or authorized.

In addition to the lack of statutory authority for mandating additional peak demand reduction targets, EAP maintains that there is a strong policy rationale for the Commission to consider prior to requiring the continuation of demand reduction programs in future Act 129 EE&C plans. Competitive markets today offer highly successful and robust demand response programs through the respective regional transmission organizations, i.e. PJM Interconnection or MISO, and these competitive market DR programs are very popular with commercial and industrial customers. Any mandated Act 129 DR programs would force customers to choose between PJM DR programs and Act 129 programs. Those PJM DR programs are also available

¹³ See, e.g., Amended DR Study at p.4 which provides that “[t]he top 100 hours definition of DR performance caused a number of predictive difficulties and had a negative impact on cost effectiveness of the programs offered in 2012. The SWE recommends that the definition be discontinued” and at pp. 27-28.

for residential customers in some service territories where residential customers participate in direct load control programs supported by either an independent entity, i.e. Comverge in the PPL service territory or as part of a generation offering, i.e. Direct Energy. Given the availability of these programs and the opportunity they present for further growth and innovation among electric generation suppliers' offerings to consumers, EAP believes that it would be prudent to forego any further government mandate which would inevitably confuse consumers and have a negative impact on the competitive electric retail market in Pennsylvania.

B. THE CONCLUSION OF THE AMENDED DR STUDY THAT REDUCING PEAK DEMAND IN THE TOP 100 HOUR WAS A FLAWED METHODOLOGY SUPPORTS ELIMINATION OF THIS APPROACH EVEN IN THE EVENT THE COMMISSION DETERMINES TO MANDATE FUTURE DEMAND REDUCTION TARGETS.

In the event that the Commission establishes additional incremental peak demand reduction targets, EAP supports the conclusion reached in the Amended DR Study to eliminate the top 100 hours approach to demand reduction program design. Additionally, EAP agrees with the SWE that demand reduction resources should be dispatched only when needed for reliability or when it is likely that the results will be cost-effective. EAP notes that the criteria define the processes PJM has established and is in the process of refining for demand resources.¹⁴ Finally, while it will be necessary to establish a "trigger" for EDCs to use as a signal to dispatch demand resources, EAP believes that it is equally important to establish an equitable methodology to determine any mandated target. This is particularly crucial where failure to meet the target could result in the imposition of mandatory penalties under Act 129 and it is possible to envision a scenario where not all of the EDCs would be subject to a mandate based on the recommendations

¹⁴ See, FERC Order 745 and PJM Manual 11: Energy & Ancillary Services Market Operation.

of the SWE discussed in the Tentative Order at pp. 11 – 18. The fact that the SWE’s analysis could result in different treatment and standards for each EDC militates against the future imposition of mandates.

C. FUTURE STUDIES SHOULD BE ELIMINATED.

The Commission recognizes that a number of the suggestions offered by the SWE in its Amended DR Study concerning future approaches to demand reduction programs are, at best, preliminary and based on many assumptions that may demonstrate cost-effectiveness dependent on prospective changes to the TRC test. *See* Tentative Order at pp. 20-28 and pp. 33-34. EAP contends that the preliminary and speculative nature of these recommendations coupled with the finding that demand reduction programs in Phase I were not cost-effective does not support additional targets. Accordingly, EAP contends that the SWE should not conduct either the optional Demand Response Potential study as envisioned in the current Phase II SWE Contract work plan or any additional wholesale price suppression study.¹⁵

D. THE SCHEDULE FOR THE NEXT PHASE OF ACT 129 EE&C PLANS MUST ACCOMMODATE THE STATUTORY REQUIREMENT THAT ANY FUTURE REQUIREMENTS IN DEMAND REDUCTION BE ACCOMPLISHED BY MAY 31, 2017.

Act 129 clearly provides that any further mandated requirements to reduce peak demand, either for the 100 hours of greatest demand or pursuant to an alternative approach approved by

¹⁵ While the Phase II SWE contract provides funding for an optional Demand Response Potential study in an amount not to exceed \$312,000, there is no current provision in the SWE contract which establishes either the cost of an expanded study of wholesale price suppression or allows for its payment and the recovery of any such expense by the EDCs. EAP supports and joins in the comments of its EDC members who uniformly oppose any additional study by the SWE in the area of wholesale price suppression.

the Commission, must be accomplished by May 31, 2017.¹⁶ Thus, if the Commission establishes additional mandatory demand reduction targets, the EDCs must implement programs to be fully enrolled and operational during the summer of 2016 in order to meet the statutory deadline. The critical need to establish a schedule for determining those targets, for designing and filing Phase III EE&C plans offering programs to meet any new consumption and demand reduction mandates, for receiving the necessary Commission approval and for then implementing the Phase III EE&C plan becomes an immediate consideration for the Commission and all stakeholders.

EAP asserts that a decision to impose additional mandatory demand reduction targets in Phase III that must be achieved by May 31, 2017 necessitates a timeframe for determining the targets by mid-year 2014 and approval of Phase III EE&C plans during the first half of 2015.

EAP maintains that the timing seemingly dictated by Act 129 for the completion of one round of EE&C plans and the implementation of the next iteration of plans provides little opportunity to consider “lessons learned” and to develop best practices among the various stakeholders. EAP believes that the Commission can and should consider this circumstance as it determines whether to impose future mandates under Act 129 particularly with respect to demand reduction which has not proven to be cost-effective during Phase I.

III. CONCLUSION

EAP contends that establishing new demand reduction mandates for EDCs to achieve in Phase III Act 129 EE&C plans and proceeding with further demand reduction potential or wholesale price suppression studies are neither warranted nor justified based on the language of the statute and the findings of the Statewide Evaluator in the amended DR Study.

¹⁶ 66 Pa. C.S. § 2806.1(d)(2).

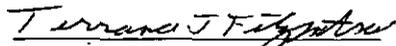
Act 129 directs the Commission to set additional incremental requirements for reduction in peak demand only in the event that it has been determined that demand reduction programs in Phase I were cost-effective. The Statewide Evaluator clearly determined that demand reduction programs implemented in Phase I were not cost-effective. The Commission is not authorized to determine an “alternative reduction” approach where, as here, the initial approach mandated by the law did not result in cost-effective programs. Moreover, the alternatives outlined in the amended DR Study do not provide any increased assurance of cost-effectiveness for future programs but instead look to change the parameters of the Total Resource Cost test as a means for **possibly** concluding that Phase III programs may be cost-effective. EAP urges the Commission not to adopt the recommendations of the SWE which suggest that future Act 129 demand reduction programs may be cost-effective not only because these suggestions are highly theoretical and based on myriad and complex assumptions but because the EDC market interventions involved with such programs is contrary to Commission policy supporting competitive electric retail markets.

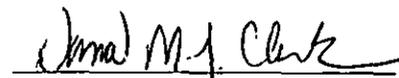
In the event the Commission determines to establish further peak demand reduction mandates in Phase III, EAP agrees with the SWE recommendation that the “top 100 hours methodology” is ineffective and should not be the basis for program design or assessment in any future EE&C plans. EAP again emphasizes that demand reduction targets for large commercial and industrial customers should not be set inasmuch as any incremental value over that achieved through PJM offered programs is speculative at best.

Finally, EAP believes that if further targets are set, the Commission should consider the statutory compliance deadline of May 31, 2017 for meeting any further demand reduction targets and establish a schedule which provides for final Phase III EE&C plan approval during the first

half of 2015. Early plan approval is crucial if there are further incremental reduction requirements so as to provide ample time for implementation of programs during the summer of 2016.

Respectfully Submitted:


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Dated: December 30, 2013

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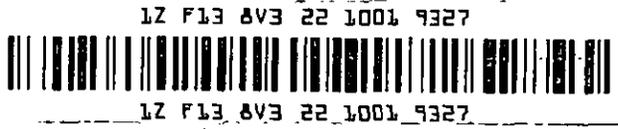
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