



Testimony

Submitted on behalf of the  
Pennsylvania Chamber of Business and Industry

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**Hearing re: Energy Efficiency  
and Conservation Projects  
of Act 129 of 2008**

Before the:  
**Consumer Affairs Committee  
Pennsylvania House of Representatives**

Presented by:

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Harrisburg, PA  
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Chairman Godshall, Chairman Daley, and members of this committee, my name is Kevin Sunday, manager of government affairs for the Pennsylvania Chamber of Business and Industry. The PA Chamber is the largest, broad-based business advocacy association in the Commonwealth. Our members are of all sizes, crossing all industry sectors throughout Pennsylvania. Thank you for the opportunity for the PA Chamber to testify on behalf of our members – some of whom generate electricity, some of whom deliver it, and all of whom use it.

According to the United States Energy Information Administration, Pennsylvania has the 15<sup>th</sup> highest average residential retail electricity price in the nation.<sup>1</sup> However, commercial and industrial rates are, on a per-kilowatt hour basis, much more competitive compared to that of other states. Based on the most recent monthly data available from EIA, average commercial electricity prices in Pennsylvania were lower than that of 29 other states, and average industrial electricity prices lower than that of 33 other states.<sup>2</sup>

These competitive energy costs for commercial and industrial sectors help make Pennsylvania more attractive to new and expanded investment, which leads to job creation. As the members of this committee are aware, Pennsylvania's economy faces numerous challenges and we should continue to pursue policies that play to our strengths – which, in this case, is a diverse, competitive energy portfolio that encourage businesses to invest in Pennsylvania.

Unfortunately, the private sector has been forced to expend considerable amounts of capital to comply with alternative energy and energy efficiency mandates over the past decade. Pennsylvania's Alternative Energy Portfolio Standards Act of 2004 outlined specific percentages of electricity sold in Pennsylvania be generated from certain alternative sources, subcategorized as Tier I (solar, wind, "low-impact" hydro, geothermal, and biomass) or Tier II (waste coal, distributed generation, large-scale hydro, municipal solid waste or landfill-to-gas, and wood pulp), with a specific carve-out for solar photo-voltaic.<sup>3</sup>

Over a five year period between 2008 and 2013, total AEPS requirements increased from 5.7% to 10.2%, or slightly less than double. However, as Table 1 shows, the costs of compliance increased from slightly more than \$1 million in 2008 to more than \$54 million in 2013.<sup>4</sup> The PA Chamber believes it is reasonable to expect costs to continue to climb as the alternative energy mandates increase, and we applaud any efforts by the Chairman and members of this committee to inform consumers of the costs of these mandates.

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<sup>1</sup> Pennsylvania State Profile and Energy Estimates. U.S. Energy Information Administration, August 2015.  
<http://www.eia.gov/state/?sid=PA#tabs-5>

<sup>2</sup> Electric Power Monthly. U.S. Energy Information Administration, July 27, 2015.  
[http://www.eia.gov/electricity/monthly/epm\\_table\\_grapher.cfm?t=epmt\\_5\\_6\\_a](http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a)

<sup>3</sup> Alternative Energy Portfolio Standards Act (Act 213 of 2004).  
<http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2004&sessInd=0&act=213>

<sup>4</sup> Various annual AEPS reports. Pennsylvania Public Utility Commission.  
[http://paaeps.com/credit/background\\_information.do?todo=background](http://paaeps.com/credit/background_information.do?todo=background)

**TABLE 1: AEPS ANNUAL COSTS OF COMPLIANCE**

Compliance Year	Cost of Compliance	Tier I Requirement	Weighted Avg. Credit Price	Tier II Requirement	Weighted Avg. Credit Price	Solar PV Carveout	Weighted Avg. Credit Price
2008	\$1,153,158	1.5%	\$4.48	4.2%	\$.066	0%	\$230
2009	\$2,204,613	2.0%	\$3.65	4.2%	\$.036	0.01%	\$260.19
2010	\$3,443,241	2.5%	\$4.77	4.2%	\$.032	0.01%	\$325
2011	\$13,452,920	3.0%	\$3.94	6.2%	\$0.22	0.02%	\$247.82
2012	\$31,223,149	3.5%	\$5.23	6.2%	\$0.17	0.03%	\$180.39
2013	\$54,439,440	4.0%	\$8.31	6.2%	\$0.22	0.05%	\$109.23

Act 129 of 2008<sup>5</sup> tasked the state’s regulated electric distribution utilities with developing and implementing plans to reduce electricity consumption by their customers. Utilities who fail to do so could be fined up to \$20 million. Electric distribution companies are eligible to receive cost recovery from surcharges assessed to the same customer classes (which, broadly, are residential, small commercial and industrial and large commercial and industrial) where demand reductions are occurring. Act 129 mandated each utility find a way for its customers to reduce electric consumption by 1% by 2011, 3% by 2011 and 4.5% by 2013, compared to a 2009 baseline.

A PA PUC report issued in 2014 identified the total costs of Act 129 requirements for the period of 2009 through 2013 as more than \$1.7 billion.<sup>6</sup> In 2012, the PA PUC set new incremental targets for consumption reduction for each electric distribution company, ranging from 1.6% to 2.9%. Spending by electric distribution companies to comply with energy efficiency requirements is capped at 2% of their 2006 total revenue, or approximately \$245 million per year. It can then be reasonably projected that over the next three years, utilities will spend roughly an additional \$735 million to comply with the new targets – all of which will be borne by ratepayers. According to a 2014 analysis, Pennsylvania’s current energy efficiency requirements obligated the fifth-highest spending for such mandates in the nation.<sup>7</sup>

Customer surcharges to implement the mandated reductions also vary greatly by electric distribution company. Data provided to us by the Industrial Energy Consumers of Pennsylvania shows that Act 129 requirements add more than \$43,000 to the monthly electricity bill of an average mid-sized steel manufacturer in one utility service territory. Statewide, the average mid-sized office building pays anywhere from \$181 to \$470 more per month as a result of the mandates. Larger office buildings and hospitals are paying two to three times those amounts, and some larger industrials are paying more than \$28,000 a month.

While Pennsylvania may have competitive industrial and commercial electricity costs on a statewide average basis, individual company’s circumstances vary wildly, depending on the nature of the company’s operations, the service territory the company operates in, the company’s ability to negotiate delivery of electricity from suppliers, and the timing, frequency and intensity of their energy use. In short, companies, whether they are large or small and whether they are publicly traded or privately held, have inherent incentive to reduce energy costs to improve profitability and competitiveness. Many commercial and industrial customers have expended considerable amounts of capital to improve energy efficiency

<sup>5</sup> Act 129 of 2008. <http://www.legis.state.pa.us/WU01/LI/LI/US/HTM/2008/0/0129..HTM>

<sup>6</sup> Act 129 Statewide Evaluator Final Annual Report – Phase I: June 1, 2009 – May 31, 2013. Pennsylvania Public Utility Commission, March 4, 2014. <http://www.puc.pa.gov/pcdocs/1274547.pdf>

<sup>7</sup> Summary of Electric Utility Customer-Funded Energy Efficiency Savings, Expenditures and Budgets. The Edison Foundation Institute for Electric Innovation, March 2014. [http://www.edisonfoundation.net/iei/Documents/InstElectricInnovation\\_USEESummary\\_2014.pdf](http://www.edisonfoundation.net/iei/Documents/InstElectricInnovation_USEESummary_2014.pdf)

prior to enactment of Act 129 or outside of their utilities' Act 129 requirements. The additional fees and surcharges imposed by utilities to satisfy these government mandates can, in many cases, appear to function as an additional tax or fee on energy usage or a transfer of capital to a business' competitors – in many cases without direct benefit to the company paying the surcharges and fees.

Proponents of Act 129 will point to the PUC's Total Resource Cost that has, to date, produced a net-positive economic effect of the Act 129 compliance plans. However, the TRC test looks at aggregate economic effects of each utility's plan – not the individual circumstances of each commercial and industrial company paying into Act 129 programs. There are, in many cases, winners and losers as a result of the plans. With this in mind, the PA Chamber is willing to take part in further discussions surrounding mechanisms that allow commercial and industrial consumers to opt out of Act 129 plans, with enough time to allow utilities to plan for the implications of their exit.

Utilities themselves remain in a precarious position under the current structure of Act 129, forced pay severe financial penalties or find a way for customers to use less and less of the utilities' core service – providing electricity. The PA Chamber is willing to support thoughtful, considerate efforts to re-align the penalty provisions of Act 129, including making penalties discretionary and adjusting the ceiling and floor provisions of the penalty calculations. Further, the PA Chamber is also willing to support a more incentive-based structure for utilities and consumers to achieve energy efficiency improvements.

In regards to the Clean Power Plan, the final version of the Environmental Protection Agency's regulations for greenhouse gas emission from existing fossil fuel power plants were released on August 3, 2015.<sup>8</sup> Much of the mechanics and structure of the rule changed significantly from the version of the rule that was proposed in June of 2014, not the least being that one of the rule's so-called "building blocks" for energy efficiency was removed. In the proposed version, EPA had established different greenhouse gas reduction targets for each state based on four building blocks, which were a variety of measures EPA believed each state could implement. In the final version, EPA removed the building block that set a uniform, nationwide energy efficiency improvement which was used to calculate each state's overall target. EPA recognized the "extensive legal concerns" that a number of commentators raised regarding the use of government encouraging the reduction in consumption to achieve emissions reductions, and so energy efficiency was removed from setting the states' targets.

It should be noted that EPA will allow states to implement energy efficiency programs as part of their compliance plans. However, only projects installed after 2012 will generate compliance credits, meaning any costs incurred by ratepayers under Act 129 prior to 2012 (approximately \$1.3 billion) will not help Pennsylvania achieve its requirements. EPA has also proposed incentives, in the form of additional compliance credits for states to implement energy efficiency measures in low-income communities prior to the start of the final rule's 2022 initial compliance deadline.

However, before any legislative discussions take place regarding additional energy efficiency measures with the express purpose of compliance with the Clean Power Plan, the PA Chamber would first urge the General Assembly to review the deadlines imposed on DEP and the General Assembly under Act 175 of 2014. This Act provides for legislative review of the state's compliance plan prior to submittal to EPA, and it would behoove all parties involved for the General Assembly to ensure the deadlines in the Act reflect the new deadlines of the final rule. Further, it is also be in every stakeholders' interest that the Governor's Office and the General Assembly support efforts to stay the implementation of these rules

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<sup>8</sup> Clean Power Plan Final Rule. U.S. Environmental Protection Agency, Aug. 3, 2015.  
<http://www2.epa.gov/cleanpowerplan/clean-power-plan-final-rule>

until a number of legal questions surrounding the rule are resolved. Once a compliance plan is submitted to EPA, EPA will either approve it (at which point it becomes federally enforceable and vulnerable to third-party litigation) or deny it (at which point the implementation of state's target can be taken over by the federal government, perhaps immediately). In short, before leaders in the legislative and executive branch locks Pennsylvania into a compliance strategy, let's first be sure than the goal proposed by EPA and the path it has proposed is legally sound.

Thank you for your time and I look forward to any questions that you may have.