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REVIEW COMMISSION

April 17, 2008

**Via Fed Ex Overnight**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**Re: Proposed Rulemaking: Universal Service and Energy Conservation Reporting  
Requirements and Customer Assistance Programs  
Docket No. L-00070186**

Dear Secretary McNulty:

Enclosed please find for filing the original (unbound) and fifteen (15) copies of the Comments of Action Alliance of Senior Citizens of Greater Philadelphia in the above-captioned proceeding.

Copies of these Comments have been served on all parties as indicated in the attached Certificate of Service and the "cc" below.

Very truly yours,

*Philip A. Bertocci*

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Enclosures

**CERTIFICATE OF SERVICE**

**Re: Universal Service and Energy :  
Conservation Reporting Requirements : Docket No. L-00070186  
and Customer Assistance Programs :**

I hereby certify that I have this day served a true copy of the foregoing document, Comments of Action Alliance of Senior Citizens of Greater Philadelphia, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17<sup>th</sup> day of April, 2008.

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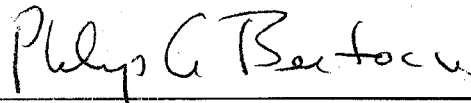
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Re: Universal Service and Energy            :**  
**Conservation Reporting Requirements       :**       **Docket No. L – 00070186**  
**and Customer Assistance Programs         :**

**COMMENTS OF  
ACTION ALLIANCE OF SENIOR CITIZENS  
OF GREATER PHILADELPHIA**

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**April 17, 2008**

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## **I. INTRODUCTION.**

These Comments are filed by Community Legal Services, Inc. on behalf of Action Alliance of Senior Citizens of Greater Philadelphia, a non-profit membership and advocacy organization which advocates on behalf of low and lower income Senior Citizens on vital consumer issues, including utility service.

This Proposed Rulemaking has its origins in the Commission's Investigation concerning universal service funding for electric distribution companies and natural gas distribution companies entitled *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M – 00051923. That proceeding resulted in a Final Investigatory Order, entered on December 18, 2005. Action Alliance submitted Comments in that proceeding.

In this proceeding, Action Alliance continues to make recommendations consistent with the primary themes that it developed in its prior filing. For low income public utility customers, the Commission's Customer Assistance Programs (CAPs) are critical to preserving the promise of universal service – affordable utility service. Under the Electricity Generation Choice and Competition Act and the Natural Gas Choice and Competition Act, achievement of affordable service is the paramount legislatively defined goal of universal service programs. Utilities must be proactive in their enrollment of customers in CAP programs, and active in assisting customers to maintain their participation in CAP programs. CAP programs must be adequately funded to provide service at rates which not only reduce the energy burdens of low income customers, but reduce those burdens to affordable levels. CAP control standards must be administered in ways which provide due process protections to CAP participants, and which apply standards and requirements which further rather than defeat the goal of assuring that low income and vulnerable

customers are able to obtain and maintain utility service.

## II. COMMENTS.<sup>1</sup>

### CHAPTER 54. ELECTRICITY GENERATION CUSTOMER CHOICE

**§ 54.72. (Definitions). *CAP – Customer Assistance Program* – A plan implemented by a distribution company for the purpose of providing universal service and energy conservation services to low income customers, in which the customers shall:**

- (i) Make monthly payments based on household income and household size.**
- (ii) Comply with specific responsibilities in order to remain eligible for the program.**

#### Comment:

This proposed definition substantially tracks the definition of “Customer assistance program” which is contained in Chapter 14 Section 1403. It clearly defines the obligation imposed upon CAP participants to make monthly payments and to comply with program rules. However, participation in CAP confers certain rights on customers as well as entails certain responsibilities. As part of regulations which contain provisions concerning universal service and energy conservation program goals (Proposed Regulation § 54.73), the proposed definition should more specifically summarize the benefits to low income customers which are to be derived from CAP participation.

Action Alliance submits that the proposed definition should be amended by adding:

“(iii) Customers successfully complying with subsections (i) and (ii) shall receive from the distribution company continued utility service and forgiveness of outstanding, preprogram debt.”

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<sup>1</sup> In this filing, for simplicity of exposition, Action Alliance quotes the proposed regulation or portion of a regulation in bold, followed by the Comment, including at the end any proposed amendments to the regulatory language.

**§ 54.72. (Definitions). CARES – Customer Assistance and Referral Evaluation Services – A program that provides a cost-effective service that helps selected, payment-troubled customers maximize their ability to pay utility bills. A CARES program provides a casework approach to help customers secure energy assistance funds and other needed services.**

**Comment:**

The Commission has long supported the implementation of CARES programs that utilize a “casework” approach for achieving universal service goals for those low income residential customers who due to physical frailty or disability and/or mental health issues are in frequent danger of service termination and have difficulty navigating the various utility and social service bureaucracies to access the available resources to maintain that service. In 1992, the Commission specified in some detail the components of a “casework” approach for such selected low income customers. According to a Secretarial Letter issued at that time:

Utilities should include, inter alia, the following seven elements in a CARES program:

1. Staff training in communication skills.
2. Staff training regarding the program design of CARES.
3. Home visitation, one at minimum, and preparation of an energy audit in most cases for CARES recipients.
4. Intensive tracking and referral services for CARES participants.
5. Maintenance of confidential case files for CARES participants.
6. Expansion and maintenance of the customer service network.
7. Inclusion as one of the job description criteria for a CARES representative, a social service background or a combination of experiences and education that includes listening and communication skills and a compassionate and caring attitude toward the needs of the low income utility customers.<sup>2</sup>

Moreover, the Commission subsequently summarized its insistence that such services are

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<sup>2</sup> Secretarial Letter, November 30, 1992 (concerning Commission adoption of four recommendations of the Bureau of Consumer Services relating to Customer Assistance and Referral Evaluation Services (CARES) programs).

reasonable and necessary for a certain portion of every utility's low income customers, when it promulgated Guidelines for electric and natural gas service stating that "a CARES program provides a casework approach to help customers secure energy assistance funds and other needed services." 52 Pa.Code § 54.72 (Definitions. CARES); 52 Pa.Code § 62.2 (Definitions. CARES).

In practice, however, the CARES program for most utilities has often been only a "quick-fix" referral service, which does not provide the continuous level of contact necessary to prevent a vulnerable customer from careening from one crisis to another.

Action Alliance submits that the Commission should take this opportunity to reaffirm in binding regulation that a "casework" approach involves more extensive service and should be clearly distinguished from a quick-fix referral to another social agency. Action Alliance therefore proposes that an additional sentence be added to the CARES definition which states: "In a casework approach, a utility utilizes dedicated staff trained to provide on-going assistance as needed to selected, vulnerable low income individual customers who due to mental or physical weakness or disability have a continuous need for assistance in accessing and utilizing available resources to obtain and maintain utility service."

**§ 54.72. (Definitions). *Payment troubled* – A household that has failed to maintain one or more payment arrangements in a 1-year period or has received a termination notice.**

**Comment:**

Action Alliance supports the broadening of this definition proposed by the Commission to include a household that has failed to maintain one or more payment arrangements in a 1 year period. However, Action Alliance further submits that the definition should be further broadened

to include customers who have developed arrearages beyond a certain level, or who have been identified to have "special needs," which are likely to result in the development of arrearages.

On the basis of past experience, Action Alliance submits that to the extent possible, the Commission should support measures which ensure that the low income customer receives affordable bills even before a utility identifies that customer for regulated collection action. Enrollment of low income customers in CAP at the earliest stages before large arrearages have been accumulated is the most cost effective means of lowering collection related expenses.

Action Alliance therefore proposes that the following provision be added after the words "termination notice" to the definition of "payment troubled": "or who have not paid the utility bill for two consecutive billing cycles."

**§ 54.73. Universal service and energy conservation program goals.**

**(a) The Commission will determine if the EDC meets the goals of universal service and energy conservation programs.**

**(b) The general goals of universal service and energy conservation programs include the following:**

**(1) To protect consumers' health and safety by helping low income customers maintain affordable electric service.**

**(2) To provide for affordable electric service by making available payment assistance to low income customers.**

**(3) To assist low income customer in conserving energy and reducing residential utility bills.**

**(4) To establish universal service and energy conservation programs that are operated in a cost-effective and efficient manner in order to minimize overall program costs.**

**Comment:**

In this proposed provision, the Commission most appropriately inserts the word "affordable" in Section 54.73(b)(1). At the same time, the provision adds in Section 54.73(b)(4)

the emphasis on cost-effective and efficient management of universal service and energy conservation programs “in order to minimize overall program costs.” In light of this added emphasis upon “minimizing overall program costs,” Action Alliance submits that it is only fitting and proper for the Commission to increase emphasis on the need to provide “affordable” service to CAP customers.

While Chapter 14 required that the Commission reassess its policies with the aim of “eliminating opportunities for customer capable of paying to avoid the timely payment of public utility bills,” it nevertheless reaffirmed the General Assembly’s policy goal of “ensur[ing] that service remains available to all customers on reasonable terms and conditions.” 66 Pa.C.S. §§ 1403(2), 1403(3). Service offered on terms which would constitute an unaffordable energy burden is not consistent with Chapter 14. Action Alliance therefore supports this amendment to Section 54.73(b)(2) as a confirmation that minimizing overall program costs can never be the dominant factor in determining the size of CAP programs and/or the level of CAP benefits.

**54.74(a)(5). Review of universal service and energy conservation plans, funding and cost recovery. *Plan submission*..... In the proceeding on the plan, the Commission will establish a funding level that balances efforts to ensure the availability of universal service and energy conservation programs throughout an EDC’s service territory with the cost of the programs and the rate impact on residential customers that are not enrolled in the programs, and will permit an EDC to recover costs related to universal service and energy conservation from residential customers....**

**Comment:**

This proposed provision envisages a balancing by the Commission of the interests of low income customers for whose direct benefit universal service and energy conservation programs are intended against the rate impact on residential customers that are not enrolled in the

programs. Because balancing is involved, it is critical that the starting point of the analysis be defined with maximum possible precision. The interest of low income customers in universal service benefits is not just an interest in the “availability” of such programs, but also an interest in universal service programs that actually reduce energy burdens to affordable levels. Utilities often evaluate the effectiveness of their universal service programs in terms of whether they reduce the level of payments that low income payments are required to make. However, the true measure of the effectiveness of low income programs is not reduction alone, but reduction to affordable levels, in terms of the low income customer’s overall energy burden.

For this reason, Action Alliance submits that the word “affordability” should be added to the first part of this provision, to read as follows: “In the proceeding on the plan, the Commission will establish a funding level that balances efforts to ensure the availability and affordability of universal service and the availability of energy conservation programs throughout an EDC’s service territory....”

**§ 54.74 (b)(1). Review of universal service and energy conservation plans, funding and cost recovery.... *Tariff contents.* The tariff shall include the following information: *General Requirements.* A universal service and energy conservation plan that may include a CAP, LIURP, CARES, Hardship Funds or other programs, policies and protections consistent with Commission orders, regulations and other applicable law....**

**Comment:**

Action Alliance submits that universal service and energy conservation plans should, at a minimum, contain a CAP, LIURP, CARES and Hardship Fund as mandatory components. In addition, if other components of a universal service and energy conservation plan are required by Commission orders, regulations and/or applicable law, these would also constitute mandatory



components.

CAP, LIURP, CARES and Hardship Funds have become in practice the basic, required elements of universal service and energy conservation programs provided by Pennsylvania public utilities to low income customers. Together, these program elements provide a coordinated range of services necessary to ensure that low income customers will have access to essential utility service. As the Commission states, in the Final Investigatory Order, it was determined that “the review of the adequacy of universal service funding for each company would be accomplished on a case-by case basis in conjunction with the established triennial review of the company’s universal service program under 52 Pa.Code §§ 54.74 and 62.4.” Proposed Rulemaking Order, at

3. If utilities are to recover the full costs of universal service programs, they must provide all necessary components as part of their plan, and submit all components to Commission review.

Accordingly, the first sentence of proposed regulation Section 54.74(b)(1) should be amended to read: “The tariff shall include the following information: A universal service and energy conservation plan that must include a CAP, LIURP, CARES, Hardship Funds and other programs, policies and protections consistent with Commission orders, regulations and other applicable law....”

**§ 54.74(b)(1)(iii)(B). Review of universal service and energy conservation plans, funding and cost recovery.... *Tariff contents.* The Tariff shall include the following information: ... *General Requirements.* A universal service and energy conservation plan that may include: a CAP, LIURP CARES, Hardship Funds or other programs .... For each component of the plan, the following information shall be submitted: ... The projected needs assessment. The needs assessment must include: ... An estimate of low income customers.**

**Comment:**

Action Alliance submits that this provision would be clearer if it stated: “An estimate of the number of low income customers.” The apparent aim of the provision is solely quantitative.

**§ 54.74(b)(1)(iii)(D). Review of universal service and energy conservation plans, funding and cost recovery.... *Tariff contents.* The Tariff shall include the following information: ... *General Requirements.* A universal service and energy conservation plan that may include: a CAP, LIURP CARES, Hardship Funds or other programs .... For each component of the plan, the following information shall be submitted: ... The projected needs assessment. The needs assessment must include: ... An estimate of payment troubled, low income customers.**

**Comment:**

Action Alliance submits that this provision would be clearer if it stated: “An estimate of the number of payment troubled, low income customers.” The apparent aim of the provision is solely quantitative.

**§ 54.74(b)(2)(vi). Review of universal service and energy conservation plans, funding and cost recovery.... *Program rules.* The tariff must contain rules that apply to the universal service and energy conservation programs.... The rules must address the following: ... Dismissal from the program, including default rules in § 76.5 (relating to default provisions for failure to comply with program rules).**

**Comment:**

Proposed Section 76.5 sets forth regulations identifying mandatory universal service and energy conservation program rules, along with the requirement that customers who violate those rules shall be subject to dismissal from a utility’s Customer Assistance Program. The proposed mandatory program rules replace similar CAP guidelines which provided that these violations “should” result in dismissal.<sup>3</sup>

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<sup>3</sup> See 52 Pa.Code §§ 69.265(7).

Action Alliance submits that dismissal of a CAP customer from the Program constitutes a substantial deprivation of benefits related to a service which constitutes a basic necessity of life. For this reason, the substitution of mandatory sanctions for non-compliance with program rules for the prior guidelines, which allowed greater utility discretion to take local circumstances into account, should be balanced by providing explicit due process customer protections requiring prior written notice and a pre-deprivation right to appropriate dispute resolution processes so that harmful, unnecessary or erroneous dismissals can be avoided. More formal customer procedural protections will benefit not only CAP customers, but also utilities. Low income customers wrongfully dismissed from CAP are likely to default on their bills, and will be more expensive to serve due to increased collection costs.

There is Commission precedent which supports the inclusion of explicit due process customer protections in the area of utility dismissal of CAP customers from CAP for failure to comply with program rules. In the Chapter 14 Second Implementation Order, the Commission stated that although CAP customers threatened with service termination were barred by Chapter 14 Section 1405(c), 66 Pa.C.S. § 1405(c), from obtaining a Commission established payment agreement, CAP customers continued to have the right to obtain a stay of termination pending disputes concerning compliance with CAP rules by the customer and/or the utility. Thus, CAP customers are permitted to raise disputes before the utility and the Commission concerning the application of CAP program rules, including but not limited to: "allegations that the customer's CAP budget was inappropriately increased"; "allegations that the customer has been charged a CAP rate which is not the appropriate for a household with their income or type of service"; "allegations that the customer was improperly removed from CAP"; "complaints about the

utility's application of payments including application of energy assistance grants."<sup>4</sup> Because dismissal of a low income customer from CAP is likely to lead to unaffordable bills, payment defaults, the initiation of collection actions and all utility expenses attendant thereto, Commission regulations should provide due process protection prior to dismissal from CAP, so that erroneous, unnecessary and harmful CAP dismissals may be avoided whenever possible.

Action Alliance proposes that the following provision be added to Section 54.74(b)(2)(vi): "Prior to removing a customer from CAP for failure to comply with CAP program rules, the utility shall provide the customer with a ten day written notice which includes the specific reason for the proposed dismissal, the projected date of dismissal, the customer's right to cure the default prior to dismissal, the right to dispute the dismissal, stay of dismissal pending resolution of the dispute or appeal and the right timely to appeal a dismissal to the Commission."

**§ 54.75. Annual residential collection and universal service and energy conservation program reporting requirements. An EDC shall report annually to the Commission on the degree to which universal service and energy conservation programs within its service territory are available and appropriately funded. Annual EDC reports must contain information on programs and collections for the prior calendar year. Unless otherwise stated, the report shall be due April 1 each year. When noted, the data shall be reported by classification of accounts as total residential customers and confirmed low income residential customers. An EDC's report must contain the following information:**

**Comment:**

Action Alliance supports the Commission's efforts to gather quantitative information concerning the universal service and energy conservation programs, including collections

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<sup>4</sup> Re: Chapter 14 Implementation, Docket No. M-00041802F002 (Order entered September 12, 2005), at 34-35.

activities. The Commission is historically on record for its efforts to encourage utilities to develop functional alternatives to service termination through payment agreements and universal service programs. Consistent with this policy to minimize terminations, the Commission should expand CAP reporting requirements to include the number of deaths, injuries, and fires, and amount of property damage occurring within a year after termination of utility service at a residential property.

Accordingly, Action Alliance submits the following language for inclusion in the proposed rules: “§ 54.75(3). Post-termination events. Program reporting shall include the number of deaths, injuries, and fires, and amount of property damage occurring within a year after the termination of utility service at a property where such service was terminated.”

**§54.76(b). Evaluation reporting requirements. An EDC shall submit an impact evaluation report to the commission every 6 years. When an EDC is required to submit an impact evaluation in the same year as it is required to file its universal service and energy conservation plan, the EDC shall file the impact evaluation report 6 months prior to the filing date for the universal service and energy conservation plan.**

**Comment:**

In this proposed provision, the Commission appears to suggest but not clearly require that at least every other review of a utility's triennial universal service and energy conservation plan filing should be supported by a current impact evaluation report. Long experience has shown that impact evaluations performed by an independent third party often provide a level of analysis which can not be achieved by the parties in a quasi-judicial review of a proposed universal service and energy conservation plan. Action Alliance submits that there should be an absolute requirement that at least every other triennial universal service and energy conservation plan

Tariff filing be supported by a current independent impact evaluation.

Accordingly, Action Alliance requests that the Commission revise proposed regulation 54.76(b) to read as follows: "Evaluation reporting requirements. An EDC shall submit an impact evaluation report to the commission every 6 years to coincide with the commission's review of the EDC's triennial universal service and energy conservation plan. When an EDC is required to submit an impact evaluation report in the same year as it is required to file its universal service and energy conservation plan, the EDC shall file the impact evaluation report 6 months prior to the filing date for the universal service and energy conservation plan."

#### CHAPTER 62. NATURAL GAS SUPPLY CUSTOMER CHOICE.

**§ 62.2. (Definitions). CAP – Customer Assistance Program – A plan implemented by a distribution company for the purpose of providing universal service and energy conservation services to low income customers, in which the customers shall:**

- (i) Make monthly payments based on household income and household size.**
- (ii) Comply with specific responsibilities in order to remain eligible for the program.**

**Comment:**

This proposed definition substantially tracks the definition of "Customer assistance program" which is contained in Chapter 14 Section 1403. It clearly defines the obligation imposed upon CAP participants to make monthly payments and to comply with program rules. However, participation in CAP confers certain rights on customers as well as entails certain responsibilities. As part of regulations which contain provisions concerning universal service and energy conservation program goals (Proposed Regulation § 62.3), the proposed definition should more specifically summarize the benefits to low income customers which are to be derived from CAP participation.

Action Alliance submits that the proposed definition should be amended by adding:

“(iii) Customers successfully complying with subsections (i) and (ii) shall receive from the distribution company continued utility service and forgiveness of outstanding, preprogram debt.”

**§ 62.2. (Definitions). CARES – Customer Assistance and Referral Evaluation Services – A program that provides a cost-effective service that helps selected, payment-troubled customers maximize their ability to pay utility bills. A CARES program provides a casework approach to help customers secure energy assistance funds and other needed services.**

**Comment:**

The Commission has long supported the implementation of CARES programs that utilize a “casework” approach for achieving universal service goals for those low income residential customers who due to physical frailty or disability and/or mental health issues are in frequent danger of service termination and have difficulty navigating the various utility and social service bureaucracies to access the available resources to maintain that service. In 1992, the Commission specified in some detail the components of a “casework” approach for such selected low income customers. According to a Secretarial Letter issued at that time:

Utilities should include, inter alia, the following seven elements in a CARES program:

1. Staff training in communication skills.
2. Staff training regarding the program design of CARES.
3. Home visitation, one at minimum, and preparation of an energy audit in most cases for CARES recipients.
4. Intensive tracking and referral services for CARES participants.
5. Maintenance of confidential case files for CARES participants.
6. Expansion and maintenance of the customer service network.
7. Inclusion as one of the job description criteria for a CARES representative, a social service background or a combination of experiences and education that includes listening and communication skills and a compassionate and caring attitude toward the

needs of the low income utility customers.<sup>5</sup>

Moreover, the Commission subsequently summarized its insistence that such services are reasonable and necessary for a certain portion of every utility's low income customers, when it promulgated Guidelines for electric and natural gas service stating that "a CARES program provides a casework approach to help customers secure energy assistance funds and other needed services." 52 Pa.Code § 54.72 (Definitions. CARES); 52 Pa.Code § 62.2 (Definitions. CARES).

In practice, however, the CARES program for most utilities has often been only a "quick-fix" referral service, which does not provide the continuous level of contact necessary to prevent a vulnerable customer from careening from one crisis to another.

Action Alliance submits that the Commission should take this opportunity to reaffirm in binding regulation that a "casework" approach involves more extensive service and should be clearly distinguished from a quick-fix referral to another social agency. Action Alliance therefore proposes that an additional sentence be added to the CARES definition which states: "In a casework approach, a utility utilizes dedicated staff trained to provide on-going assistance as needed to selected, vulnerable low income individual customers who due to mental or physical weakness or disability have a continuous need for assistance in accessing and utilizing available resources to obtain and maintain utility service."

**§ 62.2. (Definitions). *Payment troubled* – A household that has failed to maintain one or**

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<sup>5</sup> Secretarial Letter, November 30, 1992 (concerning Commission adoption of four recommendations of the Bureau of Consumer Services relating to Customer Assistance and Referral Evaluation Services (CARES) programs).



**more payment arrangements in a 1-year period or has received a termination notice.**

**Comment:**

Action Alliance supports the broadening of this definition proposed by the Commission to include a household that has failed to maintain one or more payment arrangements in a 1 year period. However, Action Alliance further submits that the definition should be further broadened to include customers who have developed arrearages beyond a certain level, or who have been identified to have "special needs," which are likely to result in the development of arrearages. On the basis of past experience, Action Alliance submits that to the extent possible, the Commission should support measures which ensure that the low income customer receives affordable bills even before a utility identifies that customer for regulated collection action. Enrollment of low income customers in CAP at the earliest stages before large arrearages have been accumulated is the most cost effective means of lowering collection related expenses.

Action Alliance therefore proposes that the following provision be added after the words "termination notice" to the definition of "payment troubled": "or who have not paid the utility bill for two consecutive billing cycles."

**§ 62.3. Universal service and energy conservation program goals.**

**(a) The Commission will determine if the NGDC meets the goals of universal service and energy conservation programs.**

**(b) The general goals of universal service and energy conservation programs include the following:**

- (1) To protect consumers' health and safety by helping low income customers maintain affordable natural gas service.**
- (2) To provide for affordable natural gas service by making available payment assistance to low income customers.**
- (3) To assist low income customer in conserving energy and reducing residential utility bills.**

**(4) To establish universal service and energy conservation programs that are operated in a cost-effective and efficient manner in order to minimize overall program costs.**

**Comment:**

In this proposed provision, the Commission has properly maintained the word “affordable” in Sections 62.3(b)(1) and 62.3(b)(2). While Chapter 14 required that the Commission reassess its policies with the aim of “eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills,” it nevertheless reaffirmed the General Assembly’s policy goal of “ensur[ing] that service remains available to all customers on reasonable terms and conditions.” 66 Pa.C.S. §§ 1403(2), 1403(3). Service offered on terms which would constitute an unaffordable energy burden is not consistent with Chapter 14. Action Alliance therefore supports this amendment to Section 62.3(b)(2) as a confirmation that minimizing overall program costs can never be the dominant factor in determining the size of CAP programs and/or the level of CAP benefits.

**62.4 (a)(5). Review of universal service and energy conservation plans, funding and cost recovery. *Plan submission....* In the proceeding on the plan, the Commission will establish a funding level that balances efforts to ensure the availability of universal service and energy conservation programs throughout an NGDC’s service territory with the cost of the programs and the rate impact on residential customers that are not enrolled in the programs, and will permit an NGDC to recover costs related to universal service and energy conservation from residential customers.**

**Comment:**

This proposed provision envisages a balancing by the Commission of the interests of low income customers for whose direct benefit universal service and energy conservation programs are intended against the rate impact on residential customers that are not enrolled in the

programs. Because balancing is involved, it is critical that the starting point of the analysis be defined with maximum possible precision. The interest of low income customers in universal service benefits is not just an interest in the “availability” of such programs, but also an interest in universal service programs that actually reduce energy burdens to affordable levels. Utilities often evaluate the effectiveness of their universal service programs in terms of whether they reduce the level of payments that low income payments are required to make. However, the true measure of the effectiveness of low income programs is not reduction alone, but reduction to affordable levels, in terms of the low income customer’s overall energy burden.

For this reason, Action Alliance submits that the word “affordability” should be added to the first part of this provision, to read as follows: “In the proceeding on the plan, the Commission will establish a funding level that balances efforts to ensure the availability and affordability of universal service programs and the availability of energy conservation programs throughout a NGDC’s service territory....” In addition, for the reasons set forth below in Comments regarding Section 62.4(b)(4)(iv) and Section 76.4(1), Action Alliance submits that the Commission should recognize that the Philadelphia Gas Works should be permitted to recover its universal service costs from all firm customer classes; accordingly, it is proposed that the following sentence be added to Section 62.4(5): “In the case of a ‘city natural gas distribution operation,’ the NGDC will be permitted also to recover costs related to universal service and energy conservation from non-residential firm customers.”<sup>6</sup>

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<sup>6</sup> For the justification for this proposal, see the Comments below related to Sections 62.4(b)(4)(iv) and 76.4(1).

**§ 62.4(b)(1). Review of universal service and energy conservation plans, funding and cost recovery.... *Tariff contents.* The tariff shall include the following information: *General Requirements.* A universal service and energy conservation plan that may include a CAP, LIURP, CARES, Hardship Funds or other programs, policies and protections consistent with Commission orders, regulations and other applicable law....**

**Comment:**

Action Alliance submits that universal service and energy conservation plans should, at a minimum, contain a CAP, LIURP, CARES and Hardship Fund as mandatory components. In addition, if other components of a universal service and energy conservation plan are required by Commission orders, regulations and/or applicable law, these would also constitute mandatory components.

CAP, LIURP, CARES and Hardship Funds have become in practice the basic, required elements of universal service and energy conservation programs provided by Pennsylvania public utilities to low income customers. Together, these program elements provide a coordinated range of services necessary to ensure that low income customers will have access to essential utility service. As the Commission states, in the Final Investigatory Order, it was determined that “the review of the adequacy of universal service funding for each company would be accomplished on a case-by case basis in conjunction with the established triennial review of the company’s universal service program under 52 Pa.Code §§ 54.74 and 62.4.” Proposed Rulemaking Order, at 3. If utilities are to recover the full costs of universal service programs, they must provide all necessary components as part of their plan, and submit all components to Commission review.

Accordingly, the first sentence of proposed regulation Section 62.4(b) should be amended to read: “The tariff shall include the following information: A universal service and energy conservation plan that must include a CAP, LIURP, CARES, Hardship Funds and other

programs, policies and protections consistent with Commission orders, regulations and other applicable law....”

**§ 62.4(b)(1)(iii)(B). Review of universal service and energy conservation plans, funding and cost recovery.... *Tariff contents.* The Tariff shall include the following information: ... *General Requirements.* A universal service and energy conservation plan that may include: a CAP, LIURP CARES, Hardship Funds or other programs .... For each component of the plan, the following information shall be submitted: ... The projected needs assessment. The needs assessment must include: ... An estimate of low income customers.**

**Comment:**

Action Alliance submits that this provision would be clearer if it stated: “An estimate of the number of low income customers.” The apparent aim of the provision is solely quantitative.

**§ 62.4(b)(1)(iii)(D). Review of universal service and energy conservation plans, funding and cost recovery.... *Tariff contents.* The Tariff shall include the following information: ... *General Requirements.* A universal service and energy conservation plan that may include: a CAP, LIURP CARES, Hardship Funds or other programs .... For each component of the plan, the following information shall be submitted: ... The projected needs assessment. The needs assessment must include: ... An estimate of payment troubled, low income customers.**

**Comment:**

Action Alliance submits that this provision would be clearer if it stated: “An estimate of the number of payment troubled, low income customers.” The apparent aim of the provision is solely quantitative.

**§ 62.4(b)(2)(vi). Review of universal service and energy conservation plans, funding and cost recovery.... *Program rules.* The tariff must contain rules that apply to the universal service and energy conservation programs.... The rules must address the following: ... Dismissal from the program, including default rules in § 76.5 (relating to default provisions for failure to comply with program rules).**

**Comment:**

Proposed Section 76.5 sets forth regulations identifying mandatory universal service and energy conservation program rules, along with the requirement that customers who violate those rules shall be subject to dismissal from a utility's Customer Assistance Program. The proposed mandatory program rules replace similar CAP guidelines which provided that these violations "should" (but not necessarily would) result in dismissal.<sup>7</sup>

Action Alliance submits that dismissal of a CAP customer from the Program constitutes a substantial deprivation of benefits related to a service which constitutes a basic necessity of life. For this reason, the substitution of mandatory sanctions for non-compliance with program rules for the prior guidelines, which allowed greater utility discretion to take local circumstances into account, should be balanced by providing explicit due process customer protections requiring prior written notice and a pre-deprivation right to appropriate dispute resolution processes so that harmful, unnecessary or erroneous dismissals can be avoided. More formal customer procedural protections will benefit not only CAP customers, but also utilities. Low income customers wrongfully dismissed from CAP are likely to default on their bills, and will be more expensive to serve due to increased collection costs.

There is Commission precedent which supports the inclusion of explicit due process customer protections in the area of utility dismissal of CAP customers from CAP for failure to comply with program rules. In the Chapter 14 Second Implementation Order, the Commission stated that although CAP customers threatened with service termination were barred by Chapter

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<sup>7</sup> See 52 Pa.Code § 69.265(7).

14 Section 1405(c), 66 Pa.C.S. § 1405(c), from obtaining a Commission established payment agreement, CAP customers continued to have the right to obtain a stay of termination pending disputes concerning compliance with CAP rules by the customer and/or the utility. Thus, CAP customers are permitted to raise disputes before the utility and the Commission concerning the application of CAP program rules, including but not limited to: “allegations that the customer’s CAP budget was inappropriately increased”; “allegations that the customer has been charged a CAP rate which is not the appropriate for a household with their income or type of service”; “allegations that the customer was improperly removed from CAP”; “complaints about the utility’s application of payments including application of energy assistance grants.”<sup>8</sup> Because dismissal of a low income customer from CAP is likely to lead to unaffordable bills, payment defaults, the initiation of collection actions and all utility expenses attendant thereto, Commission regulations should provide due process protection prior to dismissal from CAP, so that erroneous, unnecessary and harmful CAP dismissals may be avoided whenever possible.

Action Alliance proposes that the following provision be added to Section 62.4(b)(2)(vi): “Prior to removing a customer from CAP for failure to comply with CAP program rules, the utility shall provide the customer with a ten day written notice which includes the specific reason for the proposed dismissal, the projected date of dismissal, the customer’s right to cure the default prior to dismissal, the right to dispute the dismissal, stay of dismissal pending resolution of the dispute or appeal and the right timely to appeal a dismissal to the Commission.”

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<sup>8</sup> Re: Chapter 14 Implementation, Docket No. M-00041802F002 (Order entered September 12, 2005), at 34-35.

**§ 62.4(b)(4)(iv). Tariff contents.** The tariff must contain the following information....  
**Surcharge.** A NGDC may propose a surcharge pursuant to 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments to surcharge) to provide for full recovery of universal service and energy conservation costs. The surcharge may be subject to annual reconciliation or may be adjusted prospectively on a quarterly basis as required by changes in the level of costs incurred. When a surcharge is proposed, the tariff filing shall contain:  
....(iv) A statement that the surcharge is applicable only to residential customers.

**Comment:**

Action Alliance submits that the Commission should expressly except the Philadelphia Gas Works (PGW) from the requirement that the universal service surcharge be applicable only to residential customers. The creation of this exception is appropriate based on the unique demographic circumstances of PGW's residential customer base and PGW's historical status, formally recognized in the Public Utility Code as a "city natural gas distribution operation," 66 Pa.C.S. § 102, the sole municipally owned natural gas utility under full Commission jurisdiction.

As Commission Chairman Wendell F. Holland recognized in his Statement filed in connection with PGW's most recent base rate case, PGW has a "unique consumer base" whose circumstances must be recognized in policy decisions concerning natural gas service in the City of Philadelphia.<sup>9</sup> Approximately one-third of PGW's residential customers are low income, with incomes at or below 150% of the federal poverty level, almost double the average percentage of low income natural gas customers served by other Pennsylvania natural gas companies. As Action Alliance's expert witness Harry S. Geller testified in PGW's recent rate case, the "sheer numbers of low income PGW customers (as a percentage of all PGW customers)" justifies a

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<sup>9</sup> Pa. PUC v. PGW, R-00061931 (Statement of Chairman Wendell F. Holland, filed September 13, 2007) ("I have said it time and time again that the long-term financial health of PGW and the impact on consumers is the No. 1 energy issue in Philadelphia. The ongoing challenge that faces this Commission is to strike a balance between the needs of this unique consumer base with the fiscal needs of this company").



public policy of seeking recovery of PGW's universal service and energy conservation costs from all firm customer classes, not just the residential class.

In support of this recommendation, Mr. Geller testified:

as the Commission's 2005 Report on Universal Service Programs & Performance indicates, the demographics of PGW's residential customer base are truly extraordinary, when compared to other Pennsylvania natural gas utilities. For instance, in 2005, PGW had 157,000 low-income residential customers (customers with household incomes at or below 150% FPL), constituting 33% of its customer base. [Report, at 8] By contrast, the natural gas utility with the second highest percentage of low-income customers is Dominion, with 24%, which in absolute numbers represents only half as many low income customers as PGW. [Id. at 8]. Overall, PGW excluded, low-income natural gas customers represent 18% of the customer base for Pennsylvania natural gas utilities. [Id. at 7,8] On the electric side, Penelec has the highest percentage of low-income customers, who constitute 24% of the company's customer base; statewide, low-income customers constitute 19% of the total number of electric customers. [Id. at 8] These demographics would justify as in the public interest, a continuation of the present [PGW] policy to promote universal services through contribution by all classes.<sup>10</sup>

In addition, Mr. Geller testified that on the national level, regulators have recognized that where there is a high level of need and enrollment, universal service costs should be spread widely over all customer classes, not just the residential class:

National experience shows that under circumstances where customer demands on universal service programs are exceptionally large, regulators have recognized the advisability of spreading the costs of those programs as widely as possible. For example, as the Office of Consumer Advocate reported in the Commission's investigation Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, [Docket M-00051923] the states with the largest low-income assistance programs invariably recognized the need to allocate the substantial costs of those programs to all firm customer classes, not just the residential class. [OCA Comments, at 28-29] Similarly, given the substantial size of PGW's CAP

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<sup>10</sup> Rebuttal Testimony of Harry S. Geller on Behalf of Action Alliance of Senior Citizens, et al., May 4, 2007, in Pa. PUC v. PGW, R-00061931, Action Alliance St. 1-R, at 5. The comparable data contained in the Commission's 2006 Report on Universal Service Programs & Performance (at 7-8) shows a slight reduction in the number of PGW low income customers as a percentage of total PGW residential customers (from 33% to 32%), not a significant change especially in light of the fact that the rest of the data cited by Mr. Geller is virtually unchanged.

program, and the obvious need to increase enrollment further, the Commission should support the utility's proposal to allocate universal service costs to all customer classes.<sup>11</sup>

In PGW's recent base rate case, the Commission implicitly recognized PGW's unique demographic circumstances and the extreme poverty of so many of its customers when it upheld the company's claims (against other parties) that the company should be allowed to retain its traditional practice of allocating the costs of its universal service and energy conservation programs to all firm customer classes. The Commission accepted the ALJs' recommendation that these costs continue to be allocated to all firm customer classes; otherwise, as the ALJs pointed out, residential customers would be required to absorb an additional increase of 3.8% over and above that derived from increases in PGW operating costs.<sup>12</sup> Indeed, in reaching its final decision, the Commission recognized that "realignment of the costs in this proceeding would simply overburden the residential classes...."<sup>13</sup>

In this instance, maintaining PGW's existing and historical practice of allocating the costs of its universal service and energy conservation programs to all firm customer classes is also consistent with the intent of Chapter 14, the Responsible Utility Customer Protection Act. As the definitions section of that Act demonstrates, this statute is concerned exclusively with residential customers.<sup>14</sup> In the Act's Declaration of Policy, the legislature expressed its concern that

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<sup>11</sup> Rebuttal Testimony of Harry S. Geller on Behalf of Action Alliance of Senior Citizens, et al., May 4, 2007, in Pa. PUC v. PGW, R-00061931, Action Alliance St. 1-R, at 5-6.

<sup>12</sup> Pa. PUC v. PGW, R-00061931 (Recommended Decision issued July 24, 2007), at 80-81.

<sup>13</sup> Pa. PUC v. PGW, R-00061931 (Order entered September 28, 2007), at 88.

<sup>14</sup> The Act defines a "customer" as a "natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult whose name appears on the mortgage, deed or lease of the property for which the residential service is requested." (emphasis added). 66

“[i]ncreasing amounts of unpaid bills now threaten paying customers with higher rates due to other customers’ delinquencies.” 66 Pa.C.S. §1402(2). In providing CAP customers with affordable bills, universal service programs reduce the overall amount of delinquencies. By maintaining PGW’s historical allocation of CAP costs, the Commission furthers the goal of protecting “paying [residential] customers” against unreasonably high rates. At the same time, it also furthers the Chapter 14 goal of “ensur[ing] that service remains available to all customers on reasonable terms and conditions.” 66 Pa.C.S. § 1402(3).

Other reasons also support Action Alliance’s recommendation that the Commission formally recognize that the PGW’s universal service and energy conservation costs should be allocated to all firm customer classes. As the Commission has observed, historically, PGW’s universal service programs have as a matter of policy always been funded by all firm customer classes.<sup>15</sup> Moreover, PGW and its owner the City of Philadelphia have determined that this allocation, in the Philadelphia context, is consistent with “cost of service” principles, “because the program contributes to low-income standards of living and prevents homelessness and erosion of the City’s tax base, thereby benefitting the entire community.”<sup>16</sup>

Action Alliance therefore requests that Section 62.4(b)(4)(iv) be amended to read:

“(iv) except in the case of a ‘city natural gas distribution operation,’ a statement that the surcharge

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Pa.C.S. § 1403 (Definitions).

<sup>15</sup> Re: Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, M – 00051923 (Final Investigatory Order, entered December 18, 2006), at 31, n.25.

<sup>16</sup> Re: Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, M – 00051923, Comments of Philadelphia Gas Works (January 31, 2006), at 8-9; see also Rebuttal Testimony of Roger D. Colton on behalf of Office of Consumer Advocate, May 4, 2007, Pa. PUC v. PGW, R-00061931, OCA St. 4-R, at 13.

is applicable only to residential customers.”

**§ 62.5. Annual residential collection and universal service and energy conservation program reporting requirements. An NGDC shall report annually to the Commission on the degree to which universal service and energy conservation programs within its service territory are available and appropriately funded. Annual NGDC reports must contain information on programs and collections for the prior calendar year. Unless otherwise stated, the report shall be due April 1 each year. When noted, the data shall be reported by classification of accounts as total residential customers and confirmed low income residential customers. An NGDC’s report must contain the following information:**

**Comment:**

Action Alliance supports the Commission’s efforts to gather quantitative information concerning the universal service and energy conservation programs, including collections activities. The Commission is historically on record for its efforts to encourage utilities to develop functional alternatives to service termination through payment agreements and universal service programs. Consistent with this policy to minimize terminations, the Commission should expand CAP reporting requirements to include the number deaths, injuries, and fires, and amount of property damage occurring within a year after termination of utility service at a residential property.

Accordingly, Action Alliance submits the following language for inclusion in the proposed rules: “§ 62.5(3). Post-termination events. Program reporting shall include the number of deaths, injuries, and fires, and amount of property damage occurring within a year after the termination of utility service at a property where such service was terminated.”

**§ 62.6(b). Evaluation reporting requirements.... A NGDC shall submit an impact evaluation report to the commission every 6 years. When an NGDC is required to submit an impact**

**evaluation in the same year as it is required to file its universal service and energy conservation plan, the NGDC shall file the impact evaluation report 6 months prior to the filing date for the universal service and energy conservation plan.**

**Comment:**

In this proposed provision, the Commission appears to suggest but not clearly require that at least every other review of a utility's triennial universal service and energy conservation plan filing should be supported by a current impact evaluation report. Long experience has shown that impact evaluations performed by an independent third party often provide a level of analysis which can not be achieved by the parties in a quasi-judicial review of a proposed universal service and energy conservation plan. Action Alliance submits that there should be an absolute requirement that at least every other triennial universal service and energy conservation plan Tariff filing be supported by a current independent impact evaluation.

Accordingly, Action Alliance requests that the Commission revise proposed regulation 62.6(b) to read as follows: "Evaluation reporting requirements. A NGDC shall submit an impact evaluation report to the commission every 6 years to coincide with the commission's review of the NGDC's triennial universal service and energy conservation plan. When an NGDC is required to submit an impact evaluation report in the same year as it is required to file its universal service and energy conservation plan, the NGDC shall file the impact evaluation report 6 months prior to the filing date for the universal service and energy conservation plan."

**CHAPTER 76. CUSTOMER ASSISTANCE PROGRAMS**

**§ 76.1. Purpose. Universal service and energy conservation shall be made available to low income customers throughout a distribution company's territory. To ensure their availability, universal service and energy conservation programs shall be developed and**

**funded individually for each distribution company. To ensure cost effectiveness and compliance with statutory requirements that protect all ratepayers, certain rules shall be consistent for all programs. These rules relate to costs that shall be recovered by the distribution company, customer actions or inactions that shall result in dismissal from participation in a CAP, and billing and collection practices that shall be observed for CAP customers.**

**Comment:**

Action Alliance proposes that the following sentence be substituted for the second sentence in this section: "To ensure that affordable utility service is generally available, universal service and energy conservation programs shall be made available to low income customers throughout a distribution company's territory."

This proposed amendment places the goal of affordability at the center of regulations governing the cost effective management of each utility's universal service and energy conservation programs. In the Final Investigatory Order and in the Proposed Rulemaking Order in this proceeding (p. 4), the Commission has articulated the need to balance the achievement of affordability against the interests of non-CAP customers.<sup>17</sup> In its Proposed Revision to the CAP Guidelines, the Commission has recognized that affordability must be measured in terms of a judgment concerning the energy burden which low income utility customers may be reasonably expected to shoulder.<sup>18</sup> In the Commission's balancing, it is critical that the factors to be balanced be defined as precisely as possible. Universal service and energy conservation programs that are available, but which are not based upon a realistic standard of affordability, is not what the

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<sup>17</sup> Re: Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, M – 00051923 (Final Investigatory Order, entered December 18, 2006), 9-10, 19-20, 69.

<sup>18</sup> Re: Proposed Revision to Policy Statement on Customer Assistance Programs, 52 Pa.Code §§ 69.261-69.267, M – 00072036 (Order and Proposed Policy Statement, entered September 5, 2007) Appendix A, Section 69.265(2).

Commission should be balancing when it considers the interests of non-CAP customers.

**§ 76.2. Definitions. CAP – Customer Assistance Program – A plan implemented by a distribution company for the purpose of providing universal service and energy conservation services to low income customers, in which the customers shall:**

- (i) Make monthly payments based on household income and household size.**
- (ii) Comply with specific responsibilities in order to remain eligible for the program.**

**Comment:**

This proposed definition substantially tracks the definition of “Customer assistance program” which is contained in Chapter 14 Section 1403. It clearly defines the obligation imposed upon CAP participants to make monthly payments and to comply with program rules. However, participation in CAP confers certain rights on customers as well as entails certain responsibilities. Action Alliance has proposed amendment to the definition of “Customer Assistance program” contained in the proposed regulations at Section 54.72 and Section 62.2. For the sake of consistency, Action Alliance proposes that the Commission adopt the same definition of “Customer assistance program” that is adopted in these companion regulations.

Action Alliance submits that the proposed definition should be amended by adding:

“(iii) Customers successfully complying with subsections (i) and (ii) shall receive from the distribution company continued utility service and forgiveness of outstanding, preprogram debt.”

**§ 76.3(a). Approval process. A distribution company shall obtain Commission approval prior to implementing a CAP plan, or a revision or expansion of an existing CAP. A distribution company shall utilize the procedures set forth at section 54.74(a)(3) or section 62.4(a)(3)....**

**Comment:**

Action Alliance requests that the Commission add to this section a provision which specifies that a utility which determines that its CAP program must be expanded to accommodate increased demand for participation must enroll new applicants while its petition to expand its CAP program is pending. As the Commission has recognized, in the Final Investigatory Order, the natural gas and electricity generation Competition Acts bar the imposition of enrollment ceilings.<sup>19</sup> Without such a provision, situations may arise where a utility determines that expansion is necessary at some point prior to the triennial submission and approval of its universal service and energy conservation plan. Unless the regulations take this situation into account, a utility may be faced with the choice of either admitting the applicant into its CAP program (despite the fact that temporary program size limits have been reached and can only be expanded with Commission approval) or imposing a CAP enrollment ceiling in violation of the electricity generation and/or natural gas Competition Acts and applicable CAP Guidelines.

Action Alliance therefore proposes that the Commission add the following sentence to this provision: "A public utility may not deny participation to a CAP applicant on the grounds that its CAP program has reached its temporary size limits, but must accept all eligible CAP applicants pending Commission review of its request to revise or expand its CAP program."

**§ 76.4(1). Recovery of costs of customer assistance programs. The following considerations shall apply to the recovery of CAP costs by a distribution company: (1) CAP costs shall be recoverable only from residential customers.**

**Comment:**

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<sup>19</sup> Re: Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, Docket No. M-00051923 (Final Investigatory Order, entered December 18, 2005), at 6.



Action Alliance submits that the Commission should expressly except the Philadelphia Gas Works (PGW) from this provision, due to the unique demographic circumstances of its residential customer base and its historical status, formally recognized in the Public Utility Code as a “city natural gas distribution operation,” 66 Pa.C.S. § 102, the sole municipally owned natural gas utility under full Commission jurisdiction.

As Commission Chairman Wendell F. Holland recognized in his Statement filed in connection with PGW’s most recent base rate case, PGW has a “unique consumer base” whose circumstances must be recognized in policy decisions concerning natural gas service in the City of Philadelphia.<sup>20</sup> Approximately one-third of PGW’s residential customers are low income, with incomes at or below 150% of the federal poverty level, almost double the average percentage of low income natural gas customers served by other Pennsylvania natural gas companies. As Action Alliance’s expert witness Harry S. Geller testified in PGW’s recent rate case, the “sheer numbers of low income PGW customers (as a percentage of all PGW customers)” justifies a public policy of seeking recovery of PGW’s universal service and energy conservation costs from all firm customer classes, not just the residential class.

In support of this recommendation, Mr. Geller testified:

as the Commission’s 2005 Report on Universal Service Programs & Performance indicates, the demographics of PGW’s residential customer base are truly extraordinary, when compared to other Pennsylvania natural gas utilities. For instance, in 2005, PGW had 157,000 low-income residential customers (customers with household incomes at or below 150% FPL), constituting 33% of its customer base. [Report, at 8] By contrast, the natural gas utility with the second highest

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<sup>20</sup> Pa. PUC v. PGW, R-00061931 (Statement of Chairman Wendell F. Holland, filed September 13, 2007) (“I have said it time and time again that the long-term financial health of PGW and the impact on consumers is the No. 1 energy issue in Philadelphia. The ongoing challenge that faces this Commission is to strike a balance between the needs of this unique consumer base with the fiscal needs of this company”).

percentage of low-income customers is Dominion, with 24%, which in absolute numbers represents only half as many low income customers as PGW. [Id. at 8] Overall, PGW excluded, low-income natural gas customers represent 18% of the customer base for Pennsylvania natural gas utilities. [Id. at 7,8] On the electric side, Penelec has the highest percentage of low-income customers, who constitute 24% of the company's customer base; statewide, low-income customers constitute 19% of the total number of electric customers. [Id. at 8] These demographics would justify as in the public interest, a continuation of the present [PGW] policy to promote universal services through contribution by all classes.<sup>21</sup>

In addition, Mr. Geller testified that on the national level, regulators have recognized that where there is a high level of need and enrollment, universal service costs should be spread widely over all customer classes, not just the residential class.

National experience shows that under circumstances where customer demands on universal service programs are exceptionally large, regulators have recognized the advisability of spreading the costs of those programs as widely as possible. For example, as the Office of Consumer Advocate reported in the Commission's investigation Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, [Docket M -00051923] the states with the largest low-income assistance programs invariably recognized the need to allocate the substantial costs of those programs to all firm customer classes, not just the residential class. [OCA Comments, at 28-29] Similarly, given the substantial size of PGW's CAP program, and the obvious need to increase enrollment further, the Commission should support the utility's proposal to allocate universal service costs to all customer classes.<sup>22</sup>

In PGW's recent base rate case, the Commission implicitly recognized PGW's unique demographic circumstances and the extreme poverty of so many of its customers when it upheld the company's claims (against other parties) that the company should be allowed to retain its

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<sup>21</sup> Rebuttal Testimony of Harry S. Geller on Behalf of Action Alliance of Senior Citizens, et al., May 4, 2007, in Pa. PUC v. PGW, R-00061931, Action Alliance St. 1-R, at 5. The comparable data contained in the Commission's 2006 Report on Universal Service Programs & Performance (at 7-8) shows a reduction slight reduction in the number of PGW low income customers as a percentage of total PGW residential customers (from 33% to 32%), not a significant change especially in light of the fact that the rest of the data cited by Mr. Geller is virtually unchanged.

<sup>22</sup> Rebuttal Testimony of Harry S. Geller on Behalf of Action Alliance of Senior Citizens, et al., May 4, 2007, in Re: Pa. PUC v. PGW, R-00061931, Action Alliance St. 1-R, at 5-6.

traditional practice of allocating the costs of its universal service and energy conservation programs to all firm customer classes. The Commission accepted the ALJs' recommendation that these costs continue to be allocated to all firm customer classes; otherwise, as the ALJs pointed out, residential customers would be required to absorb an additional increase of 3.8% over and above that derived from increases in PGW operating costs.<sup>23</sup> Indeed, in reaching its final decision, the Commission recognized that "realignment of the costs in this proceeding would simply overburden the residential classes..."<sup>24</sup>

In this instance, maintaining PGW's existing and historical practice of allocating the costs of its universal service and energy conservation programs to all firm customer classes is also consistent with the intent of Chapter 14, the Responsible Utility Customer Protection Act. As the definitions section of that Act demonstrates, this statute is concerned exclusively with residential customers.<sup>25</sup> In the Act's Declaration of Policy, the legislature expressed its concern that "[i]ncreasing amounts of unpaid bills now threaten paying customers with higher rates due to other customers' delinquencies." 66 Pa.C.S. §1402(2). In providing CAP customers with affordable bills, universal service programs reduce the overall amount of delinquencies. By maintaining PGW historical allocation of CAP costs, the Commission furthers the goal of protecting "paying [residential] customers" against unreasonably high rates. At the same time, it also furthers the Chapter 14 goal of "ensur[ing] that service remains available to all customers on

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<sup>23</sup> Re: Pa. PUC v. PGW, R-00061931 (Recommended Decision issued July 24, 2007), at 80-81.

<sup>24</sup> Re: Pa. PUC v. PGW, R-00061931 (Order entered September 28, 2007), at 88.

<sup>25</sup> The Act defines a "customer" as a "natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult whose name appears on the mortgage, deed or lease of the property for which the residential service is requested." (emphasis added). 66 Pa.C.S. § 1403 (Definitions).

reasonable terms and conditions.” 66 Pa.C.S. § 1402(3).

Other reasons also support Action Alliance’s recommendation that the Commission formally recognize that the PGW’s universal service and energy conservation costs should be allocated to all firm customer classes. As the Commission has observed, historically, PGW’s universal service programs have as a matter of policy always been funded by all firm customer classes.<sup>26</sup> Moreover, PGW and its owner the City of Philadelphia have determined that this allocation, in the Philadelphia context, is consistent with “cost of service” principles, “because the program contributes to low-income standards of living and prevents homelessness and erosion of the City’s tax base, thereby benefitting the entire community.”<sup>27</sup>

Action Alliance therefore requests that Section 76.4(1) be amended to read:

“CAP costs shall be recovered only from the residential customer class, except the CAP costs of a “city natural gas distribution operation,” which shall be recovered from all firm customer classes.”

**§ 76.5(a). Default provisions for failure to comply with program rules. (a) The failure of a CAP customer to comply with the following shall result in dismissal from CAP participation:**

**Comment:**

Proposed Section 76.5(a) sets forth regulations identifying mandatory universal service and energy conservation program rules, along with the requirement that customers who violate

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<sup>26</sup> Re: Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, M – 00051923 (Final Investigatory Order, entered December 18, 2006), at 31, n.25.

<sup>27</sup> Re: Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, M – 00051923, Comments of Philadelphia Gas Works (January 31, 2006), at 8-9; see also Rebuttal Testimony of Roger D. Colton on behalf of Office of Consumer Advocate, May 4, 2007, Re: Pa. PUC v. PGW, R-00061931, OCA St. 4-R, at 13.

CAP rules shall be subject to dismissal from a utility's Customer Assistance Program. The proposed mandatory program rules replace similar CAP guidelines which provided that these violations "should" (but not necessarily would) result in dismissal and allowed for greater utility discretion to take local circumstances into account.<sup>28</sup>

Action Alliance submits that dismissal of a CAP customer from the program constitutes a substantial deprivation of benefits related to a life essential service. For this reason, the substitution of mandatory sanctions for the prior discretionary guidelines, should be balanced by providing explicit due process customer protections. Due process requires prior written notice and a pre-deprivation right to appropriate dispute resolution processes so that harmful unnecessary or erroneous dismissals can be avoided. More formal customer procedural protections will benefit not only CAP customers, but also utilities. Low income customers wrongfully dismissed from CAP are likely to default on their bills, and will be more expensive to serve due to increased collection costs.

There is Commission precedent which supports the inclusion of explicit due process customer protections in the area of utility dismissal of CAP customers from CAP for failure to comply with program rules. In the Chapter 14 Second Implementation Order, the Commission stated that although CAP customers threatened with service termination were barred by Chapter 14 Section 1405(c), 66 Pa.C.S. § 1405(c), from obtaining a Commission established payment agreement, CAP customers continued to have the right to obtain a stay of termination pending disputes concerning compliance with CAP rules by the customer and/or the utility. Thus, CAP customers are permitted to raise disputes before the utility and the Commission concerning the

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<sup>28</sup> See 52 Pa.Code §§ 69.265(7).

application of CAP program rules, including but not limited to: "allegations that the customer's CAP budget was inappropriately increased"; "allegations that the customer has been charged a CAP rate which is not the appropriate for a household with their income or type of service"; "allegations that the customer was improperly removed from CAP"; "complaints about the utility's application of payments including application of energy assistance grants."<sup>29</sup> Because dismissal of a low income customer from CAP is likely to lead to unaffordable bills, payment defaults, the initiation of collection actions and all utility expenses attendant thereto, Commission regulations should provide due process protection prior to dismissal from CAP, so that erroneous, unnecessary and harmful CAP dismissals may be avoided whenever possible.

Action Alliance proposes that the following provision be added to Section 76.5(a)(1):

"Prior to removing a customer from CAP for failure to comply with CAP program rules, the utility shall provide the customer with a ten day written notice which includes the specific reason for the proposed dismissal, the projected date of dismissal, the customer's right to cure the default prior to dismissal, the right to dispute the dismissal, stay of dismissal pending resolution of the dispute or appeal and the right timely to appeal a dismissal to the Commission."

**§ 76.5(a)(1). Default provisions for failure to comply with program rules. (a) The failure of a CAP customer to comply with the following shall result in dismissal from CAP participation: (1) Failure to apply for LIHEAP.**

**Comment:**

Action Alliance has three requests regarding this LIHEAP related provision. The first

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<sup>29</sup> Re: Chapter 14 Implementation, Docket No. M-00041802F002 (Order entered September 12, 2005), at 34-35.

involves the clarification that the provision applies to the LIHEAP Cash program, as opposed to the LIHEAP Crisis program. The second involves further specification concerning when and under what conditions a CAP customer may be dismissed from CAP for failure to apply for LIHEAP Cash. The third addresses the situation of the CAP customer of a regulated utility who has applied for LIHEAP Cash but provided the grant to another utility where he/she is also a CAP participant.

Distinction between LIHEAP Cash and LIHEAP Crisis. The federal Low Income Home Energy Assistance Program (LIHEAP) has long had two components. The first component is LIHEAP Cash (often commonly referred to as "LIHEAP"), a grant available to all low income customers who have responsibility for residential heating, regardless of whether they are current on their heating bill or bills. The second component is LIHEAP Crisis (often commonly referred to as "Crisis"), which is available to LIHEAP income eligible customers whose heat related service is off due to non-payment or inability to pay, or who are in imminent danger of being without heat due to inability to pay.<sup>30</sup> This proposed regulation applies to LIHEAP Cash, not LIHEAP Crisis. Most customers eligible for LIHEAP Cash are not eligible for LIHEAP Crisis, because they are not in or close to shut-off status. Dismissal of a customer from a CAP program for failure to apply for LIHEAP Crisis would serve no useful purpose, because the lack of service or the imminent loss of service is a more than adequate incentive to apply for LIHEAP Crisis.

Proposed regulation Section 76.5(a)(1) should therefore be amended to read: "Failure to

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<sup>30</sup> See Commonwealth of Pennsylvania, Department of Public Welfare, Low-Income Home Energy Assistance Program, Fiscal Year 2007 Final State Plan, Appendix B, §§ 601.4; 601.31; 601.41; 601.61-601.62.

apply for LIHEAP Cash grant.”

Dismissal for failure to apply for LIHEAP Cash. Action Alliance submits that no customer should be dismissed from CAP for failure to apply for LIHEAP Cash unless the customer has been provided with a ten day written notice of pending dismissal, an opportunity to cure the default by making an application for LIHEAP Cash, and has not applied for LIHEAP Cash. This proposal takes into account the necessary complexity of CAP programs and the limited ability of many low income customers to obtain effective knowledge of all program requirements and to act in accordance with those requirements.

LIHEAP Cash enrollment is not year around, but only extends from approximately November 1 to the end of March in the following year. For that reason, there are certain times of year when a CAP participant who has failed to apply for LIHEAP Cash can not cure his/her default; once a program has closed for the LIHEAP program year, no grants can be obtained for applicants who applied after the closing date.

The aim of incorporating LIHEAP Cash requirements in CAP programs is to maximize the degree to which CAP recipients and utilities can access taxpayer funds to support universal service goals, as opposed to the funds of other non-CAP customers. Before a customer should be removed from CAP for failure to apply for LIHEAP Cash, the customer should be given a direct and explicit written ten day notice of pending dismissal in a time frame which would permit the customer to cure his/her default by making the necessary application and the customer must have failed to make the necessary application. In other words, although information concerning the LIHEAP Cash requirement should be provided as part of every utility's CAP explanations, such



explanations are necessarily too general and combined with too much more immediately relevant information to constitute effective notice.

This regulation should induce utilities to communicate with customers concerning their LIHEAP Cash requirement at a time when it will do the most good. Dismissal from CAP is not in the interest either of utilities or of the customer. For that reason, good public policy suggests that a utility should not commence an action to dismiss a customer from CAP unless there actually exists a reasonable opportunity for the customer to cure the default by applying for LIHEAP Cash benefits. Assuming that the minimum advance notice of dismissal is 10 days, a customer should be allowed ten days to complete and submit a LIHEAP Cash application.

Action Alliance therefore requests that the Commission add the following sentences to this provision: "A utility shall not commence an action to dismiss a customer from CAP for failure to apply for LIHEAP Cash unless there actually exists a reasonable opportunity for the customer to cure the default by applying for LIHEAP Cash benefits. Prior to any dismissal from CAP for failure to apply for LIHEAP Cash, the utility shall provide the customer with a written, ten day notice, informing the customer of the pending dismissal from CAP, and informing him/her of the right to cure the dismissal by submitting an application for LIHEAP Cash."

#### LIHEAP Recipients Who Have Provided Their Grant To Another Heating Source.

Low income customers often receive heat related service from not one but two sources. For instance, a low income natural gas heating customer may receive heat-related electric service which powers the home furnace fueled by natural gas. A LIHEAP Cash grant may be assigned either to the primary heating source (natural gas service) or to the secondary heating source

(electric service). Customers in this situation are not permitted under LIHEAP rules to obtain two LIHEAP Cash grants or to split the grant, and are therefore only able to assign a LIHEAP Cash grant to one utility. The current CAP Guidelines explicitly recognize this problem, and under such circumstances, expressly exempt a CAP customer from sanctions for failure to assign his/her LIHEAP Cash grant to the CAP utility if the customer has assigned the grant to another utility or energy supplier from whom the customer obtains heat related service.<sup>31</sup> This longstanding policy recognizes the fungibility of cash, and the financial reality that for low households, the receipt of LIHEAP Cash for one heat-related utility service assists the customer in being able to afford a second heat-related service.

Action Alliance therefore requests that the following qualification be added to this provision: "A utility may not dismiss a CAP customer from its CAP for failure to assign a LIHEAP Cash grant if the customer has in the same LIHEAP year assigned his/her LIHEAP Cash grant to another utility for heat-related service."

**§ 76.5(a)(3). Default provisions for failure to comply with program rules. (a) The failure of a CAP customer to comply with the following shall result in dismissal from CAP participation: ... Failure to report changes in income and household size.**

**Comment:**

Action Alliance submits that as drafted, this provision concerning reporting of changes in income and household size is unworkable. Low income households are subject to numerous

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<sup>31</sup> See, 52 Pa.Code § 69.265(g)(iv) ("If a customer applies for a LIHEAP benefit but directs it to another utility or energy provider, the CAP provider shall not assess a penalty.") In contrast, the Proposed Customer Assistance Program Statement has eliminated this provision contained in the current Policy Statement. See Re: Revision to Policy Statement on Customer Assistance Programs, 52 Pa. Code §§ 69.261-69.267 (Annex A).

monthly fluctuations in income and household composition. Monthly income for a low income household with income from employment changes up or down whenever there is a fluctuation due to over-time compensation, shifts assigned, or a one-time seasonal opportunity for an income supplement. Monthly income for a low income household whose income is from Public Benefits fluctuates at the time of yearly changes in benefit levels or when household composition changes. Action Alliance submits that it is not reasonable to require households to continually contact the utility to report all such changes, or to require a utility to continually adjust the amount of CAP payments, or to move customers on and off CAP in accordance with transitory fluctuations.

In addition, as drafted, the provision would require a utility to dismiss from CAP a customer who failed to report a decrease in monthly household income and/or an increase in household size, both factors which considered individually would cause a decrease in the household's income expressed as a percentage of the Federal Poverty Guidelines, and would result in a decrease in the customer's average monthly CAP payment. Dismissal of a CAP customer from a universal service program because his/her monthly charges are greater than required by the utility's CAP program is absolutely inconsistent with the stated purpose of CAP programs, to make utility service affordable for a low income customer.

If the Commission believes that this default provision should be maintained as a regulation, it should be amended to state: "Failure to report changes in annual household income and household composition in response to annual requests from the utility."

In addition, the Commission should add the requirement that "When the utility learns that a CAP customer's household income has decreased or household size has increased, the utility must inform the customer that an adjustment in the CAP payment may be warranted, and shall

promptly make such adjustment upon receipt of verified information supporting these changes in income or household size.”

**76.5(a)(5). Default provisions for failure to comply with program rules. (a) The failure of a CAP customer to comply with the following shall result in dismissal from CAP participation: ... Failure to accept usage reduction services.**

**Comment:**

Action Alliance’s comment on this provision concerning usage reduction services is in two parts. In the first part, Action Alliance submits that this provision is flawed because it does not provide for exemption from this requirement for CAP customers who are tenants with landlords who do not consent to the usage reduction measures which the utility proposes. In the second part, Action Alliance submits that dismissal from CAP for failure to accept usage reduction services is an unnecessarily broad penalty, since a more focused penalty already exists.

(1) Existing Section 69.265(3)(vi) provides “exemptions” from CAP control features like the failure to accept usage reduction services in situations when the CAP customer’s failure to accept such services is due to reasons beyond the customer’s control. In contrast, the proposed regulation does not appear to provide for those situations where the failure to accept usage reduction services is due to circumstances beyond the CAP customer’s control. In situations where a tenant is the customer, the landlord may be unresponsive or unwilling to accept the usage reduction services offered by the utility to the CAP customer. The tenant does not have the authority under his/her lease to authorize physical changes to windows, doors, roofs, etc. that may be part of the usage reduction services offered by the utility to the CAP customer.

For this reason, to avoid injustice, Section 76.5(a)(5) should be amended to read: “(5) Failure to accept usage reduction services, except in cases where the failure to accept such services is due to circumstances beyond the CAP customer’s control.”

(2) Dismissal from CAP for failure to accept usage reduction services is an overly broad penalty. The proposed CAP Guidelines, Section 69.265(4)(iii)(A), already authorize the utility to charge a CAP customer who refuses to reduce energy consumption the full cost of energy used in excess of consumption limits. For a low income customer, this is a sufficient disincentive or punishment. The additional cost of utility service arising from implementation of such a policy is more likely than not to result in service termination or impose serious economic hardship on the customer. The few customers who, due to ignorance, confusion linked to age or non-age related cognitive deficits, or mental health issues, refuse all attempts at assistance with energy usage deserve sympathy, not punishment. There is no need to increase the customer’s outstanding balance by dismissing the customer from CAP, thereby imposing the requirement that the customer pay not only for excess use, but for non-excess use, at a rate which is not affordable. Dismissing a customer from CAP, and charging such a high-usage low income customer the full non-CAP rate for all consumption will create such high balances that given the harsh state of existing law, the terminated customer’s ability to obtain any service reconnection at all may be fatally impaired.<sup>32</sup>

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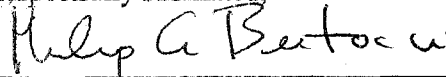
<sup>32</sup> The Commission has interpreted Chapter 14 Section 1405(c) to bar payment arrangements for any balance containing CAP billings. A CAP customer who is deemed to have refused usage reduction services for whatever reason, and is dismissed from CAP, would not be eligible for a Commission established payment arrangement, and could be required by a utility to pay the pre-CAP arrearage plus any CAP arrearage as a condition of retaining service.

If the Commission determines that there should be a provision in CAP regulations, placing limits on the granting of CAP benefits to customers who refuse to accept usage reduction services, the Commission should provide that: "CAP customers who fail to accept usage reduction services offered under a utility's CAP program shall be billed for any usage above the consumption limits not at the CAP rate, but at the standard residential rate."

### III. CONCLUSION.

For the forgoing reasons, Action Alliance requests that the Commission amend the proposed revisions to 52 Pa.Code §§ 54.71 et seq. (Chapter 54. Electricity Generation Customer Choice. Subchapter C. Universal Service and Energy Conservation Plan: Review, Funding and Reporting Requirements), 52 Pa.Code §§ 62.1 et seq. (Chapter 62. Natural Gas Supply Customer Choice. Subchapter A. Universal Service and Energy Conservation Plan: Review, Funding and Reporting Requirements) and the proposed regulations to be published at 52 Pa.Code §§ 76.1 et seq. (Chapter 76. Customer Assistance Programs) as set forth above or as consistent with the proposals set forth above.

Respectfully submitted,



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PHILIP A. BERTOCCI, ESQUIRE

THU B. TRAN, ESQUIRE

COMMUNITY LEGAL SERVICES, INC.

Attorneys for Action Alliance of Senior Citizens  
of Greater Philadelphia

**Gelnett, Wanda B.**

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**From:** Totino, Michael  
**Sent:** Wednesday, April 23, 2008 2:55 PM  
**To:** Gelnett, Wanda B.  
**Subject:** FW: Screen shot of CAP comments

-----Original Message-----

**From:** Burket, Patricia [mailto:pburket@state.pa.us]  
**Sent:** Wednesday, April 23, 2008 2:01 PM  
**To:** Totino, Michael; Jewett, John H.  
**Subject:** Screen shot of CAP comments

Michael

As I said, I counted PECO's twice but you may be missing an e-mail. Here's a screen shot of my "CAP Reg Comments" folder from Outlook (the easiest way I know to do this) so please check and see if you can identify any you are missing and let me know. This is the complete list of comments and some of the e-mails I sent you today.

Thanks, Pat