

2676 RECEIVED

From: Lisa Hipple [LHipple@ENERGYPA.ORG]
Sent: Friday, April 18, 2008 2:37 PM
To: Smith, Michael; Burket, Patricia; Page, Cyndi
Cc: Donna Clark; Dave Epple; Michael Love
Subject: Comments to the Proposed Rulemaking Relating to Universal Service

2008 APR 23 PM 3:08

INDEPENDENT REGULATORY
REVIEW COMMISSION

Attached are the Comments to the Proposed Rulemaking Relating to Universal Service from the Energy Association of Pennsylvania.

Lisa M. Hipple
Executive Secretary/Paralegal to J. Michael Love
Energy Association of Pennsylvania
800 North Third Street, Suite 301
Harrisburg, PA 17102
Phone: 717-901-0600
Facsimile: 717-901-0611
lhipple@energypa.org

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Proposed Rulemaking Relating to :
Universal Service and Energy Conservation : Docket No. L-00070186
Reporting Requirements, 52 Pa. Code §§ :
54.71-54.78 (electric); §§ 62.1-62.8 (natural :
gas) and Customer Assistance Programs, :
§§ 76.1-76.6 :

Comments of
The Energy Association of Pennsylvania
*to the Proposed Rulemaking Relating to Universal Service and Energy
Conservation Reporting Requirements and Customer Assistance Programs*

J. Michael Love
President and CEO
E-Mail: mlove@energypa.org

Donna M. J. Clark
Vice President and General Counsel
E-Mail: dclark@energypa.org

ENERGY ASSOCIATION OF PENNSYLVANIA
800 North Third Street,
Suite 301 APC Building
Harrisburg, PA 17102
Phone: (717) 901.0600
Facsimile: (717) 901.0611

Date: April 18, 2008

I. Introduction

On December 18, 2006, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered a Final Investigatory Order (Docket No. M-00051923), directing a revision of regulations concerning universal service and energy conservation rules found at 52 Pa. Code Chapters 54 and 62. The primary objective of the rulemaking is to establish a unified process by which the level of funding of universal service and energy conservation programs offered by electric distribution companies and natural gas distribution companies could be determined in conjunction with the Commission's triennial review of utilities' low-income programs. In addition, the Commission proposed promulgating new regulations at 52 Pa. Code §§ 76.1-76.6 relating to customer assistance programs ("CAP").

On September 4, 2007, the Commission entered an Order at Docket No. L-00070186, requesting comments on the rulemaking to revise its regulations for Universal Service and Energy Conservation Reporting Requirements, 52 Pa. Code §§ 54.71-54.78 (electric) and §§ 62.1-62.8 (natural gas) and to add a Chapter entitled Customer Assistance Programs at §§ 76.1-76.2. The Order appeared in the *Pennsylvania Bulletin* on February 9, 2008 with comments initially due by April 9, 2008. On April 4, 2008, the PUC extended the time for comments through April 18, 2008.

The proposed rulemaking Order addresses a variety of topics, including the following:

- Establishment of a triennial review process regarding CAP design, funding and cost recovery;
- Prior Commission approval relating to implementation of a CAP Plan or revisions to a CAP plan;

- Default provisions for failure to comply with CAP rules;
- Coordination of energy assistance benefits;
- Application of LIHEAP Cash payments;
- Timely collection efforts; and
- Reporting requirements.

The Energy Association of Pennsylvania ("EAPA" or the "Association") commends the Commission's efforts to "move towards a comprehensive, integrated consideration of CAP designs and CAP cost recovery...[i]n order to balance the interests of beneficiaries of CAP programs with the interests of paying customers...." Final Investigatory Order at p.5. The Association supports the Commission's efforts to revise its regulation at 52 Pa. Code §§ 54.71-54.78 and §§ 62.1-62.8 and to promulgate new regulations at 52 Pa. Code §§ 76.1-76.6 to achieve this purpose. The instant comments are offered to aid the Commission in achieving the balance identified in its December 2006 Order with recognition that any proposed substantive change in the distribution companies' universal service programs will significantly affect the costs to residential customers.

Electric and gas distribution companies' Universal Service Programs include Customer Assistance Programs (CAP), Low-income Usage Reduction Program (LIURP), Customer Assistance Referral and Evaluation Services (CARES), and Hardship programs. The combined expenditures for the electric and natural gas distribution companies' Universal Service Programs in 2006 amounted to \$327 million with CAP costs accounting for nearly 90 percent of all universal service costs. Expenditures in 2007 are likely to exceed program expenditures in 2006. EAPA has

estimated that the cost will approach \$365 million based on information submitted to the Commission on or about April 1, 2008 by the state's electric and natural gas distribution companies. As with the EAPA comments to the proposed changes to the CAP policy statement, EAPA urges the Commission to conduct a cost/benefit analysis prior to any wholesale changes in the design of Universal Service Programs, particularly CAP programs.

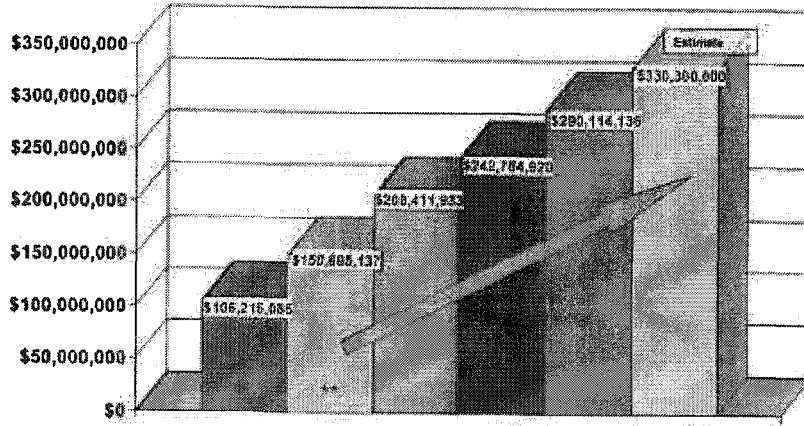
2002-2006: Actual Data

As noted by the Commission in its December 2006 Final Investigatory Order, “[s]ince the year 2000, this [CAP] cost has risen from \$69.6 million in 2000 to \$242.8 million in 2005, an increase of 249 percent.” Final Investigatory Order at p.5 (Footnote omitted). As summarized in the charts below, on page 5, universal service costs have continued to rise with 2007 costs currently estimated at \$365 million.¹

¹ CAP costs represent approximately 90% of all Universal Service Costs.

Customer Assistance Programs

EAPA Member Electric and Natural Gas Distribution Companies
Annual Gross Costs



** Electric & Gas, No PGW
*** PGW added first year

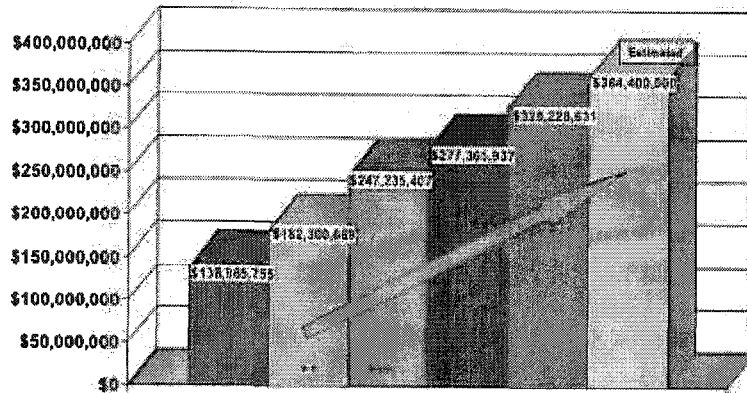
2002 2003 2004 2005 2006 2007

Source: PA PUC Universal Service Programs and Collection Performance Reports

Universal Service Programs

EAPA Member Major Electric and Natural Gas Distribution Companies

Total CAP Costs, LIURP Spending, CARES Costs and Hardship Fund Contributions



** Electric & Gas, No PGW
*** PGW added first year

2002 2003 2004 2005 2006 2007

Source: PA PUC Universal Service Programs and Collection Performance Reports

Additionally, as detailed on the chart below, the component of CAP costs that is steadily increasing is the CAP credit or CAP shortfall, meaning the difference between the bill paid by the CAP participant and the actual cost to the utility to service and deliver energy to that CAP participant.

% of Total CAP Spending by CAP Component						
<i>Weighted Averages</i>						
	EDCs			NGDCs		
	Admin Costs	CAP Credits (Shortfall)	Arrearage Forgiveness	Admin Costs	CAP Credits (Shortfall)	Arrearage Forgiveness
2002	38.0%	38.0%	38.0%	23.1%	59.8%	17.2%
2003	28.3%	50.3%	21.4%	12.5%	57.3%	30.2%
2004	23.0%	53.0%	25.0%	8.0%	79.0%	13.0%
2005	21.0%	62.0%	17.0%	5.0%	83.0%	12.0%
2006	19.0%	64.0%	17.0%	5.0%	85.0%	10.0%
2007*	15.0%	66.0%	18.0%	5.0%	83.0%	12.0%

Administrative costs include: contract and utility staffing; account monitoring; intake; outreach; consumer education and conservation; training; maintaining telephone lines; recertification; computer programming; evaluation; and other fixed overhead costs. Account monitoring includes collection expenses as well as other operation and maintenance expenses. See Appendix 6 for the percentage of CAP spending by program component: administration, CAP credits, and arrearage forgiveness.

CAP credits: total amount of the difference between the standard billed amount and the CAP billed amount.

Arrearage forgiveness: the total pre-program arrearages forgiven as a result of customers making agreed upon CAP payments.

*2007 Data is estimated based on preliminary reporting to the PUC on April 1.

Source: PA PUC Report on Universal Service Programs and Collections Performance (Multiple Years)

A further analysis of the utility administered energy assistance programs data for this period reveals that:

- Electric and gas utilities are effectively dealing with administrative costs by keeping them at a reasonable level.
- The differential between the standard residential rate and the average CAP payment amount has dramatically grown to represent the majority of the expense.
- As natural gas commodity costs have increased, the CAP credit shortfall has also increased as a percentage of CAP spending.
- As electric rate caps expire and the electric commodity (generation) costs increase, CAP credit/shortfall in the electric industry will likely reach the percentage cost now found in the natural gas industry.

Currently, the rate differential between the standard residential billed rate amount and the CAP billed rate amount has become so disparate that the CAP participant is no longer paying much of the commodity costs incurred and, for some utilities, is contributing nothing towards fixed costs. This ever-widening differential is a cost that other customers bear and underscores the need for a cost/benefit analysis prior to any changes to utility CAP programs that expand eligibility or broaden assistance. Moreover, the increasing differential supports a renewed focus on energy conservation as a means to reduce usage and contain costs.

Conservation is the Cornerstone in any successful CAP Program.

Historically, CAP programs were established to assist payment troubled low-income customers pay utility bills by providing a reduced CAP payment amount AND reducing usage by means of cost-effective energy conservation programs. The Association requests that the rulemaking re-emphasize the importance of participating in energy conservation programs to maintain eligibility in utility administered, ratepayer funded energy assistance programs.

The Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-2812, provides that the public interest will be promoted by continuing low income assistance and energy conservation policies, protections, and services existing prior to deregulation. 66 Pa.C.S. §2802 (17). These programs include CAP "and policies and services that help low-income customers...reduce or manage energy consumption in a cost effective manner...." 66 Pa.C.S. § 2803.

Similar or identical language also appears throughout the Natural Gas Choice and Competition Act. 66 Pa.C.S. §§2201-2212. For example, Section 2202 defines "Universal service and energy conservation" as "[p]olicies, practices and services that help residential low-income retail gas customers and other residential retail gas customers experiencing temporary emergencies, as defined by the commission,....maintain natural gas and supply distribution services." 66 Pa. C.S. § 2202. The term includes programs that assist low-income customers reduce or manage energy consumption in a cost-effective manner. Section 2203 provides that the Commission shall maintain such programs that were in existence as of the effective date of the Act and obligates the natural gas distribution companies to file an initial proposal to meet such obligations in the restructuring proceedings. See 66 Pa. C.S. §§ 2203 (7) & (9). Chapter 14 continues this legislative mandate by again linking universal service and energy conservation to the definition of customer assistance program. See, 66 Pa. C.S. § 1403.

Even prior to this clear statutory directive linking assistance programs for low-income customers with conservation the Commission itself voiced the identical concern and identified conservation as a design criteria for early CAP programs. As the Commission observed in its Order releasing a BCS Report dated October 31, 1984 and entitled *Proposed Options For Dealing With Payment Troubled Customers*, Docket No. M-849403:

"Every opportunity for conservation with low-income customers regarding program operation and energy conservation should be taken." Id. at pp. 4-5.

As Commission staff further observed shortly thereafter in a report entitled *Recommendations For Dealing With Payment Troubled Customers* dated March 22, 1985:

Conservation when combined with weatherization can reduce usage and improve a customer's ability to pay. *Id.* See generally discussion at pp. 3-4.

"Consumer behavior is an essential component of any conservation program." *Id.* at p. 6.

Arrearage forgiveness or guaranteed service programs are intended for deserving low-income customers and consumer education regarding conservation and energy usage should be an integral part of such programs. *Id.* See at pp. 32-34 (Arrearage Forgiveness) and pp. 34-35 (Guaranteed or Assured Service Programs).

Still later, the Commission continued to emphasize the need for conservation in its Order adopting a Policy Statement and Guidelines for Residential Low Income Usage Reduction Program ("LIURP") at Docket No. M-840403 on May 22, 1987:

"There is a direct relationship between the extent of payment problems and the use of unusually large amounts of service." *Id.* at p. 2.

"We originally chose to support usage reduction because we found that low-income customers spend a much greater percentage of their incomes on energy than do other groups of residential customers." *Id.* at p. 2.

Then in its Order entitled Policies to Mitigate Price Electricity Increases, Docket No. M-00061957 entered on May 17, 2007, the Commission again observed:

"Customers can control the size of their electric bills through energy efficiency, conservation, and demand side response measures. Customers can benefit from utilizing these measures now, even if the rate cap is still in effect, where they reside." *Id.* at pp. 6, 10.

"The Commission also mandates an energy conservation program for low income customers, the Low Income Usage Reduction Program ("LIURP"). *Id.* at p. 18.

This historical regulatory and statutory tie between energy assistance programs and energy conservation, which is aimed at reducing consumption and containing costs, could be reflected and reinforced by the Commission as it reviews triennial filings. Program design that promotes increased usage should be cautiously implemented, if at all, because it inevitably leads to higher bills and increased program costs which are eventually borne by the non-CAP residential customer.

As discussed in the Association's Comments in regards to the Proposed CAP Policy Statement, Docket No. M-00072036, program control features such as consumption limits and maximum CAP credits may actually result in higher program costs. The regulatory scheme must balance the benefit of maintaining CAP eligibility for low-income consumers facing energy bills with the increasing cost burden of the program to non-CAP residential customers. This balance cannot be achieved if cost effective energy conservation efforts for CAP participants are not promoted and supported by state dollars along with existing utility administered programs such as LIURP.

Should CAP Rates Encourage Greater use of Electricity and Gas?

Electric and gas CAP rates have become the energy venue of choice. A comparison on a cents per million BTU basis shows that with heating oil at \$3.60 a gallon and kerosene at \$3.90 a gallon, discounted electric CAP rates and discounted gas CAP rates are significantly below the market price for energy. See chart on p.11. The Commission's cold weather survey, government surveys, and the results of published reports on heating oil consumption all demonstrate that CAP rates are

encouraging greater use of electric space heaters in lieu of centralized heat from oil or kerosene.

The following chart demonstrates that for numerous EDCs, the price per million BTU for non-CAP residential service is below that for oil heat. The CAP electric rate is significantly below the residential non-CAP electric rate and regulations, which result in widening that differential do not promote conservation and send an inappropriate price signal to CAP electric customers at the expense of the remaining residential customers in a utilities' franchise territory.

	Fuel Type	Fuel Price per Million BTU
EDC (A)	Heating Oil	\$26.00
	Electric	\$19.78
	Gas	\$15.20
	Electric CAP	\$9.90
	Gas CAP	\$7.60
EDC (B)	Heating Oil	\$26.00
	Electric	\$24.33
	Gas	\$15.25
	Electric CAP	\$12.15
	Gas CAP	\$7.70
EDC (C)	Heating Oil	\$26.00
	Electric	\$26.99
	Gas	\$15.21
	Electric CAP	\$13.50
	Gas CAP	\$8.00
EDC (D)	Heating Oil	\$26.00
	Electric	\$26.61
	Gas	\$15.20
	Electric CAP	\$14.00
	Gas CAP	\$8.00

For the natural gas distribution companies, usage per household has been shrinking for the non-CAP household as prices increase and conservation improves but, for the CAP household, usage is constant or growing. This makes the job more difficult

for marketers to compete for the CAP load because of the low price that must be offered to those users under state sanctioned universal service plans. It further suggests that the program design did not send an appropriate price signal to low-income consumers as the cost of commodity increased, because usage did not decrease.

The potential for CAP programs to encourage non-essential energy usage should not be encouraged by Commission regulation. The Association recommends that the Commission establish a threshold level of energy usage that encourages conservation and energy efficiency by CAP participants who are obligated to pay timely the discounted CAP amount and conserve energy.

The policy issues underlying this rulemaking are complicated and costly, seemingly pitting the needs of low-income consumers against the working poor and other residential customers. The Association respects the Commission's efforts in this regard and requests that as it finalizes these rules, other price drivers facing residential customers also guide policy directives.

Below are the Association's comments to the specific proposed revisions and new regulations submitted on behalf of the member companies².

² EAPA members joining in these comments include: Allegheny Power, Citizens' Electric Co., Columbia Gas of PA, Dominion Peoples, Duquesne Light Co., Equitable Gas Co., Metropolitan Edison Co., A *FirstEnergy Company*, National Fuel Gas Distribution Corp., Pennsylvania Electric Co, A *FirstEnergy Company*, Pennsylvania Power Co, A *FirstEnergy Company*, PECO Energy Co., Philadelphia Gas Works, Pike County Light & Power Co., PPL Electric Utilities Corp., PPL Gas Utilities Corp., UGI Penn Natural Gas, Inc., UGI Utilities, Inc, Valley Energy, Inc. and Wellsboro Electric Co.

II. General Comments

§ 54.72 ; § 62.2 ; and § 76.2 Definitions.

Under the revised definition of "Customer Assistance Program", the Commission has omitted the term "payment troubled" and reworded the definition to de-emphasize the fact that the programs were established to help the low-income customer who failed to pay a monthly bill maintain utility service through responsible bill payment and energy conservation. The new definition establishes a program parameter that eliminates a key historical eligibility requirement opening the CAP programs to customers based on income criteria alone.

The Association and its members request that the term "payment troubled" be retained to assure that CAP programs are available to customers who truly need the help provided through a reduced utility bill. Without the inclusion of "payment troubled" as part of the definition, CAP programs become open and available to all low-income customers regardless of need, creating tremendous cost burden on non-CAP residential customers. This change in definition represents an estimated \$1.25 billion³ shift in expense from one group of residential utility customers to another group of residential utility customers, all within the same customer class. EAPA encourages the Commission to consider its obligation to all customers (not only CAP customers) to maintain affordable rates in this rulemaking process.

Use of the phrase "self-certification" for customer income verification within the definition of a "Confirmed low income residential account" needs clarification and should mirror the process approved by the Commission for telephone utilities. First, the

³ See Comments to the Order and Proposed Policy Statement on Customer Assistance Programs, Docket No. 00072036 filed by EAPA on 1/9/08.

Commission has already ruled that a "self-certification" process is subject to fraud and is not acceptable in Pennsylvania. Re: Lifeline and Link-Up Programs, Docket No. M-00051871, Final Order entered May 23, 2005. As part of its implementation of Act 183 and revamping of Lifeline generally, the Commission undertook to update its lifeline eligibility standards, ruling that customers could qualify on two separate bases:

1. Enrollment in a public assistance program (Medicaid, Federal Public Housing Assistance (Section 8), Low-Income Home Energy Assistance Program (LIHEAP), Supplemental Security Income (SSI), Food Stamps, Temporary Assistance to Needy Families (TANF), State Blind Pension, General Assistance or the National School Lunch Program); OR
2. Income at or below 135% of the Federal Poverty Guidelines (FPG).⁴

A Pennsylvania telephone company verifies customer eligibility through one of two Pennsylvania government databases: the Department of Public Welfare's (DPW) database identifies program participation; and the Department of Revenue (DOR) separately validates that the customer's income meets the FPG standard (if the customer is not participating in one of the qualifying social assistance programs). The carriers directly query DPW's automated database at no charge. DOR charges a \$5.00 per inquiry fee.

The Commission has recognized FPG income verification through customer-supplied copies of income tax returns and has rejected self-verification, stating:

We agree with PTA that self-certification without some form of reasonable independent verification is suspect for fraudulent abuse and will not be acceptable in Pennsylvania as a means for qualifying for our Lifeline/Link-Up programs.⁵

⁴ *Re: Lifeline and Link-Up Programs*, Docket No. M-00051871, Final Order entered May 23, 2005.

⁵ *Id.* at 10.

Since the Commission has already determined that self-certification may encourage fraud in the telephone industry, it would seem reasonable that such a procedure is equally unacceptable in the energy utility industries. Any revision should recommend a "self-certification" process similar to that approved by the Commission in implementing Chapter 30.

Second, the Association and its members question the need for the use of the term "confirmed" in the phrase "confirmed low income residential account" and ask that the Commission consider substituting the word "estimated". The Association notes that the phrase is defined in that part of the revised regulations dealing with reporting requirements for both the electric and natural gas distribution industries. The reports filed, i.e. the 56.231 Report and the Payment Agreement Report, exclude CAP participants pursuant to Commission rules and instructions and income categories in those reports are not routinely confirmed in the manner suggested by the definition but rather estimated. Requiring confirmation without availability of input from DPW or DOR as established above would be difficult, if not impossible, and would encumber the monthly filing of this critical information collected by the industries and the Commission.

Additionally, the definition sections include the definitions for CAP, LIHEAP, CARES and LIURP. To include definitions for all the universal service programs maintained, the Association recommends that the Commission add a definition of "Hardship fund" to § 54.72 and § 62.2. The proposed definition would read as follows:

"Hardship fund – a program funded by voluntary donations from utility shareholders, customers, utility employees and others to pay the energy bills of qualified, low-income households."

The Association further recommends adding the words "utility web site" to the definition of "Outreach referral contacts". Most distribution companies are actively promoting their web sites as sources of information for programs, services, announcements, outage information, etc. The revised definition would read as follows.

"An address, utility web site or telephone number that a customer would write, e-mail or call to obtain information about applying for the hardship fund. Contact information should be specific to each county in the [EDC or NGDC] service territory, if applicable."

Finally, the definition of "Payment troubled" should be revised to strike the phrase "or has received a termination notice." Simply receiving a termination notice does not automatically mean that the customer is payment troubled. Many customers who receive termination notices manage to stay current on their bill without actually going through the termination process. In addition, termination notices are issued to customers who fail to provide access to meters, tamper with meters or distribution equipment or commit fraud. These customers are not necessarily payment troubled. Additionally, including these customers in the payment-troubled category will complicate reporting requirements for distribution companies and inaccurately inflate the number of payment-troubled customers.

**Review of universal service and energy conservation plans, funding and cost recovery.
§ 54.74(a) and § 62.4(a) Plan submission.**

These provisions require electric and natural gas distribution companies to file a universal service and energy conservation plan every three years (triennial review) in the form of a tariff filing with the Commission for approval. The Association requests

that the regulations specify a time period for Commission approval of the three-year plan particularly in light of the new triennial updated tariff filing. The Association observes that the current process can take up to 24 months and is longer than the time allotted for review and resolution of a base rate case filing, i.e. nine (9) months. The Association suggests that any new three-year plan should become effective on the date the Commission enters its final order. The triennial review would then be complete when the Commission decision is final and distribution companies would then have the plan in effect for three years prior to submitting a new plan for review.

The current timeline is also problematic in light of 52 Pa. Code § 69.265(14)(ii)(A), which requires a distribution company to have a one-time process evaluation completed by an independent third-party following the expansion of a CAP program or a substantial revision of an existing CAP program. This provision, if not amended, requires the third party to complete the process evaluation during the middle of the second year. Again, if the approval process of the triennial filing can last up to 24 months, the independent evaluation becomes superfluous.

The Association recommends that the Commission add new language at 52 Pa. Code § 54.74(a)(6) and § 62.4(a)(6) as follows:

"The Commission shall issue a decision on the plan within 180 days of the [EDC or NGDC] filing date of its revised tariff."

These proposed additions would establish a reasonable time period for the Commission, the distribution company and other interested parties to review and resolve issues involving the components of the three-year plan, funding level and cost recovery. The proposed time period also helps in the areas of planning and implementation.

§ 54.74 and § 62.4 Review of universal service and energy conservation plans, funding and cost recovery.

The Association applauds and welcomes the change envisioned by the Final Investigatory Order that plan design and cost recovery be submitted and reviewed in one proceeding. With respect to the revised regulations at 52 Pa. Code §§ 54.74 and 62.4, the Association seeks clarification regarding what specific substance will be included in the tariffs as opposed to what materials must be submitted in support of the tariff filing.

The revised regulations appropriately distinguish between "the tariff filing" and "the tariff". Specifically, proposed 52 Pa. Code § 54.74(a) and § 62.4(a) provide that the utility submit for approval an updated universal service and energy conservation plan "in the form of a tariff filing" every three years. It is understood that such a filing would include both proposed tariff provisions as well as supporting material and data. However, in revised 52 Pa. Code § 54.74(b) and § 62.4(b), "Tariff contents", it appears that the entire filing will become part of the tariff upon approval.

The Association submits that including each of the items outlined in the "Tariff contents" section of the revised regulations in the tariff itself greatly expands the definition of tariff found at 66 Pa.C.S. § 102. The Association questions whether such items as the "needs assessment" or the "program budget" or "the organizational structure of staff responsible for universal service programs" should be included in the tariff. See, e.g. 52 Pa. Code § 54.74(b)(1)(iii), (v) and (vii) and § 62.4(b)(1)(iii), (v) and (vii). Likewise, explanations of "the manner and extent to which the universal service or energy conservation component operates in an integrated manner with the components of the plan" AND explanations of the differences between the existing plan and

proposed plan do not appear to be the types of items found in tariffs but rather provide support and explanation for the proposed tariff provisions. See, e.g., 52 Pa. Code § 54.74(b)(1)(i) and (viii) and § 62.4(b)(1)(i) and (viii).

The Association asks for clarification by amending the revised regulations to provide that the title of 52 Pa. Code §§ 54.74(b) and 62.4(b) be changed from "Tariff Contents" to "Tariff Filing Contents" and that the text throughout 52 Pa. Code §§ 54.74(b) and 62.4(b) refer to "tariff filing" rather than "tariff". This would permit each utility to present a filing with proposed language for the tariff supported by appropriate data and explanation. In the course of the approval process, the Commission can decide whether the language of the specific tariff provisions is adequate on a case-by-case basis.

§ 54.74(b)(3) and § 62.4 (b) (3) Documentation in support of funding and cost recovery for universal service and energy conservation.

The revised regulations provide that the three-year tariff filing "shall contain documentation of cost savings that result from customer participation in these programs, to the extent that such savings exist." 52 Pa. Code § 54.74(b)(3) and § 62.4(b)(3). The Association and its members believe that implementation of the proposed regulation will be problematic and the subject of protracted proceedings as drafted. The historical basis for CAP programs, which represent roughly 90 percent of a utility's universal service costs, was to provide payment-troubled eligible customers with a significant discount on their monthly energy bill in exchange for regular payment and participation in energy-savings programs, such as LIURP. The expense of providing energy services to consumers at an amount that is less than the cost to purchase the

commodity on the wholesale market and deliver it to the household is tangible and measurable. On the other hand, the method of measuring a hypothetical cost savings because the CAP household would have presumably been subject to collection action and possible termination by the utility but for the existence of the assistance program is, at best, subjective.

EAPA is concerned that the measurement of hypothetical cost savings will be the subject of much dispute in the triennial tariff filing. Under the revised regulations as proposed, it will be difficult to determine what constitutes cost savings. Additional complications arise because utilities regularly remove a certain percentage of CAP customers from the program for failure to abide by program rules and then readmit them after meeting program requirements.

The less subjective and more practical approach would be to examine cost savings arguments such as working capital and collection expenses in base rate proceedings. A base rate proceeding offers interested parties the opportunity to evaluate all aspects of this issue, particularly alleged savings associated with a CAP. In addition, in a base rate proceeding, the parties could address ratemaking adjustments to those savings, such as weather normalization. Accordingly, the Association recommends dropping the documentation of hypothetical cost savings that may result from customer participation in universal service programs from the triennial tariff proceedings.

§ 54.75. Annual residential collection and universal service and energy conservation program reporting requirements.

An area of minor concern to the Association and its electric distribution company members involves revised 52 Pa. Code § 54.75(2)(i)(D), which requests the number of program participants by source of intake. The electric distribution companies believe that this statement needs clarification, specifically additional detail as to what data they should report. It appears as if the Commission is requesting the customer's source of enrollment into the program (i.e., was the customer enrolled by the EDC or by a community based organization - CBO). If the Commission is looking for data on the party responsible for referring the customer to the program, this could be problematic as it has been the EDCs' experience that customers often forget or simply do not remember where they heard about a particular program. The information would seem to have little or no value collected in this manner and EDCs ask that the reporting requirement be eliminated.

§ 54.75 (2)(i)(E)

The reporting requirements of revised 52 Pa. Code § 54.75(2)(i)(E) require that the utility report the number of program participants participating in two or more of the utilities universal service and energy conservation programs. Some of this data is already provided through other Commission reports and the additional reporting in yet another reporting format is not only redundant but time consuming and, for some of our members, costly and difficult to gather. Many of the member programs use non-mainframe applications to store data and there is no easy "query" method to determine accounts that overlap. Utilities would need extensive time and programming hours to

provide this information in an accurate manner. The Association sees no real benefit to determining the number of customers participating in multiple programs and recommends the reporting requirement at § 54.75(2)(i)(E) be eliminated.

§ 54.76 (a) and § 62.6 (a). Evaluation reporting requirements.

Association members are further concerned with the proposed methodology of selecting the independent third-party impact evaluator as set forth in the revised regulation and the Proposed Policy Statement. The distribution companies should be able to select the independent third-party evaluator based on the companies' selection criteria. Conferring with BCS is generally beneficial and productive but being required to use a BCS-provided list of acceptable independent evaluators would limit the choice of evaluators. It is always possible to identify someone who has acceptable credentials that BCS may not know. The member companies believe BCS' approval of the bidders list would reduce utility input, limit the selection of qualified independent evaluators and affect market prices charged to the utility for third-party evaluations.

§ 54.77. Electric distribution companies with less than 60,000 residential accounts.

The Association recommends that in order to maintain consistency between the regulated energy industry distribution companies, the Commission change its proposed reporting requirements for the smaller electric distribution companies to include distribution companies with less than 100,000 customers. The existing 52 Pa. Code § 62.7 (gas distribution companies) is applicable to natural gas distribution companies with less than 100,000 customers. This would use the same customer count to

determine small companies for both the electric and natural gas regulated industries and provide a consistent approach.

Chapter 76 Customer Assistance Programs

§ 76.2. Definitions.

As set forth under revised regulations 52 Pa. Code § 54.72 and § 62.2, the Association recommends that the definition for "low income customer" be added to this new section, as well, using the same definition. Moreover, the discussion of the definition of Customer Assistance Program, supra at p 13, is incorporated herein by reference.

§ 76.3. Approval process.

The new regulation found at 52 Pa. Code § 76.3(a), states that distribution companies "shall obtain Commission approval prior to implementing a CAP plan, or a revision or expansion of an existing CAP." Requiring distribution companies to secure prior PUC approval likely lends itself to significant delays, which may pose significant negative impacts on distribution companies' CAP customers. The Commission should permit distribution companies to incorporate minor revisions to their CAP programs, particularly in cases where these minor tweaks address the best interests of their customers. Often suggestions for program improvements arise from distribution company meetings with concerned citizen advocacy groups and the processes as proposed can make these types of changes difficult and untimely.

As outlined earlier in these comments at pp. 18-19, the Association questions the requirement that the entire universal plan, including CAP, be submitted in the form of a tariff filing. The Association believes that it is the cost recovery mechanism, at most, which should be included in the tariff. The full plan would, of course, remain available for review and referral on the Commission website.

§ 76.4. Recovery of costs of customer assistance programs.

Under proposed Section 76.4(d), the Commission shall "consider the timeliness of a distribution company's collection activities [for its CAP customers] in evaluating the reasonableness of costs claimed for recovery." 52 Pa. Code § 76.4(d). EAPA contends that the open-ended and subjective nature of this language, which does not appear to consider that utilities most often handle delinquencies on a case-by-case basis, providing customers with an opportunity to correct a default or apply for assistance or negotiate a payment agreement prior to instituting termination proceedings – could contradict the strong policy directive of the Commission in other proceedings. The proposed regulation minimizes the Commission's directive to utilities to exercise caution in how collection efforts proceed, particularly with low-income customers who face termination of service for failure to pay. Timely collections are a basic, good business practice that utilities pursue to minimize collection costs; but utilities do so with the recognition that service, not termination, is the business of utility companies. The Association urges the Commission to weigh the timeliness of collections against maintaining utility service for at-risk low-income households.

§ 76.5. Default provisions for failure to comply with program rules.

With respect to the CAP program default provisions as outlined in proposed 52 Pa. Code § 76.5, the Association recommends amending the provision at §76.5(a)(i) "Failure to apply for LIHEAP". Reinstating this provision as proposed (which the Commission removed when it revised the CAP Policy Statement on May 8, 1999) will have harsh results and could result in dismissal from the CAP program when, for example, as experienced this year the LIHEAP program closed in mid-March rather than in April.

Moreover, it has been the experience of the regulated utility industry that this requirement is problematic. LIHEAP funds available in Pennsylvania continue to fall short of the need⁶. Without a process involving DPW's assistance in identifying LIHEAP applicants or some method to identify customers served by more than one utility, a CAP participant may have applied their LIHEAP grant to the "other" utility and should not be denied participation in a CAP program based on assignment of the LIHEAP grant.

The Association member companies continue their practice of encouraging low-income households to apply for LIHEAP. Most Pennsylvania utilities actively use an array of print and media outreach efforts, educational bill stuffers and bill messages, celebrity appearances, and community events to urge their customers to apply for LIHEAP and they will continue these efforts. In addition, utilities' CAP processes include provisions to refer program participants to LIHEAP. As such, EAPA requests

⁶ A more problematic issue arises for heating customers of regulated utilities who qualify for LIHEAP when, as is currently the case, DPW modifies the awarding of crisis grants in mid-program year to provide a substantially larger benefit to households that heat with deliverable fuels such as heating oil, propane and kerosene as opposed to households that heat with electricity or natural gas. Operational program changes by DPW mid-stream could and do discriminate against customers of regulated utilities particularly where, as here, no public announcement of the change was disseminated and the program closed in mid-March rather than April, as in recent program years. See Exhibit A attached hereto and incorporated by reference.

that the proposed rule at 52 Pa. Code § 76.5(a)(1) be modified to provide that the utility may dismiss a participant from the CAP program for failure to apply for LIHEAP. This would provide the utility the discretion to deal with participants individually, taking into account all circumstances.

With respect to the proposed regulation at 52 Pa. Code § 76.5(b), the Association proposes that the language be amended to provide that the CAP customer will be removed from the program upon termination and, not as proposed, upon failure to make a payment. As proposed, dismissal from the program could occur prior to termination in direct contradiction to current Commission policy.

The Association contends that CAP participants who default on CAP payments should be placed into the collection cycle and removed from the program if terminated. This would provide the participant the opportunity to pay the missed payments and would not force the utility to remove the household from the program and then reinstate, resulting in extra administrative time and expense. The extra administrative step of removing and then reinstating a CAP participant adds expense that would be borne by other residential customers.

§ 76.6. Restoration of service after termination for nonpayment of CAP bills.

The Association and its members seek clarification regarding the implementation of proposed regulation at 52 Pa. Code § 76.6. Restoring service to CAP customers may not negate statutory provisions found at 66 Pa.C.S. § 1405(c) which clearly state that:

"Customer assistance programs – Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the Commission."

The proposed rulemaking cites that reconnection procedures at 66 Pa.C.S §1407(c)(2)(iii), along with "applicable Commission regulations and orders" are to be used for CAP restorations. The Association believes that applying Section 1407(c)(2)(iii) in CAP restoration situations may provide CAP customers with a payment agreement and is in direct conflict with 66 Pa.C.S §1405(c). CAP customers should be required to pay the distribution company's reconnection fee along with any missed payments as part of the restoration process particularly if, as requested above, removal from the program does not occur immediately upon missing a payment.

CAP customers do not qualify for the 24-month repayment terms offered under Section 1407(c)(2)(iii) because their outstanding balances are part of the forgiveness component of the utilities' CAP programs. CAP customers already pay the lowest rate available and receive forgiveness of their arrears in exchange for making regular monthly payments and taking other steps to reduce energy usage. Additionally, if the Commission allows CAP customers to forego paying their missed payments to reconnect service, the additional costs from those arrearages are borne by non-CAP customers in that utility franchise territory.

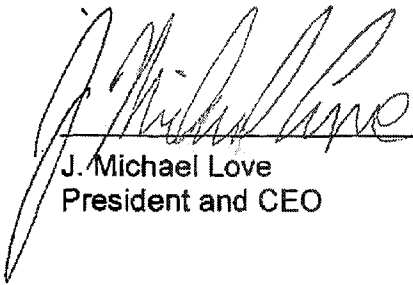
III. Conclusion

The Association appreciates the opportunity to review and comment on the Commission's Universal Service and Energy Conservation Reporting Requirements and Customer Assistance Programs proposed rulemaking and looks forward to working with

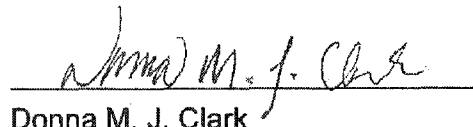
Commission staff to resolve areas of concern. First, and foremost, however, all parties must be cognizant that any changes or revisions to expand the universal service programs, particularly CAP programs, will significantly affect the costs to the non-participating customers at a time when energy prices are increasing and all stakeholders are seeking ways to mitigate cost increases.

EAPA member distribution companies are proud of the success they have experienced to date with their Universal Service Programs. Changes to these programs, however, could prove costly, particularly if the Commission changes CAP program requirements to enroll customers who are not in fact "payment troubled." Again, we urge caution by the Commission in this process and ask that revisions to regulation or the promulgation of new regulation proceed prudently to avoid imposing significant cost increases on electric and natural gas distribution companies' non-CAP residential customers at a time of rising energy prices.

Respectfully Submitted,



J. Michael Love
President and CEO



Donna M. J. Clark
Vice President and General Counsel

EXHIBIT "A"

Operations Memorandum - LIHEAP OPS080203

02/11/08

SUBJECT: Low-Income Home Energy Assistance Program (LIHEAP)
Crisis Recipients Who Reapply for Crisis for an Oil Delivery

TO: Executive Directors

FROM: Joanne Glover, Director, Bureau of Operations

Purpose

To advise County Assistance Offices (CAOs) that, effective February 11, 2008, households who received a \$300 Crisis benefit prior to the increase of Crisis benefits to \$500, and who experience another crisis, may receive a crisis benefit equal to a minimum delivery up to \$500.

Background/Discussion

The recent increase of the maximum Crisis grant to \$500 results in a maximum benefit of \$200 for LIHEAP Crisis recipients who have already received a \$300 Crisis benefit prior to the increase. The Department of Public Welfare acknowledges that a \$200 benefit would be insufficient to meet the vendor's minimum delivery requirements for many customers who heat with fuel oil. To ensure that prior Crisis recipients who heat with oil and suffer another home heating emergency receive a fuel oil delivery, DPW will authorize a Crisis payment to cover the minimum delivery cost up to \$500. For households using any other source of heat, the maximum total crisis grant remains \$500 for the LIHEAP season.

For example, if a household received the maximum crisis benefit of \$300 for a fuel oil delivery in December 2007, that household may be approved for the cost of a minimum oil delivery up to \$500 in additional crisis assistance.

Procedure

When a household applies for a Crisis benefit, the CAO must confirm with the oil vendor that the request is valid. Once confirmed, the CAO will authorize the crisis delivery of up to \$500 in fuel oil. Upon delivery, the vendor must submit a trip ticket to the CAO verifying the amount of oil delivered and the amount of the payment. Payment cannot be authorized until the trip ticket is received.

Next Steps

1. Follow the eligibility requirements for crisis benefits in the LIHEAP 2008 Final State Plan, Section 601.32.
2. This Operations Memorandum will become obsolete June 30, 2008.

Policy Clarifications - LIHEAP - Crisis PLR14080605

Submitted:02/14/08

**Agency:CAOs
Citations:**

Subject: LIHEAP Crisis Recipients who Reapply for Crisis for an Oil Delivery

Operations Memorandum 080203 advises that effective February 11, 2008, households who had received a Crisis benefit of \$300 for an oil delivery prior to the \$500 increase in the maximum Crisis grant, could receive up to an additional \$500 Crisis benefit, if they experience another crisis situation. We have the following questions:

1. Can we do anything for the clients who were authorized the additional crisis benefit of \$200 in the past week and had to pay out of pocket an additional \$100-\$300 cash for the minimum delivery?
2. Who is to notify the general public and the dealers? Is there going to be a press release forthcoming?
3. Can the additional Crisis funds be applied for by customers who use an oil/kerosene mix?
4. Is there any consideration given for additional funding for recipients who use other deliverable fuels; kerosene, wood, propane or coal?
5. What do we do about new applications as of today? Are they entitled to the initial \$500 or are they limited to the minimum delivery up to \$500? The memo only addresses people who received the initial \$300 crisis money.

**Response By:Division of Federal Programs and Program
Management**

Date:02/14/08

1. Households that resolved their crisis with the additional \$200 Crisis grant by using other resources are not eligible for additional LIHEAP funds because they are no longer in crisis. LIHEAP cannot reimburse households for past deliveries. This new policy was effective February 11, 2008. If households find themselves in another crisis situation due to lack of oil, they can apply for another crisis benefit up to a maximum of \$300. Effective February 11, the maximum crisis amount for an oil customer is either \$500 (if they had not received crisis prior to February 11th) or up to \$800 for the season.
2. The Department is not doing a news release. The decision to allow a special payment for oil customers who had received \$300

previously was made by the Administration at the request of the Deputy Secretary. We did share the Operations Memorandum with the Chairman of the LIHEAP Advisory Committee and the PA Petroleum Marketers and Convenience Store Association.

3. Yes. The policy does apply to oil and oil/kerosene blends.

4. DPW will extend this policy to all deliverable fuels.

5. If a household that heats with deliverable fuel did not receive a Crisis benefit prior to the \$500 increase and experiences a crisis situation due to a shortage of fuel, they are entitled to \$500 only. They may not come back for the additional \$300.