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From: J Gerhard [jgerhardpulp@palegalaid.net]
Sent: Thursday, April 17, 2008 2:50 PM
To: Smith, Michael; Burket, Patricia; Page, Cyndi
Cc: Harry Geller; Beth Pomerantz; Phil Bertocci; TMcCloskey@paoca.org
Subject: Comments of the Pa Utility Law Project regarding the Proposed CAP Rulemaking, Docket No. L-00070186.

To Whom It May Concern:

This e-mail is being sent to you pursuant to an Order of the Pennsylvania Public Utility Commission in regard to *Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements, 52 Pa. Code §§ 54.71 - 54.78 (electric); §§ 62.1 - 62.8 (natural gas) and Customer Assistance Programs, §§ 76.1 - 76.6*, Docket No. L-00070186.

Attached, please find an electronic copy of the Comments submitted by the Pennsylvania Utility Law Project in the above-referenced matter.

If you have any difficulty accessing this file, please contact me directly.

Very truly yours,

John C. Gerhard

John C. Gerhard
Staff Attorney
Pa Utility Law Project
118 Locust St., Harrisburg, PA 17101
Tel. 717-236-9486, ext. 201
Mobile 717-576-2588
Fax 717-233-4088

PENNSYLVANIA UTILITY LAW PROJECT

118 LOCUST STREET
HARRISBURG, PA 17101-1414

HARRY S. GELLER, ESQ.
HGELLERPULP@PALEGALAID.NET

PHONE: (717) 232-2719
FAX: (717) 233-4088
MOBILE: (717) 576-2282

April 17, 2008

Hand Delivered

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd floor
Harrisburg, PA 17120

Re: Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements, 52 Pa. Code §§ 54.71- 54.78 (electric); §§ 62.1-62.8 (natural gas) and Customer Assistance Programs, §§ 76.1 – 76.6

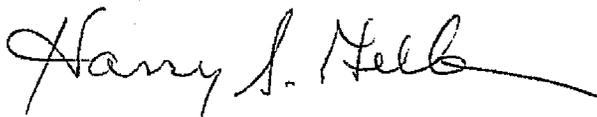
Docket No. L-00070186

Dear Secretary McNulty:

Enclosed, please find for filing the original (unbound) and fifteen (15) copies of the Comments of the Pennsylvania Utility Law Project in the above-captioned proceeding. A copy is also included on the enclosed CD.

As per the instructions in the *Pennsylvania Bulletin*, an electronic version of these Comments has been sent to the following parties: Michael Smith (michasmit@state.pa.us), Patricia Krise Burket (pburket@state.pa.us), and Cyndi Page (cypage@state.pa.us).

Very truly yours,



Harry S. Geller, Esq.
Executive Director

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Proposed Rulemaking Relating to
Universal Service and Energy
Conservation Reporting Requirements,
52 Pa. Code §§ 54.71- 54.78 (electric); §§
62.1-62.8 (natural gas) and Customer
Assistance Programs, §§ 76.1 – 76.6**

Docket No. L-00070186

CERTIFICATE OF SERVICE

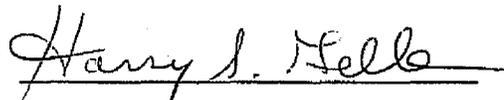
I hereby certify that I have today served a true copy of the foregoing document upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA FIRST CLASS MAIL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd floor
Harrisburg, PA 17120

VIA ELECTRONIC MAIL

Michael Smith (michasmit@state.pa.us)
Patricia Krise Burket (pburket@state.pa.us)
Cyndi Page (cypage@state.pa.us).



Harry S. Geller, Esq.
PA Attorney I.D. # 22415
Pennsylvania Utility Law Project
Harrisburg, PA 17101-1414

Dated: April 17, 2008

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements, 52 Pa. Code §§ 54.71 - 54.78 (electric); §§ 62.1 - 62.8 (natural gas) and Customer Assistance Programs, §§ 76.1 - 76.6

Docket No. L-00070186

**COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT**

Harry S. Geller, Esq.
Executive Director
hgellerpulp@palegalaid.net
PA Attorney I.D. # 22415

John C. Gerhard, Esq.
Staff Attorney
jgerhardpulp@palegalaid.net
PA Attorney I.D. # 94809

Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101-1414
Phone: 717-232-2719
Fax: 717-233-4088

Dated: April 17, 2008

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE APPROPRIATE FRAMEWORK FOR CAP RULEMAKING	1
III.	COMMENTS	7
	A. Chapter 54: Electricity Generation Customer Choice	7
	§ 54.71. Statement of purpose and policy	7
	§ 54.72. Definitions. CAP – Customer Assistance Program	11
	§ 54.72. Definitions. Low income customer	12
	§ 54.72. Definitions. Payment troubled	13
	§ 54.73. Universal service and energy conservation program goals	14
	§ 54.74 (a)(3). Plan submission	16
	§ 54.74 (a)(5)-(6). Plan submission	18
	§ 54.74 (b)(1). Tariff contents	19
	§ 54.74 (b)(1)(iii). Tariff contents	21
	§ 54.74 (b)(2). Tariff contents	22
	§54.75. Reporting requirements	25
	B. Chapter 62: Natural Gas Supply Customer Choice	26
	§ 62.1. Statement of purpose and policy	26
	§ 62.2. Definitions. CAP – Customer Assistance Program	27
	§ 62.2. Definitions. Low income customer	28
	§ 62.2. Definitions. Payment troubled	29
	§ 62.3. Universal service and energy conservation program goals	30
	§62.4(a)(3). Plan submission	32
	§62.4(a)(5). Plan submission	33
	§62.4(b)(1). Tariff contents	35
	§62.4(b)(1)(iii). Tariff contents	37
	§62.4(b)(2). Tariff contents	38
	§62.5. Reporting requirements	41
	C. Chapter 76: Customer Assistance Programs	42
	§76.1. Purpose	42
	§76.2. Definitions. CAP – Customer Assistance Program	43
	§ 76.3. Approval process	43
	§76.4(1). Recovery of costs of customer assistance programs	45
	§76.4(4). Recovery of costs of customer assistance programs	46
	§76.5(a). Default provisions for failure to comply with program rules	46
	§76.5(a)(1). Default provisions for failure to comply with program rules	49
	§76.5(a)(3). Default provisions for failure to comply with program rules	50
	§76.5(a)(5). Default provisions for failure to comply with program rules	51
VI.	CONCLUSION	52

I. INTRODUCTION

The Pennsylvania Utility Law Project (“PULP”), as part of the nonprofit Pennsylvania Legal Aid Network, provides statewide representation, advice, and support in energy and utility matters on behalf of low income, residential utility customers. PULP submits these Comments on behalf of the low income consumers we represent in response to the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) request for comments in its *Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements*, 52 Pa. Code §§ 54.71- 54.78 (electric); §§ 62.1-62.8 (natural gas) and *Customer Assistance Programs*, §§ 76.1 – 76.6, Docket No. L-00070186 (Order entered August 30, 2007), published in the *Pennsylvania Bulletin* on Saturday, February 9, 2008. PULP appreciates the opportunity to submit these comments and thanks the Commission.

II. THE APPROPRIATE FRAMEWORK FOR CAP RULEMAKING

Low income families are in peril in Pennsylvania – energy prices are soaring, the economic outlook is deteriorating, and utility service termination levels are at historically high levels. This rulemaking and its sister policymaking proceeding offer the Commission an opportunity to address these problems by enabling low income customers to maintain utility service through access to universal service programs with affordable CAP rates, one of the key mandates of the *Electricity Generation Customer Choice and Competition Act* and of the *Natural Gas Choice and Competition Act* (“The Choice Acts”). 66 Pa. C.S. §§ 2200 et seq. and 2800 et seq. PULP submits that this mandate should be the guiding force of this rulemaking, both because it is what is required to assist low income consumers in the current economy and because it is what is required by the legislation.

In order to achieve the goal of helping low income customers maintain service, the Commission will want to ensure CAP programs are adequately funded and properly designed so that CAP bills are truly affordable. Only after this is accomplished should the Commission turn its attention to the mechanisms for funding these programs and to the methods of allocating the costs among other ratepayers. By focusing too much attention on reducing costs and balancing them across other residential ratepayers, the Commission runs the risk of missing its principal objective.

The charge of the Commission to help low income customers maintain service through affordable rates is inherent in the definition of Universal Service within both the Choice Acts (emphasis added):

§ 2803. Definitions.

"Universal service and energy conservation."

Policies, protections and services that help low-income customers *to maintain electric service*. The term includes customer assistance programs; termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

and

§ 2202. Definitions.

"Universal service and energy conservation."

Policies, 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, *to maintain natural gas supply and distribution services*. The term includes retail gas customer assistance programs, termination of service protections and consumer protection policies and services that help residential low-income customers and other residential customers experiencing temporary emergencies to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs and consumer education.

Further, in its policy declaration, the Electric Choice Act states that "electric service is essential to the health and well-being of residents, to public safety and to orderly economic

development; and electric service should be available to all customers on reasonable terms and conditions,” and “the commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.” 66 Pa. C.S. § 2802. Similarly, the Natural Gas Choice Act includes among its standards for restructuring of the natural gas industry the following: “The commission shall, at a minimum, continue the level and nature of the consumers protections, policies and services within its jurisdiction that are in existence as of the effective date of this chapter to assist low-income retail gas customers to afford natural gas services.” 66 Pa. C.S. § 2201(7).

The Responsible Utility Customer Protection Act (Chapter 14/Act 201) also relies, implicitly, on the Commission to ensure that CAP payments are affordable by excluding them as the subject of payment agreements negotiated or approved by the Commission. 66 Pa.C.S. §1405(c).

Finally, the General Assembly recognizes that the public purpose of enabling low income customers to be able to maintain service through universal service programs is not one that can be compromised or accomplished without cost.

§ 2802. Declaration of policy. The General Assembly finds and declares as follows: There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services; and full recovery of such costs is to be permitted through a non-bypassable rate mechanism.

Unfortunately, this public purpose has not yet been achieved. Despite the Commission's efforts thus far, low income customers continue to suffer service terminations at alarming levels. In this proceeding, the Commission can take a significant step toward achieving its mandate and reducing termination levels by requiring from utility companies the design and implementation

of CAP programs (1) that result in affordable monthly CAP bills, (2) that expand CAP enrollment and eliminate enrollment ceilings so CAPS better accommodate the actual needs, and (3) that ensure there are legitimate processes in place to protect the rights of those intended to benefit from these programs.

PULP looks forward to the development of balanced and equitable regulations that effectuate the intent of the legislation and that provide guidance to the public, distribution companies, and to CAP applicants and participants. While efforts to balance the concerns and interests of other ratepayers are laudable and the Commission is prudent in considering such interests, PULP submits that those are not the primary concerns of the governing legislation. Rather, the primary directive of the legislation requires the Commission to ensure that low income customers have access to appropriately funded and available universal service programs with affordable CAP rates that help them maintain utility service:

§ 2804. Standards for restructuring of electric industry.

(9) The Commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory....

and

§ 2203. Standards for restructuring of natural gas utility industry.

(8) the Commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each natural gas distribution service territory....

The passage and enactment of Chapter 14 fundamentally changes the way CAPs impact low income households and greatly increases the need for the Commission to ensure that an effective and affordable CAP structure exists in each distribution company service territory. The interaction of Chapter 14 and CAP programs provides an instructive insight into the direction

this rulemaking should take. For example, Section 1405(c) prohibits the Commission from establishing payment agreements for CAP rates. This prohibition is based on the assumption that the CAP rates set by each distribution company are *per se* affordable. A CAP customer, therefore, should have neither need for a payment agreement regarding bills arising out of CAP rates nor recourse to the Commission to provide payment assistance. Unfortunately, the assumption that CAP bills are affordable is fundamentally flawed.

Under existing guidelines, CAP bills are not affordable; they can be as high as 17% of a household's income. See 52 Pa. Code § 69.265(2)(i). In practice, under some utility company designs, they often result in even higher rates. This means that even when present guidelines are followed, CAP bills for a low income family can constitute three times the energy burden of a middle or higher income family.¹ In no way can this kind of energy burden be considered affordable for the most economically fragile members of our society. Nor is it in any way logical that the General Assembly would intend to deprive payment arrangements to the lowest income and most vulnerable households who are required to shoulder a 17% energy burden but provide payment arrangements for the median and upper income population whose energy burden is more than three times lower.

Affordability, in the context of a life essential good or service, does not simply mean it is offered at a discount. It should mean that an individual has sufficient money to pay for a minimum level of that good or service while at the same time retaining the ability to purchase other life essential goods and services. It makes no sense to call a CAP bill affordable if, in

¹ See *Proposed Revision to Policy Statement on Customer Assistance Programs*, 52 Pa. Code §§ 69.261-69.267, Docket No. M-00072036 (*Proposed Policy Statement*) at p. 4-5.

order to pay it, a customer must eliminate prescription medicines, forgo paying rent, or go without proper nutrition.²

Also consider the effects of Section 1407(c) governing payment to restore service for CAP customers whose service has been terminated. Full payment of any outstanding balance together with reconnection fees can be required for reconnection of service to a customer who has defaulted on two or more payment agreements. 66 Pa. C.S. § 1407(c)(2)(i). This requirement presumes the broken payment agreement is a result of bad faith; a customer could have paid but chose not to.³ However, what the broken payment agreements may illustrate is simple poverty – an inability to pay. The assumption that utilities can easily tell the difference between who can and can not pay is faulty; a customer without the ability to pay (i.e., a poor person) can be caught up in the net cast to capture deadbeats.

A CAP system that does not universally offer affordable payments to low income customers will inevitably result in broken payment agreements and protracted, if not futile, efforts of low income families to stave off inevitable termination. In this proceeding, the Commission can take a significant step toward addressing these problems by making CAPs more affordable. Upon reviewing these comments, PULP encourages readers to look back for guidance and insight to the Commission's own history:

The Energy Assurance Program (EAP) recognizes that some households *simply do not have sufficient income to pay for the basic necessities of life, including energy*. There is no question that this inability to pay is a social problem. There is no question, however, but that this inability to pay represents a utility problem. *For these households,*

² The reconnection rate is often cited as proof that customers can indeed afford service. One of the fundamental flaws in using the reconnection rate as a meaningful measure is that it fails to recognize the lengths to which low income customers may go to pay for a reconnection. A low income customer who chooses to forgo buying prescription medicine so as to be able to afford reconnection of terminated utility service can not be said in any meaningful way to be able to afford utility service. Yet, this is precisely the kind of assertion that is made when the reconnection rate is cited as justification that service is only being terminated for those who can really afford to pay.

³ When compared to the more lenient payment options available to customers who did not default on two or more payment agreements, one can not but conclude that the more draconian payment options are punitive in nature for a low income customer.

regardless of the number of disconnect notices that are sent, regardless of the number of times service is disconnected, regardless of the type of payment plan that is offered, there will be insufficient household funds to pay. A utility can recognize this conclusion, and seek to collect what it can while minimizing its collection expenses, or a utility can deny the conclusion and devote its time and energy and attention to what will prove to be fruitless collection endeavors.

Pa. PUC v. Columbia Gas Company, Docket No. R-891468, 1990 Pa. PUC Lexis 162, * 209

(September 20, 1990) (*emphasis added*), quoted in the *Comments of the OCA, Customer*

Assistance Programs: Funding Levels and Cost Recovery Mechanisms, Docket No. M-00051923

(January 30, 2006) at 10.

III. COMMENTS

A. Chapter 54: Electricity Generation Customer Choice

§ 54.71. Statement of purpose and policy.

[Section] The requirements of 66 Pa.C.S. § 2804(9) [of the code] (relating to standards for [restructuring] restructuring of electric industry) [mandates] mandate that the Commission ensure universal service and energy conservation policies, activities and services for residential electric customers are appropriately funded and available in each EDC territory. This subchapter establishes a unified process which allows the Commission, in the context of its review of an EDC's universal service and energy conservation plan, to approve an adequate level of program funding, to determine the types and amount of program costs recoverable from residential customers and to approve a mechanism for full cost recovery. This subchapter requires covered EDCs to establish uniform reporting requirements for universal service and energy conservation policies, programs and protections and to report this information to the Commission.

Comments:

PULP strongly supports this statement of purpose and policy. It correctly articulates the mandate which requires the Commission to ensure that programs be appropriately funded and available. This statement forms the standard against which all proposed regulations need to be measured. Simply put, to be considered “appropriately available,” a universal service program must be adequately funded at a level which permits enrollment of all those who require its assistance and must provide CAP rates which are affordable.

Affordability in energy discussions generally is couched in terms of energy burden. A household's energy burden is calculated by taking energy usage multiplied by the cost of energy and dividing by the household income.⁴ The average household in Pennsylvania has an energy burden of 4.8%. *Proposed Revision to Policy Statement on Customer Assistance Programs*, 52 Pa. Code §§ 69.261-69.267, Docket No. M-00072036 at 4-5. At present, under CAP Policy Guidelines, low income households in Pennsylvania can have an energy burden of nearly 17%. 52 Pa Code § 69.265(2)(i). It seems clear this is an unaffordable burden.

The repercussions of unaffordable energy are many and unsettling. According to a study done by the Children's Sentinel Nutrition Assessment Program (C-SNAP) in collaboration with Citizens Energy Corporation, "the reality is that America's low-income families must struggle constantly to protect their children from multiple threats to their health and growth, of which energy insecurity may be the most immediately life threatening."⁵ For the poor and near-poor, saving is not a possibility and budget strains lead to trade-offs between food and energy, food being one of the only elective parts of a budget. The use of cheaper, but riskier heat sources, poor ventilation, unsafe food, extreme temperatures – all results of lack of energy affordability – have long-term effects on children's growth and development. Babies and toddlers in energy insecure homes are more likely to be in poor health, have a history of hospitalizations, be at risk for developmental problems, and be food insecure. Hunger, in turn, leads to more hospitalizations, poor health, iron deficiency anemia, problems with cognitive development, and behavioral and emotional problems. Children of color are at more risk for energy insecurity

⁴ FSC's Law and Economics Insights, Issue 07-6, November/December 2007. Retrieved from <http://www.fscoline.com/new/news.htm> on 4/3/08; see also Economic Opportunity Studies, Washington, D.C., Energy Affordability. Retrieved from <http://www.opportunitystudies.org/energy-affordability/> on 4/3/08.

⁵ Fuel for Our Future. Impacts of Energy Insecurity on Children's Health, Nutrition, and Learning. Children's Sentinel Nutrition Assessment Program (C-SNAP) in collaboration with Citizens Energy Corporation, September 2007. Retrieved from http://www.c-snap.org/upload/resource/fuel_for_our_future_9_18_07.pdf on 4/3/08.

because they more often live in low-income households. Babies and toddlers in income-eligible homes without LIHEAP are more likely underweight and therefore have a harder time maintaining body heat.⁶

Other jurisdictions, both inside and outside the United States, can serve as guides for Pennsylvania. In New Jersey, the Universal Service Fund program

has set a 6 percent energy affordability standard, 3 percent for nonheating electric accounts and 3 percent for gas accounts. The 6 percent affordability standard is about twice the median energy burden for all households in the Northeast Region.⁷

Maryland also has a much lower energy burden than Pennsylvania, with a 3 percent of income standard for electric usage, and New Hampshire uses a 4 percent of income standard for its energy usage burden.⁸ In the Midwest, where the average energy burden is 6%, Ohio's universal service program has a 10 percent of income standard for gas usage and a 5 percent of income standard for electric usage (15 percent of income for electric heating usage), making the choice between eating and heating still a reality for Ohio low income households.⁹ In the United Kingdom, the criterion for "fuel poverty" is a 10% energy burden.¹⁰

Including a set affordability standard in these regulations would comport with steps the Commission has taken in its *Proposed Revision to Policy Statement on Customer Assistance Programs*, 52 Pa. Code §§ 69.261-69.267, Docket No. M-00072036 (*Proposed Policy Statement*). Quoting its own Final Investigatory Order, the Commission stated,

⁶ Fuel for Our Future. Impacts of Energy Insecurity on Children's Health, Nutrition, and Learning. Children's Sentinel Nutrition Assessment Program (C-SNAP) in collaboration with Citizens Energy Corporation, September 2007. Retrieved from http://www.c-snap.org/upload/resource/fuel_for_our_future_9_18_07.pdf on 4/3/08.

⁷ Impact Evaluation and Concurrent Process Evaluation of the NJ Universal Service Fund. Final Report. Prepared for the NJ Board of Public Utilities. April 2006. Apprise, Inc., p. 15.

⁸ *Id.*

⁹ Ohio Partners for Affordable Energy, Dave Rinehold, Executive Director and Counsel, Ohio's Percentage Income Payment Plan (PIPP), 10/22/06. Retrieved from <http://www.opportunitystudies.org/repository/File/weatherization/PIPPpresentNCAF-10-22-06.ppt#256> on 4/3/08.

¹⁰ Fuel Poverty in the USA: The Overview And The Outlook. Energy Action. Issue No. 98. March 06. Dr. Meg Power. Retrieved from <http://www.opportunitystudies.org/repository/File/fuel%20poverty.pdf> on 4/3/08.

We decline to increase the minimum payments for low-income customers. The highest minimum payment reflects 10% of a typical public assistance grant for a household of three who receives \$403 per month from a Temporary Assistance to Needy Families [TANF] grant. Considering that an average household in Pennsylvania has an energy burden of 4.8%, it is unreasonable to expect the poorest households to pay more than 10%.

Proposed Policy Statement at p. 4-5.

However, while applauding the Commission's 10% standard as significantly better than the previous 17% standard for affordability, PULP submits that 10% is still problematic for a number of reasons. First, the 10% standard is still inequitable because it requires a payment level that is more than twice the 4.8% energy burden of an average household in Pennsylvania. *Id.* Second, the 10% standard, combined with the cost of rent or mortgage and taxes, exceeds the generally accepted recommendation for low income households that total housing costs (including those for utility service) not exceed 30% of available income. The standard used in HUD programs is 30% of income for rent/mortgage and utilities.¹¹ Finally, the 10% standard still exceeds the 6% energy burden level that experts in the design of low income utility Customer Assistance Programs recommend.¹²

For these reasons, PULP submits that the 10% proposed maximum energy burden should be modified downwards, and a more appropriate standard of affordability would be an energy burden established as follows: 3 % of gross household income for electric usage, 3 % of gross household income for gas usage, and 6 % of gross household income for electric heating accounts or gas heating and electric non-heating accounts combined.

¹¹ See, e.g., the HOME Program, 24 CFR 92.209(h)(1) and HUD general requirements for specified programs, 24 CFR 5.628(a).

¹² Fisher, Sheehan & Colton. Public Finance and General Economics, Home Energy Affordability Gap Retrieved from <http://www.homeenergyaffordabilitygap.com/> on 3/27/08.

§ 54.72. Definitions. CAP – Customer Assistance Program.

[An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of electric utility services.] 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 to remain eligible for the program.

Comments:

PULP submits that this definition is too narrow because it removes from the definition of CAP the concept of mutual benefits and obligations. CAPs were created and should be designed to provide “payment assistance to low-income, payment troubled utility customers.” 52 Pa.Code § 54.72. Since one of the principal features of a CAP is that it imparts tangible benefits to the customer, removing this phrase does not make sense. That concept must remain an essential part of the program design and needs to be retained in the definition. To clearly articulate this essential element of CAP, the definition should be expanded with the insertion of the following language immediately following the proposed subsection (ii): “Customers successfully complying with subsections (i) and (ii) shall receive from the distribution company continued utility service and monthly forgiveness of outstanding, preprogram debt.”¹³

¹³ Throughout these comments PULP additions are double underlined and deletions are double struck through.

§ 54.72. Definitions. [Low-income] Low income customer.

A residential utility customer whose gross household income is at or below 150% of the Federal poverty guidelines. Gross household income does not include the value of food stamps or other noncash income.

Comments:

PULP supports the Commission's proposed definition of low income customer and the exclusion of noncash income from the determination of the household gross income. This definition conforms to those provided by other state and federal programs in their treatment of noncash income. PULP further submits that, in order to avoid a range of interpretations that result in wide differences in practice among distribution companies across the state and cause confusion among customers, advocates, and Commission and utility staff, there be uniformity throughout the Commonwealth in the determination of "gross household income." Each distribution company should be expected to follow the same standard. Administrative expediency and equity support the use of a uniform, minimum standard for the entire state. Since such a uniform standard presently exists in regulations which affect the same vulnerable population base, PULP submits that the Commission should follow the PA Department of Public Welfare's regulations governing income exemptions and use these to provide a uniform standard in arriving at "gross household income." See 55 Pa.Code § 183.81 (Income exemptions).

§ 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.

Comments:

The “payment troubled” definition is important because becoming “payment troubled” is a basis of eligibility for enrollment into CAP. Thus, a low income customer who is not “payment troubled” can be denied entry into CAP and denied access to CAP benefits, such as reduced rates, arrearage forgiveness, and continued service.

A disadvantage of the proposed definition is that it makes it possible for a household to run up a sizeable outstanding debt before actually being deemed “payment troubled” and being able to enroll in a CAP. For example, a customer falling behind on his/her bill may only be able to make partial payments for a number of months, slowly accruing a large balance due. Because of the partial payments toward the full bill, the customer may not register as a significant credit risk or problem in the utility’s system.¹⁴ This may result in the company delaying initiation of termination proceedings for a longer period of time, allowing the problem to persist, worsen, and, in some cases, become unmanageable.

PULP submits the following change to the “payment troubled” definition currently proposed by the Commission:

A household that has failed to maintain one or more payment arrangements in a 1-year period, has been unable to pay its utility bill in full and on time for two consecutive billing cycles, or has received a termination notice.

¹⁴ PULP participates in PECO’s Universal Services Advisory Committee’s quarterly meetings. At a recent meeting, PECO representatives stated that partial payments may register a customer as less of a credit risk than no payments at all. Therefore, a customer who makes some payments may have termination proceedings put off for a longer amount of time than a customer with no payment history at all.

This modest expansion to the definition mitigates the aforementioned ill effects. It makes a customer eligible for CAP enrollment more quickly and prevents a large build-up in outstanding past due amounts. Importantly, this change can improve the definition without expanding it in a way that imposes undue financial burdens on the program and on the shoulders of other residential ratepayers.

§ 54.73. Universal service and energy conservation program goals.

(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] low income customers maintain affordable electric service.
- (2) To provide for affordable electric service by making available payment assistance to [low-income] low income customers.
- (3) To assist [low-income] low income customers [conserve] in conserving energy and [reduce] reducing residential utility bills.
- (4) To establish universal service and energy conservation programs that are operated in a cost-effective and efficient manner to minimize overall program costs.

Comments:

The *Electricity Choice Act*, 66 Pa.C.S. §§ 2801 et seq., introduced competition into Pennsylvania's electric generation markets. This legislation did not introduce competition for competition's sake; rather, it introduced competition as a means to control the cost of electricity to consumers. 66 Pa.C.S. § 2802(5). The legislation recognized the essential nature of electricity and its fundamental link to public health and well-being. *Id.* at § 2802(9). In particular, the General Assembly gave special notice to low income customers, requiring that "the commonwealth, at a minimum, must continue the protections, policies and services that now assist customers who are low-income to afford electric service." *Id.* at § 2802(10). Chapter 14, aimed at customers capable of paying but who choose not to pay, did nothing to diminish the

General Assembly's concern for or intention to protect low income customers. Quite to the contrary, the General Assembly reaffirmed its intention that service remain available to all customers on reasonable terms and conditions. 66 Pa.C.S. § 1402.

With this background in place, the Commission's inclusion of the word "affordable" in Section 54.73 is fitting, and PULP supports its introduction since the overarching goal of universal service is to ensure low income customers can maintain service, which is integrally tied to affordable service. PULP restates its earlier recommendation that the Commission include in these regulations a clear, concrete standard of affordability to which all electric distribution companies must adhere in designing, implementing, and operating their universal service programs, CAPs in particular. Those standards should be 3 % of gross household income for electric usage, 3 % of gross household income for gas usage, and 6 % of gross household income for electric heating accounts or gas heating and electric non-heating accounts combined.

PULP also submits that the addition of the phrase "to minimize overall program costs" at the end of subsection (4) is unnecessary. The proposed phrasing creates a conflict with the primary purpose of the statute: to ensure programs which maintain service through affordable CAP rate payments. In its original form, subsection (4) uses the phrase, "operated in a cost-effective and efficient manner." The original phrase provides the Commission with the ability to ensure that the programs are administered within a sound economic and administrative structure. Well managed and efficient programs are encompassed within this language and are capable of being required by the Commission. Nothing further need be added to the definition.

The proposed phrase, "*to minimize overall program costs,*" sets out the minimization of program costs as a primary objective in itself. This is inappropriate. While maintaining a cost effective and efficient program is a laudatory and achievable goal, minimization of costs may not

be achievable at all times. It is conceivable that in order for a CAP to achieve its goals of providing affordable CAP rates and appropriate levels of enrollment the CAP may need to expand overall program costs. As the language is presently proposed, such an expansion of the program might be prohibited. PULP, therefore, recommends the removal of the proposed language “*to minimize overall program costs*” as unneeded and incorrect.

§ 54.74. [Universal] Review of universal service and energy conservation plans, funding and cost recovery.

(a) Plan submission.

(3) An EDC shall file its universal service and energy conservation plan in the form of a tariff filing. The tariff filing must conform with applicable regulations in Chapters 53 and 76 (relating to tariffs for noncommon carriers; and customer assistance programs). The plan should state how it differs from the previously approved plan.

Comments:

PULP supports the Commission’s requirement that universal service and energy conservation plan filings comport with existing regulations governing tariff filings at 52 Pa.Code §§ 53.1 – 53.103. Since universal service and energy conservation plan filings are now tariff filings, it only makes sense that distribution companies comply with existing regulations for filing tariffs. However, PULP requests certain clarifications regarding the form of notice to be provided with the new universal service and energy conservation plan filings.

The timing and form of public notice required for tariff filings are governed by Chapter 53 of the *Pennsylvania Code*. Distribution companies are required to give notice 60 days prior to filing a new tariff, a tariff supplement, or a tariff revision. 52 Pa.Code §§ 53.31 and 53.101. While the timing of notice generally is constant, the form of notice differs depending on the type of filing. Upon the filing of a new tariff, tariff supplement, or tariff revision that constitutes a

general rate increase within the meaning of 66 Pa.C.S. § 1308(d), Section 53.45(b) provides guidance for the form of public notice. 52 Pa.Code § 53.45(b). For other types of tariff filings, such as “other proposed changes in rates, rules and regulations, including nongeneral rate increases, proposed changes in regulations—without rate changes—and proposed rate changes under 66 Pa.C.S. § 1307(f),” the Commission dictates the manner of notice. 52 Pa.Code § 53.45(g).

It seems likely that most universal service and energy conservation plan filings will fall into this latter category and will be governed by Section 53.45(g). Thus, the Commission on a case by case basis will determine what form public notice will take. Given that these filings will have a profound impact on low income households throughout the Commonwealth, PULP recommends that the Commission promulgate a regulation now that will govern the notice given whenever a triennial universal service and energy conservation plan tariff filing is made. PULP recommends that distribution companies should publish notice in the *Pennsylvania Bulletin* 60 days prior to the filing of their triennial universal service and energy conservation plan. This will provide adequate notice to all interested parties and provide a uniform treatment across the Commonwealth.

§ 54.74. [Universal] Review of universal service and energy conservation plans, funding and cost recovery.

(a) Plan submission.

(5) 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. The Commission will approve recovery of CAP costs consistent with § 76.4 (relating to recovery of costs of customer assistance programs). [If the Commission rejects the plan, the EDC shall submit a revised plan under the order rejecting or directing modification of the plan as previously filed. If the order rejecting the plan does not state a timeline, the EDC shall file its revised plan within 45 days of the entry of the order.

(6) The Commission will act on the plans within 90 days of the EDC filing date.]

Comments:

Proposed Section 54.74(a)(5) contains several points that require elaboration. The first point regards the Commission's proper role as the arbiter of the availability of universal service programs. PULP supports the Commission's position that the Commission alone is responsible for determining the proper level of funding for CAPs. However that level of funding must be based on first determining the program parameters necessary to achieve the goals of universal service as mandated by the Choice Act. The Commission must, at a minimum, ensure the existence of a program which meets the enrollment requirements of the service territory and provides affordable CAP rates to those who are enrolled. It is only **after** a program structure is in place to ensure that these goals are achieved should the Commission establish a funding level.

A second point relates to the recovery of costs only from the residential rate class. As PULP and many other parties have pointed out, there is no sound argument for isolating the cost of universal service programs to only the residential customer class. It is without doubt that the social benefits of these universal service and energy conservation programs extend to all

segments of society, including small businesses, commercial entities, and industrial enterprises. Since all classes benefit from the programs, all classes should share the burdens. PULP respectfully submits that the Commission should reconsider its choice to isolate cost recovery only to residential customers.

Finally, PULP supports the Commission's clear statement of its authority in this area. Since only the Commission has the authority to temporarily suspend enrollment of eligible clients into a universal service program, a utility may not under any circumstance unilaterally halt for any length of time the enrollment of eligible clients into its universal service programs. This interpretation of the Commission's sole authority is substantiated by proposed Section 76.3 (Approval process), which identifies the process a utility must use to petition the Commission for a modification to an existing universal service and energy conservation tariff.

§ 54.74. [Universal] Review of universal service and energy conservation plans, funding and cost recovery.

(b) [Plan] Tariff contents. The tariff must include the following information:

(1) [The components of] General requirements. A universal service and energy conservation plan that may include [the following:] a CAP, LIURP, CARES, Hardship Funds [and] or other programs, policies and protections consistent with Commission orders, regulations and other applicable law. For each component of [universal service and energy conservation,] the plan [shall include, but not be limited to], the following information shall be submitted:

Comments:

PULP supports the Commission's establishing minimum standards for universal service programs. However, PULP submits that the Commission, at the least, should make each of the stated universal service components – CAP, LIURP, CARES, and Hardship Fund – mandatory for every distribution company. The use of the permissive “may include” in the proposed

regulation should be replaced with “shall include.” This change will communicate the mandatory nature of this rule.

After many years of experimentation and pilot programs, it is clear that the four-pronged approach using a CAP, LIURP, CARES, and Hardship Fund is the most effective method of responding to the Choice Acts’ requirement of making universal service programs available to low income households. Each of these pieces plays an important and necessary role in providing balanced, comprehensive assistance to low income households. Furthermore, each of these programs is needed in order to achieve the goals stated at Section 54.73 (universal service and energy conservation program goals):

- CAP provides affordable payments to low income, payment troubled households, addressing Section 54.73(b)(2)’s goal of providing payment assistance to low income customers.
- LIURP reduces energy usage by low income households, which meets the goal of Section 54.73(b)(3) to help low income customers conserve energy. By reducing overall energy consumption, LIURP also addresses the Commission’s concern over minimizing program costs.
- CARES advances Section 54.73(b)(1)’s goal of protecting consumers’ health and safety.
- Hardship Funds address Section 54.73(b)(2) by providing assistance to low income families. Hardship Funds also manage the costs of the program by allowing utility shareholders to offset the costs to residential ratepayers.

To fail to require any of these programs would be to reduce the effectiveness in achieving the stated goals of Section 54.73 and the overall requirement to ensure that universal service programs (all universal service and energy programs) are appropriately available and funded.

Therefore, PULP respectfully submits that the Commission should change Section 54.74(b)(1) to read, “(1) [The components of] General requirements. A universal service and energy conservation plan that ~~may~~ shall include [the following:] a CAP, LIURP, CARES, and Hardship Funds and other programs, policies and protections....”

§ 54.74. [Universal] Review of universal service and energy conservation plans, funding and cost recovery.

(b) [Plan] Tariff contents. The tariff must include the following information:

- [3] Projected] (iii) The projected needs assessment. The needs assessment must include:
- (A) The number of identified low income customers.
 - (B) An estimate of low income customers.
 - (C) The number of identified payment troubled, low income customers.
 - (D) An estimate of payment troubled, low income customers.
 - (E) The number of customers who still need LIURP services and the cost to serve that number.
 - (F) The enrollment size of the CAP to serve all eligible customers.

Comments:

PULP supports the Commission’s inclusion of an explicit requirement that distribution companies consider and estimate the projected needs for their universal service and energy conservation programs. Solid, cost-effective planning requires these kinds of estimates. However, PULP encourages the Commission to monitor distribution company behavior regarding projected needs assessments and corresponding enrollment behaviors. A projected enrollment level should not be treated as an automatic limit or ceiling on enrollment. Approaching or meeting a projected enrollment level should never be an acceptable reason for a distribution company to unilaterally halt or slow enrollment into its universal service and energy conservation programs.

The Commission must be able to ascertain whether the CAP Rate design that is proposed will achieve the desired goals of affordable payments and appropriate enrollment. Thus, a company's needs assessment should include information regarding the effect of the proposed CAP rate design on affordable payment levels and on CAP customer service maintenance levels. This information will enable the Commission to ascertain whether the design is adequate. The assessment should therefore include:

- The number of CAP customers who are required to make monthly CAP payments that exceed the affordability guidelines;
- The cost to the CAP of adjusting the CAP rate design to ensure that all CAP customers are charged an affordable CAP Rate; and
- The number of CAP Rate customers who have had service terminated within the prior three years and the length of time those customers were without service.

§ 54.74. [Universal] Review of universal service and energy conservation plans, funding and cost recovery.

(b) [Plan] Tariff contents. The tariff must include the following information:

(2) Program rules. The tariff must contain rules that apply to the universal service and energy conservation programs. The rules must be consistent with the code, applicable Commission regulations, orders, and other applicable law. The rules must address:

- (i) Program eligibility.
- (ii) Enrollment process.
- (iii) Customer responsibilities for continued program participation.
- (iv) Coordination of energy assistance benefits including the application of LIHEAP grants.
- (v) Arrearage forgiveness.
- (vi) Dismissal from the program, including default rules in §76.5 (relating to default provisions for failure to comply with program rules)
- (vii) Reinstatement to the program.
- (viii) Termination of service.
- (ix) Restoration of service.
- (x) Treatment of CAP customers who become income ineligible for continued participation.
- (xi) Other matters required for the implementation and operation of the program.

Comments:

Proposed Section 54.74(b)(2) sets forth the rules required to be included in the universal service and energy conservation tariff. These proposed regulations effectively replace parts of the existing policy statement governing customer assistance programs at 52 Pa.Code § 69.265(7) (Default provisions). A key difference between the existing policy statement and these proposed regulations is in how distribution companies are to treat customers who breach program rules. The policy statement reads, “The failure of a participant to comply with one of the following *should* result in dismissal from CAP participation.” 52 Pa.Code § 69.265(7) (*emphasis added*). Proposed Section 54.74(b)(2)(vi) requires the inclusion of rules for dismissal from the program pursuant to Section 76.5, which itself reads, “The failure of a CAP participant to comply with the following *shall* result in dismissal from CAP participation.” 52 Pa.Code §76.5(a) (*emphasis added*).

This is a significant change in policy that reduces the ability of the utility to consider individual, extenuating circumstances in the administration of CAP programs. Given that CAP programs are the single most important assistance mechanism available to low income, residential utility customers, PULP recommends that the Commission consider two additions to the regulations that can reintroduce a needed balance into the situation: notice requirements and explicit rules for reinstatement into CAP.

PULP recommends that the Commission require distribution companies to provide formal notice to CAP customers before dismissing the customer from CAP. Dismissal from CAP is effectively termination of service because a CAP customer unable to comply with the lower payment requirements of CAP will certainly be unable to pay the significantly higher rates of a full bill. Thus, dismissal from CAP should be treated with extreme care and caution.

As the Commission recently recognized in its Chapter 14 Second Implementation Order, CAP customers have the right to petition the Commission for assistance in a number of situations related to CAP administration, 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 rate for a household with their income or type of service; allegations that the customer was improperly removed from CAP or that CAP eligibility was denied; allegations that the customer has not been credited for all payments made, and complaints about the utility's application of payments including application of energy assistance grants.

Re: Chapter 14 Implementation, Docket No. M-00041802F002 (Order entered September 12, 2005), at 34-35. In order for this right to have meaning, customers must know and understand their right to petition the Commission for redress. It is particularly important that the customer be made aware of these rights at a time when the right can be exercised meaningfully, such as immediately prior to a proposed dismissal from the CAP program. Providing notice at the time of enrollment, occurring perhaps months or years earlier and likely forgotten by the customer, is insufficient to adequately notify the customer of his/her rights.

Accordingly, the Commission should mandate that distribution companies provide notice to CAP customers immediately prior to dismissal from CAP. PULP supports adding to Section 54.74(b)(2)(vi) the proposed language from the *Comments of Action Alliance*:

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.

Comments of Action Alliance, pg. 11.

Additionally, PULP recommends that the Commission promulgate explicit and uniform rules governing the length of time and circumstances under which a CAP customer may be reinstated into CAP after an involuntary dismissal from CAP. Currently, different distribution

companies have widely ranging policies regarding when a customer can reenter CAP after having been dismissed for noncompliance. These widely ranging policies are not based on regional needs, demographic differences, or local idiosyncrasies (the kinds of rationale used for allowing program differences among varying distribution companies). They are merely based on the whims of history. This serves no legitimate policy purpose and creates disparities in treatment between similarly situated low income customers. Now is the time to redress those inequities through standard procedures for reinstatement.

PULP recommends that the Commission incorporate the following language as mandatory for all distribution companies:

§ 76.5(c). Distribution companies shall immediately reinstate into CAP applicants or customers who cure their CAP default and who establish their continued eligibility for CAP participation.

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

[Each] 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 [shall] must contain information on programs and collections for the prior calendar year. Unless otherwise stated, the report shall be due April 1 each year [, beginning April 1, 2001]. [Where] When noted, the data shall be reported by classification of accounts as total residential customers and confirmed low income residential customers. [Each] An EDC's report [shall] must contain the following information:

Comments:

PULP supports the Commission's efforts to have distribution companies monitor and report on their universal service and energy conservation programs. However, PULP submits that, since CAPs are intended to promote the public health and welfare and are often programs of last resort for the Commonwealth's most vulnerable residents, the CAP reporting requirements

can be improved by expanding them to 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. Jonathan Stein, General Counsel for Community Legal Services, Inc. in Philadelphia, made this point recently in the Pittsburgh Post Gazette.¹⁵ This kind of reporting can reveal the true and truly meaningful costs caused by service termination.

Therefore, PULP submits the following language for inclusion in the proposed rules:

“Activity following service termination. 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.”

B. Chapter 62: Natural Gas Supply Customer Choice

§ 62.1. Statement of purpose and policy.

The requirements of 66 Pa.C.S. § 2203(8) (relating to standards for restructuring of natural gas utility industry) mandate that the Commission ensure universal service and energy conservation policies, activities and services for residential natural gas customers are appropriately funded and available in each NGDC territory. This subchapter establishes a unified process which allows the Commission, in the context of its review of an NGDC’s universal service and energy conservation plan, to approve an adequate level of program funding, to determine the types and amount of program costs recoverable from residential customers and to approve a mechanism for full cost recovery. This subchapter requires covered NGDCs to establish uniform reporting requirements for universal service and energy conservation policies, programs and protections and to report this information to the Commission.

Comments:

PULP strongly supports this statement of purpose and policy for the same reasons as advanced in support of proposed Section 54.71 earlier in these comments. Like proposed

¹⁵ Stein, Jonathan M. “Death By Utility Cut Off.” Pittsburgh Post Gazette, 20 Feb. 2008.

Section 54.71, proposed Section 62.1 correctly states that the Commission's key concern must be to ensure that programs are appropriately funded and available so that low income customers can maintain service. As PULP argued at length regarding proposed Section 54.71, to be considered appropriately available a universal service program must be adequately funded at a level which permits enrollment of all those who require its assistance and which provides CAP rates that are affordable for those eligible customers.

The same arguments offered by PULP in its discussion of proposed Section 54.71 are incorporated by reference here for proposed Section 62.1. In particular, PULP submits that the 10% proposed maximum energy burden should be modified downwards, and a more appropriate standard of affordability would be an energy burden established as follows: 3 % of gross household income for electric usage, 3 % of gross household income for gas usage, and 6 % of gross household income for electric heating accounts or gas heating and electric non-heating accounts combined.

§ 62.2. Definitions. CAP – Customer Assistance Program.

[An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of natural gas utility services.] 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 to remain eligible for the program.

Comments:

PULP submits that this definition is too narrow because it removes from the definition of CAP the concept of mutual benefits and obligations. CAPs were created and should be designed to “provide payment assistance to low-income, payment troubled utility customers.” 52 Pa.Code

§ 62.2. Since one of the principal features of a CAP is that it imparts tangible benefits to the customer, removing this phrase does not make sense. That concept must remain an essential part of the program design and needs to be retained in the definition. To clearly articulate this essential element of CAP, the definition should be expanded with the insertion of the following language immediately following the proposed subsection (ii): “Customers successfully complying with subsections (i) and (ii) shall receive from the distribution company continued utility service and monthly forgiveness of outstanding, preprogram debt.”

§ 62.2. Definitions. [Low-income] Low income customer.

A residential utility customer whose gross household income is at or below 150% of the Federal poverty guidelines. Gross household income does not include the value of food stamps or other noncash income.

Comments:

PULP supports the Commission’s definition of low income customer and the exclusion of noncash income from the determination of the household gross income. This definition conforms to those provided by other state and federal programs in their treatment of noncash income. PULP further submits that, in order to avoid a range of interpretations that result in wide differences in practice among distribution companies across the state and cause confusion among customers, advocates, and Commission and utility staff, there be uniformity throughout the Commonwealth in the determination of “gross household income.” Each distribution company should be expected to follow the same standard. Administrative expediency and equity support the use of a uniform, minimum standard for the entire state. Since such a uniform standard presently exists in regulations which affect the same vulnerable population base, PULP submits that the Commission should follow the PA Department of Public Welfare’s regulations

governing income exemptions and use these to provide a uniform standard in arriving at “gross household income.” See 55 Pa.Code § 183.81 (Income exemptions).

§ 62.2. 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.

Comments:

The “payment troubled” definition is important because becoming “payment troubled” is a basis of eligibility for enrollment into CAP. Thus, a low income customer who is not “payment troubled” can be denied entry into CAP and denied access to CAP benefits, such as reduced rates, arrearage forgiveness, and continued service.

A disadvantage of the proposed definition is that it makes it possible for a household to run up a sizeable outstanding debt before actually being deemed “payment troubled” and being able to enroll in a CAP. For example, a customer falling behind on his/her bill, may only be able to make partial payments for a number of months, slowly accruing a large balance due. Because of the partial payments toward the full bill, the customer may not register as a significant credit risk or problem in the utility’s system.¹⁶ This may result in the company delaying initiation of termination proceedings for a longer period of time, allowing the problem to persist, worsen, and, in some cases, become unmanageable.

PULP submits the following change to the “payment troubled” definition currently proposed by the Commission:

¹⁶ PULP participates in PECO’s Universal Services Advisory Committee’s quarterly meetings. At a recent meeting, PECO representatives stated that partial payments may register a customer as less of a credit risk than no payments at all. Therefore, a customer who makes some payments may have termination proceedings put off for a longer amount of time than a customer with no payment history at all.

A household that has failed to maintain one or more payment arrangements in a 1-year period, has been unable to pay its utility bill in full and on time for two consecutive billing cycles, or has received a termination notice.

This modest expansion to the definition mitigates the aforementioned ill effects. It makes a customer eligible for CAP enrollment more quickly and prevents a large build-up in outstanding past due amounts. Importantly, this change can improve the definition without expanding it in a way that imposes undue financial burdens on the program and on the shoulders of other residential ratepayers.

§ 62.3. Universal service and energy conservation program goals.

(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] low income customers maintain affordable natural gas service.
- (2) To provide for affordable natural gas service by making available payment assistance to [low-income] low income customers.
- (3) To [help low-income] assist low income customers [conserve] in conserving energy and [reduce] reducing residential utility bills.
- (4) To ensure universal service and energy conservation programs are operated in a cost-effective and efficient manner to minimize program costs.

Comments:

The *Natural Gas Choice Act*, 66 Pa.C.S. §§ 2201 et seq., like the *Electric Choice Act*, introduced competition not for competition's sake but as a means to reduce the ultimate cost of energy to consumers. The legislation also recognized the essential nature of natural gas and its fundamental link to public health and well-being. *Id.* at § 2203 (3). In particular, the General Assembly gave special notice to low income customers, requiring that "the commission shall, at a minimum, continue the level and nature of the consumers protections, policies and services." *Id.* at § 2203 (7). Chapter 14, aimed at customers capable of paying but who choose not to pay, did nothing to diminish the General Assembly's concern for or intention to protect low income

customers. Quite to the contrary, the General Assembly reaffirmed its intention that service remain available to all customers on reasonable terms and conditions. 66 Pa.C.S. § 1402.

With this background in place, PULP restates its earlier recommendation that the Commission include in these regulations a clear, concrete standard of affordability to which all natural gas distribution companies must adhere in designing, implementing, and operating their universal service programs, CAPs in particular. Those standards should be 3 % of gross household income for electric usage, 3 % of gross household income for gas usage, and 6 % of gross household income for electric heating accounts or gas heating and electric non-heating accounts combined.

PULP also submits that the addition of the phrase “to minimize overall program costs” at the end of subsection (4) is unnecessary. The proposed phrasing creates a conflict with the primary purpose of the statute: to ensure programs which maintain service through affordable CAP rate payments. In its original form, subsection (4) uses the phrase, “operated in a cost-effective and efficient manner.” The original phrase provides the Commission with the ability to ensure that the programs are administered within a sound economic and administrative structure. Well managed and efficient programs are encompassed within this language and are capable of being required by the Commission. Nothing further need be added to the definition.

The proposed phrase, “*to minimize program costs*” sets out the minimization of program costs as an objective in itself. This is inappropriate. It is conceivable that, in order for a CAP to achieve its goals of providing affordable CAP rates and appropriate levels of enrollment, the CAP may need to expand overall program costs. As the language is presently proposed, such an expansion of the program might be prohibited. PULP, therefore, recommends the removal of the proposed language “*to minimize program costs*” as unneeded and incorrect.

§ 62.4. [Universal]Review of universal service and energy conservation plans, funding and cost recovery.

(a) Plan submission.

(3) An NGDC shall file its universal service and energy conservation plan in the form of a tariff filing. The tariff filing must conform with applicable regulations in Chapters 53 and 76 (relating to tariffs for noncommon carriers; and customer assistance programs). The plan should state how it differs from the previously approved plan.

Comments:

PULP supports the Commission's requirement that universal service and energy conservation plan filings comport with existing regulations governing tariff filings at 52 Pa. Code §§ 53.1 – 53.103. Since universal service and energy conservation plan filings are now tariff filings, it only makes sense that distribution companies comply with existing regulations for filing tariffs. However, PULP requests certain clarifications regarding the form of notice to be provided with the new universal service and energy conservation plan filings.

The timing and form of public notice required for tariff filings are governed by Chapter 53 of the *Pennsylvania Code*. Distribution companies are required to give notice 60 days prior to filing a new tariff, a tariff supplement, or a tariff revision. 52 Pa. Code §§ 53.31 and 53.101. While the timing of notice generally is constant, the form of notice differs depending on the type of filing. Upon the filing of a new tariff, tariff supplement, or tariff revision that constitutes a general rate increase within the meaning of 66 Pa.C.S. § 1308(d), Section 53.45(b) provides guidance for the form of public notice. 52 Pa. Code § 53.45(b). For other types of tariff filings, such as “other proposed changes in rates, rules and regulations, including nongeneral rate increases, proposed changes in regulations—without rate changes—and proposed rate changes

under 66 Pa.C.S. § 1307(f),” the Commission dictates the manner of notice. 52 Pa.Code § 53.45(g).

It seems likely that most universal service and energy conservation plan filings will fall into this latter category and will be governed by Section 53.45(g). Thus, the Commission, on a case by case basis, will determine what form public notice will take. Given that these filings will have a profound impact on low income households throughout the Commonwealth, PULP recommends that the Commission promulgate a regulation now that will govern the notice given whenever a triennial universal service and energy conservation plan tariff filing is made. PULP recommends that distribution companies should publish notice in the *Pennsylvania Bulletin* 60 days prior to the filing of their triennial universal service and energy conservation plan. This will provide adequate notice to all interested parties and provide a uniform treatment across the Commonwealth.

§ 62.4. [Universal]Review of universal service and energy conservation plans, funding and cost recovery.

(a) Plan submission.

(5) 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. The Commission will approve recovery of CAP costs consistent with § 76.4 (relating to recovery of costs of customer assistance programs.) [The Commission will act on the plans within 90 days of the NGDC filing date.

(6) If the Commission rejects the plan, the NGDC shall submit a revised plan pursuant to the order rejecting or directing modification of the plan as previously filed. If the order rejecting the plan does not state a timeline, the NGDC shall file its revised plan within 45 days of the entry of the order.]

Comments:

Proposed Section 62.4(a)(5) contains several points that require elaboration. The first point regards the Commission's proper role as the arbiter of the availability of universal service programs. PULP supports the Commission's position that the Commission alone is responsible for determining the proper level of funding for CAPs. However, that level of funding must be based on first determining the extent of the program necessary to achieve the goals of universal service as mandated by the Choice Act. The primary goals that must be fulfilled are, at a minimum, to ensure the provision of a program which meets the enrollment requirements of the service territory and provides affordable CAP rates to those who are enrolled. It is only after a program structure is in place to ensure that these goals are achieved should the Commission establish a funding level.

A second point relates to the recovery of costs only from the residential rate class. As PULP and many other parties have pointed out, there is no sound argument for isolating the cost of universal service programs to only the residential customer class. It is without doubt that the social benefits of these universal service and energy conservation programs extend to all segments of society, including small businesses, commercial entities, and industrial enterprises. Since all classes benefit from the programs, all classes should share the burdens. PULP respectfully submits that the Commission should reconsider its choice to isolate cost recovery only to residential customers.

Finally, since only the Commission has the authority to temporarily suspend enrollment of eligible clients into a universal service program, a utility may not under any circumstance unilaterally halt for any length of time the enrollment of eligible clients into its universal service programs. This interpretation of the Commission's sole authority is substantiated by proposed

Section 76.3 (Approval process), which identifies the process a utility must use to petition the Commission for a modification to an existing universal service and energy conservation tariff.

Thus, PULP supports the Commission's clear statement of its authority in this area.

§ 62.4. [Universal] Review of universal service and energy conservation plans, funding and cost recovery.

(b) [Plan] Tariff contents. The tariff must contain the following information:

(1) [The components of] General requirements. A universal service and energy conservation plan that may include [the following:] a CAP, LIURP, CARES, Hardship Funds [and] or other programs, policies and protections consistent with Commission orders, regulations and other applicable law. For each component of [universal service and energy conservation,] the plan, [shall include] the following information shall be submitted:

Comments:

PULP supports the Commission's establishing minimum standards for universal service programs. However, PULP submits that the Commission, at the least, should make each of the stated universal service components – CAP, LIURP, CARES, and Hardship Fund – mandatory for every distribution company. The use of the permissive “may include” in the proposed regulation should be replaced with “shall include.” This change will communicate the mandatory nature of this rule.

After many years of experimentation and pilot programs, it is clear that the four-pronged approach using a CAP, LIURP, CARES, and Hardship Fund is the most effective method of responding to the Choice Acts' requirement of making universal service programs available to low income households. Each of these pieces plays an important and necessary role in providing balanced, comprehensive assistance to low income households. Furthermore, each of these

programs is needed in order to achieve the goals stated at Section 62.3 (universal service and energy conservation program goals):

- CAP provides affordable payments to low income, payment troubled households, addressing Section 62.3(b)(2)'s goal of providing payment assistance to low income customers.
- LIURP reduces energy usage by low income households, which meets the goal of Section 62.3(b)(3) to help low income customers conserve energy. By reducing overall energy consumption, LIURP also addresses the Commission's concern over minimizing program costs.
- CARES advances Section 62.3(b)(1)'s goal of protecting consumers' health and safety.
- Hardship Funds address Section 62.3(b)(2) by providing assistance to low income families. They also offset the costs of the program by allowing utility shareholders to mitigate the costs to residential ratepayers.

To fail to require any of these programs would be to reduce the effectiveness in achieving the stated goals of Section 62.3 and the overall requirement to ensure that universal service programs (all universal service and energy programs) are appropriately available and funded.

Therefore, PULP respectfully submits that the Commission should change Section 62.4(b)(1) to read, "(1) [The components of] General requirements. A universal service and energy conservation plan that may shall include [the following:] a CAP, LIURP, CARES, and Hardship Funds and other programs, policies and protections...."

§ 62.4. [Universal] Review of universal service and energy conservation plans, funding and cost recovery.

(b) [Plan] Tariff contents.

(1) [The components of] General requirements.

[(3)] (iii) The projected needs assessment. [for each program component and an explanation of how each program component responds to one or more identified needs]. The needs assessment [shall] must include [the]:

(A) The number of identified [low-income] low income customers [and].

(B) An estimate of [low-income] low income customers [, the].

(C) The number of identified payment troubled, [low-income] low income customers [, an].

(D) An estimate of payment troubled, [low-income] low income customers [, the].

(E) The number of customers who still need LIURP services and the cost to serve that number [, and the].

(F) The enrollment size of CAP to serve all eligible customers.

Comments:

PULP supports the Commission's inclusion of an explicit requirement that distribution companies consider and estimate the projected needs for their universal service and energy conservation programs. Solid, cost-effective planning requires these kinds of estimates.

However, PULP encourages the Commission to monitor distribution company behavior regarding projected needs assessments and corresponding enrollment behaviors. A projected enrollment level should not be treated as an automatic limit or ceiling on enrollment.

Approaching or meeting a projected enrollment level should never be an acceptable reason for a distribution company to unilaterally halt or slow enrollment into its universal service and energy conservation programs.

The Commission must be able to ascertain whether the CAP Rate design that is proposed will achieve the desired goals of affordable payments and appropriate enrollment. Thus, a company's needs assessment should include information regarding the effect of the proposed

CAP rate design on affordable payment levels and on CAP customer service maintenance levels. This information will enable the Commission to ascertain whether the design is adequate. The assessment should therefore include:

- The number of CAP customers who are required to make monthly CAP payments that exceed the affordability guidelines;
- The cost to the CAP of adjusting the CAP rate design to ensure that all CAP customers are charged an affordable CAP Rate; and
- The number of CAP Rate customers who have had service terminated within the prior three years and the length of time those customers were without service.

§ 62.4. [Universal] Review of universal service and energy conservation plans, funding and cost recovery.

(b) [Plan] Tariff contents.

(2) Program rules. The tariff must contain rules that apply to the universal service and energy conservation programs. The rules must be consistent with the code, applicable Commission regulations, orders, and other applicable law. The rules must address the following:

- (i) Program eligibility.
- (ii) Enrollment process.
- (iii) Customer responsibilities for continued program participation.
- (iv) Coordination of energy assistance benefits including the application of LIHEAP grants.
- (v) Arrearage forgiveness.
- (vi) Dismissal from the program, including default rules in § 76.5 (relating to default provisions for failure to comply with program rules).
- (vii) Reinstatement to the program.
- (viii) Termination of service.
- (ix) Restoration of service.
- (x) Treatment of CAP customers who become income ineligible for continued participation.
- (xi) Other matters required for the implementation and operation of the program.

Comments:

Proposed Section 62.4(b)(2) sets forth the rules required to be included in the universal service and energy conservation tariff. These proposed regulations effectively replace parts of the existing policy statement governing customer assistance programs at 52 Pa.Code § 69.265(7) (Default provisions). A key difference between the existing policy statement and these proposed regulations is in how distribution companies are to treat customers who breach program rules. The policy statement reads, “The failure of a participant to comply with one of the following *should* result in dismissal from CAP participation.” 52 Pa.Code § 69.265(7) (*emphasis added*). Proposed Section 62.4(b)(2)(vi) requires the inclusion of rules for dismissal from the program pursuant to Section 76.5, which itself reads, “The failure of a CAP participant to comply with the following *shall* result in dismissal from CAP participation.” 52 Pa.Code § 76.5(a) (*emphasis added*).

This is a significant change in policy that reduces the ability of the utility to consider individual, extenuating circumstances in the administration of CAP programs. Given that CAP programs are the single most important assistance mechanism available to low income, residential utility customers, PULP recommends that the Commission consider two additions to the regulations that can reintroduce a needed balance into the situation: notice requirements and explicit rules for reinstatement into CAP.

PULP recommends that the Commission require distribution companies to provide formal notice to CAP customers before dismissing the customer from CAP. Dismissal from CAP is effectively termination of service because a CAP customer unable to comply with the lower payment requirements of CAP will certainly be unable to pay the significantly higher rates of a full bill. Thus, dismissal from CAP should be treated with extreme care and caution.

As the Commission recently recognized in its Chapter 14 Second Implementation Order, CAP customers have the right to petition the Commission for assistance in a number of situations related to CAP administration, 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 rate for a household with their income or type of service; allegations that the customer was improperly removed from CAP or that CAP eligibility was denied; allegations that the customer has not been credited for all payments made, and complaints about the utility's application of payments including application of energy assistance grants.

Re: Chapter 14 Implementation, Docket No. M-00041802F002 (Order entered September 12, 2005), at 34-35. In order for this right to have meaning, customers must know and understand their right to petition the Commission for redress. It is particularly important that the customer be made aware of these rights at a time when the right can be exercised meaningfully, such as immediately prior to a proposed dismissal from the CAP program. Providing notice at the time of enrollment, occurring perhaps months or years earlier and likely forgotten by the customer, is insufficient to adequately notify the customer of his/her rights.

Accordingly, the Commission should mandate that distribution companies provide notice to CAP customers immediately prior to dismissal from CAP. PULP supports adding to Section 62.4(b)(2)(vi) the proposed language from the Comments of Action Alliance:

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 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.

Comments of Action Alliance, pg. 22.

Additionally, PULP recommends that the Commission promulgate explicit and uniform rules governing the length of time and circumstances under which a CAP customer may be reinstated into CAP after an involuntary dismissal from CAP. Currently, different distribution

companies have widely ranging policies regarding when a customer can reenter CAP after having been dismissed for noncompliance. These widely ranging policies are not based on regional needs, demographic differences, or local idiosyncrasies (the kinds of rationale used for allowing program differences among varying distribution companies). They are merely based on the whims of history. This serves no legitimate policy purpose and merely creates disparities in treatment between similarly situated low income customers. Now is the time to redress those inequities through standard procedures for reinstatement.

PULP recommends that the Commission incorporate the following language as mandatory for all distribution companies:

§ 76.5(c). Distribution companies shall immediately reinstate into CAP applicants or customers who cure their CAP default and who establish their continued eligibility for CAP participation.

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

(a) [Each] 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 [shall] must contain information on programs and collections for the prior calendar year. Unless otherwise stated, the report shall be due April 1 each year [, beginning April 1, 2003]. When noted, the data shall be reported by classification of accounts as total residential customers and confirmed low income residential customers. [Each] An NGDC's report [shall] must contain the following information:

Comments:

PULP supports the Commission's efforts to have distribution companies monitor and report on their universal service and energy conservation programs. However, PULP submits that, since CAPs are intended to promote the public health and welfare and are often programs of last resort for the Commonwealth's most vulnerable residents, the CAP reporting requirements

can be improved by expanding them to 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. Jonathan Stein, General Counsel for Community Legal Services, Inc. in Philadelphia, made this point recently in the Pittsburgh Post Gazette.¹⁷ This kind of reporting can reveal the true and truly meaningful costs caused by service termination.

Therefore, PULP submits the following language for inclusion in the proposed rules:

“Activity following service termination. 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.”

C. 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 must be consistent for all programs. These rules relate to costs that shall be recovered by the distribution company, customer actions or inactions that result in dismissal from participation in a CAP, and billing and collection practices that shall be observed for CAP customers.

Comments:

PULP proposes that the language in Section 76.1 needs to cite more explicitly affordability as a central purpose of universal service and energy conservation programs. As

¹⁷ Stein, Jonathan M. “Death By Utility Cut Off.” Pittsburgh Post Gazette, 20 Feb. 2008.

such, PULP supports the language submitted by Action Alliance to replace the existing second sentence of Section 76.1:

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.

Comments of Action Alliance, pg. 28.

§ 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.

Comments:

PULP submits that this definition is too narrow because it does not identify the benefits that accrue to customers participating in CAPs. This omission does not make sense since one of the principal features of a CAP is that it imparts tangible benefits to the customer. To clearly articulate this essential element of CAP, the definition should be expanded with the insertion of the following language immediately following the current "(ii)": "Customers successfully complying with subsections (i) and (ii) shall receive from the distribution company continued utility service and monthly forgiveness of outstanding preprogram debt."

§ 76.3. Approval process.

(a) 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 in § 54.74(a)(3) or § 62.4(a)(3) (relating to review of universal service and energy conservation plans, funding and cost recovery).

(b) When an immediate temporary modification must be made to an existing CAP to maintain its operation, a distribution company shall submit an application for special permission to file a tariff revision or supplement on less than statutory notice consistent with §§ 53.102 and 53.103 (relating to exception to requirement for statutory notice; and concurrently furnished information). A copy of the application, including the supporting information, shall be served on the Office of Consumer Advocate, the Office of Trial Staff, and other advocates for low income customers, and provided to BCS. A distribution company shall obtain Commission approval prior to implementing a temporary modification to an existing CAP.

Comments:

PULP supports the Commission's approval process as it appears in Section 76.3. As the proposed rules clearly establish, the Commission is the ultimate arbiter of universal service programs and energy conservation programs and retains the final decision over whether a program may be limited in any way. Just as a distribution company cannot unilaterally choose to stop providing service to customers outside of universal service and energy conservation programs, neither can a distribution company unilaterally limit, diminish, or curtail enrollment into a universal service or energy conservation program.

PULP requests the Commission include language making it clear that, pending the Commission's ruling on a utility request to alter a CAP program pursuant to Section 76.3, low income customers will continue to be enrolled into programs without limitation. To achieve this goal, PULP recommends the following language be included as subsection (c):

(c) Pending Commission review of a request to revise, limit, or expand a CAP program, a distribution company shall continue to enroll eligible customers into existing programs, notwithstanding any size limits, enrollment projections, or enrollment quotas.

PULP also requests that subsection (b) be modified to include PULP as an advocate for low income customers to be notified upon the triggering of subsection (b). PULP is currently the principal statewide advocate in Pennsylvania on behalf of low income utility customers. PULP has been designated by the Pennsylvania Legal Aid Network as the lead advocate on utility law issues, and PULP assists social service providers and others working with the low income community on utility related issues. PULP routinely appears before the Commission and works with the BCS to advocate on behalf of low income customers. Given this role in the Commonwealth, PULP respectfully requests that subsection (b) be amended to read:

(b) When an immediate temporary modification must be made to an existing CAP to maintain its operation, a distribution company shall submit an application for special permission to file a tariff revision or supplement on less than statutory notice consistent with §§ 53.102 and 53.103 (relating to exception to requirement for statutory notice; and concurrently furnished information). A copy of the application, including the supporting information, shall be served on the Office of Consumer Advocate, the Office of Trial Staff, the Pennsylvania Utility Law Project, and other advocates for low income customers, and provided to BCS. A distribution company shall obtain Commission approval prior to implementing a temporary modification to an existing CAP.

§76.4. Recovery of costs of customer assistance programs.

(1) CAP costs shall be recoverable only from residential customers.

Comments:

As PULP and many other parties have pointed out, there is no sound argument for isolating the cost of universal service programs to only the residential customer class. The social benefits of these universal service and energy conservation programs extend to all segments of society, including small businesses, commercial entities, and industrial enterprises. Since all classes benefit from the programs, all classes should share the burdens. PULP respectfully submits that the Commission should reconsider its choice to isolate cost recovery only to residential customers.

§76.4. Recovery of costs of customer assistance programs.

(4) The Commission will consider the timeliness of a distribution company's collection activities in evaluating the reasonableness of costs claimed for recovery.

Comments:

PULP supports the Commission's inclusion of subsection (4) as a method to regulate and mitigate the costs of universal service and energy conservation programs. However, PULP cautions the Commission to exercise this authority carefully so as not to drive utility companies into overly aggressive collection activity against low income customers. Currently, distribution companies have a certain level of discretion in working with low income customers. This discretion allows them to work with low income customers over long periods of time so that customers with payment troubles have every opportunity to make regular, consistent payments while maintaining service. Many times this results in workable payment plans, continued service, and success for both low income customers and utilities. The Commission should only deny cost recovery where it appears the company egregiously abuses its discretion.

§76.5. 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:

Comments:

PULP submits that dismissing customers from the CAP program for failure to comply with program rules is an inadvisable way to deal with program noncompliance, particularly where noncompliance is generally a function of an ignorance of program rules or because administrative requirements are complicated and confusing. Dismissal is a punitive approach

that presumes an intentional reason for program noncompliance, and it is an inappropriate and ineffective response to ignorance or confusion. A better method of dealing with this kind of program noncompliance is to encourage distribution companies to increase their educational outreach and streamline their procedures to make it easier for low income customers to understand and comply with program requirements.

As PULP stated earlier in these comments under Section 54.74(b)(2), the proposed mandatory dismissal replaces a more flexible approach in the existing policy statement governing customer assistance programs at 52 Pa.Code § 69.265(7) (Default provisions). Replacing a reasonably applied “may dismiss” of the policy statement with the proposed “should dismiss” language of the proposed rules effectively eliminates utility discretion in an area where that discretion can prove fruitful. Where utilities have room for discretion, they can work with customers to educate them and secure appropriate compliance. If a utility discovers that noncompliance is the result of intentional obfuscation or malfeasance, then the utility can proceed to dismiss the customer from the program. Thus, PULP recommends the elimination of proposed Section 76.5.

Should the Commission decide to maintain Section 76.5 in its current form, then PULP recommends including a robust notice section. Since the likely result of dismissal from the CAP program is imminent termination of service,¹⁸ customers about to be dismissed from CAP should receive ample and formal notice. In this way, customers whose noncompliance stems from ignorance or unintentional noncompliance can take appropriate steps to remedy their noncompliance and remain enrolled in CAP. PULP supports adding to the proposed language from the *Comments of Action Alliance*:

¹⁸ The reason CAP customers are enrolled in CAP is because they proved that they were unable to afford full cost service. The reintroduction of full cost service will undoubtedly result in service termination for these customers.

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 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.

Comments of Action Alliance, pg. 11.

PULP also recommends that the Commission promulgate explicit rules governing the length of time and circumstances under which a CAP customer should be reinstated after an involuntary dismissal from CAP. Currently, different distribution companies have widely ranging policies regarding when a customer can reenter CAP after having been dismissed for noncompliance. These widely ranging policies are not based on regional needs, demographic differences, or local idiosyncrasies (the kinds of rationale used for allowing program differences among varying distribution companies). They are merely based on individual company preference. This serves no legitimate policy purpose and merely creates disparities in treatment between similarly situated low income customers.

PULP recommends that the Commission incorporate the following language as mandatory for all distribution companies:

§ 76.5(c). Distribution companies shall immediately reinstate into CAP applicants or customers who cure their CAP default and who establish their continued eligibility for CAP participation.

§76.5. 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:

(1) Failure to apply for LIHEAP.

Comments:

PULP strongly believes that proposed section 76.5.(a)(1) is inappropriate to be placed into regulations because it is certain to be a source of confusion. First, LIHEAP is a program subject to significant annual changes. Financial and other eligibility levels are subject to change from year to year in accord with changes in available funding and modifications of program requirements. For example, DPW may set LIHEAP eligibility levels significantly below those of CAP. Federal Regulations permit LIHEAP eligibility to be set as low as 110% FPIG. It is conceivable, and has happened more than once, that Pennsylvania LIHEAP financial eligibility levels may be set at 135% of Federal Poverty Income Guidelines. Since CAP eligibility is set at a higher level (150% FPIG), it makes no sense to place an absolute requirement to apply for LIHEAP into a regulation when a significant number of people in CAP may, from year to year, be ineligible to apply. Secondly, the proposed regulation refers to a failure to apply for LIHEAP. However, LIHEAP is not a single program but has three distinct parts – Cash, Crisis, and Weatherization/Crisis Interface - each of which can be applied for and received independently of the others. In its current form, Section 76.5(a)(1) is unclear whether applying for one part of LIHEAP is sufficient to stave off program dismissal. Thirdly, LIHEAP is a seasonal program generally open from November through March each year, depending on Federal funding and on the discretion of the PA Department of Public Welfare. See LIHEAP Final State Plan 2008, Appendix B, § 601.6. It is unclear how the seasonal nature of the

LIHEAP program impacts the application of the requirement to apply for LIHEAP. For instance, can a customer who enrolls in CAP in March just before the LIHEAP program usually ends be terminated for failing to apply for LIHEAP after the LIHEAP program closes for the year? How much time and opportunity will a customer have to apply? Finally, many customers have two providers of utility service: electric and natural gas. It is possible, and advisable, that a low income customer is enrolled in the CAP of both of its utility providers. How does this requirement to apply for LIHEAP impact this customer, particularly where the customer may only receive one LIHEAP Cash grant and apply it to only one of its two utility providers?

PULP strongly advocates that the Commission continue to encourage and require LIHEAP participation from CAP enrollees. However, PULP also strongly advocates that this process remain in guidelines and not in the form of a regulation. Thus, PULP respectfully requests the elimination of proposed section 76.5(1).

§76.5. 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:

(3) Failure to report changes in income and household size.

Comments:

PULP submits that subsection (3)'s requirement to report changes in income and household size is an inappropriate and unwieldy requirement for low income families. Both income and household size are much more fluid in low income households than might be the case for middle or upper income families. It is not uncommon for low income workers to be employed in multiple part-time jobs or in a low wage, seasonal full-time job that offers changing

weekly or monthly hours. The result is that frequently a low income worker can have different income levels in every single month of the year. The same is true for household size, as low income households are more likely to be comprised of extended family members who might not be full-time residents of the home. Because of the fluidity in wages and household makeup, reporting changes as they occur is an administratively cumbersome endeavor, both for customers and for the utilities receiving the information. It could not be justified as either a cost effective or efficient use of resources.

PULP recommends that subsection (3) be altered in a manner that recognizes the need for wage and household size verification but which respects the reality of low income customers' lives and distribution companies' administrative capabilities. Thus, PULP proposes that existing subsection (3) be removed and replaced by: "Failure to report changes in annual household income at the time of recertification or at least once every year."

§76.5. 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:

(5) Failure to accept usage reduction services.

Comments:

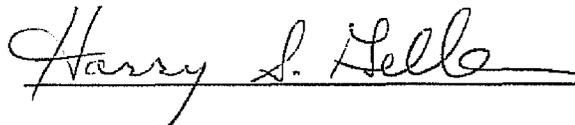
PULP submits that in its present form subsection (5) will produce results radically different from those that are intended and desired. Low-income usage reduction for high users in CAP is universally beneficial and should be required and promoted. The appropriate goal is to reduce usage through self monitoring by the customer. Where necessary, the goal should also be to provide usage reduction services for high users. Creating a punitive rule for default is not

appropriate. It will not provide long-term benefits to the company, other ratepayers, or the customer. It punishes a customer for the customer's own ignorance but does nothing to solve the underlying problem of inefficient energy use. Given that usage reduction services cost the customer nothing and result in lower overall energy consumption, there are few legitimate reasons why a low income household might refuse them. Thus, unless we suppose some form of outright malice or illegality on the part of the customer, it is more likely that a refusal to accept usage reduction stems from ignorance or some cognitive deficiency on the customer's part. The appropriate response, therefore, is the one companies are presently utilizing: individual flexibility combined with outreach and education, not program dismissal.

VI. CONCLUSION

In conclusion, PULP thanks the Commission for this opportunity to submit these comments in this proceeding that holds such importance for low income households in the Commonwealth.

Respectfully Submitted:

A handwritten signature in cursive script, reading "Harry S. Geller", written over a horizontal line.

Harry S. Geller, Esq.
John C. Gerhard, Esq.

Pennsylvania Utility Law Project
1118 Locust Street
Harrisburg, PA 17101-1414

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