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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION INDEPENDENT REGULATORY REVIEW COMMISSION

3:35 p.m

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 CONSUMER ADVISORY COUNCIL TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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INTRODUCTION

These comments are submitted by the Consumer Advisory Council (Council) to the Pennsylvania Public Utility Commission (Commission) in response to the Proposed Rulemaking published in the Pennsylvania Bulletin on February 9, 2008 at Pa B.776. The Council is responsible for advising the Commission upon matters relating to the protection of consumer interests affected by the Commission's exercise of its jurisdiction as provided by law (52 Pa. Code § 91.2. Purposes of the Council.) Universal Service Programs serve a critical role in assisting low income utility consumers maintain service through affordable rates. This rulemaking is therefore of significant importance to Pennsylvania consumers.

COMMENTS TO SPECIFIC SECTIONS OF THE RULEMAKING

These Comments are intended to apply equally to Electric and Natural Gas Distribution Companies. All Comments addressed to specific sections of the proposed Rulemaking

relating to electric distribution companies, §§ 54.71- 54.78, are intended to be equally applicable to the parallel proposed rulemaking sections §§ 62.1-62.8 for natural gas.

§ 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:

The Consumer Advisory Council supports the Commission's proposed use of the 150% Federal poverty guidelines as the definition of low income customer. The Council further supports the Commission's proposal to exclude any noncash income from the definition of gross income. Noncash income, such as food stamps, public housing or other low income benefits, is generally excluded from the definition of gross income and could not reasonably be considered to be available as income for the purpose of paying utility bills.

§ 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 Commission requires that a customer be "payment troubled" as a precondition to CAP eligibility and therefore as a precondition to receipt of reduced rates, arrearage forgiveness, and continued service. The Council supports the intent of the definition proposed by the Commission, but believes that, in its present form, it may be

too limiting. In order to avoid a significant accrual of debt, a "payment troubled customer" should be identified for CAP enrollment as early as administratively practical. The proposed definition does not adequately address this concern in that it makes it possible for a household to run up a sizeable outstanding debt before actually being deemed "payment troubled." Any customer unable to pay his bill in full for two consecutive billing periods should be considered payment troubled for the purpose of being considered for CAP eligibility. The Council therefore 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.

This suggested change of definition makes a customer eligible for CAP enrollment more quickly and prevents a large build-up in outstanding past due amounts. Importantly, this change in definition may be accommodated without burden to other ratepayers and within present company credit procedures.

§ 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 Consumer Advisory Council supports the Commission's intent to ensure that universal service and energy conservation program goals include:

- 1) The protection of low income consumers' health and safety;
- 2) The maintenance of electric services for low income customers;
- 3) Affordable rates for low income customers through payment assistance;
- 4) Assisting low income customers to conserve energy and reduce their bills ; and
- 5) Ensuring that universal service programs are operated in an efficient and cost effective manner.

Each of these components is in clear conformity with the statutory definition:

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. (66 Pa C.S. § 2803.)

However, the Council is concerned that the proposed phrase, "to minimize overall program costs," though well intended, may be in conflict with the intent to offer effective Customer Assistance Programs that achieve the goal of maintaining service for eligible low income consumers through affordable rates. The Council strongly and unequivocally supports cost effective and efficient universal service programs. That is a goal consistent with the Commission's statutory obligations. However, the minimization of costs cannot be a goal by itself. It is conceivable that, in order for a CAP to provide affordable CAP rates and appropriate levels of enrollment in times of increasing energy costs, the CAP might need to expand overall program costs. As the language is presently proposed, such an expansion of the program might be prohibited. The Council therefore

believes that the language “operated in a cost-effective and efficient manner” not be qualified. The proposed language “in order to minimize overall program costs” should be deleted.

§ 54.74(a)(3). Review of universal service and energy conservation plans, funding and cost recovery. Plan submission.

§ 54.74(a)(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:

The Consumer Advisory Council believes that the filing of a distribution company’s universal service and energy conservation plan is a matter of significant import for all consumers within a company’s service territory. All consumers, low income or not, customer or applicant, CAP participant or not, have an interest in effective and efficiently run programs. The Council therefore recommends that, either prior to or concurrently with the filing of universal service and energy conservation plan tariffs or changes to those tariffs, the public be notified. Timely publication in the Pennsylvania Bulletin is recommended.

§ 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:

The Consumer Advisory Council supports the Commission's proposal for a regulation requiring distribution companies to monitor and report on their universal service and energy conservation programs. However the Council continues to believe that Commission reporting requirements may 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. As the Council has previously stated in other comments submitted to the Commission, utility termination-related deaths and serious injuries are a tragic reality. These may occur as a result of fire, hypothermia, hyperthermia, asphyxiation or other causes. They may also occur to visitors within the household and to neighbors. The responsibility of the Commission to protect *the health and welfare* of Pennsylvania citizens is one which requires a broader data base of information. The Council therefore recommends including statistics regarding deaths, serious injuries, fires and property damage within the reporting requirements by inserting **the following language 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.

§ 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:

The Consumer Advisory Council submits that a full definition of Customer Assistance Programs should reasonably incorporate a balanced view of the benefits and responsibilities inherent in those programs. The proposed definition incorporates program responsibilities but omits any reference to program benefits. To provide a clearer and more balanced definition, the Council recommends that the CAP definition incorporate the following language immediately following the current “(i)”: “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:

CAP continuity of enrollment is essential to prevent an increase in low income consumer debt and/or service termination. The Consumer Advisory Council requests that the Commission ensure 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 CAP programs. To achieve this goal, the Council 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.

The Council also requests that subsection (b) be modified to include a requirement that notice of any proposed program modification be submitted to the members of the Consumer Advisory Council in addition to the other identified recipients.

§76.4. Recovery of costs of customer assistance programs.

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

Comments:

The cost of universal service programs should not be isolated to only the residential customer class. The social benefits of these universal service and energy conservation

programs extend to all segments of society. The electric industry restructuring statute known as the Choice Act states:

7. The Commission shall require that restructuring of the electric utility industry be implemented in a manner that does not unreasonably discriminate against one customer class to the benefit of another.
8. The Commission shall establish for each electric utility an appropriate cost recovery mechanism which is designed to fully recover the electric utility's universal service and energy conservation costs over the life of these programs. (Pa. C.S. § 2804- Standards for restructuring of electric industry.)

Since all classes benefit from the programs, all classes should share the burdens.

The Council 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:

The Consumer Advisory Council 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, cost control through timely collection should not be seen as sanctioning or promoting high levels of service termination. Distribution company discretion in working with low income customers to maintain service is to be encouraged. This discretion allows the company 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. Workable payment plans and continued service are win-win achievements for low income

customers, distribution companies and other ratepayers. The Commission should only deny cost recovery in cases of a company either failing to exercise reasonable discretion or seriously abusing such 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:

The Council recognizes that enrollment in CAP entails both benefits and responsibilities. Noncompliance with program rules must be addressed. However, since CAPs have been developed to protect the health and welfare of the Commonwealth's most vulnerable households, it is extremely important that sanctions for noncompliance be viewed as a last resort. Program compliance must be encouraged by distribution companies through information, education and direct customer contact.

The Council is concerned that the proposed mandatory dismissal for noncompliance replaces a more reasonable approach in the existing policy statement ("shall dismiss" is inserted in place of the more discretionary "should result in dismissal") governing customer assistance programs at 52 Pa.Code § 69.265(7) (Default provisions). Replacing the more lenient "should result in dismissal" of the policy statement with the proposed "shall dismiss" language of the proposed rules effectively eliminates utility discretion in an area where that discretion can prove fruitful.

The Council strongly recommends requiring clear notification to consumers. Dismissal from the CAP program places significant burdens on a household and is often followed by service termination. The Council submits that customers about to be

dismissed from CAP should receive full prior notice, have an opportunity to correct the noncompliance or contest the proposed action, and have reasonable opportunity to appeal that dismissal.

The Council also recommends that the Commission promulgate explicit rules governing the length of time before and circumstances under which a CAP customer should be reinstated after an involuntary dismissal from CAP.

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

(a)(1) Failure to apply for LIHEAP.

Comments:

The Council submits that sound public policy is to promote the maximum use of LIHEAP by CAP customers. The goal is to access the LIHEAP grant to benefit an individual customer and therefore the CAP as a whole. Since obtaining the LIHEAP Cash grant is beneficial to all, common sense as well as equity suggests that a distribution company should not dismiss a customer from CAP for failure to apply for LIHEAP unless there has been an opportunity to correct that omission. This is particularly true when one considers that the sanction, as it is presently proposed, would automatically result in the dismissal of a customer current in CAP payments and otherwise complying with all other program requirements. Since the goal is to access the LIHEAP grant in order to reduce the costs of the CAP to other ratepayers, it is essential that the CAP participant be given a reasonable opportunity to secure the LIHEAP grant and prevent the dismissal. At a minimum, a customer should be notified of the default and provided ten

days to complete and submit a LIHEAP Cash application. CAC recommends that the Commission adopt the following language as part of its regulation:

A distribution company shall not commence an action to dismiss a customer from CAP for failure to apply for LIHEAP Cash unless there actually exists a reasonable opportunity for the customer to submit an application for LIHEAP Cash benefits. Prior to any dismissal from CAP for failure to apply for LIHEAP Cash, the utility shall provide the customer with a written, ten day notice, informing the customer of the pending dismissal from CAP, and informing him/her of the right to prevent the dismissal by submitting an application for LIHEAP Cash.

§76.5. Default provisions for failure to comply with program rules. Failure to report changes in income and household size.

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

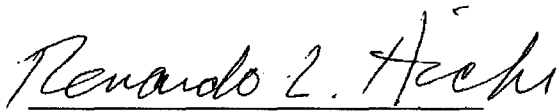
Comments:

The Council recognizes that a cost-efficient and effective CAP requires that participants periodically submit income and household composition information to the distribution company. However, the process of obtaining income and household composition information must be achieved within an administratively feasible framework. Many low income families have part-time jobs and fluctuating household incomes. Constantly reporting such income fluctuation is simply administratively inefficient. The Council therefore recommends that subsection (a)(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, the Council proposes that existing subsection (a)(3) be replaced by: "Failure to report changes in annual household income at the time of recertification or at least once every year."

CONCLUSION

The Council thanks the Commission for undertaking this significant Rulemaking and for its consideration of these Comments.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Renardo L. Hicks". The signature is written in black ink and is positioned above a horizontal line.

Renardo L. Hicks,
Chairperson
Consumer Advisory Council

April 15, 2008