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From: dianemiller@firstenergycorp.com
Sent: Friday, April 18, 2008 2:17 PM
To: Burket, Patricia; Page, Cyndi; Smith, Michael
Cc: levers@firstenergycorp.com; bbingaman@firstenergycorp.com
Subject: FirstEnergy CAP Comments

RECEIVED
APR 24 REC'D
**INDEPENDENT REGULATORY
REVIEW COMMISSION**

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

Attached are the Comments of Metropolitan Edison Company, Pennsylvania
Electric Company and Pennsylvania Power Company in the above-referenced
docket.

(See attached file: CAP Rules FE Comments 4-18-08.pdf)

Diane L. Miller
Executive Assistant
FirstEnergy Legal Dept. - Reading Office
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Phone: (610) 921-6685
Fax: (610) 939-8655
E-Mail: dianemiller@firstenergycorp.com

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FirstEnergy

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APR 24 REC'D

2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001

INDEPENDENT REGULATORY
REVIEW COMMISSION

Linda R. Evers, Esq.
(610) 921-6658
(610) 939-8655 (Fax)

April 18, 2008

VIA OVERNIGHT UNITED PARCEL SERVICE

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 for filing are an original and sixteen (16) copies of Comments of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (collectively "FirstEnergy") in the above-referenced docket. Please date stamp the additional copy and return to me in the enclosed postage-prepaid envelope.

Please contact me at the above phone number should you have any questions.

Sincerely,



Linda R. Evers, Esquire

Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY AND PENNSYLVANIA
POWER COMPANY**

I. INTRODUCTION

In December 2005, the Pennsylvania Public Utility Commission (“Commission”) initiated a comprehensive investigation regarding Customer Assistance Programs (“CAP”): Funding Levels and Cost Recovery Mechanisms.¹ The Commission closed its investigation and entered a Final Investigatory Order on December 18, 2006.² In the Final Investigatory Order, the Commission directed, *inter alia*, that a rulemaking be initiated to revise the existing regulations at 52 Pa. Code §54.74 and §62.4. On August 30, 2007, the Commission adopted an Order and Proposed Rulemaking³ which appeared in the *Pennsylvania Bulletin* of February 9, 2008,⁴ and invited interested parties to submit comments on the proposed rulemaking relating to universal

¹ *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, Order entered December 15, 2005.

² *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, Final Investigatory Order entered December 18, 2006.

³ *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 and Proposed Rulemaking entered September 4, 2007.

⁴ 38 Pa.B. 776.

service and energy conservation reporting requirements and CAPs. On April 4, 2008, the Commission extended the time for comments through April 18, 2008. Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec") and Pennsylvania Power Company ("Penn Power") (collectively "FirstEnergy Companies" or "Companies") respectfully submit these comments in the above-captioned docket in response to the Commission's invitation for comments regarding the proposed rulemaking.⁵

II. COMMENTS

Following are the comments of the FirstEnergy Companies addressing specific sections of the proposed rulemaking as set forth in Annex A of the Order and Proposed Rulemaking published in the *Pennsylvania Bulletin* on February 9, 2008. Inasmuch as the FirstEnergy Companies do not have comments on every section of the proposed rulemaking, the comments herein will only address those sections of the proposed rulemaking where the Companies wish to offer specific comments and suggestions for the Commission's consideration. The FirstEnergy Companies agree with the Commission's proposed rulemaking regarding the sections not commented on herein. Additionally, as the proposed rulemaking at Sections 62.1 through 62.7 specifically pertain to the natural gas industry, the FirstEnergy Companies will not comment on those sections.

⁵ The FirstEnergy Companies recognize the important inter-relationship between the proposed rulemaking relating to universal service, energy conservation and CAPs at issue in this proceeding and the proposed revisions to the Policy Statement on CAPs at Docket No. M-00072036. In addition to these comments, the Companies also provided written comments on January 9, 2008, to the proposed revisions to the Policy Statement on CAPs at Docket No. M-00072036.

§54.71

The FirstEnergy Companies generally support the purpose and policy behind the proposed revisions to the rules and believe that the establishment of a unified administrative process where program funding and cost recovery can be determined at the same time the universal service and energy conservation plan is reviewed is in the public interest. It should be noted that both Met-Ed and Penelec currently have in place a Universal Service Cost Rider that provides for full recovery of universal service and energy conservation costs. The Commission approved a similar rider for Penn Power at its April 9, 2008 Public Meeting. The comments that follow are based on the FirstEnergy Companies' utilization of the surcharge.

§54.72

The FirstEnergy Companies agree with the majority of proposed revisions to the definitions in this section of the proposed rulemaking and offer only a few suggestions:

- The definition of "CAP – Customer Assistance Program" should simply be "[t]he term as defined in 66 Pa. C.S. §1403 (relating to definitions)." Chapter 14 of the Public Utility Code defines "Customer Assistance Program" as:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by section 2202 (relating to definitions) or 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa. C.S. §1403.

While the definition in the proposed rulemaking is somewhat similar, using the definition already provided for in the Public Utility Code would be simpler and remove any possibility of confusion or inconsistency.

- The definition of “EDC – Electric distribution company” should be “[t]he term as defined in 66 Pa. C.S. §2803 (relating to definitions).” Chapter 28 of the Public Utility Code defines “Electric distribution company” as:

The public utility providing facilities for the jurisdictional transmission and distribution of electricity to retail customers, except building or facility owners/operators that manage the internal distribution system serving such building or facility and that supply electric power and other related electric power services to occupants of the building or facility.

66 Pa. C.S. § 2803.

Again, while the definition in the proposed rulemaking is extremely similar, using the definition already provided for in the Public Utility Code would be simpler and remove any possibility of confusion or inconsistency.

- The definition of “Outreach referral contacts” should be revised as follows:

An address and telephone number that a customer would call or write to apply for ~~the hardship fund~~ universal service and energy conservation programs. Contact information should be specific to each county in the EDC’s service territory, if applicable.

These outreach referral contacts should not be limited to provide only for application to an EDC's hardship fund, but rather for all universal service and energy conservation programs sponsored by an EDC.

- An additional criteria has been added to the definition of "payment troubled." In addition to a household failing to maintain one or more payment agreements in a 1-year period, a household may also be considered "payment troubled" if it has received a termination notice. This additional criteria should be deleted. A customer should not automatically be considered payment troubled simply because that customer received a termination notice. Not all customers that receive a termination notice are payment troubled. In fact, some customers may wait for a termination notice before making a payment although they may not actually be payment troubled. Furthermore, for Commission reporting purposes and needs assessment preparation, this definitional change will require programming changes to record those customers who have received a termination notice. A sufficient amount of time will be necessary to implement these programming changes.

§54.74

The FirstEnergy Companies have several areas of concern regarding Section 54.74. First, the proposed rulemaking only provides for the filing of a universal service and energy conservation plan in the form of a tariff filing every three years. While filings every three years have made sense in the past, the FirstEnergy Companies would recommend that these

regulations include a provision that would allow an EDC to submit a filing more frequently when necessary. There may exist a potential need to update a universal service plan on a more frequent basis so that beneficial design changes and changing cost levels based on changing needs can be implemented sooner rather than having to wait for three years to do so. This is especially true for companies who are recovering the costs of implementing these programs via a surcharge pursuant to Section 1307 of the Public Utility Code.

Second, the FirstEnergy Companies recommend that a provision should be added to Section 54.75(a) specifying a reasonable time limit for the Commission to act on a company's proposed universal service and energy conservation plan, such as 180 days after its tariff filing is submitted. Having a prescribed time limit for the Commission to act on a company's plan would provide time certainty to a historically uncertain process, help companies regularly plan for and implement universal service programs and alleviate any need for the variation of the dates when a triennial filing is to be submitted.

Third, Section 54.74(b) provides a listing of the contents that must be included in the tariff when a universal service and energy conservation plan is submitted in the form of a tariff filing. Including this voluminous information will add numerous unnecessary pages to a company's tariff. This would make it more difficult when reviewing the tariff and more costly when updating it with revisions or modifications, especially CAP program changes. To put this in perspective, the size of the current universal service and energy conservation plans of each of the FirstEnergy Companies are over twenty pages.

The FirstEnergy Companies recommend that the tariff simply include a company's cost recovery provisions and rider details. Providing the universal service and energy conservation plan as part of the tariff *filing* is not problematic and makes sense to do so; however, it is unnecessary and burdensome to include the actual plan as part of the tariff itself. Including the plan with the filing but not specifically within the tariff itself is consistent with the treatment of other regulatory mechanisms and programs that has been adopted and in place for many years.

Fourth, the FirstEnergy Companies recommend deleting proposed Section 54.74(a)(4) that requires an EDC to consult the Bureau of Consumer Services ("BCS") for advice regarding the design and implementation of its universal service and energy conservation plan at least 30 days prior to submitting its plan for Commission approval. This requirement is unnecessary and inconsistent with the Commission's process regarding similar required submissions.

Historically, the FirstEnergy Companies have welcomed and taken advantage of the opportunity to participate in an informal dialogue with BCS to obtain input and feedback prior to submitting a universal service plan for the Commission's review and approval. This type of informal review prior to submitting such a filing has proven to be beneficial, and the Companies anticipate continuing such a practice. However, the opportunity to participate in such an informal review should be left to the discretion of the distribution company and not be required via regulation.

Pursuant to the Commission's Final Investigatory Order⁶ and its subsequent Proposed Rulemaking Order,⁷ included in this proposed rulemaking is the establishment of a triennial review process that takes the form of a tariff filing and addresses CAP program funding, design criteria and cost recovery on a case-by-case basis. Such a process will allow any interested party, including Commission staff, to formally participate in the proceeding and offer its views on the submitted filing for the Commission's consideration. Requiring a distribution company to consult with Commission staff, in this case the BCS, for advice 30 days prior to filing its universal service and energy conservation plan is unnecessary and inconsistent with the Commission's processes regarding other similar filings affecting various areas of Commission staff.

In the alternative, the Companies recommend that Section 54.74(a)(4) be amended to provide that a distribution company "may," at its discretion, consult with the BCS prior to submitting its tariff filing for the triennial review process for Commission review and approval.

Finally, regarding the projected needs assessment that is proposed to be included in the tariff filing pursuant to Section 54.74(b), the FirstEnergy Companies have a concern about the requirement at Section 54.74(b)(1)(iii)(D) to include an estimate of "payment troubled, low income customers." As discussed earlier, the proposed definition of "[p]ayment troubled" in Section 54.72 is "[a] household that has failed to maintain one or more payment arrangements in

⁶ *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, Final Investigatory Order entered December 18, 2006.

⁷ *Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirement*, 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, Proposed Rulemaking Order entered September 4, 2007.

a 1-year period or has received a termination notice.” Generally, a customer either is or is not low income *and* payment troubled. While it is possible to estimate the number of low income customers, it is virtually impossible to estimate which and how many customers will become payment troubled. Projecting how many households will fail to maintain one or more payment agreements or receive a termination notice is pure speculation. For this reason, proposed Section 54.74(b)(1)(iii)(D) should be deleted.

§76.2

The definition of “CAP – Customer Assistance Program” in this section should likewise be “[t]he term as defined in 66 Pa. C.S. §1403 (relating to definitions),” as discussed earlier in reference to Section 54.72. While the definition proposed in this section is somewhat similar to the definition contained in Chapter 14, using the definition already provided for in the Public Utility Code would be simpler and remove any possibility of confusion or inconsistency.

§76.3

As previously discussed under Section 54.74, the FirstEnergy Companies believe these regulations should provide an EDC the opportunity to submit a filing more frequently than every three years when necessary. A need may exist to update or modify a universal service plan on a more frequent basis so that beneficial design changes and changing cost levels based on changing needs can be implemented sooner rather than having to wait for three years to do so. Section 76.3(b) could be amended to address this concern by simply removing the word “temporary” near the beginning and end of this section. Such a revision would allow for an EDC

to update or modify its universal service and energy conservation plan more frequently than every three years if necessary.

§76.5

This section provides for a customer's failure to comply with certain rules listed at Section 76.5(a) to result in dismissal from CAP participation. The FirstEnergy Companies agree that failure of a CAP customer to verify or certify eligibility and report changes in income and household size should ultimately result in dismissal from the program. However, the FirstEnergy Companies do not support the proposal to dismiss a participant from the CAP program if they fail to apply for LIHEAP or accept free budget counseling or usage reduction services offered by the distribution company.

The FirstEnergy Companies believe that taking corrective action within CAP, such as suspending CAP benefits rather than dismissing the customer from the program is the more effective and efficient way to handle failure to apply for LIHEAP or refusal to accept free budget counseling or usage reduction services. Taking corrective action within CAP avoids the administrative costs of dismissing and reinstating, prevents any time delays and ultimately achieves the same end result while saving money for the ratepayers who pay for yet do not participate in CAP. The suspension of benefits instead of dismissal concept is also part of the recently approved Met-Ed and Penelec Updated Universal Service Plan.⁸ Such an automatic dismissal provision in these proposed regulations would be inconsistent with recent Commission decisions.

⁸ *FirstEnergy (Metropolitan Edison Company and Pennsylvania Electric Company) Universal Service and Energy Conservation Plan 2006-2008 Submitted in Compliance with 52 Pa. Code §54.74, Docket No. M-00072022, Order entered August 31, 2007.*

Additionally, rather than dismissing from CAP and then possibly terminating a customer for failure to make payments as proposed at Section 54.74(b), the FirstEnergy Companies recommend performing credit and collection activities up to and including terminating the customer's service while still enrolled in the CAP program. For the same reasons set forth above, avoiding the steps involved to dismiss and subsequently reinstate a CAP customer will avoid administrative inefficiencies and additional costs to the non-CAP customer base while achieving the same desired result.

§76.6


This proposed section directs that restoration of service shall be governed by 66 Pa. C.S. § 1407 and applicable Commission regulations and orders when a CAP customer's service has been terminated for non-payment. This section is unnecessary and should be deleted. Chapter 14 of the Public Utility Code already specifically addresses the requirements for the reconnection of a customer's service when it has been terminated for non-payment. There is no additional need or benefit to include such a provision in the Commission's regulations here. Therefore, this proposed section is unnecessary and should be deleted.

III. CONCLUSION

The FirstEnergy Companies appreciate the opportunity to provide comments on the Commission's proposed rulemaking relating to universal service and energy conservation reporting requirements and customer assistance programs.

Respectfully submitted,

Dated: April 18, 2008

A handwritten signature in cursive script that reads "Linda R. Evers". The signature is written in black ink and is positioned above a horizontal line.

Linda R. Evers, Esquire

Attorney No. 81428

Attorney for:

Metropolitan Edison Company,

Pennsylvania Electric Company and

Pennsylvania Power Company

2800 Pottsville Pike

P.O. Box 16001

Reading, PA 19612-6001

(610) 921-6658

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proposed Rulemaking Relating to	:	
Universal Service and Energy	:	
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52 Pa. Code §§ 54.71 – 54.78 (electric); §§	:	
62.1 – 62.8 (Natural Gas) and Customer	:	
Assistance Programs, §§ 76.1 – 76.6	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by Overnight United Parcel Service, as follows:

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

Service by electronic mail, as follows:

Patricia Krise Burket
Assistant Counsel
pburket@state.pa.us

Michael Smith
Bureau of Consumer Services
michasmit@state.pa.us

Cyndi Page
Office of Communications
cypage@state.pa.us

Dated: April 18, 2008



Linda R. Evers, Esquire
Attorney No. 81428
Attorney for:
Metropolitan Edison Company,
Pennsylvania Electric Company and
Pennsylvania Power Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
(610) 921-6658