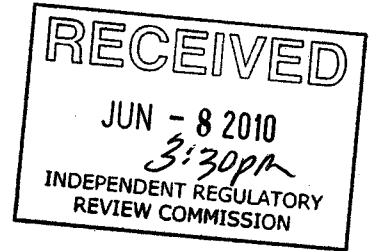


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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE



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I. INTRODUCTION

The Office of Consumer Advocate (OCA) appreciates this opportunity to provide further comments to the Pennsylvania Public Utility Commission (Commission) regarding electric distribution company (EDC) and natural gas distribution company (NGDC) universal service and energy conservation plans. In particular, the Commission has sought additional comments on the Customer Assistance Programs (CAPs) operated by Pennsylvania's EDCs and NGDCs pursuant to the Commission's regulations and various sections of the Public Utility Code. See, e.g., 66 Pa.C.S. §§2802(10), 2802(17), 2804(8), 2804 (9), 2203(7), 2203(8) and 52 Pa. Code §69.265. The Commission reopened the comment period to invite additional comments and suggestions on specific topics relating to the cost and funding for CAPs, as well as the affordability of utility bills.

Customer Assistance Programs in Pennsylvania date back to the 1980s when the first CAP pilot programs were established, based on the work of the Bureau of Consumer Services, to find better ways to address payment troubled customers rather than the endless and costly collection/termination cycle that had been traditionally pursued. The concept of these early pilots was that if customers were asked to pay the amount of the bill that they could afford, the customers would pay that amount, develop more regular payment patterns, and be able to get themselves out of the cycle of payment problems. At the same time, the utility would be able to reduce its operating expenses by lowering its uncollectible expense if the customer paid something rather than nothing, lowering credit and collection costs, and lowering termination costs.

The OCA has long supported the development of CAPs in Pennsylvania as a cost-effective and reasonable means to address payment issues of low income customers. Along with the Commission's Bureau of Consumer Services, the OCA and its expert witnesses, Roger Colton and Nancy Brockway, were strong advocates of initial pilot programs and have been instrumental in efforts to improve and expand on the CAP programs over the years. The Commission adopted a CAP Policy Statement in 1992 that moved from pilot programs to more fully developed programs. The CAP Policy Statement provided the guidelines for major natural gas and electric companies to implement a Customer Assistance Program. In 1996, the provision of universal service through the use of Customer Assistance Programs was codified in the Public Utility Code for electric utilities in Chapter 28 when restructuring of the electric industry was introduced. 66 Pa.C.S. §§ 2802(10), 2802(17), 2804(9). Similarly, when Chapter 22 was enacted expanding retail choice for natural gas customers, universal service through the use of Customer Assistance Programs was included by the General Assembly as a requirement for natural gas companies. 66 Pa.C.S. §§ 2203(7)-(8).

The OCA continues to strongly support the Customer Assistance Programs as the best means to address payment problems for low income customers. Through the CAP, not only can costly collection activities and uncollectible expense be avoided, but the sometimes tragic results of the termination of utility service can be avoided if low income customers are able to afford to pay their utility bill. It must always be recognized, though, that the costs of these programs are being paid by other customers, nearly all of whom are residential customers. The residential customers who pay the costs of these programs are often themselves below, or just above, the 150% of the federal poverty level and might not receive either CAP assistance or

LIHEAP benefits. In 2008, the CAP program costs supported by these other mostly residential customers of the EDCs and NGDCs exceeded \$360 million.

As the CAPs continue to grow and our economy continues to struggle, the Commission has raised vital topics regarding the costs and funding levels for CAPs. In particular, the Commission has raised a critical question as to the impact of the Department of Public Welfare's proposed policy change regarding the use of LIHEAP funds on the CAP design. The OCA addresses this topic and the other Commission topics in the section below.

II. RESPONSE TO COMMISSION TOPICS

- A. *The impact of the Department of Public Welfare's proposed policy change regarding the use of Low-Income Home Energy Assistance Program (LIHEAP) funds on a distribution company's Customer Assistance Program (CAP) design.*

The 2010 Final State Plan for LIHEAP contained six proposed policy changes to the LIHEAP program. The most critical of the policy changes identified in the Final State Plan was stated as follows:

1. Public Utilities that operate customer assistance programs (CAPs) must apply the LIHEAP cash component benefits only to the customer's monthly "Asked to Pay" amount. Any remaining funds must be kept in the customer's account as a credit to pay for future "Asked to Pay" amounts. No LIHEAP funds may be applied to CAP customer's pre-program arrearages or actual usage amounts.

DPW Final State Plan at viii-xi.¹

In the OCA's view, this proposed policy change will have a major negative impact on customers of Pennsylvania's regulated utilities and the CAPs that have been successfully operated by the utilities in Pennsylvania for the last two decades. The proposal to limit the application of the LIHEAP cash grant to the "Asked to Pay" amount of the CAP customer's bill changes one of the key design elements contained in the CAP Policy Statement and one of the founding principles of the CAPs.

As the Commission has long recognized, a well-designed CAP can provide a more cost-effective approach to address a customer's inability to pay than traditional collection methods. CAPs provide benefits to the utilities as well as to the communities they serve. The programs can provide benefits such as reducing uncollectible expense and collection costs while maintaining essential life-sustaining utility service for customers who cannot pay their full monthly bill. CAPs serve a vital role in sustaining the health and welfare of not only the participants in the CAP, but also the very communities in which we all live and do business.

¹ See, <http://www.dpw.state.pa.us/Resources/Documents/Pdf/AnnualReports/LIHEAPStatePlan2010.pdf>

Pennsylvania has been able to achieve these many benefits through the CAP programs while at the same time controlling the costs that must be borne by other customers so that utility service can be more affordable for all customers. As energy prices increased dramatically in past years, the challenge of providing affordable utility service for all customers has become daunting. Most recently, a weakened economy has resulted in even more customers in need of the assistance provided by CAPs and a growing enrollment in the CAPs. As enrollment grows, the cost to other customers that support the CAPs in their rates has grown significantly. The Commission's most recent Universal Service Report shows that Pennsylvania's ratepayers are paying approximately \$189 million annually to support the electric company CAPs and \$174 million annually for natural gas company CAPs.² One way in which the cost of the CAP programs to non-participating customers has been controlled is by crediting the LIHEAP grant against the CAP customer's "shortfall" for those customers who receive a LIHEAP grant.

The OCA submits that in order for CAP programs to be successful, it is necessary to ensure that the burden on non-CAP customers does not become too great. The costs of the CAP are borne by all non-participating residential customers.³ Non-participating customers include many low income customers, including non-CAP customers with incomes below 150% of the federal poverty level as well as customers with incomes just above 150% of federal poverty. CAPs reach only a modest percentage of the total number of low income customers in each company's service territory. As the costs of the CAPs increase, so too does the burden borne by other customers. This risks making utility service unaffordable for more and more non-CAP customers.

² See http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2008.pdf.

³ For the Philadelphia Gas Works, all firm service customers contribute to the cost of the CAP.

Commissioner Powelson has recently expressed concern regarding increases in universal service program costs. In a series of cases involving the review of the Universal Service surcharge rates of various utilities, Commissioner Powelson discussed these concerns. See, e.g., Metropolitan Edison Company Universal Service Charge Rate Effective January 1, 2010, Docket No. M-2009-2144764, Statement of Commissioner Powelson at Public Meeting of December 17, 2009; Pennsylvania Electric Company Universal Service Charge Rate Effective January 1, 2010, Docket No. M-2009-2144792, Statement of Commissioner Powelson at Public Meeting of December 17, 2009; Pennsylvania Power Company Universal Service Charge Rate Effective January 1, 2010, Docket No. M-2009-2144793, Statement of Commissioner Powelson at Public Meeting of December 17, 2009 and PPL Electric Utilities Universal Service Rider Rate Effective January 1, 2010, Docket No. M-2009-2145179, Statement of Commissioner Powelson at Public Meeting of December 17, 2009. For example, in the most recent Met-Ed proceeding, Commissioner Powelson stated the importance of his concern as follows:

I highlight these staggering numbers not to dispute their mathematical accuracy nor to question the merits of the Universal Service Fund; to be clear, it is being decided here today that the numbers submitted by Met-Ed are accurate and that these funds are being put to good use for customers who are in need of financial assistance. Instead, I point out these figures because I feel it is critical that people be made aware of how much these programs are costing customers each year, in most cases customers who are not reaping the benefits of this fund.

Metropolitan Edison Company Universal Service Charge Rate Effective January 1, 2010, Docket No. M-2009-2144764, Statement of Commissioner Powelson at Public Meeting of December 17, 2009. Commissioner Powelson also expressed his concern regarding the impact of the Department of Public Welfare's proposed policy change on the universal service costs that have been experienced. In this regard, Commissioner Powelson stated:

This increase in universal service costs will be further exacerbated by the Department of Public Welfare's proposed changes in the way LIHEAP funding can be applied. As a result, the Commission will soon be faced with very unpalatable decisions regarding the funding of universal service plans; either the burdens on non-CAP customers will continue to increase, or the assistance provided to CAP customers will need to decrease.

PECO Energy Company's Universal Service and Energy Conservation Plan for 2010-2012,

Docket No. M-2009-2094394, Statement of Commissioner Powelson at Public Meeting of May 6, 2010.

It is the OCA's view that for EDCs and NGDCs that are operating CAP programs based on a Percentage of Income Payment Plan (PIPP), or otherwise providing an affordable bill to CAP customers, the DPW's proposed policy change requiring the LIHEAP cash grant to be applied to the "Asked to Pay" amount to further reduce that customer's bill would disrupt one of the essential features of the CAP and the Commission's CAP Policy Statement that have allowed these programs to flourish. The Commission's CAP Policy Statement strikes a balance between providing an affordable bill to low income, payment troubled customers and ensuring that rates to other non-CAP residential customers remain just and reasonable. Changing this aspect of the Policy Statement, without recognizing the impacts on the inter-related parts of the Policy Statement or the program design compromises the framework that has allowed for the full development of such programs in Pennsylvania.

It is important to recognize that no other state that operates a PIPP-type low income program applies the LIHEAP cash grant in the manner required by the new DPW policy. As demonstrated by the OCA's expert consultant, Roger Colton, who has designed and helped implement utility low income programs across the country, every other state has used the model previously used in Pennsylvania in which the LIHEAP funds are applied against the bill shortfall

in order to reduce the costs of the program to other customers.⁴ In a world of limited resources, it makes sense, of course, to use LIHEAP funding to help bring the CAP customer's bill down to the affordable level, rather than to reduce the affordable "asked to pay" level down even further for those customers that are fortunate enough to receive both CAP and LIHEAP benefits.

The OCA submits that if the DPW proposed policy change moves forward, it is imperative that the CAPs in Pennsylvania that are currently designed to apply the LIHEAP grant to the CAP shortfall portion of the customer's bill in order to provide an affordable "asked to pay" amount to the customer must be redesigned to account for these changes.⁵ The Commission has already suspended sections 69.265(9)(ii) and (iii) of its CAP Policy Statement related to the application of the LIHEAP grant to the CAP credit (also called the CAP shortfall). Customer Assistance Program Policy Statement: Suspension and Revision, Docket M-00920345 (Order entered April 9, 2010). This suspension of Sections 69.265(9)(ii) and (iii) of the CAP Policy Statement will increase the cost of CAP programs borne by other residential customers unless a corresponding redesign of the CAPs is implemented. The OCA submits that revised CAPs should be implemented before the winter heating season of 2010-2011 to avoid improperly burdening other residential, non-CAP customers.

There are a number of ways to redesign the CAPs to at least partially restore the balance between providing an affordable payment to low income customers and the burden on other residential customer of bearing the costs of the program. The OCA, along with its expert

⁴ See, Prepare Now En Banc Hearing on Universal Service Programs Design and Cost, Docket No. M-2009-2123882, OCA Comments of October 9, 2009, Attached White Paper on *The Integration of Federal LIHEAP Benefits with Ratepayer-Funded Percentage of Income Payment Plans (PIPPs): Legal and Policy Questions Involving the Distribution of Benefit Dollars* prepared by Roger D. Colton.

⁵ The OCA submits that other program designs must also be re-examined, particularly if such designs seek to provide a payment amount to the customer that reflects the affordable percentages specified in the Commission's Policy Statement. Even a CAP Rate program that provides enough of a discount to the regular rate for the customer's bill to reach an affordability target before the receipt of the LIHEAP grant could present an issue if the LIHEAP grant is then used to further reduce the amount the customer is asked to pay.

witness, Roger Colton, has been examining some possible design modifications to the CAP programs that would be necessary if the DPW policy of requiring that the LIHEAP grant be applied to the affordable "asked to pay" amount is implemented.⁶ In considering design modifications, the OCA would support modifications that present the least disruption to the existing CAP structure, present the least harm to non-LIHEAP customers, allow low income customers to continue to participate in both an electric and natural gas CAP programs, and be accomplished in a revenue neutral manner. After examining several possible approaches, the OCA recommends that the Commission's CAP Policy Statement be amended to support a "CAP-Plus" program. A "CAP-Plus" approach, in addition to using the traditional percentage of income to determine the "asked to pay" amount, would include a charge within the "asked to pay" amount for all CAP participants that is designed to generate a revenue stream equal to the total value of the LIHEAP dollars received by the utility. In other words, the "asked to pay" amount would reflect the fact that the LIHEAP grant will be applied directly to that amount when seeking to achieve an affordable payment level for the CAP customer.

To implement the CAP-Plus program design recommended by the OCA, an additional amount, the "plus" amount, must be included in every CAP participant's "asked to pay" amount, whether or not that customer receives a LIHEAP grant. The "plus" amount is calculated by first determining the total amount of LIHEAP dollars that the utility receives (or is expected to receive) for participants in its CAP. The amount of LIHEAP dollars is then spread over all CAP participants. That resulting figure is divided by 12 to arrive at the monthly "plus"

⁶ Roger Colton is a principal in the firm of Fisher Sheehan & Colton, Public Finance and General Economics. Mr. Colton provides technical assistance to a variety of public utilities, state agencies and consumer organizations in the areas of regulatory economics, poverty law and economics, public benefits, fair housing, community development, energy efficiency, and utility law and economics. Mr. Colton's work focuses on low-income issues, and he has testified and published extensively. Mr. Colton has an M.A. in Economics from the McGregor School, Antioch University and a J.D. (Order of the Coif) from the University of Florida. Mr. Colton has testified before the Pennsylvania Public Utility Commission as an expert witness on many occasions.

for the "asked to pay" amount. Using a simple mathematical example, if a utility receives \$5 million annually in LIHEAP cash grants for its CAP participants, and has 25,000 CAP participants, the \$5 million in LIHEAP dollars would be divided by 25,000 participants, resulting in a "plus" amount of \$200 per CAP participant. The \$200 would then be divided by 12 resulting in an addition of \$16.67 to the monthly "asked to pay" amount of every CAP customer. If a CAP customer applies for and receives a LIHEAP cash grant, the LIHEAP cash grant would be applied to the "asked to pay" amount (preferably over a 12 month period) which would offset the "plus" amount that was included. Since the "plus" amount reflects an average of the LIHEAP dollars received spread over all CAP customers, whether they receive LIHEAP or not, the LIHEAP cash grant should, on average, either offset or more than offset the "plus" amount for LIHEAP recipients.

It is important to note that under the OCA's recommended CAP-plus approach, the additional "plus" charge included in the asked to pay amount is not equal to the average LIHEAP cash grant amount awarded by DPW. In most of the NGDC programs, only around 50% of the CAP customers receive a LIHEAP grant. Thus, the "plus" amount would only equal about one half of the average LIHEAP grant. For EDCs, the percentage of customers receiving a LIHEAP cash grant is even less since electricity is not typically the primary heat source. Using the average state-wide LIHEAP cash grant level or the average cash grant level of the utility's LIHEAP recipients as the "plus" amount would result in an over-collection of the lost LIHEAP dollars from the DPW change in policy. As noted above, the OCA would seek revenue neutrality as a goal of any design modifications in response to the DPW policy change. To achieve revenue neutrality, the additional amount that is to be included in the "asked to pay" portion of the CAP participant's bill should be based on the total LIHEAP *dollars* received by

the utility spread over *all* CAP participants. In this way, the additional amount included in the asked to pay portion of the customer's bill will more closely reflect the actual dollars of LIHEAP received by the utility that had previously been applied to the CAP shortfall when determining the affordable payment level for the customer.⁷

Customers who apply for and receive a LIHEAP grant will be better off under this methodology than under the prior CAP Policy Statement. Those customers who do not apply for and receive a LIHEAP grant, however, will pay higher bills than they do under the Commission's prior policy.⁸ The total cost of the CAP to non-participating customers will remain the same as they are under the prior policy. This approach will maintain the balance that was originally developed in the design of these programs through the CAP Policy Statement. This balance allowed Pennsylvania's CAP programs to grow into some of the best programs in the Nation with some of the broadest participation. Retaining this balance is particularly critical in these difficult economic times, as non-CAP residential customers, many of whom are just above the 150% of the federal poverty level that would qualify them for the CAP or LIHEAP, would otherwise be asked to pay the increased costs of these programs. The alternative under the DPW policy is to simply raise the cost of CAP programs even further for non-participating customers.

The OCA submits that the Commission should require all EDCs and NGDCs to make a filing to address the impact of the change in DPW policy on their CAP program, the

⁷ The amount of LIHEAP dollars received each year will vary for many different reasons. There are several ways to address this issue. One method is for a calculation to be done each year based on the prior year's LIHEAP dollars to keep the additional charges as reflective as possible of the most recent receipt of LIHEAP. Another method involves a projection and true up of LIHEAP dollars for the then current program year.

⁸ The OCA would also note that as part of the CAP programs, customers are encouraged to apply for LIHEAP. The CAP program staff provide assistance to customers in the application process. It will be important for CAP programs staff to continue to improve their efforts to assist customers in obtaining LIHEAP cash grants. Under the CAP-Plus model proposed by the OCA, individual customers will certainly benefit directly if they apply for and receive a LIHEAP grant.

affordability of the asked to pay portion of their customer's bills, and the costs borne by other customers.⁹ The OCA has raised this issue in several proceedings in an attempt to address the impact on ratepayers before the policy change is implemented for the 2010-2011 LIHEAP season. Time is running short, however, and a comprehensive solution is needed before the LIHEAP season begins to avoid additional costs being imposed on non-CAP residential customers if DPW persists in enforcing this policy change.¹⁰

In addition, the OCA submits that the CAP Policy Statement will need to be amended if the DPW policy change is implemented. In addition to Sections 69.265(9)(ii) and (iii) related to the application of the LIHEAP grant to the CAP credits which the Commission has now waived, Sections 69.265(2)(payment plan proposal) and 69.265(3)(i)(Control features, Minimum payment terms) will need to be amended. In particular, Section 69.265(2) that sets forth the guidelines for the various payment plans will need to be amended to reflect the CAP-Plus feature when deriving the affordable payment percentages. Section 69.265(3)(i) regarding the minimum payment terms will also need to be amended to reflect the CAP-Plus amount in the minimum payment.

⁹ While the PIPP program design is the most directly affected by the change in the LIHEAP policy since the program is designed to have the customer make only the affordable payment, other program designs, such as rate discount programs and percentage of bill programs, may also have to be revisited to properly address the DPW Policy change. This is particularly the case if these programs are designed to provide some or all customers with an affordable payment in accordance with the Commission's affordability guidelines as part of the rate discount or percentage of bill payment.

¹⁰ Again, the OCA would note that no other state has interpreted the federal LIHEAP statute as requiring that LIHEAP cash grants be used to reduce the "asked to pay" amount of a Percentage of Income Payment Plan program.

- B. *Factors that may impact CAP costs and affordability of bills, such as increased CAP enrollment levels, the recent economic decline, the expiration of electric generation rate caps, the impact on residential rates from the initiation of energy efficiency and conservation programs under Act 129 of 2008, and the potential impact on residential bills from smart metering initiatives.*

As the Commission correctly notes in this topic area, there are many factors that will have an impact on customer bills over the next few years and on the ability of customers to pay those bills. These factors will have an impact not just for customers at 150% of the Federal Poverty Level and below, but for many other residential customers whose incomes are above this threshold level used to define a low income customer for purposes of the Commission's CAP Policy Statement. A recent study by PathWays PA entitled *The Self-Sufficiency Standard for Pennsylvania 2010-2011* found that for a family of four in Philadelphia, an income that is 270% of the federal poverty level is needed to adequately meet their basic needs.¹¹ As our economy struggles to recover in Pennsylvania and the Nation, more and more Pennsylvania residents also struggle with limited incomes to pay for these necessities. A recent compilation of census data performed for the Report of the Act 129 Low Income Working Group¹² showed that between 2000 and 2008, the percentage of low income customers with incomes below 150% of the federal poverty level in Pennsylvania grew from 19.33% to 25.10% (See Appendix A to the Low Income Working Group Report).

While the decline in the economy has placed tremendous burdens on many Pennsylvania residents, the economic decline fortunately has been accompanied by a moderation in energy prices from the previous high prices seen in the Summer of 2008. For example, in the

¹¹ See, *The Self-Sufficiency Standard for Pennsylvania 2010-2011*, Dianna M. Pearce, PhD, Prepared for PathWays PA (May 2010), p.4. The Report can be found at: http://pathwayspa.org/10-11_SS_Standard.pdf.

¹² The March 19, 2010 Low Income Working Group Report can be found at: <http://www.puc.state.pa.us/pcdocs/1071851.pdf>. The Commission officially released the Report via Secretarial Letter on April 27, 2010 (<http://www.puc.state.pa.us/pcdocs/1076203.docx>).

Summer of 2008, this Commission estimated that if the electric rate caps had expired in July 2008, residential electric rates would have increased 73.1% on average across the Commonwealth. The Commission's current estimate performed on March 31, 2010, based on recent wholesale electric prices, shows an 8.5% increase on average for residential customers across the Commonwealth.¹³ Nevertheless, some utilities are still expected to see rate increases much higher than this average.

Even with this moderation in energy prices, residential customers face overall higher energy costs than several years ago. These higher energy prices have put upward pressure on residential customer bills in several respects. The higher energy prices drive up the individual customer's bill for their own usage and it increases the cost of the CAP shortfall (the difference between a CAP customer's total bill and their payment) that other residential customers must pay. Additionally, the higher energy prices result in more customers having difficulty paying their bills, leading to higher enrollment in the CAP which again increases the cost of the CAP programs.

For electric utilities and their customers, additional requirements were implemented by Act 129 that could have an impact on customer bills. The two key initiatives were the implementation of Energy Efficiency and Conservation Plans to achieve specified usage and demand reduction targets by 2013 and the requirement for the deployment of smart meters and the accompanying infrastructure.

Under the provisions of Act 129 calling for the implementation of Energy Efficiency and Conservation Plans, each EDC has designed a Plan to meet the specified energy usage and peak demand reduction requirements of the Act. The spending on these plans is

¹³ The Commission's price estimates for March 31, 2010 can be found at: <http://www.puc.state.pa.us/electric/pdf/PriceEstimates/Electric Price Estimates041610.pdf>

capped at 2% of the EDC's annual revenues for each year of the four year plan and each plan must be shown to be cost-effective on a total resource cost test basis. 66 Pa.C.S. §§2806.1(b)(1)(I) and (g). To be cost effective under the total resource cost test, each Plan must, over the lifetime of the proposed measures (not to exceed 15 years), provide more benefits than the total cost of the plan to achieve these benefits. The ultimate effect of the EE&C Plans in the long run, therefore, is that the Plans should result in positive benefits to all customers by lowering the overall costs of electric supply. Customers who participate in the EE&C programs should be able to realize even greater benefits by reducing their own usage and thus, their own monthly bills. Of particular importance, Act 129 sought to ensure that there were programs and measures specifically targeted to low income customers so that those customers, who are also being asked to bear a share of the implementation costs of the EE&C Plan, have sufficient opportunity to participate in the programs and realize reductions in their own bills.

While over time, the goal of the EE&C Plans is to lower overall costs and lower individual customer bills, there is likely to be a short term increase in rates as the programs are being rolled out over the next four years. In the EE&C proceedings, the OCA presented an analysis of the proposed charges for residential customers and the impact on residential rates. The following chart summarizes the EE&C Plan proposals as filed and the approximate percentage increase expected for residential rates from the imposition of the surcharge:

Estimated Residential EE&C Surcharges		
	\$ Per Month	% Increase
Allegheny	\$2.14	2.3%
Duquesne	\$1.14	1.4%
FirstEnergy		
Met-Ed	\$3.21	3.1%
Penelec	\$2.76	3.4%
Penn Power	\$1.95	2.4%
PECO	\$2.62	2.5%
PPL	\$1.64	2.3%

These surcharges can impact both the affordability of monthly bills and the cost of the CAP. As to affordability, any additional charges can place pressure on a customer's ability to afford service, particularly customers with fixed or limited incomes. As the monthly bill increases, from a single charge or the accumulation of different charges, the bill becomes more difficult to pay. For most CAP programs, and particularly the Percentage of Income Payment Program (PIPP), these additional surcharges will increase the cost of CAP that other customers must pay. The CAP customer's "asked to pay" amount is generally fixed in most programs and does not increase when utility rates increase. While the "asked to pay" amount is not affected by the increase from the surcharge, the CAP shortfall—the amount that other customers must pay—will increase as a result of these surcharges.

It is critical to note however, that to the extent adequate energy efficiency programs are directed to low income customers under the Act 129 plans, including those customers on CAP, reduced usage that results from the efficiency measures will *reduce* the overall cost of the CAP. As energy usage in the home is reduced, the total bill of the customer is reduced. Since in most CAPs the "asked to pay" amount remains fixed, the reduced bill results in a lower CAP shortfall that other customers must pay. Lower usage may also enable some customers to pay their monthly bill without CAP assistance. The OCA submits that it will be

critical that each EDC aggressively target and deploy energy efficiency and demand response programs to its CAP customers and other low income customers to ensure that both participating and non-participating customers benefit from these programs.

The potential impact of the costs of the smart meter initiative, however, are less clear. For most utilities, the full scale implementation of the smart meter initiative is still a few years out and the precise impacts of any investments and resulting surcharges have not been fully estimated. In other states, however, where pilot smart meter programs are being implemented, surcharges for residential customers of between \$2.50 per month and \$3.50 per month are not uncommon. In Pennsylvania, while many of the surcharge amounts have not yet been estimated, for PECO Energy, the OCA estimated a charge of \$2.67 per month for a residential customer based on a deployment of 600,000 meters by the end of the 30-month grace period in late 2012 and the receipt of a \$200 million American Recovery and Reinvestment Act (ARRA) grant. In contrast, Allegheny Power Company initially proposed a highly accelerated smart meter deployment plan that will result in a monthly charge to residential customers by 2012 of over \$15.00.¹⁴

The benefits of smart meter deployment for residential customers are difficult to estimate at this time and are less clear than the benefits expected from the Act 129 Energy Efficiency and Conservation Plans. Unlike the Energy Efficiency and Conservation Plans, the smart meter plans are not subject to an explicit, statutorily prescribed cost/benefit test under Act 129. For Pennsylvania EDCs that have already changed out their meters to allow for automatic meter reading technology, some of the short term benefits, such as reduction in meter reading

¹⁴ In the Allegheny Power proceeding, the OCA's expert witness estimated that the annual CAP funding would have to increase by over 40% just to address the imposition of the smart meter surcharge. Allegheny has recently filed a Petition to Stay the Exceptions Period in its case in which it suggests that it may modify its smart meter plan due to its pending merger with FirstEnergy so that its plan is more in accord with the much less aggressive smart meter deployment in the FirstEnergy Companies' Plans.

forces or improvements in outage management, have already been achieved. As such, there is no overall reduction in rates from an operational perspective anticipated from smart meter deployment that would offset the increased costs of the deployment. The benefit of potential reductions in energy usage and peak demand resulting from the additional information that customers will be able to receive from their smart meters has also not been fully studied at this juncture.

The OCA submits, however, that under Act 129 and the Commission's Smart Meter Implementation Order, Pennsylvania EDCs have the time to attempt to address these critical issues. Act 129 allows a 15 year period for full smart meter deployment in an EDC's service territory. Deployments that utilize this flexibility can allow for a more gradual increase in rates, more experience to be gained as to how best to use smart meters to benefit customers, and the possibility of lower costs of the technology as further advances are made. Additionally, the Commission has provided each EDC a grace period of 30 months through its Smart Meter Implementation Order. Smart Meter Implementation Order, Docket No. M-2009-2092655, *slip op.* at 7-9 (Order entered June 24, 2009). The OCA has encouraged EDCs to use this grace period to continue to develop cost-effective smart meter deployment plans and benefit from additional research and information being gained from the pilot programs now underway. The OCA also encourages EDCs to work with the interested parties during this time to address the particular needs of low income customers as part of the smart meter deployment.

The OCA anticipates that the next several years will be challenging in trying to achieve rates that are just, reasonable, and affordable for all customers. In the short run, monthly bills of residential customers may increase before full economic recovery is achieved. This will increase the need for, and enrollment in, the Customer Assistance Programs as well as increase

the costs that other customers pay for these programs. As we move forward, the OCA submits that it will be necessary to ensure efficiency and proper cost control in the CAPs, bring all resources to bear for funding of these important programs, and continue to aggressively target energy efficiency to those customers most in need of lower bills.

- C. *Whether cost recovery mechanisms, which have been implemented by some distribution companies, have produced savings from an improved timeliness of collection activities and whether these savings should be considered in evaluating costs claimed for rate recovery.*

The OCA understands this question to be asking whether the automatic adjustment clauses implemented for the recovery of universal service costs by most EDCs and NGDCs have produced savings to the utilities. Automatic adjustment clauses such as those now used for universal service programs result in certain types of benefits to the utility. First, the ability to recover universal service costs on a dollar for dollar basis reduces the risk of the utility. When universal service costs were recovered through base rates, the utility bore the risk of increases in enrollment levels or energy prices that drove up the costs of the program from the expense claim included in the base rates. As these costs increased between rate cases, if there were no offsetting decreases in expenses, the utility's earnings could be reduced or it could accelerate the time when a new base rate case had to be filed. The automatic adjustment clause certainly eliminates that risk and protects shareholder earnings.

The cost recovery mechanism, while timely collecting any increased costs of the universal service programs and providing the benefit described above, is not likely to impact the timeliness of collection activities on the part of the utility as the question suggests. Since the universal service charge becomes part of the total bill charged to customers, it becomes part of the routine collection activities of the utility. In other words, the OCA is not aware of any utility

that treats collection of the universal service charges any differently from any other charge on the bill.

A larger problem with such surcharges, though, is the need to reflect cost *savings* and cost *offsets* that occur when a customer enters the CAP program. Through the surcharge mechanism, the utility is recovering the full cost of the program in the surcharge even though some of the costs related to the program are already embedded in base rates and other costs embedded in base rates will be avoided when a customer enters the program. Calculating these cost savings and cost offsets when a surcharge mechanism is used is necessary in order to avoid an over-recovery of universal service costs.

In general, cost savings represent those utility expenses that have been reduced or avoided in an absolute sense as a result of the universal service program. An example would be reductions in collection and termination costs, or reductions in working capital expense associated with carrying bad debt. As customers enter CAP rather than go through the collection and termination process, the collection and termination costs included in base rates will be saved or reduced. Similarly, as a customer enters CAP rather than accrues additional bad debt, the utility's cost of carrying that additional bad debt is avoided. These cost savings should be reflected in the universal service costs approved for recovery through any surcharge mechanism.

Cost offsets are somewhat different than cost savings. Cost offsets include costs that are already embedded in base rates, a portion of which will now be included in the automatic surcharge recovery mechanism. Such cost offsets could include a portion of labor expense when existing staff positions included in base rates are redirected to universal service issues, the cost of fleet vehicles that may be used for outreach purposes, administrative overhead, and supervisory staff expense. The most significant cost offset that needs to be accounted for when a surcharge

recovery mechanism is used is an offset to avoid the double recovery of uncollectible expense that is embedded in base rates.

Uncollectible expense in base rates represents the amount of the bill that a delinquent customer does not pay. When a customer is in the CAP, however, the amount of the bill that a customer does not pay is called the CAP credit (or CAP shortfall) and is recovered from other customers through the reconcilable surcharge. The level of uncollectible expense established in the base rate case is affected by the number of customers in the CAP since the amount the CAP customer is not able to pay is no longer considered an uncollectible expense for base rate purposes. Rather, it is considered a CAP expense and it is recovered through the reconcilable universal service charge. The problem arises when more customers move into the CAP after the level of uncollectible expense is set in the base rate case. As more customers move into the CAP, more of what was the uncollectible expense amount for those customers that had been reflected in base rates becomes the CAP credit which is recovered through the reconcilable surcharge. This creates the possibility of a double recovery of the uncollectible expense in base rates that must be accounted for in the surcharge mechanism. A similar problem occurs for the arrearage forgiveness component that is included in the surcharge.

The Commission recognized this potential in the 2006 base rate case involving the Philadelphia Gas Works. There, the Commission stated:

We find the ALJs recommendation to be supported by the record as well as Section 1408 of the Code. Accordingly, we find OCA's argument to be convincing. *Double recovery of uncollectible accounts expense is a possibility and can be alleviated by implementing a mechanism for reconciliation.*

Pa. PUC v. Philadelphia Gas Works, Docket No. R-00061931, *slip op.* at 42-43 (Order entered September 28, 2007) (emphasis added).

The OCA submits that it is critically important that cost offsets and cost savings be properly reflected in the universal service surcharge mechanisms used by EDCs and NGDCs. The OCA provided suggested language to reflect its position in its prior comments in this docket regarding proposed Sections 54.74(b)(3), 62.4(b)(3), and 76.4(3). See, OCA Comments of April 17, 2008 at 11-13, 18-19. The OCA again urges the Commission to ensure that all cost savings and cost offsets are properly calculated and applied before cost recovery is permitted.

- D. *Proposed rules in 52 Pa. Code §§54.74 and 62.4 (relating to review of universal service and energy conservation plans, funding and cost recovery), which create a triennial review process that takes the form of a tariff filing and addresses CAP program funding.*

The OCA submits that a formal approval process, such as the triennial tariff filing, is necessary to ensure that all interested parties are given an opportunity to review the programs and be heard on these important programs. As the Commission is aware, the cost of these programs has grown over the years and now represents a significant expenditure for residential customers receiving electric and natural gas service in the Commonwealth. In the OCA's view, these programs have provided significant benefits not only to the participants, but to all customers in ensuring the health and safety of the public. The tragic loss of life and home that can occur when customers are unable to afford basic utility service can be mitigated to a great extent by the existence of these programs. But, as in all programs, full consideration to improvements in the programs, efficient design and deployment, and the best use of the limited resources that can be put to the programs are key elements that should be fully considered by the Commission with the input of the many other parties who both directly and indirectly work with the programs and customers.

In its Comments of April 17, 2008 regarding the Commission's proposed Sections 54.74 and 62.4 setting forth the triennial review process, the OCA supported the Commission's

approach. See, OCA Comments of April 17, 2008 at 2-4. A tariff filing approach would allow for the review of the cost recovery aspects of the case along with the program design elements. Such an approach should lead to more efficient and cost-effective program design as well as the efficient use of resources in the review of the programs and related costs. In addition, a tariff filing approach would allow for a defined process to move the matter to evidentiary hearings if necessary. Such a process would also resolve much of the uncertainty that now surrounds the triennial review process.

The OCA is in general agreement with the triennial review process approach contained in the proposed regulations. As discussed below, the OCA would also recommend that the Commission utilize the Tentative Order procedure when there has been no formal request for hearings of the tariff filing, particularly in the event that the Commission or its staff is making changes to the filed programs.

- E. *Commissioner Kim Pizzigrilli's statement on Dominion Peoples Universal Service and Energy Conservation Plan for 2009-2011, Docket No. M-2009-2044646 (January 15, 2009), which discusses a Commission reporting requirement that directs all distribution companies to fully document the rate effect of program modifications in future universal service plans (USP). Under the requirement, distribution companies would include a table showing annual costs for each program, total cost for all USPs and the monthly cost of the programs on a per residential customer basis.*

The OCA supports the statement of Commissioner Pizzigrilli that utilities document the rate effect of program modifications in their universal service plans. As Commissioner Pizzigrilli noted, the state of the economy and rising energy prices, along with expensive investments in distribution and transmission infrastructure continue to increase customer bills. In these times of increasing energy bills, it will be important to ensure that ratepayer dollars for all programs are reasonable and being used as efficiently as possible. The

table sought by Commissioner Pizzigrilli should provide the Commission with important data to make an informed decision.

- F. *The Commission's USP approval process, specifically, whether the Commission should issue tentative orders to provide an opportunity for comments and reply comments before approving a distribution company's USP, and whether the companies' USP should be served on the statutory advocates.*

As an initial matter, the OCA submits that the Commission should require that the universal service plan be served on the Office of Consumer Advocate and on the other statutory advocates if they so desire service of the USP on their offices. The OCA also recommends that the universal service plans be served on parties such as the Public Utility Law Project (PULP) and Community Legal Services (CLS), who have demonstrated a long-standing interest in a utility's universal service issues, such as through participation in other proceedings of the utility regarding such issues. A broad distribution of the universal service plan will better ensure that parties with interest and expertise in these issues are included in the process.

As discussed in Section II.D, the OCA supports the Commission's proposed triennial review process that calls for the utility to make a tariff filing along with its universal service plan. This proposal provides for a defined process for the review of these plans and the establishment of hearings if necessary. The OCA continues to recommend this process as it allows for the potential for a broad inclusion of parties, possible collaborative processes to resolve disputed issues, and hearings of contested issues if necessary.

In this question, the Commission suggests a possible Tentative Order procedure with comments and reply comments on the universal service plan. It is not clear to the OCA whether this process is intended to replace the triennial tariff filing and review process in the proposed regulations. The OCA submits that the Tentative Order procedure should not replace proposed regulation Sections 54.74 and 62.4 relating to review of universal service and energy

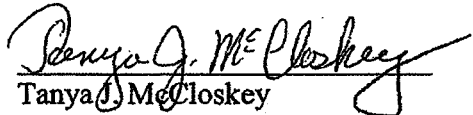
conservation plans, funding and cost recovery. The Tentative Order procedure calls only for the filing of comments and reply comments on the universal service plans. The review of the details plans, however, may require assistance from expert witnesses with knowledge of the design and operation of such programs. The Tentative Order and comment procedure might not allow for the full review and development of recommendations from expert witnesses.

The Tentative Order procedure, however, could be used if the Commission has not received any complaints or requests for hearings in response to the tariff filing made under proposed Sections 54.74 and 62.4 or if the Commission has determined that changes are needed to the filed universal service plan. In these circumstances, the Tentative Order, with comments and reply comments, would assure the Commission that it has been provided the necessary input to make an informed decision.

III. CONCLUSION

The Office of Consumer Advocate appreciates this opportunity to provide further comments on the topics identified by the Commission. The OCA looks forward to continuing to work with all interested stakeholders on the development of effective and efficient Customer Assistance Programs in Pennsylvania.

Respectfully Submitted,



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DATED: June 2, 2010
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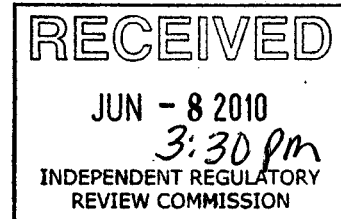
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IRWINA POPOWSKY
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June 2, 2010

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Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
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400 North Street
Harrisburg, PA 17120



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

Dear Secretary Chiavetta:

Enclosed for filing are the Comment of the Office of Consumer Advocate, in the
above-referenced proceeding.

Respectfully Submitted,

Tanya J. McCloskey
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Enclosure

cc: Stephanie Wimer, Assistant Counsel, LAW (electronic only)
Grace McGovern, Consumer Services Policy Analyst, BCS (electronic only)

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