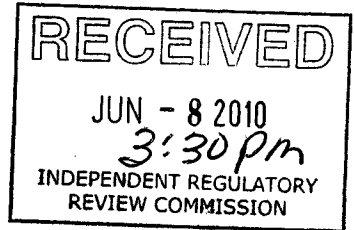


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

2674

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

Docket No. L-00070186



**COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT**

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I. INTRODUCTION

The Pennsylvania Utility Law Project (“PULP”) is a specialized statewide project of the Pennsylvania Legal Aid Network (“PLAN”), providing representation, information, assistance, and advice about residential utility and energy matters affecting low-income consumers. As a component of Regional Housing Legal Services, PULP provides direct services to low income individuals, PLAN staff, and their clients, as well as to community organizations serving the low income. PULP thanks the Commission for the opportunity to submit comments in this proceeding.

Universal Service and Energy Conservation programs, in particular the Customer Assistance Program, are essential aspects of the Commonwealth’s utility related safety net for low income households. Proper design, adequate funding, and efficient and accountable administration of these programs are of paramount importance. Particularly during this period of economic downturn when low income customers suffer disproportionately, it is imperative this safety net is sound. While more specific comments follow, some general principals can be set forth to ensure this safety net remains strong and, where necessary, is further strengthened to meet current economic challenges. PULP respectfully submits that Commission adherence to these basic principals will ensure sound, equitable regulations for CAPs:

- CAP payments must be set at truly affordable levels if they are to be of help low income families.
- The Commission must recognize the passage of Chapter 14 has changed the way CAPs work.
- The best way to mitigate the cost of CAPs is to expand the level of energy conservation education and services to CAP households.

- Universal service plan filings should be made public, with clear notice to all interested parties, and involve key stakeholders, particularly those representing the interests of vulnerable populations.

II. CONTEXT

On April 3, 2010 the Commission issued in the *Pennsylvania Bulletin* a further request for comments in the ongoing *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.

The Commission's request included a set of questions, the primary thrust of which was directed to the cost and funding of CAPs but also to the way CAPs are designed and operated. This is just the most recent step in the Commission's long, admirable, and important effort to ensure the Commonwealth's most fragile and vulnerable low income households can maintain access to life essential utility service. Given our nation's current economic troubles, low income households face even more difficulty making ends meet. While the shortsighted might use the poor economic climate as an excuse to ignore the true need and cut aid to low income families, the Commission prudently chooses this as precisely the right time to ensure our utility related safety net is strong and effective. PULP commends the Commission for focusing due attention on this important problem now when the need is greatest.

To set the stage for the larger conversation, PULP offers some preliminary remarks about how the passage of Chapter 14 introduced important changes relevant to CAP customers. PULP suggests respectfully that these changes require a fuller recognition and consideration by the Commission because they have important ramifications for CAP program design and funding.

The points to be considered are Chapter 14's sections 1405(b), 1405(c), 1405(d), and 1407(c) and how those sections impact considerations of affordability, payment troubled status as a condition for eligibility for CAP enrollment, and payment behavior.¹

A. Chapter 14 Sections 1405(b), 1405(c), 1405(d), and 1407(c)

Collectively, the introduction of Sections 1405 (b), (c), and (d) and 1407(c) dramatically changed the way the Commission must deal with customers having payment difficulty. Pre-Chapter 14, the Commission had wide discretion to establish a variety of payment agreements for a long duration of time, even where the arrearage amounts involved CAP rates, where the payment agreement was a second or subsequent arrangement, or where the service had been terminated and an individual was seeking service restoration. This is no longer the case, as the Commission has determined Section 1405(b) and 1407(c) set firm time limits for payment agreement duration, Section 1405(c) prohibits the Commission from establishing payment agreements associated with CAP rates, and Section 1405(d) prohibits the Commission from establishing more than one payment agreement.

These are extremely important changes in practice coming after CAPs originally were designed and implemented. Its pre-Chapter 14 discretion enabled the Commission to work creatively with individual customers, even CAP customers, to craft unique solutions based on individual factors of the particular customer. In the context in which the Commission had the discretion to "fix" individual cases, broad diversity among the individual company universal service plans was accepted and the companies were provided wide latitude regarding general CAP design issues. For example, if a CAP design resulted in a bill that was not really affordable for a particular family and the family fell behind on CAP payments, the Commission had the

¹ See 66 Pa.C.S. §§ 1405 (b), (c), (d), and 1407(c).

discretion to “fix” the design flaw by implementing an individualized solution. Absent this discretion and ability to craft individual solutions to general CAP design flaws and to individual CAP customer situations, the Commission may have to revisit and rethink its approach to CAP design and to issues like affordability, payment troubled status, and payment behavior.

B. Affordability

The Commission has a strong, admirable history of trying to help low income households by requiring utility companies to provide CAPs with affordable monthly bills. The Commission’s efforts have been successful only partly because, even though CAP bills are intended to be affordable, they are not so under existing guidelines, which can cause a combined CAP bill for electric and natural gas to be as high as 17% of a household’s income.² This, despite the fact that the average Pennsylvania household has an energy burden of only 4.8%.³ There is a wide gap – an affordability gap – between the CAP bill and what really is affordable for a low income family.

Historically, before Chapter 14’s passage, the Commission could address this affordability gap by providing individual payment agreements to customers so as to arrive at a more manageable ongoing bill. Section 1405(d) now precludes this kind of individualized correction and essentially deprives the Commission of a tool it once used to remedy CAP design flaws. Furthermore, because Section 1405(c) now precludes the Commission from establishing a payment agreement comprised of CAP rates, it is more important than ever that CAP bills really be affordable; if they are not affordable and a low income household falls behind in payments, then the only recourse will be to expose the low income family to full tariff rates and eventual

² 52 Pa. Code § 69.265(2)(i).

³ *Final Investigatory Order in Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, (Entered Dec. 18, 2006) at 59.

service loss. As the Commission considers restructuring CAP guidelines, PULP strongly urges it to consider this dramatic change in practice caused by the passage of Chapter 14.

C. Payment Troubled Status

Making CAP eligibility based upon payment troubled status also raises problems after the passage of Chapter 14. Historically, the Commission has required low income customers to be payment troubled to establish eligibility for enrollment into CAP.⁴ Payment troubled status is defined as a customer failing to maintain one or more payment arrangement.⁵ Prior to Chapter 14's passage, when multiple payment agreements were more common, this eligibility requirement was benign. However, under Chapter 14, being payment troubled exposes customers to Chapter 14 penalties. For example, customers who are payment troubled have higher security deposit requirements pursuant to Section 1404(a), are denied a second or subsequent payment agreement pursuant to Section 1405(d), and are able to secure less favorable reconnection terms pursuant to Section 1407(b). Particularly important, these Chapter 14 remedies were supposed to have been reserved for those with the ability to pay and who chose not to, not for low income customers requiring assistance. To require low income families to be in a payment troubled situation and to cause those households to be subject to the restrictions and penalties imposed by Chapter 14 in order to qualify for assistance seems unreasonable and unfair. As the Commission considers restructuring CAP guidelines, PULP urges it to consider the impact of Chapter 14 on using payment troubled status as an eligibility criteria for CAP.

⁴ 52 Pa.Code § 69.265(4)(iii).

⁵ *Id.* at § 69.262.

D. Payment Behavior

A final point involves payment behavior. Chapter 14 was passed, at least in part, to target the payment behavior of those who could afford to pay:

The General Assembly believes that it is now time to revisit these rules and provide protections against rate increases for timely paying customers resulting from other customers' delinquencies. The General Assembly seeks to achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills.⁶

People who could afford to pay for utility service were not paying their fair share, and they were driving up the cost of utility service for everybody else. The law includes remedies designed to target and penalize these individuals.⁷

In practice, however, many of the Chapter 14 remedies intended to apply only to those who could afford to pay but were not doing so also overreach to impact low income customers. Low income customers are much more prone to be involved in utility terminations *as a result of their inability to pay for utility service at full rates*. These low income households – never intended to be a target for Chapter 14 because they never could afford to pay for utility service at full rates in the first place – now suffer under the “remedies” Chapter 14 targets to those who can afford to pay but *choose* not to. This results in low income households being penalized inappropriately by Chapter 14 remedies, a result not in line with a policy to help low income families.

PULP respectfully suggests that, unless the Commission is able to rethink and reposition CAP policies so they recognize the new, post-Chapter 14 world, CAPs will not be able to fulfill

⁶ 66 Pa.C.S. § 1402(2).

⁷ For example, Section 1404 includes higher security deposit levels for riskier customers; Section 1405 limits the number of payment agreements available; Section 1406 eases the termination process; and Section 1407 makes reconnection harder for certain parties.

their real purpose as a safety net for poor households that have insufficient funds to pay for utility service.

III. TOPICS FROM THE COMMISSION'S RULEMAKING NOTICE

A. DPW CAP Policy

In its request for comments, the Commission inquired about “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.”⁸ As a preliminary note, PULP endorses, supports, and incorporates by reference the comments in answer to this question submitted by Action Alliance of Greater Philadelphia.

DPW has articulated an appropriate policy regarding the use of LIHEAP funds in association with CAPs and has specified a policy regarding the manner in which a LIHEAP cash grant may be applied to the account of a customer participating in a CAP. The policy requires the LIHEAP cash grant be applied as follows:

- First, to any past due CAP payment or ‘asked to pay’ amount,
- Second, to the current CAP payment or ‘asked to pay’ amount, and
- Third, if any LIHEAP funds remain, they should be applied to future CAP payments until exhausted.

PULP supports this formulation as being in accord with federal law, as being in the best interest of low income households in the Commonwealth, and as not imposing an unreasonable burden on other residential ratepayers.

⁸ 40 Pa.B. 1764.

1. *Compliance with Federal Law*

DPW's policy complies with federal law:

- 42 U.S.C. § 8621(a) shows Congress' intent that the LIHEAP cash grants meet the immediate home energy needs of households, not bills and arrearages for past energy usage that have accumulated over time, especially if those bills will be forgiven through a customer assistance program.
- 42 U.S.C. § 8624(b)(5) requires that "the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size."
- 42 U.S.C. § 8624(b)(7)(B) requires that states establish procedures to assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the LIHEAP payment made by the State.

DPW's policy meets these requirements and ensures the LIHEAP program as administered in Pennsylvania will be in compliance with federal law.

2. *Best Interest of Low Income Household*

As currently written, the Commission's energy burden standards do not provide sufficiently affordable CAP bills for low income households. While the average family in Pennsylvania pays approximately 4.8 % of their income for energy needs, low income CAP families can pay up to 17%.⁹ Clearly, given this, CAP bills are not affordable, and low income households need the purchasing power of the LIHEAP cash grants to help them make their CAP payments. This purchasing power is best afforded low income families by DPW's policy which

⁹ 52 Pa. Code § 69.265(2)(i); *Final Investigatory Order in Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, (Entered Dec. 18, 2006) at 59.

ensures the benefit of the LIHEAP cash grant accrues to the individual household and helps that household make its CAP payments.

Federal law affirmatively prohibits utilities from treating LIHEAP recipients adversely as a result of receiving the LIHEAP grant, a requirement which is clearly in the best interests of the low income household.¹⁰ This rule is particularly apt in situations where the grant is paid to the utility as opposed to being distributed to the grant recipient directly. LIHEAP grants paid directly to utilities, as opposed to being paid to the grant recipient, have been applied in a variety of ways by utilities, not all of which are in the best interest of the specific grant recipient. DPW's policy will ensure a uniform practice so that LIHEAP recipients who assign grants directly to a utility will not be treated in an adverse fashion.

Federal law also requires LIHEAP grants to work in the best interests of low income households by focusing on households with the lowest income and highest energy burdens, ensuring that the highest assistance goes to the households most in need.¹¹ Any use of a LIHEAP grant that does not reduce a recipient household's energy costs would directly contradict this federal mandate. DPW's policy will ensure LIHEAP recipients do not face increased energy burdens.

3. *Other Residential Ratepayers*

Residential ratepayers pay most of the costs for universal service programs. Despite the fact that utility companies administer universal service programs, utility companies and their shareholders contribute few funds toward the operation of these programs. Although the impact of DPW's policy will differ for residential customers from company to company, the

¹⁰ 42 U.S.C. § 8624(b)(7)(C).

¹¹ *Id.* at § 8624(b)(5).

policy's impact can be expected to be moderate and reasonable. First, the Commission must determine the long term economic benefits to the company and its ratepayers through the reduction of costs associated with customer service personnel time and termination and reconnection processes. Second, even in the case of PGW, whose flawed LIHEAP Cash grant allocation system provided no individual direct benefit to LIHEAP recipients in CRP and therefore will be most affected by DPW's allocation policy, the cost to PGW customers due to this change in policy, without factoring savings, is expected to be in the range of \$2.08 to \$2.70 per month. This seems a reasonable cost to pay to ensure CAPs operate in compliance with federal law, while providing essential assistance to the Commonwealth's most vulnerable residents.

B. CAP Costs and Affordability

In its request for comments, the Commission asked parties to address:

[f]actors 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.¹²

There are several important points to consider, including the factors identified in the Commission's Rulemaking Order, eligibility criteria, the treatment of CAP credits, the impact of energy efficiency programs, and contributions to the programs.

¹² 40 Pa.B. 1764.

1. *Commission Identified Factors*

In its announcement of the Proposed Rulemaking in the April 3, 2010

Pennsylvania Bulletin, the Commission identified several factors that may impact upon the cost and affordability of CAP and for which the Commission sought comment: the current state of economic decline, increasing enrollment levels, the expiration of generation rate caps, the cost of energy efficiency programs, and the cost of smart meter programs. Each of these five factors almost certainly will impact the size and cost of CAPs. The economic decline has resulted in more households becoming economically eligible and in need of CAPs, while the expiration of generation rate caps, the cost of energy efficiency programs, and the cost of smart meter programs will increase the cost of utility service. As more households face financial pressures and are unable to afford ever increasing utility bills, more households need to turn to CAPs as a means of affording their energy bills and avoiding service termination. It is important to recognize that the poorest of the poor, those with incomes below 150% federal poverty income guidelines, will suffer disproportionately in these hard economic times and under the new charges on their utility bills. The Commission must ensure universal service programs are available and properly funded in order to meet the needs of the increased population at or below 150% of the federal poverty income guidelines.

The one unique factor listed by the Commission is the availability of energy efficiency and conservation programs, which, unlike the other factors, should result in reduced costs to operate CAPs. Energy efficiency services are available to low income households through a number of sources, such as Act 129 programs, the Weatherization Assistance Program, and LIURP programs. The LIURP programs, in particular, are important assets because they fall under the Commission's jurisdiction, they have operated for a significant length of time, and they

have proven themselves cost effective over the long term. These programs enable low income households to reduce usage, which reduces the cost of the CAP programs, easing the burden CAPs impose on other customers. Because the energy efficiency programs have this salutary effect, PULP recommends the Commission continue its robust support of energy efficiency and conservation activity, including a focus on expanding natural gas company LIURP resources in parallel to the Act 129 low income program increases by electric distribution companies, and by an active facilitation of cooperation among all of the different energy efficiency programs.

2. *CAP Eligibility*

CAP eligibility criteria are an important aspect of the affordability of the program because they determine how easy it is to enroll in the program. Eligibility criteria should be sufficiently flexible that customers who cannot afford utility service can enroll in the program, while being sufficiently stringent that customers whose income permits them to pay for service cannot enroll in the program. For the reasons outlined in Section II of these Comments, PULP suggests the criteria of being payment troubled, in addition to income criteria, is an unsatisfactory eligibility standard.

PULP suggests the following scenarios, in addition to using income criteria, as possible alternatives to using payment troubled status as a means of determining CAP eligibility:

- Eligibility Based on Debt Level: CAP eligibility may be determined based upon a household having an income level at or below 150% of the FPIG and where the household has accrued a level of debt equal to an amount for which the utility would traditionally begin the termination process.

- Eligibility Based on Energy Burden: CAP eligibility may be determined based upon a household having an income level at or below 150% of the FPIG and having a total energy burden of 6% or more.
- Eligibility based on Age of Debt: CAP eligibility may be determined based upon a household having an income level at or below 150% of the FPIG and where the household has an unpaid bill that contains amounts at least 30 or 60 days old.
- Eligibility based on External Costs: CAP eligibility may be determined based upon a household having an income level at or below 150% of the FPIG and where the household has external costs, such as shelter and/or medical costs that exceed 50% of the household's income.

Each of these suggested scenarios has the benefit of setting a clear threshold for CAP enrollment that takes into consideration inability to pay for utility service, before a low income customer has defaulted or become subject to Chapter 14 penalties, in order to become eligible for CAP enrollment.

3. *Treatment of CAP Credits.*

The treatment of CAP credits will have an important impact on whether low income customers will remain eligible for CAP participation and maintain service. PULP makes the following recommendations regarding the treatment of CAP credits.¹³

First, PULP recommends that CAP credits be considered on a service territory wide basis, rather than on a customer by customer basis. Current Commission policy states that

¹³ CAP credits are the difference between a CAP bill and the full tariffed cost of energy consumed.

the maximum amount of CAP credits should not exceed \$1400 per participant.¹⁴ Presumably, when a household hits this maximum credit, thereafter the household will be charged full tariffed rates. PULP recommends this \$1400 limit should be based on a system average for each utility service territory, not on a customer by customer basis. That is, when CAP credits overall reach a \$1400 average, only then should the utility begin considering applying control features. This type of general, average treatment has the benefit of applying cost control in an administratively expeditious manner while still protecting individuals in unique circumstances.

Second, before considering the application of a control measure, such as a CAP credit limitation or any other usage based control, the Commission should require that a household receive LIURP treatment or some other form of comparable free weatherization treatment, such as Act 129 or the Weatherization Assistance Program. Low income housing stock tends to be older and less efficient than other housing stock, and low income households tend not to have sufficient resources on their own to purchase and install weatherization measures.¹⁵ It would be inequitable to penalize a household that is unable to limit its usage because of the status of its housing stock and because of inability to purchase conservation measures. Requiring LIURP treatment followed by an assessment period during which usage can be monitored after LIURP treatment, will offer these kinds of households a reasonable opportunity to maintain their usage so as not to exceed the maximum CAP credits.

Finally, the Commission should consider avoiding the use of a calendar year for purposes of applying CAP credit limits. The likely result of charging full rates after the CAP credit ceiling has been hit is that the household will be unable to pay the bill and will be

¹⁴ 52 Pa. Code § 69.265(3).

¹⁵ Despite these two facts, lower income households still tend to use less energy than their more affluent residential counterparts. See *Home Energy Consumption and Expenditures by Income: Pennsylvania*, Roger Colton, Report prepared for the Pennsylvania Utility Law Project, May 2009.

terminated. Were the Commission to operate on a calendar year basis, then it is quite likely households would reach their CAP credit limit toward the latter part of the calendar year just as the cold weather months were approaching. Low income households would then be facing termination just at the time of year when it was likely to lead to severe hardship and potential loss of life. This is the least favorable result. The Commission has long acknowledged this seasonal concern and has sought to avoid just such a result, as evidenced by the requirements of 52 Pa. Code § 56.100 (4), which require companies to begin Cold Weather Surveys in September of each year and as also evidenced by the active participation of the Commissioners in the annual Prepare Now Campaign, which includes a call for utility company flexibility and reasonableness in assisting low income households maintain service. PULP recommends the Commission adopt a program calendar year that would begin in April, at the conclusion of both LIHEAP and the cold weather season.

4. Impact of Energy Efficiency Programs

As noted earlier in these Comments, energy efficiency programs ultimately should have the effect of lowering the cost of CAPs by reducing the usage of CAP participants and lowering the subsidy required from other ratepayers. As such, it makes sense for the Commission to support the operation of energy efficiency and conservation programs by utilities and by other entities in the Commonwealth. PULP makes three recommendations as ways the Commission can improve energy efficiency activities.

First, given that Act 129 only applied to electric distribution companies, most likely there will be much more energy efficiency and conservation activity in the context of electric service. In the absence of comparable legislation for natural gas distribution companies,

the Commission should require natural gas distribution companies to enhance their LIURP programs so there will be more robust conservation activities in the natural gas arena.

Second, the Commission should require utility companies to work together to improve the efficiency of program implementation. For example, it makes abundant sense that where an electric and natural gas distribution company share common service territory, these companies should be required to work together to target customers to receive maximum energy efficiency measures, services, and education in a coordinated manner.

Third, the Commission should require utility companies to reach out to and work with other federal, state, and local programs to leverage resources. For example, the Department of Community and Economic Development is administering more than \$200 million of stimulus funds for weatherization. Since this program is almost identical to Act 129 low income programs and LIURP activities, it makes perfect sense to wed these activities.

PULP commends the Commission's efforts thus far to coordinate activities among all of these different programs. For example, the Commission convened a Universal Service Coordination Subgroup, which authored a report positing recommendations on how to coordinate work across programs. PULP encourages the Commission to continue to focus on these recommendations by facilitating the development and active engagement of the sub-groups recommended in the report.

5. *New Contributions to the Programs*

Given the great need for CAP programs, it is incumbent upon the Commission to explore every possible funding source for these programs. Two opportunities to increase resources include seeking state funding and requiring contributions from all of the rate classes.

The Commission has long recognized the essential importance to all residents of the Commonwealth of universal service programs. Even while supporting the universal service program funding structure incorporated into the Electric and Gas Choice Acts, the Commission also called for a statewide funding structure to be enacted by the General Assembly. That need continues to exist, and an active campaign should be undertaken by the Commission for a statewide funding source to supplement the existing funding structure.

In all cases except for PGW, universal service and energy conservation programs are funded exclusively by contributions from residential ratepayers. As PULP and other parties have pointed out in numerous proceedings before the Commission, the cost of universal service programs should be extended beyond only the residential customer class. It is without doubt that the social benefits of these universal service and energy conservation programs extend to all segments of society, including small businesses, commercial entities, and industrial enterprises. Since all rate classes benefit from the universal service programs, all classes should share the burdens to operate these programs.

C. Cost Recovery Mechanisms

In its request for comments, the Commission inquired “[w]hether cost recovery mechanisms, which have been implemented by some distribution companies, have produced savings from improved timeliness of collection activities and whether these savings should be considered in evaluating costs claimed for rate recovery.”¹⁶

PULP respectfully supports the Commission’s attempt to examine and document cost savings associated with CAPs. It is important and proper that both costs *and* savings be considered when examining these programs. Furthermore, whenever a best practice is

¹⁶ 40 Pa.B. 1764.

discovered that is cost effective and without detrimental customer effects PULP encourages the Commission to consider making that best practice a required element in the administration of each utility's CAP.

D. Triennial Review Process

In its request for comments, the Commission inquired about “[p]roposed 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.”¹⁷ PULP discussed these sections extensively in the prior round of comments and incorporates its prior statements about 52 Pa. Code §§ 54.74 and 62.4 as Appendix A to this document.

PULP also notes that a number of parties during the April 2008 round of comments made interesting points about the proposed rules in 52 Pa. Code §§ 54.74 and 62.4. PULP responds to a number of those comments in the remainder of this section.

1. *Tariff Filing*

The Energy Association of Pennsylvania (“Energy Association”) takes the position in its comments that not all of the materials comprising a universal service program tariff filing need be included as part of the actual tariff document.¹⁸ Essentially, the Energy Association argues that the nature of many of the supporting documents comprising the tariff

¹⁷ 40 Pa.B. 1764.

¹⁸ *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 - Comments of the Energy Association of Pennsylvania, Docket No. L-00070186, (Filed April 18, 2008) at 18.*

filing and the sheer volume of these documents make them inappropriate for inclusion in the companies' tariffs. Several utility companies filed comments supporting this position.¹⁹

PULP agrees with the Energy Association's assessment and recommends the Commission work with utilities, statutory advocates, and interested stakeholders to determine exactly what information from a tariff filing is appropriate for inclusion in a tariff document.

2. *Plan review period.*

The Energy Association requests the Commission establish a period of 180 days after a company submits a universal service program tariff filing during which the Commission will consider the filing and render a decision regarding it.²⁰ The current process for approving or rejecting universal service plan filings is open ended, sometimes taking years from the point of filing to ultimate Commission decision. This makes planning for, implementing, and evaluating universal service programs difficult for companies. Several utilities voiced agreement with the Energy Association's suggestion.²¹

PULP agrees with the Energy Association's assessment of the problems caused by the current open ended system and supports the recommendation that the Commission establish a 180 day time frame for rendering a decision on a universal service and energy conservation tariff filing. However, this 180 day period should be suspended or lengthened where the universal service tariff filing is contested. In that case, the time period for review should be established, as usual, by the Administrative Law Judge to whom the case is assigned. However, in no case should the existence of any time limitation, including one of 180 days, be considered a justifiable

¹⁹ See *National Fuel Gas Comments* at 5-8, *Equitable Gas Company Comments* at 5-6, *First Energy Companies Comments* at 6-7, *PECO Comments* at 3-7, and *PGW Comments* at 5-6.

²⁰ *Energy Association Comments* at 17.

²¹ *National Fuel Gas Comments* at 5, *Equitable Gas Company Comments* at 4, *Columbia Gas Co. Comments* at 4-5, *First Energy Companies Comments* at 6, *PPL Comments* at 6-7, and *PGW Comments* at 5.

reason for the exclusion of public input and participation in the universal service plan approval process. PULP is specifically concerned that there has been no opportunity for public input during the existing BCS review process and limited opportunity to comment prior to Commission approval of a universal service program. These steps should be incorporated as part of the plan review.

3. *Documenting Costs and Savings.*

The Energy Association contends that a tariff filing is an inappropriate venue in which to document and review the cost savings associated with customer participation in CAPs.²² The Energy Association contends cost savings from CAP are highly subjective, likely to be contentious, and that base rate proceedings are a more appropriate venue for cost saving considerations.²³

PULP strongly disagrees with this recommendation. Focused attention is being paid to the cost of CAPs. The real cost of CAPs, however, cannot be understood unless the savings generated by these programs are considered simultaneously with the costs. Further, base rate cases depend on the utility to file them; it is possible that many years will pass between base rate cases, thus leaving unexamined the issue of cost savings from CAP programs. The Commission appropriately is proposing to hold universal service tariff filings triennially, ensuring regular and frequent reviews of the costs and savings generated by CAP. PULP respectfully recommends the Commission maintain its proposal to review costs and savings associated with CAPs during the triennial universal service tariff filing.

²² *Energy Association Comments* at 20.

²³ *Id.*

E. Commissioner Pizzigrilli's Statement

In its request for comments, the Commission noted,

“Commissioner Kim Pizzigrilli's statement on Dominion Peoples Universal Service and Energy Conservation Plan for 2009-2011, Docket No. M-2008-2044646 (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.²⁴

PULP supports the Commission's desire “to fully document the rate effect of program modifications in future universal service plans (‘USP’).” However, PULP notes that the full rate impact of universal service programs does not consist of only the costs of the USPs. The full rate impact is comprised of *both* the costs *and* the savings that universal service programs generate so both costs and savings should be examined.

Some examples of cost savings generated from the existence of universal service programs may include: revenue generated by additional payments from CAP customers who have not had service terminated as a result of CAP enrollment; revenue saved as a result of the installation of energy efficiency and conservation measures through LIURP treatment; the reduced costs for litigation and hearings associated with avoided shut offs due to CAP enrollment and LIURP treatment; the amount of donations into the Hardship Fund; the amount of utility company share holder dollars donated to universal service and energy conservation programs; reduced uncollectible accounts; and reduced billing and collections costs.

Furthermore, there are benefits from CAP that, although difficult to quantify, deserve mention and attention. CAPs help households avoid service termination and the host of ills that

²⁴ 40 Pa.B. 1764.

flow from service termination: degradation of health, potential property damage and loss of life from fires related to unsafe practices, homelessness, absences from work and school, etc.

Without a full and complete disclosure of the cost savings provided by USPs to all Pennsylvania residents in the form of reduced health care, educational, social service, carbon reduction, and public safety costs there can be no accurate measure of either the cost or the financial benefit born by those not directly participating in the programs.

PULP opposes the proposal in the Commission's Rulemaking Order to 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 because such a proposal runs the real risk of presenting in the table an oversimplification of how cost of service is derived. Showing rate information in such a table not only oversimplifies the information, but displaying the rate information in an isolated context may give the appearance of pitting the financial interests of non-CAP customers against those of CAP customers. The proposed table will lead to the implication that CAP customers are the only cause of the high level of rates that are paid by other residential customers. Yet, clearly this is not true. Overall rates are a function of many factors of which universal service costs are only one. Pitting residential ratepayers against low income customers by implying that their high rates are a function of low income programs is a questionable practice at best. It is no better perhaps than implying that high utility rates are solely a function of the sizeable salaries of utility executives or the large fees paid to utility legal counsel or lobbyists. Because such implications simply obscure the real way cost of service is derived, PULP opposes the proposed use of such a table as it is formulated in the Rulemaking.

F. Universal Service Approval Process

In its request for comments, the Commission asks “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' USPs should be served on the statutory advocates.”²⁵ PULP endorses the Commission’s proposal to provide an opportunity for commenting on universal service plan filings and respectfully recommends the Commission provide notice both to the statutory advocates and to other interested parties, particularly those entities such as PULP and Community Legal Services, Inc., which are known to the Commission to represent the interests of the low income and which regularly appear before the Commission. PULP also recommends the Commission ensure that appropriate notice be provided to participants within the CAP programs. While endorsing a procedure to ensure an opportunity for comments and reply comments to a tentative order issued by the Commission, PULP respectfully submits that there also should be an earlier opportunity for comment when the plan is first submitted to the Bureau of Consumer Services for review. Permitting comments at this early time will enable Commission staff to receive the benefit of public experience concerning the administration of the programs. Consideration and evaluation of these early comments will enable the staff to draft more informed recommendations and will enable the Commission to issue a more informed tentative order.

1. Comments and Reply Comments

PULP supports the ability to file comments and reply comments prior to final approval of a universal service and energy conservation plan. Comments and reply comments are an administratively expedient proposal, offering an opportunity to highlight areas of

²⁵ 40 Pa.B. 1764.

agreement and disagreement, raise potential problems with program administration, and offering interested parties an opportunity to provide valuable input. They also provide the company an opportunity to work informally with interested parties to make adjustments to the tariff filing, perhaps eliminating the need for costly litigation. This process can enable Commission staff to determine whether sufficient questions of fact exist to justify an evidentiary hearing or whether an evidentiary hearing can be avoided, thus saving valuable staff time. Therefore, PULP supports the Commission's proposal to request comments and reply comments at the time the plan is filed and subsequent to a tentative order approving a universal service and energy conservation plan

2. Notice

Pursuant to the Commission's proposed regulations at 52 Pa.Code §§ 54.74 and 62.4, universal service plan submissions will henceforth take the form of a tariff filing. Current Commission regulations require a tariff filing to be accompanied by proper notice to the Commission, to statutory advocates, and to the public.²⁶ It is appropriate for the Commission to impose this same kind of notice requirements upon a universal service and energy conservation plan filing. At minimum, utilities should be required to publish notice of a universal service plan filing in the *Pennsylvania Bulletin*.

Basic principles of due process also require that these universal service and conservation program plan filings be accompanied by proper notice. All residential customers have an interest in the proper design and administration of these programs because residential customers pay the bill for the programs. Program participants, as third party beneficiaries, also

²⁶ 52 Pa.Code §§ 53.31 and 53.45.

have a substantial interest in the benefits these programs convey to them. Because of these interests, basic notice requirements about program changes should adhere.

Furthermore, it is administratively expedient to provide notice to users of the Commission's e-filing system, which offers the opportunity to accept notice electronically. PULP, for instance, has elected to receive electronic notice through the e-filing system. This system affords the Commission an administratively easy, cost effective means of notifying interested parties when a plan filing has been made.

III. OTHER ISSUES

In its request for comments, while the Commission invited comments on particular topics, it did not limit discussion to those topics.²⁷ Thus, PULP respectfully offers comments on some additional topics: flexibility for CAP when warranted, usage reduction, notice within CAP, and complaints before the Commission associated with CAP.

A. Warranted CAP Flexibility

The CAP Policy Statement is an excellent tool guiding the design of universal service and conservation programs, ensuring they meet certain minimum standards. Since, as has been previously discussed, Chapter 14 prohibits the Commission's involvement in developing payment agreements for customers who have had the benefit of CAP rates, the Commission may want to consider allowing flexibility in some CAP situations where the circumstances warrant it:

- Arrearage Forgiveness: Presently, an individual may not enroll in CAP only to receive arrearage forgiveness. The individual also must demonstrate that the CAP bill will be lower than the regular, non-CAP budget payment. However, although

²⁷ 40 Pa.B. 1764.

a low income household may not require the benefit of discounted monthly bills, it may require the benefit of freezing the arrears and receipt of arrearage forgiveness. For example, sometimes arrearages may build up because of an isolated incident, such as an illness or temporary job loss that interrupts the household's cash flow. When the emergency is resolved, the customer may be able to meet future obligations but not resolve the outstanding past arrearage. In this situation, it may be appropriate to allow the customer to enroll in CAP in order to benefit solely from arrearage forgiveness. The Commission should exercise flexibility to tailor individual solutions where the situation merits.

- Regular Payments: It is unreasonable to expect low income customers to maintain perfect payment records, even when enrolled in CAP. Low income budgets simply are too fragile and easily disrupted to meet such an expectation. It is more important that CAP customers generally are keeping up with their payments, rather than making every single one in full and on time. Rather than expecting perfect payment behavior, the Commission should expect consistent and regular payments from CAP customers. Where a household shows such regular but imperfect efforts, the Commission should consider allowing the household to remain in CAP.²⁸
- CAP Penalties: It should be expected that there will be situations where low income customers fail to maintain regular payments even after enrollment into the

²⁸ In practice, failure to maintain all payments in a timely manner may be expected for low income households. Unlike more affluent households, where payment difficulty generally results from episodic tragic occurrences, such as illness or job loss, low income households have payment difficulty because they are chronically poor and do not have enough money to meet all of their basic necessities. Expecting a perfect payment record, even within CAP, does not make sense in the case of chronic poverty. Since the Commission cannot issue or require an individual payment agreement when composed of CAP rates, creating flexibility within the CAP payment design is especially warranted.

program. For the most part, removal from CAP, exposure to full tariffed rates, and eventual termination of service are the penalties for irregular payment behavior. These penalties are inapt; exposing a customer to higher rates because of an inability to pay lower rates defies logic. PULP recommends the Commission explore other types of penalties. For example, a utility might suspend arrearage forgiveness until a CAP customer who has missed CAP payments brings his CAP account current. As a control measure, the Commission could limit the number of allowed missed CAP payments or could limit the total dollar amount of CAP bills missed. The proposed penalty is more advantageous because it induces the CAP customer to come current on payment without consigning the customer to near certain service termination.

B. Usage Reduction

Usage reduction may be the best way to mitigate the cost of CAP programs. By helping CAP participants understand energy usage and install energy efficiency and conservation measures, companies will reduce the amount of energy these households consume, thereby directly reducing the cost of the programs to other residential ratepayers.

As such, the Commission should encourage utilities to connect CAP households to energy efficiency and conservation programs, such as LIURP and Act 129 programs. Currently, with so much focus on conservation, the challenge is to coordinate most effectively and efficiently the many weatherization opportunities available, especially when those resources fall under different administrative oversight, such as the Commission's own LIURP and Act 129 activities, the Department of Public Welfare's LIHEAP activities, and the Department of

Community and Economic Development's regular and ARRA Weatherization Assistance Programs.

While most entities involved in weatherization efforts express sincere desires to "coordinate programs" and "leverage resources," still there are serious gaps between programs. The Commission is in a unique position to help bridge these gaps by fostering better policy design, disseminating best practices, and by requiring companies clearly to demonstrate coordination is happening. Admirably, the Commission has begun this process by forming workgroups and conducting meetings. PULP respectfully requests the Commission continue to push this process forward toward eliminating gaps between programs and by ensuring low income households receive maximum energy efficiency benefits through a unified program and service provider approach.

C. Notice Within CAP

CAP participants have a substantial interest in the continued, efficient delivery of CAP benefits. The Commission, as the administrative body charged with oversight of these CAP programs,²⁹ has a clear obligation to ensure CAP participants understand they have a right to dispute procedures regarding the administration of CAP, not only when CAP benefits are denied or terminated, but whenever they are being administered in a manner affecting the individual's property interest or in a manner contrary to the approved plan. While the Commission has expressed reluctance to micromanage utility companies, the Commission should not allow this reluctance to inhibit it from providing clear, strong requirements regarding the protection of consumer rights and the provision of due process protections. PULP strongly recommends the Commission clarify these dispute rights during the rulemaking and ensure these rights are made

²⁹ 66 Pa.C.S. §§ 2203(7) and (8); §§ 2802(9), (10), and (17).

known to CAP customers by conducting, during utilities' universal service plan review, a thorough review of the policies and procedures in place to ensure CAP customers have mechanisms to dispute utility company actions regarding the handling of CAP accounts.

First, the Commission should ensure utilities provide due notice to CAP customers of their right to dispute utility handling of CAP accounts. CAP customers must know they have the right to challenge utility administration of CAP programs *at the time when the disputed event occurs*. It is inadequate to send a CAP customer essential information only at the time of enrollment, a period of time that might be months or years before a disputed event arises. This information is easily forgotten by the customer. In addition to this initial information, the utility should be required to regularly inform the CAP customer of the right to dispute utility actions at the time when the utility takes administrative, corrective, or non-routine actions. Such opportunities arise, for example, when a utility corresponds with a CAP customer about late or missed payments, about eligibility recertification, or termination from the program.

Second, the Commission should ensure the processes in place at utility companies provide clear and effective procedures of redress to low income CAP customers. Utility procedures for handling and investigating CAP customer disputes should be reviewed and approved by the Commission at the time of the universal service plan filing. These procedures are essential to CAP customers receiving satisfactory service and resolution to their complaints. The Commission should ensure utility company personnel and CAP participants understand that, while CAP customers may not seek a payment agreement for arrearages including CAP rates, CAP customers do have the right to dispute with the company and the Commission any number of other facets of CAP administration. It is imperative that the Commission closely review

utility company universal service plans and procedures to ensure companies have procedures to deal with CAP customer complaints.

Finally, the Commission should ensure CAP customers know they have the right and a process to bring CAP issues before the Commission. It is not enough that customers know they can complain to the utility; CAP customers also must recognize they have the right to appeal to the Commission regarding the administration of CAPs. This right must be made known to the customer at a time when the customer can act on the knowledge, not just at the time of enrollment. The Commission should require utilities to tell CAP customers during all interactions regarding the CAP program that the customer has the right to bring issues before the Commission where the customer suspects the utility is not administering the CAP properly and to inform that customer of the process for enforcing that right.

D. CAP Complaints

Chapter 14's Section 1405(c) states, "Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission."³⁰ PULP is concerned that this narrow prohibition is being implemented in a manner that is precluding CAP customers seeking Commission assistance from actually receiving that assistance. PULP respectfully asks the Commission, as part of its review of the design elements of CAP, to investigate and correct this problem.

The Chapter 14 language is very narrow and relates only to customer assistance program rates that might become the subject of a payment agreement negotiated by the Commission. This language leaves untouched and is not intended to effect a whole range of issues associated with CAP administration for which CAP customers may seek Commission assistance through

³⁰ 66 Pa.C.S. § 1405(c).

informal or formal complaints. For example, a CAP customer may seek Commission assistance resolving a dispute regarding the amount of a CAP bill, the amount of pre-program arrearage, the amount of accrued pre-program arrearage forgiveness, treatment of a payment agreement negotiated not by the Commission but by a utility, or procedural issues, such as proper notice or the timing of a termination. In each of these situations, a CAP customer contacting the Commission for assistance should receive consideration because the pertinent issue does not deal with customer assistance program rates that might become subject of a payment agreement negotiated by the Commission. However, because a CAP customer may inartfully express her concerns, she summarily may be denied assistance under the umbrella of Section 1405(c)'s prohibition.

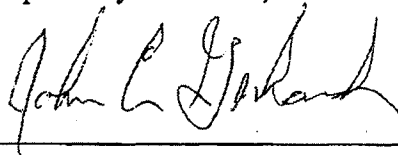
Since Chapter 14's enactment, we have seen a dramatic increase in the number of complaints unable to be pursued by the Commission. PULP is concerned that a possible cause is that CAP customers mistakenly are being denied Commission assistance. A CAP customer may call and ask for a payment agreement and be turned away because Chapter 14 does not allow the Commission to give payment agreements in that situation. However, beneath the customer's inarticulate request may lie a valid dispute over which the Commission does have authority, over which Section 1405(c) does not have authority, and for which the customer should receive assistance.

PULP respectfully requests that the Commission, along with BCS staff, investigate this situation and conduct training to help staff discern these kinds of situations and render assistance where appropriate.

IV. CONCLUSION

Universal Service and Energy Conservation programs are the threads that form the utility safety net in Pennsylvania. Sound program design, administration, and funding are critical to the strength and effectiveness of that net. During this period of economic downturn, it is particularly important that the Commission ensures that the safety net remains strong. By ensuring CAP payments are affordable, supporting conservation, strengthening due process, and paying attention to the changes wrought by the passage of Chapter 14, the Commission can ensure Pennsylvania's utility safety net remains as strong as it has been in the past and where necessary it is strengthened to meet current economic challenges.

Respectfully submitted,



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Date: June 2, 2010

V. APPENDIX A: EXCERPTS FROM PRIOR PULP COMMENTS**§ 54.74. [Universal] Review of universal service and energy conservation plans, funding and cost recovery.****(a) Plan submission.**

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

Comments:

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

The timing and form of public notice required for tariff filings are governed by Chapter 53 of the *Pennsylvania Code*. Distribution companies are required to give notice 60 days prior to filing a new tariff, a tariff supplement, or a tariff revision. 52 Pa.Code §§ 53.31 and 53.101. While the timing of notice generally is constant, the form of notice differs depending on the type of filing. Upon the filing of a new tariff, tariff supplement, or tariff revision that constitutes a general rate increase within the meaning of 66 Pa.C.S. § 1308(d), Section 53.45(b) provides guidance for the form of public notice. 52 Pa.Code § 53.45(b). For other types of tariff filings, such as "other proposed changes in rates, rules and regulations, including nongeneral rate

increases, proposed changes in regulations—without rate changes—and proposed rate changes under 66 Pa.C.S. § 1307(f),” the Commission dictates the manner of notice. 52 Pa.Code § 53.45(g).

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

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

(a) Plan submission.

(5) In the proceeding on the plan, the Commission will establish a funding level that balances efforts to ensure the availability of universal service and energy conservation programs throughout an EDC’s service territory with the cost of the programs and the rate impact on residential customers that are not enrolled in the programs, and will permit an EDC to recover costs related to universal service and energy conservation from residential customers. The Commission will approve recovery of CAP costs consistent with § 76.4 (relating to recovery of costs of customer assistance programs). [If the Commission rejects the plan, the EDC shall submit a revised plan under the order rejecting or directing modification of the plan as previously filed. If the order rejecting the plan does not state a timeline, the EDC shall file its revised plan within 45 days of the entry of the order.

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

Comments:

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

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

Finally, PULP supports the Commission's clear statement of its authority in this area. Since only the Commission has the authority to temporarily suspend enrollment of eligible clients into a universal service program, a utility may not under any circumstance unilaterally halt for any length of time the enrollment of eligible clients into its universal service programs. This interpretation of the Commission's sole authority is substantiated by proposed Section 76.3

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

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

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

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

Comments:

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

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

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

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

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

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

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

- [(3) Projected] (iii) The projected needs assessment. The needs assessment must include:
- (A) The number of identified low income customers.
 - (B) An estimate of low income customers.

- (C) The number of identified payment troubled, low income customers.
- (D) An estimate of payment troubled, low income customers.
- (E) The number of customers who still need LIURP services and the cost to serve that number.
- (F) The enrollment size of the CAP to serve all eligible customers.

Comments:

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

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

- The number of CAP customers who are required to make monthly CAP payments that exceed the affordability guidelines;
- The cost to the CAP of adjusting the CAP rate design to ensure that all CAP customers are charged an affordable CAP Rate; and

- The number of CAP Rate customers who have had service terminated within the prior three years and the length of time those customers were without service.

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

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

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

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

Comments:

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

pursuant to Section 76.5, which itself reads, “The failure of a CAP participant to comply with the following *shall* result in dismissal from CAP participation.” 52 Pa.Code §76.5(a) (*emphasis added*).

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

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

As the Commission recently recognized in its Chapter 14 Second Implementation Order, CAP customers have the right to petition the Commission for assistance in a number of situations related to CAP administration, including, but not limited to:

allegations that the customer’s CAP budget was inappropriately increased; allegations that the customer has been charged a CAP rate which is not the appropriate rate for a household with their income or type of service; allegations that the customer was improperly removed from CAP or that CAP eligibility was denied; allegations that the customer has not been credited for all payments made, and complaints about the utility’s application of payments including application of energy assistance grants.

Re: Chapter 14 Implementation, Docket No. M-00041802F002 (Order entered September 12, 2005), at 34-35. In order for this right to have meaning, customers must know and understand their right to petition the Commission for redress. It is particularly important that the customer

be made aware of these rights at a time when the right can be exercised meaningfully, such as immediately prior to a proposed dismissal from the CAP program. Providing notice at the time of enrollment, occurring perhaps months or years earlier and likely forgotten by the customer, is insufficient to adequately notify the customer of his/her rights.

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

Prior to removing a customer from CAP for failure to comply with CAP program rules, the utility shall provide the customer with a ten day written notice which includes the specific reason for the proposed dismissal, the projected date of dismissal, the customer's right to cure the default prior to dismissal, the right to dispute the dismissal, stay of dismissal pending resolution of the dispute or appeal and the right timely to appeal a dismissal to the Commission.

Comments of Action Alliance, pg. 11.

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

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

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

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

(a) Plan submission.

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

Comments:

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

The timing and form of public notice required for tariff filings are governed by Chapter 53 of the *Pennsylvania Code*. Distribution companies are required to give notice 60 days prior to filing a new tariff, a tariff supplement, or a tariff revision. 52 Pa.Code §§ 53.31 and 53.101. While the timing of notice generally is constant, the form of notice differs depending on the type of filing. Upon the filing of a new tariff, tariff supplement, or tariff revision that constitutes a general rate increase within the meaning of 66 Pa.C.S. § 1308(d), Section 53.45(b) provides guidance for the form of public notice. 52 Pa.Code § 53.45(b). For other types of tariff filings, such as "other proposed changes in rates, rules and regulations, including nongeneral rate

increases, proposed changes in regulations—without rate changes—and proposed rate changes under 66 Pa.C.S. § 1307(f),” the Commission dictates the manner of notice. 52 Pa.Code § 53.45(g).

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

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

(a) Plan submission.

(5) In the proceeding on the plan, the Commission will establish a funding level that balances efforts to ensure the availability of universal service and energy conservation programs throughout an NGDC's service territory with the cost of the programs and the rate impact on residential customers that are not enrolled in the programs, and will permit an NGDC to recover costs related to universal service and energy conservation from residential customers. The Commission will approve recovery of CAP costs consistent with § 76.4 (relating to recovery of costs of customer assistance programs.) [The Commission will act on the plans within 90 days of the NGDC filing date.

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

Comments:

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

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

Finally, since only the Commission has the authority to temporarily suspend enrollment of eligible clients into a universal service program, a utility may not under any circumstance unilaterally halt for any length of time the enrollment of eligible clients into its universal service

programs. This interpretation of the Commission's sole authority is substantiated by proposed Section 76.3 (Approval process), which identifies the process a utility must use to petition the Commission for a modification to an existing universal service and energy conservation tariff. Thus, PULP supports the Commission's clear statement of its authority in this area.

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

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

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

Comments:

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

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

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

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

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

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

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

(b) [Plan] Tariff contents.

(1) [The components of] General requirements.

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

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

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

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

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

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

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

Comments:

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

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

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

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

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

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

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

(b) [Plan] Tariff contents.

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

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

Comments:

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

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

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

As the Commission recently recognized in its Chapter 14 Second Implementation Order, CAP customers have the right to petition the Commission for assistance in a number of situations related to CAP administration, including, but not limited to:

allegations that the customer's CAP budget was inappropriately increased; allegations that the customer has been charged a CAP rate which is not the appropriate rate for a household with their income or type of service; allegations that the customer was improperly removed from CAP or that CAP eligibility was denied; allegations that the customer has not been credited for all payments made, and complaints about the utility's application of payments including application of energy assistance grants.

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

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

Prior to removing a customer from CAP for failure to comply with CAP program rules, the utility shall provide the customer with a ten day written notice which includes the projected date of dismissal, the customer's right to cure the default prior to dismissal, the right to dispute the dismissal, stay of dismissal pending resolution of the dispute or appeal and the right timely to appeal a dismissal to the Commission.

Comments of Action Alliance, pg. 22.

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

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

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

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

PENNSYLVANIA UTILITY LAW PROJECT

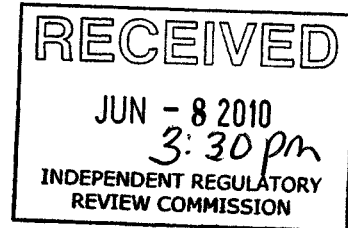
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June 2, 2010



Via E-Filing

Secretary Rosemary Chiavetta
Secretary's Bureau
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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 Chiavetta:

Enclosed, pursuant to the Notice of Proposed Rulemaking in the April 3, 2010 *Pennsylvania Bulletin*, please accept for filing the comments of the Pennsylvania Utility Law Project in the above-captioned proceeding.

If you have any questions, please contact me directly.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Gerhard".

John C. Gerhard
Staff Attorney

Cc: Stephanie Wimer (via electronic mail)
Grace McGovern (via electronic mail)