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December 9, 2019

Via eFiling

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: 2019 Amendments to Policy Statement on Customer Assistance Program, Docket No. M-2019-3012599 - EAP Letter in Response to the Petition of the Office of Consumer Advocate for Reconsideration and/or Clarification

Dear Secretary Chiavetta,

Pursuant to 52 Pa. Code §5.572(e), the Energy Association of Pennsylvania (“EAP”) files this letter on behalf of its natural gas and electric distribution company members¹ in response to the Petition of the Office of Consumer Advocate (“OCA”) for Reconsideration and/or Clarification (“OCA Petition”) of the Pennsylvania Public Utility Commission’s (“Commission”) Final Policy Statement and Order in *2019 Amendments to Policy Statement on Customer Assistance Program*, Docket No. M-2019-3012599 (“Final CAP Policy Statement Order”).

The OCA Petition was filed on November 20, 2019 within fifteen (15) days after the Commission entered the Final CAP Policy Statement Order on November 5, 2019. *See*, 52 Pa. Code §5.572(c). By Order entered on November 25, 2019, the Commission, *inter alia*, extended the time to respond to petitions for reconsideration and/or clarification² filed in connection with its Final CAP Policy Statement Order until Monday, December 9, 2019.

¹ Hereinafter referred to as NGDCs and EDCs, respectively. EDC members: Duquesne Light Co., Metropolitan Edison Co., PECO Energy Co., Pennsylvania Electric Co., Pennsylvania Power Co., PPL Electric Utilities Inc., and West Penn Power Co. NGDC members: Columbia Gas of Pennsylvania, PECO Energy Co., National Fuel Gas Distribution Corp., Peoples Natural Gas Co., Philadelphia Gas Works, and UGI Utilities, Inc.

² Two petitions for reconsideration and clarification were timely filed on November 20, 2019 at this docket: the OCA Petition and the Petition for Reconsideration and Clarification of the Energy Association of Pennsylvania,

Initially, the OCA Petition requests clarification “regarding the cost information to be included in the *universal service plan compliance filings* and clarification that the *compliance plans* include this cost information for the revised programs.”³ OCA refers to the Commission’s directive as a “compliance plan” throughout its Petition and clearly believes that these compliance filings initially due in January 2020 will initiate proceedings to revise Universal Service and Energy Conservation Plans (“USECPs”) for the utilities.⁴

As such, the OCA Petition validates EAP’s concerns set forth in its Petition for Reconsideration and Clarification⁵ that the Commission’s language at Ordering Paragraphs six (6), seven (7) and eight (8) of the final CAP Policy Statement Order creates a binding mandate for utilities to initiate a process to amend their approved USECPs. EAP contends that such a mandate, in the context of an order finalizing a policy statement, is unlawful. EAP reiterates its request made through its Petition for Reconsideration and Clarification that these specific ordering paragraphs be rescinded and that utilities be requested to provide voluntarily the “addendum” discussed in the Final CAP Policy Statement Order. EAP maintains that the most efficient and effective way to implement the amended CAP Policy Statement would be in individual utility proceedings initiated in the normal course of updating utility USECPs.⁶

Secondly, EAP agrees with the OCA request that the Commission reconsider “the extent to which its proposed maximum CAP energy affordability burdens for customers at or below 50 percent of the Federal Poverty Level (“FPL”) would cause Pennsylvania’s electric and natural gas utilities to increase the amount of Low Income Home Energy Assistance Program (“LIHEAP”) benefits returned to the Commonwealth.” *See*, OCA Petition at p. 1. EAP believes that the Commission overlooked the potential effect of its new energy burden thresholds on the treatment of LIHEAP cash and/or crisis grants provided to low-income customers participating in utility CAPs. Reducing minimum payments required for customers based on FPL could also result in supplanting regulated ratepayer monies for federal funds. In both cases, the result would be over-subsidization (i.e., energy burdens of zero) which could negatively impact the amount the Commonwealth receives for LIHEAP and place unnecessary expense on Pennsylvania’s regulated ratepayers.

In its Final CAP Policy Statement Order, the Commission notes that “LIHEAP [has] a measurable impact on energy burdens for CAP customers,” but did not design the revised thresholds to allow for utilities to use LIHEAP grants to help reach the target energy burden level. CAP customers at the new energy burden thresholds of 2%, 4%, and 6% could have no utility bill after a LIHEAP grant is applied. Since LIHEAP grants are calculated based on income

Final Policy Statement Order Re: 2019 Amendments to Policy Statement on Customer Assistance Program, Docket No. M-2019-3012599.

³ OCA Petition at p. 2. (Emphasis added.)

⁴ *See*, e.g., at p. 2 of OCA Petition wherein OCA “submits that information on the cost of the revised programs should be included in the compliance plans to properly evaluate the revised plan.”

⁵ *See supra* at fn. 2.

⁶ EAP submits implementation would occur pursuant to the revised filing schedule under *Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule*, Docket No. M-2019-3012601.

and household size and not energy usage, there may be a large LIHEAP credit remaining for the lowest income customers.⁷

As EAP has noted in its previous comments to the Commission’s investigations into low-income utility assistance programs, utility CAPs were never intended and have not been designed to give customers periods of time without energy bills.⁸ The Commission itself notes that “utility service should never be free (or even mostly free) in CAPs,”⁹ however, revisions to the CAP Policy Statement will, in fact, do just that.¹⁰ This issue applies to those customers at or below 50 percent of the FPL, as OCA describes, but EAP believes a similar impact might occur within other low-income tiers as well.

EDCs and NGDCs as participating vendors of the federal LIHEAP administered by the Commonwealth are obligated to return any excess – that is, not used by June following the year the grant was issued – to the Pennsylvania Department of Human Services (“DHS”). DHS, as the agency tasked with administering LIHEAP in Pennsylvania, must likewise return any unspent funds to the federal government.¹¹ Continued unspent funds are routinely reallocated to other states. It is anticipated that if Pennsylvania does not spend all of its allocation, that allocation will be reduced by the federal government.

A reduction in LIHEAP funding received from the federal government that could result from the amended CAP Policy Statement, at the expense of Pennsylvania ratepayers, does not benefit the Commonwealth. As OCA notes, “[d]ollars returned to LIHEAP are a direct dollar transfer from Pennsylvania ratepayers to the LIHEAP program.”¹² This remains especially pertinent as the additional changes made to the CAP policy statement via the Final Policy Statement Order have not yet been quantified in terms of cost to ratepayers or the Commonwealth.¹³

⁷ The Commission has also eliminated in its 2019 revisions the prior provision of the CAP Policy Statement that allowed for a LIHEAP grant to be applied to reduce the amount of CAP credit. The inability to apply excess LIHEAP grant dollars to the CAP shortfall eliminates one method of addressing utility uncollectibles and/or avoiding having to return federal energy assistance grant dollars.

⁸ EAP Reply Comments to *Energy Affordability for Low Income Customers* Order and Report, Docket No. M-2017-2587711, p.4;

⁹ See, Final CAP Policy Statement Order at p. 36.

¹⁰ If, for example, a CAP customer’s bill is \$25 per month, and they received the average 2018 LIHEAP cash grant amount of \$264, this customer will have no energy bill for 10 months. Customers at the lowest income levels often receive the largest grant amounts, thus resulting in no annual bills. This is already an issue for many minimum payment customers.

¹¹ Initially, DHS can reallocate the returned, unspent utility funds to other recipients within the program year, but they are likewise time limited before they must also return accumulated “carryover” dollars back to the federal government.

¹² See, OCA Petition at p. 6.

¹³ “The Energy Affordability Report and the Commission’s January 2019 Order did not analyze or address the potential cost impact of establishing a maximum 6% CAP energy burden for customers at or below 50% of the FPLG...” Final CAP Policy Statement Order at p. 30. EAP also notes no cost calculations have yet been done relative to the impacts of changing the definition of household income, or the Commission’s suggestion that CAPs “be designed to ensure a household’s total CAP bill – including any add-ons such as PPA co-payments or CAP Plus charges – will not exceed the Commission’s energy burden threshold.” Final CAP Policy Statement Order at p. 31.

EAP does not agree, however, with OCA's request for relief to the extent it would expand the utility "compliance filing" mandated by the Commission's November 5th Order.¹⁴ If the Commission grants OCA's request for additional utility data and analyses, EAP requests that the utilities received additional time to complete the additional request and submit their "compliance filings."

For these reasons, as well as those delineated in its Petition for Reconsideration and Clarification, the Energy Association of Pennsylvania agrees with OCA that the Commission appears to have not considered or fully addressed the impact of its new energy burden thresholds on LIHEAP funding when finalizing the amended CAP Policy Statement. EAP respectfully requests that together with reconsidering the LIHEAP impact, the Commission grant the reconsideration and clarification relief sought by EAP in its Petition.

Very truly yours,



Donna M.J. Clark
Vice President & General Counsel

CC: Christy M. Appleby, Office of Consumer Advocate
Joseph Magee, Bureau of Consumer Services
Jennifer Johnson, Bureau of Consumer Services
Louise Fink Smith, Law Bureau

¹⁴ OCA requests that the Commission "require the EDCs and NGDCs to analyze this issue and present their findings as part of the compliance plan, [i.e., addendum]." OCA Petition at p. 7. Clearly the OCA request for reconsideration regarding the cost implications and impact on ratepayer funded CAPs of this new policy is valid; EAP believes, however, the Commission can reconsider this impact based on existing comments and without further analysis by the utilities. *See infra* at fn. 9.