**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held September 19, 2019 |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  David W. Sweet, Vice Chairman  Norman J. Kennard, Dissenting  Andrew G. Place  John F. Coleman, Jr., Statement, Dissenting | |

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| Universal Service Rulemaking | Docket No. L-2019-3012600 |
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**ORDER**

**BY THE COMMISSION:**

On September 19, 2019, the Commission adopted amendments to its Customer Assistance Program (CAP) Policy Statement at 52 Pa. Code §§ 69.261—69.267. The *Final Policy Statement and Order* was subsequently entered on November 5, 2019, at Docket No. M-2019-3012599 (November 2019 Order). The amendments to the CAP Policy Statement will become effective upon publication in the *Pennsylvania Bulletin*. CAPs are one of four components of universal service and energy conservation programs that jurisdictional energy utilities are required to provide for their income-qualified customers. 52 Pa. Code §§ 54.74 (electric) & 62.4 (natural gas). We direct herein that the Bureau of Consumer Services (BCS) and the Law Bureau prepare a comprehensive universal service rulemaking order no later than the first quarter of 2020.

1. **INTRODUCTION**

“Universal service and energy conservation” is a collective term for the “policies, protections and services that help low-income customers[[[1]](#footnote-2)] to maintain service” as mandated by the Electric Competition Act and the Natural Gas Competition Act.[[2]](#footnote-3) The four universal service programs required in a USECP are: (1) CAPs, which may provide discounted pricing, arrearage forgiveness, and/or other benefits for enrolled low-income residential customers; (2) Low Income Usage Reduction Programs (LIURPs),[[3]](#footnote-4) which provide weatherization and usage reduction services to help customers reduce their energy utility bills; (3) Customer Assistance and Referral Evaluation Services (CARES), which provide information and referral services for low-income, special needs customers; and (4) Hardship Fund programs, which provide grants to help customers address utility debt, restore service, or stop a service termination.

Electric distribution companies (EDCs) and natural gas distribution companies (NGDCs) are required to offer these universal service programs in each distribution territory[[4]](#footnote-5) and to submit updated USECPs every three (3) years for Commission approval.[[5]](#footnote-6) Such programs are subject to the administrative oversight of the Commission and are to be operated in a cost-effective manner.”[[6]](#footnote-7) Independent impact evaluations are to be completed at least every six (6) years.[[7]](#footnote-8)

In May 2017, the Commission initiated separate proceedings[[8]](#footnote-9) to conduct a comprehensive review of the policies, practices, and procedures of Pennsylvania’s universal service programs, including the impact on energy affordability for low-income customers. Based upon these proceedings as well as numerous utility-specific proceedings, we have identified several opportunities to improve the consistency, effectiveness, and accountability of universal service requirements, which will enhance the benefits of these programs. The November 2019 Order, for example, identifies several such opportunities relative to CAPs.

The 17 amendments to the CAP Policy Statement adopted in the November 2019 Order will become part of the CAP Policy Statement when published in the *Pennsylvania Bulletin*. Additionally, changes to the Commission’s LIURP regulations are under consideration in the proceeding at *Initiative to Review and Amend the Existing LIURP Regulations at 52 Pa. Code §§ 58.1–58.18*, Docket No. L‑2016-2557886 (order entered on December 16, 2016). Further, a revised filing schedule for universal service and energy conservation plans (USECPs) has been implemented pursuant to Docket No. M‑2019-3012601 (order entered on October 3, 2019). The revised schedule extends the duration of USECPs from three years to five years and adjusts the third-party independent impact evaluation due dates, some of which will initially exceed the six-year intervals. Other potentially related, pending, industry-wide proceedings are addressing CAP final bills, universal service reporting requirements, and USECP discovery.[[9]](#footnote-10)

**II. DISCUSSION**

By amending the CAP Policy Statement, we are taking an important step to update the recommended maximum energy burdens[[10]](#footnote-11) to more affordable levels for Pennsylvania’s lowest income households, those at or below 150% of the FPIG, with particular consideration of those households at or below 50% of the FPIG. In doing so, the Commission is carrying out the mandates of the Commonwealth’s Competition Acts that require the Commission to continue, “at a minimum,” the protections, policies, and services, that existed when the Competition Acts were enacted, to assist low-income customers to afford jurisdictional energy service.[[11]](#footnote-12)

Our amendments to the CAP Policy Statement have provided our “provisional intentions for the future”[[12]](#footnote-13) which we and stakeholders will be able to address in utility­specific proceedings. The CAP Policy Statement will provide guidance until such time as we have amended universal service regulations in place. We have encouraged the utilities and other stakeholders to work together to implement the amended provisions of the CAP Policy Statement as quickly and fully as practicable in order to have a basis for meaningful input in this universal service rulemaking.

Promulgating universal service regulations addressing CAPs as part of utility USECPs will provide the Commission with a tool to enforce any necessary changes to utilities’ CAPs, including energy burden levels, CAP credit limits, and customer education requirements. Addressing these matters through a rulemaking will establish binding norms and substantive rules.[[13]](#footnote-14) Establishing these substantive rules is within our statutory authority and reasonable. They will be promulgated in accordance with the requirements set forth in the Commonwealth Documents Law, the Commonwealth Attorneys Act, and the Regulatory Review Act.[[14]](#footnote-15)

Accordingly, we direct BCS and the Law Bureau to commence a comprehensive universal service rulemaking at this docket, no later than the first quarter of 2020. The information obtained from utility and other stakeholder experiences relative to the provisions of the CAP Policy Statement, as amended, will be especially informative in determining CAP provisions to be promulgated as regulations. This universal service rulemaking may also encompass the pending LIURP rulemaking and any other changes to the Commission’s universal service regulations, policies, and practices necessary to ensure that universal service programs are reasonably structured to efficiently and effectively assist low-income ratepayers without being overly burdensome on other ratepayers or stakeholders.

**III. CONCLUSION**

As we task staff with this rulemaking, we are mindful of provisions in the Competition Acts that require the Commission to ensure that universal service and energy conservation policies, activities, and services are appropriately funded and available in each EDC’s and NGDC’s service territory. **THEREFORE,**

**IT IS ORDERED:**

1. That the Bureau of Consumer Services and the Law Bureau shall prepare a comprehensive universal service rulemaking order at this docket no later than the first quarter of 2020.

2. That the Secretary shall serve this Order upon all parties to Docket Nos. M‑2017‑2587711, M-2017-2596907, and M-2019-3012599. This Order shall be posted and made available electronically on the Commission’s website.

3. That the contact person regarding policy and technical issues for this proceeding is Joseph Magee, Bureau of Consumer Services, [jmagee@pa.gov](mailto:jmagee@pa.gov). The contact person regarding legal issues for this proceeding is Assistant Counsel Louise Fink Smith, Law Bureau, [finksmith@pa.gov](mailto:finksmith@pa.gov).

4. That the docket at *Review of Universal Service and Energy Conservation Programs*, Docket No. M-2017-2596907, be closed.

**BY THE COMMISSION,**

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Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 19, 2019

ORDER ENTERED: January 2, 2020

1. A low-income customer is one with a household income at or below 150% of the Federal Poverty Income Guidelines (FPIG). *See* Department of Health and Human Services (HHS) Poverty Guidelines for 2019. Annual Update of the HHS Poverty Guidelines, 84 Fed. Reg. 1167–68 (February 1, 2019). [↑](#footnote-ref-2)
2. Section 2803 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801—2816 (1997), and Section 2202 of the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201—2212 (1999), (respectively Electric Competition Act and Natural Gas Competition Act; collectively Competition Acts). [↑](#footnote-ref-3)
3. A utility may spend up to 20% of its annual LIURP budget on customers having an arrearage and whose household income is at or below 200% of FPIG. *See* 52 Pa. Code §§ 58.1, 58.2, and 58.10. [↑](#footnote-ref-4)
4. 66 Pa.C.S. §§ 2203(8) and 2804(9). [↑](#footnote-ref-5)
5. 52 Pa. Code §§ 54.74 and 62.4. [↑](#footnote-ref-6)
6. 66 Pa.C.S. § 2203(8) – “The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each natural gas distribution service territory. The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income retail gas customers to afford natural gas service. Programs under this paragraph shall be subject to the administrative oversight of the commission, which shall ensure that the programs are operated in a cost-effective manner.”

   66 Pa.C.S. § 2804(9) – “The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory. Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively neutral cost-recovery mechanisms that fully recover the costs of universal service and energy conservation services. The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income customers to afford electric service. Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.” [↑](#footnote-ref-7)
7. 52 Pa. Code §§ 54.76 (a–b) (electric) and 62.6 (a–b) (natural gas). [↑](#footnote-ref-8)
8. *Energy Affordability for Low-Income Customers*, Docket No. M-2017-2587711 (*Energy Affordability* proceeding); and *Review of Universal Service and Energy Conservation Programs*, Docket No. M­2017­2596907 (*Review* proceeding). [↑](#footnote-ref-9)
9. *Staff Review of CAP Final Billing Methods*, Docket No. M-2019-3010190; *Universal Service Reporting Requirements*, Docket No. M‑2019‑3011814 (USRR); and *Fully Projected Future Test Year Rulemaking*, Docket No. L‑2012-2317273 (FPFTY Rulemaking). [↑](#footnote-ref-10)
10. 52 Pa. Code § 69.265(2)(i)(A–C). [↑](#footnote-ref-11)
11. 66 Pa.C.S. § 2203(7) – “The commission shall, at a minimum, continue the level and nature of the consumers protections, policies and services within its jurisdiction that are in existence as of the effective date of this chapter to assist low-income retail gas customers to afford natural gas services.”

    66 Pa.C.S. § 2802(10) – “The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.” [↑](#footnote-ref-12)
12. *Cash Am. Net of Nev., LLC v. Dep’t of Banking*, 8 A.3d 282, 297 (Pa. 2010) (citing *Eighty-Four Mining Co. v. Three Rivers Rehab.*, 721 A.2d 1061, 1066 (Pa. 1998)). [↑](#footnote-ref-13)
13. *UGI v. Pa. Public Utility Commission*, 677 A.2d 882, 886 (Pa. Cmwlth. 1996) (*quoting PHRC v. Norristown Area School District*, 374 A.2d 671, 679 (Pa. 1977) (quoting *PG & E v. FPC*, 506 F.2d 33, 38 (D.C. Cir.1974))). [↑](#footnote-ref-14)
14. The applicable statutes and other provisions covering rulemakings and policy statements are: Regulatory Review Act, 71 P.S. §§ 745.1—745.14 – Formal Review Process; Commonwealth Attorneys Act, 71 P.S. §§ 732-101—732‑506 – Legal Review; Commonwealth Documents Law, 45 P.S. §§ 1102—1208 – Rulemaking Framework; and Administrative Code – 71 P.S. § 232 – Fiscal Notes. *See also* 52 Pa. Code § 5.43 relating to petitions for issuance, amendment, repeal, or waiver of Commission regulations. [↑](#footnote-ref-15)