

PENNSYLVANIA UTILITY LAW PROJECT

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September 13, 2010

VIA ELECTRONIC FILING (E-FILING)

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pa. PUC v. UGI Utilities, Inc.
Docket No. M-2010-2138591**

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceeding, please find the comments of the Pennsylvania Utility Law Project. These comments are submitted pursuant to the Commission Opinion and Order in this proceeding entered August 23, 2010.

If you have any questions, please do not hesitate to contact me directly.

Very truly yours,


Julie George, Esq.

Enclosures
cc: Cert. of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania PUC v.
UGI Utilities, Inc.**

Docket No. M-2010-2138591

CERTIFICATE OF SERVICE

I hereby certify that I have today served a true copy of the foregoing Comments upon the parties of record in this proceeding listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

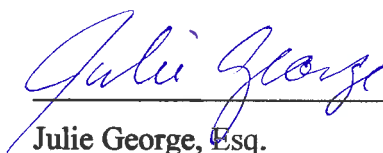
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Dated: September 13, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pa. Public Utility Commission, Law
Bureau Prosecutory Staff v. UGI
Utilities, Inc.**

Docket No. M-2010-2138591

**COMMENTS OF THE
PENNSYLVANIA UTILITY LAW PROJECT**

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Dated: September 13, 2010

I. INTRODUCTION

The Pennsylvania Utility Law Project (“PULP”) respectfully submits these comments in the above-captioned proceeding regarding the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) Settlement Agreement between UGI Utilities, Inc. (“UGI”) and the Law Bureau Prosecutory Staff (“Law Bureau”).¹ PULP provides information, assistance, and advice about residential utility and energy matters affecting low-income consumers. PULP is the designated statewide project of the Pennsylvania Legal Aid Network (“PLAN”) of civil legal aid programs. PULP acts in coordination with PLAN programs and their clients, other nonprofit agencies, and community groups that serve the low income.

PULP submits these comments pursuant to the Opinion and Order entered on August 23, 2010.² PULP’s comments respond to Vice-Chairman Christy’s Statement advocating the revision of the Settlement Agreement and Commission Order to direct the payment of settlement proceeds into UGI’s Operation Share.³ Because this revision is in the public interest, PULP supports its inclusion in the Settlement Agreement. PULP endorses and supports Operation Share as a program providing an important public benefit. However, we suggest that, since funds directed toward this organization are a benefit to the utility as well as to the customer, other beneficiaries, specifically LIURP, which will not result in a redirection of settlement payments to the sanctioned company, should also be considered by the Commission. PULP makes this suggestion because sanctions upon the company should exclusively or at least disproportionately favor the customers; sanctions should not be structured in a manner that ultimately results in a “benefit” to the company, as this benefit undermines the effectiveness of the sanction. PULP

¹ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2010-2138591, (Order entered August 23, 2010).

² Ordering paragraph number 4 of the Commission’s Opinion and Order entered August 23, 2010 states, “That, subsequent to the Commission’s review of the comments filed in this proceeding, a final Opinion and Order will be issued.”

³ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2010-2138591, Statement of Vice Chairman Tyrone J. Christy (August 18, 2010)

encourages the Commission to promote and approve settlement agreements that require at least a portion of the settlement proceeds be paid into public utility company LIURPs which benefit customers but not the company. PULP thanks the Commission for the opportunity to be heard on this issue.

II. BACKGROUND

This proceeding involves a disruption of gas service that occurred on September 6, 2009, affecting 25 residences served by UGI Utilities, Inc. The Farmington Way subdivision, in Lititz, Pennsylvania, experienced a gas service outage when the propane tanks serving the subdivision contained insufficient propane supplies to pressurize the system. A resident notified the Commission via a September 11, 2009 letter. An informal investigation by the Commission's Law Bureau and the Gas Safety Division concluded that UGI had violated regulations. The informal investigation asserted that UGI failed to monitor the propane gas supplies (violating 66 Pa. C.S. §1501); failed to furnish and maintain adequate, efficient, safe and reasonable service in the provision of gas service (violating 66 Pa. C.S. §1501); and failed to provide correct information on its emergency placard (violating 49 CFR 192.707).⁴

Commission Staff and counsel for UGI conducted settlement negotiations that resulted in the Agreement filed on July 7, 2010.⁵ The Settlement required UGI to pay a \$17,500 civil penalty. UGI cannot seek recovery of any of these monies in any future rate proceeding. An Opinion and Order was entered by the Commission ordering the terms detailed in the Settlement

⁴ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2010-2138591, (Order entered August 23, 2010) at 3.

⁵ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2010-2138591, (Settlement Agreement filed July 7, 2010).

Agreement.⁶ Vice-Chairman Tyrone J. Christy made a Statement that the \$17,500 civil penalty ordered by the Commission would be better utilized by directing the funds to Operation Share and provided an opportunity for public comment.⁷

III. COMMENTS

PULP supports Vice-Chairman Christy's Statement and the Commission's ongoing practice of approving settlement agreements in which, in lieu of a civil penalty, public utility companies agree to pay money into their LIURP or other Universal Service programs, where the payment is above and beyond the Commission approved annual budget and where the payment is not recovered from ratepayers but is paid by shareholders. PULP further avers that settlement agreements that most act in the public interest include heavy sanctions, which serve as a strong deterrent, and direct the payment of these sanctions towards the Universal Service programs that benefit the neediest customers the most and utility companies the least. While we agree with Vice-Chairman Christy that directing these monies to Operation Share is more appropriate than a civil penalty, we submit that directing these funds towards LIURP, as well as Operation Share, would provide long-term benefits to customers without rewarding the utility as well. PULP's support is based on the fact that these payments are in the public interest, solidly grounded on both legal and public policy foundations.

⁶ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2010-2138591, (Order entered August 23, 2010).

⁷ *Pa. Public Utility Commission Law Bureau Prosecutory Staff v. UGI Utilities, Inc.*, Docket No. M-2010-2138591, (Statement of Vice-Chairman Tyrone J. Christy, August 18, 2010).

A. Legal Basis for PULP Support

The Commission has clear, legal authority grounded in statute, case law, and regulation to direct settlement amounts toward specific Universal Service programs. The general powers granted in Title 66, Chapter 5 and the specific charge contained in Title 66, Chapter 15 to ensure public utilities provide safe and reasonable service combine to provide authority to the Commission to review and approve settlement agreements, both formally and informally.⁸ These general powers are made explicit in Title 52, Chapters 3 and 5 of the Pennsylvania Code, wherein the Commission expressly reserves the right to review settlement agreements.⁹

Statutory directives in the *Natural Gas Choice and Competition Act* also support the Commission's actions to review and approve settlement agreements and direct settlement proceeds to be paid into Universal Service programs, such as LIURP or Operation Share. The *Competition Act* states:

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.¹⁰

This language recognizes the importance of Universal Service program support by the Commission and specifically highlights low-income energy reduction programs such as LIURP. This policy of valuing universal service is reflected by the Commission directing settlement

⁸ 66 Pa.C.S. §§ 501, 504—506, and 1501.

⁹ 52 Pa. Code §§ 3.113 and 5.232.

¹⁰ 66 Pa. C.S. § 2203(8).

funds towards LIURP or Operation Share. The Commission's practice of revising settlement agreements so that, in lieu of a civil penalty, public utility companies agree to pay money into their LIURP or other Universal Service programs, where the payment is above and beyond the Commission approved annual budget and where the payment is not recovered from ratepayers but is paid by shareholders advances the goals of the statute.

The Commission historically has exercised its authority to create precedent in which the Commission modifies settlement agreements and directs payment of settlement amounts into specific Universal Service programs. In 2005, following allegedly improper terminations by Penelec, the Commission modified a settlement agreement between Penelec and the Law Bureau, changing the \$250,000 civil penalty that was to be paid into the Commonwealth's General Fund into a \$250,000 contribution to Penelec's Customer Assistance Program ("CAP").¹¹ After a comment period, the PUC went on to recognize the difference between civil penalties and contributions to Universal Service programs and subsequently modified the settlement to direct \$250,000 to the Dollar Energy Fund and \$100,000 to Penelec's CAP. The basis for this modification was the Commission's determination that the "Settlement Agreement would better serve the public interest if the proposed \$250,000 civil penalty to be imposed on Penelec would be instead contributed to the Dollar Energy Fund and, if an additional \$100,000 were contributed to Penelec's CAP."¹² The Commission similarly modified a settlement agreement with National Fuel Gas Distribution Corporation ("NFG") in 2008, following an explosion in Clearfield County, Pennsylvania. The original agreement reached between the Commission's Prosecutory Staff and NFG required NFG to pay a \$50,000 civil penalty and to fund an additional \$30,000 of

¹¹ *Law Bureau Prosecutory Staff Informal Investigation of the Pennsylvania Electric Company Service Terminations in Hastings and Erie, Pennsylvania*, Docket No. M-00051906, (Order entered November 2, 2005) at 14.

¹² *Law Bureau Prosecutory Staff Informal Investigation of the Pennsylvania Electric Company Service Terminations in Hastings and Erie, Pennsylvania*, Docket No. M-00051906, (Order entered December 21, 2005) at 17.

safety-related activities.¹³ The Commission modified that original agreement by increasing the penalty to \$100,000 and the safety fund to \$50,000, while additionally specifying that the \$100,000 be directed to NFG's Neighbor for Neighbor Heat Fund instead of to the General Fund.¹⁴ In another case, following a system billing error in 2008 by Pike County Light & Power Company ("PCL&P"), the company and Prosecutory Staff negotiated a settlement agreement including a \$35,000 civil penalty. The PUC decided the public interest would be served by directing the \$35,000 to the Neighbor Fund of PCL&P.¹⁵ Finally, UGI Utilities was investigated by the Commission following a 2008 gas explosion in Lancaster County, Pennsylvania. The original settlement agreement between staff and the company included a \$40,000 civil penalty that was later modified by the Commission to direct the money into UGI's Operation Share Hardship Fund.¹⁶ There have been numerous other recent settlements that have followed the same pattern of the Commission intervening and directing funds to Universal Service programs. These numerous examples provide clear precedent for the Commission to modify a settlement agreement and direct payment of settlement amounts into specific Universal Service programs.

Commission regulations also support directing sanctions towards Universal Service programs. The Commission Policy Statement codified at 52 Pa. Code §69.1201 establishes standards for determining whether a fine for a violation is appropriate, as well as if a proposed settlement is in the public interest.¹⁷ This Policy Statement provides flexibility to the Commission, supporting the Commission's ability and authority to modify settlement

¹³ *Pa. PUC v. National Fuel Gas Distribution Corp.*, Docket No. M-2008-2013013, (Order entered March 14, 2008).

¹⁴ *Pa. PUC v. National Fuel Gas Distribution Corp.*, Docket No. M-2008-201301, (Order entered May 21, 2008).

¹⁵ *Pa. PUC v. Pike County Light & Power Company*, Docket No. M-00061973, (Order entered September 15, 2008).

¹⁶ *Pa. PUC v. UGI Utilities, Inc.*, Docket No. M-2008-2036549, (Order entered November 6, 2008).

¹⁷ *The Final Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* became final on December 22, 2007, upon publication in the Pennsylvania Bulletin. See 37 Pa.B. 6755 (December 22, 2007).

agreements so they are in the public interest, including directing settlement proceeds into public utility company Universal Service programs.

Given its basis in statute, case law, and regulation, the Commission has clear legal authority to direct settlement amounts toward specific Universal Service programs. PULP therefore supports Vice-Chairman Christy's statement in this case against a civil penalty, but would suggest that LIURP, in addition to Operation Share, is a more appropriate designation for receipt of these funds.

B. Support for Operation Share Rather Than a Civil Penalty

Should the Commission elect not to direct a portion of these settlement funds into LIURP, than PULP supports the Vice-Chairman's motion to direct settlement funds exclusively into the Operation Share hardship fund. Operation Share provides emergency financial aid to pay electric bills for families with financial hardships. There is a twofold benefit to directing the funds of this settlement into UGI's hardship fund: (1) Operation Share reduces the overall cost of service for residential ratepayers now and into the future and (2) Operation Share can improve the health and well-being of low-income families.

1. *Operation Share reduces energy costs for other residential ratepayers.*

Operation Share can reduce overall energy costs for other ratepayers. Unpaid arrearages eventually turn into uncollectible expenses that the utility passes on to its residential customers in the form of higher rates. Operation Share helps low-income customers to eliminate their past arrearages, preventing those arrearages from getting out of hand and becoming uncollectible accounts. This leads to real cost savings for other ratepayers as the uncollectible costs to the utility are reduced.

These cost savings to other residential ratepayers are an important benefit and correlate with the public policy of the Commonwealth. In 2004, the General Assembly enacted Chapter 14. Among the purposes behind Chapter 14 was the goal of reducing costs of service for residential ratepayers while simultaneously ensuring service remained available to all customers on reasonable terms and conditions.¹⁸ Directing settlement agreement funds into Operation Share meets this goal because doing so will support programs that reduce costs for other residential ratepayers while also ensuring more affordable service for low-income households.

Because Operation Share reduces costs for other ratepayers, the program is in line with state policy directives. Directing funds to this Universal Service program as part of the settlement agreement is therefore in the public interest.

2. *Operation Share can improve the health and welfare of low-income families.*

Households with extra money from Operation Share can use these funds to prevent termination of service or redirect them to other life-essential necessities, thereby improving the welfare of the entire household. It is well substantiated that low-income families often face a dilemma in determining where to spend their limited resources in the face of high energy bills.¹⁹ Because of limited income and nonexistent savings, low-income families must choose between paying for utility service and paying for other life-essential necessities, such as food, medicine, and/or clothing. “Convergent evidence suggests that the periodic stress of home heating and cooling costs may adversely impact the health and nutritional status of children and other vulnerable

¹⁸ 66 Pa.C.S. § 1402(3).

¹⁹ See Deborah A. Frank, Nicole B. Neault, Anne Skalicky, John T. Cook, Jacqueline D. Wilson, Suzette Levenson, Alan F. Meyers, Timothy Heeren, Diana B. Cutts, Patrick H. Casey, Maureen M. Black and Carol Berkowitz, *Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less Than 3 Years of Age*, *Pediatrics* 2006; 118; 1293-1302. Retrieved on June 23, 2009 from <http://www.childrenshealthwatch.org/page/PublicationsTopic/#Site>. See also *Fuel for Our Future. Impacts of Energy Insecurity on Children's Health, Nutrition, and Learning*. Children's Sentinel Nutrition Assessment Program (C-SNAP) in collaboration with Citizens Energy Corporation, September 2007. Retrieved on April 4, 2008 from http://www.c-snap.org/upload/resource/fuel_for_our_future_9_18_07.pdf.

populations.”²⁰ That is, because low-income households often have insufficient money to pay for all their basic needs, they will cut back on food and medicine, thereby imperiling the safety of household members, often the very young and the very old, just so they can pay to keep the heat on. Operation Share may help a low-income family make payment on its outstanding energy bill, leaving other funds available to purchase life essential goods and services. As a result, household members may enjoy improved health and well-being.

Operation Share can help improve the health and welfare of low-income families by freeing up money from energy expenditures to be used to purchase other life essential necessities. This results in improved health for the family, a clear public policy benefit. Because Operation Share can improve family health and well-being, directing funds to be paid into this program is in the public interest.

C. LIURP is the Most Appropriate Universal Service Program to Receive Funds

Sanctions, to be most fully effective as a deterrent, should exclusively or at least disproportionately favor the customers, not the utility. While PULP supports Operation Share, we suggest that since funds directed toward this organization are a benefit to the utility as well as to the customer, Operation Share should not be the sole beneficiary of these funds. Other beneficiaries, which will not redirect funds to the sanctioned company, should also be considered, and perhaps preferred, by the Commission.

Operation Share provides emergency financial aid to pay electric bills for families with financial hardships. This financial aid payment also provides a benefit to UGI by decreasing its arrearages and uncollectibles. We strongly encourage the Commission to consider the public

²⁰ See *Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less Than 3 Years of Age*, at pp. 1294-1295.

interest benefits to be achieved by directing funds to LIURP because contributions to LIURP will act most effectively to advance the public welfare, without also benefiting the utility.

In another settlement involving UGI, Chairman Cawley favored the direction of funds to LIURP as assisting in future as well as current savings:

Allocating the funds to the Operational Share Hardship Fund will very likely reduce the company's uncollectible expense in the immediate period, resulting in greater profits for the utility this winter... Alternatively, allocation of funds to a LIURP program will put more of these funds into the hands of UGI's customers and provide them with the tools to mitigate current *and future* energy costs.²¹

A settlement agreement directing the payment of funds into LIURP is in line with Chairman Cawley's sentiments and is in the public interest because: (1) LIURP cost effectively reduces energy consumption among low-income families; (2) LIURP reduces the overall cost of service for residential ratepayers now and into the future; (3) LIURP has a beneficial economic effect in the Commonwealth; (4) LIURP can improve the health and well-being of low-income families; and (5) LIURP provides a more long-term benefit to the customer without rewarding the utility. The Commission serves the public interest most by directing settlement payments into this Universal Service program.

1. *LIURP cost effectively reduces energy consumption.* LIURP has been shown in numerous reports and studies to cost effectively reduce energy consumption among low-income households. A recent long-term study by the Consumer Services Information Project of Penn State University stated, "LIURP is successful in both reducing energy consumption and heating energy arrearages in treated homes."²² Penn State's report showed that Pennsylvania gas heating customers receiving LIURP treatment achieved an average 21.4% reduction in energy

²¹ *Pa. PUC v. UGI Utilities, Inc.*, Docket No. M-2008-2036549, (Dissenting Statement of Chairman Cawley entered October 23, 2008).

²² John Shingler, *Long Term Study of Pennsylvania's Low Income Usage Reduction Program: Results of Analyses and Discussion*, Consumer Services information Project of Penn State University, January 2009, at p. 47.

consumption.²³ The report noted that LIURP achieves these savings in a cost effective manner.²⁴ The Commission's own analysis supports the Penn State study's conclusion that LIURP treatment can result in significant reductions in energy consumption.²⁵ Moreover, LIURP reduces energy consumption in a cost effective manner, meaning that the money spent on the program is a smart investment, not just a means to reduce energy consumption.²⁶

This cost effective reduction of energy consumption is in accord with Federal and state policy directives. The Federal government recognizes the importance of and has passed legislation supporting energy conservation. The Department of Energy's Weatherization Assistance Program²⁷ and the Department of Health and Human Services' Low Income Home Energy Assistance Program²⁸ are both excellent examples of the Federal government's commitment to energy conservation, as both of these programs, year after year, weatherize low-income households in much the same way that LIURP does. Additionally, the American Recovery and Reinvestment Act of 2009 includes sizeable appropriations for weatherization and conservation activities as a means of spurring economic activity and reducing energy consumption.²⁹

Pennsylvania recognizes the value of energy conservation and reducing the cost of energy for Pennsylvanians and has recently enacted sweeping pieces of legislation designed to foster

²³ *Id.* at 28.

²⁴ *Id.* at 47.

²⁵ See on the Commission's website the annual *Reports on Universal Service Programs and Collections Performance* by the Bureau of Consumer Services documenting consistent household energy savings as a result of LIURP treatment. Found at www.puc.state.pa.us/general/publications_reports/publications_reports_yearly.aspx.

²⁶ Shingler at 47.

²⁷ See, 42 U.S.C. §6861 et seq.; 42 U.S.C. §7101 et seq.; 10 C.F.R. §440.1 et seq.

²⁸ See, 46 U.S.C. §2601 et seq.; 45 C.F.R. §96.80 et seq.

²⁹ See Section 407, Public Law 111-5 on 2/17/2009. Retrieved from http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf on 7/7/09.

alternative energy and energy conservation: the Alternative Energy Portfolio Standards Act of 2004,³⁰ the Alternative Energy Investment Act of 2008,³¹ and Act 129 of 2008.³²

Because the LIURP program cost effectively reduces energy consumption among low-income families, the program is directly in support of Federal and state policy. Directing funds to this program as part of the settlement agreement is therefore in the public interest.

2. *LIURP reduces energy costs for other residential ratepayers.* The energy usage reductions LIURP creates lead to direct savings in energy expenditures for LIURP participants. Each of the Commission's *Reports on Universal Service Programs and Collections Performance* issued this decade confirms that low-income natural gas households accrue considerable energy savings that yield a significant monetary benefit to the LIURP participant. This average annual energy savings has ranged from 15.5 % to 20.4%.³³ This monetary savings makes sense – reduced energy consumption leads to lower bills.

The impact of these monetary savings is important because it goes beyond low-income LIURP participants to benefit all Pennsylvania ratepayers. Other residential ratepayers benefit from the reduced energy consumption of low-income households achieved through LIURP because other residential customers contribute to the cost of the Universal Service programs that serve low-income families. Reducing energy consumption results in lower Universal Service costs. Additionally, LIURP participants tend to have lower arrearage levels after LIURP treatment,³⁴ which means that fewer uncollectible dollars must be accounted for in the rates of residential ratepayers. Overall, then, LIURP reduces the costs for both low-income and non low-income residential ratepayers.

³⁰ 73 P.S. §1648.1 et seq.

³¹ Pa. H. Bill No. 1, Printer's No. 86 (enacted July 9, 2008).

³² Pa. H. Bill No. 2200, Printer's No. 4526 (enacted Oct. 15, 2008).

³³ See www.puc.state.pa.us/general/publications_reports/publications_reports_yearly.aspx for copies of these reports.

³⁴ Over half of gas LIURP participants reduced their arrearage after LIURP treatment. See Shingler, at pp. 41-42.

These cost savings to other residential ratepayers are an important benefit and correlate with the public policy of the Commonwealth. In 2004, the General Assembly enacted Chapter 14. Among the purposes behind Chapter 14 was the goal of reducing costs of service for residential ratepayers while simultaneously ensuring service remained available to all customers on reasonable terms and conditions.³⁵ Directing settlement agreement funds into LIURP meets this goal because doing so will support programs that reduce costs for other residential ratepayers while also ensuring more affordable service for low-income households.

Because LIURP reduces costs for other ratepayers, the program is in line with state policy directives. Directing funds to this program as part of the settlement agreement is therefore in the public interest.

3. *LIURP has a beneficial economic effect for Pennsylvania.* Weatherization programs, like LIURP, have been shown to produce substantial economic benefits in the communities in which they exist. Much of the economic impact from weatherization programs like LIURP is in the creation of good, stable jobs; these jobs have good wages, which circulate back into the local economy and further stimulate local economic activity and development.³⁶ Some studies have found that “investments in low income energy efficiency would produce an impact that is more than 23 times the original investment.”³⁷ Pennsylvania’s own Department of Community and Economic Development (“DCED”) recognizes the power of weatherization funding to stimulate job creation and the local economy. In its recent plan submitted to the Department of Energy outlining its intention to use stimulus funds provided through the American Recovery and Reinvestment Act of 2009, DCED claims that it will put 940

³⁵ 66 Pa.C.S. § 1402(3).

³⁶ Jerry Oppenheim and Theo MacGregor, *Energy Efficiency Equals Economic Development*, June 2008 Report for Entergy, at p. 33. Retrieved from <http://www.democracyandregulation.com/> on June 23, 2009.

³⁷ Oppenheim and MacGregor at p. 33.

Pennsylvanians to work through the investment of Federal funds into local weatherization activities.³⁸

Because investments into weatherization programs like LIURP have positive economic benefits for ratepayers and local economies, benefits which are clearly in the public interest, the Commission should approve this settlement agreement and those in the future which require contributions by the company into its LIURP.

4. *LIURP can improve the health and welfare of low-income families.* Households with extra money from LIURP treatment can use these funds to prevent termination of service or redirect them to other life-essential necessities, thereby improving the welfare of the entire household.

Low-income families struggle with the decision of where to spend their limited resources in the face of high energy bills.³⁹ Because of limited income and nonexistent savings, low-income families must choose between paying for utility service and paying for other life-essential necessities, such as food, medicine, and/or clothing. “Convergent evidence suggests that the periodic stress of home heating and cooling costs may adversely impact the health and nutritional status of children and other vulnerable populations.”⁴⁰ That is, because low-income households often have insufficient money to pay for all their basic needs, they will cut back on

³⁸ Dept. of Community and Economic Development, *Pennsylvania ARRA Weatherization State Plan for Program Years 2009-2012*, at p. 1. Retrieved from <http://www.newpa.com/strengthen-your-community/redeveloping-your-community/housing/weatherization/index.aspx> on June 23, 2009.

³⁹ See Deborah A. Frank, Nicole B. Neault, Anne Skalicky, John T. Cook, Jacqueline D. Wilson, Suzette Levenson, Alan F. Meyers, Timothy Heeren, Diana B. Cutts, Patrick H. Casey, Maureen M. Black and Carol Berkowitz, *Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less Than 3 Years of Age*, *Pediatrics* 2006; 118; 1293-1302. Retrieved on June 23, 2009 from <http://www.childrenshealthwatch.org/page/PublicationsTopic/#Site>. See also *Fuel for Our Future. Impacts of Energy Insecurity on Children's Health, Nutrition, and Learning*. Children's Sentinel Nutrition Assessment Program (C-SNAP) in collaboration with Citizens Energy Corporation, September 2007. Retrieved on April 4, 2008 from http://www.c-snap.org/upload/resource/fuel_for_our_future_9_18_07.pdf.

⁴⁰ See *Heat or Eat: The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less Than 3 Years of Age*, at pp. 1294-1295.

food and medicine, thereby endangering the safety of household members, often the very young and the very old, just so they can pay to keep the heat on.

As noted earlier in these comments, participation in LIURP can produce significant energy usage reductions for a household, and these reductions can yield an average energy savings of \$373 for the household. LIURP households, because of the money saved from energy usage reductions, have additional resources with which to purchase clothing, nutritious food, and medicine. As a result, household members may enjoy improved health and well-being.

LIURP can help improve the health and welfare of low-income families by freeing up money from energy expenditures to be used to purchase other life-essential necessities. This results in improved health for the family, a clear public policy benefit. Because LIURP can improve family health and well-being, directing funds to be paid into this program is in the public interest.

5. *LIURP provides a more long-term benefit to the customer without rewarding the utility.* When settlement funds are directed to Operation Share, or any hardship fund, the benefit is a short-term one and goes to both the customer and the utility. LIURP, as an energy consumption reduction program, does not simply recycle the money back into the sanctioned company. By directing the funds from a settlement agreement to LIURP, customers receive the full benefit of the utility's payment made in compensation for the alleged violation, without also benefitting the sanctioned company. By receiving LIURP funds, rather than a one-time hardship fund payment, customers are able, through weatherization, to decrease usage on a long-term basis.

The Commission should continue its recent practice of eliminating civil penalties that go into the General Commonwealth Fund in favor of diverting that amount toward Universal

Service. The Prosecutory Staff argued this in *Pennsylvania Public Utility Commission Prosecutory Staff v. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power company d/b/a FirstEnergy*, M-2009-2112849, (September 9, 2009). PULP supports the Prosecutory Staff's position that any settlement that resolves unlawful conduct must act as deterrent not only for the specific utility, but also for the entire industry. Payment of its penalty into a program that addresses its own energy assistance needs will not result in any actual loss to the utility. "The end result is simply that the Company is merely 'paying itself' the penalty amount...this type of settlement has no deterrent effect."⁴¹

IV. CONCLUSION

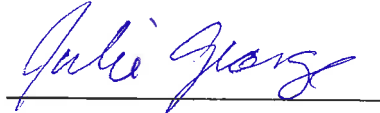
It is clear that the Commission has the legal authority to review, revise, and approve settlement agreements that are in the public interest. It is also clear that the Commission acts in the public interest when it approves settlement agreements where, in lieu of a civil penalty, public utility companies agree to pay money into LIURP or other Universal Service programs, where the payment is above and beyond the Commission approved annual budget and where the payment is not recovered from ratepayers but is paid by shareholders. PULP supports Vice-Chairman Christy's Statement that a civil penalty is not the best use of the sanction monies.

Operation Share and LIURP are both important Universal Service programs, While PULP supports Operation Share, we suggest that since funds directed toward a hardship fund benefit the utility as well as the customer, an appropriate modification is to name LIURP, which will not redirect funds to the sanctioned company, as an additional beneficiary.

⁴¹ *Pennsylvania Public Utility Commission Prosecutory Staff v. Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power company d/b/a FirstEnergy*, M-2009-2112849, Comments of the Pennsylvania Public Utility Commission Prosecutory Staff (September 9, 2009) at 3.

Thank you for this opportunity to submit these comments on this matter of importance to low-income families throughout Pennsylvania.

Respectfully submitted,



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