



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
P.O. Box 2675
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MAR 14 2011

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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Petition of Philadelphia Gas Works
Docket Number P-2010-2178610**

Dear Secretary Chiavetta:

Pursuant to the Resolution section beginning on page 7 of the Commission's Order entered November 23, 2010, the Pennsylvania Department of Public Welfare ("DPW"), who administers the Low-Income Home Energy Assistance Program ("LIHEAP") in Pennsylvania, is participating in these proceedings by providing DPW's statement based on federal law and guidance that govern LIHEAP.

LIHEAP is a block grant under which the federal government gives annual grants to states to operate multi-component home energy assistance programs for needy families. Established in 1981 by Title XXVI of P.L. 97-35, LIHEAP has been reauthorized and amended several times, most recently in 2005. The LIHEAP statute charges the U.S. Department of Health and Human Services ("HHS") to create administrative rules for LIHEAP and states: "The Secretary shall issue regulations to prevent waste, fraud and abuse" in the LIHEAP program. See 42 U.S.C. § 8624; see also 45 C.F.R. § 96.84(c). The LIHEAP statute, at 42 U.S.C. § 8627(b) also delegates to HHS the duty to investigate compliance with LIHEAP laws by conducting investigations of the use of funds received by States in order to evaluate compliance with the provisions of federal law and, whenever "the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this subchapter by such State in order to ensure compliance with the provisions of this Subchapter."

On July 21, 2010, HHS released Low-Income Home Energy Assistance Information Memorandum 2010-13 (IM 2010-13), to advise states as to the allowable uses of LIHEAP funds. Based on HHS's role with respect to interpreting and administering the LIHEAP program, states are required to comply with IM 2010-13. IM 2010-13 reads: "HHS is concerned that LIHEAP funds used in PIPPs or other vendor assistance programs may be administered without regard to LIHEAP statutory or

regulatory requirements. Through this IM, HHS wishes to clarify ways that LIHEAP funds may be coordinated with vendor energy assistance programs, such as PIPPs, and continue to be governed by the LIHEAP statute and regulations." IM 2010-13 also reads that if a "State wishes to coordinate its LIHEAP funds with a vendor's energy assistance program, such as a PIPP, the State must ensure that those LIHEAP funds continue to be governed by the LIHEAP statute, regulations and State Plan." Most significant to this case is the part of IM 2010-13 that reads:

HHS has determined that the process of subtracting the LIHEAP benefit from the client's energy bill and to then calculate the PIPP discount and/or the client's payment amount appears to be using LIHEAP as a resource and creates an inequity or adverse treatment for LIHEAP clients participating in the PIPP. Such use of LIHEAP funds appears to be out of compliance with Sections 2605(b)(7) of the LIHEAP statute ... and Section 2605(f).

DPW has reviewed the Philadelphia Gas Works' Petition to Modify its Universal Services and Energy Conservation Plans with Respect to the Customer Responsibility Program, PUC Docket No. P-2010-2178610, which sets forth PGW's "Modified Model." PGW's proposal to add a LIHEAP Cash Adjustment to the bills of CRP heating customers currently being billed 8%, 9% or 10% of gross household income to reflect the fact that these customers will either receive a LIHEAP Cash Grant or will be eligible to receive a LIHEAP Cash Grant is inconsistent with the DPW policy that LIHEAP funds must be applied in full to the benefit of the individual eligible households that applies, as required by 42 U.S.C. § 8621(a). That section requires that LIHEAP benefits are issued for the purpose of assisting low-income households, particularly those with the lowest incomes. Federal policy states that "when LIHEAP funds are provided to a utility on behalf of a client to pay his energy bill, the utility does not have the independent authority to use those funds for any other customer or for any other purpose." HHS has determined that the process of subtracting the LIHEAP benefit from the client's energy bill and to then calculate the discount and/or the client's payment amount appears to be using LIHEAP as a resource and creates an inequity or adverse treatment for LIHEAP clients participating in the discount program. Such use of LIHEAP funds appears to be out of compliance with 42 U.S.C. § 8624 (b)(7) of the LIHEAP statute. In the LIHEAP State Plan, DPW has assured the federal government that it will require home energy suppliers to charge LIHEAP recipients the difference between the actual cost of the home energy and the amount of the payment made by DPW to the home energy supplier, as required by 42 U.S.C. § 8624(b)(7)(B). There is no basis in IM 2010-13 to believe that HHS's prohibition on subtracting a LIHEAP benefit amount from the client's energy bill when determining payment amounts or PIPP discounts is limited to the situation where the utility company subtracts the actual LIHEAP benefit the participant receives. If it is impermissible to subtract the whole LIHEAP benefit, it is also impermissible to subtract any part of that benefit, however estimated. It is unclear how PGW's Modified Model meets this requirement. Pursuant to that guidance, PGW's

subtraction of a LIHEAP benefit from the CRP participant's energy bill results in adverse treatment of the LIHEAP recipient and the improper deeming of LIHEAP funds as resources available to the LIHEAP recipient. PGW's Modified Model is mathematically equivalent the exact thing the HHS guidance identifies as a violation of the federal LIHEAP statute because of the manner in which it uses LIHEAP benefits in calculating the PIPP discount and the customer's payment amount.

PGW's Modified Model treats LIHEAP Cash Grant recipients "adversely" within the meaning of federal law and regulations when it adds a LIHEAP Cash Adjustment to the bills of CRP heating customers to reflect the fact that these customers will either receive a LIHEAP Cash Grant or will be eligible to receive a LIHEAP Cash Grant, but, in contrast, does not require such an adjustment for low income Senior Citizen Discount customers receiving LIHEAP or for non-CRP recipients receiving LIHEAP.

The Modified Model is also inconsistent with DPW LIHEAP policy and 42 U.S.C. § 8621(a) (greater benefits to the neediest households) , to the extent that it proposes larger dollar increases in the "asked to pay amount" above existing levels for the poorer LIHEAP recipients who receive the largest grants, which would have the effect of negating greater benefits granted to the neediest of recipients.

In addition, PGW's proposal to calculate the "net energy burden" of CRP heating customers for the purposes of compliance with the targeted energy burdens of the PUC's CAP Policy Statement by taking their LIHEAP Cash Grants into consideration, is inconsistent with 42 U.S.C. § 8624(f) (Low-Income Home Energy Assistance Act), which states that "home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this subchapter shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law... ." PGW's Modified Model does this. Likewise, PGW's proposal to increase bills of CRP heating customers by adding LIHEAP Cash Adjustments, which are projected for each customer as a proportion of his/her eligible grant according to the LIHEAP Benefits Table violates this provision. DPW cannot permit LIHEAP vendors to participate if their plans violate federal LIHEAP law.

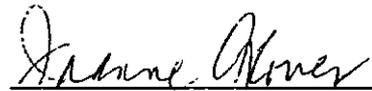
PGW's Modified Model, in the case of a CRP customer who is current on his/her bill, to apply 1/12 of the LIHEAP Cash Grant assigned to PGW to each of the customer's future monthly bills is inconsistent with the DPW policy requiring that the grant be applied as follows: First, to any past due CRP payment or "asked to pay" amount; Second, to the current CRP payment or "asked to pay" amount; Third, if any LIHEAP funds remain, to future CRP payments until exhausted.

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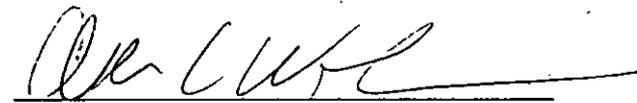
DPW must be able to monitor how all of the LIHEAP funds were applied to the customer's account. 42 U.S.C. § 8624(b)(10). If LIHEAP funds are applied in a way that did not reduce the monthly amount the customer has to pay, DPW does not believe it can monitor the application of funds for the benefit of recipients as opposed to the benefit of the utility.

DPW does not believe PGW's Modified Model is consistent with the U.S. Department of Health and Human Services' policy described in Information Memorandum LIHEAP-IM-2010-13, dated July 21, 2010, and the Department of Health and Human Services has not approved presently any PGW plan as complying with the LIHEAP Act. While the PUC considers whether to approve implementation of the Modified Model, sending vendor payments to PGW on behalf of eligible CRP customers based on this Modified Model would be an improper use of LIHEAP funds. Whether the PUC approves the Modified Model or not, if PGW uses LIHEAP funds in the way described in its Modified Model, DPW must deny PGW's vendor status in the LIHEAP program, because the Modified Model does not comply with the federal laws and requirements of LIHEAP. The PUC should recognize that HHS has provided clear guidance on the use of LIHEAP funds in connection with a PIPP and other customer assistance programs. Therefore, DPW encourage the PUC not to approve this Modified Model if PGW plans to be a LIHEAP vendor.

Sincerely,



Joanne Glover
Acting Deputy Secretary
Office of Income Maintenance



Allen C. Warshaw
Chief Counsel
Office of General Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of DPW's statement with respect to PGW's Corrected Petition to Modify its Universal Services and Energy Conservation Plans with Respect to the Customer Responsibility Program upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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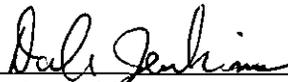
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Dated this 14th day of March, 2011.



Dale Jenkins, Esquire

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Counsel for the Pennsylvania Department of Public Welfare