THE PENNSYLVANIA UTILITY LAW PROJECT

118 LOCUST STREET
HARRISBURG, PA 17101-1414

PATRICK M. CICERO, ESQUIRE
PCICEROPULP@PALEGALAID.NET

PHONE: (717) 236-9486, EXT. 202
FAX: (717) 233-4088

October 31, 2011

Via E-Filing
Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: PA PUC v. Columbia Gas of Pennsylvania – R-2010-2215623
PCOC et al. v. Columbia Gas of Pennsylvania – C-2011-2232186

Dear Secretary Chiavetta:

Enclosed please accept for filing PCOC et al.'s Petition for Reconsideration and/or Clarification of the Opinion and Order Entered October 14, 2011 and a Certificate of Service in the captioned case.

Should you have any questions or concerns please do not hesitate to contact me.

Very sincerely,

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for ACTION United, Nettie Pelton, and Carol Collington

Patrick M. Cicero, Esq.

CC: Certificate of Service (all parties by U.S. Mail and e-mail)
Hon. Katrina Dunderdale, Administrative Law Judge (by U.S. Mail and e-mail)
Technical Advisors (by U.S. Mail and e-mail)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No.: R-2010-2215623
	:	
Columbia Gas of Pennsylvania, Inc.	:	
Pennsylvania Communities Organizing for Change, Inc., d/b/a ACTION United, Carol Collington, and Nettie Pelton	:	
	:	Docket No.: C-2011-2232186
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the Petition for Reconsideration and/or Clarification of the Opinion and Order Entered October 14, 2011 of Pennsylvania Communities Organizing for Change, Inc. d/b/a ACTION United; Carol Collington; and Nettie Pelton, as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL and FIRST-CLASS MAIL

Hon. Katrina L. Dunderdale
Administrative Law Judge
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

David Huff
Brent Killian
Ed Berzonsky
Technical Advisors
Bureau of Fixed Utility Services
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Carrie B. Wright, Esquire
Charles Daniel Shields, Esquire
PA Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265

Michael W. Gang, Esquire
Michael W. Hassell, Esquire
Andrew S. Tubbs, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Flr.
Harrisburg, PA 17101

Candis A. Tunilo, Esquire
Erin L. Gannon, Esquire
Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101

Thomas Sniscak, Esquire
William Lehman, Esquire
Todd Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778

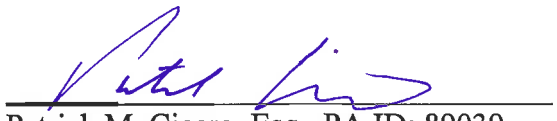
Theodore J. Gallagher, Esquire
Kimberly S. Cuccia, Esquire
Mark Kempic, Esquire
Columbia Gas of Pennsylvania, Inc.
121 Champion Way, Suite 100
Canonsburg, PA 15317

Daniel Asmus, Esquire
Elizabeth Triscari, Esquire
Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101

Charis Mincavage, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for ACTION United, Nettie Pelton, and Carol Collington



Patrick M. Cicero, Esq., PA ID: 89039
Harry S. Geller, Esq., PA ID: 22415
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

October 31, 2011

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No.: R-2010-2215623
	:	
Columbia Gas of Pennsylvania, Inc.	:	
Pennsylvania Communities Organizing for Change, Inc., d/b/a ACTION United, Carol Collington, and Nettie Pelton	:	
	:	Docket No.: C-2011-2232186
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

PETITION FOR RECONSIDERATIONAND/OR CLARIFICATION BY PENNSYLVANIA COMMUNITIES ORGANIZING FOR CHANGE, INC., d/b/a ACTION UNITED, CAROL COLLINGTON, AND NETTIE PELTON OF THE OPINION AND ORDER ENTERED OCTOBER 14, 2011

Pennsylvania Communities Organizing for Change, Inc. d/b/a Action UNITED, Ms. Carol Collington and Ms. Nettie Pelton, ("PCOC et al."), through their attorneys at the Pennsylvania Utility Law Project, hereby submit this Petition pursuant to Public Utility Commission Regulations at 52 Pa. Code §§ 5.41 and 5.572, and request timely reconsideration and/or clarification of the Commission's October 14, 2011 Opinion and Order in the captioned proceeding.

I. Introduction

On October 14, 2011, the Public Utility Commission ("Commission") issued an Opinion

and Order in the captioned proceeding. Despite a fully developed record on the issue, the Commission chose to hold in abeyance, until an unspecified time in the future, a decision about whether Columbia Gas of Pennsylvania, Inc.'s ("Columbia") modified Customer Assistance Plan-Plus design (CAP-Plus) violates federal LIHEAP law and policy.[1] Specifically, the Commission stated:

> Based upon our review and analysis of the record evidence presented with regard to the challenge of PCOC to Columbia's existing CAP-Plus program, we do not believe that this matter can be resolved in the context of this proceeding. Therefore we will defer consideration of this issue and hold it in abeyance for disposition at a future date.

Pa. P.U.C. v. Columbia Gas of Pa., Inc., Docket No. R-2010-2215623, Opinion and Order at 56 (Oct. 14, 2011) ("Opinion and Order").

The Commission expressed concern about the permissibility of CAP-Plus, and directed Columbia to "cease and desist its current practice under the CAP-Plus program to use each recipient's LIHEAP funds to first pay the costs of the CAP-Plus program before applying the remainder to each LIHEAP recipient's account." (Id. at 57.) Despite this conclusion, the Commission stated that Columbia "shall maintain its currently effective Customer Assistance Plan-Plus program as presently operated until further action of the Commission." (Id. at 60, Order ¶ 14.)

PCOC et al. seek reconsideration and/or clarification of these seemingly contradictory results. Specifically, PCOC et al. seek reconsideration of: (1) the Commission's decision to hold in abeyance a decision about whether Columbia's CAP-Plus program design violates federal

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[1] The Commission's October 14, 2011 Opinion and Order also adopted the Administrative Law Judge's ("ALJ") Recommended Decision to approve the partial settlement of the case that was negotiated by the parties, rejected Columbia's request to implement a levelized distribution charge and modified the Recommended Decision by adopting the residential rate design advocated by the Bureau of Investigation and Enforcement. This Petition for Clarification and/or Reconsideration is not addressed at these issues, but is limited only to that portion of the Opinion and Order dealing with CAP-Plus.

LIHEAP law and policy; and, (2) the Commission's decision to allow Columbia to continue to implement CAP-Plus pending an ultimate determination of this issue. Furthermore, PCOC et al. submit that clarification of the process that the Commission intends to pursue concerning resolution of the CAP-Plus issue would add certainty to what has become an increasingly untenable stalemate in resolving the appropriate integration of federal LIHEAP funds with utility ratepayer funded customer assistance plans.

The standard for granting reconsideration or clarification of a prior Commission order is articulated in *Duick v. PG&W*, 56 Pa. P.U.C. 553 (1982). In *Duick*, the Commission held:

> A petition for reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad case, wherein it was said that "[p]arties...cannot be permitted by a second motion to review or reconsider, to raise the same questions which were specifically considered and decided against them. . . ." What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

56 Pa. P.U.C. at 559 *quoting* Pa. R.R. Co. v. Pa. P.U.C., 118 Pa. Super 380, 17 A. 850 (1935). PCOC et al. seek clarification and reconsideration of questions which appear to have been overlooked by the Commission.

II. Requests for Clarification and Reconsideration

A. PCOC et al. seek reconsideration and/or clarification of the Commission's decision to hold in abeyance a decision on the legality of CAP-Plus, and request that the Commission promptly initiate a process for ultimate resolution of this issue.

In its October 14, 2011 Opinion, the Commission stated that it does not believe the

challenge by PCOC et al. to Columbia's existing CAP-Plus program "can be resolved in the context of this proceeding," and therefore it deferred consideration of this issue and held it "in abeyance for disposition at a future date." (Opinion and Order at 56.) The Commission listed three reasons for what it described as "this unusual approach." (Id.) First, the Commission stated that resolution of CAP-Plus in the context of Columbia's base rate proceeding "will have significant impact on all other similar, currently effective programs of our other jurisdictional utilities." (Id.) Second, the Commission concluded that there was "simply insufficient time to render a thorough and reasoned decision on this matter within the regulatory time constraints inherent in a 1308(d) base rate proceeding." (Id.) Finally, the Commission concluded that severance was permissible because a decision on this issue "does not have any effect on the agreed upon revenue requirement contained within the Settlement." (Id.)

Respectfully, PCOC et al. do not believe that any of the articulated reasons for indefinite deferral of this issue is sufficient either in isolation or in the aggregate. To be sure, PCOC et al. are aware of the competing policy determinations necessary to reach a reasoned conclusion on the legality and propriety of a CAP-Plus design such as the one that has been implemented by Columbia. However, a full record has been developed on this issue, and the matter was ripe for consideration at the time the Commission issued its decision, and it remains ripe for consideration at this time.

As to the first articulated reason for deferring consideration of CAP-Plus, that a decision by the Commission on the propriety of Columbia's CAP-Plus program design will have a significant impact on many of the other jurisdictional utilities' CAP programs, PCOC et al. submit that the Commission's conclusion is not a sufficient basis to defer consideration of this issue.

At the time of this writing, and at the time of the Commission's decision, no other jurisdictional utility has fully implemented a CAP-Plus design. Only Columbia has implemented CAP-Plus.[2] Thus, while it is undoubtedly true that a decision on CAP-Plus in this proceeding will impact the structure and design of CAP-Plus-like programs by the other utilities, the effect will be less severe and less costly at this point in time, that is, *prior* to the implementation of CAP-Plus by these utilities, than it would be if the Commission were to determine that CAP-Plus is impermissible *after* the implementation of CAP-Plus by these utilities.

As to the second articulated reason for deferring a decision on CAP-Plus, that there is simply insufficient time in this proceeding to decide the issues, PCOC et al. submit that this proceeding has provided the fullest look to date at the issues involved in the implementation of CAP-Plus and that deferring consideration of the issue serves no useful purpose. The matter has been fully developed in the record through the testimony and accompanying exhibits of PCOC et al. Witness Philip A. Bertocci (PCOC et al. Statements No. 1 and PCOC et al. Statement No. 1-SR), Office of Consumer Advocate ("OCA") witness Roger Colton (OCA Statement No. 3-R and OCA Statement No. 3-SR), Columbia witness Debra A. Davis (Columbia Statement No. 117-R), as well as by participation in response to an application for a subpoena by the then-Acting Deputy Secretary for the Office of Income Maintenance at the Pennsylvania Department of Public Welfare, Philip A. Abromats. Moreover, PCOC et al., OCA, and Columbia each

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[2] PCOC et al. are aware that both Duquesne Light Company ("Duquesne") and PPL Electric Utilities ("PPL") have committed in their respective base rate settlements to implement a CAP-Plus design beginning in the 2011-2012 LIHEAP year, and that a number of other utilities have proposed a CAP-Plus program design in their Universal Services and Energy Conservation Plan ("USECP") filings. In the case of Duquesne, counsel for PCOC et al. has learned that Duquesne will not be implementing CAP-Plus on November 1, 2011 because its USECP plan has not yet been approved. For its part, PPL has indicated that it currently plans to implement CAP-Plus beginning December 1, 2011. Furthermore, as to the other utilities who have proposed a CAP-Plus design in their USECP filings, none of the USECP plans has yet to be approved by the Commission.

submitted thorough and comprehensive briefs on the CAP-Plus issue for consideration by the Commission.

Thus, it is difficult to understand or predict how the Commission will develop a fuller record concerning the nuances of CAP-Plus more efficiently in another context. Under its current practice, the Commission does not generally refer a utility's proposed USECP plans to an ALJ for a full evidentiary hearing where interested parties can conduct discovery. Instead, the Commission has limited participation in those proceedings to merely filing comments on a utility's plan after the Commission has vetted it through a tentative order. Respectfully, this is an insufficient process though which to address an issue as complex as CAP-Plus. Moreover, to date the Commission has not initiated a comprehensive investigation into CAP program designs through which interested parties could participate in an evidentiary proceeding designed to develop a comprehensive record for Commission consideration. Perhaps this is what the Commission has in mind in this case, but to date it has not occurred and the Commission has provided no indication that it intends for this to happen.

Given these realities, the only context in which affected low-income individuals can adequately address the perceived illegality of a CAP-Plus program design is through intervention and participation in a base rate proceeding, which is what occurred in this case. However, if the Commission determines that a base rate proceeding is the incorrect forum for such a challenge affected utility customers are left with no process in which to litigate issues impacting utility affordability; this would have the effect of depriving low-income individuals of their due process rights.

It is axiomatic that customers of state-regulated utility companies have been found to

have a constitutionally protected property interest in continued life-essential utility service[3] and LIHEAP recipients and applicants have been found to have a constitutionally protected property interest in LIHEAP benefits.[4] The process due to energy assistance recipients is determined through the test outlined by the United States Supreme Court in *Matthews v. Eldridge*, which considers the following elements: "the private interest that will be affected . . . the risk of an erroneous deprivation . . . the probable value, if any, of additional or substitute procedural safeguards; and finally, . . . the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. 319, 335 (1976). LIHEAP recipients who do not receive the full benefit of their grant are at serious risk of deprivation of life-essential utility service. For this reason, the process due to LIHEAP recipients and utility customers is significant.[5]

PCOC et al. intervened in this proceeding to, among other things, challenge Columbia's continued improper use of LIHEAP benefits through its CAP-Plus program design. In so doing, PCOC et al. reasonably relied on the fact that this proceeding would be litigated to conclusion within the parameters established for base rate proceedings by the Public Utility Code and the Commission's regulations. As individual CAP customers in Columbia's CAP program, both Collington and Pelton desired a prompt and efficient resolution of their complaints because of their belief that a CAP-Plus program design impermissibly increases their energy burdens and serves to deprive them of the full benefit of their federal LIHEAP grants for the coming LIHEAP season. By deferring resolution of PCOC et al.'s challenge to Columbia's CAP-Plus program design to an unspecified date in the future with an unspecified process, the Commission has

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[3] *Memphis Light, Gas, & Water Div. v. Craft*, 436 U.S. 1, 18 (1978)
[4] *Kapps v. Wing*, 404 F.3d 105, 118 (2d Cir. 2005); *Boyland v. Wing*, No. 92-CV-1002, 2007 WL 951870, at *9 (E.D.N.Y. 2007); *Meeker v. Manning*, 540 F.Supp. 131, 139 (D.C. Conn. 1982)
[5] *Kapps v. Wing*, 404 F.3d. at 118-19.

effectively deprived PCOC et al. of the process that it is due in this proceeding.

Accordingly, PCOC et al. respectfully request that the Commission either reconsider its determination to defer a decision on PCOC et al.'s challenge to CAP-Plus and decide the issue on the fully developed record before it or, in the alternative, clarify the specific process that it intends to initiate in order to address the issue and initiate another proceeding expeditiously. At a minimum, any process for resolution of CAP-Plus should include the opportunity for full evidentiary hearings before an ALJ, as well as transferring the record that was developed in this proceeding.

B. The Commission should clarify and reconsider its decision to allow Columbia to continue with its implementation of CAP-Plus pending resolution by the Commission of the permissibility of a CAP-Plus program design.

On November 1, 2011, the 2011-2012 LIHEAP year will commence and no decision has been made about the appropriate use of LIHEAP grants in coordination with utility-run Customer Assistance Plans. Given the Commission's decision to defer ruling on the appropriateness of Columbia's CAP-Plus design, Columbia's CAP customers will continue to be required to pay a "plus" amount based on Columbia's LIHEAP Cash receipts from CAP customers last year. The "plus" amount is calculated through a formula that uses the total amount of LIHEAP Cash Grant dollars received by Columbia's CAP customers last LIHEAP year (2010-2011) as a proxy for the amount that these customers will receive this year (2011-2012). The effect of CAP-Plus will be particularly insidious in the coming LIHEAP year because the amount of LIHEAP money available for Pennsylvania will be between $50 and $150 million ***less*** than it was last year.[6] Columbia has already determined that the plus amount for the 2011-

[6] For LIHEAP year 2010-2011, Pennsylvania received $280,478,000 in a basic grant appropriation (not including any contingency appropriation). The basic grant appropriation for LIHEAP year 2011-2012 is not yet known. However, the following are the various proposed amounts from the President's proposed budget, the Senate's proposed appropriation, and the House of Representatives proposed appropriation:

2012 LIHEAP year is $18 per month per CAP customer, but these customers will likely receive nowhere close to the amount of LIHEAP money this year that they received last, thus underscoring the illegitimacy of the foundation of the formula used to derive the "plus" each year. The Commission should not permit Columbia to continue with its CAP-Plus plan as implemented pending resolution of the issue.

In its Opinion and Order, the Commission implicitly acknowledged that it had some concerns with the CAP-Plus design as implemented by Columbia. The Commission stated:

> We shall also direct Columbia to cease and desist its current practice under the CAP-Plus program to use each recipient's LIHEAP funds to first pay the costs of the CAP-Plus program before applying the remainder to each LIHEAP recipient's account. Instead, Columbia shall apply LIHEAP funds towards reducing each LIHEAP recipient's asked to pay amount.

(Opinion and Order at 57.) However, in its Order, the Commission ordered that Columbia "shall maintain its currently effective Customer Assistance Plan-Plus program as presently operated until further action of the Commission." (Id., Order at 60, ¶ 14.)

It is unclear what effect the Commission intended in its direction that Columbia shall "cease and desist" its current practice under CAP-Plus but that it should a the same time "maintain its currently effective Customer Assistance Plan-Plus program as presently operated." This inconsistency appears to be a carry-over from the Recommended Decision (R.D.) by the ALJ. In her R.D., the ALJ expressed a generalized concern about Columbia's implementation of CAP-Plus. On one hand, the ALJ clearly expressed her conclusion that Columbia did not demonstrate that CAP-Plus, as the ALJ described it, was lawful. (See R.D. at 140, Conclusion of

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PA's PROPOSED 2011-2012 BASIC LIHEAP GRANT	
President	$133,104,000
Senate Appropriations Committee	$230,075,000
House of Representatives – Draft budget	$195,025,000

SOURCE: http://www.neada.org/news/FY2012LIHEAPAppropriationsStatus100212.pdf

Law ¶ 9.) On the other hand, the ALJ described CAP-Plus in a manner inconsistent with the record. (R.D. at 134 & Appendix C.) In her Conclusions of Law, the ALJ stated that "[i]t has not been proven that use of LIHEAP funds – to pay the costs of the CAP-Plus program before applying the remainder to the LIHEAP recipient's account – is just and reasonable." (R.D. at 140, Conclusion of Law ¶ 9.) This determination carries through in her Recommended Order in which the ALJ states:

> Columbia Gas of Pennsylvania, Inc., shall cease and desist its current practice under the CAP-Plus program – to use each recipient's LIHEAP funds to first pay the costs of the CAP-Plus program before applying the remainder to each LIHEAP recipient's account – and shall instead apply LIHEAP funds towards reducing each LIHEAP recipient's asked to pay amount, which asked to pay amount may include the CAP-Plus monthly charge.

(R.D. at 142, Recommended Order ¶ 10.)

Thus, both the Commission and the ALJ in her R.D. recognized inherent deficiencies with CAP-Plus that must be addressed. While PCOC et al. do not agree with the underlying analysis in the ALJ's decision (as detailed in PCOC et al.'s Exceptions and Reply Exceptions), PCOC et al. do agree that Columbia can only apply LIHEAP funds towards reducing a LIHEAP recipient's asked-to-pay amount, an amount, in PCOC et al.'s judgment, which must be determined based on the affordability guidelines set forth by the Commission and without regard to whether the customer receives or is deemed eligible to receive LIHEAP.

Furthermore, as outlined more fully in the briefs submitted by PCOC et al.,[7] Columbia's CAP-Plus design violates federal law and policy. In part, this conclusion was at least implicitly endorsed by both the ALJ and the Commission, and thus PCOC et al. submit that the most prudent course of action is to require Columbia to suspend its CAP-Plus program pending a final determination by the Commission of the legality of the program design. This course of action

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[7] See PCOC et al. Main Brief at 7-23; PCOC et al. Reply Brief at 8-22.

would cause the least amount of harm because it would ensure that while the Commission determines whether CAP-Plus violates federal law and policy, low-income CAP customers would be required to pay only that amount which is calculated consistent with the Commission's affordability guidelines without regard to their receipt or anticipated receipt of LIHEAP. In contrast, the Commission's decision to permit Columbia to continue with CAP-Plus as currently implemented means that Collington and Pelton, as well as all of the other low-income, payment troubled customers who participate in Columbia's CAP program, continue to be required to pay a "plus" amount, over and above their CAP payment, that may well violate federal LIHEAP law and policy.

PCOC et al. strongly advocate that all parties – including the Commission and DPW[8] -- seek and arrive at a reasonable solution. Any such solution must be consistent with federal LIHEAP requirements, DPW policy, and the obligation of the Commission to arrive at a balanced approach for all ratepayers while assuring that CAP program participant monthly payments remain set within affordable energy burdens. However, while this process is ongoing, CAP customers – who are among the lowest income and most payment troubled households -- should not continue to be required to pay a "plus" amount above and beyond their CAP payment which is calculated consistent with the Commission's affordability guidelines.

Accordingly, PCOC et al. request that the Commission reconsider its decision to permit Columbia to continue its CAP-Plus program pending further action by the Commission, and specifically direct Columbia to suspend its CAP-Plus program until this matter has been finally resolved. At a minimum, PCOC et al. is seeking that the Commission clarify its decision and detail with specificity what part of Columbia's current program it should cease and desist and

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[8] Attorneys for PCOC et al. have expressed similar concerns in a recent letter to DPW; a copy of this letter is attached hereto as Appendix A.

which parts the Commission believes can continue until further action.

III. Conclusion

In accordance with the foregoing, PCOC et al. request reconsideration and/or clarification of the Commission's October 14, 2011 Opinion and Order. PCOC et al. respectfully ask the Commission to either reconsider its determination to defer a decision on PCOC et al.'s challenge to CAP-Plus and decide the issue on the fully developed record before it, or, in the alternative, clarify the specific process that it intends to initiate in order to address the issue and initiate the process expeditiously. Furthermore, PCOC et al. respectfully request that the Commission reconsider its decision to permit Columbia to maintain its CAP-Plus program and instead order Columbia to suspend CAP-Plus pending a final resolution of the issue by the Commission.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for PCOC, Carol Collington, and Nettie Pelton

Harry S. Geller, Esq., PA ID: 22415
Patrick M. Cicero, Esq., PA ID: 89039
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

Dated: October 31, 2011

Appendix A

PENNSYLVANIA UTILITY LAW PROJECT

118 LOCUST STREET
HARRISBURG, PA 17101-1414

HARRY S. GELLER, ESQ.
HGELLERPULP@PALEGALAID.NET

PHONE: (717) 232-2719
FAX: (717) 233-4088
MOBILE: (717) 576-2282

October 25, 2011

Edward J. Zogby, Director
Bureau of Policy, Office of Income Maintenance
Commonwealth of Pennsylvania
Department of Public Welfare
431 Health & Welfare Building
P.O. Box 2675
Harrisburg, PA 17105-2675

Re: Concerns about CAP-Plus plans

Dear Ed:

We are writing to alert you to our ongoing concerns about the integration of LIHEAP with public utilities' Customer Assistance Plans ("CAPs"). As you know from the Department's involvement with this issue over the past number of years, our concerns remain unresolved.

Most recently, our office represented three clients in opposition to a request by Columbia Gas of Pennsylvania, Inc. ("Columbia") for a base rate increase at PUC Docket # R-2010-2215623. Although our clients' concerns were broader than CAP-Plus, Columbia's decision to implement CAP-Plus was a major issue in the case. On Friday, October 14, 2011, the Public Utility Commission ("PUC" or "Commission") issued an Opinion and Order in the Columbia base rate proceeding. As to CAP-Plus, the Commission stated:

> Based upon our review and analysis of the record evidence presented with regard to the challenge of PCOC [PULP's client] to Columbia's existing CAP-Plus program, we do not believe that this matter can be resolved in the context of this proceeding. Therefore we will defer consideration of this issue and hold it in abeyance for disposition at a future date.

Pa. P.U.C. v. Columbia Gas of Pa., Inc., Docket No. R-2010-2215623, Opinion and Order at 56 (Oct. 14, 2011.)[1] In its Opinion, the Commission directed Columbia to "cease and desist its current practice under the CAP-Plus program to use each recipient's LIHEAP funds to first pay the costs of the CAP-Plus program before applying the remainder to each LIHEAP recipient's account." Id. at 57. In its Order, however, the Commission stated that Columbia "shall maintain

[1] A copy of the Commission's decision is available at the Commission's website – www.puc.state.pa.us – by clicking on Search Public Documents on the left banner and searching by the docket number of the case.

its currently effective Customer Assistance Plan-Plus program as presently operated until further action of the Commission." Id. at 60, Order ¶ 14.

As you are aware, on June 3, 2011, then-acting Deputy Director for the Office of Income Maintenance Philip E. Abromats filed a letter in the Columbia case in response to an application for the issuance of a subpoena filed by our office. In that letter, Mr. Abromats, on behalf of DPW, expressed serious concerns with the continued implementation of CAP-Plus. In DPW's opinion, Columbia's plan was inconsistent with the federal LIHEAP statute and guidance from the U.S. Department of Health and Human Services contained in LIHEAP IM-2010-13. In this letter, Mr. Abromats also indicated that if Columbia uses LIHEAP funds in a way that does not comport with federal requirements, DPW would deny Columbia's vendor status in the LIHEAP program. For ease of reference, I have enclosed a copy of that letter for your review.

Unfortunately, we are now faced with another year of uncertainty in the LIHEAP program; on November 1, 2011, the 2011-2012 LIHEAP year will commence and no decision has been made about the appropriate use of LIHEAP grants in coordination with utility-run Customer Assistance Plans. Given the Commission's decision to defer ruling on the appropriateness of Columbia's CAP-Plus design, we are troubled that Columbia's CAP customers will continue to be required to pay a "plus" amount based on Columbia's LIHEAP Cash receipts from CAP customers last year. Thus, in our view, in the absence of Commission or DPW intervention, Columbia will continue to impose a "plus" charge which violates the federal LIHEAP statute.

Accordingly, we thought it prudent to detail our legal concerns in this letter. At present, our concerns are directed specifically to the CAP-Plus program as implemented by Columbia. We focus on Columbia simply because, to date, it is the only CAP-Plus type program that has been implemented. Our office understands that PPL Electric Utilities is intending to implement a CAP-Plus program during this LIHEAP year. The details of PPL's program have not been fully disclosed, but based on the information we have, we believe that the issues expressed in this letter are applicable to PPL as well as to Columbia.[2] With this in mind, we turn now to our specific concerns about CAP-Plus.

I. Concerns about the CAP-Plus Design

Our core concern surrounding any CAP-Plus plan is that it inappropriately integrates LIHEAP with the CAP program design. A utility's CAP program is designed to provide eligible low-income customers with bills which are affordable based on the affordability standards set forth in the Commission's Policy Statement on Customer Assistance Plans, 52 Pa. Code §§ 69.261 et seq. Customers are eligible to participate in CAP if their household income is at or below 150% of the Federal Poverty Level and they are payment troubled. A CAP customer's bill is based on an affordability analysis performed by the utility pursuant to a plan approved by the Commission. To the extent that the CAP bill amount is less than the bill would have been had the customer not been on CAP (i.e., less than the full tariff rate), the difference is known as

[2] We also understand that because of LIHEAP compliance concerns, PGW and Duquesne have deferred proposals to implement CAP-Plus type programs.

the CAP shortfall amount. The aggregate CAP shortfall amount for all of a utility's CAP customers, as well as CAP participants' forgiven pre-program arrearages, is paid by utility customers through the Universal Service Plan Rider.

What we have seen to date is that, under CAP-Plus, a utility adds an additional flat dollar amount – a "plus" amount – above the amount previously deemed affordable under Commission Guidelines to each CAP participant's monthly payment. This "plus" amount varies from company to company and from year to year. Generally, the monthly amount reflects the total amount of LIHEAP Cash Grant payments that a utility's CAP customers received and assigned to that company in the prior LIHEAP program year, divided by the number of CAP participants, divided by twelve. In the case of Columbia, the amount added to CAP customers' bills last year was $17/month.[3]

Though it may vary slightly based on a specific utility's tailoring, this formula provides the framework for the design of CAP-Plus. It is apparent from the method used to arrive at the "plus" amount that the overriding goal in structuring a CAP-Plus program is to maintain CAP program costs chargeable to non-CAP customers at the same levels as would have existed prior to DPW's policy clarification that LIHEAP grants must be applied to customers' asked-to-pay amount. Under the prior methodology employed by a number of (though not all) utilities, LIHEAP Cash grants were applied to decrease the aggregate CAP shortfall and thus functioned to subsidize non-CAP ratepayers without directly benefiting the individual LIHEAP recipient. Under CAP-Plus, a utility increases each CAP customer's asked-to-pay amount in direct relation to the amount of the LIHEAP receipts that were assigned to the utility in the past LIHEAP year, receipts which would have been applied to the aggregate CAP shortfall amount had the utility not complied with DPW policy. Thus, CAP-Plus is intended to minimize the payments of non-CAP customers by recovering from CAP customers an amount which would compensate for the fact that the LIHEAP payments of CAP customers would no longer be aggregated and utilized to reduce the Universal Service Fund Charge. The continued effect is to subsidize non-CAP ratepayers at the expense of CAP customers who are LIHEAP recipients.

As we argued before the Commission in the Columbia base rate proceeding, we believe that CAP-Plus violates the LIHEAP statute and federal guidance in these four ways, which are developed more fully below:

- **The CAP-Plus design violates the LIHEAP statute because it treats a CAP customer's LIHEAP grant as an available resource in determining a monthly affordable bill;**

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[3] Columbia arrives at its plus amount each year based on the following formula:

(Total dollar amount of CAP participants' LIHEAP receivables from the prior heating season/the number of active CAP participants at the start of the LIHEAP program season/12).

See Petition of Columbia Gas of Pennsylvania, Inc. to Modify its Universal Services and Energy Conservation Plan, Docket No. P-2010-2195759, Appendix A, Testimony of Deborah A. Davis at 4:23-5:3.

- **The CAP-Plus design violates the LIHEAP statute when it treats CAP customers who receive LIHEAP "adversely" because of their receipt of LIHEAP;**

- **The CAP-Plus design violates federal LIHEAP policy as reflected in the statute because it allocates a "plus" amount without regard to household income or composition; and**

- **The CAP-Plus design conflicts with guidance issued by the U.S. Department of Health and Human Services on the appropriate coordination of LIHEAP funds with energy vendor assistance programs.**

1. **The CAP-Plus design violates the LIHEAP statute because it treats a CAP customer's LIHEAP grant as an available resource in determining a monthly affordable bill.**

Section 2605(f) of the LIHEAP statute states, in relevant part, "the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household shall not be considered income or resources of such household (or any member thereof) for any purpose under Federal or State law . . . ." 42 U.S.C. § 8624(f). This section of the statute prohibits utilities from treating LIHEAP as a resource available to the household when it determines the amount that the household will be required to pay for service.

For each CAP participant who does receive LIHEAP, the addition of a $204 per year ($17 per month)[4] "plus" amount to his CAP payment *after* the CAP payment has been calculated (in the case of Columbia) has the effect of treating his LIHEAP grant as an available resource. CAP customers are thus deemed capable of paying this additional amount because they will receive a LIHEAP Cash grant and/or will be eligible to receive a LIHEAP Cash grant. If a portion of the LIHEAP Cash grant were not being treated as an available resource, there would be no justification for raising a customer's monthly asked-to-pay amount above that amount deemed affordable under the Commission's CAP Guidelines. Thus, under a CAP-Plus design we submit that LIHEAP is being counted as a resource in violation of the statute.

2. **The CAP-Plus design violates the LIHEAP statute when it treats CAP customers who receive LIHEAP "adversely" because of their receipt of LIHEAP.**

Because the "plus" amount added to each CAP customer's asked-to-pay amount bears a direct relationship to the aggregate amount of LIHEAP money received by CAP customers, and because CAP customers are the only ones burdened by this additional payment, CAP customers who receive LIHEAP are treated adversely compared to non-CAP LIHEAP recipients. That is, a CAP customer who receives LIHEAP is asked to pay an additional amount because the utility wishes to use these LIHEAP payments to supplement the funding of its CAP program. The amount of the increase in payments asked of all CAP customers is based on the amount of LIHEAP revenue which, due to DPW's policy clarification, is no longer available to offset CAP

[4] Columbia indicates that for the LIHEAP year beginning November 1, 2011, the "Plus" amount will be $216 a year ($18 per month.)

credits to be recovered through the utility's Universal Service charge. The CAP LIHEAP recipient therefore bears a monetary burden that a non-CAP LIHEAP recipient does not bear. Thus, we submit that the LIHEAP CAP recipient is treated "adversely" in violation of the LIHEAP statute. See 42 U.S.C. § 8624(b)(7)(C).

The CAP customer is treated adversely because of the way that LIHEAP is embedded into the determination of the CAP customer's total monthly payment. The CAP-Plus customer receives a monthly bill which is higher than what has previously been deemed affordable under Commission standards due to the fact that the customer is a LIHEAP Cash recipient or is deemed to be LIHEAP Cash eligible. Consequently, the CAP customer who receives LIHEAP does not receive the full benefit of his LIHEAP grant; some of that grant must be applied to the "plus" amount as opposed to it all going toward a Universal Service Plan approved CAP payment amount that includes no addition. Non-CAP customers who receive LIHEAP are not required to pay this "plus" amount. In this way, CAP customers who receive LIHEAP are treated "adversely" in violation of the LIHEAP statute.

3. The CAP-Plus design violates federal LIHEAP policy as reflected in the statute because it allocates a "plus" amount without regard to household income or composition.

At the core of CAP-Plus is the addition of a flat "plus" amount to each CAP customer's bill irrespective of income or household size. This process creates a result that is in contradiction to the LIHEAP statute's needs-based principles, which require that LIHEAP grants be applied in a manner such that the highest level of assistance is directed to households with the lowest incomes and greatest needs, taking into consideration family size. See 42 U.S.C. § 8624(b)(5). The implementation of a CAP-Plus design, which determines the amount of the CAP bill increase to each CAP household through a formula (the aggregate amount of LIHEAP grants received, divided by the number of CAP customers) without reference to individual household need is contrary to the letter and intent of the LIHEAP statute. Section 2605 of Public Law 97-35 (42 U.S.C. § 8624).

In Pennsylvania's LIHEAP State Plan submitted to HHS by DPW, DPW assures HHS that it will carry out the federal requirements contained in Section 2605(b) of the Act as amended (State Plan Assurances.) Assurance Number 5 states:

> Highest Benefits to Neediest Households
>
> In accordance with Pub. L. 97-35, Section 2605(b)(5), as amended, Pennsylvania will provide, in a timely manner, that the highest level of assistance will be furnished to those households that have the lowest income and the highest energy costs in relation to income, taking into account household size, fuel type, and heating region.....

2011 Pennsylvania LIHEAP State Plan, Assurance 5.

Because the CAP-Plus mechanism increases the monthly CAP payment in equal dollar amounts to each CAP customer, regardless of the income and size of that particular household,

the design violates Assurance Number 5. This is because the levying of a flat additional monthly fee to all CAP households, based on the total dollar amount of LIHEAP grants received, results in the imposition of a greater proportional financial burden on households at the lowest end of the poverty scale (0-50% FPL) compared to those households at the uppermost level of CAP eligibility (100-150% FPL).

4. The CAP-Plus design conflicts with guidance issued by the U.S. Department of Health and Human Services on the appropriate coordination of LIHEAP funds with energy vendor assistance programs.

On July 21, 2010, HHS released Low-Income Home Energy Assistance Information Memorandum 2010-13 ("LIHEAP IM 2010-13"), to advise states as to the allowable uses of LIHEAP funds in coordination with vendor energy assistance programs. In LIHEAP IM 2010-13, HHS states that the IM is "guidance . . . for any LIHEAP program that is presently coordinating or plans to coordinate LIHEAP funds with vendor energy assistance programs, such as [Percentage of Income Payment Plans]." (LIHEAP IM 2010-13 at 1-2.) LIHEAP IM 2010-13 clearly states that "any LIHEAP funds provided to low-income households to meet their home energy needs must be expended in accordance with the LIHEAP statute, HHS block grant regulations, State plan, and plan amendments." (Id. at 2.) The IM lists a series of examples of how LIHEAP funds may be inappropriately coordinated with energy vendor assistance programs like CAP-Plus. In relevant part, the IM states:

> 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 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, which in part states: "...no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements..." and Section 2605(f) which states "...home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law..." HHS will question any such practice and ask for a grantee's legal opinion supporting this practice and its compliance with the LIHEAP statute.
>
> In accordance with Section 2605(b)(10) of the LIHEAP statute, States must monitor the use of LIHEAP funds coordinated with PIPP programs to ensure the proper disbursal of and accounting for LIHEAP funds.

(LIHEAP IM 2010-13 at 3-5.)[5]

A CAP-Plus program design is in conflict with this HHS Guidance. Most glaringly, LIHEAP IM 2010-13 recognized that "the process of subtracting the LIHEAP benefit amount from the client's energy bill and to then calculate . . . 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 [vendor energy assistance program]." (LIHEAP IM 2010-13 at 4.) To the extent that CAP-Plus designs utilize a portion of the CAP customer's LIHEAP grant to reduce the Universal Service Fund charge, the traditional CAP-Plus design described earlier in this letter is mathematically equivalent to the prohibition outlined in the IM.

To be sure, Columbia does not subtract each individual LIHEAP recipient's benefit amount from his/her energy bill to then calculate the customer's payment amount. However, Columbia's method of calculating CAP-Plus bills has the same effect. In the case of Columbia, the "subtraction" works as follows: Columbia selects a CAP participant's payment amount by choosing one of four options that maximizes the customer's monthly payment while maintaining affordability under the Commission's CAP affordability guidelines. Once the appropriate option is chosen, only then does Columbia add a LIHEAP adjustment or "plus" amount of $17 per month to the customer's bill. The effect of this "plus" amount is to add to the customer's CAP payment a portion of the LIHEAP grant that the customer will receive or is deemed to be eligible to receive. For those CAP participants who do in fact receive LIHEAP, this adding of a $204 per year ($17 per month) "plus" amount to their CAP payment *after* the CAP payment is calculated is functionally equivalent to the prohibition outlined by HHS in LIHEAP IM 2010-13. It acts to reduce or "subtract" a portion of the benefit which a CAP LIHEAP recipient would otherwise receive.

II. Conclusion

The foregoing are some of the ways that we believe a CAP-Plus design is in conflict with the LIHEAP statute and HHS policy as interpreted by DPW. In light of the Commission's decision to defer ruling on the permissibility of CAP-Plus, we are concerned that LIHEAP recipients participating in a CAP-Plus program such as Columbia's will continue to be negatively affected by having their LIHEAP Cash grant applied in an impermissible manner during this upcoming LIHEAP program year.

In its June 3, 2011 filing with the Commission in the Columbia proceeding, DPW indicated that it may be forced to take steps against Columbia in order to ensure compliance with its LIHEAP state plan and the LIHEAP statute if the utility persists with a CAP-Plus design that is structured in a manner inconsistent with LIHEAP policy and law. Thus, the assurances required of DPW to HHS that LIHEAP funds will be used in accordance with the statute to the benefit of LIHEAP recipients places the Department in the unfortunate position of having either to revoke vendor status or risk the Commonwealth losing critically needed LIHEAP funding.

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[5] LIHEAP IM 2010-13 also lists other ways in which vendor energy assistance plans, like CAP-Plus, may conflict with the LIHEAP statute. However, those provisions are not relevant to issues at hand.

Neither the continued misapplication, by a vendor, of LIHEAP funds, which could lead to the loss by Pennsylvania of federal LIHEAP funding, nor revocation of a utility's vendor status is a satisfactory outcome. We therefore strongly advocate that all parties seek and arrive at a reasonable solution consistent with federal LIHEAP requirements, DPW policy and the obligation of the Commission to arrive at a balanced approach for all ratepayers while assuring that CAP program participant monthly payments remain set within affordable energy burdens.

Thus, we encourage DPW to reach out to the Commission to arrive at a reasonable solution: For its part, DPW could commit to refrain from sanctioning any utility that commits to abandoning a CAP-Plus design and to petitioning the Commission to modify its CAP design in a manner that addresses DPW's concerns. For its part, the Commission could commit to an expedited procedure intended to resolve the matter of CAP-Plus design. In this way a process may go forward which would satisfy DPW's concerns about the application of LIHEAP and, in so doing, continue to allow DPW to assure HHS that it is actively striving to comply with its obligations to ensure that all LIHEAP dollars expended are appropriately used.

We welcome the opportunity to continue to discuss these issues with you and your staff and we will be reaching out to the Commission in the coming weeks with similar suggestions.

Respectfully submitted,

Harry S. Geller
Executive Director

Patrick M. Cicero
Staff Attorney

CC: Lourdes Padilla,
Acting Deputy Secretary, Office of Income Maintenance

Dale Jenkins, Esquire
Assistant Counsel

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	**Docket No.: R-2010-2215623**
	:	
Columbia Gas of Pennsylvania, Inc.	:	

Answer/response to application of PCOC et al. for Issuance of a Subpoena Addressed to Gary D. Alexander, Secretary, Commonwealth of Pennsylvania Department of Public Welfare or his designee

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

Dear Secretary Chiavetta:

The Pennsylvania Department of Public Welfare ("DPW"), who administers the Low-Income Home Energy Assistance Program ("LIHEAP") in Pennsylvania, responds that in lieu of participating in these proceedings, DPW offers the following response 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 Percentage of Income Payment Plans (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 Section 2605(b)(7) of the LIHEAP statute ... and Section 2605(f).

Columbia Gas of Pennsylvania has not asked DPW to review its CAO-Plus model and DPW has not reviewed a copy of Columbia Gas's "CAP-Plus" model. Neither DPW nor HHS has approved Columbia Gas's CAP-Plus model or approved in the design of the CAP-Plus model. DPW forwards any plans submitted by energy vendors for approval to HHS to ensure compliance with federal law. While federal law prohibits a plan that only increases bills or fees for LIHEAP recipients, DPW cannot approve a plan that merely raises fees on all CAP customers, while violating other provisions in federal law.

To the extent Columbia Gas's "CAP-Plus" model adds a "plus" amount to the bills of CAP participants 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 does not add an amount for all of its customers, the "CAP-Plus" model likely violates Pennsylvania's LIHEAP State Plan and federal law, because it treats LIHEAP Cash Grant recipients "adversely" within the meaning of applicable federal law and regulations. Pursuant to that guidance, if Columbia Gas subtracts a LIHEAP benefit from the CAP participant's energy bill that results in adverse treatment of the LIHEAP recipient and the improper deeming of LIHEAP funds as resources available to the LIHEAP recipient, then it likely violates federal law. Such a model is mathematically equivalent to 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.

LIHEAP funds must be applied in full to the benefit of the individual eligible household 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 CAP payment amounts (or PIPP discounts) is limited to the situation where the utility company subtracts the actual LIHEAP benefit the participant receives. While 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 Columbia Gas's model meets this requirement. Federal LIHEAP funds are not intended to benefit or subsidize non-LIHEAP recipients or the energy vendor. Instead, LIHEAP must benefit the individual LIHEAP recipient.

Columbia Gas's CAP-Plus Plan may be 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... ." DPW cannot permit LIHEAP vendors to participate if their plans violate federal LIHEAP law.

If Columbia Gas's CAP-Plus model provides that it will apply 1/12 of the estimated LIHEAP Cash Grant assigned to each of the customer's future monthly bills, the model is inconsistent with the DPW policy requiring that the 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; Third, if any LIHEAP funds remain, to future CAP payments until exhausted.

DPW must be able to monitor how all of the LIHEAP funds were applied to the customer's account. See 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 has not reviewed Columbia Gas's CAP-Plus model, but believes it may not be consistent with the HHS's policy described in IM-2010-13, dated July 21, 2010, and HHS has not approved presently any Columbia Gas plan as complying with the LIHEAP Act. While the PUC considers whether to approve implementation of the CAP-Plus Model, sending vendor payments to Columbia Gas on behalf of eligible CAP customers based on what is in the testimony submitted in this case would be an improper use of LIHEAP funds. Whether the PUC approves the model or not, if Columbia Gas uses LIHEAP funds in a way that does not comport with federal requirements, DPW must deny Columbia Gas's vendor status in the LIHEAP

program when the CAP-Plus 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. DPW cannot dictate to the Commission how it structures its CAP programs. However, DPW cannot authorize the use of LIHEAP grants by energy vendors with vendor status in ways which are prohibited by the federal LIHEAP Act. Therefore, DPW encourages the PUC not to approve this CAP-Plus model if Columbia Gas plans to be a LIHEAP vendor.

Sincerely,

Philip E. Abromats