

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Initiative to Review and Revise the
Existing Low-Income Usage reduction
Program (LIURP) Regulation at 52 Pa.
Code §§ 58.1-58.18**

Docket No. L-2016-2557886

**JOINT REPLY COMMENTS OF
THE PENNSYLVANIA UTILITY LAW PROJECT
THE NATURAL RESOURCES DEFENSE COUNCIL
THE NATIONAL HOUSING TRUST
THE KEYSTONE ENERGY EFFICIENCY ALLIANCE
REGIONAL HOUSING LEGAL SERVICES
COMMUNITY LEGAL SERVICES OF PHILADELPHIA, INC.**

(Collectively PA ENERGY EFFICIENCY FOR ALL COALITION or “PA-EEFA”)

March 1, 2017

Introduction

On December 16, 2016, the Pennsylvania Public Utility Commission (Commission) issued a Secretarial Letter seeking stakeholder input concerning the Commission's Low-Income Usage Reduction Programs ("LIURP") regulations at 52 Pa. Code §§ 58.1-58.18 ("LIURP Secretarial Letter"). The LIURP Secretarial Letter sought input in the form of comments from interested stakeholders to "improve the operation of various energy utility LIURPs" with the "goal of ensuring effective and efficient use of *ratepayer* funds."¹ The Commission indicates that its review of the comments submitted to this docket "will be instrumental in determining the scope of a future rulemaking" to update its LIURP regulation.² Notice of the LIURP Secretarial Letter was published in the Pennsylvania Bulletin on December 31, 2016.³ Comments were due on January 30, 2017, with reply comments due 30 days thereafter, on March 1, 2017.

Comments were submitted by the Office of Consumer Advocate ("OCA"); the Pennsylvania Departments of Community and Economic Development and Environmental Protection (DCED/DEP); the Pennsylvania Weatherization Task Force; the Commission on Economic Opportunity ("CEO"); the Energy Association of Pennsylvania ("EAP"); National Fuel Gas Distribution Corporation ("NFG"); PPL Electric; Duquesne Light Company; Philadelphia Gas Works ("PGW"); PECO Energy Company ("PECO"); and Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively "First Energy Companies"). Columbia Gas of Pennsylvania and Peoples Natural Gas submitted letters indicating they would not be filing Comments.

The Pennsylvania Energy Efficiency for All Coalition ("PA-EEFA") submits these reply comments to respond to arguments raised by the other commenting parties. PA-EEFA is a partnership of Pennsylvania and national organizations that share a common goal of ensuring that low-income individuals have access to energy efficiency services to reduce their energy consumption. While PA-EEFA, as a collective, has historically been principally concerned with expanding access to energy efficiency and weatherization in multi-family housing for economically vulnerable households, the organizations that comprise PA-EEFA recognize the significant overlap between those interests and a robust and effective LIURP for low-income

¹ LIURP Secretarial Letter at 1, 4 (emphasis in original).

² *Id.* at 1.

³ 46 Pa. B. 8188.

tenants of single family and multifamily properties, as well as low-income homeowners.

Improving the energy efficiency of low-income households not only provides direct economic benefits to these vulnerable households, it also has the potential to materially improve participants' quality of life by addressing health and safety issues that may be present. Comprehensive energy efficiency upgrades reduce customer assistance program (CAP) costs, save energy for economically vulnerable households, increase comfort, and routinely identify and resolve health and safety concerns. Lower income populations are also commonly more vulnerable to both the short term pollutants that result from electric generation and to the potential consequences of climate change, both of which are lessened by improved energy efficiency programming. The following organizations join in the filing of these reply comments on behalf of PA-EEFA: the Pennsylvania Utility Law Project, the Keystone Energy Efficiency Alliance, The National Housing Trust, The Natural Resource Defense Council, Regional Housing Legal Services, and Community Legal Services of Philadelphia, Inc. PA-EEFA thanks the Commission for the opportunity to provide these reply comments.

Background

For the purposes of these reply comments, PA-EEFA incorporates the extensive background set out in its initial comments.

Reply Comments

In response to the Secretarial Letter, many of the commenting parties addressed similar issues. As such, rather than addressing each set of comments individually, PA-EEFA will respond to the various substantive issues raised by the parties. The responses listed here are first impressions subject to further revision, addition and clarification. PA-EEFA's reply comments are meant to provide the Commission with some preliminary thoughts to assist with the preparation of a LIURP rulemaking.

1. LIURP Needs Assessment

PA-EEFA addressed LIURP Needs Assessments at length in its initial comments.⁴ In its comments, PGW states that the needs assessment should not be performed based on need alone,

⁴ Comments of the Pennsylvania Energy Efficiency for All Coalition at 11 – 12; 26 – 28.

but should also consider the impact on non-participating customers.⁵ PA-EEFA believes that in this recommendation PGW conflates two distinct and separate issues. PA-EEFA asserts that a needs assessment, by definition, is intended to determine the extent to which need for LIURP services, as defined by the Commission, exists. Need is need, and is not made greater or lesser by other factors. Conflating a determination of need with a determination of the cost impact on other ratepayers could mask a true understanding of need, with a very real risk of flawed policy determinations. Proper policy determinations require first an honest assessment of the magnitude of the problem we are trying to solve – if we are to stand a chance of solving it.

After the magnitude of the need is understood, it would then be appropriate for the Commission to consider numerous policy implications as it determines the level of investment that utilities must make in their LIURP programs. Among these policy implications, certainly, is the rate impact on non-participating customers.

2. LIURP Eligibility and Program Parameters

a. Income Eligibility

Responding to the Commission’s query as to the appropriate income level to determine eligibility for LIURP, many commenters suggested that the income eligibility criteria should be expanded from 150% of federal poverty level (FPL) to 200% FPL.⁶ PA-EEFA believes that many families meeting the 200% FPL criterion would benefit from LIURP services, but remains deeply concerned that increasing the income threshold without a commensurate increase in available funding would have the perverse consequence of reducing services to those families in greatest need— those whose incomes are below 150% FPL. With an expanded eligibility criterion and a larger population of eligible participants, there is a very real possibility that customers who face greater financial obstacles to maintaining essential utility services will be less likely to be served. Such an outcome could disproportionately affect those with the lowest incomes, who are most vulnerable to disconnection. PA-EEFA recommends that needs assessments be performed both at the 150% and 200% FPL levels. With that information in hand, the implications of a changed eligibility criterion can be considered with respect to the

⁵ Comments of Philadelphia Gas Works at 12.

⁶ See Comments of the PA Weatherization Task Force at 2; Comments of the Office of Consumer Advocate at 18 – 19; Comments of PECO Energy Company at 14; Comments of the First Energy Companies at 5 – 6; Comments of the Energy Association of Pennsylvania at 13.

ability of LIURP to serve those in greatest need. Should the Commission decide to expand eligibility to 200% FPL, it must at the same time authorize adequate funding levels to ensure that services to those in greatest need continue to be addressed, and participation by households below 150% FPL is not diluted by expansion of the pool of eligible ratepayers.

CEO suggests in its comments that LIURP should be provided to an entire multifamily building if half of the units are eligible.⁷ Similar to concerns about expanding Federal Poverty Level eligibility, PA-EEFA is concerned that CEO's suggestion to expand eligibility from the current 2/3 of units requirement might actually result in fewer services being provided for those most in need. PA-EEFA agrees it is likely that if 50% of the units meet the income eligibility requirement, the other 50% would also benefit from LIURP services. However, if this were to increase the pool of eligible customers without a corresponding increase in funding, PA-EEFA is concerned that fewer of the customers with the greatest need—those below 150% FPL—would actually receive services. Further, the 2/3 eligibility requirement aligns with WAP and many of the utilities' Act 129 plans. Maintaining a consistent eligibility threshold across programs could streamline communications with building owners and eligibility verification across programs, allowing an eligibility determination by one program to be accepted by others.

b. Landlord Requirements

In its comments, PPL suggests that easing requirements on landlords—such as current prohibitions on raising rents and evicting tenants once a LIURP project has been completed—could encourage access to LIURP services for low-income renters by making it more likely that landlords would allow services to be performed in their buildings.⁸ While that may be true, PA-EEFA's view is that it could also result in reduced benefits to the very population that the programs are designed to serve. Allowing landlords to raise rents or evict tenants without prohibition could easily mean that LIURP-qualified tenants are forced to move from rental homes that have been improved and into unimproved rentals with high utility costs. Not only would this be disruptive and expensive for the affected families, but it would also render null any potential benefits in reduced arrearages and improved payment collection that might result from efficiency projects in those rental properties that no longer housed LIURP-eligible tenants.

⁷ Comments of the Commission on Economic Opportunity at 4.

⁸ Comments of PPL Electric Utilities Corporation at 8.

c. Carry Over of Unspent LIURP Funding

The OCA recommends that any unspent LIURP funds should be carried over to the subsequent year's budget so that they will be invested to the benefit of low income ratepayers, rather than simply lost.⁹ PA-EEFA agrees with this proposal – with two important caveats. First, the Commission should be clear that the unspent funds would be additive to the already-determined budget for that subsequent year. Second, the Commission should make explicit its expectations that utilities make every reasonable effort to fully expend LIURP budgets on an annual basis.¹⁰ The needs of LIURP constituents are significant and utilities must strive to meet them as quickly as possible within budget limitations. Utilities should provide a level of service to their low income customers consistent with the available budgets, not less. Carry over of LIURP budgets should not be seen as something that makes it acceptable to underinvest in LIURP in any given year.

d. Treatment of Master Metered Properties

Several parties commented on the extent to which LIURP services should extend to multifamily properties, if at all.¹¹ PA-EEFA recognizes that there are challenges in providing services to multifamily properties, and also that there are regulatory considerations that must be addressed regarding the provision of LIURP energy efficiency services to master-metered multifamily properties. Nevertheless, we urge the Commission to acknowledge, as it has in the context of Act 129, that tenants of multifamily properties stand to benefit when the energy efficiency of these properties is improved.

One important pillar of maintaining the availability of affordable housing is to keep operating costs as low as possible. For master-metered properties this minimizes the necessity of rent increases, with resultant direct benefits to low income Pennsylvanians. In considering

⁹ Comments of the OCA at 7.

¹⁰ Comparing the Projected 2015 LIURP spending with the actual 2015 LIURP spending reported in the Bureau of Consumer Services' annual Report on Universal Service Programs and Collections Performance from 2015 and 2014, reveals that many utilities fall significantly short of spending their full LIURP budget. In 2015, Penelec underspent by \$548,270 (10.7% of projected budget); Penn Power underspent by \$372,087 (17% of projected budget); NFG underspent by \$326,491 (24.5% of projected budget); and UGI Gas underspent by \$130,341 (16% of projected budget). *See* BCS, Report on Universal Service & Collections Performance (2014) & (2015), http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx

¹¹ *See, e.g.*, Comments of the OCA at 12 – 14; Comments of EAP at 14; Comments of PGW at 11.

appropriate changes for LIURP, PA-EEFA urges the Commission to, as a first step, address opportunities through LIURP to improve the efficiency of multifamily housing that is financed under a Federal or State affordable housing program long-term affordability restrictions in place when income eligibility requirements are met, regardless of who pays the utility bills.

In its comments, the OCA recommends that a multifamily needs assessment be carried out to better understand the magnitude of need and opportunity in the multifamily sector.¹² PA-EEFA recommends that, if the Commission determines that a needs assessment is appropriate, it should assess master-metered multifamily properties in addition to those multifamily properties where tenants pay utility bills directly. Better data on the need and opportunity for this group of low-income Pennsylvanians could help the Commission determine mechanisms for addressing the regulatory barriers that currently exist. PA-EEFA also notes that if the Statewide Evaluator (SWE) for Act 129 is expected to assess the opportunity for energy efficiency in multifamily housing as part of any potential study for the state. Those results should be reviewed in the context of the LIURP needs assessment.

3. LIURP Measures

a. Cost Effectiveness Testing Parameters

Several parties indicated that measure cost effectiveness testing should be done based on the full estimated measure lifetime and not based on an arbitrary prescriptive payback period.¹³ In addition, First Energy commented that a working group should determine what the appropriate payback period for installed measures should be.¹⁴ PA-EEFA agrees with the recommendation that cost-effectiveness should be determined based on the full measure life, and not on an arbitrary payback period—either one that is used now, or a different one that would result from work group deliberations. Artificially biasing assessment of cost-effectiveness by using limited lifetimes for certain measures will unreasonably reduce benefits to low income ratepayers by excluding cost-effective measures from being installed. As described by PA-EEFA in its initial comments in this proceeding, maximizing the benefits to participants at the time that they are receiving services makes sense, because capturing all cost-effective opportunities at once

¹² Comments of the OCA at 12 – 14.

¹³ *See, e.g.*, Comments of the OCA at 20; Comments of PECO at 20.

¹⁴ Comments of First Energy at 10.

decreases the transaction costs per unit of savings.

b. Health and Safety Measures

Both PECO and the Energy Association of Pennsylvania provided comments that expressed concern over the costs of addressing health and safety issues in LIURP programs, including references to utilities as social service agencies, and even the social service agencies of last resort.¹⁵ PPL asserted that LIURP funds should not be used to address defective housing conditions.¹⁶ Unfortunately, these perspectives do not consider why a program would address health and safety issues for low income ratepayers in the first place.

Virtually all energy efficiency programs are premised on the idea that potential participants face barriers that discourage, or even prevent them from adopting energy efficient practices. Programs are designed to overcome the specific barriers that targeted participant groups face, and the barriers are not necessarily the same for every group— some groups face only minor barriers, and for others the barriers are significant.

In the case of the low income participants LIURP targets, the barriers are widely acknowledged to be significant. Not only are low income ratepayers typically unable to share in any of the costs of energy efficiency measures, they are equally unable to pay for improvements that could resolve fundamental life safety hazards— hazards that energy efficiency improvements could exacerbate if not addressed. Because they are obligated to provide energy efficiency services to low income customers, utilities not only should -- but must address health and safety issues. Doing so allows low-income customers to overcome a primary barrier to the adoption of energy efficiency.

There is no question that it is appropriate for utilities to resolve health and safety concerns when necessary for the delivery of critical energy efficiency services to high usage low income customers. As the General Assembly has noted, utility service is essential to the health and wellbeing of residents.¹⁷ To that end, in addition to mandating the continuation of universal service programs like LIURP, both the Natural Gas Choice and Competition Act¹⁸ and the

¹⁵ See Comments of PECO at 2; Comments of EAP at 6, 11.

¹⁶ Comments of PPL at 6.

¹⁷ 66 Pa. C.S. § 2802(9).

¹⁸ 66 Pa. C.S. § 2201 et seq.

Electricity Generation Customer Choice and Competition Act¹⁹ (“Choice Acts”) require utilities to maintain safety and reliability of service, and to provide service on reasonable terms and conditions.²⁰ Given these mandates, addressing health and safety concerns that directly impact the ability of the utility to implement cost effective energy efficiency measures is entirely appropriate and, arguably, is required by the Choice Acts.

4. Coordination

a. Costs and Benefits of Coordination

Several parties provided observations regarding utility coordination. For example, PPL recommended that smaller programs should take the lead on coordination between utilities because they have fewer jobs, which would presumably mean that they have greater capacity to manage coordination.²¹ PGW asserted that coordination would actually increase administrative expenses.²² In PA-EEFA’s view these perspectives miss important points.

First, if smaller utilities take responsibility for a greater share of coordination management, then their administrative costs will be disproportionately large relative to the larger utilities they are coordinating with. This would create the misleading appearance that smaller utilities are not implementing their LIURP programs as efficiently as their larger counterparts. Failing to acknowledge this could lead to inappropriate policy or management decisions that could adversely affect the services provided by the smaller utilities. All programs have an obligation to share and coordinate with each other, and those costs should not be disproportionately borne by smaller utilities.

In addition, contrary to PGW’s claims, coordination can and should *reduce* administrative costs by eliminating redundant activities. For example, once a customer has been determined to be eligible by one utility, that customer should be presumed to be eligible for the other utilities that provide service to that customer, so that multiple utilities need not all assess eligibility. Similarly, one utility can provide the audit and project management services that historically might have been duplicated by multiple utilities in the absence of coordination,

¹⁹ 66 Pa. C.S. § 2801 et seq.

²⁰ 66 Pa. C.S. § 2203; 66 Pa. C.S. § 2802(9).

²¹ Comments of PPL at 3–4.

²² Comments of PGW at 3.

clearly providing cost savings in aggregate.

The assumption that coordination across utilities and programs will lead to increased costs fails to recognize that there will also be increased benefits for low income ratepayers—and that the resultant total cost per unit of savings should indeed be less than it would be if multiple programs pursued the same level of savings.

For all of the reasons described in PA-EEFA’s initial comments in this proceeding, coordination makes sense. How coordination is implemented should be discussed in the context of a working group, charged to make specific recommendations to the Commission within a specified time frame.

b. Adoption of National Work Standards

DEP/DCED commented that LIURP and utility programs should share in Weatherization/WAP National Work Standards.²³ PA-EEFA recognizes the technical value of the WAP National Work Standards in assuring the performance of energy efficiency measures. Further, PA-EEFA acknowledges that in the multi-funder, single program delivery model that PA-EEFA described in its initial comments there is considerable value in standardizing program delivery—including through the use of consistent work standards. Therefore, in principle PA-EEFA agrees with DEP/DCED’s comments in this regard. However, as PA-EEFA is not adequately versed in the specifics of the work standards, it recommends further study and discussion regarding the adoption of the standards to make sure that LIURP would not inadvertently lose flexibility to serve customers in certain unusual situations should the standards be adopted.²⁴

5. LIURP Work Group

First Energy and PPL propose that the Commission establish a utility working group to

²³ Comments of DEP/DCED at 3.

²⁴ In the multifamily context, DCED’s currently approved energy audit tool, TREAT, will expire in 2017. Pennsylvania Department of Community and Economic Development Proposed 2017-2018 Department of Energy Weatherization Assistance Program State Plan at 18. As the WAP State Plan notes, after the expiration of TREAT, when a multifamily project is being considered, subgrantees must submit the necessary materials, such as engineering assessments, audit inputs/outputs, to approve on a case by case basis the multifamily project prior to commencing weatherizing. *Id.* Cumbersome requirements such as these should not be transferred to the LIURP context and should be avoided in WAP.

address certain issues.²⁵ PA-EEFA agrees that there could be significant benefits from such a group and would look forward to participating. In particular, PA-EEFA thinks that a work group would be effective in addressing:

- Coordination between utilities in order to streamline service delivery and maximize benefits to participants, including data sharing. PGW states that coordination would need to be based on baseline customer eligibility similarities, and understanding and developing recommendations to resolve these issues would best be addressed in a work group;
- Jointly sponsored training for CSPs;
- Treatment of de facto heating.

With respect to de facto heating, there remains disagreement among the parties on what types of services can and should be provided when temporary or atypical (aka de facto) heating systems are being used. PPL suggests that the LIURP definition of residential space heating needs to be revised, but proposes that it should not include portable electric space heaters.²⁶ PA-EEFA's view is that LIURP programs are obligated to address conditions as they exist, and that any re-definition of residential space heating that fails to acknowledge de facto conditions will fail to meet the needs of LIURP constituents. As PA-EEFA explained in its initial comments, rules must support cost-effective, common sense solutions that are in the best interest of customers.

Conclusion

PA-EEFA thanks the Commission for the opportunity to submit these reply comments as preliminary thoughts for consideration by the Commission in undertaking a LIURP rulemaking.

²⁵ Comments of First Energy at 12; Comments of PPL at 3–4.

²⁶ Comments of PPL at 10.

Respectfully submitted,

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