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May 8, 2019

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Home Energy Affordability for Low-Income Customers in Pennsylvania;
Docket No. M-2017-2587711; **PSU COMMENTS**

Dear Secretary Chiavetta:

Enclosed please find The Pennsylvania State University's Comments on Energy Affordability on Low Income Customers.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

Thomas J. Sniscak
Whitney E. Snyder

Counsel for
The Pennsylvania State University

WES/das
Enclosure

cc: Gladys Brown Dutrieuille, Chairman
David W. Sweet, Vice Chairman
John F. Coleman, Jr., Commissioner
Andrew G. Place, Commissioner
Norman J. Kennard, Commissioner
Joseph Magee, BCS (email only - jmagee@pa.gov)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Home Energy Affordability :
For Low-Income Customers : Docket No. M-2017-2587711
In Pennsylvania :

COMMENTS OF THE PENNSYLVANIA STATE UNIVERSITY

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Dated: May 8, 2019

I. INTRODUCTION

The Pennsylvania State University supports customer assistance programs for low-income users as presently allocated by the Commission to the ratepayer class that qualifies for the programs. The Pennsylvania State University submits these Comments in response to Vice-Chairman Sweet's January 17, 2019 Statement seeking interested parties to comment on, among other things, whether costs of customer assistance programs should be allocated among all rate classes. The Commission has a long-standing and sound policy in not creating subsidies by allocating these costs only to the class of users that are eligible to receive benefits of customer assistance programs – the residential class.

The Commission should not stray from this logical and just and reasonable policy. Indeed, to impose costs on ratepayers that neither cause such costs nor benefit from such costs is discriminatory ratemaking in violation of 66 Pa. C.S. § 1304¹ and the principles of eliminating cross-class subsidization expressly discussed in *Lloyd v. Pennsylvania Public Utility Comm'n*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006), *allocatur denied*, 916 A.2d 1104 (Pa. 2007).² Cost-

¹ “No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service. Unless specifically authorized by the commission, no public utility shall make, demand, or receive any greater rate in the aggregate for the transportation of passengers or property of the same class, or for the transmission of any message or conversation for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or any greater rate as a through rate than the aggregate of the intermediate rates. This section does not prohibit the establishment of reasonable zone or group systems, or classifications of rates or, in the case of common carriers, the issuance of excursion, commutation, or other special tickets at special rates, or the granting of nontransferable free passes, or passes at a discount to any officer, employee, or pensioner of such common carrier. No rate charged by a municipality for any public utility service rendered or furnished beyond its corporate limits shall be considered unjustly discriminatory solely by reason of the fact that a different rate is charged for a similar service within its corporate limits.” 66 Pa. C.S. § 1304.

² In vacating the Commission's Order for increasing subsidies in *Lloyd*, the court explained: “Because the flat percentage increase in transmission charges increases any previous discrimination in rates, and the Commission offers no explanation how discrimination in distribution and transmission rate structures are eventually going to be gradually
(cont'd footnote)

causation is the “polestar” of ratemaking and cannot simply be ignored. *Id.*; *see also* J. Cawley and N. Kennard, Rate Case Handbook, A Guide to Utility Ratemaking before the Pennsylvania Public Utility Commission (Pennsylvania Public Utility Commission 1983) (Cawley and Kennard) at 257–61); J. Cawley and N. Kennard, Rate Case Handbook, A Guide to Utility Ratemaking before the Pennsylvania Public Utility Commission (Pennsylvania Public Utility Commission 2018) (Cawley and Kennard) at 138-141.

II. BACKGROUND

On January 17, 2019, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) entered an Order releasing a staff report titled “*Home Energy Affordability for Low-Income Customers in Pennsylvania*” (Report). The Report found, *inter alia*, that inconsistencies and limitations in reported data impacted the analysis and evaluation of Customer Assistance Programs (CAPs).

In the January 17 Order, the Commission recognized the need for Natural Gas Distribution Companies (“NGDCs”) and Electric Distribution Companies (“EDCs”) to (1) standardize data gathering and reporting; (2) establish standard definitions for terms; (3) track and report data consistently (*e.g.*, income verification/confirmed low income); and (4) track and report additional data elements to enhance the evaluation of CAPs.

Therefore, the January 17 Order directed staff in the Bureau of Consumer Services (BCS) and the Law Bureau to convene, no later than July 31, 2019, a USR working group to standardize universal service reporting protocols for data definitions, tracking, and reporting. Additionally, the Commission directed all NGDCs and EDCs to participate in the USR working group.

alleviated, in effect, the Commission has determined that the principle of gradualism trumps all other ratemaking concerns—especially the polestar—cost of providing service.” *Id.* at 1020.

While the Commission Order was directed towards obtaining appropriate and accurate data to enable proper evaluation of CAPs, Vice-Chairman Sweet raised additional issues and in a January 17, 2019 Statement asking interested parties to consider and comment. The first issue is LIHEAP programs, specifically:

- How, if at all, are LIHEAP applications encouraged at the time of CAP enrollment? Are there ways the intake process could be improved to ensure dual enrollment in both programs?
- What are the known or perceived barriers to LIHEAP enrollment (administrative or otherwise), if any?
- What are the advantages or disadvantages of requiring a LIHEAP application in order to receive CAP benefits?

Sweet Statement at 2.

The second issue is Energy Burden Models. The Report states Pennsylvania's maximum energy burdens in the CAP Policy Statement are generally higher than maximum energy burdens in neighboring states, citing Pennsylvania's energy burden levels of 5% to 17%, whereas Ohio's maximum energy burden threshold is 10%, and New Jersey and New York's is 6%. Sweet Statement at 2. The Report covers cost projections of aligning Pennsylvania's energy burden threshold with that of surrounding states, specifically Ohio, and directs EDCs and NGDCs to provide analysis regarding the potential financial impact of making those changes.

In addition to the modeling scenarios, comments were requested on program design attributes. Specifically,

- New York has limited the budget for each utility's payment assistance program to 2% of revenues for sales to end-use customers. If energy burden thresholds are lowered in order to make energy bills more affordable for low-income households in Pennsylvania, should a cap on customer assistance spending also be considered? If so, what would the financial impact of a 2% cap of revenue from sales to end-use customers? How would this change affect current CAP customer?
- New York utilities recover payment assistance costs from all rate classes. If Pennsylvania adopted a similar policy, what impact would cost sharing have on all participating rate classes if Ohio or New York's energy burden thresholds were adopted?

Sweet Statement at 2.

III. COMMENTS

The Pennsylvania State University (“Penn State” or “PSU”) submits these Comments to address cost recovery, an issue of particular importance to large commercial and industrial customers.

The Commission has a long-standing policy of requiring collection of CAP costs only from residential customers. *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, Final Investigatory Order at 31 (Order entered Dec. 18, 2006). In 2005, the last time the Commission considered this issue, the Commission asked the following questions: *Should CAP costs be allocated among different rate classes? and If the Commission decides to allocate CAP costs among different rate classes, how should it decide the amounts to be allocated?* The Commission correctly decided to continue requiring collection of CAP costs from the only rate class that is eligible to participate in CAP - the residential class. *Id.* at 31-32. The Commission reasoned that it should not initiate a policy change that could have a detrimental impact on economic development and the climate for business and jobs within the Commonwealth. *Id.* at 31. The Commission also recognized that “[u]niversal service programs, by their nature, are narrowly tailored to the residential customers and therefore, should be funded only by the residential class.” *Id.* at 32 (quoting *Pa. PUC, et al v. PPL Electric Utilities Corp.*, R-00049255, 2004 Pa. PUC Lexis 40 (December 22, 2004)).

Penn State believes that the Commission should continue this sound and longstanding policy to only allocate CAP costs to residential customers, as only residential customers are eligible to receive the benefits of these programs. Otherwise, the Commission would by this policy be acting contrary to the directive in *Lloyd supra.*, which requires the Commission to move charges

for service *toward reduction of existing subsidies not to create new ones that add to subsidies.*

Moreover, the issue of imposing what amounts to be a tax on non-qualifying large customers is an issue that is one for the Legislature not this Commission.

A. CAP costs should be allocated to the only class eligible to participate in and benefit from CAP. To do otherwise would result in discriminatory and unjust and unreasonable rates.

In Pennsylvania all major natural gas and electric utilities offer a CAP which provides discounts to low-income residential customers enabling them to pay their utility bill. The formula used to determine the discount is commonly based on the customer's income. The CAPs only allow the residential class customers to participate. Commercial or industrial customers are not permitted to participate in CAPs. All of the program benefits are designated for residential customers.

Linking costs to cost causers is the "polestar" of ratemaking. *Lloyd v. Pennsylvania Public Utility Comm'n*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006), *allocatur denied*, 916 A.2d 1104 (Pa. 2007). Cost causers, in the case of CAP, are residential customers. While not all residential customers receive CAP discounts, as the discounts are available only to low-income customers that meet certain guidelines, potentially any residential customer at some point due to financial hardship might find themselves eligible for CAP. Commercial and industrial customers are never eligible for CAP, therefore it is the residential customer class that bears the costs of CAP. Because only residential customers can benefit from CAP, they must be the only class that is allocated the costs of CAP in their revenue requirements responsibility.

Moreover, in *Lloyd*, 904 A.2d at 1019-21 the Commonwealth Court discussed the mandate to eliminate cross-class subsidies:

Because the flat percentage increase in transmission charges increases any previous discrimination in rates, and the Commission

offers no explanation how discrimination in distribution and transmission rate structures are eventually going to be gradually alleviated, in effect, the Commission has determined that the principle of gradualism trumps all other ratemaking concerns—especially the polestar—cost of providing service.

...

Accordingly, we vacate the Commission's order regarding transmission and distribution rates and remand for the setting of non-discriminatory reasonable rates and rate structure for each service.

Id. at 1020-21. Imposing costs that are not caused by industrial and large commercial customers that they cannot benefit from is a step in the exact wrong direction and violates the principles discussed in *Lloyd*. Cost causation is the “polestar” of ratemaking and cannot simply be ignored. *Id.*; see also J. Cawley and N. Kennard, *Rate Case Handbook, A Guide to Utility Ratemaking before the Pennsylvania Public Utility Commission* (Pennsylvania Public Utility Commission 1983) (Cawley and Kennard) at 257–61); J. Cawley and N. Kennard, *Rate Case Handbook, A Guide to Utility Ratemaking before the Pennsylvania Public Utility Commission* (Pennsylvania Public Utility Commission 2018) (Cawley and Kennard) at 138-141.

B. The Electric Competition Act confirms the intent that CAP costs should be borne by the residential class.

The intent of the General Assembly has been made clear in several statutes. The Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. Chapter 28, was effective January 1, 1997. While laying out the standards for restructuring the electric industry, and allowing direct access to the competitive market by retail customers, it also addressed issues related to low income programs including CAP.

66 Pa. C.S. § 2804 (7) contains language that prohibits class cross-subsidization and discrimination:

The commission shall require that restructuring of the electric utility industry be implemented in a manner that does not unreasonably discriminate against one customer class to the benefit of another.

Id.

This clearly implies that programs such as CAP that apply to only residential customers and not commercial and industrial customers must continue to be funded within the residential customer class.

C. The Natural Gas Choice Act confirms the intent that CAP costs should be borne by the residential class.

Two years after the Electric Competition Act, the General Assembly reaffirmed its intent and provided additional clarity in the Natural Gas Choice and Competition Act (66 Pa. C.S. Chapter 22) that was effective July 1, 1999. While laying out the standards for restructuring the natural gas industry, it also addressed low income programs including CAP.

In 66 Pa. C.S. § 2202, the universal service and energy conservation programs are addressed:

Policies, practices and services that help residential low-income retail gas customers and other residential retail gas customers experiencing temporary emergencies, as defined by the commission, to maintain natural gas supply and distribution services.

Id.

It clearly defines such programs apply to only residential customers and not commercial and industrial customers. It continues in 66 Pa. C.S. § 2203 (6) to address the funding mechanism for such programs:

...the commission shall establish for each natural gas distribution company an appropriate nonbypassable, competitively neutral cost-recovery mechanism which is designed to recover fully the natural gas distribution company's universal service and energy conservation costs over the life of these programs.

One can review the clear language in Section 2203 (5) for the definition of "appropriate":

The commission shall require that restructuring of the natural gas utility industry be implemented in a manner that does not unreasonably discriminate against one customer class for the benefit of another.

It is clear that low income programs, such as CAP should be funded by the only class that is eligible for and uses the program and that is the residential class.

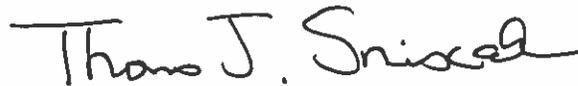
D. Any action to allocate cost of CAPs to other classes must be preceded by a comprehensive review and analysis of CAP design.

In prior base rate cases of both electric and natural gas utilities, Penn State has not commented on issues relating to low-income program design as all such programs were applicable only to residential class customers. Penn State's silence on any and all such programs may not be interpreted as support of or opposition to the design of those programs. However, Penn State submits that this Commission (a) should continue its existing method of recovery, (b) not create a new subsidy from rate classes that are neither eligible nor benefit from the CAP, and (c) should not usurp the Legislature's sole role to establish taxes or funding for CAP for those Pennsylvania customers who are ineligible for CAP.

IV. CONCLUSION

WHEREFORE, for the reasons set forth above, the Pennsylvania State University respectfully recommends the Commission continue its sound and longstanding policy of allocating costs for funding CAP entirely on the residential customer class.

Respectfully submitted,



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