

COMMONWEALTH OF PENNSYLVANIA



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May 23, 2019

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

Re: Energy Affordability for Low-Income  
Customers  
Docket No. M-2017-2587711

Dear Secretary Chiavetta:

Attached for electronic filing are the Reply Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Christy M. Appleby".

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Certificate of Service  
\*272637

## CERTIFICATE OF SERVICE

Re: Energy Affordability for Low- Income Customers : M-2017-2587711

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 23<sup>rd</sup> day of May 2019.

### SERVICE BY E-MAIL AND INTER-OFFICE MAIL

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Dated: May 23, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Affordability for : Docket No. M-2017-2587711  
Low-Income Customers :  
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**REPLY COMMENTS  
OF THE  
OFFICE OF CONSUMER ADVOCATE**

\_\_\_\_\_  
\_\_\_\_\_

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DATE: May 23, 2019

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## **I. INTRODUCTION**

On May 15, 2017, the Pennsylvania Public Utility Commission (Commission) initiated an investigation entitled Home Energy Affordability for Low-Income Customers in Pennsylvania to assess home energy burdens as a “necessary first step in evaluating the affordability, cost-effectiveness, and prudence of Universal Service Programs.” Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711, Order at 1 (Order entered May 5, 2017; see also, Home Energy Affordability for Low-Income Customers at 4 (Staff Report). On July 14, 2017, the Commission issued an initial Staff Report prepared by Law Bureau and BCS to outline the statutory, regulatory, and policy frameworks for the existing universal service and energy conservation programs. In order to create the energy affordability study, the Commission, in partnership with Penn State University, issued a Secretarial Letter that requested information from electric and natural gas distribution companies regarding energy burdens, customer assistance programs, and residential customer payment patterns.

On January 17, 2019, the Commission issued its Order releasing the Staff Report, including accompanying Statements from Vice Chairman Sweet and Commissioner Place that identified additional questions and topics to utilities and interested parties. The Staff Report was created by the Commission’s Bureau of Consumer Services (BCS) and the Law Bureau and includes customer data from 2012-2016 related to energy burdens gathered from Pennsylvania natural gas distribution companies and electric distribution companies. Staff Report at 4. The Staff Report also includes information from other states and independent studies. Staff Report at 4. On April 8, 2019, Supplemental Information was filed by Columbia Gas of Pennsylvania, Inc. (Columbia); National Fuel Gas Distribution Company (National Fuel); PECO Energy Company (PECO); Peoples Natural Gas Company LLC and Peoples Gas Company LLC (Peoples); Duquesne Light

Company (Duquesne); the FirstEnergy Companies, including Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively FirstEnergy); Philadelphia Gas Works (PGW); PPL Electric Utilities Corporation (UGI); and the UGI Companies, including UGI South, UGI North, UGI Central, and UGI Electric (collectively UGI).

On May 8, 2019, the OCA filed its Comments including Appendix A which contained the White Paper of Roger D. Colton to Office of Consumer Advocate entitled “Energy Affordability for Low-Income Natural Gas and Electric Customers in Pennsylvania (Colton White Paper). Comments were also filed by: (1) the Energy Association of Pennsylvania (EAP); (2) Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA); (3) Columbia; (4) PECO; (5) National Fuel; (6) FirstEnergy; (7) PGW; (8) Pennsylvania State University (Penn State); and (9) PPL.

The OCA incorporates by reference its Comments and the Colton White Paper. The OCA appreciates the opportunity to provide these Reply Comments. The OCA specifically addresses in these Reply Comments the following issues: (1) LIHEAP; (2) cost recovery; (3) the 10% Energy Burden; (4) limiting CAP costs to a percent of jurisdictional revenue; and (5) a comparison of other states’ energy affordability burdens.

## **II. REPLY COMMENTS**

### **A. LIHEAP**

As discussed in the OCA’s Comments, LIHEAP plays an important part in Pennsylvania’s CAP programs, and all commenters agreed that CAP customers should be encouraged, but not required to enroll in LIHEAP. See Low Income Advocates Comments at 30-32; Columbia

Comments at 12, 15-17; FirstEnergy Comments at 5-6; Peoples Comments at 7-8; PGW Comments at 19; PPL Comments at 6-7. The OCA submits, however, that LIHEAP is still an important factor in a determination of the appropriate energy burden to be established.

As Columbia discussed in its Comments, in 2010, Pennsylvania Department of Human Services changed its policy regarding the application of LIHEAP grants to customer bills. Prior to 2010, LIHEAP grants were applied towards CAP customers' shortfall balances to reduce the cost of CAP, and in 2010, the LIHEAP policy changed to require utilities to apply the grant directly to the customers' asked-to-pay amount. Columbia Comments at 7. This change has created "bill credits for CAP customers that result in months, if not full years, of no required payments from a customer." Columbia Comments at 7. This application LIHEAP resulted in a change to some CAP customers' energy affordability burdens and increased the cost of CAP to non-CAP residential customers.

Many states, however, still factor LIHEAP into its consideration of the energy affordability burden. OCA Comments at 9-11, Colton White Paper at 49-62, 88-92 (including comparison chart at 91-92). In particular, Ohio, New Jersey, New York, Maryland, Colorado, Nevada, Maine, and Illinois all first apply the LIHEAP grant to reduce the customer's bill before applying ratepayer assistance. OCA Comments at 9-10, Colton White Paper at 49-61, 91-92; see also, EAP Comments at 22. The impact of LIHEAP must be taken into consideration when establishing the appropriate energy affordability burden.

In Comments, the Low Income Advocates argued that LIHEAP should not be counted on to address energy affordability burdens, but at the same time, the Low Income Advocates recommend adoption of the energy affordability burden of 6% set in New York. Low Income Advocates Comments at 24-25, 25-33. The OCA submits that many states such as New York

incorporate LIHEAP into its calculation of the energy affordability burden. See Colton White Paper at 91-92. The Staff Report also identifies the example of Ohio's 10% limit on energy affordability burdens for natural gas and electric service in its PIPP Plus program. Staff Report at 83; OCA Comments at 9-10. One factor that must be considered is that LIHEAP is first applied to reduce the customer's bill before applying ratepayer assistance in Ohio. The ratepayer assistance is applied after the LIHEAP grant to reach the 10%. OCA Comments at 10. A similar procedure is used in New Jersey. OCA Comments at 10-11. As such, the OCA submits that the treatment of the LIHEAP grant must be fully considered when determining energy affordability burdens.

#### B. Cost Recovery

With the exception of PGW, Pennsylvania utilities recover the costs of its CAP programs from residential ratepayers. OCA Comments at 14-15; Colton White Paper at 72-81, 91-92. As the OCA stated in its initial comments, CAP costs should be allocated among all customer classes. The Low Income Advocates agree that it is not appropriate to recover costs only from the residential class. See, Low Income Advocates Comments at 17, 35. Cost recovery from only residential ratepayers is a key difference between Pennsylvania's CAP program and the CAP programs in other states. States including New Jersey, Ohio, Illinois, Colorado, Maine and New Hampshire recover the costs from all ratepayers; Nevada recovers from all retail customers. OCA Comments at 15; Colton White Paper at 91-92. The OCA submits that arguments that non-residential customers do not contribute to the need for CAP, or benefit from CAP, are in error. OCA Comments at 14-15; Colton White Paper at 72-81, 91-92.

In its Comments, Penn State and PPL argue that under cost-causation principles established by Lloyd v. Pa. PUC, CAP costs should only be allocated to residential customers. Penn State

Comments at 4-8, citing Lloyd v. Pa. PUC, 904 A.2d 1010, 1019-21 (Pa Cmwlth 2006), *allocator denied*, 916 A.2d 1104 (Pa. 2007)(Lloyd); PPL Comments at 11-12. Penn State also argues that Section 2202 of the Natural Gas Choice and Competition Act affirmed that the CAP policies are tailored only for residential customers, and the Electricity Generation Customer Choice and Competition Act prohibit “cross-subsidization” of CAP costs. Penn State Comments at 5-8. Columbia similarly argues that cost recovery should remain with the residential class. Columbia Comments at 9.

The OCA submits that Penn State’s and PPL’s interpretations of Lloyd v. Pa. PUC are not correct. The primary argument made in citing to Lloyd is that the cost of service rates are the “polestar of ratemaking.” Penn State and PPL argue that only residential customers can participate in, and benefit from, the programs, and therefore, cross-subsidization prohibits cost recovery from all other ratepayers under this “polestar of ratemaking.” The OCA submits, however, that these arguments regarding Lloyd prove too much. Taken to the logical conclusion, only low-income customers would pay for CAP since only low-income customers can participate.

Moreover, Lloyd does not preclude the consideration of other factors. In the City of DuBois, the Commission specifically permitted such consideration of other factors and stated “[o]n this point, we are in agreement with the City that while *Lloyd* establishes cost of service rates as the polestar of ratemaking, it does not preclude consideration of other factors.” Pa. PUC v. City of DuBois, Docket No. R-2016-2554150, Order at 26 (May 18, 2017).

The OCA submits that nowhere in Lloyd does it state that costs for the CAP program cannot be recovered from all ratepayers. In fact, PGW recovers the costs of its CAP from all ratepayers. Moreover, neither the Electricity Generation Customer Choice and Competition Act or the Natural

Gas Choice and Competition Act preclude the recovery of the costs of CAP programs from all ratepayers.

What the Penn State and PPL arguments ignore is the public good and the broad-based benefits of the universal service programs. A well-accepted tenet of ratemaking is that certain expenses incurred by a utility are “public goods.” All customers receive the benefits from the public goods, and the costs should be spread over all customer classes. Universal service programs are a public good and the costs of the public good should be paid by all customer classes. The Pennsylvania General Assembly specifically identified the universal service charge as non-bypassable. This designation clearly establishes the universal service programs as a public good because they cannot be avoided by ratepayers by switching suppliers. As discussed in Mr. Colton’s White Paper, Pennsylvania’s CAP programs provide direct and indirect benefits by helping low-income customers to maintain service. White Paper at 72-81. The ratemaking treatment that should be accorded costs incurred for the public good is one of the broad-based allocation to all ratepayers. States including New Jersey, Ohio, Illinois, Colorado, Maine, and New Hampshire recover the costs from all ratepayers; Nevada recovers the costs from all retail customers. White Paper at 91-92. Arguments to the contrary ignore the substantial benefits to communities, businesses, the general economy, and the utility system that can arise from rate affordability programs. The OCA submits that the costs of the universal service programs should be recovered from all ratepayers, particularly as CAPs continue to expand.

### C. 10% Energy Burden

The OCA stated in its initial comments the Commission must consider a variety of factors in its determination of the level of discount to be provided. OCA Comments at 16-18; Colton White Paper at 12-20, 88-92. Additional information is needed before a determination regarding

the appropriate energy burden level can be made. Factors such as the depth, breadth and total dollars of unaffordability must be considered. The Commission must also explicitly balance the affordability of the energy burden set with the total costs of the program, how LIHEAP is integrated into the CAP program design, the income levels of households in the service territory, and the allocation of the costs of the program. The OCA submits that the context for the percentage of income burdens is an important element to understanding what the appropriate energy affordability burden would be in Pennsylvania.

The Low-Income Advocates, PECO, PGW, PPL, Duquesne and Columbia addressed the proposed 10% energy burden in their Comments. The Low Income Advocates proposed a maximum combined gas and electric CAP energy burden of 6%, citing to a report of the New York Public Service Commission. Low Income Advocates Comments at 24-25, citing Universal Service Review Low Income Advocates Comments at 18-19 and a recent New York Public Service Commission report. The OCA submits that as discussed in the OCA's Comments and in the Colton White Paper, it is not appropriate to base a definition of affordability with other states without determining whether the programs are equivalent in all aspects. See comparison chart at Colton White Paper at 91-92; see also, OCA Comments at 9-11, 16-18.

The OCA submits that the determination of the appropriate energy affordability burden must consider many factors. As PGW stated, any changes to the energy burden must look holistically to balance the benefits and the costs. PGW Comments at 18. For example, PGW estimates that a 10% energy affordability burden would increase its Universal Service and Energy Conservation charge (using 2017 rates) for a customer by approximately \$29 per year, from \$81.26

per year to approximately \$110.26. PGW Comments at 18.<sup>1</sup> PECO estimates that the CAP program costs would increase by approximately \$38.5 million per year. PECO Comments at 8. PPL estimates that the overall costs to CAP customers would be reduced by \$3.7 million per year, but that CAP customers from 101-150% of the Federal Poverty Level would see a decrease in CAP credits, resulting in increased energy burdens. PPL Comments at 3-4. The OCA agrees with Columbia's Comments that any changes to a CAP design must also include such factors as the role of LIHEAP and cost control measures including co-payments for arrearage forgiveness, minimum payments, and maximum CAP credits. Columbia Comments at 5-7.

The OCA also agrees with commenters such as Columbia that there should be a menu of options available to CAP customers. Columbia Comments at 5-7. Affordability must be viewed as a range as it is currently in the CAP Policy Statement. OCA Comments at 6; Colton White Paper at 110. In one service territory, a 6% energy affordability may provide too much of a benefit to customers and in another service territory, it may provide too little. Id.

#### D. Limiting CAP Costs to a Percent of Jurisdictional Revenue

The OCA stated in its initial comments that the Commission should not limit universal service costs to a percentage of jurisdictional revenue at this time. See OCA Comments at 15-16; see also Colton White Paper at 82-83. Limiting universal service costs as a percentage of jurisdictional revenue would limit access to these programs when they are needed most. The limitation to a percentage of jurisdictional revenue could also result in an inconsistent funding level which could jeopardize the programs.

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<sup>1</sup> Information regarding PGW's 2017 average annual Universal Service and Energy Conservation Rider charge is from 2017 Bureau of Consumer Services Report on Universal Service Programs & Collections Performance at page 73.

Other commenters have likewise opposed the adoption of such a policy. See e.g. Columbia Gas at 10, DLC at 5, FirstEnergy Comments at 6. For example, joint commenters, CAUSE-PA, TURN, and Action Alliance noted that the Electricity Generation Customer Choice and Competition Act, as well as the Natural Gas Choice and Competition Act “require the Commission to ensure that universal service program offerings are appropriately designed and funded so that low income households can maintain service.” CAUSE-PA Comments at 34. They point out that an artificial limit would be inconsistent with this statutory mandate.

Imposing a limit on universal service costs tied to jurisdictional revenue, however, could lead to programs that are inappropriately funded and restricted to few customers. As stated by PPL, implementing a cost cap of 2 percent of jurisdictional revenue under its current CAP would restrict its estimated budget by \$46.4 million, or a reduction of more than 50 percent in funding. PPL Comments at 9-10. Similarly, FirstEnergy stated that imposing a 2 percent cost cap on its current CAP budget that exceeds \$65 million would reduce costs by more than \$40 million. FirstEnergy Comments at 6. In essence these limits would reduce CAP offerings of each utility and restrict the number of customers that can enroll in these programs. This would be a step in the wrong direction.

Rather, PPL stated it best in that implementing a “2% cost cap on CAP spend runs the risk of complicating the program, creates unnecessarily rigid program limits, and in some instances creates winners and losers within the program where there ought not be any. While a CAP spend limit could be used to minimize upward spend pressure, spending limits are likely to differ from utility to utility making such a fixed, state-wide limit difficult to appropriately derive and implement.” PPL Comments at 10-11.

Further, as stated in the OCA’s initial comments, there are other cost control features that can be implemented in more effective, targeted ways to protect the interests of non-CAP residential

ratepayers. OCA Comments at 15-16. The cost control measures include minimum payment requirements and maximum CAP credit limits. *Id.*; *see also* Colton White Paper at 87-88 (proposing eliminating customer payment assistance where low-income customers already receive government assistance limiting their utility payments). In addition, as explained by Columbia Gas, “existing controls including co-payment towards preprogram balances, minimum payments and maximum credits have been piloted, evaluated and adopted over the years in order to control costs, incent good payment behavior and encourage personal accountability.” Columbia Gas Comments at 8.

For the above reasons, and as explained in its initial Comments, the OCA submits that a limit on universal service dollars set as a percentage of jurisdictional revenue should not be adopted at this time.

#### E. A Comparison of Other States' Energy Affordability Burdens

In its initial Comments, the OCA addressed the Staff Report’s comparisons to the energy affordability burdens of other neighboring states, including Ohio, New Jersey, New York, and Maryland. The OCA cautioned the Commission on relying on such comparisons considering the differences among the states. Some of these differences include the following:

- In New Jersey, Illinois, and Oregon, unlike Pennsylvania, LIHEAP is applied to the bill before the bill as a percentage of income is determined. In other words, LIHEAP is relied on to meet the state’s respective affordable energy burden. Colton White Paper at 88.
- States such as Colorado and New York have implemented a cap on costs to fund the universal service programs. Colton White Paper at 89.
- Pennsylvania’s programs are significantly larger and more cost-intensive than other neighboring states. For example, Pennsylvania’s energy utilities spent approximately \$386 million annually to serve approximately 446,228 customers. EAP Comments at 18, 20, citing 2017 Bureau of Consumer Services Report on Universal Service Programs & Collections Performance at 73. Comparatively, New Jersey programs spent \$157.6 million in 2014.

Furthermore, New York utilities spent approximately \$136 million to assist 1.1 million households. EAP Comments at 18-19.

- Pennsylvania relies solely on the residential ratepayer class to fund its universal service programs. Other states, however, recover costs from a broader group either by collecting state funds, such as New Jersey, or collecting costs from all ratepayers, such as New York, Illinois, and Ohio. See Colton White Paper at 91-92.
- States such as New Jersey and Ohio operate their CAP programs through a statewide agency. Colton White Paper at 54.

Other commenters identified similar disparities between Pennsylvania and the universal service programs of neighboring states. For example, the Energy Association of Pennsylvania noted that some states' programs are limited to LIHEAP recipients, as is the case with Maryland, New Jersey, and Ohio. EAP Comments at 19.<sup>2</sup> Further, EAP questioned the extent to which Ohio has a true energy affordability burden of 10 percent given that Ohio has set energy burdens for electric and natural gas customers at 6 percent or \$10, whichever is greater. EAP Comments at 21.

Given the differences among universal service program between Pennsylvania and its neighboring states, not to mention the various difference between Pennsylvania's own utility programs, PPL makes a salient point stating, "while comparisons to neighboring states can be done...state-to-state customer demographics, customer needs, and other related impacts vary, meaning a one-size-fits all decision is not necessarily appropriate." PPL Comments at 12.

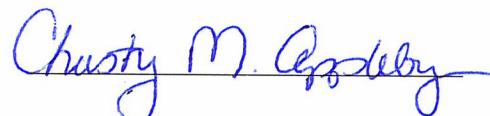
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<sup>2</sup> The OCA notes that Maine, Illinois, Colorado, and Nevada also include the impact of LIHEAP. OCA Comments at Colton White Paper, 91-92.

### **III. CONCLUSION**

The Office of Consumer Advocate commends the Commission for this initiative and again thanks the Commission for this opportunity to comment. Energy affordability is a critical component of the success of the Customer Assistance Programs in Pennsylvania. The universal services programs play a critical role in protecting the health and safety of all citizens in Pennsylvania. The OCA looks forward to continuing discussions on this important topic.

Respectfully Submitted,



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