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May 23, 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 REPLY COMMENTS**

Dear Secretary Chiavetta:

Enclosed please find The Pennsylvania State University's Reply 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
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Bryce R. Beard
Counsel for
The Pennsylvania State University

WES/das
Enclosure
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David W. Sweet, Vice Chairman
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF THE PENNSYLVANIA STATE UNIVERSITY

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Dated: May 23, 2019

I. INTRODUCTION

The Pennsylvania State University (PSU or Penn State) supports customer assistance programs (CAP) for low-income users as presently allocated by the Commission to the ratepayer class that qualifies for participation and financial assistance under the programs. PSU submits these Reply Comments in response to various parties' comments regarding whether costs of CAPs should be allocated among all rate classes. Penn State incorporates its Comments filed on May 8, 2019 by reference.

Penn State submits that no party has presented arguments that merit the Commission straying from its long-standing, logical, and just and reasonable policy of allocating CAP costs to the customers that are eligible for and can receive financial assistance under the programs instead of imposing CAP costs on customer classes who are not eligible. Indeed, to impose costs on ratepayers that neither cause such costs nor are eligible for financial assistance is discriminatory ratemaking in violation of 66 Pa. C.S. § 1304[1] 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-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

[1] This Section in pertinent part states: "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." 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 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.

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. MAY 8, 2019 COMMENTS

In its Comments, PSU explained that the Commission should not stray from its long-standing policy that the customer rate class that is eligible for CAP financial assistance should be the customer rate class that pays for CAP. Only residential customers are eligible for CAP, not commercial or industrial customers, such as Penn State.

Four other Commentators discussed this specific issue. Columbia Gas of Pennsylvania and PPL Electric Utilities Corporation are aligned with PSU's position that CAP costs should be allocated to the residential class which is the only class eligible for CAP assistance. Columbia Gas Comments at 9-10; PPL Comments at 11-12. Both PPL's and Columbia Gas' Comments maintained the same cost-causation principles that PSU set forth in its Comments. *Id.* It remains beyond dispute that the residential customer class is the cost-causer and only class eligible for CAP. Columbia Gas also explained that because it must compete with other fuel sources for industrial and large commercial customers, and that non-utility competitors would not have corresponding fee for CAP if the utility had to recover these charges from these customers, it would put Columbia Gas and other NGDCs at a disadvantage to compete with those other vendors for industrial and commercial customers. Columbia Gas Comments at 9-10. PSU agrees with these comments.

In contrast, and in favor of subsidies, The Office of Consumer Advocate (OCA) and the Joint Comments of TURN, CAUSE-PA & Action Alliance of Senior Citizens of Greater

Philadelphia (Low Income Advocates) argue in favor of allocating CAP costs to all rate classes. OCA Comments at 14-15; Joint Comments at 17-20. PSU addresses their arguments below. In short, the Commission and the Commonwealth Court have already rejected arguments that OCA and the Low Income Advocates raise and the alleged hypothetical, indirect benefits that seek to ignore cost-causation. OCA and the Low Income Advocates arguments to impose CAP costs on all rate classes are inconsistent with prior OCA positions and should be rejected.

III. PSU REPLY COMMENTS

A. The Commission and the Commonwealth Court have already rejected the argument that the General Assembly through the Competition Act intended for all ratepayers to share the costs of CAP

The OCA argues that the General Assembly, by dictating that universal service charges would be "non-bypassable," intended to recognized CAP programs as a public good that should be charged to all ratepayers. OCA Comments at 14-15. Both the Commission and the Commonwealth Court have already rejected this argument that essentially attempts to rewrite the statute to say something the General Assembly could have but did not say. In *Met-Ed Indus. Users Group v. Pa PUC*, 960 A.2d 189, 201-204 (Pa. Cmwlth. 2008), the Commonwealth Court upheld the Commission's decision that universal service program costs would be recovered only from residential ratepayers. *Id.* The court rejected the OCA's argument that the General Assembly's use of the term "nonbypassable" in the Competition Act evidenced legislative intent that these costs should be borne by all ratepayers:

> The OCA argues that the word "nonbypassable" in these sections means that the rate mechanism may not allow any customer class to by-pass a contribution to the cost of universal service programs.
> ...
> The PUC contends that the OCA has taken the term "nonbypassable" out of context.
> ...

> Here, it is reasonable to interpret the word "nonbypassable" in the context of de-regulation. The Competition Act allowed consumers to shop, or not, for electricity, and, prior to de-regulation, residential customers funded universal service costs. Thus, in sections 2802(17) and 2804(9) of the Competition Act, "nonbypassable" reasonably means that residential consumers cannot by-pass their prior funding of universal service costs by their choice, or non-choice, of an electric generation supplier. Inasmuch as the PUC's interpretation of the word "nonbypassable" in the Competition Act is reasonable, we shall defer to it.

Id. The OCA's argument now, which merely adds an additional layer of "public good" reasoning, contains no legal support to distinguish their argument from what the Commission and the Court have already rejected. The OCA's attempt to disguise this already-rejected argument and ignore or marginalize a court decision, which is now law, fails given the court's holding in *Met-Ed Indus. Users Group v. Pa PUC*, 960 A.2d 189, 201-204 (Pa. Cmwlth. 2008).

B. Charges for Sustainable Energy Funds are distinguishable and do not support charging all ratepayers for CAP and Pennsylvania courts have not "explicitly concluded that cross-class recovery of public purpose program costs is permitted by law"

Low Income Advocates argue that the Pennsylvania Courts have already held that the Commission may engage in cross-class subsidization for CAP. Low Income Advocate Comments at 18. They are wrong. In fact, the Commonwealth Court only stated in dicta that the Competition Act does not mandate that the Commission only charge those who benefit from certain programs for such programs in the context of ***rejecting*** the OCA's argument that all rate classes should pay for CAP programs. *Met-Ed Indus. Users Group v. Pa PUC*, 960 A.2d at 202 ("This court commented that the Competition Act "only provides that it be funded by 'non-bypassable rates' without any requirement that it be by a rate that is directly benefited by the program." Thus, under *Lloyd*, there is no statutory requirement that the funding for special programs come only from those who benefit from the programs.") (discussing *Lloyd*, 904 A.2d at 1027). This was dicta because

the court in *Lloyd* in fact held that the Commission correctly relied upon substantial evidence to find that the program in question (Sustainable Energy Funds) did in fact benefit all ratepayers. *Met-Ed Indus. Users Group v. Pa PUC*, 960 A.2d at 202 ("In fact, in *Lloyd,* this court pointed out that, according to the credible evidence, SEF programs do benefit distribution service. Therefore, SEF programs are funded by those who benefit from them.") This is unlike the situation here where only the residential class is eligible for and can directly benefit from CAP. Moreover, the *Lloyd* discussion regarding funding for SEF programs had nothing to do with allocation of costs to rate classes, but overall recovery of funding in distribution rates generally. Courts have not held that the Commission can totally divorce cost causation from rate setting principles for CAP.

The arguments OCA and other Low Income Advocates alleging benefits to other classes are too far removed and hypothetical to support passing CAP costs on to other rate classes, which is discussed below.

C. Hypothetical indirect and abstract alleged benefits do not support charging non-residential ratepayers for CAP, and OCA has taken contrary positions in the past

Both the OCA and Low Income Advocates argue that providing CAP benefits indirectly benefit all ratepayers using socio-economic theories. OCA Comments at 14-15; Low Income Advocate Comments at 19. They have not carried their burden of proving their contention. Their basic theory (as opposed to facts of record) is that by providing economic support for low income individuals to pay their utility bills, those individuals are better off, somehow (no proof offered) making the economy in general better off and thus other participants in the economy better off (again no proof or facts offered as to benefits), such as other rate classes. *Id.* This vague, hypothetical theory only argues that there is a very indirect benefit that may or may not in fact be

realized by other ratepayers. That is not sufficient to in fact show there is a benefit that merits assigning costs for these programs to other rate classes.

The claim by the OCA that universal service programs including the CAP is a "public good" is unexplained by the OCA and unfounded. A public good, such as police or fire protection, has two distinct economic characteristics. The first, non-rivalry, provides that when a good is consumed it does not reduce the amount available for others. A CAP provides funding for low income energy purchases, and the funds expended certainly do reduce the amount of funds available for others, since the OCA is specifically proposing that the funds come from others (other customers in other customer classes). The second, non-excludability, means that once the public good is provided other parties cannot be prevented from benefitting from the good. A CAP provides funding solely for eligible low-income customers and the qualification standards specifically excluded other customers from receiving a CAP benefit. OCA use of the term "public good" might have a good ring to it as they try to make it apply to a CAP, but a CAP is clearly not a "good" that is public.

OCA opines that "all customers receive benefits from the pubic goods" meaning from the CAP but does not offer any example of what that benefit is. There are no such valid examples. A CAP cannot be compared to a true public good, such as police protection, or construction of a flood-control dam, for a CAP benefits only the recipient of the CAP funding.

Moreover, this theory is contrary to positions OCA has taken in the past concerning cost allocation to non-qualifying classes relative to flex-rate contracts. Regarding allocation of costs of flex-rate revenue short-fall, the OCA argued that those shortfalls should only be borne by the customer classes that are eligible to receive flex rates. *Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies*, Docket No. I-

2012-2320323, OCA Main Brief at 12-25 (Feb. 25, 2014). These arguments are totally contrary to the OCA's position here, where they argue that customers ineligible for CAP should bear the costs of CAP.

Worse, the OCA made that argument in the face of evidence of concrete and direct benefits to all ratepayers resulting from flex rates. Flex rate agreements benefit all ratepayers because they are intended to keep large users on the utilities' systems where the customer has alternative options. *Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies*, I-2012-2320323, PSU Main Brief at 6-9 (Feb. 25, 2014). (citing Rebuttal Testimony of James L. Crist, P.E. on behalf of PSU, I-2012-2320323, at 17). Keeping those customers on the system has two important benefits that directly benefit all ratepayers. First, utilities have costs and investments in sizing and constructing facilities to serve all users. If large users leave, those costs do not disappear but become stranded and consequently must be borne by all of the other remaining ratepayers. Second, even under flex agreements at discounted rates, large users continue to provide significant revenues which under present rates contain the remains of subsidies from larger classes to smaller classes. *Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies*, I-2012-2320323, PSU Reply Brief at 6-7 (Mar. 12, 2014). Again, if those users left the system, the other rate classes would have to pick up the shortfall from the lack of revenue from those large users. Despite that evidence of direct benefits to customers ineligible for discounting that justifies those customers bearing those costs, the OCA argued that cost allocation to those customers was discriminatory.

Again, this is contrary to the OCA's position here, especially given the indirect and hypothetical benefits OCA uses here to justify its position regarding CAP.

Given OCA's prior position on cost/benefit allocation, their comments now concerning CAP benefits should be rejected.

D. All residential ratepayers can potentially be eligible for CAP assistance, but no industrial or commercial customer can.

OCA argues against cost-causation principles and essentially against *Lloyd* by claiming that because not all residential ratepayers are eligible now to receive CAP, that not all residential ratepayers should pay for CAP if cost-causation principles were taken to their logical extreme. OCA Comments at 14. This is a logical fallacy. The point is that all residential ratepayers *could* directly benefit from CAP if they require such assistance at some point in time under the current CAP standards (i.e. a residential ratepayer that does not qualify for CAP this year could benefit next year depending upon changes in income, and that safety net therefore is a direct benefit to all residential ratepayers). Thus, all residential ratepayers benefit from the CAP safety net should they need it at some point. Industrial and commercial customers, regardless of income level, are not eligible for CAP and thus have no such safety net. As the CAP safety net is not available to the Industrial and Commercial customer classes, they should not be required to pay for it.

E. There is no evidence or support for the proposition that rate classes other than the residential rate class cause costs of CAP programs

The OCA states in another hypothetical argument that "arguments that non-residential customers do not contribute to the need for CAP… are in error." OCA Comments at 14. Penn State is unaware, nor has OCA proven, how a Commonwealth educational institution has caused the need for residential CAP. Moreover, neither the OCA nor the whitepaper that it cites provide any support for the proposition that consumers other than residential consumers cause or even

contribute to the costs related to CAP programs. Penn State fails to see how this argument could be true given that only residential ratepayers are eligible for CAP. The Commission should reject this unsupported and unreasoned argument.

IV. CONCLUSION

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 to the residential customer class.

Respectfully submitted,

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Dated: May 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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