



COMMUNITY LEGAL SERVICES  
OF PHILADELPHIA

December 9, 2019

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

**Re: 2019 Amendments to Policy Statements on Customer Assistance Programs 52 Pa.  
Code §§ 69.261-69.267, Docket No. M-2019-3012599**

*Joint Answer of the Low Income Advocates to the Petition of the Office of Consumer  
Advocate for Reconsideration and/or Clarification*

Dear Secretary Chiavetta:

Pursuant to the Commission Order entered November 25, 2019, enclosed please find the Joint Answer of the Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (collectively, "Low Income Advocates") to the Petition of the Office of Consumer Advocate for Reconsideration and/or Clarification. This Answer is being filed at the above-referenced docket, and will be served as noted in the attached Certificate of Service.

Should you have any questions or concerns, please do not hesitate to contact me at [jprice@clsphila.org](mailto:jprice@clsphila.org) or (215) 981-3756.

Respectfully Submitted,

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

<b>2019 Amendments to Policy Statements on Customer Assistance Programs 52 Pa. Code §§ 69.261-69.267</b>	:	<b>Docket No. M-2019-3012599</b>
	:	
<b>Energy Affordability for Low-Income Customers in Pennsylvania</b>	:	<b>Docket No. M-2017-2587711</b>
	:	
<b>Review of Universal Service and Energy Conservation Programs</b>	:	<b>Docket No. M-2017-2596907</b>
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**JOINT ANSWER OF THE COALITION FOR AFFORDABLE UTILITY  
SERVICE AND ENERGY EFFICIENCY IN PENNSYLVANIA, THE TENANT UNION  
REPRESENTATIVE NETWORK, AND ACTION ALLIANCE OF SENIOR CITIZENS  
OF GREATER PHILADELPHIA TO THE PETITION OF THE OFFICE OF  
CONSUMER ADVOCATE FOR RECONSIDERATION AND/ OR CLARIFICATION**

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## **I. INTRODUCTION**

Pursuant to 52 Pa. Code §§ 5.61 and 5.572(e), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), together with the Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (collectively referred to herein as the Low Income Advocates) hereby file the following Answer to the Petition of the Office of Consumer Advocate (OCA) for Reconsideration and/or Clarification in the above-captioned matter.

The Low Income Advocates respectfully submit that the OCA's Petition must be denied, as the OCA has not met the standard for reconsideration. The issues raised by the OCA for reconsideration were already raised by the parties and thoroughly reviewed and considered by the Commission in the context of its comprehensive review of low income energy costs and the availability of universal service programming. The OCA's Petition has not put forward any new or novel arguments that were not previously considered by the Commission. As the Commission has appropriately concluded in the past, and as explained more thoroughly below, to the extent the OCA seeks further integration of the federal Low Income Home Energy Assistance Program (LIHEAP) and ratepayer-funded Customer Assistance Program (CAP) benefits, the appropriate forum is before the Pennsylvania Department of Human Services – not the Commission.

## **II. BACKGROUND**

On November 5, 2019, the Commission entered a Final Policy Statement and Order at Docket No. M-2019-3012599 (November 5 Order), which incorporates the details of the in-depth investigation from two separate proceedings initiated by the Commission nearly three years ago to determine whether Pennsylvanians face inequitably high energy costs and whether reforms to existing universal service policies and programs are necessary to ensure that all Pennsylvanians

can access affordable utility service consistent with the statutory mandates in the natural gas and electric Competition Acts.<sup>1</sup>

In its November 5 Order, the Commission found that – based on the extensive findings in these underlying proceedings – the current energy burden standards were excessive, and did not adequately fulfill the Commission’s statutory obligation to ensure that universal service programming is appropriately funded and accessible to those in need.<sup>2</sup> Accordingly, the Commission revised the energy burden standards for customers of natural gas and electric distribution companies (NGDCs and EGSs) who are enrolled in Customer Assistance Programs (CAPs).<sup>3</sup> The November 5 Order set forth a maximum combined energy burden standard of 10% for households with income between 51-150% of the Federal Poverty Income Guidelines (FPIG).<sup>4</sup> For households with income at or below 50% FPIG, the November 5 Order establishes a maximum combined energy burden of 6%.<sup>5</sup>

In making its determination, the Commission found that the existing maximum energy burden standards, originally established in 1992, “do not reflect reasonable or affordable payments for many low-income customers” — especially for those with income at or below 50% FPIG.<sup>6</sup> The Commission concluded that the revised standards would meaningfully improve the affordability of home energy for CAP households with the lowest income who are especially vulnerable to

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<sup>1</sup> Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711, and Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907.

<sup>2</sup> See 2019 Amendments to CAP Policy Statement, Final Policy Statement and Order, Docket No. M-2019-3012599, at 27 (order entered Nov. 5, 2019) (hereinafter November 5 Order).

<sup>3</sup> Id. at 27-34.

<sup>4</sup> Id. at 32-33.

<sup>5</sup> Id.

<sup>6</sup> Id. at 27, 29-30.

termination due to an inability to pay – as well as “on all households that would be income-eligible and in need of energy assistance in the future.”<sup>7</sup>

The Commission explained the process for implementation of the revised energy burden standards, explaining:

Utilities will have the opportunity to implement these CAP policy changes through voluntary compliance with the amended CAP Policy Statement or to address the matters in utility-specific proceedings and/or as promulgated regulations. Any matters that cannot be resolved by voluntary compliance with Commission policy will be addressed in utility-specific proceedings.<sup>8</sup>

To effectuate this implementation process, the Commission directed the utilities to file and serve an addendum to their existing or proposed Universal Service and Energy Conservation Plan (USECP) within 60 days of entry date of the November 5 Order to indicate how the utilities intend to voluntarily implement the policy changes specified in the amended CAP Policy Statement.<sup>9</sup> The Commission further indicated that it would subsequently engage in a rulemaking proceeding in which it would address universal service regulations, including whether to promulgate any of these CAP policy provisions as regulations, and allow for stakeholder input.<sup>10</sup>

On November 20, 2019, the OCA filed a Petition for Reconsideration and/ or Clarification.<sup>11</sup> In its Petition, the OCA argues that the Commission failed to consider the impact of the new proposed energy burdens on LIHEAP grants.<sup>12</sup> The OCA further requests clarification

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<sup>7</sup> Id. at 30-31 (explaining that those with income at or below 50 percent FPIG are a particularly “vulnerable subset of customers” and are “at greater risk of defaulting from utility customer assistance programs and face[] higher rates of service termination due to late or missed payments.”).

<sup>8</sup> Id. at 13.

<sup>9</sup> Id. at 106.

<sup>10</sup> Id. at 100.

<sup>11</sup> See Petition of the Office of Consumer Advocate for Reconsideration And/ Or Clarification, Docket Nos. M-2019-3012599, M-2017-2587711, and M-2017-2596907 (filed Nov. 20, 2019) (hereinafter OCA Reconsideration); see also 2019 Amendments to CAP Policy Statement, Order, Docket No. M-2019-3012599 (order entered Nov. 25, 2019) (extending the time for interested parties to file an Answer to the OCA’s Petition for Reconsideration and/or Clarification to Monday, December 9, 2019).

<sup>12</sup> OCA Reconsideration at 4.

regarding the cost information to be included in the universal service plan compliance filings and argues that the information on the cost of the revised programs should be included in the compliance plan to properly evaluate such plans.<sup>13</sup> We address each argument in turn.

### III. STANDARD OF REVIEW

The Commission clearly articulated the standard for granting a Petition for Reconsideration in Duick v. Pennsylvania Gas and Water Co., concluding:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince this 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, [the Commission] agree[s] with the Court in the *Pennsylvania Railroad Company* case, wherein it was stated that "[p]arties. . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them. . . ." What [the Commission] expect[s] to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.<sup>14</sup>

When granted, petitions for reconsideration can disrupt the balance struck in a final order. This has led Pennsylvania's appellate courts to find that such relief should be granted judiciously, and only under appropriate circumstances.<sup>15</sup> Pennsylvania courts have consistently held that the Commission is not required to expressly address every contention or argument raised by an interested party.<sup>16</sup> Even if the Commission does not expressly discuss and dispose of a particular issue raised by a party through the course of a proceeding, the Commission is considered to have

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<sup>13</sup> Id. at 7.

<sup>14</sup> Duick v. Pennsylvania Gas and Water Co., Docket No. C-R0597001 *et al.*, 56 Pa. PUC 553, 559 (1982), quoting Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission, 179 A. 850, 854 (Pa. Super. Ct. 1935) (indicating that the standard set forth in Duick may be properly applied to petitions for clarification).

<sup>15</sup> See West Penn Power v. Pa. PUC, 659 A.2d 1055 (Pa. Commw. Ct. 1995), petitions for allowance of appeal denied, 674 A.2d 1079 (Pa. 1996); City of Pittsburgh v. PennDOT, 416 A.2d 461 (Pa. 1980).

<sup>16</sup> See, e.g., PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2017-2019 Submitted in Compliance with 52 Pa Code § 54.74, Order, Docket No. M-2016-2554787, at 9 (order entered April 19, 2018) (hereinafter PPL Electric USECP for 2017-2019), citing Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Commw. Ct. 1993); University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Commw. Ct. 1984).

implicitly addressed and disposed of the issue without discussion.<sup>17</sup> Thus, to meet the Duick standard for reconsideration, a party must raise a “new and novel” argument, rather than contend that the Commission failed to address an argument raised by an interested party that was not expressly discussed in a final order.

In this proceeding, the OCA’s arguments for reconsideration were squarely raised by the parties and considered at length by the Commission. Thus, further consideration of the issue is not warranted, as it would disrupt the careful and deliberate balance achieved by the Commission in its November 5 Order.

#### IV. ARGUMENT

##### **A. The Commission has already considered, at length, how the revised energy burden standards will interact with the federal Low Income Home Energy Assistance Program.**

###### 1. The OCA has not meet the Duick standard.

In its Petition, the OCA argues that the Commission failed to consider the interaction of the revised energy burden standards with LIHEAP.<sup>18</sup> The OCA speculates that the revised standards may increase the amount of LIHEAP grant dollars that are not expended within a program year and must therefore be returned to the Pennsylvania Department of Human Services (DHS).<sup>19</sup> The OCA reaches this conclusion based on speculation about the resulting asked to pay amount, but – as addressed more fully below – does not cite any facts supporting its conclusion.<sup>20</sup> The Low Income Advocates respectfully submit that the OCA’s argument fails under the Duick standard. The OCA’s argument is neither new nor novel, and in fact was addressed at length in

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<sup>17</sup> The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993).

<sup>18</sup> See OCA Reconsideration at 4.

<sup>19</sup> See id.

<sup>20</sup> Id.

comments filed by Philadelphia Gas Works (PGW), Columbia Gas of Pennsylvania (Columbia Gas), and the OCA throughout the underlying proceedings.<sup>21</sup>

In its Comments submitted May 8, 2019, PGW argued that LIHEAP should be integrated into the Commission's energy burden policy and that integration of the programs was necessary to ensure that ratepayer funds are not used to supplant federal grant monies.<sup>22</sup> This is an iteration of the same argument being advanced by the OCA in its Petition. PGW cited an Applied Public Policy Research Institute for Study and Evaluation (APPRISE) study, which found that the average energy burden of its Consumer Responsibility Program (CRP) customers who obtain a LIHEAP grant fall below those set by then-current PUC policy, and concluded that "a reduction of current energy burdens may not be advisable or necessary, at least with respect to LIHEAP recipients."<sup>23</sup>

In Comments submitted May 8, 2019, Columbia Gas likewise argued that receipt of a LIHEAP grant "many times creates bill credits for CAP customers that results in months, if not full years, of no required payments from a customer."<sup>24</sup> Columbia noted that it sometimes has unspent LIHEAP grants sent back to DHS and implied that these are otherwise wasted dollars that should be used to cover the cost of CAP.<sup>25</sup> It reasoned that cost effective program management required LIHEAP to be accounted for in CAP program design.<sup>26</sup> This was not the first time that Columbia raised this argument through the course of the Commission's underlying investigation.

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<sup>21</sup> See Home Energy Affordability for Low-Income Customers in Pennsylvania, Comments of Philadelphia Gas Works, Docket No. M-2017-2587711 (filed May 8, 2019); Home Energy Affordability for Low-Income Customers in Pennsylvania, Comments of Columbia Gas of Pennsylvania, Inc., Docket No. M-2017-2587711 (filed May 8, 2019); Home Energy Affordability for Low-Income Customers in Pennsylvania, Comments of the Office of Consumer Advocate, Docket No. M-2017-2587711 (filed May 8, 2019).

<sup>22</sup> See Home Energy Affordability for Low-Income Customers in Pennsylvania, Comments of Philadelphia Gas Works, Docket No. M-2017-2587711, at 2-3 (filed May 8, 2019).

<sup>23</sup> See id. at 3.

<sup>24</sup> See Home Energy Affordability for Low-Income Customers in Pennsylvania, Comments of Columbia Gas of Pennsylvania, Inc., Docket No. M-2017-2587711, at 7 (filed May 8, 2019).

<sup>25</sup> Id. at 7-8 (Columbia notes that in 2018 it returned \$102,328.56 for 396 CAP customers "who did not utilize their entire 2016-2017 LIHEAP benefit.").

<sup>26</sup> See id. at 7-8.



In its Comments filed August 9, 2017, Columbia argued that requiring LIHEAP grants to be applied to CAP customers' asked to pay amount created windfalls for CAP customers who now had an "excess of money to use for something other than the utility bill."<sup>27</sup> Columbia argued that not accounting for LIHEAP funds in CAP design disincentivized CAP customers from developing habits of making timely and regular payments.<sup>28</sup>

The OCA raised similar arguments throughout the underlying proceedings. In the OCA's August 2017 Comments, it submitted comprehensive recommendations regarding LIHEAP and CAP integration.<sup>29</sup> Therein, the OCA argued that "Pennsylvania may want to examine in its CAP Policy Statement as to integrating LIHEAP and CAP programs."<sup>30</sup> The OCA then went on to raise and discuss each of the points that it now raises in its Petition – both in its own Comments and through the White Paper authored by its expert, Roger Colton, which the OCA attached to its Comments and filed for consideration at the docket.<sup>31</sup> Later, in its Comments submitted on May 8, 2019, the OCA again called for the Commission to integrate LIHEAP and CAP, arguing that the Commission should explicitly balance the energy affordability burden with a number of factors, including "how LIHEAP is integrated into the CAP program design."<sup>32</sup>

In its Final Policy Statement and Order, the Commission noted the recommendations of Columbia Gas, PGW, and the OCA to consider the impact on LIHEAP when determining affordable energy burdens.<sup>33</sup> The Commission also directly acknowledged the interplay between

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<sup>27</sup> Review of Universal Service and Energy Conservation Programs, Comments of Columbia Gas of Pennsylvania, Inc., Docket No. M-2017-2596907, at 10-11 (filed Aug. 9, 2017).

<sup>28</sup> Id. at 11.

<sup>29</sup> Review of Universal Service and Energy Conservation Programs, Comments of the OCA, Docket No. M-2017-2596907, at 32-34 and Appendix A, Part 5, 26-29 (filed Aug. 8, 2017).

<sup>30</sup> Id. at Appendix A, Part 5, 26.

<sup>31</sup> Id. at Appendix A, Part 5, 27-29.

<sup>32</sup> See Home Energy Affordability for Low-Income Customers in Pennsylvania, Comments of the OCA, Docket No. M-2017-2587711, at 17-18 (filed May 8, 2019).

<sup>33</sup> See November 5 Order at 21.

LIHEAP and CAP in achieving an affordable energy burden.<sup>34</sup> Citing to its Energy Affordability Report, the Commission concluded that LIHEAP has a measurable impact on the energy burden of CAP customers, but declined to further integrate the programs.<sup>35</sup> At the same time, the Commission also noted that there are significant barriers to enrollment in LIHEAP, and that not all CAP-eligible customers are able to apply for and receive LIHEAP.<sup>36</sup>

Ultimately, with respect to LIHEAP integration, the Commission retained the requirement that utilities encourage CAP participants to enroll in LIHEAP, but eliminated the provisions of the former Policy Statement that required CAP customers to assign their LIHEAP grant to the CAP-sponsoring utility and penalized CAP customers if they did not apply for the program.<sup>37</sup> In doing so, the Commission concluded: “As low-income customers may participate in more than one CAP – or may use their LIHEAP grant to obtain a deliverable fuel source — these provisions are no longer appropriate as they could require households to choose between CAPs or between a CAP and a necessary fuel delivery...and could result in creating more utility debt for financially vulnerable households.”<sup>38</sup> In reversing prior policies, the Commission made a clear decision to incentivize participation in both programs rather than penalize those who are unable to do so.

Importantly, in establishing the revised energy burden standards, the Commission explicitly acknowledged that other states have fully integrated their CAPs with LIHEAP, though the Commission chose not to do so in this proceeding – noting that these integrated programs are operated in a centralized, statewide manner.<sup>39</sup> Instead, the Commission opted – at the recommendation of the OCA and the utilities – to allow the utilities to continue to operate

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<sup>34</sup> Id. at 51.

<sup>35</sup> Id.

<sup>36</sup> Id. at 50-51.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id. at 28.

independent CAPs with unique program designs, including various control features such as minimum payments and maximum credit limits that will be addressed in the context of each utility's USECP proceeding.<sup>40</sup>

Given the extensive consideration already given to the interaction of CAP and LIHEAP, the OCA's Petition must be denied. The OCA has not met the Duick standard for reconsideration. The OCA has not raised any new or novel arguments, but instead puts forth arguments that were expounded upon at length by the parties to the underlying proceedings and explicitly addressed by the Commission. The OCA assumes that the Commission's lack of a more lengthy analysis of the effect of the new proposed energy burden on LIHEAP equates to the Commission having failed to consider such a factor. However, under the Duick standard, the Commission is not required to engage in a lengthy discussion related to the impact of the revised energy burdens on LIHEAP grants. The mere fact that the Commission did not explicitly discuss what change this would have for households with income from 0-50% FPIG is not significant and does not warrant reconsideration by the Commission.

2. The OCA engages in speculation about what may happen once utilities implement the proposed policy statement.

Even if one considers the merits of what the OCA asserts in its Petition, the request is rooted in speculation about what might occur and a misunderstanding of the role of LIHEAP in Pennsylvania.

First, it is important to note that LIHEAP is not a guaranteed entitlement program. Rather, LIHEAP is funded on an annual basis through the congressional appropriations process, and the program parameters are determined through an annual state plan.<sup>41</sup> This means that a customer

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<sup>40</sup> Id. at 31, 36-37, 46, 57-61.

<sup>41</sup> See Pa. Dep't of Human Services, LIHEAP Final State Plan (FY 2020), at i, *available at* <https://www.dhs.pa.gov/Services/Assistance/Pages/LIHEAP.aspx> (hereinafter LIHEAP State Plan).

who has received LIHEAP in the past is not entitled to it in the future, nor is it possible to predict the extent to which the status quo regarding LIHEAP may be maintained in any future year. Indeed, changes may be expected regarding the future availability of LIHEAP, grant amounts, and program parameters. If the Commission were to rely upon present-year LIHEAP grants in establishing energy burden standards for CAP as OCA proposes, even small changes in LIHEAP in the future year to year could significantly undermine the ability of CAP to meet the utility affordability needs of low income Pennsylvanians. Furthermore, LIHEAP is not currently designed to establish grant amounts in a manner that ensures consistent affordability and application to all low-income families across the state. The DHS-established grant formula is dependent on a number of factors, including the geographic region.<sup>42</sup> In some years, age and disability also play a factor in grant amounts.<sup>43</sup> Thus, in some utility service territories, households with the same number of household members and the same income level will still receive different grant amounts – making it difficult to accurately anticipate the grant amount that a household will receive.

Second, it is not at all clear that households at this threshold will be limited to paying only 6% of their income for home energy costs. Because this is a policy statement, USECPs may not always be required to deliver precisely a 6% energy burden, depending on program design. Furthermore, the Commission eliminated the standardized minimum bill and maximum CAP credit standards from the former CAP Policy Statement, and deferred these issues for determination in each utility's USECP proceeding.<sup>44</sup> The minimum bill and the maximum CAP credit established by each utility will necessarily impact the possible asked to pay amount of a

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<sup>42</sup> See LIHEAP State Plan at iv.

<sup>43</sup> See LIHEAP State Plan at app. B at § 601.41(c)(3).

<sup>44</sup> See November 5 Order at 36-37, 57-61.

CAP participant. For example, if a household with income at or below 50% FPIG receives a minimum bill, they are more likely to reach a maximum CAP credit limit before the end of the program year. As a result, even a minimum bill CAP customer may not be expected to receive minimum bills year-round and may at times be asked to pay full tariff rates, depending on how the utility ultimately designs its minimum payment and maximum CAP credit thresholds. Because the minimum payment and maximum CAP credit thresholds have not been established for USECPs under the new policy statement, it is impossible to accurately estimate the impact of a future LIHEAP grant on a CAP customer's bills.

While the Commission provided some guidance for minimum bill and maximum CAP credit policies in its November 5 Order, it is clear that utilities are free to propose policies that will fit with their individual CAP designs.<sup>45</sup> Thus, given the uncertainty associated with these critical policies, the OCA's concern that the revised energy burden standards will result in an excess LIHEAP credit after a LIHEAP grant is applied to a CAP customer's asked to pay amount is speculative. At this time, no utility has proposed and the PUC has not approved the minimum bill and maximum CAP credit policies for any USECP under the revised CAP policy statement. Any estimate of the impact of the revised energy burden standards on the amount of LIHEAP dollars that may be refunded to the Commonwealth would be inherently unreliable and of no value at this time. As such, OCA's request for such estimates should be denied.

Third, the OCA's Petition appears to imply that LIHEAP Crisis grants may be implicated by a reduction in energy burdens and that some of this money may have to be returned.<sup>46</sup> The Low Income Advocates find no merit to this suggestion. To the Low Income Advocates' knowledge LIHEAP Crisis grants have only ever been issued to CAP households when the household is facing

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<sup>45</sup> See *id.*

<sup>46</sup> OCA Reconsideration at 5.

an imminent termination, trying to reconnect service previously terminated, and/or trying to establish service at a new address where a past-due balance is impeding their ability to do so.<sup>47</sup> Similarly, to the Low Income Advocates' knowledge, DHS has never authorized Crisis grants for sums exceeding the amount that is needed to resolve a crisis.<sup>48</sup> While the current LIHEAP state plan discusses scenarios where vendors are required to return unused Crisis grants, it is not readily conceivable that this situation would ever be implicated because the grants are only available to cover an amount necessary to resolve the crisis. By design, there are never any unused Crisis dollars left over to apply to future bills. While it is unknowable what a future LIHEAP state plan may provide, OCA's concern is inconsistent with current and historic LIHEAP operations.

Finally, the OCA posits that the Commission may want to provide further guidance regarding how it expects Pennsylvania utilities to implement the proposed maximum CAP energy affordability burdens "such that ratepayer dollars are not being transferred to the State's LIHEAP program in the form of unused LIHEAP benefits."<sup>49</sup> This statement describes a transaction that does not occur and should not be expected to occur. The Low Income Advocates cannot conceive of a scenario in which ratepayer dollars would be transferred to the state's LIHEAP program because a LIHEAP grant exceeds a customer's asked to pay amount.<sup>50</sup>

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<sup>47</sup> See LIHEAP State Plan at app. B § 601.108; § 601.31(2)(vii); § 601.32.

<sup>48</sup> See *id.* at app. B § 601.61.

<sup>49</sup> OCA Reconsideration at 7.

<sup>50</sup> Under the current LIHEAP state plan, when a household enrolled in CAP applies for and receives a LIHEAP Cash grant, the Cash grant is directed to the customer's primary, secondary, or supplemental heating source. See LIHEAP State Plan at app. B § 601.41(a)(4). If this is a public utility, the LIHEAP grant – pursuant to DHS policy – must be applied to the customer's asked to pay amount. See *id.* at § 601.45. If the customer is in CAP, their monthly CAP bill is their asked to pay amount. If the LIHEAP Cash grant is in excess of the customer's asked to pay amount in a given month, any additional Cash grant funds are carried forward and applied to the customer's subsequent asked to pay amounts until the grant is exhausted. Occasionally, if a customer has extremely low income and low usage, a LIHEAP Cash grant may cover a customer's bill for an entire year or more. Under LIHEAP rules imposed by DHS, any unused LIHEAP funds must be returned to DHS if they remain on a customer's account on June 30 of the year following the program year in which the funds were issued. See *id.* Again, only the *customer's* unused LIHEAP Cash grant funds are returned to the state—not ratepayer funds.

Contrary to OCA's assertion, ratepayers are not subsidizing LIHEAP under the former policy statement, nor will they be subsidizing LIHEAP under the revised policy statement. Rather, the two programs work in tandem to ensure that extremely low income households – which the Commission recognized as a uniquely vulnerable class of customers with a disproportionately high risk of involuntary termination<sup>51</sup> – have sufficient resources to remain connected to essential utility service. Importantly, once any unused LIHEAP funds are returned to DHS, those funds are returned to the LIHEAP program to be reissued to eligible LIHEAP households. There is nothing improper about this approach and the OCA's implication to the contrary should be disregarded.

3. The Commission has authority to determine what CAP customers are “asked to pay,” but has no authority over how LIHEAP grants must be applied to CAP accounts.

The crux of the OCA's concern is the requirement that LIHEAP Cash grants must be applied to a CAP customer's asked to pay amount rather than to subsidize the cost of the CAP program to other ratepayers. This issue has a long history within the Commission and DHS, and the jurisdictional boundary lines have already been clearly drawn by the Commonwealth Court. As both the Commission and the Commonwealth Court have recognized, the Commission has authority to establish CAP rates and CAP asked to pay amounts, but DHS has the authority over administration – and thus the application – of LIHEAP grants.<sup>52</sup> In Pennsylvania Communities Organization for Change, et al. v. PUC, a number of parties challenged Columbia Gas's proposed

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<sup>51</sup> See November 5 Order at 29-30.

<sup>52</sup> See Pennsylvania Communities Organizations for Change, Inc., d/b/a ACTION United, Carol Collington, and Nettie Pelton v. PUC, 635 C.D. 2012, at 4-6 (Pa. Cmwlth. Ct. 2012) (explaining that in 2009, DHS (previously known as the Department of Public Welfare (DPW)), directed that utilities apply LIHEAP grants to a customer's asked-to-pay (ATP) amount, rather than the CAP shortfall. On April 9, 2010, the Commission suspended Section 69.265(9)(ii)–(iii) of the CAP Policy Statement by order entered at Docket No. M-00920345 in compliance with DHS's directive); see also LIHEAP State Plan at i (LIHEAP is a federal block grant program that is administered by DHS).

rate increases and the implementation of a CAP-Plus program.<sup>53</sup> The Commonwealth Court acknowledged the Commission's authority under Section 2203(8) of the Natural Gas Choice and Competition Act to oversee rate structures and low income utility programs, and to determine what CAP customers are asked to pay each month.<sup>54</sup> But the Commonwealth Court also found that it is DHS – not the Commission – which has the authority to direct how LIHEAP funds are to be applied to a customer's utility account. The Court deferred to the authority of the Low-Income Home Energy Assistance Act of 1981 (LIHEAA), and DHS as its administering department, when determining whether the treatment of LIHEAP funds through Columbia's CAP-Plus program was proper.<sup>55</sup>

While the Commission has the authority to set appropriate energy rates, including the asked to pay amount for CAP participants, DHS has the authority to dictate how LIHEAP funds are applied. In its Petition, the OCA raises the concern that the CAP burdens in the Policy Statement would create an excess of LIHEAP benefits that must be addressed.<sup>56</sup> However, concerns related to how LIHEAP funds will be applied to a customers' utility bill in light of the revised energy burden standards are more properly raised with DHS pursuant to their authority under the LIHEAA. In Pennsylvania, it is DHS – not the Commission – that is vested with the authority to set policy governing the administration and application of LIHEAP funds, and any re-allocation or reapplication of these funds must be addressed within DHS. Simply put, OCA has raised its concern about the future administration of LIHEAP in the wrong forum.

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<sup>53</sup> See Pennsylvania Communities Organizations for Change, Inc., d/b/a ACTION United, Carol Collington, and Nettie Pelton v. PUC, 635 C.D. 2012 at 4-6.

<sup>54</sup> See id. at 19-20; see also 66 Pa. C.S. § 2203(8).

<sup>55</sup> See id.

<sup>56</sup> See OCA Reconsideration at 4-6.



**B. The Commission has directed utilities to provide sufficient cost information.**

In Section B of its Petition for Reconsideration and/ or Clarification, the OCA requests that the Commission direct utilities to submit an estimate of the costs associated with any proposed changes to their current USECP.<sup>57</sup> The OCA argues that the Commission’s Order, while presenting estimates of increased costs associated with the November 5 Order, identifies cost elements that have not been quantified.<sup>58</sup>

The Low Income Advocates submit that the OCA, by asking for such cost estimates at this preliminary stage, is again asking the utilities to engage in speculation related to the full cost of implementing the revised energy burden standards. The Commission’s January 2019 Order and March 2019 Secretarial Letter requested that the utilities provide estimated costs of implementing the proposed maximum energy burdens.<sup>59</sup> While the Commission noted that the projections contained a certain level of uncertainty,<sup>60</sup> these cost estimates were based on the general framework of the revised energy burden standards set forth by the Commission. At this preliminary stage, there will necessarily be a number of unknowns related to cost. Until each utility knows if, when, and how it will implement the Commission’s Policy Statement, requiring utilities to provide additional detailed cost projections would be an exercise in futility. The proper place for this cost projection is within each utility’s USECP proceeding, where implementation of the nuanced elements of the November 5 Order that will necessarily impact costs – such as the Commission’s guidance for developing minimum payment and maximum credit thresholds — will be proposed and addressed in the context of a review of the utilities’ full suite of universal service programs.

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<sup>57</sup> Id. at 7-8.

<sup>58</sup> Id. at 7.

<sup>59</sup> See November 5 Order at 23-24.

<sup>60</sup> See id.

The Low Income Advocates further submit that the OCA has misread the Commission's Order. In Ordering Paragraph Number 6 of its November 5 Order, the Commission does not direct the utilities to submit a full compliance filing, but rather directs the utilities to file and serve an addendum to their existing or currently proposed/pending USECPs within 60 days of the entry date of the November 5 Order. This addendum will indicate if, how, and by when the utilities intend to implement the policies changes set forth in the Order.<sup>61</sup> The addendum does not, as OCA suggests, require utilities to modify their USECPs to bring them into compliance with the CAP Policy Statement.

For the reasons stated above, the Low Income Advocates believe it is premature to direct the utilities to submit updated cost estimates of their revised programs. We agree with OCA's general contention that it is important to have clear information about associated costs to appropriately assess the impact, if any, on residential consumers.<sup>62</sup> Indeed, this is why the Low Income Advocates have continued to assert that USECPs should be subject to full evidentiary proceedings before an Administrative Law Judge. However, to engage in any kind of meaningful review about the estimated cost of implementing the revised energy burden standards, this analysis must be made on a utility by utility basis in the context of each utility's USECP proceeding.

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<sup>61</sup> See *id.* at 106.

<sup>62</sup> See OCA Reconsideration at 7. Importantly, not all of the changes to the CAP Policy Statement will necessarily result in an additional cost. Many of the changes will actually decrease the cost to residential consumers – especially if the costs are spread across all customer classes as they are in every other state with a comparable universal service program. See November 5 Order at 80-97.

**V. CONCLUSION**

For the reasons set forth above, the Low Income Advocates respectfully assert that the Commission must deny the Petition of the Office of Consumer Advocate for Reconsideration and/or Clarification. The Commission should require the utilities to file and serve addendums to their existing or proposed USECPs in a prompt and timely manner, consistent with its November 5 Order, to indicate how the utilities intend to address the policy changes specified in the amended CAP Policy Statement and the utilities' anticipated timeframe for implementing such changes.

Respectfully submitted,

**Community Legal Services**  
*On Behalf of TURN and Action Alliance*



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**Pennsylvania Utility Law Project**  
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December 9, 2019

**Verification**

I, **Ria M. Pereira, Esq.**, legal counsel for the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleadings are true and correct to the best of my knowledge, information, and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Ria M. Pereira, Esq.

On behalf of the Coalition for Affordable Utility Services  
and Energy Efficiency in Pennsylvania (CAUSE-PA)

**Verification**

I, **Joline R. Price Esq.**, legal counsel for Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance), on behalf of TURN and Action Alliance, hereby state that the facts contained in the foregoing pleadings are true and correct to the best of my knowledge, information, and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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**Joline R. Price Esq.**

Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance)

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

<b>2019 Amendments to Policy Statements on Customer Assistance Programs 52 Pa. Code §§ 69.261-69.267</b>	:	<b>Docket No. M-2019-3012599</b>
	:	
	:	
<b>Energy Affordability for Low-Income Customers in Pennsylvania</b>	:	<b>Docket No. M-2017-2587711</b>
	:	
	:	
<b>Review of Universal Service and Energy Conservation Programs</b>	:	<b>Docket No. M-2017-2596907</b>
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served copies of the **Joint Answer of CAUSE-PA and TURN et al. to the Petition of the Office Of Consumer Advocate for Reconsideration and/or Clarification** in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

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*On Behalf of TURN and Action Alliance and  
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December 9, 2019