

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

**Petition of Energy Association of
Pennsylvania for
Reconsideration/Clarification of the
November 5, 2019 Final CAP Policy
Statement and Order at Docket No. M-
2019-3012599**

**Public Meeting February 6, 2020
3016889-LAW
Docket No. P-2020-3016889**

**2019 Amendments to CAP Policy Statement
on Customer Assistance Program, 52 Pa.
Code §§ 69.261-69.267**

Docket No. M-2019-3012599

**JOINT STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR. AND
COMMISSIONER RALPH V. YANORA**

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration and disposition on the merits is the Petition for Reconsideration and/or Clarification (Petition) filed by the Energy Association of Pennsylvania (EAP) regarding the directives of the Commission's Final Customer Assistance Program (CAP) Policy Statement Order (Final CAP Policy Statement) entered on November 5, 2019. The Final CAP Policy Statement amended the Commission's previous CAP Policy Statement adopted in 1992.¹

In its Petition, EAP does not challenge the substance of the recommendations included in the Final CAP Policy Statement. Rather, EAP challenges the requirement that all electric distribution companies (EDCs) and natural gas distribution companies (NGDCs) file an addendum to their current or proposed Universal Service and Energy Conservation Plans (USECPs) "to indicate how [they] intend to implement the policy changes specified in the amended [Final] CAP Policy Statement...by or before January 1, 2021." To support this request, EAP argues that this addendum requirement, established by a policy statement, is contrary to Pennsylvania law which only permits administrative agencies to adopt binding norms by either a rulemaking or adjudication.²

As relief, EAP requests that the Commission modify the Final CAP Policy Statement such that submission of a USECP addendum by EDCs and NGDCs is voluntary rather than mandatory. EAP also requests that the Commission allow for the implementation of the Final CAP Policy Statement on a case-by-case basis through routine, utility-initiated filings to revise their individual USECPs.

¹ As subsequently amended in 1999 and 2010.

² *Pa. Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977).

We find that EAP has satisfied the *Duick*³ standard to warrant reconsideration and that, accordingly, the Petition should be granted. First, reconsideration is warranted because the language of the Final CAP Policy Statement creates compliance obligations, via the addendum requirement. That is, the Commission establishes a new compliance obligation that is not an exposition on or of existing law. As such, the Final CAP Policy Statement oversteps the legal limits of what policy statements are permitted to achieve. We agree with the EAP that the Commission is only permitted to establish binding policy by means of either a rulemaking or adjudication. Therefore, we believe that the Commission overlooked the inconsistency between the mandatory addendum filing requirements set forth in the Final CAP Policy Statement and voluntary implementation of the new CAP guidelines.⁴


Second, reconsideration is warranted because the addendum requirement appears to initiate a compliance proceeding with procedural and practical implications not fully addressed in the Final CAP Policy Statement. The language in the Final CAP Policy Statement could lead one to reasonably conclude that the required addendum was more than a status report pursuant to 66 Pa. C.S. § 504. The language of the Final CAP Policy Statement seemed to indicate that each addendum was to function as a binding, de facto petition to amend, subject to an expedited review process that may have differed from the standard review of USECPs.

The required addendum should function only as a preview of what a utility may file in a petition to amend its existing or proposed USECP. An addendum should not take the place of a utility-specific proceeding to incorporate the new CAP guidelines. Since it is now clear that utilities must file a petition to amend their USECPs, if they choose to incorporate any of the new CAP guidelines, EAP is correct that the Commission should waive the filing directives related to the Final CAP Policy Statement addendum. Utilities often preview their various plans with the Commission. That practice can be encouraged, but should remain voluntary. Moreover, we share EAP's concerns that Commission staff (and we would add, stakeholders) may not have enough time to adequately review and approve revisions to all twelve utility USECPs before the suggested operational date of the plans on January 1, 2021, especially if such revisions are filed simultaneously. Accordingly, we believe that the Commission overlooked the procedural complexities that will result from the addendum requirement set forth in the Final CAP Policy Statement. As such, we agree that the utility USECPs should be voluntarily updated as initiated by routine utility filings and reviewed by the Commission on a case-by-case basis.

³ Under the *Duick* standard, factors that support reconsideration include whether there are new and novel arguments or other considerations which appear to have been overlooked by the Commission. *Duick v. Pa. Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982).

⁴ We also caution that it would be inappropriate for the Commission to "encourage" utilities to implement the recommendations set forth in the Final CAP Policy Statement by virtue of an Ordering Paragraph in a Commission Order if such implementation is truly voluntary in nature.

While we find that the EAP Petition should be granted in this instance, we reiterate that we agree with many of the recommended changes set forth in the Final CAP Policy Statement. Because many of these changes are significant, we believe that they should be implemented in a reasonable and measured way consistent with historical Commission review of utility USECP filings.



JOHN F. COLEMAN, JR.
COMMISSIONER

RALPH V. YANORA
COMMISSIONER

Date: February 6, 2020