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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held: February 6, 2020 |
| Commissioners Present: |  |

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| Gladys Brown Dutrieuille, Chairman  David W. Sweet, Vice Chairman, Statement  Andrew G. Place  John F. Coleman, Jr., Dissenting Join Statement  Ralph V. Yanora, Dissenting Joint Statement |

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| Petition of Office of Consumer Advocate for Reconsideration/Clarification of the November 5, 2019 Final CAP Policy Statement and Order at Docket No. M-2019-3012599 | Docket No. P-2020-3016885 |
| 2019 Amendments to Policy Statement on Customer Assistance Program,  52 Pa. Code § 69.261–69.267 | Docket No. M-2019-3012599 |

**ORDER ON RECONSIDERATION/CLARIFICATION**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition on the merits is the November 20, 2019 Petition for Reconsideration and/or Clarification (Petition for Reconsideration) filed by the Office of Consumer Advocate (OCA) regarding the Commission’s *Final Policy Statement and Order* entered on November 5, 2019 at Docket No. M‑2019‑3012599 (November 5 Order and Annex). Reconsideration of the OCA Petition was granted pending further review on the merits in an Order entered on November 25, 2019 (November 25 Order).[[1]](#footnote-2) This Order denies the relief requested by OCA in its Petition for Reconsideration.

**HISTORY**

*Amendments to the CAP Policy Statement at Docket No. M-2019-3012599*

*OCA Petition for Reconsideration/Clarification at Docket No. P-2020-3016885*

In May 2017, the Commission initiated two proceedings, *Energy Affordability for Low-Income Customers*, Docket No. M-2017-2587711, and *Review of Universal Service and Energy Conservation Programs*, Docket No. M­2017­2596907, to conduct a comprehensive review of the policies, practices, and procedures of Pennsylvania’s universal service programs, including Customer Assistance Programs (CAPs) (*Energy Affordability* proceeding and *Review* proceeding, respectively). CAPs are a mandatory program within utility universal service and energy conservation plans (USECPs). Based on comments from the electric distribution companies (EDCs) and the natural gas distribution companies (NGDCs) and other stakeholders in thoseproceedings and other dockets,[[2]](#footnote-3) the Commission approved 17 amendments[[3]](#footnote-4) to the CAP Policy Statement at 52 Pa. Code § 69.261—69.267[[4]](#footnote-5) in the November 5 Order[[5]](#footnote-6) at Docket No. M‑2019‑3012599.

The November 5 Order, *inter alia*, established new recommended maximum CAP energy burdens of 6% for natural gas heating, 4% for electric non-heating, and 10% for electric heating for households with incomes between 51%-150% of the Federal Poverty Income Guidelines (FPIGs). For households at or below 50% of the FPIG, the new recommended maximum CAP energy burdens are 4% for natural gas heating, 2% for electric non-heating, and 6% for electric heating. November 5 Order at 4, 13–32, 101. Other amendments to the CAP Policy Statement include eliminating established limits for minimum payments[[6]](#footnote-7) and maximum CAP credits,[[7]](#footnote-8) and formalizing utility best practices (*e.g.*, eliminating SSN requirements,[[8]](#footnote-9) waiving late payment charges,[[9]](#footnote-10) and reviewing CAP bills quarterly[[10]](#footnote-11)).

The November 5 Order, *inter alia*, “strongly urge[d]” the EDCs and NGDCs to incorporate the CAP policy amendments in their USECPs to allow stakeholders to have a basis for meaningful input in the *Universal Service Rulemaking* proceeding.[[11]](#footnote-12) November 5 Order at 2. The November 5 Order also provided that utilities would “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.” November 5 Order at 13. Further, we “suggest[ed]” that the first 16 CAP Policy Statement amendments[[12]](#footnote-13) “should be operational by or before January 1, 2021.” November 5 Order at 100. Additionally, the November 5 Order directed the EDCs and NGDCs to file and serve cover letters and addenda relative to the amendments. November 5 Order Ordering Paragraphs 6, 7, and 8.

On November 20, 2019, OCA filed the instant petition. OCA seeks reconsideration relative to the new recommended maximum energy burdens in terms of impact on Low Income Home Energy Assistance Program (LIHEAP) grants and the documentation required to support a utility’s proposal to implement the new recommended maximum energy burdens.[[13]](#footnote-14) EAP also filed Petitions regarding other aspects of the November 5 Order.[[14]](#footnote-15)

On November 21, 2019, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Tenant Union Representative Network (TURN), and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (collectively, the Low Income Advocates) jointly filed a letter asking for an extension until December 9, 2019, to file answers to the EAP and OCA Petitions.

On November 25, 2019, the Commission granted the reconsideration petitions pending further review and consideration on their merits. The November 25 Order also granted an extension until December 9, 2019, for parties to file answers to the petitions for reconsideration. In response to EAP’s petition for stay, filings due January 6, 2020, relative to the November 5 Order were stayed. Filings due January 6, 2020, relative to the Filing Schedule Order at Docket No. M-2019-3012601, discussed in greater detail below, were not expressly stayed.

On December 9, 2019, the Low Income Advocates and EAP separately filed answers to OCA’s Petition for Reconsideration.

*Revised USECP Filing Schedule at Docket No. M-2019-3012601*

On October 3, 2019, the Commission entered its USECP Filing Schedule Order, Docket No. M-2019-3012601, extending the duration of USECPs and revising the due dates of USECPs and third-party impact evaluations. The USECP Filing Schedule Order, *inter alia*, directed EDCs and NGDCs to provide enrollment and budgetary projections based on any additional years added to their current USECPs and pending proposed USECPs (if applicable)[[15]](#footnote-16) consistent with the revised filing schedule. The updated enrollment and budget filings, based on the extended terms of the utility-specific USECPs, were to be filed in conjunction with filings due pursuant to the November 5 Order, predicated on the motion adopted at the CAP Policy Statement docket on September 19, 2019.

*Universal Service Rulemaking at Docket No. L-2019-3012600*

Pursuant to a motion adopted on September 19, 2019, and the order entered on January 2, 2020, the Commission has directed BCS and the Law Bureau to commence a comprehensive universal service rulemaking at Docket No. L-2019-3012600, no later than the first quarter of 2020. The information obtained from utility and other stakeholder experiences relative to the CAP Policy Statement, especially as amended, will be informative in determining CAP provisions to be promulgated as regulations. The universal service rulemaking may also encompass the pending Low Income Usage Reduction Program (LIURP) rulemaking at Docket No. L-2016-2557886, and any other changes to the Commission’s universal service regulations, policies, and practices necessary to ensure that universal service programs are reasonably structured to efficiently and effectively assist low-income ratepayers without being overly burdensome on other ratepayers or stakeholders.

**DISCUSSION**

1. **STANDARD FOR RECONSIDERATION**

Petitions for reconsideration and clarification are reviewed pursuant to 66 Pa.C.S. § 703(g), 52 Pa. Code § 5.572, and *Duick v. PGW*, 56 Pa. P.U.C. 553 (1982). “A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion . . . to rescind or amend a prior order in whole or in part.” A party may not raise the same questions in a petition for reconsideration that were raised in a prior pleading. Such questions raised ought to be those that “appear to have been overlooked or not addressed by the Commission.” If “new and novel” questions are not raised, a party will not succeed in persuading the Commission that the “initial decision on a matter or issue was either unwise or in error.” *Duick* at 558.

As explained in greater detail below, OCA questions the interplay between LIHEAP grants and recommended maximum energy burdens, especially for CAP customers at or below 50% of the FPIG. OCA also requests clarification regarding cost information to be included in compliance filings. These are not new or novel questions; they have not been overlooked but rather have been addressed by the Commission in this and other proceedings. We duly considered the recommendation of a maximum 6% energy burden for CAP customers at or below 50% of the FPIG and we directed the utilities to file enrollment and budget projections in conjunction with proposed changes.

1. **OCA PETITION FOR RECONSIDERATION**

The instant petition seeks reconsideration and/or clarification of the impact of the changes to recommended maximum CAP energy burdens in the November 5 Order. Specifically, OCA requests that the Commission (1) address whether a 6% maximum energy burden level for CAP households at or below 50% of the FPIG will increase the amount of LIHEAP[[16]](#footnote-17) funds returned to the Commonwealth; and (2) clarify whether updated CAP cost information should be provided in utility addendum filings. OCA Petition at 7.

OCA notes that the Commission’s staff report titled *Home Energy Affordability for Low-Income Customers in Pennsylvania* (Energy Affordability Report)[[17]](#footnote-18) found that LIHEAP grants decreased the annual average energy burden for CAP households with incomes at or below 50% of the FPIG by 6 to 8 percentage points for electric non-heating and 7 to 9 percentage points for electric heating. OCA Petition at 4 and Energy Affordability Report at 5, 39. OCA opines that if CAP customers at or below 50% FPIG are charged a maximum 6% energy burden level, LIHEAP grants could potentially cover their monthly CAP bills and eventually require utilities to return “excess” LIHEAP funds to DHS at the end of the following LIHEAP season. OCA Petition at 4-5.

OCA notes that the Commonwealth’s LIHEAP State Plan[[18]](#footnote-19) restricts the use of issued LIHEAP funds to no more than two LIHEAP seasons, which end annually on June 30.[[19]](#footnote-20) OCA Petition at 5, citing Fiscal Year (FY) 2020 LIHEAP State Plan at 5. The FY 2020 LIHEAP State Plan also requires participating vendors (including EDCs and NGDCs) to return LIHEAP funds not used after this time period to DHS. OCA Petition at 5-6, *citing* FY 2020 LIHEAP State Plan at Section 601.65.

As to its first contention, OCA recommends the Commission determine whether LIHEAP and ratepayer funds will be used properly by analyzing whether the new CAP maximum energy burden levels will result in LIHEAP grants exceeding the customer’s CAP payment responsibility, resulting in excess federal monies returned to DHS. OCA Petition at 6. OCA submits that “[d]ollars returned to LIHEAP are a direct dollar transfer from Pennsylvania ratepayers to the LIHEAP program.” OCA Petition at 6.

In support of its second contention, OCA also recommends the Commission direct utilities to submit cost estimates based on implementation of the CAP Policy Statement amendments in their addendum filings. OCA maintains it is important to determine the impact of these changes on residential ratepayer bills and universal service budgets. OCA Petition at 7–8.

1. **ANSWER TO PETITION FOR RECONSIDERATION**

The Low Income Advocates maintain that OCA’s Petition does not raise new or novel arguments and thus does not meet the standard for reconsideration. The Low Income Advocates state that the issues and arguments in the OCA Petition were previously raised in the *Review* and/or *Energy Affordability* proceedings. Low Income Advocates Answer at 5-6. Specifically, the Low Income Advocates note: (1) that Philadelphia Gas Works (PGW) recommended the Commission integrate LIHEAP into the energy burden policy;[[20]](#footnote-21) (2) that Columbia Gas articulated that receipt of LIHEAP often results in no payment responsibility for CAP customers and unspent LIHEAP funds are returned to DHS;[[21]](#footnote-22) and (3) that OCA proposed that the Commission consider integrating LIHEAP and CAP in the CAP Policy Statement.[[22]](#footnote-23) Low Income Advocates Answer at 6–7.

The Low Income Advocates observe the Commission took note of these recommendations when determining energy burden levels and the impact of LIHEAP for CAP customers in the November 5 Order. Low Income Advocates Answer at 7–8, *citing* the November 5 Order at 21, 50–51. The Low Income Advocates contend that the *Duick* standard does not require the Commission to explicitly discuss every issue raised, such as the impact of the new recommended maximum energy burdens on LIHEAP grants. Low Income Advocates Answer at 9.

In addition, the Low Income Advocates opine that OCA’s Petition requests an analysis based on speculation. In particular, the Low Income Advocates argue, *inter alia*, (1) that LIHEAP funding, policies, and parameters are subject to change annually and projections based on the *status quo* may be inaccurate; and (2) that minimum bill and maximum CAP credit requirements may change in utility-specific USECP proceedings, which would impact any estimate of LIHEAP monies subject to potential refund from CAP accounts. Low Income Advocates Answer at 9–11.

The Low Income Advocates note the Commonwealth Court has recognized the Commission’s authority to establish CAP payment amounts and DHS’s authority to direct how LIHEAP funds should be applied to customer accounts. Low Income Advocates Answer at 13–14, *citing* *Pennsylvania Communities Organizing for Change, Inc. v. Pennsylvania Public Utility Commission*, 89 A.3d 338 (Pa. Cmwlth. 2014). The Low Income Advocates maintain that concerns about how LIHEAP grants will be applied to CAP accounts in light of the revised energy burdens should be addressed to DHS. Low Income Advocates Answer at 14.

The Low Income Advocates also recommend that the Commission deny OCA’s request to require utilities to provide estimates of any changes in universal service costs as a result of the amendments to the CAP Policy Statement in their addendum filings. The Low Income Advocates submit that such estimates would be speculative at this juncture as utilities have not determined if, when, and how they will implement the new recommended energy burdens. The Low Income Advocates maintain that such cost estimates should be examined in full USECP proceedings, where the entire suite of universal service programs and its costs can be addressed. Low Income Advocates Answer at 15.

EAP asserts that OCA validates EAP’s concerns regarding Ordering Paragraphs 6, 7, and 8. EAP Answer at 2. EAP also agrees that the Commission should address the interplay of LIHEAP and the new recommend maximum 6% energy burden for CAP households at or below 50% of FPIG. EAP Answer at 2–3. EAP further contends that additional data and analyses as requested by OCA should not expand compliance obligations without giving the utilities additional time to submit compliance filings. EAP Answer at 4.

1. **RESOLUTION**

Looking first at OCA’s contention regarding the recommend maximum 6% energy burden, we find that OCA has not introduced any new information or data into the record or raised any new or novel arguments regarding the amended maximum CAP energy burden levels set forth in the Annex to the November 5 Order. Consequently, the Commission is not persuaded that its November 5 Order was either ill-considered, unwise, in error, or unclear. As noted by the Low Income Advocates, the impact of LIHEAP on CAP customer bills was raised by parties and considered by the Commission in both the *Review* and *Energy Affordability* proceedings. Further, energy burdens are considered in every utility-specific USECP proceeding.

The Commission has no control over the disbursement of LIHEAP funding. Further, the utilities subject to Commission jurisdiction, even if on the DHS vendor list, often do not know the anticipated amount of a household’s LIHEAP grant. The disbursement of LIHEAP funds is a function assigned in this Commonwealth to DHS.

To the extent that OCA may have articulated a problem, DHS is likely an essential party to the solution. We remind stakeholders that the maximum energy burden percentages in the Annex to the November 5 Order are recommendations, not iron-clad limits on what a utility can charge a CAP household. Issues related to a specific utility’s energy burdens are still subject to scrutiny in that utility’s USECP proceedings.

As a second contention, OCA requests that the Commission direct utilities to submit an estimate of the costs of change when a CAP is revised because some costs increase and some costs decrease. OCA asserts this information is essential to evaluate a proposed change and to assess the impact on the ratepayers who bear the cost of universal service. OCA Petition at 7.

The November 5 Order directs that utilities provide enrollment and budget projections in their addendums for the new CAP provision they propose to implement. This requirement has been reiterated in our order addressing the EAP petition for reconsideration at Docket Nos. P-2020-3016889 and M-2019-3012599. To the extent that further granularity may be warranted, it can be addressed in utility-specific proceedings.

**CONCLUSION**

Upon further consideration of the record in this matter regarding the various legal and policy issues raised by the parties, OCA’s Petition for Reconsideration and/or Clarification is denied. As we have in the past, we shall continue our dialogue with DHS relative to its yearly LIHEAP State Plans.

Having addressed this instant Petition, we note that any further issues raised in the Petition for Reconsideration or otherwise raised in this docket, which we may not have specifically delineated herein, shall be deemed to have been duly considered and denied without further discussion. 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); *see also*, *generally*, *Univ. of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984); **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration and/or Clarification filed by the Office of Consumer Advocate on November 20, 2019, is denied.
2. That a copy of this Order be served on the following entities:
   1. **Natural Gas Distribution Utilities**: Columbia Gas of Pennsylvania, PECO Energy Co., National Fuel Gas Distribution Corp., Peoples Natural Gas Co., Peoples-Equitable Division, Philadelphia Gas Works, and UGI Utilities, Inc.
   2. **Electric Distribution Utilities**: Duquesne Light Co., Metropolitan Edison Co., PECO Energy Co., Pennsylvania Electric Co., Pennsylvania Power Co., PPL Electric Utilities Inc., and West Penn Power Co.
   3. **Other Parties**: The Commission’s Bureau of Investigation and Enforcement; Office of Consumer Advocate; Office of Small Business Advocate; Industrial Energy Consumers of Pennsylvania; Met-Ed Industrial Users Group; Penelec Industrial Customer Alliance; Penn Power Users Group; Philadelphia Area Industrial Users Group; PP&L Industrial Customer Alliance; West Penn Power Industrial Intervenors; Pennsylvania Utility Law Project; the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania; Energy Association of Pennsylvania; Dollar Energy Fund; Community Legal Services; Community Action Association of Pennsylvania; Tenant Union Representative Network; Commission on Economic Opportunity; Action Alliance of Senior Citizens of Greater Philadelphia; Pennsylvania Department of Community and Economic Development; Utility Emergency Service Fund; Philadelphia Housing Authority; the Pennsylvania Department of Human Services; and any parties to *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, not listed above.
3. That the contact person regarding policy and technical issues for this proceeding is Joseph Magee, Bureau of Consumer Services, [jmagee@pa.gov](mailto:jmagee@pa.gov). The contact person regarding legal issues for this proceeding is Assistant Counsel Louise Fink Smith, Law Bureau, [finksmith@pa.gov](mailto:finksmith@pa.gov).

**** **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 6, 2020

ORDER ENTERED: February 6, 2020

1. The Energy Association of Pennsylvania (EAP) has also filed a petition for reconsideration which was also granted pending review on the merits. EAP also filed a Petition for Stay, which was granted. The EAP petition for reconsideration will be considered in a separate order at Docket No. P-2020-3016889. [↑](#footnote-ref-2)
2. *See* the November 5 Order for a detailed history. The November 5 Order and Annex reflect a Commission motion adopted on September 19, 2019. [↑](#footnote-ref-3)
3. Attached to the November 5 Order are three attachments and the Annex. The Annex reflects the amended sections of the Final CAP Policy Statement. [↑](#footnote-ref-4)
4. The CAP Policy Statement applies to Class A EDCs and NGDCs with gross intrastate annual operating revenue in excess of $40 million. [↑](#footnote-ref-5)
5. The motion underlying the November 5 Order was adopted at the Commission’s September 19, 2019 Public Meeting, but the Order was not entered until November 5, 2019. [↑](#footnote-ref-6)
6. November 5 Order at 32–37. [↑](#footnote-ref-7)
7. November 5 Order at 57–61. [↑](#footnote-ref-8)
8. November 5 Order at 55–57. [↑](#footnote-ref-9)
9. November 5 Order at 52–53. [↑](#footnote-ref-10)
10. November 5 Order at 74–75. [↑](#footnote-ref-11)
11. On January 2, 2020, the Commission entered an Order at Docket No. L-2019-3012600 directing the Bureau of Consumer Services and the Law Bureau to initiate a comprehensive universal service rulemaking by or before March 31, 2020. *See* further discussion of that proceeding below. [↑](#footnote-ref-12)
12. Amendment 1, the new recommended maximum energy burdens, and amendments 2 through 16 relate to program elements of a CAP within a USECP. Amendment 17 relates to the treatment of CAP costs in utility-specific rate cases. [↑](#footnote-ref-13)
13. OCA is not challenging, in its petition for reconsideration, the substance of amendments 2 through 17 to the CAP Policy Statement but does reserve the right to address specific substantive issues of the amendments in utility-specific proceedings and/or in the pending universal service rulemaking. [↑](#footnote-ref-14)
14. EAP seeks reconsideration/clarification relative to Ordering Paragraphs 6, 7, and 8 of the November 5 Order and sought a stay of certain filing requirements. [↑](#footnote-ref-15)
15. The terms “pending USECP” and “pending proposed USECP” refer to USECPs that were under review by the Commission prior to the Filing Schedule Order which extended USECP length. The utilities with pending/pending proposed USECPs, as well with as existing (*i.e.*, then-current) USECPs that were lengthened, would need to file and serve enrollment and budget projections for the years added to their USECPs. (Additionally, it has been determined that the captions of those dockets are to be changed to reflect the additional years.) [↑](#footnote-ref-16)
16. In Pennsylvania, LIHEAP is administered by the Pennsylvania Department of Human Services (DHS). [↑](#footnote-ref-17)
17. Released via order entered on January 17, 2019, at Docket No. M-2017-2587711. [↑](#footnote-ref-18)
18. <https://www.dhs.pa.gov/Services/Assistance/Documents/Heating%20Assistance_LIHEAP/LIHEAP%20State%20Plan%20for%20Federal%20Fiscal%20Year%202020.pdf> [↑](#footnote-ref-19)
19. For example, funds for LIHEAP grants issued in November 2018 are available for use through June 30, 2020. FY 2020 LIHEAP State Plan at § 601.45. [↑](#footnote-ref-20)
20. *Energy Affordability* proceeding, PGW Comments at 2–8 (filed May 8, 2019). [↑](#footnote-ref-21)
21. *Energy Affordability* proceeding, Columbia Gas Comments at 7–8 (filed May 8, 2019). [↑](#footnote-ref-22)
22. *Review* proceeding, OCA Comments at 32–34 and Appendix A, at 26–29 (filed August 8, 2017). [↑](#footnote-ref-23)