



PULP

PENNSYLVANIA
UTILITY LAW PROJECT

July 10, 2023

VIA E-MAIL

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

Re: FirstEnergy Companies Joint Proposed Universal Service and Energy Conservation Plan for 2024-2028: Metropolitan Edison Company Universal Service and Energy Conservation Plan for 2024-2028; West Penn Power Company Universal Service and Energy Conservation Plan for 2024-2028; Pennsylvania Power Company Universal Service and Energy Conservation Plan for 2024-2028; Pennsylvania Electric Company Universal Service and Energy Conservation Plan for 2024-2028

Docket Nos. M-2022-3036532, M-2022-3036533, M-2022-3036534, M-2022-3036535

Dear Secretary Chiavetta:

Attached for filing, please find the **Reply Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** for the above related proceeding.

As indicated by the attached Certificate of Service, service on the parties was by email only.

Respectfully submitted,

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Metropolitan Edison Company Universal Service : Docket No. M-2022-3036532
and Energy Conservation Plan for 2024-2028 :

West Penn Power Company Universal Service : Docket No. M-2022-3036533
and Energy Conservation Plan for 2024-2028 :

Pennsylvania Power Company Universal Service : Docket No. M-2022-3036534
and Energy Conservation Plan for 2024-2028 :

Pennsylvania Electric Company Universal : Docket No. M-2022-3036535
Service and Energy Conservation Plan for 2024- :
2028

Certificate of Service

I hereby certify that I have, on this day, served copies of the **Reply Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania** in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54.

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Date: July 10, 2023

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Metropolitan Edison Company Universal Service and Energy : M-2022-3036532
Conservation Plan for 2024-2028 :

West Penn Power Company Universal Service and Energy : M-2022-3036533
Conservation Plan for 2024-2028 :

Pennsylvania Power Company Universal Service and Energy : M-2022-3036534
Conservation Plan for 2024-2028 :

Pennsylvania Electric Company Universal Service and : M-2022-3036535
Energy Conservation Plan for 2024-2028 :

**REPLY COMMENTS OF THE COALITION FOR AFFORDABLE UTILITY SERVICES
AND ENERGY EFFICIENCY IN PENNSYLVANIA**

PENNSYLVANIA UTILITY LAW PROJECT

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July 10, 2023

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its attorneys at the Pennsylvania Utility Law Project, submits the following Reply Comments pursuant to the Public Utility Commission's March 16, 2023 Order (hereinafter, March 2023 Order), which invited interested parties to submit comments and reply comments to the joint proposed Universal Service and Energy Conservation Plan (USECP) for 2024-2028 of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (WPP) (collectively, FirstEnergy or the Companies) (Proposed 2024 USECP or Plan).

On June 20, 2023, CAUSE-PA and the Office of Consumer Advocate (OCA) each submitted initial Comments in response to FirstEnergy's Proposed 2024 USECP and the issues identified in the Commission's March 2023 Order. CAUSE-PA submits the following Reply Comments for the Commission's consideration in response to OCA's initial Comments. For the sake of brevity, CAUSE-PA will not reiterate arguments raised in our initial Comments but incorporates those arguments by reference. To the extent that any argument raised in OCA's initial Comments is not addressed, this does not indicate CAUSE-PA's agreement.

II. REPLY COMMENTS

A. Areas of Alignment

CAUSE-PA and OCA agree with and support FirstEnergy's proposals to change its PCAP structure from a fixed credit option to a percentage of income payment plan and to amend energy burdens to those identified in the Commission's Final CAP Policy Statement. (OCA Cmts. at 7). CAUSE-PA and OCA additionally recognize the benefit of changing the arrearage forgiveness timeframe from 36 to 12 months. (OCA Cmts. at 15). CAUSE-PA and OCA were also aligned on

similar arguments and recommendations concerning FirstEnergy's policies and procedures for refunding security deposits to low income customers. (OCA Cmts. at 37-38).

CAUSE-PA and OCA additionally agree that PCAP customers moving from one FirstEnergy EDC territory to another should be able to transfer their accounts, without interruption of PCAP program participation, and ensuring that arrearage forgiveness follows customers. (OCA Cmts. at 30). OCA recommends that, if FirstEnergy's system is not able to automatically transfer customers' PCAP accounts when they move from one FirstEnergy EDC to another, the Companies should still be able to provide customers with an opportunity to transfer their accounts. OCA provides an example of questions that could be added to application forms to "discern whether 1) a customer is coming from another FirstEnergy utility; 2) if so, was the customer a PCAP customer at that utility and; 3) if so, does the customer wish to continue being a PCAP customer. If the customer answers in the affirmative to each of these questions, FirstEnergy should be obligated to then help the customer transfer the PCAP account." (OCA Cmts. at 30). While CAUSE-PA appreciates this recommendation and approach OCA offers as an example, we would slightly modify OCA's recommendation. Rather than obligate FirstEnergy to *help the customer* transfer the account, CAUSE-PA urges the Commission to *require* FirstEnergy to transfer the PCAP account, maintaining the customer's participation in PCAP as if there was no break in the program.

CAUSE-PA and OCA both support the text-to-recertify program. In their Comments, OCA also encourages the use of texting for other program notifications, *in addition to the traditional currently employed methods of outreach and communication.* (OCA Cmts. at 32). It is important to preserve existing methods of outreach and communication to ensure communications are effectively reaching households. Low income households often lack stable communication

services, making text messaging an unreliable form of communication without frequent updates and ongoing deployment of alternative forms of communication. Also, while CAUSE-PA supports the text-to-recertify program, we urge the Commission to consider our Comments regarding the importance of ensuring data privacy when employing additional digital technologies for customer engagement. (CAUSE-PA Cmts. at 32-34).

B. Maximum CAP Credits

In our Comments, CAUSE-PA supports FirstEnergy's proposal to eliminate maximum CAP credits for two primary reasons: 1) Imposing maximum CAP credit limits results in customers being billed in excess of their energy burdens which, in turn, results in categorically unaffordable bills for a part of each year – undermining improvements to payment frequency and bill coverage and exacerbating disparities in payment trouble and termination; and 2) Imposing arbitrary maximum credit limits through PCAP would have a disproportionate negative impact on low income customers based primarily on the quality of their homes. Low income customers are more likely to reside in older, inefficient homes, and they most often lack the economic resources to invest in upgrades that could reduce usage. (CAUSE-PA Cmts. at 16-18). Elimination of maximum CAP credits also yields the additional benefit of being less administratively burdensome for the FirstEnergy Companies.

OCA recommends that FirstEnergy continue to impose maximum CAP credits. However, OCA recommends the following amended framework:

- When a PCAP customer reaches 80% of their PCAP maximum credit, they should be referred to LIURP.
- Customers should not be removed from PCAP, even if they reach their PCAP maximum credit, if they accept LIURP.
- If LIURP does not resolve the issue, the customer should be allowed to exceed the PCAP maximum credit as long as the customer accepts LIURP usage reduction education.

- Customers refusing LIURP should not receive a PCAP subsidy once they reach 125% of their maximum PCAP credits for the year.
- Maximum PCAP credits should be tiered so that households receive a larger subsidy if the customer has lower income levels and larger subsidies should be applied to electric heating customers as opposed to non-electric heating customers.
- Maximum PCAP credits should be adjusted annually to account for increases in energy prices based on any approved base rate increases or price to compare increases.
- If the distribution or commodity prices increase, then the maximum PCAP credit should increase. If they decrease, then the maximum PCAP credit should remain the same.

(OCA Cmts. at 20).

CAUSE-PA appreciates OCA's attempt to develop a more equitable framework for establishing PCAP maximum credits. While we continue to oppose implementation of maximum CAP credits, OCA's proposal appears to address some of CAUSE-PA's more pressing concerns. Specifically, OCA's recommendation to allow tiered maximum CAP credits would help ensure the poorest households and those who rely on electric heat (and therefore have higher overall usage) receive a more distributionally equitable level of assistance. OCA's recommendation would also ensure periodic adjustment of maximum credit credits to address fluctuating energy prices, which would help to ensure the program is responsive to increasing energy costs in between the five-year USECP review. These provisions could help reduce the impact of imposing PCAP credit maximums, allowing more PCAP customers, especially the most economically vulnerable households, to stay under their maximum allowance each year. In addition, driving PCAP customers at risk of exceeding maximum CAP thresholds to utilize available WARM program measures could also help decrease usage, keeping more PCAP participants in the program.

However, CAUSE-PA is concerned that the proposal lacks critical specificity and detail required of the complex, nuanced program that could be established from this alternative recommended approach to structuring maximum PCAP credits. We also caution against the

reliance on usage to establish maximum benefit levels without strong exceptions that account for the realities of poverty and the unique energy needs of individual families.

First, OCA's proposal is premised on refusal of LIURP services, yet does not define what constitutes a "refusal". As discussed in our initial Comments, a customer's non-responsiveness should not be deemed a definitive refusal of LIURP services. Low-wage workers often have inflexible work schedules; are more likely to be prohibited from taking personal calls during business hours; and are more likely to not be able to take time off from work to allow for the installation of measures (CAUSE-PA Cmts. at 54-55).

In addition, further specificity is needed regarding how the proposed conditions apply to tenants whose landlords refuse WARM services. Tenants do not have the option to accept or refuse LIURP services. Receiving WARM education is noted as acceptable *if installation of LIURP measures did not resolve the issue*. If a tenant could not accept LIURP measures due to landlord disapproval, the tenant should be exempt if they accept education – ensuring they continue to receive PCAP benefits if they exceeded their maximum PCAP credits. It is not clear in OCA's proposal if such an exemption would be applied.

Further, while we support a tiered approach to maximum CAP credits to the extent maximum credits are ultimately imposed, OCA's proposal does not set forth recommended tiers – or a formula for adjusting those tiers based on increased commodity costs or base rates. Should the Commission require adoption of maximum CAP credits, further inquiry is critical to ensure the credit tiers and the process for adjusting those tiers is appropriately designed to ensure PCAP customers receive a just and reasonable rate. As it stands, given the lack of discovery and the limited opportunity to evaluate proposals raised in initial Comments through this proceeding, there is inadequate data and information to design appropriately tiered credit limits and associated

policies and procedures to effectively implement OCA’s proposed framework. To the extent the Commission requires adoption of maximum CAP credits, the Commission should refer this matter to the Office of Administrative Law Judge to further investigate the issue and design an appropriately tiered maximum CAP structure and associated policies and procedures to implement the nuanced policy proposal advanced by the OCA in this proceeding.

We are in turn concerned that OCA’s proposal does not account for inadequacies in funding and services through FirstEnergy’s WARM program. As discussed at length in our initial Comments, WARM reaches only a small fraction of eligible households. (CAUSE-PA Cmts. at 65-69). FirstEnergy’s proposed WARM budget is ill-equipped to meet the need in any of its EDC service territories. It is unclear whether households that would exceed the consumption limits would meet the high usage threshold for WARM – or if this policy would require extension of WARM eligibility requirements, which could further impact the ability of households with high usage to receive limited WARM assistance.

CAUSE-PA also notes its overarching concern with OCA’s definitive assertion that usage should determine whether a customer exceeds their maximum CAP credits. There is a fine line between conservation and curtailment, and any policy which ties usage to the availability of assistance must carefully distinguish between these two concepts to prevent the creation of second-class service which places an unjust and discriminatory burden on low income households. Low income households on average use more energy per square foot than higher income households.¹ This disparity in average usage is ***not*** because low income households are careless with their usage

¹ See, e.g., [Energy insecure households in the U.S. pay 27% more for electricity than others](https://pv-magazine-usa.com/2023/05/30/energy-insecure-households-in-the-u-s-pay-27-more-for-electricity-than-others/). Available at <https://pv-magazine-usa.com/2023/05/30/energy-insecure-households-in-the-u-s-pay-27-more-for-electricity-than-others/>. “In 2020, households with income less than \$10,000 a year were billed an average of \$1.31 per square foot for energy, while households making \$100,000 or more were billed an average of \$0.96 per square foot, said EIA. Renters paid considerably more (\$1.28 per square foot) than owners (\$0.98 per square foot).”; Data source: U.S. Energy Information Administration, 2020 Residential Consumption Survey; <https://www.eia.gov/consumption/residential/>

– it is a direct result of disparities in housing quality and efficiency driven by decades of underinvestment in critical housing upgrades.² In addition to inefficient housing, low income families may have higher usage driven by other concerns – including medical usage, the addition of household members, or usage which is beyond the ability of a household to reasonably control through conservation and efficiency.³ It is critical that if maximum CAP credits are retained in any form, the explicit exemptions contained in the CAP Policy Statement must also be retained.

In sum, CAUSE-PA remains opposed to maximum CAP credits and continues to support FirstEnergy’s proposal to eliminate maximum credits to ensure PCAP rates remain within the target energy burden standards. We believe elimination of the maximum CAP credits to be the most just and reasonable manner by which low income customers can stay on PCAP without facing the possibility of being billed far in exceedance of the applicable energy burden standards at any point in the PCAP program year. Should the Commission nevertheless require FirstEnergy retain maximum CAP credit thresholds, we believe OCA’s proposal presents a workable framework – though further clarity and detail is needed to effectively implement OCA’s proposal. CAUSE-PA thus strongly recommends that, if the Commission proceeds with imposing maximum CAP credit thresholds, it should refer this issue to the Office of Administrative Law Judge to establish an appropriately tiered maximum CAP credit structure and the associated policies and procedures that would be necessary to implement the nuanced policy proposal advanced by the OCA in this proceeding.

² See, e.g., ACEEE, *How High Are Household Energy Burdens? An Assessment of National and Metropolitan Energy Burden Across the United States* (Sept. 2020), available at: <https://www.aceee.org/energy-burden>.

³ See, e.g., Peter A. Kahn, MD MPH et al., *Characterization of Prescription Patterns and Estimated Costs for Use of Oxygen Concentrators for Home Oxygen Therapy in the US*, *Journal of Am. Med. Ass’n* (Oct. 19, 2021), available at: <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2785240>.

B. Eligibility of Public Housing Recipients

CAUSE-PA and OCA have opposing views regarding PCAP eligibility for public housing recipients. OCA recommended in initial Comments that the Commission should “consider the extent of participation in CAP by tenants in public and assisted housing who receive utility allowances from the Department of Housing and Urban Development (HUD)”. (OCA Cmts. at 21-22). OCA argues that utilities providing assistance above and beyond the HUD allowance would “appear to substitute ratepayer dollars for HUD Dollars.” (Id.)

CAUSE-PA strongly disagrees with OCA’s suggestion that public housing recipients should be excluded from CAP. OCA made a similar proposal as part of comments to the Final CAP Policy Statement, which the Commission rejected.⁴ OCA nevertheless asserts that language included in the policy allows for the issue to be revisited. Specifically, OCA requests that the Commission require FirstEnergy to provide data necessary for consideration as to the appropriateness of restricting public housing recipients from participating in CAP. (OCA Cmts. at 13-14). CAUSE-PA questions the ability of FirstEnergy to produce responsive data, as FirstEnergy does not and should not be tracking public housing recipients to single them out for adverse treatment.

CAUSE-PA asserts that OCA fundamentally misunderstands the manner in which public housing assistance is applied, and thus urges the Commission to again reject OCA’s recommendation, consistent with its earlier statewide policy order and subsequent successive orders. Utility allowances provided to public housing recipients are insufficient to pay for a household’s utility costs as they are an “estimation” of monthly utility costs, often based on

⁴ 2019 Amendments to CAP Policy Statement, Final Policy Statement and Order, Docket No. M-2019-3012599, at 97-98 (Order entered Nov. 5, 2019) (hereafter, Final CAP Policy Statement).

building averages,⁵ and do not account for actual monthly household energy costs.⁶ There is nearly always a lag between an increase in rates and a utility allowance adjustment. Utility allowances are thus a proxy and “stale” in terms of approximating energy costs. Landlords and housing authorities are only required to *review* a utility allowance once each year and are only required to *adjust* the allowance if rates increase by more than 10%.⁷ As a result, many households – particularly those with larger families or household members with medical equipment needs – have higher utility costs than accounted for in this approximation due to medical equipment and household inefficiencies.

Utility allowances are provided as a rent credit to some (not all) public housing recipients. However, those who receive a utility allowance must report the utility assistance they receive each year when recertifying their housing income, and their rent obligation is increased accordingly.⁸ In other words, households receiving a utility allowance are not provided with duplicative or overlapping utility assistance. Rather, the rent portion of their monthly housing allowance will increase to account for the assistance received.

It is additionally important to keep in mind that public housing assistance is only available to the most resource-limited and most vulnerable Pennsylvanians – including Seniors, Veterans, families with children, and victims of domestic violence. Public housing assistance is designed to help lift people out of poverty by providing stable and affordable housing. Providing an affordable

⁵ Use of building averages to determine average usage can have a big impact on a household’s deemed allowance. For example, if one or more units in the building is unoccupied for a portion of the year, the estimation could artificially decrease the household’s utility allowance. The same issue arises when some building residents are enrolled in CAP – but others are not – because the rates for some units are lower.

⁶ See 24 C.F.R. § 5.603 (defining “utility allowance” as “an amount equal to the *estimate* made or approved by PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.”); see also 24 C.F.R. § 982.517.

⁷ See HUD, Methodology for Completing a Multifamily Housing Utility Analysis: Notice H-2015-04 (Revised February 2022).

⁸ Id.

utility rate to public housing recipients does not “substitute” federal housing assistance, it *supplements* federal housing assistance, and provides critically necessary support to Pennsylvanians at a time of great financial hardship and tremendous need.

For these reasons, CAUSE-PA affirms our position that households should not be excluded from CAP if they receive public housing assistance.

III. CONCLUSION

CAUSE-PA thanks the Commission for its thoughtful consideration of the issues raised above and in CAUSE-PA’s initial Comments. We urge the Commission to act in accordance with CAUSE-PA’s Comments and Reply Comments to ensure that all customers – regardless of income – are able to access safe, affordable service within each of the FirstEnergy EDC service territories.

Respectfully Submitted,



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