



March 29, 2024

VIA E-MAIL

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

Re: FirstEnergy PA 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 **Petition for Reconsideration and/or Clarification 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 **Petition for Reconsideration and/or Clarification 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.

VIA EMAIL ONLY

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March 29, 2024

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 Energy: M-2022-3036535
Conservation Plan for 2024-2028 :

PETITION FOR RECONSIDERATION AND/OR CLARIFICATION OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY
IN PENNSYLVANIA

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Date: March 29, 2024

I. INTRODUCTION

Pursuant to the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (Commission), 52 Pa. Code §§ 5.41 and 5.572, the Coalition for Affordable Utility Services and Energy Efficiency (CAUSE-PA),¹ through its counsel at the Pennsylvania Utility Law Project, hereby petitions the Commission for reconsideration and/or clarification of its March 14, 2024 Final Order (Final 2024 USECP Order) regarding the FirstEnergy Pennsylvania (FE PA)² Universal Service and Energy Conservation Plan for 2024-2028 (FE PA 2024-2028 USECP).

In support thereof, CAUSE-PA asserts the following:

1. CAUSE-PA was an active participant in this proceeding and filed Comments and Reply Comments in support of its positions and recommendations.³ While we reference statements made in these filings, we will not restate the detailed arguments contained therein. We nevertheless stand by and incorporate those arguments and recommendations herein.
2. CAUSE-PA has standing to file the instant Petition for Reconsideration and/or Clarification, as the interests of its members have or will be directly impacted by the

¹ CAUSE-PA is a statewide unincorporated association of low income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable electric, water, heating, and telecommunication services. CAUSE-PA membership is open to moderate and low income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low income families maintain affordable access to utility services and achieve economic independence and family well-being. CAUSE-PA is therefore interested in and committed to achieving the creation, development, and implementation of effective universal service and energy efficiency programs which promote long term affordability of electricity, natural gas, water, wastewater, and communication services and, in turn, protect the health, safety, and welfare of economically vulnerable households across the state.

² The four FirstEnergy Companies recently merged and are collectively referred to as FirstEnergy PA or FE PA. The FE PA 2024-2028 USECP was originally filed for each of its prior operating companies (MetEd, Penn Power, West Penn Power, and Penelec). Following the merger, the former four First Energy Companies are now considered “divisions” of FE PA.

³ See FirstEnergy Companies Joint Proposed USECP for 2024-2028, Comments of CAUSE-PA, Docket Nos. M-2022-3036532, M-2022-3036533, M-2022-3036534, M-2022-3036535, filed on June 20, 2023; (hereafter Proposed 2024 USECP)

See FirstEnergy Proposed 2024 USECP, Reply Comments of CAUSE-PA, Docket Nos. M-2022-3036532, M-2022-3036533, M-2022-3036534, M-2022-3036535, filed on July 10, 2023.

Commission's Final 2024 USECP Order and any clarification or reconsideration thereof.
(See *infra* section III).

3. The Commission's Final 2024 USECP Order adopts a maximum CAP credit policy that was not proposed or supported by any party, is premised on inaccurate assumptions and incomplete data, and omits critical details regarding implementation of the policy. (Final 2024 USECP Order at 26-29).
4. CAUSE-PA urges the Commission to reconsider its decision to impose maximum CAP credit limits and to remand this narrow yet complex issue to the Office of Administrative Law Judge to resolve issues of material fact and law that were previously overlooked. Further factual inquiry is necessary for the Commission to gather and analyze relevant data, review and assess rate impacts and program costs, and determine whether and to what extent FE PA should be required to institute maximum CAP credit limits.⁴
5. Should the Commission decline to fully reconsider this issue, CAUSE-PA alternatively urges the Commission to clarify that the new maximum CAP credit limits will only apply if a CAP participant refuses to participate in FE PA's Low Income Usage Reduction Program (LIURP), consistent with the Office of Consumer Advocate's proposal. Further, the Commission should clarify that FE PA must adopt exemptions to the maximum CAP credit limits contained in the Commission's CAP Policy Statement and develop a plan and process for informing CAP participants about the availability of those exemptions.⁵

⁴ See *Evans v. Pa. PUC*, 421 CD 2020, 422 CD 2020, at 18-19 (Pa. Commw. Ct. slip. op. Sept. 29, 2021) ("Due process...requires an evidentiary hearing...if there are disputed questions of fact to be resolved." (quoting *WPP v. Pa. PUC*, 659 A.2d 1055, 1062 (Pa. Commw. Ct. 1995)).

⁵ 52 Pa. Code 69.265(3)(iv).

6. Pending resolution of the instant Petition for Reconsideration and/or Clarification, CAUSE-PA urges the Commission to order FE PA to proceed with implementation of all other directives included in the Final 2024 USECP Order.

II. BACKGROUND

7. On December 1, 2017, FE PA submitted its proposed 2019 USECP at Docket Nos. M-2017-2636969, M-2017-2636973, M-2017-2636976, and M-2017-2636978. By Order entered July 11, 2019, FE PA's 2019 USECP (2019 USECP) was approved.⁶
8. On February 21, 2020, FE PA filed a Joint Petition (2020 Joint Petition) to amend its 2019 USECP to implement numerous policy reforms included in the Commission's revised CAP Policy Statement.⁷
9. On March 12, 2020, CAUSE-PA filed an Answer in support of FE PA's 2020 Joint Petition.
10. On July 16, 2021, the Commission issued an Order (July 2021 Order), responsive to the 2020 Joint Petition, directing FirstEnergy to provide supplemental information and establishing a comment and reply comment period for stakeholders to address FirstEnergy's proposed amendments to its 2019 USECP.

⁶ See FirstEnergy Revised Universal Service and Energy Conservation Plan for 2019-2021, Order, Docket Nos. M-2017-2636969, M-2017-2636973, M-2017-2636976, and M-2017-2636978 (Order entered July 11, 2019). On October 3, 2019, the Commission extended the duration of all USECPs from three to five years, which extended FirstEnergy's 2019 USECP through 2023. The 2019 USECP is in effect until formal Commission approval of the 2024-2028 USECP.

⁷ See FirstEnergy Revised Universal Service and Energy Conservation Plan for 2019-2023 Joint Petition, Docket Nos. M-2017-2636969, M-2017-2636973, M-2017-2636976, and M-2017-2636978 (filed February 21, 2020); see also 2019 Amendments to CAP Policy Statement, Final Policy Statement and Order, Docket No. M-2019-3012599 (Order entered Nov. 5, 2019). The 2020 Joint Petition included proposals to adopt a percentage of income payment (PIP) for FirstEnergy PA's PCAP, eliminate Equal Payment Plan and associated true-ups, charge PCAP participants the lower of the maximum energy burden or actual usage amount, extend PCAP recertification timeframes, accept income documentation for either the last 30 days or 12 months when a customer applies or recertifies for PCAP, use the Commission's standardized zero-income form, incorporate a consumer education and outreach plan, and eliminate the maximum annual PCAP subsidy credit limit (hereafter referred to as maximum CAP credit limits).

11. CAUSE-PA filed Comments to the July 2021 Order expanding on its Answer to the 2020 Joint Petition, emphasizing support for provisions that will reduce energy unaffordability, including support for FE PA's proposal to adopt a percentage of income program (PIP) design and, in turn, to eliminate maximum CAP credit limits.⁸
12. On April 14, 2022, the Commission entered an Order denying FirstEnergy's 2020 Joint Petition in its entirety, without prejudice.⁹
13. On November 1, 2022, the FirstEnergy Companies filed a joint proposed Universal Service and Energy Conservation Plan for 2024-2028 (Proposed 2024 USECP) in compliance with 52 Pa. Code § 54.74 (relating to electric universal service and energy conservation reporting requirements). FE PA's Proposed 2024 USECP contained similar modifications to its USECP as proposed in its 2020 Joint Petition, including, in relevant part to the instant Petition, implementation of a PIP and corresponding elimination of maximum CAP credit limits.¹⁰
14. On March 16, 2023, the Commission entered an Order (March 2023 Order) requiring additional information from FE PA on the record and setting a timeline for stakeholder comments and reply comments on the Proposed 2024 USECP.
15. On April 25, 2023, FE PA provided supplemental data, as required by the March 2023 Order. On May 31, 2023, FE PA filed revised data, correcting estimated average monthly bills for CAP customers under both the existing CAP structure and the proposed PIP

⁸ Joint Petition of Penelec, Penn Power, MetEd, and West Penn Power to Amend Universal Service and Energy Conservation Plan for 2019-2023, Comments of CAUSE-PA, Docket Nos. P-2020-3018883, -3018884, -3018873, 3018885; M-2017-2636969, -2636973, -2636976, -2636978, at 8-19 (filed Oct. 4, 2021).

⁹ Joint Petition of Penelec, Penn Power, MetEd, and West Penn Power to Amend Universal Service and Energy Conservation Plan for 2019-2023, Order, Docket Nos. P-2020-3018883, -3018884, -3018873, 3018885; M-2017-2636969, -2636973, -2636976, -2636978, (Order entered on April 14, 2022).

¹⁰ Proposed 2024 USECP at 3-4 and 30.

design. Also on May 31, 2023, CAUSE-PA filed a request for a brief extension of the comment period to evaluate and respond to the revised data in comments. The Commission approved the extension request on June 2, 2023.

16. On June 20, 2023, CAUSE-PA and the Office of Consumer Advocate (OCA) each filed initial comments in response to the Commission's March 23 Order.
17. In relevant part, CAUSE-PA supported FE PA's proposal to implement a PIP design and eliminate its maximum CAP credit limits. CAUSE-PA agreed with FE PA that imposing maximum CAP credit limits would cause a subset of participants to far exceed the energy burden standards established in the Final CAP Policy Statement.¹¹ We argued that such a result would create categorically unaffordable rates for uniquely vulnerable households – including those with the lowest household income and/or the least efficient homes.
18. CAUSE-PA filed Reply Comments on July 10, 2023, reaffirming support of FE PA's proposal to eliminate its maximum CAP credit limits and responding to OCA's initial comments and proposals. In relevant part, OCA recommended that:

When a CAP customer reaches 80% of their maximum CAP credit, the customer should be referred to LIURP. **The customer should not be removed from CAP even if they reach the maximum CAP credit if they accept LIURP remediation.** Even if LIURP does not fix the issue, the customer should be allowed to exceed the maximum CAP credit so long as the customer accepts LIURP including usage reduction education. If the household does not accept LIURP, the customer should not receive a CAP subsidy when they reach 125% of their maximum CAP credits for the year.¹²

19. While maintaining our strong support of FE PA's proposal to eliminate maximum CAP credit limits, CAUSE-PA stated that OCA's recommendations – *taken together* – would address some (though not all) of CAUSE-PA's concern regarding imposition of maximum

¹¹ Proposed 2024 USECP, CAUSE-PA Comments at 15-16.

¹² Proposed 2024 USECP, OCA Comments at 20.

CAP credit limits. We explained that OCA’s proposal would help prevent disproportionate impacts of maximum CAP credit policies on uniquely vulnerable households.¹³ Nevertheless, we noted that there was insufficient information on the record to support application of FirstEnergy’s *existing* maximum CAP credits, and urged the Commission to refer the matter to the Office of Administrative Law Judge.¹⁴

20. On March 14, 2024, the Commission issued its Final 2024 USECP Order. In relevant part, the Order directed FE PA to:

- Establish maximum credit limits (as identified by the Commission) for its PCAP and include these new limits in its Revised 2024 USECP.
- Increase the maximum CAP credit threshold by the same percentage of any approved distribution rate increase for FE PA.
- Automatically refer PCAP customers to LIURP if they use 80% or more of their annual subsidy credit limit and include this provision in its Revised 2024 USECP.

(Final 2024 USECP Order at 29).

21. The Commission’s Final 2024 USECP Order notes explicit agreement “with OCA that PCAP customers who use 80% or more of their subsidy credits should be referred to LIURP for energy efficiency measures or education”. (Final 2024 USECP Order at 29). However, the Order is silent with regard to OCA’s recommendation that “*the customer should not be removed from CAP even if they reach the maximum CAP credit if they accept LIURP remediation.*”¹⁵

¹³ Proposed 2024 USECP, CAUSE-PA Reply Comments at 15.

¹⁴ *Id.* at 16.

¹⁵ Proposed 2024 USECP, OCA Comments at 20.

III. STANDING

22. Pursuant to sections 5.41, 5.61(e), and 5.72 of the Commission’s regulations, CAUSE-PA asserts that it has standing to intervene in this proceeding and to file the instant Petition for Reconsideration and/or Clarification.
23. Eligibility to intervene in Commission proceedings is governed by Section 5.72, which provides that “[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.”¹⁶
24. Section 5.72 further provides that the right or interest may be one “which may be directly affected, and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.”¹⁷
25. CAUSE-PA is an unincorporated association of low and moderate-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating, and telecommunication services.
26. CAUSE-PA is located, c/o Pennsylvania Legal Aid Network, 118 Locust Street, Harrisburg, PA 17101.

¹⁶ 52 Pa. Code. § 5.72(a). While Section 5.72 speaks of the rights of a “person” to intervene, the Commonwealth Court has consistently stated that “an association may have standing as a representative of its members... as long as the organization has at least one member who has or will suffer a direct, immediate, and substantial injury to interest as a result of the challenged action, [the organization] has standing.” Energy Cons. Council of Pa. v. Pa. PUC, 995 A.2d 465, 476 (Pa. Commw. Ct. 2010) (alteration in original) (citing Trippe Park v. Pa. PUC, 415 A.2d 967 (Pa. Commw. Ct. 1980); Parents United for Better Schools v. School District of Phila., 646 A.2d 689 (Pa. Commw. Ct. 1994).

¹⁷ 52 Pa. Code § 5.72(a)(2).

27. CAUSE-PA has standing to intervene because at least one member of CAUSE-PA is a customer of FE PA and will experience a direct, immediate, and substantial impact to their interests as a result of this proceeding.¹⁸
28. As noted, CAUSE-PA submitted Comments and Reply Comments in the instant USECP proceeding. CAUSE-PA has long participated as an active party in FE PA’s USECP, base rate, default service, energy efficiency, and other policy proceedings, and is a signatory party to multiple Commission-approved Settlement agreements which have a direct bearing on FE PA’s USECP – including, most recently, the approved Settlement in FE PA’s merger proceeding.¹⁹
29. CAUSE-PA is represented in this proceeding by:

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IV. LEGAL STANDARDS

30. Section 703 of the Public Utility Code, together with section 5.572 of the Commission’s regulations, establish the right of a party to seek relief following a Commission decision.²⁰

¹⁸ See Energy Cons. Council of Pa., 995 A.2d at 476.

¹⁹ See, e.g., Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, Joint Settlement Petition, Docket Nos. A-2023-3038771, et al., filed August 30, 2023.

²⁰ 66 Pa. C.S. § 703(f), (g); 52 Pa. Code § 52.572.

31. The Commission articulated its standard for granting reconsideration of a Commission order in *Duick v. Pennsylvania Gas and Water Company*:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(f), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part **What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.**²¹

This standard is commonly referred to as the *Duick* standard.

32. Vice Chairman Kimberly Barrow recently clarified application of the *Duick* standard, explaining:

Duick does not require new or novel arguments to be made, but merely advises that if they are not, then the reconsideration would likely be denied. The Commission must instead address the persuasiveness of the reasons for reconsideration.²²

33. Where a party alleges an error of fact or law, a Petition for Reconsideration is properly raised and may properly be granted.²³
34. CAUSE-PA's requests for reconsideration and/or clarification outlined in this Petition satisfies *Duick*, in that the Petition raises new and novel issues not previously heard and issues which appear to have been overlooked by the Commission – leading to errors of both law and fact which could result in the application of unjust and unreasonable rates of service for FE PA's CAP customers.

²¹ *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (1982).

²² Michael W. Chattin, et al. vs. Pennsylvania Electric Company, Metropolitan Edison Company and West Penn Power Company, Docket Nos. C-2017-263049 and C-2018-3001563 et al., Statement of Vice Chair Kimberly Barrow, Public Meeting held February 22, 2024.

²³ Application of Cressona Trucking Company, Petition for Reconsideration, 1989 Pa. PUC LEXIS 102 (Pa. PUC, 1989).

IV. REQUESTS FOR RECONSIDERATION AND/OR CLARIFICATION

A. The Commission’s Final 2024 USECP Order fails to address and/or overlooks critical issues of material fact and law.

35. The maximum CAP credit limits established in the Commission’s Final 2024 USECP Order were designed to provide adequate assistance to just 80% of FE PA’s CAP participants, resulting in categorically unaffordable rates for 20% of CAP participants. (See Final 2024 USECP Order at 26-29).
36. CAUSE-PA submits that it is neither just nor reasonable for the Commission to establish a policy designed to impose categorically unaffordable CAP rates for 20% of program participants.
37. The Commission’s order briefly notes that “eliminating subsidy credit limits would undoubtedly improve affordability for PCAP customers,” but concludes – without further factual inquiry – that elimination of maximum CAP credit limits “would not be consistent with the Commission’s obligation under the Electric Competition Act to ensure universal service programs are operated in a cost-effective manner.” (Final 2024 USECP Order at 27). In making this cursory conclusion, the Commission overlooks a range of practical impacts of a planned 20% failure rate on the Commission’s other universal service program obligations, and the potential for this policy to increase negative credit actions that may *increase* costs for all consumers – including increased uncollectible expenses and termination related costs.
38. First, the Commission appears to overlook concerns raised by CAUSE-PA that imposition of maximum CAP credits would disproportionately impact certain groups. As explained in our Reply Comments, maximum CAP credit policies disproportionately burden

households with the lowest income and/or other unique vulnerabilities – including those with medical usage, individuals with a disability, families with young children, and Seniors, as well as low income communities of color which are more likely to reside in older, inefficient housing – perpetuating inequities of the past through policies of today.²⁴ While these points are not necessarily new and novel, as they were raised in our Reply Comments, the Commission nevertheless appears to have overlooked these important considerations in its decision. In summarizing CAUSE-PA’s Comments, the Commission’s Order notes only that CAUSE-PA was concerned that imposition of maximum CAP credit limits “will result in some PCAP households receiving unaffordable energy bills and exceeding the recommended energy burden levels.” (Final 2024 USECP Order at 25). As explained, CAUSE-PA’s concerns were far more complex, noting the disparate impact of maximum CAP credit policies on uniquely vulnerable households and low income households of color. It appears the Commission has overlooked these critically important equity concerns.

39. Further, the Commission’s decision assumes maximum CAP credit limits will result in lower overall program costs, noting – without further support or quantification – that these limits “serve to ensure that ratepayers who pay for [universal service] programs are not overburdened.” (Final 2024 USECP Order at 27). However, in making this assumption, the Commission overlooks critical unresolved issues of material fact. Before determining whether maximum CAP credit limits will reduce overall program costs, the Commission must assess other material facts, including whether the policy would result in increased uncollectible expenses, payment trouble, and involuntary termination rates – as well as

²⁴ Proposed 2024 USECP, CAUSE-PA Reply Comments at 15-16.

decreased payment frequency and coverage rates. CAUSE-PA submits that these are likely consequences of a policy which imposes a 20% failure rate which may outweigh the presumed benefit of reduced subsidy credits associated with imposing maximum CAP credits.

40. The Commission’s decision is further premised on the erroneous conclusion that the maximum CAP credit limits imposed in its Order are “generally consistent with approved CAP limits for other EDCs.” (Final 2024 USECP Order at 28). In reaching this conclusion, the Commission looks only to the dollar thresholds utilized by other EDCs, without reviewing the underlying assumptions built into those dollar thresholds. Indeed, the Commission overlooks the fact that other EDC CAP credit limits are not designed to ensnare 20% of CAP participants. In PPL’s most recently approved USECP, the Company was approved to impose maximum CAP credit limits designed to adequately offset rates for 95% of CAP (OnTrack) enrollees.²⁵ In PECO’s most recently reviewed USECP, the Commission approved maximum CAP credit limits designed to impact between 2%-8% of CAP enrollees.²⁶ The Commission appears to have overlooked these key differences – as well as its own policy, which “give[s] a utility and stakeholders the flexibility to adapt limits based on the energy costs and needs in the utility’s service territory.”²⁷
41. In concluding that the maximum CAP credit limits are “generally consistent” with other EDC maximum CAP credit limits, the Commission also failed to conduct any inquiry or analysis into the applicable residential tariff rates and CAP rates of other EDCs. Without

²⁵ PPL Electric Utilities Corporation Universal Service and Energy Plan for 2023-2027, Final Order, Docket No. M-2022-3031727, page 45, Order entered February 9, 2023.

²⁶ PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024, Final Order, Docket No. M-2018-3005795 page at 25, Table 4, Order entered June 16, 2022.

²⁷ 2019 Amendments to CAP Policy Statement, Final Policy Statement and Order, Docket No. M-2019-3012599, at 60 (Order entered Nov. 5, 2019).

analyzing the rates of other EDCs, it is mere speculation that the thresholds are “generally consistent.” Indeed, on its face, the Commission’s conclusion fails to acknowledge significant variations in credit limits across other EDCs. For example, the Commission’s Order imposes a limit of \$1,700 for FE PA’s electric heating customers with income between 101-150% FPL, while PPL has a credit limit of \$2,150 for the same households. (Final 2024 USECP Order at 28, Table 8). CAUSE-PA submits that a difference of \$450 (more than 25%) is not “generally consistent.” Again, further inquiry into the underlying rates for each EDC is necessary to inform a factual finding regarding the true comparability of EDC maximum CAP credit limits.

42. Further, while the Commission approved adjustments based on any increase in distribution charges, the Commission denied proposals to adjust maximum CAP credit limits based on changes in the applicable Price to Compare – resting its decision on its conclusion that the PTC “fluctuates (including decreasing) over a shorter period of time, creating unnecessary volatility in the credit limits.” (Final 2024 USECP Order at 29). In so concluding, the Commission expressly recognizes that the PTC may increase *or* decrease - yet fails to consider cost impacts of its decision to forego more frequent adjustments to the maximum CAP credit limits on both CAP participants and the overall program. The Commission further overlooks the fact that under FE PA’s PIP design, CAP rates will be adjusted on a monthly basis, which should dispel concerns about more frequent adjustments to a credit limit. (Final 2024 USECP Order at 17).
43. Ultimately, the Commission’s Order adopted a maximum CAP credit policy was not supported by any of the commenting parties in this proceeding, and is not supported by the limited information considered in this proceeding. As such, a majority of these issues of

material fact, identified above, were not previously raised or considered. Thus, CAUSE-PA submits that these key issues of material fact constitute new or novel arguments sufficient to satisfy the *Duick* standard.

B. In ordering the imposition of uniform maximum CAP credit limits across FE PA’s four divisions, the Commission overlooks FE PA’s rate unification timeline - creating unreasonable and unjustified disparity in CAP rates across FE PA’s four divisions.

44. The Commission’s direction to use the same maximum CAP credit threshold for each of FE PA’s divisions overlooks the Commission-approved Settlement in FE PA’s recent merger proceeding.²⁸
45. In relevant part, FE PA agreed to a gradual process toward base rate unification, over a period of several years and through multiple rate proceedings.²⁹ In turn, FE PA committed to engaging in a collaborative process in advance of proposing further consolidation of universal service programs across its four divisions.³⁰
46. Notably, the Commission points to FE PA’s merger as justification for imposing a uniform CAP credit limit, concluding: “As FirstEnergy PA has merged its four EDCs into one EDC, we find it inappropriate to establish different subsidy credit limits for each rate district.” (Final 2024 USECP Order at 28). In reaching this conclusion, the Commission appears to have erroneously concluded that the merger would quickly usher in uniform rates.

²⁸ Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, Recommended Decision, Docket Nos. A-2023-3038771, et al., (RD entered Oct. 19, 2023) (hereafter Recommended Decision).

²⁹ *Id.* at 13, para. 32. FE PA agreed that it would not propose to reach full base rate unification until the conclusion of three rate cases, filed on or after January 1, 2025, or a period of 10 years from the date of the Commission’s approval of the Transaction, whichever occurs first.

³⁰ *Id.* at 20, para. 54. FE PA additionally agreed that it would maintain existing staffing levels for universal service programs, and that quarterly USAC meetings would be held to discuss with stakeholders and proposed amendments to program design or administration prior to advancing any formal proposal for change to the Commission or otherwise implementing changes.

47. CAUSE-PA respectfully submits that the Commission overlooked the fact that imposing *uniform* maximum CAP credit limits across FE PA’s four rate divisions, without regard for variations in base rates and supply charges across each division, will result in inequitable rate disparities for CAP customers in each division. Such a result runs counter to the Commission approved Settlement, through which the parties were explicit in their shared intent of ensuring “no customer group in any FE PA Rate District should be extraordinarily disadvantaged or harmed in the event of a rate unification and that such rate unification should adhere to the principle of gradualism.”³¹
48. The Commission’s imposition of uniform maximum CAP credit limits across FE PA’s four rate divisions contradicts the statutory prohibition on discrimination in rates.³² If upheld, CAP participants in each FE PA division would receive a greater or lesser amount of rate assistance based solely on their geographic location within FE PA’s service territory. The only justification the Commission advances in support of its decision is a preference for avoiding “unnecessary volatility”. CAUSE-PA submits that the Commission’s Order lacks an adequate factual basis to justify the rate disparities likely to result from its imposition of uniform maximum CAP credits across FE PA’s service territory.
49. The Commission’s Order will also serve to expedite consolidation of FE PA’s USECP, in contravention with the terms of the FE PA merger Settlement which calls for a collaborative process prior to any proposal unifying universal service programming across FE PA’s prior operating companies (now referred to as divisions).³³ In our Statement in Support of the FE PA merger Settlement, CAUSE-PA explained the critical importance of

³¹ Recommended Decision at 14.

³² 66 Pa C.S. § 1304 (“No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities . . .”).

³³ Recommended Decision at 59.

this Settlement provision to ensure that the merger would not negatively impact FE PA's rates *or* programs – setting forth an iterative process to unify both rates and programs.³⁴ By ordering FE PA to impose the same maximum CAP credit limit across all four service territories, the Commission's Order circumvents the intent and function of this critical Settlement provision – rushing consolidation of FE PA's universal service programs outside of the deliberative process contemplated in the Commission-approved Settlement.

C. The Commission's Order overlooks critical implementation details, including key components of OCA's recommendation, the application of exemptions to the maximum CAP credit policy, and the process for informing CAP participants of applicable maximum CAP credit limits.

50. In adopting a maximum CAP credit policy not supported or advanced by any participant in this proceeding, following conclusion of the comment period, the Commission overlooked critical implementation details to ensure the policy is equitably deployed and adequately understood by all program participants.
51. First, the Commission's Order fails to identify the procedural process FE PA must follow when a CAP customer reaches their maximum CAP credit limit. (Final 2024 USECP Order at 29). Specifically, it is unclear whether customers who reach the maximum CAP credit limit will be removed from the program or will continue to receive other program benefits, such as arrearage forgiveness. CAUSE-PA firmly submits that customers should remain in CAP as long as they remain income eligible. Exceeding an arbitrary maximum CAP credit limit should not result in their expulsion from the program or the loss of other program benefits.

³⁴ Joint Application of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Keystone Appalachian Transmission Company, Mid-Atlantic Interstate Transmission, LLC, and FirstEnergy Pennsylvania Electric Company, Joint Petition for Settlement - Statement in Support of CAUSE-PA, Docket Nos. A-2023-3038771, et al., at 6, 25-26 (filed Aug. 30, 2023).

52. Further, the Commission’s Order establishes maximum CAP credits based in part on OCA’s proposal. (Final 2024 USECP Order at 29). However, the Commission appears to have overlooked a critical component of that proposal: Namely, that CAP participants should be exempt from maximum CAP credits if they agree to receive efficiency and conservation services, including education, through FE PA’s Low Income Usage Reduction Program (LIURP).³⁵ If the Commission declines to reconsider its imposition of maximum CAP credits, CAUSE-PA urges the Commission to clarify that, consistent with OCA’s proposal, CAP participants who are willing to participate in LIURP *will not be subject to the maximum CAP credit limit.*
53. Similarly, the Commission’s Order does not address whether FE PA must adhere to any exemptions to the maximum CAP credit limit to account for circumstances where a CAP participant is unable to reasonably control their usage. There are myriad situations, several of which are specifically outlined in Section 69.263(3)(vi) of the Final CAP Policy Statement, in which a PCAP enrollee does not have the ability to mitigate their usage.³⁶ This includes the addition of a household member, serious illness of a household member, consumption beyond the household’s ability to control, consumption attributed to negative housing conditions, and situations where consumption estimates based on a prior occupant.³⁷ Other explicit exemptions approved by the Commission include, for example, consumption related to severe weather conditions and health-related usage.³⁸ These

³⁵ Proposed 2024 USECP, OCA Comments at 20. “The customer should not be removed from CAP even if they reach with maximum CAP credit if they accept LIURP remediation. Even if LIURP does not fix the issue, the customer should be allowed to exceed the maximum CAP credit so long as the customer accepts LIURP including usage reduction education.”

³⁶ 52 Pa. Code § 69.265(3)(iv).

³⁷ Id.

³⁸ See, e.g., Duquesne Light Company Universal Service and Energy Conservation Plan for 2020-2025 Submitted in Compliance with 52 Pa. Code § 54.74, Order, Docket No. M-2019-3008227, at 34 (order entered April 14, 2022).

exemptions are critically important to shield uniquely vulnerable households from dramatic rate unaffordability due to circumstances beyond their ability to control. To the extent the Commission continues to impose maximum CAP credits following reconsideration, we urge the Commission clarify that FE PA must adhere to these exemptions.

54. The Commission also fails to address how FE PA must inform CAP participants about the maximum CAP credit limits. While the Commission’s Order justifies the imposition of maximum CAP credit limits based on the policies incorporated by other utilities, it fails to set forth the same detailed parameters for implementation established for other utilities that have maximum CAP credit limits in place. (See Final 2024 USECP Order at 28). For example, Duquesne Light utilizes “a thermometer bar graph” on CAP bills to allow CAP participants to more closely monitor their CAP credit usage.³⁹ Duquesne also communicates information about the maximum CAP credit limit at the time of application, in their CAP welcome letter, and through direct correspondence with CAP participants who are close to reaching their CAP limit.⁴⁰ This correspondence includes referrals to LIURP, as well as Duquesne’s Hardship Fund and LIHEAP.⁴¹ Duquesne is further required to ensure that CAP participants are informed of and understand how they can qualify for exemptions to the maximum CAP credit limits.⁴² In comparison, the Commission’s Order in this proceeding provides scant detail regarding how FE PA must communicate with CAP participants about the maximum CAP credit threshold – requiring only that FE PA refer CAP participants to LIURP if they reach 80% of the new CAP credit limit. (Final 2024 USECP Order at 29).

³⁹ Id.

⁴⁰ Id.

⁴¹ Id. at 35.

⁴² Id. at 37.

55. Finally, but critically, the Commission overlooked the need for ongoing monitoring and assessment of FE PA's maximum CAP credit limit to ensure the new policy does not undermine the goals of CAP and/or cause undue harm or hardship to FE PA's CAP participants. Again, other EDCs are required to provide additional information and reports following implementation of maximum CAP credit limits. For example, Duquesne Light is required to file annual reports on the number of CAP customers reaching or exceeding their maximum CAP credit limits, broken down by income tier. Given the likelihood of substantial negative impacts, it is critical that the Commission closely monitor the impact of maximum CAP credit limits, if imposed. Metrics include, for example, the number of customers who reach or exceed their maximum CAP credits, the number of months CAP participants receive full tariff bills, and the number/percentage of customers exceeding maximum CAP credits that become payment troubled, enter collections, or are terminated..
56. CAUSE-PA submits that the Commission has overlooked these critical aspects of imposing a maximum CAP credit limit. To the extent the Commission continues to impose maximum CAP credit limits following reconsideration, it should clarify each of the critical parameters for implementation addressed above.

V. CONCLUSION

The ability of low income customers to connect and maintain safe and affordable electricity to their homes is necessary for lighting, heating, cooking, and hot water – all critical components to a safe and healthy home. To be just, reasonable, and in the public interest, a public utility's universal service and energy conservation programs must be designed and implemented to ensure low income households can maintain affordable service.

CAUSE-PA affirms our position that elimination of maximum CAP credit limits – in favor of targeted deployment of efficiency resources – is the most prudent, just, and reasonable way to move forward for FirstEnergy’s 2024 USECP. Forcing roughly one-fifth (20%) of FE PA’s CAP customers to pay full tariff rates for periods of time during the PCAP program year would undermine the ability of PCAP to achieve the multifaceted goals of the program to provide stable levels of affordability, improve bill payment and coverage rates, and reduce collections expenses. Conversely, eliminating maximum CAP credits shields uniquely vulnerable low income consumers from circumstances outside of their control. Absent additional Commission guidance and clarification, these consequences will be realized and amplified.

WHEREFORE, and for the reasons enumerated above, CAUSE-PA respectfully requests that the Commission reconsider, clarify, and/or amend its March 14, 2024 Order as follows:

- (1) Remand the issue of whether and to what extent FE PA should establish maximum CAP credit limits to the Office of Administrative Law Judge to develop a factual record from which the Commission can more fully consider critical unresolved issues of material fact and law.
- (2) Should the Commission decline to remand the issue for further consideration, issue guidance clarifying the following:
 - a. The new maximum CAP credit limits will only apply if a CAP participant refuses to participate in LIURP, consistent with the Office of Consumer Advocate’s proposal.
 - b. FE PA must adhere to the exemptions outlined in 52 Pa. Code § 69.265(3)(iv) and develop a clear process and communications plan for informing CAP participants about the availability of those exemptions.

- (3) Proceed with swift implementation of all other aspects of this Order while these narrow issues are further adjudicated and/or clarified.

Respectfully submitted,
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VERIFICATION

I, Elizabeth R. Marx, 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 pleading 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 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Elizabeth R. Marx, Esq.

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

Date: March 29, 2024