

COMMONWEALTH OF PENNSYLVANIA



PATRICK M. CICERO
Consumer Advocate

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
(800) 684-6560

 @pa_oca
 /pennoca
FAX (717) 783-7152
consumer@paoca.org
www.oca.pa.gov

April 8, 2024

Via Electronic Mail Only

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

Re: Joint Universal Service & Energy Conservation
Plan of Metropolitan Edison Company, Pennsylvania
Electric Company, Pennsylvania Power Company,
and West Penn Power Company for Years 2024 –
2028
Docket Nos. M-2022-3036532
M-2022-3036533
M-2022-3036534
M-2022-3036535

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer in Support of the Petition for Reconsideration and/or Clarification with a Verification in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/Christy M. Appleby
Christy M. Appleby
Senior Assistant Consumer Advocate
PA Attorney I.D. # 85824
CAAppleby@paoca.org

Enclosures:

cc: Office of Administrative Law Judge (**email only**: crainey@pa.gov)
Paul Diskin, TUS (**email only**: pdiskin@pa.gov)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Joint Universal Service & Energy Conservation : Docket Nos. M-2022-3036532
Plan of Metropolitan Edison Company, : M-2022-3036533
Pennsylvania Electric Company, Pennsylvania : M-2022-3036534
Power Company, and West Penn Power Company : M-2022-3036535
for Years 2024 – 2028 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer in Support of the Petition for Reconsideration and/or Clarification, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was filed electronically on the Commission's electronic filing system.

Dated this 8th day of April 2024.

SERVICE BY E-MAIL ONLY

Allison Kaster
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
akaster@pa.gov
Counsel for I&E

Naz Aarah Sabree, Small Business Advocate
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
ra-sba@pa.gov
Counsel for OSBA

Angelina Umstead, Esquire
First Energy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Harrisburg, PA 17101
aumstead@firstenergycorp.com
Counsel for FirstEnergy Companies

Elizabeth R. Marx, Esquire
John W. Sweet, Esquire
Ria M. Pereira, Esquire
Pennsylvania Utility Law Project
118 Locust Street
pulp@pautilitylawproject.org
Counsel for CAUSE-PA

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com
Counsel for "PA-CLEEC"

/s/Christy M. Appleby
Christy M. Appleby
Senior Assistant Consumer Advocate
PA Attorney I.D. # 85824
CAappleby@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

Dated: April 8, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FirstEnergy PA Joint Proposed Universal	:	Docket Nos.	M-2022-3036532
Service and Energy Conservation Plan	:		M-2022-3036533
For 2024-2028	:		M-2022-3036534
	:		M-2022-3036535

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

I. INTRODUCTION

In accordance with 52 Pa. Code Section 5.572(e), the Office of Consumer Advocate (OCA) files this Answer in Support of the Petition for Reconsideration and/or Clarification (Petition) filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) on March 29, 2024. CAUSE-PA seeks reconsideration of the Pennsylvania Public Utility Commission's (Commission) March 14, 2024 Final Order (*Final 2024 USECP Order*) regarding the FirstEnergy Pennsylvania (FE PA)¹ Universal Service and Energy Conservation and Energy Conservation Plan for 2024-2028 (Plan). In the *Final 2024 USECP Order*, the Commission adopted a maximum CAP credit policy that was not consistent with the proposals made by the parties. CAUSE-PA requests that the Commission reconsider its decision to impose maximum CAP credit limits and that the matter be remanded to the Office of Administrative Law Judge in order to resolve issues of material fact and law that might have been overlooked. Petition, ¶ 4. In the alternative, CAUSE-PA urges the Commission to clarify that new maximum CAP credit limits

¹ As CAUSE-PA notes in its Petition, the four FirstEnergy Companies recently merged and are collectively referred to as FirstEnergy PA or FE PA. The Plan was filed prior to the merger and originally for each of its prior operating companies, Metropolitan Edison Company (Met-Ed), Pennsylvania Power Company (Penn Power), West Penn Power Company (West Penn), and Pennsylvania Electric Company (Penelec). The separate companies are now divisions of FE PA. See Petition, 2 at fn. 2.

will only apply if a CAP participant refuses to participate in FE PA's Low Income Usage Reduction Program (LIURP), consistent with the OCA's proposal in this case. Petition, ¶ 5. CAUSE-PA also requests that the Commission clarify that FE PA must adopt exemptions to the maximum CAP credit limits that are contained in the Commission's CAP Policy Statement and that FE PA should develop a plan and process for informing CAP participants about the availability of those exemptions. Petition, ¶ 5; 52 Pa. Code §69.265(3)(iv).

For the reasons set forth below, the OCA supports the alternative proposal identified by CAUSE-PA in the Petition and the inclusion of the complete recommendation that the OCA included in its Comments in this proceeding. The OCA does not believe this matter needs to be referred to the Office of Administrative Law Judge for hearings; however, if the Commission believes there are material facts that need to be resolved – such as the appropriate amount and tiered structure of the maximum CAP credits, the OCA does not oppose that this issue be referred to OALJ for hearings and/or that the issue be addressed by the parties in FE PA's pending rate case at Docket R.2024-3047068. The OCA also supports CAUSE-PA's recommendation that the maximum CAP credits should be set for each of the FE PA divisions separately based on an analysis of the rates for the individual divisions because under the Settlement, there will not be rate consolidation for years. *See* Petition, ¶¶ 45-49. FE PA should develop and adhere to the processes in place for applying the exemptions that are outlined in 52 Pa. Code Section 69.265(3)(vi). *See* Petition, ¶ 53. In addition, the OCA supports CAUSE-PA's position that the Order does not effectively address the need for ongoing monitoring of maximum CAP credits, including the filing of annual reports about the number and scope of customers who exceed their maximum CAP credits at each income tier as is required by other utilities. Petition, ¶ 55.

II. ANSWER

In its Petition, CAUSE-PA states that it supported FE PA's proposal to implement a PIP design and eliminate its maximum CAP credit limits. Petition, 17. CAUSE-PA requests that the Commission reconsider its decision to impose maximum CAP credit limits and that the matter be remanded to the Office of Administrative Law Judge in order to resolve issues of material fact and law that might have been overlooked. Petition, ¶ 4. In the alternative, CAUSE-PA urges the Commission to clarify that 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 OCA's proposal in this case. Petition, ¶ 5. The OCA supports CAUSE-PA alternative proposal that the Commission include the OCA's full recommendation with the conditions attendant to that recommendation.

As CAUSE-PA notes in its Petition, the OCA recommended in its Comments 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.

OCA Comments at 20 (emphasis in Petition); Petition, ¶ 18.

The Commission's *Final 2024 USECP Order*, however, only adopted a portion of the OCA's recommendation. The Commission's *Final 2024 USECP 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; Petition, ¶ 20. As CAUSE-PA correctly notes, “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.’*” Petition, ¶ 21 (emphasis in original)(footnote omitted).

The OCA strongly supports inclusion of the conditions set forth in the OCA’s Comments in FE PA’s Plan. As the OCA discussed in its Comments, a customer should not be removed from CAP if they reach their maximum CAP credit limits and the customer agrees to LIURP remediation. The new maximum CAP credits should only apply if a CAP participant refuses to participate in LIURP, and even then, the customer should not be subject to CAP credit limits unless they reach 125% of their maximum CAP credits. *See* OCA Comments at 20. The purpose of a maximum CAP credit is to provide a cost control measure for customers that have higher than reasonable usage and thus high bills that otherwise would be paid for by customers who pay for CAP. An available remedy for high usage is the LIURP program, and the maximum CAP credit should not apply to customers who are attempting to address their high usage. It is inappropriate to impose maximum CAP credits limits where a customer makes an effort to control usage through seeking LIURP remediation. Indeed, as addressed more fully below, one of the exemptions from maximum CAP credit limits is where a household has usage that is beyond its ability to control. 52 Pa. Code § 69.263(3)(vi). Thus, from the OCA’s perspective, it makes abundant sense that a customer should not face the penalty of reaching maximum CAP credit if they are, among other things, attempting to address high usage through applying for LIURP. Thus, the OCA fully supports CAUSE-PA’s request for the Commission to clarify and/or reconsider its decision and fully adopt the OCA’s proposal, as set forth in its Comments at page 20:

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.

OCA Comments at 20.

The Commission's *Final 2024 USECP Order* directs the same maximum CAP credit threshold to be used for each of FE PA's divisions and provides in support "[a]s FirstEnergy PA has merged its four EDCs into EDC one EDC, we find it inappropriate to establish different subsidy credit limits for each rate district." *Final 2024 USECP Order* at 28; Petition, ¶¶ 44, 46. As CAUSE-PA notes, the Commission's determination overlooks that the Settlement in FE PA's merger proceeding provided that FE PA would adhere to a gradual process towards base rate unification over a period of years and through several distribution base rate proceedings. Petition, 45. FE PA committed to engaging in a collaborative process in advance of proposing further consolidation of universal service programs across the divisions. Petition, ¶ 45. CAUSE-PA argues that the Commission overlooked the fact that imposing uniform maximum CAP credit limits across FE PA's division would result in inequitable rate disparities for CAP customers in each division contrary to the Settlement. Petition, ¶ 47. For the reasons set forth in CAUSE-PA's Petition, the OCA agrees with CAUSE-PA that the maximum CAP credits should be set for each of the FE PA divisions separately based on an analysis of the rates for the individual divisions because under the Settlement, there will not be rate consolidation for years. *See* Petition, ¶¶ 45-49.

To allow for a more thorough examination of the appropriate level of CAP credit, the OCA recommends that the Commission suspend implementation of any maximum CAP credits set by the Commission in its Order until the conclusion of FE PA's currently pending rate case at Docket

R-2024-3047068, but that FE PA be ordered to address the appropriate maximum CAP credit amount for each FE PA rate district in the context of its rate case, taking into account the increase that is adopted as a result of that case. The maximum CAP credits amounts would then go into effect on January 1, 2025 which coincides with the new rates applicable from FE PA's rate case.

In its Petition, CAUSE-PA also identifies a concern that the Commission failed to identify the procedural process that FE PA must follow when a CAP customer reaches their maximum CAP credit including that FE PA must adhere to the "exemptions to the maximum CAP credit limit to account for circumstances where a CAP participant is unable to reasonably control their usage." Petition, ¶ 53, citing 52 Pa. Code § 69.263(3)(vi) of the CAP Policy Statement. The exemptions include 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 [are] based on a prior occupant." Petition, ¶ 53; *see* 52 Pa. Code § 69.263(3)(vi). CAUSE-PA also notes additional exemptions for severe weather conditions and health-related usage. *Id.* The OCA agrees with CAUSE-PA's clarification that FE PA should develop and adhere to the processes in place for applying the exemptions that are outlined in 52 Pa. Code Section 69.265(3)(vi).

In addition, the OCA supports CAUSE-PA's position that the Order does not effectively address the need for ongoing monitoring of maximum CAP credits, including the filing of annual reports about the number and scope of customers who exceed their maximum CAP credits at each income tier as is required by other utilities. Petition, ¶ 55.

III. CONCLUSION

The Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania's alternative suggestion as outlined in its Petition should be approved. The OCA recommends that

CAUSE-PA's alternative approach be adopted and that the Commission clarify that a household that applies for LIURP remediation is not be subject to maximum CAP credit limits, that individual maximum CAP credits be set for each of the FE PA divisions, that the Commission delay implementation of maximum CAP credits until January 1, 2025 and require the FE PA to address the appropriate level of maximum CAP credits for each rate district in their pending rate case at Docket No. R-2024-3047068, and that the Commission's CAP Policy Statement exemptions from the maximum CAP credits be explicitly included for the reasons set forth above. Finally, FE PA should be required to file an annual report at this docket detailing the number and extent to which customers exceed their maximum CAP credits at each income tier as is required by other utilities

Respectfully Submitted,

/s/ Christy M. Appleby

Christy M. Appleby
Senior Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAppleby@paoca.org

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Counsel for:
Patrick M. Cicero
Consumer Advocate

DATE: April 8, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Universal Service & Energy	:	
Conservation Plan of Metropolitan Edison	:	Docket Nos. M-2022-3036532
Company, Pennsylvania Electric	:	M-2022-3036533
Company, Pennsylvania Power Company,	:	M-2022-3036534
and West Penn Power Company for Years	:	M-2022-3036535
2024 – 2028	:	

VERIFICATION

I, Patrick M. Cicero, hereby state that the facts set forth in the Office of Consumer Advocate’s Answer to CAUSE PA Petition for Reconsideration, are true and correct (or are true and correct to the best of my knowledge, information, and belief) 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).

DATED: April 8, 2024

Signature:



Patrick M. Cicero
Consumer Advocate

Address:

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923