



January 9, 2025

VIA E-File

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

**Re: Technical Conference on Resource Adequacy in Pennsylvania
Docket No. M-2024-3051988**

Joint Comments of PULP and CLS

Dear Secretary Chiavetta:

Pursuant to the November 15, 2024 and November 26, 2024 Secretarial Letters, please find the attached *Joint Comments of the Pennsylvania Utility Law Project (PULP) and Community Legal Services of Philadelphia (CLS)* for filing at the above referenced docket.

Respectfully Submitted,

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CC: PC-RATechConference@pa.gov

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Technical Conference on Resource Adequacy :
in Pennsylvania : Docket Nos. M-2024-3051988

**JOINT COMMENTS OF
THE PENNSYLVANIA UTILITY LAW PROJECT AND
COMMUNITY LEGAL SERVICES OF PHILADELPHIA**

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INTRODUCTION

The Pennsylvania Utility Law Project (PULP)¹ and Community Legal Services of Philadelphia (CLS)² file the following joint comments in response to the November 15 and November 26, 2024, Secretarial Letters establishing a public comment period following the conclusion of the Public Utility Commission's November 25, 2024, Resource Adequacy Technical Conference.

As Chairman Stephen DeFrank and Vice Chairman Kimberly Barrow acknowledged at the start of the Technical Conference, it is the role of the Public Utility Commission (PUC or Commission) to ensure the delivery of safe and reliable service at affordable rates for consumers.

While the focus of the conference was to identify solutions to potential resource adequacy and system capacity issues which threaten the reliability of our system, it is incumbent on the Commission to ensure that any solutions advanced to address resource adequacy challenges fully account for the ability of ratepayers to afford service. The Commission must recognize the inherent risks and challenges associated with passing additional costs to consumers and prioritize the health and safety of Pennsylvania families and communities.

PULP and CLS provide legal services and support to thousands of low income Pennsylvania consumers each year from all corners of the Commonwealth who lack adequate resources to afford basic utility services and other essential needs. The low income communities we serve are by no means a small segment of our population. According to the U.S. Census Bureau, 12.1% of Pennsylvanians live below the federal poverty level (100% FPL), and over 25% of Pennsylvanians have income below 200% FPL.³ Our comments at this docket are focused on the unique needs of low income families across the states, and the solutions needed to address

¹ **The Pennsylvania Utility Law Project (PULP)** is a statewide specialty legal services project of Regional Housing Legal Services. Our mission is to secure just and equitable access to safe and affordable utility services for Pennsylvanians experiencing poverty. We work to achieve this mission by empowering individuals and communities through representation, advocacy, education, and support.

² **Community Legal Services (CLS)** is the largest provider of free civil legal assistance in Philadelphia. Since its founding in 1966, CLS has provided free legal assistance to more than one million low-income Philadelphians. Through direct legal representation and policy advocacy, the Energy Unit at CLS works to ensure that people have access to affordable water, heat, and electricity in their homes.

³ U.S. Census Bureau, QuickFacts: Pennsylvania, <https://www.census.gov/quickfacts/fact/table/PA/PST045224>; Kaiser Family Foundation, [State Health Facts: Distribution of Total Population by Federal Poverty Level](https://www.kff.org/other/state-indicator/population-up-to-200-fpl), <https://www.kff.org/other/state-indicator/population-up-to-200-fpl>.

resource adequacy in a manner that will ensure all Pennsylvanians – regardless of wealth – are able to access and maintain safe and affordable energy to power their homes.

As it stands today, many of Pennsylvania’s most vulnerable residents are already priced out of the market for safe, reliable energy services to their home. Involuntary terminations have surged in recent years under roiling energy markets. In 2023, following a prolonged increase in gas prices through winter, gas terminations increased 40% year over year. Electricity terminations followed suit, increasing 25% year over year in 2024, as high gas prices made their way into retail electric generation prices. In the first eleven months of 2024, 351,203 Pennsylvania households experienced an involuntary termination of gas or electric services to their home, a 15% increase over the same period of 2023.⁴

There are no signs of relief. Following a record number of utility base rate filings through 2024, rates for all essential services – electricity, gas, and water - are set to increase for Pennsylvanians across the state. Those rates will begin to hit bills at the end of January when winter heating usage is at its highest.

The knock-out punch is looming just around the corner. In June 2025, the unprecedented results of the July 2024 PJM base residual auction are anticipated to produce double digit monthly bill increases – right at the start of the summer cooling season. In a letter to PJM, PPL Electric indicated the auction would increase residential bills an average of \$15/month.⁵ In a complaint filed last week before the Federal Energy Regulatory Commission (FERC), the Shapiro Administration concluded: “Pennsylvania ratepayers face potentially the largest unjust wealth transfer in the history of U.S. energy markets” as a result of PJM’s capacity market auctions.⁶

Without swift intervention, low and moderate income Pennsylvanians and other uniquely vulnerable groups – including seniors, individuals with a disability, medically vulnerable households, and families with young children – will likely shoulder the brunt of the harm from the capacity market failures. These vulnerable populations are more likely to live in energy

⁴ Pa. PUC, Terminations and Reconnections Year-to-Date November 2023 vs. Year-to-Date November 2024, <https://www.puc.pa.gov/filing-resources/reports/terminations-for-electric-gas-water-companies/>.

⁵ Letter of PPL Electric Utilities to PJM, PJM Base Residual Auctions and Capacity Market Issues (delivered November 1, 2024) (on file).

⁶ Shapiro vs. PJM Interconnection, LLC, Complaint of Governor Josh Shapiro and the Commonwealth of Pennsylvania, FERC Docket No. EL25-46-000 (filed Dec. 30, 2024) (herein Shapiro FERC Complaint)

inefficient homes with substantial deferred maintenance, are more likely to be reliant on a fixed income or low-wage work, and are more likely to lack the discretionary resources necessary to invest in home efficiency and other critical repairs necessary to reduce energy consumption.⁷

Below, PULP and CLS offer a number of recommendations, many of which are supported by a number of other stakeholders. We urge the Commission to take immediate action to address acute capacity market issues, while simultaneously putting in place longer-term solutions that will help to shore up future resource challenges in a just and equitable manner that does not unfairly burden low income ratepayers.

1. Focus on reliability and efficiency of existing gas generation fleet.

Several technical conference testifiers supported investment in new gas generation; however, PULP and CLS are concerned that investment in new gas generation will not strike the right balance between affordability and reliability. Pennsylvania is already over-leveraged on gas production, with nearly 60% of our electricity produced by gas generation.⁸

While Pennsylvania is a top gas producer, there is no requirement that gas produced in Pennsylvania stays in Pennsylvania and benefits Pennsylvania ratepayers. The explosion of overseas gas exports since 2016 has increasingly tied the price of gas to volatile fluctuations in world energy markets⁹ – forcing Pennsylvanians to compete with other countries for gas produced in our backyard. By 2028, EIA projects that gas exports will more than double¹⁰ – further affecting gas prices and, in turn, increasing electric generation prices here at home.¹¹ In a recent statement releasing DOE’s long awaited study of liquified natural gas (LNG) exports,

⁷ See Xinao Mei & Bo Kyong Seo, The Relationships Among Housing, Energy Poverty, and Health: A scoping Review, Journal of Energy for Sustainable Development, Vol. 83 (Dec. 2024), <https://www.sciencedirect.com/science/article/abs/pii/S0973082624001947#:~:text=With%20regard%20to%20the%20accessibility,et%20al.%2C%202022>; Jamal Lewis, Diana Hernandez & Arline T. Geronimus, Energy Efficiency as Energy Justice: Addressing Racial Inequities through Investments in People and Places, J. Energy Efficiency, Vol. 13(3): 419-432 (March 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7966972/>.

⁸ Energy Information Administration, Pennsylvania State Profile and Energy Estimates (last updated December 21, 2023), <https://www.eia.gov/state/analysis.php?sid=PA>

⁹ Energy Information Administration, North America’s LNG Export Capacity is On Track to More than Double by 2028 (Sept. 3, 2024), <https://www.eia.gov/todayinenergy/detail.php?id=62984>.

¹⁰ Id.

¹¹ Public Citizen, LNG Exports Could Cost Pennsylvanians Up to \$16 Billion More in Energy Costs (Nov. 25, 2024), <https://www.citizen.org/news/lng-exports-could-cost-pennsylvanians-up-to-16-billion-more-in-energy-costs/>.

Department of Energy Secretary Jennifer Granholm noted that increasing exports “exposes a triple-cost increase to U.S. consumers.”¹²

Increasing the reliability and efficiency of existing gas generation has the potential to dramatically improve system reliability. As NRDC’s expert previously testified, and reiterated at the technical conference, “Rapid investment in the reliability of the existing gas fleet is a highly cost-effective way to address resource adequacy issues in the short term and should be fully explored before considering any greenfield investment in new power plants or gas infrastructure.”¹³ We support NRDC’s recommendations regarding the need to prioritize improvements in the efficiency and reliability of Pennsylvania’s existing gas generation fleet.

2. Improve utility and state-level integrated resource planning and include a distributional affordability analysis.

PULP and CLS agree with suggestions of multiple testifiers that the Commission should improve utility resource planning and should oversee its own statewide integrated resource planning to help ensure the Commission has effective oversight of infrastructure investment decisions.

Integrated resource plans at the utility and state level should include a distributional affordability analysis – helping break down functional silos between infrastructure investments and rates. To help improve planning for and response to grid emergencies, the Commission should improve communication channels with PJM to help deploy resources and facilitate an effective statewide response to stress on the grid.

3. Coordinate resource planning with default service planning and reject calls to undermine the availability of default service at least cost over time.

We also support the Office of Consumer Advocate’s recommendation to require utilities to coordinate resource planning with default service planning and to encourage the use of long-term contracts for in-state generation. It is also critically important to safeguard default service as a stable option for Pennsylvania consumers at the least cost over time.

¹² US DOE, *Energy, Economic, and Environmental Assessment of U.S. LNG Exports* (December 2024), https://www.energy.gov/sites/default/files/2024-12/LNGUpdate_SummaryReport_Dec2024_12pm.pdf; see also Utility Dive, *US LNG Exports Raise Electricity Bills, Gas Prices and Emissions, DOE Report Concludes* (Dec. 18, 2024), https://www.utilitydive.com/news/us-lng-exports-raise-electricity-bills-gas-prices-and-emissions-doe-repor/735876/?utm_source=Sailthru&utm_medium=email&utm_campaign=Issue:%202024-12-18%20Utility%20Dive%20Newsletter%20%5Bissue:68938%5D&utm_term=Utility%20Dive.

¹³ See Testimony of NRDC Before the House Environmental Resources & Energy Committee, at 5 (Oct. 16, 2024), [2024_0919_0007_TSTMNY.pdf](https://www.nrdc.org/sites/default/files/2024-09/19_0007_TSTMNY.pdf)

At the technical conference, one testifier suggested the Commission alter default service to a mandatory time-varying use rate. PULP and CLS strongly oppose this suggestion. While deployment of time-varying usage rates serves a beneficial role for some consumers, such rates can have a detrimental and potentially dangerous impact on other consumers – especially medically vulnerable households, seniors, and families with young children whose usage is often inflexible during expensive peak periods.¹⁴

We also caution the Commission against pursuing solutions to resource adequacy challenges that would further expand the competitive residential retail energy market, reduce consumer protections, or weaken default service. In the aggregate, residential shopping customers are charged billions of dollars more than the default service price. In our experience serving thousands of low income households, many do not even realize they are shopping until they are already deep in debt. These excessive charges – amounting to well over \$1.7 billion in under 10 years – would be far better spent on resource adequacy and infrastructure.¹⁵

Utility	Dates Analyzed	Aggregate Shopping Charges Over Default Service Price
PECO	Jan. 2018 – Dec. 2023	\$801,873,392
PPL	Jan. 2015 – April 2024	\$339,220,116
Duquesne	Jan. 2017 – May 2024	\$224,273,497
FirstEnergy	Aug. 2017 – Dec. 2021	\$431,152,822
Total		\$1,796,519,827

Notably, low income shopping customers are charged more by competitive suppliers, on average, than non-low income shopping customers.¹⁶

¹⁴ Lee V. White, Emma Aisbett, & Christa Shen, Time-Varying Rates Prompt Different Responses as a Function of Home Energy Efficiency, J. Energy & Buildings, Vol. 319 (Sept. 2024), <https://www.sciencedirect.com/science/article/pii/S0378778824006650>; Time of Use Rates: A Shared Perspective from Consumer and Clean Energy Advocates, at 26-27, Equity and Distributional Bill Impacts (July 15, 2017), <https://uspig.org/sites/pirg/files/reports/TOU-Paper-7.17.17.pdf>; see also Lee V. White & Nicole Sintov, Health and Financial Impacts of Demand-Side Response Measures Differ Across Sociodemographic Groups, Nature & Energy Vol. 5 (Jan. 2020) (emphasis added).

¹⁵ Data compiled by and on file with PULP from record data in the EDC Default Service Plan proceedings.

¹⁶ Data from PPL’s recent default service plan proceeding showed that low income shopping customers were charged an average of \$62.40 more than the default service price over a 4-month period – compared to \$19.68 in excessive charges for residential customers over the same period. Petition of PPL Electric Utilities Corp. for

As Pennsylvania families face a double-digit increase in their electric bills following the PJM capacity market failures, the Commission must take steps to prevent the double-digit impacts to consumer prices through the competitive market.

PULP and CLS encourage the Commission to take a hard look at the competitive market to prevent wasteful and excessive rates – ensuring Pennsylvania ratepayers dollars are invested in a just, equitable, and prudent manner that improves access to clean, safe, and reliable energy services at affordable rates.

4. Overhaul utility-administered efficiency programming.

A number of testifiers touched on the critically important role of energy efficiency programs in addressing capacity issues. We wholeheartedly agree.

Pennsylvania's housing stock is among the oldest in the country and is in grave need of repair. Poor housing stock and is a primary driver of unnecessarily high energy usage and correspondingly high energy burdens across low income communities. Most important to the resource adequacy discussion, aging housing stock is particularly vulnerable to the impacts of extreme heat and cold weather events, when energy usage is highest across the grid. Ironically, housing in the worst condition with the highest energy usage and the greatest need for whole-home efficiency remediation is often disqualified from existing programs due to structural repair needs and health or safety issues that prevent efficiency and weatherization.

The Commission should dedicate new and additional resources to overhauling utility-administered efficiency programming within its purview, including Act 129 Energy Efficiency and Conservation Programming and the Low Income Usage Reduction Program (LIURP). Guidelines, requirements, and funding for these programs are woefully inadequate and sorely outdated to meet the evolving efficiency needs of communities across the state. Program delivery methods are also unnecessarily siloed, missing critical opportunities to reduce energy demand across all sectors in a coordinated and integrated manner.

Approval of a Default Service Program for the Period of June 1, 2025 through May 31, 2029, CAUSE-PA Statement 1, Exhibits 1 & 2 (June 3, 2024).

The Commission has a unique opportunity, given the pending Phase V planning for Act 129 programs and the pending LIURP rulemaking, to substantially improve overall energy usage reduction, increase program coordination, and improve program results. But in doing so, it must depart dramatically from the status quo to properly leverage and invest program dollars into achieving deep and comprehensive energy reduction while producing meaningful bill savings for program participants.

PULP and CLS have long advocated for a centralized delivery of efficiency programs, helping to appropriately leverage ratepayer funding with local, state, and federal resources and reduced administrative costs. Centralized program delivery and the use of common forms and systems for applications and energy audits would allow for more rapid adoption of innovative demand response and efficiency program innovations

5. Improve the safety net of universal service programs ahead of June 2025 when price impacts stemming from the July 2024 PJM capacity auction.

In addition to advancing improvements to efficiency programs, it is critical that the Commission act to strengthen the safety net of universal service programs, especially in the short term as we grapple with the direct and immediate impacts of the July 2024 PJM auction – and the potential for additional auctions in the near term that may result in even greater cost impacts to consumers.

Specifically, we urge the Commission to lift or otherwise increase the maximum credit thresholds for utility-run Customer Assistance Programs (CAP) to account for capacity market costs. Maximum CAP credit thresholds are already set too low to provide adequate levels of assistance to all CAP participants and fail to include mechanisms to adjust for increasing pass-through energy costs. In some jurisdictions, as many as 30% of CAP participants already exceed their maximum CAP credits and revert to full tariff rates for the remainder of the program year. When CAP participants exceed their maximum CAP credit limits, termination is often quick to

follow¹⁷ – triggering a cascade of other costly consequences to the family.¹⁸ As the cost impacts from the July 2024 capacity auction take hold, it is critical that the Commission adjust maximum CAP credit thresholds. Should the Commission opt to increase the maximum CAP credit threshold – rather than lift the threshold – we recommend the Commission establish policy requiring further adjustments each time (a) the default service rate changes, and (b) the utility base rate changes. This will help to further insulate consumers from increasing rates which threaten their ability to maintain service.

The Commission must also push forward with key universal service program reforms identified in the Commission’s recent Universal Service Program Review, including auto-enrollment and recertification in Customer Assistance Programs and implementation of a Common Application Form. While the Commission has taken strides to set policy, it must go further to require implementation of these common-sense reforms. In turn, the Commission must ensure that all customers bear the expense of supporting public purpose universal service programs. Without robust prevention-based universal service programs, the cost to businesses and communities would be significantly higher.

Finally, we note that the Commission should carefully consider further reforms to universal service programs and related collections policies to protect medically vulnerable households, seniors, and families with young children from increased costs associated with resource adequacy challenges. These vulnerable groups should be eligible for universal service and efficiency programs at higher income levels, recognizing the costly burdens these households carry and their unique energy needs.

Before the severe rate impacts from the PJM capacity market failures take hold, it is crucial for the Commission to ease the path for consumers to access and enroll in utility assistance programs and improve equity in cost recovery of program costs. These simple, common-sense steps will

¹⁷ In Duquesne Light’s recent rate case, data revealed that nearly 30% of CAP participants were already exceeding their maximum CAP credits before the end of the year, even before rates increased. As a result, several thousands of CAP participants were terminated shortly after exceeding the maximum CAP credit limit. See PUC v. Duquesne Light Co., Docket No. R-2024-3046523, CAUSE-PA St. 1 at 34-37 (June 11, 2024).

¹⁸ Colin Middleton, Kim Boynton, David Lewis & Andrew M. Oster, The Value of Utility Payment History in Predicting Homelessness, PLOS (Oct. 9, 2023), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0292305>.

help reduce the accrual of unmanageable debts, lower collections costs, and improve the ability of all Pennsylvanians to access safe and reliable services.

6. Establish equitable cost allocation policies to guide the allocation of costs attributable to massive data centers.

One particularly vital issue that was not squarely addressed in the technical conference is the issue of cost causation and cost allocation. Cost causation is the polestar of cost allocation, and essentially requires that the cost-causers be held responsible for paying the cost of a utility expense. There is broad consensus that the primary factor driving resource adequacy issues – and the prime culprit of PJM’s capacity market failure – is the unprecedented onslaught of data centers. Low income Pennsylvanians should not be held responsible for the cost of market failures or the introduction of hyperscale energy users onto the system.

As Governor Shapiro identified in his recent FERC Complaint, PJM’s proposed capacity market auction design “will leave consumers paying up to \$20.4 billion in added costs over the next two years without receiving commensurate benefits in the form of new or retained generating capacity and increased reliability. That is unjust and unreasonable.”¹⁹

FERC is not the sole venue in which to rectify this unjust and unreasonable transfer of wealth from Pennsylvania families and businesses to energy companies. The Commission has a role to play in apportioning costs to those who cause them, specifically in the cost of transmission and distribution build-out to support hyperscale data center usage. As planned data centers come online in Pennsylvania, the Commission should be aggressively proactive in its oversight of rates and default service procurement. Indeed, it is important that the Commission establish just and equitable data center policies now to deal with allocation of costs later.

CONCLUSION

PULP and CLS are encouraged by the Commission’s proactive steps to more deeply understand the important and intersectional issue of resource adequacy, and the ways in which recent PJM capacity market failures exacerbate cost impacts. However, moving from inquiry to action is often the hardest part. Pennsylvania consumers cannot afford any hesitation. We therefore urge

¹⁹ Shapiro FERC Complaint at 13-14.

the Commission to take clear and decisive action on the recommendations outlined above. At each step of the way, and in every decision, rate affordability must be central to the Commission's decision making.

PULP and CLS are grateful to the Commission for its time and attention to these critical matters, and we look forward to further engaging with the Commission on this critical issue.

Respectfully submitted,



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