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March 28, 2025

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Initiative to Review and Revise the Existing Low-Income Usage Reduction
Program (LIURP) Regulations at 52 Pa. Code §§ 58.1-58.18
Docket No. L-2016-2557886

Dear Secretary Chiavetta:

Enclosed please find the Petition for Reconsideration and Clarification of the
Pennsylvania Coalition of Local Energy Efficiency Contractors, Inc. filed in the above reference
proceeding regarding the Pennsylvania Public Utility Commission's March 13, 2025 final order.

Copies are being served as indicated in the attached Certificate of Service.

Sincerely,

BUCHANAN INGERSOLL & ROONEY PC

By: 

John F. Povilaitis, Esquire

JFP/psm

Enclosure

cc: Certificate of Service
Kimberly Hafner, Director, OSA

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Initiative to Review and Revise : Docket No. L-2016-2557886
the Existing Low-Income :
Usage Reduction Program (LIURP) Regulations :
at 52 Pa. Code §§ 58.1-58.18 :

**PETITION OF THE PENNSYLVANIA COALITION OF LOCAL ENERGY
EFFICIENCY CONTRACTORS, INC. FOR RECONSIDERATION, AMENDMENT
AND CLARIFICATION OF THE ORDER ENTERED MARCH 13, 2025**

The Pennsylvania Coalition of Local Energy Efficiency Contractors, Inc. (“PA-CLEEC”), by and through its counsel, Buchanan Ingersoll and Rooney, John Povilaitis and Alan Seltzer, hereby files, pursuant to Section 5.572 of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“Commission” or “PUC”), 52 Pa. Code §5.572 (Petitions for Relief), and subsection (g) of Section 703 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 703(g) (Rescission and Amendment of Orders), this Petition for Reconsideration and Clarification (“Petition”) of the Commission’s Final-Form Rulemaking Order entered in the above matter on March 13, 2025 (“Final Order”) and in connection therewith represents as follows:

I. Introduction and Summary of Relief Requested

1. PA-CLEEC is a non-profit entity composed of 14 local community-based contractors and community-based organizations (“CBOs”), specializing in the delivery of field work for public utility Universal Service Energy and Conservation Programs (“USECP”) that benefit low-income customers of Electric Distribution Companies (“EDCs”) and Natural Gas Distribution Companies (“NGDCs”).

2. For decades, PA-CLEEC members have been the utility “boots on the ground” installing conservation and energy efficiency measures for customers participating in the

Commission's Low-Income Usage Reduction Programs ("LIURP"). Regardless of the efficacy or well-intentioned nature of a Commission-approved LIURP included in EDC's and NGDC's universal service and energy conservation plans ("USECPs"), if an RFP prevents sufficient numbers of qualified contractors from pursuing RFPs because of unreasonable requirements or because the RFP is not consistent with the approved USECP, low-income customers will not receive the benefit of those plans. The implementation of these plans by EDCs and NGDCs via work done and services performed for customers through contractors, such as the members of PA-CLEEC, is one of the "acts done" by utilities that the Commission must ensure is conducted in a reasonable manner. 66 Pa.C.S. §§ 102, 1501.¹

3. PA-CLEEC promotes: (i) the use of adequate LIURP budgets that make meaningful progress toward meeting low-income customers' needs, (ii) fair and transparent public utility request for proposal ("RFP") processes that support the delivery of energy efficiency and conservation services which create actual customer savings, and (iii) sensible, cost-effective program structures that work to benefit low-income customers.

4. Based on the Commission's overture at the commencement of this rulemaking proceeding to leverage "*the knowledge and experience gained to-date by the utilities, consumers, and other stakeholders in order to improve the operation of the various energy utility LIURPs, thereby maximizing ratepayer benefits,*"² PA-CLEEC has actively participated in this proceeding by filing both Comments and Reply Comments.

¹ "**Service.**" "Used in its broadest and most inclusive sense, *includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, . . .*" 66 Pa. C. S. § 102 (emphasis added).

² December 16, 2016 Secretarial Letter at Docket No. L-2016-2557886, p. 1 (emphasis added).

5. PA-CLEEC has for years raised in various Commission proceedings concerns about two primary issues – LIURP budget levels and the RFP process for selecting contractors that is currently at the complete discretion of each utility.³

6. In response to PA-CLEEC, the Commission acknowledged PA-CLEEC’s concerns about the lack of transparency in the RFP selection process and indicated that proposed changes to the process for evaluating and selecting LIURP contractors “are more appropriately addressed in a statewide proceeding, such as the Commission’s ongoing proceeding to review and revise the LIURP regulations”, specifically citing this rulemaking at Docket No. 2016-2557886.⁴ PA-CLEEC followed the Commission’s direction and devoted substantial resources to this rulemaking.

7. However, although acknowledging that this rulemaking proceeding was the appropriate forum to address PA-CLEEC’s LIURP budget and RFP process issues, the Commission in the Final Order reversed that commitment by rejecting all of PA-CLEEC’s common sense and practical resolutions for addressing these issues, declining to set statewide industry standards on some issues and in fact redirecting PA-CLEEC *back* to individual public utility proceedings for the issue of the level of LIURP budgets.⁵ This approach is inconsistent with the clear Commission directives provided to PA-CLEEC in prior proceedings, as noted above. In addition, this Commission position forces interested parties such as PA-CLEEC to participate in

³ See *PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2023-2027 Submitted in Compliance with 52 Pa. Code § 57.74*, Docket No. M-2022-3031727 (Order Entered February 9, 2023)(“*PPL EU USECP 2023-27*”); *PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2023-2027 Submitted in Compliance with 52 Pa. Code § 57.74*, Docket No. M-2022-3031727 (Order on Reconsideration Entered April 20, 2023).

⁴ *PPL EU USECP 2023-27*, Order on Reconsideration at 5-6, 10 (“We note that the LIURP rulemaking at Docket No. L-2016-2557886 is currently ongoing. We have made no decisions regarding PA-CLEEC’s arguments about PPL’s RFP processes that would preclude their consideration in that proceeding. Interested parties are welcome to raise such issues in the LIURP rulemaking when that docket opens for public comments.”).

⁵ Final Order at 123 (“We agree with the stakeholders that maintain that LIURP budgets should be based on the needs in a public utility’s service territory and set in public-utility-specific proceedings.”).

every LIURP/USECP proceeding, in every Petition proceeding to modify a LIURP/USECP and now, due to the Final Order, in every EDC and NGDC rate case where plans can be reopened and modified by rate case participants who enter settlements.⁶ Nor is the Commission's customary advice to "file a formal complaint" if a party is faced with unreasonable utility conduct a reasonable remedy, since such proceedings are lengthy, costly and matters that few LIURP contractors can afford to pursue. For example, it is now standard for the formal complaint process to include four rounds of testimony⁷ and a host of legal filings.

8. The Commission did not attempt in the Final Order to meaningfully address the substance of PA-CLEEC's concerns relating to LIURP budgeting and the RFP process deployed by jurisdictional public utilities. Rather, it opted to direct PA-CLEEC to individual utility proceedings on budgeting issues, which is inconsistent with its prior direction to address these issues on their merits in *this* rulemaking proceeding. As for PA-CLEEC RFP process concerns, as will be explained below, it is now not clear that there is *any* Commission forum for addressing any claims that a utility RFP is unreasonable and/or in violation of the USECPs they are intended to implement.

9. The Commission in the Final Order failed to recognize that the RFP process currently being utilized by public utilities in connection with the various USECPs is an extension and integral part of the USECPs themselves. Indeed, service providers like PA-CLEEC members often only see and respond to the Utility's RFP and have no involvement nor knowledge of the USECP that the RFP is meant to implement. Thus, the terms and conditions of the RFP are critical

⁶ PA-CLEEC understands the rate case settling parties will be required file a Petition to modify the USECP if a settlement includes changes to a USECP. However, entities such as PA-CLEEC will necessarily have to intervene and participate in *every* rate case where a USECP is potentially modified to be able to influence the settlement terms, at great cost.

⁷ Direct Testimony, Rebuttal Testimony, Surrebuttal Testimony and Rejoinder Testimony.

to the successful implementation of an approved USECP, and the Commission has an obligation to ensure that the terms and conditions of an RFP do not violate, or are otherwise inconsistent with, the previously approved USECP.

10. In this proceeding, the Commission erred in eschewing *any* responsibility for the review and oversight of a utility's RFP issued to implement an approved USECP. And, to the extent PA-CLEEC and other interested stakeholders (like service providers under a USECP) are deprived of a meaningful opportunity to review, comment on, object, seek and obtain changes to an RFP that are inconsistent with an approved plan or arbitrarily disqualify contractors that are needed to fulfill a plan, they have been deprived of their fundamental due process right of notice and opportunity to be heard. The interests harmed by this hands-off approach go way beyond the contractors striving to implement a USECP, but also include the low-income customers eligible for services, and the customer base at large who benefit from the efficiencies achieved by full implementation of USECPs.

11. And, just as importantly, as a result of the Final Order's rejection of PA-CLEEC's proposed resolutions of RFP process issues, there is no meaningful regulatory review process in Pennsylvania of a utility-issued RFP to ensure it is substantively consistent with the approved USECP under which it was issued, is fair and equitable to potential bidders, and is likely to successfully attract the number of qualified contractors necessary to achieve the goals of the USECP.

12. Further, the Final Order failed to recognize or address the need for a minimum LIURP budget given the clear record support for the number of eligible customers and their demonstrated need for this program.

13. The Final Order must be clarified and reconsidered in several respect to address these errors.

II. Procedural History

14. On May 18, 2023, the PUC adopted and entered a Notice of Proposed Rulemaking (“2023 NOPR”) to solicit comments on proposed amendments to the Commission’s existing LIURP regulations at 52 Pa. Code §§ 58.1—58.18. The 2023 NOPR Preamble summarized stakeholder responses and replies to a Secretarial Letter dated December 16, 2016, and requested comments and reply comments from interested stakeholders on the proposed amendments to the PUC’s existing LIURP regulations.

15. The 2023 NOPR was published in the *Pennsylvania Bulletin* at 53 Pa.B. 7506 (December 2, 2023), establishing the timeline for comments and reply comments. The PUC established a 45-day comment period from the date the 2023 NOPR was published in the *Pennsylvania Bulletin* on December 2, 2023, followed by a 30-day reply comment period. 53 Pa.B. 7506 (December 2, 2023).

16. Comments or letters in lieu of comments were timely filed in response to the 2023 NOPR by Duquesne Light Company (“Duquesne”); FirstEnergy PA; PECO Energy Company (“PECO”); PPL Electric Utilities Corporation (“PPL”); Columbia Gas Company (“Columbia”); National Fuel Distribution Corporation (“NFG”); Philadelphia Gas Works (“PGW”); UGI Utilities Inc. (“UGI”); Peoples Natural Gas LLC (PNGC) and Peoples Gas Company LLC (PGC) (collectively, “Peoples”); Consumer Advisory Council; Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); Energy Association of Pennsylvania; Energy Justice Advocates; the Office of Consumer Advocate

("OCA"); PA-CLEEC; Tenant Union Representative Network ("TURN"); and Commission on Economic Opportunity ("CEO") and the PA Weatherization Providers Task Force ("PAWPTF").

17. Reply comments or letters in lieu of reply comments in connection with the 2023 NOPR were timely filed by Duquesne; FirstEnergy PA; PECO; PPL; Citizens Electric Co., Wellsboro Electric Co., and Valley Electric Co; Columbia; NFG; Peoples; CAUSE-PA; EAP; OCA; PA-CLEEC; TURN; CEO & PAWPTF; Senator Marty Flynn and Representative Kyle Mullins. Thereafter, Independent Regulatory Review Commission filed its comments dated March 18, 2024.

18. As noted above, the Final Order was entered on March 13, 2025.

III. Standard of Review

19. The Code provides that "[t]he commission may, at any time, after notice and after opportunity to be heard . . . , rescind or amend any order made by it." 66 Pa. C.S. § 703(g). Such a request must be made by a petition which complies with 52 Pa. Code § 5.572. The Commission's established standard for determining whether to grant such a Petition for Reconsideration is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559, 1982 Pa. PUC LEXIS 4 (1982), and provides:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this Code to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that "[p]arties . . . , cannot be permitted a second motion to review and reconsider, to raise the same questions which were specifically decided against them" What we expect to see raised in petitions for reconsideration are new and novel arguments, not previously heard considerations which appear to have been overlooked by the Commission.

20. Thus, under the *Duick* standard, one of factors is whether there are considerations which appear to have been overlooked by the Commission. Here, reconsideration is warranted because the Commission overlooked the implications of its failure to consider the merits of PA- CLEEC's position and directing PA-CLEEC back to individual public utility proceedings on LIURP budget issues. In addition, the Commission has effectively surrendered its jurisdiction and authority to ensure that RFPs issued by utilities are reasonable acts of service that will appropriately and lawfully implement Commission-approved USECPs and benefit low-income customers.

21. Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances. *Id.* The same standard applies to the Commission's consideration of petitions for clarification. *Application of PPL Electric Utilities Corporation*, Docket Nos. A-2009-2082652 *et al.*, (Order entered Apr. 23, 2010). Accordingly, showing that an order of the Commission was premised upon an error of law warrants the Commission's granting of a petition for reconsideration and clarification of the order in question.

22. Commission orders must be based upon substantial evidence of record. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Nat'l Fuel Gas Distrib. Corp. v. Pa. Pub. Util. Comm'n*, 677 A.2d 861 (Pa. Cmwlth. 1996).

IV. Argument

A. **The Commission Overlooked the Clear Foundation in the Record that Current levels of LIURP Funding Are Inadequate and a Minimum Floor Level of Budget is Needed.**

23. PA-CLEEC seeks reconsideration of two overarching issues in this rulemaking: (i) inadequate LIURP funding, and (ii) the use of RFPs to implement LIURP/USECP plans that are completely discretionary with utilities and which may, in certain circumstances, unreasonably exclude qualified contractors needed to fully implement plans. First, the Commission has rejected PA-CLEEC's recommendation that there be a floor budget of 1% of utility jurisdictional revenues. Instead, it decided LIURP budgets "should be based on the needs in a public utility's service territory and set in public-utility-specific proceedings."⁸ While the precise level of a uniform floor budget amount may be debatable, the Commission has improperly rejected the concept of any minimum budget floor for EDCs.

24. Inconsistently, the Commission has recognized that LIURP budget levels are woeful and has explicitly provided for revisiting budgets in rate cases.⁹ The reality is that too many eligible low-income customers needing LIURP services are not being reached and getting services in a reasonable amount of time. The Commission should not tolerate these circumstances, particularly when the energy benefits of conservation and efficiency to customers and the public are so compelling.

25. The cycle of setting budgets in USECP proceedings, augmenting them in rate cases and still falling short of meeting low-income customers' needs could be broken by

⁸ Final Order at 123.

⁹ Final Order at 123 ("We recognize that while it is appropriate to determine the effectiveness and prudence of universal service costs in a USECP proceeding, we also recognize that It is necessary to evaluate the appropriateness of a LIURP funding requirement in non-USECP proceedings such as rate cases.").

setting industry-wide budget floors, particularly when the budget floor is an amount as modest as 1% of a utility's jurisdictional revenues.

26. The record of this proceeding demonstrates that the need for LIURP services dramatically exceeds available program funds. The January 16, 2024, Comments of CAUSE-PA noted that “in some utility service territories, it would take decades - in some cases as long as 95 years - to provide LIURP services to all eligible customers at existing eligibility and funding levels.”¹⁰

27. Moreover, the proposed final regulations establish factors for assessing an appropriate LIURP budget (see Section 58.4(c)(1)-(8)) and, as CAUSE-PA further noted, “the Commission does not establish any methodology for how these factors should be calculated or the weight each should be provided in establishing a reasonable budget for LIURP services.”¹¹ Mandating a minimum LIURP budget based on 1% of jurisdictional revenues is a reasonable step toward establishing USECPs that provide services to all eligible households within a reasonable period of time.

28. If PA-CLEEC's recommendation for a modest 1% floor for LIURP budgets was adopted as a common sense and practical way of addressing systemic underfunding, PA-CLEEC would not object to a provision allowing utilities to make a case for waiver of a minimum budget floor requirement, where it can be shown the budget is excessive and unnecessary and would unduly impact customer rates. This approach would address any utility and Commission concerns about the amount of a budget based on what PA-CLEEC believes and has shown in this proceeding to be a very modest level.

¹⁰ CAUSE-PA Comments p. 42. Citing FirstEnergy Companies Joint Proposed Universal Service and Energy Conservation Plans for 2024-2028. Supplemental Information, Docket Nos. M-2022-3036532, M-2022-3036533, M-2022-3036534, M-2022-3036535, filed April 25, 2023, p. 23.

¹¹ CAUSE-PA Comments p. 43.

B. The Commission Erred in Concluding that it Does Not Have the Statutory Authority or the Need to Supervise RFPs Intended to Implement USECPs.

29. PA-CLEEC recommended that in USECP filings and in rate proceedings where there was a material modification of a LIURP budget or plan being considered, the RFP implementing the plan would also be reviewed.¹² This proposed process, which properly recognizes the direct linkage between an USECP and the utility's RFP, would allow utilities the flexibility to adjust plans and RFPs, while allowing the Commission to exercise its responsibility under the Code of regulating "how public utilities implement its [sic] USECP through third Parties."¹³ The Final Order erroneously rejected PA-CLEEC's recommendation that RFPs implementing plans be part of the plan filing (or rate case) and reviewed as part of a USECP review (or rate case review).

30. Specifically, the Commission declined to adopt this recommendation because: (i) the Code does not explicitly direct the Commission to review the RFP process and (ii) utilities are required by 52 Pa. Code § 58.7(c) to select qualified ESPs.¹⁴

31. Neither of the Commission's bases for rejecting PA-CLEEC's recommendation on RFPs is supported by this record. First, as a legal matter, a utility's design and issuance of an RFP to implement a Commission-approved USECP is an act of utility "service" under the Code just like the Commission's assertion of jurisdiction and its regulation of a utility's use of third-party vendors implementing utility obligations under current PUC regulations. The Commission in the past has found and asserted jurisdiction over third-party vendors to utilities *in the absence of express statutory language in the Code or otherwise. See, Petition of Bermex, Inc.*

¹² PA-CLEEC Comments pp. 9-12.

¹³ Final Order at 245.

¹⁴ Final Order at 249.

to Amend Prior Order regarding Contracting for Service with Bermex, Inc., Docket No. P-2028-3006100 (Order entered August 8, 2019); *Re: the Contracting for Service with Bermex, Inc.*, Docket No. M-0096081 (Order entered September 18, 1996); *Pennsylvania Public Utility Commission v. Peoples Natural Gas Company*, Docket No. M-00930487 (Tentative Order entered April 27, 1995).

32. Second, the possible concerns with an RFP can extend well beyond the qualifications of an ESP. RFPs can impose unreasonable eligibility requirements, such as unnecessary and excessive insurance coverage, and other factors that effectively eliminate many qualified vendors. Such practices effectively reduce the pool of potential vendors and jeopardize the accomplishment of a PUC-approved plan. Thus, the Commission has a clear legal obligation to ensure that the RFP is both consistent with the approved USECP and does not impose unreasonable requirements on potential bidders that could severely jeopardize the ability to fully implement the plan. The Final Order fails to acknowledge and address these critical legal and policy issues.

33. In addition to failing to understand and acknowledge the direct linkage between a utility's RFP and the effective implementation of plans deemed to be in the public interest, the Commission has effectively established a "catch-22" proposition, even if a utility revises its RFP by filing a Petition with the Commission for modifications, that an interested party could in theory answer and challenge.

34. In the Final Order, the Commission stated that "[w]e disagree with PA-CLEEC's recommendation to require consultation when proposing modifications to an RFP that would impact delivery of program services. We note that the PUC does not dictate the terms of a public utility's RFP process. A public utility is, however, required to file a petition when seeking

to make one or more modifications to an existing USECP including changes to its LIURP. This petition must be served on all parties to the existing USECP. Thus, entities would have the opportunity to address their concerns as part of a public utility's committee or through filed answers to a petition, or both."¹⁵

35. First, the Commission's conclusion that it is without authority to review a utility's RFP process intended to implement a Commission-approved plan is erroneous. The development and issuance of an RFP to implement a Commission-approved USECP is clearly a jurisdictional act of service under the Code's broad definition of "service" in Code Section 102. Second, the Commission's suggestion that a party could raise RFP issues in response to a utility Petition for modification or informally through committee meeting (where the RFP will not be shared) is the proverbial "sleeves of the vest". That is because the Commission later in the Final Order clearly rejected any regulatory role over RFPs to "review or regulate the selection process".¹⁶

36. The inevitable utility response to a party raising an RFP issue in an answer to a plan modification petition, even an issue that runs counter to effective implementation of a plan, will be that the issue is not within the PUC's jurisdiction, citing this very Final Order. The Final Order's suggestion that there is a due process opportunity for parties when answering petitions to modify plans is dubious because the challenge will be to a plan that has already been developed and is being implemented, and the utility is seeking to modify only some portion of it via the filed petition. What is needed is a process *between the time an RFP is drafted and when it is actually issued* allowing an opportunity for affected vendors and other stakeholders to raise concerns/issues about the RFP's terms and, if necessary, have the Commission decide any

¹⁵ Final Order at 136.

¹⁶ Final Order at 249.

contested issues. Neither the utilities nor contractors want the RFP process implementing a plan to be interrupted by a review of the RFP's terms *after the RFP has been issued to potential bidders*. The only reasonable solution is to provide the draft RFP to the public sufficiently in advance of issuing it, so that concerns about the RFP that affect the terms and/or implementation of the plan can be resolved *before* the RFP is issued and the USECP is inhibited.

WHEREFORE, for the foregoing reasons, the PA Coalition of Local Energy Efficiency Contractors, Inc. respectfully requests that the Commission reconsider and clarify the Final Order in this proceeding as requested herein by establishing a minimum statewide LIURP budget floor, and provide a meaningful process for the review and possible objection to the terms and conditions of proposed RFPs implementing LIURP/USECPs *before they are issued to potential bidders*, and granting PA CLEEC such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

BUCHANAN, INGERSOLL & ROONEY, PC

Dated: March 28, 2025


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Initiative to Review and Revise : Docket No. L-2016-2557886
the Existing Low-Income :
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at 52, PA. Code §§ 58.1-58.18 :

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52, PA. Code § 1.54.

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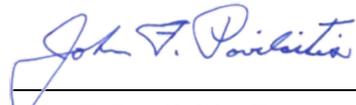
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Date: March 28, 2025



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