

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held May 22, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

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

**ORDER ON RECONSIDERATION OF FINAL-FORM
RULEMAKING ORDER**

BY THE COMMISSION:

The Pennsylvania Public Utility Commission’s (PUC or Commission) existing Low Income Usage Reduction Program (LIURP) regulations at 52 Pa. Code §§ 58.1—58.18 (Chapter 58) apply to covered natural gas distribution companies (NGDC) and covered electric distribution companies (EDC).¹ On March 13, 2025, the PUC entered its Final-Form Rulemaking Order (FFRO), consisting of a Preamble and an Annex, at this docket regarding amendments to its existing LIURP regulations. On March 28, 2025, the Pennsylvania Coalition of Local Energy Efficiency Contractors, Inc., (PA-CLEEC) filed a Petition for Reconsideration and Clarification (Petition) regarding the FFRO under 66 Pa.C.S. § 703(g) (relating to fixing of hearing) regarding the rescission and

¹ See existing 52 Pa. Code § 58.2 (relating to definitions) for the existing definition of “covered utility.” As noted in the FFRO Preamble, use of the term “covered utility” has been changed to “public utility.” “Public utility” has been defined based on the number of customers that an EDC or NGDC has. The term “electric distribution utility or EDU” is synonymous with “EDC” and “natural gas distribution utility or NGDU” is synonymous with “NGDC.” We further note that the FFRO changes the phrase “low income” to “low-income” when it is used as an adjective.

amendment of Commission orders and 52 Pa. Code § 5.572 (relating to petitions for relief following a final decision).

On behalf of its members,² PA-CLEEC seeks reconsideration and clarification of the FFRO, alleging that the PUC failed to appropriately address in the FFRO Preamble and to resolve in the final-form regulations in the FFRO Annex the issues that PA-CLEEC raised relative to the determinations in the FFRO regarding LIURP budgets and the Request For Proposal (RFP) process for selecting energy service providers (ESPs).

PPL Electric Utilities Corporation (PPL) filed its Answer in Opposition to the Petition (PPL Answer) on April 7, 2025. Also on April 7, 2025, the Energy Association of Pennsylvania (EAP) and Philadelphia Gas Works (PGW) each filed a Letter in Opposition to the Petition (EAP Letter and PGW Letter, respectively). By way of this Order, we deny PA-CLEEC's Petition.

BACKGROUND AND HISTORY³

EDCs and NGDCs are required to include a LIURP for their low-income customers in their Universal Service and Energy Conservation Plans (USECPs) or universal service portfolios. From 1988 through 2023, public utilities in the Commonwealth have provided LIURP services to more than 689,900 households receiving public utility service. Services provided through a LIURP have included energy conservation and weatherization treatments, furnace repairs and replacements,

² 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 and energy conservation plans (USECP). PA-CLEEC members consider themselves to be the public utilities' "boots on the ground" for the installation of conservation and energy efficiency measures for customers participating in LIURPs. Petition at ¶¶ 1 and 2.

³ For a more complete Background and History, *see* the FFRO Preamble at <https://www.puc.pa.gov/pcdocs/1870018.pdf> and the FFRO Annex at <https://www.puc.pa.gov/pcdocs/1870035.pdf>.

water heating measures, health and safety measures, and electric baseload measures depending, in part, on the condition of the dwelling. Much has changed in the marketplace since the inception of LIURP requirements in 1988.

On December 16, 2016, the PUC issued a Secretarial Letter (2016 Secretarial Letter) requesting comments from interested stakeholders on updating the PUC's existing LIURP regulations. On May 18, 2023, the PUC adopted and entered a Notice of Proposed Rulemaking (2023 NOPR)⁴ to solicit public comments on proposed amendments to the existing LIURP Regulations.

The 2023 NOPR, as published in the *Pennsylvania Bulletin* at 53 Pa.B. 7506 (December 2, 2023),⁵ established the timeline for public comments and IRRC's comments. The PUC specified a 45-day comment period from the date the 2023 NOPR was published in the *Pennsylvania Bulletin*, ending on January 16, 2024, and a 30-day reply comment (RC) period, ending on February 15, 2024. The close of the reply comment period marked the end of the public comment period and established the timeline for IRRC's comments, due March 18, 2024, and the delivery of the FFRO, due February 16, 2026.

Comments or letters in lieu of comments were timely filed by Duquesne Light Company (Duquesne); FirstEnergy PA;⁶ PECO Electric Company (PECO); PPL; Columbia Gas Company (Columbia); National Fuel Gas Distribution Corporation (NFG); PGW; UGI Utilities Inc (UGI); Peoples Natural Gas LLC (Peoples); the PUC's Consumer Advisory Council (CAC); the Coalition for Affordable Utility Services and

⁴ The 2023 NOPR was revised by an Errata Order posted to the PUC's website on October 31, 2023.

⁵ <https://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol53/53-48/1679.html> (accessed on December 2, 2024).

⁶ On January 1, 2024, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company merged into FirstEnergy Pennsylvania Electric Company (FirstEnergy PA). See *Joint Application of Metropolitan Edison Company, et al.*, Docket Nos. Docket Nos. A-2023-3038771, *et al.* (Order entered December 7, 2023).

Energy Efficiency in Pennsylvania (CAUSE-PA); EAP;⁷ the Energy Justice Advocates (EJA); the Office of Consumer Advocate (OCA); PA-CLEEC; the Tenant Union Representative Network (TURN); and the Commission on Economic Opportunity (CEO)⁸ and the PA Weatherization Providers Task Force (PWPTF)⁹ (collectively CEO & PWPTF).

Reply comments or letters in lieu of reply comments were timely filed by Duquesne; FirstEnergy PA; PECO; PPL; Citizens Electric Co., Wellsboro Electric Co., and Valley Electric Co. (collectively, C&T Companies); Columbia; NFG; Peoples; CAUSE-PA; EAP; OCA; PA-CLEEC; TURN; CEO & PWPTF; Senator Marty Flynn and Representative Kyle Mullins (collectively, Sen. Flynn & Rep. Mullins). Thereafter, IRRC filed its comments dated March 18, 2024.

Thereafter, the PUC adopted and entered the FFRO. Each section of the final-form regulations was addressed in context with the existing regulations, the proposed regulations, and the public comments as well as IRRC's comments. The disposition on each section also drew upon best practices identified in PUC reviews of numerous USECPs¹⁰ over the years. In promulgating the LIURP final-form regulations, the PUC leveraged the knowledge and experience gained, to date, within the PUC and the comments filed by the public utilities, consumers, and other stakeholders to improve the

⁷ EDC members of EAP include Citizens' Electric Company, Duquesne, FirstEnergy PA, PECO, Pike County Light & Power Company (Pike), PPL, UGI, and Wellsboro Electric Company. NGDC members of EAP include Columbia, Pike, NFG, PECO, Peoples, PGW, UGI, and Valley Energy Inc.

⁸ CEO is a non-profit organization serving low-income and elderly residents of Luzerne County. CEO has weatherized over 25,000 homes under DCED's Weatherization Assistance Program (WAP) and served as a subcontractor for PPL's and UGI's LIURPs and as the contracted operator of PPL's and UGI's CAPs. CEO Comments at 1

⁹ PWPTF is a network of 37 organizations providing energy conservation services throughout the Commonwealth. PWPTF entities administer various LIURPs and DCED WAPs. PWPTF Comments at 2.

¹⁰ The links to current USECPs, third-party evaluations, and a schedule of filings can be found at <https://www.puc.pa.gov/electricity/universal-service/>.

PUC's oversight of and the public utilities' operation of LIURPs with the goal of maximizing the provision of services and reduction of ratepayer costs.

II. DISSCUSSION

A. PA-CLEEC's Petition

1. PA-CLEEC's Assertions Under *Duick*, The Public Utility Code, And PUC Regulations

As grounds for reconsideration or clarification, PA-CLEEC cites *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559, 51 PUR 4th 284 (1982), 1982 WL 993413 (Pa.P.U.C.), (*Duick*). PA-CLEEC cites to Section 703(g) of the Public Utility Code as the PUC's permissive authority to:

[A]t any time, after notice and after opportunity to be heard as provided in this chapter [7 of the Public Utility Code (relating to procedure on complaints)], rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa.C.S. § 703(g). PA-CLEEC further cites § 5.572 of the PUC's regulations as the process by which petitions for reconsideration or clarification are to be filed.

PA-CLEEC alleges that the PUC:

[O]verlooked 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 [PUC] has effectively surrendered its jurisdiction and authority to ensure that RFPs issued by [public] utilities are reasonable acts of service that will appropriately and lawfully implement [PUC]-approved USECPs and benefit low-income customers.

Petition at ¶¶ 19 and 20. PA-CLEEC posits that the FFRO is “premised on an error of law and is not based on substantial evidence of record.” Petition at ¶¶ 21 and 22.

2. Stakeholder Answers

As will be discussed in greater detail below, PPL, EAP, and PGW all assert that PA-CLEEC has not raised any new or novel issues and that the PUC has made appropriate determinations relative to all issues that PA-CLEEC raised or could have raised in this rulemaking.

3. Disposition Of PA-CLEEC Petition

With respect to petitions for rehearing, reconsideration, rescission, and amendment of PUC orders, Section 703(f) of the Public Utility Code, 66 Pa.C.S. § 703(f) (regarding rehearing), establishes a party’s right to seek relief within 15 days following the service of a PUC order.¹¹ Under § 703(f), the PUC may affirm, rescind, or modify its original order. Section 703(g) of the Public Utility Code, 66 Pa.C.S. § 703(g) (regarding rescission and amendment of orders), further provides that the PUC may, at any time, after notice and opportunity to be heard by all affected parties, rescind or amend any order made by the PUC. A request for relief under §§ 703(f) or 703(g) must be brought as a petition for relief consistent with § 5.572 of the PUC’s regulations, 52 Pa. Code § 5.572 (relating to petitions for relief).

Petitions for relief predicated on §§ 703(f) and 703(g), whether brought under § 5.572(c) of the PUC’s regulations as a petition for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedes or the like, or under § 5.572(d) as a petition for rescission or amendment, are reviewed by the PUC under the

¹¹ A petition under this section which does not allege new evidence is typically treated as a petition for reconsideration. Petitions for rehearing under § 703(f) typically include an allegation of new evidence. See *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1056 (Pa. Cmwlth. 1995) (*West Penn Power*).

same standard. The PUC's application of the standard for granting a petition for amendment, reconsideration, or rescission is set forth in *Duick* as follows:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the [PUC] that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part on the grounds that the decision or ruling of the [PUC] on a matter or issue was either unwise or in error.

In this regard we agree with the [Pennsylvania Superior] Court in the *Pennsylvania Railroad Company* case, wherein the Court said:

[B]ut the grounds for reconsideration should be restricted to the new matters and new or changed conditions set up in the joint petition, which had arisen since and were not presented in the several petitions of these appellants ... and dismissed by the [PUC] ... and not appealed from. ... Parties ... cannot be permitted, by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them and not appealed from.

Pennsylvania Railroad Co. v. Public Service Commission, 179 A. 850[,854] (Pa. Super. Ct. 1935). Internal citations omitted.

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 [PUC]. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick at 559; see also *AT&T v Pa. PUC*, 568 A.2d 1362[, 1364-1365] (Pa. Cmwlth. 1990).

Regarding PUC authority to amend or rescind an order under § 703(g), the Supreme Court of Pennsylvania has stated: “Because such relief may result in disturbance of final orders, it must be granted judiciously and only under appropriate circumstances.” See *City of Pittsburgh v. Pa. Dep’t of Transp.*, 416 A.2d 461, 465 (1980);¹² see also *West Penn Power Co. v. Pa. PUC*, 659 A.2d 1055, 1065 (Pa. Cmwlth. 1995) (*West Penn Power*); see also *Application for Approval of Abandonment Of Natural Gas Service by Columbia Gas Of Pennsylvania, Inc. to One (1) Commercial Premises in Fayette County, Pennsylvania*, Docket No. P-2024-3049826 (Order entered on December 5, 2024), slip at 6-7; see also *Richard Feleccia v. PPL Electric Utilities Corporation, d/b/a PPL Utilities and Barbara A. Lima*, Docket No. C-20016210 (Order entered on March 7, 2003), slip at 3-4 (*Feleccia*).

A PUC decision to deny a petition for amendment (or rescission) is a matter squarely within PUC discretion, subject to being overturned only where a reviewing court finds that “the agency’s decision demonstrates evidence of bad faith, fraud, capricious action or abuse of power.” *West Penn Power*, 659 A.2d at 1065. The PUC has the additional discretion to “grant and prescribe such additional time as, in its judgment, is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order.” Citing 66 Pa.C.S. § 703(e) (regarding decisions by commission).

A petition for reconsideration, under § 703(g), may properly raise any matters designed to convince the PUC that it should exercise its discretion to rescind or amend a prior order in whole or in part. Parties are not entitled to raise the same questions which were specifically considered and decided against them. We expect to see *new and novel arguments*, not previously heard, or considerations which appear to have been overlooked

¹² Distinguished on other grounds in *Cianfrani v. Com., State Employees; Retirement Bd.*, 479 A.2d 468, 470 (Pa. 1984); *Summit house Condominium v. Com.*, 491 A.2d 962, 963 (Pa. Cmwlth Ct. 1985); and *Roosevelt Holding, LP v. Sampere*, 272 A.2d 990 (Pa. Cmwlth Ct. 2022).

or not addressed by the PUC. Absent such matters being presented, it is rare that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

As discussed in greater detail below with respect to PA-CLEEC's specific allegations regarding LIURP budgets and the RFP process, PA-CLEEC has not provided any new or novel arguments, and it has not raised any considerations that we overlooked or failed to address. We have concluded that the Petition fails to meet the requirements of a petition for reconsideration or clarification.

We have encapsulated here the standard for reconsideration or clarification and that PA-CLEEC has not met the standard for reconsideration or clarification under § 703 of the Public Utility Code. We provide below the discussion of our decision on the merits of PA-CLEEC's Petition in support of our conclusion to deny the Petition. We first address PA-CLEEC's allegations regarding LIURP budgets and then the allegations regarding the RFP process. As this proceeding is a rulemaking, we have gone into more detail than normal in addressing a petition for reconsideration or clarification that does not meet the *Duick* standard. The FFRO Preamble, however, is over 300 pages. While we have not included herein every nuance of every stakeholder's position on LIURP budgets and the RFP process, the FFRO Preamble speaks for itself.

B. LIURP Budgets

1. PA-CLEEC's Allegations Regarding LIURP Budgets

PA-CLEEC asserts in its Petition that the PUC "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" LIURP. Petition at ¶ 12.

PA-CLEEC asserts that it was "improper" to reject PA-CLEEC's proposal of a "floor budget of 1%" of public utility jurisdictional revenue (or the "concept of any minimum budget floor") in favor of budgets based on needs of a specific public utility as set in

public-utility-specific proceedings. PA-CLEEC asserts that a budget floor even as “modest” as 1% of jurisdictional revenue would break the cycle of using USECP proceedings and rate cases to set LIURP budgets and would be a “reasonable step towards providing LIURP services to all eligible households in a reasonable period.” PA-CLEEC submits that a public utility could always petition for a waiver of a mandatory budget floor. Petition at ¶¶ 23, 25, 27, and 28.

2. FFRO Provisions Regarding LIURP Budgets

a. PA-CLEEC

The FFRO noted that PA-CLEEC recommended allowing rate case parties to negotiate modifications to a LIURP budget established in a USECP but that the final-form regulations should require that a LIURP budget be presented in a petition to the PUC, supported by parties to a settlement. PA-CLEEC asserted that publishing notice of such a petition in the *Pennsylvania Bulletin* would allow a broader set of parties than those that participated in the rate case to provide comments on the proposed LIURP budget and LIURP modifications requested outside of USECP filings. FFRO Preamble at 98, *citing* PA-CLEEC Comments at 6-8.

PA-CLEEC recommended setting a “uniformed floor” budget for a LIURP of 1% of public utility jurisdictional revenues. PA-CLEEC stated that the uniformed floor budget should reset annually based on updated revenue figures which would (1) position a public utility to address eligible customer needs in a reasonable period of time, and (2) address the decline in LIURP assistance caused by inflation. PA-CLEEC contended that higher budgets are needed so that at least 10% of eligible customers can receive program services each year. FFRO Preamble at 106, *citing* PA-CLEEC Comments at 6-7.

PA-CLEEC suggested the following modifications to § 58.4:

(a.1) General. A public utility shall propose annual LIURP budgets for the term of a proposed USECP that is filed with the Commission for review and approval CONSISTENT WITH THE REQUIREMENTS OF THIS SUBSECTION. Upon approval of the USECP by the Commission, the public utility shall continue providing program services at the budget level approved in the USECP ~~unless the LIURP budget is revised in a future USECP proceeding~~. THE GOAL OF LIURP BUDGETS SHALL BE TO FUND SERVICE TO AT LEAST TEN PERCENT (10%) OF ALL ELIGIBLE CUSTOMERS OF THE PUBLIC UTILITY FOR A PROGRAM YEAR, BUT IN NO EVENT SHALL A PUBLIC UTILITY'S LIURP BUDGET BE LESS THAN 1% IF [sic] ITS JURISDICTIONAL REVENUES. EACH PUBLIC UTILITY'S LIURP BUDGET SHALL BE RECALCULATED AND RESET ANNUALLY BASED ON ITS CALENDAR YEAR JURISDICTIONAL REVENUES AS SPECIFIED IN THE PUBLIC UTILITY'S MOST RECENTLY FILED ANNUAL REPORT WITH THE COMMISSION DESCRIBING ITS PENNSYLVANIA JURISDICTIONAL REVENUES.

(c) [Guidelines for revising program funding] *Revisions to a LIURP budget.* A revision to a LIURP budget ~~is~~ ~~MAY~~ BE accomplished in a USECP proceeding OR IN A PUBLIC UTILITY'S GENERAL RATE PROCEEDING, SUBJECT TO THE REQUIREMENTS OF THIS SUBSECTION. IF A REVISION TO AN EXISTING AND APPROVED LIURP BUDGET OR LIURP IS APPROVED BY THE PRESIDING ADMINISTRATIVE LAW JUDGE IN A PUBLIC UTILITY'S GENERAL RATE PROCEEDING, WHETHER BY SETTLEMENT OR FULL LITIGATION, BEFORE THE COMMISSION REVIEWS AND THE RULES UPON THE PRESIDING ADMINISTRATIVE LAW JUDGE'S APPROVAL, THE PUBLIC UTILITY SHALL FILE A PETITION WITH THE COMMISSION SEEKING APPROVAL OF THE PETITION, AND PROVIDE FOR NOTICE OF SUCH PETITION IN THE *PENNSYLVANIA BULLETIN* IN

ORDER TO ALLOW PARTIES WHO DID NOT PARTICIPATE IN THE GENERAL RATE PROCEEDING TO COMMENT ON THE PROPOSED LIURP AND LIURP BUDGET MODIFICATIONS BEFORE ISSUING ANY ORDER APPROVING, DENYING OR MODIFYING THE PROPOSED MODIFICATIONS. A revision to a **public** utility's [program funding level is to] **LIURP budget must be[computed] based upon factors [listed in this section. These factors are] including the following:**

(d.1) *Unspent LIURP funds.* A public utility shall annually reallocate **AND UTILIZE unspent LIURP funds FROM ANY PARTICULAR PROGRAM YEAR AS AN INCREMENTAL ADDITION to the LIURP budget for the following program year unless an alternate use is approved by the Commission in a USECP proceeding.**

FFRO Preamble at 108, *citing* PA-CLEEC Comments at 6.

PA-CLEEC asserted that its recommendations on LIURP budgets would not have a material impact on EDCs or NGDCs because LIURP budgets are fully recoverable in rates and that its recommendations would not impact a public utility's cost recovery or earnings. PA-CLEEC contended that any financial impact from higher LIURP budgets should be offset by improved customer payments due to energy savings and reductions in costs related to customer assistance. FFRO Preamble at 108, *citing* PA-CLEEC Comments at 12.

PA-CLEEC, CAC, CAUSE-PA, EJA, OCA, and TURN supported the inclusion of proposed § 58.4(d.1) that would require a public utility to reallocate unspent LIURP funds to the following program year unless an alternate use is approved by the PUC in a USECP proceeding. PA-CLEEC, CAUSE-PA, OCA, EJA, and TURN recommended that § 58.4(d.1) should be clarified to make it clear that unspent LIURP funds from the prior year must supplement, not supplant, the LIURP funds available for the next

program year. FFRO Preamble at 109-110, *citing* PA-CLEEC Comments at 3 and 6-7, CAUSE-PA Comments at 45-46, OCA Comments at 29-30, EJA Comments at 2—4, CAC Comments at 3, and TURN Comments at 10.

b. Stakeholders

Duquesne disagreed with PA-CLEEC’s assertion that, because LIURP costs are recovered in rates and therefore do not impact earnings, increased LIURP budgets would not have a material impact on EDCs and NGDCs. Duquesne stated that PA-CLEEC had no credible basis for the assertion. Duquesne noted that increased costs directly impact EDC and NGDC customer satisfaction, brand, reputation, and regulatory compliance regarding customer satisfaction metrics. Duquesne asserted that PA-CLEEC is not accountable for public utility financial or customer service performance and should be disregarded on this matter. FFRO Preamble at 117, *citing* Duquesne Letter in Lieu of RC at 2-3, *citing* PA-CLEEC Comments at 12.

PPL opposed PA-CLEEC’s proposal to implement a uniform floor budget of 1% of public utility jurisdictional revenues annually for LIURP. PPL argued that LIURP budgets should be determined by factors such as demand for LIURP jobs, availability of ESPs, and customer interest. PPL supported leaving LIURP budget development to individual public utility USECP proceedings. Further, PPL asserted that setting a budget floor based on total revenues disregards the fact that only residential customers pay for LIURP-associated costs and that their contributions vary among EDCs and NGDCs due to differing customer counts and usage patterns. PPL argued that PA-CLEEC’s approach would disproportionately impact residential customers across service territories. PPL further argued it is unreasonable to set an arbitrary floor for LIURP funding and then roll over unspent LIURP funds from one program year to the next. PPL contended that this would lead to inflated LIURP budgets not reflective of service territory characteristics and negatively impact residential customers. FFRO Preamble at 118, *citing* PPL RC at 5—7, *citing* PA-CLEEC Comments at 6-7.

TURN supported a needs-based approach to LIURP funding and asserted that all LIURP budgets should be based on the estimated and confirmed number of low-income, moderate-income, and special needs customers in a public utility's service territory. It stresses the importance of aligning program funding conditions with customer needs to ensure fairness, effectiveness, and efficiency. TURN suggested, however, that the final-form § 58.4(c) should clarify that needs-based criteria are a consideration at all times and not just during LIURP budget revisions. TURN Comments at 10.

EAP and NFG noted their concerns regarding the proposed factors for setting the LIURP budget, asserting that public utilities may not have these data, or the data may not be accurate. EAP and NFG suggested that if the PUC would like publicly available U.S. Census-level data used, it should be specified in the regulation. They submitted that expecting a public utility to provide a budget necessary to cover all potentially eligible customers is unrealistic, as LIURPs are designed for energy conservation and funded by residential ratepayers. EAP and NFG asserted that the suggested revisions to the LIURP budget process appear to treat public utilities as social service agencies, which is not the intended role of a LIURP. They submitted that while LIURP can assist low-income customers, a public utility must also consider its obligations to provide reliable, reasonable, and safe service to all customers. EAP and NFG disagreed with changing the reference in proposed § 58.4(c)(8) from "a reasonable period of time" to "a proposed timeline," as it would unfairly burden public utilities. EAP requested clarification if there is an alternative interpretation of "eligible customer" or "timeline." FFRO Preamble at 100-101, *citing* NFG Comments at 5 and EAP Comments at 12-14.

Responding to EAP's comments that the proposed LIURP budget factors appear to treat public utilities as social service agencies, PA-CLEEC asserted that the relationship between LIURP and CAP should be considered in a more accounting-like manner. PA-CLEEC recommended that the PUC view LIURP as an investment and CAP as an expense. PA-CLEEC suggested that LIURPs can reduce the expense of CAPs

because payment-challenged low-income ratepayers would receive lower bills because of energy savings thereby yielding savings in CAP expenditures. PA-CLEEC posited that this would allow public utilities to allocate more universal service funds to LIURP. PA-CLEEC opined that EAP would agree that it is within the purview of a public utility to pursue greater efficiency in the application of residential ratepayer funds and claims that EAP has made or implied this argument frequently. PA-CLEEC opined that shifting some of the CAP budget to the LIURP budget appears to be consistent with EAP's perspective. PA-CLEEC added that ensuring savings from LIURPs and decreasing the expenses associated with CAPs should be of higher importance to the public utilities. FFRO Preamble at 118-119, *citing* PA-CLEEC RC at 2-3, *citing* EAP Comments at 13.

c. FFRO Disposition Regarding PA-CLEEC's Suggestions Regarding LIURP Budgets

We declined to adopt PA-CLEEC's suggestion of a uniform floor for LIURP budgets. We agreed with the stakeholders that maintained that LIURP budgets should be based on the needs in a public utility's service territory and set in public-utility-specific proceedings. FFRO Preamble at 123.

3. Stakeholder Answers To Petition Regarding LIURP Budgets

As noted above, three stakeholders objected to PA-CLEEC's Petition and request that the PUC deny the Petition.

a. PPL

PPL asserts that PA-CLEEC has not met the *Duick* standard in that all the issues set forth in the Petition were either raised, or could have been raised, in public comments prior to the entry of the FFRO. PPL asserts that even if the PUC were to reconsider PA-CLEEC's suggestions, the suggestions should be denied. PPL maintains that LIURP budgets should be driven by demand for LIURP projects (*i.e.*, LIURP services) in a public utility's service territory, the availability of ESPs that could provide the services in

a timely and cost-effective manner, and interest of ratepayers who bear the cost of universal service programs. PPL also asserts that the customer interest in receiving LIURP is not as great as the “need for LIURP projects.” Additionally, the availability of ESPs varies across service territories. With the variability among the service territories, PPL asserts that the PUC correctly concluded that LIURP budgets should be left to individual USECP proceedings. PPL Answer at ¶¶ 16-22.

PPL further challenges PA-CLEEC’s suggestion that a LIURP budget should be 1% of a public utility’s jurisdictional revenues. PPL points out that only residential customers bear the cost of universal service programs and that the dollar-for-dollar impact across the service territories would vary significantly. PPL Answer at ¶23. PPL notes that PA-CLEEC could have raised, but did not raise, its waiver recommendation in its comments or reply comments to the 2023 NOPR. Because public utilities currently and under the final-form regulations have to justify their LIURP budgets in their USECP proceedings, a mandatory 1% floor and waiver process would be cumbersome and a waste of time and resources. PPL Answer at ¶¶ 24-25.

PPL disputes PA-CLEEC’s contention that the PUC “reversed” a “commitment” to “address[ing] PA-CLEEC’s LIURP budget” in this rulemaking. PPL Answer at 39, *citing* PA-CLEEC Petition at 3. PPL challenges PA-CLEEC’s assertion the PUC broke a commitment with its determination to directing PA-CLEEC back to individual public utility proceedings for the issue of the level of LIURP budgets. PPL Answer at 40, *citing* PA-CLEEC Petition at 3. According to PPL, PA-CLEEC believes that the PUC failed to address PA-CLEEC’s suggestions simply because the PUC rejected them in this proceeding. PPL Answer at ¶ 41. PPL maintains, instead, that the PUC fully reviewed and considered PA-CLEEC’s LIURP budget recommendations, along with several other parties’ arguments in opposition, and ultimately concluded that PA-CLEEC’s LIURP budget recommendations should not be adopted. PPL Answer at ¶ 42, *citing* the FFRO Preamble at 106-108, 117-119, and 123. Although PA-CLEEC may be displeased with

the PUC's determination regarding LIURP budgets, PPL asserts that it is not credible to claim that the PUC failed to address PA-CLEE's recommendations in this proceeding. PPL Answer at ¶ 43.

b. EAP

EAP, on behalf of its members, also requests that PA-CLEEC's Petition be denied. EAP asserts that the PUC's determination not to adopt a suggestion from PA-CLEEC is no evidence that the PUC failed to meaningfully address the substance of PA-CLEEC's concerns. EAP asserts that PA-CLEEC has not raised new or novel arguments, has not raised issues that the PUC overlooked, and presents no convincing argument that the PUC erred as a matter of law. EAP Letter at 2. EAP characterizes the PUC's determination that a LIURP budget should be set in public-utility-specific proceedings rather than by a uniform floor set in a rulemaking as appropriate to service territory circumstances and demographics and responsive to changes that could occur over time. EAP asserts that the PUC considered the public comments of all stakeholders. EAP Letter at 2.

c. PGW

PGW also opposes PA-CLEEC's Petition and supports the opposition expressed in the EAP Letter.

4. Disposition On Reconsideration And Clarification Regarding LIURP Budgets

We find that PA-CLEEC has not raised any issues regarding a LIURP budget that either were not raised in public comments or were not addressed in the FFRO Preamble. As to whether the issue of waiver as a means of relief from a mandatory uniform floor was a novel idea raised in PA-CLEEC's Petition, we note that the final-form regulations include § 58.18, which was previously titled exemptions, and now titled "waiver" in the final-form regulations. In the FFRO Preamble, we said this regarding waiver:

We clarify that the burden is on the public utility to request approval for a waiver if a change or addition to or deletion from its LIURP deviates from the provisions of Chapter 58. Additionally, a public utility proposing a provision for its USECP that is not consistent with a provision in Chapter 58 or in another PUC regulation shall comply with § 1.91 (relating to waiver of rules) in stating a predicate for its proposal.

FFRO Preamble at 282.

While the discussion in the FFRO was not in conjunction with a discussion of a LIURP budget, we conclude that the language in the FFRO Preamble and in the final-form § 58.18 is abundantly clear that a waiver may be requested for any proposed change, addition, or deletion of a LIURP provision that deviates from Chapter 58. Thus, the option of requesting a waiver regarding a LIURP budget is not a new or novel issue to support reconsideration. The fact, however, that a waiver could be requested did not, and does not, overcome our conclusion that there were sufficient reasons not to impose a 1% uniform LIURP budget requirement. The factors in favor of a floor were amply articulated by PA-CLEEC, and we did not reject PA-CLEEC's suggestion merely because it suggested the 1% be calculated on jurisdictional revenue rather than residential revenue. As noted above, there were a substantial number of other factors, as articulated by other stakeholders, against a 1% uniform floor.

We note that neither of the two Competition Acts mandates a specific budget floor for universal service programs.

Accordingly, PA-CLEEC's Petition is denied.

C. RFP Process

1. PA-CLEEC's Allegations In Its Petition Regarding The RFP Process

Regarding its allegations about the RFP process, PA-CLEEC asserts that the PUC rejected all of its recommendations:

[C]ommon 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. . . . This approach is inconsistent with the clear [PUC] directives provided to PA-CLEEC in prior proceedings, as noted above. In addition, this [PUC] position forces interested parties such as PA-CLEEC to participate in every LIURP/USECP proceeding, in every [p]etition proceeding to modify a LIURP/USECP and now, due to the [FRRO], in every EDC and NGDC rate case where plans can be reopened and modified by rate case participants who enter settlements. Nor is the [PUC'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.

Petition at ¶ 7, citations and footnotes omitted.

PA-CLEEC further alleges that it is "not clear that there is any [PUC] forum for addressing any claims that a [public] utility RFP is unreasonable and/or in violation of the USECPs they are intended to implement." PA-CLEEC also asserts that "service providers like PA-CLEEC members often only see and respond to [a public utility's] RFP and have no involvement nor knowledge of the USECP that the RFP is meant to implement." Petition at ¶¶ 8 and 9.

PA-CLEEC further claims that the PUC 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." It asserts that the PUC has "erred in eschewing any

responsibility for the review and oversight of a [public] utility’s RFP issued to implement an approved USECP” and that this has “deprived [PA-CLEEC members] of their fundamental due process right of notice and opportunity to be heard.” PA-CLEEC also asserts that the low-income customers eligible for LIURP services and the customers who pay for the universal service programs are harmed as well. Petition at ¶¶ 9 and 10. Without a meaningful review of the RFP process, PA-CLEEC claims that the PUC cannot “ensure” that a given RFP will “successfully attract the number of qualified contractors necessary to achieve the goals of [a given] USECP.” Petition at ¶ 11.

PA-CLEEC maintains that the PUC’s justification that the Public Utility Code, the PUC’s enabling statute, does not direct the PUC to adopt the RFP recommendation is flawed. Petition at ¶ 30. PA-CLEEC argues that a public utility’s design and issuance of an RFP is a “service” subject to PUC jurisdiction under the Public Utility Code even though the potential responders are third-party vendors. PA-CLEEC asserts that there should be a process for PUC review of an RFP after it is drafted and before it is issued. Petition at ¶¶ 30, 31, 35, and 36. In Paragraph 31 of its Petition, PA-CLEEC cites to *Petition of Bermex, Inc. to Amend Prior Order regarding Contracting for Service with Bermex, Inc.*, Docket No. P-2018- 3006100 (Order entered on August 8, 2019) (*Bermex II*); *Re: the Contracting for Service with Bermex, Inc.*, Docket No. M 0096081 (Order entered on September 18, 1996) (*Bermex I*); and *Pennsylvania Public Utility Commission v. Peoples Natural Gas Company*, Docket No. M-00930487 (Tentative Order entered on April 27, 1995) (*PNG Tentative Order*), as authority for its assertion that the PUC has exercised jurisdiction over third-party vendors in the absence of express language in the Public Utility Code or otherwise. PA-CLEEC asserts that the RFPs can impose unnecessary and excessive requirements on potential third-party vendors that could “severely jeopardize” a public utility’s ability to implement its LIURP. Petition at ¶¶ 32 and 33.

2. FFRO Regarding the RFP Process

Recognizing that Chapter 58 does not use the term “RFP,” this portion of this Order includes a discussion of LIURP modifications and consultations with stakeholders as well as the selection process for ESPs.

a. PA-CLEEC

PA-CLEEC recommended adding a definition for “RFP” to § 58.2 as follows:

RFP—REQUEST FOR PROPOSAL—ALL DOCUMENTS, PROTOCOLS, CRITERIA, GUIDELINES, EVALUATIONS, RANKINGS AND OTHER ITEMS ISSUED BY THE PUBLIC UTILITY IN CONNECTION WITH ITS SOLICITATION OF PROVIDERS FOR ANY AND ALL SERVICES ASSOCIATED WITH ITS USECP [SIC] AND INTENDED TO BE USED IN ITS COMPETITIVE BIDDING PROCESS FOR THE SELECTION AND PERFORMANCE RATING OF ESPS.

PA-CLEEC Comments at 9-10.

PA-CLEEC maintained that the USECP review process should also address issues related to RFPs in a transparent way. PA-CLEEC suggested amending § 58.6 as follows:

A [covered] public utility, when [making major modifications in] developing a proposal to modify its [program] LIURP design or developing a pilot program INCLUDING, AMONG OTHER THINGS, MODIFICATIONS RELATING TO CHANGES TO THE REQUIREMENTS IN RESPONDING TO AN RFP (AS DEFINED IN SECTION 58.14B), THE EVALUATION CRITERIA IN AN RFP, OR WHICH COULD POTENTIALLY AND MATERIALLY IMPACT OR ALTER THE PUBLIC UTILITY’S THEN-CURRENT CBO, ESPS OR OTHER ENTITIES PROVIDING

LIURP SERVICES shall consult with persons and entities with experience in the design or administration of usage reduction, **energy efficiency, and weatherization** programs. **[Consultations may typically be with] Persons and entities consulted may also include a USAC, LIURP advisory committee,** past recipients of weatherization services, social service agencies, and community groups[, **other utilities with usage reduction programs, and conservation and energy service contractors**]. **“CONSULTATION” UNDER THIS SECTION SHALL BE DEEMED TO HAVE OCCURRED IF THE PUBLIC UTILITY AND THE RELEVANT INTERESTED PARTIES NOTED ABOVE HAVE HAD A MEANINGFUL OPPORTUNITY TO ENGAGE ON ANY PROPOSED LIURP MODIFICATIONS AFTER REASONABLE NOTICE FROM THE AFFECTED PUBLIC UTILITY AND ALL PARTIES HAVE INTERACTED IN GOOD FAITH AND WITH COMMERCIAL REASONABLENESS.**

FFRO Preamble at 133-134, *citing* PA-CLEEC Comments at 11-12.

PA-CLEEC, Duquesne, EJA, FirstEnergy PA, PECO, PPL, CAUSE-PA, EAP, and TURN opposed the addition of § 58.11(c) that prevents public utilities from using the same ESP for both an energy audit and the installation of recommended program measures at a dwelling. FFRO Preamble at 180, *citing* PA-CLEEC Comments at 8-9, Duquesne Comments at 11-12, EJA Comments at 6, PECO Comments at 5, CAUSE-PA Comments at 61—63, EAP Comments at 18-19, TURN Comments at 13, and FirstEnergy PA Comments at 6-7.

PA-CLEEC contended that the proposed § 58.11(c) would channel initial energy audits to companies that only perform audit services and do not have installation expertise or provide comprehensive whole-house solutions. PA-CLEEC recommended that public utilities be permitted to use the same company for both audit and installation of measures, provided that job data do not suggest that too many or too few program

measures are being recommended by a particular ESP. PA-CLEEC offered the following amendments to § 58.11(c):

(c) Absent a public utility demonstrating by statistical evidence that there is a material problem with the same ESP performing an energy audit and installing a program measure at the same dwelling, [A] a public utility may [~~not~~] use the same ESP that performed an energy audit at a dwelling to install the program measures determined appropriate by the energy audit at the same dwelling.

FFRO Preamble at 183-184, *citing* PA-CLEEC Comments at 8-9.

PA-CLEEC, Duquesne, PECO, CAUSE-PA, and EAP proposed amendments to § 58.14b. Duquesne contended that efficiency and cost reduction can be achieved through use of a single ESP, with competitive procurement practices ensuring the best overall value. Duquesne also noted that a single ESP may use multiple subcontractors as part of program implementation within a service territory. FFRO Preamble at 243, *citing* Duquesne Comments at 16.

PA-CLEEC recommended amending proposed § 58.14b(b) to include the following RFP process between § 58.14b(a) and § 58.14b(b), which would in turn have required renumbering §§ 58.14b(b)—(d) to §§ 58.14b(c)—(e):

(B) A PUBLIC UTILITY'S USE OF A COMPETITIVE BIDDING PROCESS ASSOCIATED WITH THE USE OR RETENTION OF ANY ESPS SHALL BE SUBJECT TO THE FOLLOWING REQUIREMENTS:

(1) A PUBLIC UTILITY SHALL INCLUDE IN AND WITH ANY USECP FILING OR ANY PETITION FILED UNDER SECTION [] OF THESE REGULATIONS TO OBTAIN COMMISSION APPROVAL OF ANY RECOMMENDATION APPROVING A MATERIAL MODIFICATION OF AN EXISTING LIURP BUDGET OR LIURP BY THE

PRESIDING ADMINISTRATIVE LAW JUDGE IN A PUBLIC UTILITY'S GENERAL RATE PROCEEDING, A COPY OF ITS PROPOSED RFP.

(2) A PUBLIC UTILITY SHALL INCLUDE IN AND WITH ANY USECP FILING OR ANY PETITION FILED UNDER SECTION 101 OF THESE REGULATIONS TO OBTAIN COMMISSION APPROVAL OF ANY RECOMMENDATION APPROVING A MATERIAL MODIFICATION OF AN EXISTING LIURP BUDGET OR LIURP BY THE PRESIDING ADMINISTRATIVE LAW JUDGE IN A PUBLIC UTILITY'S GENERAL RATE PROCEEDING, A LIST OF ANY MODIFICATIONS TO A PREVIOUSLY APPROVED RFP ALONG WITH DETAILED DESCRIPTIONS OF AND JUSTIFICATIONS FOR THE PROPOSED MODIFICATIONS IN THE NEWLY PROPOSED RFP.

(3) NO PORTIONS OF ANY RFP FILED WITH THE COMMISSION UNDER THIS SECTION OR ANY DETAILED DESCRIPTIONS OF AND JUSTIFICATION FOR ANY PROPOSED MODIFICATIONS TO A PREVIOUSLY APPROVED RFP SHALL BE DECLARED CONFIDENTIAL, HIGHLY CONFIDENTIAL, PROPRIETARY OR OTHERWISE PREVENTED FROM PUBLIC DISCLOSURE, SUBJECT TO THE CONFIDENTIAL REQUIREMENTS ASSOCIATED WITH INFRASTRUCTURE CONFIDENTIAL SECURITY INFORMATION AND CYBER-SECURITY.

FFRO Preamble at 243-245, *citing* PA-CLEEC Comments at 10.

PA-CLEEC asserted that a public utility's RFP should be public information and stakeholder concerns with a public utility's proposed RFP should be addressed transparently through the informal USECP review process. PA-CLEEC contended that requiring a proposed RFP to be subject for review in a public utility's USECP proceeding would provide public utilities with flexibility to adjust RFPs, deliver transparency in the LIURP RFP process, and allow the PUC to exercise its role of regulating how a public

utility implement its USECP through third parties. FFRO Preamble at 245, *citing* PA-CLEEC Comments at 9—12.

b. Stakeholders

PECO, PPL, and Peoples opposed PA CLEEC’s recommendations regarding the RFP process. FFRO Preamble at 247, *citing* PECO RC at 9; PPL RC at 11; Peoples Letter in Lieu of RC at 1. PECO claimed that PA-CLEEC’s proposal would interfere with public utility managerial discretion. PECO noted that it currently uses a competitive bidding process to select ESPs and that the PUC has proposed minimum ESP qualifications. PECO asserted that the PUC should not additionally require a public utility to provide RFP documents for approval, justify RFP changes, or engage in bidder communications or dispute resolution. PECO recommended that public utilities should be allowed to continue implementing their own competitive bidding processes to select qualified ESPs. FFRO Preamble at 247, *citing* PECO RC at 9, *citing* PA CLEEC Comments at 4, 9-10.

PPL stated that there is no statutory mandate for a public utility to use CBOs to implement its programs, including LIURP. PPL noted that the Public Utility Code directs the PUC to encourage, not mandate, the use of CBOs with the necessary technical and administrative experience to provide program services. PPL asserted that this obligation aligns with proposed § 58.14b(d), which would allow a public utility to prioritize, when appropriate, the use of CBOs that meet ESP qualifications. Further, PPL contended that a public utility should not be required to prioritize the use of CBOs over other contractors if CBOs are underperforming or not meeting their duties in a cost-effective manner. FFRO Preamble at 247, *citing* PPL RC at 10, *citing* 66 Pa.C.S. § 2804(9).

PPL opposed PA-CLEEC’s recommendation to modify § 58.14b(b) to incorporate requirements related to the competitive bidding processes for selecting ESPs, including

submitting and justifying proposed RFPs and making these submissions public information. PPL noted that the Public Utility Code does not require a public utility or the PUC to establish such a process. PPL asserted that a public utility is responsible for administering and implementing its USECP and as such should have discretion over how it conducts its RFP processes. FFRO Preamble at 247-248, *citing* PPL RC at 11, *citing* PA-CLEEC Comments at 10—12.

Peoples asserted that a public utility should have the flexibility to select ESPs based on their qualifications, costs, and ability to provide services within its service territory. FFRO Preamble at 248, *citing* Peoples Letter in Lieu of RC at 1.

Duquesne, EAP, NFG, and PPL supported the proposed amendments to § 58.6. PPL noted that it already consults with a technical team when considering LIURP modifications or pilot programs, consistent with the proposed amendments. EAP and NFG cautioned that a public utility’s advisory committee should not be considered an additional approving or regulatory body. FFRO Preamble at 133, *citing* Duquesne Comments at 9, EAP Comments at 14-15, NFG Comments at 6, and PPL Comments at 6.

CAC suggested further modification to § 58.6 to require public utilities to consult with USACs regarding potential proposals to modify their LIURPs, emphasizing the value of a USAC’s community perspectives. CAUSE-PA and EJA also oppose instructing public utilities that they “may” consult with their USAC and/or LIURP advisory committees. FFRO Preamble at 133, *citing* CAC Comments at 5-6, CAUSE-PA Comments at 78-79, and EJA Comments at 5.

EAP disagreed with the idea of requiring a public utility to consult with its USAC as suggested by several commenters. EAP argues that the timing and frequency of individual public utility USAC meetings are already regulated by USECPs relative to the filing and evaluation schedule. EAP notes that stringent

regulation in this area might duplicate existing processes and create uncertainty about whether planned frequency of meetings set in USECPs fulfills this requirement or if additional meetings are necessary. FFRO Preamble at 134-135, *citing* EAP RC at 11-12, *citing* CAC comments at 6, EJA Comments at 5, and CAUSE-PA Comments at 79.

OCA disagrees with EAP that a regulatory change is needed to clarify that a public utility advisory committee should not be given authority to approve a proposal to modify a LIURP or implement a pilot program, as this point is understood. FFRO Preamble at 135, *citing* OCA RC at 44-45, *citing* EAP Comments at 14-15, CAC Comments at 5-6, and EJA Comments at 5.

c. FFRO Disposition Regarding PA-CLEEC’s Suggestions Regarding The RFP Process

We declined to adopt PA-CLEEC’s suggestion to include a definition of the term “RFP” in final-form § 58.2. The term “RFP” is widely used and understood in the energy industry and in commerce in general. The specific term is not used in Chapter 58¹³ and does not require a definition. FFRO Preamble at 85.

Noting the various comments including IRRC’s and PA-CLEEC’s regarding the proposed requirement in § 58.11(c) for a public utility to use multiple ESPs, we deleted the provision from the final-form regulations that would have prevented a public utility from using the ESP that performed an energy audit to install program measures. FFRO Preamble at 187.

We disagreed with PA-CLEEC’s recommendation to modify § 58.6 to require consultation when proposing modifications to an RFP that would impact delivery of

¹³ Section 58.14b establishes a process for public utilities to select qualified ESPs through a competitive bid process.

LIURP services. We noted 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. A public utility is required under both the existing regulation and the final-form regulation to serve such a petition on all parties to its existing USECP.¹⁴ Thus, entities, including PA-CLEEC members, 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. FFRO Preamble at 136.

We did agree with the assertions of stakeholders that a public utility should be required to consult with its USACs when developing a proposal to modify its LIURP or introduce a pilot program. FFRO Preamble at 135.

Regarding PA-CLEEC's recommendation to modify § 58.14b to include an evaluation of the RFP process in USECP proceedings, we declined to adopt this recommendation as well. As noted by other stakeholders, the Public Utility Code does not direct the PUC to review or regulate the selection process for universal service program administrators beyond encouraging the use of qualified CBOs. We further noted that the existing provision in § 58.7(c) requires a public utility to select qualified ESPs. We established additional minimum requirements for ESP qualifications in this rulemaking. Based on our evaluation of the record in this matter, we declined to incorporate an RFP evaluation process as part of USECP proceedings, as suggested by PA-CLEEC. FFRO Preamble at 249.

As it pertained to § 58.14b(c), we acknowledged that there may be circumstances where only one ESP is available in a service territory and agreed with Duquesne that a single ESP may use multiple subcontractors and achieve quality work. However, we

¹⁴ If the public utility also has a proposed USECP pending PUC review and approval, the petition to modify the LIURP must also be filed and served at the proposed USECP docket.

shared the same concerns as CAUSE-PA that there may be circumstances where lack of ESP coverage in a public utility service territory could result in inequitable distribution of LIURP services. For example, when PPL recently reduced the number of ESPs operating in its service territory, the PUC directed PPL to track LIURP jobs completed in each county to ensure there is not a corresponding reduction in program services provided in individual PPL territories based on customer eligibility and priority for LIURP.¹⁵ The intention of § 58.14b(c) is to ensure the needs of a public utility’s service territory are being met by requiring public utilities to provide justification if selection is limited to one ESP. FFRO Preamble at 249-250.

We agreed with PPL that OCA and CAUSE-PA’s recommendations to require public utilities to hold separate advisory committee meetings may be unnecessary as USACs currently consult on topics related to universal service programs, including LIURP. We agreed with stakeholders that there is ambiguity on how the proposed amendments in § 58.16, such as requiring a public utility to have a “LIURP advisory committee” or a “USAC,” or both, could be interpreted. We recognized that public utilities are currently complying with this provision by consulting with their USACs at least semiannually. Further, a public utility has the option of establishing a USAC subcommittee to address LIURP matters independently of other universal service issues, if appropriate. We revised the final-form § 58.16(a) to indicate that a public utility is required use its advisory committee to advise it on LIURP matters. FFRO Preamble at 275-276.

¹⁵ See *PPL 2023-2027 USECP*, Docket No. M-2022-3031727 (Order entered on February 9, 2023) at 87—95.

3. Stakeholder Answers To PA-CLEEC Petition Regarding The RFP Process

a. PPL

PPL asserts that the PUC should reject PA-CLEEC’s recommendations regarding the LIURP RFP process as well. PA-CLEEC already argued, in detail, about alleged improvements that it felt needed to be made to the RFP process for selecting LIURP contractors (*i.e.*, ESPs). PPL Answer at ¶¶ 26-27, *citing* PA-CLEEC Comments at 9-12. PPL cites as an example, that PA-CLEEC recommended that the PUC require that each public utility USECP (or any petition to amend a USECP that impacts the RFP) include a draft RFP, and that “RFP” be defined in the LIURP regulations if that RFP would be used to implement an approved USECP. PPL Answer at ¶ 28, *citing* PA-CLEEC Comments at 11. PA-CLEEC wanted the PUC to require that a public utility be required to describe and justify modifications to a previously used RFP and that a draft proposed RFP could not be eligible for confidential or highly confidential classification by the public utility. PPL Answer at ¶ 29, *citing* PA-CLEEC Comments at 11. PPL notes that it and other interested parties responded to these recommendations in their reply comments, explaining why the PUC should reject them. PPL Answer at ¶ 30, *citing, e.g.*, PPL RC Comments at 11.

PPL notes that the PUC in the FFRO Preamble evaluated all these arguments and ultimately denied PA-CLEEC’s proposals, declaring that it disagreed with PA-CLEEC’s recommendation to require consultation when proposing making modifications to an RFP that would impact delivery of LIURP services. PPL Answer at 31. PPL asserts that PA-CLEEC is “once again” asking the PUC to implement its recommendations into the RFP process. PPL Answer at 32, *citing* PA-CLEEC Petition at 11-14. As alleged justification for seeking reconsideration, amendment, and clarification of the PUC’s ruling, PPL asserts that PA-CLEEC generally avers: (1) that the PUC has authority to prescribe the requirements of an EDC’s RFP process under 66 Pa.C.S. §§ 102 and 1501 (relating to definitions; character of service and facilities); (2) that the PUC’s required

qualifications for ESPs are not enough due to other potential concerns with an RFP process; and (3) that “[t]he 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.” PPL answer at 33, *citing* PA CLEEC Petition at 11-14. According to PPL, even if the PUC were to consider PA-CLEEC’s recommendations for a second time, the PUC should reject them. As explained in PPL’s Reply Comments, the EDCs are the entities administering and implementing a public utility’s USECP, so it should be left to the public utility’s discretion how it should conduct its RFPs to review, evaluate, and award bids. PPL Answer at 34-35, *citing* its Reply Comments at 11). PPL avers that the Public Utility Code neither (1) sets forth specifications on the use of an RFP process for selecting LIURP contractors (*i.e.*, ESPs); nor (2) directs the PUC to review and evaluate the LIURP contractor contracts before they are executed. PPL Answer at 36, *citing* PPL Reply Comments at 11. Although the PUC may regulate a public utility’s “service,” well-established case law holds that the PUC cannot operate as a public utility’s “super board of directors.” PPL Answer at 37, *citing Metro. Edison Co. v. Pa. PUC*, 437 A.2d 76, 81 (Pa. Cmwlth. 1981) (citations omitted). Absent express statutory authority specifying how a public utility shall conduct its RFPs, as for many other facets of its business, PPL maintains that the PUC should not establish parameters for the RFP process beyond prescribing the qualifications for ESPs. PPL Answer at ¶ 37.

In contrast, PPL further notes that the General Assembly specifically directed the PUC to implement procedures to (1) “require that [EDCs] competitively bid all contracts with conservation service providers”; and (2) “review all proposed contracts prior to the execution of the contract with conservation service providers to implement the plan.” PPL Answer at 38, *citing* 66 Pa. C.S. § 2806.1(a)(7)-(8). Under that express statutory authority, the PUC does review and approve the major EDCs’ bid evaluation criteria before the criteria are used by the EDCs in selecting conservation service providers. Absent the lack of similar language in the Public Utility Code for LIURP-related RFPs

and ESPs, PPL maintains that the PUC should reject PA-CLEEC's recommendation. PPL Answer at ¶ 38, *citing Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228 (Order entered June 18, 2020), slip at 12-14 (also referred to as the *Phase IV Implementation Order*). PPL notes that, even under the *Phase IV Implementation Order*, an EDC's evaluations of the bids are confidential and only viewable by the PUC.

As it did regarding PA-CLEEC's Petition regarding LIURP budgets, PPL disputes PA-CLEEC's contention that the PUC "reversed" a "commitment" to "address[ing] PA-CLEEC's RFP process issues" in this rulemaking. PPL challenges PA-CLEEC's assertion that the PUC broke that commitment by declining to set statewide industry standards on the RFP process. PPL Answer at ¶¶ 39-40, *citing PA-CLEEC Petition at 3, ¶ 7*.

According to PPL, PA-CLEEC believes that the PUC failed to address PA-CLEEC's RFP proposals simply because the PUC rejected them in this proceeding. PPL Answer at ¶ 41. PPL maintains, instead, that the PUC fully reviewed and considered PA-CLEEC's RFP suggestions, along with several other parties' arguments in opposition, and ultimately concluded that PA-CLEEC's suggestions should not be adopted. PPL Answer at ¶ 42, *citing the FFRO Preamble at 85, 133-134, 243-245, and 247-249*. Although PA-CLEEC may be displeased with the PUC's determination regarding LIURP budgets, it is not credible to claim that the PUC failed to address PA-CLEEC's arguments in this proceeding. PPL asserts that the PUC should deny PA-CLEEC's Petition because it fails to meet the *Duick* standard for reconsideration. PPL Answer at ¶43.

b. EAP

EAP asserts that the allegations regarding the RFP process in PA-CLEEC's Petition do not meet the *Duick* standard for determining whether to grant such a petition for reconsideration or clarification and that further amendments to the final-form LIURP

regulations are warranted. The suggestions outlined in the Petition are not new or novel and were adequately considered and rejected by the PUC. EAP requests that the PUC deny the relief sought and dismiss the Petition. EAP Letter at 2.

Specifically, with respect to the merits of the Petition, EAP asserts that the PUC specifically addressed and rejected, in the FFRO Preamble at 249, PA-CLEEC's RFP process suggestion. EAP further asserts that PA-CLEEC is seeking a regulatory mandate that cannot be provided as a matter of law. PA-CLEEC wishes the PUC to direct and standardize public utilities' individual business practices regarding the selection of vendors (*i.e.*, ESPs) to perform LIURP services. By replacing a public utility's business discretion to develop an RFP, which would follow both the rules governing universal service programs and adhere to reasonable business practices, with a prescriptive rule judged as "acceptable" or "fair" to certain weatherization contractors organized as PA-CLEEC, the PUC would be substituting its judgement for that of public utility management. According to EAP, such a result would be in contravention of longstanding legal principals in Pennsylvania that the PUC's authority to interfere in the management of a regulated public utility is limited and that the PUC is not empowered to act as a super board of directors. EAP Letter at 2, *citing Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002), footnote 6, *citing Metropolitan Edison Company v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981).

c. PGW

PGW supports the Opposition to the Petition submitted by EAP regarding the Petition. Regarding the lack of merits regarding PA-CLEEC's position, PGW notes that its RFP process is governed by specific requirements as a municipal-owned public utility. PGW Letter at 1.

4. Disposition On Reconsideration And Clarification Regarding The RFP Process

We conclude based on our review of the FFRO and the responses to PA-CLEEC's Petition that we thoroughly addressed PA-CLEEC's RFP process issues in the FFRO Preamble and that no revisions in that regard are required in the final-form regulations. In particular and in contrast to its requirements relative to Act 129 that includes explicit statutory provisions regarding the selection of contractors,¹⁶ the General Assembly chose not to require or authorize the PUC to establish finite and precise requirements for LIURP RFPs. Neither of the two Competition Acts has LIURP provisions comparable to Act 129's § 2806.1(a)(7)-(9). Case law also directs that we not act as a super board of directors for a public utility.

PA-CLEEC contends in Paragraph 35 of the Petition that issues related to the RFP should be addressed before the RFP is issued, not when a public utility petitions to change its LIURP. PA-CLEEC has not garnered any support from other stakeholders regarding its assertions in Paragraphs 9 and 36 of the Petition that the only reasonable solution is to provide the draft RFP to the public sufficiently in advance of issuing it. PA-CLEEC misses the point that the entity under the PUC's jurisdiction is the public utility, not the contractor. The entities receiving the jurisdictional services are the residential customers, not the contractors. Chapter 58 addresses the services of a LIURP being provided by a public utility consistent with its universal service obligations under the respective Competition Act. A public utility is under no obligation to use an outside contractor to provide services under its LIURP. As addressed below regarding whether selection of an ESP is a "service" under §§ 102 or 1501 of the Public Utility Code, the

¹⁶ Act 129 of 2008, *inter alia*, created an energy efficiency and conservation (EE&C) Program, at 66 Pa. C.S. §§ 2806.1 and 2806.2 (relating to energy efficiency and conservation program energy efficiency and conservation). Under Act 129, the PUC was required to adopt an EE&C Program by January 15, 2009, and set out specific issues the EE&C Program must address. Under 66 Pa.C.S. § 2806.1(a), the PUC's EE&C Program includes a procedure to require and approve the competitive bidding of all contracts with conservation service providers (CSP). In addition, Act 129 requires the PUC to establish a procedure through which the PUC will review and modify, if necessary, all contracts with CSPs prior to execution. *Phase IV Implementation Order* at 2-3.

selection of a contractor to provide services under a LIURP which is subject to Chapter 58 is not a jurisdictional “service” even though the public utility is responsible for quality of service and conduct of the contractors it selects, as well as its own employees, who provide those services.

PA-CLEEC asserts that a public utility’s design and issuance of an RFP is a “service” subject to PUC jurisdiction under the Public Utility Code even though the potential responders are third-party vendors. This is not an accurate understanding of the term of “service”¹⁷ as that term is used in the Public Utility Code.

In Paragraph 31 of its Petition, PA-CLEEC cites to *Bermex I*, *Bermex II*, and *PNG Tentative Order* as authority for its assertion that the PUC has exercised jurisdiction over third-party vendors in the absence of express language in the Public Utility Code or otherwise. Our reading of what the PUC concluded in *Bermex I*, *Bermex II*, and *PNG*

¹⁷ Section 102 of the Public Utility Code defines “service” as:

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, as well as the interchange of facilities between two or more of them, but shall not include any acts done, rendered or performed, or any thing [*sic*] furnished or supplied, or any facility used, furnished or supplied by public utilities or contract carriers by motor vehicle in the transportation of voting machines to and from polling places for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election, or in the transportation of any injured, ill or dead person, or in the transportation by towing of wrecked or disabled motor vehicles, or in the transportation of pulpwood or chemical wood from woodlots.

Section 1501 of the Public Utility Code provides in relevant part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the [PUC].

Tentative Order is contrary to PA-CLEEC's interpretation. In those proceedings, we did not exercise jurisdiction over the third-party vendors; we exercised jurisdiction over the public utilities.

It is a public utility's responsibility, as the public utility providing a jurisdictional service, to ensure adequate and safe service, including any service provided by a contractor or subcontractor. The public utility may not delegate that responsibility to another party by any device whatsoever. *See Bermex II*. In *Bermex II*, the contractor Bermex was seeking relief from a set of conditions under which it could be selected and function as a contractor for a public utility. Those conditions were imposed in 1996 by the PUC based on, *inter alia*, actions of contractor Bermex employees that included an admission to rape involuntary sexual deviate intercourse and burglary. *See Bermex I*.

The conditions imposed by the PUC in *Bermex I* required that any contract between a public utility and Bermex involving direct customer contact include safeguards that require the public utility to consistently monitor the activities of contractor Bermex. The conditions applicable under *Bermex I* were limited to contracts with Bermex; they did not apply to the dealings between public utilities and other contractors. *Bermex II* at 3-5. Thus, the PUC did not exercise oversight of the contractor selection process (*e.g.*, by RFP). As egregious as the actions of the contractor were in *Bermex I*, there was no basis for the PUC to assume or exercise over the contractor selection process. PA-CLEEC's efforts to require the PUC to impose drafting and selection conditions into the RFP process for LIURP contractors are not founded in statutory law, regulatory law, or case law.

Noting *Bermex I* and citing 66 Pa.C.S. § 2206(a) (relating to consumer protections and customer service) and 52 Pa. Code § 56.12 (relating to meter reading; estimated billing; customer reading), the Commonwealth Court has agreed with the PUC that “[a]t all times, the [public] utility is responsible for the quality of service and the conduct of its

contractors as they perform this service.” *Utility Workers Union of America, Local 69, AFL-CIO v. PA PUC*, 859 A.2d 847, 849 and 851, (Pa. Cmwlth. Ct. 2004) (*UAW*).

Bermex II did not indicate that the PUC has the jurisdiction or the responsibility to review and approve an RFP process for selection of contractors by a public utility. *Bermex II* clearly lifted the conditions that *Bermex I* imposed on contracts with Bermex, albeit retaining the requirement for safeguards for monitoring Bermex’s activities, asserting that it is within the purview of PUC authority under § 508 of the Public Utility Code, 66 Pa.C.S. § 508 (relating to power of commission to vary, reform and revise contracts).¹⁸ *Bermex II* at 14. The duty of a public utility to provide adequate and safe service is non-delegable. *Bermex I* at 7; *Bermex II* at 15. All public utilities in Pennsylvania are tasked with ensuring adequate and safe service, including services provided by contractors. *Bermex II* at 17. *Bermex I* and *Bermex II* exercised jurisdiction over public utilities, not third-party vendors. But, consistent with *Bermex I* and *Bermex II*, as well that the line of case law establishing that the PUC does not act as a super board of directors, this cannot be interpreted to mean that the PUC must approve every draft RFP and every selection under an RFP absent specific directive such as in Act 129 for EE&C CSPs.

PA-CLEEC further misinterprets *PNG Tentative Order* as exercising jurisdiction over third-party vendors. The settlement agreement in the order that PA-CLEEC cites to was between the PUC and Peoples regarding Peoples’ use of third-party vendors and use of contractor Bermex in particular. It was Peoples that agreed to pay \$30,000 into its hardship fund and to correct training deficiencies. The PUC clearly articulated its authority regarding complaints against Peoples filed by its customers or applicants or

¹⁸ Section 508 gives the PUC the authority to revise a contract between any public utility and any person only when the PUC finds, after notice and opportunity to be heard, that the terms of a contract being change are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of the Commonwealth.

OCA. Peoples acknowledged its obligation to comply with the Public Utility Code, PUC regulations, and the settlement. The PUC exercised no jurisdiction over the contractor and indeed had no jurisdiction or authority over the contractor. *PNG Tentative Order Settlement Agreement*. The *PNG Tentative Order* became final on May 17, 1995.¹⁹

Thus, PA-CLEEC is mistaken in its assertions (1) that the PUC surrendered its jurisdiction and authority that RFPs are reasonable acts of service that appropriately and lawfully implement a LIURP and benefit low-income customers; or (2) that the ESP selection process, whether by RFP or other method, is a service under the Public Utility Code. PA-CLEEC's arguments misconstrue *Bermex I* and *Bermex II* as well the *PNG Tentative Order* and *UAW* and other applicable statutes and case law.

Accordingly, we deny PA-CLEEC's Petition.

III. CONCLUSION

Having concluded that PA-CLEEC's Petition does not meet the *Duick* standard for petitions under Section 703(g) of the Public Utility Code, we could have denied PA-CLEEC's Petition solely under *Duick*. Instead and because this is a rulemaking in which an agency is required to address all points raised by stakeholders, we have chosen to also address the merits of the Petition. We have, therefore, addressed the issues raised by PA-CLEEC in its Petition on the merits.

Based on the merits of the Petition as examined herein, we have found no reason to reconsider or clarify the FFRO and hereby deny the Petition. While we have

¹⁹ A search in Westlaw returns two other citations to PUC Docket No. M-00930487:

- (1) *PA PUC v. PPL* (Order entered on August 12, 1996) in which the PUC and PPL resolved complaints related to PPL's use of contractors to perform "sensitive customer service functions." PPL agreed to forfeit \$300,000 in settlement.
- (2) *PA PUC v. PPL* (Order entered on April 12, 1995) which indicated that there had been a PUC investigation into the use of third-party contractors by PPL, Peoples, Equitable Gas Company, and Duquesne Light Company. It presented a proposed settlement between the PUC and PPL.

endeavored to cite to all the predicates in the FFRO regarding LIURP budgets and the RFP process for denying the Petition, we direct stakeholders to a full reading of the FFRO Preamble regarding our consideration and determination of all the issues surrounding LIURP budgets and the RFP process. See, for example, the discussions of the definitions of “CBO,” “ESP,” and “LIURP budget” and of our decision not to define RFP” in the FFRO Preamble. FFRO Preamble at 24-25, 32-34, 47-50, and 85.

The Law Bureau will proceed with delivery of the FFRO to the Legislative Committees and IRRC as directed in the FFRO. Further processing of the FFRO will proceed as directed in the FFRO; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration and Clarification, filed by the Pennsylvania Coalition of Local Energy Efficiency Contractors, Inc., on March 28, 2025, at this docket, is denied.
2. That the Secretary will serve a copy of this Order on Reconsideration of Final-Form Rulemaking Order on all jurisdictional electric distribution companies and all natural gas distribution companies, including city natural gas distribution operations, and all other parties to this proceeding.
3. That the Law Bureau will proceed with delivery of the Final-Form Rulemaking Order (Preamble and Annex A), with the regulatory packet including a copy of the Petition for Reconsideration and Clarification, filed by the Pennsylvania Coalition of Local Energy Efficiency Contractors, Inc., on March 28, 2025, and a copy of this Order on Reconsideration of Final-Form Rulemaking Order, on the same day, to:

- a. The Majority and Minority Chairs of the Senate Committee on Consumer Protection and Professional Licensure.
- b. The Majority and Minority Chairs of the House Consumer Protection, Technology and Utilities Committee.
- c. The Independent Regulatory Review Commission, with confirmations of receipt from the Legislative Standing Committees.

4. That the contact persons for this proceeding are Regina Carter, Bureau of Consumer Services, 717-425-5441, regincarte@pa.gov; Stephanie Wilson, Law Bureau, stepwilson@pa.gov; Erin Tate, Law Bureau, etate@pa.gov; Louise Fink Smith, Law Bureau, finksmith@pa.gov; and Karen Thorne, Regulatory Review Assistant, Law Bureau, kathorne@pa.gov.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: May 22, 2025

ORDER ENTERED: May 22, 2025