

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
Harrisburg PA 17120**

LOW INCOME HOME ENERGY :
ASSISTANCE PROGRAM : **Pub 223 06/09**
PROPOSED STATE PLAN :
FISCAL YEAR 2010 :

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMENTS RE: PROPOSED STATE PLAN**

The Pennsylvania Public Utility Commission (PUC) hereby respectfully submits its comments to the Low Income Home Energy Assistance Program (LIHEAP) Proposed State Plan for the fiscal year 2010 (2010 State Plan). The PUC's comments address the following areas of concern: LIHEAP Crisis funding during traditional public utility company winter moratorium; proposed household income eligibility requirements; proposed maximum and minimum limits for Cash and Crisis grants, proposed changes regarding the use of LIHEAP funds in utility customer assistance programs, and the expedited schedule used to finalize the 2010 State Plan.

In summation, the PUC respectfully requests that the Pennsylvania Department of Public Welfare (DPW):

- Extend the deadline to submit comments to 2010 LIHEAP State Plan until at least September 30, 2009.
- Revise the application period for LIHEAP Cash and Crisis Component so that these programs run concurrently and begin on November 1, 2009, and close on, or after April 1, 2010.
- Revise the proposed 2010 State Plan to mirror the policies and regulations as set forth in the 2009 LIHEAP State Plan.

- Waive compliance for electric distribution companies (EDCs), and natural gas distribution companies (NGDCs) with the proposed LIHEAP rules until Fiscal Year 2011, and revise the LIHEAP vendor agreements to be consistent with this waiver.
- Permit EDCs and NGDCs to sign revised vendor agreements for the 2010 LIHEAP Plan Year after the plan is finalized.
- Revise policy determination at proposed § 601.108 stating that termination notices issued by utility companies from December 1 through March 31 are not proof of a home heating emergency to qualify for a LIHEAP Crisis grant as this provision violates the express language of Section 1406(g) of the Public Utility Code, 66 Pa.C.S. § 1406(g).

I. Introduction

A. CAP Programs

The PUC is the agency charged with the regulation of the rates and service of public utilities and interpreting and enforcing the Public Utility Code. *See* 66 Pa.C.S. §§ 101, *et seq.*

On July 2, 1992, the Commission adopted a policy statement that established guidelines for CAPs. *See* 52 Pa. Code §§ 69.261-69.267. On July 25, 1992, the CAP Policy Statement became final upon publication in the *Pennsylvania Bulletin*. 22 Pa.B. 3914. The policy statement provides a blueprint for major gas and electric utilities to implement a model CAP that is designed to provide a more cost-effective approach for dealing with issues of customer inability to pay than traditional collection methods. CAPs also provide eligible low income customers with energy service at the most affordable rate available as the monthly payments are based on household family size and gross income.

With the enactment of the *Electricity Generation Customer Choice and Competition Act* (Chapter 28) in December 3, 1996, and the *Natural Gas Choice and Competition Act* (Chapter 22) in June 22, 1999, the EDCs and NGDCs were required to provide for universal service. *See* 66 Pa.C.S. § 501 (relating to general powers [of the PUC]); § 1301 (relating rates to be just and reasonable); § 1304 (relating to discrimination in rates); § 1501 (relating to character of service and facilities); § 2202 (relating to definitions (natural gas)); § 2203 (8)(relating to standards for restructuring the natural gas utility industry); and §§ 2801-2812 (relating to restructuring of the electric utility industry). CAP programs became the delivery method for universal service provided by EDCs and NGDCs.

Based on seven years experience with the CAP programs, the PUC amended the policy statement so that utilities could make maximum use of existing low income energy assistance programs, most notably LIHEAP, in funding their CAPs. *See* Order entered March 31, 1999 at Docket No. M-991232, 29 *Pa.B.* 2495. Also incorporated into CAP design guidelines at 52 Pa. Code § 69. 265(3) are control features that limit program costs. These changes were made to the CAP design to control program costs for the non-CAP residential ratepayers who pay for these programs in their monthly bills. Keeping costs as low as possible to the ratepayers will ensure the continuation of CAPs and the availability of affordable energy service for low income customers.

B. The Need for Increased LIHEAP Funding

The PUC commends DPW for spending all of the LIHEAP funds available for the fiscal year 2009 and requests that DPW spend all of the LIHEAP funds available for the fiscal year 2010. The PUC continues to be concerned about the amount of financial assistance available to help low income customers meet their current and future energy expenses. This is especially true given the potential for higher energy bills expected over the next two winters as rate caps expire for PPL Electric Utilities at the end of 2009, and for the Metropolitan-Edison Company, the Pennsylvania Electric Company and the PECO Energy Company at the end of 2010. Many low income customers have become increasingly reliant on financial assistance from LIHEAP and other customer assistance programs like CAP, LIURP and utility-sponsored Hardship Funds as a result of rising energy prices. The Responsible Utility Customer Protection Act (Act 201 of 2004 or Chapter 14), 66 Pa.C.S. §§ 1401, *et seq.*, which sets forth the rules that apply to terminating and reconnecting utility service, has also increased the need for LIHEAP funding. For this reason, the PUC supports DPW's decision not to exercise its option to use up to five percent of LIHEAP funds for energy reduction and conservation. *See Proposed State Plan* at p. 9, ¶16 (reduction of home energy needs, need for energy assistance). This is the correct decision in light of the significant federal funding already

made available over the next three years to Pennsylvania's Weatherization Assistance Plan under the federal American Recovery & Reinvestment Act.¹ The PUC also urges DPW to rescind its proposal to allocate fifteen percent of the LIHEAP block grant to the Department of Community and Economic Development for weatherization for the same reason. 2010 State Plan, Proposed Changes, Budget, p. v.

Going forward, the PUC will continue to work with DPW to educate consumers about LIHEAP and will support DPW requests for supplemental state funding for low income energy assistance from the Governor and General Assembly. Supplemental funding will not only assist low income customers in bill payment and help keep these consumers safe during the winter months, but also will ease the financial burden on all other paying customers, who fund CAPs through rates and other non-CAP assistance programs by voluntary contributions and taxes for federally-subsidized programs.

The Alternative Energy Investment Act of 2008 allocated \$10 million annually for 4 years, beginning in FY 2008-2009, to DPW to supplement LIHEAP. For the funds to be released, the Governor must issue a declaration that current LIHEAP funding is insufficient due to weather, man-made disasters or high energy prices. In light of current economic challenges and the upcoming expiration of rate caps, the PUC urges DPW to request that the Governor make such a declaration so that this funding can be made available for the 2009-2010 LIHEAP season.

II. The Proposed Changes to the LIHEAP State Plan.

According to the proposed 2010 State Plan, the opening date for the Crisis component is January 4, 2010 and the closing date is March 15, 2010. For utility company customers, a winter moratorium is in place from November 30 to April 1. *See* 66 Pa.C.S. § 1406(e)(1). The winter moratorium is a period during which utilities are

¹ American Recovery & Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

prohibited from terminating service to customers whose income is less than 250% of federal poverty guidelines, absent authorization by the Commission. Given this timeline, the 2010 State Plan effectively eliminates the ability of utility company customers to apply for Crisis grants during most of the winter moratorium period for service terminations.

Last year eligible utility company customers received \$52.7 million in Crisis component assistance. However, in the proposed 2010 State Plan, DPW removed language that was in 2009 State Plan at p. 9, ¶21 (relating to emergency contingency allocation) that said that DPW would consider using emergency contingency funds to pay Crisis grants to customers of regulated utilities who receive termination notices during the moratorium. In recent years, DPW has paid Crisis grants to customers with termination notices dated February 1 or later.

While service terminations are halted during the winter moratorium, customers of the regulated utility companies remain obligated to pay their full energy bill and arrearages continue to accrue. Without access to Crisis grants, many of these low income customers cannot pay account arrearages once the winter moratorium ends and may face service termination beginning April 1.

Also of concern is Section § 601.108 of the 2010 State Plan which is in direct contradiction of Section 1406(g) of the Public Utility Code. Section 601.108 states that termination notices issued by regulated utility companies from December 1 through March 31 are not proof of a home heating emergency to qualify for a LIHEAP Crisis benefit. 2010 State Plan, § 601.108 (relating to emergency) at p. B-19. However, Section 1406(g) of the Public Utility Code specifically establishes a termination notice as sufficient proof of a crisis to make a customer eligible for a LIHEAP Crisis grant. *See* 66 Pa.C.S. § 1406(g)(relating to termination of utility service; qualification for LIHEAP). The PUC believes that the General Assembly intended this section to apply to the

payment of Crisis grants during a qualifying customer's period of need. Since the winter moratorium only halts service terminations and does not halt the accrual of charges to the customer's account for the service received, the need for a Crisis grant could rise at any time.

Further, the PUC notes that DPW's proposed policy to close Crisis grants during the winter termination period affects only the customers of regulated utility companies while customers of other energy providers not subject to regulation under Chapter 14, such as propane and oil companies, can apply for Crisis grants throughout the LIHEAP program period. The PUC believes that such a significant segment of those eligible for the LIHEAP program should not be denied access to Crisis grants for almost the entire time period that the program is open. Accordingly, the PUC requests DPW revise the policy proposed in §601.108 stating that termination notices issued by utility companies from December 1 through March 31 are not proof of a home heating emergency to qualify for a LIHEAP Crisis grant because this policy is in violation of the express language of Public Utility Code Section 1409(g).

DPW also proposes to change the opening and closing dates of the LIHEAP Cash component. Historically, the Cash and Crisis components have opened on November 1 and have run concurrently. Changing this format for the 2009-2010 fiscal year will be confusing to customers and will leave many households without the ability to seek out LIHEAP assistance until late in the winter heating season. For these reasons, the PUC requests that DPW revise the LIHEAP Cash and Crisis Component application opening date to November 1, 2009, and revise the closing date until after April 1, 2010. These changes will open the Crisis component to customers of the regulated utilities. The PUC also requests that these components run concurrently to ensure that LIHEAP grants are available to assist as many customers as possible in meeting their home energy heating needs.

The PUC also requests that DPW reconsider its decision to change the household income eligibility guidelines from nearly 200% of the federal poverty guidelines (FPG) to 150 % of the FPG. *See* 2010 State Plan, Proposed Changes, Budget, p. v; Assurances, Section 2 (relating to eligible households) p. 2; and Appendix B, §601.31 (relating to eligibility requirements), p. B-5. The result of this change would be that thousands of customers, particularly senior citizens and the working poor, would be ineligible for LIHEAP Cash grants. The PUC urges DPW to make the 2010 LIHEAP eligibility requirements the same as last year's household income eligibility requirements.

Finally, the PUC asks DPW to reconsider its decision to change the minimum and maximum amounts for both Cash and Crisis benefits. According to the proposed 2010 State Plan, the minimum Cash benefit is \$100 and the maximum Cash benefit is \$1000. The minimum Crisis benefit is \$50 and the maximum Crisis benefit is \$300. 2010 State Plan, Proposed Changes, Budget, p. v. It is understood that DPW's determinations are based on current budget estimates. However, in the event that additional federal funds become available, the PUC encourages DPW to revisit these limits and return to those in the 2009 State Plan.

III. The Effect of DPW's Change in LIHEAP Policy on Utility Company Customer Assistance Programs

The PUC is the state agency authorized to regulate the service and distribution rates of electric distribution companies (EDCs) and natural gas distribution companies (NGDCs) and to provide for universal service. *See* 66 Pa.C.S. §§ 101, *et seq.* As such, the PUC determined that it was in the public interest to establish CAPs to provide universal service to eligible low income customers, and directed that all NGDCs and EDCs implement such programs. *See* 52 Pa. Code § 69.261 - § 69.267 (relating to policy statement of customer assistance programs).

The PUC approves each utility's CAP program as part of the triennial filing of the utility's universal service plan. *See* 52 Pa. Code § 54.74 (relating to universal service and energy conservation plans [for EDCs]) and § 62.4 (relating to universal service and energy conservation plans [for NGDCs]). As such, the PUC also approves funding of CAPs, recovery of CAP costs from non-CAP customers, and the coordination of energy assistance benefits, specifically LIHEAP grants. *See* 52 Pa. Code § 69.263(c) (relating to CAP development), § 69.265(9)(relating to CAP design elements; coordination of energy assistance benefits), and § 69.266(relating to cost recovery). Section 69.265 (9) regarding the coordination of LIHEAP payments became effective on July 25, 1992. *See* 22 Pa.B. 3914.

The PUC is particularly concerned with the proposed change to apply the LIHEAP Cash component only to the customer's monthly "Asked to Pay" amount that is discussed at page iii of the State Plan and incorporated into LIHEAP rules at § 601.45, p. B-9. The proposed change would seem to prohibit utilities that operate CAPs from applying LIHEAP funds to a CAP customer's pre-program arrearage, or to the utility discount below actual cost, which is termed the CAP credit. The PUC also understands that DPW intends that this change will require utilities to keep remaining LIHEAP funds in the customer's account as a credit to pay for future "Asked to Pay"² amounts.

The impact of DPW's rule changes is significant. For utilities who have applied LIHEAP Cash grants to pre-CAP arrearages and/or CAP credits, the proposed changes to the 2010 State Plan will increase costs to their CAP program. These utilities have a long history of using LIHEAP Cash grants to offset CAP costs, which, until very recently, DPW considered to be an acceptable use of the LIHEAP Cash grant. The offsets to CAP costs have allowed these utilities to establish CAP program design elements that set affordable and low CAP "asked to pay" bills. Without access to these offsets, the

² The PUC notes that for clarity, DPW should define the term "Asked to Pay" amount in section 601.3 (definitions) in the Proposed State Plan, p. B-1.

increased costs of these programs will be passed along to non-CAP ratepayers. Consequently, these utilities will be forced to review and reconsider their CAP program design elements and make necessary changes that will keep service affordable to CAP participants while controlling costs of the program for other ratepayers. These changes could mean an increase in the monthly amount that CAP participants are asked to pay for service or a change in eligibility requirements to reduce the number of low income customers that may be enrolled in the CAP.

If the proposed LIHEAP State Plan is adopted as final, the PUC-regulated utility companies will need to redesign their CAPs and submit their plans to the PUC for review and approval. *See* 52 Pa. Code § 69.263(c)(relating to CAP development). Because the CAP programs were originally approved by PUC order, the orders must be revised in accordance with 66 Pa.C.S. § 703(g)(relating to fixing of hearings; rescission and amendment of orders), and due process requirements of notice and an opportunity to be heard must be provided to interested parties. Depending on the factual issues that may be in dispute, hearings may be necessary resulting in a full adjudication of the CAP plan. Only after the PUC approves by final order the revisions made to the utility's CAP plan can the utility legally implement DPW's rule changes affecting LIHEAP grants.

Given DPW's late notice to the utilities whose CAPs do not comply with the new LIHEAP regulations, the length of time needed for review and approval of the utilities' revised CAP designs by the PUC and the time period required for non-compliant utilities to make programming changes to their billing and accounting systems to implement necessary changes, the PUC requests that DPW revise the proposed 2010 State Plan to mirror the LIHEAP policies/regulations in the 2009 State Plan with regard to these CAP issues. Alternatively, if DPW adopts the changes proposed rule in the 2010 State Plan, the PUC urges DPW to waive utility company compliance with the new rules for the application of LIHEAP benefits for customers enrolled in utility CAPs until the 2011 LIHEAP program year.

If the proposed LIHEAP 2010 State Plan is adopted without modification as final, the PUC requests that DPW revise the vendor agreement to waive utility compliance with the new 2010 LIHEAP rules and approve each utility's LIHEAP vendor application for the 2010 LIHEAP Plan year. The PUC believes that the utilities' LIHEAP vendor status has been a keystone to the historical success of the customer assistance programs and that the future success of CAP programs is dependent upon the utilities' receipt and administration of LIHEAP funds.

IV. Federal Law Cited in Support of DPW's LIHEAP Policy Changes

In the proposed 2010 State Plan at Section 601.45 (relating to the application of benefits), there is a direction that "public utilities that operate CAP will apply the LIHEAP Cash component benefits only to the "Asked to Pay" amounts." See 2010 State Plan, p. B-9, § 601.45 (relating to application of benefits). This section also directs that no LIHEAP funds may be applied to a CAP customer's preprogram arrearages or actual usage amounts. The 2010 State Plan does not define the "Asked to Pay" amount,³ but the PUC believes this to be the customer's CAP monthly payment.

The DPW's new rule is of paramount concern because it runs counter to a provision in the PUC's *Policy Statement on Customer Assistance Programs* at 52 Pa. Code § 69.265(9)(relating to CAP design elements; coordination of energy assistance benefits). This provision advises that a LIHEAP grant may not be used for a monthly payment, and should be applied to reduce the amount of the CAP credit. See 52 Pa. Code 69.265(9)(ii)-(iii).

³ Again, if the term "Asked to Pay" amount is used in the Proposed State Plan, it should be clearly defined in section 601.2 (relating to definitions).

The federal LIHEAP program is a block grant program and the rules for participating in the program are set by the entity that is the grantee of these federal funds, in this case DPW. *See* 42 U.S.C. § 8624 (relating to applications and requirements). *See also Boyland v. Wing*, 487 F. Supp. 2d 161, 166 (E.D.N.Y. 2007) (the Low Income Heating Assistance Act is replete with language demonstrating that Congress wanted there to be a limited federal role in the administration of the energy subsidy program and left the administration of the program almost entirely to the discretion of the state). Consequently, DPW has the authority to interpret the federal law relating to LIHEAP programs and in its discretion can establish rules for participation consistent with federal law and state law as long as its interpretations are not clearly erroneous.⁴

The pertinent federal statutes DPW regarding LIHEAP benefits are broadly worded and very much subject to interpretation. Section 8621(a) states that LIHEAP funds are granted to assist low income households “primarily in meeting their immediate energy needs.” 42 U.S.C. § 8621(a). DPW does not view the use of LIHEAP funds to pay for pre-program arrearage forgiveness or for CAP credits, costs that support CAP programs, as “costs involved in meeting immediate energy needs.”

Section 8621(a) reads as follows:

(a) The Secretary is authorized to make grants, in accordance with the provisions of this title, to States to assist low income households, particularly those with the lowest incomes, that pay a high proportion of

⁴ In fact, this proposition can be found on HHS’s website under LIHEAP –Professional - Frequently Asked Questions. *Question*: “What enforcement power does the federal government have over the use of LIHEAP funds at the state or local level?” *Answer*: “HHS block grant regulations provide that the LIHEAP grantee is the primary interpreter of the federal LIHEAP law. We [HHS] accept the grantee’s interpretation of the statute unless we find it to be clearly erroneous.” *See* http://faq.acf.hhs.gov/cgi-bin/liheap.cfg/php/enduser/std_adp.php?p_faqid=590&p_created=1032200785&p_sid=5U*IMhFj&p_essibility=0&p_redirect=&p_lva=&p_sp=cF9zcmNoPSZwX3NvcnRfYnk9JnBfZ3JpZHNvcnQ9JnBfcm93X2NudD0zNCwzNCZwX3Byb2RzPSZwX2Nhdm9JnBfcHY9JnBfY3Y9JnBfc2VhcmNoX3R5cGU9YW5zd2Vycy5zZWfY2hfbmwmcF9wYWdlPTI!&p_li=&p_topview=1

household income for home energy, primarily in meeting their immediate home energy needs.

42 U.S.C. § 8621.

Participation in a CAP allows a low income customer to meet his or her “immediate home energy needs.” Therefore, it should follow that any and all costs that support the continuation of CAP programs are costs involved in meeting the low income customer’s “immediate energy needs” and may be paid by LIHEAP funds.

The use of the word “primarily” in Section 8621(a) also supports an interpretation that LIHEAP funds may be applied to costs other than those that are directly involved in meeting the low income household’s immediate energy needs. Consequently, a customer’s CAP arrearage, pre-CAP program arrearage⁵ and CAP credit costs are not expressly excluded from payment by Section 8621(a).⁶ Thus, an interpretation of the law to that effect by DPW would not be clearly erroneous.

The use of LIHEAP funds to pay for costs associated with CAPs is also not prohibited by Section 8624(b)(7)(1). This section reads as follows:

(7) if the State chooses to pay home energy suppliers directly, establish procedures to--

* * * *

⁵ The PUC has not found any federal law or regulations that prohibit the use of LIHEAP funds to pay for account arrearages or CAP credits (costs attributed to providing discount service). “Arrearage forgiveness” and “home energy discounts” (credits) are mentioned in federal regulations related to the “LIHEAP leveraging funds incentive program.” 45 C.F.R. 96.87. Interestingly, DPW discusses its intent to apply for leveraging incentive funds in Section 22 - Leveraging Resources at page 10 of the Proposed 2010 State Plan. These leveraged resources are identified at pages 14-17 of the 2010 State Plan and include “arrearage forgiveness” and “reduced monthly payments for utilities.”

⁶ It is also noted that the only federal restriction on the use of LIHEAP funds is found at 42 U.S.C. § 8624(k) that restricts the amount of funds awarded to the state that may be used for weatherization or other energy-related home repair.

(D) ensure that the provision of vendored payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this Act that seek to reduce home energy costs, minimize the risks of home energy Crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs

42 U.S.C. § 8624(b)(7)(D)(emphasis added).

CAP programs include consumer education components stressing the importance of energy conservation. Additionally, CAPs target customers with high usage for weatherization and usage reduction treatment. Thus, CAPs reduce home energy costs and reduce the risk of a home energy crisis. Therefore, the use of LIHEAP funds to pay CAP costs is fully consistent with Section 8624(b)(7)(D) since CAP programs further the same goals.

Moreover, Section 8624(b)(7)(B) states that home energy suppliers will charge the eligible households in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the state. 42 U.S.C. § 8624(b)(7)(B). The PUC does not find this section to be applicable to CAP programs since the CAP customer is not charged the actual cost of the energy provided, but pays a discounted rate, with the costs of this discount paid by other ratepayers.

Finally, DPW cites Section 8624(b)(7) for the proposition that no household receiving assistance under this title [42 USCS §§ 8621 *et seq.*] will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements. DPW claims that using LIHEAP benefits to pay off CAP credits is treating the customer adversely since a LIHEAP beneficiary who is not in CAP would be able to apply his full LIHEAP benefit to the “Asked to Pay” amount.

Consistent with Section 8624(b)(7), the non-CAP LIHEAP customer is not treated adversely in relation to the CAP LIHEAP customer. CAP customers are already placed at an advantage over non-CAP customers by virtue of the fact that they are provided with a preferential below-cost rate⁷ for the service they use. Consider that a non-CAP LIHEAP customer who uses his LIHEAP grant to pay his monthly bill is paying the full cost of his energy usage while the CAP LIHEAP customer is paying a discounted rate for his service -- the full cost of his energy usage minus the CAP credit. In applying the LIHEAP grant to pay the CAP credit, the PUC is assuring that the CAP LIHEAP customer is paying the same rate for usage as the non-CAP LIHEAP customer.

As demonstrated, the use of LIHEAP benefits to pay for CAP credits, CAP arrearages and pre-program arrearages support the continuation of, and ensure the availability of CAP programs to low income customers to provide for their “immediate home energy needs.” Federal law does not prohibit the use of LIHEAP to pay these costs so that an interpretation by DPW to permit these uses would not be clearly erroneous. Accordingly, the PUC requests that DPW reconsider its position on these prohibitions.

V. The Proposed State Plan Is to Be Finalized Without Providing for Meaningful Public Participation in Violation of Federal Law.

The PUC is concerned that the expedited time frame established for finalizing the 2010 State LIHEAP Plan does not comply with federal law for approving such plans, and

⁷ Section 1304 of the Public Utility Code states that a utility shall not, as to rates, make or grant an unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation any unreasonable prejudice or disadvantage. 66 Pa.C.S. § 1304(discrimination in rates). However, the PUC has approved the use of the discounted rates in CAP programs as a reasonable discrimination in rates. *Rosemary Mill v. Pa. PUC*, 447 A. 2d 1100 (Pa. Cmwlth Ct. 1982)(a person may be granted a rate preference or be subjected to rate discrimination where it is reasonable to do so).

thus, denies due process rights of notice and opportunity to be heard to the utility customers, consumer advocates and utility companies.⁸

Federal law governing the LIHEAP block grant program requires that there be timely and meaningful public participation in the development and revision of the state's LIHEAP Plan. Section 8624 (b)(12) of the U.S. Code requires that the chief executive officer of the state, *i.e.*, the governor, certify that the state agrees to "provide for timely and meaningful public participation in the development of the plan" and Section 8624(c)(2) provides that each state plan and substantial revision shall be made available for public inspection to provide "timely and meaningful review of, and comment upon, such plan or substantial revision." *See* 42 U.S.C. § 8624 (b)(12) and (c)(2).

We believe that the schedule for public input and comment on the proposed state plan does not provide a meaningful opportunity to be heard. There is a very short time period provided for public input on the proposed LIHEAP State Plan this year. Normally, the proposed plan is issued in June with at least one month to file comments. It is the PUC's understanding that this year's proposed LIHEAP State Plan was first posted on the website on August 10, 2009, and that public input hearings are scheduled for August 24, 25 and 27 with written comments due on August 27, 2009. Considering the substantial changes made in DPW's rules regarding the use of LIHEAP benefits in CAPs, a three week period for public review and comment likely does not satisfy the requirements of providing for timely and meaningful public participation.

The PUC has also scheduled an *en banc* hearing for September 17, 2009 for the purpose of soliciting comments on the effect of the DPW's proposed policy changes regarding LIHEAP and the impact increased costs will have on CAPs. Extending the comment period to at least September 30, 2009 will permit the PUC to supplement its

⁸ It is noted that DPW's LIHEAP regulations at Title 55 of the *Pennsylvania Code* have not been updated since 1987, and appear to be inconsistent with the rules set forth in the proposed 2010 State Plan.

instant comments with fact-based examples of the impact that DPW's policy changes will have on CAPs and on the low income customers that they serve.

Moreover, it is also the PUC's understanding that an EDC or NGDC must sign the LIHEAP vendor agreement by August 31, 2009, in order to participate as a vendor and be eligible to receive LIHEAP funds. The vendor's agreement provides, *inter alia*, that the vendors will adhere to the LIHEAP policy and procedures as defined in the State Plan. *See* Vendor Agreement, Form PWEA 34 7/09, copy attached. However, with an August 27, 2009 deadline for filing written comments, it appears that the State Plan will not be finalized before the August 31 deadline. This means that vendors will be required to agree to adhere to policies and procedures without knowing exactly what they will be.

For these reasons, the PUC respectfully requests that the comment period for the proposed State LIHEAP Plan be extended to at least September 30, 2009. We also request that the deadline for companies to sign vendor agreements be extended until after the State Plan is finalized so that companies will know the procedures and policies to which they are agreeing to be bound.

CONCLUSION

In conclusion, the PUC respectfully requests that DPW carefully consider these comments. The proposed changes to the LIHEAP Plan will have an adverse financial impact on utility companies and their customers. In light of the significance of these changes, it is imperative that the utility companies, their customers, and consumer advocates be given more time to review and comment on these changes and that all comments be carefully considered before the Proposed State Plan is finalized.

WHEREFORE, the Pennsylvania Public Utility Commission respectfully requests that the Pennsylvania Department of Public Welfare:

1. Extend the deadline to submit comments to 2010 LIHEAP State Plan until at least September 30, 2009.
2. Revise the application period for LIHEAP Cash and Crisis Component so that these programs run concurrently and begin on November 1, 2009, and close on, or after April 1, 2010.
3. Revise the 2010 LIHEAP State Plan to mirror the policies and regulations as set forth in the 2009 LIHEAP State Plan, waive compliance for electric distribution companies and natural gas distribution companies with the proposed LIHEAP rules until Fiscal Year 2011, and revise the LIHEAP vendor agreements to be consistent with this waiver.
4. Permit electric distribution companies and natural gas distribution companies to sign revised vendor agreements for the 2010 LIHEAP Plan Year after the plan is finalized.

5. Revise the policy determination at proposed § 601.108 stating that termination notices issued by utility companies from December 1 through March 31 are not proof of a home heating emergency to qualify for a LIHEAP Crisis grant as this provision violates the express language of 66 Pa.C.S. § 1406(g).

6. Grant other relief as may be appropriate.

Respectfully submitted,

Patricia Krise Burket, Assistant Counsel

Stephanie M. Wimer, Assistant Counsel

Robert F. Young, Deputy Chief Counsel

Bohdan R. Pankiw, Chief Counsel

Counsel for the Pennsylvania
Public Utility Commission

Commonwealth Keystone Building
400 North Street P.O. Box 3265
Harrisburg, PA 17105-3265
(717)-787-5000

Date: August 27, 2009

REVISED LIHEAP VENDOR AGREEMENT
Dated: July 29-30, 2009



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
P.O. BOX 2675
HARRISBURG, PENNSYLVANIA 17105-2675

July 29, 2009

LINDA T. BLANCHETTE
Deputy Secretary for
Income Maintenance

Dear LIHEAP Vendor:

Enclosed is a revised Vendor Agreement. All vendors are required to complete and sign the new vendor agreement to continue participation in the LIHEAP program. The Department of Public Welfare (DPW) is also requiring vendors to send proof of their Social Security Number (SSN) or Federal Employer Identification Number (FEIN) for their company in order to update our records. This would include any tax document generated by the Federal Internal Revenue Service that shows both the name and SSN or FEIN of the company.

Also, please take notice of the following changes to the vendor agreement:

- Vendors must participate in *both* the Cash and Crisis components of the program.
- Vendors must retain all documents related to LIHEAP payments and deliveries for four years.
- Vendors must submit all trip tickets, shut-off notices, or other requested verification within 30 calendar days of a Crisis authorization.

The copy of the completed, signed vendor agreement along with your tax information must be returned to DPW by August 31, 2009. Please mail the information to:

Department of Public Welfare
Bureau of Policy
Division of Federal Programs
P.O. Box 2675
Harrisburg, PA 17105-2675

Failure to return the requested information within this timeframe will cause your company to be removed from DPW's list of participating LIHEAP vendors.

Once we receive your signed vendor agreement, DPW will send you a welcoming vendor packet with your new Vendor ID number. Vendor ID numbers will be chang-

ing from 5 digits to 13 digits in length beginning in the 2009-2010 heating season. Your vendor packet will also include a LIHEAP Vendor Policy and Procedure Manual for your information.

We have also included the Electronic Funds Transfer (EFT) application form in your mailing. DPW is encouraging LIHEAP vendors to take advantage of EFT and electronic Remittance Advices. Below is information and who to contact if you are interested in either EFT or receiving electronic RAs.

- Electronic Funds Transfer (EFT)

Vendors may choose to have LIHEAP payments deposited directly into a bank or financial institution of their choice. EFT eliminates the mail time it takes to receive payment from the Department. *Vendors interested in EFT should contact Blanca Meyers at (717) 787-7975.*

- Electronic Remittance Advice (RA)

Electronic RAs are available to all LIHEAP vendors via a secure website without waiting for mail time. The electronic RA contains all the same information as the paper RA for each payment cycle. Vendors would always be assured of receiving their RA for each payment. *Vendors interested in receiving electronic RA's should contact Samuel Back at (717) 425-5294.*

Thank you for your participation in the LIHEAP program. If you have any questions, please contact the LIHEAP Project Manager at (717) 772-7909.

Sincerely,



Linda T. Blanchette

Enclosure

**LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM
VENDOR AGREEMENT**

Vendor Name and Address

VENDOR COPY

Vendor Number
Federal I.D. Number
Telephone Number
E-mail Address

This Agreement is entered into for the purpose of facilitating the provision of Low-Income Home Energy Assistance Program (LIHEAP) benefits to low-income households through the delivery of fuel from the vendor to the LIHEAP beneficiary who is a customer of the vendor. By signing this agreement, vendors agree to participate in all additional programs that distribute LIHEAP funds for which LIHEAP clients may be eligible, and to participate in both the LIHEAP cash and crisis programs.

The _____ (herein referred to as the "vendor") certifies that it is not currently under suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government.

The vendor cannot enter into any subcontracts under this agreement with other subcontractors who are currently suspended or debarred by the Commonwealth or federal government. If any vendor enters into any subcontracts under this agreement with any subcontractors who become suspended or debarred by the Commonwealth or federal government during the term of this agreement or any extensions or renewals thereof, the Commonwealth shall have the right to require the vendor to terminate such subcontracts.

The vendor agrees that it shall be responsible for reimbursing the Commonwealth for all necessary and reasonable costs and expenses incurred by the Office of the Inspector General relating to an investigation of the vendor's compliance with the terms of this or any other agreement between the vendor and the Commonwealth which results in the suspension or debarment of the vendor.

Vendors will adhere to LIHEAP policy and procedures as defined in the LIHEAP State Plan and will report any discovery of fraud and address any questions regarding participation in the LIHEAP to the LIHEAP Project Manager. A copy of the current LIHEAP State Plan can be obtained online at: <http://www.dpw.state.pa.us/servicesprograms/liheap>.

The vendor agrees to the following conditions in order to receive energy assistance payments through the Commonwealth of Pennsylvania:

1. To cooperate with the Department of Public Welfare (DPW) by providing information on fuel usage and cost for LIHEAP households:
 - a) Deliverable fuel vendors must provide a metered delivery ticket for all crisis deliveries. Metered delivery tickets will contain the vendor's name and address, the date and time of delivery, the purchaser's name and address, product identification, the driver's signature or employee number, the delivery vehicle's permanently assigned company truck number, the price per gallon and the volume in terms of gallons to the nearest one-tenth of a gallon.
 - b) Vendors will provide all requested information established in DPW policies and procedures. Vendors will submit all information within 30 calendar days of the date a crisis benefit was authorized. All information must be sent to the appropriate agency, as designated by DPW, via mail, fax, or scanning. Vendors will not receive payment if all information is received on or after the 31st day a crisis delivery was authorized. LIHEAP recipients cannot be billed for services as a result of a vendor's failure to comply with billing requirements in this agreement.
 - c) Deliverable fuel vendors and utility companies must retain all documents related to LIHEAP payments and deliveries for 4 years in an orderly and retrievable manner.
2. To apply the full payment amount of each LIHEAP benefit approved by DPW to the respective account of each LIHEAP recipient whom the vendor serves.
3. To charge a LIHEAP household according to the requirements below.
 - a) the cash price normally charged for energy delivered, not a credit price.
 - b) the same amount a non-LIHEAP household would be billed for an identical delivery, except for additional discounts that may be required by established DPW policies and procedures.
4. To not discriminate against any eligible household in regard to terms and conditions of sale, credit, delivery service or price, nor treat adversely any household receiving energy assistance because of such assistance.
5. To promptly notify the LIHEAP Project Manager whenever discrepancies in approved fuel applications are found (for example, oil being authorized for a residence serviced 100% by coal) or when the vendor is aware of any potentially fraudulent activity.
6. To apply all payments paid by DPW (for both Cash Component and Crisis Component benefits) on behalf of the customer against that customer's heating costs, subject to subparagraphs "a" through "f" below, and to not use any such funds for security deposits or late payments or other finance charges.
 - a) Late payment charges must be frozen at the amount they are at the time notification of eligibility for LIHEAP (energy assistance) benefits is received by the vendor, and may not be increased for the remainder of the LIHEAP program year; i.e., the date that applications for LIHEAP benefits are no longer accepted.
 - b) Vendors are holding, on DPW's behalf, federal money for the benefit of recipient customers. Vendors are prohibited from using LIHEAP funds for purposes other than home heating. This requirement does not supersede the provisions of the Federal Bankruptcy Act, 11 U.S.C., Section 366.
 - c) Cash component payments received on behalf of a LIHEAP customer will be used to cover customer fuel purchases only, and will be available as a credit to the customer to meet additional fuel costs, including resolution of a subsequent fuel crisis, until they are exhausted, or until expiration of the state fiscal year (June 30) following the end of the state fiscal year in which LIHEAP benefits were authorized. Cash grant funds are to be used for fuel purchases only, and cannot be used for repairs (except as described under "d" and "e" below) or for service maintenance contracts.
 - d) If a household receives benefits from the cash component and subsequently applies for crisis benefits, any credit which the household may have with the vendor, including but not limited to LIHEAP cash component benefits, will be used for resolution of the crisis.

- e) LIHEAP crisis component benefits may be used for energy supply shortage emergencies to provide fuel to a household that is out of fuel or is in imminent danger of being without fuel, or to restore home-heating service to a household that is without heat due to termination of the main or second source of heat by a utility company. Such benefits may include reconnect fees, off-hour delivery charges, or minimal costs (i.e., \$50 or less) to restart the furnace. An eligible household may also receive crisis benefits for weather related emergencies, including the purchase of a new heating system, the repair of an existing heating system, pipe thawing services and the repair of broken windows, fuel lines, or the water heating system, if funding is unavailable through LIHEAP Weatherization. Additionally, crisis component payment for deliverable fuels (oil, coal, etc.) may not be used for unpaid balances, maintenance contracts or finance charges. The amount of a crisis benefit is the minimum amount needed to resolve the crisis. For deliverable fuels, the amount needed to resolve the crisis would be the amount of fuel needed to fill the tank up to the maximum crisis amount. If for any reason, the amount of crisis benefits authorized is in excess of the minimum amount needed to resolve the crisis, the excess must be returned to the Department within 48 hours after the basis for return is known.
 - f) Vendors that accept crisis payments based on utility termination notices or based on reconnection of utility service must agree to maintain ongoing utility service to such households for no less than 30 calendar days from the date of the resolution of the crisis. With regard to crisis payments made pursuant to any grants approved during the Public Utility Commission winter termination procedure referred to in §601.62(ii)(A) of Appendix B of the LIHEAP State Plan, the earliest allowable termination date is 30 days following the resolution of the crisis or May 1, whichever is later.
 - g) In cases in which an eligible LIHEAP household has no present utility service or deliverable fuel supply, a LIHEAP crisis grant tendered to the utility must be accepted as the basis for reconnection of service or for providing a fuel delivery.
 - h) Payment is only guaranteed for LIHEAP grants approved and authorized by DPW or its representatives.
7. To return funds as required, by check, within 48 hours after the basis for return is known, in instances where a customer's whereabouts are unknown or a customer changes vendors, dies or departs the area serviced by the vendor, or receives a duplicate payment, unless otherwise specified in this agreement. The information must be provided as indicated on the refund form issued by DPW. Checks shall be made payable to the Commonwealth of Pennsylvania and forwarded to: DEPARTMENT OF PUBLIC WELFARE, COMPTROLLER'S OFFICE, P.O. BOX 2675, HARRISBURG, PA 17105-2675.
 8. If a security deposit was erroneously paid with LIHEAP funds, or a billing error is detected, the vendor shall contact the LIHEAP Project Manager for appropriate action.
 9. If it is determined that a LIHEAP overpayment has occurred due to vendor error, the vendor is responsible for reimbursement from the vendor's funds, not the customer's account. Vendor error includes, but is not limited to; the vendor failing to provide appropriate or accurate customer account information, non-equitable pricing practice, failure to provide credit balance information, failure to provide service that the LIHEAP funds were sent for, and/or using a communal account for LIHEAP funds.
 10. DPW is authorized to recoup past due LIHEAP balances from vendors by debiting any current or future LIHEAP payment to the vendor for an amount equal to the outstanding unrefunded balance that is due to DPW from the vendor. A record of the balance of funds owed is established by DPW when a vendor error has occurred or a vendor has received a payment on behalf of a client who has subsequently moved to another county and is no longer a customer of the vendor. The vendor must return these funds to DPW. DPW will send the vendor up to three notices requesting payment of the funds. If the vendor has failed to respond after the third notice, the amount of the balance of funds owed to DPW will be deducted from the vendor's next payment(s) until the funds are repaid. The vendor acknowledges that DPW will reduce vendor payments by the amount of the balance of funds owed to allow for the expeditious collection of these debts.
 11. To review customer accounts annually at the end of the LIHEAP program year and identify funds that will be returned to DPW. LIHEAP funds are available for use during a two-year period, which includes the year of receipt and the year immediately following. All LIHEAP funds which have not been expended on or before June 30 of the year immediately following the LIHEAP Program year in which benefits were authorized must be returned to DPW by July 31 of that year. DPW will, on an annual basis, notify the vendors of the need to identify these accounts and request return of the funds. Any LIHEAP funds discovered through the annual review as defined in paragraphs 7, 8, and subparagraph 6e must be returned within 48 hours of discovery.
 12. To return all funds not expended on LIHEAP clients at least 90 days before filing for bankruptcy.
 13. To present for review or reproduction, records maintained by the vendor concerning overall pricing, conditions of sale, credit, and delivery of service, upon request by DPW for audit or investigation purposes, as provided in this agreement.
 14. To provide proof of the company's Federal Employer Identification Number (FEIN) or Social Security Number (SSN) to DPW. Proof would include any tax document generated by the Federal Internal Revenue Service that shows both the name and SSN or FEIN of the company. DPW requires that all vendors must indicate the types of energy (oil, electricity, propane, wood, etc.) that their company provides.
 15. To resolve any crisis payment disputes with DPW at DPW's Bureau of Hearings and Appeals, starting with the 2009 – 10 LIHEAP Program Year and continuing until superseded by a new vendor agreement, if disputes cannot be resolved informally with DPW staff.

Failure to comply with any of these conditions will result in removal from the approved vendor file and suspension of further payments to the vendor for client services.

The Commonwealth reserves the right for State and Federal agencies or their authorized representatives to perform financial and compliance audits, if deemed necessary by Commonwealth or Federal agencies. If an audit of this agreement will be performed, the vendor will be given advance notice.

Vendors will retain all books, records and documents pertaining to LIHEAP payments for a period of four years from the receipt of payment or until all questioned costs or activities have been resolved to the satisfaction of the Commonwealth, or as required by applicable federal laws and regulations. All records must be maintained in a legible, readable condition. If records are maintained in a computer, the vendor must cooperate in providing printed versions of such records. These recipient-specific records should clearly identify for both cash and crisis payments under the LIHEAP, charges to the account, and documentation supporting these entries by individual household.

This agreement will terminate June 30, 2012, unless superseded by a new agreement, or terminated for convenience upon 30 day written notice by either DPW or by the vendor.

Vendors will be required to return all credited LIHEAP funds to DPW upon termination as a participating vendor.

The Vendor will retain one copy of this signed agreement for reference by staff responsible for handling LIHEAP funds, and will return one copy of the signed Agreement to: LIHEAP, P.O. Box 2675, Harrisburg, PA 17105 - 2675 within 30 days of the mail date of this agreement. Failure to complete and return this agreement with the required documents within 30 days will cause your company to be removed from DPW's participating vendor list.

 (Signature) (Position) (Date)

 (Company Name)

Please check all types of energy your company provides:
 Electric Fuel Oil Coal Natural Gas Kerosene Propane or Bottled Gas Wood/other

Is your company a regulated utility? Yes No

Which counties does your company do business in? (Please Check)

<input type="checkbox"/> Adams	<input type="checkbox"/> Chester	<input type="checkbox"/> Fulton	<input type="checkbox"/> Mercer	<input type="checkbox"/> Sullivan
<input type="checkbox"/> Allegheny	<input type="checkbox"/> Clarion	<input type="checkbox"/> Greene	<input type="checkbox"/> Mifflin	<input type="checkbox"/> Susquehanna
<input type="checkbox"/> Armstrong	<input type="checkbox"/> Clearfield	<input type="checkbox"/> Huntingdon	<input type="checkbox"/> Monroe	<input type="checkbox"/> Tioga
<input type="checkbox"/> Beaver	<input type="checkbox"/> Clinton	<input type="checkbox"/> Indiana	<input type="checkbox"/> Montgomery	<input type="checkbox"/> Union
<input type="checkbox"/> Bedford	<input type="checkbox"/> Columbia	<input type="checkbox"/> Jefferson	<input type="checkbox"/> Montour	<input type="checkbox"/> Venango
<input type="checkbox"/> Berks	<input type="checkbox"/> Crawford	<input type="checkbox"/> Juniata	<input type="checkbox"/> Northampton	<input type="checkbox"/> Warren
<input type="checkbox"/> Blair	<input type="checkbox"/> Cumberland	<input type="checkbox"/> Lackawanna	<input type="checkbox"/> Northumberland	<input type="checkbox"/> Washington
<input type="checkbox"/> Bradford	<input type="checkbox"/> Dauphin	<input type="checkbox"/> Lancaster	<input type="checkbox"/> Perry	<input type="checkbox"/> Wayne
<input type="checkbox"/> Bucks	<input type="checkbox"/> Delaware	<input type="checkbox"/> Lawrence	<input type="checkbox"/> Philadelphia	<input type="checkbox"/> Westmoreland
<input type="checkbox"/> Butler	<input type="checkbox"/> Elk	<input type="checkbox"/> Lebanon	<input type="checkbox"/> Pike	<input type="checkbox"/> Wyoming
<input type="checkbox"/> Cambria	<input type="checkbox"/> Erie	<input type="checkbox"/> Lehigh	<input type="checkbox"/> Potter	<input type="checkbox"/> York
<input type="checkbox"/> Cameron	<input type="checkbox"/> Fayette	<input type="checkbox"/> Luzerne	<input type="checkbox"/> Schuylkill	<input type="checkbox"/> Statewide
<input type="checkbox"/> Carbon	<input type="checkbox"/> Forest	<input type="checkbox"/> Lycoming	<input type="checkbox"/> Snyder	
<input type="checkbox"/> Centre	<input type="checkbox"/> Franklin	<input type="checkbox"/> McKean	<input type="checkbox"/> Somerset	

Does your company have off-route or emergency delivery fees? Yes No (Specify amounts below):
 \$ _____ Same Day Weekday Fee \$ _____ Same Day Weeknight Fee \$ _____ Same Day Weekend Fee \$ _____ Furnace Startup Fee

Does your company require a minimum delivery? Yes No
 Minimum delivery: _____ gallons Fee if not met: \$ _____