PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

2019 Amendments to CAP Policy Statement at 52 Pa. Code §§ 69.261-69.267	**Public Meeting September 19, 2019** **3012599-LAW** **Docket No. M-2019-3012599**

STATEMENT OF COMMISSIONER NORMAN J. KENNARD

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration and disposition is a Final Policy Statement Order (Final Policy Statement) amending the Commission's existing customer assistance program (CAP) Policy Statement (Existing Policy Statement). These changes are largely based on the Commission's staff report titled *Home Energy Affordability for Low-Income Customers in Pennsylvania* (Energy Affordability Report).[1]

Maximum Energy Burdens

Under the Commission's Existing Policy Statement, the combined electric and natural gas expenses (also known as the "energy burden") of a customer are not to exceed 15-17% of household income where the household income is at or below 150% of the Federal Poverty Income Guidelines (FPIG). The CAP program provides discounted bills to qualifying low-income customers. The electric distribution companies (EDCs) and natural gas distribution companies (NGDCs) currently collect over $330 million per year from other customers (residential non-CAP) to fund these low-income CAP programs.

The Final Policy Statement presented by the Staff before us today would reduce the current energy burden down to a maximum of 10%. The Joint Motion proposes to go even further by creating a "tiered" energy burden structure with a maximum energy burden level of 6% for customers within 0-50% of the FPIG, 10% for customers within 51-100% of the FPIG, and 10% for customers within 101-150% of the FPIG.

The Energy Affordability Report estimated that a combined 10% energy burden for electric and natural gas would cost non-CAP ratepayers an additional $102 million per year, not accounting for inflation. This represents an approximate 30% increase from the current over $330 million ratepayer CAP spending. The Energy Affordability Report did not analyze or address the cost impact of establishing a 6% energy burden as proposed in the Joint Motion. Accordingly, we do not know what the additional cost impact of further reducing the energy burden will be for Pennsylvania ratepayers.

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[1] Released via order entered on January 17, 2019, in *Energy Affordability for Low-Income Customers*, Docket No. M-2017-2587711; available at http://www.puc.pa.gov/pcdocs/1602386.pdf. *See also Review of Universal Service and Energy Conservation Programs*, Docket No. M-2017-2596907.

I disagree with both the Staff recommendation and the Joint Motion for several reasons. But first, let me say that I have always supported our efforts to make energy affordable for those less fortunate. However, we cannot simply open the ratepayers' checkbooks to pay for others' bills. Our efforts should be supplemental to the social service programs devised by the General Assembly and the Governor's Administration. There is nothing in the Public Utility Code that gives us a significant role in fighting poverty. While we should help, we cannot solve the difficulty of low-income families in meeting their household budgets. Programs should be designed to meet a specifically demonstrated need and parameters should be put in place to avoid excess spending.

We already maintain one of the most generous programs in the nation. It is true that other states[2] have maximum energy burdens that are lower than in Pennsylvania, but there are significant program differences in those states as compared to Pennsylvania. For example, other states limit participation to Low-Income Home Energy Assistance Program (LIHEAP) recipients, incorporate LIHEAP grants into program discounts, have differing electric and natural gas usage, lower housing costs, and lower annual budgets and spending.[3] As we do not limit our programs to LIHEAP recipients, the participating population in CAPs is larger in the Commonwealth.

Much is made of the comparison to New York that uses a 6% energy burden. However, New York limits the total budget for each utility's universal service programs at 2% of total electric or natural gas revenues.[4] As a point of reference, in 2017, Pennsylvania's EDCs spent an average of 2.5% of gross income on universal service programs and the NGDCs an average of 2.2% of gross revenue. So we already exceed New York's spending. Based on the robust universal service programs offered in the Commonwealth, I do not believe that it is appropriate to reduce our maximum energy burden levels at this time.

Nor do I see a demonstrated need for expanded CAP contributions at a time when the nation's economy is thriving with unemployment levels at an all-time low. The total estimated $430 million CAP spending resulting from the energy burden redesign is based upon today's income levels and energy costs. Should the country go into a recession and the labor market deteriorate or should energy prices rise, CAP spending costs will be larger than estimated and uncontained. Neither the Staff recommendation nor the Joint Motion agree to place a limit on overall spending like New York does.

For this reason, among others, I do not agree with the tiered energy burden levels proposed by the Joint Motion. Moving forward without any data regarding the potential cost impact of a 6% energy burden for the lowest low-income customers is not only reckless, but also exposes Pennsylvania ratepayers to unknown, increased costs that could be significant. This exposure could result in pressuring low-income, non-CAP customers into no longer being able to

[2] New York and New Jersey established a maximum energy burden of 6% for low-income customers.

[3] EAP Comments to PUC Secretarial Letter issued October, 16, 2017, Docket No. M-2017-258771 at 18-20; PGW Comments at 12-15, Exhibit B; OCA Comments at 9-11, Appendix A at 5-7, 49-60.

[4] *Order Adopting Low Income Program Modifications and Directing Utility Filings*, Case No. 14-M—0565 (Issued by New York Public Service Commission and Effective on May 20, 2016).

afford their utility bills and lead to an even higher percentage of uncollectibles than we currently have.

We are blindly changing the CAPs with no idea of the cost, no metric to evaluate the effectiveness of the programs, and no cap on program budgets. Although the CAPs have some cost containment features such as minimum bill requirements and individual CAP credit limits, we currently do not have, nor do has there been a proposal to implement, any test or metric to evaluate if these programs are effective and accomplishing their goals. We also have no spending threshold for the budget of the CAPs and therefore, no limit to the costs that non-CAP ratepayers will bear. I struggle to see any of the principles of ratemaking that have stood the test of time in providing fair, nondiscriminatory, and just rates included in the reasoning for the changes to the CAPs.

One of the fundamental principles of ratemaking is cost causation - the cost to serve each customer should be reflected in the price of the product they are purchasing. Although there are times when we make exceptions, the exceptions should not be designed to provide a permanent discounted rate based on the income of a household or on any other metric other than the cost of serving that customer.

The original CAPs were designed to reduce the number of payment-troubled customers by serving as an alternative to traditional collection methods. It was anticipated that the major cost for a CAP would be administrative costs since the programs were to be cost-effective and designed so that if "properly implemented, many of the problems associated with other CAP programs should be diminished or entirely eliminated."[5] We have strayed far from the original goal of *temporarily* assisting customers in an efficient manner that does not create a burden on non-CAP customers.

Nor do we have any evidence that reducing energy burdens levels will decrease utility uncollectibles. In fact, since the establishment of CAPs in Pennsylvania, uncollectibles have increased. When CAPs were implemented state-wide in 1992, the Commission found that uncollectibles in the electric industry averaged between about 1% to 1.5% between 1987 and 1990. In 2000, the electric industry's gross write-off ratio grew to an average of 2.17% and most recently, 2017 averaged a gross write-off ratio of 2.2%. These uncollectible costs are borne by all ratepayers and are felt the most by non-CAP low-income. This illustrates that there may be other factors at play beyond discounted utility bills when determining affordability.

CAPs were not meant to solve poverty, but, rather, were established at a time when inflation in utility bills was growing much faster than customers' incomes causing a disparity that was particularly acute for low-income customers. LIHEAP grants did not grow at the same pace as the increasing proportional cost of energy and the CAPs were created because the utilities were carrying out collections for a stable number of customers who were falling further and further behind in paying bills. The CAPs were created to decrease uncollectibles and to assist low-income customers in maintaining their utility service.

[5] *Investigation of Uncollectible Balances, Final Report to the Pennsylvania Public Utility Commission,* February 1992, pp. 116-117.

Overall, I agree with the OCA's comments which maintained that Pennsylvania CAPs, as currently designed, are working reasonably well. Based on the data that is available, the OCA stated that it cannot conclude that a 10% maximum energy burden is appropriate for the Commonwealth. Rather than changing the maximum energy burdens, the OCA suggests making other modifications to CAPs, including revising minimum payment requirements and pursuing budget billing.[6] While I agree with many of the changes set forth in the Final Policy Statement, I agree with the OCA and question whether changing our maximum energy burdens levels is appropriate at this time.

As a last point, I believe due process mandates that, if such changes are to be made, we must issue the revised policy statement as a proposal with a 30-day comment period and not as a final order. This would allow us to receive data from the EDCs and NGDCs regarding the cost impact of reducing the energy burden to 6% for the lowest low-income customers. Additionally, stakeholders will have the opportunity, for the first time, to comment on the comprehensive set of changes before us. Prior to the Final Policy Statement, stakeholders have only had the opportunity to comment on various piecemeal parts of the changes to the Existing CAP Policy Statement. To alleviate all due process concerns, stakeholders should be provided the opportunity to comment on the "entire package" of changes, many of which are so intricately intertwined.

Cost Recovery

Currently, almost all universal service costs are recovered from the residential rate classes, because this is a program that benefits residential customers exclusively.[7] However, the Final Policy Statement provides that utilities may address recovery of CAP costs and other universal service costs from any ratepayer class in their individual rate case filing. While we are not making a final decision regarding cost recovery in this matter, the Final Policy Statement expressly authorizes utilities to propose cross-class subsidization in their next rate case filing.

I strongly oppose the expansion of CAP and universal service cost recovery to commercial and industrial rate classes. Large commercial and industrial entities neither benefit from nor are they eligible for these programs. Again, principals of cost causation dictate that costs should be attributed to the customers causing the costs to be incurred.[8] Additionally, Sections 2804(7) and 2203(5) of the electric and natural gas competition acts prohibit discriminating "against one customer class to the benefit of the other."[9]

To a restate a point made earlier, we are wandering into the arena of tax policy where general taxes, like personal income or corporate net income taxes, are used for the general public good. We are not the General Assembly and do not have the discretion to impose a tax for the public benefit.

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[6] OCA Comments to PUC Secretarial Letter issued October 16, 2017, Docket No. M-2017-258771 at 6-7, 20-21, Appendix A at 20-22, 110

[7] Philadelphia Gas Works and Peoples Natural Gas Company, LLC apply their Universal Service Riders to more than just the residential customer class.

[8] *See Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006).

[9] 66 Pa. C.S. §§ 2203(5), 2804(7).

Further, passing universal service costs onto commercial and industrial ratepayers can force these ratepayers to procure energy services elsewhere with negative effects on the utilities and customers. Commercial and industrial ratepayers of NGDCs are often sensitive to changes in rates as energy costs are a large expense of their businesses and price increases can push them to find alternatives to natural gas. In some locations, customers have the ability to bypass the distribution system and connect directly to the interstate pipeline system.

The loss of industrial and commercial customers not only weakens the revenue base of the utility but also has the potential to harm all ratepayers. Although in rate cases, the goal is to move each rate class towards its cost of service, for many utilities the residential rate class pays less than its cost of service and is subsidized by the other classes, including commercial and industrial. Since many of the costs of providing service are fixed and do not vary with the loss or addition of a few customers, the loss of revenue from commercial and industrial customers will mean other rate classes, including residential customers, would see rate increases.

Although I oppose permitting utilities to cross-subsidize CAP and universal service costs among rate classes, I recognize that there are credible legal arguments on both sides of the issue. With that in mind, it is very likely that any future utility rate case filing proposing to pass CAP and/or universal service costs onto commercial and industrial customers will be challenged in court. I caution that should cross-class subsidization be prohibited by the courts, all the increased CAP costs related to a reduced energy burden will be borne by non-CAP residential customers. This is particularly of issue because we do not know the cost impacts of using a 6% maximum energy burden for the lowest low-income customers. Once again, we are exposing non-CAP residential customers to unknown increased costs which could be significant. Unfortunately adding these increased costs to non-CAP residential bills could result in unaffordable utility bills for non-CAP low-income customers.

Conclusion

I agree with many of the changes set forth in the Final Policy Statement and believe that cleaning up our CAP processes is a great idea and a step forward in assisting low-income customers in maintaining their utility service. However, I do not see a need to: (1) decrease the maximum CAP energy burdens levels or (2) authorize drastic cost recovery mechanisms for the significant increases in CAP spending that will result. Therefore, I respectfully dissent.

Date: September 19, 2019

NORMAN J. KENNARD
COMMISSIONER