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VIA e-file

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

**Re: Review of Universal Service and Energy Conservation Programs
Docket No. M-2017-2596907**

Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Tenant Union Representative Network, and Action Alliance of Senior Citizens of Greater Philadelphia

Dear Secretary Chiavetta,

Please find the Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Tenant Union Representative Network (TURN), and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (collectively, the Low Income Advocates), which are being submitted for filing in the above captioned proceeding.

Please do not hesitate to contact me at 717-236-9486 x. 205, or by email at pulp@palegalaid.net with any questions or concerns.

Respectfully Submitted,

Elizabeth R. Marx

Before the Pennsylvania Public Utility Commission

Review of Universal Service and Energy : Docket No. M-2017-2596907
Conservation Programs :

JOINT COMMENTS OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA,
TENANT UNION REPRESENTATIVE NETWORK,
AND
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA

Pennsylvania Utility Law Project
On Behalf of CAUSE-PA

Patrick M. Cicero, Esq.
Elizabeth R. Marx, Esq.
Joline Price, Esq.
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

Community Legal Services
On Behalf of TURN and Action Alliance

Robert Ballenger, Esq.
Josie B.H. Pickens, Esq.
Jenna Collins, Esq.
1424 Chestnut Street
Philadelphia, PA 19102-2505
215-981-3700
rballenger@clsphila.org
jpickens@clsphila.org
jcollins@clsphila.org

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), together with Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (collectively referred to herein as the Low Income Advocates), file the following comments in response to the Commission's May 10, 2017 Order at this docket. That Order begins an investigation into the design, implementation, costs, cost recovery, administration reporting, and evaluation of universal service programs, and encourages interested stakeholders to file comments.

CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

The Tenant Union Representative Network (TURN) is a not-for-profit corporation with many low and lower income members. TURN's mission is to advance and defend the rights and interests of tenants and homeless people. TURN's goal is to guarantee to all Philadelphians equal access to safe, decent, accessible, and affordable housing. Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service. As part of advancing the respective interests of tenants and seniors, TURN and Action Alliance advocate on behalf of low

and moderate income residential customers of public utilities in Philadelphia in proceedings before the PUC.

The Low Income Advocates thank the Commission for engaging in this broad, statewide inquiry into universal service programming in Pennsylvania, and urge the Commission to take definitive action to improve the delivery of critical assistance programs for low income individuals and families across the state.

II. BACKGROUND

Over the past several months, the Commission has engaged in a review of its Universal Service programs as a part of its mandate pursuant to the Public Utility Code (Code), which requires the Commission to continue, at a minimum, the policies, practices, and services that were in existence as of the effective date of the Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201-2212, and the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-2815.¹ Universal Service Programs are subject to the administrative oversight of the Commission, which must ensure that the programs are run in a cost-effective manner and that services are appropriately funded and available in each utility distribution territory.² The portfolio of Universal Service Programs generally includes Customer Assistance Programs (CAPs), Low Income Usage Reduction Programs (LIURPs), Customer Assistance and Referral Evaluation Services (CARES), and Hardship Funds. These services are primarily provided to low-income customers;³ however, some programs, such as CARES, may be available to non-low-income customers who meet certain requirements.

¹ 66 Pa. C.S. §§ 2203(7) & 2802(10).

² 66 Pa. C.S. §§ 2203(8) & 2804(9).

³ Low-income customers are residential customers with household incomes at or below 150% of the Federal Poverty Income Guidelines (FPIG). 52 Pa. Code § 54.72.

The Commission’s review began in December 2016, when it issued a Secretarial Letter on December 16, 2016, at Docket No. L-2016-2557886, seeking informal stakeholder input on a number of questions regarding the existing LIURP Regulations at 52 Pa. Code §§ 58.1-58.18.⁴ The goal of that proceeding was to receive feedback that was intended to inform a possible future LIURP rulemaking. Additionally, at the March 16, 2017 Public Meeting, the Commission adopted a Joint Motion directing the Commission’s Bureau of Consumer Services (BCS) to initiate a study to determine what constitutes an affordable energy burden for Pennsylvania’s low-income households and, based on this analysis, whether any changes in the Commission’s CAP Policy Statement, 52 Pa. Code §§ 69.261-69.267, or other Universal Service and Energy Conservation Program guidelines are necessary to bring these programs into alignment with any affordability recommendations.⁵

Ultimately both of these processes were rolled into the current docket through the Commission’s May 10, 2017 Order.⁶ In that Order, the Commission required its Law Bureau to prepare a report “outlining the statutory, regulatory, and policy frameworks of existing Universal Service and Energy Conservation Programs and the processes required to initiate any proposed changes to these existing statutory, regulatory, and policy frameworks.”⁷ The Commission publicly released the Law Bureau report on July 14, 2017.⁸ The Commission’s USECP Order solicited interested parties to submit comments at this docket “outlining their priorities, concerns,

⁴ See 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 (Secretarial Letter issued December 16, 2016).

⁵ See Joint Motion of Vice Chairman Andrew G. Place and Commissioner David W. Sweet, Docket No. M-2017-2587711 (Adopted March 16, 2017).

⁶ Review of Universal Service and Energy Conservation Programs, Docket M-2017-2596907 (Order Entered May 10, 2017) (“USECP Order”)

⁷ USECP Order at 5, ¶ 1.

⁸ Staff Report, Review of Universal Service and Energy Conservation Programs, Docket M-2017-2596907 (July 14, 2017)

and suggested changes to the Universal Service and Energy Conservation programs.”⁹ The Low Income Advocates file these Comments consistent with the Commission’s May 10, 2017 Order.

III. SUMMARY OF RECOMMENDATIONS

For the first time in years, the PUC has embraced the opportunity to take a fresh look at the programs that make energy affordable for the poorest Pennsylvanians. The Low Income Advocates urge the PUC to take the bold and necessary next steps to solve the energy affordability crisis in Pennsylvania in a sustainable and effective manner.

The Low Income Advocates propose the establishment of affordable energy burdens for low income families, targeting no more than 6% of monthly household income for combined home energy bills. To ensure that home energy bills actually reach affordability at 6% of household income, CAP should be structured as a Percentage of Income Program (PIP). In addition, the Low Income Advocates assert that the Commission must work to address funding levels and funding sources, as well as current threats to affordability that work to undermine and erode affordability achieved through CAP. The Low Income Advocates propose several specific protections to proactively address current threats to affordability, including the elimination of punitive and arbitrary limitations on CAP credits; added fees and charges (such as co-payments and CAP-Plus, a LIHEAP surcharge); and artificially inflated energy supply charges resulting from generation charges that are higher than a utility’s default service price. Finally, the Low Income Advocates suggest a number of specific changes to ensure that CAP eligibility requirements are uniform, consistent, and fair, allowing all low income customers to access with

⁹ USECP Order at 5, ¶ 2.

dignity the critical utility assistance necessary to ensure that they can receive essential utility service and live in health and comfort in their homes.

Similarly, the Low Income Advocates propose a number of improvements to LIURP, CARES and Hardship Fund programs. The Low Income Advocates incorporate by reference the Comments and Reply Comments submitted recently in the LIURP Rulemaking proceeding by the Energy Efficiency for All Coalition (EEFA). The Low Income Advocates believe that, under the current universal services framework, EEFA's recommendations present sound improvements to program delivery structure, needs assessments and budget determinations. Additionally, the Low Income Advocates propose dedicated social work staff for CARES programs, and urge the Commission to eliminate unduly restrictive requirements and improve funding for Hardship Fund programs.

As a broader concern, the Low Income Advocates believe the current, disjointed utility universal service program administration model, requiring each utility to administer its own programs with different eligibility and funding rules and conditions for each utility service territory, should be phased out in favor of a uniform and consistent state-wide program. A statewide program utilizing local nonprofits and community groups as "point of service" partners, presents the most efficient and appropriate means to accomplish the purposes of universal services. Such a program would, at a reasonable cost to ratepayers, provide low-income Pennsylvanians with consistently affordable bills, under reasonable terms and conditions, and would provide the most efficient platform for program outreach and coordination of program benefits among the portfolio of available services. Such transformative change is authorized by the current provisions of Pennsylvania law, and is essential to effectively stem the current cycle of unaffordability and utility terminations for low income households.

The Low Income Advocates further submit that, regardless of whether the Commission adopts a state-wide model or retains the current utility-by-utility approach, all customers must contribute to the cost of meeting the goals of universal service. Such a change is not only within the Commission’s legal authority, it is the most equitable approach to ensure that universal service programs are adequately funded and available to households in need across Pennsylvania. Indeed, the General Assembly recognized that universal service programs are “public purpose” programs, and it is inequitable for non-residential customers to continue to reap direct and indirect benefits from the provision of universal services without contributing to the costs. Pennsylvania should follow the lead of the majority of other states, and require all customers to contribute to the costs of universal services programs.

Finally, the Low Income Advocates submit that the Commission must improve its oversight of universal service programs. In doing so, the Commission should closely review the manner in which individual universal service complaints are adjudicated, and should ensure that universal service program portfolios (whether administered on a utility or statewide basis) are subject to an on-the-record review of relevant data and information. Enhancing the review process will ensure that decisions about the terms and conditions of universal service programs are informed by available facts and data – as opposed to purely theoretical analysis. Expanding current reporting requirements, and making that information available to the public, are important steps toward ensuring that universal service programs are subject to appropriate oversight by the Commission and the public. In all, enhanced oversight and review of universal service programs will help ensure that programs are, indeed, widely available and appropriately funded to provide all those in need with access to truly affordable utility services.

IV. OVERVIEW OF POVERTY IN PENNSYLVANIA

From the outset, it is essential to understand why universal service programs are needed and to have a clear picture of what it means to be poor in Pennsylvania, as it is a practical impossibility to design an appropriate response to a problem that has not been fully explored and identified.

a. Scope of Poverty in Pennsylvania

A striking number of Pennsylvanians are unable to afford life's basic essentials – food, water, medicine, medical care, housing, energy, transportation, and childcare. Pennsylvania ranks 21st in the nation for poverty, with over 2.6 million people (roughly 21% of the statewide population) having income at or below 150% of the federal poverty income guidelines (FPIG).¹⁰ Poverty is pervasive across the state, regardless of geographic location; however, there are several pockets of concentrated poverty in both rural and urban counties that should be noted. The highest levels of poverty are reported in Philadelphia (26.5%), Centre (20.5%), Fayette (18.4%), Clarion (18.3%), Indiana (17.7%), and Erie (16.9%) counties.¹¹ Most other counties, rural and urban, are not far behind.

Low income individuals and families are among the most vulnerable in our society, including a disproportionate number of women, children, minorities, individuals with a disability, and the elderly. Women (14.2%) and children (19%) are far more likely to live in poverty than others, particularly single mothers with children.¹² Children from minority groups have an even greater likelihood of living in poverty: Approximately 42% of Latino children,

¹⁰ US Census Bureau, American Community Survey (2015), S1701, Poverty Status in the Past 12 Months, 2015, <http://factfinder.census.gov>.

¹¹ Note that these percentages are based on 100% FPIG. Id.

¹² Nat'l Ctr. For Children in Poverty, Pennsylvania Demographics of Poor Children (2014), http://www.nccp.org/profiles/PA_profile_7.html. Again, these percentages are based on 100% FPIG.

39% of black children, and 15% of Asian children live in poor families, with income at or below 100% FPIG.¹³ Regardless of gender or age, individuals from minority groups (particularly Latinos (30.3%) or African Americans (28.5%)) are nearly three times more likely to live in poverty compared to white adults (10.3%).¹⁴ Individuals with disabilities (26.7%) are also far more likely to live in poverty than able-bodied individuals.¹⁵

b. Needs Created by Poverty

The ability of the estimated 2.6 million low income households¹⁶ in Pennsylvania to make ends meet is significantly constrained. Low income households often have to choose between competing needs: feeding and clothing their families, paying rent, heating their homes, buying medicine, or paying for transportation to get to work. The competition for scarce resources is endless. Quite literally, low-income families almost always have to choose which bills to pay and which can be paid later. This balancing of priorities and consequences is difficult under the best of circumstances and, more often than not, impossible.

For well over a decade, low income wages have remained too low to meet household needs, even as wages have grown for higher-paid jobs after the recent economic recession.¹⁷ Pennsylvania's minimum wage was last raised on July 24, 2009, and currently stands at just

¹³ Id.

¹⁴ US Census Bureau, American Community Survey (2015), <http://factfinder2.census.gov>.

¹⁵ Cornell University, Yang-Tan Inst. on Employment & Disability, 2015 Disability Status Report: Pennsylvania, at 41 (2016), http://www.disabilitystatistics.org/StatusReports/2015-PDF/2015-StatusReport_PA.pdf?CFID=201850&CFTOKEN=b15758a3170aaa64-CD4449A7-EDC0-101B-2E01EC375F3B6485.

¹⁶ As noted above, this is the number of low income Pennsylvanians with income at or below 150% FPIG. This is not to suggest that those above 150% FPIG do not also struggle to make ends meet.

¹⁷ See Nat'l Employment Law Project, Occupational Wage Declines Since the Great Recession: Low-Wage Occupations See Largest Real Wage Declines (Sept. 2015), <http://www.nelp.org/content/uploads/Occupational-Wage-Declines-Since-the-Great-Recession.pdf>.

\$7.25 an hour,¹⁸ far less than the state minimum in each of Pennsylvania’s neighboring states.¹⁹

A 2015 examination of the economic outlook for working families concluded that, in Pennsylvania, **a working adult making minimum wage would need to work 90.5 hours per week to make ends meet.**²⁰ For a household to meet basic needs and address emergencies as they arise, a single adult living in Pennsylvania would need to make \$16.41 per hour, while a single adult with two children would need to make \$31.67 per hour.²¹ In other words, Pennsylvania’s minimum wage “provides just 44 percent of a living wage for a single adult and less than a quarter of the living wage for a single adult with two children.”²²

In addition to stagnant wages for low income workers, those who rely on Social Security, Supplemental Security Income (SSI/disability), and veteran benefits have also experienced many years of income stagnation – with yearly cost of living adjustments lagging behind actual inflation for many years.²³

¹⁸ Pa. Dep’t of Labor & Industry, Ctr. For Workforce Info. & Analysis, Analysis of the Pennsylvania Minimum Wage (March 2017), <http://www.workstats.dli.pa.gov/Documents/Minimum%20Wage%20Reports/Minimum%20Wage%20Report%202017.PDF>.

¹⁹ Delaware, \$8.25; Maryland, \$9.25 (increase to \$10.10 effective July 1, 2018); New Jersey, \$8.44; New York, \$9.70 (with annual increases until reaches \$15); Ohio, \$8.15 (\$7.25 for small employers); West Virginia, \$8.75. See Nat’l Conf. of State Legisl., State Minimum Wages: 2017 Minimum Wage by State (Jan. 5, 2017), <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx>.

²⁰ Allison Fredericksen, Alliance for a Just Society, The Job Gap Economic Prosperity Series: Pay Up, Long Hours and Low Pay Leave Works at a Loss (2015), <http://allianceforajustsociety.org/wp-content/uploads/2015/10/Pay-Up-revised-11.pdf>. In calculating living expenses, the report used Pennsylvania-specific data from the US Department of Agriculture, the US Department of Housing and Urban Development, the US Department of Transportation, the Medical Expenditure Panel Survey, the Consumer Expenditure Survey, and the American Savings Education Council. See *id.* at 40-42.

²¹ *Id.* at 31.

²² *Id.*

²³ Social Security Admin., Cost-of-Living Adjustments, <https://www.ssa.gov/oact/cola/colaseries.html>; see also Mark Miller, The COLA Crunch: Why Social Security Isn’t Keeping Up with Seniors’ Costs, Reuters (Oct. 23, 2014), <http://www.reuters.com/article/us-column-miller-colas-idUSKCN0IC1DP20141023> (pointing to data which “shows that Social Security beneficiaries have lost 31 percent of their buying power since 2000).

While income for poor families remains stagnant, the cost of basic living expenses soar. Housing, healthcare, food, childcare, transportation, childcare – and even water²⁴ – have continued to increase.²⁵ Despite lower commodity costs natural gas and fuel oil, utility distribution costs – particularly for electricity – have nonetheless outpaced inflation, driving a continued and substantial gap in affordability for low income households.²⁶ In short, poor families are being squeezed from all sides, with little chance of relief.

As a result of extreme financial pressure from all sides, many poor families must take drastic measures to keep their families safe. Faced with few available alternatives, many resort to high risk payday lenders, take dangerous health and safety risks, and forgo food, medicine, and medical care to maintain critical utility services.²⁷

²⁴ While the affordability of water services has not been specifically included in this proceeding, the Low Income Advocates strongly urge the Commission to examine the affordability of water service in Pennsylvania, and the options available to ensure universal access to water for low income Pennsylvanians. See generally, Emily Previti, Why is Water Expensive, WITF – Keystone Crossroads (Feb, 24, 2016), <http://crossroads.newsworks.org/index.php/local/keystone-crossroads/91273-why-is-pennsylvanias-water-expensive-> (“The average cost for water provided by private companies is 43 percent higher in Pennsylvania than nationally; on the public side, its 21 percent higher...”).

²⁵ See Nat’l Employment Law Project, Occupational Wage Declines Since the Great Recession: Low-Wage Occupations See Largest Real Wage Declines (Sept. 2015), <http://www.nelp.org/content/uploads/Occupational-Wage-Declines-Since-the-Great-Recession.pdf> (“[T]aking into account cost-of-living increases since the recession officially ended in 2009, wages have actually declined for most U.S. workers. Inflation-adjusted or ‘real’ wages reflect workers’ true purchasing power; as real wages decline, so too does the amount of goods and services workers can buy with those wages. The failure of wages to merely keep pace with the cost of living is not a recent phenomenon. The declines in real wages since the Great Recession continue a decades-long trend of wage stagnation for workers in the United States.”).

²⁶ See Christina Simeone & John Hanger, A Case Study of Electricity Competition Results in Pennsylvania (Oct. 28, 2016), <http://kleinmanenergy.upenn.edu/paper/electricity-competition> (“From 2000 to 2014, average annual distribution charges to the residential sector increased at rates exceeding the rate of inflation.”); see also Fisher, Sheehan & Colton, The Home Energy Affordability Gap: Pennsylvania (April 2017), http://www.homeenergyaffordabilitygap.com/03a_affordabilityData.html.

²⁷ NEADA, 2011 National Energy Assistance Survey (Nov. 2011), <http://www.neada.org/news/nov012011.html>; see also Ariel Drehobl & Lauren Ross, ACEEE, Lifting the High Energy Burden in America’s Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities, at 13 (April 2016), <http://aceee.org/research-report/u1602>

High energy burden can cause very real mental and physical health problems for household members due to thermal discomfort, inadequate lighting, unsafe housing conditions, and constant financial and social stress. Individuals who experience high energy burdens may cut back on necessary energy use and inadequately heat, cool, and light their homes, which can result in many negative health consequences.

V. ENERGY AFFORDABILITY

The inability to afford energy in particular has a devastating impact on low income households and far-reaching consequences on the vibrancy of our communities as a whole. The inability to afford energy services – often referred to as energy insecurity – is a multi-dimensional and intersectional problem that impacts the health, safety, and welfare of the household and the broader community.²⁸

Recent social science research has delineated energy insecurity into three distinct dimensions: economic, physical, and behavioral.²⁹ Economic energy insecurity “represents the disproportionate financial burden that high energy costs impose on low-income households,” which is linked to the financial hardships associated with an inability to pay bills such as utility arrearages, frequent terminations and disruption of service, and an inability to move from inefficient homes due to barriers associated with outstanding utility debt.³⁰ Physical energy

...

Researches have also found that high energy burdens affect mental health by creating more stressful environments, increasing social isolation, and negatively impacting educational achievement and emotional resiliency. ... Families that have trouble paying their energy bills may sacrifice nutrition, medicine, and other necessities in order to avoid shutoffs. These effects are especially detrimental to the physical and mental development of children.

...

The troubling reality is that many households resort to high-cost payday lending in order to pay their utility bills, which can further exacerbate the cycle of poverty. A 2012 study found that **paying utility bills was the most common reason why individuals took out a payday loan**. These loans are small, short-term loans with high interests rates that can make repayment difficult and costly. By addressing energy affordability, policymakers can help to break the cycle of poverty and increase economic development, educational achievement, and public health.

Id. (emphasis added).

²⁸ Diana Hernandez, Understanding “Energy Insecurity” and Why It Matters to Health, J. Social Science & Medicine 167, at 1-10 (2016); see also Ariel Dreihobl & Lauren Ross, ACEEE, Lifting the High Energy Burden in America’s Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities, at 13 (April 2016), <http://aceee.org/research-report/u1602>; NAACP, Lights Out In The Cold: Reforming Utility Shut-Off Policies as If Human Rights Matter (March 2017), http://www.naacp.org/wp-content/uploads/2017/04/Lights-Out-in-the-Cold_NAACP-ECJP-4.pdf.

²⁹ Diana Hernandez, Understanding “Energy Insecurity” and Why It Matters to Health, J. Social Science & Medicine 167, at 1-10 (2016).

³⁰ Id. at 4.

insecurity is characterized by “deficiencies in physical infrastructure of the home environment that impact thermal comfort, induce harmful exposures and increase energy costs.”³¹ Behavioral energy insecurity is defined by “strategies used to cope, improvise and counteract the impacts of economic and physical energy insecurity.”³² Taken together, these indicia of energy insecurity harm low-income households in myriad ways through the rise in food insecurity, poor health, dangerous living conditions, and often homelessness.³³ On the other hand, providing households with an affordable bill helps stabilize critical housing costs, improves payments, decreases uncollectible expenses over the long term, and improves the health and wellbeing of the individual household members and of the larger community in which they live and work.

The Pennsylvania General Assembly has explicitly recognized the far-reaching societal benefits of energy affordability in the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-2815 (“Electric Choice Act”), and the Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201-2212 (“Gas Choice Act”), in which it declared that utility service “is essential to the health and well-being of residents, to public safety and to orderly economic development” and “should be available to all customers on reasonable terms and conditions.”³⁴ In furtherance thereof, the Electric and Gas Choice Acts require the Commission

³¹ *Id.* at 6.

³² *Id.*

³³ A 2011 survey of LIHEAP recipients conducted by the National Energy Assistance Directors’ Association (NEADA) revealed that, to pay for energy, 24% went without food, 37% went without medical or dental care, and 34% did not fill or took less than the prescribed dosage of medication. NEADA, 2011 National Energy Assistance Survey (Nov. 2011), available at <http://www.neada.org/news/nov012011.html>. Moreover, research conducted by the University of Colorado found that the inability to pay for home energy is the leading cause of homelessness for families with children.” Colorado Interagency Council on Homelessness et al., Colorado Statewide Homeless Count (2007); see also Child Health Impact Working Group, Unhealthy Consequences: Energy Costs and Child Health: A Child Health Impact Assessment of Energy Costs and the Low Income Home Energy Assistance Program (2006).

³⁴ 66 Pa. C.S. § 2802(9) (Electric Competition Act); 66 Pa. C.S. § 2203 (8)-(9) (Natural Gas Competition Act).

to ensure that electric and natural gas universal service programs are “appropriately funded and available in each [natural gas and electric distribution] service territory.”³⁵

The current portfolio of universal service programs – CAP, LIURP , Hardship Funds, and CARES – are intended to work together to target different component causes of energy insecurity. But unfortunately, as explained throughout these Comments, the programs are not sufficiently designed or implemented in a manner that achieves universal access to affordable utility services across the Commonwealth. While the programs are helpful for a great many Pennsylvanians, the level of assistance has been insufficient to achieve actual affordability for many of those enrolled in the programs. In some cases, the programs have produced the mere appearance of affordability that mitigates hardship for a short period of time, but have perverse unintended consequences, preventing households from receiving other needed assistance and forcing drastic measures – such as bankruptcy – to prevent the loss of critical utility services. Even at their best, the program penetration rates have been too low and have experienced a significant decline over the past several years.³⁶ This decline is not for lack of need. It is instead largely driven by insufficient outreach, complicated and varying utility-specific program enrollment requirements, and punitive rules which serve to deny households the assistance that they need.

This proceeding provides the Commission the ability to make needed changes to the structure, design, and implementation of universal service programs to address unaffordability. The Commission has a statutory mandate to ensure that universal services are “appropriately funded and available in each service territory.”³⁷ To fulfill this mandate, the Commission must

³⁵ 66 Pa. C.S. §§ 2804(9), 2203(8)-(9).

³⁶ See section V.b, CAP Enrollment Chart.

³⁷ 66 Pa. C.S. §§ 2804(9), 2203(8).

first determine the level of assistance necessary to make service “available to all customers on reasonable terms and conditions,” regardless of their socio-economic status. Only after it defines the need can the Commission oversee appropriate program design and funding, and ensure widespread availability of universal services.

a. Establishing an Appropriate Energy Burden

Currently, universal service programs are not providing all consumers with access to service on reasonable terms and conditions, as required in the Choice Acts. While Customer Assistance Programs (CAPs) reduce bills for participating households, the Commission’s CAP policy statement allows for energy burdens as high as 17% for combined heat and electric customers,³⁸ which is much higher than 1-5% average energy burden for non-low income households.³⁹ Many CAPs are inadequately designed to consistently achieve targeted energy burdens for participating households, and often exceed the established maximum. This is true especially for electric-only CAP customers⁴⁰ and CAP customers in deep poverty (below 50% FPIG).⁴¹ As explained above, low income households have very little income to pay for basic living expenses, and regularly go without life’s necessities to pay for utility services. **As such,**

³⁸ 52 Pa. Code § 69.265(2)(A)-(C).

³⁹ Energy burden estimates for non-low income households vary. The Bureau of Consumer Services, in its 2015 Report on Universal Service Programs and Collections Performance, concluded that a typical Pennsylvania household “pays about 2.5% of its income for home energy needs.” PUC, BCS, 2015 Report on Universal Service Programs and Collections Performance, at 35 (2016), http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx.

⁴⁰ PPL, for example, implements a 16% rule, wherein it charges a maximum CAP rate of 16% for all CAP customers – regardless of whether they are a heating or nonheating customer. See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2017-2019, Tentative Order, Docket No. M-2016-2554787, at 14 (April 6, 2017); see also id. at PPL First Supplement 6 & PPL Second Supplement 2.

⁴¹ See Duquesne Universal Service and Energy Conservation Plan for 2018-2020, Tentative Order, Docket No. M-2016-2534323, at 21-29 (March 23, 2017) (“The APPRISE Evaluation reveals that average Duquesne CAP customer at or below 50% of FPIG has an energy burden that is three to four times higher than the recommended threshold.”); PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911 (Nov. 8, 2012) (“Of primary concern is whether PECO’s CAP Rate complies with the energy burdens and affordability provisions outlined in the Commission’s CAP Policy Statement.”).

the Low Income Advocates assert that it is fundamentally unreasonable – and contrary to the legislative mandate – to charge low income households enrolled in an assistance program an energy burden that is more than three times the energy burden of higher income households.

The Low Income Advocates commend the Commission for instituting its parallel exploration of energy affordability across the state. Indeed, any approved program changes to universal service programs should be targeted to achieve a reasonable and consistent state-wide energy burden for all low income customers to ensure that all households are able to access energy services based on reasonable expectations of those customers' ability to afford life-essential utility service.

Achieving real affordability requires targeting the appropriate combined gas and electric energy burden. To that end, the Low Income Advocates strongly recommend that the Commission require a combined gas and electric CAP energy burden of no greater than 6% of household income, which is closer to the average energy burden of middle and high income households and is consistent with the affordability level advanced by experts in the field and adopted by several other states, including our neighbors in New York,⁴² New Jersey,⁴³ and

⁴² Order Adopting Low Income Program Modifications and Directing Utility Filings, NY Pub. Service Comm'n Docket No. 14-M-0565 (May 20, 2016).

⁴³ New Jersey adopted a universal service program which targets affordability at 6%. For customers with separate natural gas and electric service, each utility targets affordability at 3% of income. See I/M/O the Establishment of a Universal Service Fund Pursuant to Section 12 of the Electric Discount and Energy Competition Act of 1999, NJ Pub. Util. Bd., Docket No. EX00020091 (March 20, 2003) (citing NJSA § 48:3-51 (2007)).

Maryland,⁴⁴ as well as Colorado⁴⁵ and Illinois.⁴⁶ Other states – like Ohio – use a slightly higher combined energy burden, though the higher energy burden has proven insufficient to meet the affordability needs of low income households, particularly those in deep poverty.⁴⁷

A 6% energy burden is not arbitrary, but rather has a logical and coherent basis rooted in accepted policy regarding housing and utility affordability. As the New York Public Service Commission found in its recent exploration of the state’s universal service programming:

There is no universal measure of energy affordability; however, a widely accepted principle is that total shelter costs should not exceed 30% of income. For example, this percentage is often used by lenders to determine affordability of mortgage payments. **It is further reasonable to expect that utility costs should not exceed 20% of shelter costs, leading to the conclusion that an affordable energy burden should be at or below 6% of household income (20% x 30% = 6%).** A 6% energy burden is the target energy burden used for affordability programs in several states (e.g., New Jersey and Ohio), and thus appears to be reasonable. **It also corresponds to what US Energy Information Administration data reflects is the upper end of middle and upper income customer household energy burdens (generally in the range of 1 to 5%).** The Commission therefore adopts

⁴⁴ Maryland recently recognized the widely accepted 6% energy burden standard in designing its newly launched holistic Supplemental Targeted Energy Program (STEP). “Based on feedback from Policy Reform Advisory Group stakeholders and industry experts, DHS has determined that an energy burden in excess of 6% of household income is considered unaffordable.” MD Dep’t Human Res. Report on Proposed Program Changes – Office of Home Energy Programs (Dec. 1, 2016), http://dlslibrary.state.md.us/publications/JCR/2016/2016_92.pdf.

⁴⁵ 4 CCR 723-3412(e)(I), -4412(e)(I).

⁴⁶ 305 ILCS 20/18 (c)(2) (Energy Assistance Act).

⁴⁷ Ohio has set a slightly higher energy burden, with a targeted burden of 10% for electric heating customers, and a 6% energy burden for gas customers and electric non-heating customers (or 12% combined energy burden). In re: Commission’s Review of Chapters 4901:1-17 and 4901:1-18, OH Pub. Util. Comm’n, Docket No. 08-723-AU-ORD (Dec. 17, 2008). Noting the insufficiency of these targeted levels at reaching affordability levels – particularly for those in the deepest poverty – a 3% energy burden has been implemented in several Ohio service territories by stipulation. APPRISE, State Report: Ohio, http://www.appriseinc.org/reports/MSS_OH.pdf. Cleveland Electric Illuminating (CEI) and Toledo Edison (TE) charge low-income program customers with incomes below 50% FPIG 3% of their income for electricity. See id., at 9 n.7. The Ohio PUCO lowered its target energy burden to “more closely align[] the energy burden of Ohio’s low income families with that of Ohio’s median income families.” In re: Commission’s Review of Chapters 4901:1-17 and 4901:1-18, OH Pub. Util. Comm’n, Docket No. 08-723-AU-ORD (Apr. 1, 2009). When Ohio implemented its current energy affordability program in 2011 with lower energy burden targets for enrollees, there was an almost immediate increase in the percentage of customers making payments each month. In re: Commission’s Review of Chapters 4901:1-17 and 4901:1-18, OH Pub. Util. Comm’n Docket No. 08-723-AU-ORD (Feb. 8, 2013).

a policy that an energy burden at or below 6% of household income shall be the target level for all low income customers.⁴⁸

There is inherent logic in New York's calculation of an affordable energy burden, targeting energy affordability as a component percentage of overall shelter costs.

The Low Income Advocates urge the Commission to adopt the same rationale in establishing a reasonable energy burden for Pennsylvania's low income utility customers, in recognition of the fact that utility costs should be limited to a reasonable percentage of a low income household's shelter costs. Doing so would help struggling households to afford critical housing costs and promote long-term financial stability, thereby protecting the health and wellbeing of the community as a whole.

As the Commission proceeds with its broad consideration of universal service issues, the Low Income Advocates assert that the Commission must first determine a reasonable energy burden, and recommends that the Commission adopt a 6% combined energy burden to ensure that energy services are truly economically available to all customers.

b. Addressing Threats to Affordability

In addition to establishing an acceptable energy burden, it is also critical that the Commission recognize and account for ongoing threats to affordability in designing and implementing an appropriate policy response. If unaddressed, these threats will continue to undermine efforts to achieve an affordable energy burden target, and will erode successes made through the adoption of an affordable energy burden. Eliminating current threats to unaffordability will ensure that universal service programs are appropriately targeted to

⁴⁸ Order Adopting Low Income Program Modifications and Directing Utility Filings, NY Pub. Service Comm'n Docket No. 14-M-0565 (May 20, 2016).

safeguard against the imposition of unreasonable terms and conditions of service for households with very little income.

As a general proposition, rising energy costs are a persistent threat to energy affordability. As noted above, the cost of energy continues to climb at rates which exceed the rate of inflation.⁴⁹ Closer attention must be paid to ensure that universal service programming keeps pace with increased need for assistance as a result of higher utility costs.

In addition to the threats imposed by rising costs, energy affordability is also threatened by the ineffective design and inadequate reach of current universal service programs. As explained throughout these comments, the currently available universal service and energy conservation programs are insufficient to address the scope of unaffordability and the widespread need for assistance across the state. Indeed, only a fraction of the eligible population is enrolled in a universal service program. As of December 31, 2015, an average of 46% of confirmed low income electric customers and 35% of confirmed low income natural gas customers were enrolled in CAP.⁵⁰ But these averages do not paint an accurate picture, as the definition of and the process used to identify “confirmed low income customers” varies widely between utilities. For example, some utilities only count customers in the confirmed low income customer count when they have provided verified income documentation within the last 12 months.⁵¹ But a household generally only verifies income when they are participating in a universal service

⁴⁹ Christina Simeone & John Hanger, A Case Study of Electricity Competition Results in Pennsylvania (Oct. 28, 2016), <http://kleinmanenergy.upenn.edu/paper/electricity-competition>.

⁵⁰ PUC, BCS, 2015 Report on Universal Service & Collections Performance, at 42 (2016), http://www.puc.pa.gov/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2015.pdf

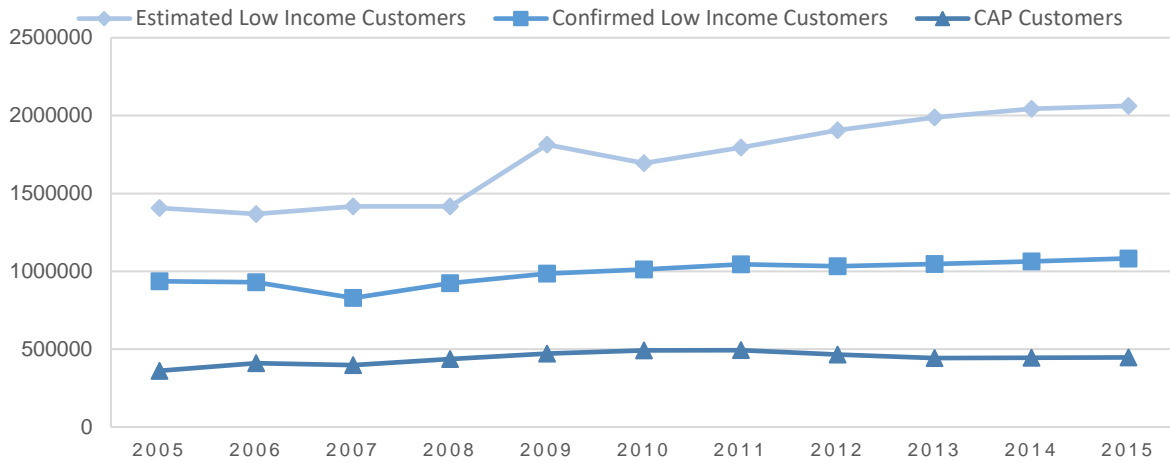
⁵¹ See Pa. PUC v. UGI Penn Natural Gas, Inc., Surrebuttal Testimony of Mitchell Miller on Behalf of CAUSE-PA, Docket No. R-2016-2580030, at 10 (May 26, 2017) (“UGI retains the confirmed low income customer designation for only a relatively short period of time (i.e. while a customer is actively enrolled in CAP, or has received grant assistance or LIURP services within the last 12 months), and has ceased its practice of including self-reported low income customers in its low income customer count.”) (internal citations omitted).

program. Indeed, rules like this which artificially constrain the confirmed low income customer count create an endlessly circular result, as program need is then assessed for each subsequent year based only on the population that actually enrolls in an assistance program in the previous year. The Low Income Advocates therefore urge the Commission to ensure that, in the context of assessing need and potentially CAP-eligible households, utilities include all customers who have identified themselves as low income, and to prohibit utilities from removing a confirmed low income designation after an arbitrary period of time, without confirming with the customer whether their income has changed.

As a result of the current practice that significantly under-counts eligible populations, utilities actual CAP participation rates are significantly lower than the rates noted above.⁵² The CAP Enrollment Chart below shows that CAP enrollment lags far behind the confirmed low income population and even farther behind the estimated low income population. Indeed, the gap between the number of estimated low income customers and confirmed low income customers – and those who are actually enrolled in CAP – grows wider each year while program enrollment remains relatively stable and, in fact, may be in decline.

⁵² See PUC, BCS, 2015 Report on Universal Service & Collections Performance, at 41-41 (2016), http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx (“The CAP participation rate would be much lower if the rate reflected estimated rather than confirmed low income customers, as estimated numbers are much higher.”).

CAP ENROLLMENT CHART



2005 Report on Universal Service Programs & Collections Performance at 7-8, 41; 2006 Report on Universal Service Programs & Collections Performance at 6-8, 38; 2007 Report on Universal Service Programs & Collections Performance at 7-8, 37-38; 2008 Report on Universal Service Programs & Collections Performance at 7-8, 37; 2009 Report on Universal Service Programs & Collections Performance at 9-10, 39; 2010 Report on Universal Service Programs & Collections Performance at 9-10, 39-40; 2011 Report on Universal Service Programs & Collections Performance at 9-10, 40; 2012 Report on Universal Service Programs & Collections Performance at 7-8, 35; 2013 Report on Universal Service Programs & Collections Performance at 7-8, 37; 2014 Report on Universal Service Programs & Collections Performance at 7-8, 42; 2015 Report on Universal Service Programs & Collections Performance at 7-8, 42.

Reports available at http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx.

Even low income households that actively participate in CAP often receive an unaffordable bill as a result of program designs which do not adequately or consistently produce bill affordability for those enrolled.⁵³ The unaffordability of CAP bills is particularly consequential, given households enrolled in CAP are not eligible for a Commission-issued

⁵³ See Duquesne Universal Service and Energy Conservation Plan for 2018-2020, Tentative Order, Docket No. M-2016-2534323, at 21-29 (March 23, 2017) (“The APPRISE Evaluation reveals that average Duquesne CAP customer at or below 50% of FPIG has an energy burden that is three to four times higher than the recommended threshold.”); PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911 (Nov. 8, 2012) (“Of primary concern is whether PECO’s CAP Rate complies with the energy burdens and affordability provisions outlined in the Commission’s CAP Policy Statement.”); See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2017-2019, Tentative Order, Docket No. M-2016-2554787, at 14 (April 6, 2017); see also id. at PPL First Supplement 6 & PPL Second Supplement 2.

payment agreement if they fall behind while enrolled in the program.⁵⁴ The Low Income Advocates offer detailed recommendations in sections VI through IX below to redesign universal service program delivery to better address far ranging unaffordability.

There are also several currently sanctioned universal service design elements that further contribute to energy unaffordability. Many programs, for example, impose a maximum CAP credit limit,⁵⁵ which cuts households off from CAP assistance when the household reaches a pre-determined threshold without due consideration to the facts and circumstances of the household *prior to terminating CAP assistance*.⁵⁶ Other programs layer on added costs, which force CAP rates above the Commission's already-high energy burden thresholds. For example, several companies impose a "CAP Plus" amount to each CAP bill, based on the total LIHEAP dollars collected from CAP customers in the previous year,⁵⁷ while other companies impose a monthly

⁵⁴ 66 Pa. C.S. § 1405(c) ("Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.").

⁵⁵ As used here, the term CAP credit is the difference between the CAP-bill paid by the CAP customer and a bill that the same customer would have paid if they were not enrolled in CAP. That difference is the CAP credit.

⁵⁶ 52 Pa. Code § 69.265(3)(v). While some programs have adopted exemptions to the maximum credit limit, many have not. See, e.g. PECO USECP at 31-32; Met Ed USECP at 11; Penelec USECP at 11; Penn Power USECP at 11; and West Penn Power USECP at 11. Those utilities which do recognize the exemptions in their USECP do not implement the exemptions in a manner that allows households in need to exercise the exemptions when applicable. See generally PPL Electric Utilities Corporation, Universal Service and Energy Conservation Plan for 2014-2016, Docket No. M-2013-2367021, at 11 (Sept. 30, 2014), <http://www.puc.state.pa.us/pcdocs/1318186.pdf>.

⁵⁷ See, e.g., PPL Electric Utilities Corporation, Universal Service and Energy Conservation Plan for 2014-2016, Docket No. M-2013-2367021, at 6 (Sept. 30, 2014), <http://www.puc.state.pa.us/pcdocs/1318186.pdf>.

The 2011-2012 CAP Plus amount was \$8 and the 2012-2013 CAP Plus amount is \$5. CAP Plus stems from the Company's 2010 distribution rate case settlement (Docket No. R-2010-2161694). The purpose of CAP Plus is to help offset the program expenses for all residential customers who pay for OnTrack through the reconcilable Universal Service Rider. The Company determines the CAP Plus amount by taking the total amount of LIHEAP funding received by OnTrack participants, dividing that dollar amount by the number of active OnTrack accounts as of September 30, and then dividing that annual amount by 12 months. The CAP Plus payment amount is applicable to all OnTrack participants and may change annually depending on the level of federal funding available for LIHEAP. PPL will include the CAP Plus payment amount in the formulas for the various OnTrack payment options. OnTrack customers who have a credit balance due to a LIHEAP grant are exempt from the CAP Plus charge until they have exhausted their credit balance.

Id.; see also Columbia Gas of Pennsylvania, Inc., Revised 2015-2018 Universal Service and Energy Conservation Plan, Docket No. M-2014-2424462, at 18 (Aug. 12, 2015), <http://www.puc.state.pa.us/pcdocs/1376694.pdf>.

Every CAP customer will be assessed a flat monthly fee in addition to the payment plan options identified above. The 'plus' amount is determined by dividing the total LIHEAP cash dollars received on CAP accounts

arrears co-pay amount in addition to the customer's monthly CAP rate.⁵⁸ These costs are “on the top” of the existing affordability determinations, and both distort and undermine the goals of the program.

Certain LIURP design features are similarly problematic, and often exclude households which are in dire need of assistance to control their energy costs. Usage thresholds, for example, do not account for usage on a square foot basis. As a result, low income households in small homes – such as manufactured housing or apartments – are most often unable to access usage reduction services that could help control avoidable energy costs.

The foregoing is not an exhaustive list of the current program design elements that undercut the goal of energy affordability for low-income households. Given time and resource constraints, and the already expansive reach of these comments, the Low Income Advocates do not endeavor to fully address these consequential and nuanced programmatic details at this time. However, these issues are nonetheless critically important to consider in more depth through future processes to be developed from this docket, before arriving at a proposed course of action. As such, the Low Income Advocates recommend that the Commission seek further comment or stakeholder processes to allow more targeted and detailed comments regarding specific universal

in the prior heating season by the number of current CAP customers. The monthly plus amount will be 1/12 of the final total. This amount will be calculated yearly beginning with October billing cycle.

Id.

⁵⁸ See, e.g., Columbia Gas of Pennsylvania, Inc., Revised 2015-2018 Universal Service and Energy Conservation Plan, Docket No. M-2014-2424462, at 18 (Aug. 12, 2015), <http://www.puc.state.pa.us/pcdocs/1376694.pdf> (“The CAP customer will be required to pay a five-dollar co-payment towards pre-program arrears until the arrears are eliminated.”); Philadelphia Gas Works, Universal Service and Energy Conservation Plan, Docket No. M-2013-2366301, at 10 (Sept. 22, 2014), <http://www.puc.state.pa.us/pcdocs/1316015.pdf> (“In addition to the forgiveness offered, the customer is required to pay \$5/month toward the reduction of any frozen arrears.”).

service program design flaws which contribute to widespread unaffordability and undermine the broad goals of the universal service programs.

In addition to program design issues which contribute to unaffordability, the competitive market has also presented significant threats to affordability in recent years. The Commission is well aware that the competitive market has not produced widespread cost savings for residential shopping customers.⁵⁹ The impact of higher costs through the competitive market – coupled with aggressive and often misleading marketing tactics – has greatly harmed low income consumers in particular, who lack the financial stability to absorb the shock of variable or unpredictable rates and hidden fees.⁶⁰ The stark impact of competitive shopping on the affordability of energy for low income consumers can be seen by looking at the shopping data for electric utility CAP customers. CAP customers are currently able to shop in the PPL and First Energy service territories.⁶¹ In each of these service territories, CAP shopping customers have been charged significantly higher rates than the price to compare. In First Energy’s service territory, the higher costs have translated to higher monthly bills for CAP customers. In PPL’s service territory, the higher costs have caused CAP customers to prematurely reach their maximum credit limit, forcing them to pay full tariff rate bills until the end of the program year.

⁵⁹ Christina Simeone & John Hanger, *A Case Study of Electricity Competition Results in Pennsylvania* (Oct. 28, 2016), <http://kleinmanenergy.upenn.edu/paper/electricity-competition> (“During full implementation of restructuring (from 2011 to 2014), statewide average annual retail electricity rates to residential shopping customers were higher than utility default service rates.”).

⁶⁰ See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021, at Docket No. P-2016-2526627 at 54 (Order Issued Oct. 16, 2016)

The data provided by PPL in this proceeding demonstrated the economic harm experienced as the result of unrestricted CAP customer shopping decisions. The identified economic harm affects the ability of CAP customers to remain on CAP, as higher costs result in a quicker erosion of the CAP customers’ limited allocation of CAP credits and also affects non-CAP customers by increasing the subsidy they incur to support the universal service objectives within the Competition Act.

Id.

⁶¹ Metropolitan Edison Company, Pennsylvania Power, West Penn Power, and Pennsylvania Electric Company

In addition to directly increasing costs to vulnerable CAP customers, CAP shopping has also unnecessarily inflated the cost of the First Energy and PPL CAP programs by millions of dollars each year.⁶²

Again, given the constraints of this already far-ranging inquiry, the Low Income Advocates do not endeavor to address CAP shopping fully in these comments. However, competitive electric and natural gas issues pose a serious and severe threat to affordability, and must be squarely addressed to protect vulnerable low income customers enrolled in CAP – as well as those who pay for the programs – from unreasonable and unaffordable costs. The Low Income Advocates submit that exposing financially vulnerable households to the risk of higher electric and gas prices produces no net benefit for these customers or the universal service programs themselves. It is an increased cost without increased benefit, is wasteful, and is anathema to the purpose of universal services. The Commission should explore appropriate price protections for CAP shopping customers on a state-wide basis – either through *en banc* hearings, stakeholder workgroups, or an additional comment period – that will ensure CAP customers across the state pay no more than the utility default service price.

VI. INDIVIDUAL UNIVERSAL SERVICE PROGRAM DESIGN ISSUES

This section addresses broad and systemic issues with the design and implementation of the four primary universal service programs: the Customer Assistance Program (CAP), the Low Income Usage Reduction Program (LIURP), the Customer Assistance and Referral Evaluation Services Program (CARES), and the Hardship Fund. It summarizes certain design

⁶² In the case of PPL, the data demonstrates that CAP costs have been increased on net by more than \$2.7 million per year. *See* Final Order, Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021 at Docket No. P-2016-2526627 at 27 (Order Issued Oct. 16, 2016). Although not currently publically available, the increase in CAP costs for the First Energy Companies as a result of CAP shopping is even more significant than in the PPL service territory.

recommendations for universal service program delivery to the customer that can be implemented under the current utility-specific model of universal service. However, as explained more fully in section VIII, the Low Income Advocates submit that the most efficient manner to effectuate the delivery of universal service program benefits to customers is through centralized, state-wide universal service administration. Indeed, consolidated statewide program delivery is within the authority of the PUC pursuant to the Electric and Gas Choice Acts, and should be adopted.

The comments in this section should not be considered exhaustive of the many and varied universal service design and implementation issues existing under the current decentralized, utility-specific universal service model in Pennsylvania, some of which were mentioned above in section V.b, Addressing Threats to Affordability. There are many details that should be considered when designing an appropriate and holistic resolution to broad and systemic issues, regardless of the approach the Commission ultimately determines to embrace. The Low Income Advocates encourage the Commission to continue its inquiry beyond this initial investigation to explore potential solutions offered herein (and by other stakeholders) in further detail, and to ultimately adopt and implement policy reforms that are carefully calibrated and sufficiently detailed to resolve persistent and deep-rooted utility unaffordability across the state.

a. Customer Assistance Program (CAP)

Setting an affordable energy burden is a critical first step toward achieving widespread energy affordability for low income consumers. Above, the Low Income Advocates argued for a 6% combined energy burden target, noting that the details of the Commission's affordability study are forthcoming. Once an appropriate energy burden is established, affordability programs must be designed, funded, and administered to achieve the targeted energy burden for all

consumers. In addition, the Commission must avoid imposing program rules which might work at a cross purpose to achieving heightened levels of affordability.⁶³

CAP serves as the primary program within the universal service program portfolio designed to address energy affordability. While LIURP, CARES, and Hardship Fund programs each play an important role in supporting lasting affordability and economic stability, these programs are secondary to CAP in providing baseline affordability to Pennsylvania's low income population. Close attention must be paid to ensure that the benefits provided through CAP are sufficient to produce an affordable bill. In turn, the complementary universal service programs must be thoughtfully coordinated to leverage efficiencies and deliver holistic energy assistance services to low income families.

i. CAP Benefit Structure

As explained above, current CAP designs often fail to produce an affordable bill – particularly for electric-only customers and households at the deepest levels of poverty. The success of a CAP in achieving the mandate set forth in the Choice Act (to ensure that all consumers can access service based on reasonable terms and conditions) largely hinges on whether available assistance programs are appropriately designed to deliver adequate benefits to all those in need. The Low Income Advocates strongly urge the Commission to adopt a uniform Percentage of Income Program (PIP), targeting a 6% combined energy burden, and to adjust the arrearage forgiveness component of CAP to better address the realities that low income customers face.

⁶³ See section V.b, Addressing Threats to Energy Affordability, for an overview of several nuanced program rules which currently serve to undermine affordability goals. A detailed examination of each of these rules is beyond the scope of these comments, but the Low Income Advocates nevertheless urge the Commission to continue its investigation to more fully understand the ways in which nuanced program rules undermine broad efforts to achieve affordability for low income customers.

1. Payment Plan Design

Currently, the Commission’s CAP Policy Statement authorizes multiple variations of CAP payment design – including percentage of income, percentage of bill, and rate discounts.⁶⁴ As such, CAP payment designs vary widely across utility service territories, with each offering different payment terms to low income households. The payment design of some CAPs has become so complex that it can confuse even the most seasoned energy policy experts, with some utilities layering in multiple and sometimes conflicting components of various payment designs. Over time, percentage of bill and rate discount structures have failed to produce consistently affordable bills for low income households – particularly for those in deepest poverty and those who rely on separate utilities for electric and heating services.⁶⁵

The Low Income Advocates strongly support implementation of a Percentage of Income Program (PIP), targeted to achieve a combined energy burden that is no greater than 6% of household income. Indeed, the only effective way to guarantee affordability is to ensure that CAP customers pay no more than a set percentage of their income each month. The rationale for establishing a 6% combined energy burden is discussed at length above in section V.

To reach a 6% combined energy burden, the Low Income Advocates recommend that electric heating customers and dual gas/electric customers be assessed a 6% energy burden. To appropriately account for households with multiple energy providers, non-heating electric and

⁶⁴ 52 Pa. Code § 69.265(2).

⁶⁵ See Duquesne Universal Service and Energy Conservation Plan for 2018-2020, Tentative Order, Docket No. M-2016-2534323, at 21-29 (March 23, 2017) (“The APPRISE Evaluation reveals that average Duquesne CAP customer at or below 50% of FPIG has an energy burden that is three to four times higher than the recommended threshold.”); PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911 (Nov. 8, 2012) (“Of primary concern is whether PECO’s CAP Rate complies with the energy burdens and affordability provisions outlined in the Commission’s CAP Policy Statement.”).

gas customers should be assessed a 2% energy burden, and gas heating customers should be assessed a 4% energy burden. This approach is similar to the New Jersey, Colorado, and Ohio⁶⁶ approaches, mentioned above, which assess a 2 or 3% energy burden for each utility when heating and electric services are provided by different utilities.⁶⁷

To be clear, 6% should be viewed as the *maximum* energy burden and, as a safeguard for consumers that have an average monthly bill less than their energy burden, CAPs should offer an average bill payment option to be applied in months when the percentage of income bill is higher than the customer's average bill. Some utilities are already employing this approach, albeit with a higher energy burden target.⁶⁸ The average bill option should not be confused with budget billing, wherein a consumer may end up with a balance when the periodic "true up" occurs. Charging a traditional budget bill for CAP customers would undermine the intent and purpose of providing an affordable monthly bill by adding a potentially unaffordable lump sum charge when the budget bill is recalculated for the next year.⁶⁹

⁶⁶ In Ohio, the combined energy burden was lowered by stipulation in certain jurisdictions with heightened concentrations of poverty. See APPRISE, State Report: Ohio, at 9, n.7, available at http://www.appriseinc.org/reports/MSS_OH.pdf.

⁶⁷ I/M/O the Establishment of a Universal Service Fund Pursuant to Section 12 of the Electric Discount and Energy Competition Act of 1999, NJ Pub. Util. Bd., Docket No. EX00020091 (March 20, 2003) (citing NJSA § 48:3-51); 4 CCR 723-3412(e)(I), -4412(e)(I).

⁶⁸ See Peoples Natural Gas Co., LLC, Universal Service and Energy Conservation Plan 2015-2018, Docket No. M-2014-2432515, at 9-10 (amended Jan. 12, 2016), http://www.puc.state.pa.us/general/pdf/USP_Plan-Peoples.pdf; see also Columbia Gas of Pennsylvania, Inc., Revised 2015-2018 Universal Service and Energy Conservation Plan, Docket No. M-2014-2424462, at 17-18 (Aug. 12, 2015), <http://www.puc.state.pa.us/pdocs/1376694.pdf> (As explained above, in section V.b, additional costs in Columbia Gas service territory – including a CAP Plus charge and a monthly \$5 co-pay – have also worked to undermine the affordability of Columbia's PIP).

⁶⁹ This issue arose recently in First Energy's service territory, which layered traditional budget billing onto its CAP in its most recently approved triennial Universal Service and Energy Conservation Plan. West Penn Power, Metropolitan Edison Co., Pennsylvania Electric Co., & Pennsylvania Power Co. Universal Service and Energy Conservation Plans for 2015-2018, Final Order, Docket Nos. M-2014-2407728, -2407729, -2407730, -2407731, at 20-23 (May 19, 2015). First Energy's incorporation of budget billing was intended to resolve the financial burden created by the amortization of under-billing as a result of estimated billing. Id. Ironically, this is the exact problem now caused by budget billing: Under-billing over the year is resulting in high lump-sum charges for consumers at the end of the year, the amortization of which is negatively impacting CAP affordability. Counsel for CAUSE-PA assisted at least one consumer to make arrangements for payment of several hundred dollars which came due at the

Implementing a percentage of income program targeted at maximum 6% combined energy burden, coupled with the average bill methodology described above, would ensure that households receive a consistently affordable monthly bill which is precisely targeted to achieve the target energy burden. In comparison, credit and bill discount programs simply cannot achieve the same targeted affordability level, as those methodologies categorize low income customers into larger income pools, which fail to account for a household's actual income. For example, in a standard tiered discount or credit program, a household at 70% FPIG would be given the same discount as a household at 100% FPIG. Under this approach, households at the lowest ends of each income tier are often assessed an unaffordable monthly bill amount, and quickly fall behind – undermining the goals of CAP. On the other hand, households at the highest levels of each income tier often receive excess credits or discounts which are not necessary to achieve the household's target energy burden. Because a percentage of income plan targets individualized affordability, there is no over-subsidy – thereby preserving resources to be spent toward achieving affordability for lower income households.

2. Arrearage Forgiveness

Arrearage management is a critical benefit of CAP, and should remain a component of assistance available to low income consumers. That said, changes to current arrearage forgiveness program design are necessary to align arrearage forgiveness policies and procedures with the reality faced by many low income consumers.

To explain, many current arrearage forgiveness program policies do not account for existing policies that remove individuals from CAP or otherwise act as a barrier to reentry into

end of First Energy's CAP budget billing true-up. The full extent of the fallout from First Energy's implementation of traditional budget billing into its CAP is not yet known, as data has not been shared with stakeholders.

the program. For example, many customers are removed from CAP because they miss the deadline for recertification, expire their maximum CAP benefits, or are unable to make two CAP payments.⁷⁰ Once removed from CAP, low income households often quickly amass a new set of undiscounted, non-CAP arrears, which are not typically eligible for deferment by reentry into the program. In addition to receiving unaffordable, undiscounted bills, households removed from CAP with remaining unforgiven arrearages are billed for those arrears all at once – and often cannot get a payment arrangement.⁷¹ Unable to pay the undiscounted bill – in addition to remaining unforgiven arrears – these households are placed on the utility collection path, which often leads directly to termination. Once terminated, these households most often are unable to reconnect service until the full, unaffordable tariff rate bills issued after program removal are paid in full.⁷² This is a vicious cycle that perpetuates poverty and crises for vulnerable households.

The CAP Policy Statement briefly addresses CAP termination, though it lacks clarity and conflicts with actual practice, leading to inconsistent CAP termination practices across the state, and often inordinately high up-front restoration costs for vulnerable households:

Failure to make payments will result in the utility returning the participant to the regular collection cycle and may lead to termination of service. By returning the customer to the regular collection cycle, the utility does not need to enter into a new payment arrangement but may begin the termination process. At a minimum, the utility should inform the participant of the consequences of defaulting from CAP. **To avoid termination of service, the CAP participant must pay the amount set forth in the termination notice prior to the scheduled termination date. This amount should generally be no more than two CAP bills.**⁷³

⁷⁰ See section V.b, Addressing Threats to Affordability.

⁷¹ See 66 Pa. C.S. § 1405.

⁷² See section VI.a.ii. below, which explains that most utilities exclude customers and applicants that do not have an active utility account from receiving CAP assistance.

⁷³ 52 Pa. Code § 69.265(7)(i).

In the Low Income Advocates’ experience, the amount for restoration is – in practice – *rarely* “no more than two CAP bills,” as contemplated by the Policy Statement. Once placed in the “regular collection cycle,” previously deferred arrears – plus any in-CAP arrears – are placed back on the customer’s bill, and then later appear on the customer’s quoted restoration amount presented on their termination notice. Depending on the timing and whether the household can obtain grant funds, borrow funds to make partial payments, or obtain medical certificates, the customer may not enter termination for several months. In such circumstances, the low-income customer continues to incur additional, unaffordable full-tariff rate bills.⁷⁴

The Low Income Advocates strongly recommend that the Commission investigate the termination procedure for CAP customers more thoroughly to identify areas for improvement to ensure that households who fall behind on their CAP payments do not incur further insurmountable debt. That investigation should include, but not be limited to, the restoration amounts quoted for CAP customers after their service is terminated, the notice of termination provided to CAP customers, and utility-specific CAP participation and related termination data. In addition, we urge the Commission to allow for the deferment of *all* full tariff arrears accrued by a CAP customer, regardless of whether the arrears were accrued before or after initial CAP enrollment. The potential added cost of this measure will be short lived if comprehensive changes in policy and program benefit design and delivery make CAP bills more universally accessible and affordable to all low income households, as the General Assembly clearly intended.

⁷⁴ Importantly, the use of these protections to postpone termination after CAP removal is not the “fault” of the consumer – who is acting as any rational person would to avoid loss of critical energy services. It is a systemic failure to adequately address unaffordability.

In addition to these prospective recommendations, the Low Income Advocates recommend that the Commission examine possible forgiveness models for arrears accrued under previously unaffordable CAP designs. As explained at length above, CAPs regularly fall short of producing true affordability.⁷⁵ As a result, households fall behind when enrolled in CAP, and often incur additional utility debt that is not eligible for deferment through the arrearage forgiveness program or for a utility or Commission-issued payment arrangement.⁷⁶ For these customers, bankruptcy often becomes the only viable means to continue or restore service lost due to unaffordable bills.

Adopting a PIP designed to deliver truly affordable bills for all low income customers will significantly reduce arrears of low income consumers as a whole over the long term.⁷⁷ Indeed, between 94 to 97% of low income participants in New Jersey's Universal Service Fund program who received a bill within the target affordability range (3% for natural gas and 3% for electric) had a bill payment coverage of over 90%, and between 83 and 92% of participants with an affordable bill had a bill payment coverage of 100%.⁷⁸ But to achieve these benefits, CAP must be made available to all low income households, and its design and implementation must be structured to produce truly affordable bills. If the Commission determines to move forward with a CAP redesign, as we urge it to do, it must also squarely address existing debt accrued under the current unaffordable paradigm. In other words, as we hopefully transition to greater affordability for low income households, the Commission should start with a clean slate, and should allow all

⁷⁵ See section V above.

⁷⁶ See 66 Pa. C.S. § 1405.

⁷⁷ See Roger Colton, *Water Bill Affordability for the City of Philadelphia* (April 9, 2015), <http://www.povertylaw.org/files/docs/Colton%20City%20Council%20comments--April%208%202015--Final.pdf>.

⁷⁸ *Id.*

prior arrears accrued under an old model – including both in-CAP and out-of-CAP arrears – to be deferred for forgiveness through the new, affordable model.

ii. CAP Eligibility

As explained above, CAP enrollment lags far behind need.⁷⁹ More must be done to ensure that all low income households are able to apply for and enroll in CAP. The Low Income Advocates offer the following recommendations to ensure that CAP eligibility criteria does not inappropriately exclude those in dire need of affordability assistance.

1. Allow All Low-Income Customers to Enroll in CAP

The Low Income Advocates assert that CAP should be available for all income-qualified consumers, from the time they seek to establish service. As explained above, low income households – by definition – do not have enough income to make ends meet. As a result, low income households either go without critical needs, such as nutritious food and prescription medication to keep up with their utility bills, or they quickly fall behind. CAP should be viewed as a prevention program, designed to ensure affordability from the time the household establishes service, rather than a remedy after a period of crushing unaffordability.

As it stands, CAP is only available to utility customers who are “payment troubled.”⁸⁰ This criteria raises two primary issues. First, some utilities interpret this to require that low income household fall into arrears before providing needed assistance. In other words, it encourages the accumulation of debt, and discourages low income households from taking preventative steps to ensure that they can reasonably maintain electric and natural gas service at

⁷⁹ See section V.b., CAP Enrollment Chart.

⁸⁰ 52 Pa. Code § 69.265(4).

an affordable rate. Second, CAP is not generally available to applicants for service, including former customers that reverted to applicant status 30 days after termination.⁸¹ Limiting CAP to current customers – to the exclusion of applicants for service – creates uniquely harmful barriers for vulnerable low income households seeking to establish critical utility services, as these households often experience frequent moves and extended periods of service loss.

Allowing all low income households to apply for CAP and receive an affordable bill from the outset of their relationship with their utility would act as a prevention mechanism, leading to prolonged economic stability for the household and decreased uncollectible expenses over the long term. In turn, it would improve the health and safety of the family and greater community by eliminating the need to rely on inefficient, ineffective, and dangerous alternatives for cooking and home heating needs.

2. Adopt Flexible and Consistent Income Documentation Standards

Currently, the manner and method in which a utility calculates income for the purposes of CAP enrollment varies widely between utilities. Indeed, many programs do not even disclose in their USECPs what income is included in the calculation and/or what documentation is requested from CAP applicants. The lack of clear guidelines for income documentation is particularly problematic for low income populations, which often work “odd jobs”, receive inconsistent support from family or friends, or otherwise earn income through non-traditional employment. The lack of clarity, transparency, and consistency in acceptable income documentation

⁸¹ The CAP Policy Statement does – on its face – provide that eligibility extend to a “utility ratepayer or new applicant for service.” However, utilities have most often categorically excluded applicants for service from eligibility. See, e.g., Universal Service and Energy Conservation Plans for Years 2015-2018 for Met. Ed., Penelec, Penn Power, and West Penn Power, at 9 (Revised June 20, 2017), http://www.puc.state.pa.us/consumer_info/electricity/energy_assistance_programs.aspx (requiring CAP applicants to have a “residential account with an active account status” to be eligible for CAP).

discourages households in need of assistance from applying for CAP, thereby exacerbating the household's payment troubles and adding to the problem of uncollectible expenses and rising disconnection rates.

The Low Income Advocates recommend that the Commission set forth flexible yet consistent and transparent regulatory guidelines for income documentation that account for varied and non-traditional sources of income. Given the constraints of this comment period, the Low Income Advocates recommend that income documentation issues – along with several other issues identified throughout these comments – be referred to a work group of Commission staff and interested stakeholders, which could explore the issue more thoroughly and develop recommendations to the Commission in furtherance of a consistent and fair policy for the Commission's adoption.

3. Establish Fair and Consistent Guidelines for Income Calculation

In addition to the lack of clear income documentation requirements, utilities' current income calculation methods are inconsistent and lack fundamental fairness between sources of income. In particular, CAP applicants with employment income are not placed on equal footing with applicants whose income is from Social Security, disability, unemployment compensation, or other assistance-based income. This disparity is rooted in the fact that the calculation of employment income is typically based on the household's gross income, without accounting for the tax and other obligations of working households that are deducted from each paycheck. For example, a household of 2 that relies on a monthly Social Security check of \$2,030 would fall at exactly 150% of the Federal Poverty Income Guidelines, and would be eligible for CAP. However, a household of 2 that receives a paycheck (i.e., net income) for \$2,030 for work performed would not be eligible for CAP because their higher gross income, including tax

withholdings and other deductions, is above 150% FPIG. Both households have the same monthly spending power, yet one is eligible for CAP and the other is not. While the Low Income Advocates in no way suggest that those with employment income should be given any advantage over non-working families, we nonetheless assert that all low income households should be assessed for eligibility in CAP based on something closer to actual expendable income – not gross pre-tax income.

Many state and federal assistance programs account for discrepancies between employment and assistance income by applying a standard earned income disregard, whereby a fixed percentage is deducted from employment income when calculating household income for the purposes of program enrollment. For example, applicants for Temporary Assistance to Needy Families (TANF) are provided a 50% disregard from gross earned income.⁸² Not only does this attempt to set low income families on equal footing, it also ensures that households are not unfairly penalized for working.

The Low Income Advocates recommend adoption of a standard earned income disregard of 20% of income which would help place working families on level footing, and would better ensure that needy families are able to access the relief they need to meet their monthly expenses. Similarly, the Low Income Advocates recommend that households with fixed income sources – such as Social Security – be permitted to deduct from income their mandatory Medicare premiums that are deducted from benefits.

⁸² 55 Pa. Code § 183.94.

4. Allow Individuals with Zero Income to Enroll in CAP

Currently, utility CAPs vary in their acceptance of and verification processes for households with zero income. But excluding households that do not have income at the time they apply for assistance is contrary to the purpose of CAP, and excludes households when they are most in need. Households in crisis – such as recently unemployed households, households facing a medical emergency, or those experiencing domestic violence or the loss of a family member – often go through periods without income as they navigate the hardship before them. As it currently stands, these extraordinarily vulnerable households are sometimes excluded from receiving energy assistance through CAP, placing the household at risk of further hardship and financial instability. Indeed, excluding this population from receiving assistance simply because they have no income is the very definition of kicking someone when they are down. By providing energy assistance when clients are most vulnerable, CAP programs will help stabilize the lives of individuals and families in need and thus enable them to stabilize their finances.

The Low Income Advocates urge the Commission to require that all CAPs allow customers with zero income to enroll in the program to receive critical energy assistance. The verification process should not be overly burdensome, and utilities should be required to adopt flexible standards for verification of zero income status. In doing so, the Low Income Advocates recognize that there may be a need for more frequent income recertification for zero income households to verify whether the household's circumstances have improved, and recommend that households with zero income be required to recertify every 6 months to capture any change in circumstance that may occur. This approach is consistent with several existing CAPs,⁸³ and

⁸³ See, e.g., UGI Gas, UGI PNG, UGI CPG, UGI Electric, Revised Universal Service and Energy Conservation Plan for January 1, 2014 through December 31, 2017, Docket No. M-2013-2371824, at 20 and Appendix F (Feb. 17,

strikes an appropriate balance between the added burden of frequent recertification and the need to verify the household's circumstances.

iii. CAP Coordination

As set forth in section VIII below, we believe the most effective way to ensure the delivery of universally available and cost-efficient universal service and energy conservation programming is through a consolidated statewide delivery model. For universal service programs to be delivered in a coordinated manner, these programs should be co-administered at the State level, as part of the suite of programs which work in tandem to help low income families maintain home energy services.

Alternatively, if the Commission maintains the current, utility-by-utility approach to universal services program delivery, it must require the utility to coordinate programs within the utility, across overlapping service territories, and with other state and federal programs. As explained in the paragraphs that follow, this necessary coordination requires several changes under the current, utility-by-utility approach to universal service program delivery.

First, utilities should be required to enhance efforts to coordinate enrollment in universal service programs within their respective universal service program portfolio. For example, a household that submits a CAP application should be processed for eligibility for LIURP services and, where possible, scheduled for an initial efficiency audit at the time of enrollment in CAP. And, while enrolled in CAP, households that reach a certain usage threshold⁸⁴ should be offered

2015), available at <http://www.puc.state.pa.us/pdocs/1343605.pdf>. Met Ed., Penelec, Penn Power, West Penn Power, Universal Service and Energy Conservation Plan for Years 2015-2018, Docket Nos. M-2014-2407729, M-2014-2407730, M-2014-2407731, M-2014-2407728, at 10 (Revised June 20, 2017), http://www.puc.state.pa.us/consumer_info/electricity/energy_assistance_programs.aspx.

⁸⁴ See section VI.b, LIURP, which recommends that the Commission examine current usage thresholds to more appropriately serve smaller homes with relatively high usage per square foot.

LIURP services and energy education to ensure that the household is operating safely and efficiently to reduce costs for the household and other ratepayers.

At the same time, utilities operating in overlapping service territories should be required to develop a process and procedure for coordinated enrollment and participation in parallel programs. Enrollment in an electric utility's CAP should trigger enrollment in the natural gas utility's CAP – and vice versa. While intra-coordination raises important privacy concerns, there must be a path forward that can realize the benefit of program synergies without compromising the privacy rights of individual households. The same principles of coordination hold true for intra-utility coordination of LIURP, discussed below.

Finally, more must be done to coordinate enrollment and recertification with other state and federal assistance programs. If a household is eligible for food assistance, cash assistance, LIHEAP, Lifeline, or other state or federal assistance programs, that household should be considered categorically income eligible for assistance through CAP and should automatically be screened for eligibility and enrolled as appropriate.⁸⁵

To facilitate improved coordination in the near term, the Commission should require the use of a common application form, and should take definitive steps by implementing regulations to standardize eligibility, benefits, terms, and conditions across utility service territories. In addition, the Commission should encourage utilities operating in the same geographic region to give a preference to Community Based Organizations (CBO) which administer programs for

⁸⁵ In New Jersey, households that receive food assistance are automatically screened for eligibility in the percentage of income program. See APPRISE, Impact Evaluation and Concurrent Process Evaluation of the New Jersey Universal Service Fund: Final Report (April 2006). Indiana, Maryland, Maine, Nevada, Ohio, Oregon, Washington, and Wisconsin all have some level of energy assistance coordination with LIHEAP. APPRISE, Ratepayer-Funded Low-Income Energy Programs: Performance and Possibilities (July 2007), <http://www.appriseinc.org/reports/NLIEC%20Multi-Sponsor%20Study.pdf>.

other utilities. When a household has problems paying an electric bill, it is likely the household also has trouble paying for natural gas service. Delivering energy efficiency programs services through a single Conservation Service Provider (CSP) or CBO – would make the programs more widely available to low income consumers, eliminate confusion, and cut administrative and training costs. Finally, the Commission should establish clear guidelines for information sharing between utilities and with other state and federal assistance programs to protect consumer privacy while advancing consumer protections. See section VIII below for additional recommendations and considerations with respect to the consolidation and coordination of universal service program administration.

The Low Income Advocates assert that the failure to coordinate CAPs with other assistance programs is a missed opportunity to gain valuable administrative efficiencies, and urge the Commission to do more to coordinate programs to gain important cost savings and improve the overall cost-effectiveness of the programs.⁸⁶

b. LIURP

In section VIII below, the Low Income Advocates assert that statewide administration of universal service programming would gain a number of synergies and efficiencies – cutting costs and expanding programmatic reach across the state. LIURP is particularly well-suited to a statewide delivery approach, and has perhaps the greatest potential of all the universal service programming for significant cost reductions. In addition to reducing administrative costs, simplifying and standardizing enrollment and recertification, and expanding program reach, statewide LIURP delivery would enable LIURP to deliver fuel neutral services treating natural

⁸⁶ 66 Pa. C.S. § 2804 (“Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.”).

gas and electric energy efficiency and usage reduction needs at the same time. The Low Income Advocates assert that a statewide approach to LIURP could and should continue to contract with local community-rooted conservation service providers, community based organizations, and weatherization contractors, though selected contractors should be capable of serving both fuel types. This would eliminate the hassle and expense of duplicate audits and allow for the delivery of enhanced health and safety services,⁸⁷ including remediation of dangerous *de facto* heating.

However, because transitioning to a state-wide administrative model may take considerable time and effort, the Low Income Advocates contend that immediate LIURP improvements can and should be adopted. The Low Income Advocates incorporate herein by reference the Comments and Reply Comments submitted recently by the Energy Efficiency for All Coalition (EEFA) in the LIURP Rulemaking proceeding.⁸⁸ EEFA proposed a number of recommendations regarding the structure and delivery of LIURP services, and the regulatory changes necessary to actualize those recommendations within the current utility-specific program delivery structure, appropriate needs assessments, and program budget determinations. The Low Income Advocates urge the Commission to adopt those proposals, while undertaking the necessary steps to move toward a state-wide administrative model for all universal service programs.

⁸⁷ The need to deliver comprehensive health and savings services as a component of energy efficiency and usage reduction services could not be clearer in light of the recent and devastating fire in a London high rise. Just a short time before the fire, the building received comprehensive energy efficiency services, but health and safety issues were not addressed. See generally Justin Pritchard, *Insulating Skin on High-Rises has Fueled Fires Before London*, The Seattle Times (Jun. 18, 2017), <http://www.seattletimes.com/nation-world/insulating-skin-on-high-rises-has-fueled-fires-before-london/>.

⁸⁸ See Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP_ Regulation at 52 Pa. Code §§ 58.1-58.18, Docket L-2016-2557886 (EEFA Comments filed January 30, 2017; EEFA Reply Comments filed March 1, 2017). EEFA is a coalition of Pennsylvania and National service providers, environmental advocates, and consumer groups, including the Pennsylvania Utility Law Project and Community Legal Services. PULP and CLS serve as counsel for CAUSE-PA, Action Alliance, and TURN in this proceeding.

c. CARES

As indicated in the Staff Report, CARES is not guided by an express policy statement, nor is it subject to explicit regulation – though it is defined in the Universal Service Reporting Regulations:

CARES – A program that provides a cost-effective service that helps selected payment-troubled customers maximize their ability to pay utility bills. A CARES program provides a casework approach to help customers secure energy assistance funds and other needed services.⁸⁹

According to the Bureau of Consumer Services, “CARES staff provide three primary benefits: case management, maintaining a network of service providers; and making referrals to services that provide assistance.”⁹⁰ At their best, CARES staff serve as a consumer ombudsman/advocate within the utility – connecting vulnerable households to services in the community that can assist with energy affordability and/or help address a multitude of hardships that impact the customer’s ability to pay their utility bill.

Unfortunately, many current CARES programs do not perform this function, and do not offer the individualized case management and referral services that the program is intended to provide.⁹¹ Such a case management function could easily and successfully be crafted as part of a state-wide universal services administrative model, as described more fully in section VIII below.

Under the current model, some utilities lack dedicated CARES staff, and perform the referral service by providing call center employees with a list of universal service program

⁸⁹ 52 Pa. Code §§ 54.72, 62.2.

⁹⁰ Pa. PUC, BCS, 2015 Report on Universal Service Programs & Collections Performance, at 48 (Oct. 2016), http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx.

⁹¹ See, e.g., Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Order, Docket No. M-2016-2542415, at 57-58 (Order entered Aug. 3, 2017).

subcontractors – with little to no follow-up case management services.⁹² Few have cultivated relationships with service providers beyond those that administer their utility’s programs. Rather, CARES funding is often used to pay for general universal service expenses, with little attention paid to providing case management services for troubled customers to help the household establish and maintain long-term economic stability.

CARES was intended to serve an important role in the portfolio of universal service programs, providing hands-on assistance to vulnerable households facing challenging circumstances. Individualized case management and referral services are critical to help low income households facing acute and challenging life circumstances to fill the gaps to achieve economic stability. When households are able to stabilize their finances, they can more regularly afford to meet all of life’s basic necessities – including energy services. The Low Income Advocates assert that this is best achieved by (1) providing in-depth utility case management services to help address and remove unique barriers that may prevent households from accessing the utility’s assistance programs, and (2) connecting consumers with resources in their community such as legal service providers, housing assistance programs, domestic violence agencies, child advocacy programs, counseling service providers, credit counseling agencies, food banks, and health clinics.

The Low Income Advocates recommend that the Commission adopt a robust CARES framework within the state-wide administrative model described in section VIII. That said, transitioning to a consolidated service delivery model will take time. As such, the Low Income Advocates submit that the Commission should, in the near term, require utilities to have an

⁹² See Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415, Supplemental Comments of CAUSE-PA, at 4 (filed April 28, 2017).

proportionate number of dedicated staff persons, with appropriate experience in social work or a related field, who understand the intricacies of the utility’s own universal service programs, can address and remove unique barriers to universal service enrollment, and can cultivate relationships with a broad range of local agencies and service providers with which to connect consumers in need.

d. Hardship Funds

As with CARES, Hardship Funds similarly lack express policy guidelines or regulation. The program is defined in the Universal Service Reporting Requirements as: “A fund that provides cash assistance to utility customers to help them pay their utility bills.”⁹³ The Bureau of Consumer Services further explains in its Universal Service Report that Hardship Funds “provide cash assistance to residential customers who need help in paying their utility bills or to those who still have a critical need for assistance after other resources have been exhausted.”⁹⁴

Under the current, decentralized model of universal service delivery, utility Hardship Fund programs often impose restrictive rules, which are not always evident in the utility’s Universal Service and Energy Conservation Plan. In many cases, these restrictions are imposed by the utility’s subcontractors, not the utility.⁹⁵ Some programs, for example, impose a recent payment requirement.⁹⁶ But recent payment requirements act as a barrier to the households that

⁹³ 52 Pa. C.S. §§ 54.71, 62.2.

⁹⁴ Pa. PUC, BCS, 2015 Report on Universal Service Programs & Collections Performance, at 50 (Oct. 2016), http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx.

⁹⁵ See, e.g., Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415, Comments of CAUSE-PA, at 4 (filed March 7, 2017); Duquesne Light Company Universal Service and Energy Conservation Plan for 2017-2019 Submitted in Compliance with 52 Pa. Code §§ 54.74, Docket No. M-2016-2534323, Final Order, at 46-47 (March 2, 2017).

⁹⁶ Duquesne Light, for example, requires Hardship Fund recipients to have paid \$150 in the last 90 days. See Duquesne Light Company Universal Service and Energy Conservation Plan for 2017-2019 Submitted in Compliance with 52 Pa. Code §§ 54.74, Docket No. M-2016-2534323, Final Order, at 42 (March 2, 2017).

the Hardship Fund is designed to assist: those experiencing a recent hardship.⁹⁷ Other Hardship Funds require disclosure of a Social Security Number, which raises important privacy, safety, and access issues.⁹⁸ Likewise, some Hardship Fund programs regularly exclude those enrolled in CAP from receiving a Hardship Fund grant.⁹⁹ As a result, low income households who fall behind on their CAP bill have no place to turn for assistance. This is contrary to BCS’s account of the program, which asserts that Hardship Funds are available “to those *who still have a critical need for assistance after other resources have been exhausted.*”¹⁰⁰

The Commission recently acknowledged that, under the current utility-by-utility universal service delivery model, utilities must ultimately retain control over the terms and conditions of universal service programs within its purview, even when CBOs administer portions of those programs. The Commission explained:

Section 2804(9) of Title 66 encourages use of CBOs ‘that have the necessary technical and administrative experience to be the direct providers of services or programs’ (emphasis added). While contracted CBOs may be used to administer universal service programs, the utilities are responsible for setting eligibility requirements, establishing program parameters, and drafting a triennial USECP for Commission approval. A contracted CBO should not dictate the eligibility requirements of a utility’s universal service program.¹⁰¹

Nonetheless, when confronted with a conflict between a CBO’s practices and the utility’s universal service program requirements, the Commission declined to require any changes to the

⁹⁷ Households in the midst of a hardship often do not immediately seek out services and assistance programs, and are often not referred to the Hardship Fund program until after several months of payment trouble. When these households finally do locate assistance, they are often turned away for Hardship Fund assistance because they do not meet recent payment requirements.

⁹⁸ See *id.* at 43-47.

⁹⁹ *Id.*

¹⁰⁰ Pa. PUC, BCS, 2015 Report on Universal Service Programs & Collections Performance, at 50 (Oct. 2016), http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx

¹⁰¹ See Duquesne Light Company Universal Service and Energy Conservation Plan for 2017-2019 Submitted in Compliance with 52 Pa. Code §§ 54.74, Docket No. M-2016-2534323, Final Order, at 46-47 (March 2, 2017).

Hardship Fund rules in that service territory. Instead, the Commission deferred a decision, directing no changes be made:

We recognize that unless the CBO [] that provides Hardship Fund services ... modifies its practices, the utilities may be faced with the need to find a new CBO or to take the process in-house. ... We further recognize that we have not yet heard from the [CBO]. ... Accordingly, we shall direct no changes at this time.¹⁰²

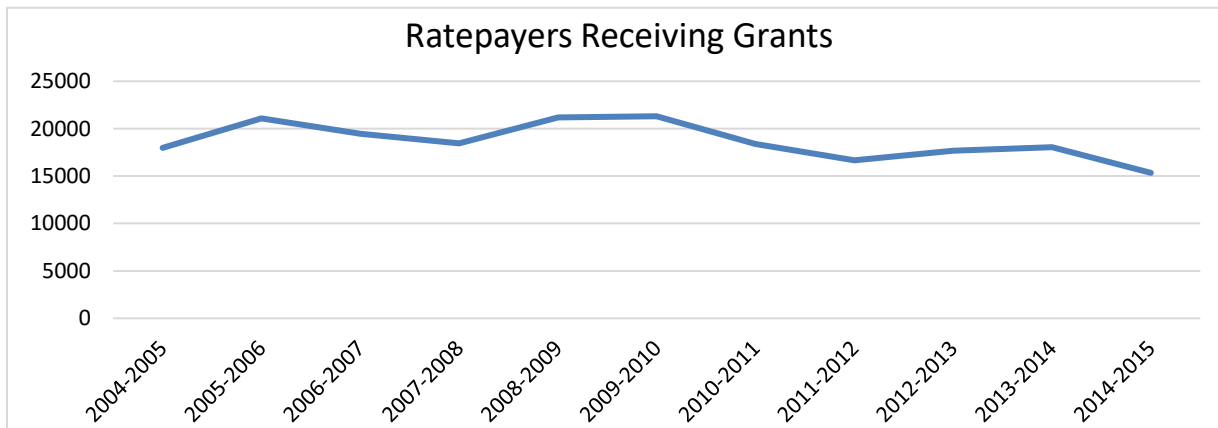
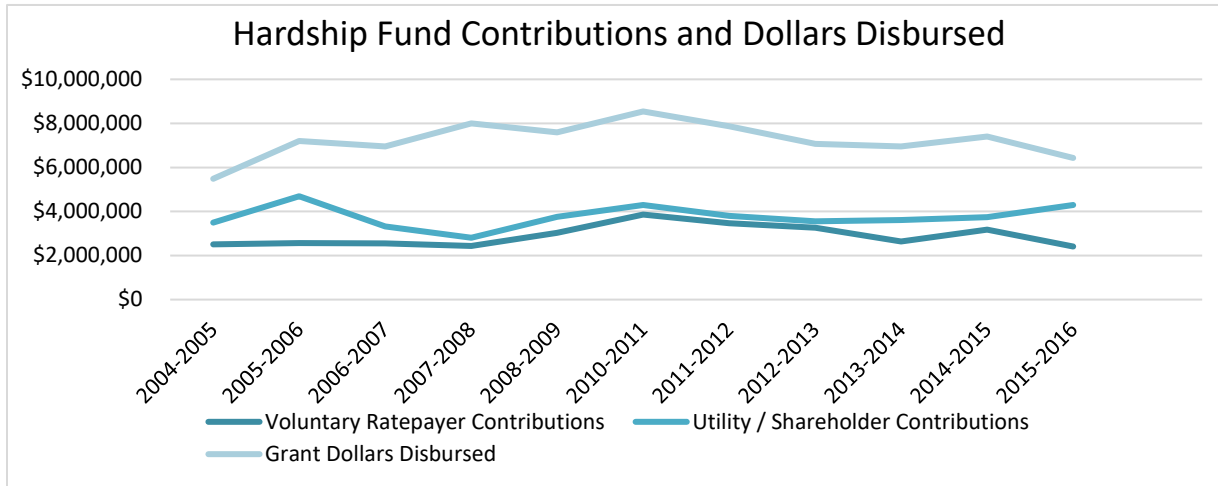
Accordingly, at this time, many utility Hardship Funds remain subject to rules and procedures imposed by subcontractors which may be incompatible with the objectives of universal service programs.

The Low Income Advocates urge the Commission to eliminate restrictive requirements, such as those discussed above, and develop standard program parameters for Hardship Funds that ensure the program is available to those in need. Of course, a centralized administration of universal service programs would make such standard program parameters significantly easier to administer and oversee. However, if the Commission does not move forward with centralized universal service administration, the Low Income Advocates nonetheless urge the Commission to issue formal guidance prohibiting the imposition of program rules and restrictions by program subcontractors which are not expressly approved as part of the utility's USECP. While utilities have discretion and control over the programs, outsourcing should not be permitted to hamper the Commission's oversight authority. Indeed, as noted by the Commission, the imposition of program rules by program subcontractors is contrary to the Choice Acts, and should not be allowed to continue.

In addition to concerns over the restrictive nature of many programmatic rules imposed by utility subcontractors, the Low Income Advocates also have concerns about program funding.

¹⁰² Id.

Over the past decade, funding for Hardship Fund programs has not increased with need, and the number of grants awarded and the total dollars disbursed have declined. Because funds are insufficient to meet demand, most programs cannot operate through the summer – and many programs periodically run out of available funding through the fall, winter, and spring seasons. The charts below illustrate the urgency of funding issues relative to grants received.



2005 Report on Universal Service Programs & Collections Performance at 53-54; 2006 Report on Universal Service Programs & Collections Performance at 47-48; 2007 Report on Universal Service Programs & Collections Performance at 47-48; 2008 Report on Universal Service Programs & Collections Performance at 46-47; 2009 Report on Universal Service Programs & Collections Performance at 48-50; 2010 Report on Universal Service Programs & Collections Performance at 49-51; 2011 Report on Universal Service Programs & Collections Performance at 48-50; 2012 Report on Universal Service Programs & Collections Performance at 42-44; 2013 Report on Universal Service Programs & Collections Performance at 44-46; 2014 Report on Universal Service Programs & Collections Performance at 50-52; 2015 Report on Universal Service Programs & Collections Performance at 50-52.

Reports are available at http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx.

Thus, in addition to eliminating restrictive program requirements, the Low Income Advocates recommend that the Commission identify potential funding sources that could supplement voluntary donations and shareholder contributions which traditionally fund the program. For example, pipeline credits,¹⁰³ *pro hac vice* fees,¹⁰⁴ and operation and maintenance expense reductions¹⁰⁵ could all be redirected to supplement Hardship Funding – as could fines, settlements, and terms of mergers and acquisitions. The Commission should issue concise regulations assigning these sorts of fines and payments to the Hardship Fund to prevent later challenges to the use of funds in this manner.¹⁰⁶

Finally, under the current universal service program delivery model, the Commission should inquire more deeply into the efforts of utilities to raise voluntary contributions from its rate base. As utilities transfer to auto-pay and e-bill systems, fewer and fewer customers are donating to the fund automatically through their bill and many utilities have yet to create a function to allow customers to donate with their online payments.

The Hardship Fund plays a critically important role in the delivery of emergency services to low-income customers. The Commission must take definitive steps to ensure that the program

¹⁰³ See Pa. PUC et al. v. Columbia Gas, Recommended Decision at 26-28, Docket No. R-2016-2529660 (Sept. 28, 2016) (Final Order approving RD issued Oct. 10, 2016).

¹⁰⁴ The Commission does not currently charge a fee for the admission of out-of-state attorneys for limited practice before the Commission, *pro hac vice*.

¹⁰⁵ See 52 Pa. Code § 69.265(1) (authorizing the use of operations and maintenance expense reductions to fund CAP).

¹⁰⁶ In a recent base rate proceeding for Columbia Gas, the Commission's Bureau of Investigation and Enforcement strongly opposed the use of pipeline credits to finance Columbia's Hardship Fund. While the case ultimately settled, allowing Columbia to continue to use these funds for a period of time, the fact that the Commission's own investigative arm opposed the use of these funds to supplement the provision of universal services is troubling. The Commission should be clear in its policy guidance moving forward that the use of funds in this manner is not only accepted, but encouraged. See Pa. PUC et al. v. Columbia Gas, Recommended Decision at 26-28, Docket No. R-2016-2529660 (Sept. 28, 2016) (Final Order approving RD issued Oct. 10, 2016).

is both available and appropriately funded, in fulfillment of its statutory duty under the Natural Gas and Electric Choice Acts.

VII. PROGRAM FUNDING

Universal service program funding is a critical piece to the affordability puzzle. The Low Income Advocates urge the Commission to adjust its policy to allow for recovery of universal service costs from all rate classes to more fairly and equitably distribute the costs of these programs. As discussed below, this approach is in accord with existing law, and is in fact the prevailing policy across the nation. As BCS previously concluded,

[T]he problem of the inability of some low income customers to pay their entire home energy bills is caused primarily by societal economic conditions that are unrelated to one rate class. Until such time as sufficient public revenues are available to address the poverty/energy problem, the costs for CAP programs should be viewed as a cost of operating as a public utility for which all ratepayers must share the cost.

...

The Bureau [of Consumer Services] does not find any logic to the argument that because the larger societal economic conditions are negatively affecting the ability of some low income residential customers to pay their bills, that the problem is somehow caused by the residential class and should therefore be paid for by that class. If the Commission, as a regulatory authority, decides that it is in the public interest to provide home energy services for necessities of life to disadvantaged ratepayers without full payment, then the costs should be borne by all ratepayers who benefit from the companies operating as public utilities. This viewpoint acknowledges that bare rates are not determined by cost of service considerations alone, and that in this case, rate design should include a broader societal perspective.¹⁰⁷

The Commission faces the very same questions today that it did in 1992 when BCS issued its Final Report in the Commission's Investigation of Uncollectible Balances. As discussed more thoroughly below, the Commission has the full legal authority to shift its current recovery policy

¹⁰⁷ Pa. PUC, BCS, Investigation of Uncollectible Balances, Final Report to the Pennsylvania Public Utility Commission, Docket No. I-900002, at 157-158 (Feb. 1992).

to spread costs across the entire rate base. The Low Income Advocates urge the Commission to take this step.

There are several mechanisms through which the costs of universal service programming could be recovered across rate classes, provided the charge is nonbypassable as required by the Choice Act. The Low Income Advocates strongly recommend that the Commission impose either a cross-class system benefit charge or a universal service rider on all customers not enrolled in a universal service program, regardless of customer or rate class.

a. Pennsylvania Law

While the Commission's policy has generally favored imposing universal service costs solely on the residential class of customers, there is nothing in the law that requires or even encourages such a narrow approach to cost sharing.¹⁰⁸

Section 2802(17) of the Electric Competition Act provides:

There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a non-bypassable rate mechanism.

In short, the Act entitles utilities to full recovery for the costs of providing universal service and energy conservation programs through a nonbypassable rate mechanism not because of the benefit of universal service to residential customers, but because of the public purpose such

¹⁰⁸ As a matter of statutory interpretation, it should be observed that the Gas Choice Act specifically prohibits recovery from the industrial customer for costs related to consumer education (66 Pa. C.S. § 2206), indicating that the General Assembly clearly knows how, and when, to preclude cross class recovery when it believes appropriate. The absence of such a restriction for cross class recovery for universal service costs in either the Gas Choice Act or the Electric Choice Act is meaningful, and indicates the PUC has ample authority to approve cross-class recovery in its specific mandate to ensure that universal service programs are appropriately funded.

programs serve. The General Assembly did not establish the design or terms of that rate mechanism, and instead specifically entrusted that determination to the Commission.

In August 2006, the Commonwealth Court in Lloyd v. Pa. PUC affirmed the right to recover the costs of “public purpose programming” from all rate classes.¹⁰⁹ In Lloyd, a challenge was brought by the PPL Industrial Customer Alliance (PPLICA) against the Commission’s decision to allow cross-class recovery of funding for the Sustainable Energy Fund (SEF) in PPL’s service territory.¹¹⁰ PPLICA argued that SEF provided “no demonstrable benefits to ratepayers” and asserted that there was no legal justification for the program.¹¹¹ PPLICA concluded that recovery of costs through rates constituted an “unlawful tax on ratepayers which only the General Assembly has the power to impose.” The Commonwealth Court roundly rejected PPLICA’s arguments, finding explicitly that the General Assembly – through section 2802(17) of the Choice Act¹¹² – “specifically authorized that public service programs such as SEF be funded.” The Court also concluded that there was substantial evidence to support the Commission’s conclusion that SEF provided demonstrable benefits to ratepayers, and therefore deferred to the Commission as the finder of fact. Ultimately, pursuant to these findings, the Commonwealth Court affirmed the continued recovery of public purpose program costs from all ratepayers, and definitively concluded that “SEF funding was not a tax, hidden or

¹⁰⁹ Lloyd v. Pa. PUC, 904 A.2d 1010 (Pa. Commw. Ct. 2006).

¹¹⁰ It is important to note that Lloyd also examined funding for PPL’s CAP (known as OnTrack), but the funding issue raised in Lloyd did not examine the issue of cross-class recovery. Rather, the CAP issue questioned the appropriate level of funding and targeted enrollment level, not the mechanism for recovery. See id. at 1027-28.

¹¹¹ Id. at 1024-25.

¹¹² Note that this is the same section that is cited in full above, and provides explicitly that “certain public purpose costs, including programs for low income assistance, energy conservation and others,” are in the public interest and must be continued. 66 Pa. C.S. § 2802(17).

otherwise, but a conservation program directly related to conservation programs that the General Assembly permitted to be funded.”¹¹³

Later in 2006, notwithstanding the Commonwealth Court’s decision in Lloyd which found that cross-class recovery of public purpose program costs are permissive, the Commission made a policy determination that universal service programming costs should be recovered solely from residential ratepayers. As support, the Commission explained:

We believe that we should not initiate a policy change that could have a detrimental impact on economic development and the climate for business and jobs within the Commonwealth. Since the Commission first encouraged utilities to initiate CAP programs on a voluntary basis, it has allocated CAP costs to the residential class, with a few exceptions. It is true that, in the early stages of these programs, the Commission indicated the possibility that this policy could change in the future. However, the Commission has continued to follow this policy even after universal service programs became mandatory with the passage of the Competition Acts. In fact, [in 2004] the Commission held that ‘universal service programs, by their very nature, are narrowly tailored to the residential customers and therefore, should be funded only by the residential class.’¹¹⁴

The Commission applied this policy a year later in Met-Ed Industrial Users Group v. Pa. PUC, ordering that universal service costs be recovered exclusively from residential ratepayers.¹¹⁵ On review, the Commonwealth Court deferred to the Commission’s discretion and affirmed the narrow approach to rate recovery.¹¹⁶ The Commonwealth Court again analyzed section 2802(17) – as well as its decision in Lloyd – and concluded: “[U]nder Lloyd, ***there is no statutory requirement that the funding for special programs come only from those who benefit from the programs.*** However, the lack of such a requirement does not mean that funding for

¹¹³ Lloyd, 904 A.2d at 1027.

¹¹⁴ See Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, Final Investigatory Order, Docket No. M-00051923, at 15-16 (Oct. 19, 2006).

¹¹⁵ Met-Ed Industrial Users Group v. Pa. PUC, Opinion and Order, Docket Nos. R-00061366, R-00061366C0001-0003, -0013; R-00061367; R-00061367C0001-0003, 0005, 0007-0008; P-00062213; P-00062214; A-110300f0095; A-110400F0040 (Jan. 11, 2007).

¹¹⁶ Met-Ed Indus. Users Group v. Pa. PUC, 960 A.2d 189 (Pa. Commw. Ct. 2007).

special programs must come from those who do not benefit.”¹¹⁷ In other words, the Commission has flexibility in determining which customer classes should pay for public purpose programs, and has the authority to assign costs accordingly – provided the classes which are assigned the costs cannot bypass the charge.¹¹⁸

Since the decision in Met-Ed Industrial Users Group, there have been no further legal challenges to the Commission’s policy. Thus, at present, the Commission is free to re-shape its former policy through the course of this investigatory proceeding to establish appropriately reflective cross-class cost recovery to adequately account for the true societal costs and benefits of ensuring universal service by allocating the costs of universal service programming to all utility customers. Indeed, the Low Income Advocates submit that it would be inequitable for programs so essential to the public purpose goals of the Electric and Gas Choice Acts to continue to be funded solely by residential customers.

b. Substantial Evidence Supports Cross-Class Recovery of Universal Service Costs

While it is perhaps true that the most obvious benefits of universal service programs – including decreased uncollectible expenses and improved payment behavior of residential customers – are generally thought to be primarily beneficial to the residential rate class, there are a multitude of societal benefits which inure to non-residential ratepayers that should not be ignored. As a public good, the cost of ensuring affordable access to very basic human needs should be borne by all those who enjoy the benefits of the public utility.

¹¹⁷ Id. at 201 (emphasis added).

¹¹⁸ Id. at 201-202.

To a great extent, employers are being subsidized by residential ratepayers, who are shouldering the burden of providing critical safety-net programs to ensure universal access to basic utility services which benefit all ratepayers. In 2015, between 27-45% of low income consumers enrolled in a universal service program are employed and between 15-31% are retired. These customers are not currently paid sufficient wages, or were not paid sufficient wages while employed, to pay for their basic living expenses, and require assistance through universal service programs in order to make ends meet.¹¹⁹ Comparatively, just 2-5% of low income customers enrolled in a universal service program receive public assistance.¹²⁰ At the same time, the added stress associated with poverty – and the inability to afford basic life necessities – can have a negative impact on employers. Low income customers faced with the threat of termination or loss of service often struggle to cope with heightened levels of stress and anxiety, and must take time away from work to arrange payments, locate or apply for assistance programs, and arrange for reconnection.¹²¹ Indeed, the toll of poverty – and particularly the loss of energy services – can be severe, and can cause economic consequences for employers, including low productivity, frequent absences, and unnecessarily high turn-over.¹²² It is time for the Commission to recognize that all utility customers enjoy the benefit of providing universally

¹¹⁹ Pa. PUC, BCS, 2015 Report on Universal Service Programs & Collections Performance, at 36 (Oct. 2016), available at http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx.

¹²⁰ *Id.*

¹²¹ See Ariel Drebohl & Lauren Ross, ACEEE, Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities, at 13 (April 2016), <http://aceee.org/research-report/u1602>.

¹²² See; Coalition on Human Needs, The High Cost of Being Poor in the US: Anti-Poverty Programs Help Alleviate Costs, but More Must be Done to Reduce Burdens (Sept. 20, 2016), <https://www.chn.org/wp-content/uploads/2016/10/Final-CHN-Natl-Census-Poverty-Report-9.20.16-1.pdf> (explaining that a study of renters in Milwaukee found that “workers leaving housing involuntarily were 20 percent more likely to lose their jobs afterwards than comparable workers who did not have to leave their dwellings.”); see also Patricio Dalton et al., Exposure to Poverty and Productivity, PLOS (Jan. 26, 2017), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0170231>.

available utility service and, therefore, all utility customers should bear responsibility for the costs.

There are also a multitude of other benefits derived from universal service programming that enrich Pennsylvania communities as a whole. Improved access to utility services decreases homelessness and improves financial stability,¹²³ which can translate to improved economic standing and increased participation in the marketplace. In other words, low income households that receive assistance to afford basic utility services have increased purchasing power, and are better able to buy food, transportation, medicine, and other goods and services, thereby bolstering the economic outlook for the community as a whole.¹²⁴ On the other hand, the inability to access affordable utility services is often an immediate catalyst for homelessness.¹²⁵ Not only does this remove the household from participation in the market, it also causes communities to expend an even greater level of resources to adequately address pervasive homelessness and protect the safety of its community members.¹²⁶

The safety of the community at large is greatly improved when low income households are able to access affordable utility services. The inability to access affordable utility service

¹²³ See Joint State Government Commission, General Assembly of the Commonwealth of Pennsylvania, Homelessness in Pennsylvania: Causes, Impacts, and Solutions: A Task Force and Advisory Committee Report (April 2016), <https://projecthome.org/sites/default/files/HOMELESSNESS%20IN%20PENNSYLVANIA%20REPORT.pdf>; Colorado Interagency Council on Homelessness et al., Colorado Statewide Homeless Count (2007).

¹²⁴ See Nat'l Employment Law Project, Occupational Wage Declines Since the Great Recession: Low-Wage Occupations See Largest Real Wage Declines (Sept. 2015), <http://www.nelp.org/content/uploads/Occupational-Wage-Declines-Since-the-Great-Recession.pdf>.

¹²⁵ See Joint State Government Commission, General Assembly of the Commonwealth of Pennsylvania, Homelessness in Pennsylvania: Causes, Impacts, and Solutions: A Task Force and Advisory Committee Report (2016), <http://jsg.legis.state.pa.us/resources/documents/ftp/documents/HR550%201%20page%20summary%204-6-2016.pdf>; Colorado Interagency Council on Homelessness et al., Colorado Statewide Homeless Count (2007).

¹²⁶ See, e.g., People's Emergency Center, Policy Brief: Estimated Annual Cost of Child Homelessness in Pennsylvania: \$363 Million (June 2012), <https://housingalliancepa.org/wp-content/uploads/2012/07/Cost-policy-brief-policy-2012-06-14.pdf>.

leads to unsafe practices – extension cords strung across properties, use of unsafe space heaters, ovens, or generators, and, in desperation, unauthorized hookups or connections. Every year, tragedy strikes communities all over Pennsylvania as a direct result of unaffordable and inaccessible utility services.

Likewise, the general health and welfare of Pennsylvanians is also at risk when utility service is unaffordable.¹²⁷ Providing affordable bills through targeted universal service programming can help alleviate those health risks, while freeing up resources for the household to spend on necessary healthcare expenses.

Universal service programming also improves child development – which translates into an improved work-force of tomorrow. As explained above, children (particularly very young and minority children) are disproportionately likely to live in poverty.¹²⁸ The impact of poverty on children can be severe, causing long-term health and developmental consequences.¹²⁹ But beyond general effects of poverty, children are also more likely to suffer negative impacts associated with the loss of utility service in particular. Loss of sleep, exposure to extreme temperatures, and the inability of parents to cook a hot meal can all greatly impact the child’s health, safety, and wellbeing.¹³⁰ Indeed, providing broad access to affordable utility service is critical for the future of our children and the communities in which they live.

¹²⁷ Diana Hernandez, Understanding “Energy Insecurity” and Why It Matters to Health, J. Social Science & Medicine 167, at 1-10 (2016); Ariel Drebohl & Lauren Ross, ACEEE, Lifting the High Energy Burden in America’s Largest Cities: How Energy Efficiency Can Improve Low Income and Underserved Communities, at 13 (April 2016), <http://aceee.org/research-report/u1602>.

¹²⁸ See section IV, above.

¹²⁹ See Patrice L. Engle & Maureen M. Black, The Effect of Poverty on Child Development and Educational Outcomes, 1136 NY Academy of Sciences 243-246 (June 2008), <http://onlinelibrary.wiley.com/doi/10.1196/annals.1425.023/abstract>.

¹³⁰ See generally id.; see also Heather Sandstrom & Sandra Huerta, Urban Institute, The Negative Effects of Instability on Child Development: A Research Synthesis (Sept. 2013); <http://www.urban.org/sites/default/files/publication/32706/412899-The-Negative-Effects-of-Instability-on-Child-Development-A-Research-Synthesis.PDF>.

Providing universal service programming to shield against senseless harm and avoidable costs is a public service, and should be equally funded by all those who benefit from an ordered society. Indeed, the provision of accessible low income programming to ensure universal access to utility services is not the sole responsibility of residential ratepayers, but is instead the responsibility of all individuals and entities which benefit – either directly or indirectly – from the provision of universal service. As such, the cost of providing universal service programs should be spread across all ratepayers which stand to benefit from the improved health, safety, and welfare of low income families and their children.

c. Universal Service Cost Recovery in Other States

Cross-class recovery for universal service costs is the “norm” across much of the country, where state utility commissions and legislatures have expressly recognized that universally available utility services benefit the community as a whole. To the knowledge of the Low Income Advocates, Pennsylvania is the only state to establish a policy generally limiting cost recovery of universal service programming to the residential class. Other states which operate universal service programming, including Colorado, Ohio, New Jersey, Maine, New Hampshire, New York, Washington, Oregon, Illinois, and California, recover the costs of that programming from every rate class.¹³¹

¹³¹ Roger D. Colton, Best Practices: Low Income Rate Affordability Programs (Nov. 2007), http://www.fsconline.com/downloads/Papers/2007%2011%20BestPractice_RateAffordability.pdf (“With the exception of Pennsylvania, whose utility commission has chosen to limit cost recovery exclusively to the residential class, low-income rate affordability programs recover their costs from all customer classes.”); *see, e.g.*, 4 CCR 723-3, § 3412(g) (Colorado); Ohio Rev. Code § 4928.52; NJ Rev. Stat. § 48:3-60; Amendments to Consumer Protections Standards for Electric and Gas Transmission and Distribution Utilities (Chapter 815) and Statewide Low Income Assistance Plan (Chapter 314), No. 2013-00228, Order (Me P.U.C. July 17, 2013); Re Statewide Low-Income Electric Assistance Program, 87 NH PUC 349, 218 P.U.R.4th 442 (N.H. PUC 2002); Order Adopting Low Income Program Modifications and Directing Utility Filings, NY Pub. Service Comm’n Docket No. 14-M-0565 (May 20, 2016); 2015 ORS § 757.612(7); Re Investigation into Percentage of Income Payment Program, No. 16-254, Order (Or. P.U.C. July 6, 2016); Illinois Energy Assistance Act (the “IEAA”), 305 ILCS 20/18; Cal. Pub. Util. Code § 382.

d. Cross-Class Recovery Options

As noted above, the Electric and Natural Gas Choice Acts require that utilities be permitted to fully recover any universal service costs.

The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and **full recovery of such costs is to be permitted through a non-bypassable rate mechanism.**¹³²

The rate mechanism used to recover universal service costs was reserved to Commission discretion. Currently, universal service costs in Pennsylvania are recovered through a rider on rates or through base rates, the allocation of which is determined in a base rate proceeding.

But rather than allocate these costs in base rate proceedings, and consistent with our recommendation for centralized administration of universal services, the Low Income Advocates recommend that the Commission institute a uniform system benefit charge across utilities and customer classes. System benefit charges are in place in a number of states to fund programs substantially similar to Pennsylvania's universal service programs. The system benefit charge has been described as providing "the greatest flexibility in terms of contracting for services and delivering benefits across utility service territories."¹³³ Indeed, system benefit charge funding ensures that the "customers in the greatest need are served."¹³⁴ Thus, a Pennsylvania system benefit charge would enable the Commission to focus funding more accurately on satisfying the objectives of universal service programs, as they may be refined over time. System benefit charges provide a consistent and understandable mechanism to recover program costs. The Low

¹³² 66 Pa. C.S. §§ 2802(17), 2804(9), 2203(6) (emphasis added).

¹³³ APPRISE and Fisher, Sheehan and Colton, Ratepayer-Funded Low-Income Energy Programs: Performance and Possibilities, at x (July 2007).

¹³⁴ Id. at 62.

Income Advocates submit that a system benefit charge is an appropriate way to fund universal service program delivery and should be pursued by the Commission.¹³⁵

If the Commission were to determine that recovery through a universal service rider should continue, the Low Income Advocates urge the Commission to set forth guidance regarding an appropriate allocation of costs between rate classes. Otherwise, disputes over the proper allocation of universal service costs could be subject to unnecessary and lengthy litigation. Accordingly, the Low Income Advocates submit that if the Commission were to decline to pursue a system benefit charge funding mechanism, the Commission should nonetheless adopt specific factors for assessing proper allocation of universal service funding to all customers, including the relative ability of each class to bear CAP costs.¹³⁶

VIII. PROGRAM IMPLEMENTATION AND DELIVERY

The Low Income Advocates strongly recommend that the Commission explore options to centralize implementation of universal service and energy conservation programming into a statewide delivery system. Over time, the patchwork of universal service programs in Pennsylvania has grown unwieldy. Currently, these programs have complex and confusing program design features that sometimes thwart the overarching goal of ensuring that utility services are universally available on reasonable terms and conditions.¹³⁷ In turn, oversight of the various programs is also constrained by the myriad of program details – each with its own nuanced policy implications. It is time for the Commission to reign in duplicative program

¹³⁵ As explained more fully in section VIII below, a state-wide administration of universal services programs has the greatest potential to result in increased efficiencies, promoting the cost-effective delivery of universal services as required by the Electric and Gas Choice Acts. A system benefit charge would produce further efficiencies by streamlining recovery and oversight.

¹³⁶ See Pa. PUC, BCS, Investigation of Uncollectible Balances, Final Report to the Pennsylvania Public Utility Commission, Docket No. I-900002, at 159 (Feb. 1992).

¹³⁷ See sections V and VI above.

expenses, and centralize program delivery and implementation to ensure that universal service programs are consistently available to all low income customers throughout the Commonwealth.

a. Pennsylvania Law Supports Centralized Program Delivery and Implementation

The Pennsylvania Public Utility Code provides the Commission with sufficient authority to permit it to establish a consolidated, state-wide program, supported by a nonbypassable charge to utility ratepayers. First, the Electric and Natural Gas Choice Acts require the Commission to ensure that universal service “policies, activities and services are appropriately funded and available” and that “the programs are operated in a cost-effective manner.”¹³⁸ As explained more thoroughly below in section VIII.b, each of these requirements would be fulfilled if the Commission were to shift to a consolidated statewide program delivery model. Not only would a statewide delivery model produce enhanced availability to low income populations, it would also significantly improve the cost-effectiveness of the program by eliminating duplicative administrative costs.

Importantly, the utilities’ current individual plan requirements are not mandated by statute, so the Commission is not constrained to continue on with the patchwork program approach. The Electric Competition Act provides: “At the time each utility files its restructuring plan with the commission, the utility shall submit an *initial plan* that sets forth how it shall meet its universal service and energy conservation obligations.”¹³⁹ At this stage, we are far past the utilities’ “initial plan” filings, leaving the Commission free to redesign the delivery model to embrace a more holistic and cost-effective approach. Plan requirements are codified in the

¹³⁸ 66 Pa. C.S. §§ 2804, 2203(8).

¹³⁹ 66 Pa. C.S. § 2804(15).

Universal Service Reporting Requirements, which could be revised accordingly by the Commission to support a statewide delivery model.¹⁴⁰

In turn, shifting to a centralized delivery method would not infringe on the Commission’s statutory requirement to “encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income [customers].”¹⁴¹ The models suggested by the Low Income Advocates below in section VIII.c would continue to utilize local agencies to provide in-person enrollment options for those who lack the communication technology to allow telephone or online enrollment – and to provide specific outreach in the local communities. Likewise, local community based organizations would continue to provide energy efficiency and conservation program delivery. The differences would be: (1) program processes, rules, and procedures would be standardized across utility service territories and (2) CBOs would contract directly with the statewide program administrator. These changes not only consistent with the Choice Act requirements, they would enhance the Commission’s ability to ensure the universal availability of cost-effective and appropriately funded programming for low income households.

Finally, a centralized statewide program would not conflict with statutory requirements contained in the Choice Acts, but – rather – would allow for the appropriate integration of services across service territories and with other assistance programs. Language in the Electric Choice Act provides: “Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively neutral cost-recovery

¹⁴⁰ 52 Pa. Code §§ 54.74, 62.4.

¹⁴¹ 66 Pa. C.S. §§ 2203(8), 2804(9).

mechanisms that fully recover the costs of universal service and energy conservation services.”¹⁴² Similarly, the Gas Choice Act provides:

After notice and hearings, the commission shall establish for each natural gas distribution company an appropriate nonbypassable, competitively neutral cost-recovery mechanism which is designed to recover fully the natural gas distribution company's universal service and energy conservation costs over the life of these programs. Except as provided in [Section 2203(10)], policies, activities and services under this paragraph shall be funded and spent in each natural gas distribution company's service territory.¹⁴³

Each of these sections, although slightly different in phrasing, seek to ensure that, in restructuring the utility markets, universal service programs are funded in all utility service territories by nonbypassable charges. In these respects, both sections are fully compatible with a statewide universal service program administration to which all utility customers contribute through a system benefit charge or some other consistent rate mechanism.¹⁴⁴

The Gas Choice Act, through its broad grant of responsibility to the Commission over universal services provides sufficient authorization for moving forward with a statewide

¹⁴² 66 Pa. C.S. § 2804(9).

¹⁴³ 66 Pa. C.S. § 2203(6).

¹⁴⁴ Opponents of this framework may suggest the Commission is constrained by 66 Pa. C.S. § 2203(6) to utility-run universal services programs. This argument would misconstrue the Gas Choice Act's requirement that those programs be “funded and spent” in each natural gas distribution company territory and that the nonbypassable charges “recover fully the natural gas distribution company's universal service and energy conservation costs.” Indeed, both of these requirements are satisfied by a statewide universal services administrative framework that ensures that program funding and spending occurs in each natural gas utility's service territory and which imposes charges exclusively on customers through a nonbypassable system benefit charge, resulting in no lost cost recovery to the utility.

Moreover, 66 Pa. C.S. § 2203(6) begins with the notable exception “[e]xcept as **as provided in [Section 2203(10)]**.” Accordingly, section 2203(6) also reserves to the Commission the powers to deviate from any interpretation of its terms as permitted by section 2203(10), which clearly contemplates the Commission's authority over the funding of all universal services within its jurisdiction.

Finally, section 2203(6) may be construed to address the continuation of programs through the restructuring period, and neither guarantees a utility-specific universal service framework, nor imposes any permanent funding or spending mechanisms, clearly imposing limitations only “over the life” of the programs to which it applies. 66 Pa. C.S. § 2203(6). In contrast, 66 Pa. C.S. § 2203(8), requiring universal service programs to be appropriately funded and available in each utility service territory, remains the General Assembly's unequivocal mandate, which may be satisfied through statewide universal services administration and a system benefit charge or other rate mechanism.

administrative framework for universal services. The Commission is required by the Gas Choice Act to “ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each natural gas distribution service territory.”¹⁴⁵ This continuing core requirement must be effectuated as the General Assembly intended.

b. Centralized Delivery is in the Public Interest

Centralized delivery and implementation of universal service programs would bring about significant program benefits for the individuals and families who are able to access the programs, for the communities in which low income households live and work, and for the ratepayers who finance the programs. Additionally, state-wide administration of universal service programs would create administrative efficiencies, further ensuring that the General Assembly’s intent in requiring that universal service be cost-effective.

First, centralized statewide delivery would streamline and standardize program intake and enrollment – as well as the application of program rules and procedures. Rather than contend with multiple sets of program rules for utilities in overlapping service territories, low income service providers could make one referral for households to receive comprehensive and holistic utility assistance. If structured appropriately, a consolidated state-wide approach to implementation and delivery would also increase enrollment by simplifying the enrollment process and allowing for streamlined program messaging, which would in turn simplify outreach, education, and training. Simply put, customers are more likely to access assistance if they know about the program, understand the program terms, and are provided a convenient method to apply. As covered throughout these comments, higher universal service enrollment will reduce

¹⁴⁵ 66 Pa. C.S. § 2203(8).

uncollectible expenses, improve the quality of life for low income families, and promote public health, welfare, and safety for the broader community.

Administrative efficiencies would also be gained by eliminating redundant costs – making a statewide approach more cost-effective than the current utility-by-utility approach. Indeed, moving toward a centralized program administration was recommended in Colorado by the Applied Public Policy Research Institute for Study and Evaluation (APPRISE).¹⁴⁶ In that report, APPRISE specifically noted the increased efficiency and consistency of program administration was an advantage of a centralized model. Furthermore, although noting a potential disadvantage, namely that customers would likely continue to go to local county offices for assistance, APPRISE concluded that the county agencies could continue to provide information and application support.¹⁴⁷ The APPRISE report recognizes the reality that CBOs should always be an entry point for applicants. As a result, the Low Income Advocates recommend that under a state-wide administrative model, CBOs should continue to have a role in the day-to-day work of enrolling applicants and should contract with the Commission’s universal service administration to continue to serve low-income families in their communities.

As noted above, enhancing access to and ensuring the cost-effectiveness of universal service programming are the core components of the Commission’s universal service obligations contained in the Electric and Natural Gas Choice Acts.¹⁴⁸ In light of the significant cost savings and consumer benefits of consolidating program delivery and implementation, the Low Income

¹⁴⁶ APPRISE, CO LEAP Service Delivery Evaluation, Final Report, at 130 (February 2009), available at: <http://www.appraiseinc.org/wp-content/uploads/2016/05/CO-LEAP-Final-Report.pdf>

¹⁴⁷ *Id.* at 131.

¹⁴⁸ 66 Pa. C.S. §§ 2804; 2203(8).

Advocates assert that statewide program consolidation is in the best interest of the public, and should be adopted.

c. Centralized Program Options

There are a number of ways that the Commission could endeavor to streamline and centralize program delivery and implementation, though the Low Income Advocates do not recommend a particular approach at this time. More information about the relative costs and logistical concerns is necessary to assess the options more thoroughly.

There are two basic models which have significant potential. First, the Commission could establish a bureau to administer and oversee implementation of a centralized universal service program.¹⁴⁹ Alternatively, the Commission could contract with a third party to administer a consolidated statewide program. Either option could be structured to accommodate the design and funding recommendations made throughout these comments. And, as mentioned above, centralized delivery could continue to promote the use of Community Based Organizations to provide in-person intake options, local program outreach, and – for LIURP – the delivery of coordinated energy efficiency and conservation services.¹⁵⁰

The Low Income Advocates urge the Commission to explore the options for consolidation more thoroughly, gathering additional and targeted input from all stakeholders –

¹⁴⁹ 66 Pa. C.S. § 308.2(7), (12).

In addition to the specific bureaus established in this part, the commission may establish other bureaus, offices and positions to perform the following functions:

...

(7) Insure adequate service quality, efficiency and availability at just and reasonable rates.

...

(12) Perform other functions the commission deems necessary for the proper work of the commission.

Id.

¹⁵⁰ 66 Pa. C.S. § 2804(9) (“The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income customers to afford electric service.”).

including the Community Based Organizations, utilities, consumer advocates, and other providers that serve low income communities across the state. The Low Income Advocates specifically recommend soliciting targeted and narrow comments on the options for consolidation. This would better inform the Commission’s decision regarding consolidated program delivery in Pennsylvania, and the issues which may arise through transition, implementation, and operation of a statewide program with multiple funding streams from the various utilities.

IX. OVERSIGHT

a. Consumer Dispute Process

The current informal dispute and complaint processes are inadequate to identify and address universal service program issues. As a result, many low income households are summarily dismissed from the process, leaving them without recourse to protect their right to accessible service on reasonable terms and conditions.

As explained in the 2015 Utility Consumer Activities Report and Evaluation:

Generally, customer contacts to BCS fall into three basic categories: consumer complaints, [payment arrangement requests] PARs and inquiries. Consumer complaints and PARs are taken in by BCS for further investigation, while inquiries are not. BCS classifies consumer complaints as contacts regarding disputes about utilities’ actions related to billing, service delivery, repairs, etc. PARs are classified as contacts involving payment negotiations for unpaid utility service. Consumer complaints and PARs often are collectively referred to as informal complaints. **Inquiries include information requests, opinions from consumers and complaints addressed on the initial call which do not require further investigation on the part of BCS.**¹⁵¹

The report goes on to provide additional information about “inquiries” – which do not receive follow-up or investigation by the Bureau of Consumer Services:

¹⁵¹ Pa. PUC, BCS, 2015 Utility Consumer Activities Report and Evaluation, at 3 (Dec. 2016), http://www.puc.state.pa.us/filing_resources/consumer_activities_report_evaluation.aspx.

In large part, the inquiries in 2015 involved questions regarding the customer assistance programs. BCS also classifies certain PARs as inquiries. For example, BCS does not issue payment decisions on requests to restore or avoid suspension/termination of toll or non-basic telephone service. When consumers call with these problems, BCS classifies these requests as inquiries. **Similarly, if a customer has recently been through the BCS payment arrangement process and calls again with a new request regarding the same account, BCS does not open a new PAR case. In these instances, BCS classifies the customer’s contact as an inquiry.**

Of the calls in 2015 that were coded as “inquiries,” and were not subject to further investigations, 25% were CAP related, 18% were related to termination or suspension of service, and 16% were calls from consumers that were deemed categorically ineligible for a new payment arrangement without further inquiry.¹⁵²

First, the current paradigm for complaint handling often fails to identify low income households which could enroll in CAP to stabilize unaffordable costs and, ultimately, avoid termination. Low income customers with significant arrearages are routinely granted payment arrangements to resolve pending termination.¹⁵³ But unlike CAP – which alleviates unaffordability – payment arrangements exacerbate unaffordability for low income consumers, adding additional costs to an already unaffordable monthly bill. These same households often continue to seek additional payment arrangements until they are eventually turned away.¹⁵⁴ Despite having multiple points of contact and communication with the customer throughout the process, these payment troubled low income customers continue to struggle on the pathway to CAP.

Similarly, many universal service program issues appear to go undetected through the Commission’s complaint process. Low income households are often unaware that they could

¹⁵² Id. at 7-8.

¹⁵³ Over 54% of electric payment arrangements and 63.9% of natural gas payment arrangements are for confirmed low income customers. Pa. PUC, BCS, 2015 Report on Universal Service Programs & Collections Performance, at 9-10 (Oct. 2016), http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx.

¹⁵⁴ See 66 Pa. C.S. § 1405 (limiting the number of payment arrangements available to a consumer).

challenge their removal from CAP, the calculation of benefits, or the application of arrearage forgiveness. So, when the household is unable to pay for service, they most often articulate to the utility or the Commission that they are seeking to establish a payment arrangement. But when a consumer calls the utility or the Commission for a payment arrangement, and identifies as a CAP customer, the consumer's dispute or complaint is often dismissed because CAP customers are not eligible for payment arrangements. In other words, they do not know how to appropriately frame their case so as to trigger an investigation into whether the customer was treated fairly and equitably in their participation in CAP.

The Low Income Advocates recommend that the Commission investigate the dispute and complaint handling processes in further depth to ensure that low income consumers are provided appropriate due process to dispute actions taken by a utility that affect their access to affordable utility services. In turn, we urge the Commission to allow paralegals and legal interns to assist low income households through the complaint process and to represent low income households before the Commission. This is consistent with other agencies that oversee assistance program disputes, and would help vulnerable households to identify and raise pertinent program-related issues.

b. Program Planning and Oversight

Each utility is currently required to submit a triennial Universal Service and Energy Conservation Plan (USECP), setting forth the terms, process, and procedure for its portfolio of universal service programs.¹⁵⁵ The USECP is then reviewed by the Bureau of Consumer Services, and a Tentative Order is issued. Most often, the Commission's Tentative Order allows for a brief comment period for stakeholders to provide input on various aspects of the proposed

¹⁵⁵ 52 Pa. Code §§ 54.77, 62.1-8, 62.7; see also 66 Pa. Code § 2212(b).

USECP. In rare cases, an isolated issue may be referred for additional comment, mediation, or to the Office of Administrative Law Judge. With respect to most issues, comments by interested stakeholders are significantly constrained, as commenting parties are unable to access critical utility data to inform their recommendations.¹⁵⁶ While data is sometimes revealed through the initial comment period, when utilities respond to issues raised in the Tentative Order, the parties often have a very short window with which to respond through reply comments. And, there is little to no ability to request follow-up data. As a result, policy recommendations are often made in the dark, based on anecdotal evidence from the populations served by the commenting parties – without the benefit of each party’s access and review of program data. While BCS has taken recent steps in an attempt to bring transparency to USECP proceedings (such as hosting voluntary stakeholder meetings prior to the issuance of a Tentative Order), stakeholders continue to lack adequate access to relevant and timely data, and sufficient time to review and analyze USECP proposals to make informed policy recommendations.

To remedy the lack of adequate due process review of critical universal service programming, the Low Income Advocates urge the Commission to adopt a more formal review process that would allow for interested parties to explore aspects of a USECP and raise critical questions through the discovery process. This is true under either model – whether the Commission continues to administer programs on a utility by utility basis, or consolidates

¹⁵⁶ See, e.g., Philadelphia Gas Works Universal Service Plan for 2017-2020, Docket No. M-2016-2543415 (wherein CAUSE-PA requested data from PGW to better inform its policy recommendations, but was met with obstruction from PGW, which ultimately refused to provide information); see also PECO Energy Company Universal Services Three-Year Plan 2016-2018, Docket No. M-2015-2507139 (wherein CAUSE-PA sought to intervene in the proceeding and served discovery of pertinent data regarding PECO’s USECP, over the vehement objection of PECO. Ultimately, the Commission mooted the issue when it entered a Final Order in the proceeding without ever ruling on the intervention requests).

programming into a statewide administrative model as the Low Income Advocates urge above. Specifically, the Low Income Advocates suggest the following procedural progression:

- (1) Utilities file their triennial USECP, which is immediately referred to the Office of Administrative Law Judge for the creation of a record.
- (2) The Administrative Law Judge assigned to the case oversees the exchange of discovery and the admission of evidence and testimony.
- (3) The Administrative Law Judge certifies the complete record to the Commission for a decision.
- (4) The Commission refers the record to BCS, the Office of Special Assistants, and/or the Law Bureau (as appropriate) to draft a Tentative Order.
- (4) The Commission issues a Tentative Order, allowing interested stakeholders and the general public to provide comment.
- (5) At the conclusion of the comment period, the Commission issues a Final Order.

Notably, this suggested approach to the review of USECPs would not unduly prolong the current review process. As it stands, there is typically a period of at least 6 months between the time a utility files its proposed USECP and the time the Commission enters its Tentative Order. The proposed process would simply offer a more robust record from which the Commission – with the input of all informed stakeholders, including BCS – could make important and far-reaching policy decisions.

c. Reporting Requirements

Large electric and natural gas distribution companies are subject to the annual universal service and energy conservation reporting requirements contained in section 54.75 and 62.5 of the Pennsylvania Public Utility Code. These reports are later compiled and summarized by the Bureau of Consumer Services in its annual Report on Universal Service Programs and Collections Performance, and are made available on the Commission’s website.¹⁵⁷

¹⁵⁷ See 52 Pa. Code §§ 54.78, 62.8; see also Pa. PUC, Universal Service Reports, http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx.

The current reporting and public disclosure requirements are insufficient to allow adequate review and assessment of a utility's universal service programs. First, improvements must be made to the current public-facing data. The summary data contained in the publicly available BCS report does not include key data contained in the utilities' initial reports which are critical to assessing a utility's portfolio of programs and identifying trends which need to be addressed. For example, information about CAP payment rates, the number of full on-time payments, and the percentage of CAP bills paid by a customer are missing from the Commission's annual report, but are important to assessing whether CAP is producing an affordable bill, and whether improvements need to be made to specific processes. Important data regarding service rates and outcomes for LIURP, CARES, and Hardship Fund programs is similarly withheld from the public.

The Low Income Advocates urge the Commission to publicly disclose the data reported to the Commission pursuant to natural gas and electric utility universal service reporting requirements at the time it is reported to BCS, or soon thereafter. This could be accomplished by simply posting the reports to the Commission's website, as it does with Act 129 energy efficiency reports.¹⁵⁸ Alternatively, the Commission could require the utilities to file the report at the docket for their currently-approved USECP, with service to the parties to that proceeding. Public disclosure of the full utility reports, near the time the data is reported, would allow a more robust public participation, supported by current data, facts, and figures. Nothing in the reported data includes identifying or personal information that could raise potential privacy concerns if

¹⁵⁸ See Pa. PUC, [Electric Distribution Company Act 129 Reporting](http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/act_129_information/electric_distribution_company_act_129_reporting_requirements.aspx), http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/act_129_information/electric_distribution_company_act_129_reporting_requirements.aspx.

this information were made public. As such, the Low Income Advocates fail to see any downside to requiring the added disclosure.

In turn, a closer look should be paid to the data required to be disclosed by the utilities in the annual reports to the Commission. Based on the issues identified throughout these Comments, the Low Income Advocates suggest requiring the disclosure of additional data points to better inform policy decisions moving forward, including but not limited to:

- CAP Recertification
 - Number of customers removed from CAP for failure to recertify their income
 - Number of customers terminated within 3 and 6 months of missed recertification
 - Outreach efforts (form letters / communications)
- Maximum CAP Benefit Levels
 - Number who exceed maximum CAP benefits
 - Number of exemptions granted to maximum CAP benefits
 - Number of customers terminated within 3 and 6 months of reaching their maximum CAP credit or discount
- CAP Shopping
 - Number who are served by a competitive supplier
 - Number of shopping customers who reach their maximum benefit level before the end of the program year
 - Calculation of the CAP shortfall at the price to compare, by month, compared to actual CAP shortfall
 - Number of CAP Shopping customers that are terminated
- Coordination
 - The number of customers who are automatically recertified for CAP because they receive LIHEAP benefits
 - The number of CAP customers served also through LIURP / CARES / Hardship Fund
 - The number of LIURP participants served jointly by an overlapping utility
- Periodic Termination and Reconnection Information
 - For the reporting period [Quarter? Calendar year?], the number of terminated customers who participated in CAP during the 12 months preceding termination
 - The number of customers who participated in CAP during the 12 months preceding termination who were reconnected, including the duration of service loss, aggregated by 3 month increments
 - The number of customers who participated in CAP during the 12 months preceding termination who remain disconnected at the time of preparation of the report.

Of course, were the Commission to make significant changes to the programs, as recommended throughout, some of these data points may be less critical, or even moot. In addition to this data,

utilities should be required to disclose form notice letters and the text of other communications to customers concerning important aspects of the program, including program solicitation, education, recertification, and other notices. Currently, to the best of the Low Income Advocates' knowledge, none of this information is reviewed as a matter of course by the Commission in its oversight of the utilities' universal service programs. As a result, programs intended to fulfill the Commission's legislative mandate to ensure that service is universally available to all Pennsylvanians are fragmented, reaching only a minority of customers in need, and facing different problems and challenges in each service territory. This unwieldy and scattered structure does not fully ensure the maintenance of adequately funded and available universal service programs as required by the Electric and Gas Choice Acts.

X. CONCLUSION

The Low Income Advocates submit the foregoing comments for consideration as part of this broad investigation. As suggested throughout these Comments, we submit that further and targeted inquiry into a number of nuanced policy issues is necessary to establish the best programmatic path moving forward. As such, the Low Income Advocates suggest that the Commission continue its investigation and, ultimately, issue a comprehensive rulemaking that would establish clear, consistent, and detailed programmatic design, implementation, rules, procedures, oversight, evaluation, and reporting requirements. To that end, the Low Income Advocates provide the following summary of their recommendations for substantive changes to universal service program design, implementation, delivery, and oversight.

- CAP
 - Adopt a 6% *combined* electric and natural gas energy burden
 - Institute a statewide Percentage of Income Program Design, with an average bill alternative for those with a burden below the energy burden target
 - Clarify termination procedure for CAP customers
 - Provide arrearage forgiveness for full tariff arrears upon entry or reentry into CAP

- Establish a transitional arrearage forgiveness program to address arrears accrued through an unaffordable rate design
- Standardize eligibility requirements to allow all low income consumers to access assistance
- Coordinate and streamline program delivery within the utility, between overlapping utilities, and with other state and federal assistance programs
- Further explore and investigate nuanced program rules and procedures which undermine efforts to produce an affordable bill for participants
- LIURP
 - Enhance coordination between LIURP and CAP
 - Adjust usage thresholds to better reach small homes with high per square foot usage
 - Incorporate other comments and recommendations incorporated by reference from the LIURP Rulemaking
- CARES
 - Require utilities to appoint a dedicated staff person, with appropriate education and background in social work, to handle intensive case management and referrals.
- Hardship Fund
 - Require that fines, fees, expense reductions, pipeline or grid credits, and other rate reductions or refunds be allocated to Hardship Fund programs.
 - Establish uniform eligibility rules that eliminate harsh eligibility barriers that exclude households in need
 - Affirm/restore utility authority over Hardship Fund program terms and conditions
- Program Delivery
 - Investigate options to deliver statewide universal service programming, and adopt an appropriate model for implementation
- Cost Recovery
 - Assign universal service costs on all rate classes
 - Impose a cross-class System Benefit Charge to finance universal service programs
 - If allocation of costs between rate classes is reserved for base rate proceedings, establish criteria to guide the distribution of costs
- Oversight and Reporting
 - Review and improve complaint handling requirements and procedures
 - Require that a record be developed prior to the Commission's consideration of Universal Service and Energy Conservation Plans
 - Require advanced disclosure of utility data
 - Enhance data reporting requirements

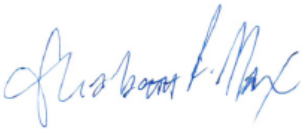
As noted throughout, these recommendations are not exhaustive of all the nuanced issues with each utility's portfolio of universal service programs, but rather attempt to distill the most

critical program issues into concrete recommendations for improving the overall delivery and administration of universal service programming.

The Low Income Advocates are thankful to the Commission for its thoughtful consideration of the comments and recommendations made herein, and look forward to actively engaging in the next stages of this investigation.

Respectfully Submitted,

Pennsylvania Utility Law Project
On Behalf of CAUSE-PA



Elizabeth R. Marx, Esq., PA ID 309014
Patrick M. Cicero, Esq., PA ID 89039
Joline Price, Esq., PA ID 315405
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

Community Legal Services
On Behalf of TURN and Action Alliance



Robert Ballenger, Esq., PA ID 93434
Josie B.H. Pickens, Esq., PA ID 309422
Jenna Collins, Esq., PA ID 312103
1424 Chestnut Street
Philadelphia, PA 19102-2505
215-981-3700
rballenger@clsphila.org
jpickens@clsphila.org
jcollins@clsphila.org