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August 8, 2017

Rosemary Chiavetta, Esq., Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, Pennsylvania 17120

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

Dear Secretary Chiavetta:

Enclosed for filing please find the comments of the Energy Association of Pennsylvania to the Commission's Opinion and Order at the above-referenced docket.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicole W. Gear", with a long horizontal flourish extending to the right.

Nicole W. Gear  
Manager, Policy & Research

Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Review of Universal Service and  
Energy Conservation Programs

:

Docket No. M-2017-2596907

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**COMMENTS OF THE  
ENERGY ASSOCIATION OF PENNSYLVANIA  
TO OPINION AND ORDER**

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**I. INTRODUCTION**

On May 10, 2017, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) entered an Opinion and Order to initiate a review of utility Universal Service and Energy Conservation Programs (“USECPs”), Docket Number M-2017-2596907. The Commission initiated this review to extend and incorporate its previously-initiated review of utility LIURPs<sup>1</sup> and study of home energy burdens in Pennsylvania.<sup>2</sup> The Commission has stated it intends to use the review initiated by this Opinion and Order to examine the above issues in conjunction with “universal service program design, implementation, costs, cost recovery, administration, reporting, and evaluation”<sup>3</sup> more broadly.

The Commission – via the Natural Gas Choice and Competition Act<sup>4</sup> and the Electric Generation Customer Choice and Competition Act<sup>5</sup> (“Competition Acts”) – is charged with

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<sup>1</sup> See *Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1 – 581.18*, Docket No. L-2016-2557886 (Secretarial Letter issued December 16, 2016).

<sup>2</sup> See *Energy Affordability for Low Income Customers Opinion and Order*, Docket No. M-2017-2587711 Opinion and Order Entered May 5, 2017.

<sup>3</sup> *Opinion and Order*, pp. 3-4.

<sup>4</sup> 66 Pa. C.S. §§ 2201-2212.

<sup>5</sup> 66 Pa. C.S. §§ 2801-2815; 66 Pa. C.S. §2203(7) and 2802(10).

maintaining, at a minimum, the customer assistance policies, practices, and services that were in place at the time of the respective effective dates of the Acts. Furthermore, the Commission is tasked with ensuring that utility USECPs are appropriately funded, available, and cost-effectively managed in each service territory.<sup>6</sup> Universal Service Programs are understood to incorporate utility Customer Assistance Programs (“CAPs”), the Low Income Usage Reduction Program (“LIURP”), Customer Assistance and Referral Evaluation Services (“CARES”) and utility Hardship Funds. These programs are primarily made available to low-income customers, where low-income is defined by 52 Pa. Code §54.72 as those residential customers whose household income is at or below 150% of the Federal Poverty Income Guidelines (“FPIG”). Some assistance may be made available to qualifying non-low-income customers as well.<sup>7</sup>

EAP respectfully submits these comments regarding utility USECPs to supplement those filed individually by its electric distribution company (“EDC”) and natural gas distribution company (“NGDC”) members.<sup>8</sup> EAP anticipates participating in the stakeholder meeting to be convened by the Commission’s Bureau of Consumer Services in September 2017, as well as offering additional feedback via reply comments as provided for and outlined in the Opinion and Order.

EAP offers the following comments as a basis for discussion and not with the intention of

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<sup>6</sup> 66 Pa. C.S. §§ 2203(8) and 2804(9).

<sup>7</sup> Select utilities have petitioned and received approval for a portion of their USECP budgets to go to services for those households with up to 200% of FPIG, e.g. weatherization services via LIURP. See 52 Pa. Code §§ 58.1, 58.2 and 58.10(c) which states that “A covered utility may spend up to 20% of its annual program budget on eligible special needs customers as defined in § 58.2”.

<sup>8</sup> Electric Utility Members: Citizens’ Electric Company; Duquesne Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Pennsylvania Power Company; Pike County Light & Power Company; PPL Electric Utilities; UGI Utilities, Inc.-Electric Division; Wellsboro Electric Company; and West Penn Power Company. Gas Utility Members: Columbia Gas of Pennsylvania, Inc.; Pike County Light & Power Company; National Fuel Gas Distribution Corp.; PECO Energy Company; Peoples Equitable Division; Peoples Natural Gas Company LLC; Peoples TWP LLC; Philadelphia Gas Works; UGI Central Penn Gas, Inc.; UGI Penn Natural Gas, Inc.; UGI Utilities Inc.; and, Valley Energy Inc.

providing a definitive answer to the issues raised at this stage of the proceeding. EAP welcomes and appreciates the collaborative approach outlined via the Opinion and Order to solicit comments, encourage dialogue via a stakeholder meeting, and allow for additional input thereafter.

## **II. BACKGROUND AND PROGRAM HISTORY**

### **A. Overview and Summary**

On July 14, 2017, the PUC's Law Bureau, in conjunction with the Bureau of Consumer Services ("BCS"), released a Staff Report in compliance with the Commission's directive in the Opinion and Order to outline the existing statutory, regulatory and policy frameworks surrounding utility USECPs. This review was directed to be published under the docket for review and comment by stakeholders in order to understand the related processes involved should the Commission wish to initiate any changes as a result of this investigation.

EAP notes that the Staff Report accurately outlines the procedural history of the Commission's actions in utility low-income policies and practices and provides a general, high-level perspective on the processes available to the Commission to direct changes to these programs. The Association maintains, however, that of equal importance to an examination of USECPs history and procedures are the conclusions drawn by the Commission in its various actions, orders, and review of USECP programs to date. EAP maintains that in order to determine a path forward, it is crucial to examine the experience of utilities in their submission and implementation of universal service plans, including the process, the cost, and the benefit to both low-income ratepayers and those who are asked to pay for the programs.

#### **i. Brief History**

Similar to the investigation initiated at this docket, the Commission issued a *Proposed Options for Dealing with Payment Troubled Customers* and *Recommendations for Dealing with*

*Payment Troubled Customers*, Docket M-840403 in 1985 in which BCS reported to the Commission following various statewide hearings and submission of public comments. A few years later in 1987 the Commission reviewed utility LIURPs and issued an Order and Policy Statement under the same docket number. The Commission derived its authority to oversee these programs from its general authority to regulate utilities under the Public Utility Code.<sup>9</sup>

It was not until the enactment of the Competition Acts that specific statutory authority for these programs became part of the Public Utility Code. The General Assembly highlighted the importance of continuing to help low-income customers maintain utility service; under both retail choice statutes, universal service and energy conservation programs<sup>10</sup> are subject to the administrative oversight of the Commission, which must ensure that the utilities run the programs in a cost-effective manner. *See*, 66 Pa.C.S. §§ 2203(8) and 2804(9). The Commission is charged with ensuring that universal service and energy conservation programs are appropriately funded and available in each utility distribution territory. *Id.* Although the statutes do not define “affordability,” the Commission’s Policy Statement on Customer Assistance Programs provides some guidance on the concept of affordable payments:

- Generally, CAP payments for total electric and natural gas home energy should not exceed 17% of the CAP participant’s annual income.<sup>11</sup>
- Generally, maximum payments for electric nonheating service should be within the following ranges:
  - Household income between 0—50% of poverty at 2%—5% of income.
  - Household income between 51—100% of poverty at 4%—6% of income.
  - Household income between 101—150% of poverty at 6%—7% of income.
- Generally, maximum payments for gas heating should be within the following ranges:
  - Household income between 0—50% of poverty at 5%—8% of income.

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<sup>9</sup> 66 Pa.C.S. § 501.

<sup>10</sup> Defined by those statutes as the policies, practices and services, such as CAP, usage reduction programs, service termination protections and consumer education that help low-income customers maintain utility service. *See*, 66 Pa C.S. §§ 2202 and 2803.

<sup>11</sup> 52 Pa. Code § 69.265 (2).

- Household income between 51—100% of poverty at 7%—10% of income.
- Household income between 101—150% of poverty at 9%—10% of income.
- Generally, maximum payments for electric heating or gas heating and electric nonheating combined should not exceed the following guidelines:
  - Household income between 0—50% of poverty at 7%—13% of income.
  - Household income between 51—100% of poverty at 11%—16% of income.
  - Household income between 101—150% of poverty at 15%—17% of income.<sup>12</sup>
- Minimum payment terms:
  - A CAP participant payment for a gas heating account should be at least \$18—\$25 a month.
  - A CAP participant payment for a nonheating account should be at least \$12—\$15 a month.
  - A CAP participant payment for an electric heating account should be at least \$30—\$40 a month.<sup>13</sup>

The Commission’s goal of balancing the interests of customers who benefit from the programs with the interests of the customers who pay for the programs is a paramount consideration in examining customer affordability and cost-effectiveness of all universal service programs. EAP notes this in particular in light of the Competition Acts requirement that the Commission establish non-bypassable cost recovery mechanisms that allow utilities to “fully recover” the costs of these programs. *See*, 66 Pa. C.S. §2804(8), 2203(6).

## **B. Utility Program History and Scope**

Since the passage of Chapter 14 in 2004<sup>14</sup>, Pennsylvania’s EDCs and NGDCs have spent over \$4 billion on universal service programs. On average over the last five years, utilities and their residential ratepayers have spent \$400 million annually on energy assistance.<sup>15</sup> By comparison, Pennsylvania’s LIHEAP allocation from the federal government for energy assistance for all fuel types (not just electric and natural gas) has averaged approximately \$200 million

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<sup>12</sup> 52 Pa. Code § 69.265 (2)(i)(A)-(C).

<sup>13</sup> 52 Pa Code § 69.265(3)(i)(A)-(C).

<sup>14</sup> 66 Pa.C.S. Chapter 14 enacted by PA Act 201 of 2004.

<sup>15</sup> PUC Annual Universal Service Reports for years 2015, 2014, 2013, 2012.

annually over that same time.<sup>16</sup> Additionally, utilities spend over \$50 million annually on weatherization services via their LIURP programs; by comparison, the federal Department of Energy (“DOE”) has allocated, on average, \$200 million for weatherization work across the entire country, of which Pennsylvania typically receives about \$14 million each year. Even with the additional funding DCED receives from the federal LIHEAP funds (known as Crisis Interface) to supplement DOE weatherization, utilities spend almost twice as much each year on weatherization work as does the Commonwealth.<sup>17</sup>

The breadth and cost of these programs evidence a strong commitment by energy utilities to their low-income, payment-troubled customers. Moreover, as these funds are often directly recovered from residential ratepayers, there remains an equal commitment by utilities to ensure that funds are effectively utilized in the administration of their universal service programs.

### **C. Utility Plan Submission and Process Experience**

Pursuant to existing Commission regulation at sections 54.74 (a) and 62.4 (a), each EDC and NGDC must submit to the Commission for approval an updated USECP every three years on a staggered schedule. The plans are to cover the next three calendar years. In addition, each company’s plan is subject to an independent (third party) review at no greater than a six-year interval.<sup>18</sup> EDCs began filing their plans in 2000 with the first impact evaluation due in 2002. NGDCs filed their first plans in 2002 with the first impact evaluations due in 2004. The Commission’s Final Rulemaking Order at Docket No. L-00000146, *Reporting Requirements for Universal Service and Energy Conservation Programs 52 Pa. Code Chapter 62*, laid out the

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<sup>16</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Low Income Home Energy Assistance Program Report to Congress for Fiscal Year 2010; Report to Congress for Fiscal Year 2011; Report to Congress for Fiscal Year 2012; Report to Congress for Fiscal Year 2013; Report to Congress for Fiscal Year 2014.

<sup>17</sup> Not including moneys spent by EDCs on Act 129 programs.

<sup>18</sup> See, 52 Pa. Code § 54.76 and § 62.6.

NGDC's individual USECP filing due date and evaluation day for plan submittals through 2004 and plan evaluations through 2008. The Appendix of that Order had an evaluation due two years after the plan submittal date or one year before the next plan was to be submitted. At the time, the Commission elaborated on the decision by saying "[t]his schedule will allow a NGDC the opportunity to reflect changes to the plan based on evaluation recommendations."<sup>19</sup> The current six-year schedule may not provide such an opportunity as one plan is often complete and another mid-cycle by the time an evaluation is conducted, completed, and offered to the Commission, the utility, and stakeholders for review.

On June 27, 2014 the Commission issued a Secretarial Letter to the major EDCs and NGDCs altering the staggered filing schedule set forth in regulation for the utilities' triennial USECPs.<sup>20</sup> Citing factors such as "mergers, appeals and other delays," the Commission indicated that the present schedule was no longer effectively timed, which necessitated not only a new filing schedule, but acted as a "partial, one time Commission waiver of the three year requirement set per 52 Pa. Code §54.74 and §62.4" by extending existing or soon-to-be-filed company three-year plans to four year plans.<sup>21</sup>

This Secretarial Letter did not, however, outline a timeline by which the Commission would review and/or approve said plans. Current Commission regulations at 52 Pa Code §54.74 (a)(6) state that "[t]he Commission will act on the plans within 90 days of the EDC filing date." Similar language is reflected in regulations governing NGDC USECPs.<sup>22</sup> There are no other timelines or benchmarks for the review and approval process. The experience of EAP's member

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<sup>19</sup> See Final Rulemaking Order at Docket No. L-00000146, Reporting Requirements for Universal Service and Energy Conservation Programs 52 Pa. Code Chapter 62, p. 11

<sup>20</sup> Commission Secretarial Letter dated June 27, 2014, *Re: USECP filing schedule and Independent Evaluation filing schedule*

<sup>21</sup> *Id.*

<sup>22</sup> 52 Pa Code § 62.4(a)(5).



utilities has been varied, but most have encountered delays well past 90 days in the initiation of the approval process of their USECPs, even to the point where final approval occurs after the plan was set to take effect.<sup>23</sup> In its comments to a 2008 Commission order on universal service program review,<sup>24</sup> EAP noted at that time that the process for triennial review was taking up to 24 months for the Commission to conduct hearings and render a decision. This continued delay of USECP plan approval appears prolonged given that the Commission routinely completes complex base rate proceedings with hearings and a final decision within nine (9) months.

In order to provide staff the opportunity to complete review of pending and upcoming filings (the “original filing date” of June 1, 2016 was to have four companies file plans simultaneously), the Commission attempted to stagger the filing dates two months apart. EAP believes that the prolonged and varied times for the review process to be initiated in these proceedings indicates that BCS and other Commission staff may need more than two months to review utility USECPs. EAP recommends the Commission consider adjusting the filing schedule again to give staff the 90 days per current regulation to review each plan and issue a tentative order by that date before the next company’s plan is filed.

EAP also suggests that if the Commission routinely needs more than 90 days to review each plan, the Commission should consider making a new three-year plan effective on the date the Commission enters its final order on the plan. The triennial review would be considered complete when the Commission renders its decision and distribution companies would then have the plan in effective for three years from the date of that decision; the next triennial review would be required

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<sup>23</sup> For example, Duquesne Light’s 2017-2019 USECP plan (Docket No. M-2016-2534323) was submitted on March 16, 2016. The first Commission action recorded under the docket occurred on August 11, 2016, five months later. Similarly, National Fuel Gas submitted its 2017-2020 plan (Docket No. M-2016-2573847) on October 28, 2016 and received a Tentative Order on August 3, 2017, nine months later.

<sup>24</sup> See, Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements, 52 Pa. Code §§ 54.71-54.78 (electric) §§ 62.1-62.8 (natural gas) and Customer Assistance Programs §§ 76.1-76.6, Docket No. L-00070186.

three years from that date. EAP believes a predictable, regular process with guidelines and benchmarks – within the existing framework of BCS review and Commission approval of USECPs – will offer clarity and structure to the benefit of all parties.

Alternatively, EAP recommends the Commission consider extending the length of the plans from three years to four or five years. It may also find it more reasonable to consider six year plans, as the USECP third-party evaluations are presently conducted on a six-year cycle. EAP believes revisiting both plan length and evaluations in the context of the time necessary for the Commission to review the plans – including time for additional information offered by the utilities as result of Commission inquiry and input by stakeholders – will inure to the benefit of all parties.

EAP's member companies work with stakeholders to review their new plan filings and any associated changes to the assistance programs. Through prior plan or rate case settlement agreements, or of their own initiative, certain utilities convene local universal service stakeholder meetings on a semi-regular basis to elicit feedback from and continue dialogue with local and statewide stakeholders in order to improve universal service programs. In some specific instances, utilities have made recommended changes to their plans prior to submission to the PUC. While utilities do not assume this will be the end of the feedback received, they believe this is an important step in the process to vet ideas and possible solutions as plans are developed.

Once a Tentative Order is issued, both the utility and interested stakeholders are responding not only to the original submitted plan, but also to the Commission's questions and requests for clarification or changes. Some issues raised by stakeholders may already have been addressed prior to plan submission via the aforementioned stakeholder process, but are now reopened in the context of the Tentative Order. Stakeholder issues are also often revisited in utility rate cases where funding and cost recovery for universal service programs is determined. EAP recommends the

Commission review these various methods of stakeholder input with an eye toward streamlining them in order to promote administrative economy and efficiency as well as avoid duplicative review of existing resolutions.

#### **D. Regulations Regarding Plan Design**

EAP notes that the comparable regulations governing USECP content for EDCs and NGDCs are not parallel. Section 54.74(b) for EDCs outlines eight factors that must be included for each component of the plan. *See*, 52 Pa. Code § 54.74(b). The regulations for NGDCs at Section 62.4(b) include eleven factors. *See*, 52 Pa. Code §62.4 (b). The additional factors which must be included for NGDC plans are: a description of outreach and intake efforts for each program component; an identification of the specific steps used to identify low-income customers with arrears and to enroll them in appropriate universal service and energy conservation programs; and an identification of the manner in which universal service and energy conservation programs operate in an integrated fashion. *Id.*

Furthermore, the NGDC regulations expand on EDC regulations regarding the projected needs assessment. Section 62.4(b)(3) includes the following language not present at the parallel EDC regulation: “The needs assessment shall include the number of identified low-income customers and an estimate of low-income customers, the number of identified payment troubled, low-income customers, an estimate of payment troubled, low-income customers, the number of customers who still need LIURP services and the cost to serve that number, and the enrollment size of CAP to serve all eligible customers.” *Id.* EAP understands that in practice the Commission has also asked some EDCs for this information in their USECPs, but recommends that the Commission explore this inconsistency during the upcoming stakeholder meeting. EAP believes

there is value in evaluating the information requested, as well as follow-up information (data) routinely requested by BCS in its plan review process.

## **E. Regulations Regarding Plan Reporting & Evaluation**

### **i. Universal Service Reporting Requirements**

Following the enactment of the Competition Acts, the Commission's regulations for EDC program reporting became effective in August 1998 and for NGDCs in December 2000. The EDCs began reporting the required data to the Commission on April 1, 2001 for the 2000 reporting year; NGDCs began reporting on April 1, 2003 for the reporting year 2002. Upon receipt of this data, BCS has conducted a data-cleaning and error-checking process that typically continues through October, but has, in recent years, lingered on through the next calendar year. The process involves both written and verbal dialogue between BCS and the companies and helps to identify uniformity issues as they are documented in various tables, charts, and appendices. The reports have been historically divided into several chapters and sections with an associated discussion of the data elements, definitions and occasional narrative highlight.

Since that time, Act 201 of 2004 (“Chapter 14”) changed the rules that apply to cash deposits, terminations and reconnections, payment agreements, and the filing of termination complaints by customers for electric and natural gas service. The Commission subsequently amended its regulations at Chapter 56; in 2014, Chapter 14 was reauthorized and associated changes to Chapter 56 are still pending.<sup>25</sup> EAP believes it behooves the Commission and utilities to review these reports and the associated data points and definitions in order to reevaluate their purpose to ensure they continue to meet the statutory requirements but also provide useful information for the Commission and the companies. For example, EAP continues to be concerned

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<sup>25</sup> See, *Rulemaking to Amend the Provisions of 52 Pa. Code Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14*, Notice of Proposed Rulemaking Order, Docket No. L-2015-2508421.

that several data points exclude CAP information when utility CAP programs are the primary component of utility USECPs.<sup>26</sup>

EAP welcomes the opportunity to review with the Commission and other stakeholders the present reporting requirements regarding utility universal service programs. EAP and its member utilities met with BCS and other PUC staff in March 2015 to discuss the reporting requirements, the associated Data Dictionary that defines the input variables under 52 Pa. Code Section 56.231 and some short-term trend analyses on several key collection variables. The meeting explored inconsistencies and misinterpretations of data points, but there remains additional work to be done in this area in order to achieve consistency in reporting and confirm the value of data being reported. Information that may have been valuable in 2001 or 2003 may not be valuable today whereas data not previously collected, particularly cost data, may be important to a full appreciation and understanding of the need and impact of these programs to both participants and those who fund them. EAP believes continued discussions between the companies and BCS will better inform a recommendation on how to improve, add, or eliminate variables in the reporting requirements. EAP believes this targeted review should be separate, but parallel, to the wider stakeholder meeting under this docket.

#### **ii. LIURP “Codebook”**

The Commission and the Consumer Services Information System Project at Pennsylvania State University (“PSU”) have informally expanded on existing regulations regarding required reporting of utility LIURPs. Regulations governing reporting required include the following from

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<sup>26</sup> For example, the reports exclude CAP costs from the data point “Annual Collections Operating Expense.” There are also similar variables collected and reported by utilities in their monthly and annual reports pursuant to §56.231 that are interpreted differently for the purpose of USECP reporting. 52 Pa. Code Section 56.231.

Section 54.75(2)(ii)(A), which deals with Universal Service Reporting requirements more broadly:

(A) LIURP. Reporting requirements as established at § 58.15 (relating to program evaluation).

(I) LIURP reporting data shall be due by April 30.

(II) Actual production and spending data for the recently completed program year and projections for the current year shall be due annually by the end of February.<sup>27</sup>

and from the more specific LIURP regulations at Section 58.15:

(1) Compiling statistical data concerning:

- (i) The number of homes weatherized.
- (ii) The itemized cost of conservation measures installed.
- (iii) The total cost per home in terms of materials and labor.
- (iv) The types of housing structures weatherized
- (v) Energy consumption.
- (vi) Program recipient demographics.
- (vii) Program recipient utility bills and account balances.
- (viii) Program recipient utility payments.

(2) Evaluating the energy savings and load management impacts of program services; changes in customer bills, payment behavior and account balances; and the overall quality of program services and steps being taken to improve program performance. Utilities should at least annually assess the cost-effectiveness of weatherization contractors utilized in providing program services and incorporate this information into program management decisions.

(3) Reporting annually to the Commission regarding the findings of this evaluation.<sup>28</sup>

Over the years, meetings have been held with utility companies in the development of what has become known as the “LIURP Codebook,” a manual of sorts for the different variables utilized for

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<sup>27</sup> 52 Pa. Code Section 54.75(2)(ii)(A)

<sup>28</sup> 52 Pa. Code Section 58.15

satisfying the reporting requirements above. This “codebook” is not codified or subject to any regular Commission review and input process although it is often referenced in Commission orders.<sup>29</sup> The Staff Report under this docket does not make mention of a “codebook”; the annual Commission Universal Service Report only makes reference to a codebook in a footnote as “[o]riginally based in the LIURP regulations at 52 Pa. Code § 58.15 and incorporated in the Universal Service Reporting Requirements regulations”<sup>30</sup>. However, no such mention is made of a “codebook” or a presumed equivalent in any Commission regulations or guidelines, nor is it otherwise easy to locate unless one is immersed in the USECP process. Importantly, each time the database reporting requirements are changed, a new codebook is prepared and utility members and their weatherization contractors are expected / presumed to make the associated changes to their collection practices and internal systems without an associated cost analysis. While the process has historically been collaborative, recent requests for further or changed data points have been more prescriptive in nature and presented as a “done deal” without ample time or input regarding IT system changes, costs, and the relevancy of the data being sought.

EAP believes these requests for changes to the LIURP Codebook should continue to be developed collaboratively between the utilities, the Commission, PSU, and the state’s Department of Community and Economic Development (to the extent company-specific data is being shared with them under the memorandum of understanding between that agency and the PUC.)<sup>31</sup> EAP believes the last such truly collaborative meeting between the parties was held in 2010. EAP hosted

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<sup>29</sup> The Commission has cited “Table 1 and Table 2 of the LIURP Codebook” as the means by which utilities meet the requirements of 52 Pa. Code § 54.75 and § 62.5. *See PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4* Docket No. Docket No. M-2015-2507139 and cited by the Statewide Evaluator for Pennsylvania’s Act 129 programs. *See, Evaluation Framework for Pennsylvania Act 129 Phase III Energy Efficiency and Conservation Programs* dated October 21, 2016 p. 37.

<sup>30</sup> *See Report on 2015 Universal Service Programs & Collections Performance*, p. 37 fn.31.

<sup>31</sup> *See Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1 – 58.18*, Secretarial Letter Dated December 16, 2016, Docket No. L-2016-2557886.

a LIURP meeting in 2015 after an addition to the reporting requirements was requested via memo in October 2014 by PSU. We believe this meeting was productive in helping the utilities to understand the importance of the additional data being requested and advising the Commission and PSU of the logistical and cost limitations of collection. The costs – and privacy concerns – associated with having all utilities undertake the collection of additional variables may far outweigh the benefits claimed by the tracking this data with the stated goal of improving the efficiency of LIURP.

### **III. RECOMMENDATIONS**

#### **A. Consistency**

##### **i. BCS Review of Plan Design and Rate Case Review of Program Funding**

The triennial review process, led by BCS, involves many of the commenters to this and the previous universal service dockets. The level of involvement of advocates to the comment and review process is a measure of the willingness of all parties – utilities, the Commission, and stakeholders – to create the best possible program for each service territory. BCS has been and remains the appropriate Commission bureau to lead the review process for USECPs. The Commission has explicit statutory authority to “ensure that universal service and energy conservation policies, activities, and services are appropriately funded and available in each electric distribution territory.”<sup>32</sup> This authority has been delegated to BCS, who works with these programs on a daily basis, is familiar with their intricacies, and works actively with other agencies, such as the Pennsylvania Department of Human Services and DCED, to ensure the best results for the state's low-income customers. EAP does not believe this should change, as some have suggested in the past, to a more formal, litigated and adjudicated proceeding. The Commission

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<sup>32</sup> See, 66 Pa C.S. § 2804(9).



retains the ability to refer USECPs to the Office of Administrative Law Judge (“OALJ”) for hearings if any of the parties raise relevant issues in their comments that are better resolved by a litigated process. Immediate filing and review by OALJ is unnecessary and would prove costly and time-consuming for all parties. Furthermore, should the process begin within OALJ, BCS would be removed from the review process, which could have unintended consequences particularly in light of this effort to create consistency where possible across utility programs and in relation to the policy objectives of the General Assembly. Furthermore, altering the current process to make it more judicial in nature would unnecessarily result in a waste of resources, and significant costs, for the Commission, the statutory and other parties, and the utilities. EAP recommends the Commission maintain its delegation of authority to BCS and the existing process for review of utility USECPs, given the recommendations contained herein.

EAP further highlights that while program design has been traditionally addressed by BCS during the triennial review, concerns regarding funding levels (and program offerings) have been raised by advocates in utility base rate cases or rider proceedings to which BCS is not a party. Both processes invite additional comment by OCA and low-income advocates; on occasion, the rate case reopens issues resolved during the program design review as the two are not considered concurrently. Recommendations from member utilities, stakeholders, and the Commission should be considered during the upcoming stakeholder meeting on how best to align these two processes to maintain consistency in program application and in the implementation of Commission regulations, guidelines, and orders addressing USECPs. EAP again stresses, however, that it is not advocating for a more formal, litigated process.

## ii. Verification of Low-Income Population and the Needs Assessment

Included in the regulatory language regarding required USECP plan contents,<sup>33</sup> each utility must provide a projected needs assessment. Furthermore, the CAP Policy statement indicates that “[t]he participation limit for CAP should reflect a needs assessment, consideration of the estimated number of low-income households in the utility’s service territory, the number of participants currently enrolled in the pilot CAP, participation rates for assistance programs and the resources available to meet the needs of the targeted population.”<sup>34</sup> Over the course of time as utility plans and customer needs have evolved, the undefined term “needs assessment” has proved amorphous across utilities and between utility plans from one filing to the next. EAP believes that the term “needs assessment” is often interpreted too broadly, as if the utility programs were a government funded program rather than a ratepayer funded program. EAP maintains that the myriad needs of its low-income customer populations cannot be met primarily through utility USECPs.

For the purposes of both evaluating the needs of any individual utility’s service territory as the utility develops (and BCS and other stakeholders review) each USECP and the universal service reporting requirements,<sup>35</sup> there has historically been a disconnect among the parties as to the definition of “confirmed low-income.” Utilities focus on the needs of individual customers who self-identify and as low-income, and they routinely request income verification to establish eligibility for USECP programs.<sup>36</sup> For many, but not all, this income verification is required each year to maintain eligibility status and maintain the integrity of the program to ensure ratepayer

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<sup>33</sup> 52 Pa. Code § 54.74(b)(3) for EDCs and 52 Pa Code § 62.4(b)(3) for NGDCs.

<sup>34</sup> 52 Pa. Code § 69.264.

<sup>35</sup> 52 Pa Code §§ 54.75 and 62.5.

<sup>36</sup> Member utilities may ask for verbal or written proof of income, as well as accept income verification done by DHS for receipt of LIHEAP benefits.

dollars are funding assistance for only those who are truly in need. This calculation is how many utilities understand and account for the “confirmed” low-income population in its service territory.

However, with regard to assessing the scope of the program relative to the needs of a particular service territory – and when the utilities submit their annual universal service reports pursuant to 52 Pa Code §§ 54.71-54.78 – the Commission and PSU establish the number of low-income customers in need of utility energy assistance programs based on U.S. Census data.<sup>37</sup> The use of Census data to estimate the need for USECPs in a given utility service territory results in a needs assessment which routinely exceeds the number of participants in any utility program and leads to the flawed conclusion that these programs are not sufficiently or effectively run. This conclusion equates an analysis typically undergone to determine need for government-funded programs with a cost-benefit analysis used to measure effectiveness of utility ratepayer funded programs. EAP believes the use of Census data to assess the needs as part of the evaluation of utility USECPs is flawed for several reasons.

Universal service and energy conservation programs are intended to assist payment troubled customers. Census data measures the total population that is low-income, but there are many low-income households that are not payment troubled. In part, this discrepancy reflects the fact that for purposes of the Census, “low-income” is defined by cash coming into the household and does not take into account food stamps, Medicaid benefits, housing allowances and similar non-cash receipts. This estimation also does not account for those households that live in “utilities included” apartment buildings or other master-metered settings. Using the number of households

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<sup>37</sup> This shortcut to estimate the need based on Census data suggests that by applying the Census percentages of low-income (below 150% of FPIG) to the corresponding number of residential accounts, and then adding the county by county results together, one can estimate the number of low income households receiving utility service by each EDC or NGDC. It is further assumed, then, that the difference between the estimated number of low income households and the number of accounts currently participating in the utility’s universal service and energy conservation programs is tantamount to the unmet need.

as a proxy for the number of utility accounts is subject to substantial over counting of the need for purposes of utility-funded USECPs. In addition, a particular utility may only serve a portion of the county, or in some cases a single county is served by more than one utility, e.g. Allegheny County. In either situation, using the county-wide percentage of low-income households fails to take into account the wide variation that can occur within a county.

As mentioned previously, utilities require income information to be eligible for initial enrollment, renewing an existing enrollment, or seeking re-enrollment after a withdrawal or removal from various universal service programs. A number of low-income payment troubled customers refuse or decline to participate because they do not wish to provide the necessary income information or for other personal reasons. Utilizing Census data counts these customers in the population of “unmet needs,” even though these customers remain unenrolled through their own choice.

This methodology further assumes that the low-income percentage for the general population is identical to the low-income percentage for the population of utility ratepayers. There is no basis for this assumption, and there may be significant discrepancies to the extent the general population does not take a utility’s service. For example, in certain areas the general population may differ significantly from the population of natural gas accounts due to households that heat with electricity, wood, oil, etc.

Pennsylvania is a very diverse state, with many differences in the customer bases and housing stock between utilities’ service territories. The variables used in the needs assessments for the various universal service programs should be customized to the individual service territories to achieve the goals of the programs in a way that is fair to both participating customers and customers subsidizing the programs who will become overburdened if the costs are too high. If the

needs assessment is not realistic and does not take into consideration the composition and size of the utility's ratepayer base and the existing surcharges or rates borne by the utility's ratepayers, some ratepayers could be financially "punished" for the composition of the service territory. In such an instance, the ratepayers would be required to subsidize an untenably large program simply because a significant percentage of the utility's customers are low income. EAP and several of its member companies suggested a further stakeholder meeting under the LIURP review docket<sup>38</sup> to explore this issue; we would welcome the opportunity to address the needs assessment more broadly at the stakeholder meeting scheduled under this docket as well.

### **B. Flexibility of Design and Application**

EAP continues to urge the Commission to consider consistency of application and improvements to utility USECPs in the context of continued flexibility for member companies to design their programs based on the unique characteristics of their service territories. Differences in program cost and scope do not necessarily equate to deficiencies between service territories, but rather differences in the consumers served.

The design and costs of various universal service programs can be greatly influenced by the (1) average size of the residence, (2) whether residences heat primarily with electric, gas, or other sources, such as propane, fuel oil or coal, (3) the age and condition of area housing stock including whether or when a home was weatherized, (4) the payment history of various customer groups within the residential class, (5) the cost of living in the service territory, and (6) the usage level of various households. These differences in not only the population served but the population funding the programs necessitates a targeted, company-specific focus as opposed to

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<sup>38</sup> EAP comments to *Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1 – 58.18*, Secretarial Letter Dated December 16, 2016, Docket No. L-2016-2557886.

general overall mandates. EAP believes the criteria for reviewing USECPs should remain broad, allow for differences between service territories, and afford opportunity for innovation in program design.

### **C. Energy Burden**

EAP and its member utilities understand the importance of affordable energy for all Pennsylvania customers but maintain that meeting this obligation is a function primarily of government first, as supplemented by utility customer assistance programs. As evidenced by the breadth and depth of universal service programs, Pennsylvania's utilities are committed to ensuring assistance remains available to help low income customers maintain their service and good payment habits, be energy efficient, and have access to additional help in crisis situations. EAP looks forward to working with the Commission and other stakeholders on this issue following the Bureau of Consumer Services' report due next year.<sup>39</sup>

Presently, the Commission utilizes a range of energy affordability levels which vary by income and heating source and are outlined in the Commission's CAP Policy Statement.<sup>40</sup> As the Commission and other stakeholders weigh CAP energy burden levels in the larger context of this investigation into utility universal service programs, EAP cautions against any immediate action under this docket before BCS's report can be fully reviewed and vetted.

## **IV. CONCLUSION**

The goal of the comments contained herein is to encourage the Commission to continue to strive toward an optimum balance in the planning and scope of universal service programs: protecting vulnerable customers and helping them to maintain essential utility service while

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<sup>39</sup> *Energy Affordability for Low Income Customers*, Opinion and Order dated March 16, 2017. Docket No. M-2017-258771. See also *infra* at pp. 4-5.

<sup>40</sup> 52 Pa. Code § 69.265.

moderating costs for the remainder of the residential rate base. EAP respectfully requests that the Commission consider these comments as it determines next steps under this review docket. EAP anticipates further input during the Commission's scheduled stakeholder meeting in September, as well as during the reply comment period that follows.

In summary, EAP believes the following considerations, once vetted, have the potential to improve the USECP process for all parties:

- Maintain delegation of authority to the Bureau of Consumer Services to review USECP plan filing.
- Recognizing the impracticability of the current filing schedule, either increase the term of the plans or the time for initial BCS review prior to formal Commission action.
- Retain the current review process; EAP does not endorse a litigated proceeding for these plans.
- Examine the value of current data collected or required by the present Universal Service Reporting Requirements and refine the definition of said data points; with respect to the LIURP "Codebook," consult with utilities prior to mandating changes in order to assure the feasibility and practicability of the proposed changes and to determine whether such changes are cost effective.
- Maintain flexibility in program plan design and the needs assessment to allow for continued innovation and programs targeted to the needs of each individual service territory, being mindful that a "needs assessment" consider the specific demographic and financial factors of a given utility territory.

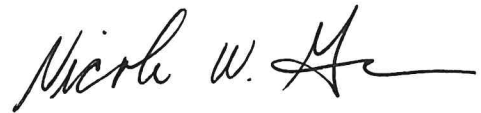
- Defer any preliminary changes or recommendations on energy burden until such time as the Bureau of Consumer Services' report is released and reviewed.

Respectfully submitted,



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