



June 7, 2023

**VIA E-FILE**


Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

**Re: 2023 Review of All Jurisdictional Fixed Utilities' Universal Service Programs  
Docket No. M-2023-3038944**

Dear Secretary Chiavetta,

Attached for filing, please find the **Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Pittsburgh United, and the Tenant Union Representative Network (TURN) (collectively, the Utility Justice Advocates)**, which are respectfully submitted for consideration in response to the Secretarial Letter published in the *Pennsylvania Bulletin* on April 8, 2023.

Respectfully Submitted,



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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**2023 Review of All Jurisdictional Fixed Utilities' :  
Universal Service Programs**

**: Docket No. M-2023-3038944**

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**JOINT COMMENTS OF  
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY  
EFFICIENCY IN PENNSYLVANIA,  
PITTSBURGH UNITED,  
AND  
TENANT UNION REPRESENTATIVE NETWORK**

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## TABLE OF CONTENTS

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. DISCUSSION.....</b>	<b>1</b>
<b>III. UTILITY INSECURITY IN PENNSYLVANIA.....</b>	<b>2</b>
A. Scope of Poverty in Pennsylvania.....	3
B. Energy and Water Insecurity .....	4
C. Current Insufficient Reach of Universal Service Programs .....	8
<b>IV. DIRECTED QUESTIONS.....</b>	<b>11</b>
QUESTION 1: What regulatory barriers are in place that would prevent utilities from having one utility do intake and then having that information provided to other utilities that provide service to that consumer for the purpose of universal service and CAP enrollment?.....	11
QUESTION 2: What regulatory barriers or other obstacles exist if an outside provider does the intake on behalf of multiple utilities serving the consumer and what solutions exist to overcome any barriers? .....	13
QUESTION 3: How can consumer consent be built into the intake process that permits the utility doing the intake to provide the enrollment information to the other utilities serving the consumer? .....	16
QUESTION 4: Is an automatic enrollment program feasible where any mechanism through which an electronic exchange of information between a utility and a state social service agency confirms the eligibility of public benefits whether or not the information is expressly authorized by the household? If express authorization is needed, rather than automatic enrollment, can that express authorization be provided one time in a uniform application rather than on a utility-by-utility basis using separate applications?.....	21
QUESTION 5: Should CAPs be administered statewide across all utility service territories rather than on a utility-by-utility basis? If so, what are the barriers to accomplishing this and what are the benefits and drawbacks of this approach? If not, what are the benefits and drawbacks of continuing to administer the programs on a utility-by-utility basis?.....	23
QUESTION 6: What changes would be required to EDCs’ and NGDCs’ existing, Commission-approved universal service and energy conservation programs to incorporate improvements and could changes be addressed in a streamlined fashion?.....	31
QUESTION 7: What additional consumer education and outreach could be undertaken to make more low income consumers aware of the benefits that may be available to them? .....	32

QUESTION 8: Can recertification periods in the existing CAP Policy Statement at Section 69.265(8)(viii) be extended so that otherwise eligible consumers do not lose benefits solely due to the fact that they timely failed to recertify their eligibility?.....35

QUESTION 9: Can the default provisions in the existing CAP Policy Statement at Section 69.265(9) be modified to reduce the chances that otherwise eligible consumers do not lose benefits solely due to the failure to comply with one of the articulated default provisions?.....40

QUESTION 10: Should utilities be required to develop and use standardized CAP forms and CAP procedures? What are the barriers, if any, of establishing a common application? .....45

QUESTION 11: What other additions or changes to the existing CAP Policy Statement should be made to increase eligibility, enrollment and maintenance of CAP benefits? .....48

QUESTION 12: Should the CAP Policy Statement be amended to include jurisdictional water public utilities, and, if so, what barriers if any exist to doing so and how can those barriers be overcome?.....55

QUESTION 13: If a coordinated enrollment process could be achieved with respect to CAP, could that same process be applied to identify eligibility for a utility's Low Income Usage Reduction Program (LIURP) or eligibility for receipt of hardship fund grants?.....62

QUESTION 14: What changes are required to the Commission's existing policies and regulations to incorporate improvements?.....63

**V. CONCLUSION..... 65**

## **I. INTRODUCTION**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA),<sup>1</sup> Pittsburgh United,<sup>2</sup> and the Tenant Union Representative Network (TURN)<sup>3</sup> (collectively, Utility Justice Advocates) submit the following Comments in response to the Commission's Secretarial Letter, published for comment in the, Pennsylvania Bulletin on April 8, 2023, opening a 60-day comment period for the review of all jurisdictional fixed utilities' universal service programs.

The Utility Justice Advocates strongly support the Commission's inquiry into this critical issue to ensure that universal service programs are accessible to those in need. We urge the Commission to take definitive action, as outlined in these Comments, to improve the delivery of essential utility assistance to low income households throughout Pennsylvania.

## **II. DISCUSSION**

As the Commission notes, it is in the public interest to ensure that all Pennsylvanians can access safe and reliable utility service regardless of ability to pay.<sup>4</sup> The Utility Justice Advocates strongly support the overarching goals of this Comment proceeding: to make enrollment and

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<sup>1</sup> 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.

<sup>2</sup> Pittsburgh United is a coalition of community, labor, faith, and environmental organizations committed to advancing the vision of a community and economy that works for all people. Pittsburgh United members work collectively to build a community whereby all workers are able to care for themselves and raise their families, sharing in the prosperity generated by economic growth and development.

<sup>3</sup> 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 people experiencing homelessness. TURN's goal is to guarantee to all Philadelphians equal access to safe, decent, accessible, and affordable housing.

<sup>4</sup> Sec. Ltr at 1.

retainment in universal service programs as efficient as possible; to improve access to assistance programming; and to streamline and eliminate unnecessary processes and costs that currently act as a barrier to consumers' ability to readily enroll in available assistance programs.<sup>5</sup> We urge the Commission to take decisive action to improve universal service enrollment and retention.

The current process and systems in place for universal service enrollment and retention are fragmented and unnecessarily duplicative. Each utility must administer its own programs with their own unique and varying program rules and conditions. This fragmented system works against the interests of utility consumers, their communities, and utilities. It creates unnecessary barriers to customers enrolling and remaining in assistance programs, hampers affordability, exacerbates the accrual of preventable arrears, increases risks of termination to low income households, and engenders unnecessary costs due to inefficiencies in administration. We urge the Commission to take decisive steps toward a centralized universal service program delivery model through adoption of uniform and consistent statewide rules, standards, and procedures. Providing greater consistency in universal service programming and administration throughout the Commonwealth will help control costs that are ultimately borne by other ratepayers<sup>6</sup> and will help to provide low income Pennsylvanians with improved access to assistance and affordable monthly bills.

### **III. UTILITY INSECURITY IN PENNSYLVANIA**

To appropriately design improvements to access and affordability of universal service programs, it is important to first understand why these programs are essential to low income

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<sup>5</sup> *Id.* at 2.

<sup>6</sup> Most Pennsylvania utilities pass through the costs of universal service solely to residential ratepayers. As CAUSE-PA and TURN explained at length in a previous Universal Service Program Review, universal service program costs should be spread across all utility ratepayers. *See* Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907, Joint Comments of CAUSE-PA, TURN and Action Alliance at 50-60.

households and their communities, as well as recent trends related to universal service access and enrollment in the Commonwealth.

### **A. Scope of Poverty in Pennsylvania**

A substantial number of Pennsylvanians are unable to afford even the most basic necessities, including essential items like food, clean water, adequate health care, housing, reliable energy, transportation, and childcare.<sup>7</sup> To measure poverty, the Census Bureau utilizes federal poverty level (FPL), a national standard based on household size and income. Notably, FPL tends to underestimate the level of need for financial assistance across the state, as it fails to consider a variety of other factors affecting economic stability, such as household composition, age, disability status, and local cost of living.<sup>8</sup>

In Pennsylvania, over 2.4 million people (roughly 19.15% of the statewide population) in 2021 had incomes at or below 150% of the federal poverty income guidelines (FPIG).<sup>9</sup> Poverty is wide-spread and can be found in high levels in both rural and urban geographic areas across Pennsylvania.<sup>10</sup> Philadelphia County, with a population of 1.5 million, has the highest level of

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<sup>7</sup> Dan Treglia, Mina Addo, Meagan Cusack, and Dennis Culhane, University of Pennsylvania, Understanding Racial And Ethnic Disparities In Health Outcomes and Utility Insecurity, *available at* [https://clsphila.org/wp-content/uploads/2021/03/CLS\\_UtilityReport\\_20200324.pdf](https://clsphila.org/wp-content/uploads/2021/03/CLS_UtilityReport_20200324.pdf); US Energy Info. Admin. Residential Energy Consumption Survey 2020, *available at* <https://www.eia.gov/consumption/residential/data/2020/index.php?view=characteristics> (hereinafter RECS Survey). *See also* NEADA, 2018 National Energy Assistance Survey, at 17, 20 (Dec. 2018), *available at* <http://neada.org/wp-content/uploads/2015/03/liheapsurvey2018.pdf> (hereinafter NEADA Survey).

<sup>8</sup> *See* Office of the Ass. Sec. for Planning and Eval. HHS Poverty Guidelines for 2023, Dept. of Health and Hum. Services. *available at* <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>. *Compare* Self Sufficiency Standard, <http://www.selfsufficiencystandard.org/Pennsylvania>, which accounts for household composition, geographic region.

<sup>9</sup> US Census Bureau, Poverty Status in the Past 12 Months, 2021, *available at* <https://data.census.gov/> (type “Poverty in Pennsylvania in 2021” in search bar; then click S1701: Poverty Status in the Past 12 Months under 2021: ACS 5-year Estimate Subject Tables)(note that PA ranks 29<sup>th</sup> at 11.8% with 1,482,811 people below poverty level).

<sup>10</sup> *Id.*

poverty in the state at 22.8%.<sup>11</sup> Other Pennsylvania counties with high rates of poverty include Centre County (17.2%), Forest County (16.7%), Cameron (16.1%), and Fayette (16.1%).<sup>12</sup>

Poverty also disproportionately affects children, women, people of color, and individuals with disabilities.<sup>13</sup> Those who are between the ages of 1 and 34 constitute 42% of the population in Pennsylvania but make up 55% of those who are below the poverty level.<sup>14</sup> Women make up 51% of the overall Pennsylvania population, but 57% of those below the poverty level.<sup>15</sup> People of color comprise of 29% of the overall Pennsylvania population, but account for 57% of individuals below the poverty level.<sup>16</sup> Furthermore, individuals with disabilities are far more likely to live in poverty than able bodied individuals.<sup>17</sup>

## **B. Energy and Water Insecurity**

Comprehensive changes are necessary to improve and streamline universal services across the Commonwealth for low income households who struggle on a daily basis to make ends meet. Every day, low income households are forced to choose between competing needs: feeding and clothing their families, paying rent, heating their homes, buying medicine, or paying for

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Tirzah Duren & Elizabeth Stelle, Tearing Down the Barriers to Prosperity: What Pennsylvanians Say About Poverty and Prosperity across the Commonwealth, 5 (2023) (citing United States Census Bureau, [American Community Survey, S1701, Poverty Status in the Past 12 Months, 2021](https://data.census.gov/cedsci/table?q=poverty%20in%20pennsylvania%202021&tid=ACSS1Y2021.S1701), <https://data.census.gov/cedsci/table?q=poverty%20in%20pennsylvania%202021&tid=ACSS1Y2021.S1701>).

<sup>14</sup> *Id.*, see also US Census Bureau, *supra* note 9 (adding under 18 years (2,656,206) with 18 to 34 (2,640,402)/total population (12,568,252); adding under 18 years below poverty level (435,602) with 18 to 34 below poverty level (382,114)/total population below poverty level (1,482,811)).

<sup>15</sup> *Id.* (calculations from total women (6,397,814)/total population (12,568,252), and women below poverty level (826,265)/total population below poverty level (1,482,811)).

<sup>16</sup> *Id.* (Comprised of the groups: Black or African American alone, American Indian and Alaska Native alone, Asian alone, Native Hawaiian and Other Pacific Islander, Some other race alone, two or more races, Hispanic or Latino origin).

<sup>17</sup> Erickson W. Lee & Von Scharder S, 2019 Disability Status Report: United States (2023), Cornell University, available at [https://www.disabilitystatistics.org/reports/2019/English/HTML/report2019.cfm?fips=2000000&html\\_year=2019&submitButton=Get+HTML](https://www.disabilitystatistics.org/reports/2019/English/HTML/report2019.cfm?fips=2000000&html_year=2019&submitButton=Get+HTML).



transportation to get to work. And yet, only a limited amount of low income customers are able to access available utility assistance, leaving most low income consumers with high monthly utility bills forced to make untenable choices to maintain utility services.

In recent years, low income households have faced ever increasing pressures. The wages earned by low income workers continue to remain too low to meet household needs, even as wages have grown for higher-paid workers.<sup>18</sup> Pennsylvania's minimum wage was last raised on July 24, 2009, and currently stands at just \$7.25 an hour,<sup>19</sup> far less than the state minimum in each of Pennsylvania's neighboring states.<sup>20</sup> For a family of four (consisting of 2 adults, a school-aged child, and a preschooler) in Pennsylvania to be economically self-sufficient in 2021, they would need an income of between \$51,771 to \$84,976.<sup>21</sup> This is far more than the \$15,080 that a full time, minimum wage worker would make annually.

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<sup>18</sup> See Alicia Adamczyk, Full-time minimum wage workers can't afford rent anywhere in the US, according to a new report, CNBC (July 14, 2021), *available at* <https://www.cnbc.com/2021/07/14/full-time-minimum-wage-workers-cant-afford-rent-anywhere-in-the-us.html>; Brynne Keith-Jennings, Catlin Nchako, and Joseph Llobrera, Number of Families Struggling to Afford Food Rose Steeply in Pandemic and Remains High, Especially Among Children and Households of Color, Center on Budget and Policy Priorities (April 27, 2021), *available at* <https://www.cbpp.org/research/food-assistance/number-of-families-struggling-to-afford-food-rose-steeply-in-pandemic-and>; Nat'l Employment Law Project, Occupational Wage Declines Since the Great Recession: Low-Wage Occupations See Largest Real Wage Declines (Sept. 2015), *available at* <http://www.nelp.org/content/uploads/Occupational-Wage-Declines-Since-the-Great-Recession.pdf>.

<sup>19</sup> Pa. Dep't of Labor & Industry, PA Minimum Wage Law (June 2023), *available at*

<https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/minimum-wage/Pages/default.aspx>

<sup>20</sup> Delaware, \$11.75; Maryland, \$13.25; New Jersey, \$14.13; New York, \$14.20; Ohio, \$10.10. See Nat'l Conf. of State Legisl., State Minimum Wages (Jan. 1, 2021), <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx>.

<sup>21</sup> Self-Sufficiency Standard, Pennsylvania, *available at* <https://selfsufficiencystandard.org/pennsylvania/>. See also PathWays PA, Overlooked and Undercounted 2019 Brief: Struggling to Make Ends Meet in Pennsylvania, *available at* [https://pathwayspa.org/wp-content/uploads/2020/01/PA2019\\_OverlookedUndercounted\\_Web.pdf](https://pathwayspa.org/wp-content/uploads/2020/01/PA2019_OverlookedUndercounted_Web.pdf); Pennsylvania - Self Sufficiency Standard. (The Self Sufficiency Standard is a benchmark often used to assess how much income a household needs to live without assistance in Pennsylvania. This tool measures the income that a family must earn to meet their basic needs and consists of the combined cost of 6 basic needs – housing, child care, food, health care, transportation, and taxes – without the help of public subsidies. Unlike the federal poverty level, which does not change based on geographic location or family composition, the Self Sufficiency Standard accounts for the varied costs of these six basic needs in different geographical areas and for differently aged household members. It is therefore a standard uniquely designed to determine the appropriate need that is to be met within each utility service territory.)

While income has remained stagnant for low income families in recent years, the cost of basic needs – including gas, electricity, water, and wastewater services – has soared, underscoring the need to streamline and improve access to universal service programs. Throughout the recent COVID-19 pandemic, low income households experienced disproportionate health and economic harm – with greater job and wage losses, increased food insecurity, and accrual of unprecedented levels of debt for life’s basic necessities.<sup>22</sup> Low income households have also been disproportionately impacted by recent surges in the rate of inflation, which in May 2022 reached a 40-year high.<sup>23</sup> In May 2023, a nationwide poll found that 3 out of 5 respondents reported that recent price increases and inflation caused moderate to severe financial hardship.<sup>24</sup>

In this tense economic climate, energy and water insecurity is growing at a rapid rate - with more and more low income families reporting that they forego food, medicine, and medical care just to keep the lights and heat on and the water running to their home. According to the Department of Energy (DOE) Energy Information Administration’s 2020 Residential Energy Consumption Survey, released in 2022, over 30% of households with income between \$19,000 and \$39,999 and over 40% of households with income less than \$19,999 reported reducing or foregoing food or medicine to pay energy costs.<sup>25</sup> The RECS data clearly reveals race-based

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<sup>22</sup> See Treglia *et al.*, Understanding Racial and Ethnic Disparities In Health Outcomes And Utility Insecurity Resulting From COVID-19 (March 2021), available at [https://clsphila.org/wp-content/uploads/2021/03/CLS\\_UtilityReport\\_20200324.pdf](https://clsphila.org/wp-content/uploads/2021/03/CLS_UtilityReport_20200324.pdf);

see also Center on Budget and Policy Priorities, Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships (Feb. 2022).

<sup>23</sup> Rachel Siegel and Andrew Van Dam, ‘Survival mode’: Inflation falls hardest on low-income Americans (Feb. 13, 2022), available at <https://www.washingtonpost.com/business/2022/02/13/low-income-high-inflation-inequality/>.

Paul Davidson, Inflation hit new 40-year high in May as gas, grocery, rent prices jumped, USA Today (June 10, 2022), available at <https://www.usatoday.com/story/money/2022/06/10/inflation-rate-cpi-may-consumer-price-index/7577577001/>.

<sup>24</sup> Jared Gans, 3 in 5 Americans now say inflation is causing financial hardship: poll, The Hill (May 18, 2023), available at <https://thehill.com/business/personal-finance/4010148-3-in-5-americans-now-say-inflation-is-causing-financial-hardship-poll/>.

<sup>25</sup> US DOE, Energy Information Administration, 2020 Residential Energy Consumption Survey, available at <https://www.eia.gov/consumption/residential/data/2020/>.

disparities in energy insecurity as well – with 40.2% of Black and African American households reporting that they reduce or forego food or medicine to pay for energy costs, compared to 16.8% of white households.<sup>26</sup>

Low income families also face involuntary termination at far greater rates than middle and high income families, creating a cascade of devastating consequences to the health, economic stability, and general welfare of hundreds of thousands of low income Pennsylvanians each year. Low income households are terminated at more than twice the rate of residential consumers as a whole.<sup>27</sup> In 2022, over 320,000 Pennsylvania households faced involuntary termination of energy and water services to their homes because they could not afford to pay.<sup>28</sup> In addition to many immediate harms – such as spoilage of food and medicine, inability to bathe or flush the toilet, lack of drinking water, and the loss of home heating, cooling, and cooking – the involuntary termination of energy and water service to a home is often an immediate catalyst to eviction and condemnation, resulting long-term housing instability; and can cause short and long-term health consequences for household members, and result in the loss of child custody and family separation.

As discussed in the section that follows, Pennsylvania’s universal service programs are not adequately reaching the growing population of families in need of comprehensive energy and water assistance to maintain service to their homes.

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<sup>26</sup> *Id.*

<sup>27</sup> Pa. Public Utility Commission, Bureau of Consumer Services, Report on Universal Service and Collections Performance, at 15-16 (Dec. 2022), available at [https://www.puc.pa.gov/media/2188/2021\\_universal\\_service\\_report\\_rev122722.pdf](https://www.puc.pa.gov/media/2188/2021_universal_service_report_rev122722.pdf) (hereinafter 2021 Universal Service Report).

<sup>28</sup> 2022 Utility Termination and Reconnection Data, as reported by the Public Utility Commission in January 2023, available at <https://www.puc.pa.gov/filing-resources/reports/terminations-for-electric-gas-water-companies/>. Note that the Commission’s website does not retain historical termination reports, so the most recent termination reports are for 2023. The termination data cited in these Comments are on file with counsel for CAUSE-PA.

### **C. Current Insufficient Reach of Universal Service Programs**

The existing universal service programs – the Customer Assistance Program (CAP), Low Income Usage Reduction Program (LIURP), and utility Hardship Funds – are intended to work in unison to target different component causes of energy insecurity – including long-term rate affordability, arrearage management, high usage, and temporary hardship. Unfortunately, across utility service territories, these universal service programs are not sufficiently accessible and coordinated to achieve the important intersectional goals of universal service programs. In addition, LIURP and Hardship Fund budgets are not sufficiently funded to address the need.

CAP enrollment rates for electric and gas utilities stand at less than half of confirmed low income (CLI) customers. Notably, as defined by the Commission, confirmed low income customers are those that a utility already knows or has reason to know are low income.<sup>29</sup> More representative of the actual scope of the problem is the CAP participation rates compared to the number of estimated low income (ELI) customers:

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<sup>29</sup> 2021 Universal Service Report at 2 (“A low-income customer is defined as one whose household income is at or below 150% of the federal poverty income guidelines. A low-income customer is classified as confirmed low-income after their public utility has obtained information that would reasonably place them within this FPIG level.”).

**Table 1: CLI AND ELI CAP PARTICIPATION RATE – 10 YEARS<sup>30</sup>**

	EDC CAP Participation Rate - CLI	EDC CAP Participation Rate - ELI		NGDC CAP Participation Rate - CLI	NGDC CAP Participation Rate - ELI
2021	50.7%	23.7%		38.4%	22.7%
2020	45.2%	23.0%		36.1%	22.1%
2019	41.0%	21.2%		33.8%	21.3%
2018	39.5%	21.6%		34.8%	20.9%
2017	40.3%	21.1%		34.9%	20.5%
2016	44.3%	22.1%		34.4%	20.3%
2015	46%	21.0%		35%	22.9%
2014	46%	21.1%		37%	23.1%
2013	47%	21.2%		36%	24.3%
2012	52%	23.6%		37%	26.1%
2011	53%	26.9%		40%	28.4%

As the above table shows, electric and gas utilities are enrolling fewer than half of all confirmed low income customers in CAP. CAP penetration rates are even lower – hovering around 25% -- as a percentage of estimated (census-based) low income customers. Many of the large water and wastewater utilities now operate comprehensive universal service programs, but there are no consistent reporting requirements – making it impossible to assess whether water and wastewater programs are reaching the eligible customer base.

Low CAP participation rates are not for lack of need. Low rates of program enrollment are largely driven by insufficient outreach, complicated and varying utility-specific program enrollment requirements, technological and transportation barriers, onerous paperwork requirements, and punitive rules – such as arbitrary maximum credit thresholds and stay-out provisions – which serve to deny low income households access to adequate levels of assistance.

<sup>30</sup> 2021 Universal Service Report at 8-10, 59-60; 2018 Universal Service Report at 6-7, 51-52; 2015 Universal Service Report at 7-8, 42; 2014 Universal Service Report at 7-8; 2013 Universal Service Report at 7, 37; 2012 Universal Service Report at 8; 2011 Universal Service Report at 10, 40.

Similarly, utility Low Income Usage Reduction Programs are not sufficiently funded to comprehensively address weatherization needs across the Commonwealth. In 2021, all of the large electric and natural gas utilities combined to complete 17,267 LIURP jobs.<sup>31</sup> This represents a small fraction of CAP customers, and an even smaller fraction of estimated low income customers. In 2020-2021, a mere 7,122 electric customers and 11,460 natural gas customers received hardship fund grants.

This unmet need for CAP, LIURP and Hardship Funds is borne out in Commission data related to payment troubled confirmed low income customers. According to the Commission's most recent Universal Service Report, confirmed low income customers of EDCs comprised an industry average of 35.1% of payment troubled residential customers in 2021, despite comprising only 11.7% of EDC residential customers.<sup>32</sup> Similarly, confirmed low income customers of NGDCs comprised an industry average of a staggering 65.8% of payment troubled residential customers in 2021, despite comprising only 14.9% of NGDC residential customers.<sup>33</sup>

When low income consumers are not promptly enrolled in available universal service programs, they must contend with categorically unaffordable monthly utility bills and face termination of service at disproportionate rates compared to residential customers as a whole. In 2021, the termination rate for confirmed low income EDC customers was 13.7% across electric utilities, compared to an industry average of just 4.0% for residential customers as a whole (inclusive of low income consumers).<sup>34</sup> Similarly, the termination rate for confirmed low income NGDC customers was 7.1% across gas utilities, compared to an industry average of 3.3% for

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<sup>31</sup> 2021 Universal Service Report at 56.

<sup>32</sup> 2021 Universal Service Report at 7, 11.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 14-15.

residential customers as a whole (again, inclusive of low income customers).<sup>35</sup> These intense disparities underscore the continued and palpable need to improve access to the essential universal service programs relied on by low income customers to afford monthly bills and stay connected to services.

This proceeding provides the Commission with the opportunity to make needed changes to the structure, design, and implementation of universal service programs to address access and affordability for low income consumers across the Commonwealth. The Commission has a statutory mandate to ensure that universal services are “*appropriately funded and available* in each service territory.”<sup>36</sup> To fulfill this mandate, the Commission must make service “available to all customers on reasonable terms and conditions,” regardless of their socio-economic status. We urge the Commission to make the improvements outlined in these Comments to improve both access and affordability, helping to ensure that low income consumers are able to afford and stay connected to life-sustaining utility services in their homes.

#### **IV. DIRECTED QUESTIONS**

**QUESTION 1:      What regulatory barriers are in place that would prevent utilities from having one utility do intake and then having that information provided to other utilities that provide service to that consumer for the purpose of universal service and CAP enrollment?**

The Utility Justice Advocates contend that there are no regulatory barriers that would *prevent* centralized enrollment and data sharing to facilitate cross-program enrollment. There are, however, several practical challenges, specifically including the need to (1) develop consent and data security protocols and (2) ensure ongoing collaboration with local community based

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<sup>35</sup> *Id.* at 14-16.

<sup>36</sup> 66 Pa. C.S. §§ 2804(9), 2203(8).

organizations. However, as discussed more fully below and specifically in response to Questions 2-5 and 10, we believe these challenges can be overcome with clear directives, policy amendments, and collaboration.

With regard to the first identified challenge, the Utility Justice Advocates submit that affirmative and fully informed customer consent is necessary prior to any sharing of information between utilities. The decision must ultimately lie with the consumer as to what information they want shared with their utility, and consumers must be assured that their data and information will only be used to enroll consumers in other utility assistance programs – and will not be sold or otherwise disclosed. It is also critically important to develop robust data integrity and security protocols to shield against unauthorized or inadvertent disclosure of highly sensitive personal data and information. Below, in response to Question 3, we discuss this particular challenge in detail and offer recommendations for how the Commission can and should proceed.

The second identified challenge relates to 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].”<sup>37</sup> Allowing utility to utility data sharing could run contrary to the concept of using local community based organizations to administer utility programs. However, as discussed more fully in response to Question 2, we believe this challenge can be overcome through collaborative program design and delivery to ensure local community based organizations can continue to serve an important role in bringing holistic services to low income families. Indeed, even in a paradigm where utilities can share information

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<sup>37</sup> 66 Pa. C.S. §§ 2203(8), 2804(9).



to facilitate cross enrollment, there will still be a critical need for trusted local partners to assist low income consumers to enroll – and to process applications.

As discussed in response to Question 5, the Utility Justice Advocates assert that statewide centralization of program delivery and implementation is the best way to ensure that universal service programs are consistently available to all low income customers throughout the Commonwealth. That said, we recognize that full centralization is a complex undertaking that will take significant time and resources to accomplish. Thus, as we discuss more fully below, we encourage the Commission to move decisively toward standardization through adoption and implementation of a common application, inter-utility data sharing, and standardization of program rules and procedures across all jurisdictional electric, gas, water, and wastewater utilities. In moving toward standardization, it is imperative for the Commission to also move forward with earlier plans to initiate a CAP Rulemaking to make certain that standardized rules and procedures create binding norms on utilities.

**QUESTION 2:       What regulatory barriers or other obstacles exist if an outside provider does the intake on behalf of multiple utilities serving the consumer and what solutions exist to overcome any barriers?**

The Choice Acts require the Commission 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].”<sup>38</sup> Using a Community Based Organization (CBO) as an outside provider is consistent with this directive. Indeed, most utilities already use CBOs for application assistance and intake, and many CBOs serve multiple utilities. For example, in Philadelphia, Neighborhood

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<sup>38</sup> 66 Pa. C.S. §§ 2203(8), 2804(9).

Energy Centers provide assistance with PECO Customer Assistance Program applications and PGW Customer Responsibility Program applications.<sup>39</sup> At the same time, both PECO and PGW use a different agency, the Utility Emergency Service Fund (UESF), to run their hardship funds, and PECO uses a third entity, CMC Energy Services, to implement its LIURP.

As always, consumer consent is paramount when discussing data-sharing between one or more entities. If an outside provider is doing intake for multiple utilities and/or multiple programs, they should confirm at the time of intake that the consumer wants to apply for each program. As discussed more thoroughly in response to Questions 3 and 4, this could be accomplished through the use of a common application with a check box for each utility program for which a consumer is seeking to apply – provided strong protections are in place to ensure the consent language is clear, detailed, limited in scope, and conveyed in plain language.

A significant barrier to using a single outside provider for intake are the duplicative application requirements of the various utility programs – both between different utilities and within a single utility’s multiple programs. Turning to an example from the Pittsburgh region, the Dollar Energy Fund (DEF) administers multiple universal service programs for the electric, gas, and water utilities in Western Pennsylvania. It is our understanding that DEF asks applicants calling about one utility program whether they would like to enroll in another program; however, if the applicant wishes to proceed with an application for another program administered by DEF, they must start at square one – providing all of their information a second time. DEF has explained that this duplicative process is a result of varied intake and application requirements for each utility

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<sup>39</sup> The Energy Coordinating Agency (ECA) coordinates the network of Neighborhood Energy Centers across Philadelphia, which are designed as one-stop locations to get help with energy issues. *See* <https://www.ecasavesenergy.org/community-programs>.

– as well as technological constraints of working with different interfaces across multiple utility systems.

The Advocates submit that we could begin to overcome these practical barriers through implementation of a common application and standard enrollment and recertification requirements and procedures across utility universal service programs. Through regulation, the Commission could require the use of a specific application form for all customer assistance programs and standardize income, documentation, notice, and disclosure requirements. We discuss this recommendation further in response to Question 3.

The technological barriers are perhaps more difficult to overcome, but they are not insurmountable. The Department of Human Services (DHS) effectively administers LIHEAP across hundreds of electric, gas, and deliverable fuel companies – all of which have different systems. Short of full centralization of universal service program administration (which we strongly support), we recommend the Commission examine the cost and feasibility of creating a centralized database that could overlay with utility systems – allowing for a single intake to be transmitted to each utility for enrollment.

We caution that standardization should not come at the cost of access and flexibility for the consumer. Low income utility customers are not a monolith – different application methods will work best for different households. As a result, the use of outside providers should not limit the methods by which a customer can apply for low income assistance programs. Customers should have the opportunity to apply through multiple enrollment pathways, including in-person, by phone, by web, and by mail. Language access must be integral to application processes. Use of outside providers should not limit or minimize a consumer’s due process right to challenge the

failure of a utility to enroll a consumer in its universal service program or to challenge the proper application of the utility's discount structure on a bill.

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.<sup>40</sup> There is potential for significant cost savings and consumer benefits in consolidating program delivery and implementation. Whether through statewide administration, or a utility-by-utility use of CBOs, strong Commission oversight is necessary to ensure that all customers are able to apply for programs, challenge decisions made about their eligibility for programs, and to ensure their data is used only for the narrow purposes of enrollment in programs.

**QUESTION 3:      How can consumer consent be built into the intake process that permits the utility doing the intake to provide the enrollment information to the other utilities serving the consumer?**

The Utility Justice Advocates strongly support efforts to improve data sharing across utility universal service programs to facilitate cross-enrollment in income-eligible programs and to streamline verification and recertification processes. We submit that utilities can and should be permitted to obtain consent from consumers during the universal service program intake process for this narrow and explicit purpose. That said, an appropriate balance must be struck to protect consumers from purposeful or inadvertent disclosure of highly sensitive personal data and information for purposes other than facilitating universal service enrollment.

The data that customers provide during the universal service program intake process can be expansive – including financial data, household composition, and identification documents and information, such as Social Security numbers and/or other information that could reveal an

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<sup>40</sup> 66 Pa. C.S. §§ 2804; 2203(8).

individual's immigration status. To receive necessary assistance, low income households have no other option but to provide this data to a utility. Consumers seeking enrollment in a universal service program are often in acute financial distress, and information about their income status – if improperly disclosed to a third party for purposes other than enrollment in a universal service program – could make them a target for bad actors. Uniquely vulnerable customers, such as immigrants, victims of domestic violence, consumers with limited English proficiency (LEP) and medically vulnerable consumers, may provide additional highly sensitive information to utilities during intake. Consumers who experience domestic violence may have their physical safety endangered if personally identifiable information or whereabouts are inadvertently disclosed to an abuser. Customers applying for universal service programs must be able to rely on robust confidentiality protections and processes that ensure that personal information is safeguarded from inadvertent or unauthorized disclosure.

To appropriately balance consumer privacy and improved access to universal service programs, we recommend that the Commission, through policy guidelines and regulation, develop clear and detailed standards and parameters for data privacy for sharing enrollment information.<sup>41</sup> Core to these standards must be the dual principles that consent must be fully informed and limited in scope.

At minimum, the Commission's standards should include (1) minimum procedural requirements for obtaining informed consent; (2) clear parameters restricting the scope of consent,

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<sup>41</sup> In CAUSE-PA's comments related to the Commission's Investigation into certain third-party access to EDC Customer Data (Docket No. M-2021-3029018) submitted on May 5, 2022, CAUSE-PA recommended that the Commission develop overarching policies that set forth minimum data privacy standards related to the sharing of certain limited data that would provide a framework for utilities to develop comprehensive data sharing tariffs, policies, and procedures. (CAUSE-PA Comments at 9). We similarly recommend that the Commission develop policy guidelines that set minimum standards and protections related to sharing data between utilities regarding universal service program enrollment information.

and prohibiting the sale or exchange of data for any pecuniary benefit to the utility or utility sub-contractor; and (3) considerations for consumers with unique vulnerabilities, such as medical conditions or status as a victim of domestic violence. We will discuss each of these recommendations in detail below.

1. *Minimum Requirements for Obtaining Informed Consent*

Consent to share personal information and data regarding universal service program eligibility must be obtained on an optional, opt-in basis and should include a clear, plain-language explanation of the purpose and scope of data sharing with other utilities. At minimum, the following should be explained to customers in plain language prior to obtaining consent to disclose universal service program enrollment data:

- A clear statement that the applicant is not required to consent to disclosure of their information as a condition of enrollment.
- The entities with which the utility intends to share the customer's information.
- What customer information will be shared.
- The purpose of sharing the customer's enrollment information.
- The time period in which the customer's consent is authorized.
- The customer's right to withhold consent or restrict the scope of disclosure without repercussion.
- How the customer can update their information and/or revoke their consent.
- Who the customer can contact if they have questions or concerns about the information sharing process.
- The grievance procedure for customers, and their right to legal recourse, if they believe their information has been improperly shared or utilized.
- An explicit statement acknowledging that the utility will never sell the customer's data or disclose the customer's data to a marketing company.

Utilities should be permitted to meet these minimum requirements either verbally, electronically, or in writing, depending on the method the consumer uses to enroll in the utility's universal service program. For instance, if a consumer is completing an application over the phone, consent to share information should be obtained verbally – rather than requiring submission

of a written consent form that could create an additional hurdle to enrollment. If enrollment is online, consent should be obtained electronically.

Clear and plain language is key to ensuring consumers are fully informed of the extent to which they are authorizing their information to be shared. It is also critical that consent be obtained in an applicant's native language. To ensure consistency across the state, we recommend that the Commission develop standardized consent language for utilities to incorporate into their intake process and/or application that meets these minimum disclosure requirements. Utilities should be required to retain a record of the customer's consent - either as a voice recording or a signed document (electronic or in writing), depending on the method used by the consumer to apply.

Finally, utilities should be required to provide periodic training to customer service representatives and universal service program administrators to review the policies and procedures related to information and data sharing and the parameters of customer consent, and how to answer consumer questions about the same. Additionally, utilities should ensure that customer service representatives are available to communicate with consumers in multiple languages, at minimum English and Spanish.

## *2. Scope of Consent*

Consent to share information and data related to universal service program enrollment must be limited to the disclosure necessary to facilitate outreach, enrollment, and/or recertification regarding a Commission-approved electric, gas, water/wastewater/stormwater universal service program that is within the jurisdiction and oversight of the Commission. Such a limitation would help shield against unauthorized disclosure to third parties that could expose economically vulnerable consumers to unwanted or potentially predatory solicitations.

As explained above, consumers seeking to enroll in a universal service program are often facing extreme financial vulnerability and have no choice but to disclose highly sensitive data to their utility as a condition of receiving critical assistance. As such, under no circumstances should consumers seeking enrollment in a universal service program ever be asked for consent that could result in the sale of data or information to third party marketers or the exchange of such data and information for a pecuniary benefit to the utility or the utility’s contractors or affiliates.

### 3. Protections for Uniquely Vulnerable Customers

Utilities routinely collect additional information about unique customer vulnerabilities, such as a consumer’s status as a victim of domestic violence or information regarding a household member’s medical conditions and/or reliance on medical equipment. As the Commission explores whether and to what extent utilities should share information to streamline universal service enrollment, we recommend that the Commission explicitly exclude information about domestic violence status and/or medical conditions or medical usage at this time. While this information could help to expand protections to vulnerable consumers,<sup>42</sup> we recommend that the Commission focus first on expanding policies governing the exchange of basic universal service enrollment information before including these more sensitive categories of customer data.

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<sup>42</sup> For example, customers who rely on medical equipment that uses electricity qualify for an exemption to the maximum CAP credit threshold – and victims of domestic violence may qualify for an exemption to a “good faith payment” requirement to access a hardship fund grant.



**QUESTION 4: Is an automatic enrollment program feasible where any mechanism through which an electronic exchange of information between a utility and a state social service agency confirms the eligibility of public benefits whether or not the information is expressly authorized by the household? If express authorization is needed, rather than automatic enrollment, can that express authorization be provided one time in a uniform application rather than on a utility-by-utility basis using separate applications?**

Yes, automatic enrollment in universal service programs based on information exchanged between a state agency and a utility – or between utilities – is feasible and achievable through careful program design and Commission oversight. Consistent with our discussion in response to Questions 1-3 and Question 5, we submit that consent to share data and facilitate auto-enrollment in other utility programs could be obtained through the use of a check-box on a common application, provided the language utilized to obtain consent establishes clear parameters for how, when, and under what circumstances the consumer’s information will be utilized. Critical parameters for customer consent are discussed more thoroughly above, in response to Question 3.

Importantly, efforts are already well underway for the Department of Human Services (DHS) to share data and information about LIHEAP recipients with utilities to facilitate auto-enrollment in CAP, and data sharing is scheduled to begin in Fall 2024. To develop its data sharing policy, DHS has worked (and continues to work) with a broad range of stakeholders through its LIHEAP Advisory Committee (LAC) – including representatives from the Office of Consumer Advocate, the Energy Association of Pennsylvania, the Pennsylvania Utility Law Project, the Community Action Association of Pennsylvania, Community Legal Services, the Commission’s Bureau of Consumer Services, and utilities.

Notably, the LAC’s diverse members reached consensus on inclusion of the following statement to obtain consent from LIHEAP participants to share information with their utility to facilitate enrollment in the utility’s CAP:

Many Pennsylvania electric and gas utilities operate utility assistance programs to help low-income customers afford the cost of utilities. DHS can share your information with your utilities to help you enroll. Information will be kept confidential. You can get a LIHEAP grant even if you do not want DHS to share your information.

\_\_\_\_\_ I allow DHS to share my income and household information with my utilities to help enroll me in a utility assistance program. I understand that my utility may need to contact me for additional information before I am enrolled in a utility assistance program.

The LAC agreed that failure to complete the consent question should never delay processing of LIHEAP applications – and failure to check the box should always default to “no”.

The LAC also developed a list of data points that would, if shared, facilitate auto-enrollment in a utility Customer Assistance Program and fulfill the Commission’s universal service reporting requirements. The consensus data points include:

- Name of utility account holder
- Name of all household members, regardless of the household member’s eligibility for LIHEAP
- Income (annual or monthly) for all household members
- Source of income for all household members (e.g. employment, Social Security, etc.)
- Date income was verified
- Service address
- Account number (or other unique identifier) for head of household
- Age or DOB of all household members
- Telephone number
- Email address

Currently, the LAC is working together with DHS to review data sharing agreements and protocols, and DHS has scheduled IT upgrades for Summer 2024, to ensure the details are in place to begin sharing data with the launch of the 2024-2025 LIHEAP program year.

The Advocates submit that additional steps to enroll a LIHEAP recipient in CAP are unnecessary and urge the Commission to *require* utilities to automatically enroll LIHEAP recipients into CAP if they provide consent to do so on their LIHEAP application. Through the

LAC data sharing work group, some utilities have indicated a reluctance to embrace auto-enrollment, claiming that they must speak with each CAP enrollee to review program rules.

We believe additional steps to facilitate auto-enrollment – beyond the applicant’s initial consent – creates an unnecessary barrier to enrollment, and would serve to keep many of the most vulnerable households from being enrolled in CAP. Utilities could communicate CAP program rules and information with auto-enrolled CAP customers through a welcome packet, direct calls / messages, or other mailings to convey important program information without creating barriers for households. Notably, the consensus consent language identified by the LAC could easily be amended to explain that the applicant will be automatically enrolled in a utility’s CAP.

**QUESTION 5: Should CAPs be administered statewide across all utility service territories rather than on a utility-by-utility basis? If so, what are the barriers to accomplishing this and what are the benefits and drawbacks of this approach? If not, what are the benefits and drawbacks of continuing to administer the programs on a utility-by-utility basis?**

Yes. The Utility Justice Advocates support a statewide approach to administration of universal service programs to gain critical economies of scale, eliminate wasteful redundancies, and improve equitable distribution of and access to assistance across the state. While we do not address more nuanced questions of cost recovery in these comments, we recommend that as the Commission moves toward a centralization and standardization, the Commission should seek additional comments about methods of cost recovery to fund a centrally-run program.

As it stands, our fragmented universal service paradigm permits each utility to design and administer programs with different definitions, eligibility criteria, benefits, funding, and rules/conditions to participation – resulting in inequities across the state in terms of the availability

and access to critical utility assistance.<sup>43</sup> We submit that this patchwork approach to universal service program administration should be phased out in favor of a uniform state-wide approach.<sup>44</sup>

There are many aspects to streamlined program administration which could be pursued independently or in tandem with other reforms to achieve varying degrees of standardization and economies of scale. These include:

- ***Uniform Application.*** Adopting a uniform application for all universal service programs, which asks for the same information from universal service program applicants, is perhaps the easiest step the Commission could take to streamline universal service programming. As identified in response to Question 4, and further below, there has already been substantial work accomplished through multiple working groups and advisory committees to identify the basic information a utility needs to enroll a customer in a universal service program.<sup>45</sup> Common applications are often utilized in administration of public benefits programs – as well as secondary education and financial aid programs.<sup>46</sup>

Adoption of a common application is a critical step to ensure that utilities can effectively share data and information across programs to facilitate streamlined enrollment and income verification. As discussed in response to Question 2, without a uniform application with standardized information requests, it is difficult for utilities to utilize data and information shared by other utilities.

Importantly, adoption of a uniform application does not necessarily require centralized program administration, but it is a necessary step in the process of centralization.

- ***Standardized Participant Eligibility and Benefits.*** Standardization of universal service program eligibility would require adoption of consistent definitions and program requirements for household income, household composition, identification, and documentation. As it stands, consumers are often eligible for some programs and not others as a result of nuanced variations in eligibility criteria. This makes it difficult for utilities, the Commission, and local agencies to inform consumers about available assistance programs and to make effective program referrals.

Standardization of program benefits is also critically important to improve equity in access to assistance statewide, and to improve program outreach, education, and access. We note there may be a need to maintain some differentiation in benefit levels between service types

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<sup>43</sup> Review of Universal Service and Energy Conservation Programs, Joint Comments of Low Income Advocates, Docket No. M-2017-2596907 at 7, 75 (Joint Comments filed Aug. 8, 2017) (hereafter, Affordability Comments).

<sup>44</sup> Affordability Comments at 7.

<sup>45</sup> See Attachment A, Recommendations from the LIHEAP Advisory Committee to the Department of Human Services.

<sup>46</sup> See, e.g., The Common Application, Inc., available at <https://www.commonapp.org/>, which permits college applicants to submit a single application to apply for over 1,000 colleges and universities across the United States.

(gas, electric, water/wastewater/stormwater), though we do not believe that variations are necessary based on geographic location. Regardless of where someone experiencing utility insecurity lives in the state, their need for access to affordable electricity, gas, and water/wastewater/stormwater services will necessarily be the same.

Even if not combined with other methods to streamline program administration, standardization of participant eligibility would help to measurably improve program outreach, education, and referrals and would bring needed clarity and transparency for consumers and other stakeholders.

Note that we discuss standardization of policies and programs and offer more specific recommendations in response to Question 10.

- ***Centralized Data Hub.*** Creation of a centralized data hub would permit utilities to access and/or input enrollment data and information to help eliminate redundancies and reduce burdensome paperwork requirements. A centralized data hub could function in multiple ways, though we submit that it would be most effective if paired with a common application – wherein a consumer could apply for all potential programs through a single, common application, submit or upload their supportive documentation, and have their information distributed to each of their utilities.
- ***Centralized Program Administration.*** Centralized program administration would allow a single administrator – or, preferably, a network of locally-based program administrators – to administer utility-supported universal service programs. To achieve economies of scale through centralized program administration, the Commission would need to adopt the other aspects of streamlined program administration – including at minimum a common application, standardized eligibility and enrollment criteria, and a centralized data hub.

The Utility Justice Advocates encourage the Commission to pursue each of the four overarching aspects to standardization to bring about true economies of scale and measurably improve access to equitable assistance statewide. Notwithstanding our strong support for the Commission to move toward fully integrated statewide universal service program delivery, we note that each of these overarching aspects to standardized program administration could be adopted independently to measurably improve the current patchwork approach to universal service program administration.

The Utility Justice Advocates recognize that there are some barriers to achieving fully integrated statewide administration that may take substantial time and effort to resolve. We will

discuss and offer recommendations for overcoming these barriers in detail below. That said, none of the barriers identified below are insurmountable, and we encourage the Commission to take decisive steps to eliminate redundancies, align eligibility/benefits, and remove unnecessarily burdensome and duplicative enrollment processes.

1. *Statewide Administration of Universal Service Programs is in the Public Interest*

Statewide administration and delivery of universal services would allow for significant program benefits for low income consumers, other ratepayers, utilities, and the Commission.<sup>47</sup> Statewide administration would remove barriers to enrollment and, in turn, improve access to universal service programs; improve utility affordability and quality of living for low income consumers, their families, and their communities; and create administrative efficiencies to help improve the cost-effectiveness of universal service administration.<sup>48</sup>

First, statewide universal service administration would provide significant benefits to low income consumers and their families. Centralized administration would allow for intake and enrollment processes, including attendant program rules and procedures, to be streamlined and standardized across utilities. This would provide important clarity for utility consumers. Instead of having to contend with multiple sets of program rules for utilities, low income consumers can be referred for enrollment in comprehensive and holistic assistance for all regulated utilities for which they have service. Ultimately, statewide universal service administration would help to reduce administrative costs and increase enrollment by allowing a streamlined and unified approach to consumer outreach and education; referrals to apply for assistance; the process, policies, procedures for enrolling in assistance programming; and training related to universal service

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<sup>47</sup> Affordability Comments at 7-8, 61-68.

<sup>48</sup> *Id.*

eligibility and enrollment. As we explained in our 2017 comments: “*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.*”<sup>49</sup>

Second, statewide administration of universal service programs would yield important benefits for utilities. Additional costs savings that benefit all utility ratepayers would be realized as a result of increased administrative efficiencies gained by eliminating redundant costs that currently result from the current utility-by-utility approach.<sup>50</sup> Elimination of these redundancies would help utilities streamline their internal policies, procedures, and operations – and devote available resources to other purposes.

Third, statewide administration of universal service programs will help the Commission to simplify its oversight of universal service procedures and operations. Rather than overseeing over a dozen utility-administered universal service programs through separate proceedings, the Commission could consolidate its review of detailed program design and administration into fewer, statewide (or regional) proceedings.

Finally and importantly, statewide administration of universal services would provide important benefits to ratepayers as a whole, as it would serve an important prevention role –

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<sup>49</sup> Affordability Comments at 65.

<sup>50</sup> APPRISE, CO LEAP Service Delivery Evaluation, Final Report, at 130-131 (February 2009), *available at* <http://www.appriseinc.org/wp-content/uploads/2016/05/CO-LEAP-Final-Report.pdf> (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)). 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. The APPRISE report recognizes the reality that CBOs should always be an entry point for applicants. As a result, the Utility Justice 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.

helping avoid accrual of arrears and the loss of service for the growing number of households that cannot afford to pay full tariff rates for critical energy and water service. Increased universal service program enrollment also has tangible benefits for all ratepayers and their communities, helping improve quality of life, and promoting the public health, safety, and welfare of low income families and the communities in which they live and work.

## 2. *Barriers to Implementing Streamlined / Consolidated Program Administration*

As identified in response to Questions 1-4, there are three primary barriers to consolidation and coordination of enrollment across utilities and utility programs: customer privacy/consent, continued use of CBOs, and IT/utility interface challenges.

The first and most critical barrier is customer privacy – and the need for clear, informed consent from consumers to share information across agencies, utilities, and with third party administrators. We discuss this barrier and offer detailed solutions in response to Question 3.

Consistent with our discussion in response to Questions 1 and 2, the second identified barrier to consolidated statewide administration is ensuring Community Based Organizations continue to play a role in administration of CAPs and other universal service programs. Evaluations conducted by the Applied Public Policy Research Institute for Study and Evaluation (APPRISE) have recognized that, as a practical matter, CBOs act as the point of entry for universal services for many customers.<sup>51</sup> To ensure that customers who rely on CBOs to enroll in universal services are not cut off from these avenues of assistance, centralized program administration must be designed in a manner that does not erode local interactions with CBOs. Intentionally protecting the CBO role in the universal service process will require the Commission, utilities, and

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<sup>51</sup> Affordability Comments at 65.



stakeholders to coordinate with CBOs to ensure that any centralized systems that are established will allow agencies to continue to provide information and application support to utility consumers. Specifically, if the Commission moves towards centralized administration, we recommend that CBOs continue to provide in-person intake options, local program outreach, and – for LIURP – the delivery of coordinated energy efficiency and conservation services.<sup>52</sup> In addition, local CBOs could also be used to process applications utilizing a centralized data hub / intake. This could work similarly to the model DHS uses to administer LIHEAP. DHS serves as the central program administrator, and controls policies and program rules, while the County Assistance Offices in each county accept and process applications.

Creation of a centralized intake and data interface for determining program eligibility would, in turn, help to resolve IT barriers identified in response to Question 2 – helping form a common bridge between various utility billing and information systems. This barrier was first identified and discussed in response to Question 2.

A centralized intake and data interface would allow utility consumers to apply for assistance through a common intake system – though individual utility programs would continue to be administered by the utility or the utility’s program administrator. Eligibility determinations by this centralized system should serve as sufficient basis for enrollment by utilities in universal service programs without the submission of additional and potentially duplicative information or documentation to separate utilities.

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<sup>52</sup> 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.”).

In designing a centralized intake and data interface, we recommend that:

1. Customers can submit any required documentation and have a method of transmitting determination directly to utilities;
2. The centralized system is able to evaluate cross enrollment within a utility's universal service programs, so that, if a consumer submits a CAP application, the centralized application system should evaluate the consumer for LIURP and other universal service program need and eligibility;
3. The centralized system is able to evaluate cross enrollment between utilities, so that an eligibility determination in an electric utility's CAP should trigger the same in the natural gas utility's CAP – and vice versa;
4. The centralized system is able to provide eligibility determination for certain state and federal utility assistance programs, and vice versa;
5. Translation and interpretation services in, at least, the top five language other than English spoken across the Commonwealth are provided through the system;
6. Any website developed as part of this statewide application system is mobile accessible and allows for documents to be uploaded from a mobile phone.

We recommend that the Commission directly oversee administration of this centralized system, either through creation of a separate division within the Bureau of Consumer Services or a new Bureau. Vesting administration of this system with the Commission would allow the Commission to take the necessary actions required to ensure the system's success, including data integrity and protection, and coordination across overlapping service territories and with state and federal assistance programs. Commission oversight of this centralized system would also allow the Commission to take necessary action to eliminate barriers to centralized CAP eligibility determinations. Specifically, we recommend that the Commission issue formal guidance that prohibits imposition of additional CAP rules and restrictions by program subcontractors or CBOs that are not expressly approved as part of utilities' USECPs. Not only is imposition of these additional program rules contrary to the Choice Acts, additional rules imposed outside of the USECP process would complicate and confuse a centralized system for determining universal service eligibility.

**QUESTION 6: What changes would be required to EDCs’ and NGDCs’ existing, Commission-approved universal service and energy conservation programs to incorporate improvements and could changes be addressed in a streamlined fashion?**

Depending on the changes the Commission makes to eligibility requirements, application format and method, and program design, utilities would need to make changes to their Universal Service and Energy Conservation Plans (USECPs) to align their programs with the Commission required changes. When the Commission updated the CAP Policy Statement in fall of 2019, the Commission received pushback from the utilities that changes could not be uniformly required, and evaluation of the updated guidelines would have to be done in each utility specific proceeding.<sup>53</sup> As a result, implementation of the most recent CAP policy statement updates has been staggered, with different utilities making changes at different times, and some declining to implement certain changes. This piecemeal review is time consuming and inefficient for all involved. The implementation of additional changes would be best served by a full rulemaking process that addressed all the universal service programs, including CAP, LIURP, Hardship Funds and CARES. Once regulations are in place, the Commission could require each utility to file a compliance filing to demonstrate how their plans are compliant with the regulations. Unlike a Policy Statement, regulations would be directly binding on each utility. Regulatory frameworks would also streamline customer ability to challenge the utility’s application of the regulations – rather than having to compare a utility’s actions to a specific plan, the Commission could address a customer complaint simply with reference to the regulatory requirements.

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<sup>53</sup> See 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-267, Docket No. M-2019-3012599, Order on Reconsideration and Clarification at 9 (Order entered February 6, 2020) (“The November 5 Order clearly articulated that compliance with the CAP policy changes was voluntary: Utilities will have the opportunity to implement these CAP policy changes through voluntary compliance with the amended CAP Policy Statement or to address the matters in utility-specific proceedings and/or as promulgated regulations. Any matters that cannot be resolved by voluntary compliance with Commission policy will be addressed in utility-specific proceedings.”)

**QUESTION 7: What additional consumer education and outreach could be undertaken to make more low income consumers aware of the benefits that may be available to them?**

Universal service programs in the Commonwealth are intended to work in unison to target different causes of energy insecurity. While universal service and conservation programs help many Pennsylvanians, the levels of assistance and enrollment are insufficient to achieve the important goals of these programs. Despite the significant and ever-growing need for energy and water assistance in the face of rising utility costs, program participation rates remained consistently low.<sup>54</sup> Insufficient outreach and consumer education contribute to limited access and affordability for low income households. The Commission's recent Order amending its CAP Policy Statement highlighted that only 30% of eligible households are enrolled in their utility's CAP.<sup>55</sup> The Commission further noted:

While there is no specific regulatory mandate that each utility must enroll a certain percentage of low-income households in CAP, **the near uniform disparity between the total number of potential income-qualified households and those actually receiving assistance calls into question the overall adequacy of consumer education and outreach.** Consumer Education and Outreach Plans are paramount to customer awareness of, and enrollment in, universal service programs.<sup>56</sup>

We recognize the Commission's important enhancements to consumer education and outreach through its recent amended CAP Policy Statement. In particular, the Commission provided guidance that utilities should develop enhanced Consumer Education and Outreach Plans with stakeholder input and submit their plans as Addendums to their USECPs.<sup>57</sup> The CAP Policy Statement further guided utilities to tailor outreach and education efforts to the demographics of their service territories, identify efforts to educate and enroll eligible and interested consumers at

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<sup>54</sup> See Section V.b, CAP Enrollment Chart.

<sup>55</sup> 2019 Amendments to CAP Policy Statement, Docket No. M-2019-3012599, Final Policy Statement and Order, at 76 (order entered Nov. 5, 2019) (hereinafter CAP Policy Statement Order).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 77.

or below 50% FPL, and identify certain resources and translation services for consumers with limited English proficiency (LEP).<sup>58</sup>

Despite efforts to improve consumer education and outreach, a substantial gap remains between CAP participation and potentially eligible customers. In the Commission's 2021 Universal Service Report, the CAP participation rate – which compares enrolled CAP participants compared to *confirmed* low income consumers – was 50.7% amongst EDCs and only 38.4% amongst NGDCs.<sup>59</sup> However, CAP participation rates as a percentage of a utility's *estimated* low income population (based on actual poverty census data, as a direct and proportional percentage of a utility's residential population) is dramatically lower – ranging between just 23% and 24% across EDCs and NGDCs.<sup>60</sup>

To improve enrollment rates of universal services across the Commonwealth, we recommend that the Commission set certain minimum standards for consumer education and outreach plans to ensure consistency among utilities. While the CAP Policy Statement addressed some aspects of consumer education and outreach, it does not apply to all jurisdictional utilities, and it does not establish explicit requirements for minimum outreach standards or metrics for measuring the effectiveness of a utility's efforts. The Commission should issue comprehensive and specific requirements for utilities, including the utilization of express metrics for assessing

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<sup>58</sup> *Id.*

<sup>59</sup> 2021 Universal Service Report at 59-60.

<sup>60</sup> A utility's estimated low income customer count uses census data provided to BCS and the Company's residential customer counts to estimate likely low income customers in a service territory, and is a far more effective indicator of actual need. By comparison, a utility's confirmed low income customer counts to measure CAP participation rates measures only the number of customers known by a utility to have already affirmatively obtained assistance or otherwise report their income levels to the utility. In other words, relying on a utility's confirmed low income customer count to assess CAP penetration rates is circular – and shows only the percentage of households enrolled in CAP that have already recently enrolled in a universal service program. Indeed, given the utilities *know* the income status of its confirmed low income customers, it is particularly alarming that only 50.7% of CLI EDC customers and 38.4% of CLI NGDC customers are enrolled in CAP. Ultimately, whether examining CAP participation rates based on estimated or confirmed low income customers, it is clear that the levels of low income customers have been able to learn about and successfully enroll in CAP remains low.

effectiveness and mapping tools to identify underserved communities. Clear benchmarks for improved enrollment rates should be established to maximize participation in low income assistance program and improve equitable access for low income consumers. Effective and consistent consumer education and outreach empowers consumers to make informed decisions regarding their utility accounts and energy usage, resulting in reduced terminations and associated costs for utilities and consumers alike.

Utilities should also be directed to increase coordination with community partners. While many utilities have included measures to coordinate with certain community groups in their existing CEOPs,<sup>61</sup> there is a lack of consistency about the types of organizations and community partners that are targeted for coordination. For example, details about coordination with community groups that serve certain historically underserved communities, such as immigrant communities, vary widely between utilities.<sup>62</sup> The Commission should explicitly direct utilities to identify efforts to target and engage with community groups that serve historically disadvantaged populations, particularly those serving limited English proficient utility consumers, immigrants, people of color, and survivors of domestic violence.

The Commission should direct utilities to develop targeted outreach campaigns that prioritize evaluating a consumer's eligibility for universal service programs before resorting to service termination and assist those who are terminated to access available programming to facilitate reconnection. This proactive approach will not only benefit the low income customers most vulnerable to service termination, but is also more cost-effective for utilities – minimizing service interruptions and the need for disconnections and reconnections. By directing utilities to

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<sup>61</sup> Peoples Natural Gas Company, 2019-2024 Universal Service and Energy Conservation Plan, at Attachment F, available at [https://www.puc.pa.gov/media/2021/peoples\\_usecp\\_2019-2024\\_revised.pdf](https://www.puc.pa.gov/media/2021/peoples_usecp_2019-2024_revised.pdf).

<sup>62</sup> *Id*; FirstEnergy USECP for 2019-2021, Docket Nos. M-2017-2636969. M-2017-2636973. M-2017-2636976. and M-2017-2636978, available at: <https://www.puc.pa.gov/pdocs/1625391.pdf>.

implement the additional suggested consumer education and outreach initiatives, the Commission can help reduce disparities and increase low income consumers awareness of the benefits available to them through the utilities' universal service and energy conservation programs. As such, we suggest the Commission require utilities to:

1. Implement assessment measures utilizing metrics, mapping tools, and benchmarks to ensure consistent access to low-income assistance programs among the utilities. Improved data tracking is key to this recommendation to ensure comparisons across utilities.
2. Identify efforts to increase coordination with other state and local agencies and community partners, particularly those that serve historically disadvantaged populations.
3. Conduct targeted outreach campaigns in areas with high concentrations of low income households and enacting policies to evaluate eligibility for universal service programs prior to involuntary termination.

**QUESTION 8: Can recertification periods in the existing CAP Policy Statement at Section 69.265(8)(viii) be extended so that otherwise eligible consumers do not lose benefits solely due to the fact that they timely failed to recertify their eligibility?**

Missed recertification is the most common reason CAP participants are dropped from the program. As illustrated in the Table below, in 2019, CAP default rates ranged from 33.2% to 55.4% for EDCs and from 21% to 36.7% for NGDCs. With recertification requirements generally suspended from March 2020 into 2021 due to the pandemic, CAP default rates dropped precipitously.<sup>63</sup> The Commission attributes this drop in the CAP default rate to the suspension of the recertification requirements.<sup>64</sup>

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<sup>63</sup> 2021 Universal Service Report at 64.

<sup>64</sup> *Id.* at 63.

**Table 2: CAP Default Rates by EDCs and NGDCs (2019-2021)**

	2019			2020			2021		
	0% - 50%	51% - 100%	101% - 150%	0% - 50%	51% - 100%	101% - 150%	0% - 50%	51% - 100%	101% - 150%
<b>EDCs</b>	55.4%	33.2%	36.9%	12.9%	9.7%	11.5%	16.7%	13.5%	16.6%
<b>NGDCs</b>	27.0%	21.0%	36.7%	8.5%	6.3%	10.3%	12.9%	11.7%	10.3%

The most significant drop is in the lowest income tier. Also noteworthy in the Commission’s 2021 Universal Service Report data, the Commission reports that Duquesne Light Company resumed recertification processes in June of 2020 – earlier than any of the other EDCs. Duquesne’s CAP default rate is the highest in each income tier of all EDCs in 2020 and the highest for those with incomes between 0 and 50% of the FPL in 2021, by 15% or more.<sup>65</sup>

Considering the data described above, the Utility Justice Advocates contend that recertification periods can and should be extended and that attendant policy provisions should also be adjusted to keep customers active on their respective utility CAPs.

Limiting the ways by which eligible customers are removed from CAP will benefit CAP customers, utilities, and all ratepayers. Low income households removed from CAP often quickly accumulate new, undiscounted, non-CAP arrears, which are not typically eligible for deferment by reentry into the program. In addition to receiving unaffordable bills, households removed from CAP with remaining unforgiven arrearages are billed for those arrears all at once – and often are unable to secure a payment arrangement. Households facing inability to pay these higher monthly bills – in addition to not being able to pay any remaining unforgiven arrears – are placed on the utility’s traditional collection path that is designed to motivate payment by those who can afford to make payments. When low income households are placed on a traditional collections path, it

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<sup>65</sup> *Id.* at 63-64.



most often leads to utility termination and, ultimately, increased uncollectible expenses borne by other residential ratepayers. Once disconnected, these households are often unable to reconnect service unless the full, unaffordable tariff rate bills issued after program removal are paid in full – an obstacle customers may never overcome. This punishing cycle perpetuates poverty and crises for vulnerable households – resulting in long-term housing instability that costs far more for communities to address.

For these reasons, we recommend adjustments to recertification requirements to reduce the administrative burden for both CAP participants and utilities administering CAP programs including extending and standardizing timelines, accepting proof of participation in other assistance programs as documentation for continued eligibility, and further automation of processes. Specifically, we recommend the following adjustments:

1. *Standardize and Extend Recertification Timeframes*

The CAP Policy Statement suggests CAP customers claiming zero income should recertify every 6 months, those receiving LIHEAP or receiving a fixed income (SSI/D or pension) recertify at least once every three years, and all other CAP participants must recertify at least once every two years. The Utility Justice Advocates recommend amendments to language in the CAP Policy Statement to: (1) amend language to standardize recertification timeframes; (2) clarify recertification income timeframes; and (3) extend timeframes for recertification.

- ***Amend language to standardize timeframes.*** We recommend removing the words “*at least*” when describing how often certain CAP participants must recertify. Current language allows utilities to impose different recertification requirements that may cause confusion amongst consumers and advocates servicing low income communities who must contend with varied program rules imposed by different utilities. This may create barriers to CAP retention and would be particularly challenging for Seniors and individuals living with disabilities, who disproportionately lack access to accessible transportation and face added barriers to completing recertification under these varied timeframes.

- ***Clarify recertification income timeframes.*** Recertification timeframes should be set at enrollment, and households should **not** be required to recertify at any point, for any reason, before their scheduled recertification date. The CAP Policy Statement’s most recent amendments encourage acceptance of 30 days or 12 months of income documentation, whichever is more representative of the household’s income and most beneficial to the customer. A CAP customer will need to have worked for 12 months to determine which is more representative. Low income households often engage seasonal work as their primary income or as a secondary source of income when it is available, so income is not necessarily consistent or reliable, year to year. If they had to recertify each time income shifted, they would be recertifying multiple times per year before having the opportunity to establish the more representative household income number, 30 days or 12 months, putting them at a distinct disadvantage.
- ***Extend recertification timeframes.*** We recommend extending recertification timeframes for all CAP customers to three years, with the exception of those reporting zero income. Customers stating zero income may remain on the 6-month recertification schedule until they report any income, which would move them to the three-year recertification timeframe. A three-year timeframe before recertification would allow CAP customers to stay in CAP without interruption due to removal from missing recertification deadlines, giving CAP customers the best opportunity to achieve full arrearage forgiveness.<sup>66</sup> Extending recertification timeframes to three years for all CAP participants (except zero income participants) streamlines recertification rules for customers, and promotes customers to successfully stay in CAP and earn arrearage forgiveness.

## 2. *Allow Flexibility for Other Forms of Assistance and/or Fixed Income*

For customers who receive other forms of assistance or on fixed incomes, we believe that flexibility should be provided in the manner and type of documentation required to recertify for CAP. Narrow recertification requirements applied to these customers are unnecessary, duplicative, and administratively burdensome.

- ***Streamline recertification for categorically eligible customers.*** If households already qualify for other assistance programs, it is unnecessary and duplicative to require these households to provide the same household income information to recertify for utility assistance.<sup>67</sup> CAP applicants and those recertifying enrollment should be considered income eligible for CAP if their household is receiving food assistance, cash assistance, LIHEAP, Lifeline, or other state or federal forms of assistance; and, proof of participation in another assistance program should satisfy recertification requirements for CAP. Examples of proof of enrollment could include (electronic or hard copy) a benefit award letter, an approval letter, a statement of benefits, or a benefit verification letter.

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<sup>66</sup> The longest arrearage forgiveness timeframes are 36 months of continuous payments.

<sup>67</sup> See *supra*, fn 53.

- **Fixed income.** Customers on a fixed income (SSI/D or pension) should be permitted to recertify by providing written (paper or electronic) or verbal attestation that household income has not changed. No further income documentation should be required. Available independent evaluations of USECPs have shown that requiring submission of formal income documentation as a requirement of recertification (as opposed to some proof that their circumstances have not changed) is a significant cause of high program attrition.<sup>68</sup>
- **Improved Recertification Reminders.** It is imperative that low income customers are provided sufficient reminders so that they become aware of recertification deadlines and requirements. As such, we recommend that utilities are directed to provide additional recertification reminders both prior to and after a CAP participant’s recertification date has passed. To address potential mail delays, we recommend that these reminders are sent via mail and other electronic means, such as text or email – if the customer have previously given permission for such electronic communication.
- **Six-Month Grace Period for Reenrollment.** If a customer is removed from CAP for failure to recertify, we further recommend that utilities provide a six-month grace period for reenrollment. Thus, if a customer is removed from CAP as a result of failure to recertify, they will have the opportunity to reenroll in CAP for six months if they complete their outstanding recertification process. Providing a six-month grace period will allow a vital period in which customers are able to cure issues related to recertification and have a streamlined way of reenrolling in CAP.
- **Self-Certification for Recertification on a Fixed Income.** As discussed, customers on fixed incomes tend to have more stable incomes that remain consistent year to year. To streamline recertification for these customers, we recommend that customers on fixed incomes – including those who receive Social Security Income, SSI, Pension or Retirement incomes are permitted to provide self-certification that their income has not changed.

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<sup>68</sup> See 2017 Columbia Impact Evaluation of its Universal Service and Energy Conservation Programs at 7, 36, available at [https://www.puc.pa.gov/general/pdf/USP\\_Evaluation-Columbia.pdf](https://www.puc.pa.gov/general/pdf/USP_Evaluation-Columbia.pdf) (“Failed to Recertify’ was one of the top reasons that customers were removed from CAP in 2016. Approximately 11% (2,435) of total CAP participants year-end December were removed for failure to recertify income.”); Philadelphia Gas Works 2019 Universal Service Programs Impact Evaluation, at xiv, executive summary, available at <https://www.puc.pa.gov/pdocs/1614503.pdf> (15% of CRP participants had been suspended for failure to recertify in 2017 calendar year); FirstEnergy 2017 Impact Assessment, at iv, executive summary, available at [https://www.puc.pa.gov/general/pdf/USP\\_Evaluation-FirstEnergy.pdf](https://www.puc.pa.gov/general/pdf/USP_Evaluation-FirstEnergy.pdf) (of a total of 26,134 PCAP dismissals in 2015, between 62-64% of dismissals were for failure to recertify); 2015 Duquesne Light Company Universal Service Programs Final Evaluation Report, at 12, available at [https://www.puc.pa.gov/general/pdf/USP\\_EvaluationDuquesne.pdf](https://www.puc.pa.gov/general/pdf/USP_EvaluationDuquesne.pdf) (2,919 out of 3,539 CAP defaults reported for failure to recertify in 2014); 2013 Peoples TWP Universal Service Impact Evaluation at 21, available at [https://www.puc.pa.gov/general/pdf/USP\\_EvaluationPeoplesTWP.pdf](https://www.puc.pa.gov/general/pdf/USP_EvaluationPeoplesTWP.pdf).

We believe that each of these recommendations is important to streamline and improve recertification periods and requirements for CAP participants. Additionally, as discussed above, we recommend that the Commission move towards a statewide system where CAP eligibility and recertification is determined and processed through a centralized data hub. This will again allow important consistency statewide and allow improved recertification rules and processes to allow low income customers to remain in CAP.

**QUESTION 9: Can the default provisions in the existing CAP Policy Statement at Section 69.265(9) be modified to reduce the chances that otherwise eligible consumers do not lose benefits solely due to the failure to comply with one of the articulated default provisions?**

Yes, the existing default provisions in the CAP Policy Statement at Section 69.265(9) can and should be modified to reduce chances that otherwise eligible consumers may lose benefits solely due to failure to comply with one of the articulated default provisions. Currently, Section 69.265(9) of the Commission’s CAP Policy Statement provides, in relevant part:

*Default provisions.* The failure of a participant to comply with one of the following should result in dismissal from CAP participation:

- (i) Failure to abide by established consumption limits.
- (ii) Failure to allow access or to provide customer meter readings in 4 consecutive months.
- (iii) Failure to report changes in income or household size.
- (iv) Failure to accept budget counseling, weatherization/usage reduction or consumer education services.
- (v) Failure to recertify eligibility.

The existing grounds for dismissal from CAP may result in inequitable and harsh consequences for low income customers, their households, and the broader community. As discussed, once removed from CAP, low income customers often quickly amass new non-CAP arrears that compound payment trouble – ultimately leading to high rates of termination. Termination of service has adverse and tangible consequences for low income customers, their

households, their communities, and other ratepayers – who ultimately shoulder the resulting uncollectible costs. We recommend amendment to the language of Section 69.265(9) related to (1) failure to abide by established consumption limits; (2) failure to report a change in income; (3) failure to accept budget counseling, weatherization/usage reduction or consumer education services; and (4) failure to recertify eligibility.

We discuss each of these recommended improvements in turn.

1. *Failure to abide by established consumption limits.*

As currently written, the CAP Policy Statement permits utilities to remove a household from CAP if they do not comply with established consumption limits. Low income consumers are far more likely to live in poor, inefficient, and potentially unsafe housing stock.<sup>69</sup> Many low income households may be unable to afford the costs of repairs and improvements necessary to stem high consumption as a result of inefficiencies or other factors in their homes. For CAP participants unable to qualify or participate in LIURP or other usage reduction programs, it is unlikely that these households will be able to reduce consumption required by current guidelines. Forcing more CAP customers to pay full tariff rates if they exceed set consumption limits undermines the ability of CAP to achieve the multifaceted goals of the program to provide stable levels of affordability, improve bill payment and coverage rates, and reduce collections expenses.

Prior to dismissal from CAP for exceeding consumption limits, the Commission should require utilities to follow an established set of exemptions, including:

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<sup>69</sup> See ACEEE, *Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency Can Improve Low income and Underserved Communities* (April 2016), available at <https://www.aceee.org/sites/default/files/publications/researchreports/u1602.pdf>.

- Increases to household size;
- Usage beyond the household’s ability to control;
- Inability to perform usage reduction or participate in usage reduction programs as a result of inability, including inability to obtain landlord consents in the case of tenants;
- Serious illness or medical condition(s) in the household;
- Other extraordinary circumstances that affect household usage.

In addition, we recommend that the Commission encourage utilities to work with stakeholders through their respective Advisory Groups to identify whether additional exemptions should be implemented.

We further recommend that the default provisions contained at Section 69.265(9) be amended to require utilities to perform targeted outreach prior to removal for failure to abide by consumption limits. Prior to removal, these CAP participants should be offered LIURP services and energy education to address high usage - and should be afforded additional time to show usage reductions.

2. *Failure to report changes in income or household size.*

As written, the current ground for CAP dismissal for failure to report changes in income or household size may cause many CAP participants to be removed from CAP, despite meeting eligibility criteria. Low income and low wage workers often have multiple jobs and change jobs frequently. Low wage, hourly workers also experience fluctuations in their monthly income for a variety of reasons, including availability of hours, workforce reductions, and lack of paid benefits and/or access to childcare.<sup>70</sup> In reality, low income households may experience changes in income

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<sup>70</sup> Drew Desilver, Which U.S. workers have paid sick leave – and which don’t?, Pew Research Center, March 12, 2020, available at <https://www.pewresearch.org/fact-tank/2020/03/12/as-coronavirus-spreads-which-u-s-workers-have-paid-sick-leave-and-which-dont/>.

several times within a year. It is unduly burdensome and inequitable to summarily dismiss low income customers from CAP for failure to report each and any of the frequent income changes that their households may experience. Instead of placing the onus for reporting solely on the shoulders of CAP participants, utilities should be guided to develop process whereby CAP participants are asked whether they have experienced certain changes in household income or size during regular interactions with utility representatives.

Similarly, low income households may experience changes and fluctuations in household size or composition more frequently than consumers as a whole due to a variety of reasons, including housing instability that may be caused by high housing prices and the unavailability of affordable housing stock. Low income families should not be penalized with CAP dismissal for not reporting possible frequent changes in household composition.

In short, if low income participants reported every change or fluctuation in income in-between their recertification period, it could result in substantial administrative burdens. Given the impossibility of even enforcement, we recommend that the Commission eliminate this ground for removal from CAP.

### 3. *Failure to accept budget counseling, efficiency, or consumer education services.*

There are a variety of reasons that low income CAP participants may be unable to participate in weatherization or usage reduction services. As currently written, failure to participate in these services can constitute a ground for CAP default. While CAP participants should be strongly encouraged to participate in weatherization and usage reduction services, they should not be punished if they ultimately do not participate in weatherization or usage reduction services.

Voluntary refusal to participate in weatherization or usage reduction services is rare.<sup>71</sup> Instead, various impediments may exist to prevent participation in these services, including landlord refusal, structural issues in the property, and moving/foreclosure of a property.<sup>72</sup> Failure to respond to outreach is also commonly deemed to be an affirmative refusal. *Inability* to participate in weatherization or usage reduction services – or lack of knowledge about the program – should never constitute grounds for removal from CAP.

We recommend that the language of Section 69.265(9) be amended to further define a LIURP refusal, and to ensure that CAP participants who are unable to participate in LIURP are not removed from the program. Similarly, the language of Section 69.265(9) should be amended to clarify that inability to participate in budget counseling or consumer education services will not constitute grounds for CAP default. These services are aimed at helping low income customers to learn about resources to help increase affordability of their utility bills. However, low income families may be unwilling or reluctant to participate in these services for a variety of reasons. It is counterintuitive to punish low income consumers and their households for not participating in these services by removing them from CAP, and thus increasing unaffordability faced by these customers.

#### 4. Failure to recertify eligibility.

As currently written, Section 69.265(9) does not contain any clear guardrails related to participants being removed from CAP. Instead, per the plain language of this Section, utilities may summarily remove CAP participants for failure to recertify and have wide discretion to determine

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<sup>71</sup> See, e.g., Pa. PUC v. Columbia Gas, CAUSE-PA Direct Testimony, Docket No., R-2022-3031211, CAUSE-PA St. 1 - Appendix C -p 10 (Direct Testimony Dated June 7, 2022).

<sup>72</sup> See, e.g., Columbia Gas of Pennsylvania, Inc.'s 2017 Impact Evaluation of its Universal Service and Energy Conservation Programs Submitted in Compliance with 52 Pa. Code§ 62.4 at 57, Table 27, *available at* [https://www.puc.pa.gov/general/pdf/USP\\_Evaluation-Columbia.pdf](https://www.puc.pa.gov/general/pdf/USP_Evaluation-Columbia.pdf);



what outreach, if any, is provided to customers who fail to recertify prior to CAP removal. Additional protections should be included in Section 69.265(9) to ensure that customers are not removed from CAP unless absolutely necessary. Specifically, we recommend the following amendments:

- Clarify that, prior to CAP removal for failure to recertify eligibility, customers must receive multiple targeted outreaches related to recertification requirements and standardize those requirements to ensure consistency statewide.
- Adopt the expanded recertification policies outlined above in response to Question 8.
- Require utilities to include a grace period prior to CAP removal for failure to recertify eligibility. CAP participants who may learn about recertification requirement shortly prior to their recertification dates or who may be struggling to provide necessary information or documents required to recertify, a grace period after a CAP participant reaches their recertification date would be invaluable to provide a period of immediate protection prior to CAP removal.
- Explicitly permit reenrollment – without any stay-out – if a consumer completes their recertification within 12 months following their removal from the program.

**QUESTION 10:      Should utilities be required to develop and use standardized CAP forms and CAP procedures? What are the barriers, if any, of establishing a common application?**

Yes. The Utility Justice Advocates strongly encourage the Commission to take decisive steps to streamline administration of universal service programs. This includes adoption of a common universal service program application form and standardization of universal service program rules and procedures. As discussed above in response to Questions 4-5, adoption of a common application will help to move Pennsylvania towards a centralized system for universal service program administration that will broadly serve the public interest – helping to increase CAP enrollment, improve affordability and bill coverage rates for low income consumers, eliminate unnecessary and duplicative administrative costs, reduce disproportionately high

involuntary terminations and uncollectible expenses, simplify outreach and education, strengthen referral processes, and improve knowledge of and access to assistance programming statewide.

We submit that any barriers to developing and implementing a common application and standardized program procedures are easily overcome through a mix of directives and guided collaboration.

Notably, efforts are already underway to establish a common application form. In the Western region of the state, advocates and utilities have made significant strides toward the development of a common application form. Through a series of meetings organized by Pittsburgh United and the Pennsylvania Utility Law Project, and attended by representatives of each of the major electric, gas, and water utilities in Pittsburgh region, this collaborative group reached general consensus on essential data points necessary to include in a common application form. Specifically, we identified the following data points for inclusion on a common application:

- Name of applicant
- Date of birth
- Property address
- Mailing address
- Telephone number
- Is this a cell phone?
  - If yes, does the applicant consent to receiving text messages regarding the application?
- Email address
- Does the applicant own or rent?
- What is the applicant's main heating source
- Is service currently on?
- Does the applicant have a shut-off notice?
- Total number of household occupants
- Number of adults/children in the household?
- Does anyone in the household receive financial assistance for a disability?
- Other sources of income in the household
- Name, DOB, and income sources/amounts for each additional household member.

These data points align with the data points that the Department of Human Services' LIHEAP Advisory Committee (LAC) recommended for inclusion in the planned data exchange process expected to launch in Fall 2024, which we discussed above in response to Question 4.

Given the substantial collaborative work that has already been done to identify the necessary data points for enrollment in universal service programs, we recommend that the Commission develop a common application form that utilizes these data points. In turn, through amendments to its CAP Policy Statement and adoption of formal regulations, the Commission should require utilities to adopt the form.

With regard to adoption of standardized universal service program procedures, we recommend that the Commission convene a working group – open to a broad range of stakeholders – to identify a set of key policies and procedures that should be standardized across all universal service programs. To ensure the success of a working group, it is important that the Commission establish clear directives and identify deliverables that the group must develop. Specifically, we recommend that the Commission charge a working group with standardizing the following key policies and procedures:

- Processing Timelines
- Notices for:
  - Incomplete Applications / Missing Documentation
  - Enrollment
  - Recertification
  - Use of Credits / Credit Limits
- Income Inclusions and Exclusions
- Acceptable Income Documentation for Enrollment
- Use of Categorical Eligibility / Verification
- Language Access
- Outreach and Referrals
- Utilization of Community Based Organizations
- Appeal Rights
- Universal Service Plan Review

In addition to and in conjunction with this working group process, we recommend that the Commission advance efforts to adopt formal regulations to standardize universal service program eligibility, benefits, terms, and conditions across utilities in the Commonwealth.

As a final note, as discussed further in response to Question 13, we submit that efforts to standardize various programmatic procedures should be applied – where appropriate – to each low income assistance program, including CAP, LIURP, Hardship Funds, CARES, Emergency Furnace Repair / Service Line Repair programs, and other forms of utility assistance within a utility’s portfolio of programs.

**QUESTION 11:      What other additions or changes to the existing CAP Policy Statement should be made to increase eligibility, enrollment and maintenance of CAP benefits?**

First and foremost, the Advocates assert that changes to the existing CAP Policy Statement should be followed by a full Universal Services rulemaking to more clearly require utilities to implement universal service programs in a consistent and standardized fashion.

In addition to the changes and improvements suggested elsewhere in these comments, the Advocates suggest the following improvements to increase eligibility, enrollment, and maintenance of CAP benefits – and in turn improve equitable access to historically underserved and disadvantaged communities. This includes improved guidelines and, ultimately, regulations governing income verification, identification, notice and appeal rights, and language access. Each recommendation is addressed in turn below.

*1. Improved Income Verification Requirements*

Many low income individuals and households have incomes that do not fit neatly into any specific box. A household member who has only recently started driving for Lyft may not have

filed a tax return yet. Someone who cleans houses, works as a nanny, or performs other odd jobs to help make ends meet may not have paystubs to provide. Low income and low wage workers often have multiple jobs and may change jobs frequently – making it difficult to produce paystubs documenting past short-term employment. The Commission should require utilities to be flexible in accepting income documentation, in a number of different ways, including:

- For the purposes of universal service program enrollment, including CAP, LIURP and Hardship Funds, the Commission should require utilities to accept any documentation that accurately reflects gross income for household members.
- The Commission should create, and require utilities to accept, a standard form for self-verification of income where documentation is not available, similar to the standard no-income form the Commission already created.
- The Commission should require utilities to accept income documentation from multiple different time frames, including any thirty-day period within the previous 12 months, income for the previous 12 months, and income from the previous calendar year (including tax documentation).

We note that these recommendations are in addition to the recommendations regarding recertification in response to Question 9. Further, in response to Question 10, we recommend that the Commission standardize policies regarding income inclusions/exclusions and documentation through the use of a working group process. These recommendations could form the start of that working group – providing some direction for how the working group should proceed.

## 2. *Improved Due Process Review of Universal Service and Energy Conservation Plans*

Universal Service and Energy Conservation Plans (USECPs) outline critical and detailed policies governing important utility programs which deeply impact low income consumers, yet USECPs are not subject to full due process review. The Utility Justice Advocates strongly urge the Commission to improve the review process for utility-run universal service program plans. Consistent with our recommendations in response to Question 12, below, all jurisdictional

utilities should be required to maintain a universal service plan. Those plans should be subject to full due process review, including exchange of discovery, development of written testimony, and evidentiary hearings to aid in the creation of a record. We submit that the Bureau of Consumer Services (BCS) should still be actively involved review, given the deep universal service program expertise of the BCS Policy team, and could do so in a direct advisory role to the Commission similar to the process utilized for review of other key utility plans, such as an EDC's Act 129 Energy Efficiency and Conservation Plan.

### 3. Standardized and Flexible Identification Requirements

The current CAP Policy Statement outlines that customers should provide verification of identity for the applicant and household members, and clarifies that the utility may request, but not require, social security numbers to verify identity, and permit household members to provide alternative identification in lieu of social security numbers.<sup>73</sup> However, the CAP Policy Statement does not specify the types of alternative identification that utilities must accept – or the method in which consumers are informed that provision of a social security number is option. In application, some utilities have established complex verification requirements for families with members who do not have or cannot locate social security numbers or who otherwise do not have access to alternative forms of identification documents such as a driver's license or passport.

The Advocates question why identification is required for enrollment in a universal service program. Utilities already require consumers to provide adequate proof of identity when they establish service. If a consumer seeks to enroll in an assistance program, they are necessarily

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<sup>73</sup> 52 Pa. Code § 69.265(8)(ii)(A).

admitting that they owe the debt they are seeking assistance to resolve. It stands to reason that only the applicant would seek enrollment in an assistance program, not someone else.

The Advocates recommend that the CAP Policy Statement and any subsequent regulations clarify that no identification document is necessary for minors under the age of 18. In addition, the Advocates suggest that the Commission eliminate or, at minimum, standardize acceptable identification documents for adults for the purposes of universal service program enrollment. Again, this recommendation compliments our recommendation in Question 10 that the Commission establish a working group to develop a set of comprehensive standards for various detailed program policies and procedures.

#### *4. Improved Notice and Appeal Rights*

The CAP Policy Statement sets forth that a utility should establish an appeal process for program denial.<sup>74</sup> Many utilities have no requirements for processing times or timely notice requirements if an application is incomplete, causing many consumers to experience an involuntary termination while their application for CAP is pending. The Commission should develop a standardized notice and appeal process. At a minimum, utilities should be required to process applications within 30 days. If an application is denied or incomplete, utilities should be required to send a denial letter that details why the applicant was denied, explains how an applicant can cure their application, and provides information about how to file an internal dispute and how to file an informal complaint with BCS. The Advocates believe this procedural right is important and should be clearly indicated and explained. This is another area where the Commission could create a standard letter and form to streamline implementation by utilities.

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<sup>74</sup> 52 Pa. Code § 69.265 (7).

5. Considerations for Customers with Limited English Proficiency (LEP)

We recommend that the Commission require all jurisdictional utilities to develop explicit language access policies that are based on the respective utilities' service territories. We specifically recommend that the Commission require utilities to conduct an assessment of language accessibility in their service territories. Utilizing that assessment, utilities should be required to translate all universal service program documents (including applications and outreach documents) and provide interpretation service for any language group found to be at or above five percent or 1,000 (whichever is less) of the population in any county within a service territory.

Establishing improved standards that require utilities to provide robust translation and interpretation services for LEP consumers is supported by statute and Commission regulation. The Public Utility Commission sets forth basic translation requirements for termination notices in 52 Pa. Code § 56.91:

A notice of termination must include, in conspicuous print, clearly and fully the following information when applicable: ...

(17) Information in Spanish directing Spanish-speaking customers to the number to call for information and translation assistance. Similar information shall be included in other languages when census data indicates that 5% or more of the residents of the utility's service territory are using that language.

For utilities that are recipients of federal funding, language access responsibilities are more extensive than the requirements contained in the PUC's regulations. Title VI of the Civil Rights Act of 1964 provides:

No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.<sup>75</sup>

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<sup>75</sup> 42 U.S.C. § 2000d.



The Title VI protection against discrimination based on national origin applies when an individual is unable or has a limited ability to speak, read, write, or understand English – in other words, the person is limited English proficient or LEP.<sup>76</sup>

Title VI responsibilities extend to contractors and grant recipients of federal programs,<sup>77</sup> such as LIHEAP vendors. Utilities that receive federal funding are required to “take reasonable steps to ensure meaningful access” its services.<sup>78</sup> The steps that are “reasonable” for a covered entity vary, depending on the size of the population served and frequency in which they have or should have contact with an LEP person of that population. Critical to this determination is an assessment of the consequences of not providing adequate language access services.<sup>79</sup> When examining these factors, an essential consideration is that utility services are indispensable to a healthy, safe home, and the consequences of providing insufficient access to service may be severe, so the requirements of Title VI are great.<sup>80</sup>

While Title VI is not within the Commission’s jurisdiction, the Commission should nevertheless consider a utilities’ obligations under federal law as a factor in setting policy standards with which the utilities should adhere.<sup>81</sup>

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<sup>76</sup> *Lau v. Nichols*, 414 U.S. 563, 569 (1974); *Sandoval v. Hagan*, 197 F.3d 484, 510-11 (11th Cir. 1999) (holding that English-only policy for driver’s license applications constituted national origin discrimination under Title VI), rev’d on other grounds, 532 U.S. 275 (2001); *Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (holding that allegations of failure to ensure bilingual services in a food stamp program could constitute a violation of Title VI).

<sup>77</sup> 45 C.F.R. § 80.3(b)(2).

<sup>78</sup> Dep’t Health & Human Services (HHS), Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, *available at* <http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/index.html>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> See *Twp. of Marple v. Pa. PUC*, 319 CD 2022 (March 9, 2023) (finding that the Commission must ensure its actions and decisions comply with certain federal constitutional mandates.)

There are two main components to providing language access: (1) oral interpretation and (2) written translation. With respect to oral interpretation, the Department of Health and Human Services (HHS) provides that use of bilingual employees to interpret is acceptable but explains that employees should be qualified to provide interpretation services.<sup>82</sup> Hiring staff interpreters or contracting for in-person interpreters are also viable options to meet the requirement. Use of telephone interpreter lines may be used, too, but nuances in language and non-verbal communication can be lost. HHS warns in guidance that “where documents are being discussed, it may be important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.”<sup>83</sup>

With respect to written translation, the general rule is that covered entities must provide written translation of any vital documents “for each LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered.”<sup>84</sup>

Based on these outlined guidelines, we initially recommend that the Commission adopt explicit policies that utilities should base their language access policies on data from the respective geographic regions they serve. Utilities should be required to conduct an assessment of language translation and interpretation needs based on their service territories. If an LEP language group is found in a utilities’ respective needs assessment to constitute at or above five percent or 1,000

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<sup>82</sup> Dep’t Health & Human Services (HHS), Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, *available at* <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-vi/index.html>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

(whichever is less) of the population in a county that the utility services, oral and written translation and interpretation services in that language should be required.

With respect to providing oral interpretation services, translation and interpretation services for customer-facing utility representatives should be provided in any languages at or above the threshold described above. While telephone interpretation services may be utilized, the Commission should strongly encourage their representatives to be qualified to provide interpretation services.

With respect to written translation, we recommend that the Commission adopt an explicit policy that utilities provide any written materials or forms related to the data sharing process in, at minimum, English and Spanish. We further recommend that customer service representatives who are trained to discuss the data sharing process with customers are able to communicate with customers in, at minimum, English and Spanish.

**QUESTION 12: Should the CAP Policy Statement be amended to include jurisdictional water public utilities, and, if so, what barriers if any exist to doing so and how can those barriers be overcome?**

Yes, absolutely – the Commission should amend the CAP Policy Statement to include jurisdictional water and wastewater utilities. Loss of water service has devastating consequences for consumers, their households, and their communities as a whole.<sup>85</sup> Low income water customers struggle on a daily basis to afford and stay connected to water and wastewater services. Current policies related to jurisdictional water/wastewater utilities in Pennsylvania lack crucial specificity

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<sup>85</sup> 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), available at <http://jsg.legis.state.pa.us/resources/documents/ftp/documents/HR550%201%20page%20summary%204-6-2016.pdf>.

related to standards for affordability and review of assistance for low income customers. For these reasons and the reasons detailed below, it is crucial that the Commission extend the CAP Policy Statement to include jurisdictional water and wastewater utilities.

In response to this question, we will address (1) the importance of water/wastewater services to low income households and their communities; (2) how rates for basic water/wastewater services have greatly increased in recent years; (3) how recent temporary water assistance underscores the need for more comprehensive measures addressing water affordability; (4) the Commission's authority to bring jurisdictional water and wastewater utilities under the CAP Policy Statement; and (5) further considerations that should be addressed to bring jurisdictional water and wastewater utilities under the CAP Policy Statement.

- *Importance of Water and Wastewater Services*

Access to water and wastewater services is tied directly to the health and well-being of the household, and the habitability of the home. Termination of water or wastewater service to the home can jeopardize a parent's custody of their children, can cause a home to be condemned, and is often cited as an immediate catalyst for eviction from private and public housing – in turn resulting in the loss of public housing assistance and increased rates of homelessness and long-term housing instability.<sup>86</sup> Consistent and affordable access to water and wastewater services has shown to have numerous benefits to communities as a whole. Having affordable access to such

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<sup>86</sup> 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), available at <http://jsg.legis.state.pa.us/resources/documents/ftp/documents/HR550%201%20page%20summary%204-6-2016.pdf>.

services has been linked to healthier child development, decreasing homelessness, and improving affordability of public and private housing.<sup>87</sup>

The harsh impacts of loss of water/wastewater services are not evenly distributed – low income consumers, their households, and their communities experience loss of these services disproportionately compared to residential customers as a whole. Even excluding the threat of termination, increased water and wastewater costs cause low income families to make unthinkable choices to pay for other critical needs (such as food, rent, or medicine) or forgo paying other utility bills. Analysis of material hardship for low and moderate income consumers experiencing income volatility found much higher rates of inability to afford bills, medical care, housing payments and food,<sup>88</sup> and a higher likelihood to resort to expensive payday loans to pay for basic living expenses.<sup>89</sup>

- *Increases in Water and Wastewater Rates in Recent Years*

In its March 22, 2022 Memorandum, the Commission’s Consumer Advisory Council (CAC) noted that water/wastewater bills have recently increased and can often equal or exceed a household’s monthly electric or gas bills. Regulated water and wastewater utilities in Pennsylvania have recently raised the basic costs of water and wastewater services through a series of significant

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<sup>87</sup> See UUSC, Patricia Jones et al., *The Invisible Crisis: Water Unaffordability in the United States* (May 2016), available at [http://www.uusc.org/sites/default/files/the\\_invisible\\_crisis\\_web.pdf](http://www.uusc.org/sites/default/files/the_invisible_crisis_web.pdf).

<sup>88</sup> Stephen Roll, David S. Mitchell, Krista Holub et al., *Responses to and Repercussions from Income Volatility in Low- and Moderate-Income Households: Results from a National Survey*, Aspen Institute EPIC, Center for Social Development, Intuit Tax & Financial Center (Dec. 2-17) at pp. 6-7, available at <https://www.aspeninstitute.org/publications/responses-repercussions-income-volatility-low-moderate-income-households-results-national-survey/>.

<sup>89</sup> Daniel Schneider and Kristen Harknett, *Income Volatility in the Service Sector: Contours, Causes and Consequences* (July 2017) at p. 9, available at <http://www.aspenepic.org/epic-issues/income-volatility/issue-briefs-what-we-know/issue-brief-income-volatility-service-sector/> (almost a quarter of consumers reporting week-to-week volatility report using payday lenders).

rate increases<sup>90</sup> – and additional rate increases are expected over the next few years as water and wastewater utilities recover the cost of additional acquisitions, invest in critical infrastructure and lead service line removal, and implement new clean drinking water standards. Increasing costs of basic water and wastewater service jeopardize low income customers’ ability to maintain consistent and affordable water/wastewater services. Shut offs often exacerbate whatever crisis prompted a household to experience payment difficulties, making it even harder for these households to get back on track.<sup>91</sup> Additional charges may be assessed against terminated households, including late fees and reconnection fees.<sup>92</sup> Termination must be addressed through providing robust assistance programs that address underlying affordability programs.

- *Temporary federal water assistance underscores the need for water/wastewater utilities to be included in the CAP Policy Statement.*

In its Memorandum, the CAC noted that the federal government implemented the Low Income Household Water Assistance Program (LIHWAP) in recognition that the loss of water service can be catastrophic to the health and safety of low income households.<sup>93</sup> LIHWAP provided an important means of assistance to low income water consumers. In 2022, LIHWAP served 411,000 household nationwide, including 226,000 households who had at least one vulnerable population member.<sup>94</sup> Despite the importance of this grant, LIHWAP was funded through a one-

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<sup>90</sup> Pa. PUC v. PWSA, R-2021-3024773; Pa. PUC v. PWSA, R-2020-2017951; Pa. PUC v. Aqua, R-2021-3027385; Pa. PUC v. Aqua, R-2018-3003558; Pa. PUC v. PAWC, R-2022-3031672; Pa. PUC v. PAWC, Pa. PUC v. PAWC, R-2020-3019369.

<sup>91</sup> NCLC, Water Affordability Advocacy Toolkit, at 40, *available at* [https://www.nclc.org/wp-content/uploads/2022/09/Water\\_Affordability\\_WD.pdf](https://www.nclc.org/wp-content/uploads/2022/09/Water_Affordability_WD.pdf). Legal Defense Fund, Water/Color Report, at 28, *available at* <https://www.naacpldf.org/our-thinking/issue-report/economic-justice/water-color-a-study-of-race-and-the-water-affordability-crisis-in-americas-cities/>. Even excluding the threat of termination, increased water and wastewater costs cause low income families to make impossible choices to pay for other critical needs (such as food, rent, heat, electricity, or medicine).

<sup>92</sup> *Id.*

<sup>93</sup> CAC Memo at 1-2.

<sup>94</sup> LIHWAP Data on file with counsel for CAUSE-PA.

time emergency federal allocation, and was designed as a temporary crisis program.<sup>95</sup> Currently, there is no further allocation capable of addressing the widespread need for water assistance. Further, LIHWAP was not designed as a means of addressing underlying affordability of water/wastewater services. These gaps in available water assistance and the need to address underlying water affordability issues underscores the crucial need for the Commission to take decisive action to bring jurisdictional water/wastewater utilities under the CAP Policy Statement.

- *The Commission has statutory authority to include water/wastewater utilities in the CAP Policy Statement*

The Commission has the authority, both explicit and implied to promulgate policy concerning water and wastewater affordability. It is well established that the Commission’s powers are limited to those “which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication.”<sup>96</sup> Chapter 14 of Title 66 grants the Commission explicit authority regarding the affordability of utilities.<sup>97</sup> In addition to its explicit authority related to utility affordability standards, the Commission has broad implied authority to promulgate policy relating to the affordability of utilities, including water, pursuant to Sections 501 of Title 66, which provides in pertinent part that “[i]n addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof.” In addition, Section 1301 of Title 66 provides that the rates of public utilities shall be “just and reasonable,” while Section 1501 of Title 66 provides that the service of public utilities shall be “adequate, efficient, safe and reasonable.” Taken together, these clear

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<sup>95</sup> *Id.*

<sup>96</sup> *Twin Lakes Utils. v. Pa. PUC*, 281 A.3d 384, 395 (Pa. Commw. Ct. 2022).

<sup>97</sup> 66 Pa. C. S. §§1405, 1409.

duties set forth by the Legislature necessarily imply that the Commission has authority to promulgate policy relating to the affordability of utilities, including regulated water and wastewater utilities.<sup>98</sup>

The history of the CAP policy predates the statutory mandates related to “universal service and energy conservation” for EDCs and NGDCs contained in Title 66.<sup>99</sup> Under the 1992 CAP policy statement, the PUC encouraged gas and electric utilities to implement CAPs, citing its authority under Sections 501, 1301, and 1501 to ensure just and reasonable rates for efficient and reasonable service.<sup>100</sup> In the policy, the PUC indicated that it would use ratemaking cases to further encourage the implementation of CAPs by requesting that utilities who decline to implement a CAP discuss whether it would be economically beneficial to the utility and its ratepayers to do so.<sup>101</sup> The 1992 CAP policy statement was issued to address the difficulty low-income customers faced in paying their utility bills.<sup>102</sup> The PUC promulgated the CAP policy statement because it determined that CAPs are in the public interest as they are “a more cost effective approach for dealing with issues of customer inability to pay than are traditional collection methods.”<sup>103</sup>

- *Additional Considerations to including jurisdictional water/wastewater public utilities in the CAP Policy Statement.*

To address the extensive issues related to water affordability and access prevalent across the Commonwealth, the Commission should include jurisdictional water and wastewater utilities in its CAP Policy Statement. To do so, we recognize the following topics must be addressed: (1)

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<sup>98</sup> 66 Pa. C.S. §§ 1301 & 1501.

<sup>99</sup> Section 2803 of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801–2816 (1997), and Section 2202 of the Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201–2212 (1999), (respectively Electric Competition Act and Natural Gas Competition Act; collectively Competition Acts).

<sup>100</sup> 22 Pa. Bull. 3914.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*



water/wastewater affordability standards; (2) requirements that jurisdictional water/wastewater utilities submit Universal Service and Water Conservation Plans (USWCPs) for Commission review and approval; and (3) requirements that jurisdictional water/wastewater utilities maintain usage reduction programs. While we discuss each of these in turn, we note that these considerations do not stand as barriers to including jurisdictional water and wastewater utilities under the CAP Policy Statement. Rather, these considerations provide important opportunities to improve access and affordability for low income water/wastewater consumers.

- ***Establish affordability standards for water and wastewater.*** While the Commission has issued clear guidance on the maximum energy burdens that are considered affordable for low income consumers, similar statewide guidance has not been issued related to target affordability levels for water and wastewater services. Without such guidance, regulated water/wastewater utilities in the Commonwealth have turned to inappropriate standards for assessing low income water affordability, including assessment tools provided by the Environmental Protection Agency (EPA) that fail to address affordability levels for low income water consumers.<sup>104</sup>

On March 22, 2022, the Consumer Advisory Council (CAC) to the Commission issued a Memorandum that recommended the initiation of a statewide policy proceeding on the affordability of water and wastewater services. The CAC recommended in its Memorandum that the Commission initiate a statewide proceeding to examine the affordability of water/wastewater services across the Commonwealth, and establish policies and standards to ensure that all low income utility consumers can maintain these services. We renew the CAC's call for a statewide proceeding to be established related to water/wastewater affordability. We recommend that a proceeding be opened to comment and input with the explicit goal to develop statewide standards for water and wastewater affordability that would allow water/wastewater utilities to be included under the guidance of the CAP Policy Statement.

- ***Require water/wastewater utilities to periodically submit detailed universal service plans for review and approval.*** In revising its CAP Policy Statement, the Commission urged EDCs and NGDCs to incorporate the guidance in the revised Policy Statement into utilities' respective USECPs as fully and quickly as possible.<sup>105</sup> Currently, water and wastewater utilities are not required to submit proposed universal service plans for Commission review and approval. Instead, consumers and utility advocates must rely on a utilities' tariff and limited information that may be available through water utilities' websites to piece together important information related to program rules, policies, and procedures that govern water assistance programs. This

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<sup>104</sup> See, e.g., *Pa. PUC v. Aqua*, CAUSE-PA St. 1 at 39-40, Docket Nos. R-2021-3027385, 3027386 (CAUSE-PA St. 1 dated Nov. 10, 2021). The United States Environmental Protection Agency (EPA) provided guidelines more than twenty years ago, which recommend that the average combined water and wastewater bill should be less than 4% to 4.5% of the median household income (maximum 2.5% for water, and 2% for wastewater). These guidelines fail to address low income households, or other households who do not possess median income.

<sup>105</sup> CAP Policy Statement Order at 2.

engenders consumer confusion and hampers consumers ability to learn about an ultimately enroll in water assistance programs. The lack of clarity related to water/wastewater assistance program policies and procedures also makes it difficult for the Commission and stakeholders to determine whether water assistance programs are adequately affordable and accessible for low income participants.

We urge the Commission to revise its current policy and require regulated water and wastewater utilities to file proposed USECPs on the same schedule required of EDCs and NGDCs. Consistent with our recommendations in response to Question 11, we recommend the Commission implement a full due process review of *all* universal service plans, including those filed by EDCs, NGDCs, or water/wastewater utilities. Requiring water and wastewater utilities to develop and seek periodic review of their USWCPs will help to align the requirements of the CAP Policy Statement with regulated water utilities – and will bring needed transparency and accountability to the operation and administration of these programs.

**QUESTION 13:      If a coordinated enrollment process could be achieved with respect to CAP, could that same process be applied to identify eligibility for a utility's Low Income Usage Reduction Program (LIURP) or eligibility for receipt of hardship fund grants?**

Yes, absolutely. The Utility Justice Advocates support coordinated and streamlined enrollment for all universal service programs, including CAP, LIURP, and Hardship Funds, to realize the full cost and energy savings benefits for both low income customers and utilities. See our response to Questions 5 and 10 for detailed recommendations for how the Commission can proceed to effectively streamline universal service program administration.

While our earlier recommendations are generally applicable to streamlined administration across a utility's universal service portfolio, including LIURP and Hardship Funds, there are some unique considerations for streamlining administration of these two additional programs.

First, LIURP serves affordability by reducing the energy usage in a home. Typically, low income customers reside in old building stock most in need of the repair and weatherization services provided through LIURP. Reducing energy usage, especially by improving older building stock, will result in more affordable energy costs for residential customers of all incomes. Despite the clear benefits of LIURP, navigating varying programs can present unique difficulties,

especially for customers applying for assistance for both electric and gas utilities. Coordinated enrollment processes will help to alleviate confusion for customers attempting to enroll in programs or apply for grant funding.

A coordinated enrollment process for CAP and LIURP should include processes whereby households that submits a CAP application are reviewed for eligibility for LIURP services and, where possible, scheduled for an initial energy efficiency audit at the time of enrollment in CAP. Customers already enrolled in CAP that reach a certain usage threshold should be offered LIURP services and energy education to ensure that the household is operating safely and efficiently to reduce costs for the household and other ratepayers. These CAP participants should not be required to provide additional, duplicative eligibility information or documentation to receive LIURP services. Instead, continued CAP participation should act as proof of categorical eligibility for qualifying for LIURP services.

With regard to streamlining administration of a utility's Hardship Fund, any customer receiving a hardship fund grant should be cross enrolled in CAP and, if feasible, scheduled for a LIURP energy audit, without the need to provide a separate application or documentation for these other assistance programs. Standardizing hardship fund eligibility requirements, funding mechanisms, and funding levels – consistent with our recommendations in response to Question 10 – would also help to ensure equitable access to grant assistance across the state.

**QUESTION 14:      What changes are required to the Commission's existing policies and regulations to incorporate improvements?**

The Utility Justice Advocates emphasize the need for certain universal service provisions to be codified in regulation, providing consistency and certainty to regulated electric, gas, water, and wastewater utilities to implement programs, and to meet the mandates included the Electric

Competition Act and the Natural Gas Competition Act as well as the Responsible Utility Customer Protection Act. We recommend the Commission, following review of comments to the instant proceeding, initiate the long promised and overdue Universal Service Rulemaking to codify provisions included in the Final CAP Policy Statement, as modified by our recommendations included throughout these Comments. This rulemaking proceeding should move forward *before* further amendments to policy are drafted and processed. The existing Final CAP Policy Statement provides helpful guidance that is making incremental gains in affordability, but it ultimately is not directly binding on covered utilities, it further reinforces the patchwork implementation of programs, and it does not address the full cohort of available universal service programs.

Recommended regulatory amendments include:

- Require utilities to adopt a specific common application form for all customer assistance programs; standardizing income, documentation, notice, and disclosure requirements;
- Standardize universal service program enrollment procedures, eligibility, benefits, terms, and conditions across the Commonwealth;
- Require customer data security provisions and privacy protections;
- Delineate language access requirements and responsibilities;
- Require regulated water and wastewater utilities to file proposed Universal Service and Water Conservation Plans (USWCP) on the same schedule that EDCs and NGDCs file their USECPs, subject to full due process review.

The Utility Justice Advocates also recognize the need for policy amendments to provide detailed guidance to effectively implement the regulations. We recommend the following policy amendments, corresponding with the above recommended regulatory amendments:

- Common application – relevant policy documents should be updated to include the recommended data points as described in Question 10.
- Data security – policy should include:
  - (1) minimum procedural requirements for obtaining informed consent;
  - (2) clear parameters restricting the scope of consent, and prohibiting the sale or exchange of data for any pecuniary benefit to the utility or utility sub-contractor;
  - (3) considerations for consumers with unique vulnerabilities, such as medical conditions or status as a victim of domestic violence; and
  - (4) considerations for consumers with limited English proficiency (LEP).

To support the development of policy, specifically related to the standardized universal service program processes, the Utility Justice Advocates recommend the convening of a working group as discussed in Question 10. We also recommend the Commission open a statewide proceeding related to water/wastewater affordability to develop statewide standards for water.

**V. CONCLUSION**

The Utility Justice Advocates appreciate the opportunity to provide comment to the Commission on these critically important issues affecting the access and affordability of universal service and energy conservation programs. As detailed throughout these Comments, we recommend that the Commission develop policies and guidelines aimed at increasing low income consumers access to assistance programs, streamlining and eliminating unnecessary duplication for customer access and enrollment in assistance programs, and developing clear policies to ensure more equitable and standardized access to utility assistance across the Commonwealth.

Respectfully submitted,

*On Behalf of CAUSE-PA and  
Pittsburgh United*



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