

# STATEMENTS OF POLICY

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[ 52 PA. CODE CH. 69 ]

[ M-00072036/57-259 ]

### Customer Assistance Programs

The Pennsylvania Public Utility Commission (Commission) on August 30, 2007, adopted a proposed policy statement order which develops general standards to ensure the appropriate funding of universal service programs, including Customer Assistance Programs (CAPs) and resolves other types of universal service issues including CAP design elements, default provisions, timely collections and arrearage forgiveness. The contact persons are Patricia Krise Burket, Law Bureau, (717) 787-3464 and Michael Smith, BCS, (717) 705-0620.

Public Meeting held  
August 30, 2007

*Commissioners Present:* Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Terrance J. Fitzpatrick; Tyrone H. Christy; Kim Pizzigrilli

*Proposed Revision to Policy Statement on Customer Assistance Programs, 52 Pa. Code §§ 69.261—69.267; Doc. No. M-00072036*

### Order and Proposed Policy Statement

*By the Commission:*

On December 18, 2006, the Commission entered its *Final Investigatory Order in Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Doc. No. M-00051923 (*Final Investigatory Order*). As a result of its investigation, the Commission directed, inter alia, the retention and revision of the Policy Statement on Customer Assistance Programs at 52 Pa. Code §§ 69.261—69.267. By this order, we propose to revise the Policy Statement consistent with the directions given.

### DISCUSSION

#### Background

On December 18, 2005, the Commission entered an order requesting comments on developing general standards to ensure the appropriate funding of universal service programs, including Customer Assistance Programs (“CAPs”); to determine the type of cost recovery mechanism that best allows utilities to “fully recover” universal service costs and to resolve other types of universal service issues. The Commission also requested comments on the following CAP design elements: consumption limits, maximum energy burdens, maximum CAP benefits, default provisions, restoration provisions, timely collections for delinquent CAP accounts, minimum CAP budget bills, eligibility and income verification, arrearage forgiveness and coordination of energy assistance benefits. *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Doc. No. M-00051923.

Written comments were filed by the following interested parties: Energy Association of Pennsylvania, Office of Consumer Advocate, Department of Public Welfare, Office of Trial Staff, Dollar Energy Fund, Inc., Office of Small Business Advocate, City of Philadelphia—Mayor’s Office—

Consumer Affairs, Action Alliance of Senior Citizens of Southeastern Pennsylvania, through counsel Community Legal Services, Inc. and the Pennsylvania Utility Law Project (collectively, “Action Alliance”), Allegheny Power, Duquesne Light Company, Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company, PECO Energy Company, PPL Electric Utilities Corporation and PPL Gas Utilities, Columbia Gas of Pennsylvania, Inc., Peoples Natural Gas Company d/b/a Dominion Peoples, Equitable Gas Company, National Fuel Gas Distribution Corporation, PG Energy, Philadelphia Gas Works, Valley Energy, Inc., Citizens’ Electric Company of Lewisburg PA, and Wellsboro Electric Company, UGI Utilities, Inc., T. W. Phillips Gas and Oil Co., Pennsylvania Association of Community Organizations for Reform Now, Energy Coordinating Agency of Philadelphia, Inc., AARP Pennsylvania, and the Industrial Energy Consumers of Pennsylvania, the Columbia Industrial Intervenors, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the Philadelphia Industrial and Commercial Gas Users Group, the PP&L Industrial Customer Alliance, the UGI Industrial Intervenors, the West Penn Power Industrial Intervenors, and Senator LeAnna M. Washington, 4th District.

On December 18, 2006, the Commission closed its investigation and entered its *Final Investigatory Order*. In this order, the Commission directed revision of the Policy Statement on Customer Assistance Programs and the promulgation of regulations relating to CAP funding. Specifically, the Commission directed inter alia that a proceeding be initiated to amend the existing CAP Statement of Policy at 52 Pa. Code § 69.261 et seq. by incorporating the following proposals:

- (1) CAP funding decisions should include the consideration of the interests of all customers, including those not enrolled in CAP programs, and previous CAP funding decisions regarding other similar utilities;
- (2) CAP enrollment ceilings should be eliminated;
- (3) The utilities’ rights to full cost recovery should be recognized and a process should be provided where utilities may propose a surcharge to recover costs that is subject to annual reconciliation or prospective adjustment on a quarterly basis;
- (4) Existing guidelines should be modified and additional guidelines regarding CAP design elements should be established as discussed in the body of this order; and,
- (5) Section 69.265(9), dealing with Coordination of Energy Assistance Benefits should be amended consistent with the discussion in the body of this order.

*Final Investigatory Order*, p. 69.

In the *Final Investigatory Order*, the Commission recognized the continued value of the CAP policy statement as an effective blueprint for structure and operations of CAPs, but acknowledged that the design criteria guidelines needed to be updated. *Final Investigatory Order*, pp. 44. In regard to this task, the Commission instructed that:

[it may be reasonable to make some changes to the statement of policy since it has not been amended for several years. Additionally, there are areas that are important enough to be addressed in proposed regulations. However, any design criteria guidelines should be based upon the interests of both CAP participating customers and non-participating customers, and they should reflect a reasonable balance between uniformity and flexibility.

*Final Investigatory Order* at p. 44.

The Commission further instructed that:

any changes [made to the CAP policy statement] must be accomplished within the Commission's legal authority as provided for in the Competition Acts. Additionally, the Commission must be careful in establishing guidelines in order to refrain from interfering with decisions that fall under a utility's management discretion. *Pennsylvania Tel. Corp. v. Pa. PUC*, 33 A.2d 765 (Pa. Super. 1943). Finally, any changes must also be consistent with Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations.

*Final Investigatory Order* at p. 44.

With this prior guidance in mind, we propose to amend the CAP Policy Statement consistent with the determinations made in the *Final Investigatory Order*.

#### **Adequate CAP Funding Elimination of Enrollment Ceilings**

Section 69.264 (relating to scope of CAPs) has been revised to recognize that universal service must be adequately funded to serve all eligible customers who request the service; to eliminate enrollment ceilings in favor of a case-by-case determination of whether a company's CAP is adequately funded and to list a number of the factors that the Commission will consider in determining whether a company's CAP is adequately funded. See § 69.264.

#### **Minimum Payments**

In regard to minimum payments, the Commission indicated an unwillingness to raise the minimum monthly CAP payment to an unreasonable amount:

We decline to increase the minimum payments for low-income customers. The highest minimum payment reflects 10% of a typical public assistance grant for a household of three who receives \$403 per month from a Temporary Assistance to Needy Families [TANF] grant. Considering that an average household in Pennsylvania has an energy burden of 4.8%, it is unreasonable to expect the poorest households to pay more than 10%.

*Final Investigatory Order*, p. 59.

The Commission did indicate that the minimum CAP payment should be tied to an index to reflect changes in energy prices and committed to propose the use of such an index in the amendment of the CAP policy statement. *Final Investigatory Order*, p. 59. The policy statement has been revised at § 69.265(4)(i)(D) (relating to CAP design elements) to permit a distribution company to propose for inclusion in its tariff rules in its triennial filing annual changes to its minimum CAP payments based on a generally accepted index that reflects changes in consumer energy prices. See § 69.265.

#### **Maximum CAP Credits.**

In the *Final Investigatory Order*, the Commission proposed to examine in the amendment of the CAP policy statement the adoption of a permanent mechanism to adjust maximum CAP credits to reflect changes in prices. As an interim measure, the Commission recommended that the utilities consider increasing their maximum CAP credits to match the recommendation that was presented by PPL: \$1,800 for electric heat, \$700 for nonheat, and \$1,000 for natural gas heat. These levels track closely with the changes reflected to the Consumer Price Index since 1992. See *Final Investigatory Order* at p. 50.

To accomplish this directive, § 69.265(3)(v) has been renumbered to § 69.265(4)(v). The CAP credit limit (in dollars) for each type of account—electric-heat, nonheat and natural gas heat—have been increased to the specific dollar amounts recommended by PPL. A new subsection (D) is proposed to be added that allows for the use of an index to adjust CAP credits. For the purpose of soliciting comments, the Consumer Price Index is proposed as the index that should be used.

#### **Exemption from CAP Control Features**

The last express revision to the CAP policy statement proposed by the Commission in its *Final Investigatory Order* is an amendment that will advise the distribution company to inform customers about exemptions that may excuse a customer's violation of a CAP control feature. *Final Investigatory Order*, p. 67. CAP control features include minimum payment terms, a prohibition against subscribing to nonbasic services, and limits on consumption. These control features are listed in § 69.265 (4)(i)–(v).

Circumstances that exempt CAP participants from control features include an increase in household size, a serious illness of a household member, energy consumption outside the ability of the customer to control and energy consumption based on the energy consumption of previous occupant. These exemptions from control features are listed in § 69.265(4)(v).

#### **Eligibility Requirements**

The Commission made some initial determinations about eligibility criteria for enrollment in CAP.

We agree with the DPW that receipt of a LIHEAP [Low Income Home Energy Assistance Program] crisis grant should result in enrollment in CAP, if CAP is the most advantageous rate for a customer. Because the DPW—an agency of the Commonwealth—has already verified household income, it is not necessary for a customer to verify income again. We agree with the parties that referrals to CAP should be automatic when a customer is facing termination of service; income verification and recertification must be simplified and standardized; and that verification of income by DPW should be adequate proof of income eligibility. Utilities should follow the CAP Policy Statement provision that a utility should make referrals to CAP when a customer calls to make a payment agreement. 52 Pa. Code § 69.265(6)(i). As to income verification, receipt of a LIHEAP grant should be adequate income verification for enrollment in CAP. Also, customers with fixed incomes, i.e., Social Security, should be required to recertify eligibility at most every two years, and the receipt of LIHEAP should result in an automatic recertification.

*Final Investigatory Order*, pp. 62.

Consistent with this discussion, the Commission proposes to revise the CAP policy statement consistent with the previous discussion. See § 69.265(5), (7)(i), (ii) and (viii).<sup>1</sup>

### **Arrearage Forgiveness**

Arrearage forgiveness is the practice of forgiving a portion of a CAP customer's outstanding accounts receivable balance based on successful participation in the program. Generally, arrearage forgiveness allows for a certain portion of the customer's outstanding balance to be eliminated based on timely payments in accordance with the terms of the CAP agreement.

In the *Final Investigatory Order* at p. 64, the Commission made one specific rule regarding arrearage forgiveness, that arrearages should be forgiven monthly when CAP payments are made. All other decisions in regard to arrearage forgiveness, including costs recovery, should be proposed by the company in the triennial review proceeding. *Final Investigatory Order*, pp. 38-39. The CAP policy statement has been amended at § 69.265(10) to state that a determination on the recovery of costs related to arrearage forgiveness will be made, and that other rules governing arrearage forgiveness will be established in the distribution company's CAP tariff filing.

### **Coordination of Energy Benefits**

The *Final Investigatory Order* stated that the coordination of a CAP customer's LIHEAP cash benefits between utility accounts would be addressed on a case-by case basis:

Instead of establishing an inflexible standard in a regulation directing how LIHEAP cash benefits are to be applied, the Commission will address this issue on a case-by-case basis in the tariff filing as part of the triennial review process. As a result, Section 69.265(9) of the CAP statement of policy should be amended accordingly. Additionally, with the tariff filing as part of the triennial review process, each utility's tariff must provide for the method of application of LIHEAP cash grants.

*Final Investigatory Order*, pp. 66.

Section 69.265(9) (relating to coordination of energy assistance benefits) has been renumbered to § 69.265(11) and amended to reflect this change.

### **Income Ineligible CAP Participant and Pre-Program Arrearages**

Preprogram arrearages were discussed in the *Final Investigatory Order*.

We agree with Action Alliance comments that large preprogram balances that remain unforgiven even when a customer makes regular monthly payments can have adverse effects on customers if a customer becomes income ineligible for CAP. For that reason, the Commission will propose a solution in the revision of the CAP policy statement. We also will clarify that the current CAP Policy Statement does not require a "timely payment" criterion but requires regular monthly payments to receive arrearage forgiveness. We also agree that arrearages should be forgiven monthly when CAP payments are made.

<sup>1</sup> Eligibility requirements previously addressed at § 69.265(4) are now addressed at proposed § 69.265 (5).

*Final Investigatory Order*, pp. 63-64.

Consistent with the previous discussion, the CAP policy statement has been revised by adding new § 69.265(13)(ii)(B) to state that "regular monthly payments," that is, payments made within five days after the due date<sup>2</sup>, should not adversely affect arrearage forgiveness, to the extent that it is made available for CAP participants who have become income ineligible. We have also defined the term "regular monthly payments" in § 69.262.

### **Default Provisions**

One of the major changes proposed by the Final Investigatory Order was the promulgation of regulations relating to circumstances that would result in the dismissal of a customer from a CAP<sup>3</sup>. *Final Investigatory Order*, pp. 50-55. In the current policy statement, default provisions are listed at § 69.265(7) (relating to CAP design elements; default provisions).

Consistent with this direction, we propose to revise the existing policy statement by deleting the list of circumstances that should result in dismissal from CAP participation and will instead state that the failure of a customer to comply with the default provisions of the new regulation should result in dismissal from CAP participation. This section has been renumbered as § 69.265(8). 13.

### **Revisions to Existing CAPs Alternate Program Design**

This order proposes two additional revisions to the CAP policy statement necessitated by the other procedural and substantive changes made in regard to CAP proposals and programs<sup>4</sup>.

First, § 69.263 (relating to CAP development) has been revised to encourage distribution companies to seek advice regarding CAP implementation, expansion or revision from the Commission's Bureau of Consumer Services. BCS has extensive experience in the implementation of customer assistance programs and is an important resource. We have also encouraged companies to submit CAP proposals to BCS 30 days prior to the official filing date to allow adequate time for BCS to review the company's proposal and provide its advice.

The last proposed revision to the CAP policy statement relates to the revision of § 69.267 (relating to alternate design). In light of changes made to other sections of the policy statement, the section has been revised to make it clear that Commission review and approval of universal service programs that is materially different from historic CAPs is necessary prior to implementation the program's implementation.

### **CONCLUSION**

As a result of our investigation into funding levels and cost recovery for Customer Assistance Programs, we propose to amend the Policy Statement on Customer Assistance Programs at 52 Pa. Code §§ 69.261—69.267 as

<sup>2</sup> Deeming a payment made within five days of the due date as a regular monthly payment is consistent with the public policy underlying the practice that a utility may not impose a late fee when a payment is received within 5 days after the billing due date. See 52 Pa. Code § 56.21(2)(ii)(relating to payment).

<sup>3</sup> We note that we determined that failure to apply for LIHEAP should also result in dismissal from CAP participation. *Final Investigatory Order*, p. 52 f.n. 34.

<sup>4</sup> We have proposed other changes be made to the CAP policy statement for clarity and for consistency with our proposed revision of regulations at 52 Pa. Code Chapters 54 and 62. See *Notice of Proposed Rulemaking, Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements*, 52 Pa. Code §§ 54.71—54.78 (electric); §§ 62.1—62.8 (natural gas) and *Customer Assistance Programs*, §§ 76.1—76.6, Docket No. L-00070186. Also, as a result of our proposed revision of the policy statement, format changes needed to be made in other sections of the policy statement. These changes are fairly obvious and clearly marked in the Annex A.

set forth in Annex A. All interested parties are invited to submit comments on the proposal set forth in Annex A. Persons submitting comments are requested to provide supporting justification for requested revisions and proposed regulatory language.

Accordingly, pursuant to sections 501, 1501, 1504 and 2203, and Chapter 28 of the Public Utility Code, 66 Pa.C.S. §§ 501, 1504, 2203 and 2801—2812 and the Commonwealth Documents Law, 45 P.S. § 501 et seq., and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, we propose to amend the CAP policy statement at 52 Pa. Code Chapter 69 as previously noted and as set forth in Annex A;

*Therefore,*

*It Is Ordered:*

1. That the proposed revisions to policy statement on Customer Assistance Programs at 52 Pa. Code §§ 69.261—69.267, as set forth in Annex A, are issued for comment.

2. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. That the Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. That the Secretary shall serve a copy of this order upon all jurisdictional natural gas distribution companies, all electric distribution companies, the Energy Association of Pennsylvania, Pennsylvania Utility Law Project, the Dollar Energy Fund, the Pennsylvania Department of Public Welfare, the Office of the consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff and all other parties filing comments at Docket M-00051923.

5. That interested persons may submit an original and 15 copies of written comments referencing this docket to the Office of the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 within 60 days from the date this order is published in the *Pennsylvania Bulletin*. In addition, one copy of the comments in electronic format (Microsoft Office Word 2003® or readable equivalent) on a portable storage unit (diskette, CD) shall be filed with the Secretary and a copy sent by electronic mail to Patricia Krise Burket, Assistant Counsel at pburket@state.pa.us, Michael Smith, Bureau of Consumer Services, michasmith@state.pa.us, and Cyndi Page, Office of Communications, at cypage@state.pa.us. Comments shall be posted on the Commission's website.

6. A copy of this order shall be posted on the Commission's website and served on the Office of Consumer Advocate and Office of Small Business Advocate.

7. The contact persons for this matter are Michael Smith, Bureau of Consumer Services, (717) 705-0620, and Patricia Krise Burket, Assistant Counsel, Law Bureau, (717) 787-3464.

*By the Commission*

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-259. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 52. PUBLIC UTILITIES

#### PART I. PUBLIC UTILITY COMMISSION

##### Subpart C. FIXED SERVICE UTILITIES

#### CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

##### POLICY STATEMENT ON CUSTOMER ASSISTANCE PROGRAMS

###### § 69.261. General.

CAPs and other universal service programs are [designed as] alternatives to traditional collection methods for low income, payment troubled customers. Customers participating in CAPs agree to make monthly payments based on household [family] size and gross income. Customers make regular monthly payments, which may be for an amount that is less than the current bill for utility service, in exchange for continued provision of the service. **This section and §§ 69.262—69.267 apply to Class A electric utilities and natural gas utilities with gross [intrastate] intraState annual operating revenue in excess of \$40 million [should adopt the guidelines in §§ 69.263—69.265 (relating to CAP development; scope of CAPs; and CAP design elements) implementing residential CAPs].**

###### § 69.262. Definitions.

The following words and terms, when used in §§ 69.261, 69.263—69.267 and this section, have the following meanings, unless the context clearly indicates otherwise[; ]:

\* \* \* \* \*

**BCS—Bureau of Consumer Services.**

**CAP—Customer Assistance Program—A plan sponsored by a distribution company for the purpose of providing universal service and energy conservation to low income customers, in which customers shall:**

(i) **Make monthly payments based on household income and household size.**

(ii) **Comply with certain responsibilities in order to remain eligible for the program.**

**CAP credits—The difference between a CAP customer's actual usage bill and the CAP monthly budget bill.**

**Distribution company—A natural gas distribution company or an electric distribution company.**

**DPW—Department of Public Welfare.**

**[EDC—Electric distribution company—The electric distribution company as defined in 66 Pa.C.S. § 2803 (relating to definitions).]**

**LIHEAP—Low Income Home Energy Assistance Program—A Federally funded program which provides financial assistance [grants to needy households for home energy bills] in the form of cash and crisis grants to low income households for home energy bills and is administered by DPW.**

**LIURP—Low Income Usage Reduction Program—A program that assists low income customers to conserve energy and reduce residential energy bills established by a distribution company**

consistent with Chapter 58 (relating to residential low income usage reduction programs).

*Low income customers*—A residential [utility] customer whose annual household gross income is at or below 150% of the Federal poverty income guidelines.

[Low-income] *Low income payment troubled customers*—[Low-income] Low income customers who have failed to maintain one or more payment arrangements in a 1 year period or who have received a termination notice.

*Preprogram CAP arrearages*—Arrearages that accumulated prior to a customer's enrollment in CAP.

*Regular monthly payment*—A monthly payment that is made within 5 days of the monthly billing due date.

§ 69.263. CAP development, expansion and revision.

(a) A [utility] distribution company should develop a CAP consistent with the guidelines provided in §§ 69.261, 69.262, 69.264—69.267 and this section.

(b) The [Bureau of Consumer Services will] distribution company is encouraged to work with [the utility] the BCS in CAP development, expansion and revision.

(c) Before implementing, revising or expanding a CAP, a [utility should submit its CAP] distribution company should provide a copy of the proposal to the [Bureau of Consumer Services] BCS for review [and Commission approval] of design elements. This review is technical in nature and not for ratemaking purposes[, and the rate consequences of any CAP will be addressed within the context of subsequent Commission rate proceedings as described in § 69.266 (relating to cost recovery)]. The distribution company is encouraged to submit a draft of the universal service plan to BCS at least 30 days prior to the official filing date. The BCS will provide to the distribution company, for its consideration, advice to improve the CAP proposal.

§ 69.264. Scope and funding of CAPs.

[CAPs should be targeted to low-income, payment troubled customers. The participation limit for CAP should reflect a needs assessment, consideration of the estimated number of low-income households in the utility's service territory, the number of participants currently enrolled in the pilot CAP, participation rates for assistance programs and the resources available to meet the needs of the targeted population.]

In a distribution company's service territory, universal service programs should be available and appropriately funded to serve the eligible population who need this service. A CAP is one type of program that provides for the successful delivery of universal service to eligible customers. CAP enrollment ceilings are eliminated in favor of a case-by-case determination of whether a distribution company's universal service program is adequately funded to meet the needs of a distribution company's low income population. In making a determination of adequate funding, the Commission will consider the following factors:

- (1) A distribution company's needs assessment.
- (2) The number of customers enrolled in CAPs compared with the number of confirmed low income customers in the company's service territory.
- (3) Demographics of the service territory.
- (4) Enrollment suspension or suppression in the last 3 years.
- (5) Enrollment recommendations from the most recent evaluation.
- (6) The interests of all customers, not those just enrolled in CAPs, in maintaining reasonable and affordable rates.
- (7) Previous Commission decisions regarding CAP funding levels of other distribution companies to the extent they are similar in size, and demographics to the distribution company whose funding level is under review.

§ 69.265. CAP design elements.

[The] A distribution company should include the following design elements [should be included] in [a] its CAP:

(1) *Program funding*. Program funding should be derived from the following sources:

\* \* \* \* \*

(iv) Universal service [funding] cost recovery mechanism for [EDCs] distribution companies.

(2) [Payment plan proposal]. Generally, CAP payments for total electric and natural gas home energy should not exceed 17% of the CAP participant's annual income. The minimum payment should not be less than the guidelines in paragraph (3)(v)(A) and (B). Payment plans should be based on one or a combination of the following: ] *Maximum CAP monthly budget bill*. Maximum CAP monthly budget bills should not exceed the following levels:

(i) Maximum CAP monthly budget bills for electric nonheating service should not exceed 4% of a household's monthly gross annual income.

(ii) Maximum CAP monthly budget bills for natural gas heating should not exceed 6% of a household's gross annual income.

(iii) Maximum CAP monthly budget bills for electric heating accounts or gas heating and electric nonheating accounts combined should not exceed 10% of a household's gross annual income.

(iv) When determining a CAP monthly budget bill, a distribution company should deduct 20% from all earned income to compensate for taxes, other mandatory deductions from salary, and work expenses. This deduction does not need to apply to income eligibility.

(v) The Commission may adjust a CAP monthly budget bill to be consistent with this section.

(3) *CAP Budget Payment Plan*. CAP budget payment plans should be based on one or more of the following:

(i) *Percentage of income plan*. Total payment for total electric and natural gas home energy under a percentage of income plan is determined based upon a scheduled percentage of the participant's annual gross income. The participating household's gross income and family size

place the family at a particular poverty level based on Federal poverty income guidelines.

**[ (A) Generally, maximum payments for electric nonheating service should be within the following ranges:**

**(I) Household income between 0—50% of poverty at 2%—5% of income.**

**(II) Household income between 51—100% of poverty at 4%—6% of income.**

**(III) Household income between 101—150% of poverty at 6%—7% of income.**

**(B) Generally, maximum payments for gas heating should be within the following ranges:**

**(I) Household income between 0—50% of poverty at 5%—8% of income.**

**(II) Household income between 51—100% of poverty at 7%—10% of income.**

**(III) Household income between 101—150% of poverty at 9%—10% of income.**

**(C) Generally, maximum payments for electric heating or gas heating and electric nonheating combined should not exceed the following guidelines:**

**(I) Household income between 0—50% of poverty at 7%—13% of income.**

**(II) Household income between 51—100% of poverty at 11%—16% of income.**

**(III) Household income between 101—150% of poverty at 15%—17% of income. ]**

(ii) *Percentage of bill plan.* The participant's household payment contribution for total electric and natural gas home energy under a percentage of bill plan is determined using variables based on family size and income and the household's energy usage level. **[ A participant's annual payment is calculated as a percentage of income payment and converted to a percentage of the annual bill. When a utility determines subsequent CAP payment amounts, a participant will continue to pay the same percentage of the total bill even if annual usage has changed. ]**

(iii) *Rate discount.* The participant's energy usage is billed at a reduced rate.

(iv) *Minimum monthly payment.* The participant's **monthly** payment contribution is calculated by taking the participant's estimated monthly budget billing amount and subtracting the maximum, monthly CAP credit **[ (previously called billing deficiency) ]**.

(v) *Annualized, average payment.* The participant's CAP payment contribution is calculated by determining the total amount the participant paid over the last 12 months and dividing by 12 months to determine a CAP monthly budget bill.

(vi) **[ An alternative ] Alternative payment formula.** An alternative payment formula **[ must be reviewed by the Bureau of Consumer Services and approved by the Commission. ]** may be proposed for Commission review and approval in the distribution company's tariff filing as part of the triennial review process as set forth at §§ 54.74 and 62.4.

**[ (3) ] (4) Control features.** The **[ utility ] distribution company** should include the following control features to limit program costs:

(i) *Minimum payment terms.*

\* \* \* \* \*

**(D) A distribution company may propose in its triennial filing annual changes to its minimum CAP payments based on a generally accepted index that reflects changes in consumer energy prices.**

\* \* \* \* \*

(iii) *Consumption limits.* Limits on consumption should be set at a percentage of a participant's historical average usage. A level of **[ 110% ] 125%** is recommended. Adjustments in consumption **limits** should be made for extreme weather conditions through the use of weather normalization techniques.

**(A) A CAP customer may be required to pay for the full cost of the energy used in excess of consumption limits unless an increase in consumption is due to factors listed in subparagraph (vi).**

**(B) When a CAP customer cannot afford the full cost of the energy used in excess of consumption limits, the customer may be required to bring consumption back to an acceptable level, within a reasonable time, unless an increase in consumption is due to factors listed in subparagraph (vi).**

**(C) When a CAP customer cannot pay for the energy used in excess of consumption limit and will not attempt to control household consumption and will not allow the distribution company to provide weatherization services, the distribution company should remove the customer from the CAP unless an increase in consumption is due to the factors listed in subparagraph (vi).**

(iv) **[ High usage treatment.** Utilities should target for special treatment those participants who historically use high amounts of energy. **] Treatment of high usage customers.** A distribution company should prioritize LIURP services and referrals to other services that help reduce usage for CAP customers who exceed a consumption limit established for the customer's household as defined by section subparagraph (iii).

(v) *Maximum CAP credits.* **[ The annual maximum CAP credits should not exceed a total of \$1,400 per participant. ]**

**(A) The annual maximum CAP credits per natural gas heating [ participant ] customer should not exceed [ \$840 ] \$1,000.**

**(B) The annual maximum CAP credits per electric nonheating customer should not exceed [ \$560 ] \$700.**

**(C) The annual maximum CAP credits per electric heating [ participant ] customer should not exceed [ \$1,400 ] \$1,800.**

**(D) The total maximum CAP credits per customer account should be adjusted annually using the Consumer Price Index inflation calculator.**

(vi) *Exemptions.* A **[ utility may ] distribution company** should inform a customer of the exemptions from CAP control features upon enrollment, certification and prior to termination of service. A distri-

bution company should exempt a [ household ] CAP customer from a CAP control feature if one or more of the following conditions exist:

(A) The household experienced [ the addition of a family member ] an increase in household size.

\* \* \* \* \*

(D) [ The household is located in housing that is or has been condemned or has housing code violations that negatively affect energy consumption.

(E) ] Energy consumption estimates have been based on consumption of a previous occupant.

[ (4) ] (5) *Eligibility criteria.* The CAP applicant should meet the following criteria for eligibility:

(i) [ Status as a utility ratepayer or new applicant for service is verified.

(ii) ] Household income is verified at or below 150% of the Federal poverty income guidelines.

[ (iii) The applicant is a low income, payment troubled customer. When determining if a CAP applicant is payment troubled, a utility should select one of the following four options to prioritize the enrollment of eligible, payment troubled customers:

(A) A household whose housing and utility costs exceed 45% of the household's total income. Housing and utility costs are defined as rent or mortgage/taxes and gas, electric, water, oil, telephone and sewage.

(B) A household who has \$100 or less disposable income after subtracting all household expenses from all household income.

(C) A household who has an arrearage. The utility may define the amount of the arrearage.

(D) A household who has received a termination notice or who has failed to maintain one payment arrangement. ]

(ii) The CAP applicant is payment troubled.

(iii) The CAP monthly budget bill amount is the most advantageous rate.

(iv) A customer who has received a LIHEAP crisis grant shall be automatically enrolled in a CAP when the CAP monthly budget bill amount is the most advantageous rate.

(v) A household that is income-eligible, but has a commercial, professional or farming use associated with the household residence is ineligible for CAP.

[ (5) ] (6) *Appeal process.* [ The utility ] A distribution company should establish the following appeal process for [ program denial ] CAP applicants and CAP customers:

(i) [ If the ] When a CAP applicant is not satisfied with the [ utility's initial eligibility determination, the utility should use utility company ] distribution company's application of its CAP program rules, the distribution company should comply with the dispute procedures in §§ 56.151 and 56.152 (relating to general rule; and contents of the utility company report).

(ii) [ The ] A CAP applicant or customer may appeal [ the denial of eligibility to the Bureau of Consumer Services ] a distribution company's application of its CAP program rules to the Commission in accordance with §§ 56.161—56.165 (relating to informal complaint procedures).

(iii) The distribution company should include a written copy of the appeal process in the CAP literature provided to the CAP customer upon program enrollment.

[ (6) ] (7) *Administration.* [ If ] When feasible, the [ utility ] distribution company should include non-profit community based organizations in the [ operation ] administration of the CAP. The [ utility ] distribution company should incorporate the following components into the CAP administration:

(i) *Outreach.* [ Outreach may be conducted by non-profit, community-based organizations and should be targeted to low income payment troubled customers. The utility should make automatic ] A distribution company should make referrals to a CAP when a [ low-income ] low income customer calls to make a payment [ arrangements ] arrangement, fails a credit screening test or contacts the distribution company about a billing dispute, about required contacts and notices for service termination and about restoration of service. A distribution company should not terminate service to a low income customer without first making a referral to a CAP.

(ii) [ *Intake and verification.* Income verification may be completed through a certification process that is satisfactory to the utility or certification through a government agency. Intake may also be conducted by those organizations and should include verification of the following:

(A) Identification of the CAP applicant.

(B) The annual household income.

(C) The family size.

(D) The ratepayer status.

(E) The class of service-heating or nonheating. ] *Verification of income.* A distribution company should verify total household income and household size through one of the following methods:

(A) Receipt of LIHEAP or other government program that sets eligibility at no more than 150% of the Federal poverty guidelines. Receipt of LIHEAP should automatically satisfy the income requirements of this section without requiring additional income information from a CAP applicant.

(B) Personal certification at a community agency or distribution company site.

(C) Self-certification by mail when a customer provides household income and size and attests that the information is true and correct.

\* \* \* \* \*

(iv) *Explanation of CAP.* [ A complete and thorough explanation of the CAP components should be provided to participants. ] A distribution company or its representative should provide a complete and thorough explanation of the CAP components to participants. The explanation should include infor-

mation on benefits and responsibilities of CAP participation and the importance of energy conservation. Referrals to other appropriate support services should be part of consumer education.

(v) *Application for LIHEAP grants.* An application for LIHEAP grants, to the extent that [is] grants are available, should be completed during the intake interview.

\* \* \* \* \*

(viii) [ *Annual reapplication.* An annual process that reestablishes a participant's eligibility for CAP benefits should be required.

(ix) *Arrearage forgiveness.* Arrearage forgiveness should occur over a 2- to 3-year period contingent upon receipt of regular monthly payments by the CAP participant.

(x) *Routine management program progress reports.* Progress reports that may be used to monitor CAP administration should be prepared at regular intervals. These reports should include basic information related to the number of participants, payments and account status. ]

*Recertification.* A distribution company should establish a customer's continued eligibility for CAP benefits using one or more of the following methods:

(A) Unless special circumstances exist, a distribution company should automatically recertify a customer upon receipt of a LIHEAP grant.

(B) A distribution company should recertify a customer for up to 2 years when a household receives its sole source of income from Social Security or Supplemental Security Income.

(C) Instead of recertifying each CAP customer, a distribution company might survey for continued income eligibility a random sample of non-LIHEAP CAP customers. When the random survey shows that incomes of at least 90% of the CAP customers remained eligible, the distribution company should continue to recertify through sampling.

(D) When a distribution company cannot annually recertify a customer's eligibility using the methods listed in this section, the distribution company may require eligibility verification through written or personal contact.

[ (7) ] (8) *Default provisions.* The failure of a [ participant ] customer to comply with [ one of the following should ] the default provisions of which will be codified in § 76.5 when finally adopted by the Commission must result in dismissal from CAP participation[ :

(i) Failure to make payments will result in the utility returning the participant to the regular collection cycle and may lead to termination of service. By returning the customer to the regular collection cycle, the utility does not need to enter into a new payment arrangement but may begin the termination process. At a minimum, the utility should inform the participant of the consequences of defaulting from the CAP. To avoid termination of service, the CAP participant must pay the amount set forth in the termination notice prior to the

scheduled termination date. This amount should generally be no more than two CAP bills.

(ii) Failure to abide by established consumption limits.

(iii) Failure to allow access or to provide customer meter readings in 4 consecutive months.

(iv) Failure to report changes in income or family size.

(v) Failure to accept budget counseling, weatherization/usage reduction or consumer education services.

(vi) Failure to annually verify eligibility ] .

[ (8) ] (9) *Reinstatement policy.* [ A customer may be reinstated into CAP at the utility's discretion. ] A distribution company should reinstate a customer into a CAP when the customer who was defaulted from the CAP for failing to follow CAP rules and has not had his utility service terminated corrects the reasons for being removed from the program. When utility service to a CAP customer has been terminated and subsequently restored in accordance with applicable provisions of 66 Pa.C.S. Chapter 14 (relating to responsible utility customer protection), a distribution company should reenroll the customer in a CAP, with all CAP benefits to resume. A distribution company should require that a customer verify household size and income if the customer has not been an active CAP participant within the prior 6 month period.

(10) *Arrearage forgiveness.* Arrearages should be forgiven monthly when CAP regular monthly payments are made. Determinations on recovery of costs related to arrearage forgiveness will be made, and other rules governing arrearage forgiveness will be established on an individual basis in the distribution company's tariff filing as part of the triennial review process as set forth in §§ 54.74 and 62.4 (relating to universal service; and energy conservation plans).

[ (9) ] (11) *Coordination of energy assistance benefits.* [ In a CAP, the utility should include the following to coordinate a participant's energy assistance benefits between it and other utilities:

(i) A LIHEAP grant should be designated by the participant to the utility sponsoring the CAP.

(ii) A LIHEAP or other energy assistance grant may not be substituted for a participant's monthly payment. If the utility determines that a participant's minimum payment exceeds 17% of the household's income, additional energy assistance grants may be used to reduce the amount of the participant's monthly payment. The participant is still responsible for making the remainder of the regular monthly payment.

(iii) The LIHEAP grant should be applied to reduce the amount of CAP credits.

(iv) A utility may impose a penalty on a CAP participant who is eligible for LIHEAP benefits but who fails to apply for those benefits. A utility should use this option carefully and the penalty should not exceed the amount of an average LIHEAP cash benefit. If a customer applies for a LIHEAP benefit but directs it to another utility or energy provider, the CAP provider should not as-



sess a penalty ]. The application of LIHEAP cash benefits to a CAP customer's account will be determined in the distribution company's tariff filing as part of the triennial review process as set forth in § 54.74 or § 62.4

(12) *Treatment of CAP customers who become income ineligible.*

(i) A distribution company should provide limited CAP benefits to a CAP customer who becomes income ineligible when:

(A) Income does not exceed 250% of the Federal poverty guidelines.

(B) A CAP account is current at the time that a customer is determined to be income ineligible for a CAP.

(ii) Limited CAP benefits should include the following:

(A) Continued enrollment in a CAP for no more than 3 months with the CAP monthly budget bill increasing by one-third each month until the actual CAP monthly budget bill amount is reached in the third month.

(B) Arrearage forgiveness benefits, to the extent provided under a CAP's rules, as long as the customer makes regular monthly payments until the CAP preprogram arrearage is retired.

(13) *Routine management program progress reports.* In addition to the data required in §§ 54.75 and 62.5 (relating annual residential collection and universal service; and energy conservation program reporting requirements), the Commission may require a distribution company to submit progress reports that include basic information related to the number of CAP participants, payments and account status.

[ (10) ] (14) *Evaluation.* The [ utility ] distribution company should thoroughly and objectively evaluate its CAP in accordance with the following, unless otherwise modified in §§ 54.76 and 62.6 (relating to evaluation reporting requirements).

\* \* \* \* \*

(iii) *Evaluation plan [ approval ].* The utility should [ submit the impact evaluation plan to the Bureau of Consumer Services for review and approval ] confer with BCS before selecting an independent third party to conduct an impact evaluation of its universal service and energy conservation programs.

§ 69.266. Cost recovery.

[ In evaluating utility CAPs for ratemaking purposes, the Commission will consider both revenue and expense impacts. Revenue impact considerations include a comparison between the amount of revenue collected from CAP participants prior to and during their enrollment in the CAP. CAP expense impacts include both the expenses associated with operating the CAPs as well as the potential decrease of customary utility operating expenses. Operating expenses include the return requirement on cash working capital for carrying arrearages, the cost of credit and collection activities for dealing with low income negative ability to pay customers and uncollectible accounts expense for writing off bad debt for these customers. When making CAP-related expense adjustments and projections, utilities should indicate whether a customer's participation in a CAP produced an immediate reduction in customary utility expenses and a reduction in future customary expenses pertaining to that account. ] A distribution company is permitted to fully recover costs of providing universal service to its eligible customers. Issues related to recovery of universal service costs will be addressed on a case-by-case basis in the distribution company's tariff filing as part of the triennial review process as set forth in applicable regulations in §§ 54.74 and 62.4 (relating to universal service and energy conservation plans) and Chapter 76 (which will be proposed by the Commission).

§ 69.267. Alternative program designs.

Alternative universal service program designs that differ from §§ 69.261—69.266 and this section may reduce uncollectible balances and may provide low income, payment troubled customers with needed assistance. [ These programs may be acceptable if the utility can provide support for design deviations. ] Before implementing an alternative universal service program design, the utility should submit its proposal including an evaluation plan as described in § 69.265 [ (10) ] (14) (relating to CAP design elements) to the [ Bureau of Consumer Services for review and ] Commission for approval. The alternative program design is submitted as a tariff filing and should contain the rules for the program, provide for program funding and cost recovery and should comply with Commission regulations and orders that are applicable to CAPs.

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