

STATEMENTS OF POLICY

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

Customer Assistance Program Policy; Statement Suspension and Revision

Public Meeting held
March 25, 2010

Commissioners Present: James H. Cawley, Chairperson;
Tyrone J. Christy, Vice Chairperson, Dissenting State-
ment; Wayne E. Gardner; Robert F. Powelson

*Customer Assistance Program Policy; Statement
Suspension and Revision; Doc. No. M-00920345*

Order

By the Commission:

With this order, the Commission suspends § 69.265(9)(ii) and (iii) of its Policy Statement, 52 Pa. Code § 69.265(9)(ii) and (iii), relating to the application of Low Income Home Energy Assistance Program (LIHEAP) grants in electric and natural gas distribution companies' Customer Assistance Programs (CAPs). The Pennsylvania Department of Public Welfare (DPW) administers LIHEAP and has proposed changes to the manner in which LIHEAP grants may be applied to a customer's account in a distribution company's CAP. The suspension of these provisions of our Policy Statement will ensure that distribution companies will be able to comply with DPW's proposed changes in the design of their CAP plans, in order to prevent distribution companies from losing LIHEAP vendor status.

Background

LIHEAP is a Federal program administered by the United States Department of Health and Human Services (HHS). In Pennsylvania, HHS allots LIHEAP block grant monies to DPW. As a recipient of the Federal block grant, DPW is responsible for interpreting and applying the directives of HHS, and developing and applying rules for the distribution of LIHEAP funds.¹

In the summer of 2009, DPW proposed changes in the way it will allow LIHEAP grants to be applied to the accounts of customers enrolled in distribution companies' customer assistance programs. *LIHEAP 2010 Final State Plan*, p. viii.² Among the proposed changes is the requirement that distribution companies operating CAPs apply the LIHEAP cash grant to the customer's monthly "Asked to Pay" amount. This proposed change is inconsistent with the Commission's Policy Statement on CAP design elements, 52 Pa. Code § 69.265, for the reasons discussed as follows.

Discussion

Electric and natural gas distribution companies file CAPs to satisfy universal service requirements set forth in the Electric Generation Customer Choice and Competi-

tion Act³ and the Natural Gas Competition Act.⁴ The Commission's CAP Policy Statement⁵ sets forth the following design guidelines for these programs:

- CAP applicants should complete LIHEAP applications during the intake process;
- LIHEAP grants should be designated to the utility by the CAP customer;
- The utility should apply the LIHEAP grant money to CAP credits;⁶ and
- The utility should not allow LIHEAP grants to be substituted for the customer's monthly payment.

52 Pa. Code § 69.265(6)(v) and (9).

The last two CAP Policy Statement provisions mentioned above are inconsistent with DPW's proposed changes in rules and policies as set forth in the 2010 Final State Plan:

Proposed Change 1

Public utilities that operate customer assistance programs (CAPs) will apply the LIHEAP cash component benefits only to the customer's monthly 'Asked to Pay' amount. Any remaining funds will be kept in the customer's account as a credit to pay for future 'Asked to Pay' amounts. No LIHEAP funds may be applied to the CAP customer's pre-program arrearages or actual usage amounts.

LIHEAP 2010 Final State Plan, p. viii.

Additionally, the application of LIHEAP funds to pre-program arrearages,⁷ a practice adopted by many distribution companies, is also inconsistent with this proposed change. Therefore, if a distribution company submits to this Commission, and the Commission approves, a plan that implements a program consistent with its Policy Statement, then the plan will violate DPW's proposed rules and policies and, consequently, the distribution company will risk losing its vendor status with DPW.⁸

The Commission's position is that it is in the public interest for utilities to safeguard their status as LIHEAP vendors in order to facilitate the efficient disbursement of grant funds to customers in need. For this reason, we are suspending our Policy Statement's guidance that:

- (ii) A LIHEAP or other energy assistance grant may not be substituted for a participant's monthly payment.
- (iii) The LIHEAP grant should be applied to reduce the amount of CAP credits.

52 Pa. Code § 69.265(9)(ii) and (iii).

The Commission is in the process of revising its CAP Policy Statement in conjunction with a proposed rule-

³ 66 Pa.C.S. § 2802(10)(17) (relating to declaration of policy).

⁴ 66 Pa.C.S. § 2203(8) (relating to standards for restructuring of natural gas utility industry).

⁵ A policy statement is not a regulation and does not have the force of law. *Pa. Human Relations Comm'n v. Norristown Sch. Dist.*, 374 A.2d 671, 677-679 (Pa. 1977). While a policy statement does not establish a binding norm, it does represent an agency's tentative future intentions, and provides the agency with the flexibility to follow the announced policy or modify it if the circumstances are appropriate. *The Mid-Atlantic Power Supply Ass'n v. Pa. PUC*, 746 A.2d 1196, 1201 (Pa. Cmwlth. 2000).

⁶ A CAP credit is the difference between the amount billed at the standard residential rate and the amount billed at the CAP rate.

⁷ A pre-program arrearage is an arrearage accumulated by the customer before entering a Customer Assistance Program. This amount is forgiven over a period of time upon receipt of timely payments by the customer.

⁸ When a distribution company has vendor status, LIHEAP grants are made by DPW on the customer's behalf directly to the distribution company rather than the grant being sent to the customer.

¹ Pursuant to 42 U.S.C. § 8624, the state agency receiving the funds must certify that it will use the funds in accordance with the Low Income Home Energy Assistance statute, 42 U.S.C. §§ 8621 *et seq.*, and that its administration of the program be set forth in a state plan that is released annually.

² The LIHEAP 2010 Final State Plan may be accessed on DPW's web site at the following address: <http://www.dpw.state.pa.us/ServicesPrograms/LIHEAP/003676506.htm>.

making on universal service programs and energy conservation reporting requirements.⁹ The Commission will revisit this suspension of its policy when it finalizes these rulemakings.

Given the change in DPW's administration of LIHEAP funds, we strongly encourage our jurisdictional distribution companies to submit revised CAP plans at their next due date that are compliant with DPW's rules so that LIHEAP vendor status is assured.¹⁰

Conclusion

For the reasons explained herein, the Commission will suspend, until further notice, § 69.265(9)(ii) and (iii) of its Policy Statement on Customer Assistance Programs, 52 Pa. Code § 69.265(9)(ii) and (iii), as these sections are inconsistent with DPW's proposed changes to the manner in which LIHEAP grants may be applied to a distribution company's CAP. *Therefore,*

It Is Ordered That:

1. Section 69.265(9)(ii) and (iii) of the Policy Statement on Customer Assistance Programs, 52 Pa. Code § 69.265(9)(ii) and (iii), is hereby suspended until further notice to read as set forth in Annex A, with ellipses referring to the existing text of the section.

2. A copy of this Opinion and Order be filed at Docket No. M-00920345 and served upon all jurisdictional natural gas distribution companies, electric distribution companies, the Office of Consumer Advocate, the Office of Trial Staff, the Pennsylvania Utility Law Project, Community Legal Services, Inc., the Energy Association of Pennsylvania and the Department of Public Welfare.

⁹ See *Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements*, 52 Pa. Code §§ 54.71–54.78 (electric); §§ 62.1–62.8 (natural gas) and *Customer Assistance Programs*, §§ 76.1–76.6 (*Proposed CAP Rulemaking*), Order entered September 4, 2007 at Docket No. L-00070186.

¹⁰ Two distribution companies have submitted CAP plans that are currently before the Commission. These plans do not appear to be in compliance with DPW's proposed rule changes. Therefore, the Commission believes that it is prudent for these companies to review and consider withdrawing and revising their respective CAP plans so that the companies can re-file plans that comply with the LIHEAP 2010 Final State Plan.

3. A copy of this Opinion and Order be published in the *Pennsylvania Bulletin* and posted on the Commission's web site.

By the Commission

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: Fiscal Note 57-259 remains valid for the final adoption of the subject regulation.

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

§ 69.265. CAP design elements.

* * * * *

(9) *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 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 assess a penalty.

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