

TESTIMONY

ON THE

**LOW INCOME HOME ENERGY
ASSISTANCE PROGRAM (LIHEAP)**

**Fiscal Year 2012
Proposed State Plan**

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INTRODUCTION

Good morning. My name is Donna M. J. Clark. I am Vice President and General Counsel of the Energy Association of Pennsylvania (EAP). The Energy Association is a trade organization representing the major electric and natural gas distribution utilities in the Commonwealth.¹ Our members play a crucial role in providing energy assistance to their low-income customers in a variety of ways through utility Universal Service Programs and by helping customers access publicly funded programs such as LIHEAP and the Weatherization Assistance Program.

First, thank you for this opportunity to provide input to the Department on its Low-Income Home Energy Assistance Program (LIHEAP) Proposed State Plan for Fiscal Year (FY) 2012. Like each of the entities appearing before you in this input process EAP and its members **share the common goal of assisting low-income customers in accessing energy assistance available here in Pennsylvania.** We maintain that the best way to assure that Pennsylvania's most vulnerable low-income families maintain utility service and keep the heat on during the winter months is to:

- Strengthen and expand ways in which public and private energy assistance dollars work together;
- Improve communication and cooperation in developing state plans and navigating complex policy issues for low-income energy assistance and weatherization; and
- Leverage private and public funds available for energy assistance to assure an effective and equitable use of taxpayer and ratepayer funds.

¹ Citizens' Electric Company; Columbia Gas of PA; Duquesne Light Company; Equitable Gas Company, LLC; Metropolitan Edison Company; National Fuel Gas Distribution Corporation; PECO Energy Company; Peoples Natural Gas Company; Pennsylvania Electric Company; Pennsylvania Power Company; Philadelphia Gas Works; Pike County Light & Power Company; PPL Electric Utilities Corporation; UGI Central Penn Gas; UGI Penn Natural Gas; UGI Utilities, Inc. (Electric and Gas); Valley Energy Company; Wellsboro Electric Company and West Penn Power Company.

It is with these guiding principles in mind that EAP offers the following input on behalf of its member electric and natural gas distribution companies, each which by the way, contracts with the Commonwealth as an approved LIHEAP vendor.

I. SUMMARY OF POSITION

EAP's testimony will address the following areas of the proposed FY 2012 LIHEAP State Plan, which we believe are fundamental to administering a program in a manner that consistently assists the greatest number of families with their heating needs at a time when assistance is most crucial:

- A. Continue communication and dialogue surrounding the Department's policy and understanding of regulated utility Customer Assistance Programs (CAP) and the manner in which Cash benefits are applied to CAP customer accounts;
- B. Adhere to State Law, 66 Pa.C.S. §1406(g), which states that "*A notice of termination to a customer of a public utility shall be sufficient proof of a crisis for a customer with the requisite income level to receive a LIHEAP Crisis Grant from the Department of Public Welfare or its designee.*";
- C. Ensure the opening and operation of the cash and regular crisis components of LIHEAP concurrently;
- D. Establish a provision for a "set-aside" of funding earmarked for customers of regulated utilities who receive termination notices after Feb 1 and face termination in the spring following the end of the "winter moratorium";
- E. Reinstate a fair policy for clients who move;
- F. Review client mailing list before distribution of LIHEAP applications to prior years' clients;
- G. Adjust the DCED transfer consistent with overall funding (i.e., from DOE and ARRA) and in conjunction with spending reports;
- H. Ensure that the State Plan adheres to current *Pennsylvania Code* regulations; and,
- I. Improve communication to LIHEAP Advisory Committee members.

Additionally, EAP must again reiterate its position that poverty is a societal issue that needs a permanent source of state energy assistance funding for low-income households. As clearly experienced this year, there are no guarantees for federal grants and the amounts and timing tend to fluctuate dramatically from year to year. For Pennsylvania to establish a stable LIHEAP State Plan in which major components remain unchanged from year to year and on which low-income households can rely, DPW and others must advocate for a permanent source of state energy assistance dollars. With the President proposing a drop in LIHEAP funding, it is likely that PA's share of the federal block grant funding will decrease significantly for FY 2012. State funds for energy assistance could help bridge this gap. EAP cautions the Department that it must not rely on a LIHEAP program design that fails to expend funding and results in significant excess dollars at program-end. This design and carry-over of funds to supplement the upcoming program year is an imprudent practice. It does not meet the real need faced by low-income households during cold weather months and it provides support for a reduction in federal funding in Pennsylvania.

Lastly, EAP was disappointed to learn that, unlike in recent years, the proposed FY 2012 LIHEAP State Plan offered only one plan design option. Cognizant that the upcoming fiscal year's LIHEAP funding is rarely settled during the program design phase, we appreciated DPW's practice of providing alternative design components based on differing funding levels.. Setting out the alternatives if and when additional federal funding becomes available for the beneficiaries, CAOs, and vendors is helpful for local planning.

II. EXPLANATION OF POSITION

A. **Communication and dialogue surrounding the Department’s policy and understanding of regulated utility Customer Assistance Programs (CAP) and the manner in which Cash benefits are applied to CAP customer accounts.**

As noted in previous testimony and dialogue, EAP did not agree with the DPW’s interpretation and policy change surrounding the application of LIHEAP cash grants to the “asked-to-pay” amount of a CAP customers’ account. Nevertheless, the change was implemented in the FY 2010 State Plan and changes were made to State regulatory procedures by the Public Utility Commission and CAP program designs by EAP member regulated utilities to maintain vendor status.

While varying opinions are necessarily a part of any policy change process, EAP believes that it is always useful to explore collaborative communication and dialogue between parties on matters of such significance. Taking time to completely understand an issue along with its collateral results is necessary to assure best practices, good policy and reasonable implementation. Understanding and sharing alternative perspectives generally proves beneficial in ultimately identifying the best solution.

The after-effects from the Department’s policy change on utility-administered customer assistance programs and the impact on utility customers, particularly low-income customers many who already struggle to pay their utility bills, is one such example.

Regulated utilities have a responsibility to balance the costs of their low-income CAP programs with the discounts/benefits provided to low-income customers. Following last year’s policy change, mindful of this responsibility, some utilities explored a “CAP-Plus” model (as recommended by certain low-income advocates and approved by the Public Utility Commission) whereby the low monthly bill of all CAP customers is minimally, and uniformly, increased to

help defray escalating program costs borne by non-CAP customers from the CAP bill subsidies. The nominal monthly increase applies to both CAP customers receiving LIHEAP benefits and CAP customers not receiving LIHEAP benefits.

Recently, EAP learned that DPW has challenged the CAP-Plus model in Commission proceedings as a possible violation of federal law. EAP maintains that the U.S. Department of Health & Human Services (HHS) guidance in this matter at Informational Memorandum 2010-13 permits this design application (which is supported by the State Consumer Advocate's expert witness) and that the issue is not whether CAP-Plus is permitted, but whether or not the design is **applied uniformly** to all CAP customers and **described** in PA's LIHEAP State Plan.

EAP respectfully suggests that this matter can likely be resolved through a timely collaborative discussion. DPW clearly has discretion to set policy in this area and EAP strongly urges the Department to consider a dialogue now, prior to completion of the State Plan, so it may add the appropriate language if necessary. It is more important than ever that Pennsylvania's energy assistance programs work together to develop policies that maximize assistance and benefits for the Commonwealth's most vulnerable families regardless of the source.

B. Adherence to State Law, 66 Pa.C.S. §1406(g), which states that “A notice of termination to a customer of a public utility shall be sufficient proof of a crisis for a customer with the requisite income level to receive a LIHEAP Crisis Grant from the Department of Public Welfare or its designee”.

Pennsylvania state law directs that “A notice of termination to a customer of a public utility shall be sufficient proof of a crisis for a customer with the requisite income level to receive a LIHEAP Crisis Grant from the Department of Public Welfare or its designee.”

The Department cannot ignore statute as implied in its proposed State Plan under §601.62(2)(ii)(A) on page B-13, that states “for utilities regulated by a government body such as

the Public Utility Commission (PUC), winter termination procedures prevent the termination of service without the governing body's approval from December 1 through March 31." The Department reasons that *"the household is ineligible for crisis benefits if the utility has not been granted approval to terminated service"* since regulations prevent those utilities from acting on a notice to terminate service and concludes, therefore, that proof of a home heating emergency does not exist.

Utilities can enforce termination notices up to 60 days from the issuance date and may implement any notice issued after February 1 on April 1 or later. DPW contends that its non-compliance with 66 Pa. C.S.A. §1406(g) is proper because federal law precludes recognition of a crisis when, due to PUC regulation, utilities are precluded from terminating customers in the winter. DPW has stated that it believes a notice of intent to terminate or disconnect cannot qualify for crisis grants because of the federal statute. Yet, as with other areas of the LIHEAP program, the states possess the discretion to establish when a crisis exists, and the Pennsylvania General Assembly has defined a crisis to include a termination notice. EAP offers that whenever possible, a state agency should endeavor to read federal and state statutes in concert with one another. Accordingly, a notice of termination qualifies the customer for a crisis grant. Absent that grant, each April, thousands of regulated utility low-income families will find themselves without utility service, many for the entire summer – some, even longer.

C. The opening and operation of the cash and regular crisis components of LIHEAP concurrently.

Again this year, DPW proposes opening the FY 2012 LIHEAP program with the "Crisis Exception" component, rather than the traditional (full) Crisis program. The program is confusing, severely limits the amount of energy assistance available when the program opens

(particularly for customers of regulated electric and natural gas utilities) and does not afford the level of assistance needed for the Commonwealth's most vulnerable citizens. By eliminating assistance to customers facing the threat of termination, many at-risk households are going without heat in dangerously cold weather and perhaps resorting to the use of unsafe measures to heat their homes.

Furthermore, each year that DPW implemented the Crisis Exception program, PA's LIHEAP program ended with millions of unspent dollars that went undistributed to families during the months their need was the greatest. Continuing this trend sends the wrong message to Congress and results in end-of-the-year efforts to "spend down" the surplus (e.g., through supplemental grants) by distributing the funds to families without consideration to immediate need. As a result of this single change to recent years' programs, many customers of regulated utilities were not able to secure the funding needed to reconnect their service or to ensure that service remained on as the winter months approached.

Each year a significant number of low-income customers of regulated utility companies find themselves in a perpetual cycle of entering the heating season without service or with the threat of having their utility service terminated as they struggle to pay the large arrearages that have accumulated over the past winter. And while service termination for these regulated utility customers is halted during the winter moratorium, once that ends, the customer is responsible for paying utility bills as well as any arrearages that have accrued, underscoring the need for utility customers to have access to crisis grants in the spring. Modeling the FY 2012 program with only a crisis exception benefit available early in the fall simply perpetuates the cycle for this very vulnerable population. Reduced public assistance benefits, continued high unemployment numbers, escalating medical and food costs, and other economic problems are contributing to

increased numbers of households in poverty across the state. This means that more households are likely to find themselves without utility service, and without energy assistance, as cold weather approaches. For many, the regular crisis grant can help ensure that service will remain on as the winter approaches, and/or decrease the specter of termination in the spring.

EAP suggests that the Department consider returning to a traditional program where both “regular” program components, cash and crisis, open and operate concurrently.

D. Provision for a “set-aside” of funding earmarked for customers of regulated utilities who receive termination notices after Feb 1 and face termination in the spring following the “winter moratorium”.

The Association urges the Department to return to its practice of setting aside a dedicated reserve of funding earmarked for regulated utility customers who receive termination notices dated February 1 or later. By not doing so, customers of regulated utilities (who are subject to the “winter protections”) do not have the same access to energy assistance dollars as do customers using deliverable fuels who have access to crisis funding throughout the winter months. This policy appears to treat customers of regulated utilities inequitably. For many of these low-income customers, the lack of dollars in the spring to prevent termination means that they will continue to face a cyclical pattern of spring termination, followed by no service during the summer months and the daunting reality of entering the winter season without heat. Until recent years, DPW recognized this need and included a set-aside provision in its LIHEAP budget. While available funds may not be apparent during this proposed State Plan process, EAP encourages DPW staff to reconsider this set-aside and amend the proposed FY 2012 plan to include a provision funding for eligible customers facing termination following the winter moratorium should Pennsylvania receive adequate funding.

E. Reinstatement of a fair policy for clients who move.

During the LIHEAP FY 2011 program, DPW issued a clarification memo indicating their intent to begin enforcing a “standing” procedure that denies benefits to otherwise LIHEAP-eligible clients except that their service was terminated for non-payment at one address and they are responsible for an overdue balance at that address as a condition of getting their utility service reconnected at the new address. Benefits are approved for customers in these identical circumstances except that they are reconnecting service at the **same** address. DPW cited federal LIHEAP regulations as the reason for this procedural change.

Reconnection procedures of EAP member utilities are dictated by the requirements of 66 PA C.S.A. §1401 through §1408. Further, utility personnel have significant experience working with the low-income population and understand their tendency for transiency as a direct result of their circumstances. This issue was the subject of much discussion between the DPW and its LAC members as they tried to understand the rationale behind this position since the referenced federal citation could not be located. Although a citation was never provided, DPW determined it would enforce the procedure. Clients facing this circumstance were denied benefits and, subsequently, many were not able to get their utility service reconnected.

In its FY 2012 proposed State Plan, DPW proposes a position that *“will allow a regulated utility to request 50 percent of the customer’s back balance from the previous address and a reconnection fee in order to restore service.”* While we appreciate the Department’s attempt to recognize and remedy the situation, this position does not go far enough to help these clients, many who have built-up substantial arrearages. This policy essentially discriminates against low-income customers who, for one reason or another, change residences and are unable to get service reconnected at a new address.

F. Review of Client Mailing list prior to distributing LIHEAP applications to prior years' clients.

As part of its early start-up process, the Department plans to mail applications to individuals who received LIHEAP benefits during the preceding LIHEAP year (See Page vi of the LIHEAP FY 2012 Proposed State Plan). Considering that the State Plan proposes reducing the FY 2012 income eligibility and that DPW anticipates significantly reduced funding for FY 2012, EAP recommends that the Department carefully review its client database and mail applications only to those individuals meeting the FY 2012 guideline criteria of 150% FPIG. Doing otherwise will likely result in confusion to those customers who received the application directly from the Department, completed and returned the forms, yet will be rejected due to income ineligibility. Additionally, the Department will waste valuable administrative time and costly supplies and postage to distribute, review and process applications knowing in advance that they are not eligible.

G. Adjusting the DCED transfer consistent with overall funding and in conjunction with spending reports.

EAP supports weatherization as a valuable tool in helping customers reduce their usage which, in turn, helps to make their energy bills more affordable and helps to facilitate a greater distribution of very limited funding. Weatherization funding comes from several sources: annually from the Department of Energy (DOE) and LIHEAP and, currently, ARRA funding that DCED must spend by March 2012. Further, utilities regularly fund Low Income Usage Reduction Programs (LIURP) and a number of the Pennsylvania EDCs have implemented funding for low-income weatherization in Act 129 Energy Efficiency & Conservation (EE&C) programs.

Therefore, in anticipation of reduced LIHEAP funding for FY 2012, DPW should consider reducing the percentage of its federally-provided LIHEAP funding transfer to weatherization. Should additional funding become available, DPW could revisit and revise the transfer percentage. It is crucial that these dollars remain in LIHEAP and pay for cash and crisis energy assistance benefits. With various state and utility-administered weatherization activities currently in place (i.e., PA's regular Weatherization Assistance Program, the PA's ARRA Weatherization Assistance Program, utilities' Low-Income Usage Reduction Programs and Act 129 programs) and improved coordination and referral processes strengthening program efficiencies, EAP believes that these dollars are better utilized in meeting the immediate energy needs of the Commonwealth's low-income customers – which is heating assistance. Weatherization measures are irrelevant if the home is without heat.

H. Extending the LIHEAP Program Close Date.

Currently, based on the FY 2012 proposed State Plan, the Department plans to close the FY 2012 LIHEAP program on Friday, March 30, 2012. EAP requests that DPW consider extending the LIHEAP program close date to at least April 15, 2012 if funding is still available.

Historically, the level of demand for energy assistance increases dramatically after the winter moratorium ends on March 31. For customers of regulated electric and gas utilities this is the point at which the potential loss of service becomes a reality. Each spring, large numbers of low-income families, despite their best efforts, find that they are not able to pay their monthly utility bills which generally include large arrearages that have accrued with interest over the winter months.

For each of the last several years, EAP member companies reported between 90,000 and 100,000 residential terminations during April and May. Without access to energy assistance

dollars, the households facing likely termination and loss of their utility service will certainly increase. Loss of utility service presents public health and safety issues.

I. Ensuring that the State Plan adheres to current *Pennsylvania Code* regulations.

Pennsylvania state LIHEAP regulations are set forth at 55 Pa. Code, Chapter 601, and have essentially remained unchanged since 1988. Each year, the Department develops a LIHEAP State Plan that appears to follow the established PA Code plan numbering system. DPW advances the LIHEAP State Plan as a proposed plan for which public hearings and testimony are included as a means of receiving public input. For several years now, DPW's State Plan included sections that are inconsistent, and in some instances conflict, with the established regulations by adding, deleting or revising language (e.g., Expanding §601.31 – General Eligibility Requirements) without adhering to proper regulatory procedure.

A state agency does not have the authority to change regulations without following the regulatory procedure for adopting or changing regulations as found in 1 Pa. Code Chapter 7. In order to make substantive changes to the LIHEAP State Plan, DPW must “give public notice of its intention to promulgate, amend, or repeal any administrative regulation by publication in the Bulletin ...” (See 1 Pa. Code Chapter 7).

J. Improving communication to LIHEAP Advisory Committee members.

A final and often overlooked area where EAP recommends attention is timely communications from Department staff to LIHEAP Advisory Committee (LAC) members and/or vendors. It would be extremely helpful if DPW could provide its LAC members notice of more significant program developments (e.g., policy clarifications, personnel changes, availability of the LIHEAP State Plan, program extensions, receipt of additional funding). In many cases, LAC

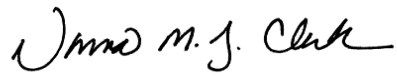
learns of information pertaining to the LIHEAP program only through happenstance. In today's world of electronic communication, it is easy and effective to distribute information and/or announcements in a matter of minutes to a designated contact group. Informing LAC members (who can then communicate with their respective constituencies) of pertinent LIHEAP program developments and changes can only improve coordination and performance. In certain instances, such as distribution of supplemental grants or program extensions, a short notification will go far in helping vendors prepare for unexpected staffing needs which, in turn, provides better and more timely assistance to the LIHEAP customer.

Finally, each year the proposed State Plan references notices surrounding its availability and of the Department's public hearing schedule that appear "in several Pennsylvania newspapers." EAP's experience is that aside from notice in the *Pennsylvania Bulletin* (which is tailored specifically to the state governmental audience) general notification in major PA newspapers is not made, limiting potential review and input by interested public parties. EAP suggests that the Department provide greater public notice in major newspapers as a means of providing ample opportunities for non-vendor, non-governmental comments as part of the process.

IV. CONCLUSION

The Energy Association of Pennsylvania appreciates the opportunity to provide these comments on the proposed LIHEAP State Plan for FY 2012 and asks the Department to thoughtfully consider the input and suggestions contained herein when finalizing the Commonwealth's FY 2012 LIHEAP State Plan. Thank you.

Respectfully Submitted,



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