

COMMONWEALTH OF PENNSYLVANIA



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January 16, 2024

Rosemary Chiavetta, Secretary
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400 North Street
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Re: Initiative to Review and Revise the Existing
Low-Income Usage Reduction Program
(LIURP) Regulations at 52 Pa. Code §§
58.1 – 58.18
Docket No. L-2016-2557886

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Low-Income Usage Reduction Program (LIURP) : Docket No. L-2016-2557886
Regulations at 52 Pa. Code §§ 58.1 – 58.18 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 16th day of January 2024.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Initiative to Review and Revise the Existing :
Low-Income Usage Reduction Program : Docket No. L-2016-2557886
(LIURP) Regulations at 52 Pa. Code §§ 58.1- 58.18 :

COMMENTS
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Table of Contents

I.	INTRODUCTION	1
II.	COMMENTS	2
A.	Justification for Reviewing LIURP Regulations	2
B.	Proposed Section 58.1.....	3
C.	Proposed Section 58.2.....	5
1.	Overview.....	5
2.	BCS – Bureau of Consumer Services.....	5
3.	Eligible customer	6
4.	Energy Savings and Energy Conservation.....	7
5.	Health and Safety Measure	8
6.	LIURP Budget.....	8
7.	LIURP Costs	9
8.	Low Income Customer.....	10
9.	Special Needs Customer	14
10.	USECP	16
11.	Weatherization	17
12.	Health and Safety Measure	18
D.	Proposed Section 58.3.....	19
E.	Proposed Section 58.4.....	19
1.	Introduction.....	19
2.	Forum for Setting the LIURP Budget (Section 58.4 (a.1)).....	20
3.	Factors to Establish the LIURP Budget (Section 58.4(c))	23
4.	Carryover of Unspent LIURP Funds (Section 58.4(d.1)).....	29
F.	Proposed Section 58.5.....	30
G.	Proposed Section 58.6.....	31
H.	Proposed Section 58.7.....	31
I.	Tenant Household Eligibility (Proposed Section 58.8).....	34
1.	Introduction.....	34
2.	Eligibility for Baseload Measures (Proposed Sections 58.8(a)(1)-(2)).....	34
3.	Landlord Contributions (Section 58.8(b)).....	35

4.	Optional Public Utility Requirement (Section 58.8(c))	36
5.	The Commission should Add Multi-family Housing Provisions to Section 58.8.....	38
J.	LIURP Outreach – (Proposed Section 58.9).....	40
K.	Prioritization of Program Services (Section 58.10)	43
L.	Energy Audit (Section 58.11) and Fuel Switching (58.11a).....	46
M.	Proposed Section 58.12.....	49
N.	Proposed Section 58.13.....	50
1.	Energy education	50
2.	Proposed Section 58.13a.....	51
O.	Proposed Section 58.14.....	51
1.	Section 58.14.....	51
2.	Proposed Section 58.14a: Quality Control.....	51
3.	Proposed Section 58.14b: Use of an ESP for program services	52
4.	Proposed Section 58.14c. Inter-utility coordination	53
P.	LIURP Reporting and Evaluation (Section 58.15)	54
Q.	LIURP Advisory Committee (Section 58.16).....	54
R.	Proposed Section 58.17.....	56
S.	Proposed Section 58.18.....	57
T.	Proposed Section 58.19.....	57
U.	Additional Questions	58
V.	Additional OCA Proposals.....	61
1.	Mechanism to Track Carrying Costs.....	61
2.	Retreatment of Homes	63
3.	Requirement for LIURP Participation	64
W.	Conclusion	64
III.	CONCLUSION.....	66
APPENDIX A-OCA's Proposed Changes to LIURP Regulations		

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Columbia Gas of Pennsylvania, Inc. Universal Service and Energy Conservation Plan for 2024-2028</i> , Docket No. M-2023-3039487, Supplemental Information (July 17, 2023)	18
<i>Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at §§ 58.1-58.18. Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at §§ 58.1-58.18</i> , Docket No. L-2016-2557886, Notice of Proposed Rulemaking Order (May 18, 2023)	<i>passim</i>
<i>Joint 2024-2028 USECP of FirstEnergy Companies for Years 2024-2028</i> , Docket No. M-2022-3036532, Plan ssss(Nov. 1, 2022).....	62
<i>Philadelphia Gas Works Universal Service and Energy Conservation Plan 2023-2027</i> , Docket No. M-2021-3029323, Order (Oct. 29, 2021)	63
<i>Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule</i> , Docket No. M-2019-3012601, Order (Oct. 3, 2019)	16
Statutes	
66 Pa. C.S. § 1405(b)(3)	15
66 Pa. C.S. § 1405(b)(4)	15
66 Pa. C.S. § 2203(9).....	28
66 Pa. C.S. § 2804(9).....	28
Regulations	
52 Pa. Code § 54.72	5
52 Pa. Code § 56.2	5
52 Pa. Code § 58.1	3, 4
52 Pa. Code § 58.2	<i>passim</i>
52 Pa. Code § 58.3	19

52 Pa. Code § 58.4	<i>passim</i>
52 Pa. Code § 58.4(a.1).....	20
52 Pa. Code § 58.4 (c).....	20, 21, 23
52 Pa. Code §§ 58.4(c)(1)-(8).....	23, 24, 25, 26
52 Pa. Code § 58.4(c)(8).....	<i>passim</i>
52 Pa. Code §58.4(d.1)	29, 30
52 Pa. Code § 58.4(e).....	9, 10, 22
52 Pa. Code § 58.5	30
52 Pa. Code § 58.5(a).....	30
52 Pa. Code § 58.5(b)	30
52 Pa. Code § 58.6	31
52 Pa. Code § 58.7	31, 52
52 Pa. Code § 58.8	33, 37
52 Pa. Code § 58.8(a)(1).....	33
52 Pa. Code § 58.8(a)(2).....	33
52 Pa. Code § 58.8(b)	34, 35
52 Pa. Code §58.8(c).....	35
52 Pa. Code § 58.9	<i>passim</i>
52 Pa. Code § 58.10	42, 43, 45
52 Pa. Code § 58.11	45
52 Pa. Code § 58.11a	45, 46, 58
52 Pa. Code § 58.12	8, 48
52 Pa. Code § 58.12(a)(1).....	48
52 Pa. Code § 58.12(a)(2).....	8, 48
52 Pa. Code § 58.12(c).....	49

52 Pa. Code § 58.12(c)(1)	48
52 Pa. Code § 58.13	49
52 Pa. Code §58.14	50
52 Pa. Code §58.14(a)(2)	51
52 Pa. Code 58.14a	50, 51
52 Pa. Code 58.14b	51
52 Pa. Code § 58.14c	52
52 Pa. Code § 58.15	53
52 Pa. Code § 58.15(c)(6)	29
52 Pa. Code § 58.16	53
52 Pa. Code § 58.16(a).....	54
52 Pa. Code § 58.17	17, 55, 56
52 Pa. Code § 58.18	56
52 Pa. Code § 62.2	5
52 Pa. Code § 65.262	5
Other Authorities	
<i>2020 RECS (Residential Energy Consumption Survey), Table CE1 .02</i>	39
ALICE Report COVID and Financial Hardship in Pennsylvania	10, 11, 12
Bureau of Consumer Services Universal Services Programs and Collections Performance Report (2022).....	17
DCED Weatherization Assistance Program Guidelines, Section V, General Program Requirements (February 2022)	18
Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.....	41, 42
Michigan Community Service Policy Manual 600 Series DOE Policy July 1, 2023 (Fuel Switching Item 609)	49

Michigan Community Service Policy Manual 600 Series DOE Policy July 1, 2023
(Fuel Switching Item 610)47, 49

I. INTRODUCTION

On May 18, 2023, the Pennsylvania Public Utility Commission (Commission) issued its Notice of Proposed Rulemaking (NOPR) regarding its *Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at §§ 58.1-58.18. Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at §§ 58.1-58.18*, Docket No. L-2016-2557886, Order (May 18, 2023) (*NOPR Order*). The NOPR was published for comment in the *Pennsylvania Bulletin* on December 2, 2023. The purpose of this rulemaking is to review the existing LIURP regulations and proposed amendments. *NOPR Order* at 11.

This proceeding has a long history, dating back to the Commission’s Secretarial Letter issued December 16, 2016 (*2016 Secretarial Letter*), in which the Commission requested stakeholder comments through a series of fourteen questions to determine the scope of the necessary updates to the Commission’s LIURP regulations. *NOPR Order* at 2, 8-10. As the Commission’s NOPR explains, the Commission’s existing LIURP regulations apply to “covered” natural gas and electric distribution companies (EDCs and NGDCs respectively). *NOPR Order* at 2. The EDCs and NGDCs are required to include low-income weatherization programs in their Universal Service and Energy Conservation Plans (USECP or Plan). The *2016 Secretarial Letter* was published in the *Pennsylvania Bulletin* on December 31, 2016.

The Office of Consumer Advocate (OCA) appreciates this opportunity to provide Comments on the proposed regulations. The existing LIURP regulations have not been updated for more than two decades. Overall, the OCA supports many aspects of the proposed regulations and supports moving forward with the proposed regulatory reform, but the OCA makes several critical suggestions that require further amendment and clarification. The proposed regulations

make important strides towards improving and expanding the existing LIURP regulation to ensure that they provide clear regulatory guidance and requirements to the utilities required to assist their low income customers to reduce their energy consumption. As discussed below, the OCA raises additional comments and specific concerns regarding certain aspects of the proposed regulations that should be corrected or reformed before final implementation. The OCA specifically reserves the right to comment in its reply comments on other changes proposed by other parties even if not addressed in these comments. The OCA looks forward to continuing to work to develop improvements to the Commission’s LIURP regulations.

II. COMMENTS

A. Justification for Reviewing LIURP Regulations

In its *NOPR Order*, the Commission provides that the LIURP regulations should be amended to ensure that the weatherization programs “foster...fair, effective, and efficient energy usage reduction programs.” *NOPR Order* at 8. The OCA agrees with these three objectives but recommends that the Commission include “comprehensive” as an additional objective. As will be discussed below, the OCA supports moving energy efficiency effectiveness towards a benefit/cost model that measures results on a whole-house and whole job basis. The Commission should also consider measuring the effectiveness of both “high use” targeting based on a total usage basis, but also “high use” targeting based on the efficiency of usage on a square footage basis. As noted below, this latter point is one reason the OCA supports electric utilities providing base load measures (*e.g.*, refrigerators) to tenants even where the landlord does not provide consent to otherwise engage in full weatherization.

The Commission’s *NOPR* provides that “[w]e articulated our interest in leveraging the knowledge and experience of the public utilities, consumers, advocates, and other stakeholders to

identify improvements to the design of and the cost-effective operation of LIURPs, to maximize ratepayer benefits.” *NOPR Order* at 8, citing *2016 Secretarial Letter* at 3 (emphasis added). The OCA agrees with the need to maximize ratepayer benefits. LIURP provides an important ratepayer benefit by helping to lower a CAP customer’s usage by helping the customer to reduce their overall energy consumption energy usage and actual bills, and therefore, reduce the amount that ratepayers must pay through the difference between the actual bills and the CAP customer’s asked to pay amount. The OCA recommends specific changes as discussed below in Section V to help to maximize the benefits for both ratepayers and low-income customers.

B. Proposed Section 58.1

The Commission proposes to amend Section 58.1 which sets forth the purpose and goals of the utilities’ LIURPs. The currently stated purpose of LIURP is “to assist low income customers to conserve energy and reduce residential energy bills.” Annex A, 52 Pa. Code § 58.1. The Commission’s proposed revised language would provide:

The purpose of this chapter is to require a public utility, as defined in § 58.2 relating to definitions, to establish a fair, effective and efficient Low-Income Usage Reduction Program (LIURP) for its low-income customers and special needs customers. A LIURP that meets the requirements of this chapter is intended to decrease a LIURP participant’s energy usage and public utility bills or to improve health, safety and comfort levels of household members, or both. A reduction in energy usage creates cost savings, which can lessen the incidence and risk of customer payment delinquencies and the attendant public utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs. A reduction in the residential demand for energy can also result in cost reductions related to the purchase of fuel or of power for all customers.

Annex A, 52 Pa. Code § 58.1; *see also NOPR Order* at 16.

The OCA supports the proposed revised Statement of Purpose. As the Commission articulated, the reason for the revisions is to “more accurately reflect the purpose and goals of a public utility LIURP.” *NOPR Order* at 16. The Commission’s NOPR provides that the revisions

are to clarify that LIURP may also provide service to a customer with household income between 151%-200% of the federal poverty income guideline level (FPIG) with special needs (*i.e.*, special needs customer), who does not meet the definition of “low-income.” *NOPR Order* at 16. The OCA supports targeted expansions of LIURP to households above 150% of poverty. These households are often ineligible for other income-defined programs such as the Customer Assistance Program (CAP) and access to the Low Income Home Energy Assistance Program (LIHEAP), and thus providing energy efficiency to these households is intended to help mitigate higher energy burdens for households that otherwise cannot be addressed through other assistance programs. Higher energy burdens for vulnerable households are not an abstraction as they can have real consequences for a household’s ability to continue to pay their bill and remain connected to essential utility service, and, thus, providing weatherization assistance that mitigates high bills provides a benefit not only to the household receiving the assistance but to other customers because it should result in reduced uncollectible expenses and costs. The OCA supports the clarifications identified by the Commission.

As outlined in Section V(1), below, the OCA’s comments build on part of the Commission’s stated purpose that does not appear to be addressed in the substantive regulatory amendments proposed. The stated purpose in Section 58.1 is “a reduction in energy usage creates cost savings, which can lessen the incidence and risk of customer payment delinquencies and the attendant public utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs.” Annex A, 52 Pa. Code § 58.1. However, the amended regulations do not provide any mechanism to assess the impact of these reductions. The OCA provides its thoughts about how to do this in Section V(1), below.

C. Proposed Section 58.2

1. Overview

Section 58.2 proposes to revise and to update the definitions section of its LIURP regulations to incorporate “current terminology,” “definitions used in 52 Pa. Code §§ 54.72, 56.2, 62.2, and 65.262” and to add other definitions applicable to LIURP. *NOPR Order* at 17-18. In this section, the OCA addresses some of the proposed revisions to several definitions and proposes to add several definitions. The OCA reserves the right to comment on other definitional changes proposed by other parties even if not addressed in these comments.

2. BCS – Bureau of Consumer Services

The Commission proposes to include within the definition of the Bureau of Consumer Services that it is the bureau within the Commission that has “oversight of the review process of a public utility’s universal service program.” Annex A, 52 Pa. Code § 58.2. The OCA does not support the inclusion of this oversight role to the extent that it would discourage or preclude the Commission as a routine part of its review of universal service programs from referring a utility’s Universal Service and Energy Conservation Plan (USECP) to the Office of Administrative Law Judge (OALJ) for the development of an evidentiary record after pleadings, discovery, and hearings. The OCA does not support a regulatory definition or change by the Commission that actually or attempts to circumscribe a future process that includes the OALJ as the entity with the primary duty to gather the evidentiary record needed so that the Commission can approve or disapprove a covered utility’s USECP.

To be clear, the OCA supports the role the BCS plays in providing advice and technical assistance to the Commission in its review of universal service programs. But, as outlined in Section E below, the OCA proposes that the LIURP regulations should specifically require the

development of an evidentiary basis for the development of LIURP budgets and programmatic terms as the current process involving a BCS-only review and parties' comments (as opposed to evidence) is inadequate. Furthermore, despite being too broad in one respect – defining BCS as the bureau responsible for oversight of universal service programs – it is too narrow in other respects in that there is nothing in this definition that encompasses all the other functions that BCS currently performs, including the disposition of informal complaints and other interactions with consumers. The OCA submits that a definition of BCS is not necessary in these regulations or, if necessary, should not include a policy-based determination that BCS is responsible for the “oversight of the review process” and should include a more complete list of all BCS’s functions.

3. Eligible customer

The Commission proposes the following definition of eligible customer:

A [low income or special needs customer who is a residential space heating customer, or a residential water heating customer, or a residential high use electric baseload customer of a covered utility] space-heating, water heating, or electric baseload low-income or special needs residential customer who meets the usage threshold and other criteria for a public utility’s LIURP, as specified in its USECP.

Annex A, 52 Pa. Code § 58.2. The OCA is concerned that the term “Eligible Customer” may be unnecessarily narrow because, as written, it would require a customer to meet both a “usage threshold *and* other criteria” (emphasis added) to be eligible for a utility’s LIURP. The OCA supports targeting LIURP to high-use customers, but it is not necessary for high use to be a required criteria that must be met along with other criteria. Since USECPs often vary depending on the utility and the particulars of its service territory, the Commission’s regulations should not be as prescriptive as to require high usage. Instead, the “and” in this definition should be changed to an “or” such that it would allow an eligible customer to meet *either* high usage *or* other criteria as specified in a USECP. Since USECPs will be approved by the Commission, there is no need to

circumscribe by regulation what could or could not qualify as an eligibility characteristic of a customer. There may be good reasons why a utility may want to prioritize other vulnerable customer groups – such as the elderly, those with disabilities, the medically vulnerable, or households with young children – for LIURP even if there are comparably higher usage households and the Commission and utilities should retain the regulatory flexibility necessary to permit this to occur. The OCA also recommends that the definition of eligible customer should include both heating and cooling needs.

The OCA recommends the definition be revised as follows:

Eligible customer - A [low income or special needs customer who is a residential space heating customer, or a residential water heating customer, or a residential high use electric baseload customer of a covered utility] *space-heating, water-heating, or electric baseload low-income or special needs residential customer or a high-use customer who uses an intermittent heating or cooling source who meets the usage threshold or other criteria for a public utility's LIURP, as specified in its USECP.*¹

4. Energy Savings and Energy Conservation

The OCA proposes that the terms “energy savings” and “energy conservation” should be defined as a part of Section 58.2. The OCA proposes that energy savings should be defined as “an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure while also ensuring normalization for external conditions that affect energy consumption.” The OCA proposes that energy conservation should be defined as “to reduce or manage energy consumption in a cost-effective and efficient manner.” The proposed definitions are more consistent with a whole house approach or full weatherization approach.²

¹ The OCA has included a complete set of its proposed revisions to the regulations as Appendix A to these Comments.

² As noted below, the OCA recommends that a full weatherization definition be added to weatherization below.

5. Health and Safety Measure

The proposed definition of Health and Safety Measure is “a program measure or repair necessary to maintain and protect the physical well-being of and comfort of an occupant of a dwelling or an ESP, or both.” Annex A, 52 Pa. Code § 58.2. It is not immediately clear why the Commission includes an Energy Service Provider (ESP), in this definition as that term is defined as the contractor of the utility who will be providing program services on behalf of the public utility. In proposed amendments to section 58.12, the Commission would allow a utility to propose a budget for health and safety measures and says that “[t]hese measures may include installing smoke alarms or carbon monoxide detectors, performing combustion testing and identifying and remediating potential hazards such as knob and tube wiring, mold, asbestos, and moisture.” Annex A, 52 Pa. Code § 58.12(a)(2). It is not clear how any of these health and safety measures would benefit or be necessary to maintain or protect ESPs who would be in a home for the sole purpose of installing these measures. The Commission should clarify why ESPs are included as beneficiaries of health and safety measures as outlined by the Commission and/or ESP should be removed from the definition of health and safety measure.

6. LIURP Budget

The Commission proposes the following definition of LIURP budget “[t]he expected cost of providing program services in a given program year, as approved in a USECP proceeding.” Annex A, 52 Pa. Code § 58.2, The Commission should amend its definition of LIURP budget to remove the last clause “as approved in its USECP proceeding.” As outlined more fully below in the OCA’s comments regarding §§ 58.4 and 58.17, the OCA opposes the Commission’s proposal to limit the Commission proceedings in which LIURP budgets can be established or LIURP programs can be modified to only USECP proceedings. These proceedings remain inadequate to

address the full scope of universal service issues and do not currently provide parties with sufficient due process protections. Moreover, as discussed more fully below, since all universal service programs are funded by rates paid by ratepayers, the Commission cannot in regulation preclude or eliminate a party's right to raise issues about these rates in any general base rate case filed by a utility. Thus, the OCA submits that the Commission should remove the last clause in this definition that states "as approved in its USECP proceeding" as this would conflict with the provisions of the Public Utility Code dealing with rates.

7. LIURP Costs

In Section 58.4, the Commission utilizes the term "LIURP costs" throughout the section. LIURP costs, however, is never specifically defined in Section 58.2. Proposed Section 58.4(e) provides:

(e) *Recovery of LIURP costs.*

(1) **[Program expenses shall] LIURP costs must be allotted among ratepayers. [The precise method of allocation between capital and expense accounts shall be determined in future rate proceedings.]**

(2) Recovery of **[program expenses] LIURP costs [shall] will** be subject to Commission review of the prudence and effectiveness of a **public** utility's administration of its **[low income residential usage reduction program] LIURP.**

(3) **The LIURP funding mechanism and the allocation between capital and expense accounts must be determined in a public utility's rate proceeding.**

Annex A, 52 Pa. Code § 58.4(e).

The Commission also utilizes the term LIURP costs in its definition of LIURP funds. The Commission defines LIURP funds as "the proceeds recovered through a public utility's LIURP funding mechanism to recover LIURP costs." Annex A, 52 Pa. Code § 58.2.

The OCA recommends that LIURP costs be defined as “the amount of LIURP funds spent from the LIURP budget to complete LIURP jobs each year.” The addition of the term will provide greater clarity for its use in Section 58.4(e) and distinguish the term from LIURP funds.

8. Low Income Customer

The Commission’s regulations propose to maintain the same income levels as the current regulations for a low-income customer. The proposed regulations propose that the definition of “low-income customer” as: “A residential **public** utility customer **[with] whose annual gross household income is** at or below 150% of the **[Federal poverty guidelines] FPIG.**” Annex A, 52 Pa. Code § 58.2. The income requirements for a low-income customer are defined as 150% of the Federal Poverty Income Guidelines (FPIG).

The OCA proposes that the Commission modify the proposed definition to increase the income limits for “a low-income customer” from 150% to 200% of the FPIG, and, as discussed below, the definition for special needs should be increased to 300% of FPIG. The COVID-19 pandemic and its impact on customers with limited income highlighted the great need for energy assistance in Pennsylvania. In addition, there is very little assistance available to households above 150% of poverty and providing access to usage reduction programs for economically vulnerable households from 150% to 300% of poverty is increasingly essential as demonstrated in the Pennsylvania-specific data put out by the United Way in their ALICE data³ that demonstrates the struggles faced by many Pennsylvania households who have income well above the traditional PUC threshold for low-income of 150% of poverty.

The United Way’s ALICE data (ALICE: Asset Limited, Income Constrained, Employed or ALICE Data), provides an estimate of the number of households who earn above the poverty line

³ See ALICE data, <https://www.unitedforalice.org/state-overview/pennsylvania>

but still struggle to afford basic expenses, these basic expenses include utility bills.⁴ Households living at this income level must on a month in and month out basis choose between rent, food, medical care, child care, utility bills, and putting gas in their vehicle.⁵ This is not a small number of households and is more than double the number of households who are considered poor. In 2021 according to ALICE, 12% of Pennsylvania’s 5,229,253 households were below the poverty line. In the same year, 27% of Pennsylvania’s households were classified as ALICE.⁶ Excerpted below is a comparison of the federal poverty line and an ALICE budget for a family of four and a family of one:⁷

Figure 1. ALICE Household Survival Budget and Federal Poverty Level, Pennsylvania, 2021

	Federal Poverty Level Census income thresholds that vary by household size but not geography to determine who is in poverty	ALICE Household Survival Budget The cost of the essentials needed to live and work in the modern economy, by household type and location
Family of Four		
Monthly Total	\$2,208	\$5,483
Annual Total	\$26,500	\$65,796
Percent Change, 2019–2021	3%	12%
Single Adult		
Monthly Total	\$1,073	\$2,193
Annual Total	\$12,880	\$26,316
Percent Change, 2019–2021	3%	14%

Note: Percent change is pre-tax.

Sources: ALICE Household Survival Budget, 2021; Assistant Secretary for Planning and Evaluation (ASPE), HHS poverty guidelines for 2021, U.S. Department of Health and Human Services

As demonstrated by this chart, the average Pennsylvania household of 4 would have had

⁴ See ALICE data, <https://www.unitedforalice.org/state-overview/pennsylvania>

⁵ See ALICE household survival budget, <https://www.unitedforalice.org/household-budgets/pennsylvania>

⁶ 2023 ALICE Report COVID and Financial Hardship in Pennsylvania: <https://www.unitedforalice.org/state-overview/pennsylvania>









⁷ See ALICE household survival budget, <https://www.unitedforalice.org/household-budgets/pennsylvania> at 2.

to earn \$65,796 to meet the basic survival budget in 2021 – which equates to 248% of the federal poverty level. For a single adult in the same year, the basic survival budget would be \$26,316 or 204% of the federal poverty level. The ALICE household survival budget “reflects the minimum cost to live and work in the modern economy.”⁸ The county-specific budgets include housing, child care, food, transportation, healthcare, technology such as a smartphone, taxes, and a 10% miscellaneous category.⁹ The table on the page below, from the most recent ALICE data, shows the makeup of the basic survival budget for these same households in 2021 on a monthly basis:¹⁰

⁸ *Id.*

⁹ *Id.*

¹⁰ See ALICE household survival budget, <https://www.unitedforalice.org/household-budgets/pennsylvania> at 3.

ALICE Household Survival Budget		Average Monthly Costs, Pennsylvania, 2021	
	Description, Update, and Sources	One Adult	Family of Four
 Housing	Rent: Fair Market Rent (40 th percentile) for an efficiency, one-bedroom, or two-bedroom apartment (based on family size), adjusted in metro areas using the American Community Survey (ACS) – minus utilities Utilities: As captured by the Community Expenditure Survey (CEX) Update: Costs of rent and utilities are now shown separately. Sources: ACS metro housing costs and U.S. Department of Housing and Urban Development (rent); CEX (utilities)	\$519 rent + \$154 utilities	\$628 rent + \$292 utilities
 Child Care	Cost for registered Family Child Care Homes for infants (0–2 years), preschool-age (3–4), and school-age children (5–12) Source: Pennsylvania Department of Human Services, 2019	\$ -	\$1,275
 Food	USDA Thrifty Food Plan by age with county variation from Feeding America Update: A change in legislation requires the USDA Thrifty Food Plans to reflect the cost for resource-constrained households to purchase a healthy, practical diet, starting in 2021, increasing costs from prior years. Sources: Feeding America; U.S. Department of Agriculture (USDA)	\$434	\$1,182
 Transportation	Operating costs for a car (average daily miles by age, cost per mile, license, fees, and insurance), or public transportation where viable Update: The decline in public transportation use during the pandemic reduced the average expenditure , yet the cost for workers who had to use it to commute remained the same. To reflect this, the budget uses 2019 average CEX spending. Sources: AAA, Federal Highway Administration, The Zebra (car); CEX (public transportation)	\$323	\$788
 Health Care	Health insurance premiums based on employer-sponsored plans plus out-of-pocket costs for households with \$40,000–\$69,000 annual income by age, weighted with the poor-health multiplier. For the senior budget, cost of Medicare Part A and B, out-of-pocket costs, plus average out-of-pocket spending for the top five chronic diseases as reported by CMS. Sources: Centers for Medicare and Medicaid Services (CMS); CEX (health); Medical Expenditure Panel Survey (MEPS)	\$223	\$885
 Technology	Smartphone plan with 10GB of data for each adult in a household Update: Costs were upgraded from a 5GB to a 10GB monthly data plan to reflect the increased need for internet access. Source: Consumer Reports	\$75	\$110
 Miscellaneous	Cost overruns estimated at 10% of the budget, excluding taxes, to cover one-time unanticipated costs within the other categories	\$173	\$516
 Taxes	Federal, state, and local taxes owed on the amount of income to cover the Survival Budget, as well as tax credits, including the Child Tax Credit (CTC) and the Child and Dependent Care Tax Credit (CDCTC) Update: Due to the significant effect of the expanded tax credits in 2021, total taxes before credits and the credits are both listed. Sources: Internal Revenue Service; Tax Foundation	\$292	\$1,009 Tax before CTC and CDCTC -\$1,202 CTC and CDCTC
Monthly Total		\$2,193	\$5,483

To see the Household Survival Budget for other household compositions at the state and county levels, go to unitedforalice.org/Household-Budgets/Pennsylvania

As can be seen from above, according to ALICE, households living at the survival threshold need to allocate on average 5% of their budget to utility bills. This, of course, can fluctuate depending on the condition of their dwelling and any other situation that can qualify a customer as a special needs customer. The OCA submits that this information supports increasing

the basic definition of low income customer to 200% FPIG and the definition of special needs customer to household with income as high as 300% of FPIG.

The OCA acknowledges that its position in these comments is different than they were in 2016 when it indicated support for maintaining the definition at 150%. There are several reasons for this, not the least of which is the growing recognition nationally that 150% of poverty is simply an insufficient measure of need. The OCA's position on this issue has evolved and submits that the Commission's definition of low income household for LIURP purposes should evolve as well and should include households up to 200% FPIG.

9. Special Needs Customer

A special needs customer is currently defined as “a customer having an arrearage with the covered utility and whose household income is at or below 200% of the Federal Poverty Guidelines.” Annex A, 52 Pa. Code § 58.2. The Commission proposes to change the definition of special needs customer to:

A customer whose household income is between 151% and 200% of the FPIG with one or more household members who meet any of the following criteria:

Are age 62 and over or age five and under.

Need medical equipment.

Have a disability.

Are under a protection from abuse order.

Are otherwise defined as a special needs customer under the public utility's approved USECP.

Annex A, 52 Pa. Code § 58.2.

For the reasons set forth above regarding the change to the income requirements for a special needs customer, the OCA recommends increasing the income qualifications for a special needs customer from 200% to 300% of the FPIG. In addition to the ALICE data, the Public Utility Code itself recognizes that customers at or below 300% of the FPIG are economically vulnerable

and in need of greater assistance as the Code provides for tiered payment arrangements for households with income up to 300% of the FPIG. For example, a one-year payment arrangement is available for customers from 250-300% of the FPL whereas all customers above 300% are only eligible for a 6-month payment arrangement. *See* 66 Pa. C.S. § 1405(b)(3)-(4).

Thus, the OCA recommends that a threshold of 300% of the FPIG be provided for special needs households, but that the Commission's proposed categories/criteria outlined in the definition should be used for the *prioritization* of special needs households as opposed to additional criteria. In other words, all households from 200% up to 300% of FPIG would count as potentially eligible special needs customers, but that a utility may prioritize those households with the additional vulnerabilities listed in the definition. As supported by the ALICE data, all households under 300% of the FPIG are special needs by virtue of their constrained budgets, and therefore, if a household has high usage or other criteria, and there are sufficient dollars within the special needs budget that the customer should not be denied LIURP if the customer otherwise does not meet the specific criteria in the list.

The OCA recommends that the proposed definition be modified as follows:

Special needs customer—A customer **[having an arrearage with the covered utility and]** whose household income is **[at or below] between 151% and [200%] 300%** of the **[Federal poverty guidelines] FPIG with *prioritization for one or more household members who meet any of the following criteria:***

- **Are age 62 and over or age five and under.**
- **Need medical equipment.**
- **Have a disability.**
- **Are under a protection from abuse order.**
- **Are otherwise defined as a special needs customer under the public utility's approved USECP.**

Annex A, 52 Pa. Code § 58.2.

Thus, the OCA recommends that the definition of special needs be increased to 300% of the FPIG and that the proposed eligibility criteria be instead used for prioritization of LIURP assistance.

10. USECP

Section 58.2 provides the following definition for USECP: “a documented Commission-approved plan describing the benefits, policies and procedures related to a public utility’s universal service and energy conservation programs.” Annex A, 52 Pa. Code § 58.2. The Commission also defines a USECP proceeding as a “Commission proceeding to review a proposed public utility USECP or a petition proposing to add or amend provisions within an existing USECP.” Annex A, 52 Pa. Code § 58.2.

By Order entered on October 3, 2019, in Universal Service and Energy Conservation Plan Filing Schedule, Docket No. M-2019-301260, the Commission extended the review of USECPs from three years to five years. *See Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule*, Docket No. M-2019-3012601, Order (Oct. 3, 2019)(*October 2019 Order*). The filing schedule for third-party independent evaluations was also adjusted to coincide with the revised USECP duration and filing schedule. The extension of the review period and change to the timeline for the independent evaluations should otherwise limit the ability to address changes to LIURP in the interim between USECP filings. The proposed definitions, however, appear to only contemplate the Company revising or proposing revisions to LIURP budgets and programs in their USECP filings. The proposed definition should be expanded to incorporate parties other than utilities proposing revisions to LIURP. In particular, there may be factors that did not exist at the time of a USECP approval that should be allowed to be the basis for the proposed revisions. For example, there has been a recent

increase in the cost of providing usage reduction services that could merit an increase in LIURP budgets. In the annual Bureau of Consumer Services Universal Services Report, many of the natural gas utilities identified significant increases in the average cost per job for heating jobs. For Columbia, the costs increased from \$7,207 in 2020 to \$13,030 in 2022. PECO Gas also experienced a more than doubling costs with average job costs of \$3,037 to \$7,256 in 2021 to \$6,374 in 2022. Peoples' costs increased from \$8,174 in 2020 to \$10,802 in 2022.¹¹ The number of heating jobs also increased for each of the utilities over that period.¹² Moreover, substantial increases in rates (either base rates or the cost of fuel) could increase both the need for, and the benefits from, increased LIURP spending.

The definition should also be expanded to incorporate the OCA's recommendations in Sections E and R below regarding the mechanisms and forums to change LIURP budgets. The OCA has recommended, as discussed in Section E below regarding the proposed changes to Section 58.4, that parties to base rate proceedings should be permitted to address issues related to the LIURP budget. The OCA also has recommended in Section R below regarding the proposed changes to Section 58.17 that the process for setting the LIURP budgets be changed.

11. Weatherization

Section 58.2 defines weatherization as “the process of modifying a dwelling to reduce energy consumption and optimize energy efficiency.” Annex A, 52 Pa. Code § 58.2. The OCA also proposes the addition of a new term to distinguish between weatherization measures and *full weatherization*. Weatherization may also encompass smaller baseload measures and the frequency of such measures should be distinguished from full weatherization. A customer who has received

¹¹ Bureau of Consumer Services Universal Services Programs and Collections Performance Report at 56 (2022), <https://www.puc.pa.gov/media/2573/2022-universal-service-report-final.pdf>

¹² *Id.*

only baseload measures should be eligible for full weatherization without having to wait if circumstances permit the full weatherization to be completed.

The OCA proposes that an additional definition be added to describe full weatherization. The purpose of this distinction is because typically, a household may not be treated under LIURP more than once every seven years. If a customer does not receive “full weatherization,” however, a customer should be able to receive full weatherization before the end of the seven-year period.

Full weatherization may be defined as the installation of weatherization measures, with the exclusion of the replacement or repair of heating systems, that would result in a minimum of 15% savings from installed measures. *See, e.g., Columbia Gas of Pennsylvania, Inc. Universal Service and Energy Conservation Plan for 2024-2028*, Docket No. M-2023-3039487, Supplemental Information at 31 (July 17, 2023)(*Columbia 2024-2028 USECP*). Under full weatherization, all weatherization work should meet established standard work specifications (SWS) which are nationally approved for use in the home energy professional field.¹³ Full weatherization should be available every seven years, and more frequently if there have been significant changes to the dwelling that would impact the efficacy of the weatherization completed.

12. Health and Safety Measure

The Commission has proposed the following definition for health and safety measure:

***Health and safety measure*—A program measure or repair necessary to maintain and protect the physical well-being and comfort of an occupant of a dwelling or an ESP, or both.**

Annex A, 52 Pa. Code § 58.2. The OCA supports the inclusion of health and safety measures as a part of LIURP to allow for the removal of potential obstacles to weatherization. The OCA

¹³ See *DCED Weatherization Program Guidelines*, Section V, General Program Requirements at 3 (February 2022) <https://dced.pa.gov/download/weatherization-assistance-program-guidelines/?wpdmdl=115898>

recommends that health and safety measures be interpreted broadly to include any measures that would be necessary to maintain and protect the physical well-being and comfort of a dwelling including pest remediation.

D. Proposed Section 58.3

Section 58.3 sets forth the proposed requirement:

A [covered] public utility shall establish and maintain a [usage reduction program] LIURP for its [low income] low-income customers and special needs customers.

Annex A, 52 Pa. Code § 58.3. The Commission proposes to retitle this section as “Establishment and maintenance of a residential LIURP” to “clarify the responsibility of a public utility to establish and maintain a LIURP for its low-income and special needs customers.” *NOPR Order* at 30-31. The OCA supports this change, including the requirement that a LIURP should include reference to and consideration of special needs customers, but consistent with above, the OCA recommends that the income eligibility requirements for LIURP be increased for low-income customers from 150% to 200% of the FPIG and increasing special needs to 300% of the FPIG and that the proposed revised increased income eligibility requirements also be incorporated into Section 58.3.

E. Proposed Section 58.4

1. Introduction

The Commission’s proposed Section 58.4 addresses LIURP budgets and how the LIURP budgets are established. The Commission’s *NOPR Order* proposes to retitle Program Funding to LIURP budgets in line with the proposal to amend the definition “regarding replacing ‘program’ with ‘LIURP’ and to reflect the difference between LIURP budgets and the LIURP funding

mechanism.” *NOPR Order* at 31, 36, Annex A, 52 Pa. Code § 58.4 (c). The Commission’s *NOPR Order* provides:

LIURP budgets are approved in a USECP proceeding that includes a comment period. This proposed amendment clarifies that a LIURP budget can only be revised through a USECP proceeding initiated pursuant to the periodic USECP review process. This section sets a maximum annual LIURP budget allowance for special needs customers as well as the factors and expenses that must first be considered to revise a LIURP budget. Furthermore, this section establishes provisions for unspent LIURP funds at the end of a program year and the mechanism for recovering LIURP costs.

NOPR Order at 36.

2. Forum for Setting the LIURP Budget (Section 58.4 (a.1)).

The Commission’s proposed LIURP budget language eliminates the current requirements for natural gas and electric distribution utility budgets. Annex A, 52 Pa. Code § 58.4. Consistent with the *NOPR Order*, the Commission’s proposed Section 58.4 revises how the budgets for electric and natural gas utilities may be established and amended. Proposed Section 58.4(a.1) provides that:

A public utility shall propose annual LIURP budgets for the term of a proposed USECP that is filed with the Commission for review and approval. Upon approval of the USECP by the Commission, the public utility shall continue providing program services at the budget level approved in the USECP.

Annex A, 52 Pa. Code § 58.4(a.1).

Proposed Section 58.4(c) provides for revisions to a LIURP budget. Section 58.4(c) states that “[a] revision to a LIURP budget is accomplished in a USECP proceeding.” Annex A, 52 Pa. Code § 58.4(c). The Commission proposes to base revisions to the LIURP budget on the following factors:

- (1) The estimated number of customers by FPIG levels 0% through 50%, 51% through 100%, 101% through 150%, and 151% through 200%.

(2) The number of confirmed low-income customers by FPIG levels 0% through 50%, 51% through 100%, 101% through 150%, and 151% through 200%.

(3) The number of special needs customers.

(4) The number of eligible confirmed low-income customers that could be provided program services. The calculation must take into consideration the number of customer dwellings that have already received, or are not otherwise in need of, program services.

(5) The number of eligible special needs customers that could be provided program services. The calculation must take into consideration the number of customer dwellings that have already received, or are not otherwise in need of, program services.

(6) Expected customer participation rates for eligible customers. Expected participation rates must be based on the number of eligible confirmed low-income customers and historical participation rates.

(7) The total expense of providing program services, including costs of program measures, energy conservation education and training expenses and prorated expenses for LIURP administration.

(8) A plan for providing program services to eligible customers within a proposed timeline, with consideration given to ESP capacity necessary for provision of services, including time and materials, and the impact on utility rates.

Annex A, 52 Pa. Code §58.4 (c).

In its *NOPR Order*, the Commission provides:

LIURP budgets have sometimes been modified through black box settlements among parties in in [sic] rate cases. When a LIURP budget is modified outside a USECP proceeding through a settlement, the settlement agreement often does not explain how the LIURP budget was determined or how this change addresses an unmet need in the public utility's service territory. As LIURP is a ratepayer-funded program, considerations impacting its budget determination should be open to scrutiny and comment. USECP proceedings allow all interested parties to provide comments, raise questions, and review information justifying the proposed change to the LIURP budget in an on-the-record proceeding. Information and data provided by the public utility and stakeholder input allow the PUC to determine whether the proposed LIURP budget appears cost-effective.

NOPR Order at 37.

The OCA has significant concerns about the unnecessary constraints that are imposed by this section on the ability to address an aspect of the Company's tariffed rates in a base rate proceeding. LIURP is included as a part of the costs of the universal service programs and recovered through the tariffed rate, the universal service rider. All tariffed rates should be eligible for review as a part of a base rate proceeding. The proposed limitation inhibits the ability of the parties to explore the need for LIURP budget increases, particularly considering the proposed base rate proceeding increase. A base rate proceeding is an "on-the-record" proceeding in which parties have the procedural right to discovery, to submit the testimony of expert witnesses, and to have hearings at which an evidentiary record is created. While proposed Section 58.4(e) would allow for cost recovery issues to be addressed in rate cases, these cost recovery issues and mechanisms cannot be divorced from the budgets. This would be akin to doing rate design separate and apart from rates. They are inextricably entwined and cannot be artificially or arbitrarily separated as the program budget and design impacts the cost recovery mechanisms that may or may not be appropriate.

The USECP is not currently an "on-the-record" proceeding and no evidentiary record is ever created. There is also no opportunity for discovery or requirement that a hearing be granted. The USECP filings as currently handled are procedurally different from all other proceedings. Generally, after the Plan is filed, USECP proceedings commence with a collaborative meeting with interested stakeholders, the utility, and BCS present. Stakeholders may ask questions or raise issues at the collaborative, but procedurally, the collaborative is just that: a meeting of interested parties to discuss the Plan filed. The collaborative meeting may be helpful to clarify aspects of the Plan or to preliminarily identify issues, but it is not the same as an on-the-record proceeding. No procedural requirements are on the utility to respond to questions. Later, the Commission will issue

an interim Order allowing for the opportunity for comments, but no discovery process is available. Historically, requests for hearings in the comments have generally not been granted.

The OCA suggests that the regulations be amended to make it clear the USECPs will become adjudicatory proceedings before the OALJ where a record can be developed. In that way they would function like other “plan” proceedings filed by utilities such as Act 129 plans or default service plans. This would minimize – but could not eliminate – the possibility that parties would raise these issues in rate cases.

The OCA does not agree with the Commission’s proposal to only address LIURP budgets within USECPs. To be clear, if the OCA’s suggestions above regarding an on-the-record proceeding for USECPs is adopted, it would significantly mitigate the number of issues that would be addressed outside of these proceedings. However, because LIURP is part of a tariff-based rate, it is inappropriate in the OCA’s view to preclude the issue from being addressed as a part of a general rate case.

3. Factors to Establish the LIURP Budget (Section 58.4(c)).

a. Use of Needs Assessment Factors

In Section 58.4(c)(1)-(8), the Commission sets forth how revisions may be made to a LIURP budget and the factors to be used in revisions to the LIURP budget. Annex A, 52 Pa. Code §§58.4(c)(1)-(8). As noted above, in Section 58.4(c), the Commission proposes to limit the forum available for review of the LIURP budget, and the OCA identified its concerns about the Commission’s proposed Section 58.4 limitation in the regulations regarding the appropriate forum to raise LIURP issues. LIURP issues should be able to be raised in both the USECP proceedings, which should be adjudicated, and base rate proceedings as needed for the reasons set forth above. Generally, however, while the OCA does not agree with the Commission’s limitation of the forums,

the OCA does agree with the Commission's overall approach to the identification of *the factors* to be considered in revisions to the LIURP budget and that the LIURP budget should be established based upon a needs assessment.

The factors identified in the needs assessment include: (1) estimated number of customers by FPIG; (2) number of confirmed low-income customers by FPIG; (3) number of special needs customers;¹⁴ (4) number of eligible confirmed low-income customers that could be provided program services, factoring in the number of dwellings that have already received services or are not in need of services; (5) the number of eligible special needs customers factoring in the number of dwellings that have already received services or are not in need of services; (6) the expected participation rates based upon the number of confirmed eligible low-income customers and the historic participation rates; (7) the total expense of providing program services, including the costs of program measures, energy conservation evaluation, training and prorated administrative expenses; and (8) a plan for providing services to eligible customers within a proposed timeline, taking into consideration ESP capacity, including the time and expense of materials, and the impact on utility rates. Annex A, 52 Pa. Code §§58.4(c)(1)-(8).

In the OCA's 2016 Reply Comments, the OCA identified that it agrees with many of the stakeholders' recommendations from the 2016 proceeding that there should be a "standardized, uniform methodology...for calculating the LIURP needs assessment." 2016 OCA Reply Comments at 15-16. The standardized, uniform methodology should also consider the unique circumstances of the utilities. The current and proposed USECP process would require that the utilities establish a needs assessment and a LIURP budget essentially in a vacuum from one another, and do not appear to be directly integrated. The regulations should reflect a greater

¹⁴ As the OCA noted in Section 58.2, the special needs customer definition should be increased to 300% of the FPIG.

congruence between the needs assessment and the LIURP budget and how the information in the needs assessment is applied to the LIURP budgets. The needs assessment should not simply be a count of the number of low-income housing units that need weatherization. There should be a direct link between the individual needs of the service territory, the need assessment, the established LIURP budget, and the number of units treated each year. As the OCA stated in its 2016 Comments in this docket, the identified factors directly tie the budget level to the needs of the service territory and changes to the needs in the service territory. It is important that the Commission continue to maintain standards for changes to the budget. 2016 OCA Comments at 7-8. The LIURP budget should flow from the needs assessment in a specific, articulated manner.

In its 2016 Comments, the OCA recommended incorporation of additional factors in the needs assessment including: (1) type of housing stock; (2) average age of housing stock; (3) number of customers who directly pay their utility bills (to distinguish master-metered versus individually metered customers); (4) type of heating fuel used by the customer; (5) housing units occupied by low-income households; (6) housing units that have not been previously treated with LIURP (or other usage reduction program) services in a period longer than that which would not preclude re-treatment; and (7) timeline for completion. 2016 OCA Comments at 32-33. The Commission did not include the OCA's recommended additional factors except for the proposed timeline for completion, but the OCA continues to believe that these additional factors remain relevant for consideration.

b. Number of Low-Income and Special Needs Customers (Sections 58.4(c)(1)-(5)).

In Sections 58.4(c)(1)-(5), the Commission identifies the following groups of customers that should be included in the needs assessment. The customer categories to be included in the needs assessment include the following: (1) estimated number of customers by FPIG; (2) number

of confirmed low-income customers by FPIG; (3) number of special needs customers;¹⁵ (4) number of eligible confirmed low-income customers that could be provided program services, factoring in the number of dwellings that have already received services or are not in need of services; (5) the number of eligible special needs customers factoring in the number of dwellings that have already received services or are not in need of services. Annex A, 52 Pa. Code §§ 58.4(c)(1)-(5). The categories of customers are limited for low-income customers to below 150% of the FPIG and to 200% for special needs customers. For the reasons set forth above in Section B regarding the definitions of low-income customers and special needs customers, the OCA recommends that the low-income FPIG categories be expanded in factors 1 and 2 to include low-income customers up to 200% of the FPIG and for factors 3-5 to expand the definition of special needs customers to include customers up to 300% of the FPIG. Annex A, 52 Pa. Code §§ 58.4(c)(1)-(5).

c. Timeline for Completion (Sections 58.4(c)(7)-(8))

In Section 58.4(c)(7), the Commission included as one of the eight factors a proposed timeline for completion of LIURP as recommended by the OCA; however, the factor, as defined, does not provide sufficient specificity. In Section 58.4(c)(8), the Commission proposes this timeline for completion for a LIURP budget should be defined as “a plan for providing program services to eligible customers within a proposed timeline, with consideration given to ESP capacity necessary for provision of services, including time and materials, and impact on utility rates.” Annex A, 52 Pa. Code 58.4(c)(8). The factor, however, does not consider a standard for how long an eligible customer should go without LIURP service or a timeframe for completion of LIURP

¹⁵ As the OCA noted in Section 58.2, the special needs customer definition should be increased to 300% of the FPIG.

service in the service territory. The regulations should incorporate a timeframe for completion of LIURP services that considers this element and set the budget accordingly.

The OCA fully supports a factor to include the impact “on utility rates” in setting a budget. This is a cost control mechanism in the sense that if the cost of the program gets too high, it may not be reasonable. However, utilities should also consider the impact of *utility rates* meaning that rate increases and other factors – such as increases in commodity costs or riders – will likely exacerbate the need and effectiveness of LIURP so that when rates are higher, LIURP is worth more to recipients because usage reduction would reduce bills. As part of the analysis, the Commission should include the impact of base rate increases as well as other rate/cost factors such as commodity cost increase and other rate increases such as riders.

In budget setting, it is also important to establish over what timeframe would be reasonable for the utility to provide services to all eligible households. In the Commission’s *NOPR*, the Commission references the 2016 Comments of PA-EEFA. PA-EFFA proposes that the Commission should also:

Determine the number of income-eligible low-income households within each service territory using current census data.

Determine expected costs per customer need to provide comprehensive fuel-neutral efficiency services based on standards to be developed by the PUC that achieve acceptable energy savings.

Establish a policy for the length of time over which it would be reasonable and appropriate to provide services to all eligible customers. Adjust each public utility’s budget allocation based on the unique factors of each service territory.

2016 PA-EEFA Comments at 26-27; *NOPR Order* at 33. The OCA strongly agrees that the Commission should establish a policy for the length of time over which it would be reasonable to provide services to all households. The Commission appears to have adopted this approach in

general, but as discussed above, the OCA recommends that the concept should be more explicitly incorporated into the LIURP regulations. *See NOPR Order* at 39, 52 Pa. Code § 58.4(c)(8).

The LIURP budget timeline is important to setting realistic goals. The Public Utility Code requires that the programs, including LIURP, be appropriately funded and available. 66 Pa. C.S. §§ 2203(9), 2804(9). Under its proposed definition the Commission has removed the requirement for a “reasonable timeframe” and replaced with “**proposed timeline**, with consideration given to [**the contractor**] ESP capacity necessary for provision of services, **including time and materials**, and the impact on utility rates.” Annex A, 52 Pa. Code § 58.4(c)(8). The Commission’s proposal may result in wildly different time frames for the establishment of a budget that would allow a utility to propose to serve customers in need over a 25, 50, or even 100-year timelines any of which would meet the regulatory change proposed, but would differ in terms of compliance with the requirements of the statute that the programs be appropriately funded and available. Annex A, 52 Pa. Code § 58.4(c)(8); 66 Pa. C.S. §§ 2203(9), 2804(9).

In the Bureau of Consumer Service’s annual Universal Service Report, BCS states that “[t]he Acts also require the Commission to ensure that universal service *and energy conservation policies* are appropriately funded and available in each electric and natural gas distribution territory.” 2022 Universal Service Report at 2 (emphasis added). According to BCS, in other words, the “appropriately funded” and “available” language would extend to usage reduction services not just universal service plans in general. The OCA notes, however, that it may not be reasonable to mandate that utilities serve all the homes that are eligible for, and in need of, LIURP services. There are many reasons why some customers may not participate. That limitation should be understood as a part of the analysis of a reasonable timeline. The concern is that there are

thousands of customers in the service territories in need of assistance and some of the plans only address hundreds of customers per year.

The OCA recommends that the Commission utilize a 15-year period as the benchmark for setting a budget and comparing plans between utilities with the goal and target to fund the LIURP budgets appropriately to meet that target. The LIURP budgets could then be adjusted to meet some of the other criteria outlined, but they should all use as a proxy the budget that would be sufficient to treat all eligible households in a 15-year period, or over the course of three five-year USECPs. From there, the utilities and or other parties could propose adjustments to the LIURP budgets based upon the other factors identified in Section 58.4(c)(8) including contractor capacity, effect on utility rates, uptake rates, and other relevant factors. Setting a time frame that can be compared from one utility to the next is an important part of ensuring that each utility's LIURP is appropriately funded any available.

5. Carryover of Unspent LIURP Funds (Section 58.4(d.1))

The Commission's proposed regulations also address the ability of utilities to carryover unspent LIURP funds from one year to the next. Section 58.4(d.1) provides that "a public utility shall annually reallocate unspent LIURP funds to the LIURP budget for the following program year unless an alternate use is approved by the Commission in a USECP proceeding." Annex A, 52 Pa. Code §58.4(d.1). The Commission also has proposed to modify Section 58.15(c)(6) to require a public utility to report annually if more than 10% of the annual LIURP budget remains unspent. *See NOPR Order* at 39; Annex A, 52 Pa. Code § 58.15(c)(6). These are good additions and the OCA supports both reporting of underspending and that those dollars should be carried over and used to supplement the next year's budget. As the OCA stated in its 2016 Comments, there are numerous reasons why a Company may under-spend its budget in a particular year. 2016

OCA Comments at 7-8. The Company may have been able to achieve greater efficiencies than expected, or alternatively, some intervening action may have prevented the Company from achieving its targets. In either scenario, the dollars should be maintained as a part of the budget and roll forward into the next programmatic year to increase the amount of funds available in the subsequent program year. This clarification should be added to the definition in section 58.4(d.1) such that it makes clear that rolled-over dollars do not supplant the dollars available for the next program year, but rather supplement those dollars. If the need still exists for the services, the budgeted dollars should be used to further address that need. Of course, there should be a way to address chronic overestimation of budgeting as well. If after several years, a utility is simply not able to spend its LIURP allocation the utility should be required to propose a plan amendment to modify its budget or its plan to reach more households. The Commission can establish a threshold timeframe by which an unspent carryover budget can be re-examined after several years of continued unspent carryover. A Petition or amendment process for review of the unspent LIURP budget would allow all interested stakeholders the opportunity to review and evaluate the budget, and importantly, to examine the reasons that the carryover budget continued over several years and was unable to be spent. Interested stakeholders could have the opportunity to make recommendations to the Commission regarding how the LIURP budget may be spent. Other modifications to the LIURP may be necessary other than amendment of the budget. If a utility believes that its USECP has systematically over-budgeted for LIURP, it should be required to come back to the Commission with a petition to change its USECP and allow all relevant parties that opportunity to participate in reestablishing an appropriate budget.

F. Proposed Section 58.5

Proposed Section 58.5 addresses administrative costs and pilot program administrative costs. Annex A, 52 Pa. Code §§ 58.5(a)-(b). The OCA does not have any comments on the proposed revisions at this time, but the OCA reserves the right to respond to other parties' comments on this section.

G. Proposed Section 58.6

Proposed Section 58.6 addresses consultation with LIURP design and pilot program design. Annex A, 52 Pa. Code § 58.6. The OCA does not have any comments on the proposed revisions at this time, but the OCA reserves the right to respond to other parties' comments on this section.

H. Proposed Section 58.7

Section 58.7 sets forth the requirement that “a public utility coordinate its LIURP with other programs to provide LIURP participants with direct assistance applying for LIHEAP and other relevant low-income assistance programs.” *NOPR Order* at 42; Annex A, 52 Pa. Code § 58.7.

Proposed Section 58.7 would modify the regulation to provide:

A LIURP must be designed to operate in conjunction with the public utility's other universal service programs as defined in 58.2 (relating to definitions) and other relevant public or private programs that provide energy assistance or similar assistance to the community. The public utility shall provide direct assistance or arrange third-party assistance for LIURP participants applying for LIHEAP as defined in 58.2 (relating to definitions) and other energy assistance programs, based on income-eligibility.

Annex A, 52 Pa. Code § 58.7. In its proposed revision, the Commission adopted the OCA's approach identified in its 2016 Secretarial Letter Comments. As the Commission's NOPR summarizes:

OCA recommended directing improved coordination efforts toward a “whole-house” approach so that LIURP service providers can meet the home's needs in a single visit. Further, OCA submitted that the need for separate customer applications and program eligibility determinations would also be avoided under

this approach. OCA strongly supported strengthening coordination to maximize the cost-effectiveness of LIURPs. OCA Comments at 23-24. OCA also supported PA-EFFA's recommendation the programs be delivered as "integrated programs." OCA favored treating the whole house in a single visit and coordinating LIURP resources with WAP regardless of the type of public utility providing the service. OCA stated that this approach would eliminate distinctions between electric or natural gas jobs (i.e., baseload, water heating, heating) and allocated costs could be rectified by the accounting process. OCA agreed with PECO's assertion that eligibility requirements should be reduced or eliminated to encourage increased program coordination. Increased coordination would ease burdens and minimize inconvenience for the low-income customer which might increase participation. OCA RC at 4-6.

NOPR Order at 42-43.

The OCA strongly supports the use of an integrated whole house approach and appreciates the Commission's proposed adoption of the OCA's recommended approach. The Commission should also consider the integration of water affordability programs as well as energy programs. Since the *2016 Secretarial Letter* comments, water and wastewater affordability programs have continued to evolve and develop. The Commission notes that PPL's Reply Comments identified that the "it needs more details on how water company coordination would work before supporting its inclusion in any LIURP regulations." *NOPR Order* at 46-47, citing PPL Reply Comments at 2-3. Several of the water and wastewater programs include conservation elements, and to the extent possible, those conservation elements should be coordinated as they are for electric and natural gas programs.

The OCA's proposals were designed to encourage further coordination and to help to eliminate some of the administrative barriers to coordination of service. Increased coordination can also help to ease the burden on the low-income customer because the low-income customer would only need to make him or herself available on one day for all treatments. This may help to also increase low-income customer participation in the programs because it will minimize the level of inconvenience for the customer. *See* OCA Reply Comments at 4-6.

I. Tenant Household Eligibility (Proposed Section 58.8)

1. Introduction

Proposed Section 58.8 addresses tenant household eligibility to receive LIURP services and the eligibility criteria that must be met. *See NOPR Order* at 48; Annex A, 52 Pa. Code § 58.8. The Commission proposes to retitle the section as “Tenant household eligibility” from the current “Tenant eligibility” title in order to “more accurately reflect the individuals living in a single rented dwelling.” *NOPR Order* at 54.

2. Eligibility for Baseload Measures (Proposed Sections 58.8(a)(1)-(2))

Proposed revised Section 58.8(a)(1) language provides that:

(a) Tenant household. An eligible customer who is a tenant that resides at a dwelling, as defined in § 58.2 (relating to definitions), shall have an equal opportunity to receive program services.

(1) A tenant household may be eligible for the installation of program measures if the landlord has granted permission to the public utility and the public utility documents the landlord’s agreement for the ESP to perform work on the dwelling. A public utility shall provide a copy of the landlord’s documented agreement to the tenant household.

Annex A, 52 Pa. Code § 58.8(a)(1).

Proposed Section 58.8(a)(2) provides that “if the landlord does not grant permission for the installation of program measures, the tenant household remains eligible for baseload measures and energy conservation education.” Annex A, 52 Pa. Code § 58.8(a)(2). In support of its proposed revision, the Commission’s *NOPR Order* notes that PPL provides a tenant household with “energy education, baseload items and energy conservation kits, when the tenant household does not receive landlord permission to install program measures.” *NOPR Order* at 54, citing PPL Comments at 8. The OCA strongly supports providing tenant households with baseload measures if the landlord approval cannot be received or consent is not provided. A minimum of baseload

measures will provide the tenant with the additional tools to help the tenant to reduce the household's energy consumption even if the landlord approval is not received.

3. Landlord Contributions (Section 58.8(b))

In the revisions to Proposed Section 58.8(b), the Commission proposes to amend the current language to:

A public utility may seek voluntary landlord contributions. The lack of landlord contributions may not prohibit an eligible tenant household from receiving program services. Voluntary contributions from landlords must be used by the public utility to supplement its approved LIURP budget. The public utility shall document the conditions relative to the use of a voluntary contribution in writing.

Annex A, 52 Pa. Code § 58.8(b).

The current language allows the utility to seek landlord contributions. The insertion of the word “voluntary” changes the relationship between the landlord and the public utility. The OCA recommends elimination of the word voluntary because the inclusion of the word voluntary may limit how a utility might be able to get a landlord to help. For example, a utility may have a reason to compel a landlord to do something that is necessary for safety, such as to move or repair a service in gas or water contexts, before doing work. The “may” portion of the regulation should be about whether the *utility* chooses to act. Instead of treating the landlord as a voluntary contribution, the OCA submits that instead the public utility should look at the landlords as partners or equivalent cooperations. The proposed voluntary approach does not appear to contemplate how an electric distribution company would leverage available energy efficiency measures.

The OCA also recommends that the second “may” in the following sentence “the lack of landlord contributions may not prohibit...” should be changed to “*shall not*” in order to eliminate any ambiguity about the requirements. 52 Pa. Code § 58.8(b). The revised sentence would read

“[t]he lack of landlord contributions *shall* not prohibit an eligible tenant household from receiving program services.” 52 Pa. Code 58.8(b)(emphasis added).

4. Optional Public Utility Requirement (Section 58.8(c))

The OCA is concerned that the Commission’s proposed revisions to Section 58.8(c) eliminates an important protection against eviction provided under the current regulations. The current language of Section 58.8(c) provides:

A eligible customer who is a tenant shall have an equal opportunity to secure program services **if the landlord has granted written permission to the tenant for the installation of program measures, and the landlord agrees, in writing, that rents will not be raised unless the increase is related to matters other than the installation of the usage reduction measures, and the tenant not evicted for a stated period of time at least 12 months after the installation of the program measures, if the tenant complies with ongoing obligations and responsibilities.**

52 Pa. Code §58.8(c)(emphasis added).

In replacement of the current eviction prohibition against raising rent and from eviction, the Commission’s proposed Section 58.8(c) changes the provision to an optional public utility requirement. The proposed revised Section 58.8(c) provides:

A public utility may require a landlord to agree that rent will not be raised unless the increase is related to matters other than the installation of the program measures or that the tenant household will not be evicted for a stated period of time after the installation of the program measures unless the tenant household fails to comply with the ongoing obligations and responsibilities owed the landlord.

Annex A, 52 Pa. Code § 58.8(c). The proposed language is not clear as to whether the utility would apply this optional provision on a case-by-case basis to incentivize a particular landlord to participate or if the utility would elect to do so through its USECP across-the-board. In either case, for the reasons set forth below, the OCA does not support the proposed revision.

In its *NOPR Order*, the Commission provides its rationale for the change. The Commission provides the explanation that:

[as]s noted above, the proposed § 58.8(c) is intended to make the requirement for a landlord to not raise rent or evict a tenant for a stated period of time after the installation of programs measures an optional provision that the public utility could impose. This optional provision is consistent with WAP regulations that require a notarized agreement signed by both the landlord and tenant to ensure that the tenant is current with rents and that during and for 18 months after the completion of WAP services a landlord cannot raise rents or evict a tenant unless it relates to matters not related to the work that was done. It also requires that there be a process in place for landlords and tenants to follow if rent or eviction issues arise after weatherization assistance. See 10 CFR § 440.22(b)(3)(relating to eligible dwelling units). Making this provision optional is also consistent with PPL's comments. PPL supported eliminating mandatory rent and eviction restrictions on landlords to increase LIURP services to tenant households. PPL Comments at 8.

NOPR Order at 55.

The stated purpose of the proposed language may be to increase landlord access to the program. However, instead of increasing landlord participation as contemplated by the Commission's attribution to the PPL Comments, the proposed language may have a reverse impact. The proposed elimination of the no eviction language has the effect of weakening the tenant eligibility requirements. The current language provides an important protection for the tenant that should not be made optional or eliminated. The current language prevents a landlord from evicting a tenant if the tenant otherwise meets their ongoing obligations and responsibilities as a tenant. In other words, the current language never prevented a landlord from evicting if the tenant breached their lease by failing to pay rent or another violation of the lease, but it did prevent the tenant from using ratepayer money to improve a property then find pretext to evict the tenant, who was the basis of eligibility for the ratepayer money in the first instance, so as to rent to another tenant who may or may not be eligible for LIURP. Moreover, the Commission's proposed revision eliminates the current provision that the landlord may also not raise the rents. This language is not included in the proposed optional utility language. Energy efficiency provisions may have the effect of increasing the overall quality and livability of the property and, therefore, value of the

property. LIURP exists for the benefit of eligible customers, not landlords. Tenants should be permitted the right to remain in their property post-LIURP remediation and reap the benefits of LIURP on their energy reduction without fear of increased rents or pretextual eviction.

Indeed, the proposed language is likely to have a chilling effect on a tenant's willingness to participate in LIURP. Tenants may not wish to participate for fear that they will be evicted or have their rents raised after the improvements to the property are made. After all, why would they seek this intervention when they may never reap the benefits? The OCA submits that the proposal to allow for potential evictions and to have no bar on raising rents may allow the landlord to become unjustly enriched at the expense of LIURP and the ratepayers who pay for the program. One of the stated objectives of LIURP is to reduce CAP customer credits through energy efficiency. If the tenant is no longer low-income or a CAP participant, the stated goal will not be defeated. With the LIURP energy efficiency improvements, the landlord's property ostensibly will increase in value, and therefore, a landlord may otherwise be able to rent out the property at a higher rate and elect to use the evict the tenant or raise the rent in order to extract more value from the property. The proposed language provides no protections for the existing tenant against these potential harms. The Commission should replace the word "may" in the first line, fourth word, with "shall".

5. The Commission should Add Multi-family Housing Provisions to Section 58.8.

In addition to the revisions proposed by the Commission's regulations, the Commission should consider whether utilities are reaching tenants of multi-family households. Tenants and residents of multi-family housing should be considered as separate populations for LIURP eligibility purposes. The primary consideration with tenants is how to obtain landlord approval. The issue also involves what the utility can do if does not receive landlord approval. In the OCA's Comments to the *2016 Secretarial Letter*, the OCA raised a concern regarding the need for a

definition of multi-family that the OCA continues to believe should be addressed by the Commission's regulations. The Commission's *NOPR Order* summarized the OCA's Comments on the inclusion of multi-family properties as a part of LIURP as follows:

OCA stated that multi-family housing efforts are best undertaken through the EDCs' Act 129 programs and through voluntary natural gas programs. OCA claimed that LIURP funds should not be used to provide services when the tenant is not the public utility's direct customer. Instead, OCA submitted that such multi-family units should be treated as commercial property with appropriate cost recovery via the Act 129 program or a voluntary natural gas program. LIURP funding should not be used to treat a housing unit unless a minimum proportion of the housing units in the multi-family building are determined low-income, as defined by the LIURP regulations. Specifically, OCA recommended that the multi-family properties have substantially more than 50% occupant of low-income tenants to be eligible for LIURP services. OCA Comments at 30-31.

NOPR Order at 48-49. The Commission also discussed the OCA's recommendations to use partnerships with other agencies and local professionals that might be aware of properties with which energy reductions may be piggybacked. *NOPR Order* at 49; 2016 OCA Comments at 31-32. The OCA also recommended that LIURPs seek an expedited permit process to make weatherization more attractive. *Id.*

The OCA also recommends accepting PA-EEFA's recommendation that the "Commission consider revising LIURP regulations to look at high usage on a square foot basis rather than in a strict usage threshold." PA-EEFA Comments at 24. The OCA supports this effort in multi-family buildings where the tenant pays the utility bill as the residence is often less efficient on a square footage basis than in a single-family home. For the OCA's Reply Comments, OCA created the following chart to demonstrate the usage per household versus the usage per household versus the usage per square foot in different types of dwellings:

Housing Unit Type	Household Square Foot	
	Million Btu	Thousand Btu
Single Family	103.05	47.65
Single Family Detached	120.7	47.9
Single Family Detached	85.4	47.4
Multi-Family	52.1	53.5
Apartments in 2-4 Unit Buildings	68.0	65.4
Apartments in 5 or more Unit Buildings	36.2	41.6
Mobile Homes	72.1	66.7

2020 RECS (Residential Energy Consumption Survey), Table CE1.02. The OCA submits that this inefficiency should be given proper consideration.

The OCA recommends that the Commission consider addressing how to include more multi-family properties as a part of LIURP and including multi-family properties where the customer is the tenant. The Commission should consider ways to expand opportunities for landlord approvals and consent for treatment, including partnerships with local organizations and an expedited permitting process. The definition of multi-family properties should also look at high usage on a square foot basis rather than in a strict usage threshold.

J. LIURP Outreach – (Proposed Section 58.9)

Proposed Section 58.9 changes the name of this regulation from “Program Announcement” to “LIURP Outreach” in order to more accurately reflect the revised regulation. *NOPR Order* at 57. The current Section 58.9 addresses program announcements to provide targeted communications about LIURP to potentially eligible customers to solicit applications. 52 Pa. Code § 58.9. The Commission’s *NOPR Order* provides:

[t]his section of the existing regulations requires a public utility to provide targeted communications about LIURP to potentially eligible customers to solicit applications. It also directs a public utility to consider advertising program services through various outlets. Finally, the section directs a public utility to make additional contacts with potentially eligible customers when funding permits.

NOPR Order at 55.

The Commission proposes to revise Section 58.9 as follows:

(a) A public utility shall, at least annually, review its customer records to identify customers who appear to be eligible for LIURP and provide a targeted communication with a description of program services and eligibility rules to each customer identified through this procedure so as to solicit applications for considerations to program services. A copy of this notice must also be sent to publicly and privately funded agencies which assist low-income customers within the public utility's service territory. A public utility shall also consider providing public service announcements regarding its LIURP in media outlet sources, such as print, broadcast and social media platforms. The public utility shall additionally advertise its LIURP in a language other than English when census data indicate that 5% or more of the residents of the public utility's service territory are using the other language.

(b) If, after implementing notice requirements of subsection (a), additional funding resources remain, the public utility shall attempt to make additional contact with eligible customers who have not responded to earlier LIURP outreach announcements.

Annex A, 52 Pa. Code §§ 58.9(a)-(b).

It is vitally important for the Commission to ensure that each of the utilities has communications that is in plain language, a robust English proficiency outreach program, and limits personal identification requirements needed to access services. For LIURP outreach to be effective, it must be understood. This requires outreach to be in plain language without "utility speak" and written at a 6th grade reading level. Outreach materials must also be readily accessible in the languages spoken by the utility's customers. The OCA does not agree with the Commission's proposed threshold to require that a public utility advertise in languages other than English only when census data indicates that 5% or more of the residents of the public utility's service territory are using that language. The OCA recommends instead to amend the language to a "substantial number" of customers. This would allow stakeholders to provide input during the USECP review proceeding whether there are enough Limited English Proficiency (LEP) households to merit

outreach in particular language. Furthermore, the “service territory” as a whole should not be the threshold for this substantial number to be used as the standard to merit outreach in a particular language. For example, it is frequently the case that LEP households are clustered in geographic areas and while those clusters may not be sufficient to hit the 5% of the service territory, even if the percentage of LEP households in more narrowly defined areas may be quite high. If the Commission retains the 5% threshold, the OCA recommends adding language to the regulation to state after the 5% threshold, “or other geographically clustered groups of LEP households” to account for the geographic differences in LEP needs across a large service territory.

It is also imperative for the Commission to make clear that there are two main components to providing language access: (1) oral interpretation and (2) written translation. With respect to oral interpretation, the federal 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.¹⁶ 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.”¹⁷ With respect to written translation, the general rule is that covered entities must provide written translation of any vital documents “for each LEP language

¹⁶ Dep’t of 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>.

¹⁷ *Id.*

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.”¹⁸

It is essential that both written and oral communications in the customer’s native language be available. The OCA recommends that the LEP should similarly have language access through the Call Center or ESPs. Language service lines and translation services should be available and made known to LEP customers. The language access requirements must also apply to ESPs contracted with the utility so that vendors of the utility can also communicate with LEP individuals in a way that is understandable.

K. Prioritization of Program Services (Section 58.10).

The Commission proposes to rename the “Program announcement” section to “Prioritization of program services” to better reflect the intention of the revised regulation. Annex A, 52 Pa. Code § 58.10. As the Commission’s *NOPR Order* describes, Section 58.10 sets forth the criteria for LIURP prioritization. The *NOPR Order* provides:

[i]t also requires EDCs to budget for LIURP spending based on different energy accounts (i.e., residential space heating customers, residential water-heating customers and residential electric baseload customers) based on the prioritization provisions in this section. It further provides that a public utility may spend up to 20% of its LIURP budget on special needs customers.

NOPR Order at 58.

The Commission proposes to revise the prioritization for LIURP services in Section 58.10 as follows:

(a) A public utility shall prioritize the offering of program services to eligible customers in the following order:

(1) Among eligible customers, those with the largest energy usage and greatest opportunities for utility bill reductions relative to the cost of providing program services, including CAP shortfall, shall be offered services first. When prioritizing eligible customers by usage level, several factors must be considered when feasible.

¹⁸ *Id.*

These factors include: the size of the dwelling, the number of occupants, the number of consecutive service months at the dwelling and the end uses of the utility service. When prioritizing eligible customers by opportunities for utility bill reductions, a public utility may also consider factors that tend to facilitate utility bill reductions.

(2) Among customers with the same standing with respect to paragraph (1), priority should be given to customers in the following sequence:

(i) Customers in CAP with the largest pre-program and in-program arrearage as a percentage of their household income.

(ii) Non-CAP customers with the largest arrearage as a percentage of household income.

(3) Among the customers with the same standing with respect to paragraph (2), those with income at the lowest FPIG level shall be offered program services first.

(b) An EDC shall use the prioritization provisions in this section to determine the amount of its annual LIURP budget allocated for program services available to residential electric space-heating, electric residential water-heating customers and residential electric baseload customers.

Annex A, 52 Pa. Code § 58.10.

The Commission's *NOPR Order* provided that the amendments include "CAP shortfall as one of the factors that a public utility is required to consider when prioritizing eligible customers by usage level and to incorporate a new prioritization factor based on the number of consecutive service months a customer resided at a dwelling." *NOPR Order* at 60. The Commission also provided that the amendments would allow "public utilities to consider factors that tend to facilitate utility bill reduction when prioritizing eligible customers by opportunities for utility bill reduction." *NOPR Order* at 60.

The OCA recommended in its 2016 Comments that a determination of CAP eligibility should automatically result in LIURP eligibility without further application, but that CAP participation should not be a prerequisite for LIURP. The OCA also recommended that public utilities notify CAP participants when they are close to their CAP credit limit to begin evaluating them for LIURP. 2016 OCA Comments at 25-27; OCA Reply Comments at 16-17; *see also NOPR*

Order at 58. The OCA continues to support this approach. The Commission’s regulations adopted the OCA’s recommendation that CAP participation should not be a prerequisite for LIURP, 52 Pa. Code Section 58.11(d), but the Commission’s regulations should also specifically identify that CAP customers should automatically be eligible for LIURP without further application. The Commission should also specifically identify that CAP participants should be notified about LIURP when they are close to the CAP credit ceiling.

The OCA agrees with many of the Commission’s proposed identified factors. The OCA specifically agrees with the Commission’s stated notion of including “CAP shortfall factors that a public utility is required to consider when prioritizing eligible customers.” *See NOPR Order* at 60. The OCA also agrees with allowing utilities to “consider factors that tend to facilitate utility bill reduction when prioritizing eligible customers by opportunities for bill reduction.” *Id.* The OCA notes that the Commission’s proposed revisions would also seem to support the notion of serving multi-family units that may not be “high use,” but may have inefficient usage on a per square foot basis and of serving very low-income customers who may be about to hit the maximum CAP credit ceilings. The OCA notes that keeping the lowest income customers under the CAP credit ceiling would represent an “opportunity for bill reduction” as proposed in the revised regulations.

As discussed in the *NOPR Order*, the Commission proposes “first priority to CAP customers with the largest PPAs and in-program arrearage balances and then to non-CAP customers with the largest unpaid balances.” *NOPR Order* at 61. The OCA agrees that priority should be given to the highest arrearage customers “relative to household income” and priority to CAP customers because the “energy reductions for CAP households decrease costs for both the CAP customers and the ratepayers from whom CAP shortfalls are recovered.” *NOPR Order* at 61. The OCA also does not oppose giving first priority to CAP customers with the largest pre-program

arrears as proposed in Section 58.10, but the OCA recommends that this only be within that group of customers that have similar usage. The Commission has previously addressed whether targeting high use customers can be done in ranges or whether it should be on a customer-by-customer basis. The OCA would recommend that targeting be done for high use customers first and then within that group of high use customers to define the ranges that the customers fall within. The higher the range the customer falls into, the higher the priority.

For special needs customers, as discussed in Section B above, the Commission has also proposed specific factors to be included for special needs customers. The OCA recommended that the income eligibility for special needs customers be increased to 300% of FPIG and that the Commission utilize the proposed identified factors for prioritization of services to special needs customers.

L. Energy Audit (Section 58.11) and Fuel Switching (58.11a).

The Commission proposes amendments to Section of 58.11 labeled energy audit or energy survey and the addition of the new Section 58.11a regarding fuel switching. The OCA agrees with many of the changes proposed to Section 58.11. In particular, the Commission eliminated the 7 and 12-year payback requirements. The requirements unnecessarily limited the ability for customers to receive certain measures, and the OCA supports the proposed change. The proposed changes also create a flexible audit system that will allow for greater flexibility in terms of the measures used by the utility.

As discussed in the definitions section above, it is important for the Commission to define energy savings to include overall energy savings, not just a particular utility's own fuel savings. The proposed change and addition of Section 58.11a reflects this change as the Commission proposes to add Section 58.11a to address fuel switching. An evaluation of fuel switching should

holistically consider whether customers would save on their overall energy usage. The definition of energy savings should consider being expanded to define savings on a total household MMBtus of energy saved as opposed to fuel specific measures such as kwh or mcf/ccf. Fuel switching may offer a household an overall benefit that may not adequately be considered if the identification of savings are narrowly limited to only consider one aspect of the fuel equation.

The Commission's proposed Section 58.11a provides that:

(a) LIURP funds may be used for program measures that involve fuel switching between electric and natural gas under either of the following conditions:

(1) When the public utility provides both electric and natural gas service to the LIURP participant.

(2) If the primary heating source provided by another public utility is determined to be inoperable or unrepairable or if the cost to repair would exceed the cost of replacement and both public utilities agree in writing that fuel switching is appropriate.

(b) The public utility shall document these conditions.

Annex A, 52 Pa. Code § 58.11a; *see NOPR Order* at 65-66.

Generally, the OCA supports the addition of fuel switching as proposed in Section 58.11a. Fuel switching will allow the public utility to evaluate the best fuel source for the customer, but should not be limited to situations where both utilities agree to make a switch. If an ESP determines that it would be more cost effective for a customer to switch their primary heating service from one utility to another, then the customer, not utilities, should choose whether they want to receive these services. A utility should not get to veto this choice by the customer if the installation and fuel switching would be cost effective from a monetary and overall energy savings standpoint. In addition to considering space heating, in making a cost-effectiveness determination a utility should be able to consider whether it would provide cost effective space cooling as well. For example, if a customer has an inoperable gas furnace, it may be more effective to install an electric heat pump

that provides both heating and cooling rather than a new gas furnace and have the household continue to rely in window air conditioning units. In this way, all costs should be considered, not just space heating costs.

Thus, while the OCA agrees with the Commission's proposal to allow for fuel switching if the primary heating source is inoperable or in need of repair. The OCA, however, does not agree with the Commission's proposed language that would require both utilities to consent to the fuel switching. A requirement for both utilities to consent presents an unnecessary barrier to fuel switching. The utilities do not own the appliances in question, the landlord or the customer does, so the customer should have the ability to determine what fuel that they prefer. If the customer consents to fuel switching that should be sufficient. The utility should not be able to override the customer's consent.

Other states, such as Michigan, have adopted fuel switching proposals and reinforce the OCA's recommendations regarding why an inoperable furnace should be considered as a factor for fuel switching. The Michigan Bureau of Community Action and Economic Opportunity (BCAEO) conducts State Administered Switching Approval.¹⁹ Fuel switching is allowable when the site-specific energy audit demonstrates that the cost effectiveness of the fuel switch over the life of the measure as indicated by the Savings to Investment Ratio. Fuel switching is also allowed when justified for Health and Safety reasons.

The OCA supports many of the changes proposed by the Commission for Section 58.11, in particular the proposal to allow for fuel switching in the proposed modifications to 58.11a. The OCA recommends modifications to remove unnecessary barriers to fuel switching by using a

¹⁹ See Michigan Community Service Policy Manual 600 Series DOE Policy July 1, 2023 (Fuel Switching Item 610) https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Doing-Business-with-MDHHS/Weatherization-Contractors/CSPM_600_Series_215133_7.pdf?rev=b0871f5307344fea9be82efec98f1527&hash=F718BAD4AF2C2CC8F2E4106CD82368CB

definition of total household energy saved on an MMBtu basis and removing the requirement that both utilities consent to the fuel switching. In particular, the OCA supports the proposal to allow for fuel switching when there is an inoperable furnace or furnace in need of repair.

M. Proposed Section 58.12

The Commission proposes to modify Section 58.12 to allow for both incidental repairs and health and safety measures as a part of LIURP. Annex A, 52 Pa. Code § 58.12. The incidental repairs are those expenditures that are needed to make the program measures operate effectively. Annex A, 52 Pa. Code § 58.12(a)(1). The Commission proposes to add the following health and safety measure provision: “these measures may include installing smoke alarms or carbon monoxide detectors, performing combustion testing and identifying and remediating potential hazards such as knob and tube wiring, mold, asbestos and moisture.” Annex A, 52 Pa. Code § 58.12(a)(2). The OCA also recommends that health and safety measures include the removal of pests where appropriate.

Health and safety issues that provide a barrier to complete or full weatherization may nevertheless not impact the totality of the house, and the utility should be able to provide as much assistance they are able to even when they cannot fully remediate health and safety concerns. Thus, the OCA submits that the regulations should permit as proposed by the FirstEnergy Companies in their Comments that the utility can install baseload measures such as lighting, refrigerator testing and replacement, smart power strips, and water heating measures even if the specific safety issues cannot be remediated. *See NOPR Order* at 71.

The proposed deferral regulations state that “if deferral is necessary, the public utility shall inform the customer in writing and describe the conditions that must be met for program services to be installed.” Annex A, 52 Pa. Code § 58.12(c)(1). The proposed regulation, however, does not

include a timeframe for the written notice. Michigan, for example, uses a timeframe of five working days.²⁰ Michigan also has a requirement that the requirements for rectifying the deferral must be reasonable and appropriate for the severity of the situation being addressed.²¹ A timeframe for the writing should be included in the regulation and that a standard of reasonableness and appropriateness be incorporated into the regulations.

The Commission's proposed amended regulations also provide that the public utility may defer the dwelling due to health, safety, and structural issues. Annex A, 52 Pa. Code § 58.12(c). The OCA submits that the regulations should make clear that a temporary deferral policy does not mean that assistance can never be provided. Services should only be postponed until such time as the problems can be resolved and/or other sources of help are found. The customer should also be able to qualify for full weatherization services if any baseload measures are used.

N. Proposed Section 58.13

1. Energy education

The Commission's proposed Section 58.13 includes amendments to the energy conservation education. Annex A, 52 Pa. Code § 58.13. The OCA strongly supports energy education measures. However, the proposed amendments do not include energy education for customers with LEP, and the OCA submits that the Commission should incorporate into Section 58.13 energy education regulations the LEP provisions recommendations discussed in the Section 58.9 regarding LIURP outreach. For LIURP to be successful, education is a crucial component. That education should be presented to the customer in the language that the customer is most

²⁰ See Michigan Community Service Policy Manual 600 Series DOE Policy July 1, 2023 (Deferral Policy Item 609) https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Doing-Business-with-MDHHS/Weatherization-Contractors/CSPM_600_Series_215133_7.pdf?rev=b0871f5307344fea9be82efec98f1527&hash=F718BAD4AF2C2CC8F2E4106CD82368CB

²¹ *Id.*

comfortable using. Thus, the OCA incorporates by reference by the Comments made above in Section 58.9 regarding the importance of language access.

2. Proposed Section 58.13a

The Proposed Section 58.13a is designed to “provide direction regarding the development and evaluation of LIURP pilot programs.” *NOPR Order* at 77. The OCA does not have any comments regarding the Commission’s proposed addition of 58.13a regarding the development and evaluation of pilot programs. See 52 Pa. Code 58.14a. The OCA reserves the right to review other parties’ comments on this issue and to respond accordingly.

O. Proposed Section 58.14

1. Section 58.14

Section 58.14 addresses program measure installations. The OCA recommends that Section 58.14 be amended to both address program measures for cooling needs and to address water heaters. To address cooling and water heating needs effectively, the OCA recommends that the Commission consider amendments to allow for greater inter-utility coordination and to allow for cost sharing.

For cooling needs, the OCA recommended in its 2016 Comments that LIURP be modified to allow for a multi-fuel, whole house approach. OCA 2016 Comments at 30. The installation of heat pumps as a measure could be used to address both cooling and heating needs in homes with natural gas. Fuel switching should be considered if the installation of a ductless mini-split or another intervention may lead to heating and cooling that will reduce inefficient summer air conditioning load from window units. Such a review may help to reduce customer arrears overall even if not tied to winter space heating. The OCA continues to recommend that cooling needs be more specifically addressed in the regulations.

Section 58.14(a)(2) addresses the installation of control devices on water heaters; installation, repair or replacement of water heater insulation and pipe insulation; and installation of devices reducing the flow of hot water. Annex A, 52 Pa. Code §58.14(a)(2). The program measures do not include the installation of a new water heater or repair of a water heater. The OCA proposes that the Commission consider including the cost of water heaters as a potential cost sharing between energy utilities and water utilities by considering a cost sharing mechanism. For example, if a gas utility sees that a gas fired water heater needs to be replaced, they can split the costs with the water company if the water company is under the Commission's jurisdiction. If the water company is not under the Commission's jurisdiction, the energy company could still reach out to see if a cooperative agreement could be made. Similarly, every water customer is going to have an electric utility, and the water repairs should be incorporated into baseload measures.

2. Proposed Section 58.14a: Quality Control

The OCA does not have any comments regarding the Commission's proposed addition of 58.14a regarding quality control. See 52 Pa. Code 58.14a. The OCA reserves the right to review other parties' comments on this issue and to respond accordingly.

3. Proposed Section 58.14b: Use of an ESP for program services

The OCA does not have any comments regarding the Commission's proposed amendments of 58.14b regarding the use of an ESP for program services. See 52 Pa. Code 58.14b. The OCA reserves the right to review other parties' comments on this issue and to respond accordingly.

4. Proposed Section 58.14c. Inter-utility coordination

The Commission proposes a new section, Section 58.14c, of the LIURP regulations to encourage inter-utility coordination. *See* Annex A, 52 Pa. Code § 58.14c. Section 58.14c(a) provides that a “public utility shall pursue coordination of its program-related services, trainings, outreach and resources with other public utilities LIURPs and with other energy assistance programs.” *See* Annex A, 52 Pa. Code 58.14c(a). The regulation does not reference water and wastewater assistance programs.

As discussed regarding Section 58.7 above, the OCA strongly supports the use of an integrated whole house approach. The Commission should also consider the integration of water and wastewater affordability programs as well as energy programs. Since the *2016 Secretarial Letter* comments, water and wastewater affordability programs have continued to evolve and develop. Several of the water and wastewater programs include conservation elements, and to the extent possible, those conservation elements should be coordinated as they are for electric and natural gas programs.

As the OCA previously noted in its Comments, the OCA’s proposals were designed to encourage further coordination and to help to eliminate some of the administrative barriers to coordination of service. Increased coordination can also help to ease the burden on the low-income customer because the low-income customer would only need to make him or herself available on one day for all treatments. This may help to also increase low-income customer participation in the programs because it will minimize the level of inconvenience for the customer. *See* OCA Reply Comments at 4-6.

P. LIURP Reporting and Evaluation (Section 58.15)

The Commission proposes to amend Section 58.15 regarding LIURP reporting and evaluation. Annex A, 52 Pa. Code § 58.15. The OCA supports the proposed reporting and evaluation measures. The OCA recommends that in addition to the reporting elements identified in Section 58.15 that the Commission also include zip code level reporting. Zip code level information can provide greater detail about the areas of LIURP penetration. In particular, the zip code level data can help to identify areas that maybe under-served in terms of number of jobs delivered and the amount of dollars spent. In order to evaluate, the OCA recommends that the Commission include in the regulation zip code level data report of at least the following: (1) number of LIURP jobs; (2) number of walk-aways due to health and safety; (3) number of walk-aways due to housing conditions; (4) the measures installed; (5) the spending (in dollars); (6) the bill savings (in units of energy, kWh, CCF); and (7) bill reductions (in dollars).

The OCA also recommends that the Commission should incorporate outcome metrics into its reporting and evaluations. To effectively evaluate programs, it is important to understand the outcomes of LIURP, rather than simply the activities completed. It is important for outcomes to be reviewed for both CAP and LIURP. The OCA recommends that the Commission establish an outcome reporting working group for both LIURP and CAP to deliberate and by a date certain, to report to the Commission regarding a proposed set of outcome reporting metrics to be incorporated into the regulations.

Q. LIURP Advisory Committee (Section 58.16)

The Commission proposes the following regulation:

- (a) [**Creation.**] A [**covered**] **public** utility shall create and maintain a [**Usage Reduction Program Advisory Panel to provide consultation and advice to the company regarding usage reduction services**] **LIURP advisory**

committee or a USAC that meets at least semiannually with stakeholders to consult on program services.

(b) [*Membership*] *Committee participants.* [No more than one representative from an organization or group may serve on a company's advisory panel. **Membership] Participants of a public utility's [consumer advisory panel] **LIURP advisory committee or USAC** may include:**

(1) Recipients of program measures and representatives from social service agencies, from community groups and from agencies or companies which administer or install program measures.

(2) Representatives from other groups or agencies which may be able to offer reasonable advice regarding [usage reduction programs and] program services.

(c) [*Review.* The advisory panel shall be provided with usage reduction program plans and proposed changes at least 15 days prior to the submission of plans for approval by the Commission. The panel shall report comments and exceptions to plans to the covered utility which shall provide the reports to the Commission in conjunction with the submission of the proposed plan.] (Reserved).

(d) [*Creation of additional advisory panels.* A covered utility may create more than one advisory panel when the size of the service territory or other considerations warrant.] (Reserved).

(e) [*Existing advisory panels.* A covered utility may use an existing customer advisory panel to satisfy this section when the membership of the panel can reasonably be expected to provide effective consultation and advice regarding usage reduction programs.] (Reserved).

Annex A, 52 Pa. Code § 58.16(a). The OCA supports the Commission's proposed modifications to Section 58.16 regarding the proposed LIURP advisory committee or a Universal Service Advisory Committee (USAC). *See* Annex A, 52 Pa. Code § 58.16(a). The OCA agrees with the importance of a LIURP advisory committee or USAC to discuss program implementation issues and to monitor, at a minimum, the semiannual progress on program services. As the OCA noted in its Comments to the *2016 Secretarial Letter*, the stakeholder group would provide a valuable opportunity for the stakeholders to share their experiences and insights into how the LIURP is operating. The OCA also agrees with the proposed diversity of membership set forth in Section 58.16(b).

The OCA recommends that the LIURP Advisory Committee should be a subcommittee of the utility's Universal Services Advisory Committee. It is an important element of the universal services programs. A utility does not need to create a new separate advisory committee, but the OCA recommends that the utility should have specific calls and meetings that are designed for the exclusive purpose of discussing LIURP which may incorporate more community-based organization than those that attend the USAC, but that falls within the scope of the USAC itself.

The OCA reserves the right to review other parties' comments on this issue and to respond accordingly.

R. Proposed Section 58.17

The Commission's proposed revisions to Section 58.17 provides:

A [covered] public utility [may not] shall [implement a required usage reduction program, nor subsequently significantly] establish or subsequently modify [a program] its program services and LIURP budget through a USECP proceeding [approved under this chapter until the utility has received Commission approval for the proposal].

Annex A, 52 Pa. Code § 58.17.

The OCA discussed its concerns with the Commission's proposed regulations about modifications to the LIURP budgets being limited to the USECP process. Section D, *supra* (regarding Section 58.4). The OCA recommends that the Commission establish an adjudicatory process for USECP proceedings akin to what is done with Act 129 or Default Service Proceedings. In addition, the OCA submits that the Commission cannot preclude programmatic or cost recovery, or budgetary modifications to universal service programs, including LIURP, from being addressed in base rate proceedings as LIURP costs are a part of the tariffed rates for a utility, and issues related to tariffed rates cannot be barred from consideration as a part of a base rate proceeding. All aspects of the utility's tariff must be permitted to be reviewed as a part of base rate proceedings.

Moreover, as discussed above, USECP proceedings do not offer the same procedural opportunities for an on-the-record review of the utility's LIURP. The OCA incorporates by reference its concerns identified above. The OCA recommends that those modifications be incorporated into the Commission's process modifications to LIURP.

S. Proposed Section 58.18

The Commission's proposed Section 58.18 provides:

A [covered] public utility alleging special circumstances may petition the Commission through a USECP proceeding to waive [exempt its required usage reduction program from] a provision in this chapter, under 52 Pa. Code § 1.91 (relating to applications for formal requirements).

Annex A, 52 Pa. Code § 58.18. The OCA generally does not support the need for exemptions or waivers as a matter of course; however, the OCA understands that the possibility for a request may arise as contemplated by the proposed amended provision. *See* Annex A, 52 Pa. Code § 58.18. The OCA recommends that the regulation be modified to identify that any requests for waivers or exemptions should be reviewed as a part of the USECP review process that will, if the OCA's suggestions are adopted, become adjudicatory, and all stakeholders in the process should have the opportunity to review the proposal and ask questions regarding the need for the proposed waiver or exemption. The OCA reserves the right to review other parties' comments on this issue and to respond accordingly.

T. Proposed Section 58.19

The OCA does not have any specific comments regarding the Commission's proposed modifications to Section 58.19 regarding temporary suspension of program services. *See* Annex A, 52 Pa. Code §58.17. The OCA does note that the Commission should add to the regulation that all parties to the USECP process should be notified at the same time as the Commission, and there should be the opportunity to ask questions about the reasons for the temporary suspension.

U. Additional Questions

The Commission poses five additional questions for comment in the NOPR:

Question A. Has LIURP proven to be an effective means to help customers with extremely high arrearage balances (e.g., \$10,000 or more) maintain utility service and pay down this debt?

The OCA does not have the data necessary to respond to this question which is generally within the control of the utilities. The OCA reserves the right to reply to other parties' responses in its reply comments.

Question B: Would offering LIURP to customers with high utility account balances and unusually high monthly average bills result in a decrease in the cost of collection efforts and a decrease in uncollectible write-offs? If so, what eligibility criteria may apply?

The OCA does not have the data necessary to respond to this question. The OCA submits that providing comprehensive weatherization services should reduce prospective arrears for households to the extent that it makes bills more affordable. This is complicated because usage reduction services only work if coordinated with utility rate design. Among the reasons why the OCA supports increasing the income eligibility thresholds to 200% of poverty and up to 300% for special needs households is to provide these households with the ability to reduce future arrears through energy conservation. Of course, energy conservation that reduces bills would do nothing per se to reduce arrears, but it should reduce future bills such that a household would have additional funds needed to contribute to a payment arrangement that would reduce any accrued arrears. The OCA looks forward to seeing what other parties suggest and reserves the right to reply to other parties' responses in its reply comments.

Question C: At what arrearage accumulation point or points should a public utility intervene to assist a customer reduce the household's monthly bill to make the bills more affordable before the customer accumulates a balance of \$10,000 or

greater? What criteria could the public utility use to identify customers who could benefit from LIURP treatment to minimize extremely high balances (e.g., amount of arrearage accumulating, age of housing and ability to provide conservation treatment, amount of average monthly bill compared to ability to pay, history of good faith payments, and the like)? Should the accumulation point be based on household income level or FPIG level or FPIG tier? What should the point or points be?

The OCA does not have the data necessary to respond to the first part of the question related to the arrearage accumulation point of intervention. The OCA reserves the right to reply to other parties' responses in its reply comments.

Regarding what criteria a public utility should use to identify customers who could benefit from LIURP treatment, the OCA notes that customers with bills that get high may be high for factors other than high usage, such as an energy supply contract with a price higher than the utility's Price to Compare. The OCA recommends that utilities should be using all of the information at their disposal to provide assistance to consumers including making recommendations to customers about the costs they are paying for commodity supply coupled with usage reduction. Furthermore, electric utilities may have baseload customers that see usage that is more akin to heating because of the use of space heaters and should reach out to the consumer to address if there are de facto space heating issues before the bills get higher than can be paid. The OCA also notes, as it did in its comments to Section 58.11a, that fuel switching should also be considered if the installation of a ductless mini-split or another intervention may lead to heating and cooling that will reduce inefficient summer air conditioning load from window units. Such a review may help to reduce customer arrears overall even if not tied to winter space heating.

Question D: How can coordination with other programs (e.g., Act 129) help customers with high arrearage balances who are income-eligible for LIURP?

Coordination with other programs such as Act 129 or voluntary energy efficiency programs can help income-eligible customers with high arrearage balances by providing additional resources

to further reduce customers' energy bills and consumption. For customers with high arrearage balances, energy efficiency measures can help to reduce going-forward bills so that the customer bills do not further increase. Act 129 or voluntary energy efficiency programs may offer additional measures that do not meet the current LIURP requirements and the coordination of these energy efficiency resources can help to better leverage energy efficiency measures. Coordination of the program benefits can help customers better manage energy usage and reduce going-forward bills.

Both *intra*-utility coordination of Act 129 and LIURP programs and *inter*-utility coordination of programs can benefit customers with high arrearage balances.²² For example, a gas utility's voluntary energy efficiency program may offer a programmable thermostat as a part of their program that would benefit both the electric and natural gas LIURP-eligible customers. That programmable thermostat could help the income-eligible customer to better utilize energy in accordance with their needs. A programmable thermostat would allow a customer greater control over the energy usage to maximize the ability to maintain comfort and to utilize energy when needed.

Overall, coordination of programs maximizes available resources for customers. If a customer's bills can be reduced, that will free up resources to potentially address outstanding arrearages and to decrease further increases to customer energy arrearages.

Question E: What other avenues should be considered, in combination with or separate from LIURP, to help public utility customers maintain service if they have arrearage balances near or exceeding \$10,000? What programs exist or could be recommended to address the existing arrearage for customers income-eligible for CAPs so as not to burden ratepayers with write-offs of accumulated arrearages in the future?

NOPR Order at 97-98.

²² As discussed above regarding inter-utility coordination, the coordination should include water and wastewater affordability programs.

Additional avenues could be considered separate from LIURP to help customers with arrearage balances near or exceeding \$10,000. CAP customers could be provided with the opportunity to receive additional arrearage forgiveness. The utilities generally only provide one opportunity for arrearage forgiveness for CAP customers regardless of the size of the balance forgiven or whether the customer has re-enrolled in CAP. If a customer had a small balance that was previously forgiven, leaves CAP and later returns to CAP with a much larger balance, that CAP-eligible customer would not be able to receive arrearage forgiveness on the balance. This policy means that although the asked-to-pay amount under the CAP may be affordable, the customer would still have a significant amount for a payment arrangement. For example, if the customer had a \$10,000 balance and a 60-month payment arrangement, the customer would owe \$166.67 each month for five years in addition to their monthly energy bill. For a three-person household with an income of \$2000 (100% of the FPIG), the payment arrangement alone would be 11.9% of their income, well over the CAP Policy Statement's affordability guidelines.

The Commission should also consider ways to also better leverage Hardship Fund dollars and LIHEAP dollars to assist low-income customers with reducing balances. The current levels of Hardship Fund dollar grants and LIHEAP dollars often are not sufficient to reduce a \$10,000 arrearage balance. The Commission could consider whether a portion of overall Hardship Fund dollars could be increased and targeted towards low-income customers to address customers with large balances who otherwise may not be able to access sufficient resources to allow for restoration of services. The Commission could also consider how to leverage payment arrangements as well.

V. Additional OCA Proposals

1. Mechanism to Track Carrying Costs

The Commission should also consider the addition of a LIURP regulation to address

the implementation of a mechanism to track carrying costs. The OCA's position is that LIURP regulations should, in addition to the substantive issues outlined in the regulations, more fully seek to evaluate and consider the impacts of LIURP services on a reduction of the costs of a utility's CAP program and its overall uncollectible expense. *2016 OCA Comments* 20-21. At present, the OCA is not aware of any utility having developed a method of assessing the impact of reduced arrearages on "carrying costs"²³ which should be reduced when arrearages are reduced incrementally (i.e., as arrearages are reduced) not simply when an arrearage is reduced to \$0. Reductions to carrying costs will occur when either one (or both) of two things happen: (1) the level of arrearages is reduced (e.g., a \$150 arrearage has fewer carrying costs than a \$250 arrearage); or (2) the age of arrearages is reduced (e.g., a 60-day arrearage has fewer carrying costs than a 120-day arrearage).

Thus, the Commission should consider amending its LIURP regulations to reflect the changes in the way that cost-effectiveness for energy efficiency programs is calculated since the Commission's original regulations were implemented in 1998. The OCA submits that the LIURP regulations should be modified both: (1) to more directly recognize the objective of helping to control the costs of CAP Credits chargeable to non-participants; (2) should require utilities to propose a mechanism in their plans to provide an accounting for the value of the reduced CAP Credits in an analysis of the cost-effectiveness of the programs themselves; and (3) to more directly recognize the reduction in utility operating costs as arrearages are reduced.²⁴

²³ The simplest definition of "carrying costs" is that the expenses that a utility has to incur for managing and holding accounts receivable that go unpaid for a period of time. This would include interest expense, collection costs, bad debt expense and the like.

²⁴ The Commission should either direct a uniform methodology for calculating carrying costs itself after consultation with stakeholders through comments or a working group and/or should require each utility to describe its methodology in its USECP.

2. Retreatment of Homes

The Commission’s proposed regulations do not fully address the circumstances for potential retreatment of homes. The OCA recommends that the Commission consider including a regulation regarding when a home may be retreated once the home has already received LIURP measures. In particular, the OCA recommends that if a customer has only received baseload treatment and has not received “full weatherization” that there should be no barrier to full weatherization at any point in the future that the household becomes eligible for full weatherization. The home may have only received limited measures due to an underlying health and safety issue with the home or because of the failure to receive landlord consent for full weatherization. To the extent that the barrier to full weatherization is removed, the home should be eligible for LIURP services and not have to wait a period of years to receive LIURP services. In addition, the OCA recommends that there should be the opportunity to have the home retreated if circumstances dictate that retreatment would be cost effective. For example, FirstEnergy indicated in its recent 2024-2028 USECP filing that the Companies will not require a stay-out of seven years if certain conditions are met. *Joint 2024-2028 USECP of FirstEnergy Companies for Years 2024-2028*, Docket No. M-2022-3036532, Plan at 21 (Nov. 1, 2022)(*FirstEnergy 2024-2028 USECP Plan*).²⁵ The Commission should establish a timeframe for treatment after full weatherization and the OCA would support a period of seven years as suggested by First Energy.

Thus, the OCA recommends that the Commission incorporate the standards for retreatment of homes into the Commission’s regulations and that as discussed in Section 58.2 above, a definition of “fully weatherized” be added to the Commission’s definition section.

²⁵ The Plan is currently pending before the Commission.

3. Requirement for LIURP Participation

Several utilities have recently proposed to include a provision in its USECP that would require customers to participate in LIURP in order to remain in CAP. *See FirstEnergy 2024-2028 USECP Plan* at 20; *Philadelphia Gas Works Universal Service and Energy Conservation Plan 2023-2027*, Docket No. M-2021-3029323, Plan at 7 (Oct. 29, 2021) (*PGW 2023-2027 USECP Plan*). The OCA does not agree that LIURP should be required to participate in CAP. The Commission's regulations should make clear that LIURP is recommended and encouraged, but not required for participation in a utility's CAP.

While it is important for customers to have the ability to participate in LIURP and that customers should be encouraged to participate, some individuals may have legitimate reasons for objecting to someone coming into the home to perform weatherization that may not fall within a utility's exemptions. There are a myriad number of reasons why a customer may otherwise not want to participate in LIURP, and CAP participants should not be financially harmed by being removed from CAP for those reasons alone. Just as customers are not required to participate in CAP to qualify for LIURP, they should not be required to participate in LIURP to qualify for CAP.

The OCA recommends that the Commission's regulations specifically identify that LIURP participation is not required for CAP enrollment.

W. Conclusion

For the reasons set forth above, the OCA supports many of the changes that the Commission proposed but has suggested necessary improvements and modifications to certain of the proposed LIURP regulations. The OCA appreciates the opportunity to provide Comments on the Commission's Notice of Proposed Rulemaking. The OCA looks forward to reviewing other

stakeholders' comments and reserves the right to respond to any issues raised in other stakeholders' comments in the OCA's Reply Comments.

III. CONCLUSION

In conclusion, the Office of Consumer Advocate appreciates the opportunity to provide Comments regarding the Commission's proposed LIURP rulemaking.

Respectfully Submitted,

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APPENDIX A
OCA's Proposed Changes to LIURP Regulations

OCA's Proposed Changes to LIURP Regulations

§ 58.2

Eligible customer - A [low income or special needs customer who is a residential space heating customer, or a residential water heating customer, or a residential high use electric baseload customer of a covered utility] **space-heating, water- heating, or electric baseload low-income or special needs residential customer or a high-use customer who uses an intermittent heating or cooling source who meets the usage threshold or other criteria for a public utility's LIURP, as specified in its USECP**

Energy savings- *an amount of saved energy determined by measuring and/or estimating consumption before and after implementation of an energy efficiency improvement measure while also ensuring normalization for external conditions that affect energy consumption.*

Energy conservation- *to reduce or manage energy consumption in a cost-effective and efficient manner.*

Full weatherization- *the installation of weatherization measures, with the exclusion of the replacement or repair of heating systems, that would result in a minimum of 15% savings from installed measures. All weatherization measures should meet established standard work specifications which are nationally approved for use in the home energy professional field. Full weatherization should be available every seven years, and more frequently if there have been significant changes to the dwelling that would impact the efficacy of the weatherization completed.*

Health and safety measure—A program measure or repair necessary to maintain and protect the physical well-being and comfort of an occupant of a dwelling [*or an ESP, or both.*]

LIURP budget- [t]he expected cost of providing program services in a given program year [, *as approved in a USECP proceeding*].

LIURP costs- *the amount of LIURP funds spent from the LIURP budget to complete LIURP jobs each year.*

Low-income customer- A residential **public** utility customer [with] whose annual gross household income is at or below [150%] **200%** of the [**Federal poverty guidelines**] FPIG.

Special needs customer—A customer [having an arrearage with the covered utility and] whose household income is [at or below] between 151% and [200%] **300%** of the [**Federal poverty guidelines**] FPIG with *prioritization* for one or more household members who meet any of the following criteria:

- Are age 62 and over or age five and under.
- Need medical equipment.
- Have a disability.

- Are under a protection from abuse order.
- Are otherwise defined as a special needs customer under the public utility's approved USECP.

USECP proceeding—A Commission proceeding to review a proposed public utility USECP or a petition proposing to add or amend provisions within an existing USECP. *In the interim between USECP proceedings, a utility or interested stakeholder may petition to add or amend provisions of a LIURP budget or programs either in a USECP proceeding or base rate proceeding.*

§ 58.4. [Program funding] LIURP budgets.

(a.1) *General.* A public utility shall propose annual LIURP budgets for the term of a proposed USECP that is filed with the Commission for review and approval. Upon approval of the USECP by the Commission, the public utility shall continue providing program services at the budget level approved in the USECP unless the LIURP budget is revised in a future [USECP] proceeding.

(c) [*Guidelines for revising program funding*] *Revisions to a LIURP budget.* [A revision to a LIURP budget is accomplished in a USECP proceeding.] A revision to a [covered] public utility's [program funding level is to] LIURP budget must be [computed] based upon factors [listed in this section. These factors are] including the following:

[(4)] (8) A plan for providing program services to eligible customers *within a fifteen-year [reasonable period of time] proposed timeline*, with consideration given to [the contractor] ESP capacity necessary for provision of services, **including time and materials**, and the impact on utility rates, *including the impact of base rates and other rate/cost factors such as a commodity cost increase and other rate increases such as riders.*

(9) *the type of housing stock;*

(10) *average age of housing stock;*

(11) *number of customers who directly pay their utility bills (to distinguish master-metered versus individually metered customers);*

(12) *type of heating fuel used by the customer;*

(13) *housing units occupied by low-income households;*

(14) *housing units that have not been previously treated with LIURP (or other usage reduction program) services in a period longer than that which would not preclude re-treatment; and*

(15) *timeline for completion.*

(d) *The needs assessment shall be utilized to directly link the individual needs of the service territory for the public utility., the needs assessment, the established LIURP budget, and the number of units treated each year. The identified factors should directly tie the budget level to the needs of the service territory, and any revisions to the budget should reflect changes to the needs in the service territory.*

[(d)](e) [Pilot programs. Covered utilities are encouraged to propose pilot programs for the development and evaluation of conservation education and other innovative technologies for achieving the purposes of residential low income usage reduction.]

(Reserved).

[(d.1)](e.1) Unspent LIURP funds. A public utility shall annually reallocate unspent LIURP funds to the LIURP budget for the following program year unless an alternate use is approved by the Commission in a USECP proceeding. Any rolled over dollars shall not supplant the dollars available for the next program year. The rolled over dollars shall supplement the existing LIURP budget dollars.

[(e)](f) Recovery of LIURP costs.

(1) **[Program expenses shall] LIURP costs must be allotted among ratepayers. [The precise method of allocation between capital and expense accounts shall be determined in future rate proceedings.]**

(2) Recovery of **[program expenses] LIURP costs [shall] will** be subject to Commission review of the prudence and effectiveness of a **public utility's** administration of its **[low income residential usage reduction program] LIURP.**

(3) **The LIURP funding mechanism and the allocation between capital and expense accounts must be determined in a public utility's rate proceeding.**

§ 58.7. Integration.

(b) **[Mandatory usage reduction programs] A LIURP [shall] must** be designed to operate in conjunction with the **[covered] public utility's [consumer services and collection] other universal service programs as defined in § 58.2 (relating to definitions) and [relevant public or private programs so that customers experiencing ability-to-pay problems are made aware of the covered utility's usage reduction program and hardship funds] other relevant public or private programs that provide energy assistance or similar assistance, including but not limited to water and wastewater affordability programs, to the community.** The **[covered] public utility shall provide direct assistance [to low income usage reduction program] or arrange third-party assistance for LIURP participants [in making application to the Low Income Home Energy Assistance Program] applying for LIHEAP as defined in § 58.2 (relating to definitions) and other energy assistance or water or wastewater affordability programs, based on income-eligibility.**

§58.8 Tenant household eligibility

§58.8(b)

(b) *Landlord contributions.* A **[covered] public utility may seek [voluntary] landlord contributions. [as long as the] The lack of landlord contributions [do] [may] shall not [prevent] prohibit** an eligible **[customer] tenant household** from receiving program services. **[Contributions] Voluntary contributions from landlords [shall] must** be used by the **public utility [as supplemental] to supplement its approved [Residential Low Income Usage**

Program] LIURP budget. The public utility shall document the conditions relative to the use of a voluntary contribution in writing.

§58.8(c)

(c) *Optional public utility requirement.* A public utility [may] shall require a landlord to agree that rent will not be raised unless the increase is related to matters other than the installation of the program measures or that the tenant household will not be evicted for a stated period of time after the installation of the program measures unless the tenant household fails to comply with ongoing obligations and responsibilities owed the landlord.

§58.9 LIURP outreach.

(a) [A covered utility shall provide notice of program activities as follows:] A public utility shall, at least annually, review its customer records to identify customers who appear to be eligible for LIURP and provide a targeted communication with a description of program services and eligibility rules to each customer identified through this procedure so as to solicit applications for consideration of program services. A copy of this notice must also be sent to publicly and privately funded agencies which assist low-income customers within the public utility's service territory. A public utility shall also consider providing public service announcements regarding its LIURP in media outlet sources, such as print, broadcast and social media platforms. The public utility shall additionally advertise its LIURP in a language other than English when census data indicate that a *substantial number* [5% or more] of the *customers* [residents] of the public utility's [service territory] *geographic areas* are using the other language.

(c) *Language access for outreach shall include oral interpretation and written translation. Written and oral communications shall be made available in the customer's native language. Language access should also be provided through all communication channels used by the public utility, including but not limited to, its Call Center and the ESPs.*

§ 58.10. [Program announcement.] Prioritization of program services.

(a) [Priority for receipt of program services shall be determined as follows:] A public utility shall prioritize the offering of program services to eligible customers in the following order:

(2) Among customers with the same standing with respect to paragraph (1), [those with the greatest arrearages shall receive services first. When feasible,] priority should be given to [customers with the largest arrearage relative to their income; for example, arrearage as a percentage of income] customers in the following sequence:

(i) Customers in CAP with the largest pre-program and in-program arrearage as a percentage of their household income. *Customers' pre-program and in-program arrearages should be prioritized by customers with similar usage levels. Within that group, high usage customers should be prioritized first and then prioritized within the group of high usage customers by specific usage ranges for prioritization.*

(ii) Non-CAP customers with the largest arrearage as a percentage of household income. *Customers' arrearages should be prioritized by customers with similar usage levels. Within that group, high usage customers should be prioritized first and then prioritized within the group of high usage customers by specific usage ranges for prioritization.*

(iii) *Special needs customers shall be prioritized using the identified factors for prioritization identified in the definition for special needs customers in Section 58.2.*

(3) Among the customers with the same standing with respect to paragraph (2), those with incomes [which place them farthest below the maximum eligibility level] at the lowest FPIG level shall [receive] be offered program services first.

(e) A public utility's CAP customers shall automatically be eligible for LIURP without further application.

(f) A public utility's CAP participants shall be notified about LIURP when the CAP participant is close to the CAP credit ceiling.

[e] (g) A public utility shall document its prioritization protocols in its USECP.

§ 58.11a. Fuel switching.

(a) LIURP funds may be used for program measures that involve fuel switching between electric and natural gas under either of the following conditions:

(2) If the primary heating source provided by another public utility is determined to be inoperable or unrepairable or if the cost to repair would exceed the cost of replacement and [both public utilities agree in writing] *the customer agrees* that fuel switching is appropriate.

§ 58.12. Incidental repairs and health and safety measures

(a) *Criteria and services.* A public utility shall identify in its USECP the criteria used for performing incidental repairs and health and safety measures.

(1) *Incidental repairs.* Expenditures on program measures may include incidental repairs to the dwelling needed to make those program measures operate effectively. *The incidental repairs may include, but should not be limited to, baseload measures such as lighting, refrigerator testing and replacement, smart power strips, and water heating measures even if the specific safety issues cannot be remediated.*

(2) *Health and safety measures.* These measures may include *pest removal*, installing smoke alarms or carbon monoxide detectors, performing combustion testing and identifying and remediating potential hazards such as knob and tube wiring, mold, asbestos and moisture.

(c) *Deferral.* A public utility may defer a dwelling due to health, safety and structural problems that either do not meet the criteria or exceed the maximum budget allowances for

incidental repairs or health and safety measures. *The requirements for rectifying the deferral must be reasonable and appropriate for the severity of the situation being addressed.*

(1) If deferral is necessary, the public utility shall inform the customer in writing *within five days* and describe the conditions that must be met for program services to be installed.

§ 58.13. [Usage reduction] Energy conservation education.

(a) *Applicability.* A [covered] public utility shall provide [usage reduction] energy conservation education services to [program] LIURP recipients so that maximum energy savings can be derived from the installation of program measures and through the modification of energy-related behavior including water consumption. [Usage reduction] Energy conservation education should also address regular utility bill payment behavior and the [covered] public utility shall provide direct assistance to [low income usage reduction program recipients] each customer who receives program services in making application to secure available energy assistance funds. *The energy conservation education shall be consistent with the requirements set forth for outreach, including language accessibility, as set forth in Section 58.9 regarding LIURP outreach.*

§ 58.14. Program measure installation.

(a) [*Installation.*] Based on the results of the energy [survey] audit conducted under § 58.11 (relating to energy [survey] audit), a [covered] public utility shall install or arrange for the installation of [the following] applicable program measures designed to reduce [energy] utility bills, usage or demand for [space heating] space-heating, [water heating] water-heating, *cooling* and baseload end uses which may include the following:

(2) For residential [water heating] water-heating customers, program measures may include [the installation of control devices on water heaters or other major appliances, rewiring to permit billing on a time of day or other off-peak rate schedule, the installation of water heater and pipe insulation and devices reducing the flow of hot water in showers, faucets or other equipment.] any of the following:

(iv) *Installation of a new water heater or repair of an existing water heater.*

(b) [*Quality control.* A covered utility shall establish effective quality control guidelines and procedures for the installation of program measures. When a contractor is utilized, the covered utility shall schedule post-installation inspections and require a warranty covering workmanship.] (Reserved).

(c) [*Inter-utility coordination.* Customers of covered gas utilities and covered electric utilities shall have coordinated provision of comprehensive program services.

(4) A covered utility may choose to absorb in its program budget the labor and materials cost for the water heating treatments they provide under this section. An electric utility choosing not to absorb the costs may choose to bill the covered gas utility for the electric utility's cost of providing gas water heating treatments. Similarly, a gas utility choosing not to absorb the

costs may choose to bill the covered electric utility for the gas utility's cost of providing electric water heater treatments. *The covered utility may also choose to share the cost of a water heater with the applicable regulated water public utility by a cost sharing mechanism.* Inter-utility billing arrangements shall be stated in a contract between the two utilities which specifies costs to be covered and measures to be installed.

§ 58.14c. Inter-utility coordination.

(a) A public utility shall pursue coordination of its program-related services, trainings, outreach and resources with other public utilities LIURPs, [and] with other energy assistance programs, and with water and wastewater affordability programs.

§ 58.15. [Program] LIURP reporting and evaluation.

A public utility shall be responsible for the ongoing reporting and evaluation of its LIURP, including compiling and reporting information requested by the Commission on an annual basis. At a minimum, the following data and analyses regarding its LIURP must be provided:

(3) Statistical data on LIURP jobs completed in the preceding program year by April 30, including:

(vii) Zip code level data of the following:

- (1) number of LIURP jobs;*
- (2) number of walk-aways due to health and safety;*
- (3) number of walk-aways due to housing conditions;*
- (4) the measures installed;*
- (5) the spending (in dollars);*
- (6) the bill savings (in units of energy, kWh, CCF); and*
- (7) bill reductions (in dollars).*

§58.17

A [covered] public utility [may not] shall [implement a required usage reduction program, nor subsequently significantly] establish or subsequently modify [a program] its program services. *[and LIURP budget through a USECP proceeding]* [approved under this chapter until the utility has received Commission approval for the proposal].

OCA Proposed Additional Regulations

Carrying Costs

The public utility shall develop a mechanism by which carrying costs for LIURP are tracked. The public utility shall track the impact of LIURP services on a reduction of the costs of a utility's CAP program and its overall collectible expense. The tracking shall include how the level of arrears are reduced and how the age of the arrears are reduced. The public utility shall report the tracking as a part of its USECP and as a part of its April 1 reporting for 52 Pa. Code §§ 54.75 and 62.5.

Retreatment of homes

Homes may be retreated after a period of seven years. Homes that have been previously treated by LIURP may be retreated by a public utility prior to seven years under the following circumstances:

- (1) If the customer previously only received baseload treatment and has not receive full weatherization;
- (2) The home only received limited measures due to an underlying health and safety condition in the home or a failure to receive landlord consent for full weatherization; or
- (3) If circumstances dictate that the retreatment would be cost-effective.

LIURP Participation as a Requirement of CAP

CAP participants who refuse LIURP treatment may not be removed from CAP due to the refusal to accept LIURP treatment.