



BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Rulemaking to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1 – 58.18 (relating to residential low income usage reduction programs).

Docket No. L-2016-2557886

COMMENTS OF

THE TENANT UNION REPRESENTATIVE NETWORK (TURN)

INTRODUCTION

On December 2, 2023, the Pennsylvania Public Utility Commission’s (Commission or PUC) Notice of Proposed Rulemaking concerning the Commission’s Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1-58.18 was published in the Pennsylvania Bulletin.¹ The Proposed Rulemaking follows a December 16, 2016 Secretarial Letter inviting stakeholder comments on updates to the PUC’s LIURP regulations. Community Legal Services, Inc. (CLS) joined with several other non-profit organizations, submitting comments and reply comments in response to the Secretarial Letter, in a collaboration referred to as the Pennsylvania Energy Efficiency for All Coalition, or PA-EEFA.

In this proceeding, CLS, on behalf of the Tenant Union Representative Network (TURN), submits comments regarding the proposed LIURP regulations.² As set forth below, TURN recognizes several important improvements, responsive to comments of PA-EEFA and others, but nonetheless raises significant concerns about other proposals included in the Commission’s proposed regulations.

TURN generally commends the Commission for recognizing the importance of LIURP as a vital component of universal service programming in Pennsylvania. Improving the energy efficiency of low-income households not only provides direct economic benefits to these vulnerable households, but it also has the potential to materially improve participants’ quality of life by addressing health and safety issues that may be present. Comprehensive energy efficiency upgrades reduce customer assistance program (CAP) costs, save energy for economically vulnerable households, increase comfort, and routinely identify and resolve health and safety

¹ 53 Pa.B. 7506.

² Please note that all citations to LIURP regulations herein are to the proposed regulations set forth in the Annex attached to the Notice of Proposed Rulemaking.

concerns. Lower income populations are also commonly more vulnerable to both the short-term pollutants that result from electric generation and to the potential consequences of climate change, both of which are lessened by improved energy efficiency programming. The following comments, organized by subject matter, note the changes in the proposed regulations that TURN is supportive of, and raise concerns about various changes and omissions.

COMMENTS

1. The Commission’s Proposal to Permit LIURP Funds to be Utilized for Fuel Switching is Positive, but Limited by Unnecessary Requirements.

TURN supports the elimination of LIURP’s prior prohibition on fuel switching for households’ primary heating sources. However, TURN submits that the proposed rule’s requirement that “both public utilities agree in writing that fuel switching is appropriate” undermines the effectiveness of this change.³ Indeed, in TURN’s experience, households that require fuel switching for primary heating sources have typically ceased utilizing the fuel associated with the broken heater (typically natural gas). Obtaining written consent from a utility that is not currently providing service should not be necessary. Moreover, a utility that simply fails to respond to a request for written consent would impede the replacement, unnecessarily leaving a household without heat when another utility stands ready to provide it.

This limitation on fuel switching impedes inter-utility coordination, risks decreasing energy savings, and may prevent LIURP from providing the best solution for the household. The appropriateness of fuel switching should be based on the needs of the customer, the cost effectiveness of the repair or replacement, and a fuel-neutral evaluation of the potential for energy savings, not on a case-by-case agreement between utility companies based on the

³ 52 Pa. Code §58.11a(a)(2).

unspecified criterion of “appropriateness.” If approving a situation as appropriate for fuel switching is left up to the agreement of both public utilities, it would be easy for a public utility to simply refuse fuel switching in all instances, without needing to provide an explanation, leaving families without safe and efficient home heating.

2. The Proposed Regulation Appropriately Endeavors to Coordinate LIURP with CAP, Without Requiring Customers to be on CAP.

TURN supports the Commission’s effort to encourage but not require CAP enrollment for CAP-eligible customers receiving LIURP services.⁴ Low-income customers should not be excluded from LIURP, and unable to attain potential energy savings, simply because they are not enrolled in CAP. Moreover, as discussed in response to the Commission’s additional questions, below, TURN submits that receipt of LIURP services should, as a matter of sound policy, entitle the customer to a fresh start in CAP, including a new opportunity to earn arrearage forgiveness, or an affordable monthly payment agreement if income-ineligible for CAP. Customers who have defaulted on CAP or prior payment agreements due to unaffordable utility services should not continue to be saddled with unaffordable monthly bills after receiving LIURP services. Indeed, such outcomes are contrary to the intention of LIURP and universal services generally. TURN recommends the Commission amend its LIURP regulations to specify that utility Universal Service and Energy Conservation Plans (USECPs) should enable customers to benefit not only from their reduced energy usage, but new access to CAP and affordable monthly bills after receipt of LIURP.

⁴ 52 Pa. Code §58.10(d).

Likewise, TURN supports the proposal to include CAP shortfall and pre-program arrearage considerations when targeting LIURP services.⁵ Given the need to responsibly target LIURP dollars, we support the proposed prioritization of funds. It is critical that CAP participation is not required, and prioritization is based on highest usage and where the funds will have the most benefit. However, assuming equal benefits, it makes sense to prioritize customers enrolled in CAP, as reduction in energy consumption by CAP customers will lead to a reduction in the cost of the CAP program and lead to savings for all non-CAP residential customers.

The Commission's proposals allow LIURP to work in conjunction with CAP and encourage increased CAP enrollment levels, while benefiting not only the CAP customers, but also non-CAP customers whose bill payments fund CAP discounts. Nonetheless, the Commission's LIURP regulations can further align LIURP and CAP by allowing recipients of LIURP measures to receive a fresh start on CAP if income-eligible. Failure to do so risks depriving LIURP recipients of the long-term benefits of lower-cost energy service.

3. TURN Maintains That Review of LIURP Cannot Be Limited to USECP Proceedings.

As proposed, the Commission's regulation could be interpreted as reducing oversight and opportunities for meaningful change in LIURPs by limiting review to USECP proceedings.⁶ TURN submits that this interpretation is directly at odds with the express inclusion in the proposed regulations of a consumer LIURP complaint process,⁷ which of necessity must

⁵ 52 Pa. Code §58.10(a).

⁶ 52 Pa. Code §58.2 (definition of LIURP budget); §58.4(a.1) (limiting budget changes to future USECP proceedings); §58.4(c) (same); §58.12(b) (limiting incidental repair and health and safety allowance limit determinations to USECP proceedings); §58.13(b) (requiring that energy conservation education budgets be approved in USECP proceedings); §58.13(c) (limiting consideration of pilot programs to USECP proceedings); §58.17 ("A public utility shall establish or subsequently modify its program services and LIURP budget through ha USECP proceeding.").

⁷ 52 Pa. Code §58.14a(d).

contemplate program changes responsive to founded complaints. It bears emphasis that, under current guidance, USECP proceedings occur once every five years, and typically do not include opportunities for discovery, testimony, witness examination, or other meaningful process typically employed in Commission proceedings. Moreover, by definition, a utility base rate proceeding potentially creates unaffordability for some customers and therefore implicates LIURP and other programs that are intended to decrease energy consumption and provide associated bill reductions.

Furthermore, limiting review of LURP will create a lack of responsiveness given the fast-changing technology in the area of home weatherization and thwart the Commission's express obligation to ensure that such programs are *appropriately* funded and available in every public utility service territory.⁸ Instead, program operations will evade adequate review and limit public utilities and the Commission from responding to on-the-ground circumstances that require LIURP to change. We submit that review of LIURP is not limited to USECP proceedings, and the Commission's LIURP regulations should not include language capable of such interpretation, as such limitation is contrary to the Public Utility Code, in several respects.⁹ For these reasons, the Commission should expressly acknowledge that LIURP may, in appropriate circumstances, be subject to review in utility base rate and other proceedings.

⁸ 66 Pa. C.S. §§2203(8); 2804(9).

⁹ *See, e.g.*, 66 Pa. C.S §102 (definition of "rate" includes "any rules, regulations, practices, classifications or contracts affecting" any rate and so includes LIURP).

4. Tenant LIURP Needs Require Additional Consideration and Proposed Erosion of Tenant Protections Must be Reversed.

TURN appreciates that the Commission's proposal seeks to ensure access to LIURP for tenants even when a landlord does not grant permission for installation of program measures.¹⁰ The receipt of baseload measures only, however, may be inadequate to meaningfully reduce the tenant's energy consumption. TURN would support a revision to authorize the landlord to opt out of installation of LIURP measures, rather than conditioning them upon landlord affirmative permission.

However, TURN is also concerned that the Commission's proposed regulation erodes long-standing protections that ensured tenants would be free from rent increases or eviction associated with the increased value that LIURP can provide to tenant dwellings.¹¹ TURN strongly opposes a change that would make it optional for landlords to agree to limitations on raising rent. Although public utilities may still include this requirement, there is no guarantee that they will. This means that landlords would be able to participate in the program, receive ratepayer funds to improve their property, and then increase rent based on that improvement, contributing to a shrinking of the market of low-income rental housing. Not having this requirement may even incentivize landlords to fail to make energy-saving repairs, knowing that their tenants can receive program services that will raise the value of the property without requiring investment by the landlord. Furthermore, making this requirement optional risks creating variation and inconsistency between service territories. Where one public utility may require limitations on raising rent, another may not, creating a major programmatic difference.

¹⁰ 52 Pa. Code §58.8(a)-(b).

¹¹ 52 Pa. Code §58.8(c).

TURN maintains that LIURP's traditional regulatory protection for tenants receiving LIURP installations should remain in effect in the Commission's revised regulations.

5. LIURP Should be Available for Special Needs Customers Whose Income Exceeds 150% of Federal Poverty Level (FPL).

TURN submits that many families with income in excess of 150% FPL lack the funds to undertake weatherization and efficiency measures and face unaffordable energy bills without the prospect of payment assistance from LIHEAP or CAP. Although TURN would support increasing LIURP eligibility to 200% FPL (without additional criteria), we acknowledge that LIURP funding would potentially need to increase significantly to reach all families eligible. Accordingly, TURN supports the Commission's proposal to target LIURP funding for customers with incomes above 150% FPL to those with qualifying special needs.

6. TURN Supports Including Windows and Doors as Core LIURP Measures.

The Commission's proposal to include windows and exterior doors as appropriate core program measures for space heating customers is well-founded.¹² Broken, inefficient, and poorly installed exterior doors and windows heavily impact efficiency of heating and cooling measures in a home, however they are often neglected by other home repair programs. By including them as core measures, LIURP could dramatically reduce usage achieving greater savings and much-needed health and safety improvements to the people of Pennsylvania.

¹² 52 Pa. Code §58.14(a)(1).

7. TURN Supports the Commission’s Proposed Inclusion of Health and Safety Measures in LIURP.

TURN’s members frequently report housing conditions that jeopardize their and their neighbors’ health and safety. The ability of LIURP to respond to those conditions is a significant step toward improving the overall habitability of housing for families with low and moderate income.¹³ Indeed, it makes little sense to install measures designed to improve efficiency if the household remains at risk of other significant adverse health impacts. TURN supports the inclusion of health and safety measures but submits that one further adjustment should be made. As currently drafted, the proposed regulation allows a public utility to defer LIURP services due to health, safety and structural problems beyond the ability of LIURP to respond. TURN submits that, in the event of such a deferral, a public utility should have the obligation to refer the customer to other available programs and services that could address the issue. As discussed more fully below, LIURP should broadly coordinate with all available home repair, energy efficiency, and weatherization programs to deliver the greatest impact.

8. TURN Supports a Needs-Based Approach to LIURP Program Funding.

TURN submits that all LIURP budgets should be formulated based on the number of estimated and confirmed low-income, moderate-income, and special needs customers in the public utility’s service territory, together with expected participation and cost considerations, as described in the proposed regulation.¹⁴ Alignment between program funding criteria and customer needs is essential to LIURP meeting its objectives of being fair, effective and efficient. However, TURN submits that the proposed regulation should be clarified in one respect. As

¹³ 52 Pa. Code §58.12(a)(2).

¹⁴ 52 Pa. Code §58.4(c).

drafted, the needs-based criteria are only considered at the time a LIURP budget is revised; a public utility should not be permitted to *maintain* a LIURP budget that does not align with the Commission’s designated criteria. The regulation should be clarified in that respect. Finally, as discussed more fully above, TURN submits that the LIURP regulations must not foreclose consideration, in appropriate circumstances, of LIURP program budgets and operations in public utility base rate proceedings or other non-USECP proceedings.

9. The Proposed Regulations Appropriately Require Carryover of Unspent Funds.

TURN supports the Commission’s proposal to require unspent LIURP funds to be carried over from one program year to the next.¹⁵ This is an important addition to ensure that all LIURP funds (not including administrative funds) approved for expenditure are utilized to improve the homes of Pennsylvanians. Although perhaps implicit in the regulation, TURN submits that any unspent funds reallocated to a subsequent year’s LIURP budget must actually increase the program budget for such year. In other words, TURN submits that the regulation should be clarified to explicitly state that a reallocation increases the subsequent year’s LIURP budget on a dollar-for-dollar basis.

10. Improved Coordination with Other Relevant Programs Should be Elaborated.

Although TURN recognizes and appreciates that the Commission’s proposed regulation requires a public utility’s LIURP to “operate in conjunction with the public utility’s other universal service programs...and other relevant public or private programs that provide energy assistance or similar assistance,”¹⁶ TURN nonetheless submits that additional guidance would be

¹⁵ 52 Pa. Code §58.4(d.1).

¹⁶ 52 Pa. Code §58.7(b).

appropriate. Most notably, the regulation should explicitly require public utility LIURPs to operate in conjunction with home repair assistance programs, as well as energy assistance, weatherization and efficiency programs that are not utility-sponsored. Absent such clarification, these programs may continue to provide scatter-shot, temporary, standalone services, where alignment would promote lasting solutions.

11. More Robust Reporting and Data Collection Concerning LIURP and Coordination is Appropriate.

TURN supports the increased specificity around required LIURP reporting.¹⁷ The collection of this information will allow more accurate program evaluation and enable the Commission to quickly assess each public utility's specific efforts – including the new and important requirements regarding fuel switching, health and safety measures, and inter-utility coordination. Each utility should be required to file its report on the docket(s) associated with its most recently approved or modified USECP.

However, consistent with our recommendation above, TURN submits that a public utility should be required to report not only the number of inter-utility jobs and LIURP jobs coordinated with other weatherization programs, but also the number of jobs coordinated with home repair assistance programs, as well as energy assistance, weatherization and efficiency programs that are not utility-sponsored. Coordination among all available programs allows for a more seamless experience for customers and maximizes the cost-effectiveness of LIURP, as well as other programs.

¹⁷ 52 Pa. Code §58.15.

12. TURN Supports Proposed Quality Control and Access to Complaint Process Regulations for Installed Measures

TURN appreciates the Commission's proposal to solidify quality control measures and require inspection to ensure that LIURP measures are of suitable quality.¹⁸ Poor workmanship and quality of installation can not only thwart LIURP goals; it can also contribute to other problems in the household. The proposed requirements increase the likelihood that program measures will result in actual energy savings and promote health and safety for customers. In particular, TURN supports the requirement that public utilities establish a process for filing a complaint. The ability to file a complaint ensures that customers have a forum in case of poor-quality repairs or other negative program experiences attributable to work performed (or not performed) by an energy service provider (ESP). Furthermore, notice to the utility that a customer has had a negative experience with an ESP may reasonably form the basis to consider strengthening LIURP program controls and/or other modifications, leading to ongoing improvement of the utility's LIURP.

13. The Commission Should Ensure That Customers Have a Clear Pathway to Apply for LIURP.

TURN remains concerned about the lack of clarity for how an interested customer can access the benefits of LIURP. We believe that LIURP regulations should specify that public utilities must develop an application process for customers, instead of only permitting utilities to choose, without consideration of customer interest, which households qualify to receive LIURP service.

¹⁸ 52 Pa. Code §58.14a.

14. Additional Guidance on Pilot Programs is Helpful.

TURN appreciates the Commission's proposal to provide additional guidance and clarification regarding pilot programs.¹⁹ TURN has participated in numerous proceedings involving pilot programs which can be a crucial way to develop improvements to program offerings. However, pilot programs must be done with oversight, and the Commission's regulations are instructive. Please be advised however, that, as discussed above, TURN maintains that LIURP pilot programs may, in appropriate circumstances, be subjects of consideration in utility base rate or other non-USECP proceedings.²⁰

15. Limitation on ESP Installers/Auditors May Be Too Restrictive.

The Commission's proposed prohibition on the use of the same ESP for audit and installation of program measures is well-intended and likely appropriate in some circumstances.²¹ Its rationale is clearly to avoid waste and self-interested actions by ESPs. However, this prohibition could create a need for up to three different contractors to complete important LIURP services. This has significant financial ramifications for the program and exposes the customer to requests for multiple strangers to access and perform services within their home. In both respects, the burden of utilizing multiple ESPs may exceed the cost/benefit basis of using a single contractor. We urge the Commission to explore exceptions or modifications to this limitation.

¹⁹ 52 Pa. Code §58.13.

²⁰ 52 Pa. Code §58.13(c).

²¹ 52 Pa. Code §58.11(c).

16. The Regulations Should Explicitly Address Residential Customers' Cooling Needs.

As Pennsylvania summers get hotter, summer energy costs will continue to rise. The summer of 2022 was considered one of the hottest summers on record in the state's history.²² As temperatures rise, so does the need for residential customers to use air conditioning and circulation in order to remain safe from the harmful health effects of exposure to extreme heat. This means an increased energy burden in the summer, a burden which will only continue to rise with temperatures. Low-income residential customers are especially vulnerable to this increased energy burden. Heat-related illnesses and deaths are often concentrated in low-income communities.²³

LIURP's program measures can increase the efficiency of cooling strategies, thereby decreasing energy burdens and increasing the comfort and safety of low-income customers. TURN supports the proposed regulations' addition of installation of air conditioning as a possible program measure.²⁴ However, TURN suggests that the description of applicable program measures related to cooling should be separated from the program measures available to baseload customers and placed in their own section listing applicable program measures for cooling customers. Creating this separate category for program measures for cooling customers would emphasize the importance of using LIURP to decrease cooling costs and therefore increase the safety and comfort of low-income customers.

²² Anderson, Drew. "July 2022 Was Second-Hottest on Record, Data from the National Weather Service Shows." FOX 29 News Philadelphia, 1 Aug. 2022, <https://www.fox29.com/news/july-2022-was-second-warmest-on-record-in-philadelphia-nws>

²³ United States Environmental Protection Agency. (2022). Heat Islands and Equity. <https://www.epa.gov/heatislands/heat-islands-andequity>

²⁴ 52 Pa. Code §58.14(a)(3).

RESPONSES TO ADDITIONAL QUESTIONS

Question A:

LIURP is most effective as a means to help customers with extremely high arrearage balances maintain service and pay down debt when it works in coordination with CAP and other means of addressing energy poverty. While LIURP can help high-arrearage customers by lowering energy costs and therefore decreasing the accumulation of even higher arrearage balances, for many high arrearage customers this intervention may come too late. If a high arrearage customer has already defaulted on an unmanageable payment arrangement or fallen behind on CAP due to inability to pay, future-looking energy saving measures will not help them maintain service or pay down the debt unless the future-looking savings are paired with measures that allow them to re-enter a truly affordable payment plan or CAP.

For these reasons, we recommend the Commission modify LIURP regulations to specify that utility USECPs should provide a fresh start (another opportunity to attain arrearage forgiveness) for CAP-eligible customers and, for non-CAP eligible customers, an affordable monthly repayment agreement after LIURP measures are installed.

Question B:

Offering LIURP to customers with high utility account balances and unusually high monthly average bills could result in a decrease in the cost of collection efforts and a decrease in uncollectible write-offs. LIURP will be most effective for this purpose when coupled with affordable payment arrangements or CAP enrollments with affordable monthly payments.

Customers with high account balances who also have access to payment arrangements or CAP

enrollment may be more likely to be able to continue making regular monthly payments if their monthly average energy use were decreased through LIURP.

Improved payment patterns would benefit utility cash flow and reduce ongoing collections costs, while payment agreements and CAP enrollment (coupled with new arrearage forgiveness, as discussed above) would substantially reduce write-offs.

Question C:

As opposed to a specific dollar amount, utilities should consider many criteria including age of the housing and average monthly bill. Customers should be referred to LIURP early on, before they've had a chance to accumulate large arrearages, as soon as they've begun to fall behind on their bills, at which point they should be referred to the universal services coordinator for the utility for determination of eligibility for all universal services programs.

Question D:

We encourage communication between LIURP and ACT 129 administrators in order to avoid duplicative efforts and maximize assistance available to low-income consumers. This could also be done by using the same contractors in order to avoid multiple unnecessary potentially disruptive home visits.

Question E:

TURN submits that more harmonization with the other universal services programs is essential. Customers must be enrolled in CAPs to ensure they have an affordable bill from the outset so they do not need to fall behind. All LIURP recipients should be referred to CAP as

well as hardship funds if they have past due arrearages. With better outreach and enrollment, more customers can access the components of Universal Service programming, improving low income customer payment practices and decreasing utility uncollectible write-offs.

CONCLUSION

TURN urges the Commission to act in accordance with the recommendations raised in these comments and modify its LIURP regulations as discussed herein.

Respectfully Submitted,

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