

COMMONWEALTH OF PENNSYLVANIA



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February 15, 2024

Rosemary Chiavetta, Secretary
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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 Reply Comments in the above-referenced proceeding.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

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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 Reply 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 15th day of February 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 :

REPLY COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE

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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 Order* was published for comment in the *Pennsylvania Bulletin* on December 2, 2023. The *NOPR Order* requested written comments within forty-five (45) days after publication in the *Pennsylvania Bulletin* and written reply comments thirty (30) days thereafter.

The Office of Consumer Advocate filed Comments on January 16, 2024. Comments were also filed by the following: Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA); Commission on Economic Opportunity and Pennsylvania Weatherization Providers Task Force (Task Force); Consumer Advisory Council (CAC); Duquesne Light Company (Duquesne Light); Energy Association of Pennsylvania (EAP); Energy Justice Advocates¹; FirstEnergy (Metropolitan Edison Company; Pennsylvania Electric Company; Pennsylvania Power Company; West Penn Power Company); PECO Energy Company (PECO);

¹ The Energy Justice Advocates are comprised of the following entities: 412 Justice; Agency for Community EmPOWERment of NEPA; Audubon Mid-Atlantic; CASA/CASA in Action; Central Pennsylvania Community Action, Inc.; Clean Air Council; Commission on Economic Opportunity; Community Action, Inc.; Community Action Association of Pennsylvania; Community Action Lehigh Valley; Community Justice Project; Community Progress Council; Evergreen Action; GreenBeams; Housing Alliance of Pennsylvania; Indiana Co. Community Action Program Inc.; Keystone Energy Efficiency Alliance; Lebanon County Community Action Partnership; Mobilify Southwestern Pennsylvania; National Housing Trust; Natural Resources Defense Council; Northern Tier Community Action; North Hills Community Outreach; One PA; PA Jewish Earth Alliance; PennFuture; Pennsylvania Interfaith Power & Light; Pennsylvania Solar Center; Pennsylvania Utility Law Project; Philadelphia Solar Energy Association; Physicians for Social Responsibility Pennsylvania; POWER Interfaith; Schuylkill Community Action; Sierra Club Pennsylvania Chapter; St. Paul's United Methodist Church- Working for Justice Ministry; Sustainable Pittsburgh; and Vote Solar.

Pennsylvania Coalition of Local Energy Efficiency Contractors, Inc. (PA-CLEEC); Peoples Natural Gas Company (Peoples); Philadelphia Gas Works (PGW); PPL Electric Company (PPL); the Tenant Union Representative Network (TURN); and UGI Utilities, Inc. (UGI). Columbia Gas Company of Pennsylvania (Columbia) also filed a letter supporting the Comments of EAP.

The OCA appreciates the opportunity to provide these Reply Comments. The OCA responds to the Comments as set forth below. The OCA notes that its silence in response to any particular issue or comments should not be deemed as assent or support for a particular issue or comments.

II. REPLY COMMENTS

A. Proposed Section 58.1

The Commission proposes to revise its Statement of Purpose in Section 58.1:

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. As discussed in the OCA's Comments, the OCA supports the Commission's proposed revised Statement of Purpose. OCA Comments at 3-4. The OCA responds to the Comments of UGI and Duquesne as set forth below.

In its Comments, UGI recommends that the Commission remove the final sentence in Section 58.1 which states "[a] reduction in the residential demand for energy can also result in cost reductions related to the purchase of fuel or power for all customers." UGI Comments at 3-4. UGI

argues that the purpose of LIURP is to reduce the energy usage of low-income customers and not to reduce the cost of wholesale electric market prices. UGI Comments at 3.

The OCA submits that the last sentence should remain as proposed by the Commission. UGI's arguments offer too narrow a view of the potential larger benefits of energy efficiency measures. The language specifically states that a reduction in residential demand *can* result in lower fuel or power costs. Market conditions can be too unpredictable to outright state that usage reduction will not reduce fuel and energy prices. The continued implementation of Act 129 as well as LIURP measures encourage usage reduction across the state and continued advances in energy efficient technology will only decrease load demand. As noted on pages 136 through 141 of the Commission's June 18, 2020, Act 129 Implementation Order, Docket M-2020-3015228, EDCs can bid their Peak Demand reductions back into the PJM market and pass those revenues and savings back to customers. A part of the peak demand reductions will include LIURP measures. Lower usage and lower energy prices will help every customer, including those who qualify for LIURP and are a valid Statement of Purpose.

In its Comments on Section 58.1, Duquesne Light stated that the Company believes that the regulations currently meet the charge of Section 58.1. Duquesne Light Comments at 4. Duquesne proposes to add the following modifications to a sentence in the Statement of Purpose:

“[The] A reduction in energy [bills] usage [should decrease] 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.”

Duquesne Light Comments at 4. Duquesne Light states that the LIURP program results in electricity savings each year. *Id.* The Company argues that, however, cost savings vary by participant and that not every job results in cost savings, as some customers may experience changes in household members, occupancy patterns, or other changes. Duquesne Light states that

these jobs still have benefits, increasing comfort and safety of the premises and reducing energy usage below what it would have been, absent the LIURP improvements. Additionally, the Company identifies concerns with the definition of “special needs customer” as used in the Statement of Purpose and defined in Section 58.2. Duquesne Light disagrees with the particular focus on those customers and, as such, disagrees with the inclusion of “special needs customers” in this section, as discussed in more detail below.

The OCA does not agree that the proposed changes are needed. The prior sentence appropriately frames the issue that Duquesne Light raises without the need for revisions. The prior sentence states: “[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.” Annex A, 52 Pa. Code §58.1. Duquesne Light’s proposed modification change from a reduction in energy “bills” to “usage” limits the benefits of LIURP to usage instead of viewing the holistic impact of the reductions on the customer’s bill. In the OCA’s experience, from a customer’s perspective the point for many customers is that the reduction in energy usage should equate to a reduction in bills. While the OCA agrees that energy bills are the sum of more than just energy consumption, particularly as utilities create increasingly complicated rate designs, the purpose of LIURP is to potentially both improve affordability through a reduction in energy usage and to improve the health, safety, and comfort levels of household members. The OCA submits that the “or both” in the existing language effectively addresses the issue that Duquesne Light raises and recognizes that LIURP may have either an impact on energy usage and/or an improvement to the health, safety, and comfort levels of the household. Additionally, the OCA is concerned that adopting the change that Duquesne Light proposes will create incentives to focus on energy reduction measures in the aggregate that do not result in bill savings for

particular customers. In the OCA's view, this is not appropriate. The OCA supports the definition as currently proposed. The OCA will address Duquesne Light's concerns regarding the special needs definition in Section C (10) below.

B. Proposed Section 58.2

1. Administrative Costs

The current definition of administrative costs provides that administrative costs be defined as:

Expenses not directly related to the provision of program services. The term may include salaries, fringe benefits and related personnel costs for administration, secretarial and clerical support involved in fiscal activities, planning, personnel administration, and the like; office expenses, such as rents, postage, copying and equipment; and other expenses, such as audit and evaluation expenses, advertising and insurance.

52 Pa. Code § 58.2. The Commission proposes to amend the definition to expand to include quality control and training. Annex A, 52 Pa. Code § 58.2.

In its Comments, UGI proposes that the definition of administrative costs should be modified to include "Information Technology" following "administration" and before "secretarial." UGI Comments at 4. UGI provides that IT investments will be required to implement and appropriate to afford current and timely recovery of costs. UGI Comments at 4.

The OCA does not agree that the definition of administrative costs should be expanded to include "Information Technology." Only expenses are recovered through the universal service rider, and Information Technology has been considered a capital expenditure. Capital expenditures are not permitted to be recovered through a surcharge. *See Popowsky v. Pa. PUC*, 869 A.2d 1144, 1155-58 (Pa. Cmwlth. Ct. 2005). In the *Popowsky* case, the Commonwealth Court held that the use of a surcharge is limited to the recovery of non-capital costs unless specifically provided by

law. *Id.* at 1155-56. Information Technology has not previously been included in LIURP costs and is not currently included in the Universal Service Charge as an expense item.

2. CARES

The LIURP regulations currently do not have a definition of CARES. In the NOPR, the Commission proposes that the definition of CARES be:

CARES—Customer Assistance and Referral Evaluation Services—A universal service program, as approved by the Commission, that provides a referral-based approach or a casework approach, or both, to help a payment-troubled customer secure energy assistance funds and other needed services to maximize the customer’s ability to pay utility bills.

Annex A, 52 Pa. Code § 58.2.

UGI proposes to modify the definition to align with the definitions in Sections 54.74 and 62.2 of the Commission’s Regulations. UGI Comments at 4-5, citing 52 Pa. Code §§ 54.74, 62.2. The definition in Sections 54.74 and 62.2 are identical and describe CARES as “[a] program that provides a cost-effective service that helps selected payment troubled-customers maximize their ability to pay utility bills. A CARES program provides a casework approach to help customers secure energy assistance funds and other needed services.” 52 Pa. Code §§ 54.74, 62.2.

While the OCA understands that it is important for the CARES definitions to be aligned, the OCA supports the Commission’s proposed revised definition of CARES, particularly in the context of the LIURP regulations. CARES programs have evolved through the Universal Service and Energy Conservation Plans (USECPs) since the Commission first passed Sections 54.74 and 62.2. The important distinction in the Commission’s definition is that CARES may be either a referral-based approach or a casework-based approach. This distinction clarifies that some low-income customers may only need information about available programs in order to maximize their ability to pay utility bills, but some other low-income customers, due to their personal

circumstances, may require a more hands-on, casework approach for success. The OCA supports the Commission’s proposed definition in the LIURP regulations that reflects this broader purpose for CARES.

3. CBO

The Commission’s LIURP regulations currently do not define the term “CBO,” or Community Based Organization. The Commission proposes the following new definition for CBO:

CBO—Community-based organization—A public or private nonprofit organization that is representative of a community or a significant segment of a community and that works to meet community needs.

Annex A, 52 Pa. Code § 58.2.

In its Comments, UGI proposes to change the definition to:

[o]rganizations that have the necessary technical and administrative experience to be the direct providers of services and programs which reduce energy consumption or otherwise assist low-income customers to afford electric service.²

UGI Comments at 5. UGI argues that the change would align the regulatory language with Sections 2804(9)³ and 2203(a) that encourages electric and gas utilities to use CBOs. *Id.*

² The OCA notes that UGI’s proposed definition limits CBOs to electric service. The OCA believes that this was unintentional on the part of UGI, as UGI references both the natural gas and electric competition statutes. The use of CBOs is applicable to either electric or natural gas service and should not be limited in the definition.

³ The OCA notes that UGI’s Comments appear to have a typographical error and erroneously refers to “2084(9).” The relevant portion of Section 2804(9) provides:

The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income customers to afford electric service.

66 Pa. C.S. § 2804(9). The relevant portion of Section 2203(a) provides:

The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or

The OCA does not agree that UGI’s proposed definition should be used because the change in the language will unnecessarily limit the types of organizations that are eligible to assist with LIURP. The statutory language in 2804(9) and 2203(a) that UGI references is not a definition of what a community-based organization is. 66 Pa. C.S. §§ 2203(a) and 2804(9). Instead, the statutory language explains the *role* that the community-based organizations will fulfill in a universal service program. Sections 2804(9) and 2203(a) do not specifically define a community-based organization. 66 Pa. C.S. §§ 2203(a) and 2804(9). The Commission’s definition of CBOs is entirely consistent with Sections 2804(9) and 2203(a). The role of CBOs under the statute will need to be technically and administratively experienced to perform the energy efficiency service, but the Commission’s definition provides what type of organization fulfills that role. In other words, the Commission appropriately focuses on the *who* whereas UGI wants the Commission to focus on the *what* work these organizations will perform.

The term “community-based organization” is not specifically defined in either the Electricity Generation Customer Choice and Competition Act or Natural Gas Choice and Competition Act. 66 Pa. C.S. §§ 2203(a) and 2804(9). The Commission’s proposed definition is derived from 20 U.S.C. § 7801. Section 7801 defines a community-based organization as:

a public or private organization of demonstrated effectiveness that (a) is representative of a community or significant segments of a community; and (b) provides educational or related services to individuals in the community.

programs which reduce energy consumption or otherwise assist low-income retail gas customers to afford natural gas service.

66 Pa. C.S. § 2203(8).

20 U.S.C. § 7801.⁴ The purpose of this language is to ensure that organizations that have direct ties and connections to the low-income community that is served are used as a part of the energy efficiency programs. It is vitally important that such community-based organizations be included and considered as a part of the low-income energy efficiency programs. Community-based organizations have important direct ties to the consumers that are being served and provide a valuable resource for the programs that should be encouraged. The Commission's proposed language modifications serve to support the technical requirements identified in the statutes as well as acknowledging the broader role that community-based organizations fulfill in the community. UGI's proposed language as the definition of a community-based organization would dilute the importance of the local community connections and should not be adopted.

4. De Facto Heating

The Commission proposes the new definition, de facto heating, to be included in the regulations. The Commission proposes to define de facto in the proposed regulations as:

***De facto heating*—Use of a portable heater as the primary heating source when the primary or central heating system is non-functioning or public utility service has been terminated.**

Annex A, 52 Pa. Code § 58.2.⁵

The Commission's *NOPR Order* provides:

⁴ Community-based organization is defined in Section 7801, the definition section of the federal Chapter 70, Strengthening and Improvement of Elementary and Secondary Schools.

⁵ In its Comments, UGI proposes a minor modification to the definition that would replace the reference to portable heaters with portable *space* heaters in order to better align the definition with eligible customers which references space heating. UGI Comments at 5. The OCA does not oppose UGI's proposed minor modification to the definition of de facto, but the modification would not be needed if PECO's proposed definition were adopted.

In its Comments, PPL also notes a concern that the term de facto heating is used in the definitions section but not in the body of the document itself. PPL Comments at 3.

This term would be defined for the first time in this regulation. It has long been used in filings by stakeholders and in PUC orders and other documents to refer to the use of an alternate heating source when the primary or central heating system in a residence is non-functioning or because public utility service or non-utility heating fuel has been terminated or depleted. This proposed definition is based on the description of “de facto heating” developed by the Universal Service Coordination Working Group.

NOPR Order at 21, referencing the definition put forth in the *Universal Service Coordination Working Group Report*, Docket No. M-2009-2107153, Report at 1 (November 18, 2009)(*USC Working Group Report*).

In their respective Comments, PECO and PPL both commented on the Commission’s definition. PECO Comments at 2; PPL Comments at 3. PECO stated that the Company has been actively addressing de facto heating issues for several years and the Company acknowledged appreciation for the Commission’s proposal to include a definition of de facto heating in the proposed regulations. PECO Comments at 2. PECO, however, argues that the definition is too narrow and would limit the primary heating source to a portable heater. PECO proposes that the Commission should consider utilizing the following definition for de facto heating:

Use of an alternative heating source as the primary heating source when the primary or central heating system is non-functioning or public utility service has been terminated.

PECO Comments at 2.

The OCA supports the use of remedies to de facto heating situations as a part of LIURP.

As the *USC Working Group Report* provided:

[t]he situation most often occurs when the customer’s central heating system is broken and in need of repair, or when the delivery of natural gas or other non utility delivered heating fuel, such as fuel oil, wood or coal has been terminated or depleted. Using portable space heaters for whole house heating is a potentially unaffordable and unsafe alternate central heating source. The number of customers doing so has risen dramatically over the past several years, especially with the dramatic increase in the cost of home heating oil. Consumer education needs to

play an important role, along with or part of a possible expanded role of outreach and referrals.

There are insufficient funds earmarked to help these customers repair their central heating systems. Alternate funding methods should be explored, such as the use of utility escheat funds for the repair or replacement of central heating systems.

USC Working Group Report at 1-2.

Some utilities such as PECO have included programs to address de facto space heating as a part of their LIURP and USECPs for many years. The OCA agrees with PECO that the Commission should consider expanding the definition of de facto heating to include other alternative heating sources rather than just “portable” sources, and the proposed modifications are consistent with the rationale for de facto measures as identified in the *USC Working Group Report*. See PECO Comments at 3. A consumer may rely on any number of resources for heating that may or may not be portable such as electric when their primary fuel source is not operating or has been terminated, ovens, fireplaces, or other similar non-portable heating sources. Many of these alternative heating sources may present significant health and safety risks, and the inclusion of the term “portable” in the definition should not limit whether low-income customers may receive assistance as a part of the weatherization programs. The same health and safety issues exist whether the customer is using a portable kerosene space heater or opening their electric oven to heat the home.

The OCA recommends that PECO’s proposed alternative definition be adopted.

5. Health and Safety Measure

The Commission proposes to define “Health and Safety Measure” as 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. In Section 58.12, the Commission proposes to add health and safety measures to the regulation providing for incidental repairs.

Annex A, 52 Pa. Code § 58.12. The Commission included the following examples of health and safety measures:

(2) *Health and safety measures.* 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). In its Comments, the OCA strongly supported the inclusion of health and safety measures as a part of LIURP. The OCA identified two proposed modifications unrelated to the Comments presented by PECO and UGI regarding the definition.⁶

PECO and UGI both argued that the proposed definition should be narrowed. PECO Comments at 2; UGI Comments at 6-7. UGI argued that the proposed definition was overly broad and should instead focus on LIURP program intent. UGI Comments at 6-7. UGI proposes that the definition be modified to define as:

a program or 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, that is performed as part of other LIURP measures which will reduce energy usage for eligible customers.

UGI Comments at 6. UGI argued that some of the examples in the *NOPR Order* are very costly so UGI recommended that a 25% spending limit be implemented on LIURP projects to ensure the base goal of usage reductions remains the focus. UGI Comments at 6-7.⁷

Similarly, PECO recommends that health and safety measures should be employed only in circumstances where they would facilitate or otherwise enable usage reduction measures for the household. PECO Comments at 2. PECO argues that the definition should include a requirement

⁶ In its Comments, the OCA questioned the inclusion of an ESP in the definition and recommended that pest removal also be included as a health and safety measure. OCA Comments at 8.

⁷ The OCA will address UGI's proposed spending cap for health and safety measures in its Comments to Section 58.12.

that the measure be intended to enable installations that will reduce a customer's energy usage. PECO Comments at 2.

UGI's and PECO's respective proposals would unnecessarily narrow the scope of health and safety measures. The inclusion of health and safety measures is wholly within the intent of LIURP and within the intent of the Commission's proposed revised Statement of Purpose. The Commission's proposed revised Statement of Purpose provides, in relevant part:

[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.

Annex A, 52 Pa. Code § 58.1. The purpose of the inclusion of health and safety measures in LIURP is to ensure that jobs that otherwise would get deferred can get completed. In particular, the OCA does not agree with PECO that health and safety measures should be intended to enable installations that will reduce a customer's energy usage. PECO Comments at 3. The OCA submits that such a limitation may exclude measures such as installation of a smoke detector or carbon monoxide detector. Their installation may not directly impact the ability to install measures but impact the overall health and safety of the home.

The proposed limitations on health and safety measures will unnecessarily limit eligible LIURP homes. A house that will be deferred because of health and safety issues will still have the underlying high usage and need to be addressed. A low-income customer may not otherwise have the resources to remedy that health and safety measure on their own to facilitate energy efficiency improvements. Non-CAP residential ratepayers will still pay year over year for the customer's high usage and low-income customers may be at risk of exceeding the maximum CAP credit. The high usage will not be able to be decreased because the health and safety issues prevent installation of the energy efficiency measures.

The OCA recommends that UGI and PECO's Comments be denied, and the Commission adopt the proposed revisions with the modifications identified by the OCA in its Comments.

6. LIURP

The Commission proposes that the definition of LIURP should be:

A universal service program, as approved by the Commission, that provides energy usage reduction services, health, safety and comfort services, conservation education services or a combination of such services for an eligible customer.

Annex A, 52 Pa. Code § 58.2.

In its Comments, UGI proposes that the definition of LIURP should be narrowed to be consistent with Sections 54.72 and 62.2 of the Commission's regulations. UGI Comments at 7, citing 52 Pa. Code §§ 54.72, 62.2. The Company proposes that the definition should instead be "universal service program, as approved by the Commission, that helps eligible customers to conserve energy and reduce energy bills." UGI Comments at 7; *see* 52 Pa. Code §§ 54.72, 62.2. Alternatively, the Company recommends the definition should state "as defined in 52 Pa. Code 54.72 (for Electric Distribution Companies ("EDC")) and 62.2 (for Natural Gas Distribution Companies ("NGDC"))." UGI Comments at 7.

The OCA does not agree with UGI's proposed revision. UGI's proposal would unnecessarily narrow the definition of LIURP. As the Commission's *NOPR Order* provides, the Commission's proposed definition is consistent with Sections 54.72 and 62.2, but more clearly allows for additional measures such as health and safety measures to be included as a part of LIURP. *See NOPR Order* at 23. The *NOPR Order* provides:

This proposed definition is consistent with the definition of "LIURP" in 52 Pa. Code §§ 54.72 and 62.2 and identifies "LIURP" as a universal service program that provides energy usage reduction services, health, safety and comfort services, conservation education services, or a combination of such services to eligible customers.

NOPR Order at 23. The OCA supports this expanded language to more clearly provide for additional services such as health and safety measures that will allow for greater customer eligibility and will address potential deferrals due to health and safety issues.

The OCA recommends that UGI's proposed modification to the definition be denied and the Commission's proposed definition be adopted.

7. Payment-troubled Customer

The Commission proposes that "payment-troubled customer be defined as:

***Payment-troubled customer*—A customer who has an arrearage or has failed to maintain one or more payment arrangements in a one-year period.**

Annex A, 52 Pa. Code § 58.2. UGI proposes that the definition be revised to be consistent with the definitions of "payment troubled" found in 52 Pa. Code Sections 54.72 and 62.2 and replace the use of "a customer who has failed to maintain one or more payment arrangements in a 1-year period." UGI Comments at 8. UGI "questions if the inclusion of criteria based on an arrearage is appropriate give that, historically, the number of payments received after term notices or reconnections mad after term are very material and significant in number." UGI Comments at 8. UGI concludes that arrearage is not indicative of the ability to pay and that such customers are really payment troubled. *Id.*

Importantly, the only place in the proposed revised regulations that the Commission uses the term payment-troubled is in its CARES definition to identify those customers that may need additional referral or casework assistance. The OCA does not agree with UGI's conclusion that an arrearage is not indicative of an inability to pay because customers are able to put together payments after termination notices or reconnections. Ability to access emergency assistance funds before or after a termination does not mean that the customer is otherwise able to afford to pay.

In fact, as the OCA discussed in its Comments, the United Way's ALICE data (ALICE: Asset Limited, Income Constrained, Employed or ALICE data), low-income customers by definition of their income status do not have a household survival budget and by virtue of their income levels cannot afford basic household necessities, including utilities without sacrificing other bills. *See* OCA Comments at 10-14. The ALICE data estimates the number of households above the federal poverty level that still struggle to afford basic expenses, including utility bills.⁸ The empirical data presented in the ALICE data demonstrates that households living at this income level on a month-to-month basis choose between rent, food, medical care, childcare, utility bills, and putting gas in their vehicle.⁹ *See also* OCA Comments at 11. Approximately 27% of Pennsylvania households are classified as ALICE.¹⁰ Excerpted below is a comparison of the federal poverty line and an ALICE budget for a family of four and a family of one.

⁸ *See* ALICE data, <https://www.unitedforalice.org/state-overview/pennsylvania>

⁹ *See* ALICE household survival budget, <https://www.unitedforalice.org/household-budgets/pennsylvania>

¹⁰ *See* ALICE household survival budget, <https://www.unitedforalice.org/household-budgets/pennsylvania> at 2.

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 that chart, the average Pennsylvania household of four would have had 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.”¹¹

Moreover, the Commission recognized the principle that a customer did not have to have an arrearage in order to need the assistance of CAP when the Commission revised its CAP Policy Statement in 2019. See *2019 Amendments to Policy Statement on Customer Assistance Programs*, 52 Pa. Code §§69.261, 267, Docket No. M-2019-3012599, Order at 5 (Nov. 5, 2019) (*Final CAP Policy Statement Order*); 52 Pa. Code § 69.265(5). The Commission’s *Final CAP Policy Statement Order* specifically identified that the Commission had removed from the CAP Policy Statement

¹¹ 2023 ALICE Report COVID and Financial Hardship in Pennsylvania: <https://www.unitedforalice.org/state-overview/pennsylvania>

the requirement that a customer be payment-troubled in order to be eligible for CAP because “we find that encouraging utilities to restrict CAP enrollment based on a household being payment-troubled before enrolling them in CAP is counter-productive and counter-intuitive.”¹² *See Final CAP Policy Statement Order* at 47; 52 Pa. Code § 69.265(5). Section 69.265(5) of the Commission’s CAP Policy Statement reflects this removal of the payment-troubled requirement. 52 Pa. Code § 69.265(5).

For the reasons set forth above, the OCA recommends that UGI’s proposed amendment to the definition of payment-troubled be denied.

8. Program Measure

The Commission proposes to revise the definition of program measure to:

An [Installations which are designed to reduce energy consumption] installation and other work performed on a dwelling under this chapter.

Annex A, 52 Pa. Code §58.2. In its Comments, UGI proposes to insert the phrase “designed to reduce energy consumption” in order to “add clarity,” but the purported “clarity” simply reverts the regulation back to the Commission’s original language. *See* UGI Comments at 8; see 52 Pa. Code § 58.2. In the *NOPR Order*, the Commission provides that the revision “reflects that program measures may include installation and other related work performed on a dwelling.” *NOPR Order* at 26.

The OCA does not recommend that UGI’s language change be adopted. The Commission’s change to the definition of program measure facilitates the flexibility to execute many of the Commission’s other changes such as the additions of health and safety measures, expansion of incidental repairs, and fuel switching under LIURP. *See* 52 Pa. Code §§ 58.12, 58.13a. The phrase

¹² The OCA notes that the Commission did not prohibit utilities from establishing a payment-troubled criterion if appropriate. *Final CAP Policy Statement Order* at 47.

“program measure” is used throughout the Commission’s proposed revised regulations and a change to the definition would impact the scope of each of the regulations where the term is used. *See, e.g.,* 52 Pa. Code §§ 58.8 (tenant household eligibility), 58.11a (fuel switching), 58.12 (incidental repairs and health and safety measures). Requiring that the measure be directly tied to energy conservation has the ripple effect of potentially restricting the implementation of health and safety measures, incidental repairs, fuel switching, or de facto heating remedies. As the Commission provides in the *NOPR Order*, LIURP, as a universal service program, should be designed to provide “energy usage reduction services, health, safety and comfort services, conservation education services, or a combination of such services to eligible customers.” *NOPR Order* at 23. UGI’s proposed amendment would impact the ability of LIURP to achieve those goals and should be denied.

9. Program Service

The Commission proposes to revise the definition of program service to “[**Services**] **A service** offered or **work** performed by a [**covered**] **public** utility or its [**agent**] **ESP** under this chapter.” Annex, 52 Pa. Code § 58.2. UGI proposes to add “to administer or implement a program measure” after ESP. UGI Comments at 8. The OCA does not have a specific concern with the additional language viewed alone, but this language change *combined* with the UGI’s proposed change to the definition of “program measure” would limit what service or work could be performed by a public utility or ESP. The OCA is concerned about that limitation for the reasons set forth in the discussion of “program measure” above.

10. Special Needs Customers

a. Introduction

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. The OCA recommended in its Comments to expand the definition of special needs from 200% of the FPL to 300% and that the proposed eligibility criteria be used instead for prioritization. *See* OCA Comments at 14-16.

In their respective Comments, EAP, NFG, PECO, PPL, and Duquesne specifically addressed the Commission’s proposed changes to the definition and use of special needs and argue that the definition of special needs should not be expanded. *See* EAP Comments at 11; NFG Comments at 4-5; PECO Comments at 2-3; PPL Comments at 2, 4; Duquesne Comments at 4-6. EAP identified that it has some concerns with the proposed revisions to the definition of “special needs customer.” EAP Comments at 11. EAP states that the Commission proposes changes to this definition: (1) to remove the arrearage requirement component of the definition and (2) to apply the definition to those customers between 151% and 200% of FPIG with one or more household members who: are age 62 and over or age 5 and under; need medical equipment; have a disability; are under a protection from abuse order; or are otherwise currently defined as a special needs customer under the utility’s approved USECP. EAP Comments at 11. EAP argues that the Commission’s rationale for this change is to make utility LIURP qualifications for a “special needs customer” more consistent with that of the PA Department of Human Services’ (DHS) LIHEAP

definition of a “vulnerable household” per the 2023 LIHEAP State Plan at 601.3. EAP Comments at 11, citing *NOPR Order* at 27. NFG and PPL similarly argue that the definition of special needs should align with the DHS “vulnerable” definition. PPL Comments at 4; NFG Comments at 4-5. If consistency with DHS definitions for “vulnerable household” is the goal, EAP argues that the definition should include *only* the parameters that “at least one member who is elderly (age 60 or over), disabled, or age five and under.” EAP Comments at 11.

EAP also argues that utilities will not necessarily know disability or medical device need status. EAP Comments at 11. If disability and medical device necessity status is to be kept as a special needs designation, EAP would suggest adding clarifying language that will enable utilities to more easily make this determination, such as via source of income documentation in the LIURP application process or confirming that the customer has an active medical certificate on the account. EAP Comments at 11. These additional, proposed demographic questions are not currently a part of the LIURP application and eligibility process for many utilities. EAP Comments at 11.

The OCA recommends that the Commission increase the FPIG to 300% for special needs households, and that the criterion outlined in the definition should be used for prioritization of special needs households as opposed to additional criteria. OCA Comments at 15. EAP’s proposed limitation should not be adopted. The OCA notes that EAP misunderstands the Commission’s reference to the 2023 LIHEAP State Plan. The LIHEAP State Plan, Section 601.3, was not meant to be mirrored. The Commission specifically provides where the categories for special needs have been derived, and that scope is beyond the LIHEAP State Plan definition. The Commission expands the current special needs categories to include a young child. The *NOPR Order* provides:

With the exception of a household member who is a young child, the demographics and conditions related to the special needs designation for a household member is

consistent with existing provisions in public utility USECPs. *The designation of a household with a young child as “special needs” is consistent with the definition of a “vulnerable household” in Pennsylvania’s 2023 LIHEAP State Plan at § 601.3 (relating to definitions).* The proposed amended definition also reflects that a customer does not need to have an arrearage to be considered special needs.

NOPR Order at 27 (emphasis added). The Commission also cites to the FirstEnergy USECP and NFG USECP for references to the definition of “special needs” for the other categories. *NOPR Order* at 27, citing *FirstEnergy 2019-2021 USECP*, Docket Nos. M-2017-2636969, *et al.*, Plan at 19 (June 24, 2019); *NFG 2022-2026 USECP*, Docket No. M-2021-3024935, Plan at 33 (June 14, 2022).

In response to EAP’s Comments regarding tracking a medical condition for the special needs designation, the OCA does not agree that because the utilities do not currently track the information means that the medical status should not be included as a criteria. As EAP posited, there are ways for the utilities to track this information, just as they currently track customers that are confirmed low-income customers who are not otherwise in CAP. Customers may have had a medical certificate or identified in some other way that they have a disability or medical condition. That information should be tracked to allow for prioritization.

NFG agrees with EAP’s Comments and argues that LIURP should not be a “panacea” to ameliorate poor housing stock. NFG Comments at 3. NFG argues that expansion of the definition of “special needs” would veer from the historic core goals of LIURP and the proposed changes are not congruent with the vulnerable household’s definition in LIHEAP. NFG Comments at 5. NFG claims that expansion of LIURP would result in ratepayers bearing additional costs with questionable upside that would increase the complexity in administration. NFG Comments at 4. Specifically, NFG claims that custom reporting would need to be developed in order to query data and to analyze applicable metrics. NFG Comments at 4. Proposed amendments to meaningfully

offer LIURP in a way that allows utilities to advance original goals would result in a net benefit and reduce administrative burden, overhead, redundant reporting and prescriptive program requirements would positively impact LIURP and ratepayers. NFG Comments at 5.

The OCA does not agree with NFG's Comments about the expansion of the special needs definition. NFG's argues the Commission's regulations are attempting to be a "panacea" for poor housing stock. Instead, the regulations move LIURP forward to address changes in need as the programs have expanded over the last twenty years since the original LIURP regulations were passed. There is a significant unmet need. High energy bills due to the need for weatherization present an affordability problem that impacts a customer's ability to maintain service and the uncollectible expenses that must be borne by other ratepayers if the high bills go unpaid. As the OCA noted above, the LIHEAP definition of vulnerable customers might be a helpful tool to supplement the Commission's understanding of vulnerable populations; it does not have to be an exclusive list. LIHEAP recipients are not necessarily the same population as LIURP recipients. LIHEAP recipients are a subset of LIURP recipients. The income threshold for LIURP is different, and the OCA recommends that it be further increased to 300% of the FPIG. The resources available to LIHEAP recipients have not been historically available to customers over 151% of FPIG. The OCA notes that the proposed categories for amendment that NFG mentions, "administrative burden, overhead, redundant reporting and prescriptive program requirements," are generally only favorable to the utility's operation of the program, and not LIURP recipients. *See* NFG Comments at 4.

In its Comments, PECO states that the Company supports the ability to provide LIURP services to eligible customers up to 200% of the Federal Poverty Level ("FPL"), as is permitted under the existing definition of "special needs customer." PECO Comments at 2-3. However,

PECO believes the Commission's proposed revisions to the definition of "special needs customer" cannot be implemented because many of the new "criteria" are outside the scope of information regularly collected by utilities. PECO states that under certain circumstances, such as CAP enrollment, PECO will collect information about the ages of household members and the type and amount of income for each household member. The information is used to determine the household income as a percentage of the FPIG at the time of enrollment and is not used for tracking purposes or updated until the customer recertifies for the program (typically every two years). PECO states that the Company does not have knowledge of the customer's need for medical equipment or a customer's coverage by a protection from abuse order unless the customer affirmatively chooses to share that information with PECO. PECO Comments at 3. Setting aside the implementation challenges associated with determining whether a customer meets the proposed criteria, the Company also believes the Commission's proposed revisions may unnecessarily restrict a utility's ability to seek out high-usage customers at 151%-200% of FPIG for energy-saving LIURP measures. Thus, PECO recommends that the Commission retain the existing regulatory definition of "special needs customer."

The OCA does not agree. That PECO does not currently track the data identified for special needs customers does not mean that PECO cannot track the information. PECO also argues that the Company does not have knowledge of a customer's status unless the customer chooses to share the information. The same is true for a confirmed low-income customer. The Company tracks that income information and can apply the appropriate protections to that customer when the Company has knowledge of the information. There are numerous ways that PECO can know if a customer has a medical condition or disability such as the information provided for a medical certificate.

PECO also knows if the customer has previously requested for protection from abuse protections from the utility.

Similar to EAP, NFG, and PECO, Duquesne also disagrees with the Commission's particular focus on special needs customers. Duquesne Comments at 5. In particular, Duquesne is concerned by the Commission's expansion of this definition, especially the inclusion of any household member aged five and under. Duquesne argues that the proposal likely significantly expands the number of eligible households for Duquesne Light's LIURP, potentially directing the program's resources away from those most in need. The current definition of special needs customer is based on income level and demonstrated inability to pay. The Company believes this is the appropriate criterion. Should the Commission determine the definition should be expanded, it must assess the costs and benefits of expanding LIURP eligibility. The Company also questions what is considered "medical equipment" in this definition. Duquesne Comments at 5-6.

While the changes proposed by the Commission and the OCA would expand the LIURP population, the OCA does not agree with Duquesne's premise that there would be a need to direct resources away from customers that are most in need. The appropriate resources to be directed can be addressed as a part of the LIURP budgeting process, and there is already a segmentation of the budget such that up to 25% of the budget would be allocated to special needs customers. See Appendix A, 52 Pa. Code § 58.4. There would not be diversion from CAP participants with that allocation. Instead, there could be a separately allocated portion of the budget towards "special needs" customers just as the current regulations provide that up to 20% of the budget can go towards the special needs customers. As discussed in the OCA's Comments, customers up to 300% of the FPIG are in need, and often do not have access to other resources to assist. *See* OCA

Comments 10-16. The OCA recommends that the categories identified by the Commission be used as a tool for prioritization of need.

For the reasons set forth above, the OCA recommends that the Commission's revised definition of "special needs" be adopted as amended by the OCA's Comments. *See* OCA Comments at 14-16, Appendix A.

11. Weatherization

The Commission proposed to revise the definition of weatherization to "[t]he process of modifying a dwelling to reduce energy consumption and optimize energy efficiency." Annex A, 52 Pa. Code § 58.2. In the *NOPR Order*, the Commission proposed the revisions for the following reasons:

[t]his proposed definition refers to the work needed to install program measures to make a dwelling more energy efficient, consistent with the WAP technical glossary of the National Association for State Community Services Programs (NASCS), which defines "weatherization" as the "process of reducing energy consumption and increasing comfort in buildings by improving the energy efficiency of the building and maintaining health and safety."

NOPR Order at 23.

UGI proposes to add "improve" and replace "optimize" and "weather related and weather dependent" be included after "reduce" and before "energy." UGI Comments at 9. The OCA does not agree with UGI's proposed additions of "weather related and weather dependent." The proposed revisions imply that high energy usage is solely related to weather factors and would unnecessarily limit why a consumer may have high energy usage. A consumer may have high energy usage impacted by health factors, such the need for electric-dependent oxygen equipment. Moreover, the use of the word "optimize" is more appropriate than "reduce" because it is more in alignment with the Commission's stated goals to reduce energy consumption an increase the comfort in building by improving both energy efficiency and health and safety. *NOPR Order* at

23. “Optimize” encompasses measures such as health and safety measures which may not necessarily directly reduce energy usage but help to improve the overall comfort of the home. “Reduce” otherwise would limit the types of measures to be implemented under weatherization. Therefore, the OCA recommends that UGI’s proposed amended language be denied.

C. Proposed Section 58.3

The Commission proposed to modify the language of Section 58.3 as follows: “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 *NOPR Order* provided that the change was designed 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.

In its Comments, Duquesne recommends that the Commission maintain its existing language as “sufficient.” Duquesne Comments at 6. As discussed in above in Section B(10) regarding the definition of “special needs” customer, Duquesne identified concerns with the inclusion of “special needs customers” in Section 58.3 as well. Duquesne Comments at 6. Duquesne states:

[w]hile the Company does not disagree with a focus on certain customers with unique situations, as it does through its current USECP, the more expansive special needs definition and provisions included throughout the proposed regulations introduce a lack of regulatory clarity, likely increase costs, and fail to show a benefit beyond what the utilities currently provide. It is unclear to the Company that the benefits of the proposed changes outweigh the increase in program costs.

Duquesne Comments at 6.

The OCA does not agree with Duquesne’s assertions that the proposed change introduces a lack of regulatory clarity, will increase costs, and will fail to show a benefit. The introduction of special needs customers into Section 58.3 provides greater regulatory clarity because the customers

are now a defined portion of the customers to be served by the utility. Regarding the increase to costs, Duquesne provides a broad statement that costs will likely increase, but does not quantify or even explain what additional increase to costs there would be. Any additional costs would be addressed as a part of the setting of the LIURP budget which inevitably involves prioritization as even under the current paradigm utility ratepayer funded assistance is insufficient alone to address the scope of need.

Regarding the failure to show a benefit argument, the OCA addressed in its Comments the significant need for assistance in the special needs customer population. OCA Comments at 10-14 (definition of low-income customer), 14-16 (definition of special needs customer), 19 (proposed changes to Section 58.3). In fact, the OCA recommends in its Comments that the low-income customer definition be expanded to 150% of the FPIG and that the special needs customer definition be expanded to 300% of the FPIG. OCA Comments a 10-16. For the reasons set forth in the OCA's Comments, the proposed definition changes should be flowed through to Section 58.3. *See* OCA Comments a 19.

D. 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.

OCA, CAUSE-PA, Task Force, CAC, Energy Justice Advocates, TURN, EAP, Peoples, PGW, UGI, and PECO all addressed Section 58.4 in their respective Comments. *See* OCA Comments at 19- 30. The OCA responds to the Comments as set forth below.

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).

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.

In its Comments, UGI strongly supported the proposal to only address the LIURP budget in USECP proceedings. UGI Comments at 9. PPL also argued that the USECP process should be the sole proceeding where LIURP substantive provisions could be established and adjusted. PPL Comments at 5-6. PPL argued that “such a process ensures consistency, transparency, and due process for all interested parties to be heard on proposed LIURP changes.” PPL Comments at 5. PPL stated that it “sees a benefit and would like to retain the ability to adjust LIURP budgets outside of rate cases.” PPL Comments at 5. PPL also requested that the Commission clarify that the LIURP funding mechanism for recovery of LIURP costs must be determined in a public utility’s rate proceeding. PPL Comments at 5. While PECO agreed that the USECP proceedings are the appropriate venue for the establishment and revision of LIURP budget, PECO also stated that the LIURP regulations should still preserve the existing flexibility to consider LIURP issues in other types of Commission proceedings such as when a utility seeks a change in their base rates. *See* PECO Comments at 3.

As the OCA discussed in its Comments, 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. OCA Comments at 21-23. In response to PPL’s Comments about the USECP proceedings, a base rate proceeding is a full, on-the-record proceeding with testimony and hearings. All of the parties’ positions are fully transparent and interested parties may be heard on the proposed changes. Moreover, there is often a greater diversity of participants in the case than in a USECP proceeding, including consumer complainants. Settlements are accompanied by Findings of Fact and Conclusions of Law as well

as Statements in Support that are all grounded in the on-the-record proceeding positions. As the OCA discussed in its Comments, all tariffed rates are eligible for review as a part of a base rate proceeding. The proposed limitation unlawfully inhibits the ability of the parties to explore the need for LIURP budget increases, particularly in light of proposed base rate proceeding increase. Moreover, the current process in the USECP proceedings are not “on-the-record proceedings” in which the parties have procedural rights. Finally, as PPL indicated in its request for clarification, budgets would be set in USECP proceedings, but allocation would be completed in a base rate proceeding. PPL Comments at 5. It is the OCA’s understanding of the Commission’s proposed regulations that is exactly what would happen. The changes to Section 58.4(e) would continue to allow for cost recovery issues to be addressed in rate cases and divorce the cost recovery issues from the mechanism/budget set. *See* OCA Comments at 22.

For many of the same reasons that the OCA identified, CAUSE-PA, TURN, Task Force, the Energy Justice Advocates, and CAC identified similar concerns regarding the Commission’s proposal to address only within a USECP proceeding. CAUSE-PA Comments at 35-40; TURN at 5-6; Energy Justice Advocates at 3; Task Force Comments at 3-7; CAC Comments at 3. As noted by the Energy Justice Advocates, the Commission should not adopt regulatory restrictions that undermine the ability of the Commission to investigate and assess the adequacy of LIURP within a base rate proceeding, the forum where the Commission determines the justness and reasonableness of a utility’s rates, terms and conditions, policies and services. Energy Justice Advocates at 3. As TURN notes, this prohibition is carried throughout the Commission’s regulations in Sections 58.2, 58.4(a.1), 58.4(c), 58.12(b), 58.123(b), 58.13(c), 58.17. TURN Comments at 5-6. The OCA strongly supports the advocates’ proposal to eliminate the forum for addressing the LIURP budget. As the OCA discussed in its Comments, the OCA also 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. If 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. *See* OCA Comments at 23.

3. Set-aside for Special Needs Customers (Section 58.4(a.2))

The Commission proposes to revise its Section 58.4(a.2) to increase the special needs set aside to 25%. The Commission's proposed regulation provides:

(a.2) *Special needs customers. A public utility may spend up to 25% of its annual LIURP budget on eligible special needs customers as defined in § 58.2 (relating to definitions).*

Annex A, 52 Pa. Code § 58.4(a.2).

The OCA did not specifically comment on the increased set aside in its Comments, but the OCA supports its proposed inclusion at the increased income limits and the prioritization protocols that the OCA recommended in the definition for special needs. PECO, PGW, EAP, and UGI commented on the proposed set aside. PECO Comments at 3-4.

PECO and EAP both supported the proposed 25% set aside but identified concerns with the definition of special needs customers. In its Comments, PECO stated that the Company supports the proposed increase from 20% to 25% to be spent on special needs customers. PECO Comments at 3. However, the Company stated that the Company did not have reliable access to the type of information that would be required to determine if a customer meets one of the new proposed criteria. PECO Comments at 3. The Company stated without that information, the Company could not determine the number of special needs customers overall or the number of eligible special needs customers that could be provided with program services. PECO Comments

at 3-4. EAP also stated that it supported the proposed set-aside “notwithstanding the comments raised above regarding the definition of such customers.” EAP Comment at 12.

As the OCA discussed in Section B above regarding the definitions of low-income customers and special needs customers, customers up to 300% of the FPIG are in need of assistance. The Commission currently has a set-aside for up to 20% of the budget allocated to special needs customers. The revised definition provides for additional criteria for defining special needs customers. The OCA recommends that these criteria be used for prioritization, but the Company already requests from customers many of the factors such as date of birth of CAP participants and household participants’ age and income. For many customers, the utilities may also have received medical certificates and could potentially estimate and/or confirm that the customers have the necessary criteria for special needs prioritization. Some utilities may not currently capture that data but it does not mean that the utilities do not have the ability to do so. Moreover, the Company could screen a high usage customer for eligibility and specifically use those factors to prioritize the customer as special needs as well.

PGW recommends that the phrase “at its election, but it [sic] not required to” be inserted in the proposed regulation. PGW Comments at 3. PGW does not object for other utilities but states that the Company has a significant number of low-income customers with need. PGW does not agree that the Company should defer to special needs customers. PGW Comments at 2. PGW estimates that 23.6% of its customers earn less than 150% of FPIG versus the state average of 15.3%. PGW Comments at 2. PGW argues that it has no difficulty spending its budget. Increasing to 200% of FPIG would result in significant systematic changes and costs for PGW because the Company does not have income verifications above 150% of the FPIG. PGW Comments at 3.

PGW's concerns can be addressed in at least two ways, but the OCA does not agree that one of those ways should be making the provision voluntary. Making the provision voluntary would result in disparities in program services across the utility service territories. It would also make program coordination more difficult if the program criteria differed for overlapping service territories. Different programmatic eligibility requirements could be potentially confusing for ESPs who work in more than one utility service territory.

First, PGW's LIURP budget could be increased to provide for a set aside for special needs customers. Second, as is discussed below regarding PGW's concerns with the administrative cost cap, PGW can request a regulatory waiver from the Commission, and the Commission can determine whether such a waiver is appropriate for an individual utility. The OCA does not agree that PGW should specifically be carved out of the language or that the language should be voluntary.

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

a. Use of Needs Assessment Factors

Proposed Section 58.4(c)(1)-(8) provides for revisions to a LIURP budget. Section 58.4(c) also states that “[a] revision to a LIURP budget is accomplished in a USECP proceeding.” Annex A, 52 Pa. Code § 58.4(c). The OCA addressed its concerns regarding this provision above and in its Comments at pages 22-23. 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;¹³ (4) number of eligible confirmed low-income customers that could be provided program services, factoring in the number of dwellings that have already

¹³ As the OCA noted in Section 58.2, the special needs customer definition should be increased to 300% of the FPIG.

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).

PECO and EAP identified concerns with the proposed needs assessment. PECO Comments at 4; EAP Comments at 12. EAP and PECO raise similar concerns about the level of customers and oppose the mandate that the Commission consider certain customer populations “*regardless of whether those customers are high usage*” when revising a LIURP budget. PECO Comments at 4 (emphasis in original). PECO argues that it is not appropriate to base the budget for the usage reduction program on the total number of estimated low-income customers, confirmed low-income customers, or special needs customers. EAP states that utilities “do not necessarily have this data, nor is it always accurate.” EAP Comments at 12. EAP argues that to the extent the Commission wishes to use publicly-available U.S. Census-level data, the Commissions should be listed as the reference point in the regulation so that all parties know where the estimates are coming from, as utilities themselves do not collect income information for all their customers or all the households in their service territory. EAP Comments at 12. EAP argues that “utility programs are not intended nor financially suited to provide assistance to all technically eligible customers” and the Commission’s “appear to treat utilities as social service agencies responsible for weatherization or housing services, which is not the role of a regulated utility.” EAP Comments at 13.

Under the law, the Commission must ensure that universal service programs are appropriately funded and allocated. 66 Pa. C.S. §§ 2203(9), 2804(9). Factors 58.4(c)(1)-(3) are important factors to consider as a part of the budget. The factors represent the portion of the total income-eligible population in the service territory. Inclusion of these factors provides important context for the size and scope of the population to be addressed as a part of the universal service programs. Factor number (c)(4) and (c)(5) winnows that population to the total number of eligible customers. Factors (c)(4) and (c)(5) alone do not represent the full picture and scope of the issues. The OCA does not agree that the utilities do not have access to information about the number of estimated low-income customers or confirmed low-income customers. EAP does not specify what data is not collected, but some of the data like the confirmed and estimated number of low-income customers are already required to be collected from the utilities. The utilities report confirmed and estimated number of low-income customers to the Commission annually as part of the Bureau of Consumer Services' Universal Service Programs & Collections Performance Report (BCS Report).¹⁴ These factors have also historically been included in the utility's needs assessment. The OCA agrees with EAP that the Commission should provide guidance regarding how to calculate each so that there is consistency across the utilities. This would be beneficial so as to allow there to be an apples-to-apples comparison of programs; however, the OCA does not believe that this step is an obstacle to collecting this data.

In its Comments, UGI also identified a concern with the requirement for budget adjustments for the number of confirmed low-income customers and estimated low-income customers. UGI Comments at 9. UGI recommended that “the Commission should be clear in adding a specific requirement that prior to receipt of LIURP services, estimated low-income

¹⁴ See, 2022 BCS Report at 8-10, <https://www.puc.pa.gov/media/2573/2022-universal-service-report-final.pdf> (last accessed February 5, 2024).

customers should be required to provide the utility with proof of low-income status before receiving weatherization measures.” UGI Comments at 10. UGI identified that the approach is similar to the approach that the Pennsylvania Department of Community and Economic Development’s (DCED) Weatherization Assistance Program (WAP) requirements. UGI Comments at 10. UGI argues that this would serve to increase the number of confirmed low-income customers who may be targeted for CAP enrollment.

The OCA agrees with UGI that to the extent the pool of estimated low-income customers or special needs customers are targeted for LIURP assistance that income verification could be a part of the application process. However, this does not need to be included in the regulations. Each utility should develop a process for income verification for those customers for which they do not currently have income information. The process for income verification should be streamlined and not create new barriers to enrollment in the weatherization program.

The OCA, CAC, and CAUSE-PA addressed concerns with the needs assessment: (1) the use of the needs assessment and (2) the factors included. In their respective Comments, the OCA and CAUSE-PA identified a broad concern that the current and proposed USECP process currently consider the needs assessment and a LIURP budget in a vacuum from one another and do not appear to be integrated. OCA Comments at 24-25; CAUSE-PA Comments at 43-45.

The CAC, CAUSE-PA and the OCA also raise concerns about the factors used. The OCA agrees with the concerns identified by CAUSE-PA and the CAC which provide for further refinement of the data that is collected. CAUSE-PA identifies that the depth of need, as opposed to just the number of households should be considered. CAUSE-PA Comments at 44. In its Comments, the CAC identified a concern that the inclusion of the broad factors would result in an underassessment of the overarching need and would drive funding disparities across the state. CAC

Comments at 3. The CAC stated that households that received services many years ago may be eligible for services again and should not be excluded from a LIURP needs assessment. CAC Comments at 3. CAC noted that it is unclear what criteria might be used to determine if a household “is not otherwise in need” of LIURP services. CAC Comments at 3. This factor is subjective and could result in the arbitrary exclusion of homes from the overall needs assessment that could benefit from usage reduction services.

The OCA’s 2016 Comments recommended additional factors in the needs assessment that would help to address the CAC concerns and provide greater specificity about the true needs in the service territory. There the OCA recommended that the needs assessment also include: (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. OCA Comments at 25.

CAUSE-PA recommended that the Commission should consider establishing a periodic statewide evaluation of need utilizing a neutral third party evaluator. CAUSE-PA Comments at 45. CAUSE-PA argued that the process would obviate the need for utilities to perform an individual needs assessment and engage in a process akin to the Statewide Evaluator process utilized for assessing the potential energy savings for Act 129. CAUSE-PA Comments at 45. CAUSE-PA

concludes that such a process would help to improve consistency and availability of programs across the state.

CAUSE-PA raises an interesting idea to be considered to address the need for greater uniformity in how needs assessments are created and how they are used. There are potential benefits to a neutral party establishing the need in each service territory, but there are variables that would need to be evaluated such as how a Statewide Evaluator would be paid for. Would it be paid through an assessment as the Act 129 Statewide Evaluator (SWE) is paid for or some other process of a levy across the utilities for the costs? The OCA submits that the Commission should examine whether a statewide evaluator for a needs assessment is feasible as proposed by CAUSE-PA.

d. Timeline for Completion (Proposed 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. Annex A, 52 Pa. Code § 58.4(c)(7). 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 OCA identified a concern in its Comments that the factor did not consider a standard for how long an eligible customers should go without LIURP service or a timeframe for completion. The OCA also expressed a concern that the Commission had eliminated the requirement for a “reasonable timeline” and replaced with a “proposed timeline.” OCA Comments at 28. CAUSE-PA, the Energy Justice Advocates and the CAC shared the OCA’s concern regarding the elimination of the

“reasonable timeline” language. CAUSE-PA Comments at 43; Energy Justice Advocates Comments at 3; CAC Comments at 2. The OCA recommends a timeline of not more than 15 years and that the budget be set accordingly. OCA Comments at 26-29.

EAP disagreed with the inclusion of the language that would change the reference from a “reasonable period of time” to a “proposed timeline.” EAP Comments at 13. EAP, however, disagreed with the elimination for different reasons from the advocates. EAP stated that it does not agree that it was the utility’s role to weatherize all potentially-eligible customers in the service territory, particularly if there is a disproportionate number of low-income customers in the service territory. EAP Comments at 13.

The OCA disagrees with EAP’s perspective on the obligations of the utilities. The Public Utility Code requires that the programs, including LIURP, be appropriately funded and available. 66 Pa. C.S. §§ 2203(9), 2804(9). Under the statutory requirements, it is important for the utility to understand what it would take to address the income-eligible weatherization needed in the service territory because the LIURP budget timeline is important to setting realistic goals and a realistic budget. After all, how can an appropriate budget be set if the scope of the problem is not understood? Although EAP agrees that a reasonable timeline should be included, EAP does not agree that the scope of the problem should be measured. EAP’s proposal would result in the same problem as the Commission’s proposed revised language. The Commission’s proposal to eliminate the reasonable timeline may result in wildly different timeframes 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. The OCA agrees with the Energy Justice Advocates that “[t]he Commission should

restore this explicit reasonableness requirement to ensure comprehensive energy reduction services are reasonably accessible to all those in need.” Energy Justice Advocates at 3.

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).

The OCA, CAC, CAUSE-PA, and Energy Justice Advocates recommend that unspent LIURP funding be included in the LIURP budget for the subsequent year. CAC Comments at 3; Energy Justice Advocates at 2. CAC, CAUSE-PA and the Energy Justice Advocates request clarification that the carryover budget will be in addition to the amount budgeted for LIURP in the subsequent year. The OCA agrees that all allocated dollars be spent on the program and supports the Commission’s proposed additional language. OCA Comments at 29; 2016 OCA Comments at 7-8.

Peoples and UGI both argued that the Commission should not rollover the LIURP budget dollars. Peoples Comments at 2; UGI Comments at 9-10. UGI argued that effective management requires that there be shown a need for the unspent dollars and an ability to spend them. UGI Comments at 10. Peoples argued that the Company was concerned about being able to fully spend the budget with the proposed rollover amendment. Peoples Comments at 2. EAP proposed that if the Commission included a rollover that it consider a percentage threshold or other limit where

monies would not be reallocated to future years, but instead could be reallocated to other USECP offerings or returned to ratepayers as a credit to ratepayers or allocated to use in the Hardship Fund. EAP Comments at 13.

As the OCA discussed in its Comments, there are numerous reasons why a Company may under-spend its budget in a particular year. 2016 OCA Comments at 7-8; OCA Comments at 29. 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 target. In either scenario, the OCA recommended the dollars be maintained as a part of budget and roll forward into the next programmatic year to increase the amount of funds available in the subsequent program year. OCA Comments at 29-30. The OCA recommended consistent with the recommendations of the CAC, CAUSE-PA and the Energy Justice Advocates that this clarification 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. OCA Comments at 30.

The OCA does not agree with EAP's proposed threshold process or UGI's argument about prudent spending. If the need still exists for the services, the budgeted dollars should be used to further address that need and not the other universal services programs as proposed by EAP. If after several years, a utility is simply not able to spend its LIURP allocation then the utility should be required to proposed a plan amendment to modify the budget or its plan to reach more household. 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 could be established and interested stakeholders could make recommendations about the budget.

E. Proposed Section 58.5

The Commission's proposed Section 58.5 provides:

(a) *LIURP administrative costs.* [For programs covered by § 58.4 (relating to program funding),] A public utility may not spend more than 15% of [a covered utility's] its annual LIURP budget [for its usage reduction program may be spent] on administrative costs, as defined in § 58.2 (relating to definitions). [The costs associated with approved pilot programs are exempt from the 15% cap.]

(b) *LIURP pilot program administrative costs.* The administrative costs associated with an approved pilot program are exempt from the 15% cap on LIURP administrative costs. A public utility shall track the administrative costs of a pilot program separately from the other costs of the pilot program.

Annex A, 52 Pa. Code §58.5.

In its Comments, PGW disagreed with the proposed change to administrative costs. PGW Comments at 3. PGW stated that the Company has previously requested and been granted a waiver of Section 58.5 in its USECP because PGW its program design is based upon a Total Resource Cost (TRC) cost-effectiveness targets and exceeds the 15% administrative cap due to the use of the TRC. PGW Comments at 3. PGW stated that targets, rather than a strict cap, would better serve the intent of the regulation. PGW Comments at 3. The Company stated when treating homes comprehensively, more administrative costs are required because there is additional coordination, scheduling, visits and health and safety remediations needed. PGW Comments at 3.

In its filed Comments, the OCA did not have any comments on Section 58.5, but the OCA reserved its right to respond to other parties' comments. PGW's proposed revisions should not be adopted. The OCA agrees with the Commission's proposed cap and with CAUSE-PA recommendation that the 15% cap should apply to all costs, including administrative, inter-utility training, and pilot program costs. CAUSE-PA Comments at 49-50. PGW's proposal would allow for the exception to subsume the whole. The purpose of an administrative cap is to ensure that the programs operate efficiently and that the dollars for the program are primarily focused on

providing customer benefits and implementation of measures. PGW has not demonstrated through its comments alone why the use of the TRC cannot still operate under an administrative cap. Nor has PGW recommended an alternative. However, to the extent that PGW believes that the TRC cannot operate under the cap, the Company can still request a waiver as it does with its current program. As PGW has done in the past, a waiver can be sought if PGW can demonstrate that a benefit can be shown. The OCA does not agree that the use of a TRC and an administrative cap are mutually exclusive. The OCA recommends that PGW's opposition to the administrative cap be denied.

F. Proposed Section 58.6

The Commission's proposed revision to Section 58.6 provides that the utilities should be required to consult with persons or entities that have experience in LIURP program design "or administration of usage reduction, energy efficiency and weatherization programs." Annex A, 52 Pa. Code § 58.6. The persons or entities *may* include the utility's USAC, a LIURP Advisory Committee, "past recipients of weatherization service, social service agencies, and community groups." Annex A, 52 Pa. Code § 58.6.

The OCA did not address this provision of the Commission's regulations, but reserved the right to respond to other parties' comments. EAP commented that it supported the Commission's proposed revisions but with caution that a utility's advisory committee should not be viewed as an additional approving or regulatory body. EAP Comments at 14-15. EAP stated that it should remain clear that the group is advisory only and should not be given equal weight to statutory advocates. EAP Comments at 14-15. The OCA does not agree with EAP that a regulatory change is needed to clarify its point. Of course, the Commission is the body which has jurisdiction over the utility to decide how a program should be designed. Nothing in the Commission's regulation changes

that. The Commission’s language merely recognizes that the USAC and future LIAC groups can offer valuable insights into how a utility’s proposal will impact their respective constituents and requires the utility to utilize the resource provided. USACs and LIACs are made up of statutory advocates, low-income advocates, community-based organizations, weatherization providers, and other entities that work with low-income communities. Those diverse insights are important to the utility’s decision-making process when moving forward with a proposal and the Commission’s decision-making process to the extent that any entity wishes to provide formal comments to the Commission about the proposal. While the OCA appreciates the opportunity to work with the utilities on new proposals prior to filing, the OCA’s presence as a statutory advocate on the USAC or LIAC or its filing of formal comments in a USECP proceeding does not usurp any other entity from providing their insights and knowledge about the proposal to the Commission.

The Commission’s CAC also provided comments regarding Section 58.6. CAC Comments at 5-6. Specifically, the CAC Comments identified a concern that the Commission’s proposed revisions to section 58.6 would *require* utilities to consult with “persons and entities with experience in the design or administration of usage reduction programs” – but consultation with a utility’s Universal Service Advisory Committee would be *permissive*. CAC Comments at 5-6. The CAC Comments encouraged the Commission to *require* utilities to consult with their respective advisory committees regarding potential proposals to modify its LIURP. CAC Comments at 5-6. The Energy Justice Advocates identified a similar concern and recommendation. Energy Justice Advocates Comments at 5. Utility USACs include a range of community perspectives that should be consulted in developing modifications to a utility LIURP.

As the OCA discussed in response to EAP’s Comments, the diverse perspectives provided by the USAC and the LIAC and that the utilities should be required to utilize these important tools

as a part of their decision-making process as recommended by the CAC and the Energy Justice Advocates.

G. 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.” Annex A, 52 Pa. Cod § 58.7.

Several parties, including the OCA, addressed this Section in their Comments. *See* OCA Comments at 31-32. EAP stated in its Comments that they are generally supportive of the proposed amendments to this section. EAP Comments at 15. EAP raised a question regarding what the Commission meant by “direct assistance.” EAP Comments at 14. EAP stated that “direct assistance” could mean filling out the application, which EAP stated that it did not believe would be appropriate for the utility to do. EAP Comments at 14. EAP stated that utility ratepayers should not bear the responsibility for providing application assistance, and that such application assistance should remain with DHS. EAP requests that the Commission remove the word “direct” to allow the utilities more flexibility regarding information sharing and assistance. EAP Comments at 14.

The OCA does not agree with EAP’s proposal to eliminate the word “direct” from assistance. The OCA supported in its Comments a whole house approach to integration of resources. OCA Comments at 31-32. Similarly, the Energy Justice Advocates and CAUSE-PA strongly supported integration of programs. Energy Justice Advocates Comments at 5-6; CAUSE-PA Comments at 55-59. There are many ways in which utilities already perform direct assistance to customers through the Utility File Transfer program in which utilities will apply for crisis grants on behalf of customers that have already provided a cash grant to the utility. Utilities also directly assist customers through its CARES program. When the DHS data sharing program is operational,

direct assistance will mean sharing information across utilities to allow customers to more easily participate in multiple programs. Direct assistance means coordinating with the electric utility's Act 129 program, the natural gas utility's voluntary program, other utilities' LIURP programs and water and wastewater programs for a whole house approach. Direct assistance does not necessarily mean physically filling out applications for all eligible customers. It means providing assistance to eliminate or lessen the barriers to access to programs, to help the customer be aware of available resources and to help customers to have access to those resources. *See* OCA Comments at 31-32. Direct assistance means increased coordination on the utility end. 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 because it will minimize the level of inconvenience for the customer. OCA Comments at 32. When a customer takes advantage of all available resources, that benefits the utilities because customers may have greater resources to be able to pay their bills. Section 58.7 is about integrating resources and leveraging those resources to the benefit of customers.

H. Proposed Section 58.8

1. Introduction

Section 58.8 addresses tenant household eligibility to receive LIURP services and the eligibility criteria that must be met. Annex A, 52 Pa. Code § 58.8. As the OCA discussed in its Comments, the OCA strongly supports aspects of the Commission's proposed modifications to Section 58.8 such as to allow the utility to provide baseload measures and energy education even if landlord consent is not provided. OCA Comments at 33-34; *see* 52 Pa. Code §§ 58.8(a)(1)-(2). The OCA identified concerns regarding the provisions of Sections 58.8(b) (landlord contributions)

and 58.8(c) (optional public utility requirement). In particular, as discussed below in response to EAP, PPL, UGI, and Duquesne, the OCA objected to the Commission’s proposed optional public utility requirement to enforce tenant protections against increases to rent or eviction. OCA Comments at 35-37. Finally, the OCA recommended that the Commission consider the addition of a multi-family provision. OCA Comments at 37-40.

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

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 measures.” Annex A, 52 Pa. Code § 58.8(a)(2). UGI argues that the “baseload measures” should be replaced with “baseload measures not requiring landlord permission.” UGI Comments at 10. UGI’s proposed replacement language is unduly vague. It is not clear from UGI’s Comments what baseload measures that UGI believes either would or would not require landlord permission. The term is not defined in the Comments or in the regulations, so inclusion would introduce ambiguity into the regulations. The OCA supports the Commission’s proposed revisions to Sections 58.8(a)(1)-(2). *See* OCA Comments at 33-34.

3. Proposed Section 58.8(c)

The OCA opposes the Commission’s proposed revisions to the language of Section 58.8(c).

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 is not evicted for a stated period of time of 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).

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).

EAP, PPL, Duquesne and UGI addressed Section 58.8(c). In its Comments, EAP, PPL, Duquesne, and UGI stated that they agree with the Commission's modifications to Section 58.8(c) to make optional the requirement that utilities require the landlord to agree not to raise rent or evict within 12 months. EAP Comments at 15-16; PPL Comments at 7-8; Duquesne Comments at 9-10; UGI Comments at 10-11. In particular, EAP argues that it is difficult for utilities to enforce the previously required stipulation that a landlord not raise rent or evict the tenant for at least 12 months post-installation of program measures. EAP Comments at 15. EAP alleges that the requirement created barriers to participation for tenant customers, but that making the requirement optional will allow utilities to offer more measures to tenants. *Id.* UGI similarly alleges that the provision may serve to harm tenants that would otherwise benefit due to landlord reluctance to enter into an agreement. UGI Comments at 11.

The OCA, Energy Justice Advocates, CAUSE-PA, and TURN all objected to the Commission's proposed revisions to the existing language. OCA Comments at 35-37; CAUSE-PA at 71-73; TURN at 7-8; Energy Justice Advocates Comments at 8. The OCA disagrees with EAP and the utility companies' assumption that the proposed revisions will increase landlord access to the program. As the OCA discussed in its Comments, instead of increasing landlord participation

as EAP and the utilities suggest, the proposed language may have the reverse impact. *See* OCA Comments at 36-37. The proposed elimination of the no eviction language has the effect of weakening the tenant eligibility requirements. The current language prevents a landlord from evicting a tenant if the tenant otherwise meets their ongoing obligations and responsibilities as a tenant. The current language prevented the landlord from using ratepayer money to improve a property then find a pretext to evict the tenant, who as the basis for the eligibility for the ratepayer money in the first instance and to potentially be able to prevent to another tenant who may or may not be eligible for LIURP. Moreover, EAP and the utilities do not acknowledge that the Commission's proposed revision also eliminates completely the current provision that the landlord may not raise rents. OCA Comments at 36. The 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.

Moreover, while EAP and the utilities allege that the revised provision may increase landlord interest, it may have a chilling effect on a tenant's willingness to participate in LIURP. As the OCA discussed in its Comments, 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. OCA Comments at 37. The proposal to allow for potential evictions and no bar on raising rents may allow the landlord to be unjustly enriched at the expense of LIURP and the ratepayers that pay for the program. OCA Comments at 37.

The OCA agrees with the concerns raised by CAUSE-PA, TURN and the Energy Justice Advocates. CAUSE-PA, TURN, and the Energy Justice Advocates also argue that the proposal will serve to erode tenant protections and increase the risk that landlords will take advantage of the program to increase rent potential. CAUSE-PA Comments at 73-74; TURN Comments at 7-8;

Energy Justice Advocates Comments at 8. CAUSE-PA notes that the proposal could also serve to erode the availability of quality affordable housing. CAUSE-PA Comments at 74. TURN notes a concern that without the requirement that landlords may be incentivized to fail to make energy saving repairs because they know that their tenants can receive program services that will increase the value of the property without investment from the landlord. TURN Comments at 7. There also may be differences in the way that utilities address the requirement, creating disparities in different service territories. TURN Comments at 7. The Energy Justice Advocates recommend that the Commission restore the tenant protections that prevent landlords from raising rent or evicting a tenant as a result of upgrades to the property. Energy Justice Advocates Comments at 8. The OCA shares their concerns.

In order to address the landlord approval, CAUSE-PA recommends that instead of adopting the proposed language revisions that the Commission develop a standardized, consistent landlord agreement form that clearly states that the tenant and the landlord protections. CAUSE-PA Comments at 72-73. The Energy Justice Advocates recommend that a standardized, simplified landlord agreement form be developed that clearly states both the landlord and tenant protections for LIURP recipients. Energy Justice Advocate Comments at 8. EAP also recommends that in addition to documenting the landlord approval in writing that the utilities should also be allowed to obtain consent via a recorded call or electronic methods as long as the utility maintains the records. *Id.* at 15-16. EAP argues that obtaining landlord consent is a significant challenge for utilities and that creating a simplified process for landlord approval would result in greater participation. *Id.* at 16. The OCA agrees that a simplified, standardized process should be developed and that the Commission should consider allowing consent via a recorded call or other

electronic methods. Simplifying the consent process will benefit both landlords and tenants and should be encouraged.

I. LIURP Outreach- (Proposed Section 58.9)

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).

As the OCA discussed in its Comments, the OCA supports the Commission's efforts to ensure that each of the utilities has communications that are in plain language, a robust limited-English proficiency outreach program, and limits personal identification requirements needed to access service. OCA Comments at 39-42. The OCA did not agree with the Commission's proposed threshold to require a public utility to 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. OCA Comments at 40. 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 process whether there are enough Limited English Proficiency (LEP) households

to merit outreach in a particular language. OCA Comments at 41. Further, the OCA recommends that the service territory should not be the threshold but that the substantial number should be used as the standard to merit outreach in a particular language. OCA Comments at 41. CAUSE-PA similarly recommended support for the Commission's outreach provisions and that community-based organizations be leveraged in outreach efforts. CAUSE-PA Comments at 81-83.

In their respective Comments, EAP, PPL, PGW, PECO, and UGI addressed the Commission's proposed LIURP outreach. EAP Comments at 16-17; PGW Comments at PPL Comments at 9; PECO Comments at 4-5. In its Comments, EAP agrees with the Commission's goals to allow for additional communication methods to potentially eligible customers and agrees that the change from mass-mailing to communication appropriately recognizes the different ways that customers may interact with their utility. EAP Comments at 16. EAP, however, cautioned against continuing to make this a program requirement because not all utilities have an open enrollment for their LIURPs. EAP Comments at 16. EAP argued that a mass communication where there is not open enrollment would lead to disappointment on the part of consumers and a wasted effort on the part of utilities. EAP Comments at 16. EAP also requested that the utilities be given leniency regarding communications in other languages. *Id.* PGW similarly requested to modify the advertising requirements because their selection process is internal in order to ensure that customers with the greatest need are served. PGW Comments at 3-4.

The OCA does not agree that a limitation should be placed on information about the programs based on the enrollment practices of the utilities. The OCA does not agree that the selection process should be limited to internal processes, but it is important that customers and organizations that work with the low-income community, in particular, be aware of the program. Widespread understanding and knowledge of the program will help to facilitate participation in

the program. Customers are less likely to believe that the utility's legitimate no-cost energy efficiency program is a scam, and will feel more comfortable enrolling if they understand the benefits of the program in their first language. Landlords may be more willing to participate in the program if they understand the benefits to their tenants. Community-based organizations can provide support and information regarding the combined benefits available from CAP and LIURP.

EAP also requests that the Commission soften the proposed language regarding advertising LIURP in other languages. See EAP Comments at 17. EAP notes that there is a difference used in the language used for media outlet sources and to customers. The first sentence provides that the public utility shall *consider* providing announcements in media outlet sources, and the second sentence states that the utility *shall* advertise in other languages when census data indicates more than 5% or more of the residents are using another language. EAP Comments at 17. EAP asks that the language requirement be tied more closely to the media advertising language and not require advertising generally. EAP Comments at 17.

Similar to EAP's Comments, PECO sought clarification. regarding the following two sentences of proposed § 58.9(a) which address public service announcements and advertising:

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.

PECO Comments at 4 (emphasis added). PECO asks the Commission to clarify that these provisions should be read in concert to provide that if a utility decides to provide public service announcements regarding its LIURP, then the utility must also provide public service announcements in qualifying non-English languages. In order to make this clarification, PECO recommends that the second sentence be replaced with the following:

If public service announcements are provided, the utility shall also make such announcements 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.

PECO Comments at 5.

The OCA does not agree that the language should be softened or made voluntary by the utilities, and that language access should be across all communication portals and providing access through language lines to its Call Center or ESPs. OCA Comments at 42. It is essential that both written and oral communications in the customer's native language be available. The Commission should not soften the language but instead require utilities to provide language access in both oral interpretation and written language. *See* OCA Comments at 41. As the OCA discussed in its Comments, the OCA does not agree that the Commission should limit to 5% of the population in its service territory, but instead it should be a "substantial number of customers." 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. OCA Comments a 41-42.

In its Comments, PPL requests that the Commission clarify when the public utility must review census data to evaluate whether "5% or more of the residents of the public utility's service territory are using the other language." PPL Comments at 9. As noted above, the OCA does not agree with the 5% threshold, but at a minimum, the utilities should review their language access policies with their USECP filing. The utilities should also be under a continuing obligation to address language access needs if the utilities become aware of an increased population of LEP customers, such as due to an increase in a particular refugee population. The utilities should work with their USACs and LIAC to determine whether needs are evolving in the communities that they serve.

EAP also highlighted that the continued inclusion of a requirement to send these notices to “publicly and privately funded agencies which assist low-income customers within the public utility’s service territory.” EAP Comments at 16. EAP argued that it is not reasonable to assume that utilities know of all such groups in their service territories. Further, the regulation should make clear that all the costs incurred via the outreach required in this section are recoverable via the established LIURP-related surcharge.

The OCA does not agree with EAP’s assertions. The utilities utilize many of these community-based organizations as a part of their USAC, as part of their proposed LIAC, and use the low-income groups as tools for their CARES referrals. To the extent that the utilities are not already doing so, the utilities should be engaging with their low-income agencies. Section 58.9 does not require that the utilities know every agency in the service territory. It requires that the utility make efforts to provide public notice of the programs to those entities that can reasonably be known. The burden should be placed on the utilities to know those agencies that work with low-income customers. Utilities can work with entities such as 211 and the United Way to get to better understand agencies in the community.

J. Proposed Section 58.10

a. Introduction

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) **[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:**

(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 **[receive] be offered** services first. When prioritizing eligible customers by usage level, several factors **[shall] must** be considered when feasible. 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, **[utility rate factors which may tend to limit (for example, declining block rates) or facilitate, for example, time-of-day rates or heating rates, bill reductions somewhat independently of absolute usage levels should be considered.] 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), **[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.**
- (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 incomes **[which place them farthest below the maximum eligibility level] at the lowest FPIG level shall [receive] be offered program services first.**

(b) **[Covered electric utilities] An EDC shall use the [guidelines outlined] prioritization provisions in this section to determine the amount of its annual [program funding] LIURP budget to be [budgeted] allocated for [usage reduction] program services available to residential electric [space heating] space-heating, electric residential [water heating] water-heating customers and residential [high-use] electric baseload customers. (c) [A covered utility may spend up to 20% of its annual program budget on eligible special needs customers as defined in § 58.2 (relating to definitions).] (Reserved).**

(d) A public utility may not restrict participation in LIURP to customers enrolled in a CAP. If a customer is CAP-eligible, participation in CAP must be encouraged but not required to receive program services.

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

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; see Annex A, 52 Pa. Code § 58.10(a)(1). 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.

Many of the commenters addressed concerns with the prioritization factors identified in the Commission's proposed revised regulations including: (1) CAP shortfall as a prioritization factor; (2) customers with an arrearage prioritization factor; and (3) requirement for LIURP participation. Commenters also proposed additional factors to be considered as discussed below.

b. CAP Shortfall as a Prioritization Factor (58.10(a)(1))

The Commission includes CAP shortfall as a prioritization factor. Annex A, 52 Pa. Code §58.10(a)(1). In their respective Comments, EAP, PGW, PPL, NFG, and FirstEnergy oppose the introduction of CAP shortfall as one of the factors in prioritizing eligible customers. EAP Comments at 17; PGW Comments at 4-5; PPL Comments at 9; NFG Comments at 7; FirstEnergy Comments at 4-5. As the OCA discussed in its Comments, it is important for CAP shortfall to also be included as a prioritization factor. *See* OCA Comments at 43-46. The OCA recommends that the Commission's proposed CAP prioritization factor be maintained.

The common thread amongst those opposed to the proposal is that they do not see a value in prioritizing CAP shortfall as a part of LIURP. EAP argues that it does not believe that changing prioritization from usage and arrearage to CAP shortfall will aid in coordination efforts across weatherization programs because only utilities will have the information regarding the CAP shortfall. EAP Comments at 17. Moreover, EAP states that those customers with the highest arrearages will already capture those customers with the highest CAP shortfalls. EAP Comments at 17. NFG argues that CAP shortfall is not a sound metric more than usage or arrears, and utilities will need to invest time, resources, and funding in order to incorporate the concept. NFG Comments at 7. PGW argues that the CAP shortfall is an absolute figure that may not capture a home's relative needs. PGW Comments at 4. PGW argues that other factors such as dwelling size, number of occupants, number of consecutive service months at a given dwelling, and utility end uses are arbitrary for the purposes of the LIURP section. PGW argues that the current selection criteria of prioritizing the highest usage receiving assistance will logically also have higher CAP shortfalls since CAP assistance amounts are a flat rate or PIPP tied to usage. PGW claims that basing the prioritization of the preprogram arrearages is not helpful because many customers already have arrearage forgiveness outside of LIURP. PGW Comments at 4.

PPL states that it does not support prioritizing services based on the size of the arrearage or household income under (a)(2). PPL Comments at 9. PPL also recommends that the Commission offer flexibility in scheduling and prioritizing jobs when serving high-usage baseload customers. *Id.* at 11. PPL argues that public utilities are in the best position to most effectively schedule LIURP jobs and a mandated schedule will make scheduling less efficient. PPL Comments at 11.

FirstEnergy argues that including the CAP shortfall when prioritizing customers would not be effective for the Company because the dollar value for the CAP shortfall changes monthly and

varies depending on the time of the year. FirstEnergy Comments at 4. FirstEnergy argues that taking the total annual usage and the customer's income level into consideration is a more effective way to prioritize customers, and there is not a need of prioritization because there are no complaints about the current process and not a large surplus of applications. *Id.*

The OCA does not agree regarding the utilities' assessment regarding the impact of using CAP shortfall as a prioritization factor. The OCA supports the regulations allowing utilities to "consider factors that tend to facilitate utility bill reduction when prioritizing eligible customers." *See NOPR Order* at 60. Utilizing CAP shortfall is a factor that would facilitate utility bill reduction both for CAP customers and those who pay for the CAP program. What the utilities overlook is that CAP shortfall can help to identify other customers, such as tenants, with inefficient usage that may otherwise be overlooked for LIURP treatment. The OCA notes that using the CAP shortfall as a criterion supports the notion of serving smaller, multi-family units that may not be "high use," but may have highly inefficient usage on a square footage 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 maximum CAP credit ceiling would represent "an opportunity for bill reduction" as proposed in the revised regulations.

c. Arrearages as a Prioritization Factor (Section 58.10(a)(2))

The Commission includes arrearages as a prioritization factor. Annex A, 52 Pa. Code § 58.10(a)(2). Several of the Comments also oppose the Commission's proposal to revise the regulations to prioritize customers with arrearages, but some of the utilities identified different alternatives to prioritization for high arrearages. The OCA agrees with the Commission 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; OCA Comments at 45-46. The OCA recommends 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. OCA Comments at 45-46.

PPL argues that high pre-program arrears should be addressed as a part of CAP and not as a part of LIURP. PPL Comments at 9-11. Duquesne disagrees with “aspects” of the Commission’s proposed prioritization of customers criteria. Duquesne Comments at 10. The Company stated that “[i]t understands the value in prioritizing a CAP customer, as the higher their monthly usage, the greater the costs spread to non-CAP customers.” Duquesne Comments at 10. Duquesne argues that throughout the *NOPR Order* that the Commission continually shifts the focus to CAP customers, with arrearages and in debt. Duquesne states that “[t]hose issues are not the correct priority in a proceeding regarding LIURP. LIURP is a usage-focused program.” Duquesne Comments at 11.

FirstEnergy states regarding 58.10(2)(i)-(ii) that the Company gives the first priority to CAP customers with the largest preprogram arrearages and in-program arrearages and then to non-CAP customers with the largest unpaid balances. FirstEnergy Comments at 4. FirstEnergy agrees that focusing on customers with the highest electric usage provides the best opportunity for savings and CAP participants should be prioritized. *Id.* FirstEnergy noted that prioritizing customers with the highest preprogram arrearages is not always an indicator that their home has the most opportunity for savings, as the arrearage may have been carried forward from a prior residence. *Id.* FirstEnergy identified a concern that documenting specific criteria in a rulemaking or in the USECP at a detailed level creates rules that the Company cannot adhere to. FirstEnergy Comments at 4-5. FirstEnergy stated that coordinated jobs are not always pre-planned and are usually already

in progress when a LIURP application is received. FirstEnergy states that [i]f such a change were prescribed in this manner, most of the customers who benefit today- who do not have high annual electric usage will not independently meet the proposed prioritization criteria. *Id.* at 5.

As discussed in the *NOPR Order*, the Commission proposes that the first priority is “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 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 recommends 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.

d. Requirement for LIURP Participation (52 Pa. Code § 58.10(3)(d))

The Commission proposes that a utility may not restrict LIURP to CAP participants, and that if a CAP participant is eligible, participation must be encouraged but not required to receive program services. Annex A, 52 Pa. Code § 58.10(3)(d). EAP, PPL and PGW do not agree with the Commission’s proposal to encourage, but not require, CAP customers to participate in LIURP. EAP Comments at 18; PPL Comments at 10; PGW Comments at 9; *see* Annex A, 52 Pa. Code § 58.10(3)(d). The OCA agrees with the Commission that LIURP should not be limited to CAP participants and that CAP participants should be encouraged, but not required, to participate in CAP.

EAP argues that the requirement for LIURP “aids in incentivizing otherwise reluctant customers into participating.” EAP Comments at 18. In its Comments, PPL states that the Company uses a proactive approach to refer newly enrolled customers to their LIURP program, but if a customer does not take advantage of the program, the Company believes that it should not fall on the utility to later prioritize that customer once it becomes a crisis. PPL Comments at 10. PGW also strongly disagrees with Section 58.10(d) that CAP-eligible customers cannot be required to receive LIURP services and recommends that “if a customer is CAP-eligible, participation in CAP must be encouraged but not required to receive program services.” PGW Comments at 9.

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.

e. Additional Prioritization Proposals

Several of the Comments recommended additional factors that should be considered for prioritization. See CAC Comments at 3; Energy Justice Advocates Comments at 8; TURN Comments at 4-5. The CAC recommended that the Commission include an additional factor to

allow prioritization of households for services when coordinated with other energy efficiency and home repair programs, including Act 129, WAP, the Whole Homes Repair Program and the new federal Inflation Reduction Program. CAC Comments at 3. The Energy Justice Advocates made a similar proposal. Energy Justice Advocates Comments at 8. CAC stated that “allowing prioritization of homes that can be served through leveraged funding will help maximize the delivery of holistic services to low-income families.” CAC Comments at 3. The OCA agrees with the proposals and it would also address the concerns addressed some of the utilities and EAP that the other prioritization factors of CAP shortfall and high arrearages may discourage such coordination. *See* EAP Comments at 17; FirstEnergy Comments at 4-5.

TURN also recommended that LIURP prioritization be accompanied by a fresh start with arrearage forgiveness upon receipt of LIURP services. TURN Comments at 4, 5. The OCA strongly supports prioritization of CAP customers with high arrearages for LIURP services. The OCA agrees that “fresh start” proposals should be considered as a part of a larger CAP rulemaking. As the OCA discussed in its Comments, additional avenues, such as an opportunity to receive additional arrearage forgiveness, could be considered separate from LIURP to help customers with large balances. OCA Comments at 60. 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. OCA Comments at 60. 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. OCA Comments at 60. 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. OCA Comments at 60.

And a fresh start for arrearage forgiveness may be something to consider as a part of the LIURP regulations when factors are identified that tie the cause of the delinquency to a delay in receipt of LIURP services or factors are identified that show that the customer had exhausted their maximum CAP credits which created the significant arrearage accumulation. Broader consideration of a fresh start, however, should be considered as a part of any overall universal service or CAP rulemaking rather than a part of this LIURP rulemaking.

K. Energy Audit (Proposed Section 58.11) and Fuel Switching (Proposed 58.11a)

1. Introduction

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 OCA supported the Commission's elimination of 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. *See* OCA Comments at 46.

The OCA does not have any Reply Comments regarding the proposed Energy Audits portion of Section 58.11 and responds below to the Comments of stakeholders regarding fuel switching (Proposed Section 58.11a).

2. Fuel Switching (Proposed Section 58.11a)

a. Overview

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. The OCA notes that as discussed in the discussion Section of its Comments, it is important for the Commission to define energy savings to include overall energy savings, not just a particular utility's own savings. The proposed change and addition of Section 58.11a reflects this change through fuel switching. The OCA recommends that an evaluation of fuel switching should holistically consider whether customers would save on their overall energy usage.

b. Fuel Switching

A range of Comments were provided by the stakeholders regarding fuel switching. Annex Annex A, 52 Pa. Code § 58.11a. EAP did not provide a position on fuel switching and deferred to the individual members. The OCA notes that EAP's position highlights the diversity of positions presented by the utility stakeholders.

NFG opposed the proposal to include fuel switching. NFG Comments at 8. NFG stated that the proposal did not include specific circumstances under which fuel switching should be considered or identify which utility would bear the costs. *Id.* The proposed regulations also does not account for repairs or replacement where the source is a deliverable fuel. *Id.* The OCA supports

fuel switching and does not believe that the issues identified by NFG should present a bar to fuel switching.

PPL and PGW both also addressed concerns regarding how the fuel switching costs would be allocated. PPL Comments at 12; PGW Comments at 7. While PGW stated that the Company believes that the Commission has the authority to encourage fuel switching, PGW argued that they should not be required to subsidize fuel switching from natural gas to electric. PGW recommended that the utility that is switched should pay for fuel switching. PGW Comments at 7. PPL also agreed, in part, with the fuel switching process outlined in Section 58.11a(2). PPL Comments at 12. PPL stated that the costs related to fuel switching will fall onto the electric utilities because inoperable natural gas or oil systems will produce little to no usage for LIURP services. PPL Comments at 12. The OCA agrees that in its final rulemaking order the Commission should specifically identify how the costs will be allocated to the utilities.

PPL also identifies a concern regarding how the written agreement would work when partnering with other utilities and how disputes would be resolved. PPL Comments at 12. The problems presented by PPL's questions regarding the written agreement highlight why there should not be a requirement for consent from the two utilities.

The Energy Justice Advocates, CAUSE-PA and TURN supported the proposed elimination of LIURP's prohibition on fuel switching for households' primary heating sources, but like the OCA objected to the requirement that both utilities agree in writing. Energy Justice Advocates at 4-5; CAUSE-PA Comments at 69-70; TURN Comments at 3-4. The advocates identified numerous reasons why there should not be a requirement for both utilities to consent. TURN identified that it has been their experience that many households have ceased using fuel associated with the broken furnace, and the utility may fail to respond. TURN Comments at 4. The Energy Justice

Advocates recommended that LIURP funds should support fuel-blind fuel switching when the new source would result in the “lowest projected annual home energy burden, including winter heating and cooling costs, without requiring permission from the other utility or vendor.” Energy Justice Advocates Comments at 4-5. CAUSE-PA noted that requiring dual approval would enable the utility providing the more expensive fuel to bar a prudent switch, “forcing low income consumers to continue paying higher than necessary energy bills.” CAUSE-PA Comments at 69-70.

The Energy Justice Advocates, TURN and CAUSE-PA have identified similar concerns as the OCA identified in its Comments. *See* OCA Comments at 46-47. The OCA agrees that 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. The OCA also agrees with CAUSE-PA’s assertion that the decision should “be driven solely by a neutral assessment of whether switching the household’s fuel source will reduce overall household energy burden over the long term and, in turn, whether the customer consents to the switch.” CAUSE-PA Comments at 68. 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. The OCA cited to the example of Michigan in its Comments. The Michigan Bureau of Community Action and Economic Opportunity (BCAEO) conducts State Administered Switching Approval.¹⁵ Fuel switching is allowable when the site-specific energy audit demonstrates that the

¹⁵ *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

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. OCA Comments at 46.

In its Comments, CAUSE-PA also made several additional recommendations that the OCA recommends that the Commission should adopt. CAUSE-PA recommended that the Commission should revise Section 58.11a(a)(1) to clarify that fuel switching is available to households receiving natural gas and electric service subject to the same requirements as households served by dual-fuel utilities. CAUSE-PA Comments at 70. CAUSE-PA also recommends that to help ensure the participant has the appropriate information to make the decision, that an energy audit should be provided to report to the consumer an estimate of how a fuel switch could impact the customer's monthly utility bills, how much the fuel switch would reduce the customer's bill for the original fuel source, how much of an increase would be the customer's bill for the new fuel source, and an estimate of the net energy savings. CAUSE-PA Comments at 70.

CAUSE-PA also recommended that deliverable fuels be added. CAUSE-PA Comments at 71. While the option would be beneficial for low-income customers, the OCA notes that it is not clear how including deliverable fuels in fuel switching would lead to an overall usage reduction for LIURP. The OCA has recommended that the definition of LIURP energy savings should be viewed holistically to define savings on a total household MMBtus of energy saved as opposed to fuel specific measures such as kwh or mcf/ccf. However, an alternative deliverable fuel would be outside of the LIURP equation.

c. Fuel Switching for Cooling Needs

Similar to the OCA, the Energy Justice Advocates Comments and the CAC Comments also recommend that cooling needs be considered for fuel switching. Energy Justice Advocates

Comments at 4-5. CAC Comments at 4-5. In support of efficient cooling fuel switching, CAC stated:

[i]ncreasing summer heat is driving a significant increase in critical energy usage necessary for health and safety. Summer cooling costs are in turn increasing – falling hardest on low-income families, who are more likely to live in less efficient homes.

CAC Comments at 4. Although the Commission proposes to amend Section 58.14 to include air conditioner installations in addition to replacements, the CAC argues that they are concerned that this amendment is not sufficient to address cooling needs. CAC Comments at 4. The CAC recommended that further reforms be implemented to ensure that cooling needs are effectively addressed through LIURP. CAC Comments at 5. The CAC recommended that the Commission revise section 58.11a to consider cooling costs in assessing whether to permit a utility to switch fuel sources. CAC Comments at 5. The CAC cited the example that since 2016, there have been tremendous strides in heat pump technologies, which provide efficient home heating *and* cooling, and these advanced benefits should be expressly considered in determining the most beneficial fuel source for both heating and cooling. CAC Comments at 5.

The OCA also recommended that 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. The Energy Justice Advocates made very similar recommendations as the OCA. They recommended that the definition of Residential Space-Heating Customer include space cooling in order to “allow more in-depth weatherization services, inclusive of building shell measures, to be provided to reduce

cooling costs.” Energy Justice Advocates at 5. The OCA also supports the Energy Justice Advocates’ recommendation that the Commission consider adding language that includes the total home energy costs, including summer cooling costs, in the assessment of fuel switching.

L. 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). As the OCA discussed in its Comments, the OCA supports the proposed health and safety measure provision and would add pest removal, where appropriate, to the list. See OCA Comments at 48-49.

In its Comments, Duquesne stated that it supports Section 58.12(a), but that incidental repairs and health and safety measures should be addressed in individual utility USECP proceeding. Duquesne Comments at 12. The Company recommends removal of subsections (a)(1) and (a)(2). Duquesne Comments at 12. Duquesne argues that the detail included in the Commission’s proposed language, particularly what is entailed with a health and safety measure, would unnecessarily restrict possible measures and does not fully take into account the differences that may exist in service territories or customer differences such as electric versus gas. Duquesne Comments at 12. Duquesne stated that Section 58.2 appropriately defines these terms and further specificity is unnecessary. Duquesne Comments at 12.

The OCA disagrees with Duquesne. The list identified in the Commission’s proposed revised Section 58.12a is not exclusive, but without such a list of categories, the types of provisions allowed for may vary widely, as they do today, across utilities. In particular, CAUSE-PA recommended that the language “but are not limited to” should be added to the list of health and safety measures, and the OCA would support this change to allow for the flexibility to install the measures necessary to address the health and safety but that otherwise do not “fit neatly within these specific enumerated measures.” CAUSE-PA Comments at 52. A standard uniform baseline of measures should be established in the regulations to ensure that there are not baseline variances across utilities regarding what would be treated and what would be deferred.

In its Comments, EAP states that it is generally supportive of the proposed changes. EAP Comments at 20. EAP requests a clarification that indicates that incidental repairs and health and safety measures should have their own spending allowance limits as EAP understands the Commission’s language to indicate that there would be one “bucket” for both expenses. EAP Comments at 20. To the extent tracking is required, EAP requests that the Commission further define the terms to ensure effective reporting and comparisons across utilities. EAP Comments at 20. In response to Section 58.12(d)(2), EAP noted that the utilities already report on deferrals. EAP stated that if the Commission wishes to aggregate and track the information that the Commission could do so from information that is already reported. EAP Comments at 20. EAP questioned what the data would be used for and why it should be maintained for a period of three years other than to align with DCED protocols. EAP Comments at 20.

The OCA does not believe that a firm cap should be set forth for either bucket of expenditures as identified by EAP. The allowance for both incidental repairs or health and safety measures, whether combined or separated, should be adequate to require the utility expend the

amount adequate to address the health and safety issues presented. The OCA supports the Commission's proposed tracking of deferrals. The information tracked pursuant to Section 58.15 will allow the Commission to better understand the obstacles for deferrals and whether a property that has been deferred is subsequently addressed. The OCA recommends that the Commission maintain the proposed tracking information.

The CAC strongly supports the inclusion of health and safety measures and recommends that the Commission standardize the LIURP health and safety allowances across Pennsylvania to ensure consistent availability of funds. CAC Comments at 5. The Energy Justice Advocates also support the proposed additional explicit language and state that the changes will help ensure that the programs reach the most families in need. Energy Justice Advocates at 8. The Energy Justice Advocates and CAUSE-PA both recommend that a minimum requirement of \$2,000 be added to the LIURP health and safety budgets, with flexibility to approve additional expenditures as necessary to ensure installation of available measures. Energy Justice Advocates at 8; CAUSE-PA at 53. The Energy Justice Advocates and CAC also recommended that if the home is being deferred, the utility be required to actively refer customers to local home repair contractors, social and housing service providers or other relevant programs that could address the issues. Energy Justice Advocates Comments at 8; CAC Comments at 5. The CAC recommends that the utilities be required to maintain a referral list within its approved USECP. CAC Comments at 5.

The OCA agrees, in principle, with the recommendations of the Energy Justice Advocates, the CAC, and CAUSE-PA. The OCA is concerned about the proposal to include a specific dollar amount in the regulations, or a minimum of \$2,000. The OCA agrees that the utilities should be required to address health and safety concerns. Since the factors and costs may vary over time, the

OCA submits that the budget for health and safety should be set in the utilities plans rather than establishing a minimum spend in regulations.

M. Proposed Section 58.13

1. Energy Education

The Commission's proposed Section 58.13 includes proposed amendments to the energy conservation education. Annex A, 52 Pa. Code § 58.13. The OCA addresses below stakeholder Comments regarding the cost of energy education; language access; and post-installation education. The OCA supports the Commission's proposed education efforts as a part of Section 58.13. In its Comments, however, the OCA identified a concern regarding the fact that the education discussed in Section 58.13 did not address language access and discusses language access in response to stakeholder comments in subsections (b) and (c) below. *See* OCA Comments at 49-50.

a. Cost of Energy Education

In Section 58.13(b), the Commission identifies that a portion of the LIURP budget shall be allocated to energy education services. Section 58.12(b) states “[e]nergy conservation programs that have average costs which exceed \$150 per program recipient household must be submitted for review and approval through a USECP proceeding.” Annex A, 52 Pa. Code § 58.13(b). In its Comments, EAP identified a concern with the proposed \$150 and recommended that it should be changes to a percentage threshold. EAP Comments at 21. The OCA agrees with this proposed change. Price increases and inflation over time will diminish the fixed number, and a percentage threshold will allow for prices to change.

b. Language Access

PECO opposes the requirement that “[a] public utility shall take reasonable steps to provide energy conservation activities in the language or the method of communication appropriate to its target audience.” PECO Comments at 6; Annex A, 52 Pa. Code § 58.13(d). In the *NOPR Order*, the Commission provides that this is consistent with the requirements of 52 Pa. Code § 56.91(b)(17). PECO disagrees that the language is consistent as the referenced language only addresses termination notices, is limited to Spanish and “other languages when census data indicates that 5% or more of the residents of the public utility’s service territory are using that language.” PECO Comments at 6; 52 Pa. Code § 56.91(b)(17). PECO avers that the provision would apply to all activities and that the Commission does not provide any guidance about what would constitute a reasonable step. PECO Comments at 7. PECO states that if the proposed addition is intended to require translation services for a broad scope of events, the costs may be substantial and would decrease the funding available for usage reduction services. PECO Comments at 7.

As the OCA discussed in Section J of its Comments, language access is imperative to program success for LEP populations. *See* OCA Comments at 40-42. Education is only valuable to the customer if it is in a language that they can understand. It is critical for the Commission to ensure that each of the utilities has communications that is in plain language, a robust Limited 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. As the OCA discussed in Section J of its Comments, 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. *See* OCA Comments at 41. The OCA recommends instead to amend the language to a “substantial number” of customers. *See* OCA Comments at 41. 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, and that language access should be available at all points of contact, including the Call Center and ESP. *See* OCA Comments at 40-42.

c. Post-Installation Education

EAP, PECO and Duquesne each do not support the proposed post-installation education that is required either in person or over the phone, to all LIURP recipients whose usage has increased over the past 12-months post installation. EAP Comments at 22; PECO Comments at 7; Duquesne Comments at 14.

EAP raises the same concerns regarding Section 58.14a(f) of the Commission’s proposed regulations. EAP Comments at 22. EAP argues that an additional inspection requirement would be costly and that if it is maintained that a higher threshold be established with a less costly outreach

method. EAP Comments at 22. PECO argues that the supplemental education, particularly in person, would likely result in an increase in LIURP expenditures and not an increase in reductions. PECO Comments at 7. PECO states that there are many factors such as weather and changes in behaviors that could impact usage outside of the installed measures. PECO argues that it should be permitted flexibility in how they approach post-installation customer contacts. PECO Comments at 7. PECO states that the Company monitor LIURP participant usage for 12 months after measure installation and provides monthly progress letters to highlight changes in monthly usage as compared to the customer's individual goal. Two years after the customer receives the LIURP measures, the customer may receive an additional visit and audit if otherwise still eligible for the program. PECO argues that the proposed requirements are not necessary, would increase costs and potentially would not result in benefits. PECO Comments at 7.

Duquesne similarly argues that the amendments would require significant resources and costs and argues that the provision lacks clarity regarding what threshold triggers the requirement. Duquesne Comments at 14. Duquesne also argues that it is duplicative of the quality control requirements under 58.14(f). Duquesne Comments at 14. Duquesne requests that the requirement be maintained but recommends that if it is maintained, it be amended to only require such education to electric heating customers. Duquesne Comments at 14. Duquesne argues that measures implemented with baseload customers are typically more behavioral focused, as compared to in need of physical improvements. Duquesne Comments at 14. Duquesne states that specifying that the follow-up phone call or visit requirement only applies to heating customers will ensure that there is not overlap between the industries. Duquesne Comments at 14.

PGW states that the Company has already implemented a process to follow-up with customers whose usage has increased after participation through a third-party contractor that

provides education on-site. PGW Comments at 9-10. PGW, however, states that it generally supports the EAP' arguments on this issue.

PPL, on the other hand, generally agrees with the proposed changes but argues that the proposed education should be more targeted. PPL proposes to reach out when their usage increases by 10% in the past 12-month post-installation and to also send post-installation letters to customers who see a usage decrease of 10% to recognize the change. PPL Comments at 14. PPL states that the Company provides education to all LIURP customers as part of its energy assessment. *Id.* PPL also recommends that utilities not be required to itemize customer education as a standalone measure but that they should be able to roll out the cost of any education into the cost of the energy assessment. PPL Comments at 14.

The OCA supports the Commission's post-installation education requirements as set forth in 52 Pa. Code § 58.14. While Duquesne and PECO argue that the costs will be prohibitive, neither has quantified the additional cost. PECO also argues that it will not drive further savings, but PECO has provided no basis for this conclusion. Moreover, PGW has indicated that they have already developed an approach to do a similar on-site education post-installation as recommended by the Commission.

The Commission has importantly recognized that post-treatment education is vital to the success of LIURP. The OCA notes that it is particularly important that the contacts be over the phone or in-person because that will allow the Company to better understand the reasons that a customer's usage has increased. Is it because of a behavioral issue that education could address? Has the household composition changed, *i.e.*, a new baby in the household? Or is it something that has happened with the measures installed? The check-in will allow for that dialogue to happen and appropriate referrals or education to occur.

The OCA notes that PPL's proposed 10% increase threshold is consistent with Section 58.14(f) which provides for a post-inspection follow-up if usage increases more than 10%. EAP suggests that a higher threshold be used, but EAP does not make a specific recommendation about what that threshold should be or why it should be higher. The OCA submits that the 10% makes sense to use as a threshold to account for potential changes in weather or other factors. The OCA, however, does not agree with Duquesne's proposal to limit to only heating measures. Duquesne has not provided any basis for eliminating baseload measures from consideration as a part of post-installation evaluation. The Commission should also require evaluation and education for baseload measures as well, but the OCA agrees that it also makes sense to include a threshold requirement to trigger the contact.

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. In its Comments, PECO states that the Commission should preserve the ability to consider LIURP pilots in non-USECP proceedings. PECO Comments at 7. PECO notes that there may be other types of proceedings such as base rate proceedings that it would be appropriate to consider whether a new pilot would be beneficial for customers. PECO Comments at 7. For all the reasons set forth above regarding the Commission's proposed changes to Section 58.4, the OCA supports PECO's recommendation that pilot programs not be limited to consideration in USECP proceedings. *See also* OCA Comments at 19-23.

N. Proposed Section 58.14 (Program Measure Installation) and Propose Section 58.14a (Quality Control)

a. Program Measure

The CAC recommended that the Commission further revise Section 58.14 to include space-cooling in addition to space heating, water heating and baseload end uses. CAC Comments at 5. The CAC states that “while summer cooling costs do not currently outpace winter heating costs, they are nevertheless a substantial component of home energy needs.” CAC Comments at 5. The CAC recognizes that the regulations should ensure greater prioritization of efficient cooling measures as a component to weatherization. CAC Comments at 5.

The OCA strongly supports the CAC’s recommendation to add summer cooling and the OCA made a similar recommendation in its Comments. As the OCA discussed in its Comments in 2016 and the most recent Comments, the OCA also recommended that for cooling needs, LIURP be modified to allow for a multi-fuel, whole house approach. OCA 2016 Comments at 30; OCA Comments at 50. 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. OCA Comments at 50. 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.

b. Quality Control

Section 58.14a(f) requires the utility to make an additional contact with the LIURP participant whose usage has increased by more than 10% within 12 months post-measure and perform a follow-up inspection when the utility “cannot substantiate the reason for the increase in

usage.” 52 Pa. Code §§ 58.14a(f). Section 58.13(d) is similar to Section 58.14a(f) for quality control in that both require the utility to reach out 12-month post-measure to perform a follow-up with the customer when there has been an increase in usage. Annex A, 52 Pa. Code §§ 58.14a(f); 58.13(d).

As discussed in Section N(c) above, PECO, Duquesne, and EAP oppose the proposal to require 12-month post-inspection. PECO Comments at 8-9; EAP Comments at 22. PECO argues that the Company does not believe that contacting customers and potentially inspecting homes a year after the completion of LIURP measures would be an appropriate use of LIURP funds. PECO Comments at 8. PECO states that there may be a variety of non-LIURP-related factors that may influence the customer’s usage and that the Company may provide an additional visit two years after the customer receives its LIURP treatment. PECO Comments at 8. As PECO argued above, PECO states that the proposed follow-up may be potentially costly and may not lead to any usage reductions. PECO Comments at 9. Duquesne also argues that the provision should only apply to electric heating customers and not to electric baseload customers. Duquesne Comments at 15-16.

The Commission has importantly recognized that post-treatment quality control and education are vital to the success of LIURP. The quality control will allow for the utility to better understand the longevity of the measures taken, whether further measures are needed, and whether the issues are behavioral in nature. It is important to LIURP to understand the reasons that customers may have increased usage post-treatment to help to develop the program. As noted above, the OCA does not agree with Duquesne’s proposal to limit to only heating measures. Duquesne has not provided any basis for eliminating baseload measures from consideration as a part of post-installation evaluation. The Commission should also require evaluation for baseload measures as well.

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

The OCA does not have any reply comments regarding this section.

d. Proposed Section 58.14c. Inter-utility coordination

The OCA does not have any reply comments regarding this section.

O. LIURP Reporting and Evaluation (Proposed Section 58.15)

1. Introduction

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. In its Comments, 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. *See* OCA Comments at 53. 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. *See* OCA Comments at 53. In order to evaluate LIURP, 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). *See* OCA Comments at 53.

The OCA also recommends that the Commission also should incorporate outcome metrics into its reporting and evaluations. *See* OCA Comments at 53. To effectively evaluate programs, it is important to understand the outcomes of LIURP, rather than simply the activities completed. *See* OCA Comments at 53. It is important for outcomes to be reviewed for both CAP and LIURP. *See* OCA Comments at 53. 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. *See* OCA Comments at 53.

In their respective Comments, EAP, NFG, UGI, Duquesne, PPL, and FirstEnergy request that the Commission strike or eliminate some or all of the additional reporting requirements. See EAP Comments at 23-24; NFG Comments at 11-12; UGI Comments at 11; Duquesne Comments at 17; PPL Comments at 17-19; FirstEnergy Comments at 7. The OCA does not agree that the proposed or existing reporting requirements should be eliminated or stricken, and the OCA responds as discussed below to each of their specific concerns.

2. The Need for the Reporting Requirements

The Commission proposes additional reporting requirements in order to track elements of the success of LIURP. EAP, NFG, UGI, Duquesne, PPL, and FirstEnergy identify concerns with the proposed reporting requirements and request that the Commission strike or eliminate some or all of the additional reporting requirements.

UGI proposes to remove all of the reporting requirements from this Section. UGI Comments at 11. UGI argues that any new reporting requirements should be added to the regulations at Sections 54.74 and 62.5. UGI Comments at 11. UGI does not provide any reasoning for why the reporting requirements should be eliminated and moved to Sections 54.74 and 62.5. The OCA does not agree with UGI's recommendations. The Commission has identified many amendments to the LIURP regulations that Sections 54.74 and 62.5 do not capture. The new reporting requirements are designed to capture the impact of the proposed changes across the board. The OCA also notes that it is important to have specific, targeted reporting requirements regarding LIURP itself and the proposed reporting requirements reflect that need. The reporting

requirements will help the Commission, the utilities, and the interested stakeholders to better understand the overall success of the program and will provide all insights into refining changes to the respective programs in the individual USECPs.

EAP, PPL, and FirstEnergy raise concerns regarding specific aspects of the new reporting requirements in Section 58.15(3). The proposed revisions to Section 58.15(3) provide:

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

(i) The number of LIURP jobs including the number and type of dwelling, the number of each job type completed, the number of fuel-switching jobs, the number of deferred dwellings, the number of previously deferred dwellings that received program services during the program year, the number of inter-utility coordinated LIURP jobs and the number of LIURP jobs coordinated with other weatherization programs.

(ii) The total LIURP costs including, material and labor costs of measures installed, administrative costs, inter-utility trainings, coordinated trainings and outreach, health and safety, incidental repairs, energy conservation education and cost to serve special needs customers.

(iii) Overall percent of energy usage reduction and energy usage reduction by job type.

(iv) The total number of CAP households and number of special needs households.

(v) The budget and actual spending for each LIURP pilot program, number of jobs by job type, duration of the pilot, results and measures implemented through the pilot.

(vi) An explanation if more than 10% of the annual LIURP budget remains unspent.

Annex A, 52 Pa. Code § 58.15(3).

In its Comments, EAP states that it supports the Commission's proposed changes to the LIURP reporting requirements that would align with the existing regulations. EAP Comments at 23. Regarding the newly requested data about deferral jobs presented in Section 57.15(3)(i), EAP recommends an implementation timeline of at least two years from the finalization of the regulations so that the utilities can begin tracking the information in order to report it the following year. EAP Comments at 23. EAP identifies that the utilities do not already collect this data. EAP

Comments at 23. EAP requests that the Commission outline the purpose of collecting the information and how it might improve program delivery. EAP Comments at 23.

For the reasons set forth above, the new reporting requirements will allow the Commission to examine the changes necessary to the individual LIURPs in the USECPs and to track the progress of each of the utilities in meeting the newly established goals. The OCA does not oppose EAP's proposed deferral of implementation of the reporting requirement for Section 58.15(3)(i) to ensure that utilities are capable of collecting, tracking, and reporting the data. The OCA also agrees that the Commission should provide further guidance regarding calculation of the data so that the utility reporting is consistent and comparable. The OCA does not agree that further reconsideration is necessary. Examining deferrals and the reasons for deferrals will provide important insights into the reasons for deferrals. Those reasons for deferrals, once understood, then can be more fully addressed in each utility's USECP. Moreover, when each utility reports the data, the data can be compared and aggregated to show if there are consistent, systemic issues that need to be resolved. The data reporting provides an important tool to understand the reasons behind deferrals, and what, if any, further actions are needed.

EAP also identifies a concern with the reporting requirement if the utility underspends its budget by 10%. EAP Comments at 24. NFG identifies a concern with the reporting requirement in Section 58.15(3)(vi) that the Company be required to explain if more than 10% of the budget is unspent. NFG Comments at 10-12. NFG states that the Company has a concern with the Commission's reliance on a spend versus budget as a measure of success. NFG states that the Commission's Preamble makes clear that the Commission views expenditure of the budget as a measure of success, and the new Section 58.15(3)(iv) can be viewed as reinforcing that view. NFG argued that in other realms, underspending is not typically questioned. NFG argues that "rigid

adherence” does not acknowledge that there may be a lack of contractor availability; supply chain disruptions; delays in customer response; declining population; competing programs; increasing regulation of construction; and contractor. NFG Comments at 11. NFG argues that LIURP should operate independent of the budget. NFG implores the Commission to strike the proposed edits and revisit the issue. NFG Comments at 11-12.

The OCA does not agree with EAP and NFG’s interpretation of the need to understand if the utility has underspent its budget. The needs assessment will show the depth of need still needed in the service territory and the LIURP budget will be set in order to meet that need. NFG avers that typically underspending is considered to be a good thing to save money, but that is not the case when there is potentially a decades long list of customers that need to be treated. However, underspending may not always mean underperforming. NFG has identified valid reasons why, in a particular year, the budget may be underspent and is why the Commission has proposed to allow for a rollover budget. If that rollover budget persists, then as the OCA recommends above and in the OCA’s Comments regarding the LIURP budget in Section 58.4, the utility can take action to address the overall budget. The 10% underspend is merely a trigger to further investigate why the budget is being underspent.

PPL and FirstEnergy raise similar concerns regarding the proposed reporting requirement for Section 58.15(3). PPL Comments at 17-19; FirstEnergy Comments at 7. PPL disagrees and states that it does not see the value in tracking and reporting the information given the significant time and expense that PPL would have to incur for the data to be tracked and reported. PPL Comments at 17-19. PPL states that it would like to better understand how the information is intended to be used to improve LIURP. PPL Comments at 17-19.

FirstEnergy raises a similar concern regarding the Section 58.13(5) reporting requirements to separate health and safety and incidental spending into separate categories because some of the weatherization measures that may be completed may overlap these categories. FirstEnergy Comments at 7. FirstEnergy stated that further clarity is needed for the utilities to ensure that the information reported is consistent and valuable because collecting the data would increase the administrative costs of the program. FirstEnergy Comments at 7.

The Commission has proposed to make a significant number of amendments to LIURP. The proposed reporting requirements will allow the Commission, the utilities and interested stakeholders to better understand the impact of the LIURP changes on customers. The OCA agrees with the Commission's request for the specific information regarding incidental repairs and health and safety. The reporting requirements, particularly in Section 58.13(3) track each of the new areas that the Commission has amended – the expansion of the special needs customer category, the expansion of education, health and safety expenditures, the incidental repairs and compares that data with the number of dwellings, how many dwellings were deferred, whether the utility as able to go back to the deferred property, and how inter-utility coordination worked. Annex A, 52 Pa. Code § 58.15(3). Understanding the scope and size, and the overall impact of those changes on the program, will help the Commission, the utilities and the stakeholders to better understand what programmatic changes may need to be made in the individual USECPs. If the data is not captured, then the overall impacts cannot be evaluated.

Duquesne also raises concerns regarding the additional information requested in Section 58.15(4). Section 58.14 requests:

(4) Evaluation data and analysis of LIURP jobs by April 30, including periods covering pre-installation and post-installation of program measures, ending in the preceding program year. The evaluation data and analysis must be submitted in compliance with the reporting instructions provided to public

utilities electronically by the Commission's Bureau of Consumer Services each year and include the following information, broken out by job type:

- (i) Energy savings and load management impacts of program services.**
- (ii) Changes in customer utility bills.**
- (iii) Payment behavior and account balances.**
- (iv) Household demographic data at the time program measures were installed.**
- (v) Assessment of the cost-effectiveness of ESPs used in providing program services and how the ESPs are meeting quality control standards.**

The public utility shall identify how this information is incorporated into LIURP management decisions.

Annex A, 52 Pa. Code §58.15(4)(i)-(v).

Duquesne identifies specific concerns with the data points for (ii)-(iv). Duquesne Comments at 17. Duquesne states reporting this data will add an additional burden and could be considered invasive. Duquesne Comments at 17. Duquesne also requested clarity regarding (v) the requests an assessment of the cost-effectiveness of ESP used and how cost-effectiveness is measured. Duquesne Comments at 17. Duquesne notes that if cost-effectiveness is based upon the energy saved, the information would not be known for at least a year and the customer's situation may change during that time. Duquesne Comments at 17.

The proposed data points regarding the customer utility bills, payment behavior, and household demographics are designed to understand the impacts of LIURP on customer bills. The data will help to better understand how cost-effective LIURP is and how it is performing for customers. The OCA does not agree with Duquesne's concern that the data will be invasive. The OCA presumes that the data will be reported in the aggregate and the aggregate will conceal any potential individual information. The OCA agrees with Duquesne that clarity should be provided regarding (v) so that the information is consistent across the utilities. While the household demographics may change after a year, the OCA submits that it is still important to examine how LIURP and its cost-effectiveness at that snapshot in time of the installation of the measures,

including the household demographics at that time. The decisions of the ESPs would have been made based upon the individual household at the time of the installation of the measures.

CAUSE-PA notes that the reporting requirements delete Section 58.15(3) which requires that the information be reported annually to the Commission regarding the findings of the evaluation. CAUSE-PA notes that the information requires the data to be submitted but never explicitly requires a report to the Commission. CAUSE-PA also recommends that the utilities be required simultaneously report to Commission and file required data at dockets for USECPs and append to any filing seeking to amend USECP or other which impacts rates and need for service. CAUSE-PA Comments at 76.

The OCA strongly supports CAUSE-PA's request to require the utilities to report the data to the Commission and that it be included in the dockets for USECPs and with any filing seeking to amend the USECP or other which impacts rates and the need for service. The data provides a valuable tool to understanding the effectiveness of LIURP, and in particular, in the USECP will help all stakeholders to better understand if changes to the program should be made.

P. Proposed Section 58.16

The OCA does not have any reply comments regarding this section.

Q. 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.

EAP simply stated that it supported the proposed modifications. EAP Comments at 24. In its Comments, PECO opposed the amendments in Sections 58.17 and 58.18 that required the use of a USECP proceeding to modify a LIURP or to seek a waiver of LIURP requirements. PECO Comments at 9. The Company believes that it would be beneficial to preserve the flexibility to pursue LIURP modifications or waivers in non-USECP proceedings. PECO Comments at 9.

The OCA agrees with PECO's arguments that there is a need for flexibility about the forum to address LIURP issues. PECO Comments at 9. The OCA disagrees with EAP's proposed support for the modifications. EAP Comments at 24. As the OCA discussed in its Comments, OCA does not agree that a bar to address in USECP proceedings is permissible under the law. In its Comments, the OCA discussed its concerns with the Commission's regulations about modifications to the LIURP budgets being limited to the USECP process. Section D, *supra* (regarding Section 58.4). OCA Comments at 55. The OCA recommended that the Commission establish an adjudicatory process for the USECP process similar to what is done with Act 129 or Default Service proceedings. OCA Comments at 55. 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. OCA Comments at 55-56. All aspects of the utility's tariff must be permitted to be reviewed as a part of base rate proceedings. OCA Comments at 55-56. Moreover, as discussed in Section D above and in the OCA's Comments, USECP proceedings do not offer the same procedural opportunities for an on-the-record review of the utility's LIURP. OCA Comments at 56.

R. 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. PECO and EAP made the same arguments as in Section R regarding the Commission's proposed prohibition on addressing LIURP issues in a non-USECP proceeding. PECO Comments at 9; EAP Comments at 24. The OCA addresses its responses to the identical arguments in its response to Section R, *supra*.

S. Proposed Section 58.19

The OCA does not have any reply comments regarding this section.

T. Additional Questions

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

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?

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?

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?

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

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?

The OCA provided its responses to the identified questions on pages 57 to 60 of its Comments. OCA Comments at 57-60. TURN and CAUSE-PA proposed potential ways that LIURP and high arrearages could be addressed. Also as discussed below, the utilities and EAP were largely dismissive of the connection between high bills and LIURP. Duquesne, in fact, argued that “including such questions in a NOPR is inappropriate.” Duquesne Comments at 19.

The OCA recommended that comprehensive weatherization services should be used to reduce prospective arrears for households to the extent that it makes bills more affordable. OCA Comments at 57. A key component is 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 the 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. OCA Comments at 57.

The OCA also noted 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. OCA Comments at 58. 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. OCA Comments at 58. 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. OCA Comments at 58. The OCA also noted, 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. OCA Comments at 58. Such a review may help to reduce customer arrears overall even if not tied to winter space heating.

Additional avenues could be considered separate from LIURP to help customers with arrearage balances near or exceeding \$10,000. OCA Comments at 60. 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. OCA Comments at 60. 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. OCA Comments at 60. 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. OCA Comments at 60. 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 low-income advocates, TURN and CAUSE-PA, offered creative potential solutions to address the complex problems associated with high balance arrearages. The OCA supports as discussed below many of the recommendations of the low-income advocates. TURN recommended that the Commission modify LIURP regulations to specify that utility USECPs should provide a fresh start for arrearage forgiveness for CAP-eligible customers and for non-CAP eligible customers, an affordable monthly repayment agreement after LIURP measures are installed. TURN Comments at 15. Utilities should consider many criteria including the age of housing and average monthly bill, and customers should be referred to LIURP early before such a balance accumulates. TURN Comments at 16. As the OCA discussed in its Comments and above, the OCA agrees that additional opportunities for additional arrearage forgiveness should be provided for customers to be able to address their large balances to the extent that the reason for the high balances is tied to a lack of weatherization or energy efficiency. Further consideration of this issue should be reserved for a broader consideration within a CAP or universal service rulemaking.

The OCA also supports the recommendations of CAUSE-PA to address tackling large balances and how to prevent them from occurring. CAUSE-PA stated that LIURP is a prevention program that will help customers to reduce energy consumption and bills before they accrue. CAUSE-PA at 84. CAUSE-PA stated that in their experience, households with arrearages in excess of \$10,000 often have high usage and are in acute need of comprehensive energy services to help reduce costs. CAUSE-PA Comments at 84-85. LIURP-eligible households with arrearages have often exhausted all options and are ineligible for further debt forgiveness. CAUSE-PA Comments at 85. CAUSE-PA stated that LIURP should be paired with reforms to the CAP arrearage management policies and/or payment arrangement policies to ensure affordable bills going

forward. CAUSE-PA Comments at 85. CAUSE-PA argued that offering LIURP with such arrearage management policies would help to reduce uncollectibles. CAUSE-PA Comments at 85.

CAUSE-PA recommended that the Commission: (1) establish statewide policies that would ensure access to a payment arrangement and/or re-set CAP benefits upon completion of LIURP; (2) utilities should be required to screen household income of all residential customers requesting a payment arrangement and refer to universal service programs before entering a payment arrangement; (3) utilities should proactively contact customers and provide referrals if they fall more than one month behind on their bills prior to initiating collection; (4) utilities should screen all new and moving customers for income level at the time service is established and for existing customers, on non-emergency calls, ask if there is any income update; and (5) utilities should be required to develop an auto-enrollment process with the DHS LIHEAP data sharing. CAUSE-PA Comments at 84-88.

As the OCA noted above, the utilities and EAP were largely dismissive of solutions to address arrearages and EAP argued that LIURP is not a tool for addressing high balance accounts. EAP Comments at 25. EAP argues that it would not be an effective use of program funds because the “measures cannot address payment behavior” and that LIURP should not be treated as a collection tool or redefined as such. EAP Comments at 26. UGI, Peoples, and NFG supported the EAP Comments. UGI Comments at 13; NFG Comments at 13; Peoples Comments at 4-5. EAP stated that there is no reporting information which indicates which, if any, high balance accounts have received LIURP and still experience high balances that it is difficult to know whether LIURP has been an effective means to help customers with balances in excess of \$10,000. EAP Comments at 25-26.

The OCA submits that just because there is no *reported* data does not mean that the data does not exist. The utilities know their customers and know if their customers with large arrearage balances have previously been enrolled in CAP and/or if they were ever referred for LIURP services. FirstEnergy identifies in its Comments that it has identified 700 accounts with balances over \$10,000, but did not provide information about those accounts. FirstEnergy Comments at 10. FirstEnergy could review those accounts to determine what factors were employed to address the large balances accumulating. The utilities are the only ones who have access to the information needed to determine what the nexus is between high balance accounts, lack of access to CAP or appropriate payment arrangements, and access to LIURP or weatherization. Rather than provide information, the implication from the many of the utilities' comments is that customers do not want to pay. The OCA does not endorse this view. It is incumbent on the utilities to provide the information needed on these high account balances to allow a root cause analysis that would allow an effective determination of whether LIURP can be part of the solution. The OCA agrees that it is unlikely that LIURP in and of itself can effectively address high account balances, but it certainly has the possibility of stopping the continued accrual of high balances and, when coupled with CAP, additional arrearage forgiveness and/or payment arrangements that are tailored to a household's ability to pay, would likely result in a reduction of those arrears.

Peoples adopted the Comments of EAP but identified a concern about potential consideration of using ratepayer dollars to weatherize non-low-income households with high arrearages under LIURP. Peoples Comments at 5. Peoples stated it was not fair to reward customers who fail to maintain their monthly payment responsibilities, particularly when paid for by ALICE households who do not qualify for programs but bear the costs of them. Peoples Comments at 5. The OCA agrees that there is a disproportionate impact on ALICE households as the OCA

discussed in its Comments. *See* OCA Comments at 10-16. That disproportionate impact should result in seeking to expand services to those households rather than pitting their needs against the needs of the relatively financially worse off. It is for this reason that OCA recommends that the low-income customer definition be increased from 150% to 200% FPIG and that special needs customers be increased to 300% of the FPIG so as to reasonably include within LIURP those households who need additional assistance. OCA Comments at 10.

Duquesne concluded that the Company has not found LIURP to be an effective means to help customers with extremely high arrearage balances because LIURP does not generally have a meaningful impact in reducing prior debt. Duquesne Comments at 20. Duquesne stated in response to Question B that offering LIURP to customers with high utility account balances and high average monthly bills would not result in a decrease in the cost of collection efforts or a decrease in write-offs due to the fact that 90% of its LIURP visits are baseload audits. *Id.* Duquesne suggested in response to Question E that the Commission should partner with utilities to potentially pursue federal funding to develop programs to reduce customers' bills such as "weatherization and deployment of solar and other distributed energy resources that help customers offset their bills in a sustainable manner, while mitigating cost to nonparticipating customers." Duquesne Comments at 24. Outside the scope of the rulemaking, Duquesne recommended that the Commission be open to proposed innovative programs and rates. Duquesne stated that:

Examples could include increased use of email and/or text alerts to provide near-real time information on energy usage; beneficial electrification where it results in customer benefits; potential pre-payment programs; and/or subscription/flat rates. Examples of each of these exist in other jurisdictions and can serve as a model for Pennsylvania.

Duquesne Comments at 24-25.

Alternative ratemaking, subscription rates, pre-payment programs, or real-time pricing options should not be considered as potential solutions to addressing high balance arrearage issues. Such proposals come with significant potential consumer harms for customers that are already either terminated or are in danger of termination. The OCA submits that Duquesne's proposed alternatives to addressing high arrearage balance customers should not be considered.

FirstEnergy did not believe that LIURP would be an effective way to address arrearages, but instead FirstEnergy argued that CAP is the most effective way to address. FirstEnergy Comments at 8-11. FirstEnergy stated that LIURP can be used to help reduce future bills. FirstEnergy Comments at 8. FirstEnergy did acknowledge that coordination between CAP and LIURP can offer "more comprehensive support to customers with high arrearages" and that CAP participation can assist customers with substantial debt by avoiding termination and providing "flexible payment plans." *Id.*

PECO concluded that LIURP programs will help to reduce future energy usage by reducing their utility bills which may help to improve payment behavior to improve affordability. PECO Comments at 11. LIURP may help to mitigate their future uncollectible write-offs and cost of collection efforts, but providing LIURP to customers with existing high arrearage balances does not reduce the uncollectible portion of balances or cost of collection efforts. *Id.*

PPL also did not believe that there was a correlation between LIURP weatherization and the ability for customers with high arrearage balances to maintain service and pay down debt. PPL Comments at 21. PPL does not agree with prioritizing LIURP based on arrearage size. PPL Comments at 21. CAP is the best tool for a large balance. PPL Comments at 22. PPL stated that the Commission and interested parties need to better understand how a customer accumulates such

a high balance of arrears and that broken payment arrangements, medical certificates, and complaints prolong the period that customers do not pay bills. *Id.*

FirstEnergy, PECO, and PPL did not offer much for potential solutions other than to refer to CAP and to partner with LIURP. These are tools that are already being employed and are not addressing the causation factor. Eroding consumer protections is also not a solution. As discussed above, the OCA submits that prioritizing high arrearage balance CAP participants can help customers to better manage their future bills to prevent low-income customers from getting into the \$10,000 balance range. Each of the utilities identified LIURP as a preventative tool, but that preventative tool can be leveraged with other potential positive solutions. The OCA submits that the Commission should consider the positive alternatives offered by OCA, CAUSE-PA and TURN regarding addressing high arrearage balances and partnering potential solutions.

U. Conclusion

For the reasons set forth above and in the OCA's Comments, 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 the next steps in this process.

In conclusion, the Office of Consumer Advocate appreciates the opportunity to provide Reply Comments regarding the Commission's proposed LIURP rulemaking. The OCA respectfully requests that the Commission adopt the OCA's recommendations in its Comments and Reply Comments.

Respectfully Submitted,

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