

Comments of the Independent Regulatory Review Commission



Pennsylvania Public Utility Commission Regulation #57-340 (IRRC #3387)

Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1 -58.18

March 18, 2024

We submit for your consideration the following comments on the proposed rulemaking published in the December 2, 2023 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Pennsylvania Public Utility Commission (PUC) to respond to all comments received from us or any other source.

1. Economic or fiscal impact of the regulation.

Question 19 of the RAF asks an agency to provide specific estimates of the costs and savings associated with compliance of the rulemaking. The PUC has not provided specific estimates in the RAF or Preamble to the rulemaking. Instead, they have asked stakeholders to quantify costs and savings associated with the proposed amendments. The comments submitted by stakeholders on the proposed rulemaking indicate the potential for additional costs to utility companies as well as savings to utility customers that participate in low-income usage reduction programs (LIURP) offered by utilities. However, the comments do not provide specific estimates on the potential costs or savings.

In order for this Commission to determine if the regulation is in the public interest, a complete answer to Question 19 is required. We encourage the PUC to engage with stakeholders to determine the fiscal impact of the rulemaking, quantify the findings, and include specific cost and saving estimates in the RAF submitted with the final rulemaking.

2. Reaching of consensus.

We acknowledge the efforts of the PUC in developing this proposed regulation, including the issuance of a Secretarial Letter in 2016 that sought input on updates to the LIURP regulations. The regulations have not been updated since 1998. The PUC used the feedback provided by interested parties to develop this proposed rulemaking.

The PUC's Consumer Advisory Council (CAC) and the Energy Association of Pennsylvania (EAP) submitted comments on the proposed rulemaking that address the time that has lapsed since the issuance of the Secretarial Letter in 2016. CAC's comments state the following:

The Council notes from the outset that the [PUC's] proposed rulemaking is based on comments solicited in 2016 – seven years before releasing the proposed rulemaking. The energy landscape has changed dramatically since 2016. Efficiency technologies have advanced, energy costs have risen, and new programs and delivery models have emerged. Increasing extreme temperatures in both summer and winter are driving unique needs that were not at the forefront of energy policy in 2016 – but are front and center today. Further transformative changes are on the horizon as Inflation Reduction Act investments drive a rapid transition toward home electrification and expanded reliance on distributed generation. Given this rapidly evolving energy landscape, we encourage the [PUC] to remain open and responsive to a wide range of comments and recommendations on issues not previously addressed in 2016.

EAP's comments state the following:

However, much time has passed between the [PUC's] initiation of this review and today. As such, EAP suggests that any review of LIURP regulations consider related [PUC] action since 2016, as well as the growth of federally-funded weatherization programs administered by the Pennsylvania Department of Community and Economic Development (“DCED”) and the additional availability of programs funded by the federal Inflation Reduction Act (“IRA”) and administered by the Pennsylvania Department of Environmental Protection (“DEP”).

As discussed below, stakeholders, through their comments and reply comments, have provided numerous and differing opinions and suggestions on the proposed rulemaking.

In addition, through this rulemaking proceeding, the PUC is seeking input from stakeholders on the role a LIURP can play in reducing or eliminating further accumulation of arrearages for some utility customers. The PUC included the following questions in the Preamble:

- 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?
- 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?
- 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 tier? What should the point or points be?

- How can coordination with other programs (e.g., Act 129) help customers with high arrearage balances who are income-ineligible for LIURP?
- 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 questions above are important and substantive. However, specific language addressing the issues was not included in the Annex to this proposal.

In light of the time that has passed since the issuance of the Secretarial Letter of 2016, the lack of specific fiscal impact information, the numerous comments and reply comments submitted by stakeholders on the proposed rulemaking, and the questions regarding arrearages, we draw attention to a key component of the regulatory review process as stated in Section 2(a) of the RRA: “To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency.” 71 P.S. § 745.2(a).

We urge the PUC to continue seeking input from all interested parties to build consensus on how LIURP fits into the energy landscape of 2024, the proposed amendments to the LIURP regulations and any potential new language that might be added to the final regulation to address arrearage. As the PUC develops the final-form regulation, we encourage further discussions with the stakeholders who have provided input on this rulemaking, and we request the PUC provide a description in the RAF and Preamble to the final-form regulation of the efforts made in this regard.

In addition, if new language is added to the Annex to address the issue of arrearages, we encourage the PUC to issue an Advance Notice of Final Rulemaking that includes the specific arrearage language to be included in the final rulemaking. This would provide stakeholders the opportunity to provide feedback on substantive language that was not included in the proposed rulemaking.

3. LIURP budgets. – Whether the regulation is consistent with the intent of the General Assembly; Reasonableness; Need.

Commentators have raised numerous concerns with the new definition of “LIURP budget” found in § 58.2, relating to definitions, and amendments being proposed in § 58.4(a.1) and (c), relating

to LIURP budgets, § 58.17, relating to modifications of a LIURP, and § 58.18, relating to waiver. The new definition and the proposed changes to existing language will alter the way LIURPs are reviewed, approved, and modified. The amendments would limit the PUC's review of a utility's LIURP budget to quinquennial Universal Service and Energy Conversation Plan (USECP) proceedings. Commentators are concerned that the changes will affect the transparency of LIURP proceedings before the PUC and the ability of stakeholders to participate in the proceedings. They argue that consideration of LIURP funding should be included in base rate proceedings and not limited USECP filings that are reviewed and approved by the PUC. In addition, some commentators believe the changes being contemplated contradict statutory mandates and would affect the PUC's ability to administer LIURPs of utility companies, including potential modifications to and waivers of LIURP requirements.

We acknowledge the description of the changes and the rationale for the changes provided by the PUC in the Preamble to the proposal. In light of the comments and reply comments provided by commentators, we ask the PUC for a more detailed explanation of the need for the proposed changes included in the rulemaking. We also ask PUC to consider the suggestions made by the commentators regarding other ways to review, approve and modify LIURP budgets, including maintaining the status quo, and to address the validity of those suggestion in the Preamble to the final-form rulemaking. Finally, we ask the PUC to ensure that the proposed rulemaking does not conflict with any statutory provisions that guide the administration of LIURPs.

4. Whether the regulation is in the public interest.

Interested parties have submitted detailed comments and reply comments on new provisions and amendments included in this rulemaking. Some commentators, advocating on behalf of utility customers (advocates), ask for such things as more opportunities to participate in LIURP proceedings, additional reporting requirements for utilities with LIURPs, expansion of eligibility criteria for utility customers, additional protection for tenant households, mandatory use of community-based organizations (CBOs), and additional services and repairs that would fall under LIURPs. Other commentators, representing utility companies (industry) caution against an expansion of LIURP eligibility and services that could increase costs without actual benefits to potential recipients of LIURP funding or services. They believe any updates should focus on usage reduction and balancing the needs of LIURP participants and the costs borne by all residential customers, while at the same time preserving the managerial discretion needed by utilizes to administer their LIURPs. We note that the advocates and industry also expressed similar opinions on several proposed provisions and have provided the rationale for their arguments.

As noted above, the Section 5.2 of the RRA includes criteria to be used by this Commission to determine if a regulation is in the public interest and Section 5.1(a) of the RRA requires an agency to respond to all comments it receives on a proposed rulemaking. List below are specific sections of the rulemaking for which the advocates and industry have submitted comments that we believe warrant further consideration. We ask the PUC to provide responses to the questions below, which are based on the comments submitted by stakeholders. We will weigh the PUC's responses to questions against the following RRA criteria to determine if the rulemaking is in the

public interest: economic or fiscal impact; protection of the public health, safety and welfare; and the clarity, feasibility and reasonableness of the regulation.

Section 58.2. Definitions.

Administrative costs – Should information technology and training be included in this definition?

CAP – Customer assistance program – Should the definition be aligned with PUC’s Policy Statement found at 52 Pa. Code § 69.261?

CARES – Customer assistance and referral evaluation services – Should the definition be consistent with the existing Universal Service and Energy Conservation (“USECP”) reporting regulations at 52 Pa. Code §§ 54.72 and 62.2?

Defacto heating – Should the definition be expanded to include a broader range of heating sources?

Eligible customer - Should this definition require a customer to meet both the usage threshold and other criteria in a public utility’s LIURP? Should the definition include both heating and cooling needs?

ESP – Energy service provider – Should the definition be more inclusive of CBOs?

Health and safety measure – Should the definition be interpreted broadly to include any measures that would be necessary to maintain and protect the physical well-being and comfort of a dwelling or should it focus on the reduction of energy usage of low-income households?

LIURP – Low-Income Usage Reduction Program – Should the definition be consistent with the definitions found in 52 Pa. Code §§ 54.72 and 62.2?

Low-income customer – Should the threshold be increased from 150% to 200% of federal income poverty guidelines (FPIGs) and should the threshold be established at 300% for special needs customers?

Payment-troubled customer – Should the definition be consistent with the definition of “payment troubled” found in 52 Pa. Code §§ 54.72 and 62.2? Is the inclusion of criteria based on arrearages appropriate?

Residential electric baseload customer – Should space cooling be added to this definition?

Residential space-heating customer – Should space cooling be included in the term being defined and added to the definition?

Special needs customer – Should the FPIG threshold be raised to 300%? Should the reference to “protection from abuse” be expanded to include other court orders that contain clear evidence of abuse? Will utilities be able to determine need status of its customers and implement the

requirements of the regulation? Should the definition be aligned with the Department of Human Services definition of “vulnerable household”? Will the definition expand the number of eligible households and redirect resources away from others in need of services? What is meant by “medical equipment”?

Section 58.4. LIURP budgets.

Subsection (a.2) Special needs customers.

Will the increase from 20% to 25% of a utility’s LIURP budget on special needs customers limit flexibility in addressing unique needs of some customers? How will the PUC ensure utilities are assessing the needs of all eligible customers?

Subsection (c) Revisions to a LIURP budget.

Do the criteria set forth in this subsection apply to new LIURP budgets of a utility or revisions to that budget or both? Are all the factors to be given equal weight in the establishment of LIURP budgets and services? What is the benefit of changing the current reference of “a reasonable period of time” to “a proposed timeline”?

Subsection (d.1) Unspent LIURP funds

How are utilities to prioritize spending unused funds from a prior years LIURP budget in a current LIURP budget? Is there an expectation that all rolled-over funds will be eventually spent on future LIURP budgets and services?

Section 58.7. Integration.

What is meant by the existing term “direct assistance” found under Subsection (b)?

Section 58.8. Tenant household eligibility.

Has the PUC considered developing standardized policies or procedures regarding tenant household eligibility or a form that could be signed by the tenant, landlord and the utility regarding LIURP services to ensure all parties are aware of and understand their rights and obligations?

Would new Subsection (c), regarding optional utility requirement, ensure that tenants are free from rent increases or evictions associated with the increased value that LIURP can provide to tenant dwellings? Is the new language of this subsection an optional provision the utility could apply on a case-by-case basis to incentivize a particular landlord to participate, or would a utility have to apply this uniformly throughout its service territory under its LIURP?

Section 58.9. LIURP outreach.

Is the provision regarding a utility providing public service announcements regarding its LIURP in media outlet resources, such as print, broadcast and social media platforms mandatory? If that

is the intent of the PUC, we note that, as currently written, it is not enforceable. Will utilities be required to provide oral interpretation and written translation of its targeted communication to potentially eligible customers? How often should a utility review census data to determine the percentage of non-English speaking customers in its territory?

Section 58.10. Prioritization of program services.

What would the ramifications be to potentially eligible LIURP recipients and utilities if customer assistance program (CAP) customers were automatically eligible for LIURP without further application? Will the prioritization framework capture customers that live in smaller homes or apartments that have a high usage factor, but less usage than larger homes? Will the framework properly assess the needs of customers who have recently experienced a service disconnection or involuntary termination? How will the prioritization framework be administered if applications for LIURP services are received by utilities at different times of the year? What is meant by the term “CAP shortfall,” and why does the PUC believe this factor is important in determining eligibility for potential LIURP recipients?

Section 58.11. Energy audit.

Both the advocates and industry oppose Subsection (c) and the prohibition of a public utility from using the same energy service provider (ESP) to both install program measures and perform the required energy audit. What is the rationale for this provision? Similar prohibitions regarding quality control inspections are found under § 58.14a(e), relating to quality control.

Section 58.11a. Fuel switching.

Will the decision to switch fuel be driven by an assessment of overall household energy usage or by utility preference? If a decision is made to switch fuel, which utility’s LIURP will be responsible for paying for the switch? How will disputes be resolved if the partnering utilities cannot reach an agreement on various aspects of the switching process?

Section 58.12. Incidental repairs and health and safety measures.

Subsection (a) Criteria and services

When developing the proposed regulation, did the PUC consider adding a specific dollar amount as a minimum for each home repair? What impact would adding a specific dollar amount as a minimum for each home have on both potential customers and a utility’s LIURP?

Subsection (b) Allowances

Regarding the requirement that incidental repairs and health and safety measures are to have their own spending allowance limits, are utilities required to have separate allowances for both categories?

Subsection (c) Deferrals

If a utility decides to defer work on a dwelling under this subsection, are there any timeframes associated with the deferral of the work? Is the deferral temporary or permanent? What obligation does the utility have to follow up with the customer?

What is the need for the reporting requirements of Subsection (c)(2)? What will the PUC do with the information it collects?

Section 58.13. Energy conservation education.

New language is being added to Subsection (d). It states, “A public utility shall take reasonable steps to provide energy conservation education activities in the language or the method of communication appropriate to its target audience.” In the Preamble, the PUC explains that this language is consistent with other customer information provisions found at 52 Pa. Code § 56.91(b)(17). The new language of Subsection (d) provides discretion and flexibility to a utility while the language of § 56.91(b)(17) is more specific on what is required. If a utility meets the requirements of § 56.91(b)(17) in its administration of this subsection, will it have satisfied its energy conservation education services requirement?

What are the costs for utilities associated with the new requirement of post-installation education found in Subsection (d)(4)? What are the potential savings for customers? Under issue one of our comments on this proposed rulemaking, we ask the PUC to quantify the fiscal impact of this new requirement. We pose similar questions regarding costs and savings on §58.14a(f), regarding quality control.

Section 58.13a. LIURP pilot program.

What is the need for a pilot program to be approved only through a USECP proceeding? Are there other types of proceedings before the PUC that may be appropriate for the approval of pilot LIURPs?

Section 58.14. Program measure installation.

Should space-cooling measures be added to this section of the rulemaking? Does this PUC have the statutory authority to add space-cooling measures?

Under Subsection (d), what role is the utility to have in the securing or warranties for the program measures that have been installed?

Section 58.14a. Quality control.

What is the need for a separate complaint process under Subsection (d) beyond the complaint process already available to customers via other PUC regulations?

Section 58.14b. Use of an ESP for program services.

Subsection (c) allows a public utility to outsource program services to a single ESP under certain circumstances. How will this provision work with other provisions of the regulation that require separate entities to perform audits and inspections of work performed?

Section 58.14c. Inter-utility coordination.

Would the costs associated with inter-utility training fall under the definition of “administrative costs” in § 58.2?

Section 58.15. LIURP reporting and evaluation.

How will the data collected under this section assist the PUC in its administration of LIURP? Would the suggestions made by the advocates regarding additional data collection assist the PUC in its administration of LIURP and ultimately assist the recipients of LIURP services? For information or data not currently being collected by a utility, will the PUC provide a timeframe for utilities to start collecting and reporting the data?

As noted previously, specific cost and saving estimates related to this provision must be included in the RAF submitted with the final-form regulation.

5. Miscellaneous clarity.

The definition of “de facto hearing” included in the definitions section of this rulemaking but is not used in any other section of the rulemaking and should be deleted.

The definition of “special needs customer” includes a provision that is unclear. It reads as follows, “Are 62 years of age or older but under 6 years of age.” Should the word “but” be replaced with “or”?