

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

En Banc Hearing on Alternate :
Ratemaking Methodologies : Docket No. M-2015-2518883
:

**Comments of the Pennsylvania Utility Law Project
to the December 31, 2015 Notice on Alternate Ratemaking**

I. INTRODUCTION

On December 31, 2015, the Pennsylvania Public Utility Commission (Commission) issued a Secretarial Letter, at the captioned docket number, informing interested parties that it would hold an *en banc* hearing on March 3, 2016 to seek information from experts regarding the efficacy and appropriateness of alternative ratemaking methodologies, such as revenue decoupling. The notice accompanying the Secretarial Letter listed 22 separate issues and questions to guide the discussion at the hearing to be held March 3, 2016. Only participants invited by the Commission were permitted to testify, all other interested parties were invited to submit comments to be filed March 16, 2016. Consistent with that notice, the Pennsylvania Utility Law Project (PULP) files these comments on behalf of its low-income clients.

PULP is a specialized project of the Pennsylvania Legal Aid Network that provides information, assistance, and advice on low income residential utility and energy matters. PULP acts in coordination with legal aid programs across the state, as well as and other non-profit agencies and community groups to assist Pennsylvania's low-income residential utility and energy consumers connect to and maintain affordable utility and energy services within their home.

PULP thanks the Commission for the opportunity to submit these comments concerning potential changes to the way that utility rates are structured in Pennsylvania. This issue is of paramount importance to Pennsylvania's low-income households, of which there are a significant number. According to the Commission's most recent Universal Service Report, there are more than 2 million estimated low-income customers of regulated electric natural gas utilities, which constitutes 27.2% of these utilities' customers.¹ Of this amount, approximately 1.06 million households have been confirmed as low-income.²

¹ Report on 2014 Universal Service Programs & Collection Performance of the Pennsylvania Electric Distribution Companies and the Natural Gas Distribution Companies at 7-8. Available at: http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf. We note that these numbers are include both gas and electric utilities, and those it cannot be concluded that they reflect separate households, as some accounts are counted as both a gas and electric household.

Families and individuals living at or below 150% of the federal poverty level have staggeringly high energy burdens – paying between 17 and 22% of their income on electric and heating costs – but have the least ability to pay.³ This translates to a rise in food insecurity,⁴ poor health,⁵ dangerous living conditions,⁶ and even homelessness.⁷ This affordability dilemma not only harms low income individuals and families – it also contributes to the overall cost of energy for all Pennsylvanians through increased uncollectible accounts and ongoing programmatic costs.

² Ibid.

³ LIHEAP-eligible households pay between 17 and 22 percent of their income on energy costs. Economic Opportunity Studies, Meg Power, *The Burden of Residential Energy Bills on Low-Income Consumers* (Mar. 20, 2008), available at http://www.opportunitystudies.org/repository/File/energy_affordability/Forecast_Burdens_08.pdf.

⁴ Heating and cooling is intimately tied to home habitability and, as a result, low-income families often go to great lengths to pay energy bills -- often forgoing food, medicine, and medical care to stay warm. A 2011 survey of LIHEAP recipients conducted by the National Energy Assistance Directors' Association (NEADA) revealed that, to pay for energy, **24% of LIHEAP recipients went without food, 37% went without medical or dental care, and 34% did not fill or took less than the prescribed dosage of medication.** NEADA, *2011 National Energy Assistance Survey* (Nov. 2011), available at http://neada.org/wp-content/uploads/2013/05/NEA_Survey_Nov11.pdf

⁵ *Id.*; see also Deborah A. Frank et al., *The Low Income Home Energy Assistance Program and Nutritional and Health Risks Among Children Less than 3 Years of Age*, 118 *AAP Pediatrics*, 1293-1302 (2006); Child Health Impact Working Group, *Unhealthy Consequences: Energy Costs and Child Health: A Child Health Impact Assessment of Energy Costs and the Low Income Home Energy Assistance Program* (Boston: Nov. 2006).

⁶ "Space heaters accounted for 33% of 2007-2011 reported home heating fires, 81% of home heating fire civilian deaths, 70% of home heating fire civilian injuries, and 51% of home heating fire direct property damage." Nat'l Fire Protection Ass'n, Fire Analysis & Research Division, *Home Fires Involving Heating Equipment*, at ix & 33 (Oct. 2013). While there are no state-wide statistics on space heater-related fires in Pennsylvania, we can see that the national statistics are on par with statewide statistics by looking to the local news carriers, which regularly report on space-heater related fires, injuries, and deaths. See, e.g., CW15, *Extension Cord Powering Space Heater Believed to Cause Blaze in Harrisburg* (March 20, 2014), <http://www.cw15.com/news/features/top-stories/stories/extension-cord-powering-space-heater-believed-cause-blaze-harrisburg-7136.shtml>; Fox 43 News, *Stove Used to Heat Home Sparks Rowhome Fire in Harrisburg* (Jan. 7, 2014), <http://fox43.com/2014/01/07/stove-used-to-heat-home-sparks-rowhome-fire-in-harrisburg/>. In January 2014, a local news outlet reported that in just 24 hours, the Harrisburg Fire Department responded to over 20 fire emergencies, many of which were due space heaters and kitchen stoves being used to heat homes. WGAL News 8, *Harrisburg Fire Department Urges Safe Use of Space Heaters, Stoves* (Jan. 7, 2014), available at <http://www.wgal.com/news/susquehanna-valley/dauphin/harrisburg-fire-department-urges-safe-use-of-space-heaters-stoves/23821264>.

⁷ Research conducted by the University of Colorado, Denver, in 2006 found that the inability to pay for home energy is a leading cause of homelessness for families with children. Colorado Interagency Council on Homelessness et al., *Colorado Statewide Homeless Count* (2007).

Pennsylvania has been a leader in developing and supporting programs to assist low income consumers with their electric and natural gas bills, and PULP has worked tirelessly to support comprehensive universal service programs designed to provide bill payment assistance, arrearage management, and energy efficiency and weatherization. While PULP's efforts the Commission's decisions have greatly improved the design and funding for these programs, the programs are insufficient to address the growing gap in affordability for lower income Pennsylvanians. Simply put, while PULP has worked to leverage all available resources to expand access to energy efficiency targeted to economically vulnerable households, the programs do not sufficiently target all eligible households or meet clearly documented needs for bill payment assistance and efficiency and weatherization investments.

Thus, while PULP supports additional resources targeted to low income households to meet these needs, it is not at all clear that the alternate ratemaking and/or decoupling mechanisms outlined by the Commission, and discussed by the parties at the March 3, 2016 *en banc* hearing, will actually produce these resources. Many of the mechanisms supported at the *en banc* hearing may, in fact, do more harm than good.

II. GENERAL COMMENTS

As explored more fully below, PULP's concerns raise questions about the need for reform to the existing Act 129 structure, the lack of any documented value of "alternative ratemaking methodologies" to achieve the benefits of efficiency and conservation programs, and the potential impacts of changes in ratemaking methodologies, rate design, as well as other issues raised by the Commission's Notice, on low income customers.

In this section, our Comments will respond to the issues raised by those testifying at the Commission's March 3, 2016 *en banc* hearing, raise additional concerns about the need for "alternative ratemaking methodologies," and present our recommendations about the consideration of decoupling or other rate design changes identified in the Commission's Notice.

A. LOW-INCOME CUSTOMERS ARE VULNERABLE TO BILL INCREASES, WHETHER DUE TO RISING COSTS, SURCHARGES, RATE DESIGN CHANGES, AND DECOUPLING MECHANISMS.

Low income customers are particularly vulnerable to higher utility bills for essential electric and gas service. When proposals for rate design changes, rate increases, and higher non-bypassable charges are under consideration, we urge the Commission to consider that low-income households often have a tenuous ability to maintain essential utility services.

Both in filed testimony, and at the hearing, several panelists and some members of the Commission, either implied or stated that low-income customers would not be put at risk from any decoupling mechanism because the changes would be relatively small,⁸ or that these households would have access to Customer Assistance Programs to mitigate any harm.⁹ These general statements are misplaced for several reasons.

First, the evidence demonstrates that low-income households cannot afford rates as they currently exist, let alone any increase in rates no matter how small. Data from 2014, the last year in which data is publically available, shows that low-income customers had a significantly higher termination rate as compared to all residential customers.

Figure 1 – 2014 Total Number of Terminations and Termination Rate¹⁰

	RESIDENTIAL CUSTOMERS		CONFIRMED LOW-INCOME	
	Terminations	Reconnections	Termination	Reconnection
Electric	231,775 households	177,973 households	115,229 households	86,393 households
	4.7% Termination Rate	76.8% Reconnection rate	18.6% Termination Rate	75% Reconnection rate
Natural Gas Utilities	109,935 households	70,938 households	55,822 households	34,077 households
	4.3% Termination Rate	64.5% Reconnection rate	12.6% Termination Rate	61% Reconnection rate

⁸ Written Testimony of Keystone Energy Efficiency Alliance, Clean Air Council, and Natural Resources Defense Council at 9-10.

⁹ Oral statements of Commissioner Robert Powelson at March 3, 2016 *en banc* hearing at Docket No. M-2015-2518883.

¹⁰ *Ibid.* n. 1 *supra*, at 10-16.

As this data shows, even at current rates low-income households face significant payment trouble, face termination of service at rates 3-4 times as great as residential customers as a whole, and are less likely to reconnect service once that service has been terminated.

Some panelists suggested that these problems would not be exacerbated under a decoupling mechanism because they are caused by factors unrelated to utility ratemaking.¹¹ We disagree. The assumption embedded in this assertion is that a well-constructed decoupling mechanism simply produces higher rates more steadily than a rate case, suggesting that because bills would have increased anyway under traditional rate regulation, the harm is not actually associated with decoupling. This argument ignores the fact that in traditional rate cases, utilities must demonstrate that the requested increase is just and reasonable. While costs or expenses may have increased in some areas, they must be considered in light of the potential for more efficient utility operations and lower costs in other areas. Under decoupling, the utility gets cost recovery *in between rate cases* based on sales revenues or other complicated formulas, but is not required to demonstrate that all available means have been implemented to reduce their operational costs or other costs so as to ameliorate the impact of lower sales revenues.

Furthermore, rate cases, unlike automatic adjustments, provide interested parties with the opportunity to explore the need for additional measures to mitigate the harm to economically vulnerable customers associated with the rate increase by exploring and making recommendations for ameliorate the potential for increasingly unaffordable electric and gas bills.

Furthermore, the suggestion that low-income households are already protected from the deleterious effects of incremental rate increases because of the CAP program is incorrect. While it is true that CAP participation is effective at providing more affordable bills for CAP-enrolled households, ***the significant majority of confirmed low-income households are not enrolled in CAP.*** In 2014, the CAP participation rate was only 46% for electric utilities and 37% for natural gas utilities.¹² Moreover, even for those enrolled on CAP, not all CAP programs insulate households from cost increase due to increased rates. Thus, any suggestion that low-income households would not be affected by incremental rate increases brought about by decoupling because of CAP should account for both of these facts.

Finally, in its testimony, Columbia Gas of Pennsylvania, Inc. asserted that certain low-income customers would actually do better under their proposed flat fee/fixed distribution charge than under a traditional rate design because CAP

¹¹ See Testimony of Dr. Hugh Gilbert Peach at 15.

¹² *Ibid.* n. 1 *supra*, at 42.

customers have higher usage on average than non –CAP customers.¹³ This argument misses the mark for several reasons. First, it ignores the fact that 70% of Columbia’s confirmed low-income customers **are not** enrolled in CAP.¹⁴ Second, Columbia has consistently reported that CAP households who receive LIURP have reduced their energy usage to *below* that which the average residential customers used indicating that high use by these households is based on circumstances outside of their control, which may effectively be mitigated by targeted LIURP remediation rather than punitive rate design. Finally, Columbia’s assertion that low income customers have higher than average usage is contrary to data from the US Department of Energy in its Residential Energy Consumption Survey (“RECS”). RECS shows that while low income consumers have slightly higher usage per square foot, the overall gas and electric usage is significantly lower than non-low-income households.¹⁵

B. THE CURRENT ACT 129 PROGRAMS ARE WORKING

In our view, the proponents of decoupling have the burden of demonstrating the existence of a problem that needs reform, or the value that will result to ratepayers from changes in rate design or ratemaking methodologies, prior to any adoption of “alternative ratemaking methodologies.” Based on the testimony presented at the hearing, in Pennsylvania, decoupling and other ratemaking reforms appear to be solutions in search of a problem.

Act 129 mandates the implementation of efficiency, conservation, and demand response programs and expenditures for the Commonwealth’s electric utilities. The Commission recently determined that the utilities (with one exception) have complied with Phase I of this mandate. Pursuant to Act 129, the Commission is authorized to approve efficiency and consumption reduction programs after these statutory mandates are met if the program benefits exceed its costs. As a result, and in accord with the results of statewide savings potential studies conducted by the independent Statewide Evaluator, the Commission determined that additional reductions in consumption were cost effective and prescribed targets to be met by May 31, 2016 during the Phase II period.¹⁶ Finally, the Commission proceeded to evaluate costs and benefits and established new consumption reduction targets and peak reduction targets for all EDCs and forthcoming plans starting in 2016. The

¹³ Testimony of Paula A Strass on Behalf of Columbia Gas of Pennsylvania, Inc. at 5.

¹⁴ *Ibid.* n. 1 *supra*, at 42.

¹⁵ See Dep’t of Energy, US Energy Information Admin., 9009 RECS Survey Data, Consumption & Expenditures Tables, at CE.1.2, CE.2.2, CE.3.2 (2010), *available at* <http://www.eia.gov/consumption/residential/data/2009/index.cfm?view=consumption#undefined> ; see also Pa. PUC v. Columbia Gas of Pa., Inc., Docket R-2015-2468056, Direct Testimony of Roger D. Colton on Behalf of the Pennsylvania Office of Consumer Advocate at 10-17 (June 19, 2015).

¹⁶ Energy Efficiency and Conservation Program, Docket Nos. M-2012-2289411 and M-2008-2069887, (Implementation Order Entered at August 2, 2014).

Commission recently established Phase III program targets for each EDC, and is in the process of approving plans for the program from June 1, 2016 through May 31, 2021.¹⁷

These efficiency and demand response programs are not without cost. As pointed out by Acting Consumer Advocate Tanya McCloskey, currently, under Act 129, Pennsylvania's seven major electric utilities spend approximately \$240 million annually on energy efficiency and demand response programs.¹⁸ This is in addition to the \$48 million in LIURP spending that occurs each year.¹⁹

To be sure, PULP actively supports increases in budgets to meet the overwhelming and under-met energy efficiency needs to low-income households. However, none of the testimony presented at the hearing addressed exactly how much or in what form **new and additional resources** would be added as a result of either decoupling or other alternative rate designs. Act 129 is based on a statutory spending cap of 2% of 2006 EDC revenue and LIURP is based on a utility-specific needs assessment. Utilities are required to file plans to address both, and no additional incentive has been or will be necessary for this to occur. Nor did any proponent of decoupling explain or describe how this alternative ratemaking methodology will result in any value or benefit to lower income customers.

Unless there is some factual basis for finding that the current programs need reforms, or that more cost effective programs should be included in rates, it is difficult at this time to determine the value of any alternative ratemaking reform. We urge the Commission to identify the problem that needs to be resolved prior to undertaking ratemaking reforms with potentially risky results for low-income households.

¹⁷ Energy Efficiency and Conservation Program, Docket No. M-2014-2424864 (Order Entered June 11, 2015). A Clarification Order was issued on August 20, 2015 to respond to several petitions and waiver requests, but those matters did not alter the overall policy directives and efficiency portfolio budgets set forth in the June Order.

¹⁸ Testimony of Tanya J. McCloskey on behalf of the Office of Consumer Advocate at 2.

¹⁹ *Ibid.* n. 1 *supra*, at 38.

C. PULP HAS CONCERNS ABOUT THE LACK OF ANY ANALYSIS ON THE BILL IMPACTS FOR ECONOMICALLY VULNERABLE CUSTOMERS ASSOCIATED WITH RATE DESIGN CHANGES

The avowed purpose of decoupling is to move a utility away from a ratemaking system that creates incentives for relying on “throughput” or sales revenues to meet their approved revenue requirement and rate of return. Under a decoupling program, utilities can continue to collect increased revenues if sales or kWh revenues do not meet a certain target on an annual basis and in between traditional base rate cases. This policy results in a rate increase without a rate case. Of course, under some programs, the utility must also decrease its revenues and rates if the opposite result occurs, that is, that sales revenues exceed the annual target. As a result, decoupling and other “adjustment” mechanisms are proposed to ostensibly protect the utility from downward pressure on sales and theoretically remove the disincentive from utilities to implement efficiency programs and distributed generation programs that result in lower sales revenues.

However, the impacts of decoupling and associated mechanisms are theoretical, and its value in Pennsylvania is particularly questionable in light of the Act 129 mandates and cost recovery methodology. Whatever its merits or demerits, decoupling has the explicit purpose and intent to shift the risk of reduced sales revenues from utilities and their shareholders to customers. PULP does not agree that this shift in risk is either desirable or necessary, particularly without any concrete and guaranteed additional revenue for energy efficiency. Utilities are in a better position to manage risks than individual residential customers as a whole. In particular, low income customers with fixed or insufficient monthly income have **no means** to manage these risks.

Furthermore, there are significant potential legal and statutory impediments to adopting decoupling because it would thwart both a traditional rate case in which all revenues and expenses can be reviewed and considered, as well as the explicit methodology for recovery of efficiency program costs set forth in Act 129. Act 129 prohibits automatic rate adjustments to respond to lost sales revenues that may result from the implementation of its mandated efficiency and demand response programs.²⁰ A decoupling mechanism, which allows utilities to avoid lost revenues from energy efficiency, would conflict with this prohibition.

Most importantly, before the Commission considers decoupling or any other rate design change identified in the Commission’s Notice, a thorough review of the potential rate and bill impacts of any recommended change in residential rate design or ratemaking policies should be explored. At a minimum, this exploration must consider any impacts of a ratemaking change or rate design change on a wide variety of households, including low usage customers, low income customers, renters, and

²⁰ 66 Pa. C. S. § 2806.1(k).

customers with inelastic usage because of health needs. Most alternative rate design proposals, including decoupling, fixed charges, or demand charges, typically result in higher fixed charges and bills for lower usage or more vulnerable customers that blunt the customer's incentive to adopt efficiency programs.

While decoupling does not have to operate to increase the fixed monthly charges on a customer's bill, it does increase prices and rates when sales revenues decrease, regardless of whether that sales revenue decrease is due to economic conditions, efficiency programs, distributed generation, or demographic changes in the utility's service territory. As a result, customers who conserve and reduce usage may not see the full benefit of that action on their electric bill.

Most of the ratemaking changes identified in the Commission's Notice will not incent customers to engage in conservation or efficiency programs. Nor will they address the barriers that exist that prevent many customers from participating in current efficiency and demand response programs: insufficient income to afford investments in efficiency or demand response equipment; renters and others who reside in multi-unit structures; and ineligibility of some customers due to participation in prior programs. Rather, they appear to respond to the desire of utilities and their shareholders to assure their revenue streams in the face of declining consumption due to a host of factors, only one of which is related to Pennsylvania's efficiency programs.²¹ These options have a particularly adverse impact on lower income and fixed income customers who must not only pay for the efficiency programs that they typically cannot or do not use, but the additional charges associated with decoupling or fixed charges that are typically proposed as "alternative ratemaking" initiatives.

D. ANY REFORM DESIGNED TO INCREASE THE SCOPE AND SCALE OF EFFICIENCY PROGRAMS SHOULD NOT INCLUDE ASSUMPTIONS ABOUT THEIR IMPACT ON THE GENERATION SUPPLY PORTION OF THE BILL

In any consideration of decoupling programs as referenced by the Commission in its Notice, PULP urges the Commission to ensure that the costs associated with expanded programs will have bill impacts that are fair, reasonable, and affordable for residential customers, particularly lower income and fixed income customers, many of whom cannot participate in programs that require any monetary investment.

²¹ While not discussed in detail at the *en banc* hearing, decoupling is also often justified as a response to distributed generation or rooftop and community solar installations that result in lower revenues for utilities due to the decreased consumption by those customers. However, there are additional issues associated with the impact of net metering applicable to these that results in additional subsidies in the form of payments by the utility for the excess generation produced by these installations. As a result, there are more complicated issues relating to distributed generation that deserve a more focused investigation and consideration that cannot be resolved by decoupling alone. More information is needed on the extent of the impact of distributed generation and associated net metering impacts prior to addressing this issue.

Closely related to this concern is that Pennsylvania does not regulate the generation supply portion of the customer's bill, typically an amount that is in excess of 50% of the total electric bill. Any proposal for decoupling should not, therefore, reflect any impact associated with the reduced sales of generation supply service, whether charged through the Price to Compare (default service) or the customer's Electric Generation Supplier. Unlike states with vertical regulation of both distribution and generation, the Pennsylvania Commission should not consider, for example, the impact of increased efficiency programs that might result from a decoupling mechanism or other performance incentives on deferred capacity investments for generation supply, a common policy objective in such states.²² The generation supply portion of the customer's bill does not impact the EDC's regulated sales revenues associated with distribution service. Any evaluation of the incentives theoretically associated with changes in rate design or cost recovery should take into account these limitations when seeking to create incentives or changes in rate design.

E. ANY MOVE TO SIGNIFICANTLY EXPAND EFFICIENCY AND DEMAND RESPONSE PROGRAMS BY PENNSYLVANIA EDCs SHOULD ALSO ENSURE THE COMMENSURATE INCREASE IN FUNDING AND PROGRAMS AVAILABLE TO LOW INCOME CUSTOMERS.

To the extent that the Commission seriously considers alternative rate designs or cost recovery methods with the intent to expand the current efficiency program directives, PULP seeks to ensure that budgets and measures are commensurately increased for no cost programs offered to low income customers. It would not be appropriate to conclude that any performance incentive or ratemaking reform such as decoupling, would result in additional programs and budgets for no cost programs targeted to eligible low income customers. Rather, additional reforms would need to be developed to ensure that these vulnerable customers would receive additional efficiency and demand response program benefits commensurate with the increased expenditures for non-low income residential customers. The alternative is that lower income customers who cannot participate in the general residential efficiency and demand response programs will be required to shoulder the burden of paying not only for the impact of decoupling or moving variable charges to fixed charges, but will experience higher bills to pay for the infrastructure costs incurred by the utility to support all customers, a result that will greatly exacerbate the unaffordability crisis for many Pennsylvania families.

²² See, e.g., the Final Arizona Policy Statement Regarding Utility Disincentives to Energy Efficiency and Decoupled Rate Structures, Docket Nos. E-0000J-08-0314 and G-0000C-08-0314 (December 29, 2010) that documented the potential benefits of increased efficiency programs on avoided generation supply investments.

II. RESPONSES TO SPECIFIC ISSUES AND QUESTIONS

While many of the issues addressed in the Commission’s solicitation for comments have already been addressed in PULP’s general concerns articulated above, PULP offers the following considerations to the Commission on several of the specific issues and questions identified in the Notice. Our Comments are not intended to address every issue in the Commission’s Notice, but rather we focus on the public interest and affordability impacts of decoupling and other potential rate design changes.

The statutory and regulatory barriers, if any, associated with alternative rate mechanisms in Pennsylvania.

There are a number of statutory provisions that the Commission should consider prior to adopting any “alternative ratemaking methodology,” particularly any methodology that seeks to implement a decoupling mechanism.

- The Electric Choice Act authorizes the Commission to “use performance based rates as an alternative to existing rate base/rate of return regulation.”²³ As a result of this statutory authority, the Commission would need to propose “performance based rates” that included specific performance-related criteria in order to adopt an “alternative” form of regulation. Any such approach would require a comprehensive review of what performance areas should be linked to recovery of utility revenues. This proceeding does not appear to suggest such an approach.
- The Choice Act also authorizes the continuation of the EDC’s efficiency and low-income programs and states that, “full recovery of such costs is to be permitted through a non-bypassable rate mechanism.”²⁴
- Act 129 expanded the obligations of the EDCs to provide “cost effective” efficiency and consumption reduction programs.²⁵ Among the directives of Act 129 is a requirement that the cost recovery mechanism ensure that costs for each customer class reflect the benefits received by that class. This Act calls for a cost recovery method that ensures the “full and complete recovery” of the “prudent and reasonable” costs of the programs, including administrative costs, by the EDC.
- Act 129 contains a specific prohibition on allowing an EDC to collect “lost revenues” outside of a traditional rate case and would appear to create a significant statutory barrier to any consideration of a decoupling mechanism

²³ 66 Pa C.S. § 2806(i).

²⁴ 66 Pa C.S. § 2802(17).

²⁵ 66 Pa C.S. § 2806.1(a).

because it prohibits collection of “decreased revenues of any electric distribution company due to reduced energy consumption or changes in energy demand shall not be a recoverable cost under a reconcilable automatic adjustment clause.”²⁶

- Act 129 states that the costs for efficiency and conservation programs shall not exceed 2% of the EDC’s total annual revenue as of December 2006.²⁷

The Commission has implemented these directives and approved a surcharge cost recovery mechanism that ensures that actual costs are recovered based on approved budgets on a timely basis. There is no evidence that the EDCs have not recovered their actual costs or that there has been any unreasonable delay in cost recovery for these programs.

Further, the current statutory directives do not reference any need for additional incentives in the form of decoupling or other alternatives to the current volume-based rate structure for distribution services to incent or ensure recovery of costs for efficiency programs in Pennsylvania. Every EDC in the state is authorized to file base rate cases to recover their just and reasonable costs and expenses. At the time of a base rate case, the EDC’s actual revenues and expenses and investments are reviewed and taken into account when establishing the revenue requirement, rate of return, and rate structure for its customers. If “lost revenues” due to efficiency, distributed generation, or other social and economic factors apparent in the service territory require a change in revenue requirement and rates, the EDC can file a base rate case. At that time, all the competing factors and developments affecting sales and revenues can be reviewed with the EDC’s operational costs and investments. To single out one potential source of “lost revenues” due to efficiency programs ignores the fact the EDCs have control over other aspects of their revenue, appears to single out energy conservation for decreases in utility collections, and eliminates the ability for the public to review how the EDC has taken internal measures to reduce its operational expenses to reflect changes in revenue streams.

Pros and cons of alternative rate mechanisms, such as straight fixed variable rate design, lost margin recovery mechanisms for conservation programs or incentive regulation tied to energy efficiency and conservation performance.

Whether alternative rate mechanisms increase customer bill volatility.

Identification of any risk of interclass or intraclass cost shifts, including low income community cost impacts, and whether those cost shifts are inappropriate.

PULP addresses these three questions and issues together. They relate to the impact of any change to rate design or ratemaking methodology on customer bills impacts and the

²⁶ 66 Pa C.S. § 2806.1(k).

²⁷ 66 Pa C.S. § 2806.1(g).

affordability of essential utility service. Affordability concerns are of prime importance to lower income customers.

As a preliminary matter, PULP is concerned any “incentive regulation tied to energy efficiency and conservation performance” would seek to alter the Act 129 policy that focuses on a penalty mechanism if the efficiency and demand response mandates are not achieved. Pennsylvania EDCs have largely avoided penalties and have substantially complied – and often exceeded – the Act 129 mandates and Commission savings targets. Any consideration of rewards or incentives to utility shareholders for performance in excess of program targets or efficiency results would result in another mechanism to increase both utility earnings and customer rates and prices for distribution service.

Policies that will increase shareholder earnings at the expense of residential customers to achieve program results for energy efficiency should not be encouraged without a showing that they would work better than the current penalty structure. Furthermore, every customer service requirement imposed on Pennsylvania’s EDCs could be a justification for creating rewards and incentives to meet or exceed regulatory mandates. There is no basis for assuming that efficiency programs should be the subject of rewards and incentives when compared to the wide variety of customer service obligations and Universal Service program mandates imposed by the PUC. EDCs have a statutory and regulatory obligation to provide energy efficiency programming through both Act 129 and LIURP under their universal service obligations imposed by the Choice Act and the Commission’s regulations. The Commission should not condone incentives for performance of obligatory requirements.

The testimony at the *en banc* hearing seemed to suggest that any performance mechanism would be for performance that is above and beyond that which is required. However, none of the testifiers indicated where any additional revenue would come from to achieve this additional energy efficiency. It is a dubious conclusion to suggest that shareholders will pay for additional energy efficiency with their dollars, at least not to a greater degree than the amount of the performance incentive. Ratepayers could be left paying more for an incentive than they receive in value for energy efficiency.

With regard to the specific rate designs identified by the Commission, PULP has significant concerns about the impact of those rate design changes on residential customers generally, and lower income and lower usage customers specifically. Rate design is a zero sum game – some customers will experience higher bills and others will receive lower bills under the new rate design. Unfortunately, the “losers” will be low income customers, who often live in homes that cannot be remediated due to poor housing conditions, and/or do not have the resources to adopt the deep energy efficiency measures or distributed generation necessary to significantly reduce usage. Thus, any consideration of alternative rate designs should be accompanied by a detailed customer bill impact analysis for all customers. The change in rate design should be evaluated for a wide variety of customer usage and demographic profiles. The suggestion that the “average” customer will not see a higher bill should be rejected as misleading and without probative value. Utilities have

to deal with **actual** customers and all of the variations of their lives. Indeed, there is no such thing as an “average customer.”

With regard to shifting volumetric rates to fixed charges, straight fixed variable rates, or “lost margin recovery mechanisms for conservation programs,” the result is likely to harm lower use and low income residential households. Such cost recovery mechanisms will favor higher usage and higher income customers. To explain, moving cost recovery out of volumetric rate structures and into fixed charges or non-bypassable surcharges will lower volumetric charges and increase that portion of the monthly electric bill that cannot be avoided by reducing usage. Most studies and evaluations of the impact of such proposals (to impose new surcharges or shift cost recovery to fixed charges) confirm this hypothesis. For example, using usage data from the U.S. energy Information Administration’s Residential Energy Consumption Survey for Pennsylvania, the National Consumer Law Center documents that households with lower incomes and elderly households use less electricity than higher income households.²⁸ Any fixed charge cost recovery proposals will unfairly and disproportionately harm these customers because the higher fixed charge will have a disproportionate impact on their monthly bill even if the variable price charge per kWh is lowered.

Decoupling would likely result in utility rates increasing more quickly, and potentially at higher levels than utility rates would otherwise be raised after a comprehensive rate review. Moreover, rate increases through decoupling can result for reasons unrelated to the purported goals of energy efficiency and conservation. In fact, decoupling can raise rates for residential consumers due to the lower usage caused by a general economic downturn, while simultaneously shielding the utility from such economic effects. Adjustments made outside of rate cases tend to miss these sorts of factors, to the detriment of consumers. Regardless of how many prudence reviews are conducted when rates are changed outside a full rate case, if one component of a utility’s cost of service is essentially put on autopilot, consumers are at risk of being charged too much. Any shortfall related to revenue reductions will likely be short-lived, because utilities can – and do – file for a general rate increase as frequently as they feel it is needed, whenever the combined impact of all relevant factors cause it to begin to under-earn. Overearnings situations are not nearly so quickly remedied, and decoupling can allow rates to increase without utility overearnings being corrected.

²⁸ While the median usage for households with income at \$25,000 or less is 6,025 kWh, this usage rises steeply for households with higher incomes, to 10,439 kWh for households with income between \$50,000 and \$74,999 and over 11,000 kWh for higher income households. Furthermore, households with those age 65 or older have a median electricity usage of 6,991 kWh compared to the 10,192 kWh usage for those aged 65 or less. See National Consumer Law Center, http://www.nclc.org/images/pdf/energy_utility_telecom/rate_design/PA-FINAL2.pdf

Impacts alternative rate mechanisms may have on incentives for customers to participate in energy efficiency and conservation programs.

Whether there is an optimal rate mechanism for encouraging energy efficiency and conservation programs;

Whether there is an optimal alternative rate mechanism for encouraging more efficient system operations

PULP is not aware of any “optimal rate mechanism” that would assure the objectives set forth in these areas of interest.

Any incentive offered to customers to participate in efficiency and conservation programs will result in increased costs recovered through the cost recovery mechanism. Furthermore, every rate design and rate mechanism comes with positive and negative attributes in terms of customer bill impacts, utility incentives, and public interest compliance with statutory mandates. Utilities and their shareholders often seek rate designs and rate recovery mechanisms that guarantee recovery of costs and the approved revenue requirement. However, utilities typically do not recognize or address the need for internal efficiencies and reforms that might result in lower costs to offset their lower revenues. Consumers typically oppose rate designs that shift current volumetric rates to fixed or demand charges because those rate designs harm lower use and lower income customers. In addition, because fixed charges or non-bypassable surcharges cannot be avoided, such charges fail to send any incentive to reduce electricity consumption. The Commission should proceed cautiously with any proposals to made radical changes in current residential rate design.

Furthermore, the Commission’s jurisdiction is limited to the distribution portion of the customer bill, which is often less than 50% of a customer’s bill when the cost of generation supply from default service or an EGS is considered. Combining changes in rate design for the distribution portion of the bill with the cents per kWh charge for the price to compare or the EGS charge for generation supply will lead to customer confusion as well as the adverse impacts noted above.

III. Conclusion

PULP continues to support additional resources to assist low-income customers in affording the increasingly high cost of home energy and home heating. Specifically, PULP supports the increased emphasis the Commission has placed on Act 129 compliance through a more robust low-income energy savings target. Furthermore, in PULP's view, there is not a utility service territory in the state that is adequately meeting the needs of its high-use, low-income population through LIURP. More resources are undoubtedly needed to bring energy efficiency to low-income households.

That said, none of the information presented at the *en banc* hearing, in testimony or independent research convinced us that alternate rate design and decoupling would drive additional resources to those most in need. No compelling picture has been presented as to where additional resources would come from, or why those additional resources could not be allocated under traditional rate making. Without compelling evidence that the value of additional resources for low-income households would outweigh the increased costs and risks to these households from alternate rate design/decoupling, PULP cannot support such an approach.

PULP thanks the Commission for its careful review of these issues and invites any questions that the Commission or staff may have about these comments.

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
On behalf of our low-income clients



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March 16, 2016