COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF HOME ENERGY ASSISTANCE PROGRAMS OFFERED BY INVESTOR-OWNED UTILITIES PURSUANT TO KRS 278.285(4)	))))	CASE NO. 2019-00366

O R D E R

On October 28, 2019, the Commission initiated this proceeding to investigate home energy assistance (HEA) programs offered by investor-owned jurisdictional utilities and funded, primarily, by ratepayer funds, ordinarily pursuant to KRS 278.285(4).[1] The purpose of this proceeding is to develop and implement superior program attributes as compared to the current programs, including, but not limited to, uniform administrative, funding, and eligibility standards for HEA programs that advance consistent, effective, and accountable HEA programs across the Commonwealth that are beneficial to and easily accessed by eligible low-income customers, resulting in increased benefits to all ratepayers.

Six investor-owned utilities with ratepayer-funded HEA programs and one investor-owned utility with an HEA program funded only by shareholder funds were made parties

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[1] The HEA programs at issue in this proceeding are funded through a mix of ratepayer funds and shareholder funds. The Commission's statutory authority applies only to ratepayer funds. However, the Commission has long encouraged utilities to include shareholder funds as a funding source for HEA programs to ensure program accountability, reasoning that a utility will pay closer attention to a program that receives shareholder funding. We note that there are similar programs that are funded through shareholder funds and voluntary donations only, and not with ratepayer funds. The Commission has limited jurisdiction over such programs, and thus uniform HEA program parameters will not necessarily apply to programs that are not funded with ratepayer funds.

in the Order initiating this proceeding: Columbia Gas of Kentucky, Inc. (Columbia); Delta Natural Gas Company, Inc. (Delta); Duke Energy Kentucky, Inc. (Duke Kentucky); Kentucky-American Water Company (Kentucky-American);[2] Kentucky Power Company (Kentucky Power); Kentucky Utilities Company (KU); and Louisville Gas and Electric Company (LG&E). The Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General) and Community Action Kentucky, Inc. (CAK) are intervenors in this proceeding.

The parties responded to four rounds of discovery, filed written comments, and, on February 25, 2020, participated in a formal conference that further discussed the parties' discovery responses. On March 17, 2020, an informal conference was held so that the parties'[3] could collaboratively develop a joint proposal for uniform HEA program parameters. After a substantive discussion, the parties produced a document with common HEA program tenets. Due to a public health state of emergency, a formal hearing scheduled for April 22 and 23, 2020 was canceled. The evidence of record is robust and the parties' collaboration produced their recommended uniform parameters. Therefore, the Commission finds that this matter should be submitted for a decision based upon the substantial evidence in the record.

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[2] Kentucky-American's assistance program is funded through shareholder funds and voluntary donations. Kentucky-American was included as a party to this proceeding because of accountability and administrative attributes that the Commission wished to draw upon in developing uniform HEA program parameters.

[3] Representatives of agencies that currently administer HEA programs but are not parties to this proceeding also participated in the informal conference.

BACKGROUND

In 2001, the Kentucky Legislature revised KRS 278.285 to authorize HEA programs as part of the demand-side management (DSM) programs[4] that jurisdictional utilities can offer to their customers.[5] HEA programs provide financial assistance to eligible low-income residential customers who may not necessarily be able to pay their utility bills. HEA programs benefit all utility customers, not just those who receive financial assistance. The primary benefit to eligible low-income customers is an increased ability to pay for utility service. For ratepayers who are not eligible to participate in HEA programs, the primary benefit is a reduction in utility costs, and thus a reduction in rates as a result of avoided costs that would otherwise be incurred from debt collection and from writing off uncollectible accounts.

DISCUSSION

The Commission reviews and approves HEA program surcharges paid by ratepayers to ensure they are fair, just, and reasonable. As recent cases and the record in this proceeding have made clear, HEA programs offered by jurisdictional utilities vary greatly and have raised a host of concerns regarding the HEA programs' efficacy, accountability, and accessibility:

- Administration. There are different organizational and fee structures across the HEA programs.[6] Each of the HEA programs is administered by a different administering

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[4] Demand-side management programs are designed to reduce energy consumption through specific measures, such as rebates for energy-saving products, weatherization, and education.

[5] 2001 Kentucky Laws Ch. 11 (H.B. 305).

[6] Columbia's Response to Commission Staff's First Request for Information (Staff's First Request), Items 1-4 (filed Nov. 18, 2019); Delta's Response to Staff's First Request, Items 1-4 (filed Nov. 14, 2019); Duke Kentucky's Response to Staff's First Request, Items 1-4 (filed Nov. 18, 2019); Kentucky Power's

agency. Some of the administering agencies conduct the back-office functions and subcontract the front-office functions for accepting and evaluating HEA program applications to other local community nonprofits, such as one of the 23 community action agencies (CAA) in Kentucky. Other administrating agencies conduct both the front-office and back-office functions.

Administrative fees paid to the administering agencies vary and range from 7 percent to 15 percent of the program funds, with additional fixed amount fees paid to CAAs for processing applications and enrollments.[7] Among the programs, the administrative fee percentages are not based on the same criteria; some are based on a percentage of budgeted program funds, others are based on costs to administer the programs. The differences in administrative fee amounts do not appear to be based on a quantifiable financial basis because there are no significant differences in the corresponding services delivered by the administering agencies.

- Oversight. Given that funding sources for HEA programs include ratepayer funds, one critical area of accountability is program oversight. Auditing requirements and general oversight vary greatly between programs.[8] Some utilities require monthly report and annual audits. Other utilities merely review invoices from the agency that administers that utility's HEA program to ensure the agency calculated the correct administrative fee

Response to Staff's First Request, Items 1–4 (filed Nov. 18, 2019); LG&E/KU's Response to Staff's First Request, Items 1–4 (filed Nov. 18, 2019) Columbia's Response to Commission Staff's Second Request for Information, Items 4-5 (filed Jan. 3, 2020).

[7] *Id.*; Kentucky-American Response to Staff's First Request, Items 1, 4.

[8] *Id.* at Item 3; Columbia's Response to Staff's Second Request, Items 9–11; Delta's Response to Staff's Second Request, Items 3–5 (filed Jan. 3, 2020); Duke Kentucky's Response to Staff's Second Request, Items 5-6 (filed Jan. 3, 2020); Kentucky Power's Response to Staff's Second Request, Item 3 (filed Jan. 3, 2020); LG&E/KU Response to Staff's Second Request, Item 9 (filed Jan. 3, 2020).

percentage, but do not review the amounts the agency is authorizing for eligible participants, which may result in the HEA program under- or overcollecting funds from ratepayers.

- Funding. Five of the HEA programs at issue are funded, in significant part, through a monthly per-meter surcharge billed to residential customers.[9] The per-meter surcharge amount varies among the utilities from a low of $0.10 per meter to a high of $0.30 per meter. One of the HEA programs is funded through a volumetric surcharge billed to residential customers.[10] The unequal funding is not correlated to differing economic conditions or need in each utilities' service territory. Instead, based on a review of past proceedings, these varying funding levels are correlated to the substance and involvement by intervening parties in past rates cases for each particular utility. As such, utilities serving areas with highly organized low-income advocates tend to have HEA program surcharges that are more closely correlated to economic conditions or need. As a result, those areas without similar involvement or advocacy are adversely impacted by funding levels untethered to a rational basis.

- Eligibility Requirements. All HEA programs have eligibility requirements, but the requirements are not consistent from program to program.[11] All HEA programs have income requirements tied to federal poverty guidelines (FPG) and vary from 110 percent

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[9] KRS 278.285 provides that the cost of HEA programs can be assigned only to the customer class that benefits from the programs. Thus, monthly surcharges that fund HEA programs and benefit residential customers can only be assessed on residential customers.

[10] Columbia Tariff Sheet No. 51b.

[11] Order Opening, Appendix C (Ky. PSC Oct. 28, 2019) Columbia's Response to Staff's First Request, Item 1; Delta's Response to Staff's First Request, Item 1; Duke Kentucky's Response to Staff's First Request, Item 1; Kentucky Power's Response to Staff's First Request, Item 1; LG&E/KU's Response to Staff's First Request, Item 1.

of FPG to 200 percent of FPG. Similarly, there is no consistency regarding participation in other programs, such as weatherization, or additional participation criteria added, such as amount of arrearage. Some HEA programs prioritize past-year participants in eligibility determinations, others determine eligibility on a first-come, first-served basis, and some have prioritization criteria with eligibility determinations made after a set period in which applications are accepted.

- Benefits. HEA program benefits dictate not only the benefit amount, but also the period when HEA programs are offered, whether the money is allocated between the summer cooling season versus winter heating season, and the fuel source used by eligible HEA participants.[12] Some HEA program benefits have not been revised since the programs were established a decade or more ago. Other programs, such as Kentucky Power's HEART and THAW programs, are frequently reviewed and revised to tailor the benefits to the identified need.

- Accessibility. There is no consistent effort across utility service territories by program administrators to enroll eligible households, resulting in an unequal distribution of services.[13] Although HEA program availability ideally should be tied to the number of customers or poverty levels per county within the service area, participation appears to

[12] Columbia's Response to Staff's First Request, Items 5-6; Delta's Response to Staff's First Request, Items 5–6; Duke Kentucky's Response to Staff's First Request, Items 5–6; Kentucky Power's Response to Staff's First Request, Items 5-6; LG&E/KU's Response to Staff's First Request, Items 5–6; Columbia's Response to Staff's Second Request, Items 6-7; Delta's Response to Staff's Second Request, Items 9; Duke Kentucky's Response to Staff's Second Request, Item 9; LG&E/KU's Response to Staff's Second Request, Item 8; Delta's Response to Commission Staff's Third Request for Information (Staff's Third Request), Item 4 (filed Feb. 14, 2020).

[13] Kentucky Power's Response to Staff's Third Request, Item 4 (filed Feb. 14, 2020); Feb. 25, 2020 Formal Conference Video Transcript (CVT) at 9:43:42, 9:49:25. Kentucky Power testified how it made a mid-course correction with the assistance of CAK to address unequal participation in one HEA program.

be higher in areas where the agencies accepting applications have a stronger marketing effort or closer relationship with the utility.

FINDINGS

The case record is replete with specific details regarding the existing HEA programs. Based on the substantial evidence filed in the record by the parties and the program parameters proposed by the parties, the Commission finds that the below program parameters are reasonable; have corrected identified deficiencies in the current HEA programs, are in the public interest; will result in rates that are fair, just, and reasonable; and will achieve the purpose of this proceeding: consistent, effective, and accountable HEA programs that are more beneficial to and easily accessed by eligible low-income customers, and result in increased benefits to all ratepayers. With clear, consistent parameters, the Commission will be better able to evaluate the effectiveness of the HEA programs moving forward, including their impact on uncollectible accounts and disconnections for nonpayment.

Administration

As discussed above, each utility deals with separate agencies that administer their respective HEA programs and each administering agency has its own fee structure, often unsupported by hard data. From a review of the program histories, it appears that the current organizational structure for HEA programs arose by happenstance as different interested parties intervened in cases in which HEA programs were established or amended, or in which one utility opted to mirror parameters from an HEA program established by another utility.

As part of standardizing HEA parameters, the Commission prefers an organizational structure with as few administrating agencies as possible with which utilities, and the Commission, coordinate within operating HEA programs.[14] In response to the Commission's stated preference, the majority of utilities agreed to a single HEA administrator, but ultimately the parties' consensus agreement on HEA parameters was that there was a preference for a single HEA administrator, but who that is can vary by utility.[15]

Based upon the substantial evidence in the case record, the Commission finds that the current organizational structure with multiple agencies conducting similar work at different costs (some of which cannot be validated) and with different results is unnecessarily duplicative and an inefficient use of ratepayer funds. The Commission concludes that a single administering agency that acts as a hub for subcontractors performing front line services would result in economies of scale, lower operating costs, and reliable oversight that best serves ratepayers' interests, as well as the interests of those eligible for HEA program assistance. Because the financial benefits to ratepayers are not limited to customers of investor-owned utilities, the Commission envisions expanding HEA programs to other utilities under its jurisdiction at some future time. A potential expansion of HEA programs is all the more reason to establish a single administering agency now.

The Commission concludes that CAK's unique role makes it the logical choice to become the single administering agency. CAK is the statewide association that

[14] CVT at 3:05:24.

[15] Commission Staff's Informal Conference Memo (Ky. PSC Mar. 16, 2020), Attachment, Common Tenets (Common Tenets).

represents and supports all CAAs in Kentucky, and thus has “affiliate” offices in all 120 Kentucky counties. As the administering agency for Kentucky Power’s HEA, CAK worked closely with Kentucky Power to refine the parameters of Kentucky Power’s HEA to better serve Kentucky Power’s service territory. In addition to HEA programs, CAK has a history of administering programs that are subcontracted to CAAs providing front line services, including the federal Low Income Home Energy Assistance Program (LIHEAP) and a program that assists Kentuckians obtain health insurance through the federal insurance exchange.[16] In response to a question at the formal conference, CAK affirmed that it had the technical and operational ability to act as the single administering agency.[17] If CAK were to be the administering agency for HEA funds, it could build upon its existing system and expertise.

The Commission does not have the statutory authority to require CAK to accept a role as the single administering agency for HEA programs. The Commission nevertheless has authority over HEA programs, and thus states that moving forward, HEA programs must be administered by a single agency. The parties to this matter are on notice that it is not reasonable to continue to operate HEA programs with multiple administering agencies due to the inconsistencies and inefficiencies documented in the record. Therefore, the Commission finds that, if CAK declines the Commission’s request for CAK to become the sole administering agency for HEA programs under the Commission’s jurisdiction, then the Commission will explore other options, including proposals from agencies with experience in successfully administering HEA programs.

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[16] CVT at 3:07:11, 3:07:20.

[17] CVT at 3:08:05.

Regarding delineating program functions between the administering agencies and subcontracting agencies, whether CAK or another agency is the administering agency, the Commission requests that CAK provide guidance on an appropriate assignment of functions based upon CAK's considerable experience with the proposed organizational structure.

The Commission concurs with the parties' HEA common tenets that administrative fees should reflect actual, quantifiable costs, and should be capped at 10 percent of program funds.[18] The parties raised the issue that some flexibility was required for large expenditures, and asserted that such flexibility should be separately negotiated by each utility and administrator. With a single administrating agency with significant experience subcontracting front line services, the fee structure should better align fees earned with the actual costs of providing the service.

The parties' recommended that ratepayer-funded HEA programs operate using a common information technology system.[19] Currently, all CAAs that administer ratepayer-funded HEA programs use CASTiNET, a software system developed by CAK.[20] The Commission concurs with the parties that using a common information technology system promotes consistency and economies of scale. This economy of scale and scope further underscores the need for a single administering agency.

[18] Common Tenets, unnumbered item 4.

[19] *Id.*, unnumbered item 2.

[20] CVT at 2:40:25.

The parties also raised an issue regarding the types of costs allowed to be covered in administrative fees, such as legal and information technology fees.[21] The parties recommended that legal and information technology fees be allowed only if directly related to administration of HEA funds. The Commission agrees that fees should be directly related to the administration of HEA programs. However, the Commission concludes that it would be more reasonable for this issue to be negotiated by utilities in their contract with the administering agency, and that the contract be subject to Commission review, including any amendments thereof. This permits the utilities to negotiate contract terms that incorporate matters that are unique to that utility while retaining Commission oversight into the reasonableness of such terms.

<u>Oversight</u>

The parties provided recommendations regarding program audits, monthly reports, and annual reports. The parties proposed that program management audits be conducted by a third party occur every five years, with copies of the audits filed with the Commission.[22] The Commission agrees that a program management audit should be conducted every five years by a third party. Pursuant to KRS 278.255, the Commission finds that a competent, qualified, and independent firm selected by the Commission should be retained to perform a full and comprehensive program management audit. The Commission further finds that, pursuant to KRS 278.255(3), the utilities should bear the cost of the HEA program management audit, which will be included in the cost of service

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[21] Common Tenets, unnumbered item 4.

[22] *Id.*, unnumbered item 11.

of a utility for ratemaking purposes, or deferred if incurred outside of a utility ratemaking test year.

The parties also proposed monthly reporting to utilities by the administering agency, based upon data provided by subcontracting agencies, with other communications as determined by each utility.[23] In order to be useful, the Commission concludes that monthly reports should be standardized. Because each subcontracting agency uses the same software, standardizing monthly reports should not be problematic. The Commission commends LG&E, KU, and Kentucky Power for the substance and quality of reports provided by its HEA program administrators pursuant to their contracts with the three utilities. The Commission finds that these reports should be used as models for standardized reports developed for HEA programs and elements that should be included in monthly reports are set forth in Appendix A. Additionally, the Commission expects utilities to thoroughly review monthly reports, not merely use them as an invoice to expend customer funds. The Commission will not allow utilities to shirk their obligation to protect customer funds administered through these programs.

Finally, the parties proposed annual reporting to the Commission.[24] During the informal conference, the parties agreed that the annual report should include any recommendations the administrator or utility have regarding changes to the uniform program parameters or to any utility-specific requirements. The Commission concurs with these proposals. The annual reports should include elements set forth in Appendix

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[23] *Id.,* unnumbered item 11.

[24] *Id.*, unnumbered item 11.

B, which will assist the Commission in evaluating the effectiveness and reasonableness of the HEA program parameters.

Funding

The Commission has long had concerns regarding the differing per meter surcharges between HEA programs. The majority of HEA surcharge amounts were established as part of settlement agreements in past cases or established by the Commission a decade ago and never revised over time, even as customer rates have increased. Columbia's HEA surcharge is a volumetric rate of $0.0582 per Mcf, with an annual true-up filing that readjusts the surcharge amount based upon the amount collected in the previous year.[25] The remaining utilities' HEA surcharge is based on a per-meter amount. The per-meter fees are as follows:

Utility	Per Meter HEA Surcharge
Delta	$0.20
Duke Kentucky	$0.10
Kentucky Power	$0.30
Kentucky Utilities	$0.30
LG&E	$0.25

The parties proposed that the HEA surcharge amount be assessed on a per-meter basis with utility-specific surcharge amounts.[26] The Commission concurs that the HEA surcharge should be a per-meter fee, but is not persuaded that the surcharge amount should be utility-specific. As part of standardizing HEA program parameters, the Commission must also identify those parameters that, due to unique characteristics of a utility's service territory, cannot reasonably be standardized. The HEA surcharge amount

[25] Columbia Tariff Sheet No. 51b.

[26] Common Tenets, unnumbered item 6.

does not fall into that category. The Commission finds it more reasonable to establish a uniform minimum amount, with utilities having the option of increasing the HEA surcharge amount on a utility-by-utility basis in a future rate case. In evaluating the information provided by the parties, the Commission concludes that the minimum surcharge amount of $0.30 per meter assessed on residential meters should be sufficient to address the demonstrable need to assist eligible low-income customers with their utility bills. The $0.30-per-meter surcharge results in an annual bill impact as follows:

Utility	Electric Customers Annual Bill Impact	Gas Customers Annual Bill Impact	Combined Gas and Electric Customers Annual Bill Impact
Columbia		($0.10)[27]	
Delta		$1.20	
Duke Kentucky	$2.40	$2.40	$4.80
Kentucky Power	$0.00		
Kentucky Utilities	$0.00		
LG&E	$0.60	$0.60	$1.20

The Commission further finds that those utilities with a per-meter HEA surcharge under $0.30, Columbia, Delta, Duke Kentucky, and LG&E should implement a $0.30-per-meter HEA surcharge on residential customers effective as of the date of this Order.

Since the first HEA programs were approved, the Commission has consistently stated its position that it is important that any investor-owned utility offering an HEA program funded with ratepayer funds should also participate by including shareholder funds. This position is based on the belief that a utility will be more vigilant in its oversight of the HEA program if the utility and its shareholders have a financial interest. Indeed, the record in this matter indicates that the utilities that have provided the largest amount of shareholder funds for HEA administration have also exhibited the most significant

[27] Based on an average residential natural gas usage of 5.3 Mcf per month.

oversight of those HEA programs. Further, the Commission's position also represents a preference that shareholders bear some of the costs of HEA programs in order to reduce the costs borne by customers. While the Commission cannot require an investor-owned utility to commit shareholder funds to an HEA program, we strongly encourage utilities to include shareholder funds in HEA programs otherwise exclusively funded by ratepayers.

Benefits

As stated above, the Commission's goal in establishing this proceeding was to standardize the HEA parameters to the extent possible, which meant identifying parameters that, due to unique characteristics of a utility's service territory, cannot reasonably be standardized. HEA program benefits, including amount and program year, are one of the parameters that cannot reasonably be standardized because they reflect and respond to different needs within each utility's service territory. Where one utility's customers may have the greatest need for assistance with winter heating bills, another utility's customers may have the greatest need for assistance with summer cooling bills.

The parties' proposed that HEA program benefits be utility-specific determinations, made in consultation with the central administering agency or subcontracting agencies.[28] Regarding the benefit amount, the parties proposed that the amount be a fixed amount, developed by the utility in consultation with the administering agency and subcontractor agencies, and reviewed every one-to-three years. The parties agreed that the number of participant slots should be determined by funding levels for each HEA program. Finally, the parties agree that any program funds not spent in a program year should roll over to

[28] Common Tenets, unnumbered items 3 and 5.

the next program year, and that unspent funds should be reviewed in light of necessary changes to ensure HEA benefits.

The Commission concurs with the parties that HEA program benefits should be a utility-specific determination, made in consultation with the central administering agency or subcontracting agencies. However, each utility must obtain Commission approval for the proposed HEA program terms prior to implementation.

Eligibility

In standardizing the eligibility parameters for HEA programs, the Commission sought to reasonably expand the opportunity for those most in need of assistance and remove artificial barriers that prevented those in need from receiving assistance. To that end, the parties were asked to analyze how different eligibility parameters would impact their HEA programs. In addition, the parties provided thoughtful recommendations during discovery and during the informal conference. The Commission draws upon the robust record to develop the eligibility parameters. We note that the eligibility parameters discussed below are minimum requirements. To allow for flexibility to meet utility-specific needs, utilities may develop additional eligibility parameters subject to Commission review and approval.

1. Income Threshold. The parties recommended flexible parameters for income eligibility, with the option of establishing the income threshold as either the LIHEAP equivalent, which currently is 130 percent of FPG, or 200 percent of FPG.[29] The Commission notes that Duke Kentucky had proposed raising the income eligibility

[29] *Id.*, unnumbered item 8.

threshold for its HEA program to 200 percent of FPG in a separate case; the request was denied and deferred to a decision in this proceeding.[30]

The Commission is not persuaded by the parties' proposal that the income threshold be flexible because there is no indication that there are utility-specific unique income characteristics that would justify not standardizing this parameter. The Commission agrees with the parties that establishing the income threshold at 200 percent of FPG is reasonable.[31] As CAK explained, because LIHEAP and other assistance programs carry a maximum of 130 percent income threshold, many households are left without another form of assistance.[32] In discovery requests,[33] the parties acknowledged that an increase in the income threshold could result in additional applicants, which is especially important for those HEA programs that cannot expend all program funds because the program's low income threshold reduces the pool of eligible applicants. For example, Delta has an income threshold of 110 percent of FGP and rarely expends all program funds, but indicated that, if the income threshold was increased, it could expend all available funds.

The Commission further finds that the implementation of the 200 percent income threshold should be effective as of the start of the respective HEA program year.

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[30] Case No. 2018-00370, *Electronic Annual Cost Recovery Filing for Demand Side Management by Duke Energy Kentucky, Inc.* (Ky. PSC Oct. 2, 2019), Order at 12.

[31] Voluntary energy cost assistance programs established pursuant to KRS 278.287 that are funded by voluntary donations are outside the scope of this proceeding. Thus, the income threshold set forth in KRS 278.287(6)(c) is not applicable to the HEA programs that are the subject of the proceeding.

[32] CAK's Response to Staff's Second Request, Item 4 (filed Feb. 14, 2020).

[33] Columbia's Response to Staff's Second Request, Item 13; Delta's Response to Staff's Second Request, Item 10; Duke Kentucky's Response to Staff's Second Request, Item 7; LG&E/KU's Response to Staff's Second Request, Item 10.

Implementing a new income threshold during the program year, rather than at the start of the program year, would result in confusion and administrative inefficiency.

2. Prioritization. To address the expected increase in the applicant pool, the Commission concurs with the parties that a prioritization system must be developed for eligible applicants, other than first come, first served.[34] As CAK stated, HEA programs are not intended to provide generalized financial assistance to low-income households, but instead are designed to provide limited and targeted assistance to ratepayers whose "economic equilibrium is disrupted by seasonal fluctuations in utility bills or sudden rate increases."[35] Thus, the Commission finds the parties' proposal to develop prioritization criteria in consultation with the administering agency or subcontracting agencies to be reasonable. The Commission agrees with the parties that a prioritization system must include a provision for waitlists, which are dissolved at the end of the program year. The Commission also agrees that the prioritization methodology should be periodically reviewed and revised as necessary.

Consistent with the purpose of prioritization and to afford eligible applicants an equal opportunity for assistance, the Commission finds that there should not be a carryover or preference for past program participants. At the start of each program year, each eligible applicant should receive equal consideration under the prioritization methodology.

[34] Common Tenets, unnumbered item 9. For examples of prioritization, *see* Kentucky Power's Response to Staff's Second Request, Item 2; LG&E/KU's Response to Staff's Second Request, Item 3.

[35] CAK's Response to Staff's Second Request, Item 5.

3. Customer Status. Although not addressed in the Common Tenets, numerous parties made the same recommendation that eligible applicants must be active utility customers who have electric and/or natural gas as their primary heat source.[36] The parties also recommended that applicants should be responsible for home energy costs with the bill in their name or in a spouse's name.[37] The Commission finds these eligibility parameters reasonable given the nature and purpose of HEA programs.

4. Weatherization. Many HEA programs include a requirement that an applicant must apply for or be enrolled in weatherization programs. The parties proposed that referral to weatherization programs be encouraged, but not required.[38] In previous cases and in this proceeding, evidence was presented that weatherization requirements can prevent otherwise eligible applicants from obtaining necessary assistance. For that reason, the Commission concurs with the parties that, while eligible applicants should be referred to weatherization programs, they should not be required to apply for or participate in weatherization programs.

5. Arrearages. The parties each have different eligibility requirements related to past due amounts. The Commission finds that this parameter should not be standardized, but instead should be a utility-specific determination because the underlying financial impact, such as writing off bad debt, could become an expense recovered in rates.

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[36] Delta's Response to Staff's Second Request, Item 15; Duke Kentucky's Response to Staff's Second Request, Item 10; Kentucky Power's Response to Staff's Second Request, Item 7.

[37] Duke Kentucky's Response to Staff's Second Request, Item 10.

[38] Common Tenets, unnumbered item 10.

6. To prevent foreclosing on other eligibility requirements that might have a utility-specific benefit, any other eligibility requirements proposed by a utility are subject to Commission review and approval.

Accessibility

One of the Commission's primary concerns is the inconsistent access to HEA programs as demonstrated by unequal number of HEA participants across a service territory. For example, Kentucky Power provided a county-by-county report of participant slots allocated, used, and unused that indicated that some counties used all available slots, while other counties used less than 25 percent of available slots.[39] In response to the uneven participation, Kentucky Power and CAK met to make modifications in increase the number of applications and ensure equal opportunity in all counties in Kentucky Power's service territory.[40] As a result of the modifications, Kentucky Power reported that 95 percent of participant slots available in each county in its service territory were filled.[41]

The parties proposed that HEA programs be promoted by all involved: the utilities, the administering agency, subcontracting agencies, and the Commission. The Commission finds that the utilities, administering agency, and subcontracting agencies should develop specific marketing concepts that will be filed with the Commission and are subject to Commission review and approval. As part of this effort, responsibilities shall be clearly delineated and to a degree sufficient enough for all involved, including the Commission, to determine responsibility and fault in failure of promotion. The

[39] Kentucky Power Response to Staff's Second Request, Item 3, Attachment 1; Kentucky Power's Response to Staff's Third Request, Item 4.

[40] Kentucky Power's Response to Staff's Third Request, Item 4; CVT at 9:49:25.

[41] CVT at 9:49:25.

Commission will use its best efforts to promote HEA programs in support of the utilities, administering agency, and subcontracting agencies.

Timing of Implementation of Uniform Guidelines

The parties proposed that the uniform parameters for HEA programs be implemented in accordance with contractual terms of existing agreements and subject to requirements of any settlement agreements.[42] The Commission finds that delaying implementation of uniform HEA program parameters will frustrate the very purpose of this proceeding: to establish HEA program parameters that advance consistent, effective, and accountable HEA programs across the Commonwealth that are beneficial to and easily accessed by eligible low-income customers, and result in increased benefits to all ratepayers. Approving piecemeal implementation of the uniform parameters extends the ongoing unevenness and inequity in the existing HEA program structure into the future.

The Commission jurisdiction extends to the contract terms that pertain to rates and service. KRS 278.040(2) provides, in relevant part, that "[t]he jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and services of utilities[.]" As state courts have recognized, "[s]trictly speaking, the Commission ha[s] the right and duty to regulate rates and services, no matter what a contract provided."[43] Here, the HEA surcharge and terms of service for HEA programs clearly fall within the Commission's jurisdiction. The HEA surcharge is collected from ratepayers by the utilities, with bill credits applied to customers

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[42] Common Tenets, unnumbered item 13.

[43] *Bd. of Education v. Dohrman*, 620 S.W.2d 328, 329 (Ky. App. 1981) (rejecting the argument that rates charged to the Board by a sewer utility were not subject to modification by the Commission because the rates were established by a contract).

eligible under the HEA program terms of service, and payment made to HEA program administrators for service rendered in administering the HEA programs under the terms of service.

SUMMARY OF FINDINGS

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. HEA programs should be administered by a single administering agency that provides back-office functions and subcontracts front-office functions to community-level nonprofit organizations, such as CAAs and Affordable Energy Corporation, which administers LG&E's HEA program.

2. Within 30 days of the date of this Order, CAK should file notice with the Commission stating whether it will serve as the single administering agency for HEA programs.

3. If CAK does not agree to serve as the single administering agency, the Commission will issue a request for proposal for a nonprofit with significant experience successfully administering HEA programs to serve as the administering agency.

4. The administrating agency should enter into formal contracts with subcontracting agencies within 3 months after the administering agency has been selected. Within 15 days of execution by the administering agency and respective subcontractors, the contracts with each subcontracting agency should be filed with the Commission for the Commission's review and approval.

5. HEA administrative fees paid by utilities to the administering agency should be based on actual, verifiable costs of providing service and should be capped at 10 percent of the total HEA program funds expended.

6. HEA programs should be operated by a common information technology system.

7. The type of costs included in administrative fees is subject to contractual negotiations between the utilities and the administering agency, should be directly related to HEA program administration, and is subject to Commission review and approval.

8. Pursuant to KRS 278.255, an HEA program management audit shall be conducted every five years by a third party selected by the Commission pursuant to a request for proposal paid for by the utilities with an HEA program.

9. Beginning within 60 days of the date of this Order, all subcontracting agencies shall file monthly reports with the respective utilities on the 15th day of each month, containing the information set forth in Appendix A to this Order. After the HEA program administrating agency has been selected and formal contracts with subcontracting agencies executed, the administrating agency should file a monthly report, based upon data provided by subcontracting agencies, with the respective utilities on the 15th day of each month, containing the information set forth in Appendix A to this Order.

10. The administering agency and the utilities should jointly file with the Commission a report containing the utility-specific information set forth in Appendix B to this Order on an annual basis no later than July 15.

11. HEA programs should be funded by a $0.30 per meter surcharge collected from residential customers pursuant to KRS 278.285(3).

12. Columbia, Delta, Duke Kentucky, and LG&E should implement a $0.30-per-meter HEA surcharge on residential customers effective as of the date of this Order.

13. Utilities should file a description of current shareholder funding levels and any future plans to increase this amount within 30 days of the date of this Order. Utilities should include information regarding current and future shareholder funding levels when they file applications for Commission approval of HEA programs and with annual reports filed pursuant to finding paragraph 10.

14. HEA program benefits should be a utility-specific determination, made in consultation with the central administering agency or subcontracting agencies, and subject to Commission review and approval prior to implementation.

15. The income threshold for HEA program eligibility should be 200 percent of FPG. The utilities should implement the 200 percent income threshold as of the start of their respective HEA program years.

16. The utilities, in consultation with the administering agency, should develop prioritization criteria for eligible applicants to receive assistance from their HEA programs with the following:

a. The prioritization system should provide for eligible applicants to be placed on a waitlist, which will be dissolved at the end of each program year.

b. The prioritization methodology should not include a carryover or preference for past HEA program participants.

c. The prioritization methodology should be periodically reviewed and revised as necessary.

17. Eligible applicants for HEA programs must be active utility customers who have electric or natural gas as their primary heat source and should be responsible for home energy costs with the bill in their name or in a spouse's name.

18. HEA programs should not include a requirement that an applicant must apply for or be enrolled in weatherization programs.

19. Any requirements regarding limits on or forgiveness of arrearages is a utility-specific decision subject to Commission review and approval.

20. Any other eligibility requirements that a utility chooses to implement shall be made in consultation with the administering agency and is subject to Commission review and approval.

21. Utilities, the administering agency, and subcontracting agencies shall all have responsibility to develop and implement a marketing strategy for the respective HEA programs, subject to Commission review and approval.

IT IS THEREFORE ORDERED that:

1. Columbia, Delta, Duke Kentucky, Kentucky Power, LG&E, and KU shall comply will all matter set out in finding paragraphs 1 through 21 as if they were individually so ordered.

2. Within 20 days of the date of this Order, Columbia, Delta, Duke Kentucky, and LG&E shall file with the Commission, using the Commission's electronic Tariff Filing System, their respective revised tariff sheets setting out the rates approved in this Order and reflecting that they were approved pursuant to this Order.

3. Within 30 days of the date of this Order, CAK shall file notice whether it agrees to serve as administering agency.

4. This case shall remain open and on the Commission's docket until the administering agency has been selected.

5. Any documents filed pursuant to finding paragraphs 9 and 10 of this Order shall reference this case number and shall be filed in the post-case file.

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By the Commission

ENTERED

MAY 04 2020 rcs

KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00366 DATED MAY 04 2020

All subcontracting agencies shall file a monthly report (Monthly HEA Report) with the respective utilities on the 15th day of each month containing, for the previous month, the following information:

1. The total dollar amount of HEA funds expended.

2. The amount of HEA funds allocated for expenditure.

3. The amount of participants receiving benefits.

4. The amount of new enrollments in the program.

5. The amount of participants unenrolled from the program.

6. The amount of program applications.

7. The amount of applications denied and the reason for denial.

8. An itemized report of:

   a. All administrative expenses incurred in relation to the HEA program.

   b. All fees paid to subcontractors in relation to operation of the HEA program.

9. If the HEA program operates across multiple counties:

   a. The amount of customers in each county.

   b. The amount of participants in each county.

   c. The amount of funds distributed in each county.

   d. The amount of slots available for each county.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00366 DATED MAY 04 2020

The administering agency and respective utility shall jointly file a report (HEA Report) no later than July 15th of each year, detailing the following utility-specific information:

1. Provided annually and separated by month:

   a. Total funds collected from ratepayers via a meter-charge.

   b. Donations collected from ratepayers for the HEA program.

   c. The total amount of residential customers.

   d. The amount of shareholder funds allocated for the program.

   e. The amount of HEA funds distributed to participants.

   f. The current balance of the HEA account.

   g. The amount, if any, of “rolled-over” and unspent HEA funds.

2. The total number of slots, total and by county.

3. The total number of:

   a. Program participants.

   b. Program applicants.

   c. Denied applicants.

4. Copies of each Monthly HEA Report.

5. Agendas of any meeting between the administrator and utility, including any discussed or proposed program changes.

6. The following information for all residential customers, annually and by month:

a. Average balance amount.

b. Average monthly bill amount.

c. Average monthly payment amount.

d. Average monthly usage (Gas and Electric separate, where applicable).

e. Termination notices issued.

f. Service terminations.

g. Amount of unique customers receiving a termination notice for non-payment (i.e., if a customer receives one or more termination notices, this customer would only be counted as one).

h. Amount of unique customers with service terminated for non-payment (i.e., if a customer has service terminated once, this customer would only be counted as one).

7. The information set forth in Item 6 for HEA program participants, annually and by month.

8. The average monthly benefit provided to participants through the program.

9. Copies of any outside independent audit conducted during the program year.

10. A brief description of the current shareholder funding levels and any future plans to increase the shareholder contribution amount.

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