

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Universal Service	:	
and Energy Conservation Plan for 2016-2018	:	
Submitted in Compliance with 52 Pa. Code	:	
§§ 54.74 and 62.4	:	Docket No. M-2015-2507139

COMMENTS

of

TENANT UNION REPRESENTATIVE NETWORK (“TURN”),
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA (“Action
Alliance”) (COLLECTIVELY “TURN et al.”)

Concerning PECO’s Universal Service Three-Year Plan

March 16, 2016

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Comments of TURN et al.

I. INTRODUCTION

On October 2, 2015, PECO Energy Company (“PECO”) filed its Universal Services and Energy Conservation Plan for 2016-2018 (“Plan”). On February 25, 2016, the Pennsylvania Public Utility Commission (“Commission”) issued a Tentative Order, which directed PECO to address particular aspects of the Plan and solicited comments from interested parties. These Comments are submitted on behalf of Tenant Union Representative Network (“TURN”) and Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) (collectively “TURN et al.”). TURN et al. submit that there are a number of disputed issues of material fact that should be referred to the Office of Administrative Law Judge (“OALJ”) for investigation, hearing and decision.

II. SUMMARY

The purpose of these Comments is to address issues that the Commission has identified in its February 25, 2016 Tentative Order (“Tentative Order”). These Comments also address problematic aspects of the Plan that have been identified by TURN et al. that have not been specifically identified in the Tentative Order. TURN et al. submit these Comments urging the Commission to order PECO to do the following:

- Retain the policy of providing in-CAP payment arrangements to vulnerable customers.
- Exclude unintentional misrepresentation from the definition of fraud and allow CAP eligible customers who unintentionally misrepresented their income or household composition to remain enrolled in CAP upon provision of updated, accurate information to PECO.
- Ensure that the fraud investigation policy is not overly burdensome.

- Provide more information about how it plans to use credit reports to conduct fraud investigations and how it will comply with the Fair Credit Reporting Act.
- Review any request for a medical certificate from a customer who has been coded “Medical Certificate Non-Renewal (MCNR)” to determine if the customer was properly coded.
- Grant medical certificate renewals for customers who have satisfied their obligation to pay current charges while under the protection of the certificate.
- Eliminate the requirement of post-bankruptcy deposits for CAP-eligible customers.
- Share policies and procedures for outreach to high-users regarding LIURP audits and create exceptions for individuals who are in good standing.

In the alternative, TURN et al. request that these and the remaining issues in the Tentative Order be referred to the OALJ for hearing and decision.

III. ISSUES IDENTIFIED IN THE COMMISSION’S TENTATIVE ORDER

A. CAP ARREARAGES

PECO’s Plan states that CAP customers will not be eligible for payment arrangements beyond the initial in-program arrearage forgiveness (“InPa Forgiveness”) agreement that will be available to CAP customers when PECO transitions to its new CAP design.¹ The Commission has stated its support for the elimination of in-CAP payment arrangements.² In its Tentative Order the Commission stated that “CAPs should eliminate arrears over time and establish reduced or affordable monthly payments.”³ The Commission further stated that “[p]ayment arrangements within this program should not be necessary to address in-program debt and may

¹ See Proposed 2016-2018 Plan at 9-10.

² Tentative Order at 15.

³ *Id.*

instead allow participants to accrue higher CAP balances.”⁴ While TURN et al. agree that CAPs should be designed to produce affordable bills, neither PECO’s existing CAP design nor its forthcoming Fixed Credit Option (FCO) Percentage of Income Program design will result in affordable bills for every CAP customer. TURN et al. support the continuation of PECO’s policy of approving in-CAP payment arrangements for customers who do not receive affordable bills under PECO’s CAP. Further, payment arrangements are an important safety net for CAP customers who fall behind due to a financial, medical, or personal emergency. TURN et al. support the continuation of PECO’s policy of approving in-CAP payment arrangements for vulnerable customers.

Beginning in October 2016, PECO will implement its FCO CAP design. The design was the result of a settlement between PECO and several parties, including TURN et al. The FCO design is an improvement upon PECO’s current CAP design, in that the FCO is expected to improve affordability for CAP participants.⁵ The table that follows represents the expected changes to unaffordability under the FCO.⁶

⁴ *Id.*

⁵ M-2012-2290911 Recommended Decision at 21(June 11, 2015). In its Statement in Support of Settlement of the FCO design, TURN et al. encouraged the Commission to undertake revision and review of the Commission’s CAP Policy Statement to reduce the maximum affordability standards in order to provide bills which are actually affordable to low-income families. M-2012-2290911 TURN Statement in Support of Settlement at 3. References to affordability in these Comments and in PECO’s CAP Design Settlement reference the standards specified in the Commission’s CAP Policy Statement. TURN et al. submit that these standards fail to produce meaningful affordability for a significant number of CAP customers. Although PECO’s FCO is expected to produce more affordable bills under the Commission’s standards, these bills will not be as affordable as they would be if the Commission revised its standards. PECO should retain its in-CAP payment arrangement policy because the current Commission maximum affordability standards result in unaffordable bills for some CAP customers.

⁶ M-2012-2290911 Recommended Decision at 21(June 11, 2015).

	Current Program Percent Unaffordable	Current Program \$ Over Affordability (Mean)	Term Sheet FCO Percent Unaffordable	Term Sheet FCO \$ Over Affordability (Mean)	Change in Breadth	Change in Depth
Rate R	34%	\$504	12%	\$414	-22%	-\$90
Rate RH	28%	\$764	10%	\$426	-18%	-\$338

While the existing CAP design results in more than 1/3 of Rate R CAP customers receiving unaffordable bills, the FCO design is expected to result in 12% of Rate R CAP customers receiving unaffordable bills. TURN et al. support the settlement of the CAP design proceeding because of this anticipated improvement in the affordability of CAP bills; however, as the above table clearly demonstrates, under the new FCO design a significant number of CAP customers will continue to receive unaffordable CAP bills.

Further, the above table does not reflect the impact that PECO's InPa Forgiveness agreement will have on the affordability of CAP bills. When the FCO is launched, PECO will provide eligible CAP customers with a 60- month payment arrangement on 1/3 of the customer's in-program arrearage balance. For every \$1 that the customer pays on the arrangement, the customer will receive permanent forgiveness of \$2. TURN et al. support the InPa Forgiveness agreement because it addresses the significant in-program arrearages that have accumulated under PECO's existing CAP design. However, TURN et al. are concerned that the InPA Forgiveness agreement could undermine affordability for some CAP customers because customers will be responsible for paying the monthly InPA Forgiveness agreement amount in addition to paying the monthly FCO bill. Given that the new FCO design will continue to result

in unaffordable bills for some of PECO's CAP customers, it is appropriate that PECO retain its current CAP payment arrangements policy.

PECO's FCO design is a result of a settlement between several parties, including TURN et al. The settlement was the product of extensive negotiations over PECO's CAP design. The resulting settlement agreement does not contain a single provision regarding the discontinuation of PECO's policy of providing in-CAP payment arrangements.⁷ It is not likely that PECO's FCO will completely eliminate the affordability concerns that have plagued PECO's CAP for years. While the FCO is expected to improve affordability over previous iterations of PECO's CAP, it will not result in affordable bills for every CAP customer. The extent that it results in any improvement in affordability has yet to be determined. Pursuant to the settlement, an expert external evaluation of the FCO will not be complete until June 30, 2019.⁸ It is premature to conclude prior to the launch and evaluation of the FCO that the FCO, and accompanying InPA Forgiveness arrangements, will be a success or that either will eliminate the need for PECO to extend in-CAP payment arrangements to vulnerable customers.

In-CAP payment arrangements are also an important safety net for CAP customers who experience a financial, medical, or personal emergency that causes them to fall behind on PECO bills. If PECO eliminates the availability of in-CAP payment arrangements, these customers are at risk of termination and worse, particularly in winter when energy costs are often high. Every winter, the Commission conducts a Prepare Now campaign, in recognition that many families may not be prepared to handle winter energy bills. In its 2015 campaign letter, the Commission noted:

⁷ See M-2012-2290911 PECO Energy Company's Joint Petition for Settlement (March 20, 2015) at Exhibit A.

⁸ *Id.* at page 9.

[U]tilities have more flexibility under the law to make allowances for payment-troubled consumers than does the Commission. Moreover, in dealing with these situations, utilities are reminded of the provisions under Chapter 56 of the Public Utility Code that impose an obligation of good faith, honesty and fair dealing in their performance and enforcement. With this in mind, we ask that you consider the following actions as we head into the winter heating season:

(...)

9) Exercise leniency when establishing payment arrangement plans for all consumers. Again, utilities have more discretion in making payment arrangements than does the Commission. When assessing whether to grant a payment arrangement, please consider:

- Changes in circumstances such as lost or reduced income,
- Extended illness of the ratepayer or a household member, or
- Increased household size and accompanying expenses.⁹

In response to the Commission’s Prepare Now letter, PECO replied that it “continues to voluntarily provide an additional payment arrangement, beyond that required by statute, for its CAP customers if they experience a reduction in income.”¹⁰ PECO also noted its policy of providing “an additional payment arrangement when LIHEAP Crisis grants are insufficient to pay the customer’s entire balance.”¹¹

TURN et al. agree with the Commission that the utilities have discretion in making payment arrangements. At any time, PECO’s CAP customers can experience the sudden changes in circumstances and emergencies that the Commission lists in its Prepare Now letter. The Commission’s support for PECO’s proposal to eliminate in-CAP arrangements appears to contradict the goals of the Commission’s Prepare Now campaign. If PECO eliminates in-CAP payment arrangements it will eliminate both its policy to mitigate the impact of high winter bills by providing an additional payment arrangement to CAP customers who experience a reduction in income and, in many instances, its policy of providing a payment arrangement when LIHEAP

⁹ http://www.puc.pa.gov/NaturalGas/pdf/PrepareNow/2015_Prepere_Now_Letter.pdf

¹⁰ http://www.puc.pa.gov/NaturalGas/pdf/PrepareNow/PN_Ltr-PECO2015.pdf

¹¹ *Id.*

Crisis grants are insufficient to pay the customer's entire balance.¹² The elimination of these important winter policies undermines the Commission's Prepare Now campaign. PECO should retain its policy of providing in-CAP payment arrangements to vulnerable customers.

B. REMOVAL FROM CAP FOR FRAUD OR THEFT

1. Unintentional Misrepresentation

PECO's Plan states that in reviewing CAP applications for enrollment or re-certification, PECO may take action to review the application for potential fraud or misrepresentation of information.¹³ The Plan lists a number of consequences that may result if fraud or misrepresentation is found, including: back billing, removal from CAP, and termination of service.¹⁴ If an account is removed from CAP, the customer would not be eligible to re-enroll for an entire year.¹⁵ Customers may also be held accountable for pre-program arrearages and InPA Forgiveness as well as collection fees.¹⁶ The Plan does not specify when and how these consequences will be implemented. In the Tentative Order, the Commission questioned whether the same consequences should apply to cases of intentional and unintentional misrepresentation, specifically regarding repayment of forgiven arrears.¹⁷ The Commission has requested more information about whether customers who unintentionally misrepresented their information to PECO should be required to repay forgiven arrears.¹⁸

¹² PECO also states that it will continue to accept payment from the Crisis program. Proposed 2016-2018 Plan at page 21. In its current practice, PECO grants payment agreements to customer's who receive crisis grants. Under the LIHEAP State Plan, vendors are required to continue service for 30 days after the crisis has been resolved or through May 1st, whichever is later. LIHEAP State Plan, Appendix B-13.

¹³ See Proposed 2016-2018 Plan at 10.

¹⁴ *Id.* at 11.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Tentative Order at 17.

¹⁸ *Id.*

The Commission's request raises the question of whether unintentional misrepresentation should be included in PECO's definition of fraud. TURN et al. oppose the inclusion of customers who unintentionally misrepresented their information to PECO within PECO's definition of fraud. In its Plan, PECO defines fraud as "misrepresentation of the customer's identity for the purpose of obtaining utility service or CAP benefits, misrepresentation of income or occupant information, tampering with PECO's equipment or otherwise obtaining service illegally."¹⁹ PECO makes no distinction between "intentional" and "unintentional" misrepresentation. TURN et al. submit that this definition is too broad and is likely to harm customers whose representations to PECO contain inadvertent errors and omissions.²⁰

For low-income customers who participate in the CAP program, it is common for income and household composition to change sporadically and frequently. These customers should not be penalized for inadvertent errors and omissions contained in information provided to PECO. PECO's proposed consequences for misrepresentation are far too harsh for cases of unintentional misrepresentation. In particular, customers who remain eligible for CAP who are found to have unintentionally misrepresented their information should not be removed from the program or required to repay previously forgiven arrears. Instead, PECO should provide the customer with notice of the misrepresentation and a reasonable opportunity to correct and update the information that has been provided to PECO.

¹⁹ Proposed 2016-2018 Plan at 11.

²⁰ PECO fails to acknowledge that fraud requires an element of intent. The common law requirements for an action in fraud in Pennsylvania are: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) *with the intent* of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) a resulting injury proximately caused by such reliance. *Joyce v. Erie Ins. Exchange*, 74 A.3d 157 (Pa. Super. 2013); *V-Tech Services, Inc. v. Street*, 72 A.3d 270 (Pa. Super. 2013); *Gnagey Gas & Oil Co., Inc. v. Pennsylvania Underground Storage Tank Indemnification Fund*, 82 A.3d 485 (Pa. Commw. Ct. 2013).

2. Fraud Investigation

PECO's new emphasis on fraud will include a credit check and a "probe into how the customer pays for basic living expenses."²¹ PECO provides no further information about how such a credit check or probe into living expenses would proceed. While TURN et al. understand that preventing fraud is a priority for PECO, fraud investigation should not be overly burdensome on customers. PECO should provide reasonable and flexible standards of proof so that low-income customers are not burdened by onerous documentation requirements. Some CAP customers may be unable to provide traditional proof of income, such as paystubs or benefit award letters. In these situations, PECO should accept reasonable alternatives such as self-attestation of income. PECO should only require further documentation when it has reason to believe that the customer's statements are false. As additional verification, PECO should accept signed letters from neighbors, community members, or agencies familiar with the income and composition of the customer's household.

3. Use of Credit Reporting Information

PECO has begun using credit reporting agencies to investigate fraud. The Plan states that CAP applicants are required to provide PECO permission to verify income with entities including credit reporting bureaus.²² PECO has provided very little information about how it will use credit reports in its fraud analysis and has left open several important questions. TURN et al. is concerned both with the reliability of this information and whether PECO's use of credit reports complies with the Fair Credit Reporting Act (FCRA). In addition to the issues outlined below, it is unclear what happens to CAP customers who refuse to consent to use of credit reporting information. Given this lack of information, TURN et al. request that PECO provide

²¹ Proposed 2016-2018 Plan at 10.

²² *Id.* at 6.

additional information about how it is complying with the FCRA to the Commission and interested parties before implementing this program.

PECO should be required to comply with the FCRA in its use of credit reports for fraud investigation. The FCRA requires that any entity that makes an adverse decision based on information from a credit report must send an “Adverse Decision Letter” to the individual, which notifies them of their rights under the FCRA, including the right to obtain a free copy of the credit report used in the investigation.²³ An adverse action includes consumer accounts under review to determine whether the consumer meets the terms of eligibility and thus applies to PECO’s review of CAP customers.²⁴ Even if PECO is ultimately making an eligibility decision based on how the customer responds to its request for additional information, that request was based on PECO’s review of credit reports and, therefore, adverse action rules under the FCRA apply. TURN et al. submits that when PECO uses information in a credit report to trigger a fraud investigation, an adverse action has been taken and an adverse decision letter is required.

Additionally, PECO has not stated what verification it will require from customers to refute information obtained from credit reports. PECO should take a flexible approach to verification with the goal of keeping as many customers on CAP as possible. Because CAP participants are by definition low-income, they face many challenges in obtaining verification. For example, it is likely some receive in-kind payments made by friends or family directly toward bills. These payments are not included in income calculations for government benefits or other such programs. If PECO consults a credit report and discovers that a customer is current on its mortgage, PECO has no way of knowing whether a friend or family member is assisting by

²³ 15 U.S.C. § 1681m(a) (2012) (requiring any person who takes any adverse action “in whole or in part on any information contained in a consumer report,” that person must provide the consumer notice of that basis and information her of her rights to access that consumer report free of charge).

²⁴ 15 U.S.C. § 1681a (k)(1)(B)(iv)(I) (2012).

paying the mortgage directly so that the customer can maintain stable housing. Under PECO's proposal, it plans to shift the burden to the customer to prove how he or she handles expenses. PECO should accept letters from family or friends who help with in-kind expenses.

Additionally, credit reports often contain errors. Common errors include outdated information and information from another individual appearing on the wrong report due to a similar name or identifying information. Considering the unreliability of information in credit reports and the unique challenges facing low-income people in verifying expenses, this policy could potentially lead to many innocent customers facing harsh punishments for fraud including losing CAP.

TURN et al. urge the Commission to order PECO to provide more information prior to approving this aspect of the plan about how it will operate and, specifically, how it will comply with the FCRA in its use of credit reports. In the alternative, TURN et al. urge the commission to only approve this part of the Plan for a limited period in order to assess its impact on CAP customers. After this period, the Commission should only reapprove this program if the new methods for fraud investigation have proved effective and have not resulted in innocent customers being removed from the CAP program.

IV. ADDITIONAL ISSUES IDENTIFIED BY TURN ET AL.

A. MEDICAL CERTIFICATIONS

PECO's Plan proposes that "if a customer fully utilized their medical certificates and renewals prior to entering the InPA Forgiveness program and the account has been coded as 'Medical Certificate Non-Renewal,' the fact of the customer entering the InPA Forgiveness Program will not create any rights to the use of additional medical certificates."²⁵ TURN et al. are concerned that this policy could result in customers being incorrectly denied access to

²⁵ *Id.* at 10.

medical certificates. PECO must clarify the factors it considers when coding an account as Medical Certificate Non-Renewal (MCNR). In particular, PECO should be required to clarify whether it follows the Commission's regulations regarding the availability of medical certificate renewals.

Under Commission regulations, consumers have the responsibility to "make payment on all current undisputed bills or budget billing amount" while under the protection of a medical certificate.²⁶ Failure of a customer to comply with this requirement can result in the utility restricting the customer to an original medical certificate and two renewals.²⁷ Conversely, compliance with this requirement may entitle the customer to additional renewals. PECO's Plan fails to state whether PECO provides more than two renewals to customers who meet the obligation to make payment on current undisputed bills. If PECO codes an account as MCNR simply because the customer has used three medical certificates, then PECO's system fails to account for customers who may be eligible for additional renewals. TURN et al. are concerned that PECO may code customers as MCNR when the customers are eligible for additional renewals because they have met their obligation to make current payments. Customers often report that they are given varying answers from different PECO customer service workers in regard to how many medical certifications they are eligible for and how many remain available to them. PECO should be required to review any request for a medical certificate from a customer who has been coded MCNR to determine if the customer was properly coded, in light of the Commission's regulations regarding the availability of medical certificate renewals. PECO should be required to grant medical certificate renewals for customers who have satisfied their obligation to pay current charges while under the protection of the certificate.

²⁶ See M-2014-2448824 regarding Chapter 14 Implementation (Final Order entered July 9, 2015) at 13-15 (citing 52 Pa. Code § 56.116 (relating to duty of customer to pay bills)).

²⁷ *Id.* (citing see 52 Pa. Code § 56.114 (relating to length of postponement; renewals)).

B. POST-BANKRUPTCY DEPOSITS

As a part of its Collection Strategy, PECO's Plan states that it will charge a deposit regardless of income level in the case of post-bankruptcy account.²⁸ Although this issue was not raised in the Commission's Tentative Order, it raises several concerns for consumers. First, PECO should clarify whether it currently charges this deposit. Next, PECO should explain whether it will assess this deposit after the filing of a bankruptcy petition or after the debtor's bankruptcy has been discharged.²⁹ In addition, PECO should be required to explain why it believes it can charge a deposit to a CAP-eligible customer "post-bankruptcy" when PECO is prohibited from charging a deposit to a CAP eligible customer who has not filed for bankruptcy.³⁰ Finally, PECO should explain how it will calculate the deposit when the customer is CAP eligible. PECO has not indicated whether the calculation will be based on expected CAP rates or non-CAP rates. TURN et al. question whether PECO has the authority to assess a "post-bankruptcy" deposit when a debtor is CAP eligible. TURN et al. request that the Commission require PECO to provide the legal authority for this policy and further details on how PECO employs or will employ this policy.

C. REFUSAL OF LIURP AND TERMINATION FROM CAP

PECO's Plan states that CAP users who refuse a LIURP audit will be removed from CAP.³¹ PECO did not include much detail as to how LIURP outreach, removal, and reinstatement would operate, which has left a number of unanswered questions. PECO has stated the following:

²⁸ Proposed 2016-2018 Plan at 23.

²⁹ PECO's reference to a "post-bankruptcy account" is unclear.

³⁰ Under Chapter 14, PECO cannot charge a deposit to any CAP-eligible customer. 66 Pa. St. § 1404(a.1) (2014).

³¹ Proposed 2016-2018 Plan at 14.

LIURP is required for CAP customers who are deemed high users as defined by LIURP standards. CAP customers who refuse a LIURP audit will be removed from CAP after a series of communications including letters and phone calls.³²

Low-income, high use customers are at particularly high risk to accumulate unaffordable bills. Removal from CAP increases the likelihood that customers will receive unaffordable bills and be at greater risk for termination. PECO's policy of removal from CAP for refusal of LIURP should be examined closely to ensure that customers are protected.

At PECO's February 22, 2016 Universal Services Advisory Committee meeting, PECO shared numbers showing that of the 2,979 high users who were deemed to have "refused" LIURP audits and terminated from the CAP program, only 675 were reinstated. This number is shockingly low and suggests that PECO may not be effectively communicating with these customers. TURN et al. question the sufficiency of the steps that PECO takes to warn customers of the consequences of LIURP "refusal" and the information that is provided to customers regarding removal from and reinstatement into CAP. Based on the numbers referenced above, there is a concern that PECO's efforts are not effective.

While TURN et al. acknowledge that the LIURP program is aimed at high use customers in an effort to reduce usage, PECO should clarify its policy to address additional issues. TURN et al. suggest that there should be exemptions from removal for customers who are in good standing with their payments and for tenants whose landlord refuses to provide authorization for the audit. Additionally, PECO should provide data to show the average monthly usage of CAP customers who are removed from CAP for LIURP refusal as this data could demonstrate whether PECO's policy is effectively targeting high users. Finally, TURN et al. recommend that PECO provide more information about its process for outreach to customers and the content of its communication with customers to ensure that customers are protected.

³² *Id.*

V. CONCLUSION

TURN et al. urge the Commission to order PECO to, retain the policy of providing in-CAP payment arrangements to vulnerable customers; exclude unintentional misrepresentation from the definition of fraud and allow CAP eligible customers who unintentionally misrepresented their income or household composition to remain enrolled in CAP upon provision of accurate information to PECO; ensure that the fraud investigation policy is not overly burdensome; provide more information about how it plans to use credit reports to conduct fraud investigations and how it will comply with the Fair Credit Reporting Act; review any request for a medical certificate from a customer who has been coded “Medical Certificate Non-Renewal (MCNR)” to determine if the customer was properly coded; grant medical certificate renewals for customers who have satisfied their obligation to pay current charges while under the protection of the certificate; eliminate the requirement of post-bankruptcy deposits for CAP-eligible customers; and, share policies and procedures to outreach to high-utilizers regarding LIURP audits and create exceptions for individuals who are in good standing. In the alternative, TURN et al. request that these and the remaining issues in the Tentative Order be referred to the OALJ for hearing and decision.

Respectfully submitted,



Lydia R. Gottesfeld, Esq.
Josie B. H. Pickens, Esq.
Thu B. Tran, Esq.
Attorneys for TURN et al.
COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102
(215) 981-3700

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