



March 16, 2016

Via Electronic Filing
Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: PECO Energy Company Universal Services Three-Year Plan 2016-2018
Docket No. M-2015-2507139**

*Comments of the Coalition for Affordable Utility Services and Energy Efficiency in
Pennsylvania (CAUSE-PA)*

Dear Secretary Chiavetta,

Please find attached for filing the Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania in the above-captioned proceeding. Copies of this filing have been served in accordance with the attached Certificate of Service.

Please feel free to contact me directly should you have any questions.

Sincerely,



Joline Price
Counsel for CAUSE-PA
pulp@palegalaid.net
717-236-9486 x. 217

Enclosures

cc: Certificate of Service
Joseph Magee, Bureau of Consumer Services
Sarah Dewey, Bureau of Consumer Services
Louise Fink Smith, Law Bureau

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

PECO Energy Company Universal Services
Three-Year Plan 2016-2018

:
:
:
:

Docket No. M-2015-2507139

**Comments of the Coalition for Affordable Utility Services
and Energy Efficiency in Pennsylvania**

PENNSYLVANIA UTILITY LAW PROJECT

Counsel for CAUSE-PA

Joline Price, Esq., PA ID: 315405

Elizabeth R. Marx, Esq., PA ID: 309014

Patrick M. Cicero, Esq., PA ID: 89039

118 Locust Street

Harrisburg, PA 17101

Tel.: 717-236-9486

Fax: 717-233-4088

March 16, 2016

Table of Contents

I. INTRODUCTION.....	3
II. COMMENTS.....	3
A. THE COMMISSION SHOULD REFER THIS PROCEEDING TO THE OALJ FOR HEARINGS TO RESOLVE THE UNADDRESSED FACTUAL ISSUES DISPUTED IN THIS CASE.....	3
B. CUSTOMER ASSISTANCE PROGRAM	5
i. PECO should clarify eligibility and enrollment for InProgram Arrearage Forgiveness5	
ii. PECO should reset the Medical Certificate process for all of its low-income customers to coincide with the transition to the new CAP structure	9
iii. LIHEAP recipients should be automatically enrolled in CAP, pending income verification	11
iv. PECO must use a collaborative process to develop an appropriate outreach and education plan for the new Fixed Credit Option	12
v. PECO must have a simple and streamlined CAP reenrollment policy.....	13
vi. PECO’s Credit Inquiry policy is invasive, inappropriate, and should not be allowed to continue.....	14
vii. PECO cannot, as a condition of CAP Eligibility, require CAP applicants to provide PECO with permission to access their credit reports.....	16
viii. PECO cannot back-bill a CAP customer for unintentional misrepresentations	16
C. LOW INCOME USAGE REDUCTION PROGRAM (LIURP).....	17
i. PECO should update its proposed LIURP budget to incorporate both the \$700,000 for the de facto heating pilot, and the additional \$1,000,000 it committed to in the FCO settlement.	17
D. CUSTOMER ASSISTANCE AND REFERRAL EVALUATION SERVICES (CARES).....	17
i. PECO should define its CARES eligibility to include vulnerable populations, such as victims of domestic violence, individuals with medical conditions, and others with acute financial hardship.	17
E. COLLECTION STRATEGIES	19
i. PECO cannot require any CAP-eligible customers to pay security deposits.....	19
ii. PECO should continue to allow CAP customer payment arrangements.....	19
III. CONCLUSION	20

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its attorneys at the Pennsylvania Utility Law Project, submits these Comments pursuant to the Public Utility Commission's February 25, 2016 Tentative Order (TO), which invited interested parties to submit comments and reply comments on the PECO Energy Company Universal Service Plan for 2016-2018 ("PECO USECP" or "Plan").

CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating, and telecommunication services. CAUSE-PA membership is open to moderate and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being. CAUSE-PA is therefore interested in and committed to achieving the creation, development, and implementation of effective universal service and energy efficiency programs which promote long term affordability of electricity and, in turn, protect the health and welfare of economically vulnerable households across the state.

The Commission's Tentative Order requested that PECO clarify several aspects of its USECP, and sought comment from interested stakeholders on other Plan components. CAUSE-PA offers the following comments in response to the Commission's Tentative Order and offers comments concerning PECO's Plan which were not addressed by the Commission.

II. COMMENTS

- a. The Commission should refer this proceeding to the OALJ for hearings to resolve the unaddressed factual issues disputed in this case

CAUSE-PA urges the Commission to refer this matter to the Office of the Administrative Law Judge for a fully litigated hearing to resolve significant factual issues and to determine – based on record evidence - whether PECO's plan, as a whole, adequately serves its low-income population. Without a litigated proceeding, the Commission's decision with regard to the next three years of statutorily mandated Universal Service programming will be based on hearsay and

opinion evidence alone, thereby denying important due process protections for low income consumers.

PECO's projected enrollment levels are an example of a critical and disputed factual issue that is crucial to determining whether PECO's Plan is adequate to address the needs of low income customers. In its Plan, PECO estimates that 450,015 households in its service territory are low-income.¹ But for the past five years, PECO's CAP enrollment level has hovered around 140,000 customers (just 31% of its estimated low income population). PECO fails to set forth any specific target enrollment levels for the coming years because, according to PECO, it is uncertain how the new CAP Fixed Credit Option program will impact enrollment numbers.² A litigated proceeding is necessary to show whether PECO's lack of target enrollment levels is reasonable and, in turn, whether its universal services portfolio is appropriately funded and available across PECO's service territory to serve an estimated 450,015 low income households.³ Indeed, it is nearly impossible for interested parties to issue informed comments about the appropriateness and availability of PECO's USECP without the corresponding ability to seek discovery, present evidence and testimony, and cross-examine witnesses regarding its universal service enrollment.⁴

There are a host of complicated issues at stake in this proceeding, specifically the fact that PECO is in the process of undertaking a massive overhaul of its CAP program, and the mere twenty (20) days provided to file comments is not a sufficient amount of time to process the varied issues. While CAUSE-PA and others actively participated in the design of the CAP program, this proceeding addresses the **implementation** of that design. Appropriate implementation of this intricately designed program should not be taken for granted. As demonstrated in the comments below, there are a significant number of issues that are in dispute about how PECO will implement this new CAP program, each of which requires a more thorough evaluation than is permitted by a mere 20 day comment period.

Thus, before reaching any determination about whether PECO's Plan complies with its obligation to ensure that electric and natural gas service remain available at affordable levels for

¹ PECO Energy Company Universal Services Three-Year Plan 2016 to 2018, at 4.

² Plan at 11.

³ 66 Pa. C.S. § 2804(9).

⁴ In an effort to obtain more information about PECO's Plan and its impact, CAUSE-PA submitted interrogatories to PECO in this proceeding. As of the date of filing, CAUSE-PA has not received responses or objections to those interrogatories.

its low-income customers, the Commission should refer PECO's Universal Services Plan to the Office of Administrative Law Judge for evidentiary hearings. Doing so is the only sufficient way to provide the necessary level of due process for these important and far-reaching policy determinations.

b. Customer Assistance Program

In October 2016, PECO will switch its Customer Assistance Program from a tiered CAP Rate program to a Fixed Credit Option program. The design of this Fixed Credit Option⁵ was the result of extensive litigation and settlement discussions between PECO, CAUSE-PA, the OCA, and TURN, et al. That settlement was approved by the Commission on July 8, 2015.⁶ As previously recognized by the Commission, the redesign of PECO's CAP structure was driven by the unaffordability of PECO's previous CAP program.⁷ Because of the prior program's deep and demonstrated unaffordability, PECO and other stakeholders worked to craft an additional In-Program Arrearage Forgiveness (IPAF) program as part of the CAP redesign to remediate the harm to low income customers and residential ratepayers by sharing the burden for accumulated arrears equally between PECO shareholders, CAP customers, and residential ratepayers.⁸ PECO incorporates both the FCO and the IPAF into its 2015-2018 USECP Plan.

i. *PECO should clarify eligibility and enrollment for InProgram Arrearage Forgiveness*

As discussed above, because of the unaffordability of PECO's current CAP structure, PECO includes in this filing a one-time IPAF for all CAP customers who have in-program arrears

⁵ For a comprehensive statement of PECO's new FCO design see Recommended Decision, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa.Code §§ 54.74 and 62.4*, M-2012-2290911, June 11, 2015 (recommending that settlement be approved in full).

⁶ Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa.Code §§ 54.74 and 62.4*, M-2012-2290911, July 8, 2015.

⁷ The unaffordability of PECO's CAP Rate structure was addressed by the Commission multiple times, including in its Tentative Order regarding PECO's 2013-2015 USECP filing. Tentative Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa.Code §§ 54.74 and 62.4*, 8-9, M-2012-2290911, November 8, 2012. See also Final Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa.Code §§ 54.74 and 62.4*, 12-19, M-2012-2290911, April 4, 2013.

⁸ PECO attaches the relevant Base Rate settlement terms for the IPAF program as Attachment C to this Universal Service Plan filing. Plan at 36.

when PECO transitions to the FCO.⁹ As outlined in PECO's Plan, CAP customers will pay 1/3rd of the in-program arrears over a 60 month period that starts in October 2016. The other 2/3rds of the in-program arrears will be forgiven as follows: Pursuant to the settlement in PECO's most recent Base Rate case, PECO will be allowed to recover 1/3rd of the costs of the In-Program Arrearage Forgiveness through ratepayer funds with the remaining 1/3rd of the costs to be written off by PECO and will not be recoverable by PECO.¹⁰ Once a customer is enrolled in IPAF, the customer's portion of the In-Program Arrears (the In-Program Arrearage Payment Arrangement Balance, or "IPA PAR Balance") follows the customer, *even if they leave the CAP program, disconnect service, or are involuntarily terminated*. In the latter two situations, when the customer reconnects to service within the 60 month repayment period, their IPAF payment agreement will be reinstated.¹¹

As an initial matter, PECO's Plan does not detail *how* affected CAP customers will enroll in this program. To be effective, the program must be clearly explained and easy to understand for affected customers. PECO should work closely with the stakeholder collaborative designated in the FCO settlement to develop outreach and enrollment materials for both the FCO and the IPAF. To date, no collaborative meetings have been held, despite the settlement providing that these conversations were to begin within 90 days of final Commission approval of the settlement.¹²

CAUSE-PA supports PECO's effort to allow CAP customers enrolled in the IPAF program to pay off these arrears as they enter and exit CAP and PECO service. However, it is unclear from PECO's filing whether customers who voluntarily cancel service (if they move to an apartment with utilities included, or leave PECO's service territory, for example) will be able to continue paying on the IPA PAR Balance and get the benefit of 2/3 forgiveness if they don't reconnect to service within the 60 month forgiveness period. CAUSE-PA asserts that customers, when they transition to the new CAP program, should receive the benefit of 2/3 forgiveness for making

⁹ The term "in-program arrears" as used herein means arrears that developed after the customer was enrolled in CAP and while the customer was paying CAP rates. This is in contrast to pre-program arrears which are those arrearages that accrued *before* the customer entered the CAP program.

¹⁰ PECO attaches the relevant Base Rate settlement terms for the IPAF program as Attachment C to its USECP filing. Plan at 36.

¹¹ PECO USECP Plan, Attachment C, § II.5.

¹² See Joint Petition for Settlement *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa.Code §§ 54.74 and 62.4*, M-2012-2290911 (March 20, 2015) at Exhibit A, § C.5.

payment on the 1/3 of the balance that they owe, regardless of whether they remain in CAP or remain a PECO customer for the entire 60-month period. There are a myriad of reasons why a customer may leave CAP or cease to be a PECO customer. For example, a customer's household income may have increased above 150% of the Federal Poverty Level (FPL) – making the household ineligible for a CAP-related bill subsidy – or a customer may move from the service territory or find housing in which they are not responsible to electricity. These households should remain eligible to receive the matching-forgiveness during the 60-month period for each of their IPAF payments.

PECO's Plan also fails to address how it will deal with customers eligible for IPAF who are not connected in October 2016, but who later reinstate service. Any customer eligible for the IPAF program in October 2016, whether or not in the CAP program or a PECO customer at that time, should receive the benefit of IPAF.¹³

Finally, PECO states in its USECP that, other than the one-time IPAF program, CAP customers will no longer be able to receive payment arrangements from PECO. Thus, any arrears accrued by CAP customers after October 2016 while in CAP would not be eligible for any payment arrangement entered into by PECO. The Commission, in its Tentative Order, supports PECO's determination to stop offering CAP customers payment arrangements.

CAUSE-PA respectfully disagrees with the Commission, and believes PECO needlessly limits its own discretion with this provision. Furthermore, this decision contravenes the legal requirements for payment arrangements to customers who are victims of domestic violence. While Chapter 14 prohibits the Commission from issuing payment arrangements on CAP arrears, there is no similar prohibition for utility issued payment arrangements. A utility has discretion as to when and how it enters into payment arrangements for most customers.¹⁴ CAUSE-PA submits that PECO's customers would be better served by continuing to allow PECO to offer payment arrangements to CAP customers on any and all arrears. While certainly less than ideal because of the impact that it has on continued affordability of service for the customer, a CAP payment arrangement may well be a customer's last best chance of catching up before termination of

¹³ CAUSE-PA recommends that these customers get an arrearage forgiveness based on the number of remaining months in the 60 month payment arrangement period. For example, a customer who reconnects to service in October 2017 would be eligible for IPAF for in-program arrears accrued prior to October 2016, with the payment arrangement spread over the remaining 48 months.

¹⁴ 66 Pa. C.S. § 1405(d)

service. Moreover, given that the FCO is a new CAP design - and neither PECO nor the Commission know whether it will in fact have the desired impact of improving affordability and payments – it seems premature to limit payment arrangements at this juncture.

In addition, customers with Protection from Abuse Orders or similar court orders are exempt from Chapter 14’s payment arrangement limitations and must continue to be eligible for reasonable payment arrangements based on the customer’s unique circumstances, whether or not they have CAP arrears.¹⁵ As CAUSE-PA discusses below, the Commission should clarify in any discussion of payment arrangements that no prohibition for CAP payment arrangements – either by PECO or the Commission – exists for victims of domestic violence with a PFA or similar court order.

In the event that the Commission determines not to refer this matter to the OALJ for hearings, the Commission should, in accordance with the concerns expressed above, order PECO to:

- Detail how the automatic enrollment in IPAF will happen.
- Clarify that eligibility for IPAF will not be extinguished by voluntary termination, in a situation where a customer does not immediately reconnect to service, or by leaving the CAP program, if a customer’s income goes above CAP eligibility levels.
- Ensure that any customer eligible for the IPAF program in October 2016, whether or not in the CAP program or a PECO customer at that time, will be enrolled in IPAF when they reenroll in service during the 60 month repayment period.
- Ensure that PECO continues to have the discretion necessary to issue payment arrangements to CAP customers, where appropriate; and
- Ensure that customers who are victims of domestic violence with a Protection From Abuse Order or similar court order, as defined by section 1417 of Title 66, are able to access a payment arrangement which provides a “reasonable period of time” for the customer to pay, taking into account the factors outlined in 56 Pa. Code § 56.285.

¹⁵ 66 Pa. C.S. § 1417; 56 Pa. Code § 56.285. A customer with a PFA or other court order, as defined in section 1417, is entitled to have their arrears “amortized over a reasonable period of time,” taking into account the size of the unpaid balance, the ability of the applicant to pay, the payment history of the applicant, and the length of time over which the bill accumulated. *Id.*

- ii. *PECO should reset the Medical Certificate process for all of its low-income customers to coincide with the transition to the new CAP structure*

Discussing the IPAF program, PECO asserts that “[c]ustomers who developed in-program arrearages may have used medical certificates to delay or avoid termination of service due to the in-program arrearages.”¹⁶ In its Plan, PECO suggests that those customers will only be able to use “remaining medical certificate renewals,” and if they have used “all” of their medical certificates and renewals, entering the IPAF Program will not create any rights to the use of additional medical certificates.¹⁷

CAUSE-PA is concerned with how PECO is construing the ability of customers with medical conditions that require PECO service to use medical certificates. CAUSE-PA understands the medical certificate process, pursuant to statute, regulation, and Commission order, to be the following: Medical certificates can be renewed every 30 days, for an indefinite period of time, by a physician, physician assistant, or nurse practitioner, provided the customer pays her/his current bills (or budget bill amount) in full while subject to the medical certification.¹⁸ If a customer does not pay towards their current bill, however, that customer is limited to three medical certificates (one 30-day certificate and two renewals) for a given balance.

With this filing, PECO asserts by implication that customers are only entitled to a set number of medical certificate renewals – no more, regardless of whether that customer continues to pay his or her current bill. In various meetings with counsel for CAUSE-PA, PECO has stated that it can and will do manual overrides of the PECO-imposed three medical certificate limit for customers that are current on their bills during the pendency of the medical certificates. However, PECO has not clarified how it identifies situations that require a manual override, nor has it provided assurances that it informs customers of its procedures in a manner that would allow the customer to request the manual override. PECO should have an automatic setting in its systems to allow for the continuation of medical certificates. To do otherwise would be contrary to clear directive from the Commission.¹⁹

¹⁶ Plan at 10.

¹⁷ *Id.*

¹⁸ *Chapter 14 Implementation*, Final Order at 15, Docket No. M-2014-2448824 (June 11, 2015).

¹⁹ *Id.* Apparently, PECO also codes some customers as “Medical Certificate Non-Renewal.” PECO provides no justification for this blanket coding in its system, nor has it explained how such a coding could be removed.

Further, what PECO ignores in its Medical Certificate policy is that many CAP customers transitioning from CAP-Rate to the FCO have accrued arrears because PECO's CAP Rate was and is unaffordable, as recognized by the Commission.²⁰ Under the unaffordable CAP Rate program, customers with acute medical needs – often accompanied by inflexible and high usage due to medical equipment – were often forced to resort to the medical certificate process because their bills were unaffordable, even with the CAP rate discount. As such, the transition to the FCO should be seen as a fresh start for CAP customers. This is particularly true because customers will be viewed as being current on their bills by virtue of their enrollment in IPAF. Given the uniqueness of these circumstances, it would be both unjust and unreasonable to treat customers as current for purposes of establishing the IPAF and crediting IPAF forgiveness but not doing the same for purposes of medical certificates.

The Commission should reject this aspect of PECO's proposed plan and order PECO to allow all customers to start over with Medical Certificates upon enrollment in the FCO and IPAF. This would mean that all customers who submit a medical certificate after the transition to the FCO and IPAF can renew the medical certificate indefinitely so long as the customer pays her/his current bills (or budget bill amount) in full while subject to the medical certification, regardless of prior history.

CAUSE-PA requests the Commission order PECO:

- to reset its medical certificate process in October 2016,
- to create automatic renewal processes for medical certificates beyond three 30 day periods, and
- to update its messaging on medical certificates to clarify that customers can get an indefinite number of medical certificates while paying the amount due, and are

²⁰ In its final order for PECO's 2013-2015 Plan, the Commission wrote:

As noted in the Tentative Order, PECO, on its own and under no direction by the Commission, instituted an in-program payment arrangement program. This is a major factor in preventing terminations, however, bill balances continue to accrue and the number of customers receiving in-CAP payment agreements points to program unaffordability. Also under no direction by the Commission, PECO forgave \$25 million of those accumulated in-program balances in Fall 2011. PECO is to be commended for such forgiveness, however, the underlying CAP design that enabled the accrual of \$25 million of arrearages is PECO's CAP Rate Tier.

limited to three only if they do not pay their current charges.

At the very least, this issue is a factual dispute that merits further development, including full discovery and a litigated proceeding, to investigate the extent to which medical certificates are accepted and/or denied by PECO, and to identify the potentially far-reaching negative impacts on customer wellbeing. CAUSE-PA therefore requests that PECO's policy on medical certificates be referred to the Office of Administrative Law Judge.²¹

iii. LIHEAP recipients should be automatically enrolled in CAP, pending income verification

Currently, PECO automatically enrolls LIHEAP recipients in the highest tier of its CAP Rate structure. In this filing, PECO does away with this auto-enrollment, claiming it "must have information on the customer's actual income" to determine their Fixed Credit.²²

CAUSE-PA submits that continued auto-enrollment is both essential and possible, even within the framework of the FCO. Because PECO's new FCO structure is based on a percentage of income, there are certain customers who are eligible for CAP who would not receive a discounted bill but would otherwise receive CAP benefits such as arrearage forgiveness and prioritization for LIURP services. It is true that to properly target a bill discount, PECO requires a customer's exact income. However, as long as LIHEAP eligibility remains at 150% of the federal poverty income guidelines or below, PECO could and should nonetheless provisionally enroll a non-CAP, LIHEAP recipient in CAP for purposes of arrearage forgiveness and LIURP prioritization. PECO could then send a letter and CAP application to these households explaining that they may also be eligible for a discounted bill if they submit a CAP application. This approach would, at the very least, allow households not enrolled in CAP to begin to receive some of the benefits of CAP upon receipt of LIHEAP.

²¹ CAUSE-PA has submitted interrogatories to PECO asking for clarification on these issues, and reserves the right to revisit this issue in reply comments based on any responses to those interrogatories.

²² Plan at 7.

- iv. *PECO must use a collaborative process to develop an appropriate outreach and education plan for the new Fixed Credit Option*

In the FCO design settlement, PECO committed to hold a stakeholder collaborative, as follows:

Within 90 days of final Commission approval of this settlement, PECO will convene a stakeholder collaborative to address the following issues:

- i. Develop a detailed and comprehensive consumer education program regarding the CAP design changes and the effect of the changes on CAP participant benefits and obligations;
- ii. Educational materials regarding the effect on CAP customers of shopping decisions and the interrelationship of price changes to the CAP bill. (This collaborative agenda item will not be addressed until final resolution of the CAP shopping docket);
- iii. Educational materials regarding the importance of LIURP and Act 129 measures
- iv. The intended audiences of these education programs will be: CAP participants, low-income customers who are not CAP participants, and social service and health agencies;
- v. Determination of alternative languages for the translation of educational materials.
- vi. Suggested measures to be pursued in the de facto heating programs;
- vii. For each of the above, cost recovery mechanisms for the program involved.²³

The Commission approved the FCO settlement on July 8, 2015. Despite the requirement that a collaborative occur within 90 days of that date, no such collaborative meetings have taken place.²⁴ PECO must institute a comprehensive outreach plan that fully explains the new Fixed Credit Option. PECO's outreach plan should include diverse approaches to reach the CAP-eligible population in PECO's service territory. For example, many PECO customers utilize public transportation (such as the Southeastern Pennsylvania Transit Authority or SEPTA) for travel. PECO should engage customers on public transportation through the use of advertisements on the walls and in vehicles. In addition, there is a variety of local media that PECO can tap into –

²³ See Joint Petition for Settlement *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa.Code §§ 54.74 and 62.4*, M-2012-2290911 (March 20, 2015) at Exhibit A, § C.5.

²⁴ Any discussion of outreach and education regarding these transitions has been one directional and lacking in any opportunity for input from stakeholders, as required by the settlement.

including the Metro, KYW, and local neighborhood newspapers. PECO can further do outreach through engaging employees of Community Based Organizations, and through messaging for customers who call in (particularly if they are on hold) and at bill payment centers. This outreach should be undertaken with the goal of increasing awareness and understanding, such that the change in CAP structure does not come as a surprise to advocates or customers.

As a preliminary matter, PECO must work with stakeholders as agreed to in the FCO settlement, with PECO actively soliciting and incorporating stakeholder feedback. Any outreach plan must also be fully vetted by the Commission prior to approval.

v. PECO must have a simple and streamlined CAP reenrollment policy

PECO CAP customers can be dismissed from the program for a number of reasons, including failure to complete a LIURP audit or the recertification process, for being over income guidelines, and for fraud, theft, or misappropriation of service.²⁵

PECO does not explain how a customer is notified of removal for a LIURP refusal, nor does it explain the steps a customer must take to reenroll in CAP following a LIURP refusal. Any notice must be clear not only as to why a customer is being removed from CAP but also the exact steps needed to reenroll.²⁶

In addition, PECO must permit reenrollment in CAP as soon as the customer submits to the LIURP audit. PECO has said in Universal Services Advisory meetings that such customers would have to not only submit to an audit, but also have any recommended repairs and measures completed as well prior to reenrollment in CAP. This is an unnecessary delay for customers who need all the help they can get to make ends meet. CAP customers should be eligible to reenroll as soon as they submit to a LIURP audit. In addition, those customers should be enrolled retroactively to the date of removal, and be able to continue with arrearage forgiveness.

²⁵ Plan at 10.

²⁶ In Interrogatories, CAUSE-PA has requested data regarding the number of CAP removals and the amount of time until reconnection, as well as letters or other documents sent to customers and call scripts (incoming and outgoing calls) that are used to explain such removal and any requirements for reinstatement. As of the filing of these comments, CAUSE-PA has not received answers or objections to these interrogatories. As such, CAUSE-PA reserves the right to revisit these issues in reply comments.

In its Plan, PECO also states that CAP customers can be removed from CAP for a failure to recertify. CAP customers must recertify every two years to show they are still eligible for CAP (six years for LIHEAP recipients), and if a customer fails to resubmit income information, they are removed from the CAP program. These customers who are dropped from CAP for failure to recertify should be able to reenroll retroactively, and continue with any arrearage forgiveness.

CAUSE-PA requests that the Commission refer these issues to the Office of the Administrative Law Judge to fully explore PECO's policies and procedures for removal to ensure that PECO's customer messaging is clear and direct, and its process is sufficiently flexibility to allow for prompt reenrollment.

- vi. *PECO's Credit Inquiry policy is invasive, inappropriate, and should not be allowed to continue.*

As a part of its CAP program requirements, PECO requires an applicant to “[p]rovide PECO permission to verify their income with authorized entities, including credit reporting bureaus.”²⁷ In addition, describing its policies for fraud, theft, and misappropriations of service, PECO states that it will analyze customer information for potential fraud by conducting a credit check and probing how a customer pays for basic living expenses.²⁸ While it does not provide detail in this filing as to how it conducts such investigations, PECO has provided some information about these “credit inquiries” at recent Universal Service Advisory meetings – namely that a credit reporting agency takes account information and looks to see whether a customer is meeting expenses that would require an income over the CAP income threshold. PECO has set the income it is looking for at \$100,000, but has stated on numerous occasions that it may begin checking accounts to see if they are meeting expenses that require income levels of \$50,000. This method of “determining” income is incredibly problematic, as it does not take into account other sources CAP customers may be relying upon to make ends meet, such as loans and gifts from family members and friends, retirement accounts, or charitable gifts from community organizations and religious institutions.²⁹ Once PECO determines a customer has expenses that require income in

²⁷ Plan at 6.

²⁸ Plan at 10.

excess of \$100,000 - based on largely unverified estimates by a credit agency - PECO sends a letter to that customer, a copy of which was provided in slides at the last Universal Services Advisory meeting and is attached as Attachment A. CAUSE-PA has serious concerns that this letter does not provide adequate notice or opportunity to be heard, nor does the letter contain any mention of the Fair Credit Reporting Act, despite PECO's actions being an adverse use of information on a credit report.³⁰ Furthermore, the letter assumes that a customer is ineligible for CAP, and provides a murky explanation at best of what a customer can do to challenge PECO's action.

PECO's policy here is invasive, completely inappropriate, and should not be allowed to continue, first and foremost because it has not been properly vetted by the Commission. CAUSE-PA requests the Commission order PECO to immediately cease and desist these problematic practices until the completion of a fully litigated proceeding that requires PECO to show: the factual basis for its credit inquiry practices; how its processes comport with due process standards and federal law; and the cost effectiveness of conducting these types of invasive inquiries.³¹

According to numbers provided by PECO at its most recent Universal Services Advisory meeting, PECO submitted over twelve thousand CAP accounts for credit inquiry in 2015, and identified only 23 customers who had expenses "showing" an income above \$100,000.

These numbers represent two possibilities, either of which is problematic: either PECO submitted every CAP application and recertification for a credit inquiry; or PECO only submitted cases where it believed there may have been high income, in which case PECO got it wrong 99.98% of the time. Furthermore, it appears that PECO submits these credit inquiries without regard to the potentially negative impact such a credit screening could have on the credit scoring of the affected individuals.

PECO has not identified the exact cost of this program; however, regardless of cost, CAUSE-PA is nonetheless concerned about the effectiveness of this program, given the numbers provided. CAUSE-PA opposes this and any use of credit information to determine whether customers are properly reporting income, and is particularly opposed to PECO's current process,

³⁰ 15 U.S.C. § 1681. *See also* Federal Trade Commission, A Summary of Your Rights Under the Fair Credit Reporting Act, <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>.

³⁰ 15 U.S.C. § 1681. *See also* Federal Trade Commission, A Summary of Your Rights Under the Fair Credit Reporting Act, <https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>.

³¹ *Id.*

in which customers are disenrolled from CAP by algorithm, without any specific factual inquiry as to the validity of the information obtained.

The Commission should refer this issue to the Office of Administrative Law Judge and specifically direct PECO to show what legal authority, if any, it has to pull these credit reports and use the information gathered to disenroll customers automatically. Whether this legal authority exists requires the development of a factual record regarding the incidence of actual, intentional CAP enrollment fraud in PECO's service territory, and the efficacy of PECO's selected methods. CAUSE-PA further recommends the Commission order PECO to show its compliance with both due process and federal law, particularly the Fair Credit Reporting Act, in accessing credit reports, and to justify the use of such reports as cost effective.

vii. PECO cannot, as a condition of CAP Eligibility, require CAP applicants to provide PECO with permission to access their credit reports

Further, even if this practice is permitted to continue, PECO cannot and should not be requiring CAP applicants to provide permission to access this information as a condition of CAP eligibility. This, too, is problematic in that it places additional burdens and hurdles to CAP enrollment. Indeed, it remains unclear whether these credit reports "ding" the applicant's credit, thereby placing CAP applicants at a risk of harm in the form of negative credit scoring as a result of their participation in the program. The Commission should order PECO to cease requiring this credit inquiry permission as a condition of CAP eligibility, and require PECO to make any necessary adjustments to its CAP application and recertification to clarify such permission is not mandatory.

viii. PECO cannot back-bill a CAP customer for unintentional misrepresentations

CAUSE-PA commends the Commission for recognizing PECO's problematic statements in its Plan filing that any account removed for fraud, theft of service, or misappropriation of service can be back-billed for account collection fees, IPAF, forgiven or unforgiven account arrearages,

and pre-program arrears.³² PECO makes no distinction between intentional fraudulent acts and other acts that PECO may describe as a misappropriation of service, but that are just as likely to have been unintentional on the part of the customer. The Commission should require PECO to develop and publish a clear policy as to what constitutes intentional fraud or intentional misrepresentation, the specific definitions of each, and the mechanisms by which customers can challenge those determinations, including but not limited to filing complaints with the PUC. Further, the appropriateness of PECO's policy related to intentional fraud should be fully vetted through an evidentiary hearing.

c. Low Income Usage Reduction Program (LIURP)

- i. *PECO should update its proposed LIURP budget to incorporate both the \$700,000 for the de facto heating pilot, and the additional \$1,000,000 it committed to in the FCO settlement.*

Pursuant to the FCO settlement, PECO committed to an additional \$700,000 in 2017 and 2018 to be put towards a de facto heating pilot. This amount is not reflected in their LIURP budget. PECO further agreed to increase LIURP budget by \$1,000,000, separate from the \$700,000 for de facto heating, but this increase is also not evident in the LIURP budget provided.³³ CAUSE-PA agrees with the Commission that PECO must update its LIURP budget to reflect these additional funds.

d. Customer Assistance and Referral Evaluation Services (CARES)

- i. *PECO should define its CARES eligibility to include vulnerable populations, such as victims of domestic violence, individuals with medical conditions, and others with acute financial hardship.*

According to PECO, the goal of CARES (the Customer Assistance and Referral Evaluation Services program) is to maximize the ability of customers to pay their energy bills. The CARES program is targeted at low income customers with special needs and/or extenuating

³² Plan at 11.

³³ See Joint Petition for Settlement *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa.Code §§ 54.74 and 62.4*, M-2012-2290911 (March 20, 2015) at Exhibit A, § C.1; Plan at 25.

circumstances.³⁴ PECO does not define in its Plan either “special needs” or “extenuating circumstances.” CAUSE-PA urges PECO to adopt broad definitions, including, but not limited to individuals with medical conditions, individuals with acute financial hardships, and victims of domestic violence.³⁵

Specifically, CAUSE-PA asserts that CARES is both an appropriate and necessary service for all victims of domestic violence, and urges PECO to expand its CARES eligibility to account for the severe hardship faced by those living in or escaping from an abusive home. Victims of domestic violence with a PFA or other court order evidencing domestic abuse are eligible for numerous exceptions under Chapter 14 and Chapter 56, including for utility and PUC-issued payment arrangements and exemption from liability for prior arrears in another individual’s name.³⁶ To CAUSE-PA’s knowledge, PECO does not have a clear policy on how it determines whether a customer has a PFA or other court order or how it applies the relevant exceptions. Based on informal conversations with PECO, it is our understanding that PECO has only processed a handful of requests regarding PFA exceptions – less than 10 – despite the fact that in 2014, over 9,000 PFAs were processed in Philadelphia County alone.³⁷ Explicitly expanding CARES eligibility to include victims of domestic violence and other vulnerable populations will assist both customers and advocates in reaching the appropriate PECO staff to address these issues.

³⁴ Plan at 18.

³⁵ This should include all self-identified victims of domestic violence, regardless of whether they have a court order of protection. Obtaining a court order of protection is not always safe for victims of domestic violence, as it often further enrages a violent spouse or intimate partner. In fact, research is clear that the most dangerous time for a victim – when the chance of severe injury or death is highest – is at the time of separation, with or without a court order of protection.³⁵ Many who flee an abusive home – often with small children – are subject to extreme economic vulnerability. Unfortunately, all too often, a victim finds they are ultimately unable to make ends meet and either returns to the batterer or turns to the streets. Domestic violence is a leading cause of homelessness for women and children in Pennsylvania, and across the nation. *See* Nat’l Network to End Domestic Violence, *Housing, Homelessness and Domestic Violence* (2004), <http://www.ncdsv.org/images/housingdvfactsheet1.pdf>; *see also* Jill Davies, *Safety Planning with Battered Women: Complex Lives/Difficult Choices* (1998).

³⁶ *See* 66 Pa. C.S. §1417 (exempting victims of domestic violence from the harsh termination and collections policies in Chapter 14); *see also* 56 Pa. Code §56.285 (preventing a utility from requiring payment of arrears not in an individual’s name to reconnect service). Victims of domestic violence are also eligible for the old Chapter 56’s much more lenient payment arrangement rules. 56 Pa. Code §56.285.

³⁷ *See* Administrative Office of Pennsylvania Courts, Protection From Abuse Research & Statistics, <http://www.pacourts.us/news-and-statistics/research-and-statistics/protection-from-abuse> (last visited March 16, 2016).

e. Collection Strategies

i. *PECO cannot require any CAP-eligible customers to pay security deposits*

Discussing collection strategies, PECO states that it will “charge a deposit regardless of income level in the case of post-bankruptcy account.”³⁸ This is both inappropriate and impermissible. Chapter 14 is very clear that PECO cannot charge any CAP-eligible customers a security deposit. There is no carve out for post-bankruptcy accounts.³⁹ The Commission must direct PECO that it cannot charge a security deposit for customers who are eligible for CAP, regardless of when their account is established, even if the account is established post-bankruptcy.

ii. *PECO should continue to allow CAP customer payment arrangements*

As argued above, PECO states multiple times in its USECP filing that CAP customers will not be eligible for payment arrangements. Chapter 14 does prohibit the PUC from issuing payment arrangements for CAP customers.⁴⁰ However, there is nothing in Chapter 14 to prohibit PECO from issuing its own payment arrangements. To the contrary, Section 1405 specifically states that “[a] public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.”⁴¹

PECO would be better off maintaining its discretion to enter into payment arrangements with CAP customers who fall behind for any number of reasons, rather than needlessly tying its own hands. In addition, PECO provides no exemption from this payment arrangement prohibition for victims of domestic violence with a PFA or another court order with clear evidence of domestic violence. Victims of domestic violence are fully exempted from Chapter 14’s prohibition on PUC-issued payment arrangements to CAP customers.⁴² As such, PECO must exempt CAP customers who are victims of domestic violence from any restrictions it places on PECO-issued payment arrangements for CAP customers.

³⁸ Plan at 23.

³⁹ 66 Pa. C.S. §1404(a.1).

⁴⁰ See 66 Pa. C.S. §1405(c).

⁴¹ 66 Pa. C.S. §1405(d).

⁴² 66 Pa. C.S. §1417.

As with all the issues raised in these comments, the propriety of PECO's new payment arrangement policy is an issue that requires evidentiary development and a litigated proceeding. As such, the Commission must refer this issue to the Office of the Administrative Law Judge.

III. CONCLUSION

CAUSE-PA thanks the Commission for its thoughtful consideration of the issues raised above. We urge the Commission to act accordingly, and refer this proceeding to the Office of Administrative Law Judge, to ensure that all customers – regardless of income – are able to access safe, affordable electricity and natural gas service within the PECO service territory.

Respectfully Submitted,

PENNSYLVANIA UTILITY LAW PROJECT



Joline Price, Esq., PA ID: 315405
Elizabeth R. Marx, Esq., PA ID: 309014
Patrick M. Cicero, Esq., PA ID: 89039
Counsel for CAUSE-PA

118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

March 16, 2016

CAP Investigation Customer Letter



July 30, 2015

(Customer Address)
(Account Number)

Dear (Customer Name):

PECO recently reviewed your account at (Customer Address). You currently receive a discounted rate through PECO's Customer Assistance Program (CAP). CAP is available only to qualified low-income customers.

On your CAP application, you stated that your total household income is \$1,500 per month for yourself and 4 other household members. You also agreed to allow PECO to verify your application using credit report information. Our review of your credit report revealed information that appears different than the income you provided on your CAP application:

- *Your credit report shows total monthly payments on open credit lines in the amount of \$4,358. This includes:*
 - *A mortgage account with a monthly payment of \$3,248. This account is in good standing*
 - *A monthly payment on auto loans/lease for \$844. This account is in good standing*
 - *Total revolving balances for \$8,136. These accounts are in good standing*

Based on this information, your total household income appears to be greater than the income reported on your CAP application. Therefore, you are ineligible for CAP. For CAP Income Eligibility Guidelines, please visit peco.com/help.

If you have any information you would like PECO to consider regarding your eligibility for CAP, please contact us at 215-841-5810. PECO will review your additional information and make a final determination regarding your CAP eligibility.

If we do not hear from you within 20 days from the date of this letter, or if the information you provide does not substantially prove your household is eligible for CAP, you will be removed from CAP. You also may be back billed for all CAP benefits you previously received.

Please contact us with any questions you may have at 215-841-5810.

Sincerely,

PECO Universal Services
2301 Market Street, S6-2
Philadelphia, PA 19103
Phone: 215-841-5810



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Universal Services :
Three-Year Plan 2016-2018 : Docket No. M-2015-2507139
:

CERTIFICATE OF SERVICE

I hereby certify that I have this day, March 16, 2016, served copies of the **Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania**, as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA EMAIL

Joseph Magee

Sarah Dewey

Bureau of Consumer Services
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor, G-M East
Harrisburg, PA 17105
jmagee@pa.gov
sdewey@pa.gov

Louise Fink Smith

Law Bureau
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
3rd Floor, 4 North
Harrisburg, PA 17105
finksmith@pa.gov

Ward Smith

Assistant General Counsel – Exelon
2301 Market Street
Philadelphia, PA 19101
Ward.smith@exeloncorp.com

Johnnie E. Simms

Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265
josimms@pa.gov

Christy Appleby

Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
cappleby@paoca.org

Elizabeth Triscari

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
etriscari@pa.gov

Thu B. Tran

Robert W. Ballenger

Josie Pickens

Community Legal Services

1424 Chestnut Street

Philadelphia, PA 19102

ttran@clsphila.org

rballenger@clsphila.org

jpickens@clsphila.org

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT

Counsel for CAUSE-PA



Joline Price, Esq.

PA ID # 315405

118 Locust Street

Harrisburg, PA 17101

717-236-9486

pulp@palegalaid.net

jpricepulp@palegalaid.net

Dated: March 16, 2016