



March 28, 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**

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

Dear Secretary Chiavetta,

Please find attached for filing the Reply 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,



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Enclosures

cc: Certificate of Service
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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

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I. Introduction

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), submits these Reply Comments through its attorneys at the Pennsylvania Utility Law Project, pursuant to the February 25, 2016 Tentative Order (TO) in the above captioned case, which invited interested parties to submit comments and/or reply comments on issues related to the PECO Energy Company (PECO) Universal Service and Energy Conservation Plan for 2016-2018 (USECP or Plan).¹

In relevant part, the Commission’s Tentative Order requested that PECO clarify several aspects of its USECP and adopt certain modifications to bring the Plan into full compliance with applicable regulatory standards. CAUSE-PA submitted initial comments to PECO’s Plan on March 16, 2016. Initial Comments were also submitted by the Office of Consumer Advocate (OCA), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively “TURN et al.”), and PECO. CAUSE-PA submits the following comments in response to those submitted by PECO, TURN et al., and the OCA. CAUSE-PA will not reiterate arguments raised in its initial comments, but incorporates those arguments by reference.

II. Referral to the Office of Administrative Law Judge for an Evidentiary Hearing

After reviewing all of the initial comments, it is apparent that significant concerns with specific aspects of PECO’s Plan remain outstanding, including factual and policy disputes that merit an evidentiary hearing, and CAUSE-PA therefore requests that the Commission refer this

¹ Tentative Order, PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance With 52 Pa. Code §§ 54.74 and 62.4, M-2015-2507139 (February 25, 2016) (hereinafter “Tentative Order”).

matter to the Office of Administrative Law Judge for hearings. PECO's recently filed Answer to CAUSE-PA's Petition to Intervene at this docket, filed March 22, 2016, highlights the necessity of hearings. Rather than object to CAUSE-PA's standing to intervene if this matter is referred to the Office of Administrative Law Judge, PECO's Answer instead focused on PECO's refusal to entertain questions in the form of interrogatories about various aspects of its proposed plan. These questions were propounded in a good faith effort to allow CAUSE-PA to obtain necessary, additional information from PECO about how PECO's Universal Services Plan meets the needs of its low-income population, and whether the Plan complies with PECO's responsibilities under the Electricity Generation and Natural Gas Customer Choice and Competition Acts (Choice Acts).² In the absence of this information, CAUSE-PA, and all other others, are limited to simply reviewing information that is a matter of public record or that the Commission included in its Tentative Order. This is insufficient.

More information is needed to address the significant issues at stake in this proceeding. However, rather than provide answers that would allow full vetting of its proposed plan, PECO argues that because there is currently no on-the-record proceeding, PECO has no obligation to respond to interrogatories.³ According to PECO, CAUSE-PA's interrogatories were "substantially more extensive than the . . . questions posed by the Commission itself . . ." ⁴ PECO does not allege the information requested is irrelevant, or beyond the scope of this proceeding.⁵ Indeed, the

² 66 Pa. C.S. § 2804 (9); 66 Pa. C.S. § 2203 (7).

³ PECO did not contest CAUSE-PA's eligibility to intervene, should the matter be referred to an ALJ, nor did it challenge CAUSE-PA's right to file Comments or Reply Comments. *See* Answer to Petition to Intervene of CAUSE-PA, PECO Energy Company Universal Service Plan for 2016-2018, Docket No. M-2015-2507139 (Mar. 22, 2016) at 1. Rather, PECO alleged that "[t]he right to discovery . . . has not attached to this docket, and there is no on-the-record proceeding in which to intervene." *Id.* at 2. Despite using the form of an Answer to a Petition to Intervene, PECO's objection seems to be focused on CAUSE-PA's authority to serve interrogatories, rather than the right of CAUSE-PA to participate in this proceeding. *Id.* at 1.

⁴ *Id.* at 1.

⁵ *Id.* Service of interrogatories is not unprecedented at the Comment stage of proceedings. For example, in Peoples Natural Gas Company's most recent Universal Service and Energy Conservation Plan filing, the PUC's Bureau of

information requested goes to the heart of how PECO administers its Universal Service programs and whether PECO is appropriately addressing the needs of its low-income customers as required by the Choice Acts.⁶ CAUSE-PA's interrogatories addressed several aspects of PECO's Plan, including: specific CAP enrollment and removal numbers, the amount of churn in the CAP program, and how customers are informed about CAP removal and reinstatement; PECO's policies for back-billing CAP customers; outreach and enrollment for CAP (including the new Fixed Credit Option) and LIHEAP, and the integration of outreach for the two; the numbers of LIURP jobs; how PECO handles Protection from Abuse orders; and PECO's specific policies on medical certificates. All of this information is directly related to PECO's Universal Services Plan and the comments thereto.

Relatedly, CAUSE-PA is concerned with PECO's limited view of the significance and meaning of its Universal Service and Energy Conservation Plan (USECP) filings. Addressing a Commission concern that it did not provide adequate information about its organizational structure, PECO states in its comments that these filings are general descriptions, not prescriptive tariff documents.⁷ While these filings may not have the full force and effect of tariffs, they are undoubtedly more than just a general description. PECO's plan must show, in adequate detail, how PECO will meet the requirements of the Choice Acts through its Universal Services and Energy

Investigation and Enforcement filed both a Notice of Appearance and propounded interrogatories during the Comment period. *See* Bureau of Investigation and Enforcement Notice of Appearance, Peoples Natural Gas Company Universal Service and Energy Conservation Plan for 2015-2018, M-2014-2432515 (Sept. 4, 2015) and Cover Letter and Certificate of Service to Bureau of Investigation and Enforcement Interrogatories to Peoples Natural Gas Company I&E-1 through I&E-28, Peoples Natural Gas Company Universal Service and Energy Conservation Plan for 2015-2018, M-2014-2432515 (Sept. 9, 2015).

⁶ 66 Pa. C.S. § 2804 (9); 66 Pa. C.S. § 2203 (7). Even if the Commission has some of this information, to CAUSE-PA's knowledge, most of that data is not made readily available to the public.

⁷ Comments of PECO Energy Company, PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance With 52 Pa. Code §§ 54.74 and 62.4, M-2015-2507139 (March 16, 2016) at 22 (hereinafter "PECO Comments"). CAUSE-PA is not contesting PECO's right to manage its own staffing structure, within the general staffing outline it provides in its Plan.

Conservation programs.⁸ While PECO should have flexibility around the margins and in tweaking the delivery of Universal Services, PECO must file amendments or addendums to its USECP if it wants to make a major change in its Plan over the course of the three year timeframe. A Universal Services Proceeding is not merely a pro forma filing to get a stamp of approval, but rather an opportunity for the Commission and interested parties to assess the ways in which a utility is meeting the needs of its low income consumers to ensure universal access to reliable and affordable utility services.

The Commission has indicated that these proceedings are the appropriate place to address Universal Service program design.⁹ Throughout its initial comments, as well as its reply comments below, CAUSE-PA has pointed to several matters requiring more factual development. This, coupled with PECO's refusal to provide answers to question, even informally, illustrates the need for on-the-record hearings, with opportunities to conduct discovery, submit supplemental evidence, and cross examine witnesses. In the absence of such hearings, full due process cannot be realized.¹⁰ Therefore, CAUSE-PA respectfully requests that the Commission refer this matter to an ALJ for an evidentiary hearing.

⁸ See generally 52 Pa. Code § 62.1–62.8 (Universal Service Requirements for Natural Gas Distribution Companies); 52 Pa. Code 54.71–54.78 (Universal Service Requirements for Electric Distribution Companies). See also 66 Pa. C.S. § 2804 (9); 66 Pa. C.S. § 2203 (7).

⁹ See Final Order, Peoples Natural Gas Company LLC Universal Service and Energy Conservation Plan for 2015-2018 Submitted in Compliance with 52 Pa. Code § 62.4, M-2014-2432515 (December 17, 2015) at 35 (“The Commission has designated USECP dockets (i.e., triennial reviews or petitions to amend existing plans) as the preferred proceedings for introducing changes to universal service programs, rather than base rate proceedings.”).

¹⁰ Among the reasons why CAUSE-PA has chosen to file a Petition to Intervene in this proceeding, is to ensure that in the event of an adverse ruling or order there is no question about CAUSE-PA's ability to file a Petition for Reconsideration with the Commission and, if necessary, a Petition for Review in Commonwealth Court. While not conceding that it would be deprived of standing to assert appeal rights in the absence of a petition to intervene that must be acted on by the Commission, the filing of such a petition ensures the CAUSE-PA would be on sufficiently solid ground to raise relevant, contested issues – including issues concerning the adequacy of due process – in any appellate proceeding.

III. Customer Assistance Program

A. *PECO must revise its Plan to reflect its clarification that customers will rejoin the InProgram Arrearage Forgiveness program when they reconnect to service*

Responding to the Commission's inquiry regarding payment responsibility if a customer cancels service while receiving InProgram Arrearage (InPA) Forgiveness, PECO states that "if the customer reinitiates service on the PECO system during the five-year term of the InPA Forgiveness program, the customer will be allowed to re-enter the InPA Forgiveness program," on the same terms and conditions as the original InPA Forgiveness payment arrangement. PECO should include this clarification in its revised plan. Allowing customers to rejoin InPA Forgiveness upon reconnection is consistent with the FCO settlement and the only appropriate and fair approach.¹¹

B. *PECO should retain the discretion necessary to issue payment agreements for CAP arrears*

CAUSE-PA wrote at length in its initial Comments that PECO should retain its discretion to issue payment agreements for CAP arrears, and should not needlessly tie its own hands. We adopt those comments by reference here. TURN et al. noted in its comments that even with a more affordable CAP structure, the new CAP design will not result in affordable bills for every CAP customer.¹² In addition, the affordability targets set by the Commission are often not truly affordable for many low-income families, particularly those facing temporary hardships.¹³

¹¹ PECO further states in its Plan filing that customers will stay with InPA Forgiveness even if they move off of CAP (for any reason except fraud, theft of service, or other misappropriation of service). PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018, (M-2015-2507139) at 10 (hereinafter "Plan" or "PECO USECP").

¹² Comments of TURN et al. to PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018, M-2015-2507139 (March 16, 2016) at 3 (hereinafter "Comments of TURN et al.").

¹³ CAUSE-PA joins in TURN et al.'s suggestion that the Commission undertake a revision and review of the Commission's CAP Policy Statement. *See* Comments of TURN et al. at 3. Indeed, a CAP Rulemaking would allow both the Commission and advocates to strengthen Universal Services across the Commonwealth.

Because a CAP structure will never achieve affordability for 100% of the customers enrolled, in-CAP payment arrangements allow flexibility for both PECO and customers to avoid termination, uncollectible debt, and possible bankruptcy – all of which add costs to residential ratepayers.

C. As required by the FCO settlement, PECO must collaborate with stakeholders on FCO outreach and education in a manner that allows stakeholders adequate time to both review and provide input.

In its Tentative Order, the Commission requests PECO “to detail how it will educate consumers about the upcoming changes to its CAP and, on an ongoing basis, the benefits and responsibilities of the program.”¹⁴ In its comments, PECO provides a high level overview of the type of outreach it will do, but does not provide any information as to the messaging and content it will use.¹⁵ PECO states that it will do outreach to current and future CAP customers through a variety of different methods, including “earned media, web-based messaging, on-hold messages at the CAP Call Center, bill inserts” and more.¹⁶ CAUSE-PA shares OCA’s concern about PECO’s target audience, and supports OCA’s suggestion that PECO do outreach to previous LIHEAP recipients, including those who may have in the past been automatically enrolled in CAP.¹⁷ The OCA also suggests outreach to maintain CAP customers who would no longer get a bill discount but would still benefit from arrearage management or LIURP prioritization.¹⁸ As discussed in its initial comments, CAUSE-PA believes LIHEAP recipients should continue to be automatically enrolled in CAP for the purposes of arrearage management and LIURP priority.¹⁹ In the

¹⁴ Tentative Order at 16.

¹⁵ PECO Comments at 4.

¹⁶ *Id.*

¹⁷ See Comments of the OCA to PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance With 52 Pa. Code §§ 54.74 and 62.4, M-2015-2507139 (March 16, 2016) at 8 (hereinafter “OCA Comments”).

¹⁸ *Id.*

¹⁹ Comments of CAUSE-PA to PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance With 52 Pa. Code §§ 54.74 and 62.4, M-2015-2507139 (March 16, 2016) at 11 (hereinafter “CAUSE-PA Comments”).

alternative, however, CAUSE-PA supports the OCA's suggestion to do targeted outreach to those customers.

PECO suggests it will only show its content messaging to stakeholders and the Commission once the content messaging is complete.²⁰ CAUSE-PA believes PECO's response to the Commission is inadequate, as it does not provide any insight into the content of PECO's educational plan. PECO states that it met with stakeholders immediately following the FCO settlement.²¹ Under the terms of the FCO settlement, PECO must continue its collaboration with stakeholders in developing "a detailed and comprehensive consumer education program regarding the CAP design changes and the effect of the changes on CAP participant benefits and obligations."²² In convening such a collaborative, PECO must work in tandem with stakeholders, allowing for time to review proposals and provide input that will be incorporated into such an education program.²³ CAUSE-PA requests that the Commission order PECO to engage in this collaboration with both stakeholders and the Commission in compliance with the earlier settlement provisions and to ensure the development of a robust and effective educational campaign.

D. PECO must develop a clear definition of fraud that does not include unintentional misrepresentation and assumes good intent on the part of customers.

In its comments, PECO requests latitude in addressing cases of fraud within its Universal Services programs.²⁴ CAUSE-PA agrees with PECO that cases of fraud are fact-specific, and asserts that it precisely because of that fact-specific inquiry that PECO must develop a clear definition of fraud and standards for when and how a customer is removed from CAP and back-

²⁰ PECO Comments at 4.

²¹ *Id.*

²² 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 (hereinafter "FCO Settlement").

²³ See CAUSE-PA Comments at 12.

²⁴ PECO Comments at 5.

billed for benefits received. PECO must also provide CAP customers with clear notice and an adequate opportunity to dispute allegations of fraud before the customer is removed from CAP. PECO states in its comments that “if a customer believes that PECO has treated [them] unfairly, that customer will have the recourse of filing a complaint with the Bureau of Consumer Services.”²⁵ Due process requires that any notice provided by PECO must be clear as to that customer’s ability to challenge PECO’s adverse ruling – both within PECO and at the Commission – and should contain clear directions for how to exercise those dispute rights.

In addition, PECO’s definition of fraud is overly broad to the extent that it includes unintentional misrepresentations.²⁶ When approaching customers who have provided insufficient or potentially inaccurate information, PECO should start from the assumption that the customer made a mistake, and give that customer an opportunity to correct that mistake without penalty.²⁷ CAUSE-PA agrees with TURN et al. that fraud investigations should not be onerous, and PECO should be flexible in its standards of proof.²⁸

E. Customers should be reenrolled in CAP immediately upon submitting to a LIURP audit.

Given uncertainty as to the efficacy of PECO’s LIURP messaging,²⁹ PECO should also presume good intent before removing customers from CAP who fail to complete a LIURP audit. PECO should reenroll customers in CAP once they submit to a LIURP audit. In its comments to the Commission, PECO states that it will only reenroll customers in CAP after they complete

²⁵ *Id.*

²⁶ Plan at 11. As TURN et al. note in their comments, fraud requires intent. Comments of TURN et al. at 8, footnote 20.

²⁷ *See, e.g.*, CAUSE-PA Comments, Attachment A (addressing a customer suspected of misrepresentation of income as already determined ineligible for CAP). TURN et al. put it well: “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.” Comments of TURN et al. at 8.

²⁸ *Id.* at 9.

²⁹ *See Id.* at 13–14

“associated remediation measures identified in the LIURP audit.”³⁰ To require completion of LIURP treatment prior to reenrollment in CAP presumes willful disregard on the part of CAP customers and could cause significant delay in that customer reenrolling in CAP, thereby exacerbating that customer’s financial instability and/or creating additional hardship.³¹

IV. Low Income Usage Reduction Program

A. While CAUSE-PA supports PECO deferring planning on the De Facto Heating Pilot and use of the additional \$1 million in LIURP funding, PECO should be required to file an addendum or amendment to the Universal Services Plan when it does develop plans for those programs.

The Commission, in its Tentative Order, requested PECO to:

- 1) update the LIURP budget to reflect the \$700,000 for de facto heating,
- 2) provide an estimate of potential jobs that will be performed under the de facto heating pilot,³²
- 3) update the LIURP budget to reflect the additional \$1 million in LIURP funding agreed to in the FCO settlement,³³ and
- 4) provide an update estimate of additional LIURP jobs because of that additional \$1 million.³⁴

CAUSE-PA concurred with the Commission’s request.³⁵ In its comments, PECO addressed the Commission’s concerns, saying that the de facto heating pilot and plans for the additional \$1 million in LIURP funding are still in initial development, and PECO cannot yet estimate the

³⁰ PECO Comments at 6.

³¹ CAUSE-PA supports the suggestion by TURN et al. that customers who are in good standing with their payments should be exempt from CAP removal for LIURP refusal. TURN et al. Comments at 14.

³² Tentative Order at 20.

³³ *Id.* at 23.

³⁴ *Id.* at 24.

³⁵ Comments of CAUSE-PA at 17.

number of jobs that will be funded or how the budget will be allocated.³⁶ CAUSE-PA agrees with PECO that the present focus of its Universal Services staff should be on the CAP FCO transition and specifics of these pilots can be developed later.³⁷ However, CAUSE-PA also agrees with the Commission that more detail about these pilots is necessary. Therefore, the Commission should order PECO to file an amendment or addendum to this Universal Services Plan once it has more fully planned out how it will implement these pilots and use that additional money. That supplementary filing, which should be made not later than the first quarter of 2017,³⁸ should be subject to review by both the Commission and interested parties, with opportunity to provide comment and/or develop a factual record.

B. CAUSE-PA supports PECO in using one vendor for implementation of its LIURP program to the extent that doing so maximizes administrative and program efficiency

The Commission, in its Tentative Order, questions PECO's use of only one vendor for its LIURP program.³⁹ PECO, in its comments, explains that "the use of a single contractor to handle LIURP matters from start to finish has proven to be administratively effective and a key to managing the program's administrative cost."⁴⁰ CAUSE-PA agrees with PECO, and does not see a reason for PECO to utilize more than one LIURP vendor if using only one is administratively efficient and does not decrease the program's effectiveness.

³⁶ PECO Comments at 8–9; 14–15.

³⁷ *Id.* CAUSE-PA also supports PECO's suggested language change regarding the additional \$1 million in funding. *Id.* at 15.

³⁸ Filing in the first quarter of 2017 will allow PECO time to flesh out its plan, after the October 2016 FCO transition, and would also provide sufficient time for vetting the issues prior to the implementation of the de facto heating pilot.

³⁹ Tentative Order at 22.

⁴⁰ PECO Comments at 12. PECO further explains that they have external assessments of their LIURP Program done every year, and have also commissioned external audits in recent years. *Id.*

C. CAUSE-PA does not share the Commission's concern regarding a decrease in estimated LIURP jobs, to the extent that the number of jobs has and will go down because PECO is doing more comprehensive and deeper measures on a smaller number of units.

PECO, addressing the Commission's concern about a decrease of jobs numbers, cites an increase in the cost of LIURP measures. However, it is unclear whether that increase is because PECO is implementing more comprehensive and deeper measures in a smaller number of units, or because of an increase in costs for the same measures it has done in the past. CAUSE-PA does not believe the former scenario is problematic, and in fact supports efforts to increase the comprehensiveness of LIURP jobs. However, if PECO's costs are increasing due to inflation and increased costs to perform the same measures in a smaller number of units, CAUSE-PA asserts that PECO must increase its LIURP budget to account for that inflation.

The Commission should refer this issue to the Office of Administrative Law Judge to allow for a deeper inquiry into the reason for the decrease in LIURP jobs. Whether PECO is adequately implementing its LIURP program to meet the needs of its low-income population is an issue that merits an evidentiary hearing.

V. Conclusion

For the reasons outlined here, and its initial comments, PECO should refer this proceeding to the OALJ for hearings. If the Commission does not refer all or part of PECO's Plan to the OALJ, CAUSE-PA respectfully submits that the Commission must order PECO to:

- Revise its Plan to reflect that customers will rejoin the InProgram Arrearage Forgiveness when they reconnect to service
- Continue issuing payment arrangements for CAP arrearages

- Collaborate with stakeholders on FCO outreach and education in a manner that allows stakeholders adequate time to both review and provide input
- Provide clear notice and opportunity to challenge CAP removals for alleged fraud
- Establish a clear definition of fraud that does not include unintentional misrepresentation
- Reenroll customers in CAP immediately upon submitting to a LIURP audit
- File a Plan addendum when it develops its plans for the de facto heating pilot and additional \$1 million in LIURP funding
- Clarify *why* there has been a decrease in LIURP jobs

In addition, as discussed in CAUSE-PA's initial comments, order PECO to:

- Reset the Medical Certificate process for all of its low-income customers to coincide with the transition to the new CAP structure
- Automatically enroll LIHEAP recipients in CAP for arrearage forgiveness and LIURP priority
- Cease and desist its credit inquiry policy and requirement that CAP applicants provide PECO with permission to access credit reports
- Define CARES eligibility to include vulnerable populations, such as victims of domestic violence, individuals with medical conditions, and others with acute financial hardship
- Exempt *all* CAP-eligible customers from any security deposit requirements

CAUSE-PA thanks the Commission for its thoughtful consideration of the issues raised above.

We urge the Commission to act accordingly 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



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**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 28, 2016, served copies of the **Reply 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).

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