



August 26, 2016

VIA EFILE

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

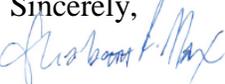
**Re: PECO Energy Company Universal Services Three-Year Plan 2016-2018
Docket No. M-2015-2507139**

Dear Secretary Chiavetta,

Please find attached for filing the **Joint Petition for Reconsideration and/or Clarification of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.) of the Final Order Entered August 11, 2016**, in the above-captioned proceeding.

Copies of this filing were served on the Parties of Record, in accordance with the attached Certificate of Service, and emailed to the Commission Staff indicated below.

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

Sincerely,


Elizabeth R. Marx
Counsel for CAUSE-PA

**cc: Parties of Record, as Indicated in Attached Certificate of Service
Joseph Magee, jmagee@pa.gov
Sarah Dewey, sdewey@pa.gov
Louise Fink Smith, finksmith@pa.gov**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the **Joint Petition for Reconsideration and/or Clarification of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)** of the Final Order Entered August 11, 2016, in accordance with 52 Pa. Code § 1.54.

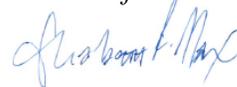
VIA EMAIL and/or FIRST CLASS MAIL

Ward Smith, Esq.
Richard G. Webster, Jr.
2301 Market Street
Philadelphia, PA 19101
Ward.smith@exeloncorp.com

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

Josie Pickens, Esq.
Thu B. Tran, Esq.
Robert W. Ballenger, Esq.
Lydia R. Gottesfeld
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



Elizabeth R. Marx
PA ID # 309014
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

Dated: August 26, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT PETITION FOR RECONSIDERATION AND/ OR CLARIFICATION BY
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)**

AND

**THE TENANT UNION REPRESENTATIVE NETWORK AND ACTION ALLIANCE OF
SENIOR CITIZENS OF GREATER PHILADELPHIA (TURN *et al.*)**

OF THE FINAL ORDER ENTERED AUGUST 11, 2016

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*), through its counsel at Community Legal Services, hereby submit this Joint Petition for Reconsideration pursuant to Public Utility Commission Regulations at 52 Pa. Code §§ 5.41 and 5.572, and requests timely reconsideration and/or clarification of the Commission's August 11, 2016, Final Order in the captioned proceeding. CAUSE-PA and TURN *et al.* submit the following in support thereof:

INTRODUCTION AND BACKGROUND

1. On August 11, 2016, the Public Utility Commission (“Commission”) issued a Final Order directing that PECO revise its Universal Service and Energy Conservation Plan consistent with its Order. The Order addressed a number of critical policy issues with regard to the programmatic design and implementation of PECO’s Universal Service and Energy Conservation programs designed to assist low income customers to afford essential utility services.
2. CAUSE-PA and TURN *et al.* file this Petition for Reconsideration, urging the Commission to clarify and/or reconsider its instructions with regard to (1) medical certificate renewal requirements for customers who are seriously ill or require the continuation of service to treat a medical condition; and (2) post-bankruptcy security deposit requirements for CAP-eligible customers.
3. With regard to medical certificate renewal process, CAUSE-PA and TURN *et al.* allege that the Commission’s Final Order requiring medically vulnerable PECO customers to eliminate all prior arrears before allowing a medical certificate to be renewed beyond the first 90 days is contrary to statute, regulation, and clear Commonwealth Court and Commission precedent.¹
4. With regard to post-bankruptcy security deposit requirements for CAP-eligible customers, CAUSE-PA and TURN *et al.* allege that the Commission’s Order does not assess whether

¹ See 52 Pa. Code §§ 56.114 and .116; see also Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14, Final Order: Attachment 1, Summary of Comments and Discussion, Docket No. L-00060182, at 148-49 (Mar. 22, 2011); Chapter 14 Implementation, Final Order, M-2014-2448824, at 15 (June 11, 2015).

PECO's policy thwarts the state's CAP affordability objectives, therefore undermining the objectives of Chapter 14 and the requirements of the Choice Act.

STANDARD OF REVIEW

5. The standard for granting reconsideration or clarification of a prior Commission order is articulated in *Duick v. Pa. Gas & Water Co.*, 56 Pa. P.U.C. 553 (1982). In *Duick*, the Commission held:

A petition for reconsideration, under the provisions of 66 Pa. C.S. §703(g), may properly raise any matters designed to convince the commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad case, wherein it was said that “[p]arties...cannot be permitted by a second motion to review or reconsider, to raise the same questions which were specifically considered and decided against them. . . .” **What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the commission.** Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.²

6. CAUSE-PA and TURN *et al.* seek clarification and reconsideration on questions of law which appear to have been overlooked by the Commission. Particularly, CAUSE-PA and TURN *et al.* allege that the Commission was unclear in its instruction with regard to medical certificates, and may have erred as a matter of law in its Final Order with respect to the requirements under which (1) a customer may renew a medical certificate and (2) PECO may charge a security deposit to its CAP-eligible customers after a bankruptcy proceeding.

² *Duick v. Pa. Gas & Water Co.*, 56 Pa. P.U.C. at 559 quoting *Pa. R.R. Co. v. Pa. P.U.C.*, 118 Pa. Super 380, 17 A. 850 (1935) (emphasis added).

ARGUMENT FOR RECONSIDERATION AND/OR CLARIFICATION

Medical Certificate Renewal

7. In its initial Plan filing, PECO proposed the following change: “Customers enrolled in InPA Forgiveness are not eligible for additional Medical Certificates if they have already used three to avoid termination due to in-program arrears.” (PECO Proposed 2016-2018 Plan at 10)³.
8. CAUSE-PA and TURN *et al.* opposed PECO’s proposed limitation on medical certificates in their Comments, explaining that the medical certification process requires payment of *current charges* for medical certificate renewals beyond the first three (90 days). (Final Order at 19, citing CAUSE-PA Comments at 9; Final Order at 20, citing TURN *et al.* at 12).
9. CAUSE-PA and TURN *et al.* argued that those who are enrolled in the InPA Forgiveness program should not be prevented from obtaining a medical certificate so long as they have kept up with **current** charges that come due while the medical certificate is in place. (Final Order at 19-20, citing CAUSE-PA Comments at 10-11 & TURN *et al.* Comments at 12).
10. In its Reply Comments, PECO argued “that unless customers ‘materially’ eliminate their arrearage over the course of a medical certificate and two renewals, no further renewals should be given.” (Final Order at 20, citing PECO Reply Comments at 9-10). PECO noted that “the Commission has previously deferred concerns raised about the medical certificate renewal process to the Chapter 56 rulemaking.” (Id.)

³ “InPA Forgiveness” is short for “In-Program Arrearage Forgiveness.” Pursuant to the InPA Forgiveness program, current CAP customers with arrearages accrued while in the CAP program “will have two-thirds of their CAP arrears frozen for forgiveness and will be responsible for paying the remaining one-third incrementally over a 5-year period, regardless of CAP status.” (Final Order at 15). InPA Forgiveness was a component of the Joint Settlement, which redesigned PECO’s CAP structure to produce better levels of affordability for CAP customers, and was approved for adoption in PECO’s last Base Rate proceeding. The intent of InPA Forgiveness was to rectify years of unaffordable bills under PECO’s current tiered discount CAP structure.

11. The Commission resolved this issue in its Final Order by directing that PECO “recognize that enrollment in InPA Forgiveness does not preclude the use of medical certificates if the customer **meets their payment obligations** and otherwise qualifies for a medical certificate,” and ordered PECO to include the change in its Revised 2016-2018 Plan. (Final Order at 21 (emphasis added)). The Commission explained: “customers who meet the medical criteria and who pay their CAP bills in-full and on-time after enrollment into InPA Forgiveness should be permitted to use the medical certificate process to suspend a future service termination.” (Final Order at 21).

12. The Commission, however, provides conflicting and/or unclear instruction with regard to what it means for a customer to “meet[] their payment obligations” for a medical certificate renewal. The Commission stated that the medical certificate process requires customers to “have brought their accounts into **current status**” by the end of the term of the medical certificates (90 days). (Final Order at 20). It noted, with regard to InPA Forgiveness, that “[c]ustomers enrolled in InPA Forgiveness **only become current on their bills by actually paying the full amount of their CAP balance.**” (Final Order at 21 (emphasis added)). Yet the Commission also stated “that customers who meet the medical criteria and **who pay their CAP bills in-full and on-time** after enrollment into InPA Forgiveness should be permitted to use the medical certificate process to suspend a future service termination.” (Final Order at 21 (emphasis added)). These two sets of instructions are confusing, and do not set forth clear and legally sound guidance for PECO to ensure that its medical certificate renewal process is compliant.

13. The statutory law governing medical certifications is set forth in Title 66, Chapter 14 of the Pennsylvania Consolidated Statutes, as amended in December 2014:

a. 66 Pa. C.S. § 1403 defines the term “medical certificate” as:

A written document, in a form approved by the commission:

- (1) certifying that a customer or member of the customer’s household is seriously ill or has been diagnosed with a medical condition which requires the continuation of service to treat the medical condition; and
- (2) signed by a licensed physician, nurse practitioner or physician’s assistant.

b. 66 Pa. C.S. § 1406(f) provides:

Medical certification – A public utility **shall not terminate** service to a premises when a customer has submitted a medical certificate to the public utility. The customer shall obtain a medical certificate verifying the condition and shall promptly forward it to the public utility. The medical certification procedure **shall be implemented in accordance with commission regulation.**

14. Turning to the Commission’s regulations, which implement the medical certification process as required in section 1406(f), Sections 56.114 and 56.116 of Title 52 in the Pennsylvania Code provide, in relevant part:

§ 56.114. Length of Postponement; Renewals.

Certifications may be renewed in the same manner and for [30 days] ... if the customer has met the obligation under § 56.116 (relating to duty of customer to pay bills). In instances when a customer has **not** met the obligation in § 56.116 to **equitably make payments** on all bills, the number of renewals for the customer’s household is limited to two 30-day certifications filed for the same set of arrearages.⁴

§ 56.116. Duty of Customer to Pay Bills.

Whenever service is restored or termination postponed under the medical emergency procedures, the customer shall retain a duty to make payment on **all current undisputed bills** or budget billing amount as determined under § 56.12 (relating to meter reading; estimated billing; customer readings).⁵

15. It is clear from these regulations that the number of renewals of medical certifications is only limited when the customer has not met the obligation to pay all current undisputed bills. If current undisputed bills are paid, the customer is entitled to further renewals under § 56.114.

⁴ 52 Pa. Code § 56.114.

⁵ 52 Pa. Code § 56.116 (emphasis added).

16. The Commission made it clear in its last rulemaking proceeding that inclusion of the word “current” in section 56.116 was deliberate, and was intended to limit the payment requirement for medical certifications to **current charges** accumulated during the pendency of the medical certificate(s). The Commission explicitly rejected requests to include past-due arrears, as such a requirement would not be equitable pursuant to section 54.114. In relevant part, the Commission explained:

[I]f the customer is paying their current bills as required by this section, the outstanding balance will not be increasing, meaning that the customer’s and the utility’s problems with the account balance will not be aggravated. We expect that once the medical certificate expires, the utility would address the outstanding balance with the customer. We also point to the petition process at § 56.118 that a utility may use to possibly void a medical certificate that a utility believes is being used to avoid the payment of the account balance.

...

[T]he proposed language requiring payment on all current bills or budget bills brings much needed clarity to this section, and recognizes the disruptive nature of serious illness on customers. At the same time, we believe this proposal will aid both consumers and utilities in preventing the accumulation of additional arrearages while a customer is under the protection of a medical certificate.⁶

17. In its most recent Chapter 14 Implementation Order, the Commission held steadfast in its interpretation of section 56.116 bill payment requirements:

[W]e reiterate that we said in the 2011 rulemaking and in the current 52 Pa. Code § 56.116: that customers ‘shall retain a duty to make payment on all current undisputed bills or budget billing amount...’ while under the protection of a medical certificate. We further reiterate that this means the current bill (or budget bill) amount must be paid in full by the due date. Failure to do so by the customer means that the utility can count the medical certificate toward the limits found in 52 Pa. Code § 56.114.⁷

⁶ *Id.* (emphasis added); see also Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14, *Comments of OCA*, at 46-47 (“Given the prohibition against termination of a customer with a medical certificate, the OCA would question whether a termination could proceed on the outstanding arrearages that are subject to the medical certificate as long as the customer is meeting their duty to pay their current bills. The OCA supports reaching equitable payment arrangements with the customer for the arrearages, but it must be recognized that the medical certificate is to protect against termination during the course of the illness for the accrued arrearages or other reason for termination. *As long as the current bills are being paid in full, service should remain available for the customer until the medical certificate is removed.*”).

⁷ Chapter 14 Implementation, Final Order, M-2014-2448824, at 15 (June 11, 2015).

18. The Commonwealth Court has long held that the medical certification requirements must be liberally interpreted: “It is clear that remedial statutes, such as those code provisions [the emergency medical certification provisions], are to be broadly and liberally construed to expand the rights of those who benefit, not to contract those rights.”⁸
19. Requiring a medically vulnerable household to pay more than their current charges to renew a medical certificate, and prevent termination, directly contradicts the clear statutory mandate in section 1406(f), the regulatory mandates of Sections 56.114 and 56.116, and established precedent. When a customer obtains a medical certification, he or she does so because of seriously illness or injury, which will be exacerbated by the cessation of service. Indeed, these customers are struggling to care for an acute medical condition – often facing extreme financial and emotional stress which comes with caring for themselves or a household member – and must resort to the medical certification process to avoid the added burden and risk of losing electric service. It would be inequitable, and antithetical to the protection offered under a medical certificate, to expect that a customer could pay current charges in addition to any existing arrears while subject to an acute medical condition. As the Commission explained when it promulgated the applicable regulation, *when a customer who is protected by a medical certificate is paying their current bills in full and on time, the balance owed does not grow – and can be addressed more appropriately at the end of the individual’s medical crisis.*⁹
20. For the reasons outlined above, CAUSE-PA and TURN *et al.* respectfully requests that the Commission reconsider its Final Order, and require PECO to revise its medical certification

⁸ *Tenant Action Group v. Pa. PUC*, 514 A.2d 1103 (Pa. Commw. 1986).

⁹ Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa. C.S., Chapter 14; *Final Order: Attachment 1, Summary of Comments and Discussion*, Docket No. L-00060182, at 148-49 (Mar. 22, 2011).

process to allow renewal in any case – regardless of the number of medical certificates issued – provided the customer pays their current charges and/or budget bill amount throughout the pendency of the certificate.

Post-Bankruptcy Security Deposits for CAP-Eligible Customers

21. In its Plan, PECO proposed to charge a deposit regardless of income level in the case of a post-bankruptcy account. (PECO Proposed 2016-2018 Plan at 23).
22. CAUSE-PA and TURN *et al.* opposed PECO’s proposal to charge a post-bankruptcy deposit when a customer is CAP eligible. CAUSE-PA argued that 66 Pa. C.S. § 1404(a.1) prohibits utilities from charging CAP-eligible customers a security deposit, and requested that the Commission direct PECO to waive security deposits for all customers eligible for CAP, regardless of whether the account was established post-bankruptcy. (Final Order at 39, citing CAUSE-PA Comments at 19). TURN *et al.* recommended that the Commission direct PECO to provide details on how it will employ its post-bankruptcy deposit policy. (Final Order at 39, citing TURN *et al.* Comments at 13). Specifically, TURN *et al.* requested that PECO be required to explain the following: whether PECO will assess this deposit after the filing of a bankruptcy petition or after the debtor’s bankruptcy has been discharged; how PECO will calculate the deposit when a debtor is CAP eligible, and whether the calculation will be based on expected CAP rates or non-CAP rates. (TURN *et al.* Comments at 13).
23. In its Reply Comments, PECO argued that the federal Bankruptcy Code pre-empts 66 Pa. C.S. § 1404(a.1). (Final Order at 39, citing PECO Reply Comments at 25-26.).
24. The Commission concluded that “PECO may require ‘adequate assurance of payment in the form of a deposit or other security, for service rendered after’ the date of the order for relief, regardless of the household’s income level.” (Final Order at 40).

25. CAUSE-PA and TURN *et al.* are concerned that PECO's policy of requiring a post-bankruptcy deposit from CAP eligible customers thwarts the state's CAP affordability objectives. The CAP policy statement provides guidance on affordability targets for electric and natural gas home energy. The CAP policy statement sets forth, in relevant part:

(2) *Payment plan proposal.* Generally, CAP payments for total electric and natural gas home energy should not exceed 17% of the CAP participant's annual income. The minimum payment should not be less than the guidelines in paragraph (3)(v)(A) and (B). Payment plans should be based on one or a combination of the following:

(i) *Percentage of income plan.* Total payment for total electric and natural gas home energy under a percentage of income plan is determined based upon a scheduled percentage of the participant's annual gross income. The participating household's gross income and family size place the family at a particular poverty level based on Federal poverty income guidelines.

(A) Generally, maximum payments for electric nonheating service should be within the following ranges:

(I) Household income between 0—50% of poverty at 2%—5% of income.

(II) Household income between 51—100% of poverty at 4%—6% of income.

(III) Household income between 101—150% of poverty at 6%—7% of income.

52 Pa Code § 69.265(2).

26. PECO's **proposed** post-bankruptcy deposit policy permits it to require a deposit when a customer is enrolled in CAP. PECO has not provided the Commission with any information to allow the Commission to determine whether this policy results in unaffordable bills for CAP customers, violating the CAP policy statement. CAUSE-PA and TURN *et al.* ask the Commission to clarify whether PECO may require post-bankruptcy deposits that result in unaffordable bills for CAP customers.

CONCLUSION

In accordance with the foregoing, CAUSE-PA and TURN *et al.* respectfully request reconsideration and/or clarification of the Commission's August 11, 2016 Final Order with respect to the payment requirements for medical certification renewal and the post-bankruptcy security deposit requirements for CAP-eligible customers. Specifically, CAUSE-PA and TURN *et al.* ask that the Commission reconsider and/or clarify that:

- (1) Pursuant to 52 Pa. Code §§ 56.114 and .116, a customer may renew a medical certificate beyond 90 days (three 30-day certificates), provided they pay the current monthly charges or budget bill amount in full and on time.
- (2) The requirement to pay current charges does not include payment on arrears accrued prior to the issuance of a medical certificate.
- (3) Participants in PECO's InPA Forgiveness program are eligible for the same medical certification protections as any other customer.
- (4) PECO may not thwart the state's CAP affordability objectives by requiring CAP customers to pay post-bankruptcy deposits that result in unaffordable bills.

PENNSYLVANIA UTILITY LAW PROJECT

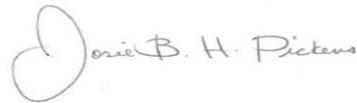
Counsel for CAUSE-PA



Elizabeth R. Marx, Esq., PA ID: 309014
Patrick M. Cicero, Esq., PA ID: 89039
Joline Price, Esq., PA ID: 315405
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088

COMMUNITY LEGAL SERVICES, INC.

Counsel for TURN et al.



Josie B. H. Pickens, Esq., PA ID 309422
Robert W. Ballenger, Esq. PA ID 93434
Thu B. Tran, Esq., PA ID 83086
1410 West Erie Avenue
Philadelphia, PA 19140
Tel.: 215-227-4378
Fax: 215-227-2435

August 26, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

VERIFICATION

I, Elizabeth R. Marx, verify that **JOINT PETITION FOR RECONSIDERATION AND/ OR CLARIFICATION BY THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA) AND THE TENANT UNION REPRESENTATIVE NETWORK AND ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA (TURN *et al.*)**, was prepared by me or under my direct supervision, and is true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Elizabeth R. Marx, Esq., PA ID 309014
The Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17055
pulp@palegalaid.net

Date: August 26, 2016