

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Universal Service :
and Energy Conservation Plan for 2013-2015 :
Submitted in Compliance with 52 Pa. Code :
§§ 54.74 and 62.4 : Docket No. M-2012-2290911

COMMENTS

of

**TENANT UNION REPRESENTATIVE NETWORK (“TURN”),
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA
 (“Action Alliance”), and THE COALITION FOR AFFORDABLE UTILITY SERVICES
 AND ENERGY EFFICIENCY IN PENNSYLVANIA (“CAUSE-PA”)
 (COLLECTIVELY “TURN et al.”)**

Concerning PECO’s Universal Service Three-Year Plan

November 28, 2012

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I. INTRODUCTION

On November 8, 2012, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued a Tentative Order in the matter of PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2012-2290911 (“Tentative Order”). The Tentative Order tentatively approved PECO’s Plan (“Plan”), in part, and solicited comments from interested parties. These Comments are submitted on behalf of Tenant Union Representative Network (“TURN”), Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) (collectively “TURN et al.”). TURN et al. submit that there are a number of issues of material fact that should be referred to the Office of Administrative Law Judge (“OALJ”) for investigation, hearing and decision.

II. SUMMARY

The purpose of these Comments is to address the issues that the Commission has identified in its November 8, 2012 Tentative Order for comments from PECO and interested parties. The Commission has listed the issues as follows:

In particular PECO is directed to comment on the following changes consistent with the discussion and direction herein: eliminate the CAP Rate design and move to a percent of income plan design; whether or not to retain the one-year arrearage forgiveness policy, make appropriate referrals to CAP Rate A while it is still in effect; require customer education and positive customer response rather than automatic enrollment in CAP upon receipt of a LIHEAP grant; recognize that the DSP docket requires shopping by CAP

customers; evaluate CAP credit policy guideline maximums on a per-customer basis; increase LIURP referral training; and address call center staffing.¹

Tentative Order at 31. The PUC also questioned PECO's practice of requiring Social Security Numbers for CAP eligibility and notarized statements of zero income from all adults of CAP households. Tentative Order at 20-22.

As the Tentative Order sets forth changes to prior orders, some of which approved settlements, the Tentative Order was served on the parties to those prior orders and settlements to afford them notice and the opportunity to be heard relative to the changes specified. TURN and Action Alliance were parties in the proceedings involving these prior orders, so have a direct and substantial interest in the outcome of the instant Plan.

In summary, TURN et al. submit these Comments urging the Commission to order PECO to do the following:

- Eliminate the CAP Rate design and move to a percent of income plan design consistent with the CAP Policy Statement;
- Increase enrollment in CAP Rate A by moving CAP Rate B customers with extenuating circumstances to CAP Rate A while it is still in effect;
- Retain the current policy of automatic enrollment in CAP upon receipt of a LIHEAP grant;
- Cease the practices of requiring Social Security Numbers from CAP household members and requiring notarized statements of no income;

¹ This list of changes on which the Commission solicits comments includes "whether or not to retain the one-year arrearage forgiveness policy," and "address call center staffing." It is not apparent from either the Tentative Order or the 10/12 APPRISE report as to why these changes are being recommended. TURN et al. reserve comment on these issues and/or may submit reply comments on these issues if appropriate.

- Retain the current policy of applying CAP credit maximums on an average customer design basis; and
- Increase LIURP referral training and provide the resources needed to ensure effective LIURP treatments to those households receiving LIURP.

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

III. ISSUES IDENTIFIED IN THE COMMISSION'S TENTATIVE ORDER

A. CAP RATE AFFORDABILITY

In 2000, the Commission initially found that PECO's CAP payment design was inconsistent with the CAP Policy Statement.² In response, PECO submitted a Petition for Expedited Approval of Consensus Modifications to PECO Energy Company's Universal Service Program and Associated Tariff Changes ("Consensus Modifications") in 2002. The consensus modifications created five payment levels, including new CAP Rates A, B and C that were designed for what was known as the "Special Needs" group of customers falling within 0-50% of the federal poverty guidelines. Following PECO's submission of its universal service plan in 2004, in accordance with the universal service reporting requirements, the Commission again determined that PECO's universal service plan did not consistently conform to the CAP Policy Statement.³ Both the Consensus Modifications and 2004 Order directed PECO to complete an evaluation of the effectiveness of design revisions to its universal service plan and to submit that evaluation to the Commission by May 2006. PECO retained APPRISE to conduct the independent third-party evaluation, resulting in two evaluation reports in April 2006 and October

²Commission Order entered September 29, 2000 at Docket No. M-00001418.

³ Order entered April 21, 2004 at Docket No. M-00041788.

2006 (“4/06 APPRISE” and “10/06 APPRISE”, respectively). The 2006 APPRISE reports showed that an overwhelming majority of PECO’s Special Needs CAP Rate customers have CAP budgets that exceed payment guidelines set in the CAP Policy Statement. 10/06 APPRISE at 60-61.

Despite CAP enhancements that have been implemented in subsequent years, the latest October 2012 APPRISE Evaluation (“10/12 APPRISE”) reported that a significant number of PECO’s CAP customers continue to experience unaffordable bills or bills that exceed Commission established energy burden guidelines.

Affordability: The Pennsylvania PUC has set energy burden targets for CAP participants. The analysis showed that while 70 percent of full year 2011 CAP participants had an energy burden at or below the PUC target, 30 percent had an energy burden above the target. While 84 percent of those with income at or below 25 percent of the poverty level had an energy burden above the target, 17 percent of those with income between 126 and 150 percent of the poverty level had an energy burden above the target. While 33 percent of those with electric baseload service had an energy burden above the target, 17 percent of those with electric heating or electric and gas service had an energy burden above the target.

10/12 APPRISE at xv.

Despite these conclusions, APPRISE was not able to ascertain to what extent the failure to achieve PUC established energy burden targets could be attributable to the structure of the CAP discount or to high usage. “Because a usage analysis was not part of this evaluation, we cannot determine what percentage of the customers exceed the target due to high usage.” 10/12 APPRISE at xvii. As discussed further below, the cause of this failure to achieve the PUC targeted energy burdens for so many CAP customers, the extent of the level of unaffordable bills, and determining how to correct PECO’s noncompliance with Commission policy are all issues that require further review and involve material facts that need further investigation, which should be referred to the OALJ for hearing and decision.

1. CAP Design

Since 1984, PECO's CAP Program has gone through a number of modifications. Until 1988, PECO's program was a percentage of income structure. TURN et al respectfully submit that the only way to ensure that each CAP customer's CAP bills meet energy burden targets is for PECO to return to a percentage of income plan ("PIP"). This approach was identified by PECO's independent evaluators as the only viable means of achieving affordability for all CAP customers.⁴ To that end, PECO should convert back to a PIP CAP design that provides bills that meet energy burden targets. Under a PIP, CAP customers receive a fixed predictable bill each month that can easily be understood to be a certain percentage of their income. The PIP approach would reduce the over-subsidy of those CAP customers who, in the current discount model, already receive bills that are lower than the energy burden targets, which would be a significant cost offset in a change to a PIP.

While TURN et al. recommend that the Commission order PECO to adopt a PIP, they submit that there may be other approaches that reach affordability for all CAP customers. One such approach may be to target the CAP rates more narrowly and eliminate the kWh usage threshold for the CAP discount. However, since the 10/12 APPRISE Evaluation did not include a usage analysis, more investigation is needed to assess the feasibility of other approaches. Such investigation of relevant material facts would be appropriate for referral to the OALJ for hearing and decision.

2. CAP Rate A

Regardless of the structure of the CAP program (PIP vs. the current rate discount model), TURN et al. agree that "PECO should ensure that its customer service representatives have the

⁴ See 10/12 APPRISE at 117-18 and Comments of Gil Peach received November 17, 2012 submitted to this docket.

requisite training to be aware that customers with special circumstances may be eligible for enrollment in CAP Rate A and to enroll them in CAP Rate A, as appropriate.” Tentative Order at 36. It is not surprising that there are reports of PECO’s staff referring to CAP Rate B, and not CAP Rate A, as the rate with the greatest discount. PECO’s CAP call center is not authorized to handle intake into CAP Rate A. Instead, CAP Rate A intake and enrollment occurs only through the few CARES staff in PECO’s Universal Services department. APPRISE at vi and 27. With only 3 or 4 PECO staff persons authorized to process CAP Rate A enrollment, the enrollment level is severely limited by this administratively created bottleneck, and despite a maximum enrollment of 7500 which had been approved by the Commission for CAP Rate A, the current enrollment is only 88 customers. Given PECO’s current process of allowing only CARES workers to enroll special needs customers into CAP Rate A, it is unlikely that CAP Rate A enrollment will ever meet the actual CAP Rate A need.

CAP Rate A customers are at the same income level as CAP Rate B customers, with the added characteristic of having “extenuating circumstances.” These extenuating circumstances, usually involving high-risk household members or other hardship, warrant providing this poorest of the poor group a nominal bill to avoid risk of further hardship to vulnerable special needs households. APPRISE recommends the investigation of CAP Rate B customers to determine the extent that high usage is the cause of the high rate of unaffordable bills among CAP Rate B customers. 10/12 APPRISE at 122-23. This investigation should include determining the extent that CAP Rate B customers are eligible for enrollment in lower CAP Rate A bills and why such CAP Rate A enrollment was never completed.⁵

⁵ The 10/06 APPRISE Evaluation showed that 73% of CAP B participants (about 7,000 at the time) lived in households with at least one vulnerable member, suggesting severe under enrollment in CAP Rate A. 10/06 APPRISE report, Table IV-3B, at 18.

With 84 percent of PECO CAP customers at or below 25% of the poverty level carrying energy burdens above the PUC target, (10/12 APPRISE at xv), there is a clear need to investigate the effectiveness of the currently employed PECO CAP program methodology for this lowest income group. The investigation should include assessing the need to enroll more customers into CAP Rate A, the extent of and causes of high usage and the feasible solutions. Given the complexity of issues involved, these are issues of relevant material fact that would benefit from fuller investigation in a proceeding before an ALJ.

B. CAP ENROLLMENT PROCEDURES

1. CAP Shopping

The Commission has recently directed that PECO implement customer choice for CAP customers beginning no later than January 1, 2014.⁶ In the Tentative Order, the Commission acknowledged that computer programming changes may need to be coordinated as PECO must modify computer programming to allow CAP customers to shop, at the same time it may also “need to modify computer programming for the change to a percent of income plan design if directed to do so.” Tentative Order at 20. Because a PIP bill would not change if monthly income has not changed, a PIP CAP design that allows for portability in the retail choice context would significantly ameliorate TURN et al.’s major concern that CAP shopping may place CAP customers at risk of higher bills. TURN et al., therefore, supports a process whereby a PIP is implemented before or at the same time that CAP shopping is implemented.

⁶*DSP II*, Docket No. P-2012-2283641 (October 12, 2012).

2. Automatic Enrollment with LIHEAP

In TURN et al.'s opinion, PECO has implemented a best practice of automatically enrolling LIHEAP recipients into CAP Rate and using LIHEAP information to satisfy recertification requirements. PECO has cited to significant efficiencies resulting from eliminating separate income verification. PECO should be encouraged to take further steps to work with DPW to obtain income level and household size information to facilitate the calculation of the household's federal poverty level and enrollment of customers into appropriate discount levels. The process of relying upon DPW to obtain and verify this detailed information will be even more critical if PECO's CAP is converted to a PIP, where household income and federal poverty level must be known to calculate the PIP bill. Whether PECO should abandon this currently effective process of CAP enrollment or conduct further education and require a positive customer response before enrollment would need further evaluation and analysis. The determination of these relevant material facts would be appropriate for referral to the OALJ for hearing and decision.

3. Requiring a Social Security Number

The Commission raises important concerns about PECO's Plan proposal and current practice of conditioning CAP enrollment on the provision of Social Security Numbers (SSNs) for all household members. Providing SSNs is not a requirement for obtaining utility service and is not a requirement for CAP enrollment. LIHEAP applicants are not precluded from LIHEAP eligibility if SSNs are omitted. The federal Privacy Act also limits the authority of government agencies to deny a benefit because of refusal to disclose a SSN. TURN et al. urge the Commission reject PECO's Plan proposal to require SSNs. PECO should not be permitted to

impose this SSN requirement through this Plan filing and should be ordered to cease its current practice of requiring SSNs.

A SSN requirement would have an especially adverse impact in the Philadelphia area where there is a high concentration of immigrants. Neither the receipt of utility service nor CAP eligibility is limited to households with a particular immigration status. A SSN requirement is unwarranted and would act to condition CAP enrollment upon having a particular immigration status. There are numerous immigration visas that do not allow or require the immigrant to apply for a SSN.⁷ Otherwise eligible immigrant applicants for CAP would be unreasonably discriminated against if a SSN requirement for CAP were allowed to continue.

Further, as the Commission has cited, the U.S. Social Security Administration has provided guidance suggesting that utility companies do not need SSNs and can do a credit check or identify the person in records by alternate means. Tentative Order at 21. PECO's CAP application currently requests name and date of birth of all household members, which is alternate information that PECO can use to identify household members. If PECO continues to insist that such information is inadequate to maintain the integrity of the CAP program, it should be required to provide evidentiary support for this position in a proceeding referred to the OALJ for hearing and decision.

4. Requiring Notarized Statement of No Income

The Commission appropriately questions whether requiring a notarized letter of no income is necessary to the operation of PECO's CAP. Tentative Order at 22. TURN et al. agree that such a requirement imposes financial and logistical burdens on persons who already lack the resources to appear before a notary public and pay for notary services. The Commission's

⁷8 C.F.R. §§ 101(a) and 203(b); <http://www.ssa.gov/immigration/>.

administrative procedural rules allow for verification of facts and “notarization is not necessary.” 52 Pa. Code § 1.36. A verification is a signed written statement of fact made expressly subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). Such a verification provides reasonably adequate assurance of the truthfulness of the statement of no income. Low-income CAP applicants should not be required to meet a more burdensome and costly notarization requirement in verifying the fact of no income. TURN et al. urge the Commission to deny PECO’s Plan proposal and order PECO to cease its current practice of requiring notarized statements of no income. In the alternative, PECO should be required to present an evidentiary basis for why such notarization is necessary to the operation of PECO’s CAP, and such evidence should be subject to scrutiny in a proceeding before an ALJ.

C. CAP CREDIT MAXIMUM

TURN et al. support PECO’s current policy that the maximum CAP credit is to be viewed as a general program design control rather than to be applied to each program participant. The Commission’s CAP Policy Statement indicates that its CAP control features are to be used to control program costs. The current CAP control measures employed by PECO do just that: they are effective at reducing program cost inefficiencies which could be created by high electric use participants. For example, the Commission CAP policy statement already recommends that CAP customers not exceed 110% of historic usage and PECO CAP customers who reach LIURP high usage guidelines must participate in the energy reduction and conservation programs offered by PECO.⁸ Moreover, imposing maximum CAP credits on an individual level would also have a significant negative effect on achieving compliance with the energy burden targets,

⁸ See Revised Universal Services Three-Year Plan at 13.

affordability and electric service retention which the Commission seeks to achieve through its Tentative Order in this matter.

TURN et al respectfully submit that imposing maximum CAP credits on an individual basis would needlessly punish customers who have energy usage and costs that are beyond their ability to control. CAP credits are flat dollar amounts that lead to a highly regressive punitive application when imposed on an individual level. CAP customers with the lowest income require a higher level of CAP credits than customers with income closer to the maximum CAP income eligibility limit, in order to obtain bills that fall within affordability guidelines as a percentage of income. The lowest income CAP customers who receive the largest CAP credit would reach their maximum CAP credits first. Individual application of the CAP credit limit could severely limit the discounts for the poorest customers who would need it most and result in their losing CAP assistance earliest, receiving non-discounted and thus unaffordable bills.

Increased service termination rates among the lowest income CAP participants will be an inevitable consequence of the application of maximum CAP credits to the individual CAP customer. It is significant that other EDCs who have imposed maximum CAP credits on an individual basis have had difficulty effectively removing customers who exceed these amounts from CAP and managing these customers' arrears. Customers removed from CAP for exceeding maximum CAP credits face the prospect of paying bills at unaffordable levels and incurring significant arrears. These customers, because they would very likely also have CAP arrears would, under current Commission interpretation, be ineligible for a Commission authorized payment agreement. Further, application of maximum CAP credits on an individual basis will result in higher uncollectible expenses and more termination expenses, the costs of which will eventually be paid by ratepayers.

In light of the fact that there is no evidence that this aggregate approach, as agreed to as a part of a settlement, has been abused or resulted in higher costs, TURN et al. strongly urges the Commission to retain the current general program design control without modification. In the alternative, should the Commission determine that a modification of the current process may be warranted, the resolution would be best referred to an Administrative Law Judge to make a determination after the development of a record of relevant material facts.

D. LIURP REFERRAL TRAINING

The Commission seeks comment on the effectiveness of PECO's LIURP education efforts and any training improvements needed for referrals to LIURP and other low income programs. The Tentative Order notes that the BCS analysis of PECO complaints "showed a statistically significant number of complaint calls from customers with an evident need who had not been referred to LIURP." Tentative Order at 26. The 10/12 APPRISE Report also recommends that PECO target CAP Rate B customers with high usage for LIURP. 10/12 APPRISE at 123. The Tentative Order further notes that BCS has identified CAP Rate B customers who are carrying extremely high in-program arrearages. Tentative Order at 16.

While there appears to be a need for greater targeting of LIURP to the lowest income CAP customers in particular, TURN et al. also recommends that an evaluation be done into the housing conditions and heating situations of CAP customers at or below 25% of the federal poverty level to assess the need for services beyond LIURP. Customers with the very lowest incomes can only afford to live in the lowest cost or lowest rent housing, which are more likely to be in poorly weatherized condition, accompanied by high utility bills. These homes may benefit significantly by receipt of LIURP, may qualify for CAP cost control exemptions, or may

require additional non-LIURP energy efficiency services. Additional LIURP measures may be required to address the circumstances of these lowest income CAP customers. TURN et al. is particularly concerned that the PECO proposed plan has an anticipated static LIURP total program budget for each program year of \$7,850,000 and projects a decreased number of audits each year as a result of increased costs for measures. To determine the actual energy efficiency needs of these low-income customers, a record of relevant material facts should be developed through referral to the OALJ for hearing and decision.

III. CONCLUSION

TURN et al. urge the Commission to order PECO to eliminate the CAP Rate design and move to a percent of income plan design consistent with the CAP Policy Statement, to increase enrollment in CAP Rate A by moving CAP Rate B customers with extenuating circumstances to CAP Rate A while it is still in effect, to retain the current policy of automatic enrollment in CAP upon receipt of a LIHEAP grant, to cease the practices of requiring Social Security Numbers from CAP household members and requiring notarized statements of no income, to retain the current policy of applying CAP credit maximums on an average customer design basis, and to increase LIURP referral training and provide the necessary resources to effectuate LIURP treatments to those households to whom LIURP referral is made. In the alternative, TURN et al. request that these and the remaining issues in the Tentative Order be referred to the OALJ for hearing and decision.

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