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November 28, 2012

VIA Federal Express

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

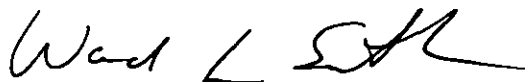
**Re: PECO Energy Company Universal Services and Energy Conservation Plan for
2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4
Docket No.: M-2012-2290911**

Dear Secretary Chiavetta:

Enclosed for filing in this docket is one signed original copy of the Comments of PECO Energy Company to the November 8, 2012 Tentative Order.

Please let me know if you have any questions.

Sincerely,



Ward L. Smith
Assistant General Counsel

Enclosures
WS/lo

cc: (Via email in Word-compatible format)

Grace McGovern, Bureau of Consumer Services
Louise Fink-Smith, Law Bureau
Cyndi Page, Office of Communications

**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**
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**COMMENTS OF PECO ENERGY COMPANY
TO THE NOVEMBER 8, 2012 TENTATIVE ORDER**

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

I. INTRODUCTION

On November 8, 2012, the Commission issued a Tentative Order in which it invited comments on the PECO Energy Company (“PECO”) Universal Service and Energy Conservation Plan for 2013-2015 (the “2013-2015 Three-Year Plan”). PECO appreciates the opportunity to provide these comments.

Although the Tentative Order touches on many issues, it primarily asks whether there are unresolved material factual questions associated with PECO’s 2013-2015 Three-Year Plan, such that the 2013-2015 Three-Year Plan should be referred to the Office of Administrative Law Judge (“OALJ”) for evidentiary hearings. PECO answers with a qualified “yes” – some, but not all, of the issues identified in the Tentative Order pose unresolved material factual questions that may need to be resolved in a litigated proceeding before an Administrative Law Judge. (For each issue on which the Commission requested input, PECO’s comments provide its recommendation on whether that issue should be referred to the OALJ or be resolved on the basis of written

comments. A summary table of PECO's referral recommendations is provided at the end of these comments.)

However, PECO also respectfully recommends and requests that, prior to moving to any litigation on the 2013-15 Three-Year Plan, the Commission allow PECO and the other low-income stakeholders – specifically, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, Community Legal Services and the Public Utility Law Project, and such other appropriate stakeholders whose intervention is granted – to meet collaboratively to determine whether they can resolve, eliminate, or at least more clearly delineate the issues for litigation. These parties have worked together for many years, in many contexts, on PECO's universal services programs. PECO strongly believes that these stakeholders can and will work in good faith to further these issues prior to engaging in litigation.

As discussed in more detail in Section II.(d) of these comments, many of PECO's low-income subject matter experts will spend substantial time in the next several months working to develop PECO's CAP shopping platform. Therefore, PECO requests that it and the other stakeholders be allowed to conduct informal collaboration in this docket, as a prelude to the issues to be litigated, through May 1, 2013. PECO requests that, on or before that date, PECO (on behalf of itself and the other collaborative stakeholders) will submit a report to the Commission describing the factually contested issues, if any, upon which consensus has been reached and further describing the issues on which consensus

has not been reached and on which litigation needs to proceed. Formal litigation in this docket would then proceed on that more limited and delineated group of issues.

II. CAP Rate

a. Affordability (pp. 14-17)

The Tentative Order discusses numerous issues under the heading of “Affordability.”¹

Affordability and a Percentage of Income Plan (“PIPP”) (pp. 14-15, 17)

The Tentative Order states that PECO’s CAP Rates do not result in affordable electric service to its CAP customers. Indeed, as the Tentative Order notes, PECO recently-filed six-year evaluation reaches the conclusion that that, for some of the CAP population, the program as structured has not attained affordable rates. The Commission therefore asks whether PECO should be required to switch from its CAP Rate program to a Percentage of Income Plan (“PIPP”).

¹ On page 11, the Tentative Order notes that in PECO’s CAP Program: “The customer does not have to be payment-troubled, as recommended by the CAP Policy Statement. . . .”

PECO has recently observed CAP applications from customers who own very substantial assets – sometimes in the hundreds of thousands of dollars -- but have recently experienced decreased income and are therefore income-eligible for CAP. If the Commission wishes this proceeding to include a discussion of “payment troubled” thresholds, PECO respectfully requests that this discussion cover whether PECO may implement an “asset test” in which customers who own assets in excess of some to-be-determined threshold will not be CAP-eligible, regardless of their level of income, because they will be deemed not to be payment-troubled due to their assets.

PECO believes that two broad questions are implicated by this inquiry. First, should PECO's CAP program aim to achieve affordability, given the costs associated with doing so? Second, if so, what is the proper program structure for accomplishing any changes? For both of these broad questions, PECO believes the issues are quite complex and involve careful balancing of various stakeholders' concerns. PECO therefore recommends that the Commission should not attempt to resolve them on the basis of written comments and reply comments. Instead, these issues should be dealt with in – and actually be the central concern of – the informal collaborative discussions that PECO recommended earlier in these comments. Such discussions on these core issues will help to minimize and refine the areas of disagreement that the Commission will need to resolve in any subsequent litigation. PECO does, however, provide the following comments to frame these issues.

The first question is: Should PECO's CAP program aim to achieve affordability, given the costs associated with doing so? PECO notes that the current levels of discounts were developed over many years in settlements with the stakeholders and with the Commission's approval. (The proceedings in which those settlements were reached are detailed in the Tentative Order.) While no stakeholder was fully satisfied with any of those settlements, the settlements clearly did result in very large growth in PECO's CAP program, from approximately \$30 million of CAP discounts being offered in the 2001-2003 time range to approximately \$80 million of CAP discounts in the current program. But in each settlement the program growth was tempered by the recognition of PECO and other parties that increases in the size of the CAP discounts are matched by increases in

the cost of the CAP program – costs that are borne by other residential customers.

PECO fully anticipates that this proceeding may result in a similar balancing, and that the stakeholders and the Commission may conclude that the CAP program should not seek to provide full affordability for the CAP population.

It should also be noted that, while PECO's CAP discounts have not resulted in affordable rates to all CAP customers, the program is nonetheless a success by other key measures of affordability. For example, the Tentative Order states (p. 15) that:

Program affordability can be measured, and operating expenses can be influenced directly by how successfully customers pay their energy bills once enrolled in the CAP program. A review of data submitted by EDCs and NGDCs to BCS . . . shows that, on average, CAP participants pay between 80% and 85% of their CAP budget bills.

For the three-year period 2009-2011, PECO's CAP participants paid 82.6% of their CAP budget bills. This puts PECO's payment levels directly within the average range of CAP programs statewide. By this measure of program affordability, then, PECO's program is consistent with other programs in the state. The stakeholders and the Commission may ultimately conclude that, even though PECO's CAP program does not hit the specific affordability targets in the Commission's guidelines, it nonetheless is successful by this alternative measure of affordability.

It is also worth consideration that one of the primary reasons that PECO's rates do not attain affordability for its poorest customers is because, in some situations, Commission-mandated cost containment measures require PECO to issue bills that are higher than the affordability targets. In order to provide affordable bills to 90% of

PECO's CAP B customers, PECO would have to tender monthly bills of approximately \$8 per month. Yet the Commission's CAP Policy Statement specifically states that a monthly Rate R bill should be at least \$12-15 per month. 52 Pa. Code § 69.265(3). Consequently, PECO issues \$12 monthly bills to this group, which automatically causes them to receive bills that are, on average, 150% of the amount that would attain affordability. As long as the Commission imposes this cost control feature, these customers will not attain affordability. (This will be true whether PECO retains its CAP rate tiers or moves to a PIPP, since this cost control feature would be imposed in either program.)

Similarly, PECO's rates have a cost control measure that is intended to encourage conservation and impose responsibility on the CAP customer for higher-than-average usage. (PECO's discounts are applied only up to a point – usually 650 kWh per month, but more in some situations.) This emphasis on conservation is consistent with CAP Policy Statement's strong focus on conservation. For example, the CAP Policy Statement requires education on conservation, 52 Pa. Code §69.265(6)(vi), allows exemption from the maximum credit limitation if usage was "beyond the household's ability to control," §69.265(3)(vi), and directs that CAP participant usage should be limited to 110% of the customer's historical usage. §69.265(3)(iii).

Having these usage limits in the PECO program, however, also means that a customer who uses even small amounts above the usage threshold will create an unaffordable bill. For example, a CAP B customer using 850 kWh will receive a bill for

approximately \$27.00, which is well in excess of the \$8.00 per month bill that is needed to attain affordability for the CAP B class. Such a bill will not meet the Commission's affordability guidelines – and that will remain the case as long as this cost control factor is in place.

In order to provide a preliminary view of the scope of the affordability issue, PECO notes that earlier this year it conducted a preliminary analysis of how much its existing program would need to be increased in order to attain affordability for 90% of the customers in each tier (88% in CAP tier E). Using actual consumption figures from June 2011-May 2012, PECO calculates that an additional \$27 million in CAP discounts would have been required during that period in order to meet the least stringent of the Commission's affordability targets. If one seeks to provide affordable discounts to 100% of the CAP population, or if the affordability target is changed to the middle of the Commission's affordability target ranges, an additional tens of millions of dollars would be required. It is not apparent to PECO that either the other stakeholders or the Commission would wish PECO to enlarge its CAP program by that amount.

The second question is: What is the proper program structure for accomplishing any changes? The two primary approaches that are discussed in the Tentative Order are continuation of PECO's tiered CAP rates, or implementation of a PIPP.

Any discussion of moving to a PIPP needs to include discussion of the transition costs – IT programming, training, etc. – that would be required in order to effectuate the

transition. PECO has conducted a first level analysis of this issue, and believes that the IT and training costs of such as transition would be in the range of \$4.5-\$6 million.

PECO also notes that, if full affordability is going to be sought, that will be an expensive proposition regardless of the program structure. As noted above, PECO estimates that it would take approximately \$27 million to attain affordability in its current structure. But attaining affordability through a PIPP would also be expensive. Dr. Gil Peach early-filed his comments in this docket on November 17, 2012. Dr. Peach states (p. 8) that, based on his analysis of 2003 data, a PIPP in that year could have attained full affordability for 100% of the population for a cost increase of \$11 million per year over the current program costs. Assuming for the sake of argument that this number is generally correct, it demonstrates that achieving full affordability, even under a PIPP, will be a very expensive proposition.

Moreover, there is substantial reason to question whether this \$11 million figure is correct – or least to require further inquiry into the consequences of pursuing a PIPP based upon it. PECO's tiered rate structure works so that most customers in each tier get CAP discounts somewhat beyond the absolute minimum required to attain the limits of the Commission's affordability range. As PECO understands Dr. Peach's analysis, he assumes that each dollar beyond that absolute minimum will no longer be provided to those customers, but instead will be used to fund the PIPP discounts. Effectively, Dr. Peach is advocating that the PIPP would partially be funded by taking dollars that are currently given to one set of poor customers and redirecting them to another set of poor customers. If and only if that approach is used is Dr. Peach's \$11 million projection

correct. If the benefits to existing customers are retained, then a PIPP to attain affordability for the remaining customers would far exceed Dr. Peach's \$11 million estimate.

PECO notes that other experts have reviewed PECO's program and different data on how many of the existing funds should be deemed "mis-targeted" and therefore available to fund a PIPP. For each federal poverty level group, the Commission's affordability targets are not a single point, but rather are a range of percentages. *One way of looking at the PIPP funding issue is to assume that existing program funds do not become "available" to fund a PIPP unless the existing customer's benefits cause their affordability to go outside of that range – that is, to over-compensate the customer so that service becomes very affordable.*

In PECO's first DSP Proceeding Docket No. 2008-2062739, Dr. Roger Colton presented testimony on behalf of the Office of Consumer Advocate that provides data on this approach. Dr. Colton reviewed PECO's tiered rate structure to determine whether some customers were being over-compensated, and thus whether the existing structure could be deemed to have "mis-targeted" benefits that could be re-directed within the CAP population. Dr. Colton concluded that there were some, but not many, customers who were being over-compensated by PECO's rate tier program – and that consequently there were few program costs that he deemed to be "mis-targeted." Indeed, in his Direct Testimony in that proceeding Dr. Colton concluded (p. 10) that PECO's tiered rate program is a "fundamentally reasonable approach" and stated (p. 17) that, despite the

mis-targeting that is to some extent inherent in the tiered rate approach, “PECO has decided, and I do not find that decision to be unreasonable, that the inefficiency that exists in benefit targeting is appropriate given the corresponding ease of program administration.”

PECO recognizes that the OCA and Dr. Colton likely will conduct additional analysis in this docket, and may well reach different conclusions than those presented by PECO. PECO’s point, however, remains intact. Attaining full affordability is likely to be a very expensive proposition, regardless of the CAP structure that is ultimately utilized. Even under a PIPP, it may be more expensive to accomplish affordability than Dr. Peach suggests. More studies and discussions will be needed for the parties to flesh out their positions. And, in PECO’s experience, the stakeholders may decide to stop short of full affordability for a variety of reasons, primarily focused on cost control.

Of course, such studies and discussions can be performed in the context of litigation under the oversight of an administrative law judge. PECO respectfully submits, however, that it and the low-income stakeholders have demonstrated over many years of collaborative work, including work under the auspices of PECO’s Universal Services Advisory Group, that they can work in good faith to move issues forward outside of the fully litigated setting.

There is an additional advantage to allowing time for a collaborative in this docket. On November 21, 2012, the Commission issued an Opinion and Order in PECO’s

DSP II Proceeding in which it addressed the timing of PECO's CAP Shopping filing. In that docket, PECO had requested that a March 31, 2013 filing date for its CAP Shopping plan be treated as a "safe harbor" date. The Commission (pp. 16-23 and Ordering Paragraph 7) rejected that request, and directed PECO to work forthwith with the Commission's Office of Competitive Market Oversight to develop and file a plan to be effective on January 1, 2014. In order to accomplish that, some of PECO's key CAP managers and subject matter experts will need to spend substantial time focused immediately on the CAP Shopping proposal. By allowing the issues in the Three-Year Plan proceeding to develop on a parallel, but less aggressive, collaborative track (followed by litigation if needed at a later date), the Commission will allow PECO to properly devote its resources to the top priority of implementing CAP shopping by January 1, 2014.

Affordability and Revenue and Expense Impacts (p. 14)

The Tentative Order notes (p. 14) that the Commission's review of the affordability of CAP programs includes "both revenue and expense impacts," such as "the return requirement on cash working capital for carrying arrearages and the cost of credit and collection activities for dealing with low-income customers and uncollectible account expenses for writing off bad debt for these customers." PECO notes that it *currently utilizes a 5% offset for cash working capital and a 22% offset for credit and collection and uncollectible expense when performing CAP calculations and rate analysis.* PECO's internal analysis suggests that these numbers may be too high, and that

the proper value may be somewhere in the mid-to-high teens. PECO therefore recommends and requests that, in the event affordability issues are sent to the Office of Administrative Judge, that the question of the proper offset amounts for cash working capital and credit/collection and uncollectible expense should be made a part of that proceeding.

Affordability and Customer Confusion (pp. 15-16)

The Tentative Order's discussion of affordability also contains a discussion (pp. 15-16) of potential customer confusion in PECO's CAP Rate program, and requests comment on those issues. The Tentative Order notes that the Commission's Bureau of Consumer Services ("BCS") conducted a review of all informal complaints filed against PECO during the year September 2011 -- August 2012 and identified 493 complaints related to its CAP program. From this population, the BCS identified two areas of concern.

First, the BCS identified 42 specific occurrences where PECO offered a payment arrangement to a CAP customer wherein the payments equaled 20% or more of the customer's monthly income. The Tentative Order notes that: "This may be inconsistent with the . . . CAP Policy Statement which provides guidelines that total electric and gas home energy should not exceed 17% of a CAP participant's income. . . ." PECO respectfully submits that no hearing is required on this issue. The Pennsylvania Public Utility Code., 66 Pa. § 1405 (c) states that: "Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved

by the Commission.” Simply, PECO is not required to provide payment arrangements of any sort to its CAP customers and the Commission is prohibited by statute from approving – or by implication, disapproving – them. If it chooses to voluntarily offer them, the Commission does not have authority to disapprove the offered terms. PECO does not see any unresolved material factual issues to be addressed at an evidentiary hearing, and recommends that this issue should be resolved on the basis of comments.

Second, the BCS identified 43 CAP-enrolled customers with accrued arrearages exceeding \$1000. As the Commission is aware, in 2012 PECO voluntarily wrote-off all CAP in-program arrearages in excess of \$1,000, providing over \$25 million in write-offs to more than 16,000 customers. It is unclear what remaining material factual issue would be taken to an ALJ regarding this issue.

It is not clear what other areas of confusion the BCS identified in its review of informal cases. In PECO’s experience with informal disputes, a very large number of the 493 informal disputes undoubtedly involved CAP customers who were seeking payment arrangements, which PECO would not give them and which the Commission was without jurisdiction to order. PECO does not believe that fact pattern presents any material factual issue that needs to be presented to an ALJ.

Finally, PECO notes that its CAP population during the period of the BCS study ranged between 130,000 and 140,000 CAP participants, depending upon the month. 493 complaints filed were filed with the Commission. If the Commission is correct that

program dissatisfaction can be determined by the number of complaints, these numbers demonstrate that 99.6% of PECO's CAP population is satisfied with the CAP program.

Affordability and CAP A (p. 16)

The Tentative Order notes that PECO has 88 customers in its CAP Rate A, and invites comments on "how accurately PECO is assigning customers to the proper CAP rate schedule."

PECO believes that this issue can be resolved on the basis of comments and does not need to be sent to the Office of Administrative Law Judge. PECO's CAP Rate A is available only to customers who demonstrate an inability to pay CAP B bills due to a number of listed "unique circumstances." Typically, a customer has to first receive CAP B service for some period of time to know whether they have an inability to pay CAP B bills, which are typically quite low – often only \$12 per month. This eligibility rule is set forth in PECO's CAP Rate A Tariff, which states that CAP A eligibility is based upon "extenuating circumstances," which is defined as:

Extenuating circumstances shall include those *individuals who demonstrate an inability to pay the billed rate of CAP B as a result of unique circumstances such as:*

- Health related matters:
 - o Injury or illness
 - o High medical bills
 - o Medically related usage
 - o Death in the family
- Sudden loss of employment
- Households that include at risk individuals such as:
 - o Children below 8 years of age
 - o Disabled persons
 - o Infirm elderly

- Inability to maintain at least two CAP B payment arrangements
- High usage related to shelter conditions which are not treatable by LIURP

In other words, in PECO's CAP A rate it *does* require an affirmative showing that the customer is "payment-troubled" at the CAP B level by having an inability to pay the CAP B rate is due to the one of the specified circumstances. Put even differently, a customer is not eligible for CAP A merely because of the presence of "infirm elderly" or "disabled persons" in the household. The presence of those factors must be causing the household to have an inability to pay their CAP B bills.

Coupled with the fact that CAP B bills are typically quite low and affordable, this means that few customers are eligible for CAP A because almost everyone who has average usage can pay a CAP B bill. In fact, at PECO's current rates a CAP B customer with average usage will typically receive a bill of \$12 per month – which is the same bill the customer would receive on CAP A. It is only the CAP B customer who uses more than that who will begin to experience higher bills and, potentially, face an inability to pay the CAP B bill – which is one of the prerequisites for CAP A eligibility. For those who cannot pay their CAP B bills, the reason for this inability to pay must be due to the presence of one of the listed conditions. It is thus to be expected that the CAP A population will remain low. As it should – CAP A offers a flat rate of \$12 per month for usage up to 1000 kWh per month, which is far in excess of typical usage. This kind of extraordinary rate relief should be reserved for extraordinary circumstances.

PECO believes that this is simply a debate as to how to read its tariff, not a factual or policy dispute regarding CAP A. PECO's discussion of its tariff language demonstrates that CAP A eligibility is determined by having CAP B payment troubles AND one of the listed conditions. PECO therefore does not believe that there are any remaining disputed factual issues for resolution by an ALJ.

Affordability and 12-Month Arrearage Forgiveness (pp. 11, 17)

The Tentative Order also briefly invites comments on "whether PECO should retain its one-year arrearage forgiveness policy in light of the other changes proposed in this plan proceeding."

By way of background, the Commission's CAP Policy Statement recommends that a CAP Program should have an arrearage forgiveness program, and that such arrearage forgiveness "should occur over a 2- to 3-year period contingent upon receipt of regular monthly payments by the CAP participant." *See* 52 Pa. Code §265(6)(ix).

For years, PECO's program has had a shorter duration. Originally, PECO and other stakeholders agreed to a six-month arrearage forgiveness program. Later, at the behest of one of the statutory parties, the parties agreed to lengthen the arrearage forgiveness to 12 months.

PECO is not aware of any controversy regarding this portion of its plan, and sees no reasons that it should be changed. In PECO's experience, few CAP customers make

12 consecutive in-full and on-time payments in any event, and thus the arrearage forgiveness typically is not completed until the 24-36 month time range, or even later, in any event. From the accounting perspective, as soon as the customer enters the CAP program PECO effectively has a zero expectation that any of the arrearage will ever be paid to it, and PECO therefore accounts for PPA amounts on the assumption that no payment will ever be received. There is thus no obvious financial implication to spreading the forgiveness over additional months. PECO recommends that this portion of its program should remain intact. PECO also recommends that this issue can be resolved on the basis of the comments set forth above.

b. Automatic Enrollment and LIHEAP (pp. 18-19)

When a PECO non-CAP customer obtains a LIHEAP grant, PECO automatically enrolls that customer in the highest tier of its CAP program.² PECO engages in this automatic enrollment because, once the customer receives a LIHEAP grant, PECO knows two facts about the customer: (1) the customer has demonstrated to a government agency's satisfaction that the customer is income-eligible for the LIHEAP grant, and (2) the customer is sufficiently in need of funds to pay their energy bill that they sought the LIHEAP grant. This program is consistent with the Commission's CAP Policy Statement, 52 Pa. Code § 69.265(6), which states that income verification and eligibility may be determined via "certification through a government agency," and has previously

² PECO performs this auto-enrollment only in years in which LIHEAP eligibility and CAP eligibility are based on the same income level, typically 150% of the federal poverty level.

been approved by the Commission. In the last LIHEAP season, PECO automatically enrolled 2,435 customers in its CAP program through LIHEAP auto-enrollment.

The Tentative Order asks for comments on two aspects of this program: (1) whether additional consumer education should be conducted so that auto enrollees will know their CAP obligations, and (2) whether a “positive customer response” should be required prior to enrollment.

As to additional consumer education, the Tentative Order inquires whether additional education is required so that the customer knows that the customer must make their CAP payment each month; the consequences of default from CAP; the fact that pre-program arrearage forgiveness may only be granted once in a lifetime, and the possibility that failing to honor the CAP payment plan provisions can result in removal from CAP and/or termination of service.

As a preliminary matter, PECO notes that, because its program is a CAP Rate, customers are not “removed from CAP” for failure to make payments. The consequence of failing to pay one’s CAP bill is the same as before the customer is on the CAP rate – termination of service. PECO addresses this and almost all of the other issues about which the Commission inquires in a letter sent to each auto-enrolled customer that states:

As a CAP Rate customer you **MUST**:

- Pay your CAP Rate bills on time
- Be on the budget
- Take part in the Low Income Usage Reduction Program (LIURP)

- Report any change in your household income right away

Now that you are enrolled in our CAP program, your previous balance at the time of enrollment was set aside. Each month that you pay your current discounted CAP Rate charges in full and on-time, 1/12th of your set aside balance will be forgiven.

If you pay your bill late, a late fee will be charged. If you fall behind on your bill you may receive a payment agreement. If you do not pay your bill, your service may be shut off. To pay your bill by telephone, please call **1-877-432-9384**.

If you do not want to receive a discount contact us at **1-800-774-7040**.

This letter thus informs the customer that the customer must make their CAP payment each month; the consequences of failing to pay their discounted CAP bill; the fact that they are being granted pre-program arrearage, and the possibility that failing to honor the CAP payment plan provisions can result in termination of service (but not removal from CAP, because PECO's program does not remove customers from CAP for non-payment).

Of the issues raised by the Tentative Order, then, the only issue not currently addressed in PECO's letter to the customer is "the fact that pre-program arrearage forgiveness may only be granted once in a lifetime." PECO respectfully submits that this is not a critical piece of information to provide to customers as part of the auto-enrollment process, and providing it could actually be counter-productive. Simply, if providing information on pre-program arrearages is expected to induce any change in customer behavior, the expected change would be for a customer to delay CAP enrollment until some future time so that it could build up a large pre-program arrearage before entering CAP in the misguided belief that they would be getting a greater benefit by doing so. The behavior that the Commission and PECO should wish to induce is the

exact opposite -- to have the income eligible person enrolled in CAP sooner so that they can pay their bill and not develop a pre-program arrearage that must later be forgiven and paid for by other customers. PECO therefore submits that its current communication properly addresses the consumer education issues about which the Tentative Order inquires.

The Commission's second issue is whether a "positive customer response" should be required prior to automatic enrollment. As noted above, PECO's auto-enrollment letter already provides the customer with a phone number to call if the customer does not wish to be in the CAP program and receive a discount. The suggested change, in effect, would change the program from an "opt out" to an "opt in" program. This would mean that the program would not be an automatic enrollment program at all. Instead, the list of LIHEAP recipients would simply receive a letter informing them about the availability of CAP.

In PECO's experience, the response rate to these letters would be quite low. The expected consequence of this policy change would therefore be that several thousand customers who are known to be income-eligible for CAP and who exhibited need for funds by applying to LIHEAP would not be enrolled in and receive the benefits of CAP. PECO's sees this as an adverse outcome. This adverse outcome would need to be weighed against the possibility, as the Commission notes, that some of these customers actually might not wish to be enrolled in CAP, and that those customers would overlook

their existing “opt out” potential and thus would be inadvertently trapped in a discount program they do not desire.

PECO is not aware of any data suggesting that this latter scenario actually exists. However, if other comments in this docket suggest that such information is available, PECO acknowledges that a hearing on this issue may be appropriate to explore such data. In the absence of such a suggestion, however, PECO respectfully submits that a hearing on this issue would serve no purpose. The Commission has the information it needs to decide whether to allow the automatic enrollment program to continue.

(c) Shopping (p. 20)

The Tentative Order notes that the Commission has ordered PECO, in its DSP II proceeding at Docket No. P-2012-2283641, to implement CAP shopping not later than January 1, 2014 and that PECO will need to respond through that docket as to how it will implement CAP shopping.

PECO acknowledges the direction it has received in the DSP II docket, and it will respond in that docket as directed.

(d) Timing of Changes and Coordination of Computer Programming (p. 20)

The Tentative Order also acknowledges that, once the Commission has issued its final order in this docket, PECO may need to modify its computer programming – especially if PECO is ordered to adopt a PIPP. The Tentative Order states that the Commission will allow these computer changes to be coordinated with the CAP shopping

changes to be implemented on January 1, 2014 pursuant to orders in PECO's DSP II proceeding.

On November 21, 2012, the Commission issued an Opinion and Order in PECO's DSP II Proceeding in which it addressed the timing of PECO's CAP Shopping filing. In that Opinion and Order (pp. 16-23 and Ordering Paragraph 7), the Commission rejected PECO's request to file its CAP Shopping Plan on March 31, 2013, and directed it to work forthwith with the Commission's Office of Competitive Market Oversight forthwith to develop and file a plan that will implement CAP shopping on January 1, 2014. PECO is proceeding as directed in that docket and expects to file its CAP shopping plan as quickly as possible, almost certainly in the first quarter 2013.

In the instant proceeding, comments are due on November 28 and reply comments are due on December 10. Presumably, the Commission will issue an order in December or January stating whether, and which, issues in this proceeding are assigned to the Office of Administrative Law Judge. Based on its own comments and discussions with other commenting stakeholders, PECO believes that the question of whether PECO should implement a PIPP may be sent to the Office of Administrative Law Judge. Even with an extremely accelerated litigation schedule, that litigation could not result in a final Commission order in the first quarter 2013. Thus, even in the most accelerated timeline possible, it seems extremely likely that PECO will not have Commission guidance in this docket as to whether it must adopt a PIPP until *after* the date it develops and submits its CAP shopping plan to the Commission.

If the Commission then issues an order in this docket, sometime later in 2013, directing PECO to implement a PIPP, PECO does not anticipate that it will be possible to develop a PIPP and then revise its CAP Shopping Plan in the DSP II Proceeding to be built on the newly-devised PIPP, and still meet the January 1, 2014 deadline to implement all of those various computer programming changes. This expectation is based upon PECO's factual analysis of its own computer programs and reprogramming capability. PECO therefore respectfully submits that there is an unresolved material factual dispute as to whether a PIPP ordered in 2013 can be implemented by January 1, 2014. PECO therefore requests that, if the issue of a PIPP is sent to the Office of Administrative Law Judge, PECO and the other parties be allowed to present factual evidence on the question of not only *whether* a PIPP should be implemented, but also on the question of *when* a PIPP may reasonably be implemented.

e. Requiring a Social Security Number (Tentative Order, pp. 20-22)

The Tentative Order (pp. 20-22) requests comments regarding PECO's practice of requiring CAP applicants to provide their Social Security Numbers ("SSNs").³ For the reasons set forth below, PECO concludes that this practice is legal and consistent with federal and state anti-fraud policies. PECO therefore respectfully submits that its

³ In recent discussions with community-based organizations, PECO was asked to evaluate whether an Individual Tax Number, or ITN, is sufficient for this purpose. PECO has determined that ITNs are sufficient because they are comprised of unique nine-digit numeric identifiers that are coordinated with SSNs so that there is no overlap of the two numbering systems. PECO therefore proposes to accept ITNs, as well as SSNs, on its CAP applications.

practice should be deemed reasonable and adopted on the strength of the information provided in these comments, and further submits that a hearing is not required on this issue.

PECO requests CAP applicants to provide SSNs for themselves and all members of their household. The purpose of obtaining this information is to reduce the possibility of duplicate or fraudulent benefits to a household. The information may be used to verify income, but also may be used to verify that no member of the household has been excluded from CAP due to fraud or theft and that one-time CAP benefits, such as the PPA, are not inadvertently given a second time to an applicant or household.

The Tentative Order discusses the practice of the Pennsylvania Department of Welfare with respect to use of SSNs. PECO agrees that the DPW policy – as well as the federal policy articulated by the United States Department of Health and Human Services (“HHS”) – is instructive, especially because, as the Tentative Order notes, those agencies are subject to federal Privacy Act provisions that limit their latitude with respect to use of the SSNs. PECO is not subject to these Privacy Act restrictions,⁴ but if entities that are subject the privacy act can and do require SSNs on their applications, that provides a strong reason to believe that it is reasonable for PECO to similarly use them.

⁴ As the Tentative Order notes (p. 21) the federal Privacy Act found at 42 U.S.C. § 405, states that it “shall be unlawful for a Federal, State, or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his Social Security number.” (emphasis added). PECO is a public utility, not a “Federal, State, or local government agency,” and this provision of the federal Privacy Act therefore does not apply to it.

HHS policy on this issue is set forth in a 2010 “Information Memorandum” that explicitly states that it is legal for states to require household SSNs as a condition of LIHEAP eligibility and that HHS “strongly recommends” and “encourages” states to require SSNs. The memorandum states that:

[The purpose of this memorandum is] [t]o inform LIHEAP grantees about Social Security Act provisions *that allow States to require Social Security Numbers (SSNs) from applicant households as a condition of LIHEAP eligibility*. HHS strongly recommends that States implement and strengthen requirements for SSNs of LIHEAP applicants and household members to deter fraud and prevent payments to ineligible individuals.

* * * * *

As such, HHS is issuing revised guidance on this issue to inform States of their authority to require SSNs from LIHEAP applicants and recipients and to encourage States to require SSNs in their State LIHEAP programs as a means of ensuring individual and household eligibility.

(emphasis added). See HHS Information Memorandum LIHEAP-IM-2010-6, available online at <http://www.acf.hhs.gov/programs/ocs/resource/states-discretion-to-require-social-security-numbers-in-determining>.

For its part, DPW currently uses SSNs in two different ways. As the Tentative Order notes (p. 21) for continuous assistance programs such as Food Stamps, medical assistance, and welfare,⁵ DPW requires SSNs as a condition of eligibility for those

⁵ CAP benefits are also a continuous assistance program.

benefits. In fact, DPW even states that if a person does not have an SSN, they must apply for one in order to be eligible for these ongoing benefits.⁶

As to LIHEAP, the Tentative Order notes (p. 21) that DPW's LIHEAP application "does request [an SSN], but its omission does not preclude eligibility." While it is true that LIHEAP eligibility can be obtained in limited circumstances without providing an SSN,⁷ it is nonetheless clear that DPW has largely heeded the HHS recommendation to use SSNs as a condition of eligibility to avoid fraud and duplicate payments. As DPW's 2013 Final State Plan states (emphasis added):

§601.106. Social Security numbers.

Applicants shall provide social security numbers for all members of their household. This requirement is consistent with the May 5, 2010 HHS Information Memorandum LIHEAP-IM-2010-6, which allows states to require social security numbers from applicant

⁶ DPW's application for these continuing program states (p. 17):

RESPONSIBILITY TO PROVIDE SOCIAL SECURITY NUMBERS

For cash, Medical Assistance and/or Food Stamp benefits, you must provide a Social Security Number (SSN) for each person for whom you are applying. If you do not have an SSN you must apply for one. Refusal or failure to provide an SSN may result in disqualification. For cash benefits, we will also ask you to supply an SSN for anyone else whose income and/or resources affect your eligibility or amount of benefits. Your SSN is used to verify your identity and to prevent duplication of state and federal benefits.

(emphasis added). See Department of Public Welfare Application for Benefits, found online at <http://www.dpw.state.pa.us/applyforbenefits/index.htm>.

⁷ A LIHEAP applicant can avoid providing an SSN only if the applicant provides an affidavit that one of two conditions exists – either that the applicant does not have an SSN, or that the applicant is exercising rights under the federal Privacy Act. See DPW LIHEAP Application, Energy Assistance Affidavit, found online at <https://www.humanservices.state.pa.us/compass.web/CMHOM.aspx>

households as a condition of LIHEAP eligibility. A household member who does not have a social security number or is unable to provide one shall complete an energy assistance affidavit. An energy assistance affidavit is not required for a child under the age of one.

Simply, DPW's LIHEAP application does request SSNs for all household members. While an applicant may apply for LIHEAP without providing an SSN, the process is limited, comes at the end of the application after SSNs have already been requested, and requires the execution of an affidavit limited to two specific situations. Moreover, when an application with a missing SSN is processed, DPW's Compliance Monitoring process may flag that application as potentially fraudulent.⁸

In sum, HHS recommends and DPW uses SSNs extensively as a method of establishing eligibility to obtain government benefits, both of a continuous nature and specifically for energy assistance, in order to limit fraud and waste. To the extent that the Commission believes that the DPW and HHS processes provide guidance as to what anti-fraud measures it is reasonable for PECO to pursue, those agencies' practices strongly establish that use of SSNs to limit fraud and duplicate payments is an accepted method that should be deemed reasonable on its face.

⁸ In Attachment 5 to the State Plan, DPW states that its Compliance Monitoring activities included the targeted review of applications, and that:

Targeted applications reviewed include, but are not limited to, those with the highest opportunity for worker error or fraud. Indicators include no or minimal reported income, missing social security numbers of household members, possible duplicate applications (based on addresses or other identifying information), and social security numbers for household members who are identified as being deceased.

The Tentative Order mentions two other points regarding SSNs on which PECO would like to briefly comment. First, the Tentative Order also quotes from the website of the United States Social Security Administration. Given the above-noted information regarding the robust federal and state policies and practices to use SSNs to control fraud, the information provided on the Social Security Administration's website can be read with a slightly different focus:

If a business or other enterprise asks you for your Social Security Number, you can refuse to give it. *However, that may mean doing without the purchase or service you requested.* For example, utility companies and other services ask for a Social Security Number, but do not need it; they can do a credit check or identify the person in their records by alternative means.⁹

In other words, the SSA website is entirely consistent with PECO's policy and the HHS and DPW practice with respect to benefits – an applicant does not have to give an SSN, but failing to do so means the applicant will do without the requested service – in this case, PECO's CAP Rate.

Finally, the Tentative Order notes (p. 21) that the Commission's CAP Policy Statement does not specifically mention the use of Social Security numbers. The Commission's CAP Policy statement does, however, emphasize that a utility's CAP program should contain processes to verify the CAP applicant's status as a customer and

⁹ PECO notes that, in the CAP application process, it is not using the SSN to do a credit check or to verify identity, at least not in the sense suggested here. It uses SSNs to verify income and to determine whether an individual in the household previously received certain CAP benefits, such as pre-program arrearage forgiveness, or has been removed from CAP for fraud, theft, or similar activities. In the event that the Commission does send this issue to hearing, PECO will present evidence that alternative identifiers (other than SSNs and ITNs) do not provide a reasonable substitute for SSNs in that process.

to verify income eligibility. *See* 52 Pa. Code §69.265(4). Moreover, the CAP Policy Statement also states that income verification may be performed via “certification through a government agency,” *see* 52 Pa. Code §69.265(6), which would include reliance on the DPW processes discussed above, which use SSNs. PECO respectfully submits that a policy of using SSNs in the utility program to accomplish this same purpose is consistent with the Commission’s stated policy of verifying income as a condition of CAP eligibility and with the policies and practices established by HHS and DPW for those same purposes. The Commission therefore should find that PECO’s use of SSNs for this purpose is reasonable, and should not send this issue to hearings before the Office of Administrative Law Judge.

f. Requiring Proof of No Income (Tentative Order, p. 22)

The Commission’s Tentative Order (p. 22) also seeks comments on PECO’s practice of requiring persons who claim to have households with “no income” to provide a notarized letter stating that the household has no income.

Eligibility for PECO’s CAP program is based on income level. When a person claims that they live in a household that has “no income,” they are seeking to be placed on PECO’s CAP Rate B, which currently provides a deeply discounted bill – currently a discount of greater than 90% of the normal Rate R charges, with a minimum monthly bill of \$12.00.

Because claims that a household has “no income” generally seek more generous benefits, they are generally treated with a higher level of scrutiny, because the “no

income” claim begs the question of how that household is paying for basic needs such as food and other utilities if the household has no income. There does not appear to be any dispute as to whether these claims should receive increased scrutiny – only the form that the increased scrutiny should take.

There are several methods one can use to create this higher scrutiny. PECO requires a notarized letter it believes that this approach will heighten the customer’s sense of “seriousness” of the statement, and thus induce greater precision in the customer’s statements.

PECO recognizes that there are other methods that could be used to accomplish this same goal, including the approach used by DPW and discussed in the Tentative Order – that is, requiring the customer to provide a detailed written explanation of how household needs are met, given the fact of “no income.” PECO does not believe that this is necessarily a superior method of managing this issue. For one thing, it would require PECO – and potentially the Commission – to review these claims and make judgments of whether the statement makes sense. Secondly, it does not appear to PECO that requiring customers to prepare this kind of detailed written statement would be any less burdensome on the typical CAP customer than obtaining a notarized letter that simply states that they have no income.

In that respect, PECO notes that the fees for notary services are set by the Pennsylvania Department of State and, at present, cannot exceed \$5.00 per notarization.

See the Department of State's website at

http://www.portal.state.pa.us/portal/server.pt/community/notaries_fees/12638

PECO believes that these comments provide sufficient information for the Commission to conclude that a notarized letter is a reasonable approach to this issue, and that this issue does not need to be referred to an ALJ.

g. CAP Credits (pp. 23-34)

The Commission's CAP Policy Statement recommends that CAP programs should, as a cost-control measure, set a maximum discount that a customer may receive in a year. 52 Pa. Code §265(3). In the Policy Statement, the limits are nominally set at \$560 (electric Rate R), \$1400 (electric heating), and \$840 (gas heating). In various proceedings, the Commission has approved inflation escalators of those amounts. For the most important of those limits – electric Rate R – PECO currently uses a maximum discount limit of approximately \$778.

The Commission has previously approved PECO's use of this limit on a system-wide, rather than a customer-specific, basis. This means that any individual customer is allowed to exceed the limit as long as the program, on an overall basis, does not exceed the maximum discounts on a system-average basis.

The Tentative Order seeks comments on whether PECO should continue to apply the CAP maximum discount on a system-wide basis, stating (p. 24) that:

Upon review, we now find that such averaging of CAP credits may distort the way CAP credits are applied in that some customers receive significantly more

benefits than the Policy Statement calls for and some customers are receiving considerably less, seemingly without any rational justification.

The justification for this policy is as follows. If CAP credits are limited to \$778 (or some lower number) per customer on a customer specific basis, then two sets of PECO's poorest customers – the CAP B and CAP C customers, who are the poorest of the poor, making less than 50% of the federal poverty level, and CAP customers who have higher than typical usage – will have their discounts terminated sometime during the year because they will have exceeded the maximum discount. As a result, those customers will not obtain affordable electric service throughout the year. PECO's use of a system-wide average is specifically designed to address that issue and allow PECO to flow additional dollars to these highly vulnerable customers.

PECO notes that it collects data on this issue and each year it reports to the Commission how many customers actually exceed these limits. PECO's most recent report covered 2011. At that time, the maximum allowable credit for electric non-heating customers was \$757. In 2011, just short of 30,000 customers received discounts in excess of the maximum allowable credit.¹⁰ In total, these approximately 30,000 customers received \$27.8 million in discounts, of which \$5.3 million was for discounts in excess of the maximum credit limit.

Thus, imposing the maximum discount on a customer-specific basis could reduce the cost of PECO's CAP program – in 2011, it would have done so by approximately \$5.3 million. That cost reduction would be accomplished by taking benefits from

¹⁰ Some of the customers were electric heating customers or gas customers.

approximately 30,000 highly vulnerable families. These families' utility bills would either become unaffordable under the Commission's guidelines or, if already unaffordable, would become even more unaffordable. PECO concludes that its use of a system-wide average has rational justification, and recommends that the Commission should allow it to continue to utilize it on that system-wide basis. PECO does not believe that this issue needs to be referred to an ALJ, but instead should be resolved on the basis of these comments.

III. Low-Income Usage Reduction Program ("LIURP") (pp. 25-26)

The Tentative Order also seeks comments with respect to PECO's Low-Income Usage Reduction Program ("LIURP"), stating (p. 26) that:

PECO's Plans provides that CAP Rate customers with usage above 500 kWh per month will be referred to PECO's LIURP program. However, the BCS analysis of PECO complaints, noted above, showed a statistically significant number of complaint calls from customers with an evident need who had not been referred to LIURP. The CAP Policy Statement outlines that CAPs should include consumer education programs, the importance of energy conservation and referrals to other appropriate support services.

Accordingly, the Commission seeks comment on the effectiveness of PECO's LIURP education efforts and any appropriate improvements needed to training efforts to make the proper referrals to LIURP

PECO's LIURP is evaluated annually by an independent third-party evaluator. The most recent evaluation, covering the 2010 project year, was submitted to the Commission in April 2012. With respect to targeting high users and properly training, the evaluation is highly complimentary of PECO's program, stating that:

PECO's LIURP cost-effectively delivered energy efficiency services and energy education to over nine thousand customers in 2010, many of whom had vulnerable household members. They have kept program administration costs

low, at just seven percent of program expenditures. Reductions in energy usage were larger for electric baseload jobs than in previous years, but smaller for electric heat and gas heat jobs than in previous years.

However, reductions in energy usage for customers receiving electric heat and gas heat services were lower than in previous years. For customers receiving electric heating or gas heating services, the reduction in savings is probably due to lower pre-treatment energy usage. PECO has been providing LIURP services for many years, and has furnished LIURP to many of its highest usage customers.

We have the following recommendations to continue to deliver effective services and potentially improve savings.

- **Targeting:** It is a challenge to continue to find high usage customers to treat in the program. Lower energy savings for 2010 electric heat and gas heat jobs as compared with 2009 electric heat and gas heat jobs may be related to lower pre-treatment usage for these households. PECO should continue to make targeting the highest usage households a priority for the program.

- **Education:** The high savings for households that only received CFLs, as well as previous customer survey research conducted as part of PECO's USF evaluation, indicate that the energy education conducted as part of LIURP is successful. We believe this is due to the extensive education process that occurs during the audit and the reinforcement that occurs through letters and phone calls. PECO should continue the emphasis on education.

There is nothing in this evaluation that suggests PECO is having difficulty targeting or reaching its high usage customers. To the contrary, the evaluation suggests that PECO has reached its eligible high usage customers and is now re-addressing that same population and working with lower levels of usage.

The confusion may be with the limits of LIURP as a program. Many customers refuse LIURP audits or treatment even though they have high use. In addition, many high use housing conditions are not eligible to be treated via LIURP. For example, a house with structural damage such as a missing roof, which will continue to bleed heat

into the neighborhood regardless of what is done, will not be eligible for LIURP treatments. Similarly, a Philadelphia house whose PGW service has been terminated, or which has an inoperative gas heater, will not be eligible for PECO LIURP treatment. It is therefore possible for a customer to have high usage and a high balance, to have been evaluated for LIURP and even referred to it for an audit, and for the customer to then not be eligible for LIURP treatment either because the customer will not accept the treatment or the difficulties at the house are not LIURP-eligible. None of these factors suggest that PECO's LIURP program is deficient.

The Tentative Order also notes (p. 26) 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." Presumably, this refers to the 43 customers with arrearages in excess of \$1,000. *See* Tentative Order, p. 16. PECO respectfully submits that these 43 customers almost certainly fall within the group that rejected LIHEAP or who had conditions that LIHEAP could not address. PECO further submits that, with nearly 140,000 CAP customers and approximately 9,000 LIURP-treated residences per year, a population of 43 customers who have not received LIURP treatment should be seen as a very successful program, not one that needs to be re-tooled. And that is what the independent evaluator concluded. PECO respectfully submits that this matter should be resolved on the basis of these comments and that the issue of LIURP training and referral should not be sent to an Administrative Law Judge.

IV. Organizational Structure (p. 30)

Finally, the Tentative Order states that this docket may result in program changes and that if it does, “PECO should reevaluate [its current] level of support to consider any further training necessary for the program changes ultimately directed through a final order and employ sufficient staff to operate its programs efficiently. Accordingly, PECO is directed to address this issue further in its comments to this order.”

PECO agrees that, to the extent that the final order in this proceeding orders program changes, it will need to re-evaluate its training and staffing to ensure that the new programs operate efficiently, and it will do so upon receipt of a final order. PECO does not believe that this issue is yet ripe to be sent to an ALJ.

V. Summary and Conclusion

In these comments, PECO has made recommendations with respect to whether the issues identified in the Tentative Order should be sent to the Office of Administrative Law Judge for evidentiary hearings. These recommendations are summarized in the following table:

Issue	Recommendation	Additional Comment
"Payment Troubled"	Appears to include material issues that would warrant sending to ALJ.	Depends upon whether the Commission is seeking comment on this issue.
PIPP	Material issues. Refer to ALJ, but allow a period for informal collaborative first.	
Revenue and Expense Impacts	Material issues. Refer to ALJ, but allow a period for informal collaborative first.	
Customer Confusion	No material unresolved factual issues; resolve on basis of comments.	
CAP A	Resolve on basis of comments.	
12-Month Arrearage Forgiveness	Resolve on basis of comments.	
Automatic Enrollment and LIHEAP	Resolve on basis of comments.	May need to go to ALJ if comments claim that there is evidence that some LIHEAP auto-enrollees do not wish to be placed on CAP but are unable to utilize the existing opt-out process.
Shopping		Will be addressed in DSP II proceeding.
Timing	Related to whether a PIPP is ordered. Therefore, should be referred to ALJ along with the PIPP evaluation.	Address first in collaborative.
Social Security Numbers	Resolve on basis of comments.	
Proof of No Income	Resolve on basis of comments.	
CAP Credits	Resolve on basis of comments.	
LIURP	Resolve on basis of comments.	
Organizational Structure		Not ripe until after final order in this proceeding is issued.

PECO respectfully requests that the Commission adopt these recommendations in resolving the issues set forth in the Tentative Order.

Respectfully submitted,



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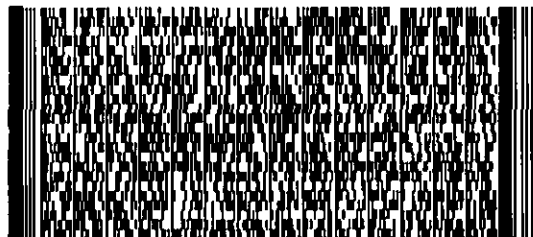
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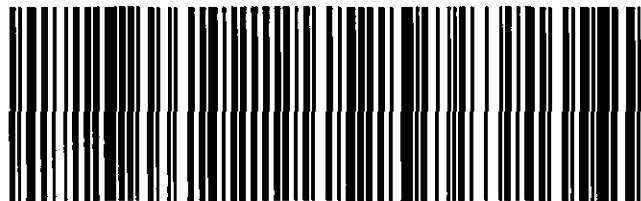
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