

**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

**REPLY 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**

December 10, 2012

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b> .....	i
<b>Reply Comments of TURN et al.</b> .....	1
<b>I. INTRODUCTION</b> .....	1
<b>II. ISSUES IDENTIFIED IN THE COMMISSION'S TENTATIVE ORDER</b> .....	3
<b>A. CAP RATE AFFORDABILITY</b> .....	3
<b>B. CAP RATE ENROLLMENT</b> .....	5
<b>C. CAP CREDIT MAXIMUM</b> .....	8
<b>D. LIURP REFERRAL TRAINING</b> .....	9
<b>E. OTHER ISSUES</b> .....	10
<b>III. CONCLUSION</b> .....	10

## **Reply Comments of TURN et al.**

### **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 on issues identified in the Tentative Order. In response, 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.”) submitted Comments in this docket on November 28, 2012.

Comments were also submitted by PECO Energy (“PECO”), the Office of Consumer Advocate (“OCA”), Pennsylvania Coalition Against Domestic Violence (“PCADV”), H. Gil Peach, Face to Face, and a group of 36 organizations. The purpose of these Reply Comments is to reply to the comments submitted thus far in this docket addressing the issues that the Commission identified in its November 8, 2012 Tentative Order. TURN et al. submit that there remain a number of issues of material fact that should be referred to the Office of Administrative Law Judge (“OALJ”) for investigation, hearing and decision.

TURN et al. appreciate that both PECO and the OCA support a collaborative process to begin to address the issues that the Commission has identified. TURN et al. also acknowledge that past collaborative discussions with stakeholders have often achieved resolutions which have

successfully enhanced PECO's low-income programs. However, TURN et al. note that the most productive collaborative efforts have resulted in prior settlements which were achieved within the context of a Commission proceeding involving a structured discovery schedule. TURN et al., therefore, request that the issues of material fact be referred to the OALJ and that the proceeding schedule incorporate sufficient time for extensive settlement discussions to allow the parties to reach a collaborative solution on as many issues as possible. TURN et al. request that the evidentiary hearing schedule further provide sufficient time for the parties to engage in discovery to obtain responses to relevant data requests. In TURN et al.'s experience, data disclosed through the discovery process informs the settlement process and facilitates collaborative outcomes.

If the Commission does not refer this matter to the OALJ and/or delays the referral or procedural schedule to allow for an informal collaborative resolution, TURN et al. respectfully request that PECO be ordered immediately to cease denying CAP applications due to lack of Social Security Numbers and to cease requiring notarization of letters of no income, until such time as the Commission may approve such practices.

In the event that this matter is not referred to the OALJ, TURN et al. submit these Reply Comments urging the Commission to order PECO to do the following:

- Eliminate the CAP Rate design and move to a percent of income payment 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;
- 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 requiring LIURP.

## II. ISSUES IDENTIFIED IN THE COMMISSION'S TENTATIVE ORDER

### A. CAP RATE AFFORDABILITY<sup>1</sup>

TURN et al. agree with APPRISE and H. Gil Peach that the optimal solution is a percentage of income payment plan (PIPP) approach. 10/12 APPRISE at 117-18, H. Gil Peach at 5-6. PECO's current CAP Rate tiered discount program has built-in deficiencies that do not match a high percentage of customers to the Commission's targeted energy burden policy.

---

<sup>1</sup> PECO suggests in footnote 1 of its Comments that *if* the Commission wishes to include a discussion of "payment troubled" thresholds, PECO requests that the discussion cover whether PECO may implement an "asset test." First, the Tentative Order does not indicate that the Commission sought comments regarding whether a PECO CAP customer must make a showing of being "payment troubled" beyond showing that the customer's household fits within the already very low income eligibility criteria; so PECO "asset test" suggestion should be dismissed accordingly. Second, it is well settled that households with income less than 250% of the federal poverty level (FPL) experience energy insecurity, supporting the presumption that CAP households, all of whom are at or below 150% FPL, are all payment troubled. Third, there is no asset test requirement in the PUC statutes, CAP Policy Statement or CAP regulations; therefore, the Commission should not now engage in discussion of the possibility of imposing an unprecedented asset test in the case of PECO's CAP. Finally, there are many questions that would need to be answered, including but not limited to: How many CAP customers are already subject to an asset test as part of their source of income such as SSI and DPW income? How many families and seniors will lose CAP benefits as a result of an asset test? What is the nature of the assets that will cause families and seniors to lose eligibility? For example, how commonly will a family become ineligible for CAP because of ownership of a car needed for an unemployed parent to look for work or by the appreciation of the value of a home owned by a senior? How many staff hours will need to be devoted to enforcing an asset limit? What is the cost of computer programming and staff training on the asset test? What gain is expected from imposing an asset test and is the gain worth the costs?

There is general agreement among the parties commenting on the CAP affordability issue that the numerous relevant factors are quite complex and require the balancing of various stakeholder interests. PECO at 4, OCA at 5-6. TURN et al. further agree with the OCA that it is not possible without discovery regarding PECO's CAP customers to ascertain how the CAP Rate program might be modified in a cost-effective manner. OCA at 5-6. However, H. Gil Peach's Comments provide evidence that there are significant cost offsets in a move to a PIPP, perhaps even enough savings to make a PIPP a more cost-effective than the current PECO CAP Rate design. H. Gil Peach at 8.

TURN et al. disagree with PECO that implementing CAP shopping should take priority over deciding on CAP design. PECO at 11. Rather, TURN et al. agree with the OCA which correctly points out that there will be much cost and confusion if a CAP shopping plan was developed and implemented under the current CAP design only to then require modification in order to fit a new CAP structure. OCA at 19. TURN et al. submit that efficient program planning requires that these fundamental CAP structural issues be addressed first.

TURN et al. disagree with PECO that the issue of CAP Rate A under-enrollment can be resolved on the basis of comments. OCA agrees with the concern expressed in the Tentative Order that it appears that the CAP Rate A program has been under-enrolled. OCA at 10. PECO's process of determining whether inability to pay is "due to" or "as a result of" extenuating circumstances, in order to qualify for CAP Rate A, requires examination. TURN et al. submit that, in light of apparent CAP Rate A under-enrollment, PECO's causation test may be too stringent and needs to be investigated. TURN et al. agree with the OCA and H. Gil Peach that further information analysis is needed to determine how PECO currently identifies

customers for the CAP Rate A program; how accurate this process is; and how more customers can be identified and enrolled in the CAP Rate A program. OCA at 11, H. Gil Peach at 10.

Further, the lack of public knowledge of CAP Rate A, even among social service agencies, requires investigation as to the causes and potential corrective actions. See Face to Face Letter Comment. Finally, TURN et al. submit that the issue of whether or not PECO is requiring, as a pre-condition to CAP Rate A enrollment, that all customers, even those customers with independently enumerated extenuating circumstances, must first demonstrate that they have failed at CAP Rate B is a material fact that requires investigation and referral to the OALJ. Such a referral should be to make both a determination as to the facts and as to whether or not this practice, if it is taking place, is a violation of the Commission's Order approving the joint settlement that created CAP Rate A.

## **B. CAP RATE ENROLLMENT**

TURN et al. agree with PECO that its program of automatically enrolling into CAP Rate those LIHEAP recipients who assign grants to PECO 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.” PECO at 17-18. However, the Commission and the OCA raise important concerns that customers be fully informed that Chapter 14 does not allow the Commission to approve any payment agreement requests from a CAP customer and that pre-program arrearage forgiveness is only allowed once in a lifetime. While TURN et al. agree with all parties in support of a continued automatic enrollment process for LIHEAP recipients, further information regarding how the process can be improved is

needed. This issue appears to be well suited for a collaborative process that focuses on addressing the concerns identified by the Commission

TURN et al. disagree with PECO that the issue of whether PECO may require Social Security Numbers (SSNs) of all persons in a CAP applicant's household can be resolved through comments. OCA, PCADV, H. Gil Peach and TURN et al. all agree that PECO should not be allowed to require SSNs for a variety of serious privacy and other policy reasons. Further, as raised by the OCA and PCADV, PECO should not be permitted to require such information without addressing the privacy concerns of the collection, protection of the data, use and disposal of the information, and sharing of the information with other third party entities, such as alternative suppliers. TURN et al. submit that this practice is currently not authorized by the Commission's CAP policy guidelines. Whether or not the Commission refers this matter to the OALJ, it is respectfully requested that PECO be ordered immediately to cease its practice of requiring SSNs until such time that the practice may be thoroughly reviewed and specifically approved by the Commission. Furthermore, TURN et al. submit that the issues raised by OCA and PCADV are of such importance to the safety and security of consumers that the Commission should immediately require that PECO adequately explain and provide appropriate details of how it protects, uses, disposes and shares such information that has already been collected.

PECO's offer to accept Individual Taxpayer Identification Numbers (ITINs) in addition to SSNs does not adequately address the concern of TURN et al. and PCADV that requiring such information acts to condition CAP enrollment upon every CAP household member's having a certain immigration status. TURN et al. question whether ITINs are available to every immigrant who cannot obtain SSNs, as the Internal Revenue Service instructions for applying for

ITINs emphasize that the “ITIN is for federal tax purposes only.”<sup>2</sup> Will dependent children be eligible for ITINs if the adults in the household are not required to file a U.S. tax return? Also, even for people eligible for ITINs, with a processing time of 6 to 10 weeks<sup>3</sup>, having the ITIN option does not help the customer who needs CAP enrollment in order to cancel a 10-day shut off notice. It is often at the time that customers first fall behind on their bill that they learn of PECO's CAP Rate program. PECO should not be allowed to impose unnecessary barriers and dangerous delays to enrollment in an assistance program for life-essential services.

OCA, PCADV, TURN et al. and a group of 36 agencies<sup>4</sup> serving low-income persons strongly oppose the requirement by PECO of requiring a notarized statement from each adult household member reporting no income. In contrast with PECO's position that the issue can be resolved in PECO's favor through comments, TURN et al. respectfully submit that the Commission should immediately halt this unilaterally imposed and unreasonable requirement. Comments of the other parties in opposition to this policy suggest that PECO is out of touch with the economic realities of its low-income customers, many of whom have lost employment in these economic times and have run out of unemployment benefits. Face to Face Letter Comment. The comments signed on by the group of 36 agencies highlights the recent loss of General Assistance income to 35,000 Philadelphians. While PECO has informally stated to

---

<sup>2</sup> <http://www.irs.gov/pub/irs-pdf/iw7.pdf>, at 1.

<sup>3</sup> Id. at 3.

<sup>4</sup> The list of 36 agencies includes: ACHIEVA, ActionAIDS, ACTUP Philadelphia, Advocacy for Justice and Peace Committee of the Sisters of St. Francis of Philadelphia, AIDS Law Project of Pennsylvania, Broad Street Ministry, CareLink Community Support Services, Center for Advocacy for the Rights and Interests of the Elderly (CARIE), Delaware Valley Community Health, Inc., Disability Rights Network of Pennsylvania, Every Mother is a Working Mother Network, Family and Community Service of Delaware County, Germantown Jewish Centre, Greater Philadelphia Coalition Against Hunger, Housing Alliance of Pennsylvania, Interim House, Inc., Lutheran Settlement House., Maternity Care Coalition, Mayor's Office of Consumer Affairs - City of Philadelphia, Mazzoni Center, Mental Health Association in Pennsylvania, New Jerusalem Now, PA Alliance for Retired Americans, Pathways PA, The Philadelphia Alliance, The Philadelphia Coalition, Philadelphia Jewish Labor Committee, Philadelphia Unemployment Project, Resources for Human Development, Inc., St. Vincent de Paul Medical Clinic, United Methodist Advocacy in Pennsylvania, UUPLAN (Unitarian Universalist PA Legislative Advocacy Network), Vision for Equality, Women Against Abuse, and Women's Law Project.

TURN et al. that it was making an exception to the notarization requirement for people who lost General Assistance, the Plan still includes a blanket rule and no exceptions.

OCA and TURN et al. agree that a statement with verification is sufficient. TURN et al. join OCA's recommendation that PECO should track data on zero-dollar income program participants. OCA at 15. Further, TURN et al. concur with OCA's comments that the response should be scaled to the extent of the problem and that an extensive effort would not be cost-justified for a minor problem. OCA at 15. Again, whether or not the Commission refers this issue to the OALJ, TURN et al. respectfully request that PECO be ordered to cease immediately its practice of requiring notarized statements of no income until such time that the Commission may approve such practice.

### **C. CAP CREDIT MAXIMUM**

OCA, PECO and TURN et al. all agree that it is not possible to provide bills within affordability targets to the lowest income PECO CAP Rate customers, throughout the year, by applying the maximum CAP credit on an individual basis. The plight of PECO's lowest income customers, between 0-50% FPL, have been a subject of concern at the Commission for years. Over this time period, gradual progress has been made to address the affordability of CAP bills for this special needs group through CAP enhancements that have been approved by the Commission. This important progress would not have been possible without the Commission's recognition that the CAP credit limits are cost control features that cannot be applied in an overly stringent or punitive manner to the individual customer. Moreover, imposing maximum CAP credits on an individual level would also have a significant negative effect on achieving

compliance with the energy burden targets, affordability and service retention, which are goals the Commission seeks to achieve through its Tentative Order in this matter.

TURN et al. agree with PECO that its use of a system-wide average has strong, rational justification and recommend that the Commission allow PECO to continue to utilize it on a system-wide basis. In light of the fact that there is no evidence that this aggregate approach has been abused, 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**

The Commission observed a statistically significant number of complaint calls from customers with an evident need who had not been referred to LIURP. PECO presumes that the Commission refers to the 43 customers with arrearages in excess of \$1000, and dismisses them stating that "these 43 customers almost certainly fall within the group that rejected LIHEAP or who had conditions that LIHEAP could not address." The issue of LIURP referrals should not be dismissed or resolved based on mere presumptions. TURN et al. agree with the OCA that additional information is needed to assess the manner and actual operation of PECO's LIURP referral program. OCA at 18. The issue of LIURP referrals and the appropriate resources to be designated by PECO to ensure effective LIURP treatments are matters of fact best resolved through submission to the OALJ.

## **E. OTHER ISSUES**

The OCA submits that to the extent that the CAP program is further addressed and modified, that the proposed changes to CAP Rate for customers taking service under the residential heating (RH) rate should be reviewed as part of the process to ensure appropriate coordination. OCA at 21. TURN et al. agree, for instance, that if the Commission orders PECO to move to a PIPP, it would remove the need to increase usage limits for CAP Rate discounts to customers who will be harmed from the phased out RH discount. In fact, so long as PECO operates a tiered rate discount, such as its current CAP Rate, there will be continuous need to make adjustments to discount levels and usage levels eligible for discounts, to address the inefficiencies discussed by H. Gil Peach in his comments. Therefore, TURN et al. strongly urges the Commission to order PECO to move to the more efficient PIPP structure and eliminate the constant need to adjust discounts, usage levels and numbers of tiered rates, only to miss energy burden targets for all but a relatively small number of customers.

## **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.

Respectfully submitted,

/s/ Thu Tran

---

Thu B. Tran, Esquire  
Robert W. Ballenger, Esquire  
George D. Gould, Esquire  
Attorneys for TURN and Action Alliance  
COMMUNITY LEGAL SERVICES, INC.  
1424 Chestnut Street  
Philadelphia, PA 19102  
(215) 981-3777

/s/ Patrick M. Cicero

---

Patrick M. Cicero, Esquire  
Harry S. Geller, Esquire  
Attorneys for CAUSE-PA  
PENNSYLVANIA UTILITY LAW PROJECT  
118 Locust Street  
Harrisburg, PA 17101  
(717) 236-9486

Date: December 10, 2012