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February 27, 2013

By eFiling

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

Re: Petition of PECO Energy Company for Approval of its Default Service Program, Docket
No. P-2012-2283641

PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket
No. M-2012-2290911

Dear Secretary Chiavetta:

Enclosed for eFiling please find the **Main Brief of behalf of TURN et al. (Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia)**, in the above-captioned matter. Copies of the enclosed have been served, electronically and by hard copy, upon the Administrative Law Judge and all other parties on the Service List.

Sincerely,

Thu B. Tran, Esquire
Robert W. Ballenger, Esquire
Josie B. H. Pickens, Esquire

Attorneys for TURN et al.

Enclosure

cc: Administrative Law Judge Cynthia Fordham
Service List

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for Approval
of its Default Service Program** :
: **P-2012-2283641**

**PECO Energy Company Universal Service and
Energy Conservation Plan for 2013-2015** :
: **M-2012-2290911**

MAIN BRIEF

ON BEHALF OF TURN et al.

**(TENANT UNION REPRESENTATIVE NETWORK and
ACTION ALLIANCE OF SENIOR CITIZENS
OF GREATER PHILADELPHIA)**

February 27, 2013

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF THE CASE.....	2
IV.	SUMMARY OF ARGUMENT.....	12
V.	ARGUMENT	14
A.	The Record Overwhelmingly Demonstrates That a PIPP is the Optimal Method to Achieve Affordable Bills.	14
1.	A PIPP is the most precise CAP design to achieve affordability.....	15
2.	A PIPP is the least cost option to attaining actual affordability.....	17
3.	A PIPP attaining 100% affordability remains less costly than a Tiered approach attaining 88% to 90% affordability even if generation costs rise sharply.	18
4.	Mitigating impact on CAP customers losing excess subsidies.	19
5.	CAP cost control features apply to a PIPP.....	21
B.	PECO's CAP Rate Program Does Not and Can Not Achieve Affordability According to the Commission's CAP Policy Statement.....	22
1.	It is undisputed that a third of PECO's CAP Rate customers experience unaffordable bills.	22
2.	PECO agreed to CAP population affordability targets of 88% to 90%.....	24
3.	PECO appears to argue that the mechanics of CAP Rate override its agreement to obtain 88% to 90% CAP population affordability.....	26
4.	PECO Has Demonstrated that CAP Rate Discounts Cannot Achieve the Affordability Objectives of the DSP Settlement and 2010 Settlement	28
C.	IT Transition Cost are Not Prohibitive and Should Not Deter a Logical Move to a PIPP	29
D.	CAP Maximum Credits Must Be Applied to a System-Wide Average in Order to Comply with the Commission's CAP Affordability Guidelines.	30
E.	PECO should be required to make appropriate referrals to CAP Rate A while it is still in effect.	31
F.	Other CAP Operational Issues	33
1.	PECO's one-year arrearage forgiveness policy should be maintained and enhanced.....	34
2.	Auto-enrollment in CAP should continue for LIHEAP recipients previously enrolled in CAP and should be modified for new CAP enrollees.	34
3.	PECO's proposal and practice of collecting Social Security Numbers from CAP applicants and all household members should be disapproved.....	35
4.	PECO's proposal and practice of requiring notarized statements from persons claiming no income should be disapproved.	36
5.	TURN et al. would support a waiver of LIURP parameters to address <i>de facto</i> heating and structural issues.....	36

6. PECO’s proposed asset test should be rejected..... 37

7. OCA’s proposed treatment of subsidized housing tenants with utility allowances is undeveloped and should not be approved. 37

VI. CONCLUSION..... 38

TABLE OF CITATIONS

COMMISSION DOCKETS:

Final Investigatory Order in Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, Docket No. M-00051923 (Order entered December 18, 2006)

PECO's Petition for Expedited Approval of Consensus Modifications to PECO's USECP for 2001-2003 and Associated Tariff Changes, Docket Nos. R-00027870 and M-00001418

PECO's USECP for 2007-2009, Docket No. M-00061945

PECO's USECP for 2010-2012, Docket No. M-2009-2094394

Petition of PECO for Approval of DSP and Rate Mitigation Program, Docket No. P-2008-2062739

Petition of PECO for Approval of DSP II, Docket No. P-2012-2283641

USECP Submission for 2004-2006, Docket No. M-00041788

STATUTES:

66 Pa. C.S. §§ 2201-2212

66 Pa. C.S. §§ 2801-2812

305 II. C.S. § 20/18

REGULATIONS:

52 Pa.Code §§ 54.71-54.78

52 Pa.Code §§ 62.1-62.8

52 Pa.Code § 69.265

I. INTRODUCTION

On February 28, 2012, PECO Energy Company (“PECO” or “Company”), filed its universal service and energy conservation plan (“USECP”) for 2013 through 2015 in accordance with Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code §§ 54.71-54.78, relating to electric universal service and energy conservation reporting requirements, and §§ 62.1-62.8, relating to natural gas universal service and energy conservation reporting requirements. PECO’s amended USECP for 2013 through 2015 (“Plan”) was filed on October 15, 2012. By Tentative Order, dated November 8, 2012 (“TO”), the Commission tentatively approved PECO’s Plan, in part, and solicited comments from interested parties.

In the Tentative Order, the Commission found that PECO’s USECP for 2013-2015 only partially complied with the universal service requirements of the Electricity Generation Customer Choice and Competition Act and the Natural Gas Competition Act. The Plan also only partially complied with the universal service reporting requirements at 52 Pa. Code § 54.74 and §62.4, and the Commission’s Customer Assistance Program Policy Statement at 52 Pa. Code §§ 69.261-69.267 (“CAP Policy Statement”). The Plan complied with the LIURP regulations at 52 Pa. Code §§ 58.1-58.18. The Tentative Order set forth the aspects that PECO would need to address for the Plan to be approved. TO, at 30-31.

Along with other interested parties, the Tenant Union Representative Network (“TURN”) and Action Alliance of Senior Citizens of Greater Philadelphia (collectively “TURN et al.”) submitted comments and reply comments, on November 28, 2012 and December 10, 2012, respectively. By Secretarial Letter dated January 3, 2013 (“Secretarial Letter”), the Commission ordered that “the CAP Plan is immediately assigned to the Office of Administrative Law Judge (“OALJ”) to conduct any necessary evidentiary hearings and briefing, and certify the record (if

any) to the Commission by March 1, 2013.” Hearings in this matter were held on February 15 and 19, 2013 before Administrative Law Judge Cynthia Williams Fordham, in which TURN et al. provided direct and rebuttal testimony, and examined and cross-examined witnesses. This Brief is submitted on behalf of TURN et al. and is due to the ALJ on February 27, 2013.

II. STATEMENT OF THE CASE

The Commission's November 8, 2012 Tentative Order provided a history of PECO's USECPs and prior formal Commission proceedings relating to PECO's CAP Rate program, including a summary of some of the “issues that continue to arise” and noting that “some of the recurring inconsistencies addressed in those prior Commission directives still exist.” TO, at 3. A key recurring issue is the affordability of PECO's CAP Rate program. In the Tentative Order, the Commission expressed concerns about the affordability of PECO's current program structure and noted that, generally, percent of income plans are more affordable for customers. TO, at 17; Secretarial Letter, at 1. TURN et al. and other interested parties urge the Commission in this proceeding to order PECO to adopt a percentage of income payment plan (“PIPP”), as the least costly and most cost-effective method to address longstanding affordability deficiencies.

The Electricity Generation Customer Choice and Competition Act (Electric Competition Act), 66 Pa. C.S. §§ 2801-2812, became effective on January 1, 1997. The Natural Gas Choice and Competition Act (Gas Competition Act), 66 Pa. C.S. §§ 2201-2212, became effective on July 1, 1999 (collectively, the “Competition Acts”). While opening the markets to competition, the Competition Acts also include provisions relating to universal service in order to ensure that utility service remains available to all customers in the Commonwealth.

The universal service provisions of the Competition Acts, among other things, tie the affordability of electric service to a customer's ability to pay for that service. The Competition

Acts define “universal service and energy conservation” as the policies, practices and services that help low income customers maintain utility service. The term includes customer assistance programs (“CAPs”), usage reduction programs, service termination protections, and consumer education. 66 Pa. C.S. §§ 2202 and 2803. The Competition Acts declare that the Commonwealth must, at a minimum, continue the low income policies, practices, and services that were in existence as of the effective date of the laws. 66 Pa. C.S. §§ 2203(7) and 2802(10). Finally, the Competition Acts require the Commission to ensure that universal service and energy conservation services are appropriately funded and available in each utility distribution territory. 66 Pa. C.S. §§ 2203(8) and 2804(9).

To help meet the requirements imposed by the Competition Acts, the Commission established the *Universal Service and Energy Conservation Reporting Requirements* (“USEC Reporting Requirements”) at 52 Pa. Code §§ 54.71-54.78 and 52 Pa. Code §§ 62.1-62.8. These USEC Reporting Requirements apply to each electric distribution company (“EDC”) serving more than 60,000 residential accounts and each natural gas distribution company (“NGDC”) serving more than 100,000 residential accounts. Effected EDCs and NGDCs are required to submit an updated universal service and energy conservation plan every three years for the Commission’s approval. In response to these requirements, PECO submitted the Universal Service and Energy Conservation Plan for 2013-2015.

PECO, which is both an EDC and a NGDC, has approximately 1.4 million residential customers divided into three types: those who receive only electric service, those who receive both electric and gas service (combination) and those who receive only gas service. There are approximately 114,000 electric customers, 23,000 combination customers and 313 gas-only customers in PECO’s CAP program, as reported to the Commission’s Bureau of Consumer

Services (“BCS”) as of October 5, 2012. TO, at 3.

Several prior formal Commission proceedings involving PECO have influenced the 2013-15 PECO triennial Plan under review. PECO’s universal service/customer assistance efforts predate the Competition Acts. Some of the issues from prior proceedings continue to arise in the context of PECO’s Customer Assistance Program Rates (CAP Rate) plan. This is especially pertinent to the proposed USECP for 2013-15 as some of the recurring inconsistencies addressed in those prior Commission directives still exist. There is a recurring theme in the continuing history of Commission Orders addressing PECO’s CAP programs over the past 12 years during which the Commission has directed PECO to make improvements to its CAP Rate application. TO, at 3.

PECO’s pilot CAP used a percent of income payment plan (PIPP) design starting in 1984. In a 1996 settlement, the Commission approved an earlier version of PECO’s current CAP Rate design, which is not a PIPP but a variation of the “rate discount” option listed in the CAP Policy Statement.¹ 52 Pa. Code § 69.265(2)(iii). Shortly thereafter, the Electric Competition Act became effective. On September 29, 2000, in *PECO’s USECP for 2001-2003*, Docket No. M-00001418, the Commission expressed concern with a potential lack of compliance with Section 2802(10) of the Electric Competition Act and Section 69.265(2) of the CAP Policy Statement and PECO was directed, *inter alia*, to analyze the cost of extending the CAP Rate discount to the entire bill of CAP Rate R (residential nonheating, base load) customers with income below 50% of the Federal Poverty Income Guidelines (“FPIG”) whose usage exceeded 500 kWh per month. On March 9, 2001, PECO petitioned for amendment of the September 29, 2000 order, asserting that PECO did not maintain the information necessary to perform the

¹ See PECO’s USECP for 2001-2003, M-00001418 (September 29, 2000).

analysis the Commission had requested and, further, that some of its payment rate data was less reliable than other payment rate data. On September 27, 2001, PECO was directed to perform the requisite analysis with its reliable data. Dr. H. Gil Peach, a witness for TURN et al. in the instant proceedings, conducted the analysis of customers with income at or below 50% FPIG.²

On April 8, 2003, in *PECO's Petition for Expedited Approval of Consensus Modifications to PECO's USECP for 2001-2003 and Associated Tariff Changes*, Docket Nos. R-00027870 and M-00001418, the Commission found that customers do not understand CAP Rate bills but concluded that the consensus modifications to the 2001-2003 USECP were "steps toward" making CAP budgets consistent with the Commission's CAP Policy Statement. That order documented, *inter alia*, PECO's agreement to submit to a third-party analysis of energy burdens expressed as a percentage of income, as well as rate design and payment plans.³ PECO also agreed to review termination procedures. PECO was directed to implement budget billing for CAP customers. PECO's CAP Rate A was formulated to address special needs customers with income at or below 25% FPIG and modified discounts for CAP Rate B (for 25% FPIG or below without special needs) and CAP Rate C (26-50% FPIG) customers were approved. PECO was directed to correct database deficiencies related to demographics and poverty and to retain data relating to asked to pay amounts: amounts due, amounts past due, preprogram arrearages, and CAP rider code and participation status. TO, at 4-5.

PECO filed its USECP for 2004-2006 in September 2003. On April 21, 2004, in PECO's Universal Service and Energy Conservation Plan Submission for 2004-2006, Docket No. M-

² Petition of PECO Energy Company for Amendment of the Commission Order Entered September 29, 2000, Docket No. M-00001418.

³ PECO engaged the Applied Public Policy Research Institute for Study and Evaluation (APPRISE) to perform the energy burden analysis. APPRISE also evaluates PECO's universal service program, pursuant to 52 Pa. Code § 54.76.

00041788, the Commission concluded that, despite some improvement, PECO's CAP Rate budgets for 2004-2006 were not fully consistent with 66 Pa. C.S. §§ 2802(10) and 2804(9), or with the guidelines in Section 69.265(2)(i)(A-C) of the CAP Policy Statement. PECO was directed to hire additional CARES⁴ staff and to address unaffordable CAP budgets caused by high usage. TO, at 5.

On September 28, 2007, in *PECO's USECP for 2007-2009*, Docket No. M-00061945, the Commission again found that PECO's USECP did not fully comply with 52 Pa. Code § 54.74 of the Commission's regulations or the guidelines in the CAP Policy Statement. Further, the Commission found that over 60% of the CAP Rate payments exceeded Commission guidelines. The USECP for 2007-2009 was assigned to the OALJ for hearings concerning a number of issues including, but not limited to, whether a CAP Rate payment design that was more consistent with the intent of the CAP Policy Statement would be feasible and to then make recommendations as to implementation. The Commission ordered that PECO develop a long term CAP along with the stakeholders that would preserve administrative benefits of the CAP Rate design but would also allow customers to realize affordable bills as set forth in the Commission's guidelines regarding percent of income energy burdens. TO, at 5.

Subsequently, on October 20, 2008, PECO and stakeholders filed a Clarified Joint Petition for Settlement, in which PECO agreed, *inter alia*, to increase base monthly usage levels for CAP discounts, hire a third-party to assess its system and work with stakeholders, and address automatic enrollment, the recertification process, the application process, and space heaters. There were also provisions addressing affordability and maximum CAP credits. On December 23, 2008, the Commission adopted the recommendation of the ALJ and approved the settlement petition which was applicable until the plan expired in 2010. TO, at 6.

⁴ CARES is described at Exh. LF-8, APPRISE Report, at 51.

On March 2, 2009, PECO filed its USECP for 2010-2012 at Docket No. M-2009-2094394. On March 10, 2009, PECO and other parties in PECO's Default Service Provider ("DSP") proceeding at Docket No. P-2008-2062739,⁵ filed a Joint Petition for Settlement ("DSP Settlement"), which the Commission approved in an order entered on June 2, 2009. The DSP Settlement included an agreement that PECO adjust discounts to achieve 90% CAP population affordability.⁶ On December 15, 2009, PECO submitted a revised USECP for 2010-2012. TO, at 6.

Thereafter, on August 23, 2010, in *PECO's USECP for 2010-2012*, at Docket No. M-2009-2094394, the Commission approved PECO's USECP for 2010-2012. This approval was predicated in part on the knowledge that, as part of the DSP Settlement in June 2009, PECO would establish a seven-tier CAP Rate design for electric customers. The design would become effective with bills rendered for the January 2011 billing period. The rates and discounts for that system would be determined during then-upcoming rate case proceedings. TO, at 6.

On December 16, 2010, in PECO's electric rate increase proceeding, the Commission approved a Joint Petition for Partial Settlement in which PECO agreed to 88-90% "CAP population affordability." Joint Petition for Partial Settlement, at 7, Docket No. R-2010-2161575 (the "2010 Settlement").

On October 12, 2012, in *Petition of PECO for Approval of DSP II*, Docket No. P-2012-2283641, the Commission noted that PECO had excluded CAP customers from retail market enhancement (RME) programs. The Commission directed that PECO must give its CAP customers the opportunity to participate in retail markets no later than January 1, 2014 (extended

⁵ Petition of PECO for Approval of DSP and Rate Mitigation Program, Docket No. P-2008-2062739.

⁶ The DSP Settlement is public record on file with the Commission. Relevant portions were also marked for entry on this record at PECO Cross 7.

to April 1, 2014 by 1/3/13 Secretarial Letter).

On October 15, 2012, PECO filed an amended USECP for 2013-2015, the Plan under review in these proceedings. Further, on October 31, 2012, PECO submitted the APPRISE six-year evaluation report in compliance with 52 Pa. Code § 54.76. Under the Summary of Findings and Recommendations section, APPRISE noted that “[o]ne of the key findings in this report was that a significant percentage of lower tier CAP participants do not reach the PUC affordability targets after receiving the CAP discount,” and

[t]he only way that a utility company can achieve the PUC target for all CAP participants is to set the customer’s payment as a fixed percentage of the customer’s income, with no limit on the maximum discount.

Exh. LF-8, APPRISE October 2012 Evaluation Report (hereinafter, “APPRISE”), at 117-18 (emphasis added).⁷

APPRISE also noted opportunities for PECO to improve its program impact including suggesting that PECO try to increase affordability for lowest poverty group participants and that PECO target lowest income CAP customers who exceed CAP usage discount limits for LIURP. *See Id.* at 124.

By Tentative Order, dated November 8, 2012 (“TO”), the Commission tentatively approved PECO’s 2013-15 Plan, in part, and solicited comments from interested parties. In the Tentative Order, the Commission found that PECO’s USECP for 2013-2015 only partially complied with the universal service requirements of the Electricity Generation Customer Choice and Competition Act and the Natural Gas Competition Act. The Plan also only partially complied with the universal service reporting requirements at 52 Pa. Code § 54.74 and §62.4, and only partially complied with the Commission’s CAP Policy Statement at 52 Pa. Code §§

⁷ http://www.puc.pa.gov/General/pdf/USP_Evaluation-Peco.pdf

69.261-69.267. The Plan complied with the LIURP regulations at 52 Pa. Code §§ 58.1-58.18. TO, at 30-31.

The Tentative Order set forth the aspects that PECO will need to address for the Plan to be approved. TO, at 31. In particular PECO was directed to address, and other interested parties were invited to comment on, the following issues and/or changes consistent with the discussion and direction in the Tentative Order:

- whether to eliminate the CAP Rate design and move to a percent of income plan design (TO, at 14-17, 31);
- whether or not to retain the one-year arrearage forgiveness policy (TO, at 17, 31);
- how to make appropriate referrals to CAP Rate A while it is still in effect (TO, at 16-17);
- whether to require customer education and positive customer response rather than automatic enrollment in CAP upon receipt of a LIHEAP grant (TO, at 18-19, 31);
- recognizing that the DSP docket requires shopping by CAP customers and requisite computer programming changes (TO, at 19-20, 31);
- whether requiring Social Security Numbers from all residents is necessary to the operation of the PECO's CAP (TO, at 20-22);
- whether requiring a notarized letter of no income is necessary to the operation of PECO's CAP (TO, at 22);
- whether PECO should continue its current CAP credit policy of applying maximums on a system-wide average (TO, at 23-24);
- whether to increase LIURP referral training (TO, at 26, 31); and
- how to address call center staffing (TO, at 31).

PECO was further directed to comment on the costs and benefits of these changes on CAP and non-CAP residential customers. TO, at 20, 31.

In response to the Tentative Order, the following entities submitted comments and/or reply comments:

- Tenant Union Representative Network ("TURN"), Action Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance", together with TURN, "TURN et al."), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"). CAUSE-PA later separately intervened in this proceeding.
- PECO Energy ("PECO")
- Office of Consumer Advocate ("OCA")
- Pennsylvania Coalition Against Domestic Violence ("PCADV")
- H. Gil Peach. Dr. Peach later became TURN et al.'s witness.

- Face to Face
- Coalition of 36 organizations opposing notarized letter requirement for adults with no income
- Pennsylvania Immigration and Citizenship Coalition
- Ceiba – A coalition of Latino community based organizations serving Philadelphia
- Nationalities Service Center

On January 3, 2013, a Secretarial Letter was issued to address procedural issues in these proceedings. To ensure that critical decisions about the structure of PECO's CAP Plan are made before PECO has to file the Shopping Plan (which, due to the extension of time, is now on or around May 1, 2013), the Commission plans to adopt a Final Order on the CAP Plan by April 4, 2013. Thus, the CAP Plan was assigned to the Office of Administrative Law Judge to conduct any necessary evidentiary hearings and briefing, and certify the record (if any) to the Commission by March 1, 2013.

The Commission stated that concurrently with the hearing process described above, between now and March 1, 2013, the Commission encourages PECO to engage the other parties in collaborative discussions about the CAP Plan. To the extent any consensus resolutions are achieved, PECO is directed to file a revised CAP Plan or settlement agreement with the Commission by March 1, 2013. Secretarial Letter, at 2. While discussions and informal data exchanges have occurred among some of the interested parties, no consensus resolutions have been reached.

This matter was assigned to Administrative Law Judge Cynthia Williams Fordham. A telephonic prehearing conference was held on January 15, 2013. Counsel for the following parties participated: PECO; OCA; OSBA; TURN, et al; CAUSE-PA; PCADV; RESA; PAIEUG; Dominion Retail and Interstate Gas; and First Energy Solutions Corp. Evidentiary Hearings in this matter were held on February 15 and 19, 2013. Briefs are due to the ALJ by February 27, 2013.

III. STATEMENT OF QUESTIONS INVOLVED

Whether PECO should eliminate the CAP Rate design and move to a percent of income plan design?

Suggested Answer: Yes.

Whether the costs and benefits for CAP and non-CAP residential customers of a change to a percent of income plan design weigh in favor of a change to a percent of income plan design?

Suggested Answer: Yes.

Whether or not PECO should retain the one-year arrearage forgiveness policy?

Suggested Answer: Yes.

Whether PECO should be required to make appropriate referrals to CAP Rate A while it is still in effect?

Suggested Answer: Yes.

Whether PECO should require customer education and positive customer response rather than automatic enrollment in CAP upon receipt of a LIHEAP grant?

Suggested Answer: Yes, for new CAP enrollees; no, for customers previously enrolled in CAP.

Whether PECO should continue to implement CAP credit policy guideline maximums on a system-wide average basis?

Suggested Answer: Yes.

Whether PECO should seek and be granted a waiver of LIURP rules to address de facto space heating?

Suggested Answer: Yes.

IV. SUMMARY OF ARGUMENT

The General Assembly has acknowledged the importance of helping low income customers maintain utility service, and the Competition Acts require the Commission to continue, at a minimum, the same “level and nature” of consumer protection policies and services that were in place at the time the Competition Acts became effective. 66 Pa. C.S. §§ 2203(7) and 2802(10). Under the Competition Acts, universal service programs are subject to the administrative oversight of the Commission, which must ensure that the utilities run the programs in a cost-effective manner. 66 Pa. C.S. §§ 2203(8) and 2804(9). The Commission balances the interests of customers who benefit from the universal service programs with the interests of the customers who pay for the programs.⁸ Although the Competition Acts do not define “affordability,” the Commission’s CAP Policy Statement provides guidance on setting affordable payments. TO, at 7-8. The “maximum energy burdens at 52 Pa. Code § 69.265(2)(i)(A)-(C) apply to all payment plan designs [not only to percentage of income payment design].”⁹ Of primary concern to the Commission is whether PECO’s CAP Rate complies with the energy burdens and affordability provisions outlined in the Commission’s CAP Policy Statement. TO, at 9.

As noted in the Tentative Order, PECO’s current CAP Rate design has been evolving since 1996. In 2000, the Commission recommended that PECO implement a percent of income payment plan (PIPP) design, discussed changes in discounts and concerns of customer confusion, and required that the number of CAP tiers be increased in an attempt to further affordability. TO, at 8. More recent orders supported the premise that PECO’s CAP Rate has been unaffordable.

Id. Notwithstanding the USECPs approved in 2008 (for 2007-2009) and 2010 (for 2010-2012),

⁸ See Final Investigatory Order on Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms (“Final Investigatory Order”), Docket No. M-00051923, (December 18, 2006) at 6-7.

⁹ Final Investigatory Order, at 47-48.

the latest October 2012 APPRISE third-party program evaluation raised questions regarding PECO's rate discounts and affordability. When the USECP for 2010 to 2012 was approved, on August 23, 2010, it was with the clearly expressed condition that PECO's next rate case would establish new rate discounts applicable to each tier.¹⁰ In PECO's 2010 electric rate increase proceeding, the Commission approved a Joint Settlement in which PECO committed to achieving 88-90% "CAP population affordability" within the guidelines of the Commission's CAP Policy Statement at 52 Pa. Code § 69.265(2)(i). Opinion and Order, December 21, 2010, Docket No. R-2010-2161575, at 10. As discussed further herein, the new Rate R (residential non-heating) CAP tier rates as implemented by PECO have instead managed to achieve only a disappointingly low 64% CAP population affordability, leaving 36% or more than a third of CAP customers with unaffordable bills. This is three times higher than the expected 10-12% unaffordability. PECO St. 1, at 9, Table 4.

In this proceeding the Commission reviewed and analyzed the USECP for 2013-15, and questions once again the design structure of the PECO CAP. The many attempts to modify PECO's current CAP tiered rate discount structure to achieve greater affordability have fallen well short of their goals. The Commission has listed two options: (1) to continue with the rate tiers and direct PECO to try again to readjust those rates to eliminate the inequities; or (2) to direct PECO to move to a percent of income plan. TO, at 15.

The record in this proceeding provides strong support for the recommendation that PECO's current CAP program should be redesigned into a Percentage of Income Payment Plan (PIPP). PECO's proposed alternative solutions would merely adjust the current rate tiers and readjust rates, but those adjustments would still result in high levels of unaffordability while increasing costs. A PIPP, on the other hand, can achieve much greater levels of affordability

¹⁰ Final Order, Docket No. M-2009-2094394, (August 23, 2010), at 7.

without increasing annual costs. A move to a PIPP would be well worth the investment for many years of optimal CAP performance. The CAP Policy Statement's control features would apply to a PIPP to manage costs, including a maximum CAP credit that should be applied on a system-wide average basis. The record weighs heavily in favor of a PIPP CAP design as the least cost and most optimal option to achieve high levels of affordability.

V. ARGUMENT

A. The Record Overwhelmingly Demonstrates That a PIPP is the Optimal Method to Achieve Affordable Bills.

The Percentage of Income Payment Plan (PIPP) structure is the best method for meeting the affordability needs of households that lack ability to pay monthly energy bills formulated according to standard "cost-of-service" rate designs. TURN et al. St. 1, at 4, lines 2-4. An affordable payment is based on ability to pay and, in Pennsylvania, the Commission has established that, as a percentage of household income, the outer limits of what a low-income family can afford to pay for non-heating electric utility service is approximately 6-7%. Id. at 4, lines 8-10. This affordability target is set forth in the CAP Policy Statement.¹¹

There are two reasons why the PIPP is the optimal program approach. First, the PIPP program design is the most precise among the available alternative program structures in

¹¹ 52 Pa. Code § 69.265(2)(i) sets a range of maximum payments (expressed as a percentage of household income) for utility service for low income customers in three income level "bands", 0-50% of federal poverty level, 50-100% of federal poverty level, and 100-150% of federal poverty level. Although the ranges of maximum payments are specifically set forth as guidelines for a Customer Assistance Program operated as a "Percentage of income plan," they apply, by virtue of 52 Pa. Code § 69.265(2)(ii), to a Customer Assistance Program operated as "Percentage of bill plan," which is one way to view PECO's current CAP Rate program, and all other CAP program designs. See Final Investigatory Order, at 47-48. According to this regulation, maximum payments for electric non-heating service should be in the range of 2-5%, 4-6% and 6-7%, maximum payments for gas heating should be in the range of 5-8%, 7-10%, and 9-10%, and maximum payments for electric heating (or electric non-heating combined with gas heating) should be in the range of 7-10%, 11-16%, and 15-17%, respectively, for the three income level bands described. Contrast the 17% maximum energy burden with the "affordable burden" often cited by analysts of 6% of gross household income for home energy bills. See www.homeenergyaffordabilitygap.com. TURN et al. St. 1, at 4, fn 1.

assigning an affordable monthly “please pay” bill. This is because the PIPP individually tailors the “please pay” amount to the income of each household. Second, once put into place (that is, after the transition charges associated with the first year) it is the least cost approach to full implementation of affordable bills across all future years. TURN et al. St. 1, at 5, lines 4-9.

1. A PIPP is the most precise CAP design to achieve affordability.

There is factual agreement on the precision of the PIPP designs in contrast to the Tiered program designs. PECO's third-party evaluator APPRISE, OCA witness Roger Colton and TURN et al. witness Dr. Peach agree that a PIPP is the most efficient CAP design to achieve affordability. In its October 2012 Evaluation, APPRISE noted that “[o]ne of the key findings in this report was that a significant percentage of lower tier CAP participants do not reach the PUC affordability targets after receiving the CAP discount,” and “[t]he only way that a utility company can achieve the PUC target for all CAP participants is to set the customer’s payment as a fixed percentage of the customer’s income, with no limit on the maximum discount.” Exh. LF-8, APPRISE, at 117-18.

OCA witness Mr. Colton emphasizes the inefficiency of the current tiered CAP Rate program, which viewed in terms of the Commission’s guidelines over-subsidizes some customers and under-subsidizes others:

...by design, some customers are under-paid...and some customers are over-paid....
When underpayments occur ratepayer money is being spent with the realization that those expenditures are insufficient to achieve the affordability objective set forth in the PUC’s guidelines; when overpayments occur, ratepayer money is being spent with the realization that those expenditures exceed the level needed to achieve affordability.

OCA, St. 1, at 8, lines 9-17. Mr. Colton notes the size of the benefit of a PIPP program design over PECO’s tiered design: “... the level of mis-targeted expenses that are in-play here are in the tens of millions of dollars each year, representing money that is both under-spent and money

that is over-spent.” OCA St. 1, at 20, lines 21-23. In a PIPP design, these tens of millions of dollars in discounts that are mistargeted in the current 7 tier CAP program can be redistributed much more precisely to meet energy burdens.

PECO’s own analysis shows a PIPP can achieve 100% affordability at the same price as its current tiered program that only achieves 64% affordability. PECO, in Lauren Feldhake's direct testimony, has provided cost and affordability rate comparisons for six (6) different CAP options, including the current 7 tiered CAP Rate program, two 12-tier options, and 3 PIPP options (one with no cost containment,¹² one with PUC required minimum bill, and one with minimum and maximum cost containment). PECO St. 1, at 7-9, Tables 1-4. In PECO’s affordability comparison table (PECO St. 1, at 9, Table 4) the PIPP with no cost containment is the only program design fully compatible with the affordability goals set forth in PA Code. Similarly, the PIPP with PUC-required minimum bill is affordable for all customers.¹³ In contrast, the three CAP tiered program designs have substantial affordability problems throughout all income ranges. See PECO St. 1, at 9, Table 4 (overall unaffordability for Rate R options: 36% in Current 7 Tier Program, 36% in proposed 12 Tiers, and 33% in proposed 12 Tiers with seasonality). Notwithstanding Ms. Feldhake's contrary rebuttal testimony, PECO concedes that a PIPP provides much greater precision.

In other words, while a PIPP would cost approximately the same as the Current 7 Tier Program in terms of subsidy or “Shortfall” costs, (PECO St. 1, at 7, Table 1), the PIPP achieves

¹² For purposes of this Brief, the labels assigned to the six (6) CAP options compared in Tables 1-4, in PECO St. 1 at 7-9, will continue to be used. However, the label “PIPP with no cost containment” refers to the lack of cost control features such as the PUC minimum bill. Other control features, as provided in 52 Pa. Code § 69.265(3), such as the aggregate maximum CAP credits that are discussed further herein, would still be applicable.

¹³ Customers in the range of 0-25% of poverty receive nominal minimum bills that may exceed the maximum energy burden bill payments, as a percentage of household income, set forth in the CAP Policy Statement. However, because minimum bill requirements are specifically set forth in the CAP Policy Statement, a PIPP with bills corresponding to the household energy burdens, but requiring minimum household bills, would still achieve 100% affordability within the current CAP Policy Statement.

100% affordability while the Current 7 Tier Program only achieves 64% affordability (PECO St. 1, at 9, Table 4; Tr. at 98, line 22-25, at 103, line 9-16, at 107, line 18 through 108, line 6.).

2. A PIPP is the least cost option to attaining actual affordability.

The analysis provided by PECO allows for cost comparison, as shown in the “Shortfall” row of Table 1. PECO St. 1, at 7, Table 1. The columns showing “PIP with no cost containment” and “PIP w PUC-required minimum bill” have essentially similar costs as the three CAP tiered programs presented in Table 1. However, as confirmed by Ms. Feldhake, for the same price, the PIPP options achieve 100% affordability¹⁴ while the three CAP tier programs achieve only 64% to 67% affordability. Tr. at 107, line 18, through 108, Line 6; PECO St. 1, at 7-9, Tables 1 and 4.

Cost offsets from eliminating over-subsidies allow a PIPP to direct funds to CAP customers who were under-subsidized to achieve greater levels of affordability without increasing overall cost. Dr. Peach's direct testimony demonstrates that by eliminating the over subsidies which occur in the Current 7 Tier Program, the PIPP preserves dollars and insures that each dollar is used exactly to meet the affordability criteria as defined in the Commission's CAP Policy Statement. TURN et al. St. 1, at 5 line 12 through 7 line 3.

PECO presented six (6) additional CAP 12 tier scenarios through Ms. Feldhake's rebuttal testimony. See PECO St. 1-R, Exhibit LF-3. The scenarios represent adjustments in usage caps for CAP discounts and redeployment of so-called “affordability goals.”¹⁵ The scenarios for Rate R (upper half of LF-3) increase total shortfall or subsidy cost between \$1.8 million to \$15

¹⁴ Although Ms. Feldhake's testimony, PECO St.1 at 9, Tables 4, shows the PIPP with PUC required minimum bill attaining 94% affordability, in fact 100% of bills rendered in this scenario would be affordable pursuant to the CAP Policy Statement. See *supra* note 13.

¹⁵ As discussed further in section V.B of this Brief, PECO's use of the term “affordability goals” often refers to an underlying factor in the calculation of discount levels and does not refer to a commitment to achieve a certain level of CAP population affordability.

million above current cost, in order to reduce unaffordability rates to between 25% and 33% from the current 36%. Tr. at 123, line 6, through 125, line 7; PECO St. 1-R, Exhibit LF-3. All of these new scenarios still fall well short of the 100% rate of affordability that is achieved by the PIPP with PUC-required minimum bill, which costs only \$200,000 more annually (\$78.1 million instead of \$77.9 million) than the current CAP. PECO St. 1, at 7-9, Tables 1 and 4.

3. A PIPP attaining 100% affordability remains less costly than a Tiered approach attaining 88% to 90% affordability even if generation costs rise sharply.

PECO estimates that a PIPP would cost millions of dollars more than PECO's CAP Rate program if future generation prices increase. See PECO St. 1 at 2. However, if PECO's CAP Rate program were to be modified to eliminate the discount usage limitation (typically 650 kWh), such that CAP Rate discounts applied to all PECO CAP customer usage, and so that 88% to 90% of PECO CAP Rate customers actually received affordable bills,¹⁶ a PIPP would cost substantially less while achieving 100% affordability.

In the worst case scenario demonstrated at Table 1 of Ms. Feldhake's direct testimony, page 7, Ms. Feldhake estimates that a 30% increase in generation prices would result in an \$8 million increase in the "shortfall" cost of CAP Rate versus a \$21 million increase in the "shortfall" cost of a PIPP. Table 1 alone, however, does not tell the full story.

As Mr. Neumann testified, extending PECO's rate discounts to all CAP customer usage to attain 88% to 90% affordability would increase the "shortfall" cost a further \$27 million. PECO St. 2R at 8; Tr. at 152, line 13, through 153, line 5. Furthermore, Mr. Neumann verified that the increased generation prices, applied to higher usage would necessarily further increase the "shortfall" costs of CAP Rate, so the \$27 million increase is understated. Tr. at 154, lines 4- 13.

¹⁶ See discussion at Section V.B, *infra*, regarding PECO's CAP Rate program's fundamental flaw: that only 88% to 90% of PECO CAP Rate customers whose usage is at or below the discount usage limitation (typically 650 kWh) receive affordable bills.

In other words, if CAP Rate were to attain 88% to 90% affordability by eliminating discount usage limitations, and generation prices were to increase by 30%, the CAP Rate shortfall would be in excess of \$112.9 million (77.9 + 8 + 27) whereas the PIPP shortfall would be \$100 million (79 + 21). A PIPP can thus provide substantially greater affordability even if generation prices increase well beyond what is expected in the near term, at a savings of approximately \$13 million or more per year, than a PECO tiered design that accomplishes 88% to 90% affordability.

4. Mitigating impact on CAP customers losing excess subsidies.

Some customers who currently receive a discount would, under a PIPP, not receive any discount because their usage levels result in bills deemed affordable under PUC guidelines. There is concern for the estimated 45,000 current CAP customers who PECO projects would receive zero subsidy in a move to a PIPP. PECO St. 1, at 2; OCA St. 1R, at 15; TURN et al. St. 1, at 18-19. Measures could be implemented to mitigate the adverse impact on these customers or reduce the number of customers who would be impacted.

As noted by OCA and TURN et al., these customers could still benefit from arrearage forgiveness of amounts that had been suspended for forgiveness at the time of initial CAP enrollment. OCA St. 1R, at 15; TURN et al. St. 1, at 19, fn. 6. These customers should not suddenly have suspended but unforgiven arrearages become immediately due, particularly while they remain within income levels at or below 150% FPIG.¹⁷

Instead of taking away all CAP discounts from CAP customers with pre-CAP energy burdens of less than the maximum energy burden allowed in the CAP Policy Statement, PECO

¹⁷ Future PECO CAP customers can also determine whether or not to enroll in a PIPP to obtain arrearage forgiveness by paying PIPP bills which may, depending on each month's usage, be more or less than a non-PIPP PECO bill.

could pick an energy burden limit that is lower in the allowed range of maximum energy burdens. As discussed by Ms. Feldhake in her direct testimony, (PECO St. 1, at 19), the Commission's affordability guidelines state that an affordable bill would be 6% to 7% of income for customers with income that falls between 101% and 150% FPIG. PECO could set the maximum energy burden for this group at 6% instead of 7% and take away \$8 million instead of \$14.5 million in subsidies, to reduce the number of customers losing discounts in a PIPP.

Further, a transition to a PIPP is likely to take several months to a year to fully implement. PECO St. 1, at 8.¹⁸ With prompt notice to all CAP customers that design changes are forthcoming to PECO's CAP program, customers in the existing tiered discount program can continue to take advantage of discounts that may become unavailable in the future, with the corresponding benefit of receiving arrearage forgiveness by paying discounted bills under the current program. If full implementation of a PIPP is not complete for 12 months after the Commission's final order requiring a PECO PIPP, all current CAP customers will have the full 12 months to earn arrearage forgiveness and new enrollees will have sufficient notice upon enrollment to prepare for program changes and avoid unsettling surprises that may be occasioned by a significant change to PECO's low-income program.

Finally, LIHEAP grants will still be available to customers who receive zero subsidies if PECO moves to a PIPP. LIHEAP maximum income eligibility has been at 150% FPIG, the same level as for CAPs. Exh. LF-8, APPRISE, at 28 (LIHEAP income eligibility at 150% of the federal poverty level).

¹⁸ PECO estimates in Table 3 of PECO St. 1, at 8, that implementing CAP shopping with its current CAP program would take approximately 14 months, and to do so with a PIPP would take 21-30 months. The difference, ranging between 7 and 16 months, could be a reasonable estimate of the time it would take PECO to implement a PIPP.

5. CAP cost control features apply to a PIPP.

The Commission already imposes significant cost containment measures on CAP programs and PECO should avoid adding further measures that act as barriers to achieving affordable bills. The CAP Policy Statement, at 52 Pa. Code § 69.265(3), provides for control features, including minimum payment terms, no nonbasic services, consumption limits, high usage treatment, maximum CAP credits, and exemptions. The minimum payment terms are a cost control feature and were referenced in Sections V.A.1 and V.A.2 above in the discussion of a PIPP with PUC required minimum bill, which are \$12 for an electric nonheating account and \$30 for an electric heating account. 52 Pa. Code § 69.265(3)(i). There have been no concerns regarding nonbasic service in this case. Maximum CAP credits are discussed in a separate section herein (Section V.D, below). Consumption limits, high usage treatment and exemptions are briefly discussed here.

Dr. Peach discussed the consumption limit of 125% of historic usage for CAP customers. TURN et al. St. 1-R, at 8, lines 11-16. This limit is consistent with the Commission's Final Investigatory Order in which the Commission agreed that "125% is a more reasonable standard than 110%." Final Investigatory Order, at 47. PECO's LIURP program already targets CAP high users for treatment, which has not been a significant matter of Commission concern, as the current USEC Plan has been found to be in compliance with the LIURP regulations at 52 Pa. Code §§ 58.1-58.18. TO, at 31. However, as discussed further below, the Commission has noted APRRISE's suggestion that PECO target lowest income CAP customers who exceed CAP usage discount limits for LIURP. TO, at 7.

All of these control features (minimum payment terms, no nonbasic services, consumption limits, high usage treatment, maximum CAP credits, and exemptions) would also

be applicable to the *de facto* heating customers discussed in Ms. Feldhake's rebuttal testimony. PECO St. 1R, at 19. Some of these customers may be eligible for exemptions to the control features if conditions cannot be treated with LIURP or other usage reduction measures. 52 Pa. Code § 69.265(3)(vi). However, as discussed further below, TURN et al. would support a PECO initiative to address more aggressively and creatively the issues of *de facto* heating and structural issues that drive up electric bills.

PECO's CAP Rate program imposes an additional control feature, not provided in the CAP Policy Statement, in setting 650 kWh and 750 kWh general limits on usage that are subject to CAP discounts. Contrary to empirical evidence, PECO insists that these usage limits are necessary to encourage conservation. PECO St. 1 at 24. APPRISE's latest evaluation of PECO's CAP shows that CAP customers are more likely to reduce usage than increase usage after CAP enrollment. LF-8, APPRISE, at xiv, 79-80. As discussed further herein, these very usage limits are at the core of the fundamentally flawed CAP Rate structure that drives up the unaffordability rates in PECO's CAP.

B. PECO's CAP Rate Program Does Not and Can Not Achieve Affordability According to the Commission's CAP Policy Statement

1. It is undisputed that a third of PECO's CAP Rate customers experience unaffordable bills.

Documentary and testimonial evidence demonstrate that more than a third of PECO's CAP customers have energy burdens above Commission targets. The October 2012 APPRISE Evaluation summarized the affordability of PECO's current CAP Rate program as follows:

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.

LF-8, APPRISE, at xv, 115-16 (emphasis added). PECO's testimonial evidence also confirmed that the current CAP Rate structure only achieves 64% affordability for nonheating (Rate R) electric customers. PECO St. 1, at 9, Table 4; Tr. at 103 lines 9-16.

PECO argues that the relatively high rates of CAP bill payment are a better indicator of affordability than energy burdens. PECO St. 1 at 30; Tr at 101, lines 7-18. PECO's reliance on percentage of CAP bills paid as an indicator of affordability is misplaced. As Dr. Peach discussed, "Due to the life essential nature of utility services, relatively high rates of payment of such bills, even among low-income customers, are not surprising." TURN St. 1-R, at 6, lines 1-13. The October 2012 APPRISE evaluation confirms that even after CAP enrollment, significant numbers of customers are still forgoing other essential needs. Among its findings, APPRISE documents that "while 48 percent of CAP participants reported that they delayed or skipped paying for food prior to program participation, 26 percent reported that they did so while in CAP." Exh. LF-8, APPRISE, at 75. Similarly, 41% of CAP participants delayed or skipped paying their mortgage or rent prior to program participation, while 23% reported they did so while in CAP. *Id.*, at 75 (Table IV-28). Finally, "[w]hile 31 percent [of CAP participants] said they had to delay medical or dental service prior to CAP participation, only 18 percent said they had to do so while participating in CAP." *Id.*, at xiv, 86, 75 (TABLE IV-28).¹⁹

¹⁹ It should be noted that the APPRISE figures represented here are based on completed interviews with 299 PECO CAP customers. A high rate of CAP participants identified for the survey did not participate. 208 participants were deemed "unusable" because "no one was present in the home during the survey who was able to answer questions...or because phone numbers were unavailable, disconnected, or incorrect." Exh. LF-8, APPRISE, at 57. 222 participants were deemed of "unknown eligibility" and excluded due to answering machines, no answers, and language barriers. *Id.*, at 58. Finally, 71 participants were considered "non-interviews" because the participants refused to complete the interview or asked the interviewer to call back, but did not ultimately

2. PECO agreed to CAP population affordability targets of 88% to 90%.

In two settlements, in 2009 and 2010, PECO agreed to CAP population affordability targets of 88% to 90%. The 2009 DSP Settlement included an agreement, at section E, paragraph 67, that “approximately ninety percent (90%) of each tier of CAP customers will meet the Commission’s affordability targets set forth in the Commission’s CAP Policy Statement, 52 Pa. Code § 69.265(2)(i).”²⁰ In PECO’s 2010 electric rate increase proceeding, Docket No. R-2010-2161575, the Commission approved a Joint Petition for Partial Settlement that included PECO’s agreement to set CAP Rate discounts so that 88-90% of CAP customers will receive bills within the Commission’s affordability guidelines.²¹

The remaining paragraphs pertinent to universal service do nothing to alter the core commitment to affordability targets. The DSP Settlement explained, *inter alia*, the new tiers within the CAP Rate program design (paragraph 68), a system-wide CAP benefit cost control and application of the CAP discount to 650 kWh (750 kWh for tiers B and C) usage per month (paragraph 69), CAP customers’ obligation to remain on default service (paragraph 70), usage tracking mechanisms (paragraph 72), potential adjustments to CAP Rate based on future

complete the interview. *Id.* Although APPRISE’s findings are significant, the sample used is very small and it is certainly possible that a higher percentage of PECO CAP customers could be experiencing these issues, but are unwilling or unavailable to participate in the APPRISE survey.

²⁰ Petition of PECO for Approval of DSP and Rate Mitigation Program, Docket No. P-2008-2062739.

²¹ The 2010 Settlement is public record on file with the Commission. Relevant portions were also marked for entry on this record at PECO Cross 6. The Opinion and Order in this matter, entered as of December 21, 2010, notes the 88% and 90% population affordability goals and summarizes:

TURN *et al.* and PCOC, in their separate but similar Statements in Support at 1-2, note that the Joint Petition preserves the terms of prior settlement agreements [citation to DSP docket omitted] that mitigate rate increases for low-income customers following expiration of the rate caps by allowing for adjustments downward or upward of the CAP Rate discounts so that 88-90% of CAP customers will receive bills within the Commission’s affordability guidelines.... We agree with TURN *et al.* and PCOC’s observations and concur that the Joint Petition not only provides the well-justified preservation of prior settlement terms that protect low income customers, but also adds needed protections to this vulnerable customer segment. Opinion and Order, 18.

Commission guidance (paragraphs 71 and 73), and LIURP prioritization and weatherization and conservation spending goals (paragraphs 74 and 75). None of these provisions alter the core commitment in the DSP Settlement to attaining 90% CAP population affordability.

The 2010 Settlement, at 7, provides in pertinent part:

The Joint Petitioners agree to the terms set forth in Exhibit 4 attached hereto. PECO's proposed changes to the Universal Service Fund Charge and annual reconciliation mechanism, as set forth in its March 31, 2010 filing and Supplement No. 2 are accepted, with the following modification to reflect moving the target for Tiers D, D1, E and E1 from 90% CAP population affordability to 88%.

Exhibit 4 to the 2010 Settlement again sets forth the CAP Affordability Targets and states that "PECO shall calculate its CAP Rate discounts utilizing the following affordability targets" and specifies 90% or 88% for each CAP Rate tier, as applicable. Exhibit 4 at 1 (a copy of Exhibit 4 to the 2010 Settlement is appended to Mr. Neumann's rebuttal testimony at SN-1). It then provides: "In all other respects, unless altered by other provisions of this settlement, PECO shall calculate its CAP Rate discounts using the methodology described in its electric DSP Settlement." Id. at 2. Finally, Exhibit 4 sets forth provisions adjusting the CAP credit cost containment factor and certain terms of agreement that do not affect the calculation of CAP Rate discounts.

Taken together, the 2009 DSP Settlement and the 2010 Settlement clearly establish PECO's agreement to the following: (1) 88% to 90% of each tier of CAP customers will receive bills within the affordability guidelines set forth in the Commission's CAP Policy Statement; and (2) CAP Rate will accomplish the 88% to 90% population affordability objective by applying discounts to CAP customers' bills up to certain monthly usage limitations, typically 650 kWh. It is noted that indexed cost containment measures (aggregate maximum CAP credits) may limit

the effectiveness of CAP Rate in achieving 88% to 90% CAP population affordability.²²

3. PECO appears to argue that the mechanics of CAP Rate override its agreement to obtain 88% to 90% CAP population affordability.

In his direct testimony, TURN et al. witness Dr. Peach is critical of PECO's operation of CAP Rate in a manner that does not seek to attain 88% to 90% CAP population affordability. See TURN St-1 at 10.²³ Dr. Peach accurately describes PECO's "use of 88-90% [affordability targets] as an underlying component of the discount calculation, rather than as its affordability goal for all CAP customers." Exhibit HGP-3, TURN Response to PECO Set I-1. Dr. Peach elaborates:

My understanding of the [2010 Settlement] agreement was that PECO would set rates to attain 88%-90% affordable bills within each tier for the population of each tier. This was to be accomplished, but not limited, by discounting CAP customer bills up to certain monthly usage limitations.

Exhibit HGP-3, TURN Response to PECO Set I-2 (emphasis added).

Dr. Peach's responses identify the conflict between PECO's reliance upon the mechanics of CAP Rate and the 88% to 90% affordability objectives explicitly agreed to by PECO in the DSP Settlement and the 2010 Settlement.

PECO witness Scott Neumann, in rebuttal testimony in this proceeding, testified about PECO's reliance upon the mechanics of CAP Rate and demonstrated that CAP Rate does not and can not result in 88% to 90% affordability. Mr. Neumann testified that "[t]he Universal Services provisions of the 2010 Settlement are contained in Exhibit 4 to that settlement." PECO St-1R at

²² As discussed below, in V.D, PECO's aggregate CAP maximum credits are unlikely to be triggered to limit CAP Rate discounts in the near future. See also PECO Exh. 1, PECO Response to TURN Set I-10.

²³ This portion of Dr. Peach's testimony provoked strenuous cross-examination by PECO's counsel, who viewed the language as inflammatory and questioned the sources of Dr. Peach's information. The factual basis underlying Dr. Peach's criticism has, nonetheless, been clearly established in this proceeding.

2.²⁴ Mr. Neumann explains the mechanics of CAP Rate²⁵ as follows:

PECO uses a three step approach: (1) PECO requests its independent evaluator, APPRISE, to calculate the discount that would be necessary, in a given tier, to provide affordable service to any target percentage of that tier if the calculated discount was applied to all kWh used by everyone in the population; (2) PECO then uses the agreed-upon affordability target percentage for a given tier – currently either 88% or 90% of a tier, depending upon which tier is being evaluated, and determines the percentage discount off PECO's Rate R or RH that would be necessary in order to provide affordable service to the specified percentage of that tier, if the discount was provided to all kWh usage; then (3) PECO provides that discount to the first 650 kWh (more in some months and for Rate RH) of usage in any given month. Id. at 3.

In sum, as confirmed by Mr. Neumann, APPRISE calculates the discounts that would be necessary to attain 88% to 90% affordability for all CAP Rate customer billings (including all usage). Id., Tr. at 145-46. The resulting discount percentage is then applied to the portion of CAP Rate customers' bills that are subject to discount (usage above 650 kWh per month is typically not eligible for a discount). PECO St-1R at 3. The effect of this methodology is to target 88% to 90% affordability only for CAP customers who use less than 650 kWh of electricity per month, as Ms. Feldhake testified: "if a Rate R customer limits their usage to 650 kWh per month, the bill that is delivered to them will be affordable for 90% of each tier." PECO St. 1 at 24; see also Tr at 103, lines 5-7 ("The design of CAP program within the usage limits achieve 88 and 90 percent affordability. That is the way the programs are designed, to achieve affordability within the usage limits at 90 and 88 percent.").

On cross-examination, Mr. Neumann acknowledged that at no time does APPRISE

²⁴ Mr. Neumann's rebuttal testimony omits any mention of the language, quoted above, contained in the body of the 2010 Settlement that explicitly acknowledges the 88% to 90% CAP population affordability objectives of CAP Rate.

²⁵ Mr. Neumann also appends several exhibits documenting the discount levels used in CAP Rate and compliance filings reflecting the same in support of the CAP Rate methodology. These exhibits do not show the math behind the discount level calculations and are irrelevant to the underlying concern expressed by TURN et al., i.e., that PECO has interpreted CAP Rate's affordability objectives to apply only to customers who don't exceed the usage limitations subject to CAP Rate discounts, contrary to the plain language of the DSP Settlement and 2010 Settlement.

calculate the discounts that would be necessary on just the first 650 kWh to attain 88% to 90% CAP population affordability. Tr. at 150, lines 5-13.. Similarly, Mr. Neumann acknowledged that APPRISE does not undertake an analysis that would tell PECO what percentage of CAP Rate customers should be expected to have unaffordable bills by limiting the discount to the first 650 kWh of usage. Tr. at 146, lines 11-16. Accordingly, PECO's methodology is not currently designed to achieve 88% to 90% CAP population affordability, nor does PECO utilize APPRISE to assist it in determining, in advance of setting tiered discount rates, how many CAP Rate customers are likely to receive unaffordable bills.

4. PECO Has Demonstrated that CAP Rate Discounts Cannot Achieve the Affordability Objectives of the DSP Settlement and 2010 Settlement

In rebuttal testimony, Mr. Neumann demonstrates, by way of hyperbole, the persistent structural flaw inherent in CAP Rate – that it is incapable of achieving 88% to 90% CAP population affordability. In response to the direct testimony of Dr. Peach, Mr. Neumann provides an example of a CAP C customer (with income between 26%-50% FPIG) using 900 kWh of electricity in a month under the rates in effect on January 1, 2011. PECO St-2R at 4-7. Mr. Neumann explains that, given the discount usage limitation in CAP Rate (650 kWh in this example), the customer's bill could only meet the target affordability percentages calculated by APPRISE if the percentage discount were increased above 100%. Id. at 5-6 (resulting in a credit on the first 650 kWh of \$18.67).

Mr. Neumann's example, taking into account the overall 36% rate of bill unaffordability of CAP Rate customers underscores the need for PECO to implement a program that can actually achieve population affordability consistent with the Commission's CAP Policy Statement. Mr. Neumann's example highlights the structural flaw in CAP Rate. It is self-evident from the

Commission's November 8, 2012 Tentative Order in this proceeding that too many CAP Rate customers cannot attain affordability through PECO's CAP Rate model of tiered discounts applied to limited usage. Although CAP Rate was premised upon the goal of 88% to 90% affordability, far more than 10% to 12% of CAP Rate customers receive unaffordable bills. The CAP C customer in Mr. Neumann's example is not a member of the 10% to 12% of CAP Rate customers for whom CAP Rate wasn't designed to achieve affordability; she is a member of the 45% to 58% CAP Rate tier C customers for whom CAP Rate's commitment to affordability remains unsatisfied.²⁶

C. IT Transition Cost are Not Prohibitive and Should Not Deter a Logical Move to a PIPP.

OCA and TURN et al. witnesses question the reliability of PECO's estimates for one-time IT costs to transition to a PIPP. PECO's estimates of IT transition costs to change its CAP to a PIPP range from a low of \$4.5-6 million²⁷ to a high of \$7.7-12.8 million.²⁸ PECO's estimates are based on the costs of its Illinois affiliate, ComEd, in implementing a PIPP. PECO St. 1, at 10-11. It appears highly unlikely that ComEd's costs provide a good predictor of PECO's costs to transition to a PIPP.²⁹

OCA's witness Mr. Colton states that PECO's "estimate of IT costs appears to be unsupported, and potentially over-stated, the IT transition costs reported in Ms. Feldhake's

²⁶ See PECO St-1 at 9, Table 4 (CAP Rate tier C is comprised of customers whose incomes are between 26% to 50% FPL and are their unaffordability percentages under the current 7 tier structure are reflected in the rows marked "26-38%" and "39-50%").

²⁷ See Exh. HGP-1 (PECO Comments of November 28, 2012) and Exh. HGP-2 (PECO Reply Comments of December 10, 2012).

²⁸ PECO St. 1 at 10.

²⁹ PECO introduced Exhibit LF-7 at the Evidentiary Hearings on February 15, 2013. LF-7 demonstrates that ComEd's IT transition costs were incurred to implement a PIPP pursuant to Illinois Senate Bill (SB) 1918, signed into law on July 10, 2009, which created a mandatory and comprehensive utility low-income program that, among other things, integrates LIHEAP and state funding, and is overseen by the Illinois Department of Commerce and Economic Opportunity. The applicable provisions of SB 1918 are codified at 305 Il. C.S. §20/18, available at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1416&ChapterID=28>.

testimony for a PIP should not be relied upon for decision making in this proceeding.” OCA St. 1, at 12, lines 15-17. In response to PECO interrogatories, Dr. Peach provides an estimate of \$5 million for IT transition costs. Exh. HGP-3, TURN Response to PECO Set I-13.

TURN et al. submit that even if the one-time IT transition costs end up being close to PECO’s high-end estimate, the investment would be worth the return of years of optimal program performance. TURN et al. St. 1, at 12, lines 14-18. The continuing issues of high rates of unaffordability in PECO’s CAP would finally be addressed.

D. CAP Maximum Credits Must Be Applied to a System-Wide Average in Order to Comply with the Commission's CAP Affordability Guidelines.

The Commission has requested comments on PECO’s ongoing policy of applying CAP maximum credits on a system-wide average basis instead of on an individual customer basis. CAUSE-PA, 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. CAUSE-PA St. No. 1, at 13-15; OCA St. No. 1, at 47-49; PECO St. No. 1, at 52-54; TURN et al. St. 1-R, at 8-9. The plight of PECO’s lowest income customers, between 0-50% FPIG, have been a recurring subject of concern at the Commission for the past 12 years. Over this time period, gradual progress has been made to partially address the affordability of CAP bills for this special needs group through CAP enhancements that have been approved by the Commission. This important, albeit slow, 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, especially customers at the lowest FPIG levels. 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 urge the Commission to retain the current general program design control without modification.

There is no foreseeable risk of exceeding maximum CAP credits, as a population average, even with a move to a PIPP. TURN St. 1-R, at 9, lines 16-23. PECO cites to projected electricity price increases of 1.9% in 2013 and 2.6% in 2014. PECO St. 1, at 17, lines 15-18. PECO's conservative estimate of the CAP credits currently available to the CAP population is well in excess of the cost or shortfall numbers provided for the various alternatives in PECO St. 1, Page 7, Table 1, Direct Cost Comparison. See PECO Exh. 1, PECO Response to TURN-I-10.

E. PECO should be required to make appropriate referrals to CAP Rate A while it is still in effect.

CAP Rate A is available only to PECO's most impoverished customers with special circumstances. TO, at 16. These special circumstances include injury or illness, high medical bills, medically related usage, death in the family, sudden loss of employment, households that include children below 8 years of age, disabled persons, infirmed elderly, inability to maintain at least two CAP B payment arrangements, or high usage related to shelter conditions that are not treatable by LIURP. Id. At present, CAP Rate A is drastically under-enrolled. As of October 2012, only 88 of a possible 7,500 PECO customers were enrolled in CAP Rate A. Id. During this same timeframe, more than 45,000 PECO customers had income at or below 25% of the

FPL. Exh. LF-8, APPRISE Evaluation, at 9. PECO must be required to overhaul its current ineffective process and make appropriate referrals to CAP Rate A.

PECO can begin to address its CAP Rate A under-enrollment problem by automatically enrolling those CAP Rate B households known to have special circumstances. For example, information on the age of household members is documented on the CAP Rate application and can be used to determine if a household includes a child below the age of 8. Similarly, a review of a household's payment history would reveal whether the household had an inability to maintain at least two CAP B agreements. PECO might also look to the demographic information for the program as a whole, regarding the percentage of households with infirmed elderly, disabled, etc., and presume similar numbers for CAP Rate B customers. OCA St. 1, at 30.

PECO's main argument against automatic enrollment has been that its Tariff language requires an affirmative showing that an extenuating circumstance is causing the household to have an inability to pay CAP B bills. Exh. HGP-1, 11/28/12 PECO Comments, at 15. In other words, a mere showing of an extenuating circumstance is not enough. However, this showing of causation is unnecessary for two reasons: "first, it is counterintuitive that inability to pay CAP B bills is both a pre-condition to CAP Rate A enrollment and a separately listed qualifying circumstance ("inability to comply with ...non-CAP A payment arrangements"); second, significantly high service termination numbers among CAP B customers for nonpayment or broken payment arrangements is conclusive evidence of high levels of inability to pay among CAP B customers who should have been enrolled in more affordable CAP A bills." TURN et al. St. 1 at 9.

In addition, under its current verification process, PECO does not require the customer to document causation and the determination of causation is highly subjective. Tr. at 114, lines 9-13

("We don't ask for some sort of a study to be done to presume that they are –what that cause really is. We have a discussion with them to confirm that that is what is causing them to be delinquent"). PECO CARES staff determine who to enroll in CAP Rate A and make a judgment about who is eligible. Tr. at 111, lines 19-23. PECO call center representatives –who refer customers to CARES staff for CAP Rate A assessment – are instructed to "listen for any descriptive terminology or "buzz words" that could potentially be considered an extenuating circumstance." PECO Exh. 1, Response to TURN I-5(b) (document titled "CARES Job Aid" at 4). Under the current referral process, a customer who does not use the appropriate "buzz words" might slip through the cracks and never be evaluated for CAP Rate A eligibility. An automatic referral process would eliminate the inherent subjectivity of the current process.

PECO might also increase CAP Rate A enrollment by increasing the number of CARES staff who are available to evaluate and enroll customers. PECO has only three CARES administrators who are primarily responsible for evaluating and enrolling customers in CAP Rate A and six staff who "may" determine CAP Rate A eligibility. PECO Exh. 1, response to TURN - I-5(c).

Regardless of the specific steps PECO takes to increase CAP Rate A enrollment, the Commission has held that "PECO should ensure that its customer service representatives have the 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." T.O. at 16.

F. Other CAP Operational Issues

A number of USEC operational issues were listed in the Commission's Tentative Order, many of which were discussed by the witnesses in these proceedings. However, due to the expedited nature of the procedural schedule, TURN et al.'s focus has been on discussing the

merits of a PIPP as directed in the Secretarial Letter. TURN et al. set forth their positions below on some of these other issues and request that the Commission order PECO to work with stakeholders to develop certain proposals further.

1. PECO's one-year arrearage forgiveness policy should be maintained and enhanced.

The Commission has directed PECO to address whether or not to retain the one-year arrearage forgiveness policy. TO, at 31. All parties presenting expert testimony on the issue of arrearage forgiveness agree that there is no need to increase the time period over which pre-CAP arrearages would be forgiven. PECO St. 1, at 41; OCA St. 1, at 34-37. TURN et al. witness Dr. Peach further supports OCA witness Mr. Colton's recommendation that the one-year arrearage forgiveness policy be modified to allow for forgiveness of all pre-CAP arrearages at any time after one year when the customer becomes current on CAP bills. TURN et al. St. 1-R, at 14, lines 5-7; OCA St. 1, at 37, lines 2-5. TURN et al., therefore, requests that the Commission allow PECO to maintain the one-year period for arrearage forgiveness and to adopt Mr. Colton's recommendation for forgiveness after one year on a rolling basis.

2. Auto-enrollment in CAP should continue for LIHEAP recipients previously enrolled in CAP and should be modified for new CAP enrollees.

The Commission has suggested that PECO adopt the Duquesne Light model of requiring customer education and positive customer response rather than automatic enrollment in CAP upon receipt of a LIHEAP grant. TO, at 18-19, 31. TURN et al. witness Dr. Peach partially agrees with OCA witness Mr. Colton and fully agrees with CAUSE-PA witness Mr. Miller on this issue. TURN St. 1-R, at 14-15. For new CAP enrollees, TURN et al. agree with OCA and CAUSE-PA that automatic enrollment should be continued but limited to 60 days unless the customer provides acknowledgment of CAP enrollment and the requirements that accompany

CAP enrollment. TURN et al. also agree with the OCA that the 60-day period not count as CAP participation for purposes of availability of payment plans, (66 Pa.C.S.A. § 1405(c)). OCA St. No. 1, at 37-38; CAUSE-PA St. No. 2, at 9-12. However, in the case of LIHEAP recipients previously enrolled in CAP, TURN et al. agree with CAUSE-PA and recommend that the current automatic enrollment and recertification process continue as the lack of awareness of CAP rules is not present and the redundant process of recertification and reenrollment would be eliminated. See CAUSE-PA St-2, at 10-12.

3. PECO's proposal and practice of collecting Social Security Numbers from CAP applicants and all household members should be disapproved.

The Commission has justified concerns about PECO's practice of requiring Social Security Numbers from CAP applicants and all their household members, including children. TO, at 20-22. PECO has failed in these proceedings to meet its burden of showing that "requiring Social Security Numbers from all residents is necessary to the operation of PECO's CAP." TO, at 22. All of the non-PECO witnesses in these proceedings who address this issue strongly oppose PECO's practice of requiring Social Security Numbers from CAP applicants and their household members. CAUSE-PA St. 2, at 3-7; OCA St. 1, at 43-46, St. 1-R, at 19-20; PCADV St.1, at 6-16, St. 1-R, at 2-6, St. 2, at 3-9; TURN et al. St. 1-R, at 16-17. PECO's proposal in rebuttal testimony, (PECO St. 1R, at 15), to allow CAP applicants the option of refusing to provide Social Security Numbers is inadequate.

PECO proposed that its CAP application will still request the Social Security Numbers but customers may refuse to provide the information. PECO St. 1-R, at 13-15. The chilling effect of such a request creates the same barriers to CAP access, for customers without Social Security Numbers, which concern CAUSE-PA, PCADV, and TURN et al. The continuing

collection of the Social Security Numbers by PECO begs the questions raised repeatedly by OCA and PCADV of whether PECO should be allowed to collect such numbers and whether adequate measures are in place to protect the numbers from disclosure or mishandling. TURN et al. submit that the answer to both questions is in the negative. Since PECO has failed to meet its burden of showing the requiring Social Security Numbers is necessary for the operation of its CAP, the proposal and practice should be rejected.

4. PECO's proposal and practice of requiring notarized statements from persons claiming no income should be disapproved.

The Commission questions whether requiring a notarized letter of no income is necessary to the operations of PECO's CAP. TO, at 22. PECO has not met its burden of showing that such notarized statements are necessary to the operation of its CAP. In PECO's rebuttal testimony, PECO offers to modify its program to track the DPW model suggested by several witnesses. As this appears to be a reasonable modification, PECO should be ordered to revise its USECP accordingly.

5. TURN et al. would support a waiver of LIURP parameters to address *de facto* heating and structural issues.

Another recurring theme in the Commission's review of PECO USECPs is the continuing issue of how to deal with CAP customers who cannot control high electric bills due to *de facto* heating and structural issues in their home. TURN et al, would support PECO's efforts to obtain a waiver of LIURP rules that have been a barrier to using LIURP funds to address *de facto* heating and structural issues. In order not to diminish funds from the standard LIURP measures, DSP funding should be extended as recommended by Mr. Miller. CAUSE-PA St. 1-R, at 9-10.

6. PECO's proposed asset test should be rejected.

PECO did not include an asset test proposal in either its initial or revised USECP for 2013-15, but PECO proposes in comments and testimony to implement an undefined asset test to remove customers from CAP when PECO becomes aware of large assets exceeding an unspecified asset level. (PECO St. 1, at 58; Exh. HGP-1, 11/28/12 PECO Comments, at 11/28/12, at fn 1). TURN et al. witness Dr. Peach agrees with the compelling assessment of OCA witness Dr. Colton that PECO's proposal should be rejected. (OCA St. 1, at 55; TURN et al. St. 1-R, at 19). Mr. Colton highlights that an asset test "imposes a de facto discriminatory factor based on age," as "households with high equity in their homes are likely to be older households that have lived in their homes for a substantial period of time." (OCA St. 1, at 53, lines 16-10). Mr. Colton's rebuttal testimony further discusses the inappropriateness of PECO's asset test proposal. (OCA St. 1-R, at 20-23). CAUSE-PA witness Mr. Miller concurs that an asset test is inappropriate for similar reasons and notes that the Commission has not made any reference to an asset test in this proceeding. (CAUSE-PA St. 1-R, at 10-11). Further, an asset limit is not included in the CAP Policy Statement as a control feature or other CAP design element. 52 Pa. Code § 69.265. For all these reasons, PECO's asset test proposal should be rejected.

7. OCA's proposed treatment of subsidized housing tenants with utility allowances is undeveloped and should not be approved.

OCA witness Mr. Colton suggests that PECO provide a fixed subsidy (varied by household size) for CAP customers who are tenants of public or subsidized housing, because "in theory" they may not "need" more assistance due to having been provided a "utility allowance." (OCA St. 1, at 56-57). Mr. Colton specifically recommends the set monthly benefit equal the

discount provided to the highest income CAP Rate tier or CAP bracket. (Id. at 59). TURN et al. witness Dr. Peach, in his rebuttal testimony, cautions that given the wide variation in utility allowances calculated for this group of customers, a set benefit amount would be arbitrary with little relation to actual need. (TURN et al. St. 1-R, at 17). The risk is too great that tenants will receive unaffordable bills, face utility service termination and then eviction for failure to maintain utility service. (TURN et al. St. 1-R, at 18). Further, PECO does not yet track information on public housing or Section 8 assisted housing for any PECO customers, (PECO Exh. 4 (IR-OCA-I-41); Tr. 160), so any such fixed subsidy implementation would be premature. Accordingly, OCA's proposal should not be approved.

VI. CONCLUSION

For the foregoing reasons, TURN et al. respectfully request that the Commission order that:

PECO Energy Company shall redesign its Customer Assistance Program (CAP) and move to a percentage of income payment plan (PIPP) with PUC required minimum bill as represented in PECO St. 1, at 7, Table 1, by April 1, 2014;

PECO shall continue to apply CAP maximum credits as a system-wide average;

PECO shall make appropriate referrals and enrollments in CAP Rate A while it is still in effect, as recommended by TURN et al. herein; and

PECO shall collaborate with stakeholders, including parties in these proceedings, to enhance CAP and LIURP operations as recommended by TURN et al. herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thu B. Tran', written over a horizontal line.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for Approval :
of its Default Service Program : P-2012-2283641

PECO Energy Company Universal Service and :
Energy Conservation Plan for 2013-2015 : M-2012-2290911

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the **Main Brief of TURN et al.**, as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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