



October 5, 2020

*Via Efiling*

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

**Re: Tenant Union Representative Network (TURN) v. PECO Energy Company,  
Docket No. C-2020-3021557**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Preliminary Objections of the Tenant Union Representative Network to the Answer of PECO Energy Company in the above-referenced case.

Due to the ongoing COVID-19 pandemic, these Preliminary Objections are being served via email as indicated on the attached Certificate of Service.

Sincerely,

Joline R. Price, Esquire  
Attorney ID No. 315405

*Enclosures*

Cc: Certificate of Service  
Administrative Law Judge Mary Long (via email to malong@pa.gov)

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network	:	
Complainant	:	
v.	:	Docket No. C-2020-3021557
PECO Energy Company	:	
Respondent	:	

**Certificate of Service**

I hereby certify that I have this day served copies of the Preliminary Objections of the Tenant Union Representative Network, upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code §1.54 in the manner and upon the persons listed below.

**VIA ELECTRONIC MAIL**

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**NOTICE TO PLEAD**

TO: Anthony E. Gay (Pa. No. 74624)	Kenneth M. Kulak (Pa. No. 75509)
Jack R. Garfinkle (Pa. No. 81892)	Catherine G. Vasudevan (Pa. No. 210254)
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Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response to the attached Preliminary Objections of Tenant Union Representative Network (TURN) within ten (10) days from service of this notice, the facts set forth by TURN in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to the attached Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for TURN.

Joline R. Price, Esquire (Attorney ID: 315405)  
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Dated October 5, 2020

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**PRELIMINARY OBJECTIONS OF TENANT UNION REPRESENTATIVE NETWORK  
TO THE ANSWER OF PECO ENERGY COMPANY**

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Complainant, Tenant Union Representative Network (TURN), pursuant to 52 Pa. Code §5.101, submits two preliminary objections to the Answer of PECO Energy Company.

**Introduction**

1. TURN filed a Formal Complaint against PECO on August 25, 2020, alleging that PECO is in violation of the terms of a Commission-approved settlement agreement and its currently-effective Universal Service and Energy Conservation Plan (“USECP”). See Exhibit A.
2. PECO filed its Answer to TURN’s Formal Complaint on September 15, 2020. See Exhibit B.
3. The Commission’s rules of administrative practice and procedure permit a party to file preliminary objections based on limited grounds including, as relevant here, the “failure of a pleading to conform to this chapter,” the “insufficient specificity of a pleading,” 52 Pa. Code §5.101(a)(2)-(3).
4. PECO’s Answer fails to deny specifically material allegations of the Complaint, resulting in PECO’s admission to those allegations.
5. PECO’s Answer fails to conform to the pleading requirements imposed by Chapter 5 of the Commission’s Regulations, which governs formal proceedings, because it sets forth a narrative statement not in numbered paragraphs.

## **Preliminary Objection I – Failure to Deny USECP and Unreasonable Service Violations**

6. Paragraphs 1 through 6 are incorporated herein by reference.
7. The Commission’s regulations require a party answering a complaint to admit or deny specifically all material allegations of the complaint. 52 Pa. Code § 5.61(b)(3).
8. The Commission’s general rules of pleading are modeled after the Pennsylvania Rules of Civil Procedure. Crh Catering Co., Inc. v. Blue Pilot Energy, LLC, No. C-2014-2415277, 2015 WL 849251, at \*2 (Feb. 12, 2015).
9. It is well settled law that a general denial is unacceptable and deemed an admission where it is clear that the defendant has adequate knowledge on which to base an admission or specific denial. City of Philadelphia v. Kenny, 369 A.2d 1343 (Pa. Cmwlth. 1977).
10. The purpose of requiring specific denial is to identify the issues in dispute between the parties. Alwine v. Sugar Creek Rest, Inc., 883 A.2d 605, 609 (2005). See also William T. Reffner, No. C-20077841, 2008 WL 8014604, at \*5 (June 5, 2008) (explaining that “[t]he purpose of Section 5.61(b) is to promote the just, speedy and inexpensive determination of actions by alerting the parties and the Commission to the factual and legal issues presented by that case. Parties can, therefore, conduct discovery as necessary and ensure that necessary witnesses and documents are presented at trial. This Section also reduces the possibility that a party will be unfairly surprised at trial.”).
11. The legal principle that a general denial is deemed an admission has been adopted by the Commission. See Pennsylvania Pub. Util. Comm'n, Bureau of Transportation & Safety, No. A-00111409C0001, 2001 WL 36250463, at \*1 (Apr. 5, 2001) (holding that by failing to deny a portion of the allegations in a Complaint, the Respondent waived its right to employ the defense at the hearing). See also Ochonma v. Bell Atlantic, 94 Pa. P.U.C. 10 (Jan. 14, 2000)

(“when a respondent fails to file an answer to deny specifically an allegation which is material, all the relevant facts stated in the allegation are deemed admitted.”).

12. In its Complaint, TURN alleges that PECO is in violation of its USECP and the requirements of 66 Pa. C.S. §1501. Pursuant to 52 Pa. Code § 5.61(b)(3), PECO is required to admit or deny specifically such allegations in its Answer.

13. As set forth in TURN’s Complaint, TURN submitted:

Both the Settlement, as approved by the Commission, and PECO’s current USECP require PECO to adjust the energy burdens used in the FCO to be consistent with the energy burdens set forth in the Commission’s CAP Policy Statement.

Complaint at ¶52.

14. In response to Paragraph 52 of TURN’s Complaint, PECO states:

Denied in part and admitted in part. It is admitted that the Company must implement its CAP program consistent with its Commission-approved USECP, which incorporates the Settlement. The remaining averments of Paragraph No. 52 are denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO’s amended proposed 2019-2024 USECP.

Answer at ¶52.

15. Paragraph 52 of PECO’s Answer does not contain any specific denial of TURN’s allegation that it is a requirement of PECO’s USECP that PECO implement energy burdens consistent with the Commission’s CAP Policy Statement.

16. As set forth in TURN’s Complaint, TURN submitted:

PECO’s failure to provide low-income customers with credits adequate to attain the Commission’s maximum energy burden based on their income violates the terms of its USECP and constitutes unreasonable service in violation of 66 Pa. C.S. §1501.  
Complaint at ¶96.

17. In response to Paragraph 96 of TURN’s Complaint, PECO states:

Denied. By way of further response, the Company submits that it has satisfied its

FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

Answer at ¶96.

18. Paragraph 96 of PECO's Answer does not contain any specific denial of TURN's allegation that PECO is in violation of its USECP, constituting unreasonable service in violation of 66 Pa. C.S. §1501.
19. The Commission should grant TURN's preliminary objection and hold that by failing to specifically deny TURN's allegations in paragraph 52 and paragraph 96 that PECO is violating its USECP, constituting unreasonable service in violation of 66 Pa. C.S. §1501, PECO has admitted to those violations.

#### **Preliminary Objection II – Failure to Satisfy Pleading Requirements**

20. Paragraphs 1 through 19 are incorporated herein by reference.
21. Section 5.61(b) of the Commission's Regulations governs the form of an answer to a formal complaint and provides as follows:

(b) *Form of answers to complaints.* The answer must be in writing and:

- (1) Set forth in paragraphs numbered to correspond with the complaint.
- (2) Advise the parties and the Commission as to the nature of the defense.
- (3) Admit or deny specifically all material allegations of the complaint.
- (4) State concisely the facts and matters of law relied upon.
- (5) Include a copy of a document, or the material part of a document when relied upon in the answer. If the writing or a copy is not available, the answer must set forth that the document is not available and the reason, and set forth the substance of the document.

52 Pa. Code § 5.61(b).

22. Section 5.62(b) of the Commission's Regulations governs the presentation of "new matter" in a party's answer and provides as follows:

(b) *Answers raising new matter.* An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of "New Matter." A party may set forth as

new matter another material fact which is not merely a denial of the averments of the preceding pleading.

52 Pa. Code §5.62(b).

23. Notwithstanding the clear requirements of Section 5.61(b) and 5.62(b) of the Commission's regulations, PECO's Answer includes seven and a half pages of narrative, not set forth in numbered paragraphs. Answer at 1-8.
24. This improperly presented narrative prejudices Complainant by impeding Complainant's ability to respond to factual statements which, if relevant to PECO's defense, must be set forth as "new matter" in order that Complainant may respond to them.
25. The Commission should not permit PECO to introduce new factual assertions in a narrative fashion, and should strike the narrative in its entirety from PECO's Answer.
26. In the alternative, the Commission should require that PECO submit an amended answer, properly pleading any facts it believes to be material, but which are not merely denials of TURN's factual averments, in numbered paragraphs as "new matter."

WHEREFORE, for the reasons set forth above, TURN respectfully requests that its Preliminary Objections to PECO's Answer be granted.

Respectfully submitted,



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Robert W. Ballenger, Esquire (Attorney ID: 93434)  
Josie B. H. Pickens, Esquire (Attorney ID: 309422)  
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**BEFORE THE  
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Complainant	:	
v.	:	Docket No. C-2020-3021557
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VERIFICATION

I, Joline Price, hereby state that the facts set forth above in the Preliminary Objections of TURN to the Answer of PECO Energy Company, are true and correct and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).



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Dated: October 5, 2020

Exhibit A:

Formal Complaint of Tenant Union Representative Network  
against PECO Energy Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network	:	
Complainant	:	
v.	:	Docket No. F-
PECO Energy Company	:	
Respondent	:	

**FORMAL COMPLAINT**

**I. Introduction**

1. Complainant is the Tenant Union Representative Network (TURN).
2. Complainant is located at 100 S. Broad Street, Suite 800, Philadelphia, PA 19120.
3. Complainant is a not-for-profit advocacy organization composed of moderate and low income tenants, many of whom are either customers of or dependent on electric service from PECO.
4. Complainant is represented in this proceeding by:

Joline Price, Esq.  
Robert Ballenger, Esq.  
Josie Pickens, Esq.

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5. Respondent is PECO Energy Company (PECO), an electric distribution company and natural gas distribution company with main offices located at 2301 Market Street, Philadelphia, PA 19103.
6. The Commission's regulations require PECO to deliver customer bills compliant with its approved rate schedules.<sup>1</sup>
7. PECO operates a statutorily mandated and Commission approved Customer Assistance Program (CAP), which provides a bill discount to eligible low-income customers.<sup>2</sup>
8. CAPs are designed as an alternative to traditional collection methods for low-income customers.<sup>3</sup> Upon enrollment in a CAP, CAP customers receive bills according to approved residential rates, with an adjustment based on household size and gross income.<sup>4</sup>
9. On March 20, 2015, TURN, PECO and other parties entered into a comprehensive settlement in the matter of PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911 (Settlement).<sup>5</sup> The Settlement is attached hereto as Exhibit A.
10. The parties filed a Joint Petition for Settlement on March 20, 2015, attaching the Settlement as a term sheet, seeking Commission approval of the Settlement. The Joint Petition for Settlement is attached hereto as Exhibit B.

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<sup>1</sup> 52 Pa. Code §56.11; see also PECO Energy Company Electric Service Tariff, <https://www.peco.com/SiteCollectionDocuments/CurrentTariffElec.pdf>; PECO Energy Company Gas Service Tariff, <https://www.peco.com/SiteCollectionDocuments/CurrentGasTariff.pdf>.

<sup>2</sup> See 52 Pa. Code §69.261 (“CAPs are designed as alternatives to traditional collection methods for low-income customers.”).

<sup>3</sup> Id.

<sup>4</sup> 52 Pa. Code §69.265; see generally Pennsylvania Public Utility Commission, *Your Rights and Responsibilities as a Utility Customer*, [http://www.puc.state.pa.us/General/consumer\\_ed/pdf/Consumer\\_Rights\\_Responsibilities.pdf](http://www.puc.state.pa.us/General/consumer_ed/pdf/Consumer_Rights_Responsibilities.pdf).

<sup>5</sup> The other parties to the Settlement were the Office of Consumer Advocate (OCA), the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance).

11. The Joint Petition was approved, without modification to the Settlement, by the Commission on July 8, 2015.
12. Through this Complaint, TURN seeks relief from the Commission to enforce the terms of the Settlement, which require PECO to implement the energy burdens set forth in the Commission's CAP Policy Statement, as adopted on November 5, 2019 and published in the Pennsylvania Bulletin on March 21, 2020.

## II. **Background**

### A. PECO's CAP

13. PECO operates a CAP program for residential customers with income at or below 150% of the Federal Poverty Level.
14. In a recent filing, PECO estimated approximately 112,000 households would be enrolled in CAP in 2020, and that 269,008 customers are potentially eligible for CAP.<sup>6</sup>

### B. COVID-19

15. On March 6, 2020, Governor Wolf declared a disaster emergency due to the COVID-19 pandemic that was and continues to be devastating to the Commonwealth of Pennsylvania and its citizens. Governor Wolf renewed the disaster emergency on June 3, 2020.<sup>7</sup>
16. As a result of COVID-19, customers in PECO's service territory are experiencing an

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<sup>6</sup> PECO Energy Company's Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan, Revised Six Year Plan, Docket No. P-2020-3020727 (July 8, 2020) at 2, 10, <http://www.puc.state.pa.us/pcdocs/1669220.pdf>.

<sup>7</sup> See Governor's Amendment to Proclamation of Disaster Emergency (June 3, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/06/20200603-TWW-amendment-to-COVID-disaster-emergency-proclamation.pdf>

unprecedented economic crisis and record unemployment.<sup>8</sup>

17. In Philadelphia, COVID-19 has disproportionately impacted Black and Latinx households who experience higher rates of COVID-19 infection and death.<sup>9</sup>

*C. Creation of the CAP Fixed Credit Option (FCO)*

18. PECO filed its initial USECP for 2013-2015 on February 28, 2012, which was then docketed at docket number M-2012-2290911.

19. TURN was an active participant at that docket, filing comments<sup>10</sup> and participating in PUC mandated mediation.<sup>11</sup> Relevant to this action, PECO was directed by the Commission to work with the parties to develop a new CAP design.<sup>12</sup>

20. Following extensive settlement negotiations, on March 20, 2015, PECO, TURN, Action Alliance, CAUSE-PA and the OCA filed the Joint Petition for Settlement.

21. The Joint Petition notes that the Settlement “sets forth a comprehensive proposal to revise PECO’s Customer Assistance Program.” Joint Petition at ¶1 (attached hereto as Exhibit B).

22. As discussed in the Joint Petition, “[t]he Joint Petitioners engaged the services of the Commission’s mediation office, and conducted extensive mediation sessions.” Joint

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<sup>8</sup> Philadelphia County saw 91,040 unemployment claims in the month of April 2020, a 1321.3% increase over the previous April. Center for Workforce Information & Analysis, Pennsylvania Regular UC Benefits, Initial Claims by Workforce Development Area (May 15, 2020).

<sup>9</sup> See Sarah Gantz, Philadelphia Inquirer, *COVID-19 is killing over twice as many Black Americans as whites, new report says* (Aug. 14, 2020), <https://www.inquirer.com/health/coronavirus/coronavirus-covid-19-black-latino-pandemic-death-rate-race-disparities-20200814.html>

<sup>10</sup> See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2012-2290911, Comments of Tenant Union Representative Network (“TURN”), Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) Concerning PECO’s Universal Service Three Year Plan (November 28, 2012).

<sup>11</sup> See, e.g., 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, PECO CAP Design Mediation Status Update (August 29, 2014).

<sup>12</sup> See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Secretarial Letter (April 25, 2014).

Petition at ¶7. Further, “[a]s a result of that extensive mediation effort and related settlement discussions, the Joint Petitioners reached agreement on a new CAP design and related issues, as set forth in the Term Sheet.” Joint Petition at ¶8.

23. The Settlement was attached as Exhibit A to the Joint Petition. Joint Petition at 5.

24. The Settlement sets forth, in detail, the structure of the CAP FCO, to be implemented in October 2016.

25. As described in the Settlement, the new CAP design was to be based on a Fixed Credit Option, which included a series of steps to calculate a customer’s credit. First, PECO would determine a customer’s prior year’s undiscounted charges using either actual usage or a pro forma profile to approximate usage, and comparing that usage to a weather normalization table. Settlement at 1-2 (attached hereto as Exhibit A).

26. Next, PECO would determine a household’s income and Federal Poverty Level. Settlement at 2.

27. The Settlement then sets forth how PECO would determine a customer’s allowable energy burden.<sup>13</sup> Settlement at 2.

28. The FCO was implemented utilizing the energy burdens set forth in Table 1 of the Settlement, reproduced below:

FPL	Electric Non-Heating	Electric Heating	Electric with Gas Heating
0-50%	5%	13%	13%
51-100%	6%	16%	16%
101-150%	7%	17%	17%

Settlement at 3.

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<sup>13</sup> An “energy burden” is a percentage of income that is considered an affordable energy bill for low-income households.

29. Regarding the energy burdens set forth in Table 1, above, the Settlement provides:

The table is based upon the ranges found at 52 Pa. Code §69.265 (2)(i)(A). In each case the energy burden listed in the table is the maximum allowable energy burden for that poverty level. ***If the Commission changes the energy burden ranges set forth in its Policy Statement, PECO will utilize the new maximum allowable energy burden for each poverty level.***

Settlement at 2 n. 3 (emphasis added).

30. The Settlement further states that PECO will calculate a customer's Annual Credit by multiplying "the Verified Household Income times that household's allowable Energy Burden to determine an Annual CAP Bill amount." Settlement at 3.

31. According to the Settlement, PECO would then subtract the Annual CAP Bill from the Usage calculation to determine a customer's annual credit. Settlement at 3.

32. The Settlement sets forth that the annual credit would be subject to an annual maximum credit. Settlement at 3-4.

33. The annual credit would then be applied to the customer's bill over the course of the year, "in a manner intended to track the seasonal nature of usage." Settlement at 4-5.

34. The Settlement sets forth that a customer's credit would be recalculated periodically to adjust the customer's annual credit. Settlement at 5-6.

35. The Settlement specifies two cost containment mechanisms: monthly minimum billing amounts, and the maximum annual credits. Settlement at 7-8.

36. The Settlement specifies how the "shortfall", or total amount of credits to CAP customers, is recovered through PECO's Universal Service Fund Charge. Settlement at 8.

37. As filed, the Settlement reflected a comprehensive proposal as to the structure of PECO's CAP program. Joint Petition at ¶1.<sup>14</sup>

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<sup>14</sup> See also 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, PECO Energy Company Statement

38. The Joint Petition was signed by counsel for all parties, with the following statement in conclusion:

WHEREFORE, the Joint Petitioners, intending to be legally bound, respectfully request that the Commission approve this Joint Petition, including all terms and conditions set forth in the Term Sheet.

Joint Petition at 4.

39. In its Statement in Support of Settlement, PECO stated that “PECO avers that this comprehensive settlement is in the public interest and, therefore, requests that the Commission approve the settlement in its entirety.”<sup>15</sup>

40. In its Statement in Support of Settlement, OCA stated that the “terms and conditions of the Settlement represent the result of extensive negotiations between the parties, are in the public interest and should be approved.”<sup>16</sup>

41. In its Statement in Support of Settlement, CAUSE-PA stated that “the FCO design satisfactorily addresses the varied interests and issues in this proceeding.”<sup>17</sup>

42. On June 11, 2015, Administrative Law Judge Cynthia Williams Fordham issued a recommended decision approving the Joint Petition for Settlement without modification.<sup>18</sup>

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in Support of Joint Petition for Settlement (April 30, 2015) at 12. (“The Term Sheet is a comprehensive settlement among the aforementioned parties ...”). PECO further stated in its Statement in Support that “[t]he Term Sheet improves affordability while simultaneously imposing controls on overall program costs...”. *Id.* at 10.

<sup>15</sup> *Id.* at 1.

<sup>16</sup> See 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, Office of Consumer Advocate’s Statement in Support of Settlement (March 20, 2015) at 3.

<sup>17</sup> See 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 Statement of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania in Support of Settlement (March 20, 2015) at 6.

<sup>18</sup> PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, June 17, 2015 Recommended Decision at 36.

43. In doing so, ALJ Fordham noted TURN's position that "although the methodology is more complicated than the PIP advocated by TURN et al. and CAUSE-PA, it reflects a reasonable compromise to improve the affordability for PECO's CAP participants."<sup>19</sup>

44. ALJ Fordham also stated with regard to the Settlement:

The parties have presented clear and reasonable reasons for approval of the FCO program. After considering the Joint Petition for Settlement, including the affordability of the new program, the cost containment, the cost recovery, arrearage forgiveness, usage reduction, the proposed evaluation after two years and the ongoing collaborative to address issues that arise and the savings achieved by not litigating the case fully, it is my opinion that the Settlement is fair, just, reasonable and in the public interest. Accordingly, I recommend that the Joint Petition for Settlement be approved.<sup>20</sup>

45. On July 8, 2015, the Commission adopted ALJ Fordham's Recommended Decision without modification, approving the Settlement.<sup>21</sup>

46. Following approval of the Settlement, PECO incorporated the CAP FCO Design into its Universal Service and Energy Conservation Plan for 2016-2018, incorporating the language of the Settlement into Attachment B thereto.<sup>22</sup> A copy of Attachment B to PECO's Universal Service and Energy Conservation Plan for 2016-2018 is attached hereto as Exhibit C.

47. In October 2016, PECO launched the CAP FCO.

48. Notwithstanding the introduction of the FCO, PECO's CAP has failed to result in affordable bills for many of PECO's CAP customers. PECO's failure to implement the

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<sup>19</sup> PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, June 17, 2015 Recommended Decision at 23 (citing TURN *et al.* Statement in Support at 4).

<sup>20</sup> PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, June 17, 2015 Recommended Decision at 36.

<sup>21</sup> PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, July 8, 2015 Order.

<sup>22</sup> See PECO Energy Company Universal Service and Energy Conservation Plan 2016-2018, Docket No. M-2015-2507139.

Commission's new energy burden in a manner consistent with PECO's obligation under the Settlement exacerbates this unaffordability.

49. While PECO has filed its next USECP and proposes a new CAP design in the future,<sup>23</sup> the Commission has not reviewed or approved that USECP.

50. PECO continues to operate its CAP FCO unless and until the Commission approves PECO's new USECP and new CAP design.

51. Unless and until the Commission approves a new CAP design, PECO is obligated to operate its CAP pursuant to the terms of its existing USECP and the Commission-approved Settlement.

52. Both the Settlement, as approved by the Commission, and PECO's current USECP require PECO to adjust the energy burdens used in the FCO to be consistent with the energy burdens set forth in the Commission's CAP Policy Statement.

53. PECO affirmed this requirement in a filing with the Commission, stating that "PECO notes, however, that if the Commission-established energy burden is changed, PECO's CAP FCO program has a 'pass through' clause allowing for automatic implementation."<sup>24</sup>

54. TURN has relied upon the terms of the carefully negotiated Settlement, and specifically the pass through clause that automatically updates the energy burdens used in PECO's FCO. For example, TURN relied upon the terms of the Settlement in its advocacy for improvements to the Commission's CAP Policy Statement.

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<sup>23</sup> PECO Energy Company's Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan, Revised Six Year Plan, Docket No. P-2020-3020727 (July 8, 2020), <http://www.puc.state.pa.us/pcdocs/1669220.pdf>.

<sup>24</sup> See Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711, Initial Comments of PECO Energy Company (May 8, 2019) at 8, <http://www.puc.state.pa.us/pcdocs/1618633.pdf>.

*D. Reduction of Energy Burdens in the Commission's CAP Policy Statement*

55. On November 5, 2019, the Commission entered a Final Policy Statement and Order at Docket No. M-2019-3012599 (November 5th Order), which ordered a number of critical reforms to the Commission's CAP Policy Statement at 52 Pa. Code §§ 69.261-.267.<sup>25</sup>
56. In its November 5th Order, the Commission found that, based on extensive data, analysis, and information in the underlying proceedings,<sup>26</sup> the current CAP energy burden standards were excessive and did not fulfill the Commission's statutory obligation to ensure that universal service programming is appropriately funded and accessible to low-income customers.<sup>27</sup> Accordingly, the Commission amended its Policy Statement to reduce the energy burden standards for customers enrolled in a utility-run CAP, setting a maximum *combined* energy burden for electric and heating of 10% for households with income between 51-150% of the Federal Poverty Level (FPL), and 6% for households with income between 0-50% FPL.<sup>28</sup> For electric baseload (non-heating) customers, the maximum was set at 4% for customers with income between 51-150% FPL, and 2% for customers with income between 0-50% FPL.<sup>29</sup> In doing so, the Commission found that the existing maximum energy burden standards "do not reflect reasonable or affordable payments for many low-income customers" - especially for those with income at or below 50% FPL.<sup>30</sup>
57. The Commission's CAP Policy Statement was published in the Pennsylvania Bulletin on March 21, 2020.<sup>31</sup>

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<sup>25</sup> 2019 Amendments to CAP Policy Statement, Docket No. M-2019-3012599, Final Policy Statement and Order, at 27 (order entered Nov. 5, 2019) (hereinafter November 5th Order).

<sup>26</sup> Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711, and Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907.

<sup>27</sup> November 5<sup>th</sup> Order at 27.

<sup>28</sup> Id. at 32-33.

<sup>29</sup> Id.

<sup>30</sup> Id. at 27, 29-30.

<sup>31</sup> 50 Pa. B. No. 12 at 1691-1695.

58. In addition to adjusting the maximum energy burden standards, the Commission made additional reforms to its CAP Policy Statement to improve the accessibility and affordability of the program.<sup>32</sup>
59. On November 20, 2019, the Energy Association of Pennsylvania (EAP) and the Office of Consumer Advocate (OCA) each – on separate grounds – filed Petitions for Reconsideration and/or Clarification of the Commission’s November 5th Order. EAP also filed a Petition to Stay the Commission’s November 5 Order until resolution of its Petition for Reconsideration. On November 25, 2019, the Commission granted the stay as to specific ordering paragraphs as requested by EAP.<sup>33</sup>
60. On February 6, 2020, the Commission issued an Order denying the OCA Petition for Reconsideration and/or Clarification.<sup>34</sup>
61. On February 6, 2020, the Commission issued an Order, granting, in part, EAP’s Petition for Reconsideration and/or Clarification (EAP Order).<sup>35</sup>
62. In pertinent part, the Commission provided the following clarification in the EAP Order:

We further clarify that the following information is only required from utilities that voluntarily propose to change their USECPs pursuant to the amendments to the CAP Policy Statement:

- Petition to Amend and Addendum to reflect proposed CAP changes to an existing USECP. This filing shall include enrollment and budget implications.
- Addendum to reflect proposed CAP changes to a pending proposed USECP. This filing shall include enrollment and budget implications.<sup>36</sup>

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<sup>32</sup> Id. at 101-104.

<sup>33</sup> 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-267, Docket No. M-2019-3012599 (Order entered November 25, 2019).

<sup>34</sup> 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-267, Docket No. M-2019-3012599, Order on Reconsideration/Clarification (Order entered February 6, 2020).

<sup>35</sup> 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-267, Docket No. M-2019-3012599, Order on Reconsideration and Clarification (Order entered February 6, 2020) (hereinafter EAP Order).

<sup>36</sup> Id. at 12.

63. Pursuant to the November 5<sup>th</sup> Order, the maximum allowable energy burdens in the Commission’s CAP Policy Statement are as follows:<sup>37</sup>

FPL	Electric Non-Heating	Electric Heating	Electric with Gas Heating
0-50%	2%	6%	6%
51-100%	4%	10%	10%
101-150%	4%	10%	10%

64. As described above, PECO is required to implement these energy burdens pursuant to the Commission-approved Settlement that created the FCO.

65. PECO has not yet adopted these energy burdens as part of its CAP FCO.

*E. Adoption of the current energy burdens does not amend or modify PECO’s USECP*

66. As designed, PECO’s FCO in operation makes several automatic adjustments, without need for Commission approval.

67. PECO adjusts a CAP customer’s fixed credit automatically if the customer experiences a change in income. The Commission approved this manner of adjustment in approving the Settlement, without modification.

68. PECO adjusts a CAP customer’s fixed credit automatically based on the customer’s usage profile. The Commission approved this manner of adjustment in approving the Settlement, without modification.

69. PECO adjusts all CAP customer’s maximum allowable CAP credit automatically when PECO’s base rates increase. The Commission approved this manner of adjustment in approving the Settlement, without modification.

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<sup>37</sup> 52 Pa. Code § 69.265(2)(i).

70. Like each of the foregoing adjustments, PECO's USECP and the Settlement provide for the automatic adjustment of CAP credits when the Commission approves new energy burdens in its CAP Policy Statement.
71. Because PECO's UESCP and the Settlement provide for the automatic adjustment to incorporate the Commission's approved energy burdens, PECO is not required to make any amendment to its existing USECP pursuant to the EAP Order.
72. PECO is bound by the terms of the Settlement.
73. PECO's obligation to adopt the new energy burdens does not derive from the Commission's CAP Policy Statement and EAP Order. PECO is required to adopt the new energy burdens to remain in compliance with its obligations under the Settlement.
74. On July 17, 2020, Counsel for TURN notified PECO in writing that it was in violation of the Settlement and its USECP and demanded that PECO implement the Commission's energy burdens.
75. Counsel for TURN discussed PECO's obligations pursuant to the Settlement and its USECP with counsel for PECO on July 31, 2020 and again on August 19, 2020.
76. PECO has failed to take any action to comply with the energy burden pass through provision of the Settlement and its USECP.

### **III. Count I – PECO is in Violation of the Commission-Approved FCO Settlement**

77. Paragraphs 1-76 of this Complaint are incorporated herein by reference.
78. The Commission favors settlement.<sup>38</sup>

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<sup>38</sup> See 52 Pa. Code §§ 5.231, 69.391 and 69.401. See also PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, June 17, 2015 Recommended Decision.

79. When the Commission approved the Settlement, without modification, its terms became binding upon PECO and subject to the Commission's enforcement authority.
80. Upon issuance of the November 5<sup>th</sup> Order, the Commission's approved energy burdens were required to be implemented in PECO's CAP, which automatically adjusts according to its terms to incorporate those energy burdens.
81. PECO has failed to pass through those energy burdens, as it is legally required to do, even after the CAP Policy Statement was published in the Pennsylvania Bulletin on March 21, 2020.
82. By failing to automatically adjust the FCO to utilize the Commission's new maximum allowable energy burdens, PECO is violating the Commission's Order approving the Settlement.
83. As a result, PECO is continuing to bill CAP customers amounts in excess of the charges that would be billed if PECO complied with the energy burden pass through provision of the Settlement.
84. At the same time, PECO is preventing new CAP applicants from receiving discounts by continuing to utilize energy burdens which have been superseded pursuant to the terms of the Settlement.
85. By failing to comply with the pass through provision of the Settlement, PECO is depriving CAP customers and applicants of CAP credits required now, in the midst of a pandemic and an economic crisis, when those customers are in great need of financial

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After considering the Joint Petition for Settlement, including the affordability of the new program, the cost containment, the cost recovery, arrearage forgiveness, usage reduction, the proposed evaluation after two years and the ongoing collaborative to address issues that arise and the savings achieved by not litigating the case fully, it is my opinion that the Settlement is fair, just, reasonable and in the public interest.

Id. at 36.

assistance.

86. PECO's failure to comply with the Settlement has resulted in harm, including economic hardship. PECO's failure to take any action to implement the Commission's new energy burdens puts it in violation of the Settlement.

**IV. Count II – PECO is in Violation of the Terms of its USECP**

87. Paragraphs 1-86 of this Complaint are incorporated herein by reference.

88. The Electric Generation Customer Choice and Competition Act (Choice Act) required that the PUC must "at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electricity service."<sup>39</sup>

89. In addition, the Commission must "ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution service territory. . . . Programs under this paragraph shall be subject to the administrative oversight of the commission, which shall ensure that the programs are operated in a cost-effective manner."<sup>40</sup>

90. The Choice Act defined universal services and energy conservation as follows:

Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protections and policies and services that help low-income customers reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.<sup>41</sup>

91. The Commission's CAP Policy Statement defines Customer Assistance Programs as

[A]lternatives to traditional collection methods for low income customers. Customers participating in CAPs agree to make monthly payments based on household size and gross household income. Customers make regular monthly payments, which may be for an amount that is less than the current tariff bill for

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<sup>39</sup> 66 Pa. C.S. § 2802 (10).

<sup>40</sup> 66 Pa. C.S. § 2804(9).

<sup>41</sup> 66 Pa. C.S. § 2803.

utility service including pre-CAP arrearages, in exchange for continued provision of the service. Class A electric utilities and natural gas utilities with gross intrastate annual operating revenue in excess of \$40 million should adopt the guidelines in §§ 69.263-69.265 (relating to CAP development; scope of CAPs; and CAP design elements) implementing residential CAPs.<sup>42</sup>

92. The PUC’s CAP Policy Statement states that “[b]efore implementing, revising or expanding a CAP, a utility should file its CAP proposal to the Bureau of Consumer Services and on stakeholders from the utility’s most recent USECP proceeding. This will allow for staff review, comments, discovery, and revisions prior to Commission approval of design elements.”<sup>43</sup>

93. PUC regulation requires PECO as an Electric Distribution Company (EDC) to “submit to the Commission for approval an updated universal service and energy conservation plan every 3 years.”<sup>44</sup>

94. PGW’s current Universal Service and Energy Conservation Plan (USECP) was first filed on October 1, 2015 and incorporates the provisions of the Settlement.

95. Following a final Commission Order on February 10, 2017, PECO filed its Universal Service and Energy Conservation Plan 2016 - 2018 on February 17, 2017.

96. PECO’s failure to provide low-income customers with credits adequate to attain the Commission’s maximum energy burden based on their income violates the terms of its USECP and constitutes unreasonable service in violation of 66 Pa. C.S. §1501.

## **V. Conclusion**

For the foregoing reasons, Complainant respectfully requests the Public Utility Commission grant the following relief:

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<sup>42</sup> 52 Pa. Code § 69.261.

<sup>43</sup> 52 Pa. Code § 69.263(c).

<sup>44</sup> 52 Pa. Code § 54.74.

- A. Find that PECO violated the terms of the Commission approved Settlement at Docket Number M-2012-2290911.
- B. Find that PECO violated its USECP at Docket Number M-2015-2507139.
- C. Find that PECO's violation(s) of its USECP constitute unreasonable service in violation of 66 Pa. C.S. §1501.
- D. Order PECO to implement the energy burdens in the Commission's CAP Policy Statement as required by the Settlement and PECO's USECP.
- E. Order PECO to retroactively calculate CAP Credits for all CAP customers back to the date the Commission approved the new energy burdens, and provide bill credits to CAP customers or reduce past-due balances as appropriate.
- F. Order PECO to provide retroactive arrearage forgiveness for all partial payments that would have satisfied full payment under the revised bills.
- G. Require PECO to make any necessary filing with the Commission to effectuate the implementation of the energy burdens in the Commission's CAP Policy Statement and the relief requested herein.
- H. Fine PECO for its willful violation of a Commission approved Settlement.
- I. Grant any other such relief as is just and appropriate.

Respectfully submitted,



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Exhibit B:  
PECO Energy Company Answer

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September 15, 2020

**VIA eFILING**

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

**Re: Tenant Union Representative Network v. PECO Energy Company**  
**Docket No. C-2020-3021557**

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced matter is the **Answer of PECO Energy Company to the Complaint of the Tenant Union Representative Network** (the “Answer”). Copies of the Answer have been served on all parties of record as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Jennedy S. Johnson

Enclosures

c: Per Certificate of Service (w/encls.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>TENANT UNION REPRESENTATIVE</b>	:	
<b>NETWORK</b>	:	
	:	
v.	:	<b>Docket No. C-2020-3021557</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the **Answer of PECO Energy Company to the Complaint of the Tenant Union Representative Network** in the above-referenced proceeding on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL**

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Dated: September 15, 2020

*Counsel for PECO Energy Company*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TENANT UNION REPRESENTATIVE  
NETWORK

DOCKET NO. C-2020-3021557

V.

PECO ENERGY COMPANY

ANSWER OF PECO ENERGY COMPANY TO THE COMPLAINT OF THE TENANT  
UNION REPRESENTATIVE NETWORK

Pursuant to 52 Pa. Code § 5.61, PECO Energy Company (“PECO” or the “Company”) hereby submits this Answer to the Complaint filed by the Tenant Union Representative Network (“TURN”) in the above-captioned docket.

I. INTRODUCTION AND BACKGROUND

As the public utility with the largest low-income population in Pennsylvania, PECO is committed to providing universal service programs that work for both low-income customers who need assistance with energy costs and all residential customers who pay for those programs. For more than thirty years, PECO has operated a Customer Assistance Program (“CAP”) designed to offer affordable payments for utility service to low-income customers. PECO’s CAP has evolved over time, and is currently open to all residential customers with no limit on the number of customers who can participate. In each of the last ten years, CAP enrollment has varied between 110,000 and 140,000 customers (approximately 8% of PECO’s electric distribution customers). In 2019, more than 111,400 customers participated in CAP, with a program cost of \$55.1 million paid by all residential customers.

PECO has consistently worked with stakeholders to identify cost-effective ways to improve affordability for low-income customers. Most recently, in July, the Company proposed

to transition from its existing CAP design, known as the “Fixed Credit Option” or “FCO,” to a “Percentage of Income Payment Plan” or “PIPP.” The Company’s PIPP proposal is now pending before the Pennsylvania Public Utility Commission (the “Commission”)<sup>1</sup> and is designed to comprehensively address affordability issues with the FCO design and incorporate many of the recommendations the Commission recently adopted in its revised CAP Policy Statement (the “Revised Policy Statement”).<sup>2</sup>

PECO’s existing FCO design was developed by the Company and other parties, including TURN, the complainant in this proceeding, and the Office of Consumer Advocate (the “OCA”), as part of a broad settlement (the “Settlement”) achieved in the docket for the Company’s 2013-2015 Universal Service and Energy Conservation Plan (the “2013-2015 USECP”). The FCO provides a fixed credit to CAP customers that is intended to result in an affordable utility bill. Several inputs are necessary to determine the customer credit under the FCO, including household income as a percentage of federal poverty level (“FPL”) guidelines, the number of household members, utility usage, and the allowable Energy Burdens (“EBs”) set forth in the Commission’s CAP Policy Statement.<sup>3</sup>

The Settlement provides that if the Commission changes the EB ranges in the Policy Statement, PECO will utilize the new maximum allowable EBs for each poverty level in calculating the FCO credit to be given to each customer. Under the Settlement, the parties also agreed that PECO would operate the FCO program for two years, collect data from those two

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<sup>1</sup> See PECO’s Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795 (filed July 8, 2020).

<sup>2</sup> 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261–69.267, Docket No. M-2019-3012599 (Order entered Nov. 5, 2019).

<sup>3</sup> See 52 Pa. Code § 69.265.

years of operations, have an independent evaluator (APPRISE)<sup>4</sup> assess the program based on those data, and submit the evaluation (in June 2019) to the Commission and the parties (the “APPRISE Evaluation”).<sup>5</sup> The Commission approved the Settlement, including the new FCO design, on July 8, 2015.<sup>6</sup>

The Company’s USECP for the 2016-2018 period (the “2016-2018 USECP”) incorporated the FCO and was approved by the Commission on August 11, 2016.<sup>7</sup> The Company began FCO implementation in October 2016 and proceeded with data collection as required by the Settlement. On November 1, 2018, during the FCO data collection period, PECO filed its proposed 2019-2021 USECP.<sup>8</sup>

On June 28, 2019, PECO filed the APPRISE Evaluation, which showed that the FCO program had not attained affordable service for all of PECO’s CAP customers.<sup>9</sup> Significantly, during calendar years 2017 and 2018 approximately 80% of customers with household income at or below 50% of FPL received unaffordable bills under the FCO.<sup>10</sup>

In the letter accompanying the APPRISE Evaluation, PECO stated it would continue to investigate the drivers of the unaffordability experienced in 2017 and 2018 for the 0-50% FPL

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<sup>4</sup> APPRISE stands for the Applied Public Policy Research Institute for Study and Evaluation.

<sup>5</sup> See Joint Petition For Settlement, Docket No. M-2012-2290911 (filed Mar. 20, 2015).

<sup>6</sup> See PECO 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 (Order entered July 8, 2015).

<sup>7</sup> See PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2015-2507139 (Order entered Aug. 11, 2016). A number of revisions were made to the 2016-2018 USECP after its initial approval.

<sup>8</sup> See Docket No. M-2018-3005795. A corrected version of the proposed 2019-2021 USECP was filed on November 26, 2019.

<sup>9</sup> APPRISE PECO Energy Universal Services Program Final Evaluation Report (June 2019), Docket Nos. M-2012-2290911 & M-2015-2507139.

<sup>10</sup> Id.

customer group.<sup>11</sup> As part of this effort, PECO would “assess whether other programmatic, design, or structural issues in the FCO” contributed to the unaffordability, and, “if so, what scope and types of changes are available and appropriate.”<sup>12</sup> The Company proposed an action plan for the following nine months, including (1) completing its analysis of the FCO data and developing preliminary recommendations to improve the FCO; (2) engaging with other signatories to the Settlement to discuss the outcome of PECO’s analysis and preliminary recommendations, obtain input on those issues, and determine whether the parties can agree to proposed programmatic changes; and (3) filing a proposal with the Commission to revise the FCO to further improve affordability for its CAP customers with incomes of 50% or less of the FPL.<sup>13</sup>

As the Company carried out its FCO action plan, the Commission entered a Final Policy Statement and Order (the “Order”) on November 15, 2019 that approved the Revised Policy Statement.<sup>14</sup> In the Order, the Commission directed PECO and other utilities were to make filings to implement the policy changes in the Revised Policy Statement:

That the Electric Distribution Companies and Natural Gas Distribution Companies listed in Ordering Paragraph No. 5 shall file and serve addendums to their existing or proposed (if applicable) Universal Service and Energy Conservation Plans, at their respective dockets, in response to this Order, within 60 days of entry date of this Order. The addendums are to indicate how the Electric Distribution Companies and Natural Gas Distribution Companies intend to implement the policy changes specified in the amended CAP Policy Statement, numbered as in the discussion herein, by or before January 1, 2021. The Electric Distribution Companies and Natural Gas Distribution Companies should indicate in the cover letter to their

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<sup>11</sup> June 28, 2019 PECO Transmittal Letter accompanying the APPRISE Evaluation, p. 2.

<sup>12</sup> Id.

<sup>13</sup> Id. at 2-3.

<sup>14</sup> 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261–69.267, Docket No. M-2019-3012599 (Order entered Nov. 5, 2019).

addendums any provisions with which they are already compliant.<sup>15</sup>

While the Revised Policy Statement did not become effective by its terms until publication in the Pennsylvania Bulletin on March 21, 2020<sup>16</sup>, PECO filed a letter in accordance with the Order's sixty-day requirement on January 16, 2020 that described the portions of the Revised Policy Statement that the Company was already implementing or intended to implement. The Company also noted that it was still considering several provisions of the Revised Policy Statement. As part of that same filing, and pursuant to a separate Commission order expanding the term of USECPs,<sup>17</sup> PECO submitted an expanded proposed USECP for the period 2019-2024.

On March 26, after the Revised Policy Statement became effective, PECO filed a letter with the Commission stating the Company's intention to make a single filing in which it would address the issues raised in the APPRISE Evaluation and the remaining provisions of the Commission's Revised Policy Statement:

PECO has been working diligently since the June 2019 filing to address the issues revealed in the evaluation report and has held multiple calls with stakeholders. During that time the Commission has also issued a series of orders that impact both energy affordability as well as Universal Service Programs, as a whole. As a result, PECO is reevaluating [sic] the structure and efficacy of the FCO and is not yet able to provide the revisions contemplated in the June 2019 filing.

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<sup>15</sup> Order, p. 106. There was no presumption that utility filings would be compliant; indeed, the Commission encouraged utilities to submit addenda before filing to the Commission's Bureau of Consumer Services and the Commission's Office of Communications for a "compliance review." See *id.*, p. 100.

<sup>16</sup> Final Policy Order, p. 105, Ordering Paragraph no. 4 (stating that the Revised Policy Statement would become effective upon its publication in the Pennsylvania Bulletin; 50 Pa. B. No. 12 at 1691-1695 (Mar. 21, 2020).

<sup>17</sup> See Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, M-2019-3012601 (Order entered Oct. 3, 2019).

By this letter, PECO reaffirms its commitment to addressing the issues revealed in the FCO evaluation and to incorporating the guidance the Commission has provided in its subsequent orders. To that end, PECO plans to 1) complete its assessment of all factors by mid-April; 2) to host stakeholder meetings/calls in late April and throughout May; and 3) to file its CAP revisions no later than the end of June 2020.<sup>18</sup>

In April and May, PECO held a series of calls with stakeholders, including TURN, in which it stated its intention to stop using the FCO model and instead implement a PIPP, in which CAP customers would receive a credit based upon their annual income and a modified version of the EBs. On June 30, PECO filed another letter with the Commission in which it stated that it had been working closely with the stakeholders and expected to make its filing the week of July 6.<sup>19</sup>

On July 8, PECO filed an amended proposed 2019-2024 USECP, which included a transition from the FCO to the PIPP model no later than eight months after Commission approval of the 2019-2024 USECP.<sup>20</sup> The PIPP adopts the recommended EBs for customers at 0-50% and 51-100% of the FPL and maintains PECO's existing EBs for customers at 101-150% of the FPL. The PIPP also incorporates reduced minimum bill amounts and new customer notifications if a customer approaches maximum credit amounts. Overall, PECO expects the new EBs adopted by the Commission and these other program changes to increase the benefits that go to low-income customers from approximately \$60 million per year under the current FCO to approximately \$80 million per year under the new PIPP.

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<sup>18</sup> Mar. 26, 2020 PECO Letter, Docket Nos. M-2012-2290911, M-2015-2507139 and M-2018-3005795, p. 2 (emphasis added).

<sup>19</sup> June 30, 2020 PECO Letter, Docket Nos. M-2012-2290911, M-2015-2507139, M-2018-3005795 and M-2019-3011281, p. 2.

<sup>20</sup> See Docket No. M-2018-3005795.

On July 17, TURN and the Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN et al.”) sent PECO a letter demanding, among other things, that PECO immediately implement the EBs from the Revised Policy Statement based on the terms of the Settlement creating the FCO.<sup>21</sup> On July 28, TURN et al. filed an Answer in response to PECO’s amended proposed 2019-2024 USECP. TURN et al. expressed strong support for many critical components of the amended proposed 2019-2024 USECP, including the transition from the FCO to the PIPP.<sup>22</sup> In its Answer, TURN et al. also recognized that the Commission would be considering how PECO would be applying EBs during the period in which PECO transitions from the FCO to a PIPP:

This provision exists in PECO’s currently active USECP as well – however, to TURN et al.’s knowledge, PECO continues to use the old energy burdens in its FCO calculations, in violation of the Settlement creating the FCO and the terms of the current USECP. As such, it is imperative that the Commission ensure in approving PECO’s Amended USECP that PECO uses the CAP Policy Statement energy burdens for the period of time that it continues to operate the FCO under the Amended USECP.<sup>23</sup>

Since the Revised Policy Statement became effective, the Company has consistently stated its intention (to both the Commission and stakeholders, including TURN) to address the FCO affordability issues identified in the APPRISE Evaluation and implement provisions of the Revised Policy Statement, and has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO’s amended proposed 2019-2024 USECP. PECO remains committed to obtaining Commission approval of its PIPP proposal for the benefit of its CAP customers.

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<sup>21</sup> July 17, 2020 TURN et al. Letter, Docket No. M-2012-2290911.

<sup>22</sup> TURN et al Answer, Docket No. M-2018-3005795, p. 1.

<sup>23</sup> Id., p. 12, n. 35 (emphasis added).

## II. FUTURE FILING TO IMPLEMENT THE ENERGY BURDENS FROM THE REVISED POLICY STATEMENT

PECO believes that it has satisfied its FCO-related obligations under the Settlement and that the filing of its comprehensive CAP proposal in its amended proposed 2019-2024 USECP is consistent with the parties' continuing efforts to improve bill affordability since the Settlement was entered in 2015. Without waiving the foregoing, PECO has been made aware of the concerns raised by TURN in its Complaint as well as in the current proceeding for approval of PECO's 2019-2024 USECP.

Therefore, the Company plans to shortly file a proposal with the Commission to utilize the EBs in the Revised Policy Statement for the period the FCO is still in place. PECO expects that this filing will be made in the Docket for its 2019-2024 USECP (M-2018-3005795). PECO expects to request Commission approval to implement the new EBs in the FCO on a going-forward, but not on a retroactive, basis. Assuming PECO receives Commission approval of that proposal, the Company will promptly implement the EBs from the Revised Policy Statement as approved by the Commission. The Company looks forward to the Commission's consideration of its revised EB/FCO proposal and values the input of TURN and other stakeholders regarding all of its proposals for the 2019-2024 USECP.

## III. ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. Admitted.
6. Denied as stated. The language of 52 Pa. Code §56.11, PECO's Electric Service Tariff, and PECO's Gas Service Tariff speaks for itself.
7. Denied in part and admitted in part. The provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812, and the Natural Gas Choice and Competition Act, 66 Pa.C.S. §§ 2201-2212, related to universal services speak for themselves. It is admitted that PECO operates a Commission-approved CAP program, the details of which are described in the Company's USECP.
8. Denied as stated. The language of 52 Pa. Code §69.261 and PECO's USECP speaks for itself.
9. Admitted.
10. Admitted.
11. Admitted.
12. Denied. Certain averments of Paragraph No. 12 are requests for relief to which no response is required. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.
13. Admitted.
14. Admitted.
15. Denied as stated. The language of the Governor's Proclamation of Disaster Emergency and Amendment speaks for itself.

16. Admitted in part and denied in part. It is admitted that the pandemic has resulted in serious economic consequences for PECO's customers and the Company. PECO is without knowledge or information sufficient to form a belief as to the truth of the averments that customers are experiencing an "unprecedented" economic crisis and "record" unemployment. Therefore, the Company denies such averments and proof thereof, if relevant, is demanded.

17. Admitted in part and denied in part. It is admitted that the newspaper article cited in the Complaint, as well as other sources, have reported that Black and Latinx households in Philadelphia have experienced higher rates of COVID-19 infection and death. The Company does not have sufficient information to form a belief as to whether the averment applies to the population of CAP customers at issue in this proceeding. The averment is therefore denied and, if the claim of racial disparity in COVID effects is material to the relief sought by Complainant and available from the Commission, proof thereof is demanded at hearing.

18. Admitted.

19. Denied in part and admitted in part. It is admitted that TURN was an active participant at that docket and filed comments. It is denied that the Commission mandated mediation in that proceeding. The remaining averments are denied as stated. The language of the April 25, 2014 Secretarial Letter speaks for itself.

20. Admitted.

21. Denied as stated. The language of the March 20, 2015 Joint Petition at Docket No. M-2012-2290911 (the "Joint Petition") speaks for itself.

22. Denied as stated. The language of the Joint Petition speaks for itself.

23. Admitted.

24. Denied as stated. The language of the Settlement speaks for itself.
25. Denied as stated. The language of the Settlement speaks for itself.
26. Denied as stated. The language of the Settlement speaks for itself.
27. Denied as stated. The language of the Settlement speaks for itself.
28. Admitted.
29. Denied as stated. The language of the Settlement speaks for itself.
30. Denied as stated. The language of the Settlement speaks for itself.
31. Denied as stated. The language of the Settlement speaks for itself.
32. Denied as stated. The language of the Settlement speaks for itself.
33. Denied as stated. The language of the Settlement speaks for itself.
34. Denied as stated. The language of the Settlement speaks for itself.
35. Denied as stated. The language of the Settlement speaks for itself.
36. Denied as stated. The language of the Settlement speaks for itself.
37. Denied as stated. The language of the Settlement and PECO's Statement in Support of Joint Petition for Settlement speaks for itself.
38. Denied as stated. The language of the Joint Petition speaks for itself.
39. Denied as stated. The language of PECO's Statement in Support of Joint Petition for Settlement speaks for itself.
40. Denied as stated. The language of OCA's Statement in Support of Settlement speaks for itself.

41. Denied as stated. The language of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania's ("CAUSE-PA") Statement in Support of Settlement speaks for itself.

42. Admitted.

43. Denied as stated. The language of the Recommended Decision speaks for itself.

44. Denied as stated. The language of the Recommended Decision speaks for itself.

45. Admitted.

46. Denied as stated. The CAP FCO calculations were incorporated as Addendum B to PECO's Universal Service and Energy Conservation Plan for 2016-2018. A copy of Addendum B is attached as Exhibit C to TURN's Complaint in this proceeding.

47. Admitted.

48. Denied in part and admitted in part. It is admitted that the Apprise Evaluation showed that the FCO program had not attained affordable service for all of PECO's CAP customers. The remaining averment of Paragraph No. 48 are denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

49. Denied in part and admitted in part. It is admitted that the Company filed an amended proposed 2019-2024 USECP which has not yet been approved by the Commission. The Company is without knowledge or information sufficient to form a belief as to the truth of the averment that the Commission has not reviewed the amended proposed 2019-2024 USECP. Therefore, the Company denies such averment and proof thereof, if relevant, is demanded.

50. Denied as stated. It is admitted that the Company is currently implementing its Commission-approved USECP and will operate consistently with Commission-approved USECPs in the future.

51. The averments of Paragraph No. 51 constitute a conclusion of law to which an answer is not required.

52. Denied in part and admitted in part. It is admitted that the Company must implement its CAP program consistent with its Commission-approved USECP, which incorporates the Settlement. The remaining averments of Paragraph No. 52 are denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

53. Denied as stated. The language of the Company's Initial Comments filed May 8, 2019 speaks for itself.

54. The Company is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph No. 54. Therefore, the Company denies such averments and proof thereof, if relevant, is demanded.

55. Denied in part and admitted in part. It is admitted that the Commission entered a Final Policy Statement and Order at Docket No. M-2019-3012599 on November 5, 2019. The remaining averments are denied as stated. The language of the Final Policy Statement and Order speaks for itself.

56. Denied as stated. The language of the Final Policy Statement and Order speaks for itself.

57. Admitted.
58. Denied as stated. The language of the Final Policy Statement and Order speaks for itself.
59. Denied as stated. The language of the Commission's November 25, 2019 Order and the November 20, 2019 Petitions filed by OCA and the Energy Association of Pennsylvania ("EAP") speaks for itself.
60. Denied as stated. The language of the Commission's February 6, 2020 Order regarding the OCA Petition speaks for itself.
61. Denied as stated. The language of the Commission's February 6, 2020 Order regarding the EAP Petition (the "EAP Order") speaks for itself.
62. Denied as stated. The language of the EAP Order speaks for itself.
63. Denied as stated. The language of the Commission's 52 Pa. Code §69.265(2)(i) speaks for itself.
64. Denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.
65. Admitted.
66. Denied as stated. The language of Addendum B to the Company's USECP speaks for itself.
67. Admitted in part and denied in part. It is admitted that PECO adjusts a CAP customer's fixed credit automatically if the customer experiences a change in income. The

remaining averments are denied as stated. The language of the Commission's Order approving the Settlement speaks for itself.

68. Admitted in part and denied in part. It is admitted that PECO adjusts a CAP customer's fixed credit based on changes in customer usage that are determined as part of a quarterly CAP assessment. It is denied that a customer's fixed credit is adjusted "automatically" based on the customer's usage profile. The remaining averments are denied as stated. The language of the Commission's Order approving the Settlement speaks for itself.

69. Admitted in part and denied in part. It is admitted that PECO adjusts all CAP customers' maximum allowable CAP credits automatically when PECO's base distribution rates increase. The remaining averments are denied as stated. The language of the Commission's Order approving the Settlement speaks for itself.

70. Denied as stated. The language of the Commission's Order approving the Settlement and PECO's USECP speaks for itself. By way of further response, PECO believes that it would be appropriate to make a filing with the Commission prior to implementing new EBs that would result in the Company significantly exceeding the CAP budget in its USECP.

71. Denied as stated. The language of the Commission's Order approving the Settlement, PECO's USECP, and the EAP Order speaks for itself. By way of further response, PECO believes that it would be appropriate to make a filing with the Commission prior to implementing new EBs that would result in the Company significantly exceeding the CAP budget in its USECP.

72. Admitted. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

73. The averments of Paragraph No. 73 constitute a conclusion of law to which an answer is not required.

74. Denied as stated. The language of TURN's July 17, 2020 letter speaks for itself.

75. Denied as stated. PECO admits that counsel for TURN spoke with counsel for PECO on July 31, 2020 and August 19, 2020. On these occasions, counsel for TURN detailed TURN's position regarding EB and the FCO.

76. Denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

77. Paragraphs 1-76 of this Answer are incorporated by reference.

78. Denied as stated. The language of 52 Pa. Code §§ 5.231, 69.391 and 69.401 and the Recommended Decision speaks for itself.

79. Denied as stated. The language of the Commission's Order approving the Settlement speaks for itself.

80. Denied as stated. The language of the Commission's Order approving the Settlement speaks for itself.

81. Denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

82. Denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

83. Denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

84. Denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

85. Denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

86. Denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

87. Paragraphs 1-86 of this Answer are incorporated by reference.

88. Denied as stated. The language of 66 Pa.C.S. §2802(10) speaks for itself.

89. Denied as stated. The language of 66 Pa.C.S. §2804(9) speaks for itself.

90. Denied as stated. The language of 66 Pa.C.S. §2803 speaks for itself.

91. Denied as stated. The language of 52 Pa. Code § 69.261 speaks for itself.

92. Denied as stated. The language of 52 Pa. Code § 69.263(c) speaks for itself.

93. Denied as stated. The language of 52 Pa. Code § 54.74 speaks for itself.

94. To the extent the date PGW first filed its current USECP is deemed relevant, the averments of Paragraph No. 94 are denied. To the extent this paragraph was intended to refer to PECO, the averments of Paragraph No. 94 are also denied.

95. Denied. The Commission approved the Company's 2016-2018 USECP by Order entered August 11, 2016 at Docket No. M-2015-2507139. Since that time, a number of revisions were made to the 2016-2018 USECP, including, most recently a revised De Facto Heating Pilot filed on November 2, 2017.

96. Denied. By way of further response, the Company submits that it has satisfied its FCO-related obligations under the Settlement by filing the comprehensive CAP proposal in PECO's amended proposed 2019-2024 USECP.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, PECO Energy Company denies that TURN is entitled to the relief requested and asks that its Complaint at Docket No. C-2020-3021557 be dismissed.

Respectfully submitted,



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Dated: September 15, 2020

*Counsel for PECO Energy Company*

## VERIFICATION

I, Richard G. Webster, Jr., hereby declare that I am the Vice President of Regulatory Policy and Strategy for PECO Energy Company; that, as such, I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Petition are true and correct to the best of my knowledge, information and belief; and that I make this verification subject to the penalties of 18 Pa.C.S. § 4904 pertaining to false statements to authorities.

A handwritten signature in blue ink, appearing to read 'R.G.W.' followed by a long horizontal flourish.

Dated: September 15, 2020

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Richard G. Webster, Jr.