



October 15, 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 Answer of TURN in Opposition to the Motion to Stay of PECO Energy Company in the above-referenced case.

Due to the ongoing COVID-19 pandemic, this Answer is 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)

**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 Answer of the Tenant Union Representative Network in Opposition to the Motion to Stay of PECO Energy Company, 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

Anthony E. Gay, Esq.
Jack R. Garfinkle, Esq.
Jennedy Johnson, Esq.
PECO Energy Company
2301 Market Street
Philadelphia, PA 19101
Anthony.gay@exeloncorp.com
Jack.garfinkle@exeloncorp.com
Jennedy.johnson@exeloncorp.com

Elizabeth R. Marx, Esq.
John W. Sweet, Esq.
Ria M. Pereira, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Kenneth M. Kulak
Catherine G. Vasudevan
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Ken.kulak@morganlewis.com
Catherine.vasudevan@morganlewis.com

Christy M. Appleby, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Cappleby@paoca.org



Joline R. Price, Esquire (PA ID: 315405)
Counsel for TURN
Community Legal Services, Inc.
jprice@clsphila.org
(215) 981-3756

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network	:	
Complainant	:	
v.	:	Docket No. C-2020-3021557
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**ANSWER OF TENANT UNION REPRESENTATIVE NETWORK
IN OPPOSITION TO THE MOTION TO STAY OF PECO ENERGY COMPANY**

Complainant, Tenant Union Representative Network (TURN), pursuant to 52 Pa. Code §5.61 and §5.103, hereby submits the following Answer in Opposition to the Motion to Stay of PECO Energy Company filed September 25, 2020. As set forth herein, TURN opposes a stay of this proceeding, as Commission action on PECO’s Petition at Docket No. P-2020-3022154¹ would be unrelated to the legal ruling, remedies, and relief sought by TURN in the instant proceeding. In opposition to the motion, TURN answers PECO’s Motion as follows:

1. Admitted in part, denied in part. It is admitted that the Formal Complaint in this proceeding addresses the Energy Burdens used by PECO in its Customer Assistance Program (“CAP”), known as the FCO or Fixed Credit Option.² By way of further answer, as laid out in the Complaint, TURN seeks the following relief:
 - 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

¹ PECO filed the referenced Petition at Docket Number M-2018-3005795 but the Petition has since been assigned a new docket number.

² TURN served PECO on August 25, 2020 with the Formal Complaint. PECO was served with the Formal Complaint by the Commission on August 26, 2020.

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.

Complaint at 16-17.

- 2. Admitted. By way of further answer, TURN alleges that PECO is in violation of the Commission-approved settlement because PECO has not complied with the following, unambiguous language of the Settlement: “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.”³ While PECO acknowledges that TURN alleges “other things” in the complaint, PECO’s singular focus on the prospective application of the Commission’s revised energy burdens seeks to minimize the additional substantial legal questions raised in the complaint that weigh against the imposition of a stay. As noted in TURN’s answer to paragraph 1, TURN seeks multiple findings and rulings from the Commission related to the legal violations alleged in the Complaint.
- 3. Admitted in part, denied in part. It is admitted that the Answer of TURN in the Company’s proposed 2019-2024 USECP at Docket No. M-2018-3005795 (“Proposed USECP”) includes the section quoted. By way of further answer, the referenced Answer solely addressed PECO’s *proposed* USECP, and the energy burdens PECO will use in the time period that it operates the FCO if and when the Commission approves the Proposed

³ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Joint Petition for Settlement, Exhibit A at 2 n.3 (March 20, 2015); see also PECO Energy Company Universal Service and Energy Conservation Plan 2016-2018, Docket No. M-2015-2507139 at 30 n.3, <http://www.puc.state.pa.us/pdocs/1510970.pdf>.

USECP.

4. Admitted in part, denied in part. It is admitted that PECO filed an Answer to TURN's Complaint in this proceeding on September 15, 2020 and included an extensive narrative statement purporting to explain PECO's past Universal Service and Energy Conservation Proceedings. It is denied that such narrative statement is accurate or relevant. By way of further answer, it is TURN's contention that the narrative statement cited in this paragraph was improperly presented and should be stricken from PECO's Answer to TURN's Complaint. See Preliminary Objection of TURN to the Answer of PECO Energy Company. It is further admitted that PECO filed an amended Proposed USECP on July 8, 2020 which includes a proposal to transition to a Percentage of Income Payment Plan (PIPP) for its CAP. It is denied that such filing is significant, or even relevant, to PECO's compliance with the Settlement and its extant USECP. By way of further Answer, the only timeline provided in the Proposed USECP is that PECO will transition to a CAP PIPP eight months following Commission approval. No date certain is known for when Commission approval would occur, nor is such approval certain.
5. Admitted in part, denied in part. It is admitted that PECO's Answer to TURN's Complaint included the statements in this paragraph. TURN is without sufficient information to affirm or deny PECO's belief that it has satisfied its obligations pursuant to the Settlement and so that assertion is denied. By way of further answer, whether PECO's actions in amending its Proposed USECP satisfy its obligations under the Commission approved Settlement at Docket Number M-2012-2290911 ("FCO Settlement") or comply with PECO's 2015-2018 Universal Service and Energy

Conservation Plan (“Current USECP”)⁴ at Docket Number No. M-2015-2507139 is a legal opinion to which no further answer is needed.

6. Admitted that PECO filed a Petition at the docket for its Proposed USECP (PECO Petition). By way of further answer, PECO only filed the referenced Petition at its *proposed* USECP docket (No. M-2018-3005795), but did not file to amend its Current USECP (No. M-2015-2507139).⁵ The Complaint in this case seeks enforcement of the terms of PECO’s Current USECP, and a ruling that PECO failed to comply with the terms of its Current USECP and the 2015 FCO Settlement. As discussed further below, a Commission ruling on PECO’s Petition would not address the substantive legal questions presented in this Complaint, nor would it comprehensively address the relief sought.
7. Admitted in part, denied in part. It is admitted that PECO requests the Commission’s approval as described in this paragraph. It is denied that such approval is necessary because the Commission-approved Settlement and PECO’s extant USECP require PECO to utilize the Commission’s revised energy burdens, which PECO has failed to do.
8. No paragraph 8 exists in PECO’s Motion.
9. No paragraph 9 exists in PECO’s Motion.
10. No paragraph 10 exists in PECO’s Motion.
11. No paragraph 11 exists in PECO’s Motion.
12. Admitted in part, denied in part. It is admitted that TURN asserted in response to PECO’s

⁴ While PECO’s Current USECP was designated for the years 2015 through 2018, it remains in effect until PECO’s Proposed USECP is approved by the Commission. See Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, M-2019-3012601, at 13 (“An existing USECP will remain in effect until a new one is approved and implemented.”).

⁵ While PECO filed its Petition at the docket for its pending Amended USECP, PECO also requested Commission approval for this proposal to start prior to Commission approval of the full USECP. See Petition at 1 (“PECO requests that the Commission provide the Company with final approval to implement the EB Proposal by the Commission’s November 19, 2020 Public Meeting. PECO is prepared to utilize the revised EBs as part of the CAP FCO beginning with bills issued in the first full billing cycle after receipt of final Commission approval.”).

Proposed USECP that the language of the FCO Settlement included in the Proposed USECP requires use of the energy burdens as specified in the Commission's CAP Policy Statement. By way of further answer, however, that proceeding is distinct from the instant proceeding. As noted above, TURN seeks a finding that PECO is in violation of the 2015 CAP FCO settlement agreement, which required automatic implementation of the CAP Policy Statement energy burdens at the time they were adopted in November as well as a finding that PECO is out of compliance with its current USECP, in violation of 66 Pa. C.S. §1501. In addition to prospective relief, TURN is also requesting that PECO retroactively calculate FCO credits for all impacted CAP customers, back to the date the Commission approved the new energy burdens, and provide bill credits, retroactive arrearage forgiveness, and/or reduce past-due balances as appropriate. TURN also requests that the Commission fine PECO for its willful violation of a Commission approved Settlement. By contrast, PECO's Petition only addresses the calculation of CAP FCO discounts prospectively.

13. Admitted in part, denied in part. It is admitted that PECO filed a Petition at Docket No. M-2018-3005795, its Proposed USECP, requesting permission to utilize the CAP Policy Statement Energy Burdens in its CAP FCO. That Petition is now docketed at P-2020-3022154. By way of further answer, PECO's Petition addresses only future CAP FCO bills, and does not address the legal questions presented in TURN's Complaint, PECO's obligation to provide retroactive relief, or whether the Commission should fine PECO for violation of a Commission approved Settlement.

14. Denied. PECO's assertion that staying the proceeding would promote administrative efficiency is incorrect and unfounded. PECO cites no basis for granting a stay solely on

the grounds of administrative efficiency because the Commission has not adopted such a standard. In the context of a proceeding before the Commission, the Process Gas standards⁶ are, at a minimum, instructive and require at least a determination that delay would not prejudice the party seeking relief (in this case, TURN). See Brunn v. Pennsylvania Power Co., No. C-20066209, 2006 WL 2846261, at *4 (Sept. 29, 2006) (upholding the ALJ’s denial of Penn Power’s requested stay, stating that “[a]lthough in an ideal, perfectly planned world, the litigation between Penn Power and Pine Township regarding the distribution line would be resolved first, requiring Mr. Brunn to wait for this resolution would be unreasonable.”); see also In Re Core Commc’ns, Inc., No. A-310922F0002AMA, 2006 WL 3523755, at *3 (Dec. 4, 2006). Any alleged administrative efficiency is substantially outweighed by the harm to TURN members and all CAP FCO customers who have been overcharged since November 2019 due to PECO’s failure to comply with the Settlement and PECO’s Current USECP.

As discussed more fully in Paragraphs 2 and 12 of this Answer, TURN’s Complaint raises legal distinct issues and requests specific relief which would not be addressed in a final decision on PECO’s Petition to modify its USECP. Staying this proceeding would delay resolution of TURN’s complaint, delay the relief its members seek, and would not promote administrative efficiency.

⁶ The Commission has articulated the Process Gas standard as follows: A stay is warranted if “(1) [t]he petitioner makes a strong showing that he is likely to prevail on the merits; (2) [t]he petitioner has shown that without the requested relief, he will suffer irreparable injury; (3) [t]he issuance of a stay will not substantially harm other interested parties in the proceedings; (4) [t]he issuance of a stay will not adversely affect the public interest.” In Re Bethlehem Steel Corp., 81 Pa. P.U.C. 267 (Jan. 6, 1994) (citing Pennsylvania Public Utility Commission v. Process Gas Consumers Group, 502 Pa. 545, 552-553 (1983)).

WHEREFORE, for the reasons set forth above, TURN respectfully requests that PECO's Motion for Stay be denied.

Respectfully submitted,



Joline R. Price, Esquire (Attorney ID: 315405)
Robert W. Ballenger, Esquire (Attorney ID: 93434)
Josie B. H. Pickens, Esquire (Attorney ID: 309422)
Kintéshia S. Scott, Esquire (Attorney ID: 328600)

COMMUNITY LEGAL SERVICES, INC.

1424 Chestnut Street

Philadelphia, PA 19102

Telephone: 215-981-3756

jprice@clsphila.org

rballenger@clsphila.org

jpickens@clsphila.org

kscott@clsphila.org

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VERIFICATION

I, Joline Price, hereby state that the facts set forth above in the Answer in Opposition to the Motion to Stay 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).

Dated: October 15, 2020


