



October 15, 2020

**VIA E-FILE**

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

**Re: PECO Energy Company's 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795, P-2020-3022154**

Dear Secretary Chiavetta:

Attached for filing, please find the **Answer of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) to the Petition of PECO Energy Company for Approval of an Amendment to Its Proposed Universal Service and Energy Conservation Plan.**

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully submitted,

A handwritten signature in black ink that reads "Elizabeth R. Marx".

Elizabeth R. Marx, Esq.  
*Counsel for CAUSE-PA*

CC: Certificate of Service  
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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for** : **Docket No. P-2020-3022154**  
**Approval of an Amendment to Its Proposed** : **M-2018-3005795**  
**Universal Service and Energy Conservation** :  
**Plan** :

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**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this day, served copies of the **Answer of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) to the Petition of PECO Energy Company for Approval of an Amendment to Its Proposed Universal Service and Energy Conservation Plan** in the above captioned matters upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54.

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October 15, 2020

Respectfully submitted,



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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**ANSWER OF THE COALITION FOR AFFORDABLE UTILITY  
SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA**

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**PENNSYLVANIA UTILITY LAW PROJECT**

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## **I. INTRODUCTION AND BACKGROUND**

Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.61(e), 5.71-.76, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, hereby files this Answer to the Petition of PECO Energy Company for Approval of an Amendment to Its Proposed Universal Service and Energy Conservation Plan (USECP) for 2019-2024 (hereinafter Petition).

CAUSE-PA strongly supports the substantive modifications proposed in PECO's Petition to reduce the applicable energy burden in PECO's currently effective USECP. Nevertheless, CAUSE-PA asserts that the procedural vehicle through which PECO seeks to amend its currently effective USECP is unnecessary, and further delays critical rate relief to economically vulnerable low income CAP customers in PECO's service territory. PECO is already obligated to reduce the applicable energy burden pursuant to the terms of a 2015 Settlement that was previously approved by the Commission and memorialized in PECO's currently effective USECP. As such, CAUSE-PA urges the Commission to dismiss PECO's Petition and issue a Secretarial Letter directing PECO to comply with the terms of the Settlement. Nevertheless, to the extent the Commission proceeds with consideration of PECO's Petition, we urge the swift approval and implementation of the critical energy burden reductions outlined in its Petition.

In support of its Answer, CAUSE-PA states as follows:

1. On March 20, 2015, PECO, the Office of Consumer Advocate (OCA), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.), and the Coalition for Affordable Utility Services and Energy Efficiency in

Pennsylvania (CAUSE-PA) filed a Joint Petition for Settlement in the PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015.<sup>1</sup> This Settlement was approved by the Commission on July 8, 2015, and is memorialized in PECO’s currently effective USECP.<sup>2</sup>

2. In relevant part, the Joint Petition for Settlement provided: “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.”<sup>3</sup> Nothing in the text of the Joint Settlement contemplated any additional procedures, filings, or delay for this settlement obligation to take effect. Rather, the plain text of the Joint Settlement, approved by the Commission, required PECO to begin utilizing the new standards upon the Commission’s adoption of revised energy burden standards.<sup>4</sup>
3. PECO’s agreement to later reduce its applicable energy burden standard if and when the Commission acted to modify its CAP Policy Statement was a substantial motivating factor in CAUSE-PA’s decision to forego further litigation in that proceeding and join as a signatory party to the Joint Settlement.
4. On November 1, 2018, PECO filed its proposed USECP for 2019-2021.
5. On October 3, 2019, the Commission issued an Order extending the USECP filing schedule from three to five years and directing each utility – including PECO – to file updated

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<sup>1</sup> PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Joint Petition for Settlement, Docket No. M-2012-2290911 (filed March 20, 2015).

<sup>2</sup> PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Order, Docket No. M-2012-2290911 (July 8, 2015) (approving the June 11, 2015 Recommended Decision of ALJ Cynthia Williams Fordham); see also PECO Energy Company Universal Service & Energy Conservation Plan, 2016-2018, at Addendum B, page 30 of 54 (last amended February 17, 2017).

<sup>3</sup> PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Joint Petition for Settlement, Docket No. M-2012-2290911, at Exhibit A, p. 2, n.3 (filed March 20, 2015) (emphasis added).

<sup>4</sup> Id.

enrollment and budget projections for the additional years of their currently-effective USECP.<sup>5</sup> As part of this Order, the Commission extended PECO's pending USECP from 2021 to 2024.<sup>6</sup>

6. On November 5, 2019, the Commission entered a Final Policy Statement and Order at Docket No. M-2019-3012599 (November 5 Order), which ordered a number of critical reforms to the Commission's Customer Assistance Program (CAP) Policy Statement at 52 Pa. Code §§ 69.261-.267.<sup>7</sup>
7. In its November 5 Order, the Commission found that, based on extensive data, analysis, and information in these underlying proceedings,<sup>8</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>9</sup> Accordingly, the Commission reduced the energy burden standards for customers enrolled in a utility-run CAP, setting a maximum *combined* energy burden 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>10</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>11</sup> In reducing the maximum energy burden standards, the Commission found that the existing maximum energy burden standards, originally established

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<sup>5</sup> See Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Docket No. M-2019-3012601, at 15-16 (order entered Oct. 3, 2019).

<sup>6</sup> See id.

<sup>7</sup> 2019 Amendments to CAP Policy Statement, Final Policy Statement and Order, Docket No. M-2019-3012599, at 27 (order entered Nov. 5, 2019) (hereinafter November 5 Order).

<sup>8</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>9</sup> November 5 Order at 27.

<sup>10</sup> Id. at 32-33.

<sup>11</sup> Id.

in 1992, “do not reflect reasonable or affordable payments for many low-income customers” - especially for those with income at or below 50% FPL.<sup>12</sup>

8. In addition to adjusting the maximum energy burden standards, the Commission made a number of additional reforms to its CAP Policy Statement to improve the accessibility and affordability of the program.<sup>13</sup>
9. To help facilitate implementation of the guidelines set forth in the Commission’s revised CAP Policy Statement, the Commission directed each utility to file and serve an addendum to their existing or proposed Universal Service and Energy Conservation Plan (USECP) within 60 days of entry date of the November 5 Order to indicate whether the utility’s existing or pending USECP was consistent with the amended CAP Policy Statement and, if not, whether and how the utility would implement the policy changes specified in the amended CAP Policy Statement.<sup>14</sup>
10. 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 5 Order. EAP also filed a Petition to Stay the Commission’s November 5 Order until resolution of its Petition for Reconsideration. This Petition for Stay was granted on November 25, 2019.<sup>15</sup>
11. On November 26, 2019, PECO submitted a revised USECP, extending the effective date of its pending proposed USECP from 2022 to 2024, but made no proposal to otherwise amend its applicable energy burden standards consistent with the terms of the 2015 Joint Settlement.

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<sup>12</sup> Id. at 27, 29-30

<sup>13</sup> Id. at 101-104.

<sup>14</sup> Id. at 106.

<sup>15</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).

12. On January 16, 2020, PECO submitted an extended USECP for 2019-2024.
13. On February 6, 2020, the Commission issued an Order (February 6 Order) which clarified that full compliance with the Commission’s amended CAP Policy Statement is voluntary at this time, and directed each utility to file and serve a cover letter and addendum to their current Plan, consistent with the Commission’s November 5 and February 6 Orders, within 15 days from the date of the Commission’s Order of February 6, 2020.<sup>16</sup> The Commission emphasized in its Order that “[i]mplementation of the amendments to the Customer Assistance Program Policy Statement is strongly encouraged on or before January 1, 2021.”<sup>17</sup>
14. On July 8, 2020, PECO filed a Petition to amend its proposed USECP for program years 2019-2024 at its pending USECP Docket, M-2018-3005795, though the Petition was also separately docketed with the Commission as a formal Petition at P-2020-3020727. Through its first Petition to amend its USECP, PECO sought approval to implement a number of proposed amendments to its currently pending USECP, many (though not all) of which are consistent with the Commission’s revised CAP Policy Statement.
15. On July 28, 2020, CAUSE-PA filed an Answer in response to PECO’s first Petition to amend its USECP, strongly supporting PECO’s proposed reduction in energy burden consistent with the Commission’s policy statement for those with income between 0-100% of the federal poverty level (FPL), its proposal to transition from a Fixed Credit Option (FCO) program design to a Percentage of Income (PIP) program design, and other amendments consistent with the Commission’s revised CAP Policy Statement, but opposing PECO’s proposal to retain its unacceptably high energy burden thresholds for those with income between 101-150% FPL

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<sup>16</sup> Petition of Energy Association of Pennsylvania for Reconsideration/Clarification of the November 5, 2019 Final CAP Policy Statement and Order, Order on Reconsideration and Clarification, Docket No. P-2020-3016889 & M-2019-3012599, at 14 para. 3 (order entered Feb. 6, 2020) (hereinafter February 6 Order).

<sup>17</sup> Id.

(10% for gas heating, 10% for electric, and 17% for electric heating). CAUSE-PA incorporates its Answer to PECO's July 28, 2020 Petition to amend its USECP by reference herein.

16. On September 25, 2020, PECO filed the instant Petition, seeking to make additional amendments to its pending USECP. In relevant part, PECO's Petition seeks to amend its current Fixed Credit Option (FCO) CAP design to incorporate the Commission's revised energy burden standards. CAUSE-PA files this Answer in response thereto.

## **II. STANDING**

17. Pursuant to the requirements contained in 52 Pa. Code § 5.61(e), CAUSE-PA asserts that it has standing to intervene and file an Answer in this proceeding.

18. Eligibility to intervene in Commission proceedings is governed by Section 5.72, which provides that “[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.”<sup>18</sup>

19. Section 5.72 further provides that the right or interest may be one “which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.”<sup>19</sup>

20. While Section 5.72 speaks of the rights of a “person” to intervene, the Commonwealth Court has consistently stated that “an association may have standing as a representative of its members... as long as the organization has at least one member who has or will suffer a direct,

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<sup>18</sup> 52 Pa. Code. § 5.72(a).

<sup>19</sup> 52 Pa. Code. § 5.72(a)(2).

immediate, and substantial injury to interest as a result of the challenged action, [the organization] has standing.”<sup>20</sup>

21. CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating, and telecommunication services.
22. CAUSE-PA membership is open to individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income Pennsylvanians to connect and maintain affordable utility services.
23. CAUSE-PA is located, c/o Pennsylvania Legal Aid Network, 118 Locust Street, Harrisburg, PA 17101.
24. As an association of low-income individuals, CAUSE-PA has a direct interest in the prompt and efficient implementation of the Commission’s CAP Policy Statement reforms to address pervasive levels of unaffordable and unreasonable rates for CAP customers both in PECO’s service territory and across the state. These reforms are designed to address deep and persistent levels of unaffordability within CAP. If documented levels of unaffordability are allowed to persist without mitigation, economically vulnerable households will continue to be exposed to significant harm to their health, safety, and financial stability.<sup>21</sup>
25. CAUSE-PA has standing to intervene because at least one member of CAUSE-PA may suffer a direct, immediate, and substantial injury to their interests as a result of this proceeding.<sup>22</sup>

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<sup>20</sup> Energy Cons. Council of Pa. v. Pa. PUC, 995 A.2d 465, 476 (Pa. Commw. Ct. 2010) (alteration in original) (citing Tripps Park v. Pa. PUC, 415 A.2d 967 (Pa. Commw. Ct. 1980); Parents United for Better Schools v. School District of Phila., 646 A.2d 689 (Pa. Commw. Ct. 1994).

<sup>21</sup> See, e.g., Diana Hernandez, Understanding “Energy Insecurity” and Why It Matter to Health, J. Social Science & Medicine 167, at 1-10 (2016).

<sup>22</sup> See Energy Cons. Council of Pa., 995 A.2d at 476. Ms. Marsha White Mathis, Mr. Carl Bailey, and Ms. Sonia Brookins are among several CAUSE-PA members who are also customers of PECO.

26. CAUSE-PA is represented in this proceeding by:

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Ria M. Pereira, Esquire  
John Sweet, Esquire  
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27. Counsel for CAUSE-PA consents to the service of documents by electronic mail to [pulp@palegalaid.net](mailto:pulp@palegalaid.net), as provided in 52 Pa. Code § 1.54(b)(3).

### **III. ANSWER**

28. CAUSE-PA strongly supports the swift implementation of the Commission’s reduced energy burden standards in PECO’s service territory – and in every electric and natural gas service territory across the state. CAUSE-PA already set forth the ample reasons for its support of PECO’s implementation of the Commission’s reduced energy burden standards in its July 28, 2020 Answer to PECO’s initial Petition to amend its USECP. Rather than reiterate those extensive arguments, we incorporate the arguments by reference herein.<sup>23</sup>

29. As the Commission concluded in its Final CAP Policy Statement Order, the Commission’s prior energy burden standards – which are currently utilized in PECO’s service territory – “do not reflect reasonable or affordable payments for many low-income customers.”<sup>24</sup> Addressing and remediating unreasonable and unaffordable rates within CAP has always been a critical matter, central to the Commission’s statutory obligation to ensure that rates are just and

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<sup>23</sup> July 28 Answer of CAUSE-PA, Docket Nos. M-2018-3005795, P-2020-3020727.

<sup>24</sup> 2019 Amendments to CAP Policy Statement, Final Policy Statement and Order, Docket No. M-2019-3012599, at 27 (order entered Nov. 5, 2019) (hereinafter November 5 Order); see also 66 Pa. C.S. § 1301(a) (“Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, **shall be just and reasonable**, and in conformity with regulations or orders of the commission.”).

reasonable –in conformance with the Commission’s Orders – and that universal service programs are appropriately funded to ensure that low income customers can maintain service in their home.<sup>25</sup> But addressing unaffordability has taken on even greater urgency in the context of the global pandemic and as utility arrearages – especially amongst low income consumers – mount at an unprecedented rate.<sup>26</sup>

30. By its terms, the 2015 Joint Settlement – which was carefully negotiated amongst the parties to that proceeding – requires PECO to reduce its applicable energy burden standard. As noted above, there are no qualifiers in the Settlement that require PECO to file a formal petition for approval from the Commission to fulfill the terms of this earlier approved settlement. Again, the Settlement plainly provides: “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.”<sup>27</sup> Similar contingent provisions in that Settlement took effect without additional Commission review and approval.<sup>28</sup>

31. It is wasteful of the Commission’s and affected parties’ finite resources to return to the Commission for approval before implementing terms agreed to through a negotiated and approved Settlement if, by those terms, there is no such requirement for an additional filing or review. Allowing PECO to do so here – further delaying effectuation of approved Settlement terms – has the potential to deter future settlements, as disputing parties may no longer trust

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<sup>25</sup> 66 Pa. C.S. §§ 2802(9), (10), (17), 2803, 2804(9), 2202, 2203(8). CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015); Retail Energy Supply Ass’n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018); see also PPL Industrial Customer Alliance v. Pa. PUC, 780 A.2d 773, 782 (Pa. Commw. Ct. 2001).

<sup>26</sup> See Moratorium Order at Temporary Reporting Requirements: At-Risk Accounts, Secretarial Letter, Docket No. M-2020-3019244 (Oct. 1, 2020); see also Comments of PECO Energy in Response to Chairman Dutrieuille’s Letter of August 10, 2020, Docket M-2020-3019244 (filed Aug. 18, 2020).

<sup>27</sup> PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Joint Petition for Settlement, Docket No. M-2012-2290911, at Exhibit A, p. 2, n.3 (filed March 20, 2015) (emphasis added).

<sup>28</sup> Id. at n.8-10 (setting forth requirements for PECO to adjust the maximum CAP credits upon approval of a rate increase).

that the terms of an approved settlement would be upheld without commitment of substantial additional time and resources.

32. If PECO believed it necessary to file a Petition for approval to reduce its energy burden consistent with the terms of the 2015 Joint Settlement, it could have done so on November 26, 2019, or January 16, 2020 – when PECO made other filings related to the Commission’s Final CAP Policy Statement and Order. It likewise could have done so within the 15-day time-frame set forth by the Commission following its February 15, 2020 Orders upholding its Final CAP Policy Statement and Order. Or through its initial Petition to amend its USECP, filed on July 28, 2020. PECO made no such filing. Instead, nearly a year after the Commission issued its Final CAP Policy Statement and Order, PECO filed a separate Petition to amend its pending USECP seeking permission to do what it was already obligated to do under the clear and unambiguous terms of the Settlement.

33. The Commission made its preference clear that utilities should endeavor to implement the Commission’s reduced energy burden standards and other reforms by January 2021 in order to gain experience with the reduction to help inform the Commission’s pending CAP rulemaking.<sup>29</sup> Rather than allow this unnecessary procedural obstacle to proceed, CAUSE-PA asserts that the Commission should dismiss PECO’s Petition and issue a Secretarial Letter directing PECO to comply with the terms of the Settlement.

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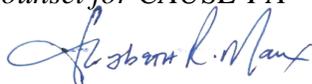
<sup>29</sup> 2019 Amendments to CAP Policy Statement, Final Policy Statement and Order, Docket No. M-2019-3012599, at 100 (order entered Nov. 5, 2019) (“We strongly urge the EDCs and NGDCs to incorporate these CAP Policy Statement amendments in their USECPs as fully and quickly as possible so that all stakeholders will have a basis for meaningful input in the Universal Service Rulemaking. We suggest that the first 16 CAP Policy Statement amendments should be operational by or before January 1, 2021.”).

34. To the extent that the Commission allows this Petition to proceed, we urge the Commission to be swift in its review and to approve PECO's proposal to implement revised energy burden standards in its existing FCO CAP without any further delay.

**IV. CONCLUSION**

For the forgoing reasons, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) strongly supports PECO's immediate implementation of the Commission's reduced energy burden standards. Nevertheless, we assert that PECO's Petition is an unnecessary procedural vehicle. We urge the Commission to dismiss PECO's Petition, and direct PECO to comply with the terms of the previously approved Settlement. In the alternative, to the extent PECO's Petition is permitted to proceed, we urge the Commission to approve PECO's proposal to comply with its Settlement terms and reduce its energy burden without delay.

Respectfully submitted,  
**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for CAUSE-PA*



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Dated: October 15, 2020

**Verification**

I, **Elizabeth R. Marx, Esq.**, legal counsel for the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleadings are true and correct to the best of my knowledge, information, and belief, that I am duly authorized to make this Verification, 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 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



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Elizabeth R. Marx, Esq.

On behalf of the Coalition for Affordable Utility Services  
and Energy Efficiency in Pennsylvania (CAUSE-PA)

October 15, 2020