

COMMONWEALTH OF PENNSYLVANIA



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February 18, 2021

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

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

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code § 5.412 and the attached *Interim Order Granting Joint Stipulation for Admission of Evidence* dated February 11, 2021 in the above-referenced proceeding, enclosed, please find a copy of the Office of Consumer Advocate's (OCA) admitted evidence, including:

- OCA Statement 1-R Rebuttal Testimony of Roger D. Colton
  - Colton Appendix A: Professional Background
  - Verification of Roger D. Colton

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Mary D. Long (email only)  
Certificate of Service

\*304208

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's § 5.412a filing of Admitted Evidence, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 18<sup>th</sup> day of February 2021.

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Dated: February 18, 2021  
\*304210

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Rebuttal Testimony of Roger D. Colton

On Behalf of  
Office of Consumer Advocate  
(OCA Statement No. 1)

January 7, 2021

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1 **Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD?**

2 A. My name is Roger Colton. My business address is 34 Warwick Road, Belmont, MA  
3 02478.

4  
5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am a consultant through the firm of Fisher, Sheehan & Colton, Public Finance and  
7 General Economics.

8  
9 **Q. FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?**

10 A. I am testifying on behalf of the Pennsylvania Office of Consumer Advocate (OCA).  
11

12 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.**

13 A. I work primarily on low-income utility issues. This involves regulatory work on rate and  
14 customer service issues, as well as research into low-income usage, payment patterns,  
15 and affordability programs. At present, I am working on various projects in the states of  
16 New Hampshire, Maryland, Pennsylvania, Ohio, Michigan, Tennessee, Missouri,  
17 Colorado and Washington. My current clients include state agencies (e.g., Pennsylvania  
18 Office of Consumer Advocate, Maryland Office of People’s Counsel), community-based  
19 organizations (e.g., Legal Assistance of New Hampshire, National Housing Trust,  
20 Natural Resources Defense Council), and public utilities (e.g., Toledo [OH] Water  
21 Department). In addition to state-specific and utility-specific work, I engage in national  
22 work throughout the United States. For example, in 2011, I worked with the U.S.  
23 Department of Health and Human Services (the federal LIHEAP office) to advance the

1 review and utilization of the Home Energy Insecurity Scale as an outcomes measurement  
2 tool for the federal Low-Income Home Energy Assistance Program (“LIHEAP”). In  
3 2007, I was part of a team that performed a multi-sponsor public/private national study of  
4 low-income energy assistance programs. This Fall, I prepared comments for a set of  
5 national consumer stakeholders (e.g., National Consumer Law Center, National Housing  
6 Trust, National Community Action Foundation) to submit to the U.S. Environmental  
7 Protection Agency regarding water affordability. A brief description of my professional  
8 background is provided in Appendix A.

9  
10 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

11 A. After receiving my undergraduate degree in 1975 (Iowa State University), I obtained  
12 further training in both law and economics. I received my law degree in 1981 (University  
13 of Florida). I received my Master’s Degree (regulatory economics) from the MacGregor  
14 School in 1993.

15  
16 **Q. HAVE YOU EVER TESTIFIED BEFORE THIS COMMISSION WITH RESPECT  
17 TO THE DESIGN AND IMPLEMENTATION OF CUSTOMER ASSISTANCE  
18 PROGRAMS?**

19 A. Yes. I have testified before the Pennsylvania Public Utility Commission (“PUC” or  
20 “Commission”) on roughly 130 occasions regarding utility issues affecting low-income  
21 customers, including specifically the design, implementation and funding of Customer  
22 Assistance Programs (CAPs). In addition, I have worked numerous times as a consultant  
23 to OCA in the preparation of “comments” in proceedings for which formal written

1 testimony was not submitted. I have finally worked with Community Legal Services of  
2 Philadelphia (CLS) in the original design and implementation of the Philadelphia Gas  
3 Works (PGW) Customer Responsibility Program (before PGW became subject to  
4 regulation pursuant to the PUC's jurisdiction) and to the design and implementation of  
5 the Philadelphia Water Department's percentage-of-income Income-based Water Rate  
6 Assistance Program (I-WRAP) (now known as the Tiered Assistance Program, or TAP)  
7 adopted by the Philadelphia Water Department pursuant to legislation enacted by the  
8 Philadelphia City Council.

9  
10 **Q. PLEASE EXPLAIN THE PURPOSE OF YOUR DIRECT TESTIMONY.**

11 A. The purpose of my Direct Testimony is to assess the reasonableness of TURN's request  
12 that PECO Energy "immediately" adopt the revised energy burdens set forth in the  
13 PUC's 2019 Revised CAP Policy Statement. (Docket No. M-2019-3012599, 2019  
14 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §  
15 69.261–69.267, November 5, 2019) (hereinafter, "Final Order"). I will address the need  
16 to consider the outcome of the other elements of the settlement, particularly the recent  
17 evaluation of the PECO CAP that found the overall program design to be ineffective in  
18 providing affordable energy bills to all CAP participants.

19  
20 In my testimony, I will explain how two sets of factors at issue here can further affect the  
21 affordability of a low-income home energy bill: (1) the underlying program design  
22 through which the energy burdens are delivered and (2) the underlying program  
23 implementation decisions. I will address each of these sets of factors below.

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**Introduction and Overview**

**Q. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY?**

A. In this section of my testimony, I introduce the Settlement of the proceeding considering PECO Energy’s 2013 – 2015 Universal Service and Energy Conservation Plan (USECP), dated March 20, 2015. (Docket No. M-2012-2290911) (hereafter, 2015 Petition for Settlement). Within the four corners of the 2015 Settlement, the parties to that proceeding told the Commission that “the Term Sheet is a comprehensive settlement. . .that resolves all issues pertaining to the above-captioned docket.” (2015 Petition for Settlement, at 1). The Petition for Settlement stated that “the Term Sheet sets forth a comprehensive proposal to revise PECO’s Customer Assistance Program (CAP). . .” (2015 Petition for Settlement, at 2).<sup>1</sup> As the Petition for Settlement provides, the Settlement was reached after “at least eight half- or full-day sessions over. . .several months, with extensive exchange of data and other information between the Joint Petitioners.” (2015 Petition for Settlement, at 3).<sup>2</sup> Amongst agreement on other issues, “as a result of that extensive mediation effort and related settlement discussion, the Joint Petitioners reached agreement on a new CAP design. . .” (Id.).

One of the primary, if not the primary issue addressed by the Settlement involved the design of PECO’s CAP (2015 Settlement Term Sheet, Part A). (hereafter 2015 Settlement Term Sheet). The design of PECO’s CAP involved the following parts:

- The “determination of credits” (Part A.1);

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<sup>1</sup> The Settlement addressed some aspects of non-CAP programs. Given that those other programs are not at issue in this proceeding, they are not further discussed.

<sup>2</sup> PECO Energy was the Joint Petitioner.

- 1           ➤ The treatment of customers who do not receive an annual credit (Part A.2);<sup>3</sup>
- 2           ➤ Cost containment (Part A.3);
- 3           ➤ Cost recovery (Part A.4); and
- 4           ➤ “External review of FCO program.” (Part A.5).

5

6   **Q.    DID THE SETTLEMENT ESTABLISH “ALLOWABLE ENERGY BURDENS”**  
 7   **FOR PECO CAP PARTICIPANTS?**

8   A.    Yes. “Step 3” of the CAP program design (2015 Settlement Term Sheet, at 2 – 3), the  
 9    Petition for Settlement defined how to “determine customer’s allowable Energy Burden.”  
 10   The 2015 Settlement Term Sheet provided that “PECO will determine the household’s  
 11   allowable Energy Burden” by reference to the following “Table 1” set forth in the Term  
 12   Sheet. For purposes of this Table, “electric non-heating” applied to PECO Rate R  
 13   customers who use a non-PECO heating fuel source; “electric heating” applies to PECO  
 14   Rate RH customers; and “electric with gas heating” applied to PECO dual commodity  
 15   customers.

Table 1. Energy Burdens			
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%

16

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<sup>3</sup> A customer can be income-eligible for CAP but receive no credits in situations where the customer’s annual bill is at or below the affordable percentage of income. In these instances, no credits are needed to reduce the customer’s bill to an affordable level.

1 Use of the Table to establish energy burdens was conditioned upon footnote 3 of the 2015  
 2 Petition for Settlement. The footnote states in its entirety:

3 The table is *based upon the ranges* found at 52 Pa. Code §69.265 (2)(i)(A).  
 4 In each case, the energy burden listed in the table is the *maximum allowable*  
 5 *energy burden* for that poverty level. If the Commission changes *the energy*  
 6 *burden ranges* set forth in its Policy Statement, PECO will utilize the new  
 7 *maximum allowable* energy burden for each poverty level.  
 8

9 (2015 Petition for Settlement, footnote 3, page 2). (emphasis added). As can be seen, in  
 10 this footnote, the Settlement provides that should the PUC change the ranges within  
 11 which CAP energy burdens must fall, PECO would continue to use the “maximum  
 12 allowable energy burden” provided in each range. The footnote effectively barred  
 13 stakeholders from advocating that PECO adopt a percentage of income burden that was  
 14 less than the maximum burden recommended in the PUC’s ranges.  
 15

16 **Q. DID THE 2015 PETITION FOR SETTLEMENT PROVIDE FOR ANY**  
 17 **EVALUATION OF THE PROPOSED NEW CAP PROGRAM DESIGN?**

18 A. Yes. In Part A.5, the 2015 Petition for Settlement provided as follows:

19 Expert external evaluation of the new FCO program will require two full  
 20 calendar years of operational data, plus a six-month period for data analysis  
 21 and evaluation. With a nominal start date of October 2016, this timeline will  
 22 require until December 2018 for operational data collection, and until June  
 23 30, 2019 to complete data analysis and evaluation. PECO’s periodic six-year  
 24 evaluation is currently required to be filed with the Commission on October  
 25 1, 2018. As part of its filing, PECO will therefore request that its six-year  
 26 evaluation be rescheduled for filing on June 30, 2019. This evaluator’s report  
 27 will be provided to the Commission and to each member of PECO’s USECP  
 28 Advisory Committee and [to] the signatories to this agreement at that time.  
 29

1 (2015 Petition for Settlement, at 9). PECO filed its Evaluation of the Company’s  
 2 Universal Service Programs, including its CAP, on June 28, 2019. That June 2019  
 3 Evaluation included an evaluation of whether the payments required of PECO’s CAP  
 4 participants resulted in energy burdens that were below, at or above the burdens  
 5 prescribed by the PUC (and set forth in “Table 1” of the 2015 Settlement).  
 6

7 **Q. WHY WAS THERE A NEED TO PERFORM AN EVALUATION OF THE**  
 8 **NEWLY-ADOPTED FCO PROGRAM DESIGN?**

9 A. As I discuss above, PECO agreed by Settlement to implement a Fixed Credit Option  
 10 (FCO) program design. Because an FCO program design was new to PECO, however, at  
 11 the same time PECO agreed to implement the FCO, it also agreed that it would  
 12 reasonably quickly evaluate the impacts of the FCO on delivering affordable home  
 13 energy. The purpose for, and need for, the evaluation was noted by TURN in its  
 14 Statement in Support of the Settlement (attached to the Direct Testimony of Philip  
 15 Bertocci, Exh. C). TURN said in that Statement in Support:

16 As provided in the Term Sheet, PECO proposes, and TURN et al. supports,  
 17 that an expert external evaluation of PECO’s FCO be undertaken beginning  
 18 in late 2018, in order to assess two full years of operational data. TURN et al.  
 19 submit that such evaluation will be essential to determining the viability of  
 20 the FCO to render affordable bills to CAP participants. TURN et al. believe  
 21 the FCO design holds promise, and look forward to an expert analysis that  
 22 will hopefully demonstrate significant improvement in both the breadth and  
 23 depth of affordability obtained for PECO’s CAP participants.”  
 24

25 (TURN St. 1, Exh. C, page 4). Three important observations stand out in this Statement.  
 26 First, the Evaluation which PECO committed to prepare is “*essential* to determining the  
 27 viability of the FCO.” (emphasis added). The viability of the FCO was not self-evident.

1 The viability of the FCO was a conclusion to be determined. Second, while stakeholders  
 2 believed that the FCO “holds promise,” whether the FCO *actually* resulted in affordable  
 3 bills to CAP participants remained for the Evaluation to determine. Finally, it was only  
 4 “hopeful” that the FCO would “demonstrate significant improvements” in both the  
 5 breadth and depth of affordability. Deciding whether that “hope” was realized, or not,  
 6 was dependent on the “expert analysis” presented in the agreed-upon Evaluation.

7

8 **Q. WHAT, IF ANYTHING, DID THE PECO EVALUATION OF THE FCO**  
 9 **PROGRAM FIND?**

10 A. PECO completed the periodic evaluation of its universal service programs (e.g., CAP,  
 11 LIURP), which included its evaluation of the impact of the FCO on affordability. The  
 12 PECO Evaluation found that the FCO did not well-serve customers with income at or  
 13 below 50% of Poverty Level in particular.

Energy Burdens Relative to PUC Target (50% of Poverty) (2017 Enrollee Treatment Group) (Burden Above PUC Target) (PECO Evaluation, at 128)		
	Pre-	Post-
Electric only heating	96%	73%
Electric only baseload	99%	76%
Electric and gas (gas)	81%	70%
Electric and gas (electric)	99%	77%

14

15 The PECO Evaluation further found not only that the extent to which the FCO failed to  
 16 reduce bills for the lowest Poverty Level (i.e., below 50% of Poverty) to be at or below  
 17 the PUC target level *increased* in 2018, but also that the dollar amount by which bills  
 18 exceeded the PUC target was substantial.

Energy Burdens Relative to PUC Target (50% of Poverty) (2018 All CAP Participants) (Burden Above PUC Target) (PECO Evaluation, at 132)		
	Percent Above PUC Target	\$ Amount Above Target
Electric only heating	82%	\$872
Electric only baseload	82%	\$554
Electric and gas (electric)	82%	\$560
Electric and gas (gas)	73%	\$399

1

2 **Q. WHAT DO YOU CONCLUDE?**

3 A. Despite the fact that the FCO, at the time it was agreed to by Settlement, was believed to  
 4 “hold promise” as a means to improve affordability, the Evaluation that was agreed upon  
 5 as a means to demonstrate whether that “promise” was realized in reality found that, for  
 6 the lowest income PECO CAP participants, the FCO did not reduce CAP bills to a level  
 7 that would result in burdens at or below the PUC burdens. As a result, PECO was left  
 8 with either continuing a program design knowing that from more than 70% (electric and  
 9 gas—gas burdens) to more than 80% of its lowest income CAP participants would  
 10 receive bills exceeding the PUC target, or developing modifications to its FCO program  
 11 that would improve affordability.

12

13 **Q. WOULD LOWERING THE PECO CAP HOME ENERGY BURDENS FIX THE**  
 14 **UNAFFORDABILITY PROBLEMS IDENTIFIED BY THE PECO USECP**  
 15 **EVALUATION?**

16 A. No. Holding all else equal, by definition, if PECO were to reduce the target burdens by  
 17 which to define affordability, both the percentage of customers found to have

1 unaffordable bills, and the dollar amount by which actual CAP bills exceeded the target  
2 burdens, would remain the same, if not increase.

3  
4 The continuing unaffordability of CAP bills for PECO low-income customers is  
5 grounded in the observation that the unaffordability is not a function of the target burden,  
6 but rather is a function of the underlying program design. For many of the customers in  
7 the lowest income range (0 to 50% of Poverty), for example, the minimum bill exceeded  
8 the prescribed home energy burden. In addition, to the extent that CAP participant bills  
9 at standard residential rates fluctuated from one year to the next, the FCO (which  
10 provides a fixed credit rather than a fixed payment) results in customers experiencing an  
11 upwards fluctuation paying more than the target burden.

12  
13 In addition, under the FCO, remember, if a CAP participant's bill increased over that  
14 which was expected in deciding what level the credit would be, the CAP participant pays  
15 the increase. Even though bills under the FCO were weather-adjusted to take into  
16 account normal variations in weather, the variability of low-income bills was higher than  
17 it was expected to be when the FCO was adopted. The evaluation found that increases in  
18 bill could not be attributed to variations associated with weather.

19  
20 Lowering the home energy burden does not "fix" that problem. The continuing  
21 unaffordability is a function of the fluctuation in customer bills, not a function of what  
22 level of burden is defined to be affordable. Even with a lower burden, CAP participant  
23 bills would continue to fluctuate and unaffordable burdens would still be experienced.

1 Moreover, lowering home energy burdens would not reduce the number of accounts  
2 facing unaffordable bills due to the imposition of minimum charges. In short, lowering  
3 the home energy burdens would increase the cost of the CAP without addressing the  
4 underlying structural problem with the program. The evaluation found that, if  
5 affordability were to be pursued, what was needed was a program redesign.

6  
7 **Q. WHY ARE YOU CONCERNED ABOUT INCREASING THE COST OF A**  
8 **PROGRAM THAT HAS BEEN FOUND TO BE INEFFECTIVE AT PROVIDING**  
9 **AN AFFORDABLE BILL TO A LARGE PORTION OF THE PARTICIPANT**  
10 **POPULATION?**

11 A. From the inception of CAP programs offered by Pennsylvania utilities in the 1990s, the  
12 PUC has made clear that the objective of CAP was not to deliver affordability assistance  
13 irrespective of the cost. Instead, the purpose is to deliver affordability assistance while  
14 taking into account the cost of providing that assistance to other ratepayers.

15  
16 The costs of universal service are borne by all non-participating residential customers,  
17 but, many of those residential customers are low-income (or “near-poor”) customers  
18 themselves. In making this observation, I mean to distinguish between the low-income  
19 (or “poor”) and the “near-poor.” A low-income non-participating customer would be a  
20 customer who is income-eligible (i.e., at or below 150% of Poverty) for CAP, but who  
21 for whatever reason does not participate. One reason an income-eligible customer may  
22 not participate in PECO’s CAP, for example, would be that PECO has simply not  
23 identified that customer as being income-eligible. According to the most recent (2019)

1 Bureau of Consumer Services (BCS) annual report on Universal Service Programs and  
2 Collections Performance,<sup>4</sup> for example, while PECO (electric) has 111,124 CAP  
3 participants (page 51), it has 393,662 estimated low-income customers (page 5). At the  
4 same time, while PECO (gas) has 19,358 CAP participants (page 51), PECO (gas) has  
5 74,914 estimated low-income customers (page 51). Those low-income customers (i.e.,  
6 customers with income less than 150% of Poverty) who do not participate in CAP pay for  
7 the cost of providing benefits to those low-income customers who do participate in CAP.

8  
9 In addition to those customers who are eligible for, but who do not participate in, CAP  
10 are those customers who are “near-poor.” Customers who are near-poor are those  
11 customers who do not have income sufficiently low to be eligible for CAP, but who also  
12 do not have income sufficiently high to have sufficient resources to meet their day-to-day  
13 needs. The “near-poor” can be considered in light of Pennsylvania’s Self-Sufficiency  
14 Standard.

15  
16 The data on Pennsylvania’s self-sufficiency standard in the PECO (gas) counties  
17 demonstrates that customers may not be “low-income” as per the PUC’s definition, but  
18 still may have insufficient household resources to consistently pay their daily expenses. I  
19 consider the five counties which PECO (gas) lists in its Tariff as comprising (in whole or  
20 part) its service territory (Bucks, Chester, Delaware, Lancaster, Montgomery counties).<sup>5</sup>

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<sup>4</sup> BCS (annual). Universal Service Programs and Collections Performance. available at:  
[http://www.puc.state.pa.us/filing\\_resources/universal\\_service\\_reports.aspx](http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx) (last accessed January 3, 2021).

<sup>5</sup> <http://www.selfsufficiencystandard.org/pennsylvania> (last accessed January 3, 2021).

1 In this assessment, I consider the self-sufficiency incomes, limited to three-person  
2 households, for these five PECO Gas counties. In the PECO (gas) service territory, the  
3 lowest self-sufficiency income for a 3-person household is \$33,686 (Lancaster County: 1  
4 adult, 2 teenagers) (162% of Poverty), while the highest self-sufficiency income for a 3-  
5 person household in the PECO Gas counties is \$87,363 (Chester County: 1 adult; 2  
6 infants) (420% of Poverty). The biggest portion of 3-person self-sufficiency incomes in  
7 the PECO (gas) counties, however, fall between 200% of Poverty and 330% of Poverty  
8 (n=47 of 75). A significant number of 3-person self-sufficiency incomes in the PECO  
9 (gas) counties fall between 200% and 300% of Poverty (n=31 of 75). As can be seen,  
10 there is a substantial population who falls within this group of concern (i.e., those who  
11 are below a Self-Sufficient income but above the CAP income eligibility line).

12  
13 The conclusion does not change if I consider PECO (electric). The Table immediately  
14 below shows the Self-Sufficiency income for selected three-person households for  
15 Philadelphia County. The Self-Sufficiency income ranged from nearly \$49,000 to more  
16 than \$67,000 for these three-person households in 2018. Given that 150% of Poverty for  
17 a three-person household in 2018 was \$31,170,<sup>6</sup> it is evident that despite the fact that  
18 households with income below those levels identified in this Table, but above \$31,170,  
19 would not be “self-sufficient,” neither would they be eligible for CAP. These PECO  
20 customers would be responsible for paying CAP costs.

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<sup>6</sup> Federal Register, Vol. 83, No. 12, p.2643 (January 18, 2018) (100% of Poverty for 3-person household is \$20,780).

Self-Sufficiency Income (PA) (2018)				
For 3-person Households with Selected Compositions				
State Name	County1	2 Adults--1 School age child	1 Adult--1 School-Age-1 Teen	1 Adult--1 School-Age-1 Infant
Pennsylvania	Philadelphia County	\$53,583	\$48,863	\$67,082

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In sum, I conclude that there is no single population of “low-income” customers served by PECO. This proceeding does not present an issue of being “for” low-income assistance or “against” low-income assistance. As always, the provision of assistance by PECO to CAP participants must simply be balanced against the obligation of income-eligible non-participants, as well as the obligation of the near-poor, to pay the costs of such assistance.

**Part 1. Overall Program Design Elements.**

**Q. PLEASE DESCRIBE THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY.**

A. As I noted above, the Evaluation of PECO’s fixed credit PIPP (FCO) found that the program was ineffective in delivering affordable bills, particularly to the lowest income customers. The ineffectiveness stems from the overall program design and would be ineffective regardless of the energy burdens or credits established. In this section of my testimony, I explain the design aspects of providing home energy assistance through PECO’s CAP. I explain that, even setting aside all program aspects other than the delivery of CAP credits directed toward bills for current service, the design of a CAP involves far more than defining the maximum bill burdens that will define the limits of affordability. Defining the maximum bill burdens is only one aspect of delivering a CAP.

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**Q. PLEASE EXPLAIN THE FIRST FUNDAMENTAL LAYER OF DECISIONS THAT PECO MUST MAKE IN IMPLEMENTING THE PUC’S MAXIMUM ENERGY BURDENS.**

A. Even after deciding what burdens it will use for each Poverty Level range, PECO must decide how to structure its delivery of percentage of income benefits in light of the evaluation that found the FCO PIPP to be ineffective for customers at the lowest income levels. For PECO, this would *not* involve simply continuing what it has done in the past.

One of the first decisions facing PECO is how, if at all, to replace the “Fixed Credit Option” (FCO) program design it previously adopted by Settlement. The FCO is a percentage of income-based program. It defines an affordable bill to be charged to CAP participants by reference to a maximum home energy burden. At its heart, the FCO operates by capping a program participant’s bill at an affordable percentage of income.

The FCO differs from what is called a “straight” percentage of income program. A straight PIPP is a fixed payment program. A CAP participant’s annual payment is set at a fixed percentage of income irrespective of the level of the customer’s bill at standard rates.<sup>7</sup> The customer’s payment remains fixed even if the customer’s underlying bill increases or decreases. In contrast, an FCO determines on an annual basis what level of bill credit would be required to reduce a CAP participant’s bill to the affordable percentage of income burden given historic bills for the customer. Once setting that level

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<sup>7</sup> This sets aside those customers who participate in CAP only to access arrearage forgiveness. These customers have bills for current service that are less than the percentage of income burden even without the receipt of bill assistance.

1 of credit, the credit remains constant whether the underlying bill increases or decreases.  
2 If the bill decreases, the customer pockets the savings. If the bill increases, the customer  
3 pays the increase.  
4

5 The bottom line for purposes here is this: determining the percentage of income burden to  
6 be used to define affordability is but the first step in the process of program design and  
7 implementation. There are multiple additional program design decisions to be made  
8 subsequent to deciding upon that percentage of income burden given that the evaluation  
9 required under the Settlement has found the FCO PIPP to be ineffective.  
10

11 **Q. DID THE PUC ADDRESS THE NEED FOR UTILITIES TO CONFORM**  
12 **PROGRAM DESIGN TO TARGET AFFORDABILITY BURDENS?**

13 A. Yes. In its Final Order adopting a Revised CAP Policy Statement, the PUC recognized  
14 that setting the target burdens merely began, and did not end, the process of program  
15 design. Note, in particular, footnote 57 of the Final Order wherein the PUC stated: “For  
16 utilities that do not have a PIP-based payment plan, system safeguards should be  
17 established to ensure the customer’s calculated payment does not exceed the maximum  
18 energy burden.”  
19

20 As we know from my discussion above, PECO does not now operate a straight PIPP (a  
21 fixed-payment PIPP), but rather operates an FCO (a fixed-credit PIPP). Accordingly,  
22 PECO’s implementation of the revised energy burdens does not involve simply  
23 substituting one affordability burden for another. Rather, PECO’s implementation, by the

1 terms of the PUC Final Order, must involve a number of steps that “ensure the  
2 customer’s calculated payment does not exceed the maximum energy burden.” (Final  
3 Order, footnote 57). As I discuss above, PECO’s evaluation demonstrates that, under its  
4 FCO, it cannot currently make such an assurance. Rather than simply substituting one  
5 affordability target for another, PECO must figure out how to revise its overall program  
6 design in order to make the assurance required by the PUC.

7  
8 **Q. DID THE PUC ADDRESS THE TIMING OF PROGRAM CHANGES THAT**  
9 **MIGHT BE NEEDED TO CONFORM PROGRAM DESIGN TO TARGET**  
10 **AFFORDABILITY BURDENS?**

11 A. Yes. The PUC established an expected operational date for the revised CAP energy  
12 burdens (along with other amendments). According to the PUC, the revised CAP energy  
13 burdens (along with other amendments) “should be operational by or before January 1,  
14 2021.” (Final Order, at 100). Even this observation does not fully reflect the flexibility  
15 provided by the PUC. The Final Order stated:

16 We *strongly urge* the EDCs and NGDCs to incorporate these CAP Policy  
17 Statement amendments in their USECPs as fully and quickly as possible so  
18 that all stakeholders will have a basis for meaningful input in the Universal  
19 Service Rulemaking. We *suggest* that the first 16 CAP Policy Statement  
20 amendments should be operational by or before January 1, 2021.

21  
22 (Final Order, at 100) (emphasis added). Again, the revised energy burdens were included  
23 in “the first 16 CAP Policy Statement amendments.”

24  
25 This expected timeframe, of course, predated the COVID-19 pandemic which not only  
26 resulted in the closure of PUC and OCA offices, but also resulted in the closure of PECO

1 offices. Work-from-home decisions were disruptive to everyone’s pre-COVID-19  
 2 schedules.

3

4 **Q. WHY IS THIS TIMEFRAME ESTABLISHED BY THE PUC IMPORTANT FOR**  
 5 **PURPOSES OF THIS PROCEEDING?**

6 A. The timeframe articulated by the PUC is important because, as the PUC noted in its  
 7 Order on Reconsideration/Clarification responding to the OCA’s Petition for  
 8 Reconsideration and/or Clarification (February 6, 2020), “[w]e remind stakeholders that  
 9 the maximum energy burden percentages in the Annex to the November 5 order are  
 10 recommendations, not iron-clad limits on what a utility can charge a CAP household.  
 11 Issues related to a specific utility’s energy burdens are still subject to scrutiny in that  
 12 utility’s USECP proceedings.” (Id., at 11). Indeed, after PECO filed its Evaluation (as it  
 13 committed to prepare in the 2015 Settlement) in June 2019, PECO thereafter (July 8,  
 14 2020) submitted a proposal to modify its FCO so as to address the unaffordability the  
 15 Evaluation found to exist in the FCO program design. PECO proposed in its July 8, 2020  
 16 filing to modify the PECO CAP to become a straight (i.e., fixed payment) PIPP rather  
 17 than a fixed-credit option program.

18

19 **Part 2. Program Implementation Decisions.**

20 **Q. ARE THERE OTHER FUNDAMENTAL PROGRAM DECISIONS THAT PECO**  
 21 **MUST MAKE TO IMPLEMENT THE PUC’S SUGGESTED ENERGY**  
 22 **BURDENS?**

23 A. Yes. Even once having established an annual target burden for home energy bills, PECO  
 24 must then convert those annual burdens into monthly payment obligations. One way to

1 accomplish this under the FCO PIPP is to calculate monthly budget bills. If PECO were  
2 to convert annual burdens into monthly payment obligations in this fashion, the CAP  
3 credit would be the difference between the budget billing amount and the affordable  
4 annual bill (divided into twelve equal increments). A second way to accomplish this  
5 would be for PECO to provide bills reflecting actual underlying consumption, and to vary  
6 the CAP credits on a seasonal basis so as to make the CAP Credits more closely reflect  
7 the actual monthly bill. For an electric heating customer, for example, CAP credits  
8 would be greater in the cold weather months when bills at standard rates are greater, and  
9 would be lower in the warm weather months when bills at standard rates would be lower.  
10 The design objective is to make annual bills and annual credits balance out so that the  
11 annual home energy burden would reflect the PUC target. A third way to accomplish the  
12 result would be simply to bill each month at standard residential rates to be matched  
13 against equal monthly CAP credits, with a running aggregate total of the net CAP credit  
14 or CAP bill being tracked.

15  
16 The point here is the same as above. Establishing what the target annual burden is  
17 represents merely the first step of the process of implementing a percentage of income  
18 program. Once the annual targeted burden is established, PECO must then make  
19 program decisions on how to translate that annual burden into monthly CAP bills and  
20 monthly CAP credits. This need for the step of converting the annual target burdens into  
21 monthly payments was acknowledged by the PUC in establishing revised energy burdens.  
22 The PUC stated in its Final Order that “Each CAP payment plan should be designed to  
23 ensure the household’s monthly payment. . .will not exceed this energy burden threshold,



# **Colton Appendix A: Professional Background**

**Roger Colton**  
**Fisher, Sheehan & Colton**  
**Public Finance and General Economics**  
**Belmont, MA**

\* \* \* \* \*

**EDUCATION:**

J.D. (Order of the Coif), University of Florida (1981)

M.A. (Regulatory Economics), McGregor School, Antioch University (1993)

B.A. Iowa State University (1975) (journalism, political science, speech)

**PROFESSIONAL EXPERIENCE:**

**Fisher, Sheehan and Colton, Public Finance and General Economics:** 1985 - present.

As a co-founder of this economics consulting partnership, Colton provides services in a variety of areas, including: regulatory economics, poverty law and economics, public benefits, fair housing, community development, energy efficiency, utility law and economics (energy, telecommunications, water/sewer), government budgeting, and planning and zoning.

Colton has testified in state and federal courts in the United States and Canada, as well as before regulatory and legislative bodies in more than three dozen states. He is particularly noted for creative program design and implementation within tight budget constraints.

**PROFESSIONAL AFFILIATIONS:**

- Past Chair: Belmont Zoning By-law Review Working Committee (climate change)
- Member: Board of Directors, Massachusetts Rivers Alliance
- Columnist: Belmont Citizen-Herald
- Producer: Belmont Media Center: BMC Podcast Network
- Host: Belmont Media Center: Belmont Journal
- Member: Belmont Town Meeting
- Vice-chair: Belmont Light General Manager Screening Committee
- Past Chair: Belmont Goes Solar
- Coordinator: BelmontBudget.org (Belmont's Community Budget Forum)
- Coordinator: Belmont Affordable Shelter Fund (BASF)
- Past Chair: Belmont Solar Initiative Oversight Committee
- Past Member: City of Detroit Blue Ribbon Panel on Water Affordability
- Past Chair: Belmont Energy Committee
- Member: Massachusetts Municipal Energy Group (Mass Municipal Association)

Past Chair: Housing Work Group, Belmont (MA) Comprehensive Planning Process  
 Past Member: Board of Directors, Belmont Housing Trust, Inc.  
 Past Chair: Waverley Square Fire Station Re-use Study Committee (Belmont MA)  
 Past Member: Belmont (MA) Energy and Facilities Work Group  
 Past Member: Belmont (MA) Uplands Advisory Committee  
 Past Member: Advisory Board: Fair Housing Center of Greater Boston.  
 Past Chair: Fair Housing Committee, Town of Belmont (MA)  
 Past Member: Aggregation Advisory Committee, New York State Energy Research and Development Authority.  
 Past Member: Board of Directors, Vermont Energy Investment Corporation.  
 Past Member: Board of Directors, National Fuel Funds Network  
 Past Member: Board of Directors, Affordable Comfort, Inc. (ACI)  
 Past Member: National Advisory Committee, U.S. Department of Health and Human Services, Administration for Children and Families, Performance Goals for Low-Income Home Energy Assistance.  
 Past Member: Editorial Advisory Board, International Library, *Public Utility Law Anthology*.  
 Past Member: ASHRAE Guidelines Committee, GPC-8, *Energy Cost Allocation of Comfort HVAC Systems for Multiple Occupancy Buildings*  
 Past Member: National Advisory Committee, U.S. Department of Housing and Urban Development, Calculation of Utility Allowances for Public Housing.  
 Past Member: National Advisory Board: Energy Financing Alternatives for Subsidized Housing, New York State Energy Research and Development Authority.

**PROFESSIONAL ASSOCIATIONS:**

National Association of Housing and Redevelopment Officials (NAHRO)  
 National Society of Newspaper Columnists (NSNC)  
 Association for Enterprise Opportunity (AEO)  
 Iowa State Bar Association  
 Energy Bar Association  
 Association for Institutional Thought (AFIT)  
 Association for Evolutionary Economics (AEE)  
 Society for the Study of Social Problems (SSSO)  
 Association for Social Economics

**BOOKS**

Colton, *et al.*, *Access to Utility Service*, National Consumer Law Center: Boston (4<sup>th</sup> edition 2008).

Colton, *et al.*, *Tenants' Rights to Utility Service*, National Consumer Law Center: Boston (1994).

Colton, *The Regulation of Rural Electric Cooperatives*, National Consumer Law Center: Boston (1992).

## BOOK CHAPTERS

Colton (2018). The equities of efficiency: distributing energy usage reduction dollars, Chapter in Energy Justice: US and International Perspectives (Edited by Raya Salter, Carmen Gonzalez and Elizabeth Ann Kronk Warner), Edward Elgar Publishing (London, England).

## JOURNAL PUBLICATIONS

65 publications in industry and academic journals, primarily involving utility regulation and affordable housing. (list available upon request)

## TECHNICAL REPORTS

200 technical reports for public-sector and private-sector clients (list available upon request)

## JURISDICTIONS IN WHICH EXPERT WITNESS PROVIDED

1. Maine	17. Mississippi	33. Colorado
2. New Hampshire	18. Tennessee	34. New Mexico
3. Vermont	19. Kentucky	35. Arizona
4. Massachusetts	20. Ohio	36. Utah
5. Massachusetts	21. Indiana	37. Idaho
6. Rhode Island	22. Michigan	38. Nevada
7. Connecticut	23. Wisconsin	39. Washington
8. New Jersey	24. Illinois	40. Oregon
9. Maryland	25. Minnesota	41. California
10. Pennsylvania	26. Iowa	42. Hawaii
11. Washington D.C.	27. Missouri	
12. Virginia	28. Arkansas	<b>Canadian Provinces</b>
13. North Carolina	29. Texas (Federal Court)	1. Nova Scotia
14. South Carolina	30. South Dakota	2. Ontario
15. Florida (Federal Court)	31. North Dakota	3. Manitoba
16. Alabama	32. Montana	4. British Columbia

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tenant Union Representative Network

v.

PECO Energy Company

:  
:  
:  
:  
:

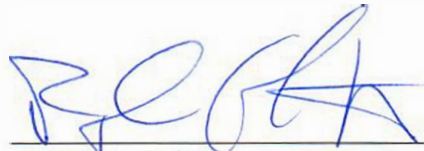
Docket No. C-2020-3021557

VERIFICATION

I, Roger D. Colton, hereby state that the facts set forth in my Rebuttal Testimony, OCA Statement 1-R, are true and correct ( or are true and correct to the best of my knowledge, information, and belief) 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: January 7, 2021  
\*301982

Signature:

  
\_\_\_\_\_  
Roger D. Colton

Consultant Address: Fisher, Sheehan, & Colton  
34 Warwick Road  
Belmont, MA 02478

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network	:	
	:	
v.	:	C-2020-3021557
	:	
PECO Energy Company	:	

**INTERIM ORDER  
GRANTING JOINT STIPULATION FOR THE ADMISSION OF EVIDENCE**

On August 25, 2020, the Tenant Union Representative Network (TURN) filed a Formal Complaint against PECO Energy Company (PECO) asserting that PECO had failed to comply with the terms of a settlement reached in 2015, regarding the use of an energy burden component for calculating bills for certain customer assistance program (CAP) customers.

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene and Answer on September 14, 2020. PECO filed its Answer to TURN's Formal Complaint on September 15, 2020. The Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement on September 23, 2020. TURN filed Preliminary Objections to PECO's Answer on October 5, 2020, in which it argued that PECO's Answer fails to deny specifically material allegations of TURN's Formal Complaint and PECO's Answer fails to conform to the pleading requirements imposed by Chapter 5 of the Commission's Regulations.

The complaint was assigned to me by hearing notice September 25, 2020 and scheduled for a prehearing conference on October 20, 2020. Following the prehearing conference a prehearing order was entered which established a schedule for the filing of written testimony and scheduled an evidentiary hearing on February 9, 2021.

By email dated February 4, 2021, the parties informed me that they had mutually agreed to waive cross-examination of witnesses and evidentiary challenges to the pre-served written testimony and accompanying exhibits. The evidentiary hearing was cancelled, and the parties file a Joint Motion to Admit Written Testimony and Exhibits Into the Formal Evidentiary Record. Attached to the motion were verifications signed by each witness.

THEREFORE,

IT IS ORDER THAT:

1. That the Joint Motion to Admit Written Testimony and Exhibits Into the Formal Evidentiary Record is granted.

2. That the following pre-served written testimony statements, accompanying exhibits and appendices, and respective executed verifications are hereby admitted into the formal evidentiary record as evidence:

- a. TURN Statement No. 1, the direct testimony of Philip A. Bertocci and accompanying exhibits A, B and C;
- b. TURN Statement No. 2, the direct testimony of Philip M. Lord and accompanying exhibits A, B, and C;
- c. PECO Statement No. 1-R, the rebuttal testimony of Mark Kehl and accompanying exhibits MK-1, MK-2, and MK-3;
- d. OCA Statement No. 1-R, the rebuttal testimony of Roger Colton, and accompanying appendix A;
- e. TURN Statement No. 1-SR, the surrebuttal testimony of Philip A. Bertocci, and accompanying appendix A;
- f. CAUSE-PA Statement No. 1-SR, the surrebuttal testimony of Harry Geller and accompanying appendix A;
- g. PECO Statement No. 1-RJ, the rejoinder testimony of Mark Kehl, and accompanying exhibit MK-1RJ.



**C-2020-3021557 - TENANT UNION REPRESENTATIVE NETWORK v. PECO ENERGY COMPANY**

*Updated 10/1/20*

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