



March 5, 2021

VIA E-File

Honorable Mary D. Long
Administrative Law Judge
Pennsylvania Public Utility Commission
301 Fifth Ave., Suite 220
Pittsburgh, PA 15222
malong@pa.gov

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

Main Brief of CAUSE-PA

Your Honor:

Enclosed, please find the **Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above noted proceeding.

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,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA

A handwritten signature in cursive script, appearing to read "Ria Pereira".

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**CC: Secretary Rosemary Chiavetta (Via E-File)
Certificate of Service**

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

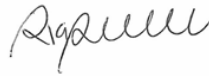
I hereby certify that I have this day served copies of the **Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 and consistent with the Commission’s March 20 Emergency Order at Docket M-2020-3019262.

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March 5, 2021

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

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March 5, 2021

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files this Main Brief in support of the relief sought in the Complaint of the Tenant Union Representative Network (TURN) and the recommendations advanced by CAUSE-PA's expert witness, Harry S. Geller.

CAUSE-PA intervened in the present case in support of TURN's Complaint to enforce a clear and undisputed provision in the 2015 Joint Settlement, approved by the Commission at Docket No. M-2012-2290911 and mirrored in PECO's subsequently approved 2016-2018 Universal Service and Energy Conservation Program (USECP). In relevant part, the Settlement clearly and unambiguously requires PECO to revise its applicable energy burden standards for its Customer Assistance Program (CAP) if and when the Commission modifies the standards in its CAP Policy Statement: "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."¹ PECO violated this Settlement provision – as well as the terms of its approved USECP – when it failed to revise its applicable energy burden standards following issuance of the Commission's Final CAP Policy Statement and Order, which revised the Commission's energy burden standards.² Failure to enforce the unambiguous terms of a Commission-approved Settlement will undermine all future Settlements – leading parties to continually question whether the terms of an agreement will later be ignored without repercussion. Unless specific in the terms of a Settlement,

¹ 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, fn. 3 (Term Sheet) (filed March 20, 2015).

² 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §69.261-69.267, Final Policy Statement and Order, Docket No. M-2019-3012599 (order entered Nov. 5, 2019), (hereinafter Final CAP Policy Statement).

parties to that Commission-approved Settlement should not have to go back to the Commission to effectuate the terms of the prior agreement.

The matter of PECO charging CAP participants rates in excess of the Commission's established energy burden maximums is not new. This immediate case is a direct outgrowth of a history of failures by PECO to comply with CAP payment guidelines. The Commission specifically highlighted this history and its concern in its Tentative Order to PECO's 2013-2015 USECP, issued on November 8, 2012:

There is a recurring theme in the continuing history of Commission Orders addressing PECO's CAP programs over the past 12 years during which the Commission has directed PECO to make improvements to its CAP Rate application.³

....

Of primary concern is whether PECO's CAP Rate complies with the energy burdens and affordability provisions outlined in the Commission's CAP Policy Statement.⁴

In the Final Order of April 4, 2013, the Commission further noted that:

PECO's current CAP Rate design has been evolving since 1996. In 2000, the Commission recommended that PECO implement a PIP plan design, discussed changes in discounts and concerns of customer confusion, and required that CAP tiers be increased in an attempt to further affordability. More recent orders supported the premise that PECO's CAP Rate has been unaffordable. Notwithstanding the USECPs approved in 2008 (for 2007 – 2009) and 2010 (for 2010 – 2012), APPRISE raised questions in its 2012 third-party program evaluation regarding PECO's rate discounts and affordability.⁵

It is within this background that the compromise, in which PECO's obligation to revise and utilize its modified energy burdens to comport with any Commission policy

³ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911, at 3 (order entered Nov. 8, 2012).

⁴ Id. at 9.

⁵ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Final Order, Docket No. M-2012-2290911, at 9 (order entered April 4, 2013).

changes, was negotiated and became part of the Joint Settlement. As ALJ Fordham noted in her Recommended Decision to approve the Joint Settlement:

As CAUSE-PA has argued from the outset of this proceeding, and the Commission acknowledged in its Tentative Order and *April 4, 2013 Order*, ***it is critical that PECO's CAP be designed in a manner that ensures low income customers will receive a bill that does not exceed the energy burdens prescribed in the Commission's standards.***⁶

As more fully explained in this Main Brief, CAUSE-PA urges the Honorable Administrative Law Judge (ALJ) Mary D. Long and the Pennsylvania Public Utility Commission (Commission) to grant the relief requested by TURN's Complaint. Specifically, CAUSE-PA urges the Commission to (1) require PECO to immediately implement the revised energy burden Standards as set forth by the Commission's Final CAP Policy Statement in compliance with footnote 3 of the Settlement; (2) provide PECO's CAP participants retroactive bill credits and retroactive arrearage forgiveness; and (3) fine PECO for its intentional violation of the terms of the parties' Joint Settlement and PECO's 2016-2018 USECP.

⁶ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Recommended Decision, Docket No. M-2012-2290911, at 24 (RD entered June 11, 2015) (emphasis added) (hereafter, RD or Recommended Decision).

II. QUESTIONS PRESENTED

1. Does the record contain substantial, un rebutted evidence that PECO intentionally violated the terms of the Joint Settlement and its 2016-2018 USECP when it failed to implement revised energy burden standards consistent with the Commission's Final CAP Policy Statement?

Suggested Answer: Yes.

2. Should the Commission order PECO to immediately implement the revised energy burdens set forth in the Final CAP Policy Statement?

Suggested Answer: Yes.

3. Should the Commission order PECO to provide CAP participants with retroactive bill credits and retroactive arrearage forgiveness?

Suggested Answer: Yes.

4. Should the Commission fine PECO for its willful violation of the Joint Settlement and its 2016-2018 USECP?

Suggested Answer: Yes.

III. BACKGROUND AND PROCEDURAL HISTORY

Pursuant to the Commission's regulations at 52 Pa. Code 54.71 *et seq.*, electric distribution companies (EDCs) are required to file a USECP with the Commission every three years.⁷ The USECP is then subject to the Commission's review and approval.⁸

On February 28, 2012, PECO filed its 2013-2015 USECP with the Commission at Docket No. M-2012-2290911. On March 20, 2015, after years of comments, litigation consisting of discovery, testimony, hearings, negotiation, facilitated mediation, and renewed negotiations, PECO, CAUSE-PA, TURN, Action Alliance, and the OCA filed a Joint Petition for Settlement (Joint Settlement).⁹ In the Joint Settlement, the parties agreed to a CAP design known as a Fixed

⁷ 52 Pa. Code § 54.74(a); 52 Pa. Code § 62.4(a)(2); see also Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Order, Docket No. M-2019-3012601 (Order entered Oct. 3, 2019) (temporarily extending the filing schedules to every 5 years).

⁸ 52 Pa. Code § 54.74(a); 52 Pa. Code § 62.4(a)(2).

⁹ See, generally, Joint Petition for Settlement.

Credit Option (FCO).¹⁰ Importantly, all of the parties to this proceeding were also parties to the Joint Settlement.

Under the terms of PECO's FCO, a CAP customer receives an Annual Credit, which is calculated based on a customer's household income, historical usage, and allowable energy burden,¹¹ as set forth in the CAP Policy Statement.¹² The FCO currently utilizes the maximum energy burdens as stated in Table 1 of the Joint Petition for Settlement of March 20, 2015 and reproduced in the following table:

Table 1: FCO Energy Burdens as Set Forth in Joint Petition

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

The above-noted energy burden levels were the maximum allowable energy burdens as set forth in the Commission's CAP Policy Statement at the time of the Joint Settlement.¹³ However, the Joint Settlement contained the following requirement:

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.¹⁴

¹⁰ Joint Petition at ¶ 1.

¹¹ Energy Burden is a percentage of income that a household spends on its utility bills. See TURN St. 1 at 16: 6-10.

¹² TURN St. 1 at 10: 10-15, citing 2016-2018 USECP.

¹³ TURN St. 1 at 15: 9-16.

¹⁴ Settlement at 2, n. 3.

Nothing in the Joint Settlement indicated that PECO had to seek further Commission approval to adhere to the terms of the Joint Settlement, nor were there any terms in the Joint Settlement or the USECP limiting the effectiveness of the agreed-to and approved term.¹⁵

On June 11, 2015, Administrative Law Judge (ALJ) Cynthia Williams Fordham issued a Recommended Decision approving the Joint Petition for Settlement without modification.¹⁶ In recommending that the Joint Settlement be approved without modification, ALJ Fordham noted about the FCO 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.”¹⁷

On July 8, 2015, the Commission adopted ALJ Fordham’s Recommended Decision without modification.¹⁸ PECO subsequently incorporated the CAP FCO design, including the provision at issue in this proceeding, into its 2016-2018 USECP. In October 2016, PECO transitioned its CAP to an FCO structure in compliance with the terms of the Joint Settlement and its revised USECP.¹⁹

On November 5, 2019, the Commission issued its Final CAP Policy Statement and Order, available at 52 Pa. Code §§ 69.261-69.267 (hereafter, Final CAP Policy Statement).²⁰ The

¹⁵ See id.

¹⁶ Recommended Decision (RD) at 36.

¹⁷ RD at 23.

¹⁸ 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 (Order entered July 8, 2015).

¹⁹ TURN St. 1 at 14: 15-17.

²⁰ 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Final Policy Statement and Order, Docket No. M-2019-3012599 (order entered Nov. 5, 2019); see also Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711 (Energy Affordability proceeding) & Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907 (Universal Service Review proceeding).

Commission amended its CAP Policy Statement after undertaking an extensive review of Universal Service and Energy Conservation Programs at the following dockets: Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907 and Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711.²¹

The Final CAP Policy Statement set forth a number of CAP design elements, including revised maximum energy burden standards intended to address longstanding unaffordability within CAP. Specifically, the Commission revised the applicable energy burdens in its CAP Policy Statement as follows:²²

Table 2 (Reproduced): Revised Energy Burdens – Final CAP Policy Statement

Household Income	Electric Nonheating Service	Natural Gas Heating	Electric Heating or Natural Gas Heating and Electric Nonheating Combined
0-50% FPIG	2%	4%	6%
51-100% FPIG	4%	6%	10%
101-150% FPIG	4%	6%	10%

Pursuant to the Commission’s November 5, 2019 Order, the Commission required each EDC and NGDC to provide a filing which indicated how the Company intended to adopt various changes to the CAP Policy Statement in its USECP.²³ However, years prior to the Commission’s November 5, 2019 Order, PECO had – on October 2, 2015 – filed its USECP for 2016-2018. PECO’s Plan, including all subsequently filed revisions, included the terms of the FCO Joint Settlement, including footnote 3. The Commission gave final approval to PECO’s 2016-2018 USECP on August 11, 2016.²⁴ Nevertheless, to date, PECO still has not incorporated the

²¹ See TURN St. 1 at 18: 1-8.

²² Final CAP Policy Statement at 32.

²³ Order at 106, Ordering Paragraphs 6-8.

²⁴ The terms of the CAP FCO Settlement were incorporated as Addendum B to PECO’s 2016-2018 USECP at Docket No. M-2015-2507139. See PECO Energy Company Universal Service and Energy Conservation Plan 2016-

Commission's revised energy burden standards in the FCO, consistent with the terms of the Joint Settlement, though PECO has acknowledged that the Settlement requires it to do so. Instead, in an action causing further delay, PECO filed an unnecessary Petition with the Commission seeking approval to implement the terms of the Joint Settlement, despite the fact that the Commission already approved PECO to do so on two separate occasions years earlier – in the Commission's review and approval of the Joint Settlement, and again when it reviewed and approved PECO's USECP.

On August 25, 2020, the Tenant Union Representative Network (TURN) filed a Complaint against PECO, alleging that PECO is in violation of the 2015 Joint Settlement and its 2016-2018 USECP.²⁵ On September 14, 2020, CAUSE-PA filed a Petition to Intervene and Answer. A Prehearing Conference was held on October 20, 2020. In the Prehearing Order dated October 22, 2020, ALJ Long granted CAUSE-PA's Petition to Intervene.

On December 4, 2020, TURN served the Direct testimony of Philip A. Bertocci, Esq. (TURN St. 1) and Philip M. Lord, Esq. (TURN St. 2). On January 7, 2021, PECO served the Rebuttal Testimony of Mark Kehl (PECO St. 1-R), and OCA served the Rebuttal Testimony of Roger D. Colton (OCA St. 1-R). On January 21, 2021, CAUSE-PA served the Surrebuttal testimony of Harry Geller, Esq. (CAUSE-PA St. 1-SR), and TURN served the Surrebuttal testimony of Philip A. Bertocci, Esq. (TURN St. 1-SR). On February 5, 2021, PECO submitted the Rejoinder Testimony of Mark Kehl (PECO St. 1-RJ). On that same date, a Notice was issued cancelling the Hearing scheduled for February 9, 2021.

2018, Docket No. M-2015-2507139 (Plan initially filed October 2, 2015); PECO Energy Company Universal Service and Energy Conservation Plan 2016-2018, Order, Docket No. M-2015-2507139 (order entered Aug. 11, 2016).

²⁵ Complaint; 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, Joint Petition for Settlement, Docket No. M-2012-2290911, at Exhibit A (Term Sheet) (filed March 20, 2015).

On February 10, 2021, the parties to the proceeding submitted a Joint Motion to Admit Written Testimony and Exhibits, which was granted by Interim Order dated February 11, 2021. CAUSE-PA submits the instant Main Brief seeking enforcement of the 2015 Joint Settlement and PECO's 2016-2018 USECP, as well as other appropriate relief.

IV. LEGAL STANDARD AND BURDEN OF PROOF

Section 701 of the Public Utility Code allows any person with an interest in the subject matter to complain, in writing, of an act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission.²⁶

The applicable legal standard and the party bearing the burden of proof depends on the nature of the allegation at issue.

In its Complaint, TURN alleges that PECO is in willful violation on the terms of the parties' Joint Settlement. The Commission encourages parties in contested proceedings to settle cases, and has - time and time again - discussed the importance of settlement of litigated issues to "eliminate the time, effort, and expense of litigating a matter to its ultimate conclusion."²⁷

TURN also alleges in its Complaint that PECO is in willful violation of its Commission approved 2016-2018 USECP. The Electricity Generation Customer Choice and Competition Act²⁸ and Natural Gas Choice and Competition Act²⁹ require the Commission to ensure that "universal

²⁶ 66 Pa. C.S. § 701.

²⁷ 52 Pa. Code §§ 5.231; 69.391; 69.401. See also PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Recommended Decision, Docket No. M-2012-2290911 (RD entered June 17, 2015); Pa. PUC v. PWSA, Recommended Decision, Docket Nos. R-2020-301951, R-2020-3017970, at 14 (RD entered Oct. 29, 2020).

²⁸ 66 Pa. C.S. § 2801, *et seq.*

²⁹ 66 Pa. C.S. § 2201, *et seq.*

service and energy conservation policies, activities and services are appropriately funded and available” in Electric Distribution and Natural Gas Distribution service territories.³⁰ Under the terms of these Acts, Universal Service programs include CAPs.³¹ The Commission oversees CAP policies and procedures of regulated electric and gas distribution companies’ USECPs. Regulated EDCs and NGDCs are required to submit USECPs to the Commission for review and approval at least every 3 years.³² The terms of a regulated utilities’ Commission approved USECP is binding on the utility, and directs the policies, procedures, eligibility, and enrollment of universal service programs.³³

Finally, TURN alleges that PECO’s failure to revise the FCO’s maximum energy burden standards constitutes unreasonable service under Section 1501 of the Public Utility Code.³⁴ Section 1501 requires that a public utility’s services and facilities shall be in conformity with the regulations and orders of the Commission.”³⁵ This Section further obligates utilities to provide efficient, safe, and reasonable service and facilities. Such service is required to be reasonably continuous and without unreasonable interruptions or delay.

With regard to TURN’s allegations that PECO failed to comply with the terms of the Settlement and its 2016-2018 USECP, PECO bears the burden of proof. Section 315(b) of the Public Utility Code states in relevant part:

³⁰ 66 Pa. C.S. § 2804 (9); 66 Pa. C.S. § 2203 (8).

³¹ 66 Pa. C.S. § 2202 (defining “universal service and energy conservation”); 66 Pa. C.S. § 2803 (defining “universal service and energy conservation”).

³² 52 Pa. Code § 54.74(a); 52 Pa. Code § 62.4(a)(2); see also Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Order, Docket No. M-2019-3012601 (order entered Oct. 3, 2019) (temporarily extending the filing schedules to every 5 years).

³³ See TURN St. 1 at 9.

³⁴ 66 Pa. C.S. § 1501.

³⁵ See also DeSantis v. Pa. Power Co., Initial Decision, Docket No. C-2019-3013652, at 10 (April 27, 2020) (holding, in the context of an individual formal complaint, that “failure to apply all the criteria from the most current universal service plan is a violation of Section 1501 of the Public Utility Code.”).

In any case involving any alleged violation by a public utility, contract carrier by motor vehicle, or broker of any lawful determination or order of the commission, ***the burden of proof shall be upon the public utility***, contract carrier by motor vehicle, or broker complained against, to show that the determination or order of the commission has been complied with.³⁶

The fact that PECO bears the burden of proof to demonstrate its compliance with the Settlement is well established. In U.S. Steel Corp v. Pa. PUC, U.S. Steel Corporation filed a complaint alleging that Peoples Natural Gas Company failed to comply with a Commission Order authorizing Peoples to file a tariff for rate increase and claimed that the Supplement filed by Peoples was designed to generate annual revenues in excess of the Commission-approved amounts.³⁷ After the matter was referred to an ALJ, an order entered on November 8, 1979 placed on U.S. Steel the burden of proving that the Supplement rates violated the directives of the Commission's Order.³⁸ On appeal, U.S. Steel claimed that the Commission erred by imposing the burden of proof on U.S. Steel, the complainant.³⁹ The Commonwealth Court agreed with U.S. Steel and found that the burden properly rested with the utility.⁴⁰ The Commonwealth Court cited to Section 315(b) and reasoned that “[a] reading of the pleading clearly indicates that the gravamen of USS’ complaint *was a failure on the part of Peoples to comply with the [order]*.”⁴¹

³⁶ 66 Pa. C.S. § 315(b) (emphasis added).

³⁷ United States Steel Corp. v. Pa. PUC, 450 A.2d 1073, 1075, (Pa. Commw. Ct. 1982); see also Hui v. City of Phila. Parking Auth., 913 A.2d 994, 1000 (Pa. Commw. Ct. 2006) (finding that Section 315(b) was not relevant to the case “because it deals with an alleged violation of a PUC determination or order by a public utility, contract carrier, or broker” and that there “was no pre-existing determination or order that was violated.”).

³⁸ United States Steel Corp. v. Pa. PUC, 450 A.2d at 1075.

³⁹ Id. at 1076.

⁴⁰ Id. at 1076, fn. 8.

⁴¹ Id. (emphasis added).

PECO must satisfy its burden of proof by a preponderance of the evidence, which "means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party."⁴²

With regard to an alleged violation of Section 1501, the Court in DeSantis v. Pennsylvania Power Company found that a Complainant bears the burden of proof, and must establish facts by a preponderance of evidence.⁴³ As such, TURN has the burden of proving that PECO was in violation of Section 1501 by a preponderance of evidence.

V. SUMMARY OF ARGUMENT

CAUSE-PA intervened in the present matter in support of TURN's Complaint, which was filed to enforce a single, clear, and undisputed provision of the Joint Settlement. The Joint Settlement provided for the redesign of PECO's CAP from a tiered discount to a FCO design.⁴⁴ The Joint 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.*"⁴⁵ All parties agree that the Joint Settlement contains such a provision,⁴⁶ and all parties agree that the Commission has entered and published a Final Order, which revised the energy burden standards referred to in the Joint Settlement.⁴⁷ PECO and the OCA, through their expert witnesses, raise a number of irrelevant issues presented for the purpose of demonstrating that enforcement of the Joint Settlement provision would not result in comprehensive restructuring

⁴² NRG Energy, Inc. v. Pa. PUC, 233 A.3d 936, 948 (Pa. Commw. Ct. 2019), citing Energy Conservation Council of Pa. v. Pa. PUC, 995 A.2d 465, at 478 (Pa. Commw. Ct. 2009).

⁴³ DeSantis v. Pa. Power Co., Initial Decision, Docket No. C-2019-3013652, at 10 (April 27, 2020).

⁴⁴ See CAUSE-PA St. 1-SR at 5: 7-10; Joint Petition for Settlement.

⁴⁵ Joint Petition for Settlement at n.3 (emphasis added).

⁴⁶ TURN St. 1 at 15; OCA St. 1 at 6; PECO St. 1 at 3; CAUSE-PA St. 1 at 5.

⁴⁷ TURN St. 1 at 27; OCA St. 1 at 3; PECO St. 1 at 6; CAUSE-PA St. 1 at 5.

or affordability improvements to PECO's CAP and would therefore be imprudent. However, as detailed in this Main Brief and by CAUSE-PA's expert witness, Harry Geller, the core fact at issue in TURN's Complaint remains – PECO has not complied with its obligations under the terms of the 2015 Settlement or its 2016-2018 USECP.

CAUSE-PA urges the Commission to require PECO to immediately implement the revised energy burden standards as set forth by the Commission's Final CAP Policy Statement and in compliance with the terms of the Joint Settlement and PECO's 2016-2018 USECP. CAUSE-PA further urges the Commission to require PECO to provide its CAP participants retroactive bill credits and retroactive arrearage forgiveness to compensate participants for PECO's failure to timely revise the energy burden standards of the FCO. Finally, and as discussed in detail below, CAUSE-PA respectfully requests that the Commission fine PECO for its intentional acts of delay and continuing failure to utilize the current Commission energy burden standards in the Final CAP Policy Statement in violation of the terms of the Joint Settlement and PECO's 2016-2018 USECP.

VI. ARGUMENT

1. The record contains substantial, un rebutted evidence that PECO intentionally violated the terms of the Settlement and its 2016-2018 USECP when it failed to implement revised energy burden standards in the Final CAP Policy Statement.

A. The unambiguous terms of the Joint Settlement required PECO to adjust its applicable energy burden standards consistent with the Commission's revised energy burden standards – without further proceedings.

The Joint Settlement is clear on its face, and the language of the disputed term is unambiguous and provide simply: *“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.”*⁴⁸

⁴⁸ Joint Petition for Settlement at n.3 (emphasis added).

In agreeing to the terms of the Joint Settlement, PECO obligated itself to *utilize the energy burdens as set forth in the CAP Policy Statement* for the FCO, and revise those energy burdens if changed by the CAP Policy Statement.⁴⁹ The Joint Settlement does not require the Commission to review or approve before PECO revises the FCO’s energy burdens. Nor does the Joint Settlement require any other analysis or obligation to be met before the changes take place. The only condition precedent to the term in dispute in this proceeding is the Commission’s action to amend the applicable maximum energy burden standard. As TURN’s expert witness, Mr. Bertocci, explained: “The changes to the CAP Policy Statement itself triggered PECO’s obligation to use those updated Energy Burdens.”⁵⁰ Indeed, PECO acknowledged its ability and intention to implement its Settlement obligations in Comments submitted to the Commission that, if the established energy burdens in the Commission’s CAP Policy Statement were changed, *PECO’s CAP FCO program has a “pass through’ clause allowing for automatic implementation.*”⁵¹

Given that PECO has to date failed to implement the revised energy burden standards in the Final CAP Policy Statement, and continues to delay implementation, CAUSE-PA asserts that PECO is in clear violation of the Settlement and its 2016-2018 USECP – causing substantial financial harm to PECO’s economically vulnerable CAP customers.

B. PECO and OCA’s expert witnesses raise a number of irrelevant issues in opposition to the Complaint, which must be ignored.

The Rebuttal testimony of PECO and OCA’s expert witnesses raise a number of issues irrelevant to the Complaint that distract from the core issue in this case: Whether PECO implemented the Commission’s revised maximum energy burden standards consistent with the

⁴⁹ See TURN St. 1 at 22: 1-11.

⁵⁰ TURN St. 1 at 20: 8-9.

⁵¹ CAUSE-PA St. 1-SR at 9: 7-15, citing Energy Affordability for Low-Income Customers, Initial Comments of PECO Energy Company, Docket No. M- 2017-2587711, at 8 (Initial Comments filed May 11, 2019).

terms of the Commission-approved Joint Settlement – which was joined by both PECO and OCA – and the 2016-2018 USECP.⁵² As such, these arguments should be ignored.

- i. PECO’s “good faith” in implementing other settlement terms is irrelevant to its compliance with the Joint Settlement term at issue in this Complaint.*

PECO’s expert witness, Mark Kehl, devotes a great deal of attention in his Rebuttal testimony to demonstrating PECO’s good faith.⁵³ In particular, Mr. Kehl testifies to PECO’s adherence to other aspects of the Joint Settlement. Mr. Kehl specifically notes that PECO moved forward with an independent FCO program evaluation and convened various stakeholder meetings to discuss the FCO.⁵⁴ In terms of implementing the revised energy burdens in the Final CAP Policy Statement, Mr. Kehl explains that PECO acted in good faith but sought a different, “holistic approach.”⁵⁵ As support for PECO’s unilateral decision to disregard the terms of the Joint Settlement, in favor of a different approach, Mr. Kehl cites the flaws of the FCO and that implementation of the revised energy burdens would be costly.⁵⁶

PECO’s asserted good faith as to the implementation of *other* Settlement provisions and its asserted concern regarding the costs of implementing the Commission’s revised energy burden standards are irrelevant to the matter at issue in this case – whether PECO violated the terms of a Commission-approved Settlement by delaying implementation of the Commission’s revised energy burden standards.⁵⁷ Further, and as more fully discussed below, PECO’s choosing a “holistic approach” - rather than implementing the revised energy burden standards as agreed to

⁵² CAUSE-PA St. 1-SR at 8: 6-19.

⁵³ PECO St. 1-R at 3-5.

⁵⁴ *Id.*; PECO St. 1-R at 4: 11-16; 5: 1-16; 10: 1-19.

⁵⁵ CAUSE-PA St. 1-SR at 8: 6-19; PECO St. 1-R at 9: 23-26.

⁵⁶ CAUSE-PA St. 1-SR at 8: 6-19; PECO St. 1-R at 13: 13-18; 16: 18-21; 17: 1-5.

⁵⁷ CAUSE-PA St. 1-SR at 9: 4-6.

in the comprehensive Joint Settlement - does not evidence PECO's good faith, but rather is an acknowledgement that PECO unilaterally, knowingly, and deliberately chose to disregard its obligations to implement the revised energy burdens under a Commission-approved Settlement and USECP.

In his Surrebuttal testimony, TURN's expert witness, Mr. Bertocci, explains that PECO has not acted in good faith to implement the remainder of the terms in the Joint Settlement.⁵⁸ Specifically, Mr. Bertocci describes how the Joint Settlement requires that, in the event of an approved rate increase, a "portion of each Rate R customer's Annual Credit that is attributable to distribution rates will be increased by a percentage equal to the system-wide residential distribution rate increase."⁵⁹ When asked to identify when PECO made these adjustments, PECO responded:

PECO had an Electric base rate increase effective January 1, 2019. In the FCO calculation methodology, each quarterly assessment looks back at the usage and rates that were in effect during the prior 12 months. In each quarterly assessment that occurred after January 1, 2019, the 12-month lookback utilized the new rates for the portion of the 12-month lookback that occurred after January 1, 2019.⁶⁰

In response to discovery which asked PECO to identify the system-wide residential distribution rate increase used, PECO answered that it "did not apply a system wide percentage increase" consistent with the terms of the Joint Settlement.⁶¹ Rather, PECO decided unilaterally to apply a different methodology.⁶² In his Rejoinder testimony, PECO's expert witness, Mr. Kehl, raises a number of arguments to explain why PECO did not adjust each customer's Annual Credit as required by the Joint Settlement, including the limitations of PECO's IT systems and the alleged

⁵⁸ TURN St. 1-SR at 10-11.

⁵⁹ Id.; citing PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Joint Petition for Settlement, Exhibit A at 6.

⁶⁰ TURN St. 1-SR at 10-11, citing PECO Response to TURN-IV-1(a).

⁶¹ TURN St. 1-SR at 10-11, citing PECO Response to TURN-IV-1(b).

⁶² Id.

need to use prospective *pro forma* usage data to calculate these Annual Credits.⁶³ However, Mr. Kehl does not contest the plain language of the Settlement or PECO’s unambiguous obligation as a result of the same – nor does he dispute that PECO unilaterally chose to not adhere to another clear and unambiguous provision of the Joint Settlement.

CAUSE-PA stands by its position that PECO’s good faith as to implementation of the other Joint Settlement provisions is not relevant to the issues in the Complaint. However, as Mr. Bertocci notes, PECO’s disregard for other provisions of the Joint Settlement is concerning, and directly contradicts PECO’s argument that they have acted in good faith in implementing other terms of the Joint Settlement.⁶⁴

ii. *The merits of the FCO design are irrelevant to the Complaint.*

OCA and PECO’s expert witnesses argue that PECO should not be required to implement the disputed term of the Joint Settlement, as there is no “bill affordability benefit” to implementing the revised energy burdens in the FCO.⁶⁵ Not only is this irrelevant to whether PECO breached its obligation under the Joint Settlement, it is also incorrect: Reducing the applicable energy burden standards in PECO’s FCO CAP will improve bill affordability.⁶⁶ OCA and PECO’s expert witnesses point to continued issues in the structure, design, and affordability of the FCO.⁶⁷ PECO’s expert witness, Mr. Kehl explains that, in order to address inherent flaws in the FCO, PECO filed to change its CAP structure on July 8, 2020 as part of its next USECP – months after

⁶³ PECO St. 1-RJ at 5-10.

⁶⁴ TURN St. 1-SR at 10-11.

⁶⁵ See PECO St. 1-R at 11; OCA St. 1-R at 19-20.

⁶⁶ Reducing the maximum percentage of income used to calculate a CAP participant’s applicable fixed credit will necessarily improve affordability. TURN St. 1-SR at 7: 17-18; 8: 1-2.

⁶⁷ Id.

PECO was obligated to adjust its energy burden standards pursuant to the Joint Settlement.⁶⁸ In this July filing, PECO proposes to changes its CAP structure to a percentage of income payment plan (PIPP), in which bills are set as a percentage of a customer’s household income.⁶⁹ However, as Mr. Bertocci notes, to date, the Commission has not approved the amended USECP.⁷⁰

OCA’s expert witness, Mr. Roger Colton, similarly argues that PECO should not be required to implement the revised energy burdens in the Final CAP Policy Statement given the questions about the FCO’s overall affordability.⁷¹ Mr. Colton describes at length the complexity of developing a comprehensive, effective, affordable, cost-contained, and OCA-acceptable CAP program.⁷² Mr. Colton’s erroneously reasons that PECO should not be required to incur increased program costs associated with revising the FCO’s energy burdens given the flaws inherent in the FCO.⁷³

CAUSE-PA and its expert witness do not dispute the inherent complexity involved in developing effective CAP programs, or the fact that PECO’s FCO design has structural issues.⁷⁴ However, as Mr. Geller points out, OCA and PECO’s expert witnesses miss the issue at hand.⁷⁵ While developing a comprehensive, affordable PIPP CAP is a desirable long-term goal, it is not a

⁶⁸ PECO St 1-R at 12; TURN St. 1-SR at 6: 7-12, citing PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795, P-2020-3020727, <https://www.puc.pa.gov/pdocs/1669220.pdf> (hereinafter “amended USECP”); see also Answer of the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia to PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795, P-2020-3020727 (filed July 28, 2020).

⁶⁹ Id.

⁷⁰ See TURN St. 1-SR at 6: 13-15.

⁷¹ OCA St. 1-R at 20: 7-17; CAUSE-PA St. 1-SR at 10.

⁷² OCA St. 1-R at 9-14; CAUSE-PA St. 1-SR at 10: 13-21.

⁷³ OCA St 1-R at 20.

⁷⁴ CAUSE-PA St. 1-SR at 10: 15-17.

⁷⁵ Id.

condition precedent for PECO to comply with the Joint Settlement regarding the current FCO.⁷⁶ As such, requiring the overhaul of PECO’s existing CAP structure as a prerequisite to revising the FCO’s energy burden standards “negate[s] the important automatic execution of the Settlement requirement and create[s] new requirements in its place.”⁷⁷ As Mr. Bertocci explains, “this proceeding is not about the ability or the efficiency of the CAP FCO structure to provide all CAP customers with bills that reflect targeted percentages of household income.”⁷⁸

In his Surrebuttal testimony, Mr. Geller describes at length how implementation of revised energy burden standards were never envisioned to address all the flaws of the FCO, uncovered through the FCO’s implementation and the APPRISE evaluation.⁷⁹ As CAUSE-PA explicitly recognized, the FCO was an imperfect solution borne of extensive settlement negotiations and compromises.⁸⁰ In other words, CAUSE-PA knew that the FCO would have flaws, and designed the Joint Settlement to include provisions that would improve affordability of the program. Indeed, as Mr. Geller testified, inclusion of a provision to automatically revise the FCO’s applicable energy burden standards was essential to the design of the FCO and to CAUSE-PA’s acceptance of Joint Settlement terms.⁸¹

Mr. Colton’s conclusion that PECO should not be required to incur increased program costs associated with revising its energy burdens given the flaws inherent in the FCO program design ignores not only PECO’s clear Settlement obligations - but also PECO’s CAP customers’ ongoing

⁷⁶ Id. at 10: 13-21.

⁷⁷ Id. at 11: 3-6.

⁷⁸ TURN St. 1-SR at 7: 7-9.

⁷⁹ CAUSE-PA St. 1-SR at 11: 7-14.

⁸⁰ Id. Indeed, CAUSE-PA’s expert witness, Mr. Geller, was a signatory counsel to the Joint Petition for Settlement on behalf of CAUSE-PA.

⁸¹ Id.

struggle to afford their monthly bills. TURN's expert witness, Mr. Bertocci, points out that reducing the energy burdens within FCO will provide a greater discount to many CAP participants (with some exceptions) and help low income households as a whole to pay their bills.⁸² CAP customers must not be denied improved bill affordability that PECO is already obligated to provide under the Joint Settlement. While abandoning PECO's FCO in the long term-in favor of a CAP PIPP structure- is an appropriate step and supported by CAUSE-PA's expert witness,⁸³ revising the FCO's energy burden standards in compliance with the Joint Settlement and PECO's currently approved USECP, is a separate obligation that must be honored - especially since approval and implementation of PECO's PIPP CAP structure will take time.

iii. *The results of the APPRISE evaluation are not relevant to PECO's compliance with the Joint Settlement.*

PECO's expert witness, Mr. Kehl, argues in his Rejoinder testimony that the results of a recent third-party evaluation of PECO's FCO are relevant to the current matter, as it was fully understood at the time of the Joint Settlement that the APPRISE evaluation could result in adjustments to the FCO.⁸⁴ Mr. Kehl quotes from CAUSE-PA's Statement in Support to the Joint Settlement, signed by Mr. Geller, which explains that expert review of the FCO would provide a data-driven analysis that "enables the Company – together with the Commission, parties and stakeholders – to make necessary adjustments to ensure that the program projections and modeling of affordability are realized."⁸⁵ Mr. Kehl similarly notes PECO's Statement of Support of the Joint Settlement, which indicates that a "data-driven review of the FCO program operations, so that the

⁸² TURN St. 1-SR at 7: 17-18; 8: 1-2.

⁸³ CAUSE-PA St. 1-SR at 11: 15-20.

⁸⁴ PECO St. 1-RJ at 3: 10-26.

⁸⁵ Id., citing CAUSE-PA's Statement in Support at 10.

Commission and the stakeholders will have the opportunity to determine whether further program refinements should be adopted.”⁸⁶ Mr. Kehl also argues that the Commission specifically reserved the authority to order additional FCO changes when approving the 2016-2018 USECP: “Finally, the Commission’s tentative partial approval of this Plan does not limit the Commission’s authority to order future changes to the Plan based on evaluation findings, universal service data, or ratemaking considerations.”⁸⁷

CAUSE-PA does not contest that a data-driven evaluation of the FCO was intended to provide the parties, stakeholders, and the Commission with valuable feedback about the FCO so that the Commission and the parties could make necessary changes to the FCO. All required periodic evaluations of USECP programs are intended to do so.⁸⁸ However, such evaluations are intended to be potentially reflected in future USECP proposed plans. Evaluations, by themselves, are not self-executing nor the basis of unilaterally abandoning Commission ordered Settlement or USECP obligations. PECO’s decision to ultimately abandon the FCO structure in favor of a PIPP – a decision made after significant collaboration and input with stakeholders⁸⁹ – was an adjustment based on evaluation of the FCO’s overall affordability. But the settlement provision at issue was explicitly included in the Joint Settlement, and envisioned to take automatic effect – notwithstanding and independent from the third party evaluator and collaborative process envisioned to occur after the FCO’s deployment. In reality, PECO did not have a “reasonable bases for its interpretation of the Settlement provision under discussion,” as Mr. Kehl suggests.⁹⁰

⁸⁶ PECO St. 1-RJ at 4: 8-15, citing PECO’s Statement in Support at 11.

⁸⁷ PECO St. 1-RJ at 4: 17-23, citing PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018, Tentative Order, Docket No. M-2015-2507139 (TO entered on Feb. 25, 2016).

⁸⁸ See Final CAP Policy Statement and Order at 2.

⁸⁹ TURN St. 1 at 12: 14-16.

⁹⁰ PECO St. 1-RJ at 14: 13-21.

Instead, PECO's decision not to implement the revised energy burdens was a unilateral decision made without the approval or agreement of the parties, stakeholders, or the Commission.

Further, as Mr. Bertocci points out, the third party evaluation was not designed to address the appropriateness of the target percentages of income considered affordable.⁹¹ Rather, the evaluation addressed the FCO's ability to provide customers with bills that approximated those targets.⁹² As such, Mr. Bertocci concludes that the results of the third party evaluation are not relevant to PECO's current, ongoing obligation under the terms of the Joint Settlement.⁹³ Similarly, stakeholder meetings and discussion about the evaluation and changes to the FCO's structure are irrelevant and do not obviate PECO's obligation under Joint Settlement to adjust the maximum applicable energy burden standard automatically if and when the Commission adopted revised energy burden standards in its CAP Policy Statement.⁹⁴

C. PECO and OCA's expert witnesses acknowledge PECO's obligation to implement the revised energy burdens in the Final CAP Policy Statement.

While raising the irrelevant issues detailed above, PECO and OCA's expert witnesses concede that the Joint Settlement requires PECO to implement the revised energy burden standards in the Final CAP Policy Statement.⁹⁵ In particular, Mr. Kehl notes:

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 EBs set forth in the Commission's CAP Policy Statement. The Settlement provided that if the Commission changes the EBs, PECO will utilize the new maximum allowable EBs for each poverty level in calculating the FCO credit to be given to each customer.⁹⁶

⁹¹ TURN St. 1-SR at 5: 4-13.

⁹² Id.

⁹³ Id.

⁹⁴ TURN St. 1-SR at 6: 1-6.

⁹⁵ See id. at 4: 1-10.

⁹⁶ PECO St. 1-R at 3:9 – 3:16, citing 52 Pa. Code § 69.265 (emphasis added); see also TURN St. 1-SR at 4: 1-10.

Mr. Kehl further acknowledges that PECO has been aware and fully capable of implementing the revised energy burdens in compliance with the Joint Settlement, but rather unilaterally chose to disregard the Joint Settlement in favor of a different approach.⁹⁷ Mr. Kehl clearly testified that it was PECO’s conscious decision to breach the Joint Settlement in favor of PECO’s preferred approach:

“Given the time that will be required to transition to a PIPP, PECO concluded that it would now be reasonable, with Commission approval, to incorporate the revised EBs in the FCO as a “bridge” to the PIPP.⁹⁸

It is also particularly telling that PECO previously acknowledged its ability and intention to implement its Settlement obligation in Comments submitted to the Commission regarding a possible Commission ordered energy burden change, and that, if the established energy burdens are changed, **PECO’s CAP FCO program has a “pass through’ clause allowing for automatic implementation.**”⁹⁹

Similarly, OCA’s expert witness, Mr. Colton, acknowledges the plain language of the Joint Settlement, and what it requires of PECO, explaining: “the Settlement provides that should the PUC change the ranges within which CAP energy burdens must fall, PECO would continue to use the ‘maximum allowable energy burden ‘provided in each range.’”¹⁰⁰

While both PECO and OCA’s expert witnesses acknowledge the obligations contained in the Joint Settlement, neither witness addresses the fact that the Settlement is also set forth *in full*

⁹⁷ Id.

⁹⁸ PECO St. 1-R at 15: 20 - 16: 2. (emphasis added); CAUSE-PA St. 1-SR at 9: 12-19.

⁹⁹ CAUSE-PA St. 1-SR at 9: 7-15, citing Energy Affordability for Low-Income Customers, Initial Comments of PECO Energy Company. Docket No. M- 2017-2587711, at 8 (Initial Comments filed May 11, 2019).

¹⁰⁰ OCA St. 1-R at 6: 9-12; see also TURN St. 1-SR at 4: 11-14.

in PECO's approved 2016-2018 USECP.¹⁰¹ The fact that PECO is currently obligated to operate its CAP FCO according to the terms of its approved USECP strongly reinforces PECO's obligations to utilize the revised energy burden standards in the Final CAP Policy Statement.

Given that no expert witness in this matter has contested the clear language or intended effect of the disputed Joint Settlement term – and PECO's witness has acknowledged that revising the FCO's energy burden standards were reasonable to incorporate as a “bridge” until PECO's CAP transitioned to a PIPP¹⁰² – PECO's failure to revise its maximum energy burden standards should be found as a clear violation of the terms of the Joint Settlement and PECO's 2016-2018 USECP, constituting unreasonable service and creating excessive rates under Section 1501 of the Public Utility Code.

2. The Commission must order appropriate relief to fulfill the terms of the Joint Settlement and to remediate harm caused by PECO's clear and unambiguous breach of a Commission-approved Settlement.

A. Implement the revised energy burden standards, as set forth in the Final CAP Policy Statement.

Given the clear violation of the terms of the Joint Settlement and the 2016-2018 USECP, CAUSE-PA supports the relief requested in TURN's Complaint and recommended by TURN's expert witnesses Mr. Bertocci and Mr. Lord.¹⁰³ Specifically, CAUSE-PA urges ALJ Long and the Commission to require PECO to immediately utilize the revised energy burden standards, as set forth in the Commission's Final CAP Policy Statement, by incorporation into its FCO design.

TURN's expert witness, Philip Lord, explains in his Direct testimony how PECO's willful failure to implement the revised energy burdens in the Final CAP Policy Statement has affected

¹⁰¹ TURN St. 1-SR at 4: 15-17.

¹⁰² PECO St. 1-R at 15: 20-21; 16: 1-2.

¹⁰³ TURN St. 1 at 24-25.

TURN, as a party to the Joint Settlement, as well as low income tenants and CAP customers.¹⁰⁴ Similarly, CAUSE-PA's expert witness, Mr. Geller, testified as to how low income communities continue to struggle to afford services, especially since the spread of the COVID-19 pandemic.¹⁰⁵ By failing to adjust the FCO's energy burdens, PECO has caused economic harm to low income customers who participate in CAP – harm that Mr. Bertocci explains has disproportionately affected Black and Brown Philadelphian households.¹⁰⁶

In his Direct testimony, Mr. Bertocci explains that PECO's failure to comply with the terms of the parties' Settlement and its USECP has broader implications for Commission policy. Mr. Bertocci explains that PECO's violations could have a chilling effect on the willingness of future parties to enter into Settlements before the Commission if parties cannot guarantee that Settlement terms will be honored.¹⁰⁷ Similarly, Mr. Bertocci reasons that failure to comply with USECPs and the rules governing universal service enforcement could harm low income customers faith and reliance on a transparent process in which utilities abide by the required terms of their universal service programs, especially since PECO is one of the largest utilities in Pennsylvania.¹⁰⁸

For these reasons and the reasons detailed above, PECO should be required to immediately adjust its FCO calculations utilizing the energy burdens set forth in the Commission's Final CAP Policy Statement.¹⁰⁹ PECO should further be directed to utilize the energy burden standards in the

¹⁰⁴ See, generally, TURN St. 2.

¹⁰⁵ CAUSE-PA St. 1-SR at 4: 8-10.

¹⁰⁶ TURN St. 1 at 25: 20 – 26: 2.

¹⁰⁷ Id. at 29: 9-19.

¹⁰⁸ Id.

¹⁰⁹ Id. at 26: 5-8.

Final CAP Policy Statement for so long as the FCO operates, as directed by the clear and undisputed terms of the Joint Settlement.¹¹⁰

B. Provide CAP participants with retroactive bill credits and retroactive arrearage forgiveness.

In order to remedy PECO's conscious delay and failure to revise the FCO's energy burden standards, PECO should be required to provide CAP participants with retroactive bill credits and arrearage forgiveness.¹¹¹ Providing relief in the form of retroactive bill credits and arrearage forgiveness would help to remedy to harm done to CAP customers by PECO's failure to promptly implement the energy burden standards in the Commission's Final CAP Policy Statement.¹¹² As Mr. Bertocci explains in his Direct testimony, retroactive credits would bring CAP participants bills down to the amount that participants should have been billed, and retroactive arrearage forgiveness would allow for any partial payments that would otherwise have been full payments to be recalculated to ensure that CAP customers were receiving the full benefits entitled under 2016-2018 USECP.¹¹³

PECO's expert witness, Mr. Kehl, argues that individual-by-individual retroactive CAP credit calculations requested by TURN cannot be recreated in PECO's Customer Information Management System (CIMS).¹¹⁴ Mr. Kehl further explains how PECO's CIMS allegedly operates as follows: CIMS has the FCO calculations built as a point-in-time calculation.¹¹⁵ CIMS uses the customer's verified financial information and the customer's last 12 months of undiscounted bills

¹¹⁰ See *id.*

¹¹¹ TURN St. 1 at 26: 5-10.

¹¹² *Id.* at 26: 12-13.

¹¹³ *Id.* at 26: 15-18.

¹¹⁴ PECO St. 1-RJ at 10: 10-14.

¹¹⁵ *Id.* at 10: 19-22.

(if available) at the time of calculation.¹¹⁶ The data tables utilized in these calculations do not store historical billing information – instead, the most recent bill history for CAP customers is added each month and the oldest month bill history is dropped.¹¹⁷ Mr. Kehl also describes other programmatic issues with calculating individual retroactive bill credits, including FCO calculations being performed on, at minimum, a quarterly basis.¹¹⁸ Mr. Kehl claims that manual bill credit adjustments are impractical, if not impossible, given the number of customers who participate in PECO’s CAP,¹¹⁹ and proposes a “system-wide average bill adjustment could be determined and provided to every CAP customer.”¹²⁰

PECO’s failure to develop the systems necessary to provide individual-by-individual retroactive bill credits should not be treated as a reasonable reason for not complying with universal service and Settlement obligations. Instead, CAP participants should be adequately compensated for PECO’s unilateral and willful decision to not implement the energy burdens in the Final CAP Policy Statement. As Mr. Geller notes in his Surrebuttal testimony, PECO was on notice that it would need systems in place to automatically pass lower maximum energy burdens to CAP participants when they agreed to the Joint Settlement in 2015.¹²¹ The implementation of the Commission’s Investigation and Rulemaking regarding energy affordability and maximum energy burdens should have put PECO on further notice that the Company would potentially need data and systems to implement revised energy burden standards.¹²² Further, PECO advised the

¹¹⁶ Id. at 11: 1-2.

¹¹⁷ Id. at 11: 1-10.

¹¹⁸ Id. at 11: 13-22.

¹¹⁹ Id. at 12: 5-12.

¹²⁰ PECO St. 1-R at 17: 3-5.

¹²¹ CAUSE-PA St. 1-SR at 12: 6-15.

¹²² Id.

Commission through its own Comments that it had such a system in place. PECO's decision to delay complying with the Joint Settlement once the CAP Policy Statement was amended which now requires a retroactive passthrough, was a conscious decision by PECO.

As Mr. Geller notes, "the delayed implementation once the new maximum energy burdens were promulgated, which now require a retroactive pass through, is fully the responsibility of PECO and should be considered the Company's – not the ratepayers' – responsibility."¹²³ Mr. Kehl acknowledges that the Company could build out its IT systems to "(1) develop a method to capture the point-in-time data from other areas of CIMS; and (2) perform all necessary FCO recalculations for each CAP customer using the captured data."¹²⁴ However, Mr. Kehl notes that he is not able to estimate full scope, time, and costs of the IT project.¹²⁵

In light of PECO's IT limitations described by Mr. Kehl, CAUSE-PA accepts Mr. Kehl's proposal that, if the Commission determines that retroactive bill credits are appropriate, PECO can provide a system-wide average adjustment to every CAP customer.¹²⁶ Exhibit MK-1RJ to Mr. Kehl's Rejoinder testimony details the proposed allocation of the system-wide average adjustment.¹²⁷ Mr. Kehl describes how, in order to reach these calculations, the Company took the average CAP credit and increased the credits, by FPL group and commodity, based on the impact of changing the energy burdens to the levels in the Final CAP Policy Statement.¹²⁸ While CAUSE-

¹²³ CAUSE-PA St. 1-SR at 12: 6-15; see also PECO St. 1-RJ at 14: 1-11 (Contrary to PECO's assertion, Mr. Geller does not ignore the magnitude of IT costs – rather, as discussed below – Mr. Geller takes into consideration the considerable amount of retroactive bill savings that would rightfully be provided to CAP participants as a result of PECO's willful violation of Settlement and USECP obligations.)

¹²⁴ PECO St. 1-RJ at 12: 15-18.

¹²⁵ Id. at 13: 1-4.

¹²⁶ Id. at 13: 7-17.

¹²⁷ Id.

¹²⁸ Id.

PA generally accepts the methodology described by Mr. Kehl and set forth in Exhibit MK-1RJ, we note that Mr. Kehl's calculations must be updated to the date that PECO actually implements the revised energy burden standards. Given that PECO's proposed methodology utilizes system averages to provide retroactive credits, it is also important that each individual CAP customer is given the right to request an individualized calculation of retroactive credits. Further, PECO should be directed, when providing retroactive arrearage forgiveness, to account for bills and payments that were counted as partial but would have been full if PECO timely implemented the revised energy burden standards. CAUSE-PA asserts that this relief, combined with the other requested relief outlined in this Main Brief, will move toward addressing the past, present and future consequences of PECO's willful inaction, and would help to redress the compounding effects of PECO's failure to timely adjust the energy burden standards of the FCO consistent with the terms of the Joint Settlement and PECO's 2016-2018 USECP.

3. PECO should be fined for its willful and intentional violation of the Joint Settlement and its 2016-2018 USECP.

Willful disregard for the terms of a Commission-approved Joint Settlement should not be tolerated by the Commission, as it undermines the integrity of Settlements – leading parties to be reticent to settle in the future for fear of endless monitoring and litigation just to ensure that the terms of an agreement are fulfilled.

This case presents a particularly egregious situation. First, the Joint Settlement provision in question affects the level of energy burdens borne by CAP participant households, a statutorily protected group which PECO was aware had been subject to excessive energy burdens within the FCO. Second, although years of Comments, litigation, negotiation, and mediation had not resulted in successful resolution or compromise, the provision in question was critical to enable the parties to reach the Joint Settlement. Third, PECO acknowledged its awareness of and obligation to

implement the Joint Settlement provision and USECP requirement. As such, CAUSE-PA asserts that PECO should be fined for its intentional refusal to implement a Commission-approved Settlement and USECP obligations.¹²⁹ The Public Utility Code, 52 Pa. Code § 69.1201, sets forth 10 criteria for determining if a fine is appropriate. As more fully discussed in Mr. Bertocci’s Direct testimony, the following factors are relevant in the present matter to determine whether a fine is appropriate:

- **Whether the conduct was of a serious nature:** As of August 2020, PECO estimates that 115,384 households were enrolled in CAP – 83,427 electric only customers, 11,929 electric heat customers, 19,748 dual electric/gas heat customers, and 280 gas only customers.¹³⁰ As Mr. Bertocci explains, PECO has been overcharging more than 100,000 CAP customers over the course of more than a year and has not revised the FCO’s energy burden standards, despite clear Settlement language requiring these adjustments.¹³¹
- **Whether the consequences of the conduct at issue were of a serious nature:** Mr. Bertocci describes the following increases in CAP credits through September 15, 2020:

Table 3 (Reproduced): Increased CAP Credits¹³²

Implementation Date	Estimated Total Increase in CAP Credits (through Sept. 15, 2020)	Number of CAP Customers (Aug. 2020)	Estimated Average Increase per CAP Customers
Nov. 5, 2019	\$22,175,260	115,834	\$191
March 21, 2020	\$11,824,148	115,834	\$102

¹²⁹ See TURN Complaint; TURN St. 1 at 26-30.

¹³⁰ TURN St. 1 at 10: 6-9, citing PECO Response to TURN-I-1(b) and (c), attached hereto in Exhibit B. See also PECO Response to TURN-I-(d) (disaggregating CAP customers by FPIG tier).

¹³¹ TURN St. 1 at 27: 6-14.

¹³² Id. at 28: 1-3

As seen in the above Table, PECO’s failure to revise the FCO’s energy burden standards in compliance with the Joint Settlement contributed to a significant increase to average CAP customers’ bills and affected a significant number of CAP participants. Low income customers, even in normal times, face untenable choices when shouldered with unaffordable utility bills and often forgo other basic necessities – such as rent, food, or medicine – in order to afford utility bills.¹³³ However, these are not normal times. Low income customers continue to face disproportionate and profound economic harm as a result of the COVID-19 pandemic.¹³⁴ Now more than ever, failing to provide customers with promised bill savings has profound and serious ramifications on low income customers’ ability to afford their bills and maintain essential services.

- **Whether the conduct at issue was deemed intentional or negligent:** As previously discussed, PECO intentionally violated the Joint Settlement and the terms of its Commission approved 2016-2018 USECP. PECO had knowledge of both its Settlement obligations and the revised energy burden standards in the Final CAP Policy Statement – and in fact previously recognized the automatic nature of the disputed term.
- **The number of customers affected and the duration of the violation:** As previously discussed, PECO’s willful failure to comply with Settlement obligations resulted in the more than 100,000 CAP participants being overcharged for approximately a year, as of the date of this Main Brief.
- **The amount of civil penalty or fine necessary to deter future violations:** As previously discussed, PECO’s failure to comply with an unambiguous Settlement obligation has a harmful effect not only for its CAP participants, but also for future parties to Commission-approved Settlements who rely on parties complying with Settlement terms. Similarly, PECO’s failure to implement provisions required by

¹³³ TURN St. 1 at 28: 4-10.

¹³⁴ CAUSE-PA St. 1-SR at 4: 8-10.

its USECP further raises concerns for PECO, as well as other EDCs and NGDCs, to uphold and abide by the provisions contained in approved Settlements and USECPs. Mr. Bertocci reasoned that the fine against PECO should be significant enough to send a message to PECO and other EDCs and NGDCs that these intentional violations are not acceptable.¹³⁵

- **Other relevant factors:** Mr. Bertocci notes that the ongoing COVID-19 pandemic and resulting economic crisis has only served to amplify the harm caused by PECO.¹³⁶ As described above, the Commission has also noted ongoing concerns about PECO exceeding CAP maximum energy burdens.¹³⁷

Given the broad economic harm caused by PECO's willful failure to implement its Settlement and USECP obligations, CAUSE-PA supports Mr. Bertocci's recommendation that PECO is fined between 5% and 10% of the value of discounts PECO failed to provide to CAP customers due to its violation of the Settlement and its 2016-2018 USECP.¹³⁸

¹³⁵ TURN St. 1 at 29: 9-19.

¹³⁶ Id. at 30: 1-5.

¹³⁷ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911, at 3, 9 (Tentative Order entered November 8, 2012).

¹³⁸ TURN St. 1 at 30: 6-11. As an example, Mr. Bertocci explains that the penalty could range from between \$600,000 and \$2.2 million based on the numbers provided by PECO through September 15, 2020. Mr. Bertocci further notes that the exact penalty amount depends on the date that PECO actually implements the revised energy burdens.


VII. CONCLUSION

As discussed in detail in this Main Brief, PECO is in clear and unambiguous violation of the terms of the Joint Petition for Settlement at Docket No. M-2012-2290911 and the terms of its 2016-2018 USECP at Docket No. M-2015-2507139. In order to remedy the past, present, and future impacts on vulnerable CAP participants as a result of PECO's failure to implement the revised energy burdens contained in the Commission's Final CAP Policy Statement, CAUSE-PA urges ALJ Long and the Commission to grant the relief requested in this Main Brief, consistent with the underlying Complaint filed by TURN in this matter.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT

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APPENDIX A: PROPOSED CONCLUSIONS OF LAW

1. Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, allows any person with an interest in the subject matter to complain, in writing, of an act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission.
2. Pursuant to the Commission's regulations at 52 Pa. Code 54.71 *et seq.*, electric distribution companies (EDCs) are required to file a USECP with the Commission every three years.¹³⁹
3. The USECP is subject to the Commission's review and approval.¹⁴⁰ The terms of a regulated utilities' Commission approved USECP is binding on the utility, and directs the policies, procedures, eligibility, and enrollment of universal service programs.¹⁴¹
4. The Commission encourages parties in contested proceedings to settle case.¹⁴²
5. The Electricity Generation Customer Choice and Competition Act¹⁴³ and Natural Gas Choice and Competition Act¹⁴⁴ require the Commission to ensure that "universal service and energy conservation policies, activities and services are appropriately funded and available" in Electric Distribution and Natural Gas Distribution service territories.¹⁴⁵
6. 66 Pa. C.S. § 1501 requires that a public utility's services and facilities shall be in conformity with the regulations and orders of the Commission."¹⁴⁶ This Section further obligates utilities to provide efficient, safe, and reasonable service and facilities. Such service is required to be reasonably continuous and without unreasonable interruptions or delay.
7. PECO has the burden of proving that the determination or order of the Commission has been complied with pursuant to Section 315(b).

¹³⁹ 52 Pa. Code §54.74(a); 52 Pa. Code § 62.4(a)(2); see also Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Order, Docket No. M-2019-3012601 (Order entered Oct. 3, 2019) (temporarily extending the filing schedules to every 5 years).

¹⁴⁰ 52 Pa. Code §54.74(a); 52 Pa. Code § 62.4(a)(2).

¹⁴¹ See TURN St. 1 at 9.

¹⁴² 52 Pa. Code §§ 5.231; 69.391; 69.401. See also PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Recommended Decision, Docket No. M-2012-2290911 (Recommended Decision entered on June 17, 2015).

¹⁴³ 66 Pa. C.S. § 2801, *et seq.*

¹⁴⁴ 66 Pa. C.S. § 2201, *et seq.*

¹⁴⁵ 66 Pa. C.S. § 2804 (9); 66 Pa. C.S. § 2203 (8).

¹⁴⁶ See also DeSantis v. Pa. Power Co., Initial Decision, Docket No. C-2019-3013652, at 10 (April 27, 2020) (holding, in the context of an individual formal complaint, that "failure to apply all the criteria from the most current universal service plan is a violation of Section 1501 of the Public Utility Code.").

8. The public utility must satisfy its burden of proof by a preponderance of the evidence.¹⁴⁷
9. The record contains substantial, un rebutted evidence that PECO intentionally failed to revise its maximum energy burden standards should be found as a clear violation of the terms of the Settlement and PECO's 2016-2018 USECP, constituting unreasonable service and creating excessive rates under Section 1501 of the Public Utility Code.
10. PECO and the OCA, through their expert witnesses, raise a number of irrelevant issues presented for the purpose of demonstrating that enforcement of the Settlement provision would not result in comprehensive restructuring or affordability improvements to PECO's CAP and would therefore be imprudent.
11. PECO's good faith in implementing other settlement terms is irrelevant to its compliance with the settlement term at issue in this Complaint.
12. The results of the APPRISE evaluation or stakeholder meetings are not relevant to PECO's compliance with the Joint Settlement.
13. It is appropriate to require PECO immediately adjust its FCO calculations utilizing the energy burdens set forth in the Commission's Final CAP Policy Statement,¹⁴⁸ and to utilize the energy burden standards in the Final CAP Policy Statement for so long as the FCO operates, as directed by the clear and undisputed terms of the Joint Settlement.¹⁴⁹
14. PECO should be directed, when providing retroactive arrearage forgiveness, to account for bills and payments that were counted as partial but would have been full if PECO timely implemented the revised energy burden standards.
15. The Public Utility Code, 52 Pa. Code § 69.1201, sets forth 10 criteria for determining if a fine is appropriate.
16. It is appropriate to fine PECO between 5% and 10% of the value of discounts PECO failed to provide to CAP customers due to its violation of the Settlement and its 2016-2018 USECP.¹⁵⁰

¹⁴⁷ NRG Energy, Inc. v. Pa. PUC, 233 A.3d 936, 948 (Pa. Commw. Ct. 2019), citing Energy Conservation Council of Pa., 995 A.2d at 478.

¹⁴⁸ TURN St. 1 at 26: 5-8.

¹⁴⁹ See id. at 26: 5-8.

¹⁵⁰ TURN St. 1 at 30: 6-11. As an example, Mr. Bertocci explains that the penalty could range from between \$600,000 and \$2.2 million based on the numbers provided by PECO through September 15, 2020. Mr. Bertocci further notes that the exact penalty amount depends on the date that PECO actually implements the revised energy burdens.

APPENDIX B: PROPOSED FINDINGS OF FACT

1. The Joint Settlement clearly and unambiguously requires PECO to revise its applicable energy burden standards for its Customer Assistance Program (CAP) if and when the Commission modifies the standards in its CAP Policy Statement: “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.”¹⁵¹
2. This immediate case is a direct outgrowth of history of failures by PECO to comply with CAP payment guidelines.¹⁵²
3. On February 28, 2012, PECO filed its 2013-2015 USECP with the Commission at Docket No. M-2012-2290911.
4. On March 20, 2015, after years of comments, litigation, hearings, negotiation, facilitated mediation, and renewed negotiations, PECO, CAUSE-PA, TURN, Action Alliance, and the OCA filed a Joint Petition for Settlement (Joint Settlement).¹⁵³
5. Inclusion of a provision to automatically revise the FCO’s applicable energy burden standards was essential to the design of the FCO and to CAUSE-PA’s acceptance of Settlement terms.¹⁵⁴
6. On June 11, 2015, Administrative Law Judge (ALJ) Cynthia Williams Fordham issued a Recommended Decision approving the Joint Petition for Settlement without modification.¹⁵⁵
7. On July 8, 2015, the Commission adopted ALJ Fordham’s Recommended Decision without modification.¹⁵⁶
8. PECO subsequently incorporated the CAP FCO design, including the provision at issue in this proceeding, into its 2016-2018 USECP.
9. The Commission gave final approval to PECO’s 2016-2018 USECP on August 11, 2016.¹⁵⁷

¹⁵¹ 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, fn. 3 (Term Sheet) (filed March 20, 2015).

¹⁵² PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911, at 3 (Tentative Order entered November 8, 2012).

¹⁵³ See, generally, Joint Petition for Settlement.

¹⁵⁴ CAUSE-PA St. 1-SR at 11.

¹⁵⁵ Recommended Decision (RD) at 36.

¹⁵⁶ 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 (Order entered July 8, 2015).

¹⁵⁷ The terms of the CAP FCO Settlement were incorporated as Addendum B to PECO’s 2016-2018 USECP at Docket No. M-2015-2507139. See PECO Energy Company Universal Service and Energy Conservation Plan 2016-2018, Docket No. M-2015-2507139 (Plan initially filed October 2, 2015); PECO Energy Company Universal Service and Energy Conservation Plan 2016-2018, Order, Docket No. M-2015-2507139 (Commission Final Order of Approval entered August 11, 2016).

10. In October 2016, PECO transitioned its CAP to an FCO structure in compliance with the terms of the Joint Settlement and its revised USECP.¹⁵⁸
11. Under the terms of PECO's FCO, a CAP customer receives an Annual Credit, which is calculated based on a customer's household income, historical usage, and allowable energy burden,¹⁵⁹ as set forth in the CAP Policy Statement.
12. The FCO currently utilizes the maximum energy burdens as stated in Table 1 of the Joint Settlement of March 20, 2015. These energy burden levels were the maximum allowable energy burdens as set forth in the Commission's CAP Policy Statement at the time of the Joint Settlement.¹⁶⁰
13. Nothing in the Joint Settlement indicated that PECO had to seek further Commission approval to adhere to the terms of the Joint Settlement, nor were there any terms in the Joint Settlement or the USECP limiting the effectiveness of the agreed-to and approved term.¹⁶¹
14. On November 5, 2019, the Commission issued its Final CAP Policy Statement and Order, available at 52 Pa. Code §§ 69.261-69.267.¹⁶²
15. To date, PECO has not incorporated the Commission's revised energy burden standards in the FCO, consistent with the terms of the Joint Settlement, though PECO has acknowledged that the Settlement requires it to do so.
16. PECO filed an unnecessary Petition with the Commission seeking approval to implement the terms of the Joint Settlement,
17. By entering into the Joint Petition for Settlement and subsequently revising its 2016-2018 USECP to incorporate Settlement language, PECO agreed, without further proceedings, analysis, or obligation, to incorporate the revised energy burdens in the Final CAP Policy Statement into the FCO.
18. PECO does not contest the plain language of the Joint Settlement and does not dispute that PECO unilaterally chose to not adhere to another clear and unambiguous provision of the Joint Settlement.
19. PECO and OCA's expert witnesses concede that the Joint Settlement requires PECO to implement the revised energy burden standards in the Final CAP Policy Statement.¹⁶³

¹⁵⁸ TURN St. 1 at 14: 15-17.

¹⁵⁹ Energy Burden is a percentage of income that a household spends on its utility bills. See TURN St. 1 at 16: 6-10.

¹⁶⁰ TURN St. 1 at 15: 9-16.

¹⁶¹ See TURN St. 1 at 15.

¹⁶² 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Final Policy Statement and Order, Docket No. M-2019-3012599 (order entered Nov. 5, 2019); see also Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711 (Energy Affordability proceeding) & Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907 (Universal Service Review proceeding).

¹⁶³ TURN St. 1-SR at 4: 1-10.

20. PECO violated the Joint Settlement – as well as the terms of its approved USECP – when it failed to revise its applicable energy burden standards following the Commission’s Final CAP Policy Statement and Order revising the Commission’s energy burden standards.
21. PECO’s choosing a “holistic approach” rather than implementing the revised energy burdens does not evidence PECO’s good faith, but rather is an acknowledgement that PECO unilaterally, knowingly, and deliberately chose to disregard its obligations to implement the revised energy burdens under a Commission-approved Settlement and USECP.
22. PECO has also not acted in good faith to implement the remainder of the terms in the Joint Settlement.¹⁶⁴
23. Developing a comprehensive, affordable PIPP CAP is not a condition precedent for PECO to comply with the Settlement regarding the current FCO.¹⁶⁵
24. PECO’s willful failure to implement the revised energy burdens in the Final CAP Policy Statement has affected parties to the Settlement, as well as low income tenants and CAP customers.¹⁶⁶
25. PECO’s violations could have a chilling effect on the willingness of future parties to enter into Settlements before the Commission if parties cannot guarantee that Settlement terms will be honored.¹⁶⁷
26. Failure to comply with USECPs and the rules governing universal service enforcement could harm low income customers faith and reliance on a transparent process in which utilities abide by the required terms of their universal service programs, especially since PECO is one of the largest utilities in Pennsylvania.¹⁶⁸
27. Mr. Kehl’s calculations in Exhibit MK-1RJ of his Rejoinder testimony must be updated to the date that PECO actually implements the revised energy burden standards.
28. It is also important that each individual CAP customer is given the right to request an individualized calculation of retroactive credits.
29. Providing relief in the form of retroactive bill credits and arrearage forgiveness would help to remedy to harm done to CAP customers by PECO’s failure to promptly implement the energy burden standards in the Commission’s Final CAP Policy Statement.¹⁶⁹
30. The methodology described by Mr. Kehl and set forth in Exhibit MK-1RJ must be updated to the date that PECO actually implements the revised energy burden standards.

¹⁶⁴ TURN St. 1-SR at 10-11.

¹⁶⁵ CAUSE-PA St. 1-SR at 10: 13-21.

¹⁶⁶ See, generally, TURN St. 2.

¹⁶⁷ TURN St. 1 at 29: 9-19.

¹⁶⁸ Id.

¹⁶⁹ TURN St. 1 at 26: 12-13.

31. As of August 2020, PECO estimates that 115,384 households were enrolled in CAP – 83,427 electric only customers, 11,929 electric heat customers, and 19,748 dual electric/gas heat customers, and 280 gas only customers.¹⁷⁰
32. PECO has been overcharging more than 100,000 CAP customers over the course of more than a year and has made no attempt to revise the FCO’s energy burden standards, despite clear Settlement language requiring these adjustments.¹⁷¹
33. PECO’s failure to revise the FCO’s energy burden standards in compliance with the Joint Settlement contributed to a significant increase to average CAP customers’ bills and affected a significant number of CAP participants.
34. Low income customers continue disproportionate and profound economic harm as a result of the COVID-19 pandemic.¹⁷²

¹⁷⁰ TURN St. 1 at 10: 6-9, citing PECO Response to TURN-I-1(b) and (c), attached hereto in Exhibit B. See also PECO Response to TURN-I-(d) (disaggregating CAP customers by FPIG tier).

¹⁷¹ TURN St. 1 at 27: 6-14.

¹⁷² CAUSE-PA St. 1-SR at 4: 8-10.

APPENDIX C: PROPOSED ORDERING PARAGRAPHS

1. PECO violated the terms of the Joint Settlement at Docket No. M-2012-2290911;
2. PECO violated the terms of its 2016-2018 USECP at Docket No. M-2015-2507139;
3. PECO's violations of the Joint Settlement at Docket No. M-2012-2290911 and the terms of its 2016-2018 USECP at Docket No. M-2015-2507139 constitute unreasonable service in violation of 66 Pa. C.S. § 1501;
4. PECO is hereby ordered to immediately implement the energy burden standards set forth in the Commission's Final CAP Policy Statement;
5. PECO is hereby ordered to retroactively calculate CAP Credits for All CAP customers, applying the revised energy burden standards set forth in the Commission's Final CAP Policy Statement, and provide bill credits to CAP customers or reduce past-due balances as appropriate;
6. PECO is hereby ordered to provide retroactive arrearage forgiveness for all partial payments that would have constituted full payments under the revised bills had PECO revised the FCO energy burdens in line with the Final CAP Policy Statement;
7. PECO is further ordered to make any necessary filing to effectuate the implementation of the revised energy burdens in the Commission's Final CAP Policy Statement and the relief requested in this Main Brief; and
8. For its intentional and willful violation of a Commission approved Settlement and the terms of PECO's Commission approved 2016-2018 USECP, PECO is hereby fined 10% of the value of discounts PECO failed to provide to CAP customers due to its violation of the Settlement and its 2016-2018 USECP.