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March 5, 2021

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing is the **Initial Brief of PECO Energy Company** (“Brief”), in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, copies of the Brief are being served upon Administrative Law Judge Mary D. Long, and all parties of record.

If you have any questions, please contact me directly at 215.841.4353.

Very truly yours,



Jennedy S. Johnson

Enclosures

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Initial Brief of PECO Energy Company** on the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

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Dated: March 5, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TENANT UNION REPRESENTATIVE	:	
NETWORK	:	
	:	DOCKET NO. C-2020-3021557
v.	:	
	:	
PECO ENERGY COMPANY	:	

**INITIAL BRIEF OF
PECO ENERGY COMPANY**

**Before Administrative Law Judge
Mary D. Long**

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I. INTRODUCTION

For more than thirty years, PECO Energy Company (“PECO” or the “Company”) has operated a Customer Assistance Program (“CAP”) designed to offer affordable payments for utility service to low-income customers. Although the structure of PECO’s CAP has evolved over time, PECO has consistently worked with stakeholders to identify cost-effective ways to improve affordability for low-income customers. PECO’s existing CAP “Fixed Credit Option” or “FCO” design was developed by the Company and other parties, including the Tenant Union Representative Network (“TURN”), the complainant in this proceeding, and the Office of Consumer Advocate (the “OCA”), as part of a broad settlement (the “Settlement”) approved by the Pennsylvania Public Utility Commission (the “Commission”) in the docket for the Company’s 2013-2015 Universal Service and Energy Conservation Plan (the “2013-2015 USECP”).¹ The Company’s USECP for the 2016-2018 period (the “2016-2018 USECP”) incorporated the CAP FCO and was approved by the Commission on August 11, 2016.² PECO continues to operate the CAP FCO under the 2016-2018 USECP.³

On August 25, 2020, TURN filed a Formal Complaint against PECO, asserting that PECO is in violation of the Settlement as well as the Company’s 2016-2018 USECP because the CAP FCO does not currently utilize the revised energy burdens (“EBs”) that are a part of the

¹ See PECO Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2012-2290911 (Order entered July 8, 2015).

² See PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2015-2507139 (Order entered Aug. 11, 2016). A number of revisions were made to the 2016-2018 USECP after its initial approval.

³ For reasons detailed in this Brief, PECO has proposed to change its CAP design to a Percent of Income Payment Plan (“PIPP”). The PIPP filing remains pending before the Commission. See PECO’s Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan, Docket No. P-2020-3020727 (filed July 8, 2020).

Commission’s revised CAP Policy Statement (the “Revised CAP Policy Statement”).⁴ The singular focus of TURN’s Formal Complaint is the language of a footnote within the Settlement that provides 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 (the “EB Footnote”).

TURN’s Complaint, however, does not tell the full story. It ignores a Settlement-mandated evaluation showing that the CAP FCO is failing the Company’s poorest customers, transparent discussions with stakeholders (including TURN) about the CAP FCO’s shortcomings and PECO’s plans to change the CAP structure, and Commission-mandated filings concerning the integration of the Revised CAP Policy Statement into PECO’s USECP. Moreover, TURN’s request for relief **will not improve bill affordability under the CAP FCO and will substantially increase the CAP costs that would be recovered from all residential customers.**

Notably, the OCA has joined the Company in critiquing TURN’s overly narrow focus and unsupported requests for relief. A full and fair review of the Company’s actions demonstrates PECO’s consistent, good-faith efforts to improve bill affordability for CAP customers in accordance with the Settlement and subsequent Commission orders.⁵

⁴ *2019 Amendments to Policy Statement on Customer Assistance Program*, 52 Pa. Code § 69.261–69.267, Docket No. M-2019-3012599 (Final Policy Order entered Nov. 5, 2019). The Revised CAP Policy Statement became effective on March 21, 2020, upon publication in the *Pennsylvania Bulletin*. See 50 Pa. Bull. at 1691-95 (Mar. 21, 2020).

⁵ The Commission also recently concluded that issues related to a utility’s implementation of the EB levels in the CAP Policy Statement “should not be considered separately from other parts of [the utility’s] CAP and universal service programs but should be considered as part of [the utility’s] entire universal service plan, including the need for changes and associated costs.” Opinion and Order, *Pa. P.U.C. v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835 (Order entered Feb. 19, 2021), p. 160 (“*Columbia Gas*”). In *Columbia Gas*, the Commission was asked to consider whether the utility was acting in compliance with a prior settlement obligation related to energy burdens. While the Settlement terms at issue in this proceeding are different, PECO firmly believes, consistent with the Company’s September 25, 2020 Motion to Stay, that EB implementation should be considered as part of the Company’s USECP proceeding.

A. Procedural History

On August 26, 2020, PECO was served with TURN’s Formal Complaint concerning the operation of PECO’s CAP FCO. On September 14, 2020, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed a Petition to Intervene and Answer. On September 15, 2020, PECO filed an Answer to TURN’s Formal Complaint. On September 23, 2020, the OCA filed a Notice of Intervention and Public Statement.

On September 25, 2020, PECO filed a Petition in the proceeding for its 2019-2024 USECP seeking Commission approval to utilize the EBs in the Revised CAP Policy Statement in the CAP FCO until the Company transitions to its proposed Percent of Income Payment Plan (the “CAP PIPP”). On September 25, 2020, PECO also filed a Motion to Stay this proceeding pending the disposition of PECO’s Petition at Docket No. P-2020-3022154.

On October 5, 2020, TURN filed Preliminary Objections to PECO’s Answer and, on October 15, 2020, PECO filed an Answer to TURN’s Preliminary Objections. Also on October 15, 2020, TURN filed an Answer in Opposition to PECO’s Motion to Stay. On October 19, 2020, PECO filed an Amended Answer to TURN’s Formal Complaint.

The case was assigned to Administrative Law Judge (“ALJ”) Mary D. Long. At the telephonic Prehearing Conference convened by ALJ Long on October 20, 2020, PECO’s Motion to Stay was denied, TURN’s Preliminary Objections were dismissed as moot, and the following schedule was established (see Prehearing Order dated October 22, 2020):

Date	Event
December 10, 2020	Written Direct Testimony of TURN Due In-Hand
January 7, 2021	Written Rebuttal Testimony Due In-Hand
January 21, 2021	Written Surrebuttal Testimony Due In-Hand

February 8, 2021	Rejoinder Testimony Outline Due In-Hand
February 9, 2021	Evidentiary Hearings by Telephone
March 5, 2021	Main Briefs due In-Hand
March 24, 2021	Reply Briefs due In-Hand

The parties engaged in discovery and submitted written direct, rebuttal and surrebuttal testimony in accordance with the schedule established by ALJ Long. On February 5, 2021, the parties notified ALJ Long that all parties agreed to waive cross-examination and PECO further requested to serve written rejoinder in lieu of oral rejoinder at the hearing. Also on February 5, 2021, ALJ Long cancelled the hearings, directed the parties to file a joint stipulation and motion to admit evidence into the record, and accepted the service of PECO’s written rejoinder. On February 10, 2021, the parties filed a Joint Stipulation and Motion to admit evidence into the record.

B. The CAP FCO And The EB Footnote

In accordance with the Settlement, the CAP FCO provides a fixed credit to CAP customers that is intended to result in an affordable utility bill. Several inputs are necessary to determine the customer credit under the FCO, including household income as a percentage of federal poverty level (“FPL”) guidelines, the number of household members, utility usage, and the allowable EBs set forth in the Commission’s CAP Policy Statement.⁶ When a customer enrolls in CAP, recertifies for continued participation in CAP, changes their financial income information, or reaches a quarterly adjustment, an FCO calculation is generated.

⁶ See 52 Pa. Code § 69.265.

The EB Footnote in the Settlement addresses a table incorporated in the Settlement which provides the maximum allowable energy burdens for FCO calculations. The footnote provides in its entirety:

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

II. ARGUMENT

A. **PECO Has Met Its CAP FCO Obligations Under The Settlement And 2016-2018 USECP**

In implementing the FCO, PECO has complied with the Company's obligations under the Settlement and Commission orders. Despite TURN's and CAUSE-PA's insistence to the contrary, the EB Footnote cannot be viewed in isolation from other terms within the Settlement or from subsequent Commission orders regarding the implementation of the Revised CAP Policy Statement and the EBs.

1. **The EB Footnote Was Part Of A Broader Settlement Focused On Achieving Bill Affordability**

The central objective of the Settlement was the implementation of a CAP framework that improved bill affordability for low-income customers. To that end, as part of the Settlement, PECO agreed to operate the FCO program for two years, collect data from those two years of operation, engage an independent evaluator (APPRISE)⁸ to assess the program based on those data, and submit the evaluation (the "APPRISE Evaluation") in June 2019 to the Commission

⁷ See Joint Petition For Settlement, Docket No. M-2012-2290911 (filed Mar. 20, 2015).

⁸ APPRISE is an acronym for the Applied Public Policy Research Institute for Study and Evaluation.

and the parties to the Settlement.⁹ In her Recommended Decision adopted by the Commission, ALJ Cynthia Williams Fordham found that the parties had presented “clear and reasonable reasons for approval of the FCO program,” including “the affordability of the new program” and “the proposed evaluation after two years and the ongoing collaborative to address issues that arise.”¹⁰

Both TURN and CAUSE-PA contend that the APPRISE Evaluation is not relevant to the issues raised in this proceeding.¹¹ Similarly, TURN argues that “[w]hether the FCO structure is adequate to accomplish affordability goals is not the subject of this proceeding”.¹² At the time of the Settlement, however, the expected improvement in bill affordability and the importance of the APPRISE Evaluation were highlighted by TURN and CAUSE-PA. For example, TURN’s Statement in Support provided the following:

As provided in the Term Sheet, PECO proposes, and TURN et al. supports, that an expert external evaluation of PECO’s FCO be undertaken beginning in late 2018, in order to assess two full years of operational data. TURN et al. submit that **such evaluation will be essential to determining the viability of the FCO to render affordable bills to CAP participants**. TURN et al. believe the FCO design holds promise, and look forward to an expert analysis that will hopefully demonstrate significant improvement in both

⁹ See Joint Petition For Settlement, Docket No. M-2012-2290911 (filed Mar. 20, 2015); see also OCA St. No. 1-R, p. 7 (“Because an FCO program design was new to PECO, however, at the same time PECO agreed to implement the FCO, it also agreed that it would reasonably quickly evaluate the impacts of the FCO on delivering affordable home energy.”).

¹⁰ Docket No. M-2012-2290911, Recommended Decision of Administrative Law Judge Cynthia Williams Fordham (June 11, 2015), p. 36.

¹¹ TURN St. No. 1-SR, p. 5 (“[t]he referenced APPRISE evaluation was required by a separate and distinct settlement term. . . . That evaluation is not relevant to PECO’s current, ongoing obligations – for as long as it operates its CAP as an FCO, it must operate the FCO according to the terms of its USECP and the Settlement.”); CAUSE-PA St. No. 1-SR, pp. 9-11 (“PECO’s obligation to revise the FCO’s maximum energy burdens is based upon a specific commitment in the Settlement that is independent of any other modifications to universal service program details, CAP elements, or even any potential attempts to modify the basic CAP structure.”).

¹² TURN St. No. 1-SR, p. 7.

the breadth and depth of affordability obtained for PECO's CAP participants.¹³

CAUSE-PA's Statement in Support similarly indicated that CAUSE-PA fully expected that data from the APPRISE Evaluation could result in changes to the terms agreed upon in the Settlement:

External Review of FCO Program: An appropriately timed, **expert review of the FCO program is critical to the program's success, as it provides 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.** To ensure an appropriate level of data is collected to enable a full and meaningful review of the FCO, the Settlement provides that PECO will seek a one-year extension of its currently scheduled six-year evaluation. This will provide the external evaluators with two full years of data with which to analyze the success of the FCO. **CAUSE-PA recognizes the importance of complete data to arrive at meaningful analysis and asserts that regular and robust review of and adjustment to the FCO program is critical to ensure that it meets the projected affordability targets.** As such, CAUSE-PA asserts that this provision will ultimately serve the public interest to have a thorough and data-driven evaluation of the FCO program.¹⁴

PECO continues to believe that bill affordability is an essential component of the Settlement and central to any interpretation of its provisions. As detailed in the following sections, PECO followed the process contemplated in the Settlement by evaluating the effectiveness of the CAP FCO, analyzing potential CAP changes to improve bill affordability, and then proposing a change in CAP structure. At each step in the process, the Company was open and transparent with the Commission and stakeholders, including TURN, about its findings and plans for future action.

¹³ See TURN St. No. 1, Ex. C, p. 4 (emphasis added).

¹⁴ See CAUSE-PA's Statement in Support, Docket No. M-2012-2290911, p. 10 (emphasis added).

2. The APPRISE Evaluation Showed The Failure Of The CAP FCO To Improve Affordability And Therefore PECO Began To Investigate CAP Design Changes

Consistent with the Company’s obligations under the Settlement, on June 28, 2019, PECO filed the APPRISE Evaluation, which showed that during calendar years 2017 and 2018 approximately 80% of customers with household income at or below 50% of the FPL received unaffordable bills under the FCO.¹⁵ TURN acknowledged the gravity of the APPRISE Evaluation in a different proceeding, explaining that it “revealed that the FCO redesign did not resolve those longstanding affordability issues – and in fact further exacerbated the unaffordability issues which led to the adoption of the FCO.”¹⁶ As OCA witness Roger D. Colton further explained:

Despite the fact that the FCO, at the time it was agreed to by Settlement, was believed to “hold promise” as a means to improve affordability, the Evaluation that was agreed upon as a means to demonstrate whether that “promise” was realized in reality found that, for the lowest income PECO CAP participants, the FCO did not reduce CAP bills to a level that would result in burdens at or below the PUC burdens. As a result, PECO was left with either continuing a program design knowing that from more than 70% (electric and gas—gas burdens) to more than 80% of its lowest income CAP participants would receive bills exceeding the PUC target, or developing modifications to its FCO program that would improve affordability.¹⁷

In response to the unfavorable results of the APPRISE Evaluation, PECO stated it would continue to investigate the drivers of the unaffordability experienced in 2017 and 2018 for the

¹⁵ APPRISE PECO Energy Universal Services Program Final Evaluation Report (June 2019), Docket Nos. M-2012-2290911 & M-2015-2507139.

¹⁶ 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 Nos. M-2018-300579 and P-2020-3020727 (filed July 28, 2020), p. 9.

¹⁷ OCA St. No. 1-R, p. 9.

0%-50% FPL customer group.¹⁸ As part of this effort, PECO would “assess whether other programmatic, design, or structural issues in the FCO” contributed to unaffordability, and, “if so, what scope and types of changes are available and appropriate.”¹⁹ The Company proposed an action plan for the following nine months, including: (1) completing its analysis of the FCO data and developing preliminary recommendations to improve the FCO; (2) engaging with other signatories to the Settlement to discuss the outcome of PECO’s analysis and preliminary recommendations, obtain input on those issues, and determine whether the parties can agree to proposed programmatic changes; and (3) filing a proposal with the Commission to revise the FCO to further improve affordability for its CAP customers with incomes of 50% or less of the FPL.²⁰

3. The Commission Directed PECO, Among Others, To Make A Filing Regarding Implementation Of The Revised CAP Policy Statement

On November 5, 2019, as the Company was implementing its FCO action plan, the Commission issued the Revised CAP Policy Statement, which, among other things, included updated EB percentages.²¹ The Commission’s Order further directed electric distribution companies and natural gas distribution companies to file addendums to their existing or proposed USECPs indicating how they intended to implement the policy changes specified in the Revised CAP Policy Statement.²² As part of a February 6, 2021 Order on Reconsideration and

¹⁸ June 28, 2019 PECO Transmittal Letter accompanying the APPRISE Evaluation, p. 2.

¹⁹ *Id.*

²⁰ *Id.* pp. 2-3.

²¹ The Revised CAP Policy Statement did not become effective by its terms until publication in the *Pennsylvania Bulletin* on March 21, 2020. Final Policy Order, Docket No. M-2019-3012599, p. 105, Ordering Paragraph no. 4 (stating that the Revised CAP Policy Statement would become effective upon its publication in the *Pennsylvania Bulletin*); *see also* 50 Pa. Bull. at 1691-95 (Mar. 21, 2020).

²² Final Policy Order, Docket No. M-2019-3012599, p. 106, Ordering Paragraph no. 6.

Clarification, the Commission further explained the filing requirements regarding implementation of the Revised CAP Policy Statement:

The intent of the cover letter and addendum filing requirements in the Ordering Paragraphs is to determine: (1) to what extent a utility is already complying with the amendments to the CAP Policy Statement (cover letter); (2) whether and how a utility plans to voluntarily amend its USECP to comply with the other aspects of the revised CAP Policy Statement (addendum); and (3) what a utility's timeline is for any compliance, recognizing that implementation by January 1, 2021, would allow utilities to collect meaningful input for the universal service rulemaking (addendum).

Although compliance with the new provisions in the CAP Policy Statement is voluntary, the requirement to file a cover letter, an addendum reflecting extended terms of a USECP, and an addendum reflecting CAP changes as the utility proposes to implement are not.

....

Accordingly, to clarify, the filing pursuant to the November 5 Order shall be at a utility's USECP docket and shall specify

- Those new provisions in the CAP Policy Statement with which the utility is already compliant and which new provisions of the CAP Policy Statement the utility is not prepared to address until its next proposed USECP is due to be filed. This can be done in a cover letter.
- **What changes to its current or pending USECP, if any, the utility proposes to implement predicated on the new provisions in the CAP Policy Statement. This shall be done as an addendum to an existing or pending USECP.** In support of a proposal, in the form of a petition to change an existing or in the form of an amended proposed USECP, the utility shall file and serve enrollment and budget projections based on the proposed change(s). The Commission may seek stakeholder comment on specific proposed change(s).²³

²³ Order on Reconsideration and Clarification, Docket Nos. M-2019-3012599 & No. P-2020-3016889 (Order entered Feb. 6, 2020), pp. 9-11 (emphasis added).

TURN argues that PECO was not obligated to make any filing to implement the revised EBs, citing language PECO used in comments filed on May 11, 2019, about the “automatic” implementation of EB changes.²⁴ The Company believes that the Commission’s Orders described above, both of which were issued after the comments cited by TURN, created a **mandatory filing requirement** for the Company to present proposed “changes to its current or pending USECP . . . predicated on the new provisions in the CAP Policy Statement”.

In accordance with the Commission’s Order, on January 16, 2020, PECO filed a letter that described the portions of the Revised CAP Policy Statement that the Company was already implementing or intended to implement. The Company also noted that it was still considering several provisions of the Revised CAP Policy Statement. On March 26, 2020, after the Revised CAP Policy Statement became effective, PECO filed a letter with the Commission stating the Company’s intention to make a single filing in which it would address the issues raised in the APPRISE Evaluation and the remaining provisions of the Commission’s Revised CAP Policy Statement. The letter provided the following discussion of the Company’s efforts and future plans:

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

By this letter, PECO reaffirms its commitment to addressing the issues revealed in the FCO evaluation and to incorporating the guidance the Commission has provided in its subsequent orders. To that end, PECO

²⁴ TURN St. No. 1, p. 20 and n.58.

plans to 1) complete its assessment of all factors by mid-April; 2) to host stakeholder meetings/calls in late April and throughout May; and 3) to file its CAP revisions no later than the end of June 2020.²⁵

After the Company's filings, on April 10, 2020, counsel for TURN and the Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "TURN *et al.*") spoke with PECO's counsel and Mr. Mark Kehl to state their position that the Company was in violation of the Settlement by not immediately implementing the EBs from the Revised CAP Policy Statement in the FCO. Consistent with the Company's March 26, 2020 filing, PECO explained that it was seeking a holistic approach to address the affordability issues identified in the APPRISE Evaluation and the recommendations in the Revised CAP Policy Statement.²⁶

4. **After Careful And Transparent Analysis, PECO Made The PIPP Filing In Response To The APPRISE Evaluation And The Commission's Filing Directives**

In the spring of 2020, PECO held a series of calls with stakeholders, including TURN, in which the Company presented its analysis of different alternatives for revising PECO's CAP. During those calls, stakeholders discussed their dissatisfaction with the FCO model and expressed a preference for a PIPP. Five different alternatives were analyzed by the Company and presented to stakeholders on April 15, 2020. Two alternatives involved retaining the CAP FCO framework. The first, Option 1 in the presentation, retained the existing EBs but made other minor adjustments. The second, Option 2 in the presentation, implemented the EBs in the Revised CAP Policy Statement and made the same minor adjustments as in Option 1. The other three alternatives (Options 3, 4A, 4B in the presentation) involved replacing the CAP FCO with

²⁵ Mar. 26, 2020 PECO Letter, Docket Nos. M-2012-2290911, M-2015-2507139 and M-2018-3005795, p. 2 (emphasis added).

²⁶ PECO St. No. 1-R, p. 9.

a PIPP and utilizing a variety of EB levels. Each of the alternatives was projected to increase annual universal service costs by \$11 million to \$15 million.²⁷

Importantly, the Company's analysis showed that **incorporating the EBs from the Revised CAP Policy Statement in the FCO made no improvement in bill affordability.**²⁸

Utilizing the revised EBs would, however, result in substantial additional universal service costs to be recovered from all residential customers. This additional cost for no improvement in affordability is significant. As the OCA explained, "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".²⁹ PECO ultimately stated its intention to stop using the FCO model and instead implement a PIPP in which CAP customers would receive a credit based upon their annual income and a modified version of the Commission's updated EBs. At no time during these stakeholder meetings did TURN propose that PECO first pursue one of the CAP FCO alternatives before transitioning to a PIPP.³⁰

On July 8, 2020, in accordance with the Settlement and the Commission's filing directives described in Section II.A.3 above, PECO filed an amended proposed 2019-2024 USECP (the "Amended USCEP") which included a transition from the CAP FCO to a PIPP.³¹

The Company's proposed PIPP includes reduced minimum bill amounts and utilizes the EBs

²⁷ PECO St. No. 1-R, p. 10; Ex. MK-1.

²⁸ PECO St. No. 1-R, p. 11; Ex. MK-1; *see also* OCA St. No. 1-R, p. 11 ("The continuing unaffordability of CAP bills for PECO low-income customers is grounded in the observation that the unaffordability is not a function of the target burden, but rather is a function of the underlying program design.").

²⁹ OCA St. No. 1-R, p. 14.

³⁰ PECO St. No. 1-R, pp. 11-12; Ex. MK-2.

³¹ *See* PECO's Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795 (filed July 8, 2020).

from the Revised CAP Policy Statement for the 0%-50% FPL and 51%-100% FPL customer groups and retains the Company's existing EBs for the 101%-150% FPL customer group. The Company's analysis showed substantial gains in affordability for customers in the 0%-50% FPL income range, with bill unaffordability dropping from around 80% under the current FCO³² to around 50% under the PIPP proposal.³³ Bill affordability is also expected to improve for the 51%-100% FPL income range (from up to 42% under the current FCO to under 10% under the PIPP proposal) and 101%-150% FPL income range (from up to 15% under the current FCO to under 5% under the PIPP proposal). In the docket for the proposed 2019-2024 USECP, TURN *et al.* has expressed strong support for the transition from the FCO to the PIPP.³⁴

On July 17, 2020, after the Amended USCEP was filed, counsel for TURN *et al.* sent PECO a letter demanding, among other things, immediate implementation of the revised EBs.³⁵ On September 25, 2020, PECO filed a Petition in its current USECP proceeding to utilize the EBs from the Revised CAP Policy Statement as part of the FCO until the Company transitions from the FCO to the PIPP (the "EB Proposal").³⁶ As part of that filing, PECO estimated the cost of implementing the EB Proposal for the first few months of 2021 would be approximately \$9 million.³⁷

In short, PECO has complied with the Commission's mandatory filing directives regarding implementation of the Revised CAP Policy Statement, including the revised EBs. As

³² See APPRISE Evaluation; Ex. MK-1, p. 15.

³³ See Ex. MK-2.

³⁴ TURN *et al.* Answer, Docket No. M-2018-3005795, p. 1.

³⁵ See Ex. MK-3.

³⁶ See Docket No. M-2018-3005795. The Petition was docketed at P-2020-3022154.

³⁷ Petition of PECO Energy Company For Approval of An Amendment to its Proposed Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795 (filed Sept. 25, 2020).

part of that compliance, and in light of PECO's implementation of the Settlement and the subsequent consensus that the FCO was not resulting in affordable bills for CAP customers, PECO filed an Amended USCEP on July 8, 2020, that described how it intended to comply with the Revised CAP Policy Statement and replace the FCO with a PIPP. The Amended USCEP, which PECO stands ready to implement, remains pending before the Commission.

B. If The Commission Determines That Any Relief Is Warranted, TURN's Requests For Relief Are Without Support

TURN has requested several forms of relief, including requests that the Commission: (1) order PECO to retroactively calculate CAP Credits for all CAP customers back to the date the Commission approved the new EBs, and provide bill credits to CAP customers or reduce past-due balances as appropriate; (2) order PECO to provide retroactive arrearage forgiveness for all partial payments that would have satisfied full payment under the revised bills; and (3) fine PECO for its willful violation of a Commission-approved Settlement.³⁸ As set forth above, TURN has entirely failed to demonstrate that PECO has failed to comply with the Settlement given subsequent developments, including the Commission's mandatory directives to utilities to make filings regarding implementation of the Revised CAP Policy Statement.

In the event the Commission nevertheless determines that some form of relief is warranted as a result of TURN's Complaint, the Commission should reject each of TURN's proposed requests. As described below, no relief is warranted for any amounts accruing prior to the effective date of the Revised CAP Policy Statement, and individualized retroactive bill calculations should not be required in light of the significant time and expense that those calculations would require. Furthermore, in light of PECO's actions to implement both the

³⁸ TURN Compl., p. 17; TURN St. No. 1, pp. 24-25.

Settlement and the Commission’s directives regarding the Revised CAP Policy Statement, the Commission should not impose any fines or penalties.

1. Any Relief Should Reflect The March 21, 2020 Effective Date Of The Revised CAP Policy Statement

TURN repeatedly represents that the EBs were “changed” when the CAP Policy Statement was amended on November 5, 2019, and that the Company should have incorporated the updated EBs in the FCO at that time.³⁹ This position, however, contradicts the plain language of the Commission’s Final Policy Order that states that the Revised CAP Policy Statement would not become effective until publication in the *Pennsylvania Bulletin*.⁴⁰ The Revised CAP Policy Statement was published in the *Pennsylvania Bulletin* on March 21, 2020.⁴¹

TURN has offered no legal justification for why the revised EBs should be deemed effective prior to March 21, 2020. Indeed, in another proceeding, TURN has admitted that the Revised CAP Policy Statement became effective when published.⁴² Should the Commission grant any relief in this proceeding, it should reflect the fact that the revised EBs became effective on March 21, 2020.

³⁹ See, e.g., TURN St. No. 1, pp. 8, 19, 22; TURN St. No. 2, pp. 11-12 (“Since November 2019, PECO has been overcharging CAP customers”); TURN St. No. 1-SR, p. 11 (“The Energy Burdens were indeed ‘changed’ by the Commission’s Final Order issued on November 5, 2019.”).

⁴⁰ Final Policy Order, p. 105, Ordering Paragraph no. 4 (stating that the Revised CAP Policy Statement would become effective upon its publication in the *Pennsylvania Bulletin*).

⁴¹ 50 Pa. Bull. at 1691-95 (Mar. 21, 2020).

⁴² 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 Nos. M-2018-300579 and P-2020-3020727 (filed July 28, 2020), p. 4 (“The Commission’s CAP Policy Statement became effective when it was published in the *Pennsylvania Bulletin* on March 21, 2020.”).

2. The Individual Retroactive Bill Credits Requested By TURN Cannot Be Automated Under PECO's Existing IT System

Both TURN and CAUSE-PA argue that individually calculated retroactive bill credits and arrearage determinations are the most appropriate form of relief in this case, and that PECO must demonstrate why such adjustments could not be accomplished.⁴³

PECO witness Mark Kehl explained why individual-by-individual retroactive CAP credit calculations requested by TURN cannot be recreated in PECO's Customer Information Management System ("CIMS"). Most significantly, PECO's CIMS has the FCO calculation built as a point-in-time calculation. The calculation pulls from specific data tables that contain the relevant data to calculate the FCO at any given time. Those data tables do not store historic billing information beyond what is needed for the point-in-time FCO calculation. The rolling nature of the FCO-related data tables prevents the Company from automatically recalculating CAP bills for a prior period.⁴⁴

Not only is the FCO credit determined by a point-in-time calculation, the calculation is also performed, at a minimum, on a quarterly basis. For this reason, to accurately recalculate CAP bills, PECO would need to recreate each customer's FCO credit at multiple periods for a given year with the point-in-time information at each of those quarterly reassessment dates. Other factors such as pro forma estimation of usage (for CAP customers who have not been at an address for twelve months), weather normalization factors, monthly allocation percentages of the annual Fixed Credit, and application of maximum annual CAP credits and minimum bill

⁴³ TURN St. No. 1-SR, p. 12; CAUSE-PA St. No. 1-SR, pp. 12-13.

⁴⁴ PECO St. No. 1-RJ, pp. 10-11.

requirements would all need to be researched and obtained (if available) for each historical point in time for which a prior period calculation would occur.⁴⁵

In addition, due to the volume of CAP accounts and the potential timeframe covered, a manual recalculation of bills for each CAP customer would be extremely difficult. The CAP program has nearly 100,000 participants and TURN has requested retroactive credits to November 2019 (fifteen months ago). Since the calculation would need to be done separately for each three-month period for each customer, a minimum of five calculations per customer would be necessary. Thus, the approach recommended by TURN and CAUSE-PA would require approximately half a million individual, manual calculations.⁴⁶

While the Company could initiate an information technology (“IT”) project to automate the calculation of retroactive credits, the full scope of such a project has not been developed at this time and therefore an estimate of the project cost or implementation timeframe is not available.⁴⁷

If the Commission determines that retroactive bill relief is warranted in this proceeding, PECO believes it would be appropriate to provide such relief through a systemwide average bill adjustment for every CAP customer. Providing relief in this manner would avoid the time and expense required to either manually perform approximately half a million individual calculations or complete an IT project to automate such calculations. Exhibit MK-1RJ details PECO’s proposed allocation of the systemwide average adjustment if such relief is ordered. The Company took the average CAP credit and increased the credits, by FPL group and commodity,

⁴⁵ *Id.* pp. 11-12.

⁴⁶ *Id.*

⁴⁷ *Id.* pp. 12-13.

based on the impact of changing the EBs to the levels in the Revised CAP Policy Statement.

This allocation appropriately directs the increased CAP credits in proportion to the EB changes.⁴⁸

3. **Fines Are Not Warranted As PECO Has Acted In Good Faith In Accordance With The Settlement And Commission Filing Directives To Improve Bill Affordability For Customers**

In addition to customer-specific bill relief, TURN is asking the Commission to impose a penalty on PECO to “deter future violations”.⁴⁹ TURN contends that PECO has “knowingly violated” the Settlement and “made no attempt to comply” with the revised EBs after they were established.⁵⁰

Contrary to TURN’s assertions, PECO has provided detailed evidence of its efforts to address the Settlement obligations regarding the CAP FCO. The steps taken by the Company were appropriately informed by the APPRISE Evaluation and the Commission’s mandatory filing directives regarding the Revised CAP Policy Statement. Notably, the OCA – which was also a party to the Settlement – has not taken issue with the Company’s actions regarding the CAP FCO and, in fact, submitted expert testimony explaining the reasonableness of the Company’s efforts to revise the format of CAP:

Lowering the home energy burden does not “fix” that problem. The continuing unaffordability is a function of the fluctuation in customer bills, not a function of what level of burden is defined to be affordable. Even with a lower burden, CAP participant bills would continue to fluctuate and unaffordable burdens would still be experienced. Moreover, lowering home energy burdens would not reduce the number of accounts facing unaffordable bills due to the imposition of minimum charges. In short, lowering the home

⁴⁸ *Id.* p. 13.

⁴⁹ TURN St. No. 1, pp. 27-30.

⁵⁰ *Id.* TURN also claimed, for the first time in surrebuttal, that PECO was failing to meet a separate obligation under the Settlement concerning annual credit adjustments after a systemwide residential distribution rate increase. TURN St. No. 1-SR, pp. 10-11. PECO witness Kehl provided an extensive response explaining why TURN’s claims were unfounded. PECO St. No. 1-RJ, pp. 5-10.

energy burdens would increase the cost of the CAP without addressing the underlying structural problem with the program. The evaluation found that, if affordability were to be pursued, what was needed was a program redesign.⁵¹

The parties to the Settlement agreed at the time of the Settlement that the results of the APPRISE Evaluation could form the basis for additional changes to PECO's CAP program. PECO utilized that process, submitted the APPRISE Evaluation to the Commission and the parties, met with the parties to present analysis of different CAP options in light of the APPRISE Evaluation and the Revised CAP Policy Statement, and made a filing with the Commission to implement that comprehensive change to a PIPP.

During the Company's stakeholder meetings leading up to the PIPP filing, TURN did not propose that PECO first implement a modified CAP FCO before transitioning to a PIPP. Once the PIPP filing was made, however, TURN filed a formal complaint in this docket stating that PECO should implement the lower EBs as part of the FCO (on both a retroactive and prospective basis). The Company has since made a filing with the Commission requesting that it be allowed to move to lower EBs during the "stub" period prior to approval and implementation of the PIPP. This series of open, transparent Commission filings and stakeholder discussions again underscores the Company's sustained good-faith efforts to improve bill affordability for CAP customers. Under these circumstances, even if the Commission determines that customer relief is appropriate, fines and penalties are not warranted.

⁵¹ OCA St. No. 1-R, pp. 10-11.

III. CONCLUSION

For the reasons set forth above, PECO Energy Company denies that TURN is entitled to the relief requested and asks that TURN's Complaint at Docket No. C-2020-3021557 be dismissed with prejudice.

Respectfully submitted



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