

COMMONWEALTH OF PENNSYLVANIA



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March 5, 2021

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

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

\*304801

CERTIFICATE OF SERVICE

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

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

Dated this 5<sup>th</sup> day of March 2021.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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MAIN BRIEF  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

### A. Overview

On August 25, 2020, the Tenant Union Representative Network (TURN) filed a Formal Complaint regarding PECO Energy Company's compliance with the Joint Petition for Settlement in the matter of PECO Energy Company (PECO or Company) Universal Service and Energy Conservation Plan 2013-2015 at Docket No. M-2012-2290911 (Settlement). In its Formal Complaint, TURN argued that PECO is not in compliance with the Settlement because PECO did not change the energy burdens used to calculate its Fixed Credit Option (FCO) upon the issuance of the November 5, 2019 CAP Policy Statement Order at Docket No. M-2019-3012599. Formal Complaint at ¶¶ 73, 80-82. TURN requested as relief that PECO be held in violation of the Settlement; that the Company should retroactively implement the revised energy burdens identified in the revised CAP Policy Statement; and that the Commission order retroactive CAP credits to the date of the revised CAP Policy Statement and arrearage forgiveness for any partial payments made. Formal Complaint at 16-17, ¶¶ A-I.

For the reasons set forth below, the OCA submits that the 2015 Settlement at Docket No. M-2012-2290911 did not require PECO to immediately implement the energy burdens identified in the Commission's revised CAP Policy Statement upon entry of the Final CAP Policy Statement Order, 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261-267, Docket No. M-2019-3012599 (Nov. 5, 2019)(Final CAP Policy Statement Order) as proposed by TURN. The OCA submits that TURN's request for retroactive energy burdens credits to the November 5, 2019 Final CAP Policy Statement Order should be denied.

B. Procedural History

On March 15, 2015, PECO, OCA, CAUSE-PA, Action Alliance and TURN filed the Joint Petition for Settlement PECO's Universal Service and Energy Conservation Plan 2013-2015 at Docket No. M-2012-2290911. Through this Settlement, PECO's Customer Assistance Program (CAP) was, *inter alia*, changed to a new design called a Fixed Credit Option (FCO). The FCO was a new design for a Pennsylvania CAP and it was intended to improve the affordability of PECO's CAP. On July 8, 2015, the Commission approved the Settlement without modification.

As part of the Settlement, PECO was required to conduct an evaluation of the FCO after two years of data was available. On June 28, 2019, PECO filed the APPRISE Evaluation of the Fixed Credit Option (FCO) program pursuant to the requirements of the Settlement.

On November 19, 2019, the Commission issued a Final Policy Statement regarding Customer Assistance Programs. 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-267, Docket No. M-2019-3012599 (Final CAP Policy Statement Order). In that Final Policy Statement, the Commission, *inter alia*, reduced the energy burdens for customers participating in CAP. 52 Pa. Code § 69.265(2)(i); see also, Final CAP Policy Statement Order at 100.

Petitions for Reconsideration were filed by the OCA and the Energy Association of Pennsylvania (EAP). On February 6, 2020, the Commission issued its Orders regarding the Petitions for Reconsideration filed by the Energy Association of Pennsylvania (EAP) and OCA. See, Petition of the Energy Association of Pennsylvania for Reconsideration and Clarification of the November 5<sup>th</sup>, 2019 Final CAP Policy Statement and Order at Docket No. M-2019-3012599, Docket No. P-2020-3016889, Order (Feb. 6, 2021); Petition of the Office of Consumer Advocate for Reconsideration and Clarification of the November 5<sup>th</sup>, 2019 Final CAP Policy Statement and Order at Docket No. M-2019-3012599, Docket No. P-2020-3016885, Order (Feb. 6, 2021)(OCA

Reconsideration Order). In the EAP Reconsideration Order, the Commission clarified that utilities could voluntarily implement the CAP Policy Statement changes to their existing or prospective Universal Service and Energy Conservation Plans. EAP Reconsideration Order at 12. The Commission sought to have implementation of the changes by January 1, 2021. Id.

By its terms, the Final Policy Statement was to become effective upon publication in the *Pennsylvania Bulletin*. Publication occurred on March 21, 2020. 50 Pa. B. No. 1691-1695.

On July 8, 2020, PECO filed an amended proposed 2019-2024 Universal Service and Energy Conservation Plan that proposed to eliminate the FCO and transition to a Percentage of Income Payment Plan (PIPP) with the revised CAP Policy Statement energy burdens. This change was proposed in response to the APPRISE Evaluation that showed the FCO design was not achieving its intended purpose of improving affordability and to reflect the new energy burdens contained in the Final Policy Statement.

On August 25, 2020, TURN filed its Formal Complaint regarding PECO Energy Company's compliance with the Joint Petition for Settlement in the matter of PECO Energy Company Universal Service and Energy Conservation Plan 2013-2015 at Docket No. M-2012-2290911 that is the subject of this proceeding. In its Formal Complaint, TURN argued that PECO should have changed the energy burdens in the FCO pursuant to the Settlement on November 19, 2019 when the Commission entered the Final Policy Statement Order.

On September 14, 2020, the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene and Answer, and on September 15, 2020, PECO filed its Answer to TURN's Formal Complaint. On September 23, 2020, the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement.

On September 25, 2020, PECO filed a Petition of PECO Energy Company for Approval of an Amendment to its Proposed Universal Service and Energy Conservation Plan, Docket No. P-2020-

3022154 (September 25, 2020) (Petition to Amend) and a Motion to Stay this proceeding pending the Commission's determination on the Company's Petition to Amend its CAP. TURN v. PECO Energy Co., Docket No. C-2020-3021551, Motion to Stay of PECO Energy Company (Sept. 25, 2020) (Motion to Stay). PECO's Petition to Amend its CAP proposes to amend the current Fixed Credit Option to utilize the energy burdens set forth in the Commission's CAP Policy Statement for the period (starting from the first billing cycle after Commission approval) that the CAP FCO is still in place.<sup>1</sup> Petition to Amend at 1. TURN filed its Answer in Opposition to the Motion to Stay on October 15, 2020. TURN v. PECO Energy Co., Docket No. C-2020-3021551, TURN Answer in Opposition to Motion to Stay of PECO Energy Company (Oct. 25, 2020) (Answer to Motion to Stay).

On October 5, 2020, TURN filed Preliminary Objections to the Answer of PECO, and PECO filed its Answer on October 15, 2020.

ALJ Mary D. Long was assigned to this proceeding. On September 28, 2020, ALJ Long issued her Prehearing Conference Order. The Prehearing Conference Order provided that an in-person Prehearing Conference would take place on October 20, 2020.

On October 22, 2020, ALJ Long issued her Prehearing Order which denied the PECO Motion for Stay and set forth the procedural rules and litigation schedule for the proceeding.

On December 10, 2020, TURN submitted the Direct Testimony of Philip A. Bertocci and Philip Lord. On January 7, 2021, the OCA submitted the Rebuttal Testimony of Roger D. Colton,<sup>2</sup> and PECO submitted the Rebuttal Testimony of Mark Kehl. On January 21, 2021, TURN submitted the Surrebuttal Testimony of Philip A. Bertocci and CAUSE-PA submitted the

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<sup>1</sup> The OCA notes that the Petition to Amend remains pending before the Commission.

<sup>2</sup> Mr. Colton is a Principal of Fisher Sheehan & Colton, Public Finance and General Economics in Belmont, Massachusetts. He provides technical assistance to public utilities and primarily works on low income utility issues. Mr. Colton has devoted his professional career to helping public utilities, community-based organizations and state and local governments design, implement and evaluate energy assistance programs to help low income households better afford their home energy bills. He has been involved with the development of the vast majority of ratepayer-funded affordability programs in the nation.

Surrebuttal Testimony of Harry Geller. On February 3, 2021, PECO submitted the Rejoinder Testimony of Mark Kehl.

On February 4, 2021, the parties informed ALJ Long that the parties had agreed to mutually waive cross-examination of all witnesses and would file a Joint Motion to Admit Written Testimony.

On February 5, 2021, PECO submitted the revised Rejoinder Testimony of PECO witness Mark Kehl.

On February 10, 2021, TURN filed the Joint Motion to Admit Written Testimony and Exhibits into the Formal Evidentiary Record and the Joint Stipulation for Admission of Testimony.

On February 11, 2021, ALJ Long granted the Motion and admitted the pre-served written testimony into the record.

C. Legal Standards

A complainant has the burden to prove his or her allegations by a “preponderance of the evidence.” 66 Pa. C.S. § 332(a). See also North American Coal Corp. v. Commonwealth of Pa., 2 Pa. Commw. 469, 279 A.2d 356 (1971). Proving an allegation by a “preponderance of the evidence” means that one party has presented evidence, which is more convincing than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950) (Se-Ling). The Pennsylvania Supreme Court stated further:

. . . The burden of proof must be by a preponderance of the evidence, which means when it is weighed there will be a perceptibly greater weight in favor of the plaintiff’s proof and more than a mere scintilla. . . . If we visualize evidence as something weighed in an ordinary balance scales and if the evidence plaintiff offers in support of his claim is so much more weighty in probative value than the evidence offered in opposition to it that it tips the scales on the side of the plaintiff, the latter has proved his claim by the fair weight of the evidence. . . .

Se-Ling, 364 Pa. at 48, 70 A.2d at 855-56.

The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility should be held responsible or accountable for the problem described in the complaint. Kiback v. IDT Energy, Inc., Docket No. C-2014-2409676, Opinion and Order at 6 (Aug. 20, 2015), citing Patterson v. The Bell Telephone Co. of PA, 72 Pa. P.U.C. 196 (1990); see also Herp v. Respond Power, LLC, Docket No. C-2014-2413756, Opinion and Order at 3 (Jan. 28, 2016). A complainant's evidence must be slightly more convincing than evidence presented by the utility but also must be substantial, and not just a trace of evidence or suspicion. Kiback at 6; Herp at 3-4. The ultimate burden of proof always remains with the complainant, even though the burden may shift to the utility periodically to rebut evidence offered by the complainant. Kiback at 7; Herp at 4.

## **II. SUMMARY OF ARGUMENT**

The OCA submits that TURN's Formal Complaint and request for retroactive relief should be denied. TURN's Formal Complaint fails to read the language of the 2015 Settlement in its full context and misinterprets the requirements of the 2015 Settlement. The OCA submits that TURN's argument that footnote 3 of the Settlement requires the Company to immediately change its energy burdens is in error and cannot be supported by a full reading of the Settlement.

As discussed below, the OCA submits that the context is important to understanding the import of and meaning of the footnote referenced by TURN in its Formal Complaint. TURN attempts to read an immediacy into the language of the footnote that is not there, is inconsistent with program design and inconsistent with the procedures set forth in the Final CAP Policy Statement Orders. Critically, TURN fails to recognize that the primary provisions of the Settlement required an evaluation of the FCO design and a determination as to whether the FCO would achieve the purpose of affordability. The evaluation clearly showed that it would not, and that changing the energy burdens would not solve that problem. TURN has also failed to

acknowledge the significant increased costs to making the proposed change to a program that all parties have agreed is not effective at meeting the needs of CAP customers. TURN's Complaint also does not address or recognize the substantial implementation and operational issues with its proposal, particularly in light of the pending changes to the entire program design, changes which will incorporate the revised energy burdens in the Final CAP Policy Statement.

TURN has failed to meet its burden of proof that the Settlement required the changes requested by TURN in the time frame requested by TURN. TURN's request should be denied.

### **III. ARGUMENT**

#### **A. Introduction**

In its Formal Complaint, TURN seeks to require PECO to immediately implement the energy burdens set forth in the Commission's revised CAP Policy Statement in its FCO program based upon footnote number 3 in the 2015 Settlement that established the FCO design. See, TURN St. 1 at 15-16; See, PECO Energy Company Universal Service and Energy Conservation Plan 2013-2015, Docket No. M-2012-2290911, Settlement at 2, fn. 3 (March 20, 2015)(Settlement). TURN requests that the energy burdens be changed retroactive to the November 5, 2019, the date of the Final CAP Policy Statement Order, as TURN argues is required by footnote 3. The TURN Formal Complaint does not address that the Final CAP Policy Statement Order by its own terms directed that the energy burdens would be effective only upon publication in the *Pennsylvania Bulletin* which occurred on March 21, 2020. See, Final CAP Policy Statement Order at 100; 50 Pa. B. No. 1691-1695 (March 21, 2020). More to the point, the TURN Formal Complaint does not address the fact that footnote 3 was only a part of a comprehensive settlement regarding the FCO. Importantly, as the FCO was a new design, the Settlement required evaluations and adjustments through interrelated provisions if the design was not achieving its purpose of affordability.

In the Settlement, the design of PECO’s Customer Assistance Program was changed from a percentage rate discount program to a Fixed Credit Option (FCO). TURN St. 1 at 12. It was expected that the FCO design would provide more affordable bills to PECO’s CAP customers. PECO transitioned to the FCO design in October 2016 as a part of PECO’s 2016-2018 Universal Service and Energy Conservation Plan. TURN St. 1 at 14; see also, Settlement at Exh. A, 2. Under the new FCO model, instead of a discount off the full tariffed rate, CAP customers received a fixed credit towards the bill. TURN St. 1 at 16-17; see also, Settlement at Exh. A, 2. PECO witness Mark Kehl described the calculation of the FCO as follows:

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 [energy burdens] set forth in the Commission’s CAP Policy Statement.

PECO St. 1 at 3; see also, TURN St. 1 at 15. The Settlement provides the following seven steps to calculate the FCO: (1) Step 1- Determine the customer’s prior year’s undiscounted charges; (2) Step 2- Determine the verified household income and federal poverty level; (3) Step 3- Determine the customer’s allowable energy burden; (4) Step 4- Calculate the customer’s annual credit; (5) Step 5- Apply annual credit to bill; (6) Step 6- Periodic recalculation and adjustment of annual credit; and (7) Step 7- New entrants to the CAP program after program begins. Settlement at Exh. A, 1-6.

The Settlement provision raised in TURN’s Formal Complaint states:

Step 3- Determine customer’s allowable energy burden  
 Once the household’s Federal Poverty Level has been determined, PECO will determine the household’s allowable energy burden, as follows:[superscript reference to footnote 3]

FPL	Electric Non-Heating	Electric Heating	Electric With Gas Heating
0-50%	5%	13%	13%
51-100%	6%	16%	16%
101-150%	7%	17%	17%

Settlement at Exh. A, 2.

Footnote 3 states:

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 this 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 burdens for each poverty level.

Settlement at Exh. A, 2, fn. 3.

As also set forth in Paragraph 5 of the Settlement, PECO was required to conduct an evaluation of the new program after two years of operation. TURN St. 1 at Exh. 1, ¶ 5. PECO had the evaluation completed and filed the APPRISE Evaluation of the FCO program on June 28, 2019. PECO St. 1 at 4. The APPRISE Evaluation revealed that 80% of customers from 0-50% of the Federal Poverty Level received unaffordable bills under the program. PECO St. 1 at 4.

On November 5, 2019, the Commission issued its Final Policy Statement and Order in the proceeding 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-267, Docket No. M-2019-3012599 (Final CAP Policy Statement Order). Petitions for Reconsideration were subsequently filed in the proceeding by the OCA and EAP. On February 6, 2020, the Commission addressed the Petitions for Reconsideration through a subsequent Order.

The Final CAP Policy Statement Order eliminated the energy burden ranges set forth in the prior CAP Policy Statement and established new energy burdens. The new energy burdens identified in the Final CAP Policy Statement Order were as follows:

FPL	Electric Non-Heating	Electric Heating	Natural Gas Heating
0-50%	2%	6%	4%
51-100%	4%	10%	6%
101-150%	4%	10%	6%

Final CAP Policy Statement Order at 4. The Commission’s Final CAP Policy Statement Order stated that the energy burdens would not be effective until they were published in the *Pennsylvania Bulletin*. Final CAP Policy Statement Order at 100. In the EAP Reconsideration Order, the Commission clarified that utilities could voluntarily implement the CAP Policy Statement changes to their existing or prospective Universal Service and Energy Conservation Plans. EAP Reconsideration Order at 12. In the EAP Reconsideration Order, the Commission provided that utilities that wanted to change their Universal Service and Energy Conservation Plan pursuant to the amendments to the CAP Policy Statement should file with the Commission any proposed changes, including energy burden changes. EAP Reconsideration Order at 11-12. The Commission provided that utilities that wanted to change their existing Plan should file a Petition and Addendum and utilities with a pending Plan should file an Addendum to reflect the proposed changes. EAP Reconsideration Order at 12. The Commission sought to have implementation of the changes by January 1, 2021. Id. On March 21, 2020, the revised CAP Policy Statement was published in the *Pennsylvania Bulletin*. 50 Pa. B. No. 1691-1695 (March 21, 2020).

The OCA submits that TURN’s request for implementation of new energy burdens starting in November, 2019 within the context of the ineffective FCO should be denied. OCA witness Colton explained:

Implementing revised energy burdens “immediately” and on a stand-alone basis would not recognize or address the flaws in the FCO identified by the evaluation called for by the Settlement. Such an implementation would require additional funding by ratepayers of a program that is not effective at achieving its purpose. In addition, such a result would not follow the process set forth by the Commission for consideration of program changes related to its Final Policy Statement Order. It would also fail to incorporate (1) program design decisions inherent in the

delivery of percentage of income based bill affordability assistance; and (2) program implementation decisions inherent in the delivery of percentage of income based bill affordability assistance. Given the evaluation, the flawed program design should be remedied as quickly as possible to bring better affordability to program participants at a reasonable cost to other ratepayers.

OCA St. 1-R at 20.

B. TURN's Formal Complaint Reads The Language Of The 2015 PECO Settlement Out Of Context.

TURN's Formal Complaint reads the language of the 2015 Settlement out of its full context and thereby seeks to impose a result that is not consistent with the full Settlement or in the public interest. The OCA submits that the context of the full Settlement is important to understanding the import and meaning of the footnote relied upon by TURN in its Formal Complaint. As OCA witness Colton testified, the primary issue raised by the Settlement involved the overall design of PECO's CAP. OCA St. 1-R at 5; 2015 Settlement at Part A (2015 Settlement Term Sheet). The Settlement contained five parts: (1) the "determination of credits" for the CAP discount (Part A.1); (2) the treatment of customers who do not receive an annual credit (Part A.2); (3) cost containment (Part A.3); (4) cost recovery (Part A.4); and (5) "External review of FCO program." (Part A.5).

OCA St. 1-R at 5.

The issue raised by the TURN Formal Complaint relates the CAP program design's fixed credit determination. Step 3 of the CAP program design defined how to "determine customer's allowable Energy Burden" and the energy burdens that should be applied. OCA St. 1-R at 5. OCA witness Colton explained:

The 2015 Settlement Term Sheet provided that "PECO will determine the household's allowable Energy Burden" by reference to the following "Table 1" set forth in the Term Sheet. For purposes of this Table, "electric non-heating" applied to PECO Rate R customers who use a non-PECO heating fuel source; "electric heating" applies to PECO Rate RH customers; and "electric with gas heating" applied to PECO dual commodity customers.

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

Use of the Table to establish energy burdens was conditioned upon footnote 3 of the 2015 Petition for Settlement. The footnote states 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.

(2015 Petition for Settlement, footnote 3, page 2). (emphasis added). As can be seen, in this footnote, 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. The footnote effectively barred stakeholders from advocating that PECO adopt a percentage of income burden that was less than the maximum burden recommended in the PUC’s ranges.

OCA St. 1-R at 5-6.

The footnote provides no basis to conclude that any change to the energy burdens must happen “immediately” or without regard to the other provisions of the Settlement. It also does not support a conclusion that it was self-executing without regard to the Commission’s procedures for implementing the Final CAP Policy Statement or approving Universal Service Program changes. Most notably, the Settlement provided that an evaluation of the FCO program must be completed after two years. TURN St. 1 at Exh. A, ¶ 5. The evaluation was completed and it showed that the FCO program is not effective and is not achieving its purpose to provide greater affordability to CAP customers. OCA St. 1-R at 9. To address the results of the evaluation, PECO proposed to

amend its Universal Service and Energy Conservation Plan to move to the PIPP at the new CAP Policy Statement energy burdens. PECO St. 1-R at 15.

PECO witness Kehl testified that PECO estimates that if the FCO was simply amended to include the new energy burdens, the cost of the proposed changes to the “EB proposal for the first few months of 2021 would be approximately \$9 million.” PECO St. 1-R at 13. But that expenditure would not improve affordability for customers or make the program more effective. See, OCA St. 1-R at 9-10. Mr. Colton testified that even if PECO were to reduce the energy burden, the percentage of customers with unaffordable bills and the dollar amount by which they exceeded the energy burdens would not change. OCA St. 1-R at 9-10. As OCA witness Colton explained the continuing unaffordability is not a function of the target energy burden, but instead a function of the underlying CAP program design. OCA St. 1-R at 10.

The OCA respectfully submits that the Settlement, with all of its interrelated provisions, cannot be read to make only one change to the program when the entire program design has been determined to be ineffective. It was never the intent of the Settlement to continue to support a program that was not operating as intended.

C. TURN’s Formal Complaint Does Not Recognize The Commission Process For Changing Universal Service Programs.

TURN also argues that any change required by footnote 3 should have been self-executing and implemented by PECO without any additional process or consideration. Contrary to the arguments of TURN witnesses Lord and Bertocci that the Settlement provision would automatically go into effect, the OCA submits that any change to PECO’s current USECP must be approved by the Commission. As described above, the Commission set forth a process for implementing the new energy burdens under the Final CAP Policy Statement. As PECO witness Kehl testified, under the intervening Commission’s Final CAP Policy Statement Order, PECO is

required to submit a filing to the Commission in order to revise its energy burdens. PECO St. 1-R at 14-15. PECO has also always been under the obligation to file any amendments to the universal service plans for Commission review and approval.<sup>3</sup>

The OCA submits that there could be no “immediacy” to the changes as argued by TURN. PECO has considered all of the provisions of the Settlement, including the evaluation, and made the filings to amend its CAP in accordance with the processes outlined by the Commission.

D. Changing The Energy Burdens Will Not Improve Affordability Of The Program.

TURN witness Lord testified that “TURN’s interest has always been for PECO’s CAP to be structured in a way that it provides an affordable monthly bill for low-income customers.” TURN St. 2 at 6. The OCA submits that TURN’s requested relief will not achieve this objective. As the FCO Evaluation done pursuant to the Settlement showed, further changes to the energy burden will not improve the affordability for customers in the program. See, OCA St. 1-R at 8-9; PECO St. 1-R at 15. Changing the energy burdens will only increase the costs of the program without providing a corresponding benefit to affordability. The OCA submits that those dollars would be more cost-effectively directed towards PECO’s new proposed PIPP design. The OCA submits that looking at the evaluation provision of the Settlement (Paragraph 5) and footnote 3 together, PECO properly concluded that the way to implement the CAP Policy Statement was to transition its program to a PIPP and include the new energy burdens in the PIPP.

In 2015, the FCO was a new and untested program design for PECO. The purpose of the FCO was to improve the overall affordability for CAP customers. The Settlement, recognizing this was a new program, provided for the next steps to evaluate the effectiveness of the program

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<sup>3</sup> Under the Sections 54.74 and 62.4 of the Commission’s regulations, PECO is required to file its Universal Service and Energy Conservation Plans for approval of the Commission. 52 Pa. Code §§ 54.74, 62.4. The Commission issues a Final Order on the Plan. *Id.* Any requested modification of the Plan approved by the Commission’s Final Order would require further Commission action.

and an examination of how the FCO functioned to achieve affordability. The evaluation was a critical part of the overall Settlement.

OCA witness Colton explained the evaluation process identified in the Settlement:

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

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

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

OCA St. 1-R at 6-7.

The purpose of the Settlement was to address affordability issues with PECO's previous CAP design. Pursuant to the Settlement, PECO completed the evaluation of the Fixed Credit Option, including the "impact of the FCO on affordability," and filed it with the Commission on June 28, 2019. OCA St. 1-R at 8. OCA witness Colton testified that the PECO Evaluation found that:

the FCO did not well-serve customers with income at or below 50% of Poverty Level in particular.

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

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

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

OCA St. 1-R at 8-9.

Unfortunately, the evaluation determined that the FCO did not achieve the objective of improving affordability. As OCA witness Colton concluded:

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.

OCA St. 1-R at 9.

PECO witness Kehl testified regarding the Company's evaluation as well. Mr. Kehl testified:

In considering how best to implement the Revised CAP Policy Statement, PECO had determined that the CAP FCO structure was not providing the anticipated affordability benefits, particularly for the lowest-income CAP participants. Furthermore, the Company's analysis in Exhibit MK-1 – shared with TURN and other stakeholders – demonstrated that implementing the CAP FCO with revised EBs would not improve bill affordability and would substantially increase universal costs. PECO therefore proposed to implement the Revised CAP Policy Statements through the PIPP, which would incorporate the revised EBs for the 0-50% and 51-100% income range and improve affordability for all CAP income ranges.

PECO St. 1-R at 15.

In Surrebuttal Testimony, TURN witness Bertocci argues that the evaluation is not relevant to PECO's obligation under the Settlement terms. TURN St. 1-SR at 13. TURN witness Bertocci is incorrect. The evaluation identified in Paragraph 5 of the Settlement was a key term that was to be the basis of determining whether the FCO was effective and if it was in need of changes. See, TURN St. 1 at Exh. A, ¶ 5. As OCA witness Colton testified, the evaluation showed that affordability could not be achieved under the FCO. Mr. Colton explained:

Holding all else equal, by definition, if PECO were to reduce the target burdens by which to define affordability, both the percentage of customers found to have unaffordable bills, and the dollar amount by which actual CAP bills exceeded the target burdens, would remain the same, if not increase.

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. For many of the customers in the lowest income range (0 to 50% of Poverty), for example, the minimum bill exceeded the prescribed home energy burden. In addition, to the extent that CAP participant bills at standard residential rates fluctuated from one year to the next, the FCO (which provides a fixed credit rather than a fixed payment) results in customers experiencing an upwards fluctuation paying more than the target burden.

OCA St. 1-R at 9-10.

The OCA submits that if the stated objective is to achieve greater affordability, and the evaluation has concluded that changing the energy burdens will not improve affordability, then any further dollars invested in the FCO would be wasted. PECO witness Kehl testified that changing the FCO energy burdens would cost approximately \$9 million in the first few months of 2021. PECO St. 1-R at 15.

The OCA submits that spending \$9 million to “fix” the affordability of a program that cannot be fixed by the FCO design would not be a cost-effective use of ratepayer dollars. Decreasing the energy burdens in a manner that will not improve affordability runs contrary to the stated purpose of the CAP programs. OCA witness Colton testified:

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

OCA St. 1-R at 11.

The OCA submits that PECO properly concluded that the way to implement the CAP Policy Statement was to transition its program to a PIPP and include the new energy burdens in the PIPP.

E. Addressing The CAP Policy Statement Involves More Than Changing The Energy Burdens.

TURN seeks to replace one component of the FCO, but as Mr. Colton testified, in seeking to address the issues identified with the FCO, there are numerous considerations. TURN has not addressed these critical implementation issues with its proposal. OCA witness Colton explained that the first step to a new program design is to set the energy burdens to be achieved, but that is

only the first step in designing a new program. In his Rebuttal Testimony, OCA witness Colton testified that:

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

OCA St. 5 at 15.

Mr. Colton discussed that the first decision that must be made is “how, if at all, to replace the “Fixed Credit Option” (FCO) program design it previously adopted by the Settlement.” OCA St. 1-R at 15. Mr. Colton elaborated:

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

OCA St. 1-R at 15-16 (footnote omitted).

In its Final CAP Policy Statement Order, the Commission also stated in footnote 57 that “for utilities that do not have a PIP-based payment plan, system safeguards should be established to ensure the customer’s calculated payment does not exceed the maximum energy burden.” Final CAP Policy Statement Order at 31, fn. 57. OCA witness Colton testified as to the importance of this consideration in regard to PECO’s FCO design:

PECO does not now operate a straight PIPP (a fixed-payment PIPP), but rather operates an FCO (a fixed-credit PIPP). Accordingly, PECO’s implementation of the revised energy burdens does not involve simply substituting one affordability burden for another. Rather, PECO’s implementation, by the terms of the PUC Final Order, must involve a number of steps that “ensure the customer’s calculated payment does not exceed the maximum energy burden.” (Final Order, footnote 57). As I discuss above, PECO’s evaluation demonstrates that, under its FCO, it cannot currently make such an assurance. Rather than simply substituting one affordability target for another, PECO must figure out how to revise its overall program design in order to make the assurance required by the PUC.

OCA St. 1-R at 16-17.

TURN has not addressed this element of the Final Policy Statement. The OCA submits that addressing the CAP Policy Statement involves more than changing the energy burdens. There are numerous other program design changes that must be considered in conjunction with changing the energy burdens.

F. TURN's Complaint Fails To Acknowledge The Implementation Issues With Its Proposal.

The OCA submits that there are other implementation issues that must be considered. The energy burdens are annual burdens for home energy. PECO must then convert those annual burdens into the monthly payment obligations. OCA witness Colton testified:

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

OCA St. 1-R at 18-19.

The OCA submits that TURN has not addressed this critical implementation detail. OCA witness Colton testified:

This need for the step of converting the annual target burdens into monthly payments was acknowledged by the PUC in establishing revised energy burdens. The PUC stated in its Final Order that "Each CAP payment plan should be designed to ensure the household's *monthly payment*. . . will not exceed this energy burden threshold, except in circumstances in which the household is charged the minimum

CAP payment or the household has exceeded the utility's approved CAP credit limit." (Final Order, at 33). (emphasis added).

OCA St. 1-R at 19-20.

The OCA submits that without a full understanding of the implementation issues, it is not possible to direct the immediate relief sought by TURN.

#### IV. CONCLUSION

WHEREFORE, for the reasons set forth above, the OCA respectfully submits that TURN's Formal Complaint should be denied. The issue of the appropriate design of PECO's CAP going-forward should be addressed in PECO's pending 2019-2024 USECP.

Respectfully Submitted,

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DATE: March 5, 2021

PROPOSED FINDINGS OF FACT

1. In the 2015 Settlement, PECO changed the design of PECO’s Customer Assistance Program from a percentage rate discount program to a Fixed Credit Option (FCO). TURN St. 1 at 12.
2. PECO transitioned to the FCO design in October 2016 as a part of PECO’s 2016-2018 Universal Service and Energy Conservation Plan. TURN St. 1 at 14; see also, Settlement at Exh. A, 2.
3. Under the new FCO model, instead of a discount off the full tariffed rate, CAP customers received a fixed credit towards the bill. TURN St. 1 at 16-17; see also, Settlement at Exh. A, 2.
4. The Settlement provides the following seven steps to calculate the FCO: (1) Step 1- Determine the customer’s prior year’s undiscounted charges; (2) Step 2- Determine the verified household income and federal poverty level; (3) Step 3- Determine the customer’s allowable energy burden; (4) Step 4- Calculate the customer’s annual credit; (5) Step 5- Apply annual credit to bill; (6) Step 6- Periodic recalculation and adjustment of annual credit; and (7) Step 7- New entrants to the CAP program after program begins. Settlement at Exh. A, 1-6.
5. Step 3 of the Settlement determines the customer’s allowable energy burden. Settlement at Exh. A, 2.
6. Under Step 3, “Once the household’s Federal Poverty Level has been determined, PECO will determine the household’s allowable energy burden, as follows:[superscript reference to footnote 3]

FPL	Electric Non-Heating	Electric Heating	Electric With Gas Heating
0-50%	5%	13%	13%
51-100%	6%	16%	16%
101-150%	7%	17%	17%

Settlement at Exh. A, 2.

7. Footnote 3 states, in part, that “If the Commission changes the energy burden ranges set forth in its Policy Statement, PECO will utilize the new maximum allowable energy burdens for each poverty level.” Settlement at Exh. A, 2, fn. 3.
8. The energy burden levels included in the 2015 Settlement were based upon the Commission’s maximum energy burdens set forth in the ranges included in the CAP Policy Statement. OCA St. 1-R at 5-6.

9. PECO filed the APPRISE Evaluation required by Paragraph 5 of the Settlement which revealed that 80% of customers from 0-50% of the Federal Poverty Level received unaffordable bills. PECO St. 1 at 4; TURN St. 1 at Exh. A, ¶ 5.
10. On July 8, 2020, PECO filed an amended proposed 2019-2024 Universal Service and Energy Conservation Plan that proposed to eliminate the FCO and to transition to a Percentage of Income Payment Plan (PIPP) with the revised CAP Policy Statement energy burdens. PECO St. 1-R at 15.
11. On September 25, 2020, PECO filed a Petition to Amend the Company's Universal Service and Energy Conservation Plan (Petition to Amend) at Docket No. P-2020-3022154. Petition to Amend at 1.
12. On September 25, 2020, PECO also filed a Motion to Stay the proceeding pending the Commission's determination on the Company's Petition to Amend. TURN v. PECO Energy Co., Docket No. C-2020-3021551, Motion to Stay of PECO Energy Company (Sept. 25, 2020).
13. PECO's Petition to Amend proposes to amend the Fixed Credit Option to utilize the energy burdens set forth in the Commission's CAP Policy Statement for the period (starting from the first billing cycle after Commission approval) that the CAP FCO is still in place. Petition to Amend at 1.
14. PECO witness Kehl testified that changing the FCO energy burdens would cost approximately \$9 million in the first few months of 2021. PECO St. 1-R at 15.
15. Holding all else equal, by definition, if PECO were to reduce the target burdens by which to define affordability, both the percentage of customers found to have unaffordable bills, and the dollar amount by which actual CAP bills exceeded the target burdens, would remain the same, if not increase. OCA St. 1-R at 9.
16. The continuing unaffordability of CAP bills for PECO low-income customers under the FCO 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. OCA St. 1-R at 10.
17. For many of the customers in the lowest income range (0 to 50% of Poverty), for example, the minimum bill exceeded the prescribed home energy burden. OCA St. 1-R at 10.
18. In addition, to the extent that CAP participant bills at standard residential rates fluctuated from one year to the next, the FCO (which provides a fixed credit rather than a fixed payment) results in customers experiencing an upwards fluctuation paying more than the target burden. OCA St. 1-R at 10.
19. The energy burdens are annual burdens for home energy burdens. OCA St. 1-R at 18.
20. PECO must then convert those annual burdens into the monthly payment obligations. OCA St. 1-R at 18.

21. Setting forth the target annual energy burdens is only the first step of implementing a percentage of income program. OCA St. 1-R a 19.

PROPOSED CONCLUSIONS OF LAW

1. TURN has failed to meet its burden of proof that PECO has violated the 2015 Settlement at Docket No. M-2012-2290911.

2. A complainant has the burden to prove his or her allegations by a “preponderance of the evidence.” 66 Pa. C.S. § 332(a). See also North American Coal Corp. v. Commonwealth of Pa., 2 Pa. Commw. 469, 279 A.2d 356 (1971).

3. Proving an allegation by a “preponderance of the evidence” means that one party has presented evidence, which is more convincing the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950) (Se-Ling).

4. A complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show that the utility should be held responsible or accountable for the problem described in the complaint. Kiback v. IDT Energy, Inc., Docket No. C-2014-2409676, Opinion and Order at 6 (Aug. 20, 2015), citing Patterson v. The Bell Telephone Co. of PA, 72 Pa. P.U.C. 196 (1990); see also Herp v. Respond Power, LLC, Docket No. C-2014-2413756, Opinion and Order at 3 (Jan. 28, 2016).

5. A complainant’s evidence must be slightly more convincing than evidence presented by the utility but also must be substantial, and not just a trace of evidence or suspicion. Kiback at 6; Herp at 3-4.

6. The ultimate burden of proof always remains with the complainant, even though the burden may shift to the utility periodically to rebut evidence offered by the complainant. Kiback at 7; Herp at 4.

7. The 2015 Settlement at Docket No. M-2012-2290911 did not require PECO to immediately implement the energy burdens identified in the Commission’s revised CAP Policy Statement upon entry of the Final CAP Policy Statement Order. 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-267, Docket No. M-2019-3012599 (Nov. 5, 2019)(Final CAP Policy Statement Order).

8. On November 5, 2019, the Commission issued its Final Policy Statement and Order in the proceeding 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-267, Docket No. M-2019-3012599 (Final CAP Policy Statement Order).

910. The new energy burdens identified in the Final CAP Policy Statement Order were as follows:

FPL	Electric Non-Heating	Electric Heating	Natural Gas Heating
0-50%	2%	6%	4%
51-100%	4%	10%	6%
101-150%	4%	10%	6%

Final CAP Policy Statement Order at 4.

10. The Final CAP Policy Statement Order eliminated the energy burden ranges set forth in the prior CAP Policy Statement.

11. The Commission's Final CAP Policy Statement Order stated that the energy burdens would not be effective until they were published in the *Pennsylvania Bulletin*. Final CAP Policy Statement Order at 100.

12. On March 21, 2020, the revised CAP Policy Statement was published in the *Pennsylvania Bulletin*. 50 Pa. B. No. 1691-1695 (March 21, 2020).

**PROPOSED ORDERING PARAGRAPHS**

It is hereby ordered that:

1. The Formal Complaint of the Tenant Union Representative Network (TURN) at Docket No. C-2020-3021557 is denied.
2. The Settlement at Docket No. does not require PECO Energy Company to change its energy burdens identified in the Commission's Final CAP Policy Statement Order.
3. The issue of PECO's energy burdens should be addressed in PECO's pending Petition to Amend at Docket No. P-2020-3022154 and 2019-2024 Universal Service and Energy Conservation Plan proceeding at Docket M-2018-3005795.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge Mary D. Long