



February 18, 2021

Via Efiling

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

**Re: Tenant Union Representative Network (TURN) v. PECO Energy Company,
Docket No. C-2020-3021557**

TURN §5.412a filing of admitted evidence

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code § 5.412a, please accept for filing the following pre-served testimony, along with associated exhibits, appendices and verifications, on behalf of the Tenant Union Representative Network (TURN) which was duly admitted to the record by the *Interim Order Granting Joint Stipulation For Admission of Evidence* dated February 11, 2021:

- TURN Statement 1, the Direct Testimony of Philip A. Bertocci
 - Exhibit A: Resume of Philip A. Bertocci
 - Exhibit B: Responses of PECO Energy Company to TURN Discovery
 - Exhibit C: TURN *et al.* Statement in Support of Settlement
 - Verification of Philip A. Bertocci
- TURN Statement 2, the Direct Testimony of Philip Lord
 - Exhibit A: TURN Statement in Support of Settlement
 - Exhibit B: PECO Responses to TURN Discovery
 - Exhibit C: U.S. Census Bureau data regarding Rate of Disconnection Notices from 2013 to 2017
 - Verification of Philip Lord

Center City Office: 1424 Chestnut St. | Philadelphia, PA 19102-2505 | Telephone: 215-981-3700 clsphila.org

North Philadelphia Law Center: 1410 West Erie Ave. | Philadelphia, PA 19140-4136 | Telephone: 215-227-2400



- TURN Statement 1-SR, the Surrebuttal Testimony of Philip A. Bertocci
 - Appendix A: PECO Energy Company Responses to TURN Discovery
 - Verification of Philip A. Bertocci

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, this testimony is being served via email only.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joline R. Price'.

Joline R. Price, Esquire
Attorney ID No. 315405

Enclosures

Cc: Certificate of Service
Administrative Law Judge Mary Long (via email to malong@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Certificate of Service

I hereby certify that I have this day served copies of the **TURN § 5.412a filing of admitted evidence** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code §1.54 and consistent with the Commission’s March 20 Emergency Order at Docket M-2020-3019262.

VIA ELECTRONIC MAIL

Anthony E. Gay, Esq.
Jack R. Garfinkle, Esq.
Jennedy Johnson, Esq.
PECO Energy Company
2301 Market Street
Philadelphia, PA 19101
Anthony.gay@exeloncorp.com
Jack.garfinkle@exeloncorp.com
Jennedy.johnson@exeloncorp.com

Elizabeth R. Marx, Esq.
John W. Sweet, Esq.
Ria M. Pereira, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Kenneth M. Kulak, Esq.
Catherine G. Vasudevan, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Ken.kulak@morganlewis.com
Catherine.vasudevan@morganlewis.com

Christy M. Appleby, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
Cappleby@paoca.org

Administrative Law Judge Mary Long
Pennsylvania Public Utility Commission
Piatt Place
Suite 220
301 5th Avenue
Pittsburgh, PA 15222
malong@pa.gov



Joline R. Price, Esquire (PA ID: 315405)
Counsel for TURN
COMMUNITY LEGAL SERVICES, INC.
jprice@clsphila.org
(215) 981-3756

February 18, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**TESTIMONY OF
PHILIP A. BERTOCCI**

**On Behalf of
Tenant Union Representative Network**

December 10, 2020

Table of Contents

I. Witness Background.....	3
II. Background on CAP Program	6
III. Universal Service Plan Creation	8
IV. Creation of the CAP Fixed Credit Option	11
V. Amendments to the CAP Policy Statement	17
VI. PECO’s adherence to the CAP FCO Settlement and 2016-2018 USECP	20
VII. Appropriateness of Relief Sought	24

Exhibits

Exhibit A: Resume of Philip A. Bertocci

Exhibit B: Responses of PECO Energy Company to TURN Discovery

Exhibit C: TURN *et al.* Statement in Support of Settlement

1 **I. WITNESS BACKGROUND**

2 **Q. Please state your name, occupation and business address.**

3 A. Philip A. Bertocci, Esquire. I am currently retired, maintaining a pro bono “of counsel”
4 role, with an office c/o, Community Legal Services, Inc., 1424 Chestnut Street, Philadelphia, PA
5 19102.

6 **Q. Briefly outline your education and professional background.**

7 A. As my resume shows, I received my B.A. Degree in History from Wesleyan University
8 (Middletown, CT) in 1962, a Ph.D. Degree in History from Yale University in 1970, and a J.D.
9 from the University of Pennsylvania Law School in 1980. From 1980, with the exception of a
10 little over a year when I was a judicial clerk, until my retirement in the Fall of 2011, I was employed
11 as a Staff Attorney at Community Legal Services (CLS). After over a decade representing low-
12 income clients in mortgage foreclosure proceedings and Chapter 7 and Chapter 13 Bankruptcy
13 proceedings, I began work in CLS’s Energy Unit in 1995, and served as the Supervising Attorney
14 of that unit from 1998 until my retirement in 2011. My resume is attached as Exhibit A.

15 **Q. For whom are you testifying in this proceeding?**

16 A. I am testifying on behalf of Tenant Union Representative Network (“TURN”).

17 **Q. Please describe the focus of your work over the past twenty five years.**

18 A. My work focused on assisting low-income Philadelphians in their efforts to obtain gas,
19 electric and water service, to maintain that service, and in the event that service is terminated, to
20 obtain prompt service reconnection. Consistent with these goals, I have served with co-counsel as
21 the Public Advocate for Philadelphia Gas Works’ residential customers in matters before the

1 Philadelphia Gas Commission and as the Public Advocate for residential customers of the
2 Philadelphia Water Department in Water Rate Increase cases. I have also served as lead counsel
3 on behalf of Philadelphia low-income consumer groups in matters involving PECO Energy
4 Company (“PECO”) and the Philadelphia Gas Works before the Pennsylvania Public Utility
5 Commission.

6 In addition to group representation, I have supervised Energy Unit attorneys and paralegals
7 providing advice and representation to hundreds of low-income Philadelphians every year in
8 matters involving access to utility service provided by PGW, PECO and the Philadelphia Water
9 Department/Water Revenue Bureau. The primary goal of that representation has been to develop
10 and strengthen universal service principles in policy, law and regulations, assuring that low-
11 income customers will be provided with the assistance necessary to maintain vital utility service.

12 **Q. Have you testified in any proceeding before the Pennsylvania PUC?**

13 A. I provided testimony in the following proceedings:

- 14 ■ PECO’s DSP II Proceeding, Petition of PECO Energy Company for Approval of its Default
15 Service Program, Docket No. P-2012-2283641, on behalf of the Coalition for Affordable
16 Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”).
- 17 ■ PECO’s DSP IV Proceeding, Petition of PECO Energy Company for Approval of its
18 Default Service Program, Docket No. P-2016-2534980, on behalf of TURN and the Action
19 Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*).
- 20 ■ PECO’s DSP V Proceeding, Petition of PECO Energy Company for Approval of Its
21 Default Service Program for the Period From June 1, 2021 Through May 31, 2025, Docket
22 No. P-2020-3019290, on behalf of TURN *et al.*

1 ▪ Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc., Docket
2 No. R-2010-2215623 & PCOC *et al.* v. Columbia Gas of Pennsylvania, Inc., Docket No.
3 C-2011-2232186 (regarding Columbia Gas of Pennsylvania, Inc.’s (“CGPA”) universal
4 service plan and low-income customer issues, on behalf of Pennsylvania Communities
5 Organizing for Change, Inc., d/b/a ACTION United, Carol Collington, and Nettie Pelton).

6 **Q. What is the purpose of your testimony?**

7 A. First, I will provide background on the Pennsylvania Public Utility Commission’s (PUC
8 or Commission) framework regarding universal service. Next, I will describe PECO’s Customer
9 Assistance Program (CAP) and the creation of the CAP Fixed Credit Option (FCO) through a
10 Settlement (Settlement or CAP FCO Settlement).¹ I will explain the Commission’s adoption of a
11 new CAP Policy Statement, as a result of its Review of Universal Service and Energy
12 Conservation Programs, Docket No. M-2017-2596907, and Energy Affordability for Low-
13 Income Customers in Pennsylvania, Docket No. M-2017-2587711. I will address the intersection
14 of these proceedings with the CAP FCO Settlement at Docket No. M-2012-2290911 and PECO’s
15 2016-2018 Universal Service and Energy Conservation Plan (2016-2018 USECP) at Docket No.
16 M-2015-2507139. Finally, I will address the appropriateness of the relief sought by TURN in
17 this Complaint.

¹ As discussed herein, the CAP FCO Settlement arose out of PECO’s 2013-2015 USECP and was filed at that docket, M-2012-2290911. *See* PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Joint Petition for Settlement (March 20, 2015), <https://www.puc.pa.gov/pdocs/1349218.pdf>. Note that the Joint Petition includes a Petition (hereinafter “Joint Petition”) and attaches an “Exhibit A: PECO CAP Mediation Settlement Term Sheet” (hereinafter Settlement or CAP FCO Settlement). The terms of the CAP FCO Settlement were then incorporated as Addendum B to PECO’s 2016-2018 USECP at Docket No. M-2015-2507139. *See* PECO Energy Company Universal Service and Energy Conservation Plan 2016-2018, Docket No. M-2015-2507139 (filed Feb. 17, 2017), <https://www.puc.pa.gov/pdocs/1510970.pdf> (hereinafter 2016-2018 USECP).

1 **II. BACKGROUND ON CAP PROGRAM**

2 **Q. Can you start by explaining what a Customer Assistance Program (CAP) is?**

3 A. Yes. In Pennsylvania, CAPs are alternative utility programs, which provide discounted
4 bills and/or arrearage forgiveness to qualifying low-income customers.²

5 **Q. Is PECO required to operate a CAP?**

6 A. Yes. Customer Assistance Programs are statutorily mandated. The Electricity Generation
7 Customer Choice and Competition Act³ and the Natural Gas Choice and Competition Act⁴
8 (collectively, “Choice Acts”) require the Commission to ensure that “universal service and
9 energy conservation policies, activities and services are appropriately funded and available” in
10 each Electric Distribution and Natural Gas Distribution service territory.⁵ “Universal Service” is
11 defined in the Choice Acts to explicitly include Customer Assistance Programs.⁶ The terms of
12 these Customer Assistance Programs are regulated by the Commission through each Electric
13 Distribution Company and Natural Gas Distribution Company’s Universal Service and Energy
14 Conservation Plan. These plans are reviewed periodically by the Commission and approved by
15 Commission Order.

16

² 52 Pa. Code § 69.261 (“CAPs are designed as alternatives to traditional collection methods for low-income customers.”).

³ 66 Pa. C.S. § 2801 et seq.

⁴ 66 Pa. C.S. § 2201 et seq.

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

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

1 **Q: Can you describe the Commission rules that govern Customer Assistance**
2 **Programs?**

3 A. Yes. According to Commission regulation, EDCs and NGDCs are required to submit
4 Universal Service and Energy Conservation Plans (USECPs) to the Commission for approval
5 every 3 years.⁷ Those plans are supposed to include program descriptions, eligibility criteria,
6 needs assessments, projected enrollment and program budgets.⁸ The Commission then reviews
7 the plans to determine if the utility meets the goals of universal service.⁹ Utilities are also
8 required to report on a number of different program details to the Commission.¹⁰

9 The Commission's regulatory framework also includes a Policy Statement on Customer
10 Assistance Programs, available at 52 Pa. Code §§69.261-69.267. That Policy Statement sets out
11 guidelines that utilities should follow in designing their CAPs.¹¹ The CAP Policy Statement sets
12 out a number of CAP design elements, including recommended affordable Energy Burdens,
13 control features to limit program costs, eligibility, intake and verification guidelines, and
14 outreach plans.¹² As set forth in the CAP Policy Statement, a Customer Assistance Program may
15 provide bills as a percentage of income, percentage of bills, or rate discount for low-income
16 customers at or below 150% of the Federal Poverty Income Guidelines (FPIG).¹³ CAPs must

⁷ 52 Pa. Code §54.74(a); 52 Pa. Code § 62.4(a)(2); *see also* Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Docket No. M-2019-3012601 (order entered Oct. 3, 2019) (temporarily extending the filing schedules to every 5 years), *available at* <https://www.puc.pa.gov/pdocs/1638860.docx> (last accessed Dec. 9, 2020).

⁸ 52 Pa. Code §54.74(b); 52 Pa. Code § 62.4(b).

⁹ 52 Pa. Code §54.73 (a); 52 Pa. Code § 62.3(a). These goals include protecting consumer health and safety; providing affordable electric service; assisting customers in conserving energy and ensure the plans are cost-effective and efficient. 52 Pa. Code § 54.73 (b); 52 Pa. Code § 62.3(b).

¹⁰ 52 Pa. Code § 54.75; 52 Pa. Code § 62.5.

¹¹ 52 Pa. Code § 69.261. *See also* 52 Pa. Code § 69.263 (a) (“a utility should develop and strive to improve its CAP consistent with the guidelines provided.”).

¹² 52 Pa. Code §69.265.

¹³ *Id.*

1 also include arrearage forgiveness, in which debt accrued prior to enrollment is forgiven over
2 time.¹⁴

3 **Q. Does the CAP Policy Statement set forth what is considered affordable for a utility**
4 **bill?**

5 A. Yes. The CAP Policy Statement, as amended on November 5, 2019, sets forth that,
6 generally, CAP participants' payments for utility service should not exceed the following
7 maximum percentages of household income:¹⁵

Household Income	Electric nonheating service	Natural Gas Heating	Electric heating or natural gas heating and electric nonheating combined
0-50% FPIG	2%	4%	6%
51-100% FPIG	4%	6%	10%
101-150% FPIG	4%	6%	10%

8

9 **III. UNIVERSAL SERVICE PLAN CREATION**

10 **Q. Can you describe PECO's Universal Service and Energy Conservation Plan**
11 **(USECP)?**

12 A. PECO's USECP includes the structure and rules that govern each of its universal service
13 programs – CAP, as well as its Low Income Usage Reduction Program (LIURP), Hardship
14 Funds, and Customer Assistance Referral and Evaluation Services (CARES). As relevant to this

¹⁴ 52 Pa. Code § 69.265 (8)(ix).

¹⁵ 52 Pa. Code § 69.265 (2)(i).

1 case, I will further detail the structure of PECO’s CAP below. The USECP that is currently
2 active for PECO can be found on the Commission’s Website, at
3 <https://www.puc.pa.gov/pcdocs/1510970.pdf>.¹⁶

4 **Q. Are the terms of a USECP binding on PECO?**

5 A. Yes. PECO structures its universal service programs based on the terms of its
6 Commission approved USECP. For each of its programs, PECO relies on the terms of the
7 USECP to regulate customer enrollment.

8 **Q: How do these terms impact customers?**

9 A. The USECP establishes the terms of customer eligibility and obligations in participating
10 in low-income customer programs. CAP Participants are required to pay CAP bills that are
11 calculated pursuant to the criteria set forth in the plan. CAP enrollees also have to continue to
12 demonstrate eligibility. Customers are currently not allowed to participate in CAP if they are
13 shopping for electricity. In addition, CAP customers are prohibited from receiving PUC-issued
14 payment arrangements on CAP bills, on the assumption that CAP already provides affordable
15 bills. Failure to comply with the terms of the USECP can result in customer removal from CAP.
16 For example, under the terms of the 2016-2018 USECP, if a customer refuses LIURP services,
17 they can be removed from CAP.¹⁷

¹⁶ While that USECP is dated 2016-2018, and PECO has filed a new plan, PECO’s 2016-2018 USECP is currently in effect. *See* Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Docket No. M-2019-3012601 (order entered Oct. 3, 2019) (“An existing USECP will remain in effect until a new one is approved and implemented.”).

¹⁷ 2016-2018 USECP at 10, <https://www.puc.pa.gov/pcdocs/1510970.pdf>.

1 **Q. Are the terms of PECO’s USECP incorporated elsewhere?**

2 A. Yes, PECO’s Electric and Gas Service Tariffs specifically incorporate the CAP Credit
3 calculation methodology found in the current 2016-2018 USECP.¹⁸ This is important because the
4 PUC’s regulations require public utilities to render bills to residential customers in accordance
5 with approved rate schedules.¹⁹

6 **Q. How many households are enrolled in PECO’s CAP?**

7 A. According to PECO, in August 2020, there were 115,384 households enrolled in CAP.
8 Broken down by rate type, this was 83,427 electric only, 11,929 electric heat, 19,748 dual
9 electric/gas and 280 gas only.²⁰

10 **Q. What is PECO’s current CAP program design?**

11 A. PECO currently operates its CAP as a Fixed Credit Option (FCO). The FCO, which I
12 explain in greater detail later in my testimony, provides an Annual Credit to reduce a customer’s
13 monthly bill. PECO’s USECP requires it to calculate a customer’s Annual Credit based on a
14 customer’s household income, historical usage, and allowable Energy Burdens as set forth in the
15 CAP Policy Statement.²¹

¹⁸ PECO Energy Company Electric Service Tariff, <https://www.peco.com/SiteCollectionDocuments/CurrentTariffElec.pdf> at 77 (stating that “The details of the FCO calculation can be found in the PECO Universal Service and Energy Conservation Plan at Docket No. M-2015-2507139.”); PECO Energy Company Gas Service Tariff, <https://www.peco.com/SiteCollectionDocuments/CurrentGasTariff.pdf> at 83 (stating that “The details of the FCO calculation can be found in the PECO Universal Service and Energy Conservation Plan at Docket No. M-2015-2507139.”).

¹⁹ 52 Pa. Code §56.11(a).

²⁰ PECO Response to TURN-I-1(b) and (c), attached hereto in Exhibit B. *See also* PECO Response to TURN-I-(d) (disaggregating CAP customers by FPIG tier), attached hereto in Exhibit B.

²¹ *See generally* 2016-2018 USECP, <https://www.puc.pa.gov/pcdocs/1510970.pdf>.

1 **IV. CREATION OF THE CAP FIXED CREDIT OPTION**

2 **Q. Have you reviewed any documents related to the creation of the CAP FCO?**

3 A. Yes. Among other documents, I have reviewed the following:

4 PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015,
5 Docket No. M-2012-2290911

6 ■ Joint Petition for Settlement (March 20, 2015)²²

7 ■ Office of Consumer Advocate (OCA) Statement in Support of Settlement (March 20,
8 2015)²³

9 ■ TURN and Action Alliance Statement in Support of Settlement (April 20, 2015)²⁴

10 ■ Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania
11 (CAUSE-PA) Statement in Support of Settlement (April 22, 2015)²⁵

12 ■ PECO Energy Company Statement in Support of Settlement (April 30, 2015)²⁶

13 ■ Recommended Decision of Administrative Law Judge Cynthia Williams Fordham (June
14 11, 2015)²⁷

²² PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Joint Petition for Settlement (March 20, 2015), <https://www.puc.pa.gov/pdocs/1349218.pdf>. Note that the Joint Petition includes a Petition and attaches an “Exhibit A: PECO CAP Mediation Settlement Term Sheet”.

²³ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Statement of the Office of Consumer Advocate in Support of Settlement (March 20, 2015), <https://www.puc.pa.gov/pdocs/1349202.pdf> (hereinafter “OCA Statement in Support”).

²⁴ This Statement was filed and served on April 20, 2015 but for some unknown reason does not appear on the docket. For the sake of completeness, I am attaching it to this testimony as Exhibit C (hereinafter TURN Statement in Support).

²⁵ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Statement of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania in Support of Settlement (April 22, 2015), <https://www.puc.pa.gov/pdocs/1355720.pdf> (hereinafter CAUSE-PA Statement in Support).

²⁶ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, PECO Energy Company’s Statement in Support of Joint Petition for Settlement (April 30, 2015), <https://www.puc.pa.gov/pdocs/1357456.pdf> (hereinafter PECO Statement in Support).

²⁷ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Recommended Decision of Administrative Law Judge Cynthia Williams Fordham (June 11, 2015), <https://www.puc.pa.gov/pdocs/1366474.docx> (hereinafter ALJ Recommended Decision).

- 1 ■ Commission Order (July 8, 2015)²⁸
- 2 PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018
3 Submitted in Compliance with 52 Pa. Code § § 54.74 and 62.4, Docket No. M-2015-2507139
- 4 ■ Final Order (August 11, 2016)²⁹
- 5 ■ PECO Energy Company Universal Service and Energy Conservation Plan (“Three Year
6 Plan”) 2016-2018 (Re-submitted February 17, 2017)³⁰

7

8 **Q. Based on that review, can you provide background on how PECO’s current CAP**
9 **structure was created?**

10 A. PECO’s FCO arose from a contested proceeding involving PECO’s Petition for Approval
11 of its Proposed 2013-2015 USECP. Ultimately, on March 20, 2015, PECO, TURN, Action
12 Alliance, CAUSE-PA and the OCA filed a Joint Petition for Settlement.³¹ As noted in the Joint
13 Petition, the proposed Settlement “sets forth a comprehensive proposal to revise PECO’s
14 Customer Assistance Program.”³² This Settlement followed extensive negotiations among the
15 parties.³³ The PECO CAP Mediation Settlement Term Sheet (Settlement) was attached as
16 Exhibit A to the Joint Petition.³⁴ The Settlement sets forth, in detail, the structure of the CAP

²⁸ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Order (July 8, 2015), <https://www.puc.pa.gov/pcdocs/1370232.doc> (hereinafter Final FCO Settlement Order).

²⁹ 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, Final Order (Aug. 11, 2016), available at <https://www.puc.pa.gov/pcdocs/1490676.docx>.

³⁰ 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, <https://www.puc.pa.gov/pcdocs/1510970.pdf>. PECO re-filed its current USECP on February 17, 2017 following the Commission’s Order on a Petition for Reconsideration.

³¹ See generally Joint Petition.

³² Joint Petition at ¶1.

³³ Joint Petition at ¶7 (“[t]he Joint Petitioners engaged the services of the Commission’s mediation office, and conducted extensive mediation sessions.”). See also Joint Petition at ¶8. (“[a]s a result of that extensive mediation effort and related settlement discussions, the Joint Petitioners reached agreement on a new CAP design and related issues, as set forth in the Term Sheet.”).

³⁴ Joint Petition at 5.

1 FCO, to be implemented in October 2016.

2 As filed, the Settlement reflected a comprehensive proposal as to the structure of PECO's
3 CAP program.³⁵ The Joint Petition was signed by counsel for all parties, with the following
4 statement in conclusion: "WHEREFORE, the Joint Petitioners, intending to be legally bound,
5 respectfully request that the Commission approve this Joint Petition, including all terms and
6 conditions set forth in the Term Sheet."³⁶ The Statements in Support of Settlement filed by the
7 parties reflect the comprehensive nature of the Settlement. For example, in its Statement in
8 Support, PECO stated that "PECO avers that this comprehensive settlement is in the public
9 interest and, therefore, requests that the Commission approve the settlement in its entirety."³⁷
10 Similarly, the OCA stated that the "terms and conditions of the Settlement represent the result of
11 extensive negotiations between the parties, are in the public interest and should be approved."³⁸
12 CAUSE-PA stated that "the FCO design satisfactorily addresses the varied interests and issues in
13 this proceeding."³⁹

14 On June 11, 2015, Administrative Law Judge Cynthia Williams Fordham issued a
15 recommended decision approving the Joint Petition for Settlement without modification.⁴⁰ In
16 doing so, ALJ Fordham noted TURN's position that "although the methodology is more
17 complicated than the PIP advocated by TURN *et al.* and CAUSE-PA, it reflects a reasonable
18 compromise to improve the affordability for PECO's CAP participants."⁴¹

³⁵ Joint Petition at ¶1. *See also* PECO Energy Company Statement in Support at 12. ("The Term Sheet is a comprehensive settlement among the aforementioned parties ..."). PECO further stated in its Statement in Support that "[t]he Term Sheet improves affordability while simultaneously imposing controls on overall program costs..." *Id.* at 10.

³⁶ Joint Petition at 4.

³⁷ *Id.* at 1.

³⁸ *See* OCA Statement in Support at 3.

³⁹ *See* CAUSE-PA Statement in Support at 6.

⁴⁰ ALJ Recommended Decision at 36.

⁴¹ ALJ Recommended Decision at 23 (citing TURN *et al.* Statement in Support at 4).

1 ALJ Fordham also stated with regard to the Settlement:

2 The parties have presented clear and reasonable reasons for approval of the FCO
3 program. After considering the Joint Petition for Settlement, including the affordability
4 of the new program, the cost containment, the cost recovery, arrearage forgiveness, usage
5 reduction, the proposed evaluation after two years and the ongoing collaborative to
6 address issues that arise and the savings achieved by not litigating the case fully, it is my
7 opinion that the Settlement is fair, just, reasonable and in the public interest.
8 Accordingly, I recommend that the Joint Petition for Settlement be approved.⁴²

9 On July 8, 2015, the Commission adopted ALJ Fordham’s Recommended Decision without
10 modification, approving the Settlement.⁴³ PECO’s 2016-2018 USECP, implementing the
11 Settlement, was approved by the Commission on August 11, 2016.⁴⁴ As set forth in its 2016-
12 2018 USECP, PECO implemented the CAP FCO Design as part of its Universal Service and
13 Energy Conservation Plan for 2016-2018, explicitly incorporating language from the Settlement
14 into Addendum B thereto.⁴⁵

15 **Q. When did the CAP FCO become effective?**

16 A. PECO transitioned its CAP customers to the FCO in October 2016, consistent with the
17 Settlement and the 2016-2018 USECP.

18 **Q. Can you provide an overview of how the FCO is supposed to operate?**

19 A. Yes. As described in the Settlement, PECO’s CAP is referred to as a “Fixed Credit
20 Option” or “FCO,” which includes a series of steps to calculate a customer’s credit that can
21 reduce CAP customers’ bills.

⁴² ALJ Recommended Decision at 36.

⁴³ See Final FCO Settlement Order.

⁴⁴ See generally 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).

⁴⁵ See PECO Energy Company Universal Service and Energy Conservation Plan 2016-2018, Docket No. M-2015-2507139.

- 1 ■ First, PECO determines a customer’s prior year’s undiscounted charges using either
2 actual usage or a pro forma profile to approximate usage, and then adjusts those charges
3 according to a weather normalization table.⁴⁶
- 4 ■ Next, based on a customer’s household income and household size, PECO determines a
5 customer’s allowable Energy Burden based on their Federal Poverty Income Guideline
6 tier. The FCO uses the Energy Burdens set forth in Table 1 of the Settlement, reproduced
7 below:

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

8

9 These Energy Burdens were the maximum allowable Energy Burdens set forth in the CAP Policy
10 Statement at the time of the Settlement. However, the Settlement contains the following
11 provision, which is at the core of this litigation:

12 ***If the Commission changes the energy burden ranges set forth in its Policy***
13 ***Statement, PECO will utilize the new maximum allowable energy burden for***
14 ***each poverty level.***

15
16 Settlement at 2 n. 3 (emphasis added).

⁴⁶ Settlement at 1-2.

1 ■ PECO then calculates a customer’s Annual Credit by multiplying “the Verified
2 Household Income times that household’s allowable Energy Burden to determine an
3 Annual CAP Bill amount.”⁴⁷

4 ■ Finally, PECO subtracts the Annual CAP Bill from the Usage calculation to determine a
5 customer’s Annual CAP Credit.

6 **Q. Can you describe what an Energy Burden is?**

7 A. An Energy Burden is a percentage of income that a household spends on its utility bills
8 (generally, electric plus heating). In this context, PECO uses what it calls an “allowable Energy
9 Burden”, which is the percentage of income that is considered by the Commission to be an
10 affordable energy bill for low-income households.

11 **Q: How is the Annual CAP Credit applied to customer bills?**

12 A. The Annual CAP Credit is applied to the customer’s bill over the course of the year.
13 Rather than apply the 1/12th of the credit each month, the credit is allocated over the course of
14 the year “in a manner intended to track the seasonal nature of usage.”⁴⁸

15 **Q: Is the Annual CAP Credit recalculated?**

16 A. Yes. The Settlement sets forth that a customer’s Annual CAP Credit would be
17 recalculated from time to time to adjust the customer’s Annual CAP Credit, based on changes in
18 rates, customer usage and other factors.⁴⁹

19 **Q. Are there any cost containment mechanisms built into the Settlement?**

⁴⁷ Settlement at 3.

⁴⁸ Settlement at 4-5.

⁴⁹ Settlement at 5-6.

1 A. Yes. The Settlement specifies two cost containment mechanisms: monthly minimum
2 billing amounts, and maximum Annual Credits.⁵⁰

3 **Q. Is PECO currently operating its CAP as an FCO based on its 2016-2018 Plan?**

4 A. Yes. It is my understanding that PECO is currently operating all of its Universal Service
5 Programs, including CAP, pursuant to the provisions of the 2016-2018 USECP.⁵¹ However, as
6 previously emphasized, PECO has not adjusted the Energy Burdens to reflect the Commission's
7 amended CAP Policy Statement guidelines on affordability.

8 **V. AMENDMENTS TO THE CAP POLICY STATEMENT**

9 **Q. What is the CAP Policy Statement?**

10 A. The Commission's CAP Policy Statement, codified at 52 Pa. Code §§ 69.261 – 69.267, is
11 a declaration of policy that provides guidance for utilities on their Customer Assistance
12 Programs.

13 **Q. Is the CAP Policy Statement binding on utilities generally?**

14 A. No. The CAP Policy Statement is a policy, not a regulation. The Commission approves
15 each utility's USECP separately. Rather, the CAP Policy Statement is meant to inform utilities
16 and stakeholders of what the Commission expects and considers in its review of a utility's CAP
17 program design.

⁵⁰ Settlement at 7-8.

⁵¹ This is consistent with the Commission's guidance in updating its USECP Filing Schedule. Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Docket No. M-2019-3012601 (order entered Oct. 3, 2019) ("An existing USECP will remain in effect until a new one is approved and implemented.").

1 **Q. What changes were adopted by the Commission since the adoption of the FCO?**

2 A. Since the launch of the CAP FCO in October 2016, the Commission has undertaken a
3 holistic review of Universal Service and Energy Conservation Programs at two different dockets:
4 Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907,
5 and Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711. This
6 review included an extensive examination of the Energy Burden thresholds in the CAP Policy
7 Statement. The result of that review was a significant amendment to the Commission's CAP
8 Policy Statement.

9 **Q. Have you reviewed any documents regarding the Commission's Amendment to its**
10 **CAP Policy Statement?**

11 A. Yes. Among other documents, I have reviewed the following documents:

- 12 ■ CAP Policy Statement Order (November 5, 2019)⁵²
- 13 ■ Petition of the Energy Association of Pennsylvania (EAP) for Reconsideration of the
14 Commission's November 5, 2019 CAP Policy Statement Order⁵³
- 15 ■ Joint Answer of TURN, Action Alliance, and CAUSE-PA to EAP's Petition for
16 Reconsideration⁵⁴

⁵² 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §69.261-69.267, Docket No. M-2019-3012599, Order (Nov. 5, 2019), available at <https://www.puc.pa.gov/pcdocs/1643025.docx> (hereinafter November 5, 2019 CAP Policy Statement Order).

⁵³ 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §69.261-69.267, Docket No. M-2019-3012599, Petition of the Energy Association of Pennsylvania for Reconsideration and Clarification of Final Policy Statement Order Entered on November 5, 2019 (Nov. 20, 2019), <https://www.puc.pa.gov/pcdocs/1652415.pdf>.

⁵⁴ 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §69.261-69.267, Docket No. M-2019-3012599, Joint Answer of the Low Income Advocate to the Petition of the Energy Association of Pennsylvania for Reconsideration and Clarification of Final Policy Statement Order Entered on November 5, 2019 (Dec. 9, 2019), <https://www.puc.pa.gov/pcdocs/1646906.pdf>.

1 ■ Commission Order on EAP Petition for Reconsideration (February 6, 2020)⁵⁵

2 **Q. What changes did the Commission make to its CAP Policy Statement?**

3 A. The Commission made a number of changes and updates to its CAP Policy Statement.⁵⁶

4 Importantly, the Commission adopted reduced Energy Burdens, as follows:

5

Household Income	Electric nonheating service	Natural Gas Heating	Electric heating or natural gas heating and electric nonheating combined
0-50% FPIG	2%	4%	6%
51-100% FPIG	4%	6%	10%
101-150% FPIG	4%	6%	10%

6

7

8 **Q. Did the Commission order utilities to do anything in making these changes and**
9 **establishing these new Energy Burdens?**

10 A. On November 5, 2019, in the same Order that the Commission changed the Energy
11 Burdens, the Commission provided specific instructions. In those instructions, the Commission
12 required each Electric Distribution Company and Natural Gas Distribution Company to make a
13 filing that indicated how the utility intended to adopt the various changes to CAP Policy
14 Statement in its USECP.⁵⁷

⁵⁵ 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §69.261-69.267, Docket No. M-2019-3012599, Order on Reconsideration and Clarification (Feb. 6, 2020), <https://www.puc.pa.gov/pdocs/1653749.docx> (hereinafter Commission Order on EAP Reconsideration of CAP Policy Statement).

⁵⁶ For a full list of the changes adopted, see November 5, 2019 CAP Policy Statement Order at 4-7.

⁵⁷ *Id.* at 106 (ordering paragraphs 6-8). See also Commission Order on EAP Reconsideration of CAP Policy Statement at 8-11.

1 **Q. How does this impact PECO’s CAP FCO?**

2 A. PECO had the same obligation to respond to the Commission’s November 5, 2019 CAP
3 Policy Statement Order as other EDCs and NGDCS, with one critical exception. In the
4 Settlement establishing the FCO, PECO bound itself to incorporate, without further proceedings,
5 the Commission’s revised Energy Burdens in the calculation of CAP bills. PECO’s 2016-2018
6 USECP and the CAP FCO Settlement cite directly to the CAP Policy Statement, specifically
7 noting that the targeted Energy Burdens in the FCO calculation would update to reflect the
8 Energy Burdens in the CAP Policy Statement at 52 Pa. Code § 69.265(2)(i). The change to the
9 CAP Policy Statement itself triggered PECO’s obligation to use those updated Energy Burdens.⁵⁸
10 By contrast, PECO would have to make a filing to adopt other changes made in the CAP Policy
11 Statement and obtain Commission approval.⁵⁹

12 **VI. PECO’S ADHERENCE TO THE CAP FCO SETTLEMENT AND 2016-2018**
13 **USECP**

14 **Q. PECO has taken the position that notwithstanding the Commission’s changes in**
15 **Energy Burdens in the Amended CAP Policy Statement, it is not bound by the provision in**
16 **the Settlement which states that it will utilize new Energy Burdens. Do you agree?**

17 A. No. In my experience, settlements are the result of negotiations between parties to
18 litigation, and are, at their core, the result of compromise whereby parties’ concerns are

⁵⁸ It is noteworthy that after the Settlement and the incorporation of the Settlement into the 2016-2018 USECP, PECO represented to the Commission that its USECP incorporates Energy Burden changes automatically in Comments to the Commission, stating “PECO notes, however, that if the Commission-established energy burden is changed, PECO’s CAP FCO program has a ‘pass through’ clause allowing for automatic implementation.” Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711, Initial Comments of PECO Energy Company (May 11, 2019) at 8, <https://www.puc.pa.gov/pcdocs/1618633.pdf>.

⁵⁹ See November 5, 2019 CAP Policy Statement Order; also Commission Order on EAP Reconsideration of CAP Policy Statement.

1 addressed in some fashion, with the aim of avoiding expensive litigation. A settlement is a
2 binding contract/statement of what parties will do. Importantly, parties do not get to pick and
3 choose which terms to honor. Such a practice violates a promise and totally undermines the
4 principle of settlement. A failure of any party to comply with its settlement obligations
5 represents, in effect, a breach of contract. Such a breach affects all settling parties and those they
6 represent. In the case of TURN, as a representative of the interests of its membership, the impact
7 of PECO’s failure to comply with the Settlement is felt by the low-income tenants TURN
8 represents, as described more fully by TURN witness Lord.

9 **Q. Why is it important for PECO to comply with the Settlement?**

10 A. As discussed above, settlements include promises that reflect compromise. A failure of
11 any party to comply with its settlement obligations affects the settling parties and those they
12 represent.

13 The Commission’s regulations confirm that settlements which serve the public interest
14 are desirable and encouraged in PUC proceedings.⁶⁰ As the Commission has recently explained,
15 “a settlement, whether whole or partial, benefits not only the named parties directly, but,
16 indirectly, all of the customers of the case. It is for these reasons, that settlements are
17 encouraged by long-standing Commission policy.”⁶¹ The Settlement at issue in this case ensured
18 that FCO credits for all CAP participants would be calculated based on the Commission’s
19 Energy Burdens, even if they changed after the FCO was implemented.

⁶⁰ See 52 Pa. Code §§ 5.231, 69.401.

⁶¹ November 19, 2020 Opinion and Order, Pa. P.U.C. v. PGW, R-2020-3017206, *et al.*, at 13.

1 **Q. Having reviewed the Settlement, what is your opinion on whether PECO has**
2 **complied with the terms of the Settlement?**

3 A. On its face, the terms of the Settlement are clear and require PECO to utilize the
4 maximum Energy Burdens set forth in the amended CAP Policy Statement, even if those Energy
5 Burdens were changed after the FCO is implemented. The Settlement includes no requirement
6 (or even suggestion) that further Commission review or approval is required in order to
7 implement the revised Energy Burdens.⁶² Once the Commission adopted new Energy Burdens in
8 its CAP Policy Statement, on November 5, 2019, the Settlement obligates PECO to “utilize the
9 new maximum allowable Energy Burden for each poverty level.”⁶³ Because the language of the
10 Settlement is clear, it is my opinion that PECO is in violation of the CAP FCO Settlement and
11 the Commission’s approved USECP.

12 **Q. In addition to a change in prescribed Energy Burdens, are there other Commission**
13 **actions which would automatically change provisions of PECO’s CAP and participating**
14 **customer’s discounts?**

15 A. Yes. For instance, the Commission’s approval of a change in PECO’s base rates directly
16 impacts the total Annual CAP credits an individual customer receives. When the Commission
17 approves a PECO base rate increase, the portion of each customer’s Annual CAP Credit that is
18 attributable to distribution rates will be increased by a percentage equal to the system-wide
19 distribution rate increase for the applicable rate class.⁶⁴ I note that the Annual CAP Credit

⁶² As a matter of interpretation, all that is contemplated by the Settlement is that the Commission’s change to the Energy Burdens in its Policy Statement would trigger a change in PECO’s FCO. There is no language in the Settlement suggesting that this change is conditioned upon any other event or occurrence.

⁶³ Settlement at 2 n.3.

⁶⁴ Settlement at 6.

1 adjustment due to base rate increases required by the Settlement has been omitted from the
2 addendum to the 2016-2018 USECP.⁶⁵

3 In addition, each customer's Annual CAP Credit under the CAP FCO is subject to a
4 maximum, as a cost containment measure. The Settlement provides that the maximum allowable
5 credits will increase by a percentage equal to the system-wide distribution rate increase for that
6 rate class.⁶⁶ Specifically, "the maximum allowable credits will be increased by a percentage
7 equal to the system-wide [applicable rate class] distribution rate increase, applied to the portion
8 of the Maximum Credit that is attributable to distribution rates."⁶⁷

9 **Q. Why is it important for PECO to comply with its USECP?**

10 A. PECO customers take service from PECO in reliance upon PECO charging the amounts
11 it is lawfully permitted to charge.⁶⁸ For CAP customers the amount charged is governed by the
12 USECP. Due to their low income, CAP customer bills typically reflect a discount off of PECO's
13 base rates.

14 Pursuant to the terms of its USECP, when the PUC changed the CAP Policy Statement,
15 PECO was required to use the updated CAP Policy Statement Energy Burdens in its FCO. By
16 failing to adjust the Energy Burdens in the FCO, PECO has delivered CAP bills which are not
17 properly calculated to reflect the Commission's CAP Policy Statement, in violation of its
18 USECP. In addition to its legal requirements to abide by the terms of its USECP, in my opinion,
19 the failure of PECO to apply all of the criteria contained in its current service plan is a violation

⁶⁵ Compare Settlement at 6; 2016-2018 USECP, Addendum B, at 6.

⁶⁶ Settlement at 4, n.8, n.9 & n.10.

⁶⁷ *Id.*

⁶⁸ 52 Pa. Code § 56.11(a).

1 of Section 1501 of the Public Utility Code, which requires a utility to provide reasonable
2 customer service and service in conformity with Commission regulations and orders.⁶⁹

3 **Q. Does PECO represent to its customers that they will be charged an amount deemed**
4 **by the PUC to be reasonably affordable?**

5 A. Yes. PECO provides information to customers about its Customer Assistance Program in
6 a number of different ways, including through brochures, information on its website, outreach
7 events in the community, and by providing information when customers call PECO.
8 Importantly, in response to a discovery request, PECO provided a portion of its “2020 CAP
9 Supervisor Training”, specifically the section related to CAP bills.⁷⁰ According to that training,
10 PECO’s suggested script for the calculation of Energy Burdens specifically states that “[t]he
11 Energy Burden is a percentage of your annual income and is the amount that you are reasonably
12 able to afford to pay for utility service per the PUC’s affordability guidelines.”⁷¹

13 **VII. APPROPRIATENESS OF RELIEF SOUGHT**

14 **Q. What remedies and relief is TURN seeking in this Complaint?**

15 A. As set forth in the Complaint, TURN requests the following relief from the Commission:

16 A. Find that PECO violated the terms of the Commission approved Settlement at Docket

⁶⁹ See 66 Pa. C.S. § 1501. See also *DeSantis v. Pennsylvania Power Company*, 2020 WL 2487413, Pa. PUC Docket No. C-2019-3013652, at *6 (holding, in the context of an individual formal complaint, that “failure to apply all the criteria from the most current universal service plan is a violation of Section 1501 of the Public Utility Code.”).

⁷⁰ PECO Response to TURN-I-16(a) at 3 (“The PUC has determined that based on the total gross household FPL%, customers are able to afford to pay a percentage of their household income on their utility bills. This percentage is known as the customers **Energy Burden**.”)(attached hereto in Exhibit B). That training, from 2020, lists the appropriate Energy Burden Percentages as the Energy Burdens from the old CAP Policy Statement, though it does include the note that “[t]he Energy Burden Percentage table is based upon the ranges found at 52 Pa. Code §69.265(2)(i)(A) [and] if the Commission changes the energy burden range set forth in the Policy Statement, PECO will utilize the new maximum allowable energy burden for each FPL Range.” *Id.* at 4.

⁷¹ *Id.* at 5.

1 Number M-2012-2290911.

2 B. Find that PECO violated its USECP at Docket Number M-2015-2507139.

3 C. Find that PECO's violation(s) of its USECP constitute unreasonable service in violation
4 of 66 Pa. C.S. §1501.

5 D. Order PECO to implement the energy burdens in the Commission's CAP Policy
6 Statement as required by the Settlement and PECO's USECP.

7 E. Order PECO to retroactively calculate CAP Credits for all CAP customers back to the
8 date the Commission approved the new energy burdens, and provide bill credits to CAP
9 customers or reduce past-due balances as appropriate.

10 F. Order PECO to provide retroactive arrearage forgiveness for all partial payments that
11 would have satisfied full payment under the revised bills.

12 G. Require PECO to make any necessary filing with the Commission to effectuate the
13 implementation of the energy burdens in the Commission's CAP Policy Statement and
14 the relief requested herein.

15 H. Fine PECO for its willful violation of a Commission approved Settlement.

16 I. Grant any other such relief as is just and appropriate.

17 **Q. In your expert opinion, have PECO's actions caused harm to its CAP customers?**

18 A. Yes. TURN witness Lord explains in further detail how PECO's failure to implement the
19 PUC's Energy Burdens has affected TURN, as a party to the Settlement, as well as the low-
20 income tenants and CAP Customers TURN represents. By charging CAP Customers bills that
21 do not reflect required Energy Burdens, PECO has economically harmed those low-income
22 customers that participate in CAP. From my perspective, based on my decades of experience

1 representing low-income utility customers in Philadelphia, I believe that these actions also
2 disproportionately affect black and brown households.

3 **Q. If PECO is found to be in violation of the Settlement, its 2016-2018 USECP and the**
4 **Public Utility Code, what would be the appropriate relief?**

5 A. In my opinion, the FCO Settlement and PECO's 2016-2018 USECP are clear regarding
6 PECO's obligation to reduce Energy Burdens. PECO should be required immediately to adjust
7 its FCO calculations to use the Energy Burdens in the CAP Policy Statement, for as long as it
8 operates the FCO. In addition, PECO should be required remedy its violations in the form of
9 retroactive bill credits and arrearage forgiveness. I also believe that PECO should be fined for its
10 willful violation of a Commission approved Settlement.

11 **Q: In your expert opinion, why is it appropriate to provide retroactive relief?**

12 A. Providing retroactive relief would begin to remedy the harm done to CAP customers by
13 PECO's failure to swiftly implement the CAP Policy Statement Energy Burdens.

14 **Q. Why are both bill credits and retroactive arrearage forgiveness appropriate?**

15 A. Retroactive bill credits would be a billing adjustment to bring CAP customer bills down
16 to the amount customers should have been billed, while retroactive arrearage forgiveness for any
17 partial payments that would have been full payments would ensure that CAP customers are
18 receiving the benefits they are entitled to under the 2016-2018 USECP.

19 **Q. Why do you feel a fine would be appropriate?**

1 A. The Public Utility Code allows for civil penalties for violations of its provisions.⁷² At 52
2 Pa. Code § 69.1201, the Commission sets out 10 standards and policies to be considered in
3 evaluating violations of the Public Utility Code, a Commission Order, and a Commission
4 Regulation to determine whether a fine would be appropriate.⁷³ There are a number of factors
5 that I believe are particularly relevant here.

- 6 • Whether the conduct was of a serious nature.⁷⁴ PECO has been overcharging
7 more than 100,000 CAP customers since November 5, 2019, over the course of
8 more than a year, and continues its failure to implement the new Energy Burdens.
9 This is not an inadvertent or one-time violation. Despite previously
10 acknowledging to the Commission its obligation to do so, PECO made no attempt
11 to comply with the new Energy Burdens when they were established or after they
12 were published.⁷⁵ Even after the filing of this Complaint, PECO has refused to
13 implement the new Energy Burdens or to recognize its obligation to make all the
14 retroactive adjustments required by its erroneous billing.
- 15 • Whether the consequences of the conduct at issue were of a serious nature.⁷⁶ In
16 evaluating the consequences of PECO's actions, the inquiry should start with how
17 much CAP customers were overcharged, in total and on a per CAP customer
18 basis. In response to a discovery request, PECO estimated the total increase in
19 CAP Credits if PECO had implemented the updated Energy Burdens on either

⁷² See 66 Pa.C.S. § 3301.

⁷³ 52 Pa. Code § 69.1201; *see also* Pa. Public Utility Comm'n, Bureau of Investigation and Enforcement v. HIKO Energy LLC, Docket No. C-2014-2431410 (Opinion and Order entered December 3, 2015), <https://www.puc.pa.gov/pcdocs/1398667.docx>.

⁷⁴ 52 Pa. Code § 69.1201(c)(1).

⁷⁵ Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711, Initial Comments of PECO Energy Company (May 11, 2019) at 8, <https://www.puc.pa.gov/pcdocs/1618633.pdf>.

⁷⁶ 52 Pa. Code § 69.1201 (c)(2).

1 November 5, 2019, or March 21, 2020, through September 15, 2020, as set forth
2 in the table below:

Implementation Date	Estimated Total Increase in CAP Credits (through September 15, 2020)	Number of CAP Customers (August 2020) ⁷⁷	Estimated Average Increase per CAP Customer
November 5, 2019	\$22,175,260 ⁷⁸	115,834	\$191
March 21, 2020	\$11,824,148 ⁷⁹	115,834	\$102

3
4 I note that the average increase is a calculation based on PECO's responses to
5 discovery. However, it shows that over time, PECO's failure to reduce Energy
6 Burdens contributes to significant economic harm, even at a calculated average. It
7 is also impossible to know how a reduced bill might have benefited individual
8 CAP customers – but in my experience, low-income customers are always facing
9 higher bills and costs than they have the ability to cover. Money paid to PECO
10 could have been spent on rent, food or other necessities.

11 • Whether the conduct at issue was deemed intentional or negligent.⁸⁰ In this case,
12 PECO has knowingly violated an unambiguous term of the FCO Settlement,
13 which was incorporated in its USECP. Indeed, prior to the Commission's
14 adoption of the reduced Energy Burdens, PECO acknowledged to the

⁷⁷ PECO Response to TURN I-1, attached hereto in Exhibit B.

⁷⁸ PECO Response to TURN I-15, attached hereto in Exhibit B.

⁷⁹ PECO Response to TURN I-14, attached hereto in Exhibit B.

⁸⁰ 52 Pa. Code § 69.1201 (c)(3).

1 Commission that any change in Energy Burdens would be automatically
2 incorporated in its USECP.

- 3 • The number of customers affected and the duration of the violation.⁸¹ As
4 previously noted, PECO has been overcharging all of its CAP customers, more
5 than 100,000 low-income customers, for more than a year. Even if you were to go
6 by the date of publication of the CAP Policy Statement, rather than the date the
7 Energy Burdens were adopted by the Commission, PECO has been overcharging
8 CAP customers for almost nine months, as of the date of this testimony.
- 9 • The amount of civil penalty or fine necessary to deter future violations.⁸² As
10 discussed earlier in my testimony, this case arises from the violation of a
11 settlement agreement and the terms of a USECP. This violation could have a
12 chilling effect on the willingness of parties to enter into settlement with PECO
13 and trust that those terms will be honored. Similarly, failure to abide by the rules
14 governing its universal service programs could harm the faith that PECO's low-
15 income customers have that PECO will hold up their end of the bargain when they
16 enroll in CAP or any of PECO's universal service programs. PECO is one of the
17 largest utilities in Pennsylvania.⁸³ I believe any fine should be substantial enough
18 to send a message to PECO and Electric and Natural Gas Distribution Companies
19 across the state that these violations are not acceptable to the Commission.

⁸¹ 52 Pa. Code § 69.1201 (c)(5).

⁸² 52 Pa. Code § 69.1201 (c)(8).

⁸³ In 2019, PECO had 1,488,812 electric customers and 484,678 Natural Gas Customers. See Pa. PUC Bureau of Consumer Services, Report on 2019 Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies at 4-5, https://www.puc.pa.gov/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2019.pdf. In addition, PECO's estimated low-income customers made up 26.4% of its residential Electric customer base, and 15.5% of its residential Natural Gas customer base. *Id.* at 6-7.

1 • Other relevant factors.⁸⁴ In particular, the ongoing COVID-19 pandemic and
2 economic crisis has amplified the harm caused by PECO. While PECO's
3 violations began prior to the COVID-19 pandemic, the ongoing refusal to take
4 action even in the face of economic harm to its CAP customers should be
5 considered in the context of calculating a fine.

6 Given all these factors, I recommend a penalty of between 5 to 10% of the value of discounts
7 PECO failed to provide to CAP customers due to its violations of the Settlement and its 2016-
8 2018 USECP. By way of example, based on the numbers provided by PECO through September
9 15, 2020, the penalty could range from between \$600,000⁸⁵ and \$2.2 million.⁸⁶ As this is a
10 continuing violation, I cannot suggest a more definitive range at this time. Such a number
11 depends on the date that PECO actually implements the Energy Burdens.

12 **Q. Does this conclude your testimony?**

13 A. Yes.

⁸⁴ 52 Pa. Code § 69.1201 (c)(10).

⁸⁵ Approximately 5% of \$11,824,148 (using March 21, 2020 for implementation of Energy Burdens).

⁸⁶ Approximately 10% of \$22,175,260 (using November 5, 2019 for implementation of Energy Burdens).

Exhibits

Exhibit A: Resume of Philip A. Bertocci

Exhibit B: Responses of PECO Energy Company to TURN Discovery

Exhibit C: TURN *et al.* Statement in Support of Settlement

Exhibit A: Resume of Philip A. Bertocci

**Resume of
Philip A. Bertocci**

Office Address: COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102
215- 981-3702
267-765-6481 (fax)
pbertocci@clsphila.org

LEGAL CAREER

COMMUNITY LEGAL SERVICES, INC., September, 1980 - September, 1981; January, 1983 – June 30, 2011 (retirement date). I currently serve as a consultant to the Energy Unit at Community Legal Services, with the title “Of Counsel.”

In my thirty-five plus years of legal practice on behalf of low and moderate income consumers, I have worked in several different areas of consumer law including mortgage foreclosure defense, ejectment defense arising from residential lease-purchase agreements, Truth-in-Lending Act litigation, consumer bankruptcy proceedings, and utility service.

Since 1995, my primary focus has been on low income gas, electric and water utility issues, with the aim of assisting low income consumers to obtain affordable utility service, to maintain that service without unreasonable interruption, and to get service back on when it has been terminated for non-payment or for other reasons. This work has involved both representation of individual utility customers and especially more general representation of the residential customer class in utility rate cases and other regulatory proceedings before the Philadelphia Gas Commission, the Philadelphia Water Commissioner, and the Pennsylvania Public Utility Commission.

The positions that I have held are summarized as follows:

Of Counsel, Community Legal Services, Summer, 2011-present
Supervising Attorney, CLS Energy Unit, Spring, 1998-Summer, 2011
Public Advocate, Philadelphia Gas Commission, 1998-present
Public Advocate, Philadelphia Water Department Rate Proceedings, 2000- present
Staff Attorney, CLS Energy Unit, 1995- Spring, 1998
Supervising Attorney, CLS Law Center South, 1986-2011
Staff Attorney, Consumer/Housing, Family Advocacy, CLS Law Center South, 1980-81, 1983-1986

PENNSYLVANIA SUPERIOR COURT

Law Clerk for Judge Phyllis W. Beck, October, 1981-December, 1982

EDUCATION

Wesleyan University, B.A. 1962
Yale University, Ph.D. (Modern European History) 1970
University of Pennsylvania Law School, J.D. 1980

LAW RELATED PROFESSIONAL MEMBERSHIPS

Member, Philadelphia Bar Association

SELECTED CASES

In Re: Philadelphia Water Department Water, Wastewater and Stormwater Rate Increase Proceeding, FY 2013-2015 (Of Counsel, with CLS Energy Unit Attorneys, as appointed Public Advocate on behalf of residential water customers).

Public Advocate et al. v. Bernard Brunwasser, Water Commissioner, et al., 22 A.3rd 261 (Pa. Cmwlth. 2011) (Lead counsel, as appointed Public Advocate on behalf of residential water customers).

In Re: Philadelphia Water Department Water and Wastewater Rate Increase Proceeding, FY 2009-2012 (Lead counsel, as appointed Public Advocate on behalf of residential water customers).

Re: Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa.C.S. Chapter 14; General Review of Regulations, PUC Docket No. L-00060182 (Lead counsel, on behalf of Action Alliance of Senior Citizens, Tenant Union Representative Network (TURN) and Association of Community Organizations for Reform Now (ACORN)) (Final Regulations pending).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. R-2008-2073938 (Emergency Base Rate Increase Case) (Lead counsel, on behalf of Action Alliance of Senior Citizens and Tenant Union Representative Network).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. R-00061931 (PGW Base Rate Case) (Lead counsel, on behalf of Action Alliance of Senior Citizens and Tenant Union Representative Network).

Malisa Alexander v. Philadelphia Gas Works, PUC Docket No. C-20077389, 2008 WL 5786602, Pa.P.U.C., 2008 (Lead counsel).

In Re: Philadelphia Water Department Water and Wastewater Rate Increase Proceeding, FY 2005-2008 (Lead counsel, as appointed Public Advocate, on behalf of residential water customers).

Grace Scutching v. Philadelphia Gas Works, PUC Docket No. C-20028352, 99 Pa.P.U.C. 195, 2004 WL 2348997 (Pa.P.U.C.) (Co-counsel).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. M - 00021612 (Restructuring Proceeding), Docket P - 00032061 (Petition for Rescission and Amendment of Philadelphia Gas Works (Means Tested Senior Citizen Discount) (Lead Counsel on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. M - 00021612 (Restructuring Proceeding pursuant to Natural Gas Choice and Competition Act) (Lead counsel on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

In Re: Philadelphia Water Department Water and Wastewater Rate Increase Proceeding, FY 2002-2004 (Lead counsel as appointed Public Advocate, on behalf of residential water customers).

PGW Capital and Operating Budget Proceedings, Philadelphia Gas Commission, FY 1995-2011 (Public Advocate on behalf of residential natural gas customers).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. R-00006042 (2001) (Base Rate Increase) (Lead counsel, on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC. Docket No. R-00005654 (2000) (Interim Base Rate Increase) (Lead counsel, on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

In re: Application of PECO Energy Company ... for Approval of (1) a Plan of Corporate Restructuring, including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, PUC Docket No. A-110550F0147 (2000) (“PECO-Unicom Merger”) (Lead counsel, on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

In re: Application of PECO Energy Company for Approval of its Restructuring Plan, PUC Docket Nos. R-00973953 and P-00971265 (1997) (“Electricity Generation Customer Choice and Competition Act”) (Co-counsel, on behalf of CEPA, ACORN and TAG).

Brodo v. Bankers Trust Co., 847 F.Supp. 353 (E.D. Pa. 1994) (Truth-in- Lending).

In re Celona, 90 B.R. 104 (Bankr. E.D. Pa. 1988), aff’d, 98 B.R. 104 (E.D. Pa. 1989) (Truth-in- Lending and Bankruptcy).

In re Fox, 83 B.R. 290 (Bankr. E.D. Pa. 1988) (Bankruptcy and Ejectment).

Reliance Standard Life Insurance v. Presley, 12 Phila. 96, aff'd, 353 Pa.Super. 651, 506 A.2d 1341 (1985) (Mortgage Foreclosure).

LEGAL PUBLICATIONS

“Residential Utility Service,” Pennsylvania Consumer Law, 2nd ed., Carolyn L. Carter, ed. (Bisel Co.:2003), updated by annual Supplement through 2011.

Co-author, The Chapter 7 Bankruptcy, Pennsylvania Bar Institute, PBI No. 1991- 635.

LEGAL AWARDS

Pennsylvania Legal Aid Network 2011 Excellence Award (“in recognition of outstanding work on behalf of our client community in Pennsylvania”).

Regional Housing Legal Services 2009 Award (“in recognition of his commitment and dedication to low income residential energy issues in Philadelphia”).

BAR ADMISSIONS

Pennsylvania – All State Courts

U.S. District Court for the Eastern District of Pennsylvania

U.S. Circuit Court of Appeals for the Third Circuit

Exhibit B: Responses of PECO Energy Company to TURN Discovery

PECO Response to TURN I-1(b) and (c)

PECO Response to TURN I-1(d)

PECO Response to TURN I-14

PECO Response to TURN I-15

PECO Response to TURN I-16(a)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network

v.

PECO Energy Company

Docket No. C-2020-3021557

Response of PECO Energy Company
to Interrogatories
TURN Set I

Response Date: 10/08/2020

TURN-I-1

Please provide a table, in excel or csv format, that sets forth, for each month from September 2019 to present:

- a. The total number of customers confirmed by PECO to be low-income.
- b. The total number of customers enrolled in PECO's Customer Assistance Program (CAP)
- c. The number of CAP customers disaggregated by rate type (electric baseload, electric heating, electric and gas).
- d. The number of CAP customers disaggregated by Federal Poverty Level (FPL) tier (0-50% FPL; 51-100% FPL; 101-150% FPL)

RESPONSE:

Please see attachments TURN-I-1(a), (b and c), and (d).

Responsible Witness: Mark Kehl

Sep 2019 to Aug 2020	Number Of CAP Customers Billed By Rate Type				
	Total	ELECTRIC	ELECTRIC HEAT	DUAL	GAS
Sep-19	111,965	81,057	11,609	18,978	321
Oct-19	111,598	80,926	11,514	18,843	315
Nov-19	111,878	81,252	11,485	18,812	329
Dec-19	112,734	81,947	11,529	18,948	310
Jan-20	113,070	82,159	11,572	19,039	300
Feb-20	113,589	82,449	11,701	19,134	305
Mar-20	114,267	82,847	11,849	19,267	304
Apr-20	114,258	82,827	11,820	19,315	296
May-20	114,338	82,814	11,821	19,411	292
Jun-20	114,716	83,001	11,894	19,533	288
Jul-20	115,190	83,284	11,956	19,668	282
Aug-20	115,384	83,427	11,929	19,748	280

Sep 2019 to Aug 2020	Number Of CAP Customers Billed By FPL Percentage			
	Total	0-50	50-100	101-150
Sep-19	111,965	29,232	53,425	29,308
Oct-19	111,598	29,039	52,974	29,585
Nov-19	111,878	29,237	53,234	29,407
Dec-19	112,734	29,704	53,737	29,293
Jan-20	113,070	29,682	53,717	29,671
Feb-20	113,589	29,997	54,015	29,577
Mar-20	114,267	30,404	54,332	29,531
Apr-20	114,258	30,490	54,383	29,385
May-20	114,338	30,453	54,280	29,605
Jun-20	114,716	30,691	54,456	29,569
Jul-20	115,190	30,905	54,722	29,563
Aug-20	115,384	31,015	54,864	29,505

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network

v.

PECO Energy Company

Docket No. C-2020-3021557

Response of PECO Energy Company
to Interrogatories
TURN Set I

Response Date: 10/08/2020

TURN-I-14

Please quantify the difference between what PECO billed FCO CAP customers between March 21, 2020 and September 15, 2020 and what PECO would have billed FCO CAP customers between March and September 15, 2020 if PECO had implemented the Commission's new energy burdens on March 21, 2020.

RESPONSE:

Please see Attachment TURN-I-14(a) for the estimated increase in CAP credits, and therefore the billing difference, between March 21, 2020 and September 15, 2020 if PECO had implemented the new energy burdens.

Responsible Witness: Mark Kehl

	Monthly Allocation of FCO Credits							Total
	8%	7%	6%	7%	10%	10%	8%	
Annual Amount from TURN-I-12	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	
Change in FCO Energy Burdens	\$24,794,540	\$2,060,269	\$1,788,830	\$1,498,860	\$1,844,218	\$2,539,785	\$2,393,831	\$2,075,059
35% of March to adjust for March 21st	\$721,094							
50% of September to adjust for September 15th							\$1,037,530	
Final results	\$721,094	\$1,788,830	\$1,498,860	\$1,844,218	\$2,539,785	\$2,393,831	\$1,037,530	\$11,824,148

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network

v.

PECO Energy Company

Docket No. C-2020-3021557

Response of PECO Energy Company
to Interrogatories
TURN Set I

Response Date: 10/08/2020

TURN-I-15

Please quantify the difference between what PECO billed FCO CAP customers between November 5, 2019 and September 15, 2020 and what PECO would have billed FCO CAP customers between November 5, 2019 and September 15, 2020 if PECO had implemented the Commission's new energy burdens on November 5, 2019.

RESPONSE:

Please see Attachment TURN-I-15(a) for the estimated increase in CAP credits, and therefore the billing difference, between November 5, 2019 and September 15, 2020, if PECO had implemented the new energy burdens.

Responsible Witness: Mark Kehl

	Monthly Allocation of FCO Credits											Total
	7%	9%	11%	9%	8%	7%	6%	7%	10%	10%	8%	
Annual Amount from TURN-I-12	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	
Change in FCO Energy Burdens	\$24,794,540	\$1,682,132	\$2,278,632	\$2,709,783	\$2,341,390	\$2,060,269	\$1,788,830	\$1,498,860	\$1,844,218	\$2,539,785	\$2,393,831	\$2,075,059
50% of September to adjust for September 15th												\$1,037,530
Final results	\$1,682,132	\$2,278,632	\$2,709,783	\$2,341,390	\$2,060,269	\$1,788,830	\$1,498,860	\$1,844,218	\$2,539,785	\$2,393,831	\$1,037,530	\$22,175,260

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network

v.

PECO Energy Company

Docket No. C-2020-3021557

Response of PECO Energy Company
to Interrogatories
TURN Set I

Response Date: 10/08/2020

TURN-I-16

Please provide a copy of all documents created by or for PECO or used by PECO since September 2015 that provide training or guidance to PECO staff or contractors on the operation of PECO's CAP FCO.

RESPONSE:

Please see Attachment TURN-I-16(a). This document is updated each year but there have been no changes to the CAP FCO section since 2015.

Responsible Witness: Mark Kehl

2020 CAP Supervisor Training

CAP Bill Information – Minimum Bill Charges

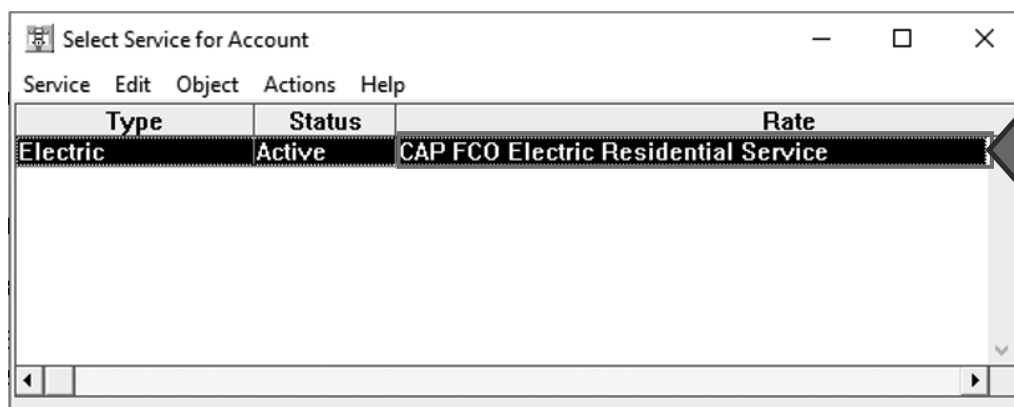
Minimum Bill Script:

- If you have **natural gas service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly gas bill will always be **\$10.00**.
- If you have **residential gas heating service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly gas bill will always be **\$25.00**.
- If you have **electric service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly electric bill will always be **\$12.00**.
- If you have **electric heating service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly electric bill will always be **\$30.00**.



Agents should provide a basic CAP minimum bill charge explanation and remind customers the information was provided when they received their CAP enrollment or recertification letter. CAP minimum bill charge information is also available to the customers in the PECO tariff. Agents should check the “Select Service” window to determine the specific type of service at the property.

Path: Object > Accounts Objects > Select Service to access the window.



Based on the example above, the agent should provide the following “*electric residential service*” minimum bill explanation:

*“If you have **electric service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly electric bill will always be **\$12.00**.”*

2020 CAP Supervisor Training

CAP Fixed Credit Calculation

The CAP Credit Calculation is comprised of three different components.

1. Annual Spend
2. Federal Poverty Level (FPL %)
3. Customers Energy Burden

The first step CIMS uses to determine the annual CAP credit amount is to calculate the last 12 months of undiscounted service charges at the premise, or the annual amount the customer would have paid for electric and/or gas on PECO's non-CAP rates. This is known as the customers **Annual Spend**.

A proxy is used when 12 months of prior usage is not available. Using a proxy, we create a pro forma profile to calculate the customers trailing 12 months usage/ charges. The proxy profile will be used in the following order of preference;

1. Usage at that residence by the customer for the month's available and actual usage by prior customers for the months unavailable
2. Usage at that residence by prior customers
3. System-wide usage or CAP usage averages

System Wide Usage or CAP Average Usage CAP Average Usage by Month

Month	Electric Residential Heating Service	Electric Residential Service	Gas Residential Heating Service	Gas Residential Service
Jan	2,081	839	144	144
Feb	2,296	819	166	163
Mar	2,123	766	150	149
Apr	1,243	585	83	81
May	730	497	32	34
Jun	665	651	17	19
Jul	756	819	16	15
Aug	840	876	13	14
Sep	790	869	16	15
Oct	644	583	22	22
Nov	718	502	40	43
Dec	1,203	651	77	74

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Energy Burden

Determine the Customer's Energy Burden

Next, CIMS will use the most recent verified financial statement income information to determine the customer's household **FPL%**. The PUC has determined that based on the total gross household FPL%, customers are able to afford to pay a percentage of their household income on their utility bills. This percentage is known as the customer's **Energy Burden**.

Income eligibility for PECO's programs is based on the Federal Poverty Level (FPL) guidelines. The Federal Government updates these guidelines every year.

2019 Chart Information

Monthly Federal Poverty Guidelines (FPL)									
Family Size	25% FPL	50% FPL	75% FPL	100% FPL	125% FPL	150% FPL	175% FPL	200% FPL	250% FPL
1	\$261	\$521	\$781	\$1,041	\$1,302	\$1,562	\$1,822	\$2,082	\$2,603
2	\$353	\$705	\$1,057	\$1,410	\$1,762	\$2,114	\$2,467	\$2,819	\$3,523
3	\$445	\$889	\$1,334	\$1,778	\$2,222	\$2,667	\$3,111	\$3,555	\$4,444
4	\$537	\$1,073	\$1,610	\$2,146	\$2,683	\$3,219	\$3,756	\$4,292	\$5,363
5	\$629	\$1,258	\$1,886	\$2,515	\$3,143	\$3,772	\$4,400	\$5,029	\$6,286
6	\$721	\$1,422	\$2,162	\$2,883	\$3,604	\$4,324	\$5,045	\$5,765	\$7,207
7	\$813	\$1,626	\$2,439	\$3,251	\$4,064	\$4,877	\$5,689	\$6,502	\$8,128
8	\$905	\$1,810	\$2,715	\$3,620	\$4,524	\$5,429	\$6,334	\$7,239	\$9,048
For each additional person, add	\$93	\$185	\$277	\$369	\$461	\$553	\$645	\$737	\$921

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Energy Burden

The following table displays the new CAP annual Energy Burden percentages per type of utility service for each FPL% range.

CAP Energy Burden Percentages				
FPL Range	Electric	Electric Heating	Gas	Gas Heating
0-50%	5%	13%	8%	8%
51-100%	6%	16%	10%	10%
101-150%	7%	17%	10%	10%

The Energy Burden Percentage table is based upon the ranges found at 52 Pa. Code §69.265 (2)(i)(A). In each case, the energy burden percentage 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 FPL Range.

Once the customer's Energy Burden is determined, the Energy Burden percentage is multiplied by the customer's verified gross household income amount. The resulting calculation is the customer's affordable **Annual Energy Burden**.

The monthly CAP credit amount is applied to the CAP customer's bill each month. It is designed to keep the customer's bill within their affordable Annual Energy Burden.



Remember to multiply the gross monthly income amount to determine the annual total gross income to determine the customer's Annual Energy Burden.

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Energy Burden

For example, a customer with an **FPL of 18%** would calculate their affordable Annual Energy Burden for Electric Heating rate as follows:

Monthly Total Gross Income	\$2,164.00
Monthly income X12months	X 12
Annual Total Gross Income	\$25,968.00
CAP FCO Electric Residential Heating Energy Burden	X 13%
Annual Energy Burden	\$3,375.00

Based on the PUC's determination of what is affordable, this example shows that the customer can afford to pay \$3,375.00 for their utility service annually.

- If a customer's charges exceed their Affordable Energy Burden Amount, a CAP credit is applied to their bill. This credit method is designed to help keep the customers utility cost within their Annual Energy Burden.
- If a customer's Annual Spend is less than their Annual Energy Burden, the customer's rates are considered to be affordable and CAP credits are not applied to the bill.

Customers may question the benefits of being on CAP when they do not receive monthly CAP credits. Explain the other benefits besides the monthly CAP credits.

How the CAP Fixed Credit is Calculated Script:

“Under the CAP FCO program, you would receive a monthly credit to your bill based upon your income, the historical usage, and energy burden. The Company determines the amount the customer would spend for a year on their service by adding together the last 12 undiscounted service charges at the property.

The Company calculates the customer's energy burden based on the customer's Federal Poverty Level percentage. The Energy Burden is a percentage of your annual income, and is the amount that you are reasonably able to afford to pay for utility service per the PUC's affordability guidelines

To determine the annual CAP credit, the energy burden is subtracted from the undiscounted service charges at the property over the past 12 months. The difference is your annual CAP credit. This amount is then divided into 12 credits which are applied to your bill each month. The amount of the monthly CAP credit will vary based on the historic usage, but the total credit for the year would not exceed your annual CAP credit. The CAP credit is reassessed quarterly and can change if there is a change in your usage.”

2020 CAP Supervisor Training

CAP Fixed Credit Calculation

The CAP Fixed Credit information is displayed in the CAP Fixed Credit Detail window. To determine the customer's Fixed Credit benefits, access the following path:

Path: Actions > Account Actions > Select "View" command button in the CAP Program window > Select "Fixed Credit Detail command button in the View CAP Detail window

In following example, the CAP customer's electric residential heating service rate is considered to be affordable and CAP credits are not applied to the bill unless there is a change when the account is reassessed.

The screenshot shows a window titled "Fixed Credit Details for" with a menu bar containing "Edit" and "Help". The main content area is divided into two sections:

Fixed Credit Totals

Service Point 1

CAP FCO Electric Residential Heating Svc

Annual Fixed Credit: 0.00

Annual Energy Burden: 3,519.37

Overage: 0.00

Projected Fixed Credit

Relative Month	Service Pt 1 Discount
12/19	0.00
01/20	0.00
02/20	0.00
03/20	0.00
04/20	0.00
05/20	0.00
06/20	0.00
07/20	0.00
08/20	0.00
09/20	0.00
10/20	0.00
11/20	0.00

An "OK" button is located at the bottom left of the window. Two arrows point to the service point name and the 03/20 row in the table.

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Annual Credit

Determine the Customer's Annual Credit

CIMS will use historical data to determine the difference between what the customer can afford to pay and what the previous year would have cost. From the historical usage and billing data for that premise, the customer's Annual credit is calculated by **subtracting** the *customers Annual Energy Burden* amount from the customers *previous year actual spend* to realize the **Annual CAP Credit**.

Example #1 – Customer used about the same amount of energy last year.

Previous years actual spend amount	\$4,557
Annual Energy Burden	-\$3,375
Annual CAP Credit	\$1,182

If the customer's usage pattern stays the same each year, the customer's Annual Fixed Credit may be the same or very similar for each relative month billed. Accounts will be reassessed quarterly, creating a new baseline comparison.

Example #2 – Customer used more energy than last year.

Previous years actual spend amount	\$5,276
Annual Energy Burden	-\$3,375
Annual CAP Credit	\$1,901

If the customer's usage pattern increases from the previous year in the same month, the Annual Fixed Credit will keep the bill within the customers' Energy Burden percentage; as long as they do not exceed their Annual Maximum credit limit. After the Annual Maximum Credit is reached, the customer will be responsible for paying the difference. Accounts will be reassessed quarterly, creating a new baseline comparison.

Example #3 – Customer used less energy than last year.

Previous years actual spend amount	\$3,200
Annual Energy Burden	-\$3,373
Annual CAP Credit	\$0

If the customer's usage pattern decreases from the previous year in the same month, the Annual Fixed Credit will be applied, keeping the bill within the Annual Energy Burden percentage for that service. The customer is required to pay a monthly minimum amount for each service. Accounts will be reassessed quarterly, creating a new baseline.

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Annual Credit

Determine the Customer's Monthly Credit

Once the customer's annual CAP credit is determined, a monthly allocation is applied to the customer's monthly bill. The monthly allocation is based on the energy type per the table below;

Month	Rate R	Rate RH	Gas
Jan	9.6%	13.9%	20.6%
Feb	8.9%	14.2%	19.5%
Mar	8.9%	12.2%	14.5%
Apr	7.0%	9.0%	9.6%
May	5.8%	5.3%	4.5%
June	7.7%	5.2%	2.6%
July	11.3%	6.4%	2.0%
Aug	10.6%	5.9%	1.8%
Sept	9.3%	5.4%	2.0%
Oct	6.6%	4.5%	2.6%
Nov	6.6%	6.4%	6.9%
Dec	8.7%	11.7%	13.6%
Total	100.0%	100.0%	100.0%

Below is an example of a heating customer whose annual credit was calculated to be \$1,200.

Month	Projected Monthly Fixed Credit	CAP Electric Heating Service Adjusted for Seasonality
January	\$100	\$150
February	\$100	\$125
March	\$100	\$75
April	\$100	\$50
May	\$100	\$50
June	\$100	\$50
July	\$100	\$150
August	\$100	\$150
September	\$100	\$50
October	\$100	\$75
November	\$100	\$125
December	\$100	\$150

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Maximum Credit

Maximum Annual Fixed Credit

The PUC has determined Maximum Annual Fixed Credit amounts for each service type in an effort to reduce the number of CAP customers whose bills exceed the PUC's Energy Burden guidelines.

CAP Maximum Annual Fixed Credit Amounts				
FPL Range	CAP Electric Residential Svc	CAP Electric Residential Heating Svc	CAP Gas Residential Svc	CAP Gas Residential Heating Svc
0-50%	\$2,435	\$3,490	\$0	\$0
51-100%	\$1,716	\$2,318	\$0	\$0
101-150%	\$1,554	\$2,070	\$0	\$0

Note: The maximum annual CAP Fixed Credit as of January 2019

There is currently no maximum credit for gas service per PECO's current gas CAP program policy. As a result, a dual commodity customer's maximum annual credit amount is the same for a CAP residential electric customer.

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Zero Credit

Zero Fixed Credit

When the calculation results in a difference of \$0.00 or a negative number, the customer is not eligible to receive a CAP FCO credit since the annual amount for the specific utility service is lower than the annual energy amount. In addition to providing the customer an explanation on how the fixed credit is calculated, provide the following information (script below) if the customer is not receiving a CAP credit.

CAP Fixed Credit – Zero Fixed Credit Script:

“If this calculation results in a difference of \$0.00 or a negative number, you are not eligible for a CAP FCO credit since the annual amount spent on the utility service is lower than the annual energy burden amount.”

Benefits of Being on CAP – Zero Credits

The customer may question the benefit of being on CAP if they are currently not receiving a CAP credit. There is no downside to remaining on CAP. The agent should explain the other benefits of being on CAP beside the monthly CAP credit, which are:

1. PPA Forgiveness

By remaining on CAP, if the customer has PPA dollars set aside the customer remains eligible to receive possible forgiveness as long as they continue to pay their bill on time and in full.

2. CAP Reassessment

As part of the CAP Program, previous energy consumption at the property is part of the equation when calculating the customer’s potential monthly credit. By reassessing an account ever three months, the new Annual Spend will be updated, creating a new baseline comparison.

The oldest three months of consumption will drop out of the equation and the three most recent months of usage will be incorporated into the equation. If at that time, the account becomes eligible for a credit, it will automatically be applied to the account. The customer is not required to do anything.

3. LIHEAP Reminders

By remaining on CAP, customers will be prioritized to proactively receive LIHEAP application reminders and any other assistance available under the suite of programs offered by our Universal Services department (i.e., CAP, LIHEAP and LIURP programs)

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Zero Credit

Benefits of Being on CAP – Currently Not Receiving a CAP Credit Script:

“I hear and understand your concern. While the current calculation of your account does not show a monthly credit, your next reassessment could possibly show a credit for you. We reassess your account every three (3) months and if at that time you are eligible for a credit, it will automatically be applied to your account. There is no downside to remaining on CAP. By remaining on CAP, you will be prioritized to ensure you will proactively receive LIHEAP application reminders. You will receive priority for any assistance available under the suite of programs offered by our Universal Services team that administers the CAP, LIHEAP, LIURP programs. Additionally, if you have PPA, you should stay on CAP to make sure you earn total forgiveness of those previous arrangements. (Explain PPA, if necessary)”

Pre-Program Arrearages (PPA) Script:

“At the time of your account was initially enrolled in CAP, your balance owed at that time was set aside for possible forgiveness. A portion of the set aside dollars may be forgiven each month. As long as you pay your current CAP bill charges in full and on-time each month 1/12 of your PPA set aside balance will be forgiven. If you are removed from CAP, you are responsible for all remaining PPA set aside balances that were not forgiven while you were enrolled in the CAP program.”

Exhibit C: TURN *et al.* Statement in Support of Settlement



1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700
Web Address: www.clsphila.org

April 20, 2015

By eFiling

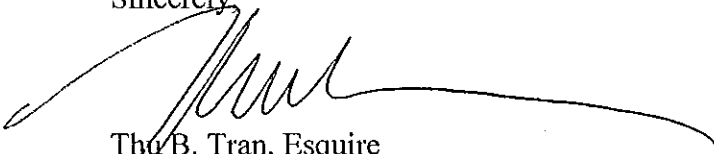
Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911

Dear Secretary Chiavetta:

Enclosed for eFiling please find the **Statement of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia in Support of Settlement**, in the above-captioned matter. Copies of the enclosed have been electronically served upon the Administrative Law Judge and other parties pursuant to the attached Certificate of Service.

Sincerely,



Thy B. Tran, Esquire
Robert W. Ballenger, Esquire
Josie B. H. Pickens, Esquire

Attorneys for TURN et al.

Enclosure

cc: Administrative Law Judge Cynthia Fordham
Service List
Commission Personnel by E-Mail: Cynthia Lehman, Grace McGovern, Joseph McGee,
Louise Fink Smith

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company 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

STATEMENT

of

TENANT UNION REPRESENTATIVE NETWORK (“TURN”)
and
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA
(COLLECTIVELY “TURN et al.”)

IN SUPPORT OF SETTLEMENT

Concerning PECO Energy’s September 30, 2013 Report of Alternative Models for the
Delivery of Customer Assistance Program (CAP) Benefits Submitted Pursuant to the
Commission’s April 4, 2013 Order

April 20, 2015

TABLE OF CONTENTS

I. Introduction..... 1

II. Settlement 3

A. Targeting Affordable Bills Pursuant to the Commission’s CAP Policy Statement..... 3

B. Short-Term Benefits for Certain Low-Income Customers. 4

C. In-Program CAP Arrears Slated for Commission Consideration. 5

D. Additional Funds and Commitments Regarding Usage Reduction. 6

E. Ongoing Collaborative..... 7

III. Conclusion 8

I. Introduction

Since 1984, when PECO's CAP started out as a percentage of income payment (PIP) plan design, it has gone through a number of modifications. In 1996, the Commission approved a CAP Rate design as part of a settlement. In 2000, the Commission recommended that PECO implement a PIP plan design. More recent orders supported the premise that PECO's CAP Rate has been unaffordable for many of its participants. Notwithstanding the USECPs approved in 2008 (for 2007 – 2009) and 2010 (for 2010 – 2012), APPRISE, PECO's third-party evaluator, raised questions in its 2012 program evaluation regarding PECO's rate discounts and affordability. PECO's latest USECP was approved in a Commission Order that directed PECO work with other interested parties to explore CAP design proposals to improve affordability levels. PECO Energy Company 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 April 4, 2013, at 9 ("Order").

On February 28, 2012, PECO filed its USECP for 2013-2015. On October 15, 2012, PECO filed an amended USECP for 2013-2015, the Plan under review herein. Further, on October 31, 2012, PECO submitted the APPRISE six-year evaluation report in compliance with 52 Pa. Code § 54.76. APPRISE noted opportunities for PECO to improve its program impact including suggesting that PECO try to increase affordability for lowest poverty group participants and that PECO target lowest income CAP customers who exceed CAP usage discount limits for LIURP. See APPRISE Evaluation Report at 124.

On November 8, 2012, the Commission entered a Tentative Order in this matter. ("Tentative Order" or "TO"). Several parties filed comments and reply comments, including Tenant Union Representative Network ("TURN") and Action Alliance of Senior Citizens of

Greater Philadelphia (“Action Alliance”) (collectively “TURN et al.”). After evidentiary hearings, including testimony and briefs, Administrative Law Judge Cynthia Fordham certified the record, on March 1, 2013.

On April 4, 2013, the Commission issued an Order in this matter, directing PECO to make certain changes to its USECP. The Commission also directed PECO to test various models to improve the affordability of its Customer Assistance Program to participants, subject to the limitation of not placing more of a financial burden on the non-participants. Order at 24. In the Order, the Commission also expressed interest in more research and investigation for a fixed credit option PIP design. Order at 23.

The Order directed PECO to conduct an analysis and serve a full report to the Commission and parties to this proceeding by September 30, 2013. Order at 24-25. The Commission emphasized that “moving forward, this Commission will expect PECO to comply with the CAP Policy Statement in future USECP filings or, alternatively, provide substantial justification for why deviations from the policy are warranted.” *Id.* On September 30, 2013, PECO submitted its “Report of Alternative Models for the Delivery of Customer Assistance Program (CAP) Benefits Submitted Pursuant to the Commission’s April 4, 2013 Order” (“PECO Report”). In response to questions from OCA, TURN et al. and CAUSE-PA, PECO filed Supplemental Information on October 15, 2013. TURN et al., CAUSE-PA and OCA submitted comments to the PECO Report on October 21, 2013.

On April 25, 2014, the Commission issued a Secretarial Letter directing the parties to provide a report by June 30, 2014 regarding whether a settlement could be reached. The Secretarial Letter also proposed that the parties utilize the Commission’s Mediation Office. The

parties engaged in extensive settlement discussions with the assistance of Mediator Cynthia Lehman, requesting several extensions of the Commission's deadlines.

The terms of the settlement result from extensive negotiations and affect a redesign of PECO's CAP. TURN et al., support this settlement because it is intended to more closely target affordable bills for CAP participants pursuant to the Commission's CAP Policy Statement, 52 Pa. Code § 69.261, et seq., provides short-term benefits to assist CAP participants who will no discount under the redesigned CAP, positions the parties to work together to address in-program CAP arrears accumulated under PECO's existing CAP program, and includes additional funds and commitments regarding usage reduction. The terms and conditions of the Settlement are in the public interest and should be approved.

II. Settlement

A. Targeting Affordable Bills Pursuant to the Commission's CAP Policy Statement.¹

As described in the Joint Petition for Settlement, Exhibit A, PECO CAP Mediation Settlement Term Sheet ("Term Sheet"), PECO is to implement a new CAP design described as being based upon the "Fixed Credit Option" or "FCO." Under PECO's proposed FCO, the amount of a CAP participant's monthly bill discount will be determined utilizing several sequential steps. First the undiscounted charges for the prior year are determined based on actual usage or a pro forma method (such method prioritizes the use of certain sources of information first), which is then weather normalized. Then PECO will verify a household's income, and determine the "energy burden," or maximum percentage of household income specified in the

¹ TURN et al. reference the Commission's CAP Policy Statement and the specified maximum bill affordability standards included therein. See 52 Pa. Code §69.265(2)(i)(A). Although reference to such maximums may be referred to herein as targeting "affordability," TURN et al. continue to submit that the Commission should undertake revision and review of this CAP Policy Statement to reduce the maximum affordability standards in order to provide bills which are actually affordable to low-income families. For instance, a few years ago, the Commission explored reducing the energy burden standards in Proposed Revision to Policy Statement on Customer Assistance Programs, 52 Pa. Code §§ 69.261-69.267, Docket No. M-00072036, Order And Proposed Policy Statement, entered September 5, 2007.

Commission's CAP Policy Statement for the customer based on verified household income. Then PECO determines an annual credit, which is the difference between prior year undiscounted charges and the product of the customer's energy burden and annual income, subject to maximum annual credit limitations. PECO will apply the total dollar amount of the annual credit over the course of the year, taking into account the seasonal nature of usage. Finally, PECO has agreed to periodic recalculations to attempt to ensure that the annual credit adjusts based on changes in the household, in usage, and to base rates.

Although this methodology is more complicated than the PIP advocated for by TURN et al. and CAUSE-PA in the underlying proceeding, it reflects a reasonable compromise to improve the targeting of affordability for PECO's CAP participants relative to PECO's current tiered discount model. Coupled with cost-containment measures and cost recovery for program costs and IT transition costs, TURN et al. submit that this proposal reflects meaningful compromise by all participants in the mediation process. 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 the breadth and depth of affordability obtained for PECO's CAP participants.

B. Short-Term Benefits for Certain Low-Income Customers.

Under PECO's existing tiered rate discount CAP structure, certain customers receive a percentage discount on their bill even though their undiscounted bills would not exceed the Commission's maximum bill affordability standards (expressed as a percentage of household

income) in the CAP Policy Statement. The parties recognized that even though these customers may not require a discount to receive a bill that, on average, is at or below the Commission's maximum bill affordability standards, provision should be included in this settlement to ensure these customers receive some bill payment assistance during a transition period. Accordingly, the settlement provides for a "phase-out benefit" of \$50 per household, applied over the course of 12 months, for these customers. In addition, because participation in CAP entitles customers to other benefits, these customers will continue to be eligible to receive pre-program arrearage forgiveness, priority for low-income usage reduction program (LIURP) treatments, and other non-bill discount benefits available to CAP participants.

C. In-Program CAP Arrears Slated for Commission Consideration.

In-program arrears have accumulated during the ongoing operation of PECO's tiered rate discount CAP. Order at 13-14. TURN et al. submit that this phenomenon is the result of PECO's existing CAP design. With the redesign of CAP proposed in the settlement, it is incumbent upon the parties to the settlement and all parties to subsequent proceedings to recognize that CAP participants must be provided reasonable means to resolve these arrears without unduly compromising affordability. Although the parties were not able to endorse an in-program arrears (IPA) forgiveness program in the context of this settlement, they meaningfully advanced the likelihood of successful resolution of these balances.

As provided in the settlement, PECO is required, either in its next base rate case or in a separate petition, to use its best efforts to obtain approval of an IPA forgiveness program. It must submit a proposal for Commission consideration in time for review to occur prior to FCO implementation in October 2016. Pursuant to the settlement, certain core provisions must be included in PECO's submission, including that CAP participants will be expected to pay 1/3 of

their IPA balances over a period of 60 months to obtain forgiveness of the other 2/3. PECO's cost recovery mechanism must not seek recovery of more than 2/3 of the projected cumulated IPA balance from CAP customers or other ratepayers, if made in a base rate proceeding. If submitted in a proceeding other than a base rate proceeding, PECO's cost recovery mechanism will have substantially similar financial effect. In the event PECO's IPA program is not approved, or its approval is delayed, PECO's CAP participants will be entitled to a 60-month payment agreement (subject to adjustment in the event IPA forgiveness is subsequently approved) on their IPA balances as of the date of implementation of the FCO.

In PECO's very recent rate filing of March 27, 2015, at Docket No. R-2015-2468981, PECO has proposed the very same IPA forgiveness program. See PECO Statement No. 7 – Scott A. Neumann, at Docket No. R-2015-2468981. TURN et al. are petitioning to intervene with the purpose, *inter alia*, of supporting Commission approval of the proposed IPA forgiveness program. TURN et al. submits that this settlement term significantly advances discussions regarding the handling of accumulated CAP balances. Indeed, PECO's new CAP program is exceedingly unlikely to succeed in permitting participants to maintain affordable service if accumulated balances are not addressed. TURN et al. look forward to working with the parties to obtain PUC-approval of an IPA forgiveness program for PECO's CAP participants that is clearly necessary to ensure the viability of PECO's FCO CAP.

D. Additional Funds and Commitments Regarding Usage Reduction.

Recognizing that cost containment provisions will necessarily negatively impact affordability for those CAP participants who are unable to moderate their usage, the settlement includes several specific agreements. Notably, prior to launch of the FCO, PECO will identify CAP participants with high usage for highest priority LIURP treatment in order to minimize the

likelihood that these customers will face unaffordable bills under the FCO program. After the FCO program begins, PECO will prioritize LIURP treatment for those CAP participants whose calculated discount will be limited by the allowable maximums included in the settlement.

The settlement also proposes to utilize LIURP funds to redress certain de facto heating situations, which are situations in which a residential electric (non-heating) customer is utilizing electricity, typically space heaters, due to the absence of other heating fuel, a malfunctioning non-electric heating system, inability to pay for oil or gas heat, or some other reason. The parties agree that due to the impact of these situations on electric usage and resulting unaffordable bills, up to \$700,000 per year of new PECO LIURP funds are to be available to repair or replace a broken oil or gas furnace as long as no structural issues impede the repair and the payback period for the LIURP investment does not exceed 15 years, on average, nor the expected length of life of the new measure installed. In addition, the parties agree that PECO will propose a \$1 million increase in its Act 129 Phase III program to target usage reduction measures for members of the CAP population with incomes between 0-50% of federal poverty guidelines. The parties agree to support PECO's additional LIURP funds, de facto heating mitigation measures, and increased Act 129 funding.

E. Ongoing Collaborative.

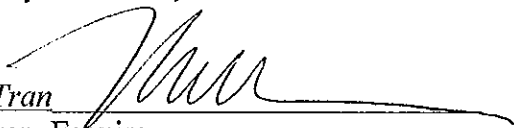
Within 90 days of the Commission's approval of the proposed settlement, PECO will engage stakeholders in a collaborative to develop customer education regarding the CAP redesign, educational materials regarding the potential effect on CAP customers of shopping decisions, educational materials regarding the importance of usage reduction measures (LIURP and Act 129), determination of alternative languages for translation of educational materials, suggested measures for de facto heating program, and cost recovery mechanisms for the

applicable programs. The intended audiences for educational programs include CAP participants, low income customers not participating in CAP, and social service and health agencies.

III. Conclusion

TURN et al. submit that the terms of the Settlement are in the public interest because they are intended to reduce the depth and breadth of unaffordability experienced by PECO's most vulnerable customers participating in CAP. The settlement represents reasonable compromise of all parties, requires that an IPA forgiveness program be proposed for Commission approval, and provides for future review to determine whether the FCO operates in its intended fashion. For these reasons, TURN et al. submit that the proposed Settlement should be approved by the Commission.

Respectfully submitted,


/s/ Thu Tran

Thu B. Tran, Esquire
Robert W. Ballenger, Esquire
Attorneys for TURN and Action Alliance
COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102
(215) 981-3777

Date: April 20, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Universal Service and :
Energy Conservation Plan for 2013-2015 : M-2012-2290911

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of **Statement of TURN et al. in Support of Settlement**, as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

Elizabeth Rose Triscari, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
717-783-2525
etriscari@pa.gov

Christy M. Appleby, Esquire
Candis A. Tunilo, Esquire
Amy Hirakis, Esquire
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street Suite 500
Harrisburg, PA 17101-1923
717-783-5048
cappleby@paoca.org
ctunilo@paoca.org
ahirakis@paoca.org

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
724-838-6765
aklodow@firstenergycorp.com
Representing First Energy Solutions Corp

Ward L. Smith, Esquire
Assistant General Counsel – Exelon
2301 Market Street, S23-1
Philadelphia, PA 19101
215-841-6863
ward.smith@exeloncorp.com
Representing PECO

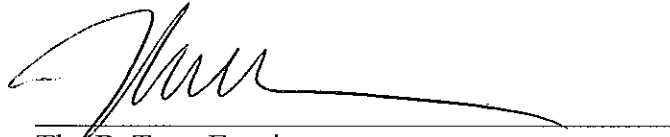
Daniel Clearfield, Esquire
Eckerts, Seamans, Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101-1248
717-232-7162
dclearfield@eckertseamans.com
dodell@eckertseamans.com
elanza@eckertseamans.com
Representing Retail Energy Supply Association

Harry S. Geller, Esquire
Elizabeth Marx, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
717-232-2719
hgellerpulp@palegalaid.net
Representing CAUSE PA

Charis Mincavage, Esquire
Adeolu A. Bakare, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
cmincavage@mwn.com
abakare@mwn.com
Representing PAIEUG

H. Gil Peach, Ph.D.
H. Gil Peach & Associates, LLC
16232 NW Oak Hills Drive
Beaverton, Oregon 97006
503-645-0716
hgilpeach@scanamerica.net

Respectfully submitted,



Thu B. Tran, Esquire
Robert W. Ballenger, Esquire
Josie B. H. Pickens, Esquire
Attorneys for TURN et al.

COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102
(215) 981-3777

April 20, 2015

VERIFICATION

I, **Philip A. Bertocci**, witness of Tenant Union Representative Network, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Date: December 10, 2020

Philip A. Bertocci, witness of TURN

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**TESTIMONY OF
PHILIP M. LORD**

**On Behalf of
Tenant Union Representative Network**

December 10, 2020

Table of Contents

I. Introduction	3
II. Background	4
III. Impact of PECO’s Actions on TURN’s Membership.....	8

Exhibits

Exhibit A: TURN Statement in Support of Settlement.

Exhibit B: PECO Responses to TURN Discovery

Exhibit C: U.S. Census Bureau data regarding Rate of Disconnection Notices from 2013 to 2017

1 **I. Introduction**

2 **Q. Please state your name, occupation, and business address.**

3 A. My name is Philip M. Lord. I am the Executive Director of the Pennsylvania Community
4 Real Estate Corporation d/b/a Tenant Union Representative Network (TURN). TURN's offices
5 are located at 100 S. Broad Street #800, Philadelphia, PA 19110.

6 **Q. Can you briefly outline your education and professional background?**

7 A. Since 2003, I have served as the Executive Director of Tenants Action Group of
8 Philadelphia (TAG) and its successor, TURN, where I manage organizing, advocacy and tenant
9 support programs.

10 I received a Bachelor of Arts in Physics from Brown University in 1970 and a Juris Doctor
11 Degree from Boston University in 1974. I was admitted to the Pennsylvania Bar in November of
12 1974. I started my legal career as a legal services attorney with Northwest Tenants Organization
13 (a special project of legal services) and later with Community Legal Services in Philadelphia.
14 During that time I managed a 15 attorney law office while specializing in housing and group
15 representation.

16 From 1981 to 2003, I was a partner of Commons & Lord and later president of Lord &
17 Haywood P.C. During that time, I concentrated my practice in the area of representing community-
18 based organizations, particularly in affordable housing development, including many tax credit
19 transactions. I represented well over 70 community-based nonprofit corporations in the City of
20 Philadelphia including several housing cooperatives.

1 I also served for several years as co-chair of a federation of community development
2 corporations known as CDC, Inc. I have published on the topic of nonprofit housing development
3 and taught numerous training classes for nonprofit corporations' staff and board members under
4 the auspices of organizations such as the University of Delaware, The Reinvestment Fund, the
5 Philadelphia Development Program, the Philadelphia Minority Bar Conference and others.

6 **Q. For whom are you testifying in this proceeding?**

7 A. I am testifying on behalf of TURN.

8 **Q. Have you testified in any proceeding before the Pennsylvania PUC?**

9 A. No.

10 **Q. What information did you rely on in preparing your testimony for this proceeding?**

11 A. My testimony is based on my experience, including as Executive Director of the Tenants
12 Action Group and then TURN. It is also based on institutional knowledge of TURN, publicly
13 available information, and discovery responses provided by PECO in this proceeding.

14 **II. Background**

15 **Q. Can you describe for me what TURN is and how it operates?**

16 A. TURN is a 30-year-old Pennsylvania nonprofit corporation, dedicated to advancing and
17 defending the rights of tenants and homeless people. TURN provides the spectrum of advocacy,
18 educational and supportive services for tenants, and TURN members are part of a city-wide
19 tenant movement to improve the rights and living conditions of people living in rental housing.

20 We assist Philadelphia residents with services such as defense in eviction actions, rental
21 unit repair problems, assistance with organizing tenant unions, assistance with housing

1 discrimination claims, referrals to access additional support services, and subsidy and relocation
2 services to qualifying tenants, when referred by the City of Philadelphia. TURN’s staff includes
3 experienced workers with a variety of tenant related expertise including housing attorneys,
4 housing counselors with extensive experience, property inspectors, and placement specialists.

5 **Q. Who are TURN’s members?**

6 A. TURN’s members are tenants in Philadelphia, with most being tenants in subsidized
7 housing. Some of our members meet monthly to discuss landlord tenant issues and ways to
8 advance the rights of tenants.

9 **Q. Can you describe TURN’s advocacy regarding utility affordability in Pennsylvania?**

10 A. TURN has been involved in PUC proceedings to ensure affordable bills for tenants in
11 Philadelphia for more than a decade, including involvement in PECO USECP proceedings.¹
12 TURN has also been a party to PECO’s recent Default Service Proceedings and Electric Base
13 Rate cases.²

14 TURN has been involved in several statewide proceedings, including the Review of Universal
15 Service and Energy Conservation Programs, Docket No. M-2017-2596907, and Energy
16 Affordability for Low-Income Customers in Pennsylvania, Docket No. M-2017-2587711. The
17 overarching goal of TURN’s advocacy regarding PECO matters has been to ensure access to
18 electric service and affordable bills for low-income tenants in Philadelphia.

¹ See, e.g. PECO Universal Service and Energy Conservation Plan for 2007-2009 Submitted in Compliance with 52 Pa. Code § 54.74, Docket No. M-00061945 (Order entered Dec. 23, 2008) (approving Joint Petition for Settlement filed by TURN *et al.*, Office of Consumer Advocate, Office of Trial Staff, and PECO Energy Company).

² See, e.g., Pa. PUC v. PECO Energy Company – Electric Division, Docket No. R-2018-3000164; Petition of PECO Energy Company for Approval of Its Default Service Program for the Period From June 1, 2021 Through May 31, 2025, Docket No. P-2020-3019290.

1 **Q. What was TURN’s specific concern in the proceedings that led to the 2015 CAP**
2 **FCO Settlement that is the subject of this proceeding?**

3 A. TURN’s interest has always been for PECO’s CAP to be structured in a way that it
4 provides an affordable monthly bill for low-income customers. Specifically, in the proceedings
5 that led to the CAP FCO Settlement, TURN advocated in earlier filings for a percentage of
6 income plan (PIP) design.³ TURN witness Bertocci covers the background on the 2015 FCO
7 Settlement and related proceedings in his testimony.

8 **Q. Was TURN a signatory to the 2015 Settlement regarding the structure of PECO’s**
9 **CAP program?**

10 A. Yes.

11 **Q. Why did TURN sign on to the 2015 Settlement?**

12 A. The Settlement was reached after extensive negotiations in which TURN and Action
13 Alliance of Senior Citizens of Greater Philadelphia were jointly represented by CLS.⁴ Although

³ See, e.g., PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Comments of Tenant Union Representative Network (“TURN”), Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) Concerning PECO’s Universal Service Three Year Plan (Nov. 28, 2012) at 5 (arguing that PECO should convert back to a PIP CAP design in which customers receive a fixed, predictable bill each month that is a certain percentage of their income), <https://www.puc.pa.gov/pdocs/1201493.pdf>. See also PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2012-2290911, Statement of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively TURN *et al.*) in Support of Settlement at 4 (“Although this methodology is more complicated than the PIP advocated for by TURN *et al.* and CAUSE-PA in the underlying proceeding . . .”) (hereinafter TURN Statement in Support), attached hereto as Exhibit A.

⁴ As discussed herein, the CAP FCO Settlement arose out of PECO’s 2013-2015 USECP and was filed at that docket, M-2012-2290911. See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Joint Petition for Settlement (March 20, 2015), <https://www.puc.pa.gov/pdocs/1349218.pdf>. Note that the Joint Petition includes a Petition (hereinafter “Joint Petition”) and attaches an “Exhibit A: PECO CAP Mediation Settlement Term Sheet” (hereinafter Settlement or CAP FCO Settlement).

1 the Settlement did not include the PIP design TURN desired, instead utilizing a more
2 complicated methodology, TURN stated in its Statement in Support that it nonetheless “reflects a
3 reasonable compromise to improve the targeting of affordability.”⁵ In its Statement in Support of
4 Settlement, TURN specifically noted that the CAP Policy Statement maximums, while deemed
5 “affordable” at the time, should be revised.⁶

6 **Q. How has TURN relied on the terms of the Settlement in its advocacy?**

7 A. TURN’s understanding of the Settlement is that it represented the agreement of all
8 signatories, and upon approval by the Commission would govern the terms and conditions of
9 PECO’s CAP program. As noted above, in the context of agreeing to that Settlement, TURN
10 submitted that the energy burdens in the CAP Policy Statement should be reduced. For TURN, a
11 material term of the Settlement was the agreement that PECO’s CAP program would
12 automatically adjust if the Commission changed those energy burdens. As a result, TURN’s
13 advocacy for lower energy burden targets, including in the Commission’s Energy Affordability
14 proceeding,⁷ has relied upon this automatic incorporation of updated energy burdens into the
15 PECO CAP Structure. In addition, based on PECO’s responses to discovery requests, PECO’s
16 supervisors would have been trained to inform customers, including TURN members, that the
17 energy burdens used in PECO’s CAP program would adjust if the Commission amended its CAP
18 Policy Statement, and that the energy burdens used reflect the PUC’s affordability guidelines.⁸

⁵ TURN Statement in Support at 4.

⁶ TURN Statement in Support at 3 n.1 (“Although reference to such maximums may be referred to herein as targeting ‘affordability,’ TURN *et al.* continue to submit that the Commission should undertake revision and review of this CAP Policy Statement to reduce the maximum affordability standards in order to provide bills that are actually affordable to low-income families.”).

⁷ Energy Affordability for Low-Income Customers, Docket No. M-2017-2587711. *See also* Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907.

⁸ TURN-I-16(a), Attachment at 4-5, attached in Exhibit B.

1 **Q. How has TURN provided information about PECO's CAP to its members?**

2 A. We provide information on utilities to tenants and members in a number of different
3 ways. For example, we will discuss utility responsibilities and payments in response to questions
4 in our classes. We also counsel individual tenants on their utility concerns. In addition, we refer
5 tenants to the Philly Tenant Resource Guide, which includes information about utility programs
6 such as PECO's CAP.⁹

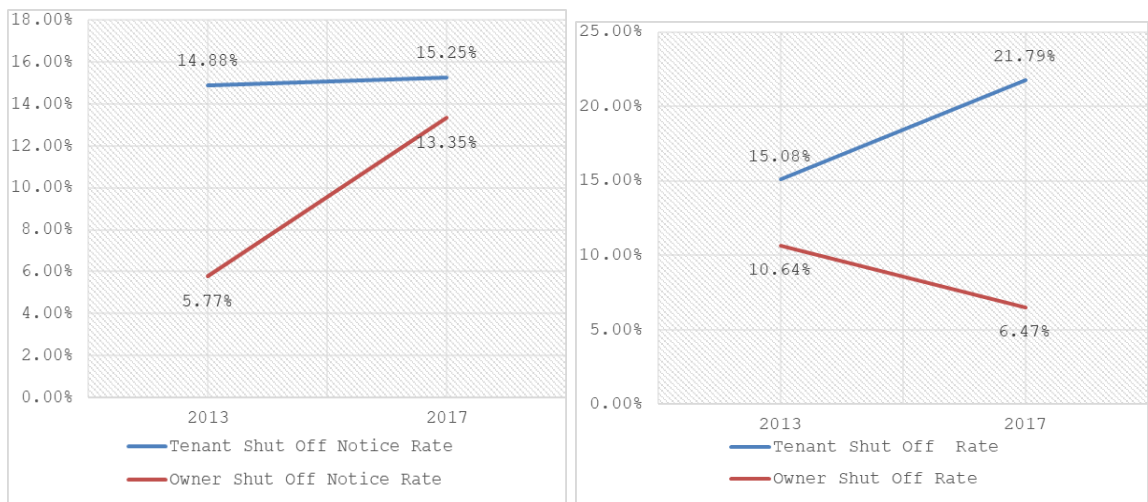
7 **III. Impact of PECO's Actions on TURN's Membership**

8 **Q. As you know, this proceeding involves PECO's refusal to reduce the energy burdens**
9 **its uses to calculate bill credits for its Customer Assistance Program. Can you describe how**
10 **high utility bills impact tenants?**

11 A. In my experience, unaffordable utility bills present a major challenge to tenants,
12 particularly low-income tenants who possess limited financial resources. Unaffordable utility
13 bills lead to shut offs, evictions, and housing displacement. When tenants receive unaffordable
14 bills, they may divert limited resources, redirecting funds that they would use to pay for rent or
15 other essential needs, such as food or medicine, to pay down utility balances. If tenants are not
16 able to keep up with their utility bills, they face the risk of utility termination. Utility shut offs
17 jeopardize the health and safety of the household and increase the likelihood of housing
18 instability. A house without utility service is not a sustainable home. When tenants lose utility
19 service, they may be forced to move to a new housing unit where they can access utility service.

⁹ See Philadelphia Eviction Prevention Project, Philly Tenant Resource Guide, at 15, http://www.phillytenant.org/documents/PEPP_Tenant_Resource_Guide_English.pdf. The website [phillytenant.org](http://www.phillytenant.org), run by the Philadelphia Eviction Prevention Project, a coalition which includes TURN, includes additional information about utility programs and PECO's Customer Assistance Program at <http://www.phillytenant.org/help-paying-my-utility-bills/>.

1 While both tenants and homeowners face a risk of shut offs due to unaffordable utility
2 bills, tenants are more likely to receive a shut off notice for nonpayment and more likely to be
3 shut off. According to data from the US Census Bureau, the rate at which both tenants and
4 homeowners received utility disconnection notices increased from 2013 to 2017.¹⁰ While the rate
5 of homeowners receiving shut off notices increased substantially from 2013 to 2017, the rate at
6 which homeowners were actually shut off decreased during that time. In contrast tenants
7 experienced both increased rates of shut off notices and increased rates of actual shut off. As
8 shown in the tables below, 22% of tenants who receive a shutoff notice are actually terminated,
9 while only 6.5% of owners threatened with shut off actually experience a shutoff. This
10 information is set forth in the tables below.



11
12 Unaffordable utility bills and utility shut offs impose an additional layer of risk for
13 tenants who are required to stay current on their utility bills to remain in compliance with their
14 lease terms. In Philadelphia, many standard subsidized housing leases contain such terms.

¹⁰ These statistics come from the U.S. Census Bureau’s American Housing Survey, available at <https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html>. The relevant data is reproduced in Exhibit C.

1 When a lease requires a tenant to maintain utility service, failure to maintain service may be
2 viewed as a breach of the lease, and grounds for the landlord to commence an eviction
3 proceeding. Evictions can trap families in poverty and substandard housing because eviction
4 records follow tenants and make it difficult for them to obtain new, quality housing.¹¹

5 Since PECO adopted its CAP FCO, tenants have sought assistance from TURN for help
6 addressing unaffordable PECO bills and for advice on preventing shut offs and evictions due to
7 their inability to afford their PECO bills. TURN regularly provides advice, counseling and
8 referrals to its members and to Philly tenants who are struggling to afford their PECO bills.

9 **Q. How has the COVID-19 pandemic impacted TURN's membership?**

10 A. TURN members and individuals throughout the state are dealing with the financial
11 impact of the pandemic. Since the start of the pandemic, more than two million Pennsylvanians
12 have applied for unemployment benefits.¹² The pandemic is continuing to wreak economic
13 havoc in Philadelphia. According to the Census Bureau's Household Pulse Survey, 36% of
14 adults in the Philly-Camden-Wilmington metro area expect someone in their household to have a
15 loss in employment income in the next four weeks.¹³ At the same time, Philadelphia tenants are
16 facing an eviction crisis. Analysis by CLS' Housing Unit has shown that there have been more

¹¹ See generally Breaking the Record: Dismantling Barriers Eviction Records Place on Housing Opportunities (Nov. 2020), available at https://clsphila.org/wp-content/uploads/2020/12/Breaking-the-Record-Report_Nov2020.pdf; see also Bond, Michaelle "Philly's Eviction Diversion Program shows some early success" Philadelphia Inquirer, <https://www.inquirer.com/real-estate/housing/eviction-diversion-program-philadelphia-mediation-renter-landlord-20201204.html> (last accessed Dec. 10, 2020).

¹² Office of Unemployment Compensation, Unemployment Compensation Claim Statistics & COVID-19, <https://www.uc.pa.gov/COVID-19/Pages/UC-Claim-Statistics.aspx> (last accessed Dec. 10, 2020). There were 26,983 claims for the week of 11/15/2020 through 11/21/2020 alone, the last week for which data is available as of the date of this testimony.

¹³ United States Census Bureau, Household Pulse Survey, Expected Loss in Employment Income, available at https://www.census.gov/data-tools/demo/hhp/#/?s_metro=37980&mapAreaSelector=msa&barChartAreaSelector=msa&measures=FJR&mapPeriodSelector=19&barChartPeriodSelector=19.

1 than 112,000 eviction filings in Philadelphia since 2015 or approximately 20,000 filings per
2 year.¹⁴ During the pandemic there have been 2,110 eviction filings in Philadelphia.¹⁵ This
3 number is likely to skyrocket after January 2021 when eviction moratoria expire. Tenants are
4 struggling to keep up with their rent. Rental assistance is grossly inadequate to meet the need and
5 the programs are typically difficult for many tenants to access. Many landlords have no interest
6 in cooperating with the rental assistance programs because of the program compliance
7 requirements. I am very concerned about a coming wave of evictions. It is essential that tenants
8 receive affordable utility bills because unaffordable bills will compound the devastating impact
9 of this pandemic.

10 **Q. Has PECO acknowledged the economic impacts of the pandemic?**

11 A. Yes. In its Amended Answer, PECO states that “the pandemic has resulted in serious
12 economic consequences for PECO’s customers . . .”¹⁶

13 **Q. How have PECO’s actions exacerbated this harm?**

14 A. PECO is adding to this economic crisis by overcharging CAP customers. In disregarding
15 its obligation to calculate CAP bills using the Commission’s revised energy burden guidelines,
16 PECO has intentionally billed CAP customers amounts that are above what the Commission
17 considers affordable. I find it unconscionable that PECO is still engaging in this practice during
18 an economic crisis and on the eve of a possible eviction tsunami. Since November 2019, PECO

¹⁴ See generally Breaking the Record: Dismantling Barriers Eviction Records Place on Housing Opportunities (Nov. 2020) at 4, available at https://clsphila.org/wp-content/uploads/2020/12/Breaking-the-Record-Report_Nov2020.pdf;

¹⁵ *Id.*

¹⁶ Amended Answer at ¶16.

1 has been overcharging CAP customers, including tenants and members of TURN. PECO's
2 behavior is likely to contribute to tenants facing shut offs, evictions, and housing displacement.

3 **Q. In your experience, do these harms have a racial justice impact as well?**

4 A. Yes. While PECO maintains that it does not possess any data concerning the race or
5 ethnicity of its CAP customers,¹⁷ research conducted by the American Council for an Energy
6 Efficient Economy (ACEEE) has found that low-income Black and Hispanic households face
7 high energy burdens, nationally and in the Philadelphia metro area.¹⁸ PECO's CAP customers
8 have household incomes at or below 150% of the federal poverty level. In Philadelphia,
9 Hispanic and Black households have the highest poverty rates.¹⁹ It is reasonable to conclude that
10 a significant number of PECO's CAP participants are Black people and other people of color.
11 TURN members are overwhelmingly Black people and other people of color. Given
12 Philadelphia's demographic makeup, I believe that PECO, as a Philadelphia business that
13 provides services to low-income communities, has an obligation to ensure that their policies and
14 practices do not contribute to systemic racial inequality.²⁰

15 **Q. Does this conclude your testimony?**

16 A. Yes.

¹⁷ PECO Response to TURN I-4, attached hereto in Exhibit B.

¹⁸ Drehobl *et al.*, American Council for an Energy Efficient Economy (ACEEE), How High are Household Energy Burdens? (Sep. 2020) at 10, 16, <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf>.

¹⁹ PEW Charitable Trusts, Philadelphia's Poor: Who they are, where they live, and how that has changed (Nov. 2017), https://www.pewtrusts.org/-/media/assets/2017/11/pri_philadelphias_poor.pdf.

²⁰ PECO and its parent company Exelon have made statement in support of racial equality. *See* The Grid: Black Lives Matter, available at <https://www.exeloncorp.com/grid/black-lives-matter> (last accessed Dec. 10, 2020). PECO's failure to utilize the reduced energy burdens approved by the Commission, as required by the Settlement, significantly undermines that message.

Exhibits

Exhibit A: TURN Statement in Support of Settlement.

Exhibit B: PECO Responses to TURN Discovery

Exhibit C: U.S. Census Bureau data regarding Rate of Disconnection Notices from 2013 to 2017

Exhibit A: TURN Statement in Support of Settlement.



1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700
Web Address: www.clsphila.org

April 20, 2015

By eFiling

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

Re: PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket
No. M-2012-2290911

Dear Secretary Chiavetta:

Enclosed for eFiling please find the **Statement of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia in Support of Settlement**, in the above-captioned matter. Copies of the enclosed have been electronically served upon the Administrative Law Judge and other parties pursuant to the attached Certificate of Service.

Sincerely,

Thu B. Tran, Esquire
Robert W. Ballenger, Esquire
Josie B. H. Pickens, Esquire

Attorneys for TURN et al.

Enclosure

cc: Administrative Law Judge Cynthia Fordham
Service List
Commission Personnel by E-Mail: Cynthia Lehman, Grace McGovern, Joseph McGee,
Louise Fink Smith

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company 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

STATEMENT

of

TENANT UNION REPRESENTATIVE NETWORK (“TURN”)
and
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA
(COLLECTIVELY “TURN et al.”)

IN SUPPORT OF SETTLEMENT

Concerning PECO Energy’s September 30, 2013 Report of Alternative Models for the
Delivery of Customer Assistance Program (CAP) Benefits Submitted Pursuant to the
Commission’s April 4, 2013 Order

April 20, 2015

TABLE OF CONTENTS

I. Introduction..... 1

II. Settlement 3

A. Targeting Affordable Bills Pursuant to the Commission’s CAP Policy Statement..... 3

B. Short-Term Benefits for Certain Low-Income Customers. 4

C. In-Program CAP Arrears Slated for Commission Consideration. 5

D. Additional Funds and Commitments Regarding Usage Reduction. 6

E. Ongoing Collaborative..... 7

III. Conclusion 8

I. Introduction

Since 1984, when PECO's CAP started out as a percentage of income payment (PIP) plan design, it has gone through a number of modifications. In 1996, the Commission approved a CAP Rate design as part of a settlement. In 2000, the Commission recommended that PECO implement a PIP plan design. More recent orders supported the premise that PECO's CAP Rate has been unaffordable for many of its participants. Notwithstanding the USECPs approved in 2008 (for 2007 – 2009) and 2010 (for 2010 – 2012), APPRISE, PECO's third-party evaluator, raised questions in its 2012 program evaluation regarding PECO's rate discounts and affordability. PECO's latest USECP was approved in a Commission Order that directed PECO work with other interested parties to explore CAP design proposals to improve affordability levels. PECO Energy Company 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 April 4, 2013, at 9 ("Order").

On February 28, 2012, PECO filed its USECP for 2013-2015. On October 15, 2012, PECO filed an amended USECP for 2013-2015, the Plan under review herein. Further, on October 31, 2012, PECO submitted the APPRISE six-year evaluation report in compliance with 52 Pa. Code § 54.76. APPRISE noted opportunities for PECO to improve its program impact including suggesting that PECO try to increase affordability for lowest poverty group participants and that PECO target lowest income CAP customers who exceed CAP usage discount limits for LIURP. See APPRISE Evaluation Report at 124.

On November 8, 2012, the Commission entered a Tentative Order in this matter. ("Tentative Order" or "TO"). Several parties filed comments and reply comments, including Tenant Union Representative Network ("TURN") and Action Alliance of Senior Citizens of

Greater Philadelphia (“Action Alliance”) (collectively “TURN et al.”). After evidentiary hearings, including testimony and briefs, Administrative Law Judge Cynthia Fordham certified the record, on March 1, 2013.

On April 4, 2013, the Commission issued an Order in this matter, directing PECO to make certain changes to its USECP. The Commission also directed PECO to test various models to improve the affordability of its Customer Assistance Program to participants, subject to the limitation of not placing more of a financial burden on the non-participants. Order at 24. In the Order, the Commission also expressed interest in more research and investigation for a fixed credit option PIP design. Order at 23.

The Order directed PECO to conduct an analysis and serve a full report to the Commission and parties to this proceeding by September 30, 2013. Order at 24-25. The Commission emphasized that “moving forward, this Commission will expect PECO to comply with the CAP Policy Statement in future USECP filings or, alternatively, provide substantial justification for why deviations from the policy are warranted.” *Id.* On September 30, 2013, PECO submitted its “Report of Alternative Models for the Delivery of Customer Assistance Program (CAP) Benefits Submitted Pursuant to the Commission’s April 4, 2013 Order” (“PECO Report”). In response to questions from OCA, TURN et al. and CAUSE-PA, PECO filed Supplemental Information on October 15, 2013. TURN et al., CAUSE-PA and OCA submitted comments to the PECO Report on October 21, 2013.

On April 25, 2014, the Commission issued a Secretarial Letter directing the parties to provide a report by June 30, 2014 regarding whether a settlement could be reached. The Secretarial Letter also proposed that the parties utilize the Commission’s Mediation Office. The

parties engaged in extensive settlement discussions with the assistance of Mediator Cynthia Lehman, requesting several extensions of the Commission's deadlines.

The terms of the settlement result from extensive negotiations and affect a redesign of PECO's CAP. TURN et al., support this settlement because it is intended to more closely target affordable bills for CAP participants pursuant to the Commission's CAP Policy Statement, 52 Pa. Code § 69.261, et seq., provides short-term benefits to assist CAP participants who will no discount under the redesigned CAP, positions the parties to work together to address in-program CAP arrears accumulated under PECO's existing CAP program, and includes additional funds and commitments regarding usage reduction. The terms and conditions of the Settlement are in the public interest and should be approved.

II. Settlement

A. Targeting Affordable Bills Pursuant to the Commission's CAP Policy Statement.¹

As described in the Joint Petition for Settlement, Exhibit A, PECO CAP Mediation Settlement Term Sheet ("Term Sheet"), PECO is to implement a new CAP design described as being based upon the "Fixed Credit Option" or "FCO." Under PECO's proposed FCO, the amount of a CAP participant's monthly bill discount will be determined utilizing several sequential steps. First the undiscounted charges for the prior year are determined based on actual usage or a pro forma method (such method prioritizes the use of certain sources of information first), which is then weather normalized. Then PECO will verify a household's income, and determine the "energy burden," or maximum percentage of household income specified in the

¹ TURN et al. reference the Commission's CAP Policy Statement and the specified maximum bill affordability standards included therein. See 52 Pa. Code §69.265(2)(i)(A). Although reference to such maximums may be referred to herein as targeting "affordability," TURN et al. continue to submit that the Commission should undertake revision and review of this CAP Policy Statement to reduce the maximum affordability standards in order to provide bills which are actually affordable to low-income families. For instance, a few years ago, the Commission explored reducing the energy burden standards in Proposed Revision to Policy Statement on Customer Assistance Programs, 52 Pa. Code §§ 69.261-69.267, Docket No. M-00072036, Order And Proposed Policy Statement, entered September 5, 2007.

Commission's CAP Policy Statement for the customer based on verified household income. Then PECO determines an annual credit, which is the difference between prior year undiscounted charges and the product of the customer's energy burden and annual income, subject to maximum annual credit limitations. PECO will apply the total dollar amount of the annual credit over the course of the year, taking into account the seasonal nature of usage. Finally, PECO has agreed to periodic recalculations to attempt to ensure that the annual credit adjusts based on changes in the household, in usage, and to base rates.

Although this methodology is more complicated than the PIP advocated for by TURN et al. and CAUSE-PA in the underlying proceeding, it reflects a reasonable compromise to improve the targeting of affordability for PECO's CAP participants relative to PECO's current tiered discount model. Coupled with cost-containment measures and cost recovery for program costs and IT transition costs, TURN et al. submit that this proposal reflects meaningful compromise by all participants in the mediation process. 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 the breadth and depth of affordability obtained for PECO's CAP participants.

B. Short-Term Benefits for Certain Low-Income Customers.

Under PECO's existing tiered rate discount CAP structure, certain customers receive a percentage discount on their bill even though their undiscounted bills would not exceed the Commission's maximum bill affordability standards (expressed as a percentage of household

income) in the CAP Policy Statement. The parties recognized that even though these customers may not require a discount to receive a bill that, on average, is at or below the Commission's maximum bill affordability standards, provision should be included in this settlement to ensure these customers receive some bill payment assistance during a transition period. Accordingly, the settlement provides for a "phase-out benefit" of \$50 per household, applied over the course of 12 months, for these customers. In addition, because participation in CAP entitles customers to other benefits, these customers will continue to be eligible to receive pre-program arrearage forgiveness, priority for low-income usage reduction program (LIURP) treatments, and other non-bill discount benefits available to CAP participants.

C. In-Program CAP Arrears Slated for Commission Consideration.

In-program arrears have accumulated during the ongoing operation of PECO's tiered rate discount CAP. Order at 13-14. TURN et al. submit that this phenomenon is the result of PECO's existing CAP design. With the redesign of CAP proposed in the settlement, it is incumbent upon the parties to the settlement and all parties to subsequent proceedings to recognize that CAP participants must be provided reasonable means to resolve these arrears without unduly compromising affordability. Although the parties were not able to endorse an in-program arrears (IPA) forgiveness program in the context of this settlement, they meaningfully advanced the likelihood of successful resolution of these balances.

As provided in the settlement, PECO is required, either in its next base rate case or in a separate petition, to use its best efforts to obtain approval of an IPA forgiveness program. It must submit a proposal for Commission consideration in time for review to occur prior to FCO implementation in October 2016. Pursuant to the settlement, certain core provisions must be included in PECO's submission, including that CAP participants will be expected to pay 1/3 of

their IPA balances over a period of 60 months to obtain forgiveness of the other 2/3. PECO's cost recovery mechanism must not seek recovery of more than 2/3 of the projected cumulated IPA balance from CAP customers or other ratepayers, if made in a base rate proceeding. If submitted in a proceeding other than a base rate proceeding, PECO's cost recovery mechanism will have substantially similar financial effect. In the event PECO's IPA program is not approved, or its approval is delayed, PECO's CAP participants will be entitled to a 60-month payment agreement (subject to adjustment in the event IPA forgiveness is subsequently approved) on their IPA balances as of the date of implementation of the FCO.

In PECO's very recent rate filing of March 27, 2015, at Docket No. R-2015-2468981, PECO has proposed the very same IPA forgiveness program. See PECO Statement No. 7 – Scott A. Neumann, at Docket No. R-2015-2468981. TURN et al. are petitioning to intervene with the purpose, *inter alia*, of supporting Commission approval of the proposed IPA forgiveness program. TURN et al. submits that this settlement term significantly advances discussions regarding the handling of accumulated CAP balances. Indeed, PECO's new CAP program is exceedingly unlikely to succeed in permitting participants to maintain affordable service if accumulated balances are not addressed. TURN et al. look forward to working with the parties to obtain PUC-approval of an IPA forgiveness program for PECO's CAP participants that is clearly necessary to ensure the viability of PECO's FCO CAP.

D. Additional Funds and Commitments Regarding Usage Reduction.

Recognizing that cost containment provisions will necessarily negatively impact affordability for those CAP participants who are unable to moderate their usage, the settlement includes several specific agreements. Notably, prior to launch of the FCO, PECO will identify CAP participants with high usage for highest priority LIURP treatment in order to minimize the

likelihood that these customers will face unaffordable bills under the FCO program. After the FCO program begins, PECO will prioritize LIURP treatment for those CAP participants whose calculated discount will be limited by the allowable maximums included in the settlement.

The settlement also proposes to utilize LIURP funds to redress certain de facto heating situations, which are situations in which a residential electric (non-heating) customer is utilizing electricity, typically space heaters, due to the absence of other heating fuel, a malfunctioning non-electric heating system, inability to pay for oil or gas heat, or some other reason. The parties agree that due to the impact of these situations on electric usage and resulting unaffordable bills, up to \$700,000 per year of new PECO LIURP funds are to be available to repair or replace a broken oil or gas furnace as long as no structural issues impede the repair and the payback period for the LIURP investment does not exceed 15 years, on average, nor the expected length of life of the new measure installed. In addition, the parties agree that PECO will propose a \$1 million increase in its Act 129 Phase III program to target usage reduction measures for members of the CAP population with incomes between 0-50% of federal poverty guidelines. The parties agree to support PECO's additional LIURP funds, de facto heating mitigation measures, and increased Act 129 funding.

E. Ongoing Collaborative.

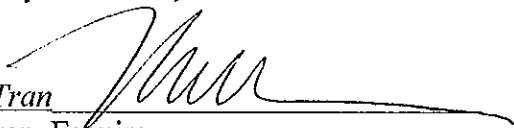
Within 90 days of the Commission's approval of the proposed settlement, PECO will engage stakeholders in a collaborative to develop customer education regarding the CAP redesign, educational materials regarding the potential effect on CAP customers of shopping decisions, educational materials regarding the importance of usage reduction measures (LIURP and Act 129), determination of alternative languages for translation of educational materials, suggested measures for de facto heating program, and cost recovery mechanisms for the

applicable programs. The intended audiences for educational programs include CAP participants, low income customers not participating in CAP, and social service and health agencies.

III. Conclusion

TURN et al. submit that the terms of the Settlement are in the public interest because they are intended to reduce the depth and breadth of unaffordability experienced by PECO's most vulnerable customers participating in CAP. The settlement represents reasonable compromise of all parties, requires that an IPA forgiveness program be proposed for Commission approval, and provides for future review to determine whether the FCO operates in its intended fashion. For these reasons, TURN et al. submit that the proposed Settlement should be approved by the Commission.

Respectfully submitted,


/s/ Thu Tran

Thu B. Tran, Esquire
Robert W. Ballenger, Esquire
Attorneys for TURN and Action Alliance
COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102
(215) 981-3777

Date: April 20, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Universal Service and :
Energy Conservation Plan for 2013-2015 : M-2012-2290911

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of **Statement of TURN et al. in Support of Settlement**, as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST CLASS MAIL

Elizabeth Rose Triscari, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
717-783-2525
etriscari@pa.gov

Christy M. Appleby, Esquire
Candis A. Tunilo, Esquire
Amy Hirkakis, Esquire
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street Suite 500
Harrisburg, PA 17101-1923
717-783-5048
cappleby@paoca.org
ctunilo@paoca.org
ahirakis@paoca.org

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
724-838-6765
aklodow@firstenergycorp.com
Representing First Energy Solutions Corp

Ward L. Smith, Esquire
Assistant General Counsel – Exelon
2301 Market Street, S23-1
Philadelphia, PA 19101
215-841-6863
ward.smith@exeloncorp.com
Representing PECO

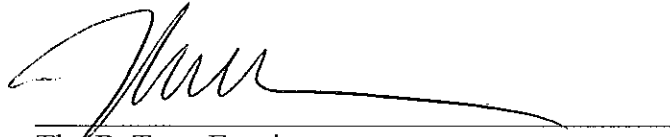
Daniel Clearfield, Esquire
Eckerts, Seamans, Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101-1248
717-232-7162
dclearfield@eckertseamans.com
dodell@eckertseamans.com
elanza@eckertseamans.com
Representing Retail Energy Supply Association

Harry S. Geller, Esquire
Elizabeth Marx, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
717-232-2719
hgellerpulp@palegalaid.net
Representing CAUSE PA

Charis Mincavage, Esquire
Adeolu A. Bakare, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
cmincavage@mwn.com
abakare@mwn.com
Representing PAIEUG

H. Gil Peach, Ph.D.
H. Gil Peach & Associates, LLC
16232 NW Oak Hills Drive
Beaverton, Oregon 97006
503-645-0716
hgilpeach@scanamerica.net

Respectfully submitted,



Thu B. Tran, Esquire
Robert W. Ballenger, Esquire
Josie B. H. Pickens, Esquire
Attorneys for TURN et al.

COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102
(215) 981-3777

April 20, 2015

Exhibit B: PECO Responses to TURN Discovery

PECO Response to TURN I-4

PECO Response to TURN I-16(a)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network

v.

PECO Energy Company

Docket No. C-2020-3021557

Response of PECO Energy Company
to Interrogatories
TURN Set I

Response Date: 10/08/2020

TURN-I-4

Does PECO possess any data concerning the Race or Ethnicity of its CAP customers? Please describe any such data in PECO's possession and provide an estimate of the number of CAP customers for whom PECO possesses such data.

RESPONSE:

PECO does not possess any data concerning the Race or Ethnicity of its CAP customers.

Responsible Witness: Mark Kehl

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network

v.

PECO Energy Company

Docket No. C-2020-3021557

Response of PECO Energy Company
to Interrogatories
TURN Set I

Response Date: 10/08/2020

TURN-I-16

Please provide a copy of all documents created by or for PECO or used by PECO since September 2015 that provide training or guidance to PECO staff or contractors on the operation of PECO's CAP FCO.

RESPONSE:

Please see Attachment TURN-I-16(a). This document is updated each year but there have been no changes to the CAP FCO section since 2015.

Responsible Witness: Mark Kehl

2020 CAP Supervisor Training

CAP Bill Information – Minimum Bill Charges

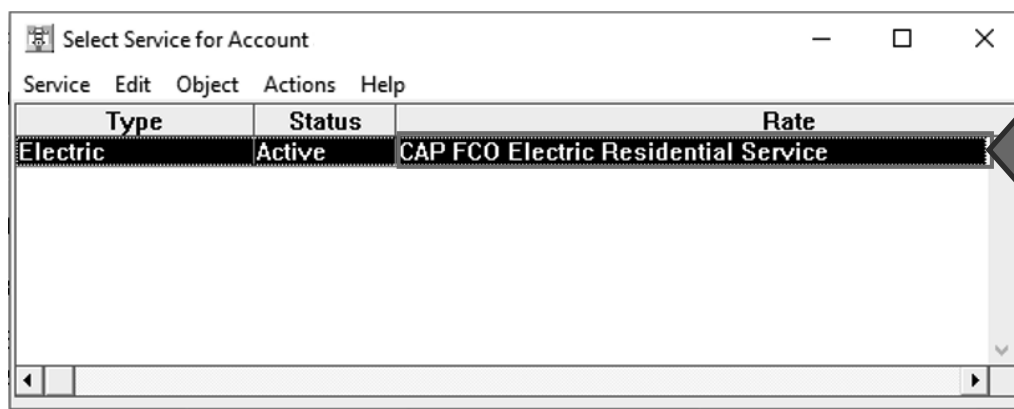
Minimum Bill Script:

- If you have **natural gas service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly gas bill will always be **\$10.00**.
- If you have **residential gas heating service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly gas bill will always be **\$25.00**.
- If you have **electric service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly electric bill will always be **\$12.00**.
- If you have **electric heating service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly electric bill will always be **\$30.00**.



Agents should provide a basic CAP minimum bill charge explanation and remind customers the information was provided when they received their CAP enrollment or recertification letter. CAP minimum bill charge information is also available to the customers in the PECO tariff. Agents should check the “Select Service” window to determine the specific type of service at the property.

Path: Object > Accounts Objects > Select Service to access the window.



Based on the example above, the agent should provide the following “*electric residential service*” minimum bill explanation:

*“If you have **electric service** with PECO, regardless of whether a monthly CAP credit applies, your minimum monthly electric bill will always be **\$12.00**.”*

2020 CAP Supervisor Training

CAP Fixed Credit Calculation

The CAP Credit Calculation is comprised of three different components.

1. Annual Spend
2. Federal Poverty Level (FPL %)
3. Customers Energy Burden

The first step CIMS uses to determine the annual CAP credit amount is to calculate the last 12 months of undiscounted service charges at the premise, or the annual amount the customer would have paid for electric and/or gas on PECO's non-CAP rates. This is known as the customers **Annual Spend**.

A proxy is used when 12 months of prior usage is not available. Using a proxy, we create a pro forma profile to calculate the customers trailing 12 months usage/ charges. The proxy profile will be used in the following order of preference;

1. Usage at that residence by the customer for the month's available and actual usage by prior customers for the months unavailable
2. Usage at that residence by prior customers
3. System-wide usage or CAP usage averages

System Wide Usage or CAP Average Usage CAP Average Usage by Month

Month	Electric Residential Heating Service	Electric Residential Service	Gas Residential Heating Service	Gas Residential Service
Jan	2,081	839	144	144
Feb	2,296	819	166	163
Mar	2,123	766	150	149
Apr	1,243	585	83	81
May	730	497	32	34
Jun	665	651	17	19
Jul	756	819	16	15
Aug	840	876	13	14
Sep	790	869	16	15
Oct	644	583	22	22
Nov	718	502	40	43
Dec	1,203	651	77	74

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Energy Burden

Determine the Customer's Energy Burden

Next, CIMS will use the most recent verified financial statement income information to determine the customer's household **FPL%**. The PUC has determined that based on the total gross household FPL%, customers are able to afford to pay a percentage of their household income on their utility bills. This percentage is known as the customer's **Energy Burden**.

Income eligibility for PECO's programs is based on the Federal Poverty Level (FPL) guidelines. The Federal Government updates these guidelines every year.

2019 Chart Information

Monthly Federal Poverty Guidelines (FPL)									
Family Size	25% FPL	50% FPL	75% FPL	100% FPL	125% FPL	150% FPL	175% FPL	200% FPL	250% FPL
1	\$261	\$521	\$781	\$1,041	\$1,302	\$1,562	\$1,822	\$2,082	\$2,603
2	\$353	\$705	\$1,057	\$1,410	\$1,762	\$2,114	\$2,467	\$2,819	\$3,523
3	\$445	\$889	\$1,334	\$1,778	\$2,222	\$2,667	\$3,111	\$3,555	\$4,444
4	\$537	\$1,073	\$1,610	\$2,146	\$2,683	\$3,219	\$3,756	\$4,292	\$5,363
5	\$629	\$1,258	\$1,886	\$2,515	\$3,143	\$3,772	\$4,400	\$5,029	\$6,286
6	\$721	\$1,422	\$2,162	\$2,883	\$3,604	\$4,324	\$5,045	\$5,765	\$7,207
7	\$813	\$1,626	\$2,439	\$3,251	\$4,064	\$4,877	\$5,689	\$6,502	\$8,128
8	\$905	\$1,810	\$2,715	\$3,620	\$4,524	\$5,429	\$6,334	\$7,239	\$9,048
For each additional person, add	\$93	\$185	\$277	\$369	\$461	\$553	\$645	\$737	\$921

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Energy Burden

The following table displays the new CAP annual Energy Burden percentages per type of utility service for each FPL% range.

CAP Energy Burden Percentages				
FPL Range	Electric	Electric Heating	Gas	Gas Heating
0-50%	5%	13%	8%	8%
51-100%	6%	16%	10%	10%
101-150%	7%	17%	10%	10%

The Energy Burden Percentage table is based upon the ranges found at 52 Pa. Code §69.265 (2)(i)(A). In each case, the energy burden percentage 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 FPL Range.

Once the customer's Energy Burden is determined, the Energy Burden percentage is multiplied by the customer's verified gross household income amount. The resulting calculation is the customer's affordable **Annual Energy Burden**.

The monthly CAP credit amount is applied to the CAP customer's bill each month. It is designed to keep the customer's bill within their affordable Annual Energy Burden.



Remember to multiply the gross monthly income amount to determine the annual total gross income to determine the customer's Annual Energy Burden.

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Energy Burden

For example, a customer with an **FPL of 18%** would calculate their affordable Annual Energy Burden for Electric Heating rate as follows:

Monthly Total Gross Income	\$2,164.00
Monthly income X12months	X 12
Annual Total Gross Income	\$25,968.00
CAP FCO Electric Residential Heating Energy Burden	X 13%
Annual Energy Burden	\$3,375.00

Based on the PUC's determination of what is affordable, this example shows that the customer can afford to pay \$3,375.00 for their utility service annually.

- If a customer's charges exceed their Affordable Energy Burden Amount, a CAP credit is applied to their bill. This credit method is designed to help keep the customers utility cost within their Annual Energy Burden.
- If a customer's Annual Spend is less than their Annual Energy Burden, the customer's rates are considered to be affordable and CAP credits are not applied to the bill.

Customers may question the benefits of being on CAP when they do not receive monthly CAP credits. Explain the other benefits besides the monthly CAP credits.

How the CAP Fixed Credit is Calculated Script:

“Under the CAP FCO program, you would receive a monthly credit to your bill based upon your income, the historical usage, and energy burden. The Company determines the amount the customer would spend for a year on their service by adding together the last 12 undiscounted service charges at the property.

The Company calculates the customer's energy burden based on the customer's Federal Poverty Level percentage. The Energy Burden is a percentage of your annual income, and is the amount that you are reasonably able to afford to pay for utility service per the PUC's affordability guidelines

To determine the annual CAP credit, the energy burden is subtracted from the undiscounted service charges at the property over the past 12 months. The difference is your annual CAP credit. This amount is then divided into 12 credits which are applied to your bill each month. The amount of the monthly CAP credit will vary based on the historic usage, but the total credit for the year would not exceed your annual CAP credit. The CAP credit is reassessed quarterly and can change if there is a change in your usage.”

2020 CAP Supervisor Training

CAP Fixed Credit Calculation

The CAP Fixed Credit information is displayed in the CAP Fixed Credit Detail window. To determine the customer's Fixed Credit benefits, access the following path:

Path: Actions > Account Actions > Select "View" command button in the CAP Program window > Select "Fixed Credit Detail command button in the View CAP Detail window

In following example, the CAP customer's electric residential heating service rate is considered to be affordable and CAP credits are not applied to the bill unless there is a change when the account is reassessed.

The screenshot shows a window titled "Fixed Credit Details for" with a menu bar containing "Edit" and "Help". The main content is divided into two sections:

Fixed Credit Totals

Service Point 1
 CAP FCO Electric Residential Heating Svc

Annual Fixed Credit: 0.00
 Annual Energy Burden: 3,519.37
 Overage: 0.00

Projected Fixed Credit

Relative Month	Service Pt 1 Discount
12/19	0.00
01/20	0.00
02/20	0.00
03/20	0.00
04/20	0.00
05/20	0.00
06/20	0.00
07/20	0.00
08/20	0.00
09/20	0.00
10/20	0.00
11/20	0.00

An "OK" button is located at the bottom left of the window. Two arrows point to the service point name and the 03/20 row in the table.

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Annual Credit

Determine the Customer's Annual Credit

CIMS will use historical data to determine the difference between what the customer can afford to pay and what the previous year would have cost. From the historical usage and billing data for that premise, the customer's Annual credit is calculated by **subtracting** the *customers Annual Energy Burden* amount from the customers *previous year actual spend* to realize the **Annual CAP Credit**.

Example #1 – Customer used about the same amount of energy last year.

Previous years actual spend amount	\$4,557
Annual Energy Burden	-\$3,375
Annual CAP Credit	\$1,182

If the customer's usage pattern stays the same each year, the customer's Annual Fixed Credit may be the same or very similar for each relative month billed. Accounts will be reassessed quarterly, creating a new baseline comparison.

Example #2 – Customer used more energy than last year.

Previous years actual spend amount	\$5,276
Annual Energy Burden	-\$3,375
Annual CAP Credit	\$1,901

If the customer's usage pattern increases from the previous year in the same month, the Annual Fixed Credit will keep the bill within the customers' Energy Burden percentage; as long as they do not exceed their Annual Maximum credit limit. After the Annual Maximum Credit is reached, the customer will be responsible for paying the difference. Accounts will be reassessed quarterly, creating a new baseline comparison.

Example #3 – Customer used less energy than last year.

Previous years actual spend amount	\$3,200
Annual Energy Burden	-\$3,373
Annual CAP Credit	\$0

If the customer's usage pattern decreases from the previous year in the same month, the Annual Fixed Credit will be applied, keeping the bill within the Annual Energy Burden percentage for that service. The customer is required to pay a monthly minimum amount for each service. Accounts will be reassessed quarterly, creating a new baseline.

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Annual Credit

Determine the Customer's Monthly Credit

Once the customer's annual CAP credit is determined, a monthly allocation is applied to the customer's monthly bill. The monthly allocation is based on the energy type per the table below;

Month	Rate R	Rate RH	Gas
Jan	9.6%	13.9%	20.6%
Feb	8.9%	14.2%	19.5%
Mar	8.9%	12.2%	14.5%
Apr	7.0%	9.0%	9.6%
May	5.8%	5.3%	4.5%
June	7.7%	5.2%	2.6%
July	11.3%	6.4%	2.0%
Aug	10.6%	5.9%	1.8%
Sept	9.3%	5.4%	2.0%
Oct	6.6%	4.5%	2.6%
Nov	6.6%	6.4%	6.9%
Dec	8.7%	11.7%	13.6%
Total	100.0%	100.0%	100.0%

Below is an example of a heating customer whose annual credit was calculated to be \$1,200.

Month	Projected Monthly Fixed Credit	CAP Electric Heating Service Adjusted for Seasonality
January	\$100	\$150
February	\$100	\$125
March	\$100	\$75
April	\$100	\$50
May	\$100	\$50
June	\$100	\$50
July	\$100	\$150
August	\$100	\$150
September	\$100	\$50
October	\$100	\$75
November	\$100	\$125
December	\$100	\$150

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Maximum Credit

Maximum Annual Fixed Credit

The PUC has determined Maximum Annual Fixed Credit amounts for each service type in an effort to reduce the number of CAP customers whose bills exceed the PUC's Energy Burden guidelines.

CAP Maximum Annual Fixed Credit Amounts				
FPL Range	CAP Electric Residential Svc	CAP Electric Residential Heating Svc	CAP Gas Residential Svc	CAP Gas Residential Heating Svc
0-50%	\$2,435	\$3,490	\$0	\$0
51-100%	\$1,716	\$2,318	\$0	\$0
101-150%	\$1,554	\$2,070	\$0	\$0

Note: The maximum annual CAP Fixed Credit as of January 2019

There is currently no maximum credit for gas service per PECO's current gas CAP program policy. As a result, a dual commodity customer's maximum annual credit amount is the same for a CAP residential electric customer.

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Zero Credit

Zero Fixed Credit

When the calculation results in a difference of \$0.00 or a negative number, the customer is not eligible to receive a CAP FCO credit since the annual amount for the specific utility service is lower than the annual energy amount. In addition to providing the customer an explanation on how the fixed credit is calculated, provide the following information (script below) if the customer is not receiving a CAP credit.

CAP Fixed Credit – Zero Fixed Credit Script:

“If this calculation results in a difference of \$0.00 or a negative number, you are not eligible for a CAP FCO credit since the annual amount spent on the utility service is lower than the annual energy burden amount.”

Benefits of Being on CAP – Zero Credits

The customer may question the benefit of being on CAP if they are currently not receiving a CAP credit. There is no downside to remaining on CAP. The agent should explain the other benefits of being on CAP beside the monthly CAP credit, which are:

1. PPA Forgiveness

By remaining on CAP, if the customer has PPA dollars set aside the customer remains eligible to receive possible forgiveness as long as they continue to pay their bill on time and in full.

2. CAP Reassessment

As part of the CAP Program, previous energy consumption at the property is part of the equation when calculating the customer's potential monthly credit. By reassessing an account ever three months, the new Annual Spend will be updated, creating a new baseline comparison.

The oldest three months of consumption will drop out of the equation and the three most recent months of usage will be incorporated into the equation. If at that time, the account becomes eligible for a credit, it will automatically be applied to the account. The customer is not required to do anything.

3. LIHEAP Reminders

By remaining on CAP, customers will be prioritized to proactively receive LIHEAP application reminders and any other assistance available under the suite of programs offered by our Universal Services department (i.e., CAP, LIHEAP and LIURP programs)

2020 CAP Supervisor Training

CAP Fixed Credit Calculation – Zero Credit

Benefits of Being on CAP – Currently Not Receiving a CAP Credit Script:

“I hear and understand your concern. While the current calculation of your account does not show a monthly credit, your next reassessment could possibly show a credit for you. We reassess your account every three (3) months and if at that time you are eligible for a credit, it will automatically be applied to your account. There is no downside to remaining on CAP. By remaining on CAP, you will be prioritized to ensure you will proactively receive LIHEAP application reminders. You will receive priority for any assistance available under the suite of programs offered by our Universal Services team that administers the CAP, LIHEAP, LIURP programs. Additionally, if you have PPA, you should stay on CAP to make sure you earn total forgiveness of those previous arrangements. (Explain PPA, if necessary)”

Pre-Program Arrearages (PPA) Script:

“At the time of your account was initially enrolled in CAP, your balance owed at that time was set aside for possible forgiveness. A portion of the set aside dollars may be forgiven each month. As long as you pay your current CAP bill charges in full and on-time each month 1/12 of your PPA set aside balance will be forgiven. If you are removed from CAP, you are responsible for all remaining PPA set aside balances that were not forgiven while you were enrolled in the CAP program.”

Exhibit C: U.S. Census Bureau data regarding Rate of Disconnection Notices from 2013 to 2017

2013-2017 AHS Delinquent Payments and Notices

PHILA METRO (000s)

Owner

Households	1350.9	1574	16.51%
DNP Notice	78	210.1	169.36%
Notice Rate	5.77%	13.35%	131.18%
Shut Off	8.3	13.6	63.86%
Shut Off Rate	10.64%	6.47%	

Tenant

Households	614.8	734.2	19.42%
DNP Notice	91.5	112	22.40%
Notice Rate	14.88%	15.25%	2.50%
Shut Off	13.8	24.4	76.81%
Shut Off Rate	15.08%	21.79%	

2013 Philadelphia - Delinquent Payments and Notices - All Occupied Units
Philadelphia, PA-NJ PMSA (1983 OMB definition)
Tenure Filter: Owner

[Estimates in thousands of housing units, except as indicated. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; '.' Represents not applicable or no cases in sample; S represents estimates that did not meet publication standards]

[Subject Definitions](#)

Characteristics	Estimate
Total	1,350.9
Utility Activity in Last Three Months	
Received notice of utilities shut-off due to missed payment(s):	
Yes	78.0
Have or had utilities shut-off:	
Yes	8.3
No	69.8
Not reported	.
No	1,218.2
Not reported	54.6
RENTER-OCCUPIED UNITS	
Total	
	.
Rent Payment Activity in Last Three Months	
Paid all the rent	
	.
Unable to pay all or part of the rent	
	.
Number of missed or partial rent payment(s):	
1 month	.
2 months	.
3 months	.
Not reported	.
No cash rent	.
Not reported	.
Eviction Notice in Last Three Months	
Threatened with eviction notice:	
Yes	.
Reason for threat of eviction:	
Failure or inability to pay rent	.
Other violation of lease	.
Landlord wants to use unit for another tenate or purpose	.
Building condemned or due to be demolished	.
Landlord foreclosed on	.
Other	.
Not reported	.
Received court ordered eviction notice:	
Yes	.
No	.
Not reported	.
No	.
Not reported	.

Likelihood of leaving home within two months due to eviction: ¹	
Very likely	.
Somewhat likely	.
Not very likely	.
Not reported	.
Where the household would move in the event of eviction: ¹	
New home	.
Family member's home	.
Friend's home	.
Household members would move to different places	.
Shelter	.
Not reported	.
OWNERS WITH ONE OR MORE REGULAR OR LUMP-SUM HOME-EQUITY MORTGAGES	
Total	857.2
Mortgage Payment Activity in Last Three Months	
Made mortgage payments on time	747.4
Missed or made late mortgage payment(s)	70.7
Number of missed or late mortgage payment(s):	
1 month	29.8
2 months	13.5
3 months	18.5
Not reported	8.9
Not reported	39.1
Foreclosure Status	
Missed or made late mortgage payment(s)	70.7
Household received foreclosure notice	13.5
Home is in foreclosure	4.3
Home is not in foreclosure	9.2
Not reported	.
Likelihood of leaving home within two months due to foreclosure:	
Very likely	.
Somewhat likely	2.9
Not very likely	10.1
Not reported	0.5
Where the household would move in the event of foreclosure:	
New home	4.2
Family member's home	6.0
Friend's home	0.5
Household members would move to different places	1.0
Shelter	1.4
Not reported	0.5
No foreclosure notice	54.6
Not reported	2.6

¹ Asked of all renter-occupied units, even those that had not received an eviction notice.

Source: U.S. Census Bureau, American Housing Survey.

Generated on: 02OCT19:11:15:14

2013 Philadelphia - Delinquent Payments and Notices - All Occupied Units
Philadelphia, PA-NJ PMSA (1983 OMB definition)
Tenure Filter: Renter

[Estimates in thousands of housing units, except as indicated. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; . represents not applicable or no cases in sample; S represents estimates that did not meet publication standards]

[Subject Definitions](#)

Characteristics	Estimate
Total	614.8
Utility Activity in Last Three Months	
Received notice of utilities shut-off due to missed payment(s):	
Yes	91.5
Have or had utilities shut-off:	
Yes	13.8
No	77.8
Not reported	.
No	500.4
Not reported	22.9
RENTER-OCCUPIED UNITS	
Total	614.8
Rent Payment Activity in Last Three Months	
Paid all the rent	518.3
Unable to pay all or part of the rent	51.6
Number of missed or partial rent payment(s):	
1 month	25.3
2 months	8.0
3 months	17.2
Not reported	1.1
No cash rent	22.1
Not reported	22.7
Eviction Notice in Last Three Months	
Threatened with eviction notice:	
Yes	16.3
Reason for threat of eviction:	
Failure or inability to pay rent	11.9
Other violation of lease	.
Landlord wants to use unit for another tenate or purpose	1.3
Building condemned or due to be demolished	.
Landlord foreclosed on	1.7
Other	1.4
Not reported	.
Received court ordered eviction notice:	
Yes	5.8
No	10.5
Not reported	.
No	577.0
Not reported	21.5

Likelihood of leaving home within two months due to eviction: ¹	
Very likely	10.0
Somewhat likely	37.2
Not very likely	544.7
Not reported	22.9
Where the household would move in the event of eviction: ¹	
New home	309.8
Family member's home	170.7
Friend's home	47.2
Household members would move to different places	12.1
Shelter	33.1
Not reported	42.0
OWNERS WITH ONE OR MORE REGULAR OR LUMP-SUM HOME-EQUITY MORTGAGES	
Total	.
Mortgage Payment Activity in Last Three Months	
Made mortgage payments on time	.
Missed or made late mortgage payment(s)	.
Number of missed or late mortgage payment(s):	
1 month	.
2 months	.
3 months	.
Not reported	.
Not reported	.
Foreclosure Status	
Missed or made late mortgage payment(s)	.
Household received foreclosure notice	.
Home is in foreclosure	.
Home is not in foreclosure	.
Not reported	.
Likelihood of leaving home within two months due to foreclosure:	
Very likely	.
Somewhat likely	.
Not very likely	.
Not reported	.
Where the household would move in the event of foreclosure:	
New home	.
Family member's home	.
Friend's home	.
Household members would move to different places	.
Shelter	.
Not reported	.
No foreclosure notice	.
Not reported	.

¹ Asked of all renter-occupied units, even those that had not received an eviction notice.

Source: U.S. Census Bureau, American Housing Survey.

Generated on: 02OCT19:11:16:16

2017 Philadelphia - Delinquent Payments and Notices - All Occupied Units
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA (2013 OMB definition)
Tenure Filter: Owner

[Estimates and Margins of Error in thousands of housing units, except as indicated. Figures may not add to total due to rounding of estimates. Margin of Error is calculated at the 90% confidence interval. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; '.' Represents not applicable or no cases in sample; S represents estimates that did not meet publication standards]

[Subject Definitions](#)

Characteristics	Estimate
Total	1,574.0
Utility Activity in Last Three Months¹	
Received notice of utilities shut-off due to missed payment(s):	
Yes	210.1
Have or had utilities shut-off:	
Yes	13.6
No	196.6
Not reported	.
No	1,311.0
Not reported	53.2
RENTER-OCCUPIED UNITS	
Total	.
Rent Payment Activity in Last Three Months¹	
Paid all the rent	.
Unable to pay all or part of the rent	.
Number of missed or partial rent payment(s):	
1 month	.
2 months	.
3 months	.
Not reported	.
No cash rent	.
Not reported	.
Eviction Notice in Last Three Months¹	
Threatened with eviction notice:	
Yes	.
Reason for threat of eviction:	
Failure or inability to pay rent	.
Other violation of lease	.
Landlord wants to use unit for another tenant or purpose	.
Building condemned or due to be demolished	.
Landlord foreclosed on	.

Other	.
Not reported	.
Received court ordered eviction notice:	
Yes	.
No	.
Not reported	.
No	.
Not reported	.
Likelihood of leaving home within two months due to eviction: ²	
Very likely	.
Somewhat likely	.
Not very likely	.
Not reported	.
Where the household would move in the event of eviction: ²	
New home	.
Family member's home	.
Friend's home	.
Household members would move to different places	.
Shelter	.
Not reported	.
HOUSEHOLDS WITH AT LEAST ONE MORTGAGE	
Total	977.0
Mortgage Payment Activity in Last Three Months¹	
Made mortgage payments on time	916.3
Missed or made late mortgage payment(s)	46.5
Number of missed or late mortgage payment(s):	
1 month	16.6
2 months	11.2
3 months	15.0
Not reported	3.6
Not reported	14.2
Foreclosure Status	
Household received foreclosure notice	12.7
Home is in foreclosure	S
Home is not in foreclosure	S
Not reported	S
No foreclosure notice	948.8
Not reported	15.5
Likelihood of leaving home within two months due to foreclosure:	
Very likely	S
Somewhat likely	S
Not very likely	S

Not reported	S
Where the household would move in the event of foreclosure:	
New home	539.3
Family member's home	321.5
Friend's home	67.9
Household members would move to different places	17.6
Shelter	5.3
Not reported	25.4

¹ *Delinquent payment questions were asked in regard to the respondents current home.*

² *Asked of all renter-occupied units, even those that had not received an eviction notice.*

Source: U.S. Census Bureau, American Housing Survey.

Generated on: 02OCT19:11:14:14

2017 Philadelphia - Delinquent Payments and Notices - All Occupied Units
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA (2013 OMB definition)

Tenure Filter: Renter

[Estimates and Margins of Error in thousands of housing units, except as indicated. Figures may not add to total due to rounding of estimates. Margin of Error is calculated at the 90% confidence interval. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; '.' Represents not applicable or no cases in sample; S represents estimates that did not meet publication standards]

[Subject Definitions](#)

Characteristics	Estimate
Total	734.2
Utility Activity in Last Three Months¹	
Received notice of utilities shut-off due to missed payment(s):	
Yes	112.0
Have or had utilities shut-off:	
Yes	24.4
No	86.5
Not reported	1.1
No	587.8
Not reported	34.4
RENTER-OCCUPIED UNITS	
Total	734.2
Rent Payment Activity in Last Three Months¹	
Paid all the rent	618.3
Unable to pay all or part of the rent	62.2
Number of missed or partial rent payment(s):	
1 month	29.8
2 months	15.6
3 months	13.8
Not reported	3.0
No cash rent	21.7
Not reported	32.0
Eviction Notice in Last Three Months¹	

2017 Philadelphia - Delinquent Payments and Notices - All Occupied Units
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA (2013 OMB definition)

Tenure Filter: Renter

[Estimates and Margins of Error in thousands of housing units, except as indicated. Figures may not add to total due to rounding of estimates. Margin of Error is calculated at the 90% confidence interval. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; '.' Represents not applicable or no cases in sample; S represents estimates that did not meet publication standards]

[Subject Definitions](#)

Characteristics	Estimate
Threatened with eviction notice:	
Yes	16.5
Reason for threat of eviction:	
Failure or inability to pay rent	13.6
Other violation of lease	.
Landlord wants to use unit for another tenant or purpose	.
Building condemned or due to be demolished	.
Landlord foreclosed on	.
Other	3.0
Not reported	.
Received court ordered eviction notice:	
Yes	2.4
No	14.1
Not reported	.
No	684.2
Not reported	33.5
Likelihood of leaving home within two months due to eviction: ²	
Very likely	7.4
Somewhat likely	41.8
Not very likely	649.1
Not reported	35.9
Where the household would move in the event of eviction: ²	
New home	374.4
Family member's home	184.9
Friend's home	64.1
Household members would move to different places	24.6
Shelter	27.2
Not reported	58.9

2017 Philadelphia - Delinquent Payments and Notices - All Occupied Units
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA (2013 OMB definition)

Tenure Filter: Renter

[Estimates and Margins of Error in thousands of housing units, except as indicated. Figures may not add to total due to rounding of estimates. Margin of Error is calculated at the 90% confidence interval. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; '.' Represents not applicable or no cases in sample; S represents estimates that did not meet publication standards]

[Subject Definitions](#)

Characteristics	Estimate
HOUSEHOLDS WITH AT LEAST ONE MORTGAGE	
Total	.
Mortgage Payment Activity in Last Three Months¹	
Made mortgage payments on time	.
Missed or made late mortgage payment(s)	.
Number of missed or late mortgage payment(s):	
1 month	.
2 months	.
3 months	.
Not reported	.
Not reported	.
Foreclosure Status	
Household received foreclosure notice	.
Home is in foreclosure	S
Home is not in foreclosure	S
Not reported	S
No foreclosure notice	.
Not reported	.
Likelihood of leaving home within two months due to foreclosure:	
Very likely	S
Somewhat likely	S
Not very likely	S
Not reported	S
Where the household would move in the event of foreclosure:	

2017 Philadelphia - Delinquent Payments and Notices - All Occupied Units
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA (2013 OMB definition)

Tenure Filter: Renter

[Estimates and Margins of Error in thousands of housing units, except as indicated. Figures may not add to total due to rounding of estimates. Margin of Error is calculated at the 90% confidence interval. Weighting consistent with Census 2010. Blank cells represent zero; Z rounds to zero; '.' Represents not applicable or no cases in sample; S represents estimates that did not meet publication standards]

[Subject Definitions](#)

Characteristics	Estimate
New home	.
Family member's home	.
Friend's home	.
Household members would move to different places	.
Shelter	.
Not reported	.

¹ *Delinquent payment questions were asked in regard to the respondents current home.*

² *Asked of all renter-occupied units, even those that had not received an eviction notice.*

Source: U.S. Census Bureau, American Housing Survey.

Generated on: 02OCT19:11:03:25

VERIFICATION

I, **Philip M. Lord**, witness of Tenant Union Representative Network, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Date: December 10, 2020

Philip M. Lord

TURN Executive Director

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SURREBUTTAL TESTIMONY OF
PHILIP A. BERTOCCI**

**On Behalf of
Tenant Union Representative Network**

January 21, 2021

Table of Contents

I. Witness Background..... 3
II. PECO’s Obligation to Implement Revised Energy Burdens..... 3
III. Impact of Reducing Energy Burdens within the CAP FCO 7
IV. CAP Policy Statement Orders on Reconsideration..... 8
V. Appropriateness of Requested Relief 10

Exhibits

Appendix A

1 **I. WITNESS BACKGROUND**

2 **Q. Please state your name, occupation, and business address.**

3 A. Philip A. Bertocci, Esquire. I am currently retired, maintaining a pro bono “of counsel”
4 role, with an office c/o, Community Legal Services, Inc., 1424 Chestnut Street,
5 Philadelphia, PA 19102.

6 **Q. Have you previously submitted testimony in this proceeding?**

7 A. Yes. I previously submitted Direct Testimony on behalf of Tenant Union Representative
8 Network (“TURN”) on December 10, 2020.

9 **Q. What is the purpose of your testimony at this time?**

10 A. I am submitting Surrebuttal Testimony on behalf of TURN in response to the Rebuttal
11 Testimony of Mark Kehl on behalf of PECO Energy Company (PECO St. 1-R) and the
12 Rebuttal Testimony of Roger Colton on behalf of the Office of Consumer Advocate (OCA
13 St. 1-R).

14 **II. PECO’S OBLIGATION TO IMPLEMENT REVISED ENERGY BURDENS**

15 **Q. Do Mr. Kehl and Mr. Colton acknowledge the provisions of the Settlement that**
16 **require PECO to implement Energy Burdens as reflected in the Commission’s**
17 **Amended CAP Policy Statement?**

1 A. Yes. Both witnesses concede that footnote 3 of the Settlement¹ requires PECO to
2 implement the Energy Burdens in the Commission’s CAP Policy Statement at 52 Pa.
3 Code § 69.265. Mr. Kehl states that

4 Several inputs are necessary to determine the customer credit under the FCO,
5 including household income as a percentage of federal poverty level (“FPL”)
6 guidelines, the number of household members, utility usage, and the allowable
7 EBs set forth in the Commission’s CAP Policy Statement. The Settlement
8 provided that if the Commission changes the EBs, PECO will utilize the new
9 maximum allowable EBs for each poverty level in calculating the FCO credit to
10 be given to each customer.²

11 Similarly, Mr. Colton quotes footnote 3 directly, and states that “[a]s can be seen, in this
12 footnote, the Settlement provides that should the PUC change the ranges within which
13 CAP energy burdens must fall, PECO would continue to use the ‘maximum allowable
14 energy burden’ provided in each range.”³

15 However, neither witness acknowledges that footnote 3 of the Settlement is also fully set
16 forth in the Universal Service and Energy Conservation Plan (USECP) for 2016-2018
17 under which PECO is currently obligated to operate the CAP FCO.⁴

¹ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Joint Petition for Settlement (March 20, 2015), <https://www.puc.pa.gov/pcdocs/1349218.pdf>. Note that the Joint Petition includes a Petition and attaches an “Exhibit A: PECO CAP Mediation Settlement Term Sheet”. I use the term Settlement to refer to the Term Sheet. As discussed at length in my Direct Testimony, the core of this litigation is PECO’s failure to comply with footnote 3 on page 2 of the Settlement. *See* TURN St. 1 at 15.

² PECO St. 1-R at 3:9 – 3:16 (citing 52 Pa. Code § 69.265)(emphasis added).

³ OCA St. 1-R at 6:9-12.

⁴ 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, <https://www.puc.pa.gov/pcdocs/1510970.pdf> (hereinafter “2016-2018 USECP”). Consistent with the Commission’s guidance in updating its USECP Filing Schedule, PECO’s 2016-2018 USECP remains in effect until a new Plan is approved and implemented. Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Docket No. M-2019-3012601 (Order entered Oct. 3, 2019) (“An existing USECP will remain in effect until a new one is approved and implemented.”).

1 **Q. Both Mr. Kehl and Mr. Colton reference an evaluation of the Fixed Credit Option**
2 **(FCO) that was required by a different term of the Settlement. Is this relevant to the**
3 **claims brought by TURN in its Complaint?**

4 A. No. This proceeding specifically addresses the obligation of PECO, pursuant to both the
5 Settlement and its currently active 2016-2018 USECP, to automatically implement the
6 new maximum allowable Energy Burdens contained in the CAP Policy Statement while
7 operating the CAP FCO. The referenced APPRISE evaluation was required by a separate
8 and distinct settlement term.⁵ In addition, the evaluation did not address the
9 appropriateness of the target percentages of income considered affordable – rather, the
10 evaluation addressed the ability of the FCO structure to provide customers with bills that
11 approximated those targets. That evaluation is not relevant to PECO’s current, ongoing
12 obligations – for as long as it operates its CAP as an FCO, it must operate the FCO
13 according to the terms of its USECP and the Settlement.

14 **Q. Mr. Kehl also discusses a series of stakeholder conversations regarding the structure**
15 **of the FCO and possible changes to the structure of PECO’s CAP. Is this relevant to**
16 **the claims brought by TURN in this Complaint?**

17 A. No. As with the evaluation itself, these stakeholder conversations are not relevant to the
18 claims brought by TURN. This case, as noted above, is about PECO’s current obligations
19 while it operates the FCO. By contrast, the referenced conversations addressed potential,
20 future changes to the FCO structure based on the findings in the APPRISE evaluation.⁶

⁵ Settlement at 9.

⁶ Mr. Kehl notes that counsel for TURN did not raise concerns about PECO’s compliance with its current FCO terms in these stakeholder conversations. PECO St. 1-R at 11. But he also recounts that counsel for TURN

1 The fact that the APPRISE evaluation and related stakeholder discussions were occurring
2 at the same time that the Commission made changes to its CAP Policy Statement
3 (therefore triggering PECO’s obligations to lower its Energy Burden targets) does not
4 release PECO from its obligation to comply with footnote 3 of the Settlement. The
5 APPRISE evaluation cannot be utilized to eliminate or even modify footnote 3 of the
6 Settlement, or PECO’s obligations under its currently active 2016-2018 USECP.

7 **Q. Has PECO proposed changes to its CAP structure?**

8 A. Yes. As Mr. Kehl explains in his testimony, on July 8, 2020, PECO did indeed make a
9 filing to change the structure of its CAP going forward, as a part of its next Universal
10 Services and Energy Conservation Plan.⁷ In that filing, PECO proposes to change the
11 structure of its CAP from the current fixed credit program to a percentage of income
12 payment plan (PIPP), which sets bills as a percentage of a customer’s household income.⁸

13 **Q. Has the Commission approved PECO’s amended USECP proposing these changes?**

14 A. To my knowledge, the Commission has not approved PECO’s amended USECP.

15 **Q. At this time, is PECO currently obligated to operate its CAP according to its 2016-**
16 **2018 USECP?**

specifically raised its concerns in a meeting on April 10th, which I note is prior to the dates of the stakeholder conversations about the structure of the CAP program. PECO St. 1-R at 9.

⁷ PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795, P-2020-3020727, <https://www.puc.pa.gov/pcdocs/1669220.pdf> (hereinafter “amended USECP”).

⁸ *Id.* at 3-10. As noted by Mr. Kehl, it is my understanding that TURN is generally supportive of this move to a PIPP. PECO St. 1-R at 13; *See also* Answer of the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia to PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795, P-2020-3020727 (filed July 28, 2020).

1 A. Yes. As a result, PECO is obligated use the Energy Burdens set forth in the
2 Commission’s CAP Policy Statement, as specified by footnote 3 of the Settlement and
3 the 2016-2018 USECP.

4 **III. IMPACT OF REDUCING ENERGY BURDENS WITHIN THE CAP FCO**

5 **Q. Both Mr. Kehl and Mr. Colton state that there is no “bill affordability benefit” to**
6 **using reduced Energy Burdens in PECO’s CAP FCO.⁹ Can you respond?**

7 A. This proceeding is not about the ability or the efficiency of the CAP FCO structure to
8 provide all CAP customers with bills that reflect targeted percentages of household
9 income. Indeed, the mechanism by which the CAP FCO was intended to provide
10 appropriate discounts is not working for a number of reasons, including its assumptions
11 about weather patterns and usage profiles. Whether the FCO structure is adequate to
12 accomplish affordability goals is not the subject of this proceeding.¹⁰ Rather, this
13 proceeding is specific to PECO’s obligations to operate the CAP FCO in compliance with
14 the Settlement and the 2016-2018 USECP.

15 **Q. Will the reduction of the targeted Energy Burdens while PECO operates the CAP**
16 **FCO benefit CAP customers?**

17 A. Yes. Reducing the Energy Burden targets within the CAP FCO will provide greater
18 discounts to many CAP participants, to their benefit. With some exceptions, most CAP

⁹ PECO St. 1-R at 11; OCA St. 1-R at 9-10.

¹⁰ As discussed above, that subject is being addressed in a distinct proceeding. And, as noted by Mr. Kehl, TURN has taken a position in favor of moving away from the FCO as a CAP structure in favor of a PIPP.

1 customers will receive lower bills.¹¹ In my experience, the lower the bill, the less
2 difficulty low-income households have paying those bills.

3 **Q. Do you agree with Mr. Colton that given the flaws in the FCO, PECO should not be**
4 **required to incur the increased program costs associated with incorporation of the**
5 **revised Energy Burdens in the FCO?**

6 A. No. CAP customers should not be denied the benefit of lower bills associated with the
7 reduced Energy Burdens which PECO is obligated to provide under footnote 3 of the
8 Settlement and its USECP. Moreover, the Settlement itself envisaged a system-wide
9 annual limit on CAP credits. Based on PECO's projections, CAP credits with revised
10 Energy Burdens would still be approximately \$30 million dollars less than the \$110.2
11 million dollar system-wide annual limit on electric CAP credits set forth in the Settlement
12 and approved by the Commission.¹² Compliance with the terms of footnote 3 of the
13 Settlement is not only legally required but is a reasonable means of protecting CAP
14 customers until PECO implements a new CAP as a successor to the FCO.

15 **IV. CAP POLICY STATEMENT ORDERS ON RECONSIDERATION**

16 **Q. Can you describe Mr. Kehl's testimony regarding the CAP Policy Statement Order?**

17 A. In his testimony, Mr. Kehl brings up the Commission's Orders on Reconsideration
18 regarding the CAP Policy Statement.¹³ He quotes extensively from the Commission's

¹¹ For example, customers already receiving a minimum bill, or already receiving a maximum credit, would not necessarily see a benefit. *See* Settlement at 7.

¹² *See* Settlement at 7-8 (setting forth a system-wide limit on annual electric CAP credits); PECO Amended Answer and New Matter, New Matter at ¶5 (estimating that use of the revised Energy Burdens would increase costs from \$60 million to \$80 million).

¹³ PECO St. 1-R at 6-9.

1 Order on the Petition for Reconsideration filed by the Energy Association of
2 Pennsylvania (EAP).¹⁴ In that Order, the Commission clarified the utility filing
3 requirements contained in its November 5, 2019 Order.

4 **Q. Is the EAP Order on Reconsideration relevant to this proceeding?**

5 A. No. The Commission's EAP Order on Reconsideration merely clarified that utilities were
6 required only to make a filing that indicated whether the utility was already complying
7 with the amendments to the CAP Policy Statement, and whether or how the utility
8 voluntarily planned to amend its USECP to comply with the CAP Policy Statement.¹⁵

9 Importantly, PECO's obligation to *automatically apply* the Energy Burdens contained in
10 the new CAP Policy Statement arises from the prior Settlement and PECO's existing
11 USECP. Doing so does not require an amendment to the 2016-2018 USECP.

12 **Q. Can you explain why the reduction of Energy Burdens would not constitute a**
13 **change to PECO's USECP?**

14 A. As I discussed extensively in my Direct Testimony, the use of the Commission's revised
15 Energy Burdens is required by PECO's currently active USECP. PECO's USECP states
16 that PECO will use the Energy Burdens in the PUC's CAP Policy Statement, as reflected
17 at 52 Pa. Code § 69.265, and explicitly provides that any change by the Commission to
18 the Energy Burdens in its Policy Statement would be incorporated into the FCO
19 calculations.¹⁶

¹⁴ *Id.* See also 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §69.261-69.267, Docket No. M-2019-3012599, Order on Reconsideration and Clarification (Feb. 6, 2020), <https://www.puc.pa.gov/pdocs/1653749.docx> (hereinafter EAP Order).

¹⁵ PECO St. 1-R at 7, citing EAP Order at 9-10.

¹⁶ See Settlement, p.2 n.3.

1 **V. APPROPRIATENESS OF REQUESTED RELIEF**

2 **Q. Mr. Kehl states that PECO has acted “in good faith to improve bill affordability for**
3 **CAP customers.” How do you respond?**

4 A. As set forth at length in my Direct Testimony, I believe PECO has willfully violated a
5 provision of a Commission approved Settlement,¹⁷ and as such I cannot agree that PECO
6 has acted in good faith. In addition, not only has PECO not acted in good faith in
7 complying with its obligation to implement lower Energy Burdens, ongoing discovery in
8 this case shows that PECO is not complying with an additional requirement of the
9 Settlement.

10 Specifically, the Settlement requires that if PECO is granted a base rate increase, the
11 “portion of each Rate R customer’s Annual Credit that is attributable to distribution rates
12 will be increased by a percentage equal to the system-wide residential distribution rate
13 increase.”¹⁸ The same provision applies for Rate RH (electric residential heating) and gas
14 customers. Asked in discovery to identify when PECO made these adjustments, PECO
15 responded:

16 PECO had an Electric base rate increase effective January 1, 2019. In the FCO
17 calculation methodology, each quarterly assessment looks back at the usage and
18 rates that were in effect during the prior 12 months. In each quarterly assessment
19 that occurred after January 1, 2019, the 12-month lookback utilized the new rates
20 for the portion of the 12-month lookback that occurred after January 1, 2019.¹⁹
21

¹⁷ TURN St. 1 at 26-30.

¹⁸ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Joint Petition for Settlement, Exhibit A at 6.

¹⁹ PECO Response to TURN-IV-1(a) (attached hereto in Appendix A).

1 Similarly, when asked to identify the system-wide residential distribution rate increase
2 used, PECO responded “PECO did not apply a system wide percentage increase. Rather
3 PECO applied the methodology described in subpart a.”²⁰

4 I take these responses to mean that PECO did not, for its electric base rate increase that
5 took effect January 1, 2019, adjust each customer’s Annual Credit as required by the
6 Settlement, as that would have required a distinct process separate from quarterly
7 assessments. While not the subject of this Complaint, PECO’s disregard for a separate
8 requirement in the Settlement concerns me, and underscores my Direct Testimony that
9 PECO has not acted in good faith and should be fined for violation of the Commission-
10 approved Settlement and 2016-2018 USECP.

11 **Q. Mr. Kehl argues that the revised Energy Burdens did not become effective until**
12 **their publication in the Pennsylvania Bulletin. Can you respond?**

13 A. Mr. Kehl appears to imply that the proper beginning date for calculating retroactive
14 credits, should the Commission determine doing so is appropriate, is March 21, 2020.²¹
15 This is the date the CAP Policy Statement was published in the *Pennsylvania Bulletin*.
16 However, the language of footnote 3 states solely “if the Commission **changes** the energy
17 burden ranges...”²² By agreeing to that Settlement provision, PECO bound itself to
18 implement amended Energy Burdens when and if the Commission took action to
19 “change” them. The Energy Burdens were indeed “changed” by the Commission’s Final
20 Order issued on November 5, 2019.

²⁰ PECO Response to TURN-IV-1(b) (attached hereto in Appendix A).

²¹ PECO St. 1-R at 16.

²² Settlement at 2, n.3 (emphasis added).

1 **Q. Mr. Kehl states that the retroactive CAP credit calculations cannot be done on an**
2 **individual-by-individual basis. How do you respond?**

3 A. Mr. Kehl's testimony does not go in depth as to why PECO would be unable to provide
4 the requested relief through an automatic process.²³ I am advised by counsel that TURN
5 has issued discovery to request more information, but that that discovery is not due back
6 until after the deadline for this testimony. At a minimum, Mr. Kehl acknowledges that it
7 can be done manually.

8 **Q. Mr. Kehl suggests that a system-wide average bill adjustment would be appropriate**
9 **to effectuate retroactive credits. Do you have a response?**

10 A. I believe PECO needs to provide more information to explain why an automatic
11 individual recalculation is impossible. The purpose of the remedy should be to put CAP
12 customers, to the extent reasonably possible, in the position they would have been in had
13 PECO complied with the Settlement and its 2016-2018 USECP. Without more
14 information, it is unclear whether a system-wide average adjustment would accomplish
15 that goal. It is also unclear how a system-wide average adjustment would contribute to
16 arrears forgiveness for CAP customers.

17 **Q. Does this conclude your testimony?**

18 A. Yes.

²³ PECO St. 1-R at 16-17.

Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tenant Union Representative Network

v.

PECO Energy Company

Docket No. C-2020-3021557

Response of PECO Energy Company
to Interrogatories
TURN Set IV

Response Date: 01/05/2021

TURN-IV-1

Reference: PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Joint Petition for Settlement, Exhibit A at 6 (describing Base rate case adjustments).

- a. Please identify the date(s) on which PECO adjusted each electric Rate R and Rate RH CAP customer's Annual Credit to account for electric base rate increases after July 8, 2015. If each customer's Annual Credit was adjusted individually based on date of enrollment or other event, please describe the process that was used and provide beginning and end dates for each Annual CAP Credit adjustment due to a base rate increase.
- b. For each date or time period identified in response to TURN IV-1(a), please identify the system wide percentage increase in the Annual CAP Credit for (i) Rate R CAP customers, and (ii) Rate RH CAP customers.
- c. For each date or time period identified in response to TURN IV-1(a), please identify the average (mean) and median Annual CAP Credit increase (in dollars) for (i) Rate R CAP customers, and (ii) Rate RH CAP Customers.

RESPONSE:

- a. PECO had an Electric base rate increase effective January 1, 2019. In the FCO calculation methodology, each quarterly assessment looks back at the usage and rates that were in effect during the prior 12 months. In each quarterly assessment that occurred after January 1, 2019, the 12-month lookback utilized the new rates for the portion of the 12-month lookback that occurred after January 1, 2019.
- b. PECO did not apply a system wide percentage increase. Rather PECO applied the methodology described in subpart a.
- c. PECO cannot calculate the impact of the rate increase as an individual factor. With each FCO quarterly assessment, changes in usage, as well as the rate change, impact the calculation of the Annual CAP Credit.

Responsible Witness: Mark Kehl

VERIFICATION

I, **Philip A. Bertocci**, witness of Tenant Union Representative Network, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Date: January 21, 2021

Philip A. Bertocci, witness of TURN