



March 15, 2021

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**Re: Pa. PUC v. PECO Energy Company, Docket No. R-2020-3018929**  
*CAUSE-PA Reply Brief*

Dear Judge Pell:

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

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only. A Microsoft Word version of this document will be submitted to Your Honor electronically.

Respectfully,



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



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March 15, 2021

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et al. :  
 :  
 v. : Docket No. R-2020-3018929  
 :  
 PECO Energy Company :

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**REPLY BRIEF OF THE COALITION FOR AFFORDABLE UTILITY  
SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)**

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**March 15, 2021**

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## I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), by and through its counsel at the Pennsylvania Utility Law Project, submits this Reply Brief in response to the Main Brief of PECO Energy Company (PECO), as well as other parties to this proceeding - including the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Philadelphia Area Industrial Energy Users Group (PAIEUG).

Consistent with the arguments advanced in CAUSE-PA's Main Brief, and as further explained herein, PECO's proposed rate increase should be rejected in its entirety at this time due to the devastating economic impact of the COVID-19 pandemic. As the record clearly shows in this proceeding, PECO's current rates are already categorically unaffordable for low income households – even when enrolled in a universal service program. Existing unaffordability must be squarely addressed in the context of this proceeding to ensure that all those in PECO's service territory can reasonably afford to connect and maintain critical natural gas service to their home.

Through testimony, CAUSE-PA's expert witness, Mitchell Miller – former long-time Director of the Commission's Bureau of Consumer Services – proposed a number of recommendations to address and remediate *existing* rate unaffordability, as well as to mitigate the impact of any approved rate increase. Mr. Miller also proposed a number of short-term recommendations designed to help address the unprecedented economic emergency created by the COVID-19 pandemic. PECO has refused to adopt any of these reasonable recommendations. As such, the impetus now rests with the Commission to ensure that all those who seek service from PECO are able to connect and maintain natural gas to their home at just and reasonable rates. CAUSE-PA urges the Commission to adopt the reasonable recommendations of CAUSE-PA to

both mitigate existing unaffordability and to offset the economic impact of any approved rate increase on PECO's most vulnerable consumers.

## **II. SUMMARY OF ARGUMENT**

CAUSE-PA continues to urge the Commission to reject PECO's proposed rate increase until the full extent of the economic impact of COVID-19 pandemic on Pennsylvania can be understood and accounted for. It is unjust and unreasonable to raise rates as the pandemic is still unfolding and Pennsylvania's economic future is in flux. PECO's low income customers already faced categorically unaffordable and unreasonable rates before the pandemic – and before PECO proposed to substantially raise the monthly cost to consumers to stay warm and safe in their home. These same households have experienced the most profound impacts as a result of the pandemic – with the economic impact falling hardest on low income communities and communities of color. Steps must be taken to ensure that all consumers – including those from Pennsylvania's most vulnerable communities – can afford to connect to and maintain service, especially in the face of the pandemic.

In its Main Brief, PECO discounts the impact of the pandemic as a factor for consideration in this proceeding, and asserts that the Commission should ignore the current reality and base its decision on calculations from the pre-COVID era. This approach would ignore the realities facing thousands of PECO's residential customers – so many of whom are either out of work or have suffered substantial reductions in wages. PECO repeatedly asserts that its existing universal service programs are sufficient to address the increased need for assistance; however, as the record clearly demonstrates, these programs were insufficient to meet the needs of low income consumers even before the onset of the pandemic – often resulting in participants paying 20% or more of their income each month on energy costs alone.



CAUSE-PA asserts that, rather than raise rates during this unprecedented economic crisis, PECO should be required to adopt short-term measures to address and respond to the acute economic hardship caused by the pandemic. As discussed below, and contrary to PECO's assertions in its Main Brief, PECO's pandemic response has been wholly inadequate to address identified need, and in some ways detracts from the ability to connect struggling consumers to available resources.

In addition, CAUSE-PA asserts that the Commission should require PECO to make changes to its CAP and LIURP programs to remediate *existing* rate unaffordability and to further adjust its voluntary Energy Efficiency and Conservation Program proposal to equitably serve low income consumers. Such reforms are necessary to ensure that rates charged to low income consumers are both just and reasonable, consistent with the requirements of the Public Utility Code. This is true regardless of any approved rate increase, but is particularly critical if the Commission were to approve PECO to increase rates at this time. Should any rate increase be approved, it is also absolutely essential that the Commission require PECO to immediately adjust its existing CAP credit levels to ensure that PECO's most economically vulnerable consumers are not forced to bear an even higher percentage rate increase than other residential ratepayers. As discussed, there is no record evidence to support PECO's proposal to adjust CAP rates over a 12-month period – forcing low income consumers to bear a higher percentage increase in rates over the short term.

Moreover, in addition to remediating unaffordability and inequity within PECO's universal service programs, the Commission should reject PECO's proposal to increase the fixed charge portion of the residential customer bill, as it would undermine the ability of low income consumers to achieve meaningful bill reductions through adoption of energy efficiency and careful

conservation. Contrary to PECO's assertions in its Main Brief, the record is replete with evidence that an increase in the fixed charge will have a measurable impact on the ability of consumers to reduce their bill through energy efficiency and conservation.

Finally, the Commission should approve CAUSE-PA's recommendation that PECO be required to study the issue of universal service cost recovery, and – in consultation with stakeholders – propose a methodology that will equitably recover universal service costs from all ratepayers. The record in this proceeding clearly shows that residential consumers do not cause energy poverty, and should not alone shoulder the associated costs of providing universally accessible utility services to the most vulnerable members of our community. Contrary to the assertions of PECO, OSBA, and PAIEUG, CAUSE-PA's proposal presents a reasonable path forward – supported by ample record evidence – to properly account for all relevant factors, including but not limited to the impact of the pandemic on businesses and residential consumers alike.

CAUSE-PA notes that, to the extent any issue is not addressed in this Reply Brief, CAUSE-PA stands firmly on the conclusions and recommendations contained in its Main Brief and in the direct and surrebuttal testimony of its expert witness, Mitchell Miller.

### **III. OVERALL POSITION ON RATE INCREASE REQUEST**

CAUSE-PA stands firmly on the conclusion reached in its Main Brief that it is inappropriate to raise rates for natural gas, which is necessary for basic human needs such as heat, hot water, and cooking fuel in the midst of the ongoing COVID-19 pandemic and the resulting economic crisis. (CAUSE-PA MB at 9-14). OCA also shared the conclusion that the proposed rate increase should be rejected due to the severity of the pandemic. (OCA MB at 11-27). While OSBA

did not argue for rejecting the rate increase in its Main Brief, its expert witness Robert Knecht explained, “When evaluating the allowed rate of return in this proceeding, the Commission should carefully consider ... the economic context for this rate filing.” (OSBA St. 1 at 2).

In its Main Brief, PECO cites the Commission’s decisions in the recent Columbia Gas and Pennsylvania American Water rate cases as support for the premise that it is appropriate to allow rate increases during the current pandemic. (PECO MB at 13). However, in each of those cases, the Commission acknowledged that its ratemaking methodologies require consideration of evidence of the impact of this pandemic.<sup>1</sup>

Substantial un rebutted record evidence in this proceeding shows that the COVID-19 pandemic has had a severe detrimental impact to the economic climate in PECO’s service territory and on PECO’s customers’ ability to afford service – especially so for low income communities and communities of color. (CAUSE-PA MB at 11-12). Evidence in this proceeding clearly shows that, even before the pandemic took hold, a large swath of PECO’s customer base was already unable to afford natural gas service – with nearly 1 in 5 (19%) of PECO’s low income consumers facing involuntary termination for nonpayment in 2019. (CAUSE-PA MB at 2, 12-13). As the Commission is well aware, the inability to afford natural gas service can have a deep and lasting negative impact on low income families – triggering eviction, poor health outcomes, and family separation. (CAUSE-PA MB at 13-14). For the sake of brevity, we will not again reiterate this evidence here, though we urge the Commission to review the substantial level of rate unaffordability in PECO’s service territory and the substantial harms that result – both before and through the pandemic.

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<sup>1</sup> Pa. P.U.C. v. Pennsylvania-American Water Co., Opinion and Order, Docket Nos. R-2020-3019369 and R-2020-3019371 (Feb. 25, 2021); Pa. P.U.C. v. Columbia Gas of Pa., Inc., Opinion and Order, R-2020-3018835 (Feb. 19, 2021).

In spite of the compounding nature of PECO's request to increase rates on existing unaffordability, PECO has proposed no improvements to its programs, policies, or practices to remediate identified unaffordability and ensure that low and moderate income households will be able to maintain service to their home. (CAUSE-PA MB at 22-36). In fact, as discussed in detail in CAUSE-PA's Main Brief, PECO is not even proposing to adjust the credit level provided to Customer Assistance Program participants to offset the impact of the rate increase at the time any rate increase was to take effect – causing CAP customers to face an even higher percentage rate increase than general residential customers. (CAUSE-PA MB at 23-25). This is the most basic action PECO prevent exacerbating existing levels of categorical unaffordability, and is in fact a prior Settlement obligation, yet PECO has refused even this most basic mitigation measure in its pursuit to increase rates.

The rate-making process requires a balancing of investor and consumer interests; thus, it is not reasonable to charge rates that consumers cannot afford to pay. (CAUSE-PA MB at 9-10). The large increase in residential arrears and customers at risk of termination is a major red flag and provides ample evidence that the pandemic has detrimentally impacted customers' ability to afford service. In a time of unprecedented economic uncertainty, where consumers have less money, and are demonstrating an inability to pay through drastically increasing arrears, prices should not go up. (CAUSE-PA MB at 11-14).

It should not be a *fait accompli* that utility rates are guaranteed to go up regardless of outside economic forces and regardless of whether consumers can afford to pay. The United States Supreme Court has held that the determination of just and reasonable rates through the rate-making process requires a *balancing* of investor and consumer interests, concluding that “**regulation does**

**not insure that the business shall produce net revenues."**<sup>2</sup> However, that seems to be the Company's position in this case. (See PECO MB at 8-12). The COVID-19 pandemic has posed unprecedented economic challenges for Pennsylvania, and has fallen especially hard on the most vulnerable communities; the proposed increase should wait until this economic uncertainty has recedes. (CAUSE-PA MB at 7-8).

The impacts of the pandemic cannot be ignored and CAUSE-PA stands firmly by its position that it is improper to raise natural gas rates during the current pandemic. However, if the Commission decides to allow PECO to increase rates, CAUSE-PA urges the Commission to account in its analysis for each of the datapoints in CAUSE-PA's Main Brief illuminating the staggering financial impact of the pandemic on PECO's customers, and specify what impact this data has on its analysis of PECO's rate proposal. Should the Commission approve any rate increase, CAUSE-PA asserts that the Commission must address identified unaffordability to ensure that PECO is not approved to charge rates that are categorically unaffordable for the most vulnerable customers in PECO's service territory.

#### **IV. RATE BASE**

CAUSE-PA did not take a position on specific rate base issues in this proceeding.

#### **V. REVENUES**

CAUSE-PA did not take a position on specific revenue issues in this proceeding.

#### **VI. EXPENSES**

CAUSE-PA did not take a position on specific expense categories in this proceeding.

#### **VII. TAXES**

CAUSE-PA did not take a position on specific tax issues in this proceeding.

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<sup>2</sup> Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 604 (1944).

## **VIII. RATE OF RETURN**

CAUSE-PA did not take a position on rate of return issues in this proceeding.

## **IX. CUSTOMER PROGRAMS AND MISCELLANEOUS ISSUES**

### **A. Recommendations Related to the COVID-19 Emergency**

To help alleviate the impact of the pandemic on PECO's residential consumers, and specifically on economically vulnerable low income consumers, Mr. Miller recommended a number of comprehensive, short-term policies and programs, including:

- Increase funding for PECO's Hardship Fund program by \$2 million, through the use of pipeline penalty credits and refunds. (CAUSE-PA St. 1 at 38).
- Waive the current burdensome requirement that hardship fund recipients achieve a zero dollar balance as a condition to issuing a grant, even if the balance could be deferred for forgiveness through enrollment in CAP or otherwise addressed through a long term payment arrangement. (CAUSE-PA St. 1 at 39).
- Waive income certification requirements for enrollment in CAP until the state is no longer under a state of emergency. (CAUSE-PA St. 1 at 39).
- Provide arrearage forgiveness for arrears accrued while in CAP. (CAUSE-PA St. 1 at 40).
- Waive late fees and reconnection fees for at least one year after a final order in this proceeding is issued. (CAUSE-PA St. 1 at 41).

(CAUSE-PA MB at 16-17).

Additionally, OCA witness Roger Colton recommended PECO initiate an Emergency COVID-19 Relief Plan (ERP) to provide financial and for low wage customers that may not have access to other forms of assistance. (OCA MB at 127). Mr. Colton explained that the ERP would provide much-needed economic relief to customers that have demonstrated an impact from the COVID-19 Pandemic and are otherwise having challenges paying their arrearages but do not have access to other resources. (OCA MB at 129).

In its Main Brief, PECO asserts that additional COVID-19 programing is not necessary because the Company has already done enough. (PECO MB at 82). However, Mr. Miller explained that the actions PECO has taken through the pandemic are largely in furtherance of existing obligations that have not expanded the availability of assistance to those in need – and in some cases may detract from the availability of adequate assistance to those in need.

In touting its pandemic response, PECO first notes that “[s]ince March 2020, PECO has offered all residential customers the opportunity to enter into a 24-month payment agreement.” (PECO MB at 80). But as CAUSE-PA witness Mitchell Miller explained, PECO provides these 24-month payment arrangements through an automated Interactive Voice Response (IVR), which does not allow for any assessment for whether a consumer is entitled to a longer payment arrangement based on income level – or is otherwise eligible for a universal service program to address deeper affordability issues. (CAUSE-PA St. 1-SR at 5). This process, Mr. Miller noted, is contrary to the statutory requirements in Chapter 14, which requires public utilities to provide information and referrals to appropriate universal service programs, as well as the Commission’s emergency orders regarding the steps a utility should take to provide assistance to at-risk consumers. (*Id.*) In pertinent part, section 1410.1 of the Public Utility Code provides:

When a customer or applicant contacts a public utility to make a payment agreement as required by section 1410 (relating to complaints filed with commission), the public utility shall: (1) Provide information about the public utility’s universal service programs, including a customer assistance program. (2) Refer the customer or applicant to the universal service program administrator of the public utility to determine eligibility for a program and to apply for enrollment in a program.<sup>3</sup>

The Commission also underscored the importance of individualized evaluation and universal service program referrals in addressing the pandemic, explaining that it is “vital that utilities inform

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<sup>3</sup> 66 Pa. C.S. § 1410.1.

customers that they are behind in payment and at-risk of termination so that those customers can be evaluated for participation in various assistance programs.”<sup>4</sup> As Mr. Miller noted, “Without any direct contact with the consumer, this evaluation cannot occur.” (CAUSE-PA St. 1-SR at 5, n.6). “If a payment arrangement is offered automatically through the IVR, there is no opportunity to assess the customer’s current economic circumstances” in order to match struggling customers with available assistance. (CAUSE-PA St. 1-SR at 5).

Providing automated payment arrangements through an IVR system prevents this kind of critical assessment, and further compounds the ability of consumers who fall behind on unaffordable payment arrangements to catch up in the future. ***When a payment arrangement is unaffordable, it sets up the customer to fail, and counts against them in the future when determining whether to offer additional payment arrangements.***

(Id.)

PECO’s provision of a standardized 24-month payment arrangement to all payment troubled customers through its IVR system is inadequate to address the economic harms created by the pandemic, *and is in fact counter-productive for lower income customers who may be eligible for substantially greater levels of relief.* As demonstrated through clear record evidence, PECO’s CAP enrollment rates have declined substantially over the last decade, even as the pandemic caused substantial economic hardship for low income communities. As of October 2020, only 20,147 of PECO’s natural gas customers were enrolled in CAP – less than 20% of PECO’s estimated low income customers. (CAUSE-PA St. 1-SR at 22). The fact that PECO is driving all payment troubled consumers into 24-month payment arrangements through its automated IVR – rather than assessing their circumstances for enrollment in a longer income-based payment

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<sup>4</sup> Public Utility Service Termination Moratorium – Modification of March 13<sup>th</sup> Emergency Order, Docket No. M-2020-3019244, at 3 (order entered Oct. 13, 2020).



arrangement or an appropriate universal service program – is likely contributing to this decline in CAP enrollment.

PECO next points to the fact that the Commission approved its proposal to increase eligibility for its Hardship Fund, known as the Matching Energy Assistance Fund (MEAF), as evidence that it has done enough to address the pandemic. But as CAUSE-PA explained in its Main Brief, PECO’s actions with regard to MEAF merely expanded the eligibility threshold – but did not increase the budget available to those in need. (CAUSE-PA MB at 18). PECO’s entire MEAF budget amounts to just **\$250,000** across its natural gas and electric divisions – a mere drop in the bucket compared to the **\$122 million** in arrears accrued by PECO’s residential consumers through the pandemic. (*Id.*) It is wholly irrational to argue that changes in eligibility criteria to spread this extremely limited amount of relief across a greater number of customers is an adequate response to current and unfolding crisis.

PECO next points to a Petition it filed on June 26, 2020, as evidence that its pandemic response has been adequate to respond to the unprecedented need for assistance. (PECO MB at 81). PECO claims in its Main Brief that this Petition “remains pending before the Commission” – but fails to note that the Petition will continue to remain pending unless and until PECO acts to provide additional information. (*Id.*) Indeed, at the August 6, 2020, Public Meeting, the Commissioners declined to further consider PECO’s June 26 Petition unless and until PECO provided additional data and support for its proposal. (CAUSE-PA St. 1-SR at 7.)<sup>5</sup> The sheer fact

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<sup>5</sup> Mr. Miller explained the procedural posture of PECO’s June 26, 2020 Petition:

In support of a staff recommendation regarding PECO’s proposed Petition, which failed to garner a majority vote at the Commission’s August 6, 2020 public meeting, Commissioner John Coleman stated: “I agree with the staff analysis and the Vice Chairman comments on that analysis that PECO has not really provided sufficient data, supporting documentation, or the justification to support these proposals.” August 6, 2020 Public Meeting, recording at 27:38, available at [https://www.puc.pa.gov/General/pm\\_agendas/2020/pm080620-audio.mp3](https://www.puc.pa.gov/General/pm_agendas/2020/pm080620-audio.mp3).

that PECO made a proposal last June to address the pandemic – without any follow-through to help that proposal to pass – is wholly inadequate to respond to the unprecedented economic hardship and corresponding utility debt crisis that has emerged as a result of the pandemic.

Finally, PECO argues in its Main Brief that adherence to the Commission’s emergency order to halt terminations and to waive late fees and reconnection fees is adequate to respond to the unfolding economic crisis. (PECO MB at 81). But as Mr. Miller concluded in surrebuttal testimony, PECO’s “compulsory compliance” with the Commission’s emergency orders is inadequate to address the unprecedented level of economic harm and hardship that residential consumers have faced and will continue to face for some time as they recover from over a year of profound economic hardship. (CAUSE-PA St. 1-SR at 8). Indeed, the Commission’s emergency orders regarding the pandemic were intended only “to protect against a ‘clear and present danger to life and property’” – not to respond to the long-term economic impacts of the crisis. (Id.) Mr. Miller noted:

With the Commission’s most recent Emergency Order set to expire at the end of March, thousands of PECO customers will potentially find themselves at risk of losing essential service in the midst of the pandemic. While the Commission may continue to examine the impact of COVID-19 on residential consumers and guide broad policy on a statewide basis, I do not believe that PECO should wait for a future statewide proceeding to address the unprecedented economic impact of the pandemic on low income consumers – especially in light of its proposal to increase rates for basic natural gas service.

(CAUSE-PA St. 1-SR at 8-9).

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In response to Chairman Gladys Brown Dutrieulle’s proposal to include the matter on the agenda for the next Public Meeting, Commissioner Coleman noted:

“I think we have discussed the merits of the proposal this morning, and unless or until PECO provides additional documentation, I think the matter has concluded, and therefore I don’t see the need to bring the matter before the Commission at a subsequent meeting.”

Id. at 31:10. Consideration of the matter concluded with the Chairman noting that the Petition would “sit in the Secretary’s Bureau.” Id.

(CAUSE-PA St. 1-SR at 7).

PECO's customers are in dire need of emergency assistance now to help ensure that economically vulnerable households are able to remain connected to critical natural gas services. (CAUSE-PA MB at 15). For low income customers, service was already unaffordable before the pandemic, even for CAP customers receiving a discount, with some households paying upwards of 20% or more of their income on energy costs alone. (Id.) The global pandemic, which has fallen hardest on low income communities, and communities of color, has worsened these struggles, leading to unprecedented levels of consumer debts and a staggering number of residential consumers eligible for terminations. (CAUSE-PA MB at 15-16).<sup>6</sup> Any further increase to rates will undoubtedly further exacerbate this economic harm – and the resulting high levels of termination across low income communities.

Mr. Miller drew parallels between the current economic crisis and the 2008 financial crisis, stating, “low-income termination rates during the Great Recession provide an insightful look at the impact of a far-ranging economic crisis on low income consumers’ ability to remain connected to essential utility services.” (CAUSE-PA MB at 13). In 2008, 87.9% (nearly 9 out of 10) of PECO’s confirmed low income natural gas customers were terminated for nonpayment, versus just 6.2% of residential customers overall (including low income customers). (Id.) **Further action must be taken to prevent a similar utility termination crisis in PECO’s service territory.**

For the sake of brevity, CAUSE-PA will not reiterate the proposals it made on the record in this proceeding to respond to the unprecedented economic crisis, and the substantial evidence on the record in support of those recommendations – both of which were discussed at length in its Main Brief and in its underlying testimony. (CAUSE-PA MB at 15-22). Rather, we stand firmly

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<sup>6</sup> As of November 2020, before the winter heating season really began, residential utility debt was up 187% year over year (\$46.2 million to \$122.3 million) across PECO’s gas and electric divisions. (CAUSE-PA St. 1 at 15). By December 2020, nearly 140,000 of PECO’s residential customers were facing pending termination by the end of December 2020. (CAUSE-PA St. 1-SR at 8).

on the arguments advanced through testimony and in our Main Brief with regard to those recommendations, and urge the Commission to take the necessary steps recommended by CAUSE-PA to mitigate the financial impact of the pandemic on low income customers. These measures are especially important if the Commission decides to allow PECO to further raise its rates, which will further exacerbate unaffordability for low income customers. CAUSE-PA believes each of its pandemic-related recommendations will help provide much needed assistance to those impacted by the pandemic, and will help ensure that low and moderate income families – including those who may find themselves in poverty for the very first time – can maintain access to critical natural gas services to their homes.

**B. Universal Service Programs**

**1. *Customer Assistance Program***

In testimony Mr. Miller recommended that the Commission order PECO to take several steps to remediate existing unaffordability within CAP and mitigate the impact of any approved rate increase on CAP customers. (CAUSE-PA St. 1 at 23-24, 30-33). CAUSE-PA continues to urge the Commission to order PECO to adhere to the following to ensure that CAP rates are just, reasonable, and in accordance with the law and policy:

- Adjust the applicable energy burden standards for PECO’s natural gas CAP customers, consistent with the Commission’s CAP Policy Statement, the terms of a prior Settlement, and PECO’s currently effective Universal Service and Energy Conservation Plan (USECP). (CAUSE-PA St. 1 at 30-31).
- Upon implementation of any rate increase, adjust the CAP fixed credit limit by a percentage equal to the system-wide residential gas distribution rate increase, consistent with the terms of the 2015 Commission approved Settlement. (CAUSE-PA St. 1 at 23-24).
- Develop a plan to increase CAP enrollment 50% by 2025, from 20,147 to 30,221 – roughly 6% of PECO’s residential customer population. (CAUSE-PA St. 1 at 32-33).

In their respective Main Briefs, PECO and OCA assert that these recommendations should be addressed in the context of PECO's USECP and other proceedings. (PECO MB at 83, OCA MB at 133-135, 142). However, PECO is proposing to increase rates *in this proceeding* – and in the midst of an economic crisis that is disproportionately harmful to low income communities and communities of color. (See CAUSE-PA St. 1 at 24; CAUSE-PA St. 1-SR at 10). As such, adjustments to PECO's CAP energy burden standards should not wait for some other proceeding. (CAUSE-PA MB at 26). These vulnerable customers simply cannot afford to wait to receive affordable bills. As Mr. Miller explains, "It is incumbent on the Commission to ensure that any rates approved as a result of this proceeding are both just and reasonable – including rates charged to low income households through CAP." (CAUSE-PA St. 1-SR at 10). Indeed, it would be a clear violation of the Public Utility Code for the Commission to approve rates for CAP customers in the context of this rate proceeding that were already found by the Commission to be unreasonable.

In its Main Brief OCA argued that adjustments to the energy burden for natural gas CAP customers without also adjusting the energy burden for electric CAP customers would create confusion. (OCA MB at 136-137). However, as explained in CAUSE-PA's Main Brief, adjusting PECO's natural gas CAP rates without also adjusting its electric CAP rates "would be no more confusing for customers than the fact that PECO is raising rates for gas service without simultaneously raising rates for electric service." (CAUSE-PA MB at 26-27). Further, as Mr. Miller pointed out in testimony, CAP credits for PECO's dual gas and electric customers appear on the residential customer bill as a single line item, without any explanation of how the credit is calculated, making customer confusion highly unlikely. (CAUSE-PA St. 1-SR at 12).

In its Main Brief, PECO asserts that Mr. Miller's recommendation that PECO be required to increase its CAP enrollment is not necessary because it has a high CAP participation rate

compared to other utilities. (PECO MB at 83). However, Mr. Miller explained in testimony that PECO dramatically undercounts its confirmed low income customers, which makes reliance on PECO's confirmed low income customer count artificially low and wholly unreliable as a point of comparison against other utilities:

Notably, PECO's "confirmed low income customer" count is even lower than PECO's CAP enrollment, which stood at 20,147 at the end of October. There are two reasons for this unusual result. First, PECO automatically recertifies LIHEAP recipients, and therefore does not consider them to be "confirmed low income" because they have not provided income documentation to PECO within the last two years – even though they must provide such documentation to the Department of Human Services in order to obtain a LIHEAP grant. PECO has also temporarily waived recertification for some CAP participants as a result of challenges obtaining documentation created by the pandemic. PECO does not count these customers as confirmed low income customers, despite the fact that they have previously provided PECO with income documentation in order to enroll in the program.

(CAUSE-PA St. 1 at 11). As Mr. Miller explained in testimony, "A 50% increase [in CAP enrollment] would bring PECO's CAP enrollment to 30,221 – *or 6% of PECO's residential customer class*, still far lower than the estimated CAP population in PECO's service territory." (CAUSE-PA St. 1 at 33 (emphasis added)). Thus, CAUSE-PA continues to urge the Commission to adopt Mr. Miller's recommendations regarding PECO's CAP energy burdens and CAP enrollment. CAUSE-PA submits that it would be both unjust and unreasonable to allow PECO to continue charging categorically unaffordable and unreasonable rates to CAP customers.

As a final point with regard to necessary reforms to PECO's CAP to address unaffordability, it is absolutely critical that the Commission require PECO to adjust its CAP credit thresholds *immediately* upon approval of any rate increase in this proceeding, in an amount equal to the approved system-wide average increase in residential distribution rates. (CAUSE-PA MB at 23-24, 28-29). PECO did not address this issue in its Main Brief, nor did it provide any counter

to this issue anywhere on the record in this proceeding. Indeed, this is most likely because there is simply no justification for raising rates without also adjusting the CAP credits to immediately account for any increase in rates. Failure to adjust available CAP credits immediately upon implementation of any rate increase would force CAP customers – who already face unacceptable levels of unaffordability – to experience an even higher average percentage increase in rates (9.9%) than general residential customers (8.8%) through the first year following approval of a rate increase. (CAUSE-PA MB at 24). This is simply unacceptable, and contrary to the terms of PECO’s Commission-approved USECP, a 2015 Commission-approved Settlement Agreement, and the Commission’s statutory universal service obligations. (CAUSE-PA MB at 23-24, 28-29).<sup>7</sup>

## **2. *Low Income Usage Reduction Program***

In testimony, Mr. Miller made several recommendations about PECO’s LIURP, including:

- Increase LIURP budget by \$2 million to reach better parity with similarly sized NGDCs.
- Establish per-job budget to address health and safety issues that prevent PECO from providing comprehensive usage reduction services to those most in need.
- Continue PECO’s Defacto Heating / Furnace Repair & Replacement Program as a permanent component of PECO Gas’s LIURP.
- Improve delivery of LIURP services to tenants and multifamily residents by adopting a lower high-usage threshold for this unique building type.
- Require that unspent LIURP funds roll over and be added to PECO’s LIURP budget for the following year.

(CAUSE-PA St. 1 at 25-26, 34-37).

In its Main Brief, PECO asserts that Mr. Miller’s recommendations are “unrealistic and would not change the size of PECO’s eligible customer pool. (PECO MB at 85). However, as Mr. Miller explained in testimony, Mr. Miller explained that “PECO’s LIURP program can play an

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<sup>7</sup> See 66 Pa. C.S. §§ 2202, 2203; PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Joint Petition for Settlement, Docket No. M-2012-2290911, at Exhibit A, page 6 (filed March 20, 2015).

important role in mitigating unaffordability for low income consumers.” (*Id.* at 25). He also explained that [PECO’s] LIURP only serves a small portion of those in need of comprehensive energy efficiency and usage reduction services.” (*Id.*) According to PECO’s most recent universal service program needs assessment, 67,015 of PECO’s gas service customers were estimated to be income eligible for LIURP services. (*Id.*) However, in an average year, PECO provides LIURP services to approximately 1,000 low income consumers. (*Id.*) Mr. Miller pointed out that: “As it stands, PECO has a disproportionately low LIURP budget compared to other natural gas distribution companies (NGDCs).” (CAUSE-PA St. 1 at 27). *Despite having the most natural gas customers in the state, PECO has the second lowest overall LIURP budget and the lowest LIURP budget proportionate to PECO’s customer base.* (*Id.*) Mr. Miller recommended that PECO increase its LIURP budget by \$2,000,000, bringing its annual LIURP budget for gas customers to \$4,250,000, which would be more consistent with similarly sized NGDCs. (CAUSE-PA St. 1 at 34). CAUSE-PA continues to assert that the Commission should adopt these just and reasonable recommendations to help mitigate *existing* rate unaffordability and offset the impact of any approved rate increase as a result of this proceeding, which will fall hardest on high usage low income customers.

**C. Neighborhood Gas Pilot Rider**

CAUSE-PA did not take a position on PECO’s Neighborhood Gas Pilot Rider in this proceeding.

**D. Energy Efficiency and Conservation Programs**

Consistent with the arguments in CAUSE-PA’s Main Brief and the testimony of Mitchell Miller, CAUSE-PA is generally supportive of EE&C initiatives, but asserts that the low income program component within PECO’s EE&C Plan requires adjustment to ensure equitable and proportionate distribution of program benefits. (CAUSE-PA MB at 37-40; CAUSE-PA St. 1 at



45). CAUSE-PA is supportive of the direct installation services proposed, which will help to remediate heating costs for households with old and inefficient heating and hot water systems that not generally available to low income households through other programming. (CAUSE-PA MB at 37).

However, as explained in CAUSE-PA's Main Brief, CAUSE-PA is concerned about the lack of proportional EE&C programming for low income consumers, who help to finance the programs through rates. (CAUSE-PA MB at 37). CAUSE-PA asserts that the Commission should ensure that it aligns its voluntary EE&C program with analogous provisions in the law – including the requirements of Act 129 to provide a proportionate level of benefits to low income consumers. (Id.) CAUSE-PA continues to assert that the Commission should require PECO to include additional opportunities within its general residential program for low income consumers to access energy efficient equipment and programming without an upfront cost. (Id. at 38). CAUSE-PA also continues to urge the Commission to order PECO to expand eligibility to ensure that renters and those with income between 101-150% FPL can access these critically important energy efficiency services. (Id. at 39). CAUSE-PA asserts that the Commission should require PECO to work with stakeholders and interested parties to develop a specific plan for coordinating its voluntary natural gas EE&C with other EE&C programs, including but not limited to LIURP, Act 129, and the Weatherization Assistance Program (WAP). (Id.)

Thus, while CAUSE-PA is generally supportive of PECO's proposed EE&C plan to help consumers reduce energy consumption, CAUSE-PA continues to urge adoption of the above reforms to help ensure that available program benefits are equitably distributed to consumers most in need.

#### **E. Quality of Service**

CAUSE-PA did not take a position on quality of service issues in this proceeding.

## **X. RATE STRUCTURE**

### **A. Cost of Service**

CAUSE-PA did not take a position on cost of service issues in this proceeding.

### **B. Revenue Allocation**

CAUSE-PA did not take a position on rate allocation issues in this proceeding.

### **C. Allocation of Universal Service Program Costs**

In its Main Brief, CAUSE-PA recommends that PECO spread its universal service costs equitably across all rate classes because nonresidential customers contribute to the cost of and need for the programs and also derive a benefit from the programs. (CAUSE-PA MB at 40-48). OCA also argued for cross class recovery of universal service costs based on similar considerations. (OCA MB at 181-206).

In its Main Brief, PECO asserts that this gas rate case is not the appropriate place to consider cross-class allocation of universal service costs because PECO's gas-only CAP customers make up a smaller portion of its total CAP customers. (PECO MB at 115). But the smaller percentage of PECO's gas CAP population relative to its electric CAP population is not a valid reason to ignore equitable universal service cost allocation proposals in the context of its gas rate case. (CAUSE-PA MB at 48). Indeed, PECO has the highest number of residential gas customers in the state and the third highest number of gas CAP participants. (CAUSE-PA St. 1-SR at 18).

PECO also indicates in its Main Brief that it intends to address the allocation of its *gas* universal service costs in its next *electric* base rate proceeding. (PECO MB at 115). But it is unclear how PECO can address allocation of costs to serve its gas customers in the context of an *electric* base rate proceeding. Allocation of PECO's universal service costs attributable to serving its natural gas customers must be made in the context of a gas rate case, not an electric rate case.

(CAUSE-PA MB at 49.) While PECO may prefer to align its cost allocation methodology across its gas and electric divisions, it must still make changes to those policies separately through its respective electric and gas rate proceedings.

In arguing against equitable recovery of universal service costs across all rate classes, OSBA and PECO each cite the Commission's recent decision in the Columbia Gas base rate case, in which the Commission declined to make changes to Columbia's universal service cost methodology. (OSBA MB at 20; PECO MB at 115). OSBA asserts that the considerations which led the Commission to reject the proposal in Columbia are similar in this case, namely the continued economic uncertainty caused by the pandemic. (OSBA MB at 20). OSBA also notes that, similar to the Columbia case, both OCA and OSBA are recommending a rate increase for large customer classes that exceeds the system average, and that changes to the allocation of universal service costs would violate principles of gradualism. (OSBA MB at 20). Ultimately, OSBA asserts that CAUSE-PA and OCA's respective proposals to allocate universal service costs across all rate classes lack specific allocations and therefore should be rejected. (OSBA MB at 23-24).

OSBA is correct: CAUSE-PA did not propose a specific universal service cost allocation in this proceeding. But that fact was by design, and should not cause the proposal to fail. CAUSE-PA's proposal with regard to universal service cost allocation was for the Commission to require PECO "to study the issue, and put forth a proposed allocation for how to equitably recover universal service costs across all rate classes." (CAUSE-PA St. 1 at 53-54). In developing its eventual proposal, CAUSE-PA recommended that PECO commence a year-long stakeholder process to gather input from all stakeholders prior to filing for approval of its proposed cost recovery methodology. (*Id.* at 54). In short, CAUSE-PA's recommendation in this proceeding

would move PECO toward equitable recovery of universal service costs over time, while allowing for due consideration to be given to any factors that PECO and its stakeholders believe are appropriate. This could include consideration of the impact that the pandemic may still be having on residential and business customers alike. CAUSE-PA asserts that its recommendations on this topic – allowing careful consideration of the issue through a year-long stakeholder process – is well supported by the record in this proceeding and should be adopted.

In its Main Brief, PAEIUG argues that allocating universal service costs to nonresidential classes violates cost causation principals. (PAIEUG MB at 30). But residential customers do not cause energy poverty and insecurity, nor are residential customers the only class of customers that derive an identifiable benefit from remediating energy poverty through the availability of universal service programming. Mr. Miller explained in direct testimony:

Energy insecurity impacts all customer classes (industry, business, commerce, educational institutions, hospitals, local and state governments, and other residential consumers) in specific and identifiable ways. The responsibility to provide universal service access to life-sustaining utility service should be shared by all utility consumers. Poverty is a broad societal problem, impacting all customers and customer classes and requiring a collective, societal solution. While the most direct benefits of universal service programs are derived by program participants, who by definition are part of the residential customer class, there are a multitude of societal benefits which insure to non-residential ratepayers that should not be ignored. As a public good, the cost of ensuring affordable access to very basic human needs should be borne by all those who enjoy the benefits of the public utility.

(CAUSE-PA St. 1 at 50).

Mr. Miller went on to explain some of the many ways that universal service programs benefit all ratepayers. (CAUSE-PA St. 1 at 50-53). For the sake of brevity, we will not reiterate that lengthy evidence here, though we note that this substantial record evidence that non-residential consumers both contribute to the cause for and derive an identifiable benefit from universal service programming must not be ignored.

In its Final CAP Policy Statement and Order, the Commission expressly rejected the argument that “the principle of cost-causation dictates that residential customers should fund these programs because that class is the only class that ‘benefits’ from them.”<sup>8</sup> The Commission cited its 1992 report on uncollectible balances, which indicated that “the origins and impacts of energy unaffordability are not limited to residential ratepayers.”<sup>9</sup> The report stated:

[T]he problem of the inability of some low income [*sic*] customers to pay their entire home energy bills is caused primarily by societal economic conditions that are unrelated to any one rate class. Until such time as sufficient public revenues are available to address the poverty/energy problem, the costs for [CAPs] should be viewed as a cost of operating as a public utility for which all ratepayers must share the cost. [BCS] does not find any logic to the argument that because the larger societal economic conditions are negatively affecting the ability of some [low-income] residential customers to pay their bills, that the problem is somehow caused by the residential class and should therefore be paid for by that class.<sup>10</sup>

The Commission went on to explain:

The Commission agrees that **poverty, poor housing stock, and other factors that contribute to households struggling to afford utility service are not just “residential class” problems.** Further, **helping low-income families maintain utility service and remain in their homes is also a benefit to the economic climate of a community.** In approving PGW’s practice of recovering such costs across all ratepayer classes, we noted that “all firm customers, including commercial and industrial customers, benefit indirectly from PGW’s extensive low-income assistance programs.”<sup>11</sup>

Notably, the adoption of cross-class universal service recovery policies in other states provides support for the argument that allocating universal service costs would not violate cost causation principals. As explained in CAUSE-PA’s Main Brief, other states that currently offer of

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<sup>8</sup> 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Final Policy Statement and Order, Docket No. M-2019-3012599, at 93 (order entered Nov. 5, 2019) (hereinafter Final CAP Policy Statement and Order).

<sup>9</sup> Id. at 94.

<sup>10</sup> Id. (citing 1992 Final Report on the Investigation of Uncollectible Balances, Docket No. I-00900002 at 157-158).

<sup>11</sup> Id. at 94 (emphasis added); see also Pa. PUC, et al. v. PGW, Order and Opinion, Docket No. R-2017-2586783, at 75 (order entered Nov. 8, 2017).

the states that currently offer programs similar to Pennsylvania’s universal service programs recover the costs of the programs across all rate classes. (See CAUSE-PA St. 1 at 53). The Commission has acknowledged that “Cross-class recovery for universal service costs is the ‘norm’ across much of the country, where state utility commissions and legislatures have expressly recognized that universally available utility services benefit the community as a whole.”<sup>12</sup> The Commission noted that it did not find evidence that cross-class recovery of universal service costs negatively impacted the business climate in any of these other states.<sup>13</sup>

In their respective Main Briefs, both OSBA and PAIEUG attempt to push a false dilemma on the Commission by arguing that universal service costs should be treated as insurance costs for residential customers, and argue that the only alternative is to treat these costs as taxes. (OSBA MB at 22-23; PAIEUG MB at 31-32). This is a false choice that reflects a deliberate attempt to eliminate several options that occupy the middle ground on the issue of universal service cost recovery. Universal service costs are neither a tax nor insurance and cannot be forced to fit neatly within either of these boxes. The programs are vital, statutory programs designed to ensure that all consumers are able to access and maintain essential utility services to their homes, a reality which undeniably provides public purpose benefits that inure to all ratepayers who reap the benefits of an economically vibrant and prosperous community.<sup>14</sup> Thus, recovery of costs associated with these benefits requires a unique evaluation that quantifies relative benefits, balances stakeholder interests, and produces an equitable allocation across all rate classes. The process proposed by CAUSE-PA offers an appropriate, incremental step to address this issue, and will yield a solution

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<sup>12</sup> Final CAP Policy Statement and Order at 96.

<sup>13</sup> Id.

<sup>14</sup> See Id. at 96 (“[T]he Commission concludes that **the General Assembly clearly identified the public purpose of these programs** in the Competition Acts by requiring that their costs be nonbypassable.”).

which ensures that all consumers who benefit from the availability of universal service programs are equitably sharing in those costs.

For the reasons explained above, and in its Main Brief, CAUSE-PA urges the Commission to adopt its recommended process for PECO to study the issue, gather stakeholder input, and put forward a proposal to equitably recover universal service program costs across all rate classes.

#### **D. Tariff Structure**

##### **1. Residential Customer Charge**

In testimony, CAUSE-PA witness Mitchell Miller recommended that PECO's proposal to increase its fixed monthly residential customer charge from \$11.75 to \$16.00, an increase of \$4.25 or 36% should be rejected because it would undercut achievable bill savings through conservation measures. (CAUSE-PA St. 1 at 41). Mr. Miller further explained that PECO's proposal undermines the explicit goals of the Low Income Usage Reduction Program (LIURP) to help low income customers to reduce their bills through conservation measures. (*Id.* at 42). Thus, Mr. Miller recommended that the fixed charge remain at \$11.75. OCA witnesses Watkins and Colton also recommended that the fixed customer charge not be increased in this case. (OCA St. 4, at 30-31; OCA St. 5 at 29-32, 55).

In its Main Brief, PECO asserts that Mr. Miller "did not support his assertions that the Company's proposed increase to its residential customer charge will impair energy efficiency efforts or undermine the Company's LIURP." (PECO MB at 119). However, in testimony Mr. Miller provided ample support for his position that the fixed charge should not increase due to the its effect on customers' ability to save money through energy conservation. (CAUSE-PA MB at 41-44). He explained that LIURP is explicitly designed to reduce customer bills:

PECO's proposal undermines the explicit goals of the Low-Income Usage Reduction Program (LIURP). The Commission's LIURP regulations explicitly

provide that the program is intended to help low-income customers to reduce their *bills* and, in turn, to “decrease the incidence and risk of customer payment delinquencies and the attendant utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs.”<sup>15</sup> By reducing the amount of bill reduction that can be obtained through LIURP measures, the proposed increase to the fixed charge threatens the continued effectiveness of ratepayer investments intended to reduce energy consumption, delinquencies, collections, and uncollectible costs. The explicit goals of the program will be more difficult to achieve as the fixed portion of the bill is increased.

(CAUSE-PA St. 1 at 42). He further explained that LIURP is effective at achieving its goals:

LIURP is effective at achieving these goals and producing meaningful average bill savings. In 2018, LIURP saved gas participants an average of \$101 per year, or \$8.41 per month. It also improved participants bill payment by 12.1%, or approximately \$166 annually, and improved bill coverage by 4.6%. The ability to save money through energy efficiency, and therefore drive improved bill payment behavior, is tied directly to a bill structure that bases costs on throughput. But as more residential customer costs are shifted to the fixed charge, the achievable bill savings – and the corresponding impact on bill payment behavior – will erode.

(CAUSE-PA at 42).

Mr. Miller explained that assigning such a high percentage of the proposed rate increase to the fixed charge would untether a substantial percentage of a customer’s bill from energy conservation bill reductions:

The current customer charge (\$11.75) makes up 14.7% of the current average residential bill (\$80.10). If the proposed fixed charge is approved at \$16.00, it would equal 20% of the current average residential bill (\$80.10) – or 18% of the average bill if PECO’s rate increase is approved as requested (\$87.17). In other words, if the proposed increase in the fixed customer charge is approved, PECO’s customers will lose the ability to control (on average) between 3-5% of their monthly bill through energy conservation and consumption reduction efforts – undermining the effectiveness of LIURP to achieve meaningful bill savings for low-income consumers. (CAUSE-PA at 43).

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<sup>15</sup> 52 Pa. Code § 58.1 (“The programs are intended to assist low-income customers conserve energy and reduce residential energy bills. The reduction in energy bills should decrease the incidence and risk of customer payment delinquencies and the attendant utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs.”).



He explained that the ability to achieve bill reduction through energy conservation measures is especially important for high use, low income customers who do not qualify for utility assistance other than weatherization programs:

This is even more critical for households with income above 150% FPL but less than 200% FPL who are ineligible for CAP or LIHEAP, but are eligible for energy efficiency and conservation services through LIURP or the federal Weatherization Assistance Program (WAP) – both of which have income guidelines of up to 200% FPL. It is critical that these households retain the ability to reduce their monthly energy costs through adoption of comprehensive energy efficiency and conservation programming.

(CAUSE-PA St. 1 at 43).

He also explained that the reductions in achievable bill reductions would undermine ratepayer investment in PECO's voluntary Energy Efficiency and Conservation Program:

Given low-income households are disproportionately payment troubled, and often lack the ability to control usage due to poor housing stock and older, less efficient appliances, it is critical that they continue to have access to effective conservation tools capable of producing meaningful and lasting bill reductions. Of course, in addition to undermining the effectiveness of millions of dollars in LIURP investments, PECO's high fixed charge proposal will also undermine the millions of ratepayer dollars that the Company is proposing to invest in energy efficiency through its voluntary Energy Efficiency and Conservation Program Plan.

(CAUSE-PA MB at 43-44).

Mr. Miller provided ample support to demonstrate that PECO's proposal to disproportionately increase its fixed charge would decrease the amount of bill reductions achievable through energy efficiency measures. Therefore, CAUSE-PA stands firmly on the conclusion reached in its Main Brief that PECO's fixed monthly customer charges should not be increased. (CAUSE-PA MB at 52). As Mr. Miller explained in testimony, "This would protect the ability of low income households to lower their utility costs by reducing consumption and would preserve the effectiveness of the LIURP program at reducing customer bills and improving payment behavior." (CAUSE-PA St. 1 at 44).

**2. *Non-Residential Customer Rate Design***

CAUSE-PA did not take a position on non-residential customer rate design in this proceeding.

**3. *DSIC Cost Allocation***

CAUSE-PA did not take a position on DSIC Cost Allocation in this proceeding.

**4. *Negotiated Gas Service***

CAUSE-PA did not take a position on negotiated gas service in this proceeding.

**5. *Theft/Fraud Investigation Charge***

CAUSE-PA did not take a position on PECO's proposed theft/fraud investigation charge in this proceeding.

**XI. CONCLUSION**

For the reasons set forth above, in CAUSE-PA's Main Brief, and in the direct and surrebuttal testimony of CAUSE-PA's expert witness, Mitchell Miller, CAUSE-PA urges the Honorable Deputy Chief Administrative Law Judge Christopher P. Pell and the Pennsylvania Public Utility Commission to deny PECO's proposed rate increase in its entirety. Moreover, consistent with the arguments raised above, CAUSE-PA urges ALJ Pell and the Commission to order PECO to implement Mr. Miller's recommendations, which are designed to alleviate existing rate unaffordability; mitigate the impact of any approved rate increase; improve access to and effectiveness of energy efficiency and conservation programming; equitably address the accrual of arrears through the COVID-19 pandemic; ensure that PECO's proposed rate design does not undermine energy efficiency and conservation; and require that PECO's public purpose program costs are equitably shared across all rate classes consistent with the fact that residential consumers do not cause energy poverty.

Respectfully submitted,  
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