



March 24, 2021

VIA E-File

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

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

Reply Brief of CAUSE-PA

Your Honor:

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.

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA

A handwritten signature in black ink, appearing to read "Ria Pereira".

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

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

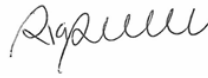
I hereby certify that I have this day served copies of the **Reply Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 and consistent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

VIA EMAIL

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March 24, 2021

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

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TABLE OF CONTENTS

I. INTRODUCTION..... 4

II. SUMMARY OF ARGUMENT..... 5

III. ARGUMENT..... 6

 1. PECO’s obligation to revise its FCO energy burden standards in line with the Final CAP Policy Statement was clear and unambiguous in its direction, and was not contingent on any other provision of the Joint Settlement. 6

 a. *PECO’s obligation to conduct a third party evaluation of its FCO CAP design was not connected to PECO’s obligation to reduce its energy burden standards..... 6*

 b. *The Joint Settlement does not require PECO to make structural changes in furtherance of a third party evaluation as a condition precedent to implementing the Commission’s revised energy burden standards. 8*

 c. *PECO was not required to seek Commission approval a third time to implement clear and unambiguous settlement provisions..... 12*

 2. Implementation of the revised energy burden standards in the Final CAP Policy Statement does not require changes to the structure or design of the FCO. 15

 3. PECO’s obligation to file a cover letter and addendum to its USECP in response to the Commission’s November 5, 2019 Order was a separate obligation and did not relieve PECO of its obligation to implement the terms of the Joint Settlement and its 2016-2018 USECP. 18

IV. CONCLUSION 22

TABLE OF AUTHORITIES

Regulations

52 Pa. Code § 69.265 10, 13, 18

Pennsylvania Public Utility Commission

2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Final Policy Statement and Order, Docket No. M-2019-3012599 (order entered Nov. 5, 2019)..... 4, 10

Energy Affordability for Low-Income Customers, Initial Comments of PECO Energy Company, Docket No. M- 2017-2587711 (Initial Comments filed May 11, 2019)..... 13

PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015
Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Joint Petition for Settlement, Docket No. M-2012-2290911 (filed March 20, 2015)..... 4, 5

PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795, P-2020-3020727..... 11

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files this Reply Brief in response to the Initial Brief of PECO and the Main Brief of the Office of Consumer Advocate (OCA).

Consistent with the arguments advanced in CAUSE-PA's Main Brief and as further explained herein, CAUSE-PA intervened in the present case in support of TURN's Complaint which seeks to enforce a clear and undisputed provision in the 2015 Joint Settlement, approved by the Commission at Docket No. M-2012-2290911 and mirrored in PECO's subsequently approved 2016-2018 Universal Service and Energy Conservation Program (USECP). In relevant part, the Joint Settlement clearly and unambiguously requires PECO to revise its applicable energy burden standards for its Customer Assistance Program (CAP) if and when the Commission modifies the standards in its CAP Policy Statement: "If the Commission changes the energy burden ranges set forth in its Policy Statement, PECO will utilize the new maximum allowable energy burden for each poverty level."¹

PECO violated this Joint Settlement provision – as well as the terms of its approved USECP – when it failed to revise its applicable energy burden standards following issuance of the Commission's Final CAP Policy Statement and Order, which revised the Commission's energy burden standards.²

¹ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Joint Petition for Settlement, Docket No. M-2012-2290911, at Exhibit A, p. 2, fn. 3 (Term Sheet) (filed March 20, 2015).

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

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

II. SUMMARY OF ARGUMENT

CAUSE-PA stands by its position and the position of CAUSE-PA's expert witness, Harry Geller, that PECO is in violation of the clear and unambiguous terms of the Joint Settlement and its 2016-2018 USECP. The Joint Settlement provided: "If the Commission changes the energy burden ranges set forth in its Policy Statement, *PECO will utilize the new maximum allowable energy burden for each poverty level.*"³ As described in detail in CAUSE-PA's Main Brief, all parties agree that the Joint Settlement contained this provision,⁴ and all parties agree that the Commission has published its Final CAP Policy Statement.⁵ PECO and OCA, in their respective Briefs and through their expert witnesses, continue to raise a number of irrelevant issues presented for the purpose of justifying PECO's unilateral choice to abandon its Joint Settlement and USECP obligations. In short, PECO and OCA attempt to rationalize PECO's breach of the Joint Settlement

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

⁴ CAUSE-PA Main Brief at 12; TURN St. 1 at 15; OCA St. 1 at 6; PECO St. 1 at 3; CAUSE-PA St. 1 at 5.

⁵ CAUSE-PA Main Brief at 12; TURN St. 1 at 27; OCA St. 1 at 3; PECO St. 1 at 6; CAUSE-PA St. 1 at 5.

by arguing that enforcement of the term would not result in comprehensive improvements to the overall design of PECO's CAP, and would therefore be imprudent.⁶ However, as described in CAUSE-PA's Main Brief and this Reply Brief, the core issue in TURN's Complaint is clear – PECO has not complied with its obligations under the Joint Settlement or its 2016-2018 USECP, and has presented no relevant or valid basis for this deliberate, unilateral action.

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

III. ARGUMENT

1. PECO's obligation to revise its FCO energy burden standards in line with the Final CAP Policy Statement was clear and unambiguous in its direction, and was not contingent on any other provision of the Joint Settlement.

a. PECO's obligation to conduct a third party evaluation of its FCO CAP design was not connected to PECO's obligation to reduce its energy burden standards.

PECO and OCA erroneously argue that the provision of the Joint Settlement requiring revision of PECO's CAP energy burden standards in compliance with the Final CAP Policy Statement should not be enforced because it must be read in the context of the full Joint Settlement,

⁶ CAUSE-PA Main Brief at 12-13.

and particularly in conjunction with unrelated provisions of the Joint Settlement. In its Initial Brief, PECO argues that the energy burden provision was an interdependent part of a broader Settlement package focused on achieving bill affordability.⁷ PECO points to CAUSE-PA’s Statement in Support of the Joint Settlement, in which CAUSE-PA recognized the importance of the provision requiring PECO to conduct a third-party evaluation of the FCO to provide “data-driven analysis that enables the Company – together with the Commission, parties and stakeholders – to make necessary adjustments to ensure that the program projections and modeling of affordability is realized.”⁸

Similarly, OCA erroneously argues in its Main Brief that TURN’s Formal Complaint reads the language of the 2015 Joint Settlement out of context.⁹ OCA asserts that there is no basis to conclude that revision of the FCO’s energy burden standards must happen without regard to the other provisions of the Joint Settlement. OCA specifically points to the third party evaluation of the FCO, and claims that the FCO program design is not effective in achieving affordable bills.¹⁰ OCA claims that the Joint Settlement contains interrelated provisions and that one change cannot be made to the FCO when the entire program design has been determined to be ineffective.¹¹

PECO and OCA incorrectly conflate the provision of the Joint Settlement requiring PECO to revise its energy burden standards with other separate Joint Settlement obligations. On page 9 of the 2015 Joint Settlement, the parties agreed to a review process in order to evaluate the overall effectiveness of the FCO. In contrast, the provision contained on page 2 of the Joint Settlement

⁷ PECO Initial Brief at 5.

⁸ Id. at 7, citing CAUSE-PA’s Statement in Support, Docket No. M-2012-2290911, at 10.

⁹ OCA Main Brief at 11.

¹⁰ Id. at 12.

¹¹ Id. at 12-13.

which is currently at issue was not lumped into or in any way contingent on the review and evaluation process of the FCO.¹² Rather, the provision was an independent requirement to determine a customer's benefit amount through calculation of the customer's energy burden.¹³ The provision was contained in a separate and distinct section of the Joint Settlement, much earlier in the document, and unambiguously referred to the disproportionately high energy burden standards that were later determined by the Commission to be both unreasonable and unaffordable. There was no indication – either in the explicit language of the disputed term or in its placement within the Joint Petition – that the provision of the Joint Settlement regarding revisions to PECO's FCO energy burden standards had any interconnection or effect on other provisions in the Joint Settlement, generally, or with regard to the third party evaluation, specifically.¹⁴

Importantly, while the obligation to revise the FCO energy burden standards if the Commission changes the energy burdens in the CAP Policy Statement is contained in PECO's 2016-2018 USECP, the 2016-2018 USECP does not also contain the requirement in the Joint Settlement that PECO evaluate the FCO – let alone that such an evaluation must occur before adhering to other terms of the USECP.

b. The Joint Settlement does not require PECO to make structural changes in furtherance of a third party evaluation as a condition precedent to implementing the Commission's revised energy burden standards.

As discussed at length in CAUSE-PA's Main Brief, and further below in section 2, a structural revision of the FCO design to rectify issues identified in a third party evaluation is not a condition precedent to PECO revising the FCO's energy burdens in compliance with the Joint

¹² Joint Settlement at 2.

¹³ Id.

¹⁴ Joint Settlement at 2, 9.

Settlement.¹⁵ CAUSE-PA and its expert witness do not dispute the inherent complexity involved in developing effective CAP programs, or the fact that PECO's FCO design has structural issues which must be addressed.¹⁶ In fact, this is why the parties included provisions in the Joint Settlement that would *both* improve affordability immediately upon any change to the energy burden standards in the CAP Policy Statement *and* create a process for evaluation to allow for additional programmatic changes as necessary based on a third party review. As Mr. Geller points out, OCA and PECO's expert witnesses miss the issue at hand.¹⁷ While developing a comprehensive, affordable PIPP CAP is a desirable long-term goal, and one that CAUSE-PA strongly supports, it was never intended to be a condition precedent for PECO to comply with the Joint Settlement or PECO's USECP regarding the energy burden standards applied through its current FCO.¹⁸ As such, requiring the overhaul of PECO's existing CAP structure as a prerequisite to revising the FCO's energy burden standards "negate[s] the important automatic execution of the Settlement requirement and create[s] new requirements in its place."¹⁹

CAUSE-PA does not contest that the APPRISE evaluation, which was conducted pursuant to the Joint Settlement, was intended to provide the Company, the parties and stakeholders, and the Commission with valuable feedback about the FCO to determine if periodic changes to the FCO were necessary.²⁰ All required periodic evaluations of USECP programs are intended to do so.²¹ However, such evaluations are intended to inform the need for structural changes to the

¹⁵ CAUSE-PA Main Brief at 18-19.

¹⁶ *Id.* at 18, citing CAUSE-PA St. 1-SR at 10: 15-17.

¹⁷ *Id.*

¹⁸ CAUSE-PA Main Brief at 18-19, citing CAUSE-PA St. 1-SR at 10: 13-21.

¹⁹ CAUSE-PA Main Brief at 19, citing CAUSE-PA St. 1-SR at 11: 3-6.

²⁰ CAUSE-PA Main Brief at 21.

²¹ *Id.*

design of a utility program – not to provide cover for a utility to side-step interim improvements to affordability pursuant to independent, stand-alone provisions of a Joint Settlement and the approved terms of its USECP.²² PECO’s decision to propose implementation of a PIPP design was an adjustment based on the APPRISE evaluation, with significant input and collaboration from stakeholders and consistent with the terms of the Joint Settlement.²³ By contrast, PECO’s decision not to implement the revised energy burden standards in the Final CAP Policy Statement was a unilateral decision by PECO, made without the input or agreement of stakeholders and directly contradicts to the unambiguous terms of the Joint Settlement.

As clearly shown, the requirement in the Joint Settlement as to which set of energy burdens PECO is to use in its CAP program and when to implement those standards has absolutely no relationship to, and is in no way contingent upon or related to conducting an evaluation or to the finding of the evaluators. This independent clause construction is not unique to this matter or this USECP. The Commission CAP Policy Statement calls for both events, but does not link them: Section 69.265(2)(i) details the maximum CAP energy burdens and is not in any way linked to Section 69.265(13), which calls for an independent evaluation of universal service and energy conservation programs not to exceed every 6 years.²⁴ The maximum energy burdens are a guideline for affordability targets to be implemented in each CAP program, whereas the periodic evaluation is to inform whether the program is designed to achieve those targets and must be submitted to the Bureau of Consumer Services for review. Evaluation findings and recommendations are not self-executing or assured of Commission approval.²⁵

²² Id.

²³ Id.; TURN St. 1 at 12: 14-16.

²⁴ Final CAP Policy Statement at 3-4, 11.

²⁵ See id.

PECO and OCA also opine at length that implementation of the Commission’s revised energy burden standards in the FCO will not improve bill affordability.²⁶ This assertion is patently false. As discussed more fully in CAUSE-PA’s Main Brief, and in further detail below in Section 2, reducing the FCO energy burden standards will absolutely improve bill affordability for CAP participants at all levels of income, as it will necessarily increase the CAP credit amount applied to their bill.²⁷ This is basic math. If you reduce the percentage of income in the FCO calculation, the result will be a higher credit, which will decrease the amount a CAP customer is charged for electric and gas service.²⁸

PECO and OCA make a valid point about structural issues within PECO’s FCO, which has resulted in many CAP customers – particularly those with the lowest income – paying rates that exceed the targeted energy burden. Those structural issues must be addressed – and in fact will be addressed in assessing PECO’s Petition for approval of a PIPP CAP structure.²⁹ But the need to remediate *structural* affordability issues within PECO’s FCO is irrelevant to whether PECO must comply with the unambiguous provision of the Joint Settlement requiring it to take immediate steps to reduce the applicable energy burden standards within the FCO, consistent with any changes to the Commission’s energy burden standards. Reducing the energy burden standards within the FCO may not solve all of the structural issues, but it will undeniably narrow the affordability gap for all CAP customers by increasing the CAP credit amount applied to their bill. This interim step was clearly contemplated by the parties to the Joint Settlement as a way to

²⁶ PECO Main Brief at 13; OCA Main Brief at 13; PECO St. 1-R at 11; OCA St. 1-R at 19-20.

²⁷ CAUSE-PA Main Brief at 17, citing “Reducing the maximum percentage of income used to calculate a CAP participant’s applicable fixed credit will necessarily improve affordability.” TURN St. 1-SR at 7: 17-18; 8: 1-2.

²⁸ See TURN St. 1 at 15-16; TURN St. 1-SR at 7-8.

²⁹ PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795, P-2020-3020727, at 3-10, available at: <https://www.puc.pa.gov/pcdocs/1669220.pdf>.

immediately improve affordability within the FCO design – irrespective of the lengthier FCO review and assessment process included much later in the Joint Settlement.

Again, while CAUSE-PA strongly supports the broader structural goal of returning to a CAP PIPP, PECO’s customers are coping with high bills ***now*** as a result of PECO’s failure to revise its energy burdens. As of August 2020, PECO estimated that 115,384 households were enrolled in CAP.³⁰ PECO’s failure to comply with its Joint Settlement and USECP obligations has caused CAP customers to have significantly higher bills than they would have otherwise received if PECO had revised the FCO’s energy burden standards in a timely manner consistent with the terms of the Joint Settlement.³¹ Low income customers, even at the best of times, face untenable choices in light of high utility bills and often forgo other basic necessities – such as rent, food, and medicine – in order to afford utility bills.³² With the spread of the COVID-19 pandemic, low income customers are struggling more than ever and continue to face disproportionate and profound economic harm – amassing unprecedented levels of arrears over the past year.³³ These arrearage levels have been inflated as a result of PECO charging higher than necessary CAP rates.

c. PECO was not required to seek Commission approval a third time to implement clear and unambiguous Settlement provisions.

Ultimately, this case turns only on whether PECO has complied with the clear, unambiguous terms of the Joint Settlement to implement the Commission’s revised CAP energy burden standards within its existing CAP FCO design. Issues raised by PECO and OCA regarding the merits of PECO’s FCO design are irrelevant to this determination. As discussed in further

³⁰ CAUSE-PA Main Brief at 30, citing TURN St. 1 at 10: 6-9, citing PECO Response to TURN-I-1(b) and (c). See also PECO Response to TURN-I-(d) (disaggregating CAP customers by FPIG tier).

³¹ See CAUSE-PA Main Brief at 30-31.

³² Id.; TURN St. 1 at 28: 4-10.

³³ CAUSE-PA Main Brief at 31; CAUSE-PA St. 1-SR at 4: 8-10.

detail in CAUSE-PA’s Main Brief, PECO and OCA’s expert witnesses concede that the Joint Settlement requires PECO to implement the revised energy burden standards in the Final CAP Policy Statement.³⁴

OCA’s expert witness, Mr. Colton, acknowledges the plain language of the Joint Settlement, and what it requires of PECO, explaining: “the Settlement provides that should the PUC change the ranges within which CAP energy burdens must fall, PECO would continue to use the ‘maximum allowable energy burden ‘provided in each range.’”³⁵

Similarly, PECO’s expert witness, Mr. Kehl, clearly concedes PECO’s obligation to revise the FCO’s energy burdens in line with the Final CAP Policy Statement:

Several inputs are necessary to determine the customer credit under the FCO, including household income as a percentage of federal poverty level (“FPL”) guidelines, the number of household members, utility usage, and the allowable EBs set forth in the Commission’s CAP Policy Statement. The Settlement provided that if the Commission changes the EBs, PECO will utilize the new maximum allowable EBs for each poverty level in calculating the FCO credit to be given to each customer.³⁶

Mr. Kehl further acknowledges that PECO has been aware of its obligations all along, and fully capable of implementing the revised energy burdens in compliance with the Joint Settlement, but unilaterally chose to disregard the Joint Settlement in favor of a different approach.³⁷ Indeed, PECO acknowledged its ability and intention to implement its Settlement obligations in Comments submitted to the Commission that, if the established energy burdens in the Commission’s CAP

³⁴ CAUSE-PA Main Brief at 22-23, citing TURN St. 1-SR at 4: 1-10.

³⁵ CAUSE-PA Main Brief at 23, citing OCA St. 1-R at 6: 9-12; see also TURN St. 1-SR at 4: 11-14.

³⁶ CAUSE-PA Main Brief at 22, citing PECO St. 1-R at 3:9 – 3:16; 52 Pa. Code § 69.265 (emphasis added); see also TURN St. 1-SR at 4: 1-10.

³⁷ Id.

Policy Statement were changed, *PECO's CAP FCO program has a "pass through" clause allowing for automatic implementation.*"³⁸

Mr. Kehl also clearly testified that it was PECO's conscious decision to breach the Joint Settlement in favor of PECO's preferred approach, only later to decide - *after TURN's Complaint was filed* – that it would seek additional Commission approval to implement the revised energy burden standards:

Given the time that will be required to transition to a PIPP, PECO concluded that it would now be reasonable, with Commission approval, to incorporate the revised EBs in the FCO as a "bridge" to the PIPP.³⁹

PECO's decision to seek *additional* Commission approval to implement the Commission's revised energy burden standards, only after it was called to task for its knowing breach of the Joint Settlement term, is clearly redundant, as the term requiring automatic adjustment of PECO's energy burden standards consistent with the Commission's CAP Policy Statement has already been reviewed and approved by the Commission in two separate proceedings. Petitioning for the same relief a third time, after twice receiving Commission approval, is "like *déjà vu*, all over again."⁴⁰ Unfortunately, PECO's actions here serve only to delay its compliance, compounding affordability challenges for PECO's CAP customers.

PECO's actions with regard to the Joint Settlement – and its decision to seek a third approval from the Commission before implementing a self-actualizing Settlement term - should be cause for concern, given the far-ranging impacts on the finality of the terms of a Commission

³⁸ CAUSE-PA Main Brief at 23, citing CAUSE-PA St. 1-SR at 9: 7-15, Energy Affordability for Low-Income Customers, Initial Comments of PECO Energy Company, Docket No. M- 2017-2587711, at 8 (Initial Comments filed May 11, 2019).

³⁹ CAUSE-PA Main Brief at 23, citing PECO St. 1-R at 15: 20 - 16: 2. (emphasis added); CAUSE-PA St. 1-SR at 9: 12-19.

⁴⁰ Quoting Lawrence Peter "Yogi" Berra.

approved settlement. Requiring settling parties to return to the Commission for approval to implement the self-actualizing terms of a settlement creates substantial waste of judicial resources, generates unnecessary litigation at great expense to all parties, and will have a direct and immediate chilling effect on the willingness of any party to enter into a settlement to resolve issues in dispute. Indeed, failure to enforce the Joint Settlement term in dispute in this proceeding will set a precedent, whereby PECO could substantially delay adherence to any settlement provision that it did not want to immediately follow.

The plain and unambiguous terms of the Joint Settlement required PECO to adjust its energy burden standards if and when the Commission took action to reduce the energy burden standards in its formal CAP Policy Statement. There was no condition precedent to this requirement, either in relation to a third party evaluation of PECO's FCO or further Commission approval. PECO's unilateral actions with regard to the Joint Settlement must be rectified.

2. Implementation of the revised energy burden standards in the Final CAP Policy Statement does not require changes to the structure or design of the FCO.

In its Main Brief, OCA argues that there are other implementation issues standing in the way of PECO revising the FCO's energy burden standards as required by the Joint Settlement and its 2016-2018 USECP.⁴¹ Specifically, OCA notes that PECO must convert the revised annual energy burdens to monthly payment obligations.⁴² OCA cites its expert witness, Roger Colton, who describes three methodologies for converting annual burdens into monthly payment obligations: (1) calculating monthly budget bills, so that the CAP credit would be the difference between the budget billing amount and the affordable annual bill; (2) providing bills that reflect

⁴¹ OCA Main Brief at 20.

⁴² Id.

actual underlying consumption, and to vary CAP credits on a seasonal basis so as to make CAP credits more closely reflect the actual monthly bill; or (3) bill each month at standard residential rates to be matched against equal monthly CAP credits, with a running total of net CAP credits being tracked.⁴³ OCA submits that the Commission acknowledged in its Final CAP Policy Statement the importance of ensuring that monthly CAP payments will not exceed the maximum energy burden standards.⁴⁴

OCA's argument that TURN has failed to specify the *best* method for implementing the revised energy burdens in the FCO is an attempt by OCA to again argue that fundamental changes to the FCO design are necessary for PECO to comply with its Joint Settlement and USECP obligations. However, the FCO is already structured to translate energy burdens into customer bills, as the FCO currently utilizes the energy burden standards from the former Commission's CAP Policy Statement that was in effect at the time of the Joint Settlement.⁴⁵

As noted above in Section 1, implementation of the Commission's revised energy burden standards is as simple as swapping out one percentage threshold for another, and then completing the very same mathematical calculation. CAUSE-PA's expert witness, Harry Geller, and TURN's expert witness, Philip Bertocci, describe how the FCO is designed so that a customer's undiscounted charges from prior year is determined using either actual usage or a pro forma profile in order to approximate usage, with the Company adjusting those charges to account for weather normalization.⁴⁶ PECO then determines a customer's allowable energy burden based on household income and household size, in relation to the Federal Poverty Income Guidelines (FPIG) and the

⁴³ *Id.*; OCA St. 1-R at 18-19.

⁴⁴ OCA's Main Brief at 20-21.

⁴⁵ *See* CAUSE-PA Main Brief at 5.

⁴⁶ CAUSE-PA St. 1-SR at 7; TURN Statement 1 at 14-15; Joint Settlement at 1-2.

energy burdens set forth in the Joint Settlement and PECO’s current USECP.⁴⁷ An annual credit is then calculated by multiplying the customer’s household income by the customer’s allowable energy burden.⁴⁸

No witness in this case has contended that PECO will be unable to prospectively revise the FCO’s energy burdens in line with the Final CAP Policy Statement. As discussed above, the Joint Settlement does not require PECO to changes the design or structure of the FCO prior to implementation of the energy burden standards in the Final CAP Policy Statement. There is no clearer acknowledgment of this fact than within PECO’s own Petition to the Commission, seeking permission to incorporate the new energy burden standards into the FCO as a bridge. As PECO states:

III. THE EB PROPOSAL

21. Consistent with PECO’s statements in its September 15, 2020 Answer, PECO is proposing to utilize the EBs in the Revised Policy Statement **as part of the FCO calculations** until the Company transitions to the PIPP.

22. To implement the EB Proposal, a limited number of changes must be made to the proposed 2019-2024 USECP that is already pending before the Commission. The USECP redline provided in Attachment A displays these changes.

23. The Company proposes to update Addendum C of its proposed 2019-2024 USECP by replacing “Table 1: Energy Burdens” with the following table:

Table 1: Energy Burdens⁴⁹

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

⁴⁷ CAUSE-PA St. 1-SR at 7; TURN Statement 1 at 14-15; Joint Settlement at 3.

⁴⁸ CAUSE-PA St. 1-SR at 7; TURN Statement 1 at 15-16.

⁴⁹ Petition of PECO Energy Company for Approval of an Amendment to Its Proposed Universal Service and Energy Conservation Plan, PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795, Dated September 25, 2020, at 7-8. (emphasis added)

Furthermore, the speed in which PECO acknowledges that the change could be made is reflected by its commitment to:

utilize the revised EBs as part of the CAP FCO beginning with bills issued in **the first full billing cycle** after receipt of final Commission approval in this proceeding.”⁵⁰

Again, PECO’s failure to implement the revised energy burden standards in the Final CAP Policy Statement was not a matter of logistical infeasibility, but rather a conscious and deliberate decision by PECO to first ignore and then unnecessarily delay its compliance with its clear obligations under the Joint Settlement. PECO’s expert witness, Mr. Kehl, has acknowledged that PECO was aware and fully capable of implementing the revised energy burden standard, but chose not to do so⁵¹ – unilaterally deciding to turn their efforts towards PIPP implementation while neglecting its Joint Settlement and USECP obligations and its customers’ needs for reduced CAP bills in the short term. For these reasons and the reasons set forth in CAUSE-PA’s Main Brief, PECO is in clear and intentional violation of the terms of the Joint Settlement and its 2016-2018 USECP.

3. PECO’s obligation to file a cover letter and addendum to its USECP in response to the Commission’s November 5, 2019 Order was a separate obligation and did not relieve PECO of its obligation to implement the terms of the Joint Settlement and its 2016-2018 USECP.

In PECO’s Initial Brief and OCA’s Main Brief, PECO and OCA argue that PECO is not required to comply with the Joint Settlement provision at issue, as PECO has already provided a filing to the Commission as required by the Commission’s November 5, 2019 Order. As described in detail in CAUSE-PA’s Main Brief, the Commission issued a Final Order on November 5, 2019

⁵⁰ *Id.* at ¶ 28, at 8. (emphasis added)

⁵¹ CAUSE-PA Main Brief at 22; PECO St. 1-R at 3:9 – 3:16, citing 52 Pa. Code § 69.265 (emphasis added); see also TURN St. 1-SR at 4: 1-10.

which amended the Commission's formal CAP Policy Statement.⁵² In the November 5, 2019 Order, the Commission required each EDC and NGDC to make a filing with the Commission indicating how and whether the utility intended to adopt various changes to the CAP Policy Statement in its respective USECP.⁵³ PECO argues that the Commission's directives pursuant to the Final CAP Policy Statement created a mandatory filing requirement, which PECO complied with when it filed a Letter dated January 16, 2020, which described what portions of the Final CAP Policy Statement PECO intended to implement.⁵⁴ PECO argues that its Letter stated that it intended to make a single filing which would address issues raised in the APPRISE evaluation and the provisions of the Final CAP Policy Statement.⁵⁵

In its Main Brief, OCA similarly argues that the Commission set forth a process for implementing the new energy burden standards in the Final CAP Policy Statement.⁵⁶ OCA notes that the Final CAP Policy Statement requires PECO to submit a filing to the Commission to revise its energy burden standards and that PECO has a continued obligation to file any universal service plan amendments with the Commission for review and approval.⁵⁷

Contrary to PECO and OCA's arguments, the filing requirements set forth by the Commission in its November 5, 2019 Order required only that each utility state whether and how it intended to implement the revised CAP Policy Statement, and in no way relieved PECO of its obligations under the terms of the Joint Settlement and its USECP which otherwise dictate the manner in which PECO was required to comply. PECO's obligations to revise the FCO energy

⁵² CAUSE-PA Main Brief at 7.

⁵³ Order at 106, Ordering Paragraphs 6-8.

⁵⁴ PECO Initial Brief at 10-11.

⁵⁵ Id.

⁵⁶ OCA Main Brief at 13-14.

⁵⁷ Id.

burden standards in line with the Final CAP Policy Statement were established well before the Commission directed the utilities to provide a filing indicating whether and how each utility intended to comply with the Final CAP Policy Statement. Moreover, years prior to the Commission's November 5, 2019 Order, PECO had – on October 2, 2015 – filed its USECP for 2016-2018. PECO's Plan, including all subsequently filed revisions, included the terms of the FCO Joint Settlement – including the provision at issue in this case. Pursuant to these independent obligations, which were previously approved by the Commission, PECO's compliance filing in response to the Commission's November 5, 2019 Order should have simply stated that – pursuant to the terms of the Joint Settlement and its Commission approved USECP – PECO intended to immediately implement the Commission's revised energy burden standards.

To date, PECO still has not incorporated the Commission's revised energy burden standards in the FCO, consistent with the terms of the Joint Settlement and its USECP, even though PECO has acknowledged that the Joint Settlement requires it to do so.⁵⁸ Instead, in an action causing further delay, PECO filed an unnecessary Petition with the Commission seeking approval to implement the terms of the Joint Settlement, despite the fact that the Commission already approved PECO to do so on two separate occasions years earlier – in the Commission's review and approval of the Joint Settlement, and again when it reviewed and approved PECO's USECP.⁵⁹

Moreover, PECO was not required to file a universal service plan amendment with the Commission for review and approval prior to revising the FCO's energy burden standards. As discussed in further detail in CAUSE-PA's Main Brief, and noted above, there is no indication in the Joint Settlement that the provision at issue in this proceeding required any further Commission

⁵⁸ CAUSE-PA Main Brief at 8.

⁵⁹ Id. at 8.

approval or action prior to implementation of the revised energy burdens contained in the Commission's Final CAP Policy Statement.⁶⁰ The only condition precedent to the provision in dispute in this proceeding is the Commission's action to amend the applicable maximum energy burden standard. As TURN's expert witness, Mr. Bertocci, explained: "The changes to the CAP Policy Statement itself triggered PECO's obligation to use those updated Energy Burdens."⁶¹

Ultimately, PECO's attempt to circumvent its clear obligations under the Joint Settlement and its Commission-approved USECP has broader detrimental consequences for consumers and parties litigating before the Commission. As discussed in detail in CAUSE-PA's Main Brief, PECO's violation of the Joint Settlement and the 2016-2018 USECP could have a chilling effect on the willingness of future parties before the Commission to enter into settlements if a party cannot guarantee that settlement terms will be honored.⁶² Similarly, failure to comply with Commission-approved USECPs and the rules governing universal service enforcement could harm the confidence of low income consumers, who rely of the transparent process in which utilities abide by the required terms of their universal service programs.⁶³ This is especially salient as PECO is one of the largest utilities in Pennsylvania.⁶⁴

For these reasons and the reasons set forth in CAUSE-PA's Main Brief, CAUSE-PA urges the ALJ and the Commission to require PECO to immediately comply with the terms of the Joint Settlement and its 2016-2018 USECP and implement the revised energy burdens contained in the Final CAP Policy Statement. As discussed in CAUSE-PA's Main Brief, CAUSE-PA further

⁶⁰ Id. at 5-6.

⁶¹ Id., citing TURN St. 1 at 20: 8-9.

⁶² CAUSE-PA Main Brief at 24; TURN St. 1 at 29.

⁶³ Id.

⁶⁴ Id.

requests that ALJ Long and the Commission order PECO to provide PECO's CAP participants retroactive bill credits and retroactive arrearage forgiveness, and fine PECO for its intentional violation of the terms of the parties' Joint Settlement and PECO's 2016-2018 USECP.

IV. CONCLUSION

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

Respectfully submitted,

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