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March 24, 2021

VIA eFILING

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

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

Dear Secretary Chiavetta:

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

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

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

Very truly yours,



Jennedy S. Johnson

Enclosures

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

VIA ELECTRONIC MAIL

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Dated: March 24, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TENANT UNION REPRESENTATIVE :
NETWORK :
 :
v. :
 :
PECO ENERGY COMPANY :

DOCKET NO. C-2020-3021557

**REPLY BRIEF OF
PECO ENERGY COMPANY**

**Before Administrative Law Judge
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I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) files this Reply Brief in response to the Main Briefs filed by the Tenant Union Representative Network (“TURN”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), and the Office of Consumer Advocate (the “OCA”). The Main Briefs address TURN’s allegation that PECO is in violation of the settlement (the “Settlement”) which established PECO’s “Fixed Credit Option” Customer Assistance Program (the “CAP FCO”)¹ because the CAP FCO does not currently utilize the energy burdens (“EBs”) that are a part of the Commission’s revised CAP Policy Statement (the “Revised CAP Policy Statement”).² The basis of TURN’s Complaint is the language of a single footnote in an exhibit to the Settlement concerning what EBs to use in the CAP FCO (“the EB Footnote”).³

As explained in the Company’s Initial Brief, TURN improperly views the EB Footnote in isolation from other provisions of the Settlement, filings contemporaneous with and required by the Settlement, and Commission directives concerning the implementation of the Revised CAP Policy Statement. PECO’s compliance with the Settlement can only be assessed when all of the facts and PECO’s obligations are considered.

¹ See *PECO Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2012-2290911 (Order entered July 8, 2015). The Company’s Universal Service and Energy Conservation Plan for the 2016-2018 period (the “2016-2018 USECP”) incorporated the CAP FCO and was approved by the Commission on August 11, 2016. See *PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2015-2507139 (Order entered Aug. 11, 2016). A number of revisions were made to the 2016-2018 USECP after its initial approval.

² *2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261–69.267*, Docket No. M-2019-3012599 (Final Policy Order entered Nov. 5, 2019). The Revised CAP Policy Statement became effective on March 21, 2020, upon publication in the *Pennsylvania Bulletin*. See 50 Pa. Bull. at 1691-95 (Mar. 21, 2020).

³ The EB Footnote provides in its entirety: “The table is based upon the ranges found at 52 Pa. Code § 69.265 (2)(i)(A). In each case, the energy burden listed in the table is the maximum allowable energy burden for that poverty level. If the Commission changes the energy burden ranges set forth in its Policy Statement, PECO will utilize the new maximum allowable energy burden for each poverty level.”

The record in this case demonstrates that PECO has complied with the Settlement through consistent, good-faith efforts to improve bill affordability for CAP customers in accordance with the Settlement's provisions and subsequent Commission orders concerning the Revised CAP Policy Statement. The relief sought by TURN (and supported by CAUSE-PA), on the other hand, will not improve bill affordability under the CAP FCO and will substantially increase the CAP costs that would be recovered from all residential customers. Notably, the OCA – which was also a party to the Settlement – does not believe that PECO has violated the Settlement or that the relief sought by TURN is warranted.

PECO's Initial Brief highlighted how material information, including Commission orders and Company filings, was ignored by TURN and CAUSE-PA in their testimony in this proceeding. This failure to tell the whole story continued in their Main Briefs. To a large extent, the principal reasons for rejecting the arguments of TURN and CAUSE-PA and dismissing TURN's Complaint were addressed in PECO's Initial Brief and therefore this Reply Brief will only revisit the key areas of disagreement

II. BURDEN OF PROOF

Pursuant to 66 Pa. C.S. § 315(b), PECO has the burden of proof to show that it has complied with the Commission Order approving the Settlement and the Commission Order approving the 2016-2018 USECP. Regarding TURN's allegation of unreasonable service in violation of 66 Pa. C.S. § 1501, TURN bears the burden of proof pursuant to 66 Pa. C.S. § 332(a). As detailed in the Company's Initial Brief and this Reply Brief, PECO has met its burden to demonstrate compliance with the above-mentioned orders while TURN has failed to demonstrate that the Company has engaged in unreasonable service or that any relief is warranted.

III. ARGUMENT

A. TURN'S Complaint Ignores Key Provisions Of The CAP FCO Settlement And Commission Orders Implementing The Revised CAP Policy Statement

1. The Settlement Included Provisions To Assess Bill Affordability, And The Evidence Demonstrated That The Settlement's CAP FCO Implementation Was Failing PECO's Poorest Customers

In their Main Briefs, TURN's and CAUSE-PA's discussion of the Settlement is incomplete. Their narrow focus on the language of the EB Footnote is an attempt to draw attention away from the central objective of the Settlement: the implementation of a CAP framework that improved bill affordability for low-income customers. As both PECO and the OCA have explained, compliance with the Settlement cannot be assessed without acknowledging and addressing the affordability issues related to the CAP FCO.⁴

As part of the Settlement, PECO agreed to operate the FCO program for two years, collect data from those two years of operation, engage an independent evaluator (APPRISE)⁵ to assess the program based on those data, and submit the evaluation (the "APPRISE Evaluation") in June 2019 to the Commission and the parties to the Settlement.⁶ Although TURN and CAUSE-PA contend that affordability and the APPRISE Evaluation are not relevant to the issues raised in this proceeding,⁷ they both highlighted the expected improvement in bill affordability

⁴ See, e.g., OCA M.B., p. 6 ("Critically, TURN fails to recognize that the primary provisions of the Settlement required an evaluation of the FCO design and a determination as to whether the FCO would achieve the purpose of affordability.")

⁵ APPRISE is an acronym for the Applied Public Policy Research Institute for Study and Evaluation.

⁶ See Joint Petition For Settlement, Docket No. M-2012-2290911 (filed Mar. 20, 2015); see also OCA St. No. 1-R, p. 7 ("Because an FCO program design was new to PECO, however, at the same time PECO agreed to implement the FCO, it also agreed that it would reasonably quickly evaluate the impacts of the FCO on delivering affordable home energy.").

⁷ TURN St. No. 1-SR, p. 5 ("[t]he referenced APPRISE evaluation was required by a separate and distinct settlement term. . . . That evaluation is not relevant to PECO's current, ongoing obligations – for as long as it operates its CAP as an FCO, it must operate the FCO according to the terms of its USECP and the Settlement."); CAUSE-PA St. No. 1-SR, pp. 9-11 ("PECO's obligation to revise the FCO's maximum energy burdens is based

and the importance of the APPRISE Evaluation in their support of the Settlement.⁸ CAUSE-PA, for example, explained that the APPRISE Evaluation could lead to further CAP changes. In CAUSE-PA’s own words, “[a]n appropriately timed, expert review of the FCO program is critical to the program’s success, as it provides data-driven analysis that enables the Company - together with the Commission, parties and stakeholders - to make necessary adjustments to ensure that the program projections and modeling of affordability are realized.”⁹

The APPRISE Evaluation required by the Settlement revealed that the CAP FCO was failing PECO’s poorest customers.¹⁰ In another Commission proceeding, TURN summarized the APPRISE Evaluation as follows: “[It] revealed that the FCO redesign did not resolve those longstanding affordability issues – and in fact further exacerbated the unaffordability issues which led to the adoption of the FCO.”¹¹ As OCA witness Colton explained: “PECO was left with either continuing a program design knowing that from more than 70% (electric and gas— gas burdens) to more than 80% of its lowest income CAP participants would receive bills exceeding the PUC target, or developing modifications to its FCO program that would improve affordability.”¹² In light of the outcome of the assessment required by the Settlement, and consistent with the Settlement’s focus on affordability, PECO committed to analyze possible

upon a specific commitment in the Settlement that is independent of any other modifications to universal service program details, CAP elements, or even any potential attempts to modify the basic CAP structure.”).

⁸ See PECO M. B., pp. 6-7.

⁹ See CAUSE-PA’s Statement in Support, Docket No. M-2012-2290911, p. 10. Affordability and the APPRISE Evaluation were similarly highlighted in the Recommended Decision adopted by the Commission in that proceeding. Docket No. M-2012-2290911, Recommended Decision of Administrative Law Judge Cynthia Williams Fordham (June 11, 2015), p. 36.

¹⁰ See PECO M.B., pp. 8-9.

¹¹ Answer of the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia to PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket Nos. M-2018-300579 and P-2020-3020727 (filed July 28, 2020), p. 9.

¹² OCA St. No. 1-R, p. 9.

program changes to improve bill affordability and share the results of its analysis with stakeholders to improve PECO's CAP. As part of PECO's commitment, PECO informed the Commission that it would be filing a proposal with the Commission to revise the FCO to further improve affordability for its CAP customers with incomes of 50% or less of the FPL.¹³

2. The Commission Required PECO To Make A Filing To Implement The Revised CAP Policy Statement, And The Company's New CAP Proposal Improves Affordability For CAP Customers

On November 5, 2019, as the Company was performing its analysis of potential CAP changes, the Commission issued the Revised CAP Policy Statement, which, among other things, included updated EB percentages.¹⁴ TURN and CAUSE-PA both argue that PECO should have **immediately** changed the EBs in the CAP FCO to match the EBs in the Revised CAP Policy Statement.¹⁵ This position runs afoul of Commission orders and the plain language of the EB Footnote.

First, the Revised CAP Policy Statement did not become effective by its terms until publication in the Pennsylvania Bulletin on March 21, 2020.¹⁶ Second, in the Final Policy Order, the Commission directed PECO, among others, to file addendums to their existing or proposed USECPs indicating how they intended to implement the policy changes specified in the Revised CAP Policy Statement. This filing requirement was further clarified in a later order in the same docket, where the Commission explained that the addendum should specify “[w]hat changes to its current or pending USECP, if any, the utility proposes to implement predicated on the new

¹³ See PECO M.B., pp. 8-9.

¹⁴ *2019 Amendments to Policy Statement on Customer Assistance Program*, 52 Pa. Code § 69.261–69.267, Docket No. M-2019-3012599 (Final Policy Order entered Nov. 5, 2019).

¹⁵ See, e.g., TURN M.B., p. 6; CAUSE-PA M.B., p. 14.

¹⁶ Final Policy Order, Docket No. M-2019-3012599, p. 105, Ordering Paragraph no. 4 (stating that the Revised CAP Policy Statement would become effective upon its publication in the Pennsylvania Bulletin); see also 50 Pa. Bull. at 1691-95 (Mar. 21, 2020).

provisions in the CAP Policy Statement.”¹⁷ The Commission could not have been more clear that PECO was required to make a filing with the Commission with its **proposed** implementation of the Revised CAP Policy Statement for consideration by the Commission:

Although compliance with the new provisions in the CAP Policy Statement is voluntary, the requirement to file a cover letter, an addendum reflecting extended terms of a USECP, and an addendum reflecting CAP changes as the utility proposes to implement are not.¹⁸

In light of these specific directives from the Commission, TURN and CAUSE-PA’s claim that changes to the EBs in the CAP FCO should have been “immediate” or “automatic” are simply not correct.¹⁹ The OCA, also a signatory to the Settlement, supports PECO’s position. As the OCA explains, the EB Footnote “provides no basis to conclude that any change to the energy burdens must happen ‘immediately’ or without regard to the other provisions of the Settlement. It also does not support a conclusion that it was self-executing without regard to the Commission’s procedures for implementing the Final CAP Policy Statement or approving Universal Service Program changes.”²⁰

As detailed in the Company’s Initial Brief and testimony of PECO witness Mark Kehl in this proceeding, PECO filed a letter with the Commission after the Revised CAP Policy Statement became effective which stated that PECO would make a single filing to address the issues raised in the APPRISE Evaluation and the remaining provisions of the Commission’s

¹⁷ Order on Reconsideration and Clarification, Docket Nos. M-2019-3012599 & No. P-2020-3016889 (Order entered Feb. 6, 2020), pp. 9-11.

¹⁸ *Id.*

¹⁹ TURN and CAUSE-PA repeatedly cite language PECO used in comments filed on May 11, 2019, about the “automatic” implementation of EB changes. TURN M.B., p. 12; CAUSE-PA M.B., p. 14. Those comments, however, were filed before the Commission Orders requiring a USECP addendum to implement changes predicated on the Revised CAP Policy Statement.

²⁰ OCA M.B., p. 12.

Revised CAP Policy Statement. In the spring of 2020, PECO held a series of calls with stakeholders, including TURN, in which the Company presented its analysis of different alternatives for revising PECO's CAP. Some alternatives retained the CAP FCO framework, while others involved a transition to a percentage of income payment plan ("PIPP"). Each of the alternatives was projected to increase annual universal service costs by \$11 million to \$15 million.²¹

The Company's analysis showed that incorporating the EBs from the Revised CAP Policy Statement in the FCO made **no improvement** in bill affordability but would result in substantial additional universal service costs to be recovered from all residential customers.²² As the OCA explained, the CAP FCO bill unaffordability was "not a function of the target burden, but rather [] a function of the underlying program design" and therefore spending millions of dollars to implement the revised EBs "would not be a cost-effective use of ratepayer dollars."²³

Consistent with the Company's statements to the Commission and stakeholders, and in accordance with the Settlement and the Commission's filing directives described above, PECO filed an amended proposed 2019-2024 USECP (the "Amended USECP") which included a transition from the CAP FCO to a PIPP. The Company's proposed PIPP includes reduced minimum bill amounts and utilizes the EBs from the Revised CAP Policy Statement for the 0%-50% FPL and 51%-100% FPL customer groups and retains the Company's existing EBs for the 101%-150% FPL customer group. The PIPP is expected improve affordability for CAP

²¹ PECO M.B., pp. 11-12.

²² *Id.* at 13.

²³ OCA M.B., pp. 17-18.

customers overall, with the most substantial affordability gains in the 0%-50% and 51%-100% FPL income ranges.²⁴

On July 17, 2020, after the Amended USECP was filed, counsel for TURN et al. sent PECO a letter demanding, among other things, immediate implementation of the revised EBs. On September 25, 2020, PECO filed a Petition in its current USECP proceeding to utilize the EBs from the Revised CAP Policy Statement as part of the FCO until the Company transitions from the FCO to the PIPP (the “EB Proposal”). As part of that filing, PECO estimated the cost of implementing the EB Proposal for the first few months of 2021 would be approximately \$9 million. TURN inexplicably fails to acknowledge the Company’s filing of the EB Proposal in its Main Brief, claiming the most recent update to the Company’s proposed USECP was filed on July 8, 2020.²⁵

In short, as the OCA observed, “[t]he Settlement, with all of its interrelated provisions, cannot be read to make only one change to [CAP] where the entire program design has been deemed ineffective. It was never the intent of the Settlement to continue to support a program that was not operating as intended.”²⁶ In the interest of fixing the documented failures of the FCO and reflecting the Revised CAP Policy Statement, PECO filed the Amended USECP to improve bill affordability for all CAP customers, and its actions have been consistent and faithful to the Settlement as well as the Commission’s directives concerning the Revised CAP Policy Statement. The Commission should dismiss TURN’s Complaint in its entirety.

²⁴ PECO M.B., pp. 13-14.

²⁵ TURN M.B., p. 17.

²⁶ OCA M.B., p. 13.

B. If The Commission Determines Relief Is Warranted, TURN's and CAUSE-PA's Specific Requests For Relief Should Be Rejected Because They Ignore Material Information About PECO's Actions And Obligations Under Commission Orders

As PECO explained in its Initial Brief, TURN has requested several forms of relief, including requests that the Commission: (1) order PECO to retroactively calculate CAP Credits for all CAP customers back to the date the Commission approved the new EBs, and provide bill credits to CAP customers or reduce past-due balances as appropriate; (2) order PECO to provide retroactive arrearage forgiveness for all partial payments that would have satisfied full payment under the revised bills; and (3) fine PECO for its willful violation of a Commission-approved Settlement.²⁷

PECO continues to believe that TURN's Complaint is without support and should be dismissed. However, if the Commission determines that some form of relief is appropriate, it should reject both TURN's and CAUSE-PA's requests for relief. Each request is unsupported for the reasons described below.

1. TURN Continues To Ignore The March 21, 2020 Effective Date Of The Revised CAP Policy Statement

In its Main Brief, TURN illogically argues that the EB Footnote obligated PECO to implement the revised EBs months before the Revised CAP Policy Statement was even effective. TURN specifically claims that retroactive relief is warranted back to November 5, 2019, the date the Commission entered the Final Policy Order which included the Revised CAP Policy

²⁷ PECO M.B., p. 15. PECO notes that TURN has separately requested that no CAP customer be terminated prior to the final resolution of this proceeding. The parties notified Administrative Law Judge Mary D. Long on March 16, 2021, that PECO has agreed to postpone termination of any CAP customer through April 30, 2021.

Statement. The language of EB footnote is “clear,” TURN argues, and PECO’s obligations are tied to “solely to the Commission’s action”, not “publication.”²⁸

TURN ignores the very language of “the Commission’s action,” which expressly provides that the Revised CAP Policy Statement would not become effective until publication in the Pennsylvania Bulletin.²⁹ The Revised CAP Policy Statement was published in the Pennsylvania Bulletin on March 21, 2020.³⁰ TURN has offered no legal justification for why the revised EBs should be deemed effective prior to March 21, 2020.

2. The Individual Retroactive Bill Credits And Arrearage Forgiveness Requested By TURN Cannot Be Automated Under PECO’s Existing IT System

As explained in the Company’s Initial Brief, PECO provided detailed testimony concerning why individual-by-individual, retroactive calculations requested by TURN cannot be recreated in PECO’s Customer Information Management System (“CIMS”). Automating the calculations could be accomplished through a new information technology (“IT”) project, but the cost and implementation timeframe for such a project are not currently available.³¹ The Company further explained that, due to the volume of CAP accounts, the potential timeframe covered, and the quarterly FCO calculations made each year, a manual recalculation of bills for each CAP customer would be extremely difficult. If the Commission determines that retroactive

²⁸ TURN M.B., pp. 18-19; *see also* CAUSE-PA M.B., pp. 6-7, 30 (declining to identify March 21, 2020 as the effective date of the Revised CAP Policy Statement and agreeing with TURN’s claim that PECO has been overcharging CAP customers “over the course of more than a year”).

²⁹ In another proceeding, TURN has admitted that the Revised CAP Policy Statement became effective when published. *See* Answer of the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia to PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket Nos. M-2018-300579 and P-2020-3020727 (filed July 28, 2020), p. 4 (“The Commission’s CAP Policy Statement became effective when it was published in the Pennsylvania Bulletin on March 21, 2020.”).

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

³¹ Further, because the Company anticipates moving to the PIPP framework that is currently pending before the Commission, a new IT project dedicated to CAP FCO calculations would be immediately obsolete after the retroactive calculations were performed.

bill relief is warranted in this proceeding, PECO proposed the use of a systemwide average bill adjustment, by FPL group and commodity, based on the impact of changing the EBs to the levels in the Revised CAP Policy Statement.³²

In its Main Brief, TURN stated that PECO's systemwide proposal "may be appropriate," with two important caveats: (1) each individual CAP customer could still challenge the sufficiency of the systemwide credit based on their individual CAP billings; and (2) PECO must provide the arrearage forgiveness that a customer would have received if their partial payments would have been full payments using the EBs from the Revised CAP Policy Statement.³³

TURN's demands defeat the purpose of the systemwide proposal. If customers can request individual billings or individualized arrearage forgiveness must be determined, the time and expense of thousands of manual calculations or the time and expense of an IT project will not be avoided. In order to address an individual CAP customer challenge to the systemwide credit or to determine whether any individual CAP customer made partial payments that would have full payments under the revised EBs, PECO will need to engage in the very same complex calculations that are detailed in the Rejoinder Testimony of Mr. Kehl.³⁴ In fact, the arrearage forgiveness calculations would require additional data points (historic customer payments) beyond what is needed to determine individualized CAP credits.

PECO continues to believe that a systemwide approach is most appropriate for any relief granted in this proceeding. To that end, should the Commission determine that arrearage forgiveness must be provided in addition to a bill credit, the Company proposes to work with the parties in this proceeding to develop a systemwide arrearage forgiveness proposal.

³² PECO M.B., pp. 17-19.

³³ TURN M.B., pp. 19-20. CAUSE-PA takes a similar position in its Main Brief (pp. 28-29).

³⁴ PECO St. No. 1-RJ, pp. 10-12.

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

TURN and CAUSE-PA contend that the Commission should fine PECO for its “willful violation” of the Settlement and the 2016-2018 USECP and further allege that consideration of the factors at 52 Pa. Code § 69.1201(c) supports penalties of over \$1 million.³⁵ In making their arguments, TURN and CAUSE-PA omit a number of material facts that are part of the record in this case. If a full and fair view of the evidence shows that penalties are not warranted. A response to TURN’s discussion of the 52 Pa. Code § 69.1201(c) factors is described below.

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

Regarding the first factor, TURN argues that PECO’s conduct is serious because PECO has “made no attempt to comply with the new [EBs]” which impact the bill credit calculations for all CAP customers.³⁶

PECO first notes that there is no evidence that the Company has engaged in conduct of a “serious nature, such as willful fraud or misrepresentation” in this proceeding. To the contrary, PECO has been fully transparent with the Commission and stakeholders about its planned course of action since the beginning of the CAP FCO. PECO shared the results of the APPRISE Evaluation showing the failures of the CAP FCO, notified the Commission of its intent to make a

³⁵ TURN recommended taking 5-10% of the value of discounts that PECO “failed” to provide to CAP customers. In direct testimony, TURN recommended a penalty of between \$600,000 and \$2.2 million. *See* TURN M.B., p. 30. CAUSE-PA supports TURN’s recommended fines. CAUSE-PA M.B., p. 32.

³⁶ TURN M.B. pp. 21-22; *see also* CAUSE-PA M.B., p. 30.

single filing to address the APPRISE Evaluation and Revised CAP Policy Statement, shared with stakeholders its analysis of potential CAP modifications, and finally, made a comprehensive CAP proposal that is expected to improve bill affordability for CAP customers.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

Regarding the second factor, TURN argues that over 100,000 CAP customers have been impacted, and that some CAP customer would have received a larger CAP credit if PECO had implemented the revised EBs as part of the CAP FCO.³⁷

While the Company acknowledges that some CAP customers would have received larger CAP credits if the revised EBs were used in the CAP FCO calculation, there is no record evidence that incorporating the revised EBs would have improved overall bill affordability for CAP customers even as it substantially increased program costs for all residential customers. Notably, no CAP customers have had their service terminated for non-payment since the Revised CAP Policy Statement became effective.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and

³⁷ TURN M.B., pp. 22-23; *see also* CAUSE-PA M.B., pp. 30-31.

supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

Addressing the third and fourth factors, TURN contends that “PECO’s conduct was intentional, and no efforts were made to comply with the Settlement.”³⁸

In this proceeding, PECO and the OCA have presented evidence that a primary objective of the Settlement is improving bill affordability for customers. The parties to the Settlement agreed at the time of the Settlement that the results of the APPRISE Evaluation could form the basis for additional changes to PECO’s CAP program. Since the approval of the Settlement, the Company has taken transparent and data-driven steps to make CAP work better for low-income customers. This includes proposing the PIPP, which is expected to improve bill affordability outcomes as compared to the CAP FCO. At the same time, PECO has complied with Commission filing requirements regarding the Revised CAP Policy Statement. Finally, in September of 2020, PECO made a filing requesting Commission approval to utilize the EBs from the Revised CAP Policy Statement until its PIPP is implemented.

(5) The number of customers affected and the duration of the violation.

Regarding the fifth factor, TURN argues that “PECO’s actions impacted more than 100,000 low-income CAP customers over the course of more than one year.”³⁹

The EB utilized in the CAP FCO calculation does affect the fixed credit applied to a CAP customer bill, subject to maximum annual CAP credits and minimum bill requirements. As noted earlier, while some CAP customers would have received larger CAP credits if the revised EBs were used in the CAP FCO calculation, there is no record evidence that incorporating the

³⁸ TURN M.B., p. 24; *see also* CAUSE-PA M.B., p. 31.

³⁹ TURN M.B., p. 17.

revised EBs would have improved overall bill affordability for CAP customers. Such an action would have, however, resulted in millions of dollars of additional universal service costs to all residential customers. Finally, regarding duration, PECO has previously addressed why any relief in this proceeding must reflect the March 21, 2020 effective date of the Revised CAP Policy Statement.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

TURN's and CAUSE-PA's Main Briefs do not address this factor and, for the reasons noted herein, PECO has not committed a violation of the Settlement or 2016-2018 USECP. Moreover, PECO has a strong history of providing robust and varied assistance programs for its low-income customers. Just recently, on December 17, 2020, the Commission approved PECO's proposal to temporarily modify the eligibility requirements for the Company's hardship fund (the Matching Energy Assistance Fund or "MEAF") to expand the number of customers who may qualify for assistance.⁴⁰ In addition, on March 23, 2021, PECO proposed an Emergency Grant Program that would provide grants of up to \$1,000 for customers at or below 200% of FPL with a past due balance.⁴¹

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

⁴⁰ *Petition of PECO Energy Company (PECO) to temporarily amend its current 2016-2018 Universal Service and Energy Conservation Plan (2016 USECP)*, Docket Nos. P-2020-3022124 and M-2015-2507139 (Secretarial Letter issued Dec. 17, 2020).

⁴¹ *Petition of PECO Energy Company for Expedited Approval to Establish a COVID-19 Emergency Grant Program for Low-Income Customers*, Docket No. M-2015-2507139.

TURN's and CAUSE-PA's Main Briefs do not address this factor.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

Regarding the eighth factor, TURN contends that “a substantial fine is necessary to deter future violations” and to ensure that parties are not discouraged from entering into settlements in the future.⁴²

As explained previously, the Company has worked consistently, transparently and in good faith to improve affordability under CAP and comply with Commission orders. PECO notes that another party to the Settlement, OCA, does not agree that PECO's actions violated the Settlement. In fact, OCA joined PECO in criticizing TURN's overly-narrow interpretation of the Settlement and also submitted expert testimony explaining the reasonableness of the Company's efforts to revise the format of CAP.

(9) Past Commission decisions in similar situations.

TURN's and CAUSE-PA's Main Briefs do not address this factor.

(10) Other relevant factors.

For the final factor, TURN makes allegations concerning: (1) PECO's “ongoing refusal to take action” even in the face of the COVID-19 pandemic; and (2) PECO's violation of “other aspects of the Settlement” related to increasing the CAP annual credit after a base rate increase.⁴³

Both arguments highlight TURN's continuing failure to tell the full story and address material evidence in this case. First, as noted in the discussion of factors three and four, the Company has taken action to improve bill affordability for CAP customers in a manner that was

⁴² TURN M.B., pp. 25-26; *see also* CAUSE-PA M.B., pp. 31-32.

⁴³ TURN M.B., pp. 27-29; *see also* CAUSE-PA M.B., p. 32.

open and transparent to stakeholders and the Commission. Further, six months ago, PECO sought Commission approval to do the very thing that TURN is seeking in this case – implement the revised EBs as part of the CAP FCO. TURN has chosen to simply ignore that filing and disingenuously state that PECO has failed to take any action to comply with the Settlement.

Second, PECO provided detailed Rejoinder Testimony demonstrating that the Company is adjusting CAP annual credits after base rate increases in a manner that is consistent with the Settlement. TURN’s Main Brief does not even acknowledge that the Company provided **any** testimony on this issue, let alone address why Mr. Kehl’s five pages of annual credit discussion was erroneous or insufficient.⁴⁴

For all these reasons, TURN’s request that the Commission impose civil penalties on PECO should be rejected.

⁴⁴ CAUSE-PA acknowledges Mr. Kehl’s Rejoinder Testimony but inexplicably (and erroneously) concludes that Mr. Kehl “does not dispute that PECO unilaterally chose to not adhere to another clear and unambiguous provision of the Joint Settlement.” TURN M.B., p. 17.

IV. CONCLUSION

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

Respectfully submitted,



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Dated: March 24, 2021

Counsel For PECO Energy Company

APPENDIX A

APPENDIX A

PROPOSED FINDINGS OF FACT

1. PECO Energy Company (“PECO” or the “Company”) currently operates a Customer Assistance Program (“CAP”) with a “Fixed Credit Option” or “FCO” design. PECO St. 1-R, pp. 3-4.

2. The FCO design was developed by the Company and other parties, including the Tenant Union Representative Network (“TURN”), the complainant in this proceeding, and the Office of Consumer Advocate (the “OCA”), as part of a broad settlement (the “Settlement”) approved by the Pennsylvania Public Utility Commission (the “Commission”) in the docket for the Company’s 2013-2015 Universal Service and Energy Conservation Plan (the “2013-2015 USECP”).¹

3. The Company’s USECP for the 2016-2018 period (the “2016-2018 USECP”) incorporated the CAP FCO and was approved by the Commission on August 11, 2016.² PECO continues to operate the CAP FCO under the 2016-2018 USECP.

4. The FCO provides a fixed credit to CAP customers that was designed to result in an affordable utility bill. Several inputs are necessary to determine the customer credit under the FCO, including household income as a percentage of federal poverty level (“FPL”) guidelines, the number of household members, utility usage, and the allowable EBs set forth in the Commission’s CAP Policy Statement. PECO St. 1-R, p. 3.

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

² See PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2015-2507139 (Order entered Aug. 11, 2016). A number of revisions were made to the 2016-2018 USECP after its initial approval and approved by the Commission. See, e.g., *Petition of PECO Energy Company (PECO) to temporarily amend its current 2016-2018 Universal Service and Energy Conservation Plan (2016 USECP)*, Docket Nos. P-2020-3022124 and M-2015-2507139 (Secretarial Letter issued Dec. 17, 2020).

5. A footnote in the Settlement (the “EB Footnote”) addresses a table incorporated in the Settlement which provides the maximum allowable energy burdens for FCO calculations. The footnote provides in its entirety: “The table is based upon the ranges found at 52 Pa. Code §69.265 (2)(i)(A). In each case, the energy burden listed in the table is the maximum allowable energy burden for that poverty level. If the Commission changes the energy burden ranges set forth in its Policy Statement, PECO will utilize the new maximum allowable energy burden for each poverty level.”³

6. Under the Settlement, PECO agreed to operate the FCO program for two years, collect data from those two years of operations, have an independent evaluator (APPRISE)⁴ assess the program based on those data, and submit the evaluation (the “APPRISE Evaluation”) to the Commission and the settling parties in June 2019. PECO St. 1-R, pp. 3-4.

7. In her Recommended Decision adopted by the Commission, ALJ Cynthia Williams Fordham found that the parties had presented “clear and reasonable reasons for approval of the FCO program,” including “the affordability of the new program” and “the proposed evaluation after two years and the ongoing collaborative to address issues that arise.”⁵

8. At the time of the Settlement, TURN and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) each highlighted the expected improvement in bill affordability under the CAP FCO and the importance of the APPRISE Evaluation.⁶

³ See Joint Petition For Settlement, Docket No. M-2012-2290911 (filed Mar. 20, 2015).

⁴ APPRISE is an acronym for the Applied Public Policy Research Institute for Study and Evaluation.

⁵ Docket No. M-2012-2290911, Recommended Decision of Administrative Law Judge Cynthia Williams Fordham (June 11, 2015), p. 36.

⁶ See TURN St. No. 1, Ex. C, p. 4; CAUSE-PA’s Statement in Support, Docket No. M-2012-2290911, p. 10.

9. On June 28, 2019, PECO filed the APPRISE Evaluation, which showed that during calendar years 2017 and 2018 approximately 80% of customers with household income at or below 50% of the FPL received unaffordable bills under the FCO.⁷

10. TURN described the APPRISE Evaluation in a different proceeding by explaining that it “revealed that the FCO redesign did not resolve those longstanding affordability issues – and in fact further exacerbated the unaffordability issues which led to the adoption of the FCO.”⁸

11. In response to the APPRISE Evaluation, PECO stated it would continue to investigate the drivers of the unaffordability experienced in 2017 and 2018 for the 0%-50% FPL customer group.⁹ The Company proposed an action plan for the following nine months, including: (1) completing its analysis of the FCO data and developing preliminary recommendations to improve the FCO; (2) engaging with other signatories to the Settlement to discuss the outcome of PECO’s analysis and preliminary recommendations, obtain input on those issues, and determine whether the parties can agree to proposed programmatic changes; and (3) filing a proposal with the Commission to revise the FCO to further improve affordability for its CAP customers with incomes of 50% or less of the FPL.¹⁰

12. On January 16, 2020, PECO filed a letter that described the portions of the Revised CAP Policy Statement that the Company was already implementing or intended to implement. The Company also noted that it was still considering several provisions of the Revised CAP Policy Statement. PECO St. 1-R, p. 8.

⁷ APPRISE PECO Energy Universal Services Program Final Evaluation Report (June 2019), Docket Nos. M-2012-2290911 & M-2015-2507139.

⁸ Answer of the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia to PECO Energy Company’s 2019-2024 Universal Service and Energy Conservation Plan, Docket Nos. M-2018-300579 and P-2020-3020727 (filed July 28, 2020), p. 9.

⁹ June 28, 2019 PECO Transmittal Letter accompanying the APPRISE Evaluation, p. 2, Docket Nos. M-2012-2290911 & M-2015-2507139.

¹⁰ *Id.* pp. 2-3.

13. On March 26, 2020, after the Revised CAP Policy Statement became effective, PECO filed a letter with the Commission stating the Company's intention to make a single filing in which it would address the issues raised in the APPRISE Evaluation and the remaining provisions of the Commission's Revised CAP Policy Statement.¹¹ PECO St. 1-R, pp. 13-14.

14. On April 10, 2020, counsel for TURN and the Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "TURN *et al.*") spoke with PECO's counsel and Mr. Mark Kehl to state their position that the Company was in violation of the Settlement by not immediately implementing the EBs from the Revised CAP Policy Statement in the FCO. Consistent with the Company's March 26, 2020 filing, PECO explained that it was seeking a holistic approach to address the affordability issues identified in the APPRISE Evaluation and the recommendations in the Revised CAP Policy Statement. PECO St. 1-R, p. 9.

15. In the spring of 2020, PECO held a series of calls with stakeholders, including TURN, in which the Company presented its analysis of different alternatives for revising PECO's CAP. Some alternatives retained the CAP FCO framework, while others involved a transition to a percentage of income payment plan ("PIPP"). Each of the alternatives was projected to increase annual universal service costs by \$11 million to \$15 million. The Company's analysis showed that incorporating the EBs from the Revised CAP Policy Statement in the FCO made no improvement in bill affordability but would result in substantial additional universal service costs to be recovered from all residential customers. PECO St. 1-R, pp. 10-11; Exhibit MK-1.

16. In discussions with stakeholders, PECO ultimately stated its intention to stop using the FCO model and instead implement a PIPP in which CAP customers would receive a

¹¹ Mar. 26, 2020 PECO Letter, Docket Nos. M-2012-2290911, M-2015-2507139 and M-2018-3005795.

credit based upon their annual income and a modified version of the Commission’s updated EBs. PECO St. 1-R, p. 10.

17. During the stakeholder meetings, TURN did not propose that PECO first pursue one of the CAP FCO alternatives before transitioning to a PIPP. PECO St. 1-R, p. 11.

18. On July 8, 2020, PECO filed an amended proposed 2019-2024 USECP (the “Amended USECP”) which included a transition from the CAP FCO to a PIPP.¹²

19. The Company’s proposed PIPP includes reduced minimum bill amounts and utilizes the EBs from the Revised CAP Policy Statement for the 0%-50% FPL and 51%-100% FPL customer groups and retains the Company’s existing EBs for the 101%-150% FPL customer group. The Company’s analysis showed substantial gains in affordability for customers in the 0%-50% FPL income range, with bill unaffordability dropping from around 80% under the current FCO to around 50% under the PIPP proposal. Bill affordability is also expected to improve for the 51%-100% FPL income range (from up to 42% under the current FCO to under 10% under the PIPP proposal) and 101%-150% FPL income range (from up to 15% under the current FCO to under 5% under the PIPP proposal). PECO St. 1-R, pp. 10-11.

20. On July 17, 2020, after the Amended USECP was filed, counsel for TURN *et al.* sent PECO a letter demanding, among other things, immediate implementation of the EBs from the Revised CAP Policy Statement in the FCO.¹³

21. On September 25, 2020, PECO filed a Petition in its current USECP proceeding to utilize the EBs from the Revised CAP Policy Statement as part of the FCO until the Company transitions from the FCO to the PIPP (the “EB Proposal”). As part of that filing, PECO

¹² See PECO’s Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795 (filed July 8, 2020).

¹³ See Ex. MK-3.

estimated the cost of implementing the EB Proposal for the first few months of 2021 would be approximately \$9 million.

22. There is no record evidence that incorporating the revised EBs in the FCO would improve overall bill affordability for CAP customers. PECO St. 1-R, pp. 10-11; Exhibit MK-1.

23. PECO acted in good faith to improve bill affordability for CAP customers, while remaining mindful of the fact that universal service program costs are recovered from all residential customers. PECO also shared its detailed CAP analyses with stakeholders on multiple occasions and kept the Commission and others apprised of its plans to improve the functioning of the Company's CAP. PECO St. 1-R, p. 14.

24. The quarterly adjustment described in the Settlement is the only mechanism that can reflect changes in PECO's base electric distribution rates in CAP customer charges. PECO St. 1-RJ, p. 8.

25. After PECO's 2019 electric base rate increase approved by the Commission, the Company made changes to the FCO Annual Credits using the quarterly adjustment process. PECO St. 1-RJ, pp. 5-8.

26. The individual-by-individual retroactive CAP credit calculations requested by TURN as part of its request for relief in this proceeding cannot be recreated in PECO's Customer Information Management System ("CIMS"). PECO's CIMS has the FCO calculation built as a point-in-time calculation. The FCO calculation pulls from specific data tables that contain the relevant data to calculate the FCO at any given time. Those data tables do not store historic billing information beyond what is needed for the point-in-time FCO calculation. The rolling nature of the FCO-related data tables prevents the Company from automatically recalculating CAP bills for a prior period. PECO St. 1-RJ, pp. 10-11.

27. The FCO calculation is performed, at a minimum, on a quarterly basis. For this reason, to accurately recalculate CAP bills, PECO would need to recreate each customer's FCO credit at multiple periods for a given year with the point-in-time information at each of those quarterly reassessment dates. Other factors such as pro forma estimation of usage (for CAP customers who have not been at an address for twelve months), weather normalization factors, monthly allocation percentages of the annual Fixed Credit, and application of maximum annual CAP credits and minimum bill requirements would all need to be researched and obtained (if available) for each historical point in time for which a prior period calculation would occur. PECO St. 1-RJ, pp. 11-12.

28. Due to the volume of CAP accounts and the potential timeframe covered, a manual recalculation of bills for each CAP customer would be extremely difficult. The CAP program has nearly 100,000 participants and TURN has requested retroactive credits to November 2019 (fifteen months ago). Since the calculation would need to be done separately for each three-month period for each customer, a minimum of five calculations per customer would be necessary. Thus, the approach recommended by TURN and CAUSE-PA would require approximately half a million individual, manual calculations. PECO St. 1-RJ, pp. 11-12.

29. PECO could initiate an information technology ("IT") project to automate the calculation of retroactive credits, but the full scope of such a project has not been developed at this time and therefore an estimate of the project cost or implementation timeframe is not available. PECO St. 1-RJ, pp. 12-13.

30. If customers can request individual billings or individualized arrearage forgiveness must be determined, the time and expense of thousands of manual calculations or the time and expense of an IT project will not be avoided. PECO St. 1-RJ, pp. 10-13.

31. If retroactive bill relief is warranted in this proceeding, applying a systemwide average bill adjustment for every CAP customer consistent with what PECO proposed in Exhibit MK-1RJ is appropriate. To develop its bill adjustment proposal, the Company took the average CAP credit and increased the credits, by FPL group and commodity, based on the impact of changing the EBs to the levels in the Revised CAP Policy Statement. This allocation appropriately directs the increased CAP credits in proportion to the EB changes. PECO St. 1-RJ, p. 13.

32. If retroactive arrearage relief is warranted in this proceeding, it would be appropriate for the Company to work with the parties in this proceeding to develop a systemwide arrearage forgiveness proposal.

PROPOSED CONCLUSIONS OF LAW

1. Pursuant to 66 Pa. C.S. § 315(b), PECO has the burden of proof to show that it has complied with the Commission Order approving the Settlement and the Commission Order approving the 2016-2018 USECP.
2. Regarding TURN's allegation of unreasonable service in violation of 66 Pa. C.S. § 1501, TURN bears the burden of proof pursuant to 66 Pa. C.S. § 332(a).
3. The Revised CAP Policy Statement did not become effective by its terms until publication in the *Pennsylvania Bulletin* on March 21, 2020.¹⁴
4. The Settlement did not require PECO to immediately implement the EBs identified in the Revised CAP Policy Statement upon issuance of the Revised CAP Policy Statement on November 5, 2019.
5. The Commission's November 5, 2019 Final Policy Order issuing the Revised CAP Policy Statement directed electric distribution companies and natural gas distribution companies to file addendums to their existing or proposed USECPs indicating how they intended to implement the policy changes specified in the Revised CAP Policy Statement.¹⁵
6. This filing requirement was further clarified by the Commission in a later order in the same docket where the Commission explained that the filing was mandatory and the addendum should specify "[w]hat changes to its current or pending USECP, if any, the utility proposes to implement predicated on the new provisions in the CAP Policy Statement."¹⁶

¹⁴ Final Policy Order, Docket No. M-2019-3012599, p. 105, Ordering Paragraph no. 4 (stating that the Revised CAP Policy Statement would become effective upon its publication in the *Pennsylvania Bulletin*); *see also* 50 Pa. Bull. at 1691-95 (Mar. 21, 2020).

¹⁵ Final Policy Order, Docket No. M-2019-3012599, p. 106, Ordering Paragraph no. 6.

¹⁶ Order on Reconsideration and Clarification, Docket Nos. M-2019-3012599 & No. P-2020-3016889 (Order entered Feb. 6, 2020), pp. 9-11.

7. The Commission's orders in the Revised CAP Policy Statement docket created a mandatory filing requirement for the Company to present proposed changes to its current or pending USECP predicated on the new provisions in the CAP Policy Statement.

8. The Settlement did not require PECO to immediately implement the EBs identified in the Revised CAP Policy Statement upon the effective date of the Revised CAP Policy Statement.

9. PECO's filing of the PIPP proposal to improve CAP bill affordability is consistent with the Settlement as well as the Commission's filing directives in the Revised CAP Policy Statement docket.

10. PECO's adjustment of FCO Annual Credits after the Company's 2019 electric base rate increase was consistent with the Settlement.

11. PECO has satisfied its burden of proof to show compliance with the Settlement and the Commission's Order approving the 2016-2018 USECP.

12. TURN has failed to satisfy its burden of proof to show that PECO is engaging in unreasonable service in violation of 66 Pa. C.S. § 1501.

13. TURN has failed to demonstrate that consideration of the factors at 52 Pa. Code § 69.1201(c) supports any penalties against PECO.

14. Penalties against PECO are not warranted in this proceeding.

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Formal Complaint of the Tenant Union Representative Network at Docket No. C-2020-3021557 is dismissed with prejudice.