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March 24, 2021

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

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

Dear Secretary Chiavetta:

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

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

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

*305580

CERTIFICATE OF SERVICE

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

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

Dated this 24th day of March 2021.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

A. Overview

The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Main Briefs of the Complainant, the Tenant Union Representative Network (TURN) and Intervenor, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA). For the reasons set forth below and in the OCA's Main Brief, the OCA continues to maintain that the 2015 Settlement at Docket No. M-2012-2290911 did not require PECO Energy Company (PECO) to immediately implement the energy burdens identified in the Commission's revised CAP Policy Statement upon entry of the Final CAP Policy Statement Order as proposed by TURN. 2019 Amendments to Policy Statement on Customer Assistance Programs, 52 Pa. Code §§ 69.261-267, Docket No. M-2019-3012599 (Nov. 5, 2019)(Final CAP Policy Statement Order). The OCA also submits that TURN's request for retroactive energy burden credits to the November 5, 2019 Final CAP Policy Statement Order should be denied.

The OCA's Main Brief contained a comprehensive discussion of the evidence and its position on the issues. The OCA will respond only to those matters raised by the other parties that were not previously addressed or that require clarification. Nevertheless, the OCA does not waive its position on contested issues because it does not repeat arguments here. Accordingly, the OCA incorporates the arguments and analysis contained in its Main Brief herein by reference.

B. Procedural History

The OCA discussed the procedural history on pages 2 through 5 of its Main Brief. See, OCA M.B. at 2-5. Main Briefs were filed by TURN, PECO, OCA, and CAUSE-PA on March 5, 2021. After the filing of Main Briefs, on March 10, 2021, Administrative Law Judge (ALJ) Long issued an Interim Order Noticing Intent to Admit Portions of the Record of Docket No. M-2012-

2290911. TURN v. PECO Energy Co., Docket No. C-2020-3021557, Interim Order (March 10, 2021)(Interim Order). The Interim Order admitted into the record from Docket No. M-2012-2290911 the following documents: (1) PECO Energy’s Joint Petition for Settlement filed on March 20, 2015, including Appendix A; (2) the OCA’s Statement in Support of Settlement filed on March 20, 2015; (3) CAUSE-PA’s Statement in Support of Settlement filed on April 22, 2015; and (4) PECO’s Statement in Support of Settlement filed on April 30, 2015.¹ No party objected to the admission of the additional record evidence by the March 16, 2021 deadline set forth in the Interim Order.

C. Legal Standards

The OCA discussed the applicable legal standards on pages 5 through 6 of its Main Brief. See, OCA M.B. at 5-6.

II. SUMMARY OF ARGUMENT

In its Reply Brief, the OCA responds to the arguments raised by TURN and CAUSE-PA in support of TURN’s Formal Complaint. TURN and CAUSE-PA fail to read the language of the 2015 Settlement in its full context and misinterpret the requirements of the 2015 Settlement. The OCA submits that the full reading of the plain language of the 2015 Settlement does not support the TURN and CAUSE-PA arguments. As discussed below and in the OCA’s Main Brief, the OCA submits that the context is important to understanding the import of and meaning of the footnote referenced by TURN and CAUSE-PA in their respective Main Briefs. TURN and CAUSE-PA attempt to read an immediacy into the language of the footnote that is not there, is

¹ As the Interim Order notes, the Statement in Support of Settlement filed by TURN on April 20, 2015 was previously admitted into the record as Exhibit C to TURN Statement No. 1 and Exhibit A of TURN Statement No. 2. Interim Order at 3.

inconsistent with appropriate program design, and is inconsistent with the procedures set forth in the Final CAP Policy Statement Orders.

Critically, TURN and CAUSE-PA fail to recognize the relevance of the primary provisions of the Settlement that required an evaluation of the Fixed Credit Option (FCO) design and a determination as to whether the FCO would achieve the purpose of affordability. The evaluation clearly showed that the FCO would not achieve the purpose of affordability, and that changing the energy burdens would not solve that problem. CAUSE-PA and TURN also fail to acknowledge the relevance and importance of the significant increased costs to making the proposed change to a program that all parties have agreed is not effective at meeting the needs of CAP customers. They also do not acknowledge the substantial implementation and operational issues with the proposal, particularly in light of PECO's pending changes to the entire program design based on the evaluation, changes which will incorporate the revised energy burdens in the Final CAP Policy Statement.

III. ARGUMENT

A. The 2015 Settlement Does Not Require PECO to Immediately Implement the Energy Burdens Identified in the Final CAP Policy Statement, and the Process for Changing Energy Burdens Still Must Be Followed.

1. Introduction

In their respective Main Briefs, TURN and CAUSE-PA argue that the 2015 Settlement requires that PECO immediately implement the energy burdens identified in the Final CAP Policy Statement, retroactive to the November 5, 2019 date of the Final CAP Policy Statement Order. See, TURN M.B. at 11-12; CAUSE-PA M.B. at 23-24. TURN and CAUSE-PA also argue that OCA witness Colton “conceded” that the Joint Settlement requires PECO to implement the revised energy burden standards in the Final CAP Policy Statement. See, TURN M.B. at 11-12; CAUSE-PA M.B. at 23-24. In its Main Brief, CAUSE-PA states that:

Similarly, 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.'"

CAUSE-PA M.B. at 23, citing OCA St. 1-R at 6: 9-12. CAUSE-PA also argues that OCA witness Colton and PECO witness Kehl do not address the fact that the Settlement is set forth in full in PECO's approved 2016-2018 USECP and that no expert witness has contested the "clear language or intended effect of the disputed Joint Settlement term." CAUSE-PA M.B at 23-24.

The OCA submits that both CAUSE-PA and TURN take the statements of OCA witness Colton out of context and do not appropriately evaluate the full context for the 2015 Settlement. As more fully discussed in the OCA's Main Brief, OCA witness Colton did not agree that the 2015 Settlement required immediate implementation of revised energy burdens. OCA M.B. at 11-14. Mr. Colton testified that there was no immediacy or stand-alone requirement in the Settlement. Rather, there was a comprehensive settlement that included an evaluation that found flaws with the FCO program. Mr. Colton explained:

Implementing revised energy burdens "immediately" and on a stand-alone basis would not recognize or address the flaws in the FCO identified by the evaluation called for by the Settlement. Such an implementation would require additional funding by ratepayers of a program that is not effective at achieving its purpose. In addition, such a result would not follow the process set forth by the Commission for consideration of program changes related to its Final Policy Statement Order. It would also fail to incorporate (1) program design decisions inherent in the delivery of percentage of income based bill affordability assistance; and (2) program implementation decisions inherent in the delivery of percentage of income based bill affordability assistance. Given the evaluation, the flawed program design should be remedied as quickly as possible to bring better affordability to program participants at a reasonable cost to other ratepayers.

OCA St. 1-R at 20.

Moreover, TURN and CAUSE-PA ignore the Commission's established process set forth in the Final CAP Policy Statement for implementation of changes to the energy burdens. OCA

M.B. at 13-14. Contrary to the arguments of TURN and CAUSE-PA, changes to the energy burdens identified in the 2015 Settlement are not self-executing, but instead PECO must follow the steps identified by the EAP Reconsideration Order for changing the energy burdens. 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261-267, Docket No. M-2019-3012599, EAP Reconsideration Order (Feb. 6, 2020)(EAP Reconsideration Order).

2. The Interconnected Terms of the Settlement Cannot Be Ignored in Considering Footnote 3.

As OCA witness Colton testified and the OCA explained in its Main Brief, the primary issue raised by the 2015 Settlement involved the overall design change of PECO's Customer Assistance Program (CAP) to a Fixed Credit Option program design. OCA St. 1-R at 5; 2015 Settlement at Part A (2015 Settlement Term Sheet); OCA M.B. at 11. The 2015 Settlement Term Sheet contained five parts. OCA M.B. at 11; OCA St. 1-R at 5. The issue raised by the TURN Formal Complaint relates to just one of those parts, the CAP program design's fixed credit determination in Part A.1 of the 2015 Settlement Term Sheet. The other four inter-connected parts related to the treatment of customers who do not receive an annual credit (Part A.2); cost containment (Part A.3); cost recovery (Part A.4); and "External review of FCO program." (Part A.5). OCA St. 1-R at 5.

In their Main Briefs, TURN and CAUSE-PA attempt to isolate footnote 3 from this full context of the Settlement. TURN M.B. at 11-15; CAUSE-PA M.B. at 13-15. The plain language of footnote 3, however, provides no basis to conclude that any change to the energy burdens must happen "immediately," without regard to the other provisions of the 2015 Settlement. The Settlement had many interconnected terms that must be considered together. Most notably, the Settlement provided that an evaluation of the FCO program must be completed after two years.

TURN St. 1 at Exh. A, ¶ 5. The evaluation was completed, and it showed that the FCO program is not effective and is not achieving its purpose to provide greater affordability to CAP customers. OCA St. 1-R at 9. To address the results of the evaluation, PECO proposed to amend its Universal Service and Energy Conservation Plan to move to a new program, a PIPP, and use the new energy burdens in the Final CAP Policy Statement in the new PIPP. PECO St. 1-R at 15. PECO's approach was fully consistent with the Settlement and respects all of its terms.

3. The Commission Processes for USECP Changes and Processes for Implementation of the Final CAP Policy Statement Must Be Respected.

In its Main Brief, CAUSE-PA argues that the OCA and PECO do not consider the fact that the 2015 Settlement was fully incorporated into the 2016-2018 USECP that is currently in effect. CAUSE-PA M.B. at 23-24. The OCA submits that it is CAUSE-PA that does not consider the impact of the Settlement being incorporated into the USECP. The Commission specifically identified in the OCA Reconsideration Order that the energy burdens are to be addressed in USECP proceedings. The Commission provided:

We remind stakeholders that the maximum energy burden percentages in the Annex to the November 5 Order are recommendations, not iron-clad limits on what a utility can charge a CAP household. Issues related to a specific utility's energy burdens are still subject to scrutiny in that utility's USECP proceedings.

2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261-267, Docket No. M-2019-3012599, OCA Reconsideration Order at 11 (Feb. 6, 2020)(OCA Reconsideration Order).

Moreover, the OCA submits that TURN's proposal and proposed effective date ignore the procedures set forth for the Final CAP Policy Statement. On February 6, 2020, the Commission addressed the Petitions for Reconsideration filed by the OCA and EAP through a subsequent Order. The Commission's Final CAP Policy Statement Order stated that the Final CAP Policy

Statement would not be effective until it was published in the *Pennsylvania Bulletin* which occurred on March 21, 2020. Final CAP Policy Statement Order at 100. In the EAP Reconsideration Order, the Commission provided that utilities that wanted to change their Universal Service and Energy Conservation Plan pursuant to the amendments to the CAP Policy Statement should file with the Commission any proposed changes, including energy burden changes. EAP Reconsideration Order at 11-12. The Commission provided that utilities that wanted to change their existing Plan should file a Petition and Addendum and utilities with a pending Plan should file an Addendum to reflect the proposed changes. EAP Reconsideration Order at 12. The Commission sought to have implementation of the changes by January 1, 2021. Id.

The OCA submits that TURN's request for implementation of new energy burdens starting on November 5, 2019 does not consider the fact that the Final CAP Policy Statement was not effective until published in the *Pennsylvania Bulletin* on March 21, 2020 and does not recognize the Commission established process for revising the energy burdens with a target date of January 2021.

4. The Costs of TURN's Proposal Are a Relevant Consideration.

In its Main Brief, CAUSE-PA argues that the proposed costs to change the energy burdens are not relevant. CAUSE-PA M.B. 18-20. The OCA submits that the costs of changes to the energy burdens are relevant and critical to evaluation of whether they should be changed as a part of this proceeding. PECO witness Kehl testified that PECO estimates that if the FCO was simply amended to include the new energy burdens, the cost of the proposed changes to the "EB proposal for the first few months of 2021 would be approximately \$9 million." PECO St. 1-R at 13. But as OCA witness Colton testified, that expenditure would not improve affordability for customers or make the program more effective. See, OCA St. 1-R at 9-10. Mr. Colton testified that even if

PECO were to reduce the energy burdens, the percentage of customers with unaffordable bills and the dollar amount by which they exceeded the energy burdens would not change. OCA St. 1-R at 9-10. As OCA witness Colton explained the continuing unaffordability is not a function of the target energy burdens, but instead a function of the underlying CAP program design. OCA St. 1-R at 10. PECO's pending proposal to change the program design and incorporate the new energy burdens addresses the issues identified by the evaluation required by the Settlement.

5. Conclusion

TURN and CAUSE-PA attempt to read an immediacy into the language of the footnote that is not there, is inconsistent with the full context of the Settlement, and is inconsistent with the procedures set forth in the Final CAP Policy Statement Orders. Moreover, the costs to implement the proposal for an ineffective program must be considered. The OCA submits that there could be no "immediacy" to the changes as argued by TURN and CAUSE-PA or stand-alone changes in light of the evaluation called for by the Settlement. The TURN and CAUSE-PA position should be rejected.

B. The APPRISE Evaluation and Need for FCO Program Design Changes Are Relevant and Must Be Considered.

In its Main Brief, CAUSE-PA argues that the issues raised by OCA witness Colton, in particular his concerns related to the FCO design, are not relevant. CAUSE-PA M.B. at 17-20. CAUSE-PA also argues that the impact of the APPRISE evaluation on the analysis of the 2015 Settlement is not relevant. CAUSE-PA M.B. at 20-21. CAUSE-PA states that OCA and PECO "miss the issue at hand," that the only relevant issue is whether PECO has complied with the Settlement, and that arguments relating to PECO's FCO are a "separate obligation that must be

honored.” CAUSE-PA M.B. at 18-20. In fact, it is CAUSE-PA that misses the issue at hand.² CAUSE-PA is seeking to read only footnote 3 of the 2015 Settlement, but footnote 3 in the 2015 Settlement cannot be evaluated in a vacuum. OCA M.B. at 11-13.

Settlement Paragraph 5 specifically provides for an evaluation of the affordability of the new FCO design to be completed after two years. As the OCA discussed in its Main Brief, the APPRISE Evaluation revealed that the FCO design that was approved as a part of the 2015 Settlement did not result in affordable rates for CAP customers which was the objective of the Settlement and the FCO design. OCA M.B. at 14-18. As the FCO Evaluation done pursuant to the 2015 Settlement showed, simply changing the energy burdens will not improve the affordability for customers in the program. See, OCA St. 1-R at 8-9; PECO St. 1-R at 15. Changing the energy burdens will only increase the costs of the program without providing a corresponding benefit to affordability. The OCA submits that those dollars would be more cost-effectively directed towards PECO’s new proposed PIPP design. The OCA submits that looking at the evaluation provision of the Settlement (Paragraph 5) and footnote 3 together, PECO properly concluded that the way to implement the CAP Policy Statement was to transition its program to a PIPP and include the new energy burdens in the PIPP.

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

² The OCA notes that TURN and CAUSE-PA do not address in their Main Briefs the implementation issues identified by OCA witness Colton. See, OCA M.B. at 20-21, citing OCA St. 1-R at 18-20.

IV. CONCLUSION

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

Respectfully Submitted,

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