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May 13, 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 **PECO Energy Company's Reply to Exceptions** ("Reply Exceptions") to the Initial Decision of Administrative Law Judge Mary D. Long dated April 9, 2021, in the above-referenced matter.

As indicated on the enclosed Certificate of Service, copies of the Reply Exceptions will be served upon Administrative Law Judge Mary D. Long, the Office of Special Assistants, and all parties of record, as instructed in the April 13, 2021 Secretarial Letter.

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

Very truly yours,



Jennedy S. Johnson

Enclosures

c: Per the Certificate of Service  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**TENANT UNION REPRESENTATIVE  
NETWORK**

v.

**PECO ENERGY COMPANY**

:  
:  
:  
:  
:  
:

**Docket No. C-2020-3021557**

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of **PECO Energy Company's Reply to Exceptions** 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: May 13, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>TENANT UNION REPRESENTATIVE</b>	:	
<b>NETWORK</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2020-3021557</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	

**REPLY OF  
PECO ENERGY COMPANY  
TO EXCEPTIONS**

**To The Recommended Decision Of  
Administrative Law Judge Mary D. Long**

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## I. INTRODUCTION

On April 9, 2021, Administrative Law Judge Mary D. Long (the “ALJ”) issued her Initial Decision (“ID”) recommending that the Pennsylvania Public Utility Commission (“Commission”) dismiss the Complaint of the Tenant Union Representative Network (“TURN”), which alleges that PECO Energy Company (“PECO” or the “Company”) is in violation of a 2015 settlement (the “Settlement”) that established PECO’s “Fixed Credit Option” Customer Assistance Program (the “CAP FCO”)<sup>1</sup> 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”).<sup>2</sup> The basis of TURN’s Complaint is the language of a single footnote in an exhibit to the Settlement concerning which EBs to use in the CAP FCO (“the EB Footnote”).<sup>3</sup>

The ALJ carefully reviewed the record evidence in this case, including a Settlement-mandated evaluation showing that the CAP FCO is failing the Company’s poorest customers, transparent discussions with stakeholders (including TURN) about the CAP FCO’s shortcomings and PECO’s plans to change the CAP structure, and Commission-mandated filings addressing the integration of the Revised CAP Policy Statement and PECO’s Universal Service and Energy

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<sup>1</sup> 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.

<sup>2</sup> *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. 1691-95 (Mar. 21, 2020).

<sup>3</sup> 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.”

Conservation Plan (“USECP”). The ALJ correctly determined that PECO has “substantially complied with the words and spirit” of the Settlement and, therefore, TURN’s Complaint should be dismissed.<sup>4</sup>

PECO’s actions with respect to the CAP FCO, which include amending its proposed 2019-2024 USECP to change its CAP format, are intended to address the documented failures of the FCO, reflect elements of the Revised CAP Policy Statement and improve bill affordability for all CAP customers.<sup>5</sup> The relief sought by TURN (and supported by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“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 Office of Consumer Advocate (“OCA”) – which was also a party to the 2015 Settlement – does not believe that PECO has violated the Settlement or that the relief sought by TURN is warranted. Furthermore, the Commission has already entered a tentative order regarding the Company’s pending 2019-2024 USECP, including the Company’s proposals for the adoption and implementation of revised EBs under both its existing FCO and proposed Percentage of Income Payment Plan (“PIPP”).<sup>6</sup>

TURN and CAUSE-PA each filed Exceptions to the ID. For the most part, the Exceptions repackage arguments considered by the ALJ that were fully addressed in the

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<sup>4</sup> ID, pp. 21, 23-24.

<sup>5</sup> PECO filed its 2019-2024 USECP on November 1, 2018, and thereafter filed amendments to the 2019-2024 USECP on November 26, 2019, January 16, 2020, July 8, 2020, and September 25, 2020. *See PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket Nos. M-2018-3005795, P-2020-3020727 & P-2020-3022154 (“2019-2024 USECP”).

<sup>6</sup> *See* Tentative Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket Nos. M-2018-3005795, P-2020-3020727 & P-2020-3022154 (Order entered May 6, 2021) (“2019-2024 Amended USECP Tentative Order”).

Company's Initial Brief ("PECO IB") and Reply Brief ("PECO RB"), which the Commission is urged to review. This Reply will address only the key errors in the opposing parties' Exceptions and their new contentions regarding the ALJ's well-reasoned recommendation.

## II. REPLIES TO EXCEPTIONS

### A. The ALJ Properly Found That PECO Has Met Its CAP FCO Obligations Under The Settlement And The 2016-2018 USECP And That TURN Has Failed To Demonstrate Unreasonable Service

#### 1. The EB Footnote Was Not Self-Executing And Should Be Viewed In The Context Of The Full Settlement And Commission-Established USECP Processes (TURN Excs. 1-3; CAUSE-PA Exc. 1)

The ALJ found that TURN's interpretation of the EB Footnote, which would have required immediate action to change the EBs without further review from the Commission, was unreasonable. In reaching this conclusion, the ALJ examined the plain language of the EB Footnote, statements made by TURN and CAUSE-PA at the time of the Settlement, and the complex USECP process that often involves overlapping filings.<sup>7</sup>

TURN and CAUSE-PA both argue that the only reasonable interpretation of the EB Footnote is that the provision is self-executing. TURN contends that the Commission's findings in *Core Communications*<sup>8</sup> are instructive. In that proceeding, the Commission considered whether pricing in a contract was superseded by rates established in a later Commission Order. The contract provision at issue provided that the rates and charges in the contract "shall apply until such time as they are replaced by new rates as may be approved or allowed into effect by the Commission."<sup>9</sup> The Commission found that the contract pricing was superseded by the later

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<sup>7</sup> ID, pp. 20-21.

<sup>8</sup> *Core Commc'ns, Inc. v. Verizon Pa. LLC*, No. C-2014-2406550, 2018 WL 4953048 (Oct. 4, 2018) ("*Core Communications*").

<sup>9</sup> Id. at \*35.

“affirmative order of the Commission, which replaced the rates listed in the [contract pricing appendix] with new lower [] rates.”<sup>10</sup> TURN contends that the Revised CAP Policy Statement is a similar “affirmative order” by the Commission that triggered the automatic implementation of the EB Footnote.<sup>11</sup>

This self-execution argument fails, however, because the “affirmative order” identified by TURN and CAUSE-PA as the EB Footnote “trigger” did not direct immediate implementation of the revised EBs or any other element of the Revised CAP Policy Statement. In fact, it did just the opposite. As the Company explained in its briefs (PECO IB, pp. 9-11; PECO RB, pp. 5-6), the Commission directed PECO and other utilities to file an addendum to their existing or proposed USECPs indicating how each utility intended to implement the policy changes specified in the Revised CAP Policy Statement.<sup>12</sup> TURN and CAUSE-PA cannot, on the one hand, claim that the Revised Policy Statement Order was the only “condition precedent” to execution of the EB Footnote while, on the other hand, ignore the Commission’s requirements and instructions for implementing that Order.<sup>13</sup>

While TURN and CAUSE-PA both object to the ALJ’s discussion of the location of the EB Footnote and the absence of any mention by TURN or CAUSE-PA in Settlement documents about the alleged self-executing nature of the EB Footnote (TURN Exc., pp. 11-18; CAUSE-PA Exc., pp. 13-18), the ALJ appropriately considered the EB Footnote in the context of the entire

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<sup>10</sup> Id. at \*36.

<sup>11</sup> TURN Exception (“Exc.”), pp. 8-9.

<sup>12</sup> TURN and CAUSE-PA repeatedly cite language that PECO used in Comments filed on May 11, 2019 about the “automatic” implementation of EB changes. TURN Exc., pp. 10-11; CAUSE-PA Exc., pp. 11, 20-22; TURN MB, p. 12; CAUSE-PA MB, 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.

<sup>13</sup> See, e.g., CAUSE-PA Exc., p. 4 (“The only condition precedent to the Joint Settlement is the issuance of the Final CAP Policy Statement with revised energy burden standards.”).

Settlement. The central objective of the Settlement was the implementation of a CAP framework that improved bill affordability for low-income customers.<sup>14</sup> For that reason, compliance with the Settlement cannot be assessed without acknowledging the documented affordability issues related to the CAP FCO and the other provisions of the Settlement addressing affordability.<sup>15</sup>

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)<sup>16</sup> to assess the program based on that data, and submit the evaluation (the “APPRISE Evaluation”) in June 2019 to the Commission and the parties to the Settlement.<sup>17</sup> As the ALJ correctly found, the APPRISE Evaluation revealed that the CAP FCO was failing PECO’s poorest customers.<sup>18</sup> As a result, and as OCA witness Roger D. 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.”<sup>19</sup>

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<sup>14</sup> See PECO IB, pp. 5-7. Notably, although TURN and CAUSE-PA contend that affordability and the APPRISE Evaluation are not relevant to the issues raised in this proceeding, they both highlighted the expected improvement in bill affordability and the importance of the APPRISE Evaluation in their support of the Settlement. See PECO RB, pp. 3-4.

<sup>15</sup> See, e.g., OCA MB, 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.”).

<sup>16</sup> APPRISE is an acronym for the Applied Public Policy Research Institute for Study and Evaluation.

<sup>17</sup> See Joint Pet. 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.”).

<sup>18</sup> ID, p. 22. 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.” 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.

<sup>19</sup> OCA St. No. 1-R, p. 9.

Consistent with the Settlement’s focus on affordability, PECO committed to analyzing possible program changes to improve bill affordability and sharing the results of its analysis with stakeholders to improve PECO’s CAP. As PECO described in its Initial Brief (pp. 8-9), the Company developed a multistep action plan to complete its analysis, engage with parties to the Settlement consistent with its terms, and make a filing with the Commission.

As the ALJ explained, the USECP process is complex: “The design of low-income programs is meant to be an ongoing process, where company filings frequently overlap as the Commission reviews plan proposals, analyzes the data, and solicits input from stakeholders to evaluate the effectiveness of a utility’s proposed programs as well as the costs related to the programs that are borne by all of a utility’s ratepayers.”<sup>20</sup> As the Company was analyzing potential changes to the CAP FCO, the Commission issued the Revised CAP Policy Statement that revised, among other things, the recommended EB percentages.<sup>21</sup> In addition, prior to even the issuance of the APPRISE Evaluation, the Company had submitted a proposed 2019-2024 USECP for review.<sup>22</sup> Analysis of PECO’s compliance with the Settlement and the 2016-2018 USECP must include consideration of these overlapping Commission processes and directives which, as the ALJ concluded, presented PECO with “arguably competing obligations.”<sup>23</sup>

For all these reasons, the Commission should affirm the ALJ’s conclusion that the EB Footnote was not “self-executing.”

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<sup>20</sup> ID, p. 21.

<sup>21</sup> The Revised CAP Policy Statement did not become effective by its terms until publication in the *Pennsylvania Bulletin* on March 21, 2020. 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. 1691-95 (Mar. 21, 2020).

<sup>22</sup> ID, p. 9, n.9.

<sup>23</sup> ID, p. 23.

2. **Incorporating The Revised EBs Into The CAP FCO Would Not Improve Affordability Levels For CAP Customers (TURN Exc. 8; CAUSE-PA Exc. 3)**

Both TURN and CAUSE-PA took exception to the ALJ's finding that "reducing the energy burdens would not improve affordability," claiming that the finding was in conflict with evidence that the lowest-income residential electric CAP customers would have received, on average, between \$340 and \$380 more in CAP credits if the revised EBs had been utilized.<sup>24</sup>

The Commission should reject the attempt of TURN and CAUSE-PA to discredit the record evidence that using the revised EBs in the CAP FCO has *no affordability benefit for CAP customers*. As explained below, there is no inconsistency between the ALJ's findings on affordability and CAP credits. Further, it was appropriate for the ALJ to make findings on both affordability (a central focus of the Settlement and PECO's CAP) and CAP credits (a source of universal service costs recovered from all residential customers).<sup>25</sup> As the OCA explained, "the provision of assistance by PECO to CAP participants must simply be balanced against the obligation of income eligible non-participants, as well as the obligation of the near-poor, to pay the costs of such assistance."<sup>26</sup>

The Company's affordability analysis (PECO Ex. MK-1) was presented to stakeholders on April 15, 2020 and included information about the percentage of CAP customers expected to receive an unaffordable bill under different CAP alternatives. An unaffordable bill is a bill that exceeds a customer's applicable EB. Two of the alternatives that PECO presented to

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<sup>24</sup> TURN Exc., pp. 23-24; CAUSE-PA Exc., pp. 25-28.

<sup>25</sup> TURN and CAUSE-PA argue that the cost of integrating the revised EBs is not a meaningful consideration in light of overall cost-containment mechanisms in the CAP FCO. TURN Exc., pp. 17-18; CAUSE-PA Exc., pp. 12-13. PECO disagrees. The Commission has an obligation to ensure that utilities run the programs in a cost-effective manner, 66 Pa.C.S. §§ 2203(8) and 2804(9), and a program change is not appropriate simply because it falls under or is subject to a cost cap.

<sup>26</sup> OCA St. No. 1-R, p. 14.

stakeholders involved retaining the CAP FCO framework. The first, Option 1 in the presentation, retained the existing EBs but made other minor adjustments. The second, Option 2 in the presentation, implemented the EBs in the Revised CAP Policy Statement and made the same minor adjustments as in Option 1. Importantly, the analysis showed there was *no improvement* in CAP customer affordability levels when the Company incorporated the revised EBs from the Revised CAP Policy Statement into the FCO,<sup>27</sup> but each of the alternatives was projected to increase annual universal service costs for all residential customers by \$11 million to \$15 million.<sup>28</sup>

Simply put, there is no inconsistency between the ALJ's findings on affordability and CAP credits. If the revised EBs were implemented, CAP credits would increase and costs for residential customers would increase, but there would be no improvement in the percentage of CAP customers receiving affordable bills.<sup>29</sup>

**3. PECO's Filings In Response To The APPRISE Evaluation And Revised CAP Policy Statement Were Consistent With The Settlement And The 2016-2018 USECP (TURN Excs. 4-7; CAUSE-PA Exc. 2)**

TURN and CAUSE-PA take exception to the ALJ's finding that PECO has "substantially complied with the words and the spirit" of the Settlement and made filings in a "good faith effort to comply with its obligations from the 2016-2018 USECP."<sup>30</sup> TURN argues that the Company's forward-looking filings are "irrelevant" to compliance with the Settlement and 2016-

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<sup>27</sup> PECO St. No. 1-R, p. 11; Ex. MK-1; *see also* OCA St. No. 1-R, p. 11 ("The continuing unaffordability of CAP bills for PECO low-income customers is grounded in the observation that the unaffordability is not a function of the target burden, but rather is a function of the underlying program design.").

<sup>28</sup> ID, p. 10.

<sup>29</sup> *See also* PECO RB, p. 13 ("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.").

<sup>30</sup> ID, p. 21.

2018 USECP, and that PECO's current CAP calculations are inconsistent with the 2016-2018 USECP, while CAUSE-PA contends that PECO made a "unilateral" decision not to implement the EB Footnote and, therefore, the ALJ's finding of good faith is "unreasonable."<sup>31</sup>

In fact, the record evidence demonstrates that PECO has complied with the Settlement and the 2016-2018 USECP 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. As described earlier, the Company initiated an action plan to revise its CAP after the disappointing affordability findings in the APPRISE Evaluation. On November 5, 2019, as the Company was implementing its CAP FCO action plan, the Commission issued the Revised CAP Policy Statement (to be effective after publication in the *Pennsylvania Bulletin*)<sup>32</sup> with updated EB percentages and directed PECO and other utilities to file addendums to their existing or proposed USECPs.<sup>33</sup>

In accordance with the Commission's Order, 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.<sup>34</sup> 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

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<sup>31</sup> TURN Exc., pp. 18-23; CAUSE-PA Exc., pp. 20-25.

<sup>32</sup> See n. 20 *supra*.

<sup>33</sup> Final Policy Order, Docket No. M-2019-3012599, p. 106, Ordering Paragraph no. 6.

<sup>34</sup> ID, p. 10.

raised in the APPRISE Evaluation and the remaining provisions of the Commission’s Revised CAP Policy Statement.<sup>35</sup>

After performing an affordability analysis of different CAP alternatives in the spring of 2020 and sharing that analysis with stakeholders, PECO decided it would propose to change its CAP to a PIPP. On July 8, 2020, in accordance with the Settlement and the Commission’s filing directives described above, PECO filed an amended proposed 2019-2024 USECP (the “Amended USECP”) that included a transition from the CAP FCO to a PIPP.<sup>36</sup>

The Company’s proposed PIPP includes reduced minimum bill amounts and utilizes the EBs from the Revised CAP Policy Statement for the 0%-50% of the Federal Poverty Level (“FPL”) and 51%-100% FPL customer groups and retains the Company’s existing EBs for the 101%-150% FPL customer group.<sup>37</sup> 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<sup>38</sup> to around 50% under the PIPP proposal.<sup>39</sup> 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). In the

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<sup>35</sup> *See id.*

<sup>36</sup> *See* PECO’s Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan, Docket No. M-2018-3005795 (filed July 8, 2020).

<sup>37</sup> TURN contends there is an “inconsistency” in the ID regarding the EBs utilized in the proposed PIPP (TURN Exc. 7). In Finding of Fact No. 31, the ALJ referenced a PECO exhibit in which PECO presented a number of options, including the use of the revised EBs. However, the ALJ’s Finding of Fact No. 38 correctly reflects PECO’s EB proposal for the PIPP, just as Finding of Fact No. 39 correctly reflects PECO’s proposal to implement the revised EBs in the FCO. The Commission should therefore deny TURN Exception No. 7.

<sup>38</sup> *See* APPRISE Evaluation; Ex. MK-1, p. 15.

<sup>39</sup> *See* Ex. MK-2.

docket for the proposed 2019-2024 USECP, TURN et al. has expressed strong support for the transition from the FCO to the PIPP.<sup>40</sup>

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”).<sup>41</sup> As part of that filing, PECO estimated that the cost of implementing the EB Proposal for the first few months of 2021 would be approximately \$9 million.<sup>42</sup>

In short, after completing the Settlement-mandated analysis of the CAP FCO, PECO has worked in an open and transparent fashion to improve bill affordability for all CAP customers. In compliance with the Commission’s mandatory filing directives regarding implementation of the Revised CAP Policy Statement, PECO filed the Amended USECP to both replace the CAP FCO with a PIPP and incorporate several of the Commission’s revised EBs. PECO stands ready to implement the Amended USECP upon Commission approval. For all these reasons, the Commission should affirm the ALJ’s findings that the Company has acted in compliance with the Settlement and 2016-2018 USECP and that TURN’s claims of unreasonable service are unsupported.

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<sup>40</sup> TURN et al. Answer, Docket No. M-2018-3005795, p. 1.

<sup>41</sup> See Docket No. M-2018-3005795. The Petition was docketed at P-2020-3022154.

<sup>42</sup> ID, p. 21.

**B. The ALJ Properly Concluded That No Relief Is Warranted (TURN Exc. 9; CAUSE-PA Exc. 4)**

TURN has requested several forms of relief, including requests that the Commission: (1) order PECO to implement the revised EBs as part of the CAP FCO; (2) 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; (3) order PECO to provide retroactive arrearage forgiveness for all partial payments that would have satisfied full payment under the revised bills; and (4) fine PECO for its willful violation of a Commission-approved Settlement.<sup>43</sup> In their respective Exceptions, CAUSE-PA argued that the Commission should require PECO to implement TURN's requested relief while TURN argued that PECO should be fined.<sup>44</sup>

While the ALJ has appropriately found that PECO did not violate the terms of the Settlement, in the event that the Commission nevertheless determines that some form of relief is warranted as a result of TURN's Complaint, the Commission should reject each of TURN's proposed requests. First, PECO notes that it has already requested Commission approval to integrate the revised EBs into the CAP FCO, and that request has been pending with the Commission since September 25, 2020.<sup>45</sup> In addition, as described below and in more detail in the Company's briefs, no relief is warranted for any amounts accruing prior to the effective date of the Revised CAP Policy Statement, and individualized retroactive bill and arrearage forgiveness calculations should not be required in light of the significant time and expense that those calculations would require. Furthermore, fines or penalties should not be imposed in light

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<sup>43</sup> TURN Compl., p. 17; TURN St. No. 1, pp. 24-25.

<sup>44</sup> CAUSE-PA Exc., pp. 29-33; TURN Exc., p. 24.

<sup>45</sup> See Docket No. M-2018-3005795. The Petition was docketed at P-2020-3022154.

of PECO's actions to implement both the Settlement and the Commission's directives regarding the Revised CAP Policy Statement.

1. **Any Relief Should Reflect The March 21, 2020 Effective Date Of The Revised CAP Policy Statement**

As TURN acknowledges in its Exceptions (p. 7), the parties disagree on when the revised EBs became effective. TURN asserts that the new EBs were changed as of the date of the Commission's Order (November 5, 2019). This position, however, contradicts the plain language of the Commission's Final Policy Order that states the Revised CAP Policy Statement would not become effective until publication in the *Pennsylvania Bulletin*, which occurred on March 21, 2020.<sup>46</sup> Indeed, the Commission has stated in the 2019-2024 USECP Tentative Order that the Revised CAP Policy Statement was amended effective on March 21, 2020.<sup>47</sup>

TURN has offered no legal justification for why the revised EBs should be deemed effective prior to March 21, 2020.<sup>48</sup> Should the Commission grant any relief in this proceeding, it should reflect the fact that the revised EBs became effective on March 21, 2020.

2. **The Individual Retroactive Bill Credits And Arrearage Forgiveness Requested By TURN Cannot Be Automated Under PECO's Existing Information Technology System**

Both TURN and CAUSE-PA argue that individually calculated retroactive bill credits and arrearage determinations are the most appropriate form of relief in this case, and that PECO

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<sup>46</sup> Final Policy Order, p. 105, Ordering Paragraph no. 4 (stating that the Revised CAP Policy Statement would become effective upon its publication in the *Pennsylvania Bulletin*); 50 Pa. Bull. 1691-95 (Mar. 21, 2020).

<sup>47</sup> 2019-2024 USECP Tentative Order, p. 3.

<sup>48</sup> Notably, in another proceeding, TURN has admitted that the Revised CAP Policy Statement became effective when published. 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.").

must demonstrate why such adjustments could not be accomplished.<sup>49</sup> As explained in the Company's Briefs, PECO provided detailed testimony concerning why individual-by-individual, retroactive calculations requested by TURN cannot be recreated in PECO's Customer Information Management System. Automating the calculations could be accomplished through a new information technology project, but the cost and implementation timeframe for such a project are not currently available. 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.<sup>50</sup> If the Commission determines that retroactive bill relief is warranted in this proceeding, PECO has 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.<sup>51</sup>

In its Exceptions, CAUSE-PA generally accepts the systemwide approach proposed by PECO with two important caveats: (1) each individual CAP customer could still challenge the sufficiency of the systemwide credit based on its individual CAP billings; and (2) PECO must provide the arrearage forgiveness that a customer would have received if its partial payments would have been full payments using the EBs from the Revised CAP Policy Statement.<sup>52</sup>

PECO explained in briefing that such demands entirely defeat the purpose of the systemwide proposal.<sup>53</sup> If customers can request individual billings or if individualized arrearage forgiveness must be determined, PECO will need to engage in the very same complex

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<sup>49</sup> TURN St. No. 1-SR, p. 12; CAUSE-PA St. No. 1-SR, pp. 12-13; CAUSE-PA Exc., pp. 31-33.

<sup>50</sup> ID, pp. 11-12.

<sup>51</sup> PECO MB, pp. 17-19.

<sup>52</sup> CAUSE-PA Exc., p. 33; *see also* TURN MB, pp. 19-20; CAUSE-PA MB, pp. 28-29.

<sup>53</sup> PECO RB, p. 11.

calculations that are detailed in the Rejoinder Testimony of Mr. Kehl.<sup>54</sup> In fact, the arrearage forgiveness calculations would require additional data points (historic customer payments) beyond what is needed to determine individualized CAP credits. As such, a systemwide approach remains the 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 has proposed to work with the parties in this proceeding to develop a systemwide arrearage forgiveness proposal.<sup>55</sup>

**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 contends that the ALJ erred in failing to apply penalties against PECO.<sup>56</sup> In addition to customer-specific bill relief, TURN and CAUSE-PA have argued that the Commission should fine PECO for its “willful violation” of the Settlement and the 2016-2018 USECP and further alleged that consideration of the factors at 52 Pa. Code § 69.1201(c) supports penalties of over \$1 million.<sup>57</sup>

Contrary to TURN’s and CAUSE-PA’s assertions, the ALJ properly found that PECO “has substantially complied with the words and the spirit of the [S]ettlement.” ID, p. 21. PECO has provided detailed evidence of its open and transparent efforts to address the Settlement obligations regarding 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 single

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<sup>54</sup> PECO St. No. 1-RJ, pp. 10-12.

<sup>55</sup> See PECO RB, p. 11.

<sup>56</sup> TURN Exc., p. 24.

<sup>57</sup> 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 MB, p. 30. CAUSE-PA supports TURN’s recommended fines. CAUSE-PA MB, p. 32.

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. Notably, the OCA – which was also a party to the Settlement – has not taken issue with the Company’s actions regarding the CAP FCO and, in fact, submitted expert testimony explaining the reasonableness of the Company’s efforts to revise the format of CAP.<sup>58</sup> PECO has also fully responded to TURN’s application of the factors at 52 Pa. Code § 69.1201(c) by providing a detailed, factor-by-factor response to its Reply Brief (pp. 12-17). TURN’s and CAUSE-PA’s request that the Commission impose civil penalties on PECO should therefore be rejected.

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<sup>58</sup> *See, e.g.*, OCA St. No. 1-R, pp. 10-11.

### III. CONCLUSION

For the foregoing reasons, the Commission should reject the Exceptions filed by TURN and CAUSE-PA and instead adopt the Recommended Decision issued by Administrative Law Judge Long without modification.

Respectfully submitted,



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