



August 25, 2021

*Via Efiling*

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: PECO Energy Company's 2019-2024 Universal Service and Energy Conservation Plan, Docket Nos. M-2018-3005795, P-2020-3020727 and P-2020-3022154**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Reply Comments of the Tenant Union Representative Network (TURN) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) (collectively, Low Income Advocates)**, to the Commission's May 6, 2021 Tentative Order in the above referenced proceeding.

Due to the ongoing COVID-19 pandemic, a copy of these Comments is being served via email, as indicated on the attached Certificate of Service.

Sincerely,

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Cc: Certificate of Service  
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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PECO Energy Company’s 2019- 2024 Universal : Docket Nos. M-2018-3005795**  
**Service and Energy Conservation Plan : P-2020-3020727**

**CERTIFICATE OF SERVICE**

I hereby certify that I have, on this day, served copies of the **Reply Comments of the Tenant Union Representative Network (TURN) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) (collectively, Low Income Advocates)**, in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54.

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Respectfully submitted,



August 25, 2021

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**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 No. M-2018-3005795  
:  
:  
Petition of PECO Energy Company to amend its Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan – filed July 8, 2020 :  
: Docket No. P-2020-3020727  
:  
:  
Petition of PECO Energy Company to amend its Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan – filed September 25, 2020 :  
: Docket No. P-2020-3022154  
:  
:

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**JOINT REPLY COMMENTS OF  
TENANT UNION REPRESENTATIVE NETWORK**

**AND**

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

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## I. INTRODUCTION

The Tenant Union Representative Network (TURN) and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) (collectively the Low Income Advocates) file these Reply Comments in response to the Initial Comments of the Office of Consumer Advocate (OCA) regarding PECO Energy Company (PECO)'s proposed Universal Service and Energy Conservation Plan (USECP) for 2019 – 2024,<sup>1</sup> and the Public Utility Commission (PUC)'s Tentative Order issued May 6, 2021.<sup>2</sup>

On July 20, 2021, the Low Income Advocates and the Office of Consumer Advocate (OCA) each submitted Initial Comments in response to PECO's Amended Proposed 2019 USECP and the issues identified in the Commission's TO. The Low Income Advocates submit the following Reply Comments for the Commission's consideration in response to the initial Comments of OCA. For the sake of brevity, the Low Income Advocates will not reiterate points raised and issues identified in initial Comments, but instead incorporate and maintain those positions by reference. To the extent an aspect of OCA's initial Comments is not addressed below, that does not indicate the Low Income Advocates' agreement therewith.

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<sup>1</sup> PECO's USECP was amended multiple times prior to review by the Commission. See PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024, PUC Docket No. M-2018-3005795; PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024, Petition of PECO Energy Company to amend its Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan – filed July 8, 2020, PUC Docket No. P-2020-3020727; Petition of PECO Energy Company to amend its Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan – filed September 25, 2020, PUC Docket No. P-2020-3022154. All references to PECO's Amended Proposed 2019 USECP are to the clean version submitted on September 25, 2020, available at <https://www.puc.pa.gov/pcdocs/1678652.pdf> (hereinafter Amended Proposed 2019 USECP).

<sup>2</sup> See PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024, PUC Docket Nos. M-2018-3005795, P-2020-3020727, P-2020-3022154, Tentative Order (May 6, 2021) (hereinafter Tentative Order or TO).

## **II. REPLY COMMENTS**

### **A. Proposed PIPP Energy Burdens**

In its Initial Comments, OCA argues that the economic impact of the COVID-19 pandemic is reason to delay adoption of the Commission's energy burden standards, or otherwise curtail the availability or accessibility of Customer Assistance Program (CAP) or CAP benefits. OCA Comments at 5. OCA's concern with implementation of the Commission's revised energy burden standards appears to be rooted in the cost impact on low income customers who do not participate in CAP. OCA Comments at 4.

The Low Income Advocates share OCA's concern about bill affordability for all low income customers, including those who are not enrolled in CAP. However, the Low Income Advocates submit that the long-standing CAP rate unaffordability is not the consequence of COVID-19, but is instead the result of outdated affordability standards and a fundamentally flawed program design. Fully addressing and rectifying the longstanding problems with PECO's CAP program requires implementing a PIPP that aligns with the Commission's revised energy burden standards.

As explained at length in our Initial Comments, PECO's currently applicable CAP design and energy burden standards are categorically unaffordable – resulting in rates that are neither just nor reasonable for low income customers. This must change. The Low Income Advocates assert that the economic impact of the COVID-19 pandemic highlights the precarious situation faced by low- and moderate-income families and justifies the extensive federal stimulus funding made available for those impacted. By contrast, PECO's CAP program must respond to and meet the needs of low-income customers to receive affordable bills under the Commission's CAP Policy Statement now and in the future, and cannot be assessed through the isolated lens of the COVID-

19 pandemic.<sup>3</sup> The Low Income Advocates submit that OCA has not identified any reasonable basis to delay remediation of identified shortcomings in the affordability of PECO's CAP rates. Providing inadequate assistance and unaffordable rates to low income customers through CAP only serves to undermine the ability of CAP customers to maintain service to their home, and detracts from the system-wide benefits of the program – including improved payment coverage and frequency and reduced collections costs.<sup>4</sup> Rather than undercut the affordability available through CAP, efforts to address affordability for low income customers not enrolled in CAP should instead be focused on improving outreach and enrollment in each of PECO's suite of universal service programs, including CAP and the Low Income Usage Reduction Program (LIURP) and the Hardship Fund (MEAF). Focusing on improved access, outreach, and enrollment for universal service programming – rather than undercutting overall CAP affordability – ensures that assistance programs are accessible and affordable to all households who are struggling to pay their bills and maintain services to their home.

Contrary to OCA's assertions, the Low Income Advocates believe that timely implementation of the energy burden standards adopted in the Commission's amended CAP Policy Statement<sup>5</sup> is particularly important in this moment, given the devastating and profound economic impact of the global COVID-19 pandemic. The economic impacts of the COVID-19 pandemic

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<sup>3</sup> Illogically, OCA's premise that COVID-19 affects the analysis of PECO's CAP program costs disregards that changes to PECO's CAP would only be subject to evaluation several years from now. OCA is incapable of predicting how well those impacted by the ongoing pandemic may recover. Indeed, as submitted in our initial Comments, PECO should instead conduct a needs assessment to understand the impact of COVID-19 on its customers. However, and in stark contrast, the Low Income Advocates can predict *with certainty* how failure to implement the Commission's affordability standards will impact low income PECO customers: They will continue to receive categorically unaffordable bills and be disproportionately impacted by loss of utility service.

<sup>4</sup> Applied Public Policy Research Institute for Study and Evaluation (APPRISE), PECO Energy Universal Services Program Final Evaluation Report, PUC Docket No. M-2019-3011281 (Jun. 28, 2019) at 160-163, *available at* <http://www.puc.state.pa.us/pcdocs/1626073.pdf>.

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

have disproportionately impacted low income consumers and have exacerbated the ongoing energy affordability crisis.<sup>6</sup> It is unjust and unreasonable to require CAP customers to continue to pay rates that the Commission has already concluded to be unreasonable and unaffordable.<sup>7</sup> Delaying implementation of the reduced energy burden standards will only compound the current utility debt crisis as low income families struggle to afford critical services. Now is the time to address longstanding unaffordability, consistent with the Commission’s stated policy, to ensure low income customers can maintain services to their homes.

The Low Income Advocates submit that OCA’s concerns about the cost impact of adopting reduced energy burden standards to other residential consumers are overstated. PECO estimates that adoption of its proposed energy burden standards will cost a total of \$5.1 million for natural gas and \$91.1 million for electric.<sup>8</sup> PECO further estimates that complying with the maximum CAP energy burdens in the CAP Policy Statement would add an additional \$8.5 million annually for residential electric customers and \$345,360 for residential natural gas customers. The table below shows the monthly cost of CAP on a per customer basis, comparing the average cost of CAP from 2017-2019 with the average projected cost of CAP on a per customer basis at PECO’s proposed energy burden standards and the Commission’s revised energy burden standards.<sup>9</sup>

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<sup>6</sup> Center on Budget and Policy Priorities, Tracking the COVID-19 Recession’s Effects on Food, Housing, and Employment Hardships (updated Jan. 8, 2021), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and>; Graff, M., Carley, S. COVID-19 Assistance Needs to Target Energy Insecurity, *Nat Energy* 5, 352–354 (2020). <https://doi.org/10.1038/s41560-020-0620-y>; see also Parker, K., Minkin, R., and Bennett, J. Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center, (Sept. 24, 2020) <https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>

<sup>7</sup> Final CAP Policy Statement at Order at 27 (“[T]he current maximum energy burden ranges based on the FPIGs in the [previous] CAP Policy Statement do not reflect reasonable or affordable payments for many low-income customers. This would be our conclusion even if the currently specified burdens are considered only presumptively reasonable or affordable.”).

<sup>8</sup> Supplemental Information at 8.

<sup>9</sup> Changes to the energy burdens will not be the only driver of changes to CAP costs – any base rate increases or changes to the Price to Compare, for example, would also impact undiscounted CAP customer bills and therefore the amount of discount applied.

**Table 1: Monthly Cost of CAP per Residential Customer<sup>10</sup>**

|          | 2017-2019 | PECO Proposed EB Standards | Commission EB Standards |
|----------|-----------|----------------------------|-------------------------|
| Electric | \$3.65    | \$5.10                     | \$5.58                  |
| Gas      | \$0.47    | \$0.87                     | \$0.92                  |

In other words, the cost to adopt PECO’s proposed energy burden standards increases rates by approximately \$1.45 per month for electric customers, and approximately \$0.40 per month for natural gas customers. In turn, the cost to adopt the Commission’s revised energy burden standards increases rates by just \$0.48 for electric customers (a total difference of \$1.93), and \$0.05 for natural gas customers (a total difference of \$0.45). The Low Income Advocates submit that this is a small price for non-low income customers to pay to ensure that service is universally accessible to all those in need.

Importantly, the cost of remediating CAP unaffordability will not have an appreciable impact on the energy burden of non-CAP low-income customers, for whom OCA notes particular concern. This is true even for those in the lowest income bracket. For example, a family of 4 at 50% FPL has a gross monthly income of \$1,104.<sup>11</sup> Adoption of PECO’s proposed electric energy burden standards would increase the relative energy burden of this household by 0.13% - just over one-tenth of one percent. In turn, adoption of the Commission’s electric energy burden standards would increase the relative energy burden of this household by 0.17% - still less than two-tenths of one percent. The relative energy burden impact for adoption of the reduced natural gas energy burden standards is far lower, amounting to 0.04% for adoption of either PECO or the

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<sup>10</sup> See TO at 2, Table 1 (PECO has 1,488,812 residential electric customers and 484,678 residential natural gas customers); see also 2019 Universal Service Report at 77 (showing average cost of CAP per customer for PECO Electric and PECO Gas); Supplemental Information at 9.

<sup>11</sup> US Dep’t of Health and Human Services, HHS Poverty Guidelines for 2021, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

Commission's reduced energy burden standards. As noted already, non-CAP low income households, such as the household in the example above, may seek to enroll in CAP to relieve this additional cost.

Likewise, households with income just *over* the eligibility threshold for CAP will experience an even smaller impact on their relative energy burden. A family of 4 at 151% FPL has a monthly income of \$3,313. The increased cost of adopting PECO's proposed electric energy burden standards (\$1.45) would increase the energy burden of this household by just 0.04%. In turn, the increased cost of adopting the Commission's electric energy burden standards (\$1.93) would increase the energy burden of this household by just 0.06%. Notably, although ineligible for CAP, these households are eligible to receive a hardship fund grant and/or comprehensive energy efficiency services, either of which would more than offset the minimal cost impact of implementing the Commission's revised energy burden standards.

In short, the increased cost for PECO to meaningfully reduce its applicable energy burden standards is minimal compared to the relative benefits it would provide to those enrolled in CAP. Program improvements that result in higher costs to some customers must be carefully considered. However, the demonstrably small impact to the relative energy burden of those who are just over the income threshold for CAP should not impede implementation of the Commission's revised energy burden standards intended to finally rectify longstanding, categorical unaffordability for those low-income customers who participate in CAP.

Additionally, the Low Income Advocates note that the financial impact on non-CAP residential customers of adopting the Commission's energy burden standards would be further reduced by equitably recovering the cost of universal service programs from all ratepayers rather than exclusively from the residential class. Residential customers do not cause energy poverty and

should not bear the sole burden to address it. Nevertheless, the estimated cost of addressing categorical rate unaffordability within CAP is a small price to pay in return for the host of far-ranging individual and societal benefits associated with improved energy affordability to those with the lowest income.

### **B. OCA's Proposed Cost Control Measures**

In its Initial Comments, OCA requests that the Commission implement several cost mitigation and cost control measures if it were to approve the change in energy burdens proposed by PECO. These measures include “limiting the annual increases in CAP costs flowed through the universal service charge; increasing the minimum payment; extending the length of time for arrearage forgiveness; capping the amount of arrearage forgiveness charged to ratepayers; decreasing overall administrative costs; revisiting and adjusting maximum CAP credits; allocating Low Income Usage Reduction Program resources (LIURP) to reduce high user bills; and re-examining HUD recipient participation.” OCA Comments at 6.

With limited exception regarding prioritization of LIURP assistance, the Low Income Advocates oppose OCA's proposals, as they would serve to dramatically undercut improvements to affordability and accessibility gained by reducing the applicable energy burden standards. As explained above, the increase in cost per customer is projected to have a minimal impact to the relative energy burden of low and moderate income households, and does not justify draconian measures. The cost control and mitigation measures suggested by OCA would restrict access to CAP and limit affordability for CAP participants. This will detract from the system-wide benefits of CAP in terms of improved payment behavior, bill coverage, and reduced collections expenses. Ultimately, OCA's proposals are not aligned with their concerns about the bill affordability for low-income households since those proposals, if adopted, would restrict low income customer

participation in CAP, making the program inaccessible to the very customers OCA is concerned will be impacted by cost.

The Commission must ensure that low income customers are able to access assistance through universal service programs, as required by statute,<sup>12</sup> without impediments to affordability and enrollment. For these reasons and those detailed below, the Low Income Advocates strongly disagree with the following cost control and mitigation measures proposed by OCA: (1) limiting annual increases in CAP costs through the Universal Service Charge; (2) review of the minimum payment; (3) extending the period for arrearage forgiveness; (4) capping arrearage forgiveness, and (5) restricting access to CAP for public housing participants.

*1. Controlling Annual Increases to the Universal Service Charge*

Through Initial Comments, OCA notes its concern that cost increases to PECO's USECP would lead to automatic increases to residential ratepayers' bills. OCA Comments at 7. OCA recommends holding annual costs, which run through PECO's automatic universal service cost recovery mechanism, to the levels projected in the USECP filing until a full impact assessment can be completed following implementation of the reduced energy burdens.

A limit on CAP program costs would incentivize PECO to limit program outreach and referrals to stay within its projections, rather than performing the robust outreach necessary to assist struggling families in accessing CAP. This would contradict the universal service obligations included in the Choice Act and Chapter 14 to ensure universal service programs are available to those in need, and may create additional barriers to CAP participation.<sup>13</sup> Limitations on the

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<sup>12</sup> 66 Pa. C.S. §§ 2802(9)-(10); 2804(9); 2203(8)-(9).

<sup>13</sup> 66 Pa. C.S. §§ 2802(9)-(10); 2804(9); 2203(8)-(9); 66 Pa. C.S. § 1410.1; Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907, Joint Reply Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Tenant Union Representative Network, and Action Alliance of Senior Citizens of Greater Philadelphia, at 12 (Joint Reply Comments filed Oct. 16, 2017).

amounts PECO can recover for CAP program costs is likely to indirectly limit CAP program enrollment and impede access to assistance programs for low income households guaranteed by the General Assembly. For this reason, the Low Income Advocates recommend the Commission reject such proposals.<sup>14</sup>

## 2. *Minimum Payments*

In its initial Comments, OCA recommends further review of PECO's proposal to reduce minimum payments from \$12 to \$10 for electric non-heating customers; \$30 to \$20 for electric heating customers; and \$25 to \$20 for natural gas heating customers. See Tentative Order at 14. OCA expresses concern that PECO did not provide any data to support its assertion that changes to the energy burdens will not impact the volume of LIHEAP grants returned to DHS. See PECO Response to OCA-I-4, attached hereto in Appendix A. In particular, PECO was unable to provide data on the number of returned LIHEAP grants by Poverty Level. See PECO Response to OCA-I-2, attached hereto in Appendix A. OCA expresses concern regarding the return of LIHEAP funding to the Department of Human Services (DHS). OCA submits LIHEAP dollars should be fully utilized. OCA Comments at 8-9.

The Low Income Advocates agree that it is important to fully utilize all available assistance, including LIHEAP dollars, maximizing the efficacy of programs and improving affordability. However, we do not share the concern regarding LIHEAP grant dollars returned to DHS, nor do we believe the receipt of LIHEAP grants should be a determining factor in the calculation of affordability for CAP customer bills.

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<sup>14</sup> The Low Income Advocates addressed PECO's proposal to impose enrollment limits in our Initial Comments. Low Income Advocate Comments at 15-17. The Low Income Advocates note that OCA has in the past opposed enrollment limits on CAP, citing significant, unmet need for the CAP program in a utility's service territory. UGI Utilities, Inc. – Gas Division, UGI Utilities, Inc. – Electric Division, and UGI Central Penn Gas, Inc., Universal Service and Energy Conservation Plan for 2014-2017 Submitted in Compliance with 52 Pa. Code 54.74 and 62.4, Docket No. M-2013-2371824, OCA Comments at 4 (Oct. 22, 2014), <https://www.puc.pa.gov/pcdocs/1320939.pdf>.

The Low Income Advocates more fully address LIHEAP grants below. Nevertheless, we note here that very little funds are ever “returned” to DHS – and the funds that are “returned” are most often returned when a family relocates out of the service territory, not because a household has excess grant assistance at the end of the two year period in which the grant must be utilized. PECO Supplemental Information at 10. Over the last three years, PECO has returned on average just \$128,330 of the average \$17.6 million received by PECO each year – just 0.73% of the average LIHEAP funds PECO receives on behalf of LIHEAP recipients each year. Id. Once returned to DHS, funds are not sent back to the federal government. Rather, those funds are re-purposed and re-granted to other Pennsylvanians in need of energy assistance.

### 3. Arrearage Forgiveness

In its Initial Comments, OCA asserts that the Commission should consider lengthening PECO’s proposed arrearage forgiveness time frame from a 12-month period to a 36-month period or longer in order to mitigate the annual costs of CAP charged to ratepayers while CAP customers continue to earn arrearage forgiveness. OCA Comments at 9-10. The Low Income Advocates oppose OCA’s suggestion to extend the period of arrearage forgiveness for CAP participants.

First, OCA asserts that the cost of arrearage forgiveness is a significant portion of the overall universal service costs for PECO. In support of this assertion, OCA provided a table from a Commission report that appears to indicate the opposite, showing arrearage forgiveness is only a small percentage of the overall program costs at 7.6% for PECO Electric and 11.6% for PECO Gas, well below the EDC average of 16.8% and the NGDC average of 20.3%. OCA Comments at 10. The Low Income Advocates do not believe that lengthening the time for CAP customers to earn arrearage forgiveness will have a meaningful impact on the overall cost of CAP.

Second, OCA does not provide support for its claim that lengthening the time for earned forgiveness will incentivize customers' paying on time and in full. Indeed, the Commission's Final CAP Policy Statement indicates a shorter arrearage forgiveness timeframe – which more quickly reduces preprogram arrearage balances – likely helps to improve payment behavior by CAP customers over time.<sup>15</sup> An adjustment to the timeframe for arrearage forgiveness should not be based on programmatic costs alone, and requires a more in-depth inquiry into the impact that such an adjustment would have on payment coverage rates and on the ability of consumers to reasonably achieve arrearage forgiveness over a longer period of time.

Third, lengthening the period of arrearage forgiveness for CAP would be punitive to existing CAP participants, who reasonably and rightfully expect to have their debt forgiven after having paid for the length of time they were provided upon entering CAP. If the Commission is inclined to accept OCA's proposal to lengthen the time for forgiveness, without further support or justification, the Commission should only apply the revised timeframe to new CAP entrants.

Finally, extending the arrearage forgiveness period beyond 36 months far exceeds limits set in the Commission's CAP Policy Statement.<sup>16</sup> If the timeframe for forgiveness is extended for new CAP enrollees on a forward-going basis, the timeframe should be a *maximum* of two years to correspond to PECO's recertification timing requirements.

Ultimately, increasing the timeframe for arrearage forgiveness may harm the success of the program, undermining efforts to provide low income consumers with a reasonable alternative method of collections. The Low Income Advocates support the timeframe for arrearage forgiveness remaining at 12 months.

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<sup>15</sup> See, e.g., Final CAP Policy Statement and Order at 44 (“More customers who have low [PPA] balances have higher than average on-time rates. Customers with less than \$391 in arrearages pay on-time 61% of the time, while customers with more than \$1,514 in arrearages pay on-time 45% of the time.”).

<sup>16</sup> 52 Pa. Code § 69.265(8)(ix).

#### 4. Maximum CAP Credit Ceilings

In Initial Comments, the OCA indicates discrepancies in the data provided regarding the number of CAP customers who would meet or exceed the CAP credit maximums if the PIPP were implemented as proposed in its 2019-2024 USECP. Specifically, according to the OCA, the data provided in PECO's Supplemental Response contrasted with the response to TURN Set I, No. 14. OCA asserts, absent clarification of this data discrepancy, that it is unable to make firm recommendations. In addition, the OCA notes that PECO has not provided information about what actions it could take to address the high usage causing customers to reach their CAP maximum credit limits. OCA Comments at 12.

The Low Income Advocates agree that PECO should address how the Company plans to target high usage CAP customers for usage reduction, such that those customers remain under their CAP maximum credit limit for a longer period of time. Regardless, the Low Income Advocates continue to support PECO's proposed increase of the maximum CAP credit threshold, as we believe this increase to be appropriate and necessary to accommodate changes to the energy burden standards. Low Income Advocates Comments at 39. Failure to adjust the applicable maximum CAP credits would undermine the affordability achieved through adoption of the reduced energy burden standards. We also reaffirm our other recommendations that PECO should address maximum CAP credit exemptions, how the Company will notify customers as they approach their limit, and how the Company will bill customers who have exhausted their CAP credit limit. Low Income Advocates Comments at 39-41.

#### 5. LIURP Prioritization for Customers with High CAP Credits

In Initial Comments, OCA recommended the Commission evaluate whether customers with high CAP credits should be prioritized for LIURP as an additional cost-mitigation

measure. OCA Comments at 12-13. The Low Income Advocates agree that CAP customers who are approaching their CAP credit limit should receive targeted outreach to provide LIURP services as quickly as possible. Furthermore, CAP customers prioritized for the receipt of LIURP treatment should not be penalized by imposition of the CAP credit limit. To the extent a CAP customer is approaching their maximum CAP threshold, but does not meet PECO’s high usage threshold for LIURP, that household should nevertheless be treated through LIURP to help control their energy costs. Ensuring those approaching their CAP limits are both eligible and targeted for enrollment and participation in LIURP will help CAP customers to improve the affordability of their energy bills and will help PECO better manage CAP costs. In addition, the Low Income Advocates reiterate our suggestions in Comments that PECO should allow tenants with at least one full billing cycle to use historical usage data for the residence for purposes of meeting the threshold usage criteria, and that PECO should implement tiered usage thresholds based on the square footage of a customer’s apartment or house. Low Income Advocate Comments at 48-50.

6. HUD Recipient Participation in CAP

The OCA recommended in Initial Comments that the Commission should “consider the extent of participation in CAP by HUD recipients.” OCA Comments at 13. OCA argues that tenants in public and assisted housing receive utility allowances from the Department of Housing and Urban Development (HUD) and that providing assistance above and beyond HUD allowance would “appear to substitute ratepayer dollars for HUD Dollars.” Id.

Adopting OCA’s suggestion that public housing recipients should be excluded from CAP would be an unconscionable program term that would arbitrarily and disproportionately impact Black tenants in PECO’s service territory.<sup>17</sup> OCA’s proposal thus urges the Commission to take

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<sup>17</sup> See, e.g., City of Philadelphia and Philadelphia Housing Authority Assessment of Fair Housing, 2016 at Table 56 (indicating 91.9% of public housing households are Black).

official action that would impose different standards for the receipt of utility assistance based on an arbitrary classification that is likely to be subject to strict scrutiny under Federal nondiscrimination and equal protection analyses. That is so because the vast majority of PECO customers receiving HUD utility allowances receive the allowance in the form of a *reduction in rent*.<sup>18</sup>

Fortunately, the Commission already declined to adopt a similar proposal made by OCA in comments to the Final CAP Policy Statement.<sup>19</sup> OCA nevertheless avers that language included in the policy allows for the issue to be revisited. Specifically, OCA requests that the Commission require PECO to provide data necessary for consideration as to the appropriateness of restricting public housing recipients from participating in CAP. OCA Comments at 13. The Low Income Advocates urge the Commission to again reject OCA’s recommendation, consistent with its earlier statewide policy order.

Utility allowances provided to public housing recipients are insufficient to pay for a household’s utility costs as they are an “estimation” of monthly utility costs, often based on building averages,<sup>20</sup> and do not account for actual monthly household energy costs.<sup>21</sup> There is consistently a lag between an increase in rates and a utility allowance adjustment. Utility allowances are thus a proxy and almost always “stale” in terms of approximating energy costs.

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<sup>18</sup> See, e.g., U.S. Dept. of Housing and Urban Dev’t, “Utility Allowances” available at [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/phecc/allowances](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/phecc/allowances) (“The PHA provides a utility allowance to the household through a *reduction in the household’s monthly rent*.”)

<sup>19</sup> Final CAP Policy Statement at 97-98.

<sup>20</sup> Use of building averages to determine average usage can have a big impact on a household’s deemed allowance. For example, if one or more units in the building is unoccupied for a portion of the year, the estimation could artificially decrease the household’s utility allowance. The same issue arises when some building residents are enrolled in CAP – but others are not – because the rates for some units are lower.

<sup>21</sup> See 24 C.F.R. § 5.603 (defining “utility allowance” as “an amount equal to the *estimate* made or approved by PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.”); see also 24 C.F.R. § 982.517.

Landlords and housing authorities are only required to *review* a utility allowance once each year and are only required to *adjust* the allowance if rates increase by more than 10%.<sup>22</sup> Consequently, many households – particularly those with larger families or household members with medical equipment needs – have higher utility costs than accounted for in this approximation due to said medical equipment and household inefficiencies.

As discussed above, utility allowances, when provided, are typically credits that reduce the household’s obligation *to pay rent*. However, in the context of multifamily housing, owners who receive a housing allowance must take into account utility allowances every year in determining the rent obligations of tenants.<sup>23</sup> In other words, households receiving a utility allowance are not provided with duplicative or overlapping utility assistance. Rather, the rent portion of their monthly housing allowance will increase to account for the assistance received.

It is important to keep in mind that public housing assistance is only available to the poorest and most vulnerable Pennsylvanians – including seniors, veterans, families with children, and victims of domestic violence. It is a program designed to help lift people out of poverty by providing stable and affordable housing, and it allows people time to build resources and recover. Providing an affordable utility rate to public housing recipients does not “substitute” federal housing assistance, as OCA claims. Federal subsidized housing assistance contributes to the affordability of the rent to be paid by the tenant, it does not reduce the tenant’s PECO bill nor provide any additional means through which the subsidized tenant could pay the PECO bill. CAP remains a critical and necessary support to subsidized housing Pennsylvanians and is not duplicative of HUD allowances.

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<sup>22</sup> See HUD, Methodology for Completing a Multifamily Housing Utility Analysis: Notice H-2015-04 (June 22, 2015).

<sup>23</sup> Id.

For these reasons, the Low Income Advocates affirm that households should not be excluded from CAP if they receive public housing assistance.

### **C. LIHEAP Grant Refunds**

In its Initial Comments, OCA raises concerns that PECO does not show an anticipated impact of the reduced energy burdens on LIHEAP grants. OCA Comments at 13-14. OCA bases this concern on an unsubstantiated expectation that more LIHEAP grants will be returned to DHS with the reduction of energy burdens to low income customers. OCA Comments at 13-14.

In response to the TO, PECO explained that the Company does not predict modifications to energy burdens will impact the volume of LIHEAP grants returned. Indeed, the greatest number of grants returned to DHS over the last three years was 816 in 2019. PECO Supplemental Information at 10. This is a meager number in comparison to those customers eligible to apply for a LIHEAP grant, including PECO's more than 113,394 households enrolled in CAP and other income-eligible customers. PECO Supplemental Information at 4. Further, PECO has averaged a returned grant amount of \$128,330 annually for the last three years, in contrast to the receipt of \$17.6 million received in LIHEAP grants per year. PECO Supplemental Information at 10. As noted above, this amounts to 0.73% of grant money returned to DHS per year.

As the Commission recognized in its Final CAP Policy Statement and Order, LIHEAP assistance is limited in its reach.<sup>24</sup> Customers are not required to apply their LIHEAP grant to one specific service (electric or gas), and may opt instead to apply their grant to help pay the high cost of deliverable fuel.<sup>25</sup> As the Commission concluded, CAP customers should not be penalized for

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<sup>24</sup> Final CAP Policy Statement and Order at 50-52.

<sup>25</sup> Final CAP Policy Statement and Order at 50-52 (“As low-income customers may participate in more than one CAP – or may use their LIHEAP grant to obtain a deliverable fuel source – these provisions are no longer appropriate as they could require households to choose between CAPs or between a CAP and a necessary fuel delivery.”); 52 Pa. Code § 69.265(9).

assigning their LIHEAP grant to a specific utility.<sup>26</sup> If LIHEAP is factored directly into the energy burden determination for the lowest income households (0-50% FPL), as OCA suggests, it would punish those CAP customers if they need to assign their LIHEAP grant to assist with another regulated or unregulated heat-related service. Further, not all low income households are eligible for LIHEAP. Immigrant consumers are particularly vulnerable, often facing disproportionately higher energy burden levels, yet many are ineligible for the program, or may be apprehensive of participating in a federal assistance program.<sup>27</sup>

As the Commission has previously acknowledged, LIHEAP is a federal program, with a finite budget, and relies on an annual appropriation that could be eliminated in the federal budget in any given year.<sup>28</sup> Unlike many other federal assistance programs, LIHEAP is not an “entitlement” program, and grant amounts can change dramatically from year to year.<sup>29</sup> Further, LIHEAP does not provide an unlimited amount of assistance dollars, and is inadequate to serve all CAP customers – let alone all low income customers who may be eligible for assistance for regulated or unregulated home heating service through the program. Once LIHEAP funding is expended – or the program otherwise closes for the season – there is no additional assistance available until the following program year.

Finally, it is important to keep in mind that LIHEAP “refunds” are not reallocated back to the federal government. Any grant funding returned to DHS is, rather, reapportioned to other Pennsylvanians in need of home energy assistance.

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<sup>26</sup> Final CAP Policy Statement and Order at 53.

<sup>27</sup> Final CAP Policy Statement and Order at 50.

<sup>28</sup> Pa. Dept. of Human Services, Low-Income Home Energy Assistance Program Final State Plan, Fiscal Year 2021, at i (2020) (explaining federal funding).

<sup>29</sup> See id. at i-ix (detailing changes from previous program year).

The Commission, through the development and ultimate publication of the Final CAP Policy Statement and Order, already evaluated data related to LIHEAP. The Low Income Advocates submit no further analysis is necessary to determine anticipated impact of the revised energy burdens on LIHEAP grants. The Commission has clearly articulated the limited scope of LIHEAP grants relative to need, and PECO has confirmed that the number of returned grants has been inconsequential – a pattern that PECO does not anticipate changing in light of the reduction of energy burdens. The Commission should require PECO to implement its proposed revised energy burdens without delay and without requiring PECO to unnecessarily analyze the anticipated impact of the revised energy burdens on LIHEAP grants.

#### **D. In-CAP Arrears**

The OCA shares the Commission’s concern regarding the level of in-program CAP arrears. Tentative Order at 38-41. The Low Income Advocates reaffirm our position provided in initial Comments that program unaffordability, caused by PECO’s use of outdated energy burden standards and a fundamentally flawed program design, is the driving factor for the accrual of in-program arrears. We maintain our recommendation that PECO adopt an in-program arrearage forgiveness for CAP Fixed Credit Option (FCO) bills that is comparable to, and runs concurrently with, pre-program arrearage forgiveness. Further, any remaining in-program arrearage balances from the transition to the FCO should be rolled into the pre-program arrearages once the new PIPP CAP is implemented, as CAP customers under the FCO were unable to earn forgiveness due to the unaffordability of CAP bills under the FCO. Low Income Advocates Comments at 42-43. Finally, the Commission should require PECO to implement reduced energy burdens without unnecessary delay associated with analyzing the myriad reasons that PECO’s CAP program has

failed to provide adequate assistance to CAP customers and leading to their accumulated CAP balances.

#### **E. Arrearage Forgiveness for Returning CAP Customers**

OCA notes in its Initial Comments that PECO's USECP states that CAP customers are eligible to receive only one once-in-a-lifetime debt forgiveness. OCA offers that this approach may be overly restrictive. The Low Income Advocates agree, and urge the Commission to direct PECO to allow former CAP customers the opportunity to earn arrearage forgiveness on a new balance that has accumulated outside of CAP.

As OCA notes, a CAP customer may leave CAP for any number of reasons, including fluctuations in income. It is an unfortunate reality that lower income customers more frequently experience financial hardship and struggle to pay full tariff rates for electric and gas service. Even a relatively small, unexpected expense, such as a medical bill or a flat tire, may cause substantial financial hardship. Despite best efforts to pay utility bills, low income families sometimes fall behind and accrue arrears over time. A customer who has received arrearage forgiveness and reduced their past due balance to zero should not be precluded from receiving help in the future to address accrued arrearages if life circumstances put them in a position to require that benefit. Allowing these customers a chance to re-enter CAP as a new enrollee would help them manage costs and assist in collection efforts for PECO. The Commission should establish a reasonable timeframe that, once surpassed, would allow the customer to become a new enrollee eligible for arrearage forgiveness.

The Low Income Advocates submit that the Commission should direct PECO to allow former CAP customers the opportunity to earn arrearage forgiveness on a new balance that accumulated outside of CAP if they later reenroll on the program.

## **F. Outreach to Customers Below 50% of the Federal Poverty Level**

OCA expresses support for PECO's identified targeted outreach activities listed in its USECP to better reach customers whose incomes range from 0-50% of the FPL. OCA submits, however, that PECO should be directed to undertake a more expansive approach to reach households in this income range. The Low Income Advocates agree with OCA that customers who are 0-50% FPL should receive the targeted outreach PECO proposes in its Plan, as these customers face the greatest challenges to achieving affordable bills, but that outreach could be broader and more expansive.

In Comments, OCA notes a variety of different measures that can be taken to enhance outreach to customers at this income level, including greater community engagement and building outreach into PECO's collections process. Confirmed low income customers would be offered the opportunity to enroll in CAP if they are seeking a payment arrangement; facing termination of service for nonpayment; disconnected for nonpayment; and/or contacted by PECO for using unsafe heating source or are without service. OCA Comments at 19. The Low Income Advocates support the measures detailed by OCA.

The Low Income Advocates also detailed recommendations for outreach in our Initial Comments. We suggested PECO: conduct an updated needs assessment that examines the impact of the COVID-19 pandemic; review neighborhood-based data and indicators that go beyond concentrations of poverty; track, geographically and by reason, application approvals and denials for CAP, LIURP, and MEAF, and program removals for CAP; and conduct targeted outreach to limited English proficient households. Low Income Advocates Comments at 35 – 39.

In addition to the recommendations made in our Initial Comments, the Low Income Advocates further submit that PECO should use GIS mapping tools and technology to determine

which neighborhoods would be best served by this type of targeted outreach and education. Overlaying poverty data with existing program enrollment will help to show where there may be critical gaps in services to discreet populations that may be harder to reach. This could help alleviate potential disparities in program reach to historically underserved populations.

The Low Income Advocates believe incorporating suggestions included in our Comments and OCA's Comments, in addition to the suggestion provided above, could help reach more customers in need, enrolling them in programs before they accrue arrears, improving customer quality of life, and improving utility payment behavior and associated collections costs over the long-term. See Low Income Advocates Comments at 37-40.

While the Low Income Advocates commend PECO for existing and planned outreach efforts, we agree with OCA that PECO should be directed to provide a detailed plan addressing how it intends to expand its outreach to increase the CAP participation rate for customers with annual income less than 50% of FPL.

**G. Examine Reason for CAP Exits**

In its Initial Comments, OCA pointed out that, through discovery, PECO acknowledged that it does not track the reasons for CAP exits, and recommended that PECO begin tracking this information. The Low Income Advocates support OCA's recommendation that PECO track the number of CAP exits by reason and establish a process to address those reasons. Having this data will allow PECO to address and mitigate unnecessary exits of customers in need from CAP; especially if the primary reason for exiting CAP is problems with recertification. The Low Income Advocates offered recommendations for the CAP recertification process in our initial Comments, including adjusting recertification timelines for LIHEAP recipients and those reporting zero income. Low Income Advocates Comments at 23-25.

## **H. Fraud and Misrepresentation**

The Low Income Advocates support OCA's recommendation that PECO's Plan include an explanation of the standard revenue protection processes used to determine whether a customer has committed fraud or has unknowingly made a mistake in the information provided. The Plan should also specifically identify the information that the customer is provided to dispute the conclusion of fraud. The Low Income Advocates agree with OCA's reasoning that such a serious allegation with the potential for compounding repercussions necessitates detailed explanation.

### III. CONCLUSION

The Low Income Advocates appreciate the Commission's thoughtful consideration of the issues raised above and in the Low Income Advocates' Initial Comments. We urge the Commission to act in accordance with our Comments and Reply Comments to ensure that all customers – regardless of income – are able to access safe, affordable service within the PECO service territory.

Respectfully Submitted,

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August 25, 2021

## Appendix A: Discovery Responses

OCA-I-2

OCA-I-4

Pennsylvania Public Utility Commission

v.

PECO Energy Company

Docket No. P-2020-3020727, M-2018-3005795

Response of PECO Energy Company  
to Interrogatories of  
Office of Consumer Advocate  
OCA Set I

Response Date: 05/28/2021

OCA-I-2

For each year for program year 2018 to date, please provide, in an active Excel spreadsheet with all formulae intact, the dollars of LIHEAP grants refunded to the state:

- a. For all LIHEAP recipients by Federal Poverty Level;
- b. For LIHEAP recipients who are also CAP participants by Federal Poverty Level.
- c. If available, disaggregate the data provided, in an active Excel spreadsheet with all formulae intact.

RESPONSE:

PECO does not maintain LIHEAP grant return information in a manner that can be queried by FPL or CAP status without a manual, customer-by-customer record review. The Company has the following consolidated information:

| Year | Number of Returned Grants | Total Value of Returned Grants | Average Value of a Returned Grant |
|------|---------------------------|--------------------------------|-----------------------------------|
| 2018 | 403                       | \$101,641                      | \$252                             |
| 2019 | 816                       | \$155,239                      | \$190                             |
| 2020 | 249                       | \$128,112                      | \$514                             |

Responsible Witness: Mark Kehl

Pennsylvania Public Utility Commission

v.

PECO Energy Company

Docket No. P-2020-3020727, M-2018-3005795

Response of PECO Energy Company  
to Interrogatories of  
Office of Consumer Advocate  
OCA Set I

Response Date: 05/28/2021

OCA-I-4

Has PECO studied, evaluated, or assessed:

- a. How any reduction in CAP burdens may affect, if at all, the number of accounts with LIHEAP refunds or the amount of LIHEAP refund given back to the State as unused? If so, please provide such assessment.
- b. How PECO can minimize the number of accounts with LIHEAP refunds, or the amount of LIHEAP refunds given back to the State as unused? If so, please provide PECO's analysis of alternatives on how to minimize unused LIHEAP benefits that are reclaimed by the State.

RESPONSE:

PECO does not believe that changes to the energy burdens will impact the volume of LIHEAP grants returned to DHS. In the last three years, PECO has averaged 489 refunds per year out of an average of 60,00 grants awarded. PECO returns LIHEAP funds to DHS for two reasons: (1) a finalized bill with an excess credit related to a LIHEAP grant; and (2) upon request of return from DHS. PECO acknowledges that utilities must return grant dollars that remain unused after 2 years after receipt of a grant. However, PECO has not returned grants to DHS under this scenario. Even with lower minimum bill requirements and lower energy burdens, PECO believes the volume of returned LIHEAP grants will be de minimis.

Responsible Witness: Mark Kehl