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February 28, 2022

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

RE: Denise Eubanks v. PECO Energy Company
Docket Number: C-2021-3025997

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Initial Brief of Respondent, PECO Energy Company*.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Angela Lorenz, Esq

Cc: Honorable Darlene Heep, ALJ
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DENISE EUBANKS	:	
Complainant	:	C-2021-3025997
v.	:	
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

INITIAL BRIEF OF RESPONDENT, PECO ENERGY COMPANY

I. INTRODUCTION and STATEMENT OF CASE

For decades, PECO Energy Company (“PECO” or the “Company”) has operated a Customer Assistance Program (“CAP”) designed to offer affordable payments for utility service to low-income customers. Although the structure of PECO’s CAP has evolved over time, PECO has consistently worked with stakeholders to identify cost-effective ways to improve affordability for low-income customers.

PECO’s existing CAP “Fixed Credit Option” or “FCO” design was developed by the Company and other parties, as part of a broad settlement (the “Settlement” or “2015 Settlement”) approved by the Pennsylvania Public Utility Commission (“Commission”) in the docket for the Company’s 2013-2015 Universal Service and Energy Conservation Plan (the “2013-2015 USECP”). The Company’s USECP for the 2016-2018 period (the “2016-2018 USECP”) incorporated the CAP FCO, and was approved by the Commission on August 11, 2016¹. PECO continues to operate the CAP FCO under the 2016-2018 USECP.

On May 21, 2021, Complainant filed a Formal Complaint against PECO, alleging that

¹ 2 See PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2015-2507139 (Order entered Aug. 11, 2016). A number of revisions were made to the 2016-2018 USECP after its initial approval.

PECO improperly calculated her Customer Assistance Program Fixed Credit Option (CAP FCO) while enrolled in PECO's Customer Assistance Program, in violation of the Universal Service and Energy Conservation Plan ("USECP"). After several cross filings, PECO's Amended Answer of September 2, 2021 remains the final filing.

For reasons set forth more fully below, the evidence of record simply does not support the relief Complainant seeks.

II. PROCEDURAL HISTORY

On May 21, 2021, PECO was served with Complainant's Formal Complaint alleging improper calculation of the Complainant's CAP FCO while enrolled in PECO's CAP Program; a violation of the USECP. On June 10, 2021, PECO filed a timely and responsive Answer to the Formal Complaint.

On June 21, 2021, Complainant filed Preliminary Objections to PECO's Answer and, on July 6, 2021, PECO filed an Amended Answer to Complainant's Preliminary Objections. On July 26, 2021 Complainants filed a second set of Preliminary Objections to PECO's Amended Answer. On August 4, 2021 PECO filed a Second Amended Answer to Complainant's second set of Preliminary Objections. On August 26, 2021, Complainant filed a third set of Preliminary Objections to PECO's Amended Answer of August 4, 2021. On September 2, 2021, PECO filed an Third Amended Answer to Complainant's Preliminary Objections.

The case was assigned to Administrative Law Judge ("ALJ") Darlene Heep. The parties engaged in discovery and convened for a telephonic hearing on November 12, 2021.

III. FACTS OF THE CASE

At the November 12, 2021 hearing, the parties presented ALJ Heep with a Joint Stipulation of Facts. (N.T., 11/12/2021, Exhibit 1, pp. 1-8.) The Stipulation of Facts is herein incorporated by reference.

Complainant, Denise Eubanks, is a residential heating customer of PECO at 871 N. 41st Street, Apt 1, Philadelphia, PA 19104. Complainant's only income is Supplemental Security Income (SSI). When Complainant moved to the aforementioned service address in August 2019, Complainant enrolled in PECO's CAP Program. The parties agree that at the time of her enrollment, the allowable energy burden for an electric heating customer with income between 51% and 100% of FPL was 16% of income.

PECO used an income of \$757 in its 2019 CAP Credit Calculation and \$793 in the 2020 CAP Credit Calculation. To calculate Complainant's FCO credit upon enrollment in 2019, PECO used previous premise usage (Parkside LLC).

In her Complaint, Complainant disputes the calculation of PECO's Customer Assistance Program – Fixed Credit Option ("CAP-FCO") program and requests that PECO provide a credit that accounts for the difference between her billed amount and the amount that she believes she should have been billed based on the energy affordability standards in place at the time of billing. Complainant also requests forgiveness of her additional arrearages.

Manager of PECO's Low-Income Programming, Mark Kehl, testified that consistent with the program requirements, 16% for electric heat, the company calculated the Complainant's annual energy burden at \$1,453.63 based on a monthly income of \$757.00 for one adult. In order to determine this, the customer's energy burden is subtracted from the undiscounted amount that the

customer spent for service over the past 12 months. The difference is the customer's annual CAP credit. This amount is then divided into 12 credits which are applied to the customer's bill each month. The amount of the credit will vary based on the customer's historic usage, but total credit for the year would not exceed the customer's annual CAP credit. Based on this yearly energy burden, Mr. Kehl credibly testified that Complainant has received the proper annual discount.

Under the CAP-FCO program, a customer may receive a monthly credit to their bill based upon their income and their historical usage. At the time of CAP enrollment in 2019, PECO Energy did not have 12 previous months of data for this specific Complainant and premise combination. Mr. Kehl explained that under the 2015 Settlement, the next default usage is to use the premise usage from a previous customer, Parkside LLC, which was available. Therefore, the default usage used to create the initial FCO calculation was the average CAP Residential Heating usage. That calculation yielded an annual spend of \$1,201.71 versus an Affordable Burden amount of \$1,453.63. Consequently, no credit was provided to Complainant.

Mr. Kehl described the machinations of the quarterly roll offs and the calculation of Complainant's CAP-FCO. Every quarter the oldest quarter of data is rolled off and the most recent quarter is added. In June 2020, as the quarters began to roll off and Complainant had actual usage at the premises, the Complainant obtained an FCO. In June 2020, the Annual spend increased to \$2,744.89 and the Affordable Burden increased to \$1,522.56. This provided an annual FCO of \$1,222.33. In Complainant's case, it would take a full year to have an FCO calculation based upon Complainant's income and usage at the premises.

At the most recent assessment in March 2021, the Annual Spend was \$2,683.96 and the Affordable Burden was \$1,522.56. The annual FCO was then calculated to be \$1,161.40. Complainant exceeded average CAP RH usage. Complainant qualified for a LIHEAP Grant and was provided a payment arrangement. In addition, any months where not all of the CAP credit

needed to be used, it was stored in the overage and used towards subsequent bills when needed.

The customer was charged the \$30.00 minimum bill from June 2020 to November 2020. Any credit that was not used for those bills went towards the Complainant's subsequent bills.

IV. BURDEN OF PROOF

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.

Complainant bears the burden of proof as to this claim. The party with the burden of proof has the duty to establish facts in support of the party's claims by a preponderance of the evidence. The Commission has jurisdiction over the parties and subject matter of this dispute.

The parties agree that PECO bears the burden of proving that it has complied with the policies contained in its 2016-2018 USECP, which was approved by an order of the Commission. 66 Pa.C.S. §315.

Section 1501 of the Code mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa.C.S. §§ 332; 1501. Complainant has the burden to show PECO provided unreasonable service.

V. SUMMARY OF THE ARGUMENT

Complainant seeks relief which is simply unattainable. While she asserts that her energy burden and CAP FCO should be recalculated, there is no basis upon which PECO is required to do. As is stated throughout this brief, the Commission has yet to approve new energy burdens beyond those recognized and adopted in the 2016-2018 USECP. Thus, PECO is properly operating under the only USECP which is approved by the Commission. The Complainant's energy burden was calculated to be consistent with the parameters outlined in the 2015 Settlement, which underpins

the 2016-2018 USECP.

Complainant did not live at her service address prior to July 2019. Accordingly, the 2018-2019 premises data from the service address was used in the calculation of the CAP FCO. As Complainant began to have usage at the service address, the quarters which used the premises data began to roll off. Complainant avers that she used a variety of appliances such as a CPAP, nebulizer and heaters. Consequently, as her usage increased, so did her bills. The only thing which remained constant is the 16% energy burden used by PECO in calculating the CAP FCO.

Complainant argues that this is in violation of §1501 and that PECO should be using the energy burdens outlined in the CAP Policy Statement at 52 Pa. Code §69.265(2)(i). However, Complainant's argument in this regard, is premature. Rather, it is a thinly veiled attempt to re-litigate ALJ Mary Long's decision in *TURN v. PECO Energy Company*, Docket C-2020-3021557. The very same arguments advanced by Complainant here, were dismissed by ALJ Long in the *TURN* decision. Accordingly, these arguments should once again be dismissed here.

The evidence presented overwhelmingly establishes that PECO has complied with both the 2015 Settlement and its obligations under the 2016-2018 USECP in correctly calculating and applying Ms. Eubanks' CAP FCO. Importantly, the Commission has made no changes to the energy burdens outlined in the 2016-2018 USECP and it has not approved PECO's proposed 2019-2024 USECP which does lower the energy burden for Complainant's FPL income. Therefore, because PECO is providing reasonable service in administering the CAP FCO under the only USECP currently in place, it is not in violation of 66 Pa.C.S. §1501 and should face no civil penalty.

Complainant's Formal Complaint must be dismissed.

VI. ARGUMENT

A. PECO Has Adhered to the Terms of its 2016-2018 USECP in Calculating Complainant’s CAP Credit.

The 2015 Settlement and 2016-2018 USECP

The Fixed Credit Option (FCO), as described in the 2015 Settlement between PECO and its stakeholders, calculated a customer’s CAP credit by evaluating the customer’s prior year’s energy usage and household income. N.T. 11/12/21, Joint Exhibit “1”, Appendix “Q”. The CAP credit evaluation detailed in the 2015 Settlement, included a determination of the customer’s allowable “energy burden,” which is a percentage of income that is considered an affordable energy bill. Id. The energy burdens set forth in the Settlement are based upon the ranges found at 52 Pa. Code §69.265 (2)(i)(a) and represent the maximum allowable energy burden for a specific poverty level.

Following approval of the 2015 Settlement, PECO incorporated the CAP FCO Design into its Universal Service and Energy Conservation Plan for 2016-2018, and launched the FCO CAP program in October 2016. The 2016-2018 USECP is presently in effect which outlines the current allowable energy burden.

FPL	Electric Non-Heating	Electric Heating	Electric with Gas Heating
0-50%	5%	13%	13%
51-100%	6%	16%	16%
101-150%	7%	17%	17%

On November 5, 2019, the Commission entered a Final Policy Statement and Order²,

² 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa.Code § 69.261-69.267 (Final Policy Statement and Order entered November 5, 2019), p. 4. See also 52 Pa.Code §§ 69.265(2)(i).

which adopted policy changes related to the design of customer assistance programs, including the allowable energy burdens thresholds for low-income households:

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

The policy statement was published in the *Pennsylvania Bulletin* on March 21, 2020³.

PECO’s 2016-2018 USECP states that “[i]f 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.”⁴ In the *TURN* decision, the Commission held that PECO had substantially complied with the words and the spirit of the settlement and in good faith, PECO proposed a CAP program which incorporated the changes made by the Commission to the household energy burdens to comply with its obligations from the 2016- 2018 USECP.

Calculation of Complainant’s Energy Burden and Application of Credits

PECO’s records indicate that the Complainant has electric service at 871 N. 41st Street, 1st Floor, Philadelphia, PA 19104 under account number 03331-22179. See N.T. 11/12/2021; Joint Exhibit “1”, Appendix “D.” The Complainant was enrolled in the program on July 26, 2019. Consistent with the 2016-2018 USECP program requirements, and using the 16% energy burden for electric heat, PECO calculated the Complainant’s 2019 annual energy burden at \$1,453.63 based on a monthly income of \$757.00 for one adult. *Id.* Based on this yearly energy burden, Complainant had received the proper annual discount. *See* N.T. 11/12/21, Joint Exhibit

³ 50 Pa.B. 1691-1695 (March 21, 2020).

⁴ See Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Docket No. M-2019-3012601 (order entered Oct. 3, 2019) (“An existing USECP will remain in effect until a new one is approved and implemented.”).

“1”, Appendices “A-B”; *see also* N.T. Kehl, 11/12/2021, pp. 20-25.

Under the CAP-FCO program, a customer may receive a monthly credit to their bill based upon their income and their historical usage. At the time of the CAP enrollment in 2019, PECO Energy did not have 12 previous months of data for this specific Complainant and premise combination. *See* Kehl, N.T. 11/12/21, Joint Exhibit “1”, Appendices “C-E.” Therefore, the next default usage, as explained by Mr. Kehl, and is outlined in the 2015 Settlement, is to use the premise usage from a previous customer, which was available. *See* Kehl, N.T., 11/12/21, pp. 29-30, Exhibit “1”, Appendices “A-D”; *see also* Joint Exhibit “2.” Thus, the default usage used to create the initial FCO calculation was the average CAP Residential Heating usage from the premises in 2018-2019. That calculation yielded an annual spend of \$1,201.71 versus an Affordable Burden amount of \$1,453.63. Consequently, no credit was provided.

Every quarter, the oldest quarter of data is rolled off and the most recent quarter is added. In June 2020, as the quarters began to roll off and Complainant had actual usage at the premises, the Complainant obtained an FCO. In June 2020, the Annual spend increased to \$2,744.89 and the Affordable Burden increased to \$1,522.56. This provided an annual FCO of \$1,222.33.

At the most recent assessment in March 2021, the Annual Spend was \$2,683.96 and the Affordable Burden was \$1,522.56. The annual FCO was then calculated to be \$1,161.40. Complainant exceeded the average CAP RH usage. *See*, Kehl, N.T. 11/12/21, Joint Exhibit “1”, Appendix “C.” Mr. Kehl testified that Ms. Eubanks’ use of heaters, a nebulizer and a CPAP machine likely caused the increase in usage, which resulted in a higher bill. Kehl, N.T., 11/12/21 pp. 32-33.

As Mr. Kehl further explained, the FCO is designed to look back at what bills were previously, and says it will give a credit equal to the amount to get the customer down to 16% of

the income bill. However, if a customer's usage changes, or is different than the prior year, the customer can end up with a bill higher than the percent of income or energy burden that the USECP is trying to hit. That is what happened here, as Ms. Eubanks continued to occupy the premises and use various machines and appliances, her bill increased higher than her energy burden. However, she did not receive the maximum credit because her usage did not extend beyond the ceiling outlined in the 2016-2018 USECP. Nevertheless, to further help with her rising bills, Complainant qualified for a LIHEAP Crisis Grant, and was given a Payment Arrangement in July 2020. *See* N.T. 11/12/21, Joint Exhibit "1", Appendix "D". Additionally, any months where not all of the CAP credit needed to be used, it was stored in the overage and used towards subsequent bills when needed. Ms. Eubanks was charged the \$30.00 minimum from June 2020 to November 2020. Any credit that was not used for those bills went towards her subsequent bills.

Dovetailing on what Mr. Kehl testified to, PECO witness Richard Schlesinger, Senior Manager of Retail Rates, also provided credible testimony as to how Ms. Eubanks' credit was accurately calculated in the context of changing rates. *See* N.T. 11/12/2021, Joint Exhibit "1", Appendix "K." Mr. Schlesinger explained that credits can be affected by rate changes. (Schlesinger, N.T. 11/12/2021, pp. 87-88.) As rates change over time, and as the premises usage months roll off each quarter, a new three-month period of usage and billing is rolled up. Eventually, the changes in the residential heating rates; either up or down; get reflected ultimately in the FCO calculation. Thus, a portion of each RH customer's annual credit that is attributable to distribution rates, will be increased by a percentage equal to the system wide RH distribution rate increase. In Ms. Eubanks' case, she does receive such a credit, but not on a real-time basis because her credit followed the quarterly roll-off model described herein. Therefore, as the rates change, so does Ms. Eubanks' credit.

Mr. Kehl attested that in the 2015 Settlement, PECO agreed to address the effectiveness of affordability after it had two (2) years of data, from a third-party vendor, on how the FCO was working. PECO followed the process contemplated in the 2015 Settlement by evaluating the effectiveness of the CAP FCO, analyzing potential CAP changes to improve bill affordability. Thus, in November 2019, PECO filed to move away from the FCO to a PIPP program, to achieve its original aim at affordability for all of its CAP customers, including Ms. Eubanks. However, that filing has yet to be Ordered and adopted by the Commission.

Despite Complainant's assertion that her CAP FCO was improperly calculated, the testimony of both PECO witnesses establishes that Complainant's credit was properly calculated, within the guidelines of the 2015 Settlement and the current 2016-2018 USECP, based upon the income she reported to PECO, changing rates and her current usage.

Unfortunately, PECO cannot move any faster than the pace set by the Commission. Unless or until the Commission moves to adopt PECO's filing to use a PIP, the Company must operate within the 2016-2018 USECP. Therefore, PECO has complied with the CAP-FCO program requirements set forth under 52 Pa. Code §58.9, *et. seq.*

B. The Individual Retroactive Bill Credits Requested By Complainant Cannot Be Automated, and Manual Calculation would be an Enormous Undertaking which Would Need to be Applied to all CAP FCO Customers

Complainant argues for an individually calculated retroactive bill credit, recalculation of her current CAP credit based on an allowable energy burden of 10%, retroactive CAP credits to Complainant and retroactive arrearage forgiveness on Complainant's PECO account. Complainant's requests simply cannot be satisfied.

PECO witness Mark Kehl explained why individual-by-individual retroactive CAP credit calculations requested by Complainant cannot be recreated in PECO's Customer Information Management System ("CIMS"). Most significantly, PECO's CIMS has the FCO calculation

built as a point-in-time calculation. The calculation pulls from specific data tables that contain the relevant data to calculate the FCO at any given time. Those data tables do not store historic billing information beyond what is needed for the point-in-time FCO calculation. The rolling nature of the FCO-related data tables prevents the Company from automatically recalculating CAP bills for individual customers for a prior period.

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

In addition, due to the volume of CAP accounts and the potential timeframe covered, a manual recalculation of bills for each CAP customer, including Ms. Eubanks, would be extremely difficult and if applied for one, would need to be applied for all. The CAP program has nearly 127,000 participants and Complainant has requested retroactive credits to August 2019. (Kehl, N.T., 11/12/21, p. 27.) Since the calculation would need to be done separately for each three-month period for each customer, a minimum of five calculations per customer would be necessary. Regardless, even a manual calculation of Ms. Eubanks' account would not produce a result different than what is required by the current 2016-2018 USECP.

C. PECO provided Complainant with Reasonable Service and did not Violate 66 Pa.C.S. §1501

Complainant alleges that PECO violated §1501 by failing to provide an affordable bill and failed to remedy the unaffordable past billings. This argument is without merit.

As Mr. Kehl explained, Ms. Eubanks' 2019 credit was based upon usage at the premises from the last twelve (12) months⁵. The historical usage at the premise prior to Ms. Eubanks moving in was lower than what Ms. Eubanks' usage became. Therefore, PECO fixed the credit based upon the usage from the past. The CAP FCO doesn't forecast what Ms. Eubanks' usage will be, it uses the past only to estimate what the future would be. (Kehl, N.T. 11/12/21, pp. 70-71.) Therefore, although Ms. Eubanks' usage increased, the fixed credit is locked and adheres to a set formula. PECO provided reasonable service by adhering to the 2016-2018 USECP.

VII. CONCLUSION

Presently, the only USECP in effect is the 2016-2018 USECP. While PECO admits that the CAP FCO program is not perfect, it is bound by not only the actions, but also the pace of the Commission. As Mr. Kehl testified, although PECO filed with the PUC for approval to change the energy burdens and change the CAP program from a fixed credit to a PIP, PECO has not yet received a final order. (N.T., Kehl, 11/12/21, p. 72).

Consequently, until the Commission issues a Final Order, PECO is obligated to operate within the framework of the 2016-2018 USECP and to use the energy burden of 16% for use in calculating Complainant's credit. Therefore, Complainant's Requests for relief are without support.

⁵ Complainant quietly attempts to argue that occupancy should factor into the premises data, as an occupant on a premises would give a more accurate reading of usage, rather than an unoccupied premises. However, the 2015 Settlement simply calls for the "premises" data to be used and does not speak to occupancy. See Joint Exhibit "1", Appendix "Q."

For the reasons set forth above, PECO Energy Company denies that Complainant is entitled to the relief requested and asks that Complainant's Formal Complaint at Docket No. C-2021-3025997 be dismissed with prejudice.

Respectfully submitted,



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**BEFORE THE
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v.	:	DOCKET NO. C-2021-3025997
	:	
PECO ENERGY COMPANY	:	
Respondent	:	
	:	

VERIFICATION

I, Angela M. Lorenz, hereby declare that I am counsel on behalf of PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. §4904 pertaining to false statements to authorities.

Date: February 28, 2022



Angela M. Lorenz, Esq.

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Respondent	:	
	:	

CERTIFICATE OF SERVICE

I, Angela Lorenz, hereby certify that I have this day served a copy of PECO Energy Company's Brief in the above matter upon all interested parties via e-mail to:

Joline R. Price, Esq.
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Dated: February 28, 2022



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