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March 21, 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 *Reply Brief of 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 | : | |

REPLY BRIEF OF PECO ENERGY COMPANY

I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) files this Reply Brief in response to the Main Brief filed by Denise Eubanks (“Complainant”). The Main Brief addresses Complainant’s allegation that PECO is in violation of its Universal Service and Energy Conservation Plan (“USECP”)¹ and therefore, incorrectly calculated Complainant’s CAP FCO credit. Complainant’s Main Brief also alleges that PECO improperly calculated Complainant’s energy burden (“EB”) at 16%, as it is required to utilize the revised EBs at 6% and 10% as outlined in the Commission’s revised CAP Policy Statement (the “Revised CAP Policy Statement”).²

As explained in the Company’s Initial Brief, the only USECP which has been approved by the Commission is the 2016-2018 USECP, which provides for the 16% EB for

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

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

Complainant's income level. The Company's USECP for the 2016-2018 period incorporated the CAP FCO and was approved by the Commission on August 11, 2016. As this ALJ is aware, the FCO provides a fixed credit to CAP customers that was designed to result in an affordable utility bill. As explained by Mr. Kehl, several inputs are necessary to determine the customer credit under the FCO, including household income as a percentage of federal poverty level (FPL) guidelines, the number of household members, utility usage, and the allowable Energy Burdens (EB) set forth in the Commission's CAP Policy Statement.

Considering the FPL in which Complainant's income falls, PECO correctly adhered to the only Commission-approved EBs. PECO continues to properly operate the CAP FCO under the 2016-2018 USECP.

Complainant further asserts that “despite the *express language* (emphasis added) in its USECP requiring use of the energy burdens in the Commission's CAP Policy Statement, PECO did not utilize the updated energy burdens.” The express language Complainant is referring to is the EB Footnote contained in the 2015 Settlement³, which predates the 2016-2018 USECP. This argument has already been decided in *TURN v. PECO Energy Company*, Docket no. C-2020-3021557. In that matter, ALJ Long reviewed the 2015 Settlement and subsequent 2016-2018 USECP Plan in totality, and found PECO had “substantially complied with the words and the spirit of the settlement” and “taken together...PECO's actions in incorporating the revised energy burdens into its CAP program are reasonably compliant with the plain language of Footnote 3 of the 2015 Settlement and subsequent 2016-2018 USECP.”⁴

³ See 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.”

⁴ *Turn v. PECO Energy Company*, Docket No. C-2020-3021557; pp. 21, 23

The record in this case demonstrates that PECO has complied with the terms of the only Commission approved USECP through consistent, good-faith efforts to improve bill affordability for CAP customers. PECO is bound by the Commission and its directives. Unless or until the Commission approves the currently proposed 2019-2024 USECP⁵, PECO has committed no violation as alleged by Complainant.

II. BURDEN OF PROOF

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

III. ARGUMENT

A. Complainant Ignores Key Provisions Of The CAP FCO And Commission Orders

1. The Evidence Demonstrates Complainant's Credit was properly Calculated Using the Previous 12 Months of Usage at the Premises

In her Main Brief, Complainant argues that PECO improperly and incorrectly calculated her CAP credit by using a 12 month look back period for an unoccupied property. The parties agree that in August 2019, Complainant had not resided at the property for 12 months. 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

⁵ PECO has proposed to change its CAP design to a Percent of Income Payment Plan ("PIPP"). The PIPP filing remains pending before the Commission. *See* PECO's Amended Proposed 2019- 2024 Universal Service and Energy Conservation Plan, Docket No. P-2020-3020727 (filed July 8, 2020).

have 12 previous months of data for this specific Complainant and premise combination. Mr. Kehl explained that under the 2015 Settlement and subsequent 2016-2018 USECP, the next default usage is to use the premise usage from a previous customer. Therefore, the default usage used to create the initial FCO calculation was the average CAP Residential Heating usage from the previous customer, Parkside LLC, which was available. 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.

Complainant argues that it was improper for PECO to calculate her CAP credit by using an unoccupied premises. Complainant asserts that PECO's system did not consider whether the property was occupied, continuously or at all, during the time period used as a proxy for the purpose of CAP credit calculation. Complainant is correct. However, there is nothing in the terms of the 2015 Settlement or 2016-2018 USECP which requires PECO to use the usage from a prior, occupied premises. As explained by Mr. Kehl, who was part of the 2015 Settlement and design of the 2016-2018 USECP:

“the FCO settlement does state in detail the calculations of the entire FCO process and in there it does mention how we would go about estimating usage for that customer if we do not have actual usage for that customer at that premise for the previous 12 months. And the first estimate if we can't match up is to look at the previous premise's usage for the last 12 months. So if there was usage for that premise for the previous 12 months that would be the default we would use for that customer's first initial fixed credit calculation.”

See N.T. Mr. Kehl, 11/12/2021, pp. 21-22.

Simply put, without usage by the Complainant at the residence, PECO was required to use the usage registered at the property from September 2018 through July 2019 as a proxy.

In this matter, the Complainant's pro forma profile was properly based on usage at the residence by a prior customer. PECO is required to determine a customer's prior year's

undiscounted charges. Specifically, the USECP provides:

For regulated charges, the undiscounted charge will be calculated using the PECO tariff rates in effect for the time period being examined. For generation charges, the undiscounted charges will be calculated using PECO's generation price-to-compare ("PTC") for the time period being examined. For natural gas commodity charges, the undiscounted charges will be calculated using PECO's natural gas PTC for the time period being examined.

See, USECP at 29.

Moreover, the allegation that PECO should have updated its Annual Credit calculation because there was a base rate increase during the period of usage used to calculate Complainant's initial CAP credit is without merit. The Complainant correctly cites the testimony of Mark Kehl in which he testified that the only update that happens is during the quarterly adjustment of CAP credits when three months of new usage information is substituted for three months of old usage information. As described by Mark Kehl's testimony, PECO was in full compliance with its USECP, which requires:

Every three months, PECO will recalculate Step I using the customer's most recent three months' data on usage/charges. PECO will then use the results of the Step 1 recalculation as inputs to complete Steps 2 through 5 to determine a Quarterly Recalculation of the Annual Credit. The adjusted Annual Credit will be applied to bills on a going-forward basis. This quarterly recalculation will be coordinated with the results of PECO's quarterly Generation Services Adjustment filing and approval so that, in each such quarterly PECO Universal Service and Energy Conservation Plan (2016-2018) Page 33 of 54 adjustment, PECO's just-approved PTC will replace the oldest three months of PTC data in the underlying calculation.

See, USECP at 33.

PECO's USECP further provides that "if PECO is granted a gas base rate increase, the maximum allowable credits will be increased by a percentage equal to the system-wide residential distribution rate increase, applied to the portion of the Maximum Credit that is attributable to distribution rates." *See*, USECP at FN 8. However, PECO's USECP does not

require a recalculation of a prior tenant's twelve-month lookback period in order to compile its pro forma profile. The evidence is clear that PECO has abided by the terms of the 2015 Settlement and the 2016-2018 USECP.

2. PECO's Calculation of Complainant's Energy Burden is Correct

In her Main Brief, Complainant posits that PECO's 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." As Complainant correctly points out, by Order entered November 5, 2019, the PUC updated its CAP Policy Statement and lowered the energy burdens to between 6% and 10% of income. However, Complainant incorrectly asserts that PECO is in violation of the USECP by not changing the EB it used to calculate Ms. Eubanks' credit, contrary to the express language of the USECP which incorporates PUC's revised, lower energy burdens. Again, Complainant's argument is misplaced and premature.

As the parties stipulated, PECO calculates a CAP customer's FCO credit to bring a customer's bill down to that specific percentage of income. USECP at 29-35. On November 5, 2019, as the Company was performing its analysis of potential CAP changes, the Commission issued the Revised CAP Policy Statement, which, among other things, included updated EB percentages. Complainant argues that based upon the November 5, 2019 action, PECO should have changed the EBs in the CAP FCO to match the EBs in the Revised CAP Policy Statement. This position is contrary to the Commission's orders and the plain language of the EB Footnote.

First, the Revised CAP Policy Statement did not become effective by its terms until publication in the Pennsylvania Bulletin on March 21, 2020⁶. Second, in the Final Policy Order,

⁶ Final Policy Order, Docket No. M-2019-3012599, p. 105, Ordering Paragraph no. 4 (stating that the Revised CAP Policy Statement would become effective upon its publication in the Pennsylvania Bulletin); see also 50 Pa. Bull. at

the Commission directed PECO, among others, to file addendums to their existing or proposed USECPs indicating how they intended to implement the policy changes specified in the Revised CAP Policy Statement. This filing requirement was further clarified in a later order in the same docket, where the Commission explained that the addendum should specify “[w]hat changes to its current or pending USECP, if any, the utility proposes to implement.” Again, the CAP Policy Statement which lowers energy burdens cannot be implemented until the Commission approves it.

In the interest of fixing the acknowledged shortcomings of the FCO and reflecting the Revised CAP Policy Statement, PECO filed the Amended USECP to improve bill affordability for all CAP customers, including Ms. Eubanks. PECO is compliant with the only Commission approved USECP and is therefore not in violation of Commission policies.

The Commission should dismiss Complainant’s Complaint in its entirety. There is no Commission approval of this Revised CAP Policy Statement or the 2019-2024 USECP. At this time, the proposed 2019-2024 USECP is still in the hands of the Commission awaiting approval. Complainant’s request for relief is premature and not possible based on the evidence at hand.

B. If The Commission Determines Relief Is Warranted, Complainant’s Specific Requests For Relief Should Be Rejected Because They Ignore Material Information About PECO’s Actions And Obligations Under Commission Orders

As PECO explained in its Initial Brief, Complainant has requested several forms of relief, including requests that the Commission: (1) order PECO to provide Complainant with a bill credit of \$908.35 which is the difference between what Complainant was actually charged in her first year of enrollment in CAP, and what PECO calculated as an affordable bill when

1691-95 (Mar. 21, 2020).

she enrolled in CAP; (2) order PECO to provide Complainant with additional bill credit equal to the additional CAP credit she would have received had PECO implemented a 10% EB in November 2019; (3) fine PECO for its violation of the USECP; (4) find PECO provided Complainant with unreasonable service, in violation of 66 Pa.C.S. §1501.

The Complainant's Formal Complaint is without support and should be dismissed.

PECO has not committed a violation of the 2016-2018 USECP. Moreover, PECO has a strong history of providing robust and varied assistance programs, such as LIHEAP, for its low-income customers, including Complainant. The Company has worked consistently, transparently and in good faith to improve affordability under CAP and comply with Commission orders. In fact, PECO has already sought Commission approval to do the very thing that Complainant is seeking in this case – implement the revised EBs as part of the CAP FCO. Complainant has chosen to simply ignore that filing and disingenuously state that PECO has failed to take any action to comply with the currently approved USECP.

In simple summary, PECO has not provided unreasonable service and has not violated 66 Pa. C.S. §1501. For all these reasons, Complainant's request that the Commission impose any fine or penalty on PECO should be rejected.

IV. CONCLUSION

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

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DENISE EUBANKS

Complainant

v.

PECO ENERGY COMPANY

Respondent

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DOCKET NO. C-2021-3025997

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: March 21, 2022



Angela M. Lorenz, Esq.

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| PECO ENERGY COMPANY | : | |
| 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: March 21, 2022



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