



March 21, 2022

Via e filing

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

**Re: Reply Brief of Complainant Denise Eubanks
Eubanks v. PECO, C-2021-3025997**

Dear Secretary Chiavetta,

Please find enclosed the Reply Brief of Complainant, Denise Eubanks in the above referenced matter.

A copy is being served upon counsel for PECO, pursuant to the attached Certificate of Service. Please contact me with any questions or concerns. I can be reached at (215) 227-4378 or by email at jprice@clsphila.org.

Respectfully submitted,

Joline R. Price, Esquire

Enclosure

Cc: Service List
Administrative Law Judge Darlene Heep (via email to dheep@pa.gov;
sdelvillar@pa.gov).

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Denise Eubanks	:	
Complainant	:	
	:	
v.	:	C-2021-3025997
	:	
PECO Energy Company	:	
Respondent	:	

REPLY BRIEF OF COMPLAINANT DENISE EUBANKS

March 21, 2022

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I. INTRODUCTION AND STATEMENT OF THE CASE

On May 21, 2021, Denise Eubanks (Complainant or Eubanks) filed a Formal Complaint with the Public Utility Commission (PUC or Commission) against PECO Energy Company (PECO), alleging improper calculation of her Customer Assistance Program (CAP) bill. PECO failed to follow the terms of its Universal Service and Energy Conservation Plan (USECP)¹ in calculating Complainant's CAP credit – both at the time of initial enrollment and over the course of her enrollment in CAP. As a result, PECO provided unreasonable service to Complainant in violation of 66 Pa. C.S. § 1501. Complainant is entitled to a bill adjustment that reflects the difference between what she was charged while enrolled in CAP and what she should have been charged had PECO calculated her CAP credits appropriately. Complainant filed her Initial Brief and PECO filed its Main Brief on February 28, 2022. Complainant submits this Reply Brief in response to the arguments raised by PECO in its Main Brief. As set forth herein, PECO has not shown that it has complied with its Universal Service and Energy Conservation Plan or provided reasonable service to Complainant. Complainant has established her right to relief.

II. PROCEDURAL HISTORY

Complainant incorporates by reference the procedural history as set forth in her Initial Brief.

III. FACTS OF THE CASE

Complainant incorporates by reference the facts as set forth in her Initial Brief.

¹ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911 (order entered July 8, 2015), <https://www.puc.pa.gov/pcdocs/1370232.doc>; PECO Energy Company Universal Service and Energy Conservation Plan 2016 to 2018, Docket No. M-2015-2507139 (plan submitted February 17, 2017) (hereinafter USECP or 2016-2018 USECP)

IV. BURDEN OF PROOF

As noted in her Initial Brief, Complainant bears the burden of proof in this Formal Complaint, pursuant to 66 Pa. C.S. § 332(a), to show that PECO violated the terms of its USECP and provided unreasonable service in violation of 66 Pa. C.S. § 1501. To meet her burden, she must establish by a preponderance of the evidence that PECO violated the Public Utility Code or a regulation or order of the Commission.² Preponderance of the evidence means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.³ Preponderance does not depend on the number of witnesses testifying on either side but rather on the credibility of the testimony in light of all the evidence in the case.⁴ If the Complainant presents evidence sufficient to initially satisfy the burden of proof, the burden shifts to PECO to rebut the evidence of the Complainant, and only if PECO's evidence is of co-equal weight does the Complainant need to present additional evidence to rebut PECO's evidence.⁵ Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁶

As described at length in Complainant's Initial Brief, Complainant has shown, by a preponderance of the evidence, that PECO violated its Universal Service and Energy Conservation Plan and provided unreasonable service to Complainant, in violation of 66 Pa. C.S. § 1501. PECO does not set forth facts or argument in its Main Brief sufficient to rebut this evidence.⁷

² *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990).

³ *Se-Ling Hoisery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

⁴ *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957), cert. denied, 353 U.S. 965 (1957).

⁵ *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlt. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

⁶ *Mill v. Commw., Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (1982).

⁷ PECO states that "[t]he 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." PECO M.B. at 5 (citing 66 Pa. C.S. § 315). Regardless of which burden of proof applies in this case, the fact remains that Complainant has clearly shown, by a preponderance of the evidence, that PECO failed to adhere to specific terms in its USECP.

V. SUMMARY OF ARGUMENT

In its Main Brief, PECO argues that it has fully adhered to the terms of its 2016-2018 USECP in calculating Complainant's CAP credit. In making this argument, PECO simply disregards the specific requirements of its USECP. Indeed, Complainant's unrebutted evidence proves PECO violated its USECP by using incorrect usage and rate data to calculate Complainant's CAP credit. PECO's Main Brief presents irrelevant distractions regarding its attempts to obtain Commission approval for changes to its CAP, rather than addressing PECO's failure to operate CAP consistent with the express requirements of its 2016-2018 USECP. PECO's 2016-2018 USECP expressly requires PECO to automatically adopt lower energy burdens when the Commission updated its CAP Policy Statement. This Complaint seeks relief Complainant is entitled to pursuant to the terms and conditions of PECO's USECP as currently in effect. PECO's assertions concerning proposed changes or improvements have no bearing on this matter and are inappropriately presented.

Further, PECO's arguments that it provided Complainant with reasonable service pursuant to section 1501 fall flat. PECO argues that its calculation of Complainant's CAP credit was reasonable because it provided the proper inputs into a formula, and the formula provided the credit. But reasonable service must mean more than simply relying on computer programming and formulas to ensure that bills are accurate. Reasonable service does not permit a utility to blindly operate a CAP according to pre-programmed, automated standards without regard to whether they are compliant with the goals, as well as the specific language, of an approved Universal Service and Energy Conservation Plan. It is unreasonable for PECO, in operating its CAP, to fail to make any adjustment when its program inputs result in unacceptable outcomes, as with Complainant's bills.

Finally, PECO argues that it cannot provide the relief requested, because to do so would be administratively burdensome. In making this argument, PECO mistakenly presumes Complainant seeks relief on behalf of all of PECO's CAP customers. Complainant only seeks adjustments to her own bill due to the particular violations of PECO's USECP demonstrated on the record in this proceeding and is not pursuing relief on behalf of other CAP customers.

VI. ARGUMENT

A. PECO has not adhered to the terms of its 2016-2018 USECP in Calculating Complainant's CAP Credit.

PECO argues that it has adhered fully to the terms of its 2016-2018 USECP in calculating Complainant's CAP credit. This is incorrect. As set forth at length in Complainant's Initial Brief, PECO failed in three specific and distinct ways to adhere to the terms of its Universal Service and Energy Conservation Plan (USECP) in calculating Complainant's CAP credit. First, PECO failed to use the Commission's updated energy burdens following the Commission's update to its CAP Policy Statement. Second, PECO failed to use a full twelve months of premise usage, as required by the 2016-2018 USECP, when calculating Complainant's initial CAP credit. Finally, PECO failed to update Complainant's calculated CAP credit to accurately reflect a change in rates.

PECO inappropriately attempts to distract from its failure to follow the terms of the USECP by referring to an irrelevant third-party evaluation and its ongoing efforts to reform the CAP program as a whole. Neither of these efforts constitutes a defense to the unrebutted evidence showing multiple violations of PECO's existing USECP. Indeed, Complainant seeks to be placed in the position she would be in if PECO had provided reasonable service and followed

the terms of its USECP in accordance with its tariff.⁸

1. PECO failed to use the correct energy burdens.

As PECO describes in its Main Brief, its current CAP structure, the CAP FCO, was first set forth in a 2015 Settlement between PECO and a number of stakeholders.⁹ Those settlement terms were then incorporated directly in PECO's 2016-2018 USECP, which remains in effect.¹⁰ In August 2019, when PECO first calculated Complainant's CAP credit, the percentage of income considered affordable for Complainant under the terms of PECO's USECP was 16%.¹¹ However, as discussed at length in Complainant's Initial Brief, when the PUC updated its policy guidance on affordable energy burdens in November 2019, PECO was obligated to use those new percentages of income (for Complainant, this is now 10%).¹² PECO acknowledges this requirement in its Main Brief, noting that "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.'" ¹³ Yet PECO provides no legal justification for its failure to utilize the new energy burdens in calculating Complainant's CAP bills.

⁸ 52 Pa. Code § 56.11(a). PECO's Tariffs set forth that CAP rates will be set in accordance with its USECP. Customer Assistance Program (CAP) Rider to PECO Energy Company Electric Service Tariff, Supplement No. 1 to Electric Pa. P.U.C. No. 7 (January 1, 2022) at 79, <https://www.peco.com/SiteCollectionImages/Elec%20Compliance%20tariff%20clean%20updated%20with%20replacement%20page%20for%20rule%2013.1.pdf> ("Customers must apply for the rates contained in this rider.... Based on the applicable level of income, number of household members, and their historical usage CAP customers will receive a Fixed Credit Option ("FCO") based upon that individual household's need. The details of the FCO calculation can be found in the PECO Universal Service and Energy Conservation Plan at Docket No. M-2015-2507139.").

⁹ PECO M.B. at 7. *See also* Hearing Exh. 1, Appendix Q.

¹⁰ PECO M.B. at 7; PECO Energy Company Universal Service and Energy Conservation Plan 2016 to 2018, Docket No. M-2015-2507139 (plan submitted February 17, 2017) (hereinafter 2016-2018 USECP).

¹¹ PECO M.B. at 7.

¹² Complainant I.B. at 15-17.

¹³ PECO M.B. at 8.

PECO argues that use of the current energy burdens outlined in the CAP Policy Statement is premature – citing to an initial decision by Administrative Law Judge Mary Long on a different Complaint.¹⁴ PECO states that “[i]n the *TURN* decision, the Commission held that PECO had substantially complied with the words and spirit of the [2015 Settlement].”¹⁵ Contrary to PECO’s assertion, the Commission has not entered a decision in the *TURN* case, and exceptions to the Initial Decision of ALJ Long await the Commission’s final action. Accordingly, PECO suggests that an Initial Decision in an unrelated proceeding is somehow dispositive and forecloses Complainant from asserting that PECO is violating the terms of its USECP. This position is nonsensical. Complainant is not a party to the *TURN* case, her standing to pursue relief is unchallenged, and this case is unrelated to the *TURN* case. *TURN* is a membership organization seeking to enforce a settlement agreement signed by both *TURN* and PECO. By contrast, Complainant was not a party to the 2015 Settlement. Furthermore, Complainant seeks to have PECO correctly apply the rules of its CAP program *to her bill*. Complainant, as a CAP-eligible PECO customer, is entitled to service consistent with the terms and conditions of PECO’s 2016-2018 USECP, including the explicit requirement that PECO use the Commission’s new energy burdens to calculate her CAP credit.

2. *PECO failed to use twelve months of premise usage, as required by its USECP, when calculating Complainant’s initial CAP credit.*

PECO further argues in its brief that Complainant received the proper annual discount.¹⁶ As detailed by PECO and in Complainant’s Initial Brief, in August 2019, PECO calculated that an affordable yearly bill for Complainant would be \$1453.63, based on 16% of income for an

¹⁴ See *Tenant Union Representative Network v. PECO Energy Company*, Pa. PUC Docket No. C-2020-3021557 (Initial Decision entered April 13, 2021).

¹⁵ PECO M.B. at 8.

¹⁶ PECO M.B. at 8.

electric heating customer and Complainant's monthly income of \$757.¹⁷ PECO then states that because PECO did not have 12 previous months of data for the Complainant at the premise, PECO used the premise usage from a previous customer to predict what Complainant's bill would be for the following year.¹⁸ Because that calculation yielded an amount (\$1201.71) that was less than the \$1453.63 PECO calculated was affordable to Complainant, Complainant did not receive any CAP credit.¹⁹

PECO argues that 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."²⁰ PECO blames Complainant's use of heaters and medical devices for her increased costs.²¹ PECO fails to acknowledge or address, however, that instead of using a full 12 months of usage at the premise, PECO only used 11 months and 6 days of usage.²² In doing so, PECO failed to adhere to the requirements of its USECP, which requires 12 months of usage, not 12 months of bills.²³ Unrebutted record evidence conclusively shows that PECO violated the terms of its USECP by failing to actually use 12 months of historical usage in calculating Complainant's CAP credit in 2019.

¹⁷ PECO M.B. at 8.

¹⁸ PECO M.B. at 9.

¹⁹ PECO M.B. at 9.

²⁰ PECO M.B. at 10.

²¹ PECO M.B. at 9-10. PECO brings up that Complainant received a LIHEAP Crisis Grant, was entered into a payment arrangement, and had months where she had CAP credit overages which were applied in subsequent months. PECO M.B. at 10. None of these facts are relevant to whether PECO accurately calculated Complainant's initial CAP credit. *Id.*

²² *See* Complainant I.B. at 17-19.

²³ *See* Hearing Tr. at 57:19-22 (PECO witness Mark Kehl answering on cross examination that the program requires 12 months of usage, not 12 bills).

3. *PECO failed to adjust Complainant's CAP credit based on a change in rates.*

PECO asserts that it accurately calculated Complainant's initial CAP credit in the context of changing rates.²⁴ However, in its Main Brief, PECO admits, as it did in testimony, that it is not properly adjusting CAP customer Annual Credits at the time of a base rate increase, as explicitly required by the FCO Settlement and incorporated into PECO's USECP.²⁵ As described on page 6 of the Settlement Term Sheet, "if PECO is granted an electric base rate increase, the portion of each Rate RH customer's Annual Credit that is attributable to distribution rates will be increased by a percentage equal to the system-wide distribution rate increase."²⁶ Rather, PECO reiterates that changes in residential heating rates, either up or down, get reflected eventually in the FCO calculation as new three month periods of usage are rolled into the credit calculation.²⁷ PECO asserts that this is how annual credits are adjusted to account for distribution rate increases.²⁸

It is undisputed that there was a base rate increase during the period of usage used to calculate Complainant's initial CAP credit. And, it is undisputed that PECO did not adjust Complainant's CAP credit to reflect that base rate increase. In fact, PECO made no adjustment whatsoever, simply allowing its quarterly roll off to substitute for and delay the specific adjustment required to be made when PECO base rates increase, as provided in its USECP. Unrebutted record evidence conclusively shows that PECO violated the terms of its USECP by failing to adjust its CAP credit calculation to reflect its base rate increase.

²⁴ PECO M.B. at 10.

²⁵ See PECO M.B. at 10.

²⁶ Hearing Exh. 1, Appendix Q. See also Hearing Tr. at 38:24-39:6.

²⁷ PECO M.B. at 10.

²⁸ PECO M.B. at 10.

B. PECO provided Complainant with unreasonable service in violation of 66 Pa. C.S. § 1501.

PECO argues in its Main Brief that it provided Complainant with reasonable service.²⁹

Section 1501 of the Public Utility Code requires public utilities like PECO to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities,” and further requires that “[s]uch service and facilities shall be in conformity with the regulations and orders of the commission.”³⁰ As discussed in Complainant’s Main Brief, the Commission has held that the statutory standard of “reasonable service” requires a utility to accurately bill its customers.³¹ PECO’s tariff explicitly incorporates the terms of PECO’s 2016-2018 USECP in its CAP Rate Rider.³² Public utility tariffs have the force and effect of law and are binding on the public utility and its customers.³³ While utilities do not need to provide “perfect” service, they must be held to a standard of reasonableness in their course of business and interactions with customers.³⁴

²⁹ PECO M.B. at 13.

³⁰ 66 Pa. C.S. § 1501.

³¹ *Michael Guagenti v. PECO Energy Company*, Pa. PUC Docket No. F-2018-3001891, Opinion and Order at 5 (Dec. 19, 2019) (citing *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995)), available at <https://www.puc.pa.gov/pdocs/1648249.docx>; *Jay Larry Moyer v. PPL Electric Utilities Corporation*, Pa. PUC Docket No. C-2017-2629683, Opinion and Order at 48 (Oct. 28, 2021), available at <https://www.puc.pa.gov/pdocs/1723657.doc>. See also 66 Pa. C.S. § 102 (“Service, used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public.”).

³² Customer Assistance Program (CAP) Rider to PECO Energy Company Electric Service Tariff, Supplement No. 1 to Electric Pa. P.U.C. No. 7 (January 1, 2022) at 79, <https://www.peco.com/SiteCollectionImages/Elec%20Compliance%20tariff%20clean%20updated%20with%20replacement%20page%20for%20rule%2013.1.pdf> (“Customers must apply for the rates contained in this rider.... Based on the applicable level of income, number of household members, and their historical usage CAP customers will receive a Fixed Credit Option (“FCO”) based upon that individual household’s need. The details of the FCO calculation can be found in the PECO Universal Service and Energy Conservation Plan at Docket No. M-2015-2507139.”).

³³ *Guagenti v. PECO*, Pa. PUC Docket No. F-2018-3001891, Opinion and Order at 6 (Dec. 19, 2019) (citing *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995)).

³⁴ See *In Re Metro. Edison Co.*, 80 Pa. P.U.C. 662, 672 (Nov. 10, 1993), rev’d on other grounds, *Popowsky v. Pa. Pub. Util. Comm’n*, 653 A.2d 1385 (Pa. Cmwlth. 1995) (“The Code only requires a public utility to furnish reasonable service. . . . It does not mandate perfect service nor must a public utility provide the best possible service.”); see also *Lori Brickner and Peter Brickner v. PPL Electric Utilities Corp.*, Pa. PUC Docket C-2009-

PECO's argument, essentially, is that its calculation of Complainant's CAP credit was reasonable because it provided the proper inputs into a formula, and the formula provided the credit, stating that "although Ms. Eubanks' usage increased, the fixed credit is locked and adheres to a set formula."³⁵ This argument fails in multiple ways. First, PECO did not use the proper inputs. PECO states that Ms. Eubank's 2019 credit was based upon usage at the premises from the last twelve months.³⁶ This is false. Complainant has put forth un rebutted evidence that PECO only used 11 months and 6 days worth of usage – not a full twelve months.³⁷ Second, reasonable service must mean more than simply relying on computer programming and formulas to ensure that bills are accurate. As discussed at length in Complainant's Initial Brief, PECO should have known the previous 11 months and 6 days of premise usage was unlikely to provide an adequate credit, based on historic usage at the premise.³⁸ And PECO failed to take into account changes in rates that had already occurred at the time it calculated Complainant's initial CAP credit.³⁹

But even if the calculation of Ms. Eubanks' initial credit was reasonable at the time it was calculated, PECO still failed to provide reasonable service because it simply ignored Complainant's concerns that her CAP bills were not providing her adequate credits under the standards set forth in PECO's USECP. Reasonable service does not permit a utility to blindly operate a CAP according to pre-programmed, automated standards without regard to whether they are compliant with the goals, as well as the specific language, of an approved Universal

2105583, Opinion and Order at 7 (order adopted April 22, 2010), *available at* <https://www.puc.pa.gov/pcdocs/1079281.docx> (holding that the failure of PPL to provide accurate information via its customer service representatives was inadequate service within the meaning of 66 Pa. C.S. § 1501).

³⁵ See PECO M.B. at 13

³⁶ PECO M.B. at 13.

³⁷ Complainant I.B. at 17-19.

³⁸ Complainant I.B. at 22-24.

³⁹ Complainant I.B. at 24-26.

Service and Energy Conservation Plan. It is unreasonable for PECO, in operating its CAP, to fail to make any adjustment when its program inputs result in unacceptable outcomes, as with Complainant's bills.

For all of these reasons, and the reasons set forth in Complainant's Initial Brief, the Commission should find that PECO provided unreasonable service to Complainant.

C. Complainant is entitled to relief.

PECO argues in its Main Brief that Complainant's requests for relief are untenable, citing the administrative burden of manually recalculating CAP customer bills when PECO's Customer Information System does not store historic billing information. PECO's assertion that the manual calculation would be impossible is premised on the idea that PECO would need to do such a calculation for all of its CAP customers.⁴⁰ In actuality, Complainant only seeks adjustments to her own bill – not a widespread adjustment to all CAP customer bills.

As detailed in Complainant's Initial Brief, Complainant's request for relief is actually two distinct bill credits. First, Complainant seeks a bill credit of \$908.35, representing the difference between the amount she was charged between August 2019 and July 2020 (\$2,361.79)⁴¹ and the amount PECO calculated as affordable to her in August 2019, based on a 16% percent of Complainant's income (\$1,453.44).⁴² Providing that bill credit would not require any manual recalculation.

Second, Complainant seeks a bill credit equal to the additional CAP credit she would have received had PECO implemented and maintained the 10% energy burden approved by the Commission in November 2019, as required by PECO's USECP. Contrary to PECO's assertions

⁴⁰ PECO M.B. at 12.

⁴¹ Hearing Exh. 1, Joint Stipulation of Facts at ¶ 35.

⁴² Hearing Exh. 1, Joint Stipulation of Facts at ¶ 32.

in its Main Brief that PECO's Customer Information Management System could not recalculate CAP bills, PECO's witness testified that PECO could issue a retroactive credit to Complainant determined by operating an Excel spreadsheet.⁴³ Nonetheless, PECO disingenuously asserts that a recalculation for Complainant would not produce a different result.⁴⁴ It is mathematically impossible for Complainant's energy burden to be the same at 16% of household income than it is at 10% of household income. Utilizing the lower energy burdens, as required by PECO's USECP, would necessarily result in higher CAP credits, to Complainant's benefit.

Ultimately, there is no obstacle to providing Complainant the relief she is entitled to, based upon her individual circumstances. PECO's broad pronouncements regarding challenges to recalculating bills for all CAP customers are beyond the scope and irrelevant to this Complaint.

VII. CONCLUSION

For the reasons set forth in this Brief and in Complainant's Initial Brief, Complainant requests the Commission:

- 1) Find that PECO violated the terms of its Universal Service and Energy Conservation Plan.
- 2) Find that PECO provided Complainant with unreasonable service, in violation of 66 Pa. C.S. § 1501.
- 3) Order PECO to provide Complainant with a bill credit of \$908.35, 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 she enrolled in CAP.
- 4) Order PECO to provide Complainant with an additional bill credit equal to the

⁴³ Hearing Tr. at 49:16-50:3.

⁴⁴ PECO M.B. at 12.

additional CAP credit she would have received had PECO implemented a 10% energy burden in November 2019.

- 5) Grant any other relief as is appropriate, just, and in the public interest.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joline R. Price".

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Kintéshia S. Scott, Esq.

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