

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Formal Complaint alleged that PECO Energy Company improperly calculated the Complainant’s Customer Assistance Program bill and that PECO provided unreasonable service. This decision finds that Complainant did not meet her burden of establishing that PECO violated a Commission order, Commission regulations or the Public Utility Code in calculating the Complainant’s bill and dismisses the Complaint.

HISTORY OF THE PROCEEDING

On May 21, 2021, Denise Eubanks (“Complainant” or “Ms. Eubanks”), represented by Community Legal Services (“CLS”), filed a Formal Complaint with the Public Utility Commission (“PUC” or “Commission”) against PECO Energy Company (“PECO”). The Complaint alleged that PECO improperly calculated Ms. Eubanks’ Customer Assistance Program (“CAP”) Fixed Credit Option (“FCO”) credit in violation of PECO’s Commission approved Universal Service and Energy Conservation Plan (“USECP”). Specifically, the

Complainant alleged that PECO: 1) failed to provide an affordable bill to the Complainant and 2) failed to update the Complainant's Credit following Commission changes to the CAP policy.

PECO filed its first Answer to the Formal Complaint on June 10, 2021. A Prehearing Order was issued on June 23, 2021. Following three sets of preliminary objections filed by CLS on behalf of the Complainant, PECO filed a Third Amended Answer to the Formal Complaint on September 2, 2021.

In the Third Amended Answer, PECO denied all material allegations, including that Ms. Eubanks was charged more than authorized under the PECO CAP program. PECO also asserted in the Third Amended Answer that the Complainant's credit was properly calculated, that the Complainant was properly charged, and that any credit not used was applied to the Complainant's subsequent bills.

An Initial Hearing was scheduled for October 6, 2021. Following Motions for Continuance by both Complainant and Respondent, the Initial Hearing was rescheduled and held on November 12, 2021.

At the hearing, the Complainant was represented by counsel from CLS and Ms. Eubanks testified on her own behalf. Counsel for PECO presented two witnesses: Mark Kehl, PECO Manager of Universal Service Programs, and Richard Schlessinger, PECO Manager of Retail Rates.

The Parties agreed to the authenticity and admissibility of the following documents that were attached to a written stipulation and admitted into the record marked as follows in Exhibit (Exh.) 1:

- Appendix A. CAP Fixed Credit Option ("FCO") Credit Calculation 1
- Appendix B. CAP FCO Credit Calculation 2
- Appendix C. Activity Statement – Parkside LLC
- Appendix D. Activity Statement - Eubanks
- Appendix E. CAP Application – Eubanks
- Appendix F. CAP Training Materials and Scripts

- Appendix G. CIMS Account contacts
- Appendix H. CAP Scripts – CAP Credit Calculation
- Appendix I. LIURP Memo
- Appendix J. PECO Energy Company Response to II-1 and II-2
- Appendix K. 2018-2019 RH Rate Calculations Summary Sheet
- Appendix L. 2019-2020 RH Rate Calculations Summary Sheet
- Appendix M. CAP Postcard (2020/2021)
- Appendix N. Online Customer Handbook
- Appendix O. 2021 PECO Brochure
- Appendix P. 2020 Social Posts and Email
- Appendix Q. 2015 CAP FCO Settlement

The Account Activity record of Parkside LLC, the service address customer of record prior to Ms. Eubanks, is Exh. 1, Appendix D. Admitted into evidence as Exh. 2 is the Account Activity record of the customer of record prior to Parkside, LLC.

The parties also stipulated as to certain facts. Those stipulated facts that are accepted are included in the Findings of Fact below.

A Briefing Order was issued on January 5, 2022, setting a due date for Main Briefs of February 7, 2022 and setting a due date for Reply Briefs of February 28, 2022.

On January 28, 2022, PECO’s Counsel filed a Motion for Modification of Briefing Schedule. Counsel for the Complainant did not object to the briefing schedule modification and on February 3, 2022, a revised briefing order was issued, setting a due date for Main Briefs of February 28, 2022 and a due date for Reply Briefs of March 21, 2022. Timely briefs were submitted by the parties.

The record was closed on March 21, 2022, the due date for Reply Briefs.

FINDINGS OF FACTS

1. Complainant is Denise Eubanks, a PECO residential heating customer at 871 N. 41st Street, Apt 1, Philadelphia, PA 19104 (“service address”), account number ending in 22179. Joint Stipulation (“JS”) at 22-23.

2. Complainant is a 63-year-old woman who uses a CPAP (Continuous Positive Airway Pressure) machine. JS at 25-26.
3. Complainant is an electric heating customer on PECO's Rate RH for electric heating. JS at 28.
4. Ms. Eubanks uses electricity for cooling, heating, cooking, lighting and medical devices. Tr. at 14:17-19; Exh. 1; JS at 26, 28.
5. When Complainant established service in August 2019 at her current address, she enrolled in PECO's Customer Assistance Program ("CAP"). Tr. at 14:23-24; 16:18-24; Exh. 1, Appendix E.
6. Complainant's only income is Supplemental Security Income (SSI). JS at 29.
7. The Complainant's income falls between 51% and 100% of the federal poverty level ("FPL"). Tr. 34.
8. When Complainant enrolled in CAP in August 2019, the allowable energy burden for an electric heating customer with income between 51% and 100% of FPL was 16% of income. USECP at 30-31.
9. PECO used an income of \$757 in its 2019 CAP Credit Calculation. JS at 32.
10. Using \$757 as Complainant's monthly income, 16% of income is \$121.12 per month and \$1,453.44 per year; using \$757 as Complainant's monthly income, 10% of income is \$75.70 per month and \$908.40 per year. JS at 32.

11. PECO used an income of \$793 in its 2020 CAP Credit Calculation for the Complainant. JS at 33.

12. Using \$793 as Complainant’s monthly income, 16% of income is \$126.88 per month and \$1,522.56 per year; using \$793 as Complainant’s monthly income, 10% of income is \$79.30 per month and \$951.60 per year. JS at 33.

13. To calculate Complainant’s FCO credit upon enrollment in 2019, PECO used previous premise usage. Exh. 1, Appendix A and Appendix C; JS at 34.

14. Since establishing a PECO account at 871 N. 41st Street, Apt 1, Complainant has received the following bills and credits:

Bill Date	Undiscounted Bill (Current Charges)	CAP Credit	Billed Amount for Current Period (Current Charges – CAP Credit)
August 21, 2019	\$38.34	\$0	\$38.34
September 20, 2019	\$36.86	\$0	\$36.86
October 21, 2019	\$134.63	\$0	\$134.63
November 19, 2019	\$301.49	\$0	\$301.49
December 20, 2019	\$403.10	\$12.73	\$390.37
January 24, 2020	\$485.58	\$15.16	\$470.42
February 24, 2020	\$380.63	\$15.52	\$365.11
March 24, 2020	\$294.63	\$85.78	\$208.85
April 22, 2020	\$244.09	\$63.00	\$181.09
May 21, 2020	\$211.75	\$37.12	\$174.63
June 22, 2020	\$80.17	\$50.17	\$30.00
July 22, 2020	\$71.64	\$41.64	\$30.00
Total	\$2,682.91	\$321.12	\$2,361.79

August 20, 2020	\$45.16	\$15.16	\$30.00
September 21, 2020	\$62.14	\$32.14	\$30.00
October 21, 2020	\$142.92	\$112.92	\$30.00

November 19, 2020	\$202.90	\$172.90	\$30.00
December 22, 2020	\$365.69	\$168.78	\$196.91
January 25, 2021	\$433.39	\$182.93	\$250.46
February 23, 2021	\$464.60	\$187.27	\$277.33
March 24, 2021	\$347.34	\$150.93	\$196.41
April 22, 2021	\$241.12	\$110.85	\$130.27
May 21, 2021	\$197.34	\$65.32	\$132.02
June 22, 2021	\$125.81	\$64.35	\$61.46
July 22, 2021	\$52.30	\$22.30	\$30.00
Total	\$2680.71	\$1285.85	\$1394.86

August 20, 2021	\$43.01	\$13.01	\$30.00
September 21, 2021	\$40.36	\$10.36	\$30.00
October 20, 2021	\$86.19	\$56.19	\$30.00
Total	\$169.56	\$79.56	\$90.00
	\$5,533.18	\$1,686.53	\$3,846.65

JS at 35.

15. Usage at the premises from August 2018 through July 2019 was as

follows:

Month	Usage (kWh)
August 2018	0
September 2018	46
October 2018	341
November 2018	570
December 2018	2750
January 2019	1252
February 2019	1865
March 2019	1893
April 2019	630
May 2019	72
June 2019	46
July 2019	208

JS at 37.

DISCUSSION

The Complainant contends that PECO failed to follow the terms of its USECP in calculating her CAP credit – both at the time of initial enrollment and over the course of her enrollment in CAP. As a result, the Complainant contends, PECO provided her with unreasonable service.

As the proponent of a rule or order, the Complainant bears the burden of proof pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public utility violated either its duty under the Public Utility Code (“Code”) or the orders or regulations of the Commission, 66 Pa.C.S. § 701, or that the utility is responsible or accountable for the problem described in the Complaint. *Griggs v. Phila. Gas Works*, Docket Number F-2020-3021754 (Opinion and Order entered July 15, 2021) (citing *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976)). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa. Cmwlth. 1993); *Mill v. Pa. Pub. Util. Comm’n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep’t of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required

to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

The Pennsylvania Public Utility Code requires each public utility to provide reasonable service as follows:

[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). The Code defines “service” as:

[s]ervice, 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, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them.

66 Pa.C.S. § 102.

The Electric Generation Customer Choice and Competition Act (Choice Act) requires that the Commission must “at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electricity service.”

66 Pa.C.S. § 2802(10). In addition, the Commission must:

ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution service territory. . . Programs under this paragraph shall be subject to the administrative oversight of the commission, which shall ensure that the programs are operated in a cost-effective manner.

66 Pa.C.S. § 2804(9).

The Choice Act defines universal service and energy conservation as follows:

[p]olicies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protections and policies and services that help low-income customers reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

66 Pa.C.S. § 2803.

The Commission’s CAP Policy Statement defines Customer Assistance Programs as:

alternatives to traditional collection methods for low-income customers. Customers participating in CAPs agree to make monthly payments based on household size and gross household income. Customers make regular monthly payments, which may be for an amount that is less than the current tariff bill for utility service including pre-CAP arrearages, in exchange for continued provision of the service. Class A electric utilities and natural gas utilities with gross intrastate annual operating

revenue in excess of \$40 million should adopt the guidelines in §§ 69.263-69.265 (relating to CAP development; scope of CAPs; and CAP design elements) implementing residential CAPs.

52 Pa. Code § 69.261.

The parties have stipulated to the following information regarding the PECO CAP-FCO program:

The PUC's CAP Policy Statement states that “[b]efore implementing, revising or expanding a CAP, a utility should file its CAP proposal to the Bureau of Consumer Services and on stakeholders from the utility’s most recent USECP proceeding. This will allow for staff review, comments, discovery, and revisions prior to Commission approval of design elements.” 52 Pa. Code § 69.263(c).

Commission regulation requires PECO as an Electric Distribution Company (EDC) to “submit to the Commission for approval an updated universal service and energy conservation plan every 3 years.” 52 Pa. Code §54.74. PECO’s current Universal Service and Energy Conservation Plan (USECP) was first filed on October 1, 2015. PECO’s Universal Service and Energy Conservation Plan (USECP) contains the rules for how PECO’s Customer Assistance Program (CAP) operates. See PECO Energy Company Universal Service and Energy Conservation Plan 2016 to 2018, submitted February 17, 2017, Docket No. M-2015-2507139 (hereinafter USECP). PECO’s USECP incorporate the Commission-approved CAP FCO Settlement terms and conditions of PECO’s CAP. PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911 (order entered July 8, 2015)

Following a final Commission Order on February 10, 2017, PECO filed its Universal Service and Energy Conservation Plan 2016 - 2018 on February 17, 2017. PECO’s 2016-2018 USECP remains in effect. 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.”).

PECO's CAP provides a bill credit to provide CAP customers with an affordable bill, called the Fixed Credit Option or FCO credit. PECO calculates FCO credits using an allowable energy burden, which is a percentage of income intended to be affordable for the customer. 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.

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. See 2019 Amendments to CAP Policy Statement, Docket No. M-2019-3012599, Final Policy Statement and Order (Nov. 5, 2019) (hereinafter CAP Policy Statement Order).

The updated CAP Policy Statement sets an allowable energy burden for an electric heating customer with income between 51% and 100% of FPL at 10% of income. CAP Policy Statement Order at 27, 29-30; 52 Pa. Code § 69.265(2)(i).

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." USECP at 30-31.

PECO's USECP provides that the allowable energy burden that is used to calculate a customer's fixed credit is based on the maximum energy burden in the Public Utility Commission's CAP Policy Statement. USECP at 30 n. 3.

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." Id.

JS at 4-21. The design of PECO's CAP FCO was part of a settlement (the "Settlement" or "2015 Settlement") approved by the Commission in the docket for the Company's 2013-2015 Universal Service and Energy Conservation Plan (the "2013-2015 USECP"), Docket No. M-2012-2290911 (order entered July 8, 2015). 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.

Since August of 2019, Ms. Eubanks has been a PECO electric residential heating (RH rate) customer at 871 N. 41st Street, Apt 1, Philadelphia, PA 19104 (service address), account number ending in 22179. Ms. Eubanks is 63 years old and uses a CPAP machine. Ms. Eubanks enrolled in the PECO CAP in August 2019 at the service address. Exh. 1, Appendix E. PECO used the Complainant’s only income at that time of \$757 per month in SSI to calculate her CAP bill. JS at 32. The Complainant’s income, which continued to be SSI, places her within 51% to 100% of the federal poverty level (FPL). Exh. 1, Appendix A.

The Complainant contends that PECO has incorrectly calculated her CAP bill. Specifically, the Complainant asserts that PECO violated the terms of the USECP in calculating Complainant’s CAP credit. The Complainant also contends that PECO provided Complainant with unreasonable service in violation of 66 Pa.C.S. § 1501.

PECO contends that the company complied with the terms of its 2016-2018 USECP in calculating Complainant’s CAP Credit and did not provide unreasonable service to the Complainant.

As a general proposition, PECO also asserts that the Complainant’s argument that PECO has violated § 1501 and that PECO should use the energy burdens outlined in the CAP Policy Statement at 52 Pa. Code § 69.265(2) is premature and is an attempt to again present arguments made in *TURN v. PECO Energy Company*, Docket C-2020-3021557 (*TURN*), in which exceptions are pending before the Commission. In the *TURN* Initial Decision, it was held that PECO had substantially complied with the words and the spirit of the settlement and that, in good faith, PECO has filed a proposed new CAP program which incorporates the changes made by the Commission to the household energy burdens in an effort to comply with its obligations from the 2016- 2018 USECP.

¹ 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).

Citing *TURN*, PECO contends that the arguments made here should be dismissed as previously decided. Given that the *TURN* matter is pending before the Commission on Exceptions, there is no basis upon which to give the decision precedential or controlling weight here.

A. USECP Calculations

The Complainant contends that PECO incorrectly calculated her CAP credits in three specific ways. They are: 1) failing to use the appropriate energy burden, 2) using less than twelve months' usage in calculating Complainant's initial CAP credit, and 3) failing to adjust Complainant's Annual Credit to reflect an increase in base rates.

1. Use of updated energy burdens

When the Complainant submitted the application for PECO Universal Services-Customer Assistance Program in August 2019, the allowable energy burden for an electric heating customer with income between 51% and 100% of the FPL was 16% of income. JS at 31. By Order entered November 5, 2019, the Commission updated its CAP Policy Statement and lowered the energy burdens to between 6% and 10% of income. JS at 18. For an electric heating customer with income between 51% and 100% of the FPL, the energy burden was set at 10% of income. JS at 15; CAP Policy Statement Order at 27, 29-30; 52 Pa. Code § 69.265(2)(i).

The Complainant asserts that despite the express language in its USECP requiring use of the energy burdens in the Commission's CAP Policy Statement, PECO did not utilize the updated energy burdens following November 2019, resulting in the Complainant not receiving the proper CAP bill. The Complainant notes that PECO's USECP provides that the allowable energy burden that is used to calculate a customer's CAP credit is based on the maximum energy burden in the Commission's CAP Policy Statement. JS at 17. The Complainant also notes 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," referencing JS at 16 and the USECP at 30-31. Eubanks Main Brief at 6.

The evidence showed that PECO has not utilize the lowered energy burden when calculating the Complainant's CAP bills. As Mr. Kehl, PECO Manager of Universal Services, testified, PECO made no change to its CAP credit calculations and PECO has continued to use the 16% energy burden for its calculations rather than the 10% in the Commission's updated CAP Policy Statement. Tr. 24-25.

PECO acknowledges that on November 5, 2019, the Commission entered a Final Policy Statement and Order, that lowered the energy burden for a customer with the Complainant's FPL to 10%. PECO Main Brief at 7-8 referencing 50 Pa.B. 1691-1695 (March 21, 2020). PECO also acknowledges that the 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." *Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule*, Docket No. M-2019-3012601 (Order entered Oct. 3, 2019). See PECO Main Brief at 7-8.

PECO nevertheless contends that it has used the correct energy burden in calculating the Complainant's CAP credit. Specifically, PECO asserts that 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. Therefore, PECO contends, the 2016-2018 USECP, with a 16% allowable energy burden, is presently in effect.

PECO did not commit a violation by using the current 16% energy burden rather than the 10%. As Mark Kehl testified, 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. Tr. 24-25. This is reflected in the agreement, which provides for a two-year evaluation of the program plus six months for data analysis and evaluation. 2015 Settlement at 9. In September 2020, based on the data and evaluation, PECO filed proposed changes to its CAP program with the Commission. Tr. 25. The proposal would change the low-income

program from an FCO to a PIP, percent of income program. Tr. 25,72. The Commission had not yet issued an Order regarding the proposed program. Tr. 26. Accordingly, it is not unreasonable for PECO to consider and use the 16% energy burden in its calculations for the PECO low-income program pending a Commission Order.

2. Months of premise usage considered when calculating Complainant's initial CAP credit

PECO's USECP provides that when a customer's usage is not available for the prior 12 months of service, PECO can create a pro forma profile based on usage at the residence by prior customers to calculate a customer's credit. USECP at 29-30, Tr. at 57. The Complainant asserts that PECO violated its USECP because the company did not utilize 12 months of usage in calculating her CAP credit. Eubanks Main Brief at 7.

At the time PECO calculated Complainant's initial CAP credit in August 2019, Complainant's usage was not available for any months except August 2019. Exh. 1, Appendix A. As Mr. Kehl testified, PECO employed as proxy the usage of Parkside, LLC, the landlord and previous PECO customer at the service address.

After the prior tenant moved out of the service address, the PECO bill for the service address was in the name of the property landlord, Parkside, LLC. Tr. at 58:8-18. PECO used the Parkside, LLC usage data from September 2018 through August 2019, to calculate the Complainant's CAP bill and credit. Tr. at 29:7-20, 51:10-14, 52; *see also* JS at 34,37; Exh. 1, Appendix A and Appendix C.

Complainant notes that Parkside, LLC usage for September 2018 was for a six-day billing period, not a full month of usage. Tr. at 53:12-18; Exh. 1, Appendix C. The Complainant contends that PECO erred by using the Parkside, LLC usage data and only 11 months and 6 days of usage rather than a full 12 months of usage in calculating the Complainant's CAP credit. The Complainant further suggests that a more accurate calculation could have been obtained by using 12 complete months of the usage by the previous tenant, Exh.

2, rather than that of Parkside. LLC. Eubanks Main Brief at 22.

It is PECO's position that because it did not have 12 previous months of usage at the service address for the Complainant, PECO properly used a default method of calculation. Mr. Kehl testified that the 2015 Settlement provides that in the absence of 12 months of usage at the premises of the customer, the company may use the data of a previous customer. Tr. 29-30. The language of the 2015 Settlement confirms his testimony and states in pertinent part:

Step 1. Determine customer's prior year's undiscounted charges:

...

- Pro forma method of determining prior year's usage: If the customer does not have 12 months of prior service at their current residence at the time the above calculation is conducted, then PECO will create a pro forma profile to calculate that customer's trailing twelve months usage/charges. The pro forma profile will be based on the following, in order of preference if data is available.
 - Usage at that residence by the customer for the months available and actual usage by prior customers for the months unavailable.
 - Usage at that residence of prior customers.

Exh. 1, Appendix Q, Exhibit A. .²

Further, the 2015 Settlement notes that because there will be a recalculation quarterly, over time, the pro forma calculations will start to be replaced by data on the customer's actual usage three months after the pro forma method is used. Settlement, Exh. 1, Appendix Q. This recalculation began for the Complainant three months after the pro forma

² Mr. Kehl also testified that the CAP calculations default to a residence rather than usage by the customer because the company believes that the square footage, the condition of the home and such have a greater bearing on the usage. Tr. 63.

calculation used by PECO for the Complainant's initial CAP calculation at the service address. This ultimately, and shortly, rendered negligible the effects of PECO using 11 months and 6 days in its initial calculation. See Exh. 1, Appendix Q at 1. PECO's use of the Parkside, LLC usage data does not rise to a violation.

3. Updating CAP credits upon a change in rates.

The Complainant contends that PECO failed to use the base rate increase during the period of the Complainant's usage to update and adjust her Annual Credit calculation. Eubanks Main Brief at 9. The Complainant notes that the Commission-approved CAP FCO Settlement establishing the terms and conditions of PECO's CAP states that "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." PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911 (order entered July 8, 2015); Settlement Terms, p. 6.

PECO increased base rates starting in January 2019. Tr. at 93:2-4 Mr. Kehl testified that PECO did not update the Annual Credit calculation based on a rate increase. Tr. 39-40, 100.

Richard Schlesinger, PECO Senior Manager of Retail Rates, however, testified that changing rates were reflected in the Complainant's credit calculation. See Exh. 1, Appendix K, Calculation Summary Sheets. Mr. Schlesinger explained that 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 into any calculations. Therefore, eventually, the changes in the residential heating rates are part of the FCO calculation. The 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. Tr. 87-88. Mr. Schlesinger further explained that in Ms. Eubanks' case, her credit reflected the rate increase as the credit is recalculated quarterly. *Id.* There is no violation by PECO here.

B. Unreasonable Service

The Complainant contends that PECO's actions were unreasonable, in violation of 66 Pa.C.S. § 1501 because PECO violated the terms of its Commission-approved USECP and was not in compliance with the Commission's changes to its USECP policy. Eubanks Main Brief at 12. The Complainant also contends that even if PECO's calculation of Complainant's CAP credit was not directly in violation of its USECP, PECO still provided unreasonable service because it "failed to remedy its CAP in operation," continuing to charge Complainant more than her appropriate energy burden and because "[r]easonable 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." Eubanks Main Brief at 12, Eubanks Reply Brief at 12.

PECO argues that in calculating the Complainant's initial CAP credit and thereafter, it complied with its USECP. I agree. As discussed above, PECO acted in accordance with the CAP Policy thus far approved by the Commission. It is not unreasonable that PECO did not begin implementing a CAP policy that is pending approval before the Commission.

PECO has filed a revamped Customer Assistance Program for Commission consideration. The issues raised by the Complainant in this matter reveal important questions as to whether the Commission approved USECP Settlement and the current PECO-CAP FCO actually resulted in an affordable energy burden for customers such as a 63-year-old Complainant on a fixed SSI income. It is also questionable whether calculating the Complainant's energy burden based on the commercial and partly unoccupied 12 months of the previous customer at the service address is logical given that the credit is to be applied to the account of an individual, particularly when PECO had the history of the Complainant at a previous address and an individual previous tenant at the service address. It is anticipated that the Commission will consider these issues when reviewing the proposed revamped PECO USECP currently pending Commission approval.

Nevertheless, in the matter before me, the evidence established that PECO did comply and is complying with the USECP and CAP FCO settlement and polices as currently written and approved, whatever their failings. The Commission has acknowledged and accepted that the PECO CAP-FCO program would negatively affect approximately 40,000 customers.³ The Commission has not yet approved energy burdens other than those in the 2016-2018 USECP for the PECO low-income program. At all times relevant to this Complaint, PECO performed its CAP-FCO calculations under the only PECO USECP approved by the Commission. Therefore, it cannot be concluded here that PECO has violated a Commission Order, regulation or the Public Utility Code. Nor can PECO's calculations, based on the current state of affairs, be determined unreasonable.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding.
66 Pa.C.S. § 701.

2. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission.
66 Pa.C.S. § 332(a).

3. Section 1501 of the Code, 66 Pa.C.S. § 1501, mandates that the Respondent provide reasonable and adequate service, not perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1977).

4. Complainant has not met her burden of proving that PECO's calculations of the Complainant's energy burden credit under the terms of the USECP currently approved was unreasonable service under 66 Pa.C.S. § 1501. 66 Pa.C.S. § 332(a).

³ See *PECO Energy Co. Universal Serv. & Energy Conservation Plan for 2016-2018* 2016 Pa. PUC LEXIS 249 at 19.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint in the matter of Denise Eubanks v. PECO Energy Company at Docket Number C-2021-3025997 is denied and dismissed.
2. That the Secretary shall mark this docket closed.

Date: June 15, 2022

_____/s/_____
Darlene Heep
Administrative Law Judge