



July 5, 2022

Via e filing

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

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

Dear Secretary Chiavetta,

Please find enclosed the Exceptions of Complainant Denise Eubanks to the Initial Decision of Administrative Law Judge Darlene Heep 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
Office of Special Assistants (ra-OSA@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Denise Eubanks	:	
Complainant	:	
v.	:	Docket No. C-2021-3025997
	:	
PECO Energy Company	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Exceptions of Complainant, Denise Eubanks, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

Via Email Only

Angela Lorenz, Esq.
Griesing Law LLC
1880 JFK Blvd., Suite 1800
Philadelphia, PA 19103
alorenz@griesinglaw.com

Khadijah Scott, Esq.
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
khadijah.scott@exeloncorp.com



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Joline R. Price, Esq.
Pa. Attorney ID: 315405
Community Legal Services, Inc.
1410 W. Erie Ave
Philadelphia, PA 19140
Tel: 215-227-4378
jprice@clsphila.org

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EXCEPTIONS OF COMPLAINANT DENISE EUBANKS

July 5, 2022

Attorneys for Denise Eubanks

Joline R. Price, Esq.
Robert W. Ballenger, Esq.
Kintéshia S. Scott, Esq.

COMMUNITY LEGAL SERVICES, INC.
1410 W. Erie Ave
Philadelphia, PA 19140
215-227-4378

I. INTRODUCTION

Denise Eubanks (Complainant or Eubanks) alleges in this Complaint that PECO improperly calculated her Customer Assistance Program (CAP)¹ bill. PECO failed to follow the terms of its 2016-2018 Universal Service and Energy Conservation Plan (2016-2018 USECP)² 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.

In her Initial Decision, Administrative Law Judge (ALJ) Darlene Heep incorrectly concludes that Complainant has not met her burden to show that PECO violated its 2016-2018 USECP and that such violations constituted unreasonable service in violation of 66 Pa. C.S. §1501. This conclusion is erroneous because Complainant irrefutably demonstrated that PECO persisted in multiple violations of its 2016-2018 USECP in failing to properly calculate her CAP

¹ PECO's CAP is described as a "fixed credit option" or "FCO" that calculates an amount of credits to be applied to participants' bills over a 12-month period, subject to adjustments described in the 2016-2018 USECP.

² This Complaint involves PECO's obligations under its current Universal Service and Energy Conservation Plan for 2016 to 2018. See PECO Energy Company Universal Service and Energy Conservation Plan 2016 to 2018, Pa. PUC Docket No. M-2015-2507139 (plan submitted February 17, 2017), <https://www.puc.pa.gov/pcdocs/1510970.pdf> (hereinafter 2016-2018 USECP).

After the ALJ issued her decision, the Commission entered an order approving PECO's proposed 2019-2024 Universal Service and Energy Conservation Plan, which includes implementation of a percentage of income plan for PECO's CAP and use of the current CAP Policy Statement energy burdens. See generally PECO Energy Company Universal Service and Energy Conservation plan for 2019 to 2024, Pa. PUC Docket No. M-2018-3005795 (Order entered June 16, 2022), <https://www.puc.pa.gov/pcdocs/1748763.pdf>. As of the date of these exceptions, PECO has not yet filed its compliance plan, and as a result, its current USECP remains in effect. Id. at 109 ("[T]he PECO Energy Company 2016-2018 Universal Service and Energy Conservation Plan shall remain in effect in whole or in part until its 2019-2024 Universal Service Plan is implemented."). In addition, even when that plan goes into effect, Complainant's claims still stand, as they relate to charges incurred while the 2016-2018 Plan was in place. See, e.g., *DeSantis v. Pennsylvania Power Company*, Pa. PUC Docket No. C-2019-3013652, Initial Decision at 10 (Apr. 27, 2020), <https://www.puc.pa.gov/pcdocs/1661583.pdf> (holding that a utility provided unreasonable service by applying criteria from its previous USECP when the customer application for a hardship fund grant was submitted after the new plan was in effect.).

credits. PECO's refusal to adhere to and render bills compliant with its Commission-approved 2016-2018 USECP constitute *per se* violations of its obligation to render reasonable service to Complainant. Complainant respectfully submits that the Initial Decision must be reversed and PECO must be required to credit Complainant's account to rectify its violations.

II. BACKGROUND AND PROCEDURAL HISTORY

Complainant incorporates by reference the background and procedural history set forth in her main and reply briefs.

III. EXCEPTIONS

Exception 1: The ALJ erred in concluding that PECO's 2016-2018 USECP does not require use of updated energy burdens in calculating Complainant's CAP credits.

In her Initial Decision, the ALJ correctly observed that “[t]he evidence showed that PECO has not utilized the lowered energy burden when calculating the Complainant's CAP bills.” I.D. at 14. However, the ALJ erred in holding that PECO nonetheless did not commit a violation by failing to utilize the Commission's revised, lower energy burdens set forth in its revised its Policy Statement on Customer Assistance Programs, 52 Pa. Code § 69.261-267 (CAP Policy Statement).³ As noted in the Initial Decision “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.” I.D. at 11. The language of the 2016-2018 USECP specifically provides: ***“If the Commission changes the energy burden ranges set forth in its [CAP] Policy Statement, PECO will utilize the new maximum allowable***

³ PECO continued to calculate Complainant's CAP credits using a 16% energy burden, after the revised CAP Policy Statement provided for a 10% energy burden applicable based on Complainant's income and household composition. As described herein, PECO's 2016-2018 USECP specifically requires PECO to calculate CAP credits based on the revised, lower energy burden standards.

energy burden for each poverty level.” 2016-2018 USECP at 30 n.3 (emphasis added). As a result, PECO was required to recalculate CAP credits when the Commission lowered the energy burdens in the revised the CAP Policy Statement by Order entered November 5, 2019. It is undisputed that PECO failed to do so, and so Complainant has unquestionably met her burden to show PECO violated its 2016-2018 USECP.

Despite the unambiguous language requiring PECO to use the revised energy burdens to calculate CAP credits, the ALJ inexplicably concluded that PECO did not commit a violation by failing to do so. I.D. at 14. The ALJ bases her decision on PECO’s testimony that it complied with the requirement to complete an evaluation of the effectiveness of its CAP as required by the 2015 Settlement regarding the design of CAP reflected in the 2016-2018 USECP, and based on that evaluation, proposed to redesign its CAP. *Id.* Thus, the ALJ’s conclusion illogically excuses PECO’s noncompliance with its 2016-2018 USECP based upon its satisfaction of a separate and irrelevant commitment. PECO’s noncompliance with the clear language of its 2016-2018 USECP must not be brushed aside merely because PECO evaluated its CAP and subsequently requested permission to change it.⁴

That the 2015 Settlement requires an evaluation of PECO’s CAP is irrelevant to this Complaint. PECO’s 2016-2018 USECP imposes a separate and distinct obligation upon PECO to utilize the lower energy burdens set forth in the current CAP Policy Statement. PECO’s compliance with the requirement to conduct an evaluation cannot obviate its responsibility to utilize the revised energy burdens.

⁴ The ALJ correctly noted that a separate case (*Tenant Union Representative Network v. PECO*, Pa. PUC Docket No. C-2020-3021557, Initial Decision (Apr. 9, 2021)), which also addresses the failure of PECO to use the updated energy burdens, is still pending before the Commission and has no precedential value with regards to this Complaint. I.D. at 13.

Moreover, Complainant does not seek to have PECO modify or amend its 2016-2018 USECP. She simply seeks to enforce the explicit obligation PECO has to use the Commission's revised energy burdens as specifically provided in the 2016-2018 USECP. Until PECO implements changes to its CAP, PECO remains obligated to follow the rules in its current 2016-2018 USECP. As acknowledged by PECO witness Mark Kehl in testimony, the language of PECO's 2016-2018 USECP does not require PECO to make an additional filing prior to implementing the lower energy burdens in PECO's CAP. See Eubanks M.B. at 16, citing Hearing Tr. at 77:13-16.

In addition to the explicit language of the 2016-2018 USECP requiring PECO to use updated energy burdens for CAP, PECO represents to its customers (including Complainant herself) that PECO is required to use the energy burdens found in the CAP Policy Statement. As discussed in Complainant's Main Brief:

In October 2019, according to call records, Complainant called PECO to inquire about her CAP credits. She was told by a call center representative that CAP credits are based on usage, energy burden and income. PECO's training manual for call center representatives states that if a customer calls in with questions about their CAP credit, they are told that "the company calculates the customer's energy burden based upon the customer's federal poverty percentage. The energy burden is a percentage of your annual income, and the amount that you are reasonably able to afford to pay for utility service *per the PUC's affordability guidelines.*"

Eubanks M.B. at 16 (citing Hearing Exhibit 1).

Whether or not PECO violated the terms of its current 2016-2018 USECP cannot depend on whether the Commission has approved new proposals from PECO regarding its CAP design, as the ALJ suggests. Once the Commission updated its CAP Policy Statement, PECO's 2016-2018 USECP required it to use the 10% energy burden to calculate Complainant's CAP credits,

based on her income and household composition. PECO violated its 2016-2018 USECP by failing to do so.

Exception 2: The ALJ erred in holding that PECO's failure to use a full 12 months of usage history was negligible and therefore did not rise to the level of a violation.

The ALJ acknowledges that PECO failed to use 12 months of premise usage data, but finds that the effect of doing so was negligible, even when combined with PECO's use of a commercial landlord account usage data. I.D. at 17. This is clearly erroneous. In finding this violation to be negligible, the ALJ relies on the fact that the CAP credit is recalculated every three months, substituting actual usage for the prior premise usage. I.D. at 16-17. However, the ALJ's conclusion that this "ultimately, and shortly, rendered negligible the effects of PECO using 11 months and 6 days in its calculation," is incorrect. I.D. at 17. As set forth in Complainant's Main Brief, in addition to using less than 12 months of proxy usage, PECO used prior premise usage in the name of a commercial landlord, and usage data that was significantly lower in several different months when compared to prior premise usage by an actual tenant. Eubanks M.B. at 8-9; 13.

The ALJ acknowledges these shortcomings:

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.

I.D. at 18.

This violation, far from being negligible, directly contributed to Complainant's receipt of unaffordable bills, as detailed at length in Complainant's Main Brief. The use of less than 12 full months of actual usage data is a significant component of PECO's larger failure to reasonably calculate CAP credits. Indeed, it is patently unreasonable for PECO to use premise usage as a

proxy when it knows, or should know, that the premise usage is incomplete, unrepresentative, and unacceptable. Complainant has met her burden to show that, in fact, PECO did violate its 2016-2018 USECP by failing to utilize 12 full months of actual usage data, and by failing to ensure that even the usage data utilized was reasonable for calculating CAP credits.

Exception 3: The ALJ erred by failing to acknowledge the specific requirement that PECO update CAP credits based on changes in base rates.

The ALJ errs by conflating two distinct requirements in PECO's 2016-2018 USECP – one which requires updating the CAP credits every three months by substituting in the previous three months of usage in the calculation, and a separate requirement that Annual CAP credits increase to correspond with PECO electric or gas base rate increases. Indeed, the ALJ's error renders meaningless PECO's obligation to increase Annual CAP credits when it raises base rates, disregarding the intention of this provision that CAP bills do not become unaffordable when PECO rates increase. As described in Complainant's Main Brief:

The terms of PECO's USECP incorporate by reference the terms of the Commission-approved CAP FCO Settlement establishing the terms and conditions of PECO's CAP. 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." The purpose of this provision is to adjust CAP customers' annual credits, calculated in part based on past billings, to fully represent the actual impact, going forward, of increased rates and charges. Indeed, for CAP to provide affordable bills, the credit must increase in corresponding amount as the billing rates to which it is applied.

Because there was a base rate increase during the period of usage used to calculate Complainant's initial CAP credit, PECO should have updated its Annual Credit calculation based on that rate increase. However, as noted by PECO witness Mark Kehl, PECO did not adjust the Annual Credit calculated based on the usage at the residence. According to Mr. Kehl, 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.

Eubanks M.B. at 18-19 (internal citations omitted).

The requirement that PECO update CAP credits every three months with updated usage is a separate requirement from the adjustment required when PECO base rates increase.

Complainant met her burden because PECO has admitted on the record that it has not implemented the CAP credit adjustment when it has increased its base rates. In concluding that Complainant had not proven that a violation occurred, the ALJ excuses PECO's acknowledged failure to follow the clear requirement of its 2016-2018 USECP.

Exception 4: The ALJ erred in holding that PECO has acted reasonably and in accordance with its 2016-2018 USECP and the CAP Policy Statement.

Addressing whether PECO provided reasonable service to Complainant, the ALJ states that "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." I.D. at 18. The premise for this conclusion is erroneous because, as explained above, the explicit language of the 2016-2018 USECP requires PECO to utilize the energy burdens set forth in Commission's CAP Policy Statement, which was approved by final order on November 5, 2019, and was not *pending* after such date. The ALJ further states that PECO is currently complying with "policies as currently written and approved, whatever their failings." I.D. at 19. This conclusion is likewise premised upon an erroneous conclusion; namely, that PECO is in compliance with its 2016-2018 USECP as written, which it is not.

Ultimately, Complainant alleges PECO provided unreasonable service, in violation of Section 1501, because it violated the terms and conditions of its current 2016-2018 USECP.⁵ As noted by the ALJ in her decision, PECO filed its 2016-2018 USECP on February 17, 2017, and

⁵ *DeSantis v. Pennsylvania Power Company*, Pa. PUC Docket No. C-2019-3013652, Initial Decision at 10 (Apr. 27, 2020), <https://www.puc.pa.gov/pcdocs/1661583.pdf> ("[F]ailure to apply all the criteria from the most current universal service plan is a violation of Section 1501 of the Public Utility Code.").

that USECP remains in effect.⁶ I.D. at 10. Thereafter, the Commission amended the CAP Policy Statement to lower the maximum energy burdens. I.D. at 11. Those energy burdens can be found in the Commission’s CAP Policy Statement at 52 Pa. Code § 69.265(2)(i). The language of PECO’s 2016-2018 USECP explicitly requires PECO to use the CAP Policy Statement energy burdens when they are modified, stating “*If the Commission changes the energy burden ranges set forth in its [CAP] Policy Statement, PECO will utilize the new maximum allowable energy burden for each poverty level.*” 2016-2018 USECP at 30 n.3. (emphasis added); see also I.D. at 11, Eubanks M.B. at 15-17. PECO’s filings to make future changes to its CAP structure and design have no bearing on whether PECO complied with the terms of its 2016-2018 USECP when calculating Complainant’s bills.

Complainant’s Main Brief sets forth at length a number of reasons why PECO’s actions in calculating Complainant’s CAP bills constituted unreasonable service. In short, PECO’s egregious failure to administer its CAP pursuant to the clear terms of its 2016-2018 USECP constitutes unreasonable service. The ALJ’s failure to correctly conclude that PECO rendered unreasonable service stems from her failure to properly enforce PECO’s 2016-2018 USECP. Complainant incorporates by reference the arguments set forth in both her Main and Reply Briefs as to why PECO has provided unreasonable service and asks that the Commission find that PECO provided unreasonable service to Complainant, in violation of 66 Pa. C.S. § 1501.

⁶ As explained above, after the ALJ issued her decision, the Commission entered an order approving PECO’s proposed 2019-2024 Universal Service and Energy Conservation Plan, which includes implementation of a percentage of income plan for PECO’s CAP and use of the current CAP Policy Statement energy burdens. See generally PECO Energy Company Universal Service and Energy Conservation plan for 2019 to 2024, Pa. PUC Docket No. M-2018-3005795 (Order entered June 16, 2022), <https://www.puc.pa.gov/pdocs/1748763.pdf>. As of the date of these exceptions, PECO has not yet filed its compliance plan, and as a result, its current USECP remains in effect. Id. at 109 (“[T]he PECO Energy Company 2016-2018 Universal Service and Energy Conservation Plan shall remain in effect in whole or in part until its 2019-2024 Universal Service Plan is implemented.”).

IV. CONCLUSION

For the reasons set forth in these exceptions, the ALJ erred in holding that Complainant did not meet her burden to show that PECO violated the terms of its 2016-2018 USECP. Likewise, the ALJ erred in holding that Complainant did not meet her burden to show that PECO provided unreasonable service by failing to calculate Complainant's CAP bills pursuant to the requirements of its 2016-2018 USECP. To the contrary, Complainant proved that PECO's violations directly led to her receipt of incorrect bills, calculated in violation of the explicit requirements of PECO's 2016-2018 USECP. As a result, PECO provided Complainant with unreasonable service in violation of Section 1501 of the Public Utility Code. For these reasons, Complainant requests the Commission direct PECO to provide retroactive bill credits, as described in Complainant's Main Brief, and such other relief as is appropriate.

Respectfully Submitted,



Joline R. Price, Esq.
Robert W. Ballenger, Esq.
Kintéshia S. Scott, Esq.

COMMUNITY LEGAL SERVICES, INC.
1410 W. Erie Ave
Philadelphia, PA 19140
215-227-4378

Counsel for Denise Eubanks