PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held December 8, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss, Dissenting
John F. Coleman, Jr.

Denise Eubanks C-2021-3025997

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Denise Eubanks (Complainant or Ms. Eubanks), filed on July 5, 2022, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Darlene Heep, issued on June 15, 2022, in the above-captioned proceeding. The Initial Decision denied and dismissed the Formal Complaint (Complaint) filed by Ms. Eubanks on May 21, 2021. PECO Energy Company (PECO or Company) filed Replies to Exceptions on July 15, 2022. For the reasons stated below, we will deny the Complainant's Exceptions and adopt the Initial Decision consistent with this Opinion and Order.

I. History of Proceeding

On May 21, 2021, Ms. Eubanks, represented by Community Legal Services (CLS), filed a Complaint with the Commission (PUC or Commission) against 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 (2016-2018 USECP).[1] 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 its CAP Policy Statement.[2] Complaint at 6-9.

PECO filed its first Answer to the Complaint on June 10, 2021. Following three sets of preliminary objections filed by CLS on behalf of the Complainant, PECO filed a Third Amended Answer to the 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: (1) the Complainant's credit was properly calculated;(2) the Complainant was properly charged, and (3) that any credit not used was applied to the Complainant's subsequent bills. Third Amended Answer at 1-5.

The Initial Hearing was held on November 12, 2021. At the hearing, the Complainant was represented by counsel from CLS and Ms. Eubanks testified on her

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[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 August 11, 2016).

[2] *See* Amendments to CAP Policy Statement, Docket No. M-2019-3012599, Final Policy Statement and Order (November 5, 2019) (CAP Policy Statement Order).

own behalf. Counsel for PECO presented two witnesses: Mark Kehl, PECO Manager of Universal Service Programs, and Richard Schlesinger, 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. I.D. at 3-6.

The record was closed on March 21, 2022.

In the Initial Decision issued on June 15, 2022, ALJ Heep denied and dismissed the Complaint because the Complainant did not meet her burden of establishing that PECO violated a Commission Order, Commission Regulations or the Public Utility Code (Code) in calculating the Complainant's bill. I.D. at 1.

As noted, *supra*, the Complainant filed Exceptions on July 5, 2022. PECO filed Replies to Exceptions on July 15, 2022.

II. Background

The Complainant established service with PECO at the service address in August 2019. The Complainant is an electric heating customer and is on PECO's Rate residential heating (RH) rate for electric heating. The Complainant's only income is Supplemental Security Income (SSI). The Complainant's income is between 51% and 100% of the federal poverty level (FPL). The Complainant enrolled in CAP at the service address in August 2019. Joint Stipulation (JS) at 23, 28-30.

The Parties stipulated to the following:

> 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 the 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.

> 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.

When the Complainant enrolled in CAP in August 2019, the allowable energy burden as prescribed by PECO's 2016-2018 USECP for an electric heating customer with income between 51% and 100% of the FPL was 16% of income. JS at 31.

The Commission's Policy Statement at 52 Pa. Code § 69.265(2) set a lower energy burden of 10% for customers with income between 51% and 100% of the FPL. CAP Policy Statement at 4. PECO's 2016-2018 USECP states that "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." PECO 2016-2018 USECP at 30.

The Complainant contends that PECO has incorrectly calculated her CAP bill. The Complainant avers that PECO violated the terms of the 2016-2018 USECP in calculating the Complainant's CAP credit by not applying the lower energy burden of 10%. The Complainant alleges that PECO provided her with unreasonable service in violation of 66 Pa. C.S. § 1501. I.D. at 12.

As relief, the Complainant avers that she is entitled to a bill credit of $908.35 due to the errors PECO made in calculating the Complainant's CAP credit. This amount represents the difference between the amount she was charged between August 2019 and July 2020 and the amount PECO calculated as affordable for her in August 2019. ($2,361.79 – $1,453.44 = $908.35). Eubanks I.B. at 28 (citing Hearing Exh. 1, JS at 32, 35). In addition, the Complainant contends that she is entitled to a bill credit equal to the additional CAP credit she would have received had PECO implemented the revised energy burdened of 10% as recommended by the Commission in its CAP Policy Statement in November 2019. Eubanks I.B. at 28-29.

PECO contends that the Company complied with the terms of its 2016-2018 USECP in calculating the Complainant's CAP credit and did not provide unreasonable service. PECO also avers 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 *Tenant Union Representative Network v. PECO Energy Company*, Docket No. C-2020-3021557. I.D. at 12.

III. Discussion

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

1. Burden of Proof

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). To establish a legally sufficient case and satisfy the burden of proof, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, a complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent utility. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a 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 utility. If the evidence presented by the respondent utility is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of production 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Safe, Adequate and Reasonable Electric Service

A public utility has a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa. C.S. § 1501. Section 1501 of the Code provides, in pertinent part, as follows:

> **§ 1501. Character of service and facilities**
>
> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to

> the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa. C.S. § 1501.

Section 1501 of the Code does not require a public utility to provide perfect service, but a public utility is obligated to provide service that is reasonable and adequate. *Analytical Lab Servs., Inc. v. Metro. Edison Co.*, Docket No. 2006608 (Order entered December 21, 2007). The term "service" is defined broadly under Section 102 of the Code to include 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. *See*, 66 Pa. C.S. §102. The statutory definition of "service" is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995). "Inappropriate and unreasonable treatment to customers can be interpreted as inadequate service…" *Barbara R. Lolly v. Duquesne Light Co.*, Docket No. C-2010-2167824 (Order entered May 9, 2011) (citing *Edward T. O'Toole v. Metropolitan Edison Co.*, Docket No. C-20030854 (Order entered May 9, 2005)). Quality customer service is expected of all regulated utilities. *Id*.

B. ALJ's Initial Decision

In her Initial Decision, ALJ Heep made fifteen Findings of Fact and reached four Conclusions of Law. I.D. at 3-6 and 19. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ denied and dismissed the Complaint, finding that the Complainant did not meet her burden of establishing that PECO violated a Commission Order, Commission Regulations or the Code in calculating the Complainant's bill. I.D. at 1. The ALJ further concluded that PECO complied with its 2016-2018 USECP when calculating the Complainant's initial CAP credit. I.D. at 18.

The ALJ provided that the design of PECO's CAP FCO was part of a settlement approved by the Commission at Docket No. M-2012-2290911 (Order entered July 8, 2015) (2015 Settlement). The Company's 2016-2018 USECP incorporated the CAP FCO. PECO continues to operate the CAP FCO under the 2016-2018 USECP.

PECO's Amended Proposed 2019-2024 USECP was approved by the Commission on June 16, 2022, at Docket No. M-2018-3005795. PECO received an extension to implement several of the provision of the 2019-2024 USECP on August 4, 2022, at Docket No. M-2018-3005795. PECO has an extension until December 16, 2022, to implement the following three changes to the USECP:

- Establish a percent of income payment plan for its CAP.
- Ensure a CAP customer's final bill does not exceed the household's prorated CAP price based on days of service.
- Commence charging income-qualified customers CAP prices for months spent out of the program and allow them to receive pre-program arrearage forgiveness.

According to the ALJ, the Complainant contended that PECO incorrectly calculated her CAP credit by: (1) failing to use the appropriate energy burden, (2) using less than twelve months of usage in calculating the Complainant's initial CAP credit, and (3) failing to adjust the Complainant's Annual Credit to reflect an increase in base rates. I.D. at 13.

1. USECP Energy Burden

The ALJ provided that when the Complainant submitted her application to the CAP 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. I.D. at 31 (citing JS at 31). The Commission updated its CAP Policy Statement on November 5, 2019, lowering the energy burden to 10% for customers with incomes between 51% and 100% of the FPL. I.D. at 13 (citing JS at 15; CAP Policy Statement Order at 27, 29-30; 52 Pa. Code § 69.265(2)(i)).

The ALJ noted that the Complainant asserted that despite the express language in its 2016-2018 USECP requiring use of the updated 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 ALJ further noted that the Complainant argued 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. I.D. at 13 (citing JS at 17). The Complainant also averred 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. I.D. at 13 (citing Eubanks Main Brief at 6).

The ALJ reasoned that the evidence showed that PECO has not utilized the lowered energy burden when calculating the Complainant's CAP bills. PECO's witness, Mr. Kehl testified that PECO has continued to use the 16% energy burden for its calculations. I.D. at 14 (citing Tr. at 24-25).

The ALJ concluded that PECO did not commit a violation by using the 16% energy burden rather than the 10%. The ALJ provided that PECO agreed in the 2015 Settlement to address the effectiveness of affordability after it had two years of data on how the FCO was working. I.D. at 14 (citing Tr. at 24-25). The ALJ noted that PECO filed proposed changes to its CAP with the Commission in September 2020. I.D. at 14 (citing Tr. at 25). The proposal would change the low income program from an FCO to a percent of income program. I.D. at 14-15 (citing Tr. at 25, 72). The ALJ found that it was reasonable for PECO to consider and use the 16% energy burden in its calculations for the PECO low-income program pending a Commission Order. I.D. at 14.

2. Months of Premise Usage in Calculation of Initial CAP Credit

PECO utilized the usage data from September 2018 through August 2019 for the property landlord to calculate the Complainant's CAP bill and credit. I.D. at 15 (citing Tr. at 29, 51, 52; JS at 34, 37; Exh. 1, Appendix A and Appendix C). The usage for September 2018 was only for a six-day period, not a full month of usage. The Complainant argued that a more accurate calculation would have resulted by: (1) using a complete twelve months of data and (2) utilizing usage data from the previous tenant, not the landlord, Parkside, LLC. I.D. at 15-16 (citing Eubanks M.B. at 22).

It is PECO's position that because it did not have twelve 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 twelve 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.

I.D. at 16 (citing Exh. 1, Appendix Q, Exhibit A).

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. ID. at 16, n. 2 (citing Tr. at 63).

The ALJ found that the effects of PECO using less than twelve months of data were negligible. The ALJ also concluded that PECO's use of the Parkside, LLC usage data did not rise to a violation. I.D. at 17.

3. Updating CAP Credits Upon a Rate Change

Mr. Schlesinger explained that as rates change over time, and as the premise's usage months roll off each quarter, a new three-month period of usage and billing is rolled into any calculations. According to Mr. Schlesinger, eventually, the changes in the residential heating rates become part of the FCO calculation. Similarly,

Mr. Schlesinger provided that 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. I.D. at 17 (citing Tr. at 87-88). Mr. Schlesinger further explained that in Ms. Eubanks' case, her credit reflected the rate increase as the credit is recalculated quarterly. *Id.* The ALJ concluded that there was no violation by PECO here. I.D. at 17.

4. Unreasonable Service

The ALJ disagreed with the Complainant's argument that PECO calculated the Complainant's initial CAP credit incorrectly. The ALJ reasoned that PECO did comply and is complying with its USECP and the CAP FCO 2015 Settlement. The ALJ noted that the Commission has acknowledged and accepted that the PECO CAP-FCO program would negatively affect approximately 40,000 customers. I.D. at 19 (citing *PECO Energy Co. Universal Serv. & Energy Conservation Plan for 2016-2018*, 2016 Pa. PUC LEXIS 249 at 19).

While the ALJ concluded that PECO had not violated a Commission Order, Commission Regulations or the Code, the ALJ expressed some concerns with the 2016-2018 USECP and CAP FCO. The ALJ opined that "[t]he 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." The ALJ also noted that "[i]t 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 tenant at the service address." The ALJ also noted that "[i]t is anticipated that the Commission will consider these issues

when reviewing the proposed revamped PECO USECP currently pending Commission approval." I.D. at 18.

The ALJ concluded that "the evidence established that PECO did comply and is complying with the USECP and CAP FCO settlement and polic[i]es as currently written and approved, whatever their failings." I.D. at 19.

C. Exceptions and Replies

1. Complainant's Exception No. 1 and Replies

In her Exception No. 1, the Complainant excepts to the ALJ's conclusion that PECO's 2016-2018 USECP does not require the use of updated energy burdens in calculating the Complainant's CAP credits. The Complainant avers that the ALJ erred in concluding that PECO did not commit a violation by failing to utilize the Commission's revised, lower energy burdens set forth in its revised Policy Statement on Customer Assistance Programs, 52 Pa. Code § 69.261-267 (CAP Policy Statement). Eubanks Exc. at 3.

The Complainant submits that the 2016-2018 USECP states: "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." Eubanks Exc. at 3-4 (citing 2016-2018 USECP at 30, n.3). The Complainant argues that PECO was required by its USECP to recalculate CAP credits when the Commission lowered the energy burdens in the revised CAP Policy Statement by Order entered November 5, 2019.

The Complainant provides that the ALJ erred by illogically concluding that PECO had not violated its USECP because PECO had complied with the requirement to

complete an evaluation of the effectiveness of its CAP as required by the 2015 Settlement and proposed to redesign its CAP. The Complainant contends that this is a separate and irrelevant commitment. Eubanks Exc. at 4 (citing I.D. at 14).

In its Replies to the Complainant's Exception No. 1, PECO avers that it "is compliant with the only Commission approved USECP and is therefore not in violation of Commission policies." PECO provides that the revised CAP Policy Statement did not become effective until it was published in the *Pennsylvania Bulletin* on March 21, 2020. PECO Replies at 4 (citing Final Policy Order, Docket No. M-2019-3012599, at 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. B*. at 1691-95 (March 21, 2020)).

PECO contends that as the ALJ pointed out, it is reasonable for PECO to use the 16% energy burden in its calculations as the Commission had not yet issued an Order regarding its proposed 2019-2024 USECP. PECO Replies at 5.

2. Complainant's Exception No. 2

The Complainant, in her Exception No. 2, excepts to the ALJ's conclusion that PECO's failure to use a full twelve months of usage history was negligible and therefore did not rise to the level of a violation. Eubanks Exc. at 6. The Complainant argues that PECO's use of less than twelve full months of actual usage data and PECO choosing to utilize usage data from a commercial landlord rather than an actual tenant was unreasonable, leading to unaffordable bills for the Complainant. Eubanks Exc. at 6-7.

In its Replies to Complainant's Exception No. 2, PECO provides that it did not have usage data for the combination of this premise and this Complainant. PECO

contends that, as Mr. Kehl explained, under the 2015 Settlement and 2016-2018 USECP, the next 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. PECO argues that the Complainant fails to prove her claim that the effect of less than twelve full months of usage was more than negligible. PECO Replies at 5-6.

3. Complainant's Exception No. 3

In Complainant's Exception No. 3, the Complainant contends that the ALJ erred by failing to acknowledge the specific requirement that PECO update CAP credits based on changes in base rates. Eubanks Exc. at 7. The Complainant contends that the ALJ erred by conflating two distinct requirements in PECO's 2016-2018 USECP – one that 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 increase. Eubanks Exc. at 7 (citing Eubanks M.B. at 18-19).

In its Replies to Complainant's Exception No. 3, PECO avers that Complainant's argument that PECO should have updated its Annual Credit calculation because there was a base rate increase during the period of usage used to calculate the Complainants initial CAP credit is without merit. PECO explains that the Complainant is correct that Mr. Kehl 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. PECO explains further that it 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.

PECO Replies (citing USECP at 33).

PECO explains that its 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." PECO Replies at 7 (citing USECP, n.8). PECO explains further that its USECP does not require a recalculation of a prior tenant's twelve-month lookback period in order to compile its pro forma profile.

PECO avers that the ALJ separately considered the requirement relating to base rate increases. PECO Replies at 7 (citing I.D. at 17). PECO contends that the ALJ understood the distinction between the two requirements. PECO Replies at 7.

4. Complainant's Exception No. 4

In Complainant's Exception No. 4, the Complainant avers that the ALJ erred in concluding that PECO has acted reasonably and in accordance with its 2016-2018 USECP and the CAP Policy Statement. Eubanks Exc. at 8. The Complainant contends that PECO did not comply with the language of the 2016-2018 USECP by not adopting the lower energy burdens of the CAP Policy Statement. The Complainant avers that 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. Eubanks

Exc. at 9. The Complainant concludes that PECO did not provide reasonable service, in violation of Section 1501, because it violated the terms and conditions of its current 2016-2018 USECP. Eubanks Exc. at 8 (citing *DeSantis v. Pennsylvania Power Company*, Docket No. C-2019-3013652 (Initial Decision issued April 28, 2020) at 10 ("[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.")).

D. Disposition

We will begin by addressing the question of whether PECO used the correct energy burden while calculating the Complainant's CAP credit. We agree with the ALJ, that PECO was in compliance with its 2016-2018 USECP when it utilized the 16% energy burden to calculate Ms. Eubanks CAP credit. We are not convinced that the language in the 2016-2018 USECP noting that PECO would adopt revised energy burdens means that PECO would automatically adopt new energy burdens without Commission approval. As Mr. Kehl testified, PECO did not believe it could change its program without Commission action. Tr. at 76. We find that PECO was reasonable in its use of the 2016-2018 USECP energy burdens in calculating Ms. Eubanks' CAP credit. Accordingly, Complainant's Exception No. 1 is denied.

Next, we will address the use of the landlord's (Parkside LLC) billing account data rather than usage from a previous tenant for the 12-month usage in the CAP FCO calculation. We agree with the ALJ's concerns regarding the CAP FCO calculation for Ms. Eubanks. In calculating the FCO for Ms. Eubanks' account, PECO utilized the billing data of the landlord rather than usage of a previous tenant. PECO's 2016-2018 USECP states:

- 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 by prior customers;
> - Usage at similar residences or CAP residences in the same area; or
> - System-wide usage or CAP usage averages.

2016-2018 USECP at 29-30 (footnote omitted).

Mr. Kehl testified that PECO used the twelve months of data from the landlord's account because the calculation defaults to data based on the premise. Mr. Kehl stated that "PECO would prefer and we believe it's better and a more accurate measure to use the premises you're moving into as an indication of what your usage would be, and therefore what credit you need to hit affordability." Mr. Kehl explained that the system used to do the calculations does not look for the most affordable or beneficial usage estimate for the customer but rather relies on logic set up based on the settlement agreement. In this case, the system chose the premise billing data from the landlord as the twelve-month usage data. Tr. at 76.

The premise data from the landlord was not predictive of Ms. Eubanks' usage and resulted in no CAP credit for the first year she was enrolled in CAP. In the landlord's account there is zero usage for August 2018, very low usage for May and June 2019, and artificially low billing data for January 2019.[3]

[3] In January 2019, PECO provided a credit to residential customers as part of the Tax Cut and Jobs Act of 2017 adjustment from its 2018 rate case settlement. Tr. at 87.

The landlord's account indicated a usage of 9,673 kWh for twelve months (August 2018-July 2019). The previous tenant had usage of 21,154 kWh for eleven months of usage (August 2017-June 2018). Exhibit 2. Ms. Eubanks had usage of 21,945 kWh in her first year of CAP which is more than twice the usage as found in the landlord's account. Exhibit 1, Appendix B.

The 2016-2018 USECP does not define usage and it does not address how to consider periods of unusually low usage or no usage in the FCO calculation procedure. Mr. Kehl testified that the system used logic to select the next available data set – the landlord's usage data. Ideally, the system would not utilize periods of very low usage or no usage to calculate a CAP credit. While this does not rise to the level of a violation, an issue with PECO's CAP FCO calculation process is indicated here.

In the Complainant's first year in CAP, Ms. Eubanks' energy burden was 26% for the year. Ms. Eubanks' monthly bills were greater than 16% of her income for eight months out of the first twelve months. The Complainant's January 2020 bill was greater than 62% of her income.

PECO testified that an individual customer's calculation could be done manually. Tr. at 49. PECO also provided that it could provide Ms. Eubanks a credit. Tr. at 50. The Complainant avers that she is entitled to a bill credit of $908.35 which represents the difference between the amount she was charged between August 2019 and July 2020 ($2,361.79) and the amount PECO calculated as affordable to her in August 2019 ($1,453.44). Eubanks I.B. at 28 (citing JS at 32, 35). We acknowledge that PECO followed the pro forma calculation procedure in its 2016-2018 USECP to calculate Ms. Eubanks' initial CAP credit. We note that the automated calculation program selected premise data to calculate the 12-months of usage but the program was unable to detect or reject billing periods of low usage or no usage. This potential miscalculation was likely not foreseen and is not addressed in the 2016-2018 USECP FCO calculation procedure.

The selection of the landlord's billing data resulted in no CAP credit in Ms. Eubanks' initial year in the CAP program. While we find no violation here, we encourage PECO to consider the Complainant's request for a bill credit. The Complainant's Exception No. 2 is denied.

With regard to the Complainant's assertion that PECO did not include increases in base rates in her CAP FCO calculation, we find no violation here. Every three months, PECO recalculates the prior 12-months of usage by using the customer's most recent three months' data on usage/charges. *See* 2016-2018 USECP at 33. Because of the three month recalculation, the increases in base rate charges are reflected in the quarterly recalculation.

As PECO witness Mr. Schlesinger provided, the rate increases were incorporated into the CAP calculations in the quarterly updates. Mr. Schlesinger stated that "as you roll off three months and you roll on three months of usage and billing, eventually the changes in our rates either up or down get reflected ultimately into the FCO calculation." Tr. at 88. We agree with the ALJ that there was no violation regarding incorporating the rate increase in PECO's CAP calculations here. The Complainant's Exception No. 3 is denied.

Based upon our review of the record, we conclude that there is no basis to find here that the service provided by PECO is unreasonable. For these reasons, we conclude that the service being provided to the Complainant's residence is reasonable and adequate, and that the Complainant has failed to prove that PECO has violated any provision of the Code, or a Commission Order or Regulation. Accordingly, we shall deny the Complainant's Exceptions.

IV. Conclusion

Based upon our review of the record and the applicable law, we shall deny the Exceptions of Ms. Eubanks, and therefore, adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

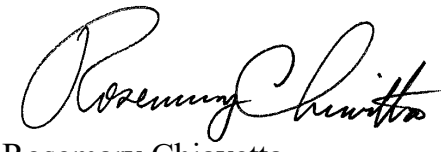
1. That the Exceptions of Ms. Denise Eubanks, filed on July 5, 2022, to the Initial Decision of Administrative Law Judge Darlene Heep, issued on June 15, 2022, at this docket, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Darlene Heep, issued on June 15, 2022, at this docket, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint of Ms. Denise Eubanks, filed on May 21, 2021, at this docket, is denied, consistent with this Opinion and Order.

4. That the proceeding at Docket No. C-2021-3025997 shall be marked closed.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 8, 2022