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

Tenant Union Representative Network C-2020-3021557

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by the Tenant Union Representative Network (TURN) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) on May 3, 2021, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Mary D. Long, served on April 13, 2021, in the above-captioned proceeding. The Office of Consumer Advocate (OCA) and PECO Energy Company (PECO or Company) filed Replies to Exceptions on May 13, 2021. For

the reasons discussed more fully below, we shall deny the Exceptions and adopt the ALJ's Initial Decision.

I. History of the Proceeding

On August 25, 2020, TURN filed a Formal Complaint (Complaint) against PECO asserting that PECO had failed to comply with the terms of a 2015 settlement regarding the use of the maximum energy burden component for calculating bills for certain customer assistance program (CAP) customers.

On September 14, 2020, CAUSE-PA filed a Petition to Intervene and Answer. On September 15, 2020, PECO filed its Answer to TURN's Complaint. On September 23, 2020, the OCA filed a Notice of Intervention and Public Statement. On October 5, 2020, TURN filed Preliminary Objections to PECO's Answer in which it argued that PECO's Answer failed to deny specific material allegations of TURN's Complaint and PECO's Answer failed to conform to the pleading requirements imposed by Chapter 5 of the Commission's Regulations, 52 Pa. Code §§ 5.1 *et seq*.

The Complaint was assigned to the ALJ who scheduled a prehearing conference for October 20, 2020, with the Parties directed to file prehearing memoranda on or before October 19, 2020.

Also, on September 25, 2020, PECO filed a Motion to Stay this proceeding because PECO also filed a Petition for Approval of an Amendment to its Proposed

2019-2024 Universal Service and Energy Conservation Plan[1] at Docket Number M-2018-3005795.[2] TURN filed an Answer to PECO's Motion on October 15, 2020. On October 15, 2020, PECO filed an Answer to TURN's Preliminary Objections. On October 19, 2020, PECO filed an Amended Answer to TURN's Complaint.

The prehearing conference was convened as scheduled and CAUSE-PA's Petition to Intervene was granted, the Preliminary Objections filed by TURN were dismissed as moot, and PECO's Motion to Stay was denied. A litigation schedule was also established which set forth deadlines for the filing of written testimony and scheduled an evidentiary hearing for February 9, 2021.

The Parties all served written testimony in support of their positions and by email to the ALJ dated February 4, 2021, the Parties indicated that they had mutually agreed to waive cross examination of witnesses and evidentiary challenges to the pre-served written testimony and accompanying exhibits. The evidentiary hearing was cancelled, and the Parties filed a Joint Motion to Admit Written Testimony and Exhibits Into the Formal Evidentiary Record with accompanying verifications signed by each witness. The motion was granted by interim order entered on February 11, 2021, and the Parties were directed to e-file their testimony with the Commission's Secretary's Bureau.

The Parties filed Main Briefs on March 5, 2021 and Reply Briefs on March 24, 2021. The ALJ closed the record by interim order entered on March 30, 2021.

---

[1] *Petition of PECO Energy Company to Amend its Amended Proposed 2019-2024 Universal Service and Energy Conservation Plan*, Order entered June 16, 2022, Docket No. P-2020-3022154. On September 8, 2022, PECO filed a Petition to Defer Implementation of Customer Assistance Program Participant Shopping in its Service Area which is pending before the Commission.

[2] *PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4* (2019-2024 USECP), Docket No. M-2018-3005795, Order entered June 16, 2022 (June 2022 PECO USECP Order).

The Commission issued the ALJ's Initial Decision on April 13, 2021.

On May 3, 2021, TURN and CAUSE-PA each filed Exceptions. On May 13, 2021, the OCA and PECO each filed Replies to Exceptions.

II. Background

On February 28, 2012, PECO filed its Universal Service and Energy Conservation Plan covering the three-year period 2013-15 (2013-15 USECP).[3] An amended plan was filed at the same docket on October 15, 2012. In response to the Commission's April 4, 2013 Order requiring PECO to make certain changes to its 2013-15 USECP, and the April 25, 2014 Secretarial Letter directing the Parties to attempt to reach an agreement on a new Customer Assistance Program (CAP) design, the Parties engaged in extensive settlement discussions. On March 20, 2015, a Joint Petition for Settlement (Joint Petition or 2015 Settlement) was filed by PECO, OCA, TURN, and CAUSE-PA. The Joint Petition changed the design of PECO's CAP from a seven-tier CAP Rate program to a Fixed Credit Option Percentage of Income Program (FCO). The Joint Petition for Settlement was approved by the Commission by order entered July 8, 2015.[4]

The FCO, as described in the 2015 Settlement, calculated a customer's CAP credit by evaluating the customer's prior year's energy usage and household income. The final element of the CAP credit evaluation included a determination of the customer's allowable "energy burden," which is a percentage of income that is

---

[3] *See* PECO Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2012-2290911 (Order entered July 8, 2015).

[4] *Id*.

considered an affordable energy bill. The 2015 Settlement included "Table 1" which set forth the energy burden percentages for three household income tiers:

FPL	Electric Non-Heating	Electric Heating	Electric with Gas Heating
0-50%	5%	13%	13%
51-100%	6%	16%	16%
101-150%	7%	17%	17%

The 2015 Settlement also provided:

> The table is based upon the ranges found at 52 Pa. Code §69.265 (2)(i)(A). In each case, the energy burden listed in the table is the maximum allowable energy burden for that poverty level. If the Commission changes the energy burden ranges set forth in its Policy Statement, PECO will utilize the new maximum allowable energy burden for each poverty level.[5]

Following approval of the 2015 Settlement, PECO incorporated the CAP FCO Design into its Universal Service and Energy Conservation Plan for 2016-2018 (2016-18 USECP),[6] and launched the CAP FCO program in October 2016.

On November 5, 2019, the Commission entered a Final Policy Statement and Order,[7] which adopted policy changes related to the design of customer assistance

---

5 Joint Petition for Settlement, Exhibit A, PECO CAP Design Mediation Term Sheet, Footnote 3.

6 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.

7 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261-69.267 (*2019 Final CAP Policy Statement*), Docket No. M-2019-3012599, (Order entered November 5, 2019), at 4. *See also* 52 Pa. Code § 69.265(2)(i).

programs, including the allowable energy burden thresholds for low-income households, as follows:

FPL	Electric Non-Heating	Electric Heating	Electric with Gas Heating
0-50%	2%	6%	6%
51-100%	4%	10%	10%
101-150%	4%	10%	10%

The *2019 Final CAP Policy Statement* was published in the *Pennsylvania Bulletin* on March 21, 2020.[8]

It is the reduction in energy burden thresholds approved by the Commission in the *2019 Final CAP Policy Statement* which forms the basis of TURN's present Complaint. As explained in more detail below, according to TURN, the terms of the 2015 Settlement, *i.e*., footnote 3, require that the modification of the energy burden thresholds in the FCO calculation is self-executing. By failing to implement the lower thresholds adopted by the *2019 Final CAP Policy Statement*, and recalculating the assistance benefit for low-income customers, TURN argues that PECO is in violation of the 2015 Settlement.

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).

[8] 50 *Pa.B.* 1691-1695 (March 21, 2020).

We also note at the outset that our Opinion and Order in the present proceeding does not modify the Commission's June 2022 PECO USECP Order. Here, we address TURN's Complaint raising the question whether the 2015 Settlement's provision at footnote 3 triggered a duty for PECO to immediately/automatically revise its 2016-2018 CAP to reflect the revised energy burden thresholds adopted by the *2019 Final CAP Policy Statement*, and recalculate the customers assistance benefit, and whether by so failing, PECO also failed to fulfill its obligations to reduce low-income customers' bills as delineated in the 2015 Settlement.

After a review of the 2015 Settlement, the Recommended Decision approving same, the record developed in this complaint proceeding and the Initial Decision rendered by ALJ Long, we conclude that the provision of footnote 3 of the 2015 Settlement did not establish a duty for PECO to automatically recalculate the customers' assistance benefit based upon a Commission-approved revision to the energy burden tiers, and that PECO has substantially complied with the 2015 Settlement. We note that, adjustments to elements of CAP programs without Commission review are neither advisable, as a practical matter, nor are they expressly contemplated by our Regulations. As discussed *infra,* the extensive review and stakeholder collaboration process undertaken regarding USECP plans dictates otherwise. Consistent therewith, the June 2022 PECO USECP Order carefully detailed the complex nature of the USECP plan approval process. While that Order did not address TURN's Complaint regarding the 2015 Settlement, it fully elaborated on PECO's substantial efforts undertaken to adjust its 2016-2018 USECP program design to address the impact on its lowest income customers. The 2015 Settlement and the subsequent 2016-2018 USECP program reflect the ongoing effort to address the energy needs of the lowest-income consumers.

Therefore, as discussed more fully, *infra*, we shall deny the Exceptions of TURN and CAUSE-PA and adopt the Initial Decision of ALJ Long without modification, consistent with this Opinion and Order.

A. Legal Standards

Section 701 of the Public Utility Code (Code), 66 Pa. C.S. § 701, provides that any person may complain, in writing, about anything done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.

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).

The decision of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. Co. v. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and

Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr., 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

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. In order to prevail, the complainant must 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).

In addition, 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; *Kossman v. Pa. PUC*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Tele. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Where a complaint involves an

existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

Finally, Section 1501 of the Code, 66 Pa. C.S. §1501, mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities.[12]

B. Principles and Policies Regarding Universal Service Plans

Universal Service and Energy Conservation Plans are central to the Commission's efforts to achieve energy affordability for the Commonwealth's low-income citizens:[9]

> The Commission adopted its Customer Assistance Programs (CAP) Policy Statement at 52 Pa. Code §§ 69.261-69.267, initially effective July 25, 1992. The CAP Policy Statement was subsequently amended, in part, effective May 8, 1999, and is applicable to class A Electric Distribution Companies (EDCs) and Natural Gas Distribution Companies (NGDCs) with gross annual operating revenue in excess of $40 million. The CAP Policy Statement provides guidance on affordable payments and establishes a process for a utility to work with the Commission's Bureau of Consumer Services (BCS) in the development of a CAP. 52 Pa. Code §§ 69.261-69.267.
>
> The Electricity Generation Customer Choice and Competition Act (Electric Competition Act), 66 Pa. C.S. §§ 2801-2812, became effective on January 1, 1997. The Natural Gas Choice and

[9] In its final order approving (with modifications) PECO's 2016-2018 USECP, the Commission cited to the history, purpose, and legal requirements of these plans. *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 (Final Order entered August 11, 2016), at 2-4.

Competition Act (Gas Competition Act), 66 Pa. C.S. §§ 2201-2212, became effective on July 1, 1999. The primary purpose of these Competition Acts was to introduce competition into the retail electric and natural gas generation markets. These two Competition Acts established standards and procedures for the restructuring of the electric and natural gas utility industries. While opening the markets to competition, the Acts also include several provisions relating to universal service to ensure that electric and natural gas service remains available to all customers in the Commonwealth.

The universal service provisions of the Competition Acts, among other things, tie the affordability of electric and natural gas service to a customer's ability to maintain utility service. The Competition Acts define "universal service and energy conservation" as the policies, practices and services that help low-income customers maintain utility service. The term includes customer assistance programs (CAPs), usage reduction programs, service termination protections and consumer education. 66 Pa. C.S. §§ 2202 and 2803. The Competition Acts commit the Commission to continuing, at a minimum, the policies, practices and services that were in existence as of the effective date of the laws. 66 Pa. C.S. §§ 2203(7) and 2802(10). Finally, the Competition Acts require the Commission to ensure that universal service and energy conservation services are appropriately funded and available in each utility distribution territory. 66 Pa. C.S. §§ 2203(8) and 2804(9).

The General Assembly has acknowledged the importance of helping low-income customers maintain utility service. Under the Competition Acts, universal service programs are subject to the administrative oversight of the Commission, which must ensure that the utilities run the programs in a cost-effective manner. 66 Pa. C.S. §§ 2203(8) and 2804(9). Although the Competition Acts do not define "affordability," the Commission's Policy Statement provides guidance on affordable payments. 52 Pa. Code §§ 69.261-69.267. The Commission balances the interests of customers who benefit from the programs with the interests of the customers who pay for the programs. *See Final Investigatory Order on CAPs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (Dec. 18, 2006), (*Final CAP Investigatory Order*), at 6-7.

To help meet these requirements, the Commission promulgated the *Universal Service and Energy Conservation Reporting*

> *Requirements* regulations (Reporting Requirements). 52 Pa. Code §§ 54.71- 54.78 (electric) and §§ 62.1 - 62.8 (gas). These Reporting Requirements require each NGDC serving more than 100,000 residential accounts and each EDC serving more than 60,000 residential accounts to submit an updated USECP every three years to the Commission for approval. 52 Pa. Code §§ 54.74 and 62.4.

C. Initial Decision

In the Initial Decision, the ALJ made fifty-five Findings of Fact (Findings) and reached six Conclusions of Law. I.D. at 5-13, and 23-24. The ALJ ruled that the language of the 2015 Settlement, which launched a new CAP design, does not require the utility to automatically recalculate the customer assistance benefit without further review by the Commission, following a revision of the Commission-approved energy burden tiers, as occurred in the *2019 Final CAP Policy Statement*. The ALJ therefore dismissed TURN's Complaint as meritless. Furthermore, following a review of the record, the ALJ concluded that PECO had met its burden of proving that it had not failed to comply with the language or the spirit of the 2015 Settlement and is not in violation of an Order of the Commission or its tariff. I.D. at 23-24.

D. Exceptions, Replies and Disposition

1. TURN Exception Nos. 1 and 2, CAUSE-PA Exception No. 1, Replies and Disposition

a. Summary of the Exceptions:

- **The ALJ erred in the plain reading of footnote 3 of the 2015 Settlement**
- **The ALJ erred by concluding that the language of a footnote is afforded less weight in the context of the terms of the agreement**

Both TURN and CAUSE-PA claim that the ALJ erred in concluding that PECO substantially complied with the Commission's Order approving the 2015 Settlement because, as TURN and CAUSE-PA assert, the plain language of that settlement, at footnote 3, requires PECO to automatically update its CAP credit calculations. TURN Exc. at 6-11; CAUSE-PA Exc. at 4 and 6-18. More specifically, they submit that the plain language of footnote 3 of the 2015 Settlement clearly requires PECO to use the revised energy burden thresholds that are set forth in the *2019 Final CAP Policy Statement* without further Commission approval.

Footnote 3 of the 2015 Settlement states as follows:

> 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.

2015 Settlement at 2, n. 3

TURN and CAUSE-PA disagree with the ALJ's conclusion that it is unreasonable to interpretate the plain language of footnote 3 to obligate PECO to immediately adopt the energy burden thresholds when revised by the *2019 Final CAP Policy Statement*. Turn and CAUSE-PA disagree with the ALJ's reasoning that, TURN and CAUSE-PA's reading of footnote 3 (*i.e*., that PECO is required to both immediately utilize the revised energy burden threshold and do so without seeking Commission approval) would require the additional language to footnote 3, as follows:

> If the Commission changes the energy burden ranges set forth in its Policy Statement, ***immediately, upon entry of a final order of the Commission revising the Policy Statement***, PECO will utilize the new maximum allowable energy burden for each poverty level, ***without seeking further approval by the Commission***.

I.D. at 20 (emphasis in original). *See* TURN Exc. at 6-11; CAUSE-PA Exc. at 9-13.

CAUSE-PA asserts that PECO has itself acknowledged that the language of footnote 3 requires automatic implementation of any revised energy burden threshold if the Policy Statement was amended, citing PECO's formal Comments filed in the Final Policy Statement proceeding, that if the maximum energy burdens were amended by the Commission, "PECO's CAP FCO program has a 'pass through' clause allowing for automatic implementation."[10]

CAUSE-PA further asserts that, contrary the ALJ's reading, no further Commission review was anticipated or stated in footnote 3. CAUSE-PA cites the cost containment measures of the 2015 Settlement as countering the ALJ's conclusion that

---

[10] CAUSE-PA Exc. at 11 citing *Energy Affordability For Low-Income Customers*, Initial Comments of PECO Energy Company, Docket No. M-2017-2587711 at 8 (filed May 11, 2019).

Commission review is needed given the cost controls were imposed upon implementing the revised energy burden standards. CAUSE-PA Exc. at 12. For example, CAUSE-PA notes that the parties to the 2015 Settlement Statements in Support emphasized in the balanced nature of the agreement with improvements to "affordability, while simultaneously imposing controls on overall program costs…." CAUSE-PA Exc. at 13. The Recommended Decision explicitly noted the cost containment measures as well. *Id.* For these reasons, CAUSE-PA asserts that the ALJ erred by concluding that Commission review was required prior to implementation of the revised energy burden thresholds.

Finally, both TURN and CAUSE-PA claim that there is no validity to the ALJ's conclusion that placement of the term in a footnote, rather than in the body of the settlement somehow diminishes its importance or effect. TURN Exc. at 11-13; CAUSE-PA Exc. at 15-17. TURN submits that there is no legal authority cited in the Initial Decision, and none otherwise, which would support the distinction between the body of a settlement and language contained in a footnote for purposes of contract interpretation. TURN Exc. at 12-13.

Both TURN and CAUSE-PA point out that other terms of the Settlement that were contained in footnotes serve as important components of it (i.e., applicable Federal Poverty Guidelines and specific actions to be taken with regard to maximum Annual Credit levels). CAUSE-PA Exc. at 16-18. TURN Exc. at 12-13. For example, CAUSE-PA notes that the Commission approved the entirety of the 2015 Settlement, and it clearly required PECO to update the maximum energy burdens upon their adjustment in the Final Policy Statement. *Id.*

b. Replies

In its Replies, PECO argues that the ALJ properly found that PECO has met its CAP FCO obligation under the 2015 Settlement and the 2016-2018 USECP and

that TURN has failed to carry its burden to establish PECO's implementation of the 2015 Settlement, and specifically, PECO's calculation of the customer assistance benefits, constitutes unreasonable service.

PECO notes that TURN and CAUSE-PA both argue that the only reasonable interpretation of footnote 3 is that the provision is self-executing. Specifically, TURN cites the Commission's findings in *Core Communication Inc. v Verizon PA LLC*, Docket No. C-2014-2406550, (Order entered October 4, 2018) (*Core*) in which the Commission found that the contract pricing was superseded by the later Commission affirmative order which replaced the rates listed in the contract pricing appendix with new lower rates. PECO notes that TURN also contends that the *2019 Final CAP Policy Statement* is a similar affirmative order that triggered the automatic implementation of the footnote 3.

However, PECO avers that the self-executing argument fails because the *Core* order did not direct immediate implementation of the revised energy burdens or any other element of the 2019 Final CAP Policy Statement but rather did the opposite. Specifically, PECO argues that TURN and CAUSE-PA cannot claim that the *2019 Final CAP Policy Statement* Order was the only "Condition precedent" to the execution of footnote 3 on one hand, while on the other hand, they ignore the Commission's requirements and instructions for implementing that Order. PECO Reply Exc. at 3-4.

PECO contends that the ALJ appropriately considered the language of footnote 3 in the context of the entire 2015 Settlement. PECO Reply Exc. at 4-5. Specifically, PECO notes that the central objective of the 2015 Settlement was the implementation of a CAP framework that improved bill affordability for low-income customers. PECO Reply Exc. at 5. Thus, compliance with the 2015 Settlement cannot be assessed without acknowledging the documented affordability issues related to the CAP FCO and other 2015 Settlement provisions addressing affordability. The ALJ

correctly found that APPRISE Evaluation[11] revealed that the CAP FCO was failing PECO's poorest customers. Consequently, PECO developed a multistep action plan to complete its analysis, engaged with parties to the 2015 Settlement consistent with its terms and to make a filing with the Commission. PECO also contends that as it was analyzing potential changes to the CAP FCO the Commission issued the 2019 Final CAP Policy Statement that revised, among other things, the recommended energy burden percentages and that its compliance with the 2015 Settlement and the 2016-2018 USECP must include consideration of the overlapping Commission processes and directives which presented PECO with arguably competing obligations. PECO Reply Exc. at 6. Therefore, the Commission should affirm the ALJ's conclusion that the language of footnote 3 was not self-executing.

In its Replies, the OCA contends that TURN's reading of footnote 3 of the 2015 Settlement agreement is in error, and its rational in support of its position is flawed. The OCA contends that TURN's reasoning is flawed and that the ALJ correctly determined that TURN's interpretation of the 2015 Settlement reads additional language into that Settlement, fails to consider footnote 3 within the context of the Settlement, and further fails to recognize the Commission process for PECO to change its energy burden. OCA Reply Exc. at 2.

The OCA submits that TURN's reliance on *Core* is misplaced because changes to the energy burdens identified in the 2015 Settlement are not self-executing. *Id*. Furthermore, unlike *Core*, the Commission has outlined a specific process for

---

[11] APPRISE is an acronym for the Applied Public Policy Research Institute for Study and Evaluation. APPRISE was an independent evaluator that PECO engaged to evaluate the data it collected from PECO's years of operation from its FCO program. As part of the 2015 Settlement had agreed to submit APPRISE's evaluation (APPRISE Evaluation) to the Commission and the Parties to the Settlement. See Joint Pet. For Settlement, Docket No. M-2012-2290911 (filed March 20, 2015); see also OCA St. No. 1-R, p. 7

changing its energy burdens. Specifically, PECO must follow the steps identified by the EAP [Energy Association of Pennsylvania] Reconsideration Order of the 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261-267, Docket No. M-2019-3012599, (Feb. 6, 2020) (*EAP Reconsideration Order*) for changing the energy burdens and that the *Core* case involves very different circumstances. OCA Reply Exc. at 2-3.

The OCA also argues that the ALJ correctly determined that TURN's interpretation of footnote 3 was not reasonable and that PECO's approach was fully consistent with the 2015 Settlement and respects all of its terms. OCA Reply Exc. at 5. Specifically, the plain language of footnote 3 provides no basis to conclude that any change to the energy burdens must happen immediately, without regard to the other provisions of the 2015 Settlement and the Settlement had many interconnected terms that must be considered together. OCA Reply Exc. at 4

Similarly, the OCA contends that the Commission should reject CAUSE-PA's arguments that the ALJ erred in the reading of footnote 3. The OCA contends that the ALJ correctly determined that the 2015 Settlement did not require PECO to immediately change its energy burdens. The OCA asserts that footnote 3 must be evaluated in the full context of the Settlement and that the plain language of footnote 3 provides no basis to conclude that any change to the energy burdens must happen immediately without regard to the other provisions of the 2015 Settlement. The OCA also asserts the Commission specifically identified in the 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code §§ 69.261- 267, Docket No. M-2019-3012599, OCA Reconsideration Order at 11 (Feb. 6, 2020) (OCA Reconsideration Order) that the energy burdens are to be addressed in USECP proceedings. OCA Reply Exc. at 12-13.

In addition, the OCA contends that CAUSE-PA's interpretation ignores the procedures set forth in the *2019 Final CAP Policy Statement*. OCA Reply Exc. at 13. The OCA submits that the costs of changes to the energy burdens are relevant and critical to evaluation of whether they should be changed as a part of this proceeding. The OCA witness Roger D. Colton testified that: even if PECO were to reduce the energy burdens, the percentage of customers with unaffordable bills and the dollar amount by which they exceeded the energy burdens would not change; the continuing unaffordability is not a function of the target energy burdens, but instead a function of the underlying CAP program design. OCA Reply Exc. at 14. Finally, the OCA contends that the ALJ appropriately evaluated footnote 3 in the full context of the Settlement and correctly concluded that there is no indication in the Settlement that the implementation of new energy burdens was self-executing or intended to be immediate for the same reasons as discussed in the OCA's Replies to TURN Exception No. 1. *Id*.

c. Disposition

As a threshold consideration, we again take note that, as the Complainant, TURN bears the burden of proof as to its claim that PECO has violated the 2015 Settlement and has the duty to establish facts in support of its claim by a preponderance of the evidence. Furthermore, the Parties agree that, pursuant to Section 315 of the Code, PECO bears the burden of proving that it has complied with the terms of the 2015 Settlement which was approved by Opinion and Order of the Commission and was further incorporated into PECO's 2016-2018 USECP, which was also approved by Opinion and Order of the Commission. 66 Pa. C.S. § 315.

In reviewing universal service plans, the Commission endeavors to balance the interests of customers who benefit from the programs with the interests

of customers who pay for these programs.[12] The development of universal service plans is a complex process, whereby the Commission routinely seeks input from stakeholders. Accordingly, for customer assistance plans (CAPs), Commission guidelines direct a utility should file its CAP proposal with the Commission, before implementing, revising, or expanding a CAP.[13] CAP programs can be costly for a utility to implement and maintain. Therefore, the regulations require regular evaluation and re-evaluation of CAP design to ensure that they are efficient in reaching the customers who qualify to participate in these programs, help these customers to achieve "affordable" bills, and are cost effective.[14]

Our regulations state that "The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b). Also, we note that the Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding. *See Pa. PUC v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988) (*Bell Telephone*). Although the public interest is considered in evaluating a settled case, there is not a fully developed record. Also, the Commission has explained that in a settled case, there may be a civil penalty even though a party does not admit to any wrongdoing or any violations. *Pa. PUC Bureau of Investigation & Enforcement v. Uber, Inc.*, Docket No. C-2014-2422723, (Order entered Sept. 1, 2016).

---

[12] *See* Final Investigatory Order on CAPs: Funding Levels and Cost Recovery Mechanisms, Docket No. M-00051923 (Dec. 18, 2006) (*Final CAP Investigatory Order*), at 6-7.

[13] *See* 52 Pa. Code § 69.263 (c).

[14] 52 Pa. Code §§ 54.76, 62.6 (requiring an independent third-party evaluation of universal service programs at least every six years).

Initially, we agree with PECO and the OCA that the ALJ properly found: (1) that PECO has met its CAP FCO obligation under the 2015 Settlement and the 2016-2018 USECP and (2) that TURN and CAUSE-PA have failed to demonstrate unreasonable service. We concur in the ALJ's conclusion that TURN failed to sustain its burden of proof on the issues. We further concur with PECO and the OCA that the language of footnote 3 was not self-executing and should be viewed in the context of the full 2015 Settlement as well as the Commission established USECP processes.

Based on the record of this proceeding, the main objective of the 2015 Settlement was the implementation of a CAP framework that improved bill affordability for low-income customers. Consequently, compliance associated with the Settlement should be assessed by applying the documented affordability issues related to the CAP FCO and other provisions of the 2015 Settlement concerning affordability. Furthermore, we must acknowledge that while PECO was addressing a potential change to the CAP FCO the Commission issued subsequent directives regarding utilities' CAPs. Thus, our determination as to whether PECO complied with the letter and spirit of the 2015 Settlement and its 2016-2018 USECP should include, not only the language of the 2015 Settlement and the 2016-18 USECP, but also, the various overlapping Commission processes and directives which resulted in PECO having arguably competing obligations.

Turning to the question of what duty, if any, PECO has as a result of the language of footnote 3, of the 2015 Settlement, we first review the language, which is as follows:

> 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.

2015 Settlement at 2, n. 3.

Upon a plain reading of the language of footnote 3, it is evident that the footnote fixes no time in which PECO must act to recalculate the customers assistance benefit based upon a Commission-approved revision to the existing energy burden ranges. We conclude, as did the ALJ, that TURN's and CAUSE-PA's proffered interpretation of footnote 3 is only possible if additional language is inserted. TURN's and CAUSE-PA's interpretation of footnote 3 is based upon language which is simply not there, *e.g.*, language requiring a time certain in which PECO must adopt and implement any newly approved energy burden tiers, without seeking Commission approval. Therefore, we shall deny the Exceptions of TURN and CAUSE-PA as to the interpretation of footnote 3 of the 2015 Settlement.

We do note that, had the footnote contained the operative language requiring PECO to act immediately to recalculate its customers' assistance benefit, without seeking Commission permission, upon Commission approval of any revision to the energy burden tiers, our analysis would require a determination as to whether PECO complied with such an express provision, even if contained in a footnote. To the extent the ALJ discussed the relative weight of language contained in the footnote, we conclude the discussion to be dicta and immaterial to our determination on the interpretation of the language of footnote 3. Consequently, to the extent TURN and CAUSE-PA raised an Exception to the ALJ's discussion of the relative weight of language contained in a footnote, we shall deny the Exception.

Therefore, based upon our review of the record, the ALJ's Initial Decision and the positions of the Parties, we shall deny TURN's Exceptions Nos. 1 and 2, and CAUSE-PA's Exception No. 1, consistent with this Opinion and Order.

2. **TURN Exception No. 3, Replies and Disposition**

a. **Summary of the Exception:**

- **The ALJ erred by concluding that the language of footnote 3 was not central to the FCO adopted by the 2015 Settlement**

TURN argues that the Initial Decision erred in holding that footnote 3 was not central to the design of the FCO. Citing to the Statements in Support of the 2015 Settlement and the Recommended Decision of ALJ Fordham in that case, TURN asserts that the statements "acknowledged the intrinsic link between the energy burdens to be used in FCO calculations and the energy burdens set forth in the CAP Policy Statement." TURN Exc. at 14. TURN concedes that it did not specifically cite to footnote 3 in its referenced Statement in Support of the 2015 Settlement, but it had stated:

> TURN *et al*. support this settlement because it is intended to more closely target affordable bills for CAP participants pursuant to the Commission's CAP Policy Statement, 52 Pa. Code § 69.261, et seq. . . . TURN *et al*. continue to submit that the Commission should undertake revision and review of this CAP Policy Statement to reduce the maximum affordability standards in order to provide bills which are actually affordable to low-income families.

TURN Exc. at 14 (citing TURN Statement in Support at 3).

TURN notes that ALJ Fordham's Recommended Decision regarding the 2015 Settlement (Fordham R.D.) quoted the entirety of the Term Sheet, including footnote 3, and referenced the energy burdens in the Term Sheet as being consistent

with the affordability burdens set forth in the Commission's CAP Policy Statement. TURN Exc. at 15-16 (citing Fordham R.D. at 8 and 23).

TURN emphasizes that the energy burdens to be utilized in PECO's CAP were a primary concern for TURN and CAUSE-PA and central to the bargain struck in reaching the 2015 Settlement. TURN Exc. at 16-17. TURN also takes issue with the Initial Decision's reference to the record evidence of some $9 million in costs to be incurred for the first few months of 2021, if manual customer bill calculations to reflect the changed energy burdens were to be done. TURN Exc. at 1. TURN argues that, even if the language of footnote 3 itself did not signal possible increased costs to ALJ Fordham or the Commission while considering the 2015 Settlement, a table in footnote 13 of the 2015 Settlement set forth the maximum total program cost changes with inflation and the number of CAP participants, and thus "expressed to ALJ Fordham and the Commission that the cost of the program could change for a variety of reasons." TURN Exc. at 17-18. TURN noted that ALJ Fordham specifically cited cost containment as part of the public interest evaluation of the 2015 Settlement. *Id.* Finally, TURN claims that:

> the potential cost of implementation of footnote 3 is necessarily covered by the maximum program costs set forth explicitly in the CAP FCO Settlement. ALJ Fordham and the Commission were clearly aware of the direct connection between the energy burdens in the CAP Policy Statement and the energy burdens used in the FCO calculation and of the potential total cost of the program.

TURN Exc. at 18.

b. Replies

In its Replies, PECO generally refutes TURN's and CAUSE-PA's characterization of the ALJ's analysis of footnote 3, as failing to acknowledge that footnote 3 was intrinsically related to the FCO adopted by the 2015 Settlement. To the contrary, PECO asserts that the ALJ gave the proper interpretation of footnote 3, and the result is that the language imposed no burden upon PECO to take immediate action to recalculate its customers' assistance benefit. PECO asserts that the ALJ properly concluded that PECO met its CAP FCO obligations under the 2015 Settlement and the 2016-18 USECP and that TURN failed to demonstrate unreasonable service. PECO R. Exc. at 7-8.

In its Replies, the OCA submits that the ALJ's Initial Decision appropriately evaluated footnote 3 in the full context of the Settlement and Statements in Support and correctly concluded that there is no indication in the Settlement that the implementation of new energy burdens was self-executing, intended to be implemented immediately or intended to be central to a multi-pronged Settlement. OCA R. Exc. at 5-6. The OCA also submits that the energy burdens were one component in the calculation of an otherwise complex new FCO design that was designed to achieve the objective of greater affordability. OCA R. Exc. at 6. Furthermore, TURN's argument ignores the importance of the evaluation of the FCO that was conducted after its second year of operation and found that the FCO was not achieving the purpose identified in the Settlement. *Id*. The FCO's purpose was to improve the overall affordability for CAP customers. OCA R. Exc. at 5-6. The OCA notes that TURN's focus on implementing new energy burdens ignores the findings of the FCO Evaluation and the importance of the Evaluation in the overall 2015 Settlement since the evaluation determined that the FCO did not achieve the objective of improving affordability. *Id*.

c. Disposition

TURN's Exception No. 3 reiterates its challenge to the ALJ's reading of the language of footnote 3, and the conclusion that there is no indication in the 2105 Settlement that PECO's implementation of new energy burdens was to be self-executing, intended to be implemented immediately or intended to be central to a multi-pronged Settlement. However, as discussed previously, we agree with the position of PECO and the OCA, that the ALJ properly construed footnote 3 in the context of the 2015 Settlement. For the same reasons discussed *supra*., in denying TURN's Exception No. 1, we conclude that the ALJ properly interpreted the meaning of footnote 3, including its implications for the FCO CAP adopted by the 2015 Settlement.

We note that TURN's arguments are unpersuasive where TURN's own statement in support of the 2015 Settlement made no mention of footnote 3, which TURN now argues is central to the implementation of the FCO adopted by the 2015 Settlement. Accordingly, we reject TURN's averment that footnote 3 was central to the FCO adopted by the 2015 Settlement.

Therefore, based upon our review of the record, the ALJ's Initial Decision and the positions of the Parties, we shall deny TURN's Exceptions No. 3, consistent with this Opinion and Order.

3. TURN Exception No. 4, CAUSE-PA Exception No. 2, Replies and Disposition

a. Summary of the Exceptions:

- **ALJ erred by concluding PECO's actions in filing a new proposed CAP plan constituted substantial compliance with the 2015 Settlement**

TURN argues that PECO's filings to implement a new CAP design and utilize the current energy burdens in the FCO in the future are irrelevant to its current obligations under the 2015 Settlement. TURN disagrees with the Initial Decision's holding that PECO has substantially complied with the words and the spirit of the 2015 Settlement by virtue of its actions in proposing a new CAP program and filings PECO made following the Commission's *2019 Final CAP Policy Statement* Order. TURN Exc. at 18-19 (citing I.D. at 21). TURN claims that PECO's filings do not excuse its alleged non-compliance with a specific provision of the 2015 Settlement. *Id.*

TURN claims that even if the Commission were to approve PECO's proposals, "neither proposal addresses the harm caused to PECO's CAP customers who have received and continue to receive unaffordable CAP bills during the period between the Commission's adoption of its new energy burdens and the Commission's action on PECO's proposals." TURN Exc. at 19.

TURN notes by way of background, that the 2015 Settlement required the APPRISE evaluation, which was completed in June 2019 and filed with the Commission. That evaluation found that the FCO was not working to bring customer bills down to the targeted energy burdens. Importantly, this issue with the FCO is separate and distinct from what those targeted energy burdens are. PECO held a series of stakeholder meetings and ultimately proposed a new program design in its pending

USECP. *Id.* (citing I.D. at 9-10). PECO's proposed new CAP design is a percentage of income payment program (PIPP) and adopts the energy burdens currently reflected in the CAP Policy Statement for two of the three Federal Poverty Level (FPL) tiers. *Id.*

TURN explains that the Initial Decision does not specifically hold that the *2019 Final CAP Policy Statement* Order and subsequent Orders on Reconsideration required PECO to make a filing with the Commission prior to implementing the lower energy burdens.

In its Exception No. 2, CAUSE-PA argues that the ALJ also erred in concluding that PECO was in substantial compliance with the 2015 Settlement by finding that PECO was not in violation of the terms of the 2015 Settlement and PECO's 2016-2018 USECP, given clear evidence that PECO willfully failed to implement the revised energy burdens in the *2019 Final CAP Policy Statement*. CAUSE-PA Exc. at 18-22. CAUSE-PA also asserts that the Initial Decision erred in finding that PECO substantially complied in good faith with the terms of the 2015 Settlement through other filings related to its CAP. CAUSE-PA Exc. at 22-25.

b. Replies

In its Replies, PECO asserts that, while TURN and CAUSE-PA take exception to the ALJ's finding that PECO has substantially complied with the word and the spirit of the 2015 Settlement and made filings that PECO made a good faith effort to comply with its obligations from the 2016-2018 USECP, PECO contends that it has complied with the 2015 Settlement and the 2016-2018 USECP through consistent, good-faith efforts to improve bill affordability for CAP customers in accordance with the 2015 Settlement's provisions and subsequent Commission orders concerning the Revised CAP Policy Statement.

Specifically, PECO avers it: (1) initiated an action plan to revise its CAP after disappointing affordability findings in the APPRISE Evaluation; (2) filed a letter describing the portions of the Revised CAP Policy Statement that the Company was already implementing or intended to implement in accordance with the Commission's Final Policy Order and it also noted that it was still considering several provisions of the Revised CAP Policy Statement; and (3) a subsequent letter of PECO's intention to make a single filing in which it would address the issues raised in the APPRISE Evaluation and the remaining provisions of the revised policy statement; and then in accordance with the Settlement and the Commission's filing directives PECO filed an amended proposed 2019-2024 USECP that included a transition from the CAP FCO to a PIPP. PECO Reply Exc. at 8-9. Thus, after completing the Settlement-mandated analysis of the CAP FCO, PECO worked in an open and transparent fashion to improve bill affordability for all CAP customers. In addition, PECO complied with the Commission's filing directives when PECO filed the Amended USECP to both replace the CAP FCO and PIPP and incorporate several of the Commission's revised energy burdens. PECO Reply Exc. at 11.

In its Replies, the OCA contends that PECO's filings to implement a new CAP design are a direct result of 2015 Settlement and its requirements and PECO's filing to utilize the CAP Policy energy burdens follows the requirements in both the *2019 Final CAP Policy Statement* and *EAP Reconsideration Order*. OCA R. Exc. at 10. Specifically, PECO implements the interrelated provision of the 2015 Settlement in its new CAP design. *Id*. The OCA noted that the APPRISE Evaluation revealed that the FCO design that was approved as a part of the 2015 Settlement did not result in affordable rates for CAP customers which was the objective of the Settlement and the FCO design. *Id*. at 10-11. Simply changing the energy burden will not improve the affordability for customers in the program but will only increase the costs of the program without providing a corresponding benefit to affordability. The OCA contends that the dollars would be more cost-effectively directed towards PECO's new proposed PIPP

design. The OCA asserts that in view of both the evaluation provision of the Settlement and footnote 3, PECO properly concluded that the way to implement the *2019 Final CAP Policy Statement* was to transition the program to a PIPP and include the new energy burdens. *Id.* at 11. Furthermore, as a procedural matter, any change to PECO's USECP must be approved by the Commission and in accordance with the process set forth in the Commission's *2019 Final CAP Policy Statement*. *Id*.

c. Disposition

Upon review, we conclude the ALJ properly found that PECO has substantially complied with the words and the spirit of the 2015 Settlement by virtue of its actions in proposing a new CAP program and filings PECO made following the Commission's *2019 Final CAP Policy Statement* Order. *See* I.D. at 21. As PECO set forth in its Replies, since the 2015 Settlement, PECO has taken affirmative steps to address and improve customer bill affordability. *See* PECO Reply Exc. at 11. PECO's efforts, after completing the Settlement-mandated analysis of the CAP FCO, demonstrated that PECO worked in a transparent manner to improve bill affordability for all CAP customers. In the process of taking affirmative steps to improve its CAP plans, PECO also complied with the Commission's filing directives by filing its Amended USECP to both replace the CAP FCO and PIPP and incorporate several of the Commission's revised energy burdens. Accordingly, like the ALJ, we conclude PECO's actions demonstrated its compliance with both the spirit and the letter of the 2015 Settlement.

Therefore, based upon our review of the record, the ALJ's Initial Decision and the positions of the Parties, we shall deny TURN's Exceptions No. 4 and CAUSE-PA's Exceptions Nos. 2, consistent with this Opinion and Order.

4. TURN Exception No. 5, Replies and Disposition

a. Summary of the Exception:

- **The ALJ erred in concluding that PECO is complying with its 2016-18 USECP**

TURN claims that PECO has not shown that it is complying with the language of its 2016-18 USECP, because taking actions to update the energy burdens in a future, proposed USECP is not what the 2015 Settlement required. TURN Exc. at 20-22. TURN also asserts that the ALJ overlooked TURN's specific record evidence that PECO represents to its customers that it is running its CAP in accordance with Commission guidelines. TURN claims that, because PECO's 2016-18 USECP is explicitly incorporated into PECO's tariff, and customers take service in reliance on those tariffs, by failing to update the new energy burdens, PECO is in turn failing to deliver legally permissible rates to its CAP customers. TURN Exc. at 20.

b. Replies

In its Replies, PECO generally asserts that its filing in response to the APPRISE Evaluation and the revised *2019 Final CAP Policy Statement* were consistent with the 2015 Settlement and the 2016-2018 USECP. For the same reasons discussed in support of the ALJ's reading of footnote 3 of the 2015 Settlement, PECO asserts we should deny TURN's Exception No. 6. PECO R. Exc. at 8-12; See, *supra*, at Section D(3)(b).

c. Disposition

In its Exception No. 5, TURN reiterates its position that the 2015 Settlement required PECO to immediately implement any newly adopted energy burden, and that PECO failed to do so by taking action to implement the new energy burdens in the future by filing for Commission approval to do so. As such, TURN's Exception No. 5 reiterates its position that the ALJ incorrectly concluded that PECO was in substantial compliance with the terms of the 2015 Settlement and the 2016-2018 USECP. As we discussed more fully *supra*, at Section D (3)(c), we agree with the ALJ's conclusion that PECO's actions demonstrated substantial compliance with the terms of the 2015 Settlement as well as the requirements of the 2016-2018 USECP.

Therefore, based upon our review of the record, the ALJ's Initial Decision and the positions of the Parties, we shall deny TURN's Exception No. 5, consistent with this Opinion and Order.

5. TURN Exception No. 6, Replies and Disposition

a. Summary of the Exception:

- **ALJ erred by concluding TURN failed to establish that PECO was in violation of Section 1501 of the Code**

TURN asserts that it met its burden to prove that PECO provided unreasonable service in violation of Section 1501 of the Code because: (1) PECO failed to calculate CAP discounts pursuant to the terms of its approved USECP, and (2) PECO represented to its customers that the energy burdens it uses reflect the Commission's affordability guidelines. TURN Exc. at 22-23. TURN submits that the

ALJ erred in holding that TURN failed to meet its burden to show that PECO has thus provided unreasonable service. *Id*.

b. Replies

In its Replies, PECO generally asserts that its filing in response to the APPRISE Evaluation and the *2019 Final CAP Policy Statement* were consistent with the 2015 Settlement and the 2016-2018 USECP. For the same reasons discussed in support of the ALJ's reading of footnote 3 of the 2015 Settlement, PECO asserts we should deny TURN's Exception No. 6. PECO R. Exc. at 8-12; *See*, *supra*, at Section D(3)(b).

c. Disposition

TURN's assertion in its Exception No. 6, that the ALJ erred in holding that TURN failed to meet its burden to show that PECO has thus provided unreasonable service, is predicated upon the same underlying findings by the ALJ, which TURN asserts are in error, based upon the ALJ's reading of the language of footnote 3 of the 2015 Settlement. Since TURN's argument in Exception No. 6, is premised upon TURN's conclusion (*i.e.*, that the ALJ misinterpreted the language of footnote 3 of the 2015 Settlement), which we have rejected by our disposition of TURN's previous Exceptions, we shall likewise deny TURN's Exception No. 6.

Therefore, based upon our review of the record, the ALJ's Initial Decision and the positions of the Parties, we shall deny TURN's Exception No. 6, consistent with this Opinion and Order.

6. TURN Exception No. 7, Replies and Disposition

a. Summary of the Exception:

- **The ALJ erred in Findings of Facts Nos. 31 and 38**

Turn asserts that Findings of Fact Nos. 31 and 38 in the Initial Decision are inconsistent. Specifically, TURN avers that Finding of Fact No. 31 is incorrect because, while PECO had proposed to incorporate the Commission's new maximum energy burdens in its then-pending USECP filing, PECO's filing retained the Company's existing energy burdens for the 101%-150% FPL customer group. TURN Exc. at 23.

b. Replies

In its Replies, PECO generally asserts that its filing in response to the APPRISE Evaluation and the *2019 Final CAP Policy Statement* were consistent with the 2015 Settlement and the 2016-2018 USECP. For the same reasons discussed in support of the ALJ's reading of footnote 3 of the 2015 Settlement, PECO asserts we should deny TURN's Exception No. 7. PECO R. Exc. at 8-12; *See,* supra, at Section D (3)(b).

c. Disposition

TURN's implicit assertion in its Exception No. 7, is that the ALJ's Findings of Facts Nos. 31 and 38 are so inconsistent as to constitute reversible error. We disagree. Upon review of the language of the Findings of Fact, we conclude that the language of Finding of Fact No. 38, which sets forth the specific energy burdens PECO proposes to implement, including a proposal to retain its existing energy burden in a specific category is both specific and accurate. The more general statement in

Finding of Fact No. 31, that PECO intends to implement the newly revised energy burdens, is a general statement, which does not preclude the fact that PECO also proposes to retain its existing energy burden in one category. Even if the ALJ's wording in the respective Findings of Fact may be construed as "ambiguous," any alleged ambiguity does not rise to the level of a material reversible error.

Therefore, based upon our review of the record, the ALJ's Initial Decision and the positions of the Parties, we shall deny TURN's Exception No. 7, consistent with this Opinion and Order.

7. TURN Exception No. 8, CAUSE-PA Exception No. 3, Replies and Disposition

a. Summary of the Exceptions:

- **The ALJ erred in Findings of Facts Nos. 41 and 42**

- **The ALJ erred by concluding that, had PECO implemented the revised energy burden standards in the 2019 Policy Statement, no bill affordability benefits would result**

TURN next claims that Findings of Fact Nos. 41 and 42 are inconsistent in that the first states that reducing the energy burdens would not improve affordability, while the second states that the lowest income residential electric CAP customers would have received, on average, between $340 and $380 more in CAP credits. TURN Exc. at 23. Citing its witness's testimony that with some exceptions, most CAP customers will receive lower bills with the revised energy burdens in place, TURN claims that "the ALJ failed to acknowledge that reducing the energy burden targets within the CAP FCO will

provide greater discounts to many CAP participants, to their benefit." TURN Exc. at 23-24.

CAUSE-PA argues in its Exception No. 3 that the ALJ analysis of whether PECO had substantially complied with the 2015 Settlement was flawed by the ALJ's inaccurate conclusion regarding the impact of the *2019 Final CAP Policy Statement* revisions to the maximum energy burden tiers.

CAUSE-PA claims that the Initial Decision erred when it failed to find any bill affordability benefits to revising the energy burden standards in the FCO in line with the Final CAP Policy Statement. CAUSE-PA Exc. at 25-29. CAUSE-PA emphasizes that it does not contest that there are flaws inherent in PECO's FCO, however, changing the structure of the FCO was not a condition precedent in the 2015 Settlement to PECO implementing the Commission's revised energy burden standards. CAUSE-PA essentially asserts that the desirable long-term goal necessary to reach true affordability for CAP participants is through critical bill savings from implementation of the revised energy burden standards. CAUSE-PA Exc. at 5 and 28-29.

b. Replies

In its Replies, PECO contends that the Commission should reject the attempt of TURN and CAUSE-PA to discredit the record evidence that using the revised energy burdens in the CAP FCO has no affordability benefit for CAP customers. PECO R. Exc. at 7. PECO argues that there is no inconsistency between the ALJ's findings on affordability and the CAP credits. Furthermore, it was appropriate for the ALJ to make findings on both affordability and CAP credits. PECO states that there is no inconsistency between the ALJ's findings on affordability and CAP credits. Specifically, if the revised energy burdens were implemented, CAP credits would increase and costs

for residential customers would increase, but there would be no improvement in the percentage of CAP customers receiving affordable bills. PECO Reply Exc. at 7-8.

PECO further avers that the Commission should reject CAUSE-PA's position in its Exception No. 3, which attempts to refute the record evidence that using the revised energy burdens in the CAP FCO has no affordability benefit for CAP customers. PECO R. Exc. at 7. PECO asserts that if the revised energy burdens were implemented, CAP credits would increase and costs for residential customers would increase, but there would be no improvement in the percentage of CAP customers receiving affordable bills. PECO R. Exc. at 7-8.

c. Disposition

Both TURN's Exception No. 8, and CAUSE -PA's Exception No. 3 aver that the ALJ's factual findings regarding the impact of the revised energy burdens upon the affordability levels of PECO's CAP customers are incorrect. We note that the ALJ's determinations regarding the impact of the adoption of the revised energy burdens is largely moot by our conclusion that the ALJ correctly concluded that pursuant to the ALJ's interpretation of footnote 3 of the 2015 Settlement, PECO had no immediate duty to adopt and implement the revised energy burdens. However, like the ALJ, we also find that the record evidence shows that incorporating the revised energy burden into the CAP FCO would not improve affordability levels of PECO's CAP customers. Rather, the evidence indicates that if the revised energy burdens were implemented, CAP credits would increase, and those increases would increase the costs for residential customers but

there would be no improvements in the percentage of CAP customers receiving affordable bills. *See* I.D. at 10.

Therefore, based upon our review of the record, the ALJ's Initial Decision and the positions of the Parties, we shall deny TURN's Exception No. 8, and CAUSE-PA's Exception No. 3, consistent with this Opinion and Order.

8. TURN Exception No. 9, CAUSE-PA Exception No. 4, Replies and Disposition

a. Summary of Exception:

- **The ALJ erred by failing to direct PECO to retroactively recalculate billing based upon a correct reading of footnote 3 the 2015 Settlement**

- **The ALJ erred by failing to impose a penalty upon PECO for noncompliance with the 2015 Settlement**

Finally, TURN argues that the ALJ erred in failing to fine PECO for its willful violation of a Commission-approved Settlement and USECP. TURN explains that, because the ALJ erroneously concluded that PECO complied with the 2015 Settlement, the ALJ did not address TURN's request to fine PECO. TURN Exc. at 24.

As relief for all of the above-enumerated exceptions, TURN requests that: (1) PECO be directed to implement the lower energy burdens for as long as it operated the CAP FCO pursuant to the 2015 Settlement and the 2016-2018 USECP; (2) PECO be directed to provide retroactive bill credits and arrearage forgiveness to all CAP customers, and (3) the Commission impose a civil penalty on PECO for its willful

violation of the Commission Orders approving the 2015 Settlement and PECO's 2016-2018 USECP. TURN Exc. at 24-25.

Similar to TURN, CAUSE-PA argues in its Exception No. 4 that the Initial Decision erred in: (1) not ordering PECO to immediately revise the maximum energy burden standards in compliance with the terms of the 2015 Settlement and PECO's 2016-2018 USECP; and, (2) failing to order PECO to provide retroactive bill credits and arrearage forgiveness to CAP participants. CAUSE-PA Exc. at 29-33.

As relief, CAUSE-PA requests that the Commission amend the Initial Decision to find that PECO was obligated under the terms of the 2015 Settlement and its 2016-2018 USECP to revise the maximum energy burden standards when the Commission revised these in the *2019 Final CAP Policy Statement*. CAUSE-PA Exc. at 25. CAUSE-PA also requests that the Commission determine that PECO clearly violated the terms of the 2015 Settlement thereby rendering unreasonable service and creating excessive rates under Section 1501 of the Code. CAUSE-PA Exc. at 29. In addition, CAUSE-PA requests that PECO be ordered to immediately implement the revised energy burden standards set forth in the *2019 Final CAP Policy Statement* to improve bill affordability without delay for PECO's CAP participants. CAUSE-PA Exc. at 31. In line with CAUSE-PA's understanding of PECO's IT [Information Technology] limitations to make bill adjustments, CAUSE-PA requests that the Commission direct PECO to provide system-wide average adjustments to CAP participants' bills providing retroactive credits and arrearage forgiveness as outlined in CAUSE-PA's Exceptions. CAUSE-PA Exc. at 32-33. CAUSE-PA notes that, given that PECO's proposed methodology utilizes system averages to provide retroactive credits, it is important that each individual CAP customer be given the right to request an individualized calculation of retroactive credits. CAUSE-PA Exc. at 33. Finally, CAUSE-PA requests that PECO be directed, when providing retroactive average

forgiveness, to account for bills and payments that were counted as partial, but would have been full, if PECO had timely implemented the revised energy burden standards. *Id.*

b. Replies

In its replies, PECO asserts that the ALJ properly concluded that no relief is warranted. Specifically, PECO asserts that: any relief should reflect the March 21, 2020 effective date of the revised 2019 Policy Statement; the individual retroactive bill credits and arrearages forgiveness requested by TURN cannot be automated under PECO's existing information technology system, and; fines are not warranted as PECO has acted in good faith in accordance with the 2015 Settlement and Commission filing directives to improve bill affordability for customers. PECO R. Exc. at 12-17.

PECO contends that TURN's assertion that the new energy burdens were changed as of the date of the Commission's *2019 Final CAP Policy Statement* Order which was entered on November 5, 2019[15] contradicts the plain language of the Commission's Order [16] which states the *2019 Final CAP Policy Statement* revising CAPs would not become effective until publication in the Pennsylvania Bulletin on March 21, 2020. In fact, the Commission stated in the 2019-2020 USECP Tentative Order that the Revised CAP Policy Statement was amended effective on March 21, 2020. PECO R. Exc. at 13. PECO contends that TURN has offered no legal justification for why the revised energy burdens should be deemed effective prior to March 21, 2020. *Id.*

---

[15] *2019 Amendments to Policy Statement on Customer Assistance Program*, 52 Pa. Code §§ 69.261-69.267, Docket No. M-2019-3012599 (Order entered November 5, 2019.)

[16] The order entered on November 5, 2019 stated that the *2019 Final CAP Policy Statement* would become effective upon its publication in the *Pennsylvania Bulletin.* That order was published in the 50 *Pa.B.* 1691-95, on March 21, 2020.

PECO asserts that, while both TURN and CAUSE-PA argue that individually calculated retroactive bill credits and arrearage determinations are the most appropriate form of relief, PECO provided detailed testimony concerning why individual-by-individual retroactive calculations requested by TURN cannot be recreated in its Customer Information Management System. PECO argues that while calculations could be accomplished through a new information technology project, the cost and implementation timeframe for such a project are not currently available. PECO R. Exc. at 13-14. In addition, PECO asserts that a manual recalculation of bills for each CAP customer would be extremely difficult due to the volume of CAP accounts, the potential timeframe covered and the quarterly FCO calculations made each year. PECO R. Exc. at 14. PECO contends that any demands such as those proposed by CAUSE-PA that would allow each individual CAP customer to challenge the systemwide credit and that PECO must provide the arrearage forgiveness that a customer would have received if its partial payments would have been full payments using the energy burdens would defeat the purpose of the systemwide proposal. *Id.*

With respect to TURN and CAUSE-PA's assertion that over a $1 million fine is appropriate under the factors of the Code, PECO contends that a penalty is not warranted because, *inter alia*: (1) it has substantially complied with the words and the spirit of the 2015 Settlement; (2) it has provided detailed evidence of its open and transparent efforts to address the settlement obligations regarding the CAP FCO; (3) it shared the results of the APPRISE Evaluation showing the failures of the CAP FCO, notified the Commission of its intent to make a single filing to address the APPRISE Evaluation ad Revised CAP Policy Statement; (4) it shared its analysis of potential CAP modifications with stakeholders; and (5) made a comprehensive CAP proposal that is expected to improve bill affordability for CAP customers. PECO Reply Exc. at 15-16. For all of these reasons, PECO asserts the Commission should reject the request for relief, including imposition of civil penalties, and deny TURN's Exception No. 9 and CAUSE-PA's Exception No. 4.

c. Disposition

Upon review, we agree with PECO that no relief is warranted in the circumstances. Because we conclude the ALJ properly found that the language of footnote 3 of the 2015 Settlement did not require PECO to act immediately to implement the revisions to the maximum energy thresholds adopted by the *2019 Final CAP Policy Statement*, without seeking Commission approval, PECO is not in violation of the terms of the 2015 Settlement. Further, we concur with the ALJ's conclusion that PECO's conduct after the 2015 Settlement demonstrates substantial compliance with the terms of the agreement.

We agree that, as the ALJ concluded, no relief, whether it is individual retroactive bill credits and arrearages forgiveness, or civil penalties is warranted. Since PECO has met its CAP FCO Obligations in the 2015 Settlement and the 2016-2018 USECP, as discussed *supra*., we find no basis for concluding that any type of relief is warranted.

Therefore, based upon our review of the record, the ALJ's Initial Decision and the positions of the Parties, we shall deny TURN's Exception No. 9 and CAUSE-PA's Exception No. 4, consistent with this Opinion and Order.

IV. Conclusion

Upon review of the record and relevant law we deny the Exceptions of TURN and CAUSE-PA and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Tenant Union Representative Network on May 3, 2021, are denied.

2. That the Exceptions filed by the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania on May 3, 2021, are denied.

3. That the Initial Decision of Administrative Law Judge Mary D. Long, served on April 13, 2021, is adopted without modification, consistent with this Opinion and Order.

4. That this matter be marked closed.

BY THE COMMISSION,

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 8, 2022