



April 26, 2021

Via E-File

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

Re: Pa. PUC v. PECO Energy Company, Docket No. R-2020-3018929
Exceptions of CAUSE-PA

Dear Secretary Chiavetta:

Enclosed, please find the **Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above noted proceeding.

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only. A Microsoft Word version of this document will be submitted to Your Honor electronically.

Respectfully,



John W. Sweet, Esq.
Counsel for CAUSE-PA

CC: *Certificate of Service*

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, et al. :
 :
 v. : Docket No. R-2020-3018929
 :
 PECO Energy Company :

Certificate of Service

I hereby certify that I have this day served copies of the **Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 and consistent with the Commission’s March 20 Emergency Order at Docket M-2020-3019262.

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I. INTRODUCTION

By Secretarial Letter dated April 12, 2021, the Office of Administrative Law Judge issued the Recommended Decision (RD) of Deputy Chief Administrative Law Judge Christopher P. Pell in the requested base rate increase of PECO Energy Company (PECO or Company). The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files these Exceptions to the Recommended Decision.

CAUSE-PA takes exception with the RD because it fails to adopt critically important recommendations of CAUSE-PA that are necessary to ensure PECO's rates, policies, and programming for low income consumers is just, reasonable, and consistent with prior Commission Orders and the public interest. (See CAUSE-PA St. 1 at 54-56).

First, the Recommended Decision grants PECO's proposed rate increase without requiring any plan to deal with the massive residential arrearages accrued during the COVID-19 pandemic. (RD at 264-266). This is an error that must be reversed. The COVID-19 pandemic has disproportionately impacted low income communities and communities of color. Raising rates on natural gas to power heat and hot water without providing sufficient assistance will increase already high rates of involuntary termination, exacerbating the disproportionate health impacts of the pandemic on low income communities and communities of color and prolonging the longer-term economic recovery for these same households. It is not in the public interest to increase rates for basic utility services at this time. To the contrary – and especially if any rate increase is approved – the Commission must require PECO to implement emergency programming and policy changes consistent with the recommendations of CAUSE-PA to help alleviate unprecedented levels of consumer debt incurred through the pandemic.

Second, the RD fails to require PECO to adopt the maximum energy burden standards set forth in the Commission's formal Customer Assistance Program (CAP) Policy Statement. (RD at 238-240). As Mr. Miller explained in testimony, PECO's current CAP rates are categorically unreasonable and unaffordable, and must be remediated in the context of this rate proceeding to ensure that the Company's economically vulnerable consumers are not subjected to unjust and unreasonable rates. (CAUSE-PA MB at 25-28). The urgency of this issue is even more pronounced in the context of the ongoing pandemic, which has disproportionately impacted low income communities. (CAUSE-PA St. 1 at 9-20, 29-30, 51-52).

Third, the RD fails to address CAUSE-PA's recommendation that PECO be required to adjust CAP credit amounts to offset any approved rate increase at the time the rate increase takes effect, and reject PECO's plan to do so on a quarterly basis. (CAUSE-PA MB at 23-24). As Mr. Miller explained, failure to adjust CAP rates at the time increased rates are implemented will cause low income CAP customers to experience a higher percentage rate increase than other residential customers. (*Id.* at 23). It is an error of both law and policy for the Commission to approve PECO to gradually adjust CAP rates to offset the impact of the rate increase, and would undermine the integrity of Commission-approved Settlements.

Fourth, in approving only a portion of PECO's proposed Energy Efficiency and Conservation (EE&C) Plan, the RD fails to appropriately address the lack of proportionate benefits and targeted EE&C programming for low income consumers. (RD at 130). Specifically, the RD adopted the Bureau of Investigation and Enforcement's (I&E) recommendation that the Company's claimed EE&C costs be reduced by \$1,772,500 based on the limited historic success rate of PECO's current EE&C rebate programs. (*Id.* at 130). However, the RD failed to indicate which portion of the proposed programming would be scaled back to achieve this budget reduction.

Moreover, the RD failed to address CAUSE-PA's recommendations regarding PECO's EE&C plan that would help address identified deficiencies in PECO's EE&C program reach for low income consumers. (Id. at 271-272). These shortcomings with the RD must be addressed to ensure that low income consumers are able to equitably access PECO's energy efficiency and conservation programming.

Fifth, the RD errs in approving PECO to continue recovering universal service costs exclusively from residential customers. (RD at 411-412). As Mr. Miller explained, energy poverty is not caused by residential consumers – it is a broad societal issue, caused by a myriad of external factors that are not attributable to a single rate class. (CAUSE-PA MB at 40-49). Thus, the cost of universal service programs to address and remediate energy poverty is not appropriately relegated solely to the residential customer class. (Id.) As the record evidence in this proceeding makes clear, universal service programs are public purpose programs, which inure to the clear and articulable benefit of all public utility consumers. (Id.) As such, commercial and industrial customers should no longer be able to bypass universal service costs. CAUSE-PA urges the Commission to reverse the RD on this important issue, and require PECO to allocate universal service costs equitably across all rate classes.

Finally, the RD erred in granting PECO's request to substantially increase its fixed charge. (RD at 412-413). As Mr. Miller explained in testimony, "Increasing the fixed charge as proposed will undermine the ability for consumers to control costs through energy efficiency, conservation, and consumption reduction, which is particularly problematic for low income customers." (CAUSE-PA St. 1 at 41). Assigning such a high percentage of the rate increase to the fixed charge prevents customers from exercising the ability to use conservation measures to mitigate that portion of the rate increase, which undermines the explicit goals of the Low Income Usage

Reduction Program (LIURP). The Commission’s LIURP regulations explicitly provide that the program is intended to help low income customers to reduce their bills and, in turn, to “decrease the incidence and risk of customer payment delinquencies and the attendant utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs.”¹ Increasing the fixed charge erodes the ability for consumers to help control their bill through conservation, and should be rejected.

II. EXCEPTIONS

- A. **CAUSE-PA Exception 1: The RD erred in granting a rate increase in the midst of the pandemic, without requiring changes to its policies and implement programming to mitigate the economic harm on low and moderate income consumers, and must be reversed. (RD at 264-266).**

The COVID-19 pandemic has thrust Pennsylvania into an unprecedented time of great economic uncertainty, which has undeniably fallen hardest on low income communities. (CAUSE-PA MB at 9). In the midst of this economic crisis, PECO has proposed to raise its rates by approximately \$68.7 million per year (8.9% over present revenues), increasing the average residential customer’s monthly bill by \$7.12 per month, or approximately 9.03%. (*Id.* at 5). In testimony, CAUSE-PA witness Mr. Miller recommended against raising rates in the midst of the pandemic, which has had a profound impact on the ability of residential consumers to pay current rates, and recommended that PECO be required to recommended that PECO be required to implement emergency pandemic provisions to help equitably address the unprecedented utility debt crisis. (CAUSE-PA St. 1 at 7-9, 38-41). The OCA also recommended that rates not increase and that PECO be required to establish a Emergency COVID-19 Relief Plan (ERP) due to the significant long-term economic crisis created by the COVID-19 Pandemic. (See OCA MB at 132).

¹ 52 Pa. Code § 58.1.

In the Recommended Decision, ALJ Pell rejected CAUSE-PA and OCA's recommendations, stating that they were "not necessary at this time." (RD at 265). ALJ Pell held that PECO has already done enough to help its customers through the pandemic and cited the Commission's recent order lifting the COVID-19 termination moratorium as indicating that economic conditions are improving. (RD at 265). However, the pandemic is far from over and the actions for which ALJ credits PECO's pandemic response were largely in furtherance of existing obligations that have not expanded the availability of assistance to those in need and, in some cases, may detract from the availability of adequate assistance to those in need. (CAUSE-PA RB at 9). Thus, granting a rate increase without requiring additional COVID-19 mitigation measures fails to appropriately balance the interest of consumers who have been economically impacted by the pandemic.

The Commission has a "duty to set 'just and reasonable' rates, reflecting a balance of consumer and investor interests."² The Pennsylvania Supreme Court has held that, "[T]he PUC is obliged to consider broad public interests in the rate-making process."³ While the PUC has broad discretion to determine the proper balance between interests of ratepayers and utilities,⁴ the burden of proving that a rate proposal is just and reasonable rests on the public utility.⁵

In testimony, Mr. Miller explained that, "[I]t is clear that the pandemic will have deep and lasting impacts on our economy that cannot be accurately assessed or accounted for in the context of this rate proceeding." (Id. at 8) He further explained:

As a foundational principle, I do not believe that rates are just and reasonable if they are not also reasonably affordable for those seeking service. Right now, given

² Popowsky v. Pa. PUC, 542 Pa. 99, 107-108 (1995) (emphasis added); 66 Pa. C.S. § 1301.

³ Id. citing Pa. Elec. Co. v. Pa. PUC, 509 Pa. 324, 331, 502 A.2d 130, 134 (1985).

⁴ Id. citing Pa. PUC v. Philadelphia Electric Co., 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989); Pa. PUC v. Pa. Gas & Water Co., 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980), cert. denied, 454 U.S. 824, 102 S. Ct. 112, 70 L. Ed. 2d 97 (1981))

⁵ 66 Pa. C.S. § 315.

the far-ranging economic uncertainty associated with the pandemic and its impact on poverty rates and rate affordability in PECO's service territory and across the state, it is impossible to reasonably assess whether low income consumers will be able afford the Company's natural gas service if its rates are increased as proposed. As discussed in greater length below, PECO's rates for low income customers – including its reduced rates for those enrolled in its Customer Assistance Program (CAP) – are already categorically unaffordable. Until we can more precisely understand the economic impact of the pandemic on local communities and individuals, I do not believe it is appropriate for the Commission to approve any increase in rates.

(Id. at 8-9).

Consequently, Mr. Miller recommended that the Commission deny PECO's proposed rate request in its entirety, and take immediate steps to address categorical unaffordability within PECO's CAP program. (CAUSE-PA St. 1 at 9). Mr. Miller extensively detailed the severe economic impact that the COVID-19 pandemic has had on low and moderate income households, especially for predominantly low income communities and communities of color. (Id. at 9-20, 29-30). Mr. Miller recommended that PECO be required to implement emergency pandemic provisions to help equitably address the growing utility debt crisis, including:

- Increase funding for PECO's Hardship Fund Program.
- Waive the requirement that grant recipients achieve zero balance, and require that grant recipients be provided with an affordable payment arrangement for any remaining balance after application of a hardship grant.
- Waive income certification requirements until businesses are fully reopen and the state of emergency ends, and require PECO to work with stakeholders to develop a transition plan.
- Provide arrearage forgiveness for in-CAP arrears accrued during the pandemic.
- Waive Late Fees and Reconnection Fees

(CAUSE-PA St. 1 at 38-41).

The actions for which ALJ Pell credits PECO's pandemic response were mostly existing obligations that have not expanded the availability of assistance to those in need and, in some cases, may in fact *detract* from the availability of adequate assistance to those in need. (CAUSE-

PA RB at 9). For instance, PECO has only offered customers 24-month payment agreements. (PECO MB at 80). These payment arrangement terms are not affordable for low income customers and are inferior to the time frames offered by the Commission’s Bureau of Consumer Services, which allow for payment arrangements with terms of up to 60 months for low income customers.⁶ Furthermore, PECO’s process for connecting customers to payment arrangements is based on an automated Interactive Voice Response (IVR) . (CAUSE-PA St. 1 SR at 5). This process violates the statutory requirements in Chapter 14, which requires public utilities to provide information and referrals to appropriate universal service programs. (CAUSE-PA RB at 9). As Mr. Miller explained, “If a payment arrangement is offered automatically through the IVR, there is no opportunity to assess the customer’s current economic circumstances” in order to match struggling customers with available assistance (CAUSE-PA RB at 9-10):

Providing automated payment arrangements through an IVR system prevents this kind of critical assessment, and further compounds the ability of consumers who fall behind on unaffordable payment arrangements to catch up in the future. ***When a payment arrangement is unaffordable, it sets up the customer to fail, and counts against them in the future when determining whether to offer additional payment arrangements.***

Id.

Notably, PECO’s IVR payment arrangement process – which offers only an automated 24-month payment arrangement to consumers calling for help with their bill – also contradicts the Commission’s March 18, 2021 Order lifting the emergency moratorium, which required utilities to offer customers with income at or below 250% FPL with a 60-month payment arrangement until December 31, 2021.⁷

⁶ See 66 Pa. C.S. §1405(b).

⁷ Public Utility Service Termination Moratorium, Order, Docket No. M-2020-3019244 (order entered Mar. 18, 2021).

Similarly, PECO's move to increase eligibility for its Hardship Fund, known as the Matching Energy Assistance Fund (MEAF), merely expanded the eligibility threshold – but did not increase the *budget* available to serve those in need. (CAUSE-PA MB at 18; CAUSE-PA RB at 11). PECO's entire MEAF budget is only \$250,000 for both its natural gas and electric divisions, compared to the \$122 million in arrears accrued by PECO's residential consumers through the pandemic. (CAUSE-PA RB at 11). Changes to the eligibility criteria to spread this extremely limited amount of funding across a greater number of customers is a wholly inadequate response to address this crisis.

The only other step that PECO has taken to address the pandemic was to file a Petition last summer seeking approval to use funds already allocated to universal service programming. (CAUSE-PA RB at 11-12). When this Petition failed to garner a majority vote last summer due to a lack of detail included in its Petition, PECO failed to take any further actions in support of this Petition. (*Id.*) PECO's customers are in dire need of emergency assistance to help ensure that economically vulnerable households are able to remain connected to critical natural gas services. (CAUSE-PA MB at 15). The inadequacy of PECO's pandemic response will expose tens of thousands of customers to the threat of termination, and will ultimately result in an unprecedented increase in uncollectible expenses that will ultimately be borne by other residential consumers.

Regarding ALJ Pell's citation to the Commission's order lifting the termination order as indicating that economic conditions in Pennsylvania are improving, the evidence in this proceeding shows that low income communities and communities of color have been hit hardest by the economic crisis and are recovering more slowly. As the ALJ recognizes elsewhere in the RD, "When these economic conditions will improve is in doubt." (RD at 408). The global pandemic, which has fallen hardest on low income communities and communities of color, has worsened

existing struggles, leading to unprecedented levels of consumer debts and a staggering number of residential consumers eligible for terminations. (CAUSE-PA MB at 15-16). These communities have been hit harder and will take longest to recover from the economic impact. (CAUSE-PA St. 1 at 7-8). As Mr. Miller explained in testimony:

[T]he COVID-19 pandemic has thrust us into an unprecedented time of great economic uncertainty, which has undeniably fallen hardest on low income communities. While Pennsylvania has moved in recent months to reopen its economy, we continue to face setbacks as the deadly COVID-19 virus continues to spread across our communities. Many employers have already announced that they will never reopen, and those that do plan to reopen face tremendous hurdles to doing so safely - resulting in long-term job losses and ongoing reductions in staffing, especially for low wage, hourly workers. The depth and breadth of Pennsylvania's long-term unemployment rates, and the resulting increase in the level of poverty in PECO's service territory and across the state, is not yet clear. That said, it is undeniable that the pandemic will have deep and lasting impacts on our economy that cannot be accurately assessed or accounted for in the context of this rate proceeding.

(CAUSE-PA St. 1 at 7-8).

The COVID-19 pandemic has had a severe detrimental impact to the economic climate in PECO's service territory and on PECO's customers' ability to afford service, especially for low income communities and communities of color. (CAUSE-PA MB at 11-12). Even before the pandemic took hold, a large swath of PECO's customer base was already unable to afford natural gas service – with nearly 1 in 5 (19%) of PECO's low income consumers facing involuntary termination for nonpayment in 2019. (*Id.* at 2, 12-13). As the Commission is well aware, the inability to afford natural gas service can have a deep and lasting negative impact on low income families – triggering eviction, poor health outcomes, and family separation. (*Id.* at 13-14).

COVID-19 program and policy mitigation is vital to ensure that consumers can remain connected to natural gas services in their home – especially if PECO's rates increase, which will further exacerbate unaffordability for low income customers. (CAUSE-PA RB at 14). The decision

to increase rates just as terminations begin to proceed will undoubtedly further exacerbate this economic harm and the resulting high levels of termination and uncollectible expenses incurred across low income communities. (CAUSE-PA RB at 13-14). In 2008, during the most recent economic crisis before the COVID-19 crisis, 87.9% (nearly 9 out of 10) of PECO's confirmed low income natural gas customers were terminated for nonpayment, versus just 6.2% of residential customers overall (including low income customers). (CAUSE-PA MB at 13). Immediate and substantial action must be taken to prevent a similar utility termination crisis in PECO's service territory. Thus, any increase in rates must be mitigated by appropriate COVID-19 pandemic programming and policy adjustments to protect against further harm to economically vulnerable consumers.

B. CAUSE-PA Exception 2: The RD erred in approving CAP rates that the Commission has already determined to be unreasonable and unaffordable, and must be amended to ensure that CAP rates are just, reasonable, and consistent with prior Commission orders. (RD at 266-267)

In 2019, the Commission issued its Final CAP Policy Statement and Order, in which it concluded that its previous maximum CAP energy burden standards *were not reasonable or affordable*. (RD at 266-267).⁸ Consistent with this finding, and following a multi-year investigation into rate affordability and universal service programming, the Commission issued a final order and adopted formal Commission policy which substantially reduced the applicable maximum CAP energy burden standards. (CAUSE-PA MB at 25-28).⁹

In this proceeding, Mr. Miller explained that PECO's CAP rates – which adhere to the Commission's *prior* energy burden standards – are unaffordable for low income consumers, and

⁸ Final CAP Policy Statement and Order at 27 (“[T]he current maximum energy burden ranges based on the FPIGs in the [former] CAP Policy Statement **do not reflect reasonable or affordable payments** for many low-income customers.” (emphasis added)).

⁹ Id.

recommended that PECO adopt the Commission's revised CAP energy burden standards to ensure that PECO's CAP rates are just, reasonable, and affordable to those in need of service. (CAUSE-PA St. 1 at 30).

In the RD, ALJ Pell rejected CAUSE-PA's recommendation that PECO lower its maximum CAP energy burdens to comply with the Commission's most recent CAP policy statement. (RD at 266-267). ALJ Pell concluded that all universal service issues raised in this case, including disputes over the applicable energy burden standards used to calculate PECO's CAP rates, should be considered as part of PECO's pending 2019-2024 Universal Service and Energy Conservation Plan (USECP) proceeding. (RD at 267). However, the Public Utility Code requires that the Commission ensure *all* rates charged (whether current or proposed) are just, reasonable, and in accordance with regulation and Commission orders.¹⁰ The Commission has already determined that PECO's current CAP rates are not reasonable or affordable, and contradict the Commission's statutory universal service obligations.¹¹ Thus, as explained below and in CAUSE-PA's Main and Reply Briefs in this proceeding, it is an error of law and an abuse of discretion to approve CAP rates that place an unreasonable and unaffordable burden on the customers who pay them. Deferral of the issue to PECO's USECP is inappropriate, as it would allow unjust and unreasonable rates to continue to be charged to CAP customers in violation of the Public Utility Code.¹²

¹⁰ 66 Pa. C.S. § 1301, 1309.

¹¹ Final CAP Policy Statement and Order at 27; see also 66 Pa. C.S. § 2203.

¹² 66 Pa. C.S. §§ 1301, 1309.

i. The CAP Rates Approved in the RD are Unjust and Unreasonable

In the Commission's order revising its maximum CAP energy burdens, the Commission held:

[T]he current maximum energy burden ranges based on the FPIGs in the CAP Policy Statement do not reflect reasonable or affordable payments for many low-income customers. This would be our conclusion even if the currently specified burdens are considered only presumptively reasonable or affordable.¹³

Pursuant to the Public Utility Code, the Commission is vested with a "duty to set 'just and reasonable' rates, reflecting a balance of consumer and investor interests," and must conform to the Commission's regulations and prior orders.¹⁴ In approving rates, the Commission is also "obliged to consider broad public interests in the rate-making process."¹⁵

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.¹⁶

The Public Utility Code is explicit that the Commission's obligation to ensure rates are just and reasonable applies both to current and proposed rates, and mandates that the Commission amend current rates when those rates are found to be unjust, unreasonable, or otherwise in violation of the law.¹⁷ In other words, it does not matter whether PECO's CAP rates were previously approved by

¹³ Final CAP Policy Statement and Order at 27.

¹⁴ *Popowsky v. Pa. PUC*, 542 Pa. 99, 107-108 (1995) (emphasis added); 66 Pa. C.S. § 1301.

¹⁵ *Id. citing Pa. Elec. Co. v. Pa. PUC*, 509 Pa. 324, 331, 502 A.2d 130, 134 (1985).

¹⁶ 66 Pa. C.S. §1301(a) (emphasis added). The term "rate" is broadly defined by the Public Utility Code:

Every individual, or joint fare, toll, charge, rental, or other compensation whatsoever of any public utility, or contract carrier by motor vehicle, made, demanded, or received for any service within this part, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, and any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental.

McCloskey v. Pa. PUC, 219 A.3d 1216, 1223 (citing 66 Pa. C.S. §102 (emphasis in original)). As a charge placed on customers in exchange for service, PECO's CAP rates fall squarely within Section 102 of the Code's definition of "rate." *Id.*

¹⁷ 66 Pa. C.S. § 1309 (a)

Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the existing rates of any public utility for any service are unjust, unreasonable, or in anywise in violation of any provision of law, the commission shall determine the just and

the Commission – or that those rates will be subject to review in a future or separate proceeding. The Commission has an obligation to ensure that the rates charged to CAP customers are both just and reasonable in the context of this proceeding, and may not defer consideration of the reasonableness of CAP rates to another proceeding.

PECO sets out its CAP rates in its Customer Assistance Program (CAP) Rider, which states, “Customers must apply for the rates contained in this rider and must demonstrate annual household gross income at or below 150% of the Federal Poverty guidelines.” (Tariff at 83 (emphasis added)). PECO’s CAP rates, approved in ALJ Pell’s Recommended Decision, substantially exceed the maximum CAP energy burden standards set forth in the Commission’s revised CAP Policy Statement. (CAUSE-PA MB at 22, 26-28).¹⁸ As previously noted, the Commission has already concluded that the Commission’s prior CAP energy burden standards, upon which PECO’s current energy burden standards are based, are unreasonable, unaffordable, and inconsistent with Commission precedent. (Id.)

It is an error of law to approve rates that the Commission has already determined “*do not reflect reasonable or affordable payments.*”¹⁹ Again, the Commission has the duty to set ‘just and reasonable’ rates, consistent with Commission regulations and prior Orders, which “reflect a ‘balance of consumer and investor interests.’”²⁰ It would be categorically unjust and unreasonable to approve PECO’s CAP rates without adjusting PECO’s applicable energy burden standards in compliance with the Commission’s revised energy burden standards, enshrined in the

reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served upon the public utility, and such rates shall constitute the legal rates of the public utility until changed as provided in this part.

Id.

¹⁸ Final CAP Policy Statement and Order at 27.

¹⁹ Final CAP Policy Statement and Order at 27.

²⁰ Popowsky v. PUC, 665 A.2d 808, 811, 542 Pa. 99, 107-108 (1995); 66 Pa. C.S. § 1301.

Commission's formal CAP Policy Statement, as recommended by CAUSE-PA in this proceeding.²¹

ii. *The CAP Rates Approved in the RD Contradict the Commission's Universal Service Obligations*

In addition to concluding that the energy burden standards currently applied by PECO are unreasonable and unaffordable, the Commission has recently concluded that the Commission's prior energy burden standards, currently in effect in PECO's service territory and approved in the RD, "*fail to satisfy the statutory objectives of universal service and continue to lead to disproportionate termination numbers.*"²² Pursuant to the Public Utility Code, the Commission has an obligation to "ensure that universal service and energy conservation policies, activities, and services are appropriately funded and available in each natural gas distribution service territory."²³ "Universal service and energy conservation" is defined explicitly as the "[p]olicies, practices and services that help residential low-income retail gas customers ... to maintain natural gas supply and distribution services" to their home.²⁴

As the evidence in this proceeding unambiguously revealed, PECO's low income customers – including those enrolled in CAP – have a markedly higher termination rate compared to average residential customers. (CAUSE-PA MB at 13). These same customers also carry a disproportionate level of debt due to the unaffordability of rates, which has been exacerbated by the ongoing economic crisis. (*Id.* at 51). In short, the data in this proceeding clearly shows that PECO's CAP rates are not adequate to ensure CAP customers can maintain service to their home. As such, PECO's current CAP rates fail to satisfy the statutory universal service obligations

²¹ *Popowsky v. PUC*, 665 A.2d 808, 811, 542 Pa. 99, 107-108 (1995); 66 Pa. C.S. § 1301; Final CAP Policy Statement and Order, Docket No. M-2019-3012599 (Nov. 5, 2019).

²² Final CAP Policy Statement and Order at 30-31; see also 66 Pa. C.S. §§ 2202, 2203(8).

²³ 66 Pa. C.S. § 2203(8).

²⁴ 66 Pa. C.S. § 2202.

imposed on the Commission to ensure that universal service programs are adequate to assist low income households to maintain service, and therefore cannot be approved as “just and reasonable” rates in this proceeding.²⁵

iii. The CAP Rates Approved in the RD are Contrary to Public Policy

Permitting PECO to charge CAP rates that violate the statutory objectives of universal service and to lead to disproportionate terminations is not only unacceptable from a legal perspective, it is also unacceptable as a matter of public policy – especially in light of the ongoing pandemic.²⁶ In testimony, Mr. Miller explained that, even with financial assistance, many low income households are forced to forego other necessities or keep their home at unsafe temperatures. (CAUSE-PA St. 1 at 28-29). Mr. Miller explained the effects of energy insecurity and, consequently the importance of providing affordable bills to low income customers. (*Id.* at 29-30):

Unaffordable energy burdens make it extremely difficult for low income households to pay for other basic necessities such as housing, food, and medicine; threatens stable and continued housing, employment, and education; has substantial and long-term impacts on mental and physical health; creates serious public health and safety risks to the household and the larger community; and negatively impacts the greater economy.

(CAUSE-PA St. 1 at 28).

On a larger scale, energy poverty negatively impacts the entire economy. (CAUSE-PA MB at 19). Termination of gas service is a is a common catalyst to eviction and homelessness, which costs communities’ additional resources and contributes to uncollectible expenses recovered from other residential consumers. (CAUSE-PA St. 1 at 21).

²⁵ Popowsky v. PUC, 665 A.2d 808, 811, 542 Pa. 99, 107-108 (1995); 66 Pa. C.S. § 1301.

²⁶ Final CAP Policy Statement and Order at 30-31; see also Popowsky v. PUC, 665 A.2d 808, 811, 542 Pa. 99, 107-108 (1995); 66 Pa. C.S. § 1301.

The need for relief from unreasonable and unaffordable rates is immediate. COVID-19 has ravaged low income and minority communities, leading to disproportionate impacts both in terms of infections and deaths within the community and economic devastation. (CAUSE-PA MB at 6-10, 19-20, 30-31, 35-36). As Mr. Miller explained, helping low income customers better afford service will ensure they are able to have heat and hot water to properly wash, sanitize, and remain in their homes to help avoid the spread of COVID-19. (See CAUSE-PA St. 1 at 40-41). Thus, in addition to the legal basis for amending PECO's applicable CAP rates, there are strong public policy reasons for doing so as well.

iv. *The CAP Rates Approved in the RD Violate the Terms of a Commission-Approved Settlement*

Finally, CAUSE-PA notes that PECO's failure to adjust its applicable energy burden standards consistent with the Commission's revised CAP Policy Statement plainly violates the terms of a 2015 Settlement and contradicts the terms of PECO's currently effective and Commission-approved Universal Service and Energy Conservation Plan (USECP).²⁷ In relevant part, the 2015 settlement, which was incorporated directly into PECO's approved USECP, provided: "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."²⁸ Yet PECO has still not complied with this previously agreed-to term by adopting the Commission's revised energy burden standards.

²⁷ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Joint Petition for Settlement, Docket No. M-2012-2290911, at Exhibit A, p. 2, fn. 3 (Term Sheet) (filed March 20, 2015); see also PECO Energy Company Universal Service and Energy Conservation Plan 2016-2018, Docket No. M-2015-2507139, Appx. B (initially filed Oct. 2, 2015).

²⁸ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Joint Petition for Settlement, Docket No. M-2012-2290911, at Exhibit A, p. 2, fn. 3 (Term Sheet) (filed March 20, 2015).

For these reasons, CAUSE-PA asserts that the Commission must – as a matter of law and sound public policy – order PECO to implement the maximum CAP energy burden standards contained in the Commission’s currently effective CAP Policy Statement. PECO’s CAP customers are suffering immediate and continuing harm as a result of unaffordable and unreasonable rates, which are inconsistent with the Commission’s universal service obligations and the Commission’s prior orders on the issue. The risks created by energy unaffordability to the health, safety, and welfare of individuals and the greater community is too great for PECO to continue to charge its CAP customers unaffordable and unreasonable rates.²⁹

C. CAUSE-PA Exception 3: The RD must be amended to require PECO to concurrently increase CAP credits by a percentage equal to the system-wide residential gas distribution rate increase, consistent with the terms of a 2015 Settlement.

To the extent any rate increase is ultimately approved as a result of this proceeding, it is imperative that the Commission require PECO to concurrently increase the CAP credit amount for existing CAP customers by a percentage equal to the system-wide residential gas distribution rate increase. (CAUSE-PA MB at 22-23, 28-29). The RD was silent on this point, and broadly deferred all universal service issues to PECO’s 2019-2024 USECP proceeding. (See RD at 267). CAUSE-PA submits that this oversight was an error of both law and policy, and must be amended to require PECO to adjust CAP rates by any approved percentage increase in residential gas distribution rates upon implementation of increased rates.

In 2015, the Commission approved a comprehensive Settlement which, in relevant part, provided:

²⁹ Id. at 27.

If PECO is granted a gas base rate increase, the portion of each rate R customer's Annual Credit that is attributable to distribution rates *will be increased by a percentage equal to the system-wide residential gas distribution rate increase.*

(CAUSE-PA MB at 22 (emphasis added)).³⁰

PECO ignored this Settlement provision in its rate proposal, and instead proposed to phase in adjustments to the CAP credits on a quarterly basis over a 12-month period based on the customers' actual usage – rather than making immediate adjustments based on the approved system-wide average increase for residential rates consistent with the terms of the Commission-approved Settlement. (CAUSE-PA MB at 22-23, 28).

If PECO's approach to adjusting CAP credits is approved, PECO's CAP customers will experience a *higher* percentage rate increase than the rest of the residential rate class. (*Id.*) As explained above, and more thoroughly in CAUSE-PA's Main and Reply Briefs, CAP customers already face categorically unaffordable bills. Unless offset by immediate adjustments to the CAP credit limit, low income CAP customers will experience a disproportionately high rate increase compared to other residential consumers - compounding current disparities in energy burdens³¹ and exacerbating the deep and unequal economic harm experienced by low income consumers as a result of the pandemic. Failure to adjust the applicable CAP credit limit consistent with the Commission-approved Settlement terms would increase unaffordability.

³⁰ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Joint Petition for Settlement, Docket No. M-2012-2290911, at Exhibit A, page 6 (filed March 20, 2015) (emphasis added).

³¹ As the Commission concluded in its recent investigation into rate affordability, low income consumers pay a substantially higher percentage of their income on energy costs. Pa. PUC, BCS, Home Energy Affordability for Low-Income Customers in Pennsylvania, Docket No. M-2017-2587711 (Jan. 2019). "Even with discounted payments, CAP customers had a higher energy burden than non-CAP residential customers. From 2012-2016, the average energy burden was 7% to 8% for NGDC CAP heating customers. ... Residential non-CAP customers had an average annual energy burden of 4% for NGDC and EDC service during this period of time, regardless of heating or non-heating status and energy type." *Id.* at 6.

It is deeply troubling that PECO would side-step the clear and unambiguous terms of a Commission-approved Settlement. As the record shows, PECO was aware of this Settlement provision, yet chose to pursue a different approach to adjusting CAP credits following approval of a rate increase in this proceeding. (CAUSE-PA MB at 22-23, 28-29). Willful disregard for the terms of a Commission-approved settlement should not be tolerated by the Commission, as it undermines the integrity of settlements. Failure to enforce clear, unambiguous terms of a settlement would have a chilling effect on the willingness of all parties settle in the future for fear of endless monitoring and litigation just to ensure that the terms of an agreement are fulfilled.

To the extent any rate increase is approved in this proceeding, we urge the Commission to require that PECO adjust the applicable CAP credits by an amount equal to the system-wide residential gas distribution rate increase consistent with the terms of the Commission-approved Settlement. Such an order would not only be consistent with the plain terms of the Commission-approved settlement, it is also good public policy, as it would ensure that CAP customers will not bear the full brunt of the rate increase at a time when low income customers are already facing profound economic hardship as a result of the pandemic.

D. CAUSE-PA Exception 4: The RD must be revised and/or clarified to ensure that the Company's Energy Efficiency and Conservation (EE&C) Program will provide a proportionate level of benefits to low income consumers. (RD at 130-131).

In this proceeding, PECO proposed to continue and expand its voluntary Energy Efficiency and Conservation (EE&C) program, and requested \$4.5 million in annual funding for the program. (RD at 130). In the RD, the ALJ adopted the Bureau of Investigation and Enforcement's (I&E) recommendation that the Company's claimed EE&C costs be reduced by \$1,772,500 based on the limited historic success rate of PECO's current rebate programs. (RD at 130). However, the ALJ

failed to indicate which portion of the proposed programming would be scaled back to achieve this reduction in funding. Moreover, the ALJ failed to address CAUSE-PA's recommendations regarding PECO's EE&C plan that would help address identified deficiencies in PECO's EE&C program reach for low income consumers. (RD at 271-272). These shortcomings with the RD must be addressed.

Rather than reducing funding for the program, CAUSE-PA submits that ordering PECO to use the \$1,772,500 to remediate the deficiencies in its rebate program and address low income access to its EE&C programs is a better solution than disallowing the funding for important EE&C programming. However, assuming the funds are disallowed, PECO should still be ordered to implement its proposed Safe and Efficient Heating Program – as modified by CAUSE-PA's recommended reforms – to ensure that approved program benefits are equitably and proportionately available to low income consumers, who are most in need of assistance to adopt comprehensive energy efficiency and conservation measures. (CAUSE-PA MB at 40).

While natural gas energy efficiency and conservation (EE&C) programming is voluntary, Commission-approved natural gas EE&C programming must still be just, reasonable, and in the public interest to be approved. (*Id.* at 38). In gauging whether PECO's EE&C program is in the public interest, CAUSE-PA asserts that the Commission must ensure that it aligns with analogous provisions in the law – including the requirements of Act 129 to provide a proportionate level of benefits to low income customers within an approved EE&C Plan. (*Id.* at 38).³²

³² See 66 Pa. C.S. § 1301; 66 Pa. C.S. § 2806.1(b)(i)(G) (“The plan shall include specific energy efficiency measures for households at or below 150% of the Federal poverty income guidelines. The number of measures shall be proportionate to the households’ share of the total energy usage in the service territory. The electric distribution company shall coordinate measures under this clause with other programs administered by the commission or another Federal or State agency. The expenditures of an electric distribution company under this clause shall be in addition to expenditures made under 52 Pa. Code Ch. 58 (relating to residential low-income usage reduction programs).”).

In testimony, CAUSE-PA witness Mr. Miller pointed out that, despite making up an estimated 20% of PECO's residential customers, low income customers make up **just 1%** of those projected to be served through PECO's EE&C Plan. (CAUSE-PA St. 1 at 46). Low income savings are projected at only 0.72% of savings achieved through the program for the general residential class. (Id.)

CAUSE-PA made several recommendations to address the lack of proportional EE&C programming for low income consumers, and PECO's overreliance on rebate programs which are inaccessible to low income households. (CAUSE-PA MB at 37-40). Mr. Miller recommended that PECO be required to take steps to improve access for low income customers, including:

- Allow all PECO customers with income at or below 150% FPL to participate in its low income EE&C program, including both homeowners and tenants. (CAUSE-PA St. 1 at 47).
- Include additional opportunities within PECO's general residential program for low income consumers to access energy efficient equipment without any customer contribution. (Id. at 48).
- Require PECO to host a collaborative meeting to develop a specific plan for coordinating voluntary EE&C programs with other related programs available to PECO's low income customers. (Id. at 48).

In the RD, the ALJ summarized CAUSE-PA's recommendations (RD at 263-265), but failed to address the recommendations in the disposition on EE&C programming. (Id. 130-131). The ALJ found that the Company should not be permitted to increase its annual funding for EE&C programs because past customer participation levels have not met projections and program expenditures have been significantly less than the budgeted amounts. (Id. at 130). Mr. Miller's recommendations to improve access for low income households by removing cost barriers to EE&C participation would help alleviate these problems, had they not been overlooked. CAUSE-PA asserts that the ALJ erred by failing to address CAUSE-PA's recommendations to reform the programming.

PECO's Safe and Efficient Heating Program is designed to target low income homeowners with income at or below 100% FPL, and will replace a limited number of furnaces over 25 years old and boilers over 30 years old. (CAUSE-PA St. 1 at 45). Mr. Miller was supportive of this program, and pointed out that these direct installation services will help to remediate heating costs for households with old and inefficient heating and hot water systems. (CAUSE-PA MB at 37). These measures are not generally available to low income households through other programming, which only provides services when a system is inoperable – not when it is inefficient and contributing to high energy costs for the participating household. (*Id.* at 38). However, notwithstanding this support, Mr. Miller explained that the program fell short of providing proportionate benefits to low income households.

PECO projects to serve approximately 27,664 consumers through its EE&C Program, but only 289 (1%) of those will be low income customers. (CAUSE-PA St. 1 at 46). Furthermore, projected savings achieved for low income customers are disproportionately low, just 3,529 MCF out of the 492,983 MCF savings projected for the residential class, *amounting to just 0.72% of overall EE&C program savings.* (*Id.*) Mr. Miller also pointed out that the eligibility standards for PECO's Safe and Efficient Heating Program are unreasonably restrictive in that it excludes tenants from participating and limits participation to customers under 100% FPL. (*Id.* at 47). It is critical that the Commission squarely address the lack of proportional benefits for low income consumers.

Ultimately, regardless of whether the Commission approves a scale-back in funding for PECO's EE&C Plan, CAUSE-PA urges the Commission to address the lack of proportional benefits for low income consumers by approving PECO's Safe and Efficient Heating Program – as amended by the recommendations of CAUSE-PA.

E. CAUSE-PA Exception 5: The RD erred in approving PECO’s proposal to recover universal service program costs exclusively from residential consumers, and must be amended to ensure equitable recovery of public purpose program costs. (RD at 411-412).

In their respective Main Briefs, CAUSE-PA and OCA argued that PECO should be directed to recover its universal service costs across all rate classes. (CAUSE-PA MB at 40-49; OCA MB at 181-206). Consistent with the Commission’s recent declaration of policy on the issue, CAUSE-PA explained that recovery of universal service costs from all customers is consistent with cost causation principles. (CAUSE-PA MB at 41).³³ Indeed, residential consumers do not cause energy poverty, and it is therefore both unjust and unreasonable for residential consumers to alone bear the cost of universal service programming. (Id.) CAUSE-PA explained that now more than ever, given the unprecedented and disproportionate economic impact of the pandemic on residential consumers (and specifically low income consumers), it was critical that universal service cost recovery be equitably shared by all consumers. (Id. at 41-42). Rather than recommend a specific cost allocation for universal service costs, CAUSE-PA recommended that the Commission order PECO to develop a proposal to recover universal service program costs equitably from all ratepayers, and seek approval for such a proposal within one year of the final order in this proceeding. (Id. at 42).

In the RD, ALJ Pell summarily rejected the recommendation that USP costs be distributed equitably among all the classes, and instead approved PECO to continue recovering all universal service program costs exclusively from residential consumers. (RD at 408). CAUSE-PA asserts that this decision is against the weight of the evidence in this proceeding, and must be corrected.

³³ Final CAP Policy Statement and Order at 94.

The Choice Act explicitly states that the Commission must ensure universal service programs are “appropriately funded and available” to ensure that low income customers can “maintain natural gas service” to their home.³⁴ In turn, the Choice Act authorizes the recovery universal service program costs through a *nonbypassable* rate mechanism. (CAUSE-PA MB at 32). Section 2203(6) of the Choice Act provides:

After notice and hearings, **the commission shall establish for each natural gas distribution company an appropriate nonbypassable, competitively neutral cost-recovery mechanism which is designed to recover fully the natural gas distribution company's universal service and energy conservation costs over the life of these programs.**³⁵

However, commercial and industrial customers have been allowed to bypass universal service program costs. It is critical that the Commission order a more equitable assignment of universal service costs, rather than place the burden solely to the residential class.

In its Final CAP Policy Statement and Order, the Commission explicitly concluded that it is “**appropriate to consider recovery of the costs of CAP from all ratepayer classes**” and declared that “[u]tilities should be prepared to address recovery of CAP costs (and other universal service costs) from any ratepayer classes in their individual rate case filing.”³⁶ The Commission indicated that it “will no longer routinely exempt non-residential classes from universal service obligations.”³⁷

While the Commission did not order utilities to propose a *specific* allocation, it explicitly indicated that individual utility rate cases are the appropriate to consider recovery of the costs of

³⁴ 66 Pa. C.S. § 2202, 2203(7), (8). Section 2202 defines “universal service and energy conservation” as the “[p]olicies, practices and services that help residential low-income retail gas ... to maintain natural gas supply and distribution services. The term includes retail gas customer assistance programs...”. 66 Pa. C.S § 2202.

³⁵ 66 Pa. C.S. § 2203(6).

³⁶ Final CAP Policy Statement and Order at 80 (emphasis added).

³⁷ Id. at 7, 97; see also 52 Pa. Code §§ 69.625(1), 69.266(b).

CAP costs from all ratepayer classes.³⁸ In doing so, the Commission acknowledged that “poverty, poor housing stock, and other factors that contribute to households struggling to afford utility service are not just ‘residential class’ problems.”³⁹

In justifying his decision, the ALJ reasoned that commercial and industrial customers have experienced harsh economic impacts as a result of the pandemic. (RD at 408). Moreover, and contrary to Commission precedent and substantial record evidence in this proceeding, ALJ Pell erroneously concluded: “Since [commercial and industrial] customers do not derive any direct benefit from the USP programs, I don’t believe it is appropriate to change the manner in which PECO’s USP costs are allocated.” (*Id.*) In short, the ALJ’s rationale on this issue is against the weight of the evidence in this proceeding and contrary to Commission precedent.

First, ALJ Pell’s rationale on this matter overlooks the impacts of the pandemic on the residential class – giving undue weight to the impact that universal service costs may have on commercial and industrial customers without examining the impact that current cost recovery of universal service programming has on residential consumers. (See CAUSE-PA MB at 41-42). CAUSE-PA notes that the ALJ’s reliance on the impact of the pandemic on commercial and industrial customers in this context is inconsistent with the ALJ’s earlier conclusion that pandemic relief for residential customers is unnecessary given recent improvements in the economic outlook. (RD at 265). (Compare RD at 265 with RD at 408).

Residential and commercial and industrial consumers are all experiencing unprecedented economic impacts as a result of the pandemic. However, the record is clear that low income

³⁸ Final CAP Policy Statement and Order at 7, 97.

³⁹ Id. at 94.

consumers have been most profoundly impacted, which will likely result in a substantial increase in universal service program enrollment. (CAUSE-PA MB at 41).

Low-income workers are less likely to have paid sick leave or personal time to care for themselves or their families. Many low wage and hourly workers and are employed in the service, hospitality, and retail sectors, which have been especially hard hit by the emergency closure of non-essential businesses.

(CAUSE-PA St. 1 at 14).

The effects of the pandemic are likely to lead to unprecedented levels of long-term unemployment for low wage workers, evictions, foreclosures, and utility terminations. (*Id.* at 14-15). The number of people who are out of work or who experience a reduction in available work or pay, will continue to grow, especially for low-wage workers who are most susceptible to pandemic related job losses. (*Id.*). The ALJ's rationale regarding cross-class recovery of universal service costs ignores all of this data and information about the impact of the pandemic on residential consumers, and instead accounts only for the impact of the pandemic on commercial and industrial consumers. (RD at 408).

In addition to overlooking the impact of the pandemic on residential consumers, the ALJ's rationale also concludes, against the weight of the evidence and inconsistent with the Commission's prior findings, that commercial and industrial customers "do not derive any direct benefit from the USP programs." (RD at 408)⁴⁰ This erroneous conclusion must be roundly rejected by the Commission.

⁴⁰ The Commission's initial decision to recover universal service costs exclusively from residential consumers was not premised on a conclusion that commercial and industrial customers derive no benefit from universal service programs. Pa. PUC, BCS, Investigation of Uncollectible Balances, Final Report to the Pennsylvania Public Utility Commission, Docket No. I-900002, at 157-158 (Feb. 1992); see also Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, Final Investigatory Order, Docket No. M-00051923, at 15-16 (Oct. 19, 2006); Final CAP Policy Statement and Order at 95-96. To the contrary, the Commission has repeatedly recognized that universal service programming benefits all customer classes, but nevertheless decided as a matter of policy that imposing any amount of universal service costs on commercial and industrial customers could cause businesses to leave the

The fact is, all consumers – including commercial and industrial customers – derive direct and identifiable benefits from the availability of universal service programming. (CAUSE-PA St. 1 at 49-53). Mr. Miller explained in testimony that energy poverty is driven, at least in part, by low wages paid by commercial and industrial consumers, noting that the majority (65.4%) of natural gas CAP customers received employment or retirement income, yet cannot afford natural gas services without assistance. (*Id.* at 50). Mr. Miller further noted that the availability of universal service programming benefits employers by reducing time away from work necessary to address utility issues, which can undermine worker productivity and increase employee turn-over and absenteeism. (*Id.*) Mr. Miller explained that there are also a multitude of broader societal benefits of universal service programming that inure to the benefit of all consumers. (CAUSE-PA MB at 47; CAUSE-PA St. 1 at 21-30). This includes reduced homelessness and improved health and safety of the broader community. (*Id.*) Indeed, helping low income consumers to afford utility service to their home has helped to measurably curb further spread of COVID-19 by ensuring that low income households have access to hot water to wash and sanitize and heat for working and schooling from home. (*Id.*) In these ways and more, universal service programs benefit the entire community – not just residential consumers.

In its Final CAP Policy Statement and Order, the Commission explained: “Cross-class recovery for universal service costs is the ‘norm’ across much of the country, where state utility commissions and legislatures have expressly recognized that *universally available utility services benefit the community as a whole.*”⁴¹ While residential consumers may exclusively experience

Commonwealth. *See id.* This assumption has since proven to be untrue. As the Commission recently observed with regard to Philadelphia Gas Works’ longstanding policy of cross-class recovery: “[W]e have not seen evidence that the economic climate in Philadelphia has been negatively impacted as a result of universal service costs charged by PGW.” *See* Final CAP Policy Statement and Order at 95-96.

⁴¹ Final CAP Policy Statement and Order at 96 (emphasis added).

energy poverty, they do not cause energy poverty, nor do they exclusively experience its negative effects. (CAUSE-PA MB at 48). The Commission explained:

The Commission agrees that poverty, poor housing stock, and other factors that contribute to households struggling to afford utility service are not just ‘residential class’ problems. Further, helping low-income families maintain utility service and remain in their homes is also a benefit to the economic climate of a community. ... Clearly, there is a persuasive argument to be made that home heating and energy assistance for low-income households serves a public good whose responsibility is not merely other residential ratepayers.⁴²

Ultimately, the Commission concluded that costs could be allocated across classes “even if one discounts any non-residential benefits.”⁴³ However, as the record in this proceeding showed, universal service programs provide clear and identifiable benefits to all ratepayers, and should be recovered accordingly.

Appropriate cost-sharing for these critical public purpose programs would lighten the burden of energy poverty on residential customers while providing more affordable services to CAP customers and more fairly allocating the costs of these critical programs between all consumers who enjoy their benefits.

Thus, and for the reasons explained more fully in CAUSE-PA’s Main and Reply Briefs, it is neither just nor reasonable for PECO to continue to recover its universal service costs exclusively from the residential class.⁴⁴ The cost of and need for universal service programs is *caused* by numerous societal factors that extend beyond the residential rate class, including but not limited to utilities regularly and continually raising rates, employers paying substandard wages, and landlords failing to appropriately maintain housing stock. (CAUSE-PA MB at 41). The cost

⁴² Final CAP Policy Statement at Order at 94-95.

⁴³ Final CAP Policy Statement at 95.

⁴⁴ 66 Pa. C.S. § 2203(6); 66 Pa. C.S. § 1301; Final CAP Policy Statement and Order at 94-97.

of ensuring affordable access to such basic human needs as heat and hot water should be borne by all who enjoy the benefits of the public utility.

F. CAUSE-PA Exception 6: The RD erred in permitting PECO to increase its fixed monthly customer charge, and must be reversed to require that any approved rate increase be recovered through the volumetric charge. (RD at 412-413).

In this proceeding, PECO seeks to increase its fixed monthly residential customer charge from \$11.75 to \$16.00, an increase of \$4.25 or 36%. (PECO St. 7 at 12:14). CAUSE-PA witness Mr. Miller recommended against increasing the fixed charge. (CAUSE-PA St. 1 at 44). He explained that increasing the fixed charge as proposed will undermine the ability for consumers to control costs through energy conservation, thus undermining the explicit goals of the Low Income Usage Reduction Program (LIURP). (*Id.* at 41-42). In the RD, the ALJ allowed the PECO's full increased fixed charge proposal, despite admitting that it violated the principal of gradualism. (RD at 409). The ALJ recommended that residential customer charge be included in the scale back of rates if the Commission ultimately grants PECO less than the full requested increase; however, the ALJ acknowledged that:

I agree that a 36% increase to the customer charge violates the principle of gradualism. This monthly charge cannot be avoided or reduced. **No matter what PECO customers do to try to bring their residential gas bills down, they must pay this customer charge or risk losing their gas service.** (RD at 409 (emphasis added)).

The sole rationale for the disposition is that the Company's proposed customer charge is supported by I&E's customer cost analysis. (*Id.*) However, the customer cost analysis should not outweigh the public interest in protecting protect the ability of low income households to lower their utility costs by reducing consumption and preserving the effectiveness of the LIURP program. (CAUSE-PA St. 1 at 44).

The Commission a “duty to set ‘just and reasonable’ rates, reflecting a balance of consumer and investor interests.”⁴⁵ In determining just and reasonable rates, the PUC has discretion to determine the proper balance between interests of ratepayers and utilities.⁴⁶ “[T]he PUC is obliged to consider broad public interests in the rate-making process.”⁴⁷

[T]he term “just and reasonable” was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.⁴⁸

In testimony Mr. Miller explained, “Increasing the fixed charge as proposed will undermine the ability for consumers to control costs through energy efficiency, conservation, and consumption reduction, which is particularly problematic for low income customers.” (CAUSE-PA St. 1 at 41). He explained that low income customers already struggle to pay for natural gas service, and rely on the ability to reduce bills through conservation and usage reduction: “Regardless of the level of household usage, any increase to the fixed charge prevents customers from exercising the ability to use conservation measures to mitigate that portion of the rate increase.” (Id.). He also explained that increasing the fixed charge would undermine the efficacy of PECO’s LIURP:

PECO’s proposal undermines the explicit goals of the Low-Income Usage Reduction Program (LIURP). The Commission’s LIURP regulations explicitly provide that the program is intended to help low-income customers to reduce their *bills* and, in turn, to “decrease the incidence and risk of customer payment delinquencies and the attendant utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs.” By reducing the amount of bill reduction that can be obtained through LIURP measures, the proposed increase to the fixed charge threatens the continued effectiveness of ratepayer investments

⁴⁵ Popowsky v. Pa. PUC, 542 Pa. 99, 107-108 (1995) (emphasis added); 66 Pa. C.S. § 1301.

⁴⁶ Id. citing Pa. PUC v. Phila. Electric Co, 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989); Pa. PUC v. Pa. Gas & Water Co., 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980), cert. denied, 454 U.S. 824, 102 S. Ct. 112, 70 L. Ed. 2d 97 (1981)).

⁴⁷ Id. citing Pa. Elec. Co. v. Pa. PUC, 509 Pa. 324, 331, 502 A.2d 130, 134 (1985).

⁴⁸ Id.

intended to reduce energy consumption, delinquencies, collections, and uncollectible costs. The explicit goals of the program will be more difficult to achieve as the fixed portion of the bill is increased. (CAUSE-PA St. 1 at 42).⁴⁹

Mr. Miller also explained that, in addition to undermining the effectiveness of millions of dollars in LIURP investments, PECO's high fixed charge proposal will also "undermine the millions of ratepayer dollars that the Company is proposing to invest in energy efficiency through its voluntary Energy Efficiency and Conservation Program Plan." (*Id.*).

Thus, the mere fact that PECO's proposed fixed monthly customer charge fits within I&E's customer cost analysis should not be dispositive where serious consumer interests and public interests are at stake. Assigning the majority of the impact of the proposed rate increase to the fixed monthly service charge means homes using the least amount of gas will face the highest percentage increase. (*Id.* at 7). This approach will undermine the ability for consumers to control costs through conservation, undercutting ratepayer investment in PECO's LIURP and EE&C plans. For these reasons, PECO's fixed monthly customer charges should not be increased and any approved increase in rates should be applied exclusively to the volumetric charge. This would protect the ability of low income households to lower their utility costs by reducing consumption and would preserve the effectiveness of the LIURP program at reducing customer bills and improving payment behavior.

III. CONCLUSION

For the reasons set forth above, and as more fully explained in its Main and Reply Briefs, CAUSE-PA urges the Commission to amend ALJ Pell's RD consistent with its above Exceptions.

⁴⁹ 52 Pa. Code § 58.1 ("The programs are intended to assist low-income customers conserve energy and reduce residential energy bills. The reduction in energy bills should decrease the incidence and risk of customer payment delinquencies and the attendant utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs.").

PECO's low income customers are struggling now more than ever. The emergence of the COVID-19 pandemic has exacerbated already existing inequities and PECO must take immediate action to assist customers affected by COVID-19 pandemic, adjust its CAP rates to affordable levels, make its EE&C program more accessible to low income households, and recover the cost of the programs across all classes of customers. By ordering PECO to take these necessary steps, the Commission can help ensure that low income customers can afford continued access to heat and hot water to fight the spread of COVID-19 and help them endure the economic impact of the pandemic.

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