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UNIVERSAL SERVICE AND ENERGY CONSERVATION REPORTING REQUIREMENTS AND CUSTOMER ASSISTANCE PROGRAMS :

DOCKET NO. L-00070185

Additional Comments of PECO Energy Company to the Commission's Proposed Rulemaking Order

The Pennsylvania Public Utility Commission ("Commission") proposes to amend Chapters 54, 62 and 76 of the Pennsylvania Code (relating to electricity generation customer choice; natural gas supply customer choice; and customer assistance programs). Notice of the proposed rulemaking was originally published at 38 Pa.B. 776 (February 9, 2008). On April 18, 2008, PECO Energy Company ("PECO" or "the Company") filed comments in response to that original notice. On April 3, 2010, the Commission reopened this proceeding, via further publication in the Pennsylvania Bulletin, 40 Pa. B. 1764 (April 3, 2010), to accept additional public comments on six specified issues. PECO appreciates the opportunity to provide these additional comments.

1. DPW Policy Change

First, the Commission requests comments on a policy change proposed by the Department of Public Welfare ("DPW"). The Commission requests comments on:

> The impact of the Department of Public Welfare's proposed policy change regarding the use of Low-Income Home Energy Assistance Program (LIHEAP) funds on a distribution company's Customer Assistance Program (CAP) design.

As PECO understands the proposed DPW policy change, this will have no effect on PECO's low-income programs.

The proposed DPW policy change, as PECO understands it, is that when a utility receives a Low Income Home Energy Assistance Program ("LIHEAP") grant, it must apply the LIHEAP grant to the account of the customer in question to reduce the outstanding balance of that account (as opposed, for example, to using the LIHEAP funds to broadly fund a low-income program for multiple customers).

PECO has historically applied LIHEAP grants directly to customer accounts in the manner that DPW now intends to require. PECO has been, and will continue to be, in discussions with DPW to ensure that it fully understands the new policy and that it can comply with it. At this time, however, PECO believes that its current policies fully comply with the proposed DPW policy change, and that this issue thus will have no effect on PECO.

(2) CAP Costs and Affordability

Second, the Commission requests comments on Customer Assistance Program ("CAP") costs and affordability:

> Factors that may impact CAP costs and affordability of bills, such as increased CAP enrollment levels, the recent economic decline, the expiration of electric generation rate caps, the impact on residential rates from the initiation of energy efficiency and conservation programs under Act 129 of 2008, and the potential impact on residential bills from smart metering initiatives.

Programmatic growth can be sustained, in light of increased CAP enrollment and a lagging economy, by balancing the needs of low-income customers to obtain affordable

service and the needs of higher-income customers to not be unreasonably burdened with the costs of an inordinately large CAP program.

In 2010, PECO filed its most recent electric base rate case and stated that the total costs of the discounts being offered under its electric CAP rate program are now $84,672,000. This equates to an average benefit of $636 per CAP customer for approximately 130,000 Rate R CAP customers. With certain offsets for uncollectible expenses and working capital costs, PECO is seeking to recover $80,946,000 from its 1,270,000 non-CAP residential customers. This equates to an average cost, per non-CAP residential customer, of $63.74 per year, or $5.31 per month. *See generally*, PECO Statement No. 6, the Direct Testimony of Lauren B. Feldhake, Docket No. R-2010-2161575.

The benefits being provided under this program are designed to provide affordable service to PECO's low-income customers, with "affordability" defined using the levels and terminology contained in the Commission's CAP Policy Statement at 52 Pa. Code § 69.261 *et seq.*

PECO notes that its electric CAP program has grown to be nearly as large as it can be under the Commission's CAP Policy Statement, on a benefit-to-each-CAP-customer basis. In PECO's electric Default Service Plan ("DSP") Settlement at Docket No. P-2008-2062739, the Commission approved a proposal allowing PECO to increase benefits in its electric CAP program, under certain conditions, up to an average CAP customer benefit of $700 per customer. As noted above, its current base rate case claim equates to $636 per average customer benefit. It therefore has room, under this cost-containment

mechanism, to increase the average per-customer benefit by another 10% before it will be required to limit the benefits given to each CAP customer.

PECO is also aware that the Commission is considering changing the affordability guidelines so that a substantially larger discount and benefit will need to flow to customers to meet the new affordability guidelines. *See Proposed Revision to Policy Statement on Customer Assistance Programs, 52 Pa. Code §§ 69.261-69.267*, Docket No. M-00072036 (Order Entered Sept. 5, 2007) (Annex A, proposed new 52 Pa.Code §69.265.

PECO is also aware that the factors described by the Commission in this question – the economy, the expiration of rate caps, surcharges due to economic efficiency and conservation and smart meters, etc. – will likely affect rates and require that additional benefits be given to low-income customers in order to hit existing or new affordability targets.

Taken together, the effect of this confluence of events is that, if the Commission alters the affordability guidelines as proposed, PECO likely will not be able to increase the benefits to its customer to meet those new affordability guidelines because the $700 cost-containment mechanism will independently constrain the cost of its program. If the Commission desires to increase the benefits that flow to the lowest income customers, it will need to change both the affordability guidelines and the $700 cost-containment mechanism – changing only one of them leaves an independent constraining factor on the

size of the CAP program. If it lifts both constraints, however, the overall cost of the program will increase.

The general size of such cost increases can be estimated for PECO's program. If the affordability guidelines and the cost-containment guidelines are both raised so that PECO can provide an average per-CAP customer benefit of $800, rather than $700, then its total program costs will increase by as much as $100 x 130,000 CAP recipients, or $13 million per year. If that is spread across the non-CAP residential customers, the additional cost to each of them will be approximately $10.23 per year, on average. This effect is linear – each $100 increase in average annual benefits given to CAP customers will result in approximately a $10 increase in average annual costs imposed on each non-CAP residential customer.

PECO is acutely aware of the needs of its lowest-income customers for affordable utility service, and thus has aggressively expanded its CAP program over recent years. And, if the Commission raises the $700 cost-containment feature and changes the affordability targets, PECO will seek to find ways to flow those newly-allowed benefits to customers in need.

Those costs, however, will be borne by the non-CAP residential customers at the levels described in these comments. PECO notes that the impact on other residential customers can be alleviated if other sources of funding, such as government grants and programs, can be found to assist in this low-income program, and it supports Commission efforts to

seek such governmental funding sources. Absent such an alternative funding source, PECO's program is nearing the cost-containment barriers that the Commission established in previous years to protect the non-CAP residential customers.

3. Savings from Collection Activity as Reflected in Cost Recovery Mechanisms

Third, the Commission requests comments on whether, and how, savings from collection activities should be reflected in cost recovery mechanisms:

> Whether cost recovery mechanisms, which have been implemented by some distribution companies, have produced savings from an improved timeliness of collection activities and whether these savings should be considered in evaluating costs claimed for rate recovery.

PECO utilizes two forms of cost recovery mechanisms for its universal service costs – base rates, and a Section 1307 surcharge known as the Universal Service Fund Charge, or ("USFC.") For both types of cost recovery mechanisms, there are cost savings, both from the underlying customer assistance program and from the cost recovery mechanism itself. How those savings should be considered differs depending upon whether one is talking about base rate cost recovery, or a Section 1307 surcharge mechanism.

PECO submits that there are two primary costs savings that need to be considered. First, when a utility reduces the amounts that it bills to its low-income customers – PECO accomplishes this through the rate discounts incorporated in its CAP Rider – the responsibility for the foregone revenue is shifted to the remainder of the residential customer base. This is the primary cost of a CAP program. Presumably, the remainder of the customers will pay a higher percentage of the bills than would be the case if the

lower-income customers were billed for those amounts. This savings results in an overall reduction in the utility's uncollectible expense.

In several of PECO's recently litigated proceedings, including its electric DSP case and its 2008 gas base rate case, PECO had the opportunity to assess the magnitude of these savings. While there may be different approaches to assessing the magnitude of these savings, PECO ultimately looked at the historical bill paying habits of its body of CAP customers to determine what percentage of billed revenue those customers tend to pay. In PECO's case, CAP customers tend to pay about 75-80% of the amounts billed to them, depending upon the year reviewed. If responsibility for some portion of those billings is shifted to other customers, PECO assumes that the payment rate will be much higher – in the high 90% range -- and that the differential will be reflected in a reduced uncollectible expense. Reviewing this data allows the Company to make certain savings assumptions. In the settlement of PECO's DSP proceeding, the parties agreed to use a 21% savings assumption. In PECO's recent gas base rate case, the parties settled on a 22% savings assumption. In PECO's pending electric and gas base rate cases, it proposes use of a 22% savings assumption.

The second primary cost recovery mechanism is a working capital cost savings. As just noted, higher-income customers pay a greater proportion of foregone revenue, resulting in uncollectible expense savings; they also tend to pay it more quickly, resulting in a working capital saving. By shifting responsibility for a revenue amount to higher-income customers, the utility therefore also tends to see cash more quickly, and to experience a working capital benefit. In PECO's DSP Settlement, its 2008 Gas Base Rate Settlement,

and its pending electric and gas base rate cases, a 5% savings assumption was utilized for the working capital savings.

For both such savings, the actual percentage saving that a utility experiences will change depending upon the service territory, customer demographics, historic data, etc., and therefore a standardized saving amount is not appropriate. However, in PECO's experience it is a relatively straightforward exercise to estimate such savings and then either litigate or settle a final savings amount to be used for cost recovery purposes.

The savings are applied differently in base rate cost recovery mechanisms and in Section 1307 cost recovery mechanisms.

In base rate case cost recovery, assuming a relatively constant program size, the savings effects will be reflected in the historic test year data for uncollectible account and working capital expenses, and no further adjustment will be needed. Effectively, if the existing CAP program results in savings in either uncollectible expense or working capital, then the historic data on uncollectible expense or working capital will have that savings "baked in," and no further adjustments will be necessary.

If the CAP program is projected to increase or decrease in size or cost, then a future test year adjustment will likely be made for the incremental change in program costs. In that case, the incremental change should incorporate the savings offsets noted above. For example, if Utility A has a CAP program that has historically provided its low-income customers with $50 million per year in cost savings, the uncollectible expense and working capital savings associated with a $50 million CAP program are already reflected

in the historic uncollectible and working capital data. Suppose, however, that Utility A is enhancing its CAP program and projects that the CAP program changes will flow an additional $10 million of benefits to its low-income customers. Utility A would not, in that case, simply reflect a $10 million increase in CAP program costs in its base rate claim. Instead (using PECO's savings offset assumptions), it would show a $10 million increase in CAP program costs, offset by a $2.2 million assumed reduction in uncollectible expense, and an assumed reduction of $0.5 million in working capital expense, for a net cost of $7.3 million. PECO's claims in its recent base rate case filings follow that logic. PECO believes it is the appropriate approach for cost recovery of expansions of CAP programs where the offsetting savings are not yet reflected in the historical uncollectible expense and working capital data.

Section 1307 cost recovery mechanisms are typically used to recover costs that are incremental to the embedded base rate costs. Consequently, Section 1307 claims typically should include a cost savings offset similar to the cost offset for expansions of programs that are reflected in future test year adjustments.

PECO notes that it has been recovering a portion of its CAP program costs through Section 1307 mechanisms for over a decade – but the amounts that it recovered were the results of settled litigated proceedings. The cost savings offsets were thus already embedded in the final settled cost recovery number, and no separate offset factor was included in the Section 1307 cost recovery calculation.

In general, PECO believes that, when a CAP cost recovery mechanism relates to future costs that are not reflected in historic base rates and base rate data, the cost recovery

mechanism should reflect an offset for savings to uncollectible expense and working capital, and it has included such offsets in its cost recoveries over time. However, the specific amount of such cost recovery is fact- and time-driven, and will vary from utility to utility and from time to time. In addition, when the cost recovery amount is determined by settlement, the offsets typically will be embedded in the final negotiated outcome, and no further adjustments will be necessary or appropriate. PECO therefore recommends that any Commission guidance on this issue should be extremely flexible. For example, the Commission might require that any cost recovery mechanism filing include a discussion of uncollectible expense and working capital offsets, without mandating the evidence, data, or mechanisms that would apply to those offsets. Instead, armed with the requirement that the filing address the issue, the litigants to any such case can determine, on a case-specific basis, the appropriate application of these offsets.

4. Triennial Tariff Filings

Fourth, the Commission requests comments on the use of triennial tariff filings:

> Proposed rules in 52 Pa. Code §§ 54.74 and 62.4 (relating to review of universal service and energy conservation plans, funding and cost recovery), which create a triennial review process that takes the form of a tariff filing and addresses CAP program funding.

The tariff issue was also raised in the Commission's original request for comments in this docket. *See* proposed new 52 Pa. Code §54.74(a)(1), 38 Pa. B. 776 (Annex A). PECO commented at length on this proposal in its April 18, 2008 comments (pp. 2-8); rather than repeat those comments, they are attached hereto as Attachment A. After describing in detail the potential pitfalls in this area, PECO provided (pp. 7-8) a recommended solution:

> This entire issue can be resolved with three minor changes to the proposed regulations. PECO proposes that (1) the title of 52 Pa. Code § 54.74 (b) be changed from "Tariff contents" to "Tariff filing contents; (2) the text of 52.74(b) be changed from "The tariff shall include the following information:" to "The tariff filing shall include the following information:"; and (3) the text of 52.74(b)(2) be changed from "The tariff shall contain rules that apply . . . ." to "The tariff filing shall contain rules that apply . . . . "
>
> Under this approach, each utility will determine which matters need to be addressed in its tariff filing and which matters need only to be addressed in supporting materials, and make its filing accordingly. If after reviewing that filing the Commission concludes that additional matters or detail is needed in the tariff itself, it can so order on a company-specific basis.

PECO continues to support this recommendation, and notes that, in its 2010-12 Three-Year Plan filing, PECO provided tariff sheets to cover certain parts of its Three-Year Plan that, in its opinion, were properly reducible to tariff.

However, like other utilities, PECO cautions against a requirement that utilities place CAP rules and guidelines in their tariffs. A tariff proceeding, which considers CAP program changes, will be a cumbersome and duplicative process running in congruence with three year plan filings. Therefore, PECO recommends a more flexible approach in which each utility decides what portions of its CAP rules and guidelines should be included in its tariff filings.

As to including cost recovery information in the Three-Year Plan filings, PECO feels that this approach should not be mandatory. Although PECO notes that it voluntarily included such data in its 2010-12 Three-Year Plan filing, any requirement to include cost recovery information in a Three Year Plan filing and that may hamper frequent reconciliation of CAP surcharges should be reconsidered.

5. Data on CAP Program Costs as Paid By Other Residential Customers

Fifth, the Commission requests comments on whether utilities should provide data on the costs that non-CAP customers pay each month to support the utility's CAP program:

> Commissioner Kim Pizzingrilli's statement in *Dominion Peoples Universal Service and Energy Conservation Plan for 2009-2011*, Docket No. M-2008-2044646 (January 15, 2009), which discusses a Commission reporting requirement that directs all distribution companies to fully document the rate effect of program modifications in future universal service plans (USP). Under the requirement, distribution companies would include a table showing annual costs for each program, total cost for all USPs and the monthly cost of the programs on a per residential customer basis

Commissioner Kim Pizzingrilli stated that:

> The Commission must ensure that there is a reasonable level of funding for universal service programs, and has proposed eliminating arbitrary enrollment ceilings on CAP programs. Some utilities have already eliminated these restrictions in response to our actions. However, the Commission has also proposed that programs be evaluated based on a number of factors, including consideration of the interests of all customers, not those just enrolled in CAPs. All utilities should fully document the rate effect of modifications in future universal service plans filed with the Commission. This information is essential to the Commission's ability to make an informed decision on the merits of these proposals.

PECO notes that Vice-Chair Tyrone J. Christy made a similar recommendation in his Statement issued on December 18, 2008 in PECO's Three-Year Plan proceeding at Docket No. M-00061945, stating in relevant part that:

> In my view, the benefits provided by universal service programs for low-income customers should be balanced against the costs that the remaining residential customers are required to pay. Many of these customers are themselves struggling to make ends meet and their interests should be considered. Although our current regulations do not require a balancing of the costs of universal programs with their benefits, I would request that, going forward, utilities provide more detailed cost information in conjunction with the filing of their universal service plans. With this cost information, the Commission would be able to reach

more informed decisions and strike a proper balance between the costs and benefits of these programs.

Given this direction, PECO provided information on the per-customer cost of its CAP program in its then-ongoing electric DSP proceeding at Docket No. P-2008-2062739 (PECO Statement No. 7-R, Rebuttal Testimony of Manus J. McHugh, pp. 21-26). It also provided that information in its pending electric base rate case (PECO Statement No. 6, Direct Testimony of Lauren B. Feldhake, p. 12) and its pending gas base rate case filing (PECO Statement No. 6, Direct Testimony of Lauren B. Feldhake, pp. 7-8). Also, PECO provided information on that same subject in Section 2 of these comments. PECO has no objection to also providing such information in its Three-Year Plan filings.

6. Use of Tentative Orders; Service on the Statutory Advocates

Sixth, the Commission requested comments on:

> The Commission's USP approval process, specifically, whether the Commission should issue tentative orders to provide an opportunity for comments and reply comments before approving a distribution company's USP, and whether the companies' USPs should be served on the statutory advocates.

In PECO's 2007-2009 Three-Year Plan Proceeding at Docket No. M-00061945, the Commission entered an Order on September 28, 2008 requiring PECO to make a series of changes to its as-filed Plan, and set five specific issues for evidentiary hearing. Although not labeled a "Tentative Order," that Order did set the primary issues for litigation, and thus had essentially the same effect as a Tentative Order.

In PECO Energy Company's Universal Service And Energy Conservation Plan For 2010-2012 Submitted In Compliance With 52 PA Code §§54.74 And 62.4 Proceeding at Docket No. M-2009-2094394, the Commission issued a Tentative Order on May 6, 2010.

It thus appears to PECO that the Commission is already utilizing a Tentative Order procedure for its Three-Year Plan Proceedings. PECO prefers Commission use of tentative orders to approve USP filings because they do not require automatic referral of these cases to an administrative law judge and therefore may reduce or eliminate prolonged litigation.

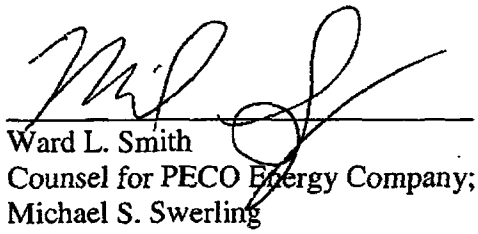
As to service on the statutory advocates, PECO notes that it meets with the statutory advocates and other stakeholders four times each year at its Universal Services Advisory Group meetings, and otherwise has extensive interaction with those stakeholders about its Universal Service programs. Moreover, some of the statutory parties –particularly the OCA and the OTS – actively participated in PECO's litigated 2007-2009 Three-Year Plan proceeding at Docket No. M-00061985. PECO finds that such open communication works to the benefits of all stakeholders, and PECO has no objection to serving its Three-Year Plan on the statutory parties.

CONCLUSION:

PECO appreciates the opportunity to provide additional comments to the Commission's Proposed Rulemaking Order. PECO respectfully requests that the Commission consider its additional comments to the Proposed Rulemaking Order.

Respectfully submitted,

Dated: June 2, 2010



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Attachment A

PECO Energy Company's
Original Comments

Filed April 18, 2008

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April 18, 2008

VIA FEDEX

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd floor
Harrisburg, PA 17120

Re: Proposed Rulemaking Relating To Universal Service and Conservation Reporting Requirements, 52 Pa. Code Sections 54.71-54.78 (electric), Sections 62.1-62.8 (natural gas) and Customer Assistance Programs, Sections 76.1-76.6
Docket No. L00070186

Dear Secretary McNulty:

Enclosed please find an original and fifteen copies of Comments of Peco Energy Company on Proposed Rulemaking Related to Universal Service and Energy Conservation Reporting Requirements and Customer Assistance Programs, for filing in the above-referenced matter. Kindly return a time-stamped copy of this document to me in the self-addressed stamped envelope.

Please do not hesitate to contact me should you have any questions.

Very truly yours,

Ward L Smith

Ward Smith
Assistant General Counsel

WS/jes

Enc.

cc: Patricia Krise Burket, Law Bureau (w/encl.)
Michael Smith, Bureau of Consumer Services

P271237

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Rulemaking Relating To Universal Service and Conservation Reporting Requirements, 52 Pa. Code §§ 54.71 – 54.78 (electric), §§62.1-62.8 (natural gas) and Customer Assistance Programs, §§ 76.1 – 76.6	:	Docket No. L-00070186

COMMENTS OF PECO ENERGY COMPANY ON PROPOSED RULEMAKING RELATED TO UNIVERSAL SERVICE AND ENERGY CONSERVATION REPORTING REQUIREMENTS AND CUSTOMER ASSISTANCE PROGRAMS

PECO Energy Company ("PECO") appreciates this opportunity to provide comments on the Commission's proposed revisions to its Regulations Related to Universal Service and Energy Reporting Requirements and Customer Assistance Programs.

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A. Introduction and Background

On December 18, 2006, the Commission entered its *Final Investigatory Order* in *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (the "Final Investigatory Order"). In the Final Investigatory Order, the Commission directed two subsequent dockets to be opened: (1) On August 30, 2007, the Commission initiated the instant proceeding, in which the Commission proposes certain changes to its regulations related to Universal Service and Energy Conservation Reporting Requirements, as well as to its regulations regarding Customer Assistance Programs, and (2) also on August 30,

2007, the Commission initiated a companion docket (M-00072036) in which the Commission has proposed changes to its Policy Statement related to Customer Assistance Programs.[1]

The primary objective of the instant rulemaking is to establish a unified process by which the level of funding of universal service and energy conservation programs offered by electric distribution companies and natural gas distribution companies could be determined in conjunction with the Commission's triennial review of utilities' low-income programs. In addition, the Commission proposed promulgating new regulations at 52 Pa. Code §§ 76.1-76.6 relating to customer assistance programs ("CAP").

PECO's comments in this docket are addressed to the proposed changes to the Commission's regulations. PECO addresses the issues raised in the proposed Regulations in the same order as those issues are addressed in the Commission's Order.

B. Specific Issues As Set Forth In the Commission's August 30, 2007 Order

1. Establishment of a Triennial Review Process for Review of CAP Design, and Tariff Filings Relating To Funding and Cost Recovery

In its August 30, 2007 Order, (p. 3-5; Annex A, pp. 4-8, 15-18), the Commission establishes a new review process for CAP programs and funding. The new regulations expand the existing triennial filing, which focuses on program issues, to include cost recovery issues and

[1] PECO filed comments on the proposed changes to the Policy Statement on January 9, 2008.

mechanisms. The new regulations also "require that triennial filings, including CAP rules and proposals for cost recovery, be submitted *as a tariff filing* . . . ."[2] (emphasis added.)

PECO supports the Commission's initiative to evaluate CAP program and cost issues as part of a single filing and review process. It also seems quite obvious that some provisions, such as cost recovery mechanisms, should be incorporated into utilities' tariffs.

PECO respectfully submits, however, that the Commission should make a small alteration to its proposed regulations in this area, as discussed in the remainder of this section of its comments. Typically, when a utility makes a "tariff filing," such a filing includes both proposed changes to the tariff itself, and supporting materials and data that facilitate the evaluation of whether the Commission should adopt the tariff. The most obvious example of this procedure is a base rate filing, in which a utility may file thousands of pages of data and testimony in support of a proposed tariff of 100 pages or so. It appears that the Commission intends to follow this same approach in the future filings of triennial plans. Thus, the general requirement will be that triennial plans be made "in the form of a tariff filing" consistent with 52 Pa. Code §§ 53.1 *et seq.* -- that is, a filing that includes proposed tariff provisions, as well as explanatory and supporting data and rationale for those tariff provisions. *See* 52 Pa. Code § 54.74(a)(3), Annex A, p. 5.

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[2] The new regulations also "require that the tariff contain a method for applying LIHEAP grants." Commission Order, p. 5. PECO addresses this issue in Section 4 of its Comments.

PECO's concern is that some of the items that, under the new regulations, appear to be required to be included *in the tariff itself* are, by their nature, better suited to be included in the supporting data and materials, rather than in the tariff itself.[3] PECO will give several examples of this in the next paragraphs of these comments. The general change that it requests, however, is that the Commission should alter the proposed regulations so that utilities are given greater flexibility in determining which portions of its triennial plan are included in the tariff itself, and which portions are included only as supporting data for the tariff.

One primary area in which this concern is apparent is proposed new 52 Pa. Code § 54.74(b) "Tariff contents." Because of its title – "Tariff contents" -- this subsection appears to list items that must be included *in the tariff* itself, as opposed to being included in the broader tariff filing as supporting materials. The listed materials, however, are often of a sort that should clearly be included in the supporting materials, as opposed to being included in the tariff itself.

For example, triennial plans have historically included a "needs assessment," in which the utility analyzes the potential population of low-income customers in its service territory.

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[3] The term "tariff" is a statutorily defined term that is limited to rates, rules, regulations, practices and contracts:

> Tariff: All schedules of rates, all rules, regulations, practices, or contracts involving any rate or rates, including contracts for interchange of service . . . ."

66 Pa. C.S. § 102. The Commission's regulations on filing of tariffs also notes that tariffs normally consist of the utility's rules and regulations, and its rate schedules. *See generally*, 52 Pa. Code §§ 53.25 and 53.26.

This is valuable information in determining the appropriate scope and potential cost of low-income programs. The proposed new 52 Pa Code § 54.74(b)(1)(iii) would require that the supporting information from the needs assessment be included in "the tariff." PECO respectfully suggests that the needs assessment is not the sort of item that is typically included in utility tariffs – rules, regulations, practices, etc. – but instead is much more in the nature of supporting material that should be included in the tariff filing, but not in the tariff itself.

Similarly, the new rules seem to require that the tariff itself, rather than the supporting materials made with the tariff filing, must contain explanatory materials. For example, the regulations require that the tariff itself include "an explanation of the manner and the extent to which the universal service or energy conservation component operates in an integrated manner with other components of the plan to accomplish the goals stated at section 54.73." 52 Pa. Code § 54.74(b)(1)(i). It seems obvious that the better course of action would be to include such explanations in the supporting materials of the tariff filing, with the tariff itself limited to the rules, regulations and procedures that actually implement the "integrated operation."

One of the most interesting examples is found at proposed new 52 Pa. Code § 54.74(b)(1)(viii). This new regulation, which falls under the general heading of "Tariff contents," will require that the "tariff contents" include the following:

> An explanation of differences between the EDC's approved plan and the implementation of that plan. The plan must include a proposal to address the identified differences. When an EDC has not implemented all of the provisions of an approved plan, the EDC shall provide a justification for that failure and plans for corrective action. When an EDC is requesting approval of a revised plan, the EDC shall provide a justification of the revisions in its request for approval.

It will be very easy to include this explanation and related discussion in the supporting materials – that is, as part of the tariff filing, but not as part of the tariff itself. On the other hand, if the requirement is that this material be included *in the tariff itself*, it is difficult to even conceptualize what the tariff would look like or say. Instead of the normal tariff approach of setting forth the rules, regulations and practices of the utility, such information – if incorporated in the tariff itself – would seem to require that the tariff set forth the rules, regulations and practices of the utility (which, because they are part of a tariff, would have the force of law), a description of the areas in which the utility is *not meeting those rules* (and that description would *also* have the force of law), a justification for its failure to meet the provisions of the tariff (and that justification, because it is in the tariff itself, would *also* have the force of law), plus a plan of corrective action (and that plan of action, which by definition would be different than the endstate rules described earlier in the same tariff provision, would *also* have the force of law). The tariff would thus include four different statements regarding the same issue, each of would have the force of law, and each of which would, almost by definition, by contradictory of the other three descriptions. This confusion can be completely avoided if utilities are allowed to put some of the material in the tariff itself, and some in the supporting materials.

Yet another example of material that is suitable to place in the supporting data, but not in the tariff itself, would be the program budget (52 Pa. Code § 54.74(b)(1)(v)) and the organizational structure of the utility's low-income staff. (52 Pa. Code § 54.74 (b)(1)(vi)). PECO is not aware of any instance in which a program budget is included in a tariff provision. If program budgets are included in a tariff, the risk is that someone will inappropriately believe that

the utility is thenceforth required to maintain its budget at that precise level, neither increasing nor decreasing it, until such time as a future tariff filing is made. This kind of budget constraint is not only problematic policy, it arguably falls into the category of inappropriately intruding on managerial discretion. Simply, providing information about one's current and proposed budget is one thing; putting that information into a tariff that has the force of law is quite another thing. Information on staff organization is quite similar. Providing information on staff organization is one thing. Requiring a binding tariff filing on organizational structure risks means that the utility could not change organizational structure without making a new tariff filing, an approach that would result in Commission micro-management of areas, such as personnel and organizational structure, that are normally viewed as being within the utilities' managerial prerogatives.

Collectively, these examples strongly suggest that the Commission needs to change the regulations so that certain matters are allowed to be included in the supporting filing, rather than in the tariff itself.

This entire issue can be resolved with three minor changes to the proposed regulations. PECO proposes that (1) the title of 52 Pa. Code § 54.74 (b) be changed from "Tariff contents" to "Tariff filing contents; (2) the text of 52.74(b) be changed from "The tariff shall include the following information:" to "The tariff filing shall include the following information:"; and (3) the text of 52.74(b)(2) be changed from "The tariff shall contain rules that apply . . . ." to "The tariff filing shall contain rules that apply . . . . "

Under this approach, each utility will determine which matters need to be addressed in its tariff filing and which matters need only to be addressed in supporting materials, and make its filing accordingly. If after reviewing that filing the Commission concludes that additional matters or detail is needed in the tariff itself, it can so order on a company-specific basis.

2. Prior Commission Approval

In its August 30, 2007 Order, (pp. 5; Annex A, p. 24), the Commission sets forth new rules requiring that "prior Commission approval is required before the distribution company can implement a CAP plan, or a revision or modification of an existing CAP program."

PECO respectfully recommends that the Commission should leave utilities greater managerial flexibility to make changes in their CAP programs without the necessity of seeking prior Commission approval. PECO is continually re-examining its CAP program and makes numerous business process improvements within that program every year. It often makes those changes after consultation with its Universal Services Advisory Group and Commission staff, but may also simply seek to improve operation or outcome of the program on its own initiative.

Some of those changes are of significant scope. For example, PECO's decision to accept LIHEAP data for purposes of income verification was a significant step that allowed nearly 25,000 new customers to be quickly enrolled or recertified in its CAP Rate program. On the other hand, many of the changes are relatively small in scope. For these smaller changes, PECO is continually fine-tuning its program to accomplish the multiple goals of low-income customer

access and affordability, cost containment, and administrative efficiency. The changes are the sort of normal program changes that are made in all areas of utility practice in the normal course of business.

PECO strongly believes that it is the best interests of all stakeholders that it continue to have this flexibility to manage its own programs. The Commission and other stakeholders have sufficient control features to allow the Commission to exercise jurisdiction over the results and outcomes of PECO's low-income programs, including reporting protocols, informal and formal complaints, and communications with the Commission staff and PECO's Universal Services Advisory Committee. Those control features will be significantly increased by the new requirement that portions of the triennial plan be incorporated into the utilities' tariffs, which by definition cannot be changed without prior Commission approval.

If the Commission extends the requirement for prior Commission approval to situations in which utilities are seeking to make business process improvements to their programs on matters that are not specified in the tariff, it will make it very difficult for utilities to implement those business process improvements. Even with an accelerated Commission review process, the requirement of prior approval will, by its nature, act as a barrier to change. As a result, under such a regime utilities' low-income programs are likely to be implemented in one triennial filing and then not changed until the next triennial filing. Business process improvements in the interim will simply be delayed, and then proposed at the time of the triennial filing.

Moreover, PECO is not aware of any aspect of its business in which such prior Commission approval is required in order to make a change in non-tariffed business practices. If prior Commission approval is need to "revise or modify" any aspect of a CAP program, then the Commission will essentially have a new role in regulation – it will effectively be a co-manager of CAP programs. Its staffing and resources will need to reflect that new level of responsibility.

PECO respectfully suggests that such a significant change in the Commission's role is not needed. The new regulations already impose significant new control features on utilities' low-income programs because the new regulations will require portions of the low-income programs to be included in the utilities tariff for the first time.[4] Rather than create an unprecedented co-managerial role for the Commission in the low-income area, PECO respectfully recommends that the Commission treat this area similar to other areas in which it exercises active oversight. Where the utility seeks a revision or modification to its program that requires a tariff change, prior Commission approval will be required. Where the utility seeks to make a revision or modification that does not involve a change to a tariffed item, it will make that change in its managerial discretion without prior Commission approval, but with the knowledge that the Commission will review its success or failure in managing its low-income programs.

PECO therefore requests that the requirement that utilities seek prior Commission

[4] This is true even if the Commission accepts PECO's comments on the first issue addressed in these comments, with respect to the scope of the tariff filing. Even under PECO's approach, its tariff will contain significant new control features as to the rules, regulations, and practices associated with its low-income programs.

approval before implementing a revision or modification to a CAP program be limited to those items that are incorporated into the utilities' tariffs.

3. Default Provisions for Failure to Comply With Program Rules

In its August 30, 2007 Order, (p. 6; Annex A, p. 25-26), the Commission sets forth new regulations that would establish rules for dismissal of customers from Customer Assistance Programs. The new regulations list five situations that will result in dismissal from CAP participation, and one additional situation (failure to make payments) that will result in dismissal from CAP participation and also may result in termination of service.

Generally, PECO agrees with the Commission's decision to include default provisions in its regulations. There are, however, two issues that PECO would like to address with respect to the final form of the default regulations: (1) Potential difficulties in enforcing the provision that a customer will be dismissed from CAP for "failure to apply for LIHEAP;" and (2) the need to allow tariff proposals for additional default conditions.

Failure to apply for LIHEAP as a default provision: PECO supports the goal of incenting or persuading all CAP customers to apply for LIHEAP grants. It may be extremely difficult, however, to properly implement this default provision. Simply, even when a customer applies for a LIHEAP grant, a utility does not always have access to information about the customer's activities. This will primarily occur in two situations.

First, if a customer applies for, but does not receive, a LIHEAP grant, then the utility typically will have no knowledge that the customer has made the LIHEAP application.[5] In that situation, a utility attempting to apply this default rule would conclude that a customer had not applied for LIHEAP, when the customer in fact did apply for LIHEAP. The utility would thus remove the customer from CAP even though the customer had applied for LIHEAP.

This unintended outcome could be avoided through a number of different approaches, but each of those approaches has barriers to implementation and would be unlikely to protect all customers who had applied for LIHEAP. Thus, for example, this issue could be resolved by having the Department of Public Welfare ("DPW") provide utilities with a list of all LIHEAP applicants in their service territory – but to date DPW has not agreed to provide such information, and it is beyond the Commission's jurisdiction to order it to do so. Utilities could also require a certification program in which customers would, as a condition of remaining on CAP, self-certify that they had applied for LIHEAP each year. This would suffer the risks of all self-certification programs. Moreover, in PECO's case, with approximately 120,000 CAP participants, this would be quite costly to administer. Just as importantly, in PECO's experience there would likely be low-income customers who would successfully complete part, but not all, of the administrative steps. This, for example, the Commission should expect that some

[5] A customer could apply for, but fail to receive, a LIHEAP grant for a variety of reasons. As the Commission is aware, the Department of Public Welfare sometimes does not broadly distribute LIHEAP applications at the beginning of the LIHEAP season. The LIHEAP season also may end at a different end date each year, depending upon the program extensions that DPW authorizes. And, if every customer in a CAP program actually does apply, the LIHEAP program may run short of funds and be unable to provide grants to all applicants. In any of these cases, the customer could apply for, or at least make a good faith effort to apply for, LIHEAP, but received no grant.

customers would properly apply for a LIHEAP grant, and then do nothing more with that information – that is, they would not send a separate certification to the utility stating that they had applied for a LIHEP grant (and that they had not received such a grant or had received it, but paid the money to a different utility or fuel source). Such customers would be removed from the CAP program, notwithstanding their need and notwithstanding that they would actually have engaged in the desired behavior of applying for LIHEAP.

The second situation in which a utility will have no information about a customer's LIHEAP application is when a customer obtains a LIHEAP grant but applies that grant to another heating source supplier. These other suppliers may be PUC jurisdictional (electric, natural gas) or not (heating oil). If some suppliers are not PUC jurisdictional, then the Commission cannot establish a data exchange protocol for those suppliers. Even if all suppliers involved are PUC jurisdictional, there are no established data interchange protocols to allow this information to be easily exchanged and processed.

This is not a minor issue. In Philadelphia, tens of thousands of PECO CAP customers obtain LIHEAP grants and apply those LIHEAP grants to either PGW or to heating oil suppliers. PECO has no information as to the LIHEAP application status of these customers.

Ultimately, PECO believes that, if the Commission requires it and other utilities to remove customers from their CAP programs for failure to apply for LIHEAP, lack of information about a given customer's LIHEAP application activity will cause customers to be

removed from CAP even though they are income-eligible and actually applied for LIHEAP. Although the goal of having all customers apply for LIHEAP is laudable, caution must be exercised in this area. Otherwise, the Commission and utilities may inadvertently end up providing less benefits to the very customers they are aiming to assist.

Additional default provisions: As noted previously in PECO's comments, it is appropriate to have tariff provisions that address rules, regulations, and practices of the CAP program. (While, as PECO notes, it is not appropriate to include explanatory material, supporting data, etc., in the tariff itself.) PECO believes that it is appropriate to include in its tariff the default provisions that will result in a customer being removed from the CAP program.

These default provisions, however, should not be limited to those presented in the Commission's proposed regulations. Instead, utilities should be allowed, in their tariff filings, to propose additional default provisions as a reason for dismissing a customer from CAP. For example, PECO's Three-Year Plan provides for removal from its CAP Rate for fraud, theft, or misappropriation of service.[6] It is also foreseeable that, in order to implement other Commission or utility initiatives with respect to low-income programs, customers will need to give permission for utilities to verify their income (or LIHEAP status, or other information) with state agencies. Although the exact need for such information is not known at this time, a utility should be allowed to propose in its tariff filing that failure to give that permission, as defined by program needs at the time, is a basis for dismissal from the CAP program.

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[6] The Commission may wish to consider adding these factors to the list of default provisions in its regulations.

4. Coordination of Energy Assistance Benefits; Application of LIHEAP Cash Benefits

In its August 30, 2007 Order, (p. 7; Annex A, pp. 7,17), the Commission addresses the application of LIHEAP grants to customer accounts, requiring that a utility propose a tariff rule dealing with the application of LIHEAP grants.

PECO's current triennial filing was made prior to issuance of the instant order and is currently before the Office of Administrative Law Judge for evidentiary hearings. PECO will therefore make a tariff filing on this issue as part of its next triennial filing. For the Commission's information in the interim, PECO applies LIHEAP grants directly to customer accounts, where they are used to reduce the customer's outstanding balance.

5. Timely Collection Efforts

In its August 30, 2007 Order, (pp. 7-9; Annex A, pp. 25), the Commission sets forth new regulations stating that the Commission shall "consider the timeliness of a distribution company's collection activities [for its CAP customers] in evaluating the reasonableness of costs claimed for recovery." 52 Pa. Code § 76.4(d).

PECO is a strong advocate of the use of timely collection efforts, and is heartened by the Commission's support for this concept. PECO is concerned, however, that the open-ended and

subjective nature of this regulatory language could contradict the strong policy directive of the Commission in other proceedings, and would otherwise be difficult to implement. In particular, the Commission has, in other proceedings, been supportive when utilities handle delinquencies on a case-by-case basis, providing customers with an opportunity to correct a default or apply for assistance or negotiate a payment agreement prior to instituting termination proceedings. This approach balances timeliness of collections against maintaining utility service for at-risk low-income households.

"Timeliness of collection activities" is singled out in the new regulations and is the only factor that is explicitly listed that the Commission will consider in evaluating the reasonableness of a utility's claimed low-income costs. Faced with that language, utilities might reasonably conclude that their cost recovery will be put at risk unless they also single out timeliness of collection activities for special attention, even if that comes at the detriment of pursuing other goals. Moreover, because there are no measurement metrics or other objection methods that a utility can use ahead of time to determine whether it will be found to have been "timely," utilities will likely need to protect their cost recovery by erring in the direction of aggressive collection activities. PECO respectfully suggests that, while this is not the intended consequence of including this language, it is still an inevitable consequence. Thus, while PECO appreciates the Commission's public statement of support for timely collection activities, it recommends removing this section of the regulations.

C. Conclusion

PECO respectfully requests that the Commission adopt its Comments as set forth above.

Respectfully submitted,

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VIA FEDERAL EXPRESS

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

Re: Universal Service and Energy Conservation Reporting Requirements and Customer Assistance Programs – Docket No. L-00070186

Dear Secretary Chiavetta:

Enclosed are an original and fifteen (15) copies of the *Additional Comments of PECO Energy Company to the Commission's Proposed Rulemaking Order* in the above-captioned matter. An additional copy of this letter is also enclosed to be date-stamped and returned to PECO Energy.

Very truly yours,

Michael S. Swerling
Enclosures

cc: Stephanie Wimer, Law Bureau
Grace McGovern, Bureau of Consumer Services