

THE PENNSYLVANIA UTILITY LAW PROJECT
118 LOCUST STREET
HARRISBURG, PA 17101-1414

PATRICK M. CICERO, ESQUIRE
PCICEROPULP@PALEGALAID.NET

PHONE: (717) 236-9486, EXT. 202
FAX: (717) 233-4088

May 2, 2012

By e-mail & U.S. Mail
ebarnes@pa.gov

Honorable Elizabeth H. Barnes
Administrative Law Judge
P.O. Box. 3265
Harrisburg, PA 17105-3265

Re:

**Joint Petition of Metropolitan Edison Company, Pennsylvania
Electric Company, Pennsylvania Power Company, and West
Penn Power Company for Approval of Their Default Service
Programs**

Docket Nos. P-2011-2273650
P-2011-2273668
P-2011-2273669
P-2011-2273670

Dear Judge Barnes:

Enclosed please find the Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) submitted in the captioned proceeding.

Should you have any questions or concerns please do not hesitate to contact me.

Respectfully submitted,



Patrick M. Cicero, Esquire
Harry S. Geller, Esquire
Counsel for CAUSE-PA

CC: Certificate of Service
PUC Secretary

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs

Docket Nos. P-2011-2273650
P-2011-2273668
P-2011-2273669
P-2011-2273670

Certificate of Service

I hereby certify that I have this day served copies of the Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) upon the ALJ and the following parties as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 and 52 Pa. Code § 5.412(f):

VIA E-MAIL & FIRST-CLASS MAIL

Hon. Elizabeth H. Barnes
Administrative Law Judge
P.O. Box 3265
Harrisburg PA 17105-3265
ebarnes@pa.gov

Thomas P. Gadsden, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
tgadsden@morganlewis.com

Aron J. Beatty, Esquire
Darryl Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
abeatty@paoca.org
dlawrence@paoca.org

Daniel G. Asumus, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 N. Second Street
Harrisburg, PA 17101
dasmus@paoca.org

Charles Daniel Shields, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
chshields@pa.gov

Divesh Gupta, Esquire
Managing Counsel - Regulatory
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202
divesh.gupta@constellation.com

Michael A. Gruin, Esquire
Stevens & Lee
17 N. Second Street, 16th Flr.
Harrisburg, PA 17101
mag@stevenslee.com

Thomas T. Niesen, Esquire
Charles E. Thomas, Esquire
Thomas, Long, Niesen & Kinnard
212 Locust St., Ste. 500
P.O. Box 9500
Harrisburg, PA 17108-9500
tniesen@thomaslonglaw.com
cthomas@thomaslonglaw.com

Charis Mincavage, Esquire
Susan E. Bruce, Esquire
McNees, Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
sbruce@mwn.com

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellot, LLC
213 Market Street, 8th Flr.
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com

Bradley A. Bingaman
Tori L. Geisler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
bbingaman@firstenergycorp.com
tgiesler@firstenergycorp.com

Todd S. Stewart
Hawke McKeon & Sniscak, LLP
100 North 10th Street
P.O. Box 1778
Harrisburg, PA 17101
tsstewart@hmslegal.com

Benjamin L. Willey, Esq.
Law Offices of Benjamin L. Willey, LLC
7272 Wisconsin Ave., Suite 300
Bethesda, MD 20814
ssp@bwilleylaw.com

Trevor D. Stiles, Esquire
Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202
tstiles@foley.com

Brian J. Knipe, Esq.
Buchanan Ingersoll & Rooney, PC
17 North Second St., 15th Floor
Harrisburg, PA 17101-1503
brian.knipe@bipc.com

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



Patrick M. Cicero, Esq., PA ID: 89039
Harry S. Geller, Esq., PA ID: 22415
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

DATE: May 2, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT PETITION OF METROPOLITAN	:	
EDISON COMPANY, PENNSYLVANIA	:	Docket Nos. P-2011-2273650
ELECTRIC COMPANY, PENNSYLVANIA	:	P-2011-2273668
POWER COMPANY AND WEST PENN	:	P-2011-2273669
POWER COMPANY FOR APPROVAL OF	:	P-2011-2273670
THEIR DEFAULT SERVICE PROGRAMS	:	

**MAIN BRIEF OF THE COALITION FOR
AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA**

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA

Harry S. Geller, Esq., PA ID: 22415
Patrick M. Cicero, Esq., PA ID: 89039
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

May 2, 2012

Table of Contents

I.	INTRODUCTION AND PROCEDURAL HISTORY.....	1
II.	DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS.....	7
A.	Procurement groups.....	7
1.	West Penn’s Proposed Consolidation of Service Types 20 and 30.....	7
B.	Residential and Commercial Class Default Service Procurement	7
1.	Summary and Overview of Each Party’s Position	7
2.	Term of Contracts.....	7
3.	Procurement Dates.....	7
4.	Laddering of Contracts beyond June 1, 2015	7
5.	OCA’s Proposal to Continue the Use of Block Purchase Components With Spot Transactions for Residential Customers	7
6.	The OCA’s Proposed “Hold Back” for Retail Opt-In Auction	7
7.	Procurement Method – Descending Price Clock Auction.....	7
8.	Load Cap.....	8
C.	Industrial Class Hourly-Priced Default Service	8
1.	Summary and Overview of Each Party’s Position	8
D.	Use of Independent Evaluator	8
E.	AEPS Requirements.....	8
1.	Non-Solar Photovoltaic Requirements	8
2.	Solar Photovoltaic Requirements	8
F.	Contingency Plans	8
1.	Full Requirements Products.....	8
2.	AEPS Requirements	8
G.	Supplier Master Agreements.....	8
1.	Credit Requirements	8
2.	Monthly versus Weekly Settlements	8
III.	RATE DESIGN AND COST RECOVERY	9
A.	Residential and Commercial Classes: Price to Compare Default Service Rider	9
B.	Industrial Class: Hourly Pricing Default Service Rider	9
C.	Market Adjustment Charge	9
1.	Summary and Overview of Each Party’s Position	9

2.	Position of Parties Opposed.....	9
3.	RESA’s Proposed Modification	15
4.	Dominion’s Proposed Modification	15
D.	Default Service Support Rider	16
1.	Non-Market Based Transmission Charges	16
2.	Generation Deactivation Charges.....	16
3.	Unaccounted-For Energy Costs.....	16
4.	Economic Load Response Charges	16
E.	Solar Photovoltaic Requirements Charge Rider.....	16
F.	Time Of Use Rate Proposals for West Penn and Penn Power.....	16
1.	Summary and Overview of Each Party’s Position	16
2.	The OCA’s Position	16
3.	RESA’s Proposal	17
G.	Reconciliation of Default Service Costs and Revenues.....	17
1.	Summary and Overview of Each Party’s Position	17
2.	The OCA’s Proposal.....	17
3.	The OSBA’s Proposal	17
H.	Other Tariff Changes (Conforming West Penn to Other Companies).....	17
IV.	COMPETITIVE MARKET ENHANCEMENTS	17
A.	Retail Opt-In Aggregation Program.....	17
1.	Summary and Overview of Each Party’s Position	17
2.	Customer Eligibility	18
3.	Program Length	18
4.	Timing of Solicitation and Auction.....	18
5.	Timing for Providing Full Terms and Conditions to Customers.....	19
6.	Customer Participation Cap.....	20
7.	Supplier Participation Load Cap.....	20
8.	Composition of Product Offer	21
9.	RESA’s Proposal to Conduct Testing of Various Marketing Channels before Implementing the Program	23
10.	Customer Options on Program Expiration and Notices to Customers of Contract Expiration.....	23
11.	Structure of Opt-In Auction – Descending Price Clock Auction versus sealed Request for Proposals	24
12.	Recovery of Costs.....	24

B.	Standard Offer Customer Referral Program.....	27
1.	Summary and Overview of Each Party’s Position	27
2.	Customer Eligibility (Eligibility of CAP Customers for both the Retail Opt-In Aggregation Program and the Standard Offer Customer Referral Program is a separate section, below.)	27
3.	Term of the Standard Offer Product and Length of 7% Discount.....	28
4.	Recovery of Costs.....	29
5.	Constellation’s Proposal to Require Customers to “Opt-In” in Order to Be Eligible to Participate	30
6.	The OCA’s Proposal to Sequence the Implementation of the Customer Referral Program.....	30
7.	RESA’s Proposal to allow the Standard Offer Customer Referral Program to Displace the New/Moving Customer Referral Program.....	31
C.	Limiting Participation by Low-Income Customers In Proposed Retail.....	32
	Market Enhancements.....	32
1.	CAUSE-PA’s Proposal.....	35
2.	The OCA’s Proposal.....	46
V.	OPERATIONAL ISSUES	47
A.	System “Enhancements” Proposed by Constellation	47
B.	RESA’s Proposal that that Companies Investigate Implementing a Secure, Web-Based System to Provide EGS Electronic Access to Customer Usage and Account Data	47
VI.	AFFILIATED INTEREST APPROVAL	48
A.	Approval of Contracts under Chapter 21 as Requested in the Joint Petition	48
VII.	OTHER ISSUES.....	48
VIII.	CONCLUSION	48

I. INTRODUCTION AND PROCEDURAL HISTORY¹

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, files this brief in support of its positions, and the positions advanced by its witness Carol J. Biedrzycki through her written testimony with accompanying exhibits and cross-examination. The evidence in the captioned proceeding demonstrates that low-income customers of the Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company’s (“West Penn”) (collectively the “Companies”) – particularly those enrolled in the Companies’ Customer Assistance Program (“CAP”) – are economically vulnerable, merit distinct treatment and require significant protection from the uncertainties of the retail electric market.

Pursuant to the Electricity Generation Customer Choice and Competition Act (“Choice Act”), an essential statutory obligation of the Public Utility Commission (“Commission”) is to “continue the protections, policies and services that now assist customers who are low-income to afford electric service”² in the competitive environment. This polestar legal principle in the midst of the myriad issues present in this case must neither be lost nor diminished. This declaration of policy in the Choice Act recognizes that, although direct access by retail customers to the competitive generation market was needed to enable competition, it was to be tempered by the Commission’s continued role in ensuring affordability of electric service to the

¹ Pursuant to Administrative Law Judge Barnes’ instructions, CAUSE-PA is using the common brief outline agreed to by the parties. The thrust of CAUSE-PA’s arguments are presented in Section IV.C of this brief; however, CAUSE-PA has listed all sections of that outline even if it did not present testimony or it takes no position on the issues in that section. In those sections where CAUSE-PA takes no position it will so state in the brief.

² 66 Pa. C.S. § 2802 (10).

Commonwealth's most economically vulnerable citizens. With this background in mind, we turn to the particulars of this proceeding.

On November 17, 2011, the Companies filed a Joint Petition for Approval of their Default Service Implementation Programs pursuant to Section 2807(e) of the Public Utility Code. The Joint Petition concerned the Companies' default service rates to be charged starting June 1, 2013, as well as various retail market enhancement proposed by the Companies to be implemented beginning June 1, 2013. Among the issues raised in their Joint Petition, the Companies proposed: (1) to institute a new charge on all non-shopping residential customers called the Market Adjustment Clause ("MAC") in the amount of \$0.005 per kWh; (2) to institute a retail opt-in auction open to all non-shopping customers that would have a fixed rate lower than the price-to-compare for a term of twenty-four months; and, (3) to institute a Customer Referral Program in which they would refer customers calling their call center, including, among other things, high bill complaints to participating EGSs who agreed to offer a twelve-month fixed rate product guaranteed to be 7% less than the then existing default service price to compare. The petition was published in the Pennsylvania Bulletin on December 3, 2011, with an Answer/Protest date of December 19, 2011.

On December 19, 2011, CAUSE-PA filed a Petition to Intervene and an Answer to the Companies' Petition raising concerns about the Companies' proposed implementation of the MAC, as well as its proposed retail market enhancement. Various other parties also filed petitions to intervene and/or an answer to the Companies Joint Petition prior to the December 19, 2011 deadline.³

³ Petitions to Intervene were filed by the following: Office of Small Business Advocate ("OSBA"), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., Exelon Generation Co., PECO, ARIPPA, FirstEnergy Solutions Corp., Washington Gas Energy Service, Direct Energy Services, Retail Energy Supply Association, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, West

On December 22, 2011, a prehearing conference was held by the Honorable Elizabeth H. Barnes, Administrative Law Judge, and a Scheduling Order was issued that same day. In her Scheduling Order, ALJ Barnes granted all of the parties' Petitions to Intervene, including that of CAUSE-PA, and set forth a procedural schedule to be followed by the parties.

On December 20, 2011, the Companies filed and served the direct testimony of seven witnesses, together with accompanying exhibits, including the testimony of Charles V. Fullem.⁴ In their Direct Testimony, the Companies proposed an Opt-in Aggregation Program in which all residential customers, including CAP customers, would be eligible to participate in an opt-in auction with a guaranteed "percent off" the Companies' then effective price to compare ("PTC") for a contract period of 24 months.⁵ The Companies also proposed a Customer Referral Program in which they would conduct a weekly solicitation from EGSs who agree to participate in the program and submit fixed-price contract offers for either 12- or 24-months. Each week, the Companies would select the lowest 12- and 24-month offer for that week.⁶

CAUSE-PA and other intervenors filed written Direct Testimony on February 17, 2012. CAUSE-PA's written direct testimony was filed by Carol J. Biedrzycki and was accompanied by eight exhibits pre-marked as Exhibits CJB-1 through CJB-8.⁷ In her Direct Testimony, Ms. Biedrzycki made certain recommendations about CAP customers' ability to participate in the proposed retail market enhancements; namely, she recommended that with certain protections,

Penn Industrial Intervenors, Dominion Retail, and the York County Solid Waste Authority. The Office of Consumer Advocate ("OCA") filed a notice of appearance and public statement on December 19, 2011, announcing its intent to intervene to protect the interests of the Companies' residential customers.

⁴ Met-Ed/Penelec/Penn Power/West Penn Statement No. 7 ("Companies' Statement No. 7").

⁵ Companies' Statement No. 7 at 23-28.

⁶ Companies' Statement No. 7 at 28-30.

⁷ CAUSE-PA Statement No. 1.

CAP customers could participate in the Opt-in Auction as proposed by the Companies in their Direct Testimony, but that they should not participate in the Customer Referral Program.⁸

On March 2, 2012, the Commission issued its Final Order in *Investigation of Pennsylvania's Retail Market: Intermediate Work Plan* at Docket No. I-2011-2237952 ("IWP Final Order"). The IWP Final Order sets forth the Commission's recommendations concerning a series of proposed retail market enhancements; most relevant to the issues CAUSE-PA has addressed in this proceeding are the Commission's recommendations concerning the Opt-in Auction/Aggregation program and its recommendations concerning the Customer Referral Program. Specifically, the Commission's IWP Final Order stated, among other things, the following concerning any EDC's proposed customer referral program:

The standard offer will target/market residential default service customers; however, residential shopping customers will not be excluded if they specifically request to participate. **At this time, CAP customers should be excluded from the Standard Offer Customer Referral Program and have deferred the details of addressing the provision of universal service within default service to the [Retail Market Investigation's] Universal Service subgroup.**⁹

Concerning the retail opt-in auction/aggregation programs proposed by EDCs in their default service proceedings, the Commission stated generally that the Retail Opt-in Auction should be made available to residential customers. However, regarding the conditions required to enable participation of low-income CAP customers, the Commission specifically indicated the need for specific protections to be addressed and present in each Default Service Plan:

The Commission recognizes the input provided thus far regarding the inclusion of CAP customers in the Retail Opt-in Auctions and has reviewed and discussed all information provided by the parties at great length. Because CAP customer participation in electric competition currently varies from EDC to EDC, the Commission finds it difficult to make a statewide pronouncement regarding these customers' inclusion or exclusion in the auctions at this time. The Commission notes that a Universal Service subgroup has been formed under the auspices of the

⁸ See CAUSE-PA Statement No. 1 at 3-4.

⁹ IWP Final Order at 31-32 (emphasis added).

Investigation and it is expected that those subgroup participants will discuss the issues surrounding CAP customer shopping at length and provide recommendations for future RMI initiatives, such as the long-term work plan anticipated to be released in the spring of 2012. However, the Commission believes it cannot make a determination, at this time, regarding the eligibility of such customers to participate in the Retail Opt-in Auctions. As such, the Commission believes the ability of CAP customer participation should be determined within each EDC's default service proceeding, through which the EDCs are presenting proposed Retail Opt-in Auction models. **We also note that we do see significant merit and agree with the comments provided by [numerous parties] that CAP customers should not be subject to harm, i.e., loss of benefits, if they are deemed eligible to participate in the auctions.**¹⁰

In response to the Commission's IWP Final Order, the Companies sent a letter to ALJ Barnes and the parties dated March 9, 2012 in which it indicated that it would respond to the Commission's IWP Final Order recommendations in its rebuttal testimony filed on March 16, 2012.

On March 16, 2012, the Companies, along with other parties including the Retail Energy Supply Association ("RESA") filed rebuttal testimony in response to the direct testimony filed by the all parties. Specifically relevant to the issues of concern to CAUSE-PA, the Companies filed rebuttal testimony by Charles V. Fullem,¹¹ in which Mr. Fullem explained the changes Companies proposed in response to the Commission's IWP Final Order. Specifically, the Companies significantly revised their Customer Referral Program to offer a fixed 7% off the EDC PTC at the time of customer enrollment with a service term of 12 months, and they also revised their Opt-in Auction proposal to offer a product that has a twelve-month term rather than a twenty-four month term and a fixed price at least 5% less than each EDC's PTC at the time of the auction as opposed to a guaranteed percent off.¹²

¹⁰ IWP Final Order at 43 (emphasis added).

¹¹ Met-Ed/Penelec/Penn Power/West Penn Statement No. 7-R ("Companies' Statement. No. 7-R").

¹² Companies' Statement No. 7-R at 3-4.

On April 4, 2012, CAUSE-PA filed its written Surrebuttal Testimony.¹³ In her Surrebuttal, Ms. Biedrzycki modified her conclusions based on the Commission's IWP Final Order and the rebuttal testimony filed by the Companies. Briefly, Ms. Biedrzycki concluded that in light of the changes proposed by the Companies in the rebuttal testimony of Mr. Fullem, CAP customers should remain on default service and should be excluded from participating in any of the Companies proposed retail market enhancements.¹⁴ Ms. Biedrzycki also recommended that, given the complexity of the issues involved, the Companies initiate a process to prohibit CAP customers from choosing a retail EGS at any time.¹⁵

On April 10, 2012, one day prior to the commencement of hearings, the Companies filed a motion to strike certain portions of Ms. Biedrzycki's Surrebuttal Testimony. CAUSE-PA filed a response in opposition to this motion on April 11, 2012. The Companies' motion was denied by ALJ Barnes on April 11, 2012.¹⁶

Hearings were held on April 11-12, 2012. Testimony and cross-examination of the parties' witnesses occurred on these two days with the exception of those witnesses for whom no party had cross-examination. At the hearings, ALJ Barnes received into evidence the parties' prepared written testimony and exhibits, either by witness sponsorship for those witnesses appearing in person or by written affidavit. Included in the testimony received into evidence was CAUSE-PA Statement No. 1 with Exhibits CJB-1 through CJB-8, CAUSE-PA Statement No. 1-SR along with Exhibits CJB-9 through CJB-10, and CAUSE-PA Statements No. 1 and 1-SR Errata.¹⁷ The hearing was adjourned and the record closed on April 12, 2012.¹⁸

¹³ CAUSE-PA Statement No. 1-SR.

¹⁴ CAUSE-PA Statement No. 1-SR at 10

¹⁵ CAUSE-PA Statement No. 1-SR at 13.

¹⁶ Tr. of Proceedings at 40:17-25

¹⁷ Tr. of Proceedings at 316-318.

¹⁸ Tr. of Proceedings at 355.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Procurement groups

1. West Penn's Proposed Consolidation of Service Types 20 and 30

CAUSE-PA has taken no position on these issues in this proceeding.

B. Residential and Commercial Class Default Service Procurement

1. Summary and Overview of Each Party's Position

CAUSE-PA has taken no position on these issues in this proceeding.

2. Term of Contracts

CAUSE-PA has taken no position on these issues in this proceeding.

3. Procurement Dates

a) Number of Procurements per Delivery Year

CAUSE-PA has taken no position on these issues in this proceeding.

b) Dates of Procurements Relative to Delivery Year

CAUSE-PA has taken no position on these issues in this proceeding.

4. Laddering of Contracts beyond June 1, 2015

CAUSE-PA has taken no position on these issues in this proceeding.

5. OCA's Proposal to Continue the Use of Block Purchase Components With Spot Transactions for Residential Customers

CAUSE-PA has taken no position on these issues in this proceeding.

6. The OCA's Proposed "Hold Back" for Retail Opt-In Auction

CAUSE-PA has taken no position on these issues in this proceeding.

7. Procurement Method – Descending Price Clock Auction

CAUSE-PA has taken no position on these issues in this proceeding.

8. Load Cap

CAUSE-PA has taken no position on these issues in this proceeding.

C. Industrial Class Hourly-Priced Default Service

1. Summary and Overview of Each Party's Position

CAUSE-PA has taken no position on these issues in this proceeding.

D. Use of Independent Evaluator

CAUSE-PA has taken no position on these issues in this proceeding.

E. AEPS Requirements

1. Non-Solar Photovoltaic Requirements

CAUSE-PA has taken no position on these issues in this proceeding.

2. Solar Photovoltaic Requirements

CAUSE-PA has taken no position on these issues in this proceeding.

F. Contingency Plans

1. Full Requirements Products

CAUSE-PA has taken no position on these issues in this proceeding.

2. AEPS Requirements

CAUSE-PA has taken no position on these issues in this proceeding.

G. Supplier Master Agreements

1. Credit Requirements

CAUSE-PA has taken no position on these issues in this proceeding.

2. Monthly versus Weekly Settlements

CAUSE-PA has taken no position on these issues in this proceeding.

III. RATE DESIGN AND COST RECOVERY

A. Residential and Commercial Classes: Price to Compare Default Service Rider

CAUSE-PA has taken no position on these issues in this proceeding.

B. Industrial Class: Hourly Pricing Default Service Rider

CAUSE-PA has taken no position on these issues in this proceeding.

C. Market Adjustment Charge

1. Summary and Overview of Each Party's Position

CAUSE-PA will leave it to the Companies and others to summarize their respective positions concerning the Companies' proposed addition of a MAC; however, it provides the following overview here for the benefit of the Administrative Law Judge and the Commission.

In its Joint Petition and testimony, the Companies propose to add a bypassable charge on non-shopping residential and commercial customers at a rate of \$0.005 per kWh to be recovered as a cost under the price to compare default service rider.¹⁹ The Companies have estimated that, if approved, the MAC will produce approximately \$149 million in revenue during the 24-month default service period.²⁰

With the exception of RESA and Dominion Retail, all of the other parties to this proceeding who have filed testimony concerning the MAC have opposed it based on substantially similar grounds, to wit: the charge is not permitted by the Public Utility Code.

2. Position of Parties Opposed

Again, CAUSE-PA will not endeavor to summarize all of the positions of the parties opposed to the MAC; but rather submits here its reasons why the Commission should not permit the Companies to collect the MAC.

¹⁹ Companies' Statement No. 7 at 11.

²⁰ Tr. of Proceedings at 169:14.

Although the Companies' have attempted at length to justify the increase as both a market enhancement tool and as a means to compensate it for unrealized costs, it is clear that an adder of this sort is not justified or permitted by the EDCs in their role as default service providers. The Companies are not providing default service as a favor to their customers or in an effort to gain market share; rather, they provide default service because they are statutorily required to do so.²¹ As a regulated utility, the Companies provide valuable services and are entitled to a regulated profit as established through their base rate proceedings. They are not, however, entitled to additional profit for the provision of default service.

Pursuant to 66 Pa C.S. § 2807(e) (3.9), default service providers are permitted to recover only those reasonable costs incurred in the provision of default service. Thus, in order for the MAC to be approved, the Companies would need to demonstrate that it is justified as a recovery of reasonable costs incurred. Based on the record before the Commission it is clear that this has not been demonstrated and is not the case. The Companies state that the MAC will “compensate the Companies for the value provided to default service customers,”²² and will create “headroom” within the Price to Compare so that alternate suppliers can compete.²³ In essence, the Companies' propose to add the MAC in order to compensate them for the “value” that they add to default service as well as to raise their default PTC in order to make alternative residential suppliers prices look more attractive. Neither of these are compensable costs pursuant to section 2807(e) (3.9) of the Public Utility Code.

Throughout their testimony, the Companies submit that there are cost-based arguments which justify the assessment of the MAC. For example, the Companies assert that default customers receive value from the credit worthiness of the Companies, and that because the

²¹ See 66 Pa. C.S. §§ 2803; 2807(e) (1).

²² Companies' Statement No. 7 at 11:8-9

²³ Id. at 11:18.

Companies are credit worthy, suppliers do not require them to post collateral for the contract liabilities that they assume under supplier master agreements.²⁴ The Companies also contend that they are uncompensated for various transmission services, that they have to be ready to satisfy the requirements of additional Alternative Energy Portfolio Standards Act requirements that may be enacted during the term of their supplier agreements, and that they have to constantly be ready to serve load or procure additional supply in the event that a supplier breaches its obligations during the term of the supplier agreements.²⁵

All of these are undoubtedly true statements; however, they do not merit additional profit for the Companies above and beyond the level of profit the Companies are already earning. A simple average of the currently authorized rates of return on equity for the companies is 11.15%.²⁶ While these rates of return on equity do not compensate the companies for “default service costs,” but rather for costs of being the transmission distribution company, the Companies are nevertheless already compensated for all reasonable costs incurred in procuring default service.²⁷ Accordingly, the Companies’ authorized return on equity should not be ignored in this equation.

Moreover, the “costs” identified by the Companies as warranting the MAC are either avoided costs because of the credit worthiness of the Companies, credit worthiness that comes from rates of return authorized by the Commission for transmission functions as well as the credit requirements imposed upon the Companies by the Commission, or are speculative rather than actual, quantifiable costs. According to the Companies, in a remarkable twist of logic,

²⁴ Companies’ Statement No. 7 at 12.

²⁵ Id. at 13.

²⁶ See CAUSE-PA Statement No 1, Exhibit CJB-8, Companies’ Resp. to OCA Interrogatories Set II, No. 17. The currently authorized rate of return for each of the Companies is as follows: Met-Ed: 10.1%; Penelec: 10.1%; Penn Power: 12.9%; and West Penn Power: 11.5%

²⁷ 66 Pa. C.S. § 2807(e) (3.9); 52 Pa. Code § 54.187(a).

because they have managed to avoid costs and enter into favorable master supplier agreements, thus keeping default service costs down for default customers, they should be financially rewarded to the tune of \$149 million over the 24 month default service period thereby *increasing* costs to default service customers, including the low-income. These avoided costs, however, are not costs at all but rather are attributable to the fact that the Companies, as regulated monopolies with regulated and guaranteed return on equity, are in a sound financial position to enable them to negotiate favorable terms. The Public Utility Code at § 2807(e)(3.9) permits the recovery only of reasonable costs incurred; were it to allow compensation for avoided costs – such as that which is sought by the Companies – the costs avoided and paid through a MAC would be limited only by the imagination of the utilities claiming them.

The costs claimed by the Companies in the event that a wholesale supplier defaults are equally non-recoverable because they are, at best, speculative. This point was made by OSBA witness Robert Knecht in his Direct Testimony.²⁸ In the event of a wholesale supplier default, the Companies can procure supply through the PJM spot market. If they do so and they incur additional costs then those costs actually incurred would be compensable. The Companies want to try to hedge those costs now through the collection of the MAC; however, the Companies are not permitted to recover costs they *may* incur, only those that they actually incur.

Additionally, the Companies suggest that this charge is somehow justified as a competitive enhancement because it would create headroom within which EGSs could compete for business. The Companies have pointed to no authority that would permit them or the Commission to enact a tax on default service in order to push customers into the competitive

²⁸ See OSBA Statement No. 1 at 6-7.

market. In fact, the entire concept is an anathema to the statutorily required default service which is to be procured at “least cost to customers over time.”²⁹

In addition to the fact that the MAC is impermissible and inconsistent with the notion of default service which is procured at least cost over time to customers, there are significant policy reasons why the Commission should disallow the MAC.

First, the MAC would impose additional cost burdens on the Companies’ low-income customers who can ill afford any price increase, let alone an impermissibly proposed increase. Combined, the Companies have close to 200,000 confirmed low-income customer accounts.³⁰ These are customers who subsist on incomes at or below 150% of the federal poverty income guidelines. For a family of four this is a gross income of \$34,575 per year.³¹ Ample evidence was presented in the Direct Testimony of CAUSE-PA witness Biedrzycki about how close to the margin these households live. By way of example, within the Met-Ed service territory, not including those customers enrolled in CAP, 55% of confirmed low-income customers are on a deferred payment agreement.³² Within the Penelec service territory, not including those customers enrolled in CAP, 43.7% of confirmed low-income customers are on a deferred payment agreement.³³ Within the Penn Power service territory, not including those customers enrolled in CAP, 38.2% of confirmed low-income customers are on a deferred payment agreement.³⁴ Within the West Penn Power service territory, not including those customers enrolled in CAP, 34.6% of confirmed low-income customers are on a deferred payment agreement.³⁵

²⁹ 66 Pa. C.S. § 2807(e)(3.4)

³⁰ CAUSE-PA Statement No. 1, Exhibit CJB-6, Companies’ Resp. to CAUSE-PA Interrogatory Set I, No. 1.h.

³¹ See CAUSE-PA Statement No. 1, Exhibit CJB-3.

³² See CAUSE-PA Statement No. 1, Exhibit CJB-7.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

This information demonstrates that within each of the Companies' service territories there is a significant low-income population with incomes at or below 150% of the federal poverty guidelines, and that these households are fundamentally unable to afford all of their household expenses, including utility expenses. Self-evident as it may be, the fact remains that low-income households are struggling to a significantly greater extent than other households to meet their essential utility costs. The addition of phantom costs to be recovered through a MAC would cause these households who are already struggling to afford service to bear additional costs without any legitimate basis for doing so and without any benefit to them.

Second, the MAC would have the insidious consequence of actually increasing the cost of service for residential customers twice because these customers would have to pay for the additional \$0.005 per kWh on the service that they use and would also have to pay increased CAP costs. CAP customers do not pay their full consumption bill and the difference between their full consumption bill and their CAP bill is paid for by all residential ratepayers.³⁶ Thus, those CAP customers who remained on default service would not only see their CAP bills increase – at least for Met-Ed, Penelec, and Penn Power which use only a modified percentage of income and bill discount CAP structure – but all residential customers would see the cost of their CAP rider increase because of the adder. Both the Commission and the OCA have expressed concern about the rising costs of universal service. The addition of the MAC would exacerbate this concern without providing any benefit to low-income customers or the residential customers who pay for the program.

In the end, it is plain that there are insufficient reasons for such a charge and a number of policy reasons to deny it. Default service customers would end up paying increased costs to the tune of \$149 million for no reason other than to increase the profits of the Companies. Without

³⁶ CAUSE-PA Statement No. 1 at 10-11.

justification of actual costs that are reasonable this adder is neither permitted by applicable law nor is it appropriate social policy.

3. RESA's Proposed Modification

The proposed modification by RESA does nothing to solve the inherent problems of the MAC. For its part, RESA objects to the Companies retaining any portion of the MAC as profits and instead proposes that proceeds from the MAC should go to pay for the costs of implementing improvements to the market structure in the EDCs' service territories; and the legitimate expenses that it incurs to provide the default service.³⁷ In the event that any funds are left over, they should then be returned to customers on a pro rata basis by a non-bypassable credit.

RESA's proposal is flawed for many of the reasons the entire concept of the MAC is flawed: There has been neither a quantification of the costs to be recovered nor an assessment of whether those costs are reasonable. Furthermore, the question of whether the costs of the proposed retail market enhancements should be paid for by the Companies' ratepayers or the EGSs who benefit from these enhancements remains an open issue that must be addressed in this proceeding. Even assuming for the sake of argument, however, that the Commission were to determine that these costs should be borne by the Companies' ratepayers, an additional surcharge would not be needed as these costs could be appropriately covered through the Companies' Default Service Support Rider.

4. Dominion's Proposed Modification

Dominion witness Thomas Butler proposes an even more aggressive MAC than proposed by the Companies.³⁸ While Mr. Butler attempts to overcome the statutory barriers to the

³⁷ RESA Statement No. 2 at 31:2-4.

³⁸ Dominion Retail Statement No. 1 at 10.

imposition of such a charge by suggesting that the proceeds from the MAC could be used to pay for the retail market enhancements and then flow back to customers via a rider, he does not provide a justification for this surcharge other than to increase competition. Based on the reasons articulated more fully in Section III.C.2, above, CAUSE-PA submits that this distinction is not material to the outcome. There continues to be no permissible basis that would permit the Companies to add a tax on default service.

D. Default Service Support Rider

1. Non-Market Based Transmission Charges

CAUSE-PA has taken no position on these issues in this proceeding.

2. Generation Deactivation Charges

CAUSE-PA has taken no position on these issues in this proceeding.

3. Unaccounted-For Energy Costs

CAUSE-PA has taken no position on these issues in this proceeding.

4. Economic Load Response Charges

a) Constellation's Proposal regarding Economic Load Response Charges to Load Resulting from PJM ELR Payments under FERC Order No. 745

CAUSE-PA has taken no position on these issues in this proceeding.

E. Solar Photovoltaic Requirements Charge Rider

CAUSE-PA has taken no position on these issues in this proceeding.

F. Time Of Use Rate Proposals for West Penn and Penn Power

1. Summary and Overview of Each Party's Position

CAUSE-PA has taken no position on these issues in this proceeding.

2. The OCA's Position

CAUSE-PA has taken no position on these issues in this proceeding.

3. RESA’s Proposal

CAUSE-PA has taken no position on these issues in this proceeding.

G. Reconciliation of Default Service Costs and Revenues

1. Summary and Overview of Each Party’s Position

CAUSE-PA has taken no position on these issues in this proceeding.

2. The OCA’s Proposal

CAUSE-PA has taken no position on these issues in this proceeding.

3. The OSBA’s Proposal

CAUSE-PA has taken no position on these issues in this proceeding.

H. Other Tariff Changes (Conforming West Penn to Other Companies)

CAUSE-PA has taken no position on these issues in this proceeding.

IV. COMPETITIVE MARKET ENHANCEMENTS

A. Retail Opt-In Aggregation Program

1. Summary and Overview of Each Party’s Position

See Section IV.C., below, for CAUSE-PA’s position on the Retail Opt-in Aggregation Program.

2. Customer Eligibility

a) Small Commercial and Industrial

CAUSE-PA has taken no position on these issues in this proceeding.

b) Shopping Customers

See Section IV.C., below, for CAUSE-PA's position on the eligibility of CAP Customers and other confirmed low-income customers for both the Retail Opt-In Aggregation Program and the Standard Offer Customer Referral Program. Except for the discrete issues concerning low-income customers, CAUSE-PA takes no position on whether the program as a whole should be limited to default service customers or all customers including those who are already being served by and EGS.

3. Program Length

See Section IV.C., below, for CAUSE-PA's position on the eligibility of CAP Customers and other confirmed low-income customers for both the Retail Opt-In Aggregation Program and the Standard Offer Customer Referral Program. Except for the discrete issues concerning low-income customers, CAUSE-PA takes no position on the length of the program except to note that there appears to be consensus that the Opt-in Aggregation program should be 12 months in length.

4. Timing of Solicitation and Auction

As to the timing and solicitation of auction participants, CAUSE-PA supports the recommendations contained in the testimony of OCA witness Barbara Alexander; specifically, her recommendation that prior to determining whether to enroll in the aggregation program, customers must be provided with the complete terms and conditions of the Opt-in Aggregation

program, including their options upon the expiration of the program.³⁹ The inclusion of this requirement is especially important for low-income customers who are not participating in CAP.

In Section IV.C, below, CAUSE-PA's discusses in detail its recommendations for specific low-income customer protections. CAUSE-PA argues that CAP customers should be excluded from the auction pool and that other discrete low-income customer groups such as those on deferred payment agreements and customers who have received LIHEAP grants during the auction term be returned to default service at the end of the term. However, there will be confirmed low-income and other vulnerable customers who do not fall into those categories. For these customers, like all residential customers, it is essential that they be presented with the complete terms and conditions of the aggregation program prior to enrollment so that they can make an informed choice as to whether they should or should not participate.

5. Timing for Providing Full Terms and Conditions to Customers

CAUSE-PA fully supports the recommendation of OCA witness Barbara Alexander that customers must be provided all terms and conditions of the opt-in auction prior to determining whether or not to enroll.⁴⁰ The suggestion that customers should be asked to enroll *prior* to having all of the terms of the auction articulated and known is poor public policy and the suggestion that by providing customers with a chance to opt-out if they do not like the program terms flips the opt-in paradigm on its head for no apparent reason other than EGS preference. The approach recommended by the EGSs in this proceeding transfers the risks of an unknown product to customers rather than EGSs. This is not acceptable.

³⁹ OCA Statement No. 2 at 11.

⁴⁰ Ibid.

6. Customer Participation Cap

a) Summary and Overview of Each Party's Position

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

b) The Companies' Proposal (50%)

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

c) The OCA's Proposal (20%)

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

7. Supplier Participation Load Cap

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

a) Summary and Overview of Each Party's Position

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

b) The Companies' Proposal

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

c) Dominion Retail's Proposal

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

d) RESA's Proposal

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

8. Composition of Product Offer

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

a) Discount from PTC

CAUSE-PA witness Biedrzycki supported the Companies' initial proposal for a 24-month product with a guaranteed percent off the price to compare throughout the entire auction term in her Direct Testimony.⁴¹ However, the Companies subsequently revised their Opt-in Auction proposal to offer a product with a twelve-month term instead of a twenty-four month

⁴¹ CAUSE-PA Statement No. 1 at 20

term and a fixed price, *at the time of the auction*, at least 5% less than each EDC's PTC, as opposed to a guaranteed percent below the PTC during the entire period.⁴² Given that the modifications proposed by the Companies would have a potentially negative and harmful impact on low-income and CAP customers, Ms. Biedrzycki proposed remedial measures designed to protect the interests of low-income customers and to respond to the Commission's Final IWP Order to avoid harm to CAP customers.⁴³ To that end, Ms. Biedrzycki recommended, and CAUSE-PA supports, the position that CAP customers should be excluded from the pool of eligible customers.⁴⁴ This issue is explored in more detail in Section IV.C., below. Nonetheless, for all other customers participating, including non-CAP, low-income customers, CAUSE-PA supports the OCA's proposal that the discount on the price to compare continue to ensure savings during the entire auction period.⁴⁵

b) "Bonus" Payments

CAUSE-PA has not taken a position on these issues in testimony; however, it supports the Companies' conclusion these payments tend to be loss leaders and should not be a part of the retail market enhancements.⁴⁶

c) Provision of Standard Contracts Specifying All Terms and Conditions of Service

In Section IV.C, below, CAUSE-PA's discusses in detail its recommendations for specific low-income customer protections. There, CAUSE-PA argues that CAP customers should be excluded from the auction pool, and that other discrete low-income customer groups such as those on deferred payment agreements and customers who have received LIHEAP grants

⁴² Companies' Statement No. 7-R at 3-4.

⁴³ CAUSE-PA Statement No. 1-SR at 6.

⁴⁴ Ibid.

⁴⁵ OCA Statement No. 2-R at 7:12-15.

⁴⁶ Companies' Statement No. 7-R at 33.

during the auction term should be returned to default service at the end of the term. However, there will be confirmed low-income and other vulnerable customers who do not fall into those categories. For these customers, like all residential customers, it is essential that they be presented with the complete terms and conditions of the aggregation program prior to enrollment so that they can make an informed choice as to whether they should or should not participate.

9. RESA's Proposal to Conduct Testing of Various Marketing Channels before Implementing the Program

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

10. Customer Options on Program Expiration and Notices to Customers of Contract Expiration

In Section IV.C, below, CAUSE-PA's discusses in detail its recommendations for specific low-income customer protections. There, CAUSE-PA argues that CAP customers should be excluded from the auction pool and that other discrete low-income customer groups such as those on deferred payment agreements and customers who have received LIHEAP grants during the auction term be returned to default service at the end of the term. However, there will be confirmed low-income and other vulnerable customers who do not fall into those categories. For these customers, CAUSE-PA fully supports the recommendations made by OCA witness Barbara Alexander that there be three (3) notices prior to the expiration of the program, and that the first notice – a 90-day notice – come from the EDC rather than the EGS serving the customer.⁴⁷ It is important that this first notice regarding the expiration of the program come directly from the Companies because the customer entered the program as a result of a mailing

⁴⁷ OCA Statement No. 2 at 11:19-12:6.

and/or other communications from the Companies. The Companies are rightly concerned that the product be developed, structured and initially offered in such a way as to not damage their brand;⁴⁸ they should be similarly concerned that information concerning the end of the program is delivered in a manner that does not damage their brand or harm their customers. Customers participating in the auction chose to enter the retail market as a result of a “push” from the Companies and the Commission. They should be given clear notice from the EDC with whom that they are used to dealing, and from whom this “push” emanated, that this special program is coming to an end. Thus, consistent with the recommendations made by the OCA, CAUSE-PA believes that it is essential that participating customers receive the three notices as set forth by OCA witness Alexander.⁴⁹

11. Structure of Opt-In Auction – Descending Price Clock Auction versus sealed Request for Proposals

CAUSE-PA has taken no position on these issues in this proceeding other than the position that CAP customers should be excluded from the pool of eligible customers which is explored in more detail in Section IV.C., below.

12. Recovery of Costs

a) All customers versus EGSs

In its Intermediate Work Plan Final Order, the Commission stated that the EGSs should bear the bulk of the costs of the Opt-in Auction:

As for the costs of the Retail Opt-in Auctions, we agree . . . that, in general, most, if not all, of these costs should be recovered from participating suppliers. The participating suppliers will be receiving customers via this program in a manner that negates almost all of the usual customer acquisition costs. As such, it is only fair that the suppliers, as the prime beneficiaries of the program, should pick up

⁴⁸ See Companies’ Statement No. 7-R at 24:12-25:14.

⁴⁹ See OCA Statement No. 2 at 11:19-12:6.

the associated costs. We advise EDCs, in their program filings, to propose mechanisms to identify and recover the costs from participating suppliers.⁵⁰

No evidence has been presented in this proceeding demonstrating that the Commission's decision that these costs should be borne by the participating EGSs' was mistaken.

Pennsylvania ratepayers have already incurred significant costs to pay for the implementation of retail competition, including costs relating to implementing electronic data exchange systems, changes in bill formats and the adoption of EDC billing for suppliers and paying for the EGS receivables, costs associated with prior and ongoing EDC customer education mailings and communications, costs incurred to modify websites to promote shopping, such as the PAPowerSwitch website promoted by the Commission and those implemented by the individual EDCs, as well as costs associated with implementing the Commission's licensing programs and oversight of the EGS marketing activities and numerous rulemakings and dockets associated with the implementation of the Pennsylvania restructuring statutes, all of which flow through to ratepayers.⁵¹

In fact, recent surveys suggest that 88% of Pennsylvania residents are aware that they can change electric suppliers and 44% have actually looked into changing electric suppliers.⁵² The retail market for the sale of generation supply service is growing in Pennsylvania. Within the Companies' service territories, current shopping statistics show that the percentage of residential shopping load being served by competitive suppliers, in the short time period since the removal of rate caps, ranges from 16.7% to 24.6%.⁵³ The fact that residential load percentages continue to trend upwards means that shopping is gaining traction within the Companies' service

⁵⁰ IWP Final Order at 84-85.

⁵¹ CAUSE-PA Statement No. 1 at 27:18-28:10.

⁵² See Fall 2011 Omnibus Survey, State of Electric Competition in Pennsylvania, conducted by Dr. Terry Madonna and presented to the Pennsylvania Public Utility Commission at its November 10, 2011 Retail Markets Investigation En Banc Hearing. Available at: <http://www.puc.state.pa.us/electric/PDF/RetailMI/EnBanc111011-P-CE-TM.pdf> (Last visited: May 2, 2012).

⁵³ OCA Statement No. 2-R at 5:10-12.

territories *without* additional market enhancements. Because significant costs have already been paid by ratepayers to support customer choice, it is inappropriate to pass these additional costs along to default service customers in order to provide services and infrastructure for competitive retail operations.

b) Recovery through the Market Adjustment Clause as Proposed by RESA

For the reasons stated in Section III.C.2, above, CAUSE-PA submits that the MAC is impermissible. Moreover, even if the MAC were permissible, recovering these costs from customers as opposed to the participating suppliers has already been rejected by the Commission in its Intermediate Work Plan Final Order.⁵⁴ For the reasons articulated in Section IV.A.12.a., above, these costs should be paid for by those EGSs participating in the auction.

c) Form of Recovery if EGSs to be responsible for all costs

CAUSE-PA witness Biedrzycki stated the following in her Direct Testimony concerning cost recovery:

[A]ll of the costs for the retail market enhancements proposed in this plan should be paid for by the participating EGSs either through a discount on the receivables that the EDC purchases from these companies or through some other mechanism developed by the Companies and the participating EGSs that is approved by the Commission.⁵⁵

Various parties, including the Companies, raised concerns about whether a discount on purchase of receivables was the correct method of recovering program costs from participating suppliers, and the Companies proposed an alternative mechanism of dividing the cost of the auction itself equally among participating EGSs, with each EGS being required to pay the

⁵⁴ See IWP Final Order at 84-85.

⁵⁵ CAUSE-PA Statement No. 1 at 29:8-11.

Companies their share before the beginning of the auction.⁵⁶ This is an acceptable alternative which is consistent with the Commission's IWP Final Order that costs are not to be borne by the Companies' customers. CAUSE-PA leaves it up to the Commission, the Companies, and the EGSs to determine how the EGSs will pay for the costs of the auction so long as the process is consistent with the Commission's IWP Final Order and the costs are not borne by the Companies' customers.

B. Standard Offer Customer Referral Program

1. Summary and Overview of Each Party's Position

See Section IV.C., below, for CAUSE-PA's position on the Customer Referral Program.

2. Customer Eligibility (Eligibility of CAP Customers for both the Retail Opt-In Aggregation Program and the Standard Offer Customer Referral Program is a separate section, below.)

CAP customers should be excluded from the pool of eligible customers. This issue is explored in more detail in Section IV.C., below. The only other discrete customer group that CAUSE-PA believes should be excluded from the referral program is callers who are calling about a high bill.⁵⁷ It would be inappropriate to refer high bill complaint customers to an EGS for service while these high bill inquiries/disputes are on-going because the rates the customer is paying for electricity may not be the cause of the high bill. This view was also endorsed by the OCA.⁵⁸ Although the Commission indicated in its IWP Final Order that customers calling concerning a high bill should be referred to an EGS "only and explicitly after the customer's concerns were satisfied,"⁵⁹ the Commission should take this opportunity to reexamine this

⁵⁶ Companies' Statement No. 7-R at 40:14-16.

⁵⁷ CAUSE-PA Statement No. 1 at 34-35.

⁵⁸ OCA Statement No. 2 at 15.

⁵⁹ IWP Final Order at 32.

conclusion. Utilities should conduct a thorough examination all of the possible reasons for a high bill and work with the customer to lower their usage instead of offering the hope of lower bills in the future based on service from an EGS. Customers should be assessed for whether they are eligible for weatherization assistance either through Act 129 or LIURP. If they are low-income, the customers should be referred to the utilities' hardship fund or LIHEAP for assistance and should be referred to the CAP program for enrollment, if eligible. While there may be a role for educating customers calling about high bill complaints about electric choice; these customers have not called for that purpose and should not be required to hear a sales pitch concerning available EGS options in their service territory.

3. Term of the Standard Offer Product and Length of 7% Discount

CAP customers should be excluded from the pool of eligible customers. This issue is explored in more detail in Section IV.C., below. Nonetheless, for all other customers participating, including non-CAP, low-income customers, CAUSE-PA supports a 12-month product at 7% off the price to compare, as long as the additional provisions recommended by CAUSE-PA in Section IV.C, below are met.

By way of summary, with additional explanation and argument below, the Customer Referral Program should be approved only if the Companies' proposal is amended to assure that at the conclusion of the auction/referral contract period that confirmed low-income customers whom the companies can readily identify⁶⁰ such as those who (1) have received a LIHEAP grant within the past year; or (2) are on a payment agreement (Commission-ordered or Company-provided) are offered a fixed rate 12-month contract at a price at or below the then existing default service PTC or returned to default service

⁶⁰ Tr. of Proceedings at 207-208.

4. Recovery of Costs

a) All Customers versus EGSs

In its Intermediate Work Plan Final Order, the Commission stated that the costs of the Customer Referral Program should be paid for by participating suppliers:

As to program costs . . . the bulk of the costs, including the costs of maintaining the referral programs once they are put into place, should be the responsibility of the participating EGSs.⁶¹

For the reasons stated more fully in Section IV.A.12.a, above, CAUSE-PA submits that the Commission statement on this subject is correct and that there has been no evidence presented in this case that should cause the Commission to modify its opinion that these costs are most appropriately borne by the participating suppliers, not the Companies' customers.

b) Recovery through the Market Adjustment Clause as Proposed by RESA

For the reasons stated in Section III.C.2, above, CAUSE-PA submits that the MAC is not a permissible charge and should not be approved. Moreover, even if the MAC were permissible, recovering these costs from customers as opposed to the participating suppliers has already been rejected by the Commission in its Intermediate Work Plan Final Order.⁶² For the reasons articulated in Section IV.A.12.a., above, these costs should be paid for by those EGSs participating in the auction.

c) Form of Recovery if EGSs to be responsible for all costs

For the reasons stated more fully in Section IV.A.12.c., above, CAUSE-PA leaves it up to the Commission, the Companies, and the EGSs to determine how the EGSs will pay for the costs of the auction so long as those costs are not borne by the Companies' customers.

⁶¹ IWP Final Order at 32.

⁶² Ibid.

5. Constellation’s Proposal to Require Customers to “Opt-In” in Order to Be Eligible to Participate

Since the point of the referral program is to highlight shopping opportunities to customers who call the Companies’ call center for various reasons, CAUSE-PA does not support Constellation’s proposal which would require customers to “opt-in” to the Customer Referral Program prior to calling the Companies. It would be needlessly costly to prepare an additional set of opt-in mailings for customers explaining the referral program. Such a change would further exacerbate the potential for confusion between the Customer Referral Program and the Opt-in Auction. Constellation’s proposal should be rejected and, instead, the Commission should delay implementation of this program consistent with the recommendations made by the OCA and CAUSE-PA as set more fully in Section IV.B.6, below.

6. The OCA’s Proposal to Sequence the Implementation of the Customer Referral Program

CAUSE-PA fully supports OCA witness Alexander’s recommendation that the Customer Referral Program be delayed.⁶³ Introducing the Customer Referral Program on the heels of the Opt-in Aggregation Program may lead to customer confusion, and may have the unintended consequence of turning customers off to the shopping experience. It is likely that many customers will not appreciate a distinction between the Opt-in Aggregation Program and the Customer Referral Program. Both offers have the appearance of being endorsed by the Commission and the EDC. This is misleading. The Companies stated that they do not believe that there will be overlap between these programs because the auction enrollment period will occur prior to the implementation of the Customer Referral Program.⁶⁴ While this may lessen

⁶³ See OCA Statement No. 2 at 15-16

⁶⁴ See CAUSE-Pa Statement No. 1, Exhibit CJB-8, Companies’ Resp. to OCA Interrogatories Set IV, No. 18.

the level of customer confusion, it is not prudent to assume that all customers referred will understand the differences.⁶⁵

According to the Companies' proposals, non-shopping customers will have been solicited for the Opt-in Aggregation program *before* the Customer Referral Program begins.⁶⁶ This solicitation will come through bill stuffers and other information sent directly to non-shopping customers with an explanation of the program design. After this solicitation occurs and customers become familiar with its terms, the Customer Referral Program will roll out with different terms. The potential for confusion is very real given⁶⁷ the perceived similarities of these programs and the potential for customer anger is very real given the actual differences in the programs and their potential outcomes.

A better approach is that which was suggested by OCA Witness Alexander which would have the Companies delay offering a Customer Referral Program and to inform customers calling for new service or to transfer service within the service territory that they have options and ask if the customer has considered other providers and suggest that they take the time to explore other options.⁶⁸

7. RESA's Proposal to allow the Standard Offer Customer Referral Program to Displace the New/Moving Customer Referral Program

CAUSE-PA has taken no position on this issue in the captioned proceedings. It does note, however, consistent with its arguments in Section IV.B.6, above, that the Standard Offer Customer Referral Program implementation be delayed consistent with the recommendations of OCA witness Alexander.

⁶⁵ See CAUSE-PA Statement No 1 at 31-32.

⁶⁶ See CAUSE-PA Statement No. 1, Exhibit CJB-8, Companies' Resp. to OCA Interrogatories Set IV, No. 18.

⁶⁷ See CAUSE-PA Statement No. 1 at 31-32.

⁶⁸ See OCA Statement No. 2 at 15-16.

C. Limiting Participation by Low-Income Customers In Proposed Retail Market Enhancements

The captioned proceeding arises out of the Companies' obligations as default service provider imposed by Act 129 of 2008 to file a plan for the adequate and reliable competitive procurement of electricity that is obtained pursuant to a prudent mix of contracts designed to procure the least cost to customers over time.⁶⁹ This obligation is unique to the Companies as default service providers. In contrast to EGSs whose procurement of power is not regulated by the Commission, the Companies must specifically demonstrate through this plan that their procurement will produce relatively stable, reliable energy designed to ensure that over the long term costs will be at least cost to their customers. Moreover, unlike competitive suppliers who have a profit incentive embedded in their energy offerings, the Companies as default service suppliers are required to pass through the cost of energy procurement with no mark-up except those reasonable costs, approved by the Commission, and actually incurred by the Companies in procuring generation supply.⁷⁰

These statutory requirements provide both the platform and backdrop for CAUSE-PA's recommendation that low-income CAP customers be excluded from the Companies' proposed retail market enhancements, as well as its recommendation that CAP customers be precluded from choosing an alternative supplier at all. The Companies, as default service suppliers required to offer service pursuant to the obligations of Act 129 of 2008, are best suited to provide service consistent with the economic realities and vulnerabilities of low-income customers. While it is certainly that case that on a quarter to quarter basis the cost of default service may vary as the Companies reconcile their costs, the price varies within the framework of a regulated structure that is designed to produce energy costs that over time will be at least cost. This is not

⁶⁹ See 66 Pa. C.S. § 2807(e) (3.4) - (3.6).

⁷⁰ 66 Pa. C.S. § 2807(e) (3.9).

true of the competitive market. While theoretically, a fully functioning competitive market may drive down prices and benefit customers, there is no oversight of EGS procurement to provide assurance that the procurement contracts will in fact reduce costs over time, or that the price fluctuations which occur in the short term are able to be borne by low-income households or will be in the customers' best interest.

Stripped of all the gloss, the distinction between the role of an EDC as a default service supplier and a EGS is this: The default service supplier has an obligation to ensure that its procurements are in the customers' best economic interests by ensuring that they procure an electricity supply that is designed to ensure least cost to their customers over time; the EGS is under no such obligation. In the lives of the poor, this distinction makes all of the difference and it is the crux of CAUSE-PA's position that CAP customers, low-income customers on deferred payment agreements, and low-income customers who have received LIHEAP should be treated differently than other customers.

No party has contested the testimony submitted by CAUSE-PA concerning the economic vulnerability of the Companies' confirmed low-income customers, and the testimony is worth reviewing here in summary format. Households with incomes at or below 150% of the federal poverty guideline lack sufficient income to pay for all of their essential needs.⁷¹ Before all of the bills are paid, low-income families routinely run out of money. In any given month, many of them cannot afford and are unable to pay for utility service because competing essential needs like rent, food, and medicine may take precedence. As discussed at length in CAUSE-PA's testimony, the Companies' confirmed low-income customers have their service terminated anywhere from 5.6 to 9.8 percent, depending on the Company, as compared to 1.22 to 2.73

⁷¹ See CAUSE-PA Statement No 1, Exhibit CJB-3 (federal poverty income guidelines); see also, CAUSE-PA Statement No. 1 at 8 (discussion of the difficulty of low-income households paying for essential needs).

percent of all the Companies' residential customers.⁷² This means that confirmed low-income customers are more than four times as likely as all residential customers to have their service terminated. Additionally, the Companies' confirmed low-income customers are as much as ten times more likely to be on a deferred payment agreement as compared to residential customers (excluding confirmed low-income customers).⁷³ By way of example, in 2011, only 5.5% of all residential households (excluding confirmed low-income residential households) were on a payment agreement as to 55% of confirmed low-income households.⁷⁴

This information provides the stark reality – self-evident as it may be – that low-income households are struggling to a significantly greater extent than other households to meet their essential utility costs. This inability to meet essential costs is unique to this group and requires specific Commission consideration. In its review of the Companies' proposals, the Commission should assure that economically vulnerable low-income customers are not harmed through their participation in the proposed retail market enhancements, and that the program costs to residential customers are not increased unnecessarily.

The Commission recognized the vulnerability and unique needs to CAP customers in its Intermediate Work Plan Final Order when it stated that CAP customers should not participate in the Customer Referral Program and should only participate in the Opt-in Auction if they could do so and not be subject to harm.⁷⁵ Based on the record established in this proceeding, it is apparent that the only means of addressing their economic vulnerability and to ensure that CAP customers are protected from the imposition of economic harm is for them to remain on default service and be excluded from participating in the retail electricity market.

⁷² CAUSE-PA Statement No. 1 at 8-9.

⁷³ CAUSE-PA Statement No. 1 at 17; see also, CAUSE-PA Statement No. 1, CJB Exhibit 7.

⁷⁴ Ibid.

⁷⁵ IWP Final Order at 31-32; 43.

1. CAUSE-PA's Proposal

In Euclidean geometry, it is an axiomatic that two parallel lines never intersect; not so with parallel proceedings before the Commission. Here, it is the intersection of the captioned case with the Commission's broader Retail Market's Investigation that has caused CAUSE-PA's witness to modify her recommendation about whether low-income CAP customers should be permitted to participate in the Companies' proposed opt-in auction and customer referral program. It was when the Companies' plan and the Commission's Final IWP Order intersected and moved in separate directions that Ms. Biedrzycki, as evidenced through her surrebuttal testimony, made the following recommendations concerning low-income customer participation in the Companies' retail market enhancements:

- CAP customers should be excluded from participation in the Retail Opt-in Auction and Customer Referral Programs, and the Companies should modify their tariffs to require CAP customers to remain with the EDC on default service;⁷⁶ and,
- The Opt-In Aggregation Program and Customer Referral Program should be approved only if the Companies' proposal is amended to assure that at the conclusion of the auction/referral contract period that confirmed low-income customers who (1) have received a LIHEAP grant within the past year; or (2) are on a payment agreement (Commission-ordered or Company-provided) are offered a fixed rate 12-month contract at a price at or below the then existing default service PTC or returned to default service.⁷⁷

a. CAP Customers should be excluded from the competitive market

Prior to delving into the factual and policy reasons why CAP customers should be excluded from the competitive market, it is essential to place this program into its proper context: the Choice Act. When the Pennsylvania General Assembly enacted the Electricity Generation Customer Choice and Competition Act in 1996 it was concerned, among other things, about the ability of low-income households to continue to be able to afford electricity in a competitive

⁷⁶ CAUSE-PA Statement No. 1-SR at 6; 10; 12-13.

⁷⁷ CAUSE-PA Statement No. 1-SR at 15-16.

environment.⁷⁸ As a means of addressing these concerns, the General Assembly specifically tasked the Commission with the responsibility of ensuring that the programs intended to facilitate the affordability of electric service are appropriately funded and available in each electric distribution territory.⁷⁹ The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service,⁸⁰ and the statutory goals of universal service are to be achieved through the enactment, establishment and maintenance of policies, practices and services that help low-income customers maintain their electric service.⁸¹

CAPs are regulated programs which provide a discounted bill for payment troubled, low-income ratepayers whose household incomes are at or below 150% of the federal poverty income guidelines.⁸² Each CAP bill is divided into two parts: (1) the amount that the CAP customer must pay each month, and (2) their monthly CAP subsidy payment.⁸³ Under Met-Ed's, Penelec's, and Penn Power's CAP program, the amount that CAP participants pay is the difference between their total consumption bill and their monthly CAP subsidy payment, which is applied at the time of the billing.⁸⁴ The monthly CAP subsidy payment is determined based on total gross household income, primary heating source and energy burden.⁸⁵ This monthly subsidy is paid for by all other residential ratepayers.

⁷⁸ See 66 Pa. C.S. §§ 2802(10), (17), and 2804(9).

⁷⁹ 66 Pa. C.S. § 2804(9).

⁸⁰ 52 Pa. Code. § 54.73

⁸¹ Ibid.

⁸² 52 Pa. Code § 59.72; 52 Pa. Code § 69.262; CAUSE-PA Statement No. 1 at 10.

⁸³ See Universal Service & Energy Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Program years 2012-2014, filed with the Commission on February 28, 2011 at Docket No. M-2011-2231038, and approved by the Commission by Final Order dated March 1, 2012 at 15.

⁸⁴ Ibid.

⁸⁵ Ibid.

For non-electric heating accounts, the benefit calculation is on a 3% energy bill burden with a maximum monthly benefit amount of \$80.⁸⁶ For electric heat accounts, the benefit calculation is based on a 9% energy bill burden with a maximum monthly benefit amount of \$200.⁸⁷ **Figure 1**, below shows this calculation for a baseload electric (non-electric heating) customer, and **Figure 2**, below, shows this calculation for an electric heating:⁸⁸

Figure 1: Baseload electric (non-electric heat)

Annual Income, Family of Four = \$16,500
Annual Electric Bill from prior year = \$1,020
Annual Household Income: \$16,500 x 3% of income = \$495 (CAP Electric Bill Burden)
Actual Electric Bill Burden (\$1,020) – CAP Electric Bill Burden (\$495) = Annual CAP Subsidy Payment of \$525
Annual CAP Subsidy Payment (\$525) / 12 = \$43.75 Monthly CAP Subsidy Payment

Figure 2: Electric heating account

Annual Income, Family of Four = \$16,500
Annual Electric Bill from prior year = \$2,200
Annual Household Income: \$16,500 x 9% of income = \$1485 (CAP Electric Bill Burden)
Actual Electric Bill Burden (\$2,200) – CAP Electric Bill Burden (\$1485) = Annual CAP Subsidy Payment of \$715
Annual CAP Subsidy Payment (\$715) / 12 = \$59.58 Monthly CAP Subsidy Payment

Thus, the amount of each CAP customer’s monthly subsidy varies depending on their electric consumption in the 12 months prior to the calculation of their benefit, their income and their heating type. In any given month, CAP customers are responsible for the difference between their fixed CAP subsidy and their total consumption bill. Thus, if a CAP customers’ consumption bill increases from what the Companies anticipated it to be at the time they fixed the CAP subsidy; the customer is fully responsible for these additional costs. While this scenario

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ See CAUSE-PA Statement No. 1, Exhibit CJB 5.

may be entirely rational when a CAP customer is on default service in which rates are regulated and designed to produce least cost service over the long haul, it is irrational when CAP customers are served by an EGS. In this latter situation, consumer prices are determined by the EGSs procurement strategy and whatever contract the customer agreed to from the EGS at any particular time.

The essential problem with CAP customer shopping as the CAP program is structured by Met-Ed/Penelec/Penn Power is that CAP customers bear the initial brunt of all cost increases if they were to choose a competitive product that has higher prices than what they could obtain on default service.⁸⁹ This is not acceptable public policy. CAP customers are enrolled in CAP precisely because they could not afford their full consumption bills; neither they nor the other residential rate payers who pay for the CAP programs should be put in a position where CAP customers are paying more than they otherwise would pay on default service. The CAP program, like the other Universal Service programs, is a regulated program designed to assist low-income households produce a more affordable bill and works best when coupled with a rate structure that is also regulated and designed to produce electricity costs that over time are at least cost to customers.

In their testimony, the Companies assert that CAP customers will be protected during the term of the auction because they will receive a “competitively-sourced fixed price that, over the term of the program, should be competitive with the default PTC.”⁹⁰ The Companies miss the point. As clearly articulated in CAUSE-PA’s Direct Testimony, without contradiction, low-

⁸⁹ This is an essential distinction between Met-Ed/Penelec/Penn Power’s programs and West Penn Power’s program. Under West Penn Power’s programs, CAP customers pay only a percentage of their income as their CAP payment each month. Thus, West Penn Power’s customers pay a fixed amount each month regardless of their consumption bill. Under this program design, it is the other residential ratepayers who pay for the CAP program who would suffer harm if the CAP customer were to participate in the competitive market and choose a rate that is higher than what he or she would pay on default service. This too is not a desirable outcome because it would needlessly increase the costs of the CAP program.

⁹⁰ Companies’ Statement No. 7-R at 21.

income customers have no room in their budget for any measure of cost volatility.⁹¹ The Companies' revised proposal presents a risk of harm to these households in that they may see an increase in their energy prices both during the term of the auction as compared to where they would have been had they remained on default service as well as after the auction is complete.

During the term of the auction, if the default service price becomes lower than the price determined at the outset of the auction – due to the quarterly adjustments in the PTC – the customers lose because they are paying more than they would have had they remained on default service. For non-low income customers this will result in frustration and perhaps resentment about the design of the product, for CAP and other low-income customers it will mean paying more for electricity than they should and will likely cause economic hardship. Given the current structure of default service, it is clear that the price to compare is the relevant baseline point of comparison. To suggest, as some parties have, that the default service price is not the relevant point of comparison is to miss the point: the entire purpose of the retail market enhancements is to entice people to participate in the competitive market who have been reluctant to do so. For these customers, the default service price will always be the benchmark

The most troubling aspect of the Companies' proposals however is what happens to low-income customers at the conclusion of the auction term: those who fail to make an affirmative choice to return to default service remain with the EGS. Given the structure of the Companies' CAP program, this will almost certainly result in a price spike for these households.

This price spike results from the manner in which Met-Ed, Penelec, and Penn Power calculate their CAP payment, which produces a “lag” in the CAP benefits catching up to the

⁹¹ See CAUSE-PA Statement No. 1 at 6-10.

bill.⁹² Because the Companies take the *prior* year’s annual energy bill and subtract the household’s maximum energy burden as a percentage of the household’s income – for electric heating customers this is 9% of income for non-electric heating customers this is 3% of income – the difference of these is the annual CAP amount that is applied to the customer’s bill.⁹³ Thus, if a household has a low energy bill in year “A” because of lower energy prices then their CAP discount would be *less* in year “B” than it would have been had they had higher energy prices in year “A”. The following chart appeared in Ms. Biedrzycki’s surrebutal testimony⁹⁴ and demonstrates the salient point:

	Year 1 – First Year participating in Opt-in Program	Year 2 – First Year after participating in Opt-in Program – service with EGS
Annual Electric Bill from Prior Year	\$2400	\$2280 (assumes 5% off of the bill from the year prior to Opt-in program)
CAP Electric Bill Burden (9% of income)⁹⁵	\$1800	\$1800
Annual Electric Bill minus CAP Electric Bill Burden = Annual CAP Benefit	600	\$480
Monthly CAP Benefit	\$50 bill credit per month	\$40 bill credit per month

This chart demonstrates that the methods the Companies use to calculate their CAP benefits produces a “lag” which does not help the customer pay their current bill each month because the monthly CAP benefit is a product of the *prior* year’s energy bill. For a customer exiting either the Opt-in Auction Program or the Customer Referral Program their prior year’s bill will likely be lower than it had been before and, thus, the customers’ then-current monthly

⁹² This problem is not apparent with West Penn Power which currently still uses straight percentage of income approach.

⁹³ See, supra, n. 83.

⁹⁴ See CAUSE-PA Statement No. 1-SR at 9.

⁹⁵ Assumes \$20,000 in annual income and a heating account.

CAP benefit will be reduced. This is shown in the second column. Upon expiration of these programs, however, customers are left on their own to obtain contracts from EGSs or return to default service. Those customers who enter into contracts with costs above what they had been paying under the program – even if they return to default service – will end up receiving an insufficient subsidy based on their prior year’s energy costs and will see a monthly increase in their bills.

In their cross-examination of Ms. Biedrzycki, the Companies elicited that this lag works in the customer’s favor during the auction/referral term because they are actually getting more of a subsidy than they otherwise would have, and to their detriment in the year after the auction/referral term.⁹⁶ This is correct and makes the point that under the Companies’ CAP structure the lag always harms someone. During the auction referral term, other ratepayers may be paying more to subsidize the CAP program than they should be and during the subsequent year CAP customers are receiving less of a benefit than they should. The former is not so much of a problem to residential customers as a whole because the universal service rider is fully reconcilable from year to year; CAP benefits are not and this creates a problem for individual CAP households. Moreover, as demonstrated in the record of this proceeding, CAP households can ill afford an increase in their monthly electricity costs.⁹⁷ The fact that these households may have received a benefit in one year only to have that benefit taken back in year two by virtue of reduced CAP benefits does nothing to help households which are barely functioning economically from month to month to be able to maintain electric service.⁹⁸

Pennsylvania’s CAP programs have always been structured with the attempt to produce an affordable bill. Affordability is tied closely to matching the provision of a benefit with the

⁹⁶ Tr. of Proceedings at 332-333.

⁹⁷ See e.g. CAUSE-PA Statement No. 1 at 6-9; 14-18.

⁹⁸ Tr. of Proceedings at 333; CAUSE-PA Statement No. 1-SR at 19.

actual costs to the customer. In this way, CAP has never been like food stamps where a customer can take his or her benefit to the “electric store” of his or her choosing and buy whatever electric commodity that he or she wants. Instead, it is a highly regulated program designed to assist the most economically vulnerable have an affordable bill and maintain life essential utilities.

Here, however, the combination of the Companies’ CAP structures combined with a lack of guaranteed affordable payments for CAP customers participating in the retail market dictates that CAP customers should be precluded from participation in the Opt-in Auction and Customer Referral Program. Moreover, as recommended in Mr. Biedrzycki’s surrebuttal testimony, those CAP customers who are shopping outside of these programs should be gradually transitioned back to default service.⁹⁹

No party in this proceeding has effectively demonstrated how CAP customers benefit from participating in the retail electricity market or can be assured that they will not experience harm. Choice for its own sake is a suspect goal and no one benefits by CAP customers being harmed through increased risks of termination of service, late payment of bills, affordability challenges, and having to do without other necessities because of constantly changing rates and increasing prices. While the retail electric market may function well for customers who have the luxury of not worrying about how they will pay for their electricity bill, it is a perilous minefield for low-income households trying to make ends meet each month. CAPs are one way these households are able to bridge the affordability gap between their income and life’s essentials. CAPs work best when stitched together with regulated EDC supplied service obtained pursuant to the statutory obligation to procure service at least cost over time through a prudent mix of contracts in a competitive wholesale environment.

⁹⁹ CAUSE-PA Statement No. 1-SR at 15-16.

Thus, consistent with the recommendation of Ms. Biedrzycki, this case presents an opportunity for the Commission to require the Companies to modify their tariffs and universal service plans to disallow CAP shopping in any manner.¹⁰⁰ If, as Mr. Fullem has asserted, the impediment to preventing CAP customers from participating in either the Opt-in Auction or the Customer Referral Program is that the Companies' tariffs do not allow it to do so,¹⁰¹ then the tariffs should be amended to require all CAP customers to remain under the protection of regulated default service. There is simply no good way to ensure that by shopping: CAP customers can maintain an affordable bill and those customers who pay for CAP programs are insulated from unnecessary price increases.

Two other related yet distinct issues surrounding CAP customers and shopping remain. First, as pointed out by CAUSE-PA witness Biedrzycki, CAP participation at any given time is not static.¹⁰² That is, a low-income customer who is not on CAP at one point in time may become CAP eligible and be placed into CAP in the future. It is CAUSE-PA's position that regardless of whether and under what conditions non-CAP, low-income customers are participating in the Opt-in Auction or Customer Referral Program - or simply shopping on their own - CAUSE-PA submits that these customers should, for all of the reasons mentioned previously, return to default service prior to being placed into CAP.¹⁰³

Second, there are already a significant percentage of CAP customers who have on their own chosen a competitive supplier. For those CAP customers who have already chosen an alternative supplier, CAUSE-PA submits that they should be transitioned back to default service

¹⁰⁰ CAUSE-PA Statement No. 1-SR at 13.

¹⁰¹ Companies' Statement No. 7-R at 43.

¹⁰² CAUSE-PA Statement No. 1-SR at 15.

¹⁰³ Ibid.

at the time of their annual CAP recertification.¹⁰⁴ Customers who are in contracts with termination penalties that would not allow them to cancel their contract at their recertification date without incurring a penalty could be required to return to default service at the conclusion of their then current contract.¹⁰⁵ The Companies would have to explain that customers could not be both CAP customers and receive supply service from an EGS. If the customer insisted on remaining with his or her EGS because of the real or perceived benefits provided by the EGS then they would be removed from CAP, but would be permitted to return to CAP in the future if they return to default service and meet all of the other CAP eligibility criteria.

- b. At the conclusion of the auction/referral contract period that confirmed low-income customers who (1) have received a LIHEAP grant within the past year; or (2) are on a payment agreement (Commission-ordered or Company-provided) are offered a fixed rate 12-month contract at a price at or below the then existing default service PTC or returned to default service.**

The CAP penetration rate within each of the Companies ranges from a low of 47.5% of confirmed low-income customers to a high of 55.6% of confirmed low-income customers.¹⁰⁶ This means that there are approximately 100,000 confirmed low-income customers are not enrolled in the Companies' CAP program.¹⁰⁷ As demonstrated through the testimony of Ms. Biedrzycki, these customers face daunting challenges in meeting their financial obligations each month and could benefit from reduced energy expenses.¹⁰⁸

Thus, for those low-income customers who are not enrolled in CAP there may well be advantages to receiving a rate lower than they would otherwise pay. As such, in the testimony submitted in this case, Ms. Biedrzycki recommended that these customers be permitted to obtain

¹⁰⁴ CAUSE-PA Statement No 1-SR at 13-14.

¹⁰⁵ Ibid.

¹⁰⁶ CAUSE-PA Statement No. 1 at 16.

¹⁰⁷ Ibid.

¹⁰⁸ See e.g. CAUSE-PA Statement No. 1 at 16-18.

the discounts provided by the Opt-in Auction and Customer Referral Programs. Like all residential customers, non-CAP low-income customers should be permitted to affirmatively choose to remain with their EGS at the conclusion of the auction or referral period, return to default service, or choose another EGS. However, as noted in Section IV.A.10, above, CAUSE-PA supports the recommendation made by the OCA that customers who participate in the Opt-in Auction be provided with an additional EDC notice 90-days prior to the expiration of their Opt-in Auction Contract in addition to the notices that are already required by the Commission.¹⁰⁹ Additionally, as noted in Section IV.B.6, above, CAUSE-PA also supports the recommendation made by OCA that the Customer Referral Program be delayed until the Commission has had an opportunity to assess the effectiveness of the Opt-in Auction proposal.¹¹⁰ Thus, the recommendations endorsed here are in addition to, rather than in place of, those suggested by the OCA.

Despite these additional protections suggested by the OCA, CAUSE-PA continues to believe that a narrow subset of non-CAP, confirmed low-income customers – those who received a LIHEAP grant directed to the Companies during the auction or referral period or those who are on a payment agreement (either PUC-ordered or Company-offered) – should be further protected from the inherent uncertainty of the retail electricity market. Specifically, Ms. Biedrzycki recommended that, subject to an appropriate confidentiality agreement, 60 days prior to the conclusion of the auction or referral contract, the winning EGS should be required to inquire with the EDC as to which of its customers are low-income and have received a LIHEAP grant during the auction/referral contract or are low-income and on a payment agreement.¹¹¹ If either of these two situations has occurred, the EGS should be required to offer a fixed price contract

¹⁰⁹ OCA Statement No. 2 at 11-12

¹¹⁰ OCA Statement No. 2 at 15-16.

¹¹¹ CAUSE-PA Statement No. 1-SR at 16.

for an additional 12-month period at a price at or below the then existing default service PTC. If the EGS elects not to do so, or the customer rejects this offer, these customers should be returned to default service unless they affirmatively choose another retail provider. These protections would ensure that these groups of economically vulnerable customers – who are not enrolled in CAP - are provided additional price protection for a longer period of time.

The Commission has the authority to order that these concessions be made. First, the programs in question are Commission driven enterprises designed to ease customers who have been reluctant to participate in the retail market into the market by offering discounts off of the default service price. Moreover, the Choice Act places the obligation on the Commission to ensure “at a minimum” the continuation of the “protections, policies and services that now assist customers who are low-income to afford electric service,”¹¹² which arguably includes the ability to ensure that confirmed low-income customers receive a reliable and stable energy supply.

CAUSE-PA believes that there is ample evidence in the record to support a decision by the Commission to provide non-CAP, confirmed low-income customers with additional protections prior to sanctioning the Companies’ proposed retail market enhancements.

2. The OCA’s Proposal

In surrebuttal, OCA witness Alexander agreed in substantial part with Ms. Biedrzycki’s recommendation that CAP customers be served by the EDC as default service provider. Ms. Alexander stated:

It would appear unreasonable to allow CAP customers to participate in the opt-in auction unless they will benefit in the form of lower bills compared to the PTC during the entire auction term. While this concern is valid for all potential enrollees in this program, it has obvious and vital importance for customers who, by definition, are unable to afford their bills for essential electricity service. Mr.

¹¹² 66 Pa. C.S. § 2802(10).

Kallaher's suggestion that CAP customers will find value in participating in this program that go beyond the price for service is not realistic or appropriate.¹¹³

To state the obvious, CAUSE-PA supports these conclusions. As argued more fully above, given the Companies' CAP structure there is no viable way to ensure that low-income CAP customers are insulated from unnecessary price increases or loss of CAP benefits through their participation in the proposed retail market enhancements in particular or the retail electric market in general. Given this conclusion, and the OCA's support, the Commission should determine that CAP customers are not among the eligible customers for either of the proposed enhancements and, more broadly, instruct that Companies to institute a process to transition CAP customers who are shopping back to default service.

CAUSE-PA also suggests that in so doing the Commission require the Companies to work with the OCA and low-income advocates to design a communications strategy for its CAP customers to explain these changes and reduce customer confusion.

V. OPERATIONAL ISSUES

A. System "Enhancements" Proposed by Constellation

CAUSE-PA has taken no position on these issues in this proceeding.

B. RESA's Proposal that that Companies Investigate Implementing a Secure, Web-Based System to Provide EGS Electronic Access to Customer Usage and Account Data

CAUSE-PA has taken no position on these issues in this proceeding.

¹¹³ OCA Statement No. 2-SR at 12:11-17.

VI. AFFILIATED INTEREST APPROVAL

A. Approval of Contracts under Chapter 21 as Requested in the Joint Petition

CAUSE-PA has taken no position on these issues in this proceeding.

VII. OTHER ISSUES

CAUSE-PA does not have any other issues to address with the court that have not been incorporated in its briefing of the issues outlined above.

VIII. CONCLUSION

Low-income customers make up a significant portion of the Companies' residential customer base and their unique needs must be taken into consideration to ensure that they are adequately protected from higher prices. The record in this proceeding is replete with evidence that low-income households struggle to be able to afford life's necessities.¹¹⁴ This is particularly true of low-income households who are enrolled in the Companies' CAP program. Low-income households simply have no budget elasticity and thus when faced with the prospect of paying only marginally more for electricity for even a short period of time this additional cost is often the difference between remaining current on their bills or falling behind. This is an unacceptable risk for CAP customers who have run out of options for keeping current on their bills. Statutory language prevents the Commission from entering payment agreements for CAP customers.¹¹⁵ Therefore, the CAP program, which is designed to produce an affordable bill for CAP customers, is an essential means for allowing low-income, payment troubled households continue to receive

¹¹⁴ See e.g., CAUSE-PA Statement No. 1 at 6-18.

¹¹⁵ 66 Pa. C.S. § 1405(c)

service. The best way to monitor and promote the success of the CAP program is to maintain the program within the safe harbor of the default service provider.

Therefore, prior to the Commission's granting approval to the Companies' proposed retail market enhancements, the following must occur:

- CAP customers should be excluded from participation in the Retail Opt-in Auction and Customer Referral Programs;
- The Companies should be directed to modify their tariffs and universal service plans to require CAP customers to remain on default service;
- The Companies should be directed to develop a transition plan to transition its CAP customers who are currently shopping back to default service in a manner that does not economically harm CAP customers;
- The Companies should be directed to work with the Office of Consumer Advocate and low-income advocates to develop a communication plan for CAP customers to explain these changes;
- The Opt-In Aggregation Program and Customer Referral Program should be approved only if the Companies' proposal is amended to assure that at the conclusion of the auction/referral contract period that confirmed low-income customers who (1) have received a LIHEAP grant within the past year; or (2) are on a payment agreement (Commission-ordered or Company-provided) are offered a fixed rate 12-month contract at a price at or below the then existing default service PTC or returned to default service.
- All of the retail market enhancements should be paid for by participating EGSs;
- Calls concerning high bill complaints, bill disputes, and bill inquiries should not be part of the customer referral program; and,

- The Companies' Market Adjustment Clause should be rejected.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
*Counsel for the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania
(CAUSE-PA)*



Harry S. Geller, Esq., PA ID: 22415
Patrick M. Cicero, Esq., PA ID: 89039
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

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