

**THE PENNSYLVANIA UTILITY LAW PROJECT  
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July 9, 2012

Via E-Filing

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
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**

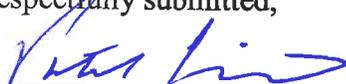
Docket Nos. P-2011-2273650  
P-2011-2273668  
P-2011-2273669  
P-2011-2273670

Dear Secretary Chiavetta:

Enclosed please find the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)'s Replies to Exceptions in the captioned proceeding.

Kindly notify the undersigned if you have any questions or concerns about this filing.

Respectfully submitted,

  
\_\_\_\_\_  
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*Counsel for CAUSE-PA*

CC: Certificate of Service

**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 **CAUSE-PA's Replies to Exceptions** upon the following persons as set forth below in accordance with the requirements of 52 Pa. Code § 1.54 and 52 Pa. Code § 5.412(f):

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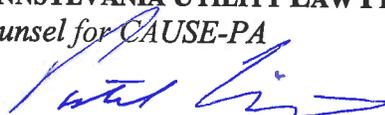
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Date: July 9, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**THE COALITION FOR AFFORDABLE UTILITY  
SERVICES AND ENERGY EFFICIENCY IN  
PENNSYLVANIA'S REPLIES TO THE EXCEPTIONS  
OF:**

**(1) METROPOLITAN EDISON COMPANY,  
PENNSYLVANIA ELECTRIC COMPANY,  
PENNSYLVANIA POWER COMPANY, AND  
WEST PENN POWER COMPANY;**

**(2) THE RETAIL ELECTRIC SUPPLY  
ASSOCIATION;**

**(3) DOMINION RETAIL, INC; AND,**

**(4) FIRST ENERGY SOLUTIONS CORPORATION**

**TO THE RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ELIZABETH H. BARNES**

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**PENNSYLVANIA UTILITY LAW PROJECT**  
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July 9, 2012

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## **I. Introduction**

By Secretarial Letter dated June 15, 2012, the Public Utility Commission (“Commission”) issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes in the joint Default Service Proceeding 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”). Exceptions were due on or before June 25, 2012, and Replies to Exceptions were due on or before July 2, 2012. However, by Secretarial Letter dated June 26, 2012, the Commission extended the deadline for filing Exceptions to June 29, 2012, and the period of filing Replies to Exceptions to July 6, 2012. On July 2, 2012, pursuant to a request made by the Companies, the Commission entered another Secretarial Letter that expanded the page limitation for Replies to Exceptions from 25 pages to 40 pages and again extended the deadline for filing Replies to Exceptions to July 9, 2012.

Exceptions were filed on or before the various due dates by the following parties: The Companies; the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); the Retail Electric Supply Association (“RESA”); the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, West Penn Power Industrial Intervenors (Collectively the “Industrial Customer Groups”); Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; First Energy Solutions Corporation (“FES”); Dominion Retail Inc.; and the Pennsylvania State University.

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), did not file Exceptions, but through its counsel at the Pennsylvania Utility Law

Project, hereby files these Replies to the Exceptions of the following parties: (1) the Companies; (2) RESA; (3) FES; (4) Dominion Retail; and, (5) the OCA.

Specifically, CAUSE-PA files the following Replies to Exceptions:

(1) ALJ Barnes properly concluded that the Companies' requested Market Adjustment Clause ("MAC") constitutes "an impermissible return," is not a "legitimate retail market enhancement tool; and is an inappropriate and unnecessary financial adder."<sup>1</sup> Accordingly, the Commission should deny the Companies' Exception No. 1, RESA's Exception No. 3, and Dominion Retail's Exception No. 4.

(2) The Commission should deny the Companies' Exception No. 3; RESA's Exception No. 4; Dominion Retail's Exception No. 1; and FES' Exceptions Nos. 1 & 2 as ALJ Barnes properly concluded that the costs of the retail market enhancements should be borne by participating electric generation suppliers ("EGS") rather than residential customers.

(3) The Commission should deny the Companies' Exception No. 4, RESA's Exception No. 9, and FES' Exception No. 4 as ALJ Barnes properly concluded that the Companies' Customer Assistance Plan (CAP) customers should not be included in either the opt-in auction or customer referral program.

(4) The Commission should sustain OCA's Exception No. 11. Customers who call the Companies concerning a high bill complaint should not be solicited for the customer referral program.

As articulated more fully below, CAUSE-PA submits that the ALJ's decisions to preclude the Companies' recovery of a MAC, to order that participating EGSs pay for the costs of the proposed retail market enhancements, and that CAP customers be precluded from participating in the proposed retail market enhancements were well reasoned, sound legal

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<sup>1</sup> R.D. at 56.

judgments and should be upheld by the Commission. CAUSE-PA also agrees with the OCA that the ALJ did not consider that argument presented by the OCA and CAUSE-PA that customers with high bill complaints should not be among the customers solicited for the customer referral program and that the Commission should consider the evidence and adopt the OCA's position.

## II. Replies to Exceptions

**A. The ALJ properly concluded that the proposed MAC is an impermissible return that is inconsistent with the Companies' obligation as a default service provider and the Commission should deny the Companies' Exception No. 1, RESA's Exceptions Nos. 3-4, and Dominion Retail's Exception No. 4.**

In the R.D., the ALJ concluded that the Companies' proposed MAC "qualifies as an impermissible return; it fails to qualify as a legitimate retail market enhancement tool; and it is an inappropriate and unnecessary financial adder."<sup>2</sup> In her analysis, the ALJ specifically rejected the Companies' argument that they "bear an associated risk" of providing default service that is not already compensated, and found that "the Companies are unable to quantify the 'cost' that they are seeking to recover through the MAC."<sup>3</sup>

In their Exceptions, the Companies assert that the ALJ erred in not permitting the MAC and that the record developed in the proceeding was sufficient to justify the addition of this adder.<sup>4</sup> The Companies' arguments on this issue are unpersuasive and the record is devoid of sufficient evidence to support the addition of \$0.005 per kWh in profit recovered through the price to compare. 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

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<sup>2</sup> R.D. at 56.

<sup>3</sup> R.D. at 56-57.

<sup>4</sup> Companies' Exception No. 1.

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.<sup>5</sup> 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. They have not done so. In fact, in their Exceptions to the R.D., the Companies' concede that the value created and risks borne by default service providers "[are] not readily quantifiable."<sup>6</sup> Moreover, while contending that there "are a number of other, significant risks that EDCs face as default service providers," the Companies concede that these risks are "inchoate and would not surface until a major dislocation in the markets were to actually occur."<sup>7</sup>

Thus, 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 actually incurred and quantifiable costs. According to the Companies, 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

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<sup>5</sup> See 66 Pa. C.S. §§ 2803; 2807(e) (1).

<sup>6</sup> Companies' Exceptions at 6.

<sup>7</sup> Companies' Exceptions at 8.

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.<sup>8</sup> 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.

The Companies suggest in their exceptions that the ALJ erred in the conclusion that the MAC was impermissible because other jurisdictions have approved adders which are comparable to the MAC.<sup>9</sup> This is immaterial. The Companies are EDCs within the Commonwealth of Pennsylvania subject to the laws of this Commonwealth and the regulatory jurisdiction of the Pennsylvania Public Utility Commission. Here, the EDCs acting as default service providers are only entitled to recover costs incurred; they are not entitled to recover hypothetical costs or expenses, a fact recognized by the ALJ in her R.D.:

Although utility regulatory commission in other jurisdictions may have included charges like that MAC in default service rates, we have different regulatory schemes than Maryland, New Jersey and Texas and our Public Utility Code does not allow for a return recovery as depicted in the proposed MAC. We have a

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<sup>8</sup> See OSBA Statement No. 1 at 6-7.

<sup>9</sup> Companies' Exceptions at 9.

reconciliation process to address risk of providing default service, and the Companies have not proposed waiving their right to reconciliation in exchange for a MAC.<sup>10</sup>

The simple reality is that in Pennsylvania, EDCs are “required to provide default service electric power to retail customers at no greater cost than the cost of obtaining generation.”<sup>11</sup> Thus, the Companies’ argument in their Exceptions that the MAC is permissible because any entity other than the EDC would not take on the role of default without a MAC should be ignored as baseless. The Public Utility Code is abundantly clear that the means by which a default service provider – whether it is the incumbent EDC or another default service provider authorized by the Commission – is compensated for costs incurred is through a reconcilable adjustment clause and then only for “reasonable costs incurred.”<sup>12</sup> This statutory language would not change if an entity other than the EDC provided default service. The Companies’ argument that no EGS would provide default service “at cost,” is thus irrelevant because *any* entity providing default service would have to comply with the existing statutory and regulatory framework.

Finally, the Companies’ suggestion that this charge is somehow justified as a competitive enhancement because it would create headroom within which EGSs could compete for business should also be rejected.<sup>13</sup> 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 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,”<sup>14</sup> a fact recognized by the

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<sup>10</sup> R.D. at 57-58

<sup>11</sup> R.D. at 56 (citing 66 Pa. C.S. § 2807(e).)

<sup>12</sup> 66 Pa. C.S. § 2807(e)(3.9)

<sup>13</sup> Companies’ Exceptions at 11.

<sup>14</sup> 66 Pa. C.S. § 2807(e)(3.4)

ALJ in the R.D. when she stated that “Pennsylvania has not allowed the addition of a return component as proposed by the Companies.”<sup>15</sup>

In the end, it is plain that there are insufficient reasons for such a MAC 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. The Commission should deny the Companies’ Exception No. 1. Without justification of actually incurred costs that are reasonable, this adder is neither permitted by applicable law nor is it appropriate social policy and the judgment of the ALJ should be upheld.<sup>16</sup>

**B. ALJ Barnes properly concluded that the costs of the retail market enhancements should be borne by participating electric generation suppliers (“EGS”) rather than residential customers and the Commission should deny the Companies’ Exception No. 3; RESA’s Exception No. 4; Dominion Retail’s Exception No. 1; and FES’ Exceptions Nos. 1 & 2.**

In the R.D., the ALJ appropriately recommended that the costs of both the opt-in auction and customer referral program be paid for by participating EGSs.<sup>17</sup> Despite much ink spilt on the issue of cost allocation, the fact remains that the retail enhancements proposed by the Companies are most appropriately paid for by the participating EGSs rather than the utilities’ customers. 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

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<sup>15</sup> R.D. at 56.

<sup>16</sup> In addition to the Companies, RESA and Dominion Retail also filed exceptions to the R.D. arguing, albeit with different reasoning, that the ALJ’s decision to reject the MAC should be reversed. (See RESA Exceptions Nos. 3-4; Dominion Exception No. 4.) The Commission should similarly deny these exceptions. Despite somewhat different arguments by RESA and Dominion from those advanced by the Companies, the fact remains that *no party* has shown that the MAC would reimburse the Companies for reasonable costs actually incurred the standard by which this issue must be judged.

<sup>17</sup> See R.D. at 117; 127.

fair that the suppliers, as the prime beneficiaries of the program, should pick up the associated costs. We advise EDCs, in their program filings, to propose mechanisms to identify and recover the costs from participating suppliers.<sup>18</sup>

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 related 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.com 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.<sup>19</sup>

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.<sup>20</sup> The retail market for the sale of generation supply service is growing in Pennsylvania. Within the Companies' service territories, recent 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%.<sup>21</sup> The fact that residential load percentages continue to trend upwards means that shopping is gaining traction within the Companies' service

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<sup>18</sup> IWP Final Order at 84-85.

<sup>19</sup> CAUSE-PA Statement No. 1 at 27:18-28:10.

<sup>20</sup> 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).

<sup>21</sup> OCA Statement No. 2-R at 5:10-12.

territories *without* additional market enhancements. Significant costs have already been paid by ratepayers to support customer choice and it is inappropriate to pass these additional costs along to default service customers in order to provide services and infrastructure for competitive retail operations. Accordingly, the Commission should affirm the determination of the ALJ on these issues and should deny the Companies' Exception No. 3; RESA's Exception No. 4; Dominion Retail's Exception No. 1; and FES' Exceptions Nos. 1 & 2.

**C. ALJ Barnes properly concluded that the Companies' Customer Assistance Plan (CAP) customers should not be included in either the opt-in auction or customer referral program, thus, the Commission should deny the Companies' Exception No. 4, RESA's Exception No. 9, and FES' Exception No. 4.**

In the R.D., the ALJ properly concludes that the Companies' CAP customers would be harmed through participation in the Companies' proposed retail market enhancements. ALJ Barnes stated:

I am persuaded to agree with CAUSE-PA that the combination of the Companies' CAP structures combined with a lack of guaranteed affordable payments for CAP customers participating in the retail market indicates that CAP customers should be precluded from participation in the Opt-in Auction and Customer Referral Program at this time.<sup>22</sup>

This decision was supported by ample evidence in the record. Throughout the Retail Market Investigation, the Commission has articulated a concern that CAP participants not be harmed through their participation in the Retail Opt-in Auction and that they be excluded from the Customer Referral Program.<sup>23</sup> The Companies and the suppliers have interpreted the Commission's statement that CAP customers "should not be subject to harm, i.e., loss of benefits,"<sup>24</sup> in an excessively narrow and unsupportable manner. In their view, so long as CAP customers retain the ability to be in CAP – i.e., their CAP benefits are portable – when they

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<sup>22</sup> R.D. at 121.

<sup>23</sup> IWP Final Order at 43.

<sup>24</sup> Ibid.

participate in the retail markets then ipso facto CAP customers have not been harmed.<sup>25</sup> This is not the standard established by the Commission.

In its IWP Final Order, the Commission did not say that those EDCs who currently allow CAP customers to shop should allow them to participate in the Opt-in Auction and allow their benefits to be portable. The Commission was clearly looking at something more than the mere portability of benefits: It was concerned that, if portable, CAP customers not be subject to harm. The Companies' simplistically narrow view that the Commission was only concerned with portability of CAP benefits should be rejected as inconsistent with the more nuanced view espoused by the Commission. The Commission's view requires a fact intensive, company specific analysis as to whether CAP participants would be harmed through their participation in the proposed retail market enhancements. This requires a look at both the structure of the proposed retail market enhancements and the Companies' CAP program to determine whether together they work to the benefit or the potential detriment of CAP customers. The essential question to consider is: Would the participation of CAP participants in either of the proposed retail market enhancements "subject [CAP participants] to harm, i.e., loss of benefits."<sup>26</sup> It is clear from the facts of this case that the answer to that question is yes. There is no way to adequately ensure that CAP customers will not lose benefits through their participation in the competitive markets,<sup>27</sup> and thus, consistent with the guidance provided by the Commission they should be excluded from participating in the competitive enhancements. The arguments and

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<sup>25</sup> See Companies' Main Brief at 136; Dominion's Main Brief at 28; RESA's Main Brief at 88; FES' Main Brief at 58.

<sup>26</sup> IWP Final Order at 43.

<sup>27</sup> One means of ensuring that CAP customers are not harmed would be to convert all of the Companies' CAP programs to straight percentage of income programs such as in West Penn Power. CAUSE-PA's witness Ms. Carol Biedrzycki mentions this in her surrebuttal testimony but ultimately rejects it because of the potentially negative consequences to other ratepayers who pay for the CAP program. See CAUSE-PA Statement No. 1-SR at 10-11.

evidence supporting this position were advanced in the testimony submitted by CAUSE-PA and argued in its briefs.

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.<sup>28</sup> Furthermore, the methods the Companies use to calculate their CAP benefits produces a “lag” which does not help the customer pay his or her current bill each month because the monthly CAP benefit is a product of the prior year’s energy bill.<sup>29</sup>

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.<sup>30</sup> 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 CAUSE-PA’s surrebutal testimony<sup>31</sup> and demonstrates the salient point:

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<sup>28</sup> CAUSE-PA Main Brief at 38.

<sup>29</sup> This is not true of West Penn Power which has a straight percentage of income program. Thus, CAP participants pay the same amount regardless of the cost of the commodity. Under this structure, it is the other residential customers who pay for the CAP program who lose in the retail market when a CAP participant chooses a product that costs more than default service. This also is not a desirable result.

<sup>30</sup> 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.

<sup>31</sup> See CAUSE-PA Statement No. 1-SR at 9.

	<b>Year 1 – First Year participating in Opt-in Program</b>	<b>Year 2 – First Year after participating in Opt-in Program – service with EGS</b>
<b>Annual Electric Bill from <i>Prior Year</i></b>	\$2400	\$2280 (assumes 5% off of the bill from the year prior to Opt-in program)
<b>CAP Electric Bill Burden (9% of income)<sup>32</sup></b>	\$1800	\$1800
<b>Annual Electric Bill minus CAP Electric Bill Burden = Annual CAP Benefit</b>	600	\$480
<b>Monthly CAP Benefit</b>	\$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. As a result, the customers’ **then-current monthly CAP benefit will be reduced** because it would be based on this lower annual bill. At this point, upon the expiration of the competition promotion programs 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. Thus, CAP participants will suffer a reduction of benefits.

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<sup>32</sup> Assumes \$20,000 in annual income and a heating account.

In their Exceptions, both the Companies and RESA contend – somewhat inexplicably – that CAP customers would not lose their benefits through participating in these market enhancements.<sup>33</sup> As pointed out by CAUSE-PA when briefing this issue, both the Companies and RESA have conflated the concept of CAP portability with loss of CAP benefits. These are not the same. To be sure, CAP households would continue to be enrolled in CAP and have not lost the ability to participate in the program. However, if simply maintaining enrollment status while shopping was all the Commission meant, it would have merely said that it would leave it to the EDCs to determine whether or not CAP benefits were to be portable. **Instead, the Commission’s standard is whether CAP customers will be harmed through their participation in these programs.** Portability of benefits is not the sine qua non of whether customers are protected from harm. The Companies’ have made their benefits portable; they have not structured their CAP program in such a way as to insulate CAP customers from harm via a loss of benefits. In fact, as was discussed in detail in the testimony submitted by CAUSE-PA, the Companies’ CAP structure perpetuates the loss of benefits by creating a CAP subsidy that bears no relationship to the household’s current energy costs.<sup>34</sup> Neither the Companies nor the other parties promoting the participation of CAP customers in these programs has come forward with any evidence contradicting the fact that CAP participants would potentially lose benefits through their participation in the retail markets. As such, their positions should be rejected.

For its part, RESA suggests that since CAP customers will not lose benefits and they would stand to receive a \$50 bonus for participating that CAP customers should be permitted to

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<sup>33</sup> Companies’ Exceptions at 29; RESA Exceptions at 31.

<sup>34</sup> See CAUSE-PA Statement No. 1-SR at 6-9; CAUSE-PA Main Brief at 40-41.

participate in the retail market enhancements.<sup>35</sup> FES suggests that all customers should be permitted to participate because CAP benefits are portable.<sup>36</sup> First, as to RESA's arguments, to be clear, under the Companies' proposal no customer will receive a \$50 bonus for participating in the opt-in auction.<sup>37</sup> It is only if the Commission modifies the Companies' proposal to conform with RESA's position, would this be the case. Second, all of the evidence in the proceeding suggests that CAP customers will likely lose benefits by participating in the auction because of the manner in which the Companies – with the exception of West Penn Power – calculate their CAP payments. This has already been discussed in detail and does not need repeating here. Because of the very real potential for harm, CAP customers should be precluded from participating in the retail market enhancements proposed by the Companies, and the Companies should be required to develop a plan to transition those already shopping back to default service.

The Companies, RESA and FES continue all suggest to one degree or another that the harm caused by their CAP structure is somehow mitigated by the fact that the Companies revised retail market enhancements provide one-year fixed-prices that will be below the Price to Compare.<sup>38</sup> This misses the point the point. Of course, one-year fixed prices won't change. What does change, however, is (1) the bench mark by which the value of this fixed price is measured, i.e., the price to compare and, (2) the CAP subsidy provided to CAP customers at the conclusion of the program.

If, during the term of the auction, the price to compare adjusts downward significantly then CAP households – and everyone else for that matter – lose because they are paying more for

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<sup>35</sup> RESA Exceptions at 31.

<sup>36</sup> FES Exceptions at 11.

<sup>37</sup> See Companies' Statement No. 7-R at 32-34.

<sup>38</sup> Companies' Exceptions at 29; RESA Exceptions at 31; FES Exceptions at 11.

electricity than they otherwise would have. For non-low income households this is an inconvenience, for the poor it matters significantly. CAP households can ill afford an increase in their monthly electricity costs, and even a month or two of higher prices can make the difference between falling behind and staying current.<sup>39</sup> Even assuming that the prices are not higher during the term of the auction or referral period, CAP customers are punished at the end of that period when their rates are based not on a Commission mandated referral program or auction, but rather on whatever rates the EGS sees fit to offer. This result would be in direct contrast to the direction to the Commission, provided within the Electricity Generation Customer Choice and Competition Act (“Choice Act), requiring the continuity of protections, policies and services that assist low-income customers to afford electric service.<sup>40</sup>

The lone argument of the Companies that is compelling is that there should be no distinction between CAP customers who shop through traditional means and those who participate in the retail market enhancements. The Companies argue that since CAP customers can shop without the market enhancements they should be able to do so through those enhancements. CAUSE-PA recognized this problem in this proceeding and recommended that for those CAP customers who have already chosen an alternative supplier, the Companies should be required to transition them back to default service at the time of their annual CAP recertification.<sup>41</sup> However, the ALJ did not recommend this in her R.D.<sup>42</sup> While CAUSE-PA continues to believe that all CAP customers who are shopping should be transitioned back to default service because of the inherent danger in CAP customer shopping given the Companies’ CAP design, there is no reason for the Commission to sanction CAP customers’ participation in

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<sup>39</sup> See e.g. CAUSE-PA Statement No. 1 at 6-9; 14-18.

<sup>40</sup> 66 Pa CS §2802 (10)

<sup>41</sup> CAUSE-PA Statement No 1-SR at 13-14.

<sup>42</sup> R.D. at 121.

the retail market enhancements – and therefore likely ensure a loss of CAP benefits – simply because it has, by default, allowed CAP customers to shop in other contexts. This would have the effect of worsening an already bad problem.

The Commission should rightfully be concerned about the affordability of service for all CAP customers. To mitigate this concern, CAUSE-PA submits that the Commission should prohibit CAP customer shopping in its entirety and order the Companies to file a plan to transition its CAP customers back to default service. Ample evidence in the record supports this conclusion and CAUSE-PA set out a viable means to do this through its testimony.<sup>43</sup> CAP customers could be informed at their annual recertification that they are required to switch back to default service. 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.<sup>44</sup>

The simple fact of the matter is that the weight of the evidence in this proceeding supports the ALJ's decision to preclude CAP customers from participating in the retail opt-in auction or the customer referral program and the Commission should affirm this decision by the ALJ and deny the Exceptions filed by the Companies, RESA, and FES.

**D. The Commission should sustain OCA's Exception No. 11 and preclude customers who call concerning a high bill complaint from being solicited for the customer referral program.**

In the R.D., the ALJ generally discusses the Companies' originally proposed customer referral program, which included the provision that customers calling about a high bill complaint would be solicited for the program.<sup>45</sup> However, the ALJ failed to discuss the recommendation

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<sup>43</sup> CAUSE-PA Statement No. 1-SR at 13-14.

<sup>44</sup> Ibid.

<sup>45</sup> R.D. at 118

made by the OCA and CAUSE-PA that customers calling about a high bill complain should not be solicited for the program. The OCA filed a timely Exception to this oversight<sup>46</sup> and CAUSE-PA fully supports the OCA's position.

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. 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,"<sup>47</sup> the Commission should take this opportunity to reexamine this conclusion. Utilities should conduct a thorough examination all of the possible reasons for a high bill and work with the customer to lower his or her 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.

Accordingly, CAUSE-PA agrees with the OCA and requests that the Commission review the evidence in this matter and adopt the position that customers calling with high bill complaints not be solicited for the customer referral program.

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<sup>46</sup> OCA Exception No. 11.

<sup>47</sup> IWP Final Order at 32.

### III. Conclusion

Low-income households have no budget elasticity. When faced with the prospect of higher electric costs – even paying only marginally more for only 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, the Commission, and for other residential customers. The best way to monitor and promote the success of the CAP program is to maintain the program within the safe harbor of default service. The ALJ recognized these realities in her well-reasoned Recommended Decision to preclude CAP customers from participating in either of the retail market enhancements. For all of the foregoing reasons, CAUSE-PA respectfully requests that the Commission review the evidence on the issues discussed in these Replies to Exceptions and to adopt the positions advanced herein.

Respectfully submitted,

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