

**THE PENNSYLVANIA UTILITY LAW PROJECT**  
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September 17, 2012

Via E-Filing  
Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re:**

**Petition of PECO Energy Company for Approval of its Default  
Service Program**

Docket Nos. P-2012-2283641

Dear Secretary Chiavetta:

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

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

Respectfully submitted,



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Patrick M. Cicero, Esquire  
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*Counsel for CAUSE-PA*

CC: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for Approval of its Default  
Service Program**

**Docket Nos. P-2012-2283641**

**Certificate of Service**

I hereby certify that I have this day served copies of the **Coalition for Affordable Utility Services and Energy Efficiency's Replies to Exceptions**, upon the ALJ and the following parties in the captioned matter as set forth below in accordance with the requirements of 52 Pa. Code § 1.54:

**BY E-MAIL ONLY**

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September 17, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :  
FOR APPROVAL OF ITS DEFAULT : Docket No. P-2012-2283641  
SERVICE PROGRAM :**

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

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September 17, 2012

## I. Introduction

By Secretarial Letter dated August 29, 2012, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge Dennis J. Buckley in the *Petition of PECO Energy Company for Approval of its Default Service Program* at Docket No. P-2012-2283641. Exceptions to the R.D. were due on September 10, 2012, and Replies to Exceptions are due on September 17, 2012.

Exceptions were filed on or before the due date by the following parties: PECO Energy Company; the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); the Retail Electric Supply Association (“RESA”); the Joint Suppliers Group<sup>1</sup>; First Energy Solutions Corporation (“FES”); Dominion Retail Inc., and Interstate Gas Supply, Inc. (“Dominion/IGS”); Green Mountain Energy Company; and, PPL EnergyPlus, LLC.

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 this Reply to Exception # 12 of RESA. Specifically, CAUSE-PA asserts that the Commission should deny RESA’s Exception No. 12 because the Administrative Law Judge (“ALJ”) properly concluded that PECO’s Customer Assistance Plan (CAP) customers should not be included in either the opt-in auction or customer referral programs. As articulated more fully below, CAUSE-PA submits that the ALJ’s decision that CAP customers be precluded from participating in the proposed retail market enhancements was well reasoned and supported by substantial evidence in the record.

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<sup>1</sup> The Joint Suppliers Group consisted of NextEra Energy Services Pennsylvania, LLC, NextEra Energy Power Marketing LLC, Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Exelon Generation Company, LLC, and Exelon Energy Company.

## II. Reply to RESA Exception No. 12

In the R.D., the ALJ properly concluded that PECO's decision to preclude CAP customers from participating in the retail market enhancements is sound because there remain "complex unresolved issues . . . with respect to CAP portability."<sup>2</sup> Moreover, no party has demonstrated "how a portable subsidy would be implemented to mitigate the risks of harm to PECO's CAP customers arising from the potential for increases in commodity charges and increased uncollectible expense."<sup>3</sup> This decision was supported by ample evidence in the record.

In its Exception No. 12, RESA contends that the ALJ erred for three reasons. First, RESA asserts that the ALJ erred because his position regarding CAP customer's participation in the retail market enhancement is inconsistent with the Commission's August 16, 2012 order issued in *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 *et seq.* (Opinion and Order entered August 16, 2012) ("*First Energy DSP Order*").

RESA's reliance on the *First Energy DSP Order* is misplaced as that order is not intended to be precedent for this case. The plain language of the *First Energy DSP Order* indicates that the Commission limited its decision about CAP customer participation to the First Energy Companies themselves when it stated that "we find that the Companies have provided sufficient justification **within this proceeding to alter that approach within their service territories.**"<sup>4</sup> This service territory specific approach, which the Commission enunciated in its *First Energy DSP Order*, is consistent with the guidance provided by the Commission in its

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<sup>2</sup> R.D. at 77.

<sup>3</sup> R.D. at 77-78.

<sup>4</sup> *First Energy DSP Order* at 143 (emphasis added).

Intermediate Work Plan Order where, the Commission specifically indicated the need for CAP participation issues 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 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.**

IWP Final Order at 43 (emphasis added).

Thus, it is clear that the issue of CAP customer participation in these programs is not the same for every electric distribution company ("EDC"), but rather 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 EDC's – in this case PECO's – CAP program to determine whether together they work to the benefit or the potential detriment of CAP customers. The ALJ correctly determined based on the facts in evidence that CAP customers should not participate in the retail market enhancements. This decision was based on

the ALJ's review of the record, a record replete with information about the economic vulnerabilities of PECO's low-income customers.<sup>5</sup>

In addition, since numerous parties to the First Energy proceeding, including CAUSE-PA, have filed petitions seeking reconsideration and/or clarification of the First Energy DSP Order, the final determination of the Commission in that proceeding is not yet settled and should not be relied upon as guidance for this case.

RESA's second argument is that low-income customers "should have the same opportunity to participate in the competitive market as everyone else," and that "CAP customers should not be denied this opportunity based on vague, unsupported and tenuous concerns like 'commodity volatility' or 'economic vulnerability.'"<sup>6</sup> RESA's attempt to discredit CAUSE-PA's evidence in this proceeding by asserting that it's evidence that low-income households struggle economically is "vague," "tenuous," or "unsupported" is weak and without merit. CAUSE-PA introduced ample evidence demonstrating that PECO's low-income households are much more economically vulnerable than residential households as a whole.<sup>7</sup>

Households at 150% of the federal poverty guideline lack sufficient income to pay for all of their essential needs. Before all of the bills are paid, low-income families scraping by routinely run out of money. Many of them cannot afford to pay for utility service because of the cost of competing essential needs like rent, food, and medicine. This fact is evidenced in the high termination rate for the Company's confirmed low-income customers as compared to all residential customers. In 2010, the termination rate for confirmed low-income electric customers

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<sup>5</sup> See e.g., CAUSE-PA Statement No. 1 at 8-11.

<sup>6</sup> RESA Exceptions at 30.

<sup>7</sup> CAUSE-PA Statement No. 1 at 8-11.

was 12.04% compared to 5.5% of all residential customers.<sup>8</sup> This data indicates that PECO's low-income electric customers are more than twice as likely to be disconnected as all electric residential customers. Clearly this is an indicator that these households are indeed more economically vulnerable than other residential households.

Furthermore, RESA's assertion that CAP customers should have the same freedom of choice to participate in the retail electric market is specious. The issue here is not whether CAP customers should be treated like all other residential customers and therefore be able to shop. They are not like other residential customers. CAP customers are the most economically vulnerable customers of PECO<sup>9</sup> and, as such, they are intended by the Choice Act to receive special consideration and protection by the Commission.<sup>10</sup> **CAP customers are enrolled in CAP precisely because they cannot 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.

At the risk of simply reiterating what was in CAUSE-PA's Main Brief, the reality is that default service is designed to produce stable prices that are projected to be least cost over the timeframe of the default service plan.<sup>11</sup> This model better addresses the rate stability that CAP households need than market forces operating on their own. Retail suppliers design their own

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<sup>8</sup> See CAUSE-PA Statement No. 1 at 11.

<sup>9</sup> See CAUSE-PA Main Br. at 17-18.

<sup>10</sup> 66 Pa. C.S. § 2802(9), (17).

<sup>11</sup> CAUSE-PA Statement No. 1-SR at 11.

mix of contracts based on their own judgments about customer preferences and then sell those products to whomever wants to buy them. No retail supplier is obligated to pursue price stability and least cost over time. PECO, as default supplier, is obligated to do both. When left with these two choices, CAUSE-PA asserts that the Act 129 default procurement requirements are significantly more compatible with the goals of the CAP program than procurement practices based upon the market judgments of EGSs which are not subject to regulatory oversight. Both PECO and the ALJ agreed based on the evidence in this proceeding.

RESA also contends that PECO's CAP program could easily be made portable compared to the other CAP programs within the state and focuses on the fact that these households would receive a discount during the term of the auction and/or referral program, and thus, could only benefit through their participation in the auction and referral programs. This view is disingenuous and myopic. By focusing exclusively on the price-controlled term of the auction and referral programs, RESA seeks to hide the fact that CAP customers would very likely face *higher* prices at the conclusion of these programs. For CAP customers, any increase in the commodity portion of their bill will be passed through to them in two ways. First, in that portion of the bill that a CAP customer pays, he will see an increase based on a commodity price increase because CAP customers pay a percentage of their bill – as opposed to a percentage of their income – as a CAP payment. Second, for the most part PECO's CAP rate discounts only apply to the first 650 kWh of usage per month. Thus, a CAP customer who uses in excess of this amount will bear the entire brunt of any increase in rates. While this scenario 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.

Finally, RESA asserts that there “is no reason to assume that CAP customer are somehow less capable of making informed decisions about shopping than other customers nor is there any reason to believe that the default service rate is preferable for these customers to EGS pricing.”<sup>12</sup> Again, RESA misses the point, perhaps on purpose, in order to obscure the real issue. Of course low-income households make choices all of the time. Like other households some of these choices are good some are bad. *But the evidence in this proceeding suggests that low-income households can ill afford to make a bad choice when it comes to their electricity and other utility bills.*<sup>13</sup> Electricity is essential and necessary for a safe and healthy living environment; a fact recognized by the General Assembly in the Electricity Generation Customer Choice and Competition Act Choice Act (“Choice Act”).<sup>14</sup> The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service, 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.<sup>15</sup> Thus, unlike other choices low-income households make, the General Assembly has recognized that the Commission must continue to ensure affordability of electricity for low-income households. Given the choice between managing CAP and its benefits within the framework of a regulated default service product or the competitive market, the evidence in this proceeding suggests that default service is better suited for the task.

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<sup>12</sup> RESA Exceptions at 31.

<sup>13</sup> See CAUSE-PA Statement No. 1 at 8-11.

<sup>14</sup> See 66 Pa. C.S. § 2802(9)-(10).

<sup>15</sup> 66 Pa. C.S. § 2804(9); 52 Pa. Code. § 54.73.

The ALJ's determination that PECO's decision to preclude CAP customers from participating in the retail market enhancements because there remain "complex unresolved issues . . . with respect to CAP portability"<sup>16</sup> is sound and based upon the substantial evidence within the record which provides ample evidence that PECO CAP customers do not currently shop,<sup>17</sup> that the PECO CAP is currently being reevaluated,<sup>18</sup> and that issues regarding the application of LIHEAP benefits are unresolved.<sup>19</sup> As PECO witness Feldhake noted:

The Commission stated, in the *Final RMI Order*, that CAP customer participation should be allowed only if those customers: "should not be subject to harm, i.e., loss of benefits." In my opinion, there are too many unresolved questions to conclude that this standard will be met. I therefore recommend that PECO CAP customers should not, at this time, be allowed to participate in the Opt-In Auction. Instead, the Commission should allow the Universal Service subgroup to pursue its review of "the needs and interests of low-income customers as we move to a more robust competitive market."

PECO Energy Company Statement No. 6-R at 5:3-10. (footnotes omitted).

### III. Conclusion

PECO CAP customers presently do not shop and no party has put forward into evidence a method of how this may occur within the context of PECO's retail market enhancements without subjecting these households to harm. Furthermore, 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

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<sup>16</sup> R.D. at 77.

<sup>17</sup> CAUSE-PA Statement No.1 at 16.

<sup>18</sup> PECO Energy Company Statement No. 6-R at 6.

<sup>19</sup> *Ibid.*

default service. The ALJ recognized these realities in his 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, adopt the positions advanced herein, and deny Exception No. 12 of RESA.

Respectfully submitted,

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