

**THE PENNSYLVANIA UTILITY LAW PROJECT
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October 29, 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 Joint Petition for Clarification of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Tenants Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia to be filed in the captioned proceeding.

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

Respectfully submitted,



Patrick M. Cicero, Esquire
Harry S. Geller, Esquire
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 Joint Petition for Clarification of the **CAUSE-PA and TURN et al.** 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:

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October 29, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**JOINT PETITION FOR
CLARIFICATION BY THE**

**COALITION FOR AFFORDABLE UTILITY SERVICES
AND ENERGY EFFICIENCY IN PENNSYLVANIA**

AND

**TENANT UNION REPRESENTATIVE NETWORK;
ACTION ALLIANCE OF SENIOR CITIZENS OF
GREATER PHILADELPHIA**

**OF THE OPINION AND ORDER
ENTERED OCTOBER 12, 2012**

COMMUNITY LEGAL SERVICES, INC.

Counsel for TURN et al.

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Date: October 29, 2012

I. Introduction

The Coalition For Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) through its attorneys at the Pennsylvania Utility Law Project, and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN et al.”), through their attorneys at Community Legal Services, Inc. (collectively “CAUSE/TURN”), hereby submit this Joint Petition pursuant to Pennsylvania Public Utility Commission (“Commission”) Regulations at 52 Pa. Code §§ 5.41 and 5.572, and request timely clarification of the Commission’s October 12, 2012 Opinion and Order in the captioned proceeding.

II. Background

On January 13, 2012, PECO filed a Petition for Approval of its Default Service Implementation Program pursuant to Section 2807(e) of the Public Utility Code. The petition concerned PECO’s default service procurement starting June 1, 2013, as well as various retail market enhancements proposed by PECO to be implemented beginning June 1, 2013. Both CAUSE-PA and TURN et al. filed a petition to intervene and/or an answer to PECO’s Petition and each was granted intervenor status by Administrative Law Judge Dennis Buckley at the March 13, 2012 prehearing conference. CAUSE-PA filed direct, rebuttal, and surrebuttal testimony of its witness, Philip A. Bertocci. After hearings were held on May 22, 2012, the parties filed Main Briefs and Reply Briefs. On August 29, 2012, ALJ Buckley issued his Recommended Decision (“RD”). Various parties filed exceptions and replies to exceptions to the RD, and on October 12, 2012 the Commission entered an Opinion and Order.

CAUSE/TURN file this Joint Petition and request clarification of certain limited aspects of the Commission’s October 12, 2012 Opinion and Order, specifically, its decision directing

that PECO and the Commission's Office of Competitive Market Oversight (OCMO) develop a plan that, "by January 1, 2014, allows [PECO's] CAP customers to purchase their generation supply from Electric Generation Suppliers." *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, (Motion of Commissioner Pamela A. Witmer, September 27, 2012) at 1 ("*Witmer Motion*").

III. Legal Requirements for Granting Reconsideration and or Clarification Under 52 Pa. Code §5.572.

In *Philip Duick et al. v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 (Order entered December 17, 1982), 1982 Pa. PUC LEXIS 4, 56 Pa. PUC 553 (1982), the Commission explained the basis for rescinding or amending a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Duick, 56 Pa. P.U.C. at 559; 1982 Pa. PUC LEXIS 4, at *11-*13.

This Joint Petition satisfies *Duick* in that it raises issues "which appear to have been overlooked or not addressed by the Commission," specifically the timing of the changes to PECO's CAP structure, and a request that parties other than PECO and OCMO be included in the process of designing a CAP program that would be portable and allow a PECO CAP participant to receive generation service from an EGS.

IV. Requests for Clarification

A. The Commission should clarify the timing of the transition by PECO to allow its CAP customers to receive generation supply from an EGS.

In this proceeding, PECO, CAUSE-PA, TURN et al., and the Office of Consumer Advocate ("OCA") all endorsed PECO's proposal not to include Customer Assistance Plan

(CAP) customers within the retail market enhancement programs proposed by PECO because the structure and complications inherent in PECO's CAP program do not presently allow CAP customers to receive generation service from an EGS. Moreover, CAUSE-PA submitted evidence that the Electric Generation and Customer Choice Act intends for CAP customers to receive special consideration and protection by the Commission.¹ Although the ALJ agreed with PECO's decision not to include CAP customers in its retail market enhancements, the Commission did not adopt this recommendation and, at the September 27, 2012 Public Meeting, approved a motion by Commissioner Witmer which stated, in relevant part:

Rather than delay the inclusion of CAP customers within the DSP II RME Programs, I recommend that **we direct PECO to develop a plan that, by January 1, 2014, allows its CAP customers to purchase their generation supply from Electric Generation Suppliers.** As a way to further assist the Company, the Commission's Office of Competitive Market Oversight (OCMO) should be directed to work with PECO to ensure that, to the extent possible, the DSP II RME Programs are available to these customers and to provide a path that allows both CAP credits and Low Income Heating [sic] Energy Assistance Program funds (LIHEAP) to be used by customers when choosing an entity to provide their generation service.

Witmer Motion at 1 (emphasis added).

In its Opinion and Order entered October 12, 2012, the Commission incorporated the language of the motion as follows:

Rather than delay the inclusion of CAP customers within PECO's RME Programs, **we direct PECO to develop a plan that will allow its CAP customers to purchase their generation supply from EGSs by January 1, 2014.**

Petition of PECO Energy Company for Approval of its Default Service Program II, Docket No. P-2012-2283641, (October 12, 2012 Opinion and Order) at 131 (emphasis added).

CAUSE/TURN submit that there are two plausible readings of Commissioner Witmer's Motion and the subsequent Opinion and Order. One reading is that PECO must simply *develop*

¹ 66 Pa. C.S. § 2802(9), (17).

a plan by January 1, 2014 that would allow its CAP customers to received EGS service at some point in the future. Another reading is that PECO must develop a plan that would allow its CAP customers to begin receiving service from an EGS on January 1, 2014.

CAUSE/TURN request clarification of the Commission's intentions about what PECO is to do and by when. Clarification is needed because on September 27, 2012, the Commission also issued a Secretarial Letter directing the Office of Competitive Market Oversight (OCMO) to develop a plan to allow CAP customers to receive service from an EGS to go into effect **no later than January 1, 2015**. This Secretarial Letter was issued as a part of the Commission's Retail Markets Investigation and attached a discussion document entitled "RMI End State Proposal." See *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (September 27, 2012 Secretarial Letter). In its "RMI End State Proposal" the Commission stated the following:

Low Income Customers. The Office of Competitive Market Oversight (OCMO) will develop a plan, to go into effect **no later than January 1, 2015**, which will allow customers on customer assistance programs (i.e. via portable benefits) to purchase supply from an electric generation supplier (EGS).

RMI End State Proposal ¶ 5 (emphasis added).

The Commission's intentions in the instant proceeding are important because one interpretation of the language contained in its October 12, 2012 Order (for PECO to develop a plan that will allow its CAP customers to purchase their generation supply from EGSs by January 1, 2014) would be inconsistent with the September 27, 2012 Secretarial Letter, which sets a date of January 1, 2015, a year later. In light of the Commission's apparent intentions, as expressed through the September 27, 2012 Secretarial Letter to develop generally applicable rules for CAP customers' entry into the competitive market by January 1, 2015, CAUSE/TURN submit that the Commission should clarify its October 12, 2012 Order in this proceeding to

assure consistency with the timeline it set out in its RMI End State proposal, which parties anticipate will be incorporated into the Commission's RMI End State Tentative Order expected to be issued on or about November 8, 2012. It would seem imprudent for PECO to develop a plan to allow its CAP customers to receive generation service from an EGS without taking into consideration any plan developed through the processes anticipated by OCMO in the Commission's End State process.

Accordingly, CAUSE/TURN respectfully request that the Commission clarify the time frame for the *development and implementation* of a plan by PECO for the modification of its CAP program to allow CAP customers to receive generation service from an EGS.

B. The Commission should clarify that PECO should consult with members of its Universal Service Advisory Committee in developing its plan to allow its CAP customers to receive generation service from EGSs.

In its October 12, 2012 Opinion and Order, the Commission directed PECO to develop a plan that will allow its CAP customers to receive generation supply from EGSs and directed OCMO to work with PECO to "(1) ensure that, to the extent possible, the Opt-in and Standard Offer Programs are available to CAP customers; and (2) provide a path that allows both CAP credits and LIHEAP funds to be used by customers that chose an EGS to supply their generation service." October 12, 2012 Opinion and Order at 132.

Regardless of the timing of its transition plan allowing its CAP customers to receive generation service from EGSs, PECO should be required to develop its plan in coordination with OCMO and members of the PECO Universal Services Advisory Committee ("USAC") as it has done with other changes to its CAP and Universal Service and Energy Conservation Plan over the 14-plus years of the USAC's existence. PECO's USAC is comprised of various nonprofit community organizations, legal aid practitioners, as well as representatives from the Office of

Consumer Advocate.

Commissioner Witmer, in her motion directing PECO to adjust its CAP program to allow shopping, recognized the complicated nature of any transition from PECO's current program to one that would allow PECO CAP customers to receive EGS generation service. *Witmer Motion* at 1 (stating that "there are a number of issues that must be addressed in order to effectuate this change"). Indeed, PECO's electric CAP Rate Program is complicated. PECO's current CAP program has 7 tiers and functions as a bill/rate discount program.² The CAP Rate tiers utilize a targeted discount approach according to Federal Poverty Level, the applicable electric rate and level of usage. These rate levels are targeted based upon the Commission's Policy Statement On Customer Assistance Programs. Generally, the lower the household's poverty level, the greater the monthly discount.

CAUSE/TURN submit that any revision to PECO's CAP program must ensure that CAP customers receiving either default service or EGS provided service continue to receive a bill which conforms to the Commission's Universal Service Policy Statement, PECO's current Universal Service Plan and the various Settlements which PECO has entered and the Commission has approved regarding PECO's universal service requirements.

CAUSE/TURN submit that the process to develop a plan that will allow PECO CAP customers to receive generation supply from EGSs will need to deal with the key terms in prior settlement agreements. CAUSE/TURN further submit that PECO's universal service programs have benefited by the input provided by its USAC and that broader stakeholder input would continue to be beneficial for appropriate program design.

Accordingly, CAUSE/TURN respectfully request that the Commission clarify that PECO should develop its transition plan in coordination with and based on input from OCMO and its

² CAUSE-PA Statement No. 1 at 15.

USAC. The input of PECO's USAC in the development of PECO's transition of its CAP program to allow shopping will be invaluable given the committee members' working knowledge of PECO's current CAP program and will compliment OCMO's working knowledge of the competitive generation markets.

V. Conclusion

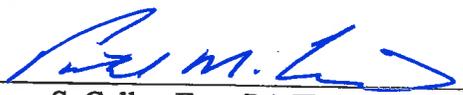
WHEREFORE, CAUSE/TURN respectfully requests that the Commission clarify its October 12, 2012 decision as requested above.

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