

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**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

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I. INTRODUCTION AND PROCEDURAL HISTORY

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 Philip A. Bertocci through his written testimony and accompanying exhibits. The evidence in the captioned proceeding demonstrates that low-income customers of PECO Energy Company (“PECO”) – particularly those enrolled in PECO’s 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” in the competitive environment. 66 Pa. C.S. § 2802 (10). 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 direct access by low-income retail customers to the competitive generation market is predicated upon the Commission’s obligation to ensure that the affordability of electric service to economically vulnerable citizens is not diminished. With this background in mind, we turn to the particulars of this proceeding.

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. The

petition was published in the Pennsylvania Bulletin on January 28, 2012, with an Answer/Protest date of February 17, 2012. 42 Pa. B 642.

On February 13, 2012, CAUSE-PA filed a Petition to Intervene and an Answer to PECO's Petition raising concerns about its proposed retail market enhancements. Various other parties also filed petitions to intervene and/or an answer to PECO's Petition prior to the February 17, 2012 deadline.¹

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.

In response to the Commission's IWP Final Order, PECO amended its proposed retail market enhancements. Specifically, PECO: (1) proposed to institute a retail opt-in auction open to all non-shopping, non-CAP customers that would offer a six-month product that is at least 5

¹ Petitions to Intervene were filed by the following: UGI Energy Services, Inc., Office of Small Business Advocate ("OSBA"), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. ("Constellation"), Exelon Generation Company, LLC, and Exelon Energy Company (collectively "Exelon"), FirstEnergy Solutions Corp. ("FES"), Washington Gas Energy Service ("WGES"), Direct Energy Services ("Direct"), Retail Energy Supply Association ("RESA"), Dominion Retail d/b/a Dominion Energy Solutions & Interstate Gas Supply, Inc. ("Dominion/IGS"); the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia ("TURN et al); Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (Collectively, "First Energy Companies"); Noble Americas Energy Solutions, LLC; ChoosePA Wind; Philadelphia Area Industrial Energy Users Group ("PAIEUG"); PPL Energy Plus LLC; NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing LLC; Green Mountain Energy Company ("GMEC"); and, the Office of Consumer Advocate ("OCA").

percent less than PECO's projected Price-to-Compare for June 1, 2013, with a \$50 bonus payment to customers which shall be paid by the EGS after the acceptance of the offer and the completion of three billing cycles;² and, (2) proposed to institute a Customer Referral Program in which it would refer customers calling its call center, including, among other things, high bill complaints, to participating EGSs who agreed to offer a month 12-fixed rate product guaranteed to be 7% less than the then existing default service price to compare.³

On March 13, 2012, a prehearing conference was held by the Honorable Dennis J. Buckley, Administrative Law Judge, and a Scheduling Order was issued on March 19, 2012. In the Scheduling Order, ALJ Buckley 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.

CAUSE-PA and other intervenors filed written Direct Testimony on April 16, 2012. CAUSE-PA's written direct testimony was filed by Philip A. Bertocci and was accompanied by four exhibits pre-marked as Exhibits PAB-1 through PAB-4.⁴ In his Direct Testimony, Mr. Bertocci supported PECO's determination that CAP customers should not participate in the proposed retail market enhancements.⁵ Mr. Bertocci also recommended that PECO's confirmed low-income customers who are not enrolled in CAP should be informed about PECO's CAP Rate program and assessed for eligibility for CAP Rate prior to their enrollment in either the Opt-in Auction or referral through the Customer Referral Program.⁶

On May 4, 2012, PECO, along with other parties including the Retail Energy Supply Association ("RESA") filed rebuttal testimony in response to the direct testimony filed by the all

² PECO Energy Company Statement No. 2-S at 3:1-6.

³ Id., at 5:19-6:2.

⁴ CAUSE-PA Statement No. 1.

⁵ CAUSE-PA Statement No. 1 at 16:17-17:11.

⁶ CAUSE-PA Statement No. 1 at 21:4-9.

parties. Specifically relevant to the issues of concern to CAUSE-PA, PECO filed rebuttal testimony by Lauren B. Feldhake, in which Ms. Feldhake responded to the Direct Testimony of RESA witness Mr. Christopher Kallaher and CAUSE-PA witness Mr. Bertocci.

On May 17, 2012, CAUSE-PA filed its written Surrebuttal Testimony. In his Surrebuttal, Mr. Bertocci responded to the rebuttal testimony filed by RESA witness Kallaher, Ms. Feldhake, and the witness sponsored by Dominion Retail, Inc. and Interstate Gas Supply, Inc. (“Dominion/IGS”) witness William Barkas.

Hearings were held on May 22, 2012. Limited oral rejoinder testimony and minor cross-examination of certain of the parties’ witnesses occurred on this day. All parties waived cross-examination of CAUSE-PA’s witness Mr. Bertocci. At the evidentiary hearing, ALJ Buckley 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 PAB-1 through PAB-4, CAUSE-PA Statement No. 1-R and, CAUSE-PA Statement No. 1-SR.

II. LEGAL STANDARD

The Electricity Generation Customer Choice and Competition Act, Act 138 of 1996, as amended by Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. §§ 2801 *et seq.*, (“Competition Act”) requires that default service providers acquire electric energy through a “prudent mix” of resources that are designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results through competitive processes that include auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. §§ 2807(e)(3.1) and 2807 (e)(3.4). The Competition Act does not, however, require a specific default service rate design methodology. *Id.* Furthermore, the Competition Act mandates that customers have

direct access to a competitive retail generation market. 66 Pa. C.S. § 2802(3). This mandate is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations, 52 Pa. Code §§ 54.181 to 54.189, and a policy statement, 52 Pa. Code §§ 69.1802 to 69.1817, addressing default service plans. The regulations first became effective in 2007 and recently have been amended to incorporate the Act 129 amendments to the Competition Act. *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L 2009-2095604 (Final Rulemaking Order entered October 4, 2011) (*Act 129 Final Rulemaking Order*).

In its *Act 129 Final Rulemaking Order* the Commission reached a determination as to what it believes constitutes least cost over time:

Finally, it should be noted that the “least cost over time” standard should not be confused with the notion that default prices will always equal the lowest cost price for power at any particular point in time. In implementing default service standards, Act 129 requires *that the Commission be concerned about rate stability* as well as other considerations such as ensuring a “prudent mix” of supply and ensuring safe and reliable service. *See* 66 Pa. C.S. §§ 2807(e)(3.2), (3.4) and (7). In our view, a default service plan that meets the “least cost over time” standard in Act 129 should not have, as its singular focus, achieving the absolute lowest cost over the default service plan time frame but, rather, a cost for power that is both adequate and reliable and also economical relative to other options.

Act 129 Final Rulemaking Order at 11-12 (emphasis added).

Thus, pursuant to the Commission’s recent guidance in the *Act 129 Final Rulemaking Order*, **default service providers must demonstrate that their plans consider price stability and reliability** when developing a procurement plan that meets the “least cost over time”

standard. *See Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan*, Docket No. P-2011-2252042, (Opinion and Order entered May 24, 2012) at 10-11.

This proceeding, however, concerns more than simply the procurement mix of PECO's default service portfolio, but rather concerns PECO's implementation of the competition enhancements that the Commission ordered to be a part of each EDC's default service proceeding. In its IWP Final Order, the Commission set forth its 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.**

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

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 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, in considering whether PECO's default service plan can be approved, the ALJ must consider not only PECO's compliance with applicable default supply procurement principals, but also with the Commission's guidance requiring that low-income customers not be subjected to harm as a result of the structure and implementation of PECO's proposed competitive retail enhancements.

III. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Summary of Briefing Party's Position

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

B. Residential Class Procurement

1. Term Length of Supply Contracts

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

2. RESA's Proposal to Include 10% Spot Purchases for Residential Customers

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

3. OCA's Proposal to Continue Block and Spot Supply Procurement for Residential Customers

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

C. Small Commercial Class Procurement

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

D. Medium Commercial Class Procurement

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

E. Large Commercial and Industrial Class Procurement

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

F. Extension of Supply Contracts Beyond May 31, 2015

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

G. Procurement Schedule

1. OCA's Proposal to Reallocate Tranches Between Solicitations

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

2. OCA's Proposed "Hold Back" for Opt-In Program

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

H. Load Cap

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

I. Other Procurement and Implementation Plan Requirements

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

IV. RATE DESIGN AND COST RECOVERY

A. Summary of Briefing Party's Position

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

B. Reconciliation of Default Service Costs and Revenues

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

C. EDC Recovery of Additional PJM Charges

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

D. Costs Included in the Generation Supply Adjustment Charge

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

E. Ratemaking Treatment of Auction Revenue Rights

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

F. Elimination of Alternative Energy Portfolio Standard Surcharge

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

G. RESA's Proposal for a \$0.005/kWh Adder to the Price-to-Compare

In his Direct Testimony, RESA witness Christopher Kallaher has proposed that PECO add a 5 mill per kWh adder to the Price to Compare and to use the funds collected by this surcharge to pay the costs of the retail market enhancements.⁷ While CAUSE-PA did not submit testimony in this proceeding on the issue of an adder, it fully supports the arguments advanced by OCA witness Richard Hahn and OSBA witness Brian Kalcic that this cost recovery mechanism is arbitrary, unreasonable and impermissible under applicable sections of the Public Utility Code.⁸ Additionally, PECO itself suggests that this mechanism of cost recovery is inappropriate because it would recover nearly ten times the amount of annual revenue that is needed for PECO to run its retail market enhancement programs.⁹ Thus, for the reasons more fully articulated by the witnesses presented by PECO, the OCA, and the OSBA, RESA's proposed 5 mill per kWh adder should be rejected.

⁷ RESA Statement No. 2 at 33-34.

⁸ See OCA Statement No. 1-R at 5-7; OSBA Statement No. 1-R at 8-9.

⁹ PECO Statement No. 5-R at 12.

V. RETAIL MARKET ENHANCEMENTS

A. Summary of Briefing Party's Position

The evidence in the captioned proceeding demonstrates that PECO's low-income customers, particularly those enrolled in its Customer Assistance Program ("CAP"), are economically vulnerable, merit distinct treatment, and require significant protection from the uncertainties of the retail electric market in order to adequately shield them from potential harm or diminishment of "the protections, policies and services that now assist customers who are low-income to afford electric service." 66 Pa. C.S. § 2802 (10). PECO has correctly determined that these customers are better served through default service, which overtime is designed to provide relatively stable prices procured at least cost over time.¹⁰ None of the proposals put forward by parties who promote CAP customer participation in the proposed retail market enhancements – namely RESA and Dominion/IGS – provide sufficient or compelling evidence demonstrating that CAP customers can participate in the retail electric market without being subjected to harm.

Accordingly, for the reasons set out more fully below, CAUSE-PA requests that the Commission adopt the following recommended protections:

- PECO's proposal to exclude CAP customers from participation in the Retail Opt-in Auction and Customer Referral Programs should be adopted;
- Confirmed low-income customers of PECO who are not enrolled in CAP Rate should be informed of the CAP Rate program and assessed for eligibility prior to enrollment in either the customer referral program or the Retail Opt-in Auction. If eligible, these customers should be

¹⁰ See *Act 129 Final Rulemaking Order* at 11-12 (emphasis added).

enrolled in CAP Rate and, like other CAP Rate customers, be precluded from the pool of customers eligible for either of the retail competition programs; and,

- PECO's proposal to have participating suppliers pay for the costs of both the Retail Opt-in Auction and the Customer Referral program should be adopted.

B. EGS Opt-In Competitive Offer Program

1. Customer Eligibility (*CAP issues are discussed in Section V.D*)

See Section V.D., 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.

2. Composition of Product Offer

See Section V.D., 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 fully supports the position advanced by OCA witness Barbara Alexander that PECO's proposed 6-month contract term should be revised to reflect a 12-month term.¹¹

¹¹ OCA Statement No. 2 at 11.

3. Customer Participation Cap

See Section V.D., 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 customer participation in the program as a whole should be capped.

4. Supplier Participation Load Cap

See Section V.D., 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 supplier participation in the program as a whole should be capped.

5. Customer Options on Product Expiration and Notice Requirements

In Section V.D, below, CAUSE-PA's discusses in detail its recommendations for specific low-income customer protections. However, for all residential customers, including those low-income customers not enrolled in CAP, 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.¹² It is important that this first notice regarding the expiration of the program come directly from PECO because the customer entered the program as a result of a mailing and/or other communications from PECO. Customers participating in the auction chose to enter the retail market as a result of a “push” from PECO and the Commission. They should

¹² OCA Statement No. 2 at 12-13.

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.¹³ Furthermore, CAUSE-PA fully supports the position taken by the OCA that those customers who do not make an affirmative choice to return to default service or who have not chosen another EGS offering must be placed on a fixed price contract that is cancellable without a cancellation fee.¹⁴

6. Structure of Opt-In Auction – Sealed-Bid Format versus Descending Price Clock Auction

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

7. PECO’s Proposed Application Process and EGS Terms and Conditions

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

C. EGS Standard Offer Program

1. Customer Eligibility (*CAP issues are discussed in Section V.D*)

See Section V.D., 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 an EGS.

¹³ Ibid.

¹⁴ OCA Statement No. 2 at 14.

2. Composition of Product Offer

See Section V.D., 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.

3. Customer Options Upon Product Expiration

In Section V.D, below, CAUSE-PA's discusses in detail its recommendations for specific low-income customer protections. However, for those customers not enrolled in CAP, CAUSE-PA submits that the notice provisions suggested by OCA witness Alexander as applicable to the Opt-in Auction Program appear to be equally applicable to the Customer Referral Program.¹⁵

4. Types of Customer Calls Eligible for Presentation of Referral Program

CAP customers should be excluded from the pool of eligible customers. This issue is explored in more detail in Section V.D., below. The other discrete customer group that CAUSE-PA believes should be excluded from the referral program is callers who are calling about a high bill.¹⁶ The Commission indicated in its IWP Final Order that customers calling about a high bill should be referred to an EGS "only and explicitly after the customer's concerns were satisfied."¹⁷ CAUSE-PA believes that, in light of this Commission guidance, it would be inappropriate to refer high bill complaint customers to an EGS for service while these high bill inquiries/disputes are on-going. This view was also endorsed by the OCA.¹⁸ In order to ensure that the referral is made only and explicitly after the customer's high bill concerns are satisfied, CAUSE-PA has

¹⁵ See Section V.B.5, *supra*

¹⁶ CAUSE-PA Statement No. 1 at 34-35.

¹⁷ IWP Final Order at 32.

¹⁸ OCA Statement No. 2 at 16.

recommended the specific steps that need to be taken prior to initiating a referral to an EGS. Utilities should first conduct a thorough examination all of the possible reasons for a high bill; if the high bill is a result of high usage, the company should assist the customer by suggesting ways to lower their usage.¹⁹ Customers should be assessed for whether they are eligible for weatherization assistance either through Act 129 or LIURP.²⁰ 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.²¹ PECO asserts²² that this is the approach they currently employ and intend to continue to use upon implementation of the customer referral program. Specifically, PECO states that it adheres to the following process: For "[c]allers with high bill complaints who are confirmed low-income customers are informed about CAP, MEAF, LIHEAP, LIURP, and other available programs and, if the facts appear to warrant a foreign wiring investigation, PECO conducts an investigation."²³ This is the appropriate response to a high bill complaint call. The Commission should reference this process within into its order and clarify that these are the steps that, at a minimum, and EDC must follow prior to referring a customer who calls concerning a high bill to an EGS.

5. Commencement Date of the EGS Standard Offer Program

CAUSE-PA fully supports the position advanced by OCA witness Barbara Alexander that PECO's Customer Referral Program implementation be delayed in order to assess whether there "is a documented need to expose additional customers to EGS offers in a manner that relies

¹⁹ CAUSE-PA Statement No. 1 at 22.

²⁰ Ibid.

²¹ Ibid.

²² See PECO Statement No. 6-R at 12:13-20.

²³ Ibid.

on the EDC to do so.²⁴ There is simply no need to run duplicative programs if they will cause customer confusion as to applicable terms.

6. PECO's Proposed Application Process and EGS Terms and Conditions

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

D. Participation by Low-Income Customers in Proposed Retail Market Enhancements

The captioned proceeding arises out of PECO's 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.²⁵ This obligation is unique to PECO as a default service provider. In contrast to an EGS whose procurement of power is not regulated by the Commission, PECO must specifically demonstrate through this plan that its procurement mix will produce relatively stable, reliable energy designed to ensure that over the long term costs will be at least cost to their customers.²⁶ Moreover, unlike competitive suppliers who have a profit incentive embedded in their energy offerings, PECO 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 PECO in procuring generation supply.²⁷

These statutory requirements provide both the platform and backdrop for CAUSE-PA's support of PECO's decision to exclude CAP customers the proposed retail market enhancements. PECO, as the default service supplier required to offer service pursuant to the obligations of Act 129 of 2008, is best suited to provide service consistent with the economic realities and

²⁴ OCA Statement No. 2 at 16.

²⁵ See 66 Pa. C.S. § 2807(e) (3.4) - (3.6).

²⁶ Ibid.

²⁷ 66 Pa. C.S. § 2807(e) (3.9).

vulnerabilities of low-income customers. While it is certainly the case that on a quarter to quarter basis the cost of default service may vary as PECO reconciles its costs, the price varies within the framework of a regulated structure that is designed to produce energy costs at least cost over time. This is not 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 support of PECO's decision to exclude CAP customers from participating in the competitive retail market enhancements.

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.²⁸ 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

²⁸ See CAUSE-PA Statement No 1 at 9-11 (discussion of the difficulty of low-income households paying for essential needs).

like rent, food, and medicine may take precedence.²⁹ As discussed at length in CAUSE-PA's testimony, the service termination rate is 12.04% for PECO's confirmed low-income customers compared to 5.5% for all residential customers.³⁰ This means that confirmed low-income customers are slightly more than two times as likely as all residential customers to have their service terminated.

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 PECO's 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.³¹ 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.

²⁹ Ibid.

³⁰ CAUSE-PA Statement No. 1 at 11.

³¹ IWP Final Order at 31-32; 43.

1. Because CAP customers will likely suffer harm through their participation in the competitive market the Commission should affirm PECO's decision to preclude these customers from participation in the Competitive Market Enhancement Programs.

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 environment. See 66 Pa. C.S. §§ 2802(10), (17), and 2804(9). 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. 66 Pa. C.S. § 2804(9). The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service, 52 Pa. Code. § 54.73, 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. Id.

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. 52 Pa. Code § 54.73. PECO's electric CAP Rate Program has 7 tiers and functions as a bill/rate discount program.³² The CAP Rate tiers address affordability via a targeted discount approach according to Federal Poverty Level and the applicable electric rate. Generally, the lower the household's poverty level, the greater the monthly discount. The tiers are determined predominantly by income range, with one income range, 0-25% FPL divided into two categories, those households with extenuating circumstances (CAP Rate A) and those

³² CAUSE-PA Statement No. 1 at 15.

without extenuating circumstances (CAP Rate B).³³ CAP Rate C is 51%-100% FPL, CAP Rate D is 51%-75%, CAP Rate D1 is 76%-100%, CAP Rate E is 101%-125% and CAP Rate E1 is 126%-150% FPL.³⁴

Within CAP Rate A, for the lowest income households with extenuating circumstances, a flat monthly rate of \$12 is charged for electric non-heating usage up to 1000 kWh a month and \$30 is charged for electric heating usage up to 1000-2000 kWh a month depending on the time of year. In all other rate tiers, however, the discounts are only on the first 650-750 kWh a month.³⁵ These discounts range from 93% within CAP Rate B (0-25% of the federal poverty level and without extenuating circumstances) to a 27% discount within CAP Rate E1 (126% to 150% of the FPL). These rate levels are targeted to affordability based upon Commission policy concerning maximum energy burden levels for each income level.³⁶ The costs of the CAP program are paid for by all residential ratepayers.

Thus, for all 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,

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

consumer prices are determined by the EGSs procurement strategy and whatever contract the customer agreed to from the EGS at any particular time.

CAP customers are enrolled in CAP precisely because they could not afford their full consumption bills, and 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 its testimony, RESA asserts that CAP customers will not be harmed by their participation in the retail market enhancements and will be protected during the term of the auction because they will receive a competitively-sourced fixed price.³⁷ RESA misses the point. As clearly articulated in CAUSE-PA's Direct Testimony, without contradiction, low-income customers have no room in their budget for any measure of cost volatility.³⁸ RESA's proposal to permit CAP customers to participate in the retail market enhancements presents a risk of harm to CAP 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

³⁷ See RESA Statement No. 2-R at 10-11.

³⁸ See CAUSE-PA Statement No. 1 at 9-11.

about the design of the product, for CAP and other low-income customers it will mean paying more for electricity than they would have under a regulated rate 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 motivate 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.

At the conclusion of the auction, customers who make no affirmative choice to either remain with an EGS under different contract terms or return to default service would be served on a month-to-month contract with fluctuating rates. These rates may be lower or higher than the then-current price-to-compare, but they will not be stable and will fluctuate with the ups and downs of the market. More importantly, the EGS serving the customer will neither be compelled to offer a fixed price contract that provides stability nor subject to the procurement requirement that energy supply be procured at least cost over time to customers. This is a deadly combination for low-income households without budget elasticity.

None of the parties in this proceeding who are in favor of CAP customer shopping has effectively demonstrated how CAP customers benefit from participating in the retail electricity market or can be assured that they will not experience harm. 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 and 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. Accordingly, the Commission should affirm PECO's decision to exclude CAP customers from both the Retail Opt-in Auction and the Customer Referral Program.

2. Non-CAP, confirmed low-income customers should be screened for CAP eligibility prior to participating in either of the Retail Competition Enhancement Programs.

As detailed in the Direct Testimony of Mr. Bertocci, low-income households within the PECO service territory do not have sufficient income to meet their essential needs.³⁹ The CAP Rate program and its tiered payment structure have been developed in order to create a more affordable electric bill for program participants. However, not all low-income households participate in CAP and Commission attention to the terms of service for these low-income, non-CAP customers is required in order to insure that the protections, policies and services that now assist customers who are low-income to afford electric service are continued in the competitive environment. 66 Pa. C.S. § 2802(10). Accordingly, Mr. Bertocci recommended in his testimony that prior to participating in the Opt-in Auction and Customer Referral Program that confirmed low-income customers of PECO should be informed about the CAP Rate program and assessed for eligibility for CAP Rate.⁴⁰ If eligible, these customers should be enrolled in CAP Rate and, like other CAP Rate customers, be precluded from the auction pool. Only if these customers are

³⁹ CAUSE-PA Statement No. 1 at 8-11.

⁴⁰ CAUSE-PA Statement No. 1 at 20.

ineligible for CAP Rate, or decline participation in CAP Rate, should they be included in the pool of eligible customers.

Other than PECO, none of the other participants in this proceeding raised a concern about Mr. Bertocci's proposal that PECO screen its confirmed low-income customers for CAP eligibility prior to enrolling these customers in either the customer referral program or opt-in auction program.⁴¹ In general, PECO's concern was that PECO has only 4,700 non-CAP customers with incomes that are verified to be below 150% of the federal poverty level.⁴² In her testimony, PECO's witness Ms. Feldhake contends that even if PECO made an attempt to screen these customers, it is likely that PECO would successfully make personal contact with only 25% or approximately 1175 of these households and, thus, Mr. Bertocci's suggestions would not materially increase the number of customers on CAP who would be ineligible for the auction, but they would increase costs and could create customer confusion.⁴³

PECO does not elaborate on why reaching this additional 1175 households would not be useful or why it could not be done cost effectively. For example, as suggested by Mr. Bertocci in his surrebuttal testimony, it is not clear why PECO's call center staff could not be instructed to discuss the CAP program for all non-CAP confirmed low-income customers who call the call center expressing an interest in the customer referral program.⁴⁴ This is precisely what PECO asserts that it does when a customer calls concerning a "high bill" complaint.⁴⁵ Moreover, as to the Opt-in Auction, PECO has presented no compelling evidence as to why it could not send a

⁴¹ PECO Statement No. 6-R at 10.

⁴² Ibid.

⁴³ PECO Statement No. 6-R at 11-12.

⁴⁴ CAUSE-PA Statement No. 1-SR at 2.

⁴⁵ PECO Statement No. 6-R at 12

separate concurrent letter from that which they will send about the auction to confirmed low-income non-CAP households describing CAP and its benefits.

The simply reality is that households which could be enrolled in CAP are better served by CAP than they would be in the competitive markets. Any time PECO has an opportunity to explain CAP and its benefits to low-income households, it should do so. Since PECO is aware of which households are confirmed low-income and not enrolled in CAP, it makes little sense to not inform these households about CAP and, if eligible, enroll them in CAP prior to their inclusion in either of the retail market enhancements.

E. Additional Proposed Retail Market Enhancements

1. Time-of-Use Offering

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

2. New/Moving Customer Referral Program

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

3. Referral of PECO Wind Customers

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

4. Seamless Moves

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

F. Recovery of Program Costs for Proposed Retail Market Enhancements

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

IWP Final Order at 84-85.

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. The retail market for the sale of generation supply service is growing in Pennsylvania. Within the PECO service territory alone, as of March 31, 2012, approximately 24% of PECO's residential customers were served by or in the process of switching to an EGS.⁴⁶ Furthermore, significant costs have already been paid by ratepayers to support customer choice, it is therefore inappropriate to pass these additional costs along to default service customers in order to provide services and infrastructure for competitive retail operations.

CAUSE-PA leaves it up to the Commission, PECO, 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 PECO's customers.

1. EGS Opt-In Competitive Offer Program

See General Discussion in Section V.F., above.

2. EGS Standard Offer Program

See General Discussion in Section V.F., above.

3. Other Enhancements

See General Discussion in Section V.F., above.

VI. 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.

⁴⁶ OCA Statement No 2 at 7.

VII. CONCLUSION

Low-income customers make up a significant portion of PECO's 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.⁴⁷ This is particularly true of low-income households who are enrolled in PECO's 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. 66 Pa. C.S. § 1405(c). 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 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. PECO has recognized this in its filing by precluding CAP customers from participating in either the Opt-in Auction or Customer Referral Program. Prior to the Commission's granting approval to PECO's proposed retail market enhancements, the following must occur:

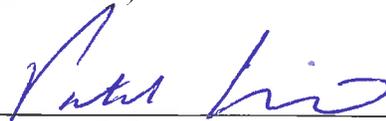
- CAP customers should be excluded from participation in the Retail Opt-in Auction and Customer Referral Programs;
- All of the retail market enhancements should be paid for by participating EGSs;

⁴⁷ See e.g., CAUSE-PA Statement No. 1 at 8-11.

- Calls concerning high bill complaints, bill disputes, and bill inquiries should be resolved prior to any referral of the customer through the referral program; and,
- Confirmed low-income customers of PECO should be informed about the CAP Rate program and assessed for eligibility for CAP Rate prior to participating in the Opt-in Auction and Customer Referral Program.

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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