

**THE PENNSYLVANIA UTILITY LAW PROJECT
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July 3, 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 Reply Brief of the Coalition for Affordable Utility Services and Energy Efficiency in the captioned proceedings.

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

Respectfully submitted,



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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 **Reply Brief of the Coalition for Affordable Utility Services and Energy Efficiency (CAUSE-PA)**, 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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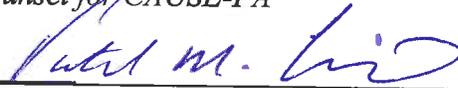
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July 3, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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July 3, 2012

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I. INTRODUCTION

On June 18, 2012, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, filed its Main Brief in which it argued that 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. Specifically, the evidence in this proceeding suggests: (1) that CAP customers should be excluded from participation in the Retail Opt-in Auction and Customer Referral Programs; (2) that the retail market enhancements should be paid for by participating electric generation suppliers (“EGSs”); (3) that 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, (3) that 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.

Most of the parties were either silent as to the issue of low-income customers’ participation in the retail market enhancements proposed by PECO or supported the exclusion of CAP customers, at least for the time being. However, the Retail Electricity Supplier Association (“RESA”), and to a lesser extent Dominion Retail, Inc./Interstate Gas Supply, Inc. (“Dominion/IGS”) and First Energy Solutions (“FES”), all argue in their main briefs that the Commission should order that CAP customers be permitted to participate in the retail market enhancements. None of the suppliers, however, has offered evidence demonstrating that CAP customers would not be subject to harm through their participation in the competitive electricity

market, and thus, they have not overcome the substantial evidence presented by CAUSE-PA and PECO that CAP customers should not participate in either the proposed Opt-in Auction or Customer Referral Program.

Only PECO addressed the proposal of CAUSE-PA that non-CAP low income customers 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.

CAUSE-PA submits this Reply Brief in opposition to the arguments advanced in the main briefs of RESA, Dominion/IGS and FES regarding CAP customer participation in the retail market enhancements, as well as to the arguments advanced by PECO that there is nothing more that it could do to assist non-CAP, confirmed low-income customers prior to these customers enrolling in the Opt-in Auction or Customer Referral Program. For the benefit of the ALJ, CAUSE-PA will follow the common brief outline used in its Main Brief.¹

II. 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.

¹ CAUSE-PA incorporates by reference, as if fully set forth herein, the legal standard found in its Main Brief. (See CAUSE-PA Main Br. at 4-7.)

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.

III. 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

CAUSE-PA incorporates by reference the arguments made in its Main Brief. CAUSE-PA also supports the arguments advanced by the Office of Consumer Advocate (“OCA”) in its brief that RESA’s proposal is prohibited by law.²

IV. RETAIL MARKET ENHANCEMENTS

A. Summary of Briefing Party’s Position

In its Main Brief, CAUSE-PA argues PECO has correctly determined that its low-income CAP customers are better served through default service, which is designed to provide relatively stable prices procured at least cost over time.³ None of the proposals put forward by parties who promote CAP customer participation in the proposed retail market enhancements – namely RESA, Dominion/IGS, and FES – provide sufficient or compelling evidence demonstrating that

² OCA Main Br. at 48-53.

³ See Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets, Docket No. L 2009 2095604 at 11-12 (Final Rulemaking Order entered October 4, 2011) (“Act 129 Final Rulemaking Order”).

CAP customers can participate in the retail electric market without being subjected to harm. This position was advanced and supported in the main briefs of PECO⁴ and the OCA.⁵

In its main brief, RESA asserts that CAP customers should participate in the Standard Offer Referral Program because CAP customers will benefit from a lower bill during the term of the program.⁶ As for the Opt-in Auction, RESA asserts that since CAP benefits could possibly be made portable that no CAP customer would be harmed through participation in the auction because they will receive a \$50 bonus and could switch service providers at any time.⁷ For their part, both Dominion/IGS and FES offer mere platitudes without evidence that all customers, including low-income customers, should participate in the competitive market and “obtain the cost-savings available in the retail marketplace.”⁸

PECO, while supporting its position that low-income CAP households should be excluded from participating in the competitive enhancements, asserts that there is no need for it to take additional steps to try to reach out to its confirmed low-income households who are not enrolled in CAP prior to enrolling any of these households in the Opt-in Auction and Customer Referral Programs.⁹

For the reasons set out more fully in Section IV.D., below, none of these arguments is sufficient to overcome the evidence presented by CAUSE-PA that low-income households – particularly those enrolled in CAP – are economically vulnerable and in need of sufficient protection from the instability of the competitive markets.

⁴ PECO Main Br. at 65-68.

⁵ OCA Main Br. at 85.

⁶ RESA Main Br. at 70.

⁷ RESA Main Br. at 80.

⁸ FES Main Br. at 33; Dominion/IGS Main Br. at 17.

⁹ PECO Main Br. at 68.

B. EGS Opt-In Competitive Offer Program

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

See Section IV.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.

2. Composition of Product Offer

See Section IV.D., below, for CAUSE-PA's position concerning 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. In addition to those discrete issues concerning low-income customers, CAUSE-PA fully supports the position advanced by the OCA that PECO's proposed 6-month contract term should be revised to reflect a 12-month term.¹⁰

3. Customer Participation Cap

See Section IV.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.

¹⁰ OCA Main Br. at 60-62.

4. Supplier Participation Load Cap

See Section IV.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 IV.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 three (3) notices be issued prior to the expiration of the program.¹¹ 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.¹²

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.

¹¹ See CAUSE-PA Main Br. at 12-13; OCA Main Br. at 70-74.

¹² OCA Statement No. 2 at 14.

C. EGS Standard Offer Program

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

See Section IV.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.

2. Composition of Product Offer

See Section IV.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 IV.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.¹³ While CAUSE-PA recognizes that this is not the position proposed by the OCA, CAUSE-PA believes that it is the proper position if the referral program is for twelve months as advanced by PECO. If, however, the Commission determines that a 12-month referral program is too lengthy and believes that a shorted referral program is warranted, CAUSE-PA

¹³ See Section V.B.5, supra

endorses the concept advanced by the OCA that participating customers who do not make an affirmative choice at the conclusion of the referral program should be returned to default service rather than remain with the EGS.¹⁴

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 IV.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.¹⁵ CAUSE-PA fully incorporates its arguments as set forth in its Main Brief as if set fully herein.¹⁶

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 on the EDC to do so."¹⁷ 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.

¹⁴ OCA Main Br. at 80-82.

¹⁵ CAUSE-PA Statement No. 1 at 34-35.

¹⁶ CAUSE-PA Main Br. at 14-15.

¹⁷ OCA Statement No. 2 at 16.

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

1. CAP Customer Participation

In its Main Brief, CAUSE-PA addressed at length its reasons for supporting PECO's decision to preclude CAP customers from participating in either the Retail Opt-in Auction or Customer Referral and fully incorporates those arguments as if they were fully set forth herein.¹⁸ None of the parties in favor of permitting CAP customers to participate in these retail market enhancements offers any evidence to refute that which was presented by CAUSE-PA.

For its part, RESA merely rehashes in its brief the flawed arguments presented through the testimony of Mr. Christopher Kallaher. For instance, RESA asserts that since PECO's CAP programs are designed so that a customer pays a percentage of his or her total bill, when a bill is lowered through participation in either the auction or referral programs, a CAP customer will pay less.¹⁹ This statement, while technically accurate, is ultimately a red herring and fails to address the core issue. PECO's CAP program is not a percentage of income program. It is therefore true that when electricity costs decrease the cost for a CAP customer decreases. However, the inverse is also true: when costs increase CAP bills increase. The problem with allowing CAP customers to shop is not what happens to their bills if electricity costs decrease, it is what happens if they increase and when they fluctuate from month-to-month, as can happen in variable rate contracts. It is the potential for harm to CAP customers as a result of rate increases or bill fluctuations which is the key issue.²⁰

¹⁸ See CAUSE-PA Main Br. at 16-23.

¹⁹ RESA Br. at 70.

²⁰ See CAUSE-PA Main Br. at 17-18.

RESA asserts that CAP customers should have the same freedom of choice to participate in the retail electric market, as well as to choose “value-added” products and services as others do.²¹ As to the latter point, there is no credible evidence in the record suggesting that CAP customers and other low-income households are attracted to value added products from their electricity supplier more than stable prices at least cost over time. More to the point, 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 PECO²² and, as such, they are intended by the Choice Act to receive special consideration and protection by the Commission.²³ CAP customers are enrolled in CAP precisely because they could not afford their full consumption bills. Neither they nor the other residential rate payers who pay for the CAP programs should be put in a position where CAP customers are paying more than they otherwise would pay on default service. The CAP program, like the other Universal Service programs, is a regulated program designed to assist low-income households produce a more affordable bill and works best when coupled with a rate structure that is also regulated and designed to produce electricity costs that over time are at least cost to customers.

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.²⁴ This model better addresses the rate stability that CAP households need than market forces operating on their own. Retail suppliers design their own mix of contracts based on their own judgments about customer preferences and then sell those

²¹ RESA Br. at 80.

²² See CAUSE-PA Main Br. at 17-18.

²³ 66 Pa. C.S. § 2802(9), (17).

²⁴ CAUSE-PA Statement No. 1-SR at 11.

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.²⁵ 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.

RESA also suggests that choosing electricity is no different than the other choices low-income households make everyday.²⁶ 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.²⁷ 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”).²⁸

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.²⁹ 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.

²⁵ See *supra* n. 3, Act 129 Final Rulemaking Order at 11-12.

²⁶ See RESA Br. at 80.

²⁷ See CAUSE-PA Statement No. 1 at 8-11.

²⁸ See 66 Pa. C.S. § 2802(9)-(10).

²⁹ 66 Pa. C.S. § 2804(9); 52 Pa. Code. § 54.73.

Similar to the arguments of RESA, neither Dominion/IGS nor FES points to any evidence suggesting reasons that CAP customers should participate in the proposed retail market enhancements; but rather, both parties merely suggest that they are ideologically inclined to allow CAP customers to shop.³⁰ The fact remains that there has been no evidence presented in this proceeding which effectively demonstrates how CAP customers benefit from participating in the retail electricity market or how it can be assured that CAP customers will not experience harm if they do so. No one benefits by CAP customers facing 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.

CAPs are one way these households are able to bridge the affordability gap between their income and life's essentials; they work best when tied to 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, consistent with the arguments presented by CAUSE-PA, PECO, and the OCA in their Main Briefs, 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.

In its Main Brief, PECO asserts that CAUSE-PA's proposal for additional screening for non-CAP, verified low-income households prior to these households participating in either of the Opt-in Auction of Customer Referral Program is "unwarranted" because of the potential for high

³⁰ See Dominion/IGS Br. at 17; FES Br. at 33.

costs and low rewards.³¹ As to the issue of costs, PECO has not quantified what it believes it would cost to implement Mr. Bertocci's proposals. As to PECO's assertion of purportedly "low-rewards", CAUSE-PA submits that for each of these almost 1200 households, enrollment in the CAP program would make a material difference to their ability to be able to continue to afford electric service.³²

In his testimony, Mr. Bertocci recommended 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.³³ 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 ineligible for CAP Rate, or decline participation in CAP Rate, should they be included in the pool of eligible customers.

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.

³¹ PECO Main Br. at 68.

³² CAUSE-PA Main Br. at 24.

³³ CAUSE-PA Statement No. 1 at 20.

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

As stated in its Main Brief, no evidence has been presented in this proceeding demonstrating that the Commission's decision that the costs of the Retail Market Enhancements should be borne by the participating EGSs' was mistaken.

1. EGS Opt-In Competitive Offer Program

See General Discussion in Section IV.F, above.

2. EGS Standard Offer Program

See General Discussion in Section IV.F, above.

3. Other Enhancements

See General Discussion in Section IV.F, above.

V. OTHER ISSUES

CAUSE-PA does not have any other issues to address.

IV. CONCLUSION

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;
- 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,

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