

**THE PENNSYLVANIA UTILITY LAW PROJECT  
118 LOCUST STREET  
HARRISBURG, PA 17101-1414**

**PATRICK CICERO, ESQUIRE  
PCICEROPULP@PALEGALAID.NET**

**PHONE: (717) 236-9486, EXT. 202  
FAX: (717) 233-4088**

October 5, 2012

Via E-Filing

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

**Re:**

**Petition of PPL Electric Utilities Corporation for Approval of its  
Default Service Program and Procurement Plan for the Period of  
June 1, 2013 through May 21, 2015.**

Docket Nos. P-2012-2302074

Dear Secretary Chiavetta:

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

Copies have been served according to the attached Certificate of Service.

Respectfully submitted,



---

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

BEEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Petition of PPL Electric Utilities Corporation for Approval of its  
Default Service Program and Procurement Plan for the Period of  
June 1, 2013 through May 21, 2015**

Docket Nos. P-2012-2302074

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the Main Brief of CAUSE-PA have been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

**VIA E-MAIL AND FIRST CLASS MAIL**

Hon. Susan D. Colwell  
Administrative Law Judge  
P.O. Box 3265  
Harrisburg PA 17105-3265  
[scolwell@pa.gov](mailto:scolwell@pa.gov)

Steven C. Gray, Esquire  
Office of Small Business Advocate  
300 North Second Street, Suite 1102  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)

Michael W. Hassell, Esquire  
David P. MacGregor, Esquire  
Matthew J. Agen, Esquire  
Post & Schell, P.C.  
17 North 2nd Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
[mhassell@postschell.com](mailto:mhassell@postschell.com)  
[dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)  
[matthewagen@postschell.com](mailto:matthewagen@postschell.com)

James A. Mullins, Esquire  
Erin Gannon, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
[jmullins@paoca.org](mailto:jmullins@paoca.org)  
[egannon@paoca.org](mailto:egannon@paoca.org)

Paul E. Russell, Esquire  
PPL Electric Utilities Corporation  
2 North Ninth Street  
Allentown, PA 18101  
[perussell@pplweb.com](mailto:perussell@pplweb.com)

Todd S. Stewart  
William E. Lehman  
Hawke, McKeon & Sniscak LLP  
100 N. 10th Street  
PO Box 1778  
Harrisburg, PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)  
[welehman@hmslegal.com](mailto:welehman@hmslegal.com)

Regina L. Matz, Esquire  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
PO Box 3265  
Harrisburg, PA 17105-3265  
[rmatz@pa.gov](mailto:rmatz@pa.gov)

Daniel Clearfield, Esquire  
Deanne M. O'Dell, Esquire  
Carl Shultz, Esquire  
Eckert Seamans Cherin & Mellot, LLC  
213 Market Street - 8<sup>th</sup> Flr.  
Harrisburg, PA 17101  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)

Divesh Gupta, Esquire  
Managing Counsel - Regulatory  
Constellation Energy  
111 Market Place, Suite 500  
Baltimore, MD 21202  
[divesh.gupta@constellation.com](mailto:divesh.gupta@constellation.com)

Charles E. Thomas, III, Esquire  
Thomas, Long, Niesen & Kinnard  
212 Locust St., Ste. 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[cet3@thomaslonglaw.com](mailto:cet3@thomaslonglaw.com)

Amy M. Klodowski, Esquire  
FirstEnergy Solutions Corporation  
800 Cabin Hill Drive  
Greensburg, PA 15601  
[aklodow@firstenergycorp.com](mailto:aklodow@firstenergycorp.com)

Brian J. Knipe, Esquire  
Buchanan Ingersoll and Rooney PC  
409 North Second Street, Suite 500  
Harrisburg, PA 17101-1357  
[brian.knipe@bipc.com](mailto:brian.knipe@bipc.com)

Pamela C. Polacek, Esquire  
Adelou Bakare, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
PO Box 1166  
Harrisburg, PA 17108-1166  
[ppolacek@mwn.com](mailto:ppolacek@mwn.com)  
[abakare@mwn.com](mailto:abakare@mwn.com)

Stephen L. Huntoon, Esquire  
Nextera Energy, Inc.  
801 Pennsylvania Ave NW  
Suite 220  
Washington, DC 20004  
[shuntoon@nexteraenergy.com](mailto:shuntoon@nexteraenergy.com)

Kenneth L. Mickens, Esquire  
316 Yorkshire Drive  
Harrisburg, PA 17111  
[kmickens11@verizon.net](mailto:kmickens11@verizon.net)

Melanie J. Elatieh, Esquire  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406  
[ElatiehM@ugicorp.com](mailto:ElatiehM@ugicorp.com)

Eric J. Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
[lechambon@comcast.net](mailto:lechambon@comcast.net)

**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for CAUSE-PA*



---

Patrick M. Cicero, Esq., PA ID: 89039  
Harry S. Geller, Esq., PA ID: 22415

Date: October 5, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PPL ELECTRIC UTILITIES :  
FOR APPROVAL OF ITS DEFAULT : DOCKET NO. P-2012-2302074  
SERVICE PROGRAM AND PROCUREMENT :  
PLAN FOR THE PERIOD OF JUNE 1, 2013 :  
THROUGH MAY 31, 2015 :**

---

**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](mailto:pulp@palegalaid.net)

October 5, 2012

**Table of Contents**

- I. Introduction..... 1
  - A. Summary and Statement of Position..... 1
  - B. Background Information and Procedural History..... 2
- II. Summary of Argument ..... 6
- III. Argument ..... 7
  - A. Legal Standards..... 7
    - 1. Burden of Proof..... 7
    - 2. Standards Applicable To Default Service..... 7
  - B. The Proposed Default Service Program..... 9
    - 1. Class Procurements..... 9
      - a) Residential - Fixed Rate..... 9
        - (1) Product Mixture..... 9
        - (2) Procurement Schedule..... 9
        - (3) Wholesale Supplier Load Cap..... 9
      - b) Small C&I - Fixed Rate ..... 9
        - (1) Product Mixture..... 9
        - (2) Procurement Schedule..... 9
        - (3) Wholesale Supplier Load Cap..... 10
      - c) Large C&I - Real-Time Hourly Rate ..... 10
        - (1) Product Mixture..... 10
        - (2) Procurement Schedule..... 10
        - (3) Wholesale Supplier Load Cap..... 10
      - d) Contract Terms Beyond May 31, 2015..... 10
      - e) AEPS Procurement ..... 10
        - (1) Transfer of AECs ..... 10
        - (2) Alternative Compliance Payment..... 10
      - f) Administrative Costs and Cash Working Capital ..... 10
    - 2. Rate Design..... 10
      - a) Residential and Small C&I Customer Classes - Fixed Rate Option..... 10
        - (1) Frequency of Rate Changes..... 10
        - (2) Hourly Priced Default Service for Small C&I Customers with Load Over 100 kW 11
      - b) Residential and Small C&I – Reconciliation..... 11

c)	Large C&I Customer Class – Rates .....	11
d)	Large C&I Customer Class – Reconciliation.....	11
e)	The Green Power Program.....	11
f)	Optional Monthly Pricing Service .....	11
g)	Price to Compare Calculation Date.....	11
h)	Recovery of Transmission and Other Related Charges .....	11
(1)	Costs to be Included in the TSC or GSC.....	11
(2)	Non-Bypassable Structure.....	11
(3)	Reconciliation.....	11
3.	Time of Use Rate Option .....	12
a)	Design .....	12
b)	Procurement .....	12
4.	Other Default Service Program Issues.....	12
a)	Supply Master Agreement and RFP Process and Rules .....	12
(1)	Revisions to the Supply Master Agreement.....	12
b)	Third-Party Manager.....	12
c)	RTO Compliance and Consistency.....	12
d)	Contingency Planning .....	12
e)	Additional Information to Wholesale Suppliers Regarding Shopping and Procurements.....	12
C.	Retail Market Enhancements and Customer Referral Programs .....	12
1.	New and Moving Customer Program .....	12
2.	Customer Referral Mailing .....	13
3.	Opt-In Auction / Aggregation Program Design.....	13
4.	Standard Offer Program Design.....	14
5.	Timing of the Retail Market Enhancements and Customer Referral Programs .....	14
6.	Cost Recovery for the Retail Market Enhancements and Customer Referral Programs	14
7.	CAP Customer Participation in the Retail Market Enhancements .....	15
D.	Additional Issues.....	24
1.	Issues for CAP Customers Currently Served by EGSs.....	24
2.	Proposed 5 mils/kWh Charge Added to Default Service Rates.....	25
3.	Requested Ruling Pursuant to 66 PA. C.S. § 2102.....	26
4.	Requested Waivers.....	26
IV.	Conclusion .....	26

## Table of Authorities

### Cases

<i>Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm’n.</i> , 578 A.2d 600.....	7
<i>See, Green Mountain Energy Company v. Pa. PUC</i> , 812 A.2d 740 .....	7
<i>Se-Ling Hosiery v. Margulies</i> , 70 A.2d 854 (Pa. 1950).....	7

### Statutes

2807 (e)(3.4) .....	7
66 Pa. C.S. § 1405(c) .....	26
66 Pa. C.S. § 2802 (10).....	1
66 Pa. C.S. § 2802(3).....	7
66 Pa. C.S. § 2804(9).....	25
66 Pa. C.S. §§ 2802(10).....	25
66 Pa. C.S. § 2802 (17).....	25
66 Pa. C.S. § 2807(e)(3.1) .....	7
66 Pa. C.S. § 2807(e) .....	2

### Other Authorities

<i>Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets</i> , Docket No. L 2009-2095604 (Final Rulemaking Order entered October 4, 2011).....	8
<i>Investigation of Pennsylvania’s Retail Market: Intermediate Work Plan</i> at Docket No. I-2011- 2237952.....	2
<i>Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval or Their Default Service Programs</i> , Docket Nos. P-2011-2273650 <i>et seq.</i> , Opinion and Order dated September 27, 2012.....	16
<i>Petition of PECO Energy Company for Approval of its Default Service Program II</i> , Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer .....	5
<i>Petition of Pike County Light &amp; Power Company for Approval of Its Default Service Implementation Plan</i> , Docket No. P-2011-2252042, (Opinion and Order entered May 24, 2012) .....	8
<i>See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval or Their Default Service Programs</i> , Docket Nos. P-2011-2273650 <i>et seq.</i> , Opinion and Order dated September 27, 2012.....	6

### Regulations

52 Pa. Code §§ 54.181 .....	7
52 Pa. Code §§ 69.1802 .....	8
52 Pa. Code. § 54.73 .....	25

## **I. Introduction**

### **A. Summary and Statement of Position**

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 Stephen R. Krone through his written testimony and accompanying exhibits. The evidence in the captioned proceeding demonstrates that low-income customer participation in PPL Electric Utilities’ (“PPL”) proposed retail enhancements does not comport with the requirements of the Electricity Generation Customer Choice and Competition Act (“Choice Act”), Pennsylvania Public Utility Commission (“Commission”) orders and policies. To the contrary, the evidence shows conclusively that low-income customers of PPL – particularly those enrolled in PPL’s Customer Assistance Program (“CAP”) known as OnTrack<sup>1</sup> – are economically vulnerable, merit distinct treatment and require significant protection not offered by or available within PPL’s proposed retail market enhancement proposal.

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 declaration of policy recognizes that direct access by low-income retail customers to the competitive generation market is conditioned upon ensuring that the affordability of electric service to economically vulnerable citizens is not diminished. The record in this proceeding indicates that PPL’s current process of permitting direct access to the competitive generation

---

<sup>1</sup> For the sake of consistency, the program will be referred to generically as CAP rather than specifically as OnTrack.

market by its CAP customers has resulted in a significant number of PPL CAP customers paying higher prices than they otherwise would have paid. The retail market enhancement plan proposed by PPL continues the failings of the current PPL CAP shopping model, fails to provide protections for low-income CAP customers that comport with the declared policy of the Choice Act addressing affordability of services, and should not be approved.

## **B. Background Information and Procedural History**

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.

On May 1, 2012, PPL filed a Petition for Approval of its Default Service Program and Procurement plan pursuant to Section 2807(e) of the Public Utility Code. The petition concerned PPL's default service procurement starting June 1, 2013, as well as various retail market enhancements proposed by PPL. The petition was published in the Pennsylvania Bulletin on May 19, 2012, with an Answer/Protest date of June 4, 2012. 42 Pa. B 2871.

In its Petition, PPL proposed two retail market enhancements that were of concern to CAUSE-PA. First, PPL proposed an Opt-in Auction Program in which all residential customers, including CAP customers, would be eligible to participate. Under this program, by early December 2013, participating electric generation suppliers (EGSs) will offer residential customers a 6-month, fixed-price product which is at least 5% less than the PPL price-to-compare effective December 1, 2012. Customers participating in the auction will also receive a

\$50 cash payment from the EGS who acquires the customer in the auction as long as the customer remains a customer of the EGS for three consecutive billing cycles. During the 6-month term, customers can switch to another EGS or back to default service without payment of a cancellation fee. At the end of the 6-month term, the customer would be permitted to return to default service or contract with a different EGS, but if the customer makes no selection, he or she would remain a customer of the EGS to which he or she was assigned for the auction period. The EGS would then be free to set the prices at which it will continue to serve these customers at any level it chooses so long as it provides the notices required by the Commission's regulations.

Second, PPL proposed that the Standard Offer Referral Program begin in mid-2014. This program would be targeted at residential customers on default service by offering a discount of 7% off the PPL price to compare in effect at the time of the offer.<sup>2</sup> This discount would last for a minimum of 4 months up to a maximum of 12-months depending on the offer made by the EGS. There would be no termination fee or penalty and the offer would be made to all customers calling PPL's call centers except calls for "emergencies, terminations, and similar circumstances where it might be deemed inappropriate."<sup>3</sup>

On June 4, 2012, CAUSE-PA filed a Petition to Intervene and an Answer to PPL's Petition raising concerns about its proposed retail market enhancements. Various other parties also filed petitions to intervene and/or an answer to PPL's Petition prior to the February 17, 2012 deadline.<sup>4</sup>

---

<sup>2</sup> PPL Statement No. 4 at 25-26.

<sup>3</sup> *Ibid.*

<sup>4</sup> A Notice of Appearance was filed by the Commission's Bureau of Investigation and Enforcement (I&E) on May 14, 2012. Notice of Intervention and Answer was filed by the Office of Consumer Advocate (OCA) on May 21, 2012, and by the Office of Small Business Advocate (OSBA) on June 4, 2012. Petitions to Intervene were filed by the Sustainable Energy Fund (SEF), Eric Joseph Epstein, UGI Energy Services d/b/a UGI Energy Link, Direct Energy

On June 6, 2012, a prehearing conference was held by the Honorable Susan D. Colwell, Administrative Law Judge, and a Scheduling Order was issued on June 7, 2012. In the Scheduling Order, ALJ Colwell 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 July 20, 2012. CAUSE-PA's written direct testimony, CAUSE-PA Statement No. 1, was filed by Stephen R. Krone and was accompanied by three exhibits pre-marked as Exhibits SRK-1 through SRK-3.

On August 17, 2012, PPL, along with other parties including the Retail Energy Supply Association ("RESA"), filed rebuttal testimony in response to the direct testimony filed by the all parties. Specifically relevant to the issues of concern to CAUSE-PA, PPL filed the rebuttal testimony by Douglass Krall, in which Mr. Krall responded to the Direct Testimony of RESA witness Mr. Christopher Kallaher and CAUSE-PA witness Mr. Krone. CAUSE-PA did not file rebuttal testimony.

On August 31, 2012, CAUSE-PA filed its written Surrebuttal Testimony which was labeled CAUSE-PA Statement No. 1-SR. In his Surrebuttal, Mr. Krone responded to the rebuttal testimony filed by RESA witness Kallaher, as well as PPL's Mr. Krall.

Hearings were held on September 7, 10-11, 2012. Limited oral rejoinder testimony and minor cross-examination of certain of the parties' witnesses occurred on these days. All parties waived cross-examination of CAUSE-PA's witness Mr. Krone. At the evidentiary hearing, ALJ

---

Services (Direct Energy), Retail Energy Supply Association (RESA), PP&L Industrial Customer Alliance (PPLICA), FirstEnergy Solutions Corp. (FES), Dominion Retail d/b/a Dominion Energy Solutions & Interstate Gas Supply, Inc. (Dominion/IGS), Constellation NewEnergy, Inc. and Exelon Generation Company, LLC, (collectively Constellation), NextEra Energy Resources, and Noble Americas Energy Solutions, LLC.

Colwell 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 SRK-1 through SRK-3 and CAUSE-PA Statement No. 1-SR. Through cross-examination of PPL witnesses Woodruff and Krall certain Interrogatory responses by PPL were also entered into the record. Those interrogatory responses were marked for identification purposes as CAUSE-PA cross-examination Exhibits # 1 through and including CAUSE-PA cross-examination exhibit # 6.

After the close of the record in this proceeding, on September 27, 2012, the Commission took two actions at its public meeting which have a bearing on the legal issues at stake here. First, the Commission conducted a binding poll on the issues presented in PECO's Default Service proceeding at Docket No. P-2012-2283641. While an Opinion and Order incorporating the results of the binding poll has not been issued at the time of the submission of this brief, it appears to be clear from the results of the poll that the Commission intends to resolve certain aspects of the retail market enhancements similarly for all EDCs. By way of example, a motion was made by Commissioner Pamela Witmer at the public meeting which substantially conforms the details of PECO's opt-in auction process with the opt-in auction process announced by the Commission in the First Energy Default Service Proceeding. *See Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer.

Second, at the September 27, 2012 public meeting the Commission issued an Opinion and Order which resolved various petitions for reconsideration that were filed by parties to the First Energy Companies' Default Service Proceeding. *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn*

*Power Company for Approval or Their Default Service Programs*, Docket Nos. P-2011-2273650 *et seq.*, Opinion and Order dated September 27, 2012.

## **II. Summary of Argument**

The PPL proposed retail market enhancements which continue its current CAP shopping policy do not comport with the requirements of the Choice Act or the Commission's orders and policies. To the contrary, an examination of the evidence in the captioned proceeding demonstrates that PPL's CAP shopping process is significantly flawed and that PPL CAP shopping policies are so complicated as to make an informed and knowledgeable venture into the competitive arena virtually impossible.

The evidence further demonstrates that low-income customers, particularly those enrolled in its 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 economic harm or the 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). This is evidenced most starkly by the fact that approximately 70% of PPL's CAP customers are paying more for service in the competitive market than they would have paid had they remained on default service<sup>5</sup> Accordingly, for the reasons set out more fully below, PPL's proposed market enhancements satisfy neither the intent nor requirements of Choice Act and should not be approved.

---

<sup>5</sup> CAUSE-PA Statement No. 1 at 16; CAUSE-PA Cross Examination Exhibits Nos. 5 & 6.

### **III. Argument**

#### **A. Legal Standards**

##### **1. Burden of Proof**

PPL has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking, 66 Pa. C.S. § 332(a), and must establish its case by a preponderance of the evidence, *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n.*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). To meet its burden of proof, PPL must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). In this case, PPL requests that the Commission approve the May 1, 2012 filing establishing the proposed DSP II.

##### **2. Standards Applicable To Default Service**

The Choice 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 Choice Act does not, however, require a specific default service rate design methodology. *Id.* Furthermore, the Choice 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 PPL’s default service portfolio, but rather concerns PPL’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. Thus, in considering whether PPL's default service plan can be approved, the ALJ must consider not only PPL's compliance with applicable default supply procurement principles, 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 PPL's proposed competitive retail enhancements. *See* IWP Final Order at 30-31; 43.

**B. The Proposed Default Service Program**

**1. Class Procurements**

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

*a) Residential - Fixed Rate*

**(1) Product Mixture**

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

**(2) Procurement Schedule**

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

**(3) Wholesale Supplier Load Cap**

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

*b) Small C&I - Fixed Rate*

**(1) Product Mixture**

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

**(2) Procurement Schedule**

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

**(3) Wholesale Supplier Load Cap**

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

**c) *Large C&I - Real-Time Hourly Rate***

**(1) Product Mixture**

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

**(2) Procurement Schedule**

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

**(3) Wholesale Supplier Load Cap**

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

**d) *Contract Terms Beyond May 31, 2015***

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

**e) *AEPS Procurement***

**(1) Transfer of AECs**

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

**(2) Alternative Compliance Payment**

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

**f) *Administrative Costs and Cash Working Capital***

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

**2. Rate Design**

**a) *Residential and Small C&I Customer Classes - Fixed Rate Option***

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

**(1) Frequency of Rate Changes**

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

**(2) Hourly Priced Default Service for Small C&I Customers with Load Over 100 kW**

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

***b) Residential and Small C&I – Reconciliation***

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

***c) Large C&I Customer Class – Rates***

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

***d) Large C&I Customer Class – Reconciliation***

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

***e) The Green Power Program***

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

***f) Optional Monthly Pricing Service***

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

***g) Price to Compare Calculation Date***

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

***h) Recovery of Transmission and Other Related Charges***

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

**(1) Costs to be Included in the TSC or GSC**

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

**(2) Non-Bypassable Structure**

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

**(3) Reconciliation**

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

**3. Time of Use Rate Option**

*a) Design*

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

*b) Procurement*

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

**4. Other Default Service Program Issues**

*a) Supply Master Agreement and RFP Process and Rules*

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

**(1) Revisions to the Supply Master Agreement**

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

*b) Third-Party Manager*

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

*c) RTO Compliance and Consistency*

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

*d) Contingency Planning*

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

*e) Additional Information to Wholesale Suppliers Regarding Shopping and Procurements*

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

**C. Retail Market Enhancements and Customer Referral Programs**

**1. New and Moving Customer Program**

See Section III.C.7., *infra*, 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 implementation of a New and Moving Customer Program.

## **2. Customer Referral Mailing**

See Section III.C.7., *infra*, 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 implementation of the proposed Customer Referral Mailing.

## **3. Opt-In Auction / Aggregation Program Design**

See Section III.C.7., *infra*, for CAUSE-PA's position on the eligibility of CAP Customers and other low-income customers for the Opt-in Aggregation Program. In that section, CAUSE-PA discusses in detail its general concerns about the program.

However, it bears noting in this section that 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.<sup>6</sup> It is important that this first notice regarding the expiration of the program come directly from PPL because the customer entered the program as a result of a mailing and/or other communications from PPL. Customers participating in the auction chose to enter the retail market as a result of a “push” from PPL and the Commission. They should 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

---

<sup>6</sup> OCA Statement No. 2 at 12-13.

customers receive the three notices as set forth by OCA witness Alexander.<sup>7</sup> 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.<sup>8</sup>

#### **4. Standard Offer Program Design**

See Section III.C.7., *infra*, for CAUSE-PA's position on the eligibility of CAP Customers and other low-income customers for the Standard Offer Program. In that section, CAUSE-PA discusses in detail its general concerns about the program, which include its program design concerns.

#### **5. Timing of the Retail Market Enhancements and Customer Referral Programs**

CAUSE-PA fully supports PPL's proposal to delay implementation of its Customer Referral Program until mid-2014.

#### **6. Cost Recovery for the Retail Market Enhancements and Customer Referral Programs**

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.

---

<sup>7</sup> *Ibid.*

<sup>8</sup> OCA Statement No. 2 at 14.

Additionally, the Commission has consistently found in both the First Energy DSP proceeding and the PECO DSP proceeding that the EGS should bear the costs of the opt-in aggregation program and the standard order referral programs. See *First Energy DSP Order* at 132; See also, *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 4. 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. 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, PPL, 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 PPL's customers.

## **7. CAP Customer Participation in the Retail Market Enhancements**

In its recent decision disposing of the various petitions for reconsideration filed in the *First Energy Default Service Proceeding*, the Commission stated the following in addressing CAUSE-PA's position:

We fully appreciate the economic vulnerability of the [First Energy Companies'] low-income customers that are participating in the CAP. To that end, we have undertaken another review of the testimony and arguments made by CAUSE and the OCA in the DSP II proceeding. We understand CAUSE's concerns that changes in the prices offered by a competitive supplier can have an effect on a CAP participant's current payment obligations and future CAP benefits. However, we continue to believe that on balance, it would cause a greater overall economic harm to CAP participants if we were to deny them access to the lower electric costs that may result from shopping in the competitive market. We emphasize that all participants will receive advance notice of any price changes and can leave the ROI Aggregation Program without penalty.

*Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650 *et seq.*, Opinion and Order dated September 27, 2012 at 24.

CAUSE-PA appreciates the level of attention paid to this issue by the Commission in prior proceedings, however, it submits that the interplay of PPL's CAP program with the competitive markets is unique and requires additional scrutiny. The positions advanced through the testimony of its witness, and more fully argued here, attempt to protect the economic interests of PPL's low-income customers in conformity with the intent and language of the Choice Act, are supported by the record in this proceeding, and are based on sound reasoning.

No party has contested the testimony submitted by CAUSE-PA concerning the economic vulnerability of PPL's confirmed low-income customers, and the testimony is worth reviewing. Households with incomes at or below 150% of the federal poverty guideline lack sufficient income to pay for all of their essential needs.<sup>9</sup> 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 like rent, food, and medicine may take precedence.<sup>10</sup> As discussed at length in CAUSE-PA's testimony, the service termination rate is 14.08% for PPL's confirmed low-income customers compared to 2.77% for all residential customers.<sup>11</sup> This means that confirmed low-income customers are slightly more than five times as likely as all residential customers to have their service terminated. This

---

<sup>9</sup> See CAUSE-PA Statement No 1 at 5-8 (discussion of the difficulty of low-income households paying for essential needs).

<sup>10</sup> Ibid.

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

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. This is particularly true of customer enrolled in PPL’s CAP program.

Generally, PPL’s CAP program provides for a discounted bill for payment troubled, low-income ratepayers whose household incomes are at or below 150% of the federal poverty income guidelines and also provides the benefit of allowing these households to have their pre-CAP program arrearages frozen and forgiven over time through payment of on-time, in-full CAP payments over a period of years.<sup>12</sup> According to information presented by PPL in discovery, as of May 31, 2012, PPL had 35,121 active CAP accounts.<sup>13</sup>

Throughout this proceeding, CAUSE-PA has taken the position that PPL’s CAP competitive shopping program is arcane and complex to a degree which renders informed shopping virtually impossible. Further, the PPL CAP shopping model is structured in a manner so that that PPL’s CAP customers would not materially benefit from the proposed Opt-in Aggregation and/or Customer Referral Programs. This position is based on the evidence in this proceeding that many CAP customers would not see the 5% savings that have been promised in the aggregation program nor the 7% savings promised in the referral program because of the manner in which CAP customers’ payments are calculated, a fact validated by PPL in response to CAUSE-PA’s discovery requests.<sup>14</sup> To understand why this is the case, it is essential to examine the manner by which PPL shares savings and costs in its CAP.

---

<sup>12</sup> CAUSE-PA Statement No. 1 at 9.

<sup>13</sup> CAUSE-PA Cross Examination Exhibit # 1.

<sup>14</sup> See CAUSE-PA Cross Examination Exhibit # 6.

PPL CAP customers who choose a competitive supplier must incur shopping savings of \$5 per month for non-heating electric customers and savings of \$10 per month for customers who heat with electricity.<sup>15</sup> The same is true for shopping losses, i.e., customers who choose a supplier with a price higher than the PPL PTC will not bear this cost if it is less than \$5 per month for non-heating electric customers or \$10 per month for customers who heat with electricity. However, even assuming that a customer reaches the \$5/\$10 savings thresholds, all savings above those levels are shared at a ratio of 60:40 with 60% of the savings benefitting PPL customers who pay for CAP through PPL's Electric Universal Service Rider and 40% of the savings benefitting the CAP participant.<sup>16</sup>

Thus, assuming a product with a 5% discount off the PPL price to compare with a 4-month term,<sup>17</sup> PPL's non-electric heating CAP participants would have to have a total consumption bill of more than \$100 per month in order for the \$5 threshold to be crossed, and a PPL CAP heating customer would have to have a total consumption bill of more than \$200 per month in order for the \$10 threshold to be crossed. Even if a PPL's CAP customer's bill were to exceed these amounts, thus enabling them to reap actual savings, PPL's 60:40 savings ratio ensures that, *at best*, an CAP customer participating in the auction would see only 40% of the 5% savings within the program – or approximately 2% off the price to compare – and then only if their total consumption bill for any given month were to exceed \$100 (non-electric heating) or \$200 (electric heating). This process creates only the illusion of 5% savings for the most vulnerable and least sophisticated customer. Furthermore, if a CAP participant's monthly bills

---

<sup>15</sup> *Id.* at Attachment 1, page 2.

<sup>16</sup> *Ibid.*

<sup>17</sup> PPL has proposed a 6-month term; however, it seems readily apparent that the Commission seeks uniformity in the design of the aggregation programs throughout Pennsylvania EDCs as it has ordered both the First Energy Companies and PECO to enact 4 month aggregation products at 5% less than the PTC followed by an 8-month fixed rate product.

do not exceed these \$100/\$200 thresholds, they will see no savings in a given month. The same general principal is at work with the customer referral program. These customers, at best, receive only 40% of the 7% of savings that is in excess of the applicable thresholds each month. CAUSE-PA is concerned that there is no meaningful way to adequately explain this to CAP participants who seek to participate in the aggregation and/or customer referral programs, and this is one of the reasons why CAUSE-PA submits that CAP customers should not participate in these programs.<sup>18</sup>

The second reason that CAP customers should be excluded from the Opt-in Auction is based upon what occurs at the end of the auction period. At the end of the auction term, CAP customers who do not affirmatively elect to switch back to default service would remain customers of the winning EGS to which they were assigned at a variable rate month-to-month contract or another contract agreed to by the CAP customer and the EGS. It is likely that the cost of service will increase significantly for these customers. In fact, according to the information provided by PPL in discovery, **more than 73% of its CAP customers who are currently being served by an EGS are being charged a higher price than PPL's price to compare.**<sup>19</sup>

Respectfully, CAUSE-PA submits that the actual result of shopping for PPL CAP customers does not comport with the Commission's belief and expectations expressed in its September 27, 2012 Opinion and Order in the *First Energy DSP* proceeding ruling on the various petitions for reconsideration that "it would cause a greater overall economic harm to CAP participants if we were to deny them access to the lower electric costs that may result from shopping in the competitive market." *First Energy DSP Reconsideration Order* at 24. The fact is, in the PPL CAP shopping program, more than 70% of PPL's CAP customers who are

---

<sup>18</sup> See CAUSE-PA Statement No. 1 at 16.

<sup>19</sup> CAUSE-PA Statement No. 1 at 16; CAUSE-PA Cross Examination Exhibits Nos. 5 & 6

participating in the competitive market are **not** experiencing lower electric costs or economic benefit from participating in the competitive market. This is a significant concern because like its formula for sharing savings associated with CAP customers receiving service from an electric generation supplier, PPL has established thresholds for increased costs as well. If an CAP customer selects a supplier whose price results in a bill that is more than \$5 higher per month for non-electric heating customers and more than \$10 per month for electric heating customers then the CAP customer must pay **all** of the difference as a part of his or her CAP bill.<sup>20</sup>

Thus, unlike the scenario in which a CAP customer must share at a ratio of 60:40 any reaped savings with non-CAP customers, in the case of increased rates, CAP customers are required to **bear the entire increase** in costs if and when those costs exceed the monthly thresholds. It is in no one's interest for CAP households to be paying more for energy than they absolutely must pay. CAP is a program that is designed, in accord with the Choice Act, to achieve affordability for households who have a demonstrated inability to afford utility services at full-tariff rates. To subject these household to economic loss as a result of participation in PPL's CAP shopping program undermines the objectives of the Act, makes no sense and is very likely to lead to increased unpaid bills and loss of service.

Furthermore, in the event that, post-auction, a CAP customer's monthly bill is not in excess of the \$5/\$10 threshold required for the CAP customer to bear the full amount of the increased costs, **non-CAP ratepayers**, through PPL's universal service programs, would bear these costs by way of increased costs in the universal service rider. This too is undesirable and should not be sanctioned by the Commission. Just as CAP customers should not have their CAP

---

<sup>20</sup> CAUSE-PA Cross Examination Exhibit No. 6, Attachment 1 at 2.

bills increased by higher supplier charges, non-CAP customers should not have their universal service costs increased unnecessarily.

To its credit, PPL recognized in the midst of this proceeding that this is a serious problem. In his surrebuttal testimony, PPL witness Douglas A. Krall stated that “[t]he Company is concerned that the large number of [CAP customers who are] ‘ineffective shoppers’ may result in a net increase in program costs and burden to other non-CAP ratepayers that could otherwise be avoided.”<sup>21</sup> Later in this testimony, Mr. Krall went further, stating:

As a practical matter, the Company does not, at this time have enough understanding of the program, its implications, and potential solutions to propose a course of action. The Company believes that its next Universal Services Review (scheduled for 2013) and the subgroup working within the context of the Retail Markets Investigation to address universal service issues are more appropriate places to address this issue. **However, the Company is concerned that encouraging additional shopping among the OnTrack population at this time may be unwise given the problems that have been identified.**<sup>22</sup>

In written rejoinder, Mr. Krall clarified these statements. In written rejoinder, Mr. Krall stated:

PPL Electric is concerned that OnTrack customer may be ineffective shoppers, and this may either result in these customers failing to comply with OnTrack payment rules or increasing costs to non-CAP residential customers who pay the costs of CAP shortfalls. Thus while the Company still supports allowing OnTrack customers to participate in the market enhancement programs, the Company proposes to not “market” the programs to OnTrack participants until there is a further examination of the issue either in the context of the Commission’s CAP working group in the RMI or PPL Electric’s next Universal Services review. Specifically, this means that the Company would not mail material regarding the Retail Opt-in Auction to OnTrack participants and would not offer the Standard Offer Referral Program to OnTrack customers who initiate contact with the Company through a Customer Service Representative.<sup>23</sup>

---

<sup>21</sup> PPL Statement No. 4-SR at 14:12-15.

<sup>22</sup> PPL Statement No. 4-SR at 15:8-16 (emphasis added).

<sup>23</sup> PPL Statement No. 4-RJ at 2:9-21.

CAUSE-PA certainly supports the decision by PPL not to market these programs to CAP participants and agrees that there is much that is yet to be learned as to why 73% of PPL's CAP customers who are shopping are, in fact, not paying lower prices but instead higher prices than PPL's price to compare. That said, CAUSE-PA does not believe that PPL's proposed course of action goes far enough. Based on the evidence of economic vulnerability presented in this proceeding coupled with the admission that the vast majority of CAP customers are not benefitting from the competitive market, CAUSE-PA submits that until PPL reforms its CAP shopping program, the Commission should determine that retail market enhancements not be offered to PPL CAP customers.

The fact situation presented by the PPL CAP shopping program is significantly different than in the situation presented in *First Energy DSP Proceeding* in which the Commission expressed the belief that CAP customers may benefit from participation in the competitive market. In the case at hand, the facts demonstrate that CAP customers who have participated in the PPL CAP shopping model have been tangibly harmed. Customers on CAP have already demonstrated that they are low-income and payment troubled. PPL has designed a CAP program that is supposed to account for these factors by designing a payment structure the CAP customers can afford based on their past payment history and their income level. Subjecting these customers to higher prices after these determinations have been made will undoubtedly lead to more defaults by these customers and, at minimum, higher costs for non-CAP ratepayers who subsidize CAP credits.

Furthermore, CAUSE-PA disagrees with the assertion that it is only a loss of CAP participation which produces harm. Harm may occur incrementally. For economically vulnerable low-income CAP customers without elasticity of budget, incremental harm may make

the difference between being able to afford electric service or not. CAUSE-PA submits that, **given the evidence in this case**, there is an insufficient basis to reach the conclusion that CAP customers will benefit through their participation in the proposed retail market enhancements, and, to the contrary, a sufficient basis to conclude that these customers will suffer economic harm by virtue of the diminution of their benefits. Accordingly, CAUSE-PA respectfully submits that they should be precluded from participating in these programs.<sup>24</sup>

However, in the alternative, if the Commission is inclined to take a similar approach to that taken in the First Energy and PECO proceedings, than it should defer CAP customer participation in these programs until at least January 1, 2014,<sup>25</sup> and direct PPL to work with the Office of Competitive Market Oversight (OCMO), low-income advocates and the OCA to develop an effective means of permitted CAP customers to receive electric service from an EGS.<sup>26</sup>

---

<sup>24</sup> The fact that participants in the auction will be eligible to receive a \$50 bonus is insufficient to make up for all of the disadvantages discussed earlier. This amount is simply not enough to mitigate the potential long-term negatives to having these customers risk paying more than the otherwise would have to pay, especially given that participants will be guaranteed a lower rate for only 6 months and then only if it exceeds the applicable thresholds discussed above.

<sup>25</sup> This date would be consistent with the date by which PECO has been required to modify its CAP program to accommodate CAP customers' selection of an EGS.

<sup>26</sup> In the PECO DSP proceeding, the Commission directed PECO to coordinate only with OCMO. CAUSE-PA respectfully submits that if the Commission is inclined to take a similar approach to that which was taken in PECO, the Commission should direct PPL to work not only with OCMO, but also low-income advocates and the OCA both of whom can provide insight into this process that would be missed without their participation. While OCMO has a breadth of experience concerning the operation of the competitive markets, the integration of CAP benefits with those markets, as well as the ancillary yet essential issues such as the effective integration of LIHEAP benefits for low-income households, would benefit from a discussion with a broader audience.

## **D. Additional Issues**

### **1. Issues for CAP Customers Currently Served by EGSs**

In addition to the issue of whether PPL's CAP customers who are currently on default service should not participate in the retail market enhancements, CAUSE-PA put forward that those CAP customers who are currently being served by an EGS should gradually be transitioned back to default service.<sup>27</sup> Despite recent Commission decisions to the contrary, CAUSE-PA continues to believe that there are good reasons why PPL's CAP customers are better served on default service than through the competitive market. It has not been demonstrated that the competitive market can adequately address the unique needs of PPL's CAP customers. For its part, PPL has four different CAP structures that it utilizes depending on the CAP participants particular needs.<sup>28</sup> The effect of higher or lower commodity prices through service by an EGS will be different depending into which of these CAP structures a CAP customer is placed. This is true even if one were to control for the cost/savings benefit sharing structure that PPL has in place for CAP customers who shop.

The reality is that PPL's CAP is a regulated product that is designed to ensure that a low-income payment troubled customer has an affordable bill. While it is true that PPL currently permits its CAP customers to receive service from an electric generation supplier, **the evidence in this proceeding demonstrates that** PPL's CAP customers see almost no benefit from this switching and face the very real possibility of paying increased costs. CAUSE-PA submits that there is no reason why the Commission should continue a situation in which 73% of PPL's CAP shopping customers are paying more than PPL's price to compare.

---

<sup>27</sup> PPL Statement No. 1 at 19-20.

<sup>28</sup> CAUSE-PA Statement No. 1 at 9.

CAUSE-PA recognizes that the Commission is committed to transitioning Pennsylvania's electric market into a more robust market for competitive electric supply. In reaching this end, however, the Commission must be mindful that 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.

## **2. Proposed 5 mils/kWh Charge Added to Default Service Rates**

In his Direct Testimony, RESA witness Christopher Kallaher has proposed that PPL 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.<sup>29</sup> 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 S. Hahn and OSBA witness Robert D. Knecht that this cost recovery mechanism is arbitrary, unreasonable and impermissible under applicable sections of the Public Utility Code.<sup>30</sup> Additionally, PPL itself suggests that this mechanism of cost recovery is

---

<sup>29</sup> RESA Statement No. 2 at 40-41.

<sup>30</sup> See OCA Statement No. 1-R at 7-8; OSBA Statement No. 2 at 13-14

inappropriate because in its judgment “it will have no cost to be recovered through the proposed 5 mill/kWh charge.”<sup>31</sup> Thus, for the reasons more fully articulated by the witnesses presented by PPL, the OCA, and the OSBA, RESA’s proposed 5 mill per kWh adder should be rejected.

**3. Requested Ruling Pursuant to 66 PA. C.S. § 2102**

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

**4. Requested Waivers**

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

**IV. Conclusion**

Low-income customers make up a significant portion of PPL’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, and this is particularly true of low-income households who are enrolled in PPL’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 PPL’s CAP customers who have run out of options for keeping current on their bills. Moreover, 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.

To that end, prior to approval of PPL’s plan the Commission should adopt the following:

---

<sup>31</sup> PPL Statement No. 1-R at 15:5-6.

- PPL CAP customers should be excluded from participation in the Retail Opt-in Auction and Customer Referral Programs;
- In the alternative, if CAP customers are to be included in the market enhancement proposals they should not be so included until January 1, 2014 at the earliest and the Commission should direct PPL to work with OCMO, the low-income advocacy community, and the OCA to develop an effective means of permitting CAP customers to receive electric service from an EGS without diminution of their CAP benefits;
- All of the retail market enhancements should be paid for by participating EGSs; and,
- Confirmed 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 Programs.

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](mailto:pulp@palegalaid.net)

October 5, 2012