

**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**

December 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 Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) to the Recommended Decision of Administrative Law Judge Susan D. Colwell dated November 15, 2012.

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 Exceptions 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).

BY E-MAIL ONLY

Office of Special Assistants
Ra-OSA@pa.gov

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

Michael W. Hassell, Esquire
David P. MacGregor, Esquire
Matthew J. Agen, Esquire
Post & Schell, P.C.
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101-1601
mhassell@postschell.com
dmacgregor@postschell.com
matthewagen@postschell.com

Paul E. Russell, Esquire
PPL Electric Utilities Corporation
2 North Ninth Street
Allentown, PA 18101
perussell@pplweb.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

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

Erin Gannon, Esquire
Tanya McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
egannon@paoca.org
tmcloskey@paoca.org

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

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Carl Shultz, Esquire
Eckert Seamans Cherin & Mellot, LLC
213 Market Street - 8th Flr.
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
cshultz@eckertseamans.com

Divesh Gupta, Esquire
Managing Counsel - Regulatory
Constellation Energy
111 Market Place, Suite 500
Baltimore, MD 21202
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

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corporation
800 Cabin Hill Drive
Greensburg, PA 15601
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

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

Stephen L. Huntoon, Esquire
Nextera Energy, Inc.
801 Pennsylvania Ave NW
Suite 220
Washington, DC 20004
shuntoon@nexteraenergy.com

Kenneth L. Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111
kmickens11@verizon.net

Melanie J. Elatieh, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
ElatiehM@ugicorp.com

Eric J. Epstein
4100 Hillsdale Road
Harrisburg, PA 17112
lechambon@comcast.net



Patrick M. Cicero

Date: December 5, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
for Approval of a Default Service Program and : **Docket Nos. P-2012-2302074**
Procurement Plan for the Period of June 1, :
2013 through May 31, 2015 :

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

**TO THE RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
SUSAN D. COLWELL**

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

December 5, 2012

Table of Contents

I.	Introduction.....	1
II.	Exceptions.....	5
	A. Exception # 1: The ALJ’s Recommended Decision incorrectly stated that low-income CAP customers who participate in the proposed Standard Offer Referral Program would receive 50% of the 7% savings, it should have stated that these customers would receive 40% of the 7% savings.....	5
	B. Exception # 2. The ALJ’s decision to refer the issues of PPL’s CAP customers to the RMI’s Universal Service Working group is in error because the working group has not been delegated with this investigative authority, is inactive and has been rendered moot by recent Commission Orders.	6
	1. The Universal Service Working Group is inactive and without the authority to adequately protect PPL’s CAP customers.	6
	2. The Commission should defer PPL’s CAP customers’ participation in either the Opt-in Auction or Referral Programs until the Commission conducts a thorough investigation to determine the protections required to prevent further harm to PPL’s CAP customers.	7
III.	Conclusion	10

I. Introduction

By Secretarial Letter dated November 15, 2012, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge Susan D. Colwell in the Petition of PPL Electric Utilities Corporation (PPL) for approval of its default service program for the period beginning June 1, 2013 through May 31, 2015.

In its Petition, PPL proposed two retail market enhancements that were of concern to the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (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, 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. 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.¹ 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."²

The effect of these two proposals on the ability of low-income customers to maintain and afford utility service was a focal point of CAUSE-PA in this litigation and received considerable attention by the parties and the ALJ. In her RD, the ALJ made the following findings of fact based on the evidence presented:

108. PPL Electric's low-income customers are economically vulnerable. CAUSE-PA Stmt. 1 at 3, 8.
109. As many as 73% of OnTrack, the Company's customer assistance program (CAP) customers being served by an EGS are being charged a higher price than the PTC. CAUSE-PA Stmt. 1 at 16; Appendix B, PPL Response to CAUSE-PA Interrogatory, Set I, Nos. 5 & 6.
110. Approximately 12% of PPL's residential customers have been confirmed by PPL as low-income. CAUSE-PA Stmt. 1 at 5.
111. Non-CAP residential customers pay the CAP shortfall, which is the difference between the full bill and the CAP customer's unique required payment. If OnTrack customers' full bill responsibility increases, the CAP shortfall increases. PPL Electric Stmt. 4-SR at 11-15; CAUSE Stmt. 1 at 13.
112. If CAP customers receive benefits that are not reflected in the determination of their required payment, non-CAP customer cost responsibility would be higher than necessary to provide an affordable bill payment for CAP customers. Tr. 106.
113. If OnTrack customers' required payments are unaffordable, they will default and likely face service termination. PPL Electric Stmt. 4-SR at 13-14.

¹ PPL Statement No. 4 at 25-26.

² *Ibid.*

114. OnTrack customers have been eligible to shop since the beginning of customer choice in the PPL Electric service territory. PPL Electric Stmt. 4-R at 7.
115. The Company has put in place billing protocols that provide for a sharing of the costs and benefits of shopping by OnTrack participants. These protocols are designed to encourage efficient shopping by OnTrack customers by increasing their required payment if they take more expensive service from an EGS while allowing them to receive a share of savings from shopping, while providing a share of shopping savings to the non-CAP residential customers that pay the CAP shortfall. PPL Electric Stmt. 4-R at 8.
116. A CAP customer participating in the Standard Offer Referral program would see only 50% of the 7% savings in the program. CAUSE-PA Stmt. 1 at 15.
117. A CAP customer participating in the auction would see only 40% of the 5% savings within the program. CAUSE-PA Stmt. 1 at 15.
118. The savings to CAP customers within the auction will occur only if their total consumption bill for any given month were to exceed \$100 for non-electric heating or \$200 for electric heating customers. CAUSE-PA Stmt. 1 at 15.
119. If a 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. CAUSE-PA Stmt. 1 at 17; Appendix B, PPL Response to CAUSA-PA Interrogatory, Set I, No. 10, Attachment 1.
120. A CAP customer must bear the entire cost of a rate increase if it exceeds the monthly thresholds. CAUSE-PA Stmt 1 at 17.

R.D. at Findings of Fact ¶¶ 108-120. In addition to these findings of fact, the ALJ extensively discussed the evidence presented in this case and, after reviewing the testimony and evidence reached the following conclusions which are material to CAUSE-PA's exceptions:

According to CAUSE witness Krone, the issue is whether the participation of OnTrack participants in either of the proposed retail market enhancements subject them to harm, i.e., loss of benefits? The answer is an unequivocal yes.

(R.D. at 132)

Pennsylvania utility customers are privileged to have strong, determined and vigilant advocates to protect their rights, especially the rights of the low-income citizens. Through their diligence, the issues which impact the at-risk members of society have been brought to light for examination. **To this end, the Commission has established a subcommittee of the RMI group to thoroughly investigate whether additional protections should be implemented for this group of consumers. Until the result of that investigation is known, the low-income customers of this utility should be treated like other customers and be permitted to participate in the program.**

(R.D. at 134 (emphasis added).)

As discussed more fully below, CAUSE-PA files two exceptions to the Findings of Fact and conclusions reached by the ALJ. First, there is a misstatement in the Finding of Fact at paragraph 116 which reads that “[a] CAP customer participating in the Standard Offer Referral program would see only 50% of the 7% savings in the program.” R.D. at Finding of Fact ¶ 116 (citing CAUSE-PA Stmt. 1 at 15.) The correct finding, based on the evidence in the record, is that a CAP customer participating in the Standard Offer Referral Program would see only **40%** of the 7% savings in the program.

Second, in her R.D., the ALJ determined that CAP customers should be treated like other customers and be permitted to participate in the retail market enhancement programs “until the result of [the PUC’s Retail Market subcommittee on CAP customer shopping] is known.” (R.D. at 134.) CAUSE-PA submits that in light of the record developed in this proceeding that PPL’s low-income CAP customers are being economically harmed as a result of their participation in the competitive market, coupled with the absence of authority, activity, or future meaningful activity of this subgroup, the ALJ’s reliance on the retail market subcommittee on CAP customer shopping to thoroughly investigate whether additional protections should be implemented for this group of consumers is in error.

Instead, the Commission should take steps to protect the financial interests of low-income CAP customers by deferring their further participation in the retail electric market and develop a thorough and meaningful process to determine whether long-term protections can be established to, at the very least, ensure that CAP customers do not continue to pay more than the price to compare for electric service.

II. Exceptions

- A. Exception # 1: The ALJ's Recommended Decision incorrectly stated that low-income CAP customers who participate in the proposed Standard Offer Referral Program would receive 50% of the 7% savings, it should have stated that these customers would receive 40% of the 7% savings.**

In the R.D., ALJ Colwell correctly identified that due to the manner in which PPL calculates the allocation of savings when a CAP customer participates in the competitive electric market, CAP customers participating in the proposed Standard Offer Referral Program would not receive the full 7% of savings below the price to compare as would other customers. However, in paragraph 116, the ALJ incorrectly stated that CAP customers would receive 50% of these savings rather than only 40% of savings. The only evidence presented in this case on this issue was presented by CAUSE-PA witness Steven Krone who testified as follows regarding the Standard Offer Referral Program:

CAP customers . . . would **not** receive 7% savings automatically, but instead only receive those savings if they generated \$5 per month in savings for non-electric heating customers and \$10 per month for electric heating customers, and only then would they receive *40% of the 7%* of savings rather than the full 7%.

(CAUSE-PA Statement No. 1 at 22:20-23:3 (emphasis in original).) This is consistent with the percentage level of savings that CAP customers would receive if they participate in the Opt-in Auction program, as well as PPL's general policy to require its CAP customers to share at a

40:60 ratio savings achieved through shopping. (*See* CAUSE-PA Statement No. 1 at 15:9-18.)

CAUSE-PA submits that the misstatement contained in paragraph 116 should be corrected to reflect that CAP customers participating in the Standard Offer Referral Program would at best receive 40% of the promised 7% savings.

B. Exception # 2. The ALJ's decision to refer the issues of PPL's CAP customers to the RMI's Universal Service Working group is in error because the working group has not been delegated with this investigative authority, is inactive and has been rendered moot by recent Commission Orders.

1. The Universal Service Working Group is inactive and without the authority to adequately protect PPL's CAP customers.

In the R.D., ALJ Colwell thoroughly reviewed the evidence and positions of the parties concerning whether CAP customers should participate in the proposed Opt-in Auction and Customer Referral Program. (*See* R.D. at 128-134.) Despite reaching the conclusion that CAP customers have been harmed by participating in the competitive market, (R.D. at 132), the ALJ determined that the ultimate resolution of CAP customers participating in the proposed market enhancement programs should be left to the Universal Service working group established by the Commission:

[T]he Commission has established a subcommittee of the RMI group to thoroughly investigate whether additional protections should be implemented for this group of consumers. Until the result of that investigation is known, the low-income customers of this utility should be treated like other customers and be permitted to participate in the program.

(R.D. at 134).

To the best of CAUSE-PA's knowledge, the RMI Universal Service subgroup was never charged by the Commission with the responsibility of conducting such an investigation and has not conducted such an investigation. In fact, the subgroup has been inactive and any work product from the workgroup which may have been anticipated is no longer to be expected and

has been rendered moot by recent Commission action. At best, the hope of this group was that stakeholders could identify and highlight the challenges which come with the interaction of CAP and the competitive electric market. As the Commission stated:

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.

Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, March 2, 2012, Final Order at 43.

The group never got very far off the ground. More recently, in the PECO DSP proceeding, the Commission has signaled that it intends to move forward without significant input of stakeholders (other than PECO) in designing a CAP program that can effectively be portable. *See Petition of PECO Energy Company for Approval of its Default Service Program* at Docket No. P-2012-2283641 (Nov. 21, 2012 Opinion and Order Granting in part and denying in part CAUSE-PA's Motion for Reconsideration). As such, while the ALJ in good faith referred the important issues of CAP customer participation to a working group, the working group to which she referred either never had the authority or purpose to which it was attributed by the ALJ and it has not actively addressed the cause of CAP customer harm and necessary protections. As such, CAUSE-PA submits that this decision constitutes error in light of the well-developed record of tangible harm to PPL's CAP customers based on their participation in the retail electric market.

- 2. The Commission should defer PPL's CAP customers' participation in either the Opt-in Auction or Referral Programs until the Commission conducts a thorough investigation to determine the protections required to prevent further harm to PPL's CAP customers.**

This proceeding produced a well-developed record of tangible harm to PPL's CAP customers who have already participated in the competitive market, yet low-income households are devoid of any guidance, let alone assurance, that CAP customers will be protected. In fact, we now know that they are and will continue to be harmed absent some action by the Commission. To wit:

- more than 73% of CAP customers who have participated in the competitive electric market are (or were at one point) paying more than the PPL price to compare (R.D., Finding of Fact ¶ 109);
- that there is no meaningful way for PPL or others to adequately explain the shared savings at a 40:60 ratio that PPL imposes on its CAP customers (R.D. at 130-31);
- that PPL CAP customers participating in the Opt-in Auction will receive only 2% of the savings rather than 5% of the savings (R.D. Finding of Fact ¶ 117); and,
- that PPL CAP customers participating in the Customer Referral Program will receive only 2.8% of the savings (40% of 7%) not the full 7% of savings, (R.D., Finding of Fact ¶116).

Thus, not only is there undisputed evidence that PPL's CAP customers are in fact being economically harmed by their participation in the retail electric markets, even when eligible for programs sponsored by the Commission they are significantly less advantaged than non-CAP customers because they will receive a significantly reduced discount.

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 participating in the competitive market are **not** experiencing lower electric costs or economic benefit from participating in the competitive market.

Moreover, 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 the overwhelming majority of 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.

It is not just the loss of CAP participation itself 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 the Commission should first act to create and authorize a meaningful and concrete process to determine the corrections which must be made to PPL's CAP shopping policy prior to expanding participation through the retail market enhancements.

Furthermore, since PPL CAP customers who currently shop are being harmed, as well as non-CAP customers who subsidize the cost of the economic loss of more costly shopping determinations, CAUSE-PA believes that it is only reasonable that the Commission defer any further CAP customer shopping until the results of the thorough investigation is concluded and appropriate corrections have been made.

If the Commission is inclined to take a similar approach to that which it has taken in the PECO DSP proceeding, it should defer CAP customer participation in these programs until at least January 1, 2014,³ direct PPL to work with the Office of Competitive Market Oversight (OCMO) and then with low-income advocates and the OCA to develop an effective means of permitting PPL CAP customers to receive electric service from an EGS without risk of economic harm.

III. Conclusion

CAUSE-PA respectfully requests that the Commission grant its exceptions for the reasons outlined more fully above. The evidence in this proceeding shows that a significant number of low income CAP shopping customers are being harmed by their participation in retail electric market. This harm should not continue.

In absence of a meaningful Universal Services subgroup which was relied upon by the ALJ, the most prudent means to protect additional low-income CAP customers is to defer CAP

³ 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.

customers from participating in either of the retail market enhancements until a meaningful investigation is conducted which establishes measures and the integration of the reasonable consumer protections intended to enable CAP customers to participate in the competitive market without incurring economic harm.

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

December 5, 2012