

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

PATRICK M. CICERO, ESQUIRE
PCICEROPULP@PALEGALAID.NET

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

December 17, 2012

Via E-Filing

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

Re:

**Petition of Duquesne Light Company for Approval of its Default
Service Program**

Docket Nos. P-2012-2301664

Dear Secretary Chiavetta:

Enclosed please find the Reply to Exceptions filed by the Coalition for Affordable Utility Services and Energy Efficiency (CAUSE-PA) in the captioned case copies of which will be served in accordance with the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,



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

CC: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for Approval of its Default Service Program Docket Nos. P-2012-2301664

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing letter 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 ONLY

Office of Special Assistants: ra-OSA@pa.gov

VIA E-MAIL AND FIRST CLASS MAIL

Honorable Katrina Dunderdale
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Michael W. Gang, Esquire
Anthony D. Kanagy, Esquire
Post & Schell, P.C.
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101-1601

Krycia M. Kubiak, Esquire
Assistant General Counsel
Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219

Charles Daniel Shields, Senior Prosecutor
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265

Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

Jennedy S. Johnson, Esquire
David T. Evrard, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923

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

Vincent A. Parisi, Esquire
IGS Energy
5020 Bradenton Avenue
Dublin, OH 43017

Gary A. Jeffries, Esquire
Assistant General Counsel
Dominion Retail, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817

Charles E. Thomas, III, Esquire
Thomas T. Niesen, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
PO Box 9500
Harrisburg, PA 17108-9500

Brian J. Knipe, Esquire
Buchanan Ingersoll and Rooney PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357

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

Brian R. Greene, Esquire
The Greene Firm, PLC
707 East Main Street
Suite 1025
Richmond, VA 23219

Victor P. Stabile, Esquire
Dilworth Paxton LLP
112 Market Street, 8th Floor
Harrisburg, PA 17101

Stephen L. Huntoon, Esquire
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W., Suite 220
Washington, DC 20001

Pamela C. Polacek, Esquire
Teresa K. Schmittberger, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166

Theodore S. Robinson, Esquire
Citizen Power Inc.
2121 Murray Avenue
Pittsburgh, PA 15217

Divesh Gupta, Esquire
Constellation Energy Group, Inc.
100 Constellation Way, Suite 500C
Baltimore, MD 21202

Stephen Bennett, Esquire
Director, State Government Affairs - East
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348

Brian Kalcic
Excel Consulting
Suite 720-T
225 S. Meramec Avenue
St. Louis, MO 63105



Date: December 17, 2012

Patrick M. Cicero
Counsel for CAUSE-PA

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 Katrina L. Dunderdale to the Petition of Duquesne Light Company (Duquesne or Company) for approval of its default service program for the period beginning June 1, 2013 through May 31, 2015. In her R.D., the ALJ ruled on all of the issues presented, including the issue of whether low-income customers of Duquesne who were enrolled on the Customer Assistance Plan (CAP) should participate in the proposed retail market enhancements. Judge Dunderdale concluded that there were too many unanswered questions about CAP portability and the integration of CAP with the retail market, and ultimately affirmed Duquesne's decision, which was supported by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), that CAP customers should not participate in these programs "until such time as the Commission sets rules and procedures about the portability of CAP discounts."¹

Various parties filed Exceptions to ALJ Dunderdale's Recommended Decision, including the Retail Energy Supply Association (RESA). CAUSE-PA did not file Exceptions, but through its counsel at the Pennsylvania Utility Law Project, hereby files this Reply to Exception number 16 of RESA. In its sixteenth exception, RESA excepts to ALJ Dunderdale's determination that there remain many unanswered questions concerning how to effectively make CAP benefits portable while maintaining affordability and not running afoul of federal LIHEAP law, and in light of these questions, CAP customers should not be among the customer eligible for the two retail market enhancement programs offered by Duquesne.

¹ R.D. at 159.

In this reply, CAUSE-PA submits that the Commission should deny RESA's Exception No. 16. ALJ Dunderdale properly concluded that it would be "imprudent and inappropriate" to include the Company's Customer Assistance Plan (CAP) customers either the opt-in auction or customer referral programs. (R.D. at 159.) As articulated more fully below, CAUSE-PA submits that the ALJ's decision to preclude CAP customers from participating in the proposed retail market enhancements was a well reasoned, sound legal judgment that should be upheld.

II. Reply to Exception

A. The ALJ properly concluded that Duquesne's CAP customers should not be included in either the opt-in auction or customer referral program, thus, the Commission should deny RESA's Exception No. 16.

In the R.D., the ALJ thoroughly reviewed the evidence presented in the proceeding and reached the following conclusion concerning Duquesne Light's CAP customer participation in the market enhancement programs:

I recommend approving Duquesne Light's proposal to preclude CAP customers from participation in the RME Programs until such time as the Commission sets rules and procedures about the portability of CAP discounts. In addition, there is need to ascertain how to move these CAP discounts to the EGSs without running afoul of federal provisions in the LIHEAP program. In this proceeding, the Company agreed it needs to develop a plan to make CAP customer benefits portable by January 1, 2014, but this plan is more likely to happen earlier, especially if the Company is permitted to make the IT transitions sequentially as it proposes. Because many questions and concerns remain about whether and how to move CAP discounts to an EGSs (especially when EGSs are not considered "vendors" as the federal provisions define that term), it is imprudent and inappropriate to permit CAP customers to participate in these programs.²

This decision was supported by ample evidence in the record demonstrating that CAP customers would be subject to harm – as that term has been defined by the Commission to mean a total loss of CAP benefits – through their participation in either of the retail market

² R.D. at 159.

enhancements. In response to discovery requests sent by CAUSE-PA, Duquesne explained that although CAP customers are technically allowed to shop for an alternate supplier, the supplier would have to separately bill the CAP customer and, to date, no supplier is able to do so.³ Even if a supplier were to offer separate or dual billing, however, CAUSE-PA introduced uncontested testimony that CAP customers would be harmed by such an arrangement. For instance, under Duquesne's currently stated model, if a supplier were to offer a CAP customer a lower rate than the price to compare, accompanied by dual billing, the CAP customer could shop. This would create a host of complications with CAP customers accessing other services such as LIHEAP.

LIHEAP is a federally-funded block grant program administered on the Federal level by the U.S. Department of Health and Human Services Administration for Children and Families. In Pennsylvania, the block grant allocation is administered by the Department of Public Welfare ("DPW") pursuant to a State Plan that is submitted each year to HHS. The LIHEAP State Plan specifically excludes the possibility that an EGS can be a LIHEAP vendor. It states, in defining the term "vendor":

Vendor – An agent or company that directly distributes home-heating energy or service in exchange for payment. The term *does not include* landlords, housing authorities, hotel managers or proprietors, rental agents, *energy suppliers or generators*, and other parties who are not direct distributors of home-heating energy or service.

Under the restructuring statute, the distribution companies are the suppliers of last resort; they remain regulated, and must comply with the State's winter termination rules. The interests of the Commonwealth's low-income customers are best served and protected by sending the LIHEAP payment to the distribution companies.⁴

Given that an EGS cannot be a direct recipient of LIHEAP grants, a low-income

³ See CAUSE-PA Statement No. 1, Appendix B, Appendix B, Duquesne Response to CAUSE-PA Interrogatories Set I, No. 3.

⁴ State Plan at Appendix B, § 601.3, Definition of Vendor (emphasis added).

customer who chooses an EGS which utilizes dual billing would not be able to have his or her LIHEAP grant applied to his or her full energy bill. Instead, the LIHEAP grant could only be applied to the Duquesne bill for distribution services. A dual billing customer who has remained current on his Duquesne distribution bill would have no way to utilize a LIHEAP Cash grant to eliminate the risk of default on EGS bills which have remained unpaid. This is unacceptable and would violate the intent of the LIHEAP program which is to assist low-income households in paying for home heating during the winter months.

Furthermore, Duquesne and the ALJ both noted that there are many unanswered questions concerning CAP portability. For instance, there are currently no effective means of permitting CAP customers to shop while balancing the needs of those customers to maintain affordability and appropriate consumer protections without first requiring Duquesne to “implement complex procedures and tracking mechanisms” which would be both difficult and expensive.⁵ In her R.D., the ALJ noted that “there is a need to ascertain how to move these CAP discounts to the EGSs without running afoul of federal provisions in the LIHEAP program.”⁶ Based on the record established in this proceeding, the ALJ’s decision to preclude CAP customers from participating in the retail electric market is best deferred “until such time as the Commission sets rules and procedures about the portability of CAP discounts.”⁷ RESA’s exception No. 16 should be denied.

⁵ See Comments of Duquesne Light Company on Universal Services filed March 7, 2012 at Docket No. I-2011-2237952; Appendix B, Duquesne Response to CAUSE-PA Interrogatories Set I, No. 16.

⁶ R.D. at 159.

⁷ R.D. at 159.

III. Conclusion

Low-income households have no budget elasticity. When faced with the prospect of higher electric costs – even paying only marginally more for only a short period of time – this additional cost is often the difference between remaining current on their bills or falling behind. This is an unacceptable risk for CAP customers, the Commission, and for other residential customers. The ALJ recognized these realities in her well-reasoned Recommended Decision to preclude CAP customers from participating in either of the retail market enhancements. The Commission must ensure that any changes made by Duquesne in its effort to develop a CAP program that will effectively allow its customers to receive service by an EGS will do so without a diminution in the benefits to CAP customer. For all of the foregoing reasons, CAUSE-PA respectfully requests that the Commission review the evidence on the issues discussed in these Replies to Exceptions and to adopt the positions advanced herein.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
*Counsel for the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania
(CAUSE-PA)*



Harry S. Geller, Esq., PA ID: 22415
Patrick M. Cicero, Esq., PA ID: 89039
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

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