



COMMONWEALTH OF PENNSYLVANIA

July 26, 2013

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Petition of PECO Energy Company for Approval of its Default Service Program (Customer Assistance Program Shopping Plan)
Docket No. P-2012-2283641**

Dear Secretary Chiavetta:

I am delivering for filing today the Main Brief, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

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

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

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Assistant Small Business Advocate
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cc: Parties of Record

Brian Kalcic

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for : Docket No . P-2012-2283641
Approval of Its Default Service Program :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Main Brief, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for :
Approval of Its Default Service Program : Docket No. P-2012-2283641
(Customer Assistance Program Shopping :
Plan) :**

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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**For: John R. Evans
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Dated: July 26, 2013

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I. INTRODUCTION

The Office of Small Business Advocate (“OSBA”) initially anticipated limited to no participation in the proceeding to allow Customer Assistance Program (“CAP”) customers of PECO Energy Company (“PECO” or “the Company”) to shop. Because customer assistance programs like PECO’s are exclusively for residential customers, small business customers typically have no interest at stake. The OSBA intended simply to monitor this phase of PECO’s default service proceeding. However, when Direct Energy Services, LLC (“Direct Energy”) proposed that the costs of PECO’s plan for CAP customers to shop should be recovered from *all* distribution customers, not just residential customers, the OSBA was compelled to object. Such a proposal is not only inequitable, it is also inconsistent with the policy and precedent of the Pennsylvania Public Utility Commission (“Commission”), as well as PECO’s Commission-approved retail market enhancement (“RME”) cost recovery mechanism. Commission policy, with limited exceptions that do not apply here, is that CAP costs be allocated only to the customer class whose members are eligible to participate in the program, *i.e.*, residential customers. The OSBA is submitting this brief on the single issue of allocation of CAP costs and urges the Commission to reject Direct Energy’s proposal.

II. PROCEDURAL HISTORY

On January 13, 2012, PECO filed a petition seeking approval of its proposed second Default Service Program to secure default service supply for the Company’s customers for the period from June 1, 2013 through May 31, 2015 (“Default Service Proceeding”).

The Commission entered an Opinion and Order on October 12, 2012 in the Default Service Proceeding that, among other things, directed PECO to develop a plan to allow its CAP

customers to purchase generation supply from electric generation suppliers (“EGSs”) by January 1, 2014 (“CAP Shopping Plan”).

On November 8, 2012, the Commission issued a Tentative Order at a separate docket considering PECO’s proposed Universal Services Three Year Plan for 2013-2015 (“Universal Services Proceeding”), seeking comments on PECO’s CAP Shopping Plan.

In a Secretarial Letter issued on January 3, 2013, at both the Default Service Proceeding and Universal Services Proceeding dockets, the Commission stated its intent to adopt a Final Order on the Three Year Plan by April 4, 2013, and directed PECO to file a plan on or around May 1, 2013, which would allow CAP customers to begin shopping on April 1, 2014.

On May 1, 2013, PECO filed a Petition and supporting direct testimony requesting that the Commission enter an Order: (1) approving the proposed CAP Shopping Plan; (2) approving the proposed changes to the Company’s Electric Tariff and Electric Generation Supplier Coordination Tariff (the “Supplier Tariff”) to implement the Plan and achieve full and current recovery of Plan costs; (3) granting a waiver of the quarterly reconciliation provisions of the Commission’s regulations (52 Pa. Code §§ 54.187(i) and (j), to the extent necessary, to implement an annual reconciliation of the over/under collection component of the Generation Supply Adjustment (“GSA”) for residential customers; and (4) approving a short delay in the commencement date of the Plan from April 1, 2014, to April 15, 2014, to accommodate the Company’s information technology (“IT”) programming and integrated software schedule.

This matter has been assigned to Administrative Law Judge (“ALJ”) Cynthia Williams Fordham who issued a Prehearing Order on May 16, 2013, scheduling a telephonic prehearing conference on May 28, 2013.

Answers to the Petition were filed on May 21, 2013, by the Office of Consumer Advocate (“OCA”), Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN”), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”).

The OSBA filed a prehearing memorandum on May 23, 2013, indicating its intent to participate in this proceeding. Prehearing memoranda were also filed by PECO, OCA, TURN, CAUSE-PA, Direct Energy, Interstate Gas Supply (“IGS”), and First Energy Solutions Corporation (“FES”).

Certain parties to PECO’s Default Service Proceeding indicated that they did not intend to participate in the CAP Shopping Plan phase of the proceeding and were removed from the service list; however, no parties withdrew their appearance.

At the Prehearing Conference, a procedural schedule was agreed upon and the same discovery modifications and protective order approved in the Default Service Proceeding were adopted in the instant proceeding, as memorialized in Prehearing Order No. 2 issued on June 13, 2013.

Non-Company Direct Testimony was filed by OCA, CAUSE-PA, and Direct Energy on June 12, 2013. Rebuttal Testimony was filed by PECO, OCA, CAUSE-PA, and the OSBA (OSBA Statement No. 4, the Rebuttal Testimony of Brian Kalcic) on June 26, 2013. Surrebuttal Testimony was filed by PECO, OCA, and CAUSE-PA on July 2, 2013.

The evidentiary hearing scheduled for July 10, 2013, was cancelled due to limited cross-examination. On July 11, 2013, a hearing was held for the limited purpose of admitting testimony and exhibits of the parties into the record.

This Main Brief is being filed pursuant to the procedural schedule set forth in Prehearing Order No. 2.

III. ARGUMENT – RECOVERY OF CAP SHOPPING PLAN COSTS

PECO has estimated that the cost to implement its proposed CAP Shopping Plan will be approximately \$4.6 million.¹ PECO is proposing to recover \$300,000 in customer education costs from residential customers through the current Customer Education Charge (“CEC”).² The remaining costs are to be recovered in a manner consistent with the recovery mechanism approved by the Commission for the costs associated with the Standard Offer Program (“SOP”). PECO proposes to recover 50% from EGSs through a 0.3% POR discount (includes CAP Shopping Plan and SOP costs) and 50% from residential distribution customers through the non-bypassable Universal Services Fund Charge (“USFC”).³

A. Direct Energy’s Proposal is Inconsistent With Commission-Approved Retail Market Enhancement Cost Recovery

Direct Energy’s witness Christopher H. Kallaher disagrees with PECO’s cost recovery proposal. Mr. Kallaher proposes that costs of the CAP Shopping Plan should not be recovered from EGSs, but rather from *all* distribution customers through a non-bypassable charge.⁴ Mr. Kallaher’s rationale in support of this position is that “the expansion of shopping opportunities to CAP customers produces societal benefits that inure to all, not just EGSs,” and that “all customers benefit from the varied products and services offered by an increasing participation of

¹ Petition at 11.

² *Id.*

³ *Id.*

⁴ Direct Energy Statement No. 1 at 10.

suppliers wanting to play in a vibrant and growing marketplace.”⁵ Mr. Kallaher clarified further which customer class, or classes, he believes should be responsible for CAP Shopping Plan costs in response to OSBA-I-1(a), stating that “all distribution customers” means “all rate classes taking distribution service, including residential, commercial and industrial customers.”⁶

However, this position is inconsistent with the RME cost recovery proposal Mr. Kallaher sponsored in the Default Service Proceeding at this same docket on behalf of the Retail Energy Supply Association (“RESA”). In earlier rebuttal testimony, Mr. Kallaher recommends that “the costs of the auction and other retail market enhancements should be recovered through a non-bypassable charge *applied to all customer classes eligible for those enhancements.*”⁷

Direct Energy acknowledges that PECO’s commercial and industrial customers are not eligible for PECO’s CAP Shopping Plan.⁸ Unlike residential customers, who may become eligible if their future income levels change, there is no possible way for a non-residential customer to qualify for CAP benefits or participate in the CAP Shopping Plan. Unlike the position he took with respect to RME cost recovery, Mr. Kallaher has proposed that even *ineligible* customer classes be subject to a non-bypassable charge to recover the costs of the CAP Shopping Plan. Mr. Kallaher has offered no additional evidence or arguments from those offered with respect to recovery of RME costs to support applying a non-bypassable charge to all customer classes rather than only eligible customer classes. Moreover, the Commission has already rejected proposals to recover 100% of RME costs from even eligible customer classes in

⁵ Direct Energy Statement No. 1 at 10.

⁶ OSBA Statement No. 4 at 1-2, attaching OSBA-I-1(a).

⁷ *Id.* at 2, quoting RESA Statement 2-R at 16 (emphasis added).

⁸ *Id.* at 3, citing Direct Energy response to OSBA-I-1(b).

the Default Service Proceeding and has approved an RME cost recovery mechanism consistent with the one PECO has proposed for CAP Shopping Plan costs.

B. Direct Energy's Proposal is Inconsistent With Commission Policy and Precedent on Recovery of CAP Costs

Allocation of CAP Shopping Plan costs to all customer classes, as proposed by Direct Energy, would be inconsistent with long-standing Commission policy and precedent.⁹ In the generic proceeding on cost recovery and other issues related to universal service and energy conservation programs, the Commission unanimously adopted a joint motion sponsored by Commissioners Fitzpatrick and Pizzingrilli. In approving that motion, the Commission specifically disagreed with the staff and voted to continue the policy of allocating CAP costs to the only customer class whose members are eligible to participate in the program, *i.e.*, residential customers.¹⁰

Further, in adopting the aforementioned motion, the Commission specifically disagreed with the OCA's interpretation of legislative intent regarding recovery of CAP costs from business customers.¹¹ While acknowledging that there are a few exceptions in which CAP costs are recovered from customers other than the residential class, the Commission recognized that none of the exceptions constitutes legal precedent because each involves a settlement or, in the

⁹ See, e.g., *Pa. PUC v. PPL Gas Utilities Corporation* at Docket No. R-00061398 (Order entered February 8, 2007), *Pa. PUC v. Valley Energy, Inc.* at Docket No. R-00049345 (Order entered April 21, 2005), *Petition of National Fuel Gas Distribution Corporation Requesting: 1) Permission to Expand Participation in Low Income Residential Assistance (LIRA) Rate, 2) Permission to Revise Rates Charged Under the Existing LIRA Rate, and 3) Permission to Implement a Funding Mechanism to Provide Recovery of Costs of the Variable Discount for the Expanded LIRA Program*, Docket No. P-00021945 (Order entered March 28, 2002), *Application of Equitable Gas Company for Approval of Natural Gas Choice and Competition Act Restructuring Filing*, Docket No. R-00994784 (Order entered July 18, 2002), *Pa. PUC, et al. v. Columbia Gas Co.*, Docket No. R-901873, et al. (Order entered October 31, 1991), *Pa. PUC v. Equitable Gas Company*, Docket No. R-901595 73, (Order entered November 21, 1990).

¹⁰ *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, Joint Motion of Commissioners Terrance J. Fitzpatrick and Kim Pizzingrilli, at 7 (adopted October 19, 2006).

¹¹ *Id.* at 7, fn 15.

case of PGW, a mechanism that was constructed prior to the Commission's having jurisdiction over the utility.¹² Finally, the Commission referred to its ruling regarding PPL Electric Utilities Corp., in which the Commission held that "[u]niversal service programs [such as CAP], by their nature are narrowly tailored to the residential customers and therefore, should be funded only by the residential class."¹³ In the PPL Electric proceeding, the Commission placed the burden of proof squarely on the proponent advocating for the allocation of CAP costs beyond the residential class requiring "concrete evidence" of the benefits of CAP to non-residential customers.¹⁴

Direct Energy has attempted to justify the recovery of CAP Shopping Plan costs from non-residential customers by arguing that all customers benefit from such a plan and therefore all customer classes should bear the costs. However, Direct Energy has provided no studies or quantitative analysis of the benefits other classes allegedly receive from the CAP Shopping Plan. Therefore, it has not provided any compelling reason to overturn Commission precedent on the recovery of CAP costs. Direct Energy's cost recovery proposal should be rejected.

¹² *Id.* at 7.

¹³ *Id.*, citing *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order entered December 22, 2004).

¹⁴ *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-00049255 at 98.

IV. CONCLUSION

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein.

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