

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

HARRY S. GELLER, ESQUIRE
HGELLERPULP@PALEGALAID.NET

PHONE: (717) 236-9486, EXT. 211
FAX: (717) 233-4088

August 9, 2013

RE: Petition of PECO Energy Company for Approval :
of its Default Service Program CAP Shopping Plan : P-2012-2283641

Via E-Filing

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

Dear Secretary Chiavetta

Enclosed please find the Reply Brief filed on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") in the above referenced proceeding. Electronic and hard copies have been sent to the parties consistent with the attached certificate of service.

Should you have any question or concerns about this filing please do not hesitate to contact the undersigned.

Respectfully submitted,



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

CC: Hon Cynthia W. Fordham
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for Approval :
of its Default Service Program CAP Shopping Plan : P-2012-2283641

Certificate of Service

I hereby certify that I have this day served copies of CAUSE-PA Reply Brief via Email and US Postal Service First Class Mail upon the statutory parties and counsel of record in the captioned matters as set forth below in accordance with the requirements of 52 Pa. Code § 1.54:

Romulo L. Diaz, Jr., Esquire
Anthony E. Gay, Esquire
Jack R. Garfinkle, Esquire
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101
romulo.diaz@exelon.com
anthony.gay@exelon.com
jack.garfinkle@exelon.com

Thomas P. Gadsden, Esquire
Kenneth M. Kulak, Esquire
Brooke E. McGlinn, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
kkulak@morganlewis.com
tgadsden@morganlewis.com
Counsel for PECO

Elizabeth Rose Triscari, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
etriscari@pa.gov

Carrie B. Wright, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265
carwright@pa.gov

Tanya J. McCloskey, Esquire
Candis A. Tunilo, Esquire
Christy M. Appleby, Esquire
Amy Hirakis, Esquire
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
cappleby@paoca.org
ctunilo@paoca.org

Thomas McCann Mullooly
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
tmullooly@foley.com
sdzieminski@foley.com
**Counsel for Exelon Generation Co.,
LLC and Exelon Energy Company**

Divesh Gupta, Esquire
Constellation Energy
111 Market Place
Suite 500
Baltimore, MD 21202
divesh.gupta@constellation.com
**Representing Constellation New Energy
and Constellation Energy Group**

Andrew S. Tubbs, Esquire
Post & Schell
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
atubbs@postschell.com
Representing PPL EnergyPlus LLC

Scott Debroff, Esquire
Rhoads & Sinon LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
sdebroff@rhoads-sinon.com
Representing Washington Gas Supply

Stephen L. Huntoon, Esquire
NextEra Energy, Inc.
801 Pennsylvania Avenue, NW
Suite 220
Washington, DC 20004
shuntoon@nexteraenergy.com
**Representing NextEra Services PA
LLC & NextEra Energy Power Marketing
LLC**

Jeffery J. Norton, Esquire
Carl Shultz, Esquire
Eckert, Seamans, Cherin & Mellott LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
jnorton@eckertseamans.com
Representing ChoosePA Wind.com

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Edward Lanza, Esquire
Eckert Seamans Cherin & Mellott LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
elanza@eckertseamans.com
**Representing RESA and
Direct Energy Services, LLC**

Melanie Santiago-Mosier
Washington Gas Energy Service, Inc
13865 Sunrise Valley Drive, Suite 200
Herndon, VA 20171
mmosier@wges.com
Counsel for Washington Gas Energy Services, Inc.

Dated: August 9, 2013

Josie Pickens, Esquire
Thu B. Tran, Esquire
Robert W. Ballenger, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
ttran@clsphila.org
Representing TURN, et al

Todd S. Stewart, Esquire
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17105-1778
tsstewart@hmslegal.com
**Representing Dominion Retail, Inc. &
Interstate Gas Supply Inc.**

Amy E. Hamilton, Esquire
Noel Trask, Esquire
Exelon Business Services Co.
300 Exelon Way
Kennett Square, PA 19348
amy.hamilton@exeloncorp.com
Representing ExGen

Brian Knipe, Esquire
First Energy Solutions Corp
76 S. Main St.
Akron, Ohio 44308
Amy M. Klodowski, Esquire
First Energy Solutions Corp
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergy.com
bknipe@firstenergy.com
Representing First Energy Solutions Corp

Joseph Clark, Esquire
Direct Energy Services, LLC
Manager, Government & Regulatory Affairs
21 East State Street, 19th Floor
Columbus OH 43215
Joseph.clark@directenergy.com
Counsel for Direct Energy


Harry S. Geller

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY 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

August 9, 2013

Table of Contents

I.	INTRODUCTION	1
II.	ARGUMENT	2
A.	The PECO CAP Shopping Plan requirement that CAP suppliers provide rates to CAP customers below PECO’s Price to Compare (“PTC”) should be Approved.	2
1.	The PECO CAP Shopping Plan requirement that CAP suppliers provide rates to CAP customers below PECO’s Price to Compare (“PTC”) is reasonable.	2
2.	The PECO CAP Shopping Plan requirement that CAP suppliers provide rates to CAP customers below PECO’s Price to Compare (“PTC”) is legal.	3
3.	The PECO CAP Shopping Plan requirement that CAP suppliers provide rates to CAP customers below PECO’s Price to Compare (“PTC”) is good public policy.	5
B.	CAP customers are distinct from and require specific protection within the retail electric market as compared to other electric customers;	6
C.	PECO’s reporting requirements are reasonable, should not be reduced and should be publically available.	8
D.	PECO should monitor and enforce the requirements it imposes upon an EGS as a requirement of being a CAP Supplier.	9

I. INTRODUCTION

On July 26, 2013, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, filed its Main Brief in which it argued that the evidence in the captioned proceeding demonstrates that PECO Energy Company (“PECO”) Customer Assistance Program (“CAP”) eligible customers (1) are distinct from and require specific protection within the retail electric market as compared to other electric customers; (2) Universal Service Programs, which include CAP, have been designated by the Electricity Generation Customer Choice and Competition Act (“Choice Act” or “Competition Act”) and the Commission to provide affordable utility service to low-income consumers within the retail electric market; (3) PECO has been required by the Commission to design a CAP Shopping Plan in which CAP customers are able to both participate within the retail electric market and continue to receive affordable electric service; and (4) whether CAP customers remain default service customers or whether they receive generation service from an EGS their bills must be set and maintained at an affordable level. In sum, CAUSE-PA asserts that PECO’s CAP Shopping Plan while it must allow CAP customers to enter the competitive retail electric market, must also fully comply with the universal service provisions of the Competition Act, Commission Policy Guidelines and PECO CAP Orders which tie the affordability of electric service to a CAP customer’s ability to pay for that service.

CAUSE-PA submits this Reply Brief in opposition to the arguments advanced in the main brief of Direct Energy Services, LLC (“DE”). that CAP shopping customers should be treated no differently from other customers, that PECO’s proposal to require CAP suppliers to provide rates below PECO’s Price to Compare (“PTC”) should be rejected, and that Supplier

reporting requirements be reduced; as well as in opposition to the argument advanced by PECO that it not be required to monitor and enforce the requirements its Plan imposes upon suppliers.

II. ARGUMENT

A. The PECO CAP Shopping Plan requirement that CAP suppliers provide rates to CAP customers below PECO's Price to Compare ("PTC") should be approved.

1. **The PECO CAP Shopping Plan requirement that CAP suppliers provide rates to CAP customers below PECO's PTC is reasonable.**

PECO, the Office of Consumer Advocate ("OCA") and CAUSE-PA have demonstrated through testimony and brief the need for PECO to design a CAP Shopping Plan which conforms with PECO's CAP design model, allows CAP customers to shop, is consistent with the requirements of the Choice Act and Commission Policy to maintain affordable electric costs and maximum energy burdens for low-income customers, and which would control CAP costs for non-CAP customers. In order to achieve these goals, PECO has proposed within its plan a requirement that CAP suppliers provide rates to CAP customers below PECO's Price to Compare ("PTC".) PECO, the OCA and CAUSE-PA each support this requirement as striking an appropriate balance of enabling CAP customers to shop while at the same time addressing the needs of CAP customers and of non-CAP residential customers. Each of these parties have provided abundant and compelling reasons within Testimony and Brief for its inclusion in the Plan and for its approval. DE stands alone in opposing this requirement.

CAUSE-PA submits that the arguments as presented in PECO's Main Brief at 13-19 provide substantial support for the reasonable nature of this provision within the plan and for its approval.

2. The PECO CAP Shopping Plan requirement that CAP suppliers provide rates to CAP customers below PECO's PTC is legal.

In support of its position that the PECO CAP Shopping Plan requirement that CAP suppliers provide rates to CAP customers below PECO's Price to Compare ("PTC") is illegal, DE argues that the Competition Act does not give the Commission authority to regulate the prices charged by an EGS. It cites 66 Pa C.S. § 2802. The Declaration of Policy of the Electricity Generation Customer Choice and Competition Act.¹ This argument is flawed for two essential reasons. It fails to provide a full and accurate representation of the declared policies and requirements of the Competition Act in regard to low-income customers and to CAP customers in particular and secondly, it incorrectly characterizes PECO's requirement as regulating the prices an EGS may charge.

The Competition Act, while opening the markets to electric competition, concurrently provided that low-income consumers be afforded essential protections within that competitive market. To this end the Act includes provisions relating to universal service in order to ensure that utility service remains available to all customers in the Commonwealth.

The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service; and the responsibility to ensure that the means to achieve the affordability of electric service is appropriately funded and available in each electric

¹ DE Brief at 7.

distribution territory is placed upon the Commission.² 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.³ Thus, any plan which allows PECO's CAP customers to receive service from an EGS must continue to "tie the affordability of electric service to a customer's ability to pay for that service" through "policies, practices and services that help low income customers maintain utility service." Not only is PECO's proposal that CAP suppliers provide rates to CAP customers below PECO's PTC legal within the context of the Competition Act, it is essential.

Secondly, neither PECO nor the Commission would be controlling or regulating the rates that an EGS may charge. The PECO plan would simply define the requirements by which an EGS may choose to be designated a CAP supplier. PECO has determined these requirements in accord with the requirements of the Competition Act and Commission CAP policies which it is obligated to follow as the default service provider. An EGS, however, unlike PECO, is under no obligation or requirement to serve this group of customers. The EGS may opt to walk away or it may opt to be designated as a CAP supplier. It is a business determination which any EGS may freely make. The fact is however, that when an EGS chooses to serve CAP customers it must recognize that current protections for those customers, including price affordability and maximum energy burdens must be maintained. An EGS is not obligated to serve CAP customers; however, when should it chooses to do so, it may not pick and choose among those protections essential to maintain affordable service.

² 66 Pa. C.S. § 2804(9).

³ 66 Pa. C.S. § 2803.

3. The PECO CAP Shopping Plan requirement that CAP suppliers provide rates to CAP customers below PECO's Price to Compare ("PTC") is good public policy.

In its Main Briefs, CAUSE-PA, PECO and the OCA addressed at length the reasons for approval of a CAP Shopping Plan which incorporates a requirement that CAP suppliers provide rates below PECO's Price to Compare. The requirements of the Competition Act, Commission CAP Policy requirements, PECO's CAP design, and Commission Orders require a CAP Shopping Plan which provides rates to CAP customers within maximum energy burdens, does not exacerbate the level and depth of unaffordability for CAP customers, or increase the level of contribution by non-participating residential customers. Those arguments are fully incorporated into this Reply if they were fully set forth herein.

For its part, Direct Energy appears to view the purpose of this proceeding as enabling it to provide, with limited risk and unlimited opportunity, competitive supply to protected low-income CAP customers at unchecked rates. Such a policy would result in uncontrolled energy burdens and the significantly negative consequence of low-income CAP customer default. Contrary to DE's assertions, policies which promote a vision of CAP customer shopping which would only be designed to cut risk for the supplier and create a CAP shopping world that would have no limitation on upside price, the energy burden borne by CAP shoppers, nor any limitation to the risk to PECO's non-CAP residential customers is not the public policy of the Commonwealth; nor would it be good public policy. Such an outcome is directly in conflict with the Competition Act and Commission Policy and is impermissible. The rates CAP customers pay and the maximum energy burden that they shoulder are to be affordable. The PECO CAP Shopping Plan that requires CAP suppliers to provide rates to CAP customers below PECO's Price to Compare is rooted in good public policy.

Furthermore, DE asserts that the PECO proposal may inhibit the choices an EGS may choose to provide to CAP customers such as “value-added” products and services. Although these claims are both speculative and unsubstantiated, it is nevertheless the case that an EGS is always making choices as to which products it will promote, and provide, and to whom. It is entirely reasonable that an EGS who opts to be designated as a CAP supplier may choose to limit the offerings it makes to these customers in the same way that it regularly determines the offerings it will make to other potential customers. Further, while there is no credible evidence in the record suggesting that CAP customers and other low-income households are attracted to or would benefit from “value added” products from their electricity supplier, there is substantial evidence presented that both CAP customers and non-CAP residential customers will benefit from rates below the PTC.

B. CAP customers are distinct from and require specific protection within the retail electric market as compared to other electric customers;

Direct Energy asserts that CAP customers should be treated no differently than any other customer and should participate in the retail electric market as others electric customers.⁴ CAUSE-PA submits that such an assertion is fundamentally flawed in that it is in direct conflict with the Competition Act, Commission policy and the realities of CAP customer economic existence.

At issue here is PECO’s Petition for approval of its CAP Customer Shopping Plan. The very nature of the proceeding is based upon the underlying fact that PECO is obligated to develop a distinct and appropriate shopping plan for customers participating in its Customer Assistance Program. That plan must address, among other matters, the provisions of the

⁴ DE Br. at 10.

Competition Act and Commission policies that call for low income CAP customers to receive affordable rates within maximum energy burdens without diminishment of the policies, practices, and services which have been provided to assist them maintain affordable service.

CAP customers are not like other residential customers. CAP customers are the most economically vulnerable customers of PECO and, as such, they are intended by the Choice Act to receive special consideration and protection by the Commission.⁵ CAP customers are enrolled in CAP precisely because they could not afford their full consumption bills. Neither they nor the other residential rate payers who pay for the CAP programs should be put in a position where CAP customers are paying more than they otherwise would pay on default service. The CAP program, like the other Universal Service programs, is a regulated program designed to assist low-income households produce a more affordable bill and works best when coupled with a shopping plan design that controls the rates that may be provided to them at levels which are below the PTC.

Since PECO's CAP program is not a percentage of income program, when electricity costs decrease the cost for a CAP customer decreases. However, the inverse is also true: when costs increase CAP bills increase. The problem with allowing CAP customers to shop in an uncontrolled environment is not what happens to their bills if electricity costs decrease, it is what happens if they increase, and the extent of the increase that can occur when contracts are not limited by the PTC. It is the potential for harm to CAP customers as a result of rate increases not keyed to affordable bills or maximum energy burdens which is the key issue.

Electricity is essential and necessary for a safe and healthy living environment; a fact recognized by the General Assembly in the Electricity Generation Customer Choice and

⁵ 66 Pa. C.S. § 2802(9), (17).

Competition Act Choice Act (“Choice Act”).⁶ The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service, and the statutory goals of universal service are to be achieved through the enactment, establishment and maintenance of policies, practices and services that help low-income customers maintain their electric service.⁷ Thus, unlike other choices low-income households make, the General Assembly has recognized that the Commission must continue to ensure affordability of electricity for low-income households. It is thus good public policy to establish a shopping design specifically intended to address the unique and distinct circumstances of CAP customers and to address the cost of CAP borne by non-CAP residential customers.

C. PECO’s reporting requirements are reasonable, should not be reduced and should be publically available.

DE agrees in concept with the requirements to provide confidential semi-annual reports to the Commission but would desire that the reporting requirements be reduced and not be available in discovery to any party who provides or receives such reports.⁸ CAUSE-PA submits that PECO’s proposed requirements are necessary, minimal, and should not be reduced. CAUSE-PA witness Miller agreed⁹ with OCA witness Colton that to the extent that an EGS engages in the market to serve CAP customers, that EGS becomes responsible for providing sufficient data for PECO to be able to report the impacts on participation on universal service (OCA ST CAP-1R 10:10-13.) The PUC should retain the right to publish in aggregated format information on CAP customer shopping participation, the impact on universal service as a result of CAP

⁶ See 66 Pa. C.S. § 2802(9)-(10).

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

⁸ DE BR at 16.

⁹ CAUSE-PA Cap Shopping ST 1-SR at 2:22-3:6.

customer shopping, and should maintain the discretion to determine, on a case by case basis, whether or not the EGS reports provided may be discoverable. (OCA ST CAP-1R 10:7-11:9)

CAUSE-PA believes that the minimal and essential level of data as requested by PECO is necessary to be provided so that PECO and or the Commission will be able to determine compliance with the terms of the shopping plan.

D. PECO should monitor and enforce the requirements it imposes upon an EGS as a requirement of being a CAP Supplier.

PECO submits that the Commission is the appropriate entity to monitor EGS compliance with PECO's CAP shopping plan as it does in regard to other retail market enhancements.¹⁰ In response CAUSE-PA acknowledges that the Commission continues to retain the ultimate monitoring and enforcement responsibilities. However, PECO will continue to have responsibility for administering its CAP and its CAP shopping Plan. Those responsibilities will not cease upon the Commission approving a shopping plan. PECO's CAP shopping principles include the obligation to "maintain consumer protections for CAP customers." This principle is an obligation which continues to be borne by PECO as administrator of its CAP program. PECO's shopping requirements that each CAP customer who shops is to be provided rates below the price to compare, not be discriminated against, nor charged an early termination fee are important CAP customer protections which may make the difference for many households to be able to afford and maintain continued electric service. Because of their importance, in order to be certain that they become reality, there needs to be monitoring and enforcement of EGS compliance. PECO, as the CAP program administrator, is the appropriate entity to fulfill that

¹⁰ PECO Br at 29-31.

role, even though the Commission will be the ultimate arbiter. In essence, both PECO and the Commission have a role.

To facilitate the monitoring responsibilities of both PECO and the Commission, there needs to be a specific determination of the information to be provided and reported by an EGS. For purposes of monitoring, CAUSE-PA supports PECO's proposed CAP shopping reporting requirements.

At a minimum, all parties will benefit from a clear understanding of the EGS reporting requirements and which entity will be responsible for monitoring and ensuring compliance of the CAP Shopping plan and its component parts. The Commission should clarify its expectations about EGS reporting and the monitoring and enforcement obligations it expects PECO to undertake.

IV. CONCLUSION

CAUSE-PA respectfully submits that the Commission determine that PECO's CAP Shopping Plan must:

1. Maintain consumer protections of CAP customers;
2. Ensure that CAP customers pay no more than what they would have paid had they remained on default service;
3. Ensure that CAP bills remain affordable;
4. Ensure that CAP customers not pay additional fees or surcharges for participating in PECO's CAP shopping plan, including but not limited to early termination fees;

5. Ensure that both PECO and the Commission effectively monitor the experiences of CAP customers enrolled in this program to guarantee that the program requirements are fully met; and,
6. Contain the costs of the plan to protect residential consumers who pay for CAP.

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

August 9, 2013