

THE PENNSYLVANIA UTILITY LAW PROJECT  
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October 21, 2013

RE: PECO Energy Company Universal Service and :  
Energy Conservation Plan for 2013-2015 : M-2012-2290911  
Report On Alternative Models For The Delivery Of  
Customer Assistance Program Benefits

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 Comments 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,



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Harry S. Geller, Esquire  
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CC: Hon Cynthia W. Fordham  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Universal Service and :  
Energy Conservation Plan for 2013-2015 : M-2012-2290911  
Report On Alternative Models For The Delivery Of  
Customer Assistance Program Benefits

**Certificate of Service**

I hereby certify that I have this day served copies of the Comments of CAUSE-PA 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:

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company Universal Service	:	
and Energy Conservation Plan for 2013-2015	:	Docket No. M-2012-2290911
Submitted in Compliance with 52 Pa. Code	:	
§§ 54.74 and 62.4	:	

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**COMMENTS  
Of  
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY  
EFFICIENCY IN PENNSYLVANIA (“CAUSE-PA”)  
Concerning  
PECO ENERGY’S REPORT ON ALTERNATIVE MODELS FOR THE DELIVERY OF  
CUSTOMER ASSISTANCE PROGRAM BENEFITS**

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The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, hereby files these Comments to the PECO Energy Company (“PECO” or “the Company”) “Report On Alternative Models For The Delivery Of Customer Assistance Program Benefits” (“Report”) which was filed September 30, 2013 and supplemented on October 15, 2013 at the captioned Docket Number.

CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunications services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being. On March

19, 2012, CAUSE-PA was granted status to participate as an intervener in Petition of PECO Energy Company for Approval of its Default Service Program Docketed at P-2012-2283641 and has actively participated in the related CAP shopping design proceeding tied to this current docket.

For reasons stated below CAUSE-PA submits that the Report is not fully responsive to the Commission's directives, is based on estimates not supported by data and arrives at a recommendation to continue into 2016- 2018 a CAP Rate design model which produces rates that are out of compliance with the Commission policy statement and with the Competition Acts. The evidence put forward within the CAP evidentiary proceeding and which is contained within the objective and uncontroverted data within the Report is that a Percentage of Income Payment ("PIP") Plan model will enable PECO to provide its CAP participants with affordable asked to pay bills and result in compliance with the Commission's policy statement and the intent of the Universal Service provisions of the Choice Act.

CAUSE-PA respectfully submits that the Commission, the Company and the public would benefit by the independent development of supplemental information and analysis prior to a final determination by the Commission of the CAP design model to be incorporated into PECO's February 2, 2015 triennial plan filing for implementation in 2016-2018.

## **BACKGROUND**

On April 4, 2013, the Pennsylvania Public Utility Commission ("PUC" or "Commission") issued a Final Order ("Final Order") in the matter of PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with

52 Pa. Code §§ 54.74 and 62.4, Docket No. M-2012-2290911. In that Final Order, the

Commission issued the following directive:

Accordingly, we shall direct PECO to test various models in search of both an EBF<sup>1</sup> and CCL<sup>2</sup> for each of PECO's 12 CAP<sup>3</sup> groups that would improve the affordability of CAP to the participants while not placing more of a financial burden on the non-participants. We further direct PECO to conduct an analysis of the fixed credit PIP<sup>4</sup>, using the information above, as it would apply to PECO's CAP customers and serve a full report to the Commission and parties to this proceeding by September 30, 2013. The report should include a sample bill calculation for an average annual usage-based bill for a customer in each of the 12 CAP groups shown above, and the data used for those calculations. While we acknowledge that there is energy burden and CAP credit limit information in the Commission's Policy Statement at 52 Pa. Code §69.265 (2) (i) (A-C) and §69.265 (3) (v), we expect this energy burden information and CAP credit limits to guide but not necessarily limit various models analyzed by PECO (Final Order at 24-25; Footnotes added.)

The Commission further noted:

After September 30, 2013, the parties will have a 20-day comment period and a 10-day reply comment period. The Commission will render a decision on this approach thereafter. Should it ultimately be decided that PECO must make a design change, the new design will be submitted in its February 2, 2015 triennial plan filing for implementation in 2016-2018. Until that time, PECO will maintain its current rate tier system.

The Commission also agrees with OCA and other commenters who point out that PECO's existing tier system does not satisfy the Commission's CAP Policy Statement. However, based on the above analysis of PIP and the underdeveloped record regarding the fixed credit PIP, we will allow PECO to continue its current tiered system. However, moving forward, this Commission will expect PECO to comply with the CAP Policy Statement in future USECP filings or, alternatively, provide substantial justification for why deviations from the policy are warranted (Final Order at 25.)

### **LEGAL STANDARD**

PECO has been given great latitude in the development of its Report to the Commission.

Nevertheless the ultimate CAP Design recommended by PECO must fully comply with the

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<sup>1</sup> Energy Burden Factor

<sup>2</sup> CAP Credit Limit

<sup>3</sup> Customer Assistance Program

<sup>4</sup> Percentage of Income Program

applicable provisions of the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*, Commission regulations, orders and policy statements.

The Electricity Generation Customer Choice and Competition Act (Electric Competition Act), 66 Pa. C.S. §§ 2801-2812, became effective on January 1, 1997. The Natural Gas Choice and Competition Act (Gas Competition Act), 66 Pa. C.S. §§ 2201-2212, became effective on July 1, 1999. The Competition Acts required Universal Service Programs and included provisions to ensure that those programs enable low-income customers to maintain utility service through affordable program rates.

The universal service provisions of the Competition Acts, among other things, tie the affordability of electric service to a customer's ability to pay for that service. The Competition Acts define "universal service and energy conservation" as the policies, practices and services that help low income customers maintain utility service. The term includes customer assistance programs 66 Pa. C.S. §§ 2202 and 2803.

The Competition Acts declare that the Commonwealth must, at a minimum, continue the low income policies, practices, and services that were in existence as of the effective date of the laws. 66 Pa. C.S. §§ 2203(7) and 2802(10). The Competition Acts require the Commission to ensure that universal service and energy conservation services are appropriately funded and available in each utility distribution territory. 66 Pa. C.S. §§ 2203(8) and 2804(9).

Finally, the Responsible Utility Customer Protection Act at 66 Pa. C.S. § 1401 *et seq.*, enacted subsequent to the Competition Acts and relying upon the expectation of properly functioning universal service programs to provide affordable CAP rates, prevents the Commission from entering payment agreements for CAP customers. 66 Pa. C.S. § 1405(c).

Therefore, each PECO CAP customer, uniquely unable to secure Commission intervention regarding payment terms, is totally dependent upon the CAP design model to ensure that the CAP payment structure provides affordable rates and complies with the CAP Policy Statement Guidelines which objectively specify the range of acceptable CAP customer energy burdens.

## **COMMENTS**

### **PECO's Recommendation to Continue its Status Quo Program Should be Rejected**

#### *PECO'S Report does not Comply with the Commission Directive*

The Commission has repeatedly noted, "PECO's existing tier system does not satisfy the Commission's CAP Policy Statement."<sup>5</sup> Although the Final Order, for lack of full record development, permitted PECO to continue its present design, the Commission clearly noted that "moving forward, this Commission will expect PECO to comply with the CAP Policy Statement in future USECP filings or, alternatively, provide substantial justification for why deviations from the policy are warranted (Final Order at 25.)" PECO's Report provides neither a basis by which the Company will be able to achieve policy statement compliance with affordability or EBF, nor substantial justification for continuing its deviance. As such, it should be rejected as not complying with the Commission directive.

First, PECO recommends continuing the same status quo design which has repeatedly been found to not comply with the CAP Policy statement regarding affordability and EBF. The of lack of an affordable payment structure for PECO's CAP lies at the heart of this proceeding and in the Commission's directive to the company to test various models in an attempt improve the affordability of CAP to its participants. In light of the Commission's directive, the historic

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<sup>5</sup> FO at 25.

uncontroverted data that its current CAP Discount model payment results in unaffordable payments, and its own acknowledgement that 35% of Rate R customers, 25% of Rate RH customers currently receive unaffordable bills<sup>6</sup> and that the status quo has problems with breadth and depth of affordability<sup>7</sup>, PECO's reluctance to recommend a modification to its CAP structure to address this issue is quite puzzling. PECO has had a tiered structure since 1996, when it converted from a PIP model to a tiered structure. Since that time the issue of CAP customer affordability has been a recurrent issue. As the Commission stated in its TO

There is a recurring theme in the continuing history of Commission Orders addressing PECO's CAP programs over the past 12 years during which the Commission has directed PECO to make improvements to its CAP Rate application.<sup>8</sup>

It further noted:

PECO's current CAP Rate design has been evolving since 1996. In 2000, the Commission recommended that PECO implement a percent of income payment plan (PIPP) design, discussed changes in discounts and concerns of customer confusion, and required that CAP tiers be increased in an attempt to further affordability. More recent orders supported the premise that PECO's CAP Rate has been unaffordable.<sup>9</sup>

Furthermore, the company fails to provide substantial justification for the continuation of this deviation. Its justification for continuing the status quo is simply that it "does **not see any clear advantage** to moving to the 7-Tier R/S/SD or the FCO".<sup>10</sup> This is hardly substantial justification.

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<sup>6</sup> Report at 6.

<sup>7</sup> Report at 8 and 24

<sup>8</sup> TO at 3.

<sup>9</sup> Ibid at 8.

<sup>10</sup> Final Statement of the Report at 24. Emphasis added.

In addition, the Report incorrectly dismisses a PIP alternative as being rejected by the Commission<sup>11</sup> when in fact the Commission determined only that “we shall not direct PECO to move to a standard PIP at this time.”<sup>12</sup> In fact, the Commission did lay out the groundwork for the possible future acceptance of a PIP:

Should DPW allow LIHEAP grants to be applied to CAP bills incrementally over 12 months, CAP customers would, in effect, have grant money to help prevent the CAP Credit overruns and enable the customer to maintain an affordable PIP bill. We do not anticipate a date for that DPW finalization. Accordingly, we shall not direct PECO to move to a standard PIP at this time.<sup>13</sup>

In the recently released FY 2014 LIHEAP Final State Plan, DPW has provided some indication that this may be a future possibility when it stated that:

“Further discussion with LIHEAP stakeholders will be forthcoming to look into the possibility of alternative models which would comply with federal standards.”<sup>14</sup>

It is therefore respectfully submitted that a potential PIP approach has not been rejected, continues to be a viable alternative, and should be considered as a design model for 2016-18 that would be capable of addressing affordability and EBFs that comply with Commission policies.

### **PECO’s Analysis is Flawed**

*PECO’s average bill payment rate is a questionable assertion of affordability*

One of the criteria which PECO has asserted as a measure to assess affordability is that that

the Commission has set a target of CAP customers paying 80% of the bills rendered to them. PECO’s Status Quo program achieves an 82% coverage rate, and

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<sup>11</sup> Report at 24.

<sup>12</sup> FO at 17.

<sup>13</sup> FO at 17.

<sup>14</sup> FY 2014 LIHEAP Final State Plan at viii.

therefore is deemed by this measure to provide an acceptable level of affordability of service.<sup>15</sup>

This analysis is questionable at best. First, the Commission has indicated in its Universal Service Reports that it has a target rate closer to 90% payment levels and that an 80% payment level is the minimally acceptable level. Secondly, PECO achieving “on average” in some years, a payment rate slightly above this minimal level does not mean that its bills are affordable. It remains the uncontroverted fact that for a high percentage of its lowest income tier CAP customers the bills charged are above policy guidelines (in total, 35% of Rate R customers, 25% of Rate RH customers currently receive unaffordable bills) and that for approximately 44,000 of its CAP customers (over 30% of all PECO CAP customers)<sup>16</sup> their CAP bills are *below* the correctly calibrated payment they would receive through a PIP or FCO. PECO has thus put forward an analysis which parallels the classic example of a man with his head in the oven and his feet in the ice box who is on average at a comfortable temperature. PECO’s analysis bases its conclusion of affordability by averaging the payment levels within a program in which a significant number of its CAP customers receive unaffordable bills and a significant number receive lower than justified bills. In such a scenario, any conclusions regarding the average affordability of the status quo program are questionable at best.

Finally, it is the individual household affordability that is the critical issue. It is the ability of each CAP participant to receive a bill that is in compliance with the guidelines that is the key goal to be pursued. The policy guidelines look to individual household income and payment levels, not to average or group payment levels. The guidelines continually refer to *participant* income, *participant* affordability, and *participant* payments.

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<sup>15</sup> Report at 16.

<sup>16</sup> Report at 20.

*PECO's hypothetical analysis of bad shopping decisions is incomplete*

In its Report, PECO refers to shopping decisions of its CAP customers in several contexts. In one reference, PECO hypothesizes a situation in which 30% of the CAP customers make a bad shopping decision, paying 5% more for their generation than the price-to-compare ("PTC")<sup>17</sup>. Within the hypothetical, this poor shopping decision would affect the affordability of the individual CAP customer as well as the other ratepayers who would pay for CAP. However, PECO fails to note anywhere in its Report that this negative effect of poor shopping decisions would not occur should the Commission adopt PECO's proposed CAP shopping design supported by CAUSE-PA, TURN et al and the OCA; namely that PECO CAP generation suppliers agree that they will charge no more than the PTC to CAP shopping customers. The Company specifically proposed its CAP Shopping design to prevent just such negative effects as hypothesized in its Report. Since this was PECO's proposal, was supported by all consumer parties and is currently under consideration by the Commission, PECO's failure to note this possibility renders the Report incomplete.

*The assessment of terminations as a result of a design change to PIP is of questionable value*

PECO assesses that there are approximately 44,000 customers who participate in its CAP Rate design model who would receive a \$0 benefit in a PIP or FCO and that as a result of the loss of those benefits, termination levels will rise by approximately 1,500 to 2,000 customers in a PIP and by approximately, 2,000 to 2,500 customers in an FCO. The use of this argument would seem to be inappropriate and the figures put forward, not worthy of reliance.

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<sup>17</sup> Report at 18.Table 8 at 19.

First, as PECO itself asserts, the genesis of this proceeding is that under the status quo CAP Rate design 35 % of Rate R customers, and 25% of Rate RH customers, currently receive unaffordable CAP bills.<sup>18</sup> It is the inability of these households to receive affordable CAP rate monthly bills that comply with the Commission's EBF policy which was the driving factor for the earlier evidentiary hearing regarding the PECO CAP Model Design and the Commission's direction to PECO to compile the Report. It would appear to defy logic and be circular in reasoning to assert that the Commission should ignore these customers, ignore their continued receipt of unaffordable bills in violation of the Commission's policy statement, and continue a flawed program design because compliance with the policy statement would result in reducing the benefits to other current CAP customers who have benefitted as a result of the flawed CAP Rate design. This illogical and unfair concept deserves even less consideration when the record reveals that it is based solely upon estimate and assumptions and cannot be considered a precise measure.

As PECO states:

Moreover, while it is true that Ms. Feldhake's calculation of a net increase in terminations is **an estimate**, the **steps of that estimate** and the basis for each **underlying assumption** are clearly set forth in Exhibit LF-1. **PECO does not suggest that Ms. Feldhake's estimate is precise**, but it is nonetheless persuasive that the net effect of moving to a PIP will directionally be to have more low-income terminations because 45,000 customers will lose benefits that will be redirected to approximately 27,000 customers.<sup>19</sup>

What is known and known with certainty is that PECO's current status quo CAP Rate Design produces bills in violation of the CAP policy guidelines and that transitioning to a PIP design would remedy that failing.

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<sup>18</sup> Report at 6.

<sup>19</sup> PECO Brief at 13, (emphasis added.)

## CONCLUSION

After a dozen years of Pennsylvania Public Utility Commission (“Commission”) orders highlighting the failure of PECO Energy Company (“PECO”) to provide bills for its lowest income Customer Assistance Program participants that comply with Commission policy, the time is at hand to make the necessary changes. These proceedings provide the opportunity for PECO to correct long running difficulties and propose and implement a Universal Service and Energy Conservation Plan (“USECP”) for 2016- 2018 which comports with the Competition Acts, the CAP Policy Statement, and recurrent Commission orders. The Report submitted, which recommends a continuation of the current CAP model is lacking. We ask that the Commission seize this opportunity to assist the most impoverished of PECO’s customers and

1. Find PECO’s Report on Alternative Models for the Delivery of Customer Assistance Program Benefits to be deficient in that it provides neither a basis by which the Company will be able to develop a CAP that achieves compliance with affordability or EBF policy guidelines, nor substantial justification for continuing its lack of compliance;
2. Order that PECO retain an independent evaluator to develop supplemental information and analysis within a time frame which enable additional Comment consideration by the Commission prior to a final determination by the Commission of the CAP design model for 2016-2018;

Respectfully submitted,



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Date: October 21, 2013