

COMMONWEALTH OF PENNSYLVANIA



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February 10, 2014

Rosemary Chiavetta, Secretary
PA Public Utility Commission
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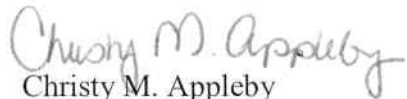
RE: Petition of PECO Energy Company for Approval of
Its Default Service Program
(Customer Assistance Program Shopping Plan)
Docket No. P-2012-2283641

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Petition for Reconsideration and Clarification in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,


Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824

Enclosures

cc: Hon. Cynthia Williams Fordham, ALJ
Office of Special Assistants
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company :
For Approval of its Default Service Plan : Docket No. P-2012-2283641

PETITION OF THE
OFFICE OF CONSUMER ADVOCATE FOR
RECONSIDERATION AND CLARIFICATION

The Office of Consumer Advocate (OCA) hereby submits this Petition pursuant to Sections 5.41 and 5.572 of the Public Utility Commission's (Commission) regulations. 52 Pa. Code §§ 5.41, 5.572. The OCA requests that the Commission reconsider and/or clarify its Order entered January 24, 2014, in the above-captioned case regarding PECO's Customer Assistance Program (CAP) Shopping program.

I. INTRODUCTION

On January 24, 2014, the Commission entered an Opinion and Order (January 24 Order) in the above-captioned proceeding. The January 24 Order addressed PECO's proposal to implement a Shopping Plan for customers enrolled in its Customer Assistance Program (CAP). Under PECO's current CAP program, CAP customers are not permitted to shop for electric generation supply. Pursuant to the Commission's directive in its October 12, 2012 Order in this docket, PECO was directed to develop and implement a Plan by January 1, 2014. Petition of PECO Energy Company for Approval of its Default Service Program, Docket No. P-2012-2283641, Order (Oct. 12, 2012) (October 12, 2012 Order). By Secretarial Letter dated January 3, 2013, this deadline was extended to April 1, 2014 and further extended to April 15, 2014 in the January 24 Order. PECO's proposed CAP Shopping Plan included protections to maintain

affordability for CAP customers who avail themselves of the opportunity to switch to an alternative supplier and to ensure the continuing cost-effectiveness of CAP. These protections were not adopted by the Commission in its January 24 Order.

The OCA respectfully requests that the Commission reconsider and/or clarify three aspects of its January 24 Order. First, the OCA requests that the Commission reconsider its determination that it lacks authority to provide price protection for CAP customers by establishing that EGSs voluntarily participating in the program must charge a price that is at or below PECO's Price to Compare (PTC). The OCA submits that the Commission has overlooked the authority provided to it in Chapter 28 and other provisions of the Public Utility Code to establish the parameters of any universal service program to ensure affordability of service to low income customers. 66 Pa. C.S. §2802(10). The Commission is authorized, and has an obligation, to ensure affordable generation service for CAP customers in a restructured electric market. The Commission has also overlooked that it is authorized to ensure that the CAP is cost-effective and that the rates supporting the program are just and reasonable. 66 Pa. C.S. §§ 2804(8)-(9); 66 Pa. C.S. § 1301. PECO's proposal to ensure prices are at or below PECO's Price to Compare for EGSs voluntarily participating in the program is necessary to maintain the affordability of service for CAP customers, ensure cost-effective programs, and ensure just and reasonable rates. The Commission should reconsider its decision in light of the statutory authority provided to it over programs that assist low income customers to maintain service as well as other provisions of the Public Utility Code. 66 Pa. C.S. §§ 1301, 2802(10), 2803, 2804(8)-(9).

Second, the OCA requests that the Commission reconsider its rejection of the OCA's proposal that CAP customers not be placed on variable price contracts at the end of a contract

term for failure to respond to an offer. The extraordinary wholesale price spikes in January 2014 that are being passed through to customers on variable price contracts are having significant bill impacts for customers. The Commission recently issued a press release on this issue cautioning customers about variable prices. The variable price contracts raise serious questions as to the affordability of CAP customer bills. CAP customers are in tenuous financial circumstances and even a one month increase in a bill can result in additional payment trouble. The magnitude of the increases being seen now would simply overwhelm CAP customers and significantly increase the cost of CAP to other non-CAP residential customers.¹ The OCA submits that these developments warrant reconsideration of the Commission's determination to reject the OCA's proposal that would maintain fixed pricing for CAP customers who do not otherwise respond to an offer.

Finally, the OCA requests that the Commission clarify whether its reporting requirements will include the number of CAP customers who shop, the level of bills that they experience, and the CAP shortfall that is generated. The OCA also requests clarification regarding whether the aggregated data will be made public. The OCA submits that collecting the additional data and making the aggregated information public will facilitate evaluation of the program.

II. STANDARD OF REVIEW

As set forth in Duick v. Pennsylvania Gas and Water Co., 56 Pa.P.U.C. 553 (1985), the standards for granting a petition for reconsideration are as follows:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was stated that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same

¹ Under PECO's CAP discount approach, a portion of the increased cost would be borne by the CAP customer and the remaining cost would flow into the CAP Shortfall paid by other customers.

questions which were specifically considered and decided against them ...”. What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

56 Pa.P.U.C. at 559 (quoting Pennsylvania R.R. Co. v. Pa. Pub. Util. Comm’n, 118 Pa. Super. 380, 179 A. 850 (1935)).

In this Petition, the OCA raises arguments the Commission may not have considered or that the Commission may have overlooked. The OCA seeks reconsideration regarding the Commission’s determination that it lacks authority to provide price protection for CAP customers within PECO’s CAP Shopping Program. Additionally, the OCA seeks reconsideration of the Commission’s determination regarding the treatment of a customer at the end of the EGS contract in light of the extreme wholesale price spikes in January of 2014. Finally, the OCA seeks clarification of PECO’s reporting requirements and whether the aggregated data will be made public. For the reasons set forth below, the OCA submits that the Commission should grant reconsideration and clarification of the issues raised in this Petition.

II. RECONSIDERATION AND/OR CLARIFICATION

A. The Commission Has The Statutory Authority To Provide Price Protection To CAP Customers As Part Of A CAP Shopping Program To Maintain Affordability For Customers And The Cost-Effectiveness of CAP.

1. Introduction

The OCA requests that the Commission reconsider its decision to not approve PECO’s proposal for price protection as part of PECO’s CAP Shopping Program. The price protection component was designed to maintain affordability for the participating customers and ensure the cost-effectiveness of the CAP. The Commission bases its decision on its determination that it does not have any authority over EGSs prices. The OCA respectfully submits that the

Commission has overlooked the authority granted to the Commission by the Public Utility Code to ensure that affordability is maintained for low income customers as part of the Customer Assistance Programs and the Commission's authority to ensure that CAP programs are cost-effective. 66 Pa. C.S. §§ 2802(10), 2803, 2804(8)-(9). Additionally, the Commission has overlooked its authority to ensure that rates are just and reasonable. 66 Pa. C.S. § 1301. Finally, the Commission has overlooked its decisions in other voluntary programs where the Commission established prices that must be charged by EGSs that voluntarily elect to participate in the competitive enhancement program. See, e.g., October 12, 2012 Order at 114; Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 at 146 (Aug. 16, 2012) (FirstEnergy Order); Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan, Docket No. P-2012-2302074 at 170-171 (Jan. 24, 2013); Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2013 through May 31, 2015, Docket No. P-2012-2301664 (Jan. 25, 2013).

2. The Commission Should Reconsider Its Rejection Of The Pricing Protection Component of PECO's CAP Shopping Program.

The Commission has the authority and the duty under the Electricity Generation Customer Choice and Competition Act (Customer Choice Act or Chapter 28) to maintain the protections for CAP customers that help them afford and maintain electric service. 66 Pa. C.S. § 2802(10). Chapter 28 also specifically requires that within the restructured electric industry, the Commission ensure that universal service programs are cost-effective. 66 Pa. C.S. §§ 2804(8)-(9). This requirement goes directly to the costs of the program that are borne by non-CAP

residential customers. In accordance with the Public Utility Code, the Commission must also ensure that the rates paid by all customers, including non-CAP customers who bear the costs of the CAP program, are just and reasonable. 66 Pa.C.S. §1301. These statutory provisions give the Commission full authority to ensure that prices charged by EGSs voluntarily participating in a CAP Shopping Program do not compromise the affordability and cost-effectiveness of the program or the reasonableness of the costs borne by non-CAP customers. The Commission has the full authority to establish a price protection component of the CAP Shopping Plan to meet these statutory requirements.

The Commission has also recognized the importance of maintaining affordability in a retail choice environment in the Intermediate Work Plan Order. There the Commission stated that CAP customers who are participating in the competitive retail energy market should not be subject to harm, or a loss of benefits. Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952 at 43 (March 2, 2012) (IWP Order). The Commission stated:

We also do see significant merit and agree with the comments provided by AARP/PULP/CLS, Constellation, OCA, PCADV and PEMC that CAP customers should not be subject to harm, i.e., loss of benefits, if they are deemed to participate in the auctions.

Id. at 43. The protection of CAP customers proposed by PECO was intended to ensure that CAP customers who participate in retail choice are not subject to harm and do not lose benefits. The Commission has the authority to establish protections to prevent this harm or loss of benefits and should exercise it here to adopt PECO's proposal.

The Commission has recognized its authority to establish pricing parameters for voluntary competitive enhancement programs before, such as the Customer Referral Programs. See, e.g., October 12, 2012 Order at 114; Joint Petition of Metropolitan Edison Company,

Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 at 146 (Aug. 16, 2012) (FirstEnergy Order); Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan, Docket No. P-2012-2302074 at 170-171 (Jan. 24, 2013); Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2013 through May 31, 2015, Docket No. P-2012-2301664 (Jan. 25, 2013). For the Customer Referral Programs, the Commission established the specific discount that an EGS must provide if it voluntarily participates in the program. If an EGS does not wish to provide a price based on this discount, then it does not have to participate. Similarly, here, EGSs that do not want to provide a price at or below PECO's PTC do not have to participate.²

Additionally, in considering similar arguments regarding the Commission's authority over pricing for EGSs for the Retail Opt-In Auction, the Commission stated:

We acknowledge RESA's concerns relating to our review of the pricing of EGS ROI plans for months five through twelve. However, we emphasize that EGS participation in the ROI programs is voluntary. As a condition to an EGS's voluntary participation in the ROI programs, we have directed that EGSs which want to participate will file their proposed terms and conditions, including pricing, for our review. Given that EGS participation is voluntary, and that the ROI programs will be implemented and conducted under the auspices of this Commission, we find that it is entirely appropriate to provide for our review of EGS ROI proposed offerings, including terms, conditions and pricing.

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs, Amended Opinion and Order, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 at 18 (Oct. 12, 2012). The Commission there found it had

² PECO's program also provide for "on-ramps" and "exit ramps" so that the EGS can enter and leave the program. If the EGS does not wish to meet the requirements in a particular period, it can exit the program. The Commission specifically approved these protocols. January 24 Order at 23.

authority to consider EGS pricing in the context of a voluntary program.³ PECO's program is voluntary as well and should be accorded the same treatment as the competitive enhancement program.

In rejecting the price protection component of PECO's CAP Shopping Program, the OCA submits that the Commission has overlooked its clear authority over universal service programs as well as its decisions regarding other voluntary competitive enhancement programs. This need for price protection is particularly pressing for CAP customers who have already demonstrated an inability to pay PECO's default service price. As noted, Section 2802(10) requires that the Commission maintain the same level of protections provided for low income customers as existed prior to restructuring. Section 2802(10) specifically states:

The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.

66 Pa. C.S. § 2802(10).

OCA witness Colton detailed the statutory requirements of affordability and the Commission's authority as follows:

The centerpieces of the Pennsylvania Public Utility Commission's ("Commission" or "PUC") "current protections for CAP customers" and "existing rules and regulations regarding universal service" is the principle of affordability. The Pennsylvania electric restructuring statute quite explicitly states that amongst

³ The Commission has similarly approved voluntary time of use programs that establish the pricing parameters that EGSs must follow if they choose to participate. Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 at 146 (Feb. 15, 2013). For example, West Penn's Time of Use provides that "[q]ualifying customers that are enrolled to receive service under this Rider will obtain TOU default service from a Commission-certified EGS contracted to provide TOU default service..." West Penn Power Company Tariff, Supplement No. 228 to Electric P.a P.U.C. No. 39, Original Page No. 42-1. The TOU Rider provides that the summer on-peak rate shall be the Residential Customer Class PTC Rate x 1.35 and the off-peak rate shall be the Residential Customer Class PTC Rate x 0.82. Id. The Non-Summer period rate is set at the Residential Customer Class PTC Default Service Rate. Id. For West Penn and Penn Power, Participating EGSs must similarly meet the price set forth in the Company's tariff.

the “interdependent standards [that] shall govern the commission’s...regulation of the restructured electric utility industry” is the principle that “universal service programs” shall continue. A “universal service program” includes “policies, protections and services that help low-income customers to maintain electric service.” (66 Pa.C.S. § 2804(9); see also, 66 Pa. C.S. § 2802(10)). The term “universal service program,” by explicit statutory reference, “includes customer assistance programs...” (Id.) Affordable electric service is a specific interdependent standard” that the Commission has been directed to take specific steps to achieve in the Commission’s “regulation of the restricted electric industry.” To the extent that an Electric Generation Supplier (“EGS”) participates in the Pennsylvania electric market, its participation is contingent upon the ability of the EGS to co-exist with the Commission’s “policies, protections and services that help low-income customers to maintain electric service...” As the statute explicitly provides, those policies, protections and services include CAP.”

OCA R.B. at 10-11; OCA St. CAP-IR at 3; see also, 66 Pa. C.S. §§ 2802(10), 2804(9).

In addition to maintaining affordability, Chapter 28 requires that the Commission ensure that universal service programs are cost-effective. Section 2804(9) provides that the costs of “programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.” 66 Pa.C.S. § 2804(9) (emphasis added). Section 1301 also requires that rates be just and reasonable. 66 Pa.C.S. § 1301. The Commission has the authority to ensure that the costs borne by other ratepayers are not excessive and that the programs remain cost-effective. Without the price protection proposed by PECO, there is no limit to the potential costs of the CAP program that could be borne by other customers. The Commission cannot ensure cost-effectiveness, and that rates remain just and reasonable, without this control feature.

PECO’s CAP Shopping Program is a specific program that EGSs can voluntarily choose to participate in or not. The Commission has already found that it has the authority to establish a specific pricing discount that must be provided by EGSs voluntarily participating in the Customer Referral Program, or Standard Offer Program and to ensure limits and protections for consumers. The Commission stated:

EGSs participating in the Standard Offer Program will be required to offer a fixed price equal to 7% below the PTC in effect at the time of customer enrollment. While the discounted rate is fixed for twelve complete billing cycles, we realize that the PTC may be adjusted upward or downward on quarterly basis which may impact the customers benefit to enrolling in the Program. However, enrolled customers are free to return to default service, should the PTC fall below the discounted rate, or may switch to a different alternate provide. Further, we agree with the OCA and FES that RESA's proposal would lead to customer confusion, would not provide any limits or protections on what a customer could be charged, and would run counter to the purpose of the Standard Offer Program, which is to introduce customers to the retail market without significant risk.

October 12, 2012 Order at 114. Ironically, the January 24 Order provides that the CAP customer should be permitted to participate in PECO's Standard Offer Program, which includes a price limit of 7% less than the Price to Compare at the time of enrollment, but it does not provide a similar protection for in the CAP Shopping Program. January 24 Order at 14, 27-28.

The OCA submits that it is clear that the Commission has the authority to establish a voluntary program in which Participating EGSs can be required to offer a price to CAP customers that is at or below PECO's PTC. Further, Chapter 28 requires that programs maintain the existing protections for low-income consumers that assist them in affording service and that these programs be cost-effective. 66 Pa. C.S. §§ 2802(10), 2803, 2804(9). The OCA requests that the Commission reconsider its authority and adopt the price limits in PECO's proposed CAP Shopping Plan.

B. The Commission Should Ensure That CAP Customers Are Not Placed On A Variable Price Contract Without Affirmative Consent.

The OCA requests that the Commission reconsider its Order regarding the treatment of a CAP customer at the end of a contract term with an EGS. The OCA had proposed several protections for CAP customers to ensure that affordability is maintained. Most pressing now is that under the Commission's Order, a CAP customer who does not affirmatively respond to an offer at the end of a contract term would be placed on a variable price contract if the customer

does not affirmatively respond to an offer. The significant wholesale price increases in January 2014 are being flowed through to customers on variable price contracts resulting in extraordinarily high monthly bills. The Commission's January 31, 2014 press release highlighted this problem and cautioned consumers about these variable prices.⁴ The OCA submits that transitioning a CAP customer to a variable price contract without affirmative consent could significantly compromise affordability and compromise the customer's ability to make timely payments to remain in CAP. Even one month of an increased bill can result in additional payment trouble for these customers with low incomes. Variable price contracts could also unnecessarily increase costs to other non-CAP residential customers who pay the costs of the CAP.

A customer who is enrolling in CAP is by definition having difficulty affording electric generation service at PECO's full fixed residential tariff rate. The January 2014 wholesale price spike demonstrated the impact of variable price contracts on residential customer bills. The OCA submits that such a price spike could cause significant harm for both CAP customers and the non-CAP residential ratepayers who must pay the increased CAP Shortfall resulting from high bills.⁵

The OCA submits that the Commission should reconsider the treatment of CAP customers at the end of the contract term as the consequences of being placed on a variable price contract without affirmative consent (and even with consent) come into sharper focus.

⁴ See January 31, 2014 Commission Press Release, http://www.puc.pa.gov/about_puc/press_releases.aspx?ShowPR=3298.

⁵ As discussed previously, a portion of the increased costs are borne by CAP customers under the Rate discount approach and a portion flows into the CAP Shortfall paid by non-CAP residential customers.

C. The OCA Seeks Clarification Regarding The Commission's Decision Regarding Reporting Requirements.

The OCA requests clarification regarding two issues that were not specifically addressed in the Commission's decision regarding the reporting requirements. First, the OCA recommended that PECO's CAP Shopping Reports should contain additional information regarding the number of CAP customers who switch, the level of bills that they experience, and the CAP shortfall that is generated. OCA St. CAP-1 at 20-21; OCA M.B. at 32-33. The OCA also recommended that the Commission aggregate the data from the EGSs and the Company and publish this information either on the Commission's website or in the Commission's annual universal service report, or both. OCA M.B. at 35. PECO agreed with the OCA's recommendations and stated that PECO was also able to provide additional information to the Commission such as the "net number of CAP customers shopping per month, including the number of CAP customers who returned to default service or switched to another supplier after accepting an EGS offer." PECO St. 2-R at 8; OCA M.B. at 33. The January 24 Order does not address the additional information or whether aggregated information will be publically available. OCA M.B. at 32-35.

The OCA submits that the number of CAP customers switched, the level of bills that they experience and the CAP Shortfall generated are important details when assessing the CAP Shopping Plan. Mr. Colton testified about why this information is needed:

The provision of periodic reports on the number of CAP customers served and the rates charged to facilitate the measurement of the benefits flowing from CAP shopping is consistent with the universal service reporting requirements previously adopted by the Commission. Given how these factors (i.e., number of CAP customers served; rates charged) affect both the affordability achieved by CAP participants and the overall costs of the CAP program to nonparticipants, it is appropriate for the Commission to require EGS cooperation in ensuring that this type of monitoring continues.

OCA St. CAP-1 at 21. The OCA would request that the number of CAP customers who switch, the level of bills that they experience, and the CAP shortfall that is generated be included in PECO's CAP Shopping reports because this additional data will allow the Commission, and interested parties, to understand the success of the program and the total costs for both CAP customers and residential ratepayers.

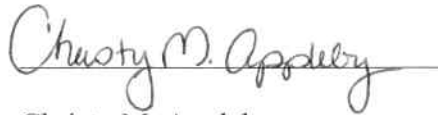
The January 24 Order also does not specifically address the OCA's request that the aggregated data be made public. The Order only addresses the possibility that non-aggregated data may need to be labeled confidential. January 24 Order at 34. The aggregated information will assist the Commission, the Company, and interested parties, such as the OCA, in assessing the benefits of PECO's CAP Shopping Plan and the effect the program has on PECO's universal service programs.

The OCA requests clarification regarding whether the aggregated data will be made public and whether the number of CAP customers who switch, the level of bills that they experience, and the CAP shortfall that is generated will be included in PECO's reports.

III. CONCLUSION

For these reasons, the OCA respectfully requests that the Commission reconsider and/or clarify its decision as set forth above.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Petition for Reconsideration and Clarification, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 10th day of February 2014.

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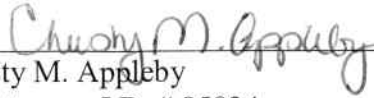
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