

COMMONWEALTH OF PENNSYLVANIA



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December 2, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
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:

Attached for electronic filing please find the Office of Consumer Advocate's Comments in the above-referenced proceeding.

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

Sincerely,

A handwritten signature in cursive script that reads "Christy M. Appleby".

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

Enclosures

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

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May 31, 2017. The May 11, 2016 Secretarial Letter directed that PECO's filing should include "(1) proposed language of the rule; (2) a proposed timeline and effective date; and (3) a proposed plan to collect data upon which to base an analysis of the CAP shopping program experiences, evaluations and recommendations." May 11, 2016 Secretarial Letter at 2. The Commission directed that the filing would be subject to public comment and final review and approval.

On July 15, 2016, PECO filed a letter in response to the Commission's May 11, 2016 Secretarial Letter. In its July 15 letter, PECO stated that it was "reviewing the operational implications of the Commonwealth Court's Order and revising its CAP Shopping Plan to implement that Order." PECO July 15 Letter at 2. PECO also indicated in the July 15 Letter that it would adhere to the following requirements made in the Commission's January 9, 2014 CAP Shopping Plan Order:

1. PECO must file tariff supplements, including a revised Electric Generation Supplier Coordination Tariff, which reflect the following revisions, or as otherwise set forth in this Opinion and Order.
2. PECO shall convene a collaborative of interested stakeholders and the Commission's Office of Competitive Market Oversight and Office of Communications to address the specific components of the education plan associated with the Customer Assistance Program customer shopping.
3. PECO, in consultation with the Commission's Office of Competitive Market Oversight and Bureau of Consumer Services, shall submit semi-annual reports to the Commission that reflect the net benefits of allowing Customer Assistance Program customers to purchase their generation supply from electric generation suppliers. PECO will work with EGSs to compile and include those benefits, services and incentives provided to CAP customers that are not reflected in PECO's bills.

PECO July 15 Letter at 2.

On September 1, 2016, PECO filed an explanatory letter, proposed rule revision in the form of a tariff filing (Exhibit B), and “other related materials” in Docket No. P-2012-2283641.¹ In its tariff filing at Exhibit B, PECO provides a rule that requires that EGSs that serve CAP customers “must not enter into any contract that imposes early cancellation/termination fees.” Exh. B at Revised Page No. 23. PECO also proposes an effective date of April 14, 2017 for CAP customer shopping. Id. In Exhibit B, PECO states that it proposes to use a collaborative approach to develop the required data collection protocol, and it also proposes to implement a CAP Shopping education collaborative in the first quarter of 2017, prior to the April 14, 2017 CAP shopping effective date. Id.

For the reasons set forth below, the OCA submits that the issue of CAP customer shopping should be addressed in the currently pending DSP IV proceeding at Docket No. P-2016-2534980, and not in either the DSP II or DSP III dockets. The OCA submits that the Commission should take no action on the proposed rule revision presented in PECO’s September 1, 2016 filing, as a full and updated evidentiary record has been developed in the DSP IV for service effective June 1, 2017. The PECO DSP IV proceeding will be decided in the immediate future, and there is no reason to implement a temporary CAP Shopping Plan for less than a two month period prior to June 1, 2017.

In the alternative, the OCA submits that a CAP Shopping Plan should be developed that contains appropriate price protections, in addition to the prohibition on early cancellation and termination fees, to address the undisputed harms to CAP customer affordability and cost-effectiveness due to unrestricted CAP customer shopping. These harms have been clearly identified in the Commission’s recent Order regarding CAP Shopping in PPL’s service territory.

¹ The OCA notes that to the OCA’s knowledge, no filings have been made in the Company’s DSP III docket at Docket No. P-2014-2409362. The “other related materials” included explanatory information in the September 1, 2016 letter and a copy of the Company’s February 14, 2014 compliance filing in DSP II attached as Exhibit A.

See, Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021, Docket No. P-2016-2526627, at 54-55 (October 27, 2016) (PPL DSP IV Order).² In the PPL DSP IV case, the Commission concluded:

The data provided by PPL in this proceeding demonstrated the economic harm experienced as the result of unrestricted CAP customer shopping decisions. The identified economic harm affects the ability of CAP customers to remain on CAP, as higher costs result in a quicker erosion of the CAP customers' limited allocation of CAP credits and also affects non-CAP customers by increasing the subsidy they incur to support the universal service objectives within the Competition Act. We find that this unrefuted evidence is sufficient to permit the Commission to impose CAP rules that may partially restrict or limit the ability of these customers to shop for electricity. In essence, we agree with the ALJ that mitigation is required to balance the interests between shopping and non-shopping customers.

PPL DSP IV Order at 54. The OCA submits that in light of these updated findings the unrestricted CAP shopping reflected in PECO's Plan should not go forward.

The OCA submits the following Comments pursuant to the Commission's directive in its November 18, 2016 Secretarial Letter.

II. COMMENTS

A. PECO's CAP Shopping Plan should be addressed in the DSP IV proceeding at Docket No. P-2016-2534980.

The OCA submits that since the DSP II proceeding when CAP Shopping was considered, much time has elapsed, and much additional information has been developed in the record of the PECO DSP IV proceeding at Docket No. P-2016-2534980, that is germane to the issue of an appropriate and reasonable Shopping Plan for PECO CAP customers. At this time, the OCA submits that it would not be reasonable to implement a nearly four year old Plan under these

² The OCA notes that these harms have also been thoroughly developed in PECO's DSP IV proceeding at Docket No. P-2016-2534980 now pending before the Commission.

circumstances. Instead, the OCA submits that the issue of CAP Shopping should be addressed in the Company's currently on-going DSP IV proceeding at Docket No. P-2016-2534980 where a full, complete and updated record has been developed. DSP IV begins just six weeks after PECO's proposed April 14, 2017 effective date for this DSP II CAP Shopping Plan, so there is no benefit in rushing a plan when a better informed decision can be made based on the full and complete DSP IV record.

The record in the DSP IV proceeding has the critical evidence regarding the impact of unrestricted CAP customer shopping where allowed in the period between the DSP II proceeding and the DSP IV proceeding. In her Recommended Decision (R.D.) in the PECO DSP IV proceeding, ALJ Cynthia Williams Fordham recognized as valid the harms identified by CAUSE-PA witness Geller. Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021, Docket No. P-2016-2534980, R.D. at 45, 57 (Sept. 23, 2016). Specifically, Mr. Geller's testimony showed that, in PPL's service territory, an average of 46% of CAP shopping customers paid more than the Price to Compare (PTC). R.D. at 45 (citing CAUSE-PA St. 1 at 27). In addition, for every month from January 2012 to February 2016, on average, at least 42% of PPL's CAP Shopping customers paid more than the PTC, and in six of those months, on average, 88% to 99% of PPL's CAP shopping customers paid more than the PTC. R.D. at 45 (citing CAUSE-PA St. 1 at 27). In the month in which CAP customers who shopped paid the highest percentage more than the Price to Compare, they paid on average 101% more per kWh, but in the month when CAP customers who shopped achieved the greatest savings, they paid only 14% less than the Price to Compare. CAUSE-PA St. 1 at 28. In addition, PPL's non-CAP residential customers have

annually paid a net \$2.74 million more for the CAP program exclusively due to CAP shopping. R.D. at 45 (citing CAUSE-PA St. 1 at 27).

A similar result has been found in the FirstEnergy Companies. The FirstEnergy Companies' CAP customers had similar experiences, as more than 77% of Met-Ed's CAP customers, more than 50% of Penelec's CAP customers, and more than 65% of West Penn's CAP customers who are shopping paid prices above the price to compare. R.D. at 45 (citing CAUSE-PA St. 1 at 29).

In the DSP IV proceeding, CAUSE-PA witness Geller proposed a CAP Shopping Plan to commence with DSP IV on or about June 1, 2017. In his CAP Shopping Plan, CAUSE-PA witness Geller recommended the following CAP Shopping principles:

1. CAP shopping participants should be prohibited from entering into a contract with an EGS in which they will pay, at any time, rates greater than the price to compare.
2. CAP shopping participants should be prohibited from entering into a contract with an EGS that includes early cancellation or termination fees.

CAUSE-PA St. 1 at 31. OCA witness Alexander supported the fundamental principles identified in Mr. Geller's proposal. See, OCA St. 2-R at 5-7.

The Commission recently found that such evidence was sufficient to permit the Commission to exercise its authority to ensure affordability and the cost-effectiveness of the program. The Commission stated:

We find that this unrefuted evidence is sufficient to permit the Commission to impose CAP rules that may partially restrict or limit the ability of these customers to shop for electricity. In essence, we agree with the ALJ that mitigation is required to balance the interests between shopping and non-shopping customers.

PPL DSP IV Order at 54. Clearly, the unrestricted CAP shopping permitted by PECO's tariff filing does not properly balance the interests between shopping and non-shopping customers or

ensure affordable service. As such, the Commission should not move forward with approving the Plan as filed.

Another critical component at this juncture that supports making this decision in the more fully developed DSP IV record is the need for customer education and the timing of CAP customer shopping implementation. Since DSP II, PECO has changed the design of its CAP program from a discount program design to a Fixed Credit Option program design. This design change was implemented in October 2016, and significant education is on-going about these changes. In the PECO DSP IV proceeding, OCA witness Alexander testified regarding the potential customer confusion created by overlapping CAP shopping and its necessary education with the redesigned CAP implementation as follows:

The Commission has approved a significant change to the PECO CAP customer rate design. The new CAP program design will change from a rate discount program to a fixed credit program. This change will affect all of PECO's 140,000 CAP customers. As with any change in rate design, particularly one of this substantial nature, there will be "winners" and "losers." Some CAP customers will receive an increase to their current dollar benefits. Others will receive a reduction to their dollar benefits or no dollar benefits at all compared to the current discount program. Furthermore, PECO will initiate a new arrears management program design for CAP customers at this time and those benefits, where applicable, will also appear on the CAP customer's bill. These changes will require PECO to interact with its CAP customers and the agencies that interact with low income customers and qualify customers for and educate customers about this program. PECO will be issuing educational messages to its CAP customers and community agencies about the forthcoming changes. And, once these changes appear on CAP customer bills, PECO will also be informing customers about the specific impact of these changes on their bill payment requirements. Once the new benefits begin appearing on CAP customer bills, PECO will no doubt receive calls and communications from customers who will need significant education and explanation about these changes and their impact on the CAP customer bill payment requirements. It would be detrimental to CAP customers and the community agencies that interact with these customers to impose another set of educational messages and communications concerning customer choice and the same time.

OCA St. 2-R at 1-2 (for PECO DSP IV). She recommended that:

At a minimum, there should not be any change to the CAP shopping policy until there has been a full implementation of the revised CAP rate design and arrears management program and a determination that the program has been properly implemented with evidence that customers understand and have adjusted to these program changes. It is my understanding that these program changes will occur in the 4th quarter of 2016. Therefore, at the earliest, I would not recommend any change to CAP customer shopping until June 1, 2017, the onset of PECO's DSP IV.

OCA St. 2-R at 3-4 (for PECO DSP IV).

Determination of a CAP Shopping Plan in the DSP IV proceeding is the most reasonable approach given the time elapsed since DSP II and the significant new evidence that is now available. The OCA submits that the Commission's recent findings in PPL's DSP proceeding regarding the harms to CAP customers from unrestricted shopping cannot be ignored. The OCA respectfully requests that the Commission not approve PECO's tariff filing in this docket and consider implementation of a CAP Shopping Plan that maintains customer affordability and program cost-effectiveness in the DSP IV proceeding where a complete record has been developed. Based on that record and the PPL findings, the OCA submits that CAP rules that mitigate the identified harms of unrestricted CAP shopping are clearly needed.

B. The OCA submits that the Commission should reconsider the implementation of price protections for PECO's CAP Shopping Plan.

If the Commission determines that it is necessary to review PECO's CAP Shopping Plan as part of this DSP II proceeding, the OCA submits that PECO's tariff filing is not sufficient for making a determination. In the original DSP II proceeding, the Commission's Order was premised on the Commission's conclusion that it did not have the authority to implement CAP shopping protections. The Commonwealth Court's decision determined that the Commission did have the authority to implement CAP price protections. The Commonwealth Court stated:

So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend to ensure adequately-funded, cost-effective, and

affordable programs to assist customers who are of low income to afford electric service, the [Commission] may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – e.g., an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.”

CAUSE-PA et al. v. Pa. PUC, 120 A. 3d 1087, 1104 (Pa. Cmwlth. Ct. July 14, 2015), *cert denied* 2016 Pa. LEXIS 723 (Pa. April 5, 2016) (PECO CAP Shopping).

The Commonwealth Court found “there is record evidence to support Petitioners’ view that a price ceiling would benefit CAP participants and, by extension, non-CAP participants.” PECO CAP Shopping at 1108. The Commonwealth Court noted, in particular, that PECO’s brief identified that 73% of CAP customers in PPL’s service territory paid more than the Price to Compare. PECO CAP Shopping at 1104-1105. The Commission, however, did not base its decision on that evidence, instead concluding that “there is no evidence in this proceeding that the overall long-run electric rates for CAP shopping customers will be higher than if those customers are served under default service rates.” Petition of PECO Energy Company for Approval of its Default Service Plan, Docket No. P-2012-2283641, Reconsideration Order, at 11 (March 6, 2014); see also, PECO CAP Shopping at 1107-1108. The OCA submits that the Commission should re-examine the record evidence in DSP II presented in light of its finding in its recent PPL DSP IV Order that CAP shopping had caused economic harm to customers over the long-run. PPL DSP IV Order at 54-55.

If the Commission determines that it is necessary to address CAP customer shopping here, the OCA respectfully requests that a CAP Shopping Plan be developed which contains appropriate price protections which address the undisputed harms to CAP customer affordability and cost-effectiveness caused by unrestricted CAP customer shopping. The OCA submits that the Commission should consider the adoption of the original 2012 PECO proposal in this docket,

which provides a rule that CAP customers could not pay more than the Price to Compare for EGS service. The OCA submits that given the Court's decision on the Commission's authority, the evidence of harm in this docket and in the Commission's findings in the PPL DSP IV proceeding, the Commission should not approve unrestricted CAP shopping in PECO's service territory. See, PPL DSP IV Order at 54-55.

III. CONCLUSION

The OCA appreciates the opportunity to provide its Comments on PECO's filing. For the reasons set forth above, the OCA respectfully requests that the PECO CAP Shopping issue be addressed in the PECO DSP IV proceeding at Docket No. P-2016-2534980. In the alternative, the OCA respectfully requests that a CAP Shopping Plan be developed here that contains appropriate price protections to address the undisputed harms to CAP customer affordability and program cost-effectiveness caused by unrestricted CAP customer shopping.

Respectfully Submitted,



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DATE: December 2, 2016
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 following document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2nd day of December 2016.

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