

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for Approval of its Default Service Program (Customer Assistance Program Shopping Plan) (DSP II)	:	
	:	P-2012-2283641
	:	
	:	
Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 Through May 31, 2021 (DSP IV)	:	
	:	P-2016-2534980

**Prehearing Memorandum of the
Coalition for Affordable Utility Services
and Energy Efficiency in Pennsylvania**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, hereby submits this Prehearing Memorandum pursuant to the April 12, 2017 Prehearing Order of Administrative Law Judge Angela T. Jones.

I. History of the Proceedings

On March 17, 2016, PECO Energy Company (PECO) filed with the Commission a Petition for Approval of a Default Service Program (DSP IV) for the period June 1, 2017 through May 31, 2021, Docket No. P-2016-2534980. (DSP IV Petition). The DSP IV Petition was filed pursuant to 66 Pa. C.S. § 2807, the Commission’s Default Service Regulations at 52 Pa. Code §§ 54.181-190, and the Commission’s Policy Statement on Default Service at 52 Pa. Code §§ 69.1801-1817.

A number of parties intervened in the DSP IV proceeding, including CAUSE-PA, and an evidentiary hearing was held on July 14, 2016, at which the written testimony and exhibits of the parties were admitted into evidence. After the submission of written testimony, the parties engaged in settlement discussions, which resulted in a settlement resolving all but one issue

involving the ability of customers enrolled in PECO's Customer Assistance Program (CAP) to shop for electric generation supply. After briefing, on October 4, 2016, Administrative Law Judge Cynthia Williams Fordham issued an Recommended Decision, wherein she declined to address the CAP shopping issue based on PECO's filing of a proposed CAP shopping rule revision at its DSP II proceeding which is docketed at P-2012-2283641.

PECO's proposed CAP shopping rule revision in its DSP II proceeding arose from an opinion and order issued by the Commonwealth Court in *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. PUC*, 120 A.3d 1087 (Pa. Cmwlth. 2015) (*CAUSE-PA*). In that proceeding, the Commission rejected a CAP shopping plan proposed by PECO that would have prevented CAP customers from shopping for EGS-provided generation service at prices higher than PECO's price to compare. On appeal, the Commonwealth Court determined that the Commission had the authority to impose or approve CAP rules that limit the terms of offers from electric generation suppliers (EGSs) to ensure adequately-funded, cost-effective and affordable universal service programs. Nevertheless, in the case before it, the Court concluded that record evidence supported the Commission's findings. However, the Court found that there was a statutory basis and sufficient record evidence to support the OCA's proposed prohibition against early termination and cancellation fees. Therefore, the Court remanded the case to the Commission for further proceedings.

PECO's proposed CAP shopping rule revision, filed September 1, 2016, was in response to a May 16, 2016 Secretarial Letter issued by the Commission. The CAP shopping program set forth therein was to become effective on April 14, 2017. It was this filing that ALJ Fordham concluded was the vehicle in which the Commission would decide the CAP shopping issues and was the basis for her decision to decline to address the issue in her October 2016 Recommended Decision.

CAUSE-PA and other parties filed exceptions to the Recommended Decision on October 14, 2016. In November 2016, the Commission issued a second Secretarial Letter in PECO's DSP II proceeding inviting parties to file comments at that docket on PECO's proposed rule revision. These comments were due in December 2016. CAUSE-PA and others filed comments.

On December 8, 2016, the Commission entered a final order, which among other things, deferred all issues relating to PECO's plan to permit CAP customers to shop for electric generation supply to PECO's DSP II docket. CAUSE-PA and others filed a Petition for Reconsideration of that decision arguing that the matter had to be decided based on new evidence and the record established in PECO's DSP IV proceeding.

On March 16, 2017, the Commission issued an Order on Reconsideration in the DSP IV docket. (*Reconsideration Order*). The *Reconsideration Order* granted in part and denied in part the petitions for reconsideration and directed that the issue of PECO's CAP retail electric shopping plan be consolidated with the existing remand proceeding at the DSP II Docket. The *Reconsideration Order* referred the consolidated dockets to the Office of Administrative Law Judge for "for further proceedings as may be necessary and a decision on the merits of PECO's 2016 CAP Rule Change Filing, the CAP-SOP proposed in this DSP IV proceeding, and all issues relating to the ability of CAP customers to shop for electric generation supply in PECO's service territory." *Reconsideration Order* at 22. The matter was assigned to the Office of Administrative Law Judge for investigation and review and was assigned to Administrative Law Judge Angela T. Jones.

By notice dated April 7, 2017, an Initial Telephonic Prehearing Conference was scheduled for Monday, May 1, 2017. On April 12, 2017, ALJ Jones issued a Prehearing Conference Order

requiring the parties to file a prehearing memorandum by 12 noon on April 27, 2017. This Prehearing Memorandum is being filed in accordance with that order.

II. Issues to be addressed

The issues in this proceeding are well known, have a long history that span a number of years, and have been the subject of multiple proceedings. At their core, the issues include, but are not limited to the following:

1. The obligations of PECO and the Commission to develop and structure a CAP program so as to ensure that CAP customers maintain their ability to meet their CAP payment obligations, and that the CAP program remains affordable for CAP customers and the customers who pay for the costs of the CAP program;

2. The terms and conditions under which participants within a CAP program can shop for competitive EGS-provided service, including whether cancellation and termination fees should be charged to CAP participants, and whether CAP participants should pay prices that are higher than the default service price to compare while enrolled in CAP;

3. The impact any CAP shopping plan would have on CAP customers' ability to maintain their service;

4. The impact any CAP shopping plan would have on the costs that residential, non-CAP customers pay to support the CAP program; and,

5. Other appropriate consumer protections.

Evidence in service territories where CAP customers shop for generation supply shows that CAP customers, as well as the residential ratepayers who pay for the CAP program, are significantly harmed by this practice and are paying millions of dollars per year without any added

benefit to CAP customers or the CAP program as a whole. This evidence is relevant and material to the Commission's disposition of CAP shopping in PECO's service territory.

CAUSE-PA reserves the right to address additional issues in response to formal and informal discovery responses and issues raised by other parties to the proceedings. Any and all evidence presented by CAUSE-PA will be directed so as to ensure that low-income customers are adequately protected under any approved CAP shopping Plan.

III. Witnesses

CAUSE-PA intends to present the following witness to testify in this matter, but reserves the right to call additional or substitute witnesses as may be warranted upon proper notice to the Presiding Officer and the parties:

Harry S. Geller, Esquire
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Mr. Geller will address the issues identified above, as well as other issues that may arise in the course of this proceeding.

IV. Service on CAUSE-PA

Service on CAUSE-PA may be made on its attorneys at the Pennsylvania Utility Law Project, who consent to accept by electronic delivery all documents on the deadlines for their filing as follows:

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V. Discovery

CAUSE-PA does not propose any Discovery modifications.

VI. Settlement

CAUSE-PA is willing to work with any and all of the other parties in this proceeding to attempt to come to a full or partial settlement of the litigated issues.

VII. Litigation Schedule

In conversation with all of the parties who are known to have an interest in the CAP Shopping issues, consensus has developed¹ that the prudent course of action would be to hold these proceedings in abeyance pending the outcome of an appeal that is currently pending in *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and*

¹ To CAUSE-PA's knowledge, the following parties agree with this approach: CAUSE-PA, PECO, the Office of Consumer Advocate, the Tenant Union Representative Network, and Action Alliance for Senior Citizens of Greater Philadelphia, the Bureau of Investigation and Enforcement, and the Office of Small Business Advocate. The Retail Energy Supply Association has informed the other parties that it does not formally oppose the approach.

Procurement Plan for the Period of June 1, 2017 Through May 31, 2021, Docket No. P-2016-2526627 (Opinion and Order dated October 27, 2016) (hereinafter “*PPL CAP Shopping Order I*”). In that proceeding, the Commission ruled after full briefing, that the joint litigation position of PPL Electric Utilities, CAUSE-PA, the OCA, and I&E was the best of several alternatives presented and adopted what came to be known as the CAP Standard Offer Program or CAP-SOP program. The Commission further denied RESA’s petition for reconsideration finding that:

[T]he most crucial aspect of any CAP Shopping Plan and the most determinative factor in the Commission’s decision, that being how the Plan will impact the CAP customer and the non-CAP residential customers who pay the costs of the program. We emphasize that the overwhelming substantial evidence presented in this proceeding demonstrated that there has been significant harm to both CAP shopping customers and non-CAP residential customers who pay the costs of the program. As such, we affirm that the CAP-SOP proposal was the best of several alternatives provided on the record of this proceeding to address the unreasonable ramifications of unrestricted shopping by PPL’s CAP customers.

Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2017 Through May 31, 2021, Docket No. P-2016-2526627 (Opinion and Order dated January 26, 2017) (hereinafter “*PPL CAP Shopping Order II*”) at 18.

On February 27, 2017, RESA filed a Petition for Review of *PPL CAP Shopping Order I* and *PPL CAP Shopping Order II*. That appeal is docketed with the Commonwealth Court as *Retail Energy Supply Association v. PUC*, Docket No. 230 CD 2017. CAUSE-PA, PPL, the OCA, and I&E have all intervened in the proceeding. On April 11, 2017, the Commonwealth Court issued a briefing schedule. This schedule has briefing concluding in early July 2017. However, because the Commonwealth Court does not hear oral argument in July and August each year, the earliest the case could be argued is the week of September 11-15, 2017. *See* 2017

Commonwealth Court Calendar, available at: <http://www.pacourts.us/courts/commonwealth-court/calendar>.

Disposition of the appeal in the PPL case is relevant for several reasons. First, the CAP-SOP program approved by the Commission in *PPL CAP Shopping Order I* is substantially similar to the CAP-SOP proposal that was proposed by CAUSE-PA in PECO's DSP IV proceeding. Second, given the disagreement between the relevant parties to this proceeding about the authority of the Commission to do what it did in *PPL CAP Shopping Order I*, none of the parties is likely to compromise its position prior to Commonwealth Court's decision in RESA's appeal. Finally, the decision of the Commonwealth Court is likely to provide guidance concerning the scope of the Commission's authority to impose consumer protections to address the unreasonable ramifications of unrestricted shopping by CAP customers.

As such, CAUSE-PA believes that it would be prudent to hold this proceeding in abeyance pending disposition of that appeal and further guidance from the Commonwealth Court. Abeyance would preserve scarce resources of the parties and the Commission while these issues are clarified. To this end, several of the parties intend to jointly file a motion formally making this request, and as such, request the following schedule for so doing:

May 12, 2017	Filing of Joint Motion to Hold the Proceeding in Abeyance
June 1, 2017	Answers to Joint Motion Due

In the event that the Joint Motion is denied, CAUSE-PA requests that the ALJ issue a scheduling order as follows:

August 1, 2017	Supplemental Direct Testimony Due (All Parties)
September 12, 2017	Supplemental Rebuttal Testimony Due
October 18-20, 2017	Oral rejoinder and Evidentiary Hearings
December 20, 2017	Main Briefs
February 5, 2018	Reply Briefs.

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



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April 27, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2017, I have served copies of foregoing letter upon all of the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA EMAIL AND/OR FIRST CLASS MAIL

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Respectfully submitted,



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