



September 28, 2022

VIA E-File

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Petition of PECO Energy Company to Defer Implementation of Customer Assistance Program Participant Shopping in Its Service Area, Docket No. P-2022-3035092

Petition to Intervene and Answer of CAUSE-PA

Dear Secretary Chiavetta:

Please find the attached **Answer and Petition to Intervene of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above referenced proceeding.

As indicated on the attached Certificate of Service, service on the parties was accomplished by email only. A hard copy can be provided upon request.

Respectfully Submitted,

Elizabeth R. Marx, Esq.
Counsel for CAUSE-PA

CC: Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company to Defer :
Implementation of Customer Assistance Program : Docket No. P-2022-3035092
Participant Shopping in Its Service Area :

**ANSWER AND PETITION TO INTERVENE
OF THE COALITION FOR AFFORDABLE UTILITY SERVICES
AND ENERGY EFFICIENCY IN PENNSYLVANIA**

PENNSYLVANIA UTILITY LAW PROJECT

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Pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“PUC” or “Commission”), 52 Pa. Code §§ 5.61-5.76, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, hereby petitions the Pennsylvania Public Utility Commission (“Commission”) to intervene and files its Answer in the above-captioned proceeding.

In short, and for the reasons explained more fully below, CAUSE-PA urges the Commission to continue the shopping rules currently in place in PECO’s service territory unless and until a further shopping proposal is reviewed and approved by the Commission following the issuance of statewide Commission policy on the matter. As explained, the Commission should not approve PECO to implement a potential future Commission policy statement regarding CAP shopping without first vetting the details of an individual utility proposal.

ANSWER

1. CAUSE-PA is a signatory party to the Joint Petition for Partial Settlement filed on August 13, 2020, in PECO’s most recent Default Service Plan (DSP) proceeding at docket P-2020-3019290, which precipitated PECO’s filing of the instant Petition. In that Settlement, the parties agreed to delay further consideration of any possible amendment to PECO’s current CAP shopping rules until after a final decision in PECO’s then-pending Universal Service and Energy Conservation Plan proceeding at dockets M-2018-3005795, P-2020-3020727, and P-2020-3022154. In relevant part, PECO agreed to “make a filing with the Commission in which it will make a proposal regarding CAP shopping that is consistent with the CAP design approved in such final, non-appealable Opinion and Order, and which is informed by all available information and data.” (Partial Settlement, Docket P-2020-3019290, at para. 70).

2. In its Statement of Support for this Partial Settlement, CAUSE-PA explained:

[E]xtensive data uncovered in [the DSP] proceeding shows that residential shopping customers – and specifically confirmed low income customers – consistently pay more, on average and on net, for competitive electric supply. Without appropriate protections, CAP shopping can cause substantial financial harm to both economically vulnerable CAP customers and other residential ratepayers who pay for the program.

The question of how to design an appropriate CAP shopping program plan to protect CAP customers and other residential customers from financial harm associated with excessive competitive market pricing is (in part) dependent on the applicable CAP design. PECO recently filed a Petition with the Commission to transition its current CAP design from a Fixed Credit Option program to a Percentage of Income Payment Plan program, which will be considered in tandem with PECO’s currently pending USECP. If approved, this Petition will impact the type of severity of harm caused by CAP shopping. Until that programmatic change is reviewed, approved, and finalized, it would not be in the public interest to proceed with adoption of a CAP shopping design. CAUSE-PA believes it is soundly in the public interest to defer further consideration of CAP shopping until PECO’s CAP design issues are fully addressed.

Importantly, the Settlement does not dictate what PECO will ultimately propose with regards to CAP shopping, nor does it limit any of the parties to a particular position regarding CAP shopping in PECO’s service territory. This ensures the parties to PECO’s future CAP shopping petition will be able to fully assess applicable data and information and are free to take any position regarding whether, when, or in what form PECO should proceed with CAP shopping. This is critical, as it ensures that any future decision is not predetermined, and is instead guided by the factual information and evidence available at that time.

(CAUSE-PA Statement in Support, Docket P-2020-3019290, at 7-8).

3. PECO’s current CAP shopping rule requires all CAP customers to remain on default service while enrolled in the program. (PECO Petition at 7).

4. CAUSE-PA supports PECO’s proposal to continue its current CAP shopping rule. (PECO Petition at 10-11). However, we strongly disagree with PECO’s proposal to amend this rule at a future date “after the effective date of a Commission Policy Statement directing the implementation of CAP shopping in all electric distribution company service areas in Pennsylvania.” (PECO Petition at 10-11). Instead, PECO’s current CAP shopping rules should remain effective until, following the issuance of final statewide Commission policy on the matter,

PECO sets forth a further shopping proposal that is subsequently reviewed and approved by the Commission.

5. CAP shopping has proven to result in substantial financial harm to CAP participants and other residential ratepayers who pay for the program through rates, and attempts at imposing lesser restrictions have failed to curb identified harm. Since approving the above noted Partial Settlement, the Commission has approved CAP shopping prohibitions in PPL Electric, Duquesne Light, and the four FirstEnergy Company service territories.

6. In PPL Electric and the four FirstEnergy Company proceedings, where limited CAP shopping was previously permitted, the data clearly showed that CAP shopping pricing restrictions (as opposed to a rule prohibiting CAP shopping) are ineffective at curbing excessive costs for low income CAP customers and other residential ratepayers.

- a. In FirstEnergy's service territories, where CAP shopping rules were modeled on the Commission's proposed CAP Shopping Policy Statement, CAP shopping customers nevertheless paid substantially higher rates for service. These excessive prices resulted in substantial higher termination rates and uncollectible expenses, imposing substantial hardship on CAP shopping customers and inflating the cost of the program and increasing collections costs borne by all residential ratepayers.¹
 - i. In 2021, on an average per customer basis, FirstEnergy's CAP shopping customers were charged between \$248.52 and \$367.18 more than the applicable default service price. This was two years after FirstEnergy had implemented rules permitting limited CAP shopping.

¹ Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs, Docket Nos. P-2021-3030012, --13, -14, -21, Statement of CAUSE-PA in Support of the Joint Petition for Partial Settlement, at 2-3, 10-12 (May 6, 2022).

- ii. In March 2020, as Pennsylvania went into lockdown across the state and unemployment rates soared, between 70-99% of CAP shopping customers were charged rates exceeding the applicable default service rate, further increasing their financial hardship through this period of extreme economic uncertainty.
 - iii. In 2021, 29.5% of FirstEnergy's CAP shopping customers were involuntarily terminated for non-payment, compared to 8.8% of CAP default service customers – and average CAP shopping account write-offs were \$837.42 higher than CAP default service customers.
 - iv. In light of this overwhelming data evidencing the failure of less restrictive CAP shopping program rules to prevent certain and substantial harm to low income CAP customers and other ratepayers, the parties to FirstEnergy's last DSP proceeding proposed and the Commission approved FirstEnergy to adopt a rule prohibiting CAP shopping.²
- b. Similar data from PPL's last DSP proceeding revealed that CAP customers were still subject to substantial harm despite the requirement that CAP customers only shop through a special Standard Offer Program (CAP-SOP) designed to provide a guaranteed 7% discount and capped pricing at the applicable default service price. Notwithstanding these CAP shopping restrictions, PPL CAP shopping customers nevertheless continued to be charged prices which substantially exceeded the applicable default service price.³
- i. The following chart shows the net charges over the applicable default service price for PPL's CAP shopping customers. PPL's CAP-SOP was implemented in June 2019 – after which CAP shopping customers continued to incur millions of dollars in charges exceeding the default service price.

² Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs, Docket Nos. P-2021-3030012, --13, -14, -21, Joint Petition for Partial Settlement at p. 21, ¶ 82-88 (May 6, 2022); see also Final Order (entered Aug. 4, 2022).

³ Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2021 through May 31, 2025, Final Order, at 102-130 (entered Dec. 17, 2020).

	Net Charges Over Default, PPL CAP Shopping Customers
2013	\$2,524,475.41
2014	\$5,815,184.07
2015	\$2,318,254.20
2016	\$7,454,373.60
2017	\$4,807,805.41
2018	\$4,281,581.10
2019	\$2,908,085.49
2020	\$221,472.88 (Jan. Only)
Total	\$30,331,232.16

- ii. On a per-customer basis, the excessive pricing charged to CAP shopping customers did not improve following implementation of its prior CAP shopping restrictions. In 2016, CAP shopping customers were charged (on average) \$284.41; and in 2019, CAP shopping customers were charged (on average) \$284.25.
- iii. As a result of this substantial evidence of ongoing harm, the Commission rightly approved PPL’s proposal to implement a prohibition on all CAP shopping.⁴

7. Underscoring the grave likelihood of financial harm from CAP shopping is the fact that residential electric shopping customers across the state were charged *on net* over \$1.5 billion more than the applicable default service price over a five-year period.⁵

⁴ Petition of PPL Electric Utilities Corp. for Approval of Its Default Service Plan for the Period June 1 2021 through May 31, 2025, Opinion and Order, Docket P-2020-3019356, at 129-130 (Dec. 17, 2020).

⁵ Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, Testimony of Harry Geller on Behalf of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), Pa. PUC Docket No. P-2020-3019356, at 8 & Exhibit 1 (dated June 25, 2020).

Petition of PECO Energy Co. for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, Testimony of Harry Geller on Behalf of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), Pa. PUC Docket No. P-2020-3019290, at 10 & Exhibit 1 (dated June 16, 2020).

Petition of Duquesne Light Company for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, Testimony of Harry Geller on Behalf of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), Pa. PUC Docket No. P-2020-3019522, at 10 & Exhibit 1 (dated July 17, 2020).

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs for the period commencing June 1, 2023, through May 31, 2027, Docket Nos. P-2021-3030012, -13, -14, -21 (dated Feb. 25, 2022).

Utility	Dates Analyzed	Aggregate Shopping Charges in Excess of Default Service Price
PECO Electric	Jan. 2015 – April 2020	\$733,197,940
PPL Electric	Jan. 2015 – May 2020	\$295,828,735
Duquesne Light	Jan. 2017 – May 2020	\$102,869,316
FirstEnergy	Aug. 2017 – Dec. 2021	\$431,152,822
Total		\$1,563,048,813

8. Excessive pricing in the competitive market has fallen especially hard on confirmed low income customers, who tend to be more susceptible to promises of savings and enticing giveaways like gift cards or store credit. In a single month in December 2021, as residential utility debt soared to unprecedented levels as a result of the pandemic, FirstEnergy’s confirmed low income shopping customers were charged over \$1.1 million more than the applicable default service price.⁶ On an average per-customer basis in that single month, across the four FirstEnergy Companies, confirmed low income shopping customers were charged between \$46.17 and \$60.71 more than the default service price. As documented at length in the FirstEnergy proceeding, these higher rates across low income customer base exacerbates payment trouble, increases terminations, and drives substantially higher universal service program costs – especially when the low income shopping customer is actively enrolled in CAP.

9. PECO’s Petition seeks to continue the status quo with regard to CAP shopping and proposes to maintain its current CAP rule that requires CAP customers to be on default service while participating in the program. In light of the substantial evidence of excessive charges in the residential retail electricity market both in PECO’s service territory and statewide, and the distinct likelihood that CAP shopping will cause financial harm to CAP customers and other ratepayers, CAUSE-PA urges the Commission to approve PECO’s proposal to preserve the status quo.

⁶ Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs, Docket Nos. P-2021-3030012, --13, -14, -21, Statement of CAUSE-PA in Support of the Joint Petition for Partial Settlement, at 2-3 (May 6, 2022).

10. CAPs are designed to help remediate energy insecurity, and the explicit statutory objective of the program is to help ensure that low income households can maintain service to their home.⁷ In turn, electric distribution companies are statutorily mandated to operate CAPs and other universal service programming – subject to the explicit oversight and direction of the Commission – which is in turn obligated by law to ensure that CAPs are appropriately funded, accessible to those in need, and maintained in a cost-effective manner.⁸

11. When CAP customers pay rates in excess of the default service price, three types of defined harm may occur: (1) the CAP participant’s pre-calculated monthly rate may not cover as much of the bill, resulting in higher monthly rates and, ultimately, greater payment trouble, involuntary termination rates, and uncollectible expenses; (2) CAP participants may reach the maximum level of CAP benefits before the end of the program year; and (3) the cost of the program may increase as levels of assistance increase. The severity of each harm is largely dependent on the structure and design of each utility’s CAP.

12. Notwithstanding our support for PECO’s proposal to maintain the status quo with regard to CAP shopping at this time, CAUSE-PA is concerned about the second part of PECO’s request: Namely, its proposal that PECO be approved to implement CAP shopping in the future following the issuance of a final statewide policy statement on the matter. Should PECO seek to implement CAP shopping at a later date, following the issuance of a final Commission policy statement on the matter, it should be required to file a Petition with the Commission to allow for appropriate review. It is critical that the Commission review CAP shopping proposals to implement CAP shopping in detail, as application of statewide policy will inherently vary across utilities depending on the structure and design of each utility’s program.

⁷ 66 Pa. C.S. § 2802 (definition of universal service and energy conservation programs).

⁸ 66 Pa. C.S. §§ 2803(10), (17); 2804(9); see also 52 Pa. Code § 69.261 *et seq.*

13. CAUSE-PA submits that further evidentiary proceedings are unnecessary for the Commission to approve PECO's Petition, as modified consistent with our recommendation that PECO be required to file a Petition if it seeks to implement CAP shopping in the future following the issuance of a Commission policy statement on the matter. Nevertheless, to the extent the Commission believes further evidence is warranted, we submit that the matter should be referred to the Office of Administrative Law Judge for further proceedings.

PETITION TO INTERVENE

14. CAUSE-PA seeks to intervene and participate as an active party in this proceeding

15. Eligibility to intervene in Commission proceedings is governed by 52 Pa. Code § 5.72, which provides in relevant part that “[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.” 52 Pa. Code § 5.72(a).

16. Section 5.72 further provides that the right or interest may be one “which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.” 52 Pa. Code. § 5.72(a)(2).

17. Even though Section 5.72 speaks of the rights of a “person” to intervene, the Commonwealth Court has consistently stated that “an association may have standing as a representative of its members ... as long as an organization has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action, [i.e., is aggrieved, the organization] has standing.” Energy Cons. Council of Pa. v. Pa. PUC, 995 A.2d 465, 476 (Pa. Commw. 2010) (alteration in original) (citing Tripps Park v. Pa.

PUC, 415 A.2d 967 (Pa. Commw. 1980); Parents United for Better Schools v. School District of Philadelphia, 646 A.2d 689 (Pa. Commw. 1994)).

18. CAUSE-PA is an unincorporated association of low and moderate 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 telecommunication services.

19. 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.

20. CAUSE-PA is located, c/o the Pennsylvania Legal Aid Network, at 118 Locust Street, Harrisburg, PA 17101.

21. CAUSE-PA has a significant interest in the impact that PECO's Petition and any modifications made through the course of this proceeding will have on moderate and low income residential customers. These interests are not adequately represented by other participants.

22. Members of CAUSE-PA are located within PECO's service territory and will be directly affected by the outcome of this proceeding, as it will impact critical aspects of PECO's Customer Assistance Program (CAP) and the cost of service for both CAP customers and other residential ratepayers who pay for CAP.

23. CAUSE-PA is a party to the underlying Settlement, which was the impetus of the instant Petition, and has participated as an active party in dozens of PECO Energy proceedings regarding PECO's CAP and related policies and procedures.

24. CAUSE-PA has standing to intervene because its members have or will suffer a direct, immediate, and substantial injury to an interest as a result of this proceeding. See Energy Cons. Council of Pa., 995 A.2d at 476.

25. CAUSE-PA is represented in this proceeding by:

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John W. Sweet, Esquire
Ria M. Pereira, Esquire
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26. Counsel for CAUSE-PA consents to the service of documents by electronic mail to pulp@pautilitylawproject.org, as provided in 52 Pa. Code § 1.54(b)(3).

WHEREFORE, CAUSE-PA respectfully requests that the Commission enter an order approving PECO's Petition. In the alternative, should the Commission refer this matter to the OALJ for further proceedings, CAUSE-PA requests that the Commission grant CAUSE-PA full status as an intervener in this proceeding, with active party status.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



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Date: September 28, 2022

Verification

I, Elizabeth R. Marx, legal counsel for the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), hereby states that the facts contained in the foregoing pleadings are true and correct to the best of my knowledge, information, and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Elizabeth R. Marx, Esq.
*On behalf of the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania*

Dated: September 28, 2022

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company to Defer :
Implementation of Customer Assistance Program : Docket No. P-2022-3035092
Participant Shopping in Its Service Area :

Certificate of Service

I hereby certify that I have this day served copies of the **Petition to Intervene and Answer of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54.

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