

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held December 8, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman

Petition of PECO Energy Company to Defer  
Implementation of Customer Assistance Program  
Participant Shopping in Its Service Area

P-2022-3035092

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition of PECO Energy Company (PECO or Company) to Defer Implementation of Customer Assistance Program Participant Shopping in Its Service Area (Petition to Defer), filed on September 8, 2022. In its Petition, PECO requests Commission approval to continue to restrict customers enrolled in its Customer Assistance Program (CAP) from shopping for retail electric generation supply until the Commission issues the final Policy Statement on Electric CAP

Participant Shopping (Final Policy Statement).<sup>1</sup> On September 28, 2022, the Office of Consumer Advocate (OCA) filed an Answer (OCA Answer) in support of the Petition to Defer. Also, on September 28, 2022, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed an Answer and Petition to Intervene (CAUSE-PA Answer). The Tenant Union Representative Network (TURN) filed a Petition to Intervene and a Letter in Lieu of Answer to PECO's Petition (TURN Letter) on September 28, 2022. No Parties filed Answers to the Petitions to Intervene. For the reasons stated below, we will grant the Petitions to Intervene of CAUSE-PA and TURN and grant PECO's Petition to Defer, consistent with this Opinion and Order.

### **Background and History of Proceeding**

Pursuant to its universal service obligations in the Public Utility Code, PECO's CAP assists low-income customers in PECO's service territory through discounted energy bills. The Company's CAP is a special rate rider for customers with an annual household gross income level at or below 150% of the Federal poverty guidelines. According to the Company, approximately 117,500 residential electric customers in PECO's service territory – almost 8% of all PECO residential electric customers – participate in the CAP. Petition to Defer at 2-3.

In October 2016, PECO transitioned from a tiered rate discount CAP structure to a new Fixed Credit Option (FCO) design. Under this approach, CAP customers receive a fixed bill credit each year for the utility service they receive based on the income of the customer's household, the number of residents in the household and the utility usage of the household in the prior year. PECO explained that its CAP credit is

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<sup>1</sup> On February 28, 2019, the Commission issued a proposed Policy Statement in *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Docket No. M-2018-3006578 (Order entered February 28, 2019) (*Proposed Policy Statement Order*).

designed to help ensure that the energy “burden” – the cost of electricity in proportion to household income – is affordable for CAP customers based on poverty level. The Company calculates the CAP credit amount using a twelve-month look-back period.

*Id.* at 3.

PECO asserts that all of its customers, including all low-income customers, may elect to shop for electricity and purchase electric generation supply from an electric generation supplier (EGS) at any time. At present, however, those customers are not permitted to enter into, or remain on, CAP while purchasing electric generation supply from an EGS. *Id.* at 4.

By Order entered February 28, 2019, the Commission issued the proposed Policy Statement on CAP shopping identifying uniform CAP shopping policies for electric distribution companies (EDCs). The *Proposed Policy Statement Order* identified the following CAP shopping requirements:

- (1) a CAP shopping product rate at or below the EDC’s [Price to Compare (PTC)] for the duration of the contract; (2) a prohibition in EGS-CAP customer contracts against fees unrelated to the provision of electric generation service, including early termination and cancellation fees; and (3) the following options for CAP customers upon expiration of the current contract period: (i) enter into another contract with their existing EGS with the same CAP protections, (ii) switch to another supplier offering a contract with the same CAP protections, or (iii) return to default service.

Petition to Defer at 4 (citing *Proposed Policy Statement Order* at 10).

In advance of the filing of the next Default Service Plans (DSPs) by EDCs, the Commission issued a Secretarial Letter on January 23, 2020, directing how CAP

shopping should be addressed in the DSPs. *Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued January 23, 2020) (*January 2020 Secretarial Letter*). The Secretarial Letter identified that the CAP Shopping Policy in the *Proposed Policy Statement Order* was unlikely to be effective in time for the subsequent Default Service Proceedings of the EDCs. However, the Secretarial Letter stated that EDCs should still consider the Commission’s prior guidance in the *Proposed Policy Statement Order* and recent decisions in previous default service proceedings in developing CAP proposals for upcoming DSP filings. *January 2020 Secretarial Letter* at 9-10.

On March 13, 2020, PECO filed its Default Service Plan V Petition at Docket No. P-2020-3019290 seeking approval of its proposed DSP V for the period June 1, 2021, through May 31, 2025. Consistent with the *Proposed Policy Statement Order*, PECO proposed a CAP shopping plan that provided the following:

CAP customers may only enter a contract with an EGS for a rate that is at or below PECO’s PTC and does not contain any early termination, cancellation or other fees. PECO also proposed to impose new requirements for EGSs who choose to serve CAP customers, including the use of the Company’s “bill-ready” EDC consolidated billing, and established contract expiration and change notice procedures. To ensure verifiable supplier interest in serving PECO CAP customers, the Company proposed to require the receipt of a minimum of five nonbinding CAP supplier participation notices from EGS before Plan implementation.

Petition to Defer at 5.

During PECO’s DSP V Proceeding, however, CAUSE-PA, TURN and other parties opposed CAP customer shopping and presented data showing that the Company’s residential customers, including low-income customers, have paid on average generation service rates higher than PECO’s PTC since 2015. Thereafter, on

August 13, 2020, the parties to the DSP V Proceeding filed a Joint Petition for Partial Settlement (Partial Settlement). As part of the Partial Settlement, PECO agreed to submit a CAP shopping proposal within ninety days of the Commission's final Order in PECO's pending Universal Services and Conservation Plan Proceeding at Docket No. M-2018-3005795 (CAP Design Proceeding), discussed below, instead of implementing the CAP shopping plan in the DSP V Proceeding. By Order entered December 3, 2020, the Commission approved the Partial Settlement. *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019290 (Order entered December 3, 2020) (*PECO DSP V Order*).<sup>2</sup>

As noted, PECO initiated its CAP Design Proceeding during the pendency of its DSP V Proceeding. In its Petition pertaining to the CAP Design filed on July 8, 2020, PECO proposed to change its current CAP to provide a percentage of income-based benefit – titled Percentage of Income Payment (PIPP) – to CAP customers instead of an FCO. According to the Company, the PIPP design provides eligible customers with a fixed bill equal to what the CAP customer can afford to pay for utility service. The fixed bill amount is determined by applying an energy burden percentage to the customer's annual income. PECO submitted that the CAP credits will be applied to reduce the customer's monthly undiscounted bill to the monthly PIPP bill amount. For billing purposes, PECO will apply the lesser of the PIPP bill or actual charges. PECO asserted that bills issued under the PIPP will be subject to both monthly minimum bill amounts and annual maximum credit amounts. *Petition to Defer at 5.*

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<sup>2</sup> The provision pertaining to PECO's agreement to submit a CAP shopping proposal within ninety days of the Commission's final Order in the CAP Design Proceeding is contained in Paragraph 70 of the Partial Settlement. *See PECO DSP V Order at 24-25.*

On June 16, 2022, the Commission approved the Company’s adoption of its PIPP. *PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2018-3005795 (Order entered June 16, 2022) (*June 2022 USECP Order*). Thereafter, the Commission granted PECO’s request to extend the deadline to implement the PIPP to December 16, 2022. *PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2018-3005795 (Order entered August 4, 2022) (*August 2022 USECP Order*). The issuance of the *June 2022 USECP Order* as modified by the *August 2022 USECP Order* triggered the ninety-day filing requirement of a CAP Shopping Plan contained in Paragraph 70 of the Partial Settlement and approved in the *PECO DSP V Order*.

PECO filed its Petition to Defer on September 8, 2022, in order to defer implementation of a CAP Shopping Plan until the Commission provides guidance to all Pennsylvania EDCs in its Final Policy Statement. Petition to Defer at 7.

On September 28, 2022, the OCA filed an Answer in support of the Petition to Defer. Also, on September 28, 2022, CAUSE-PA filed its Answer and Petition to Intervene and TURN filed its Petition to Intervene and its Letter in Lieu of Answer.<sup>3</sup>

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<sup>3</sup> A Petition to Intervene is governed by 52 Pa. Code § 5.72(a) which requires “an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.” Additionally, Section 5.72 of our Regulations provides that the right or interest to intervene may be one “which may be directly affected and which is not adequately represented by existing participants, and as to which petitioner may be bound by the action of the Commission in the proceeding.” 52 Pa. Code § 5.72(a)(2). Here, both CAUSE-PA and TURN were Parties to the Partial Settlement approved in the *PECO DSP V Order*, which included the provisions pertaining to the CAP Shopping Plan at issue in this proceeding. In light of this prior involvement and given the fact that no Parties have filed Answers or objections to the intervention petitions, we find that both CAUSE-PA and TURN have satisfied the standards for intervention and shall grant their requests to intervene in this proceeding.

Both CAUSE-PA and TURN support the Petition to Defer but recommend that PECO be required to file a Petition if it seeks to implement CAP shopping in the future following the issuance of the Final Policy Statement. CAUSE-PA Answer at 10; TURN Letter at 2-3.

## Discussion

### Petition to Defer and Answers

PECO argues that the Commission should permit the continuation of the Company's current rule requiring CAP customers to receive default service at the PTC until after the effective date of a Commission Policy Statement directing the implementation of CAP shopping in all EDC service areas in Pennsylvania. The Company submits that its proposal to maintain its prohibition on CAP customer shopping is reasonable and in the public interest. Petition to Defer at 7-9.

In support, PECO contends that its proposal is consistent with evidence presented in recent Commission proceedings concluding that the CAP shopping restrictions implemented in other EDCs' service areas have not adequately protected residential customers from the costs of CAP customers paying a rate for generation service that is higher than the PTC. Petition to Defer at 7-8.<sup>4</sup>

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<sup>4</sup> PECO cites to *Petition of Metropolitan Edison Electric Company for Approval of Its Default Service Plan for the Period From June 1, 2023 through May 31, 2027, et al.*, Docket Nos. P-2021-3030012, *et al.* (Recommended Decision issued June 29, 2022; Final Order entered August 4, 2022) (*FirstEnergy DSP VI Order*); *Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Order entered December 17, 2020) (*PPL DSP V Order*); and *Petition of Duquesne Light Company (DLC) for Approval of Its Default Service Plan for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019522 (Order entered January 14, 2021) (*DLC DSP IX Order*). Petition to Defer at 2.

The Company references the *DLC DSP IX Order* noting that DLC is the only other EDC besides PECO that has not allowed its CAP customers to shop for electric generation supply. In the *DLC DSP IX Order*, the Commission authorized deferral of CAP shopping until the issuance of a Final Policy Statement. PECO asserts that the approach approved in the *DLC DSP IX Order* was based largely on the documented problems PPL experienced in implementing its CAP standard offer program (CAP-SOP) framework where EGSs must agree to serve PPL's CAP customers at a 7% discount below the PTC. Petition to Defer at 7.

Under PPL's CAP-SOP rules, customers that had entered CAP with preexisting EGS contracts at prices above the PTC were permitted to remain with that supplier until the end of the contract term. PECO explains that in the *PPL DSP V Order*, the Commission approved elimination of CAP customer shopping effective June 1, 2021, to protect customers entering CAP with pre-program shopping contracts from harm associated with paying above-PTC rates for generation service. PECO asserts that in the *PPL DSP V Order*, PPL presented data showing that as of January 2020, 7,975 CAP customers were shopping outside of CAP-SOP and 62% of those customers were paying rates higher than the PTC. According to PECO, PPL also represented that only a few EGSs had participated in the CAP-SOP for short periods since the program's implementation in June 2017. PECO submits that, based on that evidence, the Commission concluded that PPL's CAP-SOP did not sufficiently protect shopping CAP customers from paying a rate higher than the PTC and the CAP-SOP had not otherwise been successful due to lack of EGS participation. Petition to Defer at 7.

Further, PECO references the *FirstEnergy DSP VI Order* noting that the FirstEnergy EDCs will also require their CAP customers to receive default service at the PTC commencing with their sixth default service program on June 1, 2023. PECO asserts that the settlement approved in the *FirstEnergy DSP VI Order* adopted a



reasonable set of rules to ensure that the CAP program is adequately funded as required by law. Petition to Defer at 7.

Consistent with those referenced proceedings, PECO submits that it reviewed the prices the Company's shopping residential customers are currently paying. The Company compared EGS prices in cents per kWh – determined by dividing monthly EGS charges billed to all residential accounts divided by kWh usage – to PECO's PTC in effect during the applicable period. According to PECO's analysis, since 2020, more than 80% of shopping residential customers have consistently paid EGS prices above PECO's PTC. Thus, PECO argues that its current policy of preventing CAP customers from shopping is an effective way to ensure that CAP customers do not pay prices higher than the PTC for generation service and that other residential customers do not pay higher universal service charges due to that EGS pricing. *Id.* at 8-9.

Referencing its approved PIPP, which will be implemented in December 2022, PECO states that its CAP customers receive a maximum CAP credit amount to be used over a 12-month period. If CAP customers shop at a rate higher than the PTC, the customers will exceed their maximum allowable CAP credit at a faster pace. PECO also notes that by allowing CAP customers to shop at a rate higher than the PTC increases the amount that other residential customers must pay to cover the CAP shortfall. *Id.* at 9.

Moreover, the Company submits that it recently implemented the reduced energy burdens proposed by the Commission in the 2019 Amendments to the Final Policy Statement on CAP.<sup>5</sup> As a result, PECO asserts that its CAP customers' monthly asked-to-pay amounts are even lower than they were previously. According to the

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<sup>5</sup> See, *2019 Amendments to Policy Statement on Customer Assistance Program*, 52 Pa. Code § 69.261-69.267, Docket No. M-2019-3012599 (Order entered November 5, 2019) (*2019 CAP Policy Statement*).

Company, EGSs would have to provide substantial discounts in order for a CAP customer to receive a benefit from shopping. As an example, PECO states that based on its residential PTC of \$0.0778 effective on September 1, 2022, an EGS would have to charge \$0.002 (*i.e.*, less than 1 cent) to a family of four with average usage of 700 kWh and a household income at 100-150% of the Federal Poverty Level for the customer to save any money shopping. Petition to Defer at 9.

Accordingly, PECO requests that the Commission grant the Petition to Defer and approve the continuation of the Company's current rule requiring CAP customers to receive default service at the PTC until after the effective date of the Final Policy Statement. *Id.* at 10-11.

The OCA supports PECO's Petition to Defer arguing, in part, that the evidence presented in the FirstEnergy and the PPL proceedings clearly demonstrate the financial harms of CAP shopping to both CAP customers and non-CAP residential customers who pay the costs of the program. According to the OCA, limitations on CAP customer shopping are an important cost control measure for the CAP program. The OCA further submits that the new energy burdens for PECO's CAP are designed to improve affordability, but argues that the implementation of CAP shopping in PECO's service territory would undermine that objective. Thus, the OCA requests that the Commission grant PECO's proposal to defer implementation of a CAP shopping plan. OCA Answer at 7-8.

In its Answer, CAUSE-PA urges the Commission to continue the shopping rules currently in place in PECO's service area unless and until a further shopping proposal is reviewed and approved by the Commission following the issuance of statewide Commission policy on the matter. Although supporting PECO's petition to maintain the status quo regarding CAP shopping at this time, CAUSE-PA argues that the Commission should not permit PECO in the context of this proceeding to implement a

potential future Commission policy statement regarding CAP shopping without first vetting the details of an individual utility proposal. CAUSE-PA Answer at 3.

In support of its contentions, CAUSE-PA asserts, in part, that 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 the identified harms. CAUSE-PA adds that since approving the Partial Settlement in the *PECO DSP V Order*, the Commission has approved CAP shopping prohibitions in the PPL Electric, DLC, and the four FirstEnergy Company service territories. *Id.* at 5.

CAUSE-PA submits that if PECO were to implement CAP shopping at a later date following the issuance of a Final Policy Statement on the matter, the Company should be required to file a Petition with the Commission to allow for appropriate review. According to CAUSE-PA, it is critical the Commission review CAP shopping proposals in detail because application of statewide policy will inherently vary across utilities depending on the structure and design of each utility's program. Additionally, CAUSE-PA believes that further evidentiary proceedings to approve a future PECO Petition following a Final Policy Statement on the matter would be unnecessary but that the Commission could refer the matter to the Office of Administrative Law Judge for further proceedings as deemed appropriate. *Id.* at 9-10.

Similar to CAUSE-PA, TURN strongly supports PECO's proposal to maintain the status quo by restricting the ability of CAP customers to shop. Likewise, TURN argues that PECO should not implement CAP shopping absent a full analysis showing that doing so would be a benefit to both CAP customers and the ratepayers who pay for the CAP program. Thus, TURN requests clarification that if the Commission issues a Final Policy Statement on CAP shopping that permits CAP customer shopping, PECO will need to submit a new plan for Commission review. TURN Letter at 2-3.

## Disposition

Upon review of the Petition to Defer and the Answers thereto, we find that the Company's proposal to continue to restrict CAP customers from purchasing electric generation service from EGSs until the issuance of a Final Policy Statement on CAP shopping is reasonable and in the public interest.

We agree with several of the proffered reasons in support of the Petition to Defer, including the concerns that if deferral were not permitted: (1) PECO would, as of June 1, 2023, be the only EDC in Pennsylvania to allow CAP customer shopping; (2) PECO's customers could suffer some of the potential harms identified in the PPL and FirstEnergy proceedings to CAP customers and non-CAP customers who support the costs of the program; and (3) the CAP shopping proposal would appear to conflict with the Company's adoption of the reduced energy burdens found in the *2019 CAP Policy Statement*.

Moreover, we note that all of the Parties to the Partial Settlement that was approved in the *PECO DSP V Order* – and which contained the provisions requiring PECO to submit a CAP shopping plan within ninety days of a final Order in the CAP Design Proceeding – were served with a copy of the Petition to Defer and no Party has filed objections to the Company's proposed deferral.<sup>6</sup> Thus, our consideration of the Petition to Defer, herein, is consistent with the Commission's handling of similar requests for deferment of CAP-related filings when there are no objections to such a deferment. *See, e.g., Petition of Peoples TWP LLC to Defer the Filing of a CAP-Plus Program*, Docket No. P-2011-2246461 (Order entered June 30, 2011).

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<sup>6</sup> PECO avers that it served a copy of its Petition to Defer on all the Parties in its DSP V proceeding and its CAP Design Proceeding. Petition to Defer at 10.

Under the circumstances, we deem it appropriate for the Company to continue to prohibit CAP shopping until the Commission provides further guidance in the anticipated Final Policy Statement.

Regarding the clarification requested by CAUSE-PA and TURN, we acknowledge that PECO is not proposing a CAP shopping plan at this time and whether one would be proposed in the future is speculative and dependent on the issuance of further guidance pursuant to a Final Policy Statement on CAP shopping by the Commission. Thus, we shall decline to address any procedures for the implementation of any such CAP shopping proposals when the Commission has not yet issued a Final Policy Statement on the matter.<sup>7</sup>

### **Conclusion**

For the reasons set forth above, we shall grant PECO's Petition to Defer, consistent with this Opinion and Order; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Petition of PECO Energy Company to Defer Implementation of Customer Assistance Program Participant Shopping in Its Service Area, filed on September 8, 2022, is granted, consistent with this Opinion and Order.

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<sup>7</sup> We note that in the *Proposed Policy Statement Order* the Commission had proposed that CAP participant shopping be addressed within the context of an electric default service program filing. *See Proposed Policy Statement Order* at 9 (§ 69.274(b): "An EDC should include the CAP participant electric generation shopping program in the first default service filing submitted for Commission approval ....").

2. That Paragraph 70 of the Partial Settlement approved in *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019290 (Order entered December 3, 2020), is modified to remove the requirement that PECO Energy Company file a proposal pertaining to Customer Assistance Program Participant Shopping within ninety days of a final, non-appealable order in *PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2018-3005795 and to clarify that any such proposal pertaining to Customer Assistance Program Participant Shopping shall not be filed prior to the issuance of further guidance provided by the Commission pursuant to *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Docket No. M-2018-3006578, consistent with this Opinion and Order.

3. That a copy of this Opinion and Order shall be served on all the Parties who participated in *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019290 (Order entered December 3, 2020) and *PECO Energy Company Universal Service and Energy Conservation Plan for 2019-2024 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2018-3005795.

4. That this proceeding at Docket No. P-2022-3035092 shall be marked closed.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 8, 2022