

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :
Approval of Its Default Service Program : Docket No. P-2012-2283641

PUBLIC VERSION

**REPLY BRIEF
OF DIRECT ENERGY SERVICES, LLC**

Joseph M. Clark, Esquire
Direct Energy Services, LLC
21 East State Street, 19th Floor
Columbus, Ohio 43215
Phone: 614.220.4369 ext 232
Fax: 614.220.4674
Joseph.Clark@directenergy.com

Counsel:

Daniel Clearfield, Esquire
Attorney ID #26183
Edward Lanza, Esquire
Attorney ID #81081
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Date: August 9, 2013

Attorneys for Direct Energy Services, LLC

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ARGUMENT.....1

A. PECO’s proposed price cap should be rejected because it is illegal and bad public policy.1

B. Other arguments by parties in favor of the price cap and in opposition to Direct Energy’s positions should be rejected.4

C. Concerns about contracts for CAP customers moving in and out of the CAP Shopping Plan further demonstrates why the price cap is problematic.7

D. The Commission should reject PECO’s proposed cost recovery method for CAP Shopping Plan implementation costs.10

E. The Commission should amend PECO’s proposed CAP Shopping Plan to Direct Energy’s proposal which would implement reasonable reporting requirements that will strike the appropriate balance of allowing an adequate review of the CAP Shopping Plan while not being so burdensome as to dissuade EGSs from serving CAP customers.12

F. The Commission Should Ensure There Are Appropriate and Defined Parameters Around Entering and Exiting Service of CAP Customers by EGSs.....14

G. The Commission should adopt PECO’s proposal for Commission monitoring and enforcement of compliance with the CAP Shopping Plan.....16

H. The Commission should reject CAUSE’s aggregation proposal as currently formulated.16

III. CONCLUSION17

I. Introduction

In its October 12, 2012 Opinion and Order in PECO's DSP case, the Pennsylvania Public Utility Commission ("Commission") made clear that PECO Energy Company ("PECO") customers on its customer assistance program ("CAP") should, like non-CAP customers, "have the ability to avail themselves of the full benefits of retail electric competition."¹ The Commission should find that PECO's CAP Shopping Plan will instead deny CAP customers the ability to avail themselves of the full benefits of retail competition and will probably actually deny them any of the benefits of retail electric competition.² The Commission should either modify PECO's CAP Shopping Plan in the ways requested by Direct Energy or reject the proposed CAP Shopping Plan in its entirety and require PECO to reconvene its working groups to craft a CAP customer shopping program that will succeed.

II. Argument³

A. PECO's proposed price cap should be rejected because it is illegal and bad public policy.

PECO's proposed CAP Shopping Plan includes a price cap whereby an electric generation supplier ("EGS") must at all times charge a CAP customer a price that is at or below

¹ *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641 Opinion and Order at 131-132 (October 12, 2012).

² While PECO may be "confident that many EGSs operating in PECO's service territory will seek to deliver savings... to customers" (PECO Main Brief at 19), the Commission should be asking the same question Direct Energy is asking – Where are all of those EGSs now? Those "many EGSs" participated vigorously in the previous stages of PECO's default service plan ("DSP") proceeding but not now. The silence is deafening and demonstrates the non-interest in the proposed CAP Shopping Plan and its likelihood of failure.

³ Direct Energy's reply brief does not address every point made in the Main Briefs of the other parties' to this case. Direct Energy's silence should not be construed as agreement or no objection but rather a decision to not address those particular points.

the price to compare (“PTC”).⁴ The other parties actively participating in this case support PECO’s price cap proposal. Direct Energy opposes the price cap proposal inasmuch as it is illegal and bad public policy. PECO’s price cap proposal should be rejected as a principle of the CAP Shopping Plan as well as to the extent it is considered one of PECO’s five (5) shopping design principles.⁵

As explained in Direct Energy’s Main Brief, PECO’s price cap proposal should be rejected for compelling and specific reasons. First, the proposed price cap violates 66 Pa. C.S. 2802 and the Commission does not have authority to regulate EGS prices.⁶ Second, the proposed price cap runs contrary to Pennsylvania’s public policy goals inasmuch as it thwarts setting of prices charges to customers through market forces, creates significant risk for EGSs that cannot be satisfactorily mitigated by EGSs, and effectively limits CAP customer choices to variable prices, and would actually make it harder rather than easier for CAP customers to shop.⁷ The Commission should instead allow CAP customers to shop just like non-CAP customers.⁸

The parties supporting PECO’s proposed price cap make much of the fact that a price cap will protect customers who are most vulnerable and unable to take on a greater energy burden.⁹ Direct Energy appreciates these viewpoints and also shares concerns about energy affordability for all customers. However, the price cap provision (along with the other restrictions and other burdens proposed) will deter EGSs from serving these customers and will likely make serving

⁴ Petition at 8.

⁵ Direct Energy does not directly address the five (5) shopping plan principles but opposes the principles to the extent they conflict with Direct Energy’s advocacy in this proceeding.

⁶ Direct Energy Main Brief at 7.

⁷ *Id.* at 8-10.

⁸ *Id.* at 12.

⁹ PECO Main Brief at 13-19; OCA Main Brief at 14-19; CAUSE Main Brief at 8-12.

these customers so unattractive that CAP customers in PECO's territory will not have any opportunity at all to choose an EGS product best suited for them nor will there be an opportunity to decrease the amounts that subsidize CAP customers through rates lower than the PTC.¹⁰

Additionally, the parties supporting the price cap infer that any price charged by an EGS that exceeds PECO's price to compare is somehow unreasonable. This rationale should be rejected.¹¹ The fact that an EGS's price might exceed the PTC in a particular quarter says nothing about the underlying reasonableness of the EGS price. An EGS price might be greater than the PTC for any number of good reasons – fixed price stability, length of term, the sourcing of the power from a particularly desirable source (such as “wind” or Pennsylvania natural gas). Or it may be that the customer simply wants to deal with a particular EGS rather than purchase its generation from PECO.

These parties also appeal to a desire that other non-CAP customers do not shoulder a greater burden to subsidize CAP customer rates.¹² The fact that an EGS price that is higher than the PTC in a particular month or quarter will impose an additional subsidy on remaining customers is also not a reason to adopt PECO's proposal. An EGS price that exceeds the PTC in one quarter can be below the PTC in the next, and so on.¹³ PECO Hearing Exhibit 5 puts a fine point on this reality. The PECO plan allows non-CAP customers to enjoy the benefit of paying less in subsidies when EGS prices are below the default service price without paying their fair share in those months when EGS prices might be higher. From the perspective of one that is not

¹⁰ PECO St. 3 at 6-7 (Cohn Direct Testimony).

¹¹ PECO Main Brief at 17, citing to Commission decision in PPL proceeding rejecting a similar argument.

¹² PECO Main Brief at 13-19; OCA Main Brief at 15; CAUSE Main Brief at 12.

¹³ *See* PECO Exhibit 5 (Confidential).

an actual market participant this likely seems like a great deal: the subsidy paid to EGS CAP customers would have a ceiling but no floor. From the perspective of those who put shareholder capital at risk to serve customers, however, this proposal would be no more attractive than a house with a ceiling but no floor would be to a prospective homeowner. As with most other deals that seem too good to be true, this one is just that. Few, if any, EGSs will buy into such a rigged game, leaving CAP customers with no options but utility default service, thus frustrating the Commission's clear directive that gave rise to this proceeding: design a CAP program that "will ensure that all customers have the ability to avail themselves of the full benefits of retail electric competition."¹⁴

B. Other arguments by parties in favor of the price cap and in opposition to Direct Energy's positions should be rejected.

First, PECO attempts to defend the Commission's authority to approve the price cap because the proposed CAP Shopping Plan is voluntary and the Commission approved the standard offer program ("SOP"), which includes a guaranteed 7% discount for 12 months.¹⁵ PECO's SOP argument is inapplicable here. Under Pennsylvania state law customers have the right to shop. The SOP is an additional option for customers to shop in conjunction with their rights to shop for any other product offered by an EGS. However, the price cap program offered up by PECO is not just another option for CAP customers to shop. Rather, it is an artificial and illegal restraint on the products that an EGS can offer, and it is a CAP customer's only option for shopping. The price cap takes away a CAP customer's right to shop like any other customer, whereas the SOP is an additional product offering that does not hinder other shopping

¹⁴ Direct Energy St. 1 at 7-8 (Kallaher Direct Testimony).

¹⁵ PECO Main Brief at 14-15.

opportunities for customers. The Commission should reject PECO's assertion and find it does not possess the authority to approve the proposed price cap.

PECO further finds fault with Direct Energy's position that CAP customers would be "undesirable from a business perspective", asserting that EGSs must be insulated from any risk of loss, even on variable priced contracts.¹⁶ PECO misunderstands Direct Energy's position, nor did Direct Energy advocate for a risk-free environment. Direct Energy and other EGSs take on risk every day to serve customers. Direct Energy is simply saying (and explained)¹⁷ that the price cap exposes us to pricing and hedging risk that we cannot adequately mitigate and which therefore makes these customers undesirable. Customers who present (through no fault of their own) an excessive level of risk do not entice EGSs to come to the marketplace. And, Direct Energy showed that in the proper environment it can and has appropriately mitigated its risk for the products it offers to customers.¹⁸

BEGIN CONFIDENTIAL

19

20

END CONFIDENTIAL. PECO's citation and exhibit, showing such a

¹⁶ PECO Main Brief at 15-16.

¹⁷ See PECO Hearing Exhibit 14; Direct Energy St. 1 at 4-5; Direct Energy Main Brief at FN 33 and FN 34.

¹⁸ See PECO Hearing Exhibits 8 & 9, whereby Direct Energy explained that it has not exercised provisions in its fixed price contracts to raise or lower rates. These products were appropriately hedged and changes were not necessary because Direct Energy is not subject to the types of risks PECO and others want to impose through the price cap.

¹⁹ (Confidential Version).

²⁰ (Confidential).

significant disparity in a short period of time, acutely demonstrates the risks an EGS faces through the price cap and never being able to exceed the PTC.

PECO's PTC experienced significant fluctuations in the first half of this year, going up by almost an entire penny per kWh in the first five (5) month period of this year²¹ and then dropping back .72 mills during the 3rd quarter of this year.²² These fluctuations show that an EGS would likely not be able to hedge a position to match the PTC with any confidence or without including a substantial risk price premium. These fluctuations also show the value of fixed price contracts that could remove this volatility for CAP customers and help them budget to increase their energy affordability, yet PECO's cap price proposal in practical terms eliminates an EGS's ability to offer a fixed price contract to a CAP customer.²³

PECO additionally tries to debunk Direct Energy's assertions that the price cap will also limit the variety of products eligible to CAP customers and preclude what is "best" for CAP customers.²⁴ PECO provides no evidence to refute Direct Energy's testimony regarding the ordinary price attributes of time of use or "green" products.²⁵ The bottom line is that the price cap proposal will likely preclude CAP customers from the opportunity to choose these types of products and further treat CAP customers different than non-CAP customers in an unfortunate and unnecessarily limiting way.

PECO also disputes Direct Energy's assertion that the price cap rules will require lengthier contracts with more complex terms and conditions, thereby making shopping even more difficult

²¹ PECO Hearing Exhibit 5, page 1 of 2.

²² PECO Hearing Exhibit 5, page 2 of 2

²³ Direct Energy St. 1 at 5. (Kallaher Direct Testimony)

²⁴ PECO Hearing Main Brief at 17-18.

²⁵ Direct Energy St. 1 at 5. (Kallaher Direct Testimony)

and perhaps unappealing to CAP customers.²⁶ Conveniently not mentioned by PECO, Direct Energy has not exercised the contract provision permitting cancellation for economic reasons.²⁷ These provisions are intended for unforeseen events. Nor does PECO provide any evidence of what might exist in other EGSs' contracts to deal with the situations that may be encountered under the proposed CAP Shopping Plan. Direct Energy and other EGSs will need additional language explaining when/how a contract would be canceled if the EGS cannot continue to keep the price at or below the PTC or perhaps moves out of program.²⁸ An EGS using such clauses in contracts to exercise the options permitted under the proposed CAP Shopping Plan would only confuse customers (making more work for everyone's call centers) and leave customers with poor shopping experiences.

C. Concerns about contracts for CAP customers moving in and out of the CAP Shopping Plan further demonstrate why the price cap is problematic.

In its Main Brief, OCA spells out three customer contract scenarios that it asks the Commission to address.²⁹ Specifically, OCA asks the Commission to declare: (1) a customer with an existing EGS non-CAP contract enrolling in the CAP program immediately be moved to an EGS contract that adheres to the CAP Shopping Plan rules (EGS CAP contract); (2) a CAP customer with an EGS CAP contract who leaves the CAP program should continue under the terms of the CAP program contract until it expires; and (3) where the EGS CAP contract expires

²⁶ PECO Main Brief at 18

²⁷ PECO Hearing Exhibits 10 & 11.

²⁸ Direct Energy St. 1 at 6. (Kallaher Direct Testimony)

²⁹ OCA Main Brief at 22-24.

and the customer is no longer in CAP, the EGS must again get affirmative consent to continue serving that customer.³⁰

OCA witness Colton testified about the rates at which customers move in and out of the CAP program, noting that only 37% of CAP program participants in 2011 were in the program for the entire year.³¹ According to OCA witness Colton, the “churn in the program, in other words, is substantial.”³² The “substantial” churn in CAP program participation, when combined with the practical issues identified below, vividly shows the problems with the price cap proposal.

First, as to scenario 1, PECO’s proposal is that a customer who moves into the CAP program must go to a capped rate within 1-2 billing cycles.³³ As a practical matter, a customer cannot be moved “immediately” to a CAP rate as OCA suggests – the customer’s rate must be changed on the ordinary billing cycle. Further, there are many details about OCA’s proposal that need to be answered. What would the terms of the contract be that the CAP customer is migrated to? Would the prior contract remain in place if the customer quickly exits the CAP program after entering the CAP program? Would EGSs need to insert new or additional language in all contracts (including customers not in the CAP program) to adequately address the possibility of a customer entering the CAP program, especially given the “substantial” churn in the CAP program?

³⁰ OCA Main Brief at 23-24.

³¹ OCA Statement No. CAP-1 at 16 (Direct Testimony of Roger Colton).

³² *Id.*

³³ PECO Main Brief at 29.

As to scenario 2, Direct Energy does not object (but does not support) continuing the customer on the CAP rate for the initial term. However, as further spelled out in the next paragraph, OCA's proposal to require affirmative consent to renew a customer in this scenario should be rejected.

Additionally, as to scenario 3, PECO's proposal is that a contract entered into under the CAP program must be honored until the contract ends, but that it can renew under revised terms and conditions without affirmative consent (and requiring proper notice).³⁴ Direct Energy supports PECO's arguments against the proposed affirmative consent requirement laid out in PECO's Main Brief.³⁵ Further, requiring affirmative consent would, as a practical matter, require an EGS to incur two costs to acquire the same customer. These doubling of costs would only put upward pressure on an EGS's price offered to CAP customers and lead to less savings opportunities for customers.

Finally, OCA recommends the Commission prohibit termination or cancellation fees for CAP customers.³⁶ PECO's proposed CAP Shopping Plan proposes no limitations on EGS products offered to CAP customers (except for the price cap) and an EGS would be free to impose termination fees (although an EGS would be responsible for collecting a termination fee).³⁷ Direct Energy opposes OCA's proposed prohibition on termination fees. Adopting OCA's suggestion would be yet another example of how PECO's CAP customers would be treated differently than non-CAP customers. A prohibition on termination fees would also take

³⁴ PECO Main Brief at 29-30.

³⁵ *Id.*

³⁶ OCA Main Brief at 7.

³⁷ Petition at 8.

away yet another risk mitigation tool and likely require an EGS to place that additional risk into the price offered to customers. The Commission should reject OCA's termination fee prohibition proposal.

All of the OCA's contract scenarios show why the PECO CAP plan should be rejected and replaced by one that treats CAP customers like other customers. None of these potential problems exist under the Direct Energy proposal, in which CAP customers are allowed to shop just like anyone else. Rather than being customer-friendly, the PECO proposals gives rise to just the kind of confusing and convoluted issues the OCA raises, and it should be rejected in favor of a plan that gives CAP customers a genuine opportunity to participate in the market.

D. The Commission should reject PECO's proposed cost recovery method for CAP Shopping Plan implementation costs.

PECO's proposed CAP Shopping Plan also includes a proposal to recover approximately \$4.6 million in implementation costs. The costs fall into three (3) categories – (1) customer education initiatives (approximately \$300,000); (2) training and information technology (“IT”) changes to PECO's billing and customer information system to facilitate CAP shopping and to appropriately calculate the CAP discount (approximately \$3.8 million); and (3) business readiness, including training and business process modifications (approximately \$500,000).³⁸ PECO proposes to recover the customer education monies (approximately \$300,000) through the current Customer Education Charge.³⁹ However, half of the remaining approximately \$4.3 million would be recovered from residential customers on a non-bypassable basis through the Universal Service Fund Charge (“USFC”) and the other half would be recovered from EGSs (in

³⁸ Petition at 11.

³⁹ *Id.*

addition to the SOP costs) through a 0.3% purchase of receivables (“POR”) discount rate.⁴⁰ The 0.3% POR discount rate represents a 0.1% increase from 0.2% to 0.3% to recover both SOP and CAP Plan costs.⁴¹ PECO expects to recover its implementation costs in one (1) year.⁴²

In summary, the positions of the parties in their briefs follow closely their respective testimony. PECO defends its proposal, OCA and CAUSE believe all implementation costs should be recovered from EGSs, OSBA wants to ensure that costs are recovered entirely from residential customers, and Direct Energy advocates for cost recovery from all customers (residential and non-residential).⁴³

The Commission’s decision is a straight forward policy decision to resolve among the parties. The Commission should adopt Direct Energy’s recommendation, as supported in its Main Brief.⁴⁴ The reasons laid out in Direct Energy’s Main Brief also repel the claims and arguments the other parties laid out in their Main Briefs. The expansion of shopping opportunities to CAP customers produces societal benefits that inure to all customers (both residential and non-residential), not just EGSs, through varied products and services offered by an increasing participation of suppliers wanting to play in a vibrant and growing marketplace. Opening up competition to CAP customers is another market enhancement intended to move Pennsylvania closer to what the Commission may consider to be an optimal structure and there is Commission precedent for cost recovery for market enhancements from all customers.

⁴⁰ Petition at 11.

⁴¹ Petition at 11, FN 8; PECO St. 3 at 8 (Cohn Direct Testimony); PECO St. 2 at 11 (McCawley Direct Testimony).

⁴² Petition at 12.

⁴³ PECO Main Brief at 19-23; CAUSE Main Brief 15-16; OCA Main Brief at 39-42; OSBA Main Brief at 4-6; Direct Energy Main Brief at 12-15 (respectively).

⁴⁴ Direct Energy Main Brief at 12-15.

Further, should the Commission approve recovery of any costs from EGSs, those costs should not be recovered through an increased discount rate. No party (aside from PECO citing precedent in PECO's SOP case) refutes the arguments set forth by Direct Energy as to why this method of cost recovery is "possibly the worst option available."⁴⁵ Using the POR program violates fundamental principles of cost recovery from cost causers and has nothing whatsoever to do with an EGS's fair share of uncollectibles or the administrative costs of running the POR program.⁴⁶ Moreover, using the POR discount would be unfair to suppliers who participate in the POR program, but are either unwilling or unable to make offers to CAP customers.⁴⁷ Finally, recovering these costs through the POR discount would also mean that the burden would fall disproportionately on EGSs with a larger market share, even though an EGS's current market share might bear little resemblance to its desire or ability to serve the CAP market.⁴⁸

E. The Commission should adopt Direct Energy's proposal to implement reasonable reporting requirements.

PECO proposes to require EGSs participating in the CAP shopping program to provide confidential reports to the Commission and to PECO for program evaluation. Such reports would be semi-annual reports detailing the number of customers served monthly over the six (6) month period with the following metrics for each customer served: (1) supplier name; (2) PECO customer account number; (3) the EGS CAP rate (per kWh); (4) PECO Price-to-Compare for the months in which they serve the customer during the six-month reporting period; and (5) the start

⁴⁵ Direct Energy St. 1 at 11.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Direct Energy St. 1 at 11-12 (Kallaher Direct Testimony).

and end date for the CAP rate charged to the CAP customer during the 6 month reporting period.⁴⁹

The Commission should instead adopt Direct Energy's proposal and ensure the reporting requirement burden is light enough such that the reporting obligation is strictly limited to confirming that an EGS is meeting the requirements of the program and nothing more.⁵⁰ Direct Energy's proposal would strike an appropriate balance between enough information to conduct an appropriate analysis of the CAP Shopping Plan but to not discourage EGS participation. The Commission should only require an EGS to provide (on a monthly basis) the particular rate codes (with the price associated with the rate code) that it is serving EGS customers under and the total number of customers on each rate code.⁵¹

Direct Energy's proposal will allow the Commission to do the same analysis but without the 5 categories/columns of data that PECO proposes. The primary difference is that PECO's proposal would require a customer-by-customer analysis whereas Direct Energy's proposal allows analysis in groups of customers. There has been no indication the purpose of the analysis is a customer-by-customer review, but rather the analysis would focus on the CAP Shopping Plan as a whole program. If the Commission is concerned about checking out and enforcing individual accounts, it should order that a participating EGS cooperate with Commission or PECO inquiries to confirm compliance with the CAP Shopping Plan on a customer-by-customer

⁴⁹ See PECO St. No. 2-R, Exhibit JJM-2R (at 5.4.3.0.3)

⁵⁰ Direct Energy St. 1 at 8 (Kallaher Direct Testimony)

⁵¹ Direct Energy St. 1 at 8 (Kallaher Direct Testimony). Direct Energy notes here that it used the term "rate code" to describe a general way to track specific offers by individual EGSs to confirm compliance with CAP Shopping Plan parameters. PECO's billing system is a "bill ready" system and therefore does not operate on a "rate ready" basis that utilizes rate codes by which PECO then calculates the amount to be billed. However, each EGS should have a distinct Offer ID or other internal marker by which it tracks its various product offerings (similar to a rate code) and this type of detail could be provided in a similar manner to rate codes.

basis rather than impose a blanket requirement for EGSs to provide this information up front every month. Finally, requiring this level of data will also allow the Commission to provide the aggregate data that PECO and OCA suggest for publication on the Commission website.⁵²

The Commission already knows the EGS name (category 1) and the PECO PTC during that time (category 4) and there is no reason to require an EGS to report that for any period of time. If Direct Energy's proposal is adopted, categories 2 (customer account number) and 3 (per kWh rate) would be covered in the aggregate (through an Offer ID or other product tracker designated by the EGS) on a monthly basis, making it easier to analyze data on a monthly basis instead of bi-annually. Finally, the rate charged to the CAP customer during a particular six (6) month period is irrelevant – PECO's own CAP Shopping Plan rules would not allow an EGS to exceed the PTC for any month and Direct Energy's proposal would allow the Commission and/or PECO on a monthly basis to check that CAP rate. The proposed monthly reports could simply be aggregated for the bi-annual reviews contemplated by PECO. Direct Energy's reporting proposal is a more reasonable approach and should, therefore, be adopted by the Commission.

F. The Commission Should Ensure There Are Appropriate and Defined Parameters Around Entering and Exiting Service of CAP Customers by EGSs.

As explained in its Main Brief, it appears there are certain criteria around an EGS entering and exiting service to CAP customers that may not be objected to by the parties in this case.⁵³

However, PECO does raise issues in its Main Brief that Direct Energy will address.

⁵² OCA Main Brief at 31-34.

⁵³ Direct Energy Main Brief at 17-18.

First, PECO states that Direct Energy's concerns about flexibility for CAP Shopping Plan participation are alleviated by PECO's Supplier Tariff.⁵⁴ The pertinent portion of PECO's tariff reads as follows:

Notice to Customers. An EGS shall provide a minimum of 30 days advance notice to any Customer it intends to stop serving of such intended discontinuance in a manner consistent with the PaPUC's rulings in Docket No. 00960890f.0013 and any subsequent applicable PaPUC rulings. The application of this Rule 14.2 will, however, be limited to the classes of Customers (Residential and Small Business) to which the referenced PaPUC rulings will apply. With respect to all other classes of Customers, it will be the EGS's responsibility to provide notice to a Customer of its intention to discontinue service in accordance with the EGS's contractual obligations with the Customer.⁵⁵

Direct Energy concedes that PECO's tariff allows cancellation of customer contracts. However, the tariff language does not address nor does it not supersede contract language as it relates to why an EGS can cancel a contract. The tariff language simply requires that when an EGS does cancel a contract that the EGS give proper notice. This protection touted by PECO is illusory as it is simply a procedural tariff requirement that does not get to the substance of why an EGS might cancel a customer, such as the EGS can no longer guarantee or will not continue to pledge to beat or match the PTC for a CAP customer.

Additionally, PECO points to provisions in Direct Energy contracts that permit Direct Energy to cancel a contract for the point that additional "off ramps" are not needed.⁵⁶ However, per the discovery response from Direct Energy, these provisions have not been utilized⁵⁷ as they are safeguards against unexpected events and not meant to be used simply for

⁵⁴ PECO Main Brief at 26.

⁵⁵ PECO Tariff Electric Pa. P.U.C. No. 1 S, Original Page No. 42, Section 14.2

⁵⁶ PECO Main Brief at 26.

⁵⁷ PECO Hearing Exhibits 8-11.

getting out of contracts in a normal course of business like foreseen events such as always matching or beating the PTC.

The Commission should adopt the reasonable parameters around entering and exiting the CAP Shopping Plan as laid out in Direct Energy's Main Brief.⁵⁸

G. The Commission should adopt PECO's proposal for Commission monitoring and enforcement of compliance with the CAP Shopping Plan.

The proposed CAP Shopping Plan envisions Commission monitoring and enforcement of EGS compliance with the CAP Shopping Plan.⁵⁹ However, CAUSE believes PECO should be required to take on a greater monitoring and enforcement role for the CAP Shopping Plan.⁶⁰ Direct Energy urges the Commission to adopt PECO's proposal for monitoring and enforcement of the CAP Shopping Plan. As laid out by PECO in its Main Brief, traditionally the Commission performs this role and CAUSE has not provided any compelling reason to abrogate the ordinary tariff compliance and monitoring role for the Commission.

H. The Commission should reject CAUSE's aggregation proposal as currently formulated.

CAUSE proposes as an alternative to the proposed CAP Shopping Plan an aggregation of CAP customers.⁶¹ While Direct Energy believes a CAP customer aggregation program could potentially be an option to serve CAP customers, CAUSE's plan suffers from an illegal price cap and other ill-advised restrictions Direct Energy objects to about the CAP Shopping Plan proposed by PECO. If CAUSE were to modify its proposal to eliminate these flaws, aggregation

⁵⁸ Direct Energy Main Brief at 17-18.

⁵⁹ PECO Main Brief at 30-32.

⁶⁰ CAUSE Main Brief at 13-15.

⁶¹ CAUSE Main Brief at 16-17.

should be given due consideration. Until then, however, Direct Energy urges rejection of the CAUSE aggregation proposal.

III. CONCLUSION

Direct Energy respectfully requests the Commission either amend PECO's proposed CAP Shopping Plan as recommended by Direct Energy or reject PECO's proposed CAP Shopping Plan and require PECO to reconstitute its stakeholder meetings to address the issues raised by Direct Energy.

Respectfully submitted,



Joseph M. Clark, Esquire
Direct Energy Services, LLC
21 East State Street, 19th Floor
Columbus, Ohio 43215
Phone: 614.220.4369 ext 232
Fax: 614.220.4674
Joseph.Clark@directenergy.com

Counsel:

Daniel Clearfield, Esquire
Attorney ID #26183
Edward Lanza, Esquire
Attorney ID #81081
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Date: August 9, 2013

Attorneys for Direct Energy Services, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the PUBLIC version of Direct Energy Services, LLC's Reply Brief, upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA EMAIL AND FIRST CLASS MAIL

Carrie B. Wright, Esq.
PA Public Utility Commission
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265
carwright@pa.gov

Romulo L. Diaz, Jr., Esq.
Anthony E. Gay, Esq.
PECO Energy Company
2301 Market St.
P. O. Box 8699
Philadelphia, PA 19101-8699
romulo.diaz@exeloncorp.com
Anthony.gay@exeloncorp.com

Christy M. Appleby, Esq.
Candis Tunilo, Esq.
Amy Hirkakis, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
cappleby@paoca.org
ctunilo@paoca.org
ahirakis@paoca.org

Kenneth M. Kulak, Esq.
Brooke E. McGlenn, Esq.
Morgan Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103-2921
kkulak@morganlewis.com

Amy M. Klodowski, Esq.
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com

Elizabeth Rose Triscari, Esq.
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
ETriscari@pa.gov

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak, LLP
P. O. Box 1778
Harrisburg, PA 17105-1778
tsstewart@hmslegal.com

Brian J. Knipe, Esq.
FirstEnergy Solutions Corp.
76 South Main Street 500
Akron, OH 44308
bknipe@firstenergycorp.com

Josie B. H. Pickens, Esq.
Thu B. Tran, Esq.
Robert W. Ballenger, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
jpickens@clsphila.org
ttran@clsphila.org
rballenger@clsphila.org

Harry S. Geller, Esq.
Patrick M. Cicero, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Amy E. Hamilton, Esq.
Noel Trask, Esq.
Exelon Business Services Co., LLC
300 Exelon Way
Kennett Square, PA 19348
amy.hamilton@exeloncorp.com

Maripat Pileggi, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
mpileggi@clsphila.org

Laurie Baughman, Esq.
Elizabeth Marx, Esq.
3605 Vartan Way, Suite 101
Harrisburg, PA 17110
lbaughman@pcadv.org
emarx@pcadv.org

Divesh Gupta, Esq.
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202
divesh.gupta@constellation.com

Stephen L. Huntoon, Esq.
NextEra Energy, Inc.
801 Pennsylvania Avenue, NW, Suite 220
Washington, DC 20001
shuntoon@nextenergy.com

Veronica Ludt
Legal Center Director
109 East Price Street
Philadelphia, PA 19144
vludt@facetofacegermantown.org

Jesse A. Dillon, Esq.
PPL Services Corporation
Office of General Counsel
Two North Ninth Street
Allentown, PA 18106
jadillon@pplweb.com

Natasha Kelemen
Executive Director
Pennsylvania Immigration & Citizenship
Coalition
2100 Arch Street, 7th Floor
Philadelphia, PA 19103
admin@paimmigrant.org

Steven Larin
Acting Executive Director
Nationalities Service Center
1216 Arch Street, 4th Floor
Philadelphia, PA 19107
info@nscphila.org

H. Gil Peach, Ph. D.
H. Gil Peach & Associates, LLC
16232 NW Oak Hills Drive
Beaverton, OR 97006
hgipeach@scanamerica.net

Andrew S. Tubbs, Esq.
Post & Schell
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
atubbs@postschell.com

Melanie Santiago-Mosier, Esq.
Washington Gas Energy Service, Inc.
13865 Sunrise Valley Drive, Suite 200
Herndon, VA 20171
mmosier@wges.com

Joseph Clark, Esq.
Direct Energy Services, LLC
21 East State Street, 19th Floor
Columbus, Ohio 43215
joseph.clark@directenergy.com

Will Gonzalez
Executive Director, CEIBA
149 West Susquehanna Avenue
Philadelphia, PA 19122
will.gonzalez@ceibaphiladelphia.org

Scott DeBroff, Esq.
Rhoads & Sinon, LLP
P. O. Box 1146
Harrisburg, PA 17108-1146
sdebross@rhoads-sinon.com

Telemac N. Chryssikos, Esq.
Washington Gas Energy Services, Inc.
101 Constitution Avenue, NW, Room 319
Washington, DC 20080
tchryssikos@washgas.com

Thomas McCann Mullooly
Foley & Lardner, LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
tmullooly@foley.com
sdzieminski@foley.com



Date: August 9, 2013

Edward G. Lanza, Esquire