



August 11, 2016

VIA E-FILING & FIRST CLASS MAIL

The Honorable Cynthia Williams Fordham
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Re: Petition of PECO Energy Company for Approval of a Default Service Program for the Period of June 1, 2017 through May 31, 2019, Docket P-2016-2534980

Dear Judge Fordham,

Attached, please find the Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), which was filed with the Commission this afternoon. Copies are being served pursuant to the attached Certificate of Service, and a Microsoft Word version will be served on Your Honor through email.

Please do not hesitate to contact me with questions or concerns.

Respectfully,

A handwritten signature in blue ink, appearing to read "Elizabeth Marx".

Elizabeth Marx
Counsel for CAUSE-PA

CC: ALJ Fordham & Parties per attached COS
Secretary Rosemary Chiavetta

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for Approval of a Default
Service Program for the Period of June 1, 2017 through May 31,
2019**

Docket No. P-2016-2534980

CERTIFICATE OF SERVICE

I hereby certify that on this day, August 11, 2016, I have served copies of the **Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** 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 FIRST CLASS MAIL

The Honorable Cynthia Williams Fordham
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107
cfordham@pa.gov

W. Craig Williams, Esquire
Romulo L. Diaz, Jr., Esquire
Exelon Business Services Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
craig.williams@exeloncorp.com
romulo.diaz@exeloncorp.com
Counsel for PECO Energy

Thomas P. Gadsden, Esquire
Kenneth M. Kulak, Esquire
Brooke E. McGlinn, Esquire
Morgan, Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103
tgadsden@morganlewis.com
kkulak@morganlewis.com
bmcglinn@morganlewis.com
Counsel for PECO Energy

Aron J. Beatty, Esq.
Candis A. Tunilo, Esq.
Office of Consumer Advocate
555 Walnut Street
5th floor, Forum Place
Harrisburg, PA 17101-1923
abeatty@paoca.org
Counsel for the OCA

Elizabeth Rose Triscari, Esquire
Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, Pennsylvania 1710
etriscari@pa.gov
Counsel for the OSBA

Phillip C. Kirchner, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg PA 17105-3265
phikirchne@pa.gov
Counsel for I&E

Charis Mincavage, Esq.
Adeolu A Bakare, Esq.
Alessandra L. Hylander, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, Pennsylvania 17108
cmincavage@mwn.com
abakare@mwn.com
ahylander@mwn.com
Counsel for PAIEUG

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

August 11, 2016

Charles E. Thomas III, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 600
Harrisburg, PA 17101
cet3@tntlawfirm.com
Counsel for Noble Americas Energy

Deanne M. O'Dell, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17101
dodell@eckertseamans.com
Counsel for RESA & Direct Energy



Elizabeth R. Marx, PA ID 309014

Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486, Ext. 202
Fax: 717-233-4088
pulp@palegalaid.net

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : DOCKET NO. P-2016-2534980
THE PERIOD FROM JUNE 1, 2017 :
THROUGH MAY 31, 2019 :

**MAIN BRIEF OF THE COALITION FOR
AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA**

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA

Patrick M. Cicero, Esq., PA ID: 89039
Elizabeth R. Marx, Esq., PA ID: 309014
Joline Price, Esq., PA ID: 315405
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

August 11, 2016

TABLE OF CONTENTS

I. INTRODUCTION1

 A. BACKGROUND1

 B. PROCEDURAL HISTORY3

II. STATEMENT OF THE CASE.....5

III. QUESTIONS INVOLVED.....6

 A. Does the Commission have the legal authority to impose CAP shopping restrictions to ensure adequately-funded, cost-effective, and affordable universal service programs where, as here, there is no reasonable alternative available to avoid substantial harm to CAP and non-CAP customers?6

 Suggested answer: Yes.6

 B. Is there substantial evidence showing that the absence of CAP shopping restrictions in other service territories has resulted in significant financial harm to vulnerable low income households and residential ratepayers, and that reasonable CAP rules are therefore necessary in PECO’s service territory to prevent harm and ensure adequately-funded, cost-effective, and affordable universal service programs?.....6

 Suggested answer: Yes.6

 C. Should CAP shopping be dealt with here, in this proceeding, notwithstanding the Commission’s issuance of a Secretarial Letter at Docket No. P-2012-2283641?.....6

 Suggested answer: Yes.6

 D. Should the Commission adopt the CAP shopping rules proposed by CAUSE-PA and endorsed by the OCA and TURN et al.?.....6

 Suggested answer: Yes.6

IV. LEGAL STANDARDS AND BURDEN OF PROOF7

V. SUMMARY OF ARGUMENT9

VI.	ARGUMENT	12
A.	THE COMMISSION HAS THE LEGAL AUTHORITY TO IMPOSE CAP SHOPPING RESTRICTIONS TO ENSURE ADEQUATELY FUNDED, COST-EFFECTIVE UNIVERSAL SERVICE PROGRAMS TO ASSIST CUSTOMERS WHO ARE LOW INCOME TO AFFORD ELECTRIC SERVICE.....	12
B.	CAP SHOPPING RESTRICTIONS ARE NECESSARY, AND SHOULD BE IMPLEMENTED IN THE PECO SERVICE TERRITORY FOR ITS DSP IV BECAUSE OF THE INDISPUTED RECORD EVIDENCE OF HARM TO CAP CUSTOMERS AND RATEPAYERS THAT HAS RESULTED FROM THE ABSENCE OF SUCH PROTECTION IN OTHER SERVICE TERRITORIES.	15
1.	Under PECO’s Fixed Credit Option (FCO) CAP design, CAP customers who shop and pay more than the price to compare will not receive an affordable bill.	15
2.	PECO’s low-income CAP customers are uniquely situated, economically vulnerable, and require specific and distinct protection within the retail electric market as compared to other electric customers.	18
3.	The experience of CAP customers in other EDC service territories amply demonstrates that a policy of allowing CAP customers to shop without limitation on the price or terms of service will worsen the affordability crisis for PECO’s CAP customers.	25
C.	CAUSE-PA’S CAP-SOP PROPOSAL SHOULD BE ADOPTED BECAUSE IT APPROPRIATELY BALANCES THE ABILITY OF CAP CUSTOMERS TO ENTER THE COMPETITIVE MARKET WHILE CONTINUING TO ENSURE THAT ADEQUATELY FUNDED, COST-EFFECTIVE, AND AFFORDABLE PROGRAMS REMAIN AVAILABLE TO ASSIST LOW INCOME CUSTOMERS.....	30
1.	RESA’s concerns about CAUSE-PA’s proposal are speculative, unfounded, and unsupported by substantial evidence, and its position that the status quo is acceptable – in light of indisputed harm – ignores critical mandates of the Choice Act.	32
VII.	CONCLUSION.....	38
	APPENDIX A - Proposed Findings of Fact	1
	APPENDIX B - Proposed Conclusions of Law.....	1

TABLE OF AUTHORITIES

Cases

<u>Brown v. Commonwealth</u> , 940 A.2d 610, 614, n.14 (Pa. Commw. 2008).....	8
<u>Coalition for Affordable Util. Servs. & Energy Efficiency in Pa, et al. v. Pa. Pub. Util. Comm’n</u> , 120 A.3d 1087 (Pa. Commw. 2015), <u>appeal denied</u> , 2016 WL 1383864 (Pa. Apr. 5, 2016)....	4, 10, 13, 14, 20, 23, 32, 33, 36, 37, 38, 39
<u>Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC</u> , 2016 PA LEXIS 723 & 2016 Pa. LEXIS 724 (Pa. Apr.5 2016).	20
<u>Commonwealth v. Williams</u> , 732 A.2d 1167 (Pa. 1999).....	8
<u>District of Columbia's Appeal</u> , 21 A.2d 883 (Pa. 1941).....	8
<u>McDonald v. Pa. R.R. Co.</u> , 36 A.2d 492 (Pa. 1940).....	8
<u>Samuel J. Lansberry, Inc. v. Pa. PUC</u> , 578 A.2d 600, 602 (Pa. Commw. 1990).....	8

Statutes

66 Pa. C.S. § 2802.....	1, 2, 7, 10, 13, 30, 34, 35
66 Pa. C.S. § 2803.....	7, 10, 12, 33, 34
66 Pa. C.S. § 2804.....	7, 10, 12, 13, 30, 31, 33, 34
66 Pa. C.S. § 332.....	8
66 Pa. C.S. § 69.625.....	34

Regulations

52 Pa. Code § 54.72.....	7
52 Pa. Code § 69.262.....	7
52 Pa. Code §§ 54.181-54.189.....	3
52 Pa. Code §§ 54.71-54.78.....	7
52 Pa. Code §§ 69.1801-69.1817.....	3

52 Pa. Code §§ 69.261-69.267.....	8
52 Pa. Code. § 54.73.	31

Pennsylvania Public Utility Commission Orders and Opinions

Application of Pa. Am. Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Service to the Public in Additional Portions Of Mahoning Township, Lawrence County, Pa., <u>Opinion and Order</u> , Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Oct. 29, 2008).	8
Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of their Default Service Programs, <u>Order</u> , Docket Nos. P-2015-2511333, -2511351; -2511355; -2511356 (May 19, 2016).....	24
Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of their Default Service Programs, <u>Recommended Decision</u> , Docket Nos. P-2015-2511333, -2511351; -2511355; -2511356 (April 15, 2016).....	24
PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 submitted in Compliance with 52 Pa Code § 54.74, <u>Final Order</u> , Docket M-2012-2290911 (Apr. 4, 2013).....	13, 17
PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, <u>Order</u> , Docket No. M-2012-2290911 (July 8, 2015).	17
PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, <u>Recommended Decision</u> , Docket No. M-2012-2290911 (June 11, 2015).....	15
PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, <u>Tentative Order</u> , Docket No. M-2012-2290911 (Nov. 8, 2012).....	17
Petition of PECO Energy Company for Approval of its Default Service Plan, <u>Opinion and Order</u> , Docket No. P-2012-2283641 (March 12, 2014).	23
Petition of PECO Energy Company for Approval of its Default Service Plan, <u>Opinion and Order</u> , Docket No. P-2012-2283641 (Jan. 24, 2014)	23
PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, <u>Final Order</u> , Docket No. M-2013-2367021 (Sept. 11, 2014).....	27

Pennsylvania Public Utility Commission Secretarial Letters

Petition of PECO Energy Company for Approval of its Default Service Plan, Sec. Ltr., Docket No. P-2012-2283641 (May 11, 2016)..... 9, 21

Petition of PECO Energy Company of its Default Service Program, Sec. Ltr., Docket No. P-2012-2283641 (May 23, 2016). 20

Pennsylvania Public Utility Commission Filings / Pending Dockets

Petition of Duquesne Light Company for Approval of Default Service Plan for the Period of June 1, 2017 through May 31, 2021, Docket No. P-2016-2543140..... 25

Petition of PECO Energy Company for Approval of its Default Service Plan, PECO’s Response to Sec. Ltr., Docket No. P-2012-2283641 (July 19, 2016) 9, 21

Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program & Procurement Plan for the Period of June 1, 2017 through May 31, 2021, Joint Litigation Position, at Docket No. P-2016-2526627 (July 8, 2016)..... 11

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..... 24

PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Reply Comments of PPL Electric Utilities, Docket No. M-2013-2367021 (July 21, 2014)..... 27

Secondary Authorities

Joint State Government Comm’n, Homelessness in Pennsylvania: Causes, Impacts, and Solutions (April 2016) 19

Nat’l Low Income Energy Consortium, Paid but Unaffordable: The Consequences of Energy Poverty in Missouri – and Elsewhere (2004)..... 19

Pa. Public Utility Comm’n, Bureau of Consumer Svcs., 2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies (2014) 19

I. INTRODUCTION

A. BACKGROUND

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files this brief in support of its positions and the positions advanced by its witness, Harry S. Geller, through his written testimony and accompanying exhibits, as well as in the positions of the Office of Consumer Advocate (OCA) and TURN et.al.

Pursuant to the Electricity Generation Customer Choice and Competition Act (Choice Act), an essential statutory obligation of the Public Utility Commission (Commission) is to “continue the protections, policies and services that now assist customers who are low-income to afford electric service” in the competitive environment.¹ This declaration of policy recognizes that direct access by low-income retail customers to the competitive generation market is conditioned upon ensuring that the affordability of electric service to economically vulnerable citizens is not diminished.

As the record in this proceeding indicates, it is imperative that PECO Energy Company (PECO) adopt a Customer Assistance Program (CAP) shopping platform in its DSP IV that enables CAP customers to enter the competitive electric market in a manner which ensures that the rates CAP customers pay for service are affordable and the CAP program as a whole is adequately funded. A failure to exercise control over the terms in which CAP customers participate within the competitive market will result in clear, articulable harm to CAP and non-CAP customers alike, as has been amply demonstrated in the EDC service territories that have permitted unrestricted CAP customer shopping.

¹ 66 Pa. C.S. § 2802(10).

Specifically, the record in this proceeding demonstrates that PECO's vulnerable CAP population – whose annual income averages just \$13,134² – will be subject to significantly higher prices, with the assistance of CAP. In addition, the harm to residential ratepayers is also palpable. PPL Electric Utilities' current process – which permits a similar demographic of CAP customers to pay higher prices than the applicable default service rate (price to compare or PTC) – has resulted in a net impact³ of \$2,743,872 per year over a 46-month period from January 2012 through October 2015.⁴ That is, as a result of CAP customer shopping in the manner presently occurring in the PPL service territory, residential ratepayers are charged over \$2.7 million more each year for the CAP program than they would have paid if CAP customers were prevented from shopping for and selecting an electric supplier offering a price higher than the price to compare.⁵ This enormous cost to both CAP customers and residential ratepayers is unacceptable, and is completely preventable in the PECO service territory if appropriate protections are enacted now, before PECO's CAP customers enter the competitive market for the first time.

As is argued more fully below, the Commission and PECO have the obligation to balance the coexisting goals contained within Choice Act to promote competition, without sacrificing the affordability of electric service to low-income customers and the ratepayers who assist low-income customers through CAP.⁶ CAUSE-PA has looked for ways throughout this proceeding to respect both of these goals - to promote competition and protect low income customers and ratepayers -

² CAUSE-PA St. 1, at 4 n.35.

³ Net impact, as the term is used here, means all of the savings incurred by CAP customers shopping at rates *at or below* the price to compare, subtracted from the additional costs incurred by CAP customers shopping at rates *higher* than the price to compare. This shows the net harm to the CAP program as a whole, **but does not monetize the particularized harm to individual CAP customers who pay more**. This latter harm, while not monetized, presents a significant and substantial risk of harm to low income households, and creates a ripple effect on other ratepayers in terms of increased termination costs and uncollectible expenses.

⁴ See CAUSE-PA St. 1, Attachment B (PPL Electric Utilities OnTrack (CAP) Program Shopping Collaborative #2, Friday Jan. 15, 2016).

⁵ See id.

⁶ 66 Pa. C.S. § 2802(10).

were respected, and sought to develop a plan for PECO's CAP shopping program in a manner that would protect low-income customers enrolled in CAP program and the ratepayers who finance the program, while at the same time affording CAP customers meaningful access to the competitive market. In contrast, the Retail Energy Supply Association (RESA) has steadfastly maintained its position that PECO not be permitted to impose any control over CAP customer participation in the competitive market. In furtherance of its self-serving position, RESA has sought to ensure that PECO's CAP customers suffer the same fate as that of PPL and the First Energy CAP customer: higher costs, CAP defaults, and increased risk of service termination. For the reasons outlined more fully below, RESA's position is unacceptable, and the Commission should adopt the proposal of CAUSE-PA, which has been endorsed by both the OCA and TURN *et al.*

B. PROCEDURAL HISTORY

On March 17, 2016, PECO filed the above-captioned petition (DSP IV Petition) requesting that the Commission approve PECO's proposed default service program for the period June 1, 2017 through May 31, 2019. PECO filed its DSP IV Petition in accordance with its responsibilities as a Default Service Provider pursuant the Choice Act and the Commission's default service regulations⁷ and Policy Statement on Default Service.⁸ Specifically, PECO sought to establish the terms and conditions under which it will procure default service supply to provide default service to non-shopping customers.

⁷ 52 Pa. Code §§ 54.181-54.189.

⁸ 52 Pa. Code §§ 69.1801-69.1817.

On April 5, 2016, the Supreme Court of Pennsylvania denied the Commission's Petition for Allocatur of the July 14, 2015 decision of the Commonwealth Court in Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. PUC.⁹

On April 12, 2016, Administrative Law Judge Cynthia Williams Fordham issued a Prehearing Order establishing a Prehearing Conference for April 22, 2016. On April 19, 2016, CAUSE-PA filed a Petition to Intervene, which was granted at the April 22, 2016 Prehearing Conference.

On June 3, 2016, CAUSE-PA, the OCA, the OSBA, and RESA submitted direct testimony. CAUSE-PA submitted CAUSE-PA Statement 1, the Direct Testimony of Harry Geller; OCA submitted OCA Statement 1, the Direct Testimony of Serhan Ogur, and OCA Statement 2, the Direct Testimony of Barb Alexander; OSBA submitted OSBA Statement 1, the Direct Testimony of Brian Kalcic; and RESA submitted RESA Statement 1, the Direct Testimony of Matthew White.

On June 24, 2016, PECO, the OCA, and RESA submitted rebuttal testimony. PECO submitted four statements: PECO Statement 2-R, the Rebuttal Testimony of John J. McCawley; PECO Statement 3-R, the Rebuttal Testimony of Scott G. Fisher; PECO Statement 4-R, the Rebuttal Testimony of Chantale LaCasse; and PECO Statement 5-R, the Rebuttal Testimony of Alan B. Cohn. The OCA submitted one statement: OCA Statement 2-R, the Rebuttal Testimony of Barbara Alexander. RESA submitted one statement: RESA Statement 1-R, the Rebuttal Testimony of Matthew White.

On July 8, 2016, CAUSE-PA, the OCA, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (together, TURN *et al.*), and RESA submitted surrebuttal testimony. CAUSE-PA submitted one statement: CAUSE-PA 1-SR, the

⁹ Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. et al. v. Pa. Pub. Util. Comm'n, 120 A.3d 1087 (Pa. Commw. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) (hereinafter CAUSE-PA et al.).

Surrebuttal Testimony of Harry Geller. The OCA submitted two statements: OCA Statement 1-SR, the Surrebuttal Testimony of Serhan Ogur, and OCA Statement 2-SR, the Surrebuttal Testimony of Barb Alexander. TURN *et al.* submitted one statement: TURN *et al.* Statement 1-SR, the Surrebuttal Testimony of Philip A. Bertocci. RESA submitted one statement: RESA Statement 1-SR, the Surrebuttal Testimony of Matthew White.

A hearing was held on July 14, 2016, at which all of the parties' testimony and respective exhibits and attachments were entered into the record by stipulation or verification.¹⁰ No party conducted cross-examination of any witnesses at the hearing.

II. STATEMENT OF THE CASE

Any plan which would allow PECO's CAP customers to receive generation supply service from an electric generation supplier (EGS) must tie the affordability of electric service to a customer's ability to pay for that service through policies, practices, and services that help low income customers maintain utility service. Thus, the first principal for any CAP program must be that CAP bills remain affordable – regardless of whether a CAP customer remains on default service or receives generation service from an EGS. This is a core component to the obligation of PECO and the Commission to balance the coexisting goals contained within the Choice Act to promote competition without sacrificing the affordability of electric service to low-income customers and the ratepayers who assist low-income customers through CAP.

Throughout this proceeding, CAUSE-PA, the OCA, and TURN *et al.* have all coalesced around a CAP shopping platform which ensures that both of these statutory goals are respected through the development of a modified standard offer program for CAP participants (CAP-SOP).

¹⁰ The default service program and procurement issues that were the genesis of this proceeding, as well as various other competitive market issues, have been settled by various parties and are the subject of a Joint Petition for Partial Settlement that was filed on July 28, 2016. CAUSE-PA is not a party to the Partial Settlement of those issues, but also does not object to the settlement of those issues on the terms that will be submitted by the parties.

This proposal was outlined in detail by CAUSE-PA witness Harry Geller,¹¹ and endorsed by OCA witness Barbara Alexander¹² and TURN *et al.* witness Philip Bertocci.¹³ Adoption of the CAP-SOP would afford CAP customers access to the competitive electric market in a manner that also reasonably ensures that CAP customers continue to receive service at affordable levels without undue risk. The CAP-SOP would also shield other residential ratepayers from additional, undue, and excessive expense which has been proven to occur when CAP customers shop at prices above the price to compare. For the reasons set forth more fully below, CAUSE-PA respectfully requests that the ALJ and the Commission adopt the CAP-SOP set forth in Mr. Geller's testimony.

III. QUESTIONS INVOLVED

- A. Does the Commission have the legal authority to impose CAP shopping restrictions to ensure adequately-funded, cost-effective, and affordable universal service programs where, as here, there is no reasonable alternative available to avoid substantial harm to CAP and non-CAP customers?

Suggested answer: Yes.

- B. Is there substantial evidence showing that the absence of CAP shopping restrictions in other service territories has resulted in significant financial harm to vulnerable low income households and residential ratepayers, and that reasonable CAP rules are therefore necessary in PECO's service territory to prevent harm and ensure adequately-funded, cost-effective, and affordable universal service programs?

Suggested answer: Yes.

- C. Should CAP shopping be dealt with here, in this proceeding, notwithstanding the Commission's issuance of a Secretarial Letter at Docket No. P-2012-2283641?

Suggested answer: Yes.

- D. Should the Commission adopt the CAP shopping rules proposed by CAUSE-PA and endorsed by the OCA and TURN *et al.*?

Suggested answer: Yes.

¹¹ See CAUSE-PA St. 1 at 31-33.

¹² See OCA St. 2-R at 5.

¹³ See TURN St. 1 at 11-12

IV. LEGAL STANDARDS AND BURDEN OF PROOF

As a regulated public utility serving more than 100,000 customers, PECO is required to offer an integrated package of universal service programs designed to help low-income, payment troubled ratepayers maintain and afford essential utility services. These programs are statutorily required by the Choice Act¹⁴ and by the Commission's regulations.¹⁵ The universal service provisions of the Choice Act, among other things, tie the affordability of electric service to a customer's ability to pay for that service. The Choice Act defines "universal service and energy conservation" as the policies, practices and services that help low income customers maintain utility service.¹⁶ The term includes customer assistance programs, usage reduction programs, service termination protections, and consumer education.

CAP is a general term used to describe utility payment assistance and debt-forgiveness programs for payment-troubled households.¹⁷ CAPs are regulated by the Commission, and provide a discounted bill for payment troubled, low-income ratepayers whose household incomes are at or below 150% of the federal poverty income guidelines.¹⁸ Each CAP bill is divided into two parts: (1) the amount that the CAP customer must pay each month, and (2) the monthly CAP credit amount applied to the CAP customer's bill. CAP's payment assistance feature is intended to control a customer's energy burden through affordable monthly bills based on a household's size and gross income. These lower rates are applied to ongoing usage as long as the household remains current and timely in paying its monthly customer assistance bills. CAP design and

¹⁴ See 66 Pa. C.S. §§ 2802(10), (17); 2804 (9).

¹⁵ 52 Pa. Code §§ 54.71-54.78.

¹⁶ 66 Pa. C.S. § 2803.

¹⁷ 52 Pa. Code § 54.72 (CAP – Customer Assistance Program – An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of electric utility services.)

¹⁸ 52 Pa. Code § 54.72; 52 Pa. Code § 69.262.

implementation is currently guided by the Commission’s statewide “Policy Statement on Customer Assistance Programs.”¹⁹ These policies, among other controls, establish the maximum energy burden parameters for CAP customers.

Section 332(a) of the Public Utility Code²⁰ provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”²¹ The preponderance of evidence standard requires proof by a greater weight of the evidence.²² This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party.²³ If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent.²⁴

Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case is established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission produce additional evidence to sustain its burden of proof.²⁵

In October 2016, PECO will be implementing a structural change to its CAP program that will accommodate the ability of CAP customers to switch to an electric generation supplier and remain on CAP.²⁶ In response to a Secretarial Letter issued in PECO’s DSP II proceeding at

¹⁹ 52 Pa. Code §§ 69.261-69.267.

²⁰ 66 Pa. C.S. § 332(a).

²¹ Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. 1990).

²² Commonwealth v. Williams, 732 A.2d 1167 (Pa. 1999).

²³ Brown v. Commonwealth, 940 A.2d 610, 614, n.14 (Pa. Commw. 2008).

²⁴ McDonald v. Pa. R.R. Co., 36 A.2d 492 (Pa. 1940).

²⁵ District of Columbia’s Appeal, 21 A.2d 883 (Pa. 1941); Application of Pa. Am. Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Service to the Public in Additional Portions Of Mahoning Township, Lawrence County, Pa., Opinion and Order, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Oct. 29, 2008).

²⁶ See CAUSE-PA St. 1, at 19:21 to 22:9.

Docket No. P-2012-2283641,²⁷ PECO has indicated that it will implement a CAP shopping platform at some point during the first quarter of 2017.²⁸ In this proceeding, CAUSE-PA has proposed that PECO delay implementation of its CAP shopping program design until June 1, 2017, at the earliest, which is the start of its DSP IV operational period. CAUSE-PA has proposed specific protections that should be implemented as a part of PECO's upcoming DSP IV CAP shopping design, and therefore has the burden of proof on these issues.

V. SUMMARY OF ARGUMENT

The record in this proceeding demonstrates that PECO's CAP customers are all economically vulnerable and, even with CAP discounts, face extraordinary challenges to maintain electric service connected to their home. The record also demonstrates that in other Pennsylvania service territories where CAP customers are currently permitted to shop for electric generation supply, those customers who elect to be served by an electric generation supplier routinely pay prices above the price to compare. These higher charges – above the PTC – adversely affect the continued affordability of CAP bills and the ability of CAP customers to maintain CAP benefits, as well as increase the cost of the program as a whole for other residential ratepayers.

To maintain both affordable rates for low-income customers enrolled in CAP (who have already evidenced an inability to pay at undiscounted rates) and an efficient and cost effective program, the Choice Act specifically requires the creation of a structure whereby CAP rates and the CAP program as a whole remain affordable. This is accomplished only when CAP customers

²⁷ See Petition of PECO Energy Company for Approval of its Default Service Plan, Sec. Ltr., Docket No. P-2012-2283641 (May 11, 2016), available at <http://www.puc.state.pa.us/pcdocs/1439612.doc>.

²⁸ See Petition of PECO Energy Company for Approval of its Default Service Plan, PECO's Response to Sec. Ltr., Docket No. P-2012-2283641, at 2 (July 19, 2016), available at <http://www.puc.state.pa.us/pcdocs/1459755.pdf>.

pay no more than the price to compare, thus ensuring financial harm is not bestowed on CAP customers, ratepayers, or both.

RESA has not disputed the record evidence in this proceeding. Instead, its position is based on a generalized assertion that restrictions should not be imposed on CAP customers – even if unrestricted shopping compromises CAP customer energy burdens and their ability to afford service and/or the affordability of the CAP program as a whole. RESA’s position is untenable and inconsistent with the Choice Act “which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service.”²⁹ The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service.³⁰ Yet RESA continues to baldly assert – without any supportive data – that the Commission cannot impose reasonable program terms to ensure affordability because it would restrict the market.

The Commission not only has the statutory authority, but in fact has an obligation to ensure that the means to achieve the affordability of electric service – universal service programming - is appropriately funded and available in each electric distribution territory. This requires the enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.³¹ The existence of a competitive market for generation supply does not change this requirement. The Choice Act contains within it the coexisting goals and obligations to promote competition as well as to protect low-income customers within the competitive framework to ensure rate affordability.

²⁹ CAUSE-PA et al., 120 A.3d at 1103-1104 (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17)) (emphasis added).

³⁰ 66 Pa. C.S. § 2804 (9).

³¹ 66 Pa. C.S. § 2803.

The position advanced by CAUSE-PA, and endorsed by OCA and TURN *et al.*, permits CAP customers to choose an EGS in DSP IV – after implementation of its new CAP design – while at the same time ensuring that PECO’s CAP customers do not suffer the same harm as CAP customers who are shopping in other EDC service territories and paying prices above the price to compare.³² The proposed CAP-SOP is substantially similar to PECO’s current SOP. Under CAUSE-PA’s proposal, the CAP-SOP would have the following attributes:

- It would be the only means through which a CAP customer could shop and remain eligible for CAP benefits. Any shopping request from a CAP customer that does not get processed through the SOP would be denied.
- EGS that elect to participate would agree to serve these CAP customers at a 7% discount off the PTC at the time of enrollment and, if the PTC drops more than 7% at any time during the customer’s enrollment, the EGS would have to either re-enroll the customer in a new CAP-SOP enrollment with a new 7% off the then applicable PTC or return the customer to default service.
- If returned to default service, the CAP customer could affirmatively re-enroll in the CAP-SOP with another supplier, if they so desire. Suppliers are already monitoring the PTC to determine whether to participate in the SOP and what offers to make to customers. As such, they will be able to readily determine when the PTC price drops by more than 7%, triggering their obligation to either adjust their CAP enrollee’s contract terms or return the customer to default service.
- At the end of the 12-month CAP-SOP contract, participating EGSs would either re-enroll the CAP customers in a new CAP-SOP contract that is 7% off the then-applicable PTC (subject to the same terms noted above). Or, if they decide to stop serving CAP customers, the customer would be returned to default service. EGSs would not be allowed to enroll the CAP customer in a contract outside of the SOP.
- Like all SOP customers, CAP customers would be able to leave the SOP contract at any time, without facing termination or cancellation fees.

CAUSE-PA submits that the CAP-SOP as proposed is a reasonable and prudent measure to mitigate the adverse impacts of CAP shopping above the price to compare, accommodates all of the concerns of the Choice Act, and should be adopted by the Commission without modification.

³² This position is identical to that which was proposed as a “Joint Litigation Position” by PPL, I&E, OCA, and CAUSE-PA in the recent PPL DSP proceeding. Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program & Procurement Plan for the Period of June 1, 2017 through May 31, 2021, Joint Litigation Position, at Docket No. P-2016-2526627 (July 8, 2016) (attached as Appendix C in CAUSE-PA’s Main Brief in that proceeding).

VI. ARGUMENT

A. **THE COMMISSION HAS THE LEGAL AUTHORITY TO IMPOSE CAP SHOPPING RESTRICTIONS TO ENSURE ADEQUATELY FUNDED, COST-EFFECTIVE UNIVERSAL SERVICE PROGRAMS TO ASSIST CUSTOMERS WHO ARE LOW INCOME TO AFFORD ELECTRIC SERVICE.**

The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service.³³ The Commission has the responsibility to ensure that the means to achieve the affordability of electric service is appropriately funded and available in each electric distribution territory, which requires the enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.³⁴ The existence of a competitive market for generation supply does not change this requirement; in fact, the creation of the competitive market was the genesis of the statutory obligation.

Thus in accord with the Choice Act, any plan that would allow PECO's CAP customers to receive service from an EGS must continue to tie the affordability of electric service to a customer's ability to pay for that service through the adoption and implementation of policies, practices, and services that help low income customers maintain utility service. The Commission recognized this very principal in its most recent Final Order approving PECO's Universal Service and Energy Conservation Plan for 2013-2015:

The Electricity Generation Customer Choice and Competition Act (Electric Competition Act), 66 Pa. C.S. §§ 2801-2812, became effective on January 1, 1997. The Natural Gas Choice and Competition Act (Gas Competition Act), 66 Pa. C.S. §§ 2201-2212, became effective on July 1, 1999. The primary purpose of these Competition Acts is to introduce competition into the electric generation and natural gas supply markets. The Competition Acts established standards and procedures for the restructuring of the electric and natural gas utility industries. While opening the markets to competition, the Competition Acts also include

³³ 66 Pa. C.S. § 2804 (9).

³⁴ 66 Pa. C.S. § 2803.

several provisions relating to universal service in order to ensure that utility service remains available to all customers in the Commonwealth.

The universal service provisions of the Competition Acts, among other things, tie the affordability of electric service to a customer's ability to pay for that service. The Competition Acts define "universal service and energy conservation" as the policies, practices and services that help low income customers maintain utility service. The term includes customer assistance programs, usage reduction programs, service termination protections, and consumer education. 66 Pa. C.S. §§ 2202 and 2803. The Competition Acts declare that the Commonwealth must, at a minimum, continue the low income policies, practices, and services that were in existence as of the effective date of the laws. 66 Pa. C.S. §§ 2203(7) and 2802(10). Finally, the Competition Acts require the Commission to ensure that universal service and energy conservation services are appropriately funded and available in each utility distribution territory. Pa. C.S. §§ 2203(8) and 2804(9).³⁵

In its decision in CAUSE-PA's appeal of PECO's DSP II CAP Shopping Plan, the Commonwealth Court clarified how the Commission has to balance these goals, and stated that it is essential to recognize that the Choice Act "both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service."³⁶ Specifically, the Court stated that the Choice Act³⁷ "does not demand absolute and unbridled competition."³⁸ The Court went on to state that "under certain circumstances, unbridled competition may have to give way to other important concerns,"³⁹ and specifically found that, under circumstances like those that exist here, the Commission has the authority to impose rules which limit CAP customers to paying no more than the price to compare and eliminate early termination or cancellation fees:

[T]he PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost effective, to impose, or in this case approve, CAP rules that would limit the terms

³⁵ See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 submitted in Compliance with 52 Pa Code § 54.74, Final Order, Docket M-2012-2290911, at 2-3 (Apr. 4, 2013).

³⁶ CAUSE-PA et al., 1020 A.3d at 1103-1104 (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17)) (emphasis added).

³⁷ See 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

³⁸ CAUSE-PA et al., 120 A.3d at 1101.

³⁹ Id. at 1103.

of any offer from an EGS that a customer can accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost effective for the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participant's EGS choice.⁴⁰

In reaching its conclusion, the Commonwealth Court looked to the Choice Act's declaration of policy, "which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs *and* emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service,"⁴¹ and concluded that the Commission must adhere to the following legal standard:

So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service . . . the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – e.g. EGS rate ceiling, prohibition against early termination/cancellation fees, etc.⁴²

Based on the foregoing, the Commission clearly has the authority to impose restrictions on CAP customers' ability to shop for competitive electric generation supply to ensure that CAP remains adequately funded and available to vulnerable households, cost-effective, and affordable for CAP participants.

⁴⁰ CAUSE-PA et al., 120 A.3d at 1103-04.

⁴¹ Id. (emphasis added).

⁴² Id.

B. CAP SHOPPING RESTRICTIONS ARE NECESSARY, AND SHOULD BE IMPLEMENTED IN THE PECO SERVICE TERRITORY FOR ITS DSP IV BECAUSE OF THE INDISPUTED RECORD EVIDENCE OF HARM TO CAP CUSTOMERS AND RATEPAYERS THAT HAS RESULTED FROM THE ABSENCE OF SUCH PROTECTION IN OTHER SERVICE TERRITORIES.

The record in this proceeding demonstrates that there are substantial adverse impacts to allowing CAP customers to shop at prices higher than the price to compare. This evidence is undisputed by any party and there is no evidence to the contrary.⁴³ As explained below, the Commission should impose CAP shopping protocols on PECO's CAP customers – as outlined in the CAP-SOP proposal - to protect economically vulnerable households from significant and substantial economic hardship, and to ensure that unnecessary and excessive costs are not borne by other residential ratepayers.

1. Under PECO's Fixed Credit Option (FCO) CAP design, CAP customers who shop and pay more than the price to compare will not receive an affordable bill.

As explained in Mr. Geller's direct testimony, PECO's current CAP structure is a tiered rate-discount program.⁴⁴ Effective October 2016, PECO will switch its CAP design from a tiered CAP rate program to a Fixed Credit Option (FCO) program.⁴⁵ The design of the FCO⁴⁶

⁴³ See *infra* section C.1.

⁴⁴ CAUSE-PA St. No. 1 at 13.

⁴⁵ CAUSE-PA St. No. 1 at 13.

⁴⁶ See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Recommended Decision, Docket No. M-2012-2290911 (June 11, 2015) (recommending that settlement be approved in full); see also CAUSE-PA St. No. 1 at 19-22. Beginning October 2016, PECO will calculate each customer's CAP bill as follows:

Step 1: Determine customer's prior year's Weather Normalized Base Charges

PECO will review the customer's bills at their residence for the prior 12 months⁴⁶ and determine the dollar amount that the customer would have been charged *on an undiscounted* basis in those 12-months for both the regulated and unregulated portions of PECO's bill. *For the purpose of making this calculation, PECO will look at what the charges were (or would have been) if the customer was on default service regardless of whether the customer was or was not on default service for the previous 12 months.* PECO calls this calculation its "Base Charges"⁴⁶ and once determined, those charges will be weather-normalized using the weather normalization table to create the "Weather-Normalized Base Charges."

Step 2: Determine Verified Household Income and Federal Poverty Level:

PECO will verify household income for each household and use that information and the number of people in the household to determine the household’s Federal Poverty Level.⁴⁶

Step 3: Determine Customer’s Allowable Energy Burden:

Once the household’s Federal Poverty Level has been determined, PECO will determine the household’s allowable Energy Burden, as follows:

Table 1: Energy Burdens

FPL	Electric Non-Heating	Electric Heating	Electric with Gas Heating
0-50%	5%	13%	13%
51-100%	6%	16%	16%
101-150%	7%	17%	17%

Step 4: Calculate Customer’s Annual Credit:

PECO will determine the customer’s Annual Credit by multiplying the Verified Household Income times that household’s allowable Energy Burden to determine an Annual CAP Bill amount. The Annual CAP Bill will then be subtracted from the Weather-Normalized Base Charges; the resulting amount is the Annual Credit amount for that household. That is: **Weather-Normalized Base Charges – Annual CAP Bill = Annual Credit.**

Federal Poverty Threshold	Maximum Annual Credit: Electric Non-Heating (Rate R)	Maximum Annual Credit: Electric Heating (Rate RH)
0-50%	\$2,048	\$2,922
51-100%	\$1,389	\$1,881
101-150%	\$1,241	\$1,661

Step 5: Apply Annual Credit to Bill:

PECO will apply a percentage of the total dollar amount of the Annual Credit each month over the course of the year. The credits will be applied in a manner intended to track the seasonal nature of usage, using the following monthly percentages:⁴⁶

Table 3: Seasonality Distribution

Month	Rate R	Rate RH
Jan	9.6%	13.9%
Feb	8.9%	14.2%
Mar	8.0%	12.2%
Apr	7.0%	9.0%
May	5.8%	5.3%
June	7.7%	5.2%
July	11.3%	6.4%
Aug	10.6%	5.9%
Sept	9.3%	5.4%
Oct	6.6%	4.5%
Nov	6.6%	6.4%
Dec	8.7%	11.7%
Total	100.0%	100.0%

These percentages of the annual credit will then be converted to an actual dollar amount allocated to each monthly bill. As a hypothetical example: If it is determined that customer “X” is entitled to \$1200 in annual credits as a non-heating customer, they would receive the following allocation of credits on their bill:

was the result of extensive litigation between PECO, CAUSE-PA, the OCA, TURN *et al.*, Direct Energy, and First Energy Solutions, and numerous mediation and settlement sessions, to resolve the historical unaffordability inherent in PECO’s tiered rate discount structure.⁴⁷ The FCO CAP design was approved by the Commission on July 8, 2015.⁴⁸ The redesign has produced a significantly different and complex new CAP structure, which will completely overhaul of the method PECO uses to calculate a CAP customer’s bill.⁴⁹

Month	Rate R	Monthly Credit
Jan	9.6%	\$115.20
Feb	8.9%	\$106.00
Mar	8.0%	\$96.00
Apr	7.0%	\$84.00
May	5.8%	\$69.60
June	7.7%	\$92.40
July	11.3%	\$135.60
Aug	10.6%	\$127.20
Sept	9.3%	\$111.60
Oct	6.6%	\$79.20
Nov	6.6%	\$79.20
Dec	8.7%	\$104.40

Step 6: Periodic Recalculation and Adjustment of Annual Credit

PECO will recalculate the customer’s Weather Normalized Base Charges every three month using the customer’s most recent three months’ data on usage/charges and will then use the results of the Step 1 recalculation as inputs to complete Steps 2 through 5 to determine a Quarterly Recalculation of the Annual Credit. The adjusted Annual Credit will be applied to bills on a going-forward basis. This quarterly recalculation will be coordinated with the results of PECO’s quarterly Generation Services Adjustment filing and approval so that, in each such quarterly adjustment, PECO’s just-approved PTC will replace the oldest three months of PTC data in the underlying calculation.

⁴⁷ The unaffordability of PECO’s CAP Rate structure was addressed by the Commission multiple times, including in its Tentative Order regarding PECO’s 2013-2015 USECP filing. PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911, at 8–9 (Nov. 8, 2012); see also PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Final Order, Docket No. M-2012-2290911, at 12–19 (Apr. 4, 2013).

⁴⁸ PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Order, Docket No. M-2012-2290911 (July 8, 2015).

⁴⁹ In addition to this entirely new method of determining a low-income customer’s discounted bill, PECO will at the same time be implementing an In-Program Arrearage Forgiveness (IPAF) program that will require CAP customers who have CAP arrears at the time of the transition to make payments above and beyond their CAP payments over a 60-month period of time. See CAUSE-PA St. 1 at 19:12-20.

While the FCO design is complicated, the most essential and relevant component to be considered with regard to the interaction of CAP and the competitive market in PECO's service territory is this: PECO's FCO CAP design targets affordability – and the amount of CAP credits allotted to CAP customers – based on PECO's default service rate, regardless of whether the customer is shopping for electric generation supply service.⁵⁰ If a customer's generation supply charges are higher than the price to compare for any period of time, the customer will not receive a credit that accounts for that higher price, and will receive less of a discount than is actually required for his or her bill to be affordable pursuant to Commission standards.⁵¹ Paying more than the price to compare will, thus, necessarily erode the effectiveness of PECO's CAP in reaching Commission-established energy burden targets.

As a result of CAP customer shopping, there is the very real potential for an increase in unaffordable bills, which over the long term will lead to more unpaid bills by CAP customers, and increased termination of service – the very thing that the redesign of PECO's CAP was intended to remedy. As outlined in more detail below, the experience in other service territories in which CAP customers have previously shopped for electric generation has demonstrated that this harm is not speculative, but is a very real and significant concern.

2. PECO's low-income CAP customers are uniquely situated, economically vulnerable, and require specific and distinct protection within the retail electric market as compared to other electric customers.

a. PECO's CAP and CAP-eligible populations are extremely vulnerable.

No party has contested the testimony submitted by CAUSE-PA concerning the economic vulnerability of PECO's confirmed low-income customers.⁵² Households with income at or below

⁵⁰ CAUSE-PA St. 1, at 22-23.

⁵¹ CAUSE-PA St. 1, at 23-24.

⁵² See CAUSE-PA Statement 1 at 15-17.

150% of the federal poverty guideline lack sufficient income to pay for all of their essential needs. Before all of the bills are paid, low-income families routinely run out of money. As outlined in detail in Mr. Geller's testimony, without CAP assistance, low-income customers simply cannot meet their monthly expenses. Mr. Geller explained:

The National Low Income Energy Consortium (NLIEC) conducted a survey designed to capture a nationally representative picture of the issues facing low income households. The study found that "households with incomes below 50% of the federal poverty level pay a staggering 38% or more of their annual income simply for their home energy bills." The overwhelming energy burden on low income households makes it difficult for these customers to pay for other basic necessities. Of the households surveyed in the NLIEC study, 46% went without food and 45% failed to take medication as prescribed by doctors in order to pay their home energy bills. Similarly, as recently reported by Pennsylvania's Joint State Government Commission, utility assistance ranked in the top three types of assistance noted by survey respondents (24.1 percent) that would have prevented homelessness.

Even CAP is not a panacea to fixing the difficulty of unaffordable bills. The average CAP household is desperately poor, and these extremely low income households routinely run out of money even with assistance of CAP. *In 2014, the household income of the average Pennsylvania household enrolled in CAP was \$13,134, which - with an average universal service household size of 3 - is approximately 66% of the federal poverty level.* Many cannot afford to pay for utility service because of the cost of competing essential needs like rent, food, water, medicine, clothing, childcare, and transportation. Furthermore, the Commission recognized time and time again that PECO has a long history of failing to design a program that was in conformity with the Commission affordability standards, thus producing unaffordable bills even with a CAP subsidy.⁵³

Put simply, as Mr. Geller eloquently described in direct testimony, PECO's confirmed low-income, CAP-eligible customers are economically vulnerable and unable to pay for essential

⁵³ CAUSE-PA St. 1, at 15-17 (citing Nat'l Low Income Energy Consortium, [Paid but Unaffordable: The Consequences of Energy Poverty in Missouri – and Elsewhere](http://www.neuac.org/2004_MO%20Overview.pdf), at 2-5 (2004), available at http://www.neuac.org/2004_MO%20Overview.pdf; Joint State Government Comm'n, [Homelessness in Pennsylvania: Causes, Impacts, and Solutions](http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=447), at 112, 157, 160 (April 2016), available at http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=447; Pa. Public Utility Comm'n, Bureau of Consumer Svcs., [2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf), at 7, 35 (2014), available at http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf; Nat'l Energy Ass't Directors' Ass'n, [2011 National Energy Assistance Survey](http://www.appriseinc.org/reports/Final%20NEADA%202011%20Report.pdf) (Nov. 2011), available at <http://www.appriseinc.org/reports/Final%20NEADA%202011%20Report.pdf>) (emphasis added).

services including electricity without substantial and meaningful assistance. It is for this reason that CAP programs were created to assist low-income customers maintain and afford essential utility service, and it is precisely why the benefits of CAP cannot be eroded by allowing CAP customers to pay more than the utility's price to compare.

- b. The Commission should develop protections for PECO's CAP customers beginning with the start of the DSP IV period, based on the evidence in this proceeding, rather than implement changes based on its DSP II order.

One of the issues that the Commission must decide in this proceeding is when restrictions on CAP shopping will occur, and the extent of such restrictions. The timing is critical to examine, as PECO was already obligated to impose some restrictions on cancellation and termination fees in its DSP II proceeding. The Commonwealth Court in CAUSE-PA et al. determined that the Commission erred as a matter of law when it found that it did not have the legal authority needed to impose price restrictions on the terms and conditions of CAP customers who shop for electric supply. In so doing, the Court found that there was not substantial evidence for the Commission's determination to reject a proposal to prohibit early termination and cancellation fees, and ordered the Commission to require PECO to develop a plan that prohibits CAP customers from contracting for EGS-supplied service containing these fees.⁵⁴

On May 11, 2016, in response to the Commonwealth Court's decision,⁵⁵ the Commission issued a Secretarial Letter⁵⁶ to the parties in the DSP II proceeding in which it ordered PECO to do the following:

⁵⁴ CAUSE-PA et al., 120 A.3d at 1107-08.

⁵⁵ In response to the Commonwealth Court's Opinion and Order, the Commission filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, and CAUSE-PA, along with TURN et al., filed a Cross-Petition for Allowance of Appeal. On April 5, 2016, the Supreme Court of Pennsylvania denied both petitions. See Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC, 2016 PA LEXIS 723 & 2016 Pa. LEXIS 724 (Pa. Apr.5 2016).

⁵⁶ See Petition of PECO Energy Company of its Default Service Program, Sec. Ltr., Docket No. P-2012-2283641 (May 23, 2016).

In light of the Court's Order, and the denial of allocatur by the Supreme Court, through this Secretarial Letter, the Commission hereby directs PECO to file with the Secretary and serve on the parties at its current Default Service Plan (DSP) and Universal Service and Energy Conservation Plan (USECP) dockets a proposed rule revision to its CAP Shopping Plan in its current DSP III consistent with the Commonwealth Court's Order. PECO's filing should include: (1) proposed language of the rule; (2) a proposed timeline and effective date; and (3) a proposed plan to collect data upon which to base an analysis of the CAP shopping program experiences, evaluations, and recommendations. PECO's filing will be subject to public comment and final review and approval by the Commission.⁵⁷

PECO responded to the Secretarial Letter on July 19, 2016, with a letter indicating that it will file its CAP rule revision "by September 1, 2016," and that it "currently anticipates that it will recommend implementation of CAP shopping, with the Commonwealth Court Order integrated into the CAP Shopping plan, during the first quarter of 2017."⁵⁸ Although non-specific, PECO's July 19th letter clearly anticipates that PECO will adopt the early termination and cancellation fee prohibition into its CAP shopping plan for its DSP III. This was confirmed by PECO in its rebuttal testimony by PECO witness McCawley, who stated that PECO will submit a "proposed rule revision" to its DSP III docket to implement a CAP Shopping Plan with an effective date of first quarter of 2017, and that this rule revision will "eliminate any pricing restrictions for EGSs who wish to offer competitive generation service to PECO's CAP customers and will prohibit CAP customers and EGSs from entering into any contract that imposes early cancellation or termination fees."⁵⁹ The proposed rule revision will also include PECO's proposal to "collect data to evaluate the CAP shopping program and determine whether any modifications are *later* necessary."⁶⁰

⁵⁷ Petition of PECO Energy Company for Approval of its Default Service Plan, Sec. Ltr., Docket No. P-2012-2283641 (May 11, 2016) (internal footnotes omitted).

⁵⁸ See Petition of PECO Energy Company for Approval of its Default Service Plan, PECO Ltr., Docket No. P-2012-2283641 (July 19, 2016) (emphasis added).

⁵⁹ PECO St. No. 2-R at 13:9-12.

⁶⁰ PECO St. No. 2-R at 13: 13-15 (emphasis added.)

While CAUSE-PA supports PECO's implementation of a prohibition on early termination and cancellation fees, for the reasons stated by Mr. Geller in his testimony in this proceeding and explained throughout this brief, CAUSE-PA strongly believes that (1) PECO should delay implementation of any CAP customer shopping until June 1, 2017, which is the beginning of the DSP IV operational period, and (2) the CAP shopping design must encompass protections against paying more than the price to compare. There are several reasons why this should occur.

First, as to timing, it does not make sense for PECO to implement CAP shopping during the DSP III period, as doing so would mean that PECO would be implementing CAP shopping without the benefit of whatever decision is made in this proceeding, which contains substantial evidence that CAP customers will be harmed as a result of unrestricted CAP shopping.

Second, if PECO were to implement CAP shopping in DSP III, it would be an inefficient and unnecessary implementation of a CAP shopping structure in the first quarter of 2017 that would then change effective June 1, 2017. This will inevitably lead to unnecessary customer confusion, and is quite likely to result in inconsistent shopping program designs.

Third, the interrelationship of PECO's CAP structure and its DSP design is an essential element to be considered in the review of each newly proposed DSP. PECO's CAP Rate Discount Program, which was in effect when the Commission reviewed evidence specific to PECO's DSP II, is being discontinued and will be replaced by a dramatically different CAP program, the FCO design described above. DSP IV is the first opportunity in which the Commission will have the opportunity to review the relationship of the new FCO with PECO's DSP IV design, which is proposed for the period of June 1, 2017 through May 31, 2019.

At the time the Commission ruled on PECO's previous CAP shopping plan in its DSP II proceeding, PECO's CAP program was a tiered rate-discount program. That program is still in effect, but as noted above will soon change with the implementation of the FCO in October 2016. In so doing, all of PECO's 140,000 CAP customers will have to be educated about the changes to the CAP program that will be effective in October 2016, and those CAP customers with arrears will also need to be educated about their obligations to maintain an additional IPAF payment, which will be in addition to their CAP payment.⁶¹ PECO has a comprehensive timeline for this education, which is slated to begin mid-June and will continue through at least December 2016.⁶²

Since PECO's CAP customers have not yet been able to shop for EGS-supplied generation service, they will also - for the first time - have to be educated about how to do so, and under what terms and conditions they are permitted to do so. The Commission itself, has repeatedly noted that an effective education program is an essential tool to be implemented for informed customer shopping,⁶³ and the Commonwealth Court has agreed "with the PUC's determination that consumer education is critical."⁶⁴ It stretches credulity and flies in the face of the experience of competitive shopping to suggest that PECO would be able to effectively educate its CAP customers about each of the significant CAP program changes that are occurring beginning October 2016, while concurrently trying to develop and effectively educate the same group of customers about how to effectively shop for competitive generation supply for the first time.

⁶¹ CAUSE-PA St. 1, at 13:15 to 14:1-2.

⁶² CAUSE-PA St. 1, at 14:2-3.

⁶³ See e.g., Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641, at 15-28-30 16-17 (Jan. 24, 2014); Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641, at 11, 17, 27 (March 12, 2014).

⁶⁴ CAUSE-PA et al., 120 A.3d at 1108.

Fourth, this proceeding is the first opportunity to review the Commonwealth Court's guidance regarding the legal authority and responsibility vested by the Choice Act in PECO and the Commission to ensure the availability of adequately funded, appropriately available, and cost-effective CAP programs while providing access to the competitive shopping market. This guidance was unavailable during the Commission's consideration of DSP II or DSP III. However, it is now appropriate to be used in this proceeding for prospective development of PECO's DSP for the period of June 1, 2017 through May 31, 2019.

Fifth, new data concerning the experience and effect of CAP customer shopping in the competitive market, which was unavailable during the consideration of the record in DSP II, has been developed and is now available. As Mr. Geller's testimony indicated, this new data is relevant to how the DSP design negatively impacts the ability of low-income households to afford electric service and the costs paid by ratepayers, and is therefore relevant to this proceeding.⁶⁵

Finally, it is essential to note that the issue of how and under what terms and conditions CAP customers should continue to receive electric generation supply service from an EGS and remain on CAP is being addressed by each of the other EDCs as part of their respective DSP proceedings. It is the subject of an upcoming collaborative in the First Energy Service territories,⁶⁶ is currently being litigated in PPL's default service proceeding – in which PPL, OCA, CAUSE-PA, and I&E have taken a joint litigation position identical to the one CAUSE-PA is proposing herein⁶⁷ - and was raised as an issue by Duquesne Light in its currently pending

⁶⁵ CAUSE-PA St. 1, at 26:16-29:21.

⁶⁶ Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of their Default Service Programs, Order, at Docket Nos. P-2015-2511333, -2511351; -2511355; -2511356 (May 19, 2016); Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of their Default Service Programs, Recommended Decision, Docket Nos. P-2015-2511333, -2511351; -2511355; -2511356, at 18 (April 15, 2016).

⁶⁷ 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, at Docket No. P-2016-2526627.

DSP proceeding.⁶⁸ Given the significant issues and dramatic restructuring of PECO's CAP in the upcoming year, it is vital that these matters be considered in the context of this proceeding, in light of the record evidence and the Commonwealth Court's clarification that the Commission have authority to impose restrictions on the terms and conditions by which PECO's CAP customers can select EGS service.

3. The experience of CAP customers in other EDC service territories amply demonstrates that a policy of allowing CAP customers to shop without limitation on the price or terms of service will worsen the affordability crisis for PECO's CAP customers.

Until now, PECO's CAP customers have not been able to shop for generation service while enrolled in CAP. As such, they and other ratepayers have not experienced any harm as a result of CAP customers paying EGS rates higher than the PTC. This is the case because no CAP customer has paid more than the PTC. It has nothing to do with the uniqueness of the retail market within PECO's service territory. PECO's CAP customers and the ratepayers who pay for CAP have been insulated from the effects of CAP shopping above the price to compare only because CAP customers have not been permitted to shop. It would be at best naïve and at worst disingenuous to assume that the experiences of CAP customers in other service territories will not result in similar harm to PECO's customers if, when CAP shopping begins, there are no restrictions which protect against CAP customers paying rates above the PTC.

No party has presented any evidence to indicate why or how the experience of CAP customers within PECO's service territory would be any different than the experience of PPL or First Energy CAP customers – the only two service territories that allow shopping of any kind for their CAP customers. There is no indication that the marketing techniques, offers, contract

⁶⁸ Petition of Duquesne Light Company for Approval of Default Service Plan for the Period of June 1, 2017 through May 31, 2021, at Docket No. P-2016-2543140.

terms, and EGSs will vary significantly from those service territories to PECO's. The economic demographics of the CAP customer population of PPL and First Energy are determined by statewide CAP Policy Guidelines regarding eligibility and are, thus, not different than those for the CAP customer population within PECO's service territory. EDC CAP customers across the state are all payment troubled, desperately poor, and require payment assistance that is subsidized in part by other ratepayers. While there are significantly more CAP customers within PECO's service territory than other service territories, these customers face the same challenges as all poor households across the state: how to pay for essential goods and services with little to no income. The only significant difference is that because of PECO's larger CAP enrollment more of its low-income customers will be subject to harm if permitted to engage in unrestricted shopping.

As stated in Mr. Geller's surrebuttal testimony, the time to act to prevent harm is now, not after the irreparable harm has occurred:

It seems particularly objectionable to subject this larger base of PECO's CAP customers to the same kind of harm that has been experienced by PPL and First Energy Companies' CAP customers simply because they have not yet also experienced that harm. This is especially so when the protection of low-income consumers in a competitive electric environment is one of the purposes of the Choice Act, and the potential harm of unrestricted shopping is known and can be prevented. It would be akin to knowing that a group of individuals in a neighboring county suffered harm because of unsafe dresser construction, but then insisting that, although those same dressers are about to be put on the market in Philadelphia, the cause of the harm would not be addressed or prevented by timely corrective action now, but only at some unspecified time in the future after the harm to Philadelphia's residents has occurred. PECO's proposal to deal with CAP shopping issues "later", after CAP customers have actually suffered irreparable harm within the boundaries of Philadelphia, is an abandonment of PECO's statutory and regulatory responsibility to maintain affordable CAP payments in order to enable its low-income customers maintain essential electric utility service. We know *now* the harm that will befall PECO's low-income CAP customers who shop without reasonable and targeted restrictions because all of the data – explained at length in my direct testimony – concerning how low-income households and other ratepayers are irreparably harmed by paying more

than the price to compare. There is no reason to subject PECO customers to this same harm based on the insistence that one needs to see “PECO-specific data” before reaching a conclusion and taking the action needed. The most appropriate time to implement the necessary protections in order to protect PECO customers from harm is now, in this proceeding, before it occurs.⁶⁹

In the context of determining whether competition needs to bend to ensure that PECO’s universal service programs are adequately funded and available to assist low-income customers \ to afford electricity, it is perfectly appropriate for the Commission to consider the data from the PPL and First Energy service territories.

- a. As a result of unrestricted CAP shopping, CAP customers and other ratepayers in PPL’s service territory were harmed, as evidenced by the \$2.7 million net annual increase in program costs as a result of EGS/CAP customer contracts above the price to compare.

A review of the data shows that low-income CAP customers have been significantly harmed by their participation in the competitive electric generation market. In its most recent universal service plan proceeding, PPL Electric agreed that CAP customer shopping can affect customers’ ability to remain in the program if they have selected a supplier with very high energy prices and that the primary impact of high supplier prices for its CAP customers is to increase the “burn rate” of CAP credits.⁷⁰ In response, the Commission directed PPL to address the issue of CAP shopping in its upcoming DSP.⁷¹ In preparation for its currently pending default service proceeding, PPL produced evidence which makes it clear that a significant number of PPL’s CAP customers who are shopping pay more than the price to compare.⁷² For calendar year 2015, an average of 52% of PPL’s customers shopped each month, and of those

⁶⁹ CAUSE-PA St. No. 1 at 5:5 – 6:4

⁷⁰ See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Reply Comments of PPL Electric Utilities, Docket No. M-2013-2367021 at 11 (July 21, 2014).

⁷¹ PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Final Order, Docket No. M-2013-2367021, at 19 (Sept. 11, 2014).

⁷² See CAUSE-PA St. 1, Attachment B (PPL Electric Utilities OnTrack (CAP) Program Shopping Collaborative #2, Friday Jan. 15, 2016).

customers who were shopping, an average of 46% paid more than the price to compare. This evidence corroborates the findings of harm shown in PPL’s DSP II, but now spans a **46 month period of time (nearly 4 years) and reveals millions of dollars in net harm over that time, factoring in both the savings earned and the costs incurred by all CAP shopping customers over the same period.**⁷³ This length of time and depth of data paints an indisputably clear picture of a long term pattern of deep and quantifiable harm.

Specifically, the data also shows that those customers who paid more than the price to compare **paid significantly more**, as compared to the savings achieved by customers who paid less than the price to compare. In the month in which CAP customers who shopped paid the highest percentage more than the price to compare, they paid on average 101% more per kWh. But in the month when CAP customers who shopped achieved the greatest savings, they paid only 14% less than the price to compare. The effect of this data overall is summed up by information that PPL made publically available through its Second CAP Shopping Collaborative, which is excerpted below:⁷⁴

Estimate the net impact		
Look at shopper non-savers versus savers, as compared to the PTC		
Time Period Used: January 2012 – October 2015 (46 months or 3.8 years)		
Those Paying Above PTC	Those Paying At/Below PTC	
7. Difference (each month) = \$31	7. Difference (each month) = \$9	
8. The difference, above = \$298,406	8. The difference, below = \$69,750	
9. The impact, 12 mos. = \$3,580,872	9. The impact, 12 mos. = \$837,000	
10. The impact, 18 mos. = \$5,371,308	10. The impact, 18 mos. = \$1,255,500	
1. Net (each month) = \$22 2. Net effect, monthly = \$228,656 3. The impact, over 12 months = \$2,743,872 4. The impact, over 18 months = \$4,115,808		

⁷³ CAUSE-PA St. 1 at 29:1-11.

⁷⁴ See CAUSE-PA St. 1, Attachment B (PPL Electric Utilities OnTrack (CAP) Program Shopping Collaborative #2, Friday Jan. 15, 2016).

The net impact⁷⁵ of CAP customer shopping over the 46- month period from January 2012 through October 2015 is \$2,743,872 per year, which if extrapolated over that entire 46-month period results in more than \$10.5 million in additional costs for PPL's CAP customers and other ratepayers.⁷⁶ That is, as a result of PPL's current practice of allowing CAP customers to select any EGS offer regardless of cost, residential ratepayers are paying \$2,743,872 more per year for the CAP program than they would have paid had all CAP customers simply paid the price to compare.

Substantially similar data was produced in the First Energy Company Service territories. The reported data from that proceeding appears to show that as of November 2015, more than 77% of Met-Ed's CAP customers, more than 50% of Penelec's CAP customers, and more than 65% of West Penn's CAP customers who are shopping are paying a price higher than the price to compare.

The harm to vulnerable low income CAP customers and residential ratepayers across PPL and First Energy service territories which resulted from the lack of reasonable CAP shopping restrictions is unacceptable, and is not in accord with the purpose of CAP or the dual obligations of the Choice Act. At the same time, PECO and Duquesne CAP participants did not shop, never paid more than the PTC, and harm to them and non-CAP ratepayers did not occur. Indeed, the harm is preventable now, and a remedy must not be delayed.

Despite the fact that PECO's CAP customers are currently not permitted to shop for EGS-supplied generation service, there is no reason to believe that the long-term results would

⁷⁵ As noted above, see *supra* note 3, net impact – as the term is used here - means all of the savings incurred by CAP customers shopping at rates *at or below* the price to compare, subtracted from all of the costs incurred by CAP customers shopping at rates *higher* than the price to compare. This shows the net harm to the CAP program as a whole, ***but does not monetize the particularized harm to individual CAP customers who pay more.*** This latter harm, while not monetized, presents a significant and substantial risk of harm to low income households, and creates a ripple effect on other ratepayers in terms of increased termination costs and uncollectible expenses.

⁷⁶ See CAUSE-PA St. 1 at 29:1-11.

be any different in PECO's territory than in the other Pennsylvania utility service territories that have allowed and developed a history of CAP shopping.⁷⁷ In fact, unless the issue of CAP customer shopping is addressed now, in PECO's DSP IV, the harm could very well be worse for PECO's customers than in other territories, given PECO's significantly larger CAP and CAP-eligible population, their lack of prior shopping education and experience, the complications emanating from a concurrent change in CAP design, and the structure of PECO's new FCO CAP design – which, as explained above in section B-1 above, calculates CAP credits based on the price-to-compare and not the actual price the CAP customer pays for electricity, thereby significantly reducing the level of affordability achieved for this vulnerable class of customers.

C. CAUSE-PA'S CAP-SOP PROPOSAL SHOULD BE ADOPTED BECAUSE IT APPROPRIATELY BALANCES THE ABILITY OF CAP CUSTOMERS TO ENTER THE COMPETITIVE MARKET WHILE CONTINUING TO ENSURE THAT ADEQUATELY FUNDED, COST-EFFECTIVE, AND AFFORDABLE PROGRAMS REMAIN AVAILABLE TO ASSIST LOW INCOME CUSTOMERS.

Any program structure that allows PECO's CAP customers to contract for EGS-supplied service above the PTC needlessly compromises affordability and program costs. This is unacceptable as a matter of policy and cannot be tolerated or justified for the sole purpose of advancing the competitive electric generation market. When the Pennsylvania General Assembly enacted the Choice Act in 1996, it was concerned about choice and affordability, not choice or affordability. Indeed, the ability of low-income households to continue to afford electricity in a competitive environment was a core concern of the Act's drafters.⁷⁸ As a means of addressing these concerns, the General Assembly specifically tasked the Commission with the responsibility of ensuring that the programs intended to facilitate the affordability of electric

⁷⁷ CAUSE-PA St. 1 at 29:17-21.

⁷⁸ See 66 Pa. C.S. §§ 2802 (10), (17); 2804 (9).

service are appropriately funded and available in each electric distribution territory.⁷⁹ The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service,⁸⁰ and the statutory goals of universal service programs are to be achieved through the enactment, establishment and maintenance of policies, practices and services that help low-income customers maintain their electric service.⁸¹ In this proceeding, the position of CAUSE-PA is the only position advanced which meets all of these concerns. Specifically, Mr. Geller proposed a CAP-SOP with the following criteria:

- The CAP-SOP would be the only means through which a CAP customer could shop and remain eligible for CAP benefits. Any shopping request from a CAP customer that does not get processed through the SOP would be denied.
- EGSs which volunteer to participate would have to agree to serve these CAP customers at a 7% discount off the PTC at the time of enrollment and, if the PTC drops more than 7% at any time during the customer's enrollment, the EGS would have to either re-enroll the customer in a new CAP-SOP enrollment with a new 7% off the then applicable PTC or return the customer to default service.
- If returned to default service, the customer could affirmatively re-enroll in the CAP-SOP with another supplier, if they so desire. Suppliers are already monitoring the PTC to determine whether to participate in the SOP and what offers to make to customers. As such, they will be able to readily determine when the PTC price drops by more than 7%, triggering their obligation to either adjust their CAP enrollee's contract terms or return the customer to default service.
- At the end of the 12-month CAP-SOP contract, participating EGSs would either re-enroll the CAP customers in a new CAP-SOP contract that is 7% off the then-applicable PTC (subject to the same terms noted above). Or, if they decide to stop serving CAP customers, the customer would be returned to default service. EGSs would not be allowed to enroll the CAP customer in a contract outside of the SOP.
- Like all SOP customers, CAP customers would be able to leave the SOP contract at any time, without facing termination or cancellation fees.⁸²

This position was endorsed by both the OCA and TURN *et al.*⁸³ By instituting the safeguards outlined above, suppliers would not be forced to serve customers under terms to

⁷⁹ 66 Pa. C.S. § 2804 (9).

⁸⁰ 52 Pa. Code. § 54.73.

⁸¹ Id.

⁸² See CAUSE-PA St. No. 1: 31-33.

⁸³ See OCA St. 2-R at 5; See TURN St. 1 at 11-12

which they do not agree or find to be economically unviable.⁸⁴ EGSs could opt to participate or not participate, depending on the EGS's own assessment of its needs and goals - including whether it would make economic sense for them to participate.⁸⁵ CAP customers, as well as the ratepayers who pay for the CAP subsidy, would be protected by choosing to either remain on default service or select a supplier who voluntarily chooses to serve CAP customers under these rules.⁸⁶ Furthermore, CAP customers who pay less than the price to compare would benefit by extending the life of their CAP credits, and other ratepayers would benefit through reduced costs and associated expenses.⁸⁷ Participating suppliers would be competing with other participating suppliers who would all be operating under the same set of rules for CAP customers.⁸⁸

Based on the evidence in the record of this proceeding, it is apparent that unrestricted CAP shopping would produce devastating results for vulnerable Pennsylvania households. Furthermore, the record “provides substantial reasons why there is no reasonable alternative” to eliminate the impending and inevitable harm that would befall CAP and non-CAP ratepayers. Thus, “‘competition needs to bend’ to ensure that adequately-funded, cost-effective, and affordable programs [exist] to assist customers who are of low-income to afford electric service.”⁸⁹ RESA's arguments to the contrary are wholly unsupported and without merit.

- 1. RESA's concerns about CAUSE-PA's proposal are speculative, unfounded, and unsupported by substantial evidence, and its position that the status quo is acceptable – in light of undisputed harm – ignores critical mandates of the Choice Act.**

For its part, RESA asserts that CAUSE-PA's proposal should not be accepted because (1) CAUSE-PA did not prove that the CAP program could not be modified to resolve the concerns

⁸⁴ See CAUSE-PA St. 1, at 33:4-5; CAUSE-PA 1-SR, at 10.

⁸⁵ See *id.*

⁸⁶ CAUSE-PA St. 1, at 33:5-7.

⁸⁷ CAUSE-PA St. 1, at 33:7-8.

⁸⁸ CAUSE-PA St. 1, at 33:8-10.

⁸⁹ CAUSE-PA et al., 120 A.3d at 1104.

that Mr. Geller has raised; (2) using the EDCs PTC as the sole metric for what constitutes an appropriate or reasonable price is improper, and should instead include non-commodity benefits “such as price certainty or other value added products and services that may be a part of the commodity offering”; (3) restrictions on the pricing structure would be difficult to implement; and (4) few if any EGSs would be willing to participate.⁹⁰

As an initial matter, RESA’s position is essentially that the Commission should do nothing and that CAP customers should have the opportunity to shop without any restrictions, even though the demonstrated result is to compromise CAP customers’ ability to afford service as well as the affordability of the CAP program as a whole. This position is inconsistent with the Choice Act, “which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service.”⁹¹ The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service.⁹² The Commission has the responsibility to ensure that the means to achieve the affordability of electric service is appropriately funded and available in each electric distribution territory. This requires the enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.⁹³ The existence of a competitive market for generation supply does not change this requirement. The Choice Act contains within it the coexisting goals and obligations to promote competition as well as to protect low-income customers within the competitive framework to ensure rate affordability. CAUSE-PA’s proposal accommodates both goals. RESA’s, however, seeks to ignore one set of

⁹⁰ RESA St. No. 1R at 14, 15:7-8.

⁹¹ CAUSE-PA et al., 120 A.3d at 1103-04 (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17)) (emphasis added).

⁹² 66 Pa. C.S. § 2804 (9).

⁹³ 66 Pa. C.S. § 2803.

objectives to achieve the other, which is not reasonable or acceptable and should be rejected.

Each of RESA's specific challenges should also be disregarded.

First, there is no obligation on CAUSE-PA's part to demonstrate that the CAP structure could be modified to mitigate our concerns. This is true for several reasons. Most significantly, there is no CAP structure that could mitigate the concerns expressed because the Choice Act has placed CAP funding within a closed equation.⁹⁴ The costs have to be paid either by the CAP customer, the other rate payers who pay for CAP, or both. There is no way to avoid increased costs as a result of increased prices. The CAP guidelines contained in Title 52, Chapter 69 of the Public Utility Code explain why the harm created by CAP shopping to ratepayers, CAP customers, or both cannot be mitigated through adoption of changes to the CAP structure. Section 69.265(2) sets forth the alternative CAP structures approved by the Commission, including a percentage of income plan, a percentage of bill plan, a rate discount, or a monthly minimum payment.⁹⁵ But regardless of how a participant's CAP payment is calculated, the premise of CAP is to provide bill affordability to ensure universal access to essential utility services.⁹⁶ This necessarily requires utilities to provide a discount off the rates paid by other ratepayers. And, the fact remains that utilities are entitled to full recovery of the costs of providing universal service programming to its low income customers, which is recoverable through a nonbypassable rate mechanism.⁹⁷ Thus, the reason CAUSE-PA did not propose an "adjustment" to the CAP structure, and it is nowhere in the record, is because such a proposal would not only fail to address the concerns put forward (that CAP customers and ratepayers are being harmed), but such an "adjustment" would fix nothing and

⁹⁴ CAUSE-PA St. 1-SR at 6:16-22 to 7:1-3.

⁹⁵ 66 Pa. C.S. § 69.625 (2). An alternative payment formula may be approved, also, but it must first be "reviewed by the Bureau of Consumer Services and approved by the Commission." *Id.*

⁹⁶ 66 Pa. C.S. §§ 2802 (9), (10); 2803 (defining universal service and energy efficiency).

⁹⁷ 66 Pa. C.S. §§ 2802 (17); 2804 (8), (9).

would only exacerbate the extent of the harm to non-CAP ratepayers. This is a zero sum game and RESA's arguments to the contrary should be disregarded.

As to RESA's second argument, it asserts that restricting CAP customers' choices in the competitive market would somehow be depriving these customers of certain unnamed, undisclosed "benefits" of the competitive market, that using the PTC is an inappropriate mechanism for comparison, and that customers choose "value-added" products.⁹⁸ These assertions should be given no credence, as RESA provides no support to show any purported benefit and makes no attempt to identify or quantify which products may provide added value to CAP customers and/or would not otherwise economically burden these households. In the absence of specificity as to how CAP customers and the ratepayers who finance CAP will benefit from the "value" added by these products, and in the absence of a clear showing that the "value" outweighs the harm associated with paying rates higher than the PTC, any argument to this end should be rejected.

The stated purpose of the Electricity Generation Customer Choice and Competition Act ("Choice Act") is to "create direct access to retail customers to the competitive market for the generation of electricity."⁹⁹ Thus, the non-commodity products mentioned by RESA are not within the purview of the Choice Act, and RESA's concern about CAP customers' access to these non-commodity products is misplaced. The Choice Act focuses on the generation of electricity, ensuring that the low-income programs remain adequately funded, and ensuring that these programs actually assist low-income households **afford electric service.**¹⁰⁰ There is no intent or specification within the Act that encompasses access to debit cards, toasters, loyalty rewards, or any other attributes that could be included in an EGS price other than the cost of generation.

⁹⁸ RESA St. 1-R at 15:6-9; see also CAUSE-PA St. 1-SR at 8:18 to 9:14.

⁹⁹ 66 Pa. C.S. § 2802(12) (emphasis added).

¹⁰⁰ 66 Pa. C. S. § 2802(10).

In fact, “the Choice Act expressly requires the [Commission] to administer these programs in a manner that is cost effective for both CAP participants and non-CAP participants, who share the financial consequences of the CAP participants’ EGS choice.”¹⁰¹ RESA’s insistence that these non-commodity products must remain available finds no support in the law and, to the extent that they may result in prices above the price to compare, will result in economic harm to CAP customers and the ratepayers who pay for CAP. In the absence of specificity as to how CAP customers and the ratepayers who finance CAP will benefit from the “value” added by these products, and in the absence of a clear showing that the “value” outweighs the harm associated with paying rates higher than the PTC, any argument to this end should be rejected.

Third and finally, RESA asserts that if any CAP shopping restrictions are put into place, restrictions on the pricing structure would be difficult to implement, and few EGSs would be willing to participate.¹⁰² These assertions are without merit and should carry no weight. EGSs make business decisions all of the time for a host of reasons. Even today, under PECO’s current DSP, some suppliers choose not to enter PECO service territory. Even if one were to accept the possibility that some suppliers may be initially reluctant to serve CAP customers under the rules that have been proposed, this alone should not be dispositive. Suppliers should not be permitted to negate or prevent any CAP protections by simply refusing to participate. As the Commonwealth Court’s decision in the PECO CAP shopping appeal recognized that “under certain circumstances, unbridled competition may have to give way to other important concerns,”¹⁰³ and specifically found that under circumstances like those that exist here, the PUC has the authority and responsibility to limit CAP customers to paying no more than the PTC and

¹⁰¹ CAUSE-PA et al., 120 A.3d at 1103.

¹⁰² RESA St. 1-R at 15:19-20, 16:17-21

¹⁰³ CAUSE-PA et al., 120 A.3d at 1103.

eliminate early termination or cancellation fees “[s]o long as [PUC] ‘provides substantial reasons why there is no reasonable alternative, so competition needs to bend’ to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service.”¹⁰⁴

The record in this proceeding amply demonstrates that substantial evidence – above and beyond CAUSE-PA’s burden of proving its case by a preponderance of the evidence – has been presented which clearly shows that permitting CAP customers to be contractually subject to paying EGS rates above the PTC has not worked in other EDC service territories and is harming CAP and non-CAP customers. Indeed, the record shows that there is no reasonable alternative other than to prevent and avoid the harm by implementing CAUSE-PA’s proposal for DSP IV, which is designed to ensure that adequately-funded, cost-effective, and affordable CAP shopping programs remain available to help customers who are low-income afford electric service. As such, “unbridled competition . . . ha[s] to give way to other important concerns.”¹⁰⁵ Whether or not any individual supplier chooses to serve or not serve CAP customers will be that supplier’s business decision to do so.

¹⁰⁴ CAUSE-PA et al., 120 A.3d at 1103-04 (internal citation to authority omitted).

¹⁰⁵ CAUSE-PA et al., 120 A.3d at 1103.

VII. CONCLUSION

Low-income customers make up a significant portion of PECO's residential customer base, and the unique needs of this vulnerable population must be taken into consideration to ensure that they are adequately protected from higher prices. The record in this proceeding contains substantial evidence that PECO's CAP customers and its residential ratepayers who pay for CAP would be significantly harmed if they were to enter the competitive market without protections for the price and contract terms charged to CAP customers. CAUSE-PA, the OCA, and TURN et al. all support the initiation of reasonable restrictions proffered by CAUSE-PA. The only party opposed to these restrictions is RESA, who has taken the position that nothing should be done despite the overwhelming evidence of harm. RESA's insistence that the status quo should remain is unreasonable, unacceptable, and unsupported by evidence in the record.

Low-income households simply have no budget elasticity and, thus, face extreme hardship and significant financial harm when faced with the prospect of paying more for electricity, even for a short period of time, as this additional cost is often the difference between remaining current on their bills or falling behind. This is an unacceptable risk for PECO's CAP customers who have no other options for keeping current on their bills.

Therefore, in light of the "substantial reasons why there is no reasonable alternative so competition needs to bend"¹⁰⁶ that have been produced in this proceeding, the Commission is respectfully requested to approve the CAP-SOP, which will reasonably "limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits"¹⁰⁷ because

¹⁰⁶ CAUSE-PA et al., 120 A.3d at 1103-04.

¹⁰⁷ Id.

such rules are necessary to “ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service.”¹⁰⁸

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
*Counsel for the Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania
(CAUSE-PA)*



Patrick M. Cicero, Esq., PA ID: 89039
Elizabeth R. Marx, Esq., PA ID: 309014
Joline Price, Esq., PA ID: 315405
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

August 11, 2016

¹⁰⁸ Id.

APPENDIX A - PROPOSED FINDINGS OF FACT

1. CAP programs provide a discounted bill for payment troubled, low-income ratepayers with household incomes at or below 150% of the federal poverty income guidelines. (CAUSE-PA Statement No. 1 at 18:7-8.)
2. More than 1 in 10 (12.2%) of PECO's customers are *confirmed* to have household income at or below 150% of the federal poverty level, and more than one in four (26.5%) of PECO's customers are *estimated* to have household income at or below this level. (CAUSE-PA Statement No. 1 at 15, table 1.)
3. PECO has 175,123 confirmed low-income customers, the highest total number in the state compared to other electric distribution companies (EDCs), and represents over one quarter (28%) of the confirmed low income customers in the entire state. (CAUSE-PA Statement No. 1 at 16: 1-5.)
4. Low-income households lack sufficient income to pay for all of their essential needs, including utility bills, and often forego food or medicine to pay home energy bills. (CAUSE-PA Statement No. 1 at 16:11-19, 17:1-14)
5. The household income of an average CAP household in 2014 was \$13,134, which – for a family of 3 – equates to approximately 66% of the federal poverty level. (CAUSE-PA Statement No. 1 at 4, n.35).
6. As a regulated public utility serving more than 100,000 customers, PECO is required to offer an integrated package of universal service programs – including a CAP – designed to help low-income, payment troubled ratepayers maintain and afford essential utility services. (CAUSE-PA Statement No. 1 at 18:1-6.)
7. The difference between a CAP participant's CAP Bill and the total bill that the customer would have been charged based on usage and price per kWh is called the customer's CAP annual credit, CAP credit, or CAP shortfall amount. (CAUSE-PA Statement No. 1 at 22:11-13.)
8. PECO's current CAP is designed as a rate discount program will be replaced in October 2016 by a new Fixed Credit Option (FCO) CAP design. (CAUSE-PA Statement No. 1 at 13:3-6.)
9. In addition to implementing its complex FCO CAP design, PECO will implement an In-Program Arrearage Forgiveness (IPAF) program that will require CAP customers who have CAP arrears at the time of the transition to the FCO to make payments above and beyond their CAP payments over a 60-month period of time. (CAUSE-PA Statement No. 1 at 13:10-14).
10. In implementing its FCO and IPAF programs, PECO must educate its 140,000 CAP customers about the programmatic changes and about the customer's responsibilities pursuant to the change. (CAUSE-PA St. 1 at 13:15-16, 14:1-3).

11. Under PECO's FCO, participants will receive a maximum allocation of CAP credits for the year that are apportioned monthly based on a complex calculation, which factors in the household's 12 month usage history, the default service rates in effect for the prior 12 months, the household's verified income, and the Commission's allowable energy burden. (CAUSE-PA Statement No. 1 at 13:8-10, 19:21 to 22:9, 22:13-15, 23:9-14.)
12. PECO's FCO targets a CAP participant's allowable energy burden using the default service rate regardless of whether the participant is shopping for electric generation supply service. (CAUSE-PA Statement No. 1 at 23:12-14).
13. Under PECO's FCO, participants are responsible for paying the difference between their actual usage and the amount of credit that has been allocated to them each month. (CAUSE-PA Statement No. 1 at 22:11-23.)
14. The effectiveness of CAP credits under PECO's FCO at reaching Commission-established affordability levels are diminished when a CAP customer pays more than PECO's price to compare (default service price). (CAUSE-PA Statement No. 1SR at 7:4-8.)
15. In aggregate, the CAP Credit/CAP Shortfall amount for all CAP customers is paid for by all residential non-CAP customers through PECO's Universal Services Fund Charge (USFC), which is built into PECO's rates. (CAUSE-PA Statement No. 1 at 23:3-4.)
16. Currently, PECO's CAP customers are not allowed to shop for electric generation supply while enrolled in CAP. (CAUSE-PA Statement No. 1 at 6:8-10.)
17. An effective education program is an essential tool to be implemented for informed customer shopping. (CAUSE-PA Statement No. 1 at 14:6-8).
18. In five other EDC service territories which allow CAP shopping, CAP customers and residential ratepayers have experienced significant and demonstrated financial harm. (CAUSE-PA Statement No. 1 at 26-29:16).
19. In PPL Electric's service territory, for calendar year 2015, an average of 52% of PPL's customers shopped each month, and of those customers who were shopping, an average of 46% paid more than the price to compare. (CAUSE-PA Statement No. 1 at 27:11-13.)
20. In PPL Electric's service territory, of those CAP customers who shopped and paid more than the price to compare *paid significantly more* than the price to compare, as compared to the savings achieved by CAP customers who paid less than the price to compare. (CAUSE-PA Statement No. 1 at 28:4-6.)
21. As a result of CAP customer shopping in the manner presently occurring in the PPL Electric service territory, residential ratepayers are paying \$2,743,872 more per year for the CAP program – for a period of nearly 4 years - than they would have paid had all CAP customers simply paid the price to compare. (CAUSE-PA Statement No. 1 at 29:1-5.)

22. None of the more than \$2.74 million paid each year in excess of the price to compare in PPL Electric's service territory promoted universal service goals under the Choice Act to assist low-income customers better meet their home energy needs. (CAUSE-PA Statement No. 1 at 29:4-7.)
23. In the First Energy Company's service territories, a substantial number of CAP customers who shop for electric supply pay more than the price to compare: over 77% of Med-Ed's CAP customers, over 50% of Penelec's CAP customers, and over 65% of West Penn's CAP customers who are shopping are paying a price higher than the price to compare. CAUSE-PA Statement 1, at 29:12-16.)
24. Unrestricted CAP shopping has produced tangible harm to CAP customers and the other ratepayers who pay for CAP. (CAUSE-PA Statement No. 1 at 28:3-29:16.)
25. The harm to CAP customers and other residential ratepayers that has resulted from unbridled competition in other service territories is likely to occur in PECO's service territory. (CAUSE-PA Statement No. 1 at 28:3-29:16.)
26. No reasonable alternative exists than to impose restrictions on the type of offer a CAP customer can accept and remain eligible for CAP. This is necessary to allow CAP customers' rates to remain affordable and not continue to jeopardize the overall adequacy, cost-effectiveness, or affordability of the CAP program for CAP customers and the ratepayers who pay for CAP. (CAUSE-PA Statement No. 1SR at 7:4-16)

APPENDIX B - PROPOSED CONCLUSIONS OF LAW

1. The Electricity Generation Customer Choice and Competition Act (“Choice Act”) requires the Commonwealth “continue the protections, policies and services that now assist customers who are low-income to afford electric service” in the competitive environment. 66 Pa. C.S. § 2802 (10.)
2. The Choice Act defines “universal service and energy conservation” as policies, protections and services that help low-income customers to maintain electric service. 66 Pa. C.S. § 2803.
3. The term “universal service and energy conservation” includes customer assistance programs or CAPs. 66 Pa. C.S. § 2803.
4. Universal Service Programs are subject to the administrative oversight of the Commission which will ensure that the programs are operated in a cost-effective manner. 66 Pa. C.S. § 2804 (9).
5. The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service: The Commission has the responsibility to ensure that utilities appropriately fund and make available the programs and services necessary to achieve affordability of electric service in each electric distribution territory. 66 Pa. C.S. § 2804(9); see also Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n, 120 A.3d 1087, 1103 (Pa. Commw. 2015), *appeal denied*, 2016 WL 1383864 (Pa. Apr. 5, 2016) (citing 66 Pa. C.S. § 2892 (7), (9), (10), (14), (17))
6. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. CAUSE-PA et al., 120 A.3d at 1103.
7. The Choice Act both encourages deregulation to allow consumers the opportunity to purchase directly their supply from electric generation suppliers and emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service. CAUSE-PA et al., 120 A.3d at 1103-04.
8. The Choice Act “does not demand absolute and unbridled competition,” but rather, “under certain circumstances, unbridled competition may have to give way to other important concerns” such as ensuring that universal service plans are adequately funded and cost effective. CAUSE-PA et al., 120 A.3d at 1101, 1103.
9. The Choice Act expressly requires the Commission to administer these programs in a manner that is cost effective for the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participant’s EGS choice. CAUSE-PA et al., 120 A.3d at 1103-04.

10. Because of the dual purposes of the Choice Act, at times, competition needs to bend to ensure that adequately-funded, cost-effective, and affordable programs exist and are maintained to assist customers who are low-income to afford electric service. CAUSE-PA et al., 120 A.3d at 1104.
11. The Commission has the legal authority to impose CAP rules that would limit the terms that a CAP customer could accept and remain eligible for CAP benefits, this includes the right to impose cost controls to reduce customer harm, prohibit against early termination/cancellation fees, and other rules necessary to ensure CAP programs are adequately run, cost-effective, and programs remain affordable. CAUSE-PA et al., 120 A.3d at 1103-1104.
12. It is not reasonable to approve discounts and reduced rates for low income customer classes, paid for by other residential customers, and at the same time approve a DSP plan which allows CAP customers to be charged higher rates that result in unaffordable or higher bills. Doing so contributes to higher collection costs for all customers, and has adverse health, safety, and financial impacts on individual low income households.
13. CAUSE-PA has demonstrated by a preponderance of the evidence substantial reasons why PECO should not implement CAP shopping rules prior to its full implementation of the new FCO and IPAF programs.
14. CAUSE-PA has demonstrated by a preponderance of the evidence that, under the facts presented in this case, unbridled competition must bend and special CAP rules must be imposed because no reasonable alternative exists that would allow CAP customers' rates to remain affordable and that would not continue to jeopardize the overall adequacy, cost-effectiveness, or affordability of the CAP program for CAP customers and the ratepayers who pay for CAP.
15. CAUSE-PA has demonstrated by a preponderance of the evidence that the CAP-SOP rules outlined in the Direct Testimony of Harry Geller are reasonably designed to ensure access to the competitive market for CAP customers while preserving adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service. (CAUSE-PA Statement No. 1 at 31-34).