

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

MAIN BRIEF

ON BEHALF OF TURN *et al.*

**(TENANT UNION REPRESENTATIVE NETWORK,
ACTION ALLIANCE OF SENIOR CITIZENS
OF GREATER PHILADELPHIA)**

August 11, 2016

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF THE CASE.....	3
III.	STATEMENT OF QUESTIONS INVOLVED.....	7
	A. Should the Commission address CAP shopping program rules for PECO customers in the context of this DSP IV proceeding? Suggested Answer: Yes	7
	B. Should the Commission approve two fundamental CAP shopping criteria: (1) that PECO’s CAP customers should not be charged EGS prices higher than the PTC and (2) that PECO’s CAP customers should be protected from termination/cancellation fees? Suggested Answer: Yes	7
	C. Should the Commission approve the implementation of CAP shopping protections through a new component of PECO’s Standard Offer Program, to be effective beginning June 1, 2017? Suggested Answer: Yes	7
	D. Should PECO undertake specific data collection activities in connection with the implementation of CAP shopping, as recommended by Mr. Bertocci? Suggested Answer: Yes	7
IV.	LEGAL STANDARDS AND BURDEN OF PROOF	7
V.	SUMMARY OF ARGUMENT	11
VI.	ARGUMENT.....	12
	A. THE COMMISSION HAS THE OBLIGATION TO ADDRESS CAP SHOPPING IN THE CONTEXT OF PECO’S DSP IV PROCEEDING.	12
	B. THE COMMISSION SHOULD APPROVE TWO FUNDAMENTAL CAP SHOPPING CRITERIA, PROTECTING CAP CUSTOMERS FROM EGS CHARGES IN EXCESS OF PECO’S PTC AND BARRING TERMINATION/CANCELLATION FEES....	18
	C. THE COMMISSION SHOULD APPROVE THE IMPLEMENTATION OF PECO CAP SHOPPING THROUGH A NEW COMPONENT OF PECO’S STANDARD OFFER PROGRAM, TO BE EFFECTIVE NO EARLIER THAN JUNE 1, 2017.....	26
	D. PECO SHOULD BE DIRECTED TO UNDERTAKE SPECIFIC DATA COLLECTION ACTIVITIES IN CONNECTION WITH THE IMPLEMENTATION OF CAP SHOPPING, AS RECOMMENDED BY MR. BERTOCCHI.	34
VII.	CONCLUSION.....	36

Appendix A: PECO Letter Response to the May 11, 2016 Secretarial Letter

Appendix B: Proposed Findings of Fact and Conclusions of Law

TABLE OF AUTHORITIES

Cases

<u>Se-Ling Hosiery v. Margulies</u> , 70 A.2d 854 (Pa. 1950)	10
<u>Coalition for Affordable Util. Services and Energy Efficiency in PA, et al., v. PA. PUC</u> , 120 A.3d 1087 (Pa. Commw. Ct. 2015)	passim
<u>Lansberry v. Pa PUC</u> , 578 A.2d 600 (Pa. Commw. Ct. 1990)	10
<u>Smith v. Pa. PUC</u> , 162 A.2d 80 (Pa. Super. 1960)	17

Statutes

66 Pa. C.S. §§2801-2815	2, 3, 13
66 Pa. C.S. §2802(5)	24
66 Pa. C.S. §2802(7)	26
66 Pa. C.S. §§ 2802(10)	3, 7
66 Pa. C.S. § 2802(12)	24
66 Pa. C.S. § 2802(17)	7
66 Pa. C.S. § 2803	4, 8, 9
66 Pa. C.S. §2804(9)	4, 7, 8, 9, 26, 35

Regulations

52 Pa. Code § 5.74(b)(2)	2
52 Pa. Code § 54.74	4
52 Pa. Code §§ 54.71-54.78	4, 7

PUC Orders

<u>Opinion and Order Approving Joint Petition for Partial Settlement of PECO DSP III</u> , Docket No. P-2014-2409362 (Order entered December 4, 2014)	6
<u>Final Investigatory Order in Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms</u> , Docket No. M-00051923 (Order entered December 18, 2006)	4

I. INTRODUCTION

On March 17, 2016, PECO Energy Company (“PECO” or “the Company”) filed the Petition of PECO Energy Company for Approval of a Default Service Program for the Period of June 1, 2017 through May 31, 2019 (“DSP IV”), which was assigned this Docket No. P-2016-2534980. By public notice published in the *Pa. Bulletin* on April 9, 2016, the Commission established a deadline of April 19, 2016 for formal protests, petitions to intervene, and answers. On April 12, 2016, Administrative Law Judge Cynthia Williams Fordham issued a Prehearing Order establishing a Prehearing Conference for April 22, 2016. On May 11, 2015, the Commission issued a Secretarial Letter, formally recognizing that 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 of Pennsylvania, in the matter of the Petition of PECO Energy Company for Approval of its Default Service Plan (“DSP II”), Docket No. P-2012-2283641.¹ Thus, on July 14, 2015, the Commonwealth Court’s decision in Coalition for Affordable Util. Services and Energy Efficiency in Pa., et al., v. Pa. PUC, 120 A.3d 1087 (Pa. Commw. Ct. 2015) (PECO CAP Shopping Case), became final. Two days later, on May 13, 2016, Tenant Union Representative Network (“TURN”) and Action Alliance of Senior Citizens of Greater Philadelphia (collectively known as “TURN *et al.*”) filed its Petition to Intervene in this proceeding. In light of the Pennsylvania Supreme Court’s actions and the May 11, 2016

¹ The Secretarial Letter is filed as an attachment to TURN *et al.*’s Petition to Intervene in this proceeding.

Secretarial letter, ALJ Fordham determined that TURN *et al.* had shown good cause² to intervene after the April 19, 2016 deadline. Accordingly, on May 27, 2016, ALJ Fordham issued Prehearing Order #2, ordering *inter alia* that the Petition to Intervene filed by TURN *et al.* be granted. Pursuant to the procedural schedule as modified by Prehearing Order #3, TURN *et al.* timely submit this Main Brief.

Most of the issues in this case have been resolved by agreement, as memorialized in the Joint Petition for Partial Settlement that was filed on July 28, 2016, which was joined or not opposed by all parties, except for Noble Americas Energy Solutions LLC. TURN *et al.* did not oppose the Joint Petition for Partial Settlement. A settlement has not been reached regarding the features of a proposed CAP shopping program for PECO customers.

In this Main Brief, TURN *et al.* address the necessary price protections that the Commission should approve for PECO's CAP shopping program. PECO has proposed to implement CAP shopping through a "proposal rule revision" filed in its DSP III docket. It expects to submit such proposal in August 2016. See PECO St. 2-R (Rebuttal Testimony of John J. McCawley). For the reasons discussed in this Main Brief, the Commission should reject the positions of the Retail Energy Supply Association (RESA) (opposing necessary price protections), and require PECO to implement CAP shopping on June 1, 2017, and with reasonable and necessary price protections to ensure that the statutory objectives of the Electricity Generation Customer Choice and Competition Act (Choice Act), 66 Pa. C.S. §§ 2801-2815, are satisfied.

² In its Petition to Intervene, TURN *et al.* had quoted 52 Pa. Code § 5.74(b)(2) which states that the petitions to intervene shall be filed "no later than the date fixed for filing protests as published in the *Pennsylvania Bulletin* except for good cause shown."

TURN *et al.* submit that this DSP IV is the proper forum for consideration and resolution of issues concerning PECO's CAP shopping program, particularly given the dramatic changes that will occur in the implementation of PECO's redesigned CAP program, which was crafted to accommodate CAP shopping. Moreover, TURN *et al.* submit that the evidence on the record in this DSP IV proceeding conclusively establishes the need for price protections, and that the only reasonable means to effectuate them is the proposal to implement CAP shopping through a revised component of PECO's Standard Offer Program (SOP). Finally, TURN *et al.* submit that the Commission should approve specific data collection requirements proposed by TURN *et al.*'s witness, Mr. Philip Bertocci, in connection with the implementation of PECO's CAP shopping program.

II. STATEMENT OF THE CASE

The Electricity Generation Customer Choice and Competition Act (Choice Act), 66 Pa. C.S. §§ 2801-2815, became effective on January 1, 1997. The Choice Act established standards and procedures for restructuring the electric industry in order for customers to directly purchase electricity supply from licensed electricity generation suppliers (EGS). While opening up the electric generation market to competition, the General Assembly sought to ensure that electric service remained universally available to all customers in the Commonwealth. Section 2802(10) of the Choice Act committed the Commonwealth to preserving the protections, policies and services that assisted low-income customers in being able to afford electric service, 66 Pa. C.S. § 2802(10). The General Assembly's approval of the Choice Act made universal service programs mandatory. Final Investigatory Order in Customer Assistance Programs: Funding Levels and

Cost Recovery Mechanisms, Docket No. M-00051923 (Order entered December 18, 2006), at 16.

The Choice Act defines “universal service and energy conservation” as, “[p]olicies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education,” 66 Pa. C.S. § 2803. The Choice Act also requires the Public Utility Commission to ensure that universal service and energy conservation programs are appropriately funded and available in each electric distribution territory. 66 Pa. C.S. § 2804(9).

To help meet its obligations under the Choice Act, the Commission established the Universal Service and Energy Conservation Reporting Requirements at 52 Pa. Code §§ 54.71-54.78. Section 54.74 of these regulations requires an electric distribution company (EDC) to submit to the Commission for approval an updated universal service and energy conservation plan (“USECP”) every three years. 52 Pa. Code § 54.74. As summarized in the May 11, 2016 Secretarial Letter, PECO’s 2013-2015 USECP was approved at M-2012-2290911 in 2013. The Company’s proposed 2016-2018 USECP was filed in October 2015 at M-2015-2507139. Comments and reply comments were filed in response to a February 2016 Tentative Order. A Final Order regarding the 2016-2018 USECP will be issued in the near future.

As described in the Direct Testimony of Harry Geller on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), PECO’s Customer Assistance Program (CAP), a part of its USECP, will drastically change in October

2016 to what is referred to as a Fixed Credit Option, or FCO. CAUSE-PA St. 1 at 9-10. As Mr. Geller describes, PECO's FCO CAP will provide a discounted bill, will freeze collection efforts on "pre-program arrears," and will provide for gradual arrearage forgiveness. Id. at 19. In addition, in order to ease the transition of existing CAP customers to the FCO, PECO will provide for a payment agreement on balances accrued in PECO's CAP program prior to implementation of the FCO, with the customer paying 1/3 of the balance over a period of 60 months. Id.

As Mr. Geller sets forth in testimony, calculating customer bills under the FCO is a six-step process. Id. at 20-21. This process determines the CAP customer's weatherized normal base charges based on historical use over a 12-month period and using PECO's price to compare (PTC). It then calculates an "annual credit" that would be necessary for an annual bill to be affordable on the basis of verified household income. That credit is then applied to future bills, tracking the seasonal nature of usage, and adjusted quarterly to reflect changes in usage and PECO's PTC. Id. at 20-22. PECO's FCO will also include a maximum credit amount that can be applied to any CAP customer's bill in a given month. As Mr. Geller concludes, customers who "live in poorer and more inefficient housing stock...[will be] only entitled to the maximum amount of CAP credits.... Thus, that customer will be responsible to pay the difference between what they actually use each month and the amount of the credit that has been allocated to them." Id. at 22. CAP customers in the FCO will receive less of a discount than is necessary for bills to be affordable, if they are charged higher rates by EGSs. Id. at 23.

The Secretarial Letter was produced in response to the remand ordered by the Commonwealth Court of Pennsylvania. PECO was directed specifically as follows:

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) [footnote omitted] docket a proposed rule revision to its CAP Shopping Plan³ in its current DSP III consistent with the Commonwealth Court's Order.⁴

On July 19, 2016, PECO filed within the DSP II docket a Letter Response to the May 11, 2016 Secretarial Letter, which is attached as Appendix A hereto.

TURN *et al.* will address the proposal of Mr. Geller on behalf of CAUSE-PA, as further refined in response to the Office of Consumer Advocate's witness, Ms. Barbara Alexander, to implement price protections for PECO's CAP customers in connection with the commencement of PECO's CAP Shopping program. TURN *et al.* submit that it is appropriate to address CAP shopping in this DSP IV proceeding, and not in PECO's DSP III proceeding. TURN *et al.* submit that PECO CAP customers will experience irreversible harm if CAP shopping price protections, proposed by Mr. Geller, are not implemented, and it would be an abrogation of the Commission's statutory obligations to permit CAP customers to enter the market for competitive electric supply with the knowledge that doing so will cause PECO's CAP program to cease to be affordable and cost-effective for CAP customers and non-CAP customers who contribute to the cost of CAP. Mr. Geller's proposal is the only reasonable alternative that has been identified which effectuates the Universal Service requirements of the Choice Act, and thus is an appropriate, limited restraint on electric supply competition. Finally, TURN *et al.* submit that

³ Even if it were appropriate for the Commission to approve a rule revision to PECO's DSP III to implement CAP shopping (which it is not), the Commission's final approval of such a rule revision does not prejudice any party's ability to raise issues in this DSP IV proceeding concerning the inappropriateness of charging CAP customers prices for electricity supply in excess of PECO's PTC or imposing early termination/cancellation fees on CAP customers. See TURN St.1-SR at 6-7.

⁴ PECO's DSP III for June 1, 2015 through May 31, 2017 was approved by Commission Order at P-2014-2409362. PECO's proposed DSP IV for June 1, 2017, through May 31, 2019 was filed March 17, 2016, at P-2016-2534980.

PECO should undertake specific data collection activities associated with the implementation of CAP shopping, which appear to be uncontested on the evidentiary record of this proceeding.

III. STATEMENT OF QUESTIONS INVOLVED

A. Should the Commission address CAP shopping program rules for PECO customers in the context of this DSP IV proceeding?

Suggested Answer: Yes

B. Should the Commission approve two fundamental CAP shopping criteria: (1) that PECO's CAP customers should not be charged EGS prices higher than the PTC and (2) that PECO's CAP customers should be protected from termination/cancellation fees?

Suggested Answer: Yes

C. Should the Commission approve the implementation of CAP shopping protections through a new component of PECO's Standard Offer Program, to be effective beginning June 1, 2017?

Suggested Answer: Yes

D. Should PECO undertake specific data collection activities in connection with the implementation of CAP shopping, as recommended by Mr. Bertocci?

Suggested Answer: Yes

IV. LEGAL STANDARDS AND BURDEN OF PROOF

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 pursuant to the Choice Act⁵ and the Commission's regulations.⁶ The Choice Act requires that universal service plans be "appropriately funded" and administered by the PUC to "ensure that

⁵ See 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

⁶ 52 Pa. Code § 54.71 et seq.

the programs are operated in a cost-effective manner.”⁷ Thus one goal of the Choice Act is, in the context of deregulation, to ensure that affordable utility service is available to low-income customers through “universal service and energy conservation” – those policies, practices and services that help low income customers maintain service.⁸ PECO’s CAP program is a customer assistance program, and thus the PUC is obligated to ensure it is appropriately funded and cost-effective for CAP customers and non-CAP customers alike. See PECO CAP Shopping Case, 120 A.3d at 1103.

In the PECO CAP Shopping Case, the Commonwealth Court interpreted the Choice Act as embracing two objectives. It held 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.”⁹ Accordingly, under the Choice Act, as interpreted by the Commonwealth Court, the ability of a PECO CAP customer to receive service from an EGS must satisfy the statutory objectives of ensuring continued access to service through statutorily mandated universal service plans. The Commonwealth Court thus authorized the PUC to effectuate these objectives, providing:

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 of 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., an EGS rate ceiling, prohibition against early termination/cancellation fees, etc.¹⁰

⁷ 66 Pa. C.S. § 2804(9).

⁸ 66 Pa. C.S. § 2803.

⁹ 120 A.3d at 1103.

¹⁰ 120 A.3d at 1104 (internal citations omitted).

Accordingly, the Commission has the authority to impose reasonable CAP shopping restrictions, such as those proposed in this proceeding. This is the clear consequence of the Commonwealth Court’s determination in the PECO CAP Shopping Case, confirming that the express provisions of the Choice Act require the PUC to preserve affordable service to low-income customers.¹¹ 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. Accordingly, if CAP shopping will result in unaffordability, inappropriate funding, and the unavailability of essential discounts to PECO customers to permit them to maintain electric service, the Commission is obligated to effectuate CAP shopping rules that “bend” competition. Doing so constitutes the Commission’s lawful enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.¹²

In this proceeding, CAUSE-PA’s witness, Mr. Harry Geller, has proposed that the Commission approve the continuing cost-effectiveness of PECO’s CAP program by implementing reasonable price protections for CAP customers choosing to shop for electricity supply in the competitive market. Mr. Geller’s fundamental criteria for a CAP shopping program (ensuring that CAP customers do not pay higher prices for competitive electricity supply, and eliminating any termination or cancellation fees) are endorsed by OCA witness, Ms.

¹¹ 120 A.3d at 1103 (“the Choice Act expressly requires the PUC to administer [CAP] programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants’ EGS choice.”). It should be recalled that the statutory basis for the maintenance of utility affordability programs was first codified in the Choice Act. 66 Pa. C.S. § 2804(9).

¹² 66 Pa. C.S. § 2803.

Barbara Alexander, and TURN *et al.*'s witness, Mr. Philip Bertocci. See OCA St. 2-R at 7; TURN *et al.* St. 1-SR. Moreover, Mr. Geller's specific implementation recommendations (to permit CAP shopping only through a new component of PECO's SOP), are supported by OCA and TURN *et al.* See OCA St. 2-R at 5; TURN St. 1-SR. RESA witness Mr. Matthew White opposes both the fundamental criteria and specific implementation recommendations advanced by CAUSE-PA and supported by OCA and TURN. Finally, TURN *et al.*'s witness, Mr. Bertocci, recommends that specific data collection activities be undertaken by PECO in connection with CAP shopping. TURN St. 1-SR at 9.

As the proponents of the fundamental criteria and implementation recommendations concerning PECO's CAP shopping plan, CAUSE-PA, OCA and TURN *et al.*, bear the burden of proof in this proceeding to establish that they are entitled to the relief sought.¹³ This burden must be satisfied by a preponderance of the evidence.¹⁴ Accordingly, CAUSE-PA, OCA and TURN *et al.* must present evidence more convincing, by even the smallest amount, than that presented by any opposing party.¹⁵ TURN *et al.* submit that these parties have carried their burden in this proceeding, and the Commission should approve the PECO CAP shopping program under the parameters advanced by Mr. Geller and the data collection requirements advanced by Mr. Bertocci, with an effective date of implementation of June 1, 2017.

¹³ 66 Pa. C.S. § 332(a).

¹⁴ Lansberry v. Pa. PUC, 578 A.2d 600 (Pa. Commw. Ct. 1990).

¹⁵ Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

V. SUMMARY OF ARGUMENT

TURN *et al.* submit that PECO should be ordered to implement a CAP shopping program through a new facet of its existing SOP. TURN *et al.* submit that the Commission must ensure that the requirements of the Choice Act – that customers have an opportunity to participate in the competitive market for electricity supply, and that CAP programs must be available, affordable and cost-effective – can only be satisfied if price protections are implemented. Two fundamental price protections are necessary: CAP customers must never be subjected to an EGS price in excess of PECO’s PTC; and, CAP customers must be protected from termination and cancellation fees which can make participation in the competitive market unaffordable for CAP customers. TURN *et al.* agrees with, and supports the testimony of Mr. Harry Geller, on behalf of CAUSE-PA, in articulating the necessary provisions of a “CAP-SOP” that would effectuate these fundamental criteria.

The Commission should approve the CAP-SOP supported by CAUSE-PA, OCA and TURN *et al.* in this DSP IV proceeding, to be effective June 1, 2017. The Commission should not disregard the positions of these three parties in this proceeding, on the basis that PECO has been directed to submit a “proposed rule revision” regarding CAP shopping in its currently effective DSP III. Consideration of CAP shopping in the context of PECO’s DSP III presents numerous logistical issues, potential due process concerns, and significant risks associated with an inadequate evidentiary record. Moreover, given the significant and dramatic changes forthcoming to PECO’s CAP program, and the potential for confusion, overlapping educational campaigns, and additional burdens associated with simultaneous implementation of PECO’s

FCO with a new CAP shopping program, TURN *et al.* agree with OCA and CAUSE-PA that PECO's CAP-SOP should be implemented effective as of June 1, 2017.

Finally, TURN *et al.* submit that PECO should undertake specific data collection obligations to ensure that the legislative purposes of the Choice Act are fulfilled. Accordingly, PECO should collect and maintain data regarding CAP customers' experience with EGSs by customer address in order to be able to determine the extent to which EGSs are serving the diverse communities within PECO's service territory. This data should include the number of CAP customers shopping, the rates CAP customers pay for generation service, the portion of the aggregate CAP credit amount paid for by residential customers, the savings to CAP customers and non-CAP customers generated by EGS rates below PECO's PTC, and the number of CAP customers seeking to enter contracts with competitive suppliers offering prices above PECO's PTC (or that do not comply with the terms and conditions of PECO's CAP-SOP), and the terms of such offers.

VI. ARGUMENT

A. THE COMMISSION HAS THE OBLIGATION TO ADDRESS CAP SHOPPING IN THE CONTEXT OF PECO'S DSP IV PROCEEDING.

As Mr. Geller and Mr. Bertocci acknowledge, the Commission has issued guidance to PECO in the form of a secretarial letter, dated May 11, 2016 (Secretarial Letter), advising PECO to submit a "proposed rule revision" in its DSP III to implement CAP shopping. CAUSE-PA St. 1 at 10; TURN St. 1-SR at 5. PECO has indicated that it will do so, and submits that it interprets the Secretarial Letter and the Commonwealth Court's decision in the PECO CAP Shopping Case to foreclose it from implementing any limitations on EGS pricing. PECO St. 2-R at 15. As Mr. Bertocci observes, the Secretarial Letter predated Mr. Geller's testimony, and therefore was not

informed by the development of the factual record in this DSP IV proceeding. TURN St. 1-SR at 5. Importantly, Mr. Bertocci testified that PECO's interpretation of the PECO CAP Shopping Case and Secretarial Letter is erroneous. As Mr. Bertocci states:

Mr. [McCawley] incorrectly construes the Commission's May 11, 2016 Secretarial Letter to the extent he submits that it also prohibits PECO from implementing reasonable price protections.

Mr. [McCawley] appears to misunderstand the portion of the Commonwealth Court's order that was mandatory on remand, and that portion which is not mandatory.....

The Commonwealth Court entered an order that mandated only one specific change to PECO's CAP shopping plan: that plan must prohibit CAP shopping under any contracts that impose early termination/cancellation fees. Otherwise, the Commonwealth Court affirmed the PUC's finding that the PUC's denial of price protections in PECO's CAP shopping plan was permissible on the basis of the information presented in the DSP II proceeding, Docket No. P-2012-2283641. The distinction is an important one: the Commonwealth Court did not mandate that PECO's CAP customers enter the competitive market without any price protections that the PUC may determine to be reasonable and necessary. To the contrary, the Commonwealth Court corrected the PUC's misinterpretation of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-2815 (Choice Act), confirming, as the PUC is aware, that the PUC has the authority to implement reasonable CAP shopping price protections for PECO customers. Consistent with that recognition, the Commission's May 11, 2016 Secretarial Letter expresses no specific direction regarding the contents of PECO's CAP shopping plan, other than that it be consistent with the Commonwealth Court's order.

TURN St. 1-SR at 7-8.

Moreover, as Mr. Geller articulates, approval of PECO's CAP shopping plan in the context of PECO's DSP III presents logistical issues for the participants in that proceeding. Mr. Geller notes that "there is no indication that the Commission will permit the further introduction of evidence" in the DSP III proceeding and that the Commonwealth Court's decision was predicated on the record in PECO's DSP II. CAUSE-PA St. 1 at 11, 12. He also notes that it is

inconsistent for the Commission to approve CAP shopping in that proceeding given that the Commission has specifically invited inquiry into CAP shopping program features. Id. Finally, he observes that the Secretarial Letter did not provide a timeframe for submitting a CAP shopping “proposed rule revision” creating uncertainty regarding implementation and coordination of CAP shopping with the rollout of PECO’s new CAP FCO. Id. Ms. Alexander echoes Mr. Geller’s third observation, noting that CAP shopping presents additional risks given the drastic changes to be implemented in PECO’s CAP program. OCA St. 2-R at 2-4. Similarly, Mr. Bertocci observes:

Many CAP customers will have to make adjustments to their monthly budgets with the implementation of PECO’s new CAP program, because some will experience greater discounts, and some will experience reduced discounts. Until PECO’s new CAP program is in operation, CAP customers will not have all of the information necessary to make an informed decision when evaluating EGS offers. This is particularly true for those CAP customers who will receive little to no CAP discount under PECO’s new program and would need to carefully evaluate EGS offers to maximize bill affordability going forward.

TURN St. 1-SR at 11.

Mr. Bertocci acknowledges not only the logistical issues surrounding the implementation of CAP shopping in PECO’s DSP III, but that the potential implementation of CAP shopping may present due process violations. Mr. Bertocci submits that the parties must be permitted to address PECO’s CAP shopping program in this proceeding, as follows:

Frankly, prohibiting the parties from addressing features of PECO’s CAP shopping program in this DSP IV proceeding would present a significant and unlawful impairment of due process. The maintenance of CAP programs, a fundamental component of utility universal service, is an obligation imposed on default service providers, and properly examined in the context of DSP proceedings. The Commonwealth Court recognized that the maintenance of adequate protections for low income customers can, under certain circumstances, require the “bending” of

competition. CAUSE-PA v. Pa. PUC, 120 A.3d at 1104 (“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., an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.”). Because of the statutorily recognized importance of low income protections, confirmed by the Commonwealth Court, proposals that would diminish those protections must be fully vetted in an on the record proceeding.

Accordingly, unlike Mr. White, I believe the Commonwealth Court order, and the Commission’s Secretarial Letter must be read to permit the parties to examine PECO’s CAP shopping program in this DSP IV proceeding. As noted above, the Commonwealth Court has specifically mandated that the review of CAP shopping be periodically undertaken – doing so is part of the “continuing nature” of the PUC’s oversight, as required by the Choice Act. Moreover, the Commission’s Secretarial Letter was entered on PECO’s DSP II docket, P-2012-2283641. I am aware of no basis for the Commission’s Secretarial Letter in PECO’s 2012 DSP proceeding, or any other prior decision or determination, to somehow prejudice the positions of the parties regarding PECO’s CAP shopping plan in this DSP IV proceeding, which commenced several years after the close of the record in PECO’s DSP II.

TURN St. 1-SR at 15-16 (footnote omitted).

As the Commission is no doubt aware, TURN *et al.* were joint petitioners in the PECO CAP Shopping Case, arguing that case before the Commonwealth Court, and ultimately obtaining clear guidance from the Commonwealth Court that corrected the PUC’s misunderstanding and misapplication of the Choice Act in PECO’s DSP II proceeding. However, due to the pendency of that litigation in Commonwealth Court, TURN *et al.* did not intervene in PECO’s DSP III, because the issues of CAP shopping could not be addressed in DSP III while the Commonwealth Court’s supersedeas was in effect and that litigation was

ongoing. Accordingly, proceeding in PECO's DSP III with the consideration of CAP Shopping proposals presents a significant likelihood of impairment of TURN *et al.*'s due process rights.¹⁶

In addition, consideration of PECO's CAP "proposed rule revision" in its DSP III, after the conclusion of the record in that proceeding, appears likely to violate the Commonwealth Court's order in the PECO CAP Shopping Case. The Commonwealth Court made abundantly clear that, in evaluating PECO's CAP shopping proposal in DSP II, the Commission's determination must be based on substantial evidence. In fact, regarding the Commission's determination to deny early termination and cancellation fee protection in PECO's CAP shopping program, the Commonwealth Court specifically *reversed* the Commission, finding that its decision was not based on substantial evidence because of the *absence of record evidence* supporting the Commission's determination. 120 A.3d at 1108. Proceeding on the course the Commission appears to have set, pursuant to the Secretarial Letter, would position the Commission to enter some form of order regarding PECO's CAP shopping program without any adequate evidentiary basis on a closed record in PECO's DSP III.

Notwithstanding the strong reasons in favor of developing a record in this DSP IV concerning the harms that will befall CAP customers shopping for electricity without price protections, RESA contends that it is inappropriate to consider CAP shopping at this time.

RESA St. 1-R at 17. RESA's witness, Mr. White points only to the Secretarial Letter in support

¹⁶ Although TURN *et al.* would, and if necessary will, submit comments in response to PECO's "proposed rule revision," the Commission's proposal, set forth in the Secretarial Letter, nonetheless presents a due process quandary. For example, would TURN *et al.* have standing to appeal the Commission's decision on CAP shopping in PECO's DSP III solely on the basis of its submission of comments and without being a party/intervenor? Having directed PECO to submit a proposed rule revision, is the Commission obligated to reopen the record in DSP III, in order to allow the parties, and any new intervenors such as TURN *et al.*, to develop evidence for or against proposed rule revisions? Although these specific issues may not be presently before the Commission, they should nonetheless inform its decision concerning the necessity of addressing CAP shopping issues in this DSP IV proceeding.

of this position. Id. Yet he fails to consider the direct language of the Secretarial Letter indicating that evidentiary review of PECO’s CAP shopping program may be undertaken “in a future proceeding.” The Secretarial Letter was filed in PECO’s DSP II docket, P-2012-2283641. This DSP IV docket, P-2016-2534980, ***is exactly such a future proceeding.*** Ultimately, as Mr. Bertocci states, Mr. White fails to provide any explanation for his bald assertion that reviewing PECO’s CAP shopping program in this DSP IV “is not effective.” TURN St. 1-SR at 15. In fact, the converse is true: “[t]his DSP IV proceeding presents the *first opportunity* for the parties to develop a record under the Commonwealth Court’s interpretation of the requirements of the Choice Act and the PUC’s authority thereunder.” Id. (emphasis supplied). Certainly, a thorough review undertaken in this DSP IV should be effective to ensure that PECO’s CAP shopping program satisfies the requirements of the Choice Act, and Mr. White presents no evidence to the contrary. Moreover, having properly placed the issue of CAP shopping before the Commission in this proceeding, and there being no conflicting proposal under consideration in any other proceeding or forum, the parties have a due process right to pursue CAP shopping program features in this proceeding.¹⁷

For all of the foregoing reasons, TURN *et al.* submit that the Commission must review and reach a determination on the CAP shopping price protections, implementation timeline, and data collection requirements advanced by the parties, including CAUSE-PA, OCA, and TURN *et al.* in this proceeding.

¹⁷ TURN St. 1-SR at 15; See, e.g., Smith v. Pa. PUC, 162 A.2d 80 (Pa. Super. 1960).

B. THE COMMISSION SHOULD APPROVE TWO FUNDAMENTAL CAP SHOPPING CRITERIA, PROTECTING CAP CUSTOMERS FROM EGS CHARGES IN EXCESS OF PECO'S PTC AND BARRING TERMINATION/CANCELLATION FEES.

Mr. Geller proposed two fundamental criteria for PECO's CAP shopping program. First, Mr. Geller submits that "CAP shopping participants should be prohibited from entering into a contract with an EGS in which they will pay, at any time, rates greater than the price to compare." CAUSE-PA St. 1 at 31. Second, Mr. Geller submits that "CAP shopping participants should be prohibited from entering into any contract with an EGS that includes early cancellation or termination fees." *Id.* Mr. Geller's fundamental criteria are supported by OCA and TURN *et al.* See OCA St. 2-R at 5; TURN St. 1-SR at 6. For the reasons set forth in this section, TURN *et al.* submit that the Commission's order should approve a PECO CAP shopping program reflecting these two fundamental criteria.

As set forth at length in the testimony of Mr. Geller, CAP shopping without price protections poses significant risks to CAP customers, who will incur irreversible harm in the form of unaffordable bills for essential utility service if permitted to select EGS offers that can charge more than the PTC. Mr. Geller's 40 years of experience verify his conclusion that low income customers lack economic flexibility to absorb the risk of higher prices (CAUSE-PA St. 1 at 6), and the stakes are particularly high in PECO's service territory, where the highest concentration of low-income electricity customers in Pennsylvania reside (*Id.* at 16). Mr. Geller shows that the "overwhelming energy burden on low income households makes it difficult for these customers to pay for other basic necessities" forcing many to forgo food and medication in order to pay home energy bills. *Id.* at 16. Because they are low-income, CAP customers routinely run out of money even with CAP assistance, due to other expenses, and PECO's

program has not, historically, satisfied Commission affordability standards. Id. at 17. For these reasons, Mr. Geller concludes that “PECO’s confirmed low-income customers are economically vulnerable and unable to pay for essential services like electricity without substantial and meaningful assistance. It is precisely for this reason that CAP programs were created to assist low-income customers maintain and afford utility service and that the PECO CAP, in particular, has required its most recent dramatic restructuring.” Id. at 17.

In the PECO CAP Shopping Case, the Commonwealth Court clarified and emphasized the legal analysis that applies to CAP shopping: Namely, the PUC has the authority to bend competition, to ensure that statutory objectives, such as the affordability and cost-effectiveness of CAP, are satisfied. 120 A.3d at 1104; See TURN St. 1-SR at 12. Moreover, the Commonwealth Court articulated that the Commission’s requirement to ensure the affordability and cost-effectiveness of CAP is an obligation “of a continuing nature.” 120 A.3d at 1108. Some of the parties to this proceeding may assert that, without having shopped for electricity in the past, there is insufficient evidence to show that PECO’s CAP customers will incur harm in the future. This position is without merit because the converse is true: the prevalence of harm experienced by CAP customers in other utility service territories establishes conclusively that PECO’s CAP customers will be harmed if PECO’s CAP shopping program does not provide price protections.

Because the PUC’s obligations are of a continuing nature, *they must be fulfilled now, and in the future.* The Commonwealth Court, in approving prohibitions on termination and cancellation fees did not balk at the fact that PECO’s CAP customers had not been charged them in the past, nor did it limit its determination to requiring the Commission to rectify that harm, if it

occurs, in the future. Rather, the Commonwealth Court recognized the undisputed fact that prohibiting termination and cancellation fees would protect CAP customers, providing “an added layer of protection to CAP customers consistent with the affordability goals of the Choice Act.” 120 A.3d at 1108. In fact, the Commonwealth Court specifically acknowledged that these fees “pose a risk to low-income shopping customers” under a program to be implemented in the future. Id. There is no basis under the Commonwealth Court’s decision to infer that PECO’s CAP customers must actually experience unaffordable EGS bills before the Commission should take action to ensure that the uncontested risk of higher bills, demonstrated through Mr. Geller’s testimony, is not inflicted upon PECO’s most vulnerable customers.

As Mr. Geller’s describes, in PPL service territory “alarming statistics” demonstrate the ongoing harm to CAP customers by their participation in the competitive electric generation market. As Mr. Geller shows, the PPL data compiled over a long period of time establishes that “[f]or every month from January 2012 through February 2016, at least 42% of CAP customers paid more than the PTC, and in 6 of those months 88-99% of CAP customers shopping paid more than the PTC. In most months over this more than four-year period of time, between 45%-70% of CAP customers paid more than the price to compare.” CAUSE St. 1 at 27. Quizzically, RESA’s witness, Mr. White, distorts Mr. Geller’s testimony, stating that “the incomplete statistics...reflect that at least 58% of CAP customers paid at or less than the PTC every month from January 2012 through February 2016 in PPL’s service territory.” RESA St. 1-SR at 7 (citing CAUSE-PA St. 1 at 27). This statement is demonstrably false, raising a serious question about how carefully Mr. White read Mr. Geller’s testimony and undermining Mr. White’s reliability as a witness. In the uncontested data Mr. Geller supplies there exist many months

demonstrating the majority of PPL's CAP customers were paying in excess of the PTC. As examples, and as shown on Appendix D to Mr. Geller's testimony:

- 85% of PPL's CAP shopping customers paid more than the PTC in January 2012;
- 80% of PPL's CAP shopping customers paid more than the PTC in February 2012;
- 99% of PPL's CAP shopping customers paid more than the PTC in March 2012;
- 82% of PPL's CAP shopping customers paid more than the PTC in March 2013;
- 93% of PPL's CAP shopping customers paid more than the PTC in December 2015;
- 92% of PPL's CAP shopping customers paid more than the PTC in January 2016; and
- 88% of PPL's CAP shopping customers paid more than the PTC in February 2016.

In fact, contrary to Mr. White's false statement, there exists *only one month* in the period from January 2012 through February 2016 in which 58% of PPL's CAP shopping customers paid less than the PTC, December 2014. CAUSE-PA St.1, Appx D. In every other month, fewer than 58% of PPL's CAP shopping customers received EGS rates at a price at or below PPL's PTC.

Id.

Mr. White also alleges that Mr. Geller's data is based upon a "single point in time" and so "is not reflective of the conditions CAP shopping customers have experienced over their entire shopping experience." RESA St. 1-SR at 7. Again, Mr. White's testimony is false and appears totally ignorant of the data Mr. Geller presents. A simple review of Mr. Geller's testimony demonstrates that the statistics he relies upon reflect monthly billing data **over a period of 50 months!** CAUSE-PA St. 1, Appx D. Contrary to Mr. White's unsupported statement, the data shows consistently, month after month, a significant portion, sometimes a great majority, of PPL's CAP customers were charged in excess of the PTC by EGSs.

Furthermore, as Ms. Alexander's testimony shows, EGS contracts entered into by non-CAP customers through PECO's SOP (initially providing a 7% discount off of PECO's PTC) may nonetheless result in bills in excess of PECO's PTC. OCA St. 2 at 23. Accordingly, although Mr. White submits that customers' shopping experience should be looked at over the long term, there is no evidence on the record in this proceeding that shows, over the long term, that a substantial number of CAP customers can expect anything other than higher bills from EGSs.

Mr. Geller also provides compelling evidence of the extent of the harm that will befall PECO's CAP customers and the non-CAP customers who contribute to the cost of CAP. Mr. Geller's data shows that CAP ceases to be cost-effective, contrary to the statutory purposes of the Choice Act, when CAP customers lack price protections. As Mr. Geller shows, not only is the incidence of CAP customers paying more than the PTC in PPL territory alarming, but the extent to which their bills exceed the PTC is significant. PPL's CAP customers not only paid more, but they paid *significantly more* than the PTC. As Mr. Geller summarizes, "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." CAUSE-PA St. 1 at 28. According to his data, which has not been refuted by any party, the net effect over 12-18 months of PPL CAP customers paying more than the PTC is an increased cost of between \$2.7 and \$4.1 million. Id.

Mr. Geller observes that the experience of PPL's CAP customers is typical for Pennsylvania utilities permitting unrestricted shopping. He states:

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.

CAUSE-PA St. 1 at 29.

Mr. White makes no effort to rebut Mr. Geller's testimony in this regard. As Mr. Geller concludes: "I have no reason to believe that, unless the issue of CAP customer shopping is addressed now, in DSP IV, the long-term results would 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." Id. In fact, no party to this proceeding has presented any evidence that could reasonably undermine this conclusion. Instead, for example, PECO appears to prefer to wait until data concerning PECO CAP customers shopping experiences is available; in other words, after an assessment of the incidence of unaffordable EGS bills rendered to PECO CAP customers can be measured. PECO St. 2-R, at 15. But PECO does not dispute Mr. Geller's evidence, nor provide any basis to conclude that unrestricted CAP shopping will maintain the cost-effectiveness and affordability of PECO's CAP.

There simply is no legitimate reason to believe that the widespread harm, occurring across other utility service territories, will not be duplicated in PECO's service territory if PECO's CAP customers enter the competitive market without price protections. According to Mr. Bertocci: "the new evidence provided in this DSP IV proceeding by Mr. Geller demonstrates the need for CAP shopping price protections Mr. Geller describes. There is no need to gather more data re-confirming the incidence of harm to low-income customers in advance of implementing necessary price protections for PECO CAP customers choosing to shop for electricity supply." TURN St. 1-SR at 8. Furthermore, As Mr. Geller concludes: "We know

now the harm that will befall PECO's low-income CAP customers who shop without reasonable and targeted restrictions because [of] all of the data...concerning how low-income households and other ratepayers are irreparably harmed by paying more than the price to compare.”

CAUSE-PA St. 1-SR at 5. No party to this proceeding has provided any evidence contrary to the expert opinions of Mr. Geller and Mr. Bertocci, indicating that PECO CAP customers entering the competitive market without any price protections will result in irreparable harm to PECO customers.

Although not providing any evidence to counter Mr. Geller's data concerning the unaffordability of EGS offers to CAP customers, Mr. White contends that Mr. Geller's proposals should not be approved because PECO's PTC should not be considered the “sole metric” for CAP shopping customers, because it disregards “value-added products and services.” RESA St. 1-R at 15. Mr. White's contentions cannot be taken seriously because they are totally beside the point. The purpose of the Choice Act is not to make “value-added” products available to customers. The purpose is “to create direct access by retail customers to the competitive market for the *generation of electricity*.” 66 Pa. C.S. § 2802(12) (emphasis added). Furthermore, the Choice Act specifically recognizes that deregulation was intended to be an effective means to control *cost*, not value added services. 66 Pa. C.S. § 2802(5). Ultimately, the PTC is the metric by which cost of EGS supply is measured, as any customer can learn by visiting www.PaPowerSwitch.com. The PTC is the only suitable measure of whether an EGS offer is, or is not, affordable for PECO's CAP customers.

Underlying Mr. White's recommendations is a disregard for the fundamental fact that higher EGS charges will directly and negatively impact CAP participants and the non-CAP

customers who contribute to the cost of CAP. Mr. White contends that, in order for the Commission to approve CAP shopping price protections, the proponents of those protections must show that no other changes to CAP could preserve the benefits of CAP. RESA St. 1-R at 14.¹⁸ Although Mr. White is incorrect about the legal analysis that applies in this proceeding, this showing has nonetheless been made. As summarized by Mr. Bertocci:

Although Mr. White submits that “changes in [the CAP] program should be instituted” if a CAP customer’s benefits are affected by the choice of EGS supply, he offers no ideas or concrete proposals about any such changes. Mr. White submits that restrictions on EGS offers to CAP customers must be implemented only if changes to CAP are *impossible* to maintain customer affordability. In fact, that is precisely the case: the only available means to ensure cost-effectiveness and affordability for CAP and non-CAP customers who contribute to the cost of CAP is to impose reasonable price protections on EGS supply. As Mr. Geller discusses, higher EGS prices charged to CAP customers results in unaffordable bills, higher collection costs and rates for all customers, and, in multiple ways, adversely impacts upon the financial, health, and safety of individual CAP households. CAUSE-PA. St-1 at 30. Ms. Alexander concurs, noting that “higher bills can adversely impact the affordability for essential electric service for CAP customers, and result in higher costs to the other residential ratepayers to fund these programs. OCA St. 2-R at 3. Mr. White fails to acknowledge that there are only two sources of funds available to cover EGS charges to CAP customers: CAP customers; or non-CAP residential customers who contribute to the cost of CAP. There is no CAP program design feature which can alter this basic and fundamental precept of CAP.

TURN St. 1-SR at 13.

In fact, as eloquently phrased by Mr. Geller, “[t]o suggest that CAP customers must be able to shop and compromise either their ability to afford service or the affordability of the CAP

¹⁸ As discussed *supra*, this is not the standard set by the Commonwealth Court, which reversed the Commission’s determination, ordering that CAP customers be protected from termination and cancellation fees, without requiring a showing that it is impossible to modify CAP in some other way to avoid this risk of unaffordability.

program as a whole is inconsistent with the Choice Act....The universal service provisions of the Choice Act tie affordability of electric service to a customer’s ability to pay for that service.” CAUSE-PA St. 1-SR at 8 (citing 120 A.3d 1103-1104; 66 Pa. C.S. § 2802(7); 66 Pa. C.S. § 2804(9)).

The evidence in this proceeding conclusively demonstrates that EGS prices higher than PECO’s PTC, if charged to CAP customers, will erode affordability and cost-effectiveness of PECO’s CAP. The evidence also shows that, unless restricted from doing so, EGSs will in fact charge PECO’s CAP customers prices in excess of PECO’s PTC. The Commission should not wait until affordability and cost-effectiveness have been negatively impacted by high EGS prices. The Commission’s obligations under the Choice Act are of a “continuing nature” and do not become operative only after irrevocable harm is experienced by PECO’s CAP customers and the non-CAP customers who contribute to the cost of CAP. The Commission should approve the fundamental criteria advanced by CAUSE-PA and supported by OCA and TURN *et al.*, prohibiting EGS charges to CAP customers that exceed the PTC and barring the imposition of any termination and cancellation fees on CAP customers.

C. THE COMMISSION SHOULD APPROVE THE IMPLEMENTATION OF PECO CAP SHOPPING THROUGH A NEW COMPONENT OF PECO’S STANDARD OFFER PROGRAM, TO BE EFFECTIVE NO EARLIER THAN JUNE 1, 2017.

In order to effectuate his recommended price protections for PECO CAP customers, Mr. Geller recommends that PECO modify its existing SOP to ensure that CAP customers receive the necessary protections. CAUSE-PA St. 1 at 31. First, as Mr. Geller explains, a CAP SOP would be the exclusive means for PECO’s CAP customers to access EGS supply, and CAP customer shopping requests outside the CAP SOP would be rejected. *Id.* at 31-32. Second, the CAP SOP

would require EGSs to provide an initial 7% discount off of PECO's PTC, and would require the EGS serving a CAP SOP customer to either reenroll CAP customers with a new 7% discount or return them to default service if PECO's PTC drops by 7% or more.¹⁹ *Id.* at 32. Third, at the end of the 12-month SOP contract, an EGS serving a CAP customer would have to either reenroll that CAP customer at a 7% discount off the PTC, or return the CAP customer to default service. *Id.* Fourth, like all SOP participants, CAP SOP customers would be protected against termination and cancellation fees. *Id.* at 33. In response to testimony of Ms. Alexander and Mr. White, Mr. Geller offered one further refinement to his proposal: Mr. Geller endorsed Ms. Alexander's proposal that PECO could transmit qualified and interested CAP customers to an EGS randomly selected to serve CAP customers (under the terms set forth above), in order to avoid enrollment fees for EGSs. CAUSE-PA St. 1-SR at 11; OCA St. 2-R at 6. For the reasons set forth herein, TURN *et al.* submit that the Commission should approve the implementation of PECO CAP shopping price protections through the CAP SOP mechanism described by Mr. Geller, with an effective implementation date of June 1, 2017.

Mr. Geller's recommendation is predicated on the existing framework of PECO's SOP, a program which RESA admits has benefited from the "healthy participation" of EGSs. RESA St. 1-R at 6. This framework is a means through which PECO and the PUC can, in discharging their obligations under the Choice Act, ensure that CAP provides access to EGS supply without eroding affordability or cost-effectiveness. There is no question that Mr. Geller's proposal to modify SOP to accommodate CAP shopping is administratively feasible; PECO has not claimed

¹⁹ As discussed *supra*, Ms. Alexander's testimony documents that EGS prices charged to PECO customers enrolling through SOP have, in the past, exceeded PECO's PTC. See OCA St. 2 at 23. Mr. Geller's proposal would protect CAP customers against this risk, which the evidence confirms would constitute a threat to the affordability of CAP.

that it cannot make these modifications, nor has PECO claimed that the proposed modifications would be unnecessary or overly burdensome to effectuate appropriate CAP shopping protections. CAUSE-PA St. 1-SR at 2.

RESA's witness, Mr. White, however contends that Mr. Geller's implementation recommendations, i.e., the establishment of a CAP SOP, should not be approved by the Commission because EGSs and PECO would need to have some coordinated mechanism to identify whether customers EGSs desire to serve are enrolled in CAP. Mr. White alleges that "restrictions on the pricing and structure of a product that EGSs can offer a select group of customers would be difficult to implement and would require significant changes to existing EDC and EGS protocols to develop new protocols that do not exist." RESA St. 1-R at 15. Mr. White apparently fails to take stock of the clear path to implementation set forth in Mr. Geller's testimony: a new aspect of the SOP, a program under which PECO and EGSs have established clear and effective protocols for serving customers in a manner which the Commonwealth Court acknowledged in recognizing that there exist legitimate restraints on unbridled competition.²⁰ As Mr. Geller correctly counters, "the use of a modified CAP-SOP as the only vehicle that a CAP customer could use to select EGS supply would alleviate the suppliers' concerns that suppliers do not know whether a customer is or is not enrolled in CAP." CAUSE-PA St. 1-SR at 9. Moreover, as Mr. Geller details, suppliers are under no obligation to be uninformed about the customer status of those they wish to serve – they may, and should, inquire about CAP status when seeking to serve low-income customers. *Id.* at 9-10. Ultimately, Mr. White's claim that Mr. Geller's proposal is not feasible on the basis that it would require EGSs to monitor

²⁰ 120 A.3d at 1103.

compliance with CAP-SOP terms is incorrect. See RESA St. 1R at 15. Under Mr. Geller's proposal, consistent with its responsibilities under CAP, PECO would monitor to ensure that the CAP-SOP terms and conditions are satisfied. CAUSE-PA St. 1-SR at 11.

Mr. White also asserts that Mr. Geller's proposals would result in "few, if any, EGSs" electing to serve CAP customers. RESA St. 1-R at 16. TURN *et al.* agree with Mr. Geller that this statement should carry no weight. CAUSE-PA St. 1-SR at 10. As Mr. Geller notes, the choice to serve CAP customers is a business decision, like many EGSs routinely make. *Id.* Furthermore, Mr. White's claim is inconsistent and irreconcilable with his specific acknowledgment that PECO's SOP has experienced healthy participation from EGSs. RESA St. 1-R at 6. EGSs participating in the SOP routinely offer terms to PECO non-CAP customers that are virtually identical to those CAP-SOP terms proposed by Mr. Geller. The only substantial difference is that the CAP-SOP would require EGSs either to reset the price, *or return the CAP customer to default service*, in the event PECO's PTC declines by 7% or more during the contract term. CAUSE-PA St. 1 at 32. EGSs have not claimed any right to continue serving current, non-CAP PECO customers participating in SOP, who may terminate EGS supply at any time, even during the 12-month SOP contract, without incurring termination and cancellation fees. See CAUSE-PA St. 1 at 33. RESA articulates no clear reason why EGSs would decline to serve CAP customers through a PECO CAP-SOP that provides them with virtually the same opportunities to serve CAP customers as are available to other PECO customers under the existing SOP.

Finally, in response to Mr. White's concern that EGSs should not have to pay a \$30 SOP enrollment fee to serve CAP customers (RESA St. 1-R at 16), Mr. Geller and Ms. Alexander

agree upon a simple solution. As a further refinement to Mr. Geller's proposal, Ms. Alexander proposes that PECO could transmit qualified and interested customers to an EGS that is randomly selected from those willing to serve CAP customers under the CAP-SOP criteria Mr. Geller advances, thus avoiding incurring that fee. OCA St. 1-R at 6. Mr. Geller concurs in this recommendation. CAUSE-PA St. 1-SR at 11. TURN *et al.* agree that this further refinement of Mr. Geller's proposal directly addresses, and eliminates, RESA's concern regarding enrollment fees, and should be approved by the Commission in connection with the approval of a PECO CAP-SOP.

Notwithstanding that Mr. Geller's proposal addresses its professed concerns, RESA contends that the proponents and supporters of Mr. Geller's CAP-SOP proposal have "failed to justify" the restrictions on shopping the CAP-SOP would entail. RESA St. 1-R at 14. Mr. White asserts first that Mr. Geller needed to show "there was no way to modify PECO's existing CAP program to insure that PECO CAP customers would continue to have access to the benefits of CAP even if they elect to shop." *Id.* In RESA's view, only after showing that there is no other possible means to ensure affordability and cost-effectiveness of CAP could restrictions on the competitive market be imposed. *Id.* Mr. White is incorrect about the legal standard that applies in this case; the Commonwealth Court clearly held that the PUC cannot demand a showing that other changes are "impossible" prior to approving reasonable restrictions on competition.²¹

As clearly articulated by the Commonwealth Court:

²¹ As discussed *supra*, Mr. Bertocci, joined by Mr. Geller and Ms. Alexander, specifically acknowledge and aver that, in fact, it is impossible preserve cost-effectiveness and affordability of CAP without reasonable EGS price protections. See TURN St. 1-SR at 13.

[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 of any offer from an EGS that a customer could accept and remain eligible for CAP benefits.

PECO CAP Shopping Case, 120 A.3d at 1103.

No party to this proceeding, not even RESA, alleges that restrictions on EGS pricing would conflict with the interest of the PUC in ensuring that PECO's CAP remains adequately funded and cost-effective. To the contrary, RESA simply asserts that “[a]ll customers, including low income customers should have equal access to the benefits and innovations of the competitive market.” RESA St. 1-R at 14. As Mr. Bertocci explains, the Commonwealth Court specifically rejected the position taken by RESA in this proceeding. See TURN St. 1-SR at 12.

In this proceeding, the PUC should approve Mr. Geller's recommended CAP-SOP program for PECO, because the following standard, enunciated by the Commonwealth Court has been satisfied:

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 of low-income to afford electric service, *PP & L Indus.*, 780 A.2d at 782, 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.*, an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.

PECO CAP Shopping Case, 120 A.3d at 1104.

In this case, Mr. Geller's testimony conclusively demonstrates the significant harm that will be incurred by CAP customers, and non-CAP customers who contribute to the cost of CAP, if price protections are not adopted. Thus, Mr. Geller's testimony, and the demonstrated certainty that EGSs will charge PECO's CAP customers prices in excess of the PTC, provides substantial

reasons why competition needs to bend – otherwise, the PUC cannot ensure that PECO’s CAP is adequately funded, cost-effective, and affordable. Mr. Geller has provided a clear, precise, and direct recommendation to operationalize PECO CAP shopping that minimizes interference with the competitive market. In fact, Mr. Geller’s proposal is the only proposal that any party has put forward in this proceeding that will ensure that PECO’s CAP shopping program will satisfy the specific mandates of the Choice Act.²² There is no question but that Mr. Geller’s proposal satisfies the Commonwealth Court’s standard, as it is the *only reasonable alternative* any party in this proceeding has identified to implement PECO CAP shopping without eroding affordability and cost-effectiveness.

As to the timing of implementation, TURN *et al.* submit that PECO CAP participants should have the opportunity to begin participating in the competitive market under a new CAP-SOP program, effective June 1, 2017. As submitted by the OCA and CAUSE-PA, the operationalization of PECO’s forthcoming FCO model presents a dramatic shift from the CAP program PECO’s low-income customers have participated in previously. Mr. Geller and Ms. Alexander concur that it would be imprudent to commence any PECO CAP shopping program prior to June 1, 2017. The implementation of a redesigned CAP will require significant adjustment, with some customers receiving increases, and some decreases, in bill assistance. A new arrears management component of PECO’s CAP FCO may result in bill confusion and require PECO to interact with and further explain changes to CAP customers. Educational

²² I&E and OCA suggest a state-wide stakeholder group should address issues of CAP shopping. TURN *et al.* concur that a state-wide forum could promote consistency in operationalizing CAP shopping across EDC service territories. However, for purposes of PECO’s CAP shopping plan, TURN *et al.* nonetheless submit that Mr. Geller’s recommendations present the only reasonable alternative to effectuate the low-income mandates of the Choice Act.

messages and bill changes may trigger calls and communications from confused customers. Ultimately, it would be “detrimental to CAP customers and the community agencies that interact with these customers to impose another set of educational messages and communications concerning customer choice” during this period of dramatic change in CAP. See OCA St. 2-R at 1-2. On the basis of these facts, Ms. Alexander concludes:

At a minimum, there should not be any change to the CAP shopping policy until there has been a full implementation of the revised CAP rate design and arrears management program and a determination that the program has been properly implemented with evidence that customers understand and have adjusted to these program changes. It is my understanding that these program changes will occur in the 4th quarter of 2016. Therefore, at the earliest, I would not recommend any change to CAP customer shopping until June 1, 2017, the onset of PECO’s DSP IV. I agree with Mr. Geller’s proposal in this regard.

OCA St. 2-R at 3-4.

TURN *et al.* concur with Mr. Geller and Ms. Alexander. See TURN St. 1-SR at 10-11.

For all of the forgoing reasons, TURN *et al.* submit that the Commission should approve the implementation of a PECO CAP-SOP, effective June 1, 2017, in order to permit CAP customers to enter the competitive market for electricity supply. The CAP-SOP represents the only reasonable alternative on the record of this proceeding, permitting CAP customers to shop while ensuring that the Choice Act’s affordability and cost-effectiveness mandates are satisfied. PECO’s CAP-SOP should be effective June 1, 2017, because earlier implementation presents significant risk of confusion to CAP customers and community agencies, as well as additional, untimely educational burdens on PECO.

D. PECO SHOULD BE DIRECTED TO UNDERTAKE SPECIFIC DATA COLLECTION ACTIVITIES IN CONNECTION WITH THE IMPLEMENTATION OF CAP SHOPPING, AS RECOMMENDED BY MR. BERTOCCI.

As set forth in Mr. Bertocci's surrebuttal testimony, TURN *et al.* agree that PECO should collect information about CAP customers' experience in the competitive market. TURN St. 1-SR at 8. Specifically, TURN *et al.* support PECO's plan to "compile information regarding the number of CAP customers shopping, the rates CAP customers pay for generation service, and the portion of the aggregate CAP credit amount paid for by residential customers." PECO St. 2-R at 13. In addition, TURN *et al.* submit that specific information about the experiences of CAP customers in the competitive market should be captured in PECO's data collection efforts.

As Mr. Bertocci testified:

In order to understand and evaluate the impact of shopping CAP affordability, PECO should collect data regarding the shopping experiences of CAP customers entering the market with the CAP program protections recommended by Mr. Geller. In doing so, PECO will be able to report the duration that such customers were able to benefit from competitive supply at a price not exceeding PECO's PTC, and the savings that accrue to CAP customers and all other residential PECO customers who contribute to the cost of CAP. At the same time, PECO's information gathering should document, to the extent feasible, when CAP customers accept, but are prohibited from entering, contracts with competitive suppliers that do not comply with the CAP shopping program features described by Mr. Geller. I recommend that in the collection of all CAP shopping data PECO ensure that it records the price of EGS offers to CAP customers and the address of the applicable CAP customers. This data will be essential to examining the extent to which EGSs are committed to serving the diverse communities within PECO's service territory.

TURN St. 1-SR at 9.

Mr. Bertocci's recommendations, together with PECO's proposed data collection criteria, would ensure that PECO's CAP shopping program provides opportunities for all CAP customers to

access the competitive electricity market, while enabling the Commission to fulfill its continuing obligation to monitor CAP shopping for affordability and cost-effectiveness. Such data collection requirements directly align with the legislative intent and language of the Choice Act.²³ TURN *et al.* is not aware of any party raising any objection to Mr. Bertocci's recommendations and, accordingly, TURN *et al.* submit that Mr. Bertocci's recommendations should be approved by the Commission, which should order PECO to collect and maintain (at a minimum) the following data:

- The number of CAP customers shopping,
- The rates CAP customers pay for generation service,
- The portion of the aggregate CAP credit amount paid for by residential customers,
- The savings to CAP customers and non-CAP customers generated by EGS rates below PECO's PTC,
- The number of CAP customers seeking to enter contracts with competitive suppliers offering prices above PECO's PTC (or that do not comply with the terms and conditions of PECO's CAP-SOP), and the terms of such offers.

All of the foregoing data should be collected and maintained by customer address, in order to be able to determine the extent to which EGSs are serving the diverse communities within PECO's service territory.

²³ See 66 Pa. C.S. §§ 2802(12), 2804(9).

VII. CONCLUSION

PECO has the largest concentration of low-income electric customers, and the largest CAP population, in the Commonwealth.²⁴ A large portion of its rate base is economically vulnerable, and in need of protection from high prices charged by EGSs. The record in this proceeding conclusively demonstrates the harm to CAP customers, and non-CAP customers who contribute to the cost of CAP, resulting from EGS prices in excess of the PTC. It also conclusively establishes that EGSs charge a large proportion of CAP customers choosing to shop prices which exceed the PTC, undermining affordability, cost-effectiveness, and the ability of low-income customers to maintain service. These results are simply contrary to the language and intent of the Choice Act. Notwithstanding that PECO's CAP customers have not yet incurred direct harm due to higher EGS prices, the uncontested evidence shows that such harm will result from their entry into the competitive market without adequate price protections. The Commonwealth Court has mandated certain price protections, in order to *prevent* harm to CAP customers while requiring no showing that actual harm has already occurred.²⁵ CAUSE-PA, the OCA, and TURN *et al.* all support the initiation of reasonable restrictions proffered by CAUSE-PA, as these protections will, consistent with the Commonwealth Court's guidance, ensure the

²⁴ See 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*, at 7, 42 available at http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf (referenced in CAUSE-PA St. 1 at 15, n. 28)

²⁵ PECO CAP Shopping Case, 120 A.3d at 1108.

continuation of “adequately-funded, cost-effective, and affordable programs to assist customers who are of low-income to afford electric service.”²⁶

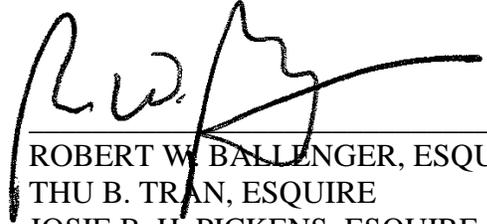
RESA opposes the price protections advanced by CAUSE-PA, and supported by OCA and TURN *et al.* RESA provides no substantial justification for permitting CAP customers to face higher charges, contrary to the purposes of the Choice Act, and relies upon an astonishing array of false statements, incorrect assertions, and unsupported conjecture. PECO expresses its intention to follow the guidance it has received in the Secretarial Letter, to submit a CAP shopping proposal as a “proposed rule revision” to DSP III. For the reasons discussed in this brief, the Commission should reach a determination on CAP shopping in this DSP IV, not in PECO’s DSP III.

CAUSE-PA’s proposed implementation of CAP shopping price protections via a new element of PECO’s SOP, a so-called “CAP-SOP,” is the only means, and is therefore the only “reasonable alternative,” that has been proposed in this proceeding to effectuate entry of PECO’s CAP customers to the competitive market while satisfying the Choice Act’s low income mandates. A CAP-SOP is a reasonable limitation on the terms of offers that may be available to CAP customers, and should be approved by the Commission. Due to the risk of confusion and undue burden on CAP customers, community agencies and PECO that could arise, TURN *et al.* agree with OCA and CAUSE-PA and submit that PECO’s CAP-SOP should be effective June 1, 2017. This will ensure that PECO’s new FCO program for CAP customers is underway, and CAP customers will have had an opportunity to adjust to that program, and the dramatic changes to their bills that will result.

²⁶ PECO CAP Shopping Case, 120 A.3d at 1104.

Finally, TURN *et al.* submit that the Commission should approve specific data collection processes, acknowledged by PECO and recommended by Mr. Bertocci, that will ensure that PECO's CAP shopping program is consistent with the Choice Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R.W. Ballenger', is written over a horizontal line. The signature is stylized and extends to the right of the line.

ROBERT W. BALLENGER, ESQUIRE
THU B. TRAN, ESQUIRE
JOSIE B. H. PICKENS, ESQUIRE
Attorneys for TURN *et al.*

Appendix “A”

PECO Letter Response to the May 11, 2016 Secretarial Letter, filed July 19, 2016 in PECO DSP
II Docket No. P-2012-2283641.

Richard G. Webster, Jr.
Vice President

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PECO
Regulatory Policy and Strategy
2301 Market Street
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July 19, 2016

Via E-filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

RE: Petition of PECO Energy Company for Approval of its Default Service Plan, Docket No. P-2012-2283641

Dear Secretary Chiavetta,

This letter responds to the May 11, 2016 Secretarial Letter in this docket. In this letter, PECO Energy Company (“PECO” or the “Company”) sets forth its plans for complying with the directives contained in that Secretarial Letter as they relate to implementing shopping for PECO’s Customer Assistance Program (“CAP”) Customers.

The Secretarial Letter implements the July 14, 2015 decision of the Commonwealth Court of Pennsylvania with respect to PECO’s CAP Shopping Plan. The Court’s decision: (1) affirmed the Commission’s Order rejecting a price ceiling on Electric Generation Suppliers (EGSs) that wished to participate in the PECO CAP Shopping Program; (2) reversed the portions of the Orders which rejected a rule that would prohibit CAP participants from entering into any contract with an EGS that imposes early cancellation/termination fees; and (3) remanded the matter back to the Commission with instructions that the Commission approve a rule revision to the PECO CAP Shopping Plan that would impose such a prohibition of early cancellation/termination fees.¹ (Several parties, including the Commission, requested the Pennsylvania Supreme Court to have further proceedings on this matter, but the Supreme Court denied allocatur on April 5, 2016.)

The Commission’s Secretarial Letter directed PECO to file a “proposed rule revision” to its CAP Shopping Plan that will implement the Commonwealth Court’s Order.² The Secretarial letter directed PECO to make its filing in its DSP III docket (P-2014-2409362). The Secretarial Letter states that PECO’s filing is to include the

¹ *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, et al. v. Pa. PUC*, 1020 A.3d 1087, 1104 (2015).

² PECO’s DSP III for June 1, 2015 through May 31, 2017 was approved by Commission Order at P-2014-2409362. PECO’s proposed DSP IV for June 1, 2017, through May 31, 2019 was filed March 17, 2016, at P-2016-2534980.

Rosemary Chiavetta, Secretary
July 19, 2016
Page 2

following: (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.

PECO is currently reviewing the operational implications of the Commonwealth Court's Order and revising its CAP Shopping Plan to implement that Order. Based on its analysis thus far, PECO expects to file the proposed rule revision by September 1, 2016. PECO 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, which is within the DSP III operational period.

PECO will also adhere to the requirements made in the PUC Order dated January 9, 2014 which states:

1. PECO must file tariff supplements, including a revised Electric Generation Supplier Coordination Tariff, which reflect the following revisions, or as otherwise set forth in this Opinion and Order.
2. PECO shall convene a collaborative of interested stakeholders and the Commission's Office of Competitive Market Oversight and Office of Communications to address the specific components of the education plan associated with the Customer Assistance Program customer shopping.
3. PECO, in consultation with the Commission's Office of Competitive Market Oversight and Bureau of Consumer Services, shall submit semi-annual reports to the Commission that reflect the net benefits of allowing Customer Assistance Program customers to purchase their generation supply from electric generation suppliers. PECO will work with EGSs to compile and include those benefits, services, and incentives provided to CAP customers that are not reflected in PECO's bills.

Rosemary Chiavetta, Secretary
July 19, 2016
Page 3

PECO looks forward to working with all stakeholders to enable its CAP customers full access to the benefits of the competitive electric retail market.

Sincerely

A handwritten signature in blue ink that reads "Richard G. Webster, Jr. / me". The signature is written in a cursive style.

Richard G. Webster, Jr.
Vice President
Regulatory Policy & Strategy
PECO Energy Company
2301 Market St, S15-2
Philadelphia, PA 19103

CC: Certificate of Service

Appendix “B”

Proposed Findings of Fact

TURN *et al.* submit that the Commission should adopt the Proposed Findings of Fact of CAUSE-PA, as set forth in Appendix A to its Main Brief, dated as of the date hereof. TURN *et al.* incorporate by reference the Proposed Findings of Fact of CAUSE-PA as if fully set forth herein.

In addition, TURN *et al.* submit that the Commission should adopt the following Finding of Fact:

1. In connection with the implementation of CAP shopping, it is necessary that PECO engage in data collection efforts that enable the Commission and PECO to ensure that the language and purposes of the Choice Act are satisfied. TURN St. 1-SR at 8-9.

Proposed Conclusions of Law

TURN *et al.* submit that the Commission should adopt the Proposed Conclusions of Law of CAUSE-PA, as set forth in Appendix B to its Main Brief, dated as of the date hereof. TURN *et al.* incorporate by reference the Proposed Conclusions of Law of CAUSE-PA as if fully set forth herein.

In addition, TURN *et al.* submit that the Commission should adopt the following Conclusion of Law:

1. TURN *et al.* have demonstrated by a preponderance of the evidence that, in order to effectuate the language and intent of the Choice Act, PECO must engage in certain data collection efforts. Effective with the June 1, 2017 implementation of PECO’s CAP-SOP, PECO must collect and maintain (at a minimum) the following data:

- The number of CAP customers shopping,
- The rates CAP customers pay for generation service,
- The portion of the aggregate CAP credit amount paid for by residential customers,
- The savings to CAP customers and non-CAP customers generated by EGS rates below PECO’s PTC, and
- The number of CAP customers seeking to enter contracts with competitive suppliers offering prices above PECO’s PTC (or that do not comply with the terms and conditions of PECO’s CAP-SOP), and the terms of such offers.

All of the foregoing data should be collected and maintained by customer address, in order to be able to determine the extent to which EGSs are serving the diverse communities within PECO’s service territory.