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February 27, 2013

*Via electronic filing*

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

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

*PECO Energy Company's Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*  
*Docket No. M-2012-2290911*

Dear Secretary Chiavetta:

Enclosed please find the Main Brief of Direct Energy Services, LLC in the above-referenced matters.

Copies are being served on all parties of record as shown on the attached Certificate of Service.

Sincerely,



Edward G. Lanza

Enclosure

c: Hon. Cynthia Williams Fordham  
Parties on Certificate of Service  
Ronald M. Cerniglia

## CERTIFICATE OF SERVICE

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

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for Approval of Its Default Service Program	:	Docket No. P-2012-2283641
	:	
PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015	:	Docket No. M-2012-2290911

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

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## **I. INTRODUCTION AND PROCEDURAL HISTORY**

### **A. Introduction**

The Commission has directed that PECO Energy Company (“PECO” or “Company”) submit a plan to include Customer Assistance Program (“CAP”) customers in programs that promote shopping in the competitive retail market for electricity. The principal concern of Direct Energy Services, LLC (“Direct Energy”) in this proceeding is to ensure that the Commission’s directive in this regard is followed in an effective and timely manner. To that end, Direct Energy has participated in this proceeding and offered suggestions and recommendations for the Commission’s consideration to help in designing a program that will offer the benefits of the competitive market to all customers, including PECO’s CAP customers.

The Commission was correct in deciding that PECO’s CAP customers should be eligible to participate in PECO’s shopping programs and in finding that there is no reason that these customers should be excluded from receiving the benefits of competition. CAP customer should not be denied the freedom of choice that a non-CAP customer has to elect a competitive supplier or to continue to take service for a particular supplier because of value-added services or any other reason. PECO’s CAP shopping plan should be designed so as to give low-income customers the ability to participate in the Company’s shopping programs provided they meet any reasonable eligibility requirements.

PECO’s CAP customers should have a viable option to choose their own electric supplier in order to improve the Company’s efforts to expand shopping in its territory. At present, CAP customers are completely excluded from the electricity market, and only 31% of all residential

customers are shopping in PECO territory.<sup>1</sup> These troubling trends can be reversed by a well-designed CAP shopping plan – one that eliminates barriers to shopping for CAP customers and does away with barriers to entry for suppliers. Direct Energy is eager to serve all of PECO’s customers, including CAP customers, regardless of the CAP program the Commission ultimately adopts for PECO. However, the Commission must ensure that any CAP program going forward is carefully designed to encourage competition, and Direct Energy has offered recommendations in this proceeding to achieve the Commission’s goal to offer shopping options to PECO’s CAP customers.

Based on the foregoing, Direct Energy is making a number of recommendations to achieve the Commission’s goal of bringing the benefits of shopping to CAP customers. First, PECO’s CAP program, regardless of its design specifics, should not create any barriers for customers or suppliers to participate in any future CAP shopping plan. Also, CAP customers should have appropriate price signals that will encourage them to seek a better deal. If the Commission opts for a Percentage-of-Income (“PIP”) type plan, it should consider using a fixed-credit program as proposed by the Office of Consumer Advocate (“OCA”). If the Commission decides to implement an aggregation program, as has been proposed here, it must avoid imposing illegal price regulation on the program. At this stage, the recommendations of Direct Energy in this proceeding are intended to ensure the success of any future CAP Shopping Plan as envisioned by the Commission. Upon PECO’s filing of its CAP Shopping Plan on May 1, 2013, Direct Energy will have additional recommendations regarding the specifics of the plan.

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<sup>1</sup> Weekly Pennsylvania Power Switch Update, Customers Switching To An Electric Generation Supplier (as of February 20, 2013). Available at [www.papowerswitch.com](http://www.papowerswitch.com).

## **B. Procedural History**

On February 28, 2012, PECO Energy Company (“PECO” or “Company”) filed its Universal Service and Energy Conservation Plan (“USECP” or “Plan”) in accordance with the Commission’s regulations at 52 Pa. Code §§ 54.71-54.78, relating to electric universal service and energy conservation requirements and at 52 Pa. Code §§ 62.1-62.8, relating to natural gas universal service and energy conservation requirements. Subsequently, on October 25, 2012, PECO filed an Amended USECP.

On October 12, 2012, the Commission issued its Final Opinion and Order in the PECO Default Service Proceeding.<sup>2</sup> In its October 12 Order, the Commission directed that the benefits of the competitive market be made available to CAP customers as follows:

The Commission is committed to ensuring that all customers, including CAP customers, are eligible to participate in the competitive retail electricity market. Accordingly, while we are supportive of RESA’s position on this issue, especially with regard to the portability of CAP credits, we acknowledge that PECO currently does not allow its CAP customers to shop, and that there are a number of issues that must be addressed in order to change this policy... Rather than delay the inclusion of CAP customers within PECO’s RME Programs, we shall direct PECO to develop a plan that will allow its CAP customers to purchase their generation supply from EGSs by January 1, 2014. Toward this end, we shall direct OCMO to work with PECO to: (1) ensure that, to the extent possible, the Opt-In and Standard Offer Programs are available to CAP customers; and (2) provide a path that allows both CAP credits and LIHEAP funds to be used by customers that choose an EGS to supply their generation service. Beyond allowing CAP customers to participate in PECO’s DSP II RME Programs, this will ensure that all customers have the ability to avail themselves of the full benefits of retail electric competition. This is consistent with the proposal released on September 27, 2012, related to the Investigation of PA’s Retail Electric Market at Docket No. I-2011-2237952.<sup>3</sup>

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<sup>2</sup> *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641 (Order issued October 12, 2012) (“PECO DSP”).

<sup>3</sup> PECO DSP Order at 131.

On October 31, 2012, PECO also filed its APPRISE six-year evaluation in compliance with 52 Pa. Code § 54.76.

On November 8, 2012, the Commission issued a Tentative Order seeking comments on specific aspects of PECO's Plan at Docket M-2012-2290911. On November 15, 2012, Dr. H. Gil Peach and Associates, LLC filed Comments in response to the Tentative Order. On November 28, 2012, the OCA, PECO, Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia ("TURN"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Pennsylvania Coalition Against Domestic Violence ("PCADV"), and Face to Face filed Comments.

Reply Comments were filed on December 10, 2012 by TURN, et. al, PECO and OCA. Upon review of the comments and reply comments, the Commission noted that some interested parties share the Commission's concerns and some requested the opportunity to participate in an evidentiary proceeding before an Administrative Law Judge ("ALJ") to more fully review PECO Plan and analyze the relevant data. Additionally, other comments suggested that certain issues might be addressed through a collaborative process.

On January 3, 2013, a Secretarial Letter was issued to address procedural issues in PECO's on-going universal service proceedings. To ensure that critical decisions about the structure of PECO's CAP Plan are made before PECO has to file the Shopping Plan (which, due to the extension of time, is now due on or around May 1, 2013), the Commission plans to adopt a Final Order on the CAP Plan by April 4, 2013. Therefore, the CAP Plan was assigned to the Office of Administrative Law Judge to conduct any necessary evidentiary hearings and briefing, and to certify the record to the Commission by March 1, 2013.

This matter was assigned to Administrative Law Judge Cynthia Williams Fordham. A Prehearing Order was issued and sent to the parties on January 9, 2013.

The following parties filed prehearing memoranda: PECO; OCA; OSBA; TURN, et al; CAUSE PA; PCADV; RESA and Direct Energy; PAIEUG; Dominion Retail and Interstate Gas; and First Energy Solutions Corp. Petitions to Intervene were filed by CAUSE-PA and PCADV. Without objections, the Petitions to Intervene were granted. PPL EnergyPlus LLC informed the presiding officer that it would not be participating in this phase of the proceeding.

A telephonic prehearing conference was held on January 15, 2013. Counsel for the following parties participated: PECO; OCA; OSBA; TURN, et al; CAUSE PA; PCADV; RESA and Direct Energy; PAIEUG; Dominion Retail and Interstate Gas; and First Energy Solutions Corp. At the prehearing conference, the following procedural schedule was established:

All Parties' Direct Testimony	February 4, 2013
All Parties' Rebuttal Testimony	February 12, 2013
Hearings for cross-examination	February 14, 15 and 19, 2013
Briefs	February 27, 2013
ALJ certifies record to Commission	March 1, 2013

Following the January 15, 2013 prehearing conference, parties exchanged discovery questions and responses under modified discovery rules. Direct and rebuttal testimony was filed by PECO, OCA, TURN, CAUSE-PA, PCADV. Direct Energy filed only rebuttal testimony: Direct Energy Statement 1R, the rebuttal testimony of Ronald M. Cerniglia. The February 14 hearing date was canceled upon agreement of the parties, and witnesses were cross-examined on February 15 and 19. A transcript of the hearings was produced and a number of exhibits introduced into the record of this proceeding. Direct Energy's testimony was admitted into the record by stipulation and all parties waived cross-examination.

In its most recent pronouncement regarding CAP shopping, the Commission reiterated its position that low-income customers in CAP programs should have the opportunity of taking advantage of shopping for electric supply.<sup>4</sup> In its RMI End State Final Order, the Commission stated that one of the basic intents of the Competition Act – to “permit retail customers to obtain direct access to a competitive generation market” - was intended to include all customers.<sup>5</sup> The Commission went on to say that CAP customers have the capability to make shopping decisions and should be allowed to do so. According to the Commission, CAP customers can, in addition to their CAP benefit, also receive the additional benefit of possible energy costs savings. The Commission cautioned that care must be taken to educate CAP customers so that they understand how their CAP benefit interacts with shopping, and that EDCs should provide such information along with the information they routinely provide to CAP customers when explaining their CAP benefits.<sup>6</sup>

Finally, the Commission acknowledged the concerns expressed by some parties about the complexities involved with the participation of CAP customers in the competitive market and the possible impact on these programs. However, the Commission decided that measuring and determining the benefits of shopping requires more than just comparing a supplier price to the default price at one point in time. The Commission stated that none of these complexities or concerns is insurmountable.<sup>7</sup>

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<sup>4</sup> *Investigation of Pennsylvania’s Retail Electric Market: End State of Default Service*, Docket No. I-2011-2237952 (Order Issued Feb. 15, 2013) (“*RMI End State Final Order*”).

<sup>5</sup> 66 Pa. C.S. § 2802(3).

<sup>6</sup> *RMI End State Final Order* at 61.

<sup>7</sup> *Id.* at 61-62.

## C. Legal Standards

### 1. Burden of Proof

Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.<sup>8</sup> It is axiomatic 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.”<sup>9</sup> A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.<sup>10</sup> Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence.<sup>11</sup> More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>12</sup>

PECO has the ultimate burden of proof in the proceeding and the initial burden of going forward with evidence showing that its Universal Service Plan and CAP shopping proposals are lawful and reasonable.

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<sup>8</sup> 66 Pa. C.S. § 332(a).

<sup>9</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>10</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>11</sup> *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

<sup>12</sup> *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## 2. Standards Applicable to Universal Service & CAP Shopping

The Competition Act addresses the requirements that PECO, as EDC providing default service, must meet.<sup>13</sup> The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a “prudent mix”<sup>14</sup> of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.<sup>15</sup>

The Competition Act also mandates that customers have direct access to a competitive retail generation market.<sup>16</sup> This is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the costs of generating electricity.”<sup>17</sup> Thus, a fundamental policy underlying the statute is that competition is more effective than economic regulation in controlling the costs of generating electricity.<sup>18</sup>

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations<sup>19</sup> and a policy statement<sup>20</sup> addressing default service plans. The regulations first became effective in 2007 and recent amendments to the regulations to incorporate statutory

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<sup>13</sup> See 66 Pa. C.S. § 2807(e).

<sup>14</sup> 66 Pa. C.S. § 2807(e)(3.2).

<sup>15</sup> 66 Pa. C.S. §§ 2807(e)(3.1).

<sup>16</sup> 66 Pa. C.S. § 2802(3).

<sup>17</sup> 66 Pa. C.S. § 2802(5). See *Green Mountain Energy Company, et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

<sup>18</sup> 66 Pa. C.S. § 2802(5).

<sup>19</sup> 52 Pa. Code §§ 54.181 to 54.189.

<sup>20</sup> 52 Pa. Code §§ 69.1802 to 69.1817.

changes to the Competition Act as a result of the implementation of Act House Bill 2200, Act 129 which became effective in November 2008, are pending.<sup>21</sup>

This particular proceeding is governed by the Commission's October 12 Order directing PECO to implement a program that provides CAP customers with an opportunity to take advantage of the competitive market for energy supply.<sup>22</sup> Pursuant to the Commission's directive, PECO's Universal Service Plan and its CAP shopping plan must be measured by whether the plans ensure the Opt-In and Standard Offer Programs approved in the DSP Order – two programs mandated by the Commission to help promote competition by existing default service customers – are available to CAP customers, and that they provide a path that allows both CAP credits and LIHEAP funds to be used by customers that choose an EGS to supply their generation service. PECO's plans must ensure that all customers, including CAP customers, have the ability to avail themselves of the full benefits of retail electric competition.

## II. ARGUMENT

### A. Summary of Argument

Direct Energy's main concern in this proceeding is the effective and timely implementation of a CAP Shopping Plan for PECO that eliminates barriers to shopping and encourages all customers to avail themselves of the benefits of a competitive retail market for electricity. Although there is a dispute among some of the parties regarding the design of the CAP program going forward – whether PECO's current tiered discount program will be retained

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<sup>21</sup> *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580, Final Policy Statement entered September 23, 2011; *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604, Final Rulemaking Order entered October 4, 2011 ("Act 129 Rulemaking"). The Act 129 Rulemaking was approved by the Independent Regulatory Review Commission ("IRRC") on May 17, 2012.

<sup>22</sup> DSP Order at 131.

or whether a new Percentage of Income Plan (“PIP”) will be adopted – Direct Energy is prepared to serve customers under either option provided that the CAP program is tailored to encourage shopping. The CAP program that the Commission orders for PECO should implement shopping in an effective and timely manner. The CAP Shopping Plan must send proper price signals to customers to encourage them to seek a better deal and it must ensure that benefits are maintained while protecting the interests of non-CAP customers.

Below, Direct Energy sets forth the types of initiatives it would support as the Commission considers PECO’s Plan. In particular, Direct Energy offers sound reasons for serious consideration of a fixed-credit alternative as part of a PIP program proposal (if the Commission orders the implementation of a PIP-type plan). Also, Direct Energy continues to support the idea of aggregation as a possible means to effectively achieve the Commission’s goal of bringing the benefits of a competitive market to all customers. While Direct Energy is offering recommendations regarding the proposals that parties have put forward in the context of this proceeding, it will reserve more specific suggestions following the filing of PECO’s CAP shopping plan on May 1, 2013.

**B. Direct Energy is Prepared to Offer CAP Customers Competitive Options Regardless of the CAP Program Design Chosen by the Commission**

Direct Energy shares the Commission’s commitment to ensuring that all customers, including CAP customers, are eligible to participate in the competitive retail electricity market. In light of the potential benefits of the competitive market, the Commission should adopt policies that encourage shopping among all sectors of PECO’s customer base. PECO’s universal service programs, and its CAP shopping plan in particular, have the potential to bring benefits to all customers through an expansion of CAP customer participation in the market. It is in the best

interests of all concerned for the Commission to formulate a workable program to assist PECO's low-income consumers while protecting the interest of all customers.<sup>23</sup>

Much of the debate in this proceeding has focused on whether PECO should retain its tier discount CAP program or whether it should adopt a new Percentage of Income ("PIP") approach to making low-income customer bills more affordable. In her testimony, PECO witness Lauren B. Feldhake concluded that PECO should retain its current CAP tiered discount program and should not be compelled to adopt a PIP-type plan. According to Ms. Feldhake, a PIP would be "time-consuming to implement and therefore could put at risk the April 1, 2014 implementation date for CAP shopping."<sup>24</sup> Ms. Feldhake also stated that, if the Commission decides that PECO should continue its existing tiered CAP rate discount program, "then the CAP program design will add little or no time to the CAP shopping implementation timeline."<sup>25</sup>

On the other hand, some parties in this proceeding have advocated for the implementation of a PIP program design as a means to accomplish the Commission's goal of allowing CAP customers to shop for electric supply. According to Mr. Mitchell Miller, testifying on behalf of CAUSE-PA, "the only effective means to guarantee affordability is to ensure that CAP customers pay no more than a set percentage of their income."<sup>26</sup> Dr. H. Gil Peach of TURN testified that a PIP structure is "optimal" to meet the Commission's affordability standards

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<sup>23</sup> Direct Energy St. 1R at 4.

<sup>24</sup> PECO St. 1 at 2.

<sup>25</sup> PECO St. 1 at 26.

<sup>26</sup> CAUSE-PA St. 1 at 9.

because a PIP tailors the payment amount of a CAP customer to the income of each household and because, once implemented, it is the least cost approach going forward.<sup>27</sup>

Direct Energy is agnostic on whether the Commission should order PECO to retain its tiered discount rate or transition to a PIP design for its CAP program. Direct Energy's main concern is that the Commission's Order to implement a shopping plan for PECO's CAP customers be followed strictly, and that a CAP shopping program be implemented pursuant to the Commission's timelines for the transition. Direct Energy is prepared to work with the Commission and the parties to design an effective CAP shopping program that brings the benefits of a competitive market to all customers, including CAP customers. If the Commission should find that one CAP program design offers a better platform and a more timely implementation of a CAP shopping plan, then Direct Energy will support that design unless the benefits of the alternative approach materially outweigh any associated delay. Once PECO files its CAP Shopping Plan with the Commission, Direct Energy will offer appropriate input into the plan to ensure that it accomplishes its goals and fulfills the Commission's order to offer competitive supply to CAP customers. Ultimately, shopping for CAP customers should be implemented as expeditiously as possible, while ensuring that customers' benefits are retained when switching to a competitive supplier.<sup>28</sup>

**C. It Is Important that the Commission Establish a CAP Shopping Plan That Provides the Right Incentives for Customers to Shop**

All stakeholders in this proceeding recognize that PECO's CAP Shopping Plan must be designed in a way that is effective in providing the maximum benefit possible to low-income

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<sup>27</sup> TURN St. 1 at 5.

<sup>28</sup> Direct Energy St. 1R at 5.

customers while ensuring that non-CAP customers are protected from poor choices by customers whose bills are subsidized. The balancing of these two priorities has created a dispute as to which program design offers the best incentives for customers to seek a better deal as participants in the competitive market for electricity. Direct Energy agrees that the right program design is very important to maximizing the benefits of competition while protecting non-CAP customers.

In PECO's testimony, witness Ms. Feldhake claimed that "the CAP rate tier program provides a greater incentive to shop, and a PIP provides little or no incentive."<sup>29</sup> This conclusion is based on the idea that, under a PIP program, a customer is required to pay based on a set percentage of her income and, thus, energy usage and price are not billing determinants for that customer. According to Ms. Feldhake, under a tiered rate discount arrangement, what the customer pays is influenced by how much energy is consumed and the price for that power. Therefore, under a tiered rate discount program, the customer will seek the benefit of a lower price offered by a competitive supplier.<sup>30</sup>

Direct Energy agrees that, as a general matter, it is reasonable to assume that a customer whose bill is affected by his or her usage or the price of power would be more likely to shop for a better deal. For instance, under a straight hypothetical PIP structure, if a household is asked to pay 5% of its \$20,000 annual income toward its electric bill, the yearly bill for that household will be \$1,000 regardless of how much power costs or how much power that household uses. In that admittedly-oversimplified situation, it is difficult to see how the PIP customer would be

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<sup>29</sup> PECO St. 1 at 27.

<sup>30</sup> *Id.*

incentivized to conserve energy or seek a lower-priced supplier. From this perspective, PECO's preference for a tiered rate discount program makes some sense.

However, in PECO's case, this does not necessarily mean that retaining the tier rate discount approach would be preferable to adopting a well-designed percentage-of-income program. As is discussed in the testimony of TURN and OCA, PIP programs can be designed to address concerns relating to the usage or price responsiveness of the program.<sup>31</sup> At the end of the day, Direct Energy and other suppliers can be expected to serve CAP customers regardless of the CAP program structure, provided that there are no barriers to customer shopping or EGS participation built into the program.<sup>32</sup> The most important thing for the Commission to consider when designing a CAP shopping program is that some design elements can serve as an obstacle to customer choice and competitive alternatives. If the design of the program creates no incentives for CAP customers to shop or an outright disincentive to exercise the customer's choice of supplier, the program will be a failure and the Commission's goal of extending the benefits of competition to CAP customers will be frustrated. It is imperative that the Commission order PECO to implement a program with no barriers to entry by customers or suppliers.

**D. A Fixed-Credit PIP May Encourage Shopping by Providing a Price Signal to CAP Customers**

Although Direct Energy has not taken a firm position on whether PECO should retain its tiered discount program or move to a PIP arrangement, there may be ways to address the shortcomings of a straight PIP structure in promoting shopping among PECO's CAP customers.

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<sup>31</sup> See, TURN St. 1 at 18 and OCA St. 1 at 22.

<sup>32</sup> Direct Energy St. 1R at 6.

If the Commission decides to transition PECO to a PIP-type program, it would be unwise to implement a straight PIP program because, as discussed above, such an approach offers little or no incentive to conserve or shop. A program that offers no incentive to shop should be rejected as failing to achieve the Commission's goals of offering the benefits of the competitive market to PECO's CAP customers.

The OCA's proposal of a "fixed-credit" PIP may be an worthwhile option for the Commission to consider if it prefers a PIP structure over PECO's current tiered discount rate program. In his testimony, OCA witness Roger D. Colton recommends the use of a fixed-credit PIP if PECO is directed to transition away from its current tiered rate discount CAP program.<sup>33</sup> Mr. Colton distinguishes a "fixed-credit" PIP from a "fixed payment" program, where a customer's bill is set at an affordable percentage of that customer's income. Under the "fixed credit" approach, it is the credit that is fixed for the customer, and PECO would calculate the dollar amount of the credit that would reduce the bill to an affordable percentage of income.<sup>34</sup> According to Mr. Colton, a fixed-credit PIP creates a conservation incentive and addresses the concern that a fixed payment program results in a conservation disincentive. Further, the OCA maintains that a fixed-credit approach would allow PECO CAP customers to participate in, and gain the benefits from, retail shopping while protecting non-participants (i.e, the remaining customers who pay the subsidy that is provided to enable CAP customers to enjoy a discounted rate) from the harms of ineffective shopping by CAP Rate customers.<sup>35</sup>

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<sup>33</sup> See, OCA St. 1 at 18.

<sup>34</sup> *Id.*

<sup>35</sup> OCA. St. 1 at 22.

The OCA's modification of a straight PIP design for PECO's CAP is a reasonable alternative to the current program and should be considered by the Commission if a PIP is adopted for PECO. A fixed-credit PIP is a good example of how a PIP program can be designed in a way that addresses questions regarding the CAP program's responsiveness to conservation or price signals. The fixed-credit proposal addresses PECO's concern that PIP programs discourage shopping because, under a fixed payment arrangement, customers do not respond to changes in usage or supply prices. The fixed-credit approach places some limited responsibility on the customer for changes in the price of generation, and as such, it is more likely to encourage shopping when compared to a fixed-payment methodology.<sup>36</sup> To the extent that a fixed-credit program would encourage shopping by CAP customers, Direct Energy supports Mr. Colton's proposal, if the Commission decides to have PECO adopt a PIP-type CAP program.

**E. Direct Energy Supports Aggregation as a Way to Promote the Entry of CAP Customers into the Retail Market for Power**

Direct Energy supports aggregation as a means to encourage CAP customers to shop for electric supply. Direct Energy proposed CAP customer aggregation in PECO's 2008 Default Service proceeding<sup>37</sup> and implemented a very successful aggregation program for customers of Pike County Light & Power Company in 2006. However, any aggregation program for PECO's CAP customers must be implemented in a way that eliminates or significantly reduces barriers to

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<sup>36</sup> Direct Energy St. 1R at 7.

<sup>37</sup> See, *Petition of PECO Energy Company for Approval of Its Default Service Program*, Docket No. P-2008-2062739.

customer and supplier participation. A properly designed aggregation program would benefit CAP customers and would enhance competition in PECO's territory.<sup>38</sup>

CAUSE-PA has proposed an aggregation program to facilitate the entry of CAP customers into the retail electricity market. CAUSE-PA witness, Mr. Mitchell Miller, has proposed to have PECO aggregate the load of the Company's 140,000 CAP customers to have these customers shop as a group, not individually.<sup>39</sup> Under Mr. Miller's proposal, PECO or a third-party administrator would seek bids through an RFP for a supplier to provide service to PECO's CAP customers for a fixed period of time. However, CAUSE-PA's aggregation plan includes a series of other conditions such as: (a) monthly asked-to-pay amounts must be "affordable"; (b) full universal service program protections must be maintained; (c) no reduction or loss of benefits for CAP customers as a result of shopping; (d) supplier prices must always be at or below the default service price; (e) CAP customers must be able to switch without fee or penalty; (f) no security or deposit requirements; and (g) written information on the rights and responsibilities of CAP customers must be provided.<sup>40</sup>

While some of the conditions imposed by CAUSE-PA as part of its aggregation proposal are not objectionable, any requirement that caps the price for generation perpetually is unacceptable. Direct Energy does not object to maintaining current protections for CAP customers or complying with the Commission's rules and regulations regarding universal service. Similarly, customer communications, switching rules or security deposit requirements, to the extent not addressed by the Commission's orders or regulations, can be negotiated by the

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<sup>38</sup> Direct Energy St. 1R at 8.

<sup>39</sup> CAUSE-PA St. 1 at 9-11.

<sup>40</sup> CAUSE-PA St. 1 at 11.

parties prior to the commencement of the RFP process (as a matter of fact, EGSs using EDC consolidated billing, virtually all EGSs, do not have the ability to bill security deposits, and do not do so). However, requiring Commission regulation of the price for competitive supply is a violation of the Competition Act<sup>41</sup> and is clearly bad policy. Sections 2802(14) and 2806(a) of the Public Utility Code are clear that "[t]he generation of electricity shall no longer be regulated as a public utility service or function."<sup>42</sup> Generation, whether provided by an EDC or an EGS, is not a public utility service or function and is not regulated by the Commission pursuant to its ratemaking authority. Further, the Competition Act mandates that customers have direct access to a competitive retail generation market.<sup>43</sup> This mandate is based on the legislative finding that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."<sup>44</sup> Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity.<sup>45</sup> Based on these clear mandates in the Competition Act, it would be wholly improper for the Commission to impose some sort of "cap" on the price of generation offered to PECO customers under a CAP shopping plan, whether as part of an aggregation arrangement or otherwise.

Presumably, CAUSE-PA's misguided suggestion of a price-regulated aggregation program is intended to protect CAP customers from the possibility of competitive supply prices

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<sup>41</sup> Electricity Generation Customer Choice and Competition Act, Act 138 of 1996, as amended by Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. §§ 2801 *et seq.*

<sup>42</sup> 66 Pa. C.S. §§ 2802(14) and 2806(a).

<sup>43</sup> 66 Pa. C.S. § 2802(3).

<sup>44</sup> 66 Pa. C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

<sup>45</sup> 66 Pa. C.S. § 2802(5).

exceeding the Price-to-Compare (“PTC”) at some undetermined point in time. Implicit in this recommendation is a paternalistic point of view with regard to low-income customers that erroneously assumes that their level of income renders them incapable of making rational decisions about the products and services they purchase. This is contrary to common sense and the Commission’s explicit finding that CAP customers are perfectly capable of making shopping decisions and should be allowed to do so.<sup>46</sup> Low-income households make decisions everyday about what products they purchase and how much they are willing and able to pay for them. They make choices about food, cell phone plans, cable service, day care and a host of other products and services without the “security” of regulated rates and prices. PECO’s CAP customers are perfectly capable of deciding whether they should accept an offer of a \$50 bonus and a 5% discount on their generation service, and whether they want to return to default service or make another choice when those terms expire. If the Commission approves an aggregation program for PECO’s CAP customers, the program must not feature illegal and unwise price constraints. CAP customers should be trusted to make rational decisions about their generation supply and the value they place on the service.

Besides the legal and policy objections set forth above, a condition that requires that a price always remain at or below a certain level creates a significant price risk for suppliers and will undoubtedly become a barrier to their participation in any CAP aggregation program. Typically, suppliers take the risk of procuring power for the customers they are contracted to serve through short and long-term supply contracts, while the PTC may change significantly on a quarter-by-quarter basis. Having the additional factor of a price limitation imposed on a supplier

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<sup>46</sup> *RMI End State Final Order* at 61

creates more risk and may be a barrier for supplier participation in the CAP shopping program. Therefore, if the Commission decides to implement an aggregation program for PECO's CAP customers, the program should be well designed to eliminate or reduce barriers to participation by customers and suppliers.<sup>47</sup> CAUSE-PA's recommendation for a capped generation price that is "always" at or below the PTC should be rejected as contrary to the Competition Act and the policy of the Commonwealth to have a competitive retail market for electricity.

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<sup>47</sup> Direct Energy St. 1R at 8-9.

III. CONCLUSION

Direct Energy respectfully requests that the Commission issue an Order consistent with Direct Energy's positions and recommendations in this proceeding.

Respectfully submitted,



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