

COMMONWEALTH OF PENNSYLVANIA



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July 26, 2013

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
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RE: Petition of PECO Energy Company for Approval of
Its Default Service Program
(Customer Assistance Program Shopping Plan)
Docket No. P-2012-2283641

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Main Brief in the
above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached
Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Christy M. Appleby".

Christy M. Appleby
Assistant Consumer Advocate
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Enclosures

cc: Hon. Cynthia Williams Fordham, ALJ
Certificate of Service

*169481

CERTIFICATE OF SERVICE

Re: Petition of PECO Energy Company for Approval of Its Default Service Program
(Customer Assistance Program Shopping Plan)
Docket No. P-2012-2283641

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 26th day of July 2013.

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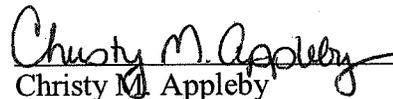
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company :
For Approval of its Default : Docket No. P-2012-2283641
Service Program (Customer Assistance :
Program Shopping Plan) :

MAIN BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION AND PROCEDURAL HISTORY

The Office of Consumer Advocate (OCA) submits this Main Brief in the matter of the Petition of PECO Energy Company for Approval of its Customer Assistance Program Shopping Plan in accordance with the procedural schedule adopted by Administrative Law Judge Cynthia Williams Fordham by Order dated June 14, 2013.

A. Background

On January 13, 2012, at the above docket, PECO Energy Company (PECO or Company) filed a Petition seeking Public Utility Commission (Commission) approval of its Default Service Program II (DSP II) for the period of June 1, 2013 through May 31, 2015. After evidentiary hearings and consideration of Exceptions and Reply Exceptions to the Recommended Decision of Administrative Law Judge Dennis J. Buckley, the Commission entered an Order on October 12, 2012, regarding PECO's DSP II. Petition of PECO Energy Company For Approval of its Default Service Program, Docket No. P-2012-2283641, Order (Oct. 12, 2012) (October 2012 Order). In its October 2012 Order, the Commission directed PECO to develop and implement a plan by January 1, 2014, that allows customers who participate in PECO's Customer Assistance Program (CAP) to purchase their generation supply from Electric Generation Suppliers (EGSs).¹

The Order stated specifically:

18. That PECO Energy Company is directed to develop a plan that will allow its CAP customers to purchase their generation supply from EGSs by January 1, 2014. Towards 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.

See October 2012 Order at 156.

¹ By Secretarial Letter dated January 3, 2013, this deadline was extended to April 1, 2014.

The Commission also separately addressed PECO's Three-Year Universal Service and Energy Conservation Plan. PECO Energy Company 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, Order (April 4, 2013) (2013 Universal Service Order). One of the issues raised in that proceeding was whether PECO's current CAP Rate tiered discount structure should be changed to a Percentage of Income Payment Plan (PIPP) structure. The Commission determined to retain PECO's CAP Rate tiered discount structure and directed PECO to develop a CAP Shopping Plan utilizing the CAP Rate design. Id.

B. Procedural History

On May 1, 2013, at the above docket, PECO filed its Petition of PECO Energy Company for Approval of its Customer Assistance Program Shopping Plan (CAP Shopping Plan) seeking approval of its CAP Shopping Plan. On May 21, 2013, the OCA filed an Answer to the Petition. Also filing Answers to the Petition on May 21, 2013, were the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA). The matter was referred to the Office of Administrative Law Judge to conduct evidentiary hearings. The matter was then assigned to Administrative Law Judge (ALJ) Cynthia Williams Fordham.

On May 28, 2013, a prehearing conference was convened, with the following parties attending: PECO, OCA, Office of Small Business Advocate (OSBA), TURN *et al.*, CAUSE-PA, Direct Energy Services, LLC (Direct Energy), Interstate Gas Supply and First Energy Solutions Corporation. The OCA served the Direct Testimony of Roger D. Colton on June 12, 2013, the Rebuttal Testimony of Mr. Colton on June 26, 2013, and Mr. Colton's Surrebuttal Testimony on

July 2, 2013.² Other Parties submitting testimony included PECO, OSBA, CAUSE-PA and Direct Energy. A hearing was held on July 11, 2013, where pre-served testimony and interrogatory responses were entered into the record by stipulation of the parties.

C. Summary of PECO's Shopping Plan

PECO's CAP Shopping Plan is designed to allow CAP customers to begin shopping for electric generation by April 15, 2014. PECO stated that a CAP Shopping Plan should reflect a balance of the following CAP Shopping Design Principles:

- Ensuring the Plan is based upon the competitive shopping program that is in place for non-CAP customers;
- Maintaining consumer protections for CAP customers;
- Containing Plan costs for the residential customers who pay for CAP;
- Ensuring CAP shopping costs and benefits are clear and measurable; and
- Ensuring full and current recovery of Plan costs.

PECO Petition at ¶ 14.

In order to implement its proposed CAP Shopping Design Principles, PECO proposed the following CAP Shopping Plan:

1. PECO will apply the appropriate CAP discount percentage to a CAP customer's total bill whether or not the customer chooses to shop. The billing approach will be the same as PECO's current practice, except that for customers who shop, the CAP discount will be applied to the EGS charges instead of PECO's price to compare (PTC). PECO Petition at ¶ 17.

2. Participating EGSs must publish their CAP rates on PAPowerswitch.com and in a customer mailing (upon a customer's request via EGS call centers) "to promote rate transparency and help simplify the shopping process for CAP customers." PECO Petition at ¶ 21.

² Roger D. Colton is a principal in the firm of Fisher, Sheehan & Colton, Public Finance and General Economics. Mr. Colton provides technical assistance to a variety of public utilities, state agencies and consumer organizations on rate and customer service issues for telephone, water/sewer, natural gas and electric utilities. Mr. Colton's work focuses on low-income energy issues, and he has testified and published extensively in this area. Mr. Colton's testimonies in this matter were entered into the record on July 11, 2013.

3. Participating EGSs must charge CAP customers a rate that is at or below the PECO PTC for residential customers. PECO Petition at ¶ 20.

4. Participating EGSs must electronically submit a notice of intent to participate as a CAP supplier at least five business days before publishing its CAP rates. PECO Petition at ¶ 22.

5. Participating EGSs that submit such a notice must enroll any CAP customer who requests service from the EGS and cannot discriminate amongst CAP customers. PECO Petition at ¶ 23.

6. Participating EGSs must provide the Commission and PECO confidential reports on the number of CAP customers served and the rates charged in order to facilitate the measurement of the benefits from shopping that are flowed to CAP customers. PECO Petition at ¶ 24.

7. Participating EGSs must use PECO's consolidated billing for all CAP customers. PECO Petition at ¶ 25.

8. PECO also proposes to reconcile its over/under-collections for its Generation Supply Adjustment (GSA) charge on an annual basis instead of the current quarterly basis to limit variation in the PTC for EGSs seeking to price at or below the PTC. PECO Petition at ¶ 36.

PECO estimated that the cost to implement the Shopping Plan will be approximately \$4.6 million consisting of the following: (1) approximately \$300,000 related to customer education initiatives; (2) approximately \$3.8 million related to training and Information Technology (IT) changes to PECO's billing and customer information system (CIS) to facilitate CAP shopping and to calculate the CAP discount; and (3) approximately \$500,000 related to business readiness, including training and business process modifications. PECO Petition at ¶ 30. PECO proposed to recover the customer education costs from residential customers in the Company's current Customer Education Charge rider. *Id.* at ¶ 31. The remaining costs are proposed to be recovered 50% from the EGSs through a 0.3% Purchase of Receivables (POR) discount, and 50% from residential customers, on a non-bypassable basis through the Universal Service Fund Charge (USFC). *Id.* at ¶ 32. PECO proposed to fully recover the implementation costs over one year

and anticipates that the average residential customer bill will increase by approximately \$0.04 per month. PECO Petition at ¶ 34.

II. SUMMARY OF ARGUMENT

The OCA supports PECO's CAP Shopping Plan with certain modifications recommended by the OCA. Overall, the CAP Shopping Plan will allow CAP customers to participate in the retail electric generation market and maintain essential benefits and protections of CAP, particularly the affordable service that is at the heart of CAP. Key components of the CAP Shopping Plan that the OCA particularly supports include: (1) that participating EGSs charge a price to a CAP participant that is at or below the Company's PTC for residential customers; (2) that the appropriate CAP discount percentage be applied to a CAP customer's total bill whether or not the customer chooses to shop; (3) that the EGS CAP prices be published on PAPowerswitch.com and in a customer mailing (upon a customer's requests via EGS call centers); (4) that participating EGSs electronically submit a notice of intent to participate as a CAP supplier at least five business days before publishing its CAP prices; (5) that participating EGSs enroll any CAP customer who requests service from the EGS without discrimination amongst CAP customers; (6) that participating EGSs provide the Commission and PECO reports on the number of CAP customers served and the rates charged in order to facilitate the measurement of the benefits from shopping that are flowed to CAP customers; (7) that participating EGSs use PECO's consolidated billing for all CAP customers; and (8) that reconciliation of its over/under-collections for its Generation Supply Adjustment (GSA) charge be conducted on an annual basis instead of the current quarterly basis to limit variation in the PTC for EGSs seeking to price at or below the PTC. Petition at ¶¶ 17, 21, 20, 22, 23, 24, 25, 36.

While the OCA is generally supportive of PECO's Plan, the OCA submits that some modifications and additions to the Plan are necessary. The OCA recommends the following:

- The CAP Shopping Plan should include the following should be included and used as a framework in finalizing the Plan:

1. The CAP Shopping Plan should allow customers to remain on CAP, meet the payment obligations of CAP, and receive the benefits of CAP;

2. The CAP Shopping Plan should not increase the program costs of CAP to nonparticipants, whether by increasing CAP credits or by increasing CAP administrative costs; and

3. The CAP Shopping Plan should not increase program costs of CAP to nonparticipants by adversely affecting ability-to-pay and thus increasing the costs of nonpayment. OCA St. CAP-1 at 4.

- The CAP Shopping Plan should include the following additional components: (1) prohibition on termination or cancellation fees and (2) implementation of consumer protections to address various contract scenarios.

- The customer education plan should ensure on-going customer education programs that address: (1) how to enter and leave the competitive market and (2) the shopping significance of exiting CAP.

- The CAP Shopping Plan should include the following operational conditions:

- (1) that on-ramps and off-ramps be provided to EGSs for the program subject to appropriate notice and re-entry with a clean slate;

- (2) that the current affordability percentage test (90% for CAP Rates B and C; 88% for CAP Rates D and E) continue to be based on the PECO PTC;

- (3) that the reporting requirements be supplemented to include at least the number of CAP participants who switch to an EGS, the bills they experience, and the CAP shortfall that is generated, and

- (4) that this information be published either on the Commission's website or in the Commission's annual universal service report, or both.

- The costs of the CAP Shopping Plan, except for the customer education costs, be borne by EGSs that benefit from the program. In the event that any costs are charged to residential ratepayers, the costs should be amortized over a three to five year period and should not be recovered as part of the Universal Service Fund Charge (USFC).

The OCA also submits that certain proposals by other parties should not be adopted at this time. Specifically:

- CAUSE-PA's proposed retail aggregation program should not be adopted.
- Direct Energy's proposal to allow EGSs to charge more than the PECO Price to Compare (PTC) should not be adopted.

The OCA submits that PECO's CAP Shopping Plan, as modified by the OCA, will provide a sound framework to allow CAP customer shopping in a manner that will allow customers to remain on CAP, meet the payment obligations of CAP, and receive the benefits of CAP. The Plan, as modified by the OCA, will also ensure that the program costs of CAP to non-participants do not increase.

III. ARGUMENT

A. Overview

In accordance with the Commission's October 2012 Order and the January 3, 2013 Secretarial Letter in this proceeding, PECO has proposed to implement a CAP Shopping Plan for its CAP customers. PECO's CAP is designed to provide assistance to low income customers at or below 150% of the Federal Poverty Level (FPL) so that they can better afford their electric bills. PECO's program has approximately 140,000 residential customers, or approximately 9% of PECO's residential electric customers. PECO St. 1 at 4. PECO's CAP program is structured as a tiered rate discount. Id. As PECO witness Crowe explained: "the discounted rate is designed to help ensure that the electricity 'burden'- the cost of electricity in proportion to household income – is affordable for 90% of CAP customers." PECO St. 1 at 5. PECO's current CAP program has seven tiers, including Tier A, which provides a special rate for customers at 0-25% of the FPL and "extenuating circumstances," and Tiers B through E, which provide increasing discounts ranging from 27% to 93% to create an affordable electric bill. Id.

PECO has proposed a framework of CAP Shopping Principles as the basis for its CAP Shopping Plan. PECO St. 1 at 6-9. Under these Principles, PECO proposes that CAP customers can purchase generation supply from EGSs in the same manner as non-CAP residential customers, and that participating EGSs charge prices to CAP customers which are equal to or lower than the PECO residential PTC in effect. Id. at 9. PECO would not "restrict the form of rates, rate discounts or other promotions offered by EGSs." PECO St. 1 at 10. PECO proposes that if the EGSs elect to participate in the CAP Shopping Plan and to serve CAP customers, the EGSs cannot discriminate between CAP customers and must enroll any CAP customer who applies for service. Id.

PECO also proposed a consumer education plan, which will focus on the benefits of the competitive market for low-income customers, to promote shopping and to provide CAP customers with tools to help them understand and manage their energy bills as a shopping customer. PECO specifically proposed the following: (1) changes to the CAP call center scripts to notify customers of their ability to shop beginning April 15, 2014, with implementation of the education beginning the fourth quarter of 2013; (2) revisions to PECO's Consumer Education Plan mailings to explain that EGSs may not charge rates in excess of PECO's PTC to CAP customers; (3) promotion of CAP shopping through mailings, postcards, brochures, press releases, PECO's website and changes to PECO's current CAP materials; and (4) including customer outreach efforts, web support, community workshops and low income advocate-sponsored events. PECO St. 1 at 12-13.

The OCA supports PECO's proposed CAP Shopping Plan. PECO's Plan is designed to facilitate individual choice of an EGS by CAP customers while at the same time ensuring that the consumer protections for CAP customers and the benefits of CAP are maintained. The OCA submits, however, that some additional features need to be included in PECO's CAP Shopping Plan to fully recognize the practical aspects of CAP and to fully ensure that CAP customers have adequate consumer protection and maintain affordable service. The OCA will discuss these issues below.

Equally important, the OCA submits that some modifications to PECO's Plan proposed by other parties should not be adopted. Specifically, Direct Energy's proposal to remove the design element that requires the participating EGSs to charge a price at or below the PTC should be rejected. Direct Energy's proposal would compromise the affordability of electric service for these most vulnerable customers, contrary to all of the work that has been put into PECO's CAP

over the years. CAUSE-PA's proposal for a retail aggregation program should not be adopted as it does not fully reflect the operational aspects of CAP and moves away from individual retail choice.

The OCA submits that with the adoption of the OCA's proposals, the PECO CAP Shopping Plan should be approved.

B. The CAP Shopping Plan Should Be Modified To Maintain Affordability and Incorporate Essential Consumer Protections and Consumer Education.

1. OCA's CAP Shopping Principles Should Be Adopted To Supplement PECO's CAP Shopping Principles.

As discussed above, PECO has proposed the following CAP Shopping Principles:

- Ensuring the Plan is based upon the competitive shopping program that is in place for non-CAP customers;
- Maintaining consumer protections for CAP customers;
- Containing Plan costs for the residential customers who pay for CAP;
- Ensuring CAP shopping costs and benefits are clear and measurable; and
- Ensuring full and current recovery of Plan costs.

PECO Petition at ¶ 14. The OCA agrees with the basis for these principles and agrees that CAP Shopping Principles should be the foundation upon which PECO's CAP Shopping Plan is built. The OCA submits, however, that PECO's principles are incomplete. The OCA recommends that these principles be broadened to ensure that the fundamental purpose of the CAP to provide affordable service is fully recognized and to ensure that the costs of the CAP paid by non-participants remain reasonable.

In his Direct Testimony, OCA witness Colton recommended that the CAP Shopping Plan include the following principles:

1. The CAP Shopping Plan should allow customers to remain on CAP, meet the payment obligations of CAP, and receive the benefits of CAP;

2. The CAP Shopping Plan should not increase the program costs of CAP to nonparticipants, whether by increasing CAP credits or by increasing CAP administrative costs; and

3. The CAP Shopping Plan should not increase program costs of CAP to nonparticipants by adversely affecting ability-to-pay and thus increasing the costs of nonpayment.

OCA St. CAP-1 at 4. The OCA's recommendations regarding PECO's proposed CAP Shopping Plan are based upon each of these three principles.

PECO witness Crowe argued that the OCA's CAP principles are already encompassed within PECO's CAP Shopping Principles and requested that the Commission adopt PECO's principles without modification. PECO St. 1-R at 3. The OCA submits, however, that PECO's CAP Shopping Principles do not clearly capture the fundamental purpose and balance of CAP as the principles recommended by OCA witness Colton. OCA witness Colton explained the differences between PECO's CAP Shopping Principles and the OCA's principles as follows:

In particular, OCA Principle #1 and OCA Principle #3 provide important protections for CAP customers and non-CAP customers. While OCA Principle #2 reasonably could be found to be within the PECO principle to contain plan costs to protect customers who pay for CAP costs, OCA Principles #1 and #3 clearly state these fundamental protections.

OCA Principle #1 focuses on affordability, not more broadly on "consumer protections." Ensuring that customers can remain on CAP, meet their payment obligations, and receive the benefits of CAP, addresses the full range of CAP benefits. Obtaining an affordable bill through the CAP Rate discount and obtaining arrearage forgiveness credits are but two of those CAP benefits. Earning arrearage forgiveness is not a "consumer protection" provided to CAP participants, it is a program benefit that must be earned (and which cannot be earned unless rates- and therefore bills- remain affordable as required by the OCA Principle (but not the PECO principle)).

Similarly, OCA Principle #3 focuses on affordability and preventing adverse impacts on CAP participants' ability-to-pay. Ability-to-pay is not simply a means to contain plan costs to nonparticipants who pay the costs of CAP. It goes directly to the essential nature of what CAP is and why it exists. Indeed, the "costs of nonpayment" are not just CAP costs as referenced in the PECO

principle. The costs of nonpayment include credit and collection expenses, working capital, bad debt, and the like that CAP is intended to avoid.

OCA St. CAP-1SR at 3.

The OCA submits that its recommended principles supplement PECO's CAP Shopping Principles and "provide an important, direct articulation of the key principles needed to guide a CAP shopping program." Id. OCA witness Colton testified:

The OCA principles speak to maintaining the heart of the CAP program. Principle #1 addresses affordability and the CAP participant's ability to make payments and continue to receive CAP benefits. Principle #3 addresses ability-to-pay and maintaining the effectiveness of CAP in achieving its cost reduction function (not a control of CAP program costs, as referenced by the PECO principle, but the costs of nonpayment).

OCA St. CAP-1SR at 3. The OCA further submits that the OCA's principles are critical to an appropriate review of the PECO CAP Shopping Plan and should be adopted in addition to PECO's CAP Shopping Principles.

2. The CAP Shopping Plan Must Be Designed To Maintain Or Improve Affordability And Include Protections for CAP Customers.

a. Introduction

PECO has included several consumer protections in the Plan that are essential components to a properly designed CAP Shopping Plan. The OCA supports all of these protections including: (1) that participating EGSs charge a price to a CAP participant that is at or below the Company's PTC for residential customers; (2) that the appropriate CAP discount percentage be applied to a CAP customer's total bill whether or not the customer chooses to shop; (3) that the EGS CAP prices be published on P APowerswitch.com and in a customer mailing (upon a customer's requests via EGS call centers); (4) that participating EGSs electronically submit a notice of intent to participate as a CAP supplier at least five business days before publishing its CAP prices; (5) that participating EGSs enroll any CAP customer who

requests service from the EGS without discrimination amongst CAP customers; (6) that participating EGSs provide the Commission and PECO reports on the number of CAP customers served and the rates charged in order to facilitate the measurement of the benefits from shopping that are flowed to CAP customers; (7) that participating EGSs use PECO's consolidated billing for all CAP customers; and (8) that reconciliation of its over/under-collections for its Generation Supply Adjustment (GSA) charge be conducted on an annual basis instead of the current quarterly basis to limit variation in the PTC for EGSs seeking to price at or below the PTC. Petition at ¶¶ 17, 21, 20, 22, 23, 24, 25, 36.

The OCA submits, however, that additional consumer protections are needed to ensure that affordability is maintained for CAP customers. The OCA submits that the cornerstone of the CAP Shopping Plan must be maintaining or improving affordability for CAP customers. The program must be designed to allow CAP customers to participate in the retail electric generation market, but at the same time, it must also include essential consumer protections to preserve CAP customers' ability to pay their bills in a timely fashion and maintain the benefits of participation in CAP.

b. The CAP Shopping Plan Price Must Ensure That Affordability For CAP Customers Is Maintained.

The CAP Shopping Plan is a program that is designed to allow CAP customers to participate in the retail generation supply market but retain the benefits and protections of CAP. As part of this program, EGSs that choose to participate (Participating EGSs), would agree to charge a price to a CAP Participant that is at or below the Company's PTC. PECO St. 1 at 9. EGSs are not restricted as to the form of rates, rate discounts, or other promotions that they choose to offer to CAP participants. PECO St. 1 at 10. OCA witness Colton agreed with this feature of PECO's Plan and identified it as a key element in maintaining affordability for CAP

customers and ensuring that the costs of CAP are not increased. Direct Energy witness Kallaher objected to this element of PECO's Plan. As discussed below, Direct Energy's arguments must be rejected. This feature of PECO's Plan is at the heart of the CAP and the CAP Shopping Plan. See generally, OCA St. CAP-1. This feature must be approved.

The OCA submits that PECO's proposal to require Participating EGSs to charge CAP customers a price that is at or below PECO's PTC is reasonable, maintains essential affordability for low-income CAP customers, and ensures that the program costs borne by other customers do not increase. The key principle behind the establishment of CAP rates is to provide low-income customers with affordable electric generation service. CAP customers are enrolled in the program specifically because they cannot afford to pay PECO's full residential tariff rate. The CAP Rate discount is specifically designed to achieve an affordable bill for the CAP participants. Allowing EGSs to charge more than PECO's PTC would undo this essential tenet of PECO's CAP Rate program and the changes ordered by the Commission in PECO's 2013 Universal Service Order aimed at improving CAP customer affordability. The OCA submits that this part of PECO's CAP Shopping Plan achieves the OCA's first CAP shopping principle that the CAP Shopping Plan should allow customers to remain on CAP, meet their payment obligations in CAP and receive the benefits of CAP.³

OCA witness Colton addressed how the CAP Shopping Plan would work within PECO's seven tiered CAP Rate structure and would fit within the OCA's principles of CAP shopping. OCA witness Mr. Colton testified:

I conclude that to allow an EGS to charge prices higher than the PTC would violate each of the CAP Shopping Principles articulated above. The PUC recently determined that, at least for now, PECO's multi-tiered CAP Rate discount will serve as a retail shopping platform for CAP Rate participants. PECO will continue to provide discounts as currently structured. Under this approach, to the

³ It also achieves OCA Principles 2 and 3.

extent that a CAP customer engages in retail shopping, and achieves a price lower than the PTC, the benefits will redound to the CAP Rate participant in proportion to the discount provided on the kWh subject to the discount off of the PTC. In addition, to the extent the CAP Rate participant receives a lower price, CAP non-participants will see a lower cost for the program through reduced CAP credits (known as the “CAP shortfall”) under PECO’s proposal. Conversely, to the extent that a CAP Rate participant engages in retail shopping, but receives a higher price, the burden of the ineffective shopping will fall on the participant, since the CAP Rate discount is based on the PTC, not on the EGS price. In addition, to the extent that a CAP Rate participant engages in retail shopping, but receives a higher price, the costs of the CAP to non-participants will increase through higher CAP credits.

OCA St. CAP-1 at 5. (Footnote omitted).

As noted, Direct Energy opposed PECO’s proposal that EGSs charge CAP customers a price that is equal to or less than the Company’s PTC and instead, proposes that EGSs “treat CAP customers as one would treat other customers.” Direct Energy St. 1 at 4, 6. Without PECO’s feature, however, customers could be charged prices higher than the PTC. The OCA submits that charging a price higher than the PTC would adversely affect the ability of PECO CAP customers to pay their bills; would undo the changes just accomplished in the 2013 Universal Service Order that improved CAP customer affordability; and would increase the costs of the CAP to non-CAP residential ratepayers.

OCA witness Colton explained the deleterious impact on customers if the EGSs charged prices higher than the PTC:

Allowing an EGS to charge rates higher than the PTC would violate the principle that retail shopping should not impede a customer’s ability to meet the payment obligations of CAP and receive the benefits of CAP. Charging EGS rates that are higher than the PTC would impose higher total bills on CAP customers. Higher bills, in turn, would represent higher home energy burdens as a percentage of income. The very nature of CAP recognizes that as burdens increase, payment difficulties increase as well. Considerable attention has been devoted to the design of PECO’s CAP to ensure that bills do not generate unaffordable burdens.

OCA St. CAP-1 at 6.

In PECO's recent 2013 Universal Service and Conservation Plan proceeding, the parties discussed the fact that PECO's CAP customers continue to have difficulty in achieving affordable bills under the current CAP Rate design. OCA witness Colton explained:

PECO continues to have difficulty in achieving affordability for its CAP Rate participants. PECO's CAP Rate program continues to fall short of the objective of meeting the PUC's affordability guidelines to the maximum extent practicable. The PECO Universal Service Evaluation (October 2012) reports that, despite the 90% "rule" that was adopted to govern the establishment of CAP Rate discount levels, 30% of CAP Rate participants did not achieve a home energy burden that was affordable as defined by the guidelines prescribed by the PUC. (Apprise, at 99). While the proportion of CAP Rate customers achieving an affordable burden improved under the seven-tier CAP Rate structure PECO adopted, the improvement was slight (from 44% falling short of the PUC guidelines to 30% falling short of the PUC guidelines). (APPRISE at 99). Increasing bills by allowing EGS prices to exceed PECO's PTC would exacerbate this problem.

OCA St. CAP-1 at 6-7. (Footnotes omitted).

The OCA is concerned about the impact of prices on both the "incidence of affordability" and the "depth of affordability" for CAP customers. OCA witness Mr. Colton explained:

When the PUC recently considered the structure of PECO's CAP Rate program, the Company and I agreed that the concern about the unaffordability of CAP Rate bills involves not simply the *incidence* of unaffordability, but the *depth* of affordability as well. It is simply not appropriate to say that someone who falls \$200 short of having an affordable bill is in the same position as someone who falls \$20 short. While at some level, both bills may still be labeled as "unaffordable," it is accurate to assert that these two program participants stand in the same position relative to affordability. Allowing an EGS rate to exceed the PTC would increase not merely the incidence of unaffordability, it would increase the depth of unaffordability for PECO's CAP participants as well. The reason low-income customers participate in PECO's CAP is because they cannot afford to pay their annual home energy bills at PECO's PTC rates. Allowing EGS prices to *increase* above the PTC for these customers with a demonstrated inability-to-pay is contrary to the fundamental objective of the CAP.

In sum, PECO's efforts to ensure that competitive shopping does not undo efforts to structure CAP rates to promote affordability, and thus maintain the ability of CAP customers to meet their month-to-month payment obligations, and to receive the full range of CAP benefits, is reasonable.

Id. at 7-8. The purpose of PECO's CAP is to improve the affordability of electric service for low-income residential customers. OCA witness Mr. Colton stated that improved affordability is achieved by "having the Company provide, for prescribed usage levels, discounts that are sufficient to reduce the overall bill for service to an affordable percentage of income." Id. at 8.

Direct Energy's proposal to permit EGSs to charge CAP customers a higher rate than the Company's PTC would fundamentally undo the affordability principle and would conflict with established CAP protections. OCA witness Mr. Colton further explained:

The PTC, in other words, has established the baseline of affordability in the PECO service territory. If competitive EGS prices are *less than* the PTC, affordability will improve (i.e., both the incidence and the depth of unaffordability will decrease.) In contrast, if competitive EGS prices are greater than the PTC, affordability will degrade (i.e., both the incidence and depth of unaffordability will grow). Accordingly, it is appropriate to consider whether competitive EGS prices are higher than or less than the PTC in determining the impact of the PECO CAP Shopping Plan on affordability (and thus on universal service).

OCA St. CAP-1R at 7.

Moreover, allowing an EGS price to exceed the PTC would increase the costs of the program to CAP non-participants in at least two ways. First, it would increase the CAP shortfall which is passed through to other customers in the Universal Service Fund Charge.⁴ Second, increased CAP bills can result in other cost increases for the program. OCA witness Mr. Colton testified:

Allowing an EGS to charge a rate that exceeds PECO's PTC would adversely affect CAP participants' ability-to-pay, which would result in increased credit and collection costs, working capital and/or bad debt expense. These increased costs of nonpayment would be borne by all residential PECO ratepayers through an increase in the Company's overall revenue requirement. Given that one purpose of CAP is to help the Company control the costs of nonpayment, PECO's efforts to ensure that competitive shopping does not frustrate or impede this objective is reasonable.

⁴ The CAP shortfall, or CAP credit, represents the difference between a CAP participant's bill at the full rate or price and the bill with the discounted rate or price.

OCA St. CAP-1 at 10.

As such and for all of the reasons discussed above, the OCA submits that PECO's proposal that Participating EGSs charge CAP customers a rate that is at or below the Company's PTC should be adopted.

c. The OCA's Proposed Additional Consumer Protections Should Be Adopted.

PECO has included several consumer protections in its Plan that are essential components to a properly designed CAP Shopping Plan. The OCA supports all of these protections including: (1) that participating EGSs charge a price to a CAP participant that is at or below the Company's PTC for residential customers; (2) that the appropriate CAP discount percentage be applied to a CAP customer's total bill whether or not the customer chooses to shop; (3) that the EGS CAP prices be published on PEPowerswitch.com and in a customer mailing (upon a customer's requests via EGS call centers); (4) that participating EGSs electronically submit a notice of intent to participate as a CAP supplier at least five business days before publishing its CAP prices; (5) that participating EGSs enroll any CAP customer who requests service from the EGS without discrimination amongst CAP customers; (6) that participating EGSs provide the Commission and PECO reports on the number of CAP customers served and the rates charged in order to facilitate the measurement of the benefits from shopping that are flowed to CAP customers; (7) that participating EGSs use PECO's consolidated billing for all CAP customers; and (8) that reconciliation of its over/under-collections for its Generation Supply Adjustment (GSA) charge be conducted on an annual basis instead of the current quarterly basis to limit variation in the PTC for EGSs seeking to price at or below the PTC. Petition at ¶¶ 17, 21, 20, 22, 23, 24, 25, 36.

The OCA submits, however, that there are several other important consumer protections that need to be included in PECO's CAP Shopping Program. These include: (1) prohibition on termination or cancellation fees and (2) implementation of consumer protections to address various contract scenarios.

i. Cancellation or Termination Fees Should Be Prohibited.

PECO proposed to allow cancellation or termination fees to be charged to CAP customers. PECO St. 1 at 10. The OCA submits that the imposition of cancellation or termination fees should not be permitted as part of the CAP Shopping Plan. OCA St. CAP-1 at 18.

The OCA submits that PECO's proposal to allow termination and cancellation fees and to allocate the responsibility for collection to the EGS overlooks the adverse impacts on affordability that the fees would have. A CAP customer's affordability is driven by the total bill received by the CAP customer, not just by the customer's consumption charges. Additional fees such as termination or cancellation fees (no matter which entity bills for them) would increase the overall bill and would "impede the customer's ability to switch to a less expensive service provider, [and] affect the affordability of service as much as high kWh charges affect the affordability." OCA St. CAP-1 at 18. OCA witness Colton explained the impact as follows:

To the extent that an EGS imposes a termination or cancellation fee, the dollars charged would divert scarce CAP resources from the payment of current bills, thus violating CAP shopping principles #1 and #3 above. In this regard, it does not matter who is charged with collecting the termination or cancellation fee. The point is not who is responsible for collection; the point is the drain on CAP participant resources represented by the additional financial obligation.

Id.

PECO witness McCawley testified that EGSs should be allowed to offer enrollment incentives and utilize termination fees as a means to recoup incentives in the event that the CAP

customer switches to another supplier or otherwise terminates his contract with an EGS. PECO St. 2-R at 5. According to Mr. McCawley, the EGS would be solely responsible for the collection of such fees and penalties. Id. The OCA submits that Mr. McCawley has missed the critical issue -- the impact of such early termination fees or penalties on the affordability of service. OCA witness Mr. Colton testified:

The imposition of termination fees and penalties would represent a drain on the limited resources of CAP participants, thus making fewer resources available to pay bills for current service.

As I discussed above, the Commission has considered the interrelationship between CAPs and the competitive acquisition of generation supply for many years. In its 1997 CAP Policy Statement, the Commission said:

As a general policy matter, the Commission supports CAP participants acquiring supply in the competitive market and allowing competitive suppliers to be involved in providing electric supply to CAP participants...As part of their restructuring plans, parties should develop workable designs for how CAP participants can be involved in the competitive market...Any program design that involves CAP participants acquiring supply in the competitive market should meet the following goals:...maintaining customer affordability.

The Commission did not abrogate the notion of maintaining affordability so long as it was not the electric distribution utility who was responsible for collecting the increased prices. Instead, the Commission was quite explicit in stating that “*any* (emphasis added) program designs that involve CAP participants acquiring supply in the competitive market should...maintain...customer affordability.” Mr. McCawley does not demonstrate how pushing the collection responsibility for termination penalties and fees onto the EGS yields compliance with the 1997 CAP Policy Statement.

OCA St. CAP-1SR at 7-8.

The OCA recommends that due to the harmful impact on CAP customers’ overall bills and affordability, EGSs should not be permitted to assess termination or cancellation fees on CAP customers as part of the CAP Shopping Plan.

ii. Consumer Protections Should Be Developed To Address Various Contract Scenarios.

PECO did not specifically address the issue of a customer leaving or entering CAP on existing contracts with EGSs. As Mr. Colton discussed in his Direct Testimony, there is significant turnover in PECO's CAP. Mr. Colton testified regarding the level of PECO's historic turnover:

The most recent evaluation of the PECO CAP Rate program found that, to the extent that PECO CAP participants continued to receive bills from PECO, those bills continued to be CAP bills (APPRISE, at 95-96). However, the APPRISE evaluation reported that of the 134,896 customers who participated in CAP during 2011, only 37 percent (50,333) were in the program for the full year. (*Id.*). The churn in the program, in other words, is substantial. Of the 134,896 customers who received a CAP bill at some point in 2011, only 82,941 received a PECO bill at all in December 2011. Of those 82,941 customers who received a PECO bill of some type during December 2011, only 74,884 received a CAP bill in December.

OCA St. CAP-1 at 16. As a result of this significant turnover, many customers continuously cycle in and out of the CAP.

OCA witness Colton further testified regarding the impact this turnover would have on a shopping customer who is entering or leaving CAP:

There is a need to consider the interaction between the time period for which a low-income customer is enrolled in CAP and the contract period during which the customer will take EGS service because a low-income customer may leave CAP before the EGS contract expires.

There is no reason to expect a customer to enroll in CAP *and* to switch to a competitive generation supplier in the same month. A qualified low-income customer may enroll in PECO's CAP Rate at any point of time in the year. With limited exceptions not relevant here, a PECO CAP customer enrolls in the program for a two-year period before that customer must once again verify household income to remain in the program. A customer, however, may switch to a competitive generation supplier at any point in time.

OCA St. CAP-1 at 12 (Footnote omitted). The OCA recommends changes to PECO's proposal regarding the interaction between a CAP customer's enrollment period and the EGS contract

term as customers cycle in and out of CAP. See OCA St. CAP-1 at 12. This practical reality of CAP needs to be fully addressed in the CAP Shopping Plan to ensure that customers are not harmed by the CAP Shopping Plan.

The OCA recommends that the CAP Shopping Plan address several scenarios of EGS contracts, *i.e.* when: (1) a customer with an existing EGS (non-CAP) contract enrolls in CAP; (2) a CAP customer with an EGS (CAP) contract leaves CAP, and (3) an EGS (CAP) contract expires and the customer is no longer in CAP. Each of these circumstances requires special attention under the CAP Shopping Plan.

With respect to scenario one, when a customer with an existing EGS (non-CAP) contract enrolls in CAP, the OCA submits that customer should immediately be moved to an EGS (CAP) contract. A customer who is enrolling in CAP is by definition having difficulty affording electric generation service at PECO's full residential tariff rate, let alone at a rate that is greater than the PTC. The CAP contract will provide the assurance that the customer receives the appropriate discount and would pay no more than they otherwise would under the PECO PTC. This captures the benefit of CAP for this entering customer.

As to scenario two when a CAP participant leaves CAP before the expiration of his or her EGS (CAP) contract, the OCA submits that the EGS (CAP) contract should continue until it expires. OCA St. CAP-1 at 19. The CAP customer may leave the program for a variety of reasons that may have nothing to do with their ability to afford their bill. For example, a customer may no longer be eligible to participate in CAP if they have failed to timely recertify or if the customer fails to make timely payments, but this customer may still be in the same situation that led them to enroll in CAP. For this reason, continuing the protections in the CAP contract until it expires can smooth the transition out of the CAP.

In the third scenario presented, where the EGS (CAP) contract expires and the customer is no longer in CAP, the OCA submits that the customer must now enter into a new relationship with the EGS and enter into a new contract. In this circumstance, the new contract must receive the affirmative consent of the customer because it no longer contains the same terms and conditions as the CAP contract. OCA witness Mr. Colton explained as follows:

A residential customer who is a CAP participant and who has been taking competitive supply through a competitive EGS presents a special contract situation to the EGS. The CAP participant is not merely taking competitive supply. The customer is participating in a particular program, of which shopping is one part. An EGS contract in the absence of CAP and its protections [EGS (no-CAP)], in other words, is a different contract than an EGS contract that incorporates the various CAP protections [EGS (CAP)]...

If the customer is no longer in CAP when the contract expires and the EGS offers a contract without the CAP protections, that customer will be entering into a new, separate, non-CAP EGS supply contract as opposed to renewing the EGS (CAP) contract. The EGS (no-CAP) contract, in other words, is not a continuation or renewal of the EGS (CAP) contract; nor is it an "amendment" to an existing contract if the CAP protection features are removed. The EGS (no-CAP) contract without CAP protection is instead an entirely new contract with an EGS. As a result, for the EGS to provide service to that customer under the new EGS (no-CAP) agreement without CAP protection, the EGS must gain affirmative customer consent to enter into the new agreement.

Id. at 19-20. (Footnote omitted).

The OCA recommends that these three CAP consumer protections be addressed in PECO's CAP Shopping Plan and that the OCA's recommendations be adopted.

d. Consumer Education

PECO's proposal recognized that an essential tenet of a successful CAP Shopping Plan is customer education and therefore, proposed several customer education initiatives. PECO specifically proposed the following: (1) changes to the CAP call center scripts to notify customers of their ability to shop beginning April 15, 2014, with implementation of the education beginning the fourth quarter of 2013; (2) revisions to PECO's Consumer Education

Plan mailings to explain that EGSs may not charge rates in excess of PECO's PTC; (3) promotion of CAP shopping through mailings, postcards, brochures, press releases, PECO's website and changes to PECO's current CAP materials; and (4) including customer outreach efforts, web support, community workshops and low income advocate-sponsored events. PECO St. 1 at 12-13.

The OCA agrees that customer education is fundamentally important to the implementation of the CAP Shopping Plan and is akin to the need for education about CAP itself. The OCA has some specific recommendations with regard to additional consumer education that is needed, specifically regarding: (1) how to enter and leave the competitive market and (2) the shopping significance of exiting CAP. The OCA also recommends that CAP customer education be on-going due to the significant turnover in the program.

First, education must take into account the significant turnover that occurs in PECO's CAP participant population. As noted above, PECO's CAP experiences significant customer turnover with only about 37% of the customers remaining in the program for a full year. OCA St. 1 at 16. The OCA recommends that due to this turnover, consumer education should be structured to ensure that every CAP participant, whether newly enrolled in CAP or returning to CAP after a period of absence, receives all important CAP shopping messages.

As to the content of the education plan, the OCA submits that CAP participants should be educated both on how to enter the competitive market and on how to leave the competitive market to return to PECO's default service or to move to another competitive service provider.

OCA witness Mr. Colton explained:

To intelligently and effectively operate within the competitive market, in other words, customers must know all the choices they have and the means to pursue those choices. A report prepared by Penn State University for the Pennsylvania PUC has labeled this "how-to" information "effective knowledge" within the

context of low-income energy assistance. This consumer education is directed not simply to the “whether” to make a choice, but also to the “how” to make a choice, including the choice to return to PECO or to move to another competitive supplier.

The need for this education is similar to the concerns raised by the Commission this year about PECO’s CAP generally. In looking at PECO’s CAP enrollment process, the Commission indicated that consumers should be educated not simply about the fact of CAP participation, but also about both the consumer’s rights and responsibilities of participation, including the risks of participation. The same set of concerns about a consumer having sufficient education applies to PECO’s CAP shopping as much as it does to the CAP program itself. Consumers should be told about their rights, responsibilities, risks and benefits regarding shopping.

OCA St. CAP-1 at 13-14 (Footnotes omitted).

The OCA submits that consumer education must also fully inform customers of the shopping significance of a decision to exit CAP. Regarding PECO’s CAP turnover, OCA witness Mr. Colton concluded as follows:

[c]onsumer education should be directed toward customers who leave CAP but who remain on the PECO system. Customers leaving CAP should be informed of the shopping significance of their decision to leave CAP. While under CAP, customers who take service from an EGS are assured that their EGS rate will not exceed PECO’s PTC, should the customer renew his or her EGS contract or enter a new contract as a CAP *non*-participant that customer will lose the price protection he or she had experienced as a CAP customer. The customer should be made aware in clear, concise terms of that change in status.

Id. at 16-17. Based on the foregoing, the OCA recommends that in addition to the customer education described in the CAP Shopping Plan, PECO develop on-going customer education programs that address: (1) how to enter and leave the competitive market and (2) the shopping significance of exiting CAP.

3. Operation of the CAP Shopping Program Design.

a. EGS Notice to Participate.

Under PECO’s proposal, an EGS would be required to submit a notice to participate in the CAP Shopping Plan at least five days before publication of its CAP rates. Direct Energy

witness Kallaher stated that Direct Energy did not oppose this notice to participate requirement but requested that the “Commission should ensure that there are appropriate on-ramps and off-ramps for EGSs serving CAP customers.” Direct Energy St. 1 at 8. Specifically, Mr. Kallaher testified:

The Commission should ensure [that] an EGS has sufficient flexibility to exit the program, and therefore terminate a contract and move the customer back to default service under terms and conditions in the contract, without penalty to the customer or harm to the EGS.

Id. The OCA agrees with Mr. Kallaher that an EGS should have appropriate off-ramps and on-ramps to allow the EGS to exit the CAP Shopping Program.

The OCA understands the possible need for EGSs to leave the CAP market and have an available “off-ramp” under PECO’s CAP Shopping Plan. OCA witness Mr. Colton testified:

Allowing an EGS to determine that, at some level of PTC, maintaining CAP affordability by keeping CAP prices below that PTC poses an unacceptable risk, or that maintaining affordability by keeping its prices below that PTC creates unacceptable business harms, to such an extent that the EGS would seek to exit the retail market for CAP participants rather than to maintain the Commission’s affordability protections, is an acceptable trade-off for the assurance that EGS prices to CAP participants will not degrade the PUC’s affordability protections.

OCA St. CAP-1R at 12.

The OCA recommended, however, that the Commission impose some necessary operational conditions. OCA witness Mr. Colton testified:

First, the EGS should provide reasonable notice to PECO that it seeks to abrogate its decision to participate in serving the CAP retail market. Second, once an EGS decides to exit the CAP market, and cede CAP customers back to default service, that EGS should be required to remain out of the market for a reasonable period of time. An EGS should not, in other words, have the right to enter the CAP market in Quarter 1, exit the CAP market in Quarter 3, only to re-enter the CAP market in Quarter 5. Finally, there should not be an automatic re-enrollment of the same CAP customers ceded back to default service to an EGS that re-enters the CAP market. Once an EGS exits the CAP market, it may re-enter that market, after a reasonable stay-out period, but it should make its re-entry with a clean slate.

OCA St. CAP-1R at 12-13. (Footnote omitted). In response to discovery, Direct Energy specifically agreed that:

When an EGS exits PECO's CAP Shopping Program those customers would return to default service. If an EGS re-enters the Program at a later date an EGS would not be entitled to re-enroll those same customers. The EGS would have to affirmatively re-enroll them again through a new contract.

OCA Hearing Exh. 2 (Amended Response of Direct Energy Services, LLC to OCA Interrogatories, Set I, No. 2).

As such, the OCA recommends that with the conditions identified by OCA witness Colton and agreed to by Direct Energy witness Mr. Kallaher be adopted.

b. Determination of PECO's CAP Rate Discount Percentage.

The OCA submits that the fact that some PECO CAP customers may effectively engage in retail shopping for generation service should not be used by PECO in any future determination of the level of the discount to be applied to the CAP Rate bill. PECO's income-based tiers are designed to achieve affordability for 90% of the CAP Rate participants in CAP Tiers B and C and 88% affordability for CAP Tiers D and E. OCA St. CAP-1 at 26.⁵ As OCA witness Colton explained: "according to PECO, the electric rates, and thus the percentage discounts needed to reach the affordability level (90% of Tiers B and C; 88% for Tiers D and E), will be adjusted annually based upon market conditions." *Id.* at 27. The OCA submits that PECO's proposed affordability percentages should not be changed based upon lower EGS shopping prices and should be premised on the assumption that all customers are taking service at the PECO PTC.

OCA witness Mr. Colton explained:

PECO should *not*, in other words, be allowed to argue that a higher percentage of CAP Rate participants are achieving affordability by accessing less expensive

⁵ The OCA notes that the OCA has not included CAP Rate A as it is designed for customers at 0-25% of the FPL and is based on a very low income and "extenuating circumstances." OCA St. CAP-1 at 26, fn. 14.

EGS prices and, thus, implement a downward adjustment to the percentage discount (reasoning that a lower discount could be applied and still achieve the 90%/88% affordability targets). Should that be allowed to occur, CAP participants who either do not choose to shop for generation service, or who cannot access the competitive electric market for any reason, would experience an increase in their CAP Rate bill since a lower CAP Rate discount is applied. This higher CAP Rate bill would occur not because of anything these customers did, but rather because other customers chose to participate in the competitive market.

Allowing PECO to adjust the CAP Rate discount based on prices other than the PTC would violate the CAP Shopping Principle that the Company's CAP Shopping Plan should not increase bills to CAP participants not engaged in retail shopping. When PECO determines the rate discounts needed to achieve affordability, the Company should determine those discounts based exclusively on the use of the PTC as the price paid by CAP participants to which the CAP discount is applied.

OCA St. CAP-1 at 27-28.

As such, the OCA recommends that PECO's current affordability percentage test (90% for CAP Rates B and C; 88% for CAP Rates D and E) be based on the PECO as it currently is and not be changed pursuant to lower competitive EGS prices.

c. PECO's Proposal To Reconcile the GSA Annually for Residential Customers Is Reasonable.

PECO witness Cohn explained that because billing cycles are not perfectly aligned with the incurrence of generation supply costs, billing cycle lag occurs, which produces significant fluctuations in the PTC that are not directly related to generation supply costs. PECO St. 3 at 10. In order to smooth out such fluctuations in the PTC, PECO proposed to reconcile its Generation Supply Adjustment surcharge (GSA) over/under-collections for residential customers on an annual basis rather than quarterly.⁶ Id. PECO also proposed to advance its residential PTC filing schedule by 30 days. Id. at 9. According to PECO witness Cohn, these changes are intended to "facilitate EGSs' obligations to track PECO's default service rate and reduce the price charged to

⁶ Since the Commission's Regulations require at least quarterly adjustments to default service rates for customers with load requirements up to 500 kW, PECO also seeks a waiver of 52 Pa. Code §§ 54.187(i) and (j). PECO St. 3 at 12.

CAP customers (if necessary).” Id. at 9-10. Further, Mr. Cohn testified that smoothing out fluctuations in the PTC will send clearer pricing signals to both customers and EGSs. PECO St. 3 at 10. See also PECO Exh. ABC-6. Although the Commission rejected this same proposal in its October 2012 Order,⁷ Mr. Cohn testified that the Company’s concerns regarding wild swings in the PTC would be amplified in the CAP Shopping Plan, where EGSs would be required to adjust prices to PECO’s CAP customers based on the PTC. PECO St. 3 at 11-12.

OCA witness Colton supports PECO’s proposal. See OCA St. CAP-1 at 22-23. The OCA submits that although this issue was litigated in PECO’s underlying DSP II case, the issue requires a second review in the context of PECO’s CAP Shopping Plan. Reducing significant fluctuations in the Company’s quarterly PTC that are not based on market forces is a sensible simplification of the program for both EGSs and CAP customers. As Mr. Colton explained:

PECO’s CAP Rate program, as with other CAP programs throughout the Commonwealth, is based on a principle of annual affordability. The discount percentages are calculated based on what percentage is needed to allow 90% of PECO CAP participants in Tiers B and C (88% in CAP Tiers D and E) to achieve bills within the Commission’s affordability range on an annual basis. The receipt of LIHEAP by CAP heating customers is based on, and applied against, an annual bill. Perhaps unlike non-CAP residential customers, who may or may not shop based on monthly bills, the entire structure of CAP is based on total annual bills.

To maintain a consistency with the annual approach to bill calculations for purposes of CAP, as well as to maintain consistency with the annual affordability principles that serve as the foundation of the PECO CAP program in general, PECO should be allowed to engage in an annual GSA reconciliation of over/under collections.

OCA St. CAP-1 at 22-23.

Direct Energy witness Kallaher opposed PECO’s annual GSA reconciliation proposal, stating that it conflicts with the Commission’s recommendation in its Retail Markets

⁷ See October 2012 Order at 56.

Investigation that electric companies move to quarterly procurements.⁸ Direct Energy St. 1 at 13. Mr. Kallaher admitted, however, that PECO's proposal would have benefits if the Company's CAP Shopping Plan is adopted. Direct Energy St. 1 at 13.

In his Rebuttal, PECO witness Cohn responded to Direct Energy's concerns, testifying that an annual reconciliation of the GSA would not change the schedule of supply procurements or the frequency that residential default service rates are adjusted. PECO St. 3-R at 7. In his Rebuttal, OCA witness Colton testified that Mr. Kallaher fails to offer a viable solution to alleviate the significant fluctuations in the PTC and maintain the Commission's affordability protections for CAP customers. OCA St. CAP-1R at 15.

The OCA submits that because PECO's PTC is subject to significant fluctuations due to billing lags and not market forces, it is necessary to smooth out such fluctuations. Smoothing out wild fluctuations in the PTC will make shopping easier for all residential customers, including CAP customers that will be entering the market for the first time. In addition, it would be easier for EGSs to participate in PECO's CAP Shopping Plan because they could better calculate the cost to serve these customers over longer periods of time. The OCA further submits that PECO's proposal will make the Company's CAP Shopping Plan easier to navigate for EGSs and customers, thereby encouraging enhanced participation by both EGSs and customers. As such, PECO's proposal to move to annual reconciliation of the GSA for residential customers should be adopted.

d. PECO's CAP Shopping Plan and Universal Service Reporting.

PECO's Shopping Plan requires that participating EGSs provide the Commission and PECO with periodic reports. PECO initially proposed that these reports be confidential and

⁸ See Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service, Docket No. I-2011-2237952, Final Order at 41-43 (Feb. 15, 2013).

require that EGSs only provide the number of CAP customers served and the rates charged in order to facilitate the measurement of benefits from shopping that are flowing to CAP customers. See PECO Petition at ¶ 24. The OCA agreed that such a reporting requirement is appropriate in order for the Commission to assess the benefits from shopping to CAP customers. OCA witness Colton recommended, however, that additional information be provided in the reports and that the Commission make the information public. Specifically, Mr. Colton recommended the following:

The addition I recommend is that the Commission aggregate the data collected from the various EGSs serving PECO's CAP customers, including the number of CAP participants who shop, the bills they experience, and the CAP shortfall that is generated, in addition to other data deemed reasonable by the Commission, and publish that data, either on the Commission's web site or in the Commission's annual universal service report (or both).

OCA St. CAP-1 at 20-21.

As explained by Mr. Colton:

The provision of periodic reports on the number of CAP customers served and the rates charged to facilitate the measurement of the benefits flowing from CAP shopping is consistent with the universal service reporting requirements previously adopted by the Commission. Given how these factors (i.e., number of CAP customer served; rates charged) affect both the affordability achieved by CAP participants and the overall costs of the CAP program to nonparticipants, it is appropriate for the Commission to require EGS cooperation in ensuring that this type of monitoring continues.

Id. at 21.

In his Direct Testimony on behalf of Direct Energy, Mr. Kallaher testified that he does not oppose a reporting requirement "in theory," but asserts that the reporting requirements should be "light enough such that the reporting obligation is strictly limited to confirming that an EGS is meeting the requirements of the program and nothing more." Direct Energy St. 1 at 8. Mr. Kallaher suggested that an EGS be required to report the rate codes that it is serving its customers under and the total number of customers being served under each rate code. See id.

Mr. Kallaher also recommended that the Commission order that the reports not be discoverable in any future proceeding from any party who provides or receives the reports. Id.

In Rebuttal, PECO witness McCawley stated that PECO supports the OCA's recommendation to make the CAP shopping data public and to include additional data in the reports. Mr. McCawley testified that:

PECO agrees with the OCA that publication of such data on the Commission website or other similar medium would facilitate the measurement of the benefits flowing from CAP shopping. PECO believes the metrics identified by the OCA (i.e., number of CAP customers shopping, the bills they experience and the portion of the aggregation CAP discount amount (i.e., the "shortfall") paid by residential customers) are reasonable for publication by the Commission.

PECO St. 2-R at 8. Mr. McCawley further testified that PECO is able to provide additional information to the Commission, such as the "net number of CAP customers shopping per month, including the number of CAP customers who returned to default service or switched to another supplier after accepting an EGS offer." Id.

Mr. McCawley also specified the information that PECO proposed that EGSs provide in their reports, and elaborated on why this information is needed. Mr. McCawley testified as follows:

[A]n EGS will be required to provide the following data for each customer served during the six-month reporting period: (1) supplier name; (2) PECO customer account number; (3) the EGS CAP rate per kWh; (4) the prevailing residential PTC for the months in which the EGS serves the customer during the six-month reporting period; and (5) the start and end date for the CAP rate charged to the CAP customer during the six-month reporting period. These additional reporting parameters are essential for PECO's future compliance with its universal service evaluation reporting obligations under the Commission's regulations at 52 Pa. Code § 54.76.

PECO St. 2-R at 8-9. PECO also revised its Supplier Tariff to reflect Mr. McCawley's testimony. Id. at 8. See also PECO Exh. JJM-2R at § 5.4.3.1.3.

CAUSE-PA witness Mr. Miller also supported the OCA's recommendations to require additional information from EGSs and to have the Commission publish the data. Mr. Miller stated:

I agree with OCA witness Colton that to the extent that an EGS engages in the market to serve CAP customers, that EGS becomes responsible for providing sufficient data for PECO to be able to report the impacts on participation on universal service. I further agree with Mr. Colton that the PUC should retain the right to publish in aggregated format information on CAP customer shopping participation, [and] the impact on universal service as a result of CAP customer shopping [...].

CAUSE-PA CAP Shopping St. 1-SR at 2-3. (Citations omitted).

Neither the OCA nor PECO supported Direct Energy's recommendation regarding EGSs reporting requirements. Mr. McCawley responded to Direct Energy stating: "PECO believes its proposed reporting requirements are not unreasonable or burdensome, but rather are necessary to ensure transparency regarding the prices that CAP customers are paying for competitive generation supply. In addition, such reporting will provide the Commission with valuable information to meaningfully monitor EGS compliance with Plan terms and obligations and take any enforcement action it deems appropriate." PECO St. 2-R at 7. (Footnote omitted). Mr. Colton responded that "[a]ggregate reporting is necessary to evaluating the PECO CAP Shopping Plan and need not contain customer-specific data. To the extent that an EGS engages in the market to serve CAP customers, however, that EGS becomes responsible for providing sufficient data for PECO to be able to report (both to the Commission and to its independent third party evaluator) the impacts of that CAP participation on universal service." OCA St. CAP-1R at 10.

In regards to Direct Energy's recommendation that the reports not be discoverable in future proceedings, both the OCA and PECO agreed that such a restriction is inappropriate. Mr. Colton testified that:

[T]he discoverability of information in some future Commission proceeding should instead be subject to a decision of the Commission, at that time, within the context of that proceeding, the issues presented, and the confidentiality protections that can be negotiated (if needed), rather than being subject to a blanket declaration in the abstract without any inkling of the need for information, the uses to which the information would be put, the protections (as needed) for the information, and the alternates should the information *not* be made available through discovery. There is absolutely no reason for this Commission today to unreasonably preclude future Commission decision making.”

OCA St. CAP-1R at 10-11. Mr. McCawley testified similarly, stating that “there is no basis for restricting discovery of such information, as Mr. Kalleher proposes, in light of the availability of confidentiality protections from the Commission, including protective orders.” PECO St. 2-R at 9. (Footnote omitted).

The OCA recommends that the Commission accept PECO’s proposal to have EGSs that participate in PECO’s CAP shopping program provide semi-annual reports to the Commission and the Company, and direct EGSs to provide the information contained in PECO’s proposed Supplier Tariff. The OCA further submits that the Commission should aggregate the data from the EGSs and the Company, including the number of CAP participants who switch to an EGS, the bills they experience, and the CAP shortfall that is generated, and publish this information either on the Commission’s website or in the Commission’s annual universal service report, or both. This information will assist the Commission, the Company and interested parties, such as the OCA, in assessing the benefits of PECO’s CAP Shopping Plan and the effect the program has on PECO’s universal service programs. The OCA also recommends that the Commission reject Direct Energy’s request to have the Commission declare that the reports are not discoverable in future proceedings.

4. CAUSE-PA’s Aggregation Proposal Should Not Be Adopted.

CAUSE-PA witness Mitchell Miller proposed to implement a CAP aggregation program as an alternative to PECO's CAP Shopping Plan. CAUSE-PA CAP Shopping St. 1 at 13. Specifically, CAUSE-PA proposed that:

Aggregation would mean that CAP customers would shop as a group, not individually. PECO, or a third party administrator contracted by PECO if that would be a more cost-effective approach, would seek retail market bids through an RFP or some other competitive approach to provide load for PECO's CAP customers for fixed periods of time to rebid prior to the conclusion of each contract period. At the conclusion of each contract period, the CAP customers would then continue to receive the benefits of shopping provided through the newly rebid contract.

CAUSE-PA CAP Shopping St. 1 at 13. The OCA submits that before an aggregation proposal could be implemented, the Commission must resolve substantial legal, administrative and operational hurdles. Solutions to these legal, administrative and operational hurdles have not been sufficiently presented in the instant proceeding, and therefore, the OCA recommends that CAUSE-PA's aggregation proposal not be approved.

The OCA submits that there are two types aggregation programs: (1) wholesale aggregation and (2) retail aggregation. OCA witness Mr. Colton explained the difference between these two types of aggregation as follows:

Two types of aggregation programs would appear to be available to PECO's low-income CAP population. The first type is "wholesale aggregation." Through wholesale aggregation, PECO would seek a competitive power supply to serve its CAP customer population based on a typical load profile of CAP customers. PECO would dedicate that competitively-procured power supply to the task of serving its CAP customer base and pass through all savings generated to CAP participants in the form of lower prices. The second type of aggregation program involves "retail aggregation." Retail aggregation involves individual customers entering into a commercial relationship with an EGS as an alternative to taking default service from PECO. Mr. Miller, on behalf CAUSE-PA, has proposed a retail aggregation program for CAP participants.

OCA St. CAP-1R at 16-17.

There are several hurdles to implementation of such a retail aggregation program. First, the OCA submits that a legal barrier may exist. Mr. Miller proposed an opt-out aggregation program. As OCA witness Mr. Colton explained: “Any given individual CAP participant would be aggregated with all other CAP participants for purposes of taking service from an EGS unless that customer affirmatively indicates his or her decision to take service from someone other than the EGS that has successfully bid for the CAP load.” OCA St. CAP-1R at 17. The OCA submits that such a proposal may be in conflict with Section 2807(d)(1) of the Public Utility Code. Section 2807(d)(1) provides that the Commission establish regulations to:

Ensure that an electric distribution company does not change a customer’s electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer’s consent to a change of supplier.

66 Pa.C.S. § 2807(d)(1). The OCA submits that at a minimum, Section 2807(d) raises significant legal concerns with this proposal.

OCA witness Mr. Colton also identified numerous practical problems that would need to be addressed. CAUSE-PA’s proposal does not consider the impact of churn or turnover in its aggregation proposal. As Mr. Colton explained, the CAP participant population is not a stable or single population as customers move into and out of CAP on a continual basis. Mr. Colton explained:

There is considerable annual turn-over (or churn) in “the” PECO CAP population, not only from year-to-year but within a year as well. The image of “the” CAP population existing as a single static group that can be aggregated and bid out to a retail competitive generation supplier is incorrect. There is instead a constant fluidity in PECO’s CAP population, with different customers entering the program and exiting the program on a monthly basis. My primary pragmatic concern with the CAUSE-PA aggregation proposal, in other words, is that it does not seem to have accounted for the dynamic nature of the PECO CAP participant population over time as brief as a single year.

OCA St. CAP-1R at 19-20. As Mr. Colton discussed, these discrete populations present unique issues that impact the viability of a retail aggregation proposal. Id. at 19.

Another hurdle to implementation of an opt-out retail aggregation program is that Mr. Miller's proposal does not address what happens to individual CAP participants at the end of the aggregation term. OCA witness Mr. Colton explained the issue as follows:

Presumably, if there is a new aggregation contract, the CAP customers would be transferred to whichever EGS successfully bids to provide supply to service to the CAP pool. The problem of what occurs to individual CAP participants at the end of the aggregation term would be compounded in the event that: (1) the CAP population is not competitively bid out; or (2) the CAP population is bid out, but no EGS chooses to bid on the population; or (3) the CAP population is bid out, but no EGS submits a price that is less than PECO's PTC.

OCA St. CAP-1R at 20.

Further, the OCA submits that the opt-out aggregation proposal is inconsistent with individual retail shopping for two reasons: (1) opt-out aggregation would consolidate the EGS market and favor large suppliers providing a homogeneous product and (2) retail competition is driven in part by the ability of market participants to actively engage in the market. OCA witness Colton testified:

First, an opt-out aggregation program would tend to consolidate the EGS market and favor large suppliers providing a homogenous product. Retail competition is best-served when all market players have an opportunity to participate in the competition for market share. The aggregation of PECO's CAP population, with its 140,000 customer base, would instead favor the largest EGSs and disfavor the smaller EGSs that might drive innovation in the marketplace for all customers.

Second, retail competition is driven in part by the ability of market participants to "learn" both the "how" and the "why" of engaging in retail shopping for electric supply service. The knowledge of how and why to participate in the search for, and selection of, competitive suppliers must overcome previous experience which counsels that no choice exists. Implementing an opt-out retail aggregation model is not consistent with teaching customers that they may (and perhaps should) make their own selection of a competitive service provider.

OCA St. CAP-1R at 21-22.

Finally, any aggregation plan would also need to be coordinated with PECO's DSP II to avoid potential impacts on PECO's wholesale suppliers and their procurements. OCA witness Mr. Colton explained:

An opt-out retail aggregation program for PECO CAP participants would substantively increase the risk for which the default service supplier must seek compensation. According to PaPowerSwitch.com, as of June 19, 2013, PECO had 446,432 residential customers that had switched to a competitive supplier. Given that CAP customers have not been permitted to shop, that number (446,432) does not include CAP participants. Should PECO successfully bid out 140,000+ CAP participants through an opt-out retail aggregation program, in other words, that would increase the number of potential customers that the default service supplier would need to account for by fully one-third.

The risks represented by an opt-out retail aggregation program for CAP participants have not been addressed in the default service plan. Should an EGS decide to abrogate its decision to serve the CAP load, and to cede the CAP participant base back to default service, the entire load of 140,000 would return to default service. The risks are different in-kind from the risks that some numbers of customers might leave default service, while others might return to default service, all at a manageable level.

OCA St. CAP-1R at 22-23.

The OCA submits that CAUSE-PA's proposal to institute a CAP aggregation program instead of PECO's CAP Shopping Plan should not be adopted.

C. Cost Recovery.

1. EGSs Should Be Responsible for the Costs of PECO's CAP Shopping Plan.

PECO estimated the cost of its CAP Shopping Plan to be approximately \$4.8 million. PECO St. 3 at 6. See also PECO Exh. ABC-3. The costs fall into three categories: (1) costs related to training and information technology (IT) changes to billing and customer information systems; (2) CAP consumer education; and (3) incremental costs related to business readiness, which includes training and business process modifications. PECO St. 3 at 6. The Company

anticipated a possible \$1 million reduction in the CAP shortfall from CAP customers' shopping savings under the program over time. Id. at 6-7. See also PECO Exh. ABC-4.

PECO proposed to allocate its CAP Shopping Plan costs between EGSs and residential customers consistent with the recovery mechanism announced in the Commission's February 14, 2013 Order in PECO's DSP II case. See Petition of PECO Energy Company For Approval of its Default Service Program, Docket No. P-2012-2283641, Order at 13 (Feb. 14, 2013). In the February 14, 2013 Order, the Commission adopted the following cost recovery method for the Standard Offer Program, a retail market enhancement:

As to the [Standard Offer Program], we agree with RESA that a fee of the lesser of \$30/customer or actual costs per referred customer is appropriate. Any remaining costs should be recovered in either one of two ways – through a non-by-passable surcharge, as proposed by RESA, or shared with 50% from the POR discount and 50% from residential and small commercial default service customers.

Id. PECO witness Cohn testified that the Company intends to recover 50% of the costs of the CAP Shopping Plan from EGSs through a 0.3% discount⁹ on all purchased EGS receivables under PECO's Purchase of Receivables (POR) program until the costs are recovered. PECO St. 3 at 7. Mr. Cohn further testified that PECO intends to recover the remaining 50% of program costs from residential customers, on a non-bypassable basis, through the Company's Universal Service surcharge (USFC) and recover the costs over one year. Id. at 8.

OCA witness Colton opposed certain aspects of PECO's proposed cost recovery. See gen'ly OCA St. CAP-1 at 28-31. Mr. Colton testified that PECO's cost-sharing proposal should be rejected. OCA St. CAP-1 at 28. Specifically, Mr. Colton testified:

PECO's proposal to share the costs of implementing the CAP Shopping Plan between EGSs (50%) and PECO residential customers (50%) should be rejected. The costs of implementing the CAP Shopping Plan are costs incurred in order to

⁹ This discount level represents an increase from 0.2% to 0.3% to recover both Standard Offer Program and CAP Shopping Plan implementation costs. PECO St. 3 at 7-8.

generate additional market participants for the EGSs who choose to compete for PECO CAP customers. These costs should be borne by the companies who benefit from the Shopping Plan being adopted (and, therefore, be wrapped into the EGS rates as a cost-of-doing-business).

Id. at 28-29. Mr. Colton did not, however, oppose PECO's proposal to recover consumer education-related costs through PECO's already approved Consumer Education Charge rider.¹⁰

Id.

Direct Energy witness Kallaher opposed PECO's cost sharing proposal. See Direct Energy St. 1 at 10-12. Mr. Kallaher testified that permitting CAP customers to shop for generation would increase the number of customers in the market and strengthen the market for all customers "through greater enticement of new suppliers and their new products to the market." Id. at 10. Mr. Kallaher went on to state that such expansion of shopping opportunities "produces societal benefits that inure to all, not just EGSs." Id. As such, Mr. Kallaher concluded that the costs of PECO's CAP Shopping Plan should be borne by all distribution customers through a non-bypassable charge. Id. at 10-11.

In his Rebuttal, OCA witness Colton responded to Direct Energy witness Kallaher's recommendation as "entirely speculative" because "Mr. Kallaher has not offered any evidence to support his claims" of social benefits for all customers from the CAP Shopping Plan. OCA St. CAP-1R at 13. The OCA submits that it would be inappropriate for ratepayers to bear the entire cost burden of the CAP Shopping Plan. Mr. Kallaher admits that EGSs will benefit from the program. Direct Energy St. 1 at 10. The CAP Shopping Plan provides an opportunity to EGSs to market to, and possibly acquire, up to 140,000 additional customers in PECO's service territory. PECO Petition at ¶ 11. As such, EGSs should be responsible for the costs of the program.

¹⁰ PECO estimated that CAP Shopping Plan-related consumer education would cost approximately \$300,000. PECO St. 3 at 6.

2. If the Commission Directs that Any Costs of PECO's CAP Shopping Plan Be Recovered from Residential Ratepayers, the Costs Should Be Amortized Over Three to Five Years.

In its CAP Shopping Plan, PECO proposed to collect 50% of the program costs from residential ratepayers amortized over one year. PECO St. 3 at 8. As discussed above, the OCA opposed collection of any program costs from residential ratepayers. In the event, however, the Commission directs that a portion of CAP Shopping Plan costs come from residential ratepayers, OCA witness Colton opposed PECO's proposal to recover the ratepayer portion over one year. Id. at 29. Instead, Mr. Colton recommended that such costs be amortized over three to five years. Id. Specifically, Mr. Colton testified:

PECO has proposed to recover the costs of its CAP Shopping Plan over a one-year period. As I explained in my Direct Testimony in this proceeding, amortization periods for extraordinary, non-recurring costs, are generally set using a balancing of the immediate rate impacts on customers to whom the rate applies and reasonably prompt cost recovery for the company. In addition, based on what is commonly called the "Matching Principle," cost recovery should seek to match the payment of costs to the ratepayers benefitting from those costs. As Mr. Kallaher's testimony indicates, there is no factual dispute that the PECO CAP Shopping Plan provides benefits over more than the first year of operation. To recover 100% of costs in Year One, therefore, would violate the Matching Principle. Benefits of the program would continue beyond Year One. A three- to five-year amortization period best matches the cost recovery with a reasonable planning period for program impacts.

OCA St. CAP-1R at 14-15.

PECO witness Mr. Cohn, in Surrebuttal, disagreed with OCA witness Colton and testified that the Company's proposal to collect costs from ratepayers over the one year remaining in DSP II is consistent with the Commission's October 2012 Order. PECO St. 3-SR at 2. In its October 2012 Order, the Commission directed that PECO expense its DSP II-related IT costs and recover them through the Company's GSA over the two-year period of DSP II. October 2012 Order at 63-64.

As discussed below, PECO does not propose to collect CAP Shopping Plan costs through the GSA or even over two years, so the Company's reliance on the October 12 Order as binding is misplaced. The OCA submits that CAP Shopping Plan benefits will continue well beyond one or even two years. As such, it is more appropriate to amortize these costs over three to five years in order to spread the cost burden over a longer period while still providing timely cost recovery to PECO. If the Commission directs that any portion of CAP Shopping Plan costs be recovered from residential ratepayers, it should direct that such costs be recovered over three to five years.

3. If Any Cost Recovery from Ratepayers is Ordered, It Is Inappropriate to Recover Any Costs of PECO's CAP Shopping Plan Through the Company's Universal Service Surcharge (USFC).

PECO proposed to recover 50% of program costs from residential customers, on a non-bypassable basis, through the USFC. PECO St. 3 at 8. OCA witness Colton opposed this part of the Company's cost recovery proposal. See OCA St. CAP-1 at 29-31. Specifically, Mr. Colton testified:

PECO's proposal to collect the costs of implementing the CAP Shopping Plan through the Company's universal service rate rider should be rejected. The costs to be collected through the rate rider are narrowly prescribed and narrowly constrained by the Commission as limited exclusively to those incurred as necessary in providing a universal service program. The CAP Shopping Plan is not a universal service program.

PECO estimates that its cost of implementing the CAP Shopping Plan will reach \$4.6 million. These expenses are divisible into three categories: (1) customer education costs of roughly \$300,000;¹¹ (2) training and IT changes to the Company's billing and customer information system to facilitate CAP shopping and to appropriately calculate the CAP discount of approximately \$3.8 million; and (3) "business readiness" costs (including training and business process modification) of "approximately \$500,000." (Petition for Approval of PECO CAP Shopping Plan, at 11). Neither the \$3.8 million, nor the \$500,000 in CAP shopping expenses should be collected through the universal service rate rider.

¹¹ PECO proposes to collect the customer education costs through the current Customer Education Charge ("CEC") approved by the Commission in Docket P-2011-2279773.

The scope of universal service costs that can be collected through the rate rider is not merely a function of crafting appropriate tariff language. The definition of a “universal service program” is set by statute.¹² These costs do not qualify as universal service program costs and thus may not be included in this charge.

In sum, the costs of implementing the CAP Shopping Plan should be borne by participating EGSs and not divided between EGSs and PECO ratepayers. Even if and to the extent that those costs (or some portion thereof) are borne in part by PECO ratepayers, they should not be collected as “universal service” costs through the universal service rate rider. These observations apply irrespective of whether the “costs” at issue involve ongoing administrative expenses, IT expenses associated with implementation of the CAP Shopping Plan, or other operation and maintenance expenses associated with the CAP Shopping Plan.

OCA St. CAP-1 at 29-31. (Emphasis supplied).

In Rebuttal, PECO witness Cohn testified that the Company believes the CAP Shopping Plan to be a universal service program because it is a new feature of PECO’s overall CAP, and therefore, the portion of program costs allocated to ratepayers should be collected through the USFC. PECO St. 3-R at 5.

The OCA submits that it is inconsistent and inappropriate for PECO to characterize the CAP Shopping Program as a retail market enhancement for purposes of determining how costs should be allocated and how long the recovery period should be and to then characterize the program as a universal service program for purposes of determining the method of cost recovery from ratepayers. In Surrebuttal, OCA witness Colton explained:

Outside of CAP, “universal service programs” have been defined by the Commission to include “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 low-income usage reduction programs, application of renewable resources and consumer education.” Clearly, the CAP Shopping Plan does not fall within these elements of universal service. It is not a termination of

¹² 66 Pa.C.S. sec. 2803 (“the term “universal service and energy conservation” shall mean policies, 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.”)

service protection or policy; it does not help low-income customers reduce or manage energy consumption in a cost-effective manner; nor is it a renewable resource or consumer education program. Therefore, the Shopping Plan is not a universal service program in which the costs are recoverable through PECO's USFC.

OCA St. CAP-1SR at 4-5 (Footnote omitted). Mr. Colton went on to explain how the Commission had addressed competitive supply within the context of universal service funding as follows:

In its 1997 CAP Policy Statement, the Commission stated:

As a general policy matter, the Commission supports CAP participants acquiring supply in the competitive market and allowing competitive suppliers to be involved in providing electric supply to CAP participants. However, the details of how viable CAP programs can be maintained and improved while affording CAP participants access to competitive supply have yet to be worked out. As part of their restructuring plan, parties should develop workable designs for how CAP participants can be involved in the competitive market.

The Commission does not indicate that the competitive procurement of supply would be "a feature of [the] overall CAP" as Mr. Cohn asserts. Instead, the acquisition of supply in the competitive market was "part of their restructuring plan," *not* a part of the CAP. Indeed, the Commission balanced the two programs against each other, considering on the one hand how to afford CAP participants access to competitive supply while at the same time maintaining and improving viable CAP programs.

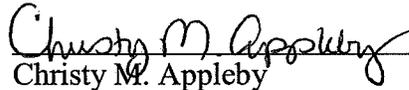
OCA St. CAP-1SR at 5-6. (Citations omitted). (Emphasis supplied).

The OCA submits that PECO's CAP Shopping Plan is not a universal service program, as defined by the Commission's regulations. Therefore, it is inappropriate to recover any portion of program costs allocated to ratepayers through the USFC. As such, PECO's proposal to do so should be rejected.

IV. CONCLUSION

The OCA respectfully requests that the Commission adopt PECO's CAP Shopping Plan with the modifications discussed herein.

Respectfully submitted,


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