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July 26, 2013

VIA eFILING

Rosemary Chiavetta, Secretary
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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 for filing is the *Non-Confidential Version of the Initial Brief of PECO Energy Company* in the above-referenced matter.

A CD containing the *Confidential* version will be sent to the Commission via overnight delivery.

In addition, a *Confidential* version will be sent via Secure File Transfer to Judge Fordham and counsel for the OCA, OSBA, Direct Energy and CAUSE-PA.

The additional parties listed on the Certificate of Service will receive the *non-Confidential* version.

Rosemary Chiavetta, Secretary
July 26, 2013
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Should you have any questions, please contact me directly at 215.963.5384. Thank you.

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosures

c: Per Certificate of Service

**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) :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the foregoing **Initial Brief on behalf of PECO Energy Company** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54.

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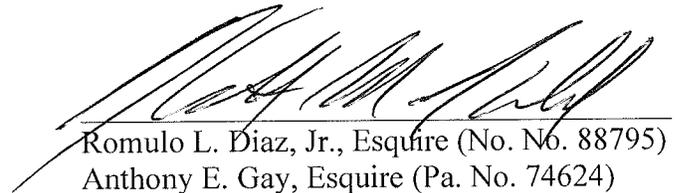
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July 26, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY
COMPANY FOR APPROVAL OF ITS
DEFAULT SERVICE PROGRAM
(CUSTOMER ASSISTANCE
PROGRAM SHOPPING PLAN)** :
: **DOCKET NO. P-2012-2283641**
:
:

**INITIAL BRIEF OF
PECO ENERGY COMPANY**

**Before Administrative Law Judge
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July 26, 2013

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I. STATEMENT OF THE CASE

A. Procedural History

This proceeding arises from PECO Energy Company's ("PECO's" or the "Company's") January 13, 2012 Petition pursuant to Section 2807(e) of the Pennsylvania Public Utility Code (the "Public Utility Code" or "Code"), 66 Pa.C.S. § 2807(e). In that petition, PECO requested that the Pennsylvania Public Utility Commission (the "Commission") approve its Default Service Program for the period from June 1, 2013 to May 31, 2015 ("DSP II"). On October 12, 2012, the Commission entered an Order approving the Company's DSP II with several revisions.¹ The revisions included a directive to PECO to develop a plan that would allow low-income customers enrolled in PECO's Customer Assistance Program ("CAP") to purchase their electric generation supply from electric generation suppliers ("EGSs") by January 1, 2014.

During the DSP II proceeding, in a separate docket, the Commission also considered PECO's proposed three-year universal service and conservation plan (the "Three Year Plan"), which included the Company's CAP proposal for the period 2013-2015.² On January 3, 2013, the Commission issued a Secretarial Letter (the "January 2013 Secretarial Letter") in both the DSP II and Three Year Plan dockets discussing the importance of entering a Final Order on PECO's CAP in the Three Year Plan proceeding before a CAP shopping plan is submitted in

¹ See *Petition of PECO Energy Co. for Approval of its Default Serv. Program*, Docket No. P-2012-2283641 (Order entered October 12, 2012) ("*October 2012 Order*"). The *October 2012 Order* directed PECO to submit additional proposals to the Commission to address several retail market enhancement ("RME") issues included in DSP II in collaboration with EGSs and other interested parties, including cost recovery for the Company's proposed Standard Offer Program. *Id.* at pp. 155-157. Thereafter, PECO made a series of compliance filings to address this Commission directive and other orders issued in this proceeding. On June 13, 2013, the Commission issued a final Order (the "*June 2013 Order*") resolving DSP II RME issues.

² See *PECO Energy Co. Universal Serv. 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 entered April 4, 2013) ("*2013 Universal Service Order*"). PECO submitted its original Universal Services Three Year Plan for the 2013-2015 period on February 28, 2012 and an Amended Plan on October 15, 2012.

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DSP II, and directing PECO to file its CAP shopping plan on or around May 1, 2013 to allow CAP customers the opportunity to shop by April 1, 2014. Thereafter, on April 4, 2013, the Commission entered its final Order in PECO's Three Year Plan proceeding and, on May 1, 2013, PECO filed a petition (the "Petition") seeking Commission approval of the Company's plan (the "CAP Shopping Plan") to facilitate shopping by CAP customers.

In the Petition, PECO requested that the Commission approve its CAP Shopping Plan and several design principles that provide the foundation of the Plan, as well as proposed changes to the Company's Electric Tariff and Electric Generation Supplier Coordination Tariff ("Supplier Tariff") to implement the Plan and achieve full and current recovery of Plan costs. PECO also requested that the Commission grant a waiver of the quarterly reconciliation provisions of the Commission's regulations (52 Pa. Code §§ 54.187(i) and (j)), to the extent necessary, to allow the Company to implement an annual reconciliation of the over/under collection component of the Generation Supply Adjustment ("GSA") to encourage and facilitate EGS supply to CAP customers. Finally, PECO requested that the Commission approve a short delay in the commencement of the Plan from April 1, 2014 to April 15, 2014 to accommodate the Company's existing integrated information technology ("IT") programming and software deployment schedule.

The Petition was served on the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Commission's Bureau of Investigation & Enforcement ("BI&E"), and all parties in PECO's DSP II proceeding as well as the separate proceeding regarding PECO's Three Year Plan at Docket No. M-2012-2290911. On May 21, 2013, the following parties each filed an Answer to the Petition: (1) the OCA; (2) the Tenant Union Representative Network ("TURN") and Action Alliance of Senior Citizens of Greater

Philadelphia (collectively, “TURN *et al.*); and (3) the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”).³

A Prehearing Conference was held on May 28, 2013 before Administrative Law Judge (“ALJ”) Cynthia W. Fordham to whom this matter was assigned and a schedule was established for submitting written testimony, holding evidentiary hearings and filing briefs. *See* Second Prehearing Order (June 13, 2013). In this phase of the proceeding only four parties – CAUSE-PA, Direct Energy Services, LLC (“Direct Energy”), the OCA and OSBA – submitted written testimony. Attached hereto as Appendix A is a list of written statements and accompanying exhibits (if any) submitted by witnesses appearing on behalf of PECO.

An evidentiary hearing was held in Philadelphia, Pennsylvania on July 11, 2013. At the hearing, the testimony and exhibits of all parties were admitted into evidence. PECO submits this Initial Brief in support of its CAP Shopping Plan and to address the issues raised by other parties.

B. Summary Of PECO CAP Shopping Design Principles And CAP Shopping Plan

In accordance with the universal service obligations set forth in the Public Utility Code and in the *2013 Universal Service Order*, PECO’s CAP employs a tiered rate discount approach to provide assistance to qualifying low income residential customers in PECO’s service territory so that the rate they actually pay for electric service is lower than the rate charged to higher-income residential customers. The lower a customer’s income as a percentage of the poverty level established under Federal law, the greater the discount (ranging from 27% to 93%) applied

³ Several other parties indicated that they did not wish to participate in this phase of the DSP II proceeding, namely, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, Noble Americas Energy Solutions L.L.C., Philadelphia Area Industrial Energy Users Group (“PAIEUG”), and UGI Energy Services, Inc. d/b/a UGI Energy Link. *See* Prehearing Order (May 16, 2013).

to the customer's electric bill. PECO St. No. 1, pp. 4-5. Approximately 140,000 residential customers in PECO's service territory – almost 9% of all PECO residential electric customers – have incomes equal to or less than 150% of the Federal poverty guidelines and participate in CAP. PECO's CAP is by far the largest low income customer assistance program in Pennsylvania, with other EDCs serving between 10,000 and 40,000 CAP customers. PECO St. No. 1, p. 4.

Under PECO's CAP, a portion of the value of CAP discounts and other CAP-related costs are recovered through base rates paid by PECO's residential customers. In 2013, approximately \$82.3 million of the projected total value of the CAP discounts and other CAP-related costs will be recovered through base rates. The annual cost of CAP benefits not recovered in base rates, referred to as the "CAP shortfall," is recovered on an ongoing basis from PECO's residential customers through the Universal Service Fund Charge ("USFC"), with annual reconciliation of any over/under collections. The CAP shortfall to be recovered from PECO's residential customers in 2013 through the USFC is projected to be \$15.7 million. PECO St. No. 3, pp. 3-5.⁴

In light of its universal service obligations and the existing CAP, PECO developed five criteria (the "CAP Shopping Design Principles") for the Plan. Under these principles, the components of a plan to introduce CAP customers in PECO's service territory to shopping should:

- Ensure the plan is based upon the competitive shopping program that is in place for non-CAP customers;

⁴ The actual shortfall is larger, but residential customers pay 73% of the total CAP shortfall amount pursuant to the settlement in PECO's most recent base rate case. The remaining 27% of the CAP shortfall is absorbed by PECO shareholders. PECO St. No. 3, pp. 4-5; *see also* Joint Petition for Settlement, *Pennsylvania Pub. Util. Comm'n v. PECO Energy Co. – Elec. Div.*, Docket No. R-2010-2161575 (approved by Order entered December, 21 2010), Exhibit 1.

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- Maintain consumer protections for CAP customers;
- Contain plan costs for the residential customers who pay for CAP;
- Ensure CAP shopping costs and benefits are clear and measurable; and
- Ensure full and current recovery of plan costs.

PECO St. No. 1, pp. 6-9.

Under the Plan, customers enrolled in PECO's CAP will be able to enter into agreements with EGSs and purchase electric generation supply beginning April 15, 2014. PECO St. No. 1, p. 15; PECO St. No. 2, p. 3. PECO will continue its current practice of applying a CAP discount to a CAP customer's total bill using the tiered rate discount approach approved by the Commission in the *2013 Universal Service Order*, except that the CAP discount will be applied to the EGS charges of CAP customers who shop instead of PECO's default service charges (equal to the Price-to-Compare ("PTC")). PECO St. No. 2, p. 8, PECO St. No. 3, pp. 12-13. PECO will also continue its Commission-approved method of calculating the CAP discount for each tier using a targeted percentage affordability goal for the total customer bill, with annual adjustments based on changes to PECO's residential PTC. PECO St. No. 2-R, p. 14; *see also 2013 Universal Service Order*, pp. 54, 62-63.

Beginning on April 15, 2014, EGSs will have the opportunity, but not the obligation, to enter into arrangements with CAP customers to provide electric generation service. EGSs who desire to serve CAP customers must submit to PECO a notice of intent to participate as a CAP supplier ("CAP Notice") and will be required to charge CAP customers a rate for electricity supply that is at or below the PECO PTC for residential customers. PECO St. Nos. 2, pp. 4-5 & 2-R, pp. 3-4; PECO Ex. JJM-1; PECO Ex. JJM-2, Revised Page No. 22, ¶ 5.4.3.1.1. Participating EGSs must also use PECO's electric distribution company ("EDC") consolidated billing for all shopping CAP customers to ensure portability of benefits. PECO St. No. 2, p. 7;

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PECO Ex. JJM-2, Revised Page No. 22, ¶ 5.4.3.1.2. Participating EGSs will be otherwise free to offer discounts, promotions, and contract lengths consistent with their business goals and competitive interests, as well as to impose termination fees (although such fees cannot be included in amounts paid to EGSs under PECO's purchase of receivables ("POR") program and EGSs will be solely responsible for collecting any such fees). PECO St. Nos. 2, p. 6 & 2-R, pp. 3, 6.

To help simplify the shopping process for CAP customers, participating EGSs must publish their CAP rates on PAPowerSwitch.com and in a mailing to individual customers upon request. PECO St. No. 2, p. 6. Participating EGSs must also provide the Commission and PECO periodic confidential reports on the number of CAP customers served and the rates charged. In such reports, EGSs will provide the following data regarding rates charged to CAP customers: (1) supplier name; (2) PECO customer account number; (3) the EGS CAP rate (per kWh); (4) PECO's prevailing residential PTC(s) for the month 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. PECO St. Nos. 2, pp. 7-8 & 2-R, pp. 8-9; PECO Ex. JJM-2R, Revised Page No. 22, ¶ 5.4.3.1.3.

EGSs who submit a CAP Notice must enroll any CAP customer who accepts an EGS' competitive offering and cannot discriminate among CAP customers. The customer enrollment process for CAP customers is the same as for non-CAP customers. PECO St. No. 2, pp. 7-8. After enrollment, the EGS must honor the terms of the contract it enters into with a CAP customer, regardless of whether the EGS subsequently receives notice, via an electronic data interchange ("EDI") transaction, that such customer is no longer participating in CAP. PECO St. No. 2-R, p. 11.

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As part of the Plan, the Company will implement a variety of customer education initiatives for low income customers focused on the benefits of the competitive market and the promotion of shopping for electricity. The initiatives will also inform CAP customers of tools to help them understand and manage their energy bills. PECO St. No. 1, p. 13; PECO St. Nos. 2, pp. 8-9 & 2-R, pp. 12-14.

PECO has estimated the expenditures to implement the Plan total approximately \$4.5 million. These expenditures include costs related to training and IT changes to PECO's billing and customer information system to facilitate CAP customer shopping and appropriately calculate the CAP discount, customer education costs, and business readiness costs. PECO St. No. 3, p. 6; PECO Ex. ABC-3. Costs associated with customer education initiatives (i.e., approximately \$0.3 million) will continue to be recovered from all residential customers through the Customer Education Charge approved by the Commission in Docket No. P-2011-2279773. All remaining CAP Shopping Plan expenditures (i.e., approximately \$4.2 million), will be allocated equally between EGSs and residential customers (including shopping customers) using a method consistent with the cost recovery mechanism approved by the Commission for PECO's Standard Offer Program costs. Specifically, 50% of the costs will be recovered over the first year of Plan implementation from EGSs (in addition to Standard Offer Program costs) through a 0.3% POR discount and the remaining 50% from residential customers, on a non-bypassable basis, through the USFC, also over a one-year period.⁵ As with the Standard Offer Program, this rate mechanism divides costs between EGSs and customers who may benefit from shopping, but does not require participating EGSs to pay an individual enrolled customer fee since customers

⁵ The 0.3% POR discount level represents a 0.1% increase from the 0.2% discount level approved by the Commission in the *June 2013 Order* (pp. 9-10) for collection of certain Standard Offer Program costs from EGSs. PECO St. No. 2, p. 11; PECO St. No. 3, p. 8.

are not being referred directly to EGSs. PECO St. No. 3-R, p. 3; *see also June 2013 Order*, pp. 9-10.

II. SUMMARY OF THE ARGUMENT

Under PECO's CAP Shopping Plan, CAP customers in PECO's service territory will be able to shop for electric generation supply beginning in April 2014 as directed by the Commission. The Plan is consistent with the Commission's *October 2012 Order* and the *2013 Universal Service Order* as well as the CAP Shopping Design Principles developed by PECO to continue implementation of the universal service policies set forth in the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 *et seq.* (the "Competition Act"). No witness testified in opposition to these principles, and the Commission should approve the principles as part of its consideration of the Plan to provide a strong foundation for retail market initiatives for CAP customers in PECO's service territory.

The principal issue in dispute in this proceeding is PECO's proposal to require EGSs who choose to serve CAP customers to charge a rate for generation service that is equal to or lower than PECO's PTC for residential customers. This limitation, which is supported by both the OCA and CAUSE-PA, will promote shopping and access to the benefits of the competitive market for low income customers without undermining the affordability of service for those customers or increasing the costs paid by PECO residential customers. Direct Energy – the only EGS to participate in this stage of PECO's DSP II proceedings – contends that there should be no limitation on the prices it can charge low income customers, but the Commission is clearly within its powers to apply such a limitation for the benefit of the 140,000 low income customers in PECO's service territory and the residential customers who pay the costs of universal service. Direct Energy appears to believe that EGSs must be protected from a risk of loss. In contrast,

PECO believes that EGSs can and should compete to serve low income customers without charging above the PTC, and Direct Energy's additional arguments that PECO's limitation will preclude EGSs from offering the "best" products for low income customers or complicate EGS terms and conditions are without merit.

The remaining issues and arguments in this proceeding are summarized briefly below.

Cost Recovery. Both Direct Energy and the OCA object to PECO's proposal to recover Plan implementation costs from both EGSs and all residential customers, with the OCA proposing that EGSs pay all costs and Direct Energy seeking to have customers pay all costs and preclude PECO from recovery of any portion of Plan costs through a POR discount. The Commission has already considered and rejected similar arguments by the OCA and Direct Energy in its Retail Market Investigation, the *October 2012 Order* and the *June 2013 Order*. The Commission should reject these arguments again since PECO's Plan proposal is consistent with the Commission's resolution of retail market enhancement cost recovery issues in the *June 2013 Order*. The Commission should also reject additional arguments by the OCA that Plan costs should be amortized over a longer time period than one year and not recovered through the USFC. PECO's proposal to recover Plan costs during the DSP II period is consistent with prior Commission approval of the recovery of DSP II IT costs, and the USFC is the appropriate mechanism to ensure full recovery from all residential customers.

Reporting Requirements. PECO's proposed reporting requirements for EGSs who voluntarily choose to serve CAP customers will provide valuable information to the Commission regarding CAP customer shopping and affordability are essential to PECO's future compliance with its universal service obligations and are fully supported by the OCA. Direct Energy, on the other hand, has proposed that EGSs simply provide "confirmation" that they have complied with

Plan requirements, as well as a bar on future discoverability of any reports made by EGSs regarding rates charged to CAP customers. Direct Energy's restrictions are far too limited to provide useful information to the Commission and PECO, and the Commission should not preclude information from discovery in future proceedings where the confidentiality of such information can be preserved through the Commission's existing protective order regulations.

Quarterly Reconciliation. The OCA and CAUSE-PA support PECO's proposal for annual reconciliation of residential default service over/under collections in order to facilitate EGS tracking of PECO's PTC. While Direct Energy opposes annual reconciliation, its witness, Mr. Kallaher, conceded that annual reconciliation could be beneficial if PECO's Plan is approved. The Commission should adopt PECO's proposal in order to increase participation by EGSs in serving CAP customers.

Compliance with Plan Requirements and Additional Customer Consent. While CAUSE-PA generally supports the CAP Shopping Plan, it proposes that PECO should require EGSs to enter into a separate contract with PECO and that PECO should assume various enforcement obligations associated with EGS compliance with the Plan. PECO believes that any enforcement responsibilities should remain entirely with the Commission.

Customer Education and Additional Customer Consent. The OCA and CAUSE-PA made a number of recommendations regarding content of the educational materials that PECO will develop on shopping for CAP customers. PECO has committed to work with the OCA, CAUSE-PA, and other interested parties to develop specific content and, accordingly, the Commission need not address these parties' specific recommendations at this time. The Commission should, however, reject the OCA's proposal for additional education for CAP customers who leave CAP as outside the scope of CAP customer education initiatives.

Similarly, the Commission should reject the OCA's proposal for EGSs to obtain an additional consent from customers who leave CAP but remain on an EGS contract when the customer contract is up for renewal under different terms. Such customers will no longer be under the CAP program and should receive the same notices from EGSs as any other shopping customer under the Commission's regulations.

Aggregation. As an alternative to permitting CAP customers to select among participating EGSs on an individual basis, CAUSE-PA asserts that the Commission should consider an aggregation program (on an opt-out or opt-in basis). PECO believes that an aggregation program is inappropriate at this time in light of the Commission's strong preference for individual choice with respect to shopping.

Other Issues. PECO has also proposed a collaborative to consider how CAP customers may participate in PECO's Standard Offer Program in the future and a short extension of the deadline for CAP shopping implementation from April 1, 2014 to April 15, 2014 to facilitate coordination with other IT deployment. No party objected to these proposals.

III. ARGUMENT

A. The Commission Should Adopt The PECO CAP Shopping Design Principles

In its Petition, PECO has requested that the Commission approve the five CAP Shopping Design Principles applied in designing the Plan. As summarized *supra*, these principles are as follows:

- Ensure the plan is based upon the competitive shopping program that is in place for non-CAP customers;
- Maintain consumer protections for CAP customers;
- Contain plan costs for the residential customers who pay for CAP;
- Ensure CAP shopping costs and benefits are clear and measurable; and

- Ensure full and current recovery of plan costs.

PECO St. No. 1, pp. 6-9. Mr. Crowe, PECO's Vice President of Energy Acquisition, testified that the CAP Shopping Design Principles reflect important goals and requirements articulated by the Commission in its Retail Markets Investigation, in PECO's universal service proceedings, and in the underlying policies of the Competition Act. Among its provisions, the Competition Act expressly provides that:

The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.⁶

The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory. Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively neutral cost-recovery mechanisms that fully recover the costs of universal service and energy conservation services . . . Programs under this paragraph shall be subject to the administrative oversight of the commission which will ensure that the programs are operated in a cost-effective manner.⁷

Consistent with these statutory provisions, the Commission has explained that the Competition Act includes several provisions to ensure that "utility service remains available to all customers in the Commonwealth" and which "tie the affordability of electric service to a customer's ability to pay for that service." *2013 Universal Service Order*, p. 2. While the Commission has emphasized that the Competition Act is intended to permit all retail customers to access a competitive generation market,⁸ the Commission also balances the interests of

⁶ 66 Pa.C.S. § 2802(10).

⁷ 66 Pa.C.S. § 2804(9).

⁸ *Investigation of Pennsylvania's Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Final Order entered February 15, 2013), p. 61.

customers who benefit from the universal service programs with the interests of the customers who pay for the programs. *See id.*, pp. 8-9.

Certain parties disagreed with some components of PECO's proposed implementation of these principles in the CAP Shopping Plan, but no witness testified in opposition to any of the CAP Shopping Design Principles themselves. PECO believes the principles will provide a strong foundation for retail market initiatives for CAP customers in PECO's territory. OCA witness Roger Colton asserted that the design principles should be expanded because PECO's references to consumer protections and plan costs are not sufficiently "directed" to maintaining affordability and the ability of CAP customers to pay for electric service (OCA St. CAP-1SR, pp. 2-3). However, the Commission's own orders make clear that low income customer affordability is a key part of the consumer protections mandated by the Public Utility Code and Mr. Crowe's testimony also reflects that this emphasis on affordability is appropriately reflected in the principles. *See 2013 Universal Service Order*, p. 2; PECO St. No. 1, p. 7 (discussing affordability in context of maintaining consumer protections) & p. 8 (emphasizing that universal service programs should be cost-effective, not simply low cost). For the foregoing reasons, the Commission should approve each of the CAP Shopping Design Principles as proposed by PECO.

B. PECO's CAP Shopping Plan Should Be Approved

1. Requiring EGSs To Charge CAP Customers A Generation Rate At Or Below The Price-To-Compare Will Help Ensure Affordability And Avoid Increased Costs To Residential Customers

As described in the testimony of PECO witnesses Crowe and McCawley and summarized *supra* in Section I.B, CAP customers in PECO's territory will be able to shop for competitive generation supply beginning in April 2014. In order to implement the CAP Shopping Design Principles to help ensure that consumer protections and affordability are maintained for CAP

customers and Plan costs are contained, PECO has proposed that EGSs who choose to serve CAP customers in PECO's service territory be required to charge a price for generation supply that is equal to or less than PECO's PTC at all times. PECO St. No. 1, p. 9; PECO St. No. 2, pp. 4-5.

The OCA and CAUSE-PA agree that EGSs should not be allowed to charge CAP customers a price for generation supply that is in excess of the PTC. OCA St. No. CAP-1, p. 5; CAUSE-PA CAP Shopping St. No. CAP-1, p. 11. The only party to oppose PECO's proposed requirement is Direct Energy, which argues that it should be able to charge prices to low-income customers that are not limited in any way. Direct Energy St. 1, p. 4. Direct Energy contends that PECO's proposed restriction (i) may be prohibited by the Competition Act; (ii) would make such customers "undesirable from a business perspective" so few EGSs would choose to serve CAP customers; (iii) would require EGSs to "tailor their offerings not to what would be best" for CAP customers and preclude offerings of green products or time-differentiated supply; and (iv) would require EGSs to include "special provisions" in their contracts for early termination. *See id.*, pp. 4-6. The Commission should reject each of Direct Energy's contentions for several reasons.

First, Direct Energy witness Kallaher's suggestion that PECO's proposed price limitation for EGSs may violate the Competition Act is unsupported and without merit.⁹ Indeed, the Commission has previously imposed limitations on EGS pricing in retail market enhancement programs where EGS participation is voluntary, such as PECO's Standard Offer Program in which EGSs are required to offer a twelve-month contract at a fixed price 7% below PECO's PTC at the time of the offer. *October 2013 Order*, p. 114; PECO St. No. 2, p. 3. In fact, in

⁹ Mr. Kallaher, without further elaboration, simply indicated that he had been so "informed" by counsel. Direct Energy St. 1, p. 4.

imposing the Standard Offer Program pricing limitation for EGSs in DSP II, the Commission emphasized the importance of protecting residential customers new to retail markets from significant risk and rejected an alternative proposal by the Retail Energy Supply Association (“RESA”) for a four-month fixed rate offer because it “would lead to customer confusion, *would not provide any limits or protections on what a customer could be charged*, and would run counter to the purpose of the Standard Offer Program, which is to introduce customers to the retail market without significant risk.” *October 2013 Order*, p. 114 (emphasis added).¹⁰ As such, it is quite clear that the Commission does not believe it is precluded by the Competition Act from imposing restrictions on EGS pricing when it comes to retail market enhancement programs (such as the Standard Offer Program) in which customers are paying a portion of the costs of program implementation.

Second, Direct Energy’s assertion that CAP customers would be “undesirable from a business perspective” under PECO’s price limitation appears to rest on a belief that all competitive suppliers must be assured the ability to serve low income customers without any risk of loss, even on variable-priced contracts. Direct Energy St. 1, pp. 4-5; *see also id.*, p. 5 (“A supplier could not guarantee a fixed price beyond the next default service price change.”); PECO Hearing Exhibit No. 13. Mr. Kallaher conceded, however, that an EGS’s price would only “possibly” need to shift as the PTC changes. Direct Energy St. 1, p. 5. As Mr. McCawley explained, PECO believes that, in the competitive market, EGSs can – and should – compete to serve CAP customers with different prices, term lengths, and other contract provisions that

¹⁰ A related contention by Direct Energy witness Kallaher that price limitations are generally “anti-competitive” (Direct Energy St. 1, p.4) provides no legal or evidentiary basis for the rejection of PECO’s proposed price limitation for EGSs who voluntarily seek to serve low-income customers. In response to an interrogatory asking for the basis for Mr. Kallaher’s assertion that PECO’s limitation on participating EGSs was “anti-competitive,” Direct Energy could only provide a one-sentence response that price limitations vaguely “interject administrative interference” in a market. *See* PECO Hearing Exhibit No. 12.

reflect different EGS views of this price risk. PECO St. No. 2-R, p. 3.¹¹

Direct Energy emphasizes the “undesirability” of low-income customers to EGSs if PECO’s proposed price limitation is adopted. However, Direct Energy fails to address the undesirable consequences of above-PTC pricing for both CAP customers and those residential customers who would pay higher USFC charges. Given the large number of CAP customers in PECO’s service territory, the adverse consequences could be substantial. As Mr. Cohn explained, if 25% of PECO’s CAP customers shopped and their EGS prices were (or became) 10% above PECO’s PTC on average, an additional \$1 million would need to be recovered annually from residential customers through the USFC to cover the additional amounts paid to EGSs. PECO St. 3-R, p. 4.¹²

Similarly, low income customers would not be immune from any above-PTC charges assessed by EGSs. As Mr. Cohn demonstrated, under PECO’s CAP, a family of two (with annual income of \$11,788 to \$15,510) should pay between 4-6% of their income for non-heating electric service, which equals a range of total annual payments of \$471.52 to \$930.60. This is sometimes referred to as the acceptable “energy burden” for this customer. Assuming a monthly usage of 1,000 kWh, and an EGS price of 10% above the PTC, that CAP customer’s bill would increase by \$5.31 per month, or approximately \$64.00 per year. This is not a small increase for a

¹¹ Direct Energy expressed concern that the price of wholesale default supply contracts can result in changes to the PTC that are not tied to current market conditions. *See* PECO Hearing Exhibit No. 13. However, EGSs are able to consider such information since the weighted average winning bid price of PECO’s wholesale default supply contracts is publicized in accordance with Commission requirements. *See* Secretarial Letter, *Re: Disclosure of Default Serv. Solicitation Results and Creation of a Default Serv. Rate Calculation Model*, Docket No. M-2009-2082042 (October 12, 2010). In this proceeding, PECO has also proposed the annual reconciliation of over/under collection of default service charges for residential customers in order to smooth changes in the PTC, which Mr. Kallaher conceded may have benefits if PECO’s CAP Shopping Plan is adopted as filed. *See* Direct Energy St. 1, p. 13.

¹² Under PECO’s proposal, EGSs are not at risk for collection of amounts owed by low income customers for generation supply since those EGS receivables will be purchased by PECO through its POR Program (less the 0.3% discount to cover costs of RME programs). *See* PECO Ex. JJM-2R, Revised Page No. 92.

poor customer, and would mean that allowing EGSs to charge prices of 10% more than the PTC could cause these customer bills to increase by an amount equal to about 7-13% of the total acceptable “energy burden.” PECO St. 3-R, pp. 4-5.

[BEGIN CONFIDENTIAL]

[END CONFIDENTIAL] See PECO Hearing

Exhibit Nos. 5, 14 & 15. During its most recent default service proceeding, PPL Electric Utilities Corporation (“PPL Electric”) reported that seventy three percent (73%) of its CAP shopping customers were paying more than the applicable PTC.¹³ Although the Commission concluded that low income customers in PPL Electric’s CAP program should be able to participate in the Standard Offer Program because any assertion that customers were being harmed was speculative,¹⁴ PECO’s proposed price limitation will both encourage low income customers to shop and realize savings without creating undue risk either for those customers or for the customers who would be required to pay the above-PTC amounts charged by EGSs.

Third, Direct Energy’s contention that PECO’s proposal will preclude EGSs from offering the “best” products for CAP customers is simply restating, in another form, its argument for unlimited pricing authority. While PECO agrees that the shopping choices of CAP customers

¹³ Recommended Decision, *Petition of PPL Elec. Util. Corp. for Approval of a Default Serv. Program and Procurement Plan for the Period June 1, 2013 through May 31, 2013*, Docket No. P-2012-2302074 (November 9, 2012), pp. 128-134.

¹⁴ Opinion and Order, *Petition of PPL Elec. Util. Corp. for Approval of a Default Serv. Program and Procurement Plan for the Period June 1, 2013 through May 31, 2013*, Docket No. P-2012-2302074 (January 23, 2013), pp. 163-64.

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will eventually determine the most successful products for low income customers in PECO's service territory, Direct Energy did not establish that an EGS' ability to charge above the PTC is essential to those future products. Its assertion that CAP customers will also likely be precluded from purchasing green power or time-differentiated products because such products typically include a premium above the PTC is not applicable; the Commission's CAP Policy Statement expressly provides that CAP customers may not subscribe to nonbasic services that would cause an increase in monthly billing and not contribute to bill reduction. *See* 52 Pa. Code § 69.265(3)(ii). **[BEGIN CONFIDENTIAL]**

[END CONFIDENTIAL] *See* PECO Hearing Exhibit No. 6.

Finally, Direct's assertion that PECO's proposal will require more complex EGS terms and conditions has no merit in light of Direct Energy's own current terms and conditions. Under its standard contract with residential customers, Direct retains a unilateral right to cancel its contract with a customer any time that the contract "becomes uneconomical" to Direct Energy. *See* PECO Hearing Ex. No. 7, ¶ 8 ("[I]f for any reason performance of this Agreement becomes materially uneconomical to Direct Energy, or if Direct Energy is otherwise unable to continue this Agreement, Direct Energy can cancel this Agreement after giving you at least fourteen (14) days' advance written notice.").

In summary, while Direct Energy has suggested that PECO's proposed pricing limitation may "dampen" the "ardor" of EGSs to serve low income customers, PECO Hearing Exhibit No. 1, it submitted no evidence to support that claim. In contrast, PECO is confident that many EGSs operating in PECO's service territory will seek to deliver savings to approximately 140,000 new customers and that its proposed pricing limitation will help ensure affordability for CAP customers and avoid increased costs to the residential customers who pay for CAP. The Commission should therefore approve PECO's proposed limitation requiring EGSs who voluntarily choose to serve CAP customers to charge a rate for generation supply that is equal to or less than the applicable PTC.

- 2. Implementation Costs For The CAP Shopping Plan Should Be Recovered From EGSs Through A POR Discount And From Residential Customers Through The USFC Over A One-Year Period**
 - a. PECO's Proposal to Allocate Plan Implementation Costs Equally Between EGSs and Residential Customers Who Benefit From CAP Customer Shopping is Consistent With the Commission's Prior Orders in This Proceeding**

No party disputes that the CAP Shopping Plan, like the Standard Offer Program and other initiatives included in DSP II, is a retail market enhancement. *See* CAUSE-PA CAP Shopping St. No. 1, p. 7; Direct Energy St. 1, p. 10; OCA St. No. CAP-1, pp. 28-29. The Commission addressed the allocation of retail market enhancement costs between EGSs and customers in its Order, *Petition of PECO Energy Co. for Approval of its Default Serv. Program*, Docket No. P-2012-2283641 (Order entered February 14, 2013) ("*February 2013 Order*") (p. 13) as follows:

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.

Consistent with that prescribed cost allocation, the Commission recently approved full and current cost recovery for PECO's Standard Offer Program through a cost sharing mechanism whereby, after collection of a per-customer fee from EGSs, half of any remaining implementation costs will be recovered from EGSs through a 0.2% POR discount and the other half from default service customers eligible to participate in the program through PECO's GSA. *June 2013 Order*, pp. 9-10.

As discussed in Section I.B *supra*, PECO is proposing to recover 50% of the Plan implementation costs (exclusive of customer education costs) through a 0.3% POR discount, with the remaining half of such costs recovered from residential customers, on a non-bypassable basis, through the USFC. PECO's full and current cost recovery proposal applies the Commission-approved rate mechanism for the Standard Offer Program with a modification to account for the differences in program structures and to appropriately reflect the fact that both EGSs and residential customers will benefit from CAP shopping.¹⁵ As Mr. Cohn explained, PECO's CAP Shopping Plan cost allocation proposal does not include a separate EGS charge because EGSs will have to pay the costs to acquire CAP customers and comply with additional requirements relating to CAP product offerings. Even though PECO's cost-sharing proposal comports with the Commission-approved cost recovery mechanism for the Standard Offer Program, witnesses on behalf of Direct Energy and the OCA opposed PECO's proposal.

Mr. Kallaher (Direct Energy St. 1, p. 10) agreed that "EGSs will certainly benefit" from allowing CAP customers to shop, yet contended that all costs of the CAP Shopping Plan should

¹⁵ The OCA supports (and no other party opposes) PECO's proposal to recover customer education costs through the Commission-approved Consumer Education Surcharge. *See* OCA St. No. CAP-1, p. 29.

be recovered through a non-bypassable charge assessed on all customers¹⁶ who will also benefit from this retail market enhancement.¹⁷ The Commission previously considered and rejected a non-bypassable charge to recover the costs of retail market enhancements without EGS contributions, confirming its view in the Final Order, *Investigation of Pennsylvania's Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-2237952 (entered March 1, 2012) ("*Intermediate Work Plan Order*") (p. 32) that EGSs should be responsible for at least a portion of retail market enhancement program costs. *See October 2012 Order*, p. 148; *February 2013 Order*, p. 13. Direct Energy has not provided any basis to deviate from the Commission's cost allocation resolution in the *February 2013 Order*.

Direct Energy also opposes the use of the POR discount to recover Plan costs from EGSs on the grounds that the Plan is not related to EGS receivables and because not all EGSs who participate in PECO's POR program will choose to serve CAP customers. Direct Energy St. 1, p. 11. However, the Commission has already considered and rejected identical arguments raised by other EGSs against the use of the POR discount to recover Standard Offer Program costs. *Cf. February 2013 Order*, pp. 5-11 (summarizing EGS arguments that a POR discount does not follow cost causation and would result in an unfair allocation of costs to EGSs who do not

¹⁶ OSBA opposed Direct Energy's proposed non-bypassable charge, asserting that Plan costs should not be recovered from commercial and industrial customers. OSBA St. No. 4, pp. 2-3. PECO agrees with OSBA witness Kalcic that any CAP Shopping Plan costs assigned to customers should only be collected from residential distribution customers who could become eligible for CAP if they meet the household income thresholds. PECO St. No. 3-SR, p. 3.

¹⁷ Direct Energy also suggests that requiring all customers to pay for the costs of the CAP Shopping Plan "can be viewed as a natural continuation of the transition to restructured markets that began in the late 90s." Direct Energy St. 1, p. 10. However, there is no basis for concluding that the cost recovery requirements for implementation of retail choice at the beginning of restructuring under the Competition Act are applicable, particularly given that the Commission has recently addressed the appropriate allocation of retail market enhancement costs in the *February 2013 Order* and the *June 2013 Order*.

participate in the Standard Offer Program), p. 13 (providing a cost allocation resolution that in its view incorporates “a very reasonable accommodation of all the party’s [sic] positions”).

Conversely, OCA witness Colton (OCA St. No. CAP-1, p. 29) argues that responsibility for Plan implementation costs should be assigned exclusively to EGSs without any customer contributions because such costs are incurred to “generate additional market participants” for EGSs. As with the Standard Offer Program, the OCA’s proposal ignores the benefits to customers, including CAP customers themselves, generated by further enhancement of Pennsylvania’s retail electric market. As PECO witness Cohn testified, a 10% reduction in energy costs for CAP customers will benefit those customers as well as reduce the USFC by approximately \$1 million annually for all residential customers.¹⁸ PECO St. No. 3, pp. 6-7; PECO Ex. ABC-4 (Corrected).

The CAP Shopping Plan can also yield significant benefits to CAP customers in the form of lower energy bills approximating \$1.2 million. *Id.*, p. 8. As PECO Exhibit ABC-5 illustrates, a CAP customer with monthly usage of 1000 kWh in CAP tier D1 (i.e., 61% discount for usage up to 650 kWh) who is able to purchase generation supply from an EGS at a price that is 10% off of PECO’s current PTC would experience a bill reduction of \$6.04 per month. For the reasons summarized above, the Commission should therefore reject the OCA’s contention that residential customers should pay no CAP Shopping Plan implementation costs whatsoever.

¹⁸ As noted by Mr. Cohn, the Company’s projections regarding USFC and CAP customer bill savings are based on several assumptions including that a shopping CAP customer receives, on average, a 10% discount off the PTC from EGSs. *See* PECO St. No. 3, pp. 7-8; PECO Ex. ABC-4 (Corrected). The projections are also contingent upon approval of the Plan requirement that requires EGSs to always charge CAP customers a price at or below the PTC.

b. PECO's Proposal to Amortize Plan Costs Over the Clearly Established One-Year Implementation Period is Reasonable

OCA witness Colton is the only witness that opposes PECO's recommended one-year amortization period for CAP Shopping Plan costs. In contrast to PECO's proposal, Mr. Colton would spread recovery of such costs over three to five years, purportedly to be consistent with a "matching principle," because PECO's CAP Shopping Plan provides benefits beyond the first year of operation. OCA St. Nos. CAP-1, p. 29 & CAP-1R, pp. 14-15. The Commission should reject the OCA's recommendation. As Mr. Cohn demonstrated, PECO's proposed one-year amortization period aligns with the portion of the DSP II term in which the CAP Shopping Plan will be implemented. PECO St. Nos. 3-R, p. 5 & 3-SR, p. 2. Moreover, contrary to the OCA's assertions, PECO's proposed amortization period properly matches the implementation costs with the clearly established time period (DSP II) in which the Plan will be in place.¹⁹ Indeed, in accordance with the *2013 Universal Service Order* (pp. 24-25), PECO is presently testing different overall CAP designs and will report its analysis to the Commission in September 2013. If the Commission ultimately directs PECO to submit a new structure in its February 2015 universal service plan, further IT programming may be required. PECO St. No. 3-SR, pp. 2-3.

c. The USFC is the Appropriate Rate Mechanism to Ensure Full Recovery of Plan Costs From All Residential Customers

As discussed in Section III.B.3.a above, PECO is proposing to collect the portion of Plan implementation costs assigned to customers through the USFC. Although the OCA's threshold position is that all Plan costs, exclusive of customer education costs, should be borne entirely by

¹⁹ Additionally, the OCA's proposal to spread Plan IT costs beyond the DSP II term without a return on the unamortized balance of those costs would not result in full recovery. *Cf.* Joint Petition for Settlement, *Petition of PECO Energy Co. for Approval of its Default Serv. Program and Rate Mitigation Plan*, Docket No. P-2008-2062739, (approved by Opinion and Order entered June 2, 2009), Ex. F (providing that IT costs would be amortized over five years with a 6% return on capital).

EGSs, OCA witness Colton also opposes PECO's proposal to collect the customer share of Plan costs through the USFC based on his view that CAP customer shopping is not a "universal service program." OCA St. Nos. CAP-1, pp. 29-30 & CAP-1SR, pp. 5-6. However, Mr. Colton has not even recommended – let alone provided support for – an alternative mechanism for recovery from customers.

As noted above, PECO recovers the customer share of Standard Offer Program costs through the GSA. However, the GSA is not appropriate for recovery of Plan costs from customers because additional residential customers have the opportunity to participate in CAP. While recovery of Plan costs not collected from EGSs through the GSA would provide PECO full recovery of CAP shopping costs, such mechanism would inappropriately collect those costs only from residential *default service* customers even though all residential distribution customers (including shopping customers) are eligible to participate in CAP if their household income falls below 150% of the Federal Poverty Guidelines. *See* PECO St. No. 3, p. 4. Therefore, PECO's selection of the USFC instead of the GSA to ensure full recovery of Plan costs from all residential customers is entirely reasonable.

Moreover, the OCA's argument against the use of the USFC to recover Plan costs allocated to residential customers is undermined by the fact that the Commission has approved full and current recovery of CAP-related costs for other EDCs with customer assistance programs that also serve as a retail choice platform for low income customers. For example, in PPL Electric Utilities Corporation's ("PPL") 2007 base rate proceeding, the Commission approved a reconcilable Universal Service Rider ("USR") for recovery of all costs, except

internal administrative costs (i.e., employee wages and benefits),²⁰ associated with universal service programs, including PPL Electric's "OnTrack" customer assistance program. Opinion and Order, *Pa. P.U.C. v. PPL Elec. Util. Corp.*, Docket Nos. R-00072155 *et al.* (entered December 6, 2007), p. 4; *see also* Order, *PPL Elec. Util. Corp. Universal Serv. and Energy Conservation Plan for 2011 through 2013*, Docket No. M-2010-2179796 (entered May 5, 2011), Appendix A pp. 13-14 (approving joint settlement of PPL's Universal Service and Energy Conservation Plan for the Period 2011-2013 that continues the use of the USR to recover OnTrack costs).

In sum, consistent with the Commission's prior Orders in this proceeding, PECO's cost-sharing proposal appropriately reflects the fact that both EGSs and residential customers will benefit from the CAP Shopping Plan and properly amortizes Plan costs over the remaining DSP II period when the Plan will be implemented. For all of these reasons, PECO's proposed cost recovery mechanism should be adopted.

3. PECO's Enrollment And Reporting Requirements For Participating EGSs Are Reasonable And Necessary To Meet Universal Service Requirements

As described in Section I.B., *supra*, in addition to recommending a pricing restriction on the rates EGSs can charge CAP customers, PECO is proposing certain EGS requirements related to CAP customer billing options, publication of CAP rates for customers, the CAP Notice, and EGS reporting. No party objects to the restrictions on CAP customer billing options set forth in the revised Supplier Tariff (Page 22, Paragraph 5.4.3.1.2) submitted by PECO. Accordingly,

²⁰ Supplement No. 125, Electric Pa. P.U.C. No. 201, Eleventh Revised Page No. 11 (effective January 1, 2013) (defining internal administrative costs as "employee wages and benefits").

PECO's proposed requirement for EGSs to use EDC consolidated billing with POR for all CAP customers they serve should be approved.²¹

Direct Energy, the only EGS that submitted testimony in this phase of the proceeding, also does not oppose PECO's proposed framework for publishing CAP rates or the requirement for EGSs to electronically submit a CAP Notice five business days before publishing CAP rates. Direct Energy St. 1, p. 8. However, Mr. Kallaher urged the Commission to ensure that EGSs have "off-ramps" from participation in the CAP retail market and "sufficient flexibility" to discontinue service to a CAP customer. *Id.*

Aside from the fact that an EGSs' decision to serve CAP customers is entirely voluntary and EGSs are free to offer contract terms consistent with their competitive interests,²² Direct Energy's concern is alleviated by PECO's existing Supplier Tariff. As explained by Mr. McCawley, after an EGS has entered into a contract with a CAP customer, the EGS may discontinue service in accordance with the notice provisions of Section 14 of the Supplier Tariff and the terms and conditions of its contract with the CAP customer. PECO St. No. 2-R, p. 6. Direct Energy's argument for additional "offramps" is also largely undercut by its current practice of including unilateral cancellation provisions in its terms and conditions for electric

²¹ While CAUSE-PA witness Miller (CAUSE-PA CAP Shopping St. No. 1, p. 6) questions whether the Plan ensures that shopping CAP customers are exempt from security requirements that an EGS might impose, PECO's existing Supplier Tariff prohibits EGSs participating in PECO's POR program from denying service for credit-related reasons. PECO St. No. 2-R, p. 10; Supplier Tariff, pp. 94 & 96.

²² As discussed in Section 1 *supra*, other than the single limitation on the price that EGSs can charge CAP customers, the Plan does not restrict the form of pricing, discounts or other promotions offered by EGSs to those customers. While PECO acknowledges Mr. Colton's (OCA St. No. CAP-1, p. 18) and Mr. Miller's (CAUSE-PA CAP Shopping St. No. 1, p. 6) concerns regarding termination fees, PECO believes permitting EGSs to use those fees (as they are free to do for other residential customers) to recoup enrollment incentives in the event of a CAP customer's early termination of the contract strikes a reasonable balance among the Company's CAP Shopping Plan Design Principles.

generation supply for residential customers in PECO's service territory, as discussed in Section II.B.1 *supra*. See PECO Hearing Ex. No. 7, ¶ 8.

Direct Energy recommends that an EGS be allowed to re-enter the CAP retail market after exiting, subject to a 90-day stay-out period and preclusion of automatic re-enrollment of the exiting EGS' former customers. See PECO Hearing Ex. No. 3; OCA Hearing Ex. No. 2. PECO believes that such stay-out period is reasonable and therefore does not object to allowing EGSs to re-enter the CAP retail market, as proposed by Direct Energy, provided that EGSs comply with all CAP Shopping Plan requirements and honor their existing contracts with CAP customers. PECO St. No. 2-R, p. 6; PECO St. No. 1-SR, pp. 2-3.

Direct Energy also does not oppose imposing certain reporting requirements on EGSs, but contends that any such reporting obligations should be limited to confirming to the Commission that an EGS has complied with the CAP Shopping Plan requirements. Direct Energy St. 1, p. 8. In addition, Direct Energy seeks a sweeping Commission declaration that such reports are not discoverable in any subsequent Commission proceeding from any party who either provides or receives the reports. *Id.* Direct Energy's recommended limitations on reporting requirements should be rejected for several reasons.

EGS reporting is essential to PECO's future compliance with its universal service evaluation reporting obligations under the Commission's regulations at 52 Pa. Code § 54.76 and provides an important tool to determine if PECO's CAP, as enhanced by the Plan, is meeting its goals. PECO St. No. 2-R, p. 9; *see also* OCA St. No. CAP-1, p. 21. More specifically, PECO's proposed reporting parameters outlined in Section I.B. above (e.g., customer account number and CAP rate) will provide the Company's independent evaluator and the Commission with timely and valuable information regarding the prices that CAP customers are paying for competitive

generation supply. This information is necessary for the Commission to evaluate the impact of CAP customer shopping on affordability and the aggregate CAP discount amount funded by all residential customers. PECO St. No. 2-R, p. 7; OCA St. Nos. CAP-1, p. 21 & CAP-1R, p. 10.²³ Stated simply, the impact of CAP shopping could not be determined if the Commission were to adopt Direct Energy's proposal for a simple "confirmation" in lieu of the reporting of detailed information regarding the rates charged to CAP customers. Furthermore, Direct Energy provides no justification for its claim that the proposed reporting parameters are unreasonable or burdensome.

To the extent Direct Energy has concerns regarding the confidentiality of EGS rates charged to CAP customers, such concerns are adequately addressed by the confidentiality protections in the Commission's regulations at 52 Pa. Code § 5.362, including the availability of appropriate protective orders. Moreover, Direct Energy (and other EGSs) may seek additional provisions in protective orders that it believes are necessary to protect the confidentiality of specific CAP pricing information in future proceedings, and the Commission should not prejudge either the relevancy of such information or the appropriate protections now.

4. CAP Customers Who Become Eligible Or Ineligible For CAP Benefits While Receiving EGS Service Are Protected Under The CAP Shopping Plan

OCA witness Colton raises concerns regarding the interaction between a customer's CAP enrollment period and the EGS contract term (e.g., the applicability of CAP rate protections for customers who join or leave CAP during the term of an EGS contract). OCA St. No. CAP-1, pp.

²³ PECO agrees with the OCA's recommendation that aggregated CAP shopping data reported by EGSs be published on the Commission's website or other similar media. PECO St. No. 2-R, p. 8. As Mr. Colton explained in his rebuttal testimony, aggregate reporting does not contain customer-specific data and is necessary for the Commission's evaluation of the universal service impacts of CAP shopping. OCA St. No. CAP-1R, p. 10.

11-12. In his rebuttal testimony, Mr. McCawley addressed these concerns and, in the process, cleared up apparent misunderstandings of how the Plan protects CAP customers who become eligible or ineligible for CAP benefits while receiving EGS service.

As explained by Mr. McCawley, PECO is proposing to notify EGSs of a customer's change to or from PECO's CAP rate by EDI transaction ("CAP Change Notice"). If an EGS receives notice that an existing shopping customer has enrolled in CAP, it must take one of two actions. First, an EGS may continue to serve such customer as long as it transitions the new CAP customer to a rate at or below PECO's PTC and complies with all other Plan requirements within two billing cycles of receipt of the CAP Change Notice. Second, the EGS may elect to discontinue service to the customer in accordance with Section 14 of the Supplier Tariff, and the customer will then be transferred to default service effective on the next meter read date after the CAP Change Notice.

On the other hand, if a shopping CAP customer becomes ineligible for CAP benefits or otherwise leaves the program and an EGS receives a CAP Change Notice that such customer is no longer on PECO's CAP rate, the EGS must still honor the terms of its contract with the customer. PECO St. No. 2-R, pp. 11-12. At the end of the contract term, EGSs must provide any CAP customer who leaves the program during the EGS contract term notices required by the Commission's regulations at 52 Pa. Code § 54.5(g)(1) and PECO's Supplier Tariff. Consistent with the Commission's guidance, if a former CAP customer does not affirmatively choose to receive service from a different EGS or elect default service after receiving the required notices, the customer will remain with the EGS on a month-to-month contract with the new pricing terms. PECO St. No. 2-R, p. 11; Order, *Interim Guidelines Regarding Advance Notification by An Elec. Generation Supplier of Impending Changes Affecting Customer Serv.*; Amendment re:

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Supplier Contract Renewal/Change Notices, Docket Nos. M-2010-2195286 and M-0001437 (entered September 23, 2010) (“Supplier Contract Renewal Guidelines Order”), p. 21 & Appendix A.

All parties agree with (or do not oppose) PECO’s proposal to require EGSs to honor the terms of an existing contract, including any CAP protections, notwithstanding receipt of a CAP Change Notice. *See* OCA St. No. CAP-1SR, p. 10 (agreeing with PECO that a CAP customer who leaves CAP would continue to receive a rate that does not exceed the PTC and other protections that are part of the EGS contract until such contract expires). The OCA, however, asserts that an EGS must obtain a former CAP customer’s affirmative consent to provide service to that customer under new pricing terms (without CAP rate protections) after expiration of the initial contract term. OCA St. No. CAP-1, pp. 19-20 & CAP-1SR, p. 11. The OCA fails to recognize that the Commission’s guidelines plainly provide that an EGS may renew an agreement at revised terms and conditions in the event that the customer does not respond to end of term notices. *Supplier Contract Renewal Guidelines Order*, p. 21. In addition, the CAP Shopping Plan contains significant customer protections, which are maintained for the duration of the EGS contract term even if a CAP customer leaves the program. Given these protections, the OCA has failed to demonstrate that requiring EGSs to obtain affirmative consent upon expiration of the initial contract term to renew an arrangement with former CAP customers with new pricing terms is warranted.

5. EGS Compliance With The CAP Shopping Plan Should Be Enforced By The Commission

CAUSE-PA generally supports the design of PECO’s CAP Shopping Plan and the numerous customer protections included therein, but contends that PECO’s Plan is deficient because it does not establish a mechanism for the Company to monitor EGSs compliance with

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Plan terms and ensure advancement of PECO's CAP Shopping Design Principles. *See* CAUSE-PA CAP Shopping St. No. 1, pp. 5-7. Each of the specific alleged deficiencies detailed on pages 5 through 7 of Mr. Miller's testimony relate to his concern regarding the Plan's lack of a monitoring and enforcement framework. Specifically, CAUSE-PA recommends that PECO, as Plan administrator, should (i) require EGSs to enter into a separate contract with PECO to participate in the CAP retail market, (ii) monitor EGS compliance with Plan requirements and (iii) impose contractual penalties for non-compliance. CAUSE-PA CAP Shopping St. Nos. 1, p. 11 & 1-SR, pp. 2-3. Because the Commission is the appropriate entity to ensure EGS compliance with the CAP Shopping Plan, just as it does for all other retail market enhancements implemented by PECO and other Pennsylvania EDCs, CAUSE-PA's proposal to expand PECO's administrative role to include monitoring and enforcement responsibilities should be rejected.

As PECO witness McCawley explained in his testimony, PECO's CAP Shopping Plan encompasses clear and appropriate customer protections and reporting obligations for EGSs who choose to serve CAP customers, which will be memorialized in the Company's Supplier Tariff. PECO St. Nos. 2, pp. 3-10 & 2-R, p. 9. Those Plan components will provide the Commission with ample information to monitor the actions of participating EGSs and take any enforcement action it deems appropriate, including, if warranted, the assessment of penalties. PECO St. No. 1-R, p. 3. A separate contractual arrangement between PECO and an EGS that chooses to serve CAP customers is simply not necessary. As noted previously, the CAP Shopping Plan terms are set forth in the Supplier Tariff, and the Commission has previously found that such tariff provisions govern the relationship between an EGS and an EDC. *See, e.g.,* Opinion and Order, *Joint Petition of Metropolitan Edison Co., Pennsylvania Elec. Co., Pennsylvania Power Co., and*

West Penn Power Co. for Approval of Their Default Serv. Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (August 16, 2012), p. 124.

Significantly, none of the Commission's prior Orders in either its Retail Markets Investigation or this proceeding confer authority on PECO (or other EDCs) to impose penalties on EGSs or to take any enforcement action for non-compliance with retail market enhancement program requirements. In addition, there is no reason or supporting evidence for the Commission to conclude that shifting enforcement responsibilities from the Commission to PECO with respect to the Plan – but not other retail market enhancements – is either necessary or justified. For all these reasons, the Commission should reject CAUSE-PA's proposal to shift any enforcement responsibility to PECO.

6. The Commission Should Approve The Annual Reconciliation Of Default Service Over/Under Collections To Encourage EGSs To Serve CAP Customers

Under the CAP Shopping Plan, PECO is proposing to advance its residential PTC filing schedule by thirty days in order to provide ample time for EGSs to develop CAP products, calculate any change to a currently offered CAP rate and to notify existing CAP customers of any rate change. *See* PECO St. No. 2, p. 5 (explaining that PECO will file the residential PTC for each quarter seventy-five days before the effective date). To further facilitate EGS tracking of PECO's default service rate, PECO has also recommended that prior period GSA over/under collections be reconciled for residential customers on an annual basis rather than a quarterly basis. PECO St. No. 3, pp. 9-10. As PECO witness Cohn testified, because PECO bills customers at different times throughout a month, the revenue billed and received for a prior month may diverge significantly from the actual default service expenses incurred in the current month. This monthly billing cycle lag can result in significant fluctuations in the quarterly PTC and impact how EGSs can ensure that their CAP rates do not exceed the residential PTC in

effect.²⁴ As Mr. Cohn demonstrated, annual reconciliation results in a more stable PTC that will make it easier for EGSs to ensure that their CAP rates do not exceed the residential PTC. PECO St. No. 3, pp. 10-11; PECO Ex. ABC-6. As a consequence, annual reconciliation will encourage EGS participation in the CAP retail market, while maintaining customer protections.

All parties participating in the CAP Shopping Plan proceedings, except Direct Energy, agree with or do not oppose the annual reconciliation of GSA over/undercollections. Direct Energy opposes annual reconciliation as part of its general opposition to any pricing restrictions on EGSs who choose to serve CAP customers. However, as noted in Section II.B.1, *supra*, Mr. Kallaher conceded that annual reconciliation could be beneficial to EGSs if PECO's Plan is approved because tracking the PTC would be "critical" to EGSs serving CAP customers. Direct Energy St. 1, p. 13. Moreover, Mr. Kallaher's claim of an alleged conflict with the Commission's recommendation in its Retail Markets Investigation that default service plans transition to at least quarterly procurements to achieve more market-reflective retail prices is entirely without merit. To the contrary, annual reconciliation will not change the schedule of default service supply procurements and the Company will continue to adjust residential default service rates on a quarterly basis to reflect changes in supply costs. PECO St. No. 3-R, p. 7. The Commission should, therefore, adopt PECO's proposed annual reconciliation of residential GSA under/over collections.

²⁴ PECO acknowledges that the Commission rejected its earlier proposal in this proceeding for annual reconciliation to minimize fluctuations in the PTC caused by conditions unrelated to the market, but believes that the same concerns justifying its original proposal will be amplified with CAP shopping. Moreover, reducing volatility will minimize barriers to EGS participation in the CAP retail market. PECO St. No. 3, pp. 11-12.

7. PECO's Initiatives For CAP Shopping Customer Education Are Appropriate

PECO's CAP Shopping Plan proposes an ongoing and multi-layered CAP customer education strategy. In his direct testimony, Mr. McCawley described the substantial educational component of the CAP Shopping Plan, which includes enhanced CAP-related call center scripts, mailings, postcards, brochures, PECO press releases, PECO universal service web pages, customer outreach, community workshops and revisions to existing CAP literature, including the CAP enrollment letter. PECO St. No. 2, pp. 8-9. Consistent with PECO's current practice, written education materials will be offered to CAP customers in several languages and CAP customers will have continuous access to translators via PECO's "language line." PECO St. No. 2-R, p. 13. This practice should allay CAUSE-PA's concern about reaching non-English speaking CAP customers. CAUSE-PA CAP Shopping St. No. 1, p. 7.

Both the OCA and CAUSE-PA made recommendations regarding the content of CAP shopping educational materials and communications. *See* OCA St. CAP-1, pp. 13-15 (stating that educational materials should include information regarding "how" to make a choice within the competitive market and should consider an appropriate quantity of messaging); CAUSE-PA CAP Shopping St. No. 1, p. 6 (recommending the use of plain language in customer education materials). In rebuttal, the Company committed to work with the OCA, CAUSE-PA and other interested parties to develop the specific content of the communications and to minimize message overload. PECO St. No. 2-R, pp. 12-13. Given that commitment, the Commission need not address the OCA's and CAUSE-PA's specific recommendations regarding content.

The OCA also proposes to expand the scope of PECO's CAP shopping customer education initiatives to target customers who leave CAP but remain on the PECO system. OCA St. No. CAP-1, p. 17. While PECO does not object to the OCA's recommendation in principle,

its adoption would increase the cost burden for residential customers who pay for CAP. PECO St. No. 2-R, pp. 13-14. For instance, the OCA's proposal would require tracking of CAP customer enrollment and post-benefit activity. *Id.* In light of the additional costs that come with broadening the scope of the CAP customer education campaign, the OCA's proposal should not be adopted. For the foregoing reasons, the Commission should approve PECO's appropriately focused CAP customer education initiatives, which are designed to empower CAP customers to shop for competitive generation supply to reduce their energy burden.

8. The Commission Should Reject CAUSE-PA's Alternative Aggregation Approach

CAUSE-PA fully supports PECO's CAP Shopping Design Principles and urges the Commission to adopt each of the Company's proposed CAP customer protections as part of the CAP Shopping Plan. CAUSE-PA CAP Shopping St. No. 1, p. 11. Indeed, CAUSE-PA is "amenable" to a variety of different CAP shopping models, including PECO's proposal where CAP customers voluntarily choose to shop, as long as the model incorporates PECO's CAP Shopping Design Principles, along with the principles outlined by CAUSE-PA witness Miller. CAUSE-PA CAP Shopping St. No. 1-SR, pp. 4-5. Nevertheless, in conjunction with his proposal to shift Plan monitoring and enforcement responsibilities from the Commission to PECO, Mr. Miller recommends a CAP customer aggregation program structured to ensure low income customer protections and competitive prices below the PTC. CAUSE-PA CAP Shopping St. No. 1, pp. 12-16.

As Mr. Crowe explained, the Company evaluated other arrangements to facilitate CAP customer shopping in developing its Plan. Indeed, PECO specifically considered a customer opt-out aggregation program in which all CAP customers would be transferred to one or more winning EGSs through a competitive bidding process and an opt-out mail offer. PECO St. No. 1,

p. 14; PECO St. No. 2-R, p. 4. However, the Commission has expressed a strong preference for individual choice with respect to shopping. *See* Declaratory Order, *In Re: Retail Energy Supply Ass'n*, Docket No. P-2010-2207062, *In Re: Dominion Retail, Inc.*, Docket No. P-2010-2207953, and *In Re: FirstEnergy Solutions Corp.*, Docket No. P-2010-2209253, (March 17, 2011), p. 9 (“The Public Utility Code and Commission regulations express a strong preference for individual choice in regard to electric generation supply.”). Accordingly, PECO did not incorporate aggregation into its CAP Shopping Plan. PECO St. No. 2-R, p. 5.

Under PECO’s CAP Shopping Plan, low income customers will be fully empowered to shop for competitive generation supply to reduce their energy costs. At the same time, the Plan helps avoid unnecessary increases in low income customer energy burdens and the cost burden of all residential customers who fund CAP by limiting EGS pricing in the CAP retail market to the level of the PTC. PECO St. No. 1-SR, p. 3. For those reasons, a retail choice platform for CAP customers that provides a shopping experience most similar to other residential customers, as proposed here, strikes the best balance among the different design principles and policy objectives underlying PECO’s CAP Shopping Plan. PECO’s proposed retail choice platform design for CAP customers should, therefore, be approved without modification.

9. CAP Customers Should Not Be Permitted To Participate In PECO’s Standard Offer Program At This Time

In the *October 2012 Order* (p. 132), the Commission directed the Office of Competitive Market Oversight (“OCMO”) to work with PECO to ensure that, to the extent possible, the Standard Offer Program is available to CAP customers. Nonetheless, as Mr. McCawley explained, PECO is not proposing to extend the Standard Offer Program to CAP customers at this time because the Commission-approved product design for the Standard Offer Program is incompatible with the Plan’s requirement that EGSs always charge a price at or below the PECO

residential PTC. More specifically, under the Standard Offer Program, EGSs may offer a twelve-month product with a fixed-price at least 7% below the applicable PTC in effect at the time of the standard offer. However, the Standard Offer Program does not require EGSs to track changes in the PTC after a customer has accepted an EGS offer. As a result, CAP customers must be treated differently from other customers participating in the Standard Offer Program to ensure that the CAP customers' standard offer rate does not exceed the PTC during the twelve-month contract term. PECO St. No 2, pp. 9-10; *see also* PECO St. No. 1, p. 13. To that end, Mr. McCawley recommended the initiation of a stakeholder collaborative within thirty days of a final Order in this proceeding and the filing of modifications to the Standard Offer Program and other retail market enhancements (e.g., the time-of-use rate program) addressing CAP shopping within ninety days of such final Order. PECO St. No. 2, p. 10. No party opposed PECO's proposed collaborative.

10. The CAP Shopping Plan Implementation Date Should Be Extended To April 15, 2014

As explained in Section 1, *supra*, subsequent to its *October 2012 Order*, the Commission directed PECO to develop a plan that enables CAP customers to begin shopping in its service territory by April 1, 2014. January 2013 Secretarial Letter, p. 1; *2013 Universal Service Order*, p. 32. PECO's 2014 IT programming schedule, which is linked to all PECO IT applications, includes six previously scheduled IT "pushes" where the Company will aggregate a variety of IT system changes and activate them in a coordinated fashion to ensure sufficient testing and system integration. Programming and testing necessary to implement the CAP Shopping Plan will not be activated until the "push" scheduled for early April 2014. PECO St. No. 1, p. 15.

Accordingly, PECO is requesting an extension in the required start date of its CAP Shopping

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Plan from April 1, 2014 to April 15, 2014. No party opposes PECO's proposed brief delay in the commencement date for the CAP Shopping Plan and it should, therefore, be approved.

IV. CONCLUSION

For the reasons set forth above, the Commission should enter an Order approving PECO's CAP Shopping Plan and adopting its CAP Shopping Design Principles. In addition, the Commission should: (1) approve the proposed changes to the Company's Electric Tariff and Electric Generation Supplier Coordination Tariff to implement the Plan and achieve full and current recovery of Plan costs; (2) grant the waiver requested in the Petition to implement annual reconciliation of GSA over/undercollections; and (3) extend the deadline for implementation of CAP shopping in PECO's service territory from April 1, 2014 to April 15, 2014.

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Dated: July 26, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY
FOR APPROVAL
OF ITS DEFAULT SERVICE PROGRAM
(CUSTOMER ASSISTANCE PROGRAM SHOPPING PLAN)**

DOCKET NO.: P-2012-2283641

TESTIMONY AND EXHIBIT LIST

Statement No. 1, Direct Testimony of Brian D. Crowe

Statement No. 1-R, Rebuttal Testimony of Brian D. Crowe

Statement No. 1-SR, Surrebuttal Testimony of Brian D. Crowe

Statement No. 2, Direct Testimony of John J. McCawley

- **Exhibit JJM-1** **Notice of Intent to Participate or Discontinue Participation As A Customer Assistance Program Supplier**
- **Exhibit JJM-2** **PECO Electric Generation Supplier Coordination Tariff**
- **Exhibit JJM-3** **PECO Electric Generation Supplier Coordination Tariff (Blackline)**

Statement No. 2-R, Rebuttal Testimony of John J. McCawley

- **Exhibit JJM-1R** **Response of Direct Energy Services, LLC to PECO Interrogatories, Set I No. 3**
- **Exhibit JJM-2R** **PECO Electric Generation Supplier Coordination Tariff (including Blackline)**

Statement No. 3 Direct Testimony of Alan B. Cohn

- Exhibit ABC-1 Listing of Prior Case Testimony
- Exhibit ABC-2 PECO Electric Service Tariff (including Blackline)
- Exhibit ABC-3 CAP Shopping Estimated Costs
- Exhibit ABC-4 Estimated Savings to CAP Customer and the Universal Service Fund Charge
(corrected)
- Exhibit ABC-5 Impact of Shopping on a CAP Customer Bill
- Exhibit ABC-6 Illustration of the Variability Caused by Quarterly Reconciliation
- Exhibit ABC-7 Responses to Questions in 52 Pa. Code Section 53.52(a)

Statement No. 3R, Rebuttal Testimony of Alan B. Cohn

- Exhibit-1R Impact of Increases in Supplier Prices on the Universal Service Fund Charge
- Exhibit-2R Impact of Shopping on a CAP Customer Bill

Statement No. 3-SR, Surrebuttal Testimony of Alan B. Cohn

PECO Hearing Exhibits 1 through 15

(Note: PECO Hearing Exhibits 5 and 6 are designated **CONFIDENTIAL** in accordance with the Protective Order entered in these proceedings)