



COMMONWEALTH OF PENNSYLVANIA

August 9, 2013

**E-FILED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**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:

I am delivering for filing today the Reply Brief, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

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cc: Parties of Record

Brian Kalcic

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Reply Brief, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Dated: August 9, 2013**

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

On January 13, 2012, PECO filed a petition seeking approval of its proposed second Default Service Program to secure default service supply for the Company's customers for the period from June 1, 2013 through May 31, 2015 ("Default Service Proceeding").

The Commission entered an Opinion and Order on October 12, 2012 in the Default Service Proceeding that, among other things, directed PECO to develop a plan to allow its CAP customers to purchase generation supply from electric generation suppliers ("EGSs") by January 1, 2014 ("CAP Shopping Plan").

On November 8, 2012, the Commission issued a Tentative Order at a separate docket considering PECO's proposed Universal Services Three Year Plan for 2013-2015 ("Universal Services Proceeding"), seeking comments on PECO's CAP Shopping Plan.

In a Secretarial Letter issued on January 3, 2013, at both the Default Service Proceeding and Universal Services Proceeding dockets, the Commission stated its intent to adopt a Final Order on the Three Year Plan by April 4, 2013, and directed PECO to file a plan on or around May 1, 2013, which would allow CAP customers to begin shopping on April 1, 2014.

On May 1, 2013, PECO filed a Petition and supporting direct testimony requesting that the Commission enter an Order: (1) approving the proposed CAP Shopping Plan; (2) approving the proposed changes to the Company's Electric Tariff and Electric Generation Supplier Coordination Tariff (the "Supplier Tariff") to implement the Plan and achieve full and current recovery of Plan costs; (3) granting 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 implement an annual reconciliation of the over/under collection component of the Generation Supply Adjustment ("GSA") for residential customers; and (4) approving a short delay in the

commencement date of the Plan from April 1, 2014, to April 15, 2014, to accommodate the Company's information technology ("IT") programming and integrated software schedule.

This matter has been assigned to Administrative Law Judge ("ALJ") Cynthia Williams Fordham who issued a Prehearing Order on May 16, 2013, scheduling a telephonic prehearing conference on May 28, 2013.

Answers to the Petition were filed on May 21, 2013, by the Office of Consumer Advocate ("OCA"), Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "TURN"), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA").

The OSBA filed a prehearing memorandum on May 23, 2013, indicating its intent to participate in this proceeding. Prehearing memoranda were also filed by PECO, OCA, TURN, CAUSE-PA, Direct Energy, Interstate Gas Supply ("IGS"), and First Energy Solutions Corporation ("FES").

Certain parties to PECO's Default Service Proceeding indicated that they did not intend to participate in the CAP Shopping Plan phase of the proceeding and were removed from the service list; however, no parties withdrew their appearance.

At the Prehearing Conference, a procedural schedule was agreed upon and the same discovery modifications and protective order approved in the Default Service Proceeding were adopted in the instant proceeding, as memorialized in Prehearing Order No. 2 issued on June 13, 2013.

Non-Company Direct Testimony was filed by OCA, CAUSE-PA, and Direct Energy on June 12, 2013. Rebuttal Testimony was filed by PECO, OCA, CAUSE-PA, and the OSBA

(OSBA Statement No. 4, the Rebuttal Testimony of Brian Kalcic) on June 26, 2013. Surrebuttal Testimony was filed by PECO, OCA, and CAUSE-PA on July 2, 2013.

The evidentiary hearing scheduled for July 10, 2013, was cancelled due to limited cross-examination. On July 11, 2013, a hearing was held for the limited purpose of admitting testimony and exhibits of the parties into the record.

Main Briefs were filed by the Company, OSBA, OCA, CAUSE-PA, Direct Energy, and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”).

This Reply Brief is limited to a response to certain arguments made in Direct Energy’s Main Brief, with respect to its CAP Shopping Plan cost recovery proposal.

## **II. REPLY ARGUMENT**

Direct Energy in its Main Brief, argues that the Commission should reject PECO’s CAP Shopping Plan cost recovery “scheme” and instead recover costs through a non-bypassable charge applicable to all customer classes, not just the Residential class.<sup>1</sup> The OSBA in its Main Brief at pages 4-7 argued in detail why Direct Energy’s proposal is inconsistent with the Commission’s decisions at this docket on recovery of the costs of other retail market enhancements and also long-standing Commission precedent and policy on recovery of CAP costs and will not repeat them here.

The OSBA must respond, however, to Direct Energy’s apparent argument that all customers should be subject to the non-bypassable charge because non-Residential

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<sup>1</sup> Direct Energy Main Brief at 12. It is worth noting that PECO’s “scheme” to recover its costs is consistent with the mechanism recommended by the Commission for PECO’s other retail market enhancement programs by Order dated February 13, 2013, and approved by the Commission by Order dated March 14, 2013 (approving PECO’s Third Revised Default Service Program II).

customers could at some time in the future be eligible to become a CAP customer.

Specifically, Direct Energy's brief states:

Finally, there is no evidence in the case that the universe of CAP customers is static. Customers who do not qualify now may well qualify in the future. Because the CAP program is available to anyone who qualifies, and the group of customers who may at some point qualify is likely far broader than the group currently eligible for the program, it is best viewed as a societal safety net program that should be funded by all customers, any one of whom could find himself or herself eligible for its benefits at some point.<sup>2</sup>

As alleged support for this argument, Direct Energy cites to the direct testimony of OCA witness, Roger D. Colton. Mr. Colton's testimony does state that consumer education about the CAP Shopping Plan should be an ongoing process because of the turnover of CAP customers, *i.e.*, different customers will be participating in CAP at different points in the year. However, nowhere does Mr. Colton state directly or even imply that his reference is to any customers other than Residential customers.

Direct Energy's witness Christopher H. Kallaher has admitted that non-Residential customers are ineligible for PECO's CAP Program pursuant to PECO's CAP Program tariff.<sup>3</sup> Tariff Electric PA P.U.C. No 4, Revised Page 69 unambiguously states that only "payment-troubled customers who are currently served under or otherwise qualify for Rate R, or RH" (*i.e.*, Residential customers) are eligible to be CAP customers. There is no possible way for non-Residential customers to ever qualify as CAP customers.

The OSBA has not taken a position on or recommended any particular CAP Shopping Plan cost recovery mechanism. However, if the Commission approves the non-bypassable charge proposed by Direct Energy, it should only be applicable to Residential customers.

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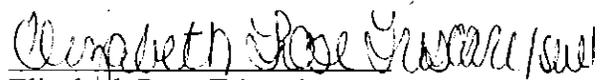
<sup>2</sup> Direct Energy Brief at 13 citing OCA Statement No. CAP-1 at 16.

<sup>3</sup> OSBA Statement No. 4 attaching Direct Energy's response to OSBA-I-1(b).

**III. CONCLUSION**

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments set forth in its Main Brief and presented herein.

Respectfully submitted,



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