

COMMONWEALTH OF PENNSYLVANIA



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August 9, 2013

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
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:

Enclosed please find the Office of Consumer Advocate's Reply 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
PA Attorney I.D. # 85824

Enclosures

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

*169481

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) :

REPLY BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: August 9, 2013

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I. INTRODUCTION

On July 26 2013, the Office of Consumer Advocate (OCA) filed its Main Brief in this proceeding. Main Briefs were also filed by PECO Energy Company (PECO), Direct Energy Services (Direct Energy), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Office of Small Business Advocate (OSBA), and Philadelphia Area Industrial Energy Users Group (PAIEUG). The OCA submits that nothing argued in the other parties' Main Briefs changes the position expressed in OCA's Main Brief in this proceeding.

As discussed on page 6 of the OCA's Main Brief, the OCA supports many components of PECO's CAP Shopping Plan, but has several recommendations to address necessary consumer protection and consumer education issues raised by the Plan. See OCA M.B. at 6. Overall, the CAP Shopping Plan will provide a sound framework for 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. The Plan, as modified by the OCA, will also ensure that the CAP program costs will not increase and that essential electric service is protected.

As discussed in its Main Brief, the OCA recommends changes to PECO's proposed CAP Shopping Principles to more directly encompass issues of CAP customer affordability and the impact on non-participant residential customers who pay the costs of the program. OCA M.B. at 11-13. With respect to the design of the CAP Shopping Program, the OCA also recommends several additional consumer protections including a prohibition on termination or cancellation fees and the implementation of consumer protections to address various contract scenarios. OCA M.B. at 19- 24. The OCA also proposed that the consumer education plan be modified to

address: (1) how to enter and leave the competitive market and (2) the shopping significance of exiting CAP. OCA M.B. at 24-26.

The OCA also recommends that the reporting requirements proposed by PECO be supplemented to include the number of CAP participants who switch to an EGS, the bills they experience, and the CAP shortfall that is generated. Further, this information should be published in the aggregate on the Commission's website or in the Commission's universal service report, or both. 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. OCA M.B. at 31-35.

The OCA also made the following unopposed recommendations regarding the operational design of the CAP Shopping Program: (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. *Id.* at 26-29.

With respect to the costs of the CAP Shopping Plan, the OCA submits that, except for the consumer education costs, the costs should be borne by EGSs that benefit from the program. *Id.* at 39-41. 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). OCA M.B. at 42-45.

The OCA further recommends that CAUSE-PA's proposed retail aggregation program not be adopted. In addition, Direct Energy's proposal to allow EGSs to charge more than the PECO Price to Compare (PTC) must be rejected as it compromises affordability for CAP customers. OCA M.B. at 35-39.

The OCA's Main Brief provides a comprehensive statement of its positions, and the OCA will not repeat all of those arguments here. To the extent an argument is not addressed in this Reply Brief, the OCA relies on those positions already advanced in the OCA Main Brief. In this Reply Brief, the OCA will respond to specific arguments advanced by other parties, referring to relevant sections of its Main Brief as appropriate.

II. ARGUMENT

A. Introduction

The OCA supports many components of PECO's CAP Shopping Plan, in particular the fact that PECO has designed a CAP Shopping Plan in which Participating EGSs will charge a price to a CAP participant that is at or below the Company's PTC for residential customers. The OCA also specifically supports PECO's proposals regarding modifications to its Generation Supply Adjustment charge. In this regard, the OCA submits that Direct Energy's challenges to these components of PECO's Plan must be rejected.

The OCA also presented several recommendations regarding the following issues: (1) CAP Shopping Principles; (2) additional consumer protections including a prohibition on termination or cancellation fees and the implementation of consumer protections to address various contract scenarios; (3) additional consumer education to customers about how to enter and leave the competitive shopping market and the shopping significance of exiting CAP. PECO' and Direct Energy's criticisms of these OCA proposals are wholly without merit. The OCA's recommendations should be adopted to ensure that consumers are protected and that service remains affordable.

The OCA also submits that the costs of the CAP Shopping Plan must be recovered from EGSs. If any cost recovery from ratepayers is ordered, the OCA submits that the costs should be amortized over to three to five years and that such recovery should be through the Universal Service Fund Charge (USFC). The OCA also recommends that CAUSE-PA's CAP aggregation proposal not be adopted for the reasons set forth in the OCA's Main Brief.

B. CAP Customer Shopping Should Not Compromise Affordability Or Increase The Costs of the Program To Non-Participants.

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

As part of its CAP Shopping Plan, 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 M.B. at 11-12; PECO Petition at ¶ 14. In its Main Brief, PECO argues that the Commission should only approve the CAP Shopping Design Principles proposed by PECO. PECO M.B. at 13. The OCA agrees with the basis for PECO's CAP Shopping Principles and agrees that CAP Shopping Principles should be the part of the foundation upon which PECO's CAP Shopping Plan is built. The OCA submits, however, that PECO's proposed principles are incomplete. As discussed at pages 11 to 13 of the OCA's Main Brief, 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. OCA M.B. at 11-13; see also, OCA St. CAP-1 at 3-4, OCA St. CAP-1SR at 1-3.

The OCA recommends the adoption of the following additional CAP Shopping 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's Main Brief argues that the OCA's issues are already incorporated into the CAP Shopping Principles because the recent Order in PECO's Universal Service and Energy Conservation proceeding (2013 Universal Service Order) and the Public Utility Code include low income customer affordability as a "key part of the consumer protections." PECO M.B. at 13; PECO Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§54.74, 62.4, Docket No. M-2012-2290911, Order (Apr. 4, 2013) (2013 Universal Service Order). Further, PECO argues that Mr. Crowe's testimony includes this emphasis on affordability, so affordability is encompassed within the principles set forth by PECO in its design of the CAP Shopping Program. PECO M.B. at 13. PECO's CAP Shopping Principles, however, do not specifically identify affordability as a key component. Rather, PECO's CAP Shopping Principles identify "consumer protections" as the key component. Affordability is a different, more targeted, concept than the more general consumer protections identified by PECO. OCA Principle #1 specifically discusses the impact of the CAP Shopping Plan on a customer's ability to remain on CAP, meet their payment obligations, and continue to receive the benefits of CAP. OCA St. CAP-1 at 3. OCA Principle #1 is designed towards ensuring that any CAP Shopping Program maintain or improve a CAP customer's ability-to-pay.

The OCA submits that affordability is more than a consumer protection; it is the heart of the CAP.

As discussed in Mr. Colton's Surrebuttal Testimony, the OCA submits that PECO's proposed principles are not as clearly directed towards CAP as those presented by OCA witness Colton. OCA witness Colton explained the differences between PECO's CAP Shopping Principles and the OCA's principles as follows:

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-ISR at 3. The OCA 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

a. The CAP Shopping Plan Price Must Ensure that Affordability for CAP Customers is Maintained And The Cost Of The CAP To Non-Participating Residential Ratepayers Does Not Increase.

In its CAP Shopping Plan, PECO has proposed that EGSs who participate in the program (Participating EGSs) be required to offer to CAP customers a price that is at or below PECO's Price to Compare (PTC). PECO's proposal allows CAP customers to participate in the retail generation supply market and retain the benefits and protections of CAP. In its Main Brief, the OCA supported this aspect of PECO's proposal. OCA M.B. at 14-19. The OCA submits that the centerpiece of any CAP Shopping Plan must be ensuring that affordability for CAP customers is either maintained or improved and that the cost of the CAP to non-participating residential ratepayers is not increased.

In its Main Brief, Direct Energy argues that the law and public policy require that CAP customers be treated like non-CAP customers. Direct Energy M.B. at 12. Direct Energy proposes that CAP customers be treated as any other shopping customers and that Participating EGSs be permitted to offer whatever price they choose. *Id.* The OCA submits, however, that CAP customers are not the same as any other customer. CAP customers have special needs that are specifically recognized and addressed through the Public Utility Code and the Commission CAP Policy Statement. *See*, Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2803, 2804(9); CAP Policy Statement, 52 Pa. Code § 69.265. The reason that CAP customers are enrolled in CAP is that due to their low income, the customer already has

difficulty affording and paying their bills on a monthly basis at PECO's full residential tariffed rate. In other words, the customer is having difficulty affording the bill at PECO's PTC. Being subject to the potential for a higher price will only make matters worse. Mr. Colton explained:

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 16. PECO's proposal that Participating EGSs offer a price that is at or below PECO's CAP rate addresses this affordability component of CAP. The OCA submits that PECO's proposal is not contrary to law or public policy. Indeed, public policy requires that any CAP Shopping Plan be designed to improve or maintain affordability for CAP customers.

Direct Energy also argues that PECO's proposal would allow the Commission the authority to regulate the prices charged by EGSs, contrary to the Electricity Generation Customer Choice and Competition Act (Competition Act). Direct Energy M.B. at 7. Further, Direct Energy argues that PECO's proposal is a "price cap" that would undermine the free market public policy objectives contained in Sections 2802 and 2805 of the Competition Act. *Id.* at 8. The OCA submits that Direct Energy's arguments are wholly without merit. First, the CAP Shopping Plan is a program that the EGS can choose to participate in or not. If the EGS elects to participate in the CAP Shopping program, then the EGS would agree voluntarily to participate based on the "rules" established for the program and to meet the program's goals. PECO's proposed program is entirely voluntary, and the Commission is not requiring that any EGS participate or charge a particular price unless the EGS consents to participate in the program. Even under the program, the only specification is that the price be at or below the PTC. Within

that parameter, the EGS is free to set its charges. Therefore, the OCA submits that PECO's proposal would in no way violate the Competition Act.

Moreover, Direct Energy's argument has already been rejected by the Commission in its October 12, 2012 Order (October 12 Order) in this docket, the Commission ordered the creation of a voluntary Standard Offer Program under which an EGS would provide a 7% discount off of the PTC at the time of the customer's enrollment. Petition of PECO Energy Company For Approval of its Default Service Program, Docket No. P-2012-2283641, Order at 114 (Oct. 12, 2012) (October 12 Order). Similar to the CAP Shopping program design, the Standard Offer Program was structured to be voluntary and designed to incent new customers to shop (here those new customers are CAP customers).

Direct Energy also argues that PECO's proposal does not allow CAP customers to avail themselves of the full benefits of retail electric competition. Direct Energy M.B. at 8. There is no support for this argument. PECO's proposal will allow CAP customers to avail themselves of retail electric competition, and EGSs can make offers to these customers that provide benefits to the customer. PECO, though, has properly recognized and addressed the unique challenges for these customers within its program rules.

The two concepts of affordability and access to the electric generation supply market must both be incorporated into any CAP Shopping Program.¹ The Competition Act created interdependent standards to govern the implementation of retail shopping with the CAP programs. OCA witness Colton testified:

The centerpieces of the Pennsylvania Public Utility Commission's ("Commission" or "PUC") "current protections for CAP customers" and "existing rules and regulations regarding universal service" is the principle of affordability. The Pennsylvania electric restructuring statute quite explicitly states that amongst the "interdependent standards [that] shall govern the commission's...regulation of

¹ See also, the OCA's discussion regarding maintaining affordability on pages 13 to 19 of its Main Brief.

the restructured electric utility industry” is the principle that “universal service programs” shall continue. A “universal service program” includes “policies, protections and services that help low-income customers to maintain electric service.” (66 Pa.C.S. § 2804(9); see also, 66 Pa.C.S. § 2802(10)). The term “universal service program,” by explicit statutory reference, “includes customer assistance programs...” (Id.) Affordable electric service is a specific interdependent standard” that the Commission has been directed to take specific steps to achieve in the Commission’s “regulation of the restricted electric industry.” To the extent that an Electric Generation Supplier (“EGS”) participates in the Pennsylvania electric market, its participation is contingent upon the ability of the EGS to co-exist with the Commission’s “policies, protections and services that help low-income customers to maintain electric service...” As the statute explicitly provides, those “policies, protections and services include CAP.

OCA St. CAP-1R at 3.

While Direct Energy argues in its Main Brief that it does not object to maintaining certain protections for CAP customers and following the Commission’s existing rules and regulations for universal service, Direct Energy’s proposal to treat CAP customers the same as other residential customers does not maintain current protections provided under the Competition Act, the CAP Policy Statement or the 2013 Universal Service Order for PECO. OCA witness Colton explained:

There is a fundamental disconnect between Direct Energy’s statement that Direct Energy will “maintain [...]current protections for CAP customers or comply [...] with the Commission’s existing rules and regulations regarding universal service” and his assertion that Direct Energy’s proposal for a CAP shopping plan “is simple: treat CAP customers as one would treat other customers.” (Direct Energy St. 1, at 6).

Mr. Kallaher’s proposal to treat CAP participants the same as other customers in the event that EGS prices would exceed PECO’s PTC would result in higher CAP bills; higher CAP energy burdens; greater CAP payment difficulties; and a decreased ability for a CAP participant to maintain electric service, all of which are in contravention of the mandatory universal service standard that “shall govern” the PUC’s regulation of a restructured electric industry in Pennsylvania.

OCA St. CAP-1SR at 8-9.

Direct Energy states numerous concerns in its Main Brief about the impact of PECO's proposal, but the one issue that Direct Energy does not address is how its alternative proposal would address CAP affordability issues. 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. 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 even increasing the price charged for a short period of time could mean the difference between a customer being able to pay the bill or to not pay the bill. PECO's Main Brief provided an example of the significant impact that a seemingly small \$5.31 per month change would have on a bill for a customer earning \$11,000-\$15,000:

[s]imilarly, 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 "energy burden" for this customer. Assuming a monthly usage of 1,000 kWh, and an EGS price of 10% above the PTC, that customer's bill would increase by \$5.31 per month, or approximately \$64.00 per year. This is not a small increase for a poor customers, 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 7-13% of the total acceptable "energy burden."

PECO M.B. at 16-17; PECO St. 3-R at 4-5. The OCA submits that CAP customers do not have the ability to ride out such increases in price like other shopping customers.

Finally, Direct Energy suggests that potential offers to CAP customers include "enhancements" such as free furnace tune-ups or free energy audits. These items, however, may not be included in the Purchase of Receivables program that is the foundation for all EGS billing

for residential customers. Moreover, even if able to be billed to the customer, such “enhancements” may compromise the affordability of the total bill and may direct attention away from programs specifically designed for low-income customers.

In conclusion, OCA witness Colton summarized his concerns with Direct Energy’s proposal:

- Maintaining and promoting affordable service in a competitive market is not only a factor that the PUC may *consider*, but it is one of the “standards” that Pennsylvania’s statute specifically states “shall govern the commission’s . . . regulation of the restructured electric utility industry”;
- Increasing generation prices beyond PECO’s PTC would increase both the incidence and the depth of unaffordability to CAP participants and would be contrary to the mandatory universal service standard that “shall govern” the transition process and the restructured electric utility industry;
- By increasing both the incidence and depth of unaffordability of electric service to CAP participants, increasing generation prices beyond PECO’s PTC would result in a decreased ability of CAP participants to make payments and, accordingly, a decreased ability of CAP participants to maintain electric service;
- Mr. Kallaher’s shopping plan for CAP customers –to “treat CAP customers as one would treat other customers” (Direct Energy St. 1, at 6)-- cannot ensure that EGS prices will not increase above PECO’s PTC, thus increasing the possibility of ineffective shopping and the consequences of ineffective shopping;
- Mr. Kallaher’s objections to the PECO proposal to require EGS prices to CAP participants to remain below the PECO PTC are misplaced.

OCA St. CAP-1SR at 9.

For all the reasons discussed above and in its Main Brief, the OCA submits that PECO’s proposal that Participating EGSs charge CAP customers a price that is at or below the Company’s PTC should be adopted.

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

At pages 19-20 of its Main Brief, the OCA discussed its support for eight important consumer protections that PECO has included in its CAP Shopping Plans. OCA M.B. at 19-20. The OCA submits that these provisions are essential components to a properly designed CAP Shopping Plan.

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.

a. Cancellation or Termination Fees Should Be Prohibited.

For the reasons set forth at pages 20 to 21 of the OCA's Main Brief and 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. OCA M.B. at 20-21. As no party addressed the issue in its Main Brief, no further reply is necessary.

b. Implementation of Consumer Protections To Address Various Contract Scenarios.

In its Main Brief, PECO addressed the OCA's concerns regarding the interaction between a customer's CAP enrollment period and the EGS contract term. PECO M.B. 28-30. The OCA expressed concern in its Direct Testimony that PECO did not specifically address the issue of a customer with an existing contract with an EGS either leaving CAP or entering CAP. As OCA witness Colton testified, there is significant turnover in the CAP during the course of the year that will impact the contracts with EGSs. The OCA recommends that the CAP Shopping Plan

address several scenarios, 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. OCA M.B. at 23.

With respect to a CAP customer who enrolls in CAP with an existing CAP contract, the OCA agreed with PECO's proposed treatment as summarized in PECO's Main Brief at pages 29-30. PECO stated that the customer would receive a CAP Change Notice and that the EGS who receives the notice must take one of two actions: (1) continue to serve the customer if the EGS transitions the customer to a price at or below PECO's PTC or (2) elect to discontinue service to the customer and the customer will be returned to default service. PECO M.B. at 29. OCA witness Colton stated in Surrebuttal that he agreed with Mr. McCawley's description of the process for a customer with an existing EGS contract who enrolls in CAP.

The OCA also agrees with PECO's discussion of the treatment of a CAP customer with an existing EGS (CAP) contract who leaves CAP (with an existing EGS contract). PECO affirms that EGSs would be required to honor the terms of any existing contract, including the CAP price protections, until the end of the contract term. PECO M.B. at 30.

As to the third scenario when an EGS (CAP) contract expires and the customer is no longer in CAP, the OCA does not agree with the PECO's assertion that an EGS does not need to obtain affirmative customer consent prior to switching a customer from an EGS (CAP) contract that has expired to a new EGS (non-CAP) contract. OCA St. CAP-1SR at 11.

PECO states that the Commission's guidelines provide that an EGS may renew an agreement at revised terms and conditions in the event that the customer does not respond to notices, and therefore, no affirmative consent is required. PECO M.B. at 30, citing Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending

Change Affecting Customer Service; Amendments re: Supplier Contract Renewal/Change Notices, Docket Nos. M-2010-2195286, M-0001437, Order at 21, App. A (Sept. 23, 2010) (Interim Guidelines Order). A review of the Interim Guidelines Order, however, suggests that it is not intended to address major changes in the terms and conditions beyond the pricing and contract length. When the Commission considered suggestions considering provisions related to changes in contract terms, the Commission stated:

we believe that these types of provisions are too complex to be properly considered in this proceeding. This complexity stems from the value judgments that need to be made in developing such provisions. After all, whether a change in a contract term is “beneficial” to a customer is a judgment that is subjective in nature and one that may be influenced by outside forces or the passage of time.

Interim Guidelines Order at 22. More importantly, the OCA submits that the Interim Guidelines Order established procedures for providing notice to non-CAP residential shopping customers whose EGS contract has expired. As has been discussed at length in this Reply Brief and the OCA’s Main Brief, CAP customers are not the same as other non-CAP participating residential shopping customers and cannot be treated the same. The CAP Shopping Plan contract with an EGS is very different than a non-CAP participating residential customer contract with an EGS and offers numerous protections that are not provided under a non-CAP participating residential customer contract with an EGS. The Interim Guidelines Order does not address such a scenario.

The OCA submits that for all of the reasons discussed in this Reply Brief and the OCA’s Main Brief, additional protections should be provided to the customer in this scenario. OCA witness Colton testified:

In the third situation, a CAP customer has entered into a contract with an EGS that contains CAP protections as part of the CAP shopping program. 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.

OCA St. CAP-1 at 20.

The OCA submits that protections need to be in place to address the impacts of EGS contracts on customers who are entering and leaving CAP. The OCA’s three proposed procedures are reasonable and must be adopted.

4. Consumer Education

At pages 24 to 26 of its Main Brief, the OCA agreed with PECO’s proposals for customer education. The OCA made two additional recommendations for consumer education topics. The two areas were: (1) how to enter and leave the competitive market and (2) the shopping significance of exiting CAP. OCA M.B. at 25-26; OCA St. 1 at CAP1 at 13-17. In its Main Brief, PECO states that it is willing to work with both OCA and CAUSE-PA regarding educational materials about “how” to make a choice within the competitive market. PECO M.B. at 34.

PECO, however, expressed concern with the OCA’s proposal to educate customers who are leaving CAP about the impact on the shopping decision of such departure from the program. PECO states that this requirement “would increase the cost burden for residential customers who pay for CAP” due to a need for additional costs that come with broadening the education campaign. PECO M.B. at 34-35; PECO St. No. 2-R at 13-14.

The OCA submits that it is willing to work with PECO to try to develop cost-effective ways to educate consumers who are leaving CAP about the impact that this will have on future shopping decisions. OCA witness Colton explained:

[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.

OCA St. CAP-1 at 16-17. The OCA submits that dollars spent on education at the appropriate time and with the appropriate message will likely save both PECO and customers money in the long run. Customers with full knowledge of the difference in contracts offered through participation in the CAP Shopping Plan and when not in the CAP Shopping Plan will make more effective and beneficial decisions.

For the reasons stated above and in the OCA's Main Brief, the OCA would recommend that education be also extended to educate customers about the shopping significance of exiting CAP.

5. Operation of the CAP Shopping Program Design.

a. Introduction.

In its Main Brief at pages 26-29, the OCA addressed its recommendations with respect to an EGS's notice to participate and the determination of PECO's CAP Rate discount percentage. See, OCA M.B. at 26-29. No further reply is needed.

The OCA addresses below Direct Energy's arguments regarding the Generation Supply Adjustment (GSA) and Universal Service Reporting.

b. Annual Reconciliation of the Generation Supply Adjustment Charge.

In its CAP Shopping Plan, PECO proposed to reconcile its Generation Supply Adjustment surcharge (GSA) over/under-collections for residential customers on an annual basis

rather than quarterly in order to smooth out fluctuations in the PTC that are due to billing lags. PECO St. 3 at 10. As discussed in the OCA's Main Brief, the OCA supports PECO's proposal. See OCA M.B. at 29-31.

In its Main Brief, Direct Energy argued that the Commission should reject PECO's proposal to reconcile its GSA over/under-collections for residential customers annually. See Direct Energy M.B. at 18-19.² Instead, Direct Energy argued that the Commission should require PECO and interested stakeholders to explore other options to smooth out fluctuations in PECO's PTC. Id. The OCA submits, however, that moving to an annual reconciliation of the GSA for residential customers is the most simple and sensible method in which to address this issue. Moving this issue to a collaborative will delay the finality of a Commission directive on the issue, which could delay PECO's implementation of its CAP Shopping Plan.

As noted in the OCA's Main Brief, Direct Energy witness Kallaher acknowledged that PECO's proposal to reconcile its GSA for over/under-collections annually for residential customers would have benefits if the Company's CAP Shopping Plan is adopted. See OCA M.B. at 31, citing Direct Energy St. 1 at 13. As such, the OCA submits that reducing significant fluctuations in the Company's quarterly PTC that are not based on market forces is a sensible simplification of the CAP Shopping Plan for both EGSs and CAP customers and should be adopted.

c. Universal Service Reporting.

PECO's Shopping Plan requires that participating EGSs provide the Commission with periodic reports. PECO initially proposed that the information should be kept confidential and required that the EGSs only provide the number of CAP customers served and the rates charged

² PECO also proposed to advance its residential PTC filing schedule by 30 days, which would provide EGSs with 75 total days of advance notice for quarterly PTC adjustments. PECO St. 3 at 9. It does not appear that Direct Energy opposed this aspect of PECO's proposal. See Direct Energy M.B. at 18-19.

in order to facilitate the measurement of benefits from shopping that are flowing to CAP customers. OCA M.B. 31-32. In its Main Brief at pages at 31-35, the OCA stated its support for such a requirement. The OCA submits that the reporting is appropriate in order for the Commission to assess the benefits from shopping to CAP customers. *Id.* at 31-35. The OCA recommended that the reports also include the number of CAP participants who shop, the bills they experience, and the CAP shortfall that is generated. The OCA also recommended that the Commission make the information public in aggregate form either on the Commission's website or in the Commission's annual universal service report (or both). OCA M.B. at 32; OCA St. CAP-1 at 20-21. PECO witness McCawley supported the OCA's recommendation to make the CAP shopping data public and to include additional data in the reports. PECO St. 2-R at 8. Mr. McCawley also 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. PECO St. 2-R at 8. CAUSE-PA also supported the OCA's request for additional reporting information. The OCA discussed the proposed reporting requirements in its Main Brief at 31-34.

In its Main Brief, Direct Energy stated that it does not oppose this concept "in theory." Direct Energy M.B. at 16. However, Direct Energy argues that the Commission should "ensure that the reporting obligation is light enough such that an EGS is meeting the requirements of the program and nothing more." *Id.* Direct Energy proposed the requirements be limited to confirming that the EGS complied with the CAP Shopping requirements, reporting on a monthly basis the rate codes that the EGS is serving its customers under and the total number of customers being served under each rate code. Direct Energy also argued that the Commission

should state now that such reports are not discoverable in any subsequent Commission proceeding from any party who either provides or receives the reports. Direct Energy M.B. at 16.

The OCA does not support Direct Energy's recommendation regarding EGS reporting requirements. OCA M.B. at 34-35; see also, PECO M.B. at 27-28. The OCA submits that there has been no demonstration by Direct Energy that the reporting requirements requested by PECO and OCA are overly burdensome or unnecessary. OCA witness Colton stated that:

To the extent that an EGS engages in the market to serve CAP customers, however, that EGS becomes responsible for providing sufficient data 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. PECO also aptly noted in its Main Brief that:

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 1.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 customer shopping on affordability and aggregate the CAP discount amount funded by all residential customers. PECO St. NO. 2-R, p. 7; OCA St. Nos. CAP-1, p. 21 & CAP 1-R, p. 10. 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.

PECO M.B. at 27-28.

In addition to limiting the scope of the reports, Direct Energy recommends that the reports not be discoverable under any circumstances in any future proceeding. Direct Energy M.B. at 16-17. Regarding Direct Energy's recommendation that the reports not be discoverable

in future proceedings, both the OCA and PECO agreed that such a restriction would be inappropriate. OCA M.B. at 34-35; PECO M.B. at 28. The OCA submits that any determination of the discoverability of the information must be based upon the relevance of the information to the proceeding pending before the Commission and the confidentiality protections that can be afforded. The OCA submits that the Commission cannot pre-judge the necessity for such information in advance of the proceeding in which the issue is raised. OCA witness Colton testified:

[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 alternatives 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. As PECO stated in its Main Brief, 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. PECO M.B. at 28; PECO St. 2-R at 9.

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.

6. CAUSE-PA's Aggregation Proposal Should Not Be Adopted.

CAUSE-PA's Main Brief states that retail aggregation "should continue to be within the panoply of options explored to enable CAP customer shopping." CAUSE-PA M.B. at 16-17. For all the reasons stated in the OCA's Main Brief at pages 35-39 and those stated in PECO's Main Brief at pages 35-36, 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. See also, OCA St. CAP-1R at 16-23.

C. Cost Recovery.

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

PECO proposed to recover 50% of the costs of the CAP Shopping Plan from EGSs through a 0.3% discount³ on all purchased EGS receivables under PECO's Purchase of Receivables (POR) program and to recover the remaining 50% of program costs from residential customers, on a non-bypassable basis, through the Company's Universal Service surcharge (USFC) over one year. PECO St. 3 at 7-8. As discussed in the OCA's Main Brief, the OCA asserted that PECO's cost recovery proposal should be rejected for the most part, and EGSs should be responsible for nearly all of the \$4.8 million in costs for PECO's CAP Shopping Plan.

³ 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.

See OCA M.B. at 39-41. The OCA did not oppose PECO's proposal to recover consumer education-related costs of approximately \$300,000 through PECO's already approved Consumer Education Charge rider. Id. at 41. CAUSE-PA supported the OCA's position regarding cost recovery asserting that implementing a plan for CAP customers to shop in the competitive market is "neither a universal service function nor a responsibility of residential ratepayers" and should therefore, be paid for by EGSs, the ultimate business beneficiaries of the program. See CAUSE-PA M.B. at 15-16.

In its Main Brief, PECO asserted that its CAP Shopping Plan is a retail market enhancement, and the program costs should therefore, be allocated to both residential customers and EGSs pursuant to the Commission's February 14, 2013 Order.⁴ PECO M.B. at 19-20. Also, PECO asserted that both EGSs and residential customers will benefit from CAP shopping. PECO M.B. at 20. PECO stated that the OCA's position that EGSs should pay 100% of the costs (excepting the consumer education amounts) ignores the benefits of CAP shopping to customers, which includes further enhancement of the retail market. Id. at 22.

In its Main Brief, Direct Energy asserted that the costs of the CAP Shopping Plan (except the consumer education amounts) should be recovered from all customers through a non-bypassable charge because the expansion of shopping opportunities to CAP customers produces societal benefits that inure to all. Direct Energy M.B. at 12-13. Direct Energy further asserted that increasing the number of customers in the market will strengthen the market for all

⁴ Petition of PECO Energy Company For Approval of its Default Service Program, Docket No. P-2012-2283641, Order at 13 (Feb. 14, 2013). The Commission further discussed this cost allocation in its June 13, 2013 Order at the same docket but did not change the underlying parameters.

customers “through greater enticement of new suppliers and their new products to the market.”
Id. at 13.⁵

The OCA submits that PECO’s and Direct Energy’s assertions are over-stated. The CAP Shopping Plan makes available about 140,000 more potential customers for the benefit of EGSs subject to the program requirements. There is no support for the statement that the availability of these CAP customers would lead to greater innovation in offers from EGSs or greater benefits for customers than what currently exists. In fact, as Direct Energy witness Kallaher testified, Direct Energy would offer CAP customers the same products and services as offered to other residential customers. See OCA Exh. CAP-1.

As such, the OCA submits that the CAP Shopping Plan clearly and distinctly benefits EGSs. As explained by OCA witness Colton: “The costs of implementing the CAP Shopping Plan are costs incurred in order to generate additional market participants for the EGSs who choose to compete for PECO CAP customers.” OCA St. CAP-1 at 28. PECO’s 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.

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 Main Brief, the OCA asserted that in the event the Commission directs that a portion of CAP Shopping Plan costs come from residential ratepayers, the Commission should

⁵ Direct Energy also asserted opening up the market to CAP customers is a continuation of the transition to restructured markets that began in the late 1990s, and customers should bear the costs of this continuation as they did for the initial opening of the retail markets. Direct Energy M.B. at 13-14. This argument must be rejected, as it ignores that the Commission has imposed retail market costs on EGSs recently, including POR program implementation and ongoing administrative costs and retail market enhancement program costs. See e.g. February 14, 2013 Order.

reject PECO's proposal to recover the ratepayer portion over one year and instead direct that recovery be amortized over three to five years. OCA M.B. at 42-43. CAUSE-PA supported the OCA's position. See CAUSE-PA M.B. at 15. In its Main Brief, PECO maintained that the ratepayer portion of CAP Shopping Plan costs should be recovered over one year because that is the time remaining on PECO's DSP II term. PECO M.B. at 23. PECO also stated that if the Commission directs PECO to submit a new CAP structure in the Company's next Universal Service Plan due in February 2015, additional IT programming and costs could be required. Id.

The OCA submits that PECO's assertions should be rejected. CAP Shopping Plan will continue indefinitely, certainly beyond one year. It is inappropriate to base cost recovery on what the Commission may or may not direct for a period beginning nearly eighteen months in the future. Instead, as explained by OCA witness Colton:

[A]mortization 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.

OCA St. CAP-1R at 14. The OCA submits that since CAP Shopping Plan will continue well beyond one or even two years, 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 its USFC. PECO St. 3 at 8. In its Main Brief, the OCA asserted that if the Commission directs any portion of CAP Shopping Plan costs be recovered from ratepayers, such costs should not be collected through PECO's USFC because these costs are not universal service program costs. See OCA M.B. at 43-45. In its Main Brief, PECO asserted that the OCA's position should be rejected because the OCA did not offer an alternative method for recovering the costs should any be allocated to customers. PECO M.B. at 24. PECO asserted that it would not be appropriate for the Company to collect the costs through the GSA surcharge because only default service customers pay the GSA surcharge. Id. PECO cited to the Commission's approval for PPL to collect approved reconcilable universal service costs through PPL's universal service rider, with exceptions not at issue here, as precedent here. See PECO M.B. at 24-25, citing Pa. PUC v. PPL Electric Utilities Corp., Docket No. R-00072155, Order at 8-10 (Dec. 6, 2007) (2007 PPL Order).

The OCA submits that the 2007 PPL Order does not provide guidance in this matter. The 2007 PPL Order approved a settlement between the parties to the matter, which settlement included a provision permitting PPL to implement its proposed universal service programs, its expenses claimed for those programs and a universal service rider to collect such expenses, with minor modifications. 2007 PPL Order at 8. There is no indication that the universal service programs include retail enhancement programs directed to PPL's CAP customers.

In the present matter, however, PECO maintained, and no party disputed, that the CAP Shopping Plan is a retail market enhancement. See PECO M.B. at 19. PECO also maintained that the Company should collect the ratepayer portion of the costs of its CAP Shopping Plan over the remaining term of its DSP II because a "one-year amortization period aligns with the portion

of the DSP II term in which the CAP Shopping Plan will be implemented.” Id. at 23. The OCA submits that based on these descriptions of the CAP Shopping Plan, the program does not meet the statutory requirements of costs permitted to be collected through the USFC. See 66 Pa. C.S. § 2803.

The definition of “universal service and energy conservation” in Section 2803 of the Public Utility Code states:

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.

66 Pa. C.S. § 2803. As explained by OCA witness Colton:

Clearly, the CAP Shopping Plan does not fall within these elements of universal service [in Section 2803]. It is not a termination of 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.

In fact, the Commission has specifically referred to CAP shopping as a feature of restructuring to a competitive market. See RE: Guidelines for Universal Service and Energy Conservation Programs, Docket No. M-00960890, Order (July 11, 1997) (1997 CAP Policy Statement). OCA witness Colton described the application of the Commission’s 1997 CAP Policy Statement to PECO’s CAP Shopping Plan as follows:

The Commission does not indicate [in the 1997 CAP Policy Statement] 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.

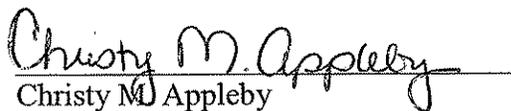
OCA St. CAP-1SR at 5-6. (Emphasis supplied).

As such, the OCA submits that it is clear that PECO's CAP Shopping Plan is not a universal service program, as defined by the Commission's regulations. While PECO's assertion that it would be inappropriate to recover such costs through its GSA is correct, it does not follow that the costs should then be collected through the USFC. Since CAP Shopping Plan costs do not fit within the statutory parameters of a universal service program, however, it is also 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. Should the Commission determine that any portion of costs of PECO's CAP Shopping Plan be recovered from ratepayers, the Commission should direct PECO to determine another mechanism for collecting such costs than the USFC or GSA, such as a base rate case.

III. CONCLUSION

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

Respectfully submitted,



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Date: August 9, 2013

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 Reply 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 9th day of August 2013.

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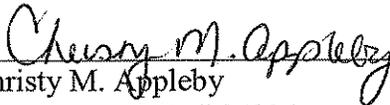
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