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RECEIVED

February 10, 2014

FEB 10 2014

**VIA FEDERAL EXPRESS**

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

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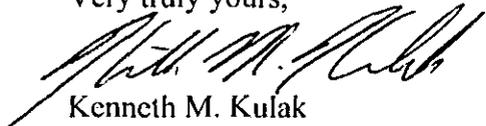
Dear Secretary Chiavetta:

Enclosed for filing on behalf of **PECO Energy Company** are the **Petition for Reconsideration and Clarification and the Application for Stay of the Commission's Order entered January 24, 2014** in the above-referenced matter.

Per the attached Certificate of Service, all parties will be served in the manner indicated.

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

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FEB 10 2014

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**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) :**

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**PETITION FOR RECONSIDERATION AND CLARIFICATION  
OF THE COMMISSION'S ORDER ENTERED JANUARY 24, 2014**

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**I. INTRODUCTION AND OVERVIEW**

Pursuant to Section 703(g) of the Public Utility Code (66 Pa.C.S. § 703(g)) and 52 Pa. Code § 5.572, PECO Energy Company ("PECO" or the "Company") hereby petitions the Pennsylvania Public Utility Commission (the "Commission") to reconsider and clarify its order entered January 24, 2014 ("Order"). In the Order, the Commission addressed PECO's plan to enable low-income customers enrolled in its Customer Assistance Program ("CAP") to purchase generation supply from electric generation suppliers ("EGSs").

PECO requests that the Commission reconsider its conclusion that it has no authority to require EGSs who choose to serve CAP customers to charge a rate for generation service equal to or lower than PECO's applicable residential default service Price-to-Compare ("PTC"). As demonstrated below, the Order does not address whether the higher Universal Service Fund Charge ("USFC") that all PECO residential customers will pay if EGSs charge CAP customers more than the PTC is a just and reasonable rate under Section 1301 of the Public Utility Code (66 Pa.C.S. § 1301). PECO believes that the Commission is clearly within its powers to apply a price limitation to those EGSs who voluntarily choose to serve CAP customers to ensure that the

rates of all residential customers who pay the costs of universal service remain consistent with the Public Utility Code. Consequently, the Commission has the power to limit the prices charged by EGSs choosing to serve CAP customers where those prices flow through the utility rates of all residential customers.

In the event that the Commission does not approve the price limitation PECO proposed in its plan (the "CAP Shopping Plan" or "Plan"), PECO requests certain amendments to the Order to facilitate implementation of the Plan as revised by the Commission. These amendments include elimination of requirements that EGSs provide notice to PECO prior to offering competitive supply to CAP customers and associated time limitations between providing and ceasing to provide service to CAP customers to ensure that CAP customers will have the same opportunities as other PECO customers, as directed by the Commission in the Order.

In addition, PECO requests that the Commission reconsider the April 15, 2014 deadline imposed by the Order to implement CAP shopping. Completion of an initial education campaign, CAP call center training, and consideration of the input and review of educational materials by the Commission and stakeholders, all of which are critical to the success of the Plan, is not feasible by April 15, 2014. PECO also has determined that information technology ("IT") programming and full testing necessary to implement the Commission's directive to extend the *Company's standard offer customer referral program* ("Standard Offer Program") cannot be completed and incorporated into PECO's "live" software systems by April 15, 2014 without risk to PECO's customer information system. PECO therefore requests that the Commission amend the Order to extend the CAP Shopping Plan commencement date from April 15, 2014 to the first

possible date after testing consistent with PECO's established schedule for updating its software systems.<sup>1</sup>

PECO also requests that the Commission amend the Order to clarify its approval of the mechanism by which PECO will provide information on the EGS prices charged to individual CAP customers. The Order appears to assume that PECO already collects detailed EGS pricing information during the consolidated billing process, including the customer kilowatt-hour (kWh) price charged by an EGS. In fact, PECO only receives an overall amount to be used in billing an EGS customer which may not reflect other features of EGS pricing. In order to determine a per-kWh price, PECO will need to divide the price received from EGSs by customer usage data. PECO will consult with the Office of Competitive Market Oversight ("OCMO") and Bureau of Consumer Services in designing the reports of EGS pricing as required by the Commission, but clarification that PECO will be in compliance with the Order by calculating a per-kWh price using the EGS overall billing amount and customer usage data will facilitate implementation of the Commission's reporting requirements.<sup>2</sup>

## II. BACKGROUND

1. This proceeding arises from the Commission's Order approving PECO's default service program for the period June 1, 2013 to May 31, 2015 ("DSP II") with modifications.<sup>3</sup>

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<sup>1</sup> As noted in the Order (p. 45), PECO "pushes" changes to its IT systems and activates those changes six times a year in a coordinated fashion to ensure sufficient testing and system integration. The next "push date" after April 15, 2014 is June 15, 2014.

<sup>2</sup> PECO notes that it does not seek reconsideration of the Commission's direction that PECO shall fully recover the costs of implementing the CAP Shopping Plan in a future base rate case instead of through the USFC or PECO's purchase of receivables ("POR") program. In light of the need for transparency with respect to the amount and nature of the costs that will be incurred and recovered, however, PECO includes a section in this Petition (III.E) which describes its accounting for these costs and an informational filing which PECO will make when implementation is complete.

<sup>3</sup> 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 revisions included a directive to PECO to develop a CAP shopping plan by January 1, 2014. *See* October 2012 Order, p. 156.

2. During the DSP II proceeding, in a separate docket, the Commission also considered and approved, with modifications, 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.<sup>4</sup> On January 3, 2013, the Commission issued a 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 was submitted, and directing PECO to file its CAP shopping plan on or around May 1, 2013 to allow CAP customers to shop by April 1, 2014.

3. On May 1, 2013, PECO filed a petition (the "Petition") seeking Commission approval of the CAP Shopping Plan, including proposed changes to the Company's Electric Tariff and Supplier Tariff to implement the Plan and achieve full and current recovery of Plan costs. In addition, 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 IT programming and software deployment schedule.

4. As described in the Petition, several design principles provided the foundation of the CAP Shopping Plan, which are consistent with the Commission's October 2012 Order and the 2013 Universal Service Order, and continue implementation of the universal service policies set forth in the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801

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<sup>4</sup> 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")*.

*et seq.* (the “Competition Act” or “Act”). Under those principles, the introduction of PECO’s CAP customers to shopping should: (1) ensure the plan is based upon the competitive shopping program that is in place for non-CAP customers; (2) maintain consumer protections for CAP customers; (3) contain plan costs for the residential customers who pay for CAP; (4) ensure CAP shopping costs and benefits are clear and measurable; and (5) ensure full and current recovery of Plan costs.

5. As described in the Petition, PECO has a significantly larger CAP customer base than all other Pennsylvania electric distribution companies (“EDCs”) and PECO’s CAP uniquely employs a tiered rate discount approach. Accordingly, the CAP Shopping Plan contained a proposed requirement that EGSs who voluntarily choose to serve CAP customers charge a rate for electricity supply that is equal to or less than PECO’s applicable PTC for residential customers. The pricing limitation was designed to 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 significantly increasing the costs paid by PECO’s residential customers through the USFC.<sup>5</sup>

6. PECO proposed several components of the CAP Shopping Plan to implement and facilitate the abilities of EGSs to abide by the pricing limitation. For example, in order to properly ensure the application of the price limitation, PECO proposed procedures for EGSs to enter and exit the CAP retail market. In addition, to facilitate EGS offers at or less than the

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<sup>5</sup> 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. Seventy-three percent of 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 USFC, with annual reconciliation of any over/under collections. The remaining twenty-seven percent of the CAP shortfall is absorbed by PECO shareholders, pursuant to the settlement of PECO’s most recent base rate case. *See Order*, p. 5.

residential PTC, PECO proposed to advance its residential PTC filing schedule by thirty days and to reconcile prior period Generation Supply Adjustment (“GSA”) over/under collections for residential customers on an annual instead of quarterly basis.

7. The Petition also proposed a variety of customer education initiatives, specific protections for customers who become eligible or ineligible for CAP while receiving EGS service, and periodic reporting requirements for EGSs.

8. In the Petition, PECO projected total expenditures to implement the Plan of approximately \$4.5 million, which included costs related to training, 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. The Company proposed to continue to recover costs associated with customer education initiatives (i.e., approximately \$0.3 million) from all residential customers through the Customer Education Charge approved by the Commission in Docket No. P-2011-2279773. As with the Standard Offer Program, the Petition proposed a rate mechanism that divides all remaining CAP Shopping Plan expenditures (“CAP Shopping Implementation Costs”) equally between EGSs and customers who may benefit from shopping. Specifically, PECO proposed to recover 50% of the CAP Shopping Implementation Costs 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.

9. On January 24, 2014, the Commission issued the Order following certification of the record by the Administrative Law Judge on August 13, 2013. In the Order, the Commission

approved, in part, the CAP Shopping Plan, with modifications. However, the Commission denied three elements of the Company's CAP Shopping Plan, which are relevant to this Petition, as follows:

(a) Pricing Limitation. The Commission rejected the Plan's key feature that would preclude EGSs from charging CAP customers a price for generation supply that is in excess of the PTC. Order, p. 14.

(b) EGS Reporting Obligations. The Commission denied PECO's proposed amendment to its Supplier Tariff to establish that EGSs serving PECO CAP customers periodically report to the Commission regarding the number of PECO's CAP customers served and the rates charged.<sup>6</sup> See Order, pp. 33-34, 48. Instead, the Commission directed PECO, in consultation with the OCMO and the Commission's Bureau of Consumer Services, to submit semi-annual reports to the Commission regarding the impact of CAP shopping in PECO's service territory, reasoning:

[W]e believe it is more efficient for PECO to compile and submit these semi-annual reports to the Commission because much of the information that PECO proposes to collect through its proposed EGS Tariff Rule 5.4.3.0.3, *supra*, is ***already available through PECO's billing system or is already in PECO's possession***. *Id.*, p. 33 (emphasis added).

(c) Cost Recovery. The Commission held that the incremental costs to implement the Plan should not be collected through the USFC or the POR discount. See Order, pp. 40-41, 48. Instead, the Commission directed PECO to recover "prudent costs" associated

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<sup>6</sup> Specifically, the proposed amendment to the Supplier Tariff set forth the following reporting parameters for each CAP customer served by an EGS: (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. See Order, p. 30.

with extending shopping to PECO's CAP customers through base rates established in a future proceeding. *Id.*, pp. 40, 42.<sup>7</sup>

10. Pursuant to Ordering Paragraph No. 2, the Company is required to make a filing, no later than February 24, 2014, that addresses the foregoing Commission directives and other directives in the Order. In addition, PECO must convene a stakeholder collaborative, no later than March 25, 2014, regarding the specific content of its education plan for CAP customers and customers who leave CAP but remain on the PECO system. *See* Ordering Paragraph No. 6 ("In particular, [PECO] shall address with the collaborative cost-effective means of informing customers leaving [CAP] of shopping alternatives available to residential customers not participating in [CAP].").

11. In sum, the final form of retail choice platform for PECO's CAP customers approved by the Commission deviates substantially from PECO's original Plan. Nonetheless, the Commission directed PECO to implement the revised CAP Shopping Plan and extend the Standard Offer Program to CAP customers by April 15, 2014 (i.e., a date based on the original Plan now significantly revised and less than three months after issuance of the Order). Ordering Paragraph Nos. 7 & 8.

### III. LEGAL STANDARDS

12. In *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982), the Commission provided the following guidance on the criteria it would consider in deciding requests for reconsideration:

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<sup>7</sup> Implementation of the Order's provisions regarding cost recovery are addressed in Section IV.E *infra*.

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

13. This Commission has previously held that the standard for determining whether clarification is warranted is substantially similar to the standard for granting reconsideration set forth in *Duick*:

The OCA’s Petition was filed pursuant to 52 Pa. Code § 5.572, Petitions for Relief. This regulation encompasses “Petitions for Clarification,” and, as with Petitions for Reconsideration, these are decided by the application of the standards set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553, 559 (1982) n1. Under the standards set forth in *Duick*, a Petition for Reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

*Application of PPL Elec. Util. Corp.*, Docket No. A-2009-2082652 *et al.*, 2010 Pa. PUC LEXIS 1707 at 3-4 (Order entered April 22, 2010). *See also Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, 2009 Pa. PUC LEXIS 1158 at 3-4 (Order entered June 2, 2009).

#### IV. REQUEST FOR RECONSIDERATION AND CLARIFICATION

14. As described in detail below, the Company has identified several arguments and important issues that the Commission did not consider or address in the Order. Accordingly, reconsideration is necessary and appropriate because the Commission did not explain the basis for its resolution of a number of critically important issues with respect to PECO's CAP Shopping Plan. *Cf. Consol. Rail Corp. v. Pennsylvania Pub. Util. Comm'n*, 625 A.2d 741 (Pa. Cmwlth. 1993) (noting that the Section 703(g) of the Public Utility Code requires decisions of the Commission to be accompanied by findings which "shall be in sufficient detail to enable the court on appeal, to determine the controverted question presented by the proceeding, and whether proper weight was given to the evidence").

##### A. PECO's Plan Requirement That EGSs Charge CAP Customers A Generation Rate At Or Below The PTC

##### 1. The Commission has Jurisdiction to Prevent Retail Customers from Paying Higher Rates to Compensate EGSs Who Choose to Charge Low-Income Customers Prices that Exceed the PTC

15. In the Order, the Commission concluded that "there is nothing in the Electric Competition Act that gives the Commission the authority to limit prices charged by EGSs." Order, p. 14. As a result, the Commission rejected PECO's proposal to require EGSs to charge CAP customers a price that is at or below the PTC in effect at the time of service. *Id.*

16. PECO recognizes that the Commission considered its arguments and those of other parties in favor of the PTC price limitation to contain the costs of PECO's CAP program, which are paid in part by all residential customers through PECO's USFC. *See* Order, pp. 9-10 & 12; *see also* Statement of Commissioner Gladys M. Brown ("A potential result, under PECO's current CAP structure, of not placing a ceiling on the prices that EGSs can charge is that the

overall costs of PECO's CAP program will rise. Those increased costs will be borne by the residential class as a whole.").

17. Without a pricing limitation, rates charged by EGSs to CAP customers may be above, equal to or below PECO's residential PTC. In concluding that it lacks authority to limit the prices charged by EGSs in the Order, however, the Commission does not explain how the portion of any unregulated EGS prices above the PTC which will be paid by all PECO residential customers is consistent with the Public Utility Code's requirement that all rates be just and reasonable. *See* 66 Pa.C.S. § 1301.

18. PECO agrees that the Competition Act does not permit the Commission to generally regulate the rates of EGSs or the price of generation as a utility service, but nothing in the Competition Act undermined Section 1301's bedrock principle that the Commission has the authority and responsibility to make certain that every utility rate paid by customers – including PECO's USFC – is just and reasonable. In addition, the Competition Act clearly 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.” 66 Pa.C.S. § 2802(17). Such policies indisputably include just and reasonable rates for those customers who pay most of the costs of universal service, and the Commission has emphasized that it must “ensure that the rates to non-CAP customers remain just and reasonable.”<sup>8</sup>

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\* *See* Order Withdrawing Rulemaking and Policy Statement, *Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements*, 52 Pa. Code §§ 54.71-54.78 (electric); §§ 62.1-62.8 (natural gas) and *Customer Assistance Programs*, §§ 76.1-76.6 Docket No. L-00070186 (May 12, 2013), p. 10 (withdrawing rulemaking proposing alternative framework for recovery of CAP program costs due to economic recession and changes in heating assistance programs).

19. In order to assist the Commission in its consideration of PECO's proposal, PECO provided an example of the potential effects of EGS pricing on residential customers, which demonstrated that 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. The Commission did not address PECO's example in the Order. Nor did it make any findings as to whether customers may be required to pay more for CAP program costs in the absence of PECO's proposed limitation with respect to EGS prices that are above the PTC and, if so, whether such additional amounts are just and reasonable.<sup>9</sup> The Commission also did not address whether benefits to individual shopping CAP customers not reflected in EGS prices, such as cash gift cards and free home energy audits, would justify potentially higher rates incurred by all residential customers.

20. In choosing to end the regulation of generation as a public utility service in the Competition Act and in subsequent amendments to the Public Utility Code, the General Assembly ensured that a "least cost" generation option would be available to customers. *See* 66 Pa.C.S. §§ 2802(14) & 2807(e). Together, the continuation of universal service programs and the availability of the "least cost" default service, combined with the need to maintain just and reasonable rates for customers paying for universal service programs, provides the Commission ample jurisdiction for ensuring CAP costs are not unlimited. The Commission should therefore reconsider the Order and clarify that it retains sufficient authority under the Public Utility Code

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<sup>9</sup> PECO notes that following the Commission's decision on its Petition, the Commission issued a press release on January 31, 2014, reminding customers "using a competitive supplier to review their contract as cold temperatures and high demand have driven the wholesale price of electricity higher" and "[c]ustomers with variable contracts or those with fixed contracts that have expired and were moved to a variable rate may see their prices increase." *See PUC Urges Shopping Consumers to Review Contracts, Cold Temps Could Mean Higher Prices for Those on Variable Rates*, available at [http://www.puc.pa.gov/about\\_puc/press\\_releases.aspx?ShowPR=3298](http://www.puc.pa.gov/about_puc/press_releases.aspx?ShowPR=3298). In the absence of PECO's proposed price limitation, all customers whether they choose not to shop for competitive generation supply or whether they enter into any EGS contract will still be responsible for paying a portion of the costs of any CAP customer contracts with variable pricing.

to approve PECO's proposal and limit prices charged by EGSs voluntarily serving CAP customers in order to maintain just and reasonable rates for all PECO residential customers.

21. Notably, several Commissioners have seemingly acknowledged that they retain authority over the pricing of EGS service to CAP customers. For example, in his statement issued with the CAP Order, Commissioner Cawley, joined by Chairman Powelson, stated that the Commission will be paying close attention to the prices charged CAP customers by EGSs and, in the Order, the Commission directed PECO to collect and report data on whether CAP shopping is providing net benefits. PECO fully supports reporting to the Commission to aid its evaluation of the impact of CAP customer shopping in PECO's service territory. However, if the Commission has no jurisdiction over the prices that EGSs can charge to low-income customers under the Competition Act, it is not clear what the purpose of such reports is or the powers, if any, the Commission will be able to exercise if it determines that EGSs are not meeting the associated social responsibilities of serving CAP customers recognized by Chairman Powelson and Commissioner Cawley, or if the reports required by the Order show an absence of net benefits from CAP shopping.

22. In the absence of clarification, portions of the Order appear inconsistent. While the Commission seems to disclaim all ability to set a limitation on EGS prices in rejecting PECO's proposal, the Order simultaneously directs PECO to ensure that CAP customers can participate in PECO's Standard Offer Program. In that program, the Commission has imposed a requirement that all EGSs electing to participate must charge customers a price that is 7% below PECO's PTC at the time of customer enrollment. Although PECO's rejected CAP Shopping Plan limitation would only apply to those EGSs who voluntarily chose to serve CAP customers (and the Order still requires EGSs to register if they wish to serve CAP customers, *see* Order, pp.

22-23), the Commission appears to conclude that it only has authority to limit the prices charged to the exact same CAP customers by EGSs if those CAP customers choose to enroll through PECO's Standard Offer Program. The Commission does not provide a basis for this distinction.

23. In the event the Commission reconsiders the Order and nonetheless concludes that it lacks authority to require EGSs to charge prices at or below PECO's PTC, PECO requests that the Commission clarify (i) how PECO's USFC rate will remain just and reasonable in the absence of any factual basis establishing how much more residential customers are likely to pay under PECO's USFC; and (ii) the basis for the distinction between the Commission's inability to limit prices charged by EGSs who voluntarily choose to serve CAP customers and the Commission's prior approval of PECO's Standard Offer Program, which imposes such limits on participating EGSs.

**B. If The Commission Does Not Approve An EGS Pricing Limitation, It Should Amend The Order To Eliminate Plan Elements Designed With Such Pricing Limitation In Mind**

24. In the Order, the Commission adopted (with some modifications) PECO's proposed requirements for EGSs to notify PECO of their intent to participate as a CAP supplier and to comply with certain time periods for entering and exiting the group of suppliers serving CAP customers. In continuing these requirements, the Commission explained that it believed that there should be some "stability" in EGS suppliers serving CAP customers and the requirements would assist in assessing the extent and impact of shopping by CAP customers. See Order, p. 23. The Commission also adopted PECO's proposal to advance its residential GSA filing by thirty days (i.e., publishing the PTC 75 days before it takes effect instead of the current 45 days), which PECO had explained would help EGSs develop CAP products, calculate CAP rates, and notify CAP customers of rate changes in light of PECO's proposed price limitation.

25. If the Commission chooses not to adopt PECO's proposed price limitation, the Commission should amend the order to eliminate the notification and entry/exit requirements. PECO proposed these requirements in recognition that the price limitation requirement would necessitate EGSs undertaking particular pricing and marketing decisions to ensure their rates did not exceed the applicable PTC. Without the pricing limitation, there is no distinction between the products EGSs are making available to CAP customers and those that they make available to non-CAP customers, which appears to be the intent of the Commission. *Cf.* Order, p. 14 ("As contemplated by the Electric Competition Act, we are affording PECO's CAP customers the same opportunities and benefits currently *available to every other PECO customer.*") (emphasis added). In effect, by requiring EGSs to register before serving CAP customers, the Commission's Order would have the effect of *limiting* the choices of CAP customers without any clear benefits to those customers, which PECO does not believe was the intent of the Commission. Furthermore, as the Commission will be able to receive information on any EGS serving CAP customers, and the benefits of any EGS "stability" in supplying CAP customers has not been established, these additional requirements should be eliminated to further reduce the cost of CAP program administration to PECO (and ultimately customers) and the costs of participation by EGSs.

26. In addition, the Commission should also eliminate the requirement that PECO publish its GSA filing 75 days in advance of the associated PTC taking effect instead of the current 45-day period. An earlier GSA notification filing inherently causes the GSA projection to lose accuracy because certain supply cost data (e.g., spot-market prices) must be projected an additional 30 days in advance. PECO proposed a longer period notwithstanding this decrease in accuracy because, on balance, PECO believed that the need for EGSs to have more time to

prepare their price offerings at or below the PTC outweighed the downside of the loss of accuracy. In the absence of the proposed price limitation, there is no need for the EGSs to have that additional preparation time, and moving the GSA filing to 75 days prior to effectiveness simply has the disadvantage of a loss of GSA accuracy with no countervailing benefit to customers or EGSs. The 75-day notification period should thus not be adopted in the absence of a price limitation.

**C. The Commission Should Amend The Order To Facilitate Reporting Information On EGS Prices**

27. Even though no party to this proceeding objected to PECO's proposed requirement that EGSs report to the Commission on their service of CAP customers or presented testimony or argument that such obligations should be shifted to PECO, the Commission concluded that it would be more efficient for PECO to collect and report information from EGSs necessary for the Commission to evaluate the impact of CAP shopping. Order, p. 33. The Commission further directed PECO to consult with the OCMO and the Bureau of Consumer Services regarding the content, timing and format of those reports. *See id.* PECO is prepared to undertake the reporting obligations as directed by the Commission, but believes that several clarifications to the Order are necessary.

28. In directing PECO to track and report retail electric prices paid by its shopping CAP customers, the Commission assumed that PECO already collects detailed pricing information from EGSs during the billing process. However, the Company's existing Supplier Tariff simply requires EGSs to transmit the overall amount to be charged to each customer via an electronic data interchange ("EDI") transaction for billing purposes. Consequently, if the CAP Rate (per kWh) ultimately becomes a reporting parameter, the Company will be forced to

manually calculate such value for each shopping CAP customer based on overall price and usage data. Even though the overall price figure may not reflect all the individual components of pricing established under the CAP customer's contract with an EGS, PECO believes a manually calculated total per-kWh CAP price for each customer is a reasonable price metric that will facilitate the Commission's assessment of the benefits from shopping that may flow to CAP customers. PECO therefore requests that the Commission amend the Order to clarify that the Company will be deemed to be in compliance with Ordering Paragraph 3 if its reports reflect a manually calculated value for the per-kWh CAP Rate. In the alternative, PECO requests that the Commission clarify that PECO is permitted to incorporate a new provision in its Supplier Tariff requiring EGSs to provide PECO with the per-kWh price charged to each CAP customer.

**D. Extension Of The Required Commencement Date Of CAP Customer Shopping**

29. In its Petition filed on May 1, 2013, PECO proposed an April 2014 date for commencement of competitive electricity shopping by CAP customers. As described herein, PECO requests that the Commission extend the Order's commencement date of April 15, 2014 so that PECO will be able to deliver appropriate education materials and education to CAP customers and be able to offer the Standard Offer Program as required by the Commission.<sup>10</sup>

30. As explained in the attached affidavit of Lauren B. Feldhake, PECO's Director of Customer Financial Operations, materials to educate low-income customers to participate in the competitive shopping market will require, at a minimum, the following components: (a) an

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<sup>10</sup> The record in this proceeding with respect to PECO's original CAP Shopping Plan was certified to the Commission on August 13, 2013. While the original schedule envisioned time for development of customer materials well before the April 15, 2014 commencement date and PECO has developed initial materials based on its original Plan with a price limitation, the anticipated amount of time is no longer available and will be further compressed depending upon the time for consideration of PECO's requests for necessary clarifications in this Petition for Reconsideration.

individual mailing to each of approximately 140,000 CAP customers in PECO's service territory to explain their new ability to shop for retail electricity; and (b) new scripts and associated training for PECO's customer call center representatives to address the questions of CAP customers. In light of the April 15, 2014 date for commencement of CAP shopping, individual mailings should be delivered to customers no later than March 15, 2014, so that customers have sufficient time to understand the options and risks of contracting for competitive electric supply and be able to obtain assistance from PECO's call center. *See* Feldhake Affidavit, ¶¶ 5-6.<sup>11</sup>

31. Consistent with other customer mailings approved by the Commission and to avoid delays in call center response times, PECO plans to mail the CAP shopping customer educational materials in mailing groups of approximately 30,000 customers per day. Mailings to CAP customers would therefore need to start on March 10, 2014, in order to reach customers by March 15, 2014. *Id.*, ¶ 7.

32. The Commission has directed that customer materials be reviewed by its Office of Communications, which usually requires up to two weeks for such reviews. Materials will therefore have to be submitted to the Commission for review no later than March 3, 2014 to provide sufficient time for consideration and additional revisions. In order to have sufficient time to confer with stakeholders and prepare customer materials, PECO believes that it will need to convene a collaborative to review and discuss materials no later than in the February 25-27, 2014 time period. *Id.*, ¶¶ 8-9.

33. The process of developing materials may also be further complicated by the need to address new topics, as several stakeholders have already communicated to PECO that they

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<sup>11</sup> The affidavit of Lauren B. Feldhake is attached as Exhibit A to this Petition for Reconsideration.

believe shopping materials for CAP customers must address the wholesale price market increases and potential effects of variable rate charges recently highlighted by the Commission. *Id.*

34. In the Order, the Commission also directed that CAP customers be permitted to participate in PECO's Standard Offer Program by April 15, 2014, which had not been part of PECO's original CAP Shopping Plan. PECO's information technology organization has analyzed the software requirements to implement this functionality and concluded that programming changes necessary to permit CAP customers to participate in the Standard Offer Program cannot be completed and fully tested by April 15, 2014. *Id.*, ¶ 10. As a result, this functionality may not be available or working properly on that date and will be a risk to PECO's customer information system.

35. Given this timeframe for materials distribution, IT programming changes and the need for the Commission to have sufficient time to resolve the issues in this Petition, PECO believes that many stakeholders will not have adequate time to prepare for the collaborative. Furthermore, until the Commission rules on this Petition, PECO will not be able to provide stakeholders with definitive answers as to how several of the key features of its CAP Shopping Plan will be implemented.

36. PECO therefore requests a short extension of the time for compliance with the Order from April 15, 2014 to the first possible date after testing consistent with PECO's established schedule for updating its software systems. Assuming that the Commission is able to address this Petition on or about March 24, 2014, PECO expects that it would be able to complete both the educational efforts described by Ms. Feldhake and the information technology

upgrades to permit CAP discounts to be applied on behalf of CAP customers who choose to participate in the Standard Offer Program by June 15, 2014.<sup>12</sup>

**E. Full Recovery Of CAP Shopping Implementation Costs In A Future Base Rate Proceeding**

37. As noted previously, under the terms of the Order, PECO will fully recover all CAP Shopping Implementation Costs in a future base rate proceeding and PECO does not seek reconsideration of the Commission's decision as to the method by which PECO will recover implementation costs. However, in light of the Commission's revisions to the CAP Shopping Plan (including new reporting requirements and new eligibility requirements for the Standard Offer Program) and the need for transparency with respect to the amount and nature of the costs that will be incurred and recovered, PECO intends to make an informational filing to describe all implementation costs (both capital and expense) after implementation is complete in 2014.

38. Consistent with the Order's conclusion that PECO is entitled to full recovery of CAP Shopping Implementation Costs, PECO will account for those costs in a manner to ensure full recovery of those costs, including: (a) in PECO's first distribution base rate case following the implementation of the CAP Shopping Plan, PECO will define the recovery period to recover the implementation costs from residential customers, and (b) PECO shall be authorized to defer any unrecovered implementation costs (and any associated depreciation), until the first distribution rate case following implementation of the CAP Shopping Program when a mechanism for the prospective recovery of, and return on capital costs, is provided.

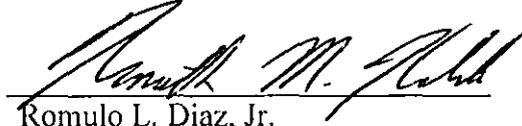
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<sup>12</sup> The next two "pushes" after April 15, 2014 are scheduled for June 15, 2014 and August 15, 2014. See Feldhake Affidavit, ¶ 10.

**V. CONCLUSION**

WHEREFORE, for the foregoing reasons, the Commission should grant reconsideration and clarification of the Order with respect to the issues identified in this Petition for Reconsideration and Clarification.

Respectfully Submitted



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*Counsel for PECO Energy Company*

Dated: February 10, 2014

**EXHIBIT A**

**Affidavit of Lauren B. Feldhake**

**RECEIVED**

**FEB 10 2014**

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**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) :**

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**AFFIDAVIT OF LAUREN B. FELDHAKE**

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I, Lauren B. Feldhake, first being duly sworn for her affidavit in this matter, hereby state as follows:

1. I am over 18 years of age and am competent to submit this Affidavit.
2. I am employed by PECO Energy Company ("PECO" or "the Company") as Director of Customer Financial Operations.
3. As Director of Customer Financial Operations, I am responsible for various departments including Billing, Payments Processing, and Credit & Collection. In addition, I have managerial oversight of PECO's universal service programs designed for low-income, residential customers who express or demonstrate difficulty paying their energy bills, including PECO's Customer Assistance Program ("CAP").
4. In conjunction with my role as Director of Customer Financial Operations, I am overseeing implementation of customer education initiatives directed to low-income customers regarding the benefits of the competitive market and shopping for electricity.
5. Materials to educate low-income customers to participate in the competitive shopping market will require, at a minimum, the following components: (a) an individual mailing to each of approximately 140,000 CAP customers in PECO's service territory to explain

their new ability to shop for retail electricity; and (b) new scripts and associated training for PECO's customer call center representatives to address the questions of CAP customers.

6. In light of the April 15, 2014 date for commencement of CAP shopping, individual mailings should be delivered to customers no later than March 15, 2014, so that customers will have sufficient time to understand the options and risks of contracting for competitive electric supply and be able to obtain assistance from PECO's call center.

7. Consistent with other customer mailings approved by the Commission and to avoid delays in call center response times, PECO plans to mail the CAP shopping customer educational materials in mailing groups of approximately 30,000 customers per day. Mailings to CAP customers would therefore need to start on March 10, 2014, in order to reach customers by March 15, 2014.

8. The Commission has directed that customer materials be reviewed by its Office of Communications, which usually requires up to two weeks for such reviews. In these circumstances, PECO believes materials will have to be submitted to the Commission for review no later than March 3, 2014 to provide sufficient time for consideration and additional revisions.

9. In order to have the collaborative before the educational materials are finalized, PECO will need to schedule the collaborative during February 25-27, 2014 time period. Given the complexity of the educational materials (as well as the fact that some parties may be preparing responses to PECO's Petition for Reconsideration in this proceeding at the same time as the collaborative), there is a substantial risk that the education outcome will be compromised by this accelerated process. The process may be further complicated as several stakeholders have also communicated to PECO that they believe the materials will need to address wholesale price market increases and the potential effects of variable rate charges which the Commission has recently highlighted for customers throughout the Commonwealth.

10. I have also consulted with the Company's information technology ("IT") organization regarding the software requirements to extend PECO's standard offer customer referral program ("Standard Offer Program") to CAP customers. The programming and process changes necessary to implement this functionality cannot be fully tested by April 15, 2014 and, if implemented without complete testing, there is a risk to the operation and customer experience process. 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. The next two "pushes" after April 15, 2014, are scheduled for June 15, 2014 and August 15, 2014.

11. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

This 10th day of February, 2014.

/s/ Lauren B. Feldhake  
Lauren B. Feldhake

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF PHILADELPHIA )

Subscribed to and sworn before me this  
\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**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)**

**RECEIVED**

FEB 10 2014

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

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**APPLICATION OF PECO ENERGY COMPANY  
FOR A STAY OF THE COMMISSION'S ORDER ENTERED JANUARY 24, 2014**

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PECO Energy Company ("PECO" or the "Company") hereby requests that the Pennsylvania Public Utility Commission ("Commission") grant a stay of its order (the "Order") entered January 24, 2014 in this proceeding pending resolution of PECO's Petition for Reconsideration and Clarification ("Petition") filed concurrently with this Application. As set forth herein, PECO fully satisfies the Commission's requirements for a stay, which will avoid irreparable harm to PECO, the low-income customers participating in PECO's Customer Assistance Program ("CAP"), and the electric generation suppliers ("EGSs") who seek to serve such customers.

In support of its request, PECO states as follows:

**I. BACKGROUND**

1. The background of this proceeding and the Commission's Order are set forth in Section I of PECO's Petition, which is incorporated herein by reference. PECO provides the following additional information to facilitate the Commission's resolution of this Application.

2. In the Order, the Commission established several deadlines for implementation of

PECO's plan to enable shopping for competitive electric supply by CAP customers (the "Plan" or "CAP Shopping Plan"). These deadlines include the following:

- **February 24, 2014** – PECO to file both electric and EGS compliance tariffs to implement the Order.
- **March 24, 2014** – Deadline for PECO to hold collaborative of stakeholders and the Commission's Office of Competitive Market Oversight ("OCMO") and Office of Communications to address the specific components of consumer education.
- **April 15, 2014** – PECO to enable its CAP customers to select an EGS and to participate in its Standard Offer Program.

3. As explained in the affidavit of Lauren B. Feldhake, PECO's Director of Customer Financial Operations, materials to educate low-income customers to participate in the competitive shopping market will require, at a minimum, the following components: (a) an individual mailing to each of approximately 140,000 CAP customers in PECO's service territory to explain their new ability to shop for retail electricity; and (b) new scripts and associated training for PECO's customer call center representatives to address the questions of CAP customers. In light of the April 15, 2014 date for commencement of CAP shopping, individual mailings should be delivered to customers no later than March 15, 2014, so that customers have sufficient time to understand the options and risks of contracting for competitive electric supply and be able to obtain assistance from PECO's call center. *See* Feldhake Affidavit, ¶¶ 5-7.<sup>1</sup>

4. Consistent with other customer mailings approved by the Commission and to avoid delays in call center response times, PECO plans to mail the CAP shopping customer educational materials in mailing groups of approximately 30,000 customers per day. Mailings to CAP customers would therefore need to start on March 10, 2014, in order to be delivered by

---

<sup>1</sup> The affidavit of Lauren B. Feldhake is attached as Exhibit A to this Application.

March 15, 2014. *Id.*, ¶ 7.

5. The Commission has directed that customer materials be reviewed by its Office of Communications, which usually requires up to two weeks for such reviews. In these circumstances, PECO believes materials will have to be submitted to the Commission for review no later than March 3, 2014 to provide sufficient time for consideration and additional revisions. *Id.*, ¶ 8.

6. In order to have sufficient time to confer with stakeholders and prepare customer materials, PECO believes that it will need to convene a collaborative to review and discuss materials no later than during the February 25-27, 2014 time period. *Id.*, ¶ 9.

7. The process of developing materials may also be further complicated by the need to address new topics, as several stakeholders have already communicated to PECO that they believe shopping materials for CAP customers must address the wholesale price market increases and potential effects of variable rate charges recently highlighted by the Commission. *Id.*

8. In the Order, the Commission also directed that CAP customers be permitted to participate in PECO's Standard Offer Program by April 15, 2014, which had not been part of PECO's original CAP Shopping Plan. As Ms. Feldhake explains, PECO's information technology organization has analyzed the software requirements to implement this functionality and concluded that programming changes necessary to permit CAP customers to participate in the Standard Offer Program cannot be fully tested by April 15, 2014. As a result, this functionality may not be available or working properly on that date and will be a risk to PECO's customer information system. *Id.*, ¶ 10.

## II. STANDARDS FOR THE COMMISSION'S ISSUANCE OF A STAY

9. In determining whether to grant a stay, the Commission applies the criteria established by the Pennsylvania Supreme Court in *Pa. P.U.C. v. Process Gas Consumers Grp.*, 502 Pa. 545, 467 A.2d 805 (1983). See, e.g., *PPL Elec. Util. Corp. Universal Serv. and Energy Conservation Plan*, Docket No. 2010-2179796, 2011 Pa. PUC LEXIS 512 at 3-4 (Order entered December 1, 2011).

10. In *Process Gas Consumers Grp.*, the Pennsylvania Supreme Court adopted the standards for issuance of a stay set forth in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958), as modified by *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977). Under *Virginia Petroleum Jobbers Ass'n*, the grant of a stay is warranted if:

- (1) The petitioner makes a strong showing that it is likely to prevail on the merits.
- (2) The petitioner shows that without the requested relief it will suffer irreparable injury.
- (3) The issuance of a stay will not substantially harm other interested parties in the proceeding.
- (4) The issuance of a stay will not adversely affect the public interest.

*Process Gas Consumers*, 502 Pa. at 552-553, 467 A.2d at 808-09. The Court held that these criteria “[require] the Court to balance the interests of all parties, and the public where applicable, and [require] the applicant to demonstrate a probability of success on the merits.” *Process Gas Consumers*, 502 Pa. at 553, 467 A.2d at 809. The Court also held that the applicant’s requirement to demonstrate a likelihood to prevail on the merits “should not be an

inflexible rule” but, instead, “must be considered and weighed relative to the other three criteria.” *Id.* at n.8.

11. In adopting the requirements for a stay set forth in *Virginia Petroleum Jobbers Ass’n*, the Supreme Court acknowledged that the first prong of the four-part test was appropriate where an appellate court was being asked to grant a stay pending an appeal of an administrative agency’s or lower court’s decision, but is out of place where the request for stay is directed to the agency or court that issued the decision:

The requirement that the applicant for a stay show that it is likely he will prevail on the merits should not be an inflexible rule. This criterion must be considered and weighed relative to the other three criteria. Under Rule 1781 of the Pa.R.A.P., a petition for a stay is to be presented, in the first instance, to the tribunal which rendered the order being challenged. If the likelihood of success on the merits is a rigid standard, then the requirement of seeking the stay in the first instance would be a futile gesture. It is that very tribunal which has just rendered an adverse decision on the merits which would be required to consider the likelihood of success factor. It is extremely unlikely that the lower tribunal will find it likely that its order will be reversed on the merits.

*Process Gas Consumers Group*, 467 A.2d at 809 n. 8.

12. Consistent with the foregoing directive in *Process Gas Consumer Grp.*, this Commission has held that the likelihood “to prevail on the merits” is “not applicable” to a request for a stay directed to the Commission. *Pa. P.U.C. v. U.G.I. Corp.*, 57 Pa. P.U.C. 83, 88-89 (1983). *Accord Pa P.U.C. v. Nat’l Fuel Gas Dist. Co.*, 65 Pa. P.U.C. 210, 213 (1987); *Re General Elec.*, 59 Pa. P.U.C. 61, 63 (1984).

### **III. THE CRITERIA FOR ISSUANCE OF A STAY ARE MET IN THIS CASE**

#### **A. The Absence Of A Stay Pending The Commission’s Decision On PECO’s Petition Will Cause Irreparable Injury**

13. The Commission’s first requirement for a stay is clearly satisfied by the

uncertainty and confusion of CAP customers arising from the implementation of the Order while PECO's Petition is pending and the associated loss of customer goodwill by PECO. Depending upon the scope and timing of the Commission's resolution of PECO's Petition, both customers and EGSs may experience additional harm.

14. As reflected in the Affidavit of Ms. Feldhake, PECO has commenced preparation of materials necessary to educate CAP customers about shopping for electric supply as well as software changes necessary to enable CAP customers to enroll with EGSs without any price limitation, in compliance with the Order. However, in light of the issues presented in PECO's Petition, PECO will be unable to provide definitive answers to questions of stakeholders regarding key features of PECO's CAP Shopping Plan until the Commission addresses PECO's Petition. Any materials developed – or distributed to customers – may be in error, in whole or in part, depending upon the resolution of PECO's Petition, including PECO's requests for amendments to facilitate implementation of its CAP Shopping Plan as revised by the Commission.

15. In addition, PECO's Standard Offer Program – about which PECO will be obligated to inform CAP customers in the materials – may not perform properly in light of the additional time necessary for software changes to permit CAP customers to participate in that program, with additional risk to PECO's customer information system.

16. EGSs interested in marketing to CAP customers will also be uncertain as to the conditions under which they will be able to serve CAP customers, which may result in few EGSs making any offers to CAP customers.

17. PECO recognizes that under the Commission's criteria for a stay, the Commission would typically first consider the likelihood of injury to PECO. In these circumstances,

however, PECO believes that the Commission must first consider the likelihood of harm for low-income customers in the absence of a stay of the Order which is likely to arise from the compressed customer education schedule, inadequate integration with the Standard Offer Program and potential limited EGSs offers, and the associated loss of established goodwill by PECO. This harm is likely to be compounded if the Commission makes changes to the Plan without a stay in place, with additional resulting customer confusion. While anticipated financial harm does not usually demonstrate injury for purposes of a stay, a utility's loss of customer goodwill has been recognized as sufficient to establish irreparable injury. *Cf. Michigan Bell Tel. Co. v. Engler*, 257 F.3d 587 (6th Cir. 2001) (finding that loss of established goodwill may cause irreparable injury to utility).

18. While customer confusion and the associated loss of goodwill to PECO provides a basis for the Commission to grant a stay, PECO believes that more extensive harm may result in the circumstance where the Commission does not grant a stay and thereafter approves PECO's proposal after reconsideration or makes other adjustments after April 15, 2014, when CAP shopping must commence in the absence of a stay.

19. If PECO proceeds to implement the Order and the Commission subsequently determines to approve PECO's proposal to require EGSs to charge low-income customers prices for electricity supply which do not exceed the PTC, contracts entered into between EGSs and CAP customers may, or may not, be compliant with law.

20. Even if the Commission resolves PECO's Petition by its scheduled meeting on March 20, 2014 (which would be thirty days after the filing of any answers to PECO's Petition), there will be insufficient time to educate and communicate with customers and implement information technology upgrades to comply with any additional Commission directives, with

additional confusion and harm to both CAP customers and EGSs. Furthermore, as described in the Petition, PECO requires clarification regarding the proper calculations of prices charged by EGSs to CAP customers, and in the absence of clarification PECO has no basis to presume that the necessary EGS data will remain available.

21. Finally, a resulting decision by CAP customers not to realize opportunities in the retail market, or by EGSs not to seek to serve the CAP community, could result in significant harm to the overall competitive market. In light of all these existing and potential harms, the first requirement for a stay is satisfied.

**B. Other Interested Parties Will Not Be Substantially Harmed**

22. The Commission's second requirement for a stay – that other interested parties will not be substantially harmed – is also clearly satisfied. In effect, a stay would maintain the status quo of PECO's existing CAP program until the Commission fully addresses PECO's Petition. While it is possible that EGSs may be able to enter into profitable contracts with CAP customers earlier if the Commission declines to grant the requested stay and some customers might be able to realize savings earlier, such profits and savings are likely to be relatively insignificant given the anticipated short period of time for consideration of PECO's Petition.

23. The Commission has recognized that where the *status quo* will result in adequate service to the public, a stay can be appropriate to prevent public hardships that could result if the Commission acted erroneously. See *Re Blue Bird Coach Lines, Inc.*, 72 Pa. P.U.C. 262 (Order entered April 27, 1990). In light of the speculative nature of any lost profits for EGSs or savings opportunities for CAP customers, the Commission's second criteria for a stay is satisfied.

**C. Issuance Of A Stay Will Not Adversely Affect The Public Interest**

24. The final stay criterion requires the Commission to consider the public interest and whether it will be adversely affected if a stay is granted. In this case, the public interest is closely tied to the interests of, and potential harm suffered by, PECO, low-income customers and EGSs in the absence of a stay as described in Section III.A. PECO is also entitled to seek reconsideration of the Order as provided under the Commission's rules, and the public has a general interest in having the legal issues raised by PECO's Petition decided correctly on the merits. *See Process Gas Consumers Grp.*, 467 A.2d at 810.

25. Balancing the interests of all affected parties and the public interest, as the Commission is obligated to do in considering this Application, unquestionably requires the Commission to issue the stay requested by PECO. Upon completion of the Commission's consideration of PECO's Petition, the Commission will be able to establish a time period for implementation of CAP shopping which provides sufficient time and flexibility for preparation and distribution of CAP shopping materials and the associated implementation of software changes necessary for the Standard Offer Program to be available to CAP customers.<sup>2</sup> Only by granting a stay will irreparable harm be avoided and the public interest advanced while producing no adverse impact on any interested party.

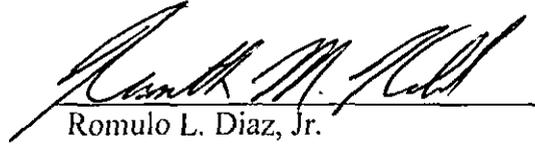
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<sup>2</sup> As noted in the Order (p. 45), PECO "pushes" changes to its IT systems and activates those changes six times a year in a coordinated fashion to ensure sufficient testing and system integration. The next "push date" after April 15, 2014 is June 15, 2014.

#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should issue an order granting this Application for a Stay in this proceeding pending the outcome of the PECO's Petition for Reconsideration and Clarification of the Commission's Order entered January 24, 2014.

Respectfully submitted,



Romulo L. Diaz, Jr.  
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Anthony E. Gay  
(Pa. No. 74624)  
Ward L. Smith  
(Pa. No. 47670)  
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Kenneth M. Kulak  
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Brooke E. McGlinn  
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Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

*Counsel for PECO Energy Company*

Dated: February 10, 2014

**EXHIBIT A**

**Affidavit of Lauren B. Feldhake**

**RECEIVED**

**FEB 10 2014**

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

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

---

**AFFIDAVIT OF LAUREN B. FELDHAKE**

---

I, Lauren B. Feldhake, first being duly sworn for her affidavit in this matter, hereby state as follows:

1. I am over 18 years of age and am competent to submit this Affidavit.
2. I am employed by PECO Energy Company (“PECO” or “the Company”) as Director of Customer Financial Operations.
3. As Director of Customer Financial Operations, I am responsible for various departments including Billing, Payments Processing, and Credit & Collection. In addition, I have managerial oversight of PECO’s universal service programs designed for low-income, residential customers who express or demonstrate difficulty paying their energy bills, including PECO’s Customer Assistance Program (“CAP”).
4. In conjunction with my role as Director of Customer Financial Operations, I am overseeing implementation of customer education initiatives directed to low-income customers regarding the benefits of the competitive market and shopping for electricity.
5. Materials to educate low-income customers to participate in the competitive shopping market will require, at a minimum, the following components: (a) an individual mailing to each of approximately 140,000 CAP customers in PECO’s service territory to explain

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6. In light of the April 15, 2014 date for commencement of CAP shopping, individual mailings should be delivered to customers no later than March 15, 2014, so that customers will have sufficient time to understand the options and risks of contracting for competitive electric supply and be able to obtain assistance from PECO's call center.

7. Consistent with other customer mailings approved by the Commission and to avoid delays in call center response times, PECO plans to mail the CAP shopping customer educational materials in mailing groups of approximately 30,000 customers per day. Mailings to CAP customers would therefore need to start on March 10, 2014, in order to reach customers by March 15, 2014.

8. The Commission has directed that customer materials be reviewed by its Office of Communications, which usually requires up to two weeks for such reviews. In these circumstances, PECO believes materials will have to be submitted to the Commission for review no later than March 3, 2014 to provide sufficient time for consideration and additional revisions.

9. In order to have the collaborative before the educational materials are finalized, PECO will need to schedule the collaborative during February 25-27, 2014 time period. Given the complexity of the educational materials (as well as the fact that some parties may be preparing responses to PECO's Petition for Reconsideration in this proceeding at the same time as the collaborative), there is a substantial risk that the education outcome will be compromised by this accelerated process. The process may be further complicated as several stakeholders have also communicated to PECO that they believe the materials will need to address wholesale price market increases and the potential effects of variable rate charges which the Commission has recently highlighted for customers throughout the Commonwealth.

10. I have also consulted with the Company's information technology ("IT") organization regarding the software requirements to extend PECO's standard offer customer referral program ("Standard Offer Program") to CAP customers. The programming and process changes necessary to implement this functionality cannot be fully tested by April 15, 2014 and, if implemented without complete testing, there is a risk to the operation and customer experience process. 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. The next two "pushes" after April 15, 2014, are scheduled for June 15, 2014 and August 15, 2014.

11. I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

This 10th day of February, 2014.

/s/ Lauren B. Feldhake  
Lauren B. Feldhake

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF PHILADELPHIA )

Subscribed to and sworn before me this  
\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**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 **PECO Energy Company's Petition for Reconsideration and Clarification and Application for Stay of the Commission's Order entered January 24, 2014** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54.

**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

Honorable Cynthia Williams Fordham  
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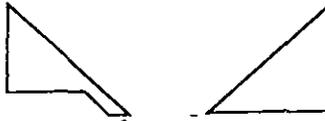


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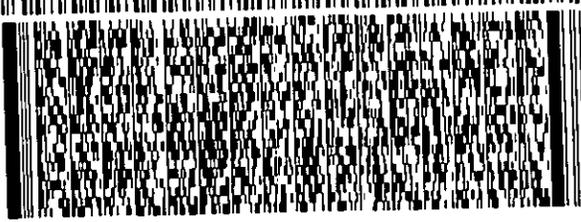
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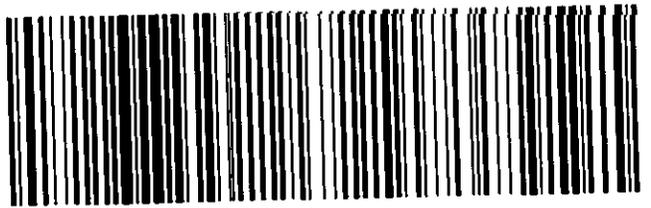


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