



August 25, 2016

By eFiling & First Class Mail

Administrative Law Judge Cynthia W. Fordham
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Re: Petition of PECO Energy Company for Approval of a Default Service Program for the Period of June 1, 2017 through May 31, 2019, Docket No. P-2016-2534980

Dear Judge Fordham:

Please find the enclosed Reply Brief of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.) in the above-captioned matter, which was filed with the Commission this afternoon.

Copies are being served on parties pursuant to the attached Certificate of Service. Please contact me with any questions or concerns.

Sincerely,



Robert W. Ballenger, Esquire
Thu B. Tran, Esquire
Josie B.H. Pickens, Esquire

Attorneys for TURN et al.

Enclosure

Cc: Secretary's Office
Service List

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for Approval :
of its Default Service Program for the Period : P-2016-2534980
from June 1, 2017 through May 31, 2019 :**

I hereby certify that I have this day served a copy of the Reply Brief of TURN *et al.* upon the persons listed below in the manner indicated in according with the requirements of 52 Pa. Code §1.54.

Via Email and/or First Class Mail

The Honorable Cynthia Williams Fordham
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107
cfordham@pa.gov

Romulo L. Diaz, Jr., Esq.
W. Craig Williams, Esq.
Exelon Business Services Co.
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
Romulo.diaz@exeloncorp.com
Craig.williams@exeloncorp.com

Aron Beatty, Esq.
Christy Appleby, Esq.
Candis Tunilo, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Floor, Forum Place
Harrisburg, PA 17101-1923
abeatty@paoca.org
cappleby@paoca.org
ctunilo@paoca.org

Charis Mincavage, Esq.
Adeolu A. Bakare, Esq.
Alessandra L. Hylander, Esq.
McNees, Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
abakare@mwn.com
ahylander@mwn.com

Phillip C. Kirchner, Esq.
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
phikirchne@pa.gov

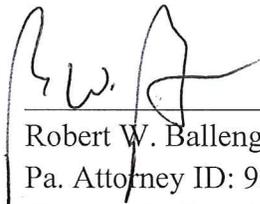
Elizabeth Rose Triscari, Esq.
Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
etriscari@pa.gov

Charles E. Thomas, III, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust St., Suite 600
Harrisburg, PA 17101
Cet3@tntlawfirm.com

Thomas P. Gadsden, Esq.
Kenneth M. Kulak, Esq.
Brooke E. McGlinn, Esq.
Morgan, Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103
tgadsden@morganlewis.com
kkulak@morganlewis.com
bmcglinn@morganlewis.com

Daniel Clearfield, Esq.
Deanne M. O'Dell, Esq.
Sarah C. Stoner, Esq.
Eckert Seamans Cherin & Mellot, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
sstoner@eckertseamans.com

Patrick M. Cicero, Esq.
Elizabeth R. Marx, Esq.
Joline Price, Esq.
Pennsylvania Utility Law Project
118 Locust Street.
Harrisburg, PA 17101
pciceropulp@palegalaid.net
emarxpulp@palegalaid.net
jpricepulp@palegalaid.net



Robert W. Ballenger, Esq.
Pa. Attorney ID: 93434
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
Tel: 215-981-3788
rballenger@clsphila.org

August 25, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for Approval :
of its Default Service Program for the Period : P-2016-2534980
from June 1, 2017 through May 31, 2019 :**

REPLY BRIEF

ON BEHALF OF TURN *et al.*

**(TENANT UNION REPRESENTATIVE NETWORK,
ACTION ALLIANCE OF SENIOR CITIZENS
OF GREATER PHILADELPHIA)**

August 25, 2016

Attorneys for TURN *et al.*

**Robert W. Ballenger, Esq.
Thu B. Tran, Esq.
Josie B. H. Pickens, Esq.
COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102
215-981-3788**

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I. INTRODUCTION

Before the Pennsylvania Public Utility Commission (Commission) is the Joint Petition for Partial Settlement of PECO Energy Company's Default Service Program for June 1, 2017 through May 31, 2019 (DSP IV) and the proposal for the implementation of reasonable price protections for PECO's low-income customer assistance program (CAP) participants. This reply brief is submitted in further support of those reasonable price protections necessary to ensure that PECO's CAP customers receive affordable bills, consistent with the provisions and intent of the Electricity Generation Customer Choice and Competition Act (Choice Act), 66 Pa. C.S. §§ 2801-2815.

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) submitted that two fundamental price protections are necessary: CAP customers must never be subjected to an EGS price in excess of PECO's PTC; and, CAP customers must be protected from termination and cancellation fees which can make participation in the competitive market unaffordable for CAP customers. CAUSE-PA further submitted that these fundamental protections be accomplished through a "CAP-SOP" that would provide the exclusive portal for CAP customers to select electricity generation supply in the competitive market. The Office of Consumer Advocate (OCA) and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) supported CAUSE-PA's proposals, and, on August 11, submitted initial briefs urging that they be approved by the Commission.

The Retail Energy Supply Association (RESA) opposed CAUSE-PA's proposals in its August 11 initial brief. PECO and the Bureau of Investigations and Enforcement (I&E) submitted initial briefs effectively asserting that implementation of CAUSE-PA's proposals

should be considered at some undetermined time in the future. Through this Reply Brief, TURN *et al.* submit that the Commission should not credit RESA's opposition, as its position is based upon unreliable testimony, speculation and mischaracterization. Moreover, TURN *et al.* submit that the Commission should approve CAUSE-PA's proposals now, as the evidence demonstrates their reasonableness and necessity. No party has articulated any good reason to wait until after CAP customers experience higher EGS rates, unaffordable bills, and have their ability to maintain service jeopardized, to approve price protections. Approving the necessary limitations on competition now, to be effective June 1, 2017, ensures that PECO's CAP program will be cost-effective and fulfills the low-income commitments of the Choice Act.

II. STATEMENT OF THE CASE

TURN *et al.* incorporate by reference the Statement of the Case set forth in their Main Brief.

III. STATEMENT OF QUESTIONS INVOLVED

A. Should the Commission reject RESA's bases for opposition to CAUSE-PA's CAP shopping proposal?

Suggested Answer: Yes

B. Should the Commission approve the implementation of price protections effective with the implementation of PECO's CAP shopping program on June 1, 2017, before CAP customers experience higher EGS charges in the competitive market for electricity supply?

Suggested Answer: Yes

IV. LEGAL STANDARDS AND BURDEN OF PROOF

TURN *et al.* incorporate by reference the Legal Standards and Burden of Proof set forth in their Main Brief.

V. ARGUMENT

A. The Commission Should Reject the Positions Advanced by RESA, as Unsupported, Speculative, and Premised Upon Misstatements and Mischaracterizations.

1. Widespread Harm to CAP Participants in Other Territories is Irrefutable Evidence in Support of CAUSE-PA's Proposal.

RESA contends that the evidence of widespread harm to CAP participants shopping for electricity supply in other territories is not sufficient to support a PECO CAP-SOP. RESA M.B. 12-14. As TURN *et al.* pointed out in their Main Brief, RESA's witness, Mr. Matthew White, in Surrebuttal Testimony, demonstrated that he may not be a reliable witness and had not carefully reviewed testimony of CAUSE-PA's witness, Mr. Harry Geller. TURN *et al.* M.B. at 20. Discussing the evidence cited by Mr. Geller, of CAP shopping customers paying in excess of the PTC, Mr. White concludes the opposite: "that at least 58% of CAP customer paid at or less than the PTC every month from January 2012 through February 2016 in PPL's service territory." RESA St. 1-SR at 7. In its Main Brief, RESA reiterates Mr. White's conclusion: "that at least 58% of CAP customers paid at or less than the PTC every month from January 2012 through February 2016." RESA M.B. at 14, note 57. This conclusion is not mathematically correct, nor supported by the actual statistics Mr. Geller provides, which show that for each month: "from January 2012 through February 2016, *at least* 42% of CAP customers paid more than the PTC, and *in 6 of those months, 88-99% of CAP customers shopping paid more than the PTC.*" CAUSE-PA St. 1 at 27 (emphasis added). Mr. White's errors are described more fully in TURN *et al.*'s Main Brief. See TURN *et al.* M.B. at 20-21.

RESA's conclusions, that CAUSE-PA, TURN *et al.*, and OCA's interpretations of the numbers are "one-sided," are rooted in its witness's abject errors. RESA's argument hinges on

an unsupportable view of the data, and pivots from there to pure speculation. As RESA explains: “[T]he data from these other utilities does not take into account a specific contract term with an EGS to show whether the CAP customer paid a higher price for the entire term of their contract with the EGSs or the CAP customer – when he or she first chose the EGS – obtained some benefit or incentive for switching.” RESA M.B. at 14-15. RESA provides no evidence that EGS contract terms with CAP customers provide for more affordable long-run electric bills, nor does RESA demonstrate that any CAP customers received benefits or incentives for switching. What Mr. Geller conclusively shows is a 50-month-long pattern during which a large proportion, many times a large majority, of CAP shopping customers were charged higher rates by EGSs. CAUSE-PA St. 1 at 27; Appx D. Equally importantly, Mr. Geller assesses the net impact of this demonstrated trend: a \$2,743,872 additional annual increase in costs to customers as a result of CAP shopping. CAUSE-PA St. 1 at 29. RESA fails entirely to show how any amount of benefit or incentive to CAP customers can compensate for such a significant increase in cost to ratepayers. Moreover, as discussed more fully below, even if some other incentive or benefit to CAP customers existed, it would not be consistent with the reduced electricity cost the Choice Act specifically intended.

In addition, RESA attempts to downplay the extent of the new evidence that CAUSE-PA has brought to light in this proceeding. RESA contends that evidence from other utility service territories is somehow insufficient, and asserts that the competitive market is unique in each utility service territory. However, RESA cites to no evidence whatsoever in support of these claims. It should be noted that, despite ample opportunity, no witness, not even RESA’s witness, has rebutted the statement made in Mr. Geller’s Direct Testimony, and supported by OCA and

TURN *et al.*, that there is no reason to believe that the long-term results of CAP shopping in PECO's territory would be any different than in every other territory where unrestricted CAP shopping has been permitted. See CAUSE-PA St. 1 at 29; TURN St. 1-SR at 8; OCA M.B. at 20.

RESA also disregards that the Commission did, in fact, consider the evidence of CAP shopping in other utility territories in the context of PECO's DSP II. RESA asserts that information from other utility service territories is "not particularly instructive." RESA M.B. at 14. RESA fails to acknowledge that the Commission specifically considered, and relied upon, information from other utility territories in assessing the weight of evidence in support of PECO CAP shopping price protections in the past. As summarized by the Commonwealth Court in Coalition for Affordable Util. Services and Energy Efficiency in Pa., et al., v. Pa. PUC, 120 A.3d 1087 (Pa. Commw. Ct. 2015) (PECO CAP Shopping Case):

The PUC acknowledges the statistic included in PECO's brief to the PUC, regarding 73% of PPL Electric CAP shopping customers paying more than the applicable PTC. The PUC notes, however, that in the next sentence, PECO acknowledged that the PUC rejected as speculative any assertion that PPL Electric's CAP customers were being harmed because of shopping and concluded that PPL Electric's CAP customers should be allowed to participate in that public utility's Standard Offer Program.

PECO CAP Shopping Case, 120 A.3d at 1106.

At this time, the *new* evidence concerning the CAP shopping experiences of customers in five Pennsylvania service territories (PPL, Met-Ed, Penelec, Penn Power and West Penn Power) demonstrates the need for CAP shopping price protections. CAUSE-PA St. 1 at 26-30. This evidence cannot be rejected as speculative. It clearly establishes the prevalence of CAP customers paying in excess of the PTC, and documents that these customers are paying

significantly more than the PTC, creating additional costs for all other ratepayers. Although RESA would like the Commission to disregard this evidence, the Commission’s own past practice indicates that this evidence *is* instructive and should be taken into consideration by the Commission.

2. RESA Misconstrues the Commonwealth Court’s Opinion and the Choice Act, Arguing That the Value of Competition For Competition’s Sake Overrides Specific Provisions of the Choice Act.

RESA contends that, because the “overarching goal” of the Choice Act is competition, competition itself has supreme value, and CAUSE-PA’s proposals should be rejected. In other words, RESA submits that solely for the sake of maximizing the number of EGS offers available to customers, the specific provisions of the Choice Act (requiring protections for low-income customers and programs that they rely upon to maintain essential electric service) should be disregarded. RESA seeks to elevate above all provisions of the Choice Act the intrinsic value in customers’ right to shop for electricity. RESA M.B. at 13. On this basis, RESA believes reasonable price protections should be refused, and PECO’s CAP customers should be encouraged to enter the competitive market and pay EGS prices above PECO’s PTC.

RESA’s contention is not supportable on a full reading of the Choice Act or the Commonwealth Court’s opinion in the PECO CAP Shopping Case. Primarily, RESA flatly asserts that the overarching goal of the Choice act is competition, period. RESA M.B. at 10. This is inaccurate. As the Commonwealth Court articulated:

[T]he overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers. But the scheme does not demand absolute and unbridled competition.

PECO CAP Shopping Case at 1101.

Accordingly, the overarching goal of the Choice Act is for competition to reduce electricity costs for consumers, not competition for competition's sake. RESA's incorrect premise is the foundation of several further flaws in its reasoning. First, RESA asserts that CAP customers in other utility service territories could have received some other benefit in exchange for higher prices. RESA M.B. at 14-15. This is pure speculation, with no evidence whatsoever to support it. Equally important, however, is that the overarching objective of competition, as envisioned by the General Assembly, is to reduce costs, leaving RESA's contention at odds with the Choice Act. If the General Assembly sought to encourage the provision of "value-added services" at higher EGS prices, it could have explicitly done so. It did not.

Furthermore, RESA's contention that CAUSE-PA, OCA and TURN *et al.* are "outright ignoring or not acknowledging" the importance of competition is: (1) incorrect; and (2) premised upon the non-cost-related benefits of competition that RESA fails to clearly articulate or support with substantial evidence. RESA M.B. at 13. First, CAUSE-PA, OCA and TURN *et al.*, support a CAP-SOP because it is a means through which CAP customers can access the competitive market and obtain the benefit the General Assembly envisaged – low electricity prices. Far from ignoring the legitimate benefit of competition, these parties seek to ensure that CAP customers receive it. Second, whatever unidentified, non-cost-related benefit RESA may believe is important, it is purely theoretical and RESA has made no meaningful attempt to identify it or place a value upon it. Again, the Choice Act was not intended to promote competition simply for the sake of competition, but rather because of the tangible benefit to consumers that could result from lower prices. To be sure, competition that leads to some other result (e.g., higher

prices, increased utility shut offs, offers of big box store gift cards as incentives), is not the kind of competition that the Choice Act sought to promote.

RESA also fails to confront the principles of statutory interpretation that apply, and upon which the Commonwealth Court relied. PECO CAP Shopping Case, 120 A.3d at 1100, n. 14. In particular, RESA fails to acknowledge that the Choice Act must be read to effectuate the General Assembly’s intent, and, if possible, to give effect to all of its provisions. See 1 Pa. C.S. §1921. Notably, the particular provisions of the Choice Act, mandating appropriate funding and cost-effectiveness of programs such as PECO’s CAP, would, in the event of a conflict, prevail over general provisions of that statute. See 1 Pa. C.S. § 1933. But the evidence shows there is no real conflict here. Consistent with the general objectives of encouraging competition in order to reduce consumer costs, a proposal which would lead to higher costs or a lack of cost-efficiency to CAP customers and non-CAP customers who contribute to the cost of CAP cannot be justified under the general purposes of the Choice Act. It is both consistent with the general purposes of the Choice Act, and the Commission’s continuing obligation under the Choice Act to ensure the affordability and cost-effectiveness of CAP,¹ to implement CAP shopping price protections.

3. RESA’s Assertion That Choices for CAP Customers Will be Adversely Affected is Not Supported.

RESA misconstrues CAUSE-PA’s CAP-SOP proposal, unpersuasively contending that price protections will eliminate shopping options for CAP customers. RESA M.B. at 18. First, RESA contends that CAUSE-PA’s proposal would “require EGSs to guarantee a steady supply of energy priced below the PTC.” RESA M.B. at 17. Second, RESA contends that the CAP-

¹ PECO CAP Shopping Case at 1108.

SOP would require EGSs to pay a \$30 referral fee to serve CAP customers. Both of these assertions are incorrect. Finally, RESA contends that restricting EGSs to the terms of CAP-SOP would be undesirable to EGSs in comparison to the SOP, because of the inability to make non-SOP offers after the expiration of the SOP term. RESA provides no evidence to support this irrelevant assertion.

CAUSE-PA's proposal is virtually identical to PECO's existing SOP, through which EGSs make offers to PECO customers that have a 7% discount off of the PTC at the time of the contract. RESA's witness acknowledges that participation in PECO's SOP has been healthy. RESA St. 1-R at 6. The most significant difference between the CAP-SOP and the SOP is that, in the event PECO's PTC drops by 7% or more, the EGS will choose between reenrolling the CAP customer at a new discount (7% off the PTC at that time) and returning the customer to default service. CAUSE-PA St. 1 at 32. RESA fails to explain how this provision will lead to a diminution in offers to CAP customers. RESA also offers no evidence showing that such a diminution would occur. TURN *et al.* submit that no such diminution would be expected since, effective with any decline in PECO's PTC by 7% or more, the CAP customer who has already shopped will be placed in the same position as the CAP customer who has not yet shopped. Both would effectively be receiving or evaluating opportunities to shop at 7% off the PTC in the same manner as any other customer electing to participate in the SOP at that time. RESA's claim that EGSs will not serve PECO customers under the terms of the CAP-SOP are not supported by its own witness's statement that PECO's nearly-identical SOP has garnered healthy participation by EGSs. RESA St. 1-R at 6.

Regarding the \$30 referral fee, RESA's concern is not based on CAUSE-PA's refined proposal, and is therefore incorrect. As discussed in TURN *et al.*'s Main Brief:

[I]n response to Mr. White's concern that EGSs should not have to pay a \$30 SOP enrollment fee to serve CAP customers (RESA St. 1-R at 16), Mr. Geller and Ms. Alexander agree upon a simple solution. As a further refinement to Mr. Geller's proposal, Ms. Alexander proposes that PECO could transmit qualified and interested customers to an EGS that is randomly selected from those willing to serve CAP customers under the CAP-SOP criteria Mr. Geller advances, thus avoiding incurring that fee. OCA St. 1-R at 6. Mr. Geller concurs in this recommendation. CAUSE-PA St. 1-SR at 11. TURN *et al.* agree that this further refinement of Mr. Geller's proposal directly addresses, and eliminates, RESA's concern regarding enrollment fees, and should be approved by the Commission in connection with the approval of a PECO CAP-SOP.

TURN *et al.* M.B. at 29-30.

CAUSE-PA and OCA have crafted a solution to the risk RESA identified in testimony. It is not clear why, in its Main Brief, RESA has ignored this aspect of the CAP-SOP proposal, which is well-documented on the record.

Finally, RESA contends that serving CAP customers within the CAP-SOP would be undesirable because EGSs would not be able to contract with those customers, outside the CAP-SOP, in the future. Again, RESA provides no evidence of the extent to which PECO customers (or the customers of any other EDC) stay with EGSs after the expiration of the SOP contract term, and no evidence concerning the rates they pay when they do so. Moreover, as discussed in TURN *et al.*'s Main Brief, RESA has not identified, and so does not contend, that EGSs have some right to expect that PECO SOP participants will continue to contract with an EGS after the expiration of the SOP contract term. TURN *et al.* M.B. at 29. In fact, inherent in the design of PECO's existing SOP is a prohibition on termination and cancellation fees, leading to the opposite conclusion – that SOP participants can freely terminate EGS contracts, leaving EGSs

with no expectation of a right to serve SOP participants, even *during* the SOP contract term. Id. Ultimately, RESA's concern appears to be that the CAP-SOP is not an introductory program and that EGSs serving CAP customers would continue to be bound by the price protection terms of the CAP-SOP. For all of the reasons discussed herein and in TURN *et al.*'s Main Brief, TURN *et al.* submit that the specific objectives of the Choice Act, the maintenance of affordability and cost-effectiveness of CAP, require the imposition of reasonable price protections for the duration of a CAP customer's experience in the competitive market.

4. RESA is Incorrect That Prior “Vetting” of PECO CAP Shopping Price Protections Renders Their Further Consideration Unnecessary.

RESA asserts that because other proposals for CAP shopping protections have been considered in the past, the Commission should not now consider implementing price protections for PECO's CAP customers entering the competitive market in the future. RESA M.B. at 10-12. Contrary to RESA's position, the Commission should require reasonable price protections for PECO's CAP participants electing to shop for electricity in the future on the basis of the compelling evidence developed *since* the Commission's determination in PECO's DSP II proceeding.²

Certainly, CAUSE-PA, OCA and TURN *et al.*, have considered price protections for PECO's CAP customers on multiple occasions, as RESA acknowledges. RESA M.B. at 10. CAUSE-PA's proposals represents the culmination of those prior positions and the crystallization of a CAP shopping framework that is administratively feasible, provide protections for CAP customers which ensure that the statutory objectives of maintaining

² As set forth in TURN *et al.*'s Main Brief, the Commission's ruling on CAP shopping via a rule revision in PECO's DSP III, would present a due process quandary. See TURN *et al.* M.B. at 14-16.

affordability and cost-effectiveness are satisfied, and permit CAP customers to shop for electricity supply in the competitive market. Rather than forming the basis for dismissing CAUSE-PA's proposal, RESA's observation that prior proposals were vetted by the Commission forms an important backdrop *in support of* the reasonableness of a PECO CAP-SOP. In fact, the proposal submitted by CAUSE-PA was developed with a thorough understanding of the manner in which price protections can, in fact, be reasonably implemented. See e.g., I&E M.B. at 13 (“restrictions such as those sought by CAUSE-PA in this proceeding can be well-founded and in the public interest.”).

More importantly, however, RESA disregards the context in which those prior CAP shopping proposals were vetted. As has been explained, this DSP IV proceeding marks the first occasion in which the parties can develop a record under the Commonwealth Court's interpretation of the Choice Act. TURN *et al.* M.B. at 17 (citing TURN St. 1-SR at 15). Accordingly, CAUSE-PA's refined proposal should not now be rejected based upon the Commission's past rejection of price protections, which were premised upon an interpretation of the Choice Act which has been overruled by the Commonwealth Court and a record developed several years ago. Instead, the Commission should approve the establishment of a PECO CAP-SOP, as the only reasonable alternative to implement CAP shopping without violating the Choice Act's mandates concerning low-income customers.

As summarized in TURN *et al.*'s Main Brief, since the Commission's initial consideration of CAP shopping in the context of PECO's DSP, significant evidence has been developed regarding the rate and depth of harm incurred by CAP customers electing to shop in the competitive market for electricity. The evidence shows, with great consistency, the large

proportion of CAP customers in other EDC territories being charged prices above the PTC. In many cases, those customers are paying *significantly* more than the PTC. The evidence shows this occurs in every EDC territory where CAP customers currently shop, none of which have price protections. CAUSE-PA St. 1 at 29. Finally, the evidence shows the extent of financial harm – the degradation of CAP affordability and cost-effectiveness – that results from CAP shopping without price protections. See CAUSE-PA St. 1 at 28. The Commission should ensure these results are not replicated in PECO’s territory, and so should require PECO to implement the CAP-SOP.

5. RESA Has Not Identified Any Reasonable Alternative to CAUSE-PA’s Proposed CAP-SOP.

In its Main Brief, RESA, for the first time, contends that it has identified another “reasonable alternative” to the proposal advanced by CAUSE-PA and supported by OCA and TURN *et al.* RESA M.B. at 10. RESA submits that CAP customers shopping without any protection from prices in excess of PECO’s PTC constitutes a “reasonable alternative” to a limitation on price. RESA M.B. at 10. RESA’s assertion is incorrect and premised upon its disregard for the evidence produced in this case.

RESA submits that “no evidence presented in this case shows why implementing CAP shopping consistent with...prior decisions is not a reasonable alternative to what is proposed” by CAUSE-PA. RESA M.B. at 10. Accordingly, RESA asserts that imposing no price restrictions on EGS supply is somehow adequate to protect CAP customers and is thus a “reasonable

alternative.”³ Of course, RESA’s position would provide no protection to CAP customers at all, and is not an alternative to anything. RESA’s proposal to reject price protections would result in charging higher EGS prices to low-income CAP customers in a manner that would compromise the affordability and cost-effectiveness mandates of the Choice Act.

RESA fundamentally ignores the compelling evidence demonstrating that PECO CAP customers will pay charges in excess of the PTC if permitted to shop without price protections. This result would be contrary to the language and purposes of the Choice Act, as clarified and interpreted by the Commonwealth Court, articulating the Commission’s continuing obligation to ensure that CAP remains affordable and cost-effective. Accordingly, any alternative to be considered must be an alternative which prevents PECO’s CAP from becoming unaffordable and preserves the cost-effectiveness of CAP for participants and other customers who contribute to the cost of CAP. RESA has identified no such reasonable alternative. Only CAUSE-PA has identified a reasonable alternative. In this proceeding, CAUSE-PA has submitted a clear framework and feasible mechanism to prevent unaffordability and ineffective expenditure of ratepayer funds through CAP – the CAP-SOP. The Commission should approve CAUSE-PA’s proposal.

³ RESA appears to suggest that PECO CAP shopping should be implemented consistent with the Secretarial Letter and the Commonwealth Court opinion, ostensibly providing no ongoing price protections for EGS supply, but prohibiting termination and cancellation fees. RESA M.B. at 10. However, at no point does RESA state that it *supports* a prohibition on termination and cancellation fees. Given its historic positions, it is anticipated that RESA would oppose such a prohibition.

B. The Commission Should Approve Price Protections for PECO CAP Shopping Customers, to Be Effective With the Commencement of CAP Shopping, no Earlier Than June 1, 2017.

PECO, I&E and RESA contend that, because PECO's CAP customers have not shopped for electricity supply in the competitive market, the Commission should not *yet* implement reasonable price protections. PECO contends that "data is necessary to determine whether the shopping experience of PECO's CAP customers is comparable to the experience of CAP customers in other service territories who CAUSE-PA alleges have suffered harm associated with paying prices for generation supply above the PTC,"⁴ so "the appropriate time for the Commission to consider any [price protections] is after data is available regarding the shopping experience of PECO's CAP customers." PECO M.B. at 9. I&E quotes the Commission's determination, in the Reconsideration Order in PECO's DSP II, and submits that, without direct experience of PECO's CAP customers in the competitive market, the Commission "would likely find an insufficient amount of evidence to place further restrictions on CAP shopping." I&E M.B. at 12. Finally, RESA asserts that "there is no evidence in this case about how PECO's customers have been harmed" in the competitive market. RESA M.B. at 14 (emphasis omitted).

In essence, each of these parties submits that PECO's CAP customers must actually experience higher, unaffordable EGS prices in the competitive market before the Commission should implement necessary price protections. To the contrary, it is inappropriate for the Commission to take a "wait and see" approach, such as that advanced by PECO, I&E and RESA. As Mr. Geller concludes: "We know *now* the harm that will befall PECO's low-income CAP

⁴ PECO has submitted no evidence in this proceeding refuting Mr. Geller's testimony, which shows that EGSs are engaged in consistently charging prices in excess of the PTC to CAP participants across EDC territories.

customers who shop without reasonable and targeted restrictions because [of] all of the data... concerning how low-income households and other ratepayers are irreparably harmed by paying more than the price to compare.” CAUSE-PA St. 1-SR at 5. TURN *et al.*, like OCA, agree that the compelling evidence in this case demonstrates that price protections are necessary to achieve the objectives of cost-effectiveness and affordability. OCA M.B. at 20. “There is no need to gather more data re-confirming the incidence of harm to low-income customers in advance of implementing necessary price protections for PECO CAP customers choosing to shop for electricity supply.” TURN St. 1-SR at 8. No witness for PECO, I&E or RESA contends or even questions that PECO’s CAP customers will encounter the same risks, and higher prices, experienced by CAP customers of PPL, Met-Ed, Penelec, Penn Power, and West Penn Power. But PECO, I&E and RESA nonetheless submit that we should cross our fingers and hope for a different outcome, ensuring that objectives of the Choice Act are violated.

It should be recalled, as submitted in TURN *et al.*’s main brief, that the Commonwealth Court upheld a prohibition on termination and cancellation fees, on the basis of the evidence presented to the Commission, in PECO’s DSP II appeal. PECO CAP Shopping Case at 1107-1108. The Commonwealth Court did not require that PECO’s CAP customers pay those fees in order to demonstrate that, having done so, they incurred actual harm. Instead, the Commonwealth Court concluded, on the basis of the evidence, that termination and cancellation fees *would* reduce affordability and undermine cost-effectiveness, jeopardizing CAP customers’ ability to maintain service and violating the purposes of the Choice Act. The Commonwealth Court found no substantial evidence supported the ability to impose those charges on CAP customers, holding that “the OCA proposal would provide *an added layer of protection* to CAP

participants consistent with the affordability goals of the Choice Act.” *Id.* at 1108 (emphasis added). The Commission should recognize that, given the record evidence in this case, implementation of price protections, in the form of CAUSE-PA’s proposed CAP-SOP, is a reasonable and necessary limitation on competition that will effectuate the low-income provisions of the Choice Act. The CAP-SOP is supported by substantial evidence, and there is no substantial evidence supporting the “wait and see” perspective shared by PECO, I&E and RESA.

For the reasons set forth in their Main Brief and this Reply Brief, TURN *et al.* submit that the Commission should approve implementation of a PECO CAP-SOP to be effective no sooner than June 1, 2017. See TURN *et al.* M.B. at 32-33 (describing the forthcoming dramatic shift in low-income assistance in PECO service territory, and the potential customer confusion and customer education activities that will be necessary for PECO’s CAP customers to adjust to a redesigned CAP program in advance of entering the competitive market for electricity supply). Again, PECO, I&E and RESA contend that the Commission should not approve a June 1, 2017 start date, arguing instead that CAP shopping should be implemented sooner, without necessary price protections. This approach is not supportable under the Commonwealth Court’s guidance. As set forth in TURN *et al.*’s Main Brief: “Because the PUC’s obligations are of a continuing nature, *they must be fulfilled now, and in the future.*” TURN *et al.* M.B. at 19 (emphasis supplied). Waiting until after PECO’s CAP customers experience higher bills for EGS supply in the Competitive Market to implement price protections would fail to fulfill the Commission’s responsibilities concerning low-income customers, as clarified by the Commonwealth Court.

VI. CONCLUSION

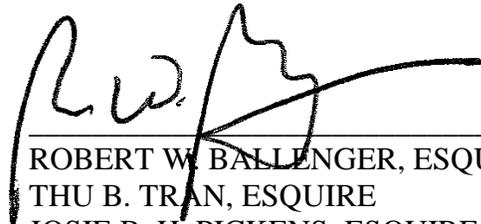
As discussed in this Reply Brief, TURN *et al.*, submit that the Commission should not give any weight to RESA's opposition to CAUSE-PA's CAP-SOP framework. RESA's position is predicated on its witness's unreliable testimony, which mischaracterizes Mr. Geller's irrefutable evidence. Moreover, RESA seeks to disregard the compelling evidence of harm to CAP customers shopping in other utility service territories, without presenting any evidentiary basis to do so, arguing that the Commission should rely upon determinations made before this evidence was available to reject CAUSE-PA's proposals. RESA misconstrues the law, asserting that the intrinsic value of customers' right to shop for electricity somehow takes precedence over the specific goals of the General Assembly, recognized by the Commonwealth Court, of ensuring competition results in lower costs to customers, and maintaining affordable and cost effective low income programs. Contrary to identifying a reasonable alternative to the CAP-SOP, RESA instead proposes that no price protections be approved, which would result in violations of the Choice Act's CAP affordability and cost-effectiveness mandates. Finally, RESA provides no actual evidence that the implementation of a CAP-SOP will adversely affect choices for CAP customers choosing to shop and, in fact, the evidence it does provide admits to healthy participation by EGSs in the substantially similar PECO SOP.

PECO, I&E and RESA also submit that PECO's CAP customers must actually incur harm in the competitive market for electricity supply before the Commission should approve program terms for CAP shopping that will protect CAP customers and CAP programs. This argument is misplaced and contrary to the evidence and the clear recognition by the Commonwealth Court in the PECO CAP Shopping Case that the Commission must ensure the

cost-effectiveness and affordability of PECO's CAP. TURN *et al.* submit that the Commission should approve a PECO CAP-SOP, the only reasonable alternative identified, in order to permit CAP customers to enter the competitive market, while maintaining CAP's cost-effectiveness and affordability. This CAP-SOP should commence no earlier than June 1, 2017, when PECO's DSP IV is effective.

For all of the reasons set forth in TURN *et al.*'s Main Brief and this Reply Brief, TURN *et al.*, submit that the Commission should approve CAUSE-PA's proposed price protections, and order PECO to implement them via a CAP-SOP.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R.W. Ballenger', written over a horizontal line.

ROBERT W. BALLENGER, ESQUIRE
THU B. TRAN, ESQUIRE
JOSIE B. H. PICKENS, ESQUIRE
Attorneys for TURN *et al.*