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December 2, 2016

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for Approval of its Default Service Plan
Docket No. P-2012-2283641

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Comments of the Retail Energy Supply Association (“RESA”) Regarding PECO Customer Assistance Program Shopping Plan, Proposed Rule Revision Dated September 1, 2016 with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: James A. Mullins via email only (jamullins@pa.gov)
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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Comments upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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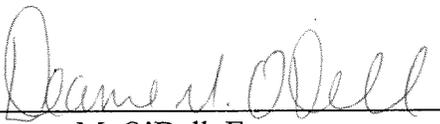
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Dated: December 2, 2016


Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :
Approval of its Default Service Plan : Docket No. P-2012-2283641
:

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
REGARDING PECO CUSTOMER ASSISTANCE PROGRAM SHOPPING PLAN,
PROPOSED RULE REVISION DATED SEPTEMBER 1, 2016**

I. INTRODUCTION

On September 1, 2016, PECO Energy Company (“PECO”) filed its Customer Assistance Program Shopping Plan (“CAP Shopping Plan”). The Retail Energy Supply Association (“RESA”)¹ submits these comments regarding PECO’s CAP Shopping Plan pursuant to the Commission’s November 18, 2016 Secretarial Letter. Generally, RESA supports the effort of PECO’s proposed CAP Shopping Plan to implement the clear directives of the Commonwealth Court’s decision which prohibits electric generation suppliers (“EGSs”) from assessing early cancellation fees on customers participating in PECO’s customer assistance plan (“CAP”).² RESA fully supports the right of all customers to freely shop for EGS-provided service. While the Commonwealth Court’s decision does prohibit EGSs from assessing early cancellation fees,

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d 1087, 1106-1107 (Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016).

there are no other restrictions placed on the products that EGSs may offer PECO's CAP customers. EGSs provide a variety of products and services including: (1) fixed price plans; (2) long-term fixed contracts (can be as long as three years); (3) energy efficiency and demand response products to better control energy usage; (4) achievement of environmental goals through green energy products; (5) home heating equipment and repair to consumers on an affordable basis; and, (6) rewards, points and rebates for customer loyalty. Having access to this greater variety of EGS provided products will offer PECO's CAP participants a significant opportunity to choose the products and services that best meet their individual needs and desires – just as all other customers are able to do. A prohibition on assessing early cancellation fees is not likely to deprive customers of the ability to avail themselves of these various products and services and RESA looks forward to providing these options to the approximately 139,000 PECO CAP participants³ who will soon be able to participate in the competitive retail market.

Upon review of PECO's CAP Shopping Plan, however, RESA believes that a more open flow process than proposed by PECO would be easier to implement and more efficiently accomplish the intended goal. More specifically, RESA is concerned that the PECO proposal to create a new process to reject some EGS enrollment requests for CAP customers and not other EGS enrollment requests for CAP participants is likely to be unnecessarily costly and difficult to implement. Similarly, the notice requirements PECO proposes for EGSs about their intention to serve or not serve CAP participants and the stay-out provision create unnecessarily complex operational issues for EGS. Finally, RESA is concerned that the provisions attempting to dictate

³ *Report on 2015 Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies*, Pennsylvania Public Utility Commission at 42. Number of PECO CAP participants as of December 31, 2015.

EGS contract terms with its customers are overreaching and could lead to unnecessary inter-company disputes between PECO and EGSs.

Taking all of this into consideration and assessing currently available processes, RESA recommends the Commission direct PECO to simplify its process as follows:

- PECO provides, via EDI, an “Accept” code which includes a “CAP” identifier in response to an EGS enrollment request; and,
- PECO includes a flag on its Eligible Customer List (“ECL”) for CAP participants.

To accomplish this process, PECO would only need to modify a previously used CAP indicator for its already existing EDI “Accept” enrollment response which would enable any EGS that does not elect to serve the CAP participant to send a drop response. To support further information flow between PECO and the EGSs so that EGSs may more appropriately tailor their products and services to CAP participations, RESA also recommends that PECO include a flag on its ECL for CAP participation. By following these two suggestions, proposed tariff Section 5.5.1 addressing EGS contract terms for CAP customers and proposed tariff Section 5.5.2 addressing EGS entry/exit requirements for serving CAP customers (which are unnecessarily complicated) would be unnecessary. The simplification of the PECO proposed process relies on existing processes and ensures that EGSs understand that they are enrolling a CAP participant and the requirements that go along with serving that customer. Finally, RESA requests that the Commission make clear that the Commission (and not PECO by virtue of creating these tariff provisions) is the entity with the regulatory authority to determine whether or not an EGS has complied with the prohibition against early cancellation/termination fees.

II. SUMMARY OF PECO PROPOSAL

The proposed tariff provisions provided with PECO's CAP Shopping Plan propose the following:

- EGSs must use consolidated billing for all CAP customers;
- EGSs cannot enter into any contract with the CAP customer that imposes early cancellation/termination fees;
- EGSs must honor any special pricing and/or programs for CAP customers until contract expires regardless of whether customer remains on CAP during term of the contract;
- EGSs wishing to no longer serve CAP customers must give PECO and customers 30-days' notice, return CAP customers to default service, wait at least 90 days before reentering CAP program, and cannot reenroll previous CAP customers without obtaining the customer's affirmative consent to another contract before reenrolling
- PECO will develop the protocols for data collection related to CAP shopping through collaboration with OCMO and interested stakeholders.
- PECO will convene a collaborative of interested stakeholders, OCMO, PaPUC Office of Communications in the first quarter of 2017 to address the specific components of the education plan associated with the CAP Shopping Plan.

As explained more fully below, RESA views these proposed processes as unnecessarily complex. EGSs, in particular, would be required to develop and operationalize new processes specifically tailored to the entry/exit requirements PECO outlines above. Rather than developing a process that creates unnecessarily complex operational issues, RESA believes consumers and stakeholders would all benefit from a more simplified approach that enables both PECO and all EGSs to rely on the existing enrollment processes.

III. COMMENTS REGARDING PECO'S PROPOSAL

As noted above, RESA supports enabling PECO's CAP participants to be able to shop for a competitive retail energy product. Viewing PECO's implementation plan from an operational perspective, however, RESA offers these suggestions on how to improve the process flow and to increase the potential for a greater variety of products and services specifically tailored to meet the needs of CAP participants.

A. PECO Should Simplify Operational Process To Notify EGS About CAP Participation

Under normal operational processes in effect today, after an EGS has followed Commission requirements to ensure a customer has consented to contract with the EGS and at the end of the rescission period,⁴ EGSs notify the EDC that the potential customer has authorized the enrollment.⁵ This notice occurs via EDI and, after the EDC receives the EGS enrollment request, the EDC sends back an enrollment response. In PECO's service territory today since CAP participants cannot shop, PECO sends back a general reject code indicating Account Not Eligible ("ANE"). Since there are no other accounts beyond CAP participant accounts are ineligible for enrollment with an EGS, EGSs receiving the ANE code know that the rejection is based on CAP participation.

Going forward, PECO proposes that EGSs be required to electronically submit to PECO a notice of intent to participate as a CAP supplier. Presuming some EGSs elect to serve CAP participants and some decline to serve CAP participants, PECO will need to modify its current systems to accept some EGS CAP participant enrollment requests while rejecting other EGS

⁴ 52 Pa. Code §§ 111.7; 111.11.

⁵ 52 Pa Code § 57.173(1).

CAP enrollment requests. Part of PECO's notice requirements also include complicated and unnecessary processes for EGSs to follow if they wish to stop serving CAP participants and then later start reserving them. PECO also proposes to include a 90-day stay out period before an EGS can restart serving CAP participants. As explained more fully below, some of these processes are not consistent with current Commission requirements for EGSs and will require EGSs to undertake complicated operational modifications of existing processes to comply.

For these reasons, RESA supports relying on existing processes with some minor modifications to more smoothly implement PECO's CAP Shopping Plan. The two parts of RESA's proposal are described below.

1. **PECO should notify EGSs, via an EDI Accept enrollment response, that potential customer participates in CAP**

As explained above, today in the normal course PECO provides EGSs with a general Account Not Eligible ("ANE") EDI rejection enrollment response when an EGS proposes to enroll a CAP participant. While this rejection does not indicate that the potential customer is being rejected due to CAP participation, there are no other ineligibility reasons for PECO to reject an enrollment. PECO did initially provide an enrollment response noting that the rejection was based on CAP participation. Going forward, since EGSs may elect whether or not to serve a CAP participant, RESA supports PECO providing an accept enrollment response noting that the potential customer participates in CAP. This process would merely involve attaching to an accept enrollment response the CAP participation designator that was previously attached to a reject enrollment response.

While RESA recognizes that the initial CAP enrollment response and the current ANE response were rejections of the initial EGS enrollment request, going forward, the CAP enrollment request should be an accept code which would not automatically result in a rejection

of the enrollment. Thus, upon receiving the accept CAP enrollment response from PECO, the EGS could either: (1) provide no further response and the enrollment will be processed; or, (2) send a drop request and the enrollment will not be processed. Since this process relies on existing operational protocols, would include a CAP designator that PECO used initially, and does not require any further complicated operational modifications of internal EGS systems, RESA believes this is a more efficient and reasonable process to implement the PECO CAP Shopping Plan.

2. PECO should include CAP participation status on ECL

In addition to the accept enrollment response signifying that a potential customer participates in CAP, RESA supports the addition of a CAP status flag on the Eligible Customer List (“ECL”). Access to this information would be beneficial because it could permit EGSs to learn of a potential customer’s CAP status prior to marketing and/or undertaking the enrollment process. This could allow EGSs to target specific products and services that may be of particular interest to CAP participants. Further, for EGSs electing not to serve CAP participants, learning about a potential customer’s status prior to sending PECO the enrollment request could be more efficient and waste less of the potential customer’s time for an ultimately unsuccessful enrollment. Importantly, by the time the EGS send the enrollment request to PECO, it has already confirmed the potential customer’s intent to enroll,⁶ provided the disclosure statement to the potential customer⁷ and waited out the 3 business day right of rescission.⁸ If, for whatever reason, the EGS enrollment request is rejected, then the EGS needs to notify the consumer of that

⁶ 52 Pa. Code § 111.7.

⁷ 52 Pa. Code § 54.5(d).

⁸ 52 Pa. Code § 111.11.

fact (this generally occurs days after the consumer has consented to enroll with the EGS). Thus, to the extent a status flag on the ECL notifying the EGS of the potential customer's CAP participation is available and can be used to obviate the need to undertake the enrollment process, the consumer will have a better overall shopping experience.

To be really useful, though, the information needs to be relatively current. Today, PECO updates its ECL on a monthly basis. RESA is not in a position to know whether monthly updates is sufficient based on the frequency with which consumers move in and out of PECO's CAP program. To the extent monthly updates is not sufficient because the data on the ECL is too stale to reflect current CAP status, then RESA would support more frequent ECL updates.

B. PECO Proposed EGS Exit and Reentry Processes Unnecessarily Complex

According to PECO's proposed Section 5.5.2, EGSs wishing to no longer serve CAP customers must give PECO and customers 30-days' notice, return CAP customers to default service, wait at least 90 days before reentering CAP program, and cannot reenroll previous CAP customers without obtaining the customer's affirmative consent to another contract before reenrolling. As explained in the previous section, RESA supports a more open flow process that would obviate the need for these notice requirements. The concerns RESA has regarding PECO's proposed specific requirements are explained below.

1. 30 Days' Notice to Customers of Intent to Stop Serving CAP Customers

PECO's proposal to require EGSs electing to stop serving CAP participants to provide "customers" at least 30-days' notice is not clear as to the "customers" PECO is contemplating with this requirement. Existing EGS CAP customers would be governed by the terms of their existing customer contracts and existing Commission rules if EGS were inclined to cancel or not renew existing contracts. The terms by which an EGS may elect to cancel a contract are set forth in the contract with the customer. These cancellation terms vary and there is no legitimate

reason for PECO's proposal to impose an across-the-board 30 day notice period just for CAP customers. In addition, the Commission requires an EGS to provide two advance notices (an initial notice 45-60 days prior to effective date and an options notice 30 days prior to effective date) prior to the expiration of a fixed term contract or any time the EGS proposes to change contract.⁹ To the extent an EGS elects to no longer serve an existing CAP customer after a contract expires, then that notice would be provided consistent with the Commission's regulations.

If PECO's proposal is intended to require an EGS to provide all of its existing customers notice that it will no longer serve CAP customers, the proposal is overreaching and unnecessary. If an existing customer is enrolled in CAP and an EGS elects to no longer provide service to CAP customers, then that existing CAP customer's EGS contract would be cancelled or not renewed as discussed previously. With access to a potential customer's CAP participation status through the ECL¹⁰ as well as an enrollment response from PECO of that CAP status, there is no valid reason to require EGSs to notify any existing customers – whether CAP or not – about an intention to no longer provide service to CAP customers. Such a requirement will only lead to customer confusion and impose unnecessary time and costs on EGSs that serve no legitimate purpose. EGSs need to be free to provide customer notices as appropriate and consistent with their individual customer contracts and the Commission's regulations.

⁹ 52 Pa Code § 54.10.

¹⁰ RESA supports updating the ECL on a frequent enough basis to enable EGSs to have a reasonable amount of certainty about a consumers current CAP participation status.

2. 90 Day Stay-Out Unnecessary

Requiring EGSs to wait 90 days to elect to begin serving CAP customers after having elected to stop serving CAP customers does not appear to serve any purpose. An EGS should be free to decide upon notice that a potential customer is enrolled in CAP whether or not it will serve that customer. The more timely the EGS can access CAP status for a particular consumer, the better the shopping experience will be for the consumer.

3. Requirement for Affirmative Consent to Reenroll CAP Customers Once EGS Elects to Again Begin Accepting CAP Customers

PECO proposes that before an EGS can reenroll a CAP participant to whom the EGS provided service prior to electing to no longer serve CAP customers, the EGS needs to obtain the prior customer's affirmative consent. This requirement does not make sense in consideration of the Commission's requirements that EGSs are required to follow. Importantly, to enroll new customers, EGSs are always required to have affirmative consent.¹¹ An EGS electing to stop serving customers would likely cancel those customer's contracts or not offer them a new product during the renewal period. Once those customers are no longer receiving service from the EGS, any new enrollment has to follow the Commission's legal requirements which include verification of intent to enroll.¹²

¹¹ 52 Pa. Code § 111.7; 52 Pa. Code § 57.174(a); 52 Pa. Code § 57.177(c). Only existing EGS customers who have failed to respond to the required EGS initial and options notices prior to the expiration of a fixed-term contract may be enrolled in a subsequent contract without new affirmative consent. 52 Pa. Code § 54.10(3). PECO's proposed tariff provision as written, however, appears to refer to EGS customers who stopped receiving service from the EGS for a period of time and then the EGS seeks to reenroll them. These customers are clearly "new" customers and not existing customers.

¹² 52 Pa. Code § 111.7.

C. Proposed Section 5.5.2 EGS Contract Terms for CAP Customers

PECO proposes to require that EGSs offering special pricing and/or programs for CAP customers “shall honor the terms of CAP shopping contracts until those contracts expire regardless of whether the customer remains on CAP for the duration of the contract.” An EGSs relationship with its customer is governed by the contract terms with the customer and the Commission’s regulations. As such a tariff provision in a utility’s supplier coordination tariff attempting to place requirements on that contractual relationship is inappropriate. As discussed further previously, EGS contracts with customers generally maintain the ability of EGSs to cancel those contracts for a variety of reasons and upon specified notice consistent with Commission regulations. There is no reason in the context of permitting CAP participants to shop for PECO to include this proposed section.

D. Proposed Section 5.5.1(3) Prohibition on Entering Into Contracts Imposing Early Cancellation/Termination Fees

PECO proposes to include the requirement in its tariff prohibiting EGSs from entering into any contract with CAP participants that imposes early cancellation/termination fees. While RESA recognizes that the language of the proposed prohibition is consistent with the directive from Commonwealth Court, the Commission should make clear that including this in the tariff does not deputize PECO to scrutinize EGS contracts or be the arbitrator about whether or not an EGS serving a CAP participant complied with this requirement. Importantly, the stated scope and purpose of the tariff is to set forth the basic requirements for interactions and coordination between PECO and EGSs necessary for ensuring the delivery of Competitive Energy Supply from EGSs.¹³ The purpose is not to place restrictions on the contracts that EGSs enter into with

¹³ PECO Tariff, Section 2.1 at Original Page 9.

their customers and to withhold services or exercise other enforcement rights set forth in the tariff upon a PECO determination that an EGS's contracts with its customers are not consistent with the supplier tariff.

IV. CONCLUSION

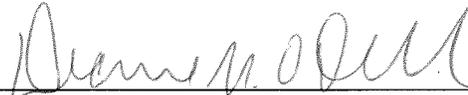
RESA supports the goal of PECO's proposed CAP Shopping Plan to implement the directives of the Commonwealth Court. From an operational perspective, however, RESA views PECO's proposed processes as unnecessarily complex and believes consumers and stakeholders would all benefit from a more simplified approach that enables both PECO and all EGSs to rely on the existing enrollment processes. To that end, RESA recommends the Commission direct PECO to simplify its process as follows:

- PECO provides, via EDI, notice in response to an EGS enrollment request that the potential customer is a CAP participant; and,
- PECO includes a flag on its Eligible Customer List ("ECL") for CAP participants.

With these changes, RESA also respectfully requests that the Commission direct PECO to delete proposed Section 5.5.1 addressing EGS contract terms for CAP customers and the second half of Section 5.5.2 addressing EGS entry/exit requirements as they are unnecessary. Finally, RESA requests that the Commission make clear that the Commission (and not PECO by virtue of creating these tariff provisions) is the entity with the regulatory authority to determine whether or not an EGS has complied with the prohibition against early cancellation/termination fees.

RESA looks forward to having the opportunity to provide products and services to PECO's CAP participants.

Respectfully submitted,



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Date: December 2, 2016

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