



December 2, 2016

**VIA E-FILING**

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

**Re: Petition of PECO Energy Company for Approval of its Default Service Plan, Docket P-2012-2283641**

Dear Secretary Chiavetta,

Attached, please find the **Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)**, which were e-filed with the Commission this afternoon.

Copies of the attached comments are being served on active parties to this and the other effected dockets (M-2012-2290911; P-2014-2409362; M-2015-2507139; and P-2016-2534980), as evidenced by the attached Certificate of Service. Please note that Attachments A-E appended to the Joint Comments will provided to parties via email, but will *not* be served in hard copy. A hard copy of the Attachments can be forwarded to any party upon request.

Finally, please note that a Microsoft WORD version of the Joint Comments is also being provided electronically to James A. Mullins, Louise Fink Smith, and Joseph Magee, as required in the Commission's November 18, 2016 Secretarial Letter.

Please do not hesitate to contact me with questions or concerns.

Respectfully,

A handwritten signature in blue ink, appearing to read "Elizabeth Marx", is written above a horizontal line.

Elizabeth Marx  
***Counsel for CAUSE-PA***

CC: James A. Mullins, Louise Fink Smith, and Joseph Magee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS :  
DEFAULT SERVICE PLAN : DOCKET NO. P-2012-2283641  
:

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, December 2, 2016, have served copies of the *Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)* upon all of the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA EMAIL AND/OR FIRST CLASS MAIL<sup>1</sup>**

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

The Honorable Dennis J. Buckley  
Administrative Law Judge  
PO Box 3265  
Harrisburg, PA 17105-3265  
[debuckley@pa.gov](mailto:debuckley@pa.gov)

W. Craig Williams, Esquire  
Romulo L. Diaz, Jr., Esquire  
Ward Smith, Esquire  
Anthony E. Gay, Esquire  
Exelon Business Services Company  
2301 Market Street, S23-1  
Philadelphia, PA 19101-8699  
[craig.williams@exeloncorp.com](mailto:craig.williams@exeloncorp.com)  
[romulo.diaz@exeloncorp.com](mailto:romulo.diaz@exeloncorp.com)  
*Counsel for PECO Energy*

Anthony C. DeCusatis, Esquire  
Thomas P. Gadsden, Esquire  
Kenneth M. Kulak, Esquire  
Brooke E. McGlinn, Esquire  
Morgan, Lewis & Bockius  
1701 Market Street  
Philadelphia, PA 19103  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[kkulak@morganlewis.com](mailto:kkulak@morganlewis.com)  
[bmcglinn@morganlewis.com](mailto:bmcglinn@morganlewis.com)  
[adcusatis@morganlewis.com](mailto:adcusatis@morganlewis.com)  
*Counsel for PECO Energy*

Aron J. Beatty, Esq.  
Christy Appleby, Esq.  
Candis A. Tunilo, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> floor, Forum Place  
Harrisburg, PA 17101-1923  
[abeatty@paoca.org](mailto:abeatty@paoca.org)  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
*Counsel for the OCA*

---

<sup>1</sup> The Joint Comments will be served via electronic and hard copy on all listed parties, where the parties' email address is listed. Parties that do not have an email address listed will receive a hard copy of the Joint Comments via first class mail. Note that *Attachments* to the Joint Comments will be served in electronic format only, on parties with an email address listed. A hard copy of the attachments will be mailed to any party upon request.

Elizabeth Rose Triscari, Esquire  
Assistant Small Business Advocate  
Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, Pennsylvania 1710  
[etriscari@pa.gov](mailto:etriscari@pa.gov)  
*Counsel for the OSBA*

Carrie B. Wright, Esq.  
Richard A. Kanaskie, Esq.  
Philip P. Kirchner, Esq.  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg PA 17105-3265  
[phikirchne@pa.gov](mailto:phikirchne@pa.gov)  
[carwright@pa.gov](mailto:carwright@pa.gov)  
*Counsel for I&E*

Charis Mincavage, Esq.  
Adeolu A Bakare, Esq.  
Alessandra L. Hylander, Esq.  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, Pennsylvania 17108  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[abakare@mwn.com](mailto:abakare@mwn.com)  
[ahylander@mwn.com](mailto:ahylander@mwn.com)  
*Counsel for PAIEUG*

Robert W. Ballenger, Esq.  
Josie B.H. Pickens, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
[ttran@clsphila.org](mailto:ttran@clsphila.org)  
[rballenger@clsphila.org](mailto:rballenger@clsphila.org)  
[jpickens@clsphila.org](mailto:jpickens@clsphila.org)

Charles E. Thomas III, Esq.  
Thomas, Niesen & Thomas, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101  
[cet3@tntlawfirm.com](mailto:cet3@tntlawfirm.com)  
*Counsel for Noble Americas Energy*

Deanne M. O'Dell, Esq.  
Daniel Clearfield, Esq.  
Sarah Stoner, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
P.O. Box 1248  
Harrisburg, PA 17101  
[dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[sstoner@eckertseamans.com](mailto:sstoner@eckertseamans.com)  
*Counsel for RESA & Direct Energy*

Brian J. Knipe, Esq.  
Buchanan Ingersoll & Rooney  
76 South Main Street  
Akron, OH 44308  
*Counsel for First Energy Solutions*

David P. Zambito, Esq.  
Cozen O'Conner  
305 N. Front Street  
Harrisburg, PA 17101  
[dzambito@cozen.com](mailto:dzambito@cozen.com)  
*Counsel for First Energy Solutions*

Divesh Gupta  
111 Market Place, Suite 500  
Baltimore, MD 21202  
[divesh.gupta@constellation.com](mailto:divesh.gupta@constellation.com)  
*Counsel for Constellation NewEnergy & Constellation Energy Group*

Amy M. Klodowski, Esq.  
First Energy Solutions, Corp.  
800 Cabin Hill Drive  
Greensburg, PA 15601  
[aklodow@firstenergycorp.com](mailto:aklodow@firstenergycorp.com)  
*Counsel for FirstEnergy Solutions*

Stephen L. Huntoon, Esq.  
NextEra Energy, Inc.  
801 Pennsylvania Ave, NW  
Suite 220  
Washington, DC 20004  
[shuntoon@fpl.com](mailto:shuntoon@fpl.com)  
*Counsel for NextEra Energy, Inc*

Becky Merola, Esq.  
Government Affairs East  
Noble Americas Energy Solitons, LLC  
5325 Sheffield Ave.  
Powell, OH 43065  
[bmerola@noblesolutions.com](mailto:bmerola@noblesolutions.com)  
*Counsel for Noble Americas Energy  
Solutions, LLC*

Michael A. Gruin, Esq.  
Stevens & Lee  
17 North Second Street  
16<sup>th</sup> Floor  
Harrisburg, PA 17101  
[mag@stevenslee.com](mailto:mag@stevenslee.com)

Charles E. Thomas, III, Esquire  
Thomas, Long, Niesen & Kinnard  
212 Locust St., Ste. 500  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[cet3@thomaslonglaw.com](mailto:cet3@thomaslonglaw.com)

Jeanne J. Dworetzky, Esquire  
Exelon Business Services Company  
2301 Market Street S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
[Jeanne.Dworetzky@Exeloncorp.com](mailto:Jeanne.Dworetzky@Exeloncorp.com)

Divesh Gupta, Esquire  
Managing Counsel - Regulatory  
Constellation Energy  
111 Market Place, Suite 500  
Baltimore, MD 21202  
[divesh.gupta@constellation.com](mailto:divesh.gupta@constellation.com)

Todd S. Stewart, Esquire  
Hawke, McKeon & Sniscak LLP  
100 North Tenth Street  
P.O. Box 1778  
Harrisburg, PA 17105  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)  
*Counsel for Interstate Gas Supply, Inc and  
Dominion*

Respectfully Submitted,



Elizabeth R. Marx, PA ID: 309014  
*Counsel for CAUSE-PA*  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486, Ext. 202  
Fax: 717-233-4088  
[emarxpulp@palegalaid.net](mailto:emarxpulp@palegalaid.net)

December 2, 2016

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS :  
DEFAULT SERVICE PLAN : DOCKET NO. P-2012-2283641  
:

---

**JOINT COMMENTS OF**

**THE COALITION FOR AFFORDABLE UTILITY SERVICES AND  
ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)**

**AND**

**THE TENANT UNION REPRESENTATIVE NETWORK AND  
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA  
(TURN ET AL.)**

---

**PENNSYLVANIA UTILITY LAW PROJECT**

*Counsel for CAUSE-PA*

Elizabeth R. Marx, Esq., PA ID: 309014  
Patrick M. Cicero, Esq., PA ID: 89039  
Joline Price, Esq., PA ID: 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486

**COMMUNITY LEGAL SERVICES, INC.**

*Counsel for TURN et al.*

Josie B.H. Pickens, Esq., PA ID: 309422  
Robert W. Ballenger, Esq., PA ID: 93434  
1424 Chestnut Street  
Philadelphia, PA 19102-2505  
Tel.: 215-981-3700

**December 2, 2016**

**TABLE OF CONTENTS**

**I. INTRODUCTION ..... 1**

    a. Substantive Background ..... 5

    b. Procedural Background..... 5

**III. COMMENTS..... 6**

    a. Reasonable price protections on CAP shopping are necessary to prevent substantial harm to PECO’s CAP customers and residential customers, as evidenced by substantial and unrefuted evidence on the record in PECO’s DSP IV proceeding. .... 6

    b. To preserve the due process rights of the parties, the Commission should make its decision on PECO CAP shopping in the currently-pending DSP IV proceeding..... 11

**IV. CONCLUSION ..... 15**

**Attachment A:**

- (1) PECO DSP IV<sup>1</sup> – Main Brief of CAUSE-PA
- (2) PECO DSP IV – Reply Brief of CAUSE-PA

**Attachment B:**

- (1) PECO DSP IV – Main Brief of TURN *et al.*
- (2) PECO DSP IV – Reply Brief of TURN *et al.*

**Attachment C:**

PECO DSP IV – Joint Exceptions of CAUSE-PA and TURN *et al.*

**Attachment D:**

- (1) PECO DSP IV<sup>2</sup> – CAUSE-PA Statement 1
- (2) PECO DSP IV – CAUSE-PA Statement 1SR

**Attachment E:**

PECO DSP IV – TURN *et al.* Statement 1-SR

*Note: The attachments to these comments do not contain the exhibits or attachments appended to the original DSP IV filings. See full record in DSP IV for complete filings.*

---

<sup>1</sup> Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2019, Docket No. P-2016-2534980.

<sup>2</sup> Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2019, Docket No. P-2016-2534980.

## I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), together with the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al), herein referred to as the Joint Parties, file the following Comments regarding PECO's CAP shopping proposal in response to the Secretarial Letter issued November 18, 2016, which allowed for interested parties to submit comments by December 2, 2016.<sup>3</sup>

From the outset, the Joint Parties assert that it is a procedural error – with significant implications for the due process of the parties – to consider PECO's CAP Shopping proposal at this docket and in this limited manner. PECO's DSP II proceeding is a closed docket concerning a Default Service Plan that has long-since expired.<sup>4</sup> Likewise, PECO's DSP III proceeding is also a closed docket. DSP III is still effective, but will expire on May 31, 2017 – just six weeks after PECO proposes to implement the CAP shopping rule revision.<sup>5</sup> The Joint Parties also object to the Commission's decision to consider PECO's CAP shopping proposal in a comment proceeding. Unlike a litigated proceeding before a neutral and detached ALJ, a comment proceeding does not in and of itself contain sworn or verified evidence, does not allow for

---

<sup>3</sup> The Commission has had PECO's filing for months, yet for reasons that were neither articulated nor apparent provided just 7 business days over the Thanksgiving holiday for parties to comment on the issue of CAP shopping in PECO's service territory. This is an insufficient amount of time to fully develop appropriate comments given the complicated procedural and factual history of the issue and the grave potential for severe harm to ratepayers at issue in this case.

<sup>4</sup> Petition of PECO Energy Company for Approval of its Default Service Program, Opinion and Order, Docket No. P-2012-2283641 (Oct. 12, 2012; Feb. 24, 2013) (hereinafter DSP II).

<sup>5</sup> Petition of PECO Energy Company for Approval of its Default Service Program for the Period From June 1, 2015 through May 31, 2017, Opinion and Order, Docket No. P-2014-2409362 (Dec. 4, 2014) (hereinafter DSP III).

discovery of data, facts, or other information, and does not provide the parties with an opportunity to question or cross-examine assertions made by other parties.

Notwithstanding its procedural objections, the Joint Parties assert that – *in light of the legal and substantive findings of the Commonwealth Court, as well as the extensive evidence of long-term harm on the record in the currently-pending Default Service Plan proceeding (DSP IV)*<sup>6</sup> – the Commission should reject PECO’s CAP Shopping Plan because, despite adopting a prohibition on early cancellation and termination fees, it lacks adequate pricing protections for CAP shopping customers. The DSP IV record reveals that in every electric distribution service territory that has allowed CAP customers to shop without price protections those customers and the ratepayers who pay for CAP end up paying millions of dollars per year more than they would have paid had all CAP customers been served by default service. The DSP IV record shows there is no reasonable alternative to the imposition of targeted price protections for CAP customers who are shopping so as to ensure that residential ratepayers are not charged more for universal service programs and CAP customers continue to have bills targeted at the Commission’s energy burden levels. Failure to impose reasonable price protections would be an abdication of the Commission’s responsibilities under the Electricity Generation Customer Choice and Competition Act (Choice Act) “to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service.”<sup>7</sup> Unrestricted CAP shopping has been demonstrated to result in costlier, less effective universal service programming – to the tune of several million dollars per year across the state. There is **no evidence** that the outcome in PECO would be different, and adopting a wait and see approach

---

<sup>6</sup> Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2019, Docket No. P-2016-2534980 (hereinafter DSP IV).

<sup>7</sup> *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) et al. v. Pa. PUC*, 120 A.3d 1087, 1104, 1108 (Pa. Commw. Ct. 2015); 66 Pa. C.S. § 2804(9).

is not appropriate, reasonable, prudent, or consistent with the Commission's responsibility to establish, and maintain policies, practices and services that allow low-income customers to maintain their electric service.<sup>8</sup> The Commission should not permit PECO to implement a costlier, less effective CAP when reasonable alternatives exist to prevent known and certain harm.

To protect the cost-effectiveness of CAP, while preserving parties' due process rights, the Commission must:

- (1) make a determination on CAP shopping in DSP IV, based on the complete record created therein; or, in the alternative,
- (2) if the Commission is unsatisfied with the record in DSP IV, it must certify that record into a separate docket and refer the matter to the Office of Administrative Law Judge for further evidentiary hearings.

Any decision the Commission makes must be based on evidence, not unsworn comments. This is particularly true given that a full and complete record has been developed in DSP IV, which cannot be ignored by the Commission.

Because of the significance of the issues involved in this proceeding and because of the unnecessarily truncated time frame that the Commission provided for Comments, CAUSE-PA incorporates by reference and attaches hereto, pursuant to 52 Pa. Code § 5.407, all of the

---

<sup>8</sup> 66 Pa. C.S. §§ 2803; 2804(9).

following documents as if they were set forth fully herein in support of its opposition to PECO's proposed CAP shopping plan and the Commission's process employed in this proceeding<sup>9</sup>:

Attachment A:

- 1- PECO DSP IV<sup>10</sup> – Main Brief of CAUSE-PA
- 2- PECO DSP IV – Reply Brief of CAUSE-PA

Attachment B:

- 1- PECO DSP IV – Main Brief of TURN *et al.*
- 2- PECO DSP IV – Reply Brief of TURN *et al.*

Attachment C: PECO DSP IV – Joint Exceptions of CAUSE-PA and TURN *et al.*

Attachment D:

- 1- PECO DSP IV – CAUSE-PA Statement 1
- 2- PECO DSP IV – CAUSE-PA Statement 1SR

Attachment E: PECO DSP IV – TURN *et al.* Statement 1-SR

---

<sup>9</sup> Note that the attachments to these comments do not contain the exhibits or attachments appended to the original DSP IV filings. See full record in DSP IV for complete filings.

<sup>10</sup> Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2019, Docket No. P-2016-2534980.

### **III. BACKGROUND**

#### **a. Substantive Background**

The Main and Reply Briefs of CAUSE-PA and TURN *et al.* in PECO's DSP IV proceeding, at Docket No. P-2016-2534980, contain detailed substantive background of the CAP shopping issue. These documents – and the Background sections contained therein – are incorporated by reference pursuant to 52 Pa Code § 5.407, and attached to these Comments as Attachments A1 and A2 (CAUSE-PA Main and Reply Briefs) and B1 and B2 (TURN *et al.* Main and Reply Briefs).

#### **b. Procedural Background**

A detailed background of the relevant procedural history – including a summary of the CAP shopping issue in PECO's entangled DSP II, III, and IV proceedings – is contained in the Joint Parties' Exceptions, filed on October 14, 2016 in PECO's DSP IV proceeding, which is attached to these Comments as Attachment C. The Background section of that document is incorporated herein by reference pursuant to 52 Pa. Code § 5.407.

## V. COMMENTS

- a. Reasonable price protections on CAP shopping are necessary to prevent substantial harm to PECO's CAP customers and residential customers, as evidenced by substantial and unrefuted evidence on the record in PECO's DSP IV proceeding.**

In relevant part, PECO's proposed CAP shopping plan would allow all CAP customers to shop for electricity from competitive suppliers *without any pricing protections*, provided the supplier does not charge the CAP customer an early cancellation or termination fee.<sup>11</sup> PECO plans to implement these changes in April 14, 2017<sup>12</sup> – just six weeks before its DSP IV plan takes effect on June 1, 2017.<sup>13</sup> As a preliminary matter, the Joint Parties note their support for the provision in PECO's plan which prohibits early cancellation and termination fees, though ultimately the Joint Parties continue to assert that this is not the appropriate forum for a decision on the merits of PECO's CAP shopping plan (as explained in depth in subsection b below). The Joint Parties object to PECO's proposal in so much as it fails to impose reasonable price protections to protect against certain and substantial long-term financial harm.

The Commission's November 18, 2016 Secretarial Letter, which requested comments on PECO's proposed CAP shopping plan, correctly summarized the legal findings of the Commonwealth Court in *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, et al v. Pa. Public Utility Commission (CAUSE-PA et al.)*,<sup>14</sup> which found that the Commission:

---

<sup>11</sup> Petition of PECO Energy Company for Approval of Its Default Service Program, Letter from PECO to Commission Regarding PECO's Customer Assistance Program Shopping Plan, Proposed Rule Revision, Docket No. P-2012-2283641, at Ex. B (Sept. 1, 2016).

<sup>12</sup> Id.

<sup>13</sup> Petition of PECO Energy Company for Approval of Its Default Service Program for the Period From June 1, 2017 through May 31, 2019, Docket No. P-2016-2534980.

<sup>14</sup> Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. (CAUSE-PA), et al v. Pa. Public Utility Comm'n, 120 A.3d 1087 (Pa. Commw. Ct. 2015).

[H]as the authority under section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms on any offer from an EGS that a customer could accept and remain eligible for CAP benefits.<sup>15</sup>

The Secretarial Letter also partially summarized the substantive findings of the Commonwealth Court, which *based on the record then before it*, affirmed the Commission's rejection of price ceilings for CAP Shopping customers, reversed the Commission's rejection of a CAP rule to prohibit the imposition of early cancellation and termination fees, and remanded the decision to the Commission to approve a rule revision to impose a prohibition on early cancellation and termination fees.<sup>16</sup>

However, the Secretarial Letter neglected a critical fact in its summary: **The substantive findings of the Commonwealth Court, and its orders for remand, were made with regard to the record in PECO's DSP II proceeding.** In the DSP II proceeding, the Commission based its decision in large part on its finding that there was insufficient evidence to demonstrate that the "long-run electric rates for CAP shopping customers will be higher than if those customers are served under default service rates."<sup>17</sup> In turn, the Commonwealth Court found that the Commission was reasonable in its decision, but was also explicit that **"the PUC's obligations under the Choice Act with respect to low-income Pennsylvanians are of a continuing nature"** and subject to periodic reassessment.<sup>18</sup>

Since the issue of PECO CAP shopping was first litigated and appealed to the Commonwealth Court in DSP II, data evidencing significant and long-term historical pricing for

---

<sup>15</sup> CAUSE-PA et al., 120 A.3d at 1104.

<sup>16</sup> Id. at 1108-09.

<sup>17</sup> Id. at 1093-94 (citing PUC DSP II Reconsideration Order at 11).

<sup>18</sup> While the Commonwealth Court noted that CAP shopping should be reconsidered every three years in the Universal Service context, the Commission has consistently ordered CAP shopping to be handled in the context of the Company's Default Service Proceedings. See CAUSE-PA et al., 120 A.3d at 1108 (emphasis added).

CAP shopping customers has been well documented, and was presented for the record in PECO's DSP IV proceeding, in the context of that soon-to-be implemented Default Service Plan. Indeed, utility data spanning several years has indisputably shown that unrestricted CAP shopping harms residential ratepayers -- to the tune of several million dollars each and every year -- in all five of the seven Pennsylvania electric distribution company service territories which currently allow CAP shopping.<sup>19</sup>

- In the PPL Electric service territory, unrestricted pricing for CAP customers resulted in additional program costs of approximately **\$2,743,872 each year** for nearly four years running -- **an aggregate of over \$10.5 million dollars in avoidable costs** over the four year period.<sup>20</sup>
- In the First Energy service territories, as of November 2015, more than 77% of Met-Ed's CAP customers, more than 50% of Penelec's customers, and more than 65% of West Penn's CAP customers who were shopping were paying more than the price to compare.<sup>21</sup>

Since the record closed in PECO's DSP IV proceeding, First Energy has shared data with stakeholders to quantify the percentages of overpayment over a three-year period (June 2013

---

<sup>19</sup> See Attachment A1, CAUSE-PA MB at 25-30; and Attachment B1, TURN *et al.* MB at 19-26 (internal citations to the record omitted).

**Note that the additional costs to the CAP program reflect the net impact, which accounts for both the savings achieved by CAP customers shopping at rates at or below the price to compare and the costs incurred by CAP customers shopping at rates higher than the price to compare.** Keep in mind that the net impact does not monetize the particularized harm to individual CAP customers who pay more than the price to compare. This latter harm, while not monetized, presents a significant and substantial risk of harm to low income households, and creates a ripple effect on other ratepayers in terms of increased termination costs and uncollectible expenses.

<sup>20</sup> See Attachment A1, CAUSE-PA MB at 27-30; and Attachment B1, TURN *et al.* MB at 20-23.

<sup>21</sup> See Attachment A1, CAUSE-PA MB at 29; and Attachment B1, TURN *et al.* MB at 22-23; see also Petitions of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of a Default Service Program for the Period Beginning June 1, 2017, through May 31, 2019, First Energy Exhibit CVF-3, Docket Nos. P-2015-2511333, -2511351, -2511355, -2511356. Updated data, including the monthly monetized quantification of these percentages, is available in the First Energy Service territories, but is not yet publically available.

through July 2016), as required by the settlement terms in its recent DSP proceeding.<sup>22</sup> CAUSE-PA's analysis of the information presented shows that net additional costs as a result of CAP customers paying more than the price to compare across the four First Energy service territories, results in an expenditure of millions of dollars more per year, per company. In fact, the harm in the First Energy service territories has been significantly greater than the harm in PPL.<sup>23</sup>

In addition to substantial increased costs to residential ratepayers to finance CAP, unrestricted CAP shopping has also undermined the Commission-established affordability levels targeted by the CAP program<sup>24</sup> – severely undercutting the intent and purpose of providing energy assistance to low income households and contravening the Commission's Universal Service obligations under the Choice Act.<sup>25</sup> The negative impact on CAP affordability is explained at length in CAUSE-PA's Main Brief:

PECO's FCO CAP design targets affordability – and the amount of CAP credits allotted to CAP customers – based on PECO's default service rate, regardless of whether the customer is shopping for electric generation supply service. If a customer's generation supply charges are higher than the price to compare for any period of time, the customer will not receive a credit that accounts for that higher price, and will receive less of a discount than is actually required for his or her bill to be affordable pursuant to Commission standards. Paying more than the price to compare will, thus, necessarily erode the effectiveness of PECO's CAP in reaching Commission-established energy burden targets.<sup>26</sup>

---

<sup>22</sup> Petitions of Met-Ed, Penelec, Penn Power, West Penn Power for Approval of a Default Service Program for the Period Beginning June 1, 2017, through May 31, 2019, Recommended Decision, Docket Nos. P-2015-2511333, -2511351, -2511355, -2511356, at 7 (April 15, 2016).

<sup>23</sup> Should the Commission certify the DSP IV record and refer the proceeding for additional hearings, CAUSE-PA will seek to have the new evidence of harm in First Energy Service territory entered into the record of the proceeding. Even without the specifics, however, the Commission can take judicial notice of the document entered into the record in the First Energy DSP proceeding, specifically First Energy witness Charles Fullem's Exhibit CVF-3. See Petitions of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of a Default Service Program for the Period Beginning June 1, 2017, through May 31, 2019, First Energy Exhibit CVF-3, Docket Nos. P-2015-2511333, -2511351, -2511355, -2511356.

<sup>24</sup> 52 Pa. Code § 69.265(2). Affordability targets range from 2% to 17%, depending on the type of service. The Joint Parties maintain that these targets are insufficient to produce actual affordability for households living below the federal poverty level. However, that issue is for another day.

<sup>25</sup> 66 Pa. C.S. § 2804(9); CAUSE-PA et al., 120 A.3d at 1103-04.

<sup>26</sup> See Attachment A1, CAUSE-PA MB at 18.

This harm is particularly egregious when considering the extreme vulnerability of customers enrolled in CAP. As explained by CAUSE-PA’s expert witness, Mr. Harry Geller, “In 2014, the household income of the average Pennsylvania household enrolled in CAP was \$13,134, which – with an average universal service household size of 3 – is approximately 66% of the federal poverty level.”<sup>27</sup>

The fact that PECO’s customers have thus far been spared from the effects of unrestricted CAP shopping should not form the basis of a decision to allow harm to occur. To the contrary, the Commonwealth Court decision approving prohibitions on termination and cancellation fees for PECO’s CAP customers makes clear that the Commission can act proactively to prevent harm.<sup>28</sup> As CAUSE-PA explained in its Main Brief in PECO’s DSP IV, there is nothing in the record in DSP IV – or the record in DSP II for that matter – to even suggest that CAP customers in PECO’s service territory would suffer a different fate, and in fact may experience an even greater level of harm than experienced in the other Pennsylvania service territories:

---

<sup>27</sup> See Attachment A1, CAUSE-PA MB at 19 and Attachment D1, CAUSE-PA St. 1 (Geller) at 15-17.

The recently-released 2015 Universal Service Report produced by the Bureau of Consumer Services reported that the average household income of households participating in an electric CAP was even lower – just \$14,044. Pa. PUC, BCS, 2015 Report on Universal Service Programs and Collections Performance, at 36 (2015), available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2015.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2015.pdf).

<sup>28</sup> See Attachment B1, TURN *et al.* MB at 19-20 (quoting CAUSE-PA *et al.*, 120 A.3d at 1108):

*The Commonwealth Court, in approving prohibitions on termination and cancellation fees did not balk at the fact that PECO’s CAP customers had not been charged them in the past, nor did it limit its determination to requiring the Commission to rectify that harm, if it occurs, in the future.* Rather, the Commonwealth Court recognized the undisputed fact that prohibiting termination and cancellation fees would protect CAP customers, providing “an added layer of protection to CAP customers consistent with the affordability goals of the Choice Act.” 120 A.3d at 1108. In fact, the Commonwealth Court specifically acknowledged that these fees “pose a risk to low-income shopping customers” under a program to be implemented in the future. *Id.* There is no basis under the Commonwealth Court’s decision to infer that PECO’s CAP customers must actually experience unaffordable EGS bills before the Commission should take action to ensure that the uncontested risk of higher bills, demonstrated through Mr. Geller’s testimony, is not inflicted upon PECO’s most vulnerable customers.

Despite the fact that PECO's CAP customers are currently not permitted to shop for EGS-supplied generation service, there is no reason to believe that the long-term results would be any different in PECO's territory than in the other Pennsylvania utility service territories that have allowed and developed a history of CAP shopping. In fact, ... the harm could very well be worse for PECO's customers than in other territories, given PECO's significantly larger CAP and CAP-eligible population, their lack of prior shopping education and experience, the complications emanating from a concurrent change in CAP design, and the structure of PECO's new FCO CAP design – which ... calculates CAP credits based on the price-to-compare and not the actual price the CAP customer pays for electricity, thereby significantly reducing the level of affordability achieved for this vulnerable class of customers.<sup>29</sup>

Indeed, in the absence of any evidence that CAP shopping in PECO's service territory will not suffer from the same harm currently occurring in five of the other Pennsylvania service territories, it is unreasonable to allow PECO's unrestricted CAP shopping proposal to be approved simply because harm has not yet occurred. As explained below, it is critical that the Commission determine that it will implement a CAP shopping proposal only after specific consideration of the evidence from the pending DSP IV proceeding to ensure that a decision is made on the full, currently applicable information.

- b. To preserve the due process rights of the parties, the Commission should make its decision to impose reasonable CAP protections on PECO CAP shopping in the currently-pending DSP IV proceeding, based on the record contained therein.**

As noted at the outset of these Comments, the Joint Parties have objections to the manner in which PECO's CAP shopping plan is being assessed. The Joint Parties recognize that the Commonwealth Court remanded its decision in PECO's DSP II to the Commission for further action. However, the remand by the Commonwealth Court was to "approve a rule revision to the PECO CAP Shopping Plan that would impose [a prohibition on early termination and cancellation

---

<sup>29</sup> See Attachment A1, CAUSE-PA MB at 30; and Attachment D1, CAUSE-PA St. 1 (Geller) at 29:17-21.

fees].”<sup>30</sup> CAUSE-PA fully supports – and always has supported -- the elimination of early termination and cancellation fees. Nothing in the remand order, however, compels or allows the Commission to ignore new evidence of harm. In fact, the Commonwealth Court specifically noted the Commission’s *continuing obligation* under the Choice Act to protect the affordability and cost-effectiveness of the CAP program.<sup>31</sup>

At the explicit direction of the Commission, the issue of CAP shopping has been addressed in the context of default service proceedings in each of the EDC’s default service plans. Default service proceeding are filed every 2-3 years, and are fully litigated – subject to the exchange of extensive discovery; direct, rebuttal, surrebuttal, and rejoinder testimony; hearings; briefings; exceptions; and, ultimately, a final and indisputably appealable order.<sup>32</sup> This is the process which the Commission has deemed appropriate for this critical issue to assist it in making a sound and just determination. But the Commission effectively truncates that process in this proceeding if it proceeds with its presumed intent to remove the CAP shopping determination from an already-litigated proceeding to a woefully short comment proceeding, where parties have no opportunity to submit verified evidence and data or sworn testimony, thereby depriving the Joint Parties of their procedural due process rights.

If the Commission goes forward with this comment proceeding – without at the very least certifying the record from DSP IV – the Joint Parties, and the millions of residential ratepayers and CAP customers– will be deprived of their right to raise questions about the efficacy of CAP shopping in PECO’s DSP IV plan. This procedural deprivation is significant, given that the pending DSP IV proceeding is the first record to (1) contain utility data which reveals long-term

---

<sup>30</sup> CAUSE-PA et al., 120 A.3d at 1108.

<sup>31</sup> Id.

<sup>32</sup> See 52 Pa. Code § 54.185.

economic harm from unrestricted CAP shopping; and (2) specifically consider the integration of CAP shopping with PECO's new FCO CAP design, which went into effect in October 2016.<sup>33</sup> It is noteworthy that the changes to PECO's CAP program came about because its former CAP design consistently failed to reach the Commission's prescribed affordability targets,<sup>34</sup> yet – as explained above – unrestricted CAP shopping (which PECO seeks to implement on the heels of its CAP FCO rollout) has proven to negatively impact affordability levels that a CAP program can achieve.

The foreclosure of parties from a decision on CAP shopping from the proceeding in DSP IV comes at its own financial cost. Significant litigation costs were incurred by the Joint Parties, the OCA, PECO, I&E, and RESA. Indeed, it would be a true waste of resources to not rely on the substantial record developed in PECO's DSP IV proceeding.

The Joint Parties discussed the implications of truncated due process at length in their Joint Exceptions:

ALJ Fordham did not just set aside the [CAP shopping] issue for another litigated proceeding in which parties would have the opportunity to fairly present their case, subject to the rules of evidence including hearsay and cross-examination, with regard to the appropriate structure of CAP Shopping in PECO's DSP IV. She extricated the entire issue of DSP IV CAP Shopping from the currently litigated proceeding – where parties expended a considerable amount of time and resources to present current data and evidence for the record and brief the issue for the Commission's decision. ... As the Joint Parties have consistently asserted, this course of action would truncate the procedural due process necessary with regard to this critically important issue. ... *Because of the statutorily recognized importance of low income protections, confirmed by the Commonwealth Court,*

---

<sup>33</sup> See Attachment A1, CAUSE-PA MB at 15; Attachment D1, CAUSE-PA St. 1 (Geller) at 13, 19-22; see also PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Recommended Decision, Docket No. M-2012-2290911 (June 11, 2015).

<sup>34</sup> See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911, at Ordering para. 18 (Nov. 8, 2012) (“Of primary concern is whether PECO's CAP Rate complies with the energy burdens and affordability provisions outlined in the Commission's CAP Policy Statement.”)

*proposals that would diminish those protections must be fully vetted in an on the record proceeding.*

The CAP shopping filing which PECO is required to make at the DSP III docket originated in PECO's DSP II. It was litigated in 2013 and 2014, and then became the subject of lengthy appeals. However, at no time was the issue of DSP II CAP shopping subject to further evidentiary proceedings.

Utilities are required to submit Default Service Program Plans every 2-3 years, unless otherwise ordered by the Commission. This periodic review of a utility's default service programs ensures that the utility's plans account for and respond to current and more relevant state of market realities, facts, and law. The data available [in DSP IV] conclusively shows the financial impact of unrestricted CAP shopping on CAP and non-CAP customers alike has drastically worsened since 2013, when PECO's DSP II CAP Shopping Plan was first reviewed by the Commission. ... [T]he un rebutted data presented on the record in *this* [DSP IV] proceeding demonstrates that substantial financial harm is occurring in every service territory which allows CAP customers to shop without restriction ... As explained by CAUSE-PA in its Main Brief, 'DSP IV is the first opportunity in which the Commission will have the opportunity to review the relationship of the new FCO with PECO's DSP IV design.'

Refusing to rule on the issue of CAP Shopping in DSP IV ... would deprive the Joint Parties of the ability to pursue a rule or order, to present evidence, and to obtain a decision based on current facts and circumstances. In short, refusing to rule on the merits of CAP Shopping in DSP IV would deprive the Joint Parties of due process – changing the rules of the game after the game is played. By ALJ Fordham's own account, the Joint Parties and OCA raised "valid points" about CAP Shopping in the context of PECO's DSP IV. (RD at 56). And the Joint Parties assert that those valid points must be considered by the Commission in this [DSP IV] proceeding, where a record has been fully developed, the parties have thoroughly engaged in an on-the record proceeding, and the decision was properly presented to the Commission for a decision.<sup>35</sup>

To protect the due process rights of all interested parties, it is critical that the Commission decide the issue of PECO's CAP shopping plan in the context of DSP IV, where a fully-developed record was compiled under the supervision and guidance of an Administrative Law Judge, subject to the rules of evidence in formal proceedings.

---

<sup>35</sup> See Attachment C, Joint Exceptions at 9 (internal citations omitted); see also Attachment A1, CAUSE-PA MB at 22, 28-29.

## VI. CONCLUSION

The Joint Parties unequivocally assert that – in light of the legal and substantive findings of the Commonwealth Court in PECO’s DSP II proceeding, and the extensive evidence of harm to ratepayers and CAP customers on the record in PECO’s DSP IV proceeding – the Commission should defer its decision on PECO CAP shopping to the currently-pending DSP IV proceeding, where it should impose reasonable price protections. If the Commission determines that it must proceed with a decision at this docket, it is critical that it at least certify the full record from the DSP IV proceeding and, based on that record, impose reasonable price protections based on the now-existing facts, data, and information about the certain and substantial harm.

Respectfully Submitted,

### PENNSYLVANIA UTILITY LAW PROJECT

*Counsel for CAUSE-PA*

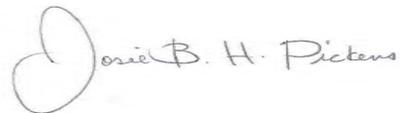


---

Elizabeth R. Marx, Esq., PA ID: 309014  
Patrick M. Cicero, Esq., PA ID: 89039  
Joline Price, Esq., PA ID: 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486

### COMMUNITY LEGAL SERVICES, INC.

*Counsel for TURN et al.*



---

Josie B.H. Pickens, Esq., PA ID: 309422  
Robert W. Ballenger, Esq., PA ID: 93434  
1424 Chestnut Street  
Philadelphia, PA 19102-2505  
Tel.: 215-981-3700

**December 2, 2016**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS :  
DEFAULT SERVICE PROGRAM FOR : DOCKET NO. P-2016-2534980  
THE PERIOD FROM JUNE 1, 2017 :  
THROUGH MAY 31, 2019 :

---

**MAIN BRIEF OF THE COALITION FOR  
AFFORDABLE UTILITY SERVICES AND ENERGY  
EFFICIENCY IN PENNSYLVANIA**

---

**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for CAUSE-PA*

Patrick M. Cicero, Esq., PA ID: 89039  
Elizabeth R. Marx, Esq., PA ID: 309014  
Joline Price, Esq., PA ID: 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

August 11, 2016

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
A.	BACKGROUND .....	1
B.	PROCEDURAL HISTORY .....	3
II.	STATEMENT OF THE CASE.....	5
III.	QUESTIONS INVOLVED.....	6
A.	Does the Commission have the legal authority to impose CAP shopping restrictions to ensure adequately-funded, cost-effective, and affordable universal service programs where, as here, there is no reasonable alternative available to avoid substantial harm to CAP and non-CAP customers? .....	6
	Suggested answer: Yes. ....	6
B.	Is there substantial evidence showing that the absence of CAP shopping restrictions in other service territories has resulted in significant financial harm to vulnerable low income households and residential ratepayers, and that reasonable CAP rules are therefore necessary in PECO’s service territory to prevent harm and ensure adequately-funded, cost-effective, and affordable universal service programs?.....	6
	Suggested answer: Yes. ....	6
C.	Should CAP shopping be dealt with here, in this proceeding, notwithstanding the Commission’s issuance of a Secretarial Letter at Docket No. P-2012-2283641?.....	6
	Suggested answer: Yes. ....	6
D.	Should the Commission adopt the CAP shopping rules proposed by CAUSE-PA and endorsed by the OCA and TURN et al.?.....	6
	Suggested answer: Yes. ....	6
IV.	LEGAL STANDARDS AND BURDEN OF PROOF .....	7
V.	SUMMARY OF ARGUMENT .....	9

VI.	ARGUMENT .....	12
A.	THE COMMISSION HAS THE LEGAL AUTHORITY TO IMPOSE CAP SHOPPING RESTRICTIONS TO ENSURE ADEQUATELY FUNDED, COST-EFFECTIVE UNIVERSAL SERVICE PROGRAMS TO ASSIST CUSTOMERS WHO ARE LOW INCOME TO AFFORD ELECTRIC SERVICE.....	12
B.	CAP SHOPPING RESTRICTIONS ARE NECESSARY, AND SHOULD BE IMPLEMENTED IN THE PECO SERVICE TERRITORY FOR ITS DSP IV BECAUSE OF THE INDISPUTED RECORD EVIDENCE OF HARM TO CAP CUSTOMERS AND RATEPAYERS THAT HAS RESULTED FROM THE ABSENCE OF SUCH PROTECTION IN OTHER SERVICE TERRITORIES. ....	15
1.	Under PECO’s Fixed Credit Option (FCO) CAP design, CAP customers who shop and pay more than the price to compare will not receive an affordable bill. ....	15
2.	PECO’s low-income CAP customers are uniquely situated, economically vulnerable, and require specific and distinct protection within the retail electric market as compared to other electric customers. ....	18
3.	The experience of CAP customers in other EDC service territories amply demonstrates that a policy of allowing CAP customers to shop without limitation on the price or terms of service will worsen the affordability crisis for PECO’s CAP customers. ....	25
C.	CAUSE-PA’S CAP-SOP PROPOSAL SHOULD BE ADOPTED BECAUSE IT APPROPRIATELY BALANCES THE ABILITY OF CAP CUSTOMERS TO ENTER THE COMPETITIVE MARKET WHILE CONTINUING TO ENSURE THAT ADEQUATELY FUNDED, COST-EFFECTIVE, AND AFFORDABLE PROGRAMS REMAIN AVAILABLE TO ASSIST LOW INCOME CUSTOMERS.....	30
1.	RESA’s concerns about CAUSE-PA’s proposal are speculative, unfounded, and unsupported by substantial evidence, and its position that the status quo is acceptable – in light of indisputed harm – ignores critical mandates of the Choice Act. ....	32
VII.	CONCLUSION.....	38
	APPENDIX A - Proposed Findings of Fact .....	1
	APPENDIX B - Proposed Conclusions of Law.....	1

**TABLE OF AUTHORITIES**

**Cases**

Brown v. Commonwealth, 940 A.2d 610, 614, n.14 (Pa. Commw. 2008)..... 8

Coalition for Affordable Util. Servs. & Energy Efficiency in Pa, et al. v. Pa. Pub. Util. Comm’n,  
120 A.3d 1087 (Pa. Commw. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016).... 4,  
10, 13, 14, 20, 23, 32, 33, 36, 37, 38, 39

Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC, 2016 PA LEXIS  
723 & 2016 Pa. LEXIS 724 (Pa. Apr.5 2016). .... 20

Commonwealth v. Williams, 732 A.2d 1167 (Pa. 1999)..... 8

District of Columbia's Appeal, 21 A.2d 883 (Pa. 1941)..... 8

McDonald v. Pa. R.R. Co., 36 A.2d 492 (Pa. 1940)..... 8

Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. 1990)..... 8

**Statutes**

66 Pa. C.S. § 2802..... 1, 2, 7, 10, 13, 30, 34, 35

66 Pa. C.S. § 2803..... 7, 10, 12, 33, 34

66 Pa. C.S. § 2804..... 7, 10, 12, 13, 30, 31, 33, 34

66 Pa. C.S. § 332..... 8

66 Pa. C.S. § 69.625..... 34

**Regulations**

52 Pa. Code § 54.72 ..... 7

52 Pa. Code § 69.262..... 7

52 Pa. Code §§ 54.181-54.189..... 3

52 Pa. Code §§ 54.71-54.78..... 7

52 Pa. Code §§ 69.1801-69.1817..... 3

52 Pa. Code §§ 69.261-69.267..... 8

52 Pa. Code. § 54.73..... 31

**Pennsylvania Public Utility Commission Orders and Opinions**

Application of Pa. Am. Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Service to the Public in Additional Portions Of Mahoning Township, Lawrence County, Pa., Opinion and Order, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Oct. 29, 2008)..... 8

Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of their Default Service Programs, Order, Docket Nos. P-2015-2511333, -2511351; -2511355; -2511356 (May 19, 2016)..... 24

Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of their Default Service Programs, Recommended Decision, Docket Nos. P-2015-2511333, -2511351; -2511355; -2511356 (April 15, 2016)..... 24

PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 submitted in Compliance with 52 Pa Code § 54.74, Final Order, Docket M-2012-2290911 (Apr. 4, 2013)..... 13, 17

PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Order, Docket No. M-2012-2290911 (July 8, 2015). ..... 17

PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Recommended Decision, Docket No. M-2012-2290911 (June 11, 2015)..... 15

PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911 (Nov. 8, 2012)..... 17

Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641 (March 12, 2014)..... 23

Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641 (Jan. 24, 2014)..... 23

PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Final Order, Docket No. M-2013-2367021 (Sept. 11, 2014)..... 27

## **Pennsylvania Public Utility Commission Secretarial Letters**

Petition of PECO Energy Company for Approval of its Default Service Plan, <u>Sec. Ltr.</u> , Docket No. P-2012-2283641 (May 11, 2016).....	9, 21
Petition of PECO Energy Company of its Default Service Program, <u>Sec. Ltr.</u> , Docket No. P-2012-2283641 (May 23, 2016). .....	20

## **Pennsylvania Public Utility Commission Filings / Pending Dockets**

Petition of Duquesne Light Company for Approval of Default Service Plan for the Period of June 1, 2017 through May 31, 2021, Docket No. P-2016-2543140.....	25
Petition of PECO Energy Company for Approval of its Default Service Plan, <u>PECO’s Response to Sec. Ltr.</u> , Docket No. P-2012-2283641 (July 19, 2016) .....	9, 21
Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program & Procurement Plan for the Period of June 1, 2017 through May 31, 2021, <u>Joint Litigation Position</u> , at Docket No. P-2016-2526627 (July 8, 2016).....	11
Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2017 through May 31, 2021, Docket No. P-2016-2526627.....	24
PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, <u>Reply Comments of PPL Electric Utilities</u> , Docket No. M-2013-2367021 (July 21, 2014).....	27

## **Secondary Authorities**

Joint State Government Comm’n, <u>Homelessness in Pennsylvania: Causes, Impacts, and Solutions</u> (April 2016) .....	19
Nat’l Low Income Energy Consortium, <u>Paid but Unaffordable: The Consequences of Energy Poverty in Missouri – and Elsewhere</u> (2004).....	19
Pa. Public Utility Comm’n, Bureau of Consumer Svcs., <u>2014 Report on Universal Service Programs &amp; Collections Performance of the Pennsylvania Electric Distribution Companies &amp; Natural Gas Distribution Companies</u> (2014) .....	19

## **I. INTRODUCTION**

### **A. BACKGROUND**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files this brief in support of its positions and the positions advanced by its witness, Harry S. Geller, through his written testimony and accompanying exhibits, as well as in the positions of the Office of Consumer Advocate (OCA) and TURN et.al.

Pursuant to the Electricity Generation Customer Choice and Competition Act (Choice Act), an essential statutory obligation of the Public Utility Commission (Commission) is to “continue the protections, policies and services that now assist customers who are low-income to afford electric service” in the competitive environment.<sup>1</sup> This declaration of policy recognizes that direct access by low-income retail customers to the competitive generation market is conditioned upon ensuring that the affordability of electric service to economically vulnerable citizens is not diminished.

As the record in this proceeding indicates, it is imperative that PECO Energy Company (PECO) adopt a Customer Assistance Program (CAP) shopping platform in its DSP IV that enables CAP customers to enter the competitive electric market in a manner which ensures that the rates CAP customers pay for service are affordable and the CAP program as a whole is adequately funded. A failure to exercise control over the terms in which CAP customers participate within the competitive market will result in clear, articulable harm to CAP and non-CAP customers alike, as has been amply demonstrated in the EDC service territories that have permitted unrestricted CAP customer shopping.

<sup>1</sup> 66 Pa. C.S. § 2802(10).

Specifically, the record in this proceeding demonstrates that PECO's vulnerable CAP population – whose annual income averages just \$13,134<sup>2</sup> – will be subject to significantly higher prices, with the assistance of CAP. In addition, the harm to residential ratepayers is also palpable. PPL Electric Utilities' current process – which permits a similar demographic of CAP customers to pay higher prices than the applicable default service rate (price to compare or PTC) – has resulted in a net impact<sup>3</sup> of \$2,743,872 per year over a 46-month period from January 2012 through October 2015.<sup>4</sup> That is, as a result of CAP customer shopping in the manner presently occurring in the PPL service territory, residential ratepayers are charged over \$2.7 million more each year for the CAP program than they would have paid if CAP customers were prevented from shopping for and selecting an electric supplier offering a price higher than the price to compare.<sup>5</sup> This enormous cost to both CAP customers and residential ratepayers is unacceptable, and is completely preventable in the PECO service territory if appropriate protections are enacted now, before PECO's CAP customers enter the competitive market for the first time.

As is argued more fully below, the Commission and PECO have the obligation to balance the coexisting goals contained within Choice Act to promote competition, without sacrificing the affordability of electric service to low-income customers and the ratepayers who assist low-income customers through CAP.<sup>6</sup> CAUSE-PA has looked for ways throughout this proceeding to respect both of these goals - to promote competition and protect low income customers and ratepayers -

<sup>2</sup> CAUSE-PA St. 1, at 4 n.35.

<sup>3</sup> Net impact, as the term is used here, means all of the savings incurred by CAP customers shopping at rates *at or below* the price to compare, subtracted from the additional costs incurred by CAP customers shopping at rates *higher* than the price to compare. This shows the net harm to the CAP program as a whole, **but does not monetize the particularized harm to individual CAP customers who pay more**. This latter harm, while not monetized, presents a significant and substantial risk of harm to low income households, and creates a ripple effect on other ratepayers in terms of increased termination costs and uncollectible expenses.

<sup>4</sup> See CAUSE-PA St. 1, Attachment B (PPL Electric Utilities OnTrack (CAP) Program Shopping Collaborative #2, Friday Jan. 15, 2016).

<sup>5</sup> See *id.*

<sup>6</sup> 66 Pa. C.S. § 2802(10).

were respected, and sought to develop a plan for PECO's CAP shopping program in a manner that would protect low-income customers enrolled in CAP program and the ratepayers who finance the program, while at the same time affording CAP customers meaningful access to the competitive market. In contrast, the Retail Energy Supply Association (RESA) has steadfastly maintained its position that PECO not be permitted to impose any control over CAP customer participation in the competitive market. In furtherance of its self-serving position, RESA has sought to ensure that PECO's CAP customers suffer the same fate as that of PPL and the First Energy CAP customer: higher costs, CAP defaults, and increased risk of service termination. For the reasons outlined more fully below, RESA's position is unacceptable, and the Commission should adopt the proposal of CAUSE-PA, which has been endorsed by both the OCA and TURN *et al.*

## **B. PROCEDURAL HISTORY**

On March 17, 2016, PECO filed the above-captioned petition (DSP IV Petition) requesting that the Commission approve PECO's proposed default service program for the period June 1, 2017 through May 31, 2019. PECO filed its DSP IV Petition in accordance with its responsibilities as a Default Service Provider pursuant the Choice Act and the Commission's default service regulations<sup>7</sup> and Policy Statement on Default Service.<sup>8</sup> Specifically, PECO sought to establish the terms and conditions under which it will procure default service supply to provide default service to non-shopping customers.

<sup>7</sup> 52 Pa. Code §§ 54.181-54.189.

<sup>8</sup> 52 Pa. Code §§ 69.1801-69.1817.

On April 5, 2016, the Supreme Court of Pennsylvania denied the Commission's Petition for Allocatur of the July 14, 2015 decision of the Commonwealth Court in Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. PUC.<sup>9</sup>

On April 12, 2016, Administrative Law Judge Cynthia Williams Fordham issued a Prehearing Order establishing a Prehearing Conference for April 22, 2016. On April 19, 2016, CAUSE-PA filed a Petition to Intervene, which was granted at the April 22, 2016 Prehearing Conference.

On June 3, 2016, CAUSE-PA, the OCA, the OSBA, and RESA submitted direct testimony. CAUSE-PA submitted CAUSE-PA Statement 1, the Direct Testimony of Harry Geller; OCA submitted OCA Statement 1, the Direct Testimony of Serhan Ogur, and OCA Statement 2, the Direct Testimony of Barb Alexander; OSBA submitted OSBA Statement 1, the Direct Testimony of Brian Kalcic; and RESA submitted RESA Statement 1, the Direct Testimony of Matthew White.

On June 24, 2016, PECO, the OCA, and RESA submitted rebuttal testimony. PECO submitted four statements: PECO Statement 2-R, the Rebuttal Testimony of John J. McCawley; PECO Statement 3-R, the Rebuttal Testimony of Scott G. Fisher; PECO Statement 4-R, the Rebuttal Testimony of Chantale LaCasse; and PECO Statement 5-R, the Rebuttal Testimony of Alan B. Cohn. The OCA submitted one statement: OCA Statement 2-R, the Rebuttal Testimony of Barbara Alexander. RESA submitted one statement: RESA Statement 1-R, the Rebuttal Testimony of Matthew White.

On July 8, 2016, CAUSE-PA, the OCA, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (together, TURN *et al.*), and RESA submitted surrebuttal testimony. CAUSE-PA submitted one statement: CAUSE-PA 1-SR, the

<sup>9</sup> Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. et al. v. Pa. Pub. Util. Comm'n, 120 A.3d 1087 (Pa. Commw. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) (hereinafter CAUSE-PA et al.).

Surrebuttal Testimony of Harry Geller. The OCA submitted two statements: OCA Statement 1-SR, the Surrebuttal Testimony of Serhan Ogur, and OCA Statement 2-SR, the Surrebuttal Testimony of Barb Alexander. TURN *et al.* submitted one statement: TURN *et al.* Statement 1-SR, the Surrebuttal Testimony of Philip A. Bertocci. RESA submitted one statement: RESA Statement 1-SR, the Surrebuttal Testimony of Matthew White.

A hearing was held on July 14, 2016, at which all of the parties' testimony and respective exhibits and attachments were entered into the record by stipulation or verification.<sup>10</sup> No party conducted cross-examination of any witnesses at the hearing.

## **II. STATEMENT OF THE CASE**

Any plan which would allow PECO's CAP customers to receive generation supply service from an electric generation supplier (EGS) must tie the affordability of electric service to a customer's ability to pay for that service through policies, practices, and services that help low income customers maintain utility service. Thus, the first principal for any CAP program must be that CAP bills remain affordable – regardless of whether a CAP customer remains on default service or receives generation service from an EGS. This is a core component to the obligation of PECO and the Commission to balance the coexisting goals contained within the Choice Act to promote competition without sacrificing the affordability of electric service to low-income customers and the ratepayers who assist low-income customers through CAP.

Throughout this proceeding, CAUSE-PA, the OCA, and TURN *et al.* have all coalesced around a CAP shopping platform which ensures that both of these statutory goals are respected through the development of a modified standard offer program for CAP participants (CAP-SOP).

<sup>10</sup> The default service program and procurement issues that were the genesis of this proceeding, as well as various other competitive market issues, have been settled by various parties and are the subject of a Joint Petition for Partial Settlement that was filed on July 28, 2016. CAUSE-PA is not a party to the Partial Settlement of those issues, but also does not object to the settlement of those issues on the terms that will be submitted by the parties.

This proposal was outlined in detail by CAUSE-PA witness Harry Geller,<sup>11</sup> and endorsed by OCA witness Barbara Alexander<sup>12</sup> and TURN *et al.* witness Philip Bertocci.<sup>13</sup> Adoption of the CAP-SOP would afford CAP customers access to the competitive electric market in a manner that also reasonably ensures that CAP customers continue to receive service at affordable levels without undue risk. The CAP-SOP would also shield other residential ratepayers from additional, undue, and excessive expense which has been proven to occur when CAP customers shop at prices above the price to compare. For the reasons set forth more fully below, CAUSE-PA respectfully requests that the ALJ and the Commission adopt the CAP-SOP set forth in Mr. Geller's testimony.

### **III. QUESTIONS INVOLVED**

- A. Does the Commission have the legal authority to impose CAP shopping restrictions to ensure adequately-funded, cost-effective, and affordable universal service programs where, as here, there is no reasonable alternative available to avoid substantial harm to CAP and non-CAP customers?

Suggested answer: Yes.

- B. Is there substantial evidence showing that the absence of CAP shopping restrictions in other service territories has resulted in significant financial harm to vulnerable low income households and residential ratepayers, and that reasonable CAP rules are therefore necessary in PECO's service territory to prevent harm and ensure adequately-funded, cost-effective, and affordable universal service programs?

Suggested answer: Yes.

- C. Should CAP shopping be dealt with here, in this proceeding, notwithstanding the Commission's issuance of a Secretarial Letter at Docket No. P-2012-2283641?

Suggested answer: Yes.

- D. Should the Commission adopt the CAP shopping rules proposed by CAUSE-PA and endorsed by the OCA and TURN *et al.*?

**Suggested answer: Yes.**

<sup>11</sup> See CAUSE-PA St. 1 at 31-33.

<sup>12</sup> See OCA St. 2-R at 5.

<sup>13</sup> See TURN St. 1 at 11-12

#### **IV. LEGAL STANDARDS AND BURDEN OF PROOF**

As a regulated public utility serving more than 100,000 customers, PECO is required to offer an integrated package of universal service programs designed to help low-income, payment troubled ratepayers maintain and afford essential utility services. These programs are statutorily required by the Choice Act<sup>14</sup> and by the Commission's regulations.<sup>15</sup> The universal service provisions of the Choice Act, among other things, tie the affordability of electric service to a customer's ability to pay for that service. The Choice Act defines "universal service and energy conservation" as the policies, practices and services that help low income customers maintain utility service.<sup>16</sup> The term includes customer assistance programs, usage reduction programs, service termination protections, and consumer education.

CAP is a general term used to describe utility payment assistance and debt-forgiveness programs for payment-troubled households.<sup>17</sup> CAPs are regulated by the Commission, and provide a discounted bill for payment troubled, low-income ratepayers whose household incomes are at or below 150% of the federal poverty income guidelines.<sup>18</sup> Each CAP bill is divided into two parts: (1) the amount that the CAP customer must pay each month, and (2) the monthly CAP credit amount applied to the CAP customer's bill. CAP's payment assistance feature is intended to control a customer's energy burden through affordable monthly bills based on a household's size and gross income. These lower rates are applied to ongoing usage as long as the household remains current and timely in paying its monthly customer assistance bills. CAP design and

<sup>14</sup> See 66 Pa. C.S. §§ 2802(10), (17); 2804 (9).

<sup>15</sup> 52 Pa. Code §§ 54.71-54.78.

<sup>16</sup> 66 Pa. C.S. § 2803.

<sup>17</sup> 52 Pa. Code § 54.72 (CAP – Customer Assistance Program – An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of electric utility services.)

<sup>18</sup> 52 Pa. Code § 54.72; 52 Pa. Code § 69.262.

implementation is currently guided by the Commission's statewide "Policy Statement on Customer Assistance Programs."<sup>19</sup> These policies, among other controls, establish the maximum energy burden parameters for CAP customers.

Section 332(a) of the Public Utility Code<sup>20</sup> provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."<sup>21</sup> The preponderance of evidence standard requires proof by a greater weight of the evidence.<sup>22</sup> This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party.<sup>23</sup> If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent.<sup>24</sup>

Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case is established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission produce additional evidence to sustain its burden of proof.<sup>25</sup>

In October 2016, PECO will be implementing a structural change to its CAP program that will accommodate the ability of CAP customers to switch to an electric generation supplier and remain on CAP.<sup>26</sup> In response to a Secretarial Letter issued in PECO's DSP II proceeding at

<sup>19</sup> 52 Pa. Code §§ 69.261-69.267.

<sup>20</sup> 66 Pa. C.S. § 332(a).

<sup>21</sup> Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. 1990).

<sup>22</sup> Commonwealth v. Williams, 732 A.2d 1167 (Pa. 1999).

<sup>23</sup> Brown v. Commonwealth, 940 A.2d 610, 614, n.14 (Pa. Commw. 2008).

<sup>24</sup> McDonald v. Pa. R.R. Co., 36 A.2d 492 (Pa. 1940).

<sup>25</sup> District of Columbia's Appeal, 21 A.2d 883 (Pa. 1941); Application of Pa. Am. Water Co. for Approval of the Right To Offer, Render, Furnish or Supply Water Service to the Public in Additional Portions Of Mahoning Township, Lawrence County, Pa., Opinion and Order, Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Oct. 29, 2008).

<sup>26</sup> See CAUSE-PA St. 1, at 19:21 to 22:9.

Docket No. P-2012-2283641,<sup>27</sup> PECO has indicated that it will implement a CAP shopping platform at some point during the first quarter of 2017.<sup>28</sup> In this proceeding, CAUSE-PA has proposed that PECO delay implementation of its CAP shopping program design until June 1, 2017, at the earliest, which is the start of its DSP IV operational period. CAUSE-PA has proposed specific protections that should be implemented as a part of PECO's upcoming DSP IV CAP shopping design, and therefore has the burden of proof on these issues.

## **V. SUMMARY OF ARGUMENT**

The record in this proceeding demonstrates that PECO's CAP customers are all economically vulnerable and, even with CAP discounts, face extraordinary challenges to maintain electric service connected to their home. The record also demonstrates that in other Pennsylvania service territories where CAP customers are currently permitted to shop for electric generation supply, those customers who elect to be served by an electric generation supplier routinely pay prices above the price to compare. These higher charges – above the PTC – adversely affect the continued affordability of CAP bills and the ability of CAP customers to maintain CAP benefits, as well as increase the cost of the program as a whole for other residential ratepayers.

To maintain both affordable rates for low-income customers enrolled in CAP (who have already evidenced an inability to pay at undiscounted rates) and an efficient and cost effective program, the Choice Act specifically requires the creation of a structure whereby CAP rates and the CAP program as a whole remain affordable. This is accomplished only when CAP customers

<sup>27</sup> See Petition of PECO Energy Company for Approval of its Default Service Plan, Sec. Ltr., Docket No. P-2012-2283641 (May 11, 2016), available at <http://www.puc.state.pa.us/pdocs/1439612.doc>.

<sup>28</sup> See Petition of PECO Energy Company for Approval of its Default Service Plan, PECO's Response to Sec. Ltr., Docket No. P-2012-2283641, at 2 (July 19, 2016), available at <http://www.puc.state.pa.us/pdocs/1459755.pdf>.

pay no more than the price to compare, thus ensuring financial harm is not bestowed on CAP customers, ratepayers, or both.

RESA has not disputed the record evidence in this proceeding. Instead, its position is based on a generalized assertion that restrictions should not be imposed on CAP customers – even if unrestricted shopping compromises CAP customer energy burdens and their ability to afford service and/or the affordability of the CAP program as a whole. RESA’s position is untenable and inconsistent with the Choice Act “which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service.”<sup>29</sup> The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service.<sup>30</sup> Yet RESA continues to baldly assert – without any supportive data – that the Commission cannot impose reasonable program terms to ensure affordability because it would restrict the market.

The Commission not only has the statutory authority, but in fact has an obligation to ensure that the means to achieve the affordability of electric service – universal service programming - is appropriately funded and available in each electric distribution territory. This requires the enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.<sup>31</sup> The existence of a competitive market for generation supply does not change this requirement. The Choice Act contains within it the coexisting goals and obligations to promote competition as well as to protect low-income customers within the competitive framework to ensure rate affordability.

<sup>29</sup> CAUSE-PA et al., 120 A.3d at 1103-1104 (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17)) (emphasis added).

<sup>30</sup> 66 Pa. C.S. § 2804 (9).

<sup>31</sup> 66 Pa. C.S. § 2803.

The position advanced by CAUSE-PA, and endorsed by OCA and TURN *et al.*, permits CAP customers to choose an EGS in DSP IV – after implementation of its new CAP design – while at the same time ensuring that PECO’s CAP customers do not suffer the same harm as CAP customers who are shopping in other EDC service territories and paying prices above the price to compare.<sup>32</sup> The proposed CAP-SOP is substantially similar to PECO’s current SOP. Under CAUSE-PA’s proposal, the CAP-SOP would have the following attributes:

- It would be the only means through which a CAP customer could shop and remain eligible for CAP benefits. Any shopping request from a CAP customer that does not get processed through the SOP would be denied.
- EGS that elect to participate would agree to serve these CAP customers at a 7% discount off the PTC at the time of enrollment and, if the PTC drops more than 7% at any time during the customer’s enrollment, the EGS would have to either re-enroll the customer in a new CAP-SOP enrollment with a new 7% off the then applicable PTC or return the customer to default service.
- If returned to default service, the CAP customer could affirmatively re-enroll in the CAP-SOP with another supplier, if they so desire. Suppliers are already monitoring the PTC to determine whether to participate in the SOP and what offers to make to customers. As such, they will be able to readily determine when the PTC price drops by more than 7%, triggering their obligation to either adjust their CAP enrollee’s contract terms or return the customer to default service.
- At the end of the 12-month CAP-SOP contract, participating EGSs would either re-enroll the CAP customers in a new CAP-SOP contract that is 7% off the then-applicable PTC (subject to the same terms noted above). Or, if they decide to stop serving CAP customers, the customer would be returned to default service. EGSs would not be allowed to enroll the CAP customer in a contract outside of the SOP.
- Like all SOP customers, CAP customers would be able to leave the SOP contract at any time, without facing termination or cancellation fees.

CAUSE-PA submits that the CAP-SOP as proposed is a reasonable and prudent measure to mitigate the adverse impacts of CAP shopping above the price to compare, accommodates all of the concerns of the Choice Act, and should be adopted by the Commission without modification.

<sup>32</sup> This position is identical to that which was proposed as a “Joint Litigation Position” by PPL, I&E, OCA, and CAUSE-PA in the recent PPL DSP proceeding. Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program & Procurement Plan for the Period of June 1, 2017 through May 31, 2021, Joint Litigation Position, at Docket No. P-2016-2526627 (July 8, 2016) (attached as Appendix C in CAUSE-PA’s Main Brief in that proceeding).

## VI. ARGUMENT

### A. **THE COMMISSION HAS THE LEGAL AUTHORITY TO IMPOSE CAP SHOPPING RESTRICTIONS TO ENSURE ADEQUATELY FUNDED, COST-EFFECTIVE UNIVERSAL SERVICE PROGRAMS TO ASSIST CUSTOMERS WHO ARE LOW INCOME TO AFFORD ELECTRIC SERVICE.**

The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service.<sup>33</sup> The Commission has the responsibility to ensure that the means to achieve the affordability of electric service is appropriately funded and available in each electric distribution territory, which requires the enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.<sup>34</sup> The existence of a competitive market for generation supply does not change this requirement; in fact, the creation of the competitive market was the genesis of the statutory obligation.

Thus in accord with the Choice Act, any plan that would allow PECO's CAP customers to receive service from an EGS must continue to tie the affordability of electric service to a customer's ability to pay for that service through the adoption and implementation of policies, practices, and services that help low income customers maintain utility service. The Commission recognized this very principal in its most recent Final Order approving PECO's Universal Service and Energy Conservation Plan for 2013-2015:

The Electricity Generation Customer Choice and Competition Act (Electric Competition Act), 66 Pa. C.S. §§ 2801-2812, became effective on January 1, 1997. The Natural Gas Choice and Competition Act (Gas Competition Act), 66 Pa. C.S. §§ 2201-2212, became effective on July 1, 1999. The primary purpose of these Competition Acts is to introduce competition into the electric generation and natural gas supply markets. The Competition Acts established standards and procedures for the restructuring of the electric and natural gas utility industries. While opening the markets to competition, the Competition Acts also include

<sup>33</sup> 66 Pa. C.S. § 2804 (9).

<sup>34</sup> 66 Pa. C.S. § 2803.

several provisions relating to universal service in order to ensure that utility service remains available to all customers in the Commonwealth.

The universal service provisions of the Competition Acts, among other things, tie the affordability of electric service to a customer's ability to pay for that service. The Competition Acts define "universal service and energy conservation" as the policies, practices and services that help low income customers maintain utility service. The term includes customer assistance programs, usage reduction programs, service termination protections, and consumer education. 66 Pa. C.S. §§ 2202 and 2803. The Competition Acts declare that the Commonwealth must, at a minimum, continue the low income policies, practices, and services that were in existence as of the effective date of the laws. 66 Pa. C.S. §§ 2203(7) and 2802(10). Finally, the Competition Acts require the Commission to ensure that universal service and energy conservation services are appropriately funded and available in each utility distribution territory. Pa. C.S. §§ 2203(8) and 2804(9).<sup>35</sup>

In its decision in CAUSE-PA's appeal of PECO's DSP II CAP Shopping Plan, the Commonwealth Court clarified how the Commission has to balance these goals, and stated that it is essential to recognize that the Choice Act "both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service."<sup>36</sup> Specifically, the Court stated that the Choice Act<sup>37</sup> "does not demand absolute and unbridled competition."<sup>38</sup> The Court went on to state that "under certain circumstances, unbridled competition may have to give way to other important concerns,"<sup>39</sup> and specifically found that, under circumstances like those that exist here, the Commission has the authority to impose rules which limit CAP customers to paying no more than the price to compare and eliminate early termination or cancellation fees:

[T]he PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost effective, to impose, or in this case approve, CAP rules that would limit the terms

<sup>35</sup> See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 submitted in Compliance with 52 Pa Code § 54.74, Final Order, Docket M-2012-2290911, at 2-3 (Apr. 4, 2013).

<sup>36</sup> CAUSE-PA et al., 1020 A.3d at 1103-1104 (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17)) (emphasis added).

<sup>37</sup> See 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

<sup>38</sup> CAUSE-PA et al., 120 A.3d at 1101.

<sup>39</sup> Id. at 1103.

of any offer from an EGS that a customer can accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost effective for the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participant's EGS choice.<sup>40</sup>

In reaching its conclusion, the Commonwealth Court looked to the Choice Act's declaration of policy, "which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs *and* emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service,"<sup>41</sup> and concluded that the Commission must adhere to the following legal standard:

So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service . . . the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – e.g. EGS rate ceiling, prohibition against early termination/cancellation fees, etc.<sup>42</sup>

Based on the foregoing, the Commission clearly has the authority to impose restrictions on CAP customers' ability to shop for competitive electric generation supply to ensure that CAP remains adequately funded and available to vulnerable households, cost-effective, and affordable for CAP participants.

<sup>40</sup> CAUSE-PA et al., 120 A.3d at 1103-04.

<sup>41</sup> Id. (emphasis added).

<sup>42</sup> Id.

**B. CAP SHOPPING RESTRICTIONS ARE NECESSARY, AND SHOULD BE IMPLEMENTED IN THE PECO SERVICE TERRITORY FOR ITS DSP IV BECAUSE OF THE INDISPUTED RECORD EVIDENCE OF HARM TO CAP CUSTOMERS AND RATEPAYERS THAT HAS RESULTED FROM THE ABSENCE OF SUCH PROTECTION IN OTHER SERVICE TERRITORIES.**

The record in this proceeding demonstrates that there are substantial adverse impacts to allowing CAP customers to shop at prices higher than the price to compare. This evidence is undisputed by any party and there is no evidence to the contrary.<sup>43</sup> As explained below, the Commission should impose CAP shopping protocols on PECO's CAP customers – as outlined in the CAP-SOP proposal - to protect economically vulnerable households from significant and substantial economic hardship, and to ensure that unnecessary and excessive costs are not borne by other residential ratepayers.

**1. Under PECO's Fixed Credit Option (FCO) CAP design, CAP customers who shop and pay more than the price to compare will not receive an affordable bill.**

As explained in Mr. Geller's direct testimony, PECO's current CAP structure is a tiered rate-discount program.<sup>44</sup> Effective October 2016, PECO will switch its CAP design from a tiered CAP rate program to a Fixed Credit Option (FCO) program.<sup>45</sup> The design of the FCO<sup>46</sup>

<sup>43</sup> See *infra* section C.1.

<sup>44</sup> CAUSE-PA St. No. 1 at 13.

<sup>45</sup> CAUSE-PA St. No. 1 at 13.

<sup>46</sup> See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Recommended Decision, Docket No. M-2012-2290911 (June 11, 2015) (recommending that settlement be approved in full); see also CAUSE-PA St. No. 1 at 19-22. Beginning October 2016, PECO will calculate each customer's CAP bill as follows:

**Step 1: Determine customer's prior year's Weather Normalized Base Charges**

PECO will review the customer's bills at their residence for the prior 12 months<sup>46</sup> and determine the dollar amount that the customer would have been charged *on an undiscounted* basis in those 12-months for both the regulated and unregulated portions of PECO's bill. ***For the purpose of making this calculation, PECO will look at what the charges were (or would have been) if the customer was on default service regardless of whether the customer was or was not on default service for the previous 12 months.*** PECO calls this calculation its "Base Charges"<sup>46</sup> and once determined, those charges will be weather-normalized using the weather normalization table to create the "Weather-Normalized Base Charges."

**Step 2: Determine Verified Household Income and Federal Poverty Level:**

PECO will verify household income for each household and use that information and the number of people in the household to determine the household’s Federal Poverty Level.<sup>46</sup>

**Step 3: Determine Customer’s Allowable Energy Burden:**

Once the household’s Federal Poverty Level has been determined, PECO will determine the household’s allowable Energy Burden, as follows:

Table 1: Energy Burdens

FPL	Electric Non-Heating	Electric Heating	Electric with Gas Heating
0-50%	5%	13%	13%
51-100%	6%	16%	16%
101-150%	7%	17%	17%

**Step 4: Calculate Customer’s Annual Credit:**

PECO will determine the customer’s Annual Credit by multiplying the Verified Household Income times that household’s allowable Energy Burden to determine an Annual CAP Bill amount. The Annual CAP Bill will then be subtracted from the Weather-Normalized Base Charges; the resulting amount is the Annual Credit amount for that household. That is: **Weather-Normalized Base Charges – Annual CAP Bill = Annual Credit.**

Federal Poverty Threshold	Maximum Annual Credit: Electric Non-Heating (Rate R)	Maximum Annual Credit: Electric Heating (Rate RH)
0-50%	\$2,048	\$2,922
51-100%	\$1,389	\$1,881
101-150%	\$1,241	\$1,661

**Step 5: Apply Annual Credit to Bill:**

PECO will apply a percentage of the total dollar amount of the Annual Credit each month over the course of the year. The credits will be applied in a manner intended to track the seasonal nature of usage, using the following monthly percentages:<sup>46</sup>

Table 3: Seasonality Distribution

Month	Rate R	Rate RH
Jan	9.6%	13.9%
Feb	8.9%	14.2%
Mar	8.0%	12.2%
Apr	7.0%	9.0%
May	5.8%	5.3%
June	7.7%	5.2%
July	11.3%	6.4%
Aug	10.6%	5.9%
Sept	9.3%	5.4%
Oct	6.6%	4.5%
Nov	6.6%	6.4%
Dec	8.7%	11.7%
Total	100.0%	100.0%

These percentages of the annual credit will then be converted to an actual dollar amount allocated to each monthly bill. As a hypothetical example: If it is determined that customer “X” is entitled to \$1200 in annual credits as a non-heating customer, they would receive the following allocation of credits on their bill:

was the result of extensive litigation between PECO, CAUSE-PA, the OCA, TURN *et al.*, Direct Energy, and First Energy Solutions, and numerous mediation and settlement sessions, to resolve the historical unaffordability inherent in PECO's tiered rate discount structure.<sup>47</sup> The FCO CAP design was approved by the Commission on July 8, 2015.<sup>48</sup> The redesign has produced a significantly different and complex new CAP structure, which will completely overhaul of the method PECO uses to calculate a CAP customer's bill.<sup>49</sup>

Month	Rate R	Monthly Credit
Jan	9.6%	\$115.20
Feb	8.9%	\$106.00
Mar	8.0%	\$96.00
Apr	7.0%	\$84.00
May	5.8%	\$69.60
June	7.7%	\$92.40
July	11.3%	\$135.60
Aug	10.6%	\$127.20
Sept	9.3%	\$111.60
Oct	6.6%	\$79.20
Nov	6.6%	\$79.20
Dec	8.7%	\$104.40

**Step 6: Periodic Recalculation and Adjustment of Annual Credit**

PECO will recalculate the customer's Weather Normalized Base Charges every three month using the customer's most recent three months' data on usage/charges and will then use the results of the Step 1 recalculation as inputs to complete Steps 2 through 5 to determine a Quarterly Recalculation of the Annual Credit. The adjusted Annual Credit will be applied to bills on a going-forward basis. This quarterly recalculation will be coordinated with the results of PECO's quarterly Generation Services Adjustment filing and approval so that, in each such quarterly adjustment, PECO's just-approved PTC will replace the oldest three months of PTC data in the underlying calculation.

<sup>47</sup> The unaffordability of PECO's CAP Rate structure was addressed by the Commission multiple times, including in its Tentative Order regarding PECO's 2013-2015 USECP filing. PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Tentative Order, Docket No. M-2012-2290911, at 8-9 (Nov. 8, 2012); see also PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Final Order, Docket No. M-2012-2290911, at 12-19 (Apr. 4, 2013).

<sup>48</sup> PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Order, Docket No. M-2012-2290911 (July 8, 2015).

<sup>49</sup> In addition to this entirely new method of determining a low-income customer's discounted bill, PECO will at the same time be implementing an In-Program Arrearage Forgiveness (IPAF) program that will require CAP customers who have CAP arrears at the time of the transition to make payments above and beyond their CAP payments over a 60-month period of time. See CAUSE-PA St. 1 at 19:12-20.

While the FCO design is complicated, the most essential and relevant component to be considered with regard to the interaction of CAP and the competitive market in PECO's service territory is this: PECO's FCO CAP design targets affordability – and the amount of CAP credits allotted to CAP customers – based on PECO's default service rate, regardless of whether the customer is shopping for electric generation supply service.<sup>50</sup> If a customer's generation supply charges are higher than the price to compare for any period of time, the customer will not receive a credit that accounts for that higher price, and will receive less of a discount than is actually required for his or her bill to be affordable pursuant to Commission standards.<sup>51</sup> Paying more than the price to compare will, thus, necessarily erode the effectiveness of PECO's CAP in reaching Commission-established energy burden targets.

As a result of CAP customer shopping, there is the very real potential for an increase in unaffordable bills, which over the long term will lead to more unpaid bills by CAP customers, and increased termination of service – the very thing that the redesign of PECO's CAP was intended to remedy. As outlined in more detail below, the experience in other service territories in which CAP customers have previously shopped for electric generation has demonstrated that this harm is not speculative, but is a very real and significant concern.

**2. PECO's low-income CAP customers are uniquely situated, economically vulnerable, and require specific and distinct protection within the retail electric market as compared to other electric customers.**

a. PECO's CAP and CAP-eligible populations are extremely vulnerable.

No party has contested the testimony submitted by CAUSE-PA concerning the economic vulnerability of PECO's confirmed low-income customers.<sup>52</sup> Households with income at or below

<sup>50</sup> CAUSE-PA St. 1, at 22-23.

<sup>51</sup> CAUSE-PA St. 1, at 23-24.

<sup>52</sup> See CAUSE-PA Statement 1 at 15-17.

150% of the federal poverty guideline lack sufficient income to pay for all of their essential needs. Before all of the bills are paid, low-income families routinely run out of money. As outlined in detail in Mr. Geller's testimony, without CAP assistance, low-income customers simply cannot meet their monthly expenses. Mr. Geller explained:

The National Low Income Energy Consortium (NLIEC) conducted a survey designed to capture a nationally representative picture of the issues facing low income households. The study found that "households with incomes below 50% of the federal poverty level pay a staggering 38% or more of their annual income simply for their home energy bills." The overwhelming energy burden on low income households makes it difficult for these customers to pay for other basic necessities. Of the households surveyed in the NLIEC study, 46% went without food and 45% failed to take medication as prescribed by doctors in order to pay their home energy bills. Similarly, as recently reported by Pennsylvania's Joint State Government Commission, utility assistance ranked in the top three types of assistance noted by survey respondents (24.1 percent) that would have prevented homelessness.

Even CAP is not a panacea to fixing the difficulty of unaffordable bills. The average CAP household is desperately poor, and these extremely low income households routinely run out of money even with assistance of CAP. *In 2014, the household income of the average Pennsylvania household enrolled in CAP was \$13,134, which - with an average universal service household size of 3 - is approximately 66% of the federal poverty level.* Many cannot afford to pay for utility service because of the cost of competing essential needs like rent, food, water, medicine, clothing, childcare, and transportation. Furthermore, the Commission recognized time and time again that PECO has a long history of failing to design a program that was in conformity with the Commission affordability standards, thus producing unaffordable bills even with a CAP subsidy.<sup>53</sup>

Put simply, as Mr. Geller eloquently described in direct testimony, PECO's confirmed low-income, CAP-eligible customers are economically vulnerable and unable to pay for essential

<sup>53</sup> CAUSE-PA St. 1, at 15-17 (citing Nat'l Low Income Energy Consortium, [Paid but Unaffordable: The Consequences of Energy Poverty in Missouri – and Elsewhere](#), at 2-5 (2004), available at [http://www.neuac.org/2004\\_MO%20Overview.pdf](http://www.neuac.org/2004_MO%20Overview.pdf); Joint State Government Comm'n, [Homelessness in Pennsylvania: Causes, Impacts, and Solutions](#), at 112, 157, 160 (April 2016), available at [http://jsg.legis.state.pa.us/publications.cfm?JSPU\\_PUBLN\\_ID=447](http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=447); Pa. Public Utility Comm'n, Bureau of Consumer Svcs., [2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies](#), at 7, 35 (2014), available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf); Nat'l Energy Ass't Directors' Ass'n, [2011 National Energy Assistance Survey](#) (Nov. 2011), available at <http://www.appriseinc.org/reports/Final%20NEADA%202011%20Report.pdf>) (emphasis added).

services including electricity without substantial and meaningful assistance. It is for this reason that CAP programs were created to assist low-income customers maintain and afford essential utility service, and it is precisely why the benefits of CAP cannot be eroded by allowing CAP customers to pay more than the utility's price to compare.

- b. The Commission should develop protections for PECO's CAP customers beginning with the start of the DSP IV period, based on the evidence in this proceeding, rather than implement changes based on its DSP II order.

One of the issues that the Commission must decide in this proceeding is **when** restrictions on CAP shopping will occur, and the **extent** of such restrictions. The timing is critical to examine, as PECO was already obligated to impose some restrictions on cancellation and termination fees in its DSP II proceeding. The Commonwealth Court in CAUSE-PA et al. determined that the Commission erred as a matter of law when it found that it did not have the legal authority needed to impose price restrictions on the terms and conditions of CAP customers who shop for electric supply. In so doing, the Court found that there was not substantial evidence for the Commission's determination to reject a proposal to prohibit early termination and cancellation fees, and ordered the Commission to require PECO to develop a plan that prohibits CAP customers from contracting for EGS-supplied service containing these fees.<sup>54</sup>

On May 11, 2016, in response to the Commonwealth Court's decision,<sup>55</sup> the Commission issued a Secretarial Letter<sup>56</sup> to the parties in the DSP II proceeding in which it ordered PECO to do the following:

<sup>54</sup> CAUSE-PA et al., 120 A.3d at 1107-08.

<sup>55</sup> In response to the Commonwealth Court's Opinion and Order, the Commission filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court, and CAUSE-PA, along with TURN et al., filed a Cross-Petition for Allowance of Appeal. On April 5, 2016, the Supreme Court of Pennsylvania denied both petitions. See Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC, 2016 PA LEXIS 723 & 2016 Pa. LEXIS 724 (Pa. Apr. 5 2016).

<sup>56</sup> See Petition of PECO Energy Company of its Default Service Program, Sec. Ltr., Docket No. P-2012-2283641 (May 23, 2016).

In light of the Court's Order, and the denial of allocatur by the Supreme Court, through this Secretarial Letter, the Commission hereby directs PECO to file with the Secretary and serve on the parties at its current Default Service Plan (DSP) and Universal Service and Energy Conservation Plan (USECP) dockets a proposed rule revision to its CAP Shopping Plan in its current DSP III consistent with the Commonwealth Court's Order. PECO's filing should include: (1) proposed language of the rule; (2) a proposed timeline and effective date; and (3) a proposed plan to collect data upon which to base an analysis of the CAP shopping program experiences, evaluations, and recommendations. PECO's filing will be subject to public comment and final review and approval by the Commission.<sup>57</sup>

PECO responded to the Secretarial Letter on July 19, 2016, with a letter indicating that it will file its CAP rule revision "by September 1, 2016," and that it "currently anticipates that it will recommend implementation of CAP shopping, with the Commonwealth Court Order integrated into the CAP Shopping plan, during the first quarter of 2017."<sup>58</sup> Although non-specific, PECO's July 19<sup>th</sup> letter clearly anticipates that PECO will adopt the early termination and cancellation fee prohibition into its CAP shopping plan for its DSP III. This was confirmed by PECO in its rebuttal testimony by PECO witness McCawley, who stated that PECO will submit a "proposed rule revision" to its DSP III docket to implement a CAP Shopping Plan with an effective date of first quarter of 2017, and that this rule revision will "eliminate any pricing restrictions for EGSs who wish to offer competitive generation service to PECO's CAP customers and will prohibit CAP customers and EGSs from entering into any contract that imposes early cancellation or termination fees."<sup>59</sup> The proposed rule revision will also include PECO's proposal to "collect data to evaluate the CAP shopping program and determine whether any modifications are *later* necessary."<sup>60</sup>

<sup>57</sup> Petition of PECO Energy Company for Approval of its Default Service Plan, Sec. Ltr., Docket No. P-2012-2283641 (May 11, 2016) (internal footnotes omitted).

<sup>58</sup> See Petition of PECO Energy Company for Approval of its Default Service Plan, PECO Ltr., Docket No. P-2012-2283641 (July 19, 2016) (emphasis added).

<sup>59</sup> PECO St. No. 2-R at 13:9-12.

<sup>60</sup> PECO St. No. 2-R at 13: 13-15 (emphasis added.)

While CAUSE-PA supports PECO's implementation of a prohibition on early termination and cancellation fees, for the reasons stated by Mr. Geller in his testimony in this proceeding and explained throughout this brief, CAUSE-PA strongly believes that (1) PECO should delay implementation of any CAP customer shopping until June 1, 2017, which is the beginning of the DSP IV operational period, and (2) the CAP shopping design must encompass protections against paying more than the price to compare. There are several reasons why this should occur.

First, as to timing, it does not make sense for PECO to implement CAP shopping during the DSP III period, as doing so would mean that PECO would be implementing CAP shopping without the benefit of whatever decision is made in this proceeding, which contains substantial evidence that CAP customers will be harmed as a result of unrestricted CAP shopping.

Second, if PECO were to implement CAP shopping in DSP III, it would be an inefficient and unnecessary implementation of a CAP shopping structure in the first quarter of 2017 that would then change effective June 1, 2017. This will inevitably lead to unnecessary customer confusion, and is quite likely to result in inconsistent shopping program designs.

Third, the interrelationship of PECO's CAP structure and its DSP design is an essential element to be considered in the review of each newly proposed DSP. PECO's CAP Rate Discount Program, which was in effect when the Commission reviewed evidence specific to PECO's DSP II, is being discontinued and will be replaced by a dramatically different CAP program, the FCO design described above. DSP IV is the first opportunity in which the Commission will have the opportunity to review the relationship of the new FCO with PECO's DSP IV design, which is proposed for the period of June 1, 2017 through May 31, 2019.

At the time the Commission ruled on PECO's previous CAP shopping plan in its DSP II proceeding, PECO's CAP program was a tiered rate-discount program. That program is still in effect, but as noted above will soon change with the implementation of the FCO in October 2016. In so doing, all of PECO's 140,000 CAP customers will have to be educated about the changes to the CAP program that will be effective in October 2016, and those CAP customers with arrears will also need to be educated about their obligations to maintain an additional IPAF payment, which will be in addition to their CAP payment.<sup>61</sup> PECO has a comprehensive timeline for this education, which is slated to begin mid-June and will continue through at least December 2016.<sup>62</sup>

Since PECO's CAP customers have not yet been able to shop for EGS-supplied generation service, they will also - for the first time - have to be educated about how to do so, and under what terms and conditions they are permitted to do so. The Commission itself, has repeatedly noted that an effective education program is an essential tool to be implemented for informed customer shopping,<sup>63</sup> and the Commonwealth Court has agreed "with the PUC's determination that consumer education is critical."<sup>64</sup> It stretches credulity and flies in the face of the experience of competitive shopping to suggest that PECO would be able to effectively educate its CAP customers about each of the significant CAP program changes that are occurring beginning October 2016, while concurrently trying to develop and effectively educate the same group of customers about how to effectively shop for competitive generation supply for the first time.

<sup>61</sup> CAUSE-PA St. 1, at 13:15 to 14:1-2.

<sup>62</sup> CAUSE-PA St. 1, at 14:2-3.

<sup>63</sup> See e.g., Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641, at 15-28-30 16-17 (Jan. 24, 2014); Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641, at 11, 17, 27 (March 12, 2014).

<sup>64</sup> CAUSE-PA et al., 120 A.3d at 1108.

Fourth, this proceeding is the first opportunity to review the Commonwealth Court's guidance regarding the legal authority and responsibility vested by the Choice Act in PECO and the Commission to ensure the availability of adequately funded, appropriately available, and cost-effective CAP programs while providing access to the competitive shopping market. This guidance was unavailable during the Commission's consideration of DSP II or DSP III. However, it is now appropriate to be used in this proceeding for prospective development of PECO's DSP for the period of June 1, 2017 through May 31, 2019.

Fifth, new data concerning the experience and effect of CAP customer shopping in the competitive market, which was unavailable during the consideration of the record in DSP II, has been developed and is now available. As Mr. Geller's testimony indicated, this new data is relevant to how the DSP design negatively impacts the ability of low-income households to afford electric service and the costs paid by ratepayers, and is therefore relevant to this proceeding.<sup>65</sup>

Finally, it is essential to note that the issue of how and under what terms and conditions CAP customers should continue to receive electric generation supply service from an EGS and remain on CAP is being addressed by each of the other EDCs as part of their respective DSP proceedings. It is the subject of an upcoming collaborative in the First Energy Service territories,<sup>66</sup> is currently being litigated in PPL's default service proceeding – in which PPL, OCA, CAUSE-PA, and I&E have taken a joint litigation position identical to the one CAUSE-PA is proposing herein<sup>67</sup> - and was raised as an issue by Duquesne Light in its currently pending

<sup>65</sup> CAUSE-PA St. 1, at 26:16-29:21.

<sup>66</sup> Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of their Default Service Programs, Order, at Docket Nos. P-2015-2511333, -2511351; -2511355; -2511356 (May 19, 2016); Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of their Default Service Programs, Recommended Decision, Docket Nos. P-2015-2511333, -2511351; -2511355; -2511356, at 18 (April 15, 2016).

<sup>67</sup> Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2017 through May 31, 2021, at Docket No. P-2016-2526627.

DSP proceeding.<sup>68</sup> Given the significant issues and dramatic restructuring of PECO's CAP in the upcoming year, it is vital that these matters be considered in the context of this proceeding, in light of the record evidence and the Commonwealth Court's clarification that the Commission have authority to impose restrictions on the terms and conditions by which PECO's CAP customers can select EGS service.

**3. The experience of CAP customers in other EDC service territories amply demonstrates that a policy of allowing CAP customers to shop without limitation on the price or terms of service will worsen the affordability crisis for PECO's CAP customers.**

Until now, PECO's CAP customers have not been able to shop for generation service while enrolled in CAP. As such, they and other ratepayers have not experienced any harm as a result of CAP customers paying EGS rates higher than the PTC. This is the case because no CAP customer has paid more than the PTC. It has nothing to do with the uniqueness of the retail market within PECO's service territory. PECO's CAP customers and the ratepayers who pay for CAP have been insulated from the effects of CAP shopping above the price to compare only because CAP customers have not been permitted to shop. It would be at best naïve and at worst disingenuous to assume that the experiences of CAP customers in other service territories will not result in similar harm to PECO's customers if, when CAP shopping begins, there are no restrictions which protect against CAP customers paying rates above the PTC.

No party has presented any evidence to indicate why or how the experience of CAP customers within PECO's service territory would be any different than the experience of PPL or First Energy CAP customers – the only two service territories that allow shopping of any kind for their CAP customers. There is no indication that the marketing techniques, offers, contract

<sup>68</sup> Petition of Duquesne Light Company for Approval of Default Service Plan for the Period of June 1, 2017 through May 31, 2021, at Docket No. P-2016-2543140.

terms, and EGSs will vary significantly from those service territories to PECO's. The economic demographics of the CAP customer population of PPL and First Energy are determined by statewide CAP Policy Guidelines regarding eligibility and are, thus, not different than those for the CAP customer population within PECO's service territory. EDC CAP customers across the state are all payment troubled, desperately poor, and require payment assistance that is subsidized in part by other ratepayers. While there are significantly more CAP customers within PECO's service territory than other service territories, these customers face the same challenges as all poor households across the state: how to pay for essential goods and services with little to no income. The only significant difference is that because of PECO's larger CAP enrollment more of its low-income customers will be subject to harm if permitted to engage in unrestricted shopping.

As stated in Mr. Geller's surrebuttal testimony, the time to act to prevent harm is now, not after the irreparable harm has occurred:

It seems particularly objectionable to subject this larger base of PECO's CAP customers to the same kind of harm that has been experienced by PPL and First Energy Companies' CAP customers simply because they have not yet also experienced that harm. This is especially so when the protection of low-income consumers in a competitive electric environment is one of the purposes of the Choice Act, and the potential harm of unrestricted shopping is known and can be prevented. It would be akin to knowing that a group of individuals in a neighboring county suffered harm because of unsafe dresser construction, but then insisting that, although those same dressers are about to be put on the market in Philadelphia, the cause of the harm would not be addressed or prevented by timely corrective action now, but only at some unspecified time in the future after the harm to Philadelphia's residents has occurred. PECO's proposal to deal with CAP shopping issues "later", after CAP customers have actually suffered irreparable harm within the boundaries of Philadelphia, is an abandonment of PECO's statutory and regulatory responsibility to maintain affordable CAP payments in order to enable its low-income customers maintain essential electric utility service. We know *now* the harm that will befall PECO's low-income CAP customers who shop without reasonable and targeted restrictions because all of the data – explained at length in my direct testimony – concerning how low-income households and other ratepayers are irreparably harmed by paying more

than the price to compare. There is no reason to subject PECO customers to this same harm based on the insistence that one needs to see “PECO-specific data” before reaching a conclusion and taking the action needed. The most appropriate time to implement the necessary protections in order to protect PECO customers from harm is now, in this proceeding, before it occurs.<sup>69</sup>

In the context of determining whether competition needs to bend to ensure that PECO’s universal service programs are adequately funded and available to assist low-income customers \ to afford electricity, it is perfectly appropriate for the Commission to consider the data from the PPL and First Energy service territories.

- a. As a result of unrestricted CAP shopping, CAP customers and other ratepayers in PPL’s service territory were harmed, as evidenced by the \$2.7 million net annual increase in program costs as a result of EGS/CAP customer contracts above the price to compare.

A review of the data shows that low-income CAP customers have been significantly harmed by their participation in the competitive electric generation market. In its most recent universal service plan proceeding, PPL Electric agreed that CAP customer shopping can affect customers’ ability to remain in the program if they have selected a supplier with very high energy prices and that the primary impact of high supplier prices for its CAP customers is to increase the “burn rate” of CAP credits.<sup>70</sup> In response, the Commission directed PPL to address the issue of CAP shopping in its upcoming DSP.<sup>71</sup> In preparation for its currently pending default service proceeding, PPL produced evidence which makes it clear that a significant number of PPL’s CAP customers who are shopping pay more than the price to compare.<sup>72</sup> For calendar year 2015, an average of 52% of PPL’s customers shopped each month, and of those

<sup>69</sup> CAUSE-PA St. No. 1 at 5:5 – 6:4

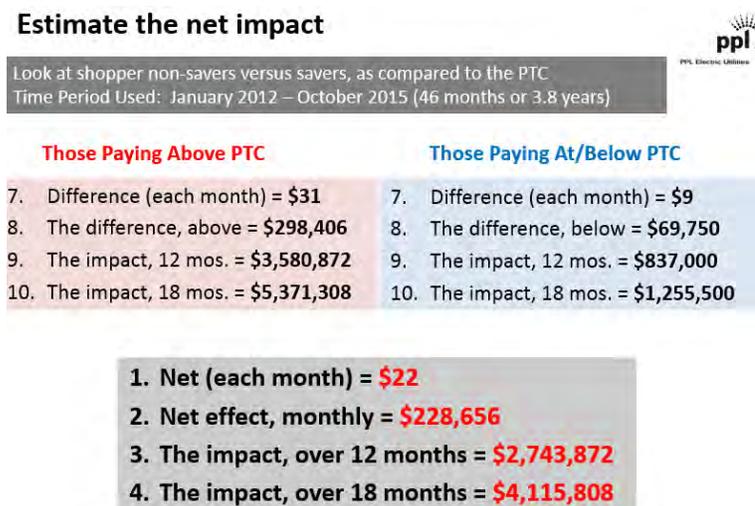
<sup>70</sup> See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Reply Comments of PPL Electric Utilities, Docket No. M-2013-2367021 at 11 (July 21, 2014).

<sup>71</sup> PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Final Order, Docket No. M-2013-2367021, at 19 (Sept. 11, 2014).

<sup>72</sup> See CAUSE-PA St. 1, Attachment B (PPL Electric Utilities OnTrack (CAP) Program Shopping Collaborative #2, Friday Jan. 15, 2016).

customers who were shopping, an average of 46% paid more than the price to compare. This evidence corroborates the findings of harm shown in PPL’s DSP II, but now spans a **46 month period of time (nearly 4 years) and reveals millions of dollars in net harm over that time, factoring in both the savings earned and the costs incurred by all CAP shopping customers over the same period.**<sup>73</sup> This length of time and depth of data paints an indisputably clear picture of a long term pattern of deep and quantifiable harm.

Specifically, the data also shows that those customers who paid more than the price to compare **paid significantly more**, as compared to the savings achieved by customers who paid less than the price to compare. In the month in which CAP customers who shopped paid the highest percentage more than the price to compare, they paid on average 101% more per kWh. But in the month when CAP customers who shopped achieved the greatest savings, they paid only 14% less than the price to compare. The effect of this data overall is summed up by information that PPL made publically available through its Second CAP Shopping Collaborative, which is excerpted below:<sup>74</sup>



<sup>73</sup> CAUSE-PA St. 1 at 29:1-11.

<sup>74</sup> See CAUSE-PA St. 1, Attachment B (PPL Electric Utilities OnTrack (CAP) Program Shopping Collaborative #2, Friday Jan. 15, 2016).

The net impact<sup>75</sup> of CAP customer shopping over the 46- month period from January 2012 through October 2015 is \$2,743,872 per year, which if extrapolated over that entire 46-month period results in more than \$10.5 million in additional costs for PPL's CAP customers and other ratepayers.<sup>76</sup> That is, as a result of PPL's current practice of allowing CAP customers to select any EGS offer regardless of cost, residential ratepayers are paying \$2,743,872 more per year for the CAP program than they would have paid had all CAP customers simply paid the price to compare.

Substantially similar data was produced in the First Energy Company Service territories. The reported data from that proceeding appears to show that as of November 2015, more than 77% of Met-Ed's CAP customers, more than 50% of Penelec's CAP customers, and more than 65% of West Penn's CAP customers who are shopping are paying a price higher than the price to compare.

The harm to vulnerable low income CAP customers and residential ratepayers across PPL and First Energy service territories which resulted from the lack of reasonable CAP shopping restrictions is unacceptable, and is not in accord with the purpose of CAP or the dual obligations of the Choice Act. At the same time, PECO and Duquesne CAP participants did not shop, never paid more than the PTC, and harm to them and non-CAP ratepayers did not occur. Indeed, the harm is preventable now, and a remedy must not be delayed.

Despite the fact that PECO's CAP customers are currently not permitted to shop for EGS-supplied generation service, there is no reason to believe that the long-term results would

<sup>75</sup> As noted above, see *supra* note 3, net impact – as the term is used here - means all of the savings incurred by CAP customers shopping at rates *at or below* the price to compare, subtracted from all of the costs incurred by CAP customers shopping at rates *higher* than the price to compare. This shows the net harm to the CAP program as a whole, ***but does not monetize the particularized harm to individual CAP customers who pay more.*** This latter harm, while not monetized, presents a significant and substantial risk of harm to low income households, and creates a ripple effect on other ratepayers in terms of increased termination costs and uncollectible expenses.

<sup>76</sup> See CAUSE-PA St. 1 at 29:1-11.

be any different in PECO's territory than in the other Pennsylvania utility service territories that have allowed and developed a history of CAP shopping.<sup>77</sup> In fact, unless the issue of CAP customer shopping is addressed now, in PECO's DSP IV, the harm could very well be worse for PECO's customers than in other territories, given PECO's significantly larger CAP and CAP-eligible population, their lack of prior shopping education and experience, the complications emanating from a concurrent change in CAP design, and the structure of PECO's new FCO CAP design – which, as explained above in section B-1 above, calculates CAP credits based on the price-to-compare and not the actual price the CAP customer pays for electricity, thereby significantly reducing the level of affordability achieved for this vulnerable class of customers.

**C. CAUSE-PA'S CAP-SOP PROPOSAL SHOULD BE ADOPTED BECAUSE IT APPROPRIATELY BALANCES THE ABILITY OF CAP CUSTOMERS TO ENTER THE COMPETITIVE MARKET WHILE CONTINUING TO ENSURE THAT ADEQUATELY FUNDED, COST-EFFECTIVE, AND AFFORDABLE PROGRAMS REMAIN AVAILABLE TO ASSIST LOW INCOME CUSTOMERS.**

Any program structure that allows PECO's CAP customers to contract for EGS-supplied service above the PTC needlessly compromises affordability and program costs. This is unacceptable as a matter of policy and cannot be tolerated or justified for the sole purpose of advancing the competitive electric generation market. When the Pennsylvania General Assembly enacted the Choice Act in 1996, it was concerned about choice and affordability, not choice or affordability. Indeed, the ability of low-income households to continue to afford electricity in a competitive environment was a core concern of the Act's drafters.<sup>78</sup> As a means of addressing these concerns, the General Assembly specifically tasked the Commission with the responsibility of ensuring that the programs intended to facilitate the affordability of electric

<sup>77</sup> CAUSE-PA St. 1 at 29:17-21.

<sup>78</sup> See 66 Pa. C.S. §§ 2802 (10), (17); 2804 (9).

service are appropriately funded and available in each electric distribution territory.<sup>79</sup> The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service,<sup>80</sup> and the statutory goals of universal service programs are to be achieved through the enactment, establishment and maintenance of policies, practices and services that help low-income customers maintain their electric service.<sup>81</sup> In this proceeding, the position of CAUSE-PA is the only position advanced which meets all of these concerns. Specifically, Mr. Geller proposed a CAP-SOP with the following criteria:

- The CAP-SOP would be the only means through which a CAP customer could shop and remain eligible for CAP benefits. Any shopping request from a CAP customer that does not get processed through the SOP would be denied.
- EGSs which volunteer to participate would have to agree to serve these CAP customers at a 7% discount off the PTC at the time of enrollment and, if the PTC drops more than 7% at any time during the customer's enrollment, the EGS would have to either re-enroll the customer in a new CAP-SOP enrollment with a new 7% off the then applicable PTC or return the customer to default service.
- If returned to default service, the customer could affirmatively re-enroll in the CAP-SOP with another supplier, if they so desire. Suppliers are already monitoring the PTC to determine whether to participate in the SOP and what offers to make to customers. As such, they will be able to readily determine when the PTC price drops by more than 7%, triggering their obligation to either adjust their CAP enrollee's contract terms or return the customer to default service.
- At the end of the 12-month CAP-SOP contract, participating EGSs would either re-enroll the CAP customers in a new CAP-SOP contract that is 7% off the then-applicable PTC (subject to the same terms noted above). Or, if they decide to stop serving CAP customers, the customer would be returned to default service. EGSs would not be allowed to enroll the CAP customer in a contract outside of the SOP.
- Like all SOP customers, CAP customers would be able to leave the SOP contract at any time, without facing termination or cancellation fees.<sup>82</sup>

This position was endorsed by both the OCA and TURN *et al.*<sup>83</sup> By instituting the safeguards outlined above, suppliers would not be forced to serve customers under terms to

<sup>79</sup> 66 Pa. C.S. § 2804 (9).

<sup>80</sup> 52 Pa. Code. § 54.73.

<sup>81</sup> Id.

<sup>82</sup> See CAUSE-PA St. No. 1: 31-33.

<sup>83</sup> See OCA St. 2-R at 5; See TURN St. 1 at 11-12

which they do not agree or find to be economically unviable.<sup>84</sup> EGSs could opt to participate or not participate, depending on the EGS's own assessment of its needs and goals - including whether it would make economic sense for them to participate.<sup>85</sup> CAP customers, as well as the ratepayers who pay for the CAP subsidy, would be protected by choosing to either remain on default service or select a supplier who voluntarily chooses to serve CAP customers under these rules.<sup>86</sup> Furthermore, CAP customers who pay less than the price to compare would benefit by extending the life of their CAP credits, and other ratepayers would benefit through reduced costs and associated expenses.<sup>87</sup> Participating suppliers would be competing with other participating suppliers who would all be operating under the same set of rules for CAP customers.<sup>88</sup>

Based on the evidence in the record of this proceeding, it is apparent that unrestricted CAP shopping would produce devastating results for vulnerable Pennsylvania households. Furthermore, the record “provides substantial reasons why there is no reasonable alternative” to eliminate the impending and inevitable harm that would befall CAP and non-CAP ratepayers. Thus, “‘competition needs to bend’ to ensure that adequately-funded, cost-effective, and affordable programs [exist] to assist customers who are of low-income to afford electric service.”<sup>89</sup> RESA’s arguments to the contrary are wholly unsupported and without merit.

- 1. RESA’s concerns about CAUSE-PA’s proposal are speculative, unfounded, and unsupported by substantial evidence, and its position that the status quo is acceptable – in light of undisputed harm – ignores critical mandates of the Choice Act.**

For its part, RESA asserts that CAUSE-PA’s proposal should not be accepted because (1) CAUSE-PA did not prove that the CAP program could not be modified to resolve the concerns

<sup>84</sup> See CAUSE-PA St. 1, at 33:4-5; CAUSE-PA 1-SR, at 10.

<sup>85</sup> See *id.*

<sup>86</sup> CAUSE-PA St. 1, at 33:5-7.

<sup>87</sup> CAUSE-PA St. 1, at 33:7-8.

<sup>88</sup> CAUSE-PA St. 1, at 33:8-10.

<sup>89</sup> CAUSE-PA et al., 120 A.3d at 1104.

that Mr. Geller has raised; (2) using the EDCs PTC as the sole metric for what constitutes an appropriate or reasonable price is improper, and should instead include non-commodity benefits “such as price certainty or other value added products and services that may be a part of the commodity offering”; (3) restrictions on the pricing structure would be difficult to implement; and (4) few if any EGSs would be willing to participate.<sup>90</sup>

As an initial matter, RESA’s position is essentially that the Commission should do nothing and that CAP customers should have the opportunity to shop without any restrictions, even though the demonstrated result is to compromise CAP customers’ ability to afford service as well as the affordability of the CAP program as a whole. This position is inconsistent with the Choice Act, “which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service.”<sup>91</sup> The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service.<sup>92</sup> The Commission has the responsibility to ensure that the means to achieve the affordability of electric service is appropriately funded and available in each electric distribution territory. This requires the enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.<sup>93</sup> The existence of a competitive market for generation supply does not change this requirement. The Choice Act contains within it the coexisting goals and obligations to promote competition as well as to protect low-income customers within the competitive framework to ensure rate affordability. CAUSE-PA’s proposal accommodates both goals. RESA’s, however, seeks to ignore one set of

<sup>90</sup> RESA St. No. 1R at 14, 15:7-8.

<sup>91</sup> CAUSE-PA et al., 120 A.3d at 1103-04 (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17)) (emphasis added).

<sup>92</sup> 66 Pa. C.S. § 2804 (9).

<sup>93</sup> 66 Pa. C.S. § 2803.

objectives to achieve the other, which is not reasonable or acceptable and should be rejected.

Each of RESA's specific challenges should also be disregarded.

First, there is no obligation on CAUSE-PA's part to demonstrate that the CAP structure could be modified to mitigate our concerns. This is true for several reasons. Most significantly, there is no CAP structure that could mitigate the concerns expressed because the Choice Act has placed CAP funding within a closed equation.<sup>94</sup> The costs have to be paid either by the CAP customer, the other rate payers who pay for CAP, or both. There is no way to avoid increased costs as a result of increased prices. The CAP guidelines contained in Title 52, Chapter 69 of the Public Utility Code explain why the harm created by CAP shopping to ratepayers, CAP customers, or both cannot be mitigated through adoption of changes to the CAP structure. Section 69.265(2) sets forth the alternative CAP structures approved by the Commission, including a percentage of income plan, a percentage of bill plan, a rate discount, or a monthly minimum payment.<sup>95</sup> But regardless of how a participant's CAP payment is calculated, the premise of CAP is to provide bill affordability to ensure universal access to essential utility services.<sup>96</sup> This necessarily requires utilities to provide a discount off the rates paid by other ratepayers. And, the fact remains that utilities are entitled to full recovery of the costs of providing universal service programming to its low income customers, which is recoverable through a nonbypassable rate mechanism.<sup>97</sup> Thus, the reason CAUSE-PA did not propose an "adjustment" to the CAP structure, and it is nowhere in the record, is because such a proposal would not only fail to address the concerns put forward (that CAP customers and ratepayers are being harmed), but such an "adjustment" would fix nothing and

<sup>94</sup> CAUSE-PA St. 1-SR at 6:16-22 to 7:1-3.

<sup>95</sup> 66 Pa. C.S. § 69.625 (2). An alternative payment formula may be approved, also, but it must first be "reviewed by the Bureau of Consumer Services and approved by the Commission." Id.

<sup>96</sup> 66 Pa. C.S. §§ 2802 (9), (10); 2803 (defining universal service and energy efficiency).

<sup>97</sup> 66 Pa. C.S. §§ 2802 (17); 2804 (8), (9).

would only exacerbate the extent of the harm to non-CAP ratepayers. This is a zero sum game and RESA's arguments to the contrary should be disregarded.

As to RESA's second argument, it asserts that restricting CAP customers' choices in the competitive market would somehow be depriving these customers of certain unnamed, undisclosed "benefits" of the competitive market, that using the PTC is an inappropriate mechanism for comparison, and that customers choose "value-added" products.<sup>98</sup> These assertions should be given no credence, as RESA provides no support to show any purported benefit and makes no attempt to identify or quantify which products may provide added value to CAP customers and/or would not otherwise economically burden these households. In the absence of specificity as to how CAP customers and the ratepayers who finance CAP will benefit from the "value" added by these products, and in the absence of a clear showing that the "value" outweighs the harm associated with paying rates higher than the PTC, any argument to this end should be rejected.

The stated purpose of the Electricity Generation Customer Choice and Competition Act ("Choice Act") is to "create direct access to retail customers to the competitive market for the generation of electricity."<sup>99</sup> Thus, the non-commodity products mentioned by RESA are not within the purview of the Choice Act, and RESA's concern about CAP customers' access to these non-commodity products is misplaced. The Choice Act focuses on the generation of electricity, ensuring that the low-income programs remain adequately funded, and ensuring that these programs actually assist low-income households **afford electric service.**<sup>100</sup> There is no intent or specification within the Act that encompasses access to debit cards, toasters, loyalty rewards, or any other attributes that could be included in an EGS price other than the cost of generation.

<sup>98</sup> RESA St. 1-R at 15:6-9; see also CAUSE-PA St. 1-SR at 8:18 to 9:14.

<sup>99</sup> 66 Pa. C.S. § 2802(12) (emphasis added).

<sup>100</sup> 66 Pa. C. S. § 2802(10).

In fact, “the Choice Act expressly requires the [Commission] to administer these programs in a manner that is cost effective for both CAP participants and non-CAP participants, who share the financial consequences of the CAP participants’ EGS choice.”<sup>101</sup> RESA’s insistence that these non-commodity products must remain available finds no support in the law and, to the extent that they may result in prices above the price to compare, will result in economic harm to CAP customers and the ratepayers who pay for CAP. In the absence of specificity as to how CAP customers and the ratepayers who finance CAP will benefit from the “value” added by these products, and in the absence of a clear showing that the “value” outweighs the harm associated with paying rates higher than the PTC, any argument to this end should be rejected.

Third and finally, RESA asserts that if any CAP shopping restrictions are put into place, restrictions on the pricing structure would be difficult to implement, and few EGSs would be willing to participate.<sup>102</sup> These assertions are without merit and should carry no weight. EGSs make business decisions all of the time for a host of reasons. Even today, under PECO’s current DSP, some suppliers choose not to enter PECO service territory. Even if one were to accept the possibility that some suppliers may be initially reluctant to serve CAP customers under the rules that have been proposed, this alone should not be dispositive. Suppliers should not be permitted to negate or prevent any CAP protections by simply refusing to participate. As the Commonwealth Court’s decision in the PECO CAP shopping appeal recognized that “under certain circumstances, unbridled competition may have to give way to other important concerns,”<sup>103</sup> and specifically found that under circumstances like those that exist here, the PUC has the authority and responsibility to limit CAP customers to paying no more than the PTC and

<sup>101</sup> CAUSE-PA et al., 120 A.3d at 1103.

<sup>102</sup> RESA St. 1-R at 15:19-20, 16:17-21

<sup>103</sup> CAUSE-PA et al., 120 A.3d at 1103.

eliminate early termination or cancellation fees “[s]o long as [PUC] ‘provides substantial reasons why there is no reasonable alternative, so competition needs to bend’ to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service.”<sup>104</sup>

The record in this proceeding amply demonstrates that substantial evidence – above and beyond CAUSE-PA’s burden of proving its case by a preponderance of the evidence – has been presented which clearly shows that permitting CAP customers to be contractually subject to paying EGS rates above the PTC has not worked in other EDC service territories and is harming CAP and non-CAP customers. Indeed, the record shows that there is no reasonable alternative other than to prevent and avoid the harm by implementing CAUSE-PA’s proposal for DSP IV, which is designed to ensure that adequately-funded, cost-effective, and affordable CAP shopping programs remain available to help customers who are low-income afford electric service. As such, “unbridled competition . . . ha[s] to give way to other important concerns.”<sup>105</sup> Whether or not any individual supplier chooses to serve or not serve CAP customers will be that supplier’s business decision to do so.

<sup>104</sup> CAUSE-PA et al., 120 A.3d at 1103-04 (internal citation to authority omitted).

<sup>105</sup> CAUSE-PA et al., 120 A.3d at 1103.

## VII. CONCLUSION

Low-income customers make up a significant portion of PECO's residential customer base, and the unique needs of this vulnerable population must be taken into consideration to ensure that they are adequately protected from higher prices. The record in this proceeding contains substantial evidence that PECO's CAP customers and its residential ratepayers who pay for CAP would be significantly harmed if they were to enter the competitive market without protections for the price and contract terms charged to CAP customers. CAUSE-PA, the OCA, and TURN et al. all support the initiation of reasonable restrictions proffered by CAUSE-PA. The only party opposed to these restrictions is RESA, who has taken the position that nothing should be done despite the overwhelming evidence of harm. RESA's insistence that the status quo should remain is unreasonable, unacceptable, and unsupported by evidence in the record.

Low-income households simply have no budget elasticity and, thus, face extreme hardship and significant financial harm when faced with the prospect of paying more for electricity, even for a short period of time, as this additional cost is often the difference between remaining current on their bills or falling behind. This is an unacceptable risk for PECO's CAP customers who have no other options for keeping current on their bills.

Therefore, in light of the "substantial reasons why there is no reasonable alternative so competition needs to bend"<sup>106</sup> that have been produced in this proceeding, the Commission is respectfully requested to approve the CAP-SOP, which will reasonably "limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits"<sup>107</sup> because

<sup>106</sup> CAUSE-PA et al., 120 A.3d at 1103-04.

<sup>107</sup> Id.

such rules are necessary to “ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service.”<sup>108</sup>

Respectfully submitted,

**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for the Coalition for Affordable Utility  
Services and Energy Efficiency in Pennsylvania  
(CAUSE-PA)*



Patrick M. Cicero, Esq., PA ID: 89039  
Elizabeth R. Marx, Esq., PA ID: 309014  
Joline Price, Esq., PA ID: 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

August 11, 2016

<sup>108</sup> Id.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS :  
DEFAULT SERVICE PROGRAM FOR : DOCKET NO. P-2016-2534980  
THE PERIOD FROM JUNE 1, 2017 :  
THROUGH MAY 31, 2019 :

---

**REPLY BRIEF OF THE COALITION FOR  
AFFORDABLE UTILITY SERVICES AND ENERGY  
EFFICIENCY IN PENNSYLVANIA**

---

**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for CAUSE-PA*

Patrick M. Cicero, Esq., PA ID: 89039  
Elizabeth R. Marx, Esq., PA ID: 309014  
Joline Price, Esq., PA ID: 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

August 25, 2016

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
A.	Background .....	1
B.	Procedural History .....	2
II.	STATEMENT OF THE CASE.....	2
III.	LEGAL STANDARDS AND BURDEN OF PROOF .....	2
IV.	SUMMARY OF ARGUMENT .....	7
V.	ARGUMENT .....	8
A.	The Commission should reject RESA’s positions because they are unsupported, speculative, and erroneous .....	8
1.	The previous CAP shopping decisions by the Commission were based on a different record and the evidence in this proceeding demonstrates the need for CAP shopping restrictions. ....	8
2.	Evidence of widespread harm to CAP customers in other utility service territories is relevant and persuasive evidence in support of CAUSE-PA’s proposal .....	11
3.	RESA provides no credible evidence to support its position that CAP customers will be adversely affected by implementing the suggested CAP SOP. ....	18
B.	The “wait and see” approach advocated by RESA, PECO and I&E to allow peco to implement a cap shopping plan without price protections is not a reasonable alternative.....	19
VI.	CONCLUSION.....	24

**TABLE OF AUTHORITIES**

**Cases**

Borough of E. McKeesport v. Special/Temporary Civil Service Comm’n, 942 A.2d 274, 281 (Pa. Commw. Ct. 2008)..... 4

Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. (CAUSE-PA) et al. v. Pa. PUC, 120 A.3d 1087, 1103-04 (Pa. Commw. Ct. 2015)..... 3, 4, 10, 11, 17, 24

Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. (CAUSE-PA) et al. v. Pa. PUC, No 445 CD 2014 (Pa. Commw. Ct. Mar. 28, 2014) (unpublished mem. op). .... 23

Hurley v. Hurley, 754 A.2d 1283 (Pa. Super. Ct. 2000)..... 6

Met-Ed Indus. Users Group v. Pa. PUC, 960 A.2d 189 (Pa. Commw. Ct. 2008)..... 3

PP&L Indus. Customer Alliance v. Pa. PUC, 780 A.2d 773 (Pa. Commw. Ct. 2001)..... 3

**Statutes**

2 Pa. C.S. § 704..... 3

66 Pa. C.S. § 2804..... 10, 19, 23

66 Pa. C.S. § 2802..... 10, 17, 23

**Regulations**

52 Pa. Code. § 54.73..... 23

**Pa. Public Utility Commission Orders, Decisions, and Secretarial Letters**

Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641 (March 12, 2014)..... 10

Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641 (Jan. 24, 2014)..... 9

Petition of PECO Energy Company for Approval of its Default Service Plan, Sec. Ltr., Docket No. P-2012-2283641 (May 11, 2016)..... 7, 11, 21

Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021, Initial Decision, Docket No. P-2016-2526627 (Aug. 17, 2016) ..... 4, 5, 6, 18, 22

PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Final Order, Docket No. M-2013-2367021 (Sept. 11, 2014)..... 13

**Other Authorities**

PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Reply Comments of PPL Electric Utilities, Docket No. M-2013-2367021 (July 21, 2014)..... 13

## **I. INTRODUCTION**

### **A. BACKGROUND**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, files this Reply Brief in response to the Main Briefs of the Retail Energy Supply Association (RESA), PECO Energy Company (PECO), and the Bureau of Investigation and Enforcement (I&E). As explained throughout, RESA’s argument is not rooted in law or fact. Rather, it is premised on factually disproven and legally unsound generalizations about how the competitive energy market will react to the introduction of reasonable CAP restrictions designed to protect economically vulnerable customers from proven harm and ensure that the costs of the CAP program are not unnecessarily increased. Furthermore, the “wait and see” approach advocated by RESA, PECO and I&E is insufficient because it will fail to protect CAP customers who shop for electric supply and non-CAP residential ratepayers within PECO’s service territory from the certain, substantial, and well-documented negative effects of paying more than the price to compare (PTC).

For the reasons contained herein – as well as the arguments contained in the Main Briefs of CAUSE-PA, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.), and the Office of Consumer Advocate (OCA) – the positions advanced by RESA in its Main Brief should be rejected, and CAUSE-PA’s proposal to implement a standard offer program designed specifically for CAP customers (CAP-SOP)<sup>1</sup> should be adopted to ensure that CAP costs are reasonably controlled and that low income customers and residential ratepayers are protected from the certain and substantial harm that will occur with the

---

<sup>1</sup> A summary of the CAP-SOP is set forth in CAUSE-PA’s Main Brief at page 11.

implementation of any CAP shopping proposal that does not limit CAP customers to choosing contracts at or below PECO's price to compare.

## **B. PROCEDURAL HISTORY**

CAUSE-PA incorporates by reference the procedural history set forth in its Main Brief. Main Briefs were filed on August 11, 2016, to address the sole issue reserved for litigation in this proceeding: Whether adoption of CAUSE-PA's CAP-SOP proposal is reasonable in light of the significant and certain harm which will be incurred by CAP customers and the residential ratepayers who finance the CAP program. Main Briefs were filed by CAUSE-PA, TURN et al., the OCA, PECO, I&E, and RESA.

## **II. STATEMENT OF THE CASE**

CAUSE-PA incorporates by reference its Statement of the Case set forth in its Main Brief.

## **III. LEGAL STANDARDS AND BURDEN OF PROOF**

Throughout its brief, RESA distorts the legal standard the Commission must use to determine whether restrictions on CAP shopping are necessary. Specifically, RESA concludes that CAUSE-PA, TURN et al., and the OCA "have the burden of proof and ultimately the burden to persuade the Commission that there are **no reasonable alternatives** to their proposed restrictions on competition."<sup>2</sup> RESA further asserts that, even if the proponent of a proposal meets the burdens of production and persuasion, the Choice Act allows the Commission to "rely on substantial evidence to reject the proposed restriction."<sup>3</sup> RESA's assertions regarding the applicable legal standard distort the law and twist the standard into one which is expedient for its purposes, but is not in accord with applicable precedent.

---

<sup>2</sup> RESA MB at 6. Although CAUSE-PA in no way concedes the correctness of RESA's fallacious legal standard, as explained in detail below, CAUSE-PA has nevertheless met the standard posited by RESA by putting forth a substantial, undisputed evidence that every other proposal would continue to impose certain and substantial harm to low income CAP customers, residential ratepayers, or both.

<sup>3</sup> RESA MB at 6.

First, in reaching its decision that the Commission has the legal authority to approve rules that limit competition to protect competing interests and priorities (here, the interest in protecting ratepayers from unnecessary costs and preserving universal access to utility service), the Commonwealth Court, in Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. (CAUSE-PA) et al. v. Pa. PUC, 120 A.3d 1087, 1103-04 (Pa. Commw. Ct. 2015), focused on the Commission's authority to act on a petition, and set forth standards applicable to that authority as well as the standard for review on appeal. The Court did not change the burden of proof or impose a new substantive legal standard. The Commonwealth Court stated:

So long as it “provides substantial reasons why there is no reasonable alternative so competition needs to bend” to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service . . . the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – e.g. EGS rate ceiling, prohibition against early termination/cancellation fees, etc.<sup>4</sup>

This is the standard that the Commission must use in assessing the evidence presented in this case, and it is the standard that the Commonwealth Court will use in assessing the Commission's ruling on any appellate review. It is not a new substantive legal standard for the parties presenting evidence to the Commission. That standard remains as it always was: Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence,<sup>5</sup> meaning evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>6</sup> Thus, proponents of restrictions on CAP shopping must come forward

---

<sup>4</sup> Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. (CAUSE-PA) et al. v. Pa. PUC, 120 A.3d 1087, 1103-04 (Pa. Commw. Ct. 2015) (quoting PP&L Indus. Customer Alliance v. Pa. PUC, 780 A.2d 773 (Pa. Commw. Ct. 2001)).

<sup>5</sup> Met-Ed Indus. Users Group v. Pa. PUC, 960 A.2d 189, 193, n.2 (Pa. Commw. Ct. 2008) (citing 2 Pa. C.S. § 704).

<sup>6</sup> Borough of E. McKeesport v. Special/Temporary Civil Service Comm'n, 942 A.2d 274, 281 (Pa. Commw. Ct. 2008).

with substantial evidence from which the Commission can determine whether CAP restrictions are necessary,<sup>7</sup> which they have.

It is instructive that RESA made a similar argument in PPL Electric Utilities' (PPL) recent default service program proceeding, which was rejected by Administrative Law Judge Susan Colwell. In that proceeding, RESA opposed restrictions that were jointly supported by CAUSE-PA, the OCA, PPL, and I&E (collectively, in that proceeding, known as "Joint Parties"), and are substantially similar to those proposed by CAUSE-PA and supported by OCA and TURN et al. in this proceeding. In rejecting RESA's statement of the legal standard, ALJ Colwell stated:

**It is not feasible to require that the Joint Parties present an exhaustive list of all possible alternatives and discuss each one critically.** They have shown that they weighed the alternatives and active promoting the Joint Litigation Position as the best plan. **It is legally sufficient to show that alternatives have been evaluated and rejected in favor of the plan ultimately promoted, and to counter the alternatives raised by the party or parties opposing the choice.** RESA did not present a reasonable alternative to be considered until briefing, and even then, relies upon the record and original plan proposed by [PPL].<sup>8</sup>

The same is true here: "It is legally sufficient to show that alternatives have been evaluated and rejected in favor of the plan ultimately promoted, and to counter the alternatives raised by the party or parties opposing the choice."<sup>9</sup> As argued more fully below, CAUSE-PA, TURN et al. and the OCA have collectively countered the only alternative that has been proposed – PECO's approach of filing an unrestricted CAP shopping plan with an educational component – as insufficient and unreasonable in light of the overwhelming evidence of harm that will occur under this approach. In PPL, ALJ Colwell succinctly and accurately characterized this as the "cross your

---

<sup>7</sup> CAUSE-PA et al., 120 A.3d at 1106-07 ("As the proponents of the rule restrictions in this case, [Joint Parties] ha[ve] the burden of proof and ultimately the burden to persuade the PUC to enact the proposed restrictions on competition.").

<sup>8</sup> Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021, Docket No. P-2016-2526627, Initial Decision, at 47-48 (August 17, 2016) (hereinafter "PPL CAP Shopping ID").

<sup>9</sup> Id.

fingers and hope they will listen”<sup>10</sup> approach and correctly concluded that it was “simply insufficient.”<sup>11</sup> The record in this proceeding compels the same conclusion.

Further, RESA is incorrect in claiming that “even if restrictions on competition are deemed the only way to address the concern, the Commission may rely on substantial evidence showing why such restrictions should be rejected.”<sup>12</sup> This is a distortion of the appellate standard. While the Commonwealth Court in CAUSE-PA et al. affirmed the Commission’s decision to not impose price restrictions, it did so *based on the record then before it*. In essence, the Court found – without reweighing the evidence or substituting its judgment for that of the PUC – that the parties in the case before it did not fulfill their burden of persuasion to convince the Commission that CAP restrictions were necessary such that competition had to bend. The Court did not find, as RESA asserts, that the parties met their burden of proof, and that the Commission could nonetheless reject the proposal based on substantial evidence.<sup>13</sup> RESA’s attempts to recast the legal standard are improper and should be disregarded.

Furthermore, RESA treats the legal standard as if it were a one-sided affair, it is not. The burden of proof is actually composed of two different burdens: the burden of production and the burden of persuasion.<sup>14</sup> While the burden of persuasion stays with the party that has the ultimate burden of proof, the burden of production can and does shift. ALJ Colwell succinctly summarized this in her recent Initial Decision in the PPL DSP case:

The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. If the party (initially, this will usually be the complainant, applicant, or petitioner, as the case may be) with the

---

<sup>10</sup> PPL CAP Shopping ID at 61.

<sup>11</sup> Id.

<sup>12</sup> RESA MB at 6.

<sup>13</sup> RESA MB at 11.

<sup>14</sup> Hurley v. Hurley, 754 A.2d 1283 (Pa. Super. 2000).

burden of production fails to introduce sufficient evidence the opposing party is entitled to receive a favorable ruling. That is, the opposing party would be entitled to a compulsory nonsuit, a directed verdict, or a judgment notwithstanding the verdict. Once the party with the initial burden of production introduces sufficient evidence to make out a prima facie case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to his position. **The burden of production goes to the legal sufficiency of a party's case.**<sup>15</sup>

In this proceeding, RESA has come forward with no evidence which would meet its burden of production. While it points obliquely to a filing that PECO has indicated that it will make by September 1, 2016, as a possible solution, RESA has suggested nothing tangible to address the certain and substantial harm caused by unrestricted CAP Shopping, and its “just say no” approach is insufficient to meet its burden of producing evidence. As explained at length below, the record is clear: the harm to CAP customers and other ratepayers is certain and substantial, and no alternatives to CAUSE-PA’s proposal reasonably exist to remedy that harm. As such, the CAP-SOP proposal set out by CAUSE-PA and endorsed by the OCA and TURN et al. should be approved.

---

<sup>15</sup> PPL CAP Shopping ID at 53.

#### IV. SUMMARY OF ARGUMENT

RESA has produced no evidence in this proceeding that can be credibly relied on to overcome the need for adequate protections of PECO's CAP customers and has not met the burden of producing evidence that overcomes the substantial evidence introduced by CAUSE-PA, the OCA, and TURN et al. showing that PECO's CAP customers are economically vulnerable and in need of protections to ensure that when they choose an electric generation supplier they do so at a rate that does not exceed the price to compare. For its part, RESA merely argues that the previous CAP shopping decisions by the Commission somehow compel the Commission to discount the evidence and CAUSE-PA's CAP SOP proposal in this case. This is categorically untrue. The decisions of the Commission and the Commonwealth Court in PECO's previous DSP II proceeding were based on evidence entered into the record of that proceeding. None of the record evidence presented in this proceeding was available at that time. It can hardly be the case that all of the CAP shopping issues were fully vetted in that proceeding. The Commission recognized this very fact in its May 11, 2016 Secretarial Letter at PPL's DSP II docket, which invited further inquiry into these matters in this or other proceedings.<sup>16</sup>

RESA also inexplicably asserts that the evidence of widespread harm to CAP participants shopping for electric supply in other service territories is not sufficient to support CAUSE-PA's CAP-SOP proposal in this case. RESA offers no support for this conclusion, nor can it. No party has presented any evidence to indicate why or how the experience of CAP customers within PECO's service territory would be any different than the experience of PPL or First Energy CAP customers. There is no indication that the marketing techniques, offers, contract terms, and EGSs will vary significantly from those service territories to PECO's. The economic demographics of

---

<sup>16</sup> Petition of PECO Energy Company for Approval of its Default Service Plan, Sec. Ltr., Docket No. P-2012-2283641 (May 11, 2016) (hereinafter May 11 2016 Secretarial Letter).

the CAP customer population of PPL and First Energy are determined by statewide CAP Policy Guidelines regarding eligibility and are, thus, not different than those for the CAP customer population within PECO's service territory. CAP customers across the state are all payment troubled, desperately poor, and require payment assistance that is subsidized in part by other ratepayers. As such, the experiences of CAP customers within other electric service territories is directly relevant to determining appropriate safeguards for PECO's CAP customers.

Finally, RESA, PECO, and I&E suggest that the parties should wait to see what PECO may file by September 1, 2016, file comments to that proceeding, and allow PECO to conduct its educational campaign. They argue that the Commission should only act to prevent avoidable harm and implement price protections *after* PECO's CAP customers actually experience the harm associated with higher, unaffordable EGS rates. This is unacceptable, as it fails to fulfill the Commission's obligation to ensure that universal service programs are appropriately available, adequately funded, and cost effective. There is no compelling reason to wait for harm that the Commission knows will occur before protecting customers from experiencing that harm. To do so would be an abdication of the Commission's responsibilities. For all of the reasons stated more fully below, the wait and see approach is grossly inadequate and is not a reasonable alternative to the CAP-SOP proposal presented by CAUSE-PA and endorsed by the OCA and TURN et al.

**V. ARGUMENT**

**A. THE COMMISSION SHOULD REJECT RESA'S POSITIONS BECAUSE THEY ARE UNSUPPORTED, SPECULATIVE, AND ERRONEOUS**

**1. The previous CAP shopping decisions by the Commission were based on a different record and the evidence in this proceeding demonstrates the need for CAP shopping restrictions.**

From the very outset, RESA's Main Brief sets forth half-truths and incomplete facts of decisions made by the Commission based on an entirely different record. RESA asserts that the

previous CAP shopping decisions in PECO's service territory somehow dictate a result in this case because "implementation of shopping for CAP customers has already been fully vetted and reasonable alternative restrictions have already been determined through other litigated and appellate proceedings."<sup>17</sup> RESA further notes, after reviewing the history of CAP shopping decisions in PECO's service territory through and including the Commonwealth Court's decision, that "[t]he [p]roponents of CAP Shopping Restrictions raise no new issues in this proceeding to warrant further delay."<sup>18</sup> Both statements are simply untrue.

When PECO filed its DSP II CAP shopping plan, it initially proposed to allow CAP customers to shop for competitive electric supply from an EGS and retain CAP benefits only if the EGS guaranteed a rate that would be no greater than PECO's price to compare. In that proceeding, the OCA proposed that PECO's CAP shopping program also permit CAP customers to exit EGS contracts with no termination/cancellation fees. The Commission rejected both proposals, stating that these program features amounted to price restrictions that it did not have statutory authority to approve.<sup>19</sup> The Commission also determined, based on the evidence before it at the time of its DSP II consideration, that even if it did have authority to approve price limitations and fee restrictions for shopping CAP participants, it believed such limitations and restrictions would impede development of the competitive market, and that only a "robust competitive market coupled with effective customer education will result in the least-cost option" for CAP participants.<sup>20</sup> CAUSE-PA, TURN et al., and the OCA appealed the decision to the Commonwealth Court.

---

<sup>17</sup> RESA MB at 10.

<sup>18</sup> RESA MB at 11.

<sup>19</sup> Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, at 14, 16-17, Docket No. P-2012-2283641 (Jan. 24, 2014) (hereinafter January 2014 Opinion and Order).

<sup>20</sup> Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, at 11, Docket No. P-2012-2283641 (March 12, 2014) (hereinafter March 2014 Opinion and Order).

By opinion and order dated July 14, 2015,<sup>21</sup> the Commonwealth Court reversed the Commission's determination concerning its legal authority, and clarified that both utilities and the Commission have the legal ability to set different rules for CAP customers. Specifically, the Court stated that the Electricity Generation Customer Choice and Competition Act<sup>22</sup> ("Choice Act") "does not demand absolute and unbridled competition,"<sup>23</sup> and found that "under certain circumstances, unbridled competition may have to give way to other important concerns,"<sup>24</sup> and specifically found that under circumstances like those that exist here, the Commission has the authority to limit CAP customers to paying no more than the price to compare and eliminate early termination or cancellation fees. The Commonwealth Court determined that the Commission erred as a matter of law regarding its determination that it did not have the legal authority needed to impose price restrictions on the terms and conditions surrounding CAP customer's access to EGS products while enrolled in CAP. However, the Commonwealth Court deferred to the Commission's determination regarding the evidence presented in the DSP II proceeding. Specifically, the Court found that the Commission had substantial evidence for its determination to reject the price ceiling requested by PECO, but that there was not substantial evidence for the Commission's determination to reject the OCA's proposal to prohibit early termination and cancellation fees.<sup>25</sup> RESA asserts that this decision means that the issue has been fully vetted. This is not the case.

First, the issues previously decided by the Commission and the Commonwealth Court in PECO's DSP proceeding were based on evidence entered into the record of that proceeding, a

---

<sup>21</sup> CAUSE-PA et al., 120 A.3d 1087.

<sup>22</sup> See 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

<sup>23</sup> CAUSE-PA et al., 120 A.3d at 1101.

<sup>24</sup> CAUSE-PA et al., 120 A.3d at 1103.

<sup>25</sup> CAUSE-PA et al., 120 A.3d at 1107-08.

record that closed on July 11, 2013. None of the record evidence presented in this proceeding was available then, so it is not the case – as RESA asserts - that all of the CAP shopping issues were fully vetted in that proceeding. The Commission recognized this very fact in its May 11, 2016 Secretarial Letter at PPL’s DSP II docket, which invited further inquiry into these matters in this or other proceedings. The letter stated, in pertinent part:

The Commission’s final approval of the rule revision ordered by the Court in this matter does not prejudice any Party’s ability to raise the termination/cancellation issue, and to provide evidence regarding its impacts on the retail electric shopping market, in a future proceeding.<sup>26</sup>

Furthermore, the Commission clearly recognized that the Commonwealth Court’s decision was “predicated on its review of the record evidence before the Commission during PECO’s DSP II proceeding.”<sup>27</sup> Thus, any and all new evidence that was not available to be entered into the DSP II proceeding must be considered, particularly in light of the clarified legal standard. Contrary to RESA’s assertion that there was no new issues in this proceeding, the record in this proceeding demonstrates that there are substantial adverse impacts to allowing CAP customers to shop at prices higher than the price to compare.

**2. Evidence of widespread harm to CAP customers in other utility service territories is relevant and persuasive evidence in support of CAUSE-PA’s proposal**

RESA is incorrect in its contention that the evidence of widespread harm to CAP participants shopping for electric supply in other service territories is not sufficient to support

---

<sup>26</sup> May 11, 2016 Secretarial Letter at 2 n. 2. It is unclear why the Commission chose to limit its footnote to clarify the ability of parties to raise the termination and cancellation fee issue in future proceedings – like this one – and did not include the related and inextricably intertwined issue of whether other CAP shopping rules should be developed to ensure continued CAP customer affordability for those customers who select EGS-supplied generation service, clearly the Commission could not prohibit such an inquiry as it would seem to violate due process rights to allow parties to address one set of issues while disallowing parties to raise another critically important, material, and relevant issue – ensuring CAP customer affordability within the competitive market – which is articulated in the Choice Act and the recent Commonwealth Court decision.

<sup>27</sup> May 11, 2016 Secretarial Letter at 2 n. 4.

CAUSE-PA's CAP-SOP proposal. RESA offers no support for its conclusion that the experience of customers in 5 of the 7 large EDC service territories is irrelevant to what PECO CAP customers can expect to encounter. Indeed, evidence of harm in 5 of 7 large electric distribution companies is wholly relevant in this case. As set forth in CAUSE-PA's Main Brief:

There is no indication that the marketing techniques, offers, contract terms, and EGSs will vary significantly from those service territories to PECO's. The economic demographics of the CAP customer population of PPL and First Energy are determined by statewide CAP Policy Guidelines regarding eligibility and are, thus, not different than those for the CAP customer population within PECO's service territory. EDC CAP customers across the state are all payment troubled, desperately poor, and require payment assistance that is subsidized in part by other ratepayers. While there are significantly more CAP customers within PECO's service territory than other service territories, these customers face the same challenges as all poor households across the state: how to pay for essential goods and services with little to no income. The only significant difference is that because of PECO's larger CAP enrollment more of its low-income customers will be subject to harm if permitted to engage in unrestricted shopping.<sup>28</sup>

In the context of determining whether competition needs to bend to ensure that PECO's universal service programs are adequately funded and available to assist low-income customers to afford electricity, it is perfectly appropriate for the Commission to consider the data from the PPL and First Energy service territories, particularly when this data shows a length of time and depth of data that paints an indisputably clear picture of a long term pattern demonstrated over a period of years which has resulted in deep and quantifiable harm. None of this information has previously been before the Commission in making a judgment about PECO's CAP shopping parameters.

Perhaps RESA wants to pretend this evidence does not exist because it is so damaging to its rhetorical position. Whatever the motivation, the experience of CAP customers in other utility service territories amply demonstrates that a policy of allowing CAP customers to shop without

---

<sup>28</sup> CAUSE-PA MB at 25-26.

limitation on the price or terms of service will worsen the affordability crisis for PECO's CAP customers.<sup>29</sup> This was summarized in CAUSE-PA's Main Brief:

A review of the data [in PPL's service territory] shows that low-income CAP customers have been significantly harmed by their participation in the competitive electric generation market. In its most recent universal service plan proceeding, PPL Electric agreed that CAP customer shopping can affect customers' ability to remain in the program if they have selected a supplier with very high energy prices and that the primary impact of high supplier prices for its CAP customers is to increase the "burn rate" of CAP credits.<sup>30</sup> In response, the Commission directed PPL to address the issue of CAP shopping in its upcoming DSP.<sup>31</sup> In preparation for its currently pending default service proceeding, PPL produced evidence which makes it clear that a significant number of PPL's CAP customers who are shopping pay more than the price to compare.<sup>32</sup> For calendar year 2015, an average of 52% of PPL's customers shopped each month, and of those customers who were shopping, an average of 46% paid more than the price to compare. This evidence corroborates the findings of harm shown in PPL's DSP II, but now spans a **46 month period of time (nearly 4 years) and reveals millions of dollars in net harm over that time, factoring in both the savings earned and the costs incurred by all CAP shopping customers over the same period.**<sup>33</sup> This length of time and depth of data paints an indisputably clear picture of a long term pattern of deep and quantifiable harm.

...

**The net impact<sup>34</sup> of CAP customer shopping over the 46- month period from January 2012 through October 2015 is \$2,743,872 per year, which if extrapolated over that entire 46-month period results in more than \$10.5 million in additional costs for PPL's CAP customers and other ratepayers.**<sup>35</sup> That is, as a result of PPL's current practice of allowing CAP customers to select any EGS offer regardless of cost, residential ratepayers are paying \$2,743,872 more

<sup>29</sup> See CAUSE-PA MB at 18-20 (summarizing the energy affordability challenges for PECO's CAP customers).

<sup>30</sup> See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Reply Comments of PPL Electric Utilities, Docket No. M-2013-2367021 at 11 (July 21, 2014).

<sup>31</sup> PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Final Order, Docket No. M-2013-2367021, at 19 (Sept. 11, 2014).

<sup>32</sup> See CAUSE-PA St. 1, Attachment B (PPL Electric Utilities OnTrack (CAP) Program Shopping Collaborative #2, Friday Jan. 15, 2016).

<sup>33</sup> CAUSE-PA St. 1 at 29:1-11.

<sup>34</sup> As noted above, see supra note 3, net impact – as the term is used here - means all of the savings incurred by CAP customers shopping at rates *at or below* the price to compare, subtracted from all of the costs incurred by CAP customers shopping at rates *higher* than the price to compare. This shows the net harm to the CAP program as a whole, **but does not monetize the particularized harm to individual CAP customers who pay more**. This latter harm, while not monetized, presents a significant and substantial risk of harm to low income households, and creates a ripple effect on other ratepayers in terms of increased termination costs and uncollectible expenses.

<sup>35</sup> See CAUSE-PA St. 1 at 29:1-11.

per year for the CAP program than they would have paid had all CAP customers simply paid the price to compare.

Substantially similar data was produced in the First Energy Company Service territories. The reported data from that proceeding appears to show that as of November 2015, more than 77% of Met-Ed's CAP customers, more than 50% of Penelec's CAP customers, and more than 65% of West Penn's CAP customers who are shopping are paying a price higher than the price to compare.<sup>36</sup>

This experience is directly relevant to PECO's plan to permit its CAP customers to shop because PECO's CAP and non-CAP residential customers will face the same burdens, the same products, and the same unaffordability. As the record demonstrates, effective October 2016, PECO will switch its CAP design from a tiered CAP rate program to a Fixed Credit Option (FCO) program, which has produced a significantly different and complex new CAP structure, which will completely overhaul of the method PECO uses to calculate a CAP customer's bill.<sup>37</sup> While the FCO design is complicated, the most essential and relevant component to be considered with regard to the interaction of CAP and the competitive market in PECO's service territory is this: **PECO's FCO CAP design targets affordability – and the amount of CAP credits allotted to CAP customers – based on PECO's default service rate, regardless of whether the customer is shopping for electric generation supply service.**<sup>38</sup> If a customer is enrolled in PECO's FCO CAP, and purchases generation supply at a price that is higher than the price to compare for any period of time, she or he will not receive a credit that accounts for that higher price, and will receive less of a discount than is required for his or her bill to be affordable pursuant to Commission standards. In other words, the CAP customer will use their CAP credit to cover fewer kilowatt hours of electricity usage, thereby resulting in higher monthly bills which exceed the affordability standards set by the Commission. In turn, non-CAP residential customers who finance the CAP-

---

<sup>36</sup> CAUSE-PA MB at 27-29 (emphasis in original).

<sup>37</sup> CAUSE-PA MB 15-18.

<sup>38</sup> See CAUSE-PA St. 1, at 22-23.

FCO will pay to supplement the profit margins of EGSs – rather than buying down the level of unaffordability for vulnerable electric consumers. Paying more than the price to compare will, thus, necessarily erode the effectiveness of PECO’s CAP in reaching Commission-established energy burden targets. This evidence was not in the record and was not available to the Commission in the DSP II Proceeding and, thus, must be considered here. RESA’s unsupported assertions to the contrary should be disregarded.

For its part, RESA incorrectly and inexplicably contends that “at least 58% of CAP customers paid at or less than the PTC every month from January 2012 through February 2016 in PPL’s service territory”<sup>39</sup> and that “the 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.”<sup>40</sup> This is not the case.

As to its first assertion, RESA badly misconstrues the data. In his direct testimony, Mr. Geller, on behalf of CAUSE-PA states that “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.”<sup>41</sup> Furthermore, Mr. Geller attached a chart at Appendix D to his direct testimony that made this point: At the **lowest point** from January 2012 through February 2016, 42% of CAP customers shopping within PPL’s service territory paid more than the PTC. Thus, RESA’s contention that somehow this was the average over this more than 40 month period is irrefutably false. A simple glance at Appendix D of CAUSE-PA’s Statement No. 1 plainly shows this.

---

<sup>39</sup> RESA MB at 14, n. 57.

<sup>40</sup> RESA MB at 14-15.

<sup>41</sup> CAUSE-PA St. No. 1 at 27.

As to its second assertion – that the data does not take into consideration the contract terms or other benefits or incentives for switching – this is inaccurate as to the contract terms and irrelevant as to the incentives for switching. PPL’s data does reflect individual customer contracts because it calculated the cost to ratepayers by compiling the gains and losses of all CAP shopping customers over a period of time, thereby quantifying the consumer’s individual experience in each individual contract, and aggregating that impact over the population as a whole. This aggregation showed over a *46 month period of time (nearly 4 years) there was \$10.5 million in net harm over that time, factoring in both the savings earned and the costs incurred by all CAP shopping customers over the same period.*<sup>42</sup>

Moreover, RESA’s assertion that the data does not reflect other incentives and products – such as “a lower price, a gift card, or an energy audit” misses the point: paying more than the PTC at any time, and particularly for long periods of time, harms CAP customers and the ratepayers who finance CAP. This harm does not change when CAP customers receive other products, such as energy audits and gift cards. Furthermore, the stated purpose of the Choice Act is to “create direct access to retail customers to the competitive market for the generation of electricity.”<sup>43</sup> Thus, the non-commodity products mentioned by RESA **are not within the purview of the Choice Act,** and RESA’s concern about CAP customers’ access to these non-commodity products is misplaced. The Choice Act focuses on the generation of electricity, ensuring that the low-income programs remain adequately funded, and ensuring that these programs actually assist low-income households **afford electric service.**<sup>44</sup> There is no intent or specification within the Act that

---

<sup>42</sup> See CAUSE-PA St. No 1 at 11 (showing a net shopping impact of \$228,656 monthly, which multiplied by 46 months is \$10,518,176).

<sup>43</sup> 66 Pa. C.S. § 2802(12) (emphasis added).

<sup>44</sup> 66 Pa C. S. § 2802(10).

encompasses access to debit cards, toasters, loyalty rewards, or any of the myriad of other products or services other than the cost of generation.

In fact, “the Choice Act expressly requires the [Commission] to administer these programs in a manner that is cost effective for both CAP participants and non-CAP participants, who share the financial consequences of the CAP participants’ EGS choice.”<sup>45</sup> RESA’s insistence that these non-commodity products must remain available finds no support in the law, and - to the extent that they may result in prices above the price to compare - will result in economic harm to CAP customers and the ratepayers who pay for CAP. RESA’s argument should be rejected. There is no evidence showing that CAP customers and the ratepayers who finance CAP will benefit from the “value” added by these products, and there is no evidence that the “value” outweighs the harm associated with paying rates higher than the PTC. There is no evidence demonstrating that any “value added” product has reduced the generation cost for CAP or non-CAP customers any argument to this end should be rejected. In the absence of any such evidence, RESA’s argument is hollow.

It is instructive that ALJ Colwell disposed of a similar argument by RESA that was made in PPL’s DSP:

RESA’s pointing out that the CAP customers *may have* enjoyed some benefit is not persuasive where the actual knowledge of these theoretical benefits is within the records of RESA’s own members and not within the records of any other part, including [PPL]. Pointing out what might have happened is not sufficient to counter the weight of the real data presented by [PPL], the veracity of which has not been challenged.<sup>46</sup>

---

<sup>45</sup> CAUSE-PA et al., 120 A.3d at 1103.

<sup>46</sup> PPL CAP Shopping ID at 54 (emphasis added).

The same is true in this proceeding. RESA has come forward with no evidence to rebut the substantial evidence that CAP customers and the ratepayers who pay for CAP are harmed under any structure whereby CAP customers pay more than the PTC.

**3. RESA provides no credible evidence to support its position that CAP customers will be adversely affected by implementing the suggested CAP SOP.**

RESA contends that the CAP-SOP will result in the elimination of offers to CAP customers because it would “require EGSs to guarantee a steady supply of energy priced below the PTC,” and EGSs would be unwilling to do so while still paying a \$30 referral fee to enroll customers through the CAP-SOP.<sup>47</sup> These concerns are unfounded. First, RESA offered no credible evidence in their rebuttal testimony that indicated how many or if EGSs would actually leave the market. Mr. White said merely that he believes “few, if any EGSs, will choose to participate in the CAP SOP program.”<sup>48</sup> This is nothing more than speculation. Like RESA’s theoretical value added benefits argument addressed above, - any information which may support RESA’s claims is within the knowledge of the EGSs involved, yet no such quantifiable data or information was entered into the record of this proceeding.

Moreover, EGSs make business decisions all of the time for a host of reasons. Even today, under PECO’s current DSP, some suppliers choose not to enter PECO service territory. Even if a significant portion of EGSs did refuse to participate in the CAP-SOP – which is at best a speculative response to the CAP-SOP proposal – the CAP-SOP nonetheless contains a provision which would allow modifications to the program if EGS participation was insufficient.<sup>49</sup> Indeed, the goal of imposing reasonable restrictions for CAP shopping is to stem the certain and acute

---

<sup>47</sup> RESA MB at 17

<sup>48</sup> RESA Statement No. 1-R at 16:19-20.

<sup>49</sup> PPL St. 1-RJ at 9.

harm that would be imposed on ratepayers and CAP customers alike. The Commonwealth Court has sanctioned this sort of reasonable restriction to remedy this sort of acute harm. As such, it is imperative that the Commission approve the CAP-SOP as a reasonable and necessary resolution to a significant and severe problem. To hold otherwise would be to abandon the Commission obligation under the Choice Act to ensure that universal service programs are appropriately available, adequately funded, and cost effective in each utility distribution territory.<sup>50</sup>

As to the issue of the \$30 referral fee, CAUSE-PA witness Geller acknowledged this reality in his surrebuttal testimony:

[A]s to RESA’s suggestion that it would be unfair to impose a \$30 SOP enrollment fee to suppliers agreeing to serve CAP customers with more restrictive terms, I agree that this concern may have merit. To that end, I endorse the suggestions of OCA witness Barbara Alexander who suggests that **PECO could simply transmit qualified and interested CAP customers to an EGS that is randomly selected from those willing to serve CAP customers under the CAP shopping criteria. This would avoid the third party enrollment fee altogether, thereby reducing any cost that might be required for EGSs to participate in such a program.** And, since PECO would have already conducted the initial screening, it would also alleviate any supplier concern as to whether the customer is or is not a CAP participant.<sup>51</sup>

The OCA crafted a solution to this concern raised by RESA and this solution has been endorsed by both CAUSE-PA and TURN et al.<sup>52</sup> As such, this is no longer an issue and is not an impediment to implementation of the CAP-SOP proposal.

**B. THE “WAIT AND SEE” APPROACH ADVOCATED BY RESA, PECO AND I&E TO ALLOW PECO TO IMPLEMENT A CAP SHOPPING PLAN WITHOUT PRICE PROTECTIONS IS NOT A REASONABLE ALTERNATIVE.**

For the first time, in its Main Brief, RESA asserts that it has identified a “reasonable alternative” to the proposal advanced by CAUSE-PA and supported by the OCA and TURN et

---

<sup>50</sup> 66 Pa. C.S. § 2804 (9).

<sup>51</sup> CAUSE-PA St. No. 1-SR at 11:13-12:2 (emphasis added).

<sup>52</sup> See TURN et al. MB at 29-30.

al.<sup>53</sup> Specifically, RESA points to the shopping plan that PECO *intends to file* by September 1, 2016, as an alternative to the CAP-SOP. Although not explicitly suggesting that it is an alternative to the SOP, both I&E and PECO suggest that “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”<sup>54</sup> In essence, RESA, PECO, and I&E suggest that the parties should wait to see what PECO may file by September 1, 2016, file comments to that proceeding, and allow PECO to conduct its educational campaign. Only *after* PECO’s CAP customers actually experience the harm associated with higher, unaffordable EGS rates can the Commission implement price protections. This approach is grossly inadequate and is not a reasonable alternative to the CAP-SOP proposal.

First, this approach has already been tried and it does not work. With the exception of the banning of early termination and cancellation fees that will be a part of whatever CAP shopping plan filed by PECO<sup>55</sup>, the approach of unrestricted CAP shopping with education and tracking of harm has been tried in PPL and First Energy. In each case, the results were clear: significant number of CAP customers paid more than the price to compare and, on net, unrestricted CAP shopping cost CAP customers and the ratepayers who paid for CAP millions of dollars more than they otherwise would have paid. Doing the same thing over and over and expecting different results is not a reasonable alternative. The simple fact of the matter is that what RESA, PECO, and I&E propose has been tried and it failed. The parties considered all of these issues in various other iterations of PECO’s CAP shopping proceedings, and the proposal advanced by CAUSE-PA in this proceeding is the culmination of those prior positions, the product of which is to institute a

---

<sup>53</sup> RESA MB at 10.

<sup>54</sup> PECO MB at 9. Both I&E and RESA assert essentially the same thing in their respective briefs. See I&E MB at 12; RESA MB at 14.

<sup>55</sup> This element was required by the Commonwealth Court on remand. See May 11, 2016 Secretarial Letter at 1.

framework that is administratively feasible, provides appropriate restrictions to CAP customers and the rate payers who pay for CAP, and permits CAP customers to shop for electricity in the competitive market place.

This is in contrast to RESA, I&E, and PECO's alternative to impose few restrictions now and wait and see what happens. ALJ Colwell succinctly summarized why this approach is insufficient in her recently issued decision in PPL's DSP:

Therefore, RESA's recommendation is to impose no restrictions on CAP shopping and to encourage CAP customers to use the SOP if they do shop. **This "cross your fingers and hope they will listen" approach is simply insufficient. It fails to protect the CAP shoppers from the negative effects of paying more than the PTC and reduces the ability of the individual customers to stay on CAP as long as possible. It reduces the overall ability of the CAP program to offer participation to as many customers as possible within the permitted expenditure as well as maximizes the burden on other residential ratepayers who fund CAP, some of whom are themselves low-income customers. And, "CAP customers have had the opportunity to participate in the SOP throughout the period analyzed by PPL witness Wukitsch and the opportunity to choose other, higher-priced products. The PPL analysis demonstrates that this has not successfully managed the costs of the program."**

However, RESA does raise legitimate concerns which should not go unaddressed. For example, while an introductory rate of 7% below the PTC at the time of enrollment with an EGS is an incentive to enter the competitive market that EGSs see as a legitimate introduction worth the cost and the \$28 enrollment fee, keeping the rate year after year while paying additional enrollment fees each year is a burden on the EGSs that they may not see as worthwhile. The requirement that CAP shoppers only shop using the SOP may have the unintended effect of preventing those low-income shoppers who are market-savvy from negotiating even more favorable rates.

At the same time, **the importance of the protections provided to all CAP customers clearly outweigh the importance of the EGSs' ability to make a profit serving those customers, at the expense of the other ratepayers.** While noting that RESA has not advocated an [sic] legitimate middle ground which recognizes that the continuation of electric service to low-income Pennsylvanians as vital to their health and welfare, surely it can see that a customer who cannot pay the electric bill and has service terminated will not be a paying customer to the EGS anymore. The overall interest, both the human interest and the economic interest,

is in favor of assisting the low-income customer to retain electric service in the most reasonable way possible.<sup>56</sup>

The proposal by RESA, PECO, and I&E is the same “wait and see” approach admonished by ALJ Colwell in PPL’s default service proceeding, and it is insufficient to effectively address the harm. As pointed out by TURN et al., “there is no need to gather more data re-confirming the incidence of harm to low-income customer in advance if implementing necessary price protections for PECO CAP customers choosing to shop for electricity supply.”<sup>57</sup> The case has already been made: CAP customers suffer by paying more than the PTC and “the importance of the protections provided to all CAP customers clearly outweigh the importance of the EGSs’ ability to make a profit serving those customers, at the expense of the other ratepayers.”<sup>58</sup>

As stated by Judge Leadbetter in granting the stay of PECO’s previous CAP shopping plan:

Petitioners have made a persuasive showing that at least a subset of CAP customers will suffer irreparable harm if the stay is denied. CAP customers are those whose household incomes are at or near the Federal Poverty Level. As Petitioners point out, these customers are exceedingly low income, economically vulnerable persons. If they are encouraged to shop for generation suppliers in the open market, some of these customers, may, by failing to read or perhaps to understand the “fine print,” select plans with low introductory rates which escalate dramatically after a fixed period, causing them to incur bills which they simply cannot afford.....those who end up with significantly increased rates could face disastrous economic consequences which could not likely be undone.....<sup>59</sup>

When the Pennsylvania General Assembly enacted the Choice Act in 1996, it was concerned about choice and affordability, not choice or affordability. Indeed, the ability of low-income households to continue to afford electricity in a competitive environment was a core concern of the Act’s drafters.<sup>60</sup> As a means of addressing these concerns, the General Assembly

---

<sup>56</sup> PPL CAP Shopping ID at 61-62 (internal citations omitted) (emphasis added).

<sup>57</sup> TURN St. No. 1-SR at 8.

<sup>58</sup> PPL CAP Shopping ID at 61.

<sup>59</sup> Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. (CAUSE-PA) et al. v. Pa. PUC, No 445 CD 2014, at 2-3 (March 28, 2014) (unpublished mem. op).

<sup>60</sup> See 66 Pa. C.S. §§ 2802 (10), (17); 2804 (9).

specifically tasked the Commission with the responsibility of ensuring that the programs intended to facilitate the affordability of electric service are appropriately funded and available in each electric distribution territory.<sup>61</sup> The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service,<sup>62</sup> and the statutory goals of universal service programs are to be achieved through the enactment, establishment and maintenance of policies, practices and services that help low-income customers maintain their electric service.<sup>63</sup> In this proceeding, the position of CAUSE-PA, the OCA, and TURN et al. is the only position advanced which meets all of these concerns.

---

<sup>61</sup> 66 Pa. C.S. § 2804 (9).

<sup>62</sup> 52 Pa. Code. § 54.73.

<sup>63</sup> Id.

## VI. CONCLUSION

Based on the evidence in the record of this proceeding, it is apparent that unrestricted CAP shopping would produce devastating results for vulnerable PECO CAP households. Furthermore, the record “provides substantial reasons why there is no reasonable alternative” to eliminate the impending and inevitable harm that would befall CAP and non-CAP ratepayers. Thus, “‘competition needs to bend’ to ensure that adequately-funded, cost-effective, and affordable programs [exist] to assist customers who are of low-income to afford electric service.”<sup>64</sup> RESA’s arguments to the contrary are wholly unsupported and without merit. We should not “wait and see” the extent of the harm which is certain to result from unrestricted CAP shopping, especially given that the CAP-SOP provides a reasonable means of preventing such harm from occurring. As such, CAUSE-PA urges the Commission to adopt the CAP-SOP proposal in full, without modification.

Respectfully submitted,

**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for the Coalition for Affordable Utility  
Services and Energy Efficiency in Pennsylvania  
(CAUSE-PA)*



Patrick M. Cicero, Esq., PA ID: 89039  
Elizabeth R. Marx, Esq., PA ID: 309014  
Joline Price, Esq., PA ID: 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088  
pulp@palegalaid.net

August 25, 2016

---

<sup>64</sup> CAUSE-PA et al., 120 A.3d at 1104.

**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 :**

**MAIN BRIEF**

**ON BEHALF OF TURN *et al.***

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

**August 11, 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**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	STATEMENT OF THE CASE.....	3
III.	STATEMENT OF QUESTIONS INVOLVED.....	7
	A.    Should the Commission address CAP shopping program rules for PECO customers in the context of this DSP IV proceeding? Suggested Answer: Yes .....	7
	B.    Should the Commission approve two fundamental CAP shopping criteria: (1) that PECO’s CAP customers should not be charged EGS prices higher than the PTC and (2) that PECO’s CAP customers should be protected from termination/cancellation fees? Suggested Answer: Yes .....	7
	C.    Should the Commission approve the implementation of CAP shopping protections through a new component of PECO’s Standard Offer Program, to be effective beginning June 1, 2017? Suggested Answer: Yes .....	7
	D.    Should PECO undertake specific data collection activities in connection with the implementation of CAP shopping, as recommended by Mr. Bertocci? Suggested Answer: Yes .....	7
IV.	LEGAL STANDARDS AND BURDEN OF PROOF .....	7
V.	SUMMARY OF ARGUMENT .....	11
VI.	ARGUMENT.....	12
	A.    THE COMMISSION HAS THE OBLIGATION TO ADDRESS CAP SHOPPING IN THE CONTEXT OF PECO’S DSP IV PROCEEDING. ....	12
	B.    THE COMMISSION SHOULD APPROVE TWO FUNDAMENTAL CAP SHOPPING CRITERIA, PROTECTING CAP CUSTOMERS FROM EGS CHARGES IN EXCESS OF PECO’S PTC AND BARRING TERMINATION/CANCELLATION FEES....	18
	C.    THE COMMISSION SHOULD APPROVE THE IMPLEMENTATION OF PECO CAP SHOPPING THROUGH A NEW COMPONENT OF PECO’S STANDARD OFFER PROGRAM, TO BE EFFECTIVE NO EARLIER THAN JUNE 1, 2017.....	26
	D.    PECO SHOULD BE DIRECTED TO UNDERTAKE SPECIFIC DATA COLLECTION ACTIVITIES IN CONNECTION WITH THE IMPLEMENTATION OF CAP SHOPPING, AS RECOMMENDED BY MR. BERTOCCHI. ....	34
VII.	CONCLUSION.....	36

**Appendix A: PECO Letter Response to the May 11, 2016 Secretarial Letter**

**Appendix B: Proposed Findings of Fact and Conclusions of Law**

## TABLE OF AUTHORITIES

### **Cases**

<u>Se-Ling Hosiery v. Margulies</u> , 70 A.2d 854 (Pa. 1950) .....	10
<u>Coalition for Affordable Util. Services and Energy Efficiency in PA, et al., v. PA. PUC</u> , 120 A.3d 1087 (Pa. Commw. Ct. 2015) .....	passim
<u>Lansberry v. Pa PUC</u> , 578 A.2d 600 (Pa. Commw. Ct. 1990) .....	10
<u>Smith v. Pa. PUC</u> , 162 A.2d 80 (Pa. Super. 1960) .....	17

### **Statutes**

66 Pa. C.S. §§2801-2815 .....	2, 3, 13
66 Pa. C.S. §2802(5) .....	24
66 Pa. C.S. §2802(7) .....	26
66 Pa. C.S. §§ 2802(10) .....	3, 7
66 Pa. C.S. § 2802(12) .....	24
66 Pa. C.S. § 2802(17) .....	7
66 Pa. C.S. § 2803 .....	4, 8, 9
66 Pa. C.S. §2804(9) .....	4, 7, 8, 9, 26, 35

### **Regulations**

52 Pa. Code § 5.74(b)(2) .....	2
52 Pa. Code § 54.74 .....	4
52 Pa. Code §§ 54.71-54.78 .....	4, 7

### **PUC Orders**

<u>Opinion and Order Approving Joint Petition for Partial Settlement of PECO DSP III</u> , Docket No. P-2014-2409362 (Order entered December 4, 2014) .....	6
<u>Final Investigatory Order in Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms</u> , Docket No. M-00051923 (Order entered December 18, 2006) .....	4

## I. INTRODUCTION

On March 17, 2016, PECO Energy Company (“PECO” or “the Company”) filed the Petition of PECO Energy Company for Approval of a Default Service Program for the Period of June 1, 2017 through May 31, 2019 (“DSP IV”), which was assigned this Docket No. P-2016-2534980. By public notice published in the *Pa. Bulletin* on April 9, 2016, the Commission established a deadline of April 19, 2016 for formal protests, petitions to intervene, and answers. On April 12, 2016, Administrative Law Judge Cynthia Williams Fordham issued a Prehearing Order establishing a Prehearing Conference for April 22, 2016. On May 11, 2015, the Commission issued a Secretarial Letter, formally recognizing that on April 5, 2016, the Supreme Court of Pennsylvania denied the Commission’s Petition for Allocatur of the July 14, 2015 decision of the Commonwealth Court of Pennsylvania, in the matter of the Petition of PECO Energy Company for Approval of its Default Service Plan (“DSP II”), Docket No. P-2012-2283641.<sup>1</sup> Thus, on July 14, 2015, the Commonwealth Court’s decision 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), became final. Two days later, on May 13, 2016, Tenant Union Representative Network (“TURN”) and Action Alliance of Senior Citizens of Greater Philadelphia (collectively known as “TURN *et al.*”) filed its Petition to Intervene in this proceeding. In light of the Pennsylvania Supreme Court’s actions and the May 11, 2016

---

<sup>1</sup> The Secretarial Letter is filed as an attachment to TURN *et al.*’s Petition to Intervene in this proceeding.

Secretarial letter, ALJ Fordham determined that TURN *et al.* had shown good cause<sup>2</sup> to intervene after the April 19, 2016 deadline. Accordingly, on May 27, 2016, ALJ Fordham issued Prehearing Order #2, ordering *inter alia* that the Petition to Intervene filed by TURN *et al.* be granted. Pursuant to the procedural schedule as modified by Prehearing Order #3, TURN *et al.* timely submit this Main Brief.

Most of the issues in this case have been resolved by agreement, as memorialized in the Joint Petition for Partial Settlement that was filed on July 28, 2016, which was joined or not opposed by all parties, except for Noble Americas Energy Solutions LLC. TURN *et al.* did not oppose the Joint Petition for Partial Settlement. A settlement has not been reached regarding the features of a proposed CAP shopping program for PECO customers.

In this Main Brief, TURN *et al.* address the necessary price protections that the Commission should approve for PECO's CAP shopping program. PECO has proposed to implement CAP shopping through a "proposal rule revision" filed in its DSP III docket. It expects to submit such proposal in August 2016. See PECO St. 2-R (Rebuttal Testimony of John J. McCawley). For the reasons discussed in this Main Brief, the Commission should reject the positions of the Retail Energy Supply Association (RESA) (opposing necessary price protections), and require PECO to implement CAP shopping on June 1, 2017, and with reasonable and necessary price protections to ensure that the statutory objectives of the Electricity Generation Customer Choice and Competition Act (Choice Act), 66 Pa. C.S. §§ 2801-2815, are satisfied.

---

<sup>2</sup> In its Petition to Intervene, TURN *et al.* had quoted 52 Pa. Code § 5.74(b)(2) which states that the petitions to intervene shall be filed "no later than the date fixed for filing protests as published in the *Pennsylvania Bulletin* except for good cause shown."

TURN *et al.* submit that this DSP IV is the proper forum for consideration and resolution of issues concerning PECO's CAP shopping program, particularly given the dramatic changes that will occur in the implementation of PECO's redesigned CAP program, which was crafted to accommodate CAP shopping. Moreover, TURN *et al.* submit that the evidence on the record in this DSP IV proceeding conclusively establishes the need for price protections, and that the only reasonable means to effectuate them is the proposal to implement CAP shopping through a revised component of PECO's Standard Offer Program (SOP). Finally, TURN *et al.* submit that the Commission should approve specific data collection requirements proposed by TURN *et al.*'s witness, Mr. Philip Bertocci, in connection with the implementation of PECO's CAP shopping program.

## **II. STATEMENT OF THE CASE**

The Electricity Generation Customer Choice and Competition Act (Choice Act), 66 Pa. C.S. §§ 2801-2815, became effective on January 1, 1997. The Choice Act established standards and procedures for restructuring the electric industry in order for customers to directly purchase electricity supply from licensed electricity generation suppliers (EGS). While opening up the electric generation market to competition, the General Assembly sought to ensure that electric service remained universally available to all customers in the Commonwealth. Section 2802(10) of the Choice Act committed the Commonwealth to preserving the protections, policies and services that assisted low-income customers in being able to afford electric service, 66 Pa. C.S. § 2802(10). The General Assembly's approval of the Choice Act made universal service programs mandatory. Final Investigatory Order in Customer Assistance Programs: Funding Levels and

Cost Recovery Mechanisms, Docket No. M-00051923 (Order entered December 18, 2006), at 16.

The Choice Act defines “universal service and energy conservation” as, “[p]olicies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education,” 66 Pa. C.S. § 2803. The Choice Act also requires the Public Utility Commission to ensure that universal service and energy conservation programs are appropriately funded and available in each electric distribution territory. 66 Pa. C.S. § 2804(9).

To help meet its obligations under the Choice Act, the Commission established the Universal Service and Energy Conservation Reporting Requirements at 52 Pa. Code §§ 54.71-54.78. Section 54.74 of these regulations requires an electric distribution company (EDC) to submit to the Commission for approval an updated universal service and energy conservation plan (“USECP”) every three years. 52 Pa. Code § 54.74. As summarized in the May 11, 2016 Secretarial Letter, PECO’s 2013-2015 USECP was approved at M-2012-2290911 in 2013. The Company’s proposed 2016-2018 USECP was filed in October 2015 at M-2015-2507139. Comments and reply comments were filed in response to a February 2016 Tentative Order. A Final Order regarding the 2016-2018 USECP will be issued in the near future.

As described in the Direct Testimony of Harry Geller on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), PECO’s Customer Assistance Program (CAP), a part of its USECP, will drastically change in October

2016 to what is referred to as a Fixed Credit Option, or FCO. CAUSE-PA St. 1 at 9-10. As Mr. Geller describes, PECO's FCO CAP will provide a discounted bill, will freeze collection efforts on "pre-program arrears," and will provide for gradual arrearage forgiveness. Id. at 19. In addition, in order to ease the transition of existing CAP customers to the FCO, PECO will provide for a payment agreement on balances accrued in PECO's CAP program prior to implementation of the FCO, with the customer paying 1/3 of the balance over a period of 60 months. Id.

As Mr. Geller sets forth in testimony, calculating customer bills under the FCO is a six-step process. Id. at 20-21. This process determines the CAP customer's weatherized normal base charges based on historical use over a 12-month period and using PECO's price to compare (PTC). It then calculates an "annual credit" that would be necessary for an annual bill to be affordable on the basis of verified household income. That credit is then applied to future bills, tracking the seasonal nature of usage, and adjusted quarterly to reflect changes in usage and PECO's PTC. Id. at 20-22. PECO's FCO will also include a maximum credit amount that can be applied to any CAP customer's bill in a given month. As Mr. Geller concludes, customers who "live in poorer and more inefficient housing stock...[will be] only entitled to the maximum amount of CAP credits.... Thus, that customer will be responsible to pay the difference between what they actually use each month and the amount of the credit that has been allocated to them." Id. at 22. CAP customers in the FCO will receive less of a discount than is necessary for bills to be affordable, if they are charged higher rates by EGSs. Id. at 23.

The Secretarial Letter was produced in response to the remand ordered by the Commonwealth Court of Pennsylvania. PECO was directed specifically as follows:

to file with the Secretary and serve on the parties at its current Default Service Plan (DSP) and Universal Service and Energy Conservation Plan (USECP) [footnote omitted] docket a proposed rule revision to its CAP Shopping Plan<sup>3</sup> in its current DSP III consistent with the Commonwealth Court's Order.<sup>4</sup>

On July 19, 2016, PECO filed within the DSP II docket a Letter Response to the May 11, 2016 Secretarial Letter, which is attached as Appendix A hereto.

TURN *et al.* will address the proposal of Mr. Geller on behalf of CAUSE-PA, as further refined in response to the Office of Consumer Advocate's witness, Ms. Barbara Alexander, to implement price protections for PECO's CAP customers in connection with the commencement of PECO's CAP Shopping program. TURN *et al.* submit that it is appropriate to address CAP shopping in this DSP IV proceeding, and not in PECO's DSP III proceeding. TURN *et al.* submit that PECO CAP customers will experience irreversible harm if CAP shopping price protections, proposed by Mr. Geller, are not implemented, and it would be an abrogation of the Commission's statutory obligations to permit CAP customers to enter the market for competitive electric supply with the knowledge that doing so will cause PECO's CAP program to cease to be affordable and cost-effective for CAP customers and non-CAP customers who contribute to the cost of CAP. Mr. Geller's proposal is the only reasonable alternative that has been identified which effectuates the Universal Service requirements of the Choice Act, and thus is an appropriate, limited restraint on electric supply competition. Finally, TURN *et al.* submit that

---

<sup>3</sup> Even if it were appropriate for the Commission to approve a rule revision to PECO's DSP III to implement CAP shopping (which it is not), the Commission's final approval of such a rule revision does not prejudice any party's ability to raise issues in this DSP IV proceeding concerning the inappropriateness of charging CAP customers prices for electricity supply in excess of PECO's PTC or imposing early termination/cancellation fees on CAP customers. See TURN St.1-SR at 6-7.

<sup>4</sup> PECO's DSP III for June 1, 2015 through May 31, 2017 was approved by Commission Order at P-2014-2409362. PECO's proposed DSP IV for June 1, 2017, through May 31, 2019 was filed March 17, 2016, at P-2016-2534980.

PECO should undertake specific data collection activities associated with the implementation of CAP shopping, which appear to be uncontested on the evidentiary record of this proceeding.

### **III. STATEMENT OF QUESTIONS INVOLVED**

- A. Should the Commission address CAP shopping program rules for PECO customers in the context of this DSP IV proceeding?**

**Suggested Answer: Yes**

- B. Should the Commission approve two fundamental CAP shopping criteria: (1) that PECO's CAP customers should not be charged EGS prices higher than the PTC and (2) that PECO's CAP customers should be protected from termination/cancellation fees?**

**Suggested Answer: Yes**

- C. Should the Commission approve the implementation of CAP shopping protections through a new component of PECO's Standard Offer Program, to be effective beginning June 1, 2017?**

**Suggested Answer: Yes**

- D. Should PECO undertake specific data collection activities in connection with the implementation of CAP shopping, as recommended by Mr. Bertocci?**

**Suggested Answer: Yes**

### **IV. LEGAL STANDARDS AND BURDEN OF PROOF**

PECO is required to offer an integrated package of universal service programs designed to help low-income, payment troubled ratepayers maintain and afford essential utility services pursuant to the Choice Act<sup>5</sup> and the Commission's regulations.<sup>6</sup> The Choice Act requires that universal service plans be "appropriately funded" and administered by the PUC to "ensure that

---

<sup>5</sup> See 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

<sup>6</sup> 52 Pa. Code § 54.71 et seq.

the programs are operated in a cost-effective manner.”<sup>7</sup> Thus one goal of the Choice Act is, in the context of deregulation, to ensure that affordable utility service is available to low-income customers through “universal service and energy conservation” – those policies, practices and services that help low income customers maintain service.<sup>8</sup> PECO’s CAP program is a customer assistance program, and thus the PUC is obligated to ensure it is appropriately funded and cost-effective for CAP customers and non-CAP customers alike. See PECO CAP Shopping Case, 120 A.3d at 1103.

In the PECO CAP Shopping Case, the Commonwealth Court interpreted the Choice Act as embracing two objectives. It held that the Choice Act “both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs and emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service.”<sup>9</sup> Accordingly, under the Choice Act, as interpreted by the Commonwealth Court, the ability of a PECO CAP customer to receive service from an EGS must satisfy the statutory objectives of ensuring continued access to service through statutorily mandated universal service plans. The Commonwealth Court thus authorized the PUC to effectuate these objectives, providing:

So long as it “provides substantial reasons why there is no reasonable alternative so competition needs to bend” to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are of low-income to afford electric service...the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits—e.g., an EGS rate ceiling, prohibition against early termination/cancellation fees, etc.<sup>10</sup>

---

<sup>7</sup> 66 Pa. C.S. § 2804(9).

<sup>8</sup> 66 Pa. C.S. § 2803.

<sup>9</sup> 120 A.3d at 1103.

<sup>10</sup> 120 A.3d at 1104 (internal citations omitted).

Accordingly, the Commission has the authority to impose reasonable CAP shopping restrictions, such as those proposed in this proceeding. This is the clear consequence of the Commonwealth Court’s determination in the PECO CAP Shopping Case, confirming that the express provisions of the Choice Act require the PUC to preserve affordable service to low-income customers.<sup>11</sup> The Commission has the responsibility to ensure that the means to achieve the affordability of electric service is appropriately funded and available in each electric distribution territory. Accordingly, if CAP shopping will result in unaffordability, inappropriate funding, and the unavailability of essential discounts to PECO customers to permit them to maintain electric service, the Commission is obligated to effectuate CAP shopping rules that “bend” competition. Doing so constitutes the Commission’s lawful enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.<sup>12</sup>

In this proceeding, CAUSE-PA’s witness, Mr. Harry Geller, has proposed that the Commission approve the continuing cost-effectiveness of PECO’s CAP program by implementing reasonable price protections for CAP customers choosing to shop for electricity supply in the competitive market. Mr. Geller’s fundamental criteria for a CAP shopping program (ensuring that CAP customers do not pay higher prices for competitive electricity supply, and eliminating any termination or cancellation fees) are endorsed by OCA witness, Ms.

---

<sup>11</sup> 120 A.3d at 1103 (“the Choice Act expressly requires the PUC to administer [CAP] programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants’ EGS choice.”). It should be recalled that the statutory basis for the maintenance of utility affordability programs was first codified in the Choice Act. 66 Pa. C.S. § 2804(9).

<sup>12</sup> 66 Pa. C.S. § 2803.

Barbara Alexander, and TURN *et al.*'s witness, Mr. Philip Bertocci. See OCA St. 2-R at 7; TURN *et al.* St. 1-SR. Moreover, Mr. Geller's specific implementation recommendations (to permit CAP shopping only through a new component of PECO's SOP), are supported by OCA and TURN *et al.* See OCA St. 2-R at 5; TURN St. 1-SR. RESA witness Mr. Matthew White opposes both the fundamental criteria and specific implementation recommendations advanced by CAUSE-PA and supported by OCA and TURN. Finally, TURN *et al.*'s witness, Mr. Bertocci, recommends that specific data collection activities be undertaken by PECO in connection with CAP shopping. TURN St. 1-SR at 9.

As the proponents of the fundamental criteria and implementation recommendations concerning PECO's CAP shopping plan, CAUSE-PA, OCA and TURN *et al.*, bear the burden of proof in this proceeding to establish that they are entitled to the relief sought.<sup>13</sup> This burden must be satisfied by a preponderance of the evidence.<sup>14</sup> Accordingly, CAUSE-PA, OCA and TURN *et al.* must present evidence more convincing, by even the smallest amount, than that presented by any opposing party.<sup>15</sup> TURN *et al.* submit that these parties have carried their burden in this proceeding, and the Commission should approve the PECO CAP shopping program under the parameters advanced by Mr. Geller and the data collection requirements advanced by Mr. Bertocci, with an effective date of implementation of June 1, 2017.

---

<sup>13</sup> 66 Pa. C.S. §332(a).

<sup>14</sup> Lansberry v. Pa. PUC, 578 A.2d 600 (Pa. Commw. Ct. 1990).

<sup>15</sup> Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

## V. SUMMARY OF ARGUMENT

TURN *et al.* submit that PECO should be ordered to implement a CAP shopping program through a new facet of its existing SOP. TURN *et al.* submit that the Commission must ensure that the requirements of the Choice Act – that customers have an opportunity to participate in the competitive market for electricity supply, and that CAP programs must be available, affordable and cost-effective – can only be satisfied if price protections are implemented. 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. TURN *et al.* agrees with, and supports the testimony of Mr. Harry Geller, on behalf of CAUSE-PA, in articulating the necessary provisions of a “CAP-SOP” that would effectuate these fundamental criteria.

The Commission should approve the CAP-SOP supported by CAUSE-PA, OCA and TURN *et al.* in this DSP IV proceeding, to be effective June 1, 2017. The Commission should not disregard the positions of these three parties in this proceeding, on the basis that PECO has been directed to submit a “proposed rule revision” regarding CAP shopping in its currently effective DSP III. Consideration of CAP shopping in the context of PECO’s DSP III presents numerous logistical issues, potential due process concerns, and significant risks associated with an inadequate evidentiary record. Moreover, given the significant and dramatic changes forthcoming to PECO’s CAP program, and the potential for confusion, overlapping educational campaigns, and additional burdens associated with simultaneous implementation of PECO’s

FCO with a new CAP shopping program, TURN *et al.* agree with OCA and CAUSE-PA that PECO's CAP-SOP should be implemented effective as of June 1, 2017.

Finally, TURN *et al.* submit that PECO should undertake specific data collection obligations to ensure that the legislative purposes of the Choice Act are fulfilled. Accordingly, PECO should collect and maintain data regarding CAP customers' experience with EGSs by customer address in order to be able to determine the extent to which EGSs are serving the diverse communities within PECO's service territory. This data should include the number of CAP customers shopping, the rates CAP customers pay for generation service, the portion of the aggregate CAP credit amount paid for by residential customers, the savings to CAP customers and non-CAP customers generated by EGS rates below PECO's PTC, and the number of CAP customers seeking to enter contracts with competitive suppliers offering prices above PECO's PTC (or that do not comply with the terms and conditions of PECO's CAP-SOP), and the terms of such offers.

## **VI. ARGUMENT**

### **A. THE COMMISSION HAS THE OBLIGATION TO ADDRESS CAP SHOPPING IN THE CONTEXT OF PECO'S DSP IV PROCEEDING.**

As Mr. Geller and Mr. Bertocci acknowledge, the Commission has issued guidance to PECO in the form of a secretarial letter, dated May 11, 2016 (Secretarial Letter), advising PECO to submit a "proposed rule revision" in its DSP III to implement CAP shopping. CAUSE-PA St. 1 at 10; TURN St. 1-SR at 5. PECO has indicated that it will do so, and submits that it interprets the Secretarial Letter and the Commonwealth Court's decision in the PECO CAP Shopping Case to foreclose it from implementing any limitations on EGS pricing. PECO St. 2-R at 15. As Mr. Bertocci observes, the Secretarial Letter predated Mr. Geller's testimony, and therefore was not

informed by the development of the factual record in this DSP IV proceeding. TURN St. 1-SR at 5. Importantly, Mr. Bertocci testified that PECO's interpretation of the PECO CAP Shopping Case and Secretarial Letter is erroneous. As Mr. Bertocci states:

Mr. [McCawley] incorrectly construes the Commission's May 11, 2016 Secretarial Letter to the extent he submits that it also prohibits PECO from implementing reasonable price protections.

Mr. [McCawley] appears to misunderstand the portion of the Commonwealth Court's order that was mandatory on remand, and that portion which is not mandatory.....

The Commonwealth Court entered an order that mandated only one specific change to PECO's CAP shopping plan: that plan must prohibit CAP shopping under any contracts that impose early termination/cancellation fees. Otherwise, the Commonwealth Court affirmed the PUC's finding that the PUC's denial of price protections in PECO's CAP shopping plan was permissible on the basis of the information presented in the DSP II proceeding, Docket No. P-2012-2283641. The distinction is an important one: the Commonwealth Court did not mandate that PECO's CAP customers enter the competitive market without any price protections that the PUC may determine to be reasonable and necessary. To the contrary, the Commonwealth Court corrected the PUC's misinterpretation of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-2815 (Choice Act), confirming, as the PUC is aware, that the PUC has the authority to implement reasonable CAP shopping price protections for PECO customers. Consistent with that recognition, the Commission's May 11, 2016 Secretarial Letter expresses no specific direction regarding the contents of PECO's CAP shopping plan, other than that it be consistent with the Commonwealth Court's order.

TURN St. 1-SR at 7-8.

Moreover, as Mr. Geller articulates, approval of PECO's CAP shopping plan in the context of PECO's DSP III presents logistical issues for the participants in that proceeding. Mr. Geller notes that "there is no indication that the Commission will permit the further introduction of evidence" in the DSP III proceeding and that the Commonwealth Court's decision was predicated on the record in PECO's DSP II. CAUSE-PA St. 1 at 11, 12. He also notes that it is

inconsistent for the Commission to approve CAP shopping in that proceeding given that the Commission has specifically invited inquiry into CAP shopping program features. Id. Finally, he observes that the Secretarial Letter did not provide a timeframe for submitting a CAP shopping “proposed rule revision” creating uncertainty regarding implementation and coordination of CAP shopping with the rollout of PECO’s new CAP FCO. Id. Ms. Alexander echoes Mr. Geller’s third observation, noting that CAP shopping presents additional risks given the drastic changes to be implemented in PECO’s CAP program. OCA St. 2-R at 2-4. Similarly, Mr. Bertocci observes:

Many CAP customers will have to make adjustments to their monthly budgets with the implementation of PECO’s new CAP program, because some will experience greater discounts, and some will experience reduced discounts. Until PECO’s new CAP program is in operation, CAP customers will not have all of the information necessary to make an informed decision when evaluating EGS offers. This is particularly true for those CAP customers who will receive little to no CAP discount under PECO’s new program and would need to carefully evaluate EGS offers to maximize bill affordability going forward.

TURN St. 1-SR at 11.

Mr. Bertocci acknowledges not only the logistical issues surrounding the implementation of CAP shopping in PECO’s DSP III, but that the potential implementation of CAP shopping may present due process violations. Mr. Bertocci submits that the parties must be permitted to address PECO’s CAP shopping program in this proceeding, as follows:

Frankly, prohibiting the parties from addressing features of PECO’s CAP shopping program in this DSP IV proceeding would present a significant and unlawful impairment of due process. The maintenance of CAP programs, a fundamental component of utility universal service, is an obligation imposed on default service providers, and properly examined in the context of DSP proceedings. The Commonwealth Court recognized that the maintenance of adequate protections for low income customers can, under certain circumstances, require the “bending” of

competition. CAUSE-PA v. Pa. PUC, 120 A.3d at 1104 (“the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits—e.g., an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.”). Because of the statutorily recognized importance of low income protections, confirmed by the Commonwealth Court, proposals that would diminish those protections must be fully vetted in an on the record proceeding.

Accordingly, unlike Mr. White, I believe the Commonwealth Court order, and the Commission’s Secretarial Letter must be read to permit the parties to examine PECO’s CAP shopping program in this DSP IV proceeding. As noted above, the Commonwealth Court has specifically mandated that the review of CAP shopping be periodically undertaken – doing so is part of the “continuing nature” of the PUC’s oversight, as required by the Choice Act. Moreover, the Commission’s Secretarial Letter was entered on PECO’s DSP II docket, P-2012-2283641. I am aware of no basis for the Commission’s Secretarial Letter in PECO’s 2012 DSP proceeding, or any other prior decision or determination, to somehow prejudice the positions of the parties regarding PECO’s CAP shopping plan in this DSP IV proceeding, which commenced several years after the close of the record in PECO’s DSP II.

TURN St. 1-SR at 15-16 (footnote omitted).

As the Commission is no doubt aware, TURN *et al.* were joint petitioners in the PECO CAP Shopping Case, arguing that case before the Commonwealth Court, and ultimately obtaining clear guidance from the Commonwealth Court that corrected the PUC’s misunderstanding and misapplication of the Choice Act in PECO’s DSP II proceeding. However, due to the pendency of that litigation in Commonwealth Court, TURN *et al.* did not intervene in PECO’s DSP III, because the issues of CAP shopping could not be addressed in DSP III while the Commonwealth Court’s supersedeas was in effect and that litigation was

ongoing. Accordingly, proceeding in PECO's DSP III with the consideration of CAP Shopping proposals presents a significant likelihood of impairment of TURN *et al.*'s due process rights.<sup>16</sup>

In addition, consideration of PECO's CAP "proposed rule revision" in its DSP III, after the conclusion of the record in that proceeding, appears likely to violate the Commonwealth Court's order in the PECO CAP Shopping Case. The Commonwealth Court made abundantly clear that, in evaluating PECO's CAP shopping proposal in DSP II, the Commission's determination must be based on substantial evidence. In fact, regarding the Commission's determination to deny early termination and cancellation fee protection in PECO's CAP shopping program, the Commonwealth Court specifically *reversed* the Commission, finding that its decision was not based on substantial evidence because of the *absence of record evidence* supporting the Commission's determination. 120 A.3d at 1108. Proceeding on the course the Commission appears to have set, pursuant to the Secretarial Letter, would position the Commission to enter some form of order regarding PECO's CAP shopping program without any adequate evidentiary basis on a closed record in PECO's DSP III.

Notwithstanding the strong reasons in favor of developing a record in this DSP IV concerning the harms that will befall CAP customers shopping for electricity without price protections, RESA contends that it is inappropriate to consider CAP shopping at this time.

RESA St. 1-R at 17. RESA's witness, Mr. White points only to the Secretarial Letter in support

---

<sup>16</sup> Although TURN *et al.* would, and if necessary will, submit comments in response to PECO's "proposed rule revision," the Commission's proposal, set forth in the Secretarial Letter, nonetheless presents a due process quandary. For example, would TURN *et al.* have standing to appeal the Commission's decision on CAP shopping in PECO's DSP III solely on the basis of its submission of comments and without being a party/intervenor? Having directed PECO to submit a proposed rule revision, is the Commission obligated to reopen the record in DSP III, in order to allow the parties, and any new intervenors such as TURN *et al.*, to develop evidence for or against proposed rule revisions? Although these specific issues may not be presently before the Commission, they should nonetheless inform its decision concerning the necessity of addressing CAP shopping issues in this DSP IV proceeding.

of this position. Id. Yet he fails to consider the direct language of the Secretarial Letter indicating that evidentiary review of PECO's CAP shopping program may be undertaken "in a future proceeding." The Secretarial Letter was filed in PECO's DSP II docket, P-2012-2283641. This DSP IV docket, P-2016-2534980, ***is exactly such a future proceeding.*** Ultimately, as Mr. Bertocci states, Mr. White fails to provide any explanation for his bald assertion that reviewing PECO's CAP shopping program in this DSP IV "is not effective." TURN St. 1-SR at 15. In fact, the converse is true: "[t]his DSP IV proceeding presents the *first opportunity* for the parties to develop a record under the Commonwealth Court's interpretation of the requirements of the Choice Act and the PUC's authority thereunder." Id. (emphasis supplied). Certainly, a thorough review undertaken in this DSP IV should be effective to ensure that PECO's CAP shopping program satisfies the requirements of the Choice Act, and Mr. White presents no evidence to the contrary. Moreover, having properly placed the issue of CAP shopping before the Commission in this proceeding, and there being no conflicting proposal under consideration in any other proceeding or forum, the parties have a due process right to pursue CAP shopping program features in this proceeding.<sup>17</sup>

For all of the foregoing reasons, TURN *et al.* submit that the Commission must review and reach a determination on the CAP shopping price protections, implementation timeline, and data collection requirements advanced by the parties, including CAUSE-PA, OCA, and TURN *et al.* in this proceeding.

---

<sup>17</sup> TURN St. 1-SR at 15; See, e.g., Smith v. Pa. PUC, 162 A.2d 80 (Pa. Super. 1960).

**B. THE COMMISSION SHOULD APPROVE TWO FUNDAMENTAL CAP SHOPPING CRITERIA, PROTECTING CAP CUSTOMERS FROM EGS CHARGES IN EXCESS OF PECO'S PTC AND BARRING TERMINATION/CANCELLATION FEES.**

Mr. Geller proposed two fundamental criteria for PECO's CAP shopping program. First, Mr. Geller submits that "CAP shopping participants should be prohibited from entering into a contract with an EGS in which they will pay, at any time, rates greater than the price to compare." CAUSE-PA St. 1 at 31. Second, Mr. Geller submits that "CAP shopping participants should be prohibited from entering into any contract with an EGS that includes early cancellation or termination fees." *Id.* Mr. Geller's fundamental criteria are supported by OCA and TURN *et al.* See OCA St. 2-R at 5; TURN St. 1-SR at 6. For the reasons set forth in this section, TURN *et al.* submit that the Commission's order should approve a PECO CAP shopping program reflecting these two fundamental criteria.

As set forth at length in the testimony of Mr. Geller, CAP shopping without price protections poses significant risks to CAP customers, who will incur irreversible harm in the form of unaffordable bills for essential utility service if permitted to select EGS offers that can charge more than the PTC. Mr. Geller's 40 years of experience verify his conclusion that low income customers lack economic flexibility to absorb the risk of higher prices (CAUSE-PA St. 1 at 6), and the stakes are particularly high in PECO's service territory, where the highest concentration of low-income electricity customers in Pennsylvania reside (*Id.* at 16). Mr. Geller shows that the "overwhelming energy burden on low income households makes it difficult for these customers to pay for other basic necessities" forcing many to forgo food and medication in order to pay home energy bills. *Id.* at 16. Because they are low-income, CAP customers routinely run out of money even with CAP assistance, due to other expenses, and PECO's

program has not, historically, satisfied Commission affordability standards. Id. at 17. For these reasons, Mr. Geller concludes that “PECO’s confirmed low-income customers are economically vulnerable and unable to pay for essential services like electricity without substantial and meaningful assistance. It is precisely for this reason that CAP programs were created to assist low-income customers maintain and afford utility service and that the PECO CAP, in particular, has required its most recent dramatic restructuring.” Id. at 17.

In the PECO CAP Shopping Case, the Commonwealth Court clarified and emphasized the legal analysis that applies to CAP shopping: Namely, the PUC has the authority to bend competition, to ensure that statutory objectives, such as the affordability and cost-effectiveness of CAP, are satisfied. 120 A.3d at 1104; See TURN St. 1-SR at 12. Moreover, the Commonwealth Court articulated that the Commission’s requirement to ensure the affordability and cost-effectiveness of CAP is an obligation “of a continuing nature.” 120 A.3d at 1108. Some of the parties to this proceeding may assert that, without having shopped for electricity in the past, there is insufficient evidence to show that PECO’s CAP customers will incur harm in the future. This position is without merit because the converse is true: the prevalence of harm experienced by CAP customers in other utility service territories establishes conclusively that PECO’s CAP customers will be harmed if PECO’s CAP shopping program does not provide price protections.

Because the PUC’s obligations are of a continuing nature, *they must be fulfilled now, and in the future.* The Commonwealth Court, in approving prohibitions on termination and cancellation fees did not balk at the fact that PECO’s CAP customers had not been charged them in the past, nor did it limit its determination to requiring the Commission to rectify that harm, if it

occurs, in the future. Rather, the Commonwealth Court recognized the undisputed fact that prohibiting termination and cancellation fees would protect CAP customers, providing “an added layer of protection to CAP customers consistent with the affordability goals of the Choice Act.” 120 A.3d at 1108. In fact, the Commonwealth Court specifically acknowledged that these fees “pose a risk to low-income shopping customers” under a program to be implemented in the future. Id. There is no basis under the Commonwealth Court’s decision to infer that PECO’s CAP customers must actually experience unaffordable EGS bills before the Commission should take action to ensure that the uncontested risk of higher bills, demonstrated through Mr. Geller’s testimony, is not inflicted upon PECO’s most vulnerable customers.

As Mr. Geller’s describes, in PPL service territory “alarming statistics” demonstrate the ongoing harm to CAP customers by their participation in the competitive electric generation market. As Mr. Geller shows, the PPL data compiled over a long period of time establishes that “[f]or every 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. In most months over this more than four-year period of time, between 45%-70% of CAP customers paid more than the price to compare.” CAUSE St. 1 at 27. Quizzically, RESA’s witness, Mr. White, distorts Mr. Geller’s testimony, stating that “the incomplete statistics...reflect that at least 58% of CAP customers 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 (citing CAUSE-PA St. 1 at 27). This statement is demonstrably false, raising a serious question about how carefully Mr. White read Mr. Geller’s testimony and undermining Mr. White’s reliability as a witness. In the uncontested data Mr. Geller supplies there exist many months

demonstrating the majority of PPL's CAP customers were paying in excess of the PTC. As examples, and as shown on Appendix D to Mr. Geller's testimony:

- 85% of PPL's CAP shopping customers paid more than the PTC in January 2012;
- 80% of PPL's CAP shopping customers paid more than the PTC in February 2012;
- 99% of PPL's CAP shopping customers paid more than the PTC in March 2012;
- 82% of PPL's CAP shopping customers paid more than the PTC in March 2013;
- 93% of PPL's CAP shopping customers paid more than the PTC in December 2015;
- 92% of PPL's CAP shopping customers paid more than the PTC in January 2016; and
- 88% of PPL's CAP shopping customers paid more than the PTC in February 2016.

In fact, contrary to Mr. White's false statement, there exists *only one month* in the period from January 2012 through February 2016 in which 58% of PPL's CAP shopping customers paid less than the PTC, December 2014. CAUSE-PA St.1, Appx D. In every other month, fewer than 58% of PPL's CAP shopping customers received EGS rates at a price at or below PPL's PTC.

Id.

Mr. White also alleges that Mr. Geller's data is based upon a "single point in time" and so "is not reflective of the conditions CAP shopping customers have experienced over their entire shopping experience." RESA St. 1-SR at 7. Again, Mr. White's testimony is false and appears totally ignorant of the data Mr. Geller presents. A simple review of Mr. Geller's testimony demonstrates that the statistics he relies upon reflect monthly billing data **over a period of 50 months!** CAUSE-PA St. 1, Appx D. Contrary to Mr. White's unsupported statement, the data shows consistently, month after month, a significant portion, sometimes a great majority, of PPL's CAP customers were charged in excess of the PTC by EGSs.

Furthermore, as Ms. Alexander's testimony shows, EGS contracts entered into by non-CAP customers through PECO's SOP (initially providing a 7% discount off of PECO's PTC) may nonetheless result in bills in excess of PECO's PTC. OCA St. 2 at 23. Accordingly, although Mr. White submits that customers' shopping experience should be looked at over the long term, there is no evidence on the record in this proceeding that shows, over the long term, that a substantial number of CAP customers can expect anything other than higher bills from EGSs.

Mr. Geller also provides compelling evidence of the extent of the harm that will befall PECO's CAP customers and the non-CAP customers who contribute to the cost of CAP. Mr. Geller's data shows that CAP ceases to be cost-effective, contrary to the statutory purposes of the Choice Act, when CAP customers lack price protections. As Mr. Geller shows, not only is the incidence of CAP customers paying more than the PTC in PPL territory alarming, but the extent to which their bills exceed the PTC is significant. PPL's CAP customers not only paid more, but they paid *significantly more* than the PTC. As Mr. Geller summarizes, "in the month in which CAP customers who shopped paid the highest percentage more than the price to compare, they paid on average 101% more per kWh. But in the month when CAP customers who shopped achieved the greatest savings, they paid only 14 % less than the price to compare." CAUSE-PA St. 1 at 28. According to his data, which has not been refuted by any party, the net effect over 12-18 months of PPL CAP customers paying more than the PTC is an increased cost of between \$2.7 and \$4.1 million. Id.

Mr. Geller observes that the experience of PPL's CAP customers is typical for Pennsylvania utilities permitting unrestricted shopping. He states:

Substantially similar data was produced in the First Energy Company Service territories. The reported data from that

proceeding appears to show that as of November 2015, more than 77% of Met-Ed's CAP customers, more than 50% of Penelec's CAP customers, and more than 65% of West Penn's CAP customers who are shopping are paying a price higher than the price to compare.

CAUSE-PA St. 1 at 29.

Mr. White makes no effort to rebut Mr. Geller's testimony in this regard. As Mr. Geller concludes: "I have no reason to believe that, unless the issue of CAP customer shopping is addressed now, in DSP IV, the long-term results would be any different in PECO's territory than in the other Pennsylvania utility service territories that have allowed and developed a history of CAP shopping." *Id.* In fact, no party to this proceeding has presented any evidence that could reasonably undermine this conclusion. Instead, for example, PECO appears to prefer to wait until data concerning PECO CAP customers shopping experiences is available; in other words, after an assessment of the incidence of unaffordable EGS bills rendered to PECO CAP customers can be measured. PECO St. 2-R, at 15. But PECO does not dispute Mr. Geller's evidence, nor provide any basis to conclude that unrestricted CAP shopping will maintain the cost-effectiveness and affordability of PECO's CAP.

There simply is no legitimate reason to believe that the widespread harm, occurring across other utility service territories, will not be duplicated in PECO's service territory if PECO's CAP customers enter the competitive market without price protections. According to Mr. Bertocci: "the new evidence provided in this DSP IV proceeding by Mr. Geller demonstrates the need for CAP shopping price protections Mr. Geller describes. 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. Furthermore, As Mr. Geller concludes: "We know

*now* the harm that will befall PECO’s low-income CAP 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. No party to this proceeding has provided any evidence contrary to the expert opinions of Mr. Geller and Mr. Bertocci, indicating that PECO CAP customers entering the competitive market without any price protections will result in irreparable harm to PECO customers.

Although not providing any evidence to counter Mr. Geller’s data concerning the unaffordability of EGS offers to CAP customers, Mr. White contends that Mr. Geller’s proposals should not be approved because PECO’s PTC should not be considered the “sole metric” for CAP shopping customers, because it disregards “value-added products and services.” RESA St. 1-R at 15. Mr. White’s contentions cannot be taken seriously because they are totally beside the point. The purpose of the Choice Act is not to make “value-added” products available to customers. The purpose is “to create direct access by retail customers to the competitive market for the *generation of electricity*.” 66 Pa. C.S. § 2802(12) (emphasis added). Furthermore, the Choice Act specifically recognizes that deregulation was intended to be an effective means to control *cost*, not value added services. 66 Pa. C.S. § 2802(5). Ultimately, the PTC is the metric by which cost of EGS supply is measured, as any customer can learn by visiting [www.PaPowerSwitch.com](http://www.PaPowerSwitch.com). The PTC is the only suitable measure of whether an EGS offer is, or is not, affordable for PECO’s CAP customers.

Underlying Mr. White’s recommendations is a disregard for the fundamental fact that higher EGS charges will directly and negatively impact CAP participants and the non-CAP

customers who contribute to the cost of CAP. Mr. White contends that, in order for the Commission to approve CAP shopping price protections, the proponents of those protections must show that no other changes to CAP could preserve the benefits of CAP. RESA St. 1-R at 14.<sup>18</sup> Although Mr. White is incorrect about the legal analysis that applies in this proceeding, this showing has nonetheless been made. As summarized by Mr. Bertocci:

Although Mr. White submits that “changes in [the CAP] program should be instituted” if a CAP customer’s benefits are affected by the choice of EGS supply, he offers no ideas or concrete proposals about any such changes. Mr. White submits that restrictions on EGS offers to CAP customers must be implemented only if changes to CAP are *impossible* to maintain customer affordability. In fact, that is precisely the case: the only available means to ensure cost-effectiveness and affordability for CAP and non-CAP customers who contribute to the cost of CAP is to impose reasonable price protections on EGS supply. As Mr. Geller discusses, higher EGS prices charged to CAP customers results in unaffordable bills, higher collection costs and rates for all customers, and, in multiple ways, adversely impacts upon the financial, health, and safety of individual CAP households. CAUSE-PA. St-1 at 30. Ms. Alexander concurs, noting that “higher bills can adversely impact the affordability for essential electric service for CAP customers, and result in higher costs to the other residential ratepayers to fund these programs. OCA St. 2-R at 3. Mr. White fails to acknowledge that there are only two sources of funds available to cover EGS charges to CAP customers: CAP customers; or non-CAP residential customers who contribute to the cost of CAP. There is no CAP program design feature which can alter this basic and fundamental precept of CAP.

TURN St. 1-SR at 13.

In fact, as eloquently phrased by Mr. Geller, “[t]o suggest that CAP customers must be able to shop and compromise either their ability to afford service or the affordability of the CAP

---

<sup>18</sup> As discussed *supra*, this is not the standard set by the Commonwealth Court, which reversed the Commission’s determination, ordering that CAP customers be protected from termination and cancellation fees, without requiring a showing that it is impossible to modify CAP in some other way to avoid this risk of unaffordability.

program as a whole is inconsistent with the Choice Act....The universal service provisions of the Choice Act tie affordability of electric service to a customer’s ability to pay for that service.” CAUSE-PA St. 1-SR at 8 (citing 120 A.3d 1103-1104; 66 Pa. C.S. § 2802(7); 66 Pa. C.S. § 2804(9)).

The evidence in this proceeding conclusively demonstrates that EGS prices higher than PECO’s PTC, if charged to CAP customers, will erode affordability and cost-effectiveness of PECO’s CAP. The evidence also shows that, unless restricted from doing so, EGSs will in fact charge PECO’s CAP customers prices in excess of PECO’s PTC. The Commission should not wait until affordability and cost-effectiveness have been negatively impacted by high EGS prices. The Commission’s obligations under the Choice Act are of a “continuing nature” and do not become operative only after irrevocable harm is experienced by PECO’s CAP customers and the non-CAP customers who contribute to the cost of CAP. The Commission should approve the fundamental criteria advanced by CAUSE-PA and supported by OCA and TURN *et al.*, prohibiting EGS charges to CAP customers that exceed the PTC and barring the imposition of any termination and cancellation fees on CAP customers.

**C. THE COMMISSION SHOULD APPROVE THE IMPLEMENTATION OF PECO CAP SHOPPING THROUGH A NEW COMPONENT OF PECO’S STANDARD OFFER PROGRAM, TO BE EFFECTIVE NO EARLIER THAN JUNE 1, 2017.**

In order to effectuate his recommended price protections for PECO CAP customers, Mr. Geller recommends that PECO modify its existing SOP to ensure that CAP customers receive the necessary protections. CAUSE-PA St. 1 at 31. First, as Mr. Geller explains, a CAP SOP would be the exclusive means for PECO’s CAP customers to access EGS supply, and CAP customer shopping requests outside the CAP SOP would be rejected. *Id.* at 31-32. Second, the CAP SOP

would require EGSs to provide an initial 7% discount off of PECO's PTC, and would require the EGS serving a CAP SOP customer to either reenroll CAP customers with a new 7% discount or return them to default service if PECO's PTC drops by 7% or more.<sup>19</sup> *Id.* at 32. Third, at the end of the 12-month SOP contract, an EGS serving a CAP customer would have to either reenroll that CAP customer at a 7% discount off the PTC, or return the CAP customer to default service. *Id.* Fourth, like all SOP participants, CAP SOP customers would be protected against termination and cancellation fees. *Id.* at 33. In response to testimony of Ms. Alexander and Mr. White, Mr. Geller offered one further refinement to his proposal: Mr. Geller endorsed Ms. Alexander's proposal that PECO could transmit qualified and interested CAP customers to an EGS randomly selected to serve CAP customers (under the terms set forth above), in order to avoid enrollment fees for EGSs. CAUSE-PA St. 1-SR at 11; OCA St. 2-R at 6. For the reasons set forth herein, TURN *et al.* submit that the Commission should approve the implementation of PECO CAP shopping price protections through the CAP SOP mechanism described by Mr. Geller, with an effective implementation date of June 1, 2017.

Mr. Geller's recommendation is predicated on the existing framework of PECO's SOP, a program which RESA admits has benefited from the "healthy participation" of EGSs. RESA St. 1-R at 6. This framework is a means through which PECO and the PUC can, in discharging their obligations under the Choice Act, ensure that CAP provides access to EGS supply without eroding affordability or cost-effectiveness. There is no question that Mr. Geller's proposal to modify SOP to accommodate CAP shopping is administratively feasible; PECO has not claimed

---

<sup>19</sup> As discussed *supra*, Ms. Alexander's testimony documents that EGS prices charged to PECO customers enrolling through SOP have, in the past, exceeded PECO's PTC. See OCA St. 2 at 23. Mr. Geller's proposal would protect CAP customers against this risk, which the evidence confirms would constitute a threat to the affordability of CAP.

that it cannot make these modifications, nor has PECO claimed that the proposed modifications would be unnecessary or overly burdensome to effectuate appropriate CAP shopping protections. CAUSE-PA St. 1-SR at 2.

RESA's witness, Mr. White, however contends that Mr. Geller's implementation recommendations, i.e., the establishment of a CAP SOP, should not be approved by the Commission because EGSs and PECO would need to have some coordinated mechanism to identify whether customers EGSs desire to serve are enrolled in CAP. Mr. White alleges that "restrictions on the pricing and structure of a product that EGSs can offer a select group of customers would be difficult to implement and would require significant changes to existing EDC and EGS protocols to develop new protocols that do not exist." RESA St. 1-R at 15. Mr. White apparently fails to take stock of the clear path to implementation set forth in Mr. Geller's testimony: a new aspect of the SOP, a program under which PECO and EGSs have established clear and effective protocols for serving customers in a manner which the Commonwealth Court acknowledged in recognizing that there exist legitimate restraints on unbridled competition.<sup>20</sup> As Mr. Geller correctly counters, "the use of a modified CAP-SOP as the only vehicle that a CAP customer could use to select EGS supply would alleviate the suppliers' concerns that suppliers do not know whether a customer is or is not enrolled in CAP." CAUSE-PA St. 1-SR at 9. Moreover, as Mr. Geller details, suppliers are under no obligation to be uninformed about the customer status of those they wish to serve – they may, and should, inquire about CAP status when seeking to serve low-income customers. *Id.* at 9-10. Ultimately, Mr. White's claim that Mr. Geller's proposal is not feasible on the basis that it would require EGSs to monitor

---

<sup>20</sup> 120 A.3d at 1103.

compliance with CAP-SOP terms is incorrect. See RESA St. 1R at 15. Under Mr. Geller's proposal, consistent with its responsibilities under CAP, PECO would monitor to ensure that the CAP-SOP terms and conditions are satisfied. CAUSE-PA St. 1-SR at 11.

Mr. White also asserts that Mr. Geller's proposals would result in "few, if any, EGSs" electing to serve CAP customers. RESA St. 1-R at 16. TURN *et al.* agree with Mr. Geller that this statement should carry no weight. CAUSE-PA St. 1-SR at 10. As Mr. Geller notes, the choice to serve CAP customers is a business decision, like many EGSs routinely make. Id. Furthermore, Mr. White's claim is inconsistent and irreconcilable with his specific acknowledgment that PECO's SOP has experienced healthy participation from EGSs. RESA St. 1-R at 6. EGSs participating in the SOP routinely offer terms to PECO non-CAP customers that are virtually identical to those CAP-SOP terms proposed by Mr. Geller. The only substantial difference is that the CAP-SOP would require EGSs either to reset the price, *or return the CAP customer to default service*, in the event PECO's PTC declines by 7% or more during the contract term. CAUSE-PA St. 1 at 32. EGSs have not claimed any right to continue serving current, non-CAP PECO customers participating in SOP, who may terminate EGS supply at any time, even during the 12-month SOP contract, without incurring termination and cancellation fees. See CAUSE-PA St. 1 at 33. RESA articulates no clear reason why EGSs would decline to serve CAP customers through a PECO CAP-SOP that provides them with virtually the same opportunities to serve CAP customers as are available to other PECO customers under the existing SOP.

Finally, in 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.

Notwithstanding that Mr. Geller's proposal addresses its professed concerns, RESA contends that the proponents and supporters of Mr. Geller's CAP-SOP proposal have "failed to justify" the restrictions on shopping the CAP-SOP would entail. RESA St. 1-R at 14. Mr. White asserts first that Mr. Geller needed to show "there was no way to modify PECO's existing CAP program to insure that PECO CAP customers would continue to have access to the benefits of CAP even if they elect to shop." *Id.* In RESA's view, only after showing that there is no other possible means to ensure affordability and cost-effectiveness of CAP could restrictions on the competitive market be imposed. *Id.* Mr. White is incorrect about the legal standard that applies in this case; the Commonwealth Court clearly held that the PUC cannot demand a showing that other changes are "impossible" prior to approving reasonable restrictions on competition.<sup>21</sup>

As clearly articulated by the Commonwealth Court:

---

<sup>21</sup> As discussed *supra*, Mr. Bertocci, joined by Mr. Geller and Ms. Alexander, specifically acknowledge and aver that, in fact, it is impossible preserve cost-effectiveness and affordability of CAP without reasonable EGS price protections. See TURN St. 1-SR at 13.

[T]he PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits.

PECO CAP Shopping Case, 120 A.3d at 1103.

No party to this proceeding, not even RESA, alleges that restrictions on EGS pricing would conflict with the interest of the PUC in ensuring that PECO's CAP remains adequately funded and cost-effective. To the contrary, RESA simply asserts that “[a]ll customers, including low income customers should have equal access to the benefits and innovations of the competitive market.” RESA St. 1-R at 14. As Mr. Bertocci explains, the Commonwealth Court specifically rejected the position taken by RESA in this proceeding. See TURN St. 1-SR at 12.

In this proceeding, the PUC should approve Mr. Geller's recommended CAP-SOP program for PECO, because the following standard, enunciated by the Commonwealth Court has been satisfied:

So long as it “provides substantial reasons why there is no reasonable alternative so competition needs to bend” to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are of low-income to afford electric service, *PP & L Indus.*, 780 A.2d at 782, the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits—*e.g.*, an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.

PECO CAP Shopping Case, 120 A.3d at 1104.

In this case, Mr. Geller's testimony conclusively demonstrates the significant harm that will be incurred by CAP customers, and non-CAP customers who contribute to the cost of CAP, if price protections are not adopted. Thus, Mr. Geller's testimony, and the demonstrated certainty that EGSs will charge PECO's CAP customers prices in excess of the PTC, provides substantial

reasons why competition needs to bend – otherwise, the PUC cannot ensure that PECO’s CAP is adequately funded, cost-effective, and affordable. Mr. Geller has provided a clear, precise, and direct recommendation to operationalize PECO CAP shopping that minimizes interference with the competitive market. In fact, Mr. Geller’s proposal is the only proposal that any party has put forward in this proceeding that will ensure that PECO’s CAP shopping program will satisfy the specific mandates of the Choice Act.<sup>22</sup> There is no question but that Mr. Geller’s proposal satisfies the Commonwealth Court’s standard, as it is the *only reasonable alternative* any party in this proceeding has identified to implement PECO CAP shopping without eroding affordability and cost-effectiveness.

As to the timing of implementation, TURN *et al.* submit that PECO CAP participants should have the opportunity to begin participating in the competitive market under a new CAP-SOP program, effective June 1, 2017. As submitted by the OCA and CAUSE-PA, the operationalization of PECO’s forthcoming FCO model presents a dramatic shift from the CAP program PECO’s low-income customers have participated in previously. Mr. Geller and Ms. Alexander concur that it would be imprudent to commence any PECO CAP shopping program prior to June 1, 2017. The implementation of a redesigned CAP will require significant adjustment, with some customers receiving increases, and some decreases, in bill assistance. A new arrears management component of PECO’s CAP FCO may result in bill confusion and require PECO to interact with and further explain changes to CAP customers. Educational

---

<sup>22</sup> I&E and OCA suggest a state-wide stakeholder group should address issues of CAP shopping. TURN *et al.* concur that a state-wide forum could promote consistency in operationalizing CAP shopping across EDC service territories. However, for purposes of PECO’s CAP shopping plan, TURN *et al.* nonetheless submit that Mr. Geller’s recommendations present the only reasonable alternative to effectuate the low-income mandates of the Choice Act.

messages and bill changes may trigger calls and communications from confused customers.

Ultimately, it would be “detrimental to CAP customers and the community agencies that interact with these customers to impose another set of educational messages and communications concerning customer choice” during this period of dramatic change in CAP. See OCA St. 2-R at 1-2. On the basis of these facts, Ms. Alexander concludes:

At a minimum, there should not be any change to the CAP shopping policy until there has been a full implementation of the revised CAP rate design and arrears management program and a determination that the program has been properly implemented with evidence that customers understand and have adjusted to these program changes. It is my understanding that these program changes will occur in the 4<sup>th</sup> quarter of 2016. Therefore, at the earliest, I would not recommend any change to CAP customer shopping until June 1, 2017, the onset of PECO’s DSP IV. I agree with Mr. Geller’s proposal in this regard.

OCA St. 2-R at 3-4.

TURN *et al.* concur with Mr. Geller and Ms. Alexander. See TURN St. 1-SR at 10-11.

For all of the forgoing reasons, TURN *et al.* submit that the Commission should approve the implementation of a PECO CAP-SOP, effective June 1, 2017, in order to permit CAP customers to enter the competitive market for electricity supply. The CAP-SOP represents the only reasonable alternative on the record of this proceeding, permitting CAP customers to shop while ensuring that the Choice Act’s affordability and cost-effectiveness mandates are satisfied. PECO’s CAP-SOP should be effective June 1, 2017, because earlier implementation presents significant risk of confusion to CAP customers and community agencies, as well as additional, untimely educational burdens on PECO.

**D. PECO SHOULD BE DIRECTED TO UNDERTAKE SPECIFIC DATA COLLECTION ACTIVITIES IN CONNECTION WITH THE IMPLEMENTATION OF CAP SHOPPING, AS RECOMMENDED BY MR. BERTOCCI.**

As set forth in Mr. Bertocci's surrebuttal testimony, TURN *et al.* agree that PECO should collect information about CAP customers' experience in the competitive market. TURN St. 1-SR at 8. Specifically, TURN *et al.* support PECO's plan to "compile information regarding the number of CAP customers shopping, the rates CAP customers pay for generation service, and the portion of the aggregate CAP credit amount paid for by residential customers." PECO St. 2-R at 13. In addition, TURN *et al.* submit that specific information about the experiences of CAP customers in the competitive market should be captured in PECO's data collection efforts.

As Mr. Bertocci testified:

In order to understand and evaluate the impact of shopping CAP affordability, PECO should collect data regarding the shopping experiences of CAP customers entering the market with the CAP program protections recommended by Mr. Geller. In doing so, PECO will be able to report the duration that such customers were able to benefit from competitive supply at a price not exceeding PECO's PTC, and the savings that accrue to CAP customers and all other residential PECO customers who contribute to the cost of CAP. At the same time, PECO's information gathering should document, to the extent feasible, when CAP customers accept, but are prohibited from entering, contracts with competitive suppliers that do not comply with the CAP shopping program features described by Mr. Geller. I recommend that in the collection of all CAP shopping data PECO ensure that it records the price of EGS offers to CAP customers and the address of the applicable CAP customers. This data will be essential to examining the extent to which EGSs are committed to serving the diverse communities within PECO's service territory.

TURN St. 1-SR at 9.

Mr. Bertocci's recommendations, together with PECO's proposed data collection criteria, would ensure that PECO's CAP shopping program provides opportunities for all CAP customers to

access the competitive electricity market, while enabling the Commission to fulfill its continuing obligation to monitor CAP shopping for affordability and cost-effectiveness. Such data collection requirements directly align with the legislative intent and language of the Choice Act.<sup>23</sup> TURN *et al.* is not aware of any party raising any objection to Mr. Bertocci's recommendations and, accordingly, TURN *et al.* submit that Mr. Bertocci's recommendations should be approved by the Commission, which should order PECO to collect and maintain (at a minimum) the following data:

- The number of CAP customers shopping,
- The rates CAP customers pay for generation service,
- The portion of the aggregate CAP credit amount paid for by residential customers,
- The savings to CAP customers and non-CAP customers generated by EGS rates below PECO's PTC,
- The number of CAP customers seeking to enter contracts with competitive suppliers offering prices above PECO's PTC (or that do not comply with the terms and conditions of PECO's CAP-SOP), and the terms of such offers.

All of the foregoing data should be collected and maintained by customer address, in order to be able to determine the extent to which EGSs are serving the diverse communities within PECO's service territory.

---

<sup>23</sup> See 66 Pa. C.S. §§ 2802(12), 2804(9).

## VII. CONCLUSION

PECO has the largest concentration of low-income electric customers, and the largest CAP population, in the Commonwealth.<sup>24</sup> A large portion of its rate base is economically vulnerable, and in need of protection from high prices charged by EGSs. The record in this proceeding conclusively demonstrates the harm to CAP customers, and non-CAP customers who contribute to the cost of CAP, resulting from EGS prices in excess of the PTC. It also conclusively establishes that EGSs charge a large proportion of CAP customers choosing to shop prices which exceed the PTC, undermining affordability, cost-effectiveness, and the ability of low-income customers to maintain service. These results are simply contrary to the language and intent of the Choice Act. Notwithstanding that PECO's CAP customers have not yet incurred direct harm due to higher EGS prices, the uncontested evidence shows that such harm will result from their entry into the competitive market without adequate price protections. The Commonwealth Court has mandated certain price protections, in order to *prevent* harm to CAP customers while requiring no showing that actual harm has already occurred.<sup>25</sup> CAUSE-PA, the OCA, and TURN *et al.* all support the initiation of reasonable restrictions proffered by CAUSE-PA, as these protections will, consistent with the Commonwealth Court's guidance, ensure the

---

<sup>24</sup> See Pa. Public Utility Comm'n, Bureau of Consumer Svcs., *2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies*, at 7, 42 available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf) (referenced in CAUSE-PA St. 1 at 15, n. 28)

<sup>25</sup> PECO CAP Shopping Case, 120 A.3d at 1108.

continuation of “adequately-funded, cost-effective, and affordable programs to assist customers who are of low-income to afford electric service.”<sup>26</sup>

RESA opposes the price protections advanced by CAUSE-PA, and supported by OCA and TURN *et al.* RESA provides no substantial justification for permitting CAP customers to face higher charges, contrary to the purposes of the Choice Act, and relies upon an astonishing array of false statements, incorrect assertions, and unsupported conjecture. PECO expresses its intention to follow the guidance it has received in the Secretarial Letter, to submit a CAP shopping proposal as a “proposed rule revision” to DSP III. For the reasons discussed in this brief, the Commission should reach a determination on CAP shopping in this DSP IV, not in PECO’s DSP III.

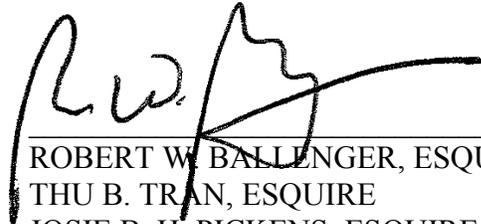
CAUSE-PA’s proposed implementation of CAP shopping price protections via a new element of PECO’s SOP, a so-called “CAP-SOP,” is the only means, and is therefore the only “reasonable alternative,” that has been proposed in this proceeding to effectuate entry of PECO’s CAP customers to the competitive market while satisfying the Choice Act’s low income mandates. A CAP-SOP is a reasonable limitation on the terms of offers that may be available to CAP customers, and should be approved by the Commission. Due to the risk of confusion and undue burden on CAP customers, community agencies and PECO that could arise, TURN *et al.* agree with OCA and CAUSE-PA and submit that PECO’s CAP-SOP should be effective June 1, 2017. This will ensure that PECO’s new FCO program for CAP customers is underway, and CAP customers will have had an opportunity to adjust to that program, and the dramatic changes to their bills that will result.

---

<sup>26</sup> PECO CAP Shopping Case, 120 A.3d at 1104.

Finally, TURN *et al.* submit that the Commission should approve specific data collection processes, acknowledged by PECO and recommended by Mr. Bertocci, that will ensure that PECO's CAP shopping program is consistent with the Choice Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R.W. Ballenger', is written over a horizontal line. The signature is stylized and extends to the right of the line.

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

## **Appendix “A”**

PECO Letter Response to the May 11, 2016 Secretarial Letter, filed July 19, 2016 in PECO DSP  
II Docket No. P-2012-2283641.

## Appendix “B”

### Proposed Findings of Fact

TURN *et al.* submit that the Commission should adopt the Proposed Findings of Fact of CAUSE-PA, as set forth in Appendix A to its Main Brief, dated as of the date hereof. TURN *et al.* incorporate by reference the Proposed Findings of Fact of CAUSE-PA as if fully set forth herein.

In addition, TURN *et al.* submit that the Commission should adopt the following Finding of Fact:

1. In connection with the implementation of CAP shopping, it is necessary that PECO engage in data collection efforts that enable the Commission and PECO to ensure that the language and purposes of the Choice Act are satisfied. TURN St. 1-SR at 8-9.

### Proposed Conclusions of Law

TURN *et al.* submit that the Commission should adopt the Proposed Conclusions of Law of CAUSE-PA, as set forth in Appendix B to its Main Brief, dated as of the date hereof. TURN *et al.* incorporate by reference the Proposed Conclusions of Law of CAUSE-PA as if fully set forth herein.

In addition, TURN *et al.* submit that the Commission should adopt the following Conclusion of Law:

1. TURN *et al.* have demonstrated by a preponderance of the evidence that, in order to effectuate the language and intent of the Choice Act, PECO must engage in certain data collection efforts. Effective with the June 1, 2017 implementation of PECO’s CAP-SOP, PECO must collect and maintain (at a minimum) the following data:

- The number of CAP customers shopping,
- The rates CAP customers pay for generation service,
- The portion of the aggregate CAP credit amount paid for by residential customers,
- The savings to CAP customers and non-CAP customers generated by EGS rates below PECO’s PTC, and
- The number of CAP customers seeking to enter contracts with competitive suppliers offering prices above PECO’s PTC (or that do not comply with the terms and conditions of PECO’s CAP-SOP), and the terms of such offers.

All of the foregoing data should be collected and maintained by customer address, in order to be able to determine the extent to which EGSs are serving the diverse communities within PECO’s service territory.

**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**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	STATEMENT OF THE CASE.....	2
III.	STATEMENT OF QUESTIONS INVOLVED.....	2
	A.    Should the Commission reject RESA’s bases for opposition to CAP shopping price protections proposed by CAUSE-PA?	
	Suggested Answer: Yes .....	2
	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 .....	2
IV.	LEGAL STANDARDS AND BURDEN OF PROOF .....	2
V.	ARGUMENT.....	3
	A.    The Commission Should Reject the Positions Advanced by RESA, as Unsupported, Speculative, and Premised Upon Misstatements and Mischaracterizations. ....	3
	1.    Widespread Harm to CAP Participants in Other Territories is Irrefutable Evidence in Support of CAUSE-PA’s Proposal. ....	3
	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. ....	6
	3.    RESA’s Assertion That Choices for CAP Customers Will be Adversely Affected is Not Supported. ....	8
	4.    RESA is Incorrect That Prior “Vetting” of PECO CAP Shopping Price Protections Renders Their Further Consideration Unnecessary. ....	11
	5.    RESA Has Not Identified Any Reasonable Alternative to CAUSE-PA’s Proposed CAP-SOP. ....	13
	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. ....	15
VI.	CONCLUSION.....	18

## **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,<sup>1</sup> 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-

---

<sup>1</sup> 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.<sup>2</sup>

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

---

<sup>2</sup> 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.”<sup>3</sup> 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.

---

<sup>3</sup> 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,"<sup>4</sup> 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

---

<sup>4</sup> 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

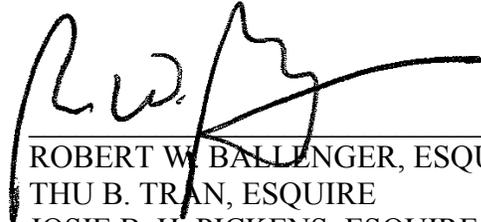
As discussed in this Reply Brief, TURN *et al.*, submit that the Commission should not give any weight to RESA's opposition to CAUSE-PA's CAP-SOP framework. RESA's position is predicated on its witness's unreliable testimony, which mischaracterizes Mr. Geller's irrefutable evidence. Moreover, RESA seeks 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', is written over a horizontal line. The signature is stylized and cursive.

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS :  
DEFAULT SERVICE PROGRAM FOR :  
THE PERIOD FROM JUNE 1, 2017 : DOCKET NO. P-2016-2534980  
THROUGH MAY 31, 2019 :

---

**JOINT EXCEPTIONS OF**

**THE COALITION FOR AFFORDABLE UTILITY SERVICES AND  
ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA)**

**AND**

**THE TENANT UNION REPRESENTATIVE NETWORK AND THE ACTION  
ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA (TURN ET AL.)**

---

**PENNSYLVANIA UTILITY LAW PROJECT**

*Counsel for CAUSE-PA*

Patrick M. Cicero, Esq., PA ID: 89039  
Elizabeth R. Marx, Esq., PA ID: 309014  
Joline Price, Esq., PA ID: 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486

**COMMUNITY LEGAL SERVICES, INC.**

*Counsel for TURN et al.*

Robert W. Ballenger, Esq., PA ID: 93434  
Josie B.H. Pickins, Esq., PA ID: 309422  
1424 Chestnut Street  
Philadelphia, PA 19102-2505  
Tel.: 215-981-3700

**October 14, 2016**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	BACKGROUND .....	2
III.	EXCEPTIONS .....	8
A.	<b>Joint Parties’ Exception 1:</b> ALJ Fordham erred in her Recommended Decision by declining to rule on CAUSE-PA’s CAP-SOP proposal, which was squarely before her as part of PECO’s DSP IV plan proceeding, and recommending that the matter be referred to the closed DSP III docket, where parties are foreclosed from presenting current record evidence on CAP shopping for full consideration.....	8
1.	PECO – along with the other parties to this proceeding - had ample time and opportunity to present a CAP Shopping plan in DSP IV. ....	10
2.	A ruling on CAP Shopping for DSP IV will not improperly interfere with a compliance decision on CAP Shopping for DSP III. ....	12
B.	<b>Joint Parties’ Exception 2:</b> ALJ Fordham erred in her Recommended Decision when she failed to approve CAUSE-PA’s proposal to implement a modified, CAP-specific Standard Offer Program (CAP-SOP), as the parties developed substantial and unrebutted record evidence that the CAP-SOP proposal is necessary and appropriate to balance the interests of CAP customers in gaining access to the competitive market while protecting the financial stability of the CAP program and the economically vulnerable customers enrolled therein, as required by the Choice Act and the Public Utility Code. ....	13
IV.	CONCLUSION.....	16

## I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), together with the Tenant Union Representative Network and the Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al), herein referred to as the Joint Parties, file the following Joint Exceptions to the Recommended Decision issued by Administrative Law Judge Cynthia Williams Fordham (ALJ Fordham) in the above captioned proceeding.

The Joint Parties' Exceptions are as follows:

- **Joint Parties' Exception 1:**  
ALJ Fordham erred in her Recommended Decision by declining to rule on CAUSE-PA's CAP-SOP proposal, which was squarely before her as part of PECO's DSP IV plan proceeding, and recommending that the matter be referred to the closed DSP III docket, where parties are foreclosed from presenting current record evidence on CAP shopping for full consideration.
- **Joint Parties' Exception 2:**  
ALJ Fordham erred in her Recommended Decision when she failed to approve CAUSE-PA's proposal to implement a modified, CAP-specific Standard Offer Program (CAP-SOP), as the parties developed substantial and un rebutted record evidence that the CAP-SOP proposal is necessary and appropriate to balance the interests of CAP customers in gaining access to the competitive market while protecting the financial stability of the CAP program and the economically vulnerable customers enrolled therein, as required by the Choice Act and the Public Utility Code.

The Joint Parties respectfully submit that, based on these critical errors of law and fact, the Commission should reject the recommendation of ALJ Fordham and approve CAUSE-PA's CAP-SOP proposal for inclusion in PECO's DSP IV. In the alternative, and at the very least, due process requires that the Commission reopen PECO's DSP III docket (permitting parties in DSP IV, such as TURN et al., to intervene therein), and certify the record from DSP IV to be considered in the reopened DSP III proceeding for full consideration of parties' positions, as well as the current applicable facts and data.

## II. BACKGROUND

The entanglement of PECO's DSP II, III, and IV proceedings is at the heart of the Joint Parties' first Exception in this proceeding. Careful attention must be paid to the procedural and substantive progression of all three proceedings to ensure that the parties' procedural and substantive due process rights are protected.

### *PECO's DSP II*

On January 13, 2012, PECO filed a petition for approval of its Default Service Program for the period of June 1, 2013, to May 31, 2015 (DSP II). After a full on-the-record proceeding, the Commission issued an Opinion and Order on October 12, 2012, approving PECO's DSP II plan, in part, and directing PECO to develop a shopping plan that would allow its CAP customers to purchase generation supply from electric generation suppliers (EGSs).<sup>1</sup>

On May 1, 2013, PECO filed a CAP Shopping Plan in compliance with the Commission's October 12, 2012 Opinion and Order in the DSP II proceeding.<sup>2</sup> On February 24, 2013, the Commission rejected PECO's DSP II CAP Shopping Plan, which included a price ceiling for EGSs serving vulnerable CAP customers. It also rejected OCA's proposed restriction on early termination and cancellation fees for CAP customers. The Commission cited its then-perceived lack of authority pursuant to the Choice Act to impose price restrictions on EGSs, and – in the alternative – the possibility that such restrictions would restrict competition.<sup>3</sup>

The Joint Parties appealed the Commission's decision to reject PECO's DSP II CAP Shopping plan to the Commonwealth Court. The OCA separately appealed the Commission's

---

<sup>1</sup> Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641 (October 12, 2012).

<sup>2</sup> Petition of PECO Energy Company for Approval of its Default Service Plan, Opinion and Order, Docket No. P-2012-2283641 (February 24, 2013).

<sup>3</sup> Id. at 14-15.

decision. On appeal, the Commonwealth Court held that the Commission erred as a matter of law, and in fact has both the statutory authority to impose price restrictions as well as the corresponding duty and obligation to ensure that Universal Service programs (like PECO's CAP) are appropriately available to economically vulnerable customers, cost effective for the ratepayers who finance the program, and affordable for CAP participants.<sup>4</sup> Notwithstanding its determination that the Commission erred as a matter of law, the Commonwealth Court did not reverse the Commission's rejection of price restrictions, finding that the Commission's decision to reject the price restrictions was reasonable based on the DSP II record before it at the time. The Commonwealth Court reversed the PUC's rejection of protections against termination/cancellation fees, finding that no substantial evidence supported the PUC's decision.<sup>5</sup>

On April 5, 2016, approximately one month *after* the start of the instant DSP IV proceeding, the Supreme Court of Pennsylvania denied the Commission's Petition for Allocatur regarding PECO's DSP II CAP Shopping plan.<sup>6</sup>

On May 11, 2016, the Commission issued a Secretarial Letter at PECO's DSP II docket requiring PECO to "file a rule revision to its CAP Shopping Plan in its current DSP III consistent with the Commonwealth Court's Order."<sup>7</sup>

On July 19, 2016, PECO filed a letter at the DSP II docket in response to the Commission's Secretarial Letter, explaining that it planned to file a rule revision to the DSP III docket by September 1, 2016.<sup>8</sup>

---

<sup>4</sup> Coalition for Affordable Util. Servs. & Energy Efficiency in Pa, et al. v. Pa. Pub. Util. Comm'n, 120 A.3d 1087 (Pa. Commw. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) (hereinafter CAUSE-PA et al.).

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Petition of PECO Energy Company for Approval of its Default Service Plan, Secretarial Letter, Docket P-2012-2283641 (May 11, 2016).

<sup>8</sup> Petition of PECO Energy Company for Approval of its Default Service Plan, PECO Letter, Docket P-2012-2283641 (July 19, 2016).

On September 1, 2016, PECO filed a second letter at the DSP II docket, which explained that PECO was in the midst of implementing its new CAP Program, the Fixed Credit Option (CAP-FCO), and requested to postpone implementation of its CAP Shopping rule revision until April 14, 2017 – just six weeks before PECO’s DSP III Plan expires and its DSP IV begins.

**PECO’s DSP III**

PECO’s DSP II expired on May 31, 2015, and PECO’s DSP III – which was fully litigated *without consideration of any aspects of CAP shopping, due to the then-pending appeal in DSP II and the existing stay to the implementation of CAP shopping* – went into effect on June 1, 2015, and remains effective through May 31, 2017.<sup>9</sup> CAUSE-PA was a party to the DSP III proceeding, ***but TURN et al. was not.***<sup>10</sup>

As noted above, the Commission issued a Secretarial Letter at PECO’s DSP II docket, requiring PECO to file a CAP Shopping rule revision at its DSP III docket. However, PECO requested to postpone implementation of any CAP Shopping rule revisions until April 14, 2017 – just over a month before DSP IV is set to begin.

---

<sup>9</sup> Petition of PECO Energy Company for Approval of its Default Service Program for the Period From June 1, 2015 through May 31, 2017, Opinion and Order, Docket No. P-2014-2409362 (Dec. 4, 2014).

<sup>10</sup> TURN et al. explained in its Main Brief why it did not intervene in DSP III, and why consideration of CAP Shopping in DSP III, to which they were not a party, presents significant Due Process concerns:

As the Commission is no doubt aware, TURN *et al.* were joint petitioners in the PECO CAP Shopping Case, arguing that case before the Commonwealth Court, and ultimately obtaining clear guidance from the Commonwealth Court that corrected the PUC’s misunderstanding and misapplication of the Choice Act in PECO’s DSP II proceeding. However, because of the pendency of that litigation in Commonwealth Court, TURN et al. did not intervene in PECO’s DSP III, because the issues of CAP shopping could not be addressed in DSP III while the Commonwealth Court’s supersedeas was in effect and that litigation was ongoing. Accordingly, proceeding in PECO’s DSP III with the consideration of CAP Shopping proposals presents a significant likelihood of impairment of TURN *et al.*’s due process rights.

TURN et al. MB at 15-16.

*PECO's DSP IV*

The instant proceeding was initiated on March 17, 2016, when PECO filed a petition for approval of its Default Service Program for the period of June 1, 2017 through May 31, 2019 (DSP IV). PECO's DSP IV set forth the terms and conditions under which it will procure default service supply to provide default service to non-shopping customers, as required by the Choice Act and the Commission's regulations.<sup>11</sup>

It is significant to note, again, that the Petition for Allocatur to the Supreme Court in the DSP II CAP Shopping Plan was denied on April 5, 2016. (See above)

On April 12, 2016, Administrative Law Judge Cynthia Williams Fordham issued a Prehearing Order establishing a Prehearing Conference for April 22, 2016.

On April 19, 2016 – approximately one month before the Secretarial Letter was filed in DSP II – CAUSE-PA filed a Petition to Intervene, in which it specifically identified its intention to address the issue of CAP customer shopping in this proceeding:

Any proposals PECO or other parties may present in the context of this proceeding to allow CAP customers to shop for generation supply. CAUSE-PA has concerns about any CAP shopping plan that allows CAP customers to pay more than the Default Service price for electric generation supply. Evidence in service territories where CAP customers shop for generation supply shows that CAP customers, as well as the residential ratepayers who pay for the CAP program, are significantly harmed by this practice and are paying millions of dollars per year without any added benefit to CAP customers or the CAP program as a whole.

(CAUSE-PA Pet. Intervene at ¶ 11.b).

On April 22, 2016, ALJ Fordham presided over the Prehearing Conference, and granted CAUSE-PA's Petition to Intervene. At no time did any party object to the inclusion of CAP Shopping in this proceeding, nor did ALJ Fordham narrow the issues in the proceeding to exclude CAP Shopping.

---

<sup>11</sup> 52 Pa. Code §§ 54.181-54.189; 52 Pa. Code §§ 69.1801-69.1817.

On May 11, 2016, the Commission made its first critical intersection between DSP II, III, and IV when it issued a Secretarial Letter at the DSP II docket ordering PECO to file a rule revision in its DSP III to allow for CAP Shopping. The Commission did not mention the pending DSP IV, and therefore did not preclude CAP shopping issues from being addressed in DSP IV, nor did it identify any issues which could arise from inserting the issue of CAP Shopping into DSP III after DSP IV proceedings had begun.

Two days later, on May 13, 2016, TURN *et al.* filed its Petition to Intervene in DSP IV. In light of the Supreme Court's denial of Allocator, and the May 11, 2016 Secretarial Letter, ALJ Fordham determined that TURN *et al.* had shown good cause to intervene after the April 19, 2016 deadline, and granted TURN *et al.*'s intervention in DSP IV.

On June 3, 2016, CAUSE-PA, the OCA, the OSBA, and RESA submitted direct testimony. CAUSE-PA submitted CAUSE-PA Statement 1, the Direct Testimony of Harry Geller, which included a proposal for a CAP shopping platform (CAP-SOP) designed to allow CAP customers access to the competitive market while protecting CAP customers and other residential ratepayers from the clear and demonstrated negative financial impacts of unrestricted electric shopping. (RD at 36-37; CAUSE-PA MB at 11). The OCA, OSBA, and RESA also submitted Direct Testimony on June 3, 2016.

On June 24, 2016, PECO, the OCA, and RESA submitted rebuttal testimony. The OCA supported CAUSE-PA's CAP-SOP proposal,

On July 8, 2016, CAUSE-PA, the OCA, TURN *et al.*, and RESA submitted surrebuttal testimony. TURN Statement 1-SR, Surrebuttal Testimony of Philip A. Bertocci, supported CAUSE-PA's CAP-SOP proposal and submitted, among other things, that:

PECO's CAP shopping proposal should not be subject to approval in its DSP III, when the evidence showing the need for program protections is properly before the Commission in this DSP IV. PECO's CAP shopping plan should not be implemented on the basis of the DSP III record, when this DSP IV record demonstrates the harm that will befall low income CAP customers entering the competitive market without adequate price protections and termination/cancellation fee prohibitions.

(TURN St. 1-SR at 5-6).

A hearing was held on July 14, 2016, at which all of the parties' testimony and respective exhibits and attachments were entered into the record by stipulation or verification.<sup>12</sup> No party conducted cross-examination of any witnesses at the hearing and no party raised any objection to the testimony of CAUSE-PA or TURN et al. ALJ Fordham did not take any action, *sua sponte*, to indicate that consideration of CAP Shopping was beyond the scope of PECO's DSP IV.

On September 23, 2016, ALJ Fordham issued a Recommended Decision. Parties were served with the Recommended Decision on October 4, 2016. With respect to CAP Shopping in DSP IV, the Recommended Decision held:

Although CAUSE-PA, the OCA and TURN et al. make valid points about CAP Shopping, PECO did not submit a CAP Shopping Plan in this proceeding. Based on the Secretarial Letter, PECO is filing its plan in another proceeding. It is important that PECO be allowed to present its plan before a ruling is made. Furthermore, if the undersigned ruled on the proposal submitted in this proceeding, it might conflict with a ruling in the other proceeding. The undersigned recommends that PECO's proposal to file its plan in other proceeding be approved. Consequently, the undersigned will not address the CAP Shopping issue in this proceeding.

(RD at 57-58).

---

<sup>12</sup> The default service program and procurement issues that were the genesis of this proceeding, as well as various other competitive market issues, have been settled by various parties and are the subject of a Joint Petition for Partial Settlement that was filed on July 28, 2016. The Joint Parties have not joined in the Partial Settlement, but did not object to the proposed settlement of those issues..

As explained throughout, the Joint Parties assert that ALJ Fordham erred by not issuing a decision on the issue of CAP Shopping in DSP IV and by failing to approve CAUSE-PA's CAP-SOP, which was supported by substantial and un rebutted record evidence.

### III. EXCEPTIONS

A. **Joint Parties' Exception 1: ALJ Fordham erred in her Recommended Decision by declining to rule on CAUSE-PA's CAP-SOP proposal, which was squarely before her as part of PECO's DSP IV plan proceeding, and recommending that the matter be referred to the closed DSP III docket, where parties are foreclosed from presenting current record evidence on CAP shopping for full consideration.**

The procedural progression of the CAP Shopping issue, which was laid out in detail in the background section above, is critical to understanding the seriousness of the error ALJ Fordham made in refusing to decide the CAP Shopping issues in this proceeding. ALJ Fordham did not just set aside the issue for another litigated proceeding in which parties would have the opportunity to fairly present their case, subject to the rules of evidence, including hearsay and cross-examination, with regard to the appropriate structure of CAP Shopping *in PECO's DSP IV*. She extricated the entire issue of DSP IV CAP Shopping from the currently litigated proceeding – where parties expended a considerable amount of time and resources to present *current* data and evidence for the record and brief the issue for the Commission's decision. She then recommended – though did not ensure – that the issue of DSP IV CAP Shopping be referred to a closed docket for PECO's soon-to-expire DSP III – where it appears the Commission may limit party<sup>13</sup> participation to unverified comments that are not subject to cross examination. As the

---

<sup>13</sup> It remains unclear whether TURN *et al.* would even be permitted to participate in the DSP III process, as they were not a party to that proceeding. As TURN *et al.* explained in its Main Brief:

Although TURN *et al.* would, and if necessary will, submit comments in response to PECO's 'proposed rule revision,' the Commission's proposal, set forth in the Secretarial Letter, nonetheless presents a due process quandary. For example, would TURN *et al.* have standing to appeal the Commission's decision on CAP Shopping in PECO's DSP III solely on the basis of its submission of comments and without being a party/intervenor? Having directed PECO to submit a proposed

Joint Parties have consistently asserted, this course of action would truncate the procedural due process necessary with regard to this critically important issue. (See TURN et al. MB at 16; CAUSE-PA MB at 21-25; see also TURN *et al.* St. 1-R at 16 (“Because of the statutorily recognized importance of low income protections, confirmed by the Commonwealth Court, proposals that would diminish those protections must be fully vetted in an on the record proceeding.”)).

The CAP Shopping filing which PECO is required to make at the DSP III docket originated in PECO’s DSP II. It was litigated in 2013, and then became the subject of lengthy appeals. However, at no time was the issue of DSP II CAP Shopping subject to further evidentiary proceedings.

Utilities are required to submit Default Service Program Plans every 2-3 years, unless otherwise ordered by the Commission.<sup>14</sup> This periodic review of a utility’s default service programs ensures that the utility’s plans account for and respond to a current and more relevant state of market realities, facts, and law. The data available conclusively shows the financial impact of unrestricted CAP Shopping on CAP and non-CAP customers alike has drastically worsened since 2013, when PECO’s DSP II CAP Shopping Plan was first reviewed by the Commission. As discussed below in Exception 2, the unrebutted data presented on the record in *this* proceeding demonstrates that substantial financial harm is occurring in every service territory which allows CAP customers to shop without restriction – to the tune of several million

---

rule revision, is the Commission obligated to reopen the record in DSP III, in order to allow the parties, and any new intervenors such as TURN et al., to develop evidence for or against proposed rule revisions? Although these specific issues may not be presently before the Commission, they should nonetheless inform its decision concerning the necessity of addressing CAP shopping issues in this DSP IV proceeding.

TURN et al. MB at 16, n.16.

<sup>14</sup> See 52 Pa. Code § 54.185(d)-(e).

dollars each and every year. (CAUSE-PA MB at 28-29). Likewise, PECO's CAP structure during DSP IV will also be radically different from its CAP structure during DSP II. (CAUSE-PA MB at 15-18, 22-23). As explained by CAUSE-PA in its Main Brief, "DSP IV is the first opportunity in which the Commission will have the opportunity to review the relationship of the new FCO with PECO's DSP IV design." (CAUSE-PA MB at 22).

Refusing to rule on the issue of CAP Shopping in DSP IV, as recommended by ALJ Fordham in her Recommended Decision, would deprive the Joint Parties of the ability to pursue a rule or order, to present evidence, and to obtain a decision based on current facts and circumstances. In short, refusing to rule on the merits of CAP Shopping in DSP IV would deprive the Joint Parties of due process – changing the rules of the game after the game is played. By ALJ Fordham's own account, the Joint Parties and OCA raised "valid points" about CAP Shopping in the context of PECO's DSP IV. (RD at 56). And the Joint Parties assert that those valid points must be considered by the Commission in *this* proceeding, where a record has been fully developed, the parties have thoroughly engaged in an on-the-record proceeding, and the decision was properly presented to the Commission for a decision.

1. *PECO – along with the other parties to this proceeding - had ample time and opportunity to present a CAP Shopping plan in DSP IV.*

ALJ Fordham opined in her RD that it was proper to forego ruling on CAUSE-PA's CAP-SOP proposal as part of PECO's DSP IV because "it is important that PECO be allowed to present its plan before a ruling is made." (RD at 57-58). PECO had ample time to present a CAP Shopping plan for its DSP IV in its initial Petition and Plan filing, in its rebuttal testimony, in its surrebuttal testimony, or in its rejoinder testimony. But PECO chose not to do so, instead relying on its argument that the Parties should not be afforded a decision on CAP Shopping in DSP IV,

and should instead be confined to whatever decision is made in the future in the closed docket DSP III proceeding.

ALJ Fordham’s refusal to consider CAUSE-PA’s properly presented proposal – especially in light of her explicit acknowledgement that “CAUSE-PA, the OCA, and TURN et al. make valid points about CAP Shopping”, (RD at 57), constitutes a critical error. The applicable standards of review clearly contemplate that non-utility parties are entitled to raise proposals in litigated proceedings.<sup>15</sup> There is no legal basis for the PUC to conclude that, in the context of a PECO’s DSP IV proceeding, and without any objection or other articulated basis, a proponent of a rule or order may simply be disregarded. To the contrary, the Joint Parties are entitled to a ruling on the merits of the CAP shopping proposals and consideration of the evidence, which has been a recognized and unchallenged aspect of this DSP IV proceeding since CAUSE-PA intervened on April 19, prior to the Commission’s May 11 Secretarial Letter.

The simple fact of the matter is that CAP shopping program proposals were properly raised in this proceeding without objection. That the proposals were raised by parties other than PECO matters only for the burden of proof, but not for the propriety of the arguments’ placement in this proceeding. It is a manifest error for ALJ Fordham to punt these issues to a forum where, by all indications, the evidentiary record will remain closed, participation will be limited to the submission of unverified, unsworn comments, and stakeholders who were not a party to DSP III may be denied intervention. At a minimum, if the Commission is going to consider CAP

---

<sup>15</sup> See 66 Pa. C.S. § 332(a).

Shopping in PECO's DSP III, the record of this proceeding must be transferred and considered on the record therein, and the parties to this proceeding must be permitted to intervene.<sup>16</sup>

2. *A ruling on CAP Shopping for DSP IV will not improperly interfere with a compliance decision on CAP Shopping for DSP III.*

The second and final rationale ALJ Fordham cites as support for her decision to forego a decision on DSP IV CAP Shopping is that “if the undersigned ruled on the proposals submitted in this proceeding, it might conflict with a ruling in the other proceeding [DSP III].” (RD at 57-58). This justification for inaction is without merit. By design, a ruling with respect to a prior Default Service Plan will not interfere with a ruling on a new Default Service Plan. Each successive plan proceeding is based on the facts and circumstances applicable at the time of the Plan's filing, and changes implemented in the DSP IV program in no way conflict with approved provisions in the DSP III program, which is effective for a different period. In other words, PECO's DSP II Plan was effective only for the DSP II Plan period (June 1, 2013, to May 31, 2015) and PECO's DSP III Plan will be effective only until May 31, 2017. To assert that the Order and Opinion in a successive, subsequently submitted Plan proceeding could not modify aspects of a previously issued Order in a prior Plan proceedings would result in a stagnant and unchanging Plan – undermining the purpose of periodic plan review. ALJ Fordham's assertion that it would be inappropriate for her decision in DSP IV to conflict with a decision in DSP III is, thus, without merit and should be rejected.

---

<sup>16</sup> Deferring issues raised by parties in an on-the-record proceeding to a subsequent proceeding in which the Commission provides only a right to comment would violate the due process rights of the Joint Parties who raised the issues here. The fact that the Commission may prefer to deal with an issue later rather than now is irrelevant. The issue was presented, evidence was fully developed, no objections or other barriers to consideration of the issue were presented, and the parties fully briefed the issue. The Commission needs to rule on the issue based on the record before it and cannot defer a decision to some unknown time pursuant to some unknown and ad hoc process.

**B. Joint Parties' Exception 2: ALJ Fordham erred in her Recommended Decision when she failed to approve CAUSE-PA's proposal to implement a modified, CAP-specific Standard Offer Program (CAP-SOP), as the parties developed substantial and un rebutted record evidence that the CAP-SOP proposal is necessary and appropriate to balance the interests of CAP customers in gaining access to the competitive market while protecting the financial stability of the CAP program and the economically vulnerable customers enrolled therein, as required by the Choice Act and the Public Utility Code.**

ALJ Fordham's decision to forego a ruling on CAP Shopping is not only procedurally defective – raising the due process issues discussed above – it also ignores the substantial evidence presented in support of CAUSE-PA's CAP-SOP proposal to stem the certain and substantial harm that will occur to both CAP customers and non-CAP residential ratepayers alike if the Commission fails to require implementation of reasonable price protections in PECO's DSP IV. Rather than reiterate here the lengthy and nuanced arguments set forth in the Joint Parties' Main and Reply Briefs, the Joint Parties will briefly summarize those points here while incorporating the totality of those arguments by reference.

Pursuant to the Electricity Generation Customer Choice and Competition Act (Choice Act), the Commission has both the duty and obligation to ensure that Universal Services, including CAP, are appropriately funded to protect the affordability of electric service for low income customers.<sup>17</sup> Within that duty, the Commission has the corresponding duty to ensure that Universal Services are provided in a cost-effective manner.<sup>18</sup> The Commonwealth Court definitively held that in fulfilling these corresponding duties, the Commission has the legal authority to “bend competition” and impose rules which may restrict CAP customer shopping to protect CAP customers and residential ratepayers from financial harm.<sup>19</sup>

---

<sup>17</sup> 66 Pa. C.S. §§ 2802(10), (17); 2803; 2804(9); see also 52 Pa. Code § 69.265.

<sup>18</sup> Id.

<sup>19</sup> CAUSE-PA et al., 120 A.3d at 1101, 1103-04.

When CAP customers shop without pricing restrictions, either the cost of the CAP program increases, the cost of utility service for CAP customers increases beyond Commission-established affordability levels, or both. (CAUSE-PA MB at 18; TURN MB at 19). This is not speculative. The record in this proceeding shows that harm is occurring to CAP customers and residential ratepayers in every service territory where CAP shopping is allowed. The CAP program in PPL's service territory has suffered a net<sup>20</sup> harm of \$2,743,872 every year for nearly four years (January 2012 through October 2015). (CAUSE-PA MB at 27-30; TURN MB at 20-23). When extrapolated over time, unrestricted CAP shopping in PPL's service territory has cost residential ratepayers a **net of \$10.5 million in additional program costs**. (Id.) Substantially similar data was produced in the First Energy Company Service territories. The reported data from that proceeding showed that as of November 2015, more than 77% of Met-Ed's CAP customers, more than 50% of Penelec's customers, and more than 65% of West Penn's CAP customers who are shopping are paying more than the price to compare. (CAUSE-PA MB at 29; TURN MB at 22-23). There is no record evidence that the harm will be any different in PECO's service territory than it is in the PPL and First Energy service territories. (CAUSE-PA MB at 30; TURN MB at 23-24).

Given the substantial and un rebutted evidence of harm to ratepayers as a result of unrestricted CAP shopping, it is critical that the Commission approve CAUSE-PA's CAP-SOP proposal for inclusion in PECO's DSP IV plan. The CAP-SOP is designed to provide CAP customers access to the market based upon a currently existing SOP platform, while protecting the participating households and the non-CAP ratepayers who finance CAP from unreasonable

---

<sup>20</sup> Net impact means all of the savings incurred by CAP customers shopping at rates *at or below* the price to compare, subtracted from all of the costs incurred by CAP customers shopping at rates *higher* than the price to compare.

and completely preventable risk of financial harm. (CAUSE-PA MB at 31-32; TURN MB at 26-27). The only other position on CAP shopping advanced in this proceeding - to sit by and wait for the harm to befall CAP customers and ratepayers who contribute to the cost of CAP - is simply untenable, as it would allow ratepayers and vulnerable CAP customers to incur substantial, unjustifiable, and wholly preventable costs. (CAUSE-PA MB at 33; TURN MB at 23). Indeed, the CAP-SOP is the only reasonable alternative advanced by the parties to this proceeding that fulfills the duties of the Commission to ensure the affordability of CAP rates and the cost-effectiveness of the CAP program. (Id.)

On the other hand, no other party to this proceeding has mounted a substantiated argument against the CAP-SOP which would outweigh the substantial harm that could result if the proposal were not adopted. RESA's speculative assertions that no suppliers will participate in the CAP-SOP – and that it would be too hard to implement – are belied by the complete lack of data to even suggest that suppliers are not interested in serving CAP customers under the terms of the proposed CAP-SOP. (CAUSE-PA MB at 36; TURN MB at 28-29). Similarly, RESA's assertion that certain undefined non-energy benefits received by CAP shoppers might outweigh the harm to CAP customers and ratepayers is also wholly unsupported by any record evidence. (CAUSE-PA MB at 35-36; TURN MB at 24). Coincidentally, any data which could support RESA's claim is within RESA's – and its members' – sole possession, as they are the entities selling these non-energy benefits, but they produced nothing in this proceeding to make their case. (Id.). Indeed, RESA's position on the value of undefined non-energy benefits lacks any support from, and is at odds with, the letter and intent of the Choice Act.<sup>21</sup>

---

<sup>21</sup> “The purpose of the Choice Act is not to make “value-added” products available to customers. The purpose is “to create direct access by retail customers to the competitive market for the *generation of electricity*.” 66 Pa. C.S. § 2802(12) (emphasis added). Furthermore, the Choice Act specifically recognizes that deregulation was intended to be an effective means to control *cost*, not value added services. 66 Pa. C.S. § 2802(5).” TURN MB at 24.

When examining the record in this proceeding, there is ample evidence to support the necessity and the reasonableness of the CAP-SOP and, as such, the proposal has met the evidentiary burden applicable in this case and should be approved by the Commission for inclusion in PECO's DSP IV.

#### IV. CONCLUSION

For the foregoing reasons, the Joint Parties respectfully request that the Commission reject the Recommendations of ALJ Fordham and approve CAUSE-PA's CAP-SOP proposal, as it was supported by substantial and un rebutted evidence, thereby meeting the applicable evidentiary standard in this proceeding.

Respectfully Submitted,

#### PENNSYLVANIA UTILITY LAW PROJECT

*Counsel for CAUSE-PA*



---

Elizabeth R. Marx, Esq., PA ID 309014  
Patrick M. Cicero, Esq., PA ID 89039  
Joline Price, Esq., PA ID 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486

#### COMMUNITY LEGAL SERVICES

*Counsel for TURN et al.*



---

Robert W. Ballenger, Esq., PA ID 93434  
Josie B.H. Pickins, Esq., PA ID 309422  
1424 Chestnut Street  
Philadelphia, PA 19102-2505  
Tel.: 215-981-3700

**CAUSE-PA Statement No. 1**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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

DIRECT TESTIMONY OF HARRY GELLER

ON BEHALF OF

THE COALITION FOR AFFORDABLE UTILITY SERVICES AND  
ENERGY EFFICIENCY IN PENNSYLVANIA (“CAUSE-PA”)

June 3, 2016

1                                   **PREPARED DIRECT TESTIMONY OF HARRY GELLER**

2   **Q.     Please state your name, occupation, and business address.**

3   A.     Harry Geller. I am an attorney. Though I am currently retired, I have maintained an office  
4   at the Pennsylvania Utility Law Project (PULP), 118 Locust St., Harrisburg, PA 17101, and serve  
5   as a consultant to PULP and its clients.

6   **Q.     Briefly outline your education and professional background.**

7   A.     I received my B.A. Degree from Harpur College, State University of New York at  
8   Binghamton in 1966, and a J.D. degree from Washington College of Law, American University  
9   in 1969. Upon graduation from law school, I entered the Volunteers in Service to America  
10  (VISTA) program, where I was assigned to the New York University Law School. I took courses  
11  in the Law School's Urban Affairs and Poverty Law program and worked with the Community  
12  In Action Program on the West Side of Manhattan in New York City from 1969-1971. In 1971,  
13  I started as a Staff Attorney for the New York City Legal Aid Society, Criminal Court and  
14  Supreme Court Branches in New York County. In 1974, I moved to Pennsylvania and began  
15  working for Legal Services, Incorporated (LSI). LSI was a civil legal aid program serving  
16  Adams, Cumberland, Franklin and Fulton Counties. I worked at LSI from 1974-1987 first as a  
17  Staff Attorney, then as Managing Attorney, and ultimately became Executive Director. Through  
18  a restructuring with other legal services programs, LSI became part of what is now known as  
19  MidPenn Legal Services and Franklin County Legal Services.

20         In 1988, I was hired to be the Executive Director of PULP, a statewide project dedicated  
21  to the rights of low-income utility customers. At PULP, I represented low-income individuals  
22  with utility and energy concerns, and supported organizations advocating for low income  
23  households in utility and energy matters. As the Executive Director of PULP, I consulted and co-

1 counseled on a wide variety of individual utility consumer cases, and I participated in task  
2 forces, work groups and advisory panels, including the LIHEAP Advisory Council. I frequently  
3 trained community organizations, legal aid staff and advocacy groups across Pennsylvania about  
4 the various utility and energy matters affecting Pennsylvania's low-income population. I retired  
5 from PULP on June 30, 2015. Although no longer employed by PULP, I now serve as a  
6 consultant to PULP and its clients. In sum, I have over 45 years' experience with households in  
7 poverty, including the past 27 years focusing specifically on utility and energy issues affecting  
8 low-income consumers. My resume is attached as Appendix A.

9 **Q. Please describe the focus of your work over the past forty-five years, including**  
10 **relevant work experience on issues of low-income families' ability to afford essential goods**  
11 **and services such as utilities?**

12 A: I have represented low-income individuals and organizations serving low income  
13 populations in a wide variety of legal matters, including family law, public benefits,  
14 unemployment compensation, utility shut-offs, debtor/creditor, and housing related disputes. Over  
15 the past 27 years, my focus has been ensuring that low-income households can connect to, afford,  
16 and maintain utility and energy services.

17 In all of these legal matters, I worked almost exclusively on behalf of individuals and  
18 households that subsist on incomes at or below 150% of the Federal Poverty Level (FPL). Through  
19 this work, I have become intimately familiar with the daily lives of countless of our poorest  
20 citizens. I have spent hundreds, if not thousands, of hours assisting clients in combing through  
21 their budgets to attempt to assist them to make ends meet. Over the years, I have consistently been  
22 surprised by the almost complete inability of low-income families to pay the most basic monthly

1 necessities on the incomes they have. Almost every month, my clients faced the stark choice of  
2 choosing which bills they could forgo with the least drastic consequences.

3 In addition to my deep understanding of the daily monetary struggles facing poor families,  
4 I have an extensive knowledge of the array of programs designed to allow low-income individuals  
5 to afford electric service.

6 While at PULP, I was involved in numerous proceedings evaluating the effectiveness of  
7 required Universal Service Programs to assist low-income families. I have spent thousands of  
8 hours identifying issues in Universal Services and making recommendations for changes to  
9 Universal Service programming to better serve low-income consumers. Ultimately, this  
10 advocacy led to the recognition that integrated programs for low income consumers were  
11 necessary. As director of PULP, I played an instrumental role in the development, oversight, and  
12 monitoring of the initial pilots and then the statutorily required low-income Universal Service  
13 Programs, each of which is structured to provide a different and complementary form of  
14 assistance to low-income customers, such that those customers have the ability to afford and  
15 maintain basic utility service.

16 For example, the Customer Assistance Program (CAP) provides alternatives to traditional  
17 collection methods for low income, payment troubled utility customers. The Low Income Usage  
18 Reduction Program (“LIURP”) is a targeted weatherization program designed to assist low-  
19 income households with the highest energy consumption, payment problems, and arrearages.  
20 These programs work in tandem and are designed to assist low-income households in  
21 maintaining affordable utility services and safe living environments while reducing utility  
22 collection, thereby benefitting other ratepayers.

1 **Q. For whom are you testifying in this proceeding?**

2 A. I am testifying on behalf of the Coalition for Affordable Utility Services and Energy  
3 Efficiency in Pennsylvania (“CAUSE-PA”).

4 **Q. Please state the purpose of your Direct Testimony.**

5 A. The purpose of my testimony is to address issues presented by the Petition of PECO  
6 Energy Company (“PECO” or “the Company”) for approval of default service programs for the  
7 period of June 1, 2017 through May 31, 2019 (hereinafter “DSP IV”), including issues related to  
8 PECO’s role in ensuring access to affordable rates for its customers because of its statutory role  
9 as default service provider.

10 **Q: Please summarize PECO’s filing.**

11 A: PECO filed the docketed DSP proceeding in accordance with its responsibilities as a  
12 Default Service Provider pursuant to Pennsylvania’s Electricity Generation Customer Choice and  
13 Competition Act, 66 Pa. C.S. § 2891 *et seq.* (the “Competition Act”), as amended by Act 129 of  
14 2008 (“Act 129”); the Commission’s default service regulations found at 52 Pa. Code §§ 54.181-  
15 54.189; and the Commission’s Policy Statement on Default Service at 52 Pa Code §§ 69.1801-  
16 1817. Specifically, PECO is obligated to provide electric generation service to all customers  
17 within its service territory who do not select a retail electric generation supplier (“EGS”) or who  
18 return to default service when the EGS providing electric generation is unable or unwilling to  
19 continue to serve the customer. Through this Petition, PECO seeks to establish the terms and  
20 conditions under which it will procure default service supply, provide default service to non-  
21 shopping customers, and satisfy the requirements of the Alternative Energy Portfolio Standards  
22 Act.

1 For its residential default service customer class, PECO proposes to procure approximately  
2 96% of the residential class default service supply through a mix of one-and two-year full  
3 requirements products, approximately 40% of which would be 1 year products and 60% would be  
4 2-year products.<sup>1</sup> The remaining 4% of the residential default service load will be supplied by a  
5 mix of long-term, five-year, fixed-price full requirements products and spot market purchases.<sup>2</sup>  
6 PECO proposes to continue its Standard Offer Program (SOP) without modification. Under  
7 PECO's current SOP, residential customers contacting PECO's customer service center are  
8 encouraged to select among a group of EGSs who have voluntarily chosen to offer customers a  
9 12-month contract priced at 7% below PECO's default service rate at the time of the offer.<sup>3</sup>

10 **Q: What are your concerns about PECO's filing?**

11 A: I am concerned about coming changes that will allow PECO's customer assistance program  
12 (CAP) customers to shop for retail electric generation service for the first time. Specifically, I  
13 believe that PECO must develop effective, stringent, and significant safeguards for its low-income  
14 customers who are enrolled in CAP and receiving generation supply from EGSs. Throughout my  
15 testimony, I address the economic fragility of CAP customers, the requirements that rates paid by  
16 CAP participants must be affordable, the potential of additional costs on non-CAP ratepayers, and  
17 the need for PECO to provide protections for its CAP customers who shop for EGS supplied  
18 generation service. I discuss why this proceeding is the proper place for the Commission to make  
19 these determinations and the options that PECO should incorporate into the proposed DSP to  
20 achieve appropriate protections for CAP customers.

<sup>1</sup> PECO Statement No. 1 at 7-8.

<sup>2</sup> PECO Statement No. 1 at 7-8.

<sup>3</sup> PECO Statement No. 1 at 6.

1 **Q: Why are you concerned about low-income CAP customers in this proceeding?**

2 A: This proceeding establishes the general rules for procurement of default service as well as  
3 rules and tariff provisions for participation in the competitive retail electric market. PECO's  
4 petition seeks to create parameters for procuring energy and to set rules for how customers,  
5 PECO, and EGSs interact. Low-income households lack significant economic flexibility. As  
6 such, the design of these arrangements directly and dramatically impacts the ability for low-  
7 income households to connect to and maintain electricity service at affordable rates. This is  
8 especially true for PECO's CAP customers. Up to this point, PECO's CAP customers have not  
9 been permitted to shop for competitive electric generation supply service while enrolled in  
10 PECO's CAP program.

11 **Q: If PECO's CAP customers are currently not allowed to shop for competitive**  
12 **generation supply service with an EGS and remain on CAP, why are you raising these**  
13 **issues here?**

14 A: PECO has been ordered to develop and file a CAP shopping plan as a result of a recently  
15 remanded case stemming from its DSP II proceeding.<sup>4</sup> In DSP II, PECO filed a CAP shopping  
16 plan that would have allowed CAP customers to shop for competitive electric supply from an  
17 EGS and retain CAP benefits only if the EGS guaranteed a rate that would be no greater than  
18 PECO's price to compare. In that proceeding, the Office of Consumer Advocate (OCA)  
19 proposed that PECO's CAP shopping program also permit CAP customers to exit EGS contracts  
20 with no termination/cancellation fees. The Commission rejected both proposals, stating that  
21 these program features amounted to price restrictions that it did not have statutory authority to

<sup>4</sup> See Secretarial Letter issued May 12, 2016 at *Petition of PECO Energy Company of its Default Service Program*, Docket No. P-2012-2283641, attached hereto as Appendix B.

1 approve.<sup>5</sup> The Commission also determined, based on the evidence before it at the time of its  
2 DSP II consideration, that even if it did have authority to approve price limitations and fee  
3 restrictions for shopping CAP participants, it believed such limitations and restrictions would  
4 impede development of the competitive market, and that only a “robust competitive market  
5 coupled with effective customer education will result in the least-cost option” for CAP  
6 participants.<sup>6</sup> Both CAUSE-PA<sup>7</sup> and the OCA appealed the PUC’s decision to the  
7 Commonwealth Court.

8 By opinion and order dated July 14, 2015,<sup>8</sup> the Commonwealth Court reversed the  
9 Commission’s determination concerning its legal authority, and clarified that both utilities and  
10 the Commission have the legal ability to set different rules for CAP customers. Specifically, the  
11 Court stated that the Electricity Generation Customer Choice and Competition Act<sup>9</sup> (“Choice  
12 Act”) “does not demand absolute and unbridled competition,”<sup>10</sup> and found:

13 What is particularly noteworthy about the legal arguments of the PUC and Direct  
14 Energy is their focus on the PUC’s lack of authority to regulate rates EGSs charge  
15 customers. **We are persuaded, however, by Petitioners’ contention that the**  
16 **absence of authority to regulate EGS rates alone does not compel the**  
17 **conclusion that the PUC lacks authority to adopt rules attendant to universal**  
18 **service programs that may have the effect of limiting competition and choice**  
19 **with respect to low-income customers.**<sup>11</sup>

<sup>5</sup> *Petition of PECO Energy Company for Approval of its Default Service Plan*, Opinion and Order at 14, 16-17, Docket No. P-2012-2283641 (Jan. 24, 2014) (*January 2014 Opinion and Order*).

<sup>6</sup> *Petition of PECO Energy Company for Approval of its Default Service Plan*, Opinion and Order at 11, Docket No. P-2012-2283641 (March 12, 2014) (*March 2014 Opinion and Order*).

<sup>7</sup> CAUSE-PA was joined in its appeal by two other organizations representing the interests of low-income customers, the Tenants Union Representative Network (TURN) and Action Alliance for Senior Citizens of Greater Philadelphia (Action Alliance) (collectively TURN et al.). TURN et al. are also parties to this proceeding.

<sup>8</sup> [CAUSE-PA et al. v. Pa PUC and McCloskey v. PA PUC](#), 120 A.3d 1087, 445 CD 2014, 596 CD 2014 (Commw. Ct., July 14, 2015).

<sup>9</sup> See 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

<sup>10</sup> [CAUSE-PA et al.](#), 120 A.3d at 1101.

<sup>11</sup> [CAUSE-PA et al.](#), 120 A.3d at 1101 (emphasis added).

1 The Court went on to state that “under certain circumstances, unbridled competition may have to  
2 give way to other important concerns,”<sup>12</sup> and specifically found that under circumstances like those  
3 that exist here, the PUC has the authority to limit CAP customers to paying no more than the price  
4 to compare and eliminate early termination or cancellation fees:

5 [W]e conclude that the PUC has the authority under Section 2804(9) of the Choice  
6 Act, in the interest of ensuring that universal service plans are adequately funded  
7 and cost effective, **to impose, or in this case approve, CAP rules that would limit**  
8 **the terms of any offer from an EGS that a customer can accept and remain**  
9 **eligible for CAP benefits.** The obligation to provide low-income programs falls on  
10 the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act  
11 expressly requires the PUC to administer these programs in a manner that is cost  
12 effective for the CAP participants and the non-CAP participants, who share the  
13 financial consequences of the CAP participant’s EGS choice.

14 Our conclusion finds support in the Choice Act’s legislative declaration of policy,  
15 which both encourages deregulation to allow consumers the opportunity to  
16 purchase directly their supply from EGSs and emphasizes the need to continue to  
17 maintain programs that assist low-income customers to afford electric service. 66  
18 Pa. C.S. § 2892 (7), (9), (10), (14), (17). **So long as it “provides substantial**  
19 **reasons why there is no reasonable alternative so competition needs to bend”**  
20 **to ensure adequately-funded, cost-effective, and affordable programs to assist**  
21 **customers who are low-income to afford electric service . . . the PUC may**  
22 **impose CAP rules that would limit the terms of any offer from an EGS that a**  
23 **customer could accept and remain eligible for CAP benefits – e.g. EGS rate**  
24 **ceiling, prohibition against early termination/cancellation fees, etc.**<sup>13</sup>

25 The Commonwealth Court determined that the Commission erred as a matter of law  
26 regarding its determination that it did not have the legal authority needed to impose price  
27 restrictions on the terms and conditions surrounding CAP customer’s access to EGS products  
28 while enrolled in CAP. However, the Commonwealth Court deferred to the Commission’s  
29 determination regarding the evidence presented in the DSP II proceeding. Specifically, the Court

<sup>12</sup> [CAUSE-PA et al.](#), 120 A.3d at 1103.

<sup>13</sup> [CAUSE-PA et al.](#), 120 A.3d at 1103-04 (emphasis added) (internal citation to authority omitted).

1 found that the Commission had substantial evidence for its determination to reject the price  
2 ceiling requested by PECO, but that there was not substantial evidence for the Commission's  
3 determination to reject the OCA's proposal to prohibit early termination and cancellation fees.<sup>14</sup>

4 In response to the Commonwealth Court's decision, the Commission filed a Petition for  
5 Allowance of Appeal with the Pennsylvania Supreme Court, and CAUSE-PA, along with TURN  
6 et al., filed a Cross-Petition for Allowance of Appeal. On April 5, 2016, the Supreme Court of  
7 Pennsylvania denied both petitions. Consequently, on May 11, 2016, the Commission sent a  
8 Secretarial Letter to the parties in the DSP II proceeding in which it ordered PECO to do the  
9 following:

10 In light of the Court's Order, and the denial of allocatur by the Supreme Court,  
11 through this Secretarial Letter, the Commission hereby directs PECO to file  
12 with the Secretary and serve on the parties at its current Default Service Plan  
13 (DSP) and Universal Service and Energy Conservation Plan (USECP) dockets a  
14 proposed rule revision to its CAP Shopping Plan in its current DSP III consistent  
15 with the Commonwealth Court's Order. PECO's filing should include: (1)  
16 proposed language of the rule; (2) a proposed timeline and effective date; and (3)  
17 a proposed plan to collect data upon which to base an analysis of the CAP  
18 shopping program experiences, evaluations, and recommendations. PECO's  
19 filing will be subject to public comment and final review and approval by the  
20 Commission.<sup>15</sup>

21 **Q: Why are you addressing these matters at this time in this proceeding?**

22 A: I believe these matters need to be addressed in this proceeding for several reasons.

23 First, the interrelationship of a company's Customer Assistance Program structure and its  
24 DSP design is an essential element to be considered in the review of each newly proposed DSP.  
25 PECO's CAP Rate Discount Program, which was in effect when the Commission reviewed

<sup>14</sup> [CAUSE-PA et al.](#), 120 A.3d at 1107-08.

<sup>15</sup> *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (May 11, 2016, Secretarial Letter) ("*May 11, 2016 Secretarial Ltr.*") (internal footnotes omitted), attached hereto as Appendix B.

1 evidence specific to PECO's DSP II, is being discontinued and will be replaced by a dramatically  
2 different CAP program known as the Fixed Credit Option (FCO.) DSP IV is the first  
3 opportunity in which the Commission will have the opportunity to review the relationship of the  
4 new FCO with PECO's DSP IV design, which is proposed for the period of June 1, 2017 through  
5 May 31, 2019.

6 Second, this is the first opportunity to review the recent Commonwealth Court guidance  
7 regarding the legal authority and responsibility vested, under the Choice Act, in PECO and the  
8 Commission concerning CAP programs and the competitive shopping market. This guidance was  
9 unavailable during the Commission's consideration of DSP II or DSP III. However, it is now  
10 appropriate to be used in this proceeding for prospective development of PECO's DSP for the  
11 period of June 1, 2017 through May 31, 2019.

12 Third, new data concerning the experience and effect of CAP customer shopping in the  
13 competitive market, which was unavailable during the consideration of the record in DSP II, has  
14 been developed and is now available. As my testimony indicates, this new data is relevant to how  
15 the DSP design affects the ability of low-income households to afford electric service and the  
16 costs paid by ratepayers and is therefore relevant to this proceeding.

17 **Q. Please discuss the Commission's Secretarial Letter directing PECO to file, to the**  
18 **Docket in DSP II, a proposed rule revision to its CAP Plan.**

19 A. On May 11, 2016, the Commission issued a Secretarial Letter directing PECO to file a  
20 proposed rule revision to its yet-to-be-implemented CAP shopping plan to conform to the rules  
21 established in the DSP II proceeding as modified by the Commonwealth Court's decision. Thus,  
22 at some point PECO will file some form of a CAP shopping plan that has no price restrictions,  
23 but that does not permit EGSs to impose early termination or cancellation fees on any CAP

1 customers. However, these rules were developed in PECO’s DSP II Plan, a plan that has already  
2 expired, and its DSP III Plan will expire in less than a year. In my view, inserting a CAP  
3 Shopping platform in an expired and about to expire plan, without addressing it prospectively in  
4 this DSP proceeding, would make little sense. Parties to the current DSP IV proceeding should  
5 be afforded the opportunity to review CAP shopping issues in this proceeding so as to ensure that  
6 any Plan is reasonable in light of all the changes that have taken place since the initial DSP  
7 proceeding and the currently available evidence. This is true for several reasons.

8 First, although the Secretarial Letter states that PECO’s plan will be “subject to public  
9 comment and final review and approval by the Commission,”<sup>16</sup> there is no indication that the  
10 Commission will permit the further introduction of evidence in the DSP II proceeding showing  
11 the significant and un-mitigatable harm that has occurred as a result of unrestricted CAP  
12 shopping in other EDC service territories, nor that it will consider the legal standard recently  
13 established by the Commonwealth Court that would allow the Commission to impose CAP  
14 shopping restrictions in light of this harm. It is only this DSP IV proceeding which provides that  
15 opportunity.

16 Second, the Secretarial Letter itself invited further inquiry into these matters in this or  
17 other proceedings. For instance, the letter stated at footnote number 2:

18 The Commission’s final approval of the rule revision ordered by the Court in this  
19 matter does not prejudice any Party’s ability to raise the termination/cancellation  
20 issue, and to provide evidence regarding its impacts on the retail electric shopping  
21 market, in a future proceeding.<sup>17</sup>

22 It is unclear why the Commission chose to limit its footnote to clarify the ability of parties to  
23 raise the termination and cancellation fee issue in future proceedings – like this one – and did not

<sup>16</sup> *May 11, 2016 Secretarial Letter at 2.*

<sup>17</sup> *May 11, 2016 Secretarial Letter at 2 n. 2.*

1 include the related and inextricably intertwined issue of whether other CAP shopping rules  
2 should be developed to ensure continued CAP customer affordability for those customers who  
3 select EGS-supplied generation service. I imagine this was merely an oversight as it would seem  
4 to violate due process rights to allow parties to address one set of issues while disallowing parties  
5 to raise another critically important, material, and relevant issue – ensuring CAP customer  
6 affordability within the competitive market – which is articulated in the Choice Act and the  
7 recent Commonwealth Court decision.

8 As the Commission recognized in another of its footnotes, the Commonwealth Court’s  
9 decision was “predicated on its review of the record evidence before the Commission during  
10 PECO’s DSP II proceeding.”<sup>18</sup> Thus any and all new evidence since PECO’s DSP II proceeding  
11 should be considered, particularly in light of the clarified legal standard.

12 Finally, the Commission’s May 11, 2016, Secretarial Letter did not provide a time frame  
13 for PECO to implement its CAP shopping program. This creates significant uncertainty. As I  
14 testify below, in addition to the pending expiration of PECO’s DSP III and implementation of  
15 DSP IV, there are a variety of reasons – including PECO’s pending roll-out of a complicated  
16 new CAP structure – why I believe PECO should not implement any CAP shopping until at the  
17 earliest the start of its DSP IV on June 1, 2017, which makes this proceeding the most  
18 appropriate forum in which to determine the details of any such CAP shopping design.<sup>19</sup>

<sup>18</sup> *May 11, 2016 Secretarial Letter at 2 n. 4.*

<sup>19</sup> To be sure, programs like the Standard Offer Program are addressed in each DSP, and so too should a CAP shopping platform; especially as in the present case the proposed DSP will be affecting a CAP program which is being fundamentally restructured.

1 **Q: What are the reasons why you believe that PECO should not develop a CAP**  
2 **shopping program until the start of DSP IV (June 1, 2017) at the earliest?**

3 A: At the time the Commission ruled on PECO's previous CAP shopping plan in its DSP II  
4 proceeding, PECO's CAP program was a tiered rate-discount program. That program is still in  
5 effect, but will soon be changing. In October 2016, PECO will switch its CAP from a tiered  
6 CAP rate program to a Fixed Credit Option (FCO) program. The design of this FCO<sup>20</sup> was the  
7 result of extensive litigation and settlement discussions between PECO, CAUSE-PA, the OCA,  
8 and TURN, et al. That settlement was approved by the Commission on July 8, 2015.<sup>21</sup> The  
9 redesign has produced a significantly different and complex new CAP structure which results in  
10 a complete overhaul of the method used to calculate a CAP customer's bill. In addition to this  
11 entirely new method of determining a low-income customer's discounted bill, PECO will at the  
12 same time be implementing an In-Program Arrearage Forgiveness (IPAF)<sup>22</sup> program that will  
13 require CAP customers who have CAP arrears at the time of the transition to make payments  
14 *above and beyond* their CAP payments over a 60-month period of time.<sup>23</sup>

15 All of PECO's 140,000 CAP customers will have to be educated about the changes to the  
16 CAP program that will be effective in October 2016, and those CAP customers with arrears will

<sup>20</sup> For a comprehensive statement of PECO's new FCO design see Recommended Decision, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, M-2012-2290911, June 11, 2015 (recommending that settlement be approved in full).

<sup>21</sup> Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, M-2012-2290911, July 8, 2015.

<sup>22</sup> The term "in-program arrears" as used herein means arrears that developed after the customer was enrolled in CAP and while the customer was paying CAP rates. This is in contrast to pre-program arrears which are those arrearages that accrued *before* the customer entered the CAP program.

<sup>23</sup> The IPAF was negotiated by the parties in recognition of the overall unaffordability of PECO's previous CAP structure and was definitively determined in PECO's most recent base rate proceeding. The unaffordability of PECO's CAP Rate structure was addressed by the Commission multiple times, including in its Tentative Order regarding PECO's 2013-2015 USECP filing. Tentative Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, 8-9, M-2012-2290911, November 8, 2012. See also Final Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, 12-19, M-2012-2290911, April 4, 2013.

1 also need to be educated about their obligations to maintain their additional IPAF payment,  
2 which will be in addition to their CAP payment. PECO has a comprehensive timeline for this  
3 education, which is slated to begin mid-June and will continue through at least December 2016.

4 Since PECO's CAP customers have not yet been able to shop for EGS-supplied  
5 generation service, they will also, for the first time, have to be educated about how to do so, and  
6 under what terms and conditions they are permitted to do so. The Commission itself, has  
7 repeatedly noted that an effective education program is an essential tool to be implemented for  
8 informed customer shopping.<sup>24</sup> It is difficult to imagine how PECO would be able to effectively  
9 educate its CAP customers about each of the various CAP program changes that are occurring  
10 beginning October 2016, while at the same time trying to develop and effectively educate the  
11 same group of customers about their ability to shop for competitive generation supply.

12 Because of all these changes, I believe that any CAP shopping program in the PECO  
13 service territory should not be implemented until the beginning of DSP IV at the earliest. This  
14 proceeding is the first, and only formally structured opportunity, to introduce evidence and  
15 address issues surrounding PECO's CAP shopping program. Furthermore, it is the first  
16 opportunity for the Commission to fully consider the determinations reached by the  
17 Commonwealth Court, the changes affecting the fully restructured PECO CAP (which will be  
18 completely transformed from a CAP rate discount structure to a fixed Credit Option structure),  
19 new evidence regarding the economic effect of CAP customer shopping, and the level and type  
20 of education required to be provided to CAP customers in light of these significant events.

<sup>24</sup> See e.g., *Petition of PECO Energy Company for Approval of its Default Service Plan*, Opinion and Order at 15-28-30 16-17, Docket No. P-2012-2283641 (Jan. 24, 2014); *Petition of PECO Energy Company for Approval of its Default Service Plan*, Opinion and Order at 11, 17, 27, Docket No. P-2012-2283641 (March 12, 2014).

1 I also note that the issue of how and under what terms and conditions CAP customers  
 2 should continue to receive electric generation supply service from an EGS and remain on CAP is  
 3 being addressed by each of the other EDCs as part of their respective DSP proceedings. It is the  
 4 subject of an upcoming collaborative in the First Energy Service territories,<sup>25</sup> and is currently  
 5 being litigated in PPL’s default service proceeding,<sup>26</sup> and Duquesne Light has also raised this  
 6 issue in their currently pending DSP proceeding.<sup>27</sup> Given the significant issues and dramatic  
 7 restructuring of PECO’s CAP in the upcoming year, it is even more vital that these matters be  
 8 addressed now, in this proceeding.

9 **Q: Please briefly describe the demographics of PECO’s low-income population.**

10 A: According to the most recent report by Commission’s Bureau of Consumer Services on  
 11 Universal Programs and Collections Activity, PECO has a significant confirmed low-income  
 12 population. I have reproduced this information in Table 1 below:

13 **Table 1 – PECO Low Income Population<sup>28</sup>**

Company	Number of Confirmed Low-Income Customers	Percentage of Customers who are Confirmed Low-Income Customers	Estimated Number of Low-Income Customers	Percentage of Customers who are Estimated to be Low-Income	Number of Active CAP Customers as of 12/31/14	CAP Participation Rate
PECO	175,123	12.2%	378,747	26.5%	140,514	80%

<sup>25</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs* at Docket Nos. P-2015-2511333, P-2015-2511351; P-2015-2511355; P-2015-2511356.

<sup>26</sup> *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2017 through May 31, 2021* at Docket No. P-2016-2526627.

<sup>27</sup> *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period of June 1, 2017 through May 31, 2021* at Docket No. P-2016-2543140

<sup>28</sup>Source: Pa. Public Utility Comm’n, Bureau of Consumer Svcs., *2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies*, , at 7, 42 available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf)

1 PECO has the highest total number of confirmed low-income customers when compared  
2 to other electric distribution companies.<sup>29</sup> In fact, PECO's 175,123 confirmed low-income  
3 customers represent 28% of the confirmed low-income customers in the entire state, and its  
4 378,747 estimated low-income customers represents 28% of the estimated low-income  
5 customers across Pennsylvania.<sup>30</sup> Given PECO's uniquely high CAP participation rate and the  
6 inability of CAP customers to shop, it is extremely likely that the overwhelming majority of  
7 PECO's confirmed low-income customers have never shopped for competitive electric  
8 generation supply before.

9 **Q: How serious of a problem is home energy affordability for PECO's low-income**  
10 **customers?**

11 A: Without CAP assistance, low-income customers simply cannot meet their monthly  
12 expenses. The National Low Income Energy Consortium (NLIEC) conducted a survey designed  
13 to capture a nationally representative picture of the issues facing low income households.<sup>31</sup> The  
14 study found that "households with incomes below 50% of the federal poverty level pay a  
15 staggering 38% or more of their annual income simply for their home energy bills."<sup>32</sup> The  
16 overwhelming energy burden on low income households makes it difficult for these customers to  
17 pay for other basic necessities. Of the households surveyed in the NLIEC study, 46% went  
18 without food and 45% failed to take medication as prescribed by doctors in order to pay their  
19 home energy bills.<sup>33</sup> Similarly, as recently reported by Pennsylvania's Joint State Government

<sup>29</sup> *Ibid.*

<sup>30</sup> These percentages are the quotient of PECO's reported numbers divided by the statewide numbers found in the PUC's 2014 Universal Service report.

<sup>31</sup> Nat'l Low Income Energy Consortium, *Paid but Unaffordable: The Consequences of Energy Poverty in Missouri – and Elsewhere* (2004), at 2-5 available at [http://www.neuac.org/2004\\_MO%20Overview.pdf](http://www.neuac.org/2004_MO%20Overview.pdf).

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

1 Commission on Homelessness, utility assistance ranked in the top three types of assistance noted  
2 by survey respondents (24.1 percent) that would have prevented homelessness.<sup>34</sup>

3 Even CAP is not a panacea to fixing the difficulty of unaffordable bills. The average  
4 CAP household is desperately poor, and these extremely low income households routinely run  
5 out of money even with the assistance of CAP.<sup>35</sup> Many cannot afford to pay for utility service  
6 because of the cost of competing essential needs like rent, food, water, medicine, clothing,  
7 childcare, and transportation.<sup>36</sup> Furthermore, the Commission recognized time and time again<sup>37</sup>  
8 that PECO has a long history of failing to design a program that was in conformity with the  
9 Commission affordability standards, thus producing unaffordable bills even with a CAP subsidy.

10 Put simply, PECO's confirmed low-income customers are economically vulnerable and  
11 unable to pay for essential services like electricity without substantial and meaningful assistance.  
12 It is precisely for this reason that CAP programs were created to assist low-income customers  
13 maintain and afford utility service and that the PECO CAP, in particular, has required its most  
14 recent dramatic restructuring.

<sup>34</sup> Joint State Government Commission, Homelessness in Pennsylvania: Causes, Impacts, and Solutions, at 112, 157, 160 (April 2016), available at [http://jsg.legis.state.pa.us/publications.cfm?JSPU\\_PUBLN\\_ID=447](http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=447) (“When asked if there were any services that may have prevented them from becoming homeless, the women responded overwhelmingly that assistance with past-due rent and utilities, security deposit, and first and last months’ rent would have been most beneficial.”).

<sup>35</sup> In 2014, the household income of the average Pennsylvania household enrolled in CAP was \$13,134, which with an average universal service household size of 3, which is approximately 66% of the federal poverty level. *See ibid.* at 35.

<sup>36</sup> *See e.g.*, Nat’l Energy Ass’t Directors’ Ass’n, 2011 National Energy Assistance Survey (Nov. 2011), available at <http://www.appriseinc.org/reports/Final%20NEADA%202011%20Report.pdf> (to pay their energy bills, 24% of LIHEAP recipients went without food, 37% went without medical or dental care, 34% did not fill or took less than the full dose of a prescribed medicine). Available at <http://www.appriseinc.org/reports/Final%20NEADA%202011%20Report.pdf>.

<sup>37</sup> The unaffordability of PECO’s CAP Rate structure was addressed by the Commission multiple times, including in its Tentative Order regarding PECO’s 2013-2015 USECP filing. Tentative Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, 8–9, M-2012-2290911, November 8, 2012. *See also* Final Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, 12–19, M-2012-2290911, April 4, 2013

1 **Q: Explain CAP generally.**

2 A: As a regulated public utility serving more than 100,000 customers, PECO is required to  
3 offer an integrated package of universal service programs, including a Customer Assistance  
4 Program, designed to help low-income, payment troubled ratepayers maintain and afford essential  
5 utility services. These programs are statutorily required by the Choice Act<sup>38</sup> and are further subject  
6 to Commission regulations.<sup>39</sup>

7 CAP programs provide a discounted bill for payment troubled, low-income ratepayers with  
8 household incomes at or below 150% of the federal poverty income guidelines. CAP programs  
9 also provide the benefit of allowing these households to have their pre-CAP arrearages frozen and  
10 forgiven over time through payment of on-time, in-full CAP payments over a period of years.

11 The universal service provisions of the Choice Act tie the affordability of electric service  
12 to a customer's ability to pay for that service: The Choice Act requires the Commission to ensure  
13 that utilities appropriately fund and make available the programs and services necessary to  
14 achieve affordability of electric service in each electric distribution territory.<sup>40</sup> The statutory  
15 goals of universal service are achieved through the enactment, establishment and maintenance of  
16 policies, practices and services that help low-income customers maintain their electric service.  
17 Universal service programs include the special rates or discounts provided by CAP, energy  
18 efficiency, service termination protections, and consumer education.<sup>41</sup> For the purposes of this  
19 case, I primarily focus on the CAP program. However, it is important to realize that each of

<sup>38</sup> See 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

<sup>39</sup> 52 Pa. Code 54.71 *et seq.*

<sup>40</sup> 66 Pa. C.S. § 2804(9); *see also*, [CAUSE-PA et al. v. Pa PUC and McCloskey v. PA PUC](#), 120 A.3d 1087, 1103 445 CD 2014, 596 CD 2014 (Commw. Ct., July 14, 2015) (“The obligation to provide low-income programs falls on the public utility under the Choice Act, not on the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice.”)

<sup>41</sup> 66 Pa. C.S. § 2803.

1 PECO's universal service programs – CAP, LIURP, CARES, and Hardship Funds – offer  
2 essential services. All universal service programs are intended to work together to allow low-  
3 income households access to an affordable, safe and reliable electric supply.

4 **Q: Explain the specifics of PECO's CAP program that will be implemented beginning**  
5 **October 2016.**

6 A: PECO's CAP will provide three primary services to low income customers. First,  
7 enrolled customers will receive a discounted bill each month through the provision of a fixed  
8 credit that is calculated based on a percentage of the customer's income. Second, the  
9 outstanding past due amount ("pre-program arrears") will be frozen and collection activity on the  
10 pre-program arrears halted. Third, upon full and timely payment of each monthly CAP bill, the  
11 frozen pre-program arrears will be gradually forgiven (i.e. eliminated).

12 In addition to these three main elements of PECO's CAP, in order to assist with the  
13 transition from PECO's current rate discount program to the FCO, PECO will also implement a  
14 60-month payment agreement for any CAP customer who has arrears within the current CAP  
15 rate discount program at the time of the transition. The customers participating in this payment  
16 agreement will be responsible for paying 1/3 of the their total CAP arrears, amortized over 60  
17 months beginning October 2016, with the other 2/3 of those arrears subject to forgiveness for  
18 each on-time, in full payment. This amount will be in addition to the customer's FCO CAP  
19 payment: In other words, it is above and beyond the level of affordability targeted by the FCO  
20 CAP program and by the Commission's CAP policy regarding maximum energy burdens.

21 Beginning October 2016, PECO will calculate each customer's CAP bill as follows:

**Step 1: Determine customer’s prior year’s Weather Normalized Base Charges**

PECO will review the customer’s bills at their residence for the prior 12 months<sup>42</sup> and determine the dollar amount that the customer would have been charged *on an undiscounted* basis in those 12-months for both the regulated and unregulated portions of PECO’s bill. ***For the purpose of making this calculation, PECO will look at what the charges were (or would have been) if the customer was on default service regardless of whether the customer was or was not on default service for the previous 12 months.*** PECO calls this calculation its “Base Charges”<sup>43</sup> and once determined, those charges will be weather-normalized using the weather normalization table to create the “Weather-Normalized Base Charges.”

**Step 2: Determine Verified Household Income and Federal Poverty Level:**

PECO will verify household income for each household and use that information and the number of people in the household to determine the household’s Federal Poverty Level.<sup>44</sup>

**Step 3: Determine customer’s allowable Energy Burden:**

Once the household’s Federal Poverty Level has been determined, PECO will determine the household’s allowable Energy Burden, as follows:

Table 1: Energy Burdens

FPL	Electric Non-Heating	Electric Heating	Electric with Gas Heating
0-50%	5%	13%	13%
51-100%	6%	16%	16%
101-150%	7%	17%	17%

**Step 4: Calculate Customer’s Annual Credit:**

PECO will determine the customer’s Annual Credit by multiplying the Verified Household Income times that household’s allowable Energy Burden to determine an Annual CAP Bill amount. The Annual CAP Bill will then be subtracted from the Weather-Normalized Base Charges; the resulting amount is the Annual Credit amount for that household.

That is: **Weather-Normalized Base Charges – Annual CAP Bill = Annual Credit.**

<sup>42</sup> If the customer does not have 12 months of prior service at their current residence at the time the above calculation is conducted, then PECO will create a pro forma profile to calculate that customer’s trailing twelve months usage/charges

<sup>43</sup> See PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015, Docket No. M-2012-2290911, Joint Petition for Settlement, Exhibit A, filed March 20, 2015, approved by Commission Order dates July 8, 2015, attached hereto as Appendix C.

<sup>44</sup> A customer’s Federal Poverty Level percentage will be determined by reference to the then-current version of the Federal Poverty Guidelines published by the Federal Department of Health and Human Services.

Federal Poverty Threshold	Maximum Annual Credit: Electric Non-Heating (Rate R)	Maximum Annual Credit: Electric Heating (Rate RH)
0-50%	\$2,048	\$2,922
51-100%	\$1,389	\$1,881
101-150%	\$1,241	\$1,661

1 **Step 5: Apply Annual Credit to Bill:**

2 PECO will apply a percentage of the total dollar amount of the Annual Credit each month over  
 3 the course of the year. The credits will be applied in a manner intended to track the seasonal  
 4 nature of usage, using the following monthly percentages:<sup>45</sup>

5 Table 3: Seasonality Distribution  
 6

Month	Rate R	Rate RH
Jan	9.6%	13.9%
Feb	8.9%	14.2%
Mar	8.0%	12.2%
Apr	7.0%	9.0%
May	5.8%	5.3%
June	7.7%	5.2%
July	11.3%	6.4%
Aug	10.6%	5.9%
Sept	9.3%	5.4%
Oct	6.6%	4.5%
Nov	6.6%	6.4%
Dec	8.7%	11.7%
Total	100.0%	100.0%

7 These percentages of the annual credit will then be converted to an actual dollar amount  
 8 allocated to each monthly bill. As a hypothetical example: If it is determined that customer “X”  
 9 is entitled to \$1200 in annual credits as a non-heating customer, they would receive the following  
 10 allocation of credits on their bill:

Month	Rate R	Monthly Credit
Jan	9.6%	\$115.20
Feb	8.9%	\$106.00
Mar	8.0%	\$96.00
Apr	7.0%	\$84.00
May	5.8%	\$69.60

<sup>45</sup> PECO may adjust these percentages to reflect the most current data available to it at any given time. However, any such adjustments will affect only the distribution of the Annual Credit to bills, not the amount of the Annual Credit.

June	7.7%	\$92.40
July	11.3%	\$135.60
Aug	10.6%	\$127.20
Sept	9.3%	\$111.60
Oct	6.6%	\$79.20
Nov	6.6%	\$79.20
Dec	8.7%	\$104.40

1 **Step 6: Periodic Recalculation and Adjustment of Annual Credit**

2 PECO will recalculate the customer's Weather Normalized Base Charges every three  
3 month using the customer's most recent three months' data on usage/charges and will  
4 then use the results of the Step 1 recalculation as inputs to complete Steps 2 through 5 to  
5 determine a Quarterly Recalculation of the Annual Credit. The adjusted Annual Credit  
6 will be applied to bills on a going-forward basis. This quarterly recalculation will be  
7 coordinated with the results of PECO's quarterly Generation Services Adjustment filing  
8 and approval so that, in each such quarterly adjustment, PECO's just-approved PTC will  
9 replace the oldest three months of PTC data in the underlying calculation.

10 **Q: Please explain what you mean by the term annual credit or maximum CAP credit?**

11 A: The difference between a CAP customer's CAP Bill and the total bill that the customer  
12 would have been charged based on usage and price per kWh is called the customer's annual  
13 credit, CAP Credit, or CAP shortfall amount. Under PECO's FCO, each customer receives a  
14 maximum allocation of credits for the year that are apportioned monthly based on the calculation  
15 and process just described. However, if a customer is low-income, and has a lower monthly  
16 energy bill burden as calculated in Step 3 above - but has high weather normalized usage as  
17 calculated in Step 1 above, they may have need for a greater credit than the maximum currently  
18 allowed to actually achieve an affordable bill. This happens frequently in low income  
19 populations, who often live in poorer and more inefficient housing stock. However, these  
20 customers are nonetheless only entitled to the maximum amount of CAP credits, as referenced in  
21 Step 4 above. Thus, that customer will be responsible to pay the difference between what they  
22 actually use each month and the amount of credit that has been allocated to them pursuant to the  
23 process described above.

1 **Q: Where does the money come from to pay for the CAP program, specifically the CAP**  
2 **credits that are allocated to each CAP customer?**

3 A: In aggregate, the CAP credit/CAP shortfall amount for all CAP customers is paid for by  
4 all residential non-CAP customers through PECO's Universal Services Fund Charge ("USFC").

5 **Q. What is your primary concern regarding the interaction of PECO's CAP, default**  
6 **service, and CAP customer shopping?**

7 A. PECO's new CAP design –scheduled to be implemented beginning in October 2016 – is  
8 structured to target affordability and the amount of CAP credits to the default service rates issued  
9 by PECO. PECO will calculate a CAP customer's weather normalized base charges, based on  
10 the customer's previous 12-months' of usage, by looking at default service rates in effect for the  
11 previous 12-month period, and will recalculate these rates in coordination with each PTC change  
12 to "roll-in" the previous 3 months' usage calculated at the default service rates. *The default*  
13 *service rate is used regardless of whether the customer is shopping or not shopping for electric*  
14 *generation supply service.* That is, the base from which PECO calculates a customer's monthly  
15 credit is derived from the price to compare, not the customer's actual rate paid.

16 Once the credit calculation is made, the credit will be applied to a customer's bill  
17 regardless of whether they are on default service or receiving EGS-supplied service. However,  
18 the credit will only appropriately target the Commission-directed energy burden targets **if the**  
19 **customer is actually paying an amount that is equal to or less than the price to compare.** If  
20 a customer's generation supply charges are higher than the price to compare for any period of  
21 time, the customer will not receive a credit that accounts for that higher price and, thus, will be  
22 receiving less of a discount than is actually required for his or her actual bills to be affordable  
23 pursuant to Commission standards. Therefore, as a result of CAP customer shopping, there is the

1 very real potential for an increase in unaffordable bills, which over the long term will lead to  
2 more unpaid bills by CAP customers, and increased termination of service – the very thing that  
3 the redesign of PECO’s CAP was intended to remedy. The experience in other service territories  
4 in which CAP customers have previously shopped for electric generation has demonstrated that  
5 this is not speculative, but is a very real and significant concern.

6 In my view, this adverse impact on energy burdens also violates core protections required  
7 by the Choice Act. The universal service provisions of the Choice Act tie the affordability of  
8 electric service to a customer’s ability to pay for that service.<sup>46</sup> The Commission has the  
9 responsibility to ensure that the means to achieve the affordability of electric service is  
10 appropriately funded and available in each electric distribution territory. This requires the  
11 enactment, establishment, and maintenance of policies, practices and services that allow low-  
12 income customers to maintain their electric service.<sup>47</sup> The existence of a competitive market for  
13 generation supply does not change this requirement. The Choice Act contains within it the  
14 coexisting goals and obligations to promote competition as well as to protect low-income  
15 customers within the competitive framework to ensure rate affordability.

16 Any plan which allows PECO’s CAP customers to receive service from an EGS must  
17 continue to tie the affordability of electric service to a customer’s ability to pay for that service  
18 through policies, practices, and services that help low income customers maintain utility service.  
19 The Commission recognized this very principal in its recent Tentative Order seeking comments  
20 on PECO’s proposed Universal Service and Energy Conservation Plan for 2016-2018:

21 The Electricity Generation Customer Choice and Competition Act (Electric  
22 Competition Act), 66 Pa. C.S. §§ 2801-2812, became effective on January 1, 1997.  
23 The primary purpose of this legislation was to introduce competition into the retail  
24 electric generation market. The Act established standards and procedures for the

<sup>46</sup> 66 Pa. C.S. § 2804(9).

<sup>47</sup> 66 Pa. C.S. § 2803.

1 restructuring of the electric utility industry. While opening up the electric  
2 generation market to competition, the Act also includes several provisions relating  
3 to universal service to ensure that electric service remains available to all customers  
4 in the Commonwealth.

5 The universal service provisions of the Competition Act, among other things, tie  
6 the affordability of electric service to a customer's ability to maintain utility service.  
7 The Competition Act defines "universal service and energy conservation" as the  
8 policies, practices and services that help low-income customers maintain utility  
9 service. The term includes customer assistance programs, usage reduction  
10 programs, service termination protections and consumer education. 66 Pa. C.S. §  
11 2803. Section 2802(10) of the Act commits the Commission to continuing, at a  
12 minimum, the policies, practices and services that were in existence as of the  
13 effective date of the law. 66 Pa. C.S. § 2802(10). Finally, the Act requires the  
14 Commission to ensure that universal service and energy conservation services are  
15 appropriately funded and available in each electric distribution territory. 66 Pa.  
16 C.S. § 2804(9).<sup>48</sup>

17 Thus, the first principal for any CAP program must be – regardless of whether a CAP  
18 customer remains on default service or receives generation service from an EGS – that CAP bills  
19 must remain affordable. This is a core component of the obligation that PECO and the  
20 Commission must fulfill pursuant to the Choice Act and the Commission's regulations.<sup>49</sup> As  
21 such, any plan that permits a CAP customer to shop for generation supply must not compromise  
22 bill affordability.

23 **Q: Please explain how a CAP customer's bill is impacted based on the rate charged?**

24 A: As indicated above, under PECO's new CAP design, the amount of a customer's  
25 annual CAP credit will be the same regardless of whether they shop for an EGS rate that is  
26 higher, lower, or the same as the then effective PECO PTC. This is because the credit is  
27 calculated based solely on PECO's PTC rates, not the customer's billed EGS rates. What will

<sup>48</sup> See PECO Energy Company Universal Service and Energy Conservation Plan for 2016-2018 submitted in Compliance with 52 Pa Code § 54.74, Docket M-2015-2507139 (Feb. 25, 2016) at 2-3.

<sup>49</sup> 52 Pa. Code 54.71 et seq.; see also, CAUSE-PA et al., 120 A.3d at 1103 ("The obligation to provide low-income programs falls on the public utility under the Choice Act, not on the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice.")

1 vary is the amount of a customer's bill, not the credit a customer receives. If a customer selects  
2 an EGS with prices that are at or below the price to compare then the customer will pay rates  
3 within the affordability targets of PECO's formula. However, if a customer is served by a  
4 supplier charging more than the price to compare, they will get less assistance than they actually  
5 need pursuant to PECO's formula to reach Commission-approved bill affordability

6 Some would suggest that this mechanism might incentivize CAP customers to  
7 make prudent shopping decisions and always choose a supplier who is charging less.  
8 However, an initially prudent decision can readily turn into an economic disaster for a  
9 PECO CAP customer upon changes in the PTC during a contract's term, or by a unilateral  
10 change in contract terms by a customer's supplier.<sup>50</sup> This will cause real economic harm  
11 to CAP customers, and to other ratepayers who pay increased costs because of increased  
12 service terminations and uncollectible expenses.

13 **Q: What data do you have to support your conclusion that actual economic harm is**  
14 **likely as a result of failing to control the rates CAP customers are able to accept while**  
15 **enrolled in CAP?**

16 A: Until now, since PECO's CAP customers have not been able to shop for generation  
17 service and remain in CAP, they and other ratepayers have not experienced any harm as a result  
18 of CAP customers paying EGS rates higher than the PTC. However, since they are about to  
19 enter the competitive shopping arena for the first time, looking at the data available in the five

<sup>50</sup> While changes in switching times have mitigated some of the most extreme problems associated with abrupt contract term changes for general residential customers engaged in the market, these changes do not sufficiently remedy the harm caused by variable rates and changing contract terms for CAP customers. Again, CAP customers in PECO's service territory will receive a maximum CAP credit amount pegged to PECO's price to compare for default service. If a CAP customer rolls from a low fixed term contract to a higher fixed or variable term contract with a supplier they will not see this until the bill comes and the harm is already done. Even one month of unaffordability for CAP customers can have a cascading effect leading to termination of service. This could be prevented through program terms that limit a CAP customer to EGS products that are always at or below the PTC.

1 utility service territories that have allowed CAP shopping provides significant insight to CAP  
2 shopping issues which have arisen and will need to be addressed within PECO's DSP IV.

3 A review of the data shows that low-income CAP customers have been significantly  
4 harmed by their participation in the competitive electric generation market. In PPL's most recent  
5 universal service plan proceeding, PPL Electric agreed that CAP customer shopping can affect  
6 customers' ability to remain in the program if they have selected a supplier with very high  
7 energy prices and that the primary impact of high supplier prices for its CAP customers is to  
8 increase the "burn rate" of CAP credits.<sup>51</sup> In response, the Commission directed PPL to address  
9 the issue of CAP shopping in its upcoming DSP<sup>52</sup>. In preparation for its currently pending default  
10 service proceeding, PPL produced evidence that makes it clear that a significant number of  
11 PPL's CAP customers who are shopping paid more than the price to compare.<sup>53</sup> For calendar  
12 year 2015, an average of 52% of PPL's customers shopped each month, and of those customers  
13 who were shopping, an average of 46% paid more than the price to compare.

14 The numbers are worse when disaggregated over the four year period from January 2012  
15 through February 2016. In response to discovery, PPL produced a table that revealed some  
16 alarming statistics. Every month from January 2012 through February 2016, at least 42% of  
17 CAP customers paid more than the PTC, and in 6 of those months, 88-99% of CAP customers  
18 shopping paid more than the PTC. In most months over this more than four-year period of time,  
19 between 45%-70% of CAP customers paid more than the price to compare. I have attached this

<sup>51</sup> See Reply Comments of PPL Electric Utilities to *PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74*, Docket No. M-2013-2367021 at 11.

<sup>52</sup> *PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74*, Docket No. M-2013-2367021 (Final Order dated September 11, 2014) at 19.

<sup>53</sup> See Slides from PPL Electric Utilities OnTrack (CAP Program) Shopping Collaborative, Session # 2, January 15, 2016, attached to here as Appendix C.

1 chart to my testimony in Appendix D, as it shows the full scale of the harm. This information  
 2 shows that the harm to CAP customers is not isolated to a single point in time, but rather is a  
 3 consistent concern in the interaction of CAP customers and the competitive electric market.

4 The data also shows that those customers who paid more than the price to compare *paid*  
 5 *significantly more*, as compared to the savings achieved by customers who paid less than the  
 6 price to compare. In the month in which CAP customers who shopped paid the highest  
 7 percentage more than the price to compare, they paid on average 101% more per kWh. But in  
 8 the month when CAP customers who shopped achieved the greatest savings, they paid only 14%  
 9 less than the price to compare. The effect of this data overall is summed up by information that  
 10 PPL made publically available through its Second CAP Shopping Collaborative, which I have  
 11 excerpted below:<sup>54</sup>

### Estimate the net impact



Look at shopper non-savers versus savers, as compared to the PTC  
 Time Period Used: January 2012 – October 2015 (46 months or 3.8 years)

Those Paying Above PTC	Those Paying At/Below PTC
7. Difference (each month) = \$31	7. Difference (each month) = \$9
8. The difference, above = \$298,406	8. The difference, below = \$69,750
9. The impact, 12 mos. = \$3,580,872	9. The impact, 12 mos. = \$837,000
10. The impact, 18 mos. = \$5,371,308	10. The impact, 18 mos. = \$1,255,500

- 1. Net (each month) = **\$22**
- 2. Net effect, monthly = **\$228,656**
- 3. The impact, over 12 months = **\$2,743,872**
- 4. The impact, over 18 months = **\$4,115,808**

12

<sup>54</sup> See Slide 5 from PPL Electric Utilities OnTrack (CAP Program) Shopping Collaborative, Session # 2, January 15, 2016, attached to here as Appendix C.

1           This slide demonstrates that the **net impact of CAP customer<sup>55</sup> shopping over the 46-**  
2 **month period from January 2012 through October 2015 is \$2,743,872 per year.** That is, as a  
3 result of CAP customer shopping without restriction, as is presently occurring in the PPL service  
4 territory, residential ratepayers are paying \$2,743,872 more per year for the CAP program than  
5 they would have paid if all CAP customers simply paid the PTC. None of this more than \$2.74  
6 million promoted universal service goals under the Choice Act to assist low-income customers  
7 better meet their home energy needs. In fact, as previously discussed, these increased costs  
8 resulted in reducing affordability for CAP customers. Since program costs are intended to assist  
9 low-income customers afford and maintain essential utility service, they should not be increased  
10 by more than \$2.74 million per year for the purpose of paying generation rates which are higher  
11 than the default price.

12           Substantially similar data was produced in the First Energy Company Service territories.  
13 The reported data from that proceeding appears to show that as of November 2015, more than  
14 77% of Met-Ed's CAP customers, more than 50% of Penelec's CAP customers, and more than  
15 65% of West Penn's CAP customers who are shopping are paying a price higher than the price to  
16 compare.

17           Consequently, despite the fact that PECO's CAP customers are currently not permitted to  
18 shop for EGS-supplied generation service, I have no reason to believe that, unless the issue of  
19 CAP customer shopping is addressed now, in DSP IV, the long-term results would be any  
20 different in PECO's territory than in the other Pennsylvania utility service territories that have  
21 allowed and developed a history of CAP shopping.

<sup>55</sup> Net impact here means all of the savings incurred because certain CAP customers are shopping at rates at or below the price to compare are subtracted from the additional costs incurred because of customers shopping at rates higher than the price to compare. This shows the net harm to the CAP program as a whole, but does not address the particularized harm to individual CAP customers who pay more. In this proceeding, I am concerned about both.

1           In my judgment, a CAP customer should never be charged more than the default service  
2 price, regardless of whether they are on default service or being served by an EGS. It is not  
3 reasonable to approve discounts and reduced rates for low income customer classes, paid for by  
4 other residential customers, and at the same time approve a DSP plan which allows CAP  
5 customers to be charged higher rates that result in unaffordable or higher bills. Doing so  
6 contributes to higher collection costs and rates for all customers, and has multiple adverse  
7 impacts (financial as well as health and safety) on individual low income households.

8 **Q:     There are many aspects of PECO’s DSP and many types of EGS offerings. Why are**  
9 **you primarily focusing on PECO’s CAP and its interaction with EGS rates?**

10 A:     My four decades of experience working with low-income customers has taught me that,  
11 as a result of budget inelasticity, cost is the most significant factor that low-income households  
12 consider in making decisions about essential goods and services. They do this because they  
13 must. Low-Income households simply do not have sufficient resources necessary to pay for all  
14 they need. Furthermore, in the context of a CAP program, affordability – the driving force in the  
15 statutory requirement for utility-run universal services - trumps any other concern.

16 **Q:     Based on the information presented here, and the evidence that you have reviewed**  
17 **concerning the experience of CAP customers from other EDCs who are shopping, do you**  
18 **have any suggestions for how PECO could implement its CAP shopping rules?**

19 A:     Yes. I am recommending that PECO create structures requiring CAP customers to shop  
20 in a manner that protects them from contracting with EGSs for a price that would ever be higher  
21 than the price to compare. This is both permissible and prudent. With the exception of EGSs, no  
22 one benefits when CAP customers pay more than the price to compare – not the CAP participant,  
23 not residential ratepayers, not PECO, and not the general public. Allowing CAP customers to

1 pay more than the price to compare causes CAP customer bills to increase, for no legitimate  
2 reason, and adds to the already high termination rates – which in turn impacts the greater  
3 community. In my judgment this is poor public policy and does not serve the public interest, nor  
4 is it in accord with the Choice Act. The Choice Act contains low-income protections that are  
5 intended to enable CAP customers to shop, but only under circumstances in which the rates they  
6 pay remain affordable. In my view, this can be achieved only when they are held harmless from  
7 rates which result in bills exceeding maximum energy burdens. The easiest way to accomplish  
8 this is to structure a CAP shopping program so that CAP customers can only contract for EGS-  
9 supplied generation service while on CAP at rates that will **always** be at or below the  
10 Companies' PTC, and under terms which prohibit early termination and cancellation fees.

11 **Q: Do you have recommendations about how this could occur?**

12 A: As I discussed earlier, the FCO which PECO will be implementing later this year will  
13 place CAP customers who contract at rates higher than the PTC in significant economic  
14 jeopardy. Therefore, at a minimum, the following principles are integral to the development of  
15 CAP shopping within PECO's DSP IV plan:

- 16 1. CAP shopping participants should be prohibited from entering into a contract with an  
17 EGS in which they will pay, at any time, rates greater than the price to compare.
- 18 2. CAP shopping participants should be prohibited from entering into a contract with an  
19 EGS that includes early cancellation or termination fees.

20 **Q. What do you suggest as to how these principles may be implemented in practice?**

21 A. I suggest that PECO modify its existing SOP within DSP IV to accommodate  
22 these CAP shopping principles. First, a modified CAP SOP would serve as the **only** means

1 through which a CAP customer could shop and remain eligible for CAP benefits. Any shopping  
2 request from a CAP customer that does not get processed through the SOP would be denied.

3 Second, for this to work, EGSs participating in the SOP who serve CAP customers would  
4 have to agree to serve these CAP customers at a 7% discount off the PTC at the time of  
5 enrollment and, if the PTC drops more than 7% at any time during the customer's enrollment, the  
6 EGS would have to either re-enroll the customer in a new SOP enrollment with a new 7% off the  
7 then applicable PTC or return the customer to default service.<sup>56</sup> If returned to default service,  
8 this would allow the customer to then affirmatively re-enroll in the SOP with another supplier, if  
9 they so desire. Suppliers are already monitoring the PTC to determine whether to participate in  
10 the SOP and what offers to make to customers. As such, they will be able to readily determine  
11 when the PTC price drops by more than 7%, triggering their obligation to either adjust their CAP  
12 enrollee's contract terms or return the customer to default service.

13 Third, unlike the standard SOP, the CAP-SOP would require EGSs at the end of the 12-  
14 month SOP contract to either re-enroll the CAP customers in a new SOP contract that is 7% off  
15 the then-applicable PTC (subject to the same terms noted above). Or, if they decide to stop  
16 serving CAP customers, the customer would be returned to default service. Again, EGSs would  
17 not be allowed to enroll the CAP customer in a contract outside of the SOP.

<sup>56</sup> This trigger – a drop of the PTC of more than 7% while the customer is enrolled in the CAP-SOP – would ensure that CAP customers would never pay more than the price to compare for service, and is thus consistent with my first principle of a CAP shopping program. The program would thus be modified for CAP customers to guarantee rates are always at or below the PTC, but not necessarily a guaranteed 7% less for the whole period depending on PTC fluctuation. It would also mean that EGSs would only have to adjust the enrollment if the PTC drop was more than 7%. Based on discovery from PECO in response to requests by the OCA, it appears that this happened on only one occasion (from Feb. 2014 – March 2014) since the SOP launched in April 2013. *See* PECO Response to OCA-I-1(c)(1), attached hereto as Appendix E.

1           Finally, like all SOP customers, and as directed by the Commonwealth Court, CAP  
2 customers would be able to leave the SOP contract at any time, without facing termination or  
3 cancellation fees.

4           By instituting these safeguards, no suppliers would be forced to serve customers under  
5 terms to which they do not agree or find to be economically unviable. CAP customers, would be  
6 protected by choosing either to remain on default service or selecting a supplier who voluntarily  
7 chooses to serve CAP customers under these modified SOP rules. Furthermore, other ratepayers  
8 would benefit through reduced termination and uncollectible expenses. Participating suppliers  
9 would be competing with other participating suppliers, which would all be operating under the  
10 same set of rules for CAP customers. Suppliers could notify PECO whether they want to  
11 participate on a quarterly basis as a regular SOP supplier and as a CAP SOP supplier, one of  
12 these two, or neither. I imagine that the number of SOP CAP suppliers would vary, just like the  
13 number of SOP suppliers varies by quarter depending on the PTC or other business  
14 determinations. PECO or its third-party administrator will know at the time of enrollment  
15 whether an SOP customer is a CAP customer or not, thus triggering the additional protections.

16 **Q:     What would happen if there were no suppliers who were willing to serve customers**  
17 **subject to these CAP shopping rules?**

18 A:     If this were the case, PECO would be required to provide service to CAP customers  
19 pursuant to its role as default service provider (as it does now) until or unless there were  
20 suppliers willing to serve CAP customers subject to these CAP program rules.

1 **Q: Since suppliers may not know that a customer is enrolled in CAP, what would**  
2 **happen if a CAP customer agreed to sign up with a supplier outside of your proposed CAP**  
3 **shopping program?**

4 A: Currently, if a PECO CAP customer tries to enroll with a supplier, the request is rejected  
5 and the supplier and customer are notified of the reasons for the rejection. PECO would simply  
6 continue this same process for all CAP customers who may desire to enroll outside the CAP  
7 SOP. That is, PECO would reject the switch and inform both the CAP customer and the supplier  
8 of the reasons why.

9 If the CAP customer insists that they do not want to remain in CAP subject to these rules,  
10 and wants to shop for service outside of these CAP shopping program rules, they should be  
11 permitted to exit from CAP without any barrier to reentering CAP in the future so long as they  
12 agree to adhere to CAP program rules. Before these customers exit CAP, PECO should clearly  
13 and adequately explain to the customer the consequences of their exit and removal from CAP,  
14 including the loss of financial bill assistance and the possibility of frozen arrears becoming due,  
15 and encourage the customer to shop for generation service through the CAP-SOP shopping  
16 platform. PECO should also be required to develop, with the collaboration of the OCA,  
17 CAUSE-PA, and other parties who may desire to participate, a comprehensive educational  
18 program detailing the benefits of remaining in CAP and the new CAP shopping rules outlined  
19 above.

20 **Q. Please summarize the conclusions in your testimony concerning CAP customer**  
21 **shopping.**

22 A. My conclusions about CAP customers shopping are:

- 1       ➤ PECO’s low-income Customer Assistance Program (CAP) customers are economically  
2       vulnerable and require assistance to connect to, afford, and maintain their electric service.
- 3       ➤ CAP customers do not lose their need for the affordability protections required by the  
4       Electric Choice Act simply because they have the opportunity, as a result of that same Act,  
5       to purchase EGS supplied generation service.
- 6       ➤ In other EDC service territories that have experienced CAP shopping, a high percentage of  
7       CAP customers who contract to purchase supply from an EGS end up paying more than  
8       the price to compare, which impacts the affordability of bills for an individual CAP  
9       customer and the costs paid by other ratepayers.
- 10      ➤ PECO has the legal ability and responsibility to structure CAP program rules that prohibit  
11      CAP customers from obtaining EGS provided service at prices that are higher than the  
12      price to compare, to ensure continued affordability of rates for CAP customers and costs  
13      for other customers.
- 14      ➤ PECO should develop a CAP shopping program as outlined in my testimony that, at a  
15      minimum, ensures that CAP customers be permitted to shop in the competitive market only  
16      if the rates they pay for EGS supply are always at or below the price to compare and do not  
17      contain cancellation or termination fees.
- 18      ➤ PECO should work with interested stakeholders to develop educational materials to  
19      describe the new CAP shopping rules and benefits of CAP.

20      **Q. Does this conclude your testimony?**

21      A. Yes.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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

SURREBUTTAL TESTIMONY OF HARRY GELLER

ON BEHALF OF

THE COALITION FOR AFFORDABLE UTILITY SERVICES AND  
ENERGY EFFICIENCY IN PENNSYLVANIA (“CAUSE-PA”)

July 8, 2016

1                   **PREPARED SURREBUTTAL TESTIMONY OF HARRY GELLER**

2   **Q.     Please state your name, occupation, and business address.**

3   A.     Harry Geller. I am an attorney. Though I am currently retired, I have maintained an office  
4   at the Pennsylvania Utility Law Project (PULP), 118 Locust St., Harrisburg, PA 17101, and serve  
5   as a consultant to PULP and its clients.

6   **Q:     Did you submit Direct Testimony in this proceeding?**

7   A:     Yes.

8   **Q.     Please state the purpose of your Surrebuttal Testimony.**

9   A:     The purpose of my Surrebuttal Testimony is to respond to certain aspects of the rebuttal  
10   testimony of PECO witness John McCawley, as well as the rebuttal testimony of Retail Energy  
11   Supply Association (RESA) witness Matthew White.

12         Specifically, my surrebuttal testimony will address why I believe, contrary to PECO's  
13   rebuttal testimony, that the filing of a "proposed rule revision" to its CAP Shopping Plan should  
14   be delayed until after a decision in this proceeding. I will also respond to PECO's assertion that  
15   it needs "PECO-specific" information before the Commission considers my proposed  
16   protections, and whether unrestricted shopping would cause unnecessary harm to PECO's low-  
17   income customers and its other ratepayers if a determination is not made in this proceeding.

18   Finally, I respond to several general, unsubstantiated and/or inaccurate statements made by  
19   RESA witness Matthew White.

20   **Q:     Please summarize Mr. McCawley's rebuttal testimony about which you would like**  
21   **to comment.**

22   A:     In his testimony, Mr. McCawley states that PECO will submit a "proposed rule revision"  
23   to its DSP III docket to implement a CAP Shopping Plan with an effective date of first quarter of

1 2017, and that this rule revision will “eliminate any pricing restrictions for EGSs who wish to  
2 offer competitive generation service to PECO’s CAP customers and will prohibit CAP customers  
3 and EGSs from entering into any contract that imposes early cancellation or termination fees.”<sup>1</sup>  
4 The proposed rule revision will also include PECO’s proposal to “collect data to evaluate the  
5 CAP shopping program and determine whether any modifications are *later* necessary.”<sup>2</sup>  
6 Specifically, PECO will propose to collect the following information: (1) the number of CAP  
7 customers shopping, (2) the rates CAP customers pay for generation service; and, (3) the portion  
8 of the aggregate CAP credit amount paid for by residential customers.<sup>3</sup>

9 In response to my suggested CAP shopping design, Mr. McCawley indicates that PECO’s  
10 hands are tied regarding price restrictions because of the Commission’s previous CAP shopping  
11 order, and given that there is no PECO-specific data concerning PECO CAP customers’  
12 shopping experience, the Commission should consider my proposed protections only after PECO  
13 implements an unrestricted CAP shopping platform and collects the relevant data suggested  
14 above.<sup>4</sup>

15 Mr. McCawley also erroneously states that all other Pennsylvania EDCs allow CAP  
16 customer shopping. This is incorrect. Like PECO, Duquesne Light does not currently allow its  
17 CAP customers to purchase electric generation supply from EGSs and remain on CAP.

18 **Q: What is your response to Mr. McCawley’s testimony?**

19 A: First, I note that Mr. McCawley did not reject any of my suggested CAP protections as  
20 either unnecessary or unable be to be accommodated by PECO’s current structures. Instead, the  
21 gist of his rebuttal is that PECO is obligated to file a rule revision to its previously filed CAP

---

<sup>1</sup> PECO Statement No. 2-R at 13:9-12.

<sup>2</sup> PECO Statement No. 2-R at 13: 13-15 (emphasis added.)

<sup>3</sup> PECO Statement No. 2-R at 13:15-18.

<sup>4</sup> PECO Statement No. 2-R at 15:6-15.

1 shopping plan pursuant to the Commission's May 11, 2016 Secretarial Letter, and that he  
2 believes the Commission should wait to assess my recommendations until after PECO has  
3 compiled and reviewed data regarding the impact of CAP shopping on PECO CAP customers.

4 While I agree the May 11, 2016 Secretarial Letter directs PECO to respond, the letter is  
5 silent as to when PECO must respond, and, thus, PECO retains significant discretion as to the  
6 timing. Given the complexity of issues, that discretion should be exercised based on a rational  
7 timeline and process. Further, I do not believe that PECO is precluded from proposing or  
8 implementing a CAP shopping design with greater protections that would commence with the  
9 start of the DSP IV period in June 1, 2017. In my Direct Testimony I detail why, in light of  
10 PECO's imminent rollout of its CAP FCO program and the significant potential for customer  
11 confusion, I believe it would be imprudent to start any CAP Shopping Program before June 1,  
12 2017. In her Rebuttal Testimony, OCA witness Alexander concurs and provides additional  
13 substantial justification:

14 At a minimum, there should not be any change to the CAP shopping policy until there  
15 has been a full implementation of the revised CAP rate design and arrears management  
16 program and a determination that the program has been properly implemented with  
17 evidence that customers understand and have adjusted to these program changes. It is my  
18 understanding that these program changes will occur in the 4th quarter of 2016.  
19 Therefore, at the earliest, I would not recommend any change to CAP customer shopping  
20 until June 1, 2017, the onset of PECO's DSP IV. I agree with Mr. Geller's proposal in  
21 this regard.<sup>5</sup>

22 I also disagree with Mr. McCawley that PECO-specific data is needed before the  
23 Commission can act to protect CAP customers from unnecessary harm associated with paying  
24 prices above the price to compare. As indicated in my direct testimony, given that PECO and  
25 Duquesne's CAP customers have not historically been able to shop for generation service and

---

<sup>5</sup> OCA Statement No.2-R at 1:16-4:7.

1 remain in CAP, they and other ratepayers have not experienced any harm as a result of CAP  
2 customers paying EGS rates higher than the PTC. However, in the other service territories in  
3 which CAP shopping has been permitted, CAP and non-CAP customers have experienced  
4 significant harm. Since PECO's CAP customers are about to enter the competitive shopping  
5 arena for the first time, looking at the data available in the five utility service territories that have  
6 allowed CAP shopping provides significant insight to CAP shopping issues which have arisen. I  
7 believe that these issues will need to be addressed within this DSP IV proceeding in order to  
8 avoid exposing PECO customers to the same form of harm.

9         Neither PECO nor any other party has presented any evidence to indicate why or how the  
10 experience of CAP customers within PECO's service territory would be any different than the  
11 experience of PPL or First Energy CAP customers. There is no indication that the marketing  
12 techniques, offers, contract terms, and EGSs will vary significantly from those service territories  
13 to PECO's. The economic demographics of the CAP customer population of PPL and First  
14 Energy are determined by statewide CAP Policy Guidelines regarding eligibility and are, thus,  
15 not different than those for the CAP customer population within PECO's service territory. EDC  
16 CAP customers across the state are all payment troubled, desperately poor, and require payment  
17 assistance that is subsidized in part by other ratepayers. In 2014, the household income of the  
18 average Pennsylvania household enrolled in CAP was \$13,134, which, with an average universal  
19 service household size of 3, is approximately 66% of the federal poverty level.<sup>6</sup> While there are  
20 significantly more CAP customers within PECO's service territory than other service territories,

---

<sup>6</sup> Source: Pa. Public Comm'n, Bureau of Consumer Svcs., *2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies*, at 35 available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf)

1 these customers face the same challenges as all poor households across the state: how to pay for  
2 essential goods and services with little to no income. The only significant difference is that  
3 because of PECO’s larger CAP enrollment more of its low-income customers will be subject to  
4 harm if permitted to engage in unrestricted shopping.

5         It seems particularly objectionable to subject this larger base of PECO’s CAP customers  
6 to the same kind of harm that has been experienced by PPL and First Energy Companies’ CAP  
7 customers simply because they have not yet also experienced that harm. This is especially so  
8 when the protection of low-income consumers in a competitive electric environment is one of the  
9 purposes of the Choice Act, and the potential harm of unrestricted shopping is known and can be  
10 prevented. It would be akin to knowing that a group of individuals in a neighboring county  
11 suffered harm because of unsafe dresser construction, but then insisting that, although those  
12 same dressers are about to be put on the market in Philadelphia, the cause of the harm would not  
13 be addressed or prevented by timely corrective action now, but only at some unspecified time in  
14 the future after the harm to Philadelphia’s residents has occurred. PECO’s proposal to deal with  
15 CAP shopping issues “later”, after CAP customers have actually suffered irreparable harm  
16 within the boundaries of Philadelphia, is an abandonment of PECO’s statutory and regulatory  
17 responsibility to maintain affordable CAP payments in order to enable its low-income customers  
18 maintain essential electric utility service. We know *now* the harm that will befall PECO’s low-  
19 income CAP customers who shop without reasonable and targeted restrictions because all of the  
20 data – explained at length in my direct testimony – concerning how low-income households and  
21 other ratepayers are irreparably harmed by paying more than the price to compare.<sup>7</sup> There is no

---

<sup>7</sup> This data was reviewed at length in my Direct Testimony and I incorporate it here by reference. See CAUSE-PA Statement No. 1 at 26-30.

1 reason to subject PECO customers to this same harm based on the insistence that one needs to  
2 see “PECO-specific data” before reaching a conclusion and taking the action needed. The most  
3 appropriate time to implement the necessary protections in order to protect PECO customers  
4 from harm is now, in this proceeding, before it occurs.

5 Therefore, I continue to recommend that PECO implement a structure requiring that if  
6 CAP customers shop for EGS provided service they do so in a manner that protects them from  
7 contracting with EGSs for a price that would ever be higher than the price to compare. The  
8 approach set out in my Direct Testimony will accomplish these goals, and I continue to endorse  
9 this approach. Allowing CAP customers to pay more than the price to compare causes CAP  
10 customer bills to increase and adds to the already high termination rates – which in turn impacts  
11 the greater community. In my judgment, this is poor public policy, does not serve the public  
12 interest, and is not in accord with the Choice Act.

13 **Q: Please address RESA witness Matthew White’s rebuttal.**

14 A: Mr. White’s concerns expressed within his rebuttal are unsupported or speculative, and not  
15 based upon the specific structure of PECO’s CAP program. I will address them one by one.

16 Contrary to Mr. White’s first concern that I have failed to demonstrate that there is no  
17 way to modify PECO’s existing CAP to insure that PECO CAP customers would continue to  
18 have access to the benefits of CAP even if they elect to shop,<sup>8</sup> I explained at length in my direct  
19 testimony that PECO’s *existing* CAP is scheduled to be phased out in October 2016, and  
20 therefore it make no sense to discuss its modification. However, PECO’s soon to be  
21 implemented CAP FCO design will allow CAP customers to choose a competitive supplier and  
22 remain on CAP. This was an essential component of the lengthy CAP re-design mediation that

---

<sup>8</sup> RESA Statement No. 1-R at 14:14-16.

1 took place over months in 2014-2015, and was approved by the Commission on July 8, 2015.<sup>9</sup>  
2 Thus, his assertion that I have failed to document how CAP customers can retain their CAP  
3 benefits and elect to shop is erroneous.

4 What is amply demonstrated in my direct testimony is the fact that once these customers  
5 elect to shop, the decision to do so at rates above the price to compare adversely affects the  
6 continued affordability of bills for CAP customers, the continued ability of those CAP customers  
7 to maintain CAP rate benefits, and increases the cost of the program as a whole for other  
8 ratepayers.<sup>10</sup> Under PECO's soon-to-be implemented FCO CAP structure and its proposed DSP  
9 IV this impact will directly affect low-income customers. The Choice Act requires that the EDC  
10 is made whole for CAP costs, regardless of the specific CAP structure approved. The effect of  
11 CAP customers paying more than the price to compare must be paid by someone. It will either  
12 require unaffordable payments by CAP customers, will cost other ratepayers more money, or –  
13 most likely -- will result in both greater costs for both CAP and non-CAP customers. There is  
14 simply no way around it: Unless CAP customers are restricted from shopping at rates above the  
15 price to compare, the resultant increase in costs will cause harm to CAP and non-CAP customers  
16 alike.

17 When it comes to addressing the issue of maintaining affordable rates for the low-income  
18 customers enrolled in CAP – customers who have already evidenced an inability to pay at  
19 undiscounted rates – and of maintaining an efficient and cost effective program, my view is that  
20 the Choice Act specifically requires the creation of a structure whereby CAP customers' rates and  
21 the CAP program as a whole remains affordable by customers paying no more than the price to

---

<sup>9</sup> Order, *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, M-2012-2290911, July 8, 2015.

<sup>10</sup> See CAUSE-PA Statement No. 1 at 23-24.

1 compare. If they can shop and pay less it will benefit everyone, but if they shop and pay more it  
2 creates significant and avoidable harm.

3 To suggest that CAP customers must be able to shop and compromise either their ability  
4 to afford service or the affordability of the CAP program as a whole is inconsistent with the  
5 Choice Act “which both encourages deregulation to allow consumers the opportunity to purchase  
6 directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that  
7 assist low-income customers to afford electric service.”<sup>11</sup> The universal service provisions of the  
8 Choice Act tie the affordability of electric service to a customer’s ability to pay for that service.<sup>12</sup>  
9 The Commission has the responsibility to ensure that the means to achieve the affordability of  
10 electric service is appropriately funded and available in each electric distribution territory. This  
11 requires the enactment, establishment, and maintenance of policies, practices and services that  
12 allow low-income customers to maintain their electric service.<sup>13</sup> The existence of a competitive  
13 market for generation supply does not change this requirement. The Choice Act contains within  
14 it the coexisting goals and obligations to promote competition as well as to protect low-income  
15 customers within the competitive framework to ensure rate affordability. My proposals  
16 accommodate both goals. RESA’s objections seek to ignore one set of objectives to achieve the  
17 other; this is not acceptable.

18 Second, Mr. White asserts that using the PTC is an inappropriate mechanism for  
19 comparison, and that customers choose “value-added” products.<sup>14</sup> This should be given no  
20 credence as he provides no support to show which of these products may provide added value to

---

<sup>11</sup> *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 1020 A.3d 1087, 1103-1104 (2015), *appeal denied*, 2016 WL 1383864 (Pa. Apr. 5, 2016) (citing 66 Pa. C.S. § 2892 (7), (9), (10), (14), (17)) (emphasis added).

<sup>12</sup> 66 Pa. C.S. § 2804(9).

<sup>13</sup> 66 Pa. C.S. § 2803.

<sup>14</sup> RESA Statement No. 1-R at 15:6-9.

1 CAP customers or would not economically burden these households. Further, he has provided no  
2 data or basis of experience demonstrating which products CAP households might find attractive.

3 As stated in my direct testimony:

4 My four decades of experience working with low-income customers has taught  
5 me that, as a result of budget inelasticity, cost is the most significant factor that  
6 low-income households consider in making decisions about essential goods and  
7 services. They do this because they must. Low-Income households simply do not  
8 have sufficient resources necessary to pay for all they need. Furthermore, in the  
9 context of a CAP program, affordability – the driving force in the statutory  
10 requirement for utility-run universal services - trumps any other concern.<sup>15</sup>

11 Moreover, in the absence of specificity as to how CAP customers and the ratepayers who finance  
12 CAP will benefit from the “value” added by these products, and in the absence of a clear showing  
13 that the “value” outweighs the harm associated with paying rates higher than the PTC, any  
14 argument to this end should be rejected. Mr. White offers speculation, but nothing more.

15 Third, Mr. White’s assertion that EGSs would have to note a CAP customer is enrolled in  
16 CAP before making such an offer<sup>16</sup> is not accurate and would not be a concern under my proposal.  
17 The use of a modified CAP-SOP as the only vehicle that a CAP customer could use to select EGS  
18 supply would alleviate the suppliers’ concerns that suppliers do not know whether a customer is  
19 or is not enrolled in CAP. Any CAP shopping request that does not get processed through the  
20 modified SOP would be denied. Further, even should the modified CAP- SOP not be adopted  
21 exactly as I have proposed, Mr. White’s concerns are not insurmountable. EGSs ask questions all  
22 the time about personal information including asking to see or have access to billing information.  
23 An EGS viewing a PECO CAP customers’ bill would readily note the CAP status and therefore  
24 only make a CAP-compliant offer. Similarly, they could ask the customer whether they are

---

<sup>15</sup> CAUSE-PA Statement No. at 30:10-15.

<sup>16</sup> RESA Statement No. 1-R at 15:10-23.

1 enrolled in CAP and direct them to look at their bill to be sure. While some customers may find  
2 asking these questions intrusive, it is unlikely that a CAP customer would find the question  
3 intrusive if the supplier explained that the reason they are asking is because they have offers that  
4 guarantee they would pay no more than PECO's rate for service. To the contrary, having worked  
5 with the low income population for over 40 years, I believe many low-income customers would  
6 find that attractive rather than intrusive.

7 Fourth, Mr. White's assertion and belief that the restrictions I propose would result in  
8 few, if any suppliers serving CAP customers<sup>17</sup> should carry no weight. EGSs make business  
9 decisions all of the time for a host of reasons. Even today, under PECO's current DSP, some  
10 suppliers choose not to enter PECO service territory. Even if one were to accept the possibility  
11 that some suppliers may be initially reluctant to serve CAP customers under the rules that I have  
12 proposed, this alone should not be dispositive. Suppliers should not be permitted to negate or  
13 prevent any CAP protections by simply refusing to participate. As the Commonwealth Court's  
14 decision in the PECO CAP shopping appeal recognized that "under certain circumstances,  
15 unbridled competition may have to give way to other important concerns,"<sup>18</sup> and specifically  
16 found that under circumstances like those that exist here, the PUC has the authority and  
17 responsibility to limit CAP customers to paying no more than the PTC and eliminate early  
18 termination or cancellation fees "[s]o long as [PUC] 'provides substantial reasons why there is  
19 no reasonable alternative, so competition needs to bend' to ensure adequately-funded, cost-  
20 effective, and affordable programs to assist customers who are low-income to afford electric  
21 service."<sup>19</sup>

---

<sup>17</sup> RESA Statement No. 1-R at 16:18-20.

<sup>18</sup> fn. 11, *supra*, *CAUSE-Pa et al.*, 120 A.3d at 1103.

<sup>19</sup> fn. 11, *supra*, *CAUSE-PA et al.*, 120 A.3d at 1103-04 (internal citation to authority omitted).

1 Fifth, despite Mr. White's assertion<sup>20</sup>, I have not suggested that PECO should be  
2 responsible for monitoring EGS *rates*. Rather, I have suggested that PECO would be responsible  
3 to monitor its CAP customers who choose to shop in order to ensure that enrollment with a  
4 supplier only happens through a CAP-SOP. This is consistent with its responsibilities. Although  
5 EGSs have no legal responsibility under the Choice Act to promote affordability or to reduce the  
6 level of harm for low-income customers and are able to charge customers any price irrespective  
7 of the consequences,<sup>21</sup> EDCs (like PECO), and the Commission, do have responsibilities to low-  
8 income utility consumers. Based on the information presented in this case, they have both the  
9 ability and responsibility to limit the terms of EGS offers that can be accepted by CAP  
10 customers. Based on the experience in other EDC territories, this limitation should occur  
11 because of the significant and un-mitigatable harm which occurs in the absence of CAP shopping  
12 restrictions.

13 Sixth, as to RESA's suggestion that it would be unfair to impose a \$30 SOP enrollment  
14 fee to suppliers agreeing to serve CAP customers with more restrictive terms<sup>22</sup>, I agree that this  
15 concern may have merit. To that end, I endorse the suggestions of OCA witness Barbara  
16 Alexander<sup>23</sup> who suggests that PECO could simply transmit qualified and interested CAP  
17 customers to an EGS that is randomly selected from those willing to serve CAP customers under  
18 the CAP shopping criteria. This would avoid the third party enrollment fee altogether, thereby  
19 reducing any cost that might be required for EGSs to participate in such a program. And, since

---

<sup>20</sup> RESA Statement No. 1-R at 15: 21-23.

<sup>21</sup> Given the current POR program, the consequences of excessive EGS pricing rarely affect the EGS. They are paid by PECO and then allow PECO and its ratepayers to contend with termination, CAP default, and the other social effects of unaffordable utility bills.

<sup>22</sup> RESA Statement No. 1-R at 16:1-7.

<sup>23</sup> See OCA Statement No. 2-R at 6:3-9.

1 PECO would have already conducted the initial screening, it would also alleviate any supplier  
2 concern as to whether the customer is or is not a CAP participant.

3 Finally, as to RESA's stated concern that it would be duplicative to address these issues  
4 in this proceeding given that the Commission has issued its May 11<sup>th</sup> Secretarial Letter<sup>24</sup>, I  
5 incorporate by reference my Direct Testimony addressing this very issue,<sup>25</sup> and note specifically:

- 6 • Although the Secretarial Letter states that PECO's plan will be "subject to public  
7 comment and final review and approval by the Commission,"<sup>26</sup> there is no indication that  
8 the Commission will permit the further introduction of evidence in the DSP II  
9 proceeding, and it is only this DSP IV proceeding which provides that opportunity.
- 10 • The Secretarial Letter itself invited further inquiry into these matters in this or other  
11 proceedings.<sup>27</sup>
- 12 • As the Commission recognized in another of its footnotes within the Secretarial Letter,  
13 the Commonwealth Court's decision was "predicated on its review of the record evidence  
14 before the Commission during PECO's DSP II proceeding."<sup>28</sup> Thus any and all new  
15 evidence since PECO's DSP II proceeding should be considered, particularly in light of  
16 the clarified legal standard.

17 **Q. Does this conclude your Surrebuttal testimony?**

18 A. Yes.

---

<sup>24</sup> RESA Statement No. 1-R at 18:20-21.

<sup>25</sup> See CAUSE-PA Statement No. 1 at 10-12.

<sup>26</sup> *Petition of PECO Energy Company for Approval of its Default Service Plan*, Docket No. P-2012-2283641 (May 11, 2016, Secretarial Letter) ("*May 11, 2016 Secretarial Ltr.*") at 2.

<sup>27</sup> *May 11, 2016 Secretarial Letter at 2 n. 2.*

<sup>28</sup> *May 11, 2016 Secretarial Letter at 2 n. 4.*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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

**VERIFICATION**

I, Harry S. Geller, verify that:

**CAUSE-PA Statement No. 1, the Direct Testimony of Harry Geller, and  
attachment A thereto; and**

**CAUSE-PA Statement No. 1SR, the Surrebuttal Testimony of Harry Geller,**  
were prepared by me or under my direct supervision, and are true and correct to the best  
of my knowledge, information and belief. I understand that the statements herein are  
made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to  
authorities).



Harry S. Geller  
118 Locust Street  
Harrisburg, PA 17055  
[hgellerpulp@palegalaid.net](mailto:hgellerpulp@palegalaid.net)

Date: July 12, 2016

**TURN et al. Statement No. 1-SR**

**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 :**

**SURREBUTTAL TESTIMONY OF  
PHILIP A. BERTOCCI**

**On Behalf of  
Tenant Union Representative Network  
and  
Action Alliance of Senior Citizens of Greater Philadelphia**

**July 8, 2016**

## TABLE OF CONTENTS

I.	WITNESS BACKGROUND .....	1
II.	PECO’S PROPOSED CAP SHOPPING PLAN SHOULD INCORPORATE THE RECOMMENDATIONS OF CAUSE-PA .....	4
III.	OCA’S SUPPORT OF CAUSE-PA’S CAP SHOPPING PROPOSAL .....	10
IV.	RESA’S CRITICISMS OF MR. GELLER’S TESTIMONY ARE UNFOUNDED .....	11
V.	CONCLUSION.....	17

**PREPARED SURREBUTTAL TESTIMONY  
OF PHILIP A. BERTOCCI**

**I. WITNESS BACKGROUND**

**Q. Please state your name, occupation and business address.**

A. Philip A. Bertocci, Esquire. I am currently retired, maintaining a pro bono “of counsel” role, with an office c/o, Community Legal Services, Inc., 1424 Chestnut Street, Philadelphia, PA 19102.

**Q. Briefly outline your education and professional background.**

A. As my resume shows, I received my B.A. Degree in History from Wesleyan University (Middletown, CT) in 1962, a Ph.D Degree in History from Yale University in 1970, and a J.D. from the University of Pennsylvania Law School in 1980. From 1980, with the exception of a little over a year when I was a judicial clerk, until my retirement in the Fall of 2011, I was employed as a Staff Attorney at Community Legal Services (CLS). After over a decade representing low income clients in mortgage foreclosure proceedings and Chapter 7 and Chapter 13 Bankruptcy proceedings, I began work in CLS’s Energy Unit in 1995, and served as the Supervising Attorney of that unit from 1998 until my retirement in 2011. My resume is attached as Exhibit PAB-1.

**Q. For whom are you testifying in this proceeding?**

A. I am testifying on behalf of Tenant Union Representative Network (“TURN”) and Action Alliance of Senior Citizens of Greater Philadelphia (collectively “TURN et al.”)

**Q. Please describe the focus of your work over the past twenty years.**

A. My work focused on assisting low income Philadelphians in their efforts to obtain gas, electric and water service, to maintain that service, and in the event that service is terminated, to obtain prompt service reconnection. Consistent with these goals, I have served with co-counsel as the Public Advocate for Philadelphia Gas Works' residential customers in matters before the Philadelphia Gas Commission and as the Public Advocate for residential customers of the Philadelphia Water Department in Water Rate Increase cases in 2002, 2005 and 2008. I have also served as lead counsel on behalf of Philadelphia low-income consumer groups in matters involving PECO Energy and the Philadelphia Gas Works before the Pennsylvania Public Utility Commission.

In addition to group representation, I have supervised Energy Unit attorneys and paralegals providing advice and representation to hundreds of low-income Philadelphians every year in matters involving access to utility service provided by PGW, PECO and the Philadelphia Water Department/Water Revenue Bureau. The primary goal of that representation has been to develop and strengthen universal service principles in policy, law and regulations, assuring that low income customers will be provided with the assistance necessary to maintain vital utility service

**Q. Have you testified in any proceeding before the Pennsylvania PUC (PPUC)?**

A. I provided testimony in PECO's DSP II Proceeding, Petition of PECO Energy Company for Approval of its Default Service Program, Docket No. P-2012-2283641, on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA").

I also provided testimony regarding Columbia Gas of Pennsylvania, Inc.'s ("CGPA") universal service plan and low-income customer issues on behalf of Pennsylvania Communities Organizing for Change, Inc., d/b/a ACTION United, Carol Collington, and Nettie Pelton in Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2010-2215623 & PCOC et al. v. Columbia Gas of Pennsylvania, Inc., Docket No. C-2011-2232186.

**Q: What is your relevant work experience on issues of low-income utility affordability and competitive markets?**

A. For decades, the CLS Energy Unit has been the primary non-utility advocate in Philadelphia for the development and improvement of the Universal Service Programs implemented by PGW, PECO and the Philadelphia Water Department. In the time that I have been in the Energy Unit, PECO and PGW's Universal Service Programs have developed and grown significantly. For example, PGW's Customer Responsibility Program has expanded from relatively modest beginnings to an enrollment ranging from approximately 50,000 to as many as 80,000 customers, in recent years. In the same period, PECO's CAP program has expanded from less than 40,000 customers to over 130,000 customers in PECO's service territory. I have served for several years on DHS' (formerly DPW's) LIHEAP Advisory Committee, supervised the annual filing of Comments regarding the LIHEAP State Plan and submitted Comments regarding the Commission's universal service policies and proposed regulations.

**Q. Have you previously submitted testimony in this proceeding?**

A. No, I have not. PECO had not proposed any changes to its CAP Shopping Plan until the recently served surrebuttal testimony of John J. McCawley.

**Q. What is the purpose of your surrebuttal testimony?**

A. The purpose of my surrebuttal testimony is to respond to certain issues raised in the rebuttal testimony of witnesses for PECO Energy, the Office of Consumer Advocate (“OCA”), and the Retail Energy Supply Association (“RESA”).

First, I address the positions of PECO Energy regarding its plan to allow CAP customers to shop or purchase competitive generation supply, outlined in the Rebuttal Testimony of John J. McCawley (PECO St. 2-R).

Second, I respond to the recommendations of OCA’s witness regarding CAP shopping, as presented in the rebuttal testimony of Barbara Alexander (OCA St. 2-R).

Finally, I respond to the arguments raised by RESA’s witness, in the rebuttal testimony of Matthew White (RESA St. 1-R).

**II. PECO’S PROPOSED CAP SHOPPING PLAN SHOULD INCORPORATE THE RECOMMENDATIONS OF CAUSE-PA**

**Q. What does PECO plan to do with regard to CAP Shopping?**

A. According to the Rebuttal Testimony of John J. McCawley:

In August 2016, PECO intends to submit a “proposed rule revision” to revise the CAP Shopping Plan with an effective date in the first quarter of 2017. Consistent with the *Commonwealth Court CAP Shopping Decision*, the Company’s rule revision will eliminate any pricing restrictions for EGSs who wish to offer competitive generation service to PECO’s CAP customers and will prohibit CAP customers and EGSs from entering into any contract that imposes early cancellation or termination fees. In accordance with the May 11, 2016 Secretarial Letter, PECO’s proposed rule revision will also include a proposal to collect data to evaluate the CAP shopping program and determine whether any modifications are later necessary. To that end, PECO intends to compile information regarding the number of CAP customers shopping, the rates CAP customers pay for generation service, and the portion of the aggregate CAP credit amount paid for by residential customers.

PECO St. 2-R, at 12.

**Q. Do you agree that this is the course of action that PECO should take with regard to CAP shopping?**

A. No. I have a number of concerns regarding PECO's proposed implementation of CAP shopping. First and foremost, I am concerned that PECO's proposal makes no effort to protect CAP customers against the demonstrable harms that will result from their entering into contracts for EGS supply at a price above PECO's price to compare (PTC). Unlike PECO's DSP II proceeding, this DSP IV proceeding has revealed new record evidence of the significant and continuing harm suffered by CAP customers in the shopping arena, with resulting increased subsidy costs paid by other residential customers, in utility service territories where price protections have not been implemented. PECO has the largest CAP population in the Commonwealth, and the implementation of CAP shopping without price protections in PECO's service territory puts approximately 140,000 CAP customers at risk of unaffordable bills.

Furthermore, I am concerned by PECO's proposal to implement CAP shopping in its DSP III proceeding. I understand the Commission's May 11, 2016 Secretarial Letter directed as much of PECO, but that direction came prior to the date upon which Mr. Geller submitted his testimony in this proceeding. Mr. Geller provides indisputable evidence of the need for CAP shopping price and termination/cancellation fee protections. PECO's CAP shopping proposal should not be subject to approval in its DSP III, when the evidence showing the need for program protections is properly before the Commission in this DSP IV. PECO's CAP shopping plan should not be implemented on the basis of the DSP III record, when this DSP IV record demonstrates the harm that will befall low income CAP customers entering the competitive

market without adequate price protections and termination/cancellation fee prohibitions. As I discuss more fully below, I also have recommendations regarding PECO data collection.

**Q. Which course of action would you recommend for PECO’s revision of its CAP Shopping Plan?**

A. I fully support the recommendations of CAUSE-PA witness, Harry S. Geller, including an implementation time frame of no earlier than June 1, 2017, the onset of PECO’s DSP IV. As summarized by OCA witness Ms. Alexander in her rebuttal testimony, Mr. Geller has proposed a program that would allow CAP customers to select an EGS through the Standard Offer Program with a specific “CAP” version of this program designed to ensure that these vulnerable customers do not pay more than the Price to Compare (PTC). Specifically, Mr. Geller recommends:

Second, for this to work, EGSs participating in the SOP who serve CAP customers would have to agree to serve these CAP customers at a 7% discount off the PTC at the time of enrollment and, if the PTC drops more than 7% at any time during the customer’s enrollment, the EGS would have to either re-enroll the customer in a new SOP enrollment with a new 7% off the then applicable PTC or return the customer to default service. If returned to default service, this would allow the customer to then affirmatively re-enroll in the SOP with another supplier, if they so desire. Suppliers are already monitoring the PTC to determine whether to participate in the SOP and what offers to make to customers. As such, they will be able to readily determine when the PTC price drops by more than 7%, triggering their obligation to either adjust their CAP enrollee’s contract terms or return the customer to default service.

OCA St. 2-R, at 4 (citing CAUSE-PA St. 1, at 32) (emphasis in original).

**Q. Please comment on Mr. Cawley’s statement that “PECO is currently under direction by the Commission and the Commonwealth Court not to include any limitations on EGS prices in its CAP shopping program.” PECO St. 2-R, at 15.**

A. Mr. Cawley is mistaken to the extent his testimony suggests that the Commonwealth Court has prohibited PECO from implementing a CAP shopping

program having those price protections recommended by Mr. Geller. As I stated above, I support Mr. Geller's recommendations. Similarly, Mr. Cawley incorrectly construes the Commission's May 11, 2016 Secretarial Letter to the extent he submits that it also prohibits PECO from implementing reasonable price protections.

Mr. Cawley appears to misunderstand the portion of the Commonwealth Court's order that was mandatory on remand, and that portion which is not mandatory. The language of the Commonwealth Court's order is instructive:

For the reasons set forth above, we affirm the PUC's Approval Order and Reconsideration order with respect to the PUC's rejection of a rule that would impose a price ceiling on EGSs that wish to participate in the PECO CAP Shopping Program. We reverse the portions of the Approval Order and Reconsideration Order which rejected a rule that would prohibit CAP participants from entering into any contract with an EGS that imposes early cancellation/termination fees. We remand this matter to the PUC with instructions that it approve a rule revision to the PECO CAP Shopping Plan that would impose *such a prohibition*. (emphasis added).

As one can see from this language, the Commonwealth Court entered an order that mandated only one specific change to PECO's CAP shopping plan: that plan must prohibit CAP shopping under any contracts that impose early termination/cancellation fees. Otherwise, the Commonwealth Court affirmed the PUC's finding that the PUC's denial of price protections in PECO's CAP shopping plan was permissible on the basis of the information presented in the DSP II proceeding, Docket No. P-2012-2283641. The distinction is an important one: the Commonwealth Court did not mandate that PECO's CAP customers enter the competitive market without any price protections that the PUC may determine to be reasonable and necessary. To the contrary, the Commonwealth Court corrected the PUC's misinterpretation of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2815 (Choice Act), confirming, as the

PUC is aware, that the PUC has the authority to implement reasonable CAP shopping price protections for PECO customers. Consistent with that recognition, the Commission's May 11, 2016 Secretarial Letter expresses no specific direction regarding the contents of PECO's CAP shopping plan, other than that it be consistent with the Commonwealth Court's order.

**Q. Please comment on Mr. Cawley's statement: "In accordance with the May 11, 2016 Secretarial Letter, PECO's proposed rule revision will also include a proposal to collect data to evaluate the CAP shopping program and determine whether any modifications are later necessary. To that end, PECO intends to compile information regarding the number of CAP customers shopping, the rates CAP customers pay for generation service, and the portion of the aggregate CAP credit amount paid for by residential customers."**

**A.** Certainly PECO should collect information about CAP customers' experience in the competitive market. The Commission's Secretarial Letter acknowledges that PECO *should* include a "proposed plan to collect data upon which to base an analysis of the CAP shopping program experiences, evaluations and recommendations." I concur that PECO should develop such a plan. However, to be clear, I believe the new evidence provided in this DSP IV proceeding by Mr. Geller demonstrates the need for CAP shopping price protections Mr. Geller describes. 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. Accordingly, my recommendation is for PECO to collect such data based on a CAP shopping plan having the fundamental features described in Mr. Geller's testimony, namely, "that CAP customers should be permitted to shop in the competitive market only

if the rates they pay for EGS supply are always at or below the price to compare and do not contain cancellation or termination fees.” CAUSE-PA St. 1 at 35.

It should again be noted that the Commonwealth Court’s decision and Commission’s guidance does not prohibit PECO’s CAP shopping plan from providing price protections to CAP customers. As Mr. Geller notes, parties in future proceedings are not prejudiced from examining the impact of CAP shopping program features on CAP participants.<sup>1</sup> Accordingly, in order to understand and evaluate the impact of shopping CAP affordability, PECO should collect data regarding the shopping experiences of CAP customers entering the market with the CAP program protections recommended by Mr. Geller. In doing so, PECO will be able to report the duration that such customers were able to benefit from competitive supply at a price not exceeding PECO’s PTC, and the savings that accrue to CAP customers and all other residential PECO customers who contribute to the cost of CAP. At the same time, PECO’s information gathering should document, to the extent feasible, when CAP customers accept, but are prohibited from entering, contracts with competitive suppliers that do not comply with the CAP shopping program features described by Mr. Geller. I recommend that in the collection of all CAP shopping data PECO ensure that it records the price of EGS offers to CAP customers and the address of the applicable CAP customers. This data will be essential to examining the extent to which EGSs are committed to serving the diverse communities within PECO’s service territory.

---

<sup>1</sup> As Mr. Geller acknowledges, the Secretarial Letter clearly recognizes that, in future proceedings, parties may provide evidence concerning the Commonwealth Court’s *mandate* that PECO’s CAP shopping plan prohibit termination/cancellation fees. Clearly, there is no reasonable argument that parties are foreclosed from providing evidence supporting CAP shopping price protections in a future proceeding, given the Commonwealth Court’s clear acknowledgement that such protections do not violate the Choice Act.

### **III. OCA'S SUPPORT OF CAUSE-PA'S CAP SHOPPING PROPOSAL**

**Q. What does OCA's witness Barbara Alexander recommend with regard to the timing of the implementation of PECO's revised CAP Shopping Plan?**

A. Ms. Alexander agrees with CAUSE-PA witness Mr. Geller, and would not recommend any change to CAP customer shopping until at the earliest June 1, 2017, the onset of PECO's DSP IV. Ms. Alexander recognizes the same concerns raised by Mr. Geller about the potential for confusion and adverse impacts if this major revision to the CAP customer shopping policy is rolled out during the implementation of significant changes to the PECO CAP customer rate design. OCA St. 2-R, at 1-4.

**Q. Does Ms. Alexander agree with Mr. Geller's proposal for how CAP customers should be able to select an EGS and maintain the essential affordability criteria for the CAP program?**

A. Yes. In general, Ms. Alexander agrees that Mr. Geller's "proposal is an acceptable interim approach to allowing CAP customers to be served by an EGS and ensure that this enrollment and experience does not adversely impact the affordability of the CAP customer's bill or the subsidy paid by other residential customers for this vital program." OCA St. 2-R, at 4-5.

**Q. Do you agree with Ms. Alexander regarding the timing of implementation of PECO CAP shopping and the maintenance of CAP affordability?**

A. Yes, I generally agree with Ms. Alexander. As I discuss above, it is essential that PECO's CAP shopping plan benefit from the record in this proceeding, demonstrating the harms that will result from CAP shopping without price protections. In addition to the direct financial harms to PECO CAP customers and other residential customers, Ms. Alexander is correct in

recognizing that CAP shopping presents additional risks at this time, given the drastic changes to be implemented in PECO's CAP program. OCA St. 2-R at 3-4. Many CAP customers will have to make adjustments to their monthly budgets with the implementation of PECO's new CAP program, because some will experience greater discounts, and some will experience reduced discounts. Until PECO's new CAP program is in operation, CAP customers will not have all of the information necessary to make an informed decision when evaluating EGS offers. This is particularly true for those CAP customers who will receive little to no CAP discount under PECO's new program and would need to carefully evaluate EGS offers to maximize bill affordability going forward.

I acknowledge that Ms. Alexander has identified certain issues that need to be resolved or considered to finalize Mr. Geller's recommendations, including whether or not PECO CAP shopping should be implemented through a revised Standard Offer Program. OCA St. 2-R at 5-6. Although there would certainly be implementation issues associated with any CAP shopping program designed to ensure affordability and cost-effectiveness of CAP, I support Mr. Geller's recommendation to implement CAP shopping through the revision/enhancement of PECO's pre-existing SOP.

#### **IV. RESA'S CRITICISMS OF MR. GELLER'S TESTIMONY ARE UNFOUNDED**

**Q. Do you agree with RESA's witness Mr. White that "Mr. Geller's proposal is really just a CAP shopping ban masquerading as a shopping proposal," RESA St. 1-R, at 17?**

A. No, Mr. Geller's proposal propounds reasonable program features that will allow PECO's CAP customers to enter the competitive market without exposure to undue price risk which threatens affordability for the most vulnerable PECO customers, who cannot afford any increase

in their monthly electric bills. Although Mr. White asserts, without any explanation, that low income customers should have equal access to the benefits and innovations of the competitive market (RESA St. 1-R at 14), the Commonwealth Court has clearly acknowledged the contrary position to be true – that competition may bend to ensure that important objectives, such as the cost-effectiveness of CAP, are satisfied. Coalition for Affordable Utility Services and Energy Efficiency in Pa., et al. v. Pa. PUC, 120 A.3d 1087, 1104 (Pa. Cmwlth 2015) (hereafter, “CAUSE-PA v. Pa. PUC”). Mr. White appears to adhere to the view, specifically rejected by the Commonwealth Court, that any limitation on competition is an impermissible restriction on customer choice. The Commonwealth Court specifically rejected this position. CAUSE-PA v. Pa. PUC, 120 A.3d at 1103 (determining that Direct Energy and the PUC arguments that CAP shopping limitations would impermissibly restrict competition were unpersuasive).

PECO’s CAP shopping plan should not impose warrantless risks of higher, unaffordable electric bills on low-income CAP customers who cannot afford to pay them when CAP shopping design features, described by Mr. Geller, can ensure that these risks are avoided. Contrary to banning CAP shopping, Mr. Geller’s proposal would make EGS offers available to CAP customers in a manner that ensures that CAP customers benefit from the competitive market, while continuing to receive the benefits of CAP. PECO CAP customers desiring to accept EGS offers that do not satisfy Mr. Geller’s proposal are free to exit CAP, as has been the case for several years.

**Q. Do you agree with Mr. White that Mr. Geller failed to show that a price restriction on EGS supply to CAP customers is the only way to ensure affordability?**

A. No. Mr. White not only fails to understand Mr. Geller’s testimony, but fails to counter the new evidence of harm to low-income customers resulting from shopping for electricity

supply without adequate price protections documented by Mr. Geller. Although Mr. White submits that “changes in [the CAP] program should be instituted” if a CAP customer’s benefits are affected by the choice of EGS supply, he offers no ideas or concrete proposals about any such changes. Mr. White submits that restrictions on EGS offers to CAP customers must be implemented only if changes to CAP are *impossible* to maintain customer affordability. In fact, that is precisely the case: the only available means to ensure cost-effectiveness and affordability for CAP and non-CAP customers who contribute to the cost of CAP is to impose reasonable price protections on EGS supply. As Mr. Geller discusses, higher EGS prices charged to CAP customers results in unaffordable bills, higher collection costs and rates for all customers, and, in multiple ways, adversely impacts upon the financial, health, and safety of individual CAP households. CAUSE-PA. St-1 at 30. Ms. Alexander concurs, noting that “higher bills can adversely impact the affordability for essential electric service for CAP customers, and result in higher costs to the other residential ratepayers to fund these programs. OCA St. 2-R at 3. Mr. White fails to acknowledge that there are only two sources of funds available to cover EGS charges to CAP customers: CAP customers; or non-CAP residential customers who contribute to the cost of CAP. There is no CAP program design feature which can alter this basic and fundamental precept of CAP.

In addition, Mr. White’s position (that restrictions on the competitive market can only be implemented if it is *impossible* to guarantee affordability otherwise) is directly contradicted by the Commonwealth Court’s interpretation of the Choice Act.<sup>2</sup> Again, the Commonwealth Court

---

<sup>2</sup> Notably, the Commonwealth Court, in mandating restrictions on EGS offers to PECO customers (prohibition on termination/cancellation fees), relied upon the acknowledged fact that in many circumstances those fees “pose a risk to low-income shopping customers” and there was not record evidence supporting an allowance to EGSs to impose those fees. CAUSE-PA v. Pa. PUC, 120 A.3d at 1108. The Commonwealth Court did not require a showing of impossibility to conclude that the termination/cancellation fees were impermissible for PECO’s CAP shopping program.

specifically held that “the General Assembly has reserved within the PUC the authority to ‘bend’ competition to further other important aspects of the Code, including the Choice Act, where it provides substantial reasons why the restriction on competition is necessary (i.e., there are no reasonable alternatives).” CAUSE-PA v. Pa. PUC, 120 A.3d at 1106. Mr. Geller need not meet Mr. White’s fabricated “impossibility” standard, but need only show, as he has, that restrictions on competition are necessary to further important aspects of the Public Utility Code, e.g., the ability of CAP customers to maintain affordable utility service and the appropriate funding and cost-effectiveness of CAP. See CAUSE-PA St. 1 at 24-25. As discussed above, there appear to be no reasonable alternatives to Mr. Geller’s proposed CAP shopping price protections that would ensure the affordability and cost-effectiveness of CAP. Mr. White fails to suggest any other reasonable alternatives, because there are none.

**Q. Please comment on Mr. White’s response to the question “Has the Commonwealth Court evaluated restrictions on EGS pricing for CAP Customers?”, RESA St. 1-R, at 17.**

A. Mr. White appears to view the Commonwealth Court’s decision as reflecting its evaluation of the merits of PECO’s proposed EGS price restrictions for CAP customers. This is a mistaken interpretation. The Commonwealth Court, in upholding the PUC’s denial of EGS price protections for PECO CAP customers specifically declined to “reweigh the evidence” submitted before the PUC in PECO’s DSP II. CAUSE-PA v. Pa. PUC, 120 A.3d at 1107. The Commonwealth Court determined that the PUC’s denial of price protections was permissible, based on the evidence on the record in PECO’s DSP II. But the Commonwealth Court required that the PUC continue to revisit the impact of shopping for electricity supply on low-income Pennsylvanians, stating that the PUC’s obligations are “of a continuing nature.” CAUSE-PA v. Pa. PUC, 120 A.3d at 1108. The Commonwealth Court decisively established that the PUC must

undertake additional review to ensure that, with any implementation of PECO CAP shopping, universal service plans are adequately funded and cost-effective to customers, consistent with the legislative purposes of universal service. The record in PECO's DSP II is not, and cannot legally, be the final record established on the issue of PECO's CAP shopping program.

**Q. Do you agree with Mr. White's statement that it is inappropriate to address CAP shopping at this time, RESA St. 1-R, at 17?**

A. No, I do not. Although Mr. White points to the language of the Secretarial Letter stating that a CAP shopping rule revision filed by PECO in its DSP III proceeding would be subject to public comment and final review, that does not in any way foreclose the parties in this DSP IV from considering necessary protections to PECO's CAP shopping program. Mr. White argues it "is not effective" for CAP shopping to be evaluated in this DSP IV proceeding, since the Commission has ordered PECO's CAP shopping plan to be submitted in PECO's DSP III proceeding, but provides no explanation for why that is the case. Regardless, I disagree that evaluating PECO's CAP shopping program in this DSP IV is not effective. This DSP IV proceeding presents the first opportunity for the parties to develop a record under the Commonwealth Court's interpretation of the requirements of the Choice Act and the PUC's authority thereunder. I don't believe it could reasonably be questioned that this DSP IV may provide an effective means to review PECO's CAP shopping program, and those reasonable customer protections necessary to ensure that PECO's low-income customers are not harmed by high priced supply in the market for competitive electricity.

Frankly, prohibiting the parties from addressing features of PECO's CAP shopping program in this DSP IV proceeding would present a significant and unlawful impairment of due process. The maintenance of CAP programs, a fundamental component of utility universal

service, is an obligation imposed on default service providers, and properly examined in the context of DSP proceedings. The Commonwealth Court recognized that the maintenance of adequate protections for low income customers can, under certain circumstances, require the “bending” of competition. CAUSE-PA v. Pa. PUC, 120 A.3d at 1104 (“the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits—e.g., an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.”). Because of the statutorily recognized importance of low income protections, confirmed by the Commonwealth Court, proposals that would diminish those protections must be fully vetted in an on the record proceeding.

Accordingly, unlike Mr. White, I believe the Commonwealth Court order, and the Commission’s Secretarial Letter must be read to permit the parties to examine PECO’s CAP shopping program in this DSP IV proceeding.<sup>3</sup> As noted above, the Commonwealth Court has specifically mandated that the review of CAP shopping be periodically undertaken – doing so is part of the “continuing nature” of the PUC’s oversight, as required by the Choice Act. Moreover, the Commission’s Secretarial Letter was entered on PECO’s DSP II docket, P-2012-2283641. I am aware of no basis for the Commission’s Secretarial Letter in PECO’s 2012 DSP proceeding, or any other prior decision or determination, to somehow prejudice the positions of the parties regarding PECO’s CAP shopping plan in this DSP IV proceeding, which commenced several years after the close of the record in PECO’s DSP II.

---

<sup>3</sup> I concur with Mr. Geller (see CAUSE-PA St. 1 at 10-12) that requiring PECO to implement CAP shopping in the context of its DSP III, which did not thoroughly examine the proposals at issue in this DSP IV, would be inappropriate, putting the cart before the horse.

**V. CONCLUSION**

**Q. Does that conclude your testimony?**

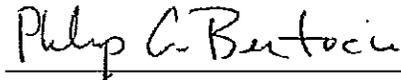
A. Yes.

**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 :**

VERIFICATION

I, Philip A. Bertocci, hereby state that the facts set forth above in my Surrebuttal Testimony, TURN et al., Statement No. 1-SR, are true and correct and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_

Philip A. Bertocci  
Of Counsel  
Community Legal Services

DATED: July 8, 2016