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December 12, 2016

VIA e-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed are the **Reply Comments of PECO Energy Company** in the above-referenced matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



W. Craig Williams

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

REPLY COMMENTS OF PECO ENERGY COMPANY

Pursuant to the Pennsylvania Public Utility Commission's ("Commission's") November 18, 2016 Secretarial Letter ("November 18 Secretarial Letter") in the above-referenced docket, PECO Energy Company ("PECO") submits these Reply Comments in support of PECO's proposed revisions to its plan to allow low-income customers enrolled in its Customer Assistance Program ("CAP") to shop for electric generation supply.

I. INTRODUCTION

In contrast to the majority of other Pennsylvania electric distribution companies ("EDCs"), PECO's CAP customers are not currently eligible to purchase electric generation supply from an electric generation supplier ("EGS"). On May 1, 2013, in its second default service program ("DSP II") proceeding, PECO proposed a plan to enable CAP customers to purchase electric generation supply from EGSs in the same manner as non-CAP customers, but with a limitation that EGS prices for CAP customers could not exceed PECO's Residential Price-to-Compare ("PTC"). This plan was designed to promote shopping and access to the benefits of the competitive market for low-income customers, while balancing the costs of CAP shopping that would be paid by other PECO residential customers.

In its final Order approving PECO's DSP II CAP shopping plan with modifications, the Commission rejected the requirement that EGSs not charge CAP customers a price for

generation supply in excess of the applicable PTC.¹ The Commission concluded that it did not have authority under the Public Utility Code to limit prices charged by EGSs and also agreed with the EGSs opposing the CAP pricing ceiling that the ceiling would limit the diversity of shopping options available to CAP customers.² In addition, the Commission declined to adopt a proposal by the Office of Consumer Advocate (“OCA”) to prohibit EGSs from imposing early cancellation or termination fees on CAP customers on the ground that it lacked the legal authority to impose such restrictions on EGSs.³ Appeals of the *DSP II Order* were taken by the OCA, 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 (collectively, “TURN”).

Subsequently, the Commonwealth Court ruled that the Commission had the authority to impose or approve CAP rules that limit the terms of offers from EGSs to ensure adequately funded, cost-effective and affordable universal service programs.⁴ The Commonwealth Court also concluded that record evidence supported the Commission’s finding that an EGS price ceiling would be anticompetitive and limit the choices available to PECO’s CAP customers, but found that there was a statutory basis and sufficient record evidence to support the OCA’s proposed prohibition against early termination and cancellation fees.⁵ As a result, the

¹ *Petition of PECO Energy Co. for Approval of Its Default Serv. Plan*, Docket No. P-2012-2283641 (Opinion and Order entered Jan. 24, 2014) (“*DSP II Order*”), p. 14.

² *Id.*

³ *Id.* at 16-17.

⁴ *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa. v. Pa. P.U.C.*, 120 A.3d 1087, 1103-1104 (Pa. Cmmw. Ct. 2015) (the “*CAP Shopping Order*”).

⁵ *Id.* at 1106-1108.

Commonwealth Court remanded the case to the Commission for further proceedings to approve a “rule revision to the PECO CAP Shopping Plan that would impose such a prohibition.”⁶

The Commission thereafter issued a Secretarial Letter on May 11, 2016 (the “May 11 Secretarial Letter”), requesting that PECO file a rule revision during its current default service program (“DSP III”).⁷ Under PECO’s proposed rule revision filed on September 1, 2016 (the “CAP Rule Revision”), EGSs that wish to offer competitive generation service to CAP customers will not be subject to any pricing restrictions.⁸ In addition, CAP customers and EGSs will be prohibited from entering into any contract that imposes early cancellation or termination fees.⁹ The CAP Rule Revision also includes a plan for collection of data in consultation with the Commission’s Office of Competitive Market Oversight (“OCMO”) for analysis of CAP shopping experiences and future evaluations and recommendations.¹⁰ On November 18, 2016, the Commission established December 2, 2016 and December 12, 2016 as the respective deadlines for comments and reply comments on the CAP Rule Revision.¹¹

Prior to the issuance of the May 11 Secretarial Letter, PECO filed a petition and accompanying direct testimony supporting its request for approval of its fourth default service

⁶ *Id.* at 1109. CAUSE-PA and TURN requested review of the Commonwealth Court’s decision by the Pennsylvania Supreme Court, but that request was denied on April 5, 2016. *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa. v. Pa. P.U.C.*, 2016 WL 1383864 (Pa. Apr. 5, 2016).

⁷ PECO’s DSP III was approved by the Commission on December 4, 2014. *See Petition of PECO Energy Co. for Approval of its Default Serv. Plan for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Opinion and Order entered Dec. 4, 2014) (“DSP III Order”).

⁸ *See Exhibit A to CAP Rule Revision*, p. 1 (noting that amended supplement to PECO’s Electric Supplier Coordination Tariff removed any requirements that prohibit EGSs from charging CAP customers a price that exceeds the PTC).

⁹ *See Exhibit B to CAP Rule Revision*, ¶ 5.5.3 (“EGSs that serve CAP customers...must not enter into any contract that imposes early cancelation/termination fees”).

¹⁰ *Id.*, ¶ 5.5.

¹¹ *See November 18 Secretarial Letter*, p. 2.

program (“DSP IV”) commencing on June 1, 2017 at Docket No. P-2016-2534980.¹² In that proceeding, a witness for CAUSE-PA proposed an alternative CAP shopping platform based on PECO’s existing Standard Offer Program (the “CAP-SOP Proposal”) that would permit CAP shopping after June 1, 2017 subject to additional CAP-specific program rules, including a requirement that CAP-SOP suppliers guarantee a seven percent discount off the PTC.¹³ The OCA and TURN supported the CAP-SOP Proposal.¹⁴

Several parties to the DSP IV proceedings were able to achieve a joint settlement that resolved all issues except the implementation of CAP shopping in PECO’s service territory. On September 23, 2016, Administrative Law Judge Cynthia W. Fordham (“ALJ”) issued her Recommended Decision (“R.D.”) in which she recommended that the Commission approve the settlement and also adopt PECO’s position that CAP shopping issues should not be addressed as part of DSP IV in light of the May 11 Secretarial Letter’s directive that PECO file its CAP Rule Revision in this docket.¹⁵

On December 2, 2016, CAUSE-PA and TURN (jointly), the OCA and the Retail Energy Supply Association (“RESA”) filed comments on PECO’s CAP Rule Revision. In their comments, both CAUSE-PA/TURN and the OCA (collectively, the “CAP-SOP Advocates”) asserted that the Commission should address the CAP Rule Revision in PECO’s DSP IV proceeding and impose pricing limitations to maintain affordable and cost-effective service for CAP customers. RESA generally supported PECO’s CAP Rule Revision, but proposed two

¹² See *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2017 through May 31, 2019*, Docket No. P-2016-2534980 (filed Mar. 17, 2016).

¹³ See CAUSE-PA/TURN Comments, Attachment D(1), pp. 31-34.

¹⁴ See OCA Comments, p. 6; CAUSE-PA/TURN Comments, Attachment E, pp. 4-11.

¹⁵ See *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2017 through May 31, 2019*, Docket No. P-2016-2534980 (Recommended Decision issued Sept. 23, 2016), pp. 35-36, 57-58.

operational changes related to the electronic data interchange (“EDI”) process and to eliminate the notice and entry/exit requirements for EGSs serving CAP customers in PECO’s Electric Generation Supplier Coordination Tariff.

On December 8, 2016, the Commission approved the settlement of PECO’s DSP IV proceedings without modification and concluded that it was not appropriate to consider the CAP-SOP Proposal in DSP IV.¹⁶ The Commission emphasized that it would fully address CAP customer shopping in PECO’s service territory in this proceeding and stated that it would take official notice of the documents constituting the DSP IV record in its consideration.¹⁷

PECO now submits these Reply Comments to respond to the issues raised by the CAP-SOP Advocates and RESA regarding the CAP Rule Revision.¹⁸ As explained below, PECO’s CAP Rule Revision is consistent with the *DSP II Order*, *CAP Shopping Order* and May 11 Secretarial Letter and, therefore, should be approved.

II. REPLY COMMENTS

A. The CAP Shopping Limitations Proposed by the CAP-SOP Advocates Are Inconsistent with the *CAP Shopping Order*

In their comments, the CAP-SOP Advocates oppose implementation of the *CAP Shopping Order* during DSP III as directed in the May 11 Secretarial Order. Instead, they request approval of the CAP-SOP Proposal to permit CAP shopping during DSP IV only as part of PECO’s Standard Offer Program, prohibit EGS prices for CAP customers that are greater than seven percent below PECO’s PTC at any time, and impose other new shopping restrictions.¹⁹

¹⁶ See *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2017 through May 31, 2019*, Docket No. P-2016-2534980 (Opinion and Order entered Dec. 8, 2016) (the “*DSP IV Order*”), pp. 34-36, 61-63, 65, 67.

¹⁷ *Id.*, p. 62.

¹⁸ In light of the *DSP IV Order*, PECO will not address the CAP-SOP Advocates’ comments advocating for consideration of the CAP-SOP Proposal in PECO’s DSP IV proceedings.

¹⁹ See OCA Comments, pp. 7-8; CAUSE-PA/TURN Comments, Attachments A-E.

However, this alternative CAP shopping proposal is inconsistent with the *CAP Shopping Order* in this case, because it limits the prices EGSs may charge PECO's CAP customers.²⁰ The Company's CAP Rule Revision, on the other hand, will implement CAP shopping in PECO's service territory during DSP III without pricing restrictions and with the protection of a prohibition against early cancellation or termination fees in accordance with the *CAP Shopping Order*.

In support of their proposal, the CAP-SOP Advocates point to the shopping experience of CAP customers in other EDCs' service territories who paid more than the applicable PTC.²¹ But this argument has already been rejected by the Commission and the Commonwealth Court in the *CAP Shopping Order*, in which the Commonwealth Court affirmed the Commission's decision to authorize shopping for PECO's CAP customers without pricing restrictions notwithstanding the Commission's acknowledgement of data appearing to show that nearly two-thirds of CAP customers in the service territory of another EDC (PPL Electric) paid prices for generation supply above the PTC.²² The CAP-SOP Advocates' reliance on the Commission's recent decision approving a version of the CAP-SOP Proposal for PPL Electric's low-income customers is similarly misplaced, as that decision rested on the actual prices paid by PPL Electric customers under PPL Electric's existing low-income customer assistance program.²³

²⁰ See *CAP Shopping Order*, 120 A.3d at 1103-1104.

²¹ See OCA Comments, pp. 5-6; CAUSE-PA/TURN Comments, p. 8.

²² See *CAP Shopping Order*, 120 A.3d at 1107.

²³ See *Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan for the Prior June 1, 2017 through May 31, 2022*, Docket No. P-2016-2526627 (Opinion and Order entered Oct. 27, 2016). A petition for reconsideration of the Commission's decision by RESA is under consideration by the Commission. See *Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan for the Prior June 1, 2017 through May 31, 2022*, Docket No. P-2016-2526627 (Opinion and Order entered Nov. 16, 2016).

In the May 11 Secretarial Letter, the Commission directed that PECO's CAP Rule Revision include "a proposed plan to collect data upon which to base an analysis of the CAP shopping program experiences, evaluations, and recommendations," and PECO has proposed to collect such data in coordination with OCMO. With that actual data, the Commission will be able to better consider programmatic changes for PECO's CAP customers in the future in a manner consistent with the *CAP Shopping Order*.

B. RESA's Proposed Operational Modifications Should Not Be Adopted

In its Comments (pp. 2-3), RESA proposes two operational changes that it contends will "simplify" the CAP enrollment process, allowing EGSs to efficiently identify CAP customers and tailor products and service options for those customers. In particular, RESA recommends that PECO include: (1) a "CAP" identifier in the "accept" code response to an EGS enrollment request; and (2) a flag for CAP customers on its Eligible Customer List ("ECL").

Both of RESA's proposed operational changes are unnecessary because PECO's existing EDI 814 protocol already includes data elements that identify PECO's CAP customers. Specifically, in response to an EGS enrollment request, PECO electronically transmits a file which contains customer account information, including the customer's tariff rate and EGS rate code. The EGS rate code field is populated with a PECO bill description, and PECO's information technology systems already include two rate codes – UD8 (Electric Residential Service CAP) and UB8 (Electric Residential Heating CAP), which will identify CAP customers in EDI transactions. PECO's ECL is also updated monthly in accordance with Commission guidelines, and the same rate codes will be included in a CAP customer's rate code field after April 14, 2017.²⁴

²⁴ *Interim Guidelines For Eligible Customer Lists*, Docket No. M-2010-2183412 (Opinion and Order entered Nov. 12, 2010), pp. 9-10. In addition, timely and accurate information regarding a customer's CAP status is available to

RESA also contends that the notification and entry/exit requirements for EGSs serving CAP customers are unnecessary and burdensome. On that basis, RESA recommends deletion of the following provisions in Paragraph 5.5 of PECO's Electric Supplier Coordination Tariff:

- EGSs that serve CAP customers must electronically submit a Notice of Intent to Participate as a CAP supplier at least five business days before publishing CAP prices.
- EGSs that offer special pricing and/or programs for CAP customers shall honor the terms of CAP shopping contracts until those contracts expire regardless of whether the customer remains on CAP for the duration of the contract.
- An EGS who opts to cease serving CAP customers must give the Commission, PECO, and its customers at least 30 days' notice before terminating its participation in the CAP shopping program.
- An EGS who exits the CAP customer program must wait at least 90 days before re-entering the CAP customer program.
- An EGS who exits the CAP customer program cannot automatically re-enroll its previous CAP customers but must again obtain a CAP customer's affirmative consent to another contract before re-enrolling them.²⁵

In the *DSP II Order*, the Commission determined that the requirements RESA seeks to eliminate provide an important level of "stability" in the suppliers serving CAP customers and would assist in assessing the extent and impact of shopping by CAP customers.²⁶ PECO is amenable to eliminating these requirements if the Commission determines they are no longer necessary.

Finally, RESA requests that the Commission clarify that the Commission (not PECO) is the appropriate entity to ensure EGS compliance with the prohibition against early cancellation

EGSs who submit a historical usage request prior to an enrollment request. As such, more frequent updates of the Company's ECL are not necessary, as RESA suggests in its Comments (p. 8).

²⁵ See RESA Comments, pp. 4-5, 8-11.

²⁶ See *DSP II Order*, p. 23; see also *Petition of PECO Energy Co. for Approval of Its Default Serv. Plan*, Docket No. P-2012-2283641 (Opinion and Order entered Mar. 12, 2014), pp. 16-19.

or termination fees in PECO's revised CAP shopping plan.²⁷ PECO agrees with RESA and supports its request for this clarification from the Commission.

PECO appreciates this opportunity to submit Reply Comments for consideration by the Commission and respectfully requests that the Commission approve its CAP Rule Revision.

Respectfully submitted,



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Dated: December 12, 2016

²⁷ RESA Comments, pp. 3, 11-12.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the Reply Comments of PECO Energy Company on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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