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April 27, 2017

**Via Electronic Filing**

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

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

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Retail Energy Supply Association's ("RESA")  
Prehearing Memorandum with regard to the above-referenced matter. Copies to be served in  
accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deanne M. O'Dell".

Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Angela Jones, w/enc.  
Certificate of Service w/enc.

## CERTIFICATE OF SERVICE

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

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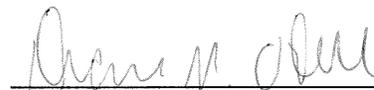
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Date: April 27, 2017

  
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Deanne M. O'Dell, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for	:	
Approval of its Default Service Program	:	
(Customer Assistance Program Shopping	:	Docket No. P-2012-2283641
Plan)(DSP II)	:	
	:	
	:	
	:	
Petition of PECO Energy Company for	:	
Approval of Its Default Service Program	:	Docket No. P-2016-2534980
for the Period From June 1, 2017 Through	:	
May 31, 2019	:	

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**PREHEARING MEMORANDUM  
OF RETAIL ENERGY SUPPLY ASSOCIATION**

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Pursuant to 52 Pa. Code §§ 5.72-5.75 and the Prehearing Conference Order dated April 12, 2017, the Retail Energy Supply Association (“RESA”)<sup>1</sup> submits this Prehearing Memorandum.

**I. SERVICE OF DOCUMENTS**

RESA requests that all documents be served on:

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

RESA also agrees to receive service of documents electronically in this proceeding. To the extent that materials are available electronically, it is requested that copies be served upon:

Daniel Clearfield – dclearfield@eckertseamans.com  
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**II. SETTLEMENT**

RESA is willing to participate in settlement discussions with any party to narrow the issues in this matter.

**III. PROPOSED PLAN AND SCHEDULE OF DISCOVERY**

RESA is amenable to working with the other parties in this matter to adopt a reasonable proposed plan and schedule of discovery. RESA does not have any proposals regarding discovery modifications.

**IV. SCHEDULE FOR SUBMISSION OF TESTIMONY, HEARINGS AND BRIEFS**

RESA will cooperate with the other parties and the ALJ to facilitate a workable litigation schedule.

**V. WITNESSES**

At this time, RESA is still evaluating whether or not to present testimony in this matter. RESA reserves the right to present a witness as may be necessary depending on the course of the proceeding and will provide the Presiding Officer as well as the other parties in this matter reasonable notice if necessary. RESA also reserves its right to add additional witnesses or change the identity of its witnesses at any time upon appropriate notice to the Presiding Officer and the parties.

## VI. PRESENTLY IDENTIFIED ISSUES

The focus of this proceeding is how and when PECO's customer assistance program ("CAP") participants will be able to avail themselves of competitive generation supply from electric generation suppliers consistent with the Commonwealth Court's direction in this matter.<sup>2</sup> On September 1, 2016, PECO filed its Customer Assistance Program Shopping Plan ("CAP Shopping Plan"). RESA, and other parties, filed comments and reply comments in response to the CAP Shopping Plan but the Commission referred the issue to the OALJ for further proceedings as may be necessary and a decision on the merits.

In contrast to the proposal set forth in PECO's CAP Shopping Plan, 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"), and the Office of Consumer Advocate ("OCA") (collectively, "Advocates") proposed – during PECO's recent default service plan proceeding ("DSP IV") – that PECO further restrict the right of CAP participants to shop beyond what was approved by the Commonwealth Court.<sup>3</sup> Although a full evidentiary record was developed regarding the Advocates' proposal, the Commission ultimately referred the issue to the OALJ for further proceedings as may be necessary and a decision on the merits.

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<sup>2</sup> *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1106-1107 (Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) ("*Commonwealth Court CAP Shopping Decision*"). Though not objecting to the goals of PECO's CAP Shopping Plan, RESA's initial comments focused on operational suggestions intended to better utilize existing protocols to more efficiently implement shopping for CAP participants and continues to believe these operational adjustments will improve process flows for the benefit of a more positive shopping experience for CAP participants.

<sup>3</sup> *See, e.g., 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, Final Order entered December 8, 2016 ("*PECO DSP IV Proceeding*").

As set forth more fully in RESA's Comments and Reply Comments, RESA's view is that the Commission must move forward to implement PECO's CAP Shopping Plan which includes only a restriction on the assessment of early cancellation/termination fees and then analyze the effect of the plan in the context of PECO's next universal service plan. Since PECO's CAP participants have never been able to shop, there is no additional evidentiary data needed to rule on the merits of PECO's CAP Shopping Plan.

Regarding the restrictions proposed by the Advocates in the context of the DSP IV proceeding and as more fully explained by RESA in its Briefs in that case, the Advocates have not satisfied the legal burden clearly laid out by the Commonwealth Court before restrictions on the right of CAP customers to shop can be implemented and, therefore, the proposed restrictions offered by the Advocates must be rejected.<sup>4</sup> While RESA has appealed the Commission's Orders restricting the right of PPL's CAP participants to shop,<sup>5</sup> RESA does not support denying PECO's CAP participants their right to shop pending an outcome of that appeal.

However, RESA does recognize that, to date, the Commission has not yet elected to specifically open up the issue of CAP shopping on a statewide basis which, if it did, would streamline time and resources that are being spent on a utility-by-utility basis to address CAP shopping issues.<sup>6</sup> RESA also acknowledges the view of other parties that the Commission may

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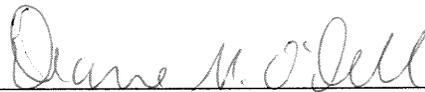
<sup>4</sup> See, e.g., *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2019*, Docket No. P-2016-2534980, Final Order entered December 8, 2016 ("*PECO DSP IV Proceeding*"), RESA Main Brief at 14; and RESA Reply Brief 6-7.

<sup>5</sup> *Retail Energy Supply Assoc. v. PUC*, 230 CD 2017, appeal filed February 27, 2017.

<sup>6</sup> In the PPL DSP IV proceeding, the Commission specifically "took under advisement," the recommendation of all parties and the ALJ that the Commission initiate a statewide proceeding to explore CAP customer shopping issues. *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, 2010*, Docket No. P-2016-2526627, Opinion and Order entered October 27, 2016 at 56. While the Commission has recently opened "broader evaluation of universal service and energy conservation policies," the issue of CAP shopping is not specifically referenced. *Review of Universal Service and Energy Conservation Program*, Docket No. M-

be inclined to further remand this proceeding in the future depending on the direction received by the Commonwealth Court in the PPL appeal. For these reasons, RESA will not oppose a request to hold these proceedings in abeyance pending final resolution of the pending PPL appeal.

Respectfully submitted,



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Date: April 27, 2017

Attorneys for Retail Energy Supply Association

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2017-2596907, Joint Motion of Commissioner David W. Sweet and Vice Chairman Andrew G. Place dated April 6, 2017 (final order pending).