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May 12, 2017

**VIA eFILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
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**

**Re: Petition of PECO Energy Company for Approval of Its Default Service Program for the Period June 1, 2017 through May 31, 2021 (DSP IV)**  
**Docket No. P-2016-2534980**

Dear Secretary Chiavetta:

Attached for filing in the above-referenced matters is the **Joint Motion to Hold Proceedings in Abeyance ("Joint Motion")**.

As evidenced by the attached Certificate of Service, a copy of the Joint Motion has been served upon Judge Jones and all parties of record. If you have any questions, please contact me directly at 215.841.5974. Thank you.

Very truly yours,



W. Craig Williams

Enclosures

cc: Per Certificate of Service (w/encls.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY** :  
**COMPANY FOR APPROVAL OF ITS** :  
**DEFAULT SERVICE PROGRAM** : **Docket No. P-2012-2283641**  
**(CUSTOMER ASSISTANCE PROGRAM** :  
**SHOPPING PLAN) (DSP II)** :

**PETITION OF PECO ENERGY** :  
**COMPANY FOR APPROVAL OF ITS** :  
**DEFAULT SERVICE PROGRAM FOR** : **Docket No. P-2016-2534980**  
**THE PERIOD JUNE 1, 2017 THROUGH** :  
**MAY 31, 2021 (DSP IV)** :

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the **Joint Motion to Hold Proceedings in Abeyance** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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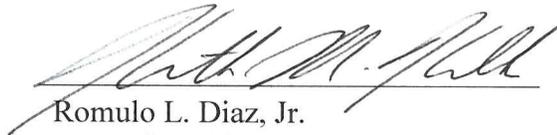
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Respectfully submitted,



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Dated: May 12, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY** :  
**COMPANY FOR APPROVAL OF ITS** :  
**DEFAULT SERVICE PROGRAM** : **DOCKET NO. P-2012-2283641**  
**(CUSTOMER ASSISTANCE PROGRAM** :  
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**THE PERIOD JUNE 1, 2017 THROUGH** :  
**MAY 31, 2021 (DSP IV)** :

**NOTICE TO PLEAD**

To: All Parties Listed on Appendix A

You are hereby notified pursuant to 52 Pa. Code § 5.103(b) that a responsive pleading must be filed within twenty (20) days of the date of service of the following Joint Motion to Hold Proceedings in Abeyance.

Respectfully submitted,



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Dated: May 12, 2017

## APPENDIX A

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PETITION OF PECO ENERGY</b>	:	
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<b>THE PERIOD JUNE 1, 2017 THROUGH</b>	:	
<b>MAY 31, 2021 (DSP IV)</b>	:	

**JOINT MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

**I. INTRODUCTION**

Pursuant to 52 Pa. Code § 5.103, PECO Energy Company (“PECO” or the “Company”), the Pennsylvania Public Utility Commission’s (“Commission’s”) Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Coalition For Affordable Utility Services And Energy Efficiency In Pennsylvania (“CAUSE-PA”), the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) and the Tenant Union Representative Network (“TURN”) and Action Alliance of Senior Citizens of Greater Philadelphia (together with TURN, “TURN *et al.*”) (collectively, the “Moving Parties”),<sup>1</sup> hereby request that the Administrative Law Judge (“ALJ”) enter an order to hold the above-captioned consolidated proceedings in abeyance pending the Commonwealth Court of Pennsylvania’s issuance of a decision in *Retail Energy Supply Ass’n v. Pa. P.U.C.*, 230

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<sup>1</sup> Direct Energy Services, LLC (“Direct Energy”) and the Retail Energy Supply Association (“RESA”), who are also parties to this proceeding, do not oppose this Joint Motion.

C.D. 2017 (“PPL CAP Shopping Appeal”).<sup>2</sup> As explained below, the relief requested herein is appropriate to ensure efficiency in the conduct of this proceeding, because the PPL CAP Shopping Appeal involves common issues related to the ability of low-income customers enrolled in an electric distribution company’s (“EDC’s”) customer assistance program (“CAP”) to purchase electric generation supply from an electric generation supplier (“EGS”) and the terms thereof. In support of this unopposed Motion and on behalf of the Moving Parties, PECO states as follows:

## II. RELEVANT BACKGROUND

### A. Prior Litigation Of PECO’s Plan To Implement CAP Shopping In Its Service Territory<sup>3</sup>

1. In contrast to the majority of other EDCs in Pennsylvania, PECO’s CAP customers are not currently eligible to purchase electric generation supply from an EGS. During its second default service program (“DSP II”) proceeding,<sup>4</sup> PECO proposed a plan (the “CAP Shopping Plan”) to allow CAP customers to shop for generation supply with EGSs that agreed not to charge a price above PECO’s Price-to-Compare (“PTC”). The Commission rejected PECO’s proposed price ceiling on the grounds that the Commission lacked the legal authority to

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<sup>2</sup> As discussed in Section II.C, *infra*, RESA has appealed the Commission’s approval of CAP shopping limitations in the most recent default service proceeding of PPL Electric Utilities Corp. (“PPL”) at Docket No. P-2016-2526627 (“PPL DSP IV Proceeding”).

<sup>3</sup> The prior procedural history of the above-captioned default service proceedings, which have now been consolidated, is set forth in detail in PECO’s Prehearing Conference Memorandum (“PECO Memorandum”). See PECO Memorandum, pp. 1-6.

<sup>4</sup> On May 1, 2013, PECO proposed the CAP Shopping Plan in accordance with the Commission’s directive in its Opinion and Order approving PECO’s DSP II, with revisions. See *Petition of PECO Energy Co. for Approval of Its Default Serv. Program*, Docket No. P-2012-2283641 (Opinion and Order entered Oct. 12, 2012), p. 156.

impose pricing restrictions on EGSs and such a proposal would limit the diversity of shopping options available to CAP customers.<sup>5</sup>

2. Following appeals by the OCA, CAUSE-PA, and TURN *et al.*, the Commonwealth Court determined that the Commission had the authority to impose rules that limit the terms of offers to CAP customers from EGSs to ensure adequately-funded, cost-effective and affordable universal service programs.<sup>6</sup> Nevertheless, the Commonwealth Court affirmed the portion of the *DSP II Order* rejecting PECO's proposed EGS pricing limitation based on its conclusion that record evidence supported the Commission's rejection of a ceiling on EGS prices for CAP customers. At the same time, the Commonwealth Court reversed a portion of the *DSP II Order* that rejected a proposal by the OCA to prohibit imposing early termination and cancellation fees on CAP customers that shop and remanded the case to the Commission for further proceedings.<sup>7</sup>

3. In response to the Commonwealth Court's remand, the Commission issued a Secretarial Letter on May 11, 2016 ("May 11 Secretarial Letter") directing PECO to file a rule revision (the "CAP Rule Revision") to its CAP Shopping Plan in the DSP II docket to implement CAP customer shopping in PECO's service territory during its current default service program ("DSP III").<sup>8</sup> In December 2016, several parties submitted comments and reply comments on PECO's CAP Rule Revision, filed on September 1, 2016, in the DSP II docket.

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<sup>5</sup> See *Petition of PECO Energy Co. for Approval of its Default Serv. Program*, Docket No. P-2012-2283641 (Order entered Jan. 24, 2014) ("*DSP II Order*"), pp. 14, 16-17.

<sup>6</sup> See *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa., et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1103-1104 (2015) ("*CAP Shopping Order*").

<sup>7</sup> *CAP Shopping Order*, 120 A.3d at 1106-1109. CAUSE-PA and TURN requested review of the CAP Shopping Order 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.*, 136 A.3d 983 (Pa. Apr. 5, 2016).

<sup>8</sup> During the appeal of the *DSP II Order*, the Commission approved DSP III. 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-

4. In a separate proceeding initiated by PECO on March 17, 2016 for approval of its fourth default service program (“DSP IV”), a witness for CAUSE-PA proposed an alternative CAP shopping platform (the “CAP-SOP Proposal”). The CAP-SOP Proposal, supported by the OCA and TURN *et al.*, would permit PECO’s CAP customers to shop only as part of PECO’s existing Standard Offer Program subject to additional CAP-specific program rules, including a requirement that CAP-SOP suppliers guarantee a 7% discount off the PTC at the time of the offer. In its Opinion and Order entered on December 8, 2016, the Commission concluded that CAP shopping issues should not be addressed as part of DSP IV but instead in PECO’s DSP II docket in accordance with the May 11 Secretarial Letter.<sup>9</sup>

**B. CAP Shopping Issues Consolidated For Hearing and Decision In This Proceeding**

5. Following petitions for reconsideration and/or clarification of the DSP IV Order, the Commission consolidated the DSP II and DSP IV proceedings and referred the consolidated proceeding to the Office of the Administrative Law Judge to address and decide the CAP shopping issues raised in both dockets, namely, PECO’s CAP Rule Revision, the CAP-SOP Proposal and “all issues relating to the ability of CAP customers to shop for electric generation supply in PECO’s service territory.”<sup>10</sup> Subsequently, those issues were assigned to the ALJ.

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2409362 (Opinion and Order entered Dec. 4, 2014) (“*DSP III Order*”). PECO’s DSP III continued PECO’s Standard Offer Program, in which default service residential customers who do not participate in CAP and small commercial customers contacting PECO’s customer service center are encouraged to select among a group of EGSs who have voluntarily chosen to offer customers a twelve-month contract priced at least 7% below PECO’s applicable PTC at the time of the offer. See *DSP III Order*, pp. 18-20, 35.

<sup>9</sup> See *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Opinion and Order entered Dec. 8, 2016) (the “*DSP IV Order*”), pp. 34-36, 61-63, 65, 67.

<sup>10</sup> See *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Opinion and Order entered Mar. 16, 2017) (“*March 2017 Order*”), pp. 20-22.

6. On April 27, 2017, each of the Moving Parties, Direct Energy and RESA filed a Prehearing Conference Memorandum in accordance with the ALJ's April 12, 2017 Prehearing Conference Order. The PECO Memorandum described an agreement among PECO and several other parties to this proceeding to file a motion to hold this proceeding in abeyance pending resolution of the PPL CAP Shopping Appeal. All of the parties participating in the Initial Telephonic Prehearing Conference, held on May 1, 2017, indicated that they would join or would not oppose such a request.

**C. Relevance Of The PPL CAP Shopping Appeal To This Proceeding**

7. The Commission approved a version of the CAP-SOP Proposal in the PPL DSP IV Proceeding.<sup>11</sup> In that proceeding, PPL initially recommended that the Commission develop a statewide CAP shopping approach through a stakeholder collaborative or rulemaking in light of the shopping experience of PPL's CAP customers. In support of that recommendation, PPL presented data showing that, over a 34-month period (January 2013-October 2015), a large portion of its CAP customers who purchased electric generation supply from EGSs paid prices above PPL's PTC.<sup>12</sup> Thereafter, the parties to the PPL DSP IV Proceeding reached a joint settlement ("PPL DSP IV Settlement") that resolved all issues but the appropriate limitations, if any, on PPL CAP customers' ability to shop for electric supply from an EGS. With respect to this contested issue, PPL, the OCA, I&E and CAUSE-PA entered into a "Joint Litigation Position" that, among other things, supported a form of the CAP-SOP Proposal ("PPL CAP-SOP"). RESA, in turn, opposed the PPL CAP-SOP.

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<sup>11</sup> See *Petition of PPL Elec. Utils. Corp. for Approval of a Default Serv. Program and Procurement Plan for the Period June 1, 2017 through May 31, 2022*, Docket No. P-2016-2526627 (Opinion and Order entered Oct. 27, 2016) ("PPL DSP IV Order"), pp. 53-56, 66, 69-71.

<sup>12</sup> See *PPL DSP IV Order*, pp. 25-27.

8. On October 27, 2016, the Commission approved the PPL DSP IV Settlement and adopted the Joint Litigation Position.<sup>13</sup> In the *PPL DSP IV Order*, the Commission concluded that its decision to approve the PPL CAP-SOP was consistent with the *CAP Shopping Order*, because the data regarding the shopping experiences of PPL CAP customers provided a substantial reason to justify CAP shopping limitations.<sup>14</sup> Following denial of its petition for reconsideration of the *PPL DSP IV Order*,<sup>15</sup> RESA filed the PPL CAP Shopping Appeal on February 27, 2017.

### III. ARGUMENT

9. The Commission’s regulations at 52 Pa. Code § 5.483(a) provide presiding officers broad authority to “regulate the course of the proceeding”. The ALJ should exercise the discretion and authority conferred by Section 5.483(a) to hold this proceeding in abeyance pending resolution of the PPL CAP Shopping Appeal to ensure a fair, reasonable and efficient disposition of CAP shopping issues in PECO’s service territory.

10. As in the PPL DSP IV Proceeding and PPL CAP Shopping Appeal, this proceeding involves the application of the *CAP Shopping Order* to a CAP-SOP shopping framework. Therefore, the Moving Parties assert that the outcome of the PPL CAP Shopping Appeal will have a direct and material impact on the disposition of the PECO CAP Shopping

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<sup>13</sup> See *id.*, pp. 23, 43-56, 66, 69-71.

<sup>14</sup> See *id.*, p. 54 (“The data provided by PPL in this proceeding demonstrated the economic harm experienced as the result of unrestricted CAP customer shopping decisions. The identified economic harm affects the ability of CAP customers to remain on CAP, as higher costs result in a quicker erosion of the CAP customers’ limited allocation of CAP credits and also affects non-CAP customers by increasing the subsidy they incur to support the universal service objectives within the Competition Act. We find that this unrefuted evidence is sufficient to permit the Commission to impose CAP rules that may partially restrict or limit the ability of these customers to shop for electricity.”).

<sup>15</sup> *Petition of PPL Elec. Utils. Corp. for Approval of a Default Serv. and Procurement Plan for the Period June 1, 2017 through May 31, 2022*, Docket No. P-2016-2526627 (Opinion and Order entered Jan. 27, 2017), pp. 17-18 (affirming that the PPL CAP-SOP proposal was the “the best of several alternatives” to address the harm associated with unrestricted shopping by PPL’s CAP customers).

case. The current briefing schedule in the PPL CAP Shopping Appeal has briefing closing in early August 2017. However, because the Commonwealth Court does not hear oral argument in July and August each year, the Moving Parties anticipate that the PPL CAP Shopping Appeal could be argued, at the earliest, during the week of September 11-15, 2017.<sup>16</sup> There is no time period in which the Commonwealth Court is required to rule on the appeal.

11. As a consequence, granting this Joint Motion would allow the ALJ to consider any guidance in the Commonwealth Court's decision in the PPL CAP Shopping Appeal regarding the scope of the Commission's authority to impose CAP shopping limitations prior to the issuance of a Recommended Decision in this proceeding. Such action could avoid the potential for a subsequent appeal of this proceeding and conserve the resources of the Commission and the parties. For these reasons, PECO and the other Moving Parties agree that it is in the public interest to hold this proceeding in abeyance pending resolution of the PPL CAP Shopping Appeal.

12. Only two of the parties that actively participated in the litigation of PECO's CAP Shopping Plan in the DSP II and/or DSP IV dockets – Direct Energy and RESA – declined to join this Joint Motion, and they do not oppose the relief requested herein.<sup>17</sup>

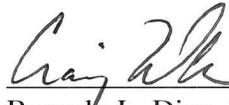
WHEREFORE, for the reasons set forth above, the Moving Parties respectfully request that the Administrative Law Judge grant this Joint Motion and enter an order holding this proceeding in abeyance pending resolution of the PPL CAP Shopping Appeal.

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<sup>16</sup> See 2017 Commonwealth Court Calendar, available at <http://www.pacourts.us/courts/commonwealth-court/calendar>.

<sup>17</sup> See RESA Prehearing Conference Memorandum, pp. 4-5 (explaining that even though RESA does not support any further delay in the implementation of CAP customer shopping in PECO's service territory, it does not oppose holding this proceeding in abeyance pending the outcome of the PPL CAP Shopping Appeal). In addition, Direct Energy appeared at the Prehearing Conference and indicated that it does not oppose this Joint Motion.

Respectfully submitted,



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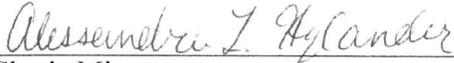
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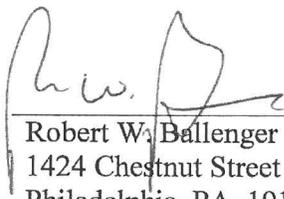
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