



November 22, 2024

VIA eFILING

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 for the Period from June 1, 2025 through May 31, 2029 Docket No. P-2024-3046008

Dear Secretary Chiavetta:

Please find enclosed the Joint Petition for Reconsideration and/or Clarification of TURN and CAUSE-PA. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Robert W. Ballenger

Robert W. Ballenger

Counsel for TURN and CAUSE-PA

Enc.

Cc: Hon. Eranda Vero
Hon. Arlene Ashton
Service list
Office of Special Assistants

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :
Approval of Its Default Service Program for : P-2024-3046008
the Period From June 1, 2025 Through :
May 31, 2029 :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the Joint Petition for Reconsideration and/or Clarification of TURN and CAUSE-PA upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code §1.54.

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November 22, 2024

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL OF ITS DEFAULT SERVICE : DOCKET NO. P-2024-3046008
PROGRAM FOR THE PERIOD FROM JUNE 1, :
2025 THROUGH MAY 31, 2029 :

**JOINT PETITION FOR RECONSIDERATION AND/OR
CLARIFICATION OF
THE OPINION AND ORDER
ENTERED NOVEMBER 7, 2024**

BY THE

TENANT UNION REPRESENTATIVE NETWORK

AND

**COALITION FOR AFFORDABLE UTILITY SERVICES
AND ENERGY EFFICIENCY IN PENNSYLVANIA**

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Date: November 22, 2024

I. INTRODUCTION

Tenant Union Representative Network (TURN) and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), hereby submit this Joint Petition pursuant to Pennsylvania Public Utility Commission (Commission) Regulations at 52 Pa. Code §§ 5.41 and 5.572, and request timely reconsideration and clarification of the Commission's November 7, 2024 Opinion and Order (Order).

The Petitioners request that the Commission clarify and/or reconsider its Order with respect to the proposed modifications to and continuation of PECO's Standard Offer Program (SOP). As relevant hereto, the Commission's Order granted the exceptions of the Retail Electric Supply Association (RESA) and NRG to the Administrative Law Judges (ALJs) September 3, 2024, Recommended Decision (RD). The ALJs recommended approval, without modification, of the July 10, 2024, Joint Petition for Non-Unanimous Settlement (Joint Petition), which included a change to PECO's SOP that would return customers to default service upon expiration of the SOP period unless customers affirmatively elect to remain with the SOP supplier. In its Order, the Commission modified the RD and struck the paragraph of the Joint Petition that included the change to PECO's SOP.

Petitioners submit that the Commission's Order pronounces novel and conflicting legal and evidentiary standards which deter appropriate evaluation and modification of the terms and conditions of a voluntary market enhancement program such as the SOP. Furthermore, since the close of the record in this proceeding, the Commission has approved the termination of the SOP in PPL territory¹ and has been presented with its ALJ's recommendation to approve the termination

¹ Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period from June 1, 2025 through May 31, 2029, P-2024-3047290, Order (Nov. 7, 2024).

of the SOP in Duquesne territory.² These developments, unavailable to Petitioners during the instant proceeding, strongly support reconsideration and/or clarification of the Commission's Order, as they call into question the legal and evidentiary bases upon which the Commission relies in granting RESA and NRG's exceptions. Furthermore, in light of these developments, the Commission's Order, contrary to its expressed intention, promotes administrative inconsistency in SOP rules throughout the Commonwealth.³

II. BACKGROUND

TURN/CAUSE-PA incorporate by reference the Introduction set forth in their July 31, 2024, Joint Reply Brief, including the procedural history leading up to the ALJs' RD and relevant detail concerning the Joint Petition. On September 3, 2024, ALJs Eranda Vero and Arlene Ashton issued their RD recommending approval of the Joint Petition without modification. On September 10, 2024, RESA and NRG filed separate exceptions to the RD, asserting, in pertinent part, that the proposed modifications to the SOP lacked sufficient evidence and would adversely impact the market for EGS supply.⁴ On September 16, 2024, TURN/CAUSE-PA filed reply exceptions, submitting that the proposed SOP modifications were adequately supported by substantial evidence⁵ and asserting that concerns about adverse market impacts were purely speculative.⁶ The Office of Consumer Advocate (OCA) filed reply exceptions to RESA and NRG's opposition to the Joint Petition's modification to the SOP, asserting that such modification does not impede direct access to the competitive market, is within the Commission's authority, and is supported by substantial evidence.⁷ Finally, PECO filed reply exceptions arguing that RESA and NRGs

² Petition of Duquesne Light Company for Approval of its Default Service Plan for the Period from June 1, 2025 through May 31, 2029, Docket No. P-2024-3048592, Recommended Decision at 27-29 (Sept. 24, 2024).

³ Order at 80 ("We note that doing so maintains consistency among SOP programs across the Commonwealth...").

⁴ RESA Exceptions at 15-25; NRG Exceptions at 5-8.

⁵ TURN/CAUSE-PA Reply Exceptions at 3-5.

⁶ TURN/CAUSE-PA Reply Exceptions at 5-7.

⁷ OCA Reply Exceptions at 5-13.

exceptions lacked merit due to the unrefuted record evidence of harm to residential shopping customers and concluding that the SOP modification would not prevent any customers from making their own shopping decisions.⁸

In its November 7 Order, the Commission granted RESA and NRG's exceptions, holding that the evidence in support of the SOP modification was "insufficient and inconclusive" because it failed to show harm specific to PECO's SOP customers, such as:

(1) an increase in customer complaints specifically relating to PECO's SOP and a related increase in costs incurred by PECO in handling such complaints; (2) an inability of customer service representatives to effectively address customer complaints; (3) an increase in payment-troubled SOP customers; (4) an increase in collection activity or service terminations among SOP customers due to the rise of overdue billings; or (5) an increase in PECO's uncollectible expense relating to an increase in payment-troubled SOP customers.⁹

Additionally, the Commission found that "the record does not support that a harm has occurred as a result of the SOP," embracing the hypothetical possibility that the sustained higher prices experienced by SOP participants could be associated with the choice of EGS products for reasons other than price.¹⁰ Finally, the Commission's Order suggests that only PECO can demonstrate harm associated with existing SOP program design.¹¹

TURN/CAUSE-PA submit that the Commission's Order deviates from the evidentiary standard applicable to Commission proceedings by ostensibly imposing an obligation that proponents of a Commission order must demonstrate a *conclusive* right to relief. TURN/CAUSE-PA submit that this aspect of the Commission's Order requires reconsideration and/or clarification as it suggests the Commission has abandoned the "preponderance of the evidence" standard. In fact, the Commission's Order mischaracterizes and fails to appropriately weigh record evidence in

⁸ PECO Reply Exceptions at 9-11.

⁹ Order at 79-80.

¹⁰ Order at 80.

¹¹ Order at 80, n. 17.

support of modifications to the SOP. Indeed, the Commission appears to rely heavily upon the contention that customers who experience higher electric costs after the 12-month SOP term do so in appreciation of non-price benefits, a notion with no evidentiary support.

Furthermore, TURN/CAUSE-PA submit that the Commission's Order appears to impermissibly narrow the range of considerations to five enumerated bases, previously pronounced in denying modifications to PPL's SOP, to the exclusion of all other relevant evidence, and without consideration of the Commission's recent approval of the termination of PPL's SOP. The Commission also erroneously suggests that only PECO can satisfy the evidentiary burden to modify its SOP, a holding that would violate the due process rights of statutory advocates and intervenors.

Finally, TURN/CAUSE-PA submit that the Joint Petitioners' proposed modifications to the SOP are warranted and satisfy the "no reasonable alternative" standard.¹² However, the Commission's approval of the termination of PPL's SOP and pending approval of the termination of Duquesne's SOP, which events were uncertain and/or unknown during the evidentiary phase of PECO's DSP VI, reflect a growing awareness that modifications to a voluntary, market enhancement program, such as the Standard Offer Program, are not, and should not be, analyzed as "restraints" on the competitive market for electric supply. Rather, the SOP is program through which a structured incentive (a 7% discount on the existing price to compare) is provided to encourage participation in the competitive market. Modifying such a program does not impose a restraint on EGSs or customers otherwise desiring to participate in the competitive market for

¹² Coalition for Affordable Utility Services and Energy Efficiency in Pa. v. Pa. PUC, 120 A. 3d 1087, 1104 (Pa. Commw. Ct. 2015); Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206, 1221 (Pa. Commw. Ct. 2018).

electric supply.¹³

III. LEGAL STANDARD

In Duick et al. v. Pennsylvania Gas and Water Company,¹⁴ the Commission explained the basis for rescinding or amending a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.¹⁵

This Petition satisfies *Duick*, in that it raises considerations “which appear to have been overlooked or not addressed by the Commission,” as well as new and novel arguments the Commission has not previously heard. Specifically, TURN/CAUSE-PA submit that:

- The Commission has overlooked and/or misapplied the traditional evidentiary standard by purporting to require demonstration of a *conclusive* right to relief;
- The Commission has overlooked and/or failed to address that the five enumerated bases for denying PPL’s proposed SOP modifications are now superseded by the Commission’s approval of the termination of PPL’s SOP, and so the Order should not suggest that evidence supporting PECO’s SOP modification is insufficient pursuant to that guidance; and
- Commission approval, subsequent to the close of the record in PECO’s DSP VI, of termination of PPL’s SOP supports the legal principle that curtailment of a market

¹³ See, e.g., PECO Reply Exceptions at 10 (“However, revising the rules that apply at the end of the SOP contract term does not prevent a customer from making their own shopping decisions since they can switch to another EGS or return to default service at any time or affirmatively choose to remain with their SOP supplier in response to the notices required by the Commission’s regulations at 52 Pa. Code § 54.10.)

¹⁴ 56 Pa. PUC. 553 (1982).

¹⁵ *Id.* at 559.

enhancement does not equate to a restraint on competition.

IV. REQUEST FOR RECONSIDERATION AND/OR CLARIFICATION

- a. **The Commission should reconsider and/or clarify its Order which departs from the “preponderance of the evidence” standard and fails to appropriately weigh evidence.**

The Commission’s Order, in discussing applicable legal standards, states that “[t]he proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa. C.S. § 332(a), and therefore...[must prove] its case by a preponderance of the evidence.”¹⁶ However, in evaluating the proposed modification to PECO’s SOP, supported by the parties to the Joint Petition, the Commission instead denies the relief requested on the basis the evidence proffered is “insufficient and inconclusive.” This holding imposes a heightened standard, unsupported by the Public Utility Code, that would obligate proponents of a rule or order to *conclusively* demonstrate the right to relief requested, rather than to support it with substantial evidence. The impact of this heightened standard is reflected in the Commission’s conclusion that the shopping data proffered in support of the SOP modifications is not “specific to SOP customers,” a holding that is both incorrect and unreasonably restrictive. The Commission fails to appropriately consider that the evidence of higher pricing among residential customers shopping for EGS supply is in fact *inclusive* of SOP participant data. Furthermore, the Commission wholly disregards the specific testimonial evidence, complimenting the shopping data, explaining the consumer risk associated with the SOP’s negative option renewal provision and the Commission’s own recent experience with affected consumers.

As TURN/CAUSE-PA reiterated in Reply Exceptions, the evidence supporting modification to the SOP includes widespread evidence of residential customer shopping

¹⁶ Order at 7.

experiences which includes the shopping experiences of SOP participants.¹⁷ The residential shopping data, examined by TURN/CAUSE-PA's witness, demonstrates the widespread and consistent experience of residential customers, *including SOP participants*, being charged prices for electric supply in excess of PECO's PTC. Indeed, this un rebutted evidence demonstrates the widespread harm experienced by all residential customers, *including SOP participants*, in support of a modification to a program that has incentivized shopping, ultimately leading some customers to experience unpredictably higher prices following the SOP's 12-month term.¹⁸

Moreover, as set forth in TURN/CAUSE-PA's witness testimony, the residential shopping data demonstrates a declining rate of residential shopping in PECO's service territory, supporting the conclusion that customers who have previously shopped are increasingly wary of entertaining new EGS offers.¹⁹ Customers for whom the SOP may be attractive are likely those who are searching for lower prices who have not yet had negative experiences with the competitive market for EGS supply. For those customers, the SOP creates a specific and identifiable risk associated with the negative option renewal aspect of the existing program design. Regarding this risk, the record contains *specific* evidence distinct from the evidence of harm associated with residential shopping generally. Indeed, OCA's expert testimony explicitly challenges this SOP program feature, on the basis that it transfers risk of price volatility to customers without affirmative knowledge or consent to the assumption of such risk.²⁰ Furthermore, the record reflects the consequence of this negative option renewal, in the form of a statement by Vice Chair Barrow in

¹⁷ TURN/CAUSE-PA Reply Exceptions at 5 ("Importantly, however, Ms. Marx's analysis *actually captures* the billing experiences of SOP participants during, and after, their 12-month program enrollment.") (emphasis supplied.).

¹⁸ See, e.g., TURN/CAUSE-PA Reply Exceptions at 4-5 (describing un rebutted evidence of residential shopping price harms, including SOP participants).

¹⁹ See, e.g., TURN/CAUSE-PA RB at 17-18 (describing declining rate of residential shopping); TURN/CAUSE-PA St. 1-R at 5 ("Declining rates of residential shopping clearly correspond to the growing knowledge among the customer base that EGS offers very rarely present opportunities for significant savings.").

²⁰ OCA St. 2 at 7, 13-15.

response to a PECO customer complaint associated with excessive pricing following the expiration of the 12-month SOP term. As recognized by the Vice Chair, this customer experience is not an isolated one, but instead reflects a prevalent fact pattern, *specific* to the SOP.²¹

In contrast, the only record evidence potentially weighing against the Joint Petition's SOP modification consists of a small survey of past PECO SOP participants, which was appropriately criticized due to its inadequate sample size and large percentage of respondents who did not recall participating in the SOP.²² Notably, although PECO conducted this survey, PECO joined in the Joint Petition, urging that modifications to the SOP be approved. Although the ALJs did not afford significant weight to this survey, the Commission's Order elevates its importance solely as a counterpoint to the artificially heightened burden imposed on the Joint Petitioners, requiring them to conclusively attribute harm exclusively to the SOP to support their proposed modifications.²³ The Commission further departs from an appropriate evidentiary standard in crediting the purely hypothetical and unsupported notion that "customers paying more for EGS service than the PTC does not necessarily prove that a harm is occurring, because customers could be making shopping decisions based on factors other than price."²⁴ The Commission identifies no evidentiary basis for this supposition which cannot be logically reconciled with the cost-savings intention of customers who are incentivized to participate in a market enhancement program premised entirely upon a fixed price offer of electric supply at a 7% savings.

TURN/CAUSE-PA submit that reconsideration and/or clarification is appropriate to ensure that the Commission's Order applies the correct evidentiary standard, evaluating the record evidence of widespread customer experiences that include the shopping rates for SOP participants,

²¹ OCA St. 2-R, Exh. BA-3.

²² OCA St. 2 at 10.

²³ Order at 79-80.

²⁴ Order at 80.

and the record evidence specific to SOP participants, including the market risk of negative option renewal and the acknowledged fact pattern recognized by Vice Chair Barrow. Such evidence may permissibly be weighed only against other substantiated record evidence. The Commission's Order must not be based on an illogical, hypothetical scenario, entirely unsupported on the record, in which SOP customers incentivized to shop by guaranteed lower prices are assumed to benefit from non-price contract features despite unexpected, excessive prices.

b. The Commission should not inconsistently rely upon five enumerated potential sources of evidence to demonstrate harm associated with the SOP, nor limit consideration solely to PECO's evidence.

In addition to failing to properly construe the evidence in favor of modifications to PECO's SOP and weigh that evidence against scant information to the contrary, as discussed above, the Commission propounds a list of five potential bases upon which it suggests PECO could sufficiently demonstrate harm associated with the SOP. Specifically, the Commission explained that, should PECO produce evidence the SOP has increased customer complaints and associated costs, strained PECO customer service resources, or increased payment-trouble, collections expense, or uncollectible expense, those harms to PECO could support modification of the SOP.²⁵

TURN/CAUSE-PA submit that the Commission has overlooked that these five bases, previously articulated in denying a proposed modification to PPL's SOP,²⁶ are outdated and of questionable import in light of the Commission's order approving PPL's termination of its SOP.²⁷ Furthermore, even if the Commission maintains that these criteria may be relevant, the Order presents them as the exclusive evidentiary bases upon which PECO can demonstrate that

²⁵ Order at 79-80.

²⁶ Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan for the Period June 1, 2021 Through May 31, 2024, Docket No. P-2020-3019356, Opinion and Order at 97-98 (Dec. 17, 2020).

²⁷ Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period from June 1, 2025 through May 31, 2029, P-2024-3047290, Order (Nov. 7, 2024).

modifications to the SOP may be warranted, suggesting impermissible limitations on the parties' rights to present evidence in support of a Commission ruling.

The Commission's Order provides:

While [the] data shows that shopping customers may have paid substantially more over the last six years than they would have if they had remained on default service, similar to *PPL DSP V*, no evidence was offered to support the results, specific to SOP customers, of overpaying for generation supply associated with PECO's existing SOP, such as: (1) an increase in customer complaints specifically relating to PECO's SOP and a related increase in costs incurred by PECO in handling such complaints; (2) an inability of customer service representatives to effectively address customer complaints; (3) an increase in payment-troubled SOP customers; (4) an increase in collection activity or service terminations among SOP customers due to the rise of overdue billings; or (5) an increase in PECO's uncollectible expense relating to an increase in payment-troubled SOP customers.²⁸

Finding insufficient evidence of harm falling into one or more of these five categories, the Commission then suggests that PECO, and only PECO, can carry the burden to demonstrate harm from the existing SOP program design.²⁹

As the Commission is aware, on November 7, 2024, the same day of the Order at issue in this Petition, the Commission entered an order adopting the settlement in PPL's DSP VI, thereby approving the termination of PPL's SOP.³⁰ Although distinguishable by the fact that PPL's proposed settlement was unanimous, whereas the Joint Petition in this proceeding was non-unanimous, the Commission did not require a showing of harm within the enumerated five categories in approving the PPL DSP VI settlement. Indeed, the record in PPL DSP VI does not demonstrate an increase in customer complaints associated with the SOP, an inability of PPL personnel to address such complaints, an increase in payment-troubled SOP customers, an increase in collection activity associated with SOP participation, or an increase in uncollectible expense

²⁸ Order at 79-80 (internal references omitted).

²⁹ Order at 80, n. 17 ("Should PECO, by its next default service proceeding, present new evidence that demonstrates harm from the existing SOP program design, we would consider any and all such evidence on a *de novo* basis.")

³⁰ Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period from June 1, 2025 through May 31, 2029, P-2024-3047290, Order (Nov. 7, 2024).

attributable to the SOP. In other words, the Commission did not continue to require evidence regarding the five enumerated criteria articulated in PPL DSP V that it now suggests must be satisfied by PECO to obtain approval of a modification to its SOP. It bears emphasis that substantial evidence is required to support a settlement term, no different than a contested matter.³¹

In evaluating the Joint Petition’s proposed modifications to PECO’s SOP, the Commission has applied different criteria than those utilized in evaluating the termination of PPL’s SOP. Furthermore, as of the date hereof, the Commission has before it a recommendation by its ALJ to approve the proposed termination of Duquesne’s SOP in its DSP X proceeding, which likewise fails to squarely address the five criteria articulated in the Order.³² Contrary to the Commission’s statement that denying modifications to PECO’s SOP “maintains consistency among SOP programs across the Commonwealth,” preservation of the negative option renewal feature of PECO’s SOP is *inconsistent* with the customer programs in PPL’s approved DSP VI and Duquesne’s proposed DSP X. The foregoing suggests that reconsideration and/or clarification of the Commission’s Order would promote consistency in evaluating proposals to modify and/or terminate EDC SOPs.

Ultimately, even if the Commission fails to provide additional guidance regarding the five evidentiary criteria listed in the Order, it behooves the Commission to clarify that its list is non-exclusive, both as to substantive evidence and as to the proponent of such evidence. The Commission’s Order may be plainly read to support an interpretation that the Commission will only review on a *de novo* basis evidence proffered by PECO that demonstrates a negative impact upon it (e.g., adverse impact upon its customer service representatives, increase in collection

³¹ 2 Pa. C.S. § 704; accord Pa. PUC v. Verde Energy, Docket No. C-2020-3017229, Opinion and Order (Sept. 15, 2022).

³² Petition of Duquesne Light Company for Approval of its Default Service Plan for the Period from June 1, 2025 through May 31, 2029, Docket No. P-2024-3048592, Recommended Decision at 25-28.

activity, increase in uncollectible expenses, etc.). TURN/CAUSE-PA submit that the Commission should, at a minimum, clarify that it will fairly review all pertinent evidence submitted on the record, without preference to any party and without limitation to the five identified criteria, in evaluating proposed DSP terms, including any such terms applicable to the SOP.

c. The Commission’s approval of PPL’s termination of its SOP supports application of a different legal standard to modification of a market enhancement program.

The Commission’s Order does not include significant discussion of the legal standards applicable to a modification to PECO’s SOP, as recommended by the ALJs for the Commission’s approval. Rather, after concluding that Joint Petitioners have provided inconclusive support for the modification, as discussed above, the Order simply states, “[f]urther, we note that the Joint Petitioners did not demonstrate that no reasonable alternative exists to the proposed modifications of the SOP.”³³ TURN/CAUSE-PA maintain the position, expressed in their Reply Brief, “that no reasonable alternative exists but to modify the SOP to avoid the particularized harm that occurs when customers, through inaction rather than affirmative choice, are converted to costly month-to-month contracts after having entered an agreement with a clear, EDC-provided, expectation of savings.”³⁴ Indeed, only two proposals – termination of PECO’s SOP as originally proposed by OCA,³⁵ or modification of the SOP as set forth in the Joint Petition – address the consumer harm associated with the SOP’s negative option renewal feature. The Commission’s Order fails to evaluate the reasonableness of the Joint Petition’s modification against the unreasonableness of continuing to expose customers, incentivized into shopping based on the SOP’s 7% price savings, to higher prices when the SOP’s 12-month term expires.

³³ Order at 80. TURN/CAUSE-PA note that, as expressed, this conclusion appears unnecessary to the Commission’s holding, and so constitutes *dicta*.

³⁴ TURN/CAUSE-PA Reply Br. at 14.

³⁵ OCA Initial Br. at 17.

While TURN/CAUSE-PA maintain that the “no reasonable alternative” standard has been satisfied, and that the Commission erred in determining otherwise, TURN/CAUSE-PA nonetheless question the appropriateness of this legal standard to a voluntary market enhancement program. TURN/CAUSE-PA submit that the Commission’s approval of the settlement proposal to terminate PPL’s SOP, and forthcoming consideration of the ALJ’s recommendation to terminate Duquesne’s SOP, reveal a fundamentally different legal analysis should apply to proposals to modify or terminate the SOP than the “no reasonable alternative” standard that applies to the adoption of EGS price protections for CAP customers. In summarizing its holding in Coalition for Affordable Utility Services and Energy Efficiency in Pa. v. Pa. PUC,³⁶ the Commonwealth Court explained that its “no reasonable alternative” standard was developed to evaluate restrictions on competition that are intended to serve other important policy concerns, namely, the access, affordability and cost-effectiveness of legislatively-mandated low income assistance programs:

[W]e held in *CAUSE-PA* that the Choice Act permits PUC to effectively limit competition and choice for low-income customers, provided there are no reasonable alternatives to restricting competition, so that other important policy concerns of the General Assembly, such as access, affordability, and cost-effectiveness, may be served.³⁷

In contrast, proposals to modify or terminate PECO’s SOP should be evaluated not as restrictions on competition, but rather, based on whether they reasonably address concerns with the continued operation of a market enhancement program.³⁸ As the Commission’s Order explains, PECO’s SOP was first established in 2013 and, through its first ten years, introduced approximately 282,000 customers to the competitive market.³⁹ The SOP was first directed to be included in PECO’s DSP as a “market enhancement program” intended to foster participation in

³⁶ 120 A. 3d 1087 (Pa. Commw. Ct. 2015).

³⁷ Retail Energy Supply Ass’n v. Pa. PUC, 185 A.3d 1206, 1222 (Pa. Commw. Ct. 2018)

³⁸ It bears emphasis that the PUC’s approval of the terms and conditions of SOPs in EDC DSPs has never been subject to challenge on appeal.

³⁹ Order at 75.

the retail competitive market.⁴⁰ As TURN/CAUSE-PA have explained, the provisions of the Commission’s 2012 Intermediate Work Plan Order applied, by their terms, to PECO’s DSP II, and there is no support for the proposition that they impede the Commission’s approval of modifications to PECO’s SOP in this DSP VI.⁴¹ Moreover, while existing SOP provisions impose a price limitation, for a fixed duration, and without termination/cancellation fees, the SOP does not, in fact, restrain competition in any meaningful sense. Rather, the SOP utilizes PECO’s customer relationship to deliver an enticement of initial savings to non-shopping customers to obtain electric supply from participating EGSs, thereby utilizing PECO operations *in favor of* compliant EGS products.⁴²

In contrast with the Commonwealth Court’s concerns regarding limitations “that partially restrict or limit the ability of [CAP] customers to shop for electricity,”⁴³ the SOP serves as a means to promote shopping through a PUC-established program that, unlike CAP, has no legislative mandate. PECO’s SOP does not restrict or limit customers’ ability to shop, but rather serves as a platform for compliant EGS-products to *incentivize* shopping. In this way, modifications to PECO’s SOP are not restraints on the market for which “no reasonable alternative” must be shown, but rather, may either reduce or increase the incentive for customers to participate as reasonably determined by the Commission. Indeed, if customers are informed that participation in PECO’s SOP includes protections that prevent them from being enrolled in a higher-priced month-to-month product at the end of the 12-month term, it is feasible that more customers may be incentivized to shop via PECO’s SOP. Nevertheless, the appropriateness of that protection for SOP participants

⁴⁰ Order at 9, citing Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Final Order entered March 2, 2012 (Intermediate Work Plan Order).

⁴¹ TURN/CAUSE-PA R.B. at 7.

⁴² See, e.g., OCA R.B. at 20-21 (discussing SOP enticement and PECO’s role in communicating with customers).

⁴³ Retail Energy Supply Ass’n v. Pa. PUC, 185 A.3d at 1206.

should not be evaluated according to the “no reasonable alternative” standard. TURN/CAUSE-PA submit that modification to a voluntary program that incentivizes market participation is not analogous to adjudicated restraints on EGS offers to CAP participants, and so should not be evaluated pursuant to the standards developed for CAP shopping.

V. CONCLUSION

WHEREFORE, TURN/CAUSE-PA respectfully request that the Commission reconsider and/or clarify its November 7, 2024 Order as set forth above.

Counsel for TURN and CAUSE-PA



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Date: November 22, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL OF ITS DEFAULT SERVICE : DOCKET NO. P-2024-3046008
PROGRAM FOR THE PERIOD FROM JUNE 1, :
2025 THROUGH MAY 31, 2029 :

VERIFICATION

I, Robert W. Ballenger, hereby state that the facts set forth in the Joint Petition for Reconsideration and/or Clarification of TURN and CAUSE-PA are true and correct (or are true and correct to the extent of my knowledge, information, and belief) 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).



Robert W. Ballenger
Counsel for TURN and CAUSE-PA

November 22, 2024