

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for  
Approval of Its Default Service Program for  
the Period From June 1, 2021 Through  
May 31, 2025** :  
: **P-2020-3019290**  
:  
:

**TESTIMONY OF  
PHILIP A. BERTOCCI**

**On Behalf of  
Tenant Union Representative Network  
and  
Action Alliance of Senior Citizens of Greater Philadelphia**

**June 16, 2020**

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1     **I.    WITNESS BACKGROUND**

2     **Q.    Please state your name, occupation and business address.**

3     A.    Philip A. Bertocci, Esquire. I am currently retired, maintaining a pro bono “of counsel”  
4     role, with an office c/o, Community Legal Services, Inc., 1424 Chestnut Street, Philadelphia, PA  
5     19102.

6     **Q.    Briefly outline your education and professional background.**

7     A.    As my resume shows, I received my B.A. Degree in History from Wesleyan University  
8     (Middletown, CT) in 1962, a Ph.D Degree in History from Yale University in 1970, and a J.D.  
9     from the University of Pennsylvania Law School in 1980. From 1980, with the exception of a  
10    little over a year when I was a judicial clerk, until my retirement in the Fall of 2011, I was employed  
11    as a Staff Attorney at Community Legal Services (CLS). After over a decade representing low-  
12    income clients in mortgage foreclosure proceedings and Chapter 7 and Chapter 13 Bankruptcy  
13    proceedings, I began work in CLS’s Energy Unit in 1995, and served as the Supervising Attorney  
14    of that unit from 1998 until my retirement in 2011. My resume is attached as Exhibit PAB-1.

15    **Q.    For whom are you testifying in this proceeding?**

16    A.    I am testifying on behalf of Tenant Union Representative Network (“TURN”) and Action  
17    Alliance of Senior Citizens of Greater Philadelphia (collectively “TURN *et al.*”)

18    **Q.    Please describe the focus of your work over the past twenty five years.**

19    A.    My work focused on assisting low-income Philadelphians in their efforts to obtain gas,  
20    electric and water service, to maintain that service, and in the event that service is terminated, to  
21    obtain prompt service reconnection. Consistent with these goals, I have served with co-counsel as  
22    the Public Advocate for Philadelphia Gas Works’ residential customers in matters before the

1 Philadelphia Gas Commission and as the Public Advocate for residential customers of the  
2 Philadelphia Water Department in Water Rate Increase cases. I have also served as lead counsel  
3 on behalf of Philadelphia low-income consumer groups in matters involving PECO Energy  
4 Company (“PECO”) and the Philadelphia Gas Works before the Pennsylvania Public Utility  
5 Commission.

6 In addition to group representation, I have supervised Energy Unit attorneys and paralegals  
7 providing advice and representation to hundreds of low-income Philadelphians every year in  
8 matters involving access to utility service provided by PGW, PECO and the Philadelphia Water  
9 Department/Water Revenue Bureau. The primary goal of that representation has been to develop  
10 and strengthen universal service principles in policy, law and regulations, assuring that low-  
11 income customers will be provided with the assistance necessary to maintain vital utility service

12 **Q. Have you testified in any proceeding before the Pennsylvania PUC?**

13 A. I provided testimony in PECO’s DSP II Proceeding, Petition of PECO Energy Company  
14 for Approval of its Default Service Program, Docket No. P-2012-2283641, on behalf of the  
15 Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”).  
16 I provided testimony in PECO’s DSP IV Proceeding, Petition of PECO Energy Company for  
17 Approval of its Default Service Program, Docket No. P-2016-2534980, on behalf of TURN *et al.*

18 I also provided testimony regarding Columbia Gas of Pennsylvania, Inc.’s (“CGPA”)  
19 universal service plan and low-income customer issues on behalf of Pennsylvania Communities  
20 Organizing for Change, Inc., d/b/a ACTION United, Carol Collington, and Nettie Pelton in  
21 Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc., Docket No. R-  
22 2010-2215623 & PCOC *et al.* v. Columbia Gas of Pennsylvania, Inc., Docket No. C-2011-  
23 2232186.

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to respond to certain issues raised in the Testimony of  
3 Carol Reilly, PECO Energy Statement No. 3. First, I address PECO's plan to allow CAP  
4 customers to shop or purchase competitive generation supply. Second, I address PECO's  
5 proposal to modify its CAP program in connection with its CAP shopping plan.

6 **II. PECO'S PROPOSED CAP SHOPPING PLAN**

7 **Q. Please describe PECO's current limitation on CAP customers shopping for EGS**  
8 **supply.**

9 A. Currently, PECO's DSP does not permit CAP customers to shop for electricity with an  
10 EGS. As a result, CAP customers are billed at PECO's default service rate. In the event a  
11 customer who has entered into a contract with an Electric Generation Supplier ("EGS") applies  
12 for CAP, PECO sends the customer a letter stating that the customer cannot participate in CAP  
13 and must drop their EGS to enroll in CAP. Response to TURN-I-3. Likewise, if a CAP  
14 customer signs a contract with an EGS, PECO sends the customer a letter stating that the  
15 customer must purchase electricity from PECO in order to continue to participate in CAP.  
16 Response to TURN-II-1.

17 **Q. Who manages PECO's practice of informing CAP applicants and CAP participants**  
18 **of the limitations on selecting EGS supply?**

19 A. With regard to both circumstances described above (i.e., where a customer applies for  
20 CAP after selecting an EGS, and where a CAP customer signs an EGS contract), PECO's  
21 Manager of Universal Services is responsible for PECO's practice. Responses to TURN-I-4;  
22 TURN-II-2.

1 **Q. If PECO’s CAP shopping plan is approved, will PECO’s Manager of Universal**  
2 **Services be required to oversee correspondence with CAP customers as described above?**

3 A. No, this correspondence would no longer be required because CAP customers would be  
4 eligible to shop.

5 **Q. Please describe PECO’s CAP shopping plan.**

6 A. According to the Testimony of Ms. Reilly, PECO proposes to implement CAP shopping  
7 on terms and conditions consistent with the Commission’s February 28, 2019 Proposed Policy  
8 Statement on Electric Customer Assistance Program Participant Shopping (“Proposed Policy  
9 Statement”), in the matter of Electric Distribution Company Default Service Plans – Customer  
10 Assistance Program Shopping, Docket No. M-2018-3006578. Accordingly, PECO proposes to  
11 permit CAP customers to shop for electricity from EGSs with the limitation that the EGS may  
12 not charge more than PECO’s Price-to-Compare (“PTC”) at any time and may not impose early  
13 termination or cancellation fees. Upon expiration of a CAP customer’s contract with an EGS,  
14 the CAP customer could renew its contract with that EGS or enter into a contract with another  
15 EGS (in either case, such contract cannot charge more than the PTC nor impose early  
16 termination or cancellation fees), or return to PECO’s default service.

17 PECO proposes that EGSs choosing to participate in its CAP shopping plan submit a  
18 notice of intent specifying that they will comply with PECO’s CAP shopping plan requirements.  
19 PECO St.-3 at 6; Response to TURN-I-16.

20 **Q. Does PECO propose to monitor EGS pricing and contract terms to ensure**  
21 **compliance with its CAP shopping proposal?**

1 A. No. PECO proposes that the Commission monitor EGS compliance with its CAP  
2 shopping plan “through traditional enforcement mechanisms, including monitoring of informal  
3 and formal customer complaints.” Response to TURN-I-15. PECO also suggests that the  
4 Commission’s Office of Competitive Market Oversight (“OCMO”) could require EGSs to  
5 provide information to facilitate oversight. Id.

6 **Q. Does PECO’s proposal to require notices of intent from participating EGSs**  
7 **adequately address monitoring and enforcement?**

8 A. No. Although any given EGS may submit a notice of intent, that notice does not govern  
9 the terms and conditions of the offers that may be received by PECO’s CAP customers. Instead,  
10 PECO appears to assume that EGSs will review Electronic Data Interchange (“EDI”) rate codes  
11 that identify CAP customers and unilaterally cancel any contract entered into by a CAP customer  
12 that does not comply with PECO’s CAP shopping plan. PECO St.-3 at 8; Response to TURN-I-  
13 14. However, PECO admits it does not have knowledge or information about EGS marketing  
14 activities to determine whether EGSs or their agents review EDI rate codes prior to marketing  
15 EGS products. Response to TURN-I-14. As a result, I believe many CAP customers will  
16 receive non-compliant offers and will enter into contracts to receive EGS supply that violate the  
17 limitations of the Proposed Policy Statement and PECO’s CAP shopping plan.

18 **Q. Why do you believe EGSs will market non-compliant offers to CAP customers**  
19 **under PECO’s CAP shopping plan?**

20 A. Based on the data provided by PECO, EGSs and their agents marketed to CAP customers  
21 in ignorance or knowing disregard that CAP customers were not permitted under PECO’s  
22 Commission approved DSP to take generation service from an EGS. We can expect that many

1 EGSs will market to CAP customers with similar disregard or ignorance of a Commission  
 2 approved limitation on the terms of their offers.

3           Until now, PECO has enforced the prohibition on CAP shopping by refusing to allow  
 4 CAP customers who sign up for EGS service to continue on CAP. Here, in this circumstance,  
 5 PECO declines to exercise this enforcement power in its CAP shopping proposal. PECO’s  
 6 proposal thus puts the burden on CAP customers to identify when they have been overcharged,  
 7 and to seek redress through the Commission’s dispute process, via informal complaints and  
 8 formal complaints. After receiving unaffordable EGS bills, these CAP customers will be placed  
 9 in the position of challenging arrearages that have mounted in their consolidated bills, and then  
 10 seeking redress not from the EGS but from PECO to whom they owe the accumulated  
 11 balance. In my experience, few CAP customers, without legal assistance, will be able to analyze  
 12 and assemble the necessary information to show the amount by which they’ve been overcharged  
 13 by the EGS.

14           It is not realistic to assume that EGSs will cancel contracts based upon EDI rate codes,  
 15 since those codes currently exist and have not precluded EGSs from enrolling tens of thousands  
 16 of CAP customers each year even though CAP customers are not eligible to shop for EGS  
 17 supply. As shown in PECO’s response to TURN-II-3, reproduced below, EGSs consistently  
 18 enter contracts with thousands of CAP customers each year, even though such contracts are not  
 19 currently permitted:

<b>2016 Summary</b>	<b>Jan-16</b>	<b>Feb-16</b>	<b>Mar-16</b>	<b>Apr-16</b>	<b>May-16</b>	<b>Jun-16</b>	<b>Jul-16</b>	<b>Aug-16</b>	<b>Sep-16</b>	<b>Oct-16</b>	<b>Nov-16</b>	<b>Dec-16</b>	<b>Total</b>
Electric	849	1,006	1,112	1,003	1,224	1,395	1,158	1,312	#	1,053	1,391	1,417	13,832
<b>2017 Summary</b>	<b>Jan-17</b>	<b>Feb-17</b>	<b>Mar-17</b>	<b>Apr-17</b>	<b>May-17</b>	<b>Jun-17</b>	<b>Jul-17</b>	<b>Aug-17</b>	<b>Sep-17</b>	<b>Oct-17</b>	<b>Nov-17</b>	<b>Dec-17</b>	<b>Total</b>
Electric	1,233	908	968	880	917	1,187	899	997	#	1,049	857	1,192	11,950
<b>2018 Summary</b>	<b>Jan-18</b>	<b>Feb-18</b>	<b>Mar-18</b>	<b>Apr-18</b>	<b>May-18</b>	<b>Jun-18</b>	<b>Jul-18</b>	<b>Aug-18</b>	<b>Sep-18</b>	<b>Oct-18</b>	<b>Nov-18</b>	<b>Dec-18</b>	<b>Total</b>
Electric	1,875	1,657	2,554	1,715	1,628	1,875	2,100	1,882	1,951	2,047	2,064	2,348	23,696
<b>2019 Summary</b>	<b>Jan-19</b>	<b>Feb-19</b>	<b>Mar-19</b>	<b>Apr-19</b>	<b>May-19</b>	<b>Jun-19</b>	<b>Jul-19</b>	<b>Aug-19</b>	<b>Sep-19</b>	<b>Oct-19</b>	<b>Nov-19</b>	<b>Dec-19</b>	<b>Total</b>
Electric	2,169	1,591	1,379	1,641	1,922	1,630	1,796	1,795	1,616	1,685	1,306	1,429	19,959
<b>2020 Summary</b>	<b>Jan-20</b>	<b>Feb-20</b>	<b>Mar-20</b>	<b>Apr-20</b>	<b>May-20</b>	<b>Jun-20</b>	<b>Jul-20</b>	<b>Aug-20</b>	<b>Sep-20</b>	<b>Oct-20</b>	<b>Nov-20</b>	<b>Dec-20</b>	<b>Total</b>
Electric	1,500	1,454	1,500	987									5,441

1 **Q. Do you believe PECO's CAP shopping plan should go forward if PECO is not going**  
2 **to monitor and ensure compliance?**

3 A. No, I do not. If PECO does not monitor and ensure EGS compliance with the pricing  
4 restrictions of its CAP shopping plan, it is likely many CAP customers will enter into contracts  
5 with EGSs that impose prices in excess of PECO's PTC. As a result, those CAP customers will  
6 receive bills that are higher than they would otherwise be under PECO's CAP program.  
7 Furthermore, if, as discussed below, PECO implements changes to its CAP program to utilize  
8 EGS charges in calculating CAP discounts, the higher prices charged by some EGSs to CAP  
9 customers will undermine CAP affordability and increase the expenses borne by all non-CAP  
10 residential customers who contribute to the cost of CAP. Both of these additional cost impacts  
11 contravene the purposes of the Commission's Proposed Policy Statement.

12 In addition, I do not believe PECO should implement a CAP shopping plan with the  
13 expectation that customers or others would be responsible for monitoring and ensuring EGS  
14 compliance with pricing restrictions. CAP customers should not have to file informal or formal  
15 complaints to obtain relief from excessive EGS charges that are prohibited by PECO's CAP  
16 shopping plan. CAP customers are economically distressed and, in my experience, the risk of  
17 EGSs imposing charges in excess of the PTC is one that must be avoided. Furthermore, PECO's  
18 proposal to require customers to seek enforcement of its CAP shopping plan through formal and  
19 informal complaints would create unnecessary additional burden on the PUC administrative  
20 hearing process. PECO's suggestion that OCMO could require EGSs to report appears  
21 theoretical, at best, and inadequate to provide timely price protection to CAP customers.

22 **Q. Why do you believe many CAP customers will be charged prices in excess of**  
23 **PECO's PTC if the CAP shopping plan is implemented as PECO has proposed?**

1 A. There are multiple reasons for this conclusion. Primarily, data provided by PECO  
2 demonstrates that residential customers, on average, experience EGS prices that significantly  
3 exceed the PTC. As explained by PECO, utilizing the aggregate revenues and billings as well as  
4 aggregate usage, PECO can derive the average EGS charges per kWh. Using this methodology,  
5 PECO calculated that the EGS charges billed to residential customers exceeded the PTC in every  
6 single month from January 2015 through April 2020. Indeed, EGS charges range from 115% of  
7 the PTC (January 2015) to 151% of the PTC (June 2019, March 2020). Response to CAUSE-  
8 PA-I-13. This result is similar to observations made statewide, which establish that prices  
9 charged to residential shopping customers are higher than those charged to residential non-  
10 shopping customers. See, e.g., Christina Simeone and John Hanger, *A Case Study of Electric*  
11 *Competition Results in Pennsylvania*, October 28, 2016 at 28.

12 Furthermore, PECO's response to CAUSE-PA-II-3 demonstrates that, as a group, non-  
13 CAP low-income PECO customers who chose to shop for electricity from EGSs were billed  
14 significantly higher charges for generation supply charges. As shown below, PECO provided the  
15 number of non-CAP confirmed low-income customers who chose to shop with an EGS and the  
16 number of such non-CAP confirmed low-income customers who received default service from  
17 PECO.<sup>1</sup> PECO also provided the total amount billed for generation supply charges for each  
18 group of non-CAP low-income customers (those who shopped for EGS supply and those who  
19 did not). Finally, PECO provided the total usage in kilowatt-hours (kWh) separately for non-  
20 CAP confirmed low-income customers who shopped for electricity with an EGS and those who  
21 did not shop. Using this data, the average cost of generation supply charges per customer and

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<sup>1</sup> The number of confirmed non-CAP low-income customers utilized in response to CAUSE-PA-II-3 include those customers whose income was verified to be at or below 150% of FPL in the two-year period prior to and including the year shown in the table below. In contrast, PECO's responses to TURN-I-7 and TURN-II-5 include only those low-income customers whose income was verified during the year reported.

1 the average price of generation supply charges per kWh can be separately calculated for non-  
2 CAP low-income customers who chose to shop with an EGS and those who received default  
3 service. The data indicates non-CAP low-income customers, as a group, were consistently  
4 charged significantly higher prices by EGSs. For example, as shown in the table below, in 2019  
5 non-CAP confirmed low-income customers who chose to shop with an EGS were charged, on  
6 average, more than \$0.04 per kWh above PECO's PTC, resulting in an average shopping  
7 customer paying more than \$200 in annual charges.<sup>2</sup>

	April YTD 2020	2019	2018	2017	2016	2015
-number of non-CAP confirmed low income shopping customers	5,019	11,015	12,194	13,576	14,977	17,137
-number of non-CAP confirmed low income non-shopping customer	12,711	30,371	34,659	37,711	43,060	49,813
-total amount billed for generation supply charges for non-CAP confirmed low income shopping customers	\$1,356,437	\$5,297,492	\$5,486,535	\$5,419,557	\$6,237,182	\$8,041,256
-total amount billed for generation supply charges for non-CAP confirmed low income non-shopping customers	\$2,042,546	\$8,391,377	\$9,204,657	\$8,476,669	\$10,247,203	\$14,113,929
-total usage for non-CAP confirmed low income shopping customers (kWh)	13,364,917	50,467,092	55,812,511	57,521,115	64,211,543	77,042,403
-total usage for non-CAP confirmed low income non-shopping customers (kWh)	33,733,288	133,348,881	142,496,682	128,635,215	141,367,922	178,978,238
-price charged to non-CAP confirmed low income shopping customers (\$/kWh)	\$ 0.1015	\$ 0.1050	\$ 0.0983	\$ 0.0942	\$ 0.0971	\$ 0.1044
-price per kWh charged to non-CAP confirmed low income non-shopping customers (\$/kWh)	\$ 0.0605	\$ 0.0629	\$ 0.0646	\$ 0.0659	\$ 0.0725	\$ 0.0789
-difference in price (\$/kWh)	\$ 0.0409	\$ 0.0420	\$ 0.0337	\$ 0.0283	\$ 0.0246	\$ 0.0255
-average cost of generation supply charges for non-CAP confirmed low income non-shopping customers	\$ 160.69	\$ 276.30	\$ 265.58	\$ 224.78	\$ 237.97	\$ 283.34
-average cost of generation supply charges for non-CAP confirmed low income shopping customers	\$ 270.26	\$ 480.93	\$ 449.94	\$ 399.20	\$ 416.45	\$ 469.23
8 -difference in average cost	\$ 109.57	\$ 204.64	\$ 184.36	\$ 174.42	\$ 178.48	\$ 185.90

9 In addition, as the Commission recognized in its Proposed Policy Statement, data from  
10 two electric distribution companies (PPL and FirstEnergy Companies) that permitted CAP  
11 customers to shop conclusively demonstrated that those customers paid excessive charges  
12 resulting in harm to CAP customers and non-CAP customers who contribute to the cost of CAP.  
13 Regarding PPL, the Commission stated:

14 PPL provided data showing that, over the 34-month period ranging from January 2013  
15 through October 2015, an average of 49 percent of PPL's CAP participants were  
16 shopping and, of the CAP participants who were shopping, 55 percent were paying above  
17 PPL's Price to Compare (PTC). PPL compared that information with information  
18 regarding those CAP participants who shopped during the same time period and paid at

<sup>2</sup> Although I note that part of the difference in average cost is due to differences in electricity consumption, in 2019 the total amount of consumption by low-income shopping and non-shopping customers was almost equal.

1 or below the PTC and found that the net financial impact was approximately \$2,743,872  
2 over 12-months. PPL concluded, and this Commission agreed, that two forms of harm  
3 resulted from CAP shopping: (1) those CAP participants paying a rate greater than PPL’s  
4 PTC were exceeding their CAP credits at a faster rate, which put those CAP participants  
5 at risk of being removed from CAP; and (2) that non-CAP participant ratepayers who  
6 subsidize CAP participants were bearing increased costs related to CAP.

7 Proposed Policy Statement Order at 2-3.

8 Likewise, regarding FirstEnergy Companies, the Commission stated:

9 [E]vidence showed that over a 58-month period ranging from June 2013 through March  
10 2018, nearly 65 percent of FirstEnergy’s CAP participants who were shopping with EGSs  
11 paid rates higher than FirstEnergy’s applicable PTCs, resulting in a net impact of \$18.3  
12 million in increased costs associated with CAP. This Commission agreed with the ALJ  
13 that the record evidence demonstrated that, over a long period of time, most of  
14 FirstEnergy’s CAP participants paid rates higher than the PTC. FirstEnergy’s CAP  
15 participants’ monthly maximum CAP credits are based on their average annual electric  
16 bill less a percentage of their annual income. Therefore, paying rates higher than the  
17 PTC increases the likelihood that CAP participants will exceed their monthly maximum  
18 CAP credits and incur charges they may not be able to pay. If CAP participants are  
19 unable to pay their bills, utility uncollectibles are increased, which are then recovered  
20 from the rest of the utility’s residential ratepayers, causing those ratepayers harm, as well.

21 Proposed Policy Statement Order at 3-4.

22 Partially in response to these demonstrated trends, CAUSE-PA and TURN *et al.*

23 expressed concerns to the Commission that “the harms created by higher priced electricity may  
24 (as in other states) be concentrated in communities of color,” disproportionately impacting those  
25 communities.<sup>3</sup> I echo these concerns, because over my decades of experience in representing  
26 low-income Philadelphians, it has consistently been true that the overwhelming majority of my  
27 clients were persons of color. Accordingly, I believe that if a thorough examination were  
28 performed in PECO’s service territory, similar to the examinations by investigative journalists in

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<sup>3</sup> Joint Comments of CAUSE-PA and TURN *et al.*, in the matter of Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Docket No. M-2018-3006578, July 30, 2019 (“Joint Comments”) at 6.

1 Chicago and the Attorney General in Massachusetts,<sup>4</sup> it would be shown that high EGS pricing  
2 disproportionately exposes people of color to serious dangers posed by a CAP shopping program  
3 which does not provide for adequate monitoring of EGS marketing activities and enforcement of  
4 Commission approved limitations on prices and contract terms.

5 **Q. Have you been able to find any support for your concern regarding the potential**  
6 **disproportionate impact of EGS pricing on low-income PECO customers of color?**

7 A. Yes, although I acknowledge that it is based on a preliminary review of PECO's data and  
8 would require additional study. PECO provided information regarding the number of non-CAP  
9 confirmed low-income customers for each year 2015 through 2020 (year to date), along with  
10 information regarding how many of those non-CAP confirmed low-income customers were  
11 shopping for electricity from an EGS. Responses to TURN-I-7; TURN-II-5.<sup>5</sup> PECO's  
12 information was broken down by zip code, allowing for U.S. Census demographic information to  
13 be applied. I chose to focus on the 12 Pennsylvania zip codes with the highest rates of poverty  
14 according to the U.S. Census, and to compare the rate of low-income shopping with racial  
15 demographics. For each year 2016 through 2019, I determined the percentage of PECO's  
16 confirmed low-income customers who chose to shop for electric generation supply with an EGS  
17 for each zip code, and determined the percentage increase over time.

18 For example, in zip code 19132, PECO verified the low-income status of 3,167 customers  
19 in 2016 (Response to TURN-II-5) and reported that 345 of those customers chose to shop with  
20 an EGS (Response to TURN-I-7). Accordingly, 10.89% (345/3167) of verified low-income

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<sup>4</sup> See Joint Comments at 6, n. 8.

<sup>5</sup> As discussed above, the responses to TURN-I-7 and TURN-II-5 depict those low-income customers whose income was verified during the year reported and so represents a subset of the total number of confirmed low-income customers utilized in PUC reporting and in response to CAUSE-PA-II-3.

1 customers in zip code 19132 chose to shop with an EGS in 2016. In the same zip code, PECO  
 2 verified the low-income status of 1,990 customers in 2019, and reported that 336 of those  
 3 customers chose to shop with an EGS.<sup>6</sup> Accordingly, 16.88% of verified low-income customers  
 4 in zip code 19132 chose to shop with an EGS in 2019. Thus, the percentage of low-income  
 5 customers choosing to shop in zip code 19132 increased by approximately 6 percentage points.

6 My preliminary analysis provides support for the need for a fuller examination of the  
 7 potential disproportionate impact of EGS marketing practices on low-income customers of color.  
 8 The table below includes the six zip codes (of the 12 zip codes examined) with the highest  
 9 concentration of Black persons:

Zip code	Percent of Verified Low-Income Customers Shopping				Percent Increase in Shopping	U.S. Census Report Demographics		
	2019	2018	2017	2016	2016-2019	White	Black	Hispanic
19013	20.51%	16.78%	17.44%	13.76%	6.76%	16%	69%	12%
19121	16.29%	16.72%	12.08%	10.45%	5.84%	13%	75%	6%
19131	15.08%	14.40%	11.66%	9.48%	5.60%	11%	80%	3%
19142	19.79%	16.44%	13.69%	13.26%	6.53%	6%	84%	3%
19139	16.77%	15.43%	13.70%	10.76%	6.01%	6%	87%	3%
19132	16.88%	16.41%	14.74%	10.89%	5.99%	3%	91%	3%

10 In contrast, the following table includes the remaining six of the zip codes examined, all of  
 11 which have a lower concentration of Black persons:

Zip code	Percent of Verified Low-Income Customers Shopping				Percent Increase in Shopping	U.S. Census Report Demographics		
	2019	2018	2017	2016	2016-2019	White	Black	Hispanic
19134	18.88%	18.06%	14.65%	13.35%	5.53%	35%	16%	46%
19133	16.74%	16.23%	12.82%	11.94%	4.79%	4%	35%	59%

<sup>6</sup> I note that the decline in the number of customers verified by PECO to be low-income, particularly in Philadelphia zip codes, would not support a conclusion that there are, in fact, significantly fewer actual low-income customers in those areas. Poverty in Philadelphia is an intractable economic problem, which has shown no significant improvement in recent years. See, e.g., Pew Charitable Trusts, *Philadelphia 2020: State of the City*, available at: [https://www.pewtrusts.org/-/media/assets/2020/04/state\\_of\\_the\\_city\\_2020.pdf](https://www.pewtrusts.org/-/media/assets/2020/04/state_of_the_city_2020.pdf).

19122	10.12%	10.35%	10.76%	9.25%	0.88%	28%	36%	28%
19124	17.65%	14.22%	13.83%	12.62%	5.03%	14%	37%	41%
19104	13.79%	11.96%	12.90%	10.05%	3.73%	35%	42%	5%
19140	15.34%	15.38%	15.38%	12.40%	2.94%	3%	53%	42%

1 As this data indicates, the lowest income zip codes with the highest percentage of Black  
2 persons experienced higher increases in the percentage of confirmed low-income customers  
3 shopping, when compared to the other zip codes examined.

4 **Q. Is PECO able, with its current billing platform, to determine if EGS charges exceed**  
5 **its PTC?**

6 A. Yes. PECO's current billing platform limits PECO to receiving the total amount of  
7 charges to be billed by the EGS. PECO states that, as a result, it does not receive the EGS rate in  
8 cents per kWh used to calculate the EGS charges. Response to TURN-I-17. However, PECO  
9 can readily determine what overall EGS charges in any billing period represent in cents per kWh  
10 based on the information included on its bills, which include EGS charges and total kWh of  
11 usage. For example, as shown in the sample bill provided in response to CAUSE-PA-I-36, EGS  
12 charges of \$55.82 for 690 kWh of electric supply from an EGS equate to an average price of  
13 \$0.0809 per kWh for the billing period. This amount exceeds the PTC of \$0.0711 set forth on  
14 the sample bill, and so would violate the terms of PECO's proposed CAP shopping plan.

15 In addition, as discussed more fully below, PECO proposes to modify its CAP to utilize  
16 EGS charges in calculating the fixed discounts provided to CAP customers who shop for EGS  
17 supply. PECO St.-3 at 11-12. It follows that PECO must be able to determine those charges, on  
18 an individual customer basis, if it is going to use them to calculate CAP discounts.

19 **Q. What do you recommend regarding PECO's CAP shopping plan?**

1 A. PECO’s CAP shopping plan should not be approved unless and until PECO develops a  
2 mechanism to provide ongoing monitoring of EGS pricing to ensure that EGS charges billed to  
3 CAP customers do not exceed the PTC. The Commission explicitly recognized that “both CAP  
4 participants, in potentially losing their CAP benefits, and non-CAP participants, because they  
5 subsidize uncollectibles resulting from CAP defaults, are harmed when CAP participants pay  
6 rates higher than their EDCs’ applicable PTCs.” Proposed Policy Statement Order at 5. For this  
7 reason, the Commission’s Proposed Policy Statement provides guidance *specifically directed to*  
8 *EDCs* to limit the harm. Proposed Policy Statement, §69.272. In that guidance, the Commission  
9 is clear that the limitation on EGS charges in excess of the PTC is a limitation that the EDC  
10 should include when addressing CAP shopping. Proposed Policy Statement, §69.275(b)(1). In  
11 my view, it is the EDC’s obligation, in the first instance, to ensure that its CAP shopping plan  
12 achieves the objectives of the Proposed Policy Statement. Accordingly, PECO should be  
13 required, if its CAP shopping plan is approved, to implement procedures to monitor and enforce  
14 the limitation on EGS pricing. The elimination of PECO’s practice of providing tens of  
15 thousands of notices, per year, to CAP customers who enter EGS contracts not permitted by  
16 PECO’s current CAP represents a savings which PECO could redirect toward monitoring EGS  
17 pricing information.

18 If these improvements are not implemented, PECO CAP customers should continue to be  
19 protected from EGS high pricing by the current practice pursuant to which CAP customers are  
20 not permitted to shop for electricity.

21 **III. PECO’S PROPOSED CAP MODIFICATION**

22 **Q. How has PECO proposed to modify its CAP?**

1 A. As set forth in Ms. Reilly’s testimony, PECO proposes to modify the manner in which it  
2 calculates CAP credits under its Fixed Credit Option (FCO) CAP design. One year after PECO  
3 implements its CAP shopping plan, PECO would begin utilizing the EGS charges for the  
4 preceding months to calculate the fixed credit provided to those CAP customers who have  
5 chosen to shop. PECO St.-3 at 11-12.

6 **Q. What would be the impact of this change on CAP customers’ bills?**

7 A. As explained by Ms. Reilly, if a CAP customer shops and receives a “discount” from  
8 PECO’s PTC, the effect would be to reduce the CAP customer’s fixed credit amount. PECO St.-  
9 3 at 12. Likewise, if a CAP customer shops and pays a premium above PECO’s PTC, the effect  
10 would be to increase the CAP customer’s fixed credit amount. Response to TURN-I-18.

11 **Q. Do you support PECO’s proposed change to its CAP fixed credit calculation?**

12 A. No, I do not. The use of PECO’s PTC in calculating the fixed credit was one of the  
13 specific agreements reached by the parties in PECO’s Joint Petition for Settlement in PECO’s  
14 Universal Service and Energy Conservation Plan for 2013-2015 (“FCO Settlement”), Docket No.  
15 M-2012-2290911, following extensive, Commission-led mediation sessions. See FCO  
16 Settlement, Exhibit A at 1.<sup>7</sup> The use of PECO’s PTC ensures that, contrary to PECO’s proposal,  
17 a CAP customer who shops for EGS supply retains the benefit of any savings on electricity  
18 achieved by shopping with an EGS. That savings contributes to bill affordability and the CAP  
19 customer’s ability to pay current bills.

20 Because the fixed credit is determined on the basis of *past bills*, utilizing EGS billings  
21 which were lower than PECO’s PTC in prior months creates a significant risk of unaffordability.

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<sup>7</sup> The FCO Settlement is available at <http://www.puc.state.pa.us/pcdocs/1349218.pdf>. It was approved without modification by the Commission’s July 8, 2015 Order, available at <http://www.puc.state.pa.us/pcdocs/1370232.doc>.

1 For example, if a CAP customer is able to contract with an EGS for supply which is lower than  
2 PECO's PTC for a full year, but is then unable to continue to obtain such a contract in the  
3 following year, PECO's proposed modification would reduce the fixed credit discount for a full  
4 twelve-month period. The CAP customer would be granted a CAP credit which would not  
5 reflect the higher prior year's PTC, and otherwise would be applicable to other CAP customers  
6 who did not shop in that year, but rather a reduced level of historical billings reflecting past EGS  
7 savings which have ceased to be available. It is patently unreasonable to think that a former  
8 CAP shopper in this situation will still have the savings achieved in a prior year, in cash, to apply  
9 to the current bills. The undesirable result would be that a reduced CAP credit reflecting savings  
10 from EGS participation in the previous year would make it more difficult for the customer to pay  
11 current bills and might not satisfy CAP affordability standards. PECO should continue to utilize  
12 the PTC in calculating CAP fixed credit discounts for CAP shoppers and non-shoppers alike.

13 **IV. CONCLUSION**

14 **Q. Does that conclude your testimony?**

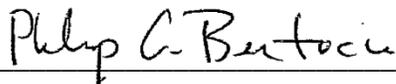
15 **A. Yes.**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for** :  
**Approval of Its Default Service Program for** : **P-2020-3019290**  
**the Period From June 1, 2021 Through** :  
**May 31, 2025** :

VERIFICATION

I, Philip A. Bertocci, hereby state that the facts set forth above in my Testimony, TURN et al., Statement No. 1, 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).

  
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Philip A. Bertocci  
Of Counsel  
Community Legal Services

DATED: June 16, 2020

**Resume of  
Philip A. Bertocci**

Office Address:       COMMUNITY LEGAL SERVICES, INC.  
1424 Chestnut Street  
Philadelphia, PA 19102  
215- 981-3702  
267-765-6481 (fax)  
[pbertocci@clsphila.org](mailto:pbertocci@clsphila.org)

**LEGAL CAREER**

COMMUNITY LEGAL SERVICES, INC., September, 1980 - September, 1981;  
January, 1983 – June 30, 2011 (retirement date). I currently serve as a consultant to the  
Energy Unit at Community Legal Services, with the title “Of Counsel.”

In my thirty-five plus years of legal practice on behalf of low and moderate  
income consumers, I have worked in several different areas of consumer law including  
mortgage foreclosure defense, ejection defense arising from residential lease-purchase  
agreements, Truth-in-Lending Act litigation, consumer bankruptcy proceedings, and  
utility service.

Since 1995, my primary focus has been on low income gas, electric and water  
utility issues, with the aim of assisting low income consumers to obtain affordable utility  
service, to maintain that service without unreasonable interruption, and to get service  
back on when it has been terminated for non-payment or for other reasons. This work has  
involved both representation of individual utility customers and especially more general  
representation of the residential customer class in utility rate cases and other regulatory  
proceedings before the Philadelphia Gas Commission, the Philadelphia Water  
Commissioner, and the Pennsylvania Public Utility Commission.

The positions that I have held are summarized as follows:

Of Counsel, Community Legal Services, Summer, 2011-present  
Supervising Attorney, CLS Energy Unit, Spring, 1998-Summer, 2011  
Public Advocate, Philadelphia Gas Commission, 1998-present  
Public Advocate, Philadelphia Water Department Rate Proceedings, 2000- present  
Staff Attorney, CLS Energy Unit, 1995- Spring, 1998  
Supervising Attorney, CLS Law Center South, 1986-2011  
Staff Attorney, Consumer/Housing, Family Advocacy, CLS Law Center  
South, 1980-81, 1983-1986

**PENNSYLVANIA SUPERIOR COURT**

Law Clerk for Judge Phyllis W. Beck, October, 1981-December,  
1982

## EDUCATION

Wesleyan University, B.A. 1962  
Yale University, Ph.D. (Modern European History) 1970  
University of Pennsylvania Law School, J.D. 1980

## LAW RELATED PROFESSIONAL MEMBERSHIPS

Member, Philadelphia Bar Association

## SELECTED CASES

In Re: Philadelphia Water Department Water, Wastewater and Stormwater Rate Increase Proceeding, FY 2013-2015 (Of Counsel, with CLS Energy Unit Attorneys, as appointed Public Advocate on behalf of residential water customers).

Public Advocate et al. v. Bernard Brunwasser, Water Commissioner, et al., 22 A.3rd 261 (Pa. Cmwlth. 2011) (Lead counsel, as appointed Public Advocate on behalf of residential water customers).

In Re: Philadelphia Water Department Water and Wastewater Rate Increase Proceeding, FY 2009-2012 (Lead counsel, as appointed Public Advocate on behalf of residential water customers).

Re: Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Provisions of 66 Pa.C.S. Chapter 14; General Review of Regulations, PUC Docket No. L-00060182 (Lead counsel, on behalf of Action Alliance of Senior Citizens, Tenant Union Representative Network (TURN) and Association of Community Organizations for Reform Now (ACORN)) (Final Regulations pending).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. R-2008-2073938 (Emergency Base Rate Increase Case) (Lead counsel, on behalf of Action Alliance of Senior Citizens and Tenant Union Representative Network).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. R-00061931 (PGW Base Rate Case) (Lead counsel, on behalf of Action Alliance of Senior Citizens and Tenant Union Representative Network).

Malisa Alexander v. Philadelphia Gas Works, PUC Docket No. C-20077389, 2008 WL 5786602, Pa.P.U.C., 2008 (Lead counsel).

In Re: Philadelphia Water Department Water and Wastewater Rate Increase Proceeding, FY 2005-2008 (Lead counsel, as appointed Public Advocate, on behalf of residential water customers).

Grace Scutching v. Philadelphia Gas Works, PUC Docket No. C-20028352, 99 Pa.P.U.C. 195, 2004 WL 2348997 (Pa.P.U.C.) (Co-counsel).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. M - 00021612 (Restructuring Proceeding), Docket P - 00032061 (Petition for Rescission and Amendment of Philadelphia Gas Works (Means Tested Senior Citizen Discount) (Lead Counsel on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. M - 00021612 (Restructuring Proceeding pursuant to Natural Gas Choice and Competition Act) (Lead counsel on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

In Re: Philadelphia Water Department Water and Wastewater Rate Increase Proceeding, FY 2002-2004 (Lead counsel as appointed Public Advocate, on behalf of residential water customers).

PGW Capital and Operating Budget Proceedings, Philadelphia Gas Commission, FY 1995-2011 (Public Advocate on behalf of residential natural gas customers).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC Docket No. R-00006042 (2001) (Base Rate Increase) (Lead counsel, on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

Pennsylvania Public Utility Commission v. Philadelphia Gas Works, PUC. Docket No. R-00005654 (2000) (Interim Base Rate Increase) (Lead counsel, on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

In re: Application of PECO Energy Company ... for Approval of (1) a Plan of Corporate Restructuring, including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company and Unicom Corporation, PUC Docket No. A-110550F0147 (2000) (“PECO-Unicom Merger”) (Lead counsel, on behalf of CEPA, ACORN, TAG and Action Alliance of Senior Citizens).

In re: Application of PECO Energy Company for Approval of its Restructuring Plan, PUC Docket Nos. R-00973953 and P-00971265 (1997) (“Electricity Generation Customer Choice and Competition Act”) (Co-counsel, on behalf of CEPA, ACORN and TAG).

Brodo v. Bankers Trust Co., 847 F.Supp. 353 (E.D. Pa. 1994) (Truth-in- Lending).

In re Celona, 90 B.R. 104 (Bankr. E.D. Pa. 1988), aff’d, 98 B.R. 104 (E.D. Pa. 1989) (Truth-in- Lending and Bankruptcy).

In re Fox, 83 B.R. 290 (Bankr. E.D. Pa. 1988) (Bankruptcy and Ejectment).

Reliance Standard Life Insurance v. Presley, 12 Phila. 96, aff'd, 353 Pa.Super. 651, 506 A.2d 1341 (1985) (Mortgage Foreclosure).

#### LEGAL PUBLICATIONS

“Residential Utility Service,” Pennsylvania Consumer Law, 2<sup>nd</sup> ed., Carolyn L. Carter, ed. (Bisel Co.:2003), updated by annual Supplement through 2011.

Co-author, The Chapter 7 Bankruptcy, Pennsylvania Bar Institute, PBI No. 1991- 635.

#### LEGAL AWARDS

Pennsylvania Legal Aid Network 2011 Excellence Award (“in recognition of outstanding work on behalf of our client community in Pennsylvania”).

Regional Housing Legal Services 2009 Award (“in recognition of his commitment and dedication to low income residential energy issues in Philadelphia”).

#### BAR ADMISSIONS

Pennsylvania – All State Courts  
U.S. District Court for the Eastern District of Pennsylvania  
U.S. Circuit Court of Appeals for the Third Circuit