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June 18, 2012

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

VIA HAND DELIVERY

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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and nine (9) copies of the Main Brief of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp an extra copy of this transmittal letter and Brief, and kindly return them for our filing purposes. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to the Philadelphia Area Industrial Energy Users Group

AAB/lmc
Enclosures

c: Administrative Law Judge Dennis J. Buckley (via E-mail and Hand Delivery)
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF THE
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

Air Liquide Industrial U.S. LP
Boeing Company, The
Building Owners & Managers Association
of Philadelphia
Drexel University
Franklin Mills Associates Limited
Partnership
GlaxoSmithKline
Jefferson Health System

Kimberly-Clark Corporation
Merck & Co., Inc.
Philadelphia College of Osteopathic
Medicine
Saint Joseph's University
Sunoco, Inc.
Temple University
United States Steel Corporation
Villanova University

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Dated: June 18, 2012

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I. INTRODUCTION AND PROCEDURAL HISTORY

On January 13, 2012, PECO Energy Company ("PECO" or the "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of the Company's Second Default Service Program ("DSP II"). *Petition of PECO Energy Company for Approval of Its Default Service Program*; Docket No. P-2012-2283641 (Jan. 13, 2012) (hereinafter, "Petition").¹ On February 13, 2012, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed a Petition to Intervene and Answer to the Company's Petition. A Prehearing Conference was held on March 13, 2012, before Administrative Law Judge ("ALJ") Dennis J. Buckley.

PAIEUG received the Company's Direct Testimony on January 13, 2012. Supplemental Direct Testimony was received on March 16, 2012 and April 24, 2012. Pursuant to the procedural schedule, on April 16, 2012, PAIEUG received Direct Testimony from the following parties: the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Coalition for Affordable Utility Services & Energy Efficiency in PA ("CAUSE-PA"); FirstEnergy Solutions Corp. ("FES"); PPL EnergyPlus, LLC ("PPL EnergyPlus"); Dominion Retail, Inc., and Interstate Gas Supply, Inc. ("Dominion"); the Retail Energy Supply Association ("RESA"); Green Mountain Energy Company ("Green Mountain"); and ChoosePAWind.com. On May 4, 2012, PAIEUG submitted one piece of Rebuttal Testimony and received Rebuttal Testimony from the following parties: the Company; the OCA; the OSBA; the Bureau of Investigation and Enforcement ("I&E"); CAUSE-PA; FES; Dominion; and RESA. On May 17, 2012, PAIEUG received Surrebuttal Testimony from the Company; the OCA; the

¹ PAIEUG's compilation is listed on the cover page of this Main Brief.

OSBA; CAUSE-PA; FES; PPL EnergyPlus; Dominion; RESA; Green Mountain; and ChoosePAWind.com.

An evidentiary hearing was held in this proceeding on May 22, 2012, for the purposes of presenting testimony and performing cross-examination. During this hearing, the parties confirmed the process for submitting Briefs. Pursuant to the procedural schedule, PAIEUG submits this Main Brief to address various issues raised in this proceeding.

Generally, PAIEUG supports PECO's DSP II as filed. As such, the arguments set forth in this Main Brief address proposals from certain intervenors to this proceeding, each of which seeks to modify PECO's DSP II filing in a manner that would detrimentally impact Large Commercial and Industrial ("C&I") customers. Specifically, PAIEUG files this Main Brief in order to set forth its opposition to: (1) RESA's proposal to require PECO to procure Large C&I default service through a request-for-proposal ("RFP") bidding process rather than through the Company's internal PJM Interconnection, LLC ("PJM") account; (2) RESA's proposal to implement a non-bypassable rider to recover certain non-market based ("NMB") transmission costs; (3) PPL EnergyPlus' proposal to implement a non-bypassable rider to recover Generation Deactivation costs; and (4) RESA, FES, and Dominion's proposals to recover retail market enhancement ("RME") costs from customers rather than electric generation suppliers ("EGS").

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Summary of Briefing Party's Position

As part of PECO's DSP II, the Company proposes to modify the means by which it supplies the Large C&I default service load. Specifically, PECO proposes to terminate its RFP bidding process for the Large C&I default service customer class; instead, the Company would serve this load directly via products purchased through the PJM energy markets. RESA, the sole party submitting testimony in opposition to PECO's proposal, asserts that PECO should continue

utilizing an RFP bidding process to procure Large C&I default service load. PAIEUG supports PECO's proposal to modify the procurement process for Large C&I default service customers, as PAIEUG agrees that the revised process will provide greater benefit to customers through a potential reduction in costs. As such, the PUC should grant PECO's request to modify its procurement methodology.

B. Residential Class Procurement

1. Term Length of Supply Contracts

PAIEUG has no position on this issue.

2. RESA's Proposal to Include 10% Spot Purchases for Residential Customers

PAIEUG has no position on this issue.

3. OCA's Proposal to Continue Block and Spot Supply Procurement for Residential Customers

PAIEUG has no position on this issue.

C. Small Commercial Class Procurement

PAIEUG has no position on this issue.

D. Medium Commercial Class Procurement

PAIEUG has no position on this issue.

E. Large Commercial and Industrial Class Procurement

PAIEUG concurs with PECO's proposal to modify the procurement process for the Large C&I default service customer class. While RESA opposes this change in procurement policy, RESA has not set forth any compelling evidence that would circumvent PECO's basis for proposing this change. Accordingly, because PECO's procurement plan for Large C&I customers is consistent with the PUC's rules and regulations, PAIEUG submits that the

Commission should disregard RESA's recommendations and approve PECO's proposed procurement plan for the Large C&I customer class.

Under PECO's First Default Service Program, ("DSP I"), the Company's process for procuring electricity supply for Large C&I default service customers was to procure full requirements products through an RFP bid process. *See Petition of PECO Energy for Approval of Its Default Service Program and Rate Mitigation Plan*; Docket No. P-2008-2062739, Order (June 2, 2009) (hereinafter "DSP I Order"). Pursuant to DSP II, PECO proposes to modify this procurement plan by eliminating the RFP bidding process and procuring default service supply for the Large C&I load directly through the PJM energy markets.² Direct Testimony of John J. McCawley, PECO Statement No. 2 (hereinafter "PECO St. No. 2"), pp. 4, 13; *see also* Direct Testimony of Scott G. Fisher, PECO Statement No. 3 (hereinafter "PECO St. No. 3"), p. 24. PECO St. No. 2, p. 13. In other words, rather than utilizing an RFP to find an "outside" wholesale supplier to serve this load, PECO would retain this service "in-house" for this set of customers. Any differences between supply scheduled in the day-ahead market and actual load would be balanced by additional purchases or sales in PJM's real time energy market. PECO St. No. 2, p. 4.

According to PECO, the shift to in-house procurement will reduce costs to the small number of Large C&I customers remaining on default service. PECO initially proposed in-house procurement as a component of its contingency plan under DSP I. Rebuttal Testimony of John J. McCawley, PECO Statement No. 2-R (hereinafter "PECO St. No. 2-R"), p. 9. When a series of bid results was rejected by the Commission during the DSP I phase, PECO implemented the contingency plan and successfully met the supply requirements. *Id.* Unfortunately, the Large

² This change relates only to the method of procurement; PECO will continue to utilize the day-ahead spot market service, as currently utilized by wholesale suppliers. PECO St. No. 2, pp. 4, 13.

C&I default service customers were still responsible for remitting the costs incurred by PECO to conduct the failed RFP. *See id.* Currently, 96% of PECO's Large C&I load is served by EGSs, thereby suggesting that the risk of wholesale supplier non-participation in RFPs to serve the remaining Large C&I default service load will remain high during the DSP II period. *See id;* *see also* PECO St. No. 3, p. 24. PECO's proposal to eliminate the RFP process removes the risk of failed RFPs to serve the small number of Large C&I customers remaining on default service, thereby lowering these customers' costs.

Conversely, RESA recommends that PECO continue to procure the load for the Large C&I class through an RFP process, despite the evident risk of sunk costs from failed RFPs. The primary basis for RESA's position seems to be RESA's concern that PECO's undertaking of this role "could lead to a misallocation of costs which would result in the default service price for the large customers not accurately reflecting all the costs of providing this default service." Direct Testimony of Aundrea Williams, RESA Statement No. 1, (hereinafter "RESA St. No. 1"), p. 13. In this instance, RESA admits to having no evidence that PECO would be unable to accurately track and allocate the costs of serving Large C&I default service customers. *See* Surrebuttal Testimony of Christopher H. Kallaher, RESA Statement No. 2-SR (hereinafter "RESA St. No. 2-SR"), p. 8. Rather, RESA's position rests upon unsubstantiated claims and a doctrinal belief that EDCs should not purchase power directly. *Id.*

PECO has demonstrated that its proposal to serve Large C&I default service load through in-house procurement could reduce costs for customers. Importantly, such cost reduction is in compliance with the least cost procurement provisions of Act 129 and the accompanying default service regulations. 66 Pa. C.S. § 2807(e)(3.4); *see also Implementation of Act 129 of October 15, 2008; Default Service And Retail Markets*; Docket No. L-2009-2095604, Order (Sept. 22,

2011) (hereinafter "Final Rulemaking Order"). Specifically, Act 129 requires EDCs to procure a prudent mix default service products designed to ensure the "least cost to customers over time." 66 Pa. C.S. § 2807(3.4). Moreover, the PUC's Final Rulemaking Order clarified the Commission's position that "the 'prudent mix' of contracts be interpreted in a flexible fashion which allows the EDCs to design their own combination of products that meets the various obligations to achieve '*least cost to customers over time*,' ensure price stability, and maintain adequate and reliable service." Final Rulemaking Order, p. 60. PECO's efforts to modify its DSP II to eliminate the risk of sunk costs incurred by Large C&I default service customers under DSP 1 fully accords with the statutory and regulatory directive to provide default service at least cost to customers.

Conversely, RESA's recommendation to utilize an RFP bidding process would again risk imposing the costs of failed RFPs upon the few Large C&I customers remaining on default service. Further, RESA's allegation that PECO may misallocate default service costs has proven to be mere conjecture. Accordingly, the Commission should protect the interests of PECO's Large C&I default service customers, reject RESA's RFP bidding proposal, and approve PECO's proposal to procure default service supply for Large C&I customers directly on the PJM energy markets.

F. Extension of Supply Contracts Beyond May 31, 2015

PAIEUG has no position on this issue.

G. Procurement Schedule

1. OCA's Proposal to Reallocate Tranches Between Solicitations

PAIEUG has no position on this issue.

2. OCA's Proposed "Hold Back" for Opt-In Program

PAIEUG has no position on this issue.

H. Load Cap

PAIEUG has no position on this issue.

I. Other Procurement and Implementation Plan Requirements (e.g., Contingency Plans, Competitive Procurement Process, Supply Master Agreements, AEPS Compliance, Independent Evaluator)

PAIEUG has no position on this issue.

III. RATE DESIGN AND COST RECOVERY

A. Summary of Briefing Party's Position

As part of the DSP II filing, PECO does not propose any modification to its current collection process for rates from either shopping or non-shopping customers. In this proceeding, however, both RESA and PPL EnergyPlus submit that PECO should be required to implement non-bypassable riders for the recovery of certain transmission-related costs. Specifically, RESA requests that PECO be required to implement a non-bypassable rider to collect NMB transmission costs from both shopping and non-shopping customers. PPL EnergyPlus submits a modification of that proposal by positing that PECO implement a non-bypassable rider to recover only Generation Deactivation Costs. Regardless, as discussed more fully herein, PAIEUG opposes both proposals as unjust, unreasonable, and contrary to provisions of the Public Utility Code and the Commission's regulations. For these reasons, the proposals of RESA and PPL EnergyPlus should be summarily dismissed by the PUC.

B. Reconciliation of Default Service Costs and Revenues

PAIEUG has no position on this issue.

C. EDC Recovery of Additional PJM Charges

1. RESA's NMB Rider Must Be Rejected as an Unjust and Unreasonable Violation of the Competition Act, the Public Utility Code and the PUC's Regulations.

a) Introduction

In 1996, Pennsylvania adopted the Electricity Generation Customer Choice and Competition Act ("Competition Act") to encourage more affordable, safe, and reliable electric service, as well as promote business and industry throughout the Commonwealth. *See generally* 66 Pa. C.S. § 2802. In order to allow EGSs to sell electricity directly to customers in the Commonwealth, the Competition Act provided for an unbundling of generation, transmission, and distribution services, which had previously been offered as a bundled product by EDCs. *Id.* at § 2802(13); *see also id.* at § 2804(3). As a result of this unbundling, customers could negotiate with competitive retail suppliers (*i.e.*, EGSs) who would provide such "shopping" customers with both generation and transmission service, while the customer would continue to receive distribution service from the EDC. Conversely, "non-shopping" customers, who chose to remain with the EDC, would receive generation, transmission, and distribution service under the EDC's "provider of last resort" default service. *See id.* § 2802(16). Moreover, the PUC adopted regulations, consistent with the Competition Act, that assign responsibility for generation and transmission service to the same entity, *i.e.*, the EDC must provide generation and transmission service for non-shopping customers, and the EGS must provide generation and transmission service for shopping customers. 52 Pa. Code § 54.182; *see also id.* at § 54.187(d). Stated another way, Commission regulations designate transmission service as a load-following expense, meaning that the entity providing a customer's generation service must also take responsibility for the provision of transmission services and collection of the associated costs.

Pursuant to the Competition Act, generation became a competitive product available to all customers throughout the Commonwealth. Although the PUC retained jurisdiction over EDCs' provision of distribution service, the Federal Energy Regulatory Commission ("FERC") regulates the terms and conditions of transmission service, including wholesale transmission rates. To that end, PJM is charged with the safe and reliable operation of the PJM transmission region, which includes PECO's service territories. See Operating Agreement of PJM, Third Revised Rate Schedule FERC No. 24, Second Revised Sheet No. 32, Section 7.7(i)(A). As part of this responsibility, PJM determines each transmission owner's (*i.e.*, also the EDC in the case of PECO) transmission obligation for the forthcoming year as set during the one coincident peak ("1-CP") during the previous year. Specifically, prior to January 1 of each year, PJM alerts an EDC as to its transmission obligation for the previous year. The EDC then determines each customer's individual obligation based upon that customer's 1-CP usage. See Direct Testimony of Randolph C. Haines, PAIEUG Statement No. 1 (hereinafter "PAIEUG St. No. 1"), p. 6. The EDC is then able to provide PJM with the overall transmission obligations of all of the EGSs on the EDC's system, including the EDC's transmission obligation as it relates to the provision of default service. For customers that do not receive default supply, PJM bills each load-serving-entity ("LSE") (which serve as EGSs under Pennsylvania's rules) for the transmission costs incurred during the year based upon that LSE's transmission obligation. PJM Open Access Transmission Tariff, June 8, 2012 available at <http://www.pjm.com/markets-and-operations/~media/documents/agreements/tariff.ashx> (last visited June 18, 2012).

Because a purpose of the Competition Act was to grant customers the ability to negotiate for energy service, and the Commission's regulations state that EGSs should charge shopping customers for both generation and transmission, Large C&I shopping customers generally have

two options with respect to transmission costs: (1) a pass-through transmission arrangement; or (2) a fixed-price transmission arrangement. *See* PAIEUG St. No. 1, p. 5. Under a pass-through transmission arrangement, the EGS directly flows through to the customer its actual transmission costs incurred by the customer based upon the individual customer's 1-CP transmission obligation. *See id.* at 6. Because this is a direct "flow-through" of such costs, the EGS does not incur any risk in the event that transmission costs either increase or decrease over the course of the customer's contract. Rather, the customer takes the risk of changing transmission costs, but the customer is able to avoid any "risk premium" that might be included by the EGS in its energy price if this direct pass-through did not occur.

By contrast, under a fixed-price transmission product, the EGS may include a "risk premium" in the customer's overall price that would allow the EGS to hedge fluctuating transmission costs over the course of a contract. In return, however, the customer pays the premium for the EGS to shoulder such risk. Moreover, under this type of product offering, the customer would receive a single combined price for generation and transmission that remains steady over the course of the entire contract, thereby allowing the customer to budget for a set energy price over the term of the contract. *See id.* at 6.

To support a competitive marketplace, the Competition Act requires EDCs such as PECO to recover generation and transmission costs separately from distribution charges. As described above, PECO customers utilizing an EGS for competitive supply pay PECO for distribution service and secure a fixed-price or pass-through contractual arrangement with an EGS. Similarly, a customer taking default service from PECO pays traditional tariff rates for distribution service, but pays for generation and transmission services through separate pass-through riders. PECO's Large C&I default service customers pay for generation and

transmission-related services through the Generation Supply Adjustment for Procurement Class 4 ("GSA-4") and Transmission Service Charge ("TSC") riders, respectively. Supplement No. 41 to Tariff – Electric Pa. P.U.C. No. 4, pp. 33, 40A. PECO does not offer a fixed-price rate to Large C&I customers for generation or transmission-related service.

While PECO is not proposing any modifications to its current methodology, which remains in line with the intention of the Competition Act, RESA, as part of this proceeding, is proposing to significantly alter the market developed since the passing of the Competition Act. Contrary to the load-following structure developed through the Competition Act and the Commission's regulations, RESA inappropriately requests that PECO be required to implement a non-bypassable NMB Rider for all customers, both shopping and non-shopping, through which PECO would collect the following charges: Network Integration Transmission Service ("NITS") costs, Regional Transmission Expansion Plan ("RTEP") costs, Expansion costs, Generation Deactivation costs, and Economic Load Response ("ELR") costs.³ RESA St. No. 1, p. 17.⁴ Unfortunately, while RESA sets forth the various costs that it believes should be collected by PECO, in order to "create a level playing field for all suppliers," RESA fails to provide any details regarding the implementation of how these costs would be collected from customers. RESA St. No. 1 p. 18. Moreover, RESA fails to provide any basis by which such a proposal

³ For purposes of this Main Brief, the term "Transmission Costs" shall include any NITS, RTEP, Expansion, Generation Deactivation, ELR, or other costs to be recovered through RESA's proposed NMB Rider. NMB costs are generally considered to be regulated cost-of-service rates that cannot be reasonably hedged or predicted by default service providers or EGSs. Rebuttal Testimony of Brian Kalcic, OSBA Statement No. 2 (hereinafter "OSBA St. No. 2,") p. 10; *see also* RESA St. No. 1, pp. 17-18.

⁴ PPL EnergyPlus set forth a related but much more narrow proposal, recommending that PECO assume responsibility only for Generation Deactivation costs through implementation of a non-bypassable rider for recovery of such costs. PPL EnergyPlus St. No. 1. This proposal was also supported by Dominion. Rebuttal Testimony of William L. Barkas, Dominion Retail/IGS Statement No. 1-R (hereinafter "Dominion St. No. 1-R"), p. 5. Although PAIEUG opposes PPL EnergyPlus' proposal on similar grounds to RESA's NMB Rider, the proposal of PPL EnergyPlus is addressed separately in Section III.C.2, *infra*.

would square within the requirement of the Public Utility Code. As a result, RESA fails to carry the necessary burden of proving that RESA's shortsighted efforts to implement a proposal that would benefit EGSs, while failing to ensure that customers would not be detrimentally impacted, would be in the public interest. As such, RESA's proposal must be dismissed by the PUC as unjust, unreasonable, and inappropriate.

b) As the Party Proposing Changes to PECO's Terms of Service, RESA Bears the Burden of Proof With Respect to the Proposed NMB Rider.

As the party presenting the proposed modification to PECO's DSP II, RESA bears the burden of proof in this proceeding. As set forth herein, however, the record includes no evidence of the cost collection system to be implemented under RESA's proposed NMB Rider, thereby depriving parties of due process. Additionally, implementation of RESA's proposed NMB would violate both the Competition Act and the PUC's regulations. Finally, in an attempt to support its incomplete and inappropriate proposal, RESA unpersuasively relies upon a misplaced equity argument, an ongoing and unresolved Commission proceeding, and claims from other jurisdictions to support this otherwise meritless proposal. Because no evidence has been provided that would support RESA's proposed modifications, RESA's proposal should be denied.

Section 332(a) of the Public Utility Code provides the following with respect to burden of proof: "[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof." 66 Pa. C.S. § 332(a). Under Section 315, "[i]n any proceeding ... involving any proposed or existing rate of any public utility ... the burden of proof to show that the rate involved is just and reasonable shall be upon the utility." *Id.* § 315(a).

According to the PUC, the "party seeking a rule or order from the Commission has the burden of proof" in a proceeding. *Pa. Pub. Util. Comm'n v. Jackson Sewer Corp.*; Docket No.

R-00005997, at pp. 5-7 (Nov. 13, 2001). In carrying this burden, a complainant must establish a case before an administrative tribunal using a preponderance of evidence as the requisite degree of proof. *Samuel J. Lansberry, Inc.*, 578 A.2d at 602. The standard of preponderance of the evidence is defined as the greater weight of the evidence, in view of all of the facts and circumstances of the case. *See Se-Lin Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 n.1 (Pa. 1950).

In this instance, RESA is seeking modification not only to PECO's DSP II filing, but also the means by which PECO currently collects costs from both shopping and non-shopping customers, as was approved by the PUC in PECO's DSP I filing. *See generally* DSP I Order. As a result, RESA has the obligation of showing, by a preponderance of evidence, that these proposed modifications are just, reasonable, and in the public interest. As discussed more fully herein, however, RESA fails to meet this challenge, and for these reasons, RESA's proposal must be denied.

c) RESA's Proposed NMB Rider Fails To Identify A Cost Collection Mechanism and Should be Summarily Rejected On Such Grounds Alone.

As established above, RESA bears the burden of proof as to its proposed NMB Rider and must establish its case by a preponderance of the evidence. RESA's proposal, however, fails to identify a cost collection method to be applied under the NMB Rider. Specifically, RESA proposes a change in methodology in terms of cost collection shifting from the EGS to the EDC; however, RESA fails to address the second part of this proposal, *i.e.*, how the EDC would collect these costs from individual customers. RESA's undeveloped and incomplete proposal warrants summary rejection from the PUC.

Although PAIEUG specifically identified cost collection as an issue of concern, RESA continues to withhold a comprehensive or even a cursory proposal. PAIEUG identified cost

collection as a critical issue for Large C&I customers with pass-through arrangements, noting that "RESA fails to discuss how Transmission Costs would be collected from Large C&I customers under the NMB Rider." PAIEUG St. No. 1, p. 6. Regardless, RESA declined to address cost collection issues, making no mention of even a conceptual cost collection mechanism when addressing other issues raised in response to the proposed NMB Rider. *See* RESA St. No. 1-SR, pp. 12-17. As further discussed below, this evidentiary gap poses serious consequences for PECO's Large C&I customers.

Currently, PECO's Large C&I customers enjoy opportunities to manage exposure to Transmission Costs because the costs are set in proportion to each customer's individual impact on the transmission system in PECO's service territory. Transmission Costs are derived from PJM's determination of a network transmission service peak load obligation, based on the 1-CP methodology, for each EDC. *See* RESA St. No. 1, p. 18. EDCs, such as PECO, then determine each Large C&I customer's individual transmission obligation based on the customer's usage during the 1-CP. *See* PAIEUG St. No. 1, p. 6. EGSs operating in its service territory then bill their customers for Transmission Costs in proportion to the customer's individual transmission obligation. *See* RESA St. No. 1, p. 18. The cost causative relationship allows Large C&I shopping customers to manage operations and minimize stress on the grid during peak hours. PAIEUG St. No. 1, p. 6.

Large C&I customers suffer detrimental financial effects when Transmission Costs are not collected in compliance with cost causation principles. Because EGSs currently collect Transmission Costs in proportion to a customer's 1-CP individual transmission obligation, Large C&I customers under pass-through contracts can minimize their billed costs by anticipating peak hours and reducing grid consumption accordingly. *See id.* Because RESA's proposal fails to

specify a cost collection method, current shopping customers cannot determine whether the proposed NMB Rider would continue utilizing the preferred CP-1 cost collection method or adopt an alternative methodology. *See id.* For example, if the NMB Rider results in a cost collection system based on a customer's individual monthly demand or monthly kWh consumption, customers could no longer effectively manage costs through time-shifting, demand response, or other market responsive behaviors because the collection of costs from individual customers is divorced from the 1-CP method through which such costs are allocated to the overall PECO zone.

Moreover, approval of RESA's proposal to implement an NMB Rider without a record on cost collection methodology deprives parties of their due process rights to examine RESA's proposal and raise serious feasibility questions. As previously discussed, RESA bears the burden of proof as to its proposed NMB Rider. *See supra* Section III.C.1.b. The above discussion demonstrates the detrimental financial impact that RESA's proposal could have upon Large C&I customers. The consequences of RESA's incomplete proposal are not theoretical. Even assuming that RESA agrees that the NMB Rider should be implemented in a manner that requires PECO to collect costs under the 1-CP method, the opportunity to examine important feasibility issues has passed. For example, the record does not contain any evidence regarding whether PECO's billing system even allows for such a cost collection methodology. Any cost collection method set forth by RESA through Briefs or Exceptions will be presented to the Commission without any party, including PECO, having an opportunity to investigate the proposal through discovery, responsive testimony, or cross-examination. Without an evidentiary record on cost collection issues, the parties and the Commission cannot determine whether PECO possess the capacity to implement a 1-CP cost collection methodology. It cannot be

assumed that PECO possesses the capacity and resources to apply the 1-CP cost collection method in the manner currently applied by EGSs. Moreover, the Commission should not encourage disregard for due process by entertaining extra-record cost collection proposals.

As noted previously, RESA carries the burden of proof in this proceeding. While RESA has set forth one portion of a proposal (*i.e.*, the portion that would benefit EGSs), RESA's proposal fails to address the cost collection methodology to be utilized, even though an incorrect methodology could significantly harm Large C&I customers. Accordingly, RESA's NMB Rider should be rejected as incomplete and unsupported by record evidence.

d) RESA's Proposed NMB Rider Represents a Step Backwards in the Evolution of the Retail Market by Re-Bundling Transmission with Distribution Service.

Much like the omission of a cost collection proposal threatens cost causation principles underlying the current market structure, the affirmative effects of RESA's NMB Rider would dilute the competitive procurement options currently available to PECO's Large C&I customers through unbundled retail electricity markets. The Competition Act provides for "the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution." 66 Pa. C.S. § 2802(13); *see also id.* § 2804(3). The purpose of this unbundling was to stimulate increased retail competition among the component parts of electric service, with the goal of spurring innovation and efficiencies. *See generally id.* § 2802.

In the instant proceeding, RESA undertakes the remarkable step of proposing to re-bundle transmission and distribution. The proposed re-bundling of distribution and transmission is contrary to the plain language of the Competition Act, harmful to Large C&I customers, and must be rejected.

The framers of the Competition Act understood that benefits could accrue to customers if they have the right to negotiate with their EGSs on the terms and conditions under which they

receive transmission service. Since the inception of the retail electric market in Pennsylvania, Large C&I customers have been able to make business decisions to tailor the terms and conditions under which they purchase transmission service by negotiating with an EGS. *See* RESA St. No. 1, p. 5. With respect to transmission, a customer can structure an arrangement under which its EGS passes-through the costs of transmission service based on the customer's own transmission obligation. PAIEUG St. No. 1, p. 6. The benefit of this approach is that a customer would be charged the then-current transmission rate based on the customer's own contribution to the cost of the transmission system (*i.e.*, the customer's load on the system peak day). Alternately, an EGS may offer a fixed price for electric service, including both generation and transmission service, that does not vary. A Large C&I customer may prefer this approach for stable budgeting purposes. PAIEUG St. No. 1, p. 6; RESA St. No. 1, p. 8. Unfortunately, under RESA's proposal, customers would no longer have the option to elect a pricing methodology that meets their business objectives, particularly those customers seeking to secure stable pricing.

Where the Competition Act unbundled generation, transmission, and distribution services to stimulate and expand customer choice, RESA's proposal to re-bundle transmission and generation service diminishes customer choice. Under the current system, EGSs may add premiums to supply contracts in order to account for the risk of variable costs, including Transmission Costs. PAIEUG St. No. 1, p. 6, PECO St. No. 2, pp. 25-26. RESA portrays the inclusion of such risk premiums as a competitive impediment, stating that "consumers are the ones who ultimately pay the price because they do not have transparency in transmission costs, and retail supplier prices may be unnecessarily increased as a result of risk premiums for these costs." RESA St. No. 1-SR, p. 15. What RESA fails to acknowledge is that some Large C&I

customers are willing to pay premiums to stabilize their NMB costs and would lose all opportunity to do so under the proposed NMB Rider. PAIEUG St. No. 1, p. 6. The opportunity to incorporate Transmission Costs into a fixed-price arrangement exemplifies the customer choice principles championed by the Competition Act. 66 Pa. C.S. § 2807(e)(3.4). As envisioned by the framers of the Competition Act, EGSs have developed fixed-price products offering stable pricing in exchange for the customer's agreement to pay a risk premium. See PAIEUG St. No. 1, p. 6. Conversely, as the default supplier under the terms of the Competition Act, PECO does not offer an array of customizable supply options to current default service customers. See 66 Pa. C.S. § 2807(e)(3.1). If cost collection responsibility for all customers' Transmission Costs is transferred to PECO, customers would lose the option of structuring fixed-price contracts to stabilize NMB charges and would be forced to pay variable NMB charges as actually assessed by PJM. See RESA St. No. 2-SR, p. 15.

In summary, the plain language of the Competition Act calls for unbundling of generation, transmission, and distribution services. RESA's NMB Rider proposal would, if approved, effectively re-bundle transmission and distribution, circumscribing customers' options in the retail market. For this reason, RESA's NMB Rider proposal violates the Competition Act and should be denied.

- e) ***Contrary to the Requirements of the Competition Act, RESA's NMB Transmission Proposal Fails to Address Important Transitional Issues Fairly, Risking Customers Being Over-Charged for Transmission.***

RESA's NMB Rider also raises fundamental transitional issues for numerous customers that have competitive supply contracts, which include a transmission component, extending beyond the June 1, 2013, effective date of the proposed DSP II. If RESA's proposal were adopted, all such customers would be at risk of being over-charged for transmission-related

services and would thus need to negotiate with their EGSs so that they would be charged Transmission Costs only once. No party to this proceeding, including RESA, who bears the burden of proof, has presented a compelling plan to ensure that currently shopping customers are not adversely affected by RESA's proposal.

The Competition Act requires that the transitional issues that arise as the competitive market evolves must be resolved "in a manner that is fair" to all customers. 66 Pa. C.S. § 2802(8). With the risk of shopping customers being over-charged for transmission under RESA's proposal, the Commission must ensure that shopping customers are fairly treated, including not being over-charged for transmission.

A shopping customer's exposure to transitional over-charges under RESA's proposed NMB Rider may depend on the customer's choice of fixed-price or pass-through contracts, but either contract structure carries transitional risks. As discussed above, EGSs are currently responsible for collecting NMB charges from their customers. A customer may choose to pay a fixed rate for all generation and transmission services provided by the EGS. PAIEUG St. No. 1, p. 6. Alternately, the customer can select a pass-through supply arrangement, where the EGS simply charges the customer the actual NMB charges as determined under the PJM 1-CP methodology. RESA suggests that only customers currently under fixed-price contractual arrangements bear any risk of transitional over-charges under its NMB Rider proposal. Surrebuttal Testimony of Aundrea Williams, RESA Statement No. 1-SR (hereinafter "RESA St. 1-SR"), pp. 16-17. In truth, both groups of customers risk over-charge, albeit in different ways.

Customers under either fixed-price arrangements or pass-through arrangements would need to take action to address the resulting "change in law" (to the extent customers' shopping contracts had such terms and condition) if RESA's proposal was adopted. Customers with fixed-

price supply arrangements would have to attempt to renegotiate their shopping contracts with their EGSs to avoid a double-collection of the Transmission Costs embedded in their fixed-price contract, spending time and resources to remove the costs from their contracts. *See* PAIEUG St. No. 1, p. 6. Customers under pass-through arrangements should not face the same explicit risk of double-collection because well-administered Transmission Cost pass-through mechanisms should be set to \$0 upon a transfer of cost responsibility to PECO by virtue of the NMB Rider. As discussed below, however, the theoretical transitional operation of pass-through arrangements may reduce the risk of double-collection, but such risk is certainly not eliminated.

Following implementation of the NMB Rider, customers under both fixed-price and pass-through arrangements would need to monitor their EDC and EGS bills for any over-billing caused by the transition to a new billing arrangement, whether due to computer glitches or otherwise. *See id.* Here, customers under pass-through contractual arrangements are also at risk. Although customers under pass-through arrangements may not be compelled to renegotiate contract rates prior to implementation of the NMB Rider, such customers will be forced to actively monitor both PECO and EGS bills to ensure that EGSs are no longer passing through Transmission Costs now recovered by PECO. *See id.* Accordingly, RESA's assertion that customers under pass-through arrangements bear no risk of transitional over-charges should be rejected. RESA St. No. 1-SR, p. 16. With such documented risks, fundamental principles of fairness dictate that the Commission reject a proposal that would have such negative effects on shopping customers, including being forced to renegotiate contracts and assume the risk of double-collection.

In addition to a heightened risk of double-collection, shopping customers currently under fixed-price arrangements also risk losing the "benefit of the bargain" to the extent that a fixed-

price contractual arrangement includes payment of a premium for absorbing the risks of variable NMB costs. Clearly, any customer under a fixed-price arrangement extending beyond May 31, 2013, must attempt to renegotiate its supply contract prior to implementation of RESA's proposed NMB Rider. Otherwise, upon implementation of the NMB Rider, the customer would pay for Transmission Costs through its EGS contract and again through distribution rates. PECO St. No. 2-R, p. 25. Of further concern, even a customer that is able to reach agreement with an EGS as to the amount of its fixed-price obligation applicable to NMB costs and the removal of such amount from the contract payment, *i.e.* avoiding a double-collection, may still suffer transitional over-charges due to the risk premiums embedded in its supply contract. Direct Testimony of L. Gene Alessandrini, PPL EnergyPlus LLC Statement No. 1 (hereinafter "PPL EnergyPlus St. No. 1"), p. 6. Currently, this risk premium is willingly paid by the customer in exchange for the EGS providing stable prices for generation and transmission service, including the cost responsibility for NMB charges. PAIEUG St. No. 1, p. 6; RESA St. No. 1, p. 8. Following implementation of the NMB Rider, the EGS would no longer bear the cost responsibility for NMB charges, but would still collect the risk premium. While the customer loses the bargained benefit of stable rates for NMB costs, the EGS maintains its benefit by retaining the risk premium.

Rather than address transitional issues, RESA seeks to marginalize the adverse customer impacts resulting from the NMB Rider. RESA claims that concerns of double charges are overstated because customers in the PECO zone are not currently paying Generation Deactivation or ELR charges.⁵ RESA St. No. 1-SR, p. 17. RESA further advises the

⁵ As of the filing of this Main Brief, customers in the PECO zone had not paid Generation Deactivation costs since the retirement of the Eddystone generation plant on May 31, 2012. *See* RESA St. No. 1-SR, p. 17. Similarly, PJM has not yet commenced collection of ELR charges pursuant to FERC Order 745. *Id.*

Commission against denying its proposed NMB Rider "simply to avoid one-time transitional issues," even suggesting that the Commission would not have achieved deregulation of electricity markets at all if transitional issues were the paramount concern. RESA St. 1-SR, p. 16.

Each of the above arguments is flawed and reflective of a failure to appreciate the Commission's responsibility to protect PECO's ratepayers from unjust and unreasonable charges. RESA's claim, that the threat of double-collection from customers is reduced because Generation Deactivation and ELR charges may be minimal at present, ignores the impact of transitioning more significant charges such as the NITS charges. Moreover, RESA altogether ignores the fact that customers would still risk *over-charges* of the unrecovered risk premiums in addition to the risk of *double-collection* of actual Transmission Costs. Finally, RESA's comments on the import of transitional issues are baseless. The Commission has a long history of thoroughly and proactively protecting ratepayers through each phase of deregulation, from the initial Restructuring Orders through the recent Retail Market Investigation Final Order at Docket No. I-2011-2237952.⁶

Despite the necessity for widespread renegotiation of shopping contracts prompted by any approval of the NMB Rider, RESA provides no transition plan to ensure that customers are safeguarded against being over-charged for transmission. PAIEUG St. No. 1, p. 6. At the very least, if the Commission adopts RESA's NMB Rider, it must establish customer protections, consistent with the directive within the Competition Act requiring that transitional issues be addressed in a manner fair to customers. Specifically, elements of a transition plan must grandfather those customers with contracts that extend beyond May 31, 2013. Under this

⁶ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*; Docket No. I-2011-2237952, Order (March 2, 2012) (hereinafter "RMI Order").

approach, shopping customers could postpone the renegotiation of their shopping contracts until the end of their contract terms. A grandfathering provision would at least reduce the likelihood of Transmission Cost over-charges and the need for customers to expend time and resources to renegotiate their contracts.

In summary, RESA has failed to propose a transition plan in compliance with the requirements of the Competition Act. Without a transition plan, any implementation of RESA's proposed NMB Rider would risk overcharging Large C&I customers for Transmission Costs. At minimum, if the Commission determines to approve RESA's NMB Rider, the proposal must be modified to include a grandfathering provision or other equally effective transitional protections.

f) RESA Fails to Provide Any Evidence that the Proposed NMB Rider Is Just, Reasonable, or In the Public Interest.

As noted previously, RESA carries the burden of proving, by a preponderance of evidence, that its proposal to modify the means by which PECO currently collects costs from both its shopping and non-shopping customers should be modified. The record shows that RESA has failed to carry its burden. Throughout the course of this proceeding, RESA has presented three principal arguments in favor of its proposal, with each failing to establish that the proposed NMB Rider is just, reasonable, or in the public interest.

First, RESA claims that its proposed NMB Rider is necessary to restore a level playing field between EGSs and wholesale default service suppliers. RESA claims that default service wholesale suppliers are not responsible for NITS, RTEP, or Expansion charges and therefore possess a competitive advantage over EGSs. RESA St. 1-SR, p. 14. According to RESA, the proposed NMB Rider is necessary to correct the perceived dilemma and provide a level playing field for EGSs. RESA's argument, however, amounts to a proverbial "apples to oranges" comparison.

While the Competition Act provided EGSs with direct access to retail end-use customers, wholesale default service suppliers contract solely with PECO. This market structure dates back to the passage of the Competition Act, when the Commission initially developed regulations to implement the provisions of the Competition Act. 52 Pa. Code § 187(d). To illustrate the relationship between competitive rates and default service rates, the Commission found that the price-to-compare ("PTC"), the line item on a default service customer's bill that the customer may compare to the price offered by an EGS, should be "equal to the sum of all unbundled generation and transmission-related charges to a default service customer for that month of service." 52 Pa. Code § 54.182; *see also Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2)*, Docket No. L-00040169, Final Rulemaking Order, (May 10, 2007). The intention of this regulation is to specify that the default service provider, as well as the EGS, should charge their customers for both generation and transmission. As the designated default service supplier, it is PECO, and not the wholesale default service suppliers, that must charge default service customers for generation and transmission services.⁷ RESA St. No. 1, p. 18. Therefore, the playing field is level regardless of how PECO structures pricing arrangements with its wholesale default service suppliers. RESA's attempt to analogize EGS cost responsibility to that of wholesale default service suppliers is unfounded and must be disregarded.

⁷ RESA itself acknowledges that the PTC charged by PECO for default service generation and transmission includes the same categories of costs that EGSs are incurring to offer competitive generation service. RESA St. No. 1, p. 18.

Second, RESA attempts to support its NMB Rider by referencing a similar proposal supported by the FirstEnergy utilities.⁸ RESA St. No. 1 pp., 18, 20. On November 17, 2011, FirstEnergy filed a joint default service plan proposing to collect NMB transmission costs through a non-bypassable rider.⁹ As with the instant proceeding, the Industrial Customer Groups intervening in the FirstEnergy proceeding vigorously opposed the NMB Rider proposal. *See Main Brief of the Met-Ed Industrial Users Group, et. al.*, Docket Nos. P-2011-2273650, et. al. (May 2, 2012). As of the date of this Main Brief, the FirstEnergy proceeding is pending before an Administrative Law Judge and will subsequently be decided by the Commission. An active and unresolved proceeding can hardly serve as persuasive or even suggestive precedent for RESA's monumental proposal to modify current law and policy, particularly amidst opposition from the affected EDC itself. PECO St. No. 2-R, p. 25.

Third, RESA attempts to justify its utilization of a non-bypassable rider for the remittance of NMB Transmission Costs because a similar mechanism was adopted in Ohio. RESA St. No. 1, pp. 18, 20, 23. Ohio is not Pennsylvania, however, and the evolution of the Ohio electric market was structured and developed separately from that of Pennsylvania. In Ohio, for example, there are no regulations that provide for generation and transmission to be charged by the same entity. *But cf.* 52 Pa. Code § 52.182 and § 52.187(d). This conflicting regulatory structure, as well as market circumstances that may be entirely different from Pennsylvania, render the Ohio analogy irrelevant to the instant proceeding.

⁸ The FirstEnergy utilities consist of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively "FirstEnergy").

⁹ In the *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs*, at Docket Nos. (P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 ("FirstEnergy Joint Petition"), the FirstEnergy Companies proposed to recover NITS, RTEP, Transmission Enhancement Charge ("TEC"), and Generation Deactivation charges through a non-bypassable rider.

The record in this proceeding offers little in the way of credible support for RESA's proposal. At most, RESA has furnished evidence showing that approval of the NMB Rider would relieve EGSs of significant cost responsibility. *See* RESA St. No. 1, p. 18. RESA has failed to demonstrate a modicum of customer benefit flowing from its proposal. To the contrary, Large C&I customers may incur significant transitional over-charges upon implementation of the NMB Rider. The one-sided benefits associated with RESA's proposal hardly justify a paradigm shift from the unbundled regulatory structure in place since the passing of the Competition Act and the Commission's adoption of default service regulation.

g) Conclusion

RESA's proposal to implement an NMB Rider to collect Transmission Costs from all customers, regardless of their shopping status, must be denied by the Commission. As the party bearing the burden of proof, RESA has failed to produce evidence supporting its proposal. Most egregiously, RESA has declined to divulge a cost collection mechanism to the parties of record. This omission renders the proposal woefully incomplete as PAIEUG and the other parties were not afforded an opportunity to fully examine critical cost collection issues. Although RESA's proposal should be rejected as incomplete and unsupported on the absence of cost collection details alone, PAIEUG alternatively submits that any approved method for collecting Transmission Costs must be based on cost-causation principles.

In addition, RESA's proposal is unjust, unreasonable and in violation of the Competition Act and the Commission's default service regulations. The proposed NMB Rider would re-bundle transmission and distribution services, while eliminating competitive transmission products. Further, the NMB Rider imposes risks for Large C&I customers with competitive supply agreements, particularly fixed-price arrangements, which extend beyond the effective date of the DSP. No protections exist to ensure that customers would not be over-charged for

Transmission Costs by both their EDC and EGS. RESA provides no transition plan to minimize the time and resources customers would expend renegotiating their contracts or protect customers from over-charges for these costs.

Finally, RESA's proffered evidence to support their proposal does not satisfy its burden of proof in this proceeding. Accordingly, RESA's proposal to implement a non-bypassable NMB Rider for recovery of Transmission Costs should be rejected.

2. PPL EnergyPlus' Unsubstantiated Recommendation for PECO to Collect Generation Deactivation Costs Via a Non-Bypassable Rider Must Be Rejected as an Unjust and Unreasonable Violation of the Competition Act, the Public Utility Code, and the PUC's Regulations.

PPL EnergyPlus provided a more limited recommendation than RESA, proposing that PECO implement a non-bypassable charge solely for recovering Generation Deactivation costs. Dominion did not submit a separate proposal, but concurred with the recommendation of PPL EnergyPlus. Despite the attempts of PPL EnergyPlus to distinguish the Generation Deactivation Rider from the more comprehensive NMB Rider proposed by RESA, the record demonstrates that both mechanisms are unsupported by record evidence and would violate the Competition Act and the Commission's default service regulations. Accordingly, the entire argument set forth in Section III.C.1, *supra*, applies with equal force to the Generation Deactivation Rider proposed by PPL EnergyPlus. In addition to the broad applicability of the preceding arguments offered in the context of RESA's NMB Rider, specific issues and evidence raised by PPL EnergyPlus in support of its proposed Generation Deactivation Rider are further addressed below.

Although PPL EnergyPlus attempts to distinguish its Generation Deactivation Rider from RESA's comprehensive NMB Rider, the charges are structurally identical and should be rejected for the same reasons. PPL EnergyPlus argues that Generation Deactivation costs should be recovered through an NMB Rider because such costs are potentially large and impossible to

predict or hedge. PPL EnergyPlus St. No. 1, p. 3. PPL EnergyPlus also argues that the transitional issues arising from RESA's broader NMB Rider are greatly mitigated by limiting recovery to Generation Deactivation costs. Surrebuttal Testimony of L. Gene Alessandrini, PPL EnergyPlus LLC Statement No. 1_SR (hereinafter ("PPL EnergyPlus St. No. 1_SR")), p. 7. These arguments fail to overcome the familiar legal, regulatory, and policy flaws first observed through RESA's proposed NMB Rider and equally relevant to the proposed Generation Deactivation Rider.

PPL EnergyPlus' proposal violates the Competition Act and Commission regulations in a variety of ways, including: (1) not carrying the necessary burden of proof; (2) failing to identify a cost collection methodology; (3) effectively re-bundling generation and transmission service; (4) omitting a transition plan; and (5) relying on fundamentally flawed evidence to support its proposal. Accordingly, for the same reasons adduced in the preceding Section III.C.1, *supra*, the Commission should reject the Generation Deactivation Rider proposed by PPL EnergyPlus and supported by Dominion.¹⁰ PPL EnergyPlus St. No. 1; Dominion St. No. 1-R, p. 5.

As with RESA, PPL EnergyPlus bears the burden of proving that its proposed Generation Deactivation Rider is just and reasonable and otherwise in compliance with the Competition Act and Commission regulations. *See* Section III.C.1.b., *supra*. As addressed below, PPL EnergyPlus has failed to meet its burden and the proposed Generation Deactivation Rider should be rejected.

¹⁰ Of note, no other party submitted any evidence in support of a non-bypassable Rider other than RESA's proposal to recover NITS, RTEP, Expansion, Generation Deactivation, and ELR costs and PPL EnergyPlus' proposal to recover Generation Deactivation costs. Although RESA indicates that OSBA supports a NMB Rider for RTEP, Generation Deactivation, and ELR charges, PAIEUG understands OSBA's testimony to oppose RESA's overall proposal to implement an NMB Rider, but, if approved, OSBA requests that any such Rider be limited to the aforementioned charges. *See* OSBA St. No. 2, p. 10. To the extent other parties propose additional costs to be recovered through a non-bypassable rider or combinations of costs other than the proposals of RESA and PPL EnergyPlus, such proposals are not supported by record evidence and must be summarily rejected.

Continuing the unfortunate trend observed in RESA's proposal, PPL EnergyPlus' proposed Generation Deactivation Rider is entirely silent on the issue of cost collection and should be rejected for depriving Large C&I customers of due process and endangering the appropriate 1-CP cost collection method currently applied by EGSs. Ironically, PPL EnergyPlus claims that its Generation Deactivation Rider should be adopted because the "current process creates confusion amongst customers when their supply price changes and frustration with the EGS." PPL EnergyPlus St. No. 1_SR, p. 3. Contrary to PPL EnergyPlus' statement, Large C&I customers are sophisticated entities that use PJM's 1-CP method to minimize exposure to Transmission Costs. *See supra* Section III.C.1.d. PPL EnergyPlus has failed to present a cost collection proposal that reflects cost causation principles and preserves the ability of Large C&I customers to manage costs. Therefore, the Generation Deactivation Rider should be rejected.

Further indicative of a shift from cost causation principles, the Generation Deactivation Rider would also re-bundle a transmission-related charge with distribution service in violation of the Competition Act and the Commission's default service regulations. *See* Section III.C.1.d., *supra*. PPL EnergyPlus argues that transferring cost collection responsibilities to PECO will benefit customers by reducing risk premiums charged to customers. PPL EnergyPlus St. No. 1_SR, p. 3. PPL EnergyPlus misrepresents the competitive marketplace, claiming that the current method of collecting Generation Deactivation charges "requires suppliers to add a risk factor or premium into their competitive bids, which results in higher and less transparent prices for consumers." PPL EnergyPlus St. No. 1, p. 6. This statement is incorrect, as neither PPL EnergyPlus nor any other EGS is compelled to add risk premiums to supply contracts. *Id.* at 7. All suppliers currently enjoy the option of utilizing pass-through arrangements, a point raised by PAIEUG and un rebutted by PPL EnergyPlus. PAIEUG St. No. 1, p. 6; *but cf.* PPL EnergyPlus

St. No. 1_SR, p. 7. Conversely, if PPL EnergyPlus' proposal is approved, Large C&I customers will lose the freedom to pay a risk premium to stabilize Generation Deactivation costs. *See* Section III.C.1.d., *supra*.

PPL EnergyPlus' treatment of transitional issues further marginalizes Large C&I concerns. PPL EnergyPlus alleges that the current absence of Generation Deactivation charges on the PECO system and the purported willingness of EGSs to work with customers should sufficiently address transitional issues. PPL EnergyPlus St. No. 1-SR, p. 7. As discussed below, both claims are meritless and indicative of PPL EnergyPlus' disregard for customer impacts.

First, as discussed in reference to RESA's proposed NMB Rider, even transferring a Generation Deactivation cost responsibility of \$0 from an EGS to an EDC may still negatively affect a customer under a fixed-price arrangement due to the risk premium retained by the EGS. *See* Section III.C.1.e., *supra*. Therefore, the fact that Generation Deactivation charges are not currently being assessed does not address the applicable transitional issues. Moreover, as recognized by PPL EnergyPlus, "these charges can come and go and increase or decrease based on proposed unit retirements and reliability needs." Because Generation Deactivation charges are unpredictable, the Commission should set policy in recognition of the fact that new charges could arise before implementation of PECO's proposed DSP and certainly before expiration of customers' current supply contracts. PPL EnergyPlus St. No. 1_SR, p. 7; *see also* PAIEUG St. No. 1, p. 5.

Second, PPL EnergyPlus places undue weight on the proactive intentions of EGSs in working with customers to address transitional issues. PPL EnergyPlus St. No. 1_SR, p. 5. For example, PPL EnergyPlus states that "if a customer's existing contract with an EGS provides for a pass-through of transmission charges, beginning on June 1, 2013 the customer's EGS would

simply cease charging the customer for PJM Generation Deactivation charges." *Id.* at 6. PPL EnergyPlus' professions of cooperative intent are admirable, but merely speculative. The Competition Act's requirement for a "fair" resolution of transition issues requires that a party seeking to significantly alter competitive market structures develop a clear and enforceable transition plan.¹¹ 66 Pa. C.S. § 2802(8).

As a final corollary to RESA's faulty NMB proposal, PPL EnergyPlus offers the same unpersuasive references to the FirstEnergy DSP proceeding and the adoption of NMB Riders in Ohio. PPL EnergyPlus St. No. 1, p. 7. As mentioned above, the FirstEnergy proceeding is an active and unresolved proceeding, which can hardly serve as persuasive or even suggestive evidence in another proceeding. *See* Section III.C.1.f., *supra*. Similarly, Ohio electric markets developed under vastly different regulatory structures and are simply irrelevant to this proceeding. *See id.*

In summary, PPL EnergyPlus' proposal should be rejected for the same fundamental reasons as RESA's NMB Rider. *See supra* Section III.C.1. As the party bearing the burden of proof, PPL EnergyPlus has failed to show that its proposal complies with the Competition Act and the Commission's default service regulations. The pervasive unwillingness of PPL EnergyPlus to meaningfully address cost collection, over-charge, and transitional issues affecting Large C&I customers suggests that the proposal is intended to benefit EGSs regardless of adverse customer impacts. The proposed Generation Deactivation Rider would eliminate the ability of Large C&I customers to negotiate fixed-price solutions for Generation Deactivation

¹¹ PAIEUG notes that OSBA recommended that any implementation of PPL EnergyPlus' proposed Generation Deactivation Rider should delay the effective date of the rider by one year to allow customers to address transitional issues. OSBA St. No. 2, p. 5. PPL EnergyPlus provided no response to OSBA's proposal. *See generally* PPL EnergyPlus St. No. 1_SR.

charges without conveying any corresponding benefits. Such a proposal cannot be in the public interest and should be denied.

D. Costs Included in the Generation Supply Adjustment Charge

PAIEUG has no position on this issue.

E. Ratemaking Treatment of Auction Revenue Rights

PAIEUG has no position on this issue.

F. Elimination of Alternative Energy Portfolio Standard Surcharge

PAIEUG has no position on this issue.

G. RESA's Proposal for a \$0.005/kWh Adder to the Price-to-Compare

RESA proposes to charge default service customers a \$0.005/kWh adder ("Adder") to recover variable costs incurred by PECO in the provision of default service. Under the terms of RESA's proposal, PECO would be permitted to retain 10% of the funds collected, with any remaining excess refunded to all ratepayers. PAIEUG opposes RESA's request and concurs with PECO and OCA that RESA's proposal would recover excess costs from default service customers, artificially inflate the PTC, and inappropriately refund costs recovered from default service customers to all customers. PECO St. No. 5-R, p. 12, OCA St. No. 1-R, p. 8.

PECO is designated by the Commission as a default service provider because an alternative default service supplier has not been approved by the Commission in the Company's service territories. As such, PECO is permitted to recover the costs of procurement pursuant to the terms of its procurement plans; however, such costs may only be collected if they are "reasonable." *Id.* § 2807(e)(3.9); *see also id.* § 1307(a). Accordingly, the Adder, which would be collected by PECO through an automatic adjustment mechanism, can only be approved by the Commission if it is just, reasonable, and otherwise consistent with the Public Utility Code.

RESA's proposal for PECO to collect \$0.005 per kWh from default service customers, with no additional benefits to customers related to adequacy or reliability of PECO's service, confirms that the Adder falls outside of the parameters of the Public Utility Code. *See* 66 Pa. Code § 2807(e). As such, inclusion of the Adder to PECO's default service procurement costs is diametrically opposed to the statutory requirement that an EDC must utilize a "least cost over time" procurement methodology.

The Commission has found that a fully competitive market must include a default service option "designed to avoid distortions in the market." *See Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. § 2807(e)(2)*, Docket No. L-00040169, Proposed Rulemaking Order (Dec. 16, 2004), p. 3. An arbitrary increase to the default service price to encourage shopping certainly creates a distorted market, in which increased customer shopping and EGS presence would be based on artificially-inflated prices, rather than genuine market participation. OCA St. No. 1-R, p. 8. In addition, the presence of the Adder could trigger EGSs, who compare their prices to default service prices, to offer higher prices to shopping customers, guaranteeing that the Adder's negative consequences would be pervasive throughout the competitive market. *See id.*

Finally, the proposal to recover the costs of the Adder from default service customers and then recoup any refunds to the Company and all customers flatly contradicts cost causation principles and must be rejected. Implementation of RESA's proposed Adder turns the Commission's commitment to cost-based rates on its head, reversing the cost causation principles established by *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

RESA's proposed Adder is directly contrary to the Public Utility Code. It is unjust, unreasonable, and precisely the opposite of a "least cost over time" procurement process. There is no implicit approval of such a device hidden in the Commission's regulations. The Adder inappropriately encourages competition through market distortion at the expense of all customers. Accordingly, the Adder must be rejected by the Commission.

IV. RETAIL MARKET ENHANCEMENTS

A. Summary of Briefing Party's Position

PAIEUG takes a limited position on cost recovery issues related to PECO's RME programs. PAIEUG agrees with PECO's proposal to recover RME program costs from EGSs and opposes the various EGSs' proposals to recover RME program costs from customers. If the Commission determines that any RME program costs should be recovered from customers, PAIEUG respectfully requests that the Commission confirm that PECO cannot recover RME program costs from customers that are ineligible to benefit from such programs.

B. EGS Opt-In Competitive Offer Program

1. Customer Eligibility (CAP issues to be discussed in Section IV.D)

PAIEUG has no position on this issue.

2. Composition of Product Offer

PAIEUG has no position on this issue.

3. Customer Participation Cap

PAIEUG has no position on this issue.

4. Supplier Participation Load Cap

PAIEUG has no position on this issue.

5. Customer Options on Product Expiration and Notice Requirements

PAIEUG has no position on this issue.

6. Structure of Opt-In Auction – Sealed-Bid Format Versus Descending Price Clock Auction

PAIEUG has no position on this issue.

7. PECO's Proposed Application Process and EGS Terms and Conditions

PAIEUG has no position on this issue.

C. EGS Standard Offer Program

1. Customer Eligibility (CAP issues to be discussed in Section IV.D)

PAIEUG has no position on this issue.

2. Composition of Product Offer

PAIEUG has no position on this issue.

3. Customer Options Upon Product Expiration

PAIEUG has no position on this issue.

4. Types of Customer Calls Eligible for Presentation of Referral Program

PAIEUG has no position on this issue.

5. Commencement Date of the EGS Standard Offer Program

PAIEUG has no position on this issue.

6. PECO's Proposed Application Process and EGS Terms and Conditions

PAIEUG has no position on this issue.

D. Participation By Low-Income Customers In Proposed Retail Market Enhancements

PAIEUG has no position on this issue.

E. Additional Proposed Retail Market Enhancements

1. Time-of-Use Offering

PAIEUG has no position on this issue.

2. New/Moving Customer Referral Program

PAIEUG has no position on this issue.

3. Referral of PECO Wind Customers

PAIEUG has no position on this issue.

4. Seamless Moves

PAIEUG has no position on this issue.

F. Recovery of Program Costs for Proposed Retail Market Enhancements¹²

PECO proposes to recover RME costs from EGSs, either specifically from EGSs participating in a program or generally through a discount on EGS purchase of receivables. PECO St. No. 1, pp. 17-19. PAIEUG agrees with PECO that RME programs primarily benefit EGSs and that EGSs should accordingly assume responsibility for the program costs. The Commission, in its RMI Order encouraging EDCs to implement the RME programs, also recognized that costs of the program should be borne by EGSs and specifically identified a POR discount as a permissible and equitable cost recovery mechanism for such costs. RMI Order, pp. 32, 78.

Although PAIEUG concludes that PECO's proposed cost recovery mechanism complies with cost causation principles and the specific guidance provided in the Commission's RMI Order, some EGSs oppose PECO's proposal to recover RME costs through a discount of purchased receivables. Of initial concern to PAIEUG, RESA, FES, and Dominion suggested that PECO recover costs of its RME programs from "all customers." RESA St. No. 1, p. 17; Direct Testimony of Tony C. Banks, FES Statement No. 1 (hereinafter "FES St. No. 1"), p. 9; Dominion St. No. 1-R, p. 4. Contrary to the plain language of such alternative proposals, PECO's RME program descriptions generally exclude Large C&I customers for participation.

¹² The foregoing discussion addressing PECO's proposed RME programs is limited to general cost recovery issues and therefore applies with equal force to each RME program proposed by PECO.

PECO St. No. 1, pp. 16-17. Accordingly, RESA, FES, and Dominion each subsequently acknowledged that Large C&I customers are ineligible for PECO's proposed RME programs. RESA St. No. 2-SR, pp. 26-27; PAIEUG Ex. No. RH-2; Surrebuttal Testimony of William L. Barkas, Dominion Retail/IGS Statement No. 1-R (hereinafter "Dominion St. No. 1-SR"), p. 8. As evidenced by the plain language of PECO's RME proposals and the clarifications offered by RESA, FES and Dominion, Large C&I customers are ineligible for participation in PECO's proposed RME programs.

If the Commission should decline to approve PECO's proposal to recover RME program costs through a discount on purchased receivables, the PUC must ensure that any approved mechanism for recovering RME program costs complies with the Public Utility Code and principles of cost causation. *See* PAIEUG St. No. 1, pp. 6-7. Accordingly, an RME program cost recovery mechanism must not recover costs from customers that are ineligible to participate in such programs.

In addition to eligibility exclusions, Large C&I customers have already achieved shopping levels obviating the need for RME programs. The Commission recommended that EDCs implement RME programs as a measure to develop robust competitive markets. *See* RMI Order, p. 3. Large C&I customers are experienced market participants and some have been purchasing competitive supply for over a decade. PAIEUG Stmt. No. 1, p. 8. Unlike Residential or Small Commercial customers, Large C&I customers are sophisticated and informed buyers of competitive generation supply. *Id.* Contrary to the circumstances of the Residential and Small Commercial customer classes, Large C&I customers have not resisted shopping.¹³ *See* Direct Testimony of Brian Crowe, PECO Statement No. 1 (hereinafter "PECO St. No. 1"), p. 5; *see also*

¹³ As reported by PECO, EGSs serve 25% of the Residential class load, 52% of the Small Commercial class load, and 78% of the Medium Commercial class load. PECO St. No. 1, p. 5.

PECO St. No. 2-R, p. 9. Rather, as emphasized by PECO, the vast majority of Large C&I customers are already shopping for competitive electric supply, with 96% of the class load procured from EGSs. PECO St. No. 2-R, p. 9; PECO St. No. 3, p. 24. Therefore, Large C&I customers have already realized the benefits underlying PECO's RME programs.

In Summary, Large C&I customers are ineligible to participate in RME programs and would generally not receive benefits from such programs. Therefore, the Commission should reject any proposal to collect RME program costs from Large C&I customers.

1. EGS Opt-In Competitive Offer Program

The position of PAIEUG is discussed in Section IV.F., *supra*.

2. EGS Standard Offer Program

The position of PAIEUG is discussed in Section IV.F., *supra*.

3. Other Enhancements

The position of PAIEUG is discussed in Section IV.F., *supra*.

V. OTHER ISSUES

None.

VI. CONCLUSION

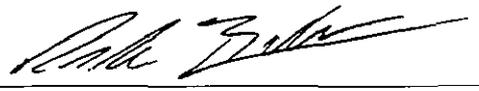
WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Adopt PECO's proposal to eliminate the RFP bidding process for Large C&I default service customers and allow PECO to procure default service supply for Large C&I customers directly through the PJM energy markets;
- (2) Deny RESA's request that PECO be required to implement a non-bypassable NMB Rider to recover NITS, RTEP, Expansion, Generation Deactivation, and ELR costs from all customers;
- (3) Deny PPL EnergyPlus' proposal for PECO to implement a non-bypassable Rider to recover Generation Deactivation costs from all customers;

- (4) Deny RESA's proposal for PECO to collect a \$0.005/kWh Adder from all default service customers;
- (5) Approve PECO's proposal to collect RME program costs from EGSs through a discount on purchased receivables or, alternatively, deny any proposal to collect RME program costs from customer classes ineligible to participate or unable to benefit from the RME programs; and
- (6) Grant any additional relief deemed appropriate and consistent with the above recommendations

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Dated: June 18, 2012

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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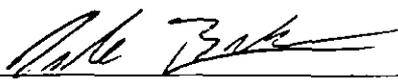
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