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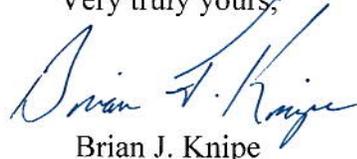
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: *Petition of PECO Energy Company for Approval of its Default Service Program,*
Docket No. P-2012-2283641

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Reply Brief of First Energy Solutions Corp.* Copies of this document have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Dennis J. Buckley (via Email and First Class Mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company For : Docket No. P-2012-2283641
Approval of Its Default Service Program :

**REPLY BRIEF OF
FIRSTENERGY SOLUTIONS CORP.**

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DATED: July 3, 2012

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I. INTRODUCTION

In its Main Brief, FirstEnergy Solutions Corp. (“FES”) explained why the Petition of PECO Energy Company (“PECO”) for approval of its default service program (“DSP”) should be approved with the following modifications recommended by FES:

- Restoration of the length of the electric generation supplier (“EGS”) contract term used in PECO’s proposed Opt-In EGS Offer Program (“Opt-In Program”) from 6 months to the 12 months PECO originally proposed;
- Replacement of PECO’s proposed 6-month default service supply procurement contracts with 12-month contracts covering the same period as the proposed Opt-In Program contracts, to increase customer participation in the Opt-In Program by facilitating customers’ comparison of the Opt-In Program contract price with a more stable and consistent price-to-compare (“PTC”);
- Elimination of the proposed 50% cap on the number of tranches on which an EGS can bid in the Opt-In Program, because the cap increases the likelihood that customers will not receive the lowest price;
- The elimination of the \$50 bonus payment PECO proposes to include in the fixed-price product offered through Opt-In Program, since bonuses when combined with the proposed recovery of program costs from winning EGSs would discourage EGS participation in the Opt-In Program;
- Use of a descending clock auction bidding format in the Opt-In Program to ensure participating customers receive the lowest possible price through head-to-head competition among EGSs; and
- Recovery of the costs of the Opt-In Program and the Standard Offer Customer Referral Program (“Referral Program”) from all customers in classes eligible to participate in each program.

The evidence of record demonstrates that these modifications will ensure that the retail market enhancement programs result in a price for customers that is certain, stable and economical relative to other options.

PECO's proposed Opt-In Program and Referral Program follow the guidelines set forth in the Intermediate Work Plan Order¹ ("*IWP Order*") guidelines to the letter. However, electric distribution companies ("EDCs") are supposed to exercise some judgment in identifying deviations from the guidelines that make sense for their customers. This is important because the DSP would establish the terms and conditions of default service from June 1, 2013 to May 31, 2015. During this period, the Pennsylvania Public Utility Commission ("Commission") intends to transition Pennsylvania to an optimal end-state of electricity default service. Also, the Commission wants to move Residential customers from default service to the competitive market through Commission-sponsored, customer-friendly retail market enhancement programs, specifically the Opt-In Program and the Referral Program. FES's proposed modifications to these programs will provide increased savings and a more stable product for participating customers, and enable these customers, who are new to purchasing electricity from alternative retail suppliers, to better compare the Opt-In Program rate with the PTC.

FES's proposed modifications are also designed to increase EGS participation in the retail market enhancement programs. For this reason, FES strongly opposes PECO's proposals to recover the costs through a discount on EGS receivables purchased through PECO's purchase of receivables ("POR") program. Even if it is ultimately determined that EGSs should bear some costs of the retail market enhancement programs, under no circumstances should costs be recovered through a POR discount. For these and other reasons detailed below, PECO's DSP should be approved only with the modifications recommended by FES.

Pursuant to the Second Prehearing Order issued March 19, 2012 and the common briefing outline approved by Administrative Law Judge Dennis J. Buckley, FES hereby submits

¹ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*").

this Reply Brief. FES will not respond in this Reply Brief to every argument set forth in the Main Briefs of the other parties, nor address every issue in the common brief outline. FES's Main Brief has adequately addressed most of the positions and arguments of the other parties, and has set forth the evidence and arguments that recommend the Commission approve PECO's proposed Opt-In Program and Referral Program with the modifications proposed by FES, and reject modifications proposed by other parties. The omission of a response to any arguments raised in another party's Main Brief should not be construed as FES's acceptance of those arguments.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Summary of Briefing Party's Position

In Section II.B.1 of its Main Brief, FES recommended a single modification to PECO's proposed supply portfolio. This modification relates to another modification which FES recommended for PECO's Opt-In Program, and is designed to increase customer participation in the Opt-In Program by facilitating customer comparisons of the PTC with the price set in the Opt-In Program. PECO and the Office of Consumer Advocate ("OCA") opposed FES's recommendation in their Main Briefs. As explained below, neither called into question the benefits of FES's recommendation for the success of the Opt-In Program, which is of critical importance during this DSP time period in which the Commission will consider the transition of Pennsylvania default service to a new paradigm through the Retail Markets Investigation ("RMI").

B. Residential Class Procurement

1. Term Length of Supply Contracts

In its Main Brief, FES recommended that PECO substitute full requirements contracts covering the first 12 months of the DSP, in lieu of the 6-month contracts through which it proposes to procure supply for 17 tranches of Residential customers. FES raised a valid justification for this recommendation, that the 12-month contracts would increase price stability for Residential customers, and would align with a 12-month Opt-In Program, giving Residential customers who are evaluating the Opt-In Program a more stable and reliable PTC to compare against the program offer for its entire 12-month duration. See FES M.B. at 5-6. This recommendation is consistent with the goals of Act 129 as well as the Commission's RMI.

PECO opposes this recommendation, arguing that the 6-month default supply contracts are part of a carefully designed ladder supply portfolio that should not be undermined to accommodate the one-time Opt-In Program. PECO M.B. at 8. However, the fact that the Opt-In Program is a one-time program makes no difference, since FES's recommendation is a one-time adjustment to a one-time DSP, to coincide with the one-time Opt-In Program, during a one-time transition to an end-state of default service.

PECO never explains how FES's recommended substitution of 12-month contracts would undermine PECO's supply portfolio. Rather, PECO focuses on the connection between this FES recommendation and FES's recommendation to increase the term of the Opt-In Program contract from 6 billing periods to 12 months as PECO initially proposed. According to PECO, once FES's recommendation relating to the term of Opt-In Program contracts is rejected for reasons set forth elsewhere in PECO's Main Brief, this recommendation for default supply contracts will

be “inapposite.” PECO M.B. at 8. However, the referenced Section IV.B.2² of PECO’s Main Brief provides no support for PECO’s default supply contract argument. PECO’s arguments in support of 6-month Opt-In Program contracts and against FES’s recommendation to extend the contracts to 12 months lack true conviction. In fact, before the *IWP Order*, PECO itself initially proposed a term of 12 months for its Opt-In Program contract. PECO merely revised its proposed Opt-In Program contract term to conform to the *IWP Order* template, notwithstanding its apparent initial determination that a 12-month Opt-In Program contract is best for its customer base.

The OCA also opposes the elimination of 6-month tranches. The OCA explains that FES’s recommended substitution of 12-month contracts “would cause the September 2013 procurement to be for only 7 tranches instead of 21 tranches.” When coupled with the OCA’s recommendation that PECO include block and spot purchases, this would result in the elimination of the September 2013 procurement, resulting in nearly 11 months without a solicitation. OCA M.B. at 11-12. FES submits that the OCA’s block and spot proposal should not be adopted, as it is excessively elaborate and inappropriate for the subject 2-year DSP, which is properly viewed as a bridge to the Commission’s end-state default service determination to come through the RMI. Since the OCA’s block and spot proposal should be rejected, the OCA’s objection to FES’s recommendation is not relevant. FES’s recommendation is relatively simple and designed to promote the Commission’s objective of maximizing the success of Opt-In Programs.

The OCA also argues that PECO’s proposed annual reconciliation of its Generation Supply Adjustment (“GSA”) surcharge, coupled with the OCA’s recommendation to move to an

² While PECO’s Main Brief references “Section IV.C.2,” there is no such section in the briefing outline, and FES believes PECO intended to reference “Section IV.B.2.”

annual rolling average of the over- and under-collections of the GSA, will smooth out the PTC adjustments with which FES is concerned. OCA M.B. at 12. FES respectfully disagrees, and submits that its simpler recommendation is preferable for this 2-year transitional DSP.

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

This section intentionally left blank.

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

This section intentionally left blank.

C. Small Commercial Class Procurement

This section intentionally left blank.

D. Medium Commercial Class Procurement

This section intentionally left blank.

E. Large Commercial and Industrial Class Procurement

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F. Elimination of Alternative Energy Portfolio Standard Surcharge

This section intentionally left blank.

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

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IV. RETAIL MARKET ENHANCEMENTS

A. Summary of Briefing Party's Position

FES addressed PECO's proposed retail market enhancement programs at length in its Main Brief. FES supports PECO's proposal that the Opt-In Program offer a fixed-price product at least 5% below the PTC as of June 1, 2013 (although FES disagrees with the inclusion of a \$50 bonus payment), as well as PECO's proposal to conduct its Opt-In Program bidder competition after its default service procurement, but before customer enrollment. FES also supports PECO's proposal of a 12-month term for its Referral Program. However, as explained above, FES has recommended modifications to each program, to ensure each program results in a price for customers that is certain, stable and economical relative to other options. FES herein will address the arguments raised by other parties in their Main Briefs, specifically those of PECO, the Retail Energy Supply Association ("RESA"), the OCA, Dominion Retail, Inc. d/b/a

Dominion Energy Solutions (“DES”) and Interstate Gas Supply, Inc. (“IGS;” collectively, “DES/IGS”) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”).

B. EGS Opt-In Competitive Offer Program

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

In its Main Brief, FES explained its view that the Opt-In Program should be open to all customers in all rate classes, but noted that PECO’s proposal to exclude commercial and industrial (“C&I”) customers simply follows the *IWP Order* guidelines. See FES M.B. at 10.

RESA argues that PECO’s proposed program should be modified to limit eligibility to default service customers only, to the exclusion of shopping customers. RESA M.B. at 55-56. FES disagrees with this proposed limitation. While the Opt-In Program should not target or market to shopping customers, the Opt-In Program should not exclude a shopping customer that approaches PECO and requests to participate in the program.

2. Composition of Product Offer

a. Contract Length

PECO continues to simply cite the *IWP Order* as its sole justification for changing the Opt-In Program’s proposed contract length from the originally proposed twelve months to six months. PECO M.B. at 54. PECO’s tepid support for this aspect of its Opt-In Program is notable. PECO simply conformed its Opt-In Program contract length to the *IWP Order* guidelines, without either conducting an independent analysis of what is best for its customers, or attempting to align the program with the parties’ overwhelming support for a 12-month term. As FES pointed out in its Main Brief, other parties that took a position on this issue uniformly

support a twelve month product. The OCA approvingly cites FES witness Banks' testimony that the twelve month term will "increase the likelihood of maximum customer participation" in the Opt-In Program. OCA M.B. at 61-62. RESA notes that the longer term "would potentially be viewed as more attractive to customers." RESA M.B. at 58. DES/IGS and CAUSE-PA also support the twelve month term. DES/IGS M.B. at 11; CAUSE-PA M.B. at 11. Good cause and substantial record evidence exist to support a deviation from the six-month guideline in the *IWP Order*, and to order PECO's Opt-In Program contract term set at twelve months.

b. Timing of Solicitation and Auction

RESA and DES/IGS continue to advocate the position that customers should be asked to enroll in the Opt-In Program prior to the EGS auction. RESA M.B. at 49-52. RESA contends that EGSs are less likely to participate in the program if they do not know the number of customers available for acquisition before they are required to participate in the auction. As explained below, this contention is incorrect. RESA's arguments are unsupported by (and contradicted by) record evidence, and the Commission considered and rejected RESA's position in addressing this issue in the *IWP Order*.

Of the other parties in this case only DES/IGS supports RESA's position. DES/IGS argues that "[k]nowing the universe of customers that they will serve will allow EGSs to provide better offers to customers." DES/IGS M.B. at 10. FES disagrees that EGSs do not know how many customers will be available to them through the program. EGSs can control the universe of customers they bid on by limiting the number of tranches on which they bid. In testimony, PECO explained that there are approximately 1,000,000 non-shopping residential customers in its service territory. (Tr. p. 54, l. 14-16). If the proposed 50% customer load cap is implemented, that means 500,000 customers will be eligible for the program. Under PECO's

proposal those customers will be split into 10 tranches, each representing 5% of eligible customers, and EGSs will be able to bid on up to 5 tranches. Thus, suppliers will have a lot of information about the number of customers available under the Opt-In Program as PECO has proposed it. Depending on the number of tranches on which a supplier decides to bid, it has the opportunity to obtain between 50,000 and 250,000 customers through the Opt-In Program. This is ample guidance for a sophisticated mass market retailer, which routinely extends offers with less than perfect information as to how many customers it could be serving.

DES/IGS (and RESA) also point out that, while under their proposal customers will not know the exact price, customers will be aware of the minimum price offered under the program (the proposed \$50 bonus and minimum 5% PTC discount). Thus, DES/IGS and RESA argue, customers have enough information to decide whether to participate in the program. They speculate further that the popularity of current product offers with allegedly more variability than the \$50 bonus and 5% discount shows that customers will not be deterred if they do not know the exact price for which they are signing up. DES/IGS M.B. at 12, RESA M.B. at 52. FES disagrees with this speculation. Current product offerings vary among fixed and variable price, nominal value of price offer, or other inclusions. These offers are vastly different from a product where the actual price is not known but customers are given an offer of “at least 5% below PTC.” In current product offerings customers always know, at a minimum, the price per kWh they will be paying. The pricing information customers would receive under the RESA-DES/IGS proposal is not comparable.

FES, PECO and the OCA have demonstrated that conducting the EGS bidding before soliciting customers strikes the appropriate balance between encouraging customer participation in the Opt-In Program and facilitating robust EGS participation. It is preferable for EGSs to

assume risk in this Commission-sponsored program targeting customers who are inexperienced with retail electric competition, rather than the customers. For the reasons given above and in FES' Main Brief, the RESA-DES/IGS proposal that customers should be required to sign up for the Opt-In Program before the auction is held should be rejected.

c. Bonus Payments

PECO states in its Main Brief that “[n]o party opposed the inclusion of a mandatory bonus payment in the opt-in offer.” PECO M.B. at 55. Contrary to this assertion, FES expressed its disagreement with the bonus payment requirement, particularly if the requirement is coupled with any imposition of the costs of PECO’s retail market enhancement programs on EGSs. FES St. No. 1 at 3; FES St. No. 1 at 11-12; FES St. No. 1-SR at 12. It should be obvious that the higher the costs imposed on EGSs, the less likely EGSs are to find the programs attractive opportunities to obtain customers. Also, as FES stated in its Main Brief, current supplier offers in PECO’s service territory already contain bonus payments, and thus bonuses are not a unique feature in PECO’s service territory. FES Ex. TCB-1. The Commission’s rationale in the *IWP Order* for suggesting that bonus payments be included in EDCs’ opt-in auction programs was that the \$50 bonus payment would offer non-shopping customers a unique incentive to shop. *IWP Order* at 69-70. Because such offers are already available to PECO’s customers, these bonuses do not, in fact, incentivize the type of customers targeted by these programs to shop.

3. Customer Participation Cap

This section intentionally left blank. See FES M.B. at 17-18.

4. Supplier Participation Load Cap

As explained at length in its Main Brief, FES is strongly opposed to the imposition of any participation caps in connection with PECO's Opt-In Program, either for customers or suppliers. FES M.B. at 17-22. It is notable that even though PECO proposed a 50% supplier load cap in order to be consistent with the *IWP Order*, PECO states in its Main Brief that "PECO does not oppose FES' proposal (FES St. No. 1, pp. 11-13) to eliminate the supplier participation cap from the Opt-In Program." PECO M.B. at 56. FES urges the Commission to accept PECO's offer, and eliminate any supplier participation cap from the Opt-In Program.

Other parties' proposals to impose supplier participation load caps at varying levels should be rejected. DES/IGS supports the 50% supplier cap and asserts that supplier participation load caps are "necessary to ensure that a more diverse supplier community is serving the customers and this is important for the long term health of the competitive market in the PECO service territory." DES/IGS M.B. at 13. RESA supports the 50% supplier cap and in addition proposes that a minimum of four bidders be required for the auction.³ RESA M.B. at 63. The only reasons given by RESA or DES/IGS to support their proposals is that they allegedly will "ensure...a diverse supplier community" and will further the Commission's desire to "jump start competition." *Id.*

However, the proposed supplier participation caps will not ensure a "diverse supplier community." The 50% cap proposed by PECO may result in two suppliers serving all participating customers. Also, given PECO's proposed tranche structure, RESA's proposal for a

³ It is unclear whether RESA is proposing a minimum of four bidders or four winning bidders, since it states its position both ways in its Main Brief. In regard to its four bidder requirement, RESA allows that "the Commission should have the flexibility to waive or alter this requirement if there are compelling reasons to do so." RESA M.B. at 64. This backtracking begs the question why this requirement should be imposed in the first place, particularly since the Commission decided not to adopt it in the *IWP Order*.

minimum of four winning suppliers may result in two suppliers serving 50% and 40% of participating customers. The only guaranteed result of the proposed limits on supplier participation is that they will limit the ability of the lowest cost bidder to serve participating customers at the lowest price.

Moreover, the removal of any supplier participation cap will not enable a single supplier to serve all PECO Residential customers. Under PECO's proposal, only Residential default service customers (excluding CAP and including shopping customers who ask to participate) are eligible for the Opt-In Program, and PECO has proposed a 50% customer participation cap. By way of an illustration, if roughly 25% of PECO Residential customers are shopping, and PECO's customer participation cap limits participation to half of the 75% of Residential customers who are eligible, a supplier winning 100% of customers through the Opt-In Program would be serving 37.5% of PECO Residential customers.

While advocates of a cap have argued that a cap is necessary to ensure sufficient competition, the proper measure of whether the bidding is competitive is the number of participants, not the number of winners. FES St. No. 1-R at 3, 9-10. Contrary to RESA's suggestion that there is no evidence to support a deviation from the *IWP Order* guidelines, RESA M.B. at 64, the record evidence shows clearly that competition is already vigorous in PECO's service territory, with 41 different suppliers, many with multiple available products, making offers to residential customers as of April, 2012. FES Ex. TCB-1. Thus, there already exists a "diverse supplier community" serving PECO customers sufficient to reasonably conclude that there will be numerous participants in a properly designed Opt-In Program, and that the results of the bidding will be competitive. RESA's and DES/IGS's recommendations might benefit suppliers, but will not benefit customers. Customers will be assigned to suppliers charging

higher prices than the lowest cost supplier or suppliers, just to satisfy an arbitrary standard. In utility territories such as PECO where substantial shopping and supplier participation already exist, it is inappropriate to sacrifice customers' desire for low prices to RESA's desire to obtain customers for its members.⁴

RESA asserts that the Commission "specifically directed that the issue of minimum number of bidders be determined in each default service proceeding," citing page 64 of the *IWP Order* in support of that statement. However, the Commission's discussion of RESA's proposal in the *IWP Order* is not nearly as definitive as RESA claims:

"At this time, the Commission will not take a definitive stance on the requirement of a minimum number of bidders, as proposed by RESA and Dominion. The EDCs may consider such a requirement within the parameters of their proposed Retail Opt-in Auctions. The Commission will evaluate the results of each opt-in auction to analyze certain criteria, including participation levels. At that point, the Commission may make a decision on whether or not a possible lack of participation warrants rejection of the auction results."

IWP Order at 64 (emphasis added). A reasonable reading of the above language, particularly in the context of the entire discussion of the supplier load cap issue at pages 61-64 of the *IWP Order*, is that an EDC may propose a minimum bidder requirement in its opt-in auction program, but it is not required to do so. Further, the Commission will analyze the results of the opt-in auctions and then will determine if supplier participation was adequate. Nor does the cited language support the argument that the Commission determined that a minimum number of bidders is a necessary or appropriate inclusion in EDCs' opt-in auction designs. Therefore, the *IWP Order* cannot reasonably be cited as support for the minimum bidder requirement proposed by RESA and DES/IGS. Indeed, if the Commission were to adopt RESA's proposal to enroll

⁴ This is admittedly speculative, since RESA is unable to state which if any of its members agree with its position. FES Ex. TCB-3 (FES I-6(d)).

customers before conducting the auction, RESA's proposed requirement of a minimum number of winning suppliers would create one more reason the auction might fail, to the disappointment of the customers who enrolled.

5. Customer Options on Product Expiration and Notice Requirements

FES supports PECO's proposal that at the end of the term, the customer remain with the EGS. See FES M.B. at 22-23. However, FES urges the Commission to reject the OCA's recommendation that the EGS be required to offer a fixed price month-to-month contract without penalty or termination fees at the end of the Opt-in Program, for the reasons set forth by PECO and RESA. OCA M.B. at 70-72, PECO M.B. at 58, RESA M.B. at 64-65.

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

The Commission in the *IWP Order* left open the issue of the appropriate auction format for EDCs opt-in auctions. PECO has proposed the use of a sealed bid format. For the reasons it has stated throughout this proceeding and in its Main Brief, FES urges the adoption of the descending clock auction format for PECO's Opt-In Program. FES strongly believes a descending clock auction format will yield the best price for customers, the attainment of which should be the primary focus of this issue. In addition, a descending clock auction will, FES believes, result in the opportunity for more EGSs to win customers, because it enables EGSs to see and react to what their competitors are doing. PECO (Banks) Cross-Exam Ex. 1 (PECO (FES) I-3).

Other than FES and PECO, the parties have generally not advocated vigorously on this issue. The OCA states that it does not take a position on this issue, OCA M.B. at 74, RESA

states that either approach is reasonable, but defers to PECO's experience and recommendation, RESA M.B. at 67, and DES/IGS argues that the sealed bid is better for PECO, but acknowledges that both bidding formats are acceptable to the Commission, DES/IGS M.B. at 14. In its Main Brief, FES responded to the testimony of PECO's witness that the descending clock auction is better for PECO. FES M.B. at 23-27.

The most important consideration in designing programs to further promote retail electric competition should be to give customers the lowest available pricing. FES St. No. 1-R at 5-6. Customers must believe that they will see significant savings from participating in the Opt-In Program. Since the auction result (i.e. price) will have the most influence on customers' decision whether to participate, the auction format which will yield the lower price is obviously the best format to choose. The way to achieve the most savings for customers is through the transparent, descending clock bidding process in which suppliers compete head-to-head to offer electricity at the lowest price, and react to indicative price information. It is simply not reasonable to believe that the same or lower prices can be achieved through a single, sealed bid RFP.

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

This section intentionally left blank.

C. EGS Standard Offer Program

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

This section intentionally left blank.

2. Composition of Product Offer

FES supports PECO's proposal that the Referral Program Standard Offer have a 12-month term with a fixed price set at 7% below the PTC at the time of enrollment and applicable for the entire term. FES M.B. at 27, PECO M.B. at 62. As FES explained in its Main Brief, this proposal is not only consistent with the *IWP Order* guidelines, but also best for a Commission-sponsored program targeting PECO Residential default service customers who likely have no experience with competitive markets. FES M.B. at 27. DES/IGS also asserts that a 12-month contract is appropriate because it provides meaningful savings and price stability. DES/IGS M.B. at 15-16.

In its Main Brief, FES also opposed any proposals to make the Standard Offer term shorter than 12 months, or to shorten the 7% discount to only a portion of the term, and will not repeat its arguments here. FES M.B. at 28-31. These proposals include the recommendation of the OCA, which continues to advocate shortening the term to 4 months. OCA M.B. at 79-80. The OCA contends in its Main Brief that the 7% discount, as designed by PECO, could be in effect for as short a period as one day if the customer enrolled in the program on the day before a quarterly price change. OCA M.B. at 79. Again, the OCA's concern about what "could" happen is speculative, and it is just as likely that on the second day PECO's PTC could increase, in which case the customer would be receiving a Standard Offer price that is even better than 7% below the PTC. Further, this speculative concern is adequately addressed by the customer's ability to terminate the Standard Offer contract without penalty, and enter into another EGS contract or return to default service. The Standard Offer as proposed by PECO ensures that participating customers will be receiving a good rate for generation service for the maximum time permitted by the *IWP Order* guidelines.

RESA's recommendation that the 7% discount from the PTC should be an introductory offer available for only the first 4 months of the 12-month Standard Offer is also unacceptable. RESA M.B. at 71-72. As FES explained in its Main Brief, RESA's assertion that this recommendation is consistent with the Commission's intent is flatly contradicted by the *IWP Order's* plain language. In fact, the Commission did not adopt every aspect of the New York-style referral program, and one aspect not adopted was New York's emphasis on short-term introductory rates. Also, RESA's claim that PECO's proposed matching of the 12-month Standard Offer and the discount will likely severely limit the ability of EGSs to participate is entirely speculative. FES M.B. at 28-31.

None of the additional arguments raised by RESA in its Main Brief with respect to the length of the discount are credible or supportable. First, RESA argues that a 4-month introductory rate will attract maximum EGS participation, which will give customers more choices after the introductory rate expires, i.e., in month 5 of the 12-month Standard Offer. RESA M.B. at 73. As an initial matter, RESA cannot know what will attract maximum EGS participation when its witness has denied knowing the position of any RESA member on its introductory rate proposal. FES Ex. TCB-3 (RESA Response to FES I-11). Also, FES believes a Commission-sponsored program, which targets Residential default service customers who have demonstrated a reluctance to shop, is not an appropriate vehicle to expose these customers to an array of "different types of EGS products and services" in the middle of the Commission-sponsored Standard Offer. Many of these customers will be only 4 months removed from utility default service, and under RESA's proposal they would not know the price they will pay for the final 2/3 of the Standard Offer.

Second, RESA argues that if FES believes customers want longer term fixed price offers such as PECO's proposed Standard Offer, FES's concern is sufficiently addressed by EGSs, including FES, having the freedom to make such offers outside the Referral Program. RESA M.B. at 73. While offers outside the Referral Program address FES's concerns with respect to customers who are inclined to go directly to the competitive market, it does not address the circumstances of the customers targeted by the Standard Offer program, i.e., the customers for whom this Commission-sponsored starter program is designed. Most of these customers will be in the Referral Program because they contacted PECO for some reason other than shopping. FES believes these customers should be free to leave the Referral Program at any time, but not compelled to leave it after only 4 months.

Third, RESA contends that FES has presented no empirical evidence supporting its claim that "teaser" rates lead to higher prices "that frustrate customers." RESA M.B. at 73. By using the phrase "that frustrate customers," RESA seems to acknowledge that its proposal will result in EGSs raising prices in months 5 through 12. Certainly, raising prices in months 5 through 12 is consistent with RESA's argument that limitation of the 7% discount to the first 4 months is necessary to "attract maximum participation by EGSs." Even without empirical data, RESA never explains why anyone would want this Commission-sponsored "starter program" targeting Residential default service customers to explore the limits of customers' patience with EGS pricing. In its Main Brief, RESA measures the success of a Referral Program in terms of the number of formal complaints, explaining — without attribution — that the New York Public Service Commission ("PSC") found that referral program participants "were quite satisfied with the program" as evidenced by a lack of complaints regarding short-term introductory rates. RESA M.B. at 73. However, FES, unlike RESA, does not equate the claimed lack of formal

complaints with a ringing endorsement of retail competition by New York customers. Customer satisfaction with EGSs in New York is certainly not borne out by that state's low Residential shopping numbers. See FES M.B. at 29-30; FES Ex. TCB-4.

Further, RESA's assertion that "the New York PSC found that participants in the referral program were quite satisfied with the program and the kinds of complaints that would be expected if Mr. Banks' concerns were well-founded did not materialize," RESA M.B. at 73 (citing RESA St. No. 2-SR at 19), is pure hearsay. The referenced Surrebuttal Testimony includes the same statement regarding the New York PSC's findings, without attribution. RESA has offered no other evidentiary support for this claim. Under general administrative law, hearsay evidence, properly objected to, is not competent evidence to support a finding; hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand. *Walker v. Unemployment Comp. Bd.*, 367 A.2d 366 (Pa. Cmwlth. 1976). There is no other evidence in the record that could support a finding regarding the New York PSC's conclusions regarding customer satisfaction with the New York referral program, participants' expressions of satisfaction with the referral program, or a lack of complaints regarding the program. Accordingly, RESA cannot establish the success of the New York program based on the evidentiary record assembled in this proceeding.

For these reasons, the Standard Offer proposed by PECO should be approved, and the recommended modifications of the OCA and RESA should be rejected.

3. Customer Options Upon Product Expiration

In its Main Brief, FES supported PECO's proposal that at the end of the Standard Offer, a customer who takes no action in response to the standard renewal notices required by the

Supplier Tariff and Commission guidelines will remain with the supplier on a month-to-month basis, without risk of the imposition of termination fines or penalties. FES M.B. at 32. RESA supports PECO's proposal as well. RESA M.B. at 73-74. However, the OCA and CAUSE-PA argue in their Main Briefs that, absent affirmative action by the customer, the customer should be transferred back to default service. OCA M.B. at 80; CAUSE-PA M.B. at 14. FES previously responded to the OCA's and CAUSE-PA's arguments in its Main Brief. See FES M.B. at 32. Moreover, customers participating in the Referral Program will have already received two notices that their contract with the Referral Program EGS is ending, and will always have the ability to switch to a better offer, without penalty. Accordingly, the OCA's and CAUSE-PA's recommendation should be rejected.

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

This section intentionally left blank.

5. Commencement Date of the EGS Standard Offer Program

FES opposes the OCA's recommendation to delay implementation of the Referral Program until after the Opt-in Program is completed. OCA M.B. at 85. The OCA asserts that if the Opt-In Program and Referral Program begin at the same time, the overlap will create significant customer confusion and the potential for adverse comparisons to the prices and terms of service associated with these various options. According to the OCA, "the experience with the Opt-In Auction should be the focus of the market enhancement activities in the summer of 2013." OCA M.B. at 84-85. CAUSE-PA supports this recommendation. CAUSE-PA M.B. at 15-16.

The OCA's recommendation, however, is contrary to the preponderance of the evidence. The record shows that non-shopping customers will have been solicited for the Opt-In Programs in the second quarter of 2013, PECO St. No. 2 at 22-24, and participants will be enrolled in the one-time Opt-In Program by June 1, 2013. Only after customers have been enrolled in the Opt-In Program will the Referral Program, which is an on-going program, commence with incoming customer calls. Contrary to the OCA's exaggeration that these are "severely overlapping programs," OCA M.B. at 84, the timelines of each program provide for very little overlap, and there is no credible evidence in the record that they are likely to cause customer confusion. Further, PECO's Referral Program is targeting only Residential default service customers, PECO St. No. 2 at 22, which means that the only time a customer participating in the Opt-In Program will be participating in the Referral Program is when the customer specifically requests to participate. FES submits that comparing prices and terms of service in the two programs is no different than comparing any two limited time offers available in the competitive retail market. While FES supports a well-coordinated approach, a 12-month delay of the Standard Offer Referral Program is unnecessary and lacks any evidentiary support. Accordingly, the OCA's recommendation to delay the Referral Program should be denied.

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

This section intentionally left blank.

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

FES addressed this issue at pages 32-33 of its Main Brief.

E. Additional Proposed Retail Market Enhancements

1. Time-of-Use Offering

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2. New/Moving Customer Referral Program

This section intentionally left blank.

3. Referral of PECO Wind Customers

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4. Seamless Moves

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F. Recovery of Program Costs for Proposed Retail Market Enhancements

1. EGS Opt-In Competitive Offer Program

FES believes the costs of the Opt-In Program should be recovered from all customers in any class eligible to participate in the program. In its Main Brief, FES opposed PECO's proposal to prorate costs of the Retail Opt-In Program among winning EGSs based on the number of customers allocated to each winning EGS, and, if there are no winning EGSs, through a discount on purchased receivables. FES M.B. at 34-41. FES agrees with RESA's argument that expecting EGSs to participate in the Opt-In Program and know that they will have to pay undefined costs when they have a very limited ability to judge whether the program could be successful could operate as a significant disincentive to their participation. RESA M.B. at 90.

PECO, the OCA and I&E continue to advocate for the imposition of all costs of the Opt-In Program on EGSs. All three contend that EGSs are the primary beneficiaries of the program, and PECO and I&E even liken the program's costs to an EGS's marketing expense. See PECO M.B. at 74, OCA M.B. at 88, I&E M.B. at 3. None of these parties appears to acknowledge the significant benefits to all Residential customers that will result from the Opt-In Program, which are described at length in FES's Main Brief and the testimony referenced therein. FES M.B. at 34-37. Indeed, the *IWP Order* does not state that all costs must be recovered from participating suppliers. *IWP Order* at 84. Yet none of these parties has proposed any methodology whereby customers eligible to participate would bear any share of program costs.

PECO and the OCA cite the Commission's "finding" that PECO's proposal to recover costs of retail market enhancements through the POR discount "appears acceptable," and the OCA argues that FES and RESA have failed to provide evidence to justify a different cost recovery methodology. PECO M.B. at 74; OCA M.B. at 88-89. As FES explained in its Main Brief, the *IWP Order*'s guidance on the appropriate method of recovering the costs of Opt-In Programs does not rise to the level of an *IWP Order* "guideline." The Commission "finding" on which PECO and the OCA rely, which is included in a section of the *IWP Order* entitled "Other," was reached after a cursory review of the issue and not vetted to the degree other issues were in the *IWP Order*. The only instance where the *Tentative IWP Order*⁵ solicited comments on cost recovery was in connection with New/Moving Customer Referral Programs. *Tentative IWP Order* at 17. The Commission received relatively few comments on this issue, and even looked to PECO's DSP filing. See FES M.B. at 38. Nevertheless, FES and RESA did in fact

⁵ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Tentative Order entered December 16, 2011) ("*Tentative IWP Order*").

provide evidence demonstrating good cause to allow recovery of the costs from all Residential customers, as explained further below.

In addition, PECO contends that FES conducted no cost-benefit analyses to support its witness's opinion that EGSs will be less likely to participate in the program if costs are recovered as PECO proposes, and that FES has not yet determined whether PECO's proposal would affect FES's own participation in the Opt-In Program. PECO M.B. at 74. While FES has not yet conducted such a cost-benefit analysis, FES submits that it is reasonable to conclude that PECO's proposal to collect costs from EGSs will undoubtedly be a factor whenever that analysis is performed.

If the costs of PECO's Opt-In Program are to be borne by EGSs, only PECO appears to advocate the POR discount as a specific form of cost recovery, and only in the event the program is unsuccessful.⁶ Similarly, the OCA takes no specific position on the form of cost recovery, as long as costs are recovered from EGSs. OCA M.B. at 88.

FES submits that it is unreasonable for EGSs to be uncertain of the level of program expenses they will incur. Throughout this proceeding, FES has supported PECO and various *IWP Order* guidelines on several aspects of the Opt-In Program which place a greater amount of uncertainty on suppliers, including the sequence of the Opt-In bidding and customer enrollment. FES supported these aspects of PECO's proposal because FES believes it is reasonable for EGSs to bear greater uncertainty than participating Residential customers, within reason. Under

⁶ While the OSBA and PAIEUG, without explanation or discussion, express their general agreement with PECO's proposal to recover the costs of retail market enhancements from EGSs through a discount on purchased EGS receivables, OSBA M.B. at 17, PAIEUG M.B. at 36-37, their Main Briefs do not specifically address the Opt-In Program and Referral Program, for which small commercial and large commercial and industrial ("C&I") customers are not eligible. Indeed, PAIEUG's suggestion in its Main Brief that FES supports recovery of the costs of these programs from large C&I customers ignores FES discovery responses that PAIEUG attached as exhibits to its witnesses' Rebuttal Testimony. See PAIEUG Ex. RH-2. Nonetheless, FES's arguments in its Main Brief regarding why a POR discount is inappropriate and inequitable recommend rejection of the OSBA's and PAIEUG's positions on this issue of a POR discount. See FES M.B. at 37-41.

PECO's proposal, EGSs will already be conducting cost-benefit analysis to predict how many tranches they will win, the final clearing price, and the number of customers who may participate. There must be some certainty regarding the level of costs incurred.

In response to discovery served by PECO and entered into the record by PECO, FES explained that if costs are to be recovered from EGSs, cost should be allocated based on the number of customers actually enrolled by each EGS, rather than the number of customers allocated to the EGS, to better match costs with revenue opportunity. This is particularly important when there are supplier and customer participation caps, since all suppliers may not be able to enroll to their anticipated level based on allocated customers. Also, there should be a cap on the amount charged to EGSs for each customer enrolled, and all costs should be made known to all qualified bidders prior to the bid proposal due date. Any under-collection of program costs as a result of the supplier cost cap should be recovered from all customers in the classes of customers eligible to participate in the program. See PECO (Banks) Cross Ex. 4.

This method of cost recovery described by FES witness Banks would provide for a sharing of costs between EGSs and the customers who benefit from the programs, and would give EGSs the certainty they need to determine whether to participate in the program. For the reasons explained in FES's Main Brief, under no circumstances should PECO recover the costs of the Opt-In Program through a discount on purchased receivables.

2. EGS Standard Offer Program

Similarly, in its Main Brief FES recommended that the costs of the Referral Program be recovered from all Residential customers, and opposed PECO's proposal to recover Referral Program costs through the POR discount since it would result in an unfair allocation of costs.

FES M.B. at 41. DES/IGS and RESA expressed similar positions in their Main Briefs. DES/IGS M.B. at 15; RESA M.B. at 93-94.

PECO and the OCA again cite the *IWP Order*'s cursory discussion of Referral Program cost recovery as a "guideline" and argue that those opposing POR discounts and recommending the recovery of costs from all eligible customers have presented insufficient evidence to justify a departure from the *IWP Order*'s guideline. PECO M.B. at 75; OCA M.B. at 89. CAUSE-PA also supports the recovery of all program costs from EGSs. CAUSE-PA M.B. at 26. As explained in the previous section, FES believes PECO and the OCA rely too greatly on the *IWP Order*'s discussion of the appropriate allocation of Referral Program costs and the appropriate method of cost recovery. Nevertheless, FES, RESA and DES/IGS presented ample evidence supporting the allocation of costs of the Referral Program to all Residential customers based on the benefits these customers will realize as a result of the program. PECO's, the OCA's and CAUSE-PA's arguments to place 100% of the costs on EGSs completely ignore these benefits. Again, the *IWP Order* does not direct that EGSs must bear 100% of the costs of this program. *IWP Order* at 32.

PECO also suggests that recovering Referral Program costs through any mechanism other than a POR discount is too administratively complex. PECO M.B. at 75. FES disagrees, and submits that any added complexity is outweighed by the need for the Referral Program to be successful, and by the need to avoid discouraging even non-participating EGSs from becoming or remaining licensed to serve Residential customers in the PECO service territory.

If costs of the Referral Program are to be borne by EGSs, only PECO appears to advocate the POR discount as the only acceptable method of cost recovery. While the OCA and CAUSE-PA support PECO's proposal to recover program costs from all EGSs, they are neutral on the

question of whether costs should be recovered through PECO's proposed POR discount or through some other mechanism. OCA M.B. at 89, CAUSE-PA M.B. at 26. In response to discovery served by PECO and entered into the record by PECO, FES explained that if costs of the Referral Program are to be recovered from EGSs, then the initial costs should be divided equally among all EGSs licensed to serve customers eligible for the programs in the PECO service territory. However, EGSs should be given the option to sign a waiver stating they will not participate in the program prior to June 1, 2015 in order to avoid being allocated these initial costs. Ongoing costs should be collected from EGSs through a per customer fee from each participating supplier based on actual enrollments. To give suppliers the requisite certainty to maximize their participation in the Referral Program, a cap should be imposed on the initial and ongoing charges. At the end of the default service plan period, any under-collection should be recovered from all customers in any class eligible to participate in the Referral Program. PECO (Banks) Cross Ex. 4. Again, under no circumstances should the costs of the Referral Program be recovered from customers through a discount on purchased EGS receivables.

3. Other Enhancements

FES addressed this issue at pages 42-43 of its Main Brief.

V. OTHER ISSUES

This section intentionally left blank.

VI. CONCLUSION

For the foregoing reasons, the Petition of PECO Energy Company for Approval of Its Default Service Program should be granted with modifications consistent with FirstEnergy Solutions Corp.'s recommendations.

Respectfully submitted,

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Dated: July 3, 2012

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for : Docket No. P-2012-2283641
Approval of its Default Service Program :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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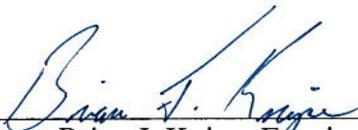
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