



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166  
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare  
Direct Dial: 717.237.5290  
Direct Fax: 717.260.1744  
abakare@mwn.com

September 17, 2012

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

**VIA ELECTRONIC FILING**

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

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Reply Exceptions of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

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 First Class Mail)  
Commission's Office of Special Assistants (OSA) ([ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Certificate of Service

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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).

### VIA E-MAIL AND FIRST CLASS MAIL

Kenneth M. Kulak, Esq.  
Morgan Lewis and Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
[kkulak@morganlewis.com](mailto:kkulak@morganlewis.com)

Anthony Gay, Esq.  
Exelon Business Services Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
[anthony.gay@exeloncorp.com](mailto:anthony.gay@exeloncorp.com)

Melanie J. Elatieh, Esq.  
UGI Corporation  
460 North Gulph Road  
King of Prussia, PA 19406  
[melanie.elatieh@ugicorp.com](mailto:melanie.elatieh@ugicorp.com)

Patrick M. Cicero, Esq.  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

Candis A. Tunilo, Esq.  
Christie M. Appleby, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
[cappleby@paoca.org](mailto:cappleby@paoca.org)

Carrie B. Wright, Esq.  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[carwright@pa.gov](mailto:carwright@pa.gov)

Elizabeth Rose Triscari, Esq.  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101  
[etriscari@pa.gov](mailto:etriscari@pa.gov)

Divesh Gupta, Esq.  
Constellation Energy  
100 Constellation Way, Suite 500C  
Baltimore, MD 21202  
[divesh.gupta@constellation.com](mailto:divesh.gupta@constellation.com)

Amy M. Klodowski, Esq.  
First Energy Solutions Corp.  
800 Cabin Hill Drive  
Greensburg, PA 15601  
[aklodow@firstenergycorp.com](mailto:aklodow@firstenergycorp.com)

Brian J. Knipe, Esq.  
Buchanan Ingersoll & Rooney, PC  
17 North Second Street, 15th Floor  
Harrisburg, PA 17101  
[brian.knipe@bipc.com](mailto:brian.knipe@bipc.com)

Todd S. Stewart, Esq.  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

Thu B. Tran, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
[ttran@clsphila.org](mailto:ttran@clsphila.org)

Tori L. Giesler, Esq.  
FirstEnergy  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Charles E. Thomas, III, Esq.  
Thomas, Long, Niesen & Kennard  
P.O. Box 9500  
212 Locust Street, Suite 500  
Harrisburg, PA 17108-9500  
[cet3@thomaslonglaw.com](mailto:cet3@thomaslonglaw.com)

Daniel Clearfield, Esq.  
Edward Lanza, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[elanza@eckertseamans.com](mailto:elanza@eckertseamans.com)

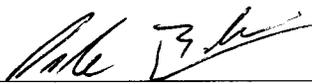
Andrew S. Tubbs, Esq.  
Post & Schell, P.C.  
17 N. Second St., 17th Floor  
Harrisburg, PA 17101  
[atubbs@postschell.com](mailto:atubbs@postschell.com)

Stephen L. Huntoon, Esq.  
NextEra Energy, Inc.  
801 Pennsylvania Ave NW, Suite 220  
Washington, DC 20004  
[shuntoon@nexteraenergy.com](mailto:shuntoon@nexteraenergy.com)

Jeffrey Norton, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
[jnorton@eckertseamans.com](mailto:jnorton@eckertseamans.com)

Scott H. DeBroff, Esq.  
Rhoads & Sinon LLP  
One South Market Square, 12th Floor  
PO Box 1146  
Harrisburg, PA 17108-1146  
[sdebroff@rhoads-sinon.com](mailto:sdebroff@rhoads-sinon.com)

Trevor D. Stiles, Esq.  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202  
[tstiles@foley.com](mailto:tstiles@foley.com)



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Adeolu A. Bakare

Dated this 17<sup>th</sup> day of September, 2012, in Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY EXCEPTIONS OF THE  
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

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Charis Mincavage (I.D. No. 82039)  
Adeolu A. Bakare (I.D. No. 208541)  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300  
cmincavage@mwn.com  
abakare@mwn.com

Counsel to the Philadelphia Area Industrial  
Energy Users Group

Dated: September 17, 2012

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## A. INTRODUCTION

On January 13, 2012, PECO Energy Company ("PECO" or "Company") filed its second Default Service Plan ("DSP II")<sup>1</sup> with the Pennsylvania Public Utility Commission ("PUC" or "Commission"). The Philadelphia Area Industrial Energy Users Group ("PAIEUG")<sup>2</sup> filed a Petition to Intervene in order to protect member interests. Importantly, PECO proposed no changes to its provision of default service that would detrimentally impact PAIEUG members; however, several Electric Generation Suppliers ("EGSs") set forth proposals that could adversely impact Large Commercial and Industrial ("C&I") customers regardless of whether these customers were receiving default supply service from PECO or alternative supply from an EGS. On August 29, 2012, the PUC issued the Recommended Decision ("RD") of Administrative Law Judge ("ALJ") Dennis J. Buckley, which provides a just, reasonable, and appropriate review of PECO's DSP II. For those reasons, PAIEUG did not file any Exceptions.

On September 10, 2012, PAIEUG received Exceptions ("Ex.") from the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Bureau of Investigation and Enforcement ("I&E"), PECO, FirstEnergy Solutions Corp. ("FSE"), PPL EnergyPlus, LLC ("PPL EnergyPlus"), Dominion Retail, Inc. and Interstate Gas Supply, Inc. ("Dominion"), and the Retail Energy Supply Association ("RESA"). PAIEUG also received exceptions from the "Joint Suppliers," a group composed of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. ("Constellation"), and Exelon Generation Company, LLC and Exelon Energy Company ("Exelon") (collectively "Constellation/Exelon"),

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<sup>1</sup> PECO's first DSP covered the period of January 1, 2011 through May 31, 2013, while PECO's second DSP addresses the period of June 1, 2013 through May 31, 2015.

<sup>2</sup> Throughout this proceeding, the Philadelphia Area Industrial Energy Users Group has referred to itself as "PAIEUG." For reasons that have not been clearly explained, the Joint Suppliers have unilaterally chosen to change this designation to the "Shopping Industrials." Considering that not all of PAIEUG's members have accounts supplied by an EGS, the Joint Suppliers designation is inappropriate, improper, and factually incorrect.

along with NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC ("NextEra").<sup>3</sup>

PAIEUG files these Replies to the Exceptions of RESA, PPL EnergyPlus, and the Joint Suppliers in order to specifically respond to: (1) RESA, PPL EnergyPlus, and the Joint Suppliers' Exceptions to the ALJ's well-reasoned recommendation to reject any recovery of Non-Market Based ("NMB") charges issued by PJM Interconnection L.L.C. ("PJM") through a non-bypassable rider due to the numerous problems inherent with such a rider; (2) RESA's Exception to the ALJ's recommendation to deny the unsupported and arbitrary \$0.005/kWh default service charge; and (3) RESA's Exception to the ALJ's appropriate recommendation for approval of PECO's procurement plan for Large C&I customers. Each of PAIEUG's Reply Exceptions are set forth more fully below.

## **B. REPLIES TO EXCEPTIONS**

**1. Reply to RESA Exception No. 5, PPL EnergyPlus Exception No. 1, and Joint Suppliers Exception No. 1: The Administrative Law Judge Was Completely Correct in Relying on Record Evidence and PUC Precedent to Find That the Collection of NMB Charges From Customers, Through a Non-Bypassable Rider, Is Unjust and Unreasonable.**

**(a) The Record Evidence in This Proceeding Supports the ALJ's Appropriate Recommendation to Reject the Various Proposals to Unreasonably Require PECO to Recover NMB Charges From All Customers Through a Non-Bypassable Rider.**

Under PECO's current DSP, "shopping" customers are charged for NMB costs by their EGSs, while "non-shopping" customers are charged these costs via PECO's default service rates. RD at 46. For the proceeding at hand, PECO did not propose any changes to the aforementioned NMB cost collection, thereby seeking to continue the current methodology whereby EGSs are responsible for collecting NMB costs from shopping customers. *Id.* at 47. Several EGSs, however, proposed changes to PECO's methodology, recommending that the Commission

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<sup>3</sup> As discussed in detail below, neither Constellation/Exelon nor NextEra, the parties comprising the Joint Suppliers, submitted testimony or briefs in this proceeding.

transfer cost collection responsibility, for both shopping and default service customers, to PECO through implementation of a non-bypassable NMB Rider.<sup>4</sup> *Id.* at 46. Based on record evidence, the ALJ appropriately rejected the proposed NMB Rider. *Id.* at 48. While several EGSs excepted to the RD, claiming that the ALJ did not fully review some of the arguments presented, a closer examination of the RD confirms that the ALJ thoroughly examined all of the parties' positions and based his decision on the appropriate weight of the record evidence. *Id.* at 46-48.

RESA, PPL EnergyPlus, and the Joint Suppliers take exception to the RD, alleging that the proposed NMB Rider will purportedly improve competitive markets and reduce retail prices for customers. RESA Ex., pp. 15, 17, 18; PPL EnergyPlus Ex., p. 4; Joint Supplier Ex., p. 8. The main support that RESA, PPL EnergyPlus, and the Joint Suppliers can provide for this claim is an argument that EGSs collecting NMB charges must include risk premiums in offers to customers. *Id.* The RD rightfully concluded that the EGSs' arguments alleging market benefits of the proposed NMB Rider are unsupported. RD at 46. Specifically, the RD found that "PPL EnergyPlus and RESA have not shown how changes to the existing cost assignment of generation deactivation charges and other PJM charges will lead to actual reductions in market prices." *Id.*; see PAIEUG Main Brief ("M.B."), pp. 14-15.

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<sup>4</sup> The NMB Rider proposals of RESA, PPL EnergyPlus, and the Joint Suppliers are substantially similar except that PPL EnergyPlus and the Joint Suppliers propose that the NMB Rider recover only generation deactivation charges, while RESA proposes to recover additional PJM charges. RD at 46. Regardless of these nuances, none of these proposals should be adopted because the problems cited by the RD and further addressed herein remain present regardless of the number and/or types of charges to be recovered through the proposed Rider. RD at 47-48; PAIEUG M.B., p. 27. As such, these Reply Exceptions refer to a single proposed NMB Rider, representing the substantively similar proposals of RESA, PPL EnergyPlus, and the Joint Suppliers.

In reaching this determination, the RD recognized that EGSs can avoid charging risk premiums to customers by collecting NMB charges on a pass-through basis.<sup>5</sup> *Id.* Moreover, the Exceptions of RESA, PPL EnergyPlus, and the Joint Suppliers ignore the fact that transferring cost collection responsibility from EGSs to the Electric Distribution Company ("EDC") (*i.e.*, PECO) does not actually eliminate any costs to customers, as customers with a pass-through mechanism would continue to remit the same costs (be it to the EDC or the EGS), assuming that the NMB costs are correctly collected based upon appropriate cost causation principles.<sup>6</sup> RD at 46; PAIEUG M.B., pp. 17, 18.

RESA, PPL EnergyPlus, and the Joint Suppliers also claim that the ALJ placed too much weight on the transitional concerns raised regarding changes to NMB cost collection.<sup>7</sup> RESA Ex., p. 13; Joint Supplier Ex., p. 15, PPL EnergyPlus Ex, p. 6. Contrary to these claims, however, the RD correctly and justly focused on the importance of these transitional concerns, affirming that the "the Electric Generation Choice and Competition Act ("Competition Act") requires that transition matters be addressed in a manner fair to all customers." *Id.*; PAIEUG M.B., pp. 18-20. In disposing of the NMB proposals, the RD recognized that customers with

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<sup>5</sup> Although customer choice is not specifically referenced in the ALJ's disposition of the NMB Rider proposals, the ALJ's determination that NMB Riders do not lower market prices is consistent with PAIEUG's assertions that the current market structure maximizes customer choice. Large C&I customers under fixed-price arrangements choose to pay risk premiums for a variety factors, including cost stability. PAIEUG M.B., p. 10. Conversely, customers preferring to pay NMB charges at cost (*i.e.*, without a risk premium but subject to more volatility) already have the option to select pass-through arrangements with EGSs. *Id.*

<sup>6</sup> Although not directly addressed in the RD, RESA, PPL EnergyPlus, and the Joint Suppliers also ignore the fact that, although the EGSs have proposed NMB Riders to meet EGS concerns, these same parties have failed to provide any proposals regarding the cost allocation and cost collection methodologies to be used, which is obviously of great importance to customers. If the correct cost allocation and cost collection methodologies are not utilized, cost causation issues could arise, especially if the NMB Rider were to collect costs from Large C&I customers in a manner that is different from the way in which these costs are incurred and how they are currently being collected by EGSs (*i.e.*, based upon the individual customer's 1-Coincident Peak). PAIEUG M.B., pp. 13-16; PAIEUG R.B., pp. 6-10.

<sup>7</sup> Notably, in excepting to the ALJ's recommendation to deny the NMB Rider, the Joint Suppliers suggest that the OSBA supports approval of the NMB Rider. Joint Suppliers Ex., p. 15. As further evidence of the RD's correct resolution of this issue, PAIEUG notes that the OCA and the OSBA filed Exceptions to various elements of RD, but did not take exception to the ALJ's resolution of NMB issues.

EGS contracts extending into the DSP II period could encounter transitional issues. RD at 46. Based on the clear language in the Competition Act, the ALJ appropriately recommended denial of the proposed NMB Riders for failure to include transitional protections. RD at 47; PAIEUG Reply Brief ("R.B."), pp. 21-23; PAIEUG M.B., pp. 13-14.

Moreover, in excepting to the ALJ's disposition of transitional issues, RESA, PPL EnergyPlus, and the Joint Suppliers marginalize the Commission's duty to protect customers from adverse transitional impacts.<sup>8</sup> RESA Ex., p. 13; Joint Supplier Ex., p. 15, PPL EnergyPlus Ex, p. 6. Shopping customers with fixed-price contracts extending beyond June 1, 2013, face the risk of over-charging in the event that an EGS fails to remove the risk premium from customers' charges to compensate for the EDC absorbing all risk associated with NMB charges. PAIEUG M.B., p. 22, PAIEUG R.B, pp. 13-14. Similarly, shopping customers with contracts that allow for a straight pass-through of NMB charges face the risk of double-charges in the event that an EGS fails to remove or zero-out all NMB pass-through mechanisms. The EGSs contend that the transitional risks can be addressed between customers and EGSs, with no guidance or structure from the Commission. *Id.* These recommendations would place customers at the mercy of EGSs' willingness and ability to address transitional issues. *Id.*; *cf.* PAIEUG M.B., p. 23; PAIEUG R.B., p. 14. The RD correctly dismissed these arguments and relied upon the express provisions of the Competition Act requiring the Commission to protect customers from transitional impacts. RD at 46-47.

The RD's comments on transitional risks are also responsive to certain arguments belatedly raised in the Exceptions of the Joint Suppliers. Contrary to procedure, the Joint Suppliers' arguments regarding transitional issues were not raised until the Exceptions stage of

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<sup>8</sup> PAIEUG notes that the Joint Suppliers' Exceptions propose transitional protections not previously before the ALJ for consideration. Joint Supplier Ex., p. 14. These proposals are addressed in Section B.1(c) of these Reply Exceptions.

this proceeding and were therefore not addressed in the RD; however, the ALJ's comments on transition matters are relevant to the Joint Suppliers' suggestion that customers are not at risk for overcharges. The Joint Suppliers argue that assignment of NMB charges to PECO would not actually increase risks to customers because customers currently under fixed-price arrangements are already risking overpayment in the event that the premium exceeds the amount of any NMB charges that actually occur. *Id.* This example ignores the fact that risk premiums include many components comprising a comprehensive "benefit of bargain" that both customer and EGS enter into voluntarily. *See* PAIEUG M.B., pp. 17-18. The mutually contracted-for risk arising from fixed-price contracts is distinct from the one-sided risk of double-charge posed by transitioning from EGS recovery of NMB charges to a non-bypassable rider. *See id.* In excepting to the RD on such grounds, the Joint Suppliers misunderstand the nature of fixed-price supply contracts and the risk of overcharge to customers posed by the NMB Rider. Joint Suppliers Ex., p. 16. Accordingly, the Commission should dismiss the Joint Suppliers' argument and adopt the RD's findings on transitional matters.

The RD correctly and appropriately disposed of the NMB Rider, recognizing that the EGSs have not provided any evidence showing that the NMB Rider reduces market prices for customers. RD at 46. Further, the RD rightly concluded that the specific NMB Rider proposals offered by RESA and PPL EnergyPlus failed to protect customers from transitional impacts as required by the Competition Act. *Id.* at 47-48. The ALJ's disposition of the NMB Rider appropriately weighed record evidence, correctly applied the Public Utility Code, and should be adopted by the Commission.

**(b) The Recommended Decision Followed Commission Precedent in Rejecting the NMB Rider Proposals of RESA and PPL EnergyPlus.**

In addition to appropriately and correctly denying RESA, PPL EnergyPlus, and the Joint Suppliers' proposals for an NMB Rider based upon weight of record evidence, the RD's recommendation for such rejection is supported by recent PUC precedent. See RD at 1. Specifically, the PUC recently reviewed a similar request in another EDC DSP proceeding and denied the implementation of NMB Riders similar to those proposed herein. Because the ALJ's RD correctly applies PUC precedent to the non-bypassable NMB Rider requested by the EGSs in this proceeding, the proposals of RESA, PPL EnergyPlus, and the Joint Suppliers' must be denied, and the ALJ's recommendation should be adopted.

Just before issuance of the RD, the Commission entered an Order 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*, Order, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273670 (August 16, 2012) ("FirstEnergy Order"). As properly observed in the RD, the FirstEnergy Order addressed many of the same issues now before the Commission in this proceeding. RD at 1. Accordingly, the RD references the FirstEnergy Order and resolves to "maintain consistency, wherever possible, with that Commission Order and the judgment of the Commission." *Id.* The RD's rejection of the NMB Rider proposed by RESA and PPL EnergyPlus is appropriately consistent with the Commission's determinations in the FirstEnergy Order. RD at 46; FirstEnergy Order, pp. 77, 81, 83.

Because PUC precedent squarely rejects the type of NMB Rider proposed here, RESA, PPL EnergyPlus, and the Joint Suppliers attempt to support their Exceptions with cites to inapplicable precedent, which is meritless for purposes of this proceeding. PPL EnergyPlus Ex., at 16; RESA Ex., p. 5; Joint Suppliers Ex., p. 13. For example, PPL EnergyPlus argues that the

RD failed to consider the Commission's limited approval of a non-bypassable rider for recovery of Regional Transmission Expansion Plan ("RTEP") charges in the *Petition for Pennsylvania Power Co. for Approval of Default Serv. Program for the Period from January 1, 2011 through May 31, 2013*, Order, Docket No. P-2010-2157862 (Nov. 17, 2010) ("Penn Power 2010 DSP Order"). PPL EnergyPlus Ex., p. 5. Similarly, RESA relies upon the Recommended Decision preceding the FirstEnergy Order, in which the ALJ recommended approval of an NMB Rider substantially identical to that proposed by RESA in this proceeding. RESA Ex., p. 16.

These arguments should be disregarded as the RD's recommendation to deny approval of the NMB Rider rightly followed the Commission's findings in the FirstEnergy Order. RD at 1; FirstEnergy Order, pp. 77, 81, 83, 86. In disposing of the proposed NMB Rider, the RD addressed the same cost collection and transition issues informing the Commission's rejection of NMB Rider proposals in the FirstEnergy Order. RD at 46-47; FirstEnergy Order, pp. 77, 81, 83, 86. In excepting to the RD's determination, PPL EnergyPlus places undue reliance on the Penn Power 2010 DSP Order, where the Commission approved a limited non-bypassable surcharge under circumstances specific to Penn Power. PPL Energy Plus Ex., at 4-6. Similarly, RESA's reliance on the FirstEnergy Recommended Decision is rendered meaningless by the subsequent issuance of the FirstEnergy Order rejecting the ALJ's recommendations. RESA Ex., p. 16 note 46.

In addition to relying upon inappropriate Commission precedents, RESA and the Joint Suppliers also contend that the RD failed to consider certain non-jurisdictional precedent. The EGSs argue that the ALJ's RD failed to consider that the Public Utilities Commission of Ohio and the New York Public Service Commission have approved NMB Riders for electric utilities in their states. RESA Ex., p. 16, note 46; Joint Supplier Ex., p. 13. Considering that the default

service regulatory requirements and competitive markets in Ohio and New York are distinctly different from those in Pennsylvania, the RD appropriately chose to ignore caselaw from states outside of Pennsylvania. RD at 1, *see* PAIEUG M.B., p.25 (noting relevant regulatory differences between Ohio and Pennsylvania default service requirements).

The RD reasonably rejected the proposed NMB Rider pursuant to Commission precedent, as well as correctly ignored caselaw from other states that have no bearing on Pennsylvania. Accordingly, the ALJ's recommendation to reject the NMB Rider proposed by RESA and PPL EnergyPlus should be adopted in this proceeding.

**(c) The Recommended Decision Fully Contemplated the Onset of New Generation Deactivation Charges.**

As noted previously, the EGSs in this proceeding have made several different proposals with respect to a non-bypassable NMB Rider. *See* Section B.1.(a). Although some EGSs have sought to include any and all potential NMB costs, other EGSs have focused mainly on a non-bypassable collection of generation deactivation costs that they deem "volatile."<sup>9</sup> RESA Ex., p. 13. The RD recognized the potential for changes in generation deactivation costs before unequivocally rejecting the proposed NMB Rider. RD at 46-47. Regardless, RESA and the Joint Suppliers excepted to the RD's recommendation, arguing that the Commission should approve an NMB Rider due to purportedly "new" evidence of forthcoming generation deactivation costs. RESA Ex., p. 14; Joint Suppliers Ex., pp. 10, 11. Contrary to RESA and the Joint Suppliers' claims, this evidence is not "new" in that all of the parties, including the ALJ, recognize that generation deactivation costs have the tendency to change, which was the originally stated basis for proposing recovery of such costs through the NMB Rider. As such,

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<sup>9</sup> As noted above, RESA proposed to include several charges in the NMB Rider, including both generation deactivation charges and Network Integration Transmission Service ("NITS") charges. NITS charges are set annually with no intermittent variation. OSBA M.B., p. 10. Conversely, generation deactivation charges vary based on the reliability impacts of generation units seeking retirement. RD at 46.

because the ALJ recognized this issue and correctly rejected recovery of generation deactivation costs through the NMB Rider, the Exceptions of RESA, PPL EnergyPlus, and the Joint Suppliers should be denied.

In excepting to the ALJ's recommendation to deny approval of the NMB Rider, RESA and the Joint Suppliers refer to recent and ongoing Reliability Must Run ("RMR") proceedings at the Federal Energy Regulatory Commission ("FERC"), which are the federal regulatory proceedings resulting in generation deactivation charges across the PJM zone. RESA Ex., p. 14; Joint Suppliers Ex., pp. 10, 11. The Joint Suppliers argue that recent FERC activity, including RMR approvals and new applications occurring in July and August of 2012, "bolsters the significance of the issue at hand." Joint Suppliers Ex., p. 12; *see also* RESA Ex., p. 14.

The Commission should reject any attempt to show changed circumstances on NMB issues, as the RD appropriately considered the possibility of changes in generation deactivation charges. RD at 46-47. Specifically, the RD aptly described the potential for new generation deactivation charges, stating that "generation deactivation charges are unknown and suppliers cannot hedge the risks of potential significant costs." *Id.* at 46. As reflected in the ALJ's disposition of the NMB Rider, knowledge of changes in generation deactivation costs did not necessitate or justify approval of the proposed NMB Rider when customers receive little, if any, benefits from the Rider while risking exposure to adverse transitional impacts. *Id.* at 46-47.

By excepting to the RD's findings based on evidence establishing only that generation deactivation charges are forthcoming in certain areas of the PJM zone, RESA and the Joint Suppliers misunderstand the RD's clear focus on customer effects. *Id.* The RD did not condition its findings upon generation deactivation charges remaining unchanged. RD at 46-47. Rather, the RD correctly observed that RESA, PPL EnergyPlus, and the Joint Suppliers have not shown

how the NMB Rider reduce prices to customers if these NMB charges are paid to the EGS or the EDC. *See* RD at 45-47; *see also* PAIEUG R.B., pp. 20-21. As such, the amount or frequency of generation deactivation charges bears no relation to the rationale compelling rejection of the NMB Rider. RD at 45-47. Finally, if the Commission considers the potential impacts of new generation deactivation costs as relevant evidence, the specific generation unit retirements cited by RESA and the Joint Suppliers should be accorded little weight as the retirements do not appear to affect customers in PECO's service territory. RESA Ex., p. 14; Joint Suppliers Ex., p. 11.

In making his determination, the ALJ was fully cognizant of the likelihood that generation deactivation charges occur sporadically and could result in a change in overall costs to customers. Even with such knowledge, however, the ALJ correctly determined that any proposed non-bypassable Rider to collect such costs would create more harm than good for customers. RD at 45. Accordingly, the Commission should disregard the Exceptions of RESA and the Joint Suppliers alleging changed circumstances due solely to potentially forthcoming generation deactivation charges and adopt the RD's recommendation to deny approval of the NMB Rider.

**(d) The Exceptions of the Joint Suppliers Introduce Alternative Proposals Not Previously Set Forth in This Proceeding and Must Be Denied By the Commission as Procedurally Inappropriate and Substantively Unsupported.**

As noted previously, some of the EGSs in this proceeding presented several similar proposals regarding the collection of NMB costs through a non-bypassable rider. RD at 45. Specifically, RESA proposed to recover NITS, RTEP, generation deactivation and other charges through the NMB Rider, while PPL proposed recovery of only generation deactivation charges through the Rider. RESA Ex., p. 11; PPL EnergyPlus Ex., p. 2. During the course of this

proceeding, RESA and PPL presented testimony on these proposals, PAIEUG opposed both proposals accordingly, and the ALJ reviewed and presented his recommendation to reject these proposals. Conversely, the Joint Suppliers did not present any testimony, perform any cross-examination, or file any briefs setting forth a different position on NMB Rider cost recovery than that proposed by RESA or PPL EnergyPlus.

Unfortunately, at the Exceptions stage of this proceeding, the Joint Suppliers have inexplicably chosen to weigh in on this issue by presenting three proposed "alternatives" regarding NMB cost collection for the PUC to review. Considering that none of the parties have been presented any opportunity whatsoever to review these proposals, present evidence, or brief these issues, the Joint Suppliers' proposals are procedurally inappropriate at a minimum. Even assuming, however, that the Joint Suppliers' proposed alternatives were procedurally appropriate, none of the three alternatives set forth are just, reasonable, or appropriate. Accordingly, the Commission must deny the Joint Suppliers' Exceptions entirely.

**(i) The Joint Suppliers' Exceptions Are Procedurally Inappropriate, Prejudicial to Other Parties, and Contrary to Fundamental Due Process Principles.**

The RD thoroughly addressed the record evidence regarding the NMB proposals set forth by RESA and PPL EnergyPlus throughout the course of this proceeding. RD at 45-46. In excepting to the RD's aforementioned findings on the NMB Rider proposals, the Joint Suppliers inappropriately attempt to circumvent Commission regulations and procedure, as well as deny parties' their due process rights. Therefore, the Joint Suppliers' Exceptions are procedurally inappropriate and should be summarily denied.<sup>10</sup>

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<sup>10</sup> PAIEUG supports the Motion to Strike filed by the OSBA on September 13, 2012.

The Joint Suppliers' Exceptions disregard the Commission's adjudicative procedures, resulting in substantial infringement of parties' due process rights. As noted above, the Joint Suppliers waived every opportunity to present a case in this proceeding. Although "active" as parties of record throughout the entirety of this proceeding, neither Constellation nor NextEra submitted testimony, cross-examined witnesses, or submitted Main or Reply Briefs on any issues, much less proposed "alternatives." As a result, no party was afforded an opportunity to challenge or question the myriad of assumptions and conclusions presented, *for the first time*, in the Joint Suppliers' Exceptions.<sup>11</sup> Moreover, the Joint Suppliers draw conclusions about other parties' motivations and purposes for offering certain recommendations, but fail to provide cites to the record.<sup>12</sup> The Exceptions even include testimonial statements of alleged facts, such as the presumptuous claim that a recommendation to modify PECO's Transmission Service Charge ("TSC"), which was not proposed by any party prior to the Joint Suppliers' Exceptions, "provides more limited benefits for competitive markets and consumers alike." Joint Suppliers Ex, p. 17. Again, the Joint Suppliers provide no citation to the record for this "fact." It is completely unacceptable for a party to use the Commission's Exceptions process to avoid review of proposals on the record. Parties that have dutifully provided the ALJ and the Commission with a comprehensive evidentiary record and timely advocacy are highly prejudiced by the interjection of new proposals and unverified statements.

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<sup>11</sup> These new assumptions and conclusions offered by the Joint Suppliers are distinct from concerns regarding the evidentiary import of forthcoming generation deactivation retirements. PAIEUG maintains that pending generation unit retirements are not new evidence with regards to the volatility of generation deactivation charges. *See* Section B.1.(c) *supra*.

<sup>12</sup> The Joint Suppliers "presume" that OCA did not express concern with regards to the collection of generation deactivation charges through an NMB Rider because residential contracts tend to be shorter in length. Joint Suppliers Ex., p. 15. As indicated by the fact that the Joint Suppliers provide no citation for this purported observation, it is fair to assume that the OCA made no such representation in this proceeding. *Id.*

The Joint Suppliers' attempt to introduce new proposals at this point in the proceeding is inappropriate and unreasonable. The Joint Suppliers had adequate opportunity to present these proposals throughout the various stages of this proceeding. By waiting until the Exceptions stage, the Joint Suppliers are circumventing PUC regulations and denying parties' their due process rights. On a procedural basis alone, the Joint Suppliers' Exceptions must be denied.

**(ii) The Joint Suppliers' Three Alternatives Must Be Rejected, as They All Contain Substantive Concerns With Respect to the Detrimental Impact They May Have on Customers if Implemented.**

Assuming *arguendo* that the Joint Suppliers' Exceptions are not denied due to their procedural inappropriateness, the Joint Supplier's proposed alternatives must also be denied on a substantive basis, as none of the three alternatives provide a justifiable basis for implementing an NMB Rider or otherwise modifying PECO's cost collection methodologies for NMB charges. Accordingly, the PUC must reject the Joint Suppliers' Exceptions and affirm the ALJ's recommendations on this issue.

The Joint Suppliers first alternative recommends that the Commission approve the NMB Rider for recovery of only generation deactivation costs, with a one-year transition period for Commercial and Large C&I customers. Joint Suppliers Ex., at 14. The one-year transition period would exempt Commercial and Large C&I customers from the NMB Rider for the twelve month period ending June 1, 2014. *Id.* Contrary to the Joint Supplier's claims, this alternative would not fully address the transition issues discussed in Section B.1(a) of these Reply Exceptions. *See* Section B.1(a) *supra*.

Equally important, the Joint Suppliers' proposal would not address PAIEUG's cost causation and customer choice concerns. If the Companies were to begin collecting generation deactivation charges, it is unclear whether these charges would or even could be collected based

on a customer's one coincident peak demand, consistent with cost causation principles. PAIEUG M.B., pp. 13-14. PECO's collection of generation deactivation from all customers would also eliminate shopping customers' ability to negotiate freely in the competitive market with respect to transmission-related costs. *See Id.*; *see also* PAIEUG R.B., pp. 11-13. Thus, the Joint Supplier's first proposal should be rejected as inconsistent with the Commission's Order and in violation of principles of cost causation and customer choice.

The Joint Suppliers' second proposal requests that the Commission approve an NMB Rider for generation deactivation charges, but carve-out only Large C&I customers with existing supply contracts. Joint Suppliers Ex., pp. 15-16. The Joint Suppliers' second proposal should be rejected because it too calls for the collection of generation deactivation costs via a non-bypassable surcharge, which was denied in the FirstEnergy Order. FirstEnergy Order, p. 81. This second proposal would also present continued concerns related to cost causation under the 1-CP methodology and grandfathering.

Moreover, while this proposal may "grandfather" certain Large C&I customers, it does not address how such customers would be treated if they were to expand their businesses and/or open new accounts. By only carving out a set portion of customers from one snap-shot in time, the Joint Suppliers' second alternative may create additional burden for these customers at a later date. Moreover, there may be some Large C&I customers who previously received service from an EGS but are on default service for a short, transitional period of time. Under this alternative, these customers would be precluded from making competitive market choices regarding NMB cost collection (i.e., receiving a fixed price or a pass-through of charges) due to no fault of their own.

If the Commission approves any NMB Rider for generation deactivation charges, the Joint Suppliers' third proposal is the only proposal that may possibly be considered, because it only affects default service customers. Under the third proposal, the Joint Suppliers propose that PECO collect generation deactivation charges instead of default service suppliers; however, EGSs would continue to collect these costs from shopping customers. Joint Suppliers Ex., pp. 21.

While this proposal is not as substantively harmful as the first two recommendations, it contrasts with the unbundled retail market structure prescribed by the Competition Act. If the Commission approves any alternate recovery for generation deactivation charges, the Joint Suppliers third proposal is the only proposal that could be appropriately considered, because it only affects default service customers and therefore does not impose transitional risks upon shopping customers. *See* RD at 46-47. While ostensibly compliant with the RD, the Joint Suppliers' third proposal contradicts the unbundling requirements of the Competition Act. *See* 66 Pa. C.S. § 2804(3); PAIEUG M.B., p. 8. As previously observed, the Competition Act explicitly provides for the unbundling of generation, transmission, and distribution, and any steps to rebundle distribution and transmission service are inconsistent with the Competition Act. *See* 66 Pa. C.S. § 2804(3); *see* PAIEUG R.B., pp. 19-20.

Accordingly, each of the three alternatives provided by the Joint Suppliers raise questions and concerns regarding both the impact on customers and the competitive market. As a result, the Joint Suppliers' proposal should be denied be supported for the foregoing reasons.

**2. Reply to RESA Exception No. 7: The RD Correctly Rejected RESA's Proposal to Implement a Non-bypassable \$0.005/kWh Default Service Cost Recovery Charge ("DSCRC").**

Although PECO did not propose any modifications to its current DSP for purported proposals of "competitive enhancement," in this proceeding, RESA proposed to implement a

non-bypassable \$0.005/kWh DSCRC. RD. at 52. The RD rightly recommended that the Commission reject RESA's proposed DSCRC, finding that the Rider would send inappropriate price signals and result in cross-subsidization between shopping customers and default service customers. RD at 54. Because RESA's Exceptions do not provide any reasoning that would overturn the ALJ's findings, RESA's Exceptions must be denied.

RESA takes exception to the RD's rejection of the DSCRC, claiming that the DSCRC is based on cost causation and aligned with PECO's costs of providing default service.<sup>13</sup> RESA Ex., p. 21. RESA argues that the DSCRC would incentivize shopping and therefore provides compelling reasons to modify PECO's determination of distribution charges from PECO's last base rate case. RESA Ex., pp. 20-23. RESA's claims, however, are incorrect, inappropriate, and unsubstantiated.

The RD correctly denied RESA's proposed DSCRC on the grounds that the "end result of the proposed PTC Adder would be the artificial inflation of the PTC with corresponding inaccurate price signals and cross subsidization of PECO's shopping customers by default service customers." RD at 54. The RD also found that the \$0.005/kWh charge, "does not align in any way with the administrative costs of providing default service or PECO's proposed RME programs." *Id.* at 52. Essentially, the RD correctly concluded that RESA's proposed DSCRC violates fundamental ratemaking principles and must be denied. *See id.* at 51-54.

In summary, although RESA claims that the DSCRC will allow PECO to align default service costs with default service revenues and create appropriate price signals, the ALJ correctly finds that the DSCRC would create distorted price signals and artificially increase default service

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<sup>13</sup> RESA provides no citation to indicate the basis for claiming that the DSCRC is aligned with cost causation principles. RESA Ex., p. 21.

rates. Therefore, the Commission must reject RESA's Exception, uphold the findings of the RD, and deny implementation of the Default Service Cost Recovery Charge.

**3. Reply to RESA Exception No. 4: The RD Correctly Accepted PECO's Proposal to Procure Default Service Supply for Large C&I Customers.**

Under PECO's current DSP, the Company procures default service supply for Large C&I customers from wholesale suppliers through spot-market full requirements contracts. RD at 25-26. As part of this proceeding, however, PECO proposes a modification to allow the Company to procure all Large C&I default service supply directly from the PJM market. *Id.* While RESA claims that the ALJ's findings would violate the Competition Act and risk misallocation of default service costs by PECO, the RD appropriately recommended approval of PECO's proposal, finding that the new method complies with the Competition Act and would reduce costs related to failed supplier bids. RESA Ex., pp. 4-5; RD at 26.

RESA excepts to the RD's findings, alleging that direct procurements on the PJM market are not "competitive" under the Competition Act and that the current process results in transparency and yields the best prices for customers. RESA Ex., pp. 5-6. RESA further argues that PECO may misallocate default service costs. RESA Ex., p. 6. Further review of the RD, however, finds that the ALJ thoroughly addressed and rejected RESA's claims.

As a threshold matter, the RD concludes that "RESA's suggestion that the procurement of supply from wholesale energy markets is not sufficiently competitive for purposes of the Code is unsupported." *Id.*; PAIEUG M.B., pp. 5-4; PAIEUG R.B., pp. 3-4. In reaching this determination, the RD correctly observed that RESA has produced no evidence of any prior misallocation of default service costs by PECO and that PECO's tariff describes the default service costs recovered through various charges in detail. RESA Ex., p. 6, *cf.* PAIEUG M.B., p. 5. Additionally, the RD found that RESA's argument that PECO's current competitive bidding

process yields the best prices for customers ignores the cost of failed bids for Large C&I supply which occurred under the current DSP. RESA Ex., p. 6, *cf.* PAIEUG M.B., pp. 5-6.

As part of its Exceptions, RESA fails to provide any evidence that was not directly considered and dismissed by the RD. RESA Ex., pp. 4-7. Moreover, RESA's Exceptions do not point to any evidence that would refute the reasoning therein, making no mention of the cost of failed bids recognized by the RD and PECO itself as a significant justification for modifying the procurement plan to reduce administrative costs. RD at 26. Further, like the recommendation to implement the DSCRC, RESA's Exceptions rest largely upon an unfounded and unsubstantiated assumption that PECO is incapable of accurately allocating default service costs. RESA Ex., p. 6., RD at 26.

Accordingly, RESA's arguments against PECO's proposed procurement for Large C&I default service supply are entirely unpersuasive and unsubstantiated. RD at 26. The ALJ appropriately found that PECO's proposed procurement plan for Large C&I customers complies with the Competition Act and will reduce costs for customers. *Id.* Therefore, the Commission should deny RESA's Exception, uphold the RD, and approve PECO's proposal to procure Large C&I default service supply directly on the PJM market.

**C. CONCLUSION**

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

- (a) Deny the RESA's Exception No. 6, PPL EnergyPlus' Exception No. 1, and the Joint Suppliers ' Exception No. 1 and adopt the Recommended Decision's rejection of any non-bypassable rider for recovery of NMB costs;
- (b) Deny RESA's Exception No. 7 and adopt the Recommended Decision's rejection of the Distribution System Cost Recovery Charge; and
- (c) Deny RESA's Exception No. 4 and adopt the Recommended Decision's approval of PECO proposal to procure default service supply for Large Commercial and Industrial Customers directly on the PJM market; and
- (d) Take any other actions as deemed necessary and appropriate consistent with these Reply Exceptions and the Recommended Decision.

Respectfully submitted,  
McNEES WALLACE & NURICK LLC

By   
Charis Mincavage (Pa. I.D. No. 82039)  
Adeolu A. Bakare (Pa. I.D. No. 208541)  
100 Pine Street, P. O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
cmincavage@mwn.com  
abakare@mwn.com

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Counsel to the Philadelphia Area Industrial Energy Users Group