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December 10, 2012

VIA e-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Investigation of Pennsylvania's Retail Electricity Market:
End State of Default Service
Docket No. I-2011-2237952**

Dear Secretary Chiavetta:

Enclosed for filing are the Comments of Exelon to the November 8, 2012 Tentative Order in the above-captioned proceeding ("the Comments").

As instructed in the Tentative Order, a copy of the Comments has been submitted to the Office of Competitive Market Oversight's Retail Markets Investigation inbox at ra-RMI@pa.gov.

Sincerely,

A handwritten signature in black ink that reads "Anthony E. Gay".

Anthony E. Gay
Associate General Counsel

AEG/ads
Attachments

c: Megan Good (via email – megagood@pa.gov)
Kirk House (via email – khouse@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

INVESTIGATION OF :
PENNSYLVANIA’S RETAIL : **DOCKET NO. I-2011-2237952**
ELECTRICITY MARKET: :
END STATE OF DEFAULT SERVICE :

**COMMENTS OF EXELON
TO THE NOVEMBER 8, 2012 TENTATIVE ORDER**

I. INTRODUCTION

Exelon Generation Company, Constellation Energy, and PECO Energy Company (“PECO”) (collectively “Exelon” or the “Company”) hereby submit these Comments in response to the Pennsylvania Public Utility Commission’s (“Commission”) November 8, 2012 Tentative Order tentatively adopting the Office of Competitive Market Oversight’s (“OCMO”) proposed model for the end state of default electric service (the “Tentative Order”).

The Tentative Order is an important milestone in the Commission’s investigation of Pennsylvania’s retail electricity market (the “Investigation”) and Exelon appreciates the opportunity to comment on each of the important topics identified in the Tentative Order. Exelon has participated extensively throughout the Commission’s Investigation, offering both testimony and written comments on the wide range of issues considered by the Commission in *en banc* hearings, collaborative processes administered by the OCMO, and numerous orders.¹ Exelon believes that many of the components of the OCMO’s proposed model will significantly enhance the sustainability and ongoing development of the retail electric market in Pennsylvania

¹ See *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952; *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered July 28, 2011); *Investigation of Pennsylvania’s Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011); and *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order entered March 2, 2012) (“*Intermediate Work Plan Order*”).

and should be adopted. As described further in these Comments, Exelon recommends several additional steps the Commission should consider to further the development of retail competition and improve the procurement of wholesale default service supply under the OCMO end state model.

Specifically, Exelon recommends the Commission:

- Establish a collaborative to develop a statewide quarterly competitive auction or request for proposals (“RFP”) structure and standardized default service supply master agreement to avoid conflicting, costly, and simultaneous procurements by multiple electric distribution companies (“EDCs”) and to realize potential economies of scale (but without combining EDC loads);
- Require hourly locational marginal priced (“LMP”) default service for medium commercial customers in electric distribution company (“EDC”) service areas where interval metering or advanced meter infrastructure (“AMI”) is complete on or after June 1, 2015, and also require EDCs to prepare transition plans for customers who will not yet have such metering infrastructure;
- Not recommend or require default service providers (“DSPs”) to enter into long-term contracts to meet the requirements of Pennsylvania’s Alternative Energy Portfolio Standards Act, 73 Pa.C.S. § 1648.1 *et seq.* (“AEPS”), so that the alternative energy market can develop consistent with competitive principles and customers will not pay more for unnecessary generation or subsidies;
- Establish an anticipated timeline for new legislation, rulemakings and other necessary actions to implement a revised default service model on June 1, 2015; and
- Maintain the nine-month period for filing and Commission approval of default service plans for the period commencing June 1, 2015, with six-month time periods for subsequent plans.

As the Commission considers proposals for both legislative changes and additional rulemakings relating to default service, it should ensure that any fundamental changes to the default service model in Pennsylvania are made with sufficient time for implementation by all market participants and that all costs incurred by EDCs as a result of such changes are recovered on a full and current basis. Exelon looks forward to working with the Commission, in the months ahead, to implement the conclusions in the Commission’s Final Order in this proceeding.

II. COMMENTS ON THE COMMISSION'S PROPOSED END STATE OF DEFAULT SERVICE²

A. Guiding Principles

In the Tentative Order, the Commission reviewed the principles in the Electricity Generation Customer Choice and Competition Act's (the "Competition Act") Declaration of Policy (66 Pa.C.S. § 2802) requiring the transition of Pennsylvania's regulated electric generation model to a competitive market and the goals of its current Investigation, particularly "the need to assess the current status of the retail market and explore changes that may be needed to allow customers to more fully realize the benefits of competition." Tentative Order, pp. 7-9. In summarizing its conclusions from the Investigation to date, the Commission underscored that two-thirds of Pennsylvania's electric customers continue to receive electric generation supply from their EDCs in the EDCs' role as DSPs instead of competitive electric supply from electric generation suppliers ("EGSs"). *Id.*, p. 9.

Exelon is a staunch advocate of competitive markets at the wholesale and retail levels and supports the Commission's efforts to develop a successful and sustainable retail electricity market in Pennsylvania. A sound energy policy must recognize the essential role of competitive electricity markets in meeting our energy and environmental challenges. Competition is the best way to foster innovation in new clean energy technologies and it is the only way to ensure that we ultimately adapt to these changes in the most efficient way possible.

As the nation's leading competitive energy provider, Exelon strongly supports competitive electricity markets to deliver choice, innovation and value for all sizes of customers. Exelon's competitive wholesale and retail energy businesses serve approximately 100,000 business and public sector customers and approximately 1 million residential customers across

² For convenience, Exelon's Comments are divided into the same sections used by the Commission in the Tentative Order.

the United States and Canada. Exelon has actively participated throughout the Investigation with a goal of improving the existing competitive market model, and Exelon's commitment to the development of a competitive market model is reflected in PECO's service territory, where over 61% of customer load is now shopping. Furthermore, during the course of the Commission's Investigation, PECO prepared a new plan for the provision of default service in its service territory for the June 1, 2013-May 31, 2015 period with a variety of retail market enhancements to further encourage customer shopping, which the Commission has approved subject to certain revisions.³

The Tentative Order emphasizes the challenge for EGSs created by the divergence of a DSP's Price-to-Compare ("PTC") from wholesale energy market prices, and properly attributes this challenge to existing statutory requirements that each DSP obtain a "prudent mix" of spot-market purchases, long-term and short-term energy contracts designed to achieve the "least cost over time" for default service customers. *Id.* Exelon shares the Commission's continuing concern that if wholesale market prices rise, EGSs may curtail or terminate their investments in the Commonwealth's retail market because they may find it difficult to compete with a PTC based on prior market conditions which may vary from the current marketplace. However, Exelon also recognizes that customers make decisions to select an EGS for their electric service for reasons other than price, such as fixed-price budget certainty, renewable attributes, or customer service.

Exelon believes the changes envisioned in the Tentative Order will require both legislative action and additional rulemaking proceedings by the Commission. Furthermore, as set forth in these Comments, Exelon believes there are several additional issues that the

³ See Opinion and Order, *Petition of PECO Energy Company for Approval of Its Default Service Program*, Docket No. P-2012-2283641 (Order entered October 12, 2012) ("*PECO DSP II Order*"), p. 153.

Commission should consider or clarify as part of these proceedings (e.g., as discussed in Section D.3 *infra*, the feasibility and logistics of statewide quarterly competitive auctions or RFPs for all EDCs for default service supply to avoid conflicting, costly, and simultaneous procurements by multiple EDCs).

Given timing and other uncertainties associated with legislative and rulemaking processes, Exelon believes an important guiding principle is to ensure there is enough time for all market participants to fully understand and adapt to any fundamental changes in order to avoid unintended market disruption. Therefore, as part of a Final Order in these proceedings, Exelon recommends the Commission establish a detailed timeline for new legislation, rulemakings, and other necessary actions leading up to an implementation date of a revised default service model to take effect on June 1, 2015, in order to provide the necessary guidance to all stakeholders and market participants.

B. Provision Of Default Service

In the Tentative Order, the Commission proposes to retain EDCs as the DSP in their respective service territories with the right to full cost recovery associated with providing default service through the use of a reconciliation mechanism. Tentative Order, p. 13. Exelon supports the Commission's proposal, and believes that the continuing role of EDCs as DSPs will provide important certainty of default service supply and retail market infrastructure for customers and market participants as the competitive landscape continues to evolve. The Commission's existing ability to approve an alternative DSP pursuant to its authority under Section 2803 of the Public Utility Code ("Code") and its regulations (52 Pa.Code §§ 54.183(b)(1)-(3)) provides an adequate pathway for selection of an alternative DSP should future changes be appropriate.

C. Applicability Of Proposed End State

Exelon agrees with the Commission's proposal to apply the Tentative Order's changes to the default service model on a statewide basis applicable to all EDCs. Exelon submits that there is no basis for distinguishing between DSPs (and default service customers) with regard to the general types of default service products that should be procured or basic requirements to facilitate the growth of retail markets. The application of any changes to all DSPs may also facilitate economies of scale for statewide procurement of default service supply, as discussed in Section D.3 *infra*.

D. Default Service Products

In the Tentative Order, the Commission observes that, under the current default service construct, EDCs purchase a large portion of default service supply months, and even years, in advance of delivery, which can lead to significant reconciliation costs and ultimately a PTC that diverges from current market conditions. To further its stated goal of creating a more market-reflective PTC, the Commission proposes specific default service products by procurement class. Exelon comments on each of these products in this Section.

1. Medium and Large Commercial and Industrial Rate Classes

Exelon supports the Commission's proposal that large commercial and industrial customers only be offered an hourly LMP-based default service from the EDC. Virtually all of these customers are now shopping and have the ability to secure the types of products and services they desire from a host of suppliers in the market, whether they desire a fixed-price, variable, or renewable product, or some combination thereof.

Exelon also supports the Commission's intention to transition medium commercial customers (100kW – 500kW) to a similar hourly LMP-based default service product. While the shopping statistics indicate that fewer of these customers are shopping in comparison to large

commercial and industrial customers, the competitive market is already offering a wide range of products tailored to the level of equipment and education of these customers. Furthermore, Exelon expects that the number of medium commercial customers shopping will be substantially higher by June 1, 2015, when the proposed OCMO model would take effect, and thereby further reduce the need for any non-LMP-based default service product for these customers.

In the Tentative Order, the Commission indicates that not only medium and large customers with interval meters or AMI but also those on summary-read meters should be transitioned to LMP-based default service using load profiles. Exelon believes the Commission's proposal should be adopted in territories where interval meters or AMI implementation for these customer classes has been completed. However, issues associated with reconciliation of real-time load obligations and load profiles will complicate the provision of LMP-based default service to customers in the absence of such metering functionality. Accordingly, Exelon suggests that the Commission: (1) maintain its position that LMP-based default service be used for all large commercial and industrial customers as well as for all medium commercial customers where interval meter or AMI implementation is complete prior to the first scheduled auction for default service beginning June 1, 2015; (2) direct all EDCs to include plans to transition medium commercial customers not on interval or AMI meters at the time of the first auction to LMP-priced default service for the auction immediately subsequent to the completion of interval or AMI implementation for that entire customer class.

2. Residential and Small Commercial and Industrial Rate Classes

The Commission proposes EDCs continue to offer default service on a quarterly, fixed-price basis, with a revised procurement schedule for residential and small commercial and industrial customers. Specifically, the Commission would have EDCs procure three-month full

requirements, load following contracts, without overlapping delivery periods, through auctions held one to two months in advance of time of delivery. Tentative Order, p. 17.

The default service product proposed by the Commission has several distinct advantages over the existing default service products offered by most EDCs, which are comprised of contracts up to two years in length. In particular, a default supply contract term length of three months will significantly reduce the likelihood of divergence between wholesale market prices and PTCs, and the use of full requirements contracts (instead of a mix of full requirements, block and spot supply) will provide important protections for customers. Moreover, procurements close to time of delivery, as proposed by the Commission, will further ensure that the product is more reflective of current market prices.

Notwithstanding, we suggest any legislative modifications the Commission seeks to implement the Tentative Order's proposals should retain flexibility to allow the Commission to adopt an alternative default service procurement product in the future, should the Commission desire to do so, without additional legislative changes. For the same reason, the Commission should maintain flexibility to leave open the possibility – at some point after experience has been gathered – of removing EDCs from the DSP role and placing EGSs in that role.

3. Coordinated, Simultaneous Statewide Competitive Procurement Structure And Standardized Supply Master Agreement

The Tentative Order is silent on the structure of the procurement process for its proposed end state for default service. The Commission should establish a collaborative stakeholder process as part of the Final Order in these proceedings to develop a coordinated and simultaneous competitive procurement process – using generally uniform supply master agreements (“SMAs”) and bid solicitation documents – for the procurement of default supply for all of the Commonwealth's EDCs. This competitive procurement process could be overseen by

one of a number of existing, independent firms with experience in utility procurement monitoring, as agreed to collectively by the EDCs and approved for the EDCs' use by the Commission. Establishing a coordinated, simultaneous procurement process, including uniform SMAs and bid documents, is a logical next step to meet the default service power needs of the EDCs. As explained in more detail herein, the Commission's collaborative stakeholder process could be tasked with determining the preferred procurement structure and developing the uniform SMA and bid documents, to be approved by the Commission no later than June 1, 2014.

The Tentative Order's findings regarding the uniform nature of the shorter term products for the residential and small commercial and industrial customer classes and the synchronization of default service contracts to the PJM Interconnection, Inc. ("PJM") planning year, coupled with the large increase in the number of procurements to be held by multiple EDCs at roughly the same time, could create significant resource and timing challenges to potential wholesale suppliers. Further, Exelon fears that an unsynchronized procurement schedule could result in a situation in which, some wholesale suppliers may choose to participate in some but not all procurements. This problem is only magnified if the Commission determines that the end state proposal should apply to the smaller EDCs, which, as noted above, Exelon supports. Additional complexities associated with a lack of uniformity regarding SMAs and competitive procurement processes (e.g., EDCs using a combination of descending clock auctions and RFPs) could combine to create additional inefficiencies and challenges that could result in less than optimal competitive outcomes.

The use of a uniform, simultaneous procurement process will have the added benefit of ease of administration for both the Commission and any independent bid monitor retained by the EDCs to handle the review and/or administration of the bidding process, data provision, and

other tasks – similar to how those matters are currently handled by each individual EDC. There are a number of firms such as NERA, Boston Pacific, Navigant, and CRA that have administered such procurement events for EDCs in the Commonwealth and across the U.S. These firms would be uniquely positioned to perform such a role in the Commonwealth.

By conducting a single, quarterly procurement, significant administrative savings for EDCs and suppliers can be realized and reflected in bidders' competitive pricing. The actual products and tranches for bid would remain specific to each EDC (i.e., EDC load would not be combined), thereby helping to ensure that the particular costs or efficiencies associated with serving different procurement classes of different EDCs can continue to be considered and priced by bidders.

Both New Jersey and Maryland have been able to promote a competitive market through use of coordinated, simultaneous competitive procurements for full-requirements wholesale supply, which include uniform SMAs and solicitation documents. New Jersey utilizes a descending clock auction process – similar to that used by FirstEnergy Corp.'s EDCs – implemented and overseen by the New Jersey EDCs' independent manager.⁴ Maryland has used a competitive RFP process – similar to that used by PECO and other EDCs – through which the EDCs have generally uniform bidding schedules and conduct their own respective bid processes,

⁴ As described on the New Jersey Basic Generation Service (“BGS”) Auction website, in New Jersey, a simultaneous, multiple round, descending clock auction format has been used since the inception of the New Jersey BGS Auction. The Auction is called simultaneous because all tranches for the load required for each of the four EDCs are put on offer through the same auction. A tranche for one EDC represents a given fixed percentage (e.g., 50 MW) of that EDC's load. All tranches for the BGS-FP (“Fixed-Price”) load of all four EDCs are procured through the BGS-FP Auction. The Auction proceeds in rounds. In a round, the Auction Manager announces a price for each EDC. Bidders bid by providing the number of tranches that they are willing to serve for each EDC at the prices announced by the Auction Manager. If the total number of tranches bid is greater than the number of tranches needed for an EDC, the price for that product is reduced for the next round. Bidders are provided with the next round prices and a measure of excess supply remaining in the Auction. In the next round, bidders are given an opportunity to bid again. The Auction is called a descending clock auction because prices “tick down” throughout the Auction, starting high and being reduced gradually until the supply bid is just sufficient to meet the load to be procured. Prices that tick down in a round decrease by a decrement; a decrement is a given percentage of the previous price. Bidders holding the final bids when the Auction closes are the winners. See <http://www.bgs-auction.com/bgs.auction.overview.asp>.

which processes are monitored and verified throughout by the independent bid monitor. In fact, the New Jersey auction and Maryland RFP models have formed the basis of each of the separate auction and RFP structures currently used in the Commonwealth for default service supply procurement by the Commonwealth's largest EDCs. The robust levels of participation in New Jersey's and Maryland's structures each year, which have contributed to their stability and success, are related directly to the well-designed, stable and non-discriminatory processes established, and the fact that the processes are *coordinated and simultaneous*, using *uniform* contract and bid documents, thereby providing all the benefits highlighted herein.

While the specifics of any competitive procurement process and standardized SMA would be developed as part of the collaborative recommended above, Exelon respectfully requests that the Commission provide several overarching design requirements and goals to guide the process. Based on Exelon's experience in both managing and participating in competitive procurements in multiple states and procurement events throughout the Commonwealth and PJM, Exelon recommends that the competitive procurement process should include the following features:

- ***Standard Certification Process for Each Procurement Year.*** While quarterly RFPs would be conducted, additional savings could be obtained by requiring a single, annual certification process for each supplier. Suppliers would be obligated to recertify in each future procurement in the event there are material changes in their credit support or ability to perform other contractual obligations.
- ***End of day bid submission with notification that same evening.*** As is currently the practice in Pennsylvania and other jurisdictions, in the event that a descending clock auction is not used, bids should be submitted at the end of the day, preferably at the beginning of the week, and winning bidders should be notified that same evening.
- ***Proportional Assignment of Any Time-of-Use ("TOU") Product Load.*** TOU products are better suited as EGS offerings in the competitive marketplace. To the extent that the Commission directs an EDC to offer a TOU product as part of default service, it should be structured such that winning bidders are assigned the

same proportion of TOU and non-TOU load for that winning bid (e.g., a bidder that wins 5 tranches of non-TOU load equivalent to 5% of non-TOU load would also be awarded 5% of TOU load).

- ***Exclusion of Load Tranches Served by Existing Block Contracts.*** Any EDC that has existing block contracts that extend after June 1, 2015 would be directed to “carve out” a slice of load for its long-term block purchase and eliminate it from the bid product.
- ***Established Stakeholder Process for Continuing Improvement.*** EDCs should be directed to host an annual, coordinated procurement improvement process open to all stakeholders to ensure that there is a feedback mechanism to address any changes, recommendations or concerns that bidders may have.

With respect to a standardized SMA, the Commission should direct that the uniform SMA include at least a “check the box” provision for damages calculations consistent with several other supply agreements approved by the Commission. Under this provision, a supplier can select among mechanisms for calculation of SMA damages to preserve flexibility in accounting treatment of the SMA by the supplier.

E. Transition Timeline

The Commission proposes that EDCs incorporate changes to default service products and procurement schedules into their default service plans, effective June 1, 2015. To that end, the Commission proposes a July 1, 2014 filing requirement, with a compressed six-month timeline for Commission review. As discussed with respect to the Commission’s guiding principles, *supra* at pp. 2-5, Exelon believes it is critical to ensure the implementation of any new default service model provide sufficient time to permit an orderly transition for all market participants and customers. The Commission has recognized that retail market enhancements under the current statutory and legislative framework typically involve a wide range of changes by EDCs and suppliers, including information technology upgrades, business process revisions, and employee training, as well as significant customer education. Imposing a new model without adequate time for implementation (including associated rulemaking by the Commission) could

present significant risks to the effectiveness of that new model and lead to diminished customer interest, with potential adverse consequences for all stakeholders.

Under the existing regulations, the Commission has nine months to consider and approve a default service plan. In light of PECO's experience in preparing and litigating two default service plans, Exelon believes that a shortened timeframe of six months for consideration of the first default service plan under a new legislative and regulatory framework may be insufficient, particularly for those stakeholders (including Exelon) who are likely to be involved in multiple default service proceedings in the same time period. For example, twelve months will have elapsed between PECO's most recent default service filing and the first scheduled procurement under that approved plan. As a result, Exelon suggests that the Commission endeavor to maintain the nine-month time period between filing and approval for the first default service plans after any legislative and regulatory revisions to the default service model, while maintaining flexibility in future plans to implement a shorter review time frame that is no less than six months.

F. Consumer Protections

In the Tentative Order, the Commission notes the proposed end state default service model does not require revision to any of the consumer protections provided under the Competition Act to ensure the continued provision of high-quality customer service, including rules governing marketing, billing practices, and dispute resolution. Exelon strongly supports the continued maintenance of regulatory oversight to protect customer interests consistent with the Competition Act, but agrees revisions to the default service model should require no changes to existing consumer protections.

G. Portability Of Benefits For Low-Income Customers

To ensure universal participation in the competitive market throughout Pennsylvania, the Commission proposes that all EDCs, to the extent they have not done so already, develop plans to allow their customers on utility payment assistance and debt forgiveness programs (“CAP”) to participate in the competitive market without restriction by January 1, 2015. Tentative Order, pp. 22-23. In PECO’s DSP II proceeding, the Commission has specifically directed PECO to work with the OCMO to prepare a plan that is ready for implementation by January 1, 2014.⁵ Exelon acknowledges the direction PECO has received from the Commission in its DSP II proceeding, and confirms it will proceed as directed by the Commission in that docket.

Exelon also acknowledges that, in the instant order, the Commission further directs (p. 23) CAP shopping plans to address specific issues:

This includes how the plan will preserve the legislative mandate mentioned above that universal service programs are available and funded, 66 Pa.C.S. § 2804(9), and how the plan ensures that the protections, policies and services that assist low-income customers to afford electric service are maintained. 66 Pa.C.S. § 2802(10). The plan should also address the impact, if any, of the cost-effectiveness of the utility’s CAP program. 66 Pa.C.S. § 2804(9). We also propose that the plans specifically address consumer education efforts aimed at these customers – especially important in those markets where these customers have been unable to shop.

Exelon confirms that, when PECO submits its CAP Shopping Plan in its DSP II Docket, that plan will address the issues set forth above. Preliminarily, however, Exelon notes that a PECO CAP shopping plan, regardless of the final form proposed to and approved by the Commission, will increase PECO’s costs in at least two ways. First, PECO will need to spend significant amounts on change management, including IT reprogramming, employee re-training, and consumer education. Second, CAP customers are substantially less likely to pay their final

⁵ Opinion and Order, *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P-2012-223641 (entered November 21, 2012), pp. 21-22.

bills than the general population – PECO CAP customers pay approximately 80% of such bills, as compared to a payment rate of about 98% for the non-CAP residential population. Including those customers in the current purchase of receivables (“POR”) program would thus impose costs on PECO that were not part of the original POR program structure or the program costs collected through an uncollectible expense charge in distribution rates. PECO’s CAP shopping plan will include provisions to address, among others, the issues of portability, POR, Uncollectible Accounts Expense, and full and current cost recovery. This may require a legislative change to 66 Pa.C.S. § 1408 to allow recovery of uncollectible expenses through a surcharge.

With respect to maintaining customer protections, Exelon notes that once CAP customers are exposed to the volatility of the marketplace, they will have the potential of paying generation prices higher than PECO’s default service prices. If they do pay higher prices, that outcome will erode some of the existing protections against price volatility that these customers have enjoyed since the advent of competition and will adversely affect the affordability of their utility service. This, in turn, may require increasing the benefits provided through PECO’s CAP program to provide further CAP program funding in order to return the customers to affordability. The costs of providing those increased benefits would, in turn, be recoverable through PECO’s Universal Service Fund Charge and would thus increase the cost of the CAP program paid by non-CAP customers. Accordingly, Exelon recommends that the Commission carefully balance affordability and cost containment principles in reviewing CAP shopping plans to maintain public support for those programs.

H. Supplier Consolidated Billing

Exelon supports the Commission’s decision to request a recommendation by July 1, 2013 from the OCMO regarding how to make supplier consolidated billing (“SCB”) available as a

billing option for EGSs and third parties. This direction to the OCMO should be incorporated into the Final Order in these proceedings to ensure discussions regarding SCB continue in a timely manner.

As the Commission recognizes, SCB can be an important billing option for both EGSs and customers, and should be able to be offered by EGSs in addition to Consolidated EDC Billing and Dual Billing. SCB does present many technical and legal questions, as reflected in the Tentative Order, and assuring full and current EDC cost recovery for both the implementation and on-going costs of SCB must be established, as well as the connections between billing methods, termination policies, and purchase of receivables programs.⁶ However, Exelon believes that these questions and issues can be addressed and resolved through continuing stakeholder discussions overseen by OCMO.

I. Accelerated Switching

In the Tentative Order, the Commission proposes to expand its current efforts to explore options to accelerate the customer account switching process, including system changes to permit customers to change their address of service and maintain EGS service (“seamless moves”) and a method of offering immediate EGS service, without transfer from default service to the EGS (“instant connect”).

Exelon has participated in the Commission’s proceedings regarding accelerated switching, and PECO has advocated reduction in the current customer waiting period from ten days to four days. Exelon supports consideration of additional mechanisms to reduce the time

⁶ The Commission has addressed EGS responsibility for the costs of several retail market enhancements. *See, e.g., Intermediate Work Plan Order*, p. 32 (stating that “the bulk of the [Standard Offer] costs, including the costs of maintaining referral programs once they are put into place, should be the responsibility of EGSs”); *see also PECO DSP II Order*, p. 148 (stating that “our position articulated in the [Intermediate Work Plan Order] was and continues to be that EGSs should be responsible” for costs of proposed retail market enhancements and directing PECO, EGSs, and interested parties to submit proposal addressing how participating EGSs or customers will pay for the costs).

period between a request by a customer to switch to a supplier and the commencement of service by that supplier, and specifically supports consideration of “seamless moves” and “instant connect” in the Final Order in these proceedings. Implementation of “seamless moves” provisions would remedy the situation in which a customer is forced to drop EGS service, not because of dissatisfaction or even by choice, but rather because that customer has simply decided to move to another home or location. Further, “instant connect” provisions will allow Pennsylvania customers to exercise their choice in generation supply more fully.

While anticipated future smart meter deployment may enable expedited switching, full and current cost recovery is particularly important with respect to technology upgrades necessary to support “seamless moves” and “instant connect”, which will require substantial information technology investment. The Final Order should provide assurance of full and current cost recovery in order to facilitate deployment of this additional functionality.

J. Provision Of Metered Services

Exelon supports the EDCs retaining all metering services in their respective service territory. As the Commission notes, EDCs retaining this function will allow continued settlement and data activities to support retail competition which have already been implemented. In addition, the EDC is a more logical provider of metering services given its long and extensive experience and existing connection with each retail customer. Furthermore, any change in this responsibility could lead to substantial issues with respect to the on-going implementation of smart meter programs throughout the Commonwealth.

K. Provision Of Energy Efficiency And Conservation Programs (“EE&C”)

The Commission has adopted specific energy consumption reduction targets for the three-year period ending May 31, 2016 for those EDCs with 100,000 customers or more. Although the Commission stated that EDCs are the best entity to provide energy efficiency

programs to customers, it strongly encouraged EGSs to also provide energy efficiency programs to their customers to increase the array of products available in the competitive retail electric market and reduce energy consumption statewide.

Exelon supports a second phase of EE&C programs by EDCs, with full and current cost recovery for those programs. However, Exelon notes the competitive market currently offers a variety of energy efficiency programs, which will only grow as the market continues to mature, and that the EE&C framework will permit the Commission and EDCs to take these evolving opportunities and offerings into account.

As part of its Comments, Exelon also provides the following responses to the questions posed by Commissioner Witmer in her Statement accompanying the Tentative Order.

(a) Do any EGSs currently provide or plan to provide EE&C services as part of their competitive retail offerings within Pennsylvania?

Peak demand curtailment offerings are currently available to all EDC customers, and Exelon already offers the following types of energy efficiency programs in the Commonwealth and various other markets across the U.S.:

- Energy assessments;
- Project financing, project design, and project implementation for lighting retrofits, building automation controls, water conservation, HVAC upgrades, boiler upgrades, roof repairs/upgrades, and insulation and window upgrades; and
- Conservation programs, including peak load management programs and Constellation's proprietary VirtuWatt™ solution. VirtuWatt is an intuitive, online technology solution for managing and analyzing energy usage. This easy-to-use

dashboard enables businesses to implement cost-saving energy strategies and automate participation in load response programs.

(b) If such offerings are or will be offered, how do EDCs and EGSs see those services coordinating with existing EDC Act 129 EE&C program obligations?

PECO's Act 129 EE&C programs are already open to EGS participation. Currently, EGSs can offer energy efficiency services by completing the rebate applications for approved measures and projects on behalf of their customers. Any EGS savings should be considered complimentary to PECO's programs, with those savings counted towards satisfaction of PECO's consumption and peak demand obligations under Act 129.

(c) Are there enhancements we can make to the Commission's end state proposal to encourage EGSs to develop and offer additional EE&C services, outside the scope of Act 129 EE&C Programs?

Exelon refers the Commission to the answer to question (d) below.

(d) Is there a broader role EGSs can or should play within legislatively mandated EDC EE&C programs?

With respect to both of the above questions, consistent with the Commission's recommendations that EGSs expand their offerings in this area, Exelon recommends that the Commission support the elimination of any current legislative or regulatory restrictions on participation by EDC affiliates as conservation service providers ("CSPs"). Removing this restriction will enhance competition among providers of energy efficiency and conservation measures and increase the range of offerings. Furthermore, in light of the potential growth of EGS participation in the energy efficiency arena and the need for continued encouragement of this evolving market, Exelon recommends that the Final Order underscore that the Commission

may not impose additional EE&C obligations for large EDCs after May 31, 2016 in favor of competitive, market-based programs offered by CSPs.

L. Existing Long-Term Contracts

1. Long-Term Alternative Energy Credits Contracts

Exelon agrees with the Commission that existing long-term contracts for alternative energy credits (“AECs”) should be honored. Consistent with PECO’s most recent default service plan approved by the Commission, the costs for these contracts should be included in the PTC.

2. Other Long-Term Contracts

As with existing AEC contracts, Exelon agrees with the Commission that any existing long-term energy contracts should be honored and the cost recovered through the PTC.

M. Future Long-Term Alternative Energy Credits Contracts

The Tentative Order’s section addressing “Future Long-Term Alternative Energy Credits Contracts” appears entirely based on the mistaken belief that the DSP procuring a portion of AEPS requirements through subsidized long-term contracts will “help facilitate a successful capacity build-out of AEPS-qualified generation facilities” and “help to ensure that the percentage goals of the AEPS are reached.”⁷ In fact, for the reasons set forth below, Exelon believes that mandating such long-term contracts will: (1) risk increasing consumers’ prices for AEPS compliance; (2) deter competitive investment in renewable resources to achieve AEPS goals; and (3) impede the competitive retail market.⁸

⁷ Tentative Order, p. 37.

⁸ While Exelon opposes a mandate or policy statement encouraging DSPs to enter into long-term renewable energy or AEC contracts for the reasons described herein, Exelon supports DSPs retaining their current right to seek Commission approval to enter into such contracts through competitive procurements on an as-needed basis in order to ensure compliance and avoid penalties under AEPS requirements.

1. Long-term Subsidized AEC Contracts Risk Increasing Consumers' Prices

Locking consumers into long-term contracts based on projected prices could generate the same disastrous consequences that arose from the Public Utility Regulatory Policies Act of 1978 (“PURPA”). Under PURPA, utilities were required to enter into long-term contracts with the express intent to incent the development of renewable energy technologies and cogeneration. These requirements resulted in consumers being locked into paying billions of dollars above market prices for energy under PURPA contracts. Requiring DSPs to procure AECs through long-term contracts and recover those costs from all consumers in order to incent development of renewable generation risks repeating the PURPA debacle.

For example, due to subsidies and declining costs of solar energy facilities, the solar AEC (“SAEC”) market is oversupplied and SAEC market prices have sharply declined over the past two to three years. SAECs that were trading on the short-term market in Pennsylvania a few years ago for over \$250 are now trading for under \$10. That drastic price decline was not expected or projected to occur and long-term contracts entered into just a few years ago are already significantly above market price. If those out-of-market contracts were mandated on utilities, consumers would be locked into those above market costs. Long-term contracts negotiated by competitive suppliers, however, place those risks on shareholders because a competitive supplier cannot simply pass on above market costs without putting itself at a significant disadvantage with a competitor. Shifting the risk of generation related costs from consumers to shareholders was one of the main drivers of the Competition Act. Competitive markets work to keep constant downward pressure on prices which is why the AEC obligation belongs with the load serving entity (“LSE”), and not on the DSP for customers it does not serve, locking them into potentially above market costs.

This is true of all market-based energy related costs that can be competitively procured, which the Commission itself has acknowledged in Orders issued in the PECO and FirstEnergy utilities' default service proceedings. In those cases, several parties were seeking to have EDCs assume responsibility for certain non-market based charges imposed by PJM on LSEs, including "generation deactivation" charges.⁹ The Commission determined that generation deactivation charges are "inherently part of the supply of electricity" and as such concluded, "[c]onsistent with the Commonwealth's continued migration to a more competitive retail market, we believe that these supply-related costs should remain with the EGSs."¹⁰

While Exelon disagrees with the Commission's characterization of generation deactivation charges and maintains they are non-market based regulated costs, Exelon agrees with the Commission that charges which are "inherently part of the supply of electricity", as AECs indisputably are, do in fact belong with the LSE in support of Pennsylvania's continued migration to a more competitive retail market. Allowing the DSP to procure AECs for any customers other than its own is thus in direct conflict with the Commission's own rulings in these cases.

⁹ Generation Deactivation charges are billed by PJM to LSEs to compensate generation owners who continue to operate plants beyond planned retirement dates for reliability purposes pending completion of necessary transmission upgrades.

¹⁰ Opinion and Order, *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (Order entered August 16, 2012), p. 10; *see also* Order, *Petition of PECO Energy Company for Approval of its Default Service Program*, P-2012-2283641 (Order entered October 12, 2012), p. 60 ("Now that EGSs are LSEs, these PJM costs and administrative expenses are properly allocated among all LSEs.").

2. Long-term Subsidized AEC Contracts Will Deter Competitive Investment In Renewable Generation

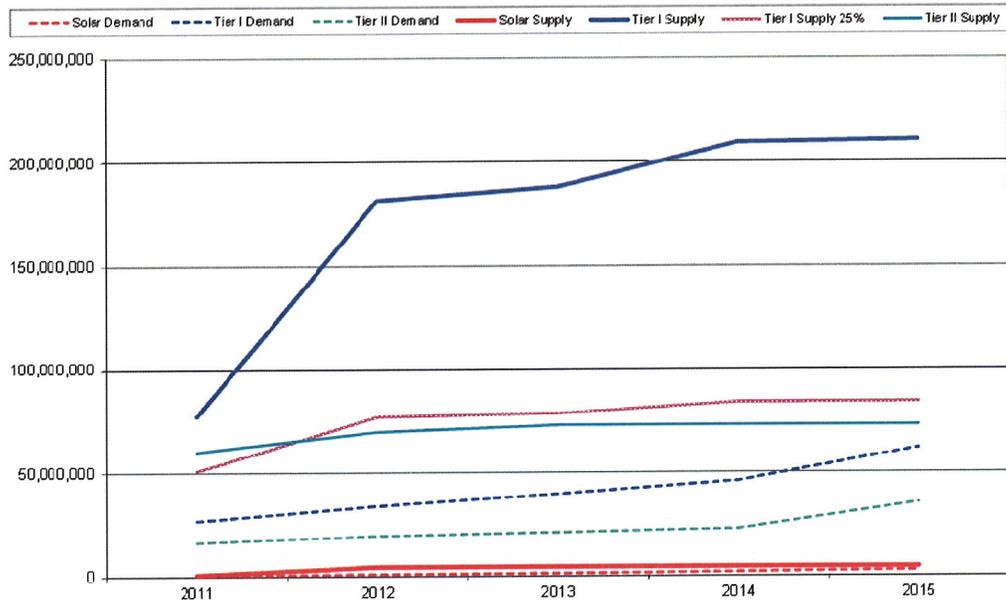
It is undisputed that there is currently an oversupply of renewable generation necessary to meet the AEPS requirements. The Commission's own 2011 AEPS Annual Report ("Report")¹¹ concluded that even when considering the entire renewable demand from all PJM states, adequate supply exists for both Tier I and Tier II Pennsylvania compliance through at least 2015. The data provided in the Report, however, suggests that conclusion is actually an understatement for two reasons.

First, the data contained in the charts on page 20 and 22 of the Report (and below) show the Tier I non-solar and solar supply as actually **significantly** in excess over demand in 2015, which suggests that at least one year of additional excess exists that is not shown by the charts. Second, AECs can generally be banked in all state renewable portfolio programs in PJM, which means the excess supply over 2011 - 2015 will be banked and available to meet demand when new renewable generation would otherwise be needed. That pushes out the date new generation will be required by at least another two years over what is assumed in the Report. Additionally, it should be noted that since the time the Report was released, installed wind capacity has increased from about 5,800 MW to more than 6,300 MW and Solar PV MW has almost doubled, from 768 MW to 1300 MW.¹² Taking these qualitative and quantitative points into consideration along with the Commission's own data, it is actually more realistic that the market is oversupplied through at least 2017.

¹¹ See 2011 Annual Report, Alternative Energy Portfolio Standards Act of 2004, Pennsylvania Public Utility Commission, http://www.puc.state.pa.us/electric/pdf/AEPS/AEPS_Ann_Rpt_2011.pdf.

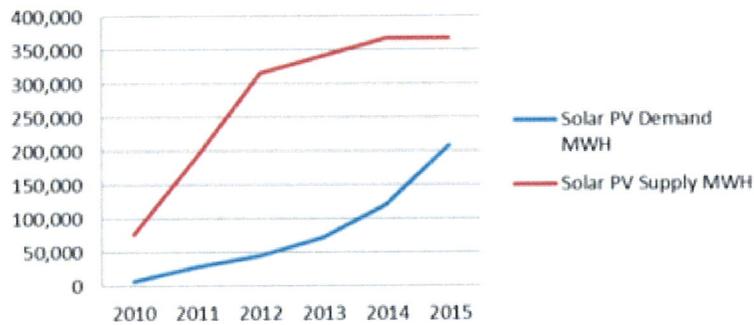
¹² See PJM's Generation Attribute Tracking System (GATS), <http://www.pjm-eis.com/>

AEPS Estimated PJM Footprint Marketplace (MWh) as of 1/31/2012



GRAPH 4 SOLAR MARKETPLACE IN PA ONLY

Solar Supply vs Demand PA Marketplace Only



Note: Solar PV supply in Graph 4 includes existing supply and 25% of the new capacity in the PJM construction queues.

This oversupply of renewable resources was caused, in part, by state and federal subsidies for the development of renewable generation, despite the lack of demand. Because renewable projects are more expensive than current energy and capacity prices generally can support, they rely upon the value of AECs and other types of renewable energy credits (“RECs”)

for development. The decline of AEC and REC prices in some states (including Pennsylvania) has led to a temporary slowing of renewable generation development and a belief by some stakeholders that AEPS goals will not be met without further government intervention.

Interfering with the AEC market, however, only exacerbates the oversupply of qualifying resources keeping AEC prices artificially low, which in turn, frustrates the future economic development of renewable resources. Besides deterring development of competitively built renewable generation by artificially suppressing the AEC prices, long-term subsidized contracts also devalue the investments made by merchant developers of existing renewable generation, further deterring future investment.

Merchant generation is built *without* mandated or subsidized long-term contracts. Regulatory interference with market policies and prices on which merchant generation relies creates uncertainty that is especially problematic for long-lived, capital intensive investments for new generation. Fear of future non-market policies a state might implement creates a powerful economic disincentive for any new, market-based investment and renewable generation developers will be much less willing to risk making investments based on expectations of future market prices if they believe the state will intervene in the market to artificially reduce future prices by mandating long-term contracts. As a consequence, government intervention to correct a perceived absence of market-based renewable energy investments will drive competitive renewable energy suppliers away, leaving only subsidized suppliers and a renewable energy market with unnecessarily higher costs for customers.

Policymakers need to resist the urge to “fix” a problem that does not exist and let the market work as intended. As the oversupply of existing renewable energy resources is reduced by increasing AEPS demand, the AEC market prices will respond accordingly and rise to the

point where they once again assist the competitive economic development of new renewable generation – without further subsidies.

The Commission clearly understands the dangers of subsidizing generation through long-term contracts as evidenced by its comments filed at the Federal Energy Regulatory Commission (“FERC”) addressing the potential anti-competitive results of New Jersey and Maryland’s proposals for subsidized long-term contracts for new natural gas generation.¹³ While the crux of those comments was focused on the impact to PJM capacity markets, the basic competitive market principles of the Commission’s comments are directly applicable here.

The Commission noted in its comments that Pennsylvania has “abandoned direct ‘command and control’ regulation . . . in favor of a market based approach which relies on economic signals to ‘tell’ potential investors when, where, and how to add generation capacity.”¹⁴ The Commission also stated that “Pennsylvania is committed to the competitive market structure and would be harmed by any action by another state within PJM that subsidized a participant in PJM’s interstate wholesale electric capacity market.”¹⁵

When discussing the importance of proper price signals for competitive markets to function as intended, the Commission recognized that subsidizing entry into the market can inhibit the issuance of proper price signals, precluding unsubsidized new entrants from competing. The Commission acknowledged that under that scenario, “consumers will again bear the risk associated with adding such resources by assuming a long-term payment obligation to

¹³ See generally Comments of the Pennsylvania Public Utility Commission, *Power Providers Group v. PJM Interconnection L.L.C.*, FERC Docket Nos. EL 11-20-000 and ER11-2875 (filed March 4, 2011).

¹⁴ *Id.*, p. 2.

¹⁵ *Id.*, p. 13.

subsidize generation resources.”¹⁶ The Commission summarized the ultimate harm of subsidized generation:

In the short run, there may be savings achieved by paying subsidized prices to a subset of suppliers, and lower prices to the rest. But in the long run, consumers will pay more, up to and including losing the benefits of competitive markets. . . . This is not in the public interest.¹⁷

3. Long-Term Subsidized AEC Contracts Impede Competitive Retail Markets

Since enactment of the Competition Act, Pennsylvania has developed a robust retail competitive market in large part due to the focus and support of this Commission on the success of retail competition. More than 1.9 million customers have competitively shopped for electricity and well over half of all the electricity consumed in Pennsylvania is provided by an EGS.

Many of these EGSs have made significant investments (including renewable energy investments) in order to competitively serve their customers’ electricity needs. Exelon Generation and Constellation, for example, have one of the largest merchant portfolios of wind generation in PJM with 675 MW obtained through long-term, competitively negotiated market based power purchase agreements (“PPAs”). In addition, Exelon Generation and Constellation own over 75 MW of solar generation through development of “behind the meter” customer installations, utility-scale solar projects, and PPAs. Those investments were made with the expectation that, as LSEs, Exelon Generation and Constellation will have on-going AEPS obligations, and to provide an opportunity to sell renewable energy and resulting AECs in the market at competitive prices. Subsidized contracts for AECs undermine those investments and retail competition generally.

¹⁶ *Id.*, p. 19.

¹⁷ *Id.*

In the Tentative Order, the Commission has asked whether a DSP should procure AECs with a mix of short, medium and long contract terms for up to 50 percent of the DSP's zonal load and allocate those AECs on a pro-rata share among the EGSs operating in its zone, entirely among the default service load, or some mix of both. Exelon believes that retail competition is negatively impacted under all of those scenarios and, for that matter, any scenario where an LSE is not fully responsible for competitively procuring all energy related products for its customers.

If a DSP procures all of its AECs for default service customers under long-term contracts, it risks stranded costs as some customers migrate to EGSs and also loses flexibility to meet its obligation as load rises and falls with energy efficiency, weather changes, etc. Requiring the DSP to procure AECs for a portion of all load and recover the costs through a non-bypassable surcharge as a way to mitigate the risk of stranded costs, however, undermines the competitive nature of generation supply the Competition Act was specifically enacted to create. It also devalues investments made by EGSs in order to successfully compete in a *fully* competitive market. The DSP procuring AECs on behalf of any portion of shopping customers removes an EGS' competitive advantage to procure low cost renewable resources for the benefit of their customers, as well as flexibility in how AEPS targets can be met most efficiently year over year. As a market-based energy related cost that can be competitively procured, AECs belong with the LSE serving the customer, and shifting that responsibility to the DSP undermines competition.

N. Statewide Consumer Education Campaign

Exelon generally supports customer education of the benefits of electric shopping, and PECO has conducted a variety of educational campaigns as part of its retail marketing efforts. While the Tentative Order highlights the type of messages that a future statewide campaign may include and estimates the need for a \$5 million annual budget for at least three years, Exelon

believes the Commission should establish a clear process in the Final Order by which the details, timing, and metrics of this new campaign will be established.

The Commission also proposes a “fair share” approach by which EGSs would be required to contribute to the costs of the education campaign. Exelon believes that more detail is required regarding this cost allocation (e.g., how are costs assessed if an EGS withdraws during a campaign?), and requests that the Commission provide additional detail on the content of the customer education campaign with specific focus on how much of it will be dedicated to informing customers on the new default service structure. While Exelon believes it is important to educate and inform customers on changes in the default service product, the proposed funds may be more effectively spent emphasizing shopping and retail alternatives instead of education on the transition from the current default service model. The Commission should make clear that EDCs will be entitled to full and current cost recovery for any “share” of customer education expenses.

O. Regulatory Costs And Assessments

1. Annual Electric Generation Supplier Licensing Fee

Exelon supports the Commission’s proposed supplier licensing fee of \$1,000.00. Any supplier licensing fee should not create a barrier to entry to Pennsylvania’s retail market for EGSs, and the amount proposed by the Commission is reasonable. Exelon believes the licensing fee should be a fixed and equal amount paid by each EGS.

2. Recovery of Electric Industry Assessments Through An Automatic Adjustment Clause

Exelon also supports the Commission’s proposal to allow an EDC to recover its portion of the Commission’s regulatory expenses through an automatic surcharge under Section 1307 of the Code. As the Commission notes, this expense has traditionally been recovered through

distribution charges and established in base rate case proceedings. Over the years, the annual amount of this unavoidable expense has fluctuated, and the use of an automatic surcharge (in which reductions in assessments are also passed on to customers) will result in a fairer mechanism for recovery of this cost.

III. CONCLUSION

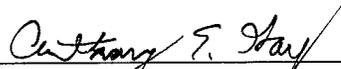
Exelon appreciates the opportunity to comment on the Tentative Order and looks forward to working with the Commission and other stakeholders to implement the measures being addressed in this proceeding and others designed to continue the development of a robust competitive market in the Commonwealth.

Exelon respectfully requests that the Commission revise the Tentative Order and enter a Final Order that:

- Establishes a collaborative process to develop a statewide quarterly competitive auction or RFP structure and standardized default service supply master agreement to avoid conflicting, costly, and simultaneous procurements by multiple EDCs and to realize potential economies of scale (but without combining EDC loads);
- Requires the EDCs to prepare transition plans for the applicable default service product for medium-sized commercial customers who will not have interval metering or AMI installed by June 1, 2015 ;
- Does not recommend or require DSPs to enter into long-term contracts to meet the requirements of Pennsylvania's Alternative Energy Portfolio Standards Act, 73 Pa.C.S. 1648.1 *et seq.*;
- Establishes an anticipated timeline for new legislation, rulemakings and other necessary actions leading to implementation of a revised default service model on June 1, 2015; and

- Maintains the nine-month period for filing and Commission approval of default service plans for the period commencing June 1, 2015, with six-month time periods for subsequent plans.

Respectfully submitted,


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