



An Exelon Company

W. Craig Williams  
Assistant General Counsel  
2301 Market Street / S23-1  
Philadelphia, PA 19103

Direct Dial: 215-841-5974

September 17, 2018

**VIA eFILING**

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

**Re: Pennsylvania Public Utility Commission v. PECO Energy Company**  
**Docket No. R-2018-3000164**

Dear Secretary Chiavetta:

Enclosed for filing is the **Reply Brief of PECO Energy Company** (the "Reply Brief") in the above-referenced matter.

As evidenced by the Certificate of Service, a copy of the Reply Brief has been served upon Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge F. Joseph Brady, and all parties of record.

Should you have any questions, please do not hesitate to contact me at 215-841-5974.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Craig Williams", with a long horizontal flourish extending to the right.

W. Craig Williams

Enclosures

cc: Per Certificate of Service (w/encls.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

v.

**PECO ENERGY COMPANY**

:  
:  
:  
:  
:  
:

**DOCKET NO. R-2018-3000164**

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the **Reply Brief of PECO Energy Company** on the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL AND FEDERAL EXPRESS**

Honorable Christopher P. Pell  
Deputy Chief Administrative Law Judge  
Office of Administrative Law Judge  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
[cpell@pa.gov](mailto:cpell@pa.gov)

Honorable F. Joseph Brady  
Administrative Law Judge  
Office of Administrative Law Judge  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
[fbrady@pa.gov](mailto:fbrady@pa.gov)

Carrie B. Wright  
Prosecutor  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120  
[carwright@pa.gov](mailto:carwright@pa.gov)

Elizabeth Rose Triscari  
Deputy Small Business Advocate  
Office of Small Business Advocate  
300 North Second Street, Suite 202  
Harrisburg, PA 17101  
[etriscari@pa.gov](mailto:etriscari@pa.gov)

Christy M. Appleby  
Hayley Dunn  
Assistant Consumer Advocates  
Aron J. Beatty  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
Forum Place, 5<sup>th</sup> Floor  
555 Walnut Street  
Harrisburg, PA 17101-1923  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
[hdunn@paoca.org](mailto:hdunn@paoca.org)  
[abeatty@paoca.org](mailto:abeatty@paoca.org)

Patrick M. Cicero  
Elizabeth R. Marx  
Kadeem G. Morris  
John W. Sweet  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)  
*Counsel for CAUSE-PA*

Scott J. Rubin  
333 Oak Lane  
Bloomsburg, PA 17815-2036  
[scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com)  
*Counsel for IBEW*

Charis Mincavage  
Adeolu Bakare  
Alessandra Hylander  
McNees Wallace & Nurick LLC  
P.O. Box 1166  
100 Pine Street  
Harrisburg, PA 17101-1166  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[abakare@mcneeslaw.com](mailto:abakare@mcneeslaw.com)  
[ahylander@mcneeslaw.com](mailto:ahylander@mcneeslaw.com)  
*Counsel for PAIEUG*

Joseph L. Vullo  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
[jlvullo@bvrrlaw.com](mailto:jlvullo@bvrrlaw.com)  
*Counsel for CAAP*

Karen O. Moury  
Kristine E. Marsilio  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)  
[kmarsilio@eckertseamans.com](mailto:kmarsilio@eckertseamans.com)  
*Counsel for NRG Energy*

Derrick Price Williamson  
Barry A. Naum  
SPILMAN THOMAS & BATTLE, PLLC  
1100 Bent Creek Boulevard, Suite 101  
Mechanicsburg, PA 17050  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
[bnaum@spilmanlaw.com](mailto:bnaum@spilmanlaw.com)  
*Counsel for ArcelorMittal*

Charles T. Joyce  
Spear Wilderman, P.C.  
230 South Broad Street, Suite 1400  
Philadelphia, PA 19102  
[ctjoyce@spearwilderman.com](mailto:ctjoyce@spearwilderman.com)  
*Counsel for IBEW*

Donald R. Wagner  
Linda R. Evers  
Michael A. Gruin  
Stevens & Lee  
111 N. Sixth Street  
Reading, PA 19601  
[drw@stevenslee.com](mailto:drw@stevenslee.com)  
[lre@stevenslee.com](mailto:lre@stevenslee.com)  
[mag@stevenslee.com](mailto:mag@stevenslee.com)  
*Counsel for WalMart*

Gregory W. Tillman  
Walmart Inc.  
2001 Southeast 10<sup>th</sup> Street  
Bentonville, AR 72716-5530  
[greg.tillman@walmart.com](mailto:greg.tillman@walmart.com)

Joline R. Price  
Robert W. Ballenger  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
[jprice@clsphila.org](mailto:jprice@clsphila.org)  
[rballenger@clsphila.org](mailto:rballenger@clsphila.org)  
*Counsel for TURN et al.*

Mark C. Hammond  
Land Air Water Legal Solutions, LLC  
1000 Westlakes Dr., Suite 150  
Berwyn, PA 19312  
[mhammond@landairwater.com](mailto:mhammond@landairwater.com)  
*Counsel for Tesla*



Mark Belland  
O'Brien, Belland, & Bushinsky, LLC  
500-506 North 6th Street  
Philadelphia, PA 19123  
[mbelland@obbblaw.com](mailto:mbelland@obbblaw.com)  
*Counsel for LIUNA*

Mary Va Lor  
LIUNA  
905 16th Street NW  
Washington, DC 20016  
[mlor@liuna.org](mailto:mlor@liuna.org)

Becky Merola  
Calpine Energy Solutions, LLC  
5325 Sheffield Avenue  
Powell, OH 43065  
[becky.merola@calpinesolutions.com](mailto:becky.merola@calpinesolutions.com)

Charles E. Thomas III  
THOMAS, NIESEN & THOMAS, LLC  
212 Locust Street, Suite 302  
Harrisburg, PA 17101  
[cet3@tntlawfirm.com](mailto:cet3@tntlawfirm.com)  
*Counsel for Calpine Solutions*

Reizdan B. Moore  
Reizdan B. Moore, LLC  
3544 North Progress Avenue, Suite 108  
Harrisburg, PA 17110  
[reizdan.moorelaw@comcast.net](mailto:reizdan.moorelaw@comcast.net)  
*Counsel for ChargePoint, Inc.*

Scott F. Dunbar  
Keyes & Fox LLP  
1580 Lincoln Street, Suite 880  
Denver, CO 80203  
[sdunbar@keyesfox.com](mailto:sdunbar@keyesfox.com)  
*Counsel for ChargePoint, Inc.*

Roger D. Colton  
Fisher, Sheehan & Colton  
34 Warwick Road  
Belmont, MA 02478  
[roger@fsconline.com](mailto:roger@fsconline.com)  
*Consultant for OCA*

David J. Effron  
Berkshire Consulting Services  
12 Pond Path  
Northampton, NH 03862  
[djeffron@aol.com](mailto:djeffron@aol.com)  
*Consultant for OCA*

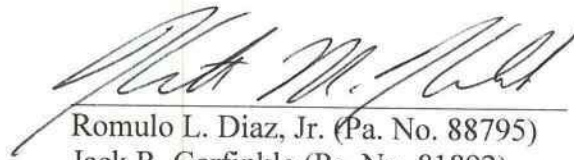
David S. Habr  
Habr Economics  
213 Cornuta Way  
Nipomo, CA 93444-5020  
[david.habr@habreconomics.com](mailto:david.habr@habreconomics.com)  
*Consultant for OCA*

Clarence L. Johnson  
CJEnergy Consulting  
3707 Robinson Avenue  
Austin, TX 78722  
[cjenergyconsult@att.net](mailto:cjenergyconsult@att.net)  
*Consultant for OCA*

Jeffrey Pollock  
J. Pollock, Inc.  
12647 Olive Boulevard, Suite 585  
St. Louis, MO 63141  
[jcp@jpollockinc.com](mailto:jcp@jpollockinc.com)  
*Consultant for PAIEUG*

Brian Kalcic  
Excel Consulting  
Suite 720  
225 South Meramec Avenue  
St. Louis, MO 63105  
[excel.consulting@sbcglobal.net](mailto:excel.consulting@sbcglobal.net)  
*Consultant for OSBA*

Respectfully submitted,



Romulo L. Diaz, Jr. (Pa. No. 88795)  
Jack R. Garfinkle (Pa. No. 81892)  
W. Craig Williams (Pa. No. 306405)  
Michael S. Swerling (Pa. No. 94748)  
PECO Energy Company  
2301 Market Street  
Philadelphia, PA 19103  
215.841.5974 (dir)  
215.568.3389 (fax)  
[romulo.diaz@exeloncorp.com](mailto:romulo.diaz@exeloncorp.com)  
[jack.garfinkle@exeloncorp.com](mailto:jack.garfinkle@exeloncorp.com)  
[craig.williams@exeloncorp.com](mailto:craig.williams@exeloncorp.com)  
[michael.swerling@exeloncorp.com](mailto:michael.swerling@exeloncorp.com)

Kenneth M. Kulak (Pa. No. 75509)  
Anthony C. DeCusatis (Pa. No. 25700)  
Catherine G. Vasudevan (Pa. No. 210254)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
215.963.5384 (dir)  
215.963.5001 (fax)  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)  
[catherine.vasudevan@morganlewis.com](mailto:catherine.vasudevan@morganlewis.com)

Dated: September 17, 2018

*Counsel for PECO Energy Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION** :  
:   
:   
v. : **Docket Nos. R-2018-3000164 et al.**  
:   
**PECO ENERGY COMPANY** :

**REPLY BRIEF OF  
PECO ENERGY COMPANY**

**Before Deputy Chief Administrative Law Judge Christopher P. Pell  
And Administrative Law Judge F. Joseph Brady**

Romulo L. Diaz, Jr. (Pa. No. 88795)  
Jack R. Garfinkle (Pa. No. 81892)  
W. Craig Williams (Pa. No. 306405)  
Michael S. Swerling (Pa. No. 94748)  
PECO Energy Company  
2301 Market Street  
Philadelphia, PA 19103  
215.841.5974 (bus)  
215.568.3389 (fax)  
[romulo.diaz@exeloncorp.com](mailto:romulo.diaz@exeloncorp.com)  
[jack.garfinkle@exeloncorp.com](mailto:jack.garfinkle@exeloncorp.com)  
[craig.williams@exeloncorp.com](mailto:craig.williams@exeloncorp.com)  
[michael.swerling@exeloncorp.com](mailto:michael.swerling@exeloncorp.com)

Kenneth M. Kulak (Pa. No. 75509)  
Anthony C. DeCusatis (Pa. No. 25700)  
Catherine G. Vasudevan (Pa. No. 210254)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5384 (bus)  
215.963.5001 (fax)  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)  
[catherine.vasudevan@morganlewis.com](mailto:catherine.vasudevan@morganlewis.com)

Dated: September 17, 2018

*Counsel for PECO Energy Company*

## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
II. STATEMENT OF THE CASE.....	2
III. SUMMARY OF THE ARGUMENT .....	2
IV. ARGUMENT .....	3
A. Overview of NRG Proposal.....	3
B. PECO’s Provision of Default Service and Applicable Law .....	3
1. Burden of Proof.....	3
2. PECO’s Default Service Obligations.....	5
C. NRG Proposal to Reallocate Costs .....	7
1. Qualifications of Mr. Peterson.....	7
2. NRG’s Alternative Cost Allocation .....	9
D. Effects of NRG’s Proposal.....	13
E. Additional Issues.....	13
F. Summary .....	15
V. CONCLUSION.....	16

## TABLE OF AUTHORITIES

	Page(s)
<b>Commission Cases</b>	
<i>Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement,</i> Docket No. R-00971265 (Order entered Dec. 29, 1997).....	2
<i>Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service,</i> Docket No. I-2011-2237952 (Order entered February 11, 2013) .....	7
<i>Manes v. PECO Energy Company,</i> Docket No. C-20015803 (Order entered June 14, 2002) .....	8
<i>Pa. P.U.C. v. Philadelphia Gas Works,</i> Docket Nos. R-2017-2586783 <i>et al.</i> (Order entered Nov. 8, 2017).....	3
<i>Pennsylvania Public Utility Commission v. PECO Energy Company,</i> Docket No. R-2015-2468981 (Order entered December 17, 2015).....	18
<i>Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge,</i> Docket Nos. P-2012-2338282 <i>et al.</i> (Order entered May 22, 2014).....	4
<i>Petition of PECO Energy Company for Approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017,</i> Docket No. P-2014-2409362 (Order entered Dec. 14, 2014).....	7, 15
<i>Petition of PECO Energy Company for Approval of its Default Service Program II,</i> Docket No. P-2012-2283641 (Order entered June 13, 2013) .....	15
<i>Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021,</i> Docket No. P-2016-2534980 (Order entered Dec. 8, 2016).....	7, 15
<b>Statutes, Regulations, and Other Authority</b>	
66 Pa. C.S. § 315(a) .....	3
52 Pa. Code § 54.187(e).....	12
<i>Generation Supply Adjustment Audit for the Twelve Month Periods Ended December 31, 2014, December 31, 2013, and December 31, 2012,</i> Docket No. D-2015-2521461 (Secretarial Letter issued March 16, 2017) .....	15



## I. INTRODUCTION

PECO Energy Company (“PECO” or “the Company”) files this Reply Brief in response to the Main Brief of NRG Energy, Inc. (“NRG”) regarding the single issue reserved for decision in the Joint Petition for Partial Settlement (the “Joint Petition”) filed in this proceeding on August 28, 2018. The settlement described in the Joint Petition (the “Settlement”) resolves all issues in this case except for NRG’s proposal to reallocate over \$100 million in distribution system costs only to those PECO residential distribution service customers who receive default service.<sup>1</sup>

As explained in PECO’s Main Brief, NRG’s proposal to allocate distribution system costs only to residential distribution service customers who receive default service, and thereby raise the price of default service by fifteen percent, is inconsistent with basic principles of utility cost allocation. Mr. Chris Peterson, NRG’s witness, lacked both personal and specialized knowledge to support the proposal and other opinions in his testimony, and he acknowledged that he had not analyzed the effects of his own proposal.<sup>2</sup> The testimony of witnesses for both the Company and the OCA clearly established that PECO properly allocates the costs of both default service and distribution service to residential customers.

To a large extent, the principal reasons for rejecting NRG’s proposal were fully addressed in the Company’s Main Brief and the Main Brief of the OCA and therefore this Reply Brief will only revisit key areas of disagreement in the briefing by NRG. Consistent with the proposed

---

<sup>1</sup> PECO Main Br., p. 3. Based on its Proposed Ordering Paragraphs included with its Main Brief, NRG appears to have revised its proposal to now include a request to scale-back its proposed reallocation based upon the final revenue requirement approved by the Commission in this proceeding. NRG did not present any testimony explaining its scale-back proposal or how it could be implemented in light of NRG’s failure to allocate indirect expenses to customer classes other than the residential class. *See* Office of Consumer Advocate (“OCA”) Main Br., p. 12.

<sup>2</sup> PECO Main Br., pp. 5-6.

findings of fact, conclusions of law, and ordering paragraphs submitted by both PECO and the OCA, the Pennsylvania Public Utility Commission (the “Commission”) should reject NRG’s proposal and approve the Joint Petition without modification.

## **II. STATEMENT OF THE CASE**

PECO incorporates the Statement of the Case as set forth in its Main Brief.

## **III. SUMMARY OF THE ARGUMENT**

NRG devotes large portions of its Main Brief to discussing the history of Pennsylvania’s electricity markets and incorporating Mr. Peterson’s testimony regarding his cost allocation methodology. However, NRG entirely fails to demonstrate that Mr. Peterson’s reallocation of over \$100 million in distribution system costs to residential distribution service customers receiving default service is reasonable or consistent with Pennsylvania law or established utility principles of cost causation.

NRG’s extensive recitation of Mr. Peterson’s non-utility experience provides no basis for the Commission to conclude that Pennsylvania should be the first jurisdiction in the nation to adopt Mr. Peterson’s allocation of indirect distribution system expenses to default service. Both PECO and the OCA have demonstrated that Mr. Peterson’s use of default service revenues and the number of residential distribution customers receiving default service are improper cost allocators. Additionally, a 1997 Commission decision<sup>3</sup> regarding PECO’s restructuring does not create a basis to consider default service as a separate “operating division” of PECO. NRG also continues to ignore the testimony of Mr. Peterson himself conceding his lack of knowledge of PECO’s programs and proposals, as well as his failure to conduct any “sensitivity analysis” of

---

<sup>3</sup> Opinion and Order, *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code and Joint Petition for Partial Settlement*, Docket No. P-00971265 (Order entered December 29, 1997) (the “1997 Restructuring Order”).

the effects of his proposal. The Commission should adopt the Settlement without the modifications requested by NRG.

#### **IV. ARGUMENT**

##### **A. Overview Of NRG Proposal**

PECO incorporates the Overview of NRG's Proposal as set forth in its Main Brief.

##### **B. PECO's Provision Of Default Service And Applicable Law**

###### **1. Burden of Proof**

PECO agrees with both the OCA and NRG that the Company has the burden of proof in this proceeding under Section 315(a) of the Pennsylvania Public Utility Code. The statutory burden of proof with respect to the reasonableness of a utility's rates does not shift from the public utility in a general rate proceeding. However, the Commission has made clear that "a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis, during the reception of evidence in the proceeding, tending to demonstrate the reasonableness of the adjustment."<sup>4</sup>

While NRG acknowledges this requirement, its statement that "Pennsylvania law requires only that NRG show that PECO failed to meet its burden of proof"<sup>5</sup> misstates and minimizes NRG's own burden to demonstrate the reasonableness of the adjustments advocated by Mr. Peterson. The Commission recently explained the allocations of both the burden of proof and the burden of production among parties:

As the petitioner or moving party, Columbia has the burden of proof in this proceeding pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the

---

<sup>4</sup> Opinion and Order, *Pa. P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-2017-2586783, *et al.* (Order entered November 8, 2017), p. 12.

<sup>5</sup> NRG Main Br., p. 11.

burden of proof, Columbia must show, by a preponderance of the evidence, that the relief sought is proper under the circumstances. That is, Columbia's evidence must be more convincing, by even the smallest amount, than that presented by an opposing party. . . .

Upon the presentation by Columbia of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of Columbia shifts to the opposing party. If the evidence presented by the opposing party is of co-equal value or "weight," the burden of proof has not been satisfied. Columbia now has to provide some additional evidence to rebut that of the opposing party. While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.<sup>6</sup>

NRG cannot prevail simply by asserting that PECO has failed to meet its burden of proof.

Because PECO (and the Joint Petitioners) presented evidence that clearly meets PECO's burden,

NRG must demonstrate the reasonableness of the allocations recommended by Mr. Peterson.

Moreover, to the extent NRG's proposal requires the Commission to determine particular facts

regarding the viability of Mr. Peterson's proposed allocations, methodologies, and results, the

Commission's decision "must be supported by substantial evidence in the record. More is

required than a mere trace of evidence or a suspicion of the existence of a fact sought to be

established."<sup>7</sup> NRG's failure to both establish the reasonableness of Mr. Peterson's proposal and

provide substantial evidence to support the facts he relies upon<sup>8</sup> requires rejection of NRG's

proposal.

---

<sup>6</sup> Opinion and Order, *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket Nos. P-2012-2338282 *et al.* (Order entered May 22, 2014), pp. 7-8 (emphasis in original, internal citations omitted).

<sup>7</sup> *Id.*, p. 8.

<sup>8</sup> *See, e.g.*, NRG Proposed Finding of Fact No. 13, ("PECO's indirect expenses should be allocated in a way that reflects the costs that would be incurred to operate a separate default service division.").

## 2. PECO's Default Service Obligations

In its Main Brief, PECO explained the regulatory framework that governs the provision of default service to its distribution customers. As a Pennsylvania electric distribution company (“EDC”), PECO serves as the default service provider to retail electric customers within its service territory and provides electric generation service to those customers who do not select an electric generation supplier (“EGS”) or who return to default service after being served by an EGS that becomes unable or unwilling to serve them.<sup>9</sup> Every customer who receives default service from PECO is a distribution service customer, and PECO provides electric distribution service without regard to whether a customer also receives default service.<sup>10</sup> As noted by the OCA, PECO must stand ready to provide default service at all times to all of its distribution service customers.<sup>11</sup>

PECO also summarized the testimony of PECO witness Alan B. Cohn, who described PECO's default service procurement process and the recovery of default service costs in accordance with plans reviewed and approved by the Commission.<sup>12</sup> Mr. Cohn explained that PECO enters into competitively procured default service contracts with wholesale suppliers that provide “full requirements” service to meet the default service generation requirements of distribution customers at all times.<sup>13</sup> PECO recovers the costs of these contracts and all other costs of default service through its generation supply adjustment charge (“GSA”) and transmission service charge (“TSC”), which comprise PECO's “Price-to-Compare” (“PTC”).<sup>14</sup>

---

<sup>9</sup> See PECO Main Br., p. 6.

<sup>10</sup> See *id.*

<sup>11</sup> See OCA Main Br., pp. 8-9.

<sup>12</sup> PECO Main Br., pp. 6-9.

<sup>13</sup> *Id.*

<sup>14</sup> PECO Main Br., p. 8.



More than 90% of the amounts collected from distribution customers under PECO's PTC are paid directly to default service generation wholesale suppliers.<sup>15</sup>

Payments to these wholesale suppliers are managed by PECO's Energy Acquisition ("EA") team, whose responsibilities include matching each distribution customer's load responsibility to its generation provider (whether that is one of over 100 EGSs in PECO's service territory or nine wholesale default suppliers).<sup>16</sup> Because the work performed by the EA team supports both shopping and non-shopping customers (who can always choose to shop at any time), PECO includes the costs of the EA team in distribution rates and those costs are not separately allocated to customers receiving default service or to EGSs for services provided to those EGSs.<sup>17</sup> As OCA also noted, PECO does not operate a separate "default service division" or "business line," and it is not permitted to profit from the provision of default service to distribution customers.<sup>18</sup>

NRG's discussion of PECO's default service obligations in its Main Brief largely consists of a discussion of various Commission orders relating to the restructuring of the electric industry in Pennsylvania and the development of Pennsylvania's retail electric market. NRG also acknowledges that the Commission reviewed and approved PECO's distribution rates in 2010 and 2015, but in the midst of its summary NRG further asserts that "PECO's distribution rates have not yet been fully unbundled."<sup>19</sup> Nothing in the Commission's Orders support NRG's

---

<sup>15</sup> *Id.*, p. 8.

<sup>16</sup> *Id.*, pp. 8-9.

<sup>17</sup> *Id.*, p. 9.

<sup>18</sup> OCA Main Br., pp. 8-9; PECO Main Br., p. 8.

<sup>19</sup> NRG Main Br., p. 17.

contention that PECO's distribution and default service rates have yet to be unbundled, and NRG provides no citation to support this claim.<sup>20</sup>

### **C. NRG Proposal To Reallocate Costs**

#### **1. Qualifications of Mr. Peterson**

In its Main Brief, NRG tries to burnish Mr. Peterson's credentials as an expert in this utility rate case proceeding by reciting his non-utility accounting experience and emphasizing the limited energy experience of others at his firm who worked on projects in which Mr. Peterson was not involved.<sup>21</sup> Lacking other material to establish Mr. Peterson's own specialized knowledge, NRG is reduced to proclaiming that his lack of utility experience does not diminish his expertise because "nothing about being a public utility shields PECO from following widely accepted accounting practices in the allocation of indirect costs to different functions of its business" and asserting that he also sought advice from counsel on matters that were outside his own expertise.<sup>22</sup>

NRG's recitations regarding Mr. Peterson's qualifications do not address his lack of relevant experience. There is no dispute that Mr. Peterson has knowledge of cost allocation in other industries, but that is not the legal requirement; he must have specialized knowledge of the matter at issue which, in this case, involves utility rates, utility cost causation, and the provision

---

<sup>20</sup> NRG does cite the Commission's Final Order in the Retail Markets Investigation regarding the unbundling of commodity costs and distribution rates issued on February 11, 2013. See NRG Main Br., p. 16; Final Order, *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Order entered February 11, 2013). The Commission subsequently approved PECO's distribution rates in 2015 as well as two additional default service plans in 2014 and 2016. See *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, P-2016-2534980 (Order entered December 8, 2016); Opinion and Order, *Pennsylvania Public Utility Commission v. PECO Energy Company*, Docket No. R-2015-2468981 (Order entered December 17, 2015); Opinion and Order, *Petition of PECO Energy Company for Approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Order entered December 4, 2014).

<sup>21</sup> NRG Main Br., pp. 20-27.

<sup>22</sup> *Id.*, pp. 21 & 26.

of default service.<sup>23</sup> As PECO explained in its Main Brief, Mr. Peterson lacks any relevant utility experience as well as both personal and specialized knowledge to support his opinions, and his inability to provide **any** evidence that utilities allocate expenses as he has proposed further undermines the application of his “widely accepted” theories to PECO.<sup>24</sup> Mr. Peterson may be comfortable wielding cost allocation analysis like a saw,<sup>25</sup> but Pennsylvania law and the Commission’s precedent require that he first have sufficient specialized knowledge of the utility costs he wants to allocate.

NRG also offers a new argument in its Main Brief that Mr. Peterson’s testimony should be given weight because he “did not hold himself out as an expert witness on all issues related to the base rate proceeding.”<sup>26</sup> Despite this admitted lack of expertise, NRG continues to rely on Mr. Peterson’s testimony on a variety of ratemaking issues, including his assertion (which NRG says is now only a “theory”) that PECO is motivated to allocate default service costs to distribution customers because “the fact remains that PECO earns a rate of return on distribution charges.”<sup>27</sup> Instead of conceding that Mr. Peterson is wrong, NRG asserts that he is correct because “less indirect costs allocated to distribution service means there would be less rate base” and appears to advocate (for the first time in its Main Brief) that PECO’s plant in service should be reallocated to default service in accordance with Mr. Peterson’s theory.<sup>28</sup> PECO simply does

---

<sup>23</sup> See PECO Main Br., p. 10 (citing *Manes v. PECO Energy Co.*, Docket No. C-20015803 (Order entered June 14, 2002)).

<sup>24</sup> *Id.*, pp. 10-12.

<sup>25</sup> NRG Main Br., p. 24.

<sup>26</sup> *Id.*, p. 26.

<sup>27</sup> NRG Main Br., p. 26 n.52 & NRG St. 1-SR, p. 33.

<sup>28</sup> NRG Main Br., p. 26 n.52.

not earn a return on expenses,<sup>29</sup> and the Administrative Law Judges (“ALJs”) should give no weight to Mr. Peterson’s testimony.

## **2. NRG’s Alternative Cost Allocation**

### **a. Allocation Of Indirect Costs To Residential Default Service**

Throughout its Main Brief, NRG repeatedly asserts that PECO’s allocation of such expenses as employee salaries, common plant depreciation, information technology and other costs to all distribution customers is “illogical” and contrary to “common sense” and “standard business practice.”<sup>30</sup> In NRG’s view, Mr. Peterson’s proposal to allocate more than half of PECO’s indirect expenses of \$196 million to distribution customers who receive default service “more accurately reflects the costs that PECO incurs to support all of PECO’s residential operations, both default service and distribution service.”<sup>31</sup> Mr. Peterson determined the level of default service-related expenses by using a combination of allocation methods based upon default service revenues and the number of distribution customers receiving default service, which he believes is consistent with “widely accepted” allocators of revenue and the number of customers used to allocate costs among operating divisions of a business.<sup>32</sup>

PECO’s Main Brief, as well as OCA’s Main Brief, summarized the flaws in Mr. Peterson’s methodology as described by PECO witness Alan B. Cohn and OCA witness Clarence Johnson, including Mr. Peterson’s failure to determine whether the costs he proposed to allocate were actually caused by any default service function.<sup>33</sup> Reduced to its essence, NRG’s

---

<sup>29</sup> PECO Main Br., p. 11.

<sup>30</sup> See, e.g., NRG Main Br., pp. 1, 2, 6, 9, 26 n.52 & 30.

<sup>31</sup> NRG Main Br., p. 51.

<sup>32</sup> See *Id.*, pp. 51-62.

<sup>33</sup> PECO Main Br., pp. 13-15; OCA Main Br., pp. 10-14.

Main Brief offers three main arguments in favor of the reasonableness of Mr. Peterson's proposals, and all lack merit.

First, NRG relies upon Mr. Peterson's testimony that allocation of indirect costs is "not a novel concept" and "[c]ompanies consistently allocate indirect expenses across business units and cost centers."<sup>34</sup> While the concept that companies may allocate indirect costs across cost centers is not in dispute, NRG entirely failed to demonstrate that this concept has ever been applied to utility default service. Mr. Peterson could not identify any utility in the United States that operates default service as a "separate division," nor any utility that allocates indirect expenses as he has proposed.<sup>35</sup> Especially in light of Mr. Peterson's lack of relevant utility experience, there is no basis for the Commission to conclude that Mr. Peterson's application of these concepts in the context of utility ratemaking and PECO's operations is correct.<sup>36</sup>

Second, NRG contends that it is unreasonable not to allocate over \$100 million of indirect expenses to residential distribution customers receiving default service in light of PECO's projected default service revenues in excess of \$637 million and the provision of default service to a projected 66 percent of residential distribution customers.<sup>37</sup> But the basis for NRG's contention is Mr. Peterson's unsupported and demonstrably incorrect claim that such costs are

---

<sup>34</sup> See NRG Main Br., p. 31.

<sup>35</sup> PECO Main Br., p. 15.

<sup>36</sup> In what appears to be an effort to salvage the credibility of Mr. Peterson by impugning that of Mr. Cohn, NRG contends that PECO "perhaps" has not adopted Mr. Peterson's allocation approach because Mr. Cohn has only worked at PECO during his entire utility career of thirty-seven years. NRG Main Br., p. 28. There is nothing in the record to suggest that PECO or Mr. Cohn – whose testimony has been accepted by this Commission, the Federal Energy Regulatory Commission and the Maryland Public Service Commission in more than twenty-eight proceedings over his thirty-seven years at PECO – are unfamiliar with the principles of cost allocation discussed by Mr. Peterson and addressed by Mr. Cohn in his testimony. See PECO St. 9-R, pp. 1-2 & Exhibit ABC-1. NRG's contention here should be flatly rejected.

<sup>37</sup> NRG Main Br., p. 1.



necessary for default service – not any analysis of the costs PECO actually incurs.<sup>38</sup> Mr. Peterson developed his proposal before conducting any discovery in this proceeding, when he could have investigated how PECO actually provides default service to distribution customers.<sup>39</sup> Subsequently, PECO provided substantial record evidence demonstrating that his proposed allocations make no sense and clearly violate the principle of cost causation that must guide any allocation of costs by a regulated public utility.<sup>40</sup> And while PECO does not track the time spent by EA team employees on default service, NRG provides no evidence to refute Mr. Cohn’s testimony regarding the limited amount of work performed by PECO’s EA team in managing payments that are made directly wholesale default service generation suppliers. Those payments – which the OCA properly characterizes as a “pass through” expense – comprise virtually all of PECO’s PTC revenues.<sup>41</sup>

Even if the ALJs were to conclude that some amount of indirect expense corresponding to the limited amount of work performed by the EA group should be allocated to distribution customers receiving default service, the allocators recommended by Mr. Peterson – default service revenues and number of default service customers – are plainly inappropriate. As the OCA explained, Mr. Peterson’s allocation is inconsistent with PECO’s cost of service study, and the OCA agrees with Mr. Cohn’s testimony that NRG has not shown that the costs Mr. Peterson proposes to allocate are caused by or even vary with his chosen allocators.<sup>42</sup>

---

<sup>38</sup> NRG Main Br., p. 47 (“Of the total indirect expenses that [Mr. Peterson] deemed necessary to reallocate, he identified \$101,951,549, which is currently allocated entirely to distribution service, and should be attributed to default service. This represents approximately 51.5 percent of the total pool of indirect expenses.”) (emphasis added).

<sup>39</sup> See PECO Main Br., pp. 13-14.

<sup>40</sup> PECO Main Br., pp. 13-15.

<sup>41</sup> *Id.*, pp. 8-9 & 14; OCA Main Br., p. 13.

<sup>42</sup> PECO Main Br., p. 15; OCA Main Br., pp. 12-14.

Third, NRG believes the Commission's 1997 Restructuring Order requires PECO to allocate indirect costs as if it operated a separate default service division.<sup>43</sup> But as both PECO and the OCA explained in testimony and briefing, at the time of that decision, PECO owned and operated generation plants and the Company's generation business had twice the number of employees as its distribution operations and had significant income on a standalone basis.<sup>44</sup> In fact, the 1997 Restructuring Order makes clear that "references to generation [] mean that sector of PECO's operations related to the *production* of energy."<sup>45</sup>

Although NRG contends that changes to PECO's business since restructuring are "of no consequence,"<sup>46</sup> PECO's operations as default service provider today are clearly not analogous to its prior operations related to the production of energy. Instead of employing thousands of employees to operate and support generation plants, PECO now only solicits and manages the contracts whereby wholesale suppliers provide default service supply to customers. In addition, Pennsylvania law and the Commission's regulations prescribe the manner in which PECO may recover its default service costs.<sup>47</sup> While the Commission has made clear that default service costs are not to be included in distribution rates, this requirement does not mean that a hypothetical company structure should be imposed for the purpose of allocating costs between default service and distribution service.<sup>48</sup> NRG's claim that the cost allocation discussion in the

---

<sup>43</sup> NRG Main Br., pp. 41-46. PECO notes that, although the 1997 Restructuring Order is a key component of Mr. Peterson's allocation recommendation, he relied on counsel to explain the Order. *See* OCA Main Br., p. 10, n.9; NRG Main Br., p. 26.

<sup>44</sup> PECO Main Br., p. 17; Tr. 443.

<sup>45</sup> 1997 Restructuring Order, p. 49 (emphasis added).

<sup>46</sup> NRG Main Br., p. 44.

<sup>47</sup> PECO Main Br., p. 8.

<sup>48</sup> *See* 52 Pa. Code § 54.187(e) & OCA St. 3R, p. 4.

1997 Restructuring Order is “as valid today as [it was] over twenty years ago”<sup>49</sup> is simply wrong: the Order does not relate to default service rates and should not now be applied to allocate default service costs in light of the significant changes to PECO’s operations and the existence of a statutory and regulatory framework for the recovery of default service costs.<sup>50</sup>

#### **D. Effects Of NRG’s Proposal**

NRG’s discussion of the effects of its proposal in its Main Brief simply summarizes Mr. Peterson’s proposed rate adjustments and repeats his statements about how customers perceive prices for generation supply, despite Mr. Peterson’s admission at hearings that he does not claim any expertise in advertising.<sup>51</sup> Notably, NRG also asserts that it is not proposing to deny PECO recovery of the costs Mr. Peterson proposes to allocate to default service and that any change in shopping levels “would likely occur over a lengthy period of time,”<sup>52</sup> but NRG entirely ignores both Mr. Peterson’s admission that he did not conduct any “sensitivity analysis” of the effects of shopping on his proposal as well as the conclusions of Mr. Cohn and the OCA that his proposal would result in PECO losing money as more customers shop.<sup>53</sup>

#### **E. Additional Issues**

*Mr. Peterson’s Knowledge of PECO Programs and Proposals.* In PECO’s Main Brief, PECO demonstrated that Mr. Peterson was completely uninformed and had not read any documents about various programs operated by PECO (such as the Standard Offer Program),

---

<sup>49</sup> NRG St. 1, p. 10.

<sup>50</sup> *Cf.* OCA St. 3R, pp. 6-7 (explaining that pass through costs are not typically included in allocation of administrative expense).

<sup>51</sup> Tr. 497. NRG’s additional arguments regarding PECO’s energy efficiency programs are discussed in Section IV.E *infra*.

<sup>52</sup> NRG Main Br., p. 58.

<sup>53</sup> PECO Main Br., p. 19; OCA Main Br., p. 11.

which he nevertheless cited in his testimony.<sup>54</sup> Despite Mr. Peterson’s lack of knowledge and further admitted lack of expertise in consumer advertising and branding, NRG continues to rely on his testimony to argue that PECO’s energy efficiency and conservation (“EE&C”) programs “give PECO an opportunity to educate consumers about default service” and “unfairly promote its brand name.”<sup>55</sup> The suggestion is that customers cannot distinguish between education and marketing of EE&C programs and default service, and that some EE&C costs, therefore, must support PECO’s default service operations. For those programs that Mr. Peterson cited as having a “direct impact” on the provision of default service and about which Mr. Peterson admitted he had no working knowledge,<sup>56</sup> NRG continues to recite Mr. Peterson’s testimony without any additional, credible record evidence.<sup>57</sup> These additional arguments and assertions by NRG are entirely unsupported and merit no weight in this proceeding.

*Negative Administrative Expense.* NRG claims astonishment that PECO’s current PTC reflects negative administrative and general (“A&G”) expenses, arguing that it would be impossible for such a significant business enterprise to have a negative A&G expense.<sup>58</sup> NRG’s astonishment appears to be based on a misunderstanding of the actual components of PECO’s PTC and related Commission orders.

First, as shown in NRG Exhibit CP-20, A&G expense is just one of many subcategories of “Administrative Cost” – and the total PTC Administrative Cost is positive. Second, the

---

<sup>54</sup> PECO Main Br., pp. 11-12.

<sup>55</sup> NRG Main Br., pp. 40 & 66; *see also* OCA St. 3R, p. 8 (concluding that Mr. Peterson’s opinion appears to be speculation). The only example of EE&C advertising Mr. Peterson could cite in support of his belief encouraged both shopping and non-shopping customers to save energy. *See* PECO St. 9-R, p. 19; Tr. 495.

<sup>56</sup> Tr. 487-88 & 494-94.

<sup>57</sup> *Compare* NRG St. 1-SR, pp. 9-10 with NRG Main Br., pp. 39-40.

<sup>58</sup> *See* NRG Main Br., p. 36.

negative A&G expense component is not evidence of improper cost allocation, but rather evidence of a revenue credit to customers related to customer-funded investments in the Standard Offer Program. As explained in the Company's Tariff, the PTC's Administrative Cost includes costs incurred to implement retail market enhancements directed by the Commission that are not recovered from EGSs or through another rate, and not only administrative costs associated with wholesale supply contracts as NRG contends.<sup>59</sup> Customers have paid for certain Standard Offer Program costs through the Administrative Cost component of the PTC.<sup>60</sup> When the Company receives revenues from its Standard Offer Program vendor, it credits those revenues back to customers through the PTC to offset Standard Offer Program costs.<sup>61</sup> This revenue credit to customers is reflected in the negative A&G expense shown in NRG Exhibit CP-20.<sup>62</sup>

## **F. Summary**

PECO's Reply Brief is summarized in Section III.

---

<sup>59</sup> Compare NRG Main Br., p. 37 & Tariff Electric PA. P.U.C. No. 5, Second Revised Page No. 35.

<sup>60</sup> See *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641 (Order entered June 13, 2013), pp. 9-10 (approving PECO's proposal to recover any Standard Offer Program costs remaining after the per customer acquisition fee paid by participating EGSs as follows: 50% from the purchase of receivables ("POR") discount and 50% from residential and small commercial default service customers); see also *Petition of PECO Energy Company for Approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Order entered December 4, 2014), pp. 16-19, 60 (approving continuation of the Standard Offer Program, including the cost recovery mechanisms approved by the Commission in DSP II); *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Order entered December 8, 2016), pp. 18-20, 67 (approving continuation of the Standard Offer Program, including the cost recovery mechanisms approved by the Commission in DSP III).

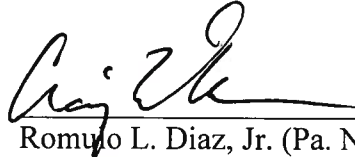
<sup>61</sup> *Petition of PECO Energy Company for Approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Order entered December 4, 2014) (approving settlement provision requiring that any fees received from any Standard Offer Program third-party servicer under contract to PECO be used to reduce the implementation costs of certain call script changes prior to reducing other Standard Offer Program implementation or operating costs).

<sup>62</sup> As PECO explained in its Main Brief, the Commission also regularly audits PECO's PTC. See PECO Main Br., p. 8. Mr. Peterson was unaware of the Commission audits, despite the Commission's release of audit reports to the public. Tr. 506; see, e.g., Secretarial Letter, *Generation Supply Adjustment Audit for the Twelve Month Periods Ended December 31, 2014, December 31, 2013, and December 31, 2012*, Docket No. D-2015-2521461 (Letter issued March 16, 2017) (noting Commission approval for release of audit to the public).



## V. CONCLUSION

For the reasons set forth above and in PECO's Main Brief, the Commission should reject NRG's proposal to reallocate distribution system costs as presented by Mr. Peterson and adopt the Joint Petition.



---

Romulo L. Diaz, Jr. (Pa. No. 88795)  
Jack R. Garfinkle (Pa. No. 81892)  
W. Craig Williams (Pa. No. 306405)  
Michael S. Swerling (Pa. No. 94748)  
PECO Energy Company  
2301 Market Street  
Philadelphia, PA 19103  
215.841.5974 (bus)  
215.568.3389 (fax)  
[romulo.diaz@exeloncorp.com](mailto:romulo.diaz@exeloncorp.com)  
[jack.garfinkle@exeloncorp.com](mailto:jack.garfinkle@exeloncorp.com)  
[craig.williams@exeloncorp.com](mailto:craig.williams@exeloncorp.com)  
[michael.swerling@exeloncorp.com](mailto:michael.swerling@exeloncorp.com)

Kenneth M. Kulak (Pa. No. 75509)  
Anthony C. DeCusatis (Pa. No. 25700)  
Catherine G. Vasudevan (Pa. No. 210254)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5384 (bus)  
215.963.5001 (fax)  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)  
[catherine.vasudevan@morganlewis.com](mailto:catherine.vasudevan@morganlewis.com)

Dated: September 17, 2018

*Counsel for PECO Energy Company*