COMMONWEALTH OF PENNSYLVANIA

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June 18, 2012

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Main Brief in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Candis A Tunilo

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891

Enclosures
cc: Hon. Dennis J. Buckley, ALJ
Certificate of Service
*154966

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: June 18, 2012

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I. INTRODUCTION AND PROCEDURAL HISTORY

The Office of Consumer Advocate (OCA) submits this Main Brief in the matter of the Petition of PECO Energy Company for Approval of its Default Service Program (Petition) in accordance with the procedural schedule adopted by Administrative Law Judge Dennis J. Buckley by Order dated March 19, 2012. The Petition addresses the default service plan of PECO Energy Company (PECO or Company) for the period of June 1, 2013 through May 31, 2015 (DSP II). The Company's current default service plan expires on May 31, 2013 (DSP I).

Intervenors in this proceeding include: the OCA; the Bureau of Investigation and Enforcement (I&E); Office of Small Business Advocate (OSBA); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Exelon Generation Company, LLC and Exelon Energy Company (ExGen); Washington Gas Energy Services, Inc (WGES); PPL Energy Plus, LLC (PPL); UGI Energy Services, Inc. (UGIES); Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*); FirstEnergy Solutions Corp. (FES); Noble Americas Energy Solutions, LLC (Noble); ChoosePAWind.com (ChoosePAWind); Green Mountain Energy Company (GMEC); Retail Energy Supply Association (RESA); Direct Energy Services, LLC (Direct Energy); Philadelphia Area Industrial Energy Users Group (PAIEUG); NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC (NextEra); Dominion Retail, Inc. and Interstate Gas Supply, Inc. (Dominion/IGS); Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation); and Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively FirstEnergy Companies).

At hearings in this matter on May 22, 2012, the OCA submitted into the record direct, rebuttal and surrebuttal testimonies and accompanying attachments of Richard S. Hahn[1] and Barbara R. Alexander.[2]

Contemporaneous with this proceeding, the Pennsylvania Public Utility Commission (Commission) has been investigating the retail electricity market. In its Order initiating the Retail Market Investigation (RMI), the Commission stated that the statewide investigation would be conducted "with the goal of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state."[3] To that end, the Commission has issued two orders providing recommendations and guidance for upcoming default service plans, which include the Company's pending Petition.[4]

The OCA submits that the primary task in this proceeding is to ensure that default service is provided in a reasonable manner consistent with Pennsylvania law, while at the same time providing cost effective improvements to the retail market that will encourage customers to take advantage of competitive retail offers if they so choose. The provision of default service and the

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1 Mr. Hahn is a principal consultant with La Capra Associates in Boston, Massachusetts. Mr. Hahn has a Bachelors of Science in Electrical Engineering, a Masters of Science in Electrical Engineering, both from Northeastern University (1973 and 1974, respectively). He also has a Masters in Business Administration from Boston College (1982). Mr. Hahn is a registered professional engineer in Massachusetts. He has worked in the electric utility industry for over 35 years and has diverse experience with both regulated and unregulated companies. Mr. Hahn's qualifications are detailed in OCA St. 1 at Exhibit OCA-RSH-1.

2 Ms. Alexander is a Consumer Affairs Consultant who works on consumer protection and customer service issues associated with utility regulation. Ms. Alexander is an attorney, and a graduate of the University of Michigan (1968) and the University of Maine School of Law (1976). Prior to opening her consulting practice in 1996, she spent nearly ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission. Her current consulting practice is directed to consumer protection, customer service and low-income issues associated with both regulated and retail competition markets. Ms. Alexander's qualifications are detailed in OCA St. 2 at Exhibit BA-1.

3 Investigation of Pennsylvania's Retail Electricity Market, Docket No. I-2011-2237952, Order (April 29, 2011)

4 Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order (December 16, 2011) (December 16 Final Order); Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Order (March 2, 2012) (IWP Order).

enhancements that have been proposed by the Company and other parties in this proceeding are closely interrelated. The default service products purchased, and the timing of those purchases, must be coordinated with the retail enhancements (*e.g.*, opt-in auction, referral program) approved in this proceeding. As discussed in further detail in this Main Brief, the OCA submits the following recommendations regarding PECO's DSP II proposal.

With regard to PECO's proposed procurement portfolio for DSP II:

- As discussed in Section II.B.3, the OCA submits that the Company should procure a mix of contracts similar to its procurement plan in DSP I, which includes a mix of one- and two-year fixed price full requirements contracts and block and spot products, in order to achieve a diversified portfolio that is least cost over time.
- As discussed in Section II.B.3, if the Commission determines that PECO's residential procurement proposal for DSP II should be adopted, the OCA submits that the Company's phase out of block purchases should be altered so that peak and baseload blocks are matched, thereby keeping them in balance as reliance on block purchases declines over time.
- As discussed in Section II.G.1, the OCA submits that PECO can achieve a better laddering and layering of residential fixed price full requirements contracts by more evenly allocating the tranches in the November 2012 (procure 16 of the 33 tranches) and January 2013 (procure 17 of the 33 tranches) solicitations.
- As discussed in Section II.G.2, the OCA proposes a "hold back" approach for tranches in order to better plan for the Retail Opt-In Auction. The OCA submits that the "hold back" approach coupled with a 20% customer participation cap (discussed

in detail in Section IV.B.3) adequately addresses the potential negative impact an open-ended opt-in program could have on default service procurement.

- As discussed in Section II.H, the OCA submits that a 50% supplier load cap is essential to promoting supplier diversity in the procurement of default service load and protecting customers against supplier default and should therefore, be adopted.

With regard to the Company's proposals for rate design and cost recovery for DSP II:

- PECO proposes to move from a quarterly reconciliation period for the Generation Supply Adjustment surcharge to an annual reconciliation period. As discussed in Section III.B, the OCA generally supports the Company's proposal to move to an annual reconciliation but proposes a modification to move to a 12-month rolling average reconciliation in order to better smooth out volatility in the Price to Compare.
- As discussed in Section III.D, the OCA opposes PECO's proposal to collect capital costs through the Generation Supply Adjustment surcharge with a return on equity, as the collection of capital costs in a surcharge is prohibited by the Public Utility Code and long-established case law in Pennsylvania.
- As discussed in Section III.E, the OCA opposes PECO's proposal to split the proceeds of its exercising of Auction Revenue Rights evenly between customers and shareholders. The OCA submits that effectively managing Auction Revenue Rights is part of PECO's responsibilities as a DSP, and therefore, PECO's proposed 50/50 sharing mechanism for the proceeds of Auction Revenue Rights should be rejected.

With regard to PECO's proposals for retail market enhancements:

- For the EGS Opt-In Competitive Offer (or retail opt-in auction) program, the OCA has the following recommendations:

- As discussed in Section IV.B.2.a, the OCA recommends that the contract term for the Opt-In Auction Program be twelve months.
- As discussed in Section IV.B.2.b., the OCA recommends that customers should be offered a price that is guaranteed to be lower than the Price to Compare for the entire contract term.
- As discussed in Section IV.B.2.c, the OCA submits that customers should be provided with all terms and conditions, including price, prior to opting into the program.
- As discussed in Section IV.B.3., the OCA recommends that no more than 20% of the total, default residential customers should be allowed to enroll in the program.
- As discussed in Section IV.B.5.a, the OCA recommends that enrolled customers who do not affirmatively select an option for continued service at the end of the program, should remain with their current EGS on a fixed price month-to-month contract.
- As discussed in Section IV.B.5.b, the OCA recommends that prior to the end of their contracts, enrolled customers should receive a separate notice from PECO advising them of their options for continued generation service in addition to the two required EGS notices.
- As discussed in Section IV.B.7, the OCA recommends that a process should be developed and monitored by PECO to maintain the customer participation cap.

- For the EGS Standard Offer Program, the OCA submits the following recommendations:

- As discussed in Section IV.C.2, the OCA recommends that an "introductory period" of four months with a 7% off of the Price to Compare for the entire introductory period be adopted in order to provide guaranteed savings.

- As discussed in Section IV.C.3, the OCA recommends that customers should be returned to default service after the introductory offer period expires unless the customer affirmatively chooses to remain with the EGS or switch to another EGS.

- As discussed in Section IV.C.4, the OCA submits that customer calls included in the Standard Offer Program should be limited to new or moving customers and customers who specifically request information about Choice.

- As discussed in Section IV.C.5, the OCA recommends that PECO should delay the implementation of the EGS Standard Offer Program until after the EGS Opt-In Competitive Offer Program is completed to avoid customer confusion.

- As discussed in Section IV.E.1, PECO's Time-of-Use Program has already been addressed in PECO's Smart Meter proceeding at Docket No. M-2009-2123944 and does not need to be further addressed in this case.

- As discussed in Section IV.F, the OCA submits that suppliers should pay for the implementation costs of the EGS Opt-In Competitive Offer Program pursuant to the <u>IWP Order</u>. Additionally, the OCA submits that suppliers should pay for the implementation and ongoing costs of PECO's Customer Referral Programs pursuant to the <u>IWP Order</u>.

The OCA submits this Main Brief pursuant to the ALJ's Second Prehearing Order dated March 12, 2012, and the ALJ's Order of June 12, 2012, extending the Main Brief page limitation to 100 pages.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Summary of OCA's Position.

The OCA recommends modifications to PECO's residential procurement plan for DSP II to ensure that it includes a prudent mix of products designed to ensure reliable, stable service at least cost over time pursuant to Act 129.[5] See gen'ly OCA St. 1, 1-R and 1-S. The Company has proposed to procure 100% full requirements contracts for residential default service, with 60% being two-year contracts and 40% being one-year contracts. See PECO St. 2 at 12. The Company has proposed to eliminate block purchases, such as those included in DSP I. See PECO St. 5 at 14. The OCA submits that it is not reasonable or prudent to rely on one type of product, Fixed Price Full Requirements (FPFR) contracts, for all residential default service needs. Such a plan cannot be deemed a "prudent mix" of purchases as mandated by Act 129.[6]

As discussed in more detail below in Section II.B.3, the OCA submits that the Company should procure a mix of contracts similar to its procurement plan in DSP I, which includes a mix of one- and two-year FPFR contracts and block and spot products. Specifically, PECO's DSP I procurement portfolio contained the following: 75% full requirements contracts, which is made up of 45% 2-year contracts and 30% 1-year contracts; and 25% PECO block and spot purchases, which is made up of 80% forward purchases of energy blocks and 20% purchases from the PJM spot market. PECO St. 2 at 10-11; PECO St. 3 at 5. The OCA submits that PECO's DSP II procurement portfolio should be similar to that in DSP I in order to achieve a diversified portfolio that is least cost over time.

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[5] The OCA will address residential customers only throughout this Main Brief, unless otherwise specifically indicated.

[6] See 66 Pa. C.S. § 2807(e)(3.2).

If the Commission determines that PECO's overall residential procurement proposal for DSP II should be adopted, the OCA submits that the Company's phase out of block purchases should be altered. As more fully discussed below in Section II.B.3.e., a better phase out approach would continue to match peak and baseload blocks and keep them in balance as reliance on block purchases declines over time. See OCA St. 1 at 9. The OCA's alternate phase out plan would prevent excessive spot market purchases during the phase out of block purchases. Id. Consequently, if the Commission adopts PECO's proposed residential procurement portfolio, the OCA submits that its alternate phase out plan for block purchases should be adopted.

B. Residential Class Procurement.

Default service is the basic service that Pennsylvania's electric customers are entitled by law to receive if they do not switch to an alternative retail electric generation supplier (EGS), or if their alternative EGS fails to provide them with service. PECO is the Default Service Provider in its service territory, and as such must offer default service that meets specific legal requirements. Act 129 of 2008 provides the framework that default service must meet and sets forth specific parameters for the procurement of electric default service in Pennsylvania. Act 129 commenced by identifying three "public policy findings" and "objectives of the Commonwealth" that were to be served by the Act. The first of these findings included the need to ensure the availability to all Pennsylvanians of "adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time."[7] Act 129 went on to declare that it is in the public interest to adopt "energy procurement requirements designed to ensure that electricity obtained reduces the

[7] See Preamble to Act 129, 2008 Pa. Laws 129.

possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents."[8]

Consistent with these findings, the General Assembly in 2008 set forth a definition of the default service provider (DSP) and established procurement standards for the provision of default service. Under Act 129, the DSP must offer service "pursuant to a commission-approved competitive procurement plan" through a "prudent mix of contracts" that is designed to ensure the "least cost to customers over time."[9]

The Commission has recognized that Act 129's "least cost" standard must be considered in conjunction with the Act's requirements that prices be stable and that service be reliable. The Commission's recent Final Rulemaking Order states:

> Finally, it should be noted that the "least cost over time" standard should not be confused with the notion that default prices will always equal the lowest cost price for power at any particular point in time. In implementing default service standards, Act 129 requires that the Commission be concerned about rate stability as well as other considerations such as ensuring a "prudent mix" of supply and ensuring safe and reliable service. *See* 66 Pa. C.S. §§ 2807(e)(3.2), (3.4) and (7). In our view, a default service plan that meets the "least cost over time" standard in Act 129 should not have, as its singular focus, achieving the absolute lowest cost over the default service plan time frame but, rather, a cost for power that is both adequate and reliable and also economical relative to other options.

Implementation of Act 129 of October 15, 2008: Default Service and Retail Electric Markets, Docket No. L-2009-2095604, Slip op. at 11-12 (Oct. 4, 2011) (Final Rulemaking Order). As the Commission Order makes clear, default service providers must consider price stability and reliability when developing a procurement plan that meets the "least cost over time" standard.

8 Id.

9 66 Pa.C.S. § 2807(e) 3.1, 3.4

By Joint Settlement Agreement, the parties to PECO's DSP I proceeding[10] agreed that PECO would procure residential default service supply for the DSP I period as follows: 75% full requirements contracts, which consist of 45% two-year contracts and 30% one-year contracts, with the two-year contracts overlapping on an annual basis, and 25% PECO block and spot share, which consists of 80% forward purchases of energy blocks and 20% PJM spot market purchases. See PECO St. 2 at 10-11; PECO St. 3 at 5. For its DSP II, PECO proposes procuring the residential default service supply with 100% full requirements contracts, with 60% being two-year contracts and 40% being one-year contracts. The contracts will be laddered with 6-month spacing between the start of the delivery periods. PECO will transition to this blend of products using transition products with varying terms of 6 to 18 months. See PECO St. 2 at 12.

As discussed in more detail below in Section II.B.3 below, the OCA submits that the Company should procure a mix of contracts similar to its procurement plan in DSP I, which includes a mix of one- and two-year FPFR contracts and block and spot products.

1. Term Length of Supply Contracts.

In the RMI, the Commission determined that EDCs should file default service plans limiting or eliminating the existence of long-term energy contracts extending past the end date of the upcoming default service plan time period. The Commission recognized, however, that the use of a laddered approach may result in some EDCs having delivery periods that extend beyond the end date of their default service plan. See December 16 Final Order at 19, 20. The Commission also determined that EDCs should limit the proportion of long-term contracts that

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10 Petition of PECO Energy Company for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 through May 31, 2014, Docket No. P-2008-2062739, Order (June 2, 2009).

make up their default service plan energy portfolios and consider using already existing long-term contracts from previous or presently effective default service plans.[11] Id. at 19, 21.

PECO's residential default service procurement plan for DSP II is made up of 100% FPFR contracts (60% 2-year contracts/ 40% 1-year contracts). The contracts will be laddered with 6-month spacing between start of the delivery periods. PECO will transition to this blend of products using transition products with varying terms of 6 to 18 months. See PECO St. 2 at 12. After the Fall 2012 procurement, the supply contracts will be procured approximately two months (for December 1 delivery) to four months (for June 1 delivery) prior to the contract delivery period. PECO proposes no further block energy and spot market purchases in DSP II, and therefore, by the end of DSP II, the only remaining block energy products (from DSP I) will be the 5-year, 50 MW block, which expires December 31, 2015. See PECO St. 2 at 4, 14. DSP II FPFR products will have delivery terms that end on May 31, 2015, with a limited portion extending beyond May 31, 2015 (scheduled for the early 2014 solicitation). See PECO St. 2 at 14-15.

FES witness Banks recommends that PECO eliminate 6-month FPFR contracts and instead procure the supply with 12-month FPFR contracts covering the entire first twelve months of DSP II. FES St. 1 at 8. According to Mr. Banks, this procurement strategy will provide a more stable and reliable Price To Compare (PTC) to compare against the EGS offers for the duration of the Opt-In Auction Program. Id. OCA witness Hahn disagrees with Mr. Banks' recommendation, explaining the implications as follows:

> The proposal for the elimination of the six-month full requirements contracts for residential default service customers should not be adopted. Under PECO's proposed DSP II, 17 tranches of residential full requirements with a six-month term from June 2013 through November 2013 will be procured in

[11] This recommendation does not pertain to Alternative Energy Credit and Solar Renewable Energy Credit solicitations. December 16 Final Order at 19, 21.

> November 2012. This is the only instance of six-month full requirements contracts in the residential DSP II. If these are replaced with 12-month full requirements contracts from June 2013 through May 2014, as proposed by Mr. Banks, it would defer the procurement of 17 tranches of residential default service load in September 2013 for which deliveries would have commenced in November 2013. This would cause the September 2013 procurement to be for only 7 tranches instead of 21 tranches. Under my proposed revisions to DSP II where block and spot purchases continue for residential default service customers, the September 2013 procurement would be eliminated altogether if Mr. Banks' proposal is adopted, resulting in nearly 11 months without a solicitation. I believe that this approach would reduce the effectiveness of the layering and laddering of procurements and result in a solicitation in September 2013 that would be smaller than it should be. The six-month contracts should be retained to spread procurement tranches more evenly throughout the year.

OCA St. 1-R at 3. PECO has proposed to move from a quarterly to an annual reconciliation of the over- and under-collections in the Generation Supply Adjustment surcharge (GSA), which is discussed in more detail below in Section III.B., along with OCA's recommendation to move to an annual rolling average of the over- and under-collections of the GSA. The OCA submits that an annual rolling average reconciliation of the GSA will smooth out the adjustments to the PTC with which Mr. Banks is concerned. See Section III.B. *infra*. As a result, Mr. Banks' proposal to eliminate 6-month FPFR contracts from DSP II should be rejected.

Additionally, as discussed in detail below in Section II.B.3, the OCA submits that PECO should continue to include block and spot purchases in its residential default service supply portfolio in order to achieve a prudent mix of contracts that is designed to ensure the least cost to customers over time pursuant to Act 129. Also discussed in more detail below, in Section II.G, the OCA submits that PECO should more evenly allocate the FPFR tranches in the November 2012 and January 2013 solicitations. Additionally, as discussed below in Section II.G.2, the OCA proposes a "hold back" approach for tranches in order to better plan for the Retail Opt-In Auction.

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

Currently, as part of DSP I, PECO purchases 10% of residential default service energy from the PJM spot market as part of PECO's block and spot procurement obligation. See PECO St. 2 at 10-11. RESA witness Aundrea Williams recommends that PECO continue to include a small portion of spot market purchases for residential default service procurement in DSP II. See RESA St. 1 at 11. Ms. Williams asserts that with the inclusion of spot market purchases, residential default service will continue to contain at least a small portion of current market prices, thereby preventing default service prices from further diverging from wholesale market prices over time. Id. OCA witness Hahn indicated his agreement with RESA's proposal to the extent it is consistent with OCA's proposal to continue both block and spot supply procurement for residential customers in DSP II. See OCA St. 1-R at 9. OCA's proposal is more fully discussed in the next section.

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

a. Introduction.

The Company's prospective residential procurement plan for DSP II relies exclusively on one- and two-year FPFR contracts. The OCA submits that exclusive reliance on one type of short-term product does not satisfy the "prudent mix" requirements for the purchasing of electric power under Act 129.[12] As detailed below and in the testimony of OCA witness Richard S. Hahn, the OCA submits that PECO should procure a prudent mix of power purchases, specifically FPFR contracts as well as block and spot purchases, as the Company did in DSP I. See OCA St. 1 at 7. The prudent mix of power purchases in DSP I worked effectively and

12 66 Pa. C.S. § 2807(e)(3.2).

should be continued. As detailed below, the OCA's proposal meets the requirements of Act 129 and should be implemented as PECO's DSP II.

b. Legal Framework.

The General Assembly established the policy goals of Act 129 in its Preamble. There, in declaring the purpose of Act 129, the General Assembly found that price stability was a key concern that needed to be addressed. The General Assembly stated:

> **Preamble**
>
> The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:
>
> (1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service *at the least cost, taking into account any benefits of price stability over time* and the impact on the environment.
>
> (2) It is in the public interest to adopt energy efficiency and conservation measures and *to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability*, promotes economic growth *and ensures affordable and available electric service to all residents*.
>
> (3) It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.[13]

As the highlighted portions above demonstrate, the General Assembly determined that essential electricity service must be provided to consumers at the least cost while considering price stability. In addition to the obligation to provide least cost and stable service, the Act specifically requires that default service be adequate, reliable, affordable, efficient, and

[13] See Preamble to Act 129, 2008 Pa. Laws 129. (Emphasis added).

available.[14] The General Assembly established a series of policy objectives that each EDC must work to achieve through its default service plan. In reviewing PECO's DSP II, the Commission must assure that these legal obligations are met in order to provide customers with service designed to achieve the least cost to default service customers over time.

The Commission has explicitly recognized the goals of Act 129 that must be met in establishing a procurement plan, as follows:

> We agree with the majority of parties that the "prudent mix" of contracts be interpreted in a flexible fashion which allows the DSPs to design their own combination of products that meets the various obligations **to achieve "least cost to customers over time," ensure price stability, and maintain adequate and reliable service**.

Final Rulemaking Order at 60. (Emphasis added).

The legal framework for default service is set forth in detail in Section 2807(e), Obligation to Serve.[15] Under Section 2807, PECO is required to provide electric generation supply service to all of its default service customers through a Commission approved competitive procurement plan.[16] Under Act 129, generation is to be obtained through competitive procurement processes, such as auctions, requests for proposals, and bilateral agreements.[17] As part of a procurement plan, Act 129 requires a mix of power as follows:

> The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:
>
> (i) Spot market purchases.
>
> (ii) Short-term contracts.

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14 Id.

15 66 Pa. C.S. § 2807(e).

16 66 Pa. C.S. § 2807(e)(3.1).

17 Id.

> (iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years.[18]

The Act requires that default supply must include a prudent mix of the various types of contracts. Further, the mix of contracts must be designed to achieve certain goals, as follows:

> The prudent mix of contracts entered into pursuant to paragraphs 3.2 and 3.3 shall be designed to ensure:
>
> (i) Adequate and reliable service.
>
> (ii) The least cost to customers over time.
>
> (iii) Compliance with the requirements of paragraph (3.1).[19]

Act 129 further requires that the Commission evaluate whether the default supplier's plan meets the requirements of the Act. The Commission must take several factors into consideration, and must make specific findings that the default supplier's plan meets the requirements of the Act, as follows:

> (3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis and shall make specific findings which shall include the following:
>
> (i) The default service provider's plan includes prudent steps necessary to negotiate favorable generation supply contracts.
>
> (ii) The default service provider's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

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18 66 Pa. C.S. § 2807(e)(3.2).

19 66 Pa. C.S. § 2807(e)(3.4).

> (iii) Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.[20]

The General Assembly requires each EDC to take affirmative steps to ensure that the goals of the Act are met.

As detailed above, the default service legislative framework requires the default service provider to develop a procurement plan that meets several goals. The default service provider must obtain a prudent mix of supplies designed to provide service at the least cost to customers over time. Default service must be reliable, adequate, and designed to reduce price instability. The OCA submits that the above legal framework provides the foundation upon which PECO's DSP II must be reviewed.

As part of its investigation into Pennsylvania's retail electricity market, the Commission issued guidelines impacting the current filing. In general, the Commission favors limiting or eliminating contracts extending past the end date of the upcoming default service plan. In addition, the Commission recommended that each EDC limit long-term contracts.[21]

In presenting these guidelines, however, the Commission explicitly recognized that such recommendations were not intended to impede an EDC from meeting its statutory obligations to provide default service at least cost to customers over time. The Commission addressed the legal implications of its recommendations, as follows:

> Notably, these guidelines are not intended to inhibit EDCs from developing default service plans that include a prudent mix of contracts that achieve the "least cost to customers over time." The Commission reiterates that it will not mandate a prescriptive portfolio of contract lengths and will allow EDCs to retain flexibility in developing plans that meet Act 129 requirements. For this reason, the Commission declines to accept RESA's and Direct Energy's

[20] 66 Pa. C.S. § 2807(e)(3.7).

[21] <u>December 16 Final Order</u> at 19.

> recommendations that the Commission direct EDCs to develop portfolios that include a more specific mix of contracts.
>
> …
>
> OCA remarks that it is impossible to know whether long-term contracts will be necessary for EDCs to meet Act 129 requirements, and thus the Commission should not recommend limiting their use. The Commission reiterates that these recommendations are not intended to constrain an EDC from meeting its statutory obligations.
>
> Further, the Commission will refrain from making recommendations with respect to specific contractual terms and conditions for energy that will be procured for the next phase of default service plans, as suggested by Direct Energy. Providing guidance on specific, contractual provisions is outside the scope of the purpose of these recommendations.[22]

The OCA submits that the Commission's guidelines must be considered in light of the requirements of Act 129 to develop a reasonable and appropriate default service plan.

c. <u>PECO's Proposed Residential Procurement Plan and OCA's Recommendation to Continue Block and Spot Procurement.</u>

PECO has proposed to supply its residential default service customers from June 1, 2013 through May 31, 2015 with one- and two-year FPFR contracts. PECO St. 2 at 12. By definition, the Company's purchases would be classified as "short-term" contracts under the Public Utility Code.[23] OCA witness Hahn explained the basic structure of PECO's residential procurement plan in DSP I versus DSP II as follows:

> In DSP I, default service power supplies for residential customers are procured as follows: (1) 75% of the residential default service load is supplied through fixed price, full requirements contracts awarded in several tranches or slices of load to several suppliers, (2) 5% of the residential default service load is supplied through spot market purchases from PJM markets, and (3) 20% of the residential default service load is supplied through the purchase of baseload, winter peak and summer peak fixed blocks of power supplemented with purchases and sales of spot market power. The Company proposes to eliminate

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22 <u>December 16 Final Order</u> at 19-20.

23 Section 2807(e)(3.2) identifies three categories of default supplies: Spot market, short term, and long term contracts. Long term contracts are those greater than 4 years, but less than 20. Spot market purchasing occurs in the PJM administered wholesale market at both day ahead and real time prices. The proposed 12-month and 24-month contracts are both "short-term" contracts as defined by Act 129. 66 Pa.C.S. § 2807(e)(3.2).

> components (2) and (3) above and rely upon full requirements contracts for 100% of residential default service load in DSP II.

OCA St. 1 at 6. (Internal citations omitted).

The OCA submits that PECO's procurement proposal relies too heavily on a single type of product – short-term FPFR contracts. As proposed, the Company's plan would procure all power for DSP II through one- and two-year FPFR contracts, which is in stark contrast to the current default service plan that includes one- and two-year FPFR contracts, block and spot purchases and long-term contracts. The OCA submits that PECO should continue with a diversified approach to the procurement of power.

OCA witness Hahn identified concerns with PECO's proposal to procure power using only one- and two-year FPFR contracts:

> I disagree that block and spot purchases should be phased out, and believe that they should be continued in DSP II in the same ratio as they were in DSP I. The Act requires default service providers, such as PECO, to utilize a prudent mix of least cost supply options. The inclusion of block and spot purchases in the supply portfolio is a least cost option and helps to meet the least cost standard in the Act.

OCA St. 1 at 7. Mr. Hahn went on to explain why PECO should continue to include block and spot purchases in its supply portfolio for DSP II:

> I examined the cost of supplying the 75% portion of residential default service load from full requirements during 2011, the first year of DSP I and the only year for which actual data was available at the time I developed this testimony. The average cost of the full requirements contracts was $76.06 per MWH. For the 25% of residential default service load supplied by block and spot purchases, the average all-in cost was approximately $71.75 per MWH or about 6% lower than the full requirements contracts. This finding is consistent with the analysis provided in the testimony of PECO witness Fisher that showed that full requirements contracts result in 6% higher prices than block and spot purchases. Thus, based upon actual cost data for real purchases, the block and spot purchases cost less than full requirements purchases. If a lower cost option is eliminated from a power supply portfolio, that portfolio may not achieve the least cost standard. Therefore, block and spot purchases should be retained.

Id. By employing a more diverse mix of products, the Company was able to achieve a prudent mix of supplies designed to provide service at the least cost over time. Eliminating these diverse options, as PECO proposes, is not reasonable at this time.

d. PECO's Critique of OCA Witness Hahn's Proposal Falls Short.

PECO witness Fisher challenged Mr. Hahn's analysis of the block and spot purchases and his recommendation to continue them. Mr. Fisher argued that Mr. Hahn's comparison of 2011 costs reflects only a single market scenario that unfolded in the past. See PECO St. 3-R at 5-6. Instead of analyzing past results, Mr. Fisher asserted, a procurement strategy should be assessed based on how it will perform in the future, with an understanding that many different market scenarios could unfold. PECO St. 3-R at 6. Further, Mr. Fisher argued that FPFR products offer price stability that block and spot purchases do not and therefore, should be relied on exclusively for DSP II. PECO St. 3-R at 6-7.

Mr. Fisher stated that the FPFR contract solicitations in DSP I occurred under conditions where market price levels were higher, and the block and spot purchases occurred when market prices were lower. PECO St.3-R at 7-9. Mr. Fisher asserted that Mr. Hahn's conclusion that block and spot purchases in 2011 cost 6% less than FPFR purchases is incorrect, in that according to Mr. Fisher's analysis, block and spot purchases in 2011 actually cost only 1% less than FPFR purchases. PECO St. 3-R at 10. Mr. Fisher also pointed out that Mr. Hahn's analysis does not include FPFR solicitations that occurred in September 2011 and January 2012 for delivery in June 2012, in which Mr. Fisher's analysis indicates that the costs for these FPFR products were the lowest of any residential product solicitations in DSP I. PECO St. 3-R at 11-12.

Also, Mr. Fisher provided an analysis of the application of various default service approaches to 1,000 different market scenarios, which analysis included procurement as proposed by the Company in DSP II and the procurement used by the Company in DSP I (continuation of which is recommended by OCA witness Hahn). Based on this analysis, Mr. Fisher concluded that Mr. Hahn's recommendation to continue procurement the same as was done in DSP I "would expose customers to considerably more risk with regard to rate volatility, supply cost uncertainty, and deferred cost recovery balances" than the procurement portfolio PECO proposes for DSP II. PECO St. 3-R at 16-19.

In response to Mr. Fisher's analysis, OCA witness Hahn noted that no evidence or analysis was presented that shows that block and spot purchases cost more than FPFR contracts. OCA St. 1-S at 3. Mr. Hahn testified:

> In 2011, there was a high level of PECO residential customer shopping in a very short period of time, and the 25% reliance on block and spot purchases as part of the power supply portfolio produced a favorable outcome. Concerns regarding only one year of data comparison as the basis of a cost comparison are not material to my recommendation. This comparison, while limited to one year, shows a good result, and we should retain block and spot purchases going forward to get more experience and data. There is simply no basis for excluding these products from the residential default service portfolio at this time.

OCA St. 1-S at 3-4. Retail market enhancement programs as per the <u>December 16 Final Order</u> and the <u>IWP Order</u> will be introduced in DSP II in an effort to further increase residential customer shopping. Therefore, it naturally follows that block and sport purchases should remain in PECO's procurement portfolio in order to continue in DSP II the favorable outcome they had in DSP I, when paired with increased residential customer shopping.

Additionally, regarding the purported risk of block and spot purchase raised by PECO witness Fisher, Mr. Hahn testified:

> Mr. Fisher attempts to introduce a new analysis that purports to show that block and spot purchases are too risky. However, even when his analysis accounts for all the risks Mr. Fisher identifies, it still shows that block and spot purchases are less costly than full requirements. For example, on page 10 of his rebuttal testimony, Mr. Fisher reduces my estimate of the savings from using block and spot purchases from $4.31 per MWH to $3.59 per MWH. However, block and spot purchases still cost less the FPFR service in his example. Even if one accepts all of Mr. Fisher's statistical simulations, they do not eliminate the favorable price difference with block and spot purchases. They simply narrow the gap. So even if his analyses were accepted at face value, they do not show that customers are harmed by the continuation of block and spot purchases.

OCA St. 1-S at 4-5.

Mr. Fisher's criticisms of Mr. Hahn's recommendation to continue block and spot purchases in DSP II fall short because they do not show that FPFR contracts are cheaper or carry less risk than block and spot purchases. In fact, Mr. Fisher concludes that the inclusion of block and spot purchases along with the FPFR contracts in a comprehensive residential procurement strategy provide for a 0.5% lower expected residential default service rate.[24] PECO St. 3-R at 28-29. This is exactly what Act 129 requires of procurement portfolios. The OCA submits, therefore, that Mr. Hahn's recommendation should be adopted.

e. <u>RESA's and Dominion's Criticisms of Block and Spot Purchasing Are Overstated.</u>

In their rebuttal testimonies, RESA and Dominion objected to the OCA's proposal to include block and spot purchases in the residential default service plan. RESA witness Williams asserted that block and spot purchases cannot be considered least cost based on the fact that the block and spot purchases were lower than FPFR purchases for only one year.[25] Further, RESA witness Williams asserted that Mr. Hahn failed to recognize that PECO residential customers had

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[24] Mr. Hahn also pointed out that Mr. Fisher's other attempts at attacking Mr. Hahn's analysis have no relationship to his recommendation to continue block and spot purchases in DSP II. <u>See</u> OCA St. 1-S at 5-6 (regarding Mr. Fisher's Wellsboro and PSNH examples).

[25] As discussed *supra* in Section II.B.2, RESA proposes adding 10% spot market purchases to the residential procurement portfolio, which OCA submits is consistent with OCA's proposal to continue block and spot purchases in DSP II.

numerous EGS price options that were lower than PECO's default service price, which shows that PECO's procurement strategy is not least cost. RESA St. 1-R at 2. Dominion witness Barkas asserted that the inclusion of block and spot purchases in DSP I introduced an unnecessary level of volatility into default service pricing. Dominion St. 1-R at 6.

The OCA submits that neither RESA witness Williams nor Dominion witness Barkas provided any evidence showing that block and spot purchases cost more than FPFR contracts. Instead, block and spot purchases in DSP I produced a favorable outcome when there was a high level of customer migration in 2011. See OCA St. 1-S at 3-4. With regard to RESA witness Williams' statement, OCA witness Hahn provided the following response:

> Ms. Williams' statement that EGSs offered lower prices than default service rates has no relation to the point that I made in my direct testimony, namely that default service pricing should meet the least cost over time standard for the service being provided. There are differences between default service and an EGS's offering. Default service must be provided, whereas EGSs can choose to supply a customer or not. Default service also must be available for the long run. If competitive suppliers can beat the PTC and entice customers to leave default service, so be it. That is a benefit of a competitive market. However, that does not mean that one should ignore a valuable procurement method for obtaining default service power supplies.

OCA St. 1-S at 4. Mr. Hahn also pointed out that Dominion witness Barkas' statement that the inclusion of block and spot purchases in DSP I introduced an excessive level of volatility into default service pricing was completely unsupported. Id.

The OCA submits that RESA's and Dominion's objections to the continued inclusion of block and spot purchases in the residential procurement portfolio are unfounded and should be rejected.

f. OCA's Alternate Proposal to Phase Out Block and Spot Purchases if PECO's Residential Procurement Proposal Is Adopted.

As discussed in detail above, the OCA submits that PECO should retain block and spot purchases in its residential procurement portfolio for DSP II. As proposed by PECO, however, DSP II will phase out block and spot products by not making any further block energy and spot market purchases in DSP II. Therefore, by the end of DSP II, the only remaining block energy products (from DSP I) will be the 5-year, 50 MW block, which expires December 31, 2015. See PECO St. 2 at 4, 14. OCA witness Hahn describes the Company's phase out proposal as follows:

> Existing baseload block purchases that were already transacted or scheduled will extend beyond the end of DSP I (i.e., May 31, 2013). For example, under the Company's proposal, baseload block purchases will continue to be in effect until December 2015. While the Company proposes to continue with baseload block purchases until phased out, it will end the summer and winter peak block purchases by February 2013. This will leave the Company with baseload blocks but no matching summer or winter peak blocks as the proposed phase-out of block purchases is implemented. As shown in Exhibit OCA-RSH-2, under the Company's proposal, there will be 240 MW of baseload block purchases from March 1, 2013 to December 31, 2013, but no peak purchases. Similarly, during calendar year 2014, there will be 120 MW of baseload blocks but no peak block purchases. In 2015, there will be 50 MW of baseload blocks but no peak block purchases.

OCA St. 1 at 6, Exh. OCA-RSH-2.

If PECO's proposal to phase out block and spot purchases from its DSP II residential procurement portfolio is adopted by the Commission, OCA witness Hahn notes that "[c]ontinuing the baseload blocks without any peak blocks will result in excessive spot market purchases and a sub-optimal default service power supply portfolio" because the winter and summer peak block purchases are supposed to complement the baseload block during the high peak seasons and consequently, better shape the block supply to the hourly loads. OCA St. 1 at 9. Mr. Hahn proposed an alternate phase out of block and spot purchases should PECO's proposal to phase out these purchases is accepted. Mr. Hahn's proposal is as follows:

> A better phase-out approach is to continue to match peak and baseload blocks and keep them in balance as reliance on block purchases declines over time. As long as there are any baseload blocks remaining, there should be an accompanying level of peak blocks. For example, if there are to be 120 MW in baseload blocks during 2014, then there should be approximately 50 MW of summer peak blocks purchased. A similarly determined amount of winter peak blocks should also be added. The actual size of the peak blocks can be determined using the same procedure as in DSP I. This approach will better match the block purchases to the portion of hourly residential default service load that they are designed to service. Exhibit OCA-RSH-4 illustrates how the Company's proposed procurement plan should be modified to accomplish a better phase-out of block purchases if a phase-out is approved.

Id. See also OCA St. 1 at Exh. OCA-RSH-4.

The OCA submits that PECO should continue to include block and spot purchases in its residential procurement portfolio in order to achieve a diversified portfolio that provides default service at a least cost over time pursuant to Act 129. However, should the Commission adopt PECO's proposal to phase out block and spot purchases, the OCA submits that its alternate phase out proposal should be adopted.

g. Conclusion.

As demonstrated by Mr. Hahn's analyses and conclusions, continuation of block and spot purchases in DSP II allows for a diversified least cost procurement portfolio that meets the requirements of Act 129. The OCA submits that the Company should continue to pursue a diverse mix of supply products, as recommended by OCA witness Hahn, at this time.

C. Small Commercial Class Procurement.

The OCA takes no position on this issue.

D. Medium Commercial Class Procurement.

The OCA takes no position on this issue.

E. Large Commercial and Industrial Class Procurement.

The OCA takes no position on this issue.

F. Extension of Supply Contracts Beyond May 31, 2015.

As proposed, PECO's DSP II FPFR products will have delivery terms that end on May 31, 2015, with a limited portion extending beyond May 31, 2015 (scheduled for the early 2014 solicitation). See PECO St. 2 at 14-15. Since PECO proposes no further block energy and spot market purchases in DSP II, by the end of DSP II, the only remaining block energy products (from DSP I) will be the 5-year, 50 MW block, which expires December 31, 2015. See PECO St. 2 at 4, 14. As discussed in detail above in Section II.B.3., the OCA recommends that PECO continue block and spot purchasing in DSP II.

The OCA, however, supports PECO's proposed laddering and layering of delivery terms so as to avoid a "hard stop" of products on May 31, 2015. See OCA St. 1-R at 9-10. As explained by OCA witness Hahn:

> The concept of layering and laddering of power supply contracts with periodic solicitations throughout the year is an accepted industry practice to achieve price stability, stage solicitations reasonably close to the date of commencement of deliveries, and avoid procuring a large percentage of a portfolio's power supply in a single procurement. Having all contracts expire on a specific date will undermine that approach.

OCA St. 1-R at 9-10.

RESA witness Williams recommended that PECO eliminate any contracts that overhang beyond May 31, 2015, *i.e.* a "hard stop" of all contracts on May 31, 2015. RESA St. 1 at 11. The OCA strongly opposes RESA's recommendation. PECO witness McCawley cited similar reasons as those outlined above by OCA witness Hahn for PECO's proposal to ladder supply contracts. Mr. McCawley stated that "A contract laddering strategy mitigates the rate volatility associated with replacing a large portion of supply in a short period of time." See PECO St. 2-R at 7.

Mr. McCawley went on to explain that the procurements for products that extend beyond May 31, 2015 are not scheduled to occur until January 2014 or later, and therefore, there is plenty of time to adjust the procurement schedule if changes to default service are adopted. PECO St. 2-R at 7-8. The OCA submits that this is a reasonable approach to the DSP II procurement plan, as it is the best approach to achieve price stability and avoid having to procure a large percentage of a portfolio's power supply in a single procurement (*i.e.*, for delivery on June 1, 2015).

Ms. Williams asserted that laddering of supply contracts is not an accepted industry practice to achieve price stability and that default service should not attempt to estimate the level of price stability that various customers may require. RESA St. 1-SR at 4. She advocated a hard stop so that PECO's rates will be fully exposed to market conditions at the time of procurements for its next default service plan. See RESA St. 1-SR at 4. According to Ms. Williams: "Laddering of default service contracts almost guarantees that the default service rates become disconnected from the underlying cost of wholesale supply for extended periods of time." RESA St. 1-SR at 4. Act 129 does not mandate that DSPs implement procurement portfolios so that default service rates will strictly mimic market rates at every point in time. Indeed, Act 129 explicitly repealed the "prevailing market prices" standard for default service rates that was included in the original 1996 restructuring legislation.[26] Instead, Act 129 requires DSPs to implement procurement portfolios with a prudent mix of contracts that are least cost over time.[27]

Although market conditions are currently favorable, they may not be so favorable at the time of PECO's next default service filing, and customers could be exposed to dramatic price increases if purchases for 100% of default supply must become effective at one time. The OCA

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26 66 Pa. C.S. § 2807.

27 66 Pa. C.S § 2807(e)3.1, 3.4.

submits that with the energy markets subject to volatility at any time, RESA's "hard stop" recommendation would fully expose customers to potentially dramatic rate increases on June 1, 2015. The December 16 Final Order expressly stated: "The Commission reiterates that it will not mandate a prescriptive portfolio of contract lengths and will allow EDCs to retain flexibility in developing plans that meet Act 129 requirements." See December 16 Final Order at 19. The OCA submits that PECO's proposal for some reasonable level of contract overhang does not deviate from the Commission's December 16 Final Order as RESA witness Williams suggests. See e.g. RESA St. 1-SR at 2-4. The OCA submits that PECO's laddering and layering of contracts is reasonable, and RESA's recommendation to eliminate contract overhang beyond May 31, 2015 should be rejected.

G. Procurement Schedule.

1. OCA's Proposal to Reallocate Tranches Between Solicitations.

In addition to the OCA's recommendation to continue block and spot purchases in PECO's DSP II, the OCA submits that PECO should reallocate FPFR tranches between its planned solicitations. As explained by OCA witness Hahn:

> Under the Company's proposal, it will procure [33] tranches of residential default service via new full requirements contracts to be effective on June 1, 2013. These 34 tranches will complement the 14 tranches already procured during DSP I. Twenty-seven of these [33] tranches will be procured in a solicitation scheduled for November 2012, and 7 tranches will be procured in a solicitation scheduled for January 2013. Thus, the proposed schedule will cause nearly 80% of new DSP II full requirements contracts to be procured at the same time. I believe it would be more advantageous to divide the new DSP II tranches equally between solicitations held on these two dates, such that 16 tranches will be procured in November 2012 and 17 procured in February 2013. This adjustment will achieve a more even layering and laddering on the procurement schedule.

OCA St. 1 at 8-9. See also OCA St. 1 at Exh. OCA-RSH-3.[28] RESA supports OCA's recommendation so long as the Company's proposed ratio of 6-, 12- and 18-month contracts is maintained. RESA St. 1-R at 3. OCA witness Hahn did not recommend any changes to PECO's 6-, 12- and 18-month contract ratio as part of this proposal. See gen'ly OCA St. 1 and Exh. OCA-RSH-3.

PECO witness McCawley indicated that the residential procurement schedule for DSP II should remain as proposed because only a small volume of DSP I supply contracts have deliveries beyond May 31, 2013. PECO is concerned that residential customers could be exposed to a significant change in rates on June 1, 2013 if the Company waits to procure the bulk of its supply for delivery for June 1, 2013 and later. Therefore, PECO contends that procuring most of this currently unhedged supply in November 2012 can reduce this rate uncertainty for residential customers. PECO St. 2-R at 8.

The OCA submits that procuring 80% of PECO's DSP II residential FPFR contracts in one solicitation is not an adequate laddering and layering of the procurement schedule. Instead, the OCA submits, the Company can achieve a better laddering and layering of residential FPFR contracts by procuring 16 of the 33 tranches in the November 2012 solicitation and procuring the remaining 17 tranches at the January 2013 solicitation. The OCA's recommended change to the residential FPFR procurement schedule should be adopted.

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

The OCA submits that the Company's DSP II must be designed to achieve least cost to customers over time. To achieve that goal, the procurements must be conducted in a stable environment without adding excessive risks to wholesale default suppliers that would then

[28] Mr. Hahn's direct testimony should have reflected that 33 total tranches will be sought between the November 2012 and February 2013 solicitations, as is shown in Exhibit OCA-RSH-3.

impact default service rates. In order to protect the wholesale default service procurement process in light of the proposed Retail Opt-In Auction, OCA witness Hahn proposed a mechanism by which the open ended risks to default suppliers that could be triggered under the Retail Opt-In Auction Program (discussed further below in Section IV.B.) are substantially mitigated. In describing the risk that the Retail Opt-In Auction Program could have on default service procurement, Mr. Hahn testified:

> The risk of this decrease [in default service load after load is moved to the Retail Opt-In Auction suppliers] would have to be embedded in higher default service pricing, which can manifest itself in several ways. The default service suppliers could increase their expected profit margin to lessen the possibility of a loss on this transaction. The default service suppliers could also increase their ability to hedge those obligations through financial instruments such as options or swaps, or physically through other purchases, the cost of which would be included in their bids [to supply default service load].

OCA St. 1 at 11.

OCA witness Hahn illustrated how a Retail Opt-In Auction program can increase the volatility of residential default service load in Exhibit OCA-RSH-5, which is attached to his direct testimony. According to Mr. Hahn:

> [My] illustration of the plan designed by PECO clearly demonstrates two important points. The first is that a very large Retail Opt-in Auction program introduces significant volumetric risk in, and therefore higher prices for, default service. The second point is that while block and spot purchases are desirable and necessary components of a diversified default service portfolio, they will not limit the load volatility caused by the Retail Opt-in Auction program as proposed by PECO.

OCA St. 1 at 11-12.

Referring to Exhibit OCA-RSH-5, Mr. Hahn explained:

> This illustration is for an EDC that has 63 tranches of residential default service load of 50 MW each or 3,150 MW. The target supply portfolio is to have 47 tranches supplied by full requirements contracts, 4 tranches by spot purchases, and 12 tranches by block purchases. Assume in this illustration that the default service solicitations result in three suppliers winning tranches. Suppliers A, B,

> and C win 20 tranches, 15 tranches, and 12 tranches, respectively, representing a total expected full requirements load of 2,350 MW. A 600 MW block is also procured. Now assume that 15 tranches representing 750 MW, or about 25% of the 63 default service tranches, become supplied by the Retail Opt-in Auction supplier via the Retail Opt-in Auction program. Suppliers A, B, and C are each still responsible for their fixed percentage shares of default service load (i.e., approximately 74.6%), but that load has dropped by 24% to 1,790 MW from the expected level of 2,350 MW. …
>
> The last section of [the illustration] shows the reduction in default service load served as the number of Retail Opt-in Auction tranches ranges from zero to 30, which is about half of the full requirements tranches and the maximum amount of default service that would be able to participate in the Retail Opt-in Auction program under the Company's proposal. Default service load reductions are as high as 48%.

OCA St. 1 at 11. (Internal citations omitted).

Mr. Hahn recommended a procedure by which the wholesale bidders would not be exposed to the above-described volumetric risk created by the opt-in auction program. First, Mr. Hahn recommended that the opt-in auction participation level be capped at 20% of eligible residential customers. OCA St. 1 at 12. Second, Mr. Hahn proposed to "hold back" supply reserved for the opt-in auction so that FPFR bidders would be assured that the MW size of tranches they were bidding on were fixed at the expected MW size regardless of the outcome of the opt-in auction. Id. Mr. Hahn summarized the "hold back" procedure as follows:

> One way to mitigate the increased volumetric risk is to reduce the cap on customer participation in the Retail Opt-in Auction Program. For example, setting the cap on customer participation at 20% instead of 50% will reduce volumetric risk to default service suppliers. In addition to reducing the cap, there are other measures that further reduce volumetric risk. One such measure is to set aside a portion of the targeted full requirements contracts and not procure them as part of the initial default service solicitations but leave them unfilled at the beginning of the DSP. After the Retail Opt-in Auction is held, the size of the default service tranches can be adjusted based upon how many Retail Opt-in Auction tranches are actually filled. This approach maintains the megawatts expected to be supplied by each default service supplier at the level in the original default service solicitation. Any tranches not filled during the Retail Opt-in Auction program would be supplied by additional spot purchases or by additional default service solicitations to be held after the conclusion of the Retail Opt-in

> Auction. This concept was first suggested by Mr. Kahal in testimony on behalf of the OCA in reviewing the FirstEnergy DSP at Docket P-2011-2273650. I have independently analyzed this approach and find that it can be effective in mitigating increased volumetric risk created by the Retail Opt-in Auction program.

OCA St. 1 at 12.

Mr. Hahn also provided an illustration, which presumes a 20% cap on customer participation in the opt-in auction, in order to explain how the "hold back" procedure would operate. See OCA St. 1 at Exh. OCA-RSH-6. In this illustration, Mr. Hahn used the same analysis as that in his prior illustration, except that twelve tranches, approximately 20% of the 63 total tranches, are set aside from the default service solicitations. The result of the "hold back" is that the MW being supplied remains constant as the number of tranches filled in the opt-in auction varies. OCA St. 1 at 13-14.

Mr. Hahn also provided an alternate method for mitigating the increased volumetric risk associated with the opt-in auction program. Mr. Hahn recommended in his alternate method a 20% cap on customer participation in the opt-in auction and one-half of the tranches set aside with no adjustment to supplier shares. Mr. Hahn described his alternate proposal as follows:

> The default service solicitations could be held with half of the Retail Opt-in Auction program capped tranches set aside. The supplier shares would not be adjusted as described above but would be maintained as set in the original default service options. This approach is illustrated in Exhibit OCA-RSH-7, which combines a cap on participation of 20% with a set aside of 6 tranches, or half of the 12 tranches in the above illustration. The combination of these two changes reduces the volumetric risk associated with the Retail Opt-in Auction program to +/- 10%. Default service suppliers would have the possibility of default service sales being both higher and lower than expected. I believe that this level of risk is more manageable than the program proposed by PECO, and the approach will mitigate any price increases in default service.

OCA St. 1 at 13, Exh. OCA-RSH-7.

The OCA submits that Mr. Hahn's proposals adequately address the potential negative impact an open-ended opt-in program could have on default service procurement. Mr. Hahn's "hold back" proposals and 20% customer participation cap will allow for a successful opt-in auction while helping to ensure that default service procurements do not contain unreasonable risk adders and limited bidder interest to the detriment of default service customers. Therefore, the OCA submits that the inclusion of Mr. Hahn's "hold back" proposals are reasonable and should be adopted.

H. Load Cap.

Currently, the amount of residential default service supply that any one wholesale supplier can provide is capped at 65% of all tranches. PECO St. 2 at 6. PECO proposes to raise the load cap to 67% of all tranches for a procurement class. PECO St. 4 at 18. The OCA submits that PECO's load cap should be set no higher than 50% of all tranches for a procurement class. See OCA St. 1 at 19.

Specifically, OCA witness Hahn explained:

> I believe that a limit of either 65% or 67% on the amount of default service load that any one supplier can provide is too high. Allowing one supplier to hold such a high share of default service obligations results in a highly concentrated market, and the risk of a supplier bankruptcy or financial default would become too large.

Id.

RESA witness Williams also supported setting the supplier load cap at 50%. See RESA St. 1 at 13-14. See also RESA St. 1-R at 3. Ms. Williams' explained that a 50% supplier load cap "may further mitigate the impact on default service rates should any single wholesale supplier not be able to meet its contractual wholesale supply obligations." RESA St. 1 at 14.

Further, Ms. Williams noted that a 50% load cap "may help ensure a variety of wholesale suppliers can ultimately provide the underlying supply for default service." Id.

PECO witness LaCasse contended that the supplier load cap should be increased to 67% because, for example, suppliers could bid more than one tranche in an auction with only three tranches available for a product. Dr. LaCasse stated that suppliers may not be willing to invest the money and time to submit a bid for only one tranche. PECO St. 4-R at 2. Dr. LaCasse also indicated that the Company's Supplier Master Agreement (SMA) provides adequate protection against the risk of supplier default, so a lower supplier load cap is unnecessary. Id. at 5. See also PECO St. 2-R at 10-11.

As explained by OCA witness Hahn, PECO witness LaCasse's assertions lack merit:

> Dr. LaCasse's concern over a small number of tranches is misplaced. Only one scheduled procurement is for three tranches (November 2012), and all the other procurements seek bids for 7 or more tranches. **Moreover, as I have proposed it, the cap would not be applied for each procurement but for the default service supply portfolio as a whole (i.e., all 47 tranches).** . . . In any given month, PECO will be supplying at least 47 tranches of residential load via full requirements contracts. If a 50% supplier load cap is applied, any one supplier would be allowed to successfully win as many as 23 tranches.

OCA St. 1-S at 8-9. (Emphasis added). The OCA submits that a 50% supplier load cap will promote supplier diversity in the procurement of default service load and protecting customers against supplier default. The OCA's recommendation to limit the provision of default load by any one wholesale supplier for any one customer class to 50% of tranches should be adopted.

I. Other Procurement and Implementation Plan Requirements.

1. Contingency Plans.

The OCA takes no position on this issue.

2. Competitive Procurement Process.

The OCA takes no position on this issue.

3. Supply Master Agreements.

The OCA takes no position on this issue.

4. AEPS Compliance.

While the OCA did not present testimony on this issue, the OCA would note that it supports PECO's Alternative Energy Portfolio Standard (AEPS) Compliance proposal at this time. The procurement practices have been amended and improved upon based upon PECO's experience in the DSP I Plan. PECO St. 2 at 19. As discussed below in Section III.F., the OCA also notes that it supports the elimination of the separate AEPS surcharge and its combination with the DSP surcharge, the Generation Supply Adjustment (GSA), provided that the surcharge contains sufficient detail to assess the appropriateness of the AEPS compliance. OCA St. No. 1 at 17.

5. Independent Evaluator.

The OCA takes no position on this issue.

III. RATE DESIGN AND COST RECOVERY

A. Summary of OCA's Position.

The OCA recommends certain modifications to PECO's rate design and cost recovery proposals for DSP II. PECO has proposed to move from a quarterly projection period for the GSA to a yearly projection period that coincides with the PJM planning year. See PECO St. 5 at 6. The OCA generally supports the Company's proposal to move to an annual reconciliation but proposes a modification to move to a 12-month rolling average reconciliation in order to better smooth out volatility in the PTC. See OCA St. 1 at 17-18. PECO also proposed to collect capital costs through the GSA with a return on equity equal to that in its smart meter surcharge.

See PECO St. 5 at 16, 18 and Exh. ABC-3. The OCA submits that such recovery is prohibited by the Public Utility Code and long-established case law in Pennsylvania.

The Company further proposes to split proceeds from its exercise of Auction Revenue Rights (ARRs) as follows: 50% to customers and 50% to shareholders. See PECO St. 2 at 21-22; PECO St. 5 at 14-16. The OCA submits that PECO should continue to allocate 100% of its proceeds from its exercise of ARRs to customers through the GSA. The Company has not historically incurred losses on ARRs, but even if it had, PECO would recover any ARR losses through the GSA. See OCA St. 1 at 15-16. Effectively managing ARRs is part of PECO's responsibilities as a DSP, and therefore, PECO's proposed 50/50 sharing mechanism for the proceeds of ARRs should be rejected.

PECO proposed to eliminate the current AEPS surcharge and combine it with the GSA. See PECO St. 5 at 12-13. The OCA supports PECO's proposal to combine the reconciliation of DSP II and AEPS costs into one process but submits that sufficient detail must be provided in the reconciliation to assess the appropriateness of the individual costs of DSP II and AEPS compliance.

RESA proposed a 0.5¢ per kWh adder to the PTC for default service customers. See RESA St. 2 at 33-35. The OCA strenuously opposes this suggestion. RESA proposed that the proceeds of this adder be used as follows: (1) to pay the verifiable costs of DSP II not otherwise collected by PECO; (2) to pay the costs of implementing and maintaining retail market enhancements; (3) retention by PECO of some portion (not more than 10%); and (4) return of any remaining balance to all distribution customers. RESA St. 1 at 34. The OCA submits that RESA failed to carry its burden of proving that its adder is just and reasonable. Further, the OCA submits that the adder is intended to collect illusory costs, which is specifically prohibited by law and would arbitrarily raise default service rates. Additionally, the OCA submits that it would be inappropriate to collect a charge from one group of customers (default service customers) and return excess amounts to another group of customers (all distribution customers). Based on these reasons, the OCA submits that RESA's 0.5¢ per kWh adder must be rejected.

B. <u>Reconciliation of Default Service Costs and Revenues.</u>

For DSP II, PECO proposes to move from a quarterly reconciliation period for the Generation Supply Adjustment (GSA) to a yearly reconciliation period. <u>See</u> PECO St. 5 at 10. PECO proposes to continue quarterly price changes to reflect the latest procurements but move to an annual reconciliation of over- and under-collections, with the PTC reflecting such annual reconciliation. <u>See</u> OCA St. 1 at 16. According to PECO witness Cohn, an annual reconciliation will smooth out quarter-to-quarter adjustments for over- or under-collections, which are primarily caused by billing lag. PECO St. 5-R at 3.

While the OCA is generally supportive of PECO's proposed to move to an annual reconciliation of over- and under-collections, OCA witness Hahn recommended a modification to PECO's approach. Mr. Hahn described the modification as follows:

> While I agree with a 12-month reconciliation process, I disagree with the proposal to reconcile DSP costs on a one-time annual basis, with the PTC reflecting that annual reconciliation. I believe that a 12-month rolling average reconciliation performed quarterly is a better approach.

OCA St. 1 at 17. Mr. Hahn provided the following analysis as to why a 12-month rolling average reconciliation is preferable:

> I analyzed a hypothetical situation where a utility purchased power supplies and was exposed to price and volume risks. I assumed that certain purchases were made and that actual prices and volumes changed over a four year period, and that actual costs were reconciled to expected costs. I then measured the variance in quarterly price and the sum on the quarterly over- or under-collections over those same four years. I analyzed this situation under three types of reconciliation mechanisms: (1) quarterly, (2) annually, and (3) a 12-month

> rolling average performed quarterly. This hypothetical illustration is provided in Exhibit OCA-RSH-8. The 12-month rolling average reconciliation performed quarterly resulted in the best combined performance in terms of both a low price variance and a low sum on over / under collections.
>
> It is important to note that this example represents a higher level of variability and reconciliation than the Company is actually exposed to. In my hypothetical illustration, variations in both price and quantity must be reconciled. In its DSP, PECO does not face substantial variations, as a high percentage of the power supplies will be procured through full requirement contracts, under which the supplier, not PECO, accepts the price and volume risk.

OCA St. 1 at 17-18; Exh. OCA-RSH-8.

The OCA submits that a 12-month rolling average reconciliation method should have the effect of smoothing out the PTC, as a longer time frame is being averaged out. Less volatility in the PTC should lead to greater consumer confidence in accepting EGS' offers that provide savings over a current PTC.

PECO witness Cohn asserted that Mr. Hahn's analysis supporting his conclusion that a 12-month rolling average reconciliation should be adopted is flawed, and correction of the error "reduces the magnitude of Mr. Hahn's over/under collection." PECO St. 5-R at 6. However, Mr. Cohn agreed that an annual reconciliation is preferable to quarterly reconciliation.

RESA and Dominion asserted that PECO should continue with quarterly reconciliation of over/under collections. RESA witness Williams asserted that an annual reconciliation period will further divorce default service rates from market rates. RESA St. 1 at 15. Dominion witness Barkas noted his concern that an annual reconciliation coupled with a quarterly price adjustment may create a more pronounced "boom or bust" cycle where EGSs are either able to compete or not compete for prolonged periods of time. Dominion St. 1 at 6.

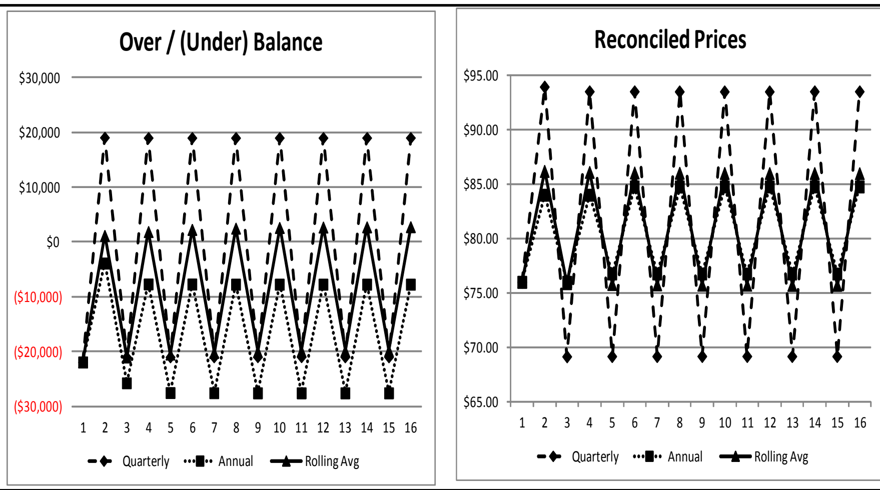
PECO witness Cohn disagreed with the assertions of RESA and Dominion. According to Mr. Cohn, an annual reconciliation will smooth out the quarterly adjustments reconciling over/under collections and send clearer price signals to customers and EGSs. PECO St. 5-R at 3. An annual reconciliation will even out the billing cycle lag that currently produces significant fluctuations in the PTC, which often display a cyclical effect due to seasonality, that are not directly related to the cost of default service supply. Id. Mr. Cohn provides in his Exhibit ABC-1R the results of his analysis using actual cost, calculated revenue and sales data from the twelve months ending March 31, 2012 to compare the volatility of quarterly and annual reconciliation of the GSA over/under collections. See PECO St. 5-R at 4-6 and Exh. ABC-1R. As described by Mr. Cohn:

> As Exhibit ABC-1R shows, annual reconciliation is less volatile, resulting in a surcharge of 0.43% whereas the quarterly reconciliation ranges from a surcharge of 6.37% to a credit of 7.74%. A smaller surcharge or credit adjustment more closely aligns with the projected default service supply cost and market price.

PECO St. 5-R at 5. Mr. Cohn's analysis also indicates that a 12-month average rolling reconciliation would have resulted in a range of surcharge from a positive 1.34% to a credit of 1.34%. See PECO St. 5-R at Exh. ABC-1R.

OCA witness Hahn challenged Mr. Cohn's assertion that his analysis is flawed. The following figure from Exhibit OCA-RSH-8 shows that a rolling average methodology results in the best combination of price variability and over/under balances:

Comparison of Reconciliation Methodologies



	Sum of Quarterly Over/(under)	Variance of Price
Quarterly	$19,096	$140.82
Annual	($7,646)	$16.11
Rolling Avg	$2,829	$26.21

OCA St. 1-S at 9-10. As is clear in the above chart, the 12-month rolling average reconciliation (solid black line) varies much less than the quarterly reconciliation.

The OCA submits that its proposed reconciliation method will promote a better atmosphere for shopping as it will create a more stable and predictable PTC. The OCA's recommendation for PECO to adopt a 12-month rolling average reconciliation should be adopted.

C. EDC Recovery of Additional PJM Charges.

The OCA takes no position on this issue.

D. Costs Included in the Generation Supply Adjustment Charge.

PECO proposes to recover the costs of the DSP II proceeding through the administrative cost component of the GSA over the DSP II term pursuant to the Commission's Policy Statement at 69 Pa. Code § 69.1808(a)(4). See PECO St. 5 at 17. The Company estimates the cost of the DSP II proceeding to be $2.8 million. Id. PECO also proposes to collect the following additional costs through the GSA: (1) the cost of the pricing forecast necessary to project rates for each default service adjustment period for residential, small commercial and medium commercial customers and (2) any other costs incurred due to enhancements recommended by the Commission in the RMI to the extent costs are not recovered directly from EGSs or in other surcharges approved by the Commission. See PECO St. 5 at16. The OCA opposes PECO's proposal to collect RMI costs through the GSA. As discussed in detail in Section IV.F, *infra*, the OCA submits that the costs of PECO's competitive enhancement programs should be recovered from participating EGSs pursuant to the recommendations in the IWP Order. PECO also proposes to amortize the capital costs of any necessary IT or other changes over 5 years and earn a return on equity at the rate allowed under its Smart Meter Surcharge. See PECO St. 5 at 18. This also applies to any other costs incurred due to retail market enhancements not recovered by EGSs or through other Commission-approved surcharges. See PECO St. 5 at Exh. ABC-3.

The OCA submits that PECO's proposal to recover capital costs through the GSA and include a guaranteed equity return thereon is improper. Specifically, OCA witness Hahn testified:

> In the response to OCA Set VII, PECO states that it expects to invest $272,500 in IT systems to implement DSP II, and $2.2 million in systems to implement the retail market initiatives, such as the Retail Opt-in Auction program. The $272,500 investment in capital to implement DSP II is very small relative to the size of the Company and not significant enough to justify a separate charge in the GSA. Furthermore, it is my understanding that the Pennsylvania courts have previously determined that it is inappropriate to recover capital costs via a surcharge, unless specifically permitted by law. The $2.2 million to implement retail market initiatives should be paid for by competitive suppliers who will benefit from them. PECO proposes to recover the $2.2 million to implement retail market initiatives and the ongoing costs of the initiatives from suppliers through a discount on its purchase of receivables program.

OCA St. 1 at 18. (Internal citation omitted).

It is well established in Pennsylvania that, in the absence of specific statutory authority, capital costs can only be recovered through base rates, not in a surcharge. See Pennsylvania Industrial Energy Coalition v. Pa. P.U.C., 653 A.2d 1336 (Pa. Commw. Ct. 1995) (PIEC);

Popowsky v. Pa. PUC, 869 A.2d 1144 (Pa. Commw. Ct. 2005) (CSIC). In PIEC, the Commonwealth Court held that Section 1315 of the Public Utility Code requires capital costs be raised in a base rate case only, not through a surcharge mechanism. PIEC at 1347. The Court reiterated its PIEC holding in CSIC, stating: "the 'used and useful' principle enunciated in 66 Pa. C.S. § 1315, prevent[s] the inclusion of capital improvements in a surcharge." CSIC at 1155.

PECO witness Cohn asserted that Commission regulations permit the Company to recover capital costs in the GSA, and that the Company has been doing so in DSP I. PECO St. 5-R at 7-8. Section 54.187(a) of the Commission's regulations states:

> (a) The costs incurred for providing default service shall be recovered through a default service rate schedule. The rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP during the period default service is provided to customers, based on the average cost to acquire supply for each customer class.

52 Pa. Code § 54.187(a). Section 69.1808(a)(4) states:

> (a) The PTC should be designed to recover all generation, transmission and other related costs of default service. These cost elements include:
>
> . . .
>
> (4) Administrative costs, including billing, collection, education, regulatory, litigation, tariff filings, working capital, information system and **associated administrative and general expenses** related to default service.

52 Pa. Code § 69.1808(a)(4). (Emphasis added). These regulations permit full recovery of all reasonable costs and **expenses** for providing default service, but there is no specific indication that any capital costs may recovered in a surcharge. It bears noting that the capital costs that PECO seeks to recover through the GSA are RMI costs, not costs of providing default service. Furthermore, PECO cannot specifically identify what the costs might be.

With regard to Mr. Cohn's claim that the Company has been collecting capital costs through the GSA in DSP I, the OCA submits that this was not an issue the parties agreed to in the settlement of DSP I. The settlement documents indicated that PECO would collect appropriate **expenses** through the GSA in DSP I. See Petition of PECO Energy Company for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 through May 31, 2014, Docket No. P-2008-2062739, Joint Petition for Settlement at Exh. F. Regardless, the parties could not agree in a settlement to permit the Company to do something that is not permitted by the Public Utility Code.

As summarized by OCA witness Hahn:

> The references cited in Mr. Cohn's rebuttal testimony clearly state that expenses associated with the provision of default service are recovered via the GSA. There is no mention of recovery of capital investments in the GSA. I do note that there is a difference between the amortization of one-time expenses over a specific period of time and the recovery of capital invested in physical assets. For example, if IT labor costs are incurred to implement a new feature of the default service program, it might be appropriate to amortize these non-recurring expenses over time rather than expensing them in one month. This is the case in Exhibit F to the Joint Settlement Petition for PECO's DSP I, which states that IT expenses are amortized over 5 years with a 6% return. This is different than what the Company proposes in DSP II. In Exhibit ABC-3, the Company requests recovery of certain costs using a capitalization structure from its most recent Quarterly Earnings Report and a return on equity per the latest Smart Meter Surcharge. This approach is clearly the type of return sought on capital investments and not amortization of non-recurring expenses. Mr. Cohn's proposal to recover the cost of capital investments in the GSA should not be adopted.

OCA St. 1-S at 11. (Emphasis in original).

The OCA submits that PECO's proposal to recover capital costs with a return on equity through the GSA must be rejected as contrary to the Public Utility Code and well established case law in Pennsylvania.

E. Ratemaking Treatment of Auction Revenue Rights.

PECO proposes changes to its tariff relating to PJM Auction Revenue Rights (ARRs). PECO St. 2 at 21-22; PECO St. 5 at 14-16. PECO proposes to allocate 50% of the costs and benefits associated with ARRs to shareholders and to pass along the remaining 50% of the costs and benefits to customers. Id. As described by OCA witness Hahn, ARRs are:

> Entitlements allocated annually to Firm Transmission Service Customers that entitle the holder of each ARR to receive an allocation of the revenues (or charges) from the Annual Financial Transmission Rights ("FTR") Auction. FTRs are financial products that allow market participants to hedge against the cost of congestion. FTRs are sold by PJM via auctions. PJM distributes the revenues from these FTR auctions to holders of ARRs. ARRs are allocated to firm transmission customers based upon historic transmission paths used to supply that customer's load. The firm transmission customers must elect the paths for which it desires ARRs. It is theoretically possible that an ARR can be a financial liability as well as a financial benefit.

OCA St. 1 at 14.

Currently, PECO allocates 100% of the costs and benefits of the ARRs to residential and large industrial customers under the GSA surcharge. This allocation has only gone to residential and large industrial customers because ARRs are only associated with the block and spot purchases for residential customers and the spot purchases for large industrial customers. OCA St. 1 at 14.[29] In its filing, the Company averred that the proposed 50/50 sharing mechanism is necessary because there is a risk of choosing the wrong transmission path and incurring a loss. PECO St. 5 at 16. Further, PECO stated that sharing the benefits and costs with shareholders will provide an incentive for the Company to select transmission paths that are more financially beneficial. Id.

The OCA submits that a 50/50 sharing mechanism is not necessary or appropriate. The request for such a mechanism should be denied. PECO has not historically incurred losses on ARRs. The OCA submits that according to data provided by PECO, "there have been only net benefits realized from the exercise of ARRs." OCA St. 1 at 15. OCA witness Hahn disagreed that the shareholders should benefit from the ARRs and explained why such a mechanism is not necessary:

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[29] ARRs are not an issue for commercial customers because they are served by full requirements contracts, and those ARRs are transferred to the full requirements suppliers. OCA St. 1 at 14.

> Congestion patterns of the ARRs do not change very much. Major construction of new transmission facilities would be required to alter or reduce congestion. Furthermore, even if there was a serious risk of a loss in choosing the correct transmission paths over which to exercise ARRs, the Company is made whole for this risk through the current recovery mechanism, which is to pass along to customers all of the benefits and costs of ARRs. PECO has not provided a viable reason to change the status quo. I believe that there will continue to be positive net benefits from ARRs, and that 100% of these positive net benefits should continue to be passed along to customers.

OCA St. 1 at 15-16. Mr. Hahn explained that doing a good job at managing the ARRs is part of the Company's responsibilities. For the operation of PECO's system, the Company must perform many functions, including maintaining poles and wires and responding to storms and emergencies. The costs of these job functions are already included in retail electric rates as expense items. There should be no need for an "incentive" to provide quality service to customers. OCA St. 1 at 16.

According to OCA witness Hahn, "if the Company's proposal is adopted, the PTC [Price to Compare] for residential customers will increase because the portion supplied by block and spot purchases will have lower benefits of ARRs." Id. Similarly, RESA witness Williams testified regarding concerns about the potential impact on the default service price. RESA St. 1 at 17. No other Pennsylvania EDC has such a mechanism, as all other EDCs pass along to customers 100% of the benefits and costs from ARRs. OCA St. 1 at 15.

PECO witness Cohn testified that factors other than those cited by Mr. Hahn, including generator outages or transmission lines, can cause congestion and that PECO runs the risk of choosing the wrong transmission paths and incurring a loss. Mr. Cohn stated:

> PECO's core business is to provide safe and reliable service to customers and not to hedge congestion risk in the FTR Auction process. PECO believes that its proposed sharing mechanism strikes the proper balance between mitigating loss exposure for customers and providing an incentive to PECO to select transmission paths that may be more financially beneficial.

PECO St. 5-R at 9.

The OCA submits that the results of PECO's success in managing the ARRs demonstrates PECO's competency in doing so even in the absence of an incentive sharing mechanism. OCA witness Hahn testified that:

> Based upon the data provided by PECO, ARRs have produced significant benefits for PECO's default service customers. If there was a serious risk of PECO choosing the "wrong path," these benefits would be smaller or perhaps negative. As I stated in my direct testimony, if there was a serious risk of a potential loss in nominating ARRs, I doubt PECO would be asking for its shareholders to share in that loss. In addition, I disagree that managing ARRs is not PECO's core business. The management of ARRs is associated with serving loads, as only Load Serving Entities ("LSEs") are afforded the opportunity to nominate and receive ARRs. Since PECO is required to be an LSE by virtue of its role as a default service provider, it is clearly within the realm of PECO's core business to manage ARRs. PECO should be required to continue to effectively manage ARRs on behalf of the customers that it provides default service power supplies for.

OCA St. 1-S at 10-11.

RESA witness Williams also opposed the ARR sharing mechanism on the grounds that all of the costs and benefits of providing default service should continue to be reflected in the default service price. Ms. Williams testified that "allowing for such a sharing mechanism could skew the prices default service customers receive and negatively impact the development of the competitive retail market." RESA St. 1 at 17. PECO witness Cohn responded that because the ARRs can only be exercised for the residential, large commercial and industrial loads served by block and spot energy products that the impact would be minimal. PECO St. 5-R at 9. The OCA submits that there would be an impact, for which there is no adequate reason, and therefore, such a change should not be permitted.

For the reasons stated above, the OCA submits that PECO's proposal to change the allocation of the ARR benefits to shareholders should not be adopted.

F. Elimination of Alternative Energy Portfolio Standard Surcharge.

In its filing, PECO proposes to eliminate the current AEPS surcharge and to combine it with the GSA surcharge. PECO St. 5 at 12-13. Currently, PECO recovers the costs of its AEPS obligations through: (1) the GSA for costs paid to each full requirements supplier for Alternative Energy Credits (AECs) transferred to PECO and (2) the AEPS surcharge for PECO's separate procurements of Tier I solar and non-solar AECs. Id. at 12. The OCA supports PECO's proposal to combine the reconciliation of DSP costs and AEPS costs into one process. OCA St. 1 at 17. However, the OCA requests that sufficient detail be provided in the reconciliation to assess the appropriateness of the individual costs of the DSP and the AEPS compliance. Id.

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

1. Burden of Proof.

RESA proposes to add a 0.5¢ per kWh charge to the Price to Compare (PTC) that will serve to increase default service rates by one-half cent. See gen'ly RESA St. 2 at 33-35. The Public Utility Code provides in relevant part:

> (a) Burden of proof.--Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.[30]

Because RESA is the party proposing a change that PECO did not include in its filing, RESA has the burden of proving its proposal is just and reasonable and in the public interest.[31] In addition to satisfying the burden of proof, a petitioner must provide substantial evidence in the record as support for its case before the Commission.[32] The Pennsylvania Supreme Court has provided

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30 66 Pa. C.S. § 332(a).

31 See e.g. Pa. P.U.C. v. Metropolitan Edison Co., Docket No. R-00061366, Order at 117 (Jan. 11, 2007); Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2010-2215623, Order at 14-16 (Mar. 15, 2012).

32 2 Pa. C.S. § 704. The term "substantial evidence" has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court as such relevant evidence that a reasonable mind might accept as

that the party with the burden of proof has a formidable task before its position can be adopted by the Commission. Even where a party has established a prima facie case, the litigant must establish that:

> [T]he elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.[33]

In addition to the general burden of proof required of a petitioner as provided in Section 332, the Public Utility Code provides the following as to proceedings specifically involving the rates of a public utility, in relevant part as follows:

> § 315. Burden of proof
>
> (a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.[34]

2. RESA's Proposal.

RESA witness Kallaher recommended that the 0.5¢ per kWh charge be added to the bills of default service customers and that the revenue be used to recover currently unrecovered costs of providing default service and costs of the retail market enhancements. Mr. Kallaher proposed that the proceeds of the 0.5¢ per kWh be distributed as follows: (1) payment of any verifiable

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adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. P.U.C., 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. 278, 166 A.2d 96 (1961); and Murphy v. Comm. Dept. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

[33] Burleson v. Pa. P.U.C., 501 Pa. 433, 436, 461 A.2d 1234, 1236 (1983).

[34] 66 Pa. C.S. § 315(a). As this Commission stated in the Penn Power default service case:
As the party seeking a Commission Order approving an Interim Default Service Plan, Penn Power has the burden of proving that the aspects of its proposed plan are both just and reasonable (66 Pa. C.S.A. §315(a)). The evidence necessary to meet this burden must be substantial and substantial evidence has been defined as being "...more than a mere scintilla, such evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229 (1938). Petition of Pennsylvania Power Company for Approval of Interim Default Service Supply Plan, Docket No. P-00072305, Order at 4 (Jan. 2, 2008).

costs related to providing default service not otherwise collected by PECO; (2) payment of costs related to implementing and maintaining competitive market enhancements; (3) retention by PECO of some portion (no more than 10%), which payment should be tied to achievement of certain benchmarks for migration away from default service; and (4) return of any remaining balance to all distribution customers. RESA St. 1 at 34.

As the figure below illustrates, OCA witness Hahn estimates that the revenue from RESA's proposed 0.5¢ per kWh adder applied to default service customers would be approximately $70 million per year.

ESTIMATED ANNUAL SURCHARGE REVENUE

Customer Class	Est'd Annual MWH Sales [1]	% Load served by Alternative Supplier [2]	Est'd MWH served by Alternative Supplier	Est'd Default Service MWH	Annual Revenue from 5 mils per KWH charge on Default Service
Residential	13,685,877	25.90%	3,544,642	10,141,235	$50,706,174
Small C/I	8,331,937	62.00%	5,165,801	3,166,136	$15,830,680
Large C/I	15,755,017	95.20%	14,998,776	756,241	$3,781,204
	37,772,831	62.77%	23,709,219	14,063,612	$70,318,059

[1] PECO Energy 2011 FERC Form 1 Report
[2] April 1,2012 Electric Shopping Statistics

OCA St. 1-R at 7. Therefore, under RESA's proposal, after implementing the retail market enhancements at a cost of approximately $3.7 million, PECO would keep as pre-tax profit approximately $6.6 million per year ($70.0 million - $3.7 million = $66.3 million. 10% * $66.3 million = $6.6 million) without any offsetting costs or risks. Remaining amounts would be returned to all of PECO's distribution customers even though it was collected only from PECO's default service customers.

3. <u>RESA's 0.5¢ Per kWh Adder Is Prohibited By Law.</u>

The OCA submits that RESA has failed to carry its burden of proof on this issue, has failed to provide substantial evidence in support of its proposed 0.5¢ per kWh adder, and has failed to show that the inclusion of the adder in PECO's DSP II would result in just and reasonable rates.[35] Further the adder is intended to collect illusory costs, which is specifically prohibited by law.[36]

The Public Utility Code provides, in relevant part:

> The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.[37]

A plain reading of the statute indicates that the default service provider has a right to "recover" all reasonable costs "incurred." This plain meaning of cost recovery as to a public utility is embedded in a number of significant decisions from the Pennsylvania Courts. Directly on point here, the Supreme Court of Pennsylvania provided that:

> Although the Commission is vested with broad discretion in determining what expenses incurred by a utility may be charged to the ratepayers, the Commission has no authority to permit, in the rate-making process, the inclusion of **hypothetical expenses not actually incurred**. When it does so, as it did in this case, it is an error of law subject to reversal on appeal.[38]

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35 ALJ Susan D. Colwell succinctly captured the cost recovery structure of default service in a recent decision, stating: "A default service provider is entitled to full recovery of its costs because it is not permitted to make a profit on the cost of the commodity." Petition of PPL Electric Utilities Corp. for Approval to Implement a Reconciliation Rider for Default Supply Service, Docket No. P-2011-2256365, R.D. at 35 (April 4, 2012).

36 See 66 Pa. C.S. § 2807(e)(3.9); Barasch v. Pa. P.U.C., 493 A.2d 653, 655 (Pa. 1985) (The Commission has no authority to permit the inclusion of hypothetical expenses not actually incurred in the ratemaking process); Cohen v. Pa. P.U.C., 468 A.2d 1143, 1150 (Pa. Commw. Ct. 1983) (A utility may only pass along to customers those expenses it actually incurs; any other approach would permit the utility to gain a profit under the guise of recovering operating expenses). See also Barasch v. Pa. P.U.C., 532 A.2d 325, 336 (Pa. 1987); Popowsky v. Pa. P.U.C., 695 A.2d 448, 455 (Pa. Commw. Ct. 1997).

37 66 Pa. C.S. § 2807(e)(3.9).

38 Barasch v. Pa. P.U.C., 493 A.2d 653, 655 (Pa. 1985). (Emphasis added).

On this same issue of illusory costs, the Commonwealth Court of Pennsylvania has held that:

> However, a utility may pass along to its customers only those expenses or costs it actually incurs. Any other approach would permit the utility, by charging higher rates than necessary, to gain a profit from its customers under the guise of recovering operating expenses.[39]

The plain meaning of the relevant Section of the Public Utility Code and the decisions of the appellate courts in Pennsylvania agree – a utility may only recover costs from its ratepayers that it has actually incurred. Hypothetical and illusory "costs" are precluded from consideration in the rates that utility customers pay.

It is important to note that even PECO opposes RESA's 0.5¢ per kWh adder. See PECO St. 5-R. PECO witness Cohn noted that "[s]uch a large and unjustified increase in the PTC would also send inaccurate price signals to customers." PECO St. 5-R at 12. OCA witness Hahn echoed Mr. Cohn's sentiment. Mr. Hahn explained:

> Including an arbitrary adder in the cost of default service will result in higher default service rates, and the DSP would no longer be consistent with a least cost standard. Furthermore, it will increase the PTC, which will allow EGSs offering a percentage discount off the PTC to achieve the minimum savings level at a higher price. This could and likely would increase the costs to customers including those who participate in the Retail Opt-In Auction or Customer Referral Programs. The same theory applies to EGSs selling to customers through normal sales channels and not through any retail market enhancement program. A higher PTC will likely cause higher prices for selling one by one in the retail market. Thus, the real effect of the RESA proposal is to increase the power supply costs for both default services customers and customers who take advantage of the retail market.

OCA St. 1-R at 7-8.

PECO witness Cohn also correctly noted that it would be inappropriate to collect a charge from one group of customers (default service customers) and refund excess amounts to another

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[39] Cohen v. Pa. P.U.C., 468 A.2d 1143, at 1150 (Pa. Commw. Ct. 1983). (Internal citations omitted); See also Barasch v. Pa. P.U.C., 532 A.2d 325, 336 (Pa. 1987); Popowsky v. Pa. P.U.C., 695 A.2d 448, 455 (Pa. Commw. Ct. 1997).

group of customers (all distribution customers). PECO St. 5-R at 12. Again, OCA witness Hahn echoed this sentiment. Mr. Hahn explained the inappropriate subsidy as follows:

> I also note that the RESA proposal applies the 5 mils per KWH adder to default service rates, but distributes any amounts remaining, after paying expenses and the PECO incentive, to all customers. Thus, this proposal will cause default service customers to subsidize customers who obtain power supply from an EGS. Default service customers will pay 100% of the costs but receive 75% or less of the remaining funds. This transfer of wealth or economic benefit is unsupported by any cost causation, is extremely inequitable, and discriminatory.

OCA St. 1-R at 8 (The 75% figure applies if 25% of residential customers in PECO's territory are shopping). OSBA also opposed RESA's proposed adder. See OSBA St. 2 at 7-9. As explained by OSBA witness Kalcic: "In essence, [RESA] seeks to penalize default service customers for choosing not to shop." OSBA St. 2 at 7. I&E witness Granger also opposes RESA's proposed adder. See gen'ly I&E St. 1-R.

In his surrebuttal testimony, RESA witness Kallaher defended the adder, stating that it is not intended to provide a dollar-for-dollar recovery of retail market enhancement costs, but instead, to account for costs associated with PECO's provision of default service that are not properly allocated to default service customers. RESA St. 2-SR at 24. Mr. Kallaher provided two examples of such costs: (1) maintaining a high credit rating and (2) operating call centers, which Mr. Kallaher claimed benefit only default service customers. Id. Further, Mr. Kallaher claimed that the PECO portion of the adder cannot be characterized as a profit because it is intended to compensate and incentivize PECO for its efforts to implement the retail market enhancements and encourage competition. Id.

RESA witness Kallaher's assertions completely lack merit. PECO's maintenance of a high credit rating and operation of call centers benefits all distribution customers, not just default service customers. A high credit rating reduces PECO's risk rating and allows it to obtain credit at satisfactory rates, which credit, when used to obtain financing, benefits all distribution customers through base rates. Further, such credit rating is reflected in the Company's return on equity, the opportunity of which to earn is on the distribution portion of PECO's provision of service and therefore, is collected from all distribution customers. Regarding call centers, call centers benefit all distribution customers, since, for example, all distribution customers are directed to call PECO to report an outage. The adder is clearly a "profit," because it is pre-tax money that PECO is permitted to retain without any added risk, which RESA attempts to portray as the recovery of operating expenses and incentive payments.

RESA failed to carry its evidentiary burden as to its proposed 0.5¢ per kWh adder. There is no support for the adder in the Public Utility Code or the controlling case law in Pennsylvania. As such, the OCA submits that the proposal must be rejected.

IV. RETAIL MARKET ENHANCEMENTS

A. Summary of OCA's Position.

The OCA supports the implementation of a retail opt-in auction along the lines of PECO's EGS Opt-In Competitive Offer Program (referred to also as the Opt-In Auction Program) as a reasonable means to provide further opportunities for ratepayers to engage in the competitive retail market for electricity.[40] The OCA, however, submits that several modifications should be made to PECO's proposed EGS Opt-In Competitive Offer Program in order to ensure a successful program and to provide necessary ratepayer protections. Specifically:

- The contract term should be for twelve (12) months;

[40] The OCA's positions only address residential customers. The OCA takes no position on whether commercial customers should be included. In addition, the OCA will address the participation of CAP customers within Section IV.D, below.

- Customers should be offered a price that is guaranteed to be lower than the Price to Compare (PTC) for the entire contract term;

- No more than 20% of the total, default residential customers should be allowed to enroll in the program;

- Suppliers participating in the Opt-In Auction Program should be limited to 50% of the customer class default service accounts;

- All terms and conditions, including price, must be provided to customers prior to their opting into the program;

- Prior to the end of the contract, enrolled customers should receive a separate notice from PECO advising them of their options for continued generation service in addition to the two required EGS notices;

- Enrolled customers who do not affirmatively select an option for continued service at the end of the program, should remain with their current EGS on a fixed price month-to-month fixed price contract;

- A process should be developed and monitored by PECO to maintain the customer participation cap; and

- The winning EGSs in the auction should pay for all of the incremental costs of implementing the Opt-In Auction Program.

The OCA also made several recommendations with respect to the Standard Offer Customer Referral Program proposed by PECO, including the following:

- An "introductory period" of four months should be adopted for the Standard Offer Program in order to provide guaranteed savings and to allow customers who are otherwise reluctant to shop a risk-free opportunity to do so;

- The default service customer should be returned to default service after the introductory offer period expires unless the customer affirmatively chooses otherwise;

- Customer calls regarding the Standard Offer Program should be limited to new or moving customers and customers who specifically request information about Choice;

- PECO should delay the implementation of the Referral Program until after the Opt-In Auction Program to avoid customer confusion; and

- Suppliers should pay the implementation and ongoing costs of PECO's referral programs pursuant to the IWP Order.

In addition to recommendations regarding the Opt-In Auction Program and the Standard Offer Customer Referral Program, the OCA also made recommendations with respect to the cost recovery for the programs and Time-of-Use programs being addressed in this proceeding:

- The participating EGSs pay the costs of the programs as per the IWP Order and
- PECO's Time-of-Use Program has already been addressed in PECO's Smart Meter proceeding at Docket No. M-2009-2123944 and does not need to be further addressed in this case.

The OCA will discuss each of the issues set out above in the following sections. First, however, the OCA provides some general comments on the issue of retail market enhancements.

As the OCA discusses below, two of the recent Orders to come out of the Retail Markets Investigation (RMI) docket have played a large role in shaping PECO's default service program as to the proposed retail market enhancements.[41] The December 16 Final Order provided recommendations for the possible use of the Opt-In Auctions and Customer Referral programs. PECO filed its DSP II Plan on January 13, 2012. Based on the Commission's Tentative Order of October 14, 2011 and the December 16 Final Order, and as an active participant in the RMI process, PECO was aware of the retail market enhancements that were included in both Orders and incorporated those programs into its proposed DSP. Specifically, with its initial filing, PECO proposed a Retail Opt-In EGS Offer Program and customer referral programs, including a Standard Offer Customer Referral Program in the form of a "Supplier of the Month" program

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41 December 16 Final Order and the IWP Order. Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order (December 16, 2011) (December 16 Final Order); Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Order (March 2, 2012) (IWP Order).

and a New/Moving Customer Referral Plan. PECO St. 2 at 25-26. Subsequently, on March 2, 2012, the Commission issued its Intermediate Work Plan Order (IWP Order).

The IWP Order provided the following:

> This intermediate work plan provides guidance regarding the following topics: (1) the expansion of consumer education; (2) the acceleration of the switching timeframe when a customer shops for an alternative supplier; (3) the initiation of a customer referral program; (4) the initiation of a retail opt-in auction program; (5) the inclusion of the default service PTC on customer bills; and (6) the increase in coordination between EDCs and EGSs.

IWP Order at 6. Specifically, the IWP Order provided guidance on the implementation of the Opt-In Auction Program and Customer Referral Programs.[42] On March 16, 2012, PECO submitted the Supplemental Direct Testimonies of Brian J. Crowe (PECO St. No. 1-S) and John J. McCawley (PECO St. No. 2-S). In its Supplemental Testimonies, PECO proposed several adjustments to its EGS Opt-In Competitive Offer Program and Customer Referral programs, including the elimination of the proposed "Supplier of the Month" program in favor of the Standard Offer Program, in order to accommodate some of the Commission's guidance as contained in the IWP Order.

As part of its investigation and analysis of this matter, the OCA provided the Direct Testimonies of Richard S. Hahn and Barbara A. Alexander on April 16, 2012. OCA witnesses Hahn and Alexander addressed PECO's proposed retail market enhancements, as the OCA will discuss in detail in Sections IV.B and IV.C below. The OCA submits that the proposed EGS Opt-In Competitive Offer Program and EGS Standard Offer Program should be modified in order to best serve the Commission's goal of increasing customer interest in the retail market for

[42] The IWP Order also provided the following provision: "To the extent that an EDC chooses to deviate from these guidelines, we expect the differences to be justified by good cause shown, which includes showing operational constraints, or supported by evidence produced during an EDC's default service proceeding, and supported substantially by interested parties in the default service proceeding." IWP Order at 6-7.

generation supply and also to ensure that customers benefit as a result of the adoption of these retail market enhancements.

B. EGS Opt-In Competitive Offer Program.

In its EGS Opt-In Competitive Offer Program, PECO proposes to conduct a Request for Proposal (RFP) process for a fixed price, six month contract with an EGS retail service rate that is initially priced at least five percent (5%) off of the Price to Compare (PTC) in effect on June 1, 2013. PECO St. 2-S at 2-3. In order to encourage customers to "opt in," the offer will also include a $50 bonus payment to customers that will be paid by the EGS if the customer remains with the EGS for three billing cycles. Id. at 3; OCA St. No. 1 at 10. The winning EGS bidders will be assigned one or more "tranches" of residential customers. PECO St. 2-S at 2. These winning EGS bidders will be the EGSs with the highest percentage off the PTC. OCA witness Barbara Alexander further explained the program:

> All non-shopping residential customers other than Customer Assistance Program (CAP) customers will be eligible to participate, but there will be a load cap of 50% of the customer group eligible to accept the offer, a program rule that will be implemented by the EGS for each tranche awarded to the EGS. PECO will then randomly select the customers who will populate the tranches for the winning EGSs. PECO will notify all default service residential customers of their opportunity to opt in to the EGS offer, disclosing the price and terms and conditions of the winning EGS offer. Customers will have 30 days to enroll by either sending in a tear off post card and returning it to the EGS, enrolling at the EGS website, or calling the EGS's toll free number. The EGS will then submit the customer's switch order via the standard electronic means to PECO. Under the proposed terms of the Opt-In Auction, the winning EGS must agree to provide a $50 bonus to customers who stay with the EGS for at least three billing periods. During the term of the EGS contract, participating customers can select a different EGS or return to default service without penalty, but once the customer leaves the opt in aggregation pool, the customer cannot return. At the end of the 6-month period, the customer will not automatically return to default service, but will remain with the EGS unless the customer affirmatively switches to another EGS or contacts PECO to return to default service. The EGS will inform the customer of price options and the right to return to default service or select another EGS. If the customer does not respond to the EGS offers, the customer will be served on a month-to-month rate contract (the terms of which are not established by PECO's

> proposed terms and conditions) and can leave at any time without early termination fee or penalty. The EGS prices after the 6-month period will not be subject to any EDC or commission approval. Under PECO's proposal, the participating EGSs will pay the incremental costs associated with the implementation of this program on the grounds that the EGSs will obtain these customers at much lower cost than it would otherwise incur, and the EGSs stand to significantly increase their market share.

OCA St. 2 at 8-10.

The OCA made several recommendations as described below regarding eligibility for the program; the composition of the product offer; supplier participation load cap; the customer participation cap; customer options on product expiration and notice requirements; and structure of the Opt-In Auction Program to better serve the Commission's goal of increasing customer interest in the retail market and also to ensure that customers benefits as a result of this program. The OCA submits that its recommended modifications to PECO's proposed program are reasonable and necessary to ensure that the program does not harm customers, the retail markets or the provision of default service.

1. <u>Customer Eligibility (non-CAP).</u>

Under PECO's plan, all residential customers (except for CAP customers) would be eligible to participate in the program. The marketing for the program would be targeted at non-shopping customers, but shopping customers would be allowed to sign up for the program. PECO St. 2-R at 15. The OCA supports PECO's approach. OCA St. 2-R at 7. This approach is also consistent with the <u>IWP Order</u>. <u>IWP Order</u> at 42. The Commission captured the importance of allowing all customers -- shopping and non-shopping -- to participate. The Commission stated:

> The Commission maintains its original position that Retail Opt-In Auctions should be open to both residential default service and residential shopping customers. The Commission agrees with those parties that expressed discomfort in the possibility of EDCs rejecting shopping customer participation. The

> Commission believes that would cast a shadow over the auctions and appear to be discriminatory against those who have already entered into the retail electric market. Additionally, the Commission believes this will prevent shopping customers from returning to default service in order to participate, which may result in cancelled contracts and the imposition of early termination fees/penalties.

IWP Order at 42.

RESA witness Kallaher proposed that shopping customers should be ineligible to participate in the EGS Opt-In Competitive Offer Program. RESA St. 2 at 18-19; RESA St. 2-SR at 13-14. While the OCA agrees that PECO should not directly solicit shopping customers for participation, this does not mean that shopping customers who inquire about the offer should not be allowed to participate. OCA witness Alexander testified:

> I cannot agree with his proposal to impose a duty on PECO to implement a program rule to this effect. It is an unfortunate, but inevitable, result that customers already served by an EGS will hear about this publicized enrollment opportunity and some may seek to enroll. I agree that PECO's enrollment materials should not be targeted to such customers and I agree that PECO's public statements and customer materials should advise customers already served by an EGS to carefully consider their contract terms and price prior to seeking to enroll in this program. Again, the fact that 25% of PECO's customers are already shopping suggests that these customers are likely to hear about this program and some may seek to enroll. PECO should not be put in a position of monitoring this development or trying to educate individual customers on the implications of enrollment since they have no knowledge of the customer's EGS terms and conditions.

OCA St. No. 2-R at 7-8. Further, as addressed in Section IV.B.3, below, the OCA submits that if the OCA's recommendation to limit the EGS Opt-In Competitive Offer Program participation to 20% of non-shopping customers is adopted, RESA's concerns regarding participation by shopping customers would be substantially lessened. The enrollment limit allows the program to be presented as a limited, one-time opportunity to non-shopping customers. OCA St. 2-R at 8.

RESA witness Kallaher responded that the main purpose of the program is to give customers who have not otherwise shopped, additional opportunities to test the market, and not to shift customers who are currently shopping. RESA St. 2-SR at 13-14. The OCA agrees about the purpose of the program, but the OCA does not agree that closing the program to shopping customers is the answer. PECO's approach to direct the marketing efforts towards non-shopping customers addresses this issue and carries forward the focus for the program identified in the IWP Order. The IWP Order stated:

> However, to ensure the focus of this competitive enhancement is on those customers who have not shopped, the Commission will also maintain its original position that all marketing, notifications and consumer educations efforts for Retail Opt-in Auctions should be targeted to non-shopping, residential, default service customers. As such, although a shopping customer may become aware of the Retail Opt-In Auction and request participation, the auction materials themselves will be directed toward the non-shopping segment of the residential sector.

IWP Order at 42.

For the reasons stated above, the OCA submits that all residential customers, both default service and shopping customers, should be eligible to participate in the Opt-In Auction Program. The marketing materials for the program, however, should be specifically directed towards non-shopping customers as PECO has proposed.

2. Composition of Product Offer.

OCA witness Alexander discussed several concerns with PECO's product offer including the six month duration of the contract, the proposed discount to be offered, and presentation of the key terms and conditions to customers. OCA St. 2 at 5. The OCA will address each issue in the identified section of the common brief outline.

a. Contract Term Length.

PECO has proposed a six (6) month contract term in the Supplemental Direct Testimony of John McCawley for the EGS Opt-In Competitive Offer program. PECO St. 2-S at 3. In its original filing, the Company recommended a twelve (12) month term. PECO St. 2 at 22. On

March 2, 2012, the Commission issued its IWP Order, and PECO revised its recommendation in "light of the Final Order." PECO St. 2-S at 2. In the IWP Order, the Commission discussed many of the comments received on this issue, and provided the following:

> After considering the comments that were filed on this topic, we recommend that customers receive supply service under the terms of the Retail Opt-In Auctions for a period of six billing cycles. We believe that a term of six billing cycles is not as risky as a longer term, since shorter-term Retail Opt-In Auctions may help protect against the unpredictability of the market and may lessen risk premiums that suppliers incorporate into their prices. Further, a short-term auction may entice more suppliers to participate in the program.

IWP Order at 50. In this proceeding, OCA witnesses Hahn and Alexander, FirstEnergy Solutions' (FES) witness Tony Banks, and DES/IGS witness Barkas all recommended, or stated they could accept, a 12-month term. Dominion St. 1-R at 7-8; FES St. 1-SR at 5; OCA St. 1 at 13; OCA St. 2-R at 5.

The OCA recommends that the contract term should be revised to a twelve month term as originally proposed by PECO. OCA St. 2 at 5. OCA witness Alexander testified:

> This contract term is necessary to avoid the potential for "teaser" rates and it better conforms to the overall Default Service procurement plan.

Id. at 11. OCA witness Hahn also noted that the "longer term will appear more attractive to customers." OCA St. 1 at 13.

OCA witness Alexander also supported the testimony of FES witness Tony Banks regarding the contract length.[43] Mr. Banks testified to the following reasons to deviate from the guidelines set forth in the IWP Order:

> PECO's program requires participating EGSs to offer a product that is at least 5% less than PECO's projected PTC for June 1, 2013. PECO St. No. 2 at 22; PECO St. No. 2-S at 3. Therefore, the initial price offered by participating EGSs is going to be favorable to customers. Extending the availability of this price to participating customers for 12 months will benefit them, as will the opportunity to

[43] The OCA notes that FES and OCA do not agree on all aspects of this issue, in particular Mr. Banks' position on the participation caps, as discussed in more detail in Section IV.B.3.

> have 12 months of price stability. In the IWP Order, the Commission sought to minimize the amount of time that customers will participate in a retail opt-in auction to allow them to switch back to default service or shop for another EGS if they are dissatisfied with the price of their generation. IWP Order at 50. However, even if the PTC were to decline more than 5% over the 12-month period, customers would be free to leave the program for lower EGS offers, or even default service, without penalty. PECO Ex. JJM-4-S at , Article 7.2. Therefore, I believe that a 12-month program period will increase the likelihood of maximum customer participation in the program. Further, there is no reason to believe that a 12-month term will increase risk premiums to the extent that there will be a lack of EGSs interested and able to offer 12-month products at least 5% below PECO's projected PTC for June 1, 2013. In fact, as of April 13, 2012, there are at least 20 suppliers offering a fixed price with contract terms of 12 months and longer on PaPowerSwitch.com. FES Ex. TCB-1. These offers included savings greater than the 5% being discussed in the context of the Opt-In EGS Offer Program.

FES St. 1 at 7-8.

The OCA submits that multiple parties, including several EGSs, have indicated good cause and substantial support for a 12-month contract term.

b. <u>Price of Product.</u>

In the Supplemental Direct Testimony of John McCawley, PECO proposed the following:

> Participating EGSs will be required to offer a six-month product that is at least five percent less than PECO's projected Price-to-Compare for June 1, 2013, instead of a 12-month product. The offer may include a $50 bonus payment to customers which shall be paid by the EGS after offer acceptance and the completion of three billing cycles with electric generation service provided by the selected EGS.

PECO St. 2-S at 3. In practical effect, under PECO's proposal, the 5% discount from the PTC is only guaranteed for 3 months of the 6 month term as long as the PTC adjusts quarterly.

OCA witness Alexander proposed that the price offered to customers should be a guaranteed savings off the PTC during the entire term of the contract, not just the price for the first quarter of the program. OCA St. 2 at 5. OCA witness Alexander testified:

> It would not be appropriate (under either a 6-month contract term or a 12-month contract term) for the Retail Opt-In Auction to only promise a savings compared to the PTC in effect in June 2013 because such an approach carries a high risk that customers will pay more than the PTC during the contract term and not understand this distinction at the time of the Retail Opt-In Auction offer or during the contract term when they have little incentive or reason to make detailed calculations between the PTC and their auction contract rate. Any other approach is likely to lead to customer dissatisfaction and lessen support for customer choice.

Id. OCA witness Hahn agreed and stated: "I also recommend a guaranteed percentage savings below the PTC, rather than a fixed price based on a discount from the PTC that is in effect on June 1, 2013." OCA St. 1 at 13.

The OCA submits that there is no assurance that an up-front bonus payment will wholly off-set the impact of an increase in the PTC during the term of the program. Customers could end up paying more than PECO's default service rates under the program as proposed. In PECO's response to OCA Set I-7, PECO's presentation regarding the PTC showed:

> That the PTC can and has varied significantly from quarter to quarter, ranging from 9.92 cents per kWh for those using less than 500 kWh in the 1st quarter of 2011, up to 11.14 cents per kWh in the 4th quarter of 2011 and then to 10.06 cents per kWh for the 2nd quarter of 2012. On its website, PECO estimates a lower PTC for residential customers for the July through September 2012 quarter, in the range of 8.87 cents per kWh (less than 500 kWh) to 9.42 cents per kWh (summer usage over 500 kWh).

OCA St. 2 at 12, fn. 4. As the record shows, the PTC has fluctuated by more than five percent. Therefore, auction participants could be at risk with these price fluctuations.

The problem with the potential price differential is further compounded by the fact that customers may not realize that there is a price change until after the bill arrives. As OCA witness Alexander testified:

> I am concerned that customers may learn about this pricing impact long after the differential has been in effect, and I am concerned that these customers will have a negative opinion about the competitive market as a result. My proposal is intended to ensure that customers have a positive experience and that actual

> savings that appear to be promised are in fact delivered for the entire contract term.

OCA St. 2-S at 3. The IWP Order provided a vision of the product offer as something "unique and eye-catching, and as customer-friendly as possible." IWP Order at 69. In the OCA's view, the proposed program will not lead to the type of outcome or customer experience that the Commission is looking for if the discount off the PTC cannot be guaranteed for the term of the program.

The OCA submits that the product offer should guarantee customer savings during the product term, without fear of harm. PECO's approach does not provide these benefits. The OCA's guaranteed percent off discount for the entire term of the contract is the only product offer of record that can accomplish these goals. The OCA has submitted substantial evidence on this issue, and for all the reasons stated above, the OCA respectfully requests the Commission to adopt the OCA's recommendations as to the product offer for the EGS Opt-In Competitive Offer Program.

c. Key Terms and Conditions.

The OCA recommends that the key terms and conditions, including price, be disclosed to the customer prior to enrollment in the program. PECO witness John McCawley also agreed that customers should be provided key terms and conditions up-front and testified that "customers are more likely to participate in the Opt-In Auction Program, and to have a positive experience with the Program, if they know the price of the product being offered to them before enrollment." PECO St. 2-R at 13. The IWP Order similarly stated that "it is important that the Commission identify the key elements of the product to be offered to customers." IWP Order at 69.

In contrast to the IWP Order, as well as Ms. Alexander's, and Mr. McCawley's position that the key terms and conditions should be identified up-front, RESA witness Kallaher recommended that customers should be enrolled prior to receiving the price and material terms and conditions. RESA St. 2 at 14-16. The OCA submits that it is imperative that consumers be presented with the key terms and conditions, including the price, prior to opting into the auction. OCA witness Alexander testified:

> The suggestion that customers should be asked to enroll prior to receiving the price, the material terms and conditions, or even before the customer is told the identity of the EGS that will become the customer's generation supplier is unreasonable. This process would transform the Opt-In Auction into an Opt-Out Auction by requiring customers to take affirmative action to de-enroll after receiving the actual price and terms should they not agree with the results of the auction or for any other reason. Nor is this proposal remotely similar to the retail competitive market in which customers agree to accept a specific EGS offer based on knowledge or the price and other terms of service.

OCA St. No. 2-R at 6; see also, OCA St. No. 2-S at 2.

In addition to the key terms and conditions discussed above, Ms. Alexander testified that if her pricing recommendation discussed in Section IV.B.2.b above is not adopted, customers also must be fully informed of the potential that the price will exceed the PTC during the course of the program. Ms. Alexander testified:

> [T]he disclosures should include a statement that the price being offered is fixed for the contract term and less than the PTC at the time of the enrollment, but that the PTC will change quarterly during the term of this contract. In light of PECO's variation in the PTC in the recent past, this will be an important consideration to customers when considering this offer. The disclosure must emphasize that the auction price is a reflection of a percentage off the PTC and not a percentage off the entire bill. Any explanation of possible savings that customers may experience when entering this program is not a reflection of the calculation of the entire residential bill when the charges for distribution service and other mandated surcharges are considered. Finally, customers should be prominently informed as part of the terms of service concerning their rights at the end of the auction contract term.

OCA St. No. 2 at 12; see also, OCA St. No. 1 at 13.

The OCA submits that PECO should provide to the customer in advance of enrollment all key terms and conditions, including price and any potential changes to the price being offered.

3. Customer Participation Cap.

a. Summary and Overview of OCA's Position.

As proposed by PECO, all residential default service customers should be solicited for participation in the Opt-In Auction Program. The OCA agrees that all default service customers should be informed about the program by submits, however, that the maximum number of customers who should be authorized to enroll in the program should be limited to no more than 20% of the total number of eligible customers. OCA witness Hahn stated that setting the customer participation cap at 20% for the Program will mitigate the increased volumetric risk in providing default service in an effort to avoid an increase in the cost of default service in which an increased volumetric risk could result. See OCA St. 1 at 10, 12. A detailed discussion on the increased volumetric risk the Program may have on default service and other ways to mitigate the risk are provided above in Section II.G.2.

b. PECO's Proposal (50% Cap).

According to the IWP Order, the cap on enrollment for the Opt-In Auction Program is recommended to be 50% of an EDC's default service customer base (non-shopping customers), but there should be no limit on the number of customers an EDC solicits for the Program. IWP Order at 59-60. Specifically, the Commission stated:

> While the Commission understands those parties' comments suggesting that the cap be lower than 50% in order to provide more meaningful certainty to the EGSs, the Commission does not want to impose a limit that may lead to the rejection of customers wishing to participate in the Retail Opt-in Auctions. However, the Commission believes that a lack of a cap would provide no estimate of customer participation to both wholesale and retail suppliers. We believe the 50% cap provides both a large customer participation pool, while providing some level of certainty to those EGSs opting to participate in the Retail Opt-in Auctions.

Id. at 59.

PECO's Opt-In Auction Program proposal includes a 50% customer participation cap and indicates that all non-shopping residential customers will be solicited to participate in the Program. See PECO St. 2-S at 3. As stated above, the OCA submits that a participation cap of 20% should be authorized in this matter and, accordingly, opposes the PECO proposal for a 50% cap. The OCA further submits that it has provided substantial evidence on this issue and has shown good cause as to why its recommendation should be adopted, as further detailed below.

c. The OCA's Position (20% Cap).

To be clear, the OCA agrees with the Commission's concerns that the lack of any cap would result in an unreasonable level of uncertainty for wholesale suppliers. The OCA also agrees with the proposed method of determining the number of residential customers who can actually enroll in the program. The OCA submits, however, that a 20% cap on participation will provide the best opportunity for a successful program, while at the same time properly mitigating potential harm to default service customers.

OCA witness Alexander summarized OCA's concern as follows:

> This program should limit enrollment to 20% of residential default service customers. My position is not a reflection of any objection to customer choice and the development of a retail market. Rather, opening up this program that has little or no precedent or experience to rely upon to predict results carries significant risks that may adversely impact customer opinion about the retail market. If 50% of the default service customers can enroll and far less agree to enroll, the Retail Opt-In Auction may be publicly viewed as a failure. If 20% can participate and far more seek to enroll and participate, this would be excellent indication of customer interest in the retail market and EGSs would have the option to offer the same terms to additional customers outside the auction process itself.

OCA St. No. 2 at 10. OCA witness Hahn also expressed his concern about PECO's proposed 50% customer participation cap:

> I am concerned that the Retail Opt-in Auction program as proposed by PECO will introduce an additional volumetric risk, over and above the existing volumetric

> risk, in providing residential default service, which will increase the cost of default service. Competitive suppliers that bid to supply default service will need to assess the risk that up to half of the default service load that they win the right to supply will be taken away from them after they have finalized their prices. Accounting for this risk will require these suppliers to raise their prices through additional risk premiums.

OCA St. 1 at 10. Mr. Hahn's demonstration of how PECO's proposed Opt-In Auction Program can increase the volatility of residential default service load is provided and discussed above in Section II.G.2. Mr. Hahn concluded that a 20% customer participation cap is essential to reducing the volumetric risk that the Opt-In Auction Program poses to default service suppliers. See OCA St. 1 at 12.

As Mr. Hahn described in his direct testimony, FPFR suppliers already have been dealing with customer migration due to increased switching activity. See OCA St. 1-R at 5. This increased level of shopping activity demonstrates a need for a more carefully measured Opt-In Auction Program, as the OCA suggests through its 20% participation cap.

Dominion witness Barkas supported PECO's 50% customer participation cap, asserting that default service suppliers will have had ample notice that up to 50% of default service customers could be transitioned to EGS service, thereby providing default service suppliers with sufficient ability to calculate and assume the risk. See Dominion St. 1-R at 6. RESA witness Kallaher also supported PECO's 50% cap, asserting that a lower cap would hamper participation by EGSs in the Opt-In Auction Program. RESA St. 2-R at 5.

OCA witness Hahn replied to Dominion's and RESA's positions as follows:

> Mr. Barkas actually makes my point for me. Potential default service providers will calculate the cost to assume this risk and will include this cost as a higher default service price. The Retail Opt-in Auction program should not result in harm to default service procurements or default service customers. It would not be in the public interest to allow such a result. My recommendation seeks to achieve a balance that allows for a robust Retail Opt-in Auction program and reasonable default service procurement and rates.

…

> The Final Order allows changes to be made for good cause. In my view, changing the cap on customer participation to 20% from 50% is for good cause and is required to mitigate an unacceptable volumetric risk. Furthermore, it is common industry knowledge that competitive suppliers will factor risks into their prices, including the risk that customers will leave for other supply arrangements. When no volumetric risk is present, as is the case when a competitive supplier signs an individual to a contract with a specific term, the price will be lower than when volumetric risk exists.

OCA St. 1-S at 6-7. Further, as explained by OCA witness Alexander:

> Not only does Mr. Hahn's and my recommendation make sense from the perspective of the entire Default Service portfolio, but this recommendation is also supported by a concern that this program be implemented carefully to assure its success and customer satisfaction.

OCA St. 2-R at 2.

As explained above, the OCA is hopeful that the Opt-In Auction Program will prove to be successful. The OCA has proposed a 20% cap in order to provide a reasonable platform for this success, while at the same time ensuring that default service customers are not harmed. OCA witness Hahn has proposed a 20% "hold back" from the general default service procurements in order to effectuate this result. See Section II.G.2., *supra*. In the OCA's view, adoption of the OCA's hold back proposal would provide a level of certainty for EGSs and wholesale suppliers alike. And, as Ms. Alexander testified, the proposed OCA 20% cap would still allow EGSs to make offers to customers directly, based on the level of interest generated by the Opt-In Auction Program.

The OCA understands and appreciates that there are a variety of opinions on this topic amongst the various parties here. The OCA submits, however, that the OCA's 20% cap and hold back provisions provide a reasonable accommodation for all of these interests, and provided protection for those consumers who remain on default service, as Act 129 requires. Accordingly, the OCA respectfully requests the Commission to review the substantial evidence provided by the OCA on this issue and adopt the OCA's recommendations as to the customer participation cap.

4. Supplier Participation Load Cap.

According to the IWP Order, in order to protect the diversity of the market and with an eye on obtaining a reasonable retail auction price, EGSs participating in the Opt-In Auction Program may not serve more than 50% of the customer class default service accounts for each EDC territory. IWP Order at 63. PECO's proposed Opt-In Auction Program implements a 50% EGS participation cap in accordance with the IWP Order. See PECO St. 2-S at and Exh. JJM-4S at § 4.4. RESA noted its support of PECO's EGS participation cap for the Opt-In Auction Program. See RESA St. 2 at 20. OCA also supports PECO's proposal. See OCA St. 1-R at 5. The OCA submits that PECO's proposal to impose a 50% EGS participation cap in its Opt-In Auction Program is reasonable and in accordance with the IWP Order and should be adopted.

5. Customer Options on Product Expiration and Notice Requirements.

a. Customer Options on Product Expiration.

At the end of the program term, PECO proposes that the customer remain with the EGS. PECO St. 2-R at 20. PECO avers that there are sufficient customer protections in the notices from the supplier, and that the customer should, therefore, stay with the EGS. Id. The OCA does not object to customers remaining with the EGS after sufficient notice for the EGS Opt-In Competitive Offer Program.[44] The OCA submits, though, that customers should be fully informed of this feature before they opt in to the program.

[44] The OCA notes that Mr. McCawley's Rebuttal testimony erroneously stated that Ms. Alexander had recommended that customers for the EGS Opt-In Competitive Offer Program should be returned to default service at the end of the program. PECO St. 2-R at 20. This was Ms. Alexander's recommendation for the Standard Offer Customer Referral Program, but not for the EGS Opt-In Competitive Offer Program.

The OCA further recommends though that if no response to an EGS offer is provided by the customer, the customer should be placed on a fixed price month-to-month contract with no penalties or termination fees. Customers who opt in to this program will likely receive some type of offer from the EGS before the program ends. The OCA submits that one of the products should be a fixed price offer and that the fixed price offer should be the offer the customer is placed on if the customer does not make an affirmative selection.

OCA witness Alexander explained:

> The EGS contract should require the EGS to disclose to the customer that if the customer fails to respond to any of the options listed in their notice (i.e., the right to return to Default Service or select an EGS option), the customer would be put on a fixed price month-to-month contract without penalty or termination fees. A customer who enters this program with a fixed price contract should not be transferred to a variable priced month-to-month contract without affirmative consent.

OCA St. 2 at 14.

The OCA submits that RESA witness Kallaher's perspective that the "competitive suppliers should have maximum flexibility regarding the product offered to customers at the end of the opt-in auction program or any other retail market enhancement program considered by the Commission" is incomplete. RESA St. 2-R at 8. The EGSs already have maximum flexibility in what they can offer to customers, but if the customer does not respond, the customer should not be placed on a variable priced rate or other rate that is wholly inconsistent with the program in which they participated. The Opt-In Auction Program is designed to create a positive experience for customers who otherwise have chosen not to shop, and a fixed price month-to-month product after the end of the program will help to maintain customers' comfort level with continuing to receive supply from an EGS. Customers who do not respond to a notice should stay with their current EGS on a fixed price, month-to-month contract if the customer does not affirmatively select another product.

b. Notice Requirements.

PECO's proposed notice provisions that would occur at the end of the EGS Opt-In Competitive Offer Program are insufficient given the type of program proposed. Under PECO's proposal, customers would receive only two notices from the EGS. PECO St. 2-R at 19-20. The OCA recommends that three notices should be provided to customers prior to the end of the program -- one from the EDC stating that the program is coming to an end and two from the EGSs as required by the Commission's regulations. In her Direct Testimony, Ms. Alexander testified as follows regarding the notices:

> Participating customers must receive three notices: (1) a 90-day notice from the EDC that will alert the customer to the end of the contract term and their options (select another EGS, select an offer from the serving EGS, return to Default Service), and explaining that they will hear directly from their EGS about rate options in the coming months; (2) a notice from the EGS 90 days prior to end of the contract about the customers' options that shall disclose the EGS offers to the customers, the option to return to Default Service, and a disclosure of what will occur if the customer does nothing; (3) a similar notice from the EGS 52-60 days prior to the end of the contract.

OCA St. 2 at 12-13.

PECO, which is sponsoring this program, should be required to advise customers that the program is coming to an end. The OCA submits that the two notices from the EGS are not sufficient because such notices are not specifically directed to the end of this special program and do not come from the sponsor of the program. The OCA submits that this notice from PECO is an important additional step to educate customers. OCA witness Alexander testified:

> I continue to recommend that this notice be required so that additional steps are taken to educate consumers about their rights at the end of the auction term and what will occur if the customer takes no action. Since it is assumed that most of the participating customers have not participated previously in the retail energy

> markets, it is my opinion that most of these customers will not be familiar with their options or that, having affirmatively agreed to participate in this program, their affirmative agreement to continue in the program and remain with the EGS will not be required.

OCA St. 2-S at 3-4.

In order to effectively educate consumers, OCA witness Alexander recommended that the PECO notice include the following elements:

> I think it advisable that PECO, similar to its presentation of this program to customers at the time of enrollment, should inform participating customers generally as follows that:
>
> i. The Retail Opt-in Auction contract is about to come to an end;
>
> ii. The customer has several options, alerting the customer to forthcoming notices from the EGS about the offers for continuing with the EGS at the end of the auction term;
>
> iii. The customer has the right to select another EGS and referring the customer to the PaPowerSwitch and OCA websites for information on marketer offers and prices;
>
> iv. The customer has the right to return to default service and how to compare offers to the PTC in effect at the end of the auction term; and
>
> v. If the customer takes no action, they will remain with their current EGS under a month-to-month contract that, at least under PECO's proposed terms and conditions, could result in a variable rate EGS contract that changes every month.

OCA St. 2 at 13.

The OCA continues to recommend an additional notice from PECO because it is an important aspect of consumer education. Many of the consumers who will participate in the program will not have previously participated in the retail markets, and the notice will ensure that these consumers are fully informed of their options. Further, as Ms. Alexander stated these customers, "have entered this program based on PECO's notices and endorsement. Therefore, it will be important that customers be educated in multiple ways and by both PECO and the EGS prior to the end of the auction term about their options and how to exercise these options." OCA St. 2 at 14.

For the reasons discussed above, the OCA submits that three notices should be provided to customers prior to the end of the program, one from the EDC and two from the EGS. The OCA has submitted substantial evidence on this issue and provided good cause as to why the OCA's recommendation should be adopted.

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

FES witness Banks asserted that a Descending Clock Auction (DCA) would be preferable to a Sealed Bid (SB) process for the Opt-In Auction Program. See FES St. 1 at 14. The OCA does not take a position on this issue except to the extent that, regardless of which method is ultimately chosen, EGSs should be responsible for the costs of the Opt-In Auction Program. See Section IV.F.1, *infra* for a full discussion of the cost recovery issue. However, the OCA submits the following information for consideration in this proceeding from the rebuttal testimony of OCA witness Hahn:

> [A]s it concerns DCAs versus SBs for the Retail Opt-In Auction, both procurement methods can work and both are used in other jurisdictions to procure power supplies. SB processes tend to take less time to implement and DCAs are more expensive to implement.

OCA St. 1-R at 4.

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

The OCA submits that PECO should manage the application process for the Opt-In Auction Program and the customer participation cap. Under PECO's proposal, both the Application process and the participation cap will be handled by the EGS. OCA witness Alexander described the process:

> Customers will have 30 days to enroll by either sending a tear off post card and returning it to the EGS, enrolling at the EGS website, or calling the EGS's toll free number. The EGS will submit the customer's switch order via the standard electronic means to PECO.

OCA St. 2 at 9. The Commission's IWP Order requires that there be a customer participation cap, but the IWP Order is silent about the day-to-day management of the participation cap and how that customer participation level will be monitored. IWP Order at 59. The OCA is concerned that under PECO's proposal, the enrollment process, the assignment of customers to EGSs, and the maintenance of the participation cap are too widely spread over several winning EGSs. These processes should be centralized in the program sponsor for efficiency and consistency.

In response to the OCA witness Alexander's testimony on the management of the enrollment processes, PECO witness McCawley testified that the Commission has the power to maintain the customer participation cap. PECO St. 2-R at 17. While the OCA agrees that the Commission has the ultimate authority over the customer participation cap, the day-to-day management of the customer participation cap is best managed by PECO and cannot be managed on a day-to-day basis by the Commission or the EGSs. Neither the Commission nor the EGSs will have the day-to-day knowledge of the number of customers being enrolled by each of the EGSs. The only entity in a position to have this view is PECO. OCA witness Alexander explained:

> PECO's proposal requires the winning EGSs to comply with the Company's proposed 50% customer enrollment cap based on the tranches that the winning EGS will receive. This methodology could result in both the potential that some EGSs may not obtain enough customers to meet the cap and others could receive enrollments in excess of the cap. Both potential results could threaten the success of the program as a whole and could lead to confusion and the potential for customer complaints and dissatisfaction.

OCA St. 2 at 11.

The OCA is concerned with manner in which PECO has proposed to implement its application process and recommends that PECO put in place a procedure to manage this process and the customer participation cap. The OCA submits that this process is potentially confusing and could lead to implementation problems for the reasons stated above.

C. <u>EGS Standard Offer Program.</u>

In its initial filing, PECO proposed two customer referral programs-- a Supplier of the Month Program and a New/Moving Referral Program. PECO St. 2-S at 5-7. Following the issuance of the <u>IWP Order</u>, PECO submitted Supplemental Testimony of John McCawley wherein PECO withdrew its Supplier of the Month Program and proposed a Standard Offer Customer Referral Program. PECO St. 2-S at 5-6. In addition, PECO proposed to work with the Office of Competitive Market Oversight's (OCMO) working group to develop the call center scripts for the New/Moving Customer Referral Program. Implementation of the New/Moving Referral Program is scheduled for the fourth quarter of 2012. PECO St. 2-S at 7. The OCA addressed the New/Moving Referral Program in Section IV.E.2.

The Standard Offer Referral Program is a "program in which customers may select a participating EGS of their choice or be randomly assigned to a participating EGS." PECO St. 2-S at 5. PECO's proposal requires that participating EGSs will provide a fixed price generation service on a month-to-month basis for twelve billing cycles, with at least a seven (7%) discount off PECO's PTC in effect at the time of customer enrollment. PECO St. 2-S at 5-6. The OCA submits that modifications are needed to PECO's proposed Standard Offer Referral Program so that the program is effective, avoids customer confusion and dissatisfaction, and provides benefits to customers.

In her Direct Testimony, OCA witness Alexander described PECO's Standard Offer Customer Referral Program, as follows:

> PECO proposes that its Standard Offer Customer Referral Program will allow residential customers (other than CAP customers) to enroll at any time and either choose a specific EGS or be randomly assigned to an EGS. The list of participating EGSs will be updated monthly. In order to participate, an EGS must apply and qualify by offering a fixed price generation service on a month-to-month basis for 12 months that is at least seven (7%) off PECO's PTC at the time of the customer enrollment. At the time of the enrollment and contact between the customer and the EGS, PECO proposes that the customer "be reminded of the terms and conditions of the offer, including the date by which the customer must take action to exercise his or her options at the end of the term," which I interpret to mean 12 months. Under PECO's proposal, the customer would have the option to accept a new EGS offer, select another EGS, or seek to return to Default Service, but that if a customer fails to affirmatively exercise any of these options, the customer would remain with the EGS under a month-to-month contract. Under PECO's proposed terms, that could allow the EGS to impose variable rates after this fixed price contract is completed. PECO's Customer Referral Program would be implemented as of June 2013.

OCA St. No. 2 at 14-15. The structure and timing of the proposed Standard Offer Referral program are of concern to the OCA as discussed in more detail below.

The <u>IWP Order</u> provided the following guidelines for a Standard Offer Program:

- The Standard Offer Customer Referral Program should be voluntary for customers, i.e., "opt-in," as well as for participating EGSs.

- The Standard Offer will target/market residential default service customers; however, residential shopping customers will not be excluded if they specifically request to participate. At this time, CAP customers should be excluded from the Standard Offer Customer Referral Program and have deferred the details of addressing the provision of universal service within default service to the RMI's Universal Service subgroup.

- The Standard Offer should be comprised of a 7% reduction from the EDC's effective DS PTC. The 7% reduction is a constant price established against the PTC effective on the date the standard offer is made.

- The Standard Offer should be provided for a minimum of four months, but should not exceed 1 year. The Standard Offer and its term should be uniform within an EDC's service territory.

- Customers may choose to be assigned to an EGS of their choice or may choose a random assignment. The process by which an EGS is assigned either randomly or by customer choice, at the customer's discretion, will be specifically detailed in each EDC's plan proposal to ensure fairness and impartiality.

- The terms and conditions of the Standard Offer must be presented to customers before they decide to enter the program.

- The Standard Offer Customer Referral Program should be presented during customer contacts to the EDC call centers, other than calls for emergencies, terminations, and the like. We would, however, permit that a customer be presented the standard offer during customer contacts to the EDC call center for high bill issues, only and explicitly after the customer's concerns were satisfied.

- Once a customer enrolls in the Standard Offer Customer Referral Program, the enrollment will be forwarded to the EGS for EDI processing.

- At the time of the first contact between the EGS and the customer, the customer will be reminded of the terms and conditions of the standard offer, including the date by which the customer must take action to exercise his or her options at the end of the term.

- There will be no termination penalty or fee imposed at any time during the effective period of the standard offer.

- All existing notification requirements apply, including notices and timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship.

- At the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a different EGS or the customer's return to default service, the customer will remain with the EGS on a month-to-month basis, and shall not be subject to any termination penalty or fee. However, this should not deter an EGS from offering longer, fixed-term prices.

<u>IWP Order</u> at 31-32.

As discussed further in the Sections below, the OCA has made numerous recommendations to improve upon the proposed Standard Offer Referral Program and to ensure that appropriate consumer protections are included. The OCA submits that a properly designed referral program could serve as a method to further educate customers about choice and facilitate enhanced participation by customers in the retail market.[45]

1. Customer Eligibility (non-CAP).

PECO has proposed that the standard offer program would be open to all residential customers. PECO St. 2-S at 3. OCA witness Alexander agreed with PECO's proposal and recommended that "[t]he Referral program should be affirmatively offered to new customers or those moving within the EDC service territory, but other customer calls to the EDC should not affirmatively require an explanation of the Referral Program unless there is a customer request to do so." OCA St. No. 2 at 16.[46]

The OCA recommends that the program be open to all residential customers, both shopping and non-shopping customers, but should be specifically targeted towards those new or moving customers who have not selected an alternative provider. The OCA will discuss issues relating to which customer callers should be informed of the program in Section IV.C.4, below.

2. Composition of Product Offer.

PECO's proposed Standard Offer Program would be a twelve month contract with at least seven (7%) off of PECO's PTC at the time of customer enrollment. PECO St. 2-S at Exh. JJM-5S, Article 1.4; OCA St. 2 at 15. The OCA notes that under PECO's proposal, this price term could result in the potential for customers to pay a higher price than PECO's default service price during the program due to the quarterly price changes for the PECO PTC. OCA St. 2 at 16. Indeed, as designed by PECO, the 7% discount could be in effect for as short a period as one day if the customer enrolled in the program on the day before a quarterly price change.

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[45] The costs, cost recovery mechanism and the OCA's recommendations for the Standard Offer Program are discussed in Section III.

[46] The OCA is only addressing customer eligibility as it relates to residential customers.

The OCA submits that PECO's proposal for a 12-month contract term and a 7% discount off the PTC only at the time of enrollment should not be adopted. OCA witness Alexander recommended that the Standard Offer Referral Program be structured as an introductory offer with guaranteed savings for a four month term. See OCA St. 2 at 16. OCA witness Alexander testified:

> The Referral Program contract should be four months so that the promised discount off the PTC is likely to result in savings to customers during the contract term. PECO's proposal carries the risk that the 12-month contract could end up costing participating customers more for essential electricity service than if they had remained on Default Service due to the changes in PECO's PTC each quarter, a risk that is greater with this proposed 12-month contract term.

OCA St. 2 at 16.[47]

The OCA submits that for the reasons stated above, an "introductory period" of four months with a guaranteed discount off the PTC for all four months should be adopted for the Standard Offer Program. This would provide savings to customers and allow customers who are otherwise reluctant to shop a risk-free opportunity to do so.

3. Customer Options Upon Product Expiration.

PECO and RESA witness Kallaher propose that a customer who accepts the introductory standard offer would continue service with the EGS unless the customer makes an affirmative choice to go to another EGS or to return to default service. PECO St. 2-S at 6; RESA St. 2-R at 14. The OCA submits that such a process is not appropriate for this type of program. Customers who agree to participate in such an "introductory" offer of a fixed discount as part of a customer call to a Call Center for a different purpose should be returned to default service unless the

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[47] RESA witness Kallaher also opposed PECO's proposed 7% discount for a 12-month contract and preferred a model similar to the "New York" model. Mr. Kallaher recommended that the customer is offered a percentage discount for a four month period, followed by a price that is disclosed to the customer by the EGS within the introductory period. RESA St. 2 at 25; RESA St. 2-SR at 14. The OCA supports a four month contract, but the OCA does not agree with the other portions of Mr. Kallaher's proposal regarding what happens to the customer at the end of the product expiration period. This issue will be discussed in Section IV.C.3, below.

customer makes an affirmative choice to remain with the EGS or to select another EGS. OCA St. 2 at 17.

Ms. Alexander discussed the purpose of the Referral Program in her Direct Testimony:

> The purpose of the Referral Program is to expose the customer to the shopping experience with a guaranteed price reduction for the contract term, preferably a relatively short period of time. Customers who call the EDC for a specific purpose unrelated to customer choice and who are marketed to "experiment" with an EGS should not be retained by the EGS at the end of the contract term without affirmative customer agreement. Customers who are satisfied with the Referral experience will select an offer that best meets their needs, whether from their own EGS or another EGS. There is little purpose to be served to allowing the EGS to retain the customer without some indication that the customer who agreed to the experiment has demonstrated a familiarity with the concept of "choice" and made an affirmative choice.

OCA St. 2 at 17.

As OCA witness Alexander further explained that "the customer's silence should result in the transfer of the customer back to Default Service." OCA St. 2-R at 10. This is particularly important given the structure of the Referral Program. Ms. Alexander testified regarding the reasons for this proposed return to default service:

> The Referral Program is being offered to customers who have called the EDC for a different purpose; the program is explained orally and it is entirely likely that the customer is going to pay attention primarily to the offer of a discount. What happens at the end of the 4-month program is not likely to be discussed in any detail. The program will be presented to the customer as a "no risk" exposure to the retail competitive market. The purpose of the discount is to trigger a customer interest in exploring customer choice with a guaranteed savings for a relatively short period of time. This program should not be used as a means of transferring customers who select a 4-month offer into an obligation by the customer to take action to avoid a potentially volatile month-to-month generation supply price. Such an approach would transform the opt-in referral program into an opt-out requirement within a very short period of time.

OCA St. 2-R at 9-10.

OCA witness Alexander's recommendation is also consistent with the Central Hudson Gas & Electric Company's referral program called Energy Switch. [48] Ms. Alexander testified that the Central Hudson Referral program is structured as follows:

> Under that program the customer is guaranteed a specific discount for two months period, but must then affirmatively agree to the EGS (called an ESCO's) terms of service to continue being served at the EGS price.

OCA St. 2 at 17.[49] Under the Central Hudson Gas & Electric Model, as stated by Ms. Alexander, "if the customer does not take affirmative action to adopt a specific option during this short period of time, the customer should be transferred back to Default Service." OCA St. 2-R at 10. The OCA submits that the Central Hudson Gas & Electric model is designed to provide an opportunity for a customer to shop with a guaranteed price reduction, for a short period of time, and at no risk. The OCA submits that the adoption of Ms. Alexander's recommendations would provide a reasonable path for the implementation of a Standard Offer Referral Program that would benefit ratepayers.

For the reasons stated above, the OCA proposes that PECO's Standard Offer Program be revised so that the introductory period will be four months and the customer will return to default service after the introductory offer period expires unless the customer affirmatively chooses otherwise.

4. <u>Types of Customer Calls Eligible for Presentation of Referral Program.</u>

The OCA recommends that the Standard Offer Program be offered only during calls in which the customer is seeking to "establish service, transfer service to a new location, or is

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48 The OCA notes that the Central Hudson Gas & Electric model is not the same as the "New York" model discussed in RESA witness Kallaher's testimony.

49 As noted by Ms. Alexander, her recommendation in this regard reflects the Central Hudson Gas & Electric referral program, called "Energy Switch." Under that program, the customer is guaranteed a specific discount for two month's service, but then must affirmatively agree to the EGS (called an ESCO in New York)'s terms of service to continue to be served at the EGS price. See www.centralhudson.com/energy_choice/energy_switch.html; OCA St. 2 at fn. 6.

specifically seeking to discuss customer choice and/or the referral program." OCA St. 2-S at 5. Calls relating to utility obligations to respond to high bills, billing and usage questions, payment difficulties or payment plan options, collection, service quality and outages, and appointments for utility service in the field, should not be included in the obligation to present the Referral program.[50] Id.

In her Direct Testimony, OCA witness Alexander recommended that the calls during which the Standard Offer Program is discussed be limited. The OCA is concerned about the discussion of the Standard Offer Program on calls where the customer is requesting non-emergency field work, *i.e.* to check a meter, or in a situation where the customer is calling about a high bill complaint, payment arrangement, budget billing, or similar bill-related calls.[51] OCA witness Alexander testified:

> An approach that would require PECO to market the Customer Referral program to customers who call relating to their bills, credit and collection issues, reliability of service, or other calls unrelated to customer choice may result in a degradation of essential consumer protections. Customers should be assured that the service and concern that they initiated relating to their PECO bill or PECO's customer service will be handled with a high priority and without delays.

OCA St. 2 at 16; see also, OCA St. 2-S at 4-5.

RESA witness Kallaher and Dominion/IGS witness Barkas both stated that all customer calls, other than emergency calls,[52] should be included. The OCA submits that the focus of calls other than New/Moving requests and calls requesting information on Customer Choice should be on resolving the customer's specific concerns without delay. Customers are calling with a

[50] The OCA also supports PECO's proposed IVR option for customers to learn more about customer Choice whenever customers dial PECO's 1-800 number. The IVR option would be a situation where customers would proactively decide to find out more about customer Choice.

[51] All parties have agreed that there will be no discussion of the Standard Offer Program on emergency calls.

[52] OCA witness Alexander notes that neither Mr. Barkas nor Mr. Kallaher define "emergency" calls in their respective testimonies. OCA St. 2-S at 4-5, fn. 2. Neither Mr. Barkas nor Mr. Kallaher responds to Ms. Alexander's concerns regarding issues related to the offer being made on credit and collection calls. Id.

specific utility problem that should be addressed without causing the customer to spend additional time on the phone about unrelated topics. Indeed, burdening such calls with further unwanted or unsolicited discussions may jeopardize quality of service in direct contravention of Section 2807(d). 66 Pa. C.S. § 2807(d).[53]

The OCA recommends that the customer calls regarding the Standard Offer Program be limited to new or moving customers, and customers who specifically request information about Choice.

5. Commencement Date of the EGS Standard Offer Program.

PECO proposes that the EGS Standard Offer Program commence at the conclusion of "its enrollment period for PECO's EGS Opt-In Competitive Offer Program, which is expected to conclude on or about May 15, 2013. The initial Standard Offer Month will be June 2013; the final Standard Offer Month will be May 2015." PECO St. 2-S at Exh. JJM-5S, Art.1.2. As proposed, the actual service provided under the Standard Offer Referral Program and the EGS Opt-In Competitive Offer Program will commence at the same time. The OCA recommends that the EGS Standard Offer Program not be implemented at the same time as the EGS Opt-in Competitive Offer Program. Such severely overlapping programs will create significant customer confusion and the potential for adverse comparisons to the prices and terms of service associated with these various options, thus threatening the overall intent to stimulate customer interest in retail choice. OCA witness Alexander testified that the experience with the Opt-In

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53 For example, RESA and Dominion/IGS want to introduce the program on high bill calls. RESA St. 2-R at 14; Dom. St. 1-R at 8-9. Many customers who are calling about a high bill may be complaining about a problem with the meter or in need of a payment arrangement, and possibly in need of a referral to the Customer Assistance Program. These customers may also inquire about other forms of assistance such as budget billing. The OCA submits that these customers are in a potentially vulnerable position due to their concerns about their high bill and should not be directed towards a competitive offer at that time.

Auction be the focus of the market enhancement activities in the summer of 2013. OCA St. 2 at 15-16.

In the OCA's view, PECO should delay the implementation of it until after the EGS Opt-In Competitive Offer Program to avoid customer confusion.

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

The OCA takes no position on this issue as it concerns the Standard Offer Referral Program.

D. Participation by Low-Income Customers in Proposed Retail Market Enhancements.

PECO witness Lauren Feldhake and CAUSE-PA witness Philip Bertocci each testified that Customer Assistance Program (CAP) customers should not be included in either of the proposed Retail Market Enhancement programs. Several of the EGSs recommended the inclusion of the CAP customers in the Retail Market Enhancement programs. The IWP Order addresses this issue. In the IWP Order, the Commission referred the question of whether CAP customers can participate in the retail market enhancements to the RMI Universal Service working group. IWP Order at 18. While the OCA did not present testimony on this issue in this proceeding, the OCA supports the proposal of PECO and CAUSE-PA and recommends that this question be considered as part of the Commission's RMI Universal Service subgroup.

E. Additional Proposed Retail Market Enhancements.

1. Time-of-Use Offering.

Act 129 requires default service providers to offer time-of-use (TOU) rates to all customers that have been provided with smart meter technology.[54] As part of the RMI, the Commission stated that EDCs should contemplate contracting with an EGS in order to satisfy the

[54] 66 Pa. C.S. § 2807(f)(5).

TOU requirement, but the Commission was clear that its recommendation was not meant as a rejection of other proposals that may be raised for TOU rates.[55]

In its DSP II, PECO stated that it plans to solicit EGS participation to provide commodity service associated with its TOU pilot, whereby an interested EGS may bid the entire implementation requirement. See PECO St. 2 at 30. However, PECO indicated that it does not intend to seek approval for its TOU pilot in this DSP II proceeding because PECO's TOU pilot was already approved as part of its smart meter program proceeding.[56] In fact, PECO has already conducted an auction that resulted in the selection of a vendor to provide TOU commodity service and another vendor to implement and administer the program.[57] PECO St. 5-R at 10. The OCA supports the handling of PECO's TOU program as part of the Company's smart meter program proceeding. See OCA St. 1 at 20; OCA St. 2-R 10-11.

RESA witness Kallaher noted that PECO's proposal is reasonable. RESA St. 2 at 30. However, Mr. Kallaher went on to propose an alternate method for PECO to meet its TOU obligations, which involves PECO (or Commission staff) determining if EGSs in its service territory are or intend to offer time-differentiated rates and if any are, PECO would post that information on a website for customers. Id. at 30-31. Mr. Kallaher's alternate proposal also requires PECO to submit an annual report to the Commission on the number of EGSs providing the service. Id. at 31. Mr. Kallaher proposed that his alternate program become effective after the expiration of any current TOU agreement PECO may have. Id. Later, in his rebuttal testimony, RESA witness Kallaher disagreed with OCA witness Hahn's support of PECO's

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[55] See December 16 Final Order at 47.

[56] See Petition of PECO Energy Company for Approval of Its Initial Dynamic Pricing and Customer Acceptance Plan, Docket No. M-2009-2123944, Order (Apr. 15, 2011) (PECO TOU Order).

[57] See Petition of PECO Energy Company for Approval of Its Initial Dynamic Pricing and Customer Acceptance Plan, Docket No. M-2009-2123944. PECO filed a Petition for Expedited Approval of Its Initial Dynamic Pricing Plan Vendor Selection & Dynamic Pricing Plan Supplement on April 2, 2012.

proposal to address its TOU program in a separate proceeding. See RESA St. 2-R at 18. Instead, Mr. Kallaher asserted that the TOU program should be addressed in this DSP II proceeding to maintain consistency. Id. at 18-19.

The OCA submits that it is inefficient to address PECO's already completed Act 129 TOU program in two proceedings. PECO's TOU program has been specifically approved by the Commission in the PECO TOU Order, and PECO has already expended resources, by conducting a vendor auction, to implement its TOU program pursuant to that Order. RESA has failed to provide a compelling reason to implement its alternate program in place of PECO's Commission-approved TOU program at this time. The OCA submits that RESA's proposal should not be adopted here.

2. New/Moving Customer Referral Program.

PECO states that it intends to participate in the working group comprised of electric distribution companies and other interested parties to develop appropriate call center scripts for residential and small business customers. PECO St. 2-S at 7. The OCA supports this proposal.

3. Referral of PECO Wind Customers.

The OCA takes no position on this issue.

4. Seamless Moves.

The OCA takes no position on this issue.

F. Recovery of Program Costs for Proposed Retail Market Enhancements.

1. EGS Opt-In Competitive Offer Program.

PECO has proposed to recover the costs of the Opt-In Auction Program from winning EGSs in proportion to the number of customers awarded to each EGS. Costs include: the RFP process; the independent evaluator; a consultant to perform the random selection of eligible customer accounts; and costs associated with the development of the Offer Letter. In the event that there are no winning EGSs, the costs of the Program will be recovered through a discount on purchased receivables until such costs are fully recovered. See PECO St. 2 at 25.

PECO's proposal is consistent with the IWP Order, wherein the Commission stated that it would be appropriate for EDCs to recover opt-in auction implementation costs from participating EGSs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction. IWP Order at 78. The Commission stated:

> As for the costs of the Retail Opt-in Auctions, we agree with UGIES and OCA that, in general, most, if not all, of these costs should be recovered from participating suppliers. The participating suppliers will be receiving customers via this program in a manner that negates almost all of the usual customer acquisition costs. As such, it is only fair that the suppliers, as the prime beneficiaries of the program, should pick up the associated costs.

IWP Order at 84-85.

The OCA supports PECO's proposal to recover the Opt-In Auction Program costs from winning EGSs. As OCA witness Hahn stated, "The retail market enhancements are being implemented at the behest of and for the benefit of EGSs. Therefore, the costs should be paid by EGSs." OCA St. 1-R at 3. I&E witness Granger agreed that EGSs should pay for the Program pursuant to the IWP Order. I&E St. 1-R at 5-6.

FES, Dominion and RESA asserted that PECO customers should be responsible for the costs of the Opt-In Auction Program. See e.g. FES St. 1 at 9; Dominion St. 1-S at 7-8; RESA St. 2 at 33. According to FES witness Banks, customers should pay for the Program because it is they "who stand to experience significant savings from a robust, competitive retail electricity market." FES St. 1 at 9. Yet, RESA witness Kallaher acknowledged that the retail market enhancements provide benefits to all stakeholders. RESA St. 2-SR at 26. EGSs are clearly "stakeholders" in the retail market enhancements that have been approved by the Commission.

The EGSs in this proceeding have provided no compelling evidence to justify a cost recovery method different from that recommended in the IWP Order. The OCA submits that PECO's proposal to recover the costs of the Opt-In Auction Program from participating EGSs (or from all EGSs via a POR discount if there are no participating EGSs) should be adopted.

2. EGS Standard Offer Program.

PECO has proposed to recover the initial and ongoing costs of the EGS Standard Offer Program through a discount on purchased EGS receivables. See PECO St. 2 at 28. As with the Opt-In Auction Program cost recovery proposal, recovery of the costs of the referral program from participating EGSs is consistent with the IWP Order. According to the Commission:

> As to program costs, we agree with the assertions of OCA and UGIES that the bulk of the costs, including the costs of maintaining the referral programs once they are put into place, should be the responsibility of the participating EGSs. We also find that PECO's proposal to recover program costs through the discount on the POR appears to be acceptable.

IWP Order at 32. The OCA supports recovery of the costs of PECO's referral program from participating EGSs. See OCA St. 1-R at 3.

Dominion witness Barkas asserts that it would be more fair to recover the costs of this program via a fixed fee that participating EGSs would pay for each customer acquired through the program. Dominion St. 1 at 4; Dominion St. 1-R at 2. PECO witness Cohn indicated that this idea is not necessarily objectionable but noted:

> Mr. Barkas' proposed customer acquisition fee would add complexity to administration of the Referral Program. For instance, a customer acquisition fee would require tracking of referrals. In addition, the Referral Program's terms and conditions must be modified to address when the fee is charged (i.e., upon referral or switching) and whether the customer must remain with the EGS for a minimum period to be deemed a referral.

PECO St. 5-R at 14. The OCA takes no specific position on which form of cost recovery is utilized, as long as the costs are recovered from EGSs as recommended in the IWP Order.

FES witness Banks asserted that all of the costs of the referral program should be recovered from customers. FES St. 1 at 3. RESA asserted that EGSs should pay only a portion of the costs of the referral program. RESA St. 2-SR at 26. FES and RESA have failed to provide evidence to justify a cost recovery different from that recommended in the IWP Order. As summarized by PECO witness Cohn: "Neither witness has provided a basis to charge all customers for what amounts to an EGS marketing expense." PECO St. 5-R at 13.

The OCA submits that PECO's proposal to recover the costs of the EGS Standard Offer Program from EGSs should be adopted.

3. Other Enhancements.

The OCA has no other enhancements to discuss at this time.

V. OTHER ISSUES

The OCA has no other issues to discuss at this time.

VI. CONCLUSION

The OCA submits that, as proposed, PECO Energy Company's Default Service Plan does not provide residential customers with a least cost, reliable and stable "prudent mix" of supplies as required under Pennsylvania law. The OCA submits that the proposed modifications detailed in this Main Brief will ensure that the legal requirements for the provision of default service are met, while increasing the opportunities customers have to receive additional benefits in the retail market. As such, the OCA submits that its proposed modifications should be adopted.

Respectfully submitted,

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157748

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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