

**ECKERT  
SEAMANS**  
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL 717 237 6000  
FAX 717 237 6019  
www.eckertseamans.com

Daniel Clearfield  
717.237.7173  
dclearfield@eckertseamans.com

June 18, 2012

**Via Electronic Filing**

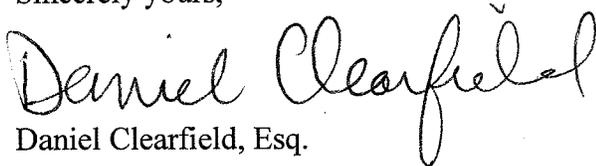
Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed please find the original of its Main Brief along with the electronic filing confirmation page with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely yours,

  
Daniel Clearfield, Esq.

DC/lww  
Enclosure

cc: Hon. Dennis Buckley, ALJ w/enc.  
Certificate of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of RESA's Main Brief upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

**VIA EMAIL AND FIRST CLASS MAIL**

Johnnie E. Simms  
Chief Prosecutor  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120  
[josimms@pa.gov](mailto:josimms@pa.gov)

Anthony E. Gay, Esquire  
Jeanne J. Dworetzky, Esquire  
PECO Energy Company  
2304 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
[Jeanne.Dworetzky@exeloncorp.com](mailto:Jeanne.Dworetzky@exeloncorp.com)  
[Anthony.gay@exeloncorp.com](mailto:Anthony.gay@exeloncorp.com)

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

Thomas P. Gadsden, Esquire  
Kenneth M. Kulak, Esquire  
Brooke E. Leach, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[kkulak@morganlewis.com](mailto:kkulak@morganlewis.com)

Tanya J. McCloskey, Esquire  
Candis Tunilo, Esq.  
Christy M. Appleby, Esq.  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Fl.  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
[cappleby@paoca.org](mailto:cappleby@paoca.org)

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

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

Melanie J. Elatieh, Esq.  
UGI Corporation  
460 North Gluph Road  
King of Prussia, PA 194-6  
[elatiehm@ugicorp.com](mailto:elatiehm@ugicorp.com)

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

Jeffrey J. Norton, Esq.  
Carl R. Shultz, Esq.  
Eckert Seamans Cherin & Mellott LLC  
23 Market St., 8<sup>th</sup> Fl.  
Harrisburg, PA 171091  
[jnorton@eckertseamans.com](mailto:jnorton@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)

Thu B. Tran, Esq.  
Robert W. Ballenger, Esq.  
George D. Gould, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
[ttran@clsphila.org](mailto:ttran@clsphila.org)  
[rballenger@clsphila.org](mailto:rballenger@clsphila.org)  
[ggould@clsphila.org](mailto:ggould@clsphila.org)  
Divesh Gupta, Esq.  
Constellation Energy  
111 Market Place, Suite 500  
Baltimore, MD 21202  
[Divesh.gupta@constellation.com](mailto:Divesh.gupta@constellation.com)  
Brian J. Knipe, Esq.  
Buchanan Ingersoll and Rooney, PC  
17 North Second St., 15<sup>th</sup> Fl.  
Harrisburg, PA 17101  
[Brian.knipe@bipc.com](mailto:Brian.knipe@bipc.com)

Adeolu A. Bakare, Esq.  
Charis Mincavage, Esq.  
McNees Wallace & Nurick  
100 Pine St.  
PO Box 1166  
Harrisburg, PA 17108  
[abakare@mwn.com](mailto:abakare@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)

Stephen L. Huntoon, Esq.  
Senior Attorney  
NextEra Energy Resources, LLC  
801 Pennsylvania Ave., NW, Suite 220  
Washington, DC 20001  
[shuntoon@nexteraenergy.com](mailto:shuntoon@nexteraenergy.com)

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

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

Amy M. Klodowski, Esq.  
FirstEnergy Solutions Corp.  
800 Cabin Hill Dr.  
Greensburg, PA 15601  
[aklodow@firstenergycorp.com](mailto:aklodow@firstenergycorp.com)  
Charles E. Thomas III, Esq.  
Thomas Long Niesen & Kennard  
212 Locust St., Suite 500  
PO Box 9500  
Harrisburg, PA 17108-9500  
[Cet3@thomaslonglaw.com](mailto:Cet3@thomaslonglaw.com)

Andrew S. Tubbs, Esq.  
Post & Schell  
17 North Second St., 12<sup>th</sup> Fl.  
Harrisburg, PA 17101-1601  
[atubbs@postschell.com](mailto:atubbs@postschell.com)

Scott DeBroff, Esq.  
Rhoads & Sinon LLP  
One South Market Square  
PO Box 1146  
Harrisburg, PA 17101  
[sdebroff@rhoads-sinon.com](mailto:sdebroff@rhoads-sinon.com)

Date: June 18, 2012

  
Daniel Clearfield, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

---

**MAIN BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION**

---

Daniel Clearfield, Esquire  
Attorney ID #26183  
Deanne M. O'Dell, Esquire  
Attorney ID #81064  
Edward Lanza, Esquire  
Attorney ID #81081  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)

Date: June 18, 2012

Attorneys for Retail Energy Supply Association

## TABLE OF CONTENTS

Table of Authorities .....	v
<b>I. INTRODUCTION AND PROCEDURAL HISTORY .....</b>	<b>1</b>
<b>A. Introduction.....</b>	<b>1</b>
<b>B. Procedural History.....</b>	<b>5</b>
<b>C. Legal Standards .....</b>	<b>6</b>
1. Burden of Proof.....	6
2. Standards Applicable to Default Service .....	7
3. Standards Applicable to Competitive Retail Market Enhancements.....	8
<b>II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS .....</b>	<b>10</b>
<b>A. Summary of Briefing Party’s Position .....</b>	<b>10</b>
<b>B. Residential Class Procurement.....</b>	<b>11</b>
1. Term Length of Supply Contracts.....	12
2. RESA’s Proposal to Include 10% Spot Purchases for Residential Customers .....	12
3. OCA’s Proposal to Continue Block and Spot Supply Procurement for Residential Customers.....	14
<b>C. Small Commercial Class Procurement .....</b>	<b>15</b>
<b>D. Medium Commercial Class Procurement .....</b>	<b>15</b>
<b>E. Large Commercial and Industrial Class Procurement .....</b>	<b>16</b>
<b>F. Extension of Supply Contracts Beyond May 31, 2015.....</b>	<b>18</b>
<b>G. Procurement Schedule.....</b>	<b>21</b>
1. OCA’s Proposal to Reallocate Tranches Between Solicitations.....	21
2. OCA’s Proposed “Hold Back” for Opt-In Program .....	21
<b>H. Load Cap.....</b>	<b>23</b>

<b>I.</b>	<b>Other Procurement and Implementation Plan Requirements (e.g., Contingency Plans, Competitive Procurement Process, Supply Master Agreements, AEPS Compliance, Independent Evaluator) .....</b>	<b>25</b>
<b>III.</b>	<b>RATE DESIGN AND COST RECOVERY.....</b>	<b>25</b>
<b>A.</b>	<b>Summary of Briefing Party’s Position .....</b>	<b>25</b>
<b>B.</b>	<b>Reconciliation of Default Service Costs and Revenues.....</b>	<b>26</b>
<b>C.</b>	<b>EDC Recovery of Additional PJM Charges .....</b>	<b>29</b>
1.	Transmission Related Charges.....	31
2.	Generation Deactivation Charges and New ELR Charges .....	33
<b>D.</b>	<b>Costs Included in the Generation Supply Adjustment Charge .....</b>	<b>35</b>
<b>E.</b>	<b>Ratemaking Treatment of Auction Revenue Rights.....</b>	<b>35</b>
<b>F.</b>	<b>Elimination of Alternative Energy Portfolio Standard Surcharge .....</b>	<b>36</b>
<b>G.</b>	<b>RESA’s Proposal for a \$0.005/kWh Adder to the Price-to-Compare.....</b>	<b>36</b>
1.	Use of the proceeds for actual default service costs and refund to all distribution customers.....	37
2.	Use of the proceeds for retail market enhancements and refund to all distribution customers.....	38
3.	Permitting PECO to retain a relatively small percentage of the proceeds after actual costs are recovered.....	40
<b>IV.</b>	<b>RETAIL MARKET ENHANCEMENTS.....</b>	<b>42</b>
<b>A.</b>	<b>Summary of Briefing Party’s Position .....</b>	<b>42</b>
<b>B.</b>	<b>EGS Opt-In Competitive Offer Program .....</b>	<b>47</b>
a.	Proposed Order of Auction/Enrollment.....	49
2.	Customer Eligibility.....	52
a.	Small Commercial Customers .....	52
b.	Shopping Customers .....	55
c.	Method of Enrollment.....	57
3.	Composition of Product Offer .....	58
4.	Customer Participation Cap .....	60

5.	Supplier Participation Load Cap .....	63
6.	Customer Options on Product Expiration and Notice Requirements .....	64
7.	Structure of Opt-In Auction – Sealed-Bid Format Versus Descending Price Clock Auction .....	67
8.	Opt-in Auction Governing Documents ( RFP Program Rules, Application and Opt-In Supplier Agreement).....	67
<b>C.</b>	<b>EGS Standard Offer Program .....</b>	<b>69</b>
1.	Customer Eligibility .....	70
2.	Composition of Product Offer .....	71
3.	Customer Options Upon Product Expiration .....	73
4.	Types of Customer Calls Eligible for Presentation of Referral Program.....	75
5.	Commencement Date of the EGS Standard Offer Program .....	75
6.	Standard Offer Referral Program Governing Documents (RFP Program Rules, Application, and Supplier Agreement) .....	76
<b>D.</b>	<b>Participation By Low-Income Customers In Proposed Retail Market Enhancements .....</b>	<b>78</b>
<b>E.</b>	<b>Additional Proposed Retail Market Enhancements .....</b>	<b>81</b>
1.	Time-of-Use Offering .....	81
2.	New/Moving Customer Referral Program.....	85
3.	Referral of PECO Wind Customers .....	87
4.	Seamless Moves.....	88
<b>F.</b>	<b>Recovery of Program Costs for Proposed Retail Market Enhancements .....</b>	<b>89</b>
1.	EGS Opt-In Competitive Offer Program .....	89
2.	EGS Standard Offer Program .....	94
3.	Other Enhancements .....	94
<b>V.</b>	<b>OTHER ISSUES .....</b>	<b>95</b>

**VI. CONCLUSION .....96**

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page(s)</b>
<i>Edan Transportation Corp. v. Pa. PUC</i> , 623 A.2d 6 (Pa. Cmwlth. 1993) .....	6
<i>Erie Resistor Corp. v. Unemployment Compensation Bd. of Review</i> , 166 A.2d 96 (Pa. Super. 1960).....	6
<i>Green Mountain Energy Company, et al. v. Pa. PUC</i> , 812 A.2d 740 (Pa. Cmwlth. 2002) .....	5, 7, 27
<i>Lloyd v. Pa. P.U.C.</i> , 904 A.2d at 1010 (Pa. Cmwlth. 2006) .....	37
<i>Mill v. Pa. PUC</i> , 447 A.2d 1100 (Pa. Cmwlth. 1982).....	6
<i>Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center</i> , 480 A.2d 382 (Pa. Cmwlth. 1984).....	6
<i>Norfolk and Western Ry. v. Pa. PUC</i> , 413 A.2d 1037 (Pa. 1980).....	6
<i>Samuel J. Lansberry, Inc. v. Pa. PUC</i> , 578 A.2d 600 (Pa. Cmwlth. 1990).....	6
<i>Se-Ling Hosiery v. Margulies</i> , 70 A.2d 854 (Pa. 1950).....	6

**Administrative Cases**

**Page(s)**

*Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets,*  
Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011)..... 8

*Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan,*  
Docket No. I-2011-2237952 (Order entered April 29, 2011) ("*Intermediate Work Plan Tentative Order*")..... 1, 8, 42, 88

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

*Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company,*  
Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011) ..... 1

*Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs,* Docket Nos. P-2009-2093053 and P-2009-2093054 (Opinion and Order entered November 6, 2009)..... 87

*Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement* (Docket No. P-2012-2297304) ..... 81

*Petition of PECO Energy for Approval of its Default Service Program and Rate Mitigation Plan,* Docket No. P-2008-2062739 (Order entered June 2, 2009)..... 5

*Proposed Policy Statement Regarding Default Service and Retail Electric Markets,* Docket No. M-2009-2140580 (Final Policy Statement entered September 23, 2011) ..... 8

**Statutes**

66 Pa. C.S. § 332..... 6

66 Pa. C.S. § 2801, *et. seq.* ..... 2

66 Pa. C.S. § 2802..... 7, 12

66 Pa. C.S. § 2804..... 37

66 Pa. C.S. § 2807..... *passim*

<b>Regulations</b>	<b>Page(s)</b>
52 Pa. Code § 5.431 .....	6
52 Pa. code § 54.187 .....	14, 37
52 Pa. Code §§ 54.181 to 54.189 .....	7
52 Pa. Code §§ 69.1802 to 69.1817 .....	7

**Other Authorities**

42 Pa.B. 642 (January 28, 2012).....	5
--------------------------------------	---

## **I. INTRODUCTION AND PROCEDURAL HISTORY**

### **A. Introduction**

PECO Energy Company (“PECO”) proposes to implement a default service plan and various retail market enhancements for the period of June 1, 2013 through May 31, 2015. In assessing the proposals offered by PECO and the other parties here, one must not lose sight of the Commission’s continuing efforts to implement improvements “to ensure that a properly functioning and workable competitive retail electricity market exists in the state”<sup>1</sup> as they are intertwined with the issues in this proceeding. The “improvements” identified by the Commission are: (1) “retail market enhancement programs” that move sticky default service customers into the competitive market (the “Intermediate Work Plan”); and, (2) restructuring default service as it exists today so that it is provided by the competitive market rather than the EDCs (the “Long Term Work Plan”). The goal being to transition to a new “end state” in which (it is anticipated) a fully competitive market will develop.

The Retail Energy Supply Association (“RESA”),<sup>2</sup> a trade association of electric generation suppliers (“EGSs”), submits that the record in this proceeding does not support

---

<sup>1</sup> *Investigation of Pennsylvania’s Retail Electricity Market*, I-2011-2237952 Order entered April 29, 2011 at 2, citing *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 Order entered March 8, 2011 at 46.

<sup>2</sup> RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

adoption of the PECO's proposed default service procurement plan and its proposed retail market enhancement programs as consistent with the Electricity Generation Customer Choice and Competition Act ("Competition Act")<sup>3</sup> or the Commission's articulated goals of: (1) moving forward to restructure default service as it exists in Pennsylvania today; and, (2) incenting consumers to select alternative suppliers from the competitive market.

Therefore, RESA recommends that various modifications regarding the default service procurement plan be implemented:

Residential Procurement Portfolio

- Inclusion of 10% spot market power in the procurement portfolio to ensure more market reflective pricing
- Elimination of contracts extending beyond May 31, 2015

Small Commercial Procurement Portfolio

- Replacement of the 12 month term contracts in September 2014 procurement with 6 month term contracts to eliminate contracts extending beyond May 31, 2015

Large C&I Procurement Portfolio

- Continuation of PECO's current procurement practice of bidding out the provision of spot market priced full requirements contracts to wholesale suppliers

Reconciliation

- Continuation of PECO's current quarterly reconciliation of default service prices

Auction Revenue Rights

- Disallowance of PECO's proposed sharing mechanism with full credits/charges passed through to default service customers and all costs reflected in default service prices.

Load Cap

---

<sup>3</sup> 66 Pa. C.S. § 2801, et. seq.

- Lowering the amount of load that can be served by any single wholesale supplier to 50%

#### Transmission Service and Other Related Charges

- Creating non-bypassable charges for a variety of transmission service and other related charges to best ensure price transparency and accuracy

#### Opt-in Auctions

- Apply to all non-shopping residential and small business (25kW and below) default customers;
- Allow CAP customers to participate by making the CAP benefit portable;
- Be conducted after the enrollment so that the total number of customers participating will be known;
- Have a minimum number of bidders so that one EGS (counting affiliated companies together) can serve no more than 50% of the aggregation load - with a minimum of four bidders; and,
- Reject PECO's proposed governing documents, require that PECO re-file these documents in a compliance filing, and give parties an opportunity to negotiate the details of the documents in a collaborative involving Commission staff.

#### Standard Offer Referral Program

- The mandated 7% discount from PECO's PTC should be an introductory offer available for four (4) months.
- Reject PECO's proposed governing documents, require that PECO re-file these documents in a compliance filing, and give parties an opportunity to negotiate the details of the documents in a collaborative involving Commission staff.

#### New and Moving Customer Referral Program

- Parties should concentrate on implementing the Standard Offer referral program and the Opt-In Auction rather than the "new mover program" to the extent the latter program requires time and money to implement;
- Except, EGS service must be available immediately for new and moving customers who identify the EGS from whom they would like to take service.

#### Cost Recovery

- Costs or retail market enhancements should be paid only by default service customers (through a "Default Service Cost Recovery Charge" or DSCRC described below), or through a non-bypassable charge applied to all.

- If costs are recovered from EGSs, they should not be recovered via a POR discount.

#### Seamless Moves

- There should be a collaborative to work out the specifics of a seamless moves program;
- Costs of the program should not be imposed upon EGSs.

#### Wind Program

- Participating EGSs should be able to include their own promotional material in the mailings that inform current Wind customers of the end of the program.
- PECO should share all proposed mailings and correspondence with wind program customers with interested participants in this proceeding prior to their finalization so that EGSs can provide input.

#### Dynamic Pricing Bid Out to EGSs

- For any future bid-outs in the default service period, adopt a model that more fully relies on market forces;
- PECO should certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory;
- PECO should submit a report on the number of EGSs actually providing the service.
- In any event, customers taking TOU service from an EGS should follow the same “end of term” rules that apply generally to EGS service.

#### Cost Recovery for Default Service and Competitive Enhancements

- Direct and contingent costs incurred by the EDC or to which the EDC is exposed in its role as a Default Service Provider should be recovered from the default service customers;
- To do this, a separate charge – the Default Service Cost Recovery Charge – would apply to default service customers (5 mils/kWh) would be implemented;
- Proceeds of the DSCRC should be used to cover costs; the rest, less 10% should be credited to distribution customers; PECO may retain up to 10% as an incentive to help make its market fully competitive and to cover incremental costs.

As explained further below, adopting all of RESA’s proposed modifications will lead to a default service plan that is: (1) legally required by the Competition Act; (2) consistent with the

goals articulated by the Commission; and, (3) necessary for the development of a properly functioning and workable competitive retail electric market in the PECO's service territory.

## **B. Procedural History**

On January 13, 2012, PECO filed a Petition for Approval of its Default Service Program for the period beginning June 1, 2013 through May 31, 2015 ("Petition"). PECO is an electric distribution company ("EDC") and is currently the default service provider ("DSP") in its respective service area.<sup>4</sup> The Petition sets forth proposals for the second default service procurement plan for each Company. Notice of the Petition was published in the *Pennsylvania Bulletin* on January 28, 2012.<sup>5</sup>

The Petition was assigned to Administrative Law Judge ("ALJ") Dennis J. Buckley. On March 13, 2012, a prehearing conference was held by ALJ Buckley. At that time, *inter alia*, RESA's timely Petition for Intervention was granted.<sup>6</sup> The active parties conducted discovery.

The evidentiary hearing commenced on May 22, 2012 and ended that same day. In addition to PECO, the following parties submitted testimony on their behalf or otherwise participated in the hearings: RESA; Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); ChoosePAWind.com ("ChoosePAWind"); Dominion Retail, Inc. ("Dominion"); FirstEnergy Solutions ("FES"); Green Mountain Energy Company ("GMEC"); the Commission's Bureau of Investigation and Enforcement ("I&E"); the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA");

---

<sup>4</sup> PECO currently provides default service pursuant to Commission-approved default service plans that will expire on May 31, 2013. *See Petition of PECO Energy for Approval of its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009) ("DSP I Order").

<sup>5</sup> 42 Pa.B. 642 (January 28, 2012).

<sup>6</sup> Second Prehearing Order (entered March 19, 2012) at 2.

Philadelphia Area Industrial Energy Users Group (“PAIEUG”); and PPL Energy Plus LLC (“PPL”).

The record was closed and the Competition Act mandates that Commission issue a decision on the Petition by October 13, 2012.<sup>7</sup>

### C. Legal Standards

#### 1. Burden of Proof

Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.<sup>8</sup> It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”<sup>9</sup> A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.<sup>10</sup> Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence.<sup>11</sup> More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>12</sup>

PECO has the ultimate burden of proof in the proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable.

---

<sup>7</sup> 52 Pa. Code § 5.431(a).

<sup>8</sup> 66 Pa. C.S. § 332(a).

<sup>9</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>10</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>11</sup> *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

<sup>12</sup> *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## 2. Standards Applicable to Default Service

The Competition Act addresses the requirements that PECO, as EDC providing default service, must meet.<sup>13</sup> The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider, acquire electric energy through a “prudent mix”<sup>14</sup> of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.<sup>15</sup>

The Competition Act also mandates that customers have direct access to a competitive retail generation market.<sup>16</sup> This is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the costs of generating electricity.”<sup>17</sup> Thus, a fundamental policy underlying the Code is that competition is more effective than economic regulation in controlling the costs of generating electricity.<sup>18</sup>

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations<sup>19</sup> and a policy statement<sup>20</sup> addressing default service plans. The regulations first became effective in 2007 and recent amendments to the regulations to incorporate statutory

---

<sup>13</sup> See 66 Pa. C.S. § 2807(e).

<sup>14</sup> 66 Pa. C.S. § 2807(e)(3.2).

<sup>15</sup> 66 Pa. C.S. §§ 2807(e)(3.1).

<sup>16</sup> 66 Pa. C.S. § 2802(3).

<sup>17</sup> 66 Pa. C.S. § 2802(5). See *Green Mountain Energy Company, et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

<sup>18</sup> 66 Pa. C.S. § 2802(5).

<sup>19</sup> 52 Pa. Code §§ 54.181 to 54.189.

<sup>20</sup> 52 Pa. Code §§ 69.1802 to 69.1817.

changes to the Competition Act as a result of the implementation of Act House Bill 2200, Act 129 which became effective in November 2008, are pending.<sup>21</sup>

### 3. Standards Applicable to Competitive Retail Market Enhancements

In its order entered April 29, 2011, the Commission initiated an investigation<sup>22</sup> into Pennsylvania's retail electricity market.<sup>23</sup> With the input of stakeholders, the Commission entered a Tentative Order (on December 16, 2011) that issued for public comment the intermediate work plan, which identified issues, tasks and goals to be resolved and implemented prior to the expiration of the EDCs' next round of default service plans, in an effort to improve the retail electricity market.<sup>24</sup> The Commission entered its *Intermediate Work Plan Final Order* on March 2, 2012.<sup>25</sup>

In its *Intermediate Work Plan Final Order*, the Commission correctly concluded that, while the shopping statistics are encouraging, "there is definite room for improvement to achieve the robust competitive market envisioned by the General Assembly."<sup>26</sup> The Commission stated that measures should be used to "kick-start" retail competition.<sup>27</sup> These measures include a plan

---

<sup>21</sup> *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580, Final Policy Statement entered September 23, 2011; *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604, Final Rulemaking Order entered October 4, 2011 ("Act 129 Rulemaking"). The Act 129 Rulemaking was approved by the Independent Regulatory Review Commission ("IRRC") on May 17, 2012.

<sup>22</sup> For ease of reference, the actual Investigation will be referred to as either the "Investigation" or "RMI."

<sup>23</sup> *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, Order entered April 29, 2011.

<sup>24</sup> *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Tentative Order entered December 16, 2011 ("*Intermediate Work Plan Tentative Order*").

<sup>25</sup> *Intermediate Work Plan Final Order*.

<sup>26</sup> *Id.* at 3 quoting with approval *Investigation of Pennsylvania's Retail Electricity Market*, Opinion and Order entered July 28 Order at 7.

<sup>27</sup> *Id.* at 32.

for an Opt-In Auction and a referral program.<sup>28</sup> The Commission also directed that a “new/mover” referral program be created pursuant to which each new or moving customers would be informed of the options for taking service from a competitive supplier and be “hot transferred” to a specific EGS, if, at the time of initiation of distribution service, the new or moving customer has identified an EGS from which the customer wished to receive generation service.<sup>29</sup> The *Intermediate Work Plan Final Order* also set forth the Commission’s view of the structure and timing of the previously endorsed “Standard Offer” referral programs as well as Opt-In Auctions.<sup>30</sup>

It should be noted the *Intermediate Work Plan Final Order* is characterized by the Commission as “guidance.” But, the Commission made clear that “to the extent that an EDC chooses to deviate from the guidelines, [it] expect[ed] the differences to be justified by good cause shown, which includes 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.”<sup>31</sup> The Commission also acknowledged that it “would have to accommodate any ‘unique situations’ confronted [in the individual default service plans].”<sup>32</sup> Accordingly, merely asserting that a contrary policy position is superior to that which the Commission has adopted is an insufficient basis on which to diverge from the directives of the *Intermediate Work Plan Final Order*.

---

<sup>28</sup> *Id.* at 13-14, 33-34.

<sup>29</sup> *Id.* at 14-20.

<sup>30</sup> *Id.* at 30-78.

<sup>31</sup> *Id.* at 6-7.

<sup>32</sup> *Id.* at 36.

## II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

### A. **Summary of Briefing Party's Position**

PECO is proposing to transition to a mix of one- and two-year full requirements products, with two-year products comprising approximately sixty percent of the contract mix and one-year contracts comprising approximately forty percent of the contract mix. PECO will not procure any additional block energy products, nor will it include any spot market purchases in their portfolio. PECO's proposed procurement plan will also result in contracts that extend beyond May 31, 2015.<sup>33</sup> PECO also proposes a slight increase of the current 65% wholesale supplier load cap to 67%.

In response, RESA recommends the following changes to PECO's proposed default service procurement plan:

#### Residential Procurement Portfolio

- Inclusion of 10% spot market power in the procurement portfolio to ensure more market reflective pricing
- Elimination of contracts extending beyond May 31, 2015

#### Small Commercial Procurement Portfolio

- Replacement of the 12 month term contracts in the September 2014 procurement with 6 month term contracts to eliminate contracts extending beyond May 31, 2015

#### Large C&I Procurement Portfolio

- Continuation of PECO's current procurement practice of bidding out the provision of spot market priced full requirements contracts to wholesale suppliers

#### Load Cap

- Lower the amount of load that can be served by any single wholesale supplier to 50%

---

<sup>33</sup>

PECO Statement No. 2 at 12.

**B. Residential Class Procurement**

Section 2807(e)(3.2) requires that the electric power procured pursuant to Section 2807(e)(3.1) shall include a prudent mix of:

- (i) Spot market purchases.
- (ii) Short-term contracts.
- (iii) Long-term purchase contracts. . .

Section 2807(e)(3.4) requires that the “prudent mix” of contracts shall be designed to ensure: (i) adequate and reliable service; (ii) the least cost to customers over time; and, (iii) compliance with the competitive procurement requirements of Section 2807(e)(3.1).<sup>34</sup> Thus, the Competition Act requires that a “prudent mix” of spot, long-term, and short-term contracts is one which – when considered holistically – is the mix which is most reasonably likely to result in a sustainable, competitive retail market, which will ensure that all consumers receive the least cost generation over time. The best way in which to achieve these goals is by implementing a plan that promotes competition. Approving a plan that will promote retail competition empowers consumers to assess these risks for themselves and choose the product that best meets their individual needs and risk tolerance levels. To stimulate competition, the default service plan must produce default service rates that are market-reflective, market-responsive and include all of the relevant costs incurred by the EDC in providing default service.<sup>35</sup> As explained by RESA witness Williams, the development of retail competition for mid-sized commercial customers in Maryland illustrates the value market responsive pricing has on retail competition.<sup>36</sup>

---

<sup>34</sup> 66 Pa. C.S. § 2807(e)(3.1).

<sup>35</sup> RESA St. No. 1 at 9-10.

<sup>36</sup> RESA St. No. 1 at 9-10.

**1. Term Length of Supply Contracts**

RESA generally does not oppose PECO's proposed term length of supply contracts with the exception of those contracts that that will extend beyond May 31, 2015 as discussed below in Section II.F. However, as explained below in Section II.B.2, RESA opposes PECO's proposal to eliminate all spot market purchases.

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

For the residential customers, PECO proposes to rely on 60% two-year contracts and 40% one-year contracts for the next default service term. PECO would eliminate the current 5% spot market purchases which are a part of the residential procurement mix. RESA is concerned that PECO's proposed procurement mix will not result in default service prices that are sufficiently market reflective over time. A sustainable market design for default service needs to ensure that a default service rate bears a rational relationship to the market price for energy. The more reliance the procurement plan places on contracts extending a year or longer, the more likely the default service rate at the time of delivery will not be in line with the then-current market price for energy.<sup>37</sup> Such a result would inhibit the development of a fully functional competitive retail market and is, therefore, inconsistent with the Competition Act.<sup>38</sup> Therefore, RESA recommends that PECO include a small portion (10%) of spot market power purchases to ensure that PECO's default service prices contain at least a small element of current market prices.

---

<sup>37</sup> RESA St. No. 1-SR at 6.

<sup>38</sup> 66 Pa. C.S. §§ 2802(5).

PECO opposes RESA's recommendation by claiming that spot market purchases would increase the "volatility" of default service rates and that they could exacerbate problems related to the reconciliation of default service costs.<sup>39</sup> Neither of these arguments has merit and both should be rejected.

First, including some spot market purchases in the procurement plan will lead to default service rates that are more closely aligned with the true price of energy at the time of delivery.<sup>40</sup> No party seriously disputes this fact. Since PECO's procurement plan proposes to continue to adjust the default service rate on a quarterly basis – as it has done during the current default service period – the default service rate will continue to change quarterly. Thus, adding spot market purchases will not change this fact. To the contrary, the more spot market purchases that are included in the procurement mix, the closer the quarterly changes will reflect the then-current market price for electricity.

Second, PECO attempts to muddle this issue by relying on the impact of reconciliation on the resulting default service rate to claim that including the reconciliation of spot market purchases in the default service rate creates a more "volatile" default service rate. However, for the reasons explained above in Section II.B.2, the inclusion of 10% spot market purchases into the portfolio mix is important so that the resulting default service rate reflects the market price of energy at the time of delivery to ensure a robust competitive retail market for the benefit of consumers. On the other hand, as explained below in Section III.B, PECO's proposal to increase the reconciliation period to annually will only serve to further divorce default service rates from underlying wholesale costs and ultimately be more costly to customers. As such the inclusion of

---

<sup>39</sup> PECO St. No. 2-R at 6, PECO St. No. 3-R at 31.

<sup>40</sup> RESA St. No. 1-SR at 5-7.

spot market purchases with continued quarterly reconciliations is the best outcome for consumers. The cost of incorporating spot market purchases is a default service cost that must be recovered through the default service rate consistent with the Competition Act.<sup>41</sup> For these reasons, the costs of spot market purchases – which provide end user benefits – should not be treated any differently from any other default service costs or “avoided” based on some misperceived belief that doing so will avoid “volatility.”

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

While RESA opposes PECO’s proposal to eliminate all spot market purchases for residential default service supply, RESA supports PECO’s proposal to eliminate the current block purchases.<sup>42</sup> OCA claims that the block purchases should continue because the average cost for the block and spot portion of the load was lower than the full requirements portion of the load during 2011.<sup>43</sup> OCA’s analysis, however, is not persuasive and its recommendation should be rejected.

Interestingly, OCA deflects criticisms of its analysis as “not material” because the claimed “good result” of lower cost block and spot purchases justify continuing these procurements in the future.<sup>44</sup> In other words, because there was – in OCA’s view – a “good result” in the past, there is no reason not to continue to expect a “good result” in the future. This view, however, is shortsighted. First, it fails to acknowledge the potential that such purchases

---

<sup>41</sup> 66 Pa. C.S. § 2807(3.9); 52 Pa. code § 54.187(a).

<sup>42</sup> RESA St. No. 1-R at 3. *See also* PECO St. No. 2 at 11.

<sup>43</sup> OCA St. No. 1 at 7.

<sup>44</sup> OCA St. No. 1-S at 4.

may cost customers more in the future resulting in unnecessarily higher default service rates.<sup>45</sup> Second, it also fails to recognize that throughout 2011 there were numerous price options that were available to PECO residential customers that were lower than the PECO default service price. The reason this is important is because it shows that PECO's current portfolio mix is not achieving the least cost standard today and, there is no guarantee that continuation of it will result in achieving the least cost standard in the future.<sup>46</sup> In sum, OCA has failed to present any convincing evidence showing that the continuation of the block purchases better achieves the statutory requirements for default service procurement plans, it must be rejected.

### **C. Small Commercial Class Procurement**

PECO proposes to procure default service supply for the small commercial class through one-year full requirements products, each laddered with six-months spacing between procurements.<sup>47</sup> With the exception of opposing default service supply contracts that extend beyond May 31, 2015 (which is discussed below in Section II.F), RESA does not oppose PECO's proposed procurement plan for small commercial customers.

### **D. Medium Commercial Class Procurement**

RESA does not oppose PECO's proposed procurement plan to replace the current mix of eighty-five percent one-year fixed-price full requirement products and fifteen percent spot-priced products entirely with six-month fixed-price full requirements products without overlap for medium commercial customers. RESA does, however, oppose OSBA's recommendation to

---

<sup>45</sup> RESA St. No. 1-R at 2-3.

<sup>46</sup> RESA St. No. 1-R at 2-3.

<sup>47</sup> PECO St. No. 2 at 13.

utilize one-year (non-laddered) contracts to acquire 100% of the medium commercial group's default service load.<sup>48</sup> While PECO's proposal does recommend elimination of the current spot market purchases despite RESA's general preference for spot market purchases, the use of six-month contracts is another way to achieve default service rates that are sufficiently market reflective over time. OSBA's proposal, however, upsets this balance because exclusive reliance on longer one-year contracts without any spot market purchases fails to offset the effects of the longer term contracts. As the use of longer terms contracts will result in default service rates paid by customers that are not reflective of the true market-price of energy at the time of delivery, OSBA's proposal should be rejected.<sup>49</sup> Moreover, RESA opposes entering into any contracts that will extend beyond May 31, 2015 as discussed below in Section II.F.

#### **E. Large Commercial and Industrial Class Procurement**

PECO proposes to eliminate spot-priced full requirements contracts entirely for the large commercial and industrial class. Instead, PECO proposes to procure all default service supply for this class directly from the PJM energy markets.<sup>50</sup> PECO's proposal would mean that PECO will take over the role of providing default service supply to these customers. RESA opposes PECO's proposal due to the potential negative consequences of abandoning the current competitive process in place to secure this supply and the potential for misallocation of costs.

Pursuant to the current competitive procurement process, any wholesale supplier is permitted to place a bid to supply the default service load and the winner is selected through a

---

<sup>48</sup> RESA St. No. 1 at 4.

<sup>49</sup> RESA St. No. 1 at 8-10.

<sup>50</sup> PECO St. No. 2 at 13.

transparent process. This process clearly meets the requirement of the Competition Act<sup>51</sup> which requires that electric power used to serve default customers must be procured through competitive procurement processes.<sup>52</sup> Pursuant to the statute, the competitive procurement process must take the form of an auction, request for proposal or bilateral agreement. By procuring power through this competitive process, the most competitive prices and the greatest value for customers is achieved.<sup>53</sup> As PECO's current process clearly complies with the statute and achieves the best results for customers, there is no reason to depart from this method going forward.

PECO supports its request by claiming that it would eliminate the risks of costs for a customer segment that is already largely being served by competitive suppliers.<sup>54</sup> PECO, however, ignores the potential for misallocation of costs – primarily administrative costs – if PECO takes over the role of supply default service. The current competitive process is transparent because all the costs of providing power are known and can be directly passed on through the default service rates.<sup>55</sup> Specifically, wholesale suppliers competing to provide this service include administrative costs in their wholesale bids which makes these costs transparent.

---

<sup>51</sup> 66 Pa. C.S. § 2807(3.4) (“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).”) (emphasis added). Subsection 2807(3.5) makes clear that these provisions “shall apply to any type of energy purchased by a default service provider to provide electric generation supply service.” 66 Pa. C.S. § 2807(3.5) (emphasis added).

<sup>52</sup> This requirement of competitive procurement is echoed throughout other subsections as well. For example, Subsection 2807(3.7) requires the default service provider to take “prudent steps necessary to negotiate favorable generation supply contracts.” 66 Pa. C.S. § 2807(3.7)(i).

<sup>53</sup> RESA St. No. 1-SR at 8.

<sup>54</sup> PECO St. No. 2-R at 9.

<sup>55</sup> RESA St. No. 1 at 13.

If PECO takes over the role of procuring this supply, the administrative (and potentially other) costs of doing so may not be similarly transparent and may not be included in the default service costs passed on to customers. This would create a barrier to competitive market entry in the current market design whereby the EDC is providing default service because a failure to fully and accurately reflect all costs in the default service rate that suppliers must compete against would lead to a significant cost advantage for default service. This is because costs not reflected in the default service rate are likely to be recovered from the all the distribution rate payers, thereby artificially lowering the default service rate. The EGS must reflect all of its similar costs in its competitive offers and the EGS does not have a captive customer class from which to recover these costs, thereby leading to a competitive disadvantage for the EGS. Moreover, misallocated default service costs force shopping customers to pay twice for many cost components (i.e., once to the EDC through their distribution rates and once to the EGS through their price for generation). PECO has not presented any compelling reason to justify a departure from its current transparent, competitive process. On the contrary, the potential harm to the development of the competitive market and to customers that may result from the change support rejecting PECO's proposal.

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

PECO's proposed default service procurement plan addresses the procurement of default service effective June 1, 2013 through May 31, 2015. Nonetheless, PECO proposes to enter into contracts during its early 2014 scheduled default service procurement solicitations which would extend beyond the May 31, 2015 default service plan term end date. Specifically, more than a third of the residential load would be served by contracts extending beyond May 31, 2015 and

some contracts for small business customers will extend to 2016.<sup>56</sup> PECO asserts this is appropriate in consideration of the Commission on-going Retail Markets Investigation and to “ensur[e] price stability for customers.”<sup>57</sup> PECO offers this proposal even though the Commission stated the following in its *Default Service Order*:

... that EDCs file plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period; and ... that EDCs limit the proportion of long-term contracts that make up their default service plan energy portfolios, and consider using already existing long-term contracts from previous or presently effective default service plans.<sup>58</sup>

RESA does not support the use of any default service contracts, regardless of the term, that extend beyond the expiration date of the default service plan term.<sup>59</sup> PECO’s recommendation to enter into contracts that will extend beyond the end of the proposed procurement plan term is directly counter to the clear objective outlined by the Commission. Permitting contracts to extend beyond the default service period would threaten the Commission’s ability to modify the default service structure, as it is seriously contemplating in its Retail Markets Investigation. While PECO claims that its proposal could be altered if it becomes unnecessary depending on the outcome of the Retail Markets Investigation, the least complicated course of action would be to make any adjustments that may be necessary after the Commission issues its guidance. At this point in time, the only concrete direction provided by the Commission is that these types of extended contracts should not be implemented. As the Commission moves forward, it will necessarily give further direction as appropriate at that time

---

<sup>56</sup> RESA St. No. 1-SR at 3.

<sup>57</sup> PECO St. No. 2 at 15.

<sup>58</sup> *Default Service Order* at 19.

<sup>59</sup> RESA St. No. 1 at 11; RESA St. No. 1-SR at 2.

and PECO – as well as all the other EDCs – will need to adjust accordingly at that time. In sum, PECO did not provide any compelling basis to ignore the directives of the Commission, and PECO’s recommendations, if accepted, would result in hindering the ability of the Commission to enact these much needed reforms.

PECO’s claim that its proposal, which “ladders” supply contracts, will also mitigate default service rate volatility should also be rejected. As RESA Witness Williams testified:

Laddering default service contracts almost guarantees that the default service rates become disconnected from the underlying cost of wholesale supply for extended periods of time. This negatively impacts the ability of EGSs to provide competitive products and services. In turn, customers ultimately suffer the consequences by being denied access to the myriad product and service offerings that would otherwise be available in a fully competitive retail market.<sup>60</sup>

PECO’s effort to determine what level of “stability” customers desire is a fruitless exercise because each customer has his or her own tolerance levels. Default service should not attempt to estimate the level of price stability that an individual customer desires. Rather, robust competitive retail markets are the best way to address each individual customer’s desires because they provide a variety of suppliers with a variety of products from which the customer can choose the product that best meets his or her own individual preferences.<sup>61</sup> Because PECO’s claim that its laddering proposal provides rate stability is without merit, it should not be relied upon to override the Commission’s clear directives to eliminate contracts extending beyond the end of the default service plan procurement date.

---

<sup>60</sup> RESA St. No. 1-SR at 4.

<sup>61</sup> RESA St. No. 1-SR at 4-5.

**G. Procurement Schedule**

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

RESA does not oppose OCA's proposal.

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

OCA recommends that a portion of the targeted full requirements contracts be "set aside" and not procured as part of the initial default service solicitations. Rather, these contracts would be left unfilled at the beginning of the default service procurement plan term. Once the Opt-In Auction is held, OCA proposes that the size of the default service tranches be adjusted based upon how many auction tranches are actually filled. The purpose of this proposal, from OCA's perspective, is to mitigate the increased volumetric risk that OCA believes would be created by the retail Opt-In Auction.<sup>62</sup>

As explained further below in Section IV.B.4, RESA does not support OCA's proposed 20% participation cap for the Opt-In Auction which would be effectuated by OCA's "hold back" proposal. In its *Intermediate Work Plan Final Order*, the Commission determined that no more than 50% of an EDC's default service customer base may participate in the retail Opt-In Auction.<sup>63</sup> OCA's proposal here would further limit the amount of default service customers that could participate in the auction.

RESA strongly opposes this hold back proposal and submits that OCA has not articulated any compelling reason to diverge from the Commission's 50% standard.<sup>64</sup> In choosing a 50% total participation cap, the Commission stated that it does not want to impose a lower cap that

---

<sup>62</sup> OCA St. No. 1 at 12.

<sup>63</sup> *Intermediate Work Plan Final Order* at 60.

<sup>64</sup> RESA St. No. 2-R at 3-5.

“may lead to the rejection of customers wishing to participate.”<sup>65</sup> The OCA’s position focuses almost exclusively on making sure the Opt-In Auction is not too successful in getting customers into the competitive market for fear that wholesale suppliers will perceive a market where most customers are shopping as “more risky” and, therefore, include a material risk premium.<sup>66</sup> This, however, is not a valid basis on which to structure these market-opening policies. Indeed, default service is just that – an option of last resort if customers for whatever reason do not shop. Holding back the number of customers who could participate in the Opt-In Auction in favor of “preserving” default service is no different than imposing an arbitrary cap on the amount of shopping that will be permitted or imposing limits on any other steps that would reduce customer load, such as self-supply. Any of those steps are plainly inconsistent with the policies of the Commonwealth, just like OCA’s attempt here to prevent too many customers from shopping by limiting the number of customers who may participate in the Opt-In Auction. It would be antithetical to the goal of developing robustly competitive retail markets to limit the ability of customers to participate in the competitive market – through the Opt-In Auction.

Moreover, there has been no evidence submitted supporting the assertion that having more customers shop would have a material effect on retail generation prices.<sup>67</sup> To the contrary, shopping produces material benefits. Customers will receive far greater benefits over time from the competitive pricing and value added service and products that come from full competition.<sup>68</sup> Indeed, a more competitive market should result in lower default service rates as well. That is

---

<sup>65</sup> *Intermediate Work Plan Final Order* at 59.

<sup>66</sup> OCA St. No. 1 at 12-13.

<sup>67</sup> RESA St. No. 2-R at 3.

<sup>68</sup> RESA St. No. 2-R at 3-4.

exactly what the Commission is working to accomplish with its Intermediate Work Plan, contrary to the OCA's unsupported assertions which must be rejected.

Even setting these points aside, however, the risk premium is likely not to be significant if OCA's proposal were adopted. If the Opt-In Auction occurs prior to all or some of the wholesale supply auctions, any risk premium should be significantly reduced or eliminated beyond what a wholesale supplier would have to bear with or without the Opt-In Auction. Thus, OCA's concerns are ill-founded and should be rejected.

#### **H. Load Cap**

PECO currently utilizes a 65% wholesale supplier load cap and proposes to increase the cap to 67% for the purpose of encouraging "participation when there is a small number of tranches for a class in a given solicitation."<sup>69</sup> RESA does not support PECO's proposal and instead recommends that the wholesale supplier load cap be decreased to 50%.

Wholesale supplier load caps are a competitive safeguard in part because they limit the exposure to the EDC – and, therefore, default service customers – of contract failure of any particular wholesale supplier. This is because a lower load cap promotes greater supplier diversity which will protect default service customers by mitigating the impact on default service rates should any single wholesale supplier not be able to meet its contractual wholesale supply obligations.<sup>70</sup> If a wholesale supplier fails to meet its contractual obligations, the Companies' proposed 67% load cap for wholesale supply of default service could create a high replacement cost that would be borne by default service customers.

---

<sup>69</sup> PECO St. No. 4 at 18,

<sup>70</sup> RESA St. No. 1 at 13-14.

In addition, diversity of supply is a crucial means of insuring that one or a few suppliers do not dominate the PECO wholesale auctions, which, in turn, could result in control of pricing such that other competitors are eventually driven out of this market. This in turn could adversely affect both wholesale and retail prices. With a lower load cap, the Commission will be preventing the wholesale supply agreements from being concentrated in one or a few large wholesale suppliers. This, in turn, will reduce the potential replacement costs associated with a single wholesale supplier and ensure a variety of wholesale suppliers can ultimately provide the underlying supply for default service.<sup>71</sup>

While PECO recognizes that an appropriate wholesale supplier load cap does serve an appropriate purpose of ensuring diversity and limiting the exposure to default service customers if a wholesale supplier is unable to provide service, PECO claims that its 67% proposal is the appropriate amount at which to cap the load.<sup>72</sup> However, as explained by RESA Witness Williams, New Jersey a state with many similarities to Pennsylvania – has concluded that a 33 1/3% wholesale supplier load cap is appropriate to address these concerns and, even with the lower load cap, has consistently realized robust participation by many wholesale suppliers.<sup>73</sup> Therefore, a 50% wholesale supplier cap is reasonable in this case.

PECO also expressed concern that RESA's lower wholesale load cap proposal would result in preventing the awarding of some contracts that would be awarded with a 67% wholesale supplier load cap.<sup>74</sup> This concern, however, is only valid in instances where only a few suppliers

---

<sup>71</sup> RESA St. No. 1 at 14.

<sup>72</sup> PECO St. No. 2-R at 11.

<sup>73</sup> RESA St. No. 1 at 14; RESA St. No. 1-SR at 9-10.

<sup>74</sup> PECO St. No. 4-R at 3-5.

bid or there are only a few tranches that are involved in the bidding process. In fact, PECO is proposing only one auction in which three tranches would be a part of the process.<sup>75</sup> However, these concerns could be easily addressed assuming they would actually materialize in fact. For example, a contingency plan could be created that would permit PECO to request the Commission to waive or alter the load cap to avoid the unlikely situation where only one or two bidders responded and the 50% load cap would prevent awarding all the tranches to one bidder and would force a rebid or some other contingency. Establishing the presumption that no one entity will obtain more than 50% of any auction, and allowing for exceptions, is preferable to using PECO's approach which permits one or two bidders on a regular basis.<sup>76</sup>

**I. Other Procurement and Implementation Plan Requirements (e.g., Contingency Plans, Competitive Procurement Process, Supply Master Agreements, AEPS Compliance, Independent Evaluator)**

To the extent RESA takes any position on these issues, they are detailed elsewhere in this brief in the appropriate sections.

**III. RATE DESIGN AND COST RECOVERY**

**A. Summary of Briefing Party's Position**

RESA makes several recommendations regarding PECO's proposed rate design and cost recovery. First, as discussed below in Section III.B, RESA opposes PECO's proposal to change its current default service reconciliation mechanism from quarterly to annual. Second, as discussed below in Section III.C, RESA also recommends that the Commission direct PECO to assume responsibility for various non-market based charges on behalf of all customers and

---

<sup>75</sup> PECO Exh. JJM-1.

<sup>76</sup> RESA St. No. 1-SR at 9.

recover the costs through a competitively neutral, non-bypassable charge. Third, as discussed below in Section III.E, RESA recommends that the Commission reject PECO's proposed new sharing mechanism for auction revenue rights. Finally, as discussed below in Section III.G, RESA recommends that PECO implement a new, separate charge – the Default Service Cost Recovery Charge (“DSCRC”) – that would apply only to default service customers to recover the unrecovered costs of providing default service and implementing retail market enhancements which are necessitated due to the continuation of a default service model whereby the incumbent EDC provides service.

**B. Reconciliation of Default Service Costs and Revenues**

PECO is proposing two changes to its current reconciliation mechanism. First, PECO will continue to adjust the default service rate on a quarterly basis but proposes to synchronize the projection periods with PJM's planning year, which begins on June 1 of each year. PECO recommends a transition process to implement this change. Second, PECO proposes to implement a twelve-month (annual) reconciliation of the over or under collection component of the GSA for residential, small commercial and medium commercial customers. While the default service rate would adjust quarterly (when new contracts replace existing ones that are expiring), the reconciliation amounts would be calculated from March 1 through February 28 to be recovered during the following annual period of June 1 through May 31.<sup>77</sup> This reconciliation accounts for differences not only in billed versus actual amounts but also in differences between projected versus actual wholesale prices, when projected prices are needed because the actual wholesale price is not yet available. While RESA does not oppose PECO's proposal to

---

<sup>77</sup> PECO St. No. 5 at 6-7.

synchronize the projection periods with PJM's planning year, RESA does oppose the proposal to perform an annual reconciliation.<sup>78</sup>

As the Commonwealth Court has observed, “distribution companies perform a default service referred to as 'provider of last resort' to retail customers who decline to shop for an electric generation supplier or who have returned to their distribution company.”<sup>79</sup> This default service is not provided to shopping customers and, therefore, all the costs of providing default service, including the financial risk of any distorted pricing mechanisms, should be included in the default service rate. If all the costs of providing default service are not included in the default service rate, then the default service rate will not reflect the true costs of providing default service. This, in turn, will hinder the ability of a truly competitive market to develop.

The result of adopting PECO's proposal will be to divorce the default service rates from underlying wholesale costs.<sup>80</sup> This is because the reconciliation adjustment period will be longer than the initial price application period where the over/under recovery occurred. Therefore, this cost of default service (i.e. the reconciliation) will not be passed on to default service customers in a timely way as it will be amortized over a year. The result will be that customers will not see the true cost of energy on a contemporaneous basis thus distorting their perception of the market price of energy. Rather, the bottom-line amount paid by customers will be based, at least in part, on a year's worth of reconciliation data rather than the current price of energy.

In addition, from a customer perspective, reducing the amount of interest (whether owed to customer or to be paid by customers) is better. The longer the time period over which PECO

---

<sup>78</sup> RESA St. No. 1 at 15.

<sup>79</sup> *Green Mountain Energy Co, v. Pa. P.U.C.*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002) (emphasis added), *appeal denied* 833 A.2d 145 (Pa. 2003).

<sup>80</sup> RESA St. No. 1 at 15.

takes to address the interest, the greater the amount that will have to be refunded or collected. Since PECO is entitled to full cost recovery pursuant to the Competition Act, it will recoup these costs from all customers.<sup>81</sup> Thus, a quarterly reconciliation that more contemporaneously addresses the reconciliation is less costly for all customers than an annual reconciliation that is addressed over a longer period of time.

Finally, PECO's attempts to attribute the reconciliation cost to a "billing lag" is not relevant as there is no record dispute that this "billing lag" is a cost of providing default service and, as such, PECO is required to pass on that cost to customers. PECO's proposal to do so over a longer period of time, as explained above, will lead to a distorted pricing structure that could stymie continued competitive market development because competitive suppliers will be forced to compete against prices that do not accurately reflect market prices and costs of providing default service. Ultimately this may limit the number of retail suppliers in the market thus minimizing a customer's ability to choose from a broad portfolio of products and services designed to best meet their individual needs. Default service rates must be market-responsive and must reflect all of the relevant costs incurred by the EDC in providing default service. Both of these factors are required so that competitive suppliers can compete on equal footing with the EDC's default service rates and customers can have ongoing access to myriad products and service offered by numerous EGSs competing to meet their needs.

If default service rates do not accurately track changes in market prices over time, then the default service rate will become out-of-market. This creates at best, intermittent opportunities for customers to access to the product and service offerings of competitive

---

<sup>81</sup> RESA St. No. 1-SR at 11.

suppliers. Similarly, if default rates do not fully reflect all of the costs of providing generation service (for example due to misallocated costs and cross-subsidization) then EGSs are at an unfair competitive disadvantage compared to the EDC's default service rate and customers are harmed as their access to the plethora of competitive products and service diminishes. This creates, at best, intermittent opportunities for customers to access the product and service offerings of competitive suppliers.

Such a market design is not sustainable and presents too much risk for retail suppliers to enter the market – a result which is in direct contravention of the purposes of the Competition Act and cannot be endorsed. Such a result is not likely to happen if RESA's recommendations to continue the use of both quarterly reconciliation adjustments and quarterly default service rate changes, coupled with the inclusion of spot market purchases as discussed in previous sections, are adopted.

### **C. EDC Recovery of Additional PJM Charges**

RESA recommends that PECO assume responsibility for the following charges and recover costs through a competitively-neutral, non-bypassable charge:

- Network Integration Transmission Services (“NITS”);
- Regional Transmission Expansion Plan costs (“RTEP”);
- Expansion costs; and,
- All charges that result from PJM's implementation of its revised Economic Load Response program in compliance with FERC Order No. 745 (“New ELR Charges”).<sup>82</sup>

NITS, RTEP, and Expansion costs (collectively “Transmission Services Charges”) are essentially embedded, cost-of-service rates that are imposed on the basis of an EDC's total native

---

<sup>82</sup> PJM only recently finalized for billing purposes the names assigned to these New ELR Charges: ID# 1242 – Day-Ahead Load Response Charge Allocation; and, ID# 1243 – Real-Time Load Response Charge Allocation. See RESA St. No. 1 at 22.

load, regardless of the source of the generation used to service the load.<sup>83</sup> For the reasons explained further below, PECO's recovery of these costs exclusively for default service customers creates a competitive advantage for default service over EGS provided generation service and distorts the ability of consumers to compare the default service rate with prices offered by EGSs.

Generation Deactivation Charges are assessed by PJM on certain entities to provide funding to generation owners who elect to operate units beyond their deactivation date pending completion of transmission upgrades.<sup>84</sup> New ELR charges are assessed by PJM to comply with a FERC order requiring it to implement a cost allocation methodology that allocates costs to those that benefit from demand reduction.<sup>85</sup> Because PECO requires wholesale default service suppliers to factor these unpredictable and difficult to quantify costs into their bids to provide default service supply, the end result is that the ultimate default service rate paid by customers is driven higher to account for this risk.<sup>86</sup>

To remedy the negative effects of both of these situations, RESA recommends that PECO assume responsibility for all of these charges for all customers and recover the costs through a competitively-neutral, non-bypassable charge to assure a level playing field for all suppliers and provide appropriate price signals for customers. This could be accomplished through the creation of a non-market based charges rider ("NMB Rider").<sup>87</sup> While RESA recognizes that a transitional period may be appropriate to ensure that customers are not subject to a "double

---

<sup>83</sup> RESA St. No. 1 at 17-18.

<sup>84</sup> RESA St. No. 1 at 19.

<sup>85</sup> RESA St. No. 1 at 21-22.

<sup>86</sup> RESA St. No. 1-SR at 15.

<sup>87</sup> RESA St. No. 1 at 23.

counting,” RESA does not agree that potential one-time transitional issues that may arise should be used to reject its proposal especially since such situation (to the extent they even exist) could be easily addressed on a case-by-case basis.<sup>88</sup>

### 1. Transmission Related Charges

Transmission Charges are not market-based charges and they are based on the total EDC load.<sup>89</sup> This is important because it means that these costs cannot be reasonably predicted or hedged. While the NITS charges generally represent a mostly known administrative charge assessed to Load Service Entities (“LSEs”) by PJM, they are still not market-based charges but are cost-of service based charges that benefit all load.<sup>90</sup> PECO assumes responsibility for all of these charges for default service customers only. The charges are passed onto default service customers through the PTC. Unlike other EDCs,<sup>91</sup> PECO does not assume responsibility for these charges for shopping customers. Therefore, EGSs are required to try to calculate the amount of these charges and factor them into the prices they offer customers. The result of this process creates an unfair competitive advantage for PECO’s default service over EGS-provided competitive service and leads to distorted pricing signals to customers.

First, the lack of inability to predict the specific amount of the charges does not negatively impact PECO since PECO, as the default service provider, is entitled to full cost

---

<sup>88</sup> RESA St. No. 1-SR at 16.

<sup>89</sup> RESA St. No. 1 at 18; RESA St. No. 1-SR at 13.

<sup>90</sup> RESA St. No. 1-SR at 13.

<sup>91</sup> FirstEnergy Ohio utilities recover transmission service charges through a competitively neutral, non-bypassable charge. Additionally, the FirstEnergy Pennsylvania utilities have proposed to assume responsibility for these specific Transmission Service Charges and also recover those costs via a non-bypassable charge from all customers in their pending Default Service Proceeding before the Commission at docket numbers P-2011-22373650, P-2011-2273668, P-2011-2273669 and P-2011-2273670. On June 15, 2012, the ALJ issued a Recommended Decision concluding that the Commission should adopt FirstEnergy’s proposal on this issue.

recovery.<sup>92</sup> EGSs do not have this same advantage. Therefore, if PECO inaccurately predicts the amount of any of these charges, it can easily recover any remaining unpaid costs from default service customers through its reconciliation mechanism. On the other hand, EGSs that inaccurately predict these costs do not have the same ability to recover the shortfall from their customers. This gives PECO a competitive advantage in providing default service.

Second, the pricing signal sent to customers is distorted because default service customers are paying the full costs of the charges while shopping customers may or not pay the full cost depending on an EGS's accuracy in predicting the charges. This creates difficulty for customers to accurately compare the prices of EGSs against the default service rate complicating the ability of consumers to shop with accurate information because they do not have transparency in transmission costs.<sup>93</sup>

Adopting RESA's proposal to require PECO to assume responsibility for all of these charges and to pass on their costs to all distribution customers is a reasonable way to level the playing field for all suppliers and provide appropriate price signals for customers. This is because all customers will be paying the "pass through" costs of transmission regardless of whether they are default customers or customers of an EGS. This will also ensure that the costs paid by these customers for these charges are the actual costs and not a supplier's estimate of the charge which may ultimately be higher or lower than the actual charge.<sup>94</sup>

---

<sup>92</sup> 66 Pa. C.S. § 2807(e)(3.9).

<sup>93</sup> RESA St. No. 1-SR at 13; RESA St. No. 1-SR at 15.

<sup>94</sup> RESA St. No. 1-SR at 14.

## 2. Generation Deactivation Charges and New ELR Charges

Like the Transmission Charges, Generation Deactivation charges and the New ELR Charges are non-market based charges assessed by PJM for various reasons.<sup>95</sup> They are also difficult to predict.<sup>96</sup> The Generation Deactivation Charges are assessed to pay generation owners to continue to operate units beyond their proposed deactivation date pending competition of necessary transmission upgrades to ensure system reliability.<sup>97</sup> The New ELR Charges will be assessed on a region-wide basis (rather than on a locational basis) to compensate loads in any area where the price paid to an ELR resource is at or above the threshold price.<sup>98</sup>

PECO currently proposes to continue to require wholesale default service suppliers to factor in the costs of these charges into their bids to provide default service supply. Thus, similar to the way PECO handles Transmission Charges, default service customers pay for the costs of these charges through the PTC.<sup>99</sup> The difference between PECO's two approaches is that the wholesale default service suppliers are required to try to calculate the costs of the charges and build this risk into their default service bid pricing and absorb the costs of inaccurate calculation.<sup>100</sup> When PECO assumes responsibility for charges for default service customers, as it does for Transmission Charges, PECO simply passes on the actual cost to default service customers. Under both approaches endorsed by PECO, however, EGSs are required try to

---

<sup>95</sup> RESA St. No. 1 at 18-19, 20-22.

<sup>96</sup> RESA St. No. 1 at 20.

<sup>97</sup> RESA St. No. 1 at 19.

<sup>98</sup> RESA St. No. 1 at 22.

<sup>99</sup> If RESA's proposal to require PECO to assume responsibility for all these charges is adopted, then these charges would need to be moved from the PTC and recovered through the new competitively neutral, non-bypassable charge. RESA St. No. 1 at 18.

<sup>100</sup> RESA St. No. 1-SR at 15.

calculate the costs of these charges and pass them on to shopping customers without any right to full cost recovery.

PECO's approach results in price distortions for customers and, most likely, supply costs (whether default service or EGS provided service) that are driven higher due to the risk premium calculations that either the wholesale default service supplier or the EGS is required to make to account for these charges.<sup>101</sup> These charges have the potential to be significant. Because suppliers cannot hedge these potentially significant costs, they must include a premium in their bids to cover the future uncertainty of those costs.<sup>102</sup> These unknown, but potentially large, costs lack transparency and can cause customers to pay significantly more than required by the actual charges. That these costs are unknown, unknowable, and cannot be hedged drives up market prices, to the detriment of all parties.

RESA's proposal would solve this problem for the benefit of consumers. By requiring PECO (rather than the wholesale default service suppliers or the EGSs) to assume responsibility for these charges and pass them through to all customers via a competitively neutral, non-bypassable charge, the actual cost of these charges will be directly passed on to all customers. Since neither wholesale default service suppliers nor EGSs have any reasonable control or ability to predict these charges, all customers should benefit over the longer term by shifting the cost responsibility back to the EDC which will reduce the risk premiums associated with these charges that consumers would be required to pay.

---

<sup>101</sup> RESA St. No. 1 at 15.

<sup>102</sup> RESA St. No. 1 at 19.

**D. Costs Included in the Generation Supply Adjustment Charge**

This issue is address in Section III.C.1.

**E. Ratemaking Treatment of Auction Revenue Rights**

PECO has proposed a cost sharing methodology for Auction Revenue Rights (“ARR”) revenue. PECO states that the only load for which it could exercise its ARR is the small portion of residential load served by block energy and spot energy products and large commercial and industrial load they propose to serve with PJM spot market purchases. To date, PECO says it has passed through 100% of the benefits/costs from its exercise of ARRs to customers under the current default service pricing mechanism. Going forward, PECO proposes that instead of passing all of these benefits/costs on to these customers, it wants a 50/50 sharing of those costs/benefits from the ARRs.<sup>103</sup> The only support PECO offers for its proposed change is the claim that the impact on the price to compare will be minimal.<sup>104</sup> PECO provides no other support to justify the need for its proposed sharing mechanism.

RESA does not support PECO’s proposed change to its current practice of passing all costs/benefits onto its default service customers and reflecting those cost/benefits in the default service price for impacted customer customers. As explained above in Section III.B, all of the costs of default service must be passed onto default service customers; otherwise, the development of the competitive retail market will be hindered. Allowing for PECO’s proposed sharing mechanism – even if it truly is for a limited number of customers for a small amount –

---

<sup>103</sup> PECO Statement No. 5 at 15.

<sup>104</sup> PECO St. No. 5-R.

will skew the default service rates in contravention of the requirements of the Competition Act and must not be permitted.

Moreover, permitting PECO to profit from default service, without any corresponding benefit to competitive market development, is inconsistent with the goal of moving customers from default service and transitioning EDCs from the role of default service provider. Giving PECO an incentive related to default service could only be justified if there was a clear and demonstrable benefit to competition resulting in awarding the incentive. PECO's ARR revenue sharing proposal has no such identified benefits and should be rejected.

**F. Elimination of Alternative Energy Portfolio Standard Surcharge**

RESA takes no position on this issue.

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

RESA recommends that a new, additional charge – the Default Service Cost Recovery Charge (“DSCRC”) be added to the PTC with the proceeds to be used as follows:

- Payment of any verifiable costs related to providing default service that have otherwise not been collected by PECO;
- Payment of costs related to implementing and maintaining competitive market enhancements, such as the Opt-In Auction, referral programs, and seamless moves; and,
- Any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers.<sup>105</sup>

---

<sup>105</sup> RESA St. No. 2 at 34.

1. **Use of the proceeds for actual default service costs and refund to all distribution customers**

Regarding the payment of verifiable costs related to providing default service, RESA recognizes that in its role as default service provider, the EDC may incur direct and contingent costs that may be inadequately reflected in the current approach to pricing default service for a number of reasons.<sup>106</sup> The Competition Act expressly provides that all reasonable costs of providing default service in the post transition period shall be fully recovered by the default service provider.<sup>107</sup> It also requires that charges for generation, transmission and distribution be fully unbundled.<sup>108</sup> Consistent with these statutory requirements, the Commission's default service regulations require the default service rate to include the sum of all generation and transmission related default service costs.<sup>109</sup> However, to date, there has been no full unbundling of the generation, transmission, and distribution costs. Therefore, to some extent all customers are paying the costs of default service – whether they use default service or not.<sup>110</sup>

Some examples of costs that are incurred or which are not attributable to default service include:

- The costs of credit security. Wholesale suppliers do not demand security from PECO as the counter-party when PECO procures default service supply because it is a regulated utility and the assumption is that any failure to pay would be remedied by the Commission through charges to PECO customers. This is a significant avoided cost that is recovered through default service rates.<sup>111</sup>
- Overhead and administrative costs. While the direct costs of providing default service are assigned to default service customers, none of the joint and common

---

<sup>106</sup> RESA St. No. 2 at 33.

<sup>107</sup> 66 Pa. C.S. § 2807(e)(3.9).

<sup>108</sup> 66 Pa. C.S. § 2804(3); *Lloyd v. Pa. P.U.C.*, 904 A.2d at 1010, 1013-14 (Pa. Cmwlth. 2006).

<sup>109</sup> 52 Pa. Code § 54.187(a).

<sup>110</sup> RESA St. No. 2 at 33; RESA St. No. 2-SR at 24.

<sup>111</sup> RESA St. No. 2 at 33.

costs are so assigned. These include the costs of PECO's executives as well as a portion of PECO's billing and customer service costs, even though a majority of questions from customers about their bills likely relate to generation charges.<sup>112</sup>

RESA's proposal attempts to recognize this by adding a modest charge onto the default service rate and crediting any remaining amount after the proceeds are used as recommended by RESA back to all distribution customers. Without the imposition of this mechanism or full unbundling, all customers will continue to pay for some part of the costs of default service in their distribution rates. Contrary to the viewpoint of some parties, RESA's proposal is an appropriate cost allocation based on cost causation unlike the current structure today whereby shopping customers subsidize some portion of default service through the distribution rates they pay.

2. **Use of the proceeds for retail market enhancements and refund to all distribution customers**

Recovering the costs related to implementing and maintaining competitive market enhancements through the proceeds of RESA's proposed new charge is reasonable and appropriate.<sup>113</sup> These initiatives are only necessary because of the existence of and continued dominance of default service among mass market customers. Without default service, all customers would be on competitive supply thus eliminating the need for measures to encourage them to enter the competitive market.<sup>114</sup> Indeed, the competitive enhancements will ultimately

---

<sup>112</sup> *Id.*

<sup>113</sup> If the Commission rejects RESA's primary position to recover the costs of the retail market enhancement initiatives from the new charge to be added to the default service rate, then RESA recommends that the costs of these programs be recovered from a competitively neutral, non-bypassable charge assessed on all customers as explained more fully below in Section IV.F.

<sup>114</sup> RESA St. No. 1 at 17.

benefit default service customers since a significant number of these customers continue to remain on default service even though they would be able to save money or achieve other benefits by shopping.<sup>115</sup> As such, these initiatives target default service customers – who have not chosen an EGS – and create incentives for them to choose an EGS. Since these programs are specifically targeted at default service customers, assessing them the costs of implementing these programs is reasonable. The position of some parties that this structure somehow penalizes default service customers has no merit as the customers being targeted for the initiatives are the ones who would be paying the costs if RESA’s proposal is adopted.

Likewise lacking any merit is the argument that these programs benefit EGSs and, therefore, EGSs should pay for them.<sup>116</sup> The issue raised by these parties is not one of deciding whether to make the “EGSs” or the “default service customers” pay. Rather, it is one of deciding whether to make “shopping customer” or “default service customers” pay. Just as EDCs pass on their costs of providing default service to their default service customers, EGSs will likely need to pass on their costs to their “shopping” customers. Requiring default service customers to pay these costs is rational and reasonable because default service customers choose to become shopping customers and avail themselves of the benefits of shopping (which for many of the retail market enhancement programs will mean a guaranteed lower price for generation service). Suggesting that “EGSs” pay for all of the costs because they gain some benefit from these programs is akin to arguing that EDC shareholders alone should pay for the EDC’s billing and collection system because those systems inure to the financial benefit of the EDC.<sup>117</sup>

---

<sup>115</sup> RESA St. No. 2 at 7-8.

<sup>116</sup> OCA St. No. 1-R at 6, OCA, St. No. 2-R at 13.

<sup>117</sup> RESA St. No. 2-SR at 23.

Further, limiting the payment of the charge to default service customers while crediting remaining funds to all customers assures the that the “newly shopping” customer will not be deprived of his or her credit for paying some portion of the costs of default service through his or her distribution rates because he or she chose to shop. Any credit limited to only default service customers would create a shopping disincentive, and would clearly be inappropriate.

**3. Permitting PECO to retain a relatively small percentage of the proceeds after actual costs are recovered**

RESA has also taken the position that allowing PECO to retain some relatively small percentage (no more than 10 percent) of any amounts remaining after actual default service costs and retail market enhancement costs are recovered could be appropriate. By tying EDC retention of any amounts to the achievement of certain benchmarks for migration away from default service, it would be possible to create positive incentives for enhanced efforts by the EDC to implement market enhancements in a robust manner. It is also possible that such a retention could be justified on the grounds that some indirect costs incurred by the EDC could not be identified without an unreasonable level of transaction costs.<sup>118</sup>

For this proposal to effectively achieve its goals, however, it must be structured so that no incentive exists for the EDC providing default service to maintain the present unacceptably high level of customers who have not switched to competitive supply.<sup>119</sup> Contrary to the opposite viewpoint of some parties, this proposal would not be providing PECO a “profit” on providing default service.<sup>120</sup>

---

<sup>118</sup> RESA St. No. 2 at 34-35.

<sup>119</sup> RESA St. No. 2 at 31.

<sup>120</sup> RESA St. No. 1-SR at 24.

Further, the existence of this additional charge is not likely to influence EGS pricing. Some parties are likely to take the position that the existence of this charge (in any form) will have this result – by inducing EGSs to raise price offers by some fraction equal to the amount of the additional charge.<sup>121</sup> But, this position fails to give any consideration to fundamental competitive principles that operate in these markets. The fact that the PTC may be slightly higher as a result of this approach to cost allocations does not necessarily mean that the ultimate consumer will pay a higher price. EGSs must offer competitive prices and other benefits that will attract sufficient interest and customers to sustain the EGSs’ business model. EGSs are not interested in charging high prices to customers; they are focused on offering value to those customers. In a robust competitive market, EGSs will compete primarily with each other rather than with utility default service. In such an environment, pricing just under the PTC would not be a winning one, and EGSs employing it would lose out to other suppliers who price more aggressively.<sup>122</sup>

As RESA witness Mr. Kallaher explained, this is what has happened in Connecticut over the past several years, during which there has been substantial headroom versus the standard service price. If the view of how suppliers behaved as prophesied by opposing parties were correct, one would have seen competitive suppliers pricing just below that standard service price, hoping to win customers away from standard service by offering the smallest possible savings necessary to induce a customer to switch. The Connecticut market did not demonstrate this dynamic. Rather, an ever-larger number of suppliers competed aggressively with each other,

---

<sup>121</sup> See, e.g., OCA St. No. 1-R at 1; OCA St. No. 2-R at 14; OSBA St. No. 2 at 9.

<sup>122</sup> RESA St. No. 2-SR at 24-25.

offering prices well below the standard service price, with a robust amount of switching among suppliers rather than switching from suppliers back to utility service.<sup>123</sup>

#### IV. RETAIL MARKET ENHANCEMENTS

##### A. Summary of Briefing Party's Position

By Order dated April 29, 2011, the Commission commenced an investigation of Pennsylvania's retail electricity<sup>124</sup> to "make... recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market" develops in the Commonwealth.<sup>125</sup> In its RMI Orders the Commission has articulated its objective of using interim competitive enhancements to "kick start" the markets.<sup>126</sup> In fact, the Commission noted in the July 28 Order that "[b]ased on shopping statistics alone, consumers are not moving into the retail marketplace at a rate that we would expect in a well functioning market. . . [t]his is despite the fact that in several service territories, competitive offers with substantial savings over default service are available."<sup>127</sup> The Commission has provided specific guidance for various retail market enhancements to address the slow rate of shopping in its December 16, 2011 Default Service Order and the *Intermediate Work Plan Final Order*. RESA supports the Commission's efforts to kick start the electric generation markets in the Commonwealth, and

---

<sup>123</sup> RESA St. No. 1-SR at 25.

<sup>124</sup> *Investigation of Pennsylvania's Retail Electricity Market*, I-2011-2237952 (Order entered April 29, 2011)("April 29 Order").

<sup>125</sup> April 29 Order, at p. 2.

<sup>126</sup> *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952, Final Order entered December 16, 2011 ("Default Service Order"), at 32 (where the Commission stated agreement with the parties like Dominion and IGS, OCA and PEMC that opt-in auctions represent a viable tool to "kick-start" retail competition).

<sup>127</sup> July 28 Order, at 6.

respectfully submits that PECO's proposals to implement the PUC's market enhancements need to be modified if the Commission's objectives are to be met.

The shopping numbers in the PECO service territory can, and must be, improved. As of April 11, 2012, only 25% of residential customers were shopping in the PECO territory.<sup>128</sup> In comparison, 45% of commercial customers and 89% of industrial customers were shopping in the PECO service territory.<sup>129</sup> These figures show that more than two-thirds of the total residential customers and more than half of the commercial customers are not experiencing the benefits of competition. The Commission pointedly observed in its original order beginning its investigation that a fully competitive market is one in which there are not only many sellers but also many buyers (as well as low barriers to entry).<sup>130</sup> Therefore, in evaluating the competitive enhancements proposed by PECO, the Commission must focus on whether these measures are properly structured to achieve the Commission's stated goal of a market in which the majority of customers – in all rate classes, not just some – are enjoying the benefits of the competitive market. It is not enough, the Commission has clearly concluded, for customers to be merely given a new option or program, since so many mass market customers are not participating for reasons that have nothing to do with making an affirmative decision to stay on default service.<sup>131</sup>

---

<sup>128</sup> Weekly Pennsylvania Power Switch Update, Customers Switching To An Electric Generation Supplier (as of April 11, 2012).

<sup>129</sup> *Id.*

<sup>130</sup> In its July 28 Order, the Commission stated that, "this Commission has held in the past that a truly competitive market is one in which there are low barriers to entry, many sellers, many buyers and offerings of a variety of products." July 28 Order at 4 (*quoting*, Investigatory Order entered October 6, 2005, at Docket No. I-00040103, p. 4).

<sup>131</sup> For example, the Commission has cited a number of reason for the apparent slow pace of shopping in Pennsylvania, including, (a) the unavailability of innovative product offerings, (b) the EDC being perceived as the "supplier of first resort," (c) status quo bias, (d) issues involving default supply acquisition for an entrenched customer base providing opportunities of scope and scale not available to EGSs, (e) customer acquisition costs not incurred by default service providers, (f) supply portfolios that lead to boom and bust

For that reason, the competitive enhancements must kick start competition by incentivizing default service customers who have, up to now, been reluctant to switch to an electric generation supplier (“EGS”). Each enhancement should be designed to introduce as many non-shopping customers as possible to the competitive market.<sup>132</sup>

Ensuring that market enhancement measures are properly designed and implemented is important to RESA and its members (and furthers the Commission’s goals) because it creates the beginnings of a “virtuous cycle.” The development of any competitive market requires sufficient and consistent participation such that participants conclude that the market is sufficiently sustainable that they may invest in the provision of products and services to add value to customers’ purchases. This in turn attracts more customers, which, in turn justifies additional investment, and so on. Customers obviously benefit from this process, but the resulting jobs and economic development benefits the Commonwealth’s economy as a whole. As noted, while competition has been reasonably good in some service territories in Pennsylvania,  $\frac{3}{4}$  of residential customers and almost  $\frac{1}{2}$  of commercial customers still have not switched. Thus, there is not sufficient competition to conclude that the competition that has occurred will be there for the long term. It is vitally important for the Commission to continue its efforts to encourage more customers to experience the competitive market through properly structured competitive market enhancements it has endorsed.<sup>133</sup> Just giving lip service to the enhancements but structuring them so that they are likely to be unsuccessful will have an extremely negative effect

---

cycles which prevent sustainable market entry by competitors, (g) access to customer data, and (h) the failure to fully recover the full costs of default service within the default service charge. July 28 Order at 6.

<sup>132</sup> RESA St. 2 at 7.

<sup>133</sup> *Id.* at 7-8.

on the development of competition as well as rob customers and the state of the benefits of competition.

Accordingly, RESA is recommending the following modifications which are crucial to the success of these programs:

#### Opt-in Auctions

- Apply to all non-shopping residential and small business (25kW and below) default customers;
- Allow CAP customers to participate by making the CAP benefit portable;
- Be conducted after the enrollment so that the total number of customers participating will be known;
- Have a minimum number of bidders so that one EGS (counting affiliated companies together) can serve no more than 50% of the aggregation load - with a minimum of four bidders;
- Communicate offer via a letter jointly from the EDC and the winning bidder, with the essential terms and conditions of the program being included in the letter
- Customer acceptance should be structured to be as easy as possible; for example, checking off a box on the bill payment slip, or on a card that could be sent back in the bill payment envelope, or on a prepaid postcard or via the internet
- Offer will include a \$50 bonus payment to customers to be paid by the EGS after offer acceptance and the completion of three billing cycles with electric generation service provided by the selected EGS
- Customers will have the ability to switch at any time without penalty
- RESA would be accept a 12 month term, in order to provide a product that would potentially be viewed as more attractive to customers
- RESA supports PECO's proposal for a 50% customer participation cap, since it is consistent with the Commission's *Intermediate Work Plan Final Order*. However, RESA proposes to use the total number of PECO's default service customers to calculate the 50% cap as the Commission intended.
- Competitive suppliers should have the same flexibility regarding the product offered to customers at the end of the Opt-In Auction program as they would for any other competitive product and any other retail market enhancement program considered by the Commission.
- RESA supports PECO's preference for how the opt in auction should be conducted (via sealed bid).
- EGSs should not be required to execute a separate agreement with PECO as a condition of participating in the Opt-In Auction Program. The Commission should

reject PECO's proposed Opt-In Auction governing documents, including the RFP Program Rules, Application and Opt-I Supplier Agreement. PECO should re-file these documents in a compliance filing following the Commission's final order in this proceeding, and parties should be directed to negotiate the development of the governing documents in a stakeholder collaborative involving Commission staff.

#### Standard Offer Program

- The mandated 7% discount from PECO's PTC should be an introductory offer available for four (4) months. After the four-month discount period, the rate should revert to a rate that is disclosed to the customer in a mailing from the EGS serving the customer shortly after enrollment.
- Customers are to be provided with information regarding the Standard Offer prior to enrollment and will receive notice of any change in the terms of the offer pursuant to Commission regulations.
- The existing rules applicable to what happens to non-choosing customers at the end-of term.
- The Standard Offer program should go forward at the same time as the Opt-In Auction (i.e., June 1, 2013).
- EGSs should not be required to execute a separate agreement with PECO as a condition of participating in the Standard Offer referral program. PECO's proposed referral program governing documents should be rejected and PECO should re-file these documents in a compliance filing following the Commission's final order. Parties should be directed to negotiate the development of these governing documents in a stakeholder collaborative involving Commission staff.

#### Dynamic Pricing Bid Out to EGSs

- Adopt a model that more fully relies on market forces;
- PECO should certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory;
- PECO should submit a report on the number of EGSs actually providing the service.

#### New/Moving Customer Program

- Parties should concentrate on implementing the Standard Offer referral program and the Opt-In Auction rather than the "new mover program" to the extent the latter program requires time and money to implement;
- Except, EGS service must be available immediately for new and moving customers who indentify the EGS they would like to take service from.

### Referral Program for PECO Wind Customers

- RESA supports PECO's proposal to eliminate the default service Wind program
- PECO should include promotional material from the EGS in the mailing announcing the end of the Wind program.
- PECO should share all proposed mailings and correspondence with wind program customers with interested participants in this proceeding prior to their finalization so that EGSs can provide input.

### Seamless Moves

- There should be a collaborative to work out the specifics of a seamless moves program;
- Costs of the program should not be imposed upon EGSs.

### Cost Recovery

- Direct and contingent costs incurred by the EDC or to which the EDC is exposed in its role as a Default Service Provider should be recovered from the default service customers;
- To do this, a separate charge – the Default Service Cost Recovery Charge – would apply to default service customers (5 mils/kWh) would be implemented;
- Proceeds of the DSCRC should be used to cover costs; the rest, less 10% should be credited to distribution customers; PECO may retain up to 10% as an incentive to help make its market fully competitive and to cover incremental costs.

### **B. EGS Opt-In Competitive Offer Program**

In this proceeding, PECO has proposed to conduct a one-time request for proposal (“RFP”) to select EGSs to provide competitive retail offers to PECO's non-shopping residential default service customers. Under PECO’s plan, participating EGSs will submit a binding, fixed-price bid (in cents per kilowatt-hour) to provide electric generation service for residential customers beginning after June 1, 2013, through an RFP process overseen by an independent

evaluator.<sup>134</sup> 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 as PECO had originally proposed. The offer will include a \$50 bonus payment to customers which shall be paid by the EGS after the offer is accepted and the customer has completed three billing cycles with electric generation service provided by the selected EGS.<sup>135</sup>

Winning bidders will be assigned one or more "tranches" of randomly selected eligible customers, who will then receive an offer letter from the EGS in a letter from PECO (which will include the corporate marks of both PECO and the applicable EGS). PECO has revised its bid rules to divide the eligible customers into twenty tranches, with each tranche equal to five percent of the eligible customers. Participating EGSs will be required to bid a fixed number of tranches up to a maximum of ten tranches (i.e., fifty percent of the eligible customers) pursuant to the supplier participation cap described in the Commission's Final Intermediate Work Plan Order.<sup>136</sup>

Under PECO's proposed Opt-in Auction Program, one hundred percent of PECO's non-shopping residential customers will be eligible to receive offers (excluding customers participating in PECO's Customer Assistance Program ("CAP")).<sup>137</sup> According to PECO, the number of customers eligible to participate in the program is approximately one million.<sup>138</sup> Customer participation will be limited to no more than 50% of the number of offers made by each winning EGS. In addition, participating EGSs will be required to accept customers who are

---

<sup>134</sup> PECO St. 2-S at 2.

<sup>135</sup> *Id.* at 3.

<sup>136</sup> PECO St. 2-S at 2-3.

<sup>137</sup> *Id.*

<sup>138</sup> Tr. 54.

shopping but contact PECO to request to participate in the Opt-In program. EGSs will be required to accept offers via a response post card included in the offer mailing, a toll-free phone number provided by the EGS, and an EGS website. PECO will mail the offer letters and charge winning EGSs for the costs associated with the mailing.<sup>139</sup>

RESA witness Christopher H. Kallaher made a number of recommendations to improve PECO's proposed Opt-In Auction program. These recommendations included: (a) an expansion of the program to make it applicable to all non-shopping residential and small business default customers with monthly peak demand of 25kW or below; (b) allowing CAP customers to participate by making the CAP benefit portable; (c) conducting the Opt-In Auction after the enrollment so that the total number of customers participating will be known; (d) having a minimum number of bidders so that one EGS (counting affiliated companies together) can serve no more than 50% of the aggregation load - with a minimum of four (4) bidders; and, (e) paying for the program through charges on either all default service customers (through a proposed Default Service Cost Recovery Charge) or all customers through non-bypassable charges.<sup>140</sup>

***a. Proposed Order of Auction/Enrollment***

In RESA's view, the first issue that needs to be addressed with respect to the Opt-In Auction is the order of the auction and the enrollment because the resolution of this issue affects several others. RESA opposes the proposed order of the auction relative to customer enrollment for the opt-in program. Conducting the price-setting auction before the customer enrollment period will tend to decrease the number of EGSs that will participate in the auction *and*

---

<sup>139</sup> PECO St. 2-S at 3.

<sup>140</sup> RESA St. 2 at 4.

negatively influence the robustness of the auction itself.<sup>141</sup> The proposed order would cause EGSs to incur material transaction costs and commit to actual pricing in the auction without having any idea how many customers are even available for acquisition through the auction. RESA respectfully submits that the Commission may have underestimated the negative effect these factors will play on ultimate value that is brought to customers through the auction. Maximizing that value depends to a great extent on EGS perception of the auction as an opportunity for mass acquisition of customers at a reasonable cost versus other channels. Leaving the key variable in that calculation – the number of customers available for acquisition – unknown until after both the price has been set and EGSs have incurred costs to participate in the auction can only have a negative impact on those EGS perceptions. Moreover, the opt-in proposal laid out by PECO moves this program far from what it could be, if done optimally. What was originally conceived as an opportunity to voluntarily move customers away from default service on a scale basis has now become simply a direct mail promotion that is distinguished from other marketing efforts only by its co-branding with the utility. If done as a true aggregation, in which the utility, the Commission, and EGSs aggressively promoted the opportunity to opt-in to a program that would save customers money, the program would garner a far greater customer response.<sup>142</sup> An optimal period during which customers could opt-in would also almost certainly extend beyond the 30-day period proposed by PECO, a time limit suggested mainly because of the constraint of having EGSs bid for service before size of the buying pool is known. Also, ease and ubiquity of sign-up opportunities and promotion will be critical for the success of the program. The use of a opt-in check-box on a customer's payment

---

<sup>141</sup> RESA St. 2 at 14.

<sup>142</sup> *Id.* at 15.

slip would almost certainly be the most effective means of opting-in, though PECO (and every other utility) will argue that it is difficult to accomplish operationally. The current schedule should give ample opportunity for overcoming any operational barriers. Finally, promotion of the program by the utility and - perhaps more critically - the Commission itself will persuade customers who, by definition, have not yet tested the competitive market that it is safe for them to do so, materially increasing participation. As proposed by PECO, what once held the promise of a robust means of increasing participation by previously non-shopping customers has now become nothing more than a single co-branding marketing letter with the utility. In the absence of a more effective promotional and operational plan, an outline of which RESA has proposed above, this program is not likely to result in a material increase in shopping. It is for this reason that RESA maintains that it would enhance the chances of success in the auction if customers were given an opportunity to enroll and *then* conduct the auction.<sup>143</sup>

RESA understands that adopting its recommendation regarding the order of the auction and customer enrollment is a deviation from the Commission's guidance in its *Intermediate Work Plan Final Order*. However, a departure from the Commission's guidance is justified in the case of PECO. The relatively low shopping levels for residential customers in the PECO service territory compared to more robust service territories or the shopping levels for other classes despite the number of EGSs participating in the market, creates greater risk that customers will not participate in the Opt-In Auction.<sup>144</sup>

The only direct way to alleviate this concern would be to give customers the ability to enroll first and then conducting the auction. Based on a fair reading of the *Intermediate Work*

---

<sup>143</sup> RESA St. 2 at 16.

<sup>144</sup> *Id.*

*Plan Final Order*, it appears that the Commission declined to go in this direction because they were concerned that customers would not have sufficient information about the product that they will receive if they opted in.<sup>145</sup> RESA, however, does not believe that this concern is justified. Customers would know that, if they opted in they would get a product that: 1) was at least 5% less than the then-current default service price; 2) included a \$50 bonus; and 3) could be canceled at anytime without penalty. With that knowledge, customers would be able to make a judgment about their interest in the aggregation. The positive features of the program RESA is proposing would attract a material number of customers based on the bonus and minimum price reduction, even if the final price is not known.<sup>146</sup> RESA urges this modification.

## 2. **Customer Eligibility**

### a. *Small Commercial Customers*

RESA recommends that the Commission include small business customers (with peak monthly demand of 25 kW and below) in the auction rather than waiting to see whether the residential auction is successful as suggested in the Intermediate Work Plan. Doing so would add to the potential value for EGSs and, in turn, provide added benefits to those customers. Shopping statistics in the PECO territory are not particularly encouraging and the proposed structure of the auction may be an obstacle to their success, therefore, the Commission should consider steps to improve the odds that market enhancement measures will succeed. One way to do this is to expand the available base of customers to include those small business customers

---

<sup>145</sup> *Intermediate Work Plan Final Order* at 55.

<sup>146</sup> RESA St. 2 at 16.

who are most like residential and who continue to receive default service in almost as great a number as residential customers.

PECO opposes extending the Opt-In Auction to small business customers because those customers allegedly are less homogenous than residential customers and comprise different tariff rates.<sup>147</sup> PECO also argues that shopping among small commercial customers is nearly twice that of residential customers, and presumably, there is less of a need for programs to encourage shopping among these customers. This is wrong. In RESA's experience, this segment of small business customers exhibits many of the same characteristics as residential customers when it comes to their familiarity with competitive electricity markets and their usually unfounded concerns about the effects of switching away from the EDC. These characteristics make an Opt-In Auction appropriate, and no less necessary, for this customer segment.

Also, shopping statistics for this group of customers show that more should be done to encourage shopping in the small commercial sector. According to PECO, 74,826 customers with a monthly peak load of 25kW or below take generation service from PECO, while 47,552 took generation service from an EGS as of February 29, 2012.<sup>148</sup> So, of the 122,378 small commercial customers in this category, only approximately 39% are shopping. While the percentage of shopping small commercial customers is slightly higher than the percentage of residential customers shopping (25%), clearly there is much room for improvement in this area. Adoption of RESA's proposal to include these small commercial customers in the Opt-In Auction program will surely lead to improved shopping statistics in PECO service territory.<sup>149</sup>

---

<sup>147</sup> PECO St. 2-R at 15.

<sup>148</sup> See, RESA Exhibit CHK-1.

<sup>149</sup> RESA St. 2-SR at 7.

The OSBA opposes the inclusion of small business customers with peak loads of 25kW and below because of the Commission’s guidance in the *Intermediate Work Plan Final Order* that small commercial customers should not participate in the Opt-In Auction at this time.<sup>150</sup> RESA disagrees with OSBA’s position on this issue because it is clear from the *Intermediate Work Plan Final Order* that the Commission recognized that shopping among small commercial customers needs improvement.<sup>151</sup> The Commission is interested in finding ways to encourage shopping in the small commercial segment in PECO territory – where only 39% of customers are shopping – and the Commonwealth as a whole.<sup>152</sup> Including these customers in the Opt-In Auction would serve as a significant incentive for small commercial customers to shop. And no party has raised any negative consequences to small business customers from increased shopping opportunities.

Furthermore, it should be noted that the Commission based its determination to exclude small commercial customers from the Opt-In Auction on factors that would not have a significant bearing on this proceeding. The Commission stated that,

“[b]ecause there is no consistency across the EDCs in defining ‘small commercial,’ the Commission believes it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load. The definitions vary across EDCs and, as such, do not produce comparable groups of customers when reviewing shopping offers and statistics.”<sup>153</sup>

In this statement, the Commission revealed that it was concerned with establishing a *statewide rule* where there is “wide variation” across the EDCs in the definition and the load

---

<sup>150</sup> OSBA St. 2 at 6.

<sup>151</sup> *Intermediate Work Plan Final Order* at 42.

<sup>152</sup> RESA St. 2-SR at 8.

<sup>153</sup> *Intermediate Work Plan Final Order* at 42.

profiles of small commercial customers. In the case of PECO, these variations are not a concern because this segment is more clearly defined as we are dealing with only one utility, one set of electric load numbers and more accurate shopping statistics. The Commission's apparent reluctance to establish a statewide rule should not preclude the inclusion of small commercial customers in PECO's Opt-In Auction program, especially where the Commission has expressed a belief that shopping can be improved in this sector. RESA respectfully submits that including small commercial customers would serve to address the Commission's concern with the level of shopping in the small commercial segment overall and would result in increased market activity in PECO territory among these customers.

*b. Shopping Customers*

PECO proposes that the Opt-In Auction program be open to all customers with marketing targeted to non-shopping customers.<sup>154</sup> It appears that PECO may be concerned with logistics, and the Company may not wish to monitor the mailing list that would be used to send program materials to default customers to assure that they haven't switched since its compilation. However, PECO plans to send a jointly branded enrollment offer out to customers and then, if the customer decides to enroll, the customer would contact the EGS. It would be simple enough for the EGS simply to deny the Opt-in offer to a customer who is already shopping. PECO is already proposing to limit the distribution of any solicitation materials to non-shopping customers. It need only take the additional step of including information in messaging and customer education materials about the program stating that the Opt-In Auction is only available to customers who currently receive default service from PECO. If a shopping customer contacts

---

<sup>154</sup> PECO St. 2-R at 15.

PECO to inquire about the Opt-In Auction or to elect to participate in the auction, the Company's customer service representatives would inform the customer that eligibility is limited to default service customers only.<sup>155</sup>

RESA believes that it is not appropriate to allow existing shopping customers to participate in the Opt-In Auction.<sup>156</sup> Permitting customers who have already decided to shop to nonetheless participate in the effort to encourage non-shopping customers to enter the competitive market makes no sense and could potentially result in competition taking a step back, rather than a step forward. Many EGSs that are currently serving mass market customers in PECO's service territory have invested significant financial resources in attracting these customers. These EGSs should not face the risk of losing significant market share as a result of an Opt-In Auction program whose stated intent is to encourage default service customers to shop. It is not enough to simply limit education and marketing about the program to default service customers.

PECO, in developing messaging about the program, call center scripts and other materials and protocols, should inform customers that they are not eligible for the Opt-In Auction if they are already being served by an EGS. This limitation is also important from a customer perspective. Many EGSs impose early termination fees on customers who cancel their contract early. Limiting eligibility to non-shopping customers will eliminate the risk that existing shopping customers will be subject to such penalties from their existing supplier should they chose to enroll in the Opt-In Auction.

---

<sup>155</sup> RESA St. 2 at 19.

<sup>156</sup> RESA St. 2 at 18.

OCA witness, Barbara Alexander opposed any firm rule barring shopping customers from participating in the Opt-In Auction.<sup>157</sup> Ms. Alexander believes that shopping customers who become aware of the program should not be precluded from enrolling. RESA respectfully submits that this view is misguided and incompatible with the intent of the Opt-In Auction, which is to encourage non-shopping customers to test the market. Including shopping customers in these market enhancement efforts undermines the legitimate expectations of EGSs who are taking market risks to serve customers in PECO's territory and would serve as a disincentive to EGS participation in these programs. There is no reason to treat these expectations any differently from the expectations of wholesale bidders for default service supply, which the Commission has expressed an ardent desire to protect.<sup>158</sup> For these reasons, PECO should be required to exclude shopping customers from enrolling in the Opt-In Auction program.

*c. Method of Enrollment*

RESA support a requirement that the offer be communicated via a letter jointly from the EDC and the winning bidder, with the essential terms and conditions of the program being included in the letter. Moreover, the customer acceptance should be structured to be as easy as possible; for example, checking off a box on the bill payment slip, or on a card that could be sent back in the bill payment envelope, or on a prepaid postcard or via the internet. The Commission specifically noted that opting in should be made as easy as possible.<sup>159</sup> Unless customer response is made as easy as possible, the chances for a successful auction are further minimized.

---

<sup>157</sup> OCA St. 2-R at 7.

<sup>158</sup> RESA St. 2-SR at 13.

<sup>159</sup> *Intermediate Work Plan Final Order* at 62.

### 3. Composition of Product Offer

Under PECO's proposal, EGSs participating in the Opt-In Auction 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.<sup>160</sup> The offer will include a \$50 bonus payment to customers to be paid by the EGS after offer acceptance and the completion of three billing cycles with electric generation service provided by the selected EGS. Customers will have the ability to switch at any time without penalty.<sup>161</sup> RESA does not oppose the composition of the product offer as it is consistent with the Commission's guidance in the *Intermediate Work Plan Final Order*.<sup>162</sup> However, RESA would accept a 12 month term, in order to provide a product that would potentially be viewed as more attractive to customers.

The OCA recommends that the price offered to customers should guarantee a 5% savings off the PTC during the entire term of the contract.<sup>163</sup> Ms. Alexander believes that it is inappropriate to promise savings relative to the PTC for a shorter time because this creates the risk that the customer will end up paying a rate higher than the PTC during the term of the offer. This claim is inconsistent with the Commission's *Intermediate Work Plan Final Order* and should be rejected.

In accordance with the Commission's guidance, the Opt-In Auction program should feature a 5% savings off of the then-current PTC, but the combination of the 5% savings versus the PTC in place throughout a 6 or 12-month term for the program would be problematic. It is

---

<sup>160</sup> PECO St. 2-S at 3.

<sup>161</sup> *Id.*

<sup>162</sup> *Intermediate Work Plan Final Order* at 70.

<sup>163</sup> OCA St. at 5 & 11.

important to keep in mind that the purpose of the Opt-In Auction program and similar market enhancements is to introduce customers to the potential benefits of shopping for electric supply through a program that is attractive both to customers and to EGSs. An offer with a 6 or 12-month term that guarantees a 5% savings off of the PTC for the entire term is unlikely to produce the best price for the customer because it exposes EGSs to an unreasonable level of risk.<sup>164</sup>

The risk in a 12-month term takes two forms. First, there is the risk of fluctuations in the default service price and market prices that are likely to take place over a 12 month period. Assuming that PECO's residential wholesale power procurement schedule is adopted, PECO will be purchasing some 24 tranches of power for power flow in December, 2013 and January, 2014.<sup>165</sup> EGSs are generally comfortable with this risk, as shown by their willingness to offer fixed prices to customers for terms up to or even beyond 12 months. But a 12-month "guaranteed savings product would require EGSs to not only take the risk that market prices for the power they purchase will change but that the default service rate will also change in some unanticipated manner.

The second risk is the risk presented by the EDC's reconciliation process, which can cause unpredictable fluctuations in the PTC due to timing differences in billings and consumption that are beyond an EGS's control. The Commission cited this particular risk as a justification for its proposed price of five percent off the then-current PTC: "[T]he utility's default service rate is not fully reflective of the market because it is also impacted by the reconciliation process. Predicting market prices in advance is always challenging; we think that

---

<sup>164</sup> RESA St. 2-R at 7-8.

<sup>165</sup> PECO Exh. JJM-1.

adding to this the vagaries of the reconciliation process is asking too much.”<sup>166</sup> In light of the Commission’s pronouncements on this issue, the OCA’s proposal for a 12-month guaranteed savings should be rejected.

#### 4. Customer Participation Cap

RESA supports PECO’s proposal for a 50% customer participation cap, since it is consistent with the Commission’s *Intermediate Work Plan Final Order*. However, RESA proposes to use the total number of PECO’s default service customers to calculate the 50% cap as the Commission intended. The Commission should take notice of the fact that PECO estimates that there are 1,088,035 customers who are eligible to participate in the Opt-In Auction program, and pursuant to PECO’s program rules, only 50% of eligible customers (544,068) will be invited to participate in the program.<sup>167</sup> Mr. McCawley testified on behalf of PECO that these numbers do not include CAP or small commercial customers,<sup>168</sup> which the Commission may decide are eligible to participate in the program. Excluding CAP customer and small commercial users reduces the available pool of customers who would be able to participate in the Opt-In Auction. If PECO’s proposal is approved as submitted (50% participation cap and no CAP or small commercial customers), the Commission must ensure that the proper number of customers are offered participation in the Opt-In Auction program. That is, the total number of tranches available for the Opt-In Auction should be determined on the basis of all residential customers, rather than have CAP customers excluded first and then apply the 50% limitation after that. This calculation method should be used regardless of whether the Commission

---

<sup>166</sup> *Intermediate Work Plan Final Order* at 70.

<sup>167</sup> PECO DSP Petition at 19.

<sup>168</sup> Tr. 54-59.

ultimately determines to exclude CAP customers. In other words, if CAP customers are not included in the auction, the 50% limitation should nonetheless be applied with the CAP customer count included. This will increase modestly the total number of non-CAP residential customers that can participate.<sup>169</sup>

RESA opposes the OCA's recommendation of a 20% customer participation cap.<sup>170</sup> According to Mr. Hahn, allowing 50% of eligible customers to participate in the Opt-In Auction program, as PECO proposes, will create additional volumetric risk and lead to higher prices that reflect additional risk premiums.<sup>171</sup> Mr. Hahn believes that reducing the cap on customer participation in the Opt-In Auction program will help mitigate what he perceives as increased volumetric risk to default service suppliers.<sup>172</sup> Mr. Hahn's proposal should be rejected because it is inconsistent with the Commission's *Intermediate Work Plan Final Order*. In its Order, the Commission found that "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."<sup>173</sup> The Commission rejected a lower cap (proposed by OCA) because it did not want to "impose a limit that may lead to the rejection of customers wishing to participate in the Retail Opt-in Auctions."<sup>174</sup> Indeed, imposing a 20% limit in order to "preserve" default service is 180 degrees opposite from the Commission's goal of encouraging customers to move away from

---

<sup>169</sup> There are a total of 135,00 CAP customers. PECO St. No. 6-R at 8. The additional of the CAP customers will mean the number of customers eligible to participate is 612,000 (50% of 1,223,035, which is 1,088,035 + 135,000) rather than 544,000.

<sup>170</sup> OCA St. 1 at 14.

<sup>171</sup> OCA St. 1 at 10.

<sup>172</sup> OCA St. 1 at 12.

<sup>173</sup> *Intermediate Work Plan Final Order* at 59.

<sup>174</sup> *Id.*

default service, with the goal that only a small percentage of customers would take service from this source, when they are transitioning to the competitive market, their supplier is not available or for some other short term reason.

Also, Mr. Hahn's concern that a 50% cap may lead to higher prices is also unfounded. Mr. Hahn has submitted absolutely no evidence that an opt-in auction open to just half the default service load will result in wholesale suppliers including a risk premium in their wholesale bids beyond that which they already include. Wholesale suppliers already take the risk of customers migrating from (and back to) default service. The Opt-In Auction is merely another risk - one about which they will be fully informed before they bid to supply the PECO default service load on a "full requirements" basis, whatever those requirements turn out to be. For the Commission to go beyond that and prevent or reject steps because they might result in more customers switching from default service would be antithetical to the goal of developing robustly competitive retail markets, as well as their mandate to structure default service in a way that produces the lowest price electricity rates over time. Taken to its logical conclusion, Mr. Hahn's demand that a competition enhancing measure must be limited because it might be too successful would mean that any policy that resulted in any migration away from default service or even any reduction in default load should be viewed with suspicion. That could include the use of self supply, net metering, energy efficiency programs (such as those mandated by Act 129), consumer education about competitive choice, and even the absence of measures that constrain movement away from default service, such as minimum stay provisions. In that sense, Mr. Hahn and the OCA have it exactly backwards on policy grounds. Rather than limit migration away from default service in order to prevent any incremental impact on default service pricing, RESA believes the Commission has rightly focused its efforts on decreasing the primacy of utility

default service, which will benefit all customers in the long run.<sup>175</sup> Therefore, Mr. Hahn's demand for a 20% cap must be rejected.

### 5. Supplier Participation Load Cap

RESA supports a 50% supplier participation load cap. RESA also proposes that a minimum number of four (4) bidders should be required for each auction. PECO objects to the four-bidder minimum and claims that a good auction outcome is possible with fewer bidders if there is a 50% supplier participation cap and a requirement that the bidders offer a discount of at least 5% off of the PTC.<sup>176</sup> Mr. McCawley stated that he does not want to preclude non-shopping residential customers from receiving any winning opt-in offers.<sup>177</sup> RESA disagrees with PECO's position on this point.

In the *Intermediate Work Plan Final Order*, the Commission specifically directed that the issue of minimum number of bidders be determined in each default service proceeding.<sup>178</sup> The 50% supplier load cap means that the opt in market will not be dominated by just one supplier; but diversity in EGS participation should go farther and also require at least four winners. This may help EGSs that otherwise might not be able to participate in the market to do so. For an EGS, having a critical mass of customers in a service territory is important because it provides them with the necessary economies of scale to permit them to participate in that market for the long term.<sup>179</sup> RESA does recognize that flexibility may be appropriate and, therefore, the

---

<sup>175</sup> RESA St. 2-R at 3-5.

<sup>176</sup> PECO St. 2-R at 18.

<sup>177</sup> *Id.*

<sup>178</sup> *Intermediate Work Plan Final Order* at 64.

<sup>179</sup> RESA St. No. 2 at 20-21.

Commission should have the flexibility to waive or alter this requirement if there are compelling reasons to do so.

FES opposed load caps and wrongly believes that supplier load caps interfere with the natural operation of competitive market forces, and lead to increased prices for customers.<sup>180</sup> FES believes that the best deal for customers is to allow a single bidder to supply 100% of the load if they offer the lowest price. FES has not provided any substantial evidence or justification specific to PECO to support this deviation from the Commission's *Intermediate Work Plan Final Order*.<sup>181</sup> Nor has FES shown any operational constraints that would support implementing something different from the Commission's recommendation. Moreover, FES ignored the fact that the opt-in auctions have dual goals: (1) to move customers into the competitive market; and, (2) to jump start competition.<sup>182</sup> Having a single supplier may be good for that existing supplier but it will not create the diverse competitive market the Commission is seeking and will not present an accurate picture of the diversity of suppliers that are possible in a truly competitive retail market.

#### 6. Customer Options on Product Expiration and Notice Requirements

The OCA has proposed that, at the end of the auction contract term, EGSs be required to serve customers on a fixed price month-to-month contract.<sup>183</sup> RESA opposes this recommendation by OCA witness Ms. Alexander; the standard "end of term" rules for EGSs contracts should continue to apply. After two notices, an Opt-In customer that does not respond

---

<sup>180</sup> FES St. 1-R at 5.

<sup>181</sup> RESA St. No. 2-SR at 15-16.

<sup>182</sup> *Id.* at 16.

<sup>183</sup> OCA St. 2 at 14.

to the notices or switch to any other supplier (or to default service) would be served by the Opt-In serving EGS on a month to month basis, with no early termination or switching fees permitted. Competitive suppliers should have the same flexibility regarding the product offered to customers at the end of the Opt-In Auction program as they would for any other competitive product and any other retail market enhancement program considered by the Commission.<sup>184</sup> To the extent that there are concerns about the price changes that a customer may experience at the end of the term, those concerns are better addressed through customer education, clear information about what options the customer has at the end of the term and, most importantly, the discipline of the marketplace.

Currently, EGSs are required to abide by significant customer disclosure requirements established by the Commission to inform residential and small business customers of their options. Under these requirements, EGSs must provide notice and other information to customers regarding the expiration of their initial contracts. The Commission has concluded that these requirements ensure that customers receive adequate information and notice regarding the generation services offered in the competitive market. The fact that the customer has entered the competitive market through a voluntary retail market program does not justify the imposition of additional regulatory requirements or restrictions on EGSs who desire to continue to serve those customers after the end of the retail market program. Moreover, given the fact that all active EGSs in the PECO service territory will be well aware of the expiration of the six-month term of the auction product, RESA expects that the period leading up to the expiration of the six-month

---

<sup>184</sup> RESA St. 2-R at 8-9.

term would be a time of particularly robust activity by EGSs hoping to win customers away from any suppliers serving auction customer who attempt to engage in uncompetitive pricing.<sup>185</sup>

In additions, OCA has proposed that customers participating in the Opt-In Auction receive three notices about what will occur at the end of the program.<sup>186</sup> RESA opposes this proposal because it is not necessary to have three notices; implementation of the OCA's recommendation would also add significantly to the costs of the program. RESA believes that every effort should be made to minimize the cost. Accordingly, RESA support a requirement that the offer be communicated via a letter jointly from the EDC and the winning bidder, with the essential terms and conditions of the program being included in the letter.<sup>187</sup> However, RESA does not support requiring three separate notifications about what happens at the end of the initial term as such mailings are unnecessarily expensive and onerous, particularly for an initial term of six months.<sup>188</sup> As Mr. Kallaher stated in his direct testimony, after all is said and done, the Opt-In Auction will end up being simply another "channel" to market to customers.<sup>189</sup> As such it is only marginally different than the direct mail offers that EGSs send to customers today. There is no valid reason to add additional regulatory requirements to this offer when the same requirements are not imposed elsewhere. RESA also believes that such mailings are likely only to confuse customers. Rather, as the Commission already concluded, customers should be adequately informed about the program term and what will happen upon expiration at the time

---

<sup>185</sup> *Id.* at 9.

<sup>186</sup> OCA St. 2 at 12-13.

<sup>187</sup> RESA St. 2-R at 9-10.

<sup>188</sup> *Id.* at 10.

<sup>189</sup> RESA St. 2 at 14-15.

they make their choice to participate. Consistent with the Commission's renewal guidelines, only two additional notices should be provided.<sup>190</sup>

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

RESA believes that either the sealed bid or the descending clock auction method are reasonable means by which to conduct the auction. Since PECO has experience with the sealed bid and believes that it will likely reduce costs, RESA supports PECO's preference for the opt in auction.

8. **Opt-in Auction Governing Documents ( RFP Program Rules, Application and Opt-In Supplier Agreement)**

The Commission should not adopt PECO's proposed Opt-In Auction governing documents, including the RFP Program Rules, Application and Opt-In Supplier Agreement. The details of these documents are contingent on the program design ultimately approved by the Commission and it is more appropriate to allow PECO and interested EGSs to negotiate the development of these documents, if necessary, pursuant to a collaborative process to be held after the conclusion of this proceeding. First, RESA opposes PECO's proposal that each EGS participating in the auction enter into an agreement with PECO (the proposed Opt-In Supplier Agreement in Exhibit JJM 4-S) setting forth alleged terms for serving customers in the Opt-In Auction.<sup>191</sup> RESA notes that the relationship between an EGS and an EDC is already governed by existing agreements such as the supplier tariff and the billing services agreement. Any additional agreements may conflict with or dilute the clarity of the agreements under which

---

<sup>190</sup> *Intermediate Work Plan Final Order* at 73.

<sup>191</sup> See, PECO Exh. JJM-4S.

EGSs and EDCs are currently doing business. At hearing, Mr. McCawley admitted that some of the provisions in PECO's proposed agreements are duplicative of existing requirements, including PUC licensing, PJM membership and compliance with PECO's supplier tariff.<sup>192</sup> In addition, he appeared to acknowledge that the proposed form agreement goes beyond the Opt-In Auction, including a term that requires an EGS not to have any outstanding amounts owed to PECO, and not making an exception for good faith billing disputes.<sup>193</sup> RESA also views this proposal as an unnecessary intrusion into the competitive market by an entity (the EDCs) that has no business dictating terms and conditions for retail generation service, especially considering that it has affiliated EGSs that may well participate in the auction process. Set forth in Appendix A to this brief are the proposed application and contracts, annotated with RESA's concerns. As can be observed, there are a host of provisions in these documents that are heavily slanted in favor of PECO's interests, are unreasonable or unnecessary. In particular, RESA would note provisions that prohibit a participating EGS from publicizing its participation in the Opt-In Auction without PECO's express consent (Section 8.8 of the Program Rules). This provision also states that PECO's general policy of not permitting any entity to publicize its business relationship of any kind with PECO. This is counterproductive to the successful implementation of the Opt-In Auction. Customer participation can only be achieved through aggressive marketing efforts by the Commission, PECO and winning suppliers.

Furthermore, there are several policy and program design issues that were the subject of litigation in this proceeding. The Opt-In auction program that is ultimately approved by the Commission is likely to differ substantially from the program outlined in the Opt-In Competitive

---

<sup>192</sup> Tr. at 60.

<sup>193</sup> *Id.* at 60-61.

Offers RFP and Program Rules.<sup>194</sup> Accordingly, after the Commission rules on the contested issues related to the Opt-In Auction, PECO should be directed to re-file the Opt-In Auction governing documents in a compliance filing and parties should be provided with an opportunity to negotiate the development of these documents in a good faith manner. For example, RESA would recommend a Commission staff-led effort to craft such governing documents, on a collaborative basis, perhaps using an existing vehicle such as the ongoing OCMO or RMI processes to do so.

In summary, (i) EGSs should not be required to execute a separate agreement with PECO as a condition of participating in the Opt-In Auction program, (ii) PECO's proposed Opt-In Auction governing documents should be rejected and PECO should re-file these documents in a compliance filing following the Commission's final order in this proceeding, and (iii) the parties should be directed to negotiate the development of the governing documents in a stakeholder collaborative involving Commission staff.

### **C. EGS Standard Offer Program**

The Commission directed EDCs to include a customer referral program in their default service plans, reasoning that such plans could provide an immediate and material improvement in customer shopping, and that they had been successful in other jurisdictions, notably New York.<sup>195</sup> PECO proposes to offer a program in which customers may select a participating EGS of their choice or be randomly assigned to a participating EGS. EGS participation would be voluntary, and the list of participating EGSs will be updated on a monthly basis. Participating

---

<sup>194</sup> PECO Exh. JJM 4-S.

<sup>195</sup> *Intermediate Work Plan Final Order* at 20-33.

EGSs will be activated as a Standard Offer Supplier through an application and qualification process rather than a bid process. Participating EGSs will be required to offer fixed-price generation service on a month-by-month basis for twelve complete billing cycles that is at least seven percent (7%) less than PECO's Price-to-Compare in effect at the time of customer enrollment. An applicant must be deemed qualified by PECO at least ten business days in advance of the first day of the next calendar month in order to be included on the list of participating EGSs. Under PECO's proposed Standard Offer Supplier terms and conditions, at the time of first contact between an EGS and the customer, the customer will 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.<sup>196</sup>

#### **1. Customer Eligibility**

CAUSE-PA opposes the inclusion of CAP customers in the proposed referral programs.<sup>197</sup> RESA disagrees and believes that Mr. Bertocci's stated concerns are invalid. In the same way that CAP customers should be eligible to participate in the Opt-In Auction, there is no reason that they should be excluded from receiving the benefits of competition that would result from the Customer Referral Program. As discussed in Mr. Kallaher's testimony, PECO's CAP programs are designed so that a customer is required to pay a percentage of their total bill.<sup>198</sup> A lower bill therefore either benefits the CAP customer (because they have less to pay out of their pocket) or the remaining customers who actually fund the CAP subsidy. Mr. Bertocci appears to be against including CAP customers because the program offers rates that are guaranteed to be

---

<sup>196</sup> PECO St. 2-S at 5-6.

<sup>197</sup> CAUSE-PA St. No. 1 at 18.

<sup>198</sup> RESA St. 2-R at 15.

below the PTC for a short period. However, a customer -- whether CAP or non-CAP -- makes choices in a competitive market for a variety of reasons. A customer may wish to continue to take service from a particular provider because of value added services, or because they simply like the EGS. CAP customers should not be denied that same freedom of choice.

## 2. Composition of Product Offer

PECO proposes that participating EGSs will be required to offer fixed-price generation service on a month-by-month basis for twelve complete billing cycles that is at least 7% less than PECO's PTC in effect at the time of customer enrollment.<sup>199</sup> RESA agrees with the "product" that will be offered via the Standard Offer and the random assignment if the customer does not choose an EGS (though "assignment among participating EGSs on a rotating basis" would be a more accurate characterization of RESA's view). These changes are consistent with the *Intermediate Work Plan Final Order*. But, PECO's proposal, which has the "Standard Offer" 7% discount last for 12 months is, in RESA's opinion, not consistent with the intent of the Commission. RESA respectfully submits that the Commission intended to institute a Referral Program similar to that which has been instituted in New York.<sup>200</sup> It is RESA's position that while the "Standard Offer" term could be as long as 12 months, the 7% mandated discount from the EDC's Price to Compare would only be available for four (4) months. After the four-month discount period, the rate should revert to a rate that is disclosed to the customer in a mailing from the EGS serving the customer shortly after enrollment. PECO's proposal to require participating EGSs to provide a 7% discount for an entire year in any event is not practicable and will likely

---

<sup>199</sup> PECO St. 2-S at 5-6.

<sup>200</sup> RESA St. 2 at 25.

severely limit the ability of EGSs to participate. It is well to recall that the Commission indicated that the Standard Offer term could be as short as 4 months (and as long as 12 months). RESA's position is in effect that the Standard Offer term should be 4 months, with a month to month, fixed price offer being provided for the remaining 8 months. The EGS would be required to inform the customer before the end of the 4 month period/term of the precise fixed price that he or she would receive for the remaining 8 months (which the customer would be free to accept or reject, but if they did nothing they would stay on the EGS service at the fixed price.

PECO opposes RESA's proposal of a four-month introductory period for the 7% discount. Mr. McCawley asserted that PECO chose a 12-month term for the offer to provide the longest period for a customer to lock in a rate, while maintaining the customer's ability to switch at any time.<sup>201</sup> However, PECO's proposal to have the "Standard Offer" price last for 12 months indicates a misreading of the *Intermediate Work Plan Final Order*, in RESA's opinion. Since the Commission intended to institute a referral program similar to that which has been instituted in New York, RESA maintains that while the "Standard Offer" term could be as long as 12 months, the 7% mandated discount from the EDC's PTC would only be available for four (4) months.<sup>202</sup> After the four-month discount period, the rate should revert to a rate that is disclosed to the customer in a mailing from the EGS serving the customer shortly after enrollment. PECO's proposal to require participating EGSs to provide a 12 month fixed price will likely severely limit the ability of EGSs to participate. The result of adopting such a proposal would be that that few suppliers will participate, as providing a guaranteed price against an unknown

---

<sup>201</sup> PECO St. 2-R at 9.

<sup>202</sup> RESA St. 2-SR at 16.

default service price (especially one that varies not only with market prices but also with the sometimes volatile reconciliation mechanism) is a risky proposition.<sup>203</sup>

FES witness Mr. Banks also advocated for a 12-month discount for the Standard Offer program. He claimed that such a proposal would provide customers with stability and security and avoid the risk of “teaser” rates and price increases that would frustrate new shopping customers.<sup>204</sup> RESA disagrees strongly with Mr. Banks’ position on this issue. An introductory rate for four (4) months will attract maximum participation by EGSs, giving customers more choices and more opportunity to be exposed to different types of EGS products and services after the 7% off PTC rate expires.<sup>205</sup> EGSs, including FES, are free to make longer term fixed price offers to customers if they believe that is what a particular group of customers may want. As to Mr. Banks’ disparaging comments about introductory rates, RESA would point out that he has presented no empirical evidence supporting his claim that “teaser” rates lead to higher prices that frustrate customers. The experience in New York is to the contrary. There, the New York PSC found that participants in the referral program were quite satisfied with the program and the kinds of complaints that would be expected if Mr. Banks’ concerns were well-founded did not materialize.<sup>206</sup>

### **3. Customer Options Upon Product Expiration**

OCA has proposed that customers should be returned to default service after the four-month introductory period unless they make a choice to remain with the EGS or switch to

---

<sup>203</sup> *Id.* at 17.

<sup>204</sup> FES St. 1-R at 12-13.

<sup>205</sup> RESA St. 2-SR at 19.

<sup>206</sup> *Id.* at 20.

another EGS.<sup>207</sup> Ms. Alexander's recommendation to return EGS customers to default service after the four-month introductory period is contrary to the Commission's *Intermediate Work Plan Final Order*, in stark contrast to the existing rules applicable to what happens to non-choosing customers at the end-of term, and an added obstacle to the proper and successful functioning of the referral program.<sup>208</sup> It is important to note that under the Commission's Order, customers are to be provided with information regarding the Standard Offer prior to enrollment and will receive notice of any change in the terms of the offer pursuant to Commission regulations. Moreover, there are no termination penalties or fees at any time under the program. Thus, if the customer becomes dissatisfied with the terms of the offer at any time, the customer can leave the program and choose another product, another EGS or default service. All these customer protections make unnecessary Ms. Alexander's recommendation to require that customers return to default service after the introductory period.

In addition to being unnecessary, Ms. Alexander's suggestion could very well be harmful to the development of a more robust market in PECO territory. A Standard Offer Customer Referral Program that requires the return of customers to default service after a short introductory period is likely to discourage EGSs from participating in the voluntary program and may lead to a significant limitation of options for customers. Furthermore, this requirement would also likely increase wholesale default service bid prices because it would increase the likelihood of significant reverse migration of load back onto default service.<sup>209</sup> For these

---

<sup>207</sup> OCA St. 2-R at 9.

<sup>208</sup> RESA St. 2-SR at 17.

<sup>209</sup> *Id.* at 18.

reasons, the OCA’s proposal to return customers to default service after the introductory period should be rejected.

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

CAUSE-PA witness Mr. Bertocci recommends that if a customer referral program is to be implemented, the referral opportunity should not be provided on “high bill” complaints.<sup>210</sup> RESA disagrees with Mr. Bertocci’s recommendation. The Commission specifically addressed this issue and ruled that the Standard Offer customer referral should apply to high bill complaints “only and explicitly after the customer’s [high bill] concerns are satisfied.”<sup>211</sup> While there will have to be further discussion about what it might mean for the customer’s high bill complaint to be “satisfied,” this addresses Mr. Bertocci’s concerns regarding high-bill complaint customers. If the customer’s high-bill complaint is satisfied, the low-income customer should be eligible to participate in the Customer Referral Program provided the customer meets any other eligibility requirement.<sup>212</sup>

5. **Commencement Date of the EGS Standard Offer Program**

The OCA has proposed that the Standard Offer Referral Program be eliminated or, at least, delayed until after the Opt-In Auction.<sup>213</sup> The Commission has made clear that the Standard Offer program should go forward at the same time as the opt in auction.<sup>214</sup> Ms. Alexander did not offer any apparent reason for diverging from the Commission’s guidance on

---

<sup>210</sup> CAUSE-PA St. 1 at 22.

<sup>211</sup> *Intermediate Work Plan Final Order* at 32.

<sup>212</sup> RESA St. 2-R at 15.

<sup>213</sup> OCA St. 2 at 15-16.

<sup>214</sup> *Intermediate Work Plan Final Order* at 31-32.

this issue; nor did she offer any special circumstances affecting PECO and militating for a delay. Further, Ms. Alexander did not indicate any particular basis to support for the delay of the Standard Offer program, other than her own personal preferences. RESA does not believe that the OCA's suggestions comport with the PUC's directives and therefore, to the extent that they differ from the PUC Order, they should be rejected.<sup>215</sup> RESA supports the Commission's recommended approach to implement the Standard Offer program simultaneously with the Opt-In Auction.<sup>216</sup> A simultaneous implementation date of June 1, 2013 for both programs is necessary to ensure that the Commission's objectives – namely to encourage more customers to participate in the competitive market – as outlined in the Commission's Order, are achieved in a timely manner.

6. **Standard Offer Referral Program Governing Documents (RFP Program Rules, Application, and Supplier Agreement)**

As stated above with reference to the Opt-In Auction program, RESA submits that the Commission should not adopt PECO's proposed Standard Offer program governing documents, including RFP Program Rules, Application and Supplier Agreement.<sup>217</sup> First, as a general matter, RESA is opposed to requiring EGSs to enter into unnecessary agreements as a condition to qualify for participation in PECO's proposed market enhancement programs, including the Standard Offer referral program. Additionally, several of the proposed provisions in the governing documents are questionable.<sup>218</sup> For example, Section 3.6 of the form agreement states that, "PECO in its sole discretion will evaluate each applicant using a standard protocol for its

---

<sup>215</sup> RESA St. 2 at 14-15.

<sup>216</sup> *Id.*

<sup>217</sup> PECO Exh. JJM 5-S.

<sup>218</sup> *See*, PECO Exh. JJM-5S.

completeness and satisfaction of the standard offer supplier qualifications.”<sup>219</sup> This provision gives PECO too much leeway to reject an EGS as being unqualified to participate in the standard offer program as part of an agreement that is duplicative of existing agreements between PECO and EGSs serving in its territory. Presumably, the only option an EGS would have if it disagreed with PECO’s decision to disqualify the supplier would be to file a formal complaint with the Commission.<sup>220</sup> Also, the proposed agreement seems to require that EGSs abandon its option to engage in good faith negotiations with PECO regarding changes in the law that affect provision of service and to discontinue its participation if the change required it.<sup>221</sup> Similar to provisions in the Opt-In Auction governing documents, the standard offer referral program documents contain provisions that prohibit suppliers from advertising their participation in the referral program. Such prohibition is clearly counterproductive to the purpose of the program, which the Commission has recognized should specifically allow customers to select an EGS by name. This feature of the program is meaningless if EGSs cannot advertise participation in order to prompt customers to select them for enrollment.

Furthermore, there are policy and program design issues for the proposed Standard Offer program that were the subject of litigation in this proceeding. The referral program that is ultimately adopted by the Commission is likely to differ from the program outlined in the governing documents. Accordingly, after the Commission rules on the contested issues, PECO should be directed to re-file the governing documents in a compliance filing and parties should have an opportunity to negotiate the development of these documents in good faith.

---

<sup>219</sup> *Id.*

<sup>220</sup> Tr. at 67.

<sup>221</sup> *See*, Tr. at 70-72.

In the attached Appendix “B,” RESA has set forth the provisions in the application and other documents that it opposes or submits should be modified. While many of these are identical to those raised in the context of the Opt-In Auction transactional documents, RESA is setting forth its position on the proposed Standard Offer documents for clarity.

In summary, (i) EGSs should not be required to execute a separate agreement with PECO as a condition of participating in the referral program, (ii) PECO’s proposed referral program governing documents should be rejected and PECO should re-file these documents in a compliance filing following the Commission’s final order, and (iii) parties should be directed to negotiate the development of these documents in a stakeholder collaborative involving Commission staff.

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

PECO’s proposal for an Opt-In Auction excludes CAP customers from participating in the program. PECO asserts that the Commission should allow the Universal Service subgroup of the Office of Competitive Market Oversight (“OCMO”) to consider whether PECO’s CAP customers should be included in the Opt-In Auction program.<sup>222</sup> The suggestion that this issue be reviewed by the Universal Service subgroup at OCMO should be rejected. The Opt-In Auction is a one-time program, and it is highly unlikely that the subgroup will be able to consider and make a determination on the issue before the program is implemented. If we wait until the subgroup considers this issue, we may miss the time window to include CAP customers

---

<sup>222</sup> PECO St. 2-R at 16 and 6-R at 5.

in the program. This may become a case of “choice delayed is choice denied” for PECO’s CAP customers.

RESA opposes PECO’s proposal to exclude CAP customers from the Opt-In Auction program. CAP customers could and should participate in the program if the CAP benefit they receive is made portable. The Commission indicated that the applicability of the Opt-In Auction to CAP customers should be considered in individual default service cases and that if CAP customers participate “they should not be subject to harm, i.e., loss of benefits, if they are deemed eligible to participate in the auctions.”<sup>223</sup> RESA respectfully submits that PECO’s CAP customers should be allowed to participate in the Opt-In Auction program and receive the benefits associated with the program. It should be relatively simple to ensure that CAP customers would not be “subject to harm” if they are deemed eligible to participate in the auction. Here, a CAP customer would stand to receive a \$50 bonus for participating but would continue to receive the subsidy from the programs administered by PECO, perhaps receiving their entire monthly benefit via a credit on the distribution portion of their bill.<sup>224</sup>

CAUSE-PA’s witness, Mr. Phil Bertocci, opposes RESA’s recommendation to include CAP customers in the Opt-In Auction program because he fears that higher commodity charges would cause a higher total bill for electric service.<sup>225</sup> These fears are unfounded because it does not follow that switching to competitive supply will inevitably lead to higher prices for CAP customers, especially if one considers the \$50 bonus the customer receives as part of the program. Also, Mr. Bertocci is concerned that CAP customers will “lose the security provided

---

<sup>223</sup> *Id.* at 43.

<sup>224</sup> RESA St. 2 at 21.

<sup>225</sup> CAUSE-PA St. 1-R at 4.

by regulated default service.”<sup>226</sup> However, Mr. Bertocci ignores the range of options that the competitive market offers that may well be very attractive to a low-income customer. First, EGSs may offer a fixed rate option that would hold the customer’s rate constant over 12 months or longer, while, under default service rates change quarterly. The certainty of a 12-month price may be very attractive to a low income household. In addition, EGSs are offering “value added” products and services along with energy that also may be attractive to low-income customers. Price is not the only consideration.<sup>227</sup> Lastly, if at some point, the customer becomes dissatisfied with the price she is paying for generation service, she will be free to switch to another EGS or back to default service at any time and without penalty.<sup>228</sup>

RESA respectfully submits that CAP customers, and other low income customers, should have the opportunity to make a choice regarding their electric generation supply in the same way as any other customer in PECO territory. Low-income households make decisions everyday about what products they purchase and how much they are willing and able to pay for them. They make choices about food, cell phone plans, cable service, day care and a host of other products and services without the “security” of regulated rates and prices. PECO’s CAP customers are perfectly capable of deciding whether they should accept an offer of a \$50 bonus and a 5% discount on their generation service, and whether they want to return to default service or make another choice when those terms expire. If they choose to stay with an EGS beyond the

---

<sup>226</sup> CAUSE-PA St. 1-R at 3, ln. 3-4).

<sup>227</sup> RESA St. 2-SR at 11.

<sup>228</sup> *Id.* at 12.

six-month term of a special offer, that is a perfectly valid choice that they should be allowed to make.<sup>229</sup>

**E. Additional Proposed Retail Market Enhancements**

**1. Time-of-Use Offering**

The Competition Act requires that the “default service provider shall submit to the Commission one or more proposed time-of-use rates and real-time price plans.”<sup>230</sup> Currently pending before the Commission, to satisfy this requirement, is a petition filed by PECO to approve its selection of an EGS as a vendor to provide time-of-use service for PECO's Dynamic Pricing Pilot Plan and for approval of its plan supplement which sets forth the implementation details for the TOU program.<sup>231</sup> While Reliant Energy Northeast LLC has filed a Petition to Intervene and Opposition identifying several troubling aspects of this program as proposed by PECO, RESA understands the issue presented in this default service proceeding to be focused on program elements that would apply in any *future* program, after the above referenced Pilot Program terminates and makes the following comments to apply to future programs.

Generally RESA views reliance on the competitive market to comply with the TOU requirements of the Competition Act as reasonable and appropriate and to be encouraged. Nonetheless, RESA has recommended that another reasonable way for PECO to satisfy these statutory requirements would be to adopt a model that more fully relies on market forces. As noted, these comments are not intended to supplant or interfere with any existing contract

---

<sup>229</sup> *Id.* at 11-12.

<sup>230</sup> 66 Pa. C.S. § 2807(f)(5).

<sup>231</sup> *Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304, Petition filed April 2, 2012.

between PECO and an EGS for provision of commodity services associated with PECO's TOU pilot as RESA's proposal would become effective upon expiration of any such agreement. Rather than conducting an auction, PECO could certify that one or more EGSs have agreed to offer a TOU rate to residential customers in their service territories. Each year, PECO would survey EGSs and determine whether they are or intend to offer a time-differentiated rate and whether the EGS intends to offer the product for at least 12-months. If PECO finds one or more EGSs offering such rates, PECO would post that information on a clearing house website (and refer customers to the information upon inquiry) and certify this information to the Commission. After the end of the year, the EDCs would submit a report on the number of EGSs actually providing the service. The statute also provides that the default service supplier should prepare a report (presumably to the Commission) detailing "the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices."<sup>232</sup> Rather than have the EDC compile these data and provide these opinions (which could require them to review competitively sensitive information), this data could be compiled and analyzed by either the Commission's staff or by a consultant hired by the EDCs.<sup>233</sup>

RESA's proposal should be adopted. It would be less expensive and more market-oriented. It would also be more efficient and customer-friendly than the one proposed by the Company. Time-differentiated products from EGSs are increasingly available to customers with smart or interval meters. RESA believes the intent behind this section of the law was to ensure that such options are available to customers with smart meters to ensure that this substantial upgrade in infrastructure would be used and useful.

---

<sup>232</sup> 66 Pa. C.S. § 2807(f)(5).

<sup>233</sup> RESA St. No. 2 at 30-31.

This alternative approach also has an added benefit of promoting a market-based solution and encouraging the innovation and creativity that comes from robustly competitive markets. RESA's alternative approach would allow EGSs to offer time-differentiated products based on their customer-driven view of what buyers want. One reason RESA consistently urges the Commission to use EGSs to deliver those services that are already available on a competitive basis is that there is simply no reason to believe that the regulated utility will be as effective as EGSs in designating and delivering a products that customers really want.<sup>234</sup>

For example, Direct Energy, offers a "Free Power Saturdays" product in the service territory of PPL where electric generation service on Saturdays is free (while the rate during the rest of the week is higher than the regular, non-time differentiated rate).<sup>235</sup> This rate plan has proven to be very popular, and there is an estimated 10% shift from on-peak electricity consumption by the projected consumer load on the rate which will reduce market costs in PPL by 1%.<sup>236</sup> Smart Meter technology will allow EGSs to offer innovative products or even permit a customer to design his or her own rate (within parameters). Encouraging market development of time-differentiated rates, rather than creating another "EDC-default" product will spur rather than slow down innovation.<sup>237</sup>

The statute permits this alternative approach. The Competition Act states that electric default service providers "shall *offer*" (not provide) time-of-use and real-time price plans to all customers with smart meter technology; and residential and commercial customers "may elect"

---

<sup>234</sup> RESA St. No. 2 at 31-32.

<sup>235</sup> *Id.*, citing, <http://residential.directenergy.com/EN/Energy/Pennsylvania/Pages/ELE/res-ele-default.aspx>.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

to participate in such pricing plans.<sup>238</sup> The process used in RESA’s alternative approach is only marginally different than PECO’s proposal that it select one EGS to provide the TOU service rate that the “default service provider” is required to submit to the Commission. As PECO has impliedly recognized, the law does not require that the default service provider actually provide the rate; only submit TOU rates or pricing plans to the Commission for “approval.”<sup>239</sup> So, RESA’s alternative proposal is consistent with the requirements of the law.

None of the witnesses in this proceeding expressed opposition to RESA’s recommendation.<sup>240</sup> Given the apparent agreement that RESA’s approach is less costly and more market friendly, adopting the concept and directing that the additional details be developed through a collaborative process is prudent. If the procurement process as modified by RESA is adopted and the other retail market enhancements as proposed herein by RESA are adopted, the impact should be to stimulate more market entry resulting in a greater number of offers. But, as an added benefit of RESA’s proposal, it is designed to address the situation of no such offers being available in the market at the time of the survey. If that is the situation, then PECO could revert to the “auction” approach as it proposes. There is little to lose, therefore, by adopting RESA’s recommendation in this regard.

Whether or not the Commission accepts RESA’s preferred approach of an EGS certification process to satisfy this Act 129 obligation, the Commission should make clear that, on a going forward basis, customers who are being served by an EGS time of use offer will be treated just as any other EGS customer at the end of the product term. That is, the customer

---

<sup>238</sup> 66 Pa. C.S. § 2807(f)(5).

<sup>239</sup> *Id.* Certainly, RESA’s proposal would only be accepted by the Commission upon a finding that it was consistent with applicable law.

<sup>240</sup> RESA St. No. 1-SR at 22.

would stay with the EGS, on a no-termination fee, month-to-month basis if the customer, after receiving two notices, takes no action to switch to another service. As a general rule this is the appropriate way in which to handle any end of term situation when the customer is being served by an EGS.

## 2. New/Moving Customer Referral Program

The “new/mover” program as envisioned by the PUC will have the EDC customer service representative provide general information on shopping opportunities and encourage customers (“new” and “moving” customers only) to review the available information on the PUC’s PA Power Switch website. If a customer knows the EGS from which he/she wishes to obtain service, the EDC is directed to create a “hot transfer” procedure where, once the distribution portion of the service initiation is completed, the customer would be transferred to the EGS service center to establish generation service. This form of “new/mover” referral will be available to residential as well as small business customers.<sup>241</sup> Costs for the “new/mover” program will be absorbed by the EDC and “normal EDC cost center cost recovery mechanism[s].”<sup>242</sup> The Commission also stated that it expected the “new/mover” program to be merged into the “Standard Offer Referral Program.”

PECO’s proposal for the new/moving customer referral program does not appear to follow the Commission’s guidance for this initiative. PECO intends to participate in the working group that the Office of Competitive Market Oversight (“OCMO”) was directed to establish in the *Intermediate Work Plan Final Order* comprised of EDCs and other interested parties to

---

<sup>241</sup> Defined customers with a monthly peak loads of 25kW and below.

<sup>242</sup> *Intermediate Work Plan Final Order* at 17-19.

develop appropriate call center scripts by the second quarter of 2012, with implementation no later than the fourth quarter of 2012. However, there is no mention of a "warm transfer" to an EGS for a customer who knows the EGS from which he or she wishes to take service, nor is there mention of referral to Pa Power Switch. Nevertheless, with one important proviso, RESA believes that it would be more prudent for PECO, suppliers and other interested parties to concentrate on implementing the standard offer referral program and the opt in auction rather than the "new mover program" to the extent that this latter program would require time and money to implement.<sup>243</sup> This is especially true of the "program" as PECO has described it.

The proviso is that PECO should devise a means to allow new and moving customers who already know the EGS from which they would like to take service to begin service with that EGS, without the need for a transfer away from the utility Customer Service Representative. In order to be on an equal footing with bundled utility service, an EGS's service must be available immediately for new and moving customers who identify the EGS they would like to take service from. RESA believes this functionality is essential for all rate classes. Forcing customers who know they want service from an EGS that they are able to identify to take commodity service from the monopoly default service even from a single billing cycle should be anathema to any entity that claims to support competition. Moreover, building this functionality now (which RESA witness Kallaher believes, based on the experience of ConEdison's new and moving customer referral program, would be relatively straightforward) will set the stage for a

---

<sup>243</sup> RESA St. 2 at 25-27.

more complete new and moving customer program later, which would be available even to customers who may not yet know which EGS they would like to begin service.<sup>244</sup>

### 3. Referral of PECO Wind Customers

PECO intends to eliminate its Wind program, wherein default customers are permitted to purchase power with "wind" attributes. As part of the elimination of this program, PECO Wind customers will be referred to interested EGSs who can offer these customers a "green energy" product.<sup>245</sup>

Under its proposal, PECO will begin announcements concerning the end of its Wind Program in August 2012. PECO expects to stop accepting new enrollments for the program on September 1, 2012 and to stop serving customers under the program on December 31, 2012. Prior to the cessation of service, PECO will make a one-time referral mailing to PECO's Wind customers in October 2012. Suppliers that wish to be included in this mailing must respond to a Request for Information that will be issued by PECO.<sup>246</sup>

RESA supports PECO's proposal to eliminate the default service Wind program. RESA recommends that PECO send to existing PECO Wind customers promotional material from the EGS itself, similar to the FirstEnergy customer referral mailings program that FirstEnergy has undertaken recently.<sup>247</sup> Pursuant to this direct mail program, Met-Ed and Penelec issued mailers to all residential and small business customers which included specific retail offers from

---

<sup>244</sup> *Id.* at 27.

<sup>245</sup> PECO St. 5 at 18.

<sup>246</sup> ChoosePA Wind St. 1 at 4.

<sup>247</sup> See, *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053 and P-2009-2093054, Opinion and Order entered November 6, 2009 at 20-21.

suppliers (prepared by those suppliers) choosing to participate. The program offered significant flexibility to participating suppliers and allowed them to present a wide range of offers to customers. The participating suppliers designed marketing inserts that were included in the residential and small business customer mailers. Expanding the rescheduled next mailing to include these EGS offers would significantly maximize its value by providing consumers concrete information about the options available in their area. Further, the cost of the mailings is likely to be the same or perhaps only incrementally more than what has already been directed by the Commission. Thus, the end result would be a win-win for all involved.<sup>248</sup> RESA further recommends that PECO be required to share all proposed mailings and correspondence with the wind program customers with interested participants in this proceeding prior to their finalization so that EGSs can provide input.<sup>249</sup>

#### 4. Seamless Moves

PECO has proposed a program called "Seamless Moves." This program allows a customer to move automatically with his/her supplier to a new premise when customer calls for a connection to the new premises. If customer has a contract with an EGS, the supplier goes with customer to new premises. PECO proposes to work with EGSs to define the specifics of this program.<sup>250</sup>

Although RESA welcomes the opportunity to participate in a collaborative to work out the specifics of the seamless moves program, RESA has an issue with the imposition of the costs

---

<sup>248</sup> See, Comments of RESA in Response to May 21, 2012 Secretarial Letter Regarding Consumer Education, Docket No. I-2011-2237952 (filed May 29, 2012).

<sup>249</sup> RESA St. 2 at 30.

<sup>250</sup> PECO St. 2 at 30.

of the program only on EGSs.<sup>251</sup> According to PECO, these costs are expected to be in the neighborhood of \$1.2 million.<sup>252</sup> This is a type of costs that should be borne by all customers because the functionality necessary to facilitate new and moving customers to continue with his supplier at a new premises should have been built into PECO's systems at the initiation of choice. PECO's failure to anticipate the need for this system upgrade should not result in EGSs having to pay the costs of these improvements.

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

RESA's primary proposal is to utilize a portion of a new and modest charge to the default service rate to pay for the costs related to implementing and maintaining competitive market enhancements, such as the Opt-In Auction, referral programs, and seamless moves is discussed in detail above in Section III.G.2. While this is RESA's preferred approach, if it is rejected, then RESA recommends that the cost of these initiatives be paid through a competitively neutral, non-bypassable charge assessed on all customers as explained further in the sections below. In no event should EGSs be assessed costs via the POR discount.

##### **1. EGS Opt-In Competitive Offer Program**

PECO proposes to recover the cost of the RFP process, including the cost of the independent evaluator and consultant performing the random selection of eligible accounts, and all costs associated with the development of the offer letters from the winning EGSs in proportion to the number of customers awarded to each EGS. If the RFP process does not result in any winning EGSs, PECO proposes to recover the costs of the program through a discount on

---

<sup>251</sup> RESA St. 2 at 28-29.

<sup>252</sup> *Id.* at 29, fn. 29.

purchased receivables until such costs are fully recovered.<sup>253</sup> RESA does not support either proposal.

RESA strongly opposes PECO's proposed cost recovery mechanism. PECO's proposed cost imposition on EGSs winning the auction could be seen as a reason for EGSs not to bother participating in the auction. This is because EGSs wanting to participate in the auction will need to consider that the costs which PECO proposes to assess on winning EGSs could be substantial. They also need to consider that, pursuant to PECO's proposal, the auction will be held in advance of enrollments so that EGSs will not know the number of customers at stake. This means that EGSs deciding whether or not to participate in the auction will have no idea whether they will be given an opportunity to serve any customers, let alone how much costs they may be assessed if they do serve any customers. The low levels of residential shopping create particular difficulties for EGSs to have any sense about the number of customers who will actually participate in the competitive enhancements. Expecting EGSs to participate in the program and know that they will have to pay some undefined cost when they have a very limited ability to judge whether the program will be successful could operate as a significant disincentive to their participation. If less EGSs participate in the auction, then the total customer value of the auction will not be maximized.<sup>254</sup> Such a result would not be desirable from any perspective especially since there are other more appropriate and reasonable ways to allocate the costs of this program – two of which have been offered by RESA.

For the reasons discussed above in Section III.G.2, the costs of this program should be recovered through the proceeds of a new charge added to the default service rate – the Default

---

<sup>253</sup> PECO St. No. 2 at 25; PECO St. No. 5 at 19.

<sup>254</sup> RESA St. No. 2 at 16-17.

Service Cost Recovery Charge. Alternatively, the costs of this program should be borne by all customers through a competitively neutral, non-bypassable charge assessed on all customers. These market enhancements are intended to move Pennsylvania closer to what the Commission may consider to be an optimal structure. This process can be viewed as a natural continuation of the transition to restructured markets that began in the late '90s. All the costs of initially opening retail markets in the late '90s were recovered from all electric customers. In the *Intermediate Work Plan Final Order*, the Commission indicated that it thought it was "only fair" for the EGSs to pick up the associated costs, since they were the "prime beneficiaries" of the program. While EGSs will certainly benefit to some degree if they are successful in gaining a critical mass of customers to make the process worthwhile, the primary – if not sole – justification for these enhancements should be the benefits they will bring – or at least make available – to all customers. Therefore, it is appropriate that the costs be borne by all customers, as were the costs of the original restructuring in the '90s.<sup>255</sup>

RESA opposes recovery any costs of retail market enhancements through the use of the discount by which PECO purchases accounts receivables from the EGS in the purchase of receivables ("POR") program. Through a POR program, the EDC purchases the accounts receivable of the EGS, adds the supplier's charges to the customer's distribution bill, and sends the customer one bill with all his or her electricity charges. A properly structured POR program enables competitors to efficiently and reasonably reach customers and is a critical component to establishing robust retail competition. Today in Pennsylvania, most EDCs offer a POR program. A component of the POR program is the amount by which the EDC purchases the EGS's

---

<sup>255</sup> RESA St. No. 1 at 18.

accounts receivables. In a “no discount” POR program, the EDC purchases the accounts at 100% of their value. In a discount POR program, the EDC purchases the accounts at some percentage less than 100%. For EDCs who have utilized a discount POR program in Pennsylvania, some portion of the discount may be used to: (1) recover the administrative costs to develop and administer the POR; and, or (2) recover the uncollectible expense associated with the EDC’s inability to collect 100% of the value of the accounts bought from the customer.

Pursuant to PECO’s proposal, a higher discount rate would be implemented (i.e. PECO would pay an EGS in the POR program less than 100% of the value for the accounts purchased) and the value of that discount would fund the retail market enhancement initiatives. RESA does not support this approach for a number of reasons. First, it violates the principle of cost recovery following cost causation. The purpose of the POR discount, as explained above, is to recover an EDC’s POR program implementation costs, administrative costs and/or the uncollectables associated with the purchased accounts. From the perspective of traditional rate-making, these programs have nothing to do with the costs that are intended to be recovered through the POR discount, which should reflect the uncollectible rate on supplier charges billed through utility consolidated billing. There is also no evidence that these programs would favor EGSs in proportion to the volumes they bill through utility consolidated billing, though that is how the proposed mechanism would assess those costs.<sup>256</sup>

Second, utilizing POR would result in the unintended consequence of exempting those suppliers who do their own billing (through dual billing) and could encourage those utilizing

---

<sup>256</sup> RESA St. No. 1 at 28.

POR to no longer do so because they are receiving less value for their purchased accounts.

Either consequence would not be in the public interest.

Lastly, any purchase of receivables-based assessment would unfairly and disproportionately assess competitive suppliers based on market share. In other words, the more customers an EGS has utilizing POR, the more significant the POR discount and the more the EGS will be contributing to the statewide consumer education campaign. Market share is gained in large part, by significant investments in the Commonwealth, expenditures on the part of the supplier to educate customers, increase their awareness of choice and product offerings, and to better manage their overall energy usage. Instead of receiving the benefit of these investments through the acquisition of a greater number of customers, these EGSs would be penalized in the form of being required to make a proportionally larger financial contribution to the retail market enhancements.

While RESA urges that the cost of both the Opt-In Auction and the Standard Offer program should be recovered from default service rates (via the DSCRC) or through a non-bypassable distribution charge, if some or all of the costs of these programs are to be recovered from EGSs, RESA suggests that the proposal by Dominion witness Barkas should be considered. Mr. Barkas has suggested that a “per customer” charge could be assessed for each customer served in the Opt-In Auction.<sup>257</sup> This per customer fee should be determined prior to the auction by using a projection of costs assigned to EGSs and dividing them by the projected level of

---

<sup>257</sup> Dominion Retail/IGS St. 1 at 4-5.

participation.<sup>258</sup> By establishing this “per customer cost” up front, EGSs will at least know the cost burden for which it would be responsible before it elects to bid into the Opt-In auction.

## **2. EGS Standard Offer Program**

PECO proposes to recover the costs of the customer referral programs through a discount on purchased EGS receivables.<sup>259</sup> For all the reasons discussed in the previous section, RESA does not support this approach but rather recommends that the costs be recovered from all default service customers through a new charge added to the default service rate or, alternatively, through a competitively neutral non-bypassable charge assessed on all customers. Any costs assigned to EGSs could be recovered via a “per customer” charge, as discussed in section 1 above.

## **3. Other Enhancements**

RESA recommended approach for cost recovery as discussed in the sections above should be adopted to address any other retail market enhancement programs except for those that arguably should have been part of the original unbundling and market opening effort in the late ‘90’s. A good example of such a cost is PECO’s proposed “seamless move” systems change. This enhancement will (finally) permit a shopping customer moving from one location in PECO’s service territory to another to keep their existing EGS, rather than having to transfer back to default service, as the customer is required to do today. This is a fundamental right of a customer and should not be considered some special “enhancement” for which EGSs should bear

---

<sup>258</sup> *Id.*

<sup>259</sup> PECO St. No. 2 at 29; PECO St. No. 5 at 19.

the cost. This cost should either be recovered from a non-bypassable distribution charge or in PECO's base rates via a distribution rate increase.

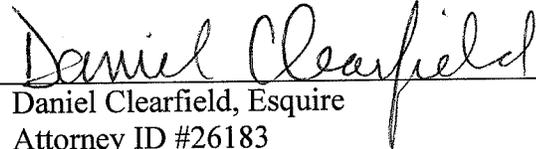
**V. OTHER ISSUES**

None.

VI. CONCLUSION

RESA respectfully requests that the Administrative Law Judge issue a Recommended Decision consistent with RESA's positions and recommendations in this proceeding.

Respectfully submitted,



Daniel Clearfield, Esquire  
Attorney ID #26183  
Deanne M. O'Dell, Esquire  
Attorney ID #81064  
Edward Lanza, Esquire  
Attorney ID #81081  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)

Date: June 18, 2012

Attorneys for Retail Energy Supply Association