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June 18, 2012

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Main Brief of First Energy Solutions Corp.* Copies of this document have been served in accordance with the attached Certificate of Service.

Very truly yours,

Brian J. Knipe
For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Dennis J. Buckley (via Email and First Class Mail)
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF FIRSTENERGY SOLUTIONS CORP.

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DATED: June 18, 2012

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I. INTRODUCTION AND PROCEDURAL HISTORY

A. Introduction/Summary of Argument

Petitioner, PECO Energy Company ("PECO"), has proposed a default service program ("DSP") to establish the terms and conditions of default service from June 1, 2013 to May 31, 2015, a period during which the Pennsylvania Public Utility Commission ("Commission") intends to transition Pennsylvania to an optimal end-state of electricity default service. In addition to proposing the terms and conditions under which it will procure and provide default service, PECO has proposed retail market enhancement programs for Residential customers, including an Opt-In EGS Offer Program ("Opt-In Program") and a Standard Offer Customer Referral Program ("Referral Program"). FirstEnergy Solutions Corp. ("FES") is a licensed electric generation supplier ("EGS") in Pennsylvania, as well as a wholesale supplier of power to default service providers, and supports the Commission's efforts to further promote retail electric competition. As FES explains below, the evidence of record demonstrates that these programs should be approved only with certain modifications recommended by FES. These modifications will ensure that the retail market enhancement programs result in a price for customers that is certain, stable and economical relative to other options.

With respect to the Opt-In Program, these modifications include the restoration of the term of the Opt-In Program contract to 12 months as PECO originally proposed. While PECO shortened the contract to 6 months in response to the Commission's issuance of its Intermediate Work Plan ("IWP") guidelines, see *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*"), the 12-month contract term PECO originally proposed will provide increased savings and a more stable product for participating customers. The parties are generally in agreement on this modification. In addition, because the Opt-In Program benefits all customers, the costs of the program should be recovered from all customers, in the classes of customers eligible to participate in the program, through a non-bypassable charge. FES disagrees with PECO's proposal to recover the costs of the Opt-In Program from winning EGSs which will act as a deterrent to EGS participation in the program. Further, FES strongly opposes PECO's contingency plan, in the event the Program is unsuccessful, to recover the costs through a discount on EGS receivables purchased through PECO's purchase of receivables ("POR") program. This proposal would unfairly allocate the costs of the programs among EGSs based on market share, including market share obtained outside of the Opt-In Program, and without regard to whether an EGS participating in POR actually wishes to participate in the Opt-In Program. Moreover, there is no relationship between the Opt-In program and the discount on purchased receivables. As FES explains below, these and FES's other modifications, to the extent they deviate from the *IWP Order*'s guidelines, are justified by good cause, including EDC operational constraints, or supported by the evidence of record and supported substantially by the parties to these proceedings.

With respect to the Referral Program, FES supports PECO's proposal that the term of the Standard Offer be 12 months, the maximum term contemplated by the *IWP Order* guidelines. This term, at a fixed price which is 7% off PECO's price-to-compare ("PTC") at the time of enrollment and remains fixed through the duration of the 12-month offer, will extend the period during which customers receive the lowest price available under the program, with stability and certainty for a longer period of time. However, FES opposes PECO's proposal to recover the costs of Referral Program from EGSs through a POR discount. Again, when costs are recovered through a POR discount, suppliers who participate in PECO's POR program but do not wish to participate in the Referral Programs will bear program costs. Rather than maximizing EGS participation in the PECO retail market to the benefit of customers, cost recovery proposals using POR discounts will discourage or limit EGS activity in PECO's service territory. The costs of the Referral Program should be paid by all customers. Even if it is ultimately determined that EGSs should bear some costs of the retail market enhancement programs, under no circumstances should costs be recovered through a POR discount.

For these and other reasons detailed below, PECO's DSP should be approved only with the modifications recommended by FES.

B. Procedural History

On January 13, 2012, PECO filed a Petition requesting Approval of its Default Service Program for the two-year period June 1, 2013 to May 31, 2015 ("Petition"). Notice of the Petition was published in the Pennsylvania Bulletin on January 28, 2012, 42 Pa.B. 642, setting a deadline of February 13, 2012 for formal protests, petitions to intervene and answers.

Notices or Petitions to Intervene were filed by the Commission's Bureau of Investigation and Enforcement; the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Philadelphia Area Industrial Energy Users Group ("PAIEUG"); ChoosePAWind; the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.; Direct Energy Services, Dominion Retail, Inc. d/b/a Dominion Energy Solutions and Interstate Gas Supply, Inc. (collectively, "DES/IGS"); FES; Exelon Generation Company, LLC and Exelon Energy Company; Green Mountain Energy Company; Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company; NextEra Energy Services Pennsylvania, LLC and NextEra Power Marketing, LLC; Noble Americas Energy Solutions LLC; PPL EnergyPlus LLC; the Retail

Energy Supply Association ("RESA"); Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia; UGI Energy Services, Inc.; and Washington Gas Energy Services, Inc.

On March 13, 2012, all parties participated in a prehearing conference before the ALJ. At the prehearing conference, the ALJ granted all requests for intervention, adopted the official service list and litigation schedule for these proceedings, and adopted modifications of the Commission's regulations regarding discovery. The ALJ's Second Prehearing Order issued March 19, 2012 approved a proposed Protective Order attached to PECO's Prehearing Conference Memorandum.

The parties took discovery and served written direct, rebuttal and surrebuttal testimony. Evidentiary hearings were held on May 22, 2012, during which various witnesses were subjected to cross-examination in connection with their written testimony and exhibits.

Pursuant to the Second Prehearing Order issued March 19, 2012 and the common briefing outline approved by the ALJ, FES hereby submits this Main Brief.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Summary of Briefing Party's Position

FES' recommendations in this proceeding focus primarily on PECO's proposed retail market enhancement programs. Therefore, FES has only a single recommended modification to PECO's proposed supply portfolio, which is described in Section II.A.1 below. This modification will result in a more stable 12-month PTC for Residential customers than PECO's proposal, thereby facilitating customer comparisons of the PTC with the price set in the Opt-In Program for an entire year. The ease with which customers will see the lower price available in the Opt-In Program will in turn facilitate increased customer participation in the program.

B. Residential Class Procurement

1. Term Length of Supply Contracts

As discussed in Section IV.B.2 below, FES witness Tony C. Banks recommends extending the length of the Opt-In Program contract from 6 months to 12 months as PECO initially proposed. As a corollary to the 12-month opt-in offer product, FES witness Banks also recommends that PECO make one adjustment to its default service procurement strategy for Residential customers. PECO proposes to procure 6-month full requirements contracts for 17 tranches of Residential customers, for a product term of June 2013 through November 2013. See PECO Ex. JJM-1. FES witness Banks proposes that PECO eliminate the 6-month contracts, and instead procure this supply with contracts covering the entire first 12 months of the DSP, beginning June 1, 2013. This will give Residential customers who are evaluating the Opt-In Program a more stable and reliable PTC to compare against the program offer for the entire 12-month duration of the program. FES St. No. 1 at 8.

PECO and the OCA oppose this recommendation. PECO witness McCawley testified that even if the Opt-In Program contract is extended to 12 months, he opposes the corollary recommendation because the 6-month default service contract is part of a carefully designed laddered portfolio, which should not be undermined by a one-time product. PECO St. No. 2-R at 9. The OCA also opposes the elimination of 6-month tranches. OCA St. No. 1-R at 3.

Neither PECO nor the OCA disputes that the substitution of 12-month contracts for 6-month contracts as FES recommends would increase price stability for Residential customers and enable them to better evaluate competitive offers matching the term of the Opt-In Program. Moreover, neither explains how the substitution of 12-month contracts for 6-month contracts would undermine PECO's Residential Supply Portfolio, or how the substitution would undermine PECO's "carefully designed laddered portfolio." FES' recommended adjustment to PECO's default supply portfolio would maximize the Opt-in Program's potential. FES St. No. 1-SR at 15. Since no party has presented evidence contradicting FES's analysis, the preponderance of the evidence is in favor of modifying PECO's proposed use of 6-month contracts with 12-month contracts for the entire first 12 months of the DSP, beginning June 1, 2013. PECO's proposed procurement plan should be modified consistent with FES witness Banks' recommendation.

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

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

C. Small Commercial Class Procurement

FES reserves the right to reply to other parties' arguments on this issue.

D. Medium Commercial Class Procurement

FES reserves the right to reply to other parties' arguments on this issue.

E. Large Commercial and Industrial Class Procurement

FES reserves the right to reply to other parties' arguments on this issue.

F. Extension of Supply Contracts Beyond May 31, 2015

FES reserves the right to reply to other parties' arguments on this issue.

G. Procurement Schedule

1. OCA's Proposal to Reallocate Tranches Between Solicitations

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

H. Load Cap

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

III. RATE DESIGN AND COST RECOVERY

A. Summary of Briefing Party's Position

FES reserves the right to reply to other parties' arguments on this issue.

B. Reconciliation of Default Service Costs and Revenues

FES reserves the right to reply to other parties' arguments on this issue.

C. EDC Recovery of Additional PJM Charges

FES reserves the right to reply to other parties' arguments on this issue.

D. Costs Included in the Generation Supply Adjustment Charge

FES reserves the right to reply to other parties' arguments on this issue.

E. Ratemaking Treatment of Auction Revenue Rights

FES reserves the right to reply to other parties' arguments on this issue.

F. Elimination of Alternative Energy Portfolio Standard Surcharge

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

IV. RETAIL MARKET ENHANCEMENTS

A. Summary of Briefing Party's Position

FES believes that programs to further promote retail electric competition should be developed in consideration of the overarching principle of being responsive to customers' preferences. Further, FES believes that, at this point in time, customers' motivation to shop is driven by a desire to receive the lowest possible price. Thus, the most important consideration in designing customer programs should be to give customers the lowest available pricing. FES St. No. 1 at 5.

FES' position regarding PECO's proposed Opt-In Program was presented by FES witness Banks. As FES witness Banks explained, FES agrees with a number of features in PECO's proposed Opt-In Program. These include PECO's proposals to (1) conduct its Opt-in Program competition after its default service supply procurement; (2) conduct its Opt-in Program competition before customer enrollment; and (3) offer a fixed-price product to customers participating in the Opt-In Program (although FES disagrees with the inclusion of a $50 bonus payment). FES St. No. 1 at 2-3. However, FES recommends certain important modifications to other aspects of PECO's proposed Opt-In Program, as summarized below.

PECO originally proposed a contract length of 12 months, but revised its proposal to 6 months in response to new Commission guidelines in the *IWP Order*. FES believes a 12-month contract term will provide increased savings and a more stable product for participating customers. Also, FES strongly opposes any artificial limits on the number of tranches an EGS can bid on in the Opt-In Program. There are ways to increase the likelihood of supplier diversity without imposing unnecessary and artificial limits on the operation of the competitive market. Such constraints result in customers not receiving the lowest possible price since the lowest price supplier is barred from serving all customers who wish to participate in the program. FES St. No. 1 at 4. Finally, PECO proposes that participating EGSs compete in the Opt-In Program through the submission of sealed bids. FES believes that competition among EGSs through a transparent descending clock auction ("DCA") process will result in a lower program price for participating customers and will increase the likelihood of maximum customer participation in the program. Also, under a DCA process, suppliers will have the opportunity to rebid lower prices, unlike the one-time bid opportunity under a sealed bid RFP process. FES St. No. 1 at 4.

FES supports the Standard Offer product that PECO proposes for its Referral Program. The product consists of a 12-month fixed price set at a 7% discount off the PTC at the time of enrollment.

However, FES opposes PECO's proposal to recover the costs of retail market enhancements from EGSs, in some instances through a POR discount. The proposed enhancements will benefit all customers in any class of customers eligible to participate, and therefore should be recovered from customers through a non-bypassable charge. Under no circumstances should costs be recovered from EGSs arbitrarily through a POR discount.

FES will discuss the above recommendations in more detail in the relevant sections below.

B. EGS Opt-In Competitive Offer Program

1. Customer Eligibility (CAP issues to be discussed in Section IV.D)

PECO proposes to restrict participation in the Opt-In Program to Residential customers. Commercial and Industrial ("C&I") customers will not be eligible. FES believes that retail enhancement programs should be available to customers in all rate classes. However, PECO's proposal is consistent with the Commission's determination in the *IWP Order*, though FES notes that the Commission stated in the *IWP Order* that it will review the success of the residential auctions and determine whether a similar program would be suitable for the small C&I sector. *IWP Order* at 42-43.

2. Composition of Product Offer

a. Contract Length

FES supports a contract length of at least 12 months, notwithstanding the Commission's six billing-cycle guideline for retail opt-in auctions in the Commission's *IWP Order*. FES St. No. 1 at 7-8. PECO, which initially proposed a 12-month contract term but shortened it to 6 months in response to the *IWP Order*, merely maintains that its proposed contract length is consistent with the *IWP Order*. PECO St. No. 2-R at 13. PECO's lack of support and belief in a 6-month term is evidenced by the fact that prior to the *IWP Order*, PECO never considered a term shorter than 12 months. PECO confirmed in discovery that any alternative designs it considered for the Opt-In Program involved one-year and two-year offers. See FES Cross-Exam Ex. 1 (PECO Response to OCA-II-11). Indeed, PECO's complete and unquestioning conformance to the *IWP Order* guidelines demonstrates its general indifference to the design of the retail market enhancement programs, with the exception of cost recovery.

The *IWP Order* encourages each EDC to examine whether each guideline is appropriate for its operations and customer base, and recognizes that EDCs may propose deviations from the guidelines contained therein, if such deviations are "justified by good cause shown, which includes showing operational constraints, or supported by evidence produced during an EDC's default service proceeding and supported substantially by interested parties in the default service proceeding." *IWP Order* at 6-7. In the subject proceeding, most parties support or do not oppose a 12-month term. DES/IGS witness Barkas testifies that DES/IGS could accept a 1-year product. Dominion St. No. 1-R at 7-8. The OCA's witness Alexander agrees with FES's recommendations for a 12-month term. OCA St. No. 2-R at 5. RESA also indicates that it could accept a 12-month term, although it disagrees with the reasons the OCA has posited to support a 12-month term. RESA St. No. 2-R at 6. While all these parties reach their respective conclusions for different reasons, it is telling that they all could support a 12-month contract term. FES St. No. 2-R at 5.

There are good reasons to deviate from the *IWP Order* guideline. PECO's program requires participating EGSs to offer a product that is at least 5% less than PECO's projected PTC for June 1, 2013. PECO St. No. 2 at 22; PECO St. No. 2-S at 3. Therefore, the initial price offered by participating EGSs is going to be favorable to customers. Extending the availability of this price to participating customers for 12 months will benefit them even more by providing 12 months of price stability. In the *IWP Order*, the Commission sought to minimize the amount of time that customers will participate in a retail opt-in auction to allow them to switch back to default service or shop for another EGS if they are dissatisfied with the price of their generation. *IWP Order* at 50. However, even if the PTC were to decline more than 5% over the 12-month period, customers would be free to leave the program for lower EGS offers, or even default service, without penalty (PECO Exhibit JJM-4-S at 9, Article 7.2). Therefore, FES believes that a 12-month program period will increase the likelihood of maximum customer participation in the program.

Further, there is no reason to believe that a 12-month term will increase risk premiums to the extent that there will be a lack of EGSs interested and able to offer 12-month products at least 5% below PECO's projected PTC for June 1, 2013. In fact, as of April 13, 2012, there were <u>at least 20 suppliers</u> offering a fixed price with contract terms of 12 months and longer in PECO's service territory on PAPowerSwitch.com. FES Exhibit TCB-1. These offers included savings greater than the 5% being discussed in the context of the Opt-in Program. Given this information, there will be substantial support among the interested parties of a 12 month term for the Opt-In Program in this case.

FES submits that the deviation from the Commission's suggested term length has been supported on the record in this proceeding and substantially by parties hereto.

b. Timing of Solicitation and Auction

FES supports holding the EGS bidding before customer enrollment. Customers will want to know the price they will receive before they decide whether to participate in the Opt-In Program, so customer solicitation after the EGS auction occurs and the price is known is appropriate and more likely to result in robust customer participation. RESA recommends that PECO conduct customer enrollment for its Opt-In Program before conducting the EGS bidding to set the price, so that EGSs participating in the bidding will know the total number of participating customers. The Commission should reject this recommendation, which is contrary to the *IWP Order*, unsupported by any evidence that it will improve EGS participation in the Opt-In Program, and is not in customers' best interests. FES St. No. 1-R at 7-9.

The Commission's *IWP Order* guidelines advise that the EGS bidding precede enrollment and RESA has not presented good cause to deviate from that approach. RESA did not consult, review or prepare any studies or analyses to determine what it calls "the negative effect" the Commission's preferred sequence of events will have on the ultimate value that is brought to customers through the auction, or that putting the price-setting auction before the customer enrollment period will tend to decrease the number of EGSs that will participate in the auction. FES Ex. TCB-3 (RESA Response to FES I-7). RESA did not provide any formal studies or analyses projecting the number of EGSs that will participate if EGS bidding precedes customer enrollment, or if customer enrollment precedes EGS bidding. Nor does RESA have any studies to support its assertion that the Commission's preferred sequence "is not likely to result in a material increase in shopping." FES Ex. TCB-3 (RESA Response to FES I-9). While RESA asserts that relatively low shopping levels for PECO residential customers justify a deviation from the Commission's *IWP Order* guidelines, the Commission was aware of shopping levels when it adopted the *IWP Order*. In the *IWP Order*, the Commission acknowledged that parties differed in their proposals as to the timing of the EGS auction relative to customer enrollment. However, the Commission stated that "One of the underlying goals of the Retail Opt-In Auctions is to assist uncertain customers in their shopping endeavors. As such, mitigating customer confusion is important to the Commission. The Commission is also concerned about a worst-case scenario in which the EGS auction does not fully subscribe all available tranches. Such a scenario could foster a negative perception toward the competitive retail markets if customers who expected auction service were not able to receive service or had to receive a different price and/or product." *IWP Order* at 55. The Commission determined that holding the EGS auction before customer enrollment is the appropriate way to address these concerns.

Also, while RESA speculates that under its proposal, customers would have sufficient information to be attracted to the program, RESA St. No. 2 at 14-16, FES respectfully disagrees. Customers want and deserve to know the price of the product they are asked to purchase. The portion of the *IWP Order* cited above shows the Commission agrees. If either party should be expected to proceed with less than perfect information, it is the EGS, not the residential customer. In the sequence recommended by the Commission and proposed by PECO, a customer will know the term, price and supplier – all information the customer would know if making a choice among supplier offers, but with the advantage that the customer will not have to compare offers to determine which one is best. Finally, it is unclear how reversing the sequence would resolve RESA's concerns with EGSs knowing the number of participating customers, since a customer who has opted in could subsequently leave the program before the price-setting auction, e.g., for a better EGS offer. FES Ex. TCB-3 (RESA Response to FES I-10). Shockingly, RESA's witness is not even aware of whether any RESA members actually support his recommendation. FES Ex. TCB-3 (RESA Response to FES I-7(c)). RESA's proposal is designed to provide benefits to suppliers at the expense of benefits to customers. Therefore, FES recommends the Commission reject this proposal.

PECO's proposed schedule strikes an appropriate balance among the different interests involved in the complicated process of putting the Commission's retail enhancements in place. Bidders in wholesale default service procurements are experienced (or should be) in calculating the risks involved in procurements where the numbers of customers may vary before and during the term of their contracts, so it is appropriate to hold the default service auctions first. Customers will want to know the price they will receive before they decide whether to participate in the Opt-In program, so customer solicitation after the EGS auction occurs is also appropriate. EGSs are knowledgeable industry participants who will be able to decide whether the Opt-In Program is an attractive proposition based on their business models. See FES St. No. 1-R at 9. Finally, FES notes that PECO's proposed schedule is consistent with the *IWP Order* guidelines, in which the Commission correctly notes that the schedule proposed by PECO will mitigate customer confusion and prevent a negative perception if the EGS auction does not fully subscribe all available tranches with the result that some customers who opt in to the auction either will not receive the service or receive a different price and/or product. *IWP Order* at 55.

c. Bonus Payments

PECO proposes that winning EGSs provide their customers with a $50 "bonus" payment if they remain with the EGS for three billing cycles. PECO St. No. 2-S at 3.[1] FES witness Banks expressed FES's disagreement with bonuses in qualifying FES's support for PECO's proposal to offer a fixed-price product in the Opt-in Program. FES St. No. 1 at 3. FES is concerned that recovery of the costs of retail market enhancement programs from EGSs, coupled with the bonus payment requirement, will have an adverse impact on the overall number of EGSs that choose to participate in the Opt-in Program. FES St. No. 1 at 11. Proponents of bonus payments claim that such bonuses are appropriate in part because they represent customer acquisition costs that EGSs will avoid. *IWP Order* at 64. However, if EGSs must pay a bonus and the costs of the program as well, a significant benefit of the program from the EGS's perspective is lost. Requiring EGSs to pay bonuses in addition to program costs will discourage EGS participation, and will put at risk the program's effectiveness in increasing shopping in the PECO territory. FES St. No. 1 at 12.

Finally, FES disagrees with RESA's suggestion that the Commission has already decided this issue definitively. RESA St. No. 2-R at 12-13. While the Commission issued guidelines through the *IWP Order*, the Commission took pains to avoid prejudging any of these issues by recognizing exceptions to its guidelines for good cause. The Commission's guideline was based on information that a $50 bonus is a "unique feature" unlike anything already offered in the market. *IWP Order* at 69-70. However, FES Ex. TCB-1 demonstrates that as of April 13, 2012,

[1] While PECO's Supplemental Direct Testimony states that the offer "may" include a $50 bonus payment to customers, PECO St. No. 2-S at 3, PECO clarified in discovery that the $50 bonus payment is required in the EGS's offer, and that the "may" is intended to indicate that the customer's receipt of the $50 bonus payment is conditioned on (1) the customer's acceptance of the offer, and (2) the customer's remaining with the selected EGS for three complete billing cycles. FES Ex. TCB-2 (PECO Response to FES-I-11).

there were two EGSs offering $50 incentive payments to customers. These include Gateway Energy Service Corporation, which offers a $50 Visa Prepaid Card to customers signing up online, and Verde Energy USA, Inc., which offers new customers a $50 cash back bonus rebate. Because the proposed bonus payment would not offer customers anything unique as the Commission intended, FES submits that good cause exists to eliminate it.

FES questions the probative value of the unspecified evidence compiled by focus groups and surveys which RESA references as the support for its position. RESA St. No. 2-R at 12. Most notably, RESA does not provide <u>any</u> specifics regarding these studies, such as the time, place, participants, methodology, or even the industry being studied. A bald and unsupported claim that a party has focus groups or surveys, without any context, support or specifics, means nothing.

3. Customer Participation Cap

PECO proposes to include a 50% customer participation cap consistent with the *IWP Order*. Most parties support the customer participation cap proposed by PECO, with the exception of the OCA, which proposes a customer participation cap of 20%. FES does not support any participation caps in the Commission's retail enhancement programs and contends that every customer is entitled to shop for electricity supply without arbitrary limitations or restrictions (see Section 7. below). Although FES does not support a customer participation cap, it recognizes that PECO's proposal is consistent with the *IWP Order* recommendation on the issue.

The OCA proposes that the customer participation cap be limited to 20% of Residential customers. The OCA is the only party proposing such a low percentage for a customer cap. The OCA's rationale for its proposal is that it recognizes the risks involved in substantially reducing the amounts wholesale suppliers will bid on for the default service auction, while allowing customer participation in the Opt-In Program. OCA St. No. 1 at 10-12. The OCA's proposal reflects its interest in maintaining what it perceives as the viability of the current default service structure at the expense of the Opt-In Program. The OCA's proposal would artificially limit customer participation in the Opt-In Program in favor of maintaining the current default service paradigm for non-shopping Residential customers. However, imposing such a low customer participation cap will discourage EGSs from participating in the Opt-In Program, particularly if other parties' recommendations are adopted whereby participating EGSs have to bear the costs of the auction and/or a bonus payment is involved. FES St. No. 1 at 11-12. FES contends the OCA's proposal is not in customers' interests, is contrary to the Commission's intent as expressed throughout the Commission's Retail Markets Investigation ("RMI") and in the *IWP Order*, and should be rejected.

4. Supplier Participation Load Cap

PECO's proposed bid rules divide eligible customers into twenty tranches, with each tranche equal to 5% of eligible customers. PECO proposes to require EGSs to bid a fixed number of tranches which is limited to a maximum quantity of ten tranches (i.e., 50% of eligible customers). PECO St. No. 2-S at 3, Ex. JJM-4S ¶ 1.4. PECO, however, acknowledges that the Opt-In Program could be conducted with a higher cap or no cap at all. PECO St. No. 2-R at 18.

FES is aware of the 50% cap included in the Commission's *IWP Order* guidelines. However, FES is strongly opposed to any supplier caps. FES opposes any artificial limits on competition, which would include supplier participation in retail market enhancement programs.

In response to discovery concerning the benefits to customers of the proposed 50% cap, PECO only referenced the *IWP Order* and the Commission's rationale in that Order. FES Ex.

TCB-2 (PECO Response to FES-I-4). In the *IWP Order*, the Commission expressed its belief that a 50% cap is the appropriate level to strike a balance between ensuring that a diverse array of EGSs are able to participate and enjoy the potential benefits of retail opt-in auctions and providing the lowest possible pricing to consumers. *IWP Order* at 63. However, there are numerous offers currently available to residential customers in PECO's service territory. FES Exhibit TCB-1 consists of screen shots of the supplier offers on PAPowerSwitch.com that were available to customers in PECO's service territory as of April 13, 2012; a total of <u>41</u> different suppliers were listed, many with multiple offers available. The fact that many suppliers already compete in the PECO service territory indicates that the Opt-In Program will attract vigorous EGS competition without the need to impose any supplier load cap. A supplier load cap will guarantee that some customers will not receive the lowest possible price through PECO's Opt-In Program.

Supplier diversity is certainly an important factor in building a competitive retail market, but load caps are not the best way to achieve the balance the Commission seeks through the *IWP Order*. FES' recommendation below for a descending clock auction ("DCA") process, instead of the proposed sealed-bid RFP, will further increase the likelihood of supplier diversity in PECO's Opt-In Program. Another important factor in building a robust retail market is getting customers the best pricing available in the marketplace. This is accomplished by allowing the markets to work without artificially limiting competition among participants. Supplier load caps interfere with the natural operation of competitive market forces, which Pennsylvania, through the Competition Act, has recognized to be more effective than regulation in controlling the cost of electric generation service. 66 Pa. C.S. § 2802(5).

DES/IGS asserts that the lack of a supplier load cap could result in a single supplier being able to serve all customers in a particular service territory merely by being able to bid the lowest price on a single day of the year.[2] DES/IGS further asserts that suppliers should be competing based on their entire service offering and not just the price. DES/IGS St. No. 1-R at 2-3. First, FES respectfully disagrees with the assertion that an Opt-In Program with no supplier load cap could enable a single supplier "to serve all customers in a particular service territory merely by being able to bid the lowest price on a single day of the year" DES/IGS St. No. 1-R at 2. While no load cap might result in one EGS serving all the customers in the Opt-In Program, it could not result in one supplier serving all customers in PECO's service territory. DES/IGS's claim overlooks at least three important considerations: (1) as illustrated by FES Exhibit TCB-1, shopping Residential customers in PECO's service territory are already served by numerous EGSs, and these customers would not participate in the Opt-In Program; (2) PECO has proposed a cap limiting customer participation in the Opt-in Program to 50% of residential default service customers; and (3) even those default service customers awarded to an EGS through the Opt-In Program may switch at any time to another EGS. Even if a customer must remain with the winning EGS for 3 months to receive the $50 bonus PECO proposes to include in the Opt-In Program, a competing EGS might offer its own $50 bonus or another more attractive product outside the Opt-In Program, to attract customers away within the first 3 months. FES St. No. 1-SR at 9.

Second, DES/IGS's criticism that suppliers should be competing based on their entire service offering and not just the price overlooks the fact that price is the sole determinative factor for winning bidders in the Opt-In Program. Participating EGSs are competing on the basis of

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[2] It is worth noting DES/IGS' concession of FES' point that its proposal will result in customers receiving the lowest available price.

nothing other than price, and any artificial limit on the number of customers the lowest bidder may win absolutely ensures that the clearing price will be higher than it could and should be. Third, FES disagrees with any suggestion that the absence of a supplier participation cap might dissuade many suppliers from engaging in robust competition to serve participating customers. The important consideration in evaluating supplier diversity should be whether there are a sufficient number of supplier participants who will compete to serve customers at the lowest price, not whether a supplier wins too many customers. The former ensures that a retail market enhancement program gives customers the lowest available pricing, while the latter does not. FES St. No. 1-SR at 9-10.

RESA, in addition to supporting PECO's proposed 50% supplier participation cap in its Opt-In Program, proposes an additional requirement of at least four (4) winning bidders to ensure supplier diversity. RESA's proposal is not supported by the *IWP Order*, lacks *any* factual support and would not be in the best interests of customers. Any artificial limit on the number of customers that a supplier may serve interferes with the natural operation of the competitive market, and ensures that customers do not receive the lowest price. FES St. No. 1-R at 5. The most important consideration in designing programs to further promote retail electric competition should be to give customers the lowest available pricing. This is best accomplished by assuring that there is a robust competitive process that includes multiple suppliers rather than by limiting the number of customers a supplier may win in that competitive process. FES St. No. 1-R at 5-6. Further, RESA's proposed minimum winning bidder recommendation lacks any factual basis. RESA confirmed in discovery that its perceived need for at least four winning bidders is not based on any formal study, but is speculative and based merely on unspecified observations of competitive dynamics. FES Ex. TCB-3 (RESA Response to PECO(RESA)-II-

10). Finally, RESA does not explain or demonstrate in any way how requiring a minimum number of winning bidders could provide a number of EGSs a "sufficient customer base"[3] to provide them with the necessary economies of scale that would permit them to participate in the PECO market for the long term. Given the opportunity to expand on its claims, RESA simply offered the unsubstantiated assertion that a larger number of winning bidders gives a larger number of EGSs the opportunity to gain scale in the PECO service territory, FES Ex. TCB-1 (FES I-6). Again, but not surprisingly, RESA's witness does not know whether this recommendation reflects the position of any individual RESA member. FES Ex. TCB-1 (FES I-6(d)). Therefore, the Commission should reject this recommendation.

5. Customer Options on Product Expiration and Notice Requirements

PECO proposes that at the end of the contract term for the Opt-In Program, the opt-in EGS must provide the notices required by the Commission's regulations at 52 Pa. Code § 54.5(g)(1). The Companies' proposal is consistent with the *IWP Order*, which follows current Commission guidelines. The guidelines provide for two notices to customers, one fifty-two to ninety days before the end of the program and the other at least forty-five days before the program ends. The latter notice will provide new terms and conditions for service and a date by which the customer must take action. If the customer does not do so, the guidelines provide that the customer will remain with the supplier on a month-to-month basis, without the risk of the imposition of termination penalties or fees. *IWP Order* at 73-75.

FES supports this portion of PECO's proposal. As the Commission stated in the *IWP Order*, customers subject to these conditions will have already affirmatively made the choice to

[3] In discovery, RESA could not define the number of customers that might constitute a "sufficient customer base" for any EGS. FES Ex. TCB-3 (RESA Response to PECO(RESA)-III-14 and FES I-6(a)).

participate in the Opt-In Program and will have received all required notices advising them that a change in terms and conditions will occur, what those changes will be and what options are available to them.

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

PECO proposes a one-time sealed-bid RFP process. PECO St. No. 2 at 22; Ex. JJM-4 Article 4; PECO St. No. 2-S at 2. FES disagrees with the use of a sealed-bid RFP for the Opt-In Auction, and proposes that a descending clock auction (DCA) format be used instead. FES St. No. 1 at 4, 14-16; FES St. No. 1-SR at 3, 10-12. A DCA will result in a lower price for participating customers by allowing participating suppliers to see indicative price information and adjust their bids accordingly in real time. This transparency and flexibility enables bidders to know where they stand during the process and to bid more aggressively against other bidders to secure the opportunity to serve customers, driving down the ultimate price to the customer. This in turn will attract more customer participation. FES St. No. 1 at 14. Thus, the DCA creates an effective price discovery mechanism: prices decline in response to supply being bid, and bidders can adjust their bids accordingly. The descending-price clock format provides the price transparency that facilitates effective and efficient bidding among all bidders. The price signals provided through the process enable bidders to bid confidently and aggressively (i.e., at lower prices).

In contrast, participants in a static, sealed-bid RFP submit bids without the benefit of receiving indicative price information. Without transparent price information to guide their decisions, suppliers bid tentatively, notwithstanding their ability to submit multiple bids. The DCA provides meaningful price signals and allows bidders to gain information about the value of what they are bidding on, reducing risks for bidders and encouraging them to bid lower prices. A sealed-bid process does not provide these price signals, thereby increasing risks faced by bidders and discouraging them from bidding lower prices. Speaking figuratively, participants in the sealed-bid RFP will be taking shots in the dark. The sealed-bid RFP runs counter to the notion of enabling competitive market forces to drive down the cost of electricity for customers. This will hinder efforts to secure the lowest price for the retail market enhancement products designed to foster more retail competition. FES St. No. 1 at 14.

The potential adverse impact of a sealed-bid RFP on retail competition is illustrated by an example PECO provided in response to discovery. FES St. No. 1 at 15-16; FES Ex. TCB-2 (PECO Response to FES-I-3 (REVISED)). As illustrated in the example of a sealed-bid RFP provided by PECO, and discussed by FES witness Banks, a bidder whose bid indicated a willingness to serve 10 tranches at the same price of 6.06 cents/kWh lost and will not win any customers. In a DCA, however, that bidder would have seen indicative price information and had the ability to adjust its bid(s) accordingly in real time. However, since there is no opportunity for the bidder to provide a lower bid for any of the tranches it is willing to serve, it is simply excluded from serving participating customers. Accordingly, use of a sealed-bid RFP frustrates at least one other goal of the Commission in implementing retail opt-in auctions, i.e., supplier diversity, while a DCA gives EGSs additional opportunities to increase the likelihood of supplier diversity and lower prices. See FES St. No. 1 at 15-16.

PECO retained Dr. LaCasse for the purpose of testifying in support of PECO's proposal to procure fixed-price full requirements supply through an RFP process. PECO St. No. 4 at 5. Although Dr. LaCasse had not provided direct testimony in support of PECO's proposal to use a sealed bid RFP for its Opt-In Program, and had no involvement in the development of the Opt-In

Program design, PECO called Dr. LaCasse to provide Rebuttal Testimony in opposition to FES's DCA recommendation. At hearing, Dr. LaCasse provided oral rejoinder by reading a prepared statement, through which she purported to address the issues raised by FES. However, in her statement Dr. LaCasse did not indicate a preference for either bidding format. In fact, Dr. LaCasse stated that she "ha[s] not offered a general statement as to which mechanism will result in a lower price," that "the auction literature does not offer simple answers as to which auction format yields a lower price," and that she "do[es] not testify whether DCAs or sealed-bid RFPs are more expensive as a general rule." Tr. 86, 89-90.

In response to FES witness Banks' testimony that the DCA will result in a lower customer price, FES St. No. 1 at 14, Dr. LaCasse explained how a DCA creates head-to-head competition <u>to create a low price</u>:

> A descending clock auction would typically feature a high starting price to attract bidder interest. Over the course of many rounds, bidders compete to bring prices down to levels consistent with the market. Each round, bidders would obtain indicative price information: the more rounds, the more indicative price information; and conversely, the fewer rounds, the less indicative price information.

Tr. at 87.

According to Dr. LaCasse, this type of competition will not occur in the Opt-In Program because bidding must begin with a price at least 5% below the PTC:

> In the opt-in program, price must be at least five percent below the price to compare. The starting price for DCA will not be high and there may not be significant price discovery. There may not be many rounds, as competition will be limited to only those EGSs willing to supply at that price. In fact, it's possible that interest from EGSs will be just sufficient for the tranches available. In that case, the descending clock auction would close at five percent under the prevailing price to compare. The DCA would not yield indicative price information in that case. It's also possible that interest from EGSs would not be sufficient to fill all

> the tranches. Again, in that case, the DCA would close at five percent under the prevailing price to compare and the DCA would yield no indicative price information. In those cases, a sealed-bid RFP would be expected to yield a lower price.

Tr. at 87-88. Judging from the above testimony, it is apparent that Dr. LaCasse's rejoinder is based on the assumption that only a few EGSs are willing to supply at a price lower than 5% below the PTC. However, this assumption is proved incorrect by the evidence of record. As shown in FES Exhibit TCB-1, there were 41 suppliers offering retail service in PECO's service territory as of April 13, 2012; of those 41 suppliers, 20 offered a 12-month fixed price product, and eighteen of those 12-month fixed price offers included a price at least five percent below the then-current PTC. In fact, five of those 12-month fixed price offers were *at least twenty percent* below the PTC. Therefore, Dr. LaCasse's assumption that limited supplier support exists for the five percent PTC discount is clearly incorrect.

The current supplier activity in PECO's service territory clearly shows that bids under a DCA will likely begin at the five percent discount-to-PTC level, and the open and transparent bidding will drive down the price well below this threshold. A static, one-time sealed bid RFP process cannot achieve this lowest possible price, and if the lowest possible price cannot be achieved, the Opt-In Program will likely fail. The Opt-In Program is supposed to induce non-shopping customers to move to retail service, and those customers have already indicated resistance to shopping at the level of current offers.

In response to FES witness Banks' testimony that a DCA is not, in his opinion, more expensive to run than a sealed bid RFP (FES St. No. 1-SR at 12), Dr. LaCasse did not testify whether DCAs or sealed-bid RFPs are more expensive as a general rule. Tr. at 90. Rather, Dr. LaCasse stated that "[w]hat is relevant is whether a sealed-bid RFP would be less expensive and a DCA would be more expensive *for PECO*," and that a sealed-bid RFP would be less expensive in this case because it is "a bidding process with which it is familiar." Tr. at 90. While FES understands that PECO already uses the sealed-bid format for its default service procurements, *PECO's customers* will be better served by the use of a DCA in the Opt-In Program.

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

FES reserves the right to reply to other parties' arguments on this issue.

C. EGS Standard Offer Program

1. Customer Eligibility (CAP issues to be discussed in Section IV.D)

FES reserves the right to reply to other parties' arguments on this issue.

2. Composition of Product Offer

FES believes the Referral Program contract should have a 12-month term with the 7% discount off the PTC at the time of enrollment applicable for the entire term. Therefore, FES supports PECO's proposal of a 12-month standard offer at a fixed price at least 7% less than the PTC at the time of enrollment. PECO St. No. 2-S at 5. As FES witness Banks explained, a 12-month term will offer customers the discounted program price with stability and certainty for a longer period of time. In addition to price stability and certainty, the program proposed by PECO allows customers to leave the program at any time without incurring penalties or fees. FES St. No. 1-SR at 13-14. Similarly, DES/IGS asserts that a 12-month contract is appropriate because it provides meaningful savings and price stability. DES/IGS St. No. 1-R at 9. The 12-month product PECO proposes is consistent with the Commission's *IWP Order* guideline that the standard offer should be provided for a minimum of four months, but should not exceed 1 year. *IWP Order* at 31.

The Commission should reject the OCA's recommendation that the Referral Program contract length be only 4 months. According to the OCA, a 12-month contract *could* end up costing participating customers more for service than if they had remained on default service due to quarterly changes in the PTC. OCA St. No. 2 at 16. This recommendation is speculative at best, as suggested by the OCA's use of "could." To the extent this *could* happen, it is adequately addressed by the customer's ability to terminate the Standard Offer contract without penalty and enter into another EGS contract or return to default service. The OCA further claims it is not clear why PECO is proposing a 12-month contract term for the Referral Program since this program feature was not included in the Commission's *IWP Order*. OCA St. No. 2 at 16-17. It is unclear on what basis the OCA claims PECO's proposal is contrary to the Commission's guidelines in the *IWP Order*, which plainly contemplate a contract term of up to 1 year:

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

IWP Order at 31 (emphasis added).

Also, the Commission should reject RESA's recommendation that the term of the Standard Offer can be as long as 12 months, but the 7% mandated discount from PECO's PTC should be an introductory offer available for only four months. RESA St. No. 2 at 25; RESA St. No. 2-R at 14.[2] RESA's proposal is simply a four month contract disguised as longer-term. Short-term "introductory" or "teaser" rates would likely lead to offers that increase the price after the introductory period expires, leading to customer frustration with the shopping experience.

[2] RESA submitted Errata correcting references on page 14 of its Rebuttal Testimony that read "3 months" to instead read "4 months." RESA St. No. 2-R at 14 and Errata.

Customers should not be forced to make another shopping decision after only a few months. FES St. No. 1-R at 13. RESA's recommendation would require participating customers, who have little or no experience with shopping, to understand that their price will change after a few months in the Referral Program. If RESA's proposal were adopted, FES believes participating customers would likely not look back fondly on their first shopping experience. FES St. No. 1-SR at 13-14. The Commission's resistance to short-term introductory rates is demonstrated by its adoption in the *IWP Order* of a guideline providing for a term of up to 12 months, and its reference to the 7% off product as a “constant price” during the term of the standard offer:

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

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

IWP Order at 31 (emphasis added). There is no indication that the length of the discount should be any less than the length of the contract.

RESA witness Kallaher testified that RESA's proposal is consistent with the intent of the Commission to institute a referral program similar to that instituted in New York. RESA St. No. 2 at 24. Under the program implemented by the New York Public Service Commission, customers are offered a 7% discount off their standard service offer for a period of two (2) months. After that time, the customer can return to default service or continue with the same or a different EGS. Although the Commission adopted certain components of the New York program, it did not adopt every aspect of that program. Among the components the Commission did not adopt is New York's emphasis on short-term introductory rates. FES St. No. 1-R at 12-13. As FES witness Banks explained, the short-term introductory rates of the New York program have not been successful in promoting residential retail competition. From December 2005 when the New York customer referral programs were adopted to August 2011 (when the last migration data is available), New York residential shopping did not increase significantly, and the impact of the referral program on the shopping increase cannot be determined. FES St. No. 1-R at 13; FES Ex. TCB-4. In fact, Pennsylvania residential shopping, without the benefit of a customer referral program, has already surpassed residential shopping in New York, with its short-term introductory rate referral program model. FES St. No. 1-R at 14; FES Ex. TCB-5. The individual efforts of EGSs in Pennsylvania, and the continued focus of the Commission, consumer groups and EDCs, have done more to promote shopping than the short-term introductory rates of the New York model. FES St. No. 1-R at 14.[4]

Another reason that short-term introductory rates are less problematic in New York than they would be in Pennsylvania is because in New York, default service rates for Residential customers adjust on a monthly basis. See Case 06-M-1017, *Proceeding on Motion of the Commission as to the Policies, Practices and Procedures for Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers*, Order Requiring Development of Utility-Specific Guidelines for Electric Commodity Supply Portfolios and Instituting a Phase II to Address Longer-Term Issues (issued April 19, 2007), slip op. at 10 ("Under current utility commodity charge mechanisms, the commodity rates billed to mass market customers are monthly average prices."); see also Case 96-E-0897, *In the Matter of Consolidated Edison Company of New York, Inc.'s Plans for (1) Electric Rate/Restructuring Pursuant to Opinion No. 96-12; and (2) the Formation of a Holding Company Pursuant to Public Service Law, Sections*

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[4] RESA points to the lack of slamming complaints as evidence that the New York model is a success. RESA St. No. 2-SR at 19. Suffice to say that a program's success should not be measured by the number, or lack, of complaints it generates.

70, 108, 110, and Certain Related Transactions, Order Concerning Con Edison Filing of Market Supply Charge (MSC) and Monthly Adjustment Clause (MAC) Mechanism (issued April 24, 2000), slip op. at 3, 11 (Adopting Staff recommendation to approve MSC with monthly reconciliations for full service customers). Since New York Residential customers are accustomed to default service rates that change monthly, they may be more amenable to a Commission-sponsored short-term introductory rate. This is not the case for Pennsylvania Residential customers.

RESA witness Kallaher also asserts that requiring participating EGSs to provide a 7% discount for an entire year will likely severely limit the ability of EGSs to participate. RESA St. No. 2 at 24-25. This assertion is speculative at best, and not based on any studies or reports. FES Ex. TCB-3 (RESA Response to FES I-12). In fact, as FES Exhibit TCB-1 clearly illustrates, the evidence of record shows that this assertion is simply wrong, since many suppliers already have made fixed-price offers in excess of a 7% discount in PECO's service territory. Finally, once again, RESA witness Kallaher confirmed in response to discovery that he is not aware whether his recommendation reflects the position of any RESA member. FES St. No. 1-R at 12-14; FES Ex. TCB-3 (RESA Response to FES I-11).

RESA witness Kallaher further asserted his understanding that, notwithstanding the language of the *IWP Order*, the Commission did not intend to make the discount available for 12 months, and that this view is based on the discussions within the customer referral program sub-group in the Commission's RMI. FES Ex. TCB-3 (RESA Response to FES I-11). However, the discussions of a sub-group cannot be considered evidence of the Commission's intent. Contrary to RESA's assertion, several elements of the sub-group's deliverable were not adopted in the *IWP Order*. FES St. No. 1-R at 12.

3. Customer Options Upon Product Expiration

FES supports PECO's proposal that at the end of the Standard Offer, customers and suppliers will be subject to all standard renewal notices as required by the Supplier Tariff and Commission guidelines. The Commission should reject the OCA's proposal that, absent affirmative action by the customer, the customer should be transferred back to default service. OCA St. No. 2 at 6, 17. Requiring the return of customers to default service at the end of the Standard Offer will hinder the promotion of retail competition and discourage EGSs from participating in the Referral Program. RESA St. No. 2-SR at 18.

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

FES reserves the right to reply to other parties' arguments on this issue.

5. Commencement Date of the EGS Standard Offer Program

FES reserves the right to reply to other parties' arguments on this issue.

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

FES reserves the right to reply to other parties' arguments on this issue.

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

PECO proposes to exclude customers who participate in its customer assistance programs (“CAP”) from the Opt-In Program and Customer Referral Program. In the *IWP Order* the

Commission recognized that CAP customer participation in electric competition varies among EDCs, and left the issue of CAP customer inclusion in retail opt-in auction programs to be determined within each EDC's DSP. *IWP Order* at 43. The *IWP Order* guidelines state that at this time, CAP customers should be excluded from the Standard Offer Customer Referral Program. *IWP Order* at 31. Every customer should have the opportunity to shop for electricity supply and obtain the cost-savings available in the retail marketplace. Therefore, FES supports the inclusion of CAP customers in all EDCs' retail market enhancement programs and, if current operational or other constraints restrict CAP customers' participation, FES urges the Commission to require whatever changes are necessary to those EDCs' CAPs such that all residential customers can obtain the savings from choosing a supplier.

E. Additional Proposed Retail Market Enhancements

1. Time-of-Use Offering

FES reserves the right to reply to other parties' arguments on this issue.

2. New/Moving Customer Referral Program

FES reserves the right to reply to other parties' arguments on this issue.

3. Referral of PECO Wind Customers

FES reserves the right to reply to other parties' arguments on this issue.

4. Seamless Moves

FES supports the recommendations by RESA and DES/IGS for a collaborative effort to address issues related to Seamless Moves. Further, costs of any such collaborative or system modifications necessary to implement a Seamless Moves program should be borne by all EDC customers who would benefit from such a program. FES agrees with RESA that Seamless Moves are a correction to a design flaw in the EDC's systems that should have been built into the systems at the outset of electric choice, and if the systems had been built correctly all customers would have paid for that functionality. RESA St. No. 2 at 29.

F. Recovery of Program Costs for Proposed Retail Market Enhancements

1. EGS Opt-In Competitive Offer Program

a. Costs Of The Opt-In Program Should Be Recovered From All Customers

FES believes the costs of the Opt-In Program should be recovered from all customers in any class eligible to participate in the program, through the use of a non-bypassable rider. FES St. No. 1 at 8. As FES witness Banks explained, all customers stand to experience significant savings from a robust, competitive retail electricity market that includes an increase in the number of EGSs from which they can choose, and will benefit from all programs arising from the Commission’s RMI, including the Opt-In Program. Those benefits will continue well beyond the expiration of the Opt-In Program, and therefore the costs associated with the program should be recovered by EDCs from all customers in classes eligible for the program. FES St. No. 1 at 9.

Other EGS parties expressed similar positions. RESA asserts that the costs of the program should be paid either by all customers through non-bypassable charges, or by all default service customers. RESA St. No. 2 at 16-18; RESA St. No. 2-R at 12. Also, while DES/IGS's written testimony appeared to support recovery of costs from winning EGSs through a per customer charge, Dominion St. No. 1-R at 4, DES/IGS witness Barkas clarified his written testimony under cross-examination at hearing, explaining that DES/IGS's preference is that the costs of the Opt-In Program be recovered from all customers. Tr. at 104, 112.

FES opposes PECO's proposal to recover its costs for implementing the Opt-In Program from EGSs. PECO initially estimated the costs of its proposed RFP process at $1,020,000, FES Ex. TCB-2 (PECO Response to FES-I-6), but subsequently increased its estimate to $1,205,000, including $405,000 in program costs and $800,000 in mailing costs, FES Cross-Exam Ex. 1 (PECO Response to FES-II-1). PECO proposes to recover these costs from the winning EGSs, in proportion to the number of customers awarded to each EGS.

Other parties supporting PECO's proposal disregard the flow of benefits to customers. The OCA supports cost recovery from EGSs, contending that the costs associated with these programs are not necessary to implement retail choice and programs are not mandated by the Competition Act. OCA St. No. 2 at 7; OCA St. No. 2-R at 12. CAUSE-PA also supports PECO's proposal that winning EGSs pay the costs of the Opt-In EGS Offer Program. CAUSE-PA St. No. 1 at 22-23. While the OCA does not explain its recommendation, CAUSE-PA's recommendation appears to be based on the faulty premise that only EGSs participating in the program will receive benefits from the program, and that customers who do not want to participate in the program will not benefit from the program and should not bear any of its costs. To the contrary, all customers stand to benefit from a robust, competitive retail electricity market that may include an increase in the number of EGSs and/or lower pricing offers from which they can choose. FES St. No. 1-R at 10.

Further, while the issue of cost recovery mainly revolves around the two programs available only to Residential Customers (i.e., the Opt-In Program and the Referral Program), the advocates for small C&I and large C&I customers also commented on this issue in Rebuttal

Testimony. The OSBA appears to implicitly oppose recovery of costs from customers, contending that if retail enhancement programs are going to be recovered from all customers, then the costs of wholesale default service supply procurements should also be recovered from all customers. OSBA St. No. 1-R at 3. Also, PAIEUG witness Haines asserts that "FES appears to evaluate cost allocation based solely on program eligibility" and that "the flow of benefits should also be considered before allocating costs…." PAIEUG St. No. 1-R at 10.

These parties appear to have overlooked FES witness Banks' Testimony regarding why all Residential customers will benefit from the Opt-In Program and the Customer Referral Programs. FES St. No. 1 at 9. The education component of all the retail enhancement programs will benefit both all eligible customers and non-participating EGSs, since all customers will be exposed to Commission-approved messages favoring retail shopping and will be more likely to participate in the retail market in the future, even if they do not participate in the Opt-In Program or the Customer Referral Programs. While FES did in fact consider the flow of benefits before recommending the proper allocation of costs between customers and suppliers, FES submits that the parties that support PECO's proposal failed to consider potential adverse impacts on the number of EGSs that participate in the programs if suppliers must bear all the costs, particularly since even non-participating EGSs will likely benefit in the future.

FES witness Banks explained that the appeal of the program is further diminished when cost recovery from EGSs is considered together with PECO's requirement that EGSs include a $50 bonus payment in their offers. PECO St. No. 2-S at 3.[5] In developing its guideline

[5] While PECO's Supplemental Direct Testimony states that the offer "may" include a $50 bonus payment to customers, PECO St. No. 2-S at 3, PECO clarified in discovery that the $50 bonus payment is required in the EGS's offer, and that the "may" is intended to indicate that the customer's receipt of the $50 bonus payment is conditioned on (1) the customer's acceptance of the offer, and (2) the customer's remaining with the selected EGS for three complete billing cycles. FES Ex. TCB-2 (PECO Response to FES-I-11).

concerning bonus payments, the Commission observed that certain EGSs had expressed support for a bonus of $50-$150, representing the "customer acquisition cost" the EGSs avoided by obtaining the customer through an Opt-In Program. *IWP Order* at 64. Since these EGSs believed the Opt-In Program would save enough costs to justify a signing bonus, any potential additional costs incurred by these EGSs as a result of participating in the Opt-In Program will cause them to revisit their interest in participating. If EGSs must pay a bonus and the costs of the program as well, a significant benefit of the program from the EGS's perspective will be lost, and the EGS's cost-benefit analysis for participating in the program will be substantially altered. In this case, combining bonus payments with the recovery of program costs from EGSs will discourage participation and will make the program ineffective in increasing shopping in the PECO territory. FES St. No. 1 at 8-12.

b. Under No Circumstances Should The Cost Of The Opt-In Program Be Recovered Through A Discount On Purchased Receivables

In the event the Opt-In Program does not result in any winning EGSs, PECO proposes a contingency plan to recover its program costs from EGSs through a 0.3% discount on purchased EGS receivables under its POR program until the program costs are fully recovered. PECO St. No. 2 at 25; PECO St. No. 5 at 19; DOM/IGS Cross-Exam Ex. 1 (PECO Response to DOM-I-2). PECO witness Cohn asserts that costs should be recovered from all EGSs through a POR discount because all EGSs have the opportunity to participate in proposed retail market enhancement programs. PECO St. No. 5-R at 13.

FES strongly disagrees with PECO's proposed contingency plan to recover costs of an unsuccessful Opt-In Program through implementing a discount on purchased EGS receivables. In this proceeding, no parties other than PECO support this method of recovering costs. RESA, like FES, opposes the recovery of costs from all suppliers through a discount on purchased receivables. RESA St. No. 2-R at 12. DES/IGS agrees that if the Opt-In EGS Offer Program is unsuccessful, recovery of costs through a POR discount is inappropriate. DES/IGS St. No. 1-R at 4. Even the parties that advocate recovering the costs of the program from EGSs, the OCA and CAUSE-PA, only discuss cost recovery when an EGS has been awarded customers, based on the number of customers awarded to the EGS. Neither advocates the use of a POR discount, nor even discusses a contingency scenario in the case of no winning suppliers in the Opt-In Program. FES St. No. 1-R at 9-11.

PECO's rationale for this method of recovery is the *IWP Order*. PECO's reliance on the *IWP Order* should be given little weight, given that the *IWP Order*'s finding that cost recovery through a POR discount should be considered was based on PECO's own proposal in the proceeding. *IWP Order* at 85. The issue of the appropriate cost recovery mechanism was never fully vetted in connection with the *IWP Order*. In fact, the only instance in the *IWP Order* where the Commission solicited comments on cost recovery was in connection with the New/Moving Customer Referral Program. *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Tentative Order entered December 16, 2011), slip op. at 17.

If the Opt-In Program fails, there will have been no increase in shopping in the PECO service territory. In that case, the implementation of a POR discount will discourage new EGSs from entering the territory or encourage EGSs that currently participate to drop out of the POR program. That is, PECO's proposed use of a POR discount in connection with its Opt-in Program may have an effect that is the opposite of what PECO intended when designing its Opt-In Program. FES St. No. 1 at 9-10.

In addition, recovery of costs through an EDC's POR program violates the principle that cost recovery should follow cost causation. A discount on purchased receivables should be used only for reasons that have a logical connection to the purposes of the POR program, not as a mechanism for recovering costs of programs completely unrelated to POR. FES St. No. 1 at 10. Consistent with this principle, the discount in PECO's POR program was intended to recover the costs of implementing the POR program, as explained in a Joint Petition for Partial Settlement submitted in proceedings concerning PECO's revised electric POR program:

> 9. Except as provided below, PECO's Revised Electric POR filing is approved as filed, including the tariff revisions which are shown in Exhibits 1 and 2 to this Joint Petition, and all costs of implementing the Revised Electric POR Program (including the modifications and additions set forth below) will be recovered through the Program's temporary discount on purchased EGS receivables.

Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program, Docket No. P-2009-2143607 (Opinion and Order entered June 18, 2010), slip op. at 6 (quoting Joint Petition for Partial Settlement). Such unrelated cost imposition will encourage EGSs to discontinue their participation in POR programs. FES St. No. 1 at 10-11.

In addition, use of a POR discount will allow suppliers that submitted bids to participate in the Opt-In Program to escape responsibility for its costs. Indeed, Rule 19 of PECO's Supplier Coordination Tariff explains that participation in PECO's POR program is voluntary and not all EGSs must participate:

> For residential Customers only, any EGS utilizing EDC consolidated billing shall be required to utilize EDC consolidated billing for all of the EGS's residential Customers, and all such residential accounts shall be included in PECO's purchase of receivables program. If an EGS is providing a residential Customer with a service or product that does not meet the definition of "basic electric supply" as defined in paragraph 13, or if the EGS is providing a service or product to residential

> Customers that PECO's EDC consolidating billing system cannot accommodate, the EGS shall be permitted to issue a separate bill for such service or product in accordance with PECO's Separate EDC/EGS Billing procedures for that Customer if it provides written certification to PECO that the service or product cannot be billed under EDC consolidated billing.

See PECO Energy Company Electric Generation Supplier Coordination Tariff, Tariff Electric Pa. PUC No. 1S Second Revised Page No. 96, Rule 19, effective January 31, 2012. Under Rule 19, an EGS which does its own billing does not participate in PECO's POR program. Such an EGS would not pay any share of program costs, even if it submitted bids to participate in the program, if it obtains no customers through the program. Since POR programs were implemented for the purpose of attracting increased EGS activity in EDC service territories where they might otherwise not participate, it would be ill-advised to make POR programs unattractive to EGSs. FES St. No. 1 at 10-11.

Further, cost recovery through a POR discount unfairly and disproportionately allocates costs based on an EGS's market share. Unfair and disproportionately allocated cost recovery will be harmful to the success of retail competition in an EDC's service territory if it discourages EGSs from participating in the territory. FES St. No. 1 at 11.

Moreover, the use of a POR discount requires PECO to present substantially more evidence than it has to date. PECO is proposing a 0.3% POR discount, which is a greater discount than the Commission authorized PECO to impose to recover the administrative costs of POR implementation. FES Cross-Exam Ex. 2 (PECO Response to FES-I-13(a)). While PECO has presented only an estimate of projected costs, it has presented little other evidence regarding this level of discount.

Instead, FES's proposal to recover costs through a non-bypassable charge eliminates the need for a contingent recovery mechanism in the event the Opt-In Program is unsuccessful and there are no winning EGSs. FES St. No. 1 at 9.

2. EGS Standard Offer Program

For the reasons described above, FES recommends that the costs of the Referral Program be recovered from all Residential customers. RESA also supports the recovery of costs from all customers through a non-bypassable charge. RESA St. No. 2 at 27-28. The OCA, the OSBA, PAIEUG and CAUSE-PA oppose recovery of costs from customers to varying degrees. However, all Residential customers, even those who do not participate in the retail market enhancement programs, will enjoy the benefits those programs deliver to PECO customers.

FES further opposes PECO's proposal to recover its initial and on-going costs of the Referral Program[6] through a discount on EGSs' purchased receivables in PECO's POR program. PECO St. No. 2 at 29; PECO St. No. 5 at 19. DES/IGS and RESA also oppose the recovery of costs from all suppliers through a POR discount. DES/IGS St. No. 1 at 2; RESA St. No. 2 at 27-28.

As explained in the preceding section, use of a POR discount would result in an unfair allocation of costs among EGSs. Every EGS that serves customers awarded through the program must use EDC consolidated billing and, therefore, PECO's POR. "All Standard Offer Supplier billing for customers who enroll under the Program shall be Consolidated EDC Billing." PECO Ex. JJM-5S, Rule 5.2. However, an EGS may participate in PECO's POR but not in the Referral Program. PECO, CAUSE-PA's and the OCA's recommendation that costs be recovered through

[6] PECO estimates initial costs at $1.3 million, and ongoing costs at $0.9 million, with the caveat that these are estimates and subject to change based on final program design and implementation. PECO Ex. ABC-5.

a POR discount would result in recovery of program costs from EGSs which may not be participating in the Referral Program but are participating in PECO's POR program. Because a POR discount is an inappropriate method for recovering the costs of these programs which have nothing to do with costs related to POR programs, PECO's proposal must be rejected.

Likewise, the Commission should reject DES/IGS's alternative proposal that PECO should calculate a per customer fee that each supplier would pay for each customer acquired through the referral program. DES/IGS St. No. 1 at 4-5. In discovery, DES/IGS explained that the per customer fee could be calculated prior to the Referral Program, based upon a "realistic estimate of customer participation," annual operating costs, and recovery of start-up costs over a period of three years. FES Ex. TCB-6 (DES/IGS Response to FES I-1(a)). DES/IGS believes this set fee will allow for broad supplier participation by reducing up-front risks to suppliers. FES Ex. TCB-6 (DES/IGS Response to FES I-1(b)). This recovery method may result in large over- or under-collections, require potential adjustments, and will not align cost recovery with cost incurrence. Given the current status of the RMI end-state default service discussions, it is uncertain whether the Referral Program will be around for three years. The imposition of three years' worth of estimated program costs per customer will deter EGSs from participating in the Referral Program. Further, to date no one has come up with a realistic estimate of customer participation levels. Given these circumstances, any per-customer fee would have to be based on a number of assumptions which could result in significant over/under recovery of costs. FES St. No. 1-R at 15-16.

3. Other Enhancements

FES believes that the costs of education regarding changes in the PTC and other retail market enhancements should be recovered from all customers in all classes of customers that are eligible for the program. In response to discovery exploring the rationale behind PECO's proposal to recover the costs of other retail market enhancements through a discount on purchased EGS receivables, PECO identified certain sections of the IWP Order, but conceded that they do not explicitly address other retail market enhancements. DOM/IGS Cross-Exam Ex. 1 (PECO Response to DOM-I-6).

V. OTHER ISSUES

FES reserves the right to reply to other parties' arguments on any other issues raised by any party.

VI. CONCLUSION

For the foregoing reasons, the Petition of PECO Energy Company for Approval of Its Default Service Program should be granted with modifications consistent with FirstEnergy Solutions Corp.'s recommendations.

Respectfully submitted,

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Dated: June 18, 2012

Attorneys for FirstEnergy Solutions Corp.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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