COMMONWEALTH OF PENNSYLVANIA

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July 3, 2012

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,

Candis A Tunilo

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

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: July 3, 2012

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I. INTRODUCTION AND PROCEDURAL HISTORY

On June 18, 2012, the Office of Consumer Advocate (OCA) filed its Main Brief in this proceeding. Main Briefs were also filed by PECO Energy Company (PECO or the Company); the Bureau of Investigation and Enforcement (I&E); Office of Small Business Advocate (OSBA); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); PPL Energy Plus, LLC (PPL); FirstEnergy Solutions Corp. (FES); ChoosePAWind.com (ChoosePAWind); Green Mountain Energy Company (GMEC); Retail Energy Supply Association (RESA); Philadelphia Area Industrial Energy Users Group (PAIEUG); and Dominion Retail, Inc. and Interstate Gas Supply, Inc. (Dominion/IGS). The OCA submits that nothing argued in the Main Briefs of the parties changes the positions detailed in the OCA's Main Brief.

In its Main Brief, the OCA supported the use of a prudent mix of energy products designed to achieve residential default service rates at the least cost over time as required by Act 129 of 2008. See OCA M.B. at 7-25. The residential supply mix proposed by the OCA is the same mix currently in use for PECO. Under the OCA proposal, the Company would meet 75% of their residential default service load through Fixed Price Full Requirements (FPFR) contracts, and 25% through a mix of 80% forward purchases of energy blocks and 20% purchases from the PJM spot market. The OCA submits that the Company's proposal to move to 100% reliance on FPFR contracts is inconsistent with the policy established by the General Assembly through Act 129. The parties opposed to the OCA's proposed residential procurement argue that it would result in risks to customers and rate volatility – but the success of PECO's existing default supply plan (DSP I) shows that is not the case. As a result, the OCA submits that including a diverse

mix of products in the residential supply mix as recommended by the OCA is the prudent and reasonable approach that should be adopted in this proceeding.

The OCA further argued in its Main Brief that RESA's proposed 0.5¢ per kWh adder to the Price to Compare must be soundly rejected. See OCA M.B. at 47-53. The adder represents an unprecedented profit adder for PECO – despite the fact that the Company agrees that it is recovering all of its reasonable costs of default service on a dollar for dollar basis pursuant to a Commission-approved reconcilable rate mechanism. RESA has advanced a wide range of goals, rationales, and principles to support implementation of this 0.5¢ per KWh adder. The OCA submits, however, that all of these arguments must fail. The adder does not reflect any cost, nor is there any reasonable relationship between the adder and any valid efforts to enhance retail competition. The adder is simply an unjustified addition to the Price to Compare that will increase the price of electricity to both switching and non-switching customers. The adder must be totally rejected as contrary to law and contrary to sound public policy.

The OCA also addressed in detail the issues related to the retail market enhancement proposals included in PECO's proposed DSP II. See OCA M.B. at 29-33, 53-90. The OCA submits that the modifications to these programs contained in its Main Brief will help ensure their success, while at the same time ensuring that important consumer protections are in place. Additionally, the OCA's modifications help ensure that a successful default service procurement can go forward. The parties opposed to the OCA's modifications at times point to the Commission's recent Intermediate Work Plan Order.[1] The Commission, however, has clearly recognized the need to develop its decision in this proceeding on record evidence related to

[1] Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Order (March 2, 2012) (IWP Order).

PECO. The OCA submits that its positions are fully reflective of substantial evidence adduced in this proceeding that reflects the needs of the Company's customers and should be adopted.

For the reasons set forth in the OCA's Main Brief, and those detailed below in this Reply Brief, the OCA submits that the Company should be directed to amend its DSP II Plan as recommended by the OCA. The OCA further submits that its Main Brief provides a comprehensive statement of its positions, and the OCA will not repeat all of those arguments here. To the extent an argument is not addressed in this Reply Brief, the OCA relies on those positions already advanced in the OCA Main Brief. In this Reply Brief, the OCA will respond to specific arguments advanced by other parties, referring to relevant sections of its Main Brief as appropriate.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Summary of OCA's Position.

The OCA provided a full summary of its position in its Main Brief at pages 7-8.

B. Residential Class Procurement.

1. Term Length of Supply Contracts.

a. OCA Response to FES.

The only party to recommend a change to the term length of contracts in PECO's DSP II residential procurement portfolio was FES witness Banks. Mr. Banks recommended that PECO procure 12-month Fixed Price Full Requirements (FPFR) contracts instead of 6-month FPFR contracts for the first 12 months of DSP II. See FES M.B. at 5-6; FES St. 1 at 8. This recommendation ties to FES's recommendation to extend the term of PECO's Opt-In Auction Program from 6 months to 12 months. Id. FES asserts that neither PECO nor OCA has disputed FES's arguments that the substitution of 12-month FPFR contracts would increase price stability.

FES M.B. at 5. Further, FES asserts that its recommended substitution would not undermine PECO's laddered residential DSP II portfolio. Id. at 5-6.

The OCA generally supports PECO's laddering and layering of supply contracts for DSP II (with a small change discussed in Section II.G.1 of OCA's Main Brief) but recommends that PECO continue block and spot purchases in DSP II as it had in DSP I (as discussed in Section II.B.3 in OCA's Main Brief and below). As stated in OCA's Main Brief, FES witness Banks' proposal has negative implications. OCA witness Hahn described the implications as follows:

> The proposal for the elimination of the six-month full requirements contracts for residential default service customers should not be adopted. Under PECO's proposed DSP II, 17 tranches of residential full requirements with a six-month term from June 2013 through November 2013 will be procured in November 2012. This is the only instance of six-month full requirements contracts in the residential DSP II. If these are replaced with 12-month full requirements contracts from June 2013 through May 2014, as proposed by Mr. Banks, it would defer the procurement of 17 tranches of residential default service load in September 2013 for which deliveries would have commenced in November 2013. This would cause the September 2013 procurement to be for only 7 tranches instead of 21 tranches. Under my proposed revisions to DSP II where block and spot purchases continue for residential default service customers, the September 2013 procurement would be eliminated altogether if Mr. Banks' proposal is adopted, resulting in nearly 11 months without a solicitation. I believe that this approach would reduce the effectiveness of the layering and laddering of procurements and result in a solicitation in September 2013 that would be smaller than it should be. The six-month contracts should be retained to spread procurement tranches more evenly throughout the year.

OCA St. 1-R at 3. Clearly, Mr. Banks' proposal would increase the time between solicitations significantly and impact the benefits of the laddering contained in PECO's DSP II.

The OCA submits that FES's reasons for substituting 12-month FPFR contracts for the 6-month FPFR contracts in PECO's DSP II residential procurement portfolio are inadequate and could cause unnecessary price volatility and should, therefore, be rejected.

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

In its Main Brief, RESA recommends that PECO include 10% spot purchases in its residential DSP II so that PECO's default service prices will contain at least a small portion of current market prices. RESA M.B. at 12-14. As discussed in OCA's Main Brief (at page 13), the OCA's proposal is to continue the block and spot portion of the procurement plan for residential customers in DSP II. If the OCA's proposal to continue the block and spot portion of PECO's procurement plan is adopted, there will be a spot component. The OCA's proposal is fully discussed in its Main Brief (at pages 13-25) and below in the next Section.

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

a. OCA Response to PECO.

In its Main Brief, PECO provides two primary criticisms of OCA's recommendation to continue block and spot purchases, along with Fixed Price Full Requirements (FPFR) contracts, in DSP II for the residential class. See gen'ly PECO M.B. at 10-16. First, PECO asserts that the OCA has examined only a single market scenario, when there is a broad potential for different market scenarios, and the performance of default service procurement can be very different under different market conditions. PECO M.B. at 11-13. Second, PECO asserts that the OCA ignores market timing issues and other market conditions in its single market scenario. Id. at 14-16. The OCA submits that both concerns are overstated and do not outweigh the benefits of a diversified portfolio (rather than sole reliance on a single contract type, as PECO proposes for DSP II).

With regard to PECO's first critique that the OCA has only examined a single market scenario, the Company misses the point. OCA witness Hahn examined the performance of

PECO's DSP I procurement portfolio – the only **actual** data available to examine. PECO's DSP I portfolio contained the following mix of supply: 75% FPFR contracts, which consist of 45% two-year contracts and 30% one-year contracts, with the two-year contracts overlapping on an annual basis, and 25% PECO block and spot share, which consists of 80% forward purchases of energy blocks and 20% PJM spot market purchases. See PECO St. 2 at 10-11; PECO St. 3 at 5. After his examination of the performance of PECO's DSP I portfolio, OCA witness Hahn concluded:

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

OCA St. 1 at 7. Mr. Hahn's analysis indicated that the inclusion of block and spot purchases in PECO's DSP I procurement portfolio helped achieve the least cost standard, even at a time when many customers were switching to EGSs for supply. Further, Mr. Hahn's analysis suggested that even in depressed market conditions, the balancing of block and spot supply has produced favorable results.

PECO asserts that OCA witness Hahn's recommendation to continue block and spot purchases "would expose customers to considerably more risk with regard to rate shock and supply cost uncertainty." PECO M.B. at 13. PECO points to Wellsboro Electric Company's situation in 2008, where supply costs under its block and spot approach increased significantly due to market price changes, as an example of how block and spot purchases are too risky to be

included in its DSP II procurement portfolio. PECO's use of the Wellsboro situation in 2008 is irrelevant because it is not an apples-to-apples comparison. As Mr. Hahn explained:

> Unlike PECO, Wellsboro is a very small utility that relies upon a limited number of ties to the transmission system. Wellsboro experienced high congestion[] costs due, in significant part, to a single transformer failure and the replacement with a transformer deemed by Penelec to have lower capacity. Upon completion of repairs to the transformer, Wellsboro's congestion returned to normal levels. Thus, the problem here was not the use of block and spot purchases but rather a single transformer rating issue that had a disproportionate impact on Wellsboro due to its small size.

OCA St. 1-S at 5.

While the OCA agrees that FPFR contracts can provide a known price for the term, it is important to note that this known price does not necessarily mean the lowest price or the least cost over time. In this instance, even after examining all of his market scenarios and all the risks identified therein, PECO witness Fisher concluded that the inclusion of block and spot purchases along with FPFR contracts in a comprehensive procurement strategy provided for a 0.5% lower expected default service rate. PECO St. 3-R at 28-29. The OCA submits that a procurement portfolio consisting of a single type of product, FPFR contracts in this instance, does not meet the prudent mix of contracts requirement in Act 129. See 66 Pa. C.S. § 2807(e)(3.2). The OCA submits that PECO should continue with a diversified approach to the procurement of power.

With regard to PECO's second critique that the OCA ignores market timing issues and other market characteristics in its analysis, PECO's arguments are misplaced. PECO M.B. at 14-16. PECO asserts that OCA witness Hahn's analysis fails to address key factors, such as the timing of DSP I purchases, which distorts his results. Id. at 14. Further, PECO criticizes Mr. Hahn's results because they do not include all of the DSP I FPFR contracts or the residual compensation required by suppliers in their bid prices. Id.

PECO's second critique is rebutted by its own witness's conclusion. Even after examining all of his market scenarios and all the risks identified therein, PECO witness Fisher concluded that the inclusion of block and spot purchases along with FPFR contracts in a comprehensive procurement strategy provided for a 0.5% lower expected default service rate. PECO St. 3-R at 28-29. As summarized by OCA witness Hahn:

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

OCA St. 1-S at 4-5.

Act 129 requires that DSPs procure power using a prudent mix of spot market purchases, short-term contracts and long-term contracts that are designed to achieve the least cost to customers over time. See 66 Pa. C.S. § 2807(e)(3.2), (3.4). The OCA submits that PECO's proposal to use only FPFR contracts to meet its procurement obligations falls short of Act 129's requirements. Mr. Hahn's recommendation meets the prudent mix standard and is designed to achieve the least cost to customers over time. The OCA submits, therefore, that Mr. Hahn's recommendation should be adopted.

b. OCA Response to RESA and Dominion.

In its Main Brief, RESA asserts that the OCA's recommendation to continue block and spot purchases in DSP II should be rejected because Mr. Hahn's analysis is not persuasive. RESA M.B. at 14. Specifically, RESA claims that a good result in the past (*i.e.*, DSP I) is no

reason to expect a good result in the future (*i.e.*, DSP II). Id. Further, RESA asserts that OCA's recommendation fails to: (1) acknowledge that block and spot purchases may cost customers more in DSP II and (2) recognize that there were numerous price options available to PECO residential customers in 2011 that were lower than the PECO default service price. Id. at 14-15.

In its Main Brief, Dominion notes its concern that the inclusion of block and spot purchases in DSP II will unnecessarily increase the volatility of PECO's Price to Compare (PTC), especially with the implementation of competitive enhancement programs designed to move customers into the competitive market. Dominion M.B. at 6. Dominion asserts that customers would not be harmed by the removal of block and spot purchases from DSP II. Id.

The OCA submits that neither RESA nor Dominion produced any evidence or analyses that block and spot purchases cost more than FPFR contracts. As stated above in Section II.B.3.a, both witnesses that analyzed the performance of the DSP I procurement portfolio – OCA witness Hahn and PECO witness Fisher – concluded that block and spot purchases were cheaper than FPFR purchases during that time period. See OCA St. 1 at 7; PECO St. 3-R at 28-29. Further, as noted by OCA witness Hahn, these results were favorable during times of high customer migration. See OCA St. 1-S at 3-4.

With regard to RESA's assertion that the OCA failed to recognize there were numerous price options available to PECO residential customers in 2011 that were lower than the PECO default service price, the OCA submits that RESA's argument is off point. As summarized by OCA witness Hahn:

> Ms. Williams' statement that EGSs offered lower prices than default service rates has no relation to the point that I made in my direct testimony, namely that default service pricing should meet the least cost over time standard for the service being provided. There are differences between default service and an EGS's offering. Default service must be provided, whereas EGSs can choose to supply a customer or not. Default service also must be available for the long

> run. If competitive suppliers can beat the PTC and entice customers to leave default service, so be it. That is a benefit of a competitive market. However, that does not mean that one should ignore a valuable procurement method for obtaining default service power supplies. These two statements have no effect on each other. Ms. Williams' argument on this point should not be accepted. Mr. Barkas has not provided any support for his statement that continuing block and spot purchases will introduce volatility and create reconciliation problems, and these arguments should likewise not be accepted.

OCA St. 1-S at 4. Additionally, with regard to the notion of "least cost over time," the Commission itself has offered the following advice:

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

Implementation of Act 129 of October 15, 2008: Default Service and Retail Electric Markets, Docket No. L-2009-2095604, Slip op. at 11-12 (Oct. 4, 2011) (Final Rulemaking Order).

The OCA submits that RESA and Dominion have failed to offer adequate reasons to discontinue block and spot purchases in DSP II, and consequently, their positions should be rejected. The OCA's recommendation to continue block and spot purchases in DSP II should be adopted.

c. OCA Response to PECO's Critique of OCA's Alternate Proposal.

OCA witness Hahn submitted an alternate proposal to phase out block and spot products in PECO's DSP II Plan should OCA's recommendation to continue block and spot purchases not be adopted. See OCA M.B. at 23-25; OCA St. 1 at 9. According to Mr. Hahn's alternate proposal, in its phase out of block and spot products, PECO would continue to match peak and

baseload blocks and keep them in balance as reliance on block purchases declines over time. OCA St. 1 at 9. In its Main Brief, PECO asserted that OCA's alternate procurement proposal presented additional risks, such as low bidder participation and increased administrative costs, and therefore, PECO had already incorporated an additional tranche of FPFR supply as a mitigation measure. See PECO M.B. at fn 10. PECO asserts that OCA's alternate proposal should, therefore, be rejected. Id.

OCA proposed an alternate method to phase out block and spot purchases should the Commission adopt PECO's residential procurement portfolio. See OCA M.B. at 23-25. The OCA submits that PECO's criticism of OCA's alternate approach to phase out block and spot purchases is misplaced. If PECO's proposal is adopted, OCA witness Hahn notes that "[c]ontinuing the baseload blocks without any peak blocks will result in excessive spot market purchases and a sub-optimal default service power supply portfolio" because the winter and summer peak block purchases are supposed to complement the baseload block during the high peak seasons and consequently, better shape the block supply to the hourly loads. OCA St. 1 at 9. Although, PECO asserts that the incorporation of an additional tranche of FPFR supply will mitigate any incremental spot purchases, the OCA submits that its alternate proposal is a more reasonable phase out approach. As summarized by OCA witness Hahn:

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

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

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

C. Small Commercial Class Procurement.

The OCA takes no position on this issue.

D. Medium Commercial Class Procurement.

The OCA takes no position on this issue.

E. Large Commercial and Industrial Class Procurement.

The OCA takes no position on this issue.

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

In its Main Brief, the OCA supported PECO's proposed laddering and layering of delivery terms so as to avoid a "hard stop" on May 31, 2015. The OCA's proposed continuation of block and spot purchases does not change its support of PECO's proposal on this issue. See OCA M.B. at 26-28. In its Main Brief, RESA asserts that PECO should eliminate any contracts that extend beyond the DSP II Plan period or in other words, have a "hard stop" of all procurement contracts on May 31, 2015. See RESA M.B. at 18-20. According to RESA, PECO could adjust its procurement schedule at a later date to alleviate the "hard stop" should the Commission give appropriate direction to do so. Id. at 19-20. RESA also asserts that PECO's laddering of supply contracts will not mitigate default service rate volatility but instead, will disconnect default service rates from the underlying cost of wholesale supply. Id. at 20.

RESA's assertion that there should be a "hard stop" of all procurement contracts on May 31, 2015 must be rejected. As explained by OCA witness Hahn, having all contracts expire on a specific date will undermine the accepted industry practice of laddering and layering supply contracts to achieve price stability. OCA St. 1-R at 9-10. RESA's recommendation could require PECO to acquire 100% of power supply for June 1, 2015, when the wholesale supply costs might not be favorable.

Contrary to RESA's claim that the December 16 Final Order[2] requires DSPs to have a "hard stop" of all contracts on May 31, 2015, the plain language of the December 16 Final Order states otherwise. According to the December 16 Final Order, EDCs should **limit** the amount of "short-term energy contracts extending past the end date of the upcoming default service plan period." December 16 Final Order at 19. (Emphasis added). The Commission went on to state:

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

December 16 Final Order at 19-20. (Emphasis added) (RESA and Direct Energy proposed that the Commission direct that EDCs eliminate contracts extending beyond the end date of their next default service plans). The Commission has already spoken on this issue, and RESA's proposal should again be rejected.

Further, as explained in the OCA's Main Brief, PECO has indicated that it has time to adjust is procurement schedule later in its DSP II Plan if changes to default service are adopted. See OCA Main Brief at 27. The OCA submits that this is a reasonable approach to the DSP II

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[2] Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order (Dec. 16, 2011) (December 16 Final Order).

procurement plan, as it is the best approach to achieve price stability and avoid having to procure a large percentage of a portfolio's power supply in a single procurement (*i.e.*, for delivery on June 1, 2015).

With regard to RESA's argument that PECO's laddering of supply contracts will not mitigate default service rate volatility but instead, will disconnect default service rates from the underlying cost of wholesale supply, RESA's argument fails to consider the mandates of Act 129. Act 129 does not mandate that DSPs implement procurement portfolios so that default service rates will strictly mimic market rates at every point in time. Indeed, Act 129 explicitly repealed the "prevailing market prices" standard for default service rates that was included in the original 1996 restructuring legislation. See 66 Pa. C.S. § 2807. Instead, Act 129 requires DSPs to implement procurement portfolios with a prudent mix of contracts that are least cost over time. See 66 Pa. C.S. § 2807(e)(3.1), (3.4).

The OCA submits that although market conditions are currently favorable, they may not be so favorable at the time of PECO's next default service filing, and customers could be exposed to dramatic price increases if purchases for 100% of default supply must become effective at one time. The OCA submits that with the energy markets subject to volatility at any time, RESA's "hard stop" recommendation would fully expose customers to potentially dramatic rate increases on June 1, 2015. The OCA submits that PECO's laddering and layering of contracts is reasonable, and RESA's recommendation to eliminate contract overhang beyond May 31, 2015 should be rejected.

G. Procurement Schedule.

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

a. OCA Response to PECO.

In its Main Brief, PECO asserts that OCA's proposal to more equally allocate the tranches to be procured in the November 2012 and January 2013 procurements will expose residential customers to higher market price uncertainty. PECO M.B. at 21-22. PECO asserts that procuring most of the supply earlier (*i.e.*, the November 2012 procurement) can reduce rate uncertainty for residential customers. Id.

PECO proposes to procure 27 tranches in November 2012 and 7 tranches in January 2013. OCA St. 1 at 8. The OCA submits that procuring 80% of its DSP II residential supply in one solicitation is not adequate laddering and layering of PECO's procurement schedule to achieve least cost pursuant to Act 129. The OCA recommends that PECO more equally divide the number of tranches procured in the November 2012 and January 2013 procurements to achieve a better laddering and layering procurement approach. See OCA M.B. at 28-29. The OCA's recommendation should be adopted.

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

a. OCA's Response to PECO.

Due to the unprecedented nature of the Commission-endorsed Opt-In Auction Program being proposed in this proceeding, OCA witness Hahn recommended setting aside 20% of the default residential load from the procurement process and a 20% customer participation cap for the Opt-In Auction Program to reduce the risk premium that may be added to the FPFR contracts. The purpose of the "hold back" is to ensure that those parties bidding for the full requirements portion of default service load are protected from an open ended, "one of a kind"

risk that the load they are bidding on will actually "show up" in expected amounts once they are required to be served. By mitigating this risk faced by the default suppliers, the OCA submits that customers will not be exposed to high risk premiums that suppliers would otherwise include in their bids to compensate them for the risk from this unprecedented program. Alternately, OCA witness Hahn recommended a 20% customer participation cap and that one-half of the DSP II tranches be set aside with no adjustment to supplier shares. See OCA M.B. at 29-33.

In its Main Brief, PECO asserts that the OCA failed to provide credible evidence that the Opt-In Auction Program may have a significant effect on supply bid prices, whereby suppliers will incorporate customer migration and other risks into their bid prices. PECO M.B. at 23. Further, PECO asserts that if the Opt-In Auction Program does not result in substantial customer switching, under OCA's "hold back" proposal, the Company would be forced to immediately procure sufficient supply to meet residential requirements on June 1, 2013, when market prices could be high. Id. PECO also opposed OCA's alternate proposal, asserting that the proposal does not alleviate volumetric risk to suppliers. Id. at 24.

With regard to the Company's position, the OCA submits that PECO has missed the point. It is not a question of whether wholesale suppliers have incorporated customer migration risk into their past bids. The type of "volumetric risk" (i.e., the risk of losing customers) that will result from the Opt-In Auction Program is not comparable to normal shopping. The OCA is referring to risks above and beyond the normal "status quo" risks in effect today. There is no experience that any party can point to that is similar to this setting. As such, extra care must be taken to ensure that default service customers are not harmed under this process by additional risk premiums included in bids for such uncertainty. Second, the OCA submits that a 20% customer participation cap for the Opt-In Auction is an appropriate and necessary component of

OCA's "hold back" proposal. The 20% participation cap would mitigate much of the volumetric risk associated with the migration of a large proportion of PECO's default service customers at one time if the Opt-In Auction reaches capacity and also mitigate the risk of having to purchase a sufficient supply to meet residential requirements for June 1, 2013 if the Opt-In Auction Program does not result in substantial customer switching.

PECO points to a procurement for DSP I supply that would extend into DSP II, which rendered the lowest price of any DSP I solicitations to date even though suppliers knew that the Opt-In Auction Program was likely to be incorporated into PECO's DSP II, as evidence that the Opt-In Auction Program will not have a significant effect on default service procurement. PECO M.B. at 23. The OCA submits that the Commission should not place much weight on this example. The solicitation occurred in January 2012, and PECO provided no indication that the bulk of the FPFR contract delivery will extend beyond the date of the Opt-In Auction Program – June 1, 2013.

The OCA's proposal is intended to minimize the volumetric risks in excess of today's "status quo" risks in order that the solicitations can be conducted in a more stable environment while simultaneously supporting robust participation in the Opt-In Auction Program. The OCA submits that it is prudent to plan ahead for known increased volumetric risks to wholesale suppliers, such as the Opt-In Auction Program. As such, the OCA's "hold back" proposals are reasonable and should be incorporated into PECO's DSP II.

b. OCA's Response to RESA.

In its Main Brief, RESA also opposes the OCA's "hold back" proposals because they incorporate a 20% customer participation cap on the Opt-In Auction Program, which RESA claims is an attempt by the OCA to limit the success of competitive enhancement programs. See

RESA M.B. at 21-22. The OCA submits that RESA's argument is off base. The point of Mr. Hahn's "hold back" proposals is to recognize the potential for a successful auction and ensure that default service is reasonably priced, in compliance with Pennsylvania law, while allowing customers the opportunity to take advantage of competitive offers from the Opt-In Auction Program if they so choose. Of critical importance, the OCA notes that the Opt-In Auction Program proposal is unique, and the default suppliers may not be in a position to adequately account for or assess the risks associated with this program.

As discussed above, OCA submits that there is a distinction between the normal risks associated with default supplies, and the unique risks inherent under the proposed Opt-In Auction Program. This distinction must be addressed in order to ensure that default service is provided as required under Act 129. The OCA submits that the 20% participation cap and corresponding "hold back" proposals help ensure that the Opt-In Auction Program can bring benefits to consumers, while at the same time ensuring that the program does not interfere with the legal requirement that default service be "least cost over time." As such, the OCA submits that its "hold back" proposals should be adopted.

H. Load Cap.

In its Main Brief, PECO asserts that OCA's and RESA's recommendations to reduce PECO's supplier load cap from PECO's proposed 67% to 50% should be rejected for the following reasons: (1) the Commission has previously rejected such arguments and permitted a 75% supplier load cap; (2) concerns of supplier bankruptcy and high replacement cost are misplaced; and (3) the idea that a load cap is consistent with a highly concentrated market is erroneous. PECO M.B. at 25-27. In their cases-in-chief in this proceeding, both OCA and RESA support a 50% supplier load cap. See OCA M.B. at 33-34; RESA M.B. at 23-25.

The OCA submits that PECO's reliance on the Commission's allowance of a 75% supplier load cap in the prior default service plan of another company is not controlling or persuasive here. See Joint Petition of Metropolitan Edison Co. and Pennsylvania Electric Company for Approval of Their Default Service Programs, Docket Nos. P-2009-2093053 and P-2009-2093054, Order (Nov. 6, 2009) (FirstEnergy DSP I). First, FirstEnergy DSP I involved an initial default service plan developed at a time when other issues, such as the expiration of rate caps, were prominent. The default service plans and procurements are more mature at this time, as rate caps expired over 18 months ago in PECO's service territory, and the OCA submits that PECO's DSP II must be developed based on the facts today. As such, the OCA submits that PECO's argument that FirstEnergy DSP I is controlling, or even persuasive, should be rejected.

PECO's argument that OCA's concerns of supplier bankruptcy and high replacement cost are misplaced and should also be rejected. PECO claims that the credit mechanisms in its Supplier Master Agreement (SMA) provide adequate protections from supplier default. PECO M.B. at 26. The OCA submits that permitting one supplier to be responsible for 67% of the Company's default service load increases the risk of a supplier default. See OCA M.B. at 33-34; OCA St. 1 at 19. The OCA submits that it is inadequate to fall back solely on the provisions of PECO's SMA for security from a supplier default. The OCA submits that it is prudent to take proactive measures to increase supplier diversity by lowering the load cap to 50%.

The OCA submits that a 50% supplier load cap will promote supplier diversity in the procurement of default service load and protect customers against supplier default. The OCA's recommendation to limit the provision of default load by any one wholesale supplier for any one customer class to 50% should be adopted.

I. Other Procurement and Implementation Plan Requirements.

The OCA addressed the issue of AEPS Compliance in its Main Brief (at pages 35 and 47). The OCA has no reply to other issues in this Section.

III. RATE DESIGN AND COST RECOVERY

A. Summary of OCA's Position.

The OCA provided a full summary of its position in its Main Brief at pages 35-37.

B. Reconciliation of Default Service Costs and Revenues.

In its Main Brief, the OCA generally supported PECO's proposal to move from a quarterly reconciliation period for the Generation Supply Adjustment (GSA) to a yearly reconciliation period to better smooth out fluctuations in the Price to Compare (PTC). The OCA, however, proposed a modification to PECO's approach – that PECO move to a 12-month rolling average reconciliation. See OCA M.B. at 37-40.

1. OCA's Response to PECO

In its Main Brief, PECO asserts that the OCA's recommendation to implement a 12-month rolling average reconciliation should be rejected because it will result in more price fluctuation than PECO's proposed annual reconciliation. See PECO M.B. at 37-38. Specifically, PECO asserts that OCA witness Hahn's analysis of this issue is flawed because he compares estimated revenue to billed revenue to calculate the over- and under-collection balances rather than compare the billed revenue to actual costs. Id. at 38. Also, PECO asserts that Mr. Hahn's analysis does not provide an apples-to-apples comparison of the various reconciliation schedules because it assumes significant price variation from the underlying supply contracts, which PECO will not face in DSP II with all of its supply being procured through FPFR contracts. Id.

The OCA submits that PECO's claims of flaws in OCA witness Hahn's analysis are not accurate. As explained by Mr. Hahn:

> I disagree that this example is flawed. This example was provided to illustrate how the three reconciliation mechanisms perform under changing market conditions that produce a mismatch between revenues and costs. Mr. Cohn may disagree with my labeling of the parameters in Exhibit OCA-RSH-8, but the illustration is still valid. Mr. Cohn appears to agree with me that quarterly reconciliations are the least desirable approach, as it results in large swings in both the over / (under) collections balance and fluctuation in rates. I continue to believe that a rolling average reconciliation methodology results in the best outcome.

OCA St. 1-S at 9. Further, as discussed in OCA's Main Brief (at pages 13-25), the OCA submits that PECO should continue with block and spot purchases, along with FPFR contracts, in its DSP II Plan. As such, Mr. Hahn's reconciliation analysis is accurate for the contemplated DSP II Plan.

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

2. OCA Response to RESA and Dominion

RESA and Dominion oppose PECO's proposal to move to an annual reconciliation of the GSA. In its Main Brief, RESA asserts that an annual reconciliation of the GSA will divorce the default service rates from underlying wholesale costs, which will distort customers' perceptions of the market price of energy. See RESA M.B. at 27. RESA also asserts that extending periods of under-collections will result in customers paying more in interest to PECO on under-collection amounts. RESA M.B. at 27-28. Dominion echoes RESA's argument in its Main Brief, adding that extending the time over which under- and over-collections are collected "could

impact the PTC in a way that could artificially keep suppliers in a bad market position relative to the PTC, for a very long time." Dominion M.B. at 8-9.

The OCA submits that RESA and Dominion have failed to introduce any evidence that contradicts the analyses of OCA witness Hahn and PECO witness Cohn that annual reconciliations smooth out the quarterly adjustments to the PTC and send clearer price signals to customers and EGSs. See e.g. OCA St. 1 at 17-18 and Exh. OCA-RSH-8; OCA St. 1-S at 9-10; PECO St. 5-R at 3-6 and Exh. ABC 1-R. As explained by PECO witness Cohn, current significant fluctuations in PECO's PTC are not directly related to the cost of default service supply. PECO St. 5-R at 3. Instead, it is a billing lag that causes the significant fluctuations in the PTC, which often display a cyclical effect due to seasonality. Id. Mr. Cohn compared the volatility of quarterly versus annual reconciliation of the GSA and explained his results as follows:

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

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

The OCA submits that RESA's and Dominion's arguments to continue with a quarterly reconciliation of PECO's GSA must be rejected. The OCA submits that its proposal to implement a 12-month rolling average reconciliation method will promote a better atmosphere for shopping, as it will create a more stable and predictable PTC. The OCA's recommendation for PECO to adopt a 12-month rolling average reconciliation should be adopted.

C. EDC Recovery of Additional PJM Charges.

The OCA takes no position on this issue.

D. Costs Included in the Generation Supply Adjustment Charge.

PECO proposes to recover the costs of the DSP II proceeding through the administrative cost component of the Generation Supply Adjustment (GSA) charge over the DSP II term pursuant to the Commission's Policy Statement at 69 Pa. Code § 1808(a)(4). PECO St. 5 at 17; PECO M.B. at 41. PECO proposes to include in this cost recovery mechanism capital costs and a return on equity on those capital costs at the rate allowed under PECO's smart meter charge. PECO St. 5 at 18. The OCA specifically opposes PECO's proposal to collect capital costs and a return through the GSA. OCA M.B. at 40-43. The OCA discusses this issue more fully in its Main Brief and responds here to the arguments raised in PECO's Main Brief.

The OCA submits that PECO's proposal to recover capital costs and a guaranteed equity return through the GSA is improper. See OCA St. 1 at 18. It is well established in Pennsylvania that, in the absence of specific statutory authority, capital costs can only be recovered through base rates, not in a surcharge. Pennsylvania Industrial Energy Coalition v. Pa. P.U.C., 653 A.2d 1336 (Pa. Commw. Ct. 1995) (PIEC); Popowsky v. Pa. P.U.C., 860 A.2d 1144 (Pa. Commw. Ct. 2005) (CSIC). PECO does not address the PIEC case in its Main Brief, and it is important that PIEC be considered in the analysis of whether capital costs may be recovered. In PIEC, the Commonwealth Court held that Section 1315 of the Public Utility Code requires capital costs be raised in a base rate case only, not through a surcharge mechanism. PIEC at 1347. The Commonwealth Court reiterated the PIEC holding in CSIC, stating: "the 'used and useful' principle enunciated in 66 Pa. C.S. § 1315, prevent[s] the inclusion of capital improvements in a surcharge." CSIC at 1155.

PECO attempts to distinguish the CSIC case because the CSIC case involved a water utility's capital expenditures for physical distribution facilities improvements. PECO states that their proposal is to recover IT-related capital costs, not distribution facilities improvements capital costs, and that this means that CSIC is not applicable here. PECO M.B. at 42. The OCA submits that the CSIC holding is based on the determination that the used and useful principle does not allow for the recovery of capital costs through a surcharge. The Company's attempt to distinguish different types of capital costs fails. These are costs the Company seeks to treat as rate base items with a return on equity earned on these costs.

PECO argues that under the Public Utility Code, default service providers have the rights to recover all reasonable costs incurred pursuant to a Commission-approved competitive procurement plan on a full and current basis, pursuant to a surcharge under Section 1307 of the Public Utility Code. Id. Section 54.187(a) of the Commission's regulations states:

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

52 Pa. Code § 54.187(a). These regulations permit full recovery of all reasonable costs for providing default service, but there is no specific indication that any capital costs may be recovered in a surcharge.

PECO also argues in its Main Brief that PECO currently recovers IT capital costs associated with the implementation of DSP I through the GSA. PECO M.B. at 41; PECO St. No. 5-R at 8. As OCA witness Hahn explained, though, there is a difference between the amortization of a one time IT expense and the recovery of capital investment with a return on equity. OCA witness Hahn testified:

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

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

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

E. Ratemaking Treatment of Auction Revenue Rights.

PECO proposes a sharing of its Auction Revenue Rights (ARR) in this proceeding. PECO proposes to allocate 50% of the costs and benefits associated with ARRs to shareholders and to pass along the remaining 50% of the costs and benefits to customers. PECO M.B. at 43; PECO St. St. 2 at 21-22; PECO St. 5 at 14-16. PECO argues that its proposal would provide an incentive for the Company to provide more profitable ARRs. PECO M.B. at 44. Currently, one hundred percent (100%) of the costs and benefits of the ARRs flow to residential and large industrial customers under the GSA surcharge. OCA St. 1 at 14. The OCA submits that PECO's proposal for a sharing methodology for ARR revenue should not be adopted because it is neither necessary nor appropriate. See, OCA M.B. at 43-46. The OCA and RESA both oppose PECO's proposal to share in the ARR revenues.

In its Main Brief, PECO avers that the Company can receive value when it selects a transmission path with congestion, or it can run the risk of choosing the wrong transmission path in exercising its rights and incur a loss. Thus, PECO argues the incentive of the sharing mechanism is warranted. PECO M.B. at 43. OCA witness Hahn testified, however, that an incentive is not necessary. Mr. Hahn testified that while it is **theoretically** possible to incur a loss, **historically**, PECO has **never** incurred such losses on the ARRs. See gen'ly OCA St. 1 at 15-16. As OCA witness Hahn testified: "there have been only net benefits realized from the exercise of ARRs." OCA St. 1 at 15.

PECO argues that OCA witness Hahn assumes that congestion patterns do not change very much absent major new transmission construction projects and that he does not acknowledge factors such as generator or transmission line outages or generation retirements. PECO M.B. at 44; PECO St. 5-R at 9. Mr. Hahn did not make any such assumption. In responding to Mr. Cohn's Rebuttal Testimony, OCA witness Hahn testified in his Surrebuttal as follows:

> Mr. Cohn does not provide any evidence or new arguments to support the Company's request to retain 50% of the benefits from the ARRs. He simply restates arguments made in his direct testimony that PECO runs the risk of choosing the wrong transmission path and therefore, incurring a loss.

OCA St. 1-S at 10.

The important issue here is the risk that PECO assumes, and based upon the facts presented in this case, the Company bears no risk of such losses whatever the source of the congestion. Even if the Company were to be at risk, the Company is made whole through the cost recovery mechanism. OCA witness Hahn testified:

> Furthermore, even if there was a serious risk of a loss in choosing the correct transmission paths over which to exercise ARRs, the Company is made whole for this risk through the current recovery mechanism, which is to pass along to

> customers all of the benefits and costs of the ARRs. PECO has not provided a viable reason to change the status quo. I believe that there will continue to be positive net benefits from ARRs and that 100% of these positive net benefits should continue to be passed along to customers.

OCA St. 1 at 15-16.

PECO argues in its Main Brief that a sharing mechanism will mitigate customers' loss exposure and provide an incentive for the Company to select more profitable ARRs. PECO M.B. at 44. The OCA submits that PECO's sharing mechanism is a solution to a problem that does not exist. OCA witness Hahn testified that:

> Based upon the data provided by PECO, ARRs have produced significant benefits for PECO's default service customers. If there was a serious risk of PECO choosing the "wrong path," these benefits would be smaller or perhaps negative. As I stated in my direct testimony, if there was a serious risk of a potential loss in nominating ARRs, I doubt PECO would be asking for its shareholders to share in that loss.

OCA St. 1-S at 10. PECO has historically not incurred such losses and even if the losses existed, the Company is already made whole for any potential losses.

For the reasons stated above and in the OCA's Main Brief, the OCA submits that PECO's proposed sharing mechanism for ARR revenue should not be adopted.

F. Elimination of Alternative Energy Portfolio Standard Surcharge.

The OCA addressed this issue in its Main Brief (at page 47).

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

1. Summary and Overview of the OCA's Position.

The OCA submits that RESA's 0.5¢ per kWh adder to the Price to Compare is wholly unjustified and in conflict with the Public Utility Code and well-established case law. If implemented, the adder would create a substantial profit on default service for PECO and require default service customers to unfairly subsidize shopping customers. Of note, PECO also opposes

RESA's 0.5¢ per kWh adder, as well as I&E and OSBA. RESA's adder proposal must be rejected.

2. OCA's Position.

RESA asserts that all customers are paying the costs that PECO incurs for default service whether the customers use default service or not, and therefore, a 0.5¢ per kWh adder is necessary to appropriately allocate the costs of default service based on cost causation. RESA M.B. at 37-38. In its Main Brief, RESA attempts to justify its 0.5¢ per kWh adder to the Price to Compare (PTC) by addressing the arguments against its adder proposal rather than providing evidence in support of its asserted bases for the adder.[3] See gen'ly RESA M.B. at 38-41. Specifically, RESA asserts that parties opposed to the adder, such as the OCA, have four principal arguments: (1) the adder structure penalizes default service customers; (2) the retail market enhancements benefits EGSs, so EGSs should pay for them; (3) allowing PECO to retain a portion of the proceeds of the adder would be tantamount to permitting PECO to earn a profit on its provision of default service, which is prohibited; and (4) the adder is likely to influence EGSs to also increase their prices. Id. The OCA agrees that these are the arguments presented and submits that these arguments support the rejection of RESA's proposal. The OCA also submits that implementation of RESA's proposed adder is unsound public policy and is in direct contravention of the Public Utility Code and the laws of the Commonwealth.

First, RESA alleges that its proposed adder will not penalize default service customers, but instead, the adder is necessary to recover the costs of implementing and maintaining retail market enhancements, which enhancements would not be necessary if default service customers would switch to an EGS. RESA M.B. at 38-39. As discussed at length in the OCA's Main Brief

[3] RESA names the 0.5¢ per kWh adder the Default Service Cost Recovery Charge (DSCRC) in its Main Brief. See RESA M.B. at 36.

(see OCA M.B. at 87-90) and later in this Reply Brief in Section IV.F, the Commission stated in the IWP Order that it would be reasonable for participating EGSs, as the prime beneficiaries of retail enhancement programs, to pay the costs of such programs. See IWP Order at 78, 84-85. As summarized by PECO witness Cohn: "[W]itness [Kallaher] has provided [no] basis to charge all customers for what amounts to an EGS marketing expense." PECO St. 5-R at 13.

Contrary to RESA's first argument, collecting the 0.5¢ per kWh adder from default service customers and then returning leftover proceeds to all distribution customers **does** penalize default service customers. OCA witness Hahn, PECO witness Cohn, I&E witness Granger and OSBA witness Kalcic all agree that RESA's proposal has the effect of using default service customers to unfairly subsidize all distribution customers. See OCA St. 1-R at 8; PECO St. 5-R at 12; I&E St. 1-R gen'ly; and OSBA St. 2 at 7. As stated by OCA witness Hahn:

> [T]his proposal will cause default service customers to subsidize customers who obtain power supply from an EGS. Default service customers will pay 100% of the costs but receive 75% or less of the remaining funds. This transfer of wealth or economic benefit is unsupported by any cost causation, is extremely inequitable, and discriminatory.

OCA St. 1-R at 8 (The 75% figure applies if 25% of residential customers in PECO's territory are shopping). Hence, RESA's proposal must be rejected.

Next, RESA asserts that the argument that retail enhancement programs benefit EGSs and should, therefore, be paid for by EGSs lacks merit. RESA M.B. at 39. Instead, according to RESA, the argument should be whether default service customers or shopping customers should pay for the retail enhancement programs. Id. RESA attempts to bolster its argument using the illustration that making EGSs pay for retail enhancement programs is akin to making EDC shareholders pay for an EDC's billing and collection system because they financially benefit the EDC. Id.

RESA's assertions completely lack merit. EDC billing and collection systems are necessary for EDCs to recover rates deemed just and reasonable pursuant to the Public Utility Code. These billing and collection systems have functions that also benefit EGSs and all distribution customers. For instance, EGSs benefit from EDCs' billing and collection systems via consolidated billing and Purchase of Receivables programs (POR). POR programs are a mechanism whereby EGSs sell their receivables in a service territory to the serving EDC (sometimes at a discount), and the EDC collects the amounts due from shopping customers on the EDC's regular bill and is permitted to use collection practices pursuant to the Public Utility Code and the Commission's regulations when customers do not pay the charges. EGSs use consolidated billing and POR programs in order to save themselves the costs of maintaining their own billing and collection systems.

EDC billing and collection systems also benefit customers. For instance, consolidated billing and POR programs allow a shopping customer to receive one bill from his EDC, which reflects both the distribution and transmission charges from his EDC and the generation charges from the EGS he has chosen rather than two separate bills – one from his EDC and one from his EGS. Again, RESA's attempts to illustrate how retail enhancements are similar to EDC functions that customers fund through rates fail. RESA's 0.5¢ per kWh adder is an unwarranted profit mechanism that will arbitrarily increase the PTC and must be rejected.

Third, RESA asserts that permitting PECO to retain part of the adder's proceeds would not be providing PECO a profit on its provision of default service. RESA M.B. at 40. Instead, RESA asserts that allowing PECO to retain "some relatively small percentage (no more than 10 percent)" of the adder's proceeds could be an appropriate incentive for PECO to meet certain benchmarks for migration away from default service and also could be used to pay "some

indirect costs incurred by the EDC [that] could not be identified without an unreasonable level of transaction costs." Id.

The OCA submits, however, that the approximately $6.6 million per year that PECO stands to retain pursuant to RESA's proposal (see OCA M.B. at 49) is significantly more than any allegedly unrecovered indirect costs that PECO incurs as a DSP. Further, even if it was not significantly more than these indirect costs that RESA alleges exist, certainly the transaction costs to identify such costs would not be so unreasonable that PECO would not undertake the task to identify them so that it could recover the costs via lawful means. Most importantly, PECO has not expressed any concern that it is not fully recovering its costs as the DSP. See e.g. PECO M.B. at 46. As noted by OCA witness Hahn: "The proposed 5 mil per KWH adder is not related to any cost for implementing default service or the retail market enhancements."

Section 2807(e)(3.9) is the Public Utility Code provision that is directly on point here. Section 2807(e)(3.9) does not provide for, nor authorize, a public utility to include a profit adder for the provision of default service through a reconcilable automatic adjustment clause. The Public Utility Code provides, in relevant part:

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

66 Pa. C.S. § 2807(e)(3.9). As the OCA explained in its Main Brief (see OCA M.B. at 47-53) a public utility is allowed to "recover … all reasonable costs incurred." 66 Pa. C.S. § 2807(e)(3.9). It is not only the statute, but the courts of the Commonwealth that have made this point abundantly clear. A public utility may only *recover expenses* or *costs* that it has *actually incurred*. Cohen v. Pa. P.U.C., 468 A.2d 1143, 1150 (Pa. Commw. Ct. 1983) (internal citations

omitted). See also Barasch v. Pa. P.U.C., 532 A.2d 325, 336 (Pa. 1987); Popowsky v. Pa. P.U.C., 695 A.2d 448, 455 (Pa. Commw. Ct. 1997).

RESA has not provided any analysis that the amount it selected for its adder (0.5¢ per kWh) is related to any actual costs that PECO incurs or will incur. See gen'ly RESA St. 2 at 34. As discussed above, the adder is clearly a profit mechanism. RESA's attempts to cloak its adder mechanism as an incentive device and a means to recover unidentified costs must fail.

Finally, RESA asserts that the adder is not likely to influence EGS pricing. RESA M.B. at 41. While RESA acknowledges that its adder will increase the PTC, RESA denies that EGSs will also raise their prices because "EGSs are not interested in charging high prices to customers." Id. However, RESA ignores the fact that those EGSs offering a percentage off the PTC will receive higher rates if the PTC is raised. See e.g. OCA St. 1-R at 7-8; OCA M.B. at 51. Therefore, RESA's adder would result in customers participating in the Opt-In Auction Program and Referral Program paying artificially higher prices because of the percentage off the PTC model for those programs. See OCA St. 1-R at 7-8. As further explained by OCA witness Hahn:

> The same theory applies to EGSs selling to customers through normal sales channels and not through any retail market enhancement program. A higher PTC will likely cause higher prices for selling one by one in the retail market. Thus, the real effect of the RESA proposal is to increase the power supply costs for both default services customers and customers who take advantage of the retail market.

OCA St. 1-R at 7-8. Moreover, as summarized by PECO witness Cohn: "Such a large and unjustified increase in the PTC would also send inaccurate price signals to customers." PECO St. 5-R at 12. As OCA witness Hahn further stated: "Including an arbitrary adder in the cost of default service will result in higher default service rates, and the DSP would no longer be

consistent with a least cost standard [as required by Act 129]." OCA St. 1-R at 7. See also 66 Pa. C.S. § 2807(e).

As discussed in OCA's Main Brief (see OCA M.B. at 47-48), RESA has the burden of proving that its 0.5¢ per kWh adder proposal is just and reasonable and in the public interest. See e.g. Pa. P.U.C. v. Metropolitan Edison Co., Docket No. R-00061366, Order at 117 (Jan. 11, 2007); Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc., Docket No. R-2010-2215623, Order at 14-16 (Mar. 15, 2012). RESA has a substantial evidentiary burden as to the proposed adder, which it has failed to carry. While Dominion also supports RESA's proposal, Dominion has not offered evidence that the adder is just, reasonable and in the public interest. See Dominion M.B. at 8. RESA's proposed adder finds no support in the Public Utility Code, the controlling case law in Pennsylvania or sound public policy. The OCA respectfully requests the Commission to deny RESA's request for a 0.5¢ per kWh adder to the PTC.

IV. RETAIL MARKET ENHANCEMENTS

A. Summary of OCA's Position.

In this portion of its Reply Brief, the OCA addresses the Retail Market Enhancements related to PECO's proposed EGS Opt-In Competitive Offer (also referred to as the Opt-In Program); Standard Offer Referral Program; cost recovery for the programs; and the Time-of-use programs. For a complete discussion of these issues, see OCA M.B. at 53-90. In the following sections, the OCA will respond to the arguments of the other parties as discussed in their Main Briefs.

B. EGS Opt-In Competitive Offer Program.

The OCA made several recommendations regarding the EGS Opt-In Competitive Offer Program (also referred to as the Opt-In Auction Program) in its Testimonies of Barbara R.

Alexander and Richard S. Hahn. Specifically, the OCA has made recommendations regarding eligibility for the program; the composition of the product offer; supplier participation load cap; the customer participation cap; customer options on product expiration and notice requirements; and structure of the Opt-In Program to better serve the goal of increasing customer interest in the retail market and to ensure that customers benefit as a result of the program. The OCA discusses its recommendations at pages 57-76 of its Main Brief and responds here to the issues raised by other parties in their Main Briefs about the issues.

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

Under PECO's plan, all residential customers (except for CAP customers) would be eligible to participate in the Opt-In Auction Program. PECO St. 2-R at 15. This approach is also consistent with the IWP Order. IWP Order at 42. The OCA agrees with PECO's proposal to allow all customers to participate in the Opt-In Auction Program, but to target the advertising and marketing program to non-shopping customers. PECO M.B. at 53; OCA M.B. at 58-60; OCA St. 2-R at 7. The OCA submits that excluding shopping customers who otherwise hear of the program could be discriminatory and could result in customer dissatisfaction.

RESA proposes in its Main Brief that the EGS should be able to deny the Opt-In offer to a customer who is already shopping. RESA M.B. at 55. While the OCA agrees that the intent of the Opt-In Auction Program is to encourage non-shopping customers to enter the retail competitive market, (see OCA St. 2-R at 7-8), the OCA submits that a practice of denying the enrollment of shopping customers may frustrate those customers and raise the specter of discrimination. The Commission succinctly responded to the problems with RESA's approach in its IWP Order and captured the importance of allowing all customers -- shopping and non-shopping -- to participate. The Commission stated:

> The Commission maintains its original position that Retail Opt-In Auctions should be open to both residential default service and residential shopping customers. The Commission agrees with those parties that expressed discomfort in the possibility of EDCs rejecting shopping customer participation. The Commission believes that would cast a shadow over the auctions and appear to be discriminatory against those who have already entered into the retail electric market. Additionally, the Commission believes this will prevent shopping customers from returning to default service in order to participate, which may result in cancelled contracts and the imposition of early termination fees/penalties.

IWP Order at 42.

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

2. Composition of Product Offer.

In its Main Brief, the OCA discussed concerns with the composition of PECO's product offer including the six-month duration of the contract, the proposed discount to be offered, and presentation of the key terms and conditions to be addressed. See OCA M.B. at 60-65.

a. Contract Term Length.

For the Opt-In Auction Program, the OCA, Dominion, and FES propose a 12-month contract length. OCA M.B. at 60-62; Dominion M.B. at 11; FES M.B. at 11. As PECO discusses in its Main Brief, PECO modified its proposal from a 12-month contract to a 6-month contract term in the Supplemental Testimony of John McCawley based upon the Commission's IWP Order. PECO M.B. at 53; PECO St. 2-S at 3; PECO St. 2 at 22.

In its Main Brief, PECO argues that a program length of 6 billing cycles is not as risky as a longer term; would help protect against the unpredictability of the market; would lessen the risk premiums that suppliers incorporate into products; and may entice more suppliers into the

market. PECO M.B. at 54; IWP Order at 50. The OCA submits, however, that these reasons ignore the particular interest of consumers in securing savings of sufficient length for the customer to want to participate in this program.

OCA witness Alexander explained one of the key concerns with the shorter term as follows: "This contract term is necessary to avoid the potential for 'teaser' rates and it better conforms to the overall Default Service procurement plan." OCA St. 2 at 11. OCA witness Hahn also noted that the "longer term will appear more attractive to customers." OCA St. 1 at 13. The OCA, FES, RESA, Dominion, and CAUSE-PA each stated in their Main Briefs that they recommend, or could accept, a 12-month term. OCA M.B. at 61; FES M.B. at 11; RESA M.B. at 58; Dominion M.B. at 11; CAUSE-PA M.B. at 11.

The OCA submits that multiple parties, including several EGSs, have indicated good cause and substantial support for a 12-month term, rather than PECO's proposed 6-month term. Nothing contained in PECO's Main Brief has caused the OCA to reconsider this recommendation.

b. Price of Product.

PECO proposed a 6-month product that is at least 5% less than PECO's projected Price to Compare (PTC) for June 1, 2013. The offer can also include a $50 bonus payment to customers that is paid by the EGS after the customer has accepted and completed three billing cycles with the selected EGS. PECO St. 2-S at 3. The OCA submits that in practical effect, under PECO's proposal, the 5% discount from the PTC is only guaranteed for 3 months of the 6-month term since the PTC adjusts quarterly. OCA witness Alexander proposed that the price offered to customers be a guaranteed savings off of the PTC during the entire term of the contract, not just the price for the first quarter of the program. OCA St. 2 at 5.

In its Main Brief, RESA argues that "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." RESA M.B. at 59. The OCA submits, however, that a guaranteed savings off the PTC for the entire term as opposed to a price that could be higher than the Price to Compare is the most beneficial to customers. RESA seeks to shift the "unreasonable level of risk" to customers.

As OCA witness Alexander testified:

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

OCA St. 2 at 5.

The OCA would note that the IWP Order provided a vision of the product offer as something "unique and eye-catching, and as customer-friendly as possible." IWP Order at 69. The OCA submits that a price that could be higher than the Price to Compare during the term of the program is not eye-catching or customer friendly.

The record demonstrates that under PECO's and RESA's proposal, there is a substantial risk for customers in this program. PECO's PTC has fluctuated substantially. In PECO's response to OCA Set I-7, PECO's presentation regarding the PTC showed:

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

> range of 8.87 cents per kWh (less than 500 kWh) to 9.42 cents per kWh (summer usage over 500 kWh).

OCA St. 2 at 12, fn. 4; OCA M.B. at 63. As this demonstrates, auction participants could be at risk with these price fluctuations under PECO's and RESA's proposal.

The OCA submits that the product offer should guarantee customer savings during the product term, without fear of harm. Neither PECO's approach nor RESA's approach provides these benefits. The OCA's guaranteed percent off discount for the entire term of the contract is the only product offer of record that can accomplish these goals. The OCA has submitted substantial evidence on this issue, and for the all the reasons stated above and in the OCA's Main Brief, the OCA respectfully requests the Commission to adopt the OCA's recommendations as to the product offer for the Opt-In Auction Program.

c. Terms and Conditions.

PECO has proposed that the Opt-In Auction be conducted prior to customer enrollment so that customers will know the price of the product being offered prior to enrolling. PECO M.B. at 50. The OCA agrees with this proposal. The OCA's position is that customers must be supplied with the full terms and conditions, including price, before participating in the Opt-In Auction Program. See OCA M.B. at 64-65. FES's Main Brief also proposes to hold the EGS bidding prior to customer enrollment and argues that:

> Customers will want to know the price they will receive before they decide whether to participate in the Opt-In Retail Auction, so customer solicitation after the EGS auction occurs and the price is known is more appropriate and more likely to result in robust customer participation.

FES M.B. at 13.

RESA opposes the proposal to conduct the Opt-In Auction prior to customer enrollment. RESA M.B. at 49-52. RESA argues that conducting the auction before the customer enrollment

will tend to decrease the number of EGSs that will participate in the auction. RESA M.B. at 49. In its Main Brief, FES challenged the factual basis for this statement. FES cited to its interrogatory responses, which stated that RESA did not prepare any studies or analyses to determine the effect of sequencing customer enrollment or that putting the price-setting auction before customer enrollment would decrease the number of EGSs. FES M.B. at 13, citing FES Exh. TCB-3 (RESA Response to FES I-7). Further, FES points out that RESA did not perform any studies or analyses projecting the number of EGSs that would participate in the auction if it preceded customer enrollment or vice versa. FES M.B. at 13, citing FES Exh. TCB-3 (Response to FES I-19).

The OCA submits that even if more EGSs participated in the auction, the likelihood is that fewer customers would accept the offer if they do not know the pricing terms. This would defeat the purpose of the Opt-In Auction Program. PECO witness McCawley testified that "customers are more likely to participate in the Opt-In Auction Program, and to have a positive experience with the Program, if they know the price of the product being offered to them before enrollment." PECO St. 2-R at 13.

RESA argues that customers would know that the price would be at least 5% less than the current default service price; include a $50 bonus and could be canceled without penalty. RESA M.B. at 52. The OCA submits that customers must have access to all of the terms and conditions, including the actual price particularly since the 5% discount is only in effect for one quarter. OCA witness Alexander testified that:

> The suggestion that customers should be asked to enroll prior to receiving the price, the material terms and conditions, or even before the customer is told the identity of the EGS that will become the customer's generation supplier is unreasonable. This process would transform the Opt-In Auction into an Opt-Out Auction by requiring customers to take affirmative action to de-enroll after receiving the actual price and terms should they not agree with the results of the

auction or for any other reason. Nor is this proposal remotely similar to the retail competitive market in which customers agree to accept a specific EGS offer based on knowledge or the price and other terms of service.

OCA St. 2-R at 6. See also OCA St. 2-S at 2.

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

3. Customer Participation Cap.

PECO's Opt-In Auction Program proposal includes a 50% customer participation cap. See PECO M.B. at 55, PECO St. 2-S at 3. PECO and RESA support this proposal in their Main Briefs. PECO M.B. at 55-56; RESA M.B. at 60-63. The OCA submits that the maximum number of customers authorized to enroll in the program should be limited to no more than 20% of the total number of non-shopping customers. The OCA proposes to set the customer participation cap at 20% for the Program so as to mitigate the volumetric risk for wholesale suppliers of default service power related to this unique, first of its kind program. See OCA St. 1 at 10, 12. The OCA more fully discusses this issue at pages 66 to 70 of its Main Brief. In the following section, the OCA will respond to the arguments of the other parties on this issue.

PECO stated in its Main Brief that it was "amenable to either a 20% or 50% customer participation cap and therefore does not object to lowering the customer participation cap as proposed by the OCA." PECO M.B. at 55.[4] RESA, FES and Dominion are opposed to the 20% cap.

RESA argues that the OCA is attempting to impose a limit that would lead to the rejection of customers who want to participate in the Opt-In Auction Program. RESA M.B. at 61-62. Contrary to the import of these arguments, the OCA is not attempting to limit the number

[4] The OCA notes that PECO has addressed the issue of the enforcement of the customer participation cap in this Section of its Main Brief. The OCA addresses the issue in Section IV.B.7 below.

of customers who can participate in the retail market for generation service. The OCA is recommending a pragmatic, reasoned approach for this unique, untested program that should enable a successful Opt-In Auction Program. OCA witness Alexander summarized OCA's concern as follows:

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

OCA St. 2 at 10.

RESA also argues that OCA witness Hahn's concerns regarding the 50% customer participation cap leading to higher prices are incorrect. RESA M.B. at 61-62. RESA avers that the wholesale suppliers already bear the risk that customers will migrate to and from default service. RESA M.B. at 62. The OCA agrees that full requirements suppliers are already dealing with customer migration due to **normal** switching activity, but this Opt-In Auction is not a risk associated with normal switching activity. See OCA St. 1-R at 5. This is a unique program designed to move a large number of customers into the competitive market at one time. OCA witness Hahn expressed his concern regarding the 50% customer participation cap:

> I am concerned that the Retail Opt-In Auction program as proposed by PECO will introduce an additional volumetric risk, over and above the existing volumetric risk, in providing residential default service, which will increase the cost of default service. Competitive suppliers that bid to supply default service will need to assess the risk that up to half of the default service load that they win the right to supply will be taken away from them after they have finalized their prices. Accounting for this risk will require these suppliers to raise their prices through additional risk premiums.

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

In its Main Brief, Dominion argues that there should be no difference in the level of risk that is priced into the products by the wholesale suppliers based on the percentage of customers that opt in and that there will be no difference to the market whether 20% or 50% migration exists. Dominion M.B. at 12. OCA witness Hahn responded to this position as follows:

> Potential default service providers will calculate the cost to assume this risk and will include this cost as a higher default service price. The Retail Opt-In Auction program should not result in harm to default service procurements or default service customers. It would not be in the public interest to allow such a result. My recommendation seeks to achieve a balance that allows for a robust Retail Opt-In Auction program and reasonable default service procurement and rates.
>
> ...
>
> The Final Order allows changes to be made for good cause. In my view, changing the cap on customer participation to 20% from 50% is for good cause and is required to mitigate an unacceptable volumetric risk. Furthermore, it is common industry knowledge that competitive suppliers will factor risks into their prices, including the risk that customers will leave for other supply arrangements. When no volumetric risk is present, as is the case when a competitive supplier signs an individual to a contract with a specific term, the price will be lower than when volumetric risk exists.

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

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

OCA St. 2-R at 2.

As discussed in OCA's Main Brief and above, the OCA has proposed the 20% cap in order to provide both a reasonable platform for success and to ensure that default service is not harmed. The OCA submits that the combination of current migration levels along with a 20% participation level should result in very robust overall shopping numbers, while still mitigating harm to default service. In addition, the Opt-In Auction Program as proposed here has never been attempted before in any jurisdiction. In the OCA's view, it would be more reasonable to proceed in the fashion that the OCA has recommended in light of these facts.

The OCA submits that the OCA's 20% cap and the hold back provisions discussed in Section II.G.2 above will provide a reasonable accommodation for all of the interested parties and provide protection for those customers who remain on default service. As such, the OCA submits that the Commission should adopt the OCA's recommendation on this issue.

4. Supplier Participation Load Cap.

The OCA noted its support for PECO's proposed 50% supplier participation cap for the Opt-In Auction Program. See OCA M.B. at 70. RESA and Dominion also support the Company's proposal. See RESA M.B. at 63-64; Dominion M.B. at 13. The OCA submits that PECO's proposal is reasonable and consistent with the IWP Order (see IWP Order at 63) and should be adopted.

FES opposes PECO's proposed 50% supplier participation cap for the Opt-In Auction Program. See FES M.B. at 18-22. FES asserts that load caps interfere with the natural operation of competitive market forces. FES M.B. at 19. However, FES ignores that the Commission had a dual purpose in recommending a 50% supplier participation cap in the IWP Order – that a diverse array of EGSs are able to participate in and enjoy the potential benefits of the Opt-In Auction and that customers enjoy the lowest pricing possible. See IWP Order at 63. The OCA

submits that FES has not presented any evidence that this dual purpose should be disrupted in PECO's service territory. As such, FES's proposal to have no supplier participation cap should be rejected in favor of PECO's proposed 50% supplier participation cap.

5. Customer Options on Product Expiration and Notice Requirements.

a. Customer Options on Product Expiration.

The OCA has proposed that customers remain with their EGS at the end of the Opt-In Auction Program and that if a customer does not affirmatively select a pricing product, the customer be placed on a fixed price, month-to-month product without any penalties or fees. OCA M.B. at 70-72.

PECO argues that the OCA's recommendation is not needed. PECO M.B. at 58. The OCA submits that due to the nature of this Opt-In Auction Program, sponsored by PECO and backed by the Commission, it should be made clear that customers will receive a fixed price product if they take no action. OCA witness Alexander explained:

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

OCA St. 2 at 14.

In its Main Brief, RESA states that "[c]ompetitive 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." RESA M.B. at 71. The EGSs already have significant flexibility in what they can offer to customers, but if the customer does not respond, the customer should not be placed on a variable priced service or other service that is wholly

inconsistent with the program in which they participated. The point of the Opt-In Auction Program is to create a positive experience for customers who otherwise have chosen not to shop, and a fixed price month-to-month product after the end of the program will help to maintain customers' comfort level with continuing to receive supply from an EGS. In the OCA's view, this is an important consumer protection that should be ordered by the Commission in this matter.

b. Notice Requirements.

The OCA has recommended that three notices be provided to customers prior to the end of the program -- one from the EDC stating that the program is coming to an end and two from the EGSs as required by the Commission's regulations. OCA M.B. at 72; OCA St. 2 at 12-13.

In its Main Brief, PECO avers that in its opinion, the three customer notices are not warranted because sufficient consumer protections exist. PECO M.B. at 57. The OCA submits that additional consumer protections are necessary for this special program. As OCA witness Alexander testified:

> I continue to recommend that this notice be required so that additional steps are taken to educate consumers about their rights at the end of the auction term and what will occur if the customer takes no action. Since it is assumed that most of the participating customers have not participated previously in the retail energy markets, it is my opinion that most of these customers will not be familiar with their options or that, having affirmatively agreed to participate in this program, their affirmative agreement to continue in the program and remain with the EGS will not be required.

OCA St. 2-S at 3-4.

PECO also states that "there is no reason for treating such a customer differently from any other customer whose contract with an EGS is about to expire." PECO M.B. at 57. Similarly, RESA agrees with PECO that two notices are sufficient and states that the Opt-In

Auction Program "is only marginally different than the direct mail offers that EGSs send to customers today." RESA M.B. at 66.

The OCA submits that there is an important distinction between this program and customers responding to a typical direct mail solicitation. This is a program that is being implemented by PECO and approved by the Commission. It will be presented to customers with these representations to encourage their participation. As Ms. Alexander testified, these customers "have entered this program based on PECO's notices and endorsement. Therefore, it is important that customers be educated in multiple ways by both PECO and the EGS." OCA St. 2 at 14. Moreover, the consumers who will participate in the program likely will not have previously participated in the retail markets, and the notice will ensure that customers are fully informed of their options.

The OCA submits that customers participating in the Opt-In Auction Program, which is sponsored by PECO and backed by the Commission, should be provided notice that this program is coming to an end. The EDC should be involved in the end-of-contract notice to ensure that customers are appropriately educated about the process by the sponsor of the Program, the EDC. The OCA submits that the EDC notice is an important consumer education tool and protection that should be ordered by the Commission in this matter.

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

The OCA addressed this issue in its Main Brief (at page 74).

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

The OCA recommends that PECO manage the application process for the Opt-In Auction Program and the customer participation cap as discussed at pages 74-76 of its Main Brief. Under

PECO's proposal, both the Application process and the participation cap will be handled by the EGS.

In its Main Brief, PECO states that the EGS implementation of the cap, with Commission oversight, is the most cost-effective mechanism to monitor the customer participation cap. PECO M.B. at 55-56. On the contrary, the OCA submits that under PECO's proposal, the maintenance of the participation cap and enrollment process is too widely spread over the EGSs to be effective from a cost basis or from an implementation basis.

The OCA submits that the day-to-day management of the customer participation cap is best handled by PECO and realistically cannot be managed on a day-to-day basis by the EGSs. The EGSs will not have the necessary knowledge of the number of customers being enrolled by each of the EGSs. The only entity in a position to have this view is PECO. The OCA submits that PECO's process has the potential to be very confusing and could lead to implementation problems with the customer participation cap if PECO does not manage the day-to-day operations of the application process and the customer participation cap.

C. EGS Standard Offer Program.

In the following sections, the OCA will respond to the arguments of the other parties as found in their Main Briefs.

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

PECO proposes that its Standard Offer Customer Referral Program target residential default service (excluding CAP) customers, but will be open to shopping customers as well. PECO M.B. at 62. The OCA submits that the Referral Program should be affirmatively offered to new customers, those customers moving within the EDC service territory, and those who specifically inquire about customer choice or the Referral Program, but other customer calls to

the EDC should not trigger a requirement to offer the Referral Program. OCA St. 2 at 16. The OCA will discuss issues relating to which customer callers should be informed of the program in Section IV.C.4 below. Nothing contained in the other parties' Main Briefs have caused the OCA to reconsider its position on this issue.

2. Composition of Product Offer.

PECO proposes a 12-month term and that the offer be a fixed price of 7% below the PTC at the time of customer enrollment. PECO M.B. at 62; PECO St. 2-S at Exh. JJM-5S, Article 1.4; OCA St. 2 at 15. FES similarly recommends a 12-month contract. FES M.B. at 27. The OCA and RESA both recommend a 4-month introductory offer.[5] OCA M.B. at 79-80; RESA M.B. at 71-73. OCA witness Alexander explained her recommendation and the concerns with PECO's proposal:

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

OCA St. 2 at 16. The OCA's proposed method would ensure that customers participating in the program would receive guaranteed benefits in the form of savings for the 4-month introductory period. At the end of the contract term, customers who do not affirmatively respond to the EGS' notices should be returned to default service as discussed in Section IV.C.3 below.

PECO argues that OCA's concern about customer savings is unwarranted because the customer "who concludes that the default service rate will be less expensive than the rate

[5] RESA witness Kallaher opposed PECO's proposed 7% discount for a 12-month contract and preferred a model similar to the "New York" model. Mr. Kallaher recommended that the customer be offered a percentage discount for a 4-month period, followed by a price that is disclosed to the customer by the EGS within the introductory period. RESA St. 2 at 25; RESA St. 2-SR at 14; RESA M.B. at 71-73. The OCA supports a 4-month introductory period, but the OCA does not agree with the other portions of Mr. Kallaher's proposal regarding what happens to the customer at the end of the product expiration period. This issue will be discussed in Section IV.C.3 below.

obtained through the Standard Offer Referral Program is free to return to default service." PECO M.B. at 62-63. While a customer will have the ability to switch to default service, as a practical matter, such a switch does not occur instantaneously. Customers will most likely find out that their price in the Standard Offer Referral Program is higher than the PECO price when they receive their first bill. By that time, the customer will have incurred charges higher than PECO's charges when they thought they were in a discount program.

The OCA's objective in recommending a 4-month time frame is to allow customers to experience the competitive retail market, but to enable that experience to be positive by producing savings. The OCA submits that for the reasons stated above and in its Main Brief, an "introductory period" of four months with a guaranteed discount off the PTC for all four months should be adopted for the Standard Offer Program.

3. Customer Options Upon Product Expiration.

PECO and RESA propose that if a customer does not affirmatively choose to receive service from a different EGS or elect default service after receiving the required notices, the customer will remain with the Standard Offer Supplier on a month-to-month contract. PECO M.B. at 63; RESA M.B. at 73-75. PECO avers that these customers should be treated no differently than other shopping customers. PECO M.B. at 64. The OCA submits, though, that these customers have not entered the retail market in the same way as other shopping customers. These customers are different from other shopping customers. The OCA submits that PECO's proposed process is not appropriate for this type of "introductory" program, and customers should be returned to default service after the 4-month period as is done in the Central Hudson program in New York.[6] See OCA M.B. at 80-82. It is important to recognize that a large

[6] See OCA St. 2 at 17. The OCA notes that the Central Hudson Gas & Electric model is not the same as the "New York" model discussed by RESA.

percentage of customer calls to PECO will be from new/moving customers. Customers who participate in such an "introductory" offer of a fixed discount as part of a call to a Call Center for a different purpose should be returned to default service unless the customer makes an affirmative choice to remain with the EGS or to select another EGS. OCA witness Alexander testified that:

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

OCA St. 2 at 17.

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

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

PECO adopts the Commission's guidelines that Standard Offer Program be presented during customer contacts to the EDC call centers, "other than calls for emergencies, terminations and the like," including high bill calls after the customer concerns are satisfied. PECO M.B. at 64. RESA witness Kallaher and Dominion witness Barkas both testified that all customer calls, other than emergency calls, should be included. RESA M.B. at 75; Dominion M.B. at 17. CAUSE-PA recommends that callers who are calling about a high bill should be excluded.

CAUSE-PA M.B. at 14-15. The OCA proposes that the Standard Offer Program be offered only during calls in which the customer is seeking to "establish service, transfer service to a new location, or is specifically seeking to discuss customer choice and/or the referral program." OCA St. 2-S at 5; OCA M.B. at 82-84. OCA witness Alexander testified:

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

OCA St. 2 at 16. See also OCA St. 2-S at 4-5.

The OCA addresses this issue more fully at pages 82 to 84 of its Main Brief. Nothing contained in PECO's, RESA's or Dominion's Main Briefs has caused the OCA to reconsider, nor requires the OCA to submit a further reply here on the topic.

5. Commencement Date of the EGS Standard Offer Program.

In its Main Brief, RESA recommends that the Opt-In Auction Program and the Standard Offer Program commence at the same time. RESA M.B. at 75-76. The OCA recommends that the EGS Standard Offer Program be implemented only after the conclusion of the Opt-In Auction Program. Overlapping programs could create customer confusion and the potential for adverse comparisons to the prices and terms of service associated with the various options, thus threatening the overall intent to stimulate interest in retail choice. CAUSE-PA agreed that "there is no need to run duplicative programs if they will cause customer confusion as to applicable terms." CAUSE-PA M.B. at 16.

The OCA fully addresses this issue at pages 84 to 85 of its Main Brief. Nothing contained in PECO's or RESA's Main Briefs has caused the OCA to reconsider its position, nor requires the OCA to submit a further reply here on the topic.

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

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

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

RESA and Dominion both recommend that CAP customers should be included in the Retail Market Enhancement Program. RESA M.B. at 78-81; Dominion M.B. at 17. PECO's Main Brief properly raises a significant number of issues that need to be addressed before CAP customers should participate in the retail market enhancement programs including:

> (1) how to protect CAP customers from commodity volatility; (2) how to seamlessly integrate the Low Income Home Energy Assistance Program and CAP portability; (3) the need to allow PECO's recent CAP tier changes and in-program arrearage forgiveness programs time to mature before making other major changes to its CAP program; (4) integration with PECO's Rate RH phase-out; and (5) how to implement a discount on the customer's bill, especially given that the discount would, in many cases, be larger than the customer's distribution charges. In addition, the risk of higher costs for all customers associated with greater uncollectible expense needs to be considered and addressed.

PECO M.B. at 66. The OCA would add to this list the impact of including CAP customers in these programs on other non-CAP, residential customers who pay for the costs of the CAP shortfall. The OCA supports the proposal of PECO and CAUSE-PA and recommends that this question be considered as part of the Commission's RMI Universal Service subgroup.

E. Additional Proposed Retail Market Enhancements.

1. Time-of-Use Offering.

PECO has a pending Petition of PECO Energy Company for Approval of Its Initial Dynamic Pricing and Customer Acceptance Plan at Docket No. M-2009-2123944 before the Commission. RESA made recommendations with respect to PECO's Time-of-Use (TOU) programs in this proceeding. RESA M.B. at 81-85. PECO addresses this issue at pages 67 to 68

of its Main Brief and states that RESA's recommendations will undermine the Commission's review of its pending Petition and potentially delay implementation of the TOU programs. PECO M.B. at 67-68. The OCA supports PECO's position and more fully addresses this issue at pages 85 to 87 of its Main Brief. Nothing contained in RESA's Main Brief has caused the OCA to reconsider its position, nor requires the OCA to submit a further reply here on the topic.

2. New/Moving Customer Referral Program.

The OCA briefly addressed this issue in its Main Brief. The OCA supports PECO's proposal. OCA M.B. at 87. No further reply is needed.

3. Referral of PECO Wind Customers.

The OCA takes no position on this issue.

4. Seamless Moves.

The OCA takes no position on this issue.

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

The OCA supports the Commission's and PECO's recommendation that the costs of the Retail Market Enhancement Programs should be recovered from EGSs, given that EGSs are the entities reaping the possible customer acquisition benefits resulting from the programs. IWP Order at 78; PECO M.B. at 72-76. CAUSE-PA, I&E, and OCA all support the Commission's and PECO's recommendation that EGSs bear the costs of these initiatives. CAUSE-PA M.B. at 25-26; I&E M.B. at 3-4; OCA M.B. at 87-90.

1. EGS Opt-In Competitive Offer Program.

PECO has proposed to recover the costs of the Opt-In Auction Program directly from the winning EGSs in proportion to the number of customers allocated to each EGS. PECO M.B. at 72-73; PECO St. 2 at 25. The costs to be recovered would include: the RFP process; the

independent evaluator; a consultant to perform the random selection of eligible customer accounts; and costs associated with development of the Offer Letter. PECO St. 2 at 25. In the event that the RFP process does not produce any winning EGSs, the costs of the program would be recovered through a 0.3% POR discount until such costs are fully recovered. Id.

PECO's position is consistent with the IWP Order, which proposed that the costs of the program should be allocated to all participating EGSs. The IWP Order stated:

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

IWP Order at 84-85. OCA witness Hahn addressed this issue and stated: "[t]he retail market enhancements are being implemented at the behest of and for the benefit of EGSs. Therefore, the costs should be paid for by the EGSs." OCA St. 1-R at 3.

FES, Dominion and RESA all recommend that PECO customers be responsible for the costs of the Opt-In Auction Program. FES M.B. 34-41; Dominion M.B. at 17-18; RESA M.B. at 89-94. FES recommends that customers should pay for the Opt-In Auction Program because "all customers stand to experience significant savings from a robust, competitive retail electricity market." FES M.B. at 34. Dominion similarly states that "customers will benefit from the enhancement programs." Dominion M.B. at 17. For the reasons stated by PECO and the IWP Order, the OCA disagrees. The EGSs will be the primary beneficiaries through substantially reduced acquisition and transaction costs, and as such, should be responsible for the costs.

The OCA agrees with PECO's Main Brief statement that the EGSs have not demonstrated any good cause to deviate from the Commission's IWP Order on this issue. PECO M.B. at 73. The OCA submits that PECO's proposal to recover the costs of the Opt-In Auction

Program from participating EGSs (or from all EGSs via a POR discount if there are no participating EGSs) should be adopted.

2. EGS Standard Offer Program.

PECO has proposed to recover the initial and on-going costs of the EGS Standard Offer Program through a discount on purchased EGS receivables (POR). PECO St. 2 at 28; PECO M.B. at 75-76. As with the Opt-In Auction Program cost recovery proposal, the recovery of the costs of the Standard Offer Program from EGSs is consistent with the IWP Order. The IWP Order stated:

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

IWP Order at 32. The OCA, CAUSE-PA, and I&E support PECO's proposal to recover referral program costs from EGSs. OCA M.B. at 89-90; CAUSE-PA M.B. at 25-26; I&E at 3-4.

Dominion proposes that the program should be paid for through a predetermined fee that each EGS would pay for each customer acquired through the program. Dominion M.B. at 17. The OCA takes no specific position on which form of cost recovery is utilized, as long as the costs are recovered from EGSs as recommended in the IWP Order and proposed by PECO. The EGSs will be the primary beneficiaries through substantially reduced acquisition and transaction costs and as such, should be responsible for the costs.

RESA and FES recommend that the costs be recovered from customers. RESA M.B. at 90-91, 93-94; FES M.B. at 4. The OCA submits that RESA and FES have failed to provide evidence to justify a cost recovery mechanism different from that recommended in the IWP

Order. As PECO witness Cohn testified: "Neither witness has provided a basis to charge all customers for what amounts to an EGS marketing expense." PECO St. 5-R at 13.

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

3. Other Enhancements.

The OCA has no other enhancements to discuss or address.

V. OTHER ISSUES.

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

VI. CONCLUSION.

For the reasons detailed in this Reply Brief, and those contained in the OCA's Main Brief, the OCA submits that the Company should be directed to modify its default service plan. The OCA's proposed modifications are designed to ensure that default service is provided through a prudent mix of contracts designed to be the least cost to customers over time, recognizing the benefits of price stability, and without any unjustified profit adders. The OCA also submits that the OCA's proposed modifications for the competitive enhancement programs be adopted to further ensure that retail competition continues to grow in the Company's service territory through successful retail enhancement programs. The OCA respectfully requests that its positions on the issues addressed in its Main Brief and this Reply Brief be adopted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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

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