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July 3, 2012

Via Electronic Filing

Rosemary Chiavetta, Secretary
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PO Box 3265
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Re: Petition of PECO Energy Company for Approval of
Its Default Service Program; Docket No. P-2012-2283641

Dear Secretary Chiavetta:

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

Sincerely yours,

A handwritten signature in black ink that reads "Daniel Clearfield". The signature is written in a cursive style with a large, sweeping initial "D".

Daniel Clearfield, Esq.

DC/lww
Enclosure

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

CERTIFICATE OF SERVICE

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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

REPLY BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION

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I. INTRODUCTION AND SUMMARY

On behalf of the Retail Energy Supply Association (“RESA”)¹ this Reply Brief is submitted in response to the main briefs of several of the parties to the above-captioned proceeding. While RESA anticipated and responded to many of the arguments set forth in the main briefs and incorporates those arguments herein, RESA offers this reply brief to respond to several specific points of the parties.

The temptation to view this as a complex case with numerous issues at play, should not overshadow the fact that there are a few “big picture” issues that must remain at the forefront when considering the proposal of PECO Energy Company (“PECO”) to implement a default service plan and various retail market enhancements for the period of June 1, 2013 through May 31, 2015.

First, the structure of the default service procurement plans is critically important. If the default service procurement plan is not structured in a way that is likely to result in default service rates that rationally track the market at the time of delivery, then this will negatively impact the ability of electric generation suppliers (“EGSs”) to enter the market and provide competitive alternatives as contemplated by the Electricity Generation Customer Choice and Competition Act (“Competition Act”).² The modifications proposed by RESA– which decrease

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

² 66 Pa. C.S. § 2801, et. seq.

the reliance on longer term contracts, shorten the delivery procurement window and lower the wholesale supplier load cap – are narrowly tailored to result in a default service procurement plan that will foster the development of a robust competitive retail electricity market. It should be noted that these proposed modifications are also designed to fulfill the Commission’s admonition that the plan at issue should be transitional, allowing the smoothest transition to a new “end state” which the Commission is currently considering. Unlike PECO or the other parties, RESA’s proposals are designed to facilitate this transition, by making the default rate more market reflective and by eliminating “overhanging” contracts, rather than assuming that the Commission will be able to just “fix things” when such longer term changes are in fact implemented.

Second, the intent and purpose of the retail market enhancement programs to encourage default service customers to shop must remain in preeminent focus. These programs will be successful only if they are structured in the most favorable way possible to encourage the participation of a variety of EGSs and to reasonably place the costs of the program on those who will benefit. Despite this, PECO apparently has not even attempted to evaluate the programs from the standpoint of the most important question that needs to be asked: “what structure will result in the greatest success, i.e., the greatest number of customers ending up on competitive service?” Rather, PECO’s constant refrain seems to be that it believes it has adhered to the Commission’s *Intermediate Work Plan Final Order*, and that is enough. While this an important consideration, the Commission specifically allowed for changes in the structure of the opt-in auction and the standard offer if the circumstances in a particular EDC service territory supported that result. As such, RESA’s recommended modifications to the structure of the retail opt-in auction and the customer referral program that are calculated to give the programs a

greater chance of success in the service territory of PECO. In each instance in which RESA has proposed revisions they have been grounded on the specific facts in the PECO service territory, with a laser focus on making the programs as successful as possible. As such, RESA's modifications should be adopted.

Finally, the Commission should reject attempts by parties to make the competitive enhancements less "enhancing" to competition. This means rejecting positions advocated by, for example, the OCA, to limit the number of customers who could benefit from the opt-in auction to just 20%, require customers who have accepted the "Standard Offer" to go back to default service at the end of the Standard Offer term if they take no affirmative action – directly contrary to the otherwise applicable ruling – and to impose 100% of the costs of the programs on EGSs, even though default customers plainly benefit from lower rates and greater access to the competitive markets these programs will provide. For all of these reasons, RESA respectfully urges the Commission to adopt the pro-competition positions of RESA in order to fulfill the mandate of the Choice Act to create a truly competitive retail market in PECO's service territory.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Residential Class Procurement

1. The Commission Should Accept RESA's Proposal to Include 10% Spot Purchases for Residential Customers

RESA supports the continued inclusion of 10% spot-market purchases in PECO's residential procurement for the residential class. In its Main Brief PECO expresses its opposition to RESA's proposal, but offers no arguments in addition to its previously stated position; however one argument deserves to be addressed. PECO claims that inclusion of more spot in the

mix will make the default service rate less market reflective because PECO will have to estimate the hourly prices that will come from the spot and this will cause more reconciliation issues.³ While this claim may be ingenious – it is obviously and intuitively wrong.⁴ PECO is defining "market responsive" as tracking to the minute actual changes in the market. Of course, if one uses estimates of the spot market – as one must in order to accommodate the lag in calculating and billing the default service rate – there will always be differences between the actual and the estimate. Until the universal deployment of smart meters, this will always be there for all pricing other than for contracts set months in advance of delivery. However, whatever difference there might be between the actual market rate and the estimate put into the pricing, the question is which is closer to the actual market price – an estimate of the prices that quarter – or a rate that was set for a 12 month period six months prior to delivery? The answer should be obvious. Moreover, under the current reconciliation process these estimates will be reconciled in the next quarter, thereby reflecting the effect of any changes in market price just a few months later.⁵ While this is not a perfect system, it is far better in terms of market responsiveness than simply ignoring them, and running the risk that the default service price ends up completely at odds with what is happening in the market.⁶ The remaining arguments of PECO and the other parties with respect to adding spot market pricing into the residential procurement mix have been addressed in RESA's Main Brief, and they need not be addressed in this Reply Brief. Based on RESA's

³ PECO Brief at 9-10.

⁴ RESA St. No. 1-SR at 5-7.

⁵ RESA St. No. 1-SR at 7.

⁶ RESA St. No. 1-SR at 5.

proposals as set forth in its Main Brief, the Commission should direct PECO to include 10% spot purchases as part of its residential procurement plan.

2. The Commission Should Reject OCA's Proposal to Continue Block and Spot Supply Procurement for Residential Customers

OCA's proposal to continue PECO's procurement of block and spot supply to meet its default service obligations to the residential class must be rejected.⁷ The inclusion of block and spot contracts imposes additional risk on all customers and is inconsistent with establishing default service rates in a manner that promotes the development of a robust sustainable competitive retail market because the underlying design of the procurement plan is not reasonably tailored to achieve a market responsive default service rate.⁸ PECO provided ample evidence explaining the risks involved in block purchases which include supply cost uncertainty and deferred cost recovery balances.⁹ If PECO is left with excess power due to a decrease in electricity demand or significant customer migration, this would force PECO to sell the excess power into the market at times when prices are relatively depressed resulting in higher, unanticipated costs for customers.¹⁰ These unnecessary and potentially costly risks are not consistent with the Competition Act and the goals of this proceeding.

⁷ RESA Brief at 15.

⁸ RESA St. No. 1-R at 2-3. As Ms. Williams testified, during 2011, there were numerous competitive price options available to PECO residential customers that were lower than the PECO default service rate. While point-in-time market comparisons can be problematic, this evidence certainly point to the risk that block and spot purchases can result in default service rates that materially diverge from the prices being offered in the competitive market and leave default service customers to bear the risks of the purchases.

⁹ PECO St. No. 3-R at 19-25.

¹⁰ PECO St. No. 3-R at 28-29.

B. Small Commercial Class Procurement

RESA has objected to PECO's proposed use of one-year laddered Firm Price Full Requirement (FPFR) contracts for the Small Commercial Class because a portion of the scheduled procurements (one-year contracts to be procured in September 2015) should be reduced to six-months to avoid any "overhang" of supply contracts beyond May 31, 2015.¹¹ RESA has recommended a "hard stop" of all contracts on May 31, 2015 to address the issue of supply contract "overhang."¹² The reasons for RESA's opposition to PECO's proposal and the rationale for the proposal for a "hard stop" are explained in more detail in Section II.E below.

C. Medium Commercial Class Procurement

RESA continues to support PECO's plan for the Medium Commercial Class procurement as set forth in RESA's Main Brief.¹³ As explained before, RESA objects to OSBA's proposal to use one-year, FPFR contracts to acquire 100% of the default service supply for this class of customers. In its Brief, the OSBA argues that its proposal promotes price stability and that RESA's focus on making default service prices more market-reflective is misplaced.¹⁴ The OSBA goes on to say that Act 129 repealed "prevailing market prices" and as such, measures to promote price stability are to be preferred. The OSBA's analysis of Act 129 misses the mark. While it is true that "prevailing market prices" is no longer the standard for evaluating default service procurement strategies, it is equally true that Act 129 does not establish a new "price stability" standard. Instead, the law requires default service procurements that result in "least

¹¹ RESA Brief at 19-21.

¹² *Id.*

¹³ RESA Brief at 16.

¹⁴ OSBA Brief at 5.

cost to customers over time.”¹⁵ RESA respectfully submits that Act 129’s “least cost over time” standard is met when default service procurement plans ensure that the resulting default service rate is as close as possible to the market price for energy at the time of delivery. This outcome satisfies the requirements of the statute because it results in a default service procurement plan that will establish and sustain a robust competitive retail market, allowing the collective decisions of empowered customers to determine what constitutes “least cost” with respect to their own personal decisions regarding electricity supply. It would be inappropriate to elevate this concept of “price stability” over the “least cost over time” formulation in the statute, especially where the reference to “stability” is not even in the default service procurement portion of the law (and only part of the Preamble to recent amendments). Moreover, least cost can best be achieved by ensuring that default service prices reflect market prices for electric supply. In fact, the Commission has already concluded that “[t]he rules of statutory construction dictate that the findings and declarations found in the Preamble of a statute do not take precedence over the specific statutory provisions contained in the law, but the rules of statutory construction provide that the Preamble may be considered in the construction of a statute.”¹⁶ Moreover, OSBA completely ignores the fact that customers in the medium commercial customer class clearly are comfortable with the competitive market (with 39% of their load shopping presently) and should be able to manage a more market responsive default service rate. OSBA would actually use a procurement scheme that is more akin to that recommended for the

¹⁵ 66 Pa. C.S. §2807(e).

¹⁶ *Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan*, Docket No. P-2011-2252042, Opinion and Order entered May 24, 2012 (“*PCL&P 2012 Default Service Order*”). On June 22, 2012, OCA filed an appeal of this order to the Commonwealth Court. *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Case No. 1179 C.D. 2012 at 29.

class that is exhibiting the least amount of shopping – the residential class.¹⁷ This makes no sense. For these reasons, OSBA’s proposal to use one-year, FPFR contracts to acquire 100% of the default service supply for the Medium Commercial Class should be rejected.

D. The Commission Should Adopt RESA’s Recommendation Regarding Procurements for Large Commercial and Industrial Class

RESA has expressed its opposition to PECO’s proposal to eliminate its current spot-priced full requirements contracts and to procure all default service supply for the Large Commercial and Industrial Class directly from PJM.¹⁸ PAIEUG supports PECO’s proposal on the ground that having PECO retain the procurement function for the small number of large commercial and industrial customers “in-house” would eliminate “sunk costs” resulting from possible failed RFPs.¹⁹ On the contrary, RESA believes that PECO’s proposed procurement methodology for this class of customers is likely to lead to a misallocation of administrative costs such that the default service price does not accurately reflect the costs of providing default service. In addition, purchasing spot-priced supply from PJM is not a competitive procurement process or sufficiently transparent.²⁰

PECO argues that: (1) there is no evidence of misallocation of administrative costs or that PECO will misallocate such costs in the future; (2) PECO’s tariff details the administrative costs that are to be recovered in default service supply charges and included in PECO’s GSA filings;

¹⁷ OSBA Brief at 4-5.

¹⁸ RESA Brief at 17-19.

¹⁹ PAIEUG Brief at 3-6.

²⁰ *Id.*

and (3) the Commission retains full authority to review these costs.²¹ Also, PECO claims that the Commission has, in the past, concluded that procurement of spot-priced supply directly from the wholesale energy markets is consistent with statutory requirements for default service supply.²²

RESA continues to believe that the appropriate course for the procurement of default service supply for the Large Commercial and Industrial customer class should be through the use of PECO's current competitive procurement process. First, such direct purchases in the market for the purpose of providing the primary default service supply does not appear to satisfy the statutory standard that "the electric power acquired shall be procured through competitive procurement processes and shall include one or more of the following [auctions, requests for proposal, bilateral agreements]."²³ Purchasing directly from the PJM real time market, other than to supplement some other purchase made via auction or RFP, would not seem to meet this standard.

Second, having an EDC directly participate in the energy market, buying and selling energy on behalf of customers would appear to be completely inconsistent with the Commission's expressed goals of moving the EDC out of the energy procurement role. Having the EDC directly procure power creates the potential that it could benefit from those purchases (indeed, PECO has made a proposal to keep a portion of the benefits that might come from these wholesale purchases). The last thing that would appear appropriate at this point is to create any incentive to the EDC to keep load on default service. This could happen if PECO wanted to

²¹ PECO Brief at 18.

²² *Id.*

²³ 66 Pa. C.S. § 2807(e)(3.1).

justify the administrative costs that it incurred to enable it to make these purchases, or to continue to receive its share of financial benefits from the spot market purchases.

PAIEUG's concerns regarding the continuation of energy procurement through RFPs are misplaced, and should not serve as justification for bringing PECO back into the default procurement function for large commercial and industrial customers. By allowing wholesale suppliers to compete to provide this service, any administrative adder that may be imposed are included in the wholesale bids, are therefore transparent, and are included in the default service rates customers pay.²⁴ RESA submits that, over time, a competitive procurement process (which PECO would not be using if its plan was accepted) will produce the most competitive prices, the lowest administrative charges, and the greatest economic value for customers. Such a process works today for the benefit of large commercial and industrial and there is no reason to believe it will not continue to work well going forward.

Moreover, PECO made no showing that it could not continue to procure this service – as it is done currently – from the wholesale market. For all these reasons, PECO's proposal is a bad idea from a policy perspective and should be rejected.

E. The Commission Should Reject Any Extension of Supply Contracts Beyond May 31, 2015

As RESA explained in its Main Brief, it is imperative that the Commission reject PECO's proposal to include default service supply contracts that extend beyond May 31, 2015 as part of its procurement plan for residential and small commercial customers.²⁵ Eliminating contracts

²⁴ RESA St. 1-SR at 8. Incidentally, PAIEUG's reference to Mr. Kallaher's testimony (RESA St. 2-SR) is incorrect. It was RESA witness M. Williams who addressed this issue in testimony (RESA St. 1-SR).

²⁵ RESA Brief at 19-21.

that “overhang” beyond May 31, 2015 is important because permitting contracts to extend beyond the default service period would threaten the Commission’s ability to modify the default service structure, as it is contemplating in its Retail Markets Investigation.²⁶

PECO maintains that it has followed the Commission’s instructions in the Default Service Recommendations Order and has already “limited” contracts that extend beyond May 31, 2015.²⁷ PECO seems to believe that *if* the Commission decides to make significant changes to the Commonwealth default service structure, the Company will have time to renegotiate any offending agreement and set everything right before the changes take effect. RESA respectfully submits that PECO must prepare now for the possibility that its default service role may be significantly different in the near future and eliminate obstacles to the seamless transition that is likely to come soon. Maintaining any supply contracts that overhang beyond May 31, 2015 is not a prudent way to prepare for impending changes in default service, and therefore, PECO’s proposal in this regard should be rejected.

The OCA agrees with PECO’s approach and favors the plan as the best way 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, 2015.²⁸ OCA’s justification of PECO’s proposal to retain contracts that overhang beyond May 31, 2015 on the basis of price stability is misguided. The Choice Act does not mandate price stability, but rather provides for default service procurement plans that will result in the lowest electricity prices over time.²⁹ PECO’s

²⁶ *Id.*

²⁷ PECO Brief at 16-17.

²⁸ OCA Brief at 27.

²⁹ 66 Pa. C.S. §2807(e)(3.1).

proposal to retain supply contracts with “overhang” have the potential to create additional costs that would ultimately inure to the detriment of utility customers. This could occur if the Commission mandates changes to the nature of default service (to, for example, a provider of last resort type service) or transfers that obligation to an EGS(s). It makes no sense to agree to a procurement plan that contemplates contracts extending into the period in which the Commission has suggested that a new default service model could be in place. Doing so could only cause additional complications at best, and , at worst, could stymie the Commission in implementing its new “end state” as quickly as it intended.

The better approach is to adopt a procurement plan that contains contracts that end on a date certain: May 31, 2015. The Plan should also contemplate that it could be extended for a period if it becomes clear closer to May, 2015 that changes in default service procurement will not be in place by that date. To do otherwise could well interfere with the ability of the Commission to effectuate changes designed to advance the development of competitive retail electric markets in the utility’s territory, and it should be rejected.

F. Procurement Schedule

1. OCA’s Proposal to Reallocate Tranches Between Solicitations

RESA does not oppose OCA’s proposal.

2. OCA’s Proposed “Hold Back” for Opt-In Program

RESA continues to oppose OCA’s proposed “hold back” for the Opt-In Program for the reasons set forth in its Main Brief.³⁰ In its Brief, the OCA has failed to present any new evidence

³⁰ RESA Brief at 21-23.

or compelling reasons for adoption of its “hold back” proposal, and as such, the recommendation should be rejected.

G. RESA’s Recommendation of a 50% Load Cap Should Be Adopted

RESA opposes PECO’s proposal of a 67% load cap and requests that the Commission adopts RESA’s recommendation of a 50% load cap.³¹ The Company’s proposal creates a high replacement cost if a supplier fails to meet its obligations, and other jurisdictions, like New Jersey, have achieved competitive results in their default supply procurement with a load cap of about 33%.³²

PECO claims that a higher load cap represents an appropriate balance between the goals of achieving supplier diversity and obtaining lower prices from suppliers seeking economies associated with larger supply opportunities.³³ It claims that a 67% is necessary to insure the interest of wholesale suppliers who might not bid where a 50% requirement might mean that they could only win one tranche.³⁴ However, the Company’s proposed auction schedule lists only one auction (November, 2012, for delivery in June, 2013, one year, Residential)³⁵ in which less than 5 tranches will be auctioned. Thus, even if PECO’s argument was valid for a two or three tranche load, the concern does not apply to this procurement plan. For the one three-tranche auction that PECO is proposing to hold, RESA recommends that the results of that

³¹ RESA Brief 24-26.

³² RESA Brief at 25.

³³ PECO Brief at 25-26.

³⁴ *Id.*

³⁵ PECO Exh. JJM-1.

auction be examined and if there are not sufficient bidders, then PECO can ask the Commission to waive the rule in that one instance.

The Company also asserts that the credit requirements in the Supply Master Agreement (“SMA”) provide adequate protection for default service customers in the event of supplier default.³⁶ According to PECO, the parties did not offer testimony in support of different security requirements if the Commission approves a lower load cap, and the reference to the lower 33% load cap in the New Jersey BGS auctions does not support a lower cap for PECO procurements.³⁷

Contrary to PECO’s assertions, a 50% load cap is the appropriate limit that the Commission should approve in this proceeding because wholesale load caps can be a competitive safeguard as they can help limit the EDC’s exposure to contract failure of any particular wholesale supplier. The Companies’ proposed 67% load cap for wholesale supply of default service could create a high replacement cost in the event a wholesale supplier fails to meet its contractual obligations.³⁸ By preventing the wholesale supply agreements from being concentrated in a few large suppliers and reducing the potential replacement costs associated with a single wholesale supplier, load caps may help ensure a variety of wholesale suppliers can ultimately provide the underlying supply for default service. Further, RESA disagrees that the credit requirements in the SMA offer sufficient protection from supplier default. A combination of a lower load cap (50%) and whatever credit requirements the Commission approves would be a superior method of safeguarding against the possibility of contract failure by any one supplier.

³⁶ PECO Brief at 26.

³⁷ PECO Brief at 27.

³⁸ RESA St. 1 at 14.

Finally, RESA takes issue with PECO's dismissal of the New Jersey example as a guide to the Commission in addressing the load cap issue. New Jersey's 33 1/3 load cap as part of its BGS auctions represents a good example for the Commission to follow to achieve an acceptable level of supplier diversity. New Jersey is a state with many similarities to Pennsylvania that has concluded that promoting diversity of wholesale suppliers through load caps is in the public interest.³⁹ RESA continues to believe that the New Jersey experience should be used as a guide in this case.

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

To the extent RESA takes any position on these issues, they are detailed in the appropriate sections of its Main Brief and this Reply Brief.

III. RATE DESIGN AND COST RECOVERY

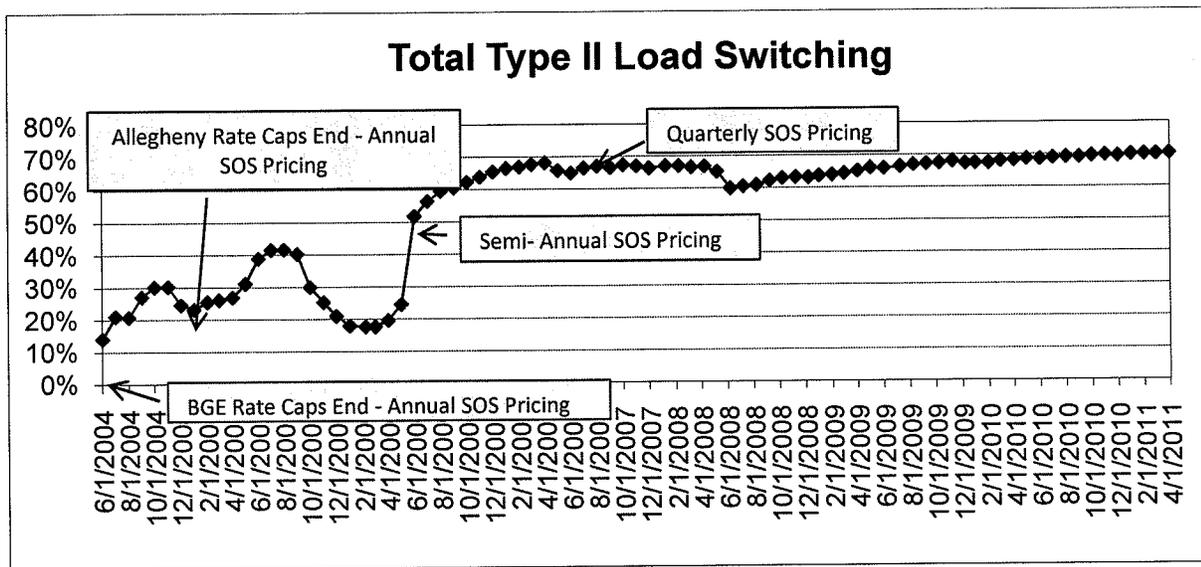
A. RESA's Proposal for a Quarterly Reconciliation of Default Service Costs and Revenues Should be Approved by the Commission

RESA opposes PECO's proposal to change the current quarterly reconciliation of default service costs and revenues to an annual reconciliation because it believes that a more frequent reconciliation leads to more market-reflective default service prices and promotes the development of competitive markets.⁴⁰ PECO contends that RESA's position that annual reconciliation further divorces default service rates from underlying wholesale supply costs is not

³⁹ RESA St 1-SR at 9-10.

⁴⁰ RESA Brief at 28.

supported by any analysis or formal study.⁴¹ However, RESA has indeed submitted clear evidence to support its point that market reflective default service rates promote the development of competitive markets. RESA witness Ms. Williams provided the results of a study that showed that switching increased dramatically and remained stable after Maryland instituted market responsive (first semi-annual and then quarterly adjusted) pricing for Type II non-residential customers (25 kW to 600 kW).⁴² The chart reflecting these findings follows:



This evidence presented by Ms. Williams is an unmistakable reminder that market responsive default rates lead to increased competition, which is the point of the Competition Act. Moreover, as Ms. Williams explained, reconciliation of actual and billed amounts is an inevitable part of and EDC procuring and providing default service. As such it is a “cost” of default service just as cash working capital associated with the purchases is a cost.⁴³ Changing the reconciliation schedule to an annual rather than quarterly (which means that PECO holds off

⁴¹ PECO Brief at 37-38.

⁴² RESA St. 1 at 9-10.

⁴³ RESA St. 1-SR at 10.

recovering or paying back this “cost” merely makes default service costs less reflective of reality.⁴⁴ RESA’s proposal to continue quarterly reconciliation of default service costs and revenues advances the goal of having default service rates that reflect market prices. PECO’s proposal to change to annual reconciliation will likely have the opposite effect, and for that reason, should be rejected.

B. The Commission Should Adopt RESA’s Proposal of a Non-Market Based (NMB) Rider to Allow PECO to Transmission Related Charges

RESA has proposed the creation of Non-Market-Based (“NMB”) Rider to permit PECO to recover PJM charges for Network Integration Transmission Services (“NITS”), Regional Transmission Expansion Plan costs (“RTEP”), expansion costs, and all charges that result from PJM’s implementation of its revised Economic Load Response program in compliance with FERC Order No. 745 (“New ELR Charges”).⁴⁵ RESA has proposed this NMB Rider in an effort to eliminate the competitive advantage that default service enjoys over competitive service when PECO recovers these costs from default service customers and to reduce competitive generation service prices by eliminating risk premiums that are added to EGS prices to account for the variability in these costs.⁴⁶

PECO does not support the proposed NMB Rider because it is not convinced that its implementation would lead to lower market prices, and because it believes that risk premiums could be eliminated by EGSs including PJM charges as a pass-through on EGS customer

⁴⁴ RESA St. 1-SR at 10-11.

⁴⁵ RESA Brief at 30-35.

⁴⁶ RESA Brief at 30-31.

contracts.⁴⁷ PAIEUG expresses much more strenuous objections to the proposed NMB rider and argues that the proposal is unjust and unreasonable, it allegedly violates the Competition Act and it is not in the public interest.⁴⁸ PAIEUG's objections to the NMB Rider proposal center around the perceived negative effects that this cost collection mechanism would have on the ability of large industrial customers to negotiate favorable generation service agreements. RESA submits that PAIEUG's opposition to the NMB Rider proposal is misguided, and the Commission should authorize the implementation of the rider in spite of PAIEUG's objections.

Contrary to PECO's contention that RESA has not shown that creation of an NMB Rider would lead to lower market prices, RESA witness Aundrea Williams provided specific examples of how the current cost collection process negatively affects market prices. Ms. Williams offered testimony indicating that, with respect to generation deactivation and new ELR charges, "PECO's approach results in price distortions for customers and, most likely, supply costs (whether default service or EGS provided service) that are driven higher due to the risk premium calculations that either the wholesale default service supplier or the EGS is required to make to account for these charges."⁴⁹ If the NMB Rider is implemented, these charges will be passed through to customers and there will be no need for EGSs to add a risk premium to its prices to account for these unpredictable costs. As Ms. Williams explained, the elimination of risk premiums will result in lower prices for customers.

PAIEUG opposes the NMB Rider proposal because it believes that it is not consistent with the Competition Act and because it fears that its ability to negotiate favorable deals for

⁴⁷ PECO Brief at 40-41.

⁴⁸ PAIEUG Brief at 7-27.

⁴⁹ RESA Brief at 35.

generations services would be somehow compromised. First, PAIEUG argues that RESA's proposal for an NMB Rider effectively "re-bundles" transmission and generation service in violation of the Competition Act and diminishes customer choice.⁵⁰ This contention by PAIEUG is based on a mistaken interpretation of the Competition Act and is nothing more than a hyperbolic statement that should be dismissed. As PAIEUG correctly points out, the Competition Act mandates the unbundling of electric services and the separation from generation, transmission and distribution.⁵¹ However, RESA is not proposing to undo what the statute mandates and have generation, transmission and distribution services "re-bundled" so that one vertically-integrated utility can provide all these services, as was the case before enactment of the Competition Act. RESA strongly supports the Competition Act's unbundling mandate and is not advocating a return to the past (even if it were possible or desirable at this stage of the game). RESA's NMB Rider proposal deals not with unbundling or re-bundling, but with the proper mechanism to recover costs and measures that the Commission should take to promote the development of a fully-functioning competitive electricity market in Pennsylvania (the charge will remain "unbundled" and separately charged). As RESA explained in its Main Brief, the adoption of the NMB Rider would provide a mechanism for the proper allocation and recovery of transmission-related costs and would level the playing field for EGSs to offer customers generation services at lower prices. This proposal would enhance competition and lead to customer benefits, not to a "rebundling."

Secondly, the proposed NMB Rider would not affect significantly the ability of large industrial customers to negotiate and secure favorable contracts for electric service. In fact,

⁵⁰ PAIEUG Brief at 16-18.

⁵¹ 66 Pa. C.S. § 2802(13).

RESA's proposal would make PJM charges more transparent and would lead to lower prices for customers by eliminating risk premiums that industrial customers pay when they opt for fixed price contracts under the current system. It is important to note that under RESA's proposed rider, PAIEUG members who currently take service under a pass-through transmission arrangement would not be affected. These customers will pay the same transmission-related charges they currently pay; the only difference would be that, under RESA's proposal, the charges would be assessed under the NMB rider instead of appearing on the EGS portion of the bill. For those customers taking service under a fixed-price transmission arrangement, they will pay the actual transmission-related costs they incur based on their usage (which will vary), but they will not be paying the risk premiums that EGSs must impose to account for these variable charges. Although this change may be an inconvenience for some customers who prefer budgeting certainty, there is a benefit in the form of lower prices resulting from the elimination of risk premiums associated with transmission-related costs.⁵²

Finally, PAIEUG argues that RESA's NMB Rider proposal should be rejected because it lacks the level of detail PAIEUG demands with regard to the cost collection methodology, and it fears that large industrial customers may be double-charged during the transition to the new cost recovery mechanism. At the outset, it should be noted that RESA is not proposing a change to the cost collection methodology employed by PECO to determine each customer's obligation for transmission-related costs. So, PAIEUG's concern that a sophisticated industrial customer cannot determine what cost collection method will be used is unfounded. To the extent that this is a legitimate concern, the issue does not arise from RESA's NMB Rider proposal, but from the

⁵² Moreover, an industrial customer desiring budget certainty could always contract with an EGS to pay a fixed amount for these charges (with the EGS responsible for paying PECO – in effect a hedge).

methods used by PJM and PECO to determine the transmission obligations of LSEs and individual customers, respectively.⁵³ In addition, RESA has acknowledged the possible need for a transition period to help deal with the worry that some customers may be double-charged for transmission-related costs under certain circumstances.⁵⁴ RESA's proposal does not preclude adoption of PAIEUG's suggestion that transitional issues be addressed in a manner that is fair to customers.⁵⁵ In any event, concerns with one-time transitional issues should not be a bar to the implementation of an NMB Rider that would promote competition and lead to customer benefits.⁵⁶

C. Costs Included in the Generation Supply Adjustment Charge

RESA is not addressing this issue as part of its Reply Brief.

D. PECO's Proposal for Sharing of Auction Revenue Rights Proceeds Should Be Rejected

RESA, along with the OCA, has expressed its opposition to PECO's proposal to establish a 50/50 sharing of Auction Revenue Rights ("ARR") revenues, in place of the current practice of

⁵³ PAIEUG Brief at 15. In its Brief, PAIEUG expresses a preference for the one coincident peak ("1-CP") method employed by PJM to set transmission obligations and for the utility to establish each customer's individual transmission obligation.

⁵⁴ RESA St. 1-SR at 16.

⁵⁵ PAIEUG Brief at 22.

⁵⁶ The Presiding Officer and the Commission should take note that an NMB Rider proposal similar to the one proposed here by RESA was approved in the FirstEnergy Default Service matter. In that case, ALJ Elizabeth Barnes found that, NMB transmission services should be acquired by the First Energy Companies on behalf of default service generation suppliers and EGSs serving load in the Companies' service areas and such costs should be removed from the Price to Compare and recovered through a Rider on a competitively-neutral, non-bypassable basis. *Joint Petition for Default Service Plan (2013-2015) of Metropolitan Edison Company, et al.*, Docket Nos. P-2011-2273650, et al. (Recommended Decision Issued June 15, 2012) at 71.

passing through to default service customers the gains and losses associated with AARs.⁵⁷ RESA submits that PECO's sharing proposal should be rejected because it is inappropriate to create an incentive which could prompt PECO to hinder competition by skewing default service rates and shopping to maintain this revenue flow. PECO should not be permitted to profit from default service in such an open-ended and unstructured manner. PECO has not presented any new or additional arguments in its Brief to counter RESA's position on this issue. Therefore, RESA requests that the Commission reject PECO's sharing proposal regarding ARR revenues.

E. Elimination of Alternative Energy Portfolio Standard Surcharge

RESA takes no position on this issue.

F. The Commission Should Approve RESA's Proposal for a \$0.005/kWh Adder to the Price-to-Compare

RESA has proposed a Default Service Cost Recovery Charge ("DSCRC") be added to the PTC with the proceeds to be used as for: (1) payment of any verifiable costs related to providing default service that have otherwise not been collected by PECO; (2) payment of costs related to implementing and maintaining competitive market enhancements, such as the Opt-In Auction, referral programs, and seamless moves; and, (3) any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers.⁵⁸

RESA's proposal is justified from a cost-allocation standpoint. The Competition Act expressly provides that all reasonable costs of providing default service in the post-transition

⁵⁷ RESA Brief at 36-37.

⁵⁸ RESA Brief at 37.

period shall be fully recovered by the default service provider.⁵⁹ It also requires that charges for generation, transmission and distribution be fully unbundled.⁶⁰ Consistent with these statutory requirements, the Commission's default service regulations require the default service rate to include the sum of all generation and transmission related default service costs.⁶¹ However, to date, there has been no full unbundling of the generation, transmission, and distribution costs. Therefore, to some extent, all customers are paying the costs of default service – whether they use default service or not. RESA's PTC Adder proposal attempts to recognize this by adding a modest charge onto the default service rate and crediting any remaining amount after the PTC Adder is used as recommended by RESA back to all distribution customers. Without the imposition of this mechanism or full unbundling, all customers will continue to pay for some part of the costs of default service in their distribution rates.

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

PECO, OCA and OSBA have raised a number of objections to RESA's PTC Adder proposal. PECO asserts that RESA has not provided support for the claim that PECO is at risk of failing to recover all costs associated with providing default service or that such costs are not properly allocated to default service customers.⁶² Both PECO and OCA believe that the costs that the adder is intended to collect are illusory or hypothetical, and therefore not recoverable.⁶³ The OCA goes as far as to say that the PTC Adder is illegal because utilities may only recover

⁵⁹ 66 Pa. C.S. § 2807(e)(3.9).

⁶⁰ 66 Pa. C.S. § 2804(3); *Lloyd v. Pa. P.U.C.*, 904 A.2d at 1010, 1013-14 (Pa.Cmwlt. 2006).

⁶¹ 52 Pa. Code § 54.187(a).

⁶² PECO Brief at 46.

⁶³ PECO Brief at 46-47; OCA Brief at 36-37.

costs that are actually incurred.⁶⁴ Also, PECO and OCA assert that the PTC Adder will collect more than the Company needs to recover and that the excess should not be shared with all distribution customers because the charge applies only to default service customers, and that would be inequitable, would result in cross-subsidization, and would result in an artificial inflation of the PTC and inaccurate price signals.⁶⁵

The concerns expressed by PECO and OCA regarding RESA's proposed PTC Adder misunderstand the basis for the proposal and are unfounded and should be rejected. First, RESA is not particularly concerned that PECO will not recover default service costs to which it is entitled; RESA is concerned that a number of default service-related costs – most of which PECO is already recovering – are not properly reflected in the price of default service as opposed to its distribution rates. The PTC Adder is intended to reflect such costs accurately and in a way that may ameliorate distortions resulting from the failure to accurately reflect default service costs in the PTC. For example, wholesale suppliers do not demand costly credit assurances from PECO because of its credit rating and financial standing. But such credit standing has a cost – a cost that is now shouldered entirely by distribution customers. Rather than attempt the costly and difficult process of identifying the portion of this credit cost that should be assigned to default service, RESA's PTC Adder would do so on a rough basis. Ratemaking regularly utilizes such estimates to allocate costs among classes; allocations on the basis of "revenues" or "plant in service" are regularly used in class cost of service studies. This is no different in concept.

Secondly, the costs that the PTC Adder are intended to recover are not illusory of hypothetical. RESA identified examples of real and significant costs such as the avoided costs of

⁶⁴ OCA Brief at 50-51.

⁶⁵ PECO Brief at 47-48; OCA Brief at 49.

credit security and executive and administrative costs such as billing and customer service that all customers pay, even if they are not on default service. The parties may label these costs illusory of hypothetical, but they failed to even suggest that the costs that RESA identified are non-existent or properly reflected in default service prices.⁶⁶

PECO, the OCA and OSBA oppose RESA's recommendation to permit PECO to collect the PTC Adder from default service customers and return any remaining credit to all distribution customers. According to OCA, it would be inappropriate to collect a charge from one group of customers (default service) and return excess amounts to another group of customer (distribution).⁶⁷ OSBA claims that it is "patently inequitable and discriminatory to redistribute revenues from default service customers to shopping customers without any link to cost causation."⁶⁸

These arguments totally fail to appreciate that the PTC Adder is primarily a cost allocation mechanism. That is, by charging a small amount to default service customers the Commission would be recognizing that there are costs associated with the provision of default service *that distribution customers in fact are paying for*; hence the return to distribution customers.

Moreover, the goal is to move default service customers into the competitive market. Therefore, the default service customer who pays the PTC Adder today is likely to be a shopping

⁶⁶ It is ironic that PECO claims that these default service costs are illusory. PECO's claim that these costs are illusory should be compared to FirstEnergy's claim that these costs can be significant and should be recovered by the default service provider. See FirstEnergy Main Brief, at 40-46, in Joint Petition for Default Service Plan (2013-2015) of Metropolitan Edison Company, et. al., Docket No. P-2011-2273650. To support its claims, FirstEnergy presented expert testimony to quantify and justify the recovery of such costs. Id.

⁶⁷ OCA Brief at 37.

⁶⁸ OSBA Brief at 13.

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

RESA’s proposed PTC Adder is a useful tool for cost recovery that encourages the development of the competitive market, and the Commission should approve it in this case.

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

PECO, OCA and OSBA oppose returning excess proceeds from the PTC Adder to distribution customers because, they claim, such a transfer would be tantamount to default service customers subsidizing shopping customers.⁶⁹ The parties opposing RESA’s PTC Adder and the related customer refunds overlook the fact that the customer referral program and the retail opt-in auction are targeting default service customers to incent them to participate in the competitive market. At the time that these programs are being developed and implemented, therefore, the customers who will be paying for them are the target audience for the programs – default service customers. When these default service customers choose to participate in the programs, removing the requirement from them to pay the PTC Adder is reasonable because their new status as shopping customers is the exact result intended by implementation of the programs. To the extent there are on-going costs of the programs, those customers who continue to remain on default service and continue to remain the target audience for the programs may be

⁶⁹ PECO Brief at 47-48; OCA Brief at 51-52; OSBA Brief at 13.

reasonably assessed the program costs. Contrary to the assertions of PECO and OCA, then, the PTC Adder is the most appropriate, reasonable and fair way to recover the costs of these programs from the correct class of customers and then remove their obligation to pay the costs once they have elected to participate in the programs.

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

The OCA also argues that the proposed PTC Adder is a “profit” because it is pre-tax money that PECO is permitted to retain without any added risk.⁷⁰ RESA believes that the PTC Adder should not be used as a way for PECO to acquire a profit from default service. RESA has offered a PTC Adder that would be a “win-win” for all stakeholders involved for a number of reasons. First, it would reasonably recognize that there are legitimate costs of default service that are being paid by all customers some of which would be appropriately recovered from default service customers through the PTC Adder; the remaining amount would be credited to all distribution customers. Second, RESA’s approach would provide a reasonable funding source for retail market processes and programs from those customers for whom such processes are targeted – default service customers. Finally, any over-collection would be credited to all customers thereby ensuring that the collection of the PTC Adder is shared across all ratepayers rather than being given only to PECO shareholders in the form of a profit on default service.

The portion that is retained by PECO under RESA’s proposal is to permit recovery of costs that are not included presently in distribution rates (such as internal costs of implementing the Competitive Enhancements) and will act as an incentive payment to encourage PECO’s

⁷⁰ OCA Brief at 53.

efforts in opening up the Company's territory to electric competition. The Commission can carefully monitor this portion of the PTC Adder and make its continued collection contingent upon PECO continuing to achieve success in having customers shop. Structured in this way, the PTC Adder becomes a win-win-win. It should not be brushed aside simply by claims by parties who are not particularly interested in seeing the development of fully competitive markets and wish to retrain the exiting default backstop as a better, regulated alternative to competitive markets.

IV. RETAIL MARKET ENHANCEMENTS

A. RESA's Proposals Regarding Customer Eligibility For The Retail Opt-In Auction And Customer Referral Programs Should Be Adopted

RESA recommends that small commercial and industrial customers (with peak annual demand of 25 kW and below) should be included in both the retail opt-in auction and the customer referral program.⁷¹ RESA also recommends that shopping customers should not be eligible to participate in these two retail market programs intended to encourage non-shopping customers to select a competitive supplier.⁷²

B. EGS Opt-In Competitive Offer Program

1. RESA's Proposal To Give Customers The Opportunity To Enroll In The Program Prior To Conducting The Auction Should Be Adopted

PECO, FES and OCA support holding the auction to choose the EGS(s) who will supply service pursuant to the retail opt-in auction before enrolling the customers who will participate in the auction. PECO refers to the *Intermediate Work Plan Final Order* in support of its

⁷¹ RESA Brief at 54-56.

⁷² RESA Brief at 57-59.

recommendation that the auction occur before customer enrollments and claims that reversing the sequence will create customer confusion and could lead to customers enrolling and not enough EGSs participating in the program.⁷³ Similarly, FES claims that “customers will want to know the price they will receive before they decide whether to participate in the Opt-In Program.”⁷⁴ Finally, OCA believes that customers should be presented with the key terms and conditions, including price, prior to the auction.⁷⁵ These arguments are not persuasive, and they should be rejected.

RESA is recommending that PECO depart from the Commission’s guidance regarding the order of the Opt-In Auction and enrollment because it believes strongly that more needs to be done to increase shopping statistics for residential customers in PECO territory – 25% shopping is simply not enough especially where, as in the PECO territory, there are a great number of EGSs offering service.⁷⁶ Improving switching numbers requires the full participation of EGSs and customers willing to exercise their options in a truly competitive market. Contrary to PECO’s assertions, the Company’s proposed sequence is likely to discourage EGSs from participating in the auction if it means that they are assuming the significant risk that an unknown number of customers entails (combined with PECO and OCA’s position that EGSs must shoulder all the costs of the auction). Also, there is little risk of customer confusion because the essential elements of the Opt-In product will be known – it will be a 6-month offer of at least 5% off the PTC with a \$50 bonus. Customers will be armed with enough information

⁷³ PECO Brief at 50.

⁷⁴ FES Brief at 13.

⁷⁵ OCA Brief at 64-65.

⁷⁶ RESA Brief at 44. This distinguishes the PECO territory from some of the other EDC territories, for example PPL.

to make a choice. If RESA's proposal is adopted, EGSs will also have better information and greater levels of confidence to participate in the Opt-In Program and increase its chances of success.

2. RESA's Proposals Regarding Customer Eligibility for the Opt-In Auction Program Should Be Adopted

a. Small Commercial Customers

PECO and OSBA oppose RESA's recommendation that small commercial customers with peak annual demands of 25 kW and below should be included in the opt-in auction and the customer referral.⁷⁷ OSBA and PECO also point to the Commission's recommendation in the *Intermediate Work Plan Final Order*⁷⁸ to: (1) wait and see whether a residential-only retail auction is successful before including small commercial customers; and, (2) not exclude shopping customers contacting an EDC from the referral program if they specifically request to participate.⁷⁹ None of these arguments supports rejecting RESA's recommendation.

At the outset, RESA does not agree that shopping for small commercial customers is "significantly higher" than residential shopping in PECO's service territory. The shopping statistic of 39% of small commercial customers shopping in PECO, as compared to 25% of residential shopping, is hardly something to celebrate and is reasonably characterized as "slightly higher" from a relative standpoint.⁸⁰ One of the main goals of the Competition Act is to rely on competitive market forces to control the cost of generation. The more customers in the

⁷⁷ PECO Brief at 52-53; OSBA Brief at 13-15.

⁷⁸ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 Final Order entered March 2, 2012 ("*Intermediate Work Plan Final Order*").

⁷⁹ OSBA Brief at 13-14; PECO Brief at 52-53.

⁸⁰ RESA Ex. CHK-2.

competitive market, the closer Pennsylvania will come to achieving this goal. The fact that over half of PECO's small commercial customers today are not receiving the benefit of the competitive market is a clear indication that the market is not a success. If 61% of customers bought cars from one car maker would that market be viewed as fully competitive? Accordingly, the fact that most small commercial customers are similarly captives of the default rate justifies continued attempts to encourage shopping for this customer segment.

Regarding the Company's claim that including small commercial customers would add complexity to the program, these claims appear to be based on PECO's rate classifications for its commercial customers – which vary – rather than the limited segment of those under 25kW. Notably, the number of customers in this breakpoint for PECO appears to be relatively small or, at least, manageable. According to PECO, 74,826 customers with a monthly peak load of 25kW or below take generation service from PECO, while 47,552 took generation service from an EGS as of February 29, 2012.⁸¹ So, of the 122,378 small commercial customers in this category, only approximately 39% are shopping. RESA would point out that the fact that PECO can provide these data indicate that identifying these customers and including them in the opt-in auction would certainly be feasible.

Further, PECO's reliance on the *Intermediate Work Plan Final Order* fails to acknowledge that the Commission was expressing concerns about the fact that rate classifications varied across the Commonwealth. The Commission did not address the special circumstances presented by the very low levels of shopping in the PECO service territory or the

⁸¹ See, RESA Exhibit CHK-1.

specific issue of limiting this customer class to the 25kW breakpoint established in the Commission's regulations regarding consumer protection.⁸²

b. Shopping Customers

OCA and PECO object to RESA's recommendation that customers who are already shopping should be not be eligible to participate in the retail opt-in auction.⁸³ RESA recommends that shopping customers not be eligible to participate in the retail opt-in auction or the customer referral program. The purpose of these proposed eligibility restrictions is to introduce default service customers to the competitive market. Customers who are receiving service from a competitive supplier are experiencing the competitive market already and, therefore, including them does not further the purpose of the program. RESA is also concerned about a potential negative impact to EGSs that are already serving these customers, the negative impact to customers who may have agreed to a contract containing early cancellation fees.⁸⁴ Again, given the special circumstances here, taking steps to at least advertise the program as only available to default customers is clearly warranted and consistent with the Commission's goal to encourage switching among customers who are not yet shopping.

Moreover, neither PECO nor OCA raise any legitimate reason for including shopping customers in a program that is supposed to expose customers to the competitive market. In PECO's case, its opposition appears to be based merely on what would be the easiest administratively; but a system could be devised that minimizes administrative hassle. For example, the Commission could direct that all the promotional materials and the contacts from

⁸² 52 Pa. Code § 54.1.

⁸³ OCA Brief at 59; PECO Brief at 53.

⁸⁴ RESA Brief at 58.

PECO state that shopping customers are not eligible, but not require PECO to “police” every switch that comes from a customer to assure that he or she is in fact currently on default service. If a customer switches, then the switch would be permitted to be completed. This would seem a reasonable compromise.

3. Composition of Product Offer

RESA supports PECO’s proposal for a six-month contract term for service under the Opt-In Program as it is consistent with the Commission’s guidance on the subject.⁸⁵ The OCA argues in favor of a 12-month contract term, but fails to justify this departure from the Commission’s determination besides citing the support of other parties for its position.⁸⁶ The Commission was justified in establishing a six-month term with regard to the Opt-In Program with a shorter term that would reduce the risk of market changes and supplier risk premiums added to their prices.⁸⁷ The Commission also reasoned that the shorter term would entice more EGSs to participate in the program, and RESA agrees. The OCA has not provided compelling evidence or other policy justifications for departing from the Commission’s preferred approach on this issue.

Similarly, with regard to price, the OCA opposes the fixed-price product proposed by PECO and proposes a product with a guaranteed savings off the PTC.⁸⁸ For the reasons set forth by RESA in its Main Brief, the OCA’s proposal should be rejected.⁸⁹ The OCA’s proposal is inconsistent with the Commission’s guidance on the price of the Opt-In Program, and a fixed

⁸⁵ *Intermediate Work Plan Final Order* at 50.

⁸⁶ OCA Brief at 60-62. In its Brief, the OCA claims that FES and DES/IGS can accept a 12-month term.

⁸⁷ *Intermediate Work Plan Final Order* at 50.

⁸⁸ OCA Brief at 62.

⁸⁹ RESA Brief 60-61

price option reduces the risks associated with EGSs having to provide a guaranteed savings off the PTC for a 12-month period. Moreover, and simply put, since, under PECO's plan, the residential default service price will change in December 2013 and January, 2014,⁹⁰ requiring a "guaranteed savings" product for a 12 month term would expose EGSs to the risk of having to match an unknown price. The result would likely be few if any EGSs willing to take that risk.

FES opposes the \$50 bonus because it believes that "if EGSs must pay a bonus and the costs of the program as well, a significant benefit of the program from the EGSs perspective is lost."⁹¹ FES also argues that a \$50 incentive is already being offered by suppliers in PECO territory, and the bonus offers nothing "unique" to the Opt-In Program.⁹² First, the Commission itself has already concluded that a \$50 bonus payment offering as part of the retail opt-in auction "is a reasonable incentive. . . to attract attention,"⁹³ and FES has raised no PECO-specific argument to contradict the PUC's guidance. Second, it should be noted that RESA has proposed that the costs of the program not be borne by EGSs, so to the extent that FES's opposition rests on the assumption that EGSs will bear all costs of the program, RESA's proposals regarding cost recovery should assuage FES's concerns.

Finally, FES's claim that the bonus is already being offered by suppliers and therefore should not be approved for PECO's Opt-In Program is non-sensical and should be rejected. Simply because bonuses of this level have already been offered does not in any way refute or invalidate the justification for including a bonus for this offer. In fact, if suppliers are using a

⁹⁰ See, Exh. JJM-1.

⁹¹ FES Brief at 16.

⁹² FES Brief at 16-17.

⁹³ *Intermediate Work Plan Final Order* at 70.

\$50 (or greater) bonus to attract new customers, this is an indication that such incentives are worthwhile and should be approved by the Commission to achieve its goal of encouraging customers to shop. Moreover, EGSs have and will continue to offer signing bonuses in all the service territories. The Commission presumably was aware of this and, nonetheless, directed that a \$50 bonus be part of the opt-in product. FES's position should be rejected.

4. Customer Participation Cap

RESA is in support of PECO's recommendation to limit participation in the opt-in program to 50% of PECO's residential default service customers.⁹⁴ However, as RESA explained in its Main Brief, it remains concerned that PECO use the appropriate number of customers to calculate how many customers will have the opportunity to participate in the program. The number of eligible customers, for purposes of calculating the cap, should include CAP customers in the 50% calculation even if the Commission decides to exclude CAP customers from the Opt-In Auction Program. This would be consistent with the Commission's directive that 50% of all residential default service customers be permitted to participate in the program.⁹⁵ Making the calculation in this way would result in some 68,000 more residential customers being permitted to participate in the opt-in auction, at the 50% level.⁹⁶

RESA continues to oppose the OCA's recommendation of a 20% customer participation cap for the reasons set forth in RESA's Main Brief.⁹⁷ The OCA has not presented any new or

⁹⁴ RESA Brief at 61-62.

⁹⁵ *Intermediate Work Plan Final Order* at 59-60.

⁹⁶ There are a total of 135,00 CAP customers. PECO St. No. 6-R at 8. The addition of the CAP customers will mean the number of customers eligible to participate is 612,000 (50% of 1,223,035, which is 1,088,035 + 135,000) rather than 544,000.. RESA Brief at 62, fn. 169.

⁹⁷ RESA Brief at 62-64.

additional arguments in its Main Brief to justify its recommendation on this issue that RESA should address in this Reply Brief. RESA would simply reiterate that OCA's demand for such a minimal level of participation is driven by a totally different world view – one that seeks to protect default service and to maintain as many customers on that service as possible, in the misguided belief that default service is somehow a better alternative for customers. RESA's opposition stems from its belief that the whole purpose of the opt-in auction is to get as many new customers into the competitive market as possible and that default service is just that – a back-up service that customers should be using only if they are unable to partake of competitive offers or are between competitive offers for a short period. Structuring the opt in auction to protect default service is truly “the tail wagging the dog” and should be rejected.

5. **RESA's Recommendation To Require At Least Four Winning Bidders Should Be Adopted**

RESA recommends that in addition to the proposed 50% supplier participation cap, a minimum of four winning suppliers be required.⁹⁸ PECO and FES object to RESA's proposals. PECO argues that there is no evidence that a four-bidder minimum would increase supplier participation in the one-time Opt-In Program RFP.⁹⁹ FES claims that no caps should be implemented because the winning bidder, who may be offering the lowest price, will not be able to serve more customers.¹⁰⁰

First, PECO's statement that RESA hasn't shown that the four EGS minimum would result in greater supplier participation is a non sequitur; by definition, if the auction required

⁹⁸ RESA Brief at 64-66.

⁹⁹ PECO Brief at 56.

¹⁰⁰ FES Brief at 21-22.

four winning bidders, at whatever level each was willing to participate, then supplier participation would be greater than an auction where only two winning bidders (50% load cap) was required. Assuming that PECO really meant that the four EGS minimum would not necessarily result in more bidders into the auction, RESA respectfully submits that, indeed, it has shown this. RESA's proposal is based on the extensive experience of its members in competitive markets throughout the country and the Commission's pronouncement regarding the importance of supplier diversity.¹⁰¹ The purpose of the requiring a minimum number of winners is to promote supplier diversity which will enable a variety of suppliers to bring their own "individual strengths and business models" to the auction for the benefit of retail end users.¹⁰² Note that the four EGS minimum does not mean that each supplier need serve 25% of the load; one supplier could serve 50% of the eligible load and three other suppliers could serve, 40%, 5% and 5% respectively. It stands to reason that increasing the minimum number of winning bidders will result in a greater number of suppliers of different sizes and business plans electing to bid than if there could be just two winning suppliers. This is a significant benefit to consumers because (1) it would operate as a check on market power (compared to the scenario in which one supplier is allowed to win the entire auction) and, (2) to the extent requiring a minimum number of bidders did allow a greater number of suppliers to enter the PECO market at scale, their participation could bring a more robust array of products and services, which RESA sees as a benefit to customers.¹⁰³

¹⁰¹ *Intermediate Work Plan Final Order* at 63.

¹⁰² RESA St. No. 2 at 24.

¹⁰³ FES Ex. TCB-1.

FES takes the position that customers benefit if a single supplier serves 100% of the load as long as that supplier offers the lowest price. FES has offered nothing to support this assertion. Instead of attempting to explain why a diversity of suppliers would be negative for customers, FES simply suggests that RESA's proposal should be rejected.¹⁰⁴ This is a patently obvious attempt to deflect attention away from the fact that FES would prefer to secure 100% of the retail opt-in auction load to serve its own business purposes. As such, it must be rejected.

6. The OCA's Recommendations Regarding Customer Options on Product Expiration and Notice Requirements Should Be Rejected

RESA has proposed that customers who participate in the Opt-In Program continue to enjoy the same protections with regard to the option upon expiration of the contract that the Commission has established in its regulations.¹⁰⁵ By contrast, the OCA insists that additional restrictions be placed on the relationship between customers and their chosen EGS. In particular, the OCA advocates for three notices to be given to customers at the end of the program, instead of the two currently required, and that if a customer does not respond to the notice, the customer should remain with the EGS on a fixed price, month-to-month contract.¹⁰⁶

RESA does not support OCA's proposal that customers should be automatically placed on fixed-price month-to-month contracts at the end of the Opt-In Program term because it is inconsistent with the Commission's established rules for end-of-term renewals. Moreover, the OCA's recommendation appears to be based on unsubstantiated and misplaced concerns that any

¹⁰⁴ FES Brief at 22.

¹⁰⁵ RESA Brief at 66-67.

¹⁰⁶ OCA Brief at 70-72.

other result could subject these customers to some untold harm.¹⁰⁷ Under the proposed plan, the customer will receive the required notices and will be free to decide whether to stay with the then-current EGS or choose some other option. Moreover, each customer will be free to switch away from the opt-in EGS at any time. There is no reason to treat Opt-In Program participants differently than any other shopping customer. PECO rightfully proposes (in this instance) to comply with the Commission's *Intermediate Work Plan Final Order* and permit Opt-In Program customers to remain with the EGS on a month-to-month basis (with a monthly variable price) without any termination penalty or fee.¹⁰⁸ OCA's approach would completely undermine the program and would constitute an unjustified interference with the customer's choice, which may be exercised by not responding to an EGS's notices and may reflect the customer's satisfaction with his current EGS. The OCA's recommendation is unreasonable and burdensome and should be rejected.

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

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

¹⁰⁷ OCA MB at 94, 96.

¹⁰⁸ *Intermediate Work Plan Final Order* at 50.

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

In its Brief, PECO incorrectly asserts that no party has objected to the governing documents for the Opt-In Auction, which include the RFP Program Rules, Bidder Application and the Opt-In Supplier Agreement.¹⁰⁹ In fact, RESA has objected to a number of provisions in these documents and has proposed that: (i) EGSs should not be required to execute a separate agreement with PECO as a condition of participating in the Opt-In Auction program; (ii) PECO's proposed Opt-In Auction governing documents should be rejected and PECO should re-file these documents in a compliance filing following the Commission's final order in this proceeding; and (iii) the parties should be directed to negotiate the development of the governing documents in a stakeholder collaborative involving Commission staff.¹¹⁰ RESA continues to believe that these steps should be taken to address the many concerns expressed in its Main Brief with the Opt-in Auction's governing documents. RESA provided redlined versions of PECO's original governing documents with specific recommendations for changes as part of its main brief.¹¹¹ The Commission should reject PECO's original submissions and direct the parties to negotiate with regard to the offending language before the final documents are approved.

C. EGS Standard Offer Program

1. Customer Eligibility

As is the case for the Opt-In Auction Program, RESA believes that CAP customers should not be excluded from participation in the Standard Offer Program. CAUSE-PA generally

¹⁰⁹ PECO Brief at 60.

¹¹⁰ RESA Brief at 69-70.

¹¹¹ RESA Brief, Appendix A.

opposes the inclusion in CAP customers in PECO's Retail Market Enhancement programs, but does not offer a specific objection to RESA's position that CAP customers should be included in the Standard Offer Program.¹¹² RESA has explained in Section IV.D., *infra*, and in its Main Brief, all the reasons that CAP customers should be included in PECO's Retail Market Enhancement Programs and has responded to CAUSE-PA's objections to this proposal. For the reasons set forth above, the Commission should direct PECO to include CAP customers in the Standard Offer Program and the Opt-In Auction Program.

2. Composition of Product Offer

PECO proposes to require EGSs participating in the customer referral program to offer service on a month-to-month basis for 12 complete billing cycles at a fixed price of 7% off the PTC at the time of customer enrollment.¹¹³ RESA proposes that the 7% off PTC price be offered for the first four months of the one year service term and, after that introductory period, the price offered by the EGS should revert to one that is disclosed to the customer in a mailing from the EGS serving the customer.¹¹⁴ OCA recommends that the Standard Offer Program be structured as an introductory offer with guaranteed savings for a four-month term.¹¹⁵ FES supports PECO's proposal of a 12-month standard offer at a fixed price at least 7% less than the PTC at the time of enrollment.¹¹⁶ These recommendations should be rejected in favor of RESA's proposal for a program where the 7% discount is available for four months of the 12-month term, after which

¹¹² CAUSE-PA Brief at 21-23.

¹¹³ PECO Brief at 62.

¹¹⁴ RESA Brief at 73.

¹¹⁵ OCA Brief at 80.

¹¹⁶ FES Brief at 27.

time, the rate would revert to a rate that is disclosed to the customer in a mailing from the EGS serving the customer shortly after enrollment.¹¹⁷

RESA proposes a four-month discount of 7% in accordance with the Commission's directive in the *Intermediate Work Plan Final Order*. PECO and FES disagree with this approach because they believe that the Commission called for a discount that is *not* limited to four months.¹¹⁸ First, because the PTC changes every quarter, there is disagreement about whether the *Intermediate Work Plan Final Order* requires EGSs to continue to offer a 7% discount off the PTC throughout the one-year service term or whether the discount is to be an introductory price not dependent on subsequent PTC changes. The language in dispute from that order is the following:

- The standard offer should be comprised of a 7% reduction from the EDC's effective DS PTC. The 7% reduction is a constant price established against the PTC *effective on the date the standard offer is made*.
- The standard offer should be provided for a minimum of four months, but should not exceed 1 year. The standard offer and its term should be uniform within an EDC's service territory.¹¹⁹

PECO relies on the second bullet to argue that the Commission clearly recommended that the standard offer discount could be offered for up to one year.¹²⁰ These attempts to create confusion where none exists appear to intentionally overlook the Commission's clear directive that "[t]he 7% reduction is a constant price established against the PTC effective on the date the standard offer is made." By this clear language, the Commission does not establish that the 7%

¹¹⁷ RESA Brief at 73.

¹¹⁸ PECO Brief at 63.

¹¹⁹ *Intermediate Work Plan Final Order* at 31 (emphasis added).

¹²⁰ PECO Brief at 63.

discount is required to change quarterly with the PTC. This supports a shorter term discount such as was used to great success in New York.¹²¹ Further, for all the other reasons explained in RESA's Main Brief, the use of an introductory 7% discount is more reasonably calculated to result in a more successful customer referral program and should be adopted.¹²²

3. **Customer Options Upon Product Expiration**

RESA opposes OCA's proposal that customers should be automatically returned to the EDC at the end of the customer referral term based on OCA's unsubstantiated and misplaced concerns that any other result could subject these customers to harm.¹²³ PECO rightfully proposes to comply with the Commission's *Intermediate Work Plan Final Order* on this point and permit referral customers to remain with the EGS on a month-to-month basis without any termination penalty or fee.¹²⁴ OCA's approach would completely undermine the program and is not consistent with Commission precedent which has already concluded that customers should not be "automatically" transferred back to default service at the end of a retail market program.¹²⁵

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

In its Brief, PECO incorrectly asserts that no party has objected to the governing documents for the Standard Offer Program, which include the Standard Offer Supplier

¹²¹ RESA Brief at 73; RESA St. 2 at 25.

¹²² RESA Brief at 73.

¹²³ OCA Brief at 80-82.

¹²⁴ *Intermediate Work Plan Final Order* at 32.

¹²⁵ *Petition for Pike County Light & Power Company for Expedited Approval of Its Default Service Implementation Plan*, Docket No. P-2008-2044561, Opinion and Order entered July 26, 2010.

Application and the Standard Offer Supplier Agreement. In fact, RESA has objected to a number of provisions in these documents and has proposed that (i) EGSs should not be required to execute a separate agreement with PECO as a condition of participating in the referral program, (ii) PECO's proposed referral program governing documents should be rejected and PECO should re-file these documents in a compliance filing following the Commission's final order, and (iii) parties should be directed to negotiate the development of these documents in a stakeholder collaborative involving Commission staff.¹²⁶ RESA provided redlined versions of PECO's original governing documents with specific recommendations for changes as part of its Main Brief.¹²⁷ The Commission should reject PECO's original submissions and direct the parties to negotiate with regard to the offending language before the final documents are approved.

D. Low-Income Customers Should Be Permitted to Participate In Proposed Retail Market Enhancements

PECO and CAUSE-PA oppose the inclusion of customers who participate in the Company's Customer Assistance Program ("CAP"). PECO has proposed that the issue be referred to the Universal Service Working Group of the Office of Competitive Market Oversight ("OCMO") because of complex issues that need to be addressed regarding the portability of CAP benefits.¹²⁸ CAUSE-PA fears that low-income customers will be harmed by price fluctuations once the introductory periods for the proposed retail market enhancements.¹²⁹

¹²⁶ RESA Brief at 78-80.

¹²⁷ RESA Brief, Appendix B.

¹²⁸ PECO Brief at 65-66.

¹²⁹ CAUSE-PA Brief at 21-23.

For all the reasons set forth in its Main Brief, RESA recommends that the Commission permit CAP customers to participate in both the retail opt-in auction and the customer referral program.¹³⁰ CAUSE-PA, with the support of OCA, recommends that the Commission affirm PECO's decision to exclude CAP customers from both the Retail Opt-In Auction and the Customer Referral Program.¹³¹ As developed more fully in its Main Brief, the underlying basis for CAUSE-PA's proposals is a stated preference for EDC provided default service over EGS provided alternative service based on the mistaken belief that the default service rate is superior to the EGS prices because the EDC's rates are "regulated" by the Commission. This foundational belief is not accurate and must be rejected.

As a threshold matter, neither the default service rate nor the price offered by EGSs is set by the Commission because the Commission does not have the authority to do so. The Competition Act makes clear that "[t]he generation of electricity shall no longer be regulated as a public utility service or function."¹³² The statute requires the Commission to establish the rates for the distribution and transmission services of the EDC and states that these regulated rates shall be governed by Chapter 13 of the Public Utility Code (which sets forth the "just and reasonable" standard for all jurisdictional rates). Pursuant to the law, generation (whether provided by EDC or EGS) is not a public utility service or function and it is not regulated by the Commission pursuant to its ratemaking authority in Chapter 13.¹³³ Therefore, the Commission does not set the default service rates.

¹³⁰ RESA Brief at 80-82.

¹³¹ CAUSE-PA Brief at 23.

¹³² 66 Pa. C.S. §§ 2802(14), 2806(a).

¹³³ 66 Pa. C.S. § 2804(10).

Rather, the default service rates are the result of the default service procurement plan that is approved by the Commission. Because of this, CAUSE-PA believes that

The default service supplier has an obligation to ensure that its procurements are in the customers' best economic interests by ensuring that they procure an electricity supply that is designed to ensure least cost to their customers over time.¹³⁴

CAUSE-PA contrasts this with EGSs who have "no such obligation" and, therefore, CAUSE-PA incredulously infers that they are more likely to manipulate their pricing to harm customers. This is nothing more than a scare tactic that has no foundation in fact or reality.

First, both default service supply and EGS generation service supply are acquired from the same wholesale energy market, and wholesale energy suppliers are heavily regulated by FERC, and wholesale energy prices are deemed just and reasonable pursuant to FERC's market-based rate authority. Ultimately, therefore, generation charges – including both default service charges and prices offered by EGSs – are fundamentally derived from the same market and are similarly constrained by market forces. Just as the Commission relies on competitive market forces to produce acceptable rates for default service supply, those same market forces assure that retail prices charged to consumers by EGSs will be similarly acceptable. Market forces will drive EGS generation charges to the market price and any EGSs that try to gouge customers will be unsuccessful. Thus it is the competitive market that assures that a customer's "best economic interest" will be realized. CAUSE-PA appears to favor regulation over competitive markets, a position that is both misguided and completely inconsistent with the policy of this Commonwealth, as set forth in the Competition Act.

¹³⁴ CAUSE-PA Brief at 17.

Second, CAUSE-PA ignores the fact that EGS generation charges are for the same product – generation service – as is being provided by the EDC, and are imposed through a contract with the customer and only after an EGS obtains a license pursuant to the Public Utility Code. In the licensing process, EGSs are required to prove to the Commission that they are financially and technically fit to render service. EGSs also have to meet stringent standards to participate as a market participant in the PJM market. In order to supply electricity for retail use within the PJM Control area, suppliers must become a PJM member and must sign the PJM Operating Agreement.¹³⁵ Once licensed, the Commission has a variety of processes in place to protect customers from inappropriate conduct by an EGS including regulations regarding: (1) billing,¹³⁶ (2) disclosures,¹³⁷ (3) contract rules,¹³⁸ (4) marketing and advertising,¹³⁹ and (5) complaint resolution.¹⁴⁰ The effect of these regulations are to ensure that consumers are given all the tools they need to make informed decisions about who they want to provide them generation services.

As for PECO's arguments, RESA has addressed the Company's concerns in its Main Brief. However, RESA reiterates its fundamental position that low-income customers should have the same opportunity to participate in the competitive market as anyone else. CAP customers should not be denied this opportunity based on vague and tenuous concerns like

¹³⁵ The application form for membership and the operating agreement may be accessed on PJM's website at: <http://www.pjm.com/about-pjm/member-services/become-a-member.aspx>. These standards include the posting of significant credit.

¹³⁶ 52 Pa. Code § 54.4.

¹³⁷ 52 Pa. Code § 54.5.

¹³⁸ 52 Pa. Code § 54.5(d) (rescission period); 73 P.S. § 201-7, et. seq.

¹³⁹ 52 Pa. Code § 54.7(c).

¹⁴⁰ 52 Pa. Code § 57.177.

“commodity volatility” or “economic vulnerability.”¹⁴¹ PECO’s low-income customers should be allowed to opt for a product that offers a lower price and a cash bonus, even if these features are temporary. If at some point, customers decide that the terms are not favorable, they can go back to PECO or pick another lower cost provider.

In response to PECO’s stated concerns regarding implementation of a portable benefit for CAP customers, RESA submits that the nature of PECO’s CAP program makes it easier to carry out than other types of low-income benefits provided by other EDCs. Indeed these programs are easier to administer with a discount program.¹⁴² Because PECO offers a discount off the bill, as opposed to having a percentage of income program, if a CAP customer is only paying 50% of his or her bill (with the rest covered by remaining non-CAP customers), then the CAP customer is better off if his bill goes down by 10%. Also, PECO’s remaining non-CAP customers are better off at that point as the subsidy is also smaller.

In conclusion, there is no reason to assume, as CAUSE-PA does, that CAP customers are somehow less capable of making informed decisions about shopping than other customers nor is there any reason to believe that the default service rate is preferable for these customers to EGS pricing. Based on the above, the Commission should direct PECO to set forth a reasonable

¹⁴¹ See, e.g., PECO Brief at 66 and CAUSE-PA Brief at 17.

¹⁴² PECO claims that RESA’s position on including CAP customers is somehow due to RESA witness Kallaher’s “misunderstanding” of PECO’s program. PECO Brief at 67, Mr. Kallaher fully understood PECO’s program as a “discount” program but made an error in his rebuttal testimony when he inadvertently referred also to “percentage of income” programs that are used by other EDCs, such as First Energy. As PECO acknowledges, Mr. Kallaher corrected his reference in an errata. PECO Brief at 67 fn. 27. But what PECO didn’t acknowledge was that this inadvertent reference did not have the slightest effect on Mr. Kallaher’s testimony or position that CAP customers can and should be included in both competitive enhancement programs. Indeed these programs are easier to administer with a discount program. If a CAP customer is only paying 50% of his or her bill (with the rest covered by remaining non-CAP customers) then the CAP customer is better off if his bill goes down by 10% and remaining customers are better off at that point as the subsidy is also smaller.

proposal for including CAP customers in its retail market enhancement programs notwithstanding the objections of PECO, CAUSE-PA and OCA.

E. Additional Proposed Retail Market Enhancements

RESA has proposed changes to PECO's proposals regarding additional Retail Market Enhancements including the Company's Time-of-Use Offering, New/Moving Customer Referral Program, Referral of PECO Wind Customers and the Seamless Moves Programs.¹⁴³ RESA continues to support its proposed modifications to the Retail Market Enhancement measures. The parties have not raised any new or additional issues that RESA should address at this time.

With regard to PECO's proposal for Time-of-Use ("TOU") offerings, RESA has proposed that, (1) for any future bid-outs in the default service period, PECO should adopt a model that more fully relies on market forces; (2) PECO should certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory; (3) PECO should submit a report on the number of EGSs actually providing the service; and (4) customers taking TOU service from an EGS should follow the same "end of term" rules that apply generally to EGS service, i.e, a customer that makes no affirmative choice at the end of the term of the TOU offering would stay with the EGS providing the service on a month-to-month, no early termination fee basis.¹⁴⁴ PECO objects to these proposals on the ground that there is a petition pending at the Commission to approve an auction that PECO conducted already, and deciding the TOU issue here would interfere with the pending petition proceeding.¹⁴⁵ It should be clear that, as RESA explained in its Main Brief, these recommendations are not intended to supplant

¹⁴³ RESA Brief at 82-91.

¹⁴⁴ RESA Brief at 82-86.

¹⁴⁵ PECO Brief at 68-69.

or interfere with any existing contract between PECO and an EGS for provision of commodity services associated with PECO's TOU pilot, as RESA's proposal would become effective upon expiration of any such agreement.¹⁴⁶

RESA is steadfast in its position that PECO should avail itself of competitive market forces to fulfill its obligations in connection with TOU offerings, and RESA's proposals should be adopted as a reasonable and efficient method to comply with these requirements. It is particularly important that the Commission establish that any TOU program using the competitive market truly advances the competitive market. Forcing customers who do not make an affirmative choice to be transferred back to default service at the end of the TOU is completely contrary to the PUC's existing rules, inconsistent with the treatment afforded customers participating in other Competitive Enhancements and should be rejected in any event.

F. RESA's Proposal for Recovery of Program Costs for Proposed Retail Market Enhancements Should Be Adopted

RESA opposes PECO's proposals in this proceeding – joined by OCA – which attempt to require “EGSs” to pay for the costs of the retail market enhancement programs.¹⁴⁷ In this regard, it should be noted that PECO claims, incorrectly, that Dominion witness Barkas “agrees with PECO's proposal that EGSs should pay the costs of the Standard Offer Program.”¹⁴⁸ In fact, Mr. Barkas said just the opposite when he clarified his position during cross-examination: that, in the first instance, he believed that all distribution customers should bear the cost of both the standard

¹⁴⁶ RESA Brief at 83.

¹⁴⁷ PECO Brief at 73.

¹⁴⁸ PECO Brief at 75.

offer and the opt-in auction, only if this position is rejected by the Commission did he voice support for a “per customer” charge to EGSs to recover the cost.¹⁴⁹

This is an enormously important issue and could “make or break” the success of the competitive enhancements. Forcing EGSs to pay all the costs of the opt-in auction and standard offer program, and requiring that they agree to do this before they even know how many customers may well participate is a recipe for failure. PECO’s proposal is that an EGS would have to agree prior to participating that it would accept all the costs of the program; this without knowing whether the EGS might serve one customer or 1,000 through this channel.

The suggestion of requiring these programs be paid through the discount at which the EDCs purchase accounts receivables from the EGS in the purchase of receivables (“POR”) program is a particularly bad idea that must be rejected because, among other things, the POR program has nothing to do with the programs being addressed here.¹⁵⁰ When evaluating PECO’s alternate proposals, it must be remembered that the end user customers – whether they are default service customers or shopping customers – will ultimately bear the burden of these costs. Therefore, the Commission should not be enticed to adopt an approach which sells itself as the “EGS will pay” option without first considering what that will mean in reality.

Clearly the Commission views this Opt-In Auction and the Standard Offer Program as the centerpiece of its current efforts to “jump start” the competitive market. It would be a severe disappointment for all concerned if no or very few EGSs participated due to their concerns about

¹⁴⁹ Tr. 104 (“[F]irst of all, in both programs, ideally as a supplier – and we think there is really good reason to think . . . that costs should be collected from all customers. However, given some of the indications we’ve had from the Commission, they want suppliers to help kind of pay for some of it, and we’ve given some ideas how it could be done if it goes in that direction.”) Accord. Tr. 101-103, 105-106, 108-109, 111-112.

¹⁵⁰ RESA Brief at 89.

an unknown level of costs which they might have to shoulder. Moreover, some (OSBA)¹⁵¹ appear to argue that the implementation costs should be borne by EGSs because it is the EGSs that “will benefit.” This is obviously incorrect. While it is clear that the beneficiaries will be the default customers who use this special opportunity to step into the competitive market for the first time, the real beneficiary will be the Commonwealth, because these programs will assist the Commonwealth’s policy of creating fully competitive markets to be realized. For both these reasons (elimination of the concern about EGS participation and advancement of the Commonwealth’s pro-competition policies) RESA recommends that the costs of Retail Market Enhancements be paid through a non-bypassable charge applicable to all customers eligible for those enhancements or, if the Commission orders its establishment, through the PTC Adder that RESA has proposed in this proceeding.

In connection with the recovery of costs associated with PECO’s remaining retail market enhancements, PECO objects to RESA’s position that EGSs should not pay for costs associated with seamless move and “switch on connect” because all customers should bear the cost of a functionality that should have been set up at the start of retail choice in Pennsylvania.¹⁵² The Company goes on to state that there is no evidence that PECO “was obligated” to build functionality to help shopping customers retain their chosen EGS without interruption when the customer moves.¹⁵³ It is puzzling that the Company would take the position that it could not possibly anticipate that EGS customers might move, and that they might request that their EGS service move with them, or that a person new to the service territory might want to subscribe to

¹⁵¹ OSBA Brief at 18.

¹⁵² PECO Brief at 76.

¹⁵³ *Id.*

an EGS service at the same time that he or she arranged for service from the distribution company. After all, an applicant for local telephone service also subscribes to the long distance carrier of his or her choice and is not relegated to the local service affiliate company for the first month of his/her service. RESA's position is that EGSs should not be made to pay for the reasonable costs of setting up "switch on connect" or "seamless move" capabilities that should have been in place a long time ago, when all customers were asked to pay for costs related to the transition to a competitive electricity environment. "Switch on connect" costs fall in the category of readily ascertainable measures that should not have taken 13 years to implement. For these reasons, EGSs should not be required to bear these costs.

V. **OTHER ISSUES**

None.

VI. CONCLUSION

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

Respectfully submitted,



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