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July 3, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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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:

Enclosed is the Reply Brief of PPL EnergyPlus, LLC in the above-referenced proceeding.

Copies have been provided to the persons in the manner indicated on the Certificate of Service.

Respectfully Submitted,

Andrew S. Tubbs

AST/jl

Enclosures

cc: Honorable Dennis J. Buckley
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Reply Brief of PPL EnergyPlus, LLC** has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF OF
PPL ENERGYPLUS, LLC**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. RATE DESIGN AND COST RECOVERY	2
A. PJM GENERATION DEACTIVATION CHARGES	2
B. INCLUSION OF A GENERATION DEACTIVATION CHARGE IS CONSISTENT WITH THE COMPETITION ACT, IMPROVES THE COMPETITIVE MARKET, AND SHOULD BE APPROVED.	6
C. THE INCLUSION OF A GENERATION DEACTIVATION CHARGE IS REASONABLE AND APPROPRIATE.....	9
D. ALL TRANSITIONAL ISSUES HAVE BEEN ADEQUATELY ADDRESSED.....	11
III. CONCLUSION.....	14

TABLE OF AUTHORITIES

Page

Pennsylvania Statutes

66 Pa. C.S. § 2801.....2

66 Pa.C.S. § 2802.....6

66 Pa.C.S. § 2802(13).....6, 7

66 Pa.C.S. § 2804(3).....6, 7

Pennsylvania Administrative Agency Decisions

*Application of Laser Northeast Gathering Company, LLC, Docket No. A-2010-2153371
(Opinion and Order entered June 14, 2011).....7*

*Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania
Power Company, and West Penn Power Company for Approval of Their Default Service
Programs, at Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and
P-2011-2273670 (Recommended Decision entered June 15, 2012).....8, 12*

*Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and
Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program,
Docket No. M-2009-2093215 (October 28, 2009)10*

*Petition of Pennsylvania Power Co. for Approval of Default Serv. Program for the
Period from January 1, 2011 through May 31, 2013, Docket No. P-2010-2157862
(Nov. 17, 2010).....7, 8*

I. INTRODUCTION

On January 13, 2012, PECO Energy Company (“PECO”) filed a Petition for Approval of its Default Service Program (“DSP Petition”). In its DSP Petition, PECO proposes to establish the terms and conditions under which PECO will procure default service supply, provide default service to non-shopping customers, and recover all costs on a full and current basis for the period from June 1, 2013 through May 31, 2015.

In its Main Brief, PPL EnergyPlus explained its position relative to its proposal that PECO be required to recover, through a non-bypassable rider, certain non-market based (“NMB”) transmission costs that are administratively set by PJM Interconnection, LLC (“PJM”). Specifically, PPL EnergyPlus explained that requiring PECO, as the default service provider, to recover administratively set transmission-related charges to address transmission system reliability problems caused by generation unit deactivation is appropriate. Moreover, PPL EnergyPlus demonstrated that because these charges are unknown and cannot be predicted or hedged by electric generation suppliers (“EGSs”), the recovery of these charges through a competitively neutral NMB Rider would improve the competitive market in the PECO service territory by reducing the risk and uncertainty associated with these charges for wholesale and retail suppliers. Namely, as proposed by PPL EnergyPlus, the NMB Rider would allow wholesale suppliers and EGSs to avoid placing unnecessary charges or unnecessary premiums on customers and eliminate an area that currently results in customer confusion.

In its Main Brief, PAIEUG and PECO assert that the Commission should not approve an NMB Rider to recover Generation Deactivation charges. In its Main Brief, PAIEUG argues that such an NMB Rider would violate the Electricity Generation Customer Choice and Competition

Act¹ (“Competition Act”), and presents transitional issues that PPL EnergyPlus has not adequately addressed. PECO argues that PPL EnergyPlus has not shown that implementing the NMB Rider will reduce rates, or that PECO should be responsible for alleviating customer frustration and confusion. The arguments made by PAIEUG and PECO are inaccurate and insufficient, and thus their positions should be rejected and the NMB Rider should be approved.

For the reasons that follow, as well as those more fully explained in PPL EnergyPlus’ Main Brief, approval of the NMB Rider should be granted as proper and in the public interest.

II. RATE DESIGN AND COST RECOVERY

A. PJM GENERATION DEACTIVATION CHARGES

As explained in PPL EnergyPlus’ Main Brief, Generation Deactivation charges are administratively set by PJM to recover the costs associated with operating generation units that, if deactivated by generation owners, could adversely affect system reliability. PPL EnergyPlus St. No. 1, pp. 2-3. Specifically, Generation Deactivation charges are non market-based charges set by PJM to address transmission system reliability problems by compensating generators that elect to defer deactivating a generation unit pending completion of required transmission reliability upgrades. *Id.* PJM imposes Generation Deactivation charges on load serving entities (“LSEs”) within the transmission system zone that benefit from the transmission system upgrades. Each LSE in the transmission zone is allocated a proportional share of Generation Deactivation charges determined by PJM. PPL EnergyPlus Statement No. 1, p. 3. PJM determines the zonal percentage cost allocator for the Generation Deactivation charges based on each LSE’s Network Service Peak Load contribution. *Id.*

¹ 66 Pa. C.S. §§ 2801 *et. seq.*

PECO's second Default Service Program ("DSP II") will establish the terms and conditions of the competitive retail electric market in PECO's service territory for the period of June 1, 2013 through May 31, 2015. Generation Deactivation charges in the PECO zone were expected to end by May 2012. PPL EnergyPlus Statement No. 1-SR at 7; See LGA Exhibit 1. Therefore, after May 2012 there will be no imminent need for PECO or EGSs to collect additional PJM Generation Deactivation charges from their retail customers. However, as supported by the uncontested record evidence in this proceeding, PJM Generation Deactivation charges are potentially significant, and there is a real potential for additional PJM Generation Deactivation charges in the future. PPL EnergyPlus St. No. 1, p. 4. Further, no party has challenged that these administratively set charges are unknown, and are not market risks that can be predicted or hedged by wholesale and retail suppliers. PPL EnergyPlus Statement No. 1, p. 3-4. Currently, Generation Deactivation costs are allocated by PJM to PECO for its default service customers and are the responsibility of the winning wholesale bidders in PECO's default service auctions. PECO Exhibit JJM-2, Supplier Master Agreement Exhibit D, p. 4. Similarly, EGSs are allocated a portion of the PECO zone Generation Deactivation charges based upon their respective loads in the PECO service territory. Going forward, these charges have the potential to be significant and pose an unnecessary impediment to the development of the competitive retail electric market in PECO's service territory.

Suppliers collect Generation Deactivation charges from customers in one of two ways, either through a risk premium applied to fixed price offers or via a pass-through mechanism built into variable price offers. Regardless of the method used by suppliers at this time, it is more appropriate for PECO to recover these charges from all customers. Instead of having customers incur additional expense to cover forecasted costs that may not actually occur, PPL EnergyPlus

is proposing that the recovery of these charges be assigned to PECO, which will allow suppliers to avoid placing unnecessary premiums on customers. PPL EnergyPlus St. No. 1-SR, p. 3. In addition, for customers where the Generation Deactivation charges are a pass-through, the process creates confusion amongst customers when their supply price changes, as well as frustration with their EGS for a charge that is not within the control of the EGS, and is a charge for system reliability rather than supply. *Id.*

By establishing an NMB Rider, PECO would pass through the PJM Generation Deactivation charge allocation and recover these charges from all customers via a competitively neutral non-bypassable charge. As explained by PPL EnergyPlus witness Alessandrini, the fact that PJM Generation Deactivation charges are based on proposed unit retirements and reliability needs, and are therefore intermittent and inconsistent, should lead to the conclusion that the potential premiums charged to both residential and commercial and industrial customer classes and the risks to suppliers are not necessary. PPL EnergyPlus St. No. 1-SR, pp. 7 and 8. Further, this proposal provides a benefit to both shopping customers and default service customers, because Generation Deactivation costs for PECO default service customers are currently the responsibility of the winning default service bidders. Therefore, default service bids also include risk premiums that are passed onto the default service prices being offered to non-shopping. PPL EnergyPlus St. No. 1, p. 5. All PECO customers would benefit by having PECO collect Generation Deactivation costs in an NMB Rider.

Moreover, contrary to the assertions of PECO and PAIEUG, including pass-through mechanisms in all EGS contracts is not a solution but instead highlights the existing problem. PAIEUG MB at p. 29. As noted above, EGSs include PJM Generation Deactivation charges in their retail offers to residential and industrial customers through a risk premium or by negotiating

a pass-through mechanism in their variable price offers. Indeed, PECO's and PAIEUG's suggestion that the use of pass-through mechanisms by EGSs in their offers to customers will resolve the harm caused to the competitive market in PECO's service territory shows either a misunderstanding of, or a disregard for, the competitive retail market in PECO's service territory. Under PECO's and PAIEUG's suggestion, EGSs would either have to cease making fixed price offers or fixed price offers would continue to include risk premiums to address the potential for significant future PJM Generation Deactivation charges. As detailed by PPL EnergyPlus witness Alessandrini, regardless of type of offer made by EGSs, all shopping customers will continue to encounter offers that include risk premiums, reopeners, price change provisions or variable price changes due to non-market based charges. This "solution" will not improve the competitive market. Instead, it will harm the market's development by reducing the types of offers made by EGSs or continue to permit customer confusion caused by pass-through mechanisms.

However, if PPL EnergyPlus' proposal is adopted, residential and commercial and industrial customers can receive and negotiate either fixed price contracts or variable price contracts with EGSs without having to worry about risk premiums, reopeners, price change provisions or variable price changes due to non-market based charges. The proposed NMB Rider would properly assign PECO the collection responsibility associated with both shopping and non-shopping transmission and reliability based costs to PECO. By assigning this responsibility to PECO, EGSs will no longer need to place these unnecessary charges and premiums on their customers. Indeed, EGSs would be able to make offers based on their cost of supply.

B. INCLUSION OF A GENERATION DEACTIVATION CHARGE IS CONSISTENT WITH THE COMPETITION ACT, IMPROVES THE COMPETITIVE MARKET, AND SHOULD BE APPROVED.

PJM Generation Deactivation charges are related to transmission system upgrades that will directly benefit PECO's service territory. Indeed, the charge is for the cost to operate a generation unit to avoid system reliability concerns until the necessary transmission upgrades can be completed. Therefore, assigning responsibility for the recovery of Generation Deactivation charges to PECO is appropriate. Further, assigning the responsibility to PECO is consistent with the language and goals of the Competition Act, *see generally* 66 Pa.C.S. § 2802, and the Commission's regulations. In its Main Brief, PAIEUG argues that the recovery of PJM Generation Deactivation charges for all load in the PECO zone through the NMB Rider violates the Competition Act. In support of this claim, PAIEUG argues that the proposed NMB Rider limits the competitive market by reducing competitive options, and that it is a rebundling of transmission and distribution rates. Specifically, PAIEUG claims that including any NMB Rider would deprive Large Commercial and Industrial ("C&I") customers of the fixed rate option that is currently made available to them. PAIEUG MB at p. 17. These arguments are without merit.

PAIEUG argues that this proposal creates an improper "re-bundling" of transmission and distribution services, in violation of 66 Pa.C.S. §§ 2802(13)² and 2804(3). PAIEUG MB at 16. This argument is inconsistent with Commission precedent. The NMB Rider would be separate and distinct from distribution charges, and thus would not rebundle transmission and distribution services. Further, the Generation Deactivation charge is not "transmission" service, as PAIEUG would have it characterized. PAIEUG MB at 17. The PJM-imposed Generation Deactivation charge is not a market-based charge. It is an administratively determined rate imposed by PJM

² It would appear that this section was cited in error, and that PAIEUG intended to cite 2802(14), which mirrors the language provided in PAIEUG's Main Brief at page 16.

and approved by the Federal Energy Regulatory Commission for services that are not at all competitive. As proposed, the Generation Deactivation charges would be borne by PECO on behalf of all customers, whether or not they shop. Thus, Generation Deactivation charges are not a charge for transmission services.

Moreover, the Commission has already validated the legal and factual basis for an EDC to acquire PJM-imposed non-competitive service charges on behalf of all suppliers, and to recover the cost of those services from all customers in the EDC's service territory on a competitively neutral basis. *See Petition of Pennsylvania Power Co. for Approval of Default Serv. Program for the Period from January 1, 2011 through May 31, 2013*, Docket No. P-2010-2157862 (Nov. 17, 2010) ("Penn Power 2010 DSP Order"). The Commission has allowed these charges to be handled by the EDCs, without considering such treatment to be improper re-bundling. In the Penn Power 2010 DSP Order, the Commission approved a settlement agreement which allowed Penn Power to recover Regional Transmission Expansion Plan ("RTEP") charges through a non-bypassable rider to all customers. If allowing the inclusion of PJM based charges violates 66 Pa.C.S. §§ 2802(13)³ and 2804(3), as PAIEUG contends, then that part of the settlement could not have been approved by the Commission. *See Application of Laser Northeast Gathering Company, LLC*, Docket No. A-2010-2153371, p. 32 (Opinion and Order entered June 14, 2011) (denying the term and condition of a settlement that provided for "light-handed" regulation of Laser because it would be unlawful and inconsistent with Chapters 11, 19, and 21 of the Public Utility Code).

The RTEP charges are substantially similar in nature to the Generation Deactivation charges that PPL EnergyPlus has proposed to have PECO collect in this proceeding. Namely,

³ It would appear that this section was cited in error, and that PAIEUG intended to cite 2802(14), which mirrors the language provided in PAIEUG's Main Brief at page 16.

RTEP charges are administratively developed and PJM-assigned charges that are not associated with competitive transmission service.⁴ Allowing the inclusion of the Generation Deactivation charges in an NMB Rider in this proceeding is consistent with the Commission's approval of the DSS Rider to recover RTEP charges in Penn Power's DSP proceeding. Therefore, the Commission should approve PPL EnergyPlus' proposal.

If an NMB Rider is approved, EGSs will still be able to offer the same options that they currently provide, namely a fixed rate option and a variable rate option. Further, inclusion of an NMB Rider does not "significantly alter" the competitive market. PAIEUG MB at 31. Although the NMB Rider would cause certain cost collection responsibilities to shift from the EGSs to PECO, the products currently offered will remain the same. PAIEUG's claims regarding the impact of an NMB Rider on the competitive market are grossly inaccurate.⁵

On the contrary, the evidence in this proceeding has shown that creating a competitively neutral mechanism to collect the Generation Deactivation charge is beneficial to competition, because it creates pricing transparency and reduces EGS risk and customer confusion. PPL EnergyPlus St. No. 1, p. 5. Implementation of this mechanism would eliminate the need for EGSs to include risk premiums in their fixed price offers. Therefore, all customers in PECO's service territory will benefit from receiving offers from EGSs that are based on the cost of supply

⁴ In addition, in the Recommended Decision in *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs*, at Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Recommended Decision entered June 15, 2012) ("Met-Ed et. al."), the ALJ found that allowing the inclusion of certain PJM-imposed charges as an NMB Rider would maintain competitive neutrality, and did not violate the Competition Act or any Commission regulations. Met-Ed et.al. RD at 62. Exceptions on this matter have been filed with the Commission.

⁵ Further undermining this argument is the fact that after May 2012, the PECO zone has no Generation Deactivation charges, so modifying the program should have no impact on the market at this time. PPL EnergyPlus St. No. 1-SR, p. 7.

and will not be inflated by the need for an EGS to account for the potential for non-market based Generation Deactivation charges.

The NMB Rider would allow for PECO to recover costs for transmission-related charges required to maintain system reliability caused by generation unit deactivations. Approval of the NMB Rider would remove these non-market based costs from default service and provide for the recovery of these charges via a competitively neutral non-bypassable rider applied to all PECO customers. This would produce the result advocated for by PECO and PAIEUG, namely, a simple pass-through of the PJM Generation Deactivation charges to all PECO customers.

For the reasons set forth above, the Commission should reject PAIEUG's claim, which is inconsistent with existing precedent, and approve the inclusion of the Generation Deactivation charge as part of an NMB Rider.

C. THE INCLUSION OF A GENERATION DEACTIVATION CHARGE IS REASONABLE AND APPROPRIATE.

The proposed inclusion of the Generation Deactivation charge, which is supported by Dominion, IGS, and by RESA, is a reasonable mechanism for addressing an issue that has a detrimental effect on competition in PECO's service territory, and should be implemented in the current proceeding. In its Main Brief, PECO relies on two primary contentions to argue that an NMB Rider should not be implemented. The first is that no evidence has been produced to show that there will be a reduction in market prices as a result of the NMB Rider. PECO MB at 40. The second is that PECO does not believe any evidence was presented to justify that it should be responsible for addressing customer confusion and frustration resulting from the Generation Deactivation charges. *Id.*

As to PECO's first contention, PPL EnergyPlus and RESA have both shown that, with regard to PJM-imposed charges that cannot be predicted or hedged, the EGSs must build in an

additional risk premium in order to ensure that they recover potential Generation Deactivation charges. Thus, if the Generation Deactivation charge were collected by PECO rather than the EGSs, then the EGSs could offer prices that did not include the risk premium and would, therefore, be lower than they would otherwise have been. PPL EnergyPlus St. No. 1 at 5, 6. PECO is simply wrong in its contention that no evidence was presented on whether a price reduction would occur.

As to PECO's second contention, PPL EnergyPlus has produced substantial evidence in this case to show not only that the NMB Rider would improve the competitive market, but also that the NMB Rider would reduce the customer confusion and frustration that results when EGSs are required to impose Generation Deactivation charges on customers. PPL EnergyPlus St. No. 1 at 5. The Commission has advocated, on numerous occasions, for clarity with regard to customer interactions. *See, e.g., Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215 (October 28, 2009)(As requested by PAIEUG, the Commission approved modifications to commercial customers' bills in order to provide transparency and clarity). The proposed inclusion of Generation Deactivation charges in an NMB Rider would provide very little additional responsibility to PECO. However, it will greatly improve the transparency of EGS pricing, for all customers as fixed price offers would not have a premium, variable prices will not have price adjustments and pass-through pricing would not have monthly changes that would need to be explained to customers. Having PECO collect the Generation Deactivation charges presents a net win for customers and the competitive market. Therefore, PPL EnergyPlus' proposal should be adopted.

D. ALL TRANSITIONAL ISSUES HAVE BEEN ADEQUATELY ADDRESSED

PECO DSP II provides the perfect opportunity to make this pro-competitive market adjustment. PPL EnergyPlus St. No. 1-SR at 7. There are currently no Generation Deactivation charges in the PECO zone, and most customer contracts will expire before the date that the DSP II changes will go into effect.⁶ In this proceeding, the parties supporting the Generation Deactivation charge have produced evidence to show that there are no meaningful transitional issues that should prevent the Commission from implementing PPL EnergyPlus' proposed NMB Rider. PAIEUG's argues that customers would be adversely affected by the adoption of the Generation Deactivation charge. However, this argument is not supported by the record evidence in this proceeding.

First, PAIEUG argues that PPL EnergyPlus' proposal may violate cost causation principles, if Large C&I customers are not allowed to utilize the one coincident peak ("1-CP") cost collection method. PAIEUG MB at 14-15. This argument both misstates the Commission's cost causation principles, and does not accurately portray the impact of the NMB Rider. As to cost causation, PAIEUG's argument is contrary to the Commission's cost causation principles, because one of the fundamental principles of public utility regulation is that rates are designed to reflect the costs of classes of customers, not individual customers. Here, however, PAIEUG seeks to gain an advantage by demanding rates that are designed on an individualized basis. This is not consistent with the Commission's typical cost causation practice of designing rates based on classes of customers.

⁶ OSBA's witness stated that he would recommend a delay "unless the current level of Generation Deactivation charges collected within PECO's transmission zone is de minimus." OSBA St. No. 2-R at 5. As of May 2012, PECO does not have any Generation Deactivation charges. PPL EnergyPlus St. No. 1_SR at 7. Therefore, the current level of Generation Deactivation charges is de minimus. As the current state of these charges in PECO's service territory falls squarely within the situation where the OSBA did not recommend a delay, the implementation of an approved NMB rider should occur on June 1, 2013 as proposed by PPL EnergyPlus.

In addition, the impact of the NMB Rider will not upset any cost causative relationship, as argued by PAIEUG. PAIEUG MB at 15. Customers will still be able to reduce their costs by reducing their use of the system. The NMB Rider proposed by PPL EnergyPlus will have no impact on the ability of Large C&I customers to benefit from reducing their usage because through the NMB Rider, PECO, rather than EGSs, would collect the PJM Generation Deactivation charges through the competitively neutral, non-bypassable rider. Therefore, customers could manage their allocation of the PJM Generation Deactivation charges by managing their usage.

PAIEUG also argues that implementation of the NMB Rider will cause customers to run the risk of either being overcharged or being inconvenienced. PAIEUG argues that Large C&I customers who have negotiated contracts which extend into PECO's DSP II period will be subject to a double-collection, because the Generation Deactivation charge is already included as part of the negotiated contract price. This leads to PAIEUG's second argument, which is that all customers are subject to potential over-billing errors caused by the transition to a new billing arrangement, and that, therefore, customers will now be inconvenienced by having to be more diligent in reviewing their bills.

As to PAIEUG's first argument, PPL EnergyPlus has provided evidence in this proceeding to show that a double-collection is highly unlikely.⁷ To the extent that a customer's existing contract with an EGS provides for a pass-through of transmission charges, beginning on June 1, 2013 the customer's EGS would simply cease charging the customer for PJM Generation Deactivation charges. That is, the EGS would simply zero out this charge on the customer's bill

⁷ In the *Met-Ed et. al. Recommended Decision*, the ALJ specifically addressed and rejected the same argument regarding double-collection. See *Met-Ed et. al. Recommended Decision* at 63-65.

once PECO assumes responsibility for recovery of these charges. PPL EnergyPlus, St. No. 1-SR, p. 6.

For those customers that entered into fixed-term contracts that spanned the DSP I and DSP II phases, sophisticated customers like PAIEUG's members knew or should have known that certain terms of their service would be subject to review and revision in this proceeding. PPL EnergyPlus St. No. 1_SR at 4. Further, the effective date of the change would be June 1, 2013, which would provide impacted customers with sufficient time to renegotiate their contract with their EGS. PPL EnergyPlus St. No. 1-SR at 6. As noted above, as of May 2012 there were no PJM Generation Deactivation charges being collected in the PECO zone. Therefore, it is unlikely that EGSs included a risk premium into their recent offers to retail customers. Moreover, if an EGS does not renegotiate with an existing customer, it is likely that the EGS will eventually lose that customer, because that customer will be able to obtain a better offer somewhere else. Thus, there is very minimal risk that any Large C&I customer would not be provided the opportunity to renegotiate their contract, should the Generation Deactivation charge be implemented. For these reasons, the likelihood of double-collection is extremely low, given the type and limited number of customers involved.

PAIEUG's second argument is that imposing an NMB Rider would create a burden on customers, because customers would have to review their bills more thoroughly. PAIEUG MB at 20. This argument is without merit, and conflicts with PAIEUG's statement that Large C&I customers are highly sophisticated. PAIEUG MB at 29. In addition, Large C&I customers routinely work with their supplier to review their monthly invoices. PPL EnergyPlus St. No. 1-SR at 6. The fact that these customers are sophisticated and are often already closely reviewing

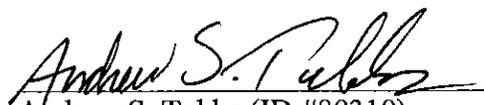
their bills undermines the argument that this transition will place an additional burden on Large C&I customers.

As previously noted, the proposed inclusion of a Generation Deactivation charge cannot be described as a significant alteration to the competitive market. At most it shifts an administrative cost currently collected from all customers by individual LSEs to PECO. PAIEUG's overstated fears about issues related to a one-time transition should not inhibit the Commission from approving a charge that will improve the competitive market in PECO's service territory for both customers and suppliers.

III. CONCLUSION

WHEREFORE, PPL EnergyPlus, LLC respectfully requests that Administrative Law Judge Dennis J. Buckely and the Pennsylvania Public Utility Commission approve PPL EnergyPlus, LLC's proposal to assign PECO Energy Company with the responsibility of recovering non-market based PJM Generation Deactivation charges in its certificated service territory through a Non Market-Based Rider.

Respectfully submitted,



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Date: July 3, 2012

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