Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
COUNSELORS AT LAW

Thomas P. Gadsden
Partner
215.963.5234
tgadsden@MorganLewis.com

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

July 3, 2012

VIA EXPRESS MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing are an original and nine (9) copies of the **Reply Brief of PECO Energy Company ("Reply Brief")** in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Reply Brief has been served upon Administrative Law Judge Dennis J. Buckley and all parties. Pursuant to 52 Pa. Code § 1.11(2), the enclosed Reply Brief shall be deemed filed on the date shown on the express delivery receipt attached to the delivery envelope.

Kindly time-stamp the extra copy of the Reply Brief we have enclosed and return it to us in the postage-paid, return addressed envelope provided.

Should you have any questions, please contact me directly at 215.963.5234. Thank you.

Sincerely,

TPGadsden

Thomas P. Gadsden

TPG/tp
Enclosures

c: Per Certificate of Service

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JUL 03 2012
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS DEFAULT SERVICE PROGRAM	:	**DOCKET NO. P-2012-2283641**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

REPLY BRIEF OF PECO ENERGY COMPANY

Before Administrative Law Judge
Dennis J. Buckley

Anthony E. Gay
(Pa. No. 74624)
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

Thomas P. Gadsden
(Pa. No. 28478)
Kenneth M. Kulak
(Pa. No. 75509)
Brooke E. Leach
(Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Counsel for PECO Energy Company

July 3, 2012

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I. INTRODUCTION

PECO Energy Company ("PECO" or the "Company") files this Reply Brief in response to the Main Briefs that were filed by the following parties:

Bureau of Investigation and Enforcement	("I&E")
Office of Consumer Advocate	("OCA")
Office of Small Business Advocate	("OSBA")
Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania	("CAUSE-PA")
ChoosePAWind.com	("ChoosePAWind")
Dominion Retail, Inc. and Interstate Gas Supply, Inc. d/b/a IGS Energy	("Dominion")
FirstEnergy Solutions Corp.	("FES")
Green Mountain Energy Company	("GMEC")
Philadelphia Area Industrial Energy Users Group	("PAIEUG")
PPL Energy Plus, LLC	("PPL EnergyPlus")
Retail Energy Supply Association	("RESA")[1]

As explained in the Company's Initial Brief, PECO's Default Service Program for the period from June 1, 2013 to May 31, 2015 ("DSP II") is designed to ensure that PECO's default service customers continue to have access to an adequate, reliable electric generation supply at the least cost over time and to enable PECO to recover its costs of furnishing that service. In addition, PECO has proposed a variety of retail market enhancements to be implemented as part of DSP II in accordance with the directives issued by the Pennsylvania Public Utility Commission ("Commission") in its Investigation of Pennsylvania's Retail Electricity Market (the "Retail Markets Investigation").[2]

[1] The following parties did not file Main Briefs: Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc., Direct Energy Services, LLC, Exelon Generation Company, LLC and Exelon Energy Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company, NextEra Energy Services Pennsylvania, LLC and NextEra Power Marketing LLC, Noble Americas Energy Solutions LLC, UGI Energy Services, Inc. d/b/a UGI EnergyLink and Washington Gas Energy Services, Inc.

[2] *See Investigation of Pennsylvania's Retail Elec. Mkt.: Recommendations Regarding Upcoming Default Serv. Plans*, Docket No. I-2011-2237952, 2011 WL 6740802 (Pa. P.U.C. Dec. 16, 2011) ("*Default Service Recommendations Order*") and *Investigation of Pennsylvania's Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-2237952, 2012 WL 1066614 (Pa. P.U.C. Mar. 2, 2012) ("*Intermediate Work Plan Order*").

To a large extent, the arguments advanced by the opposing parties' in their respective Main Briefs were fully addressed in PECO's Initial Brief. Therefore, this Reply Brief will focus on particular areas of disagreement as well as new argument and material presented by several opposing parties. As none of the arguments or material now advanced by the opposing parties justify modification of PECO's DSP II as submitted, the Commission should approve DSP II so that PECO can begin its implementation for the benefit of customers.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Summary Of PECO's Position

As explained in PECO's Initial Brief, DSP II seeks to build on the Company's existing default service program ("DSP I"), maintaining many of DSP I's existing features while proposing enhancements to ensure that DSP II is designed to obtain a "prudent mix" of contracts to provide an adequate and reliable default service supply, at least cost over time, for all default service customers, as required by the Public Utility Code. *See* 66 Pa.C.S. § 2807(e)(3.7); Initial Br., pp. 3-8. DSP II closely follows the Commission's recommendations in the *Default Service Recommendations Order*, and takes into account both the significant growth in customer shopping in PECO's service territory and future retail market enhancements to encourage customers to shop for electric generation supply. *Id.*

Before addressing the few disputed issues that opposing parties have raised regarding DSP II procurement and implementation, the applicable legal standard for evaluating a "prudent mix" of contracts designed to ensure "least cost over time" under Act 129 of 2008 ("Act 129") should be made clear in light of RESA's discussion of default service procurement for the Residential Class. According to RESA, the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801 *et seq.* (the "Competition Act"), when viewed "holistically," requires a prudent mix of contracts that is "most reasonably likely to result in a sustainable, competitive market" and stimulates competition with default service rates that are "market-reflective, market-responsive and recover all of the relevant costs incurred by the EDC in providing default service." RESA Main Br., p. 11. This is not correct.

As a threshold matter, there is no authority for RESA's "holistic" reading of the Public Utility Code, nor any textual basis for RESA's interpretation of Act 129's "prudent mix" requirements. *See* RESA Main Br., p. 11 (advocating its proposed standard without citation except to RESA witness testimony). In fact, RESA fails to note that the Commission previously *rejected* the interpretation of the "prudent mix" requirement RESA now offers:

> [W]e disagree with RESA's assertion that the "least cost" standard mandates that a default service plan be reasonably likely to result in a "market-reflective and market-responsive" service rate that recovers all costs related to providing default service. We interpret this standard, ***not contained in either the Competition Act or Act 129***, to mean a preference for short term and spot price supplies which ignore both the Act 129 concerns of price stability and a "prudent mix" of products. We do not believe that adoption of RESA's suggested standard is consistent with the "least cost" standard contained in Act 129 and [it] would not adequately protect retail customers from volatility and risks inherent in the energy market. Price stability benefits are very important to some customer groups, so an interpretation of "least cost" that mandates subjecting all default service customers to significant price volatility through general reliance on short term pricing is inconsistent with Act 129's objectives.

See Final Rulemaking Order, *Implementation of Act 129 of 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. L-2009-2095604, 2011 WL 4826268 (Pa. P.U.C. Oct. 4, 2011), p. 41 ("*Default Service Regulations Order*") (emphasis added).

Contrary to RESA's understanding, the Commission has found that a "prudent mix" must be interpreted "in a flexible fashion which allows the DSPs to design their own combination of products that meets the various obligations to achieve 'least cost to customers over time,' ensure price stability, and maintain adequate and reliable service." *Id.*, p. 60. That is exactly what DSP II's "prudent mix" is designed to achieve. PECO Initial Br., pp. 5-7.

B. Residential Class Procurement

In DSP II, for the Residential Class, PECO is proposing to transition from its current mix of 75% fixed-price full requirements ("FPFR") contracts and 25% block and spot procurement to a mix of one-year and two-year FPFR contracts. The new FPFR contracts will be laddered with six-month spacing between the commencement of delivery periods, with a transition to this blend of contracts using products with term lengths that vary from six months to eighteen months. Block energy contracts procured during DSP I and extending into DSP II will be allowed to expire during DSP II. After the first FPFR supply procurement scheduled for Fall 2012, all FPFR products will be procured approximately two to four months prior to delivery (instead of five to nine months prior to delivery as under DSP I). PECO Initial Br., pp. 5-6.

No party opposes PECO's use of FPFR contracts as the primary mechanism for procurement of default service supply for residential customers, and many parties specifically supported PECO's DSP II procurement and implementation plans (or took no position) in their Main Briefs. In the following sections, PECO addresses the specific issues raised by several parties, none of which justify any revision to PECO's default service plan as proposed.

1. Term Length of Supply Contracts

The only party to propose a change in the length of FPFR contracts for the Residential Class (other than RESA and its proposal to terminate all default supply contracts on May 31, 2015, which is discussed in Section II.B.F *infra*) is FES, which asserts that PECO should replace the six-month contracts scheduled for procurement in November 2012 with twelve-month contracts. FES' proposal is based on its separate recommendation to change the term of PECO's proposed Opt-In Electric Generation Supplier ("EGS") Offer Program (the "Opt-In Program") from six billing periods (as recommended by the Commission and proposed by PECO) to twelve months. In its Initial Brief, PECO explained that the proposed change would adversely affect its residential supply portfolio, but FES contends that PECO has not sufficiently demonstrated any adverse effect. PECO Initial Br., pp. 8-9; FES Main Br., pp. 5-6.

As explained by Mr. McCawley, PECO is proposing to transition its residential portfolio from its current mix of FPFR contracts and block and spot procurements to a portfolio that is primarily laddered one- and two-year FPFR contracts, spaced six months apart, and this transition will be accomplished through the procurement of six month contracts. PECO St. No. 2, p. 12. An initial procurement of seventeen tranches of a six-month product (June 2013-November 2013) is necessary to establish six-month spacing for the 17 tranches of twelve-month product that follow. *See* PECO Ex. JJM-1. Elimination of these initial six-month contracts – which FES advocates only as part of its recommendation to change PECO's Opt-in Program product, and not because it objects in principle to six-month contracts – would entirely undermine the laddered contract spacing in PECO's proposed plan.[3] The Commission should therefore reject FES' proposal.

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

RESA generally does not object to PECO's use of one- and two-year FPFR contracts for the Residential Class, but proposes that PECO procure spot market power for 10% of its

[3] PECO notes that it is proposing to procure eighteen month contracts at the same time it procures the six month contracts as part of this transition. *See* PECO Exh. JJM-1. The term of these contracts is eighteen months instead of twenty-four months in order to avoid increased "overhang" in accordance with the *Default Service Recommendations Order*. PECO St. No. 2, p. 15; PECO St. No. 3, p. 29, n. 48.

residential customer load to "ensure that PECO's default service prices contain at least a small element of current market prices" to meet RESA's goal of more "market reflective" default service prices. RESA Main Br., p. 9. The 10% spot component proposed by RESA would be an increase over the targeted 5% spot market purchases currently undertaken by PECO as part of its block and spot procurements. PECO St. No. 2, p. 11; PECO St. No. 3, p. 18. PECO introduced extensive evidence demonstrating that RESA's proposal could cause volatile distortions in default service rates that would make the rates **less** reflective of contemporaneous market prices due to the need to project spot market prices and then recover actual costs in subsequent periods through deferred cost recovery charges. PECO Initial Br., pp. 9-10; PECO St. No. 3-R, pp. 30-32.

While RESA suggests in its Main Brief that PECO is attempting to "muddle the issue" by focusing on the effects of reconciling projected and actual spot market energy costs, RESA does not dispute the effects of the reconciliation of spot market energy costs described by PECO. Instead, it simply contends, without evidence, that the increased spot market supply will generally be beneficial to customers based on the same erroneous interpretation of the "prudent mix" standard discussed in Section II.A *supra*. In addition to the flaws in RESA's arguments already addressed, RESA's purported concerns over "market reflective" prices ignore the fact that residential customers will continue to be exposed to spot market pricing throughout the term of DSP II, as block energy products contracted for in DSP I are gradually phased out. *See* PECO St. No. 3, p. 18. Furthermore, PECO's proposed DSP II portfolio, with its shorter periods between purchase and delivery of FPFR products, will make PECO's default service rates more in line with contemporaneous market prices. *Id.*, p. 30.[4] The Commission should therefore reject RESA's proposal to increase the spot market supply to be procured for the Residential Class in DSP II.

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

In its Initial Brief, PECO described the substantial risks associated with block and spot procurement and explained why PECO has proposed to not procure new block energy contracts in DSP II. PECO Initial Br., pp. 12-13. In particular, PECO explained how block and spot procurement can result in significant and unnecessary increases in default service rates, particularly when many customers migrate to competitive suppliers. The Company also noted that an analysis of block and spot procurement, which considered more than 1,000 different but equally likely market scenarios, demonstrated that customers would be exposed to considerably more risk under the OCA's proposal than with PECO's FPFR procurements. *See id.* Finally, PECO reviewed the errors in each of the OCA's justifications for continuing block and spot procurement, including its consideration of only one market scenario when it compared FPFR procurements and block and spot procurements, as well as its failure to take into account the insurance-like benefits of FPFR contracts for customers. PECO Initial Br., pp. 10-16.

In its Initial Brief, the OCA makes two primary arguments in favor of continued block and spot procurement for residential customers: (1) PECO's DSP II Residential Class portfolio is insufficiently "diverse" without such procurement; and (2) block and spot procurement should remain in DSP II because, as claimed by the OCA, its use resulted in a less expensive and more

[4] RESA also relies on shopping data from Maryland for non-residential customers in support of its arguments relating to Residential Class procurement, which PECO addressed in its Initial Brief. *See* PECO Initial Br., p. 10 n. 6.

"favorable outcome" than FPFR contracts as residential customer shopping increased in DSP I. OCA Main Br., pp. 18-22. Neither of these arguments has merit.

With respect to the OCA's supply "diversity" argument, having a "diversity" of contracts is not the same as having a "prudent mix" of contracts as required by Act 129. *See Default Service Regulations* Order, p. 61 (noting that PECO makes "the important point that 'diversity' of contracts should not be confused with a 'prudent mix' where full requirements contracts can include significant mitigation risks for customers by ensuring fixed prices regardless of congestion costs, usage patterns, weather and other factors"). In fact, as demonstrated by PECO witness Scott Fisher's analysis of the different procurement approaches, having different types of contracts does not necessarily ensure a less risky supply portfolio and actually may result in a more risky supply portfolio. PECO St. No. 3, pp. 30-33. Stated simply, there is no reason to include a block-and-spot component in the supply portfolio for the sake of "diversity", especially given the magnified risks of this approach in an environment characterized by competitive retail market development. *Cf. Default Service Regulations Order*, p. 60 (rejecting positions of those parties that a "prudent mix" be defined to require a specific mix or percentage of types of contracts or a minimum of two types of products).

Furthermore, the FPFR procurement process is designed to ensure the least cost to customers by requiring qualified bidders to compete and be selected based on the lowest price. As a consequence, competitive bidders in the FPFR solicitations will consider the costs and risks associated with all forms of supply available to them in order to satisfy the fixed-price load following obligation. PECO St. No. 3, p. 21. The FPFR products included in PECO's procurement proposal, therefore, reflect adequate "diversity" of supply. Finally, while the one- and two-year FPFR contracts proposed by PECO in themselves embody a least cost portfolio of supply, residential customers will also continue to receive supply from a long-term 50 MW block energy contract throughout DSP I (expiring on December 31, 2015), as well as block and spot supply procurement gradually reduced over the DSP II term. PECO St. No. 3, p. 18.

The OCA's separate contention that block and spot procurement should continue in the same manner as in DSP I because the results were "favorable" and purportedly less expensive than FPFR procurement is flawed for a variety of reasons discussed in detail in PECO's Initial Brief. Reduced to its essence, the OCA ignored the value that default service customers receive from the fixed-price, load-following protections of FPFR contracts; failed to consider the fact that wholesale market price levels were generally higher at the times when the FPFR products were procured than when block and spot purchases were made and that the block market portfolio was subject to uncharacteristically low market volatility; ignored pricing information for a substantial portion (over 40%) of the FPFR contracts actually procured by PECO that were relatively low-priced; conducted an "apples to oranges" comparison of different contracts with different terms; and then asserted that block and spot procurement should be continued because it appears less expensive under its calculations. PECO Initial Br., pp. 14-15.

Moreover, the OCA's characterizations of Mr. Fisher's testimony are inaccurate. For example, the OCA asserts (OCA Main Br., p. 19) that Mr. Fisher's analysis showed that FPFR contracts cost six percent more than block and spot purchases and thus were a "lower cost" option for customers; in fact, this inaccurate characterization ignores costs and risks that customers would directly bear under the block- and- spot procurement approach. PECO St. No. 3-R, pp. 14-16. Similarly, the OCA states that Mr. Fisher's recalculation of Mr. Hahn's estimate of "savings" achieved through block and spot procurement reduced the "savings" only from $4.31 to $3.59 per megawatt-hour (MWh) (OCA Main Br., p. 22). However, Mr. Fisher's analysis did not conclude that any such savings were achieved, and instead showed that making a single adjustment to account for wholesale market procurement timing differences without correcting for other errors reduced Mr. Hahn's estimate of the difference in costs of procurement methodologies to $0.72 per MWH. Nor did Mr. Fisher's criticisms "fall short" as the OCA suggests (OCA Main Br., p. 22) because he found that including block and spot contracts with FPFR contracts results in a 0.5% lower expected default service rate (OCA Main Br., p. 12). What Mr. Fisher actually concluded was that this small difference did not justify continuing block and spot procurement in light of the demonstrated higher levels of risk to customers and other potential costs. PECO St. No. 3-R, pp. 19-22.

The OCA's alternative "phase-out" proposal for procurement of block energy contracts in the event the Commission adopts PECO's procurement plan for the Residential Class (OCA Main Br., pp. 24-25) should also be rejected for the reasons described in PECO's Initial Brief (p. 16, n. 10). In making this proposal, the OCA effectively concedes that PECO's recommended portfolio will satisfy the Public Utility Code's requirements of a "prudent mix" designed to ensure "least cost over time."[5] For all these reasons, the Commission should reject the OCA's proposal for continued block and spot supply procurement.

C. Small Commercial Class Procurement

PECO's proposed procurement of default service supply for the Small Commercial Class through one-year, laddered FPFR contracts was generally accepted by the parties with the exception of RESA, which objects only to the portion of contracts for this customer class that

[5] In its Main Brief, the OCA reiterates its "phase out" proposal in the event the Commission adopts PECO's procurement plan for the Residential Class. OCA Main Br., pp. 24-25. However, as noted in PECO's Initial Brief, PECO considered this proposal in its procurement design but concluded that procurement of an additional tranche for FPFR supply presented lower risks for customers. *See* PECO Initial Br., p. 16, n.10.

would extend past May 31, 2015. This issue was addressed in PECO's Initial Brief (Section II.C) and is further discussed in Section II.F, *infra*.

D. Medium Commercial Class Procurement

PECO has proposed to replace the current mix of 85% one-year FPFR contracts and 15% spot-priced full requirements contracts procured under DSP I for the Medium Commercial Class with six-month FPFR contracts in light of the significant shopping by medium commercial customers. PECO Initial Br., pp. 17-18; PECO St. No. 3, pp. 25-26. Only the OSBA objects to this proposed portfolio, asserting that it is inconsistent with the repeal of the "prevailing market price" standard by Act 129 and improperly "deemphasizes" price stability. OSBA Main Br., p. 5.

The change in the procurement portfolio for the Medium Commercial Class is appropriate in light of the large number of medium commercial customers (78%) now shopping. PECO Initial Br., p. 17. While the OSBA supports a reduced level of stability for small commercial customers given the increased amount of shopping by those customers (52%), it does not explain why the same level of stability is needed for medium commercial customers who are shopping at a significantly higher level. PECO Initial Br., p. 13. In addition, as explained in PECO's Initial Brief, the use of six-month contracts does not reflect a "current market price" standard but simply consideration of the appropriate level of price stability in light of the developing commercial opportunities for these customers. Notably, PECO has proposed to eliminate a spot-market component of supply for these customers in light of the reduction in the length of the proposed default supply products to enhance stability. *Id.*; PECO St. No. 3, p. 26.

E. Large Commercial And Industrial Class Procurement

In DSP II, PECO has proposed 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. Through this procurement method, PECO will eliminate the risk of additional costs for the non-shopping customers that could arise as a result of conducting an RFP that is not successful due to insufficient supplier participation. PECO Initial Br., pp 18-19. PAIEUG, on behalf of industrial customers, has expressed its support for PECO's proposed procurement approach. PAIEUG Main Br., pp. 3-6.

RESA objects to PECO's proposal because it believes that PECO's current competitive process is "transparent", "achieves the best results for customers", and avoids a "potential for misallocation of costs" to all distribution customers that should instead be allocated to default service customers. RESA Main Br., pp. 17-18. As PECO explained in its Initial Brief, however, the Commission has already determined that procurement of spot-priced supply directly from wholesale energy markets in which the costs of supply are directly passed through to customers is consistent with statutory requirements for competitive default service supply. PECO Initial Br., pp. 18-19. Moreover, RESA does not explain in any detail how continuing to seek suppliers willing to serve a very small portion of PECO's default service load (and charge accordingly for the associated risks of customer migration) is more likely to achieve a better result and avoid the risk of a failed procurement as occurred in DSP I. PECO St. No. 2-R, pp. 9-10. Nor does RESA cite any evidence to support its claim that PECO will misallocate costs in the future. PECO Initial Br., p. 17. The Commission should therefore approve PECO's proposed procurement for the Large Commercial and Industrial Class.

F. Extension Of Supply Contracts Beyond May 31, 2015

In DSP II, consistent with the *Default Service Recommendations Order*, PECO has proposed to limit the "over-hang" of contracts in accordance with its laddering strategy to mitigate rate volatility associated with replacing a large portion of default service supply in a short period of time, and will not execute any contract that will extend beyond May 31, 2015 until early 2014. PECO Initial Br., pp. 19-20. In the event that legal developments result in PECO no longer serving as the default service provider for its service territory after May 31, 2015, there will be ample time to adjust (or eliminate) PECO's solicitations that extend beyond May 31, 2015. *Id.*

The only party to contest PECO's recommendation is RESA, which opposes any default service contracts extending beyond May 31, 2015, and laddering of contracts generally. RESA Main Br., pp. 19-20. RESA's position is clearly at odds with the *Default Service Recommendations Order*, in which the Commission plainly envisioned that EDCs may choose to include contracts extending beyond May 31, 2015 to reduce the risks of adverse impacts that could arise from a "hard stop" of default service supply contracts on May 31, 2015. *See Default Recommendations Order*, p. 20.

RESA's opposition to laddering is also flatly inconsistent with the Commission's Default Service Policy Statement. *See* 52 Pa. Code § 69.1805(1) (stating that default supply contracts "should be laddered to minimize risk" for residential and small commercial customers). And, RESA's suggestion, that consideration of the appropriate level of stability for different types of default service customer procurement is a "fruitless exercise," ignores the Commission's express conclusions in the *Default Service Regulations Order*:

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

Default Service Regulations Order, pp. 11-12.[6]

Contrary to RESA's contention, PECO's proposal in no way "threaten[s] the Commission's ability to modify the default service structure" (RESA Main Br., p. 19); instead, consistent with Commission guidance, it will reduce risk to customers of a significant increase in default service prices. Nor is PECO's solution more "complicated"; it simply ensures that there is an integrated procurement and implementation plan in place which can be adjusted in the event of a change in law and/or PECO's role as default service provider. RESA's objection to PECO's proposal for limited contracts extending past May 31, 2015 is thus entirely without merit.

[6] Any suggestion that the Commission's conclusions in the *Default Service Regulations Order* – including its express reference to rate stability – are somehow no longer applicable in light of developments in the Retail Markets Investigation is belied by the Commission's recent decision regarding the default service plan of Pike County Light & Power Company. *See Petition of Pike County Light & Power Co. for Approval of Its Default Serv. Implementation Plan*, Docket No. P-2011-2252042, 2012 WL 1963545 (Pa. P.U.C. May 24, 2012), p. 29 (discussing Commission's final Act 129 default service regulations and explaining that the Commission had found that a default service plan that meets the least cost over time standard "should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan time frame but rather a cost for power that is **relatively stable** and also economical relative to other options") (emphasis added).

G. Procurement Schedule

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

This issue was fully addressed in PECO's Initial Brief (pp. 21-22).

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

In response to PECO's proposed Opt-In Program, the OCA recommended two mechanisms (or "scenarios") by which PECO would set aside or "hold back" some tranches of residential default service supply from the November 2012 and January 2013 procurements to attempt to address volumetric risk (i.e., the migration of customers from default service to EGSs as a result of the Opt-In Auction) which the OCA believes could lead to default service suppliers including higher risk premiums in their bids. PECO Initial Br., pp. 22-24.[7] As PECO noted in its Initial Brief, however, the OCA presented no credible evidence that the Opt-In Program may have a significant effect on bid prices. In addition, PECO described Mr. Fisher's analysis of the OCA's "hold back" scenarios and explained how those scenarios posed substantial risks for PECO and residential default service customers. Those risks include a substantial shortfall in revenues for PECO arising from the need to procure immediate supply at potentially higher market prices when it is receiving revenues under a Price-to-Compare ("PTC") established prior to the Opt-In Auction and an associated deferred cost recovery that would need to be recovered from customers, as well as volumetric and price risk associated with the increased block and spot supply recommended by the OCA at part of its "hold back" scenario recommendations. *See id.*, pp. 23-24.

[7] As part of its proposal, the OCA also suggested that the 50% Opt-In Program customer participation cap recommended by the Commission and proposed by PECO should be reduced to 20%. As described in PECO's Initial Brief, PECO believes either a 20% or 50% cap would be acceptable. PECO Initial Br., pp. 55-56.

The OCA's Main Brief simply recounts the OCA's proposals and does not address Mr. Fisher's analysis at all; indeed, the OCA did not file any testimony in response to Mr. Fisher's analysis or the other points made in his rebuttal testimony. *See* PECO St. No. 3-R, pp. 35-40; *see generally* OCA St. No. 1-S. As such, in the absence of any testimony or argument fully addressing the risks identified by PECO, the Commission should reject the OCA's "hold back" proposals in their entirety.

H. Load Cap

In DSP II, PECO is proposing a 67% default service wholesale supplier load cap for all customer classes, based on the 65% load cap approved by the Commission in DSP I and the subsequent increase in the cap from 65% to 67% for a Small Commercial Class procurement.[8] PECO Initial Br., pp. 24-27. The OCA and RESA propose a 50% load cap, contending that a lower load cap will create more supplier diversity and reduce customer exposure in the event of a supplier default. OCA Main Br., pp. 33-34; RESA Main Br., pp. 23-25. PECO fully addressed these arguments in its Main Brief, explaining that the opposing parties' concerns were inapposite in light of the Commission's prior analysis and approval of a 75% load cap; protections for PECO customers against supplier defaults; and, in light of RESA's reliance on a 33% load cap in New Jersey, the differences between PECO's procurements and those of electric utilities in New Jersey. PECO Initial Br., pp. 25-27. PECO only notes here, in response to RESA's proposal that PECO should request one or more waivers from the Commission to address smaller procurements, that its proposal to apply a consistent 67% load cap is designed in part to avoid the need for repeated Commission determinations of load caps in individual procurements.

[8] *See* Order, *Petition of PECO Energy Co. for Expedited Approval to Increase the Load Cap for the Small Commercial Customer Class in its Spring 2010 Default Serv. Procurement*, Docket No. P-2008-2062739, 2010 WL 1975379 (Pa. P.U.C. May 11, 2010), p. 6 (approving 67% load cap).

I. Other Procurement And Implementation Plan Requirements

In PECO's Initial Brief, the Company describes other components of DSP II which were uncontested, including its contingency plans, competitive procurement documents, and proposed Independent Evaluator, as well as the basis for its satisfaction of PJM-related requirements and the Commission's required factual finding that PECO and its affiliates have not withheld generation supply in a manner that violates federal law. PECO Initial Br., pp. 28-31. No party addressed these components of DSP II, and the Commission should therefore approve them and make the factual findings required under Section 2807(e) of the Public Utility Code, 66 Pa.C.S. § 2807(e).

III. RATE DESIGN AND COST RECOVERY

A. Summary Of PECO's Position

As explained in its Initial Brief (pp. 32-34), PECO is proposing to generally maintain its current rate design whereby PECO recovers default service costs from default service customers through a GSA charge, with several adjustments to simplify and improve recovery of default service costs. Consistent with the Public Utility Code and the Commission's default service regulations, PECO will continue to project and adjust default service rates for the Residential, Small and Medium Commercial Classes on a quarterly basis and for the Large Commercial and Industrial Class on a monthly basis. PECO St. No. 5, pp. 4 & 14. However, reconciliation of the over/under collection component of the GSA for the Residential, Small and Medium Commercial Classes will occur on an annual basis instead of a quarterly basis. *See id.*, pp. 7-8. In addition, PECO has proposed tariff changes relating to the incorporation of the currently separate AEPS Cost Recovery Surcharge into the GSA, the elimination of certain expired rates, the distribution of the costs and benefits from PECO's exercise of Auction Revenue Rights

("ARRs") and the clarification of the definition of administrative costs included in the GSA. PECO Initial Br., pp. 33-34.

Many parties either agreed or took no position in their Main Briefs with several of PECO's proposed adjustments to its current rate design. First, none of the opposing parties challenged PECO's requested change in the adjustment period for default service rates under the GSA to synchronize rate adjustments with the PJM planning year. Second, no issues have been raised with regard to PECO's proposed mitigation strategy for the Large Commercial and Industrial Class designed to deal with months with unusually large over/under collections. Third, no opposing parties objected to clarifying the definition of "administrative cost" under the GSA to specifically reference the cost of the pricing forecast necessary to project rates on a quarterly basis for the Residential, Small Commercial and Medium Commercial Classes. Finally, none of the other parties disagreed with PECO's proposal to eliminate declining block rates for all tariff schedules, as well as the Wind Energy Service Rider. Therefore, the foregoing proposed tariff changes should be approved for the reasons set forth in PECO's Initial Brief (pp. 33-34).

That said, the OCA, RESA and Dominion do recommend certain modifications to PECO's rate design and cost recovery proposals for DSP II. *See* OCA Main Br., pp. 35-42; RESA Main Br., pp. 25-29 & 35-41; Dominion Main Br., pp. 7-9. In addition, PPL EnergyPlus and RESA propose that the Commission direct PECO to assume responsibility for various PJM charges on behalf of all customers and recover those costs through a non-bypassable surcharge. *See* PPL EnergyPlus Main Br., pp. 3-10; RESA Main Br., pp. 29-34.

B. Reconciliation Of Default Service Costs And Revenues

As described in its Initial Brief, while PECO will continue to **adjust** default service rates on a quarterly basis for Residential, Small Commercial and Medium Commercial customers to reflect changes in supply costs, it has proposed that prior period over/under collections be **reconciled** for those customers on an annual basis rather than on a quarterly basis. By using an annual rather than quarterly schedule for the reconciliation of over/under collections, fluctuations in default service prices which are related to monthly "billing lag" rather than the actual costs of default service supply will be smoothed out and result in more meaningful price signals for both customers and EGSs. PECO Initial Br., pp. 35-36. And, while Dominion contends that there is no evidence of any "billing lag" issue or associated customer confusion (Dominion Main Br., p. 9), the Commission has already recognized that more extended periods for over/under collection reconciliation may be beneficial and result in more market-reflective default service rates. *See Default Service Recommendations Order*, pp. 54-55.

RESA and Dominion oppose annual reconciliation primarily on the ground that quarterly reconciliation would purportedly result in more market-reflective default service rates. *See* RESA Main Br., pp. 27-28; Dominion Main Br., pp. 5 & 8-9. The OCA, in turn, proposed that PECO continue to reconcile on a quarterly basis, but collect or refund the net balance of each quarter's reconciliation over a prospective twelve-month period. OCA Main Br., pp. 37-40. Although RESA, Dominion and the OCA's objections to annual reconciliation were fully addressed in PECO's Initial Brief, a few key points are highlighted below.

First, RESA and Dominion err in asserting that annual reconciliation will necessarily cause default service rates to diverge from underlying market prices in a way that adversely affects competition. As shown by the data presented by PECO on over/under collections for the twelve months ending March 31, 2012, there is less likelihood of significant swings in default service pricing associated with annual reconciliation than with quarterly reconciliation, and, in any event, the actual amount of annual reconciliation is likely to be relatively small (particularly under PECO's increased use of FPFR contracts). PECO Initial Br., pp. 36-37.[9] While Dominion generally asserts that annual reconciliation "could artificially keep suppliers in a bad market position relative to the PTC" (Dominion Main Br., p. 8) and RESA expresses similar concerns (RESA Main Br., pp. 27-28), neither contends that the impact calculated by Mr. Cohn based on actual 2011 supply costs (0.43%) would in fact be detrimental.[10] And, although RESA and Dominion also assert that customers may pay less interest over a shorter reconciliation period, they provide no record evidence regarding the amount of interest that would be paid under any of the proposed reconciliation methodologies.[11]

The OCA's assertion that a 12-month rolling average reconciliation will smooth out volatility in the PTC more effectively than annual reconciliation is belied by the hypothetical example presented by its own witness. Notwithstanding the errors contained in Mr. Hahn's calculations detailed in PECO's Initial Brief (p. 38), the hypothetical does not support the OCA's contention that a rolling average reconciliation methodology results in the best combination of

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[9] Contrary to Dominion's suggestion that the data presented by PECO witness Cohn are "contrived" (Dominion Initial Br., p. 9), Mr. Cohn's analysis is based on actual cost, calculated revenue, and sales data for the twelve months ending March, 31, 2012. *See* PECO St. No. 5-R, p. 4. Dominion's suggestion that PECO should simply "address the shortcomings of its accounting methodology" to address billing lag (Dominion Main Br., p. 9) is similarly inapposite; as RESA recognizes (RESA Main Br., p. 28), billing lag is simply a cost of default service which PECO is entitled to recover from customers.

[10] In its Main Brief (p. 29), RESA also asserts that EGSs can be at a "competitive disadvantage" if the costs of default service are not properly allocated. As with its objections to PECO's proposed procurement of spot supply for the Large Commercial and Industrial Class, RESA has presented no evidence whatsoever of any such misallocation by PECO. *See* Section II.E *supra*.

[11] While Dominion views annual reconciliation as based on a "speculative conclusion that rate volatility is harmful to customers", Dominion later emphasizes, in support of PECO's elimination of block and spot procurement, that "potential volatility" associated with reconciliation (presumably on a quarterly basis, which it supports) can "cause the PTC to change in unpredictable ways that can impact EGS's ability to offer competitive priced products." *Compare* Dominion Main Br., p. 5 & p. 6. The portion of "unpredictable" change associated with billing lag is exactly what PECO's annual reconciliation proposal is intended to reduce, and the significantly smaller volatility should support competition rather than contribute to the "boom and bust" cycle with which Dominion and RESA are concerned.

price variability and over/under collection balances. In fact, and as is clear from the figure from Exhibit OCA-RSH-8 reproduced in the OCA's Main Brief (p. 40), a 12-month rolling average reconciliation results in more price fluctuation than PECO's proposed annual reconciliation.

In sum, the evidence shows that PECO's proposed annual reconciliation will result in less volatile rates and clearer price signals, particularly in light of PECO's proposed DSP II procurement strategy that increases the use of FPFR contracts and reduces block and spot supply. The Commission should therefore approve annual reconciliation for PECO's default service residential, small commercial and medium commercial customers.

C. EDC Recovery Of Additional PJM Charges

As explained in its Initial Brief (pp. 39-41), PECO does not support PPL EnergyPlus' and RESA's proposal, which was supported by Dominion, to depart from the existing cost assignment of generation deactivation charges and shift responsibility for the recovery of those charges from EGSs to PECO. While PECO recognizes that the generation deactivation costs may be difficult for any party, including EGSs, to quantify with certainty, there is nothing in the existing regulatory construct that precludes PPL EnergyPlus and other EGSs from passing these costs through to customers. To the extent that the Commission adopts PPL EnergyPlus' and RESA's proposal, and directs PECO to directly charge retail customers, once a transition date has been established, additional steps will need to be taken by EGSs to avoid "double-billing" or the possibility of renegotiating existing contracts with their customers.[12]

[12] PECO recognizes that other EDCs have proposed to recover generation deactivation charges through a non-bypassable rider as PPL EnergyPlus and other EGSs have sought in this proceeding. *See* Recommended Decision, *Joint Petition of Metropolitan Edison Co., Pennsylvania Elec. Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (June 15, 2012), pp. 69-70. In the event the Commission determines that generation deactivation charges should be recovered on a non-bypassable basis by other EDCs, PECO is amenable

PECO also opposes RESA's comparable proposal that other PJM transmission charges also be recovered by PECO through a non-bypassable charge. Indeed, RESA's contention that default service enjoys a "competitive advantage" over EGSs as a result of the current allocation of PJM charges is unsupported. As RESA concedes, PJM Network Integration Transmission Service costs for which EGSs are responsible are "mostly known," and wholesale default service suppliers are also required to make estimates of other PJM charges in their competitive bids to provide default service supply at a fixed price. *See* RESA Main Br., pp. 30-31.

D. Costs Included In the Generation Supply Adjustment Charge

Consistent with the Commission's Policy Statement at 69 Pa. Code § 69.1808(a)(4) and DSP I, PECO has proposed to recover the costs incurred to implement DSP II, including capital expenditures related to information technology ("IT") changes, through the administrative cost factor in the GSA. PECO Initial Br., p. 41. The OCA is the only party that objected to the inclusion of capitalized IT costs in the GSA and asserts that capital costs can only be recovered through base rates. PECO addressed this argument in its Initial Brief and none of the OCA's new arguments have merit for the reasons discussed below.

In its Main Brief, the OCA asserts that in the absence of specific statutory authority, the "used and useful" principle articulated in Section 1315 of the Public Utility Code prevents the inclusion of capital improvements in a surcharge. OCA Main Br., pp. 41-42 (citing *Pa. Industrial Energy Coalition v. Pa. P.U.C.*, 653 A.2d 1336 (Pa. Cmwlth. 1995) ("*PIEC*"). However, the OCA does not address Section 2807(e)(3.9) of the Public Utility Code, which

to filing a tariff supplement limited to generation deactivation charges consistent with the Commission's decision. In this event, the recovery of the generation deactivation costs would be implemented in a coordinated transition with respect to legacy full requirements DSP contracts.

expressly provides that default service providers have the right to recover *all* reasonable costs incurred pursuant to a Commission-approved competitive procurement plan on a full and current basis, pursuant to a surcharge under Section 1307 of the Public Utility Code. 66 Pa.C.S. § 2807(e)(3.9) (emphasis added); *see also* 52 Pa. Code § 54.187(a) (providing that a default service rate schedule "shall be designed to recover fully all reasonable costs incurred by the [default service provider]..."). The plain language of Section 2807(e)(3.9) does not limit such costs to non-capital items. Moreover, under virtually identical statutory authority (Section 2806.1(k)), the Commission has already approved inclusion of capital costs in PECO's Energy Efficiency and Conservation Program Cost Surcharge.[13]

While the OCA cites Exhibit F of the Joint Petition for Settlement for DSP I[14] and acknowledges that the exhibit addressed recovery of certain DSP costs (OCA St. No. 1-SR, p. 11), it fails to note that the settlement expressly provided that IT costs would be amortized with a 6% return on capital. *See* Opinion and Order, *Petition of PECO Energy Co. for Approval of its Default Serv. Program and Rate Mitigation Plan*, Docket No. P-2008-2062739, 2009 WL 1644097 (Pa. P.U.C. June 2, 2009), pp. 9-10 (approving GSA tariff pages designed to recover DSP I administrative costs delineated on Exhibit F to the Joint Petition for Settlement without modification); *cf. Pa. Pub. Util. Comm'n v. Pennsylvania Elec. Co.*, Docket No. R-78040599, 28

[13] *See* Order, *Petition of PECO Energy Co. 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, 2009 WL 3637663 (Pa. P.U.C. Oct. 28, 2009), p. 90 (approving recovery of capital costs under Energy Efficiency and Conservation Program Costs surcharge). Furthermore, the OCA appears to have misunderstood the information regarding the capital expenditures that will be made to implement DSP II that it obtained in discovery. Citing PECO's response to OCA Set VII, the OCA notes that PECO seeks to recover $2.2 million in capital costs associated with its proposed retail market enhancements through the GSA, which are purportedly not related to its role of providing default service. OCA Main Br., p. 42. However, as the OCA acknowledges (OCA St. No. 1, p. 18), the Company is seeking to recover the capital costs incurred to implement retail market enhancements from EGSs. Therefore, those costs will not be included in the GSA.

[14] A copy of Exhibit F is attached as Appendix A to this Brief.

PUR4th 209, 213-214 (Order entered Jan. 26, 1979) (concluding that a utility cannot earn a return on the unamortized balance of an operating expense). PECO's proposal in DSP II is thus entirely consistent with its collection of capital expenses in DSP I, with a return on the unamortized balance equal to the same return the Commission has approved for capital costs associated with PECO's Smart Meter Program. *See* PECO St. No. 5, p. 18. There is thus no basis to preclude recovery of these capital costs as proposed by PECO in light of the broad language of Section 2807(e)(3.9).

E. Ratemaking Treatment Of Auction Revenue Rights

This issue was addressed in detail in PECO's Initial Brief (pp. 43-44), and only two points warrant additional discussion here. In its Main Brief, the OCA contends that there is no need to incent PECO to exercise ARRs because managing ARRs is standard EDC business practice. OCA Main Br., p. 45. However, PECO's core business is to provide safe and reliable service to customers – not to maximize financial benefits associated with hedging congestion risk. PECO St. No. 5-R, p. 9.

Similarly, RESA raises a concern about permitting PECO to "profit" from default service without a corresponding benefit to competition. RESA Main Br., p. 36. Aside from RESA's failure to cite any statutory authority for its "benefit" requirement, the issue here is not simply recovery of a default service cost but the ability for PECO to create additional financial benefit through selection of ARRs. In this circumstance, as PECO witness Cohn explained, the proposed sharing mechanism strikes a balance between mitigating loss exposure for customers and encouraging PECO to endeavor to select profitable ARRs to obtain this additional value. PECO St. No. 5-R, p. 9.

F. Elimination Of Alternative Energy Portfolio Standards Surcharge

No party objected to PECO's proposal to eliminate the AEPS Surcharge from its tariff and incorporate all of its AEPS compliance costs into a single cost recovery mechanism (the GSA). Indeed, the only party to address this issue was the OCA, which stated that it agreed with PECO's proposed elimination of its separate surcharge, provided that PECO's GSA contains sufficient detail to assess the appropriateness of PECO's AEPS compliance. As shown in Exhibits ABC-2 and ABC-3, PECO's proposed revisions to the GSA to incorporate the AEPS surcharge retain sufficient documentation of the basis for AEPS charges. PECO's proposal to include the AEPS Surcharge costs in the GSA and its recommended transition plan from the usage of two separate cost recovery mechanisms to exclusive use of the GSA to recover AEPS compliance costs should therefore be approved.

G. RESA's Proposal For A $0.005/kWh Adder To The Price-To-Compare

In its Initial Brief (pp. 46-48), PECO addressed RESA's proposal to add a $0.005 per kWh charge (the "PTC Adder")[15] to the cost of default service supply for PECO's default service customers to recover (1) default service costs that are purportedly "inadequately reflected" in the GSA and (2) the cost of implementing PECO's proposed retail market enhancement ("RME") programs. In doing so, PECO explained why the Commission should reject the PTC Adder, emphasizing that the proposed surcharge does not align with the administrative costs of DSP II or the RME programs, will result in cross-subsidization of shopping customers by default service customers and will send inaccurate price signals to customers by inflating the PTC. *Id.* Indeed,

[15] RESA apparently has determined that the term "adder" is insufficiently attractive and has introduced the label "Default Service Cost Recovery Charge" for the first time in its Main Brief. RESA Main Br., p. 36. Consistent with prior briefing, PECO will continue to use the term "PTC Adder."

other than Dominion (Main Br., p. 24), no party has expressed support for RESA's proposed PTC Adder.

In its Main Brief, RESA asserts that its proposal for a "modest" PTC Adder will properly allocate all costs associated with providing default service to default service customers that are currently paid by all distribution customers, including the costs of PECO's call center, executive salaries and the costs of credit security. RESA Main Br., pp. 37-38. However, RESA fails to provide any basis to change the Commission's determination of distribution charges approved by the Commission in PECO's most recent base rate proceeding. PECO Initial Br., p. 47. RESA's suggestion that the PTC Adder is an appropriate mechanism to recover the costs of RME programs is also inconsistent with the Commission's specific guidance in the *Intermediate Work Plan,* in which the Commission plainly envisioned that EGSs should pay the costs associated with those programs. *See Intermediate Work Plan*, pp. 32 & 78; PECO St. No. 5-R, pp. 13-14. Furthermore, RESA's characterization of the PTC Adder as a "modest" surcharge is disingenuous. As PECO explained in its Initial Brief, the PTC Adder would collect, on average, approximately $50 million per year from residential default service customers, which far exceeds the estimated total cost to implement DSP II and the proposed retail market enhancements. Perhaps for this reason, RESA concedes that the Adder is effectively intended to redistribute costs currently allocated to distribution customers. PECO Initial Br., p. 47; RESA St. No 2-R, p. 24. For these reasons and the reasons set forth in PECO's Initial Brief, the Commission should reject the proposed PTC Adder.

IV. RETAIL MARKET ENHANCEMENTS

A. Summary Of PECO's Position

As explained in its Initial Brief, consistent with its commitment to retail competition and the Commission's guidance in the *Intermediate Work Plan Order*, PECO has proposed a number of new retail market enhancements to promote retail shopping in addition to the initiatives undertaken during DSP I, including an Opt-In EGS Offer Program and a Standard Offer customer referral program. In PECO's Initial Brief (pp. 49-76), PECO described the key elements of each of these enhancements and addressed the various program modifications presented by other parties. As the Main Briefs of the other parties were generally consistent with their testimony (with the exception of RESA's introduction of new material relating to PECO's Opt-In Program and Standard Offer supplier documents, discussed in Section IV.B.7 *infra*), the discussion that follows is limited to addressing new arguments and reinforcing several important points for the Commission's consideration of these programs.

B. EGS Opt-In Competitive Offer Program

1. Customer Eligibility

RESA was the only party that objected to PECO's proposed eligibility requirements under the Opt-In Program (other than EGSs who support inclusion of CAP customers, which is discussed in Section IV.D *infra*). In its Main Brief, RESA contends that small business customers (i.e., those with loads of up to 25 kW) should also be allowed to participate because shopping levels for those customers are purportedly not much higher than for residential customers (39% vs. 25%). RESA Main Br., pp. 52-54. RESA also proposes to preclude customers who are already shopping from participating in the Opt-In Program on the ground that including those customers would threaten the existing market shares of EGSs. *Id.*, pp. 55-57.

PECO refuted RESA's principal arguments for modifying eligibility for the Opt-In Program in its Initial Brief (pp. 52-53) and explained that its proposal is consistent with the Commission's guidelines on this issue with respect to both small business customers and those customers who have already chosen an EGS. PECO Initial Br., pp. 52-53.

In its Main Brief, RESA offers an additional reason for excluding shopping customers from the Opt-In Program. Specifically, RESA asserts that limiting eligibility to non-shopping customers eliminates the risk that customers who are already shopping will be subject to early termination penalties from their existing EGS if they enroll in the Opt-In Program. RESA Main Br., p. 56. This assertion should be given no weight: shopping customers are already exposed to that risk if they choose to accept any offer from a different EGS. RESA's argument thus provides no basis for departure from the Commission's guidance in the *Intermediate Work Plan Order* (p. 42) to include shopping customers in the Opt-In Program.[16]

2. Composition of Product Offer

The opposing parties' recommended modifications to PECO's proposed composition of the product offer for the Opt-In Program were addressed fully in PECO's Initial Brief (pp. 53-54), and the parties have not provided any reason to deviate from the guidance the Commission gave to EDCs after consideration of product design options, including the term length of program offers. *See Intermediate Work Plan Order*, pp. 48-51 (recommending six-month

[16] With respect to the method of customer enrollment, PECO notes that customers will be able to enroll via returning a responsive postcard or by communicating with the EGS by telephone or the EGS's website. PECO Initial Br., p. 51. These methodologies are consistent with the *Intermediate Work Plan Order*, and RESA's additional proposals for modifications to PECO's bill payment process (RESA Initial Br., pp. 50-51 & 57) – for which the details and expense have not been quantified by RESA in any way – should be rejected.

product after consideration of the views of the OCA, Dominion and FES in support of twelve-month product).[17]

PECO believes that RESA's proposal (RESA Main Br., pp. 49-52) to conduct the Opt-In Program request for proposals ("RFP") **after** customer enrollment (with which Dominion concurs, *see* Dominion Main Br., p. 12) should be rejected because customers are more likely to participate if they know the price of the product being offered to them before they decide whether or not to enroll. PECO St. No. 2-R, p. 13; *see also Intermediate Work Plan Order*, p. 55 (stating Commission's belief that the proposals "to hold enrollments before the product specifications are known will create customer confusion"). The Commission gave extensive consideration to the timing of enrollment and EGS bidding in the *Intermediate Work Plan Order*, and RESA provides no basis for its suggestion that the Commission had an insufficient understanding of current shopping levels in the territories of PECO and other EDCs in determining the proper sequencing for the program.[18] RESA has neither provided a legitimate basis to deviate from the Commission's recommendation in the *Intermediate Work Plan Order* nor explained how the Commission's concerns regarding customer confusion and a potential

[17] FES now appears to clearly support eliminating the $50 bonus payment EGSs would be required to make to a participating customer after the customer remains with an EGS after three billing cycles. *Compare* FES Main Br., pp. 16-17 (stating "good cause" exists to eliminate the bonus); FES St. No. 1-SR, p. 12 (discussing FES' "simply referencing" its disagreement with bonuses in supporting PECO's Opt-In Program). While FES asserts that requiring EGSs to pay bonuses will discourage participation and put the effectiveness of the program "at risk," FES has not undertaken any analysis to support its assertion nor concluded that bonus payments would preclude its own participation in the program. *See* PECO Cross-Examination (Banks) Ex. 2 (FES Response to PECO Set II, No. I). Although the $50 bonus payment proposed by PECO in accordance with the Commission's guidance may no longer be "unique," PECO does not believe the fact that a $50 bonus is being offered by two of the numerous EGSs participating in PECO's territory invalidates the Commission's conclusion that such a bonus may remain an attractive incentive to customers. *See Intermediate Work Plan Order*, p. 70.

[18] In fact, the Commission specifically noted that PECO had already included an Opt-In Program in its DSP II filing. *See Intermediate Work Plan Order*, p. 34. Detailed information about shopping levels and EGS activity in PECO's service territory was included in testimony accompanying PECO's original filing. PECO St. No. 1, p. 5; PECO St. No. 3, p. 6; *see also* RESA Main Br., p. 44 (noting that, on a statewide basis, 75% of residential customers have not switched to a competitive supplier).

"worst-case" scenario (where customers have enrolled but an insufficient number of EGSs then subscribe to the auction) will be addressed if the sequence of the auction and enrollment is reversed.[19]

3. Customer Participation Cap

The OCA was the only party that expressed concern with respect to PECO's proposal to adhere to the Commission's guidance in the *Intermediate Work Plan Order* (pp. 59-60) and apply a 50% customer participation cap to the Opt-In Program. OCA Main Br., pp. 66-69. The OCA's concerns were fully addressed in PECO's Initial Brief (pp. 55-56). While RESA affirmatively supports PECO's proposed 50% customer participation cap, in its Main Brief, RESA contends that PECO should include Customer Assistance Programs ("CAP") customers in the customer base to which the 50% limitation is applied on the ground that it would "modestly" increase the number of residential customers that can enroll in the Opt-In Program. RESA Main Br., pp. 60-61. RESA's proposal should be rejected because CAP customers are ineligible to participate in the Opt-In Program (*see* PECO Initial Br., pp. 65-68), and RESA has not shown that a slight increase provided by inclusion of CAP customers in the eligible customer base is necessary to attract EGS participation.

[19] In its Main Brief (p. 11), FES assails PECO for strict conformance to the *Intermediate Work Plan Order* and claims that such approach demonstrates "general indifference" to the design of RME programs. This criticism has no basis in fact. The evidence shows that PECO has been a dedicated participant in the Commission's Retail Markets Investigation and has submitted extensive testimony and comments to the Commission in addition to actively participating in sub-groups of the Office of Competitive Market Oversight. PECO St. No. 1-S, p. 2. PECO has generally followed the *Intermediate Work Plan Order* in light of the Commission's extensive consideration of the design of RME programs and its detailed guidance to EDCs, and PECO does not believe that the Commission intended that each DSP proceeding would relitigate the many issues the Commission fully considered. *See, e.g.*, *Intermediate Work Plan*, pp. 6-7 (noting that issues have been discussed at length in technical conferences with formal comments and reply comments and emphasizing "good cause" requirement for deviating from Commission's guidance).

4. Supplier Participation Load Cap

In its Initial Brief (p. 56), PECO explained that it had proposed a 50% supplier participation cap consistent with the *Intermediate Work Plan Order*, but agreed that the Opt-In Program could be conducted with a higher cap or no cap at all. PECO Initial Br., p. 56. PECO also addressed RESA's recommendation that the Opt-In Program include a minimum bidder requirement in addition to the 50% supplier participation load cap and explained that because the Opt-In Program already requires two minimum bidders and a price at least 5% below the applicable PTC, the auction would provide an attractive offer to customers even if fewer than four bidders participate. In its Main Brief, RESA suggests providing the Commission the flexibility to waive its proposed minimum bidder requirement upon a showing of "compelling reasons". RESA Main Br., pp. 63-64. However, RESA has made no showing that a four-bidder minimum would increase supplier participation in the one-time Opt-In Program RFP or provide a better outcome for customers. *See* PECO Initial Br., p. 56.

5. Customer Options on Product Expiration and Notice Requirements

In its Main Brief (pp. 70-73), the OCA reiterates the arguments advanced by its witness, Barbara Alexander (joined now by CAUSE-PA, *see* CAUSE-PA Main Br., p. 12), for its proposed modifications to the customer options and notice requirements upon expiration of the Opt-In Program term. None of these arguments is valid, for the reasons set forth in PECO's Initial Brief (pp. 57-58).

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

The Commission did not prescribe an auction structure for opt-in programs, but rather observed that either a sealed bid process or a descending price clock auction ("DCA") would work well to provide a single clearing price. *See Intermediate Work Plan Order* at 77. PECO elected to utilize a sealed-bid RFP process, as the Commission expressly permits. Nonetheless, FES contends that a DCA will result in lower prices for customers participating in the Opt-In Program. The Commission should reject that claim.

As explained in PECO's Initial Brief, the auction literature does not offer simple answers as to which auction format yields the best price, much less conclude that a DCA will always produce a lower price for opt-in auctions. Rather, as PECO witness Dr. LaCasse explained and FES does not dispute, DCAs are best suited for scenarios with multiple products that are substitutes and where bidder valuations are uncertain. That, however, is not the case for PECO's one-time Opt-In Program RFP. FES does not dispute that the sealed bid format will be less complex and less expensive to implement and acknowledges that PECO has existing procedures in place to enable it to conduct a sealed bid RFP process, see FES Main Br., p. 27. Moreover, Dr. LaCasse testified that FES' suggestion that a DCA will increase supplier diversity was unfounded. Tr. 89.

FES' attempt to refute Dr. LaCasse's conclusion that there may not be significant price discovery in a DCA for the Opt-in Program is unavailing. FES contends that Dr. LaCasse incorrectly assumes that limited supplier support exists for pricing at a 5% discount off the PTC and points to supplier activity in PECO's service territory as of April 13, 2012 when 18 EGSs were offering a 12-month fixed-priced product at least 5% below the PTC. FES Main Br., p. 26. FES misconstrues Dr. LaCasse's testimony. Dr. LaCasse did not testify that there would be limited EGS support for the pricing of the Opt-In product. Rather, Dr. LaCasse explained that the effectiveness of the DCA to inform bidder valuations will likely be limited. Tr. 87; PECO St. No. 4-R, pp. 6-7. The evidence provided by FES, which emphasizes that EGS offers are publicly known and fewer than half of these are lower than the 5% starting price, is further support for Dr.

LaCasse's view; with EGS offers already publicly known, the DCA is unlikely to lead to additional "price discovery". As Dr. LaCasse testified, a sealed-bid process would be expected to yield a better result because EGSs would not know the level of supplier interest at the time of bid submission and must therefore submit their best offer. Tr. 89; PECO St. No. 4-R, pp. 6-7. The Commission should therefore reject FES' proposal for PECO to replace its proposed RFP structure with a DCA.

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

In its Initial Brief, PECO explained that the Opt-In Program included a form application and agreement setting forth required terms and conditions, all of which were included as exhibits to the testimony of PECO witness John McCawley. While Mr. McCawley was cross-examined at the hearings regarding some of the program's details (Tr. 59-74), no party other than PECO offered any testimony regarding these documents. PECO Initial Br., p. 60.

Nonetheless, **for the first time in this proceeding**, RESA's Main Brief presents issues and arguments with respect to PECO's proposed application process, terms and conditions and includes an "appendix" with detailed comments on the program materials that is not part of the record in this proceeding. RESA also now contends that the form agreements governing the Opt-In Program should be negotiated at some unspecified, future date through a collaborative process and, on that basis, contests approval of various provisions of PECO's proposed Opt-In Program RFP and Program Rules, including the requirement that participating EGSs enter into the Opt-In Supplier Agreement attached to PECO Ex. JJM-4S. RESA Main Br., pp. 67-69.

As a threshold matter, RESA's assertion that the terms and conditions governing the Opt-In Program should be negotiated in the future through a Commission Staff-led effort is without merit. There is no reason to delay the process of approving the uniform contract terms governing PECO's Opt-In Program process, which is scheduled to commence in early 2013. To the contrary, this proceeding is the appropriate forum for consideration of PECO's program documents (just as with documents used in PECO's default supply procurements), which is exactly why PECO submitted the specific program documents for all parties to consider and address. RESA's failure to take advantage of that opportunity on the record provides no basis for deferring Commission consideration of PECO's agreements. Indeed, by improperly presenting non-record factual assertions for the first time in its Main Brief, RESA has prejudiced PECO and other parties by foreclosing any opportunity to present evidence in response. This approach is, understandably, contrary to law.

Section 504 of Pennsylvania's Administrative Agency Law, 2 Pa.C.S. § 504, provides that an agency's adjudication is not valid unless the adjudication is based on a record created after the parties have been given reasonable notice and the opportunity to be heard. *See*, *e.g.*, *Kowenhoven v. County of Allegheny*, 901 A.2d 1003, 1010 (Pa. 2006). In *Kowenhoven*, the Pennsylvania Supreme Court held:

> Due process principles apply to quasi-judicial or administrative proceedings, and require an opportunity, inter alia, to hear the evidence adduced by the opposing party, cross-examine witnesses, introduce evidence on one's own behalf, and present argument. Id. (internal citation omitted).

As a Commonwealth agency, the Commission must comply with the Administrative Agency Law, and Pennsylvania appellate courts have reversed Commission orders that were based, even in part, on facts outside the administrative record. *Equitable Gas Co. v. Pa. P.U.C.*, 405 A.2d 1055, 1059 (Pa. Cmwlth. 1979); *United Natural Gas Co. v. Pa. P.U.C.*, 33 A.2d 752, 758 (Pa.

Super. 1943) ("None of these figures appear in the record . . . No opportunity was afforded appellant to dispute or discuss them or show their inapplicability to the question.")

Reliance on non-record evidence is also precluded by the Commission's own regulations, which provide: "After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." 52 Pa. Code § 5.431(b). In accordance with these regulations and basic principles of due process, Administrative Law Judges have struck new "evidence" that a party seeks to introduce at the briefing stage of proceedings. *See, e.g., Third Ave. Realty Ltd. Partners v. Pennsylvania-American Water Co.*, Docket No. C-2008-2072920, p. 10 (Initial Decision issued October 13, 2010) ("I will strike off those portions of the Complainant's reply brief that improperly attempt to introduce new evidence or raise arguments contrary to evidence presented by its witness.").

RESA offers no reason why it could not have introduced these issues or its appendix with its written testimony in this proceeding. Accordingly, the positions and arguments advanced by RESA at pages 67 through 69 of its Main Brief and in Appendix A thereto should be stricken and disregarded. In the event that the Commission nevertheless considers RESA's new material, PECO submits the following comments regarding RESA's positions on the Opt-In Program RFP and Program Rules ("Opt-In Rules").

RFP Technical Conference. In the Opt-In Rules, PECO proposes to conduct a pre-bid technical web conference in early 2013 to outline the Opt-In Program, including the RFP process. PECO Ex. JJM-4S, ¶ 2.2. RESA asserts that PECO should provide notice to all registered EGSs in its service territory of the technical conference. RESA App. A, p. 3.

However, RESA's proposed revision is unnecessary because all registered EGSs will receive notice of the technical conference via PECO's well-established supplier bulletin process.

Bidder Qualifications. In its Initial Brief (p. 60), PECO described the qualification process for EGSs to submit bid proposals. RESA now objects to several of the criteria that EGSs must demonstrate to qualify as bidders. Specifically, RESA asserts that three qualifications are unnecessary because any EGS serving load in PECO's service territory would automatically meet the criteria that: (1) the bidder is licensed to operate as an EGS in Pennsylvania; (2) the bidder is a member of PJM and meets all applicable PJM obligations for load serving entities, including credit requirements; and (3) the bidder is in compliance and agrees to continue to comply with PECO's Supplier Tariff. RESA App. A, p. 3. Although many EGSs may automatically satisfy the foregoing criteria, such qualifications should not be eliminated because the proposed Opt-In Program is not restricted to EGSs currently serving load in PECO's territory.

RESA also contends that the bidders with past due outstanding supplier-related charges owed to PECO should not be disqualified from bidding because paragraph 3.2(d) of the Opt-In Rules does not provide for "good faith disputes". *Id.* Any supply-related charges (e.g., technical support and assistance and load data supply charges) paid by EGSs to PECO arise under the Electric Generation Supplier Coordination Tariff ("Supplier Tariff").[20] Contrary to RESA's unsupported assertion, Rule 18 of the Supplier Tariff provides alternative dispute resolution procedures relating to an EGS' payment of coordination services charges. *See id.*, First Revised Page Nos. 47-48. Indeed, as PECO witness McCawley made clear, an applicant with past due

[20] *See* Supplier Tariff, First Revised Page Nos. 51-53, *available at* https://www.peco.com/CustomerService/RatesandPricing/RateInformation/Documents/PDF/New%20Electric%20Tariff/Current%20Electric%20Tariff/Elec%20Supplier%20Tariff%201%2031%2012.pdf.

outstanding supplier charges engaged in a dispute resolution under Rule 18 of the Supplier Tariff would not be disqualified from bidding in the Opt-In Program RFP process. Tr. 60-61. Moreover, the Commission has already approved this bidder qualification for similar programs, including PECO's Market Share Threshold Bidding/Assignment Process. *See In re PECO Energy Co.*, Docket No. P-00021984, 225 PUR4th 106, 113 (Pa. P.U.C. 2003).

Finally, RESA submits PECO should confirm that the criterion set forth in paragraph 3.2(f)(ii) that EGSs maintain the ability to submit 'rate level' 810 EDI transactions is "technically feasible" for EGSs. Regardless of whether such operational requirement is feasible for all EGSs, it is necessary for accounts with two rates to avoid customer confusion arising from both charges appearing on the bill under one rate. Notably, EGSs are already required to demonstrate this operational capability during certification testing to serve load in PECO's territory.

Opt-In Supplier Agreement. As PECO explained in its Initial Brief (p. 60), qualifying bidders would be required to execute an Opt-In Supplier Agreement in the form set forth in PECO Ex. JJM-4S in which they would commit to offer standard terms and conditions and comply with the RFP provisions. Although it chose not to present any testimony on the issue, RESA alleges that execution of the Opt-In Supplier Agreement by qualified bidders is unnecessary because the relationship between EGSs and PECO is already governed by PECO's Supplier Agreement. RESA Main Br., p. 67 & RESA App. A, p. 5. RESA is wrong; PECO's proposed Opt-In Program is not covered under the Supplier Tariff. Tr. 66. Therefore, execution of the Opt-In Supplier Agreement prior to bidding is absolutely necessary to bind EGSs to the Opt-In Rules.

Additional Information. Under the Opt-In Rules, PECO may, but is not obligated to, request additional information and materials from a potential bidder for evaluation of a bidder application. PECO Ex. JJM-4S, ¶ 3.4. RESA opposes this provision because it contends that it is "too broad" and could be used to delay or reject an EGS bidder. RESA App. A, p. 5. However, that assertion is mere conjecture because there is no record evidence to support it. This standard RFP provision allows PECO to request additional information to clarify an application and to assist with PECO's ultimate determination on whether to qualify a bidder. Tr. 61. In fact, the Commission has approved this precise language for use in PECO's AEPS procurement of Tier II AECs. *See* Order, *Petition of PECO Energy Co. for Approval to Procure Tier II Alternative Energy Credits and Additional Tier I and Solar Energy Credits*, Docket No. P-2010-2210975, 2011 WL 1210938 (Pa. P.U.C. Feb. 14, 2011) (approving PECO's RFP to procure Tier II AECs).[21]

Application Evaluation. Although an RFP Monitor will oversee the application evaluation, PECO in its sole discretion will evaluate each application using a standard protocol for completeness and satisfaction of the bidder qualifications. PECO Ex. JJM-4S, ¶ 3.5. RESA asserts that PECO should not have sole discretion to determine participation in the Opt-In Program RFP bidding process. RESA Main Br., p. 68 & RESA App. A, p. 5. This objection is unwarranted in light of the oversight of the RFP monitor. In addition, although the Opt-In Rules do not provide explicit recourse to challenge PECO's decision on an application, the Opt-In

[21] *See also* PECO Energy Company Request for Proposals to Supply Tier II Alternative Energy Credits In Compliance With Pennsylvania's Alternative Energy Portfolio Standards Act (November 17, 2011), *available at* https://www.peco.com/PartnersinBusiness/GreenEnergySuppliers/Documents/Fall%202011%20Tier%20II%20AEC%20RFP.pdf., ¶ 4.8 ("AEPS Procurement RFP").

Rules do not restrict the rights of any potential bidder to file a complaint with the Commission raising its concerns. Tr. 67.

Offer Package. In its Initial Brief (p. 49), PECO described the customer allocation and offer process under its proposed Opt-In Program, whereby PECO would mail all of an Opt-In Supplier's allocated customers an offer package. The package would include an offer letter with the clearing price, an explanation of the program terms and conditions and the methods by which a customer can accept the offer. RESA's concern that EGSs will not have the opportunity to review the offer package before it is mailed to customers is misplaced, as PECO has agreed to such a review. Tr. 62.

Bonus Checks. Consistent with the Commission's guidance in the *Intermediate Work Plan Order* (p. 69), the Opt-In Program requires each Opt-In Supplier to mail a $50 bonus check to customers within five business days after the customer completes three full billing cycles on the program. PECO Ex. JJM-4S, ¶ 7.3 to 7.9. The Opt-In Rules also require that an Opt-In Supplier notify PECO of satisfaction of its bonus payment requirements within three business days thereof. *Id.* RESA contends that the terms and conditions should allow for "realistic" periods for mailing the bonus checks and for reporting. RESA App. A, p. 9. In support of its position, RESA asserts that Mr. McCawley admitted that PECO has not had any discussion with EGSs about whether it is feasible to require that an EGS send out bonus checks within five business days or "report" in three days. *Id.* RESA not only misconstrues Mr. McCawley's testimony, which only relates to the five day mailing period, but also misses the point. While PECO did not have any discussions with EGSs regarding the sufficiency of the five business day period, this relatively short period is designed to avoid potential customer frustration from waiting several weeks to receive the cash promised under the bonus, as is typical for gift cards *provided by EGSs in their competitive offers. Tr. 75.* As the Commission indicated in the *Intermediate Work Plan Order* (p. 69), the bonus payment promotes a retail opt-in auction product that is "unique and eye-catching, and as customer-friendly as possible." With respect to the three-day period for providing electronic written notification of an Opt-In Supplier's satisfaction of all of its bonus payment obligations under the Opt-In Program (¶ 7.8), RESA simply has not explained why three days is too short of a period to merely send a one-time email to PECO.

Prohibition Against EGS Termination of Service. Under the Opt-In Rules, an Opt-In Supplier may not discontinue service to a customer who accepted its offer under the program before the end of the Opt-In service period under any circumstances, including non-payment or a change in applicable law, regulations, tariffs, or orders. PECO Ex. JJM-4S, ¶¶ 7.11 & 7.13. While RESA accepts that EGSs should not be able to terminate Opt-In Program customers at will, it alleges that there are situations where it may be appropriate to permit an EGS to terminate service and therefore urges that a collaborative be convened on this issue. RESA App. A, p. 10. However, RESA has not identified any situation where EGS termination is appropriate. In addition, RESA has not demonstrated that retention of the notification and informal dispute resolution process triggered by a change in law, regulation or order established under Rule 19.5 of the Supplier Tariff is warranted, particularly in light of the short duration of the Opt-In Program. Indeed, under that procedure, a party may not be able to terminate the Supplier Agreement until as long as five months after the change in law if the parties are unable to resolve the issue, which is almost as long as the entire six-month term of the Opt-In Program.[22] As with

[22] Rule 19.5 provides in relevant part: "If at any time during the term of the Tariff..., the [Commission] or a court of competent jurisdiction issues an order under which a party hereto believes that its rights, interests and/or

its other proposed changes, the record is devoid of evidence supporting RESA's modifications to the standard terms and conditions related to termination of service.

Use of PECO Mark. RESA's concerns regarding the Opt-In Rules' limitation on the use of the PECO trademark and Opt-In Supplier's ability to reference "PECO" in general are misplaced. Such limitation exclusively applies to use of the mark in the offer package or the offer package envelope, which Opt-In Suppliers will have the opportunity to review. *See* PECO Ex. JJM-4S, ¶ 8.7 ("PECO will have final approval regarding the use of any PECO mark and any other reference to PECO in the offer package and/or on the offer package envelope").

Publicity. RESA objects to Paragraph 8.8 of the Opt-In Rules prohibiting Opt-In Suppliers from publicizing their participation in the program and relationship with PECO without PECO's express consent on the ground that such provision is counterproductive to the successful implementation of the Opt-In Program that can only be achieved through "aggressive marketing efforts". RESA Main Br., p. 68. However, as Mr. McCawley explained, the purpose of this provision is to ensure that PECO may withhold approval in cases where an EGS promotes its role in the program in a way that has a negative effect on the reputation of the PECO Energy Company brand. Tr. 75-76. RESA fails to recognize that the Commission has already approved this identical contractual language in PECO's AEPS Procurement RFP (¶ 7.6). In addition, with respect to RESA's contention that restrictions on the use of brand should be reciprocal, PECO

expectations under the Agreement are materially affected by said order, the party so affected shall within thirty (30) days of said final order provide the other party with notice setting forth in reasonable detail how said order has materially affected its rights, interests and/or expectations in the Agreement. Within thirty (30) days from the receiving party's receipt of said notice the parties agree to attempt through good faith negotiations to resolve the issue. If the parties are unable to resolve the issue within thirty (30) days from commencement of negotiations, either party may at the close of said thirty (30) day period terminate the Agreement, subject to any applicable regulatory requirements, following an additional thirty (30) days prior written notice to the other party…."

anticipates using only the EGS name – not brand – in the offer package and/or offer package envelope.

Release and Indemnification Provisions. RESA's contention that the standard boilerplate language in Paragraph 8.9 of the RFP Rules should be reciprocal is devoid of any factual basis. If RESA wanted a release of claims arising from the Opt-In Program RFP, it should have submitted testimony or other evidence to support its position prior to the close of the record. The Commission has considered and approved an identical provision for PECO's AEPS Procurement RFP (¶ 7.7).

For the foregoing reasons, RESA's proposed modifications to the Opt-In Rules should be rejected and its non-record factual averments should be disregarded.

C. EGS Standard Offer Program

1. Customer Eligibility

No party raised any issues with respect to customer eligibility for the Standard Offer Program except those suppliers who support expansion of the program to CAP customers, which is addressed in Section IV.D *infra*. Therefore, PECO's proposal to target residential default service customers, but allow shopping customers to participate in the Standard Offer Program as well, should be approved for the reasons set forth in PECO's Initial Brief (pp. 61-62).

2. Composition of Product Offer

In its Initial Brief (pp. 62-63), PECO addressed the OCA's and RESA's proposed changes to the Standard Offer product. PECO explained that the OCA's concern that a twelve-month contract could end up costing participating customers more than if they had remained on default service was without merit in light of the fact that participating customers are free to return to default service at any time. In addition, to the extent RESA continues to argue that the

Commission intended the Standard Offer Program discount to last for only four months, PECO notes again that the Commission's guidance plainly provides to the contrary. *See Intermediate Work Plan Order*, p. 31 (explaining that the "standard offer" is a 7% reduction from the PTC, and "[t]he standard offer should be provided for a minimum of four months, but should not exceed 1 year.").

In its Main Brief, Dominion suggests that the mandated discount from the PTC should be reduced if EGSs are required to bear the costs of the Standard Offer Program. Dominion Main Br., p. 16. However, Dominion has not specified the level of discount it believes would be appropriate and, more importantly, has not alleged that EGSs would be deterred from participating in the Standard Offer program if they had to cover the costs and include a 7% reduction from the PTC in their standard offer. Moreover, Dominion's proposal is inconsistent with the Commission's explicit and independent directives that (1) the standard offer price must be at least 7% below the PTC and (2) participating EGSs are responsible for the costs of the program. *Intermediate Work Plan Order*, p. 32.

3. Customer Options Upon Product Expiration

This issue was fully addressed in PECO's Initial Brief (pp. 63-64).

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

In its Initial Brief (p. 64), PECO addressed the OCA's proposal to limit calls eligible for referral to those from new and moving customers and those in which a customer specifically requests an explanation of the Standard Offer Program. PECO explained that the Commission's guidance clearly provides that the Standard Offer should be presented during customer contacts to the EDC call centers, including high bill calls after customer concerns are satisfied. *Intermediate Work Plan Order*, p. 31. The OCA contends that non-emergency field calls should not be subject to referral because the customer's concerns about his/her bill or service should be resolved without delay. OCA Main Br., pp. 83-84. However, this will undoubtedly be the case because PECO already responds to callers with high bill complaints by providing information on CAP and other available low-income programs and, if the facts appear to warrant a foreign wiring investigation, PECO conducts that investigation. PECO St. No. 6-R, p. 12; *see also* Cause-PA Main Br., p. 15 (stating that this is the appropriate response to a high bill complaint call).

5. Commencement Date of the EGS Standard Offer Program

This issue was fully addressed in PECO's Initial Brief (pp. 64-65). To the extent the OCA continues to assert that the Standard Offer Program should be delayed until after the conclusion of the Opt-In Program, PECO notes that the Commission clearly required EDCs to include both types of programs in their DSP plans and did not suggest, in any way, that the Standard Offer programs should be delayed for months after Opt-In Program enrollment is complete. *Id.*, p. 31-32.

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

Under PECO's Standard Offer Program, an EGS seeking to be a Standard Offer Supplier must first submit a Standard Offer Supplier Application which sets forth minimum qualifications, including a current EGS license issued by the Commission and the ability to comply with PECO's Supplier Tariff. *See* PECO Ex. JJM-5S, Exhibit 1. As part of the qualifying process, an EGS will be required to enter into a Standard Offer Supplier Agreement (Attachment A to Exhibit 1). As explained in PECO's Initial Brief (p. 65), no party raised objections to the qualifications set forth in the form application or the standard terms and conditions provided in the form agreement submitted by PECO.

At pages 76 and 77 of its Main Brief, RESA engages in a lengthy discussion of why numerous provisions in the Standard Offer Program governing documents (i.e., PECO Ex. JJM-5S) are "questionable" and proposes modifications to those documents, which are identified in Appendix B attached to its brief. None of this is in the record either as testimony or any other form of evidence even though RESA had full opportunity to raise its concerns in these proceedings. For those reasons, as explained above, the arguments advanced on pages 76 through 78 and Appendix B of RESA's Main Brief should be stricken and disregarded.

In the event the Commission nevertheless considers RESA's arguments with respect to PECO's proposed EGS Standard Offer Program RFP and Program Rules ("Standard Offer Rules"), PECO notes that RESA simply reiterates the same unfounded objections it made to the Opt-In Rules for the following provisions: (1) technical conference; (2) supplier qualifications; (3) Standard Offer Supplier Agreement; (4) PECO's right to request additional information to evaluate an application; (5) qualification will be determined in PECO's sole discretion; (5) restrictions against EGS discontinuance of service to customers that have accepted the standard offer; (6) limitations on the use of the PECO mark; (7) publicity and (8) release and indemnification. Accordingly, those objections should be rejected for the reasons set forth in Section IV.B.7, *supra*.

The additional issues raised by RESA with respect to the Standard Offer process are also without merit. Under the Standard Offer Rules, each Standard Offer Supplier must send a sales agreement to the customer within one business day after sending an EDI 814 enrollment transaction. PECO Ex. JJM-5S, ¶ 4.4. RESA contends that PECO should confirm with EGSs that one business day turnaround time for sending the sales agreement to customers after the enrollment transaction is feasible. RESA App. B, p. 5. Notably, several other EGSs who are parties to this proceeding reviewed the Standard Offer Rules and expressed no objection to the proposed turnaround time or any other provision. Moreover, RESA has not proposed an alternative that it believes would be more feasible. Under the Standard Offer Rules, PECO is also required to submit two confidential reports to the Commission and the OCA annually. PECO Ex. JJM-5S, ¶ 4.5. RESA submits that information in the reports should be made available to other interested parties with relevant confidential information (e.g., EGS name) redacted. RESA App. B, p. 5. While PECO does not generally oppose providing the redacted report to other parties, the specific "relevant confidential information" alluded to by RESA has not been identified.

In sum, RESA's objections to PECO's proposed application process and standard terms and conditions set forth in PECO Exhibit JJM-4S should be rejected and RESA's non-record factual assertions, including those raised in Appendix B, should be disregarded.

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

As explained in PECO's Initial Brief (p. 65), PECO proposes, at this time, to exclude CAP customers from participating in both the Opt-In Program and Standard Offer Program and instead await the results of the pending examination of the needs and interests of low-income customers in a robust competitive market by the Universal Service subgroup of the Office of Competitive Market Oversight ("OCMO"). Several parties expressed support for PECO's proposal. *See* OCA Main Br., p. 85; CAUSE-PA Main Br., pp. 19-23. However, RESA, Dominion, and FES have objected to it. For the reasons set forth below and in PECO's Initial Brief, the arguments advanced to support CAP customer shopping should be rejected.[23]

RESA's assertion that CAP customers could be adequately protected from harm by making their CAP benefits "portable" is wrong. As PECO discussed in its Initial Brief, complex unresolved issues remain with respect to CAP portability and, therefore, the determination of whether CAP customer participation in RME programs can be accomplished without subjecting those customers to harm should not be made until after the completion of the OCMO Universal Service subgroup's analysis. PECO Initial Br., pp. 66-67. Moreover, RESA has not shown how a portable subsidy would be implemented to mitigate the risks of harm to PECO's CAP customers arising from the potential for increases in commodity charges and increased uncollectible expense, particularly because PECO does not use a "percentage of income" approach.

Dominion generally contends that, as a "matter of principle", all customers should be able to participate in retail market enhancements and that PECO should address "any technical reasons which may prevent such participation for the moment." Dominion Main Br., p. 17. As described in PECO's Initial Brief (pp. 66-67), Dominion's concern regarding the role of CAP customers in a robust competitive market can be addressed more effectively after the OCMO review of the provision of universal service within default service.

[23] In its Main Brief, FES indicates – for the first time in this proceeding – its support for the inclusion of CAP customers in all EDCs' RME programs and urges the Commission to require operational changes necessary to implement CAP shopping. FES Main Br., p. 32. However, FES failed to present any justification for addressing operational issues with respect to CAP shopping in this proceeding rather than in the OCMO's Universal Service working group, nor did it address the specific concerns identified by PECO witness Feldhake. *See* PECO Initial Br., p. 66.

While supporting PECO's proposal to exclude CAP customers from the Opt-In and Standard Offer Programs, CAUSE-PA recommends that PECO screen verified low-income customers for CAP eligibility and inform them of the program prior to enrollment in the Opt-In Program. However, the evidence shows that CAUSE-PA's proposal for additional screening of this limited customer population would not materially increase the number of customers on CAP, but would create additional costs for PECO and the potential for customer confusion. The Commission should therefore reject this proposal. PECO Initial Br., p. 68.

E. Additional Proposed Retail Market Enhancements

1. Time-Of-Use Offering

Consistent with the *Default Service Recommendations Order* (pp. 47-48), PECO supports EGS participation in its TOU pilot program.[24] To that end, PECO has already conducted an auction and selected vendors to provide TOU commodity service and to implement and administer PECO's TOU pilot. In addition, PECO is seeking expedited approval of its proposed Dynamic Pricing Plan Supplement which includes modifications to enable an EGS to provide TOU supply.[25] PECO Initial Br., pp. 68-69. The arguments against PECO's approach advanced in the Main Brief of RESA should be rejected for the reasons set forth below and in PECO's Initial Brief.

First, RESA errs in contending that no party "expressed opposition" to RESA's recommendation that PECO satisfy its TOU obligation by certifying that one or more EGSs have agreed to offer a TOU rate and submit an annual report to the Commission on the number of

[24] *See Petition of PECO Energy Co. for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944, 289 PUR4th 193 (Pa. P.U.C. 2011) ("*Dynamic Pricing Order*").

[25] *See Petition of PECO Energy Co. for Expedited Approval of its Initial Dynamic Pricing Plan Vendor Selection & Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (filed April 2, 2012).

EGSs actually providing TOU service rather than conducting an auction. As PECO witness Cohn made clear, PECO does not agree that RESA's alternative should be adopted because PECO has already conducted the auction and the results are under Commission review. PECO St. 5-R, p. 10. Moreover, RESA's assertion that its approach is less costly and more market friendly for future TOU offerings after PECO's TOU pilot concludes is not supported by any record evidence; indeed, RESA has not presented any evidence that the auction approach would preclude other EGSs from offering TOU or other dynamic rate products in PECO's service territory.

Second, RESA's contention that the design of PECO's TOU pilot should be addressed in this proceeding is also in error. As explained in PECO's Initial Brief, adopting RESA's proposal will simply undermine the Commission's pending review and potentially delay the launch of PECO's TOU pilot. PECO Initial Br., p. 69.

2. New/Moving Customer Referral Program

This issue was fully addressed in PECO's Initial Brief (p. 70).

3. Referral of PECO Wind Customers

While no party opposes PECO's proposal to eliminate the PECO Wind program and to refer current PECO Wind customers to interested EGSs that can offer a "green energy" product, the OCA, GMEC and ChoosePAWind.com proposed modifications to the one-time PECO Wind referral mailing. PECO addressed the principal arguments in support of each of the proposed modifications in its Initial Brief (pp. 71-72) and explained that such proposals were unnecessary because registered EGSs will have the opportunity to respond to PECO's request for information and be identified in the referral mailing. The additional arguments presented in RESA's and GMEC's Main Briefs should be rejected for the reasons discussed below.

Both RESA and GMEC contend that the PECO Wind referral mailing should include promotional materials that describe the specific green energy offerings of eligible EGSs that elect to participate in the mailing. *See* RESA Main Br., pp. 87-88; GMEC Main Br., pp. 7-8.[26] As explained in PECO's Initial Brief, allowing EGSs to insert materials into the referral mailing would be unwieldy and would increase administrative and mailing costs. PECO Initial Brief, p. 72. Moreover, neither RESA nor GMEC has shown that current PECO Wind customers will be unable to make a shopping decision upon expiration of the program if furnished the EGS contact information provided in the mailing, coupled with the information on renewable energy products provided on the Commission-maintained PAPowerSwitch.com website.

The proposals of ChoosePAWind.com and GMEC to expand the mailing to its customers to include an unlimited number of other websites that are not maintained by the Commission and references to entities that are not licensed by the Commission (such as non-EGS suppliers of other renewable-related products) should not be adopted, regardless of any "disclaimer." As with the insertion of EGS materials, requiring PECO to list websites and entities that have not been subject to any review or approval by the Commission will clearly result in increased administrative costs for PECO.

[26] RESA's attempt to support its proposal for marketing inserts by referencing a bi-annual consumer education mailing that includes specific EGS offers implemented by Metropolitan Edison Company and Pennsylvania Electric Company under their first default service plans is inapposite. *See* Opinion and Order, *Joint Petition of Metropolitan Edison Co. and Pennsylvania Elec. Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2009-2093053 and P-2009-2093054 (Pa. P.U.C. Nov. 6, 2009) (approving settlement that included the companies' agreement to send letters notifying residential and small commercial customers of available EGS offers for electric generation service at least twice a year beginning in 2011), p. 42. As explained by PECO witness Crowe, in addition to referral of PECO Wind customers to eligible EGSs, PECO is initiating another customer education campaign which will include three coordinated mailings to encourage residential and small commercial customer shopping. PECO St. No. 1, p. 7. Notably, RESA has not raised any concerns with those mailings that will not include promotional inserts or specific EGS offers.

4. Seamless Moves

This issue was fully addressed in PECO's Initial Br. (p. 72).

F. Recovery Of Program Costs For Proposed Retail Market Enhancements

As explained in its Initial Brief (p. 72), PECO proposes to recover the costs of the Opt-In Offer Program directly from winning EGSs and the costs of other RME programs (including the Opt-In Program if it is unsuccessful) through a 0.3% discount on purchased EGS accounts receivable ("POR"). The OCA, OSBA, CAUSE-PA and I&E affirmatively support PECO's proposal to recover costs from EGSs instead of customers; not surprisingly, RESA, FES and Dominion do not. However, their arguments against bearing program costs were addressed in detail in PECO's Initial Brief (pp. 72-76). Accordingly, the following discussion is limited to addressing new arguments in the other parties' Main Briefs and emphasizing several key points.

1. EGS Opt-In Competitive Offer Program

RESA and the EGSs assert that PECO's customers (either default service customers or all distribution customers) should pay all of the costs of the retail market programs, including the Opt-In Program, and oppose recovery of costs from EGSs despite the *Intermediate Work Plan Order*'s repeated specific guidance (pp. 78 & 84-85). FES Main Br., pp. 37-38; RESA, pp. 91-92; Dominion Main Br., pp. 17-18.[27]

While each of the parties emphasize retail market benefits to customers as a basis for customer payment, the benefits remain general and unquantified. *See, e.g.*, FES Main Br., p. 35 (asserting that all customers will benefit from a market that "**may** include an increase in EGSs or

[27] Notably, Dominion suggests a cost recovery alternative in which suppliers would pay a per-customer switch fee. Dominion Main Br., p. 18. As PECO witness Cohn explains, PECO does not object to this idea in principle, but notes that it will add complexity to the program. PECO St. No. 5-R, p. 14.

offers") (emphasis added). Proposals to assign costs to customers because of these general benefits, in contravention of the Commission's specific guidance, must be weighed against what the Commission understood will be actual savings in acquisition costs for winning EGSs in the Opt-In Program. Significantly, not one of the parties objecting to PECO's cost recovery proposal states that it (or, in RESA's case, its members) will refuse to participate in the Opt-In Program if PECO's recommendation is adopted by the Commission. Indeed, as noted in PECO's Initial Brief (p. 74), FES explicitly acknowledged that it has conducted no cost-benefit analysis or even considered whether PECO's proposal will affect FES' actual participation as part of its objections. *See* PECO Cross-Examination (Banks) Ex. 2 (FES Response to PECO Set II, No. I).[28]

Moreover, the various parties' emphatic concerns that recovery of Opt-In Program costs through the POR may have an adverse effect on EGS interest in PECO's service territory – an entirely hypothetical assertion, without any supporting evidence from specific EGSs stating that they would choose not to enter or would leave PECO's territory – minimizes the fact that POR recovery of the Opt-In Program costs would only be undertaken in the absence of any winning EGSs. Not one party suggests that the dozens of EGSs now serving customers in PECO's territory (and seeking to serve more) will refuse to participate in an Opt-In Program in which one million PECO customers are eligible (Tr. 54), nor do any of the parties provide a basis to conclude that there will be no winning EGSs among the participating suppliers.

[28] RESA also suggests that requiring all customers to pay for the costs of the Opt-In Program "can be viewed as a natural continuation of the transition to restructured markets that begin in the late 90s." RESA Br., p. 91. Aside from the absence of any citation to authority for this proposal, RESA provides no basis for concluding that the requirements for implementation of retail choice at the beginning of restructuring under the Competition Act is analogous to the current period, when over half of PECO's customer load is now supplied by EGSs and hundreds of thousands of residential customers are served by EGSs in PECO's service territory. PECO St. No. 1, pp. 5-6.

PECO notes that there may be some confusion among the parties regarding both the history and mechanism of the POR discount. The original POR discount of 0.2% on EGS receivables purchased by PECO was imposed to pay for the costs of implementing the POR program, a retail market enhancement available to all EGSs. Once the costs of implementation were recovered, the discount was eliminated, effective January 31, 2012. *See* Supplier Tariff, Third Revised Page No. 92 (revising POR discount from 0.2% to 0.0% as a result of the completion of recovery of the POR program implementation costs). EGSs are not charged for uncollectible EGS receivables; instead, all distribution customers support PECO's continuing purchase and collection of EGS receivables without any discount of the receivable through an uncollectible expense charge in distribution rates. PECO St. No. 1, p. 6.[29] Significantly, new EGSs entering PECO's territory are able to take advantage of this POR program without having paid any of the implementation expense incurred by earlier EGSs when the discount was in effect. PECO's proposed use of a POR discount as a contingency for recovery of costs in the event there are no winning EGS suppliers is thus consistent with this approach: instead of making customers pay for a program in which they derived no benefit, EGSs who are likely benefiting the most from the competitive market in PECO's territory (as reflected in their use of the POR program) will pay for the costs of a new program designed to encourage customers to shop and expand EGS market share.[30]

[29] *See also* Opinion and Order, *Petition of PECO Energy Co. for Approval of its Revised Elec. Purchase of Receivables Program*, Docket No. P-2009-2143607 (Pa. P.U.C. June 18, 2010), pp. 45-48 (approving PECO's proposal to recover uncollectible expense associated with purchased EGS receivables through distribution rates).

[30] FES suggests that the Commission's determination with respect to cost recovery through the POR discount should be given "little weight" because it was PECO's proposal and was not "fully vetted." FES Main Br., p. 38. While FES may not have chosen to address (or respond to) Opt-In Program cost recovery issues in its comments on the Commission's Intermediate Work Plan in its tentative form, other parties did so. *See Intermediate Work Plan Order*, pp. 78 & 84-85.

2. EGS Standard Offer Program

As with Opt-In Program costs, the Commission expressly stated in its *Intermediate Work Plan Order* that the method which PECO has proposed to recover costs for the Standard Offer Program available to all EGSs – a POR discount – is acceptable. *See Intermediate Work Plan Order*, p. 32. Apart from repeating the same contentions raised in their respective witness' testimony already addressed in PECO's Initial Brief and in the preceding section regarding the Opt-In Program, FES and Dominion made several new assertions in their Main Briefs which are incorrect, as explained below.

FES contends that PECO has not provide sufficient evidence to support the 0.3% level of the POR discount, which is greater than the discount that was imposed by PECO to recover the administrative costs of the POR program. FES Main Br., p. 40. However, FES fails to acknowledge that the administrative cost of the POR program (i.e., $1.4 million) is significantly less than the estimated costs to implement the Standard Offer Program and other enhancements. *See* FES Cross-Examination Ex. 2 (PECO Response to FES-I-13(a)). In addition, while FES contends that PECO's response to FES Interrogatory I-13(a) is insufficient to support the proposed level of POR discount for either the Standard Offer Program or the Opt-In Program in the event there are no winning suppliers , it neither identifies any flaws in PECO's calculation of the discount nor attempts to quantify a different level of discount that would be appropriate.

In its Main Brief (pp. 15-16), Dominion generally alleges that several categories of cost to be recovered through the POR discount "seem to be cost[s] associated more with consumer education". That contention is wrong; PECO is initiating another customer education campaign in addition to the Standard Offer Program and New/Moving Customer Referral Program. PECO St. No. 1, p. 7. As PECO witness Cohn made clear, PECO will continue to recover consumer education costs through its current Consumer Education Surcharge – not from EGSs. PECO St. No. 5, p. 18 & PECO Ex. 4-R.

3. Other Enhancements

This issue was fully addressed in PECO's Initial Brief (pp. 76-77). However, PECO agrees with the OSBA that the costs of the New/Moving Customer Referral Program should not be recovered from small commercial customers if the Commission approves the program without modification and also rejects PECO's proposal to recover RME program costs from EGSs.

V. OTHER ISSUES

PECO was the only party to identify other issues in its Initial Brief. *See* PECO Initial Br., p. 77 (discussing affiliated interest approval for the SMA and other agreements associated with the Opt-In Program and Standard Offer Program).

VI. CONCLUSION

For the reasons set forth above and in PECO's Initial Brief, the Commission should approve PECO's Default Service Program for the period June 1, 2013 to May 31, 2015. In addition, the Commission should: (1) make the findings required by 66 Pa.C.S § 2807(e)(3.7); (2) grant the waivers and affiliated interest approvals requested in the Petition; and (3) grant such other approvals as may be needed to fully implement PECO's proposed Default Service Program.

Respectfully submitted,

Anthony E. Gay
(Pa. No. 74624)
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

Thomas P. Gadsden
(Pa. No. 28478)
Kenneth M. Kulak
(Pa. No. 75509)
Brooke E. Leach
(Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Counsel for PECO Energy Company

July 3, 2012

APPENDIX A

Exhibit F

Summary Of The Recovery Of Costs Associated With Default Service And Mitigation

Costs Included In The PTC

1. Generation Supply Adjustment

a. Administrative costs (other costs associated with implementing the plan)

1. Information technology (IT) costs incurred to implement the procurement plan and the price to compare (PTC); includes billing and wholesale supply contract/energy procurement and scheduling system changes

2. *Cost of approval of the plan, which reflects the cost of outside* consultants and outside lawyers, expenditures on IT or software to develop data necessary for developing procurement class PTCs, and customer notification costs

3. Cost of Independent Evaluator and AEPS RFP monitor (to the extent not included in the AEPS Charge) for the full requirements, block energy, and AEPS alternative energy procurements

4. All other incremental costs necessary to implement the plan such as the cost of the "pricing agent" required under the Supply Master Agreement, additional non-IT billing system cost and supplemental care center support during the transition

b. Energy Supply-related costs

1. Cost of supply from full requirements contracts
2. Cost of complying with AEPS not included in the full requirements contracts and not included in the AEPS charge
3. Block energy and spot market energy purchases net of any sales of excess energy that become available; includes energy, capacity, ancillary services and any other charges assessed by PJM related to the purchases, excluding network transmission and PJM Regional Transmission Expansion Plan (RTEP) related costs. Specifically, cost of supply from block energy supply contracts and for the 25% of residential load served by PECO at PJM bill charges and credits identified as "Seller Responsibility" on full requirements service Supply Master Agreement Exhibit D, "Sample PJM Invoice."
4. PJM related charges assessed on load serving entities
5. Cost of collateral, if any is required, for PJM associated with load serving entity PJM bill responsibility.

c. Frequency of update and reconciliation

1. Generation Supply Adjustment changes shall be calculated and reconciled quarterly for Residential, Small C&I, and Medium C&I

2. Reconciliation is calculated monthly for Large C&I (>500kW)

2. PECO's Retail Electric Transmission Rates

3. Alternative Energy Portfolio Standard Charge

4. There Shall Be Four Procurement Classes
   a. Residential
   b. Small C&I (0-100kW)
   c. Medium C&I (100-500kW)
   d. Large C&I (>500kW)

Note: Estimates of the administrative costs identified in Section 1.a., above, are provided in the attached schedule.

Costs Not Included in the PTC

1. Consumer Education and Mitigation

   a. Consumer Education cost – to be included in a non-bypassable surcharge consistent with the Commission's order at Docket Nos. M-2008-2032274 and M-2008-2062739 and the terms of the Joint Petition for Settlement at Docket No. P-2008-2062741. Consumer Education cost includes the cost of promoting mitigation programs such as the Market Rate Transition Phase-in Program ("Early Phase-in") and the Market Rate Transition Deferral Program (Deferral Program").

   b. Cost of the Deferral Program (if required)

      1. IT implementation cost, incremental call center and enrollment cost, and other costs of the program are to be recovered in a non-bypassable surcharge with the allocation of costs consistent with the terms of this Settlement. Costs are expected to be similar to the Early Phase-in cost estimate.
      2. To be included in a non-bypassable surcharge.

2. Early Phase-in Cost

   a. To be deferred and recovered in the next base rate case per the terms of the Joint Petition for Settlement at Docket No. P-2008-2062741.
   b. The cost estimates set forth in the Joint Petition for Settlement at Docket No. P-2008-2062741 are $0.46M for O&M and $0.75M for capital. The O&M portion consists of $0.1M for IT, $0.2M for call center support, and $0.16 for bill presentment and customer notifications.

Exhibit F

Estimated Administrative Costs

Cost Element	Capital	O&M Expense	Est. Annual Cost(d)
IT/Billing System	TBD	TBD	TBD
IT/Energy Acquisition Systems	TBD	TBD	TBD
Rate Mitigation IT*(a)	$1.5M	$0.2M	Portions deferred
Rate Mitigation - Other*(a)		$0.7M	Portions Deferred
Independent Evaluator(a)		$0.5M/yr	$0.5M
Cost of Proceeding (a)(b)		$4.0M	$1.7M
Other Implementation Cost (c)		TBD	TBD
Total	TBD	TBD	TBD

NOTE: The Parties agree with the general categories above, however, the costs shown above are PECO's estimates. PECO's actual expenditures shall be subject to review and approval by the Commission at the time those costs are claimed for recovery. Only expenditures that are found to be reasonable will be recoverable from customers.

* Not included in PTC; portions associated with the Early Phase-in are deferred until the next base rate case. Includes both the Early Phase-in and the Deferral Program.

(a) Preliminary Estimate
(b) Cost of the proceeding consists of the following:
1. Outside legal cost $1.000M
2. Consultants $2.600M
3. Customer notice $0.031M
4. Proof of revenue $0.260M
5. Load study $0.125M
6. Other expenses $0.008M

(c) Cost elements such as incremental non-IT billing system costs and supplemental customer care center staff for transition.

Exhibit F

(d) Recovery period

IT - 5 years with a 6% return on unamortized capital
Cost of proceeding – 29 months
Other implementation costs – 29 months
Independent Evaluator – current (1 year)
Rate Mitigation (Deferral Program) – IT cost amortized over the deferral program period with 6% return on capital; other O&M current recovery

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS DEFAULT SERVICE PROGRAM	:	**DOCKET NO. P-2012-2283641**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Reply Brief of PECO Energy Company** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54.

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Honorable Dennis J. Buckley
Administrative Law Judge
Office of Administrative Law Judge
400 North Street
P.O. Box 3265
Harrisburg, PA 17105
debuckley@pa.gov

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Tanya J. McCloskey
Senior Assistant Consumer Advocate
Candis A. Tunilo
Christy M. Appleby
Assistant Consumer Advocates
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
tmccloskey@paoca.org
ctunilo@paoca.org
cappleby@paoca.org
cshoen@paoca.org

Elizabeth Rose Triscari
Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second Street
Suite 1102
Harrisburg, PA 17101
etriscari@pa.gov

Carrie B. Wright
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Commerce Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265
carwright@pa.gov

Todd S. Stewart
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 N. Tenth Street
Harrisburg, PA 17105-1778
tsstewart@hmslegal.com
Counsel for Dominion Retail, Inc. and Interstate Gas Supply, Inc.

Daniel Clearfield
Deanne M. O'Dell
Edward Lanza
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
elanza@eckertseamans.com
Counsel for the Retail Energy Supply Association and Direct Energy Services, LLC

Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
Counsel for Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company

Thu B. Tran
Robert W. Ballenger
George D. Gould
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
ttran@clsphila.org
rballenger@clsphila.org
ggould@clsphila.org
Counsel for TURN et al.

Jeffrey J. Norton
Carl R. Shultz
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17101
jnorton@eckertseamans.com
cshultz@eckertseamans.com
Counsel for Green Mountain Energy Company and ChoosePAWind

Brian J. Knipe
Buchanan Ingersoll & Rooney, PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503
brian.knipe@bipc.com
Counsel for FirstEnergy Solutions Corp., LLC

Divesh Gupta
Managing Counsel - Regulatory
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202
divesh.gupta@constellation.com
Counsel for Constellation Energy

Charis Mincavage
Adeolu A. Bakare
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
abakare@mwn.com
lcharlet@mwn.com
lhuff@mwn.com
Counsel for the Philadelphia Area Industrial Energy Users Group

Stephen L. Huntoon
David Applebaum
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W., Suite 220
Washington, D.C. 20001
shuntoon@nexteraenergy.com
david.applebaum@nexteraenergy.com
Counsel for NextEra Energy Resources

Amy M. Klodowski
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com
Counsel for FirstEnergy Solutions Corp.

Scott H. DeBroff
Alicia R. Duke
Rhoads & Sinon, LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
sdebroff@rhoads-sinon.com
aduke@rhoads-sinon.com
Counsel for Washington Gas Energy Services, Inc.

Charles E. Thomas, III
Thomas, Long, Niesen & Kennard
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
cet3@thomaslonglaw.com
bmerola@noblesolutions.com
Counsel for Noble Americas Energy Solutions LLC

Jodi S. Larison
Senior Manager, Business Development
UGI Energy Services, Inc.
One Meridian Boulevard, Suite 2C01
Wyomissing, PA 19610
jlarison@ugies.com
Counsel for UGI Energy Services, Inc.

Patrick M. Cicero
Harry S. Geller
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net
Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania

David I. Fein
Vice President, Energy Policy
Director of Retail Energy Policy
Constellation Energy
550 W. Washington Boulevard, Suite 300
Chicago, IL 60661
david.fein@constellation.com
Counsel for Constellation Energy

Amy E. Hamilton
Director, Public Policy
Exelon Generation Company
300 Exelon Way
Kennett Square, PA 19348
amy.hamilton@exeloncorp.com
Counsel for Exelon Generation Co., LLC and Exelon Energy Company

Melanie J. Elatieh
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
elatiehm@ugicorp.com
Counsel for UGI Energy Services, Inc.

Telemac N. Chryssikos
Washington Gas Energy Services, Inc
101 Constitution Avenue, N.W., Room 319
Washington, D.C. 20080
tchryssikos@washgas.com
Counsel for Washington Gas Energy Services, Inc.

Thomas McCann Mullooly
Trevor D. Stiles
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
tmullooly@foley.com
tstiles@foley.com
Counsel for Exelon Generation Co., LLC and Exelon Energy Company

Melanie Santiago-Mosier
Washington Gas Energy Services, Inc
13865 Sunrise Valley Drive, Suite 200
Herndon, VA 20171
mmosier@wges.com
Counsel for Washington Gas Energy Services, Inc.

Andrew S. Tubbs
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
atubbs@postschell.com
Counsel for PPL Energy Plus, LLC

Jesse A. Dillon
PPL Services Corporation
Office of General Counsel
Two North Ninth Street
Allentown, PA 18106
jadillon@pplweb.com
Counsel for PPL Energy Plus, LLC

Richard Hahn
Douglas Smith
Dan Koehler
La Capra Associates
One Washington Mall, 9th Floor
Boston, MA 02108
rhahn@lacapra.com
dkoehler@lacapra.com
das@lacapra.com

Brian Kalcic
Excel Consulting
Suite 702-T
225 S. Meramec Avenue
St. Louis, MO 63105
excel.consulting@sbcglobal.net

Barbara Alexander
Consumer Affairs Consultant
83 Wedgewood Drive
Winthrop, ME 04364
barbalex@ctel.net

TPGadsden

Anthony E. Gay, Esquire (Pa. No. 74624)
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
Phone: 215.841.4635
Fax: 215.568.3389
E-mail: anthony.gay@Exeloncorp.com

Thomas P. Gadsden, Esquire (Pa. No. 28478)
Kenneth M. Kulak, Esquire (Pa. No. 75509)
Brooke E. Leach, Esquire (Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: 215.963.5234
Fax: 215.963.5001
E-mail: tgadsden@morganlewis.com

Counsel For PECO Energy Company

Dated: July 3, 2012

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU