

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company For
Approval of Its Default Service Program**

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Docket No. P-2012-2283641

**EXCEPTIONS OF
THE JOINT SUPPLIERS GROUP**

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Filed: September 10, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (“Constellation”), and Exelon Generation Company, LLC and Exelon Energy Company (“Exelon”) (“Constellation/Exelon”),¹ along with NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC (“NextEra”) (collectively, the “Joint Suppliers Group”) hereby submit their Exceptions to the Recommended Decision issued August 27, 2012 (“Recommended Decision”),² by the Honorable Administrative Law Judge (“ALJ”) Dennis J. Buckley, with regard to the Default Service Program (“DSP”) filed with the Pennsylvania Public Utility Commission (“Commission”) by PECO Energy Company (“PECO”) on January 13, 2012.³

¹ When this proceeding was initiated, the Constellation and Exelon entities were separate companies. On March 12, 2012, the parties consummated a merger and are now part of the same corporate family. Accordingly, though the entities have participated separately throughout this proceeding, for administrative efficiency, they now file a joint petition.

² *Recommended Decision in Re: Petition of PECO Energy Company for Approval of Its Default Service Program*, Commission Docket No. P-2012-2283641, (dated August 27, 2012) (“Recommended Decision”).

³ *Petition of PECO Energy Company For Approval of Its Default Service Program*, Commission Docket No. P-2012-2283641 (Jan. 13, 2012) (“DSP Petition”).

I. INTRODUCTION AND SUMMARY OF ARGUMENT

A. INTRODUCTION

The Joint Suppliers Group herein presents exceptions to one particular issue in the ALJ's Recommended Decision – the allocation and collection of Generation Deactivation charges assessed by PJM Interconnection, L.L.C. (“PJM”). Based on the existence of new evidence, Constellation/Exelon recently filed a *Petition for Rehearing and Reconsideration*⁴ (“Constellation FirstEnergy-PA Reconsideration”) of the Commission’s decision on the same issue raised in the *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (“FirstEnergy-PA DSP”). In the instant proceeding, PPL EnergyPlus, LLC (“PPL EnergyPlus”) proposed that PECO recover costs associated with Generation Deactivation charges from and on behalf of all customers through a non-bypassable charge (“Generation Deactivation Cost Recovery Proposal”),⁵ the same proposal which is addressed in the Constellation FirstEnergy-PA Reconsideration. As the issues presented regarding the Generation Deactivation Cost Recovery Proposal are largely the same in this proceeding and the FirstEnergy-PA DSP case, where Constellation/Exelon seeks rehearing only regarding this singular Proposal, the Joint Suppliers Group believes it is appropriate for the Commission to consider a uniform decision in these cases with respect to this narrow matter. To that end, the Joint Suppliers Group makes only the following important exception:

⁴ See *Petition for Rehearing and Reconsideration of Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Exelon Generation Company, LLC and Exelon Energy Company*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (filed Aug. 31, 2012) (“Constellation FirstEnergy-PA Reconsideration”).

⁵ See *Main Brief of PPL EnergyPlus, LLC*, Docket No. P-2012-2283641 (filed June 18, 2012) (“PPL EnergyPlus Main Brief”) at 2.

JSG Exception No. 1: The Commission should deny the ALJ's ruling to reject the Generation Deactivation Cost Recovery Proposal and instead:

- (1) Allow a one-year transition period for Small Commercial, Medium Commercial (together, "Commercial") and Large Commercial and Industrial ("Large C&I") customers with EGS contracts under which they are receiving service on June 1, 2013, the first day of the DSP's term (herein referred to as "Existing EGS Contracts"), as proposed by the Office of Small Business Advocates ("OSBA") in the instant proceeding, and as presented in the August 2, 2012 *Dissenting Statement of Commissioner Gardner* ("Gardner Dissent") in the FirstEnergy-PA DSP case;⁶ *or*
- (2) Carve Large C&I customers with Existing EGS Contracts out and approve the Generation Deactivation Cost Recovery Proposal for all other customers, including all Large C&I customers without Existing EGS Contracts as of June 1, 2013; *or*
- (3) Allow PECO to collect Generation Deactivation charges *only for* default service customers, and *not for* shopping customers, via the mechanism PECO currently utilizes under its Transmission Service Charge Rider ("TSC Rider") to collect other non-market based PJM charges, like Network Integration Transmission Service ("NITS") and Regional Transmission Expansion Plan ("RTEP") charges.

While the first of these alternatives was raised by the OSBA in this proceeding and was thus before the ALJ, the Recommended Decision failed to directly address the option as a "transitional protection" mechanism, and the record along with new evidence presented herein supports review of whether the proposal represents an appropriate compromise. The two others represent proposals not directly raised by parties or considered by the ALJ, which would address

⁶ See *Dissenting Statement of Commissioner Gardner*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (issued Aug. 2, 2012) ("Gardner Dissent").

any call for a “transitional protection” mechanism, and are supported by the record as well as the new evidence herein. The Joint Suppliers Group argues herein that the Commission should: (1) deny the ALJ’s Recommended Decision’s rejection of the Generation Deactivation Cost Recovery Proposal;⁷ or, at the very least, (2) issue a ruling that it is appropriate to shift responsibility for the recovery of Generation Deactivation charges from wholesale default service suppliers (“DS Suppliers”) – *and not* EGSs – to PECO. In making his decision on the Generation Deactivation Cost Recovery Proposal, the ALJ specifically erred in finding that evidence in the record does not show how “changing the existing cost assignment of generation deactivation charges . . . will lead to actual reductions in market prices,” or what type of “transitional protections” could be implemented for rolling out the Proposal.⁸ Moreover, Constellation points out that, after the record closed in this proceeding on July 9, 2012, significant additional evidence and alternative proposals came to light, as identified in the Constellation FirstEnergy-PA Reconsideration, lending support to the Commission’s review and rejection of the Recommended Decision’s ruling to deny the Generation Deactivation Cost Recovery Proposal in its entirety. With respect to such new evidence cited to herein, the Joint Suppliers Group respectfully requests that the Commission take judicial notice of the Constellation FirstEnergy-PA Reconsideration which includes evidence that became available only after the record closed in the instant proceeding and which is largely compiled from official publicly-available decisions from FERC and certain state regulatory bodies.⁹

While the Generation Deactivation Cost Recovery Proposal represents a small portion of

⁷ Recommended Decision at 47.

⁸ See Recommended Decision at 45-46.

⁹ See 52 Pa. Code §§ 5.408 and 1005.148; see also *Gleeson v. State Board of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006) (in which the Board of Medicine properly took judicial notice of its own records).

the overall DSP, it addresses a significant issue, as further established by new evidence discussed herein, that will have important repercussions for customers, particularly those customers not included in the limited group of shopping industrial customers, represented by the Philadelphia Area Industrial Energy Users Group (“Shopping Industrials”), that opposed the Generation Deactivation Cost Recovery Proposal.

B. SUMMARY OF ARGUMENT

PJM assesses Generation Deactivation charges in order to collect revenues to recover costs for compensating generation owners whose units would otherwise be voluntarily retired (shut down), but who agreed to operate for some period to preserve system reliability while necessary transmission reinforcements can be constructed.¹⁰ Those generators are entitled to cost recovery approved by the Federal Energy Regulatory Commission (“FERC”) under Reliability Must Run agreements (a/k/a “RMR” charges).¹¹

Testimony presented by PPL EnergyPlus, as well as additional new evidence that has come to light since close of the record on July 9, 2012, explain that Generation Deactivation charges are unhedgeable, unpredictable, and have the potential to be quite significant.¹² Meanwhile, the Generation Deactivation Cost Recovery Proposal – or one of the alternatives presented herein – has the potential to both provide substantial benefits to those customers not included in the Shopping Industrials’ group, and avoid disruptive actions that could potentially threaten consumers’ confidence in competitive retail markets in Pennsylvania.¹³

¹⁰ See Recommended Decision at 45.

¹¹ Constellation FirstEnergy-PA Reconsideration at P3.

¹² See PPL EnergyPlus St. No. 1 at 3-4.

¹³ See PPL EnergyPlus St. No. 1 at 5-6.

Neither the Office of Consumer Advocate (“OCA”) nor the OSBA – those consumer advocates charged with protecting the interests of customers within PECO’s Residential and Small Commercial classes – advocated against the Generation Deactivation Cost Recovery Proposal, though the OSBA supported a one-year transition period.¹⁴ In its testimony, OSBA in fact echoed the benefits of the Proposal to consumers.¹⁵

Good cause exists at this time for the Commission to revise the ALJ’s Recommended Decision regarding the Generation Deactivation Cost Recovery Proposal, in order to tailor the scope of the decision more narrowly to address the interests affected. Each of the three alternatives presented herein preserves the benefits of the Generation Deactivation Cost Recovery Proposal for all customers other than the Shopping Industrials, while at the same time addressing the Shopping Industrials’ specific concerns.

II. ARGUMENT

A. **BACKGROUND ON GENERATION DEACTIVATION CHARGES.**

As described by PPL EnergyPlus, Generation Deactivation charges are non-market-based, impossible to hedge, and are assessed by PJM to preserve system reliability.¹⁶ The costs represent administratively determined, “surrogate” transmission charges that are temporarily in place until transmission system improvements come on line. The amount of these costs are determined by the PJM Tariff or by FERC in a litigated proceeding and then allocated by PJM. Those amounts and allocations can change based on the actual time to complete transmission improvements, the amount of revenues the RMR unit receives in the market or future FERC

¹⁴ *See, e.g.*, OCA’s Main Brief at 40 (“The OCA takes no position on this issue”); OSBA’s Main Brief at 9 (supporting the notion that “reducing the risk premiums that suppliers impose due to uncertainty over the level of non-market based charges is a reasonable goal”; recommending a one-year transition period).

¹⁵ *See, e.g.*, OSBA Reply Brief at 6.

¹⁶ PPL EnergyPlus Main Brief at 3-4.

decisions on any protests to the original cost estimate.¹⁷ These Generation Deactivation charges are potentially significant in size, and cannot be hedged because they are not market risks, such as commodity price risk and basis risk, for which EGSs and wholesale suppliers are appropriately tasked with managing.¹⁸

More specifically, as PPL EnergyPlus explains:

Generators located in [PJM] are required to provide at least ninety (90) days notice prior to deactivating a generation unit Upon receipt of a generator's intent to deactivate, PJM completes a study of its transmission system to determine whether the deactivation of the generation unit could adversely affect system reliability If PJM determines that deactivating a unit poses a system reliability concern, PJM notifies the generation owner and provides an estimate for the period of time it will take to construct any transmission system upgrades to resolve the identified system reliability concerns At this point, the generator has two options: (1) elect to proceed with deactivating the generation unit; or (2) elect to receive compensation for costs to continue to operate the unit beyond its planned deactivation date pending the completion of transmission upgrades need[ed] to maintain transmission system reliability If a generator elects to continue to operate the unit, pending the completion of the needed transmission upgrades, the generator is compensated for the costs associated with operating the plant.

* * *

To compensate those generators that elect to defer deactivation pending completion of the required reliability upgrades, PJM collects revenues by imposing a Generation Deactivation charge on certain entities.¹⁹

With respect to the potential magnitude of such charges, PPL EnergyPlus presented that:

Indeed, the potential for significant Generation Deactivation charges is a real concern for market participants in Pennsylvania. Currently, PJM is analyzing the potential reliability impact [of] at least 8,000 MW²⁰ of announced deactivations In addition, the rapid development of abundant and inexpensive domestic natural gas resources, such as

¹⁷ Constellation FirstEnergy-PA Reconsideration at 7.

¹⁸ PPL EnergyPlus Main Brief at 4.

¹⁹ PPL EnergyPlus Main Brief at pp.4-5.

²⁰ As discussed later in this pleading, PJM's latest figures include more than 14,000 MW, rather than 8,000.

Marcellus Shale natural gas, has resulted in the market price of natural gas reaching record lows. It is anticipated that the development of the natural gas market, together with pending environmental regulations, will accelerate the retirement of older, inefficient generating units.

* * *

Generation Deactivation charges cannot be predicted as wholesale and retail suppliers have no way to determine the number of generators that will elect to be compensated and to defer deactivating their generation unit. Therefore, wholesale and retail suppliers are unable to predict the potential magnitude of Generation Deactivation charges in the future and, consequently, are unable to hedge these charges.²¹

The uncertainty with respect to Generation Deactivation charges results in the addition of risk premiums, which in turn drive up market prices, to the detriment of all parties.²² Recovering the Generation Deactivation charges from all customers on a non-bypassable basis would reduce these risks and make these costs transparent to consumers.²³

As PPL EnergyPlus' witness explained with respect to the Generation Deactivation Cost Recovery Proposal:

[DS Suppliers] must include a risk factor or premium in their bids to cover the uncertainty of these future costs, which drives up market prices to the detriment of all parties. Similarly, [EGSs], depending on the terms of their contract offers, may also need to include premiums in their competitive offers to [retail] customers. Because the Generation Deactivation charges are unknown, lack transparency, [are] potentially very large, and cannot be hedged, customers may be required to pay significantly more than actually required by the actual Generation Deactivation charges. If these Generation Deactivation charges are shifted from suppliers to PECO . . . it will reduce these risks, reduce market prices, and make these costs more transparent to consumers. In short, competitive markets and all stakeholders would benefit by having PECO recover all the Generation Deactivation charges in its service territory.²⁴

For these reasons, PPL EnergyPlus proposed in direct testimony that these charges be

²¹ PPL EnergyPlus Main Brief at p.5.

²² PPL EnergyPlus Main Brief at p.5.

²³ PPL EnergyPlus Main Brief at p.3.

²⁴ PPL EnergyPlus St. No. 1 at 5: 4-19.

collected from all customers through a “non-market based charges rider” or “NMB Rider.”²⁵

PECO suggests, and the Recommended Decision agrees, that EGS concerns about Generation Deactivation (and other PJM charges) are overstated because EGSs can choose to include contract terms that allow them to pass through to their customers the actual costs associated with these charges.²⁶ PPL EnergyPlus suggests that these types of pass-throughs can cause customer confusion and frustration because they are not within the control of an EGS, but PECO and the ALJ suggest that there is no reason for such confusion and frustration to shift from EGSs to PECO.²⁷ However, good reasons exist to shift such responsibility, in order to promote competition in furtherance of the Electric Choice Act. Use of these types of contractual “pass-through” measures can be disruptive to the EGS-consumer relationship;²⁸ these relationships are critical to a successful competitive retail market in Pennsylvania. Use of these contractual measures moreover carries monetary and reputational risk that could potentially drive suppliers out of the Pennsylvania market, in favor of dedicating resources to other jurisdictions in which EGSs would not face the need to invoke such provisions (such as Ohio, where such costs are collected by the EDCs on a non-bypassable basis).²⁹ In addition, invoking these types of contractual measures can damage customers’ confidence in the shopping compact that exists between them and their EGSs, potentially resulting in returns to default service; this is in stark contrast to the stated goals of this Commission’s policy to promote retail shopping in Pennsylvania.

²⁵ PPL EnergyPlus St. No. 1 at 4: 14-16.

²⁶ PECO Main Brief at 40.

²⁷ PECO Main Brief at 40.

²⁸ PPL EnergyPlus Main Brief at 6-7.

²⁹ PPL EnergyPlus St. No. 1 at 7: 1-10.

B. THE ALJ'S RECOMMENDED DECISION ERRS IN REJECTING THE GENERATION DEACTIVATION COST RECOVERY PROPOSAL.

1. The ALJ Erroneously Concludes that Evidence Does Not Show How the Generation Deactivation Cost Recovery Proposal Will Lead to Reductions in Market Prices.

As highlighted above and contrary to the Recommended Decision's conclusion adopting PECO's statement³⁰ that parties have not shown that "changing the existing cost assignment of generation deactivation charges . . . will lead to actual reductions in market prices," substantial evidence exists in the record to conclude otherwise. Consumers will face higher costs in their default service prices and EGS fixed price offers through the risk premiums that suppliers will need to include in order to account for the significant possibility that Generation Deactivation charges will be assessed in the PECO zone. In addition, new evidence has come to light in late July and August of this year, after the close of the record in this proceeding on July 9, 2012, which emphasizes the reality of the existence, the unpredictable nature, and the magnitude of Generation Deactivation charges. If not apparent based on existing record evidence, it is clear from the new evidence that Generation Deactivation charges are essential to the reliability of the electric grid for all end-use customers in the effected zones in PJM and, therefore, are appropriate to recover from all customers on a non-bypassable basis.

First whereas, in direct testimony, PPL EnergyPlus submitted that "PJM currently is analyzing the potential reliability impact [of] at least 8,000 MW of announced deactivations,"³¹ PJM's deactivation queue, as posted on *August 28 2012*, now indicates that PJM has *over 14,000*

³⁰ PECO Main Brief at 40.

³¹ PPL EnergyPlus St. No. 1 at 4:1-2.

MW of announced deactivations that it is in the process of reviewing.³² It must be considered that it is not known how many more MW of generation will be added to this list, and exactly how many of these units may continue to operate until appropriate transmission or other reliability upgrades come on-line, potentially resulting in the need for new Generation Deactivation charges to compensate such units in the interim.

Next, very recent new evidence shows that several units in PJM have in fact filed for RMR recovery, the costs for which will be recovered in Generation Deactivation charges. For instance, GenOn Power Midwest, LP (“GenOn”) on July 30, 2012 received approval from FERC for RMR payments for two units totaling over \$22-million (subject to adjustments based on ongoing litigation), which will be recovered through Generation Deactivation charges in the Duquesne Light Company and former Allegheny Power territories.³³ In addition, on July 10, 2012, FirstEnergy Generation Corporation (“FirstEnergy Genco”) filed for RMR recovery for six units of more than 1,700 MW capacity, for over \$170-million (less any capacity and/or energy market revenues, and subject to potential litigation), for recovery in the American Transmission System, Inc. (or “ATSI”) zone, part of which is in Pennsylvania.³⁴

Finally, recent developments in Ohio and New York suggest that recovery of Generation Deactivation charges on a non-bypassable basis is appropriate, as these charges are related to system reliability for the benefit of all end-use customers. For instance, in Ohio, the Public Utilities Commission of Ohio (“Ohio PUC”) on July 18, 2012 entered an order involving

³² See *FUTURE DEACTIVATIONS (as of August 27, 2012)*, PJM Interconnection, L.L.C. (posted Aug. 28, 2012) (avail. at: <http://www.pjm.com/planning/generation-retirements/~media/planning/gen-retire/pending-deactivation-requests.ashx>).

³³ See *Order Accepting and Suspending Tariff Filing, Subject to Refund and Establishing Hearing and Settlement Procedures*, FERC Docket No. ER12-1901-000 (issued July 30, 2012).

³⁴ See *Five Letters Re: Informational Filing regarding Deactivation Avoidable Cost (DAC) Rate under Section 116 of the PJM Interconnection, L.L.C.’s Open Access Transmission Tariff*, FERC Docket No. ER10-2710-0000 (filed July 10, 2012).

FirstEnergy Corp.'s three Ohio EDCs ("FirstEnergy-Ohio"), pursuant to which these EDCs will be responsible for Generation Deactivation charges – as well as other PJM charges – on behalf of all distribution customers, and will collect for such charges on a non-bypassable basis.³⁵ Similarly, at the New York State Public Service Commission ("NYSPSC"), Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") on July 20, 2012 filed for recovery of costs related to RMR payments to be made to NRG Energy, Inc., on a non-bypassable basis.³⁶ While on August 16, 2012, the NYSPSC deferred a ruling on the amount of such cost recovery and the exact methodology for recovery, it acknowledged that RMR costs should be recovered from retail customers.³⁷

The new evidence regarding the magnitude of MWs that are currently being reviewed by PJM, as well as the evidence indicating examples of actual Generation Deactivation charges that will be borne by customers in Pennsylvania, bolsters the significance of the issue at hand, and underscores the need for the Commission to consider an equitable result that will not undermine competitive markets and drive up the costs of both default service and EGS offers unnecessarily. As PPL EnergyPlus has pointed out, these charges cannot be predicted months, let alone years, in advance³⁸ and, as is the case for the GenOn and FirstEnergy Genco situations, can change even after the costs are announced, due to refunds or other adjustments in litigation, offsets that may

³⁵ See generally, *Opinion and Order in the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Ohio PUC Case No. 12-1230-EL-SSO (issued July 18, 2012).

³⁶ See, generally, *Filing in re: Petition of Dunkirk Power LLC and NRG Energy Inc. for Waiver of Generator Retirement Requirements—Proposed Term Sheet Agreement for Procurement of Reliability Support Services ("RSS") and Tariff Amendment for Recovery of RSS Costs*, NYSPSC Case No. 12-E-0136 (filed July 20, 2012).

³⁷ See *Order Deciding Reliability Issues and Addressing Cost Allocation and Recovery*, NYSPSC Case No. 12-E-0136 (effective Aug. 16, 2012) at p.25 (discussing how it is appropriate for National Grid to recover RMR costs from both its retail and wholesale customers).

³⁸ See PPL EnergyPlus Main Brief at 5.

be included in a RMR contract, and changes to the duration of the RMR as determined by PJM (no notice required).³⁹ Not only are these charges unpredictable, but they are also unhedgeable in the marketplace. DS Suppliers in PECO's DSP and EGSs making fixed-price offers in the PECO territory will have to include risk premiums in their prices to customers to account for the *possibility* that generation units *might* seek retirement and, in turn, that Generation Deactivation charges *might* be assessed; consumers, in this way, will pay for the costs of Generation Deactivation *regardless* of whether such costs actually occur during the term of the DS Supplier's or EGS's contract and without the oversight of the Commission. These types of premiums become even more likely and more prominent as DS Suppliers and EGSs see more potential for additional deactivations, as suggested by the new evidence presented herein. Rather than subjecting consumers to unnecessary premiums to account for this unhedgeable risk, then, it would be more appropriate to have PECO collect the costs (and remit refunds) for any Generation Deactivation charges/refunds that *actually* are assessed by PJM in the PECO territory.

This is exactly the path that the Ohio PUC has adopted and implemented,⁴⁰ and that the NYSPSC is headed towards, as revealed in their orders in late July and August, respectively. By taking this approach, for instance, retail customers in the FirstEnergy-Ohio territory will not only get the benefit of not having to pay for Generation Deactivation charges that do not in fact exist, but will benefit by being able to more transparently compare EGS generation offers to default service (or "standard service offer" as it is called in Ohio) generation rates.

All together, there exists clear and concrete evidence that the Generation Deactivation

³⁹ See Constellation FirstEnergy-PA Reconsideration at 13.

⁴⁰ Generation Deactivation charges are currently collected and billed through non-bypassable charges for all customers in Ohio service territories for Duke Energy-Ohio and AEP-OH.

Cost Recovery Proposal will lead to more competitive and lower DS Supplier bids and EGS fixed-price offers, thereby allowing for consumer market prices that are lower than they would have been absent adoption of the Proposal.

2. The ALJ's Decision Fails to Acknowledge the "Transitional Protections" Proposed by Parties in this Proceeding.

The Recommended Decision seems to erroneously conclude that, because PPL EnergyPlus in presenting its Generation Deactivation Cost Recovery Proposal did not provide for a "transitional protection," as argued for by the Shopping Industrials, no such transition plan exists that would address the Shopping Industrials' concerns.⁴¹ However, this conclusion fails to acknowledge and address that two specific transition plans were presented by parties in this proceeding that would preserve the benefits of the Generation Deactivation Cost Recovery Proposal while addressing the Shopping Industrials' concerns. One of these options was presented by the OSBA, and another was offered by the Shopping Industrials themselves. To the extent that the Commission remains concerned about the issues raised by the Shopping Industrials regarding the need for renegotiating existing contracts and the risk of double-counting, the Commission can mitigate these concerns by adopting one of these two transitional mechanisms.

a. OSBA's Proposed Transitional Protection

First, the Commission can mitigate the Shopping Industrials' concerns by adopting a one-year transition period for Commercial and Large C&I customers with Existing EGS Contracts, as proposed by the OSBA in this proceeding, and as recommended by Commissioner Gardner in the FirstEnergy-PA DSP case. Under this proposal, Commercial and Large C&I customers with Existing EGS Contracts will not be subject to the Generation Deactivation Cost Recovery

⁴¹ Recommended Decision at 45-46.

Proposal until June 1, 2014, one year after the beginning of the DSP, and *almost two years* from today. This transition proposal will provide an equitable result, balancing the existing and new evidence emphasizing the significance of the issue and appropriate solutions, as well as the implementation concerns raised by the Shopping Industrials.

OSBA argued that because the collection of certain PJM charges such as Generation Deactivation charges on a non-bypassable basis provides benefits to suppliers and customers, the Commission should approve such a proposal, but with a one-year transition period, rather than dismissing the proposal entirely.⁴² The OCA did not express a double-counting or other concern with respect to the Generation Deactivation Cost Recovery Proposal, presumably because small customers tend to be on shorter-term contracts, most of which will have expired between the time the Commission makes a final determination regarding this issue in the DSP, and the time the DSP's term begins.

The Joint Suppliers Group agrees with OSBA that all of the benefits of lower generation pricing that would be achieved by removing risks of real and unknowable Generation Deactivation charges from default service and EGS pricing assumptions should not be thrown out. Rather, the Commission should narrowly tailor a decision along the lines suggested herein, by adopting a one-year transition period for Commercial and Large C&I customers with Existing EGS Contracts.

b. The Shopping Industrials' Proposed Transitional Protection

In its Recommended Decision, the ALJ rejected the Generation Deactivation Cost Recovery Proposal based on the Shopping Industrials' argument "that transition matters be addressed in a manner fair to all customers," but the ALJ failed to acknowledge that the

⁴² OSBA Main Brief at 9.

Shopping Industrials themselves presented an option that they would consider an appropriate “transitional protection” plan – grandfathering Large C&I customers with Existing EGS Contracts.⁴³ Such a plan would carve out from the Generation Deactivation Cost Recovery Proposal those Large C&I customers with Existing EGS Contracts, and allow PECO to collect Generation Deactivation charges from all other customers.

The Joint Suppliers Group agrees with the Shopping Industrials’ that their concerns would not apply to customers outside of that limited group of Large C&I customers with Existing EGS Contracts. First, though the Shopping Industrials argued that immediate implementation without a transition period might interrupt long-term shopping contracts entered into by Large C&I customers, forcing them to renegotiate contracts and potentially causing shopping Industrials to be charged twice for certain charges, these concerns would *not* apply to customers *without* existing contracts (i.e., default service customers and customers that choose an EGS after the start of the DSP’s term). Second, as noted above, because most residential contracts with EGSs tend to be shorter term in nature, the Shopping Industrials’ concerns do not apply to shopping Residential customers. Third, though the Shopping Industrials stated that the proposal would result in increased risks to customers, they fail to reconcile that, if suppliers assume the risk of Generation Deactivation charges, they will charge premiums to consumers *regardless* of whether such charges actually occur, in order to account for their otherwise unhedgeable and unpredictable risk.

Thus, as the Shopping Industrials concerns can be narrowly and fully addressed through their own proposed transition plan, the Commission could carve out from the Generation Deactivation Cost Recovery Proposal those Large C&I customers with Existing EGS Contracts,

⁴³ PAIEUG Main Brief at 22-23.

and allow FirstEnergy-PA to collect Generation Deactivation charges from all other customers. In the event that the Commission deems it necessary, it could couple The Joint Suppliers Group's second alternative proposal with OSBA's proposed one-year transition period for Commercial customers with Existing EGS Contracts.

C. THE COMMISSION SHOULD, AT THE VERY LEAST, ISSUE A RULING THAT IT IS APPROPRIATE TO SHIFT RESPONSIBILITY FOR THE RECOVERY OF GENERATION DEACTIVATION CHARGES FROM DS SUPPLIERS – *AND NOT EGSS* – TO PECO.

If the Commission denies the above two alternatives for a transition plan, the Commission should instead allow PECO to collect Generation Deactivation charges *only for* default service customers, and *not for* shopping customers, via the mechanism PECO currently utilizes under its TSC Rider to collect other PJM charges like NITS and RTEP costs. The ALJ's Recommended Decision does not take into account this third option, because it was not directly presented by any party, though it is supported by evidence in the record, and bolstered by the additional new evidence presented herein.

This final alternative provides more limited benefits for competitive markets and consumers alike. As outlined in testimony and briefing in this proceeding, wholesale DS Suppliers appropriately bear the responsibility to manage true market risks, such as commodity price risk and basis risk.⁴⁴ Generation Deactivation charges, however, are unknown charges at the time of the default service procurements that are administratively assessed to address reliability concerns.⁴⁵

As explained above, because DS Suppliers cannot hedge these potentially significant

⁴⁴ *Id.*

⁴⁵ *Id.*

costs, they must include a premium in their bids to cover the future uncertainty of those costs,⁴⁶ which can cause customers to pay significantly more than required by the actual Generation Deactivation charges.⁴⁷ Having PECO recover Generation Deactivation charges on behalf of, at the very least, all default service customers reduces these risks and makes these costs — when and if they occur — transparent to default service consumers.

Accordingly, if the Commission does not accept the first or second alternatives for transition plans presented in this proceeding, it should instead issue its order to make clear that PECO can collect Generation Deactivation charges from default service customers, but not from shopping customers.

III. CONCLUSION AND REQUESTED RELIEF

The Joint Suppliers Group is confident that the Generation Deactivation Cost Recovery Proposal will provide substantial benefits to all customers and that, if necessary, appropriate transitional mechanisms exist to mitigate any concerns. For purposes of this proceeding, The Joint Suppliers Group specifically asks that the Commission revise the Recommended Decision and enter an Order that either:

- (1) Allows a one-year transition period for Commercial and Large C&I customers with Existing EGS Contracts, as proposed by the OSBA in the instant proceeding, and as presented in the Gardner Dissent in the FirstEnergy-PA DSP case; or
- (2) Carve Large C&I customers with Existing EGS Contracts out and approve the Generation Deactivation Cost Recovery Proposal for all other customers including all Large C&I customers without existing EGS Contracts in place as of June 1, 2013;; or
- (3) Allow PECO to collect Generation Deactivation charges *only for* default service

⁴⁶ *Id.*

⁴⁷ *Id.*

