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September 10, 2012

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO 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:

On behalf of the Retail Energy Supply Association (“RESA”) enclosed for electronically filing please find the its Exceptions with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely yours,



Edward G. Lanza, Esq.

EGL/lww
Enclosure

cc: Hon. Dennis Buckley, ALJ w/enc.
Cheryl Walker Davis, OSA w/enc. (via email only)
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

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

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A handwritten signature in black ink, appearing to read "Edward G. Lanza", written over a horizontal line.

Edward G. Lanza, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

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I. INTRODUCTION

In this proceeding, the Commission must determine whether the proposed default service procurement plan offered by PECO Energy Company (“PECO”) meets the requirements of the Electricity Generation Customer Choice and Competition Act (“Competition Act”),¹ and is consistent with the Commission’s policy directives designed to produce a robust competitive retail electric market in the PECO service territory. The position of the Retail Energy Supply Association (“RESA”)² is that the August 27, 2012 Recommended Decision (“RD”) of Administrative Law Judge (“ALJ”) Dennis J. Buckley – which adopts virtually 100% of PECO’s Plan as filed – does not satisfy these requirements. The outcome here will impact the 1.6 million electric customers in southeastern Pennsylvania that are served by PECO. Adopting the RD would negatively impact these customers because it would be a significant set-back for competition for a number a reasons.

First, the RD does not satisfy the statutory requirements of the Competition Act, nor does it advance the broader policy goals that have been established by the Commission. This is because the RD recommended the adoption of a procurement plan that is unlikely to result in default service rates that are market-reflective at the time of delivery. There is no record dispute that default service pricing needs to bear some rational relationship to the market price for energy at the time of delivery or else retail competition will not develop nor can it be sustained.

¹ 66 Pa. C.S. § 2801, et. seq.

² RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Without any good legal or practical reasons, and despite recent Commission determinations, the RD never considers the negative impact that the recommended default service procurement plan will have in the PECO service territory. Rather, the ALJ has crafted an RD that simply adopts PECO's positions on nearly all of the issues in this proceeding and ignores just about every concern expressed by other parties interested in improving the state of the competitive electric market in the Commonwealth. The ALJ completely dismissed the view that a functional competitive retail market (which can only result from a properly structured default service plan) will achieve all the goals of the Competition Act and will result in the best outcome for consumers. Adopting the ALJ's recommendations will not lead to the same result.

In addition, many of the ALJ's recommendations are inconsistent with the nature and structure of the competitive enhancements directed by the Commission in its *Intermediate Work Plan Final Order*.³ The ALJ's misguided recommendations in this regard essentially adopts virtually every one of PECO's recommendations and, rejects RESA's compelling advocacy that such decisions might condemn the success of the competitive enhancements. RESA clearly demonstrated that, in view of the relatively low levels of shopping in the PECO service territory and other factors unique to this service area, modifications from the *IWPF*O were appropriate to make the competitive enhancements more likely to succeed. Unfortunately, the ALJ rejected these recommendations at every turn.

The RD is also substantially inconsistent with the Commission's most recent pronouncements in the FirstEnergy Companies Default Service proceeding.⁴ In the *FE DSP*

³ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Tentative Order entered March 2, 2012 ("*Intermediate Work Plan Final Order*" or "*IWPF*O").

⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, et. al, Opinion and Order entered August 16, 2012 ("*FE DSP Order*").

Order, the Commission ordered a number of steps, as advocated by RESA, to improve the competitiveness of the retail electric market. RESA respectfully urges the Commission to reject the ALJ's misguided and harmful recommendations and continue its pro-competition approach regarding default service procurement plans and competitive retail market enhancement initiatives. Such a result is critical if there is to be any chance of a truly competitive retail market in the PECO service territory.

II. EXCEPTIONS

A. **Exception No. 1: The ALJ Erred In Rejecting RESA's Proposal to Include 10% Spot Purchases for Residential Customers (RD at 18)**

For residential customers, PECO proposed to eliminate the current 5% spot market purchases which are a part of the residential procurement mix while RESA recommended that PECO include a small portion (10%) of spot market power purchases to ensure that PECO's default service prices contain at least a small element of current market prices. The ALJ adopted PECO's proposal and rejected RESA's recommendation, claiming that RESA did not provide any specific guidance as to how the spot power would be procured. The ALJ further stated that RESA offered no credible evidence for the Commission to conclude that adoption of its proposal would enhance retail competition.⁵ The ALJ's recommendation is wrong for several reasons and must not be adopted.

RESA presented evidence that PECO's proposed procurement mix will result in default service prices that are not sufficiently market reflective over time.⁶ It further explained that a sustainable market design for default service must ensure that a default service rate bears a

⁵ RD at 18.

⁶ RESA St. No. 1 SR at 6.

rational relationship to the market price for energy. The greater reliance the procurement plan places on contracts extending longer than a year, the more likely the default service rate at the time of delivery will not be in line with the then-current market price for energy.⁷ Such a result would inhibit the development of a fully functional competitive retail market and is, therefore, inconsistent with the Competition Act.⁸

RESA's testimony demonstrated that including some spot market purchases in the procurement plan will lead to default service rates that are more closely aligned with the true price of energy at the time of delivery.⁹ The recommendation to reject RESA's proposed modifications that result in more market responsive default service rates and the development of the retail electricity market— is fundamentally flawed and must be rejected.

In addition, rejection of this recommendation would be consistent with the Commission's decision in the *FE DSP Order* where the Commission adopted RESA's proposed modifications to FirstEnergy's default service procurement plans to include load-following full-requirements product with a 90% fixed-price portion and a 10% variable-price spot portion priced at the hourly PJM real-time zonal locational price for the applicable FE Company.¹⁰ There is no reason for the Commission to depart from this sound decision here.

B. Exception No. 2: The ALJ Erred In Approving PECO's Proposed Procurement of Default Service Supply from PJM for its Large Commercial and Industrial Class (RD at 26)

PECO proposed to entirely eliminate its current spot-priced full requirements contracts and procure all default service supply for the Large Commercial and Industrial Class directly

⁷ *Id.*

⁸ 66 Pa. C.S. §§ 2802(5).

⁹ RESA St. No. 1-SR at 5-7.

¹⁰ FE DSP Order 14-27.

from the PJM energy markets.¹¹ Through this procurement method, PECO would take over the role of providing default service supply to these customers. RESA opposed PECO's proposal due to the potential negative consequences of abandoning the current competitive process to secure this supply. Also, this procurement methodology creates the potential for PECO to "misallocate" administrative costs such that the default service price does not accurately reflect the costs of providing default service.¹² The ALJ rejected RESA's suggestions and recommended that the Commission approve PECO's proposed procurement of default service supply from PJM for its Large Commercial and Industrial Class.¹³ This recommendation should not be adopted.

Pursuant to the current competitive procurement process, any wholesale supplier is permitted to place a bid to supply the default service load and the winner is selected through a transparent competitive process. This process clearly meets the requirement of the Competition Act¹⁴ which requires that electric power used to serve default customers must be procured through competitive procurement processes.¹⁵ Pursuant to the statute, the competitive procurement process must take the form of an auction with a request for proposal or bilateral agreement. As PECO's current procurement process clearly complies with the statute, results in

¹¹ PECO Initial Brief at 18; PECO St. Nos. 2 at 13; 3 at 24.

¹² RESA Reply Brief at 8.

¹³ RD at 26.

¹⁴ 66 Pa. C.S. § 2807(3.4) ("The prudent mix of contracts entered into pursuant to paragraphs (3.2) and (3.3) shall be designed to ensure: (i) Adequate and reliable service. (ii) The least cost to customers over time. (iii) Compliance with the requirements of paragraph (3.1).") (emphasis added). Subsection 2807(3.5) makes clear that these provisions "shall apply to any type of energy purchased by a default service provider to provide electric generation supply service." 66 Pa. C.S. § 2807(3.5) (emphasis added).

¹⁵ This requirement of competitive procurement is echoed throughout other subsections as well. For example, Subsection 2807(3.7) requires the default service provider to take "prudent steps necessary to negotiate favorable generation supply contracts." 66 Pa. C.S. § 2807(3.7)(i).

the most competitive prices, and achieves the best value¹⁶ and results for customers, there is no reason to depart from this method going forward.

The ALJ also ignored the potential for misallocation of costs – primarily administrative costs – if PECO takes over the role of supplying default service for such large customers. The current competitive process is transparent because all the costs of providing power are known and can be directly passed on through the default service rates.¹⁷ If PECO takes over the role of procuring this supply, the administrative (and potentially other) costs of doing so may not be similarly transparent and may not be included in the default service costs passed on to customers. This would create a barrier to competitive market entry in the current market design whereby the EDC is providing default service because a failure to fully and accurately reflect all costs in the default service rate that suppliers must compete against would lead to a significant cost advantage for default service. This is because costs not reflected in the default service rate are likely to be recovered from all of the distribution rate payers, thereby artificially lowering the default service rate. The EGS must set forth its similar costs in its competitive offers but, unlike PECO, the EGS does not have a captive customer class from which to recover these costs, thereby leading to a competitive disadvantage for the EGS. Moreover, misallocated default service costs force shopping customers to pay twice for many cost components (i.e., through their distribution rates and their price for generation). PECO has not presented any compelling reason to justify a departure from its current transparent, competitive process. On the contrary, the potential harm to the development of the competitive market and to customers that may result

¹⁶ RESA St. No. 1-SR at 8.

¹⁷ RESA St. No. 1 at 13. Specifically, wholesale suppliers competing to provide this service include administrative costs in their wholesale bids which makes these costs transparent.

from the change supports rejecting PECO's proposal.¹⁸ Consequently, the ALJ's recommendation to approve PECO's procurement of DSS from PJM for its Large Commercial and Industrial Class must be rejected.

C. **Exception No. 4: The ALJ Erred In Rejecting RESA's Proposal To Eliminate PECO's Scheduled 2014 Procurements and Extension of Supply Contracts Beyond May 31, 2015 (RD at 27)**

While PECO offered limited "over-hang" of contracts in accordance with its laddering strategy and will not execute any contract that will extend beyond May 31, 2015 until early 2014, it proposed to enter into contracts during its early 2014 scheduled default service procurement solicitations which would extend beyond the May 31, 2015 default service plan term end date.¹⁹ RESA opposed the laddering of contracts achieved through the later procurements in PECO's plan and asserted that it will be "easier" to add contracts extending past May 31, 2015 instead of removing scheduled procurements at a later date.²⁰ The ALJ flatly rejected RESA's proposal to eliminate PECO's scheduled 2014 procurements.²¹ This was error for a number of reasons.

First, in its *Default Service Order*, the Commission recommended "that EDCs file plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period; and ... that EDCs limit the proportion of long-term contracts that make up their default service plan energy portfolios, and consider using

¹⁸ Finally, PECO's proposal improperly places the EDC back into the business of procuring and selling power to customers. Moreover, through its proposal for sharing the benefits of PJM ARR and FTRs, it gives PECO a direct financial incentive to retain load on default service.¹⁸ PECO's proposal thus is exactly opposite from the direction that the Commission wishes to go with respect to default service procurement.

¹⁹ Specifically, more than a third of the residential load would be served by contracts extending beyond May 31, 2015 and some contracts for small business customers would extend to 2016. RESA St. No. 1-SR at 3. PECO asserts this is appropriate in consideration of the Commission on-going RMI and to "ensur[e] price stability for customers." PECO St. No. 2 at 15,

²⁰ RESA St. No. 1-SR at 2-4.

²¹ RD at 27.

already existing long-term contracts from previous or presently effective default service plans.”²²

The ALJ erred in concluding that PECO’s proposal already limited enough contracts to satisfy this concern as the existence of any “over hang” contracts may undermine the efforts and progress of the Commission in the RMI proceeding to implement its Long Term Work Plan to restructure default service as it exists today.

Second, the Commission already addressed and dismissed the argument of PECO that permitting a portion of default service procurements to extend beyond May 2015 may “avoid rate shock” in the *FE DSP Order*.²³ As the Commission concluded, a default service procurement plan that utilizes “shorter, more frequent procurements should ensure a smoother transition into the next procurement period without requiring that procurements extend beyond May 2015.”²⁴

While PECO claims that its proposal could be altered if it becomes unnecessary depending on the outcome of the RMI, the least complicated course of action would be to make any adjustments that may be necessary after the Commission issues its guidance. At this point in time, the only concrete direction provided by the Commission is that these types of extended contracts should not be implemented. PECO did not provide any compelling basis to ignore the directives of the Commission, and PECO’s recommendations, if accepted, would result in hindering the ability of the Commission to enact these much needed reforms.

Moreover, PECO’s effort to determine what level of “stability” customers desire is a fruitless exercise because customers have their own individual tolerance levels, and the default service provider should not attempt to estimate the level of price stability that an individual

²² *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952, Final Order entered December 16, 2011 at 19.

²³ *FE DSP Order* at 26-27.

²⁴ *Id.*

customer desires. Rather, robust competitive retail markets are the best way to address each individual customer's desires because they provide a variety of suppliers with a variety of products from which the customer can choose the product that best meets his or her own individual preferences.²⁵ Because PECO's claim that its laddering proposal provides rate stability is without merit, it should not be relied upon to override the Commission's clear directives to eliminate contracts extending beyond the end of the default service plan procurement date or the Commission's decision in the *FE DSP Order* and the ALJ's recommendation should not be adopted.

D. Exception Number 4: The ALJ Erred in Approving PECO's Proposed Annual Reconciliation of Default Service Costs and Revenues for the Residential, Small and Medium Commercial Classes (RD at 44)

For PECO's Residential, Small and Medium Commercial Classes, PECO proposed that prior period over/under collections be reconciled for those customers on an annual basis rather than on a quarterly basis.²⁶ PECO asserted that the revenue billed and received for a prior month may diverge from the actual default service expenses incurred in the current month and result in a monthly "billing lag" along with a cyclical effect due to seasonal changes in energy prices.²⁷ Again, the ALJ erroneously agreed with PECO's position regarding this disputed issue.²⁸

RESA opposes annual reconciliation because quarterly reconciliation results in more market-reflective default service rates.²⁹ PECO's proposal, as accepted by the ALJ, will be to

²⁵ RESA St. No. 1-SR at 4-5.

²⁶ PECO St. No. 5 at 6.

²⁷ PECO Initial Brief at 35.

²⁸ RD at 44.

²⁹ RESA Reply Brief at 15; RESA St. No. 1 at 15-16.

divorce the default service rates from underlying wholesale costs.³⁰ This is because the reconciliation adjustment period will be longer than the initial price application period where the over/under recovery occurred. Therefore, this cost of default service (i.e. the reconciliation) will not be passed on to default service customers in a timely way as it will be amortized over a year. The result will be that customers will not see the true cost of energy on a contemporaneous basis thus distorting their perception of the market price of energy. Rather, the bottom-line amount paid by customers will be based, at least in part, on a year's worth of reconciliation data rather than the current price of energy. In addition, from a customer perspective, reducing the amount of interest (whether owed to customer or to be paid by customers) will ultimately result in lower customer costs with a quarterly reconciliation.³¹

Finally, PECO's attempts to attribute the reconciliation cost to a "billing lag" actually supports RESA's position because a "billing lag" is a cost of providing default service and, as such, PECO is required to pass on that cost to customers, and should do so on a timely basis.³² If default rates do not fully and timely reflect all of the costs of providing generation service (for example due to misallocated costs and cross-subsidization) then EGSs are at an unfair competitive disadvantage compared to the EDC's default service rate and customers are harmed as their access to the plethora of competitive products and service diminishes. Such a market design is not sustainable and presents too much risk for retail suppliers to enter the market – a result which is in direct contravention of the purposes of the Competition Act.

³⁰ RESA St. No. 1 at 15 and .RESA Reply Brief at 15-16.

³¹ RESA St. No. 1-SR at 11.

³² A "billing lag" imposes a cost in the same way that credit requirements or a cash working capital requirement imposes a cost. PECO's proposal to delay recovering this cost, as explained above, will lead to a distorted pricing structure that could stymie continued competitive market development because competitive suppliers will be forced to compete against prices that do not accurately reflect market prices.

For these reasons, the ALJ's recommendation for the Commission to approve PECO's annual reconciliation must be rejected.

E. Exception Number 5: The ALJ Erred In Rejecting RESA's Proposal to Shift Responsibility for the Recovery of Generation Deactivation and Other PJM Charges from EGSs to PECO (RD at 46)

The ALJ erred in rejecting RESA's proposal to shift responsibility for the recovery of Generation Deactivation and other PJM charges from EGSs to PECO.³³ Rather, the ALJ accepted PECO's position that these charges should continue to be collected from EGSs. The ALJ erroneously agrees with PECO that RESA (and PPL EnergyPlus) have not shown how changing the existing cost assignment of generation deactivation charges and other PJM charges will lead to actual reductions in market prices. According to PECO, that inclusion by EGSs of actual PJM charges in future EGS customer contracts on a pass-through basis would eliminate any risk premium issues and fully address any concerns regarding transparency and equity, as well as avoid any transition issues that could arise from the imposition of a new non-bypassable charge for those EGSs and customers who already have contracts that extend into the DSP II period.³⁴

However, as explained more fully below regarding each of the charges at issue here, RESA cites record testimony that supports its position that changing the existing cost assignment of such PJM charges will lead to actual reductions in market prices. RESA's testimony also demonstrates that recovery of these costs exclusively for default service customers creates a competitive advantage for default service over EGS provided generation service and distorts the ability of consumers to compare the default service rate with prices offered by EGSs.

³³ RD at 46.

³⁴ PECO Initial Brief at 40-41.

Adopting the ALJ's recommendation will result in a default service process that creates an unfair competitive advantage for PECO's default service over EGS-provided competitive service and leads to distorted pricing signals to customers.³⁵ As such, the ALJ erred in rejecting RESA's proposal to shift responsibility for the recovery of PJM charges from EGSs.

1. Overview Of The Charges At Issue

The ALJ noted that PECO's shopping customers currently are charged generation and transmission related costs from their EGSs who are their load serving entities (LSEs) while non-shopping customers are charged both generation and transmission related costs under PECO's default service rates.³⁶ The transmission related costs include certain regulated, non-market based charges that are set and/or allocated based on administrative processes and formulas that cannot be hedged, and are not transparent or predictable. These transmission related regulated, non-market based costs include:

- Generation Deactivation Charges
- Network Integration Transmission Services ("NITS");
- Regional Transmission Expansion Plan costs ("RTEP"); and
- Expansion costs

Additionally, charges that result from PJM's implementation of its revised Economic Load Response program in compliance with FERC Order No. 745 ("New ELR Charges") are another category of administratively determined non-market based rates assessed by PJM that are more appropriately recovered by PECO from all distribution customers.

Placing the obligation for these regulated charges on suppliers of wholesale and retail generation supply (as the ALJ recommends) deviates from proper competitive market structure

³⁵ RESA St. No. 1 at 18; RESA St. No. 1-SR at 13

³⁶ RD at 45.

and creates inefficiencies in the marketplace. To remedy the inefficiencies created by assigning these regulated charges to competitive suppliers, the Commission should direct PECO to assume responsibility for all of these charges for all customers and recover the costs through a competitively-neutral, non-bypassable charge to assure a level playing field for all suppliers and provide appropriate price signals for customers. This can be accomplished through the creation of a non-market based charges rider (“NMB Rider”).³⁷ While RESA recognizes that a transitional period may be appropriate to ensure that customers are not subject to a “double counting,” potential one-time transitional issues that may arise should not block implementation of the better approach particularly since such situation (to the extent one even exists) could be easily addressed on a case-by-case basis.³⁸

2. Generation Deactivation Charges

Generation Deactivation Charges are assessed to compensate generation owners that are agree to operate units beyond their proposed deactivation date pending completion of necessary transmission upgrades to ensure system reliability.³⁹ The ALJ erred in not recognizing that competitive markets and all stakeholders would benefit by having PECO recover the Generation Deactivation charges through their Tariff. Neither EGSs nor default service suppliers can hedge these potentially significant costs and may include a premium in their prices and bids to cover the future uncertainty of those costs. These unknown, but potentially large, costs lack transparency and may cause all customers to pay significantly more than the actual Generation Deactivation charges. The fact that these costs are unknown, unknowable, and cannot be hedged

³⁷ RESA St. No. 1 at 23.

³⁸ RESA St. No. 1-SR at 16.

³⁹ RESA St. No. 1 at 19.

drives up market prices, ultimately to the detriment of all customers. By having PECO assume responsibility and recover the costs from all load in the zone it accurately reflects these actual costs and improves transparency to consumers.

Recent RMR filings by generation owners in PJM serve as an example of how significant the cost impacts can be from these charges. On July 30, 2012 FERC approved RMR payments for two units owned by GenOn Power Midwest, LP (“GenOn”) totaling over \$22 million (subject to continuing litigation), which will be assessed through Generation Deactivation charges to shopping and non-shopping load in the Duquesne Light Company and Allegheny Power territories.⁴⁰ Earlier in the same month, FirstEnergy Generation Corporation (“FE Gen”) filed RMR contract-for-differences for six units that would result in over \$170 million, reduced by capacity and energy revenue, that would again be recovered from shopping and non-shopping load in the American Transmission System, Inc. (or “ATSI”) zone.⁴¹ Again, neither wholesale nor retail suppliers could have accurately predicted these FERC-regulated charges nor could they have forecast from what load the costs would be recovered. It is possible that some wholesale suppliers may have included risk premiums in the winning default service bids for the affected territories. It is uncertain whether those that did adequately covered the exposure that will result from these unpredictable charges. EGS that do not pass these costs through to customers in the affected zones are also at the mercy of risk premiums charged through their retail contracts. Even so, the magnitude of the charges, especially in the ATSI Zone, may cause some EGS to invoke regulatory change language to cover their portion of the multi-million dollar costs. While

⁴⁰ 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).

⁴¹ 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).

neither of these RMR contracts will directly affect PECO customers, it is reasonable to assume that the example they set will not go unnoticed in wholesale offers and retail contracts going forward.

Consistent with RESA's position, PPL EnergyPlus witness Alessandrini also proposed to transfer responsibility for generation deactivation charges from LSEs to PECO and to have PECO collect generation deactivation charges via a non-bypassable, NMB Rider from both shopping and default service customers.⁴² Mr. Alessandrini asserts that because the future amount of PJM generation deactivation charges is unknown and suppliers cannot hedge the risk of potential significant costs, wholesale suppliers and EGSs may charge customers a premium that is much higher than the actual costs.⁴³ Ms. Williams agrees, and extends this concern to other PJM charges RESA seeks to require PECO to recover from customers. Mr. Alessandrini and Ms. Williams submit that shifting these regulated non-market based costs from LSEs to PECO will reduce prices and make Generation Deactivation Charges more transparent to customers. The ALJ's decision to the contrary should be rejected.

3. Transmission Service Charges

NITS, RTEP, and Expansion costs (collectively "Transmission Services Charges") are essentially embedded, cost-of-service transmission rates that are imposed on the basis of an EDC's total native load, regardless of the source of the generation used to service the load.⁴⁴ For the reasons explained further below, PECO's recovery of these costs exclusively for default service customers creates a competitive advantage for default service over EGS provided

⁴² PPL EnergyPlus St. No. 1 at 3-4; 1-SR at 3. PPL EnergyPlus Reply Brief at 3-4.

⁴³ PPL EnergyPlus St. No. 1 at 5-6.

⁴⁴ RESA St. No. 1 at 17-18.

generation service and distorts the ability of consumers to compare the default service rate with prices offered by EGSs.

Because Transmission Service Charges are regulated, non-market based charges, they cannot be hedged, and are frequently unpredictable. While NITS charges are published for 1-year periods, they are still cost-of service based charges that benefit all load.⁴⁵ In addition, NITS charges change at least yearly, and can do so more frequently, unpredictably with no market-based mechanism to hedge the resulting uncertainty. PECO assumes responsibility for the Transmission Service Charges *for default service customers only*. The charges are passed onto default service customers through the Price to Compare (“PTC”). Unlike other EDCs,⁴⁶ PECO does not assume responsibility for these charges for shopping customers. Therefore, EGSs are required to try to calculate the amount of these charges and factor them into the prices they offer customers. The result of this process creates an unfair competitive advantage for PECO’s default service over EGS-provided competitive service and leads to distorted pricing signals to customers.

First, the inability to predict the specific amount of the charges does not negatively impact PECO since PECO, as the default service provider, is entitled to full cost recovery.⁴⁷ EGSs do not have this same advantage. Therefore, if PECO inaccurately predicts the amount of any of these charges, it can easily recover any remaining unpaid costs from default service

⁴⁵ RESA St. No. 1-SR at 13.

⁴⁶ FirstEnergy Ohio utilities recover transmission service charges through a competitively neutral, non-bypassable charge. Additionally, the FirstEnergy Pennsylvania utilities have proposed to assume responsibility for these specific Transmission Service Charges and also recover those costs via a non-bypassable charge from all customers in their pending Default Service Proceeding before the Commission at docket numbers P-2011-22373650, P-2011-2273668, P-2011-2273669 and P-2011-2273670. On June 15, 2012, the ALJ issued a Recommended Decision concluding that the Commission should adopt FirstEnergy’s proposal on this issue.

⁴⁷ 66 Pa. C.S. § 2807(e)(3.9).

customers through its reconciliation mechanism. On the other hand, EGSs that inaccurately predict these costs do not have the same ability to recover the shortfall from their customers. This gives PECO a competitive advantage in providing default service.

Second, the pricing signal sent to customers is distorted because default service customers are paying the full costs of the charges while shopping customers may or may not pay the full cost depending on an EGS's accuracy in predicting the charges. This creates difficulty for customers to accurately compare the prices of EGSs against the default service rate complicating the ability of consumers to shop with accurate information because they do not have transparency in transmission costs.⁴⁸

The ALJ erred in rejecting RESA's proposal to require PECO to assume responsibility for all of these charges and to pass on their costs to all distribution customers because its proposal is a reasonable way to level the playing field for all suppliers and provide appropriate price signals for customers. This is because all customers will be paying the "pass through" costs of transmission regardless of whether they are default customers or customers of an EGS. This will also ensure that the costs paid by these customers for these charges are the actual costs and not a supplier's estimate of the charge which may ultimately be higher or lower than the actual charge.⁴⁹

4. New ELR Charges

Like the Transmission Charges, the New ELR Charges are non-market based charges assessed by PJM for various reasons that cannot be hedge.⁵⁰ The New ELR Charges will be

⁴⁸ RESA St. No. 1-SR at 13; RESA St. No. 1-SR at 15.

⁴⁹ RESA St. No. 1-SR at 14.

⁵⁰ RESA St. No. 1 at 18-19, 20-22.

assessed on a region-wide basis (rather than on a locational basis) to compensate loads in any area where the price paid to an ELR resource is at or above the threshold price.⁵¹

The ALJ erroneously recommended adoption of PECO's proposal to require wholesale default service suppliers to factor in the costs of these charges into their bids to provide default service supply. Thus, similar to the way PECO handles Transmission Service Charges, default service customers pay for the costs of these charges through the PTC.⁵² The difference between PECO's two approaches is that the wholesale default service suppliers are required to try to calculate the costs of the charges and build this risk into their default service bid pricing and absorb the costs of inaccurate calculation.⁵³ When PECO assumes responsibility for charges for default service customers, as it does for Transmission Charges, PECO simply passes on the actual cost to default service customers. Under both approaches endorsed by PECO and recommended by the ALJ, however, EGSs are required try to calculate the costs of these charges and pass them on to shopping customers without any right to full cost recovery.

PECO's approach, recommended by the ALJ, results in price distortions for customers and, most likely, supply costs (whether default service or EGS provided service) that are driven higher due to the risk premium calculations that either the wholesale default service supplier or the EGS is required to make to account for these charges.⁵⁴ These charges have the potential to be significant. Because suppliers cannot hedge these potentially significant costs, they must

⁵¹ RESA St. No. 1 at 22.

⁵² If RESA's proposal to require PECO to assume responsibility for all these charges is adopted, then these charges would need to be moved from the PTC and recovered through the new competitively neutral, non-bypassable charge. RESA St. No. 1 at 18.

⁵³ RESA St. No. 1-SR at 15.

⁵⁴ RESA St. No. 1 at 15.

include a premium in their bids to cover the future uncertainty of those costs.⁵⁵ These unknown, but potentially large, costs lack transparency and can cause customers to pay significantly more than required by the actual charges. That these costs are unknown, unknowable, and cannot be hedged drives up market prices, to the detriment of all parties.

F. Exception No. 6: The ALJ Erred In Recommending Approval of PECO's Proposed Cost Sharing Methodology for Auction Revenue Rights Revenue (RD at 50)

PECO proposed to replace its practice of “passing through” all Auction Revenue Rights Revenue (“ARR”) costs and benefits to customers with an equal (50%) sharing of ARR costs and benefits between PECO and default service customers. Under PECO’s proposal, half of any net cost or benefit will flow through the GSA for the corresponding customer class to which the ARRs were allocated.⁵⁶ RESA opposed PECO’s new ARR sharing mechanism but the ALJ recommended that PECO’s proposal should be approved. The ALJ erroneously concluded that PECO’s proposal will minimize the risk of loss to customers and provide an incentive to PECO to select financially beneficial transmission paths.⁵⁷ The only support for the ALJ’s recommendation is PECO’s claim that the impact of the change to ARR sharing on the price to compare will be minimal.⁵⁸ The ALJ offers no other justification and PECO provides no other support to rationalize the need for its proposed sharing mechanism. As such the ALJ’s recommendation should be rejected.

RESA does not support PECO’s proposed change to its current practice of passing all costs/benefits onto its default service customers and reflecting those cost/benefits in the default

⁵⁵ RESA St. No. 1 at 19.

⁵⁶ PECO Initial Brief at 43.

⁵⁷ RD at 50

⁵⁸ PECO St. No. 5-R.

service price for impacted customer customers. All of the costs of default service must be passed onto default service customers; otherwise, the development of the competitive retail market will be hindered. Allowing for PECO's proposed sharing mechanism will skew the default service rates in contravention of the requirements of the Competition Act and must not be permitted.

Moreover, permitting PECO to profit from default service, without any corresponding benefit to competitive market development, is inconsistent with the goal of moving customers from default service and transitioning EDCs from the role of default service provider. Giving PECO an incentive related to default service could only be justified if there was a clear and demonstrable benefit to competition resulting in awarding the incentive. PECO's ARR revenue sharing proposal has no such identified benefits. For these reasons, the ALJ's recommendation to adopt the proposed PECO Cost Sharing Methodology for ARR costs must be rejected.

G. Exception No. 7: The ALJ Erred In Rejecting RESA's Proposal To Implement A Non-Bypassable \$0.005/kWh Default Service Cost Recovery Charge ("DSCRC") (RD at 54)

RESA recommended that a new, additional charge – the Default Service Cost Recovery Charge ("DSCRC") be added to the PTC with the proceeds to be used as follows:

- Payment of any verifiable costs related to providing default service that have otherwise not been collected by PECO;
- Payment of costs related to implementing and maintaining competitive market enhancements, such as the Opt-In Auction, referral programs, and seamless moves; and,
- Any balance remaining being carried forward up to some amount, with the remainder returned to all distribution customers.⁵⁹

PECO opposed RESA's recommendation and the ALJ recommends rejecting it as well. The ALJ erroneously concluded that end-result of RESA's recommendation would be the artificial inflation of the PTC with corresponding inaccurate price signals and cross-subsidization

⁵⁹ RESA St. No. 2 at 34.

of PECO's shopping customers by default service customers.⁶⁰ The ALJ concluded that no public benefit would be conveyed by the adoption of a measure. This is wrong and should be reversed.

On the contrary, the amount of the PTC Adder – \$0.005 per kWh – does align with the costs of providing default service or PECO's proposed retail market enhancement programs. An EDC providing default service may incur direct and contingent costs that are inadequately reflected in the current approach to pricing default service for a number of reasons.⁶¹ Some customers are paying the unbundled costs of default service – whether they use default service or not.⁶² Some examples of costs that are incurred or which are not attributable to default service include: the costs of credit security⁶³, overhead and administrative costs.⁶⁴

RESA's proposal attempts to recognize this inequity by adding a modest charge onto the default service rate and crediting any remaining amount after the proceeds are used back to all distribution customers. Without the imposition of this mechanism or full unbundling, all customers will continue to pay for some part of the costs of default service in their distribution rates. Contrary to the viewpoint of the ALJ, RESA's proposal is an appropriate cost allocation based on cost causation unlike the current structure today whereby shopping customers subsidize some portion of default service through the distribution rates they pay.

⁶⁰ RD at 54.

⁶¹ RESA St. No. 2 at 33.

⁶² RESA St. No. 2 at 33; RESA St. No. 2-SR at 24.

⁶³ RESA St. No. 2 at 33.

⁶⁴ *Id.*

In addition, Dominion witness Barkas suggests that RESA's proposal is appropriate for PECO on the ground that it is necessary to overcome the "substantial and persistent" bias that results from all customers starting on default service.⁶⁵ RESA agrees with this.

Recovering the costs related to implementing and maintaining competitive market enhancements in this manner is reasonable and appropriate.⁶⁶ Indeed, the competitive enhancements will ultimately benefit default service customers since a significant number of these customers continue to remain on default service even though they would be able to save money or achieve other benefits by shopping.⁶⁷ As such, these initiatives target default service customers and create incentives for them to choose an EGS.⁶⁸

RESA also proposed allowing PECO to retain some relatively small percentage (no more than 10 percent) of any amounts remaining after actual default service costs and retail market enhancement costs are recovered could be appropriate.⁶⁹ By tying EDC retention of any amounts to the achievement of certain benchmarks for migration away from default service, it would be possible to create positive incentives for enhanced efforts by the EDC to implement market enhancements in a robust manner. Such a retention is also justified on the grounds that some indirect costs incurred by the EDC could not be identified without an unreasonable level of transaction costs.⁷⁰

⁶⁵ Dominion St. No. 1-R at 10.

⁶⁶ RESA St. No. 1 at 17.

⁶⁷ RESA St. No. 2 at 7-8.

⁶⁸ Since these programs are specifically targeted at default service customers, assessing them the costs of implementing these programs is reasonable. Just as EDCs pass on their costs of providing default service to their default service customers, EGSs will likely need to pass on their costs to their "shopping" customers.

⁶⁹ RESA MB at 41-43.

⁷⁰ RESA St. No. 2 at 34-35.

For this proposal to effectively achieve its goals, however, it must be structured so that no incentive exists for the EDC providing default service to maintain the present unacceptably high level of customers who have not switched to competitive supply.⁷¹ Contrary to the opposite viewpoint of some parties, this proposal would not be providing PECO a “profit” on providing default service.⁷² Contrary to PECO’s assertion – implicitly adopted by the ALJ – Mr. Kallaher provided a compelling basis to change the Commission’s determination of distribution charges approved by the Commission in PECO’s most recent base rate proceeding. Thus, RESA’s proposal should be adopted despite the ALJ’s contrary recommendation.

H. Exception No. 8: The ALJ Erred In Recommending That Small Commercial Customers Should Be Excluded from the Opt-In Auction and Customer Referral Programs (RD at 58)

PECO proposed to limit eligibility for the retail opt-in auction and the customer referral programs to residential customers. RESA recommended that small business customers (i.e., those with peak annual demand of up to 25 kW) be eligible to participate in these programs. The ALJ refused to adopt these modifications based on a finding that including small commercial customers would “add complexity” to the programs.⁷³ The Commission should reject the ALJ’s recommendation to exclude small commercial customers from PECO’s retail market enhancement programs.

Importantly, the ALJ’s decision is inconsistent with the Commission’s decision in the *FE DSP Order* where the Commission concluded that “adopting RESA’s proposals to include small commercial customers in the Market Enhancement Programs will further the objectives of the

⁷¹ RESA St. No. 2 at 31.

⁷² RESA St. No. 1-SR at 24.

⁷³ RD at 58.

Competition Act by inducing more customers to shop and ultimately reduce the costs of electric generation.”⁷⁴ Including more potential customers in the number of customers eligible to participate in Opt-In Auction and the customer referral programs would advance the Commission’s goals to encourage competition for all customer classes. RESA demonstrated on the record that less than half (approximately 39%) of small commercial customers are shopping, and that more needs to be done to increase these dismal statistics.⁷⁵

Regarding the ALJ’s assertion that including small commercial customers would add complexity to the program, this finding seems to be based on PECO’s rate classifications for its commercial customers – which vary – rather than the limited segment of those under 25kW. The number of customers in this discrete subsection of the commercial class is relatively small or, at least, manageable. The relatively small number of customers involved and the need to increase the shopping statistics for this category of commercial customers should persuade the Commission to reject the ALJ’s recommendation.

I. Exception No. 9: The ALJ Erred In Recommending That Shopping Customers Be Eligible To Participate In The Retail Opt-In Auction Program (RD at 59)

While PECO proposed that its efforts regarding the retail opt-in auction would only be targeted to non-shopping residential customers, it indicated that shopping customers could still participate in the programs if they so desired.⁷⁶ The ALJ recommended adopting this approach and denying RESA’s proposed modification to preclude participation by shopping customers in

⁷⁴ *FE DSP Order* at 103-104.

⁷⁵ RESA Brief at 54-55. According to PECO, 74,826 customers with a monthly peak load of 25kW or below take generation service from PECO, while 47,552 took generation service from an EGS as of February 29, 2012. See RESA Exhibit CHK 1. So, of the 122,378 small commercial customers in this category, only approximately 39% are shopping and 61% need to take advantage of the benefits of choosing an alternative generation provider. *Id.*

⁷⁶ PECO St. No. 2-R at 15.

the retail-opt in auction based on his conclusion that the Companies' proposal is consistent with the *IWPFO*.⁷⁷ This viewpoint, however, ignores the record evidence in this proceeding supporting RESA's proposal and should not be accepted.

Allowing existing shopping customers in PECO territory to participate in retail market enhancement programs is not appropriate. The purpose of restricting existing shopping customers is to introduce default service customers to the competitive market. Customers who are receiving service from a competitive supplier are already experiencing the benefits of the competitive market. The ALJ ignored the record evidence demonstrating the potential negative impacts to EGSs that are already serving these customers and the negative impact to customers who may have agreed to early cancellation fees.⁷⁸ This is particularly true in the PECO territory and justifies a different conclusion than that was reached by the Commission in the *FE DSP Order*. If the Commission is concerned that shopping customers will react negatively to not being eligible for the opt-in program it can order that while the promotional materials shall state that the program is for default customers, any customer who enrolls will be included. This compromise solution would be far better than creating the risk of cannibalizing the existing shopping market by this new program.

J. Exception No. 10: The ALJ Erred By Rejecting RESA's Recommendation of a Requirement of At Least Four Winning Bidders for the Opt-In Auction (RD at 62)

The ALJ recommended that under PECO's Opt-In Auction Program, no EGS should be able to win more than 50% of the available tranches in the RFP process.⁷⁹ The ALJ also recommended that RESA proposal to include a requirement of at least four winning bidders

⁷⁷ RD at 59.

⁷⁸ RESA MB at 57-58.

⁷⁹ RD at 62.

should be rejected as “unsupported and unnecessary.”⁸⁰ While RESA supports the 50% cap, the ALJ’s decision to disregard the evidence and to dismiss RESA’s four-bidder proposal, without explanation, should be rejected.

As RESA has maintained throughout this proceeding, the 50% supplier load cap that the ALJ recommended would be improved with a requirement to have a minimum of four winning bidders. The 50% supplier load cap prevents the possibility of a market dominated by one supplier, but having at least four winning bidders adds diversity to EGS participation and results in an improved Opt-In Auction process. The RESA proposal is intended to improve this retail market enhancement by allowing EGSs that otherwise might not be able to participate in the market to do so.⁸¹ For an EGS, having a critical mass of customers in a service territory is important because it provides them with the necessary economies of scale to permit them to participate in that market for the long term. Although the ALJ cited the *FE DSP Order* to justify his rejection of the four-winning-bidder proposal,⁸² it is important to recognize that, in the *IWPFO*, the Commission specifically directed that the issue of minimum number of bidders be determined in the individual default service proceeding.⁸³ The Commission should have the flexibility to waive or alter this requirement for PECO based on the compelling reasons set forth by RESA. Further, the opt-in auctions have dual goals: (1) to move customers into the competitive market; and, (2) to jump start competition. RESA supports the 50% load cap recommended by the ALJ, but without a four-winning-bidder requirement, it will not create the

⁸⁰ *Id.*

⁸¹ RESA MB at 65.

⁸² RD at 62-63.

⁸³ *Intermediate Work Plan Final Order* at 64.

diverse competitive market the Commission is seeking and will not present an accurate picture of the diversity of suppliers that are possible in a truly competitive retail market.⁸⁴

For these reasons, the ALJ's recommendation to dismiss RESA's proposal for a minimum of four winning bidders in the Opt-In Auction should be rejected.

K. Exception No. 11: The ALJ Erred In Recommending Against RESA's Proposal for a Staff Collaborative for the Negotiation of Governing Documents (RD at 67 & 74)

In the course of this proceeding, RESA raised a number of concerns with the governing documents submitted by PECO for the Opt-In Auction and the Standard Offer Program.⁸⁵ RESA objected to the full array of additional documents and to the wholesale adoption of these documents as proposed because a significant number of provisions are unnecessary and/or unreasonable.⁸⁶ As a solution, RESA proposed a Commission-led collaborative to address the issues identified, but also to conform the documents to whatever changes the Commission will adopt in its final default service plan for PECO.⁸⁷ In his RD, the ALJ rejected RESA's recommendation of a staff collaborative for a negotiation of the governing documents and opined that RESA was "untimely in raising these issues at the briefing stage in this proceeding."⁸⁸ The ALJ's conclusion and the basis for rejecting RESA's recommendations are completely wrong and should be reversed.

First, RESA did not raise these issues for the first time at the briefing stage in the proceeding. These issues were discussed extensively in the course of cross-examination of

⁸⁴ RESA would also submit that if a different opt-in program is ordered (such as aggregation) the minimum participant requirement would still make sense.

⁸⁵ RESA MB 69-71 and 78-80.

⁸⁶ *Id.*; Tr. 59-74.

⁸⁷ *Id.*

⁸⁸ RD at 67, 74.

PECO witness Mr. McCawley.⁸⁹ The testimony offered by this witness on these issues is evidence in this case which can and should support a finding that PECO's governing documents are unnecessary and unreasonable, which is the position RESA is advancing in this proceeding.

In addition, the ALJ mistakenly referred to a "lack of any sound evidentiary basis to which PECO could have responded"⁹⁰ as justification for the erroneous recommendation on the issue of the governing documents and the need for a Commission collaborative. As stated above, there is evidence on the record that supports RESA's contention that the proposed agreements and many other PECO requirements regarding the retail market enhancements are unnecessary and unreasonable and should be rejected. Furthermore, PECO had an opportunity, and availed itself of the opportunity, to respond to the evidence presented at the hearing. PECO's counsel conducted redirect examination of Mr. McCawley and asked questions directly related to the issues with the governing documents that RESA has raised.⁹¹ In response to Mr. Kulak's questions, Mr. McCawley offered additional evidence that, presumably, is favorable to PECO's position on the subject. Therefore, it is wrong to assert, as the ALJ has here, that there is no evidence on this point or that PECO had no opportunity to respond.

RESA did not propose specific edits to the documents, but raised substantial concerns and advocated for a process that would deal with any issues the parties or the Commission would have with the documents *after* the Commission issued its final decision. Appendix A of RESA's Main Brief was illustrative of the many objectionable provisions in PECO's proposed governing documents, and it is intended to show that there is a plethora of issues that should be discussed and resolved in the context of a collaborative prior to adoption and implementation. More

⁸⁹ Tr. at 59-74.

⁹⁰ RD at 67.

⁹¹ Tr. 74-76.

importantly, the concerns raised by RESA are concerns related to legal documents, such as RFP rules and supplier agreements, and a decision as to whether these documents are unnecessary or unreasonable is a matter of law.⁹² Even if there were no record evidence, which is not the case here, the ALJ could reach a legal conclusion on the documents and recommend that the Commission address objections through a collaborative.⁹³

Finally, the ALJ's conclusions are at odds with the *FE DSP Order*, in which the Commission concluded that there was no reason for EGSs to be forced to sign new documents with new and burdensome requirements.⁹⁴ In that case, the Commission rejected the whole notion of additional documentary requirements. For the reasons stated, the ALJ's recommendation is seriously flawed and should be rejected.

L. Exception No. 12: The ALJ Erred In Recommending That Low Income Customers Should Be Precluded From Participating In The Retail Opt-In Auction Or Customer Referral Programs (RD at 77-78)

RESA proposed that low income (or "CAP") customers be allowed to participate in PECO's market enhancement programs, and that the benefit that these customers receive from PECO be made portable to ensure that low income customers are not harmed by shopping for an alternative energy supplier.⁹⁵ The ALJ recommended that the Commission reject RESA's proposal to permit CAP customers to participate in the retail opt-in auction and the referral

⁹² The interpretation of a contract is a question of law. *Seven Springs Farm, Inc. v. Croker*, 748 A.2d 740, 744 (Pa. Super. 2000).

⁹³ RESA is not opposed to mediation, as alluded to by the ALJ. RD at 67. However, if the parties are directed to use the mediation route, it should be clear that either party can take the issue to the Commission if mediation fails to resolve all the issues.

⁹⁴ *FE DSP Order* at 124.

⁹⁵ RESA MB at 80.

programs.⁹⁶ The basis for this flawed recommendation is PECO's assertion that "complex and unresolved issues remain with respect to CAP portability."⁹⁷ The ALJ recommends the adoption of PECO's proposal to wait until after the completion of the OCMO Universal Service subgroup's analysis of the CAP benefit portability issue. The ALJ's recommendation should be rejected for several reasons.

First, the ALJ's position is inconsistent with the *FE DSP Order* wherein the Commission deviated from its *IWP Final Order* and rejected the ALJ's recommendation that CAP customers be excluded from the FE Companies' market enhancement programs.⁹⁸

Second, low-income customers should have the same opportunity to participate in the competitive market as anyone else. CAP customers should not be denied this opportunity based on vague, unsupported and tenuous concerns like "commodity volatility" or "economic vulnerability."⁹⁹ PECO's low-income customers should be allowed to opt for a product that offers a lower price and a cash bonus, even if these features are temporary. If at some point, customers decide that the terms are not favorable, they can go back to PECO or pick another lower cost provider.

With regard to concerns related to the implementation of a portable benefit for CAP customers, RESA submits that the nature of PECO's CAP program makes it easier to implement compared to other types of low-income benefits provided by other EDCs. Indeed these programs are easier to administer with a discount program. Because PECO offers a discount off the bill, as opposed to having a percentage of income program, if a CAP customer is only paying 50% of his

⁹⁶ RD at 77-78.

⁹⁷ RD at 77.

⁹⁸ *FE DSP Order* at 143. .

⁹⁹ See, e.g., PECO Brief at 66 and CAUSE-PA Brief at 17.

or her bill (with the rest covered by remaining non-CAP customers), then the CAP customer is better off if her bill goes down by 10%. Also, PECO's remaining non-CAP customers are better off at that point as the subsidy is also smaller.

Finally, there is no reason to assume that CAP customers are somehow less capable of making informed decisions about shopping than other customers nor is there any reason to believe that the default service rate is preferable for these customers to EGS pricing. For these reasons, the ALJ's recommendation to exclude CAP customers from these market enhancing initiatives should be rejected.

M. Exception No. 13: The ALJ Erred In Recommending That EGSs Participating In The Standard Offer Program Be Required To Offer A 7% off PTC Price For The Entire Year Service Term (RD at 70)

The ALJ erroneously recommended that the Commission adopt PECO's proposal to require EGSs participating in the customer referral program to offer a price that is always 7% off the then-effective PTC for an entire 12-month contract term. According to the ALJ, this recommendation is consistent with the *Intermediate Work Plan Final Order*.¹⁰⁰ This conclusion, however, is incorrect and the Commission should direct that the 7% off PTC price be offered for the first four months of the one-year service term and, after that introductory period, the price offered by the EGS should revert to one that is disclosed to the customer in a mailing from the EGS serving the customer. The ALJ's decision should be rejected.

The ALJ failed to address the fact that the PTC changes every quarter and how that fact meshes with the *Intermediate Work Plan Final Order* which states the following:

¹⁰⁰ RD at 70.

- The standard offer should be comprised of a 7% reduction from the EDC's effective DS PTC. The 7% reduction is a constant price established against the PTC *effective on the date the standard offer is made*.
- The standard offer should be provided for a minimum of four months, but should not exceed 1 year. The standard offer and its term should be uniform within an EDC's service territory.¹⁰¹

The ALJ's recommendation overlooked the Commission's clear directive that "[t]he 7% reduction is a constant price established against the PTC effective on the date the standard offer is made."¹⁰² By this clear language, the Commission did not establish that the 7% discount is required to change quarterly with the PTC.¹⁰³

Additionally, the ALJ's recommendation for the standard offer term would, if adopted, make this program inconsistent with the pricing and term of the "opt-in aggregation" that the Commission ordered in the *FE DSP Order*.¹⁰⁴ There the Commission converted the opt-in auction into an opt-in aggregation with the following attributes:

- 12 month term
- 5% discount (from existing PTC) for first 4 months
- EGS determines price for remaining eight months
- \$50 bonus¹⁰⁵

Contrasting the Commission directed opt-in aggregation terms with the recommendations of the ALJ, the terms of the standard offer would be:

- 12 month term
- 7% discount (2% greater than the opt-in aggregation) from existing PTC with no bonus

¹⁰¹ *Intermediate Work Plan Final Order* at 31 (emphasis added).

¹⁰² *Id.*

¹⁰³ RESA Reply Brief at 43

¹⁰⁴ *FE DSP Order* at 108-09.

¹⁰⁵ *Id.*

Coordinating these program and ensuring that they are providing similar or equal terms would lead to more effective overall programs. Thus, if the Commission is going to direct an opt-in aggregation program for PECO, then the Commission should modify the standard offer terms to be consistent with the opt-in aggregation (with the exception that no bonus should be included in the standard offer).

N. **Exception No. 14: The ALJ Erred In Recommending Rejection of RESA's Recommendations Regarding PECO's Time-Of-Use Offering (RD at 79)**

The ALJ erroneously recommended that the Commission reject RESA's measured proposals regarding PECO's TOU program.¹⁰⁶ The purported reason for this flawed recommendation is that RESA's approach is unnecessary and complicated.¹⁰⁷ The ALJ's conclusion appears to be based on a misunderstanding of RESA's proposal on this program.

In summary, RESA has proposed the following:

(1) for any *future* bid-outs in the default service period, PECO should adopt a model that more fully relies on market forces; (2) PECO should certify that one or more EGSs have agreed to offer a TOU rate to residential customers in its service territory; (3) PECO should submit a report on the number of EGSs actually providing the service; and (4) customers taking TOU service from an EGS should follow the same "end of term" rules that apply generally to EGS service, i.e., a customer that makes no affirmative choice at the end of the term of the TOU offering would stay with the EGS providing the service on a month-to-month, no early termination fee basis.¹⁰⁸

The ALJ failed to address these specific recommendations, so it is difficult to ascertain exactly what makes RESA's proposal unnecessary or overly complicated. In fact, RESA's proposal simplifies the implementation of any future TOU initiative while remaining consistent with the Commission's directives on TOU programs.

¹⁰⁶ RD at 79.

¹⁰⁷ *Id.*

¹⁰⁸ RESA Brief at 82-86.

These recommendations are not intended to supplant or interfere with any existing contract between PECO and an EGS for provision of commodity services associated with PECO's TOU pilot, as RESA's proposal would become effective upon expiration of any such agreement.¹⁰⁹ Thus, any objections from PECO that RESA's recommended approach would complicate matters are inapposite. The certification and reporting suggested by RESA is infinitely simpler than the approach that PECO has adopted and is working to implement in connection with its pilot program.

Finally, RESA's recommendations on PECO's TOU program are necessary because they are designed to fulfill the Commission's objectives of promoting choice and competition. The Commission must ensure that TOU programs using the competitive market truly advance the competitive market, and RESA's proposals are consistent with that goal. In addition, the Commission should avoid forcing customers who do not make an affirmative choice to be transferred back to default service at the end of the TOU term, because this unauthorized switch is completely contrary to the PUC's existing rules, and inconsistent with the treatment afforded customers participating in other competitive enhancements. Therefore, for the reasons stated, the ALJ's recommendation should be rejected.

O. Exception No. 15: The ALJ Erred In Rejecting RESA's Switch-on-Connect Proposal for PECO' New/Moving Customer Referral Program (RD at 80)

The RD recommends the rejection of RESA's proposal to have PECO implement a "switch on connect" functionality to have all customers who know which EGS they would like to take service from to enroll with that EGS through PECO without having to transfer to the EGS

¹⁰⁹ RESA Brief at 83.

first.¹¹⁰ This recommendation is not fully consistent with the Commission's prior pronouncements on this subject and should be rejected.

RESA continues to believe that PECO should devise a reasonable method to allow new and moving customers who already know the EGS from which they would like to take service to begin service with that EGS as soon as practicable, without the need for a transfer away from the utility Customer Service Representative. Such functionality would facilitate the implementation of the type of "hot transfers" the Commission has envisioned and discussed as part of the RMI.¹¹¹ The "switch on connect" functionality that RESA has advocated for in this proceeding places EGS service on a more equal footing with bundled utility service because it makes it easier for a new or moving customer to have an EGS's service be available immediately.

The ALJ erred in accepting PECO's excuses that there are operational constraints that prevent implementation of "switch on connect" functionality. The ability to have a new or moving customer switch directly to his chosen EGS should have been in place long ago, and the only reason that such functionality is not in place is because PECO has unnecessarily delayed the process and dragged its feet. The Commission should reject the ALJ's recommendation and accept RESA's recommendations in this regard.

P. Exception No. 16: The ALJ Erred By Rejecting RESA's Recommended Modifications to the Elimination of PECO's Default Service "Wind" Product (RD at 81)

As part of the elimination of its Wind program, PECO Wind customers will be referred to interested EGSs who can offer these customers a "green energy" product.¹¹² Prior to the

¹¹⁰ RD at 80.

¹¹¹ See, *Intermediate Work Plan Final Order* at 17-20.

¹¹² PECO St. 5 at 18.

cessation of service, PECO will make a one-time referral mailing to PECO's Wind customers in October 2012. Suppliers that wish to be included in this mailing must respond to a Request for Information that will be issued by PECO.¹¹³

RESA recommends that various modifications regarding the default service procurement plan be implemented in the: Wind Program:

- Participating EGSs should be able to include their own promotional material in the mailings that inform current Wind customers of the end of the program.
- PECO should share all proposed mailings and correspondence with wind program customers with interested participants in this proceeding prior to their finalization so that EGSs can provide input.

RESA's proposals would enhance the referral process and assist PECO's Wind customers consumers make better choices by providing them, in a convenient and easy-to-use form, with information about the available alternatives.

The RD provides no viable rationale for rejecting these proposals. Instead, the ALJ agrees with PECO's assertions and faults RESA for not showing that PECO's Wind customers would "be unable to make a shopping decision" absent adoption of the their proposals.¹¹⁴ The ALJ's reasoning is flawed and must be rejected.

The goal here should not be to give consumers the barest minimum information that might suffice but to take this opportunity to give them enough information to facilitate and improve the decision making. PECO is required as part of its termination of the Wind Energy Service to notify customers. Nothing suggests that it acquits that responsibility by providing the bare minimum of useful information, particularly when doing more and better is so easy.

¹¹³ ChoosePA Wind St. 1 at 4.

¹¹⁴ RD at 82.

Moreover, PECO has substantial experience and expertise in mailings and can assuredly manage this process without meaningful difficulty. PECO, although asserting the process would be “unwieldy”¹¹⁵ did nothing more than make a blanket assertion, providing no basis to accept that assertion as true. The number of EGSs who would request to be included and provide information for the mailing is fairly limited. PECO’s role would be little more than insuring that the correct inserts went into the envelopes; it would have no responsibility to print, let alone write or organize, the mailer inserts.

Q. Exception Number 17: The ALJ Erred In Recommending That The Costs Of Retail Market Enhancements Be Recovered Through The Purchase Of Receivables (“POR”) Discount (RD at 85)

The ALJ recommends that PECO’s proposal to recover the costs of retail market enhancement programs through the POR discount be adopted.¹¹⁶ Even though RESA’s primary position is that these costs should be recovered through RESA’s recommended \$0.005/kWh Default Service Cost Recovery Charge (“DSCRC”) as explained above in Section G or, alternatively through a non-bypassable distribution charge, even if that proposal is rejected, the ALJ’s recommendation to recover costs through the POR discount must not be approved for a number of reasons.

First, the POR proposal it violates the principle of cost recovery following cost causation. The purpose of the POR discount is to recover an EDC’s POR program implementation costs, administrative costs and/or the uncollectables associated with the purchased accounts. Second, utilizing POR would result in the unintended consequence of exempting those suppliers who do their own billing (through dual billing) and could encourage

¹¹⁵ PECO St. No. 2-R, p. 23.

¹¹⁶ RD at 85.

those utilizing POR to no longer do so because they are receiving less value for their purchased accounts. Either consequence would not be in the public interest. Lastly, any purchase of receivables-based assessment would unfairly and disproportionately assess competitive suppliers based on market share.¹¹⁷

Even if RESA's proposal for a new non-bypassable charge is rejected, if some or all of the costs of these programs are to be recovered from EGSs, RESA suggests that the proposal by Dominion witness Barkas should be considered. Mr. Barkas has suggested that a "per customer" charge could be assessed for each customer served in the Opt-In Auction.¹¹⁸ This per customer fee should be determined prior to the auction by using a projection of costs assigned to EGSs and dividing them by the projected level of participation.¹¹⁹ By establishing this "per customer cost" up front, EGSs will at least know the cost burden for which it would be responsible before it elects to bid into the Opt-In auction

¹¹⁷ RESA MB at 93-95.

¹¹⁸ Dominion Retail/IGS St. 1 at 4-5.

¹¹⁹ *Id.*

III. CONCLUSION

For the reasons set forth above, RESA respectfully requests that the Commission grant these exceptions and issue a consistent decision which substantially rejects the ALJ's August 27, 2012 Recommended Decision.

Respectfully submitted,



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Date: September 10, 2012