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September 17, 2012

VIA E-FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
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Re: Petition of PECO Energy Company for Approval of Its Default Service Program
Docket No. P-2012-2283641

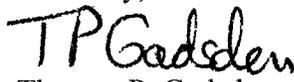
Dear Secretary Chiavetta:

Enclosed is an unbound original of the **Reply of PECO Energy Company to Exceptions** to the Recommended Decision of Administrative Law Judge Dennis J. Buckley issued on August 29, 2012 in the above-referenced matter.

As evidenced by the attached Certificate of Service, copies of the Reply to Exceptions have been served upon Administrative Law Judge Dennis J. Buckley and all parties.

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

Sincerely,


Thomas P. Gadsden

TPG/tp
Enclosure

c: Per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

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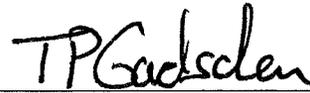
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I. INTRODUCTION

This proceeding was initiated on January 13, 2012, when PECO Energy Company (“PECO”) filed a Petition (“Petition”) pursuant to Section 2807(e) of the Pennsylvania Public Utility Code (the “Code”), 66 Pa.C.S. § 2807(e), requesting that the Pennsylvania Public Utility Commission (the “Commission”) approve PECO’s Default Service Program for the period from June 1, 2013 to May 31, 2015 (“DSP II”).

DSP II is PECO’s second default service program and contains all of the elements of a default service plan required by the Code, the Commission’s default service regulations (52 Pa. Code §§ 54.181 - 54.189), and the Commission’s Policy Statement on Default Service (52 Pa. Code §§ 69.1801 - 69.1817). PECO’s Petition also proposes a variety of retail market enhancements to be implemented as part of DSP II in accordance with the orders of the Commission in its Investigation of Pennsylvania’s Retail Electricity Market (the “Retail Markets Investigation”).

On August 29, 2012, the presiding Administrative Law Judge, Dennis J. Buckley (“ALJ”), issued his Recommended Decision (“RD”) in which he recommended that the Commission approve PECO’s DSP II subject only to a limited modification. On September 10, 2012, PECO filed a single Exception seeking to clarify a statement in the RD addressing PECO’s obligations with respect to the implementation of “switch on connect” technology for enrolling new and moving customers with electric generation suppliers (“EGSs”). Exceptions were also filed by the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Joint Suppliers Group (consisting of Exelon Energy Company, Constellation Energy Commodities Group, Inc. and Constellation New Energy, Inc., NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC), Dominion Retail, Inc. and

Interstate Gas Supply, Inc. (“Dominion”), the Retail Energy Supply Association (“RESA”), PPL EnergyPlus, LLC (“PPL EnergyPlus”), FirstEnergy Solutions Corp. (“FES”), and Green Mountain Energy Company (“GMEC”).

For the most part, the Exceptions of the other parties simply revisit issues and arguments that were fully considered by the ALJ in his thorough and well-reasoned decision and addressed in PECO’s Initial and Reply Briefs, which the Commission is urged to review. To the extent the other parties’ Exceptions assert that the RD must be modified because the ALJ erred or failed to consider their particular issues, the Commission should reject their efforts for the reasons set forth below and approve the RD with the single modification proposed in PECO’s Exception.

II. REPLY TO EXCEPTIONS

A. General Exception Of Dominion Regarding Burden Of Proof

In its Exceptions, Dominion includes a “general exception” asserting that the RD “appears to create” a presumption that PECO’s DSP II is reasonable and in the public interest and shifts the burden to other parties to disprove this presumption.

Dominion is plainly wrong and, in fact, the ALJ specifically states that PECO bears the burden of proof in this proceeding. *See* RD, pp. 8 & 88. What Dominion claims is evidence of the “presumption” on the first page of the ALJ’s ninety-page decision, fairly read, simply indicates that the ALJ found that PECO met its burden of proof only after review and consideration of the changes proposed by other parties – *i.e.*, that PECO met its legal burden of proof and burden of persuasion. Dominion’s assertion that the RD lacks sufficient analysis is also belied by the ALJ’s extensive consideration of the arguments of the parties regarding each issue, in which the ALJ’s detailed conclusions are found not only in the “Recommended Disposition” sections of the RD but also in the recitation of the arguments themselves. *See, e.g.*,

RD, p. 53 (noting agreement with PECO that the “adder” proposed by RESA does not align with actual default service costs). The Commission should therefore reject Dominion’s general exception.

B. Exceptions To Default Service Procurement And Implementation Plans

1. Residential Class Procurement – RESA’s Proposal to Include 10% Spot Purchases for Residential Customers (RESA Exc. 1)

In DSP II, PECO is proposing to transition to a mix of one and two-year fixed-price, full requirements (“FPFR”) contracts for default service supply for residential customers instead of its current mix of 75% FPFR contracts and 25% block and spot supply. RD, p. 5. The ALJ found that PECO’s proposed procurements satisfied the Code’s “prudent mix” requirements and should also result in default service rates that are generally more reflective of contemporaneous market prices while providing an appropriate degree of rate stability. RD, pp. 7-8.

In reaching this conclusion, the ALJ considered RESA’s contention that PECO must procure 10% of the default service supply for residential customers from the spot market in order to ensure more market reflective default service prices, but noted that PECO had presented analysis demonstrating that RESA’s proposal would likely result in more volatile default service rates less reflective of contemporaneous market prices due to deferred cost recovery balances. RD, pp. 17-18. The ALJ concluded that RESA’s claim that 10% spot market-priced power would enhance retail competition (for which it presented data only on switching of non-residential customers in Maryland) was not supported by credible evidence. *Id.*

In its Exception, RESA reiterates the same arguments but fails to show how the ALJ erred in concluding that RESA’s claims lacked evidentiary support. RESA Exc., pp. 3-4. RESA also contends its proposal should be adopted because the Commission recently approved FPFR

contracts for residential customers in the *FirstEnergy DSP Order*¹ that include a 90% fixed-price portion and a 10% variable price spot portion. However, RESA fails to acknowledge that PECO's residential customers will continue to be exposed to spot market pricing throughout the term of DSP II as the block energy products contracted for in DSP I are gradually phased out. PECO St. No. 3, p. 18; PECO Reply Br., pp. 6-7.² The Commission should therefore accept the ALJ's conclusions and deny RESA's first Exception.

2. Medium Commercial Class Procurement (OSBA Exc. 1)

For default service customers in PECO's Medium Commercial Class (non-residential customers with peak demand equal to or greater than 100 kW but less than or equal to 500 kW), PECO is proposing to eliminate the current one-year FPCR products and spot-priced full requirements products and instead rely upon six-month FPCR products, without overlap, procured approximately two to four months prior to delivery. The ALJ recommended approval since the vast majority (82%) of these customers are now receiving service from EGSs and "appear to have a diminished need for the same level of price stability offered during the period immediately following the end of generation rate caps." RD, p. 25.

The OSBA excepts to the ALJ's decision, asserting that PECO should procure one-year non-laddered contracts to provide more price stability and that PECO's proposal effectively retains the "prevailing market price" procurement standard repealed by Act 129. The OSBA also argues that "not all customers choose to shop" and the fact that other medium commercial

¹ *Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670, 2012 WL 3613124 (Pa. P.U.C., Aug 2, 2012) (the "*FirstEnergy DSP Order*").

² The Commission has also repeatedly emphasized that it is not seeking to adopt a "one size fits all" default service procurement model for all DSPs. See, e.g., *Final Rulemaking Order, Implementation of Act 129 of 2008; Default Serv. and Retail Elec. Mkts*, Docket No. L-2009-2095604, 2011 WL 4826268 (Pa. P.U.C. Oct. 4, 2011), p. 38 ("*Default Service Regulations Order*").

customers do so should not force non-shopping customers onto a less stable rate. OSBA Exc., pp. 4-6.

PECO's proposal does not reflect a "prevailing market price" standard but simply consideration of the appropriate level of price stability in light of the developing commercial opportunities for these customers. PECO Reply Br., pp. 17-18. While not all medium commercial customers choose to shop, the substantial increase in shopping by this customer class justifies a revised procurement strategy that is likely to be more reflective of contemporaneous market prices. Furthermore, in light of the use of shorter-term contracts, PECO has proposed to enhance stability in the "prudent mix" for these customers by eliminating the spot-market component of Medium Commercial Class supply previously procured under DSP I. PECO St. No. 3, p. 26. For these reasons, the Commission should reject the OSBA's Exception.

3. Large Commercial and Industrial Class Procurement (RESA Exc. 2)

In DSP II, PECO is proposing to eliminate its current procurement of spot-priced full requirements contracts for large commercial and industrial customers and procure spot-priced default service supply directly from wholesale markets operated by PJM Interconnection, LLC ("PJM"). Given that nearly all of these customers (96%) are receiving service from EGSs, PECO's proposal will eliminate the risk of additional costs from unsuccessful procurements for the few remaining default service customers, and the ALJ recommended approval. *See* RD, pp. 25-26. In its Exception, RESA reiterates its contention that PECO's proposal may not comply with Act 129's requirements or obtain competitive prices for customers. RESA also asserts that the ALJ "ignored the potential for misallocation of costs" associated with PECO's procurement of default supply from PJM, which may no longer be "transparent." RESA Exc., pp. 6-7.

As the Commission made clear in *Petition of Pike County Light & Power Co. for Approval of its Default Serv. Implementation Plan*, Docket No. P-2011-2252042, 2012 WL

1963545 (Pa. P.U.C., May 24, 2012), the procurement of spot-priced default service supply by an electric distribution company (“EDC”) directly from PJM’s wholesale markets is permissible under the Code and RESA fails to offer any evidence that the prices PECO will obtain from PJM will not be competitive. Furthermore, the ALJ noted that RESA conceded it has no evidence that PECO misallocated costs when PECO directly procured supply earlier for large commercial and industrial customers on a contingency basis in DSP I following an unsuccessful procurement, nor any evidence that PECO will misallocate such costs in the future. *See* RD, p. 25. As the ALJ also noted, PECO’s tariff describes the administrative costs that are to be recovered, and the Commission retains full authority to review these costs. *See id.*³ The Commission should therefore dismiss RESA’s Exception.

4. Extension of Supply Contracts Beyond May 31, 2015 (RESA Exc. 3)

Consistent with the recommendations of the Commission in the *Default Service Recommendations Order*⁴ to file default service plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period, PECO proposed to limit the “over-hang” of default supply contracts and will not execute any contract that will extend beyond May 31, 2015 until early 2014. In the event that legal developments result in PECO no longer serving as DSP, there will be ample time to adjust (or eliminate) these procurements. RESA objected to PECO’s approach on the ground that it would be “easier” to add supply contracts at a later date than to adjust procurements as PECO

³ RESA asserts that PECO’s proposal “improperly places the EDC back into the business of procuring and selling power to customers” and is “opposite from the direction that the Commission wishes to go with respect to default service procurement.” RESA Exc. p. 7, n. 18. However, nothing in PECO’s proposal for the relatively few remaining large commercial and industrial customers on default service will frustrate the Commission’s consideration of default service “end-states” or any other aspect of its Retail Markets Investigation.

⁴ *Investigation of Pennsylvania’s Retail Elec. Mkt.: Recommendations Regarding Upcoming Default Serv.Plans*, Docket No. I-2011-2237952, 2011 WL 6740802 (Pa. P.U.C. Dec. 16, 2011) (“*Default Service Recommendations Order*”).

proposed. However, the ALJ found that RESA had offered no explanation for why it would be easier to address procurement risks in a new plan instead of “removing a limited number of previously scheduled solicitations if the need arises.” RD, p. 27. RESA has excepted to the ALJ’s conclusion, asserting that (i) the ALJ erred in concluding that PECO’s proposal already limited enough contracts; (ii) the Commission rejected concerns about “rate shock” by approving procurements in the *FirstEnergy DSP Order* which do not extend beyond May 31, 2015; and (iii) any concerns about rate stability for customers are misplaced, since customers should rely upon the competitive market to provide products with desired stability. RESA Exc., pp. 7-9.

RESA’s Exception is without merit. While RESA contends that PECO’s proposal does not sufficiently limit contracts extending beyond May 31, 2015, it introduced no alternative proposal other than a “hard stop” at the end of the DSP II plan period, which the Commission made clear was not required in the *Default Service Recommendations Order*. Similarly, the Commission’s decision in the *FirstEnergy DSP Order* approving a procurement plan that does not extend beyond May 31, 2015 is not dispositive here because PECO has presented a plan to reduce potential rate volatility while also retaining flexibility to eliminate future procurements depending upon the outcome of the Retail Markets Investigation. Finally, RESA’s argument that customers should rely solely upon the competitive market to obtain the benefits of rate stability is flawed as a matter of law; as the Commission has repeatedly made clear, default service plans must be designed to achieve an appropriate level of rate stability. *See, e.g., FirstEnergy DSP Order*, p. 25 (explaining that “default service rates should provide a level of price stability”).

5. Load Cap (FES Exc. 1)

FES has excepted to the ALJ’s recommendation that the Commission approve a 50% cap on the amount of wholesale default service supply that may be provided by a single supplier to a

procurement class instead of the 67% cap proposed by PECO. PECO accepts the recommendation of the ALJ on this issue and does not oppose a 50% load cap for DSP II.

C. Rate Design And Cost Recovery

1. Reconciliation of Default Service Costs and Revenues (OCA Exc. 1; Dominion Exc. 1; RESA Exc. 4)

For DSP II, PECO has proposed to continue to adjust default service rates on a quarterly basis, but to reconcile over/under collections on an annual basis to avoid rate fluctuations that are due to “billing lag” and not changes in the actual costs of default service supply. The ALJ recommended approval, but both RESA and Dominion excepted on the ground that quarterly reconciliations result in more “market reflective” rates. In addition, they contend that annual reconciliation will distort customers’ perception of the market price of energy and create an unsustainable market for EGSs because default service rates will not reflect the true costs of providing default service. Dominion Exc., pp. 2-3; RESA Exc., pp. 9-11. The OCA agrees that a 12-month period for reconciliation of over/under collections is appropriate, but proposes that PECO use a 12-month rolling average instead of reconciling on an annual basis.

The Commission should dismiss each of these Exceptions. RESA and Dominion argue generally that annual reconciliation will cause default service rates to diverge from underlying market prices in a way that could adversely affect competition, but refutes neither PECO’s analysis showing wide changes in default service prices resulting from “billing lag” nor the minimal impact of annual reconciliation on prices. *See* PECO Initial Br., p. 37 (discussing results of analysis and improper analogy by Dominion to natural gas markets); PECO Reply Br., p. 20 (noting RESA and Dominion provide no record evidence of detrimental interest payments). And while Dominion advocates deferral of PECO’s proposal in light of the proceedings in *Default Service Interim Guidelines*, Docket No. M-2012-2314313 (Order entered August 14,

2012), the Commission has already recognized that more extended periods for over/under collection reconciliation may be beneficial and result in more market-reflective default service rates. *See Default Service Recommendations Order*, pp. 54-55. The OCA's Exception is similarly without merit; as PECO explained, the OCA's proposal results in more price fluctuation than PECO's proposed annual reconciliation. PECO Reply Br., pp. 20-21.

2. EDC Recovery of Additional PJM Charges (Joint Suppliers Group Exc. 1; PPL EnergyPlus Exc. 1; RESA Exc. 5)

In this proceeding, RESA proposed that the responsibility for several charges imposed by PJM – generation deactivation, economic load response (“ELR”), Network Integration Transmission Service (“NITS”), and additional costs associated with transmission upgrades – now paid by EGSs henceforth be recovered from all PECO customers on a non-bypassable basis. PPL EnergyPlus offered a similar proposal, but limited only to generation deactivation charges. The ALJ concluded that PPL EnergyPlus and RESA did not show how their proposed changes in cost assignment will lead to actual reductions in market prices for customers, and PPL EnergyPlus, RESA, and the Joint Suppliers have filed exceptions to the ALJ's recommendation to reject these proposals. RD, pp. 45-46.

PECO recognizes that the Commission has rejected similar proposals in the *FirstEnergy DSP Order*, but that several parties have sought reconsideration of these issues in that proceeding. As noted in PECO's Reply Brief (p. 22, n.12), in the event the Commission determines that generation deactivation charges should be recovered on a non-bypassable basis by other EDCs, PECO is amenable to filing a tariff supplement limited to generation deactivation charges consistent with the Commission's decision and a coordinated transition with respect to legacy full requirements contracts. PECO does not, however, agree that any of the other PJM charges identified by RESA should be collected on a non-bypassable basis.

3. Costs Included in the Generation Supply Adjustment Charge (OCA Exc. 2)

In its Exceptions (pp. 7-11), the OCA asserts that the ALJ erred in adopting PECO's proposal to continue to recover capital expenditures related to information technology ("IT") changes through the administrative cost factor in PECO's Generation Supply Adjustment ("GSA") charge. Specifically, the OCA contends that capital cost items are not recoverable in a surcharge unless such recovery is specifically provided for by statute, and on that basis OCA asserts that PECO's default service-related IT expenditures may only be recovered through base rates. *Id.* at 9.

Unlike the costs at issue in the cases cited by the OCA – *Popowsky v. Pa. P.U.C.*, 869 A.2d 1144 (Pa. Cmwlth. Ct. 2005) and *Pennsylvania Indus. Energy Coal. v. Pa. P.U.C.*, 653 A.2d 1336 (Pa. Cmwlth. Ct. 1995) – PECO is not seeking to recover capital expenditures relating to improvements to physical distribution facilities. In addition, the ALJ properly concluded that the OCA's reliance on these cases was misplaced because the language of Section 2807(e)(3.9) is sufficient to permit recovery of default service-related capital expenditures. The Commission has relied upon virtually identical language to approve the recovery of capital costs in PECO's Energy Efficiency and Conservation Program Cost Surcharge, as discussed in PECO's Initial Brief (p. 42), and the OCA does not explain why capital expenditures incurred in the implementation of default service programs should not be entitled to identical treatment with an appropriate return. The Commission should therefore dismiss the OCA's Exception.

4. Ratemaking Treatment of Auction Revenue Rights (OCA Exc. 3; RESA Exc. 6)

The OCA and RESA also except to the ALJ's recommendation that the Commission adopt PECO's proposal to replace its practice of "passing through" the costs and benefits associated with Auction Revenue Rights ("ARRs") to customers with a mechanism to equally share the benefits and losses of the exercise of ARRs. Specifically, the OCA asserts that PECO's proposal will "simply provide additional profits" to PECO, while RESA contends that a 50% sharing of costs and benefits will "skew" default service rates and improperly permit PECO to profit from default service. OCA Exc. pp. 11-13; RESA Exc., pp. 19-20.

Neither the OCA nor RESA is correct. The testimony of PECO witness Alan Cohn established that PECO runs a risk of selecting transmission paths when exercising ARRs that can result in losses. Because PECO's core business is to provide safe and reliable service to customers, not hedge transmission congestion risk, an incentive is appropriate for PECO to seek to maximize financial benefits associated with ARRs for customers. PECO Initial Br., p. 43; Reply Br., p. 24. RESA's concerns are simply misplaced. The impact, if any, on the Price-to-Compare ("PTC") for both the Residential and Large Commercial Customer Class will be minimal, and there is no basis for RESA's claim that any benefit to PECO from increasing value to default service customers must be accompanied by a corresponding benefit to competition.

5. Elimination of Alternative Energy Portfolio Standard Surcharge (OCA Exc. 4)

In DSP II, PECO has proposed to eliminate its separate Alternative Energy Portfolio Standard ("AEPS") surcharge and incorporate all of its AEPS compliance costs into a single cost recovery mechanism (the existing Generation Supply Adjustment or "GSA" charge). No party has opposed this change and the ALJ recommended its approval. RD, p. 51. However, the OCA has requested that the Commission clarify that PECO will provide itemized cost details

associated with the categories of AEPS and DSP costs that will be included in the GSA surcharge. PECO intends to continue to provide itemized detail of the costs of alternative energy credits (“AECs”) directly procured by PECO for AEPS compliance. However, PECO will not itemize AEPS costs associated with wholesale default service supply contracts since suppliers provide AECs as part of a fixed price for meeting all full requirements obligations (*e.g.*, load-following energy, capacity, ancillary services) under PECO’s Supply Master Agreement.

6. RESA’s Proposal for a \$0.005/kWh Adder to the Price-to-Compare (RESA Exc. 7)

RESA also excepts to the ALJ’s rejection of its proposal to add a \$0.005 kWh charge (the “PTC Adder”) for default service to purportedly recover “verifiable” costs relating to default service that PECO has not collected as well as the costs of retail market enhancements, with any balance returned to all distribution customers. RESA contends that the amount of its PTC Adder aligns with the costs of PECO’s proposed retail market programs and unquantified costs of providing default service, and that supporting retail market programs through this charge is appropriate because default service customers will benefit from incentives to choose an EGS. RESA Exc., pp. 20-23. PECO addressed these same arguments before the ALJ, and explained why there was no basis to find that default service costs were inadequately reflected in its rates. PECO also pointed out that RESA’s proposal, under which the total amount of revenue from customers far exceeds the estimated total cost to implement DSP II and the proposed retail market enhancements, would result in inaccurate price signals and the improper cross-subsidization of shopping customers. PECO Reply Br., pp. 25-26.

In the *FirstEnergy DSP Order* (p. 62), the Commission rejected a similar proposal supported by RESA because it lacked empirical support for any actual known and measurable costs that are not being recovered. RESA neglects to mention this ruling, but the flaws in its

current proposal are similar. As the ALJ found, no need has been shown for a PTC Adder to recover any default service costs and RESA has demonstrated no public benefit. The Commission should therefore dismiss RESA's Exception and reject its PTC Adder for PECO customers.

D. Retail Market Enhancements ("RME")

**1. EGS Opt-In Competitive Offer Program ("Opt-In Program")
(OCA Exc. 5; Dominion Exc. 2; RESA Excs. 8-11)**

a. Customer Eligibility (RESA Excs. 8-9)

RESA takes issue with the ALJ's recommendations (RD, p. 58) to exclude small commercial customers from PECO's Opt-In Program but to extend eligibility to participate in such programs to PECO's residential shopping customers. Notably, RESA does not refute the ALJ's finding that extending the Opt-In Program to small commercial customers would add complexity because different offers with different prices would have to be designed, solicited and marketed to different subsets of PECO's customers, which are not homogenous. RD, p. 58. Instead, RESA contends that the ALJ ignored the purportedly "dismal" level of shopping by PECO's small commercial customers with peak loads up to 25 kW and that a similar "low" level of shopping provided the basis for the Commission's decision to extend ROI Aggregation Program eligibility to small business customers in the *FirstEnergy DSP Order* (pp. 103-104). Notwithstanding RESA's characterizations to the contrary, the record evidence shows that 39% of small commercial customers are receiving service from an EGS, and those numbers have increased substantially during DSP I. PECO St. No. 3, p. 26. PECO's proposal to target marketing efforts at non-shopping customers while permitting all residential customers to participate conforms to the Commission's guideline in the *Intermediate Work Plan Order* (p. 42) (*Investigation of Pennsylvania's Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-

2237952, 2012 WL 1066614 (Pa. P.U.C., March 2, 2012), which the Commission affirmed in the *FirstEnergy DSP Order* (p. 107). Accordingly, the Commission should dismiss RESA's Exception.

**b. Composition of Product Offer – Term Length
(Dominion Exc. 2)**

In his RD (p. 60), the ALJ found PECO's proposed six-month contract term for the Opt-In Program product consistent with the *Intermediate Work Plan Order*, which rejected a twelve-month requirement, and Dominion excepted based on the *FirstEnergy DSP Order*. However, Dominion did not offer any evidentiary basis for departing from the Commission's guidance in the *Intermediate Work Plan Order* (p. 70) that a shorter term "would minimize the risk of market unpredictability, may reduce risk premiums that suppliers incorporate in their prices and might entice more suppliers to participate" in PECO's Opt-In Program, which includes a competitive bidding process unlike the ROI Aggregation Program addressed in the *FirstEnergy DSP Order*.

c. Customer Participation Cap (OCA Exc. 5)

The ALJ also adopted PECO's proposal to limit customer participation in the Opt-In Program to 50% of the customers allocated to each EGS during the competitive bidding process, concluding that such limit was consistent with the Commission's directive in the *Intermediate Work Plan Order*. RD, p. 61. The OCA excepted to this recommendation and claims that it presented substantial evidence supporting a 20% customer participation cap. In particular, the OCA contends that its proposed cap would: (1) mitigate the increased "volumetric risk" wholesale suppliers may include in their default service bids; and (2) reduce the risk that the program could be publicly viewed as a failure if enrollment is low. OCA Exc., pp. 15-16. However, these arguments were previously considered and rejected by the Commission in the

Intermediate Work Plan Order (p. 59) and in the *FirstEnergy DSP Order* (p. 112) and, accordingly, the Commission should reject this Exception of the OCA.

d. Supplier Participation Cap – Minimum Number of Bidders (RESA Exc. 10)

Consistent with the *Intermediate Work Plan Order* (p. 63), under PECO’s proposed Opt-In Program, no EGS would be able to win more than 50% of the available tranches in the RFP process. RD, pp. 62-63. While RESA supports this 50% cap, it contends that there should also be at least four winning bidders on the ground that such a requirement would increase supplier diversity by providing winning bidders “a critical mass of customers in a service territory.” RESA Exc., p. 26. The ALJ rejected RESA’s proposal, and RESA has provided no evidence that its four-bidder minimum would generate increased supplier participation. *See* RD, p. 63. As PECO explained (Initial Br., pp. 56-58), a good outcome for customers can be obtained even if fewer than four bidders participate. RESA’s Exception should therefore be rejected.

e. PECO’s Proposed Application Process and EGS Terms and Conditions (RESA Exc. 11)

Under PECO’s proposed Opt-In Program, participating EGSs must first qualify to bid in response to PECO’s Request for Proposals (“RFP”) by submitting an application to PECO demonstrating minimum requirements, including the necessary financial resources to make a \$50.00 bonus payment to all customers who enroll and remain with the program for three complete billing cycles. RD, p. 66. In addition, qualifying bidders would be required to execute a form agreement under which they would commit to offer standard terms and conditions and comply with the RFP provisions. *Id.* No party other than PECO presented any testimony regarding the qualifications set forth in the form application or the standard terms and conditions in the form agreement. Nonetheless, after the close of the record, RESA objected to PECO’s

form documents, attaching new versions with comments to its Main Brief and proposing a Commission-led collaborative to negotiate the terms of the documents. RESA Main Br., pp. 69-71.

The ALJ recommended approving PECO's form documents because no party raised objections thereto based on record evidence, and properly disregarded the positions and arguments advanced by RESA as untimely and without "any sound evidentiary basis." *Id.*, pp. 66-67. In Exception No. 11 (pp. 27-28), RESA first claims that the ALJ erred on the ground that RESA's issues and arguments were discussed "extensively" during the cross-examination of PECO witness John McCawley, and then asserts that the comments attached to its brief were simply "illustrative." RESA Exc. p. 28. But contrary to RESA's assertions, Mr. McCawley's cross-examination consisted almost entirely of questions clarifying certain program details, *see* Tr. pp., 59-74,⁵ and RESA simply failed to take advantage of the opportunity at the hearing to provide any evidentiary basis for the concerns it identifies for the first time in its Main Brief. RESA's Exception 11 should be rejected for these reasons alone.

Putting aside the inappropriate manner in which RESA's objections to PECO's Opt-In Program governing documents were raised, there is simply no reason to delay the process of approving the form agreements for PECO's Opt-In Program competitive bidding process, which is scheduled to commence in early 2013. In short, the ALJ properly considered all of the **record** evidence and concluded that PECO's proposed form agreements governing the Opt-In Program should be approved without further delay.

⁵ RESA further contends that the ALJ's conclusions are "at odds" with the *FirstEnergy DSP Order* in which the Commission determined that EGSs participating in the ROI Aggregation Program should not be required to sign other contracts in light of existing supplier tariffs and billing services agreements. RESA Exc., p. 29. However, the *FirstEnergy DSP Order* was based on record evidence that "additional agreements may conflict with or dilute the clarity of the agreements under which EGSs and EDCs are currently doing business." *Id.* at 123.

2. EGS Standard Offer Program (“Standard Offer Program”) (OCA Excs. 6-7; RESA Excs. 11, 13)

a. Customer Eligibility (RESA Exc. 8)

For the first time in this proceeding, RESA contends that small business customers should be eligible to participate in the Standard Offer Program. RESA Exc., p. 23. For the reasons discussed in Section II.D.1.a, RESA’s Exception should be denied. Moreover, RESA’s presentation of a new argument in Exceptions is entirely inappropriate.⁶

b. Composition of Product Offer (RESA Exc. 13)

RESA has excepted to the ALJ’s recommendation to approve PECO’s Standard Offer product that would require participating EGSs to offer generation service at a fixed-price of 7% below the PTC at the time of customer enrollment for twelve complete billing cycles. In Exception No. 13, RESA contends that the discount off the PTC should only be set for four months and thereafter 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. RESA Exc., p. 31.

As the ALJ correctly found, RESA’s contention that the Commission intended the Standard Offer Program discount to last for only four months is wrong. RD, p. 71. Moreover, RESA’s claim the ALJ’s recommendation is inconsistent with the pricing and term of the ROI Aggregation Program established by the Commission in the *FirstEnergy DSP Order* (pp. 108-109) is also meritless. In that proceeding, the Commission concluded that the standard offer customer referral price should be based upon a 7% discount from the PTC at the time the offer is made and that such price should remain in effect for a one-year service term. *FirstEnergy DSP Order*, p. 146. RESA’s exception should, therefore, be rejected.

⁶ See, e.g., *Pa. P.U.C. v. Columbia Gas of Pa., Inc.*, 245 PUR4th 1(2005) (“IOGA first raised its opposition ... on Exception....As such, we will deny IOGA’s Exceptions on this issue.”).

c. Types of Customer Calls Eligible for Presentation of Referral Program (OCA Exc. 6)

In its Exceptions (pp. 17-19), the OCA renews its proposal to limit calls eligible for referral to those from new and moving customers, or those in which a customer specifically requests an explanation of the Standard Offer Program. The ALJ properly rejected the OCA's proposal because the *Intermediate Work Plan Order* (p. 31) clearly provides that the Standard Offer should be presented during all customer contacts to the EDC call centers, "other than calls for emergencies, terminations and the like." *See* RD, p. 73.

The OCA acknowledges that PECO will resolve the reason for a customer high bill call before extending the Standard Offer to that customer, but asserts that such calls should nonetheless be excluded because customer satisfaction can be "ambiguous". OCA Exc., p. 18. However, the OCA fails to show how offering the Standard Offer Program after such resolution would jeopardize customer satisfaction or quality of service. As a result, the ALJ correctly concluded that the OCA's proposal is "unsupported and unduly limiting." The Commission should adopt his recommendation. RD, p. 73.

d. Commencement Date of the EGS Standard Offer Program (OCA Exc. 7)

The OCA has excepted to the ALJ's recommendation to approve PECO's proposed June 1, 2013 commencement date for the Standard Offer Program, which is approximately one month after completion of customer enrollment for the Opt-In Program. The OCA contends that the ALJ erred in finding that one month is sufficient time between the two programs because it ignores the possibility of customer confusion and negative comparisons of price and program terms during the course of the overlapping programs. OCA Exc., pp. 19-20. Accordingly, the OCA proposes to delay the Standard Offer Program until the Opt-In Program has concluded.

This proposal should be rejected for at least two reasons. First, the OCA failed to present any specific evidence to support delay. RD, p. 72. Indeed, the Commission has already rejected a similar OCA proposal to delay implementation of the Standard Offer Program until completion of an Opt-In Program. *FirstEnergy DSP Order*, p. 150. Second, as the ALJ explained, PECO needs a date certain for planning and implementation of the new program. RD, p. 72.

e. PECO's Proposed Application Process and EGS Terms and Conditions (RESA Exc. 11)

Like the Opt-In Program documents, RESA claims that the ALJ erred in rejecting its objections to PECO's Standard Offer Program documents as unsupported and untimely. RESA Exc., pp. 27-29. As the ALJ found, none of RESA's objections are supported by the record though RESA had full opportunity to raise concerns during the evidentiary phase of this proceeding. *See* RD, p. 74. For that reason and for the reasons set forth in Section II.D.1.e, the ALJ's approval of PECO's proposed Standard Offer Program documents should be adopted.

3. Participation by Low-Income Customers in Proposed Retail Market Enhancements (RESA Exc. 12)

The ALJ recommended rejecting RESA's proposal to allow customers enrolled in PECO's Customer Assistance Program ("CAP") to participate in the Opt-In Program and Standard Offer Program. RD, pp. 77-78. In so ruling, the ALJ properly concluded that the determination of whether CAP customer participation in RME programs can be accomplished without subjecting those customers to harm should not be made until after the completion of the OCMO Universal Service subgroup's analysis. *Id.*; *see also* PECO St. No. 6-R, pp. 5-6 (describing additional concerns with RESA proposal for PECO's 135,000 CAP customers).

Each of the principal arguments presented by RESA in support of the inclusion of CAP customers in RME programs was addressed in PECO's Initial Brief (pp. 65-67) and shown to be

without merit. In its Exceptions, RESA also contends 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.⁷ RESA Exc., p. 30. Specifically, RESA asserts that a PECO CAP customer who receives a discount will pay less if his or her bill is reduced. However, RESA erroneously assumes that CAP customer bills will automatically be lower under the RME programs, and fails to show how the ALJ erred in concluding that RESA’s proposal fails to mitigate the risks of harm to PECO CAP customers arising from the potential for increases in commodity charges and increased uncollectible expense. RD, pp. 78-79; PECO St. Nos. 6-R, pp. 7-8 & 6-SR, p. 4. RESA’s Exception No. 12, therefore, should be rejected.

4. Additional Proposed Retail Market Enhancements (GMEC Exc. 1; RESA Excs. 14-16)

a. Time-of-Use Offering (RESA Exc. 14)

In its Exceptions (pp. 33-34), RESA claims that the ALJ erred in recommending rejection of its proposed alternative approach for PECO to satisfy its time-of-use (“TOU”) obligation under Act 129. Under RESA’s alternative approach, instead of conducting an auction for TOU commodity service, PECO would certify that one or more EGSs have agreed to offer a TOU rate and submit an annual report to the Commission on the number of EGSs actually providing TOU service. RESA Main Brief, pp. 82-86. The ALJ found that RESA’s approach would only serve to complicate this matter to no beneficial purpose. RD, p. 79.

Since the RD was issued, the Commission has adopted a motion approving PECO’s revised proposal for its dynamic pricing program, which included a request for proposals to

⁷ The *FirstEnergy DSP Order* upon which RESA relies does not support its position on CAP portability because, in that case, the Commission based its decision to include CAP customers in the FirstEnergy EDCs’ RME programs on the fact that those customers are already permitted to shop under the terms of those EDCs’ existing retail tariffs. *First Energy DSP Order*, p 143. By contrast, PECO’s current electric tariff does not permit CAP customer shopping.

interested suppliers.⁸ Accordingly, the ALJ's recommendation should be adopted.

b. New/Moving Customer Referral Program (RESA Exc. 15)

In his RD (p. 80), the ALJ rejected RESA's proposal to require PECO to implement "switch-on-connect" functionality to facilitate near-instantaneous switching for new or moving customers who already know the EGS from whom they would like to take service. RESA criticizes the ALJ's finding that RESA's proposal is not feasible due to operational constraints on the ground that such functionality is not currently in place because PECO has "dragged its feet". RESA Exc., pp. 34-35. This argument has no merit, as explained below.

A conclusion that PECO has an obligation to implement "switch-on-connect" functionality, as part of its proposed New/Moving Customer Referral Program, is not supported by any record evidence. Not only is RESA's assumption that such functionality "should have been in place long ago" unsupported, it fails to account for the significant overhauls of PECO's present meter and billing systems that would be required to accommodate RESA's proposal. Indeed, the Commission recognized that smart meter deployment schedules vary by EDC and that system changes are necessary to implement near-instantaneous switching.⁹ As the ALJ correctly found, operational constraints, namely the ongoing deployment of advanced metering infrastructure in PECO's service territory, render RESA's proposal impractical. Therefore, RESA Exception No. 15 should be dismissed.

⁸ See *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304, Motion (Sept. 13, 2012) ("*Dynamic Pricing Motion*"). Indeed, the Commission's adoption of the *Dynamic Pricing Motion* directly addresses RESA's concern (Exc., p. 34) that customers would be transferred back to default service at the end of the TOU pilot program term.

⁹ See Tentative Order, *Interim Guidelines Regarding Standards for Changing a Customer's Elec. Generation Supplier*, Docket No. M-2011-2270442, 2011 WL 6091829 (Pa. P.U.C. Nov. 14, 2011), p. 25.

c. Referral of PECO Wind Customers (GMEC Exc. 1; RESA Exc. 15)

While no party opposed PECO's proposal to eliminate the PECO Wind program and to refer current PECO Wind customers to interested EGSs that can offer a "green energy" product, RESA and GMEC proposed modifications to PECO's proposed one-time PECO Wind referral mailing. Both parties contend that the PECO Wind referral mailing should include promotional materials that describe the specific green energy offerings of eligible EGSs that elect to participate in the mailing. *See* RESA Main Br., pp. 87-88; GMEC Main Br., pp. 7-8. The ALJ found that allowing EGSs to insert materials into the referral mailing would be unwieldy and inclusion of entities that are not licensed by the Commission would unnecessarily add administrative cost. RD, pp. 81-82. Both RESA and GMEC have taken exception to the ALJ's recommendations on the ground that their proposals purportedly would improve shopping decision-making. RESA Exc., pp. 36-37; GMEC Exc., pp. 2-4.

Contrary to RESA and GMEC's assertions, the ALJ properly concluded that neither party had shown that PECO Wind customers will be unable to make a shopping decision upon expiration of the program if furnished the EGS contact information provided in the mailing, coupled with the information provided on the PAPowerSwitch.com website. Nor did RESA and GMEC present evidence that their proposals would allow PECO Wind customers to make "better" shopping decisions. Accordingly, RESA and GMEC's Exceptions should be dismissed.

5. Recovery of Program Costs for Proposed Retail Market Enhancements (RESA Exc. 17; Dominion Excs. 3-4; FES Exc. 2)

PECO proposes to recover the costs of the Opt-In Program directly from winning EGSs and the costs of other RME programs (including the Opt-In Program if it is unsuccessful) through a 0.3% discount on purchased EGS accounts receivable ("POR"). The OCA, OSBA, CAUSE-PA and I&E affirmatively support PECO's proposal to recover costs from EGSs instead

of customers; not surprisingly, RESA, FES and Dominion do not. The ALJ concluded that RESA and the EGSs did not demonstrate good cause to deviate from the Commission's recommendation in the *Intermediate Work Plan Order* (p. 78) to recover the costs of the Opt-In Program from the participating EGSs that reap the possible customer acquisition benefits. RD, pp. 84-85. Likewise, the ALJ found that FES and RESA did not justify departure from the Commission's directive that the Standard Offer Program costs should be recovered from EGSs. *Id.*, p. 87. With respect to the Standard Offer Program, the ALJ found that Dominion's alternative for a predetermined customer acquisition fee is unnecessarily complex. *Id.* Given the foregoing conclusions, the ALJ recommended that the Commission approve PECO's proposed mechanisms to recover the costs of its RME programs. *Id.*, pp. 84-85, 87.

RESA, FES and Dominion all strongly oppose use of the POR discount to recover RME costs on the following grounds: (1) such approach allegedly does not follow cost causation, which could discourage EGSs from entering PECO's service territory and/or participating in the POR program; and (2) it would result in an unfair allocation of costs among EGSs based on market share. RESA Exc., pp. 37-38; FES Exc., pp. 5-6; Dominion Exc., pp. 5-6. Despite their emphatic concerns that recovery of Opt-In Program costs through the POR discount may have an adverse effect on EGS interest in PECO's service territory, RESA, Dominion and FES have not offered any evidence that specific EGSs would choose not to enter or would leave PECO's territory.¹⁰ Likewise, they failed to present any evidence that EGSs with larger market shares would not participate in the Opt-In Program or Standard Offer Program if costs are recovered

¹⁰ FES' contention that the Commission's statement in the *Intermediate Work Plan Order* that PECO's POR discount appears to be acceptable does not amount to a guideline or directive is a red herring. FES Exc., pp. 4-5. As previously discussed, FES' concerns with respect to potential negative impact on either EGS participation in the RME programs or interest in PECO's service territory are unfounded.

through the POR program. Indeed, FES – despite its objection – may still participate in the Opt-In Program. *See* PECO Cross (Banks) Ex. 3 (FES Response to PECO Set II, No. I).

With respect to the Standard Offer Program, Dominion contends that PECO should recover those costs through a predetermined customer acquisition cost instead of the POR discount and RESA agrees. Dominion Exc., p. 6; RESA Exc., p. 38.¹¹ As the ALJ found, Dominion’s alternative approach would add complexity to the administration of the Standard Offer Program. RD, p. 87. For instance, a customer acquisition fee would require the tracking of referrals. PECO Initial Br., pp. 75-76. In addition, the Standard Offer Program would have to spell out when the fee is charged (*i.e.*, upon referral or switching) and whether the customer must remain with the EGS for a minimum period to be deemed a referral. *Id.*

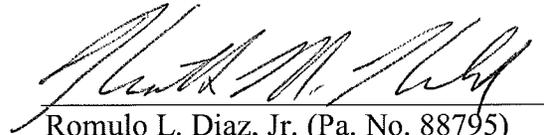
Dominion has also excepted to the ALJ’s recommendation to approve PECO’s proposal to recover the costs of the Opt-In Program from all participating EGSs. Dominion Exc., pp. 4-5. As the ALJ found, the *Intermediate Work Plan Order* directs that the costs of the Opt-In Program be borne by the EGSs who reap the benefits, and the Commission affirmed this determination in the *FirstEnergy DSP Order* (p. 136). Notably, no record evidence offered by Dominion or any other party demonstrated that the general benefit of a robust competitive retail market justifies charging customers for what amounts to an EGS marketing expense. For all of these reasons, the ALJ’s recommendation should be adopted.

¹¹ FES attacks the ALJ for his alleged failure to address its alternative cost recovery proposals in the Recommended Decision. FES Exc., pp. 6-8. However, FES’ alternative proposals are essentially more complicated versions of Dominion’s proposed customer acquisition fee. In addition, FES’ proposal to limit the amount of costs allocated to EGSs and recover any undercollection from participating customers is plainly inconsistent with the Commission’s clear direction that EGSs must pay for RME program costs.

III. CONCLUSION

For the reasons set forth above, the Recommended Decision issued by Administrative Law Judge Buckley on August 29, 2012, should be adopted with the modification described in PECO's Exception filed on September 10, 2012.

Respectfully submitted,



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