



COMMONWEALTH OF PENNSYLVANIA

August 5, 2014

**E-Filed**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Petition of PECO Energy Company for Approval of its Default Service Program for the Period From June 1, 2015 Through May 31, 2017  
Docket No. P-2014-2409362**

Dear Secretary Chiavetta:

I am enclosing for filing today the Main Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, reading "Elizabeth Rose Triscari".

Elizabeth Rose Triscari  
Deputy Small Business Advocate  
Attorney ID #306921

Enclosures

cc: Parties of Record

Brian Kalcic

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for :  
Approval of Its Default Service Plan for the : Docket No. P-2014-2409362  
Period from June 1, 2015 through May 31, 2017 :**

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Main Brief, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

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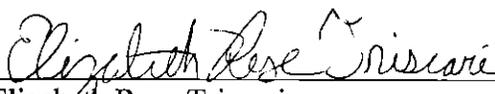
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for :  
Approval of Its Default Service Plan for the : Docket No. P-2014-2409362  
Period from June 1, 2015 through May 31, 2017 :**

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**MAIN BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Dated: August 5, 2014**

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## **I. INTRODUCTION AND PROCEDURAL HISTORY**

On March 10, 2014, PECO Energy Company (“PECO” or “the Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) the Petition of PECO Energy Company for Approval of Its Default Service Program for the Period From June 1, 2015 Through May 31, 2017 (“Petition”). The Petition seeks approval of PECO’s proposed third Default Service Program (“DSP III”) to secure default service supply for the Company’s customers for the period from June 1, 2015 through May 31, 2017.

On March 28, 2014, the Office of Small Business Advocate (“OSBA”) intervened and filed an Answer in this proceeding in order to protect the interests of the Company’s small business customers.

Answers were also filed by the Office of Consumer Advocate (“OCA”) and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) on April 1, 2014.

Petitions to Intervene were filed by CAUSE-PA, NextEra Power Marketing, LLC (“NextEra”), Philadelphia Area Industrial Energy Users Group (“PAIEUG”), FirstEnergy Solutions Corp. (“FES”), Interstate Gas Supply, Inc. (“IGS”), Direct Energy Services, LLC (“Direct Energy”), Retail Energy Supply Association (“RESA”), Noble Americas Energy Solutions LLC (“Noble”), and PECO Energy Suppliers Group (“PESG”).

This matter was assigned to Administrative Law Judge (“ALJ”) Cynthia Williams Fordham who held a telephonic prehearing conference on April 10, 2014, at which time a procedural schedule and discovery modifications were established, all petitions to intervene were granted, and PECO’s motion for a protective order was granted.

The OSBA submitted the Rebuttal Testimony and Surrebuttal Testimony of Brian Kalcic on June 26, 2014, and July 9, 2014, respectively.

An evidentiary hearing was held in Philadelphia on July 17, 2014 (the "Hearing"). PECO presented oral rejoinder testimony and certain witnesses for the parties were cross-examined. The parties agreed to waive cross-examination of other witnesses prior to the hearings and they were excused from appearing. The testimony and exhibits of the parties were entered into the record.

The OSBA is filing this Main Brief pursuant to the procedural schedule set forth in Prehearing Order #2 entered by ALJ Fordham on April 14, 2014.

## **II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS**

### **A. Summary of Briefing Party's Position**

The OSBA will only address the default service procurement plans for the Small Commercial and Medium Commercial procurement groups.<sup>1</sup> The OSBA agrees with the Company's proposal to use one-year, overlapping, fixed price full requirements ("FPFR"), load following contracts to acquire default service supply for Small Commercial default service customers. The OSBA also agrees with the Company's proposal to use six-month FPFR, load following contracts without overlap to acquire default service supply for Medium Commercial default service customers. PECO's procurement plan for Small Commercial and Medium Commercial customers will provide reasonable price stability for these default service customers,

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<sup>1</sup> PECO's non-residential procurement groups are defined on the basis of peak load, rather than by rate class. The Small Commercial procurement group is defined as all non-residential customers with peak demands less than 100 kW. The Medium Commercial procurement group is defined as all non-residential customers with peak demands greater than or equal to 100kW, but less than 500 kW. OSBA Statement No. 1 at 2.

while still promoting electric generation supplier (“EGS”) participation in the market. The Commission should approve it.

In contrast, RESA proposes what it calls a more market-based and market-responsive default service supply portfolio for the Small Commercial and Medium Commercial procurement groups, which will subject default service customers to unreasonable and unnecessary market price volatility (and increase administrative costs with additional solicitations).<sup>2</sup> In support of its position, RESA claims that its proposal for shorter term contracts for Small Commercial customers and shorter term contracts combined with hourly pricing for those Medium Commercial customers with interval meters will reduce the potential for “boom” or “bust” business cycles in the retail energy market. However, market data from PECO’s service area, as well as other large EDC service areas in Pennsylvania, contradicts that claim. Such data has proven that EGSs have been very willing to compete for customers in the retail market when default service supply portfolios employ contract term lengths similar to, or even longer than, those proposed by PECO. RESA’s proposal will only serve to create rate volatility in contravention of the Commission’s explicit acknowledgment that rate stability must be a concern when implementing default service standards.

Moreover, while RESA has looked to the Commission’s Final Order at Docket No. I-2011-2237952 (“End State Order”) for support of its proposals, the Commission itself has acknowledged concern that legislative changes are required to ensure that the End State Order

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<sup>2</sup> PECO witness John J. McCawley testified at the Hearing that RESA’s proposed procurement schedule includes nine separate procurement dates compared to PECO’s four, thereby at least doubling administrative costs to procure default service supply from approximately \$640,000 to more than \$1.4 million. Hearing Transcript at 3536, lines 4-14.

complies with the Public Utility Code.<sup>3</sup> No such legislative changes have been made. RESA's proposal effectively implements the End State Order without enabling legislation. Therefore, it is not consistent with the current statutory procurement standard in the Commonwealth requiring default service providers to procure default service supply using a prudent mix of contracts designed to produce the least cost to customers over time.<sup>4</sup>

**B. Residential Class Procurement**

The OSBA did not take a position with respect to Residential Class Procurement.

**1. Term Length and Type of Supply Contracts**

The OSBA did not take a position with respect to the term length of supply contracts for the Residential Class Procurement.

**2. Procurement Schedule**

The OSBA did not take a position with respect to the procurement schedule for the Residential Class Procurement.

**C. Small Commercial Class Procurement**

The OSBA agrees with the Company's proposed procurement plan for the Small Commercial procurement group because it provides reasonable price stability for Small Commercial default service customers, while still permitting default service rates to reasonably reflect current market prices. DSP III proposes the same procurement plan as approved by the

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<sup>3</sup> *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Final Order entered February 15, 2013 at 45.

<sup>4</sup> 66 Pa. C.S. § 2807(e)(3.3).

Commission in DSP II,<sup>5</sup> namely, one-year, FPFR, load following contracts awarded on the basis of an RFP-based procurement. Supply would be acquired via four separate solicitations beginning in Winter 2015 and ending in Fall 2016, with contracts laddered (overlapping) on a six-month basis and all procurement taking place no more than four months prior to delivery of energy.<sup>6</sup>

DSP II made a major change from DSP I, which had used primarily a mix of one-year and two-year FPFR products to acquire default service supply for Small Commercial customers. In DSP II, the Company made a shift away from an emphasis on price stability by proposing only one-year FPFR contracts, arguing that because competitive retail markets serving Small Commercial customers have developed substantially since the start of DSP I, these customers did not require as much price stability in their default service rates in DSP II. Therefore, PECO's proposed modifications in DSP II were intended to deemphasize price stability in favor of making Small Commercial default service rates more reflective of current market prices. By keeping the same Small Commercial procurement plan in DSP III as in DSP II, PECO continues its goal of carefully balancing market reflective rates with price stability.

In contrast, RESA has proposed to introduce 90-day products to the Small Commercial supply portfolio, 25 percent at the start of DSP III and then transitioning to 75 percent by the end of the DSP III period.<sup>7</sup> Supply would be acquired via seven separate solicitations beginning in Winter 2015 and ending in Winter 2017.<sup>8</sup> RESA's primary objective is to make the Small Commercial default service supply more market-based and market-responsive. RESA alleges

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<sup>5</sup> *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Opinion and Order entered October 12, 2012 ("DSP II Final Order").

<sup>6</sup> OSBA Statement No. 2 at 2.

<sup>7</sup> RESA St. 1 at 16.

<sup>8</sup> See RESA Exhibit RJH-2.

that this approach will better support retail competition and is more consistent with Commission policy.<sup>9</sup> However, RESA is wrong on both counts.

First, RESA fails to acknowledge that the Commission has explicitly rejected RESA's argument that the "least cost" standard of Act 129 mandates that default service prices be "market-reflective" and "market-responsive" and has explicitly recognized that price stability should remain an important consideration when designing a default service procurement plan:

We disagree with RESA's overall recommendations as to the proper interpretation of the "least cost" standard as mandating that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the "prevailing market price" standard that has been expressly replaced under Act 129. Moreover, this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products, not just those that necessarily reflect the market price of electricity at a given point in time. Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives.<sup>10</sup>

...

Finally, we disagree with RESA's assertion that the "least cost" standard mandates that a default service plan be reasonably likely to result in a "market-reflective and market-responsive" service rate that recovers all costs related to providing default service. We interpret this standard, not contained in either the Competition Act or Act 129, to mean a preference for short term and spot price supplies which ignore both the Act 129 concerns of price stability and a "prudent mix" of products. We do not believe that adoption of RESA's suggested standard is consistent with the "least cost" standard contained in Act 129 and would not adequately protect retail customers from volatility and risks inherent in the energy

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<sup>9</sup> RESA Statement No. 1 at 16.

<sup>10</sup> *Default Service and Retail Electric Markets*, Docket No. L-2009-2095604, Order entered October 4, 2011 ("Final Default Service Rulemaking Order") at 39-40.

market. Price stability benefits are very important to some customer groups, so an interpretation of “least cost” that mandates subjecting all default service customers to significant price volatility through general reliance on short term pricing is inconsistent with Act 129’s objectives. This is especially true given that the statute specifically enumerates short-term (up to 4 years) and long-term (over 4 to 20 years) contracts as part of the “prudent mix” of contracts that should be included in a default service plan. 66 Pa. C.S. § 2807(e)(3.2).<sup>11</sup>

RESA’s proposal to introduce 90-day products to the Small Commercial default service supply portfolio will subject customers to unreasonable price instability in pursuit of a more market-reflective and market-responsive default service rate, which is in direct contravention of Act 129’s objectives. On that basis alone, the Commission should reject it.

Moreover, consistency with the Commission’s End State Order does not mean that RESA’s proposal for Small Commercial class procurement should be adopted in this proceeding. The End State Order may be viewed as a kind of “wish list” regarding what the Commission envisions for the future of default service. However, it is not at this time a mandate to be implemented in the current round of default service proceedings, despite RESA’s best efforts to argue the contrary. Even the Commission is not comfortable with treating the End State Order as a mandate, opting instead to seek legislative changes to avoid legal uncertainty. The Commission’s End State Order explains as follows:

While the Commission is steadfast in its view that our decisions to permit [100%] spot market approaches in specific situations are appropriate, we are concerned that a general pronouncement directing a 90-day product for residential and small business customers and an hourly LMP product for “medium” C&I customers may raise legal questions about compliance with the above-referenced provisions of the Competition Act. *To avoid any legal uncertainty, the Commission would prefer to pursue legislative amendments that clearly provide the authority to*

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<sup>11</sup> Final Default Service Rulemaking Order at 41.

*approve default service plans containing products that more closely resemble current market conditions at the time of delivery.*<sup>12</sup>

No such legislative changes have been effectuated. RESA characterizes its proposals as only a transition towards the End State Order and therefore no legislative changes are needed.<sup>13</sup> However, in the case of Small Commercial procurement, RESA's proposal would result in 90-day contracts to acquire 75% of default service supply by the end of DSP III. While not technically the 100% directed in the End State Order, RESA's proposal would leave PECO's Small Commercial default service customers with a supply portfolio much more heavily weighted towards short-term products than any other currently-approved Small Commercial default service plan.<sup>14</sup> RESA's proposals are not merely a transition to the End State Order, but are an implementation of it.

RESA also argues that legislative changes are not needed to implement the End State Order because the Commission has previously approved procurement plans consisting of only one type of product as consistent with the "prudent mix standard," *e.g.*, hourly pricing for large commercial and industrial customers and a 100% spot market procurement plan for Pike County.<sup>15</sup> However, these examples are clearly distinguishable and wholly unrelated to the Commission's statutory compliance concerns in the End State Order. The Commission is "steadfast in its view" that 100% spot market approaches are appropriate in "specific situations" like Pike County and in the case of large industrial customers. However, it is precisely RESA's

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<sup>12</sup> End State Order at 45 (emphasis added).

<sup>13</sup> RESA Statement No. 1 at 13-14.

<sup>14</sup> OSBA Statement No. 1 at 6.

<sup>15</sup> RESA Statement No. 1 at 14.

proposal to employ 90-day supply contracts for residential and small business customers (and an hourly pricing product for medium commercial customers) that gave the Commission pause and raised questions as to compliance with Act 129.<sup>16</sup>

Second, RESA incorrectly argues that adding shorter-term contracts will support retail competition when in actuality, shorter contracts are unnecessary to promote retail competition. The Small Commercial procurement portfolios in DSP II and even DSP I have successfully promoted growth in the competitive retail market.<sup>17</sup> Both the number of EGSs licensed to serve customers in PECO's service territory and the number of EGSs actually serving customers has more than doubled over the DSP I and DSP II periods.<sup>18</sup> Sixty percent of the Small Commercial class has switched to an EGS.<sup>19</sup> There is simply no convincing evidence that shorter contract term lengths will better facilitate development of the competitive retail market.<sup>20</sup> RESA's concern that EGS participation will be chilled due to potential "boom" or "bust" cycles is not supported by market evidence. In at least three different EDC territories, when EDCs had term lengths comparable to or even longer than what PECO has proposed in DSP III, large numbers of EGSs concluded they should compete for customers and those EDCs saw a significant increase in customers choosing to switch to an EGS.<sup>21</sup>

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<sup>16</sup> End State Order at 45.

<sup>17</sup> PECO Statement No. 3 at 8.

<sup>18</sup> *Id.* at 8-9.

<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 36.

<sup>21</sup> *Id.* at 37-39.

PECO's Small Commercial procurement plan of overlapping, one-year FPFR contracts properly balances the concerns of price stability and market reflective rates. The Commission should approve it.

**D. Medium Commercial Class Procurement**  
*(including potential Medium Commercial customer migration to hourly-pricing)*

As in the case of PECO's Small Commercial procurement plan, the OSBA agrees with the Company's proposed Medium Commercial procurement plan because it has proven to successfully promote growth of the competitive retail market, while still preserving some modicum of price stability for Medium Commercial default service customers. PECO proposes to acquire default service supply for its Medium Commercial procurement group through six-month, FPFR, load following contracts awarded on the basis of an RFP-based procurement.<sup>22</sup> Supply would be acquired via four separate solicitations beginning in Winter 2015 and ending in Fall 2016. The contracts would run back-to-back with no laddering and all procurements would take place no more than four months prior to delivery of the energy.<sup>23</sup> This proposal is the same as that approved for Medium Commercial procurement in DSP II, which as of May 2014 has resulted in approximately 80% of Medium Commercial customers and 85% of the Medium Commercial load being served by an EGS.<sup>24</sup> Clearly, EGS participation in the competitive retail market is extensive for this class and has not been hindered by PECO's use of six-month FPFR contracts to procure default service supply.

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<sup>22</sup> OSBA Statement No. 1 at 2.

<sup>23</sup> *Id.* at 2-3.

<sup>24</sup> PECO Statement No. 2-R at 8.

Despite this evidence, RESA disagrees with PECO's proposal and instead argues that in order to promote more retail competition, all default service supply for Medium Commercial customers without interval meters should be acquired via three-month FPFR, load following contracts. Supply would be acquired through seven separate solicitations (with the resultant additional administrative expenses), as compared to PECO's four.<sup>25</sup> Additionally, all Medium Commercial customers with interval meters would be included in PECO's Large Commercial procurement group, which receives hourly priced default service. As PECO continues to deploy interval meters during the course of the DSP III period, customers would be transferred from the fixed-price procurement group to the hourly priced procurement group at the start of the next 90-day contract period.<sup>26</sup>

In DSP II, the OSBA took the position that even six-month contracts were too short to provide reasonable price stability for Medium Commercial default service customers, but the Commission disagreed. Now, only two years later, the OSBA is concerned about any further shift away from the price stability requirement afforded by Act 129, as described above in Section IIC. The remaining Medium Commercial default service customers still rely on price stability. Thus, there is simply no rational reason to subject the small minority of Medium Commercial default service customers who have chosen not to switch to an EGS (perhaps because they have received no attractive offers) to the unreasonable rate volatility that would result from adopting RESA's proposed three-month contracts and hourly pricing.

Moreover, RESA's reliance on the End State Order as support for its Medium Class procurement proposal is misguided. RESA's proposal would implement the Commission's End State Order without the necessary enabling legislation. Medium Commercial customers with

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<sup>25</sup> OSBA Statement No. 1 at 3.

<sup>26</sup> RESA Statement No. 1 at 17-20.

interval meters would immediately receive the LMP product with the remainder transitioned to hourly pricing as PECO completes its deployment of interval meters for Medium Commercial customers.<sup>27</sup> However, the Commission specifically expressed concern in the End State Order about the legality of requiring hourly pricing for Medium Commercial customers and stated that it “would prefer to pursue legislative amendments that clearly provide the authority to approve default service plans containing products that more closely resemble current market conditions at the time of delivery.”<sup>28</sup>

In summary, RESA’s proposal is unnecessary to promote competitive retail market growth, would result in unreasonable price volatility for the few remaining Medium Commercial default service customers, and is not in compliance with the applicable statutory standards for default service. The Commission should reject it and, instead, approve PECO’s proposal.

**E. Large Commercial and Industrial Class Procurement**  
*(including potential procurements relating to Medium Commercial customers)*

The OSBA did not take a position with respect to Large Commercial and Industrial Class Procurement.

**F. Extension of Supply Contracts Beyond May 31, 2017**

The OSBA did not object to the Company’s proposal for Small Commercial Class contracts to extend six months beyond May 31, 2017. The OSBA notes that the Company’s proposed Medium Commercial Class procurement plan would not extend beyond the default service term.

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<sup>27</sup> OSBA Statement No. 1 at 5-6.

<sup>28</sup> End State Order at 45 (footnote omitted).

**G. Contingency Plans**

The OSBA did not take a position with respect to contingency plans.

**H. Uniform Supply Master Agreement**

The OSBA did not take a position with respect to the Uniform Supply Master Agreement.

**I. Other Procurement and Implementation Plan Requirements**  
*(e.g., Competitive Procurement Process, AEPS Compliance and Independent Evaluator)*

The OSBA did not take a position with respect to other procurement and implementation plan requirements.

**III. RATE DESIGN AND COST RECOVERY**

**A. Summary of Briefing Party's Position**

PECO's proposal to reconcile default service costs and revenues on a semi-annual basis should be approved because it will minimize distortions in the Price To Compare ("PTC"), therefore making it more reflective of the Company's actual costs.

The OSBA takes no position on the inclusion of certain PJM charges in a non-market based ("NMB") charge, but if a NMB rider is implemented it should be consistent with those approved for other EDCs.

**B. Reconciliation of Default Service Costs and Revenues**

The OSBA supports PECO's proposal to reconcile Small Commercial and Medium Commercial default service rates on a semi-annual basis in order to minimize distortions in the PTC.<sup>29</sup> Currently, the Company reconciles default service costs on a quarterly basis. Default

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<sup>29</sup> OSBA Statement No. 2 at 2.

service over- and under-collections tend to be consistently over or under across given time periods within the course of a full year.<sup>30</sup> As a result, such differences are naturally offsetting to some degree over a 12-month period. Due to the offsetting nature of over- and under-collections, PECO shows that a properly structured semi-annual reconciliation process will eliminate some non-market based swings in default service rates that would otherwise occur if the Company were to continue to reconcile rates on a quarterly basis.<sup>31</sup> Therefore, semi-annual reconciliation will result in a PTC more reflective of PECO's actual costs.

RESA witness Richard J. Hudson, Jr. did not address the frequency of default service reconciliation in Direct Testimony, but in his Rebuttal Testimony appears to recommend quarterly rate adjustments, consistent with his proposal to incorporate 90-day contracts into the default service supply mix.<sup>32</sup>

Given that RESA has produced no evidence that reconciling rates on a quarterly basis would produce fewer distortions in the PTC than under a semi-annual reconciliation process, its proposal should be rejected.

### **C. Recovery of Certain PJM Charges**

The OSBA does not take a position on whether certain PJM charges should be recovered through a NMB charge as proposed by RESA. However, if the Commission adopts RESA's proposal, the Commission should limit the rider to those charges that have been approved for

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<sup>30</sup> OSBA Statement No. 2 at 2.

<sup>31</sup> *Id.*

<sup>32</sup> RESA Statement No. 1-R at 4.

collection in the NMB riders of other EDCs so that NMB riders are applied on a uniform basis across the Commonwealth.<sup>33</sup>

#### **IV. STANDARD OFFER PROGRAM**

##### **A. Summary of Briefing Party's Position**

The OSBA did not take a position with respect to the Standard Offer Program.

##### **B. Operational Changes**

The OSBA did not take a position with respect to operational changes to the Standard Offer Program.

##### **C. Implementation Costs**

The OSBA did not take a position with respect to implementation costs of the Standard Offer Program.

##### **D. Standard Offer Program Collaborative**

The OSBA did not take a position with respect to a Standard Offer Program collaborative.

#### **V. OTHER ISSUES**

The OSBA did not take a position with respect to any additional issues that have not already been addressed.

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<sup>33</sup> OSBA Statement No. 1 at 7.

VI. **CONCLUSION**

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein.

Respectfully submitted,

  
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