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August 5, 2014

**Via Federal Express**

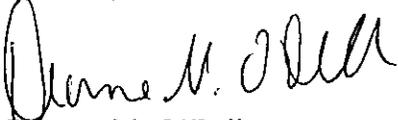
Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017; Docket No. P-2014-2409362

Dear Counsel:

Enclosed for electronic filing please find Retail Energy Supply Association's ("RESA") Initial Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Cynthia Fordham, w/enc.

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC COMMISSION**

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

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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**INITIAL BRIEF OF  
RETAIL ENERGY SUPPLY ASSOCIATION**

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

PECO Energy Company (“PECO”) proposes to implement a default service plan for the period of June 1, 2015 through May 31, 2017 (“DSP III”). In evaluating the proposals offered by PECO and the other parties, the Commission is required to approve a default service plan that complies with the Electricity Generation Customer Choice and Competition Act (the “Competition Act”) and, particularly for this plan period, the directives set forth by the Commission in its *End State Order*.

As discussed further below, PECO’s proposal do not satisfy these requirements and, therefore, must be modified consistent with the recommendations offered by the Retail Energy Supply Association (“RESA”).<sup>1</sup> Notably, PECO’s proposal makes no effort to transition to the clearly expressed directives set forth in the *End State Order* regarding the procurement plan or transitioning medium commercial customers to hourly priced products. Rather, PECO simply proposes to continue its current procurement plan. Regarding the Standard Offer Customer Referral Program (“SOP”), the record establishes that PECO’s enrollment rate is subpar and the PECO has unilaterally imposed program restrictions that may be negatively impacting the overall effectiveness of the SOP. The Commission needs to address these issue. For these and all the reasons explained further below, RESA submits that the record in this proceeding does not support adoption of PECO’s proposed default service procurement plan, rate design and cost recovery procedures as consistent with Competition Act or the Commission’s articulated goals of: (1) moving forward to restructure default service as it exists in Pennsylvania today; and, (2) incenting consumers to select alternative suppliers from the

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<sup>1</sup> RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

competitive market and urges the adoption of the various recommendations by RESA to address these concerns.

**A. Procedural History**

On March 10, 2014, PECO filed its petition to establish the terms and conditions under which it will procure default service supplies and provide default service to non-shopping customers for the period of June 1, 2015 through May 31, 2017 (“Petition”). PECO proposes to implement its third default service plan, for the period of June 1, 2015 through May 31, 2017. PECO is an electric distribution company (“EDC”) and is currently the default service provider (“DSP”) in its respective service area. The Petition was assigned to Administrative Law Judge (“ALJ”) Cynthia W. Fordham. On April 10, 2014, a prehearing conference was held by ALJ Fordham and RESA’s timely Petition for Intervention was granted. The active parties conducted discovery.

The evidentiary hearing commenced July 17, 2014 and ended that same day. In addition to PECO, the following parties submitted testimony on their behalf or otherwise participated in the hearings: RESA; the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); FirstEnergy Solutions Corp. (“FES”); Philadelphia Area Industrial Energy Users Group (“PAIEUG”); and, NextEra Energy Power Marketing LLC (“NextEra”). The following testimony on behalf of RESA submitted by Richard J. Hudson, Jr. was also admitted into the record: RESA St. 1, RESA St. 1-R and RESA St. 1-SR.

The purpose of this Initial Brief is to offer proposed modifications that will lead to a default service plan that is: (1) consistent with the goals articulated by the Commission; and, (2) necessary for the development of a properly functioning and workable competitive retail electric market in PECO’s service territory.

## **B. Legal Standards**

### **1. Burden of Proof**

Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.<sup>2</sup> It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”<sup>3</sup> A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.<sup>4</sup> Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence.<sup>5</sup> More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>6</sup>

PECO has the ultimate burden of proof in the proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable.

### **2. Standards Applicable to Default Service**

The Electricity Generation Customer Choice and Competition Act (the “Competition Act”) addresses the requirements that PECO, as EDC providing default service, must meet.<sup>7</sup> The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider, acquire electric energy through a “prudent mix”<sup>8</sup> of resources that must be designed: (i) to provide adequate and reliable

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<sup>2</sup> 66 Pa. C.S. § 332(a).

<sup>3</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>4</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>5</sup> *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

<sup>6</sup> *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

<sup>7</sup> See 66 Pa. C.S. § 2807(c).

<sup>8</sup> 66 Pa. C.S. § 2807(c)(3.2).

service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.<sup>9</sup>

The Competition Act also mandates that customers have direct access to a competitive retail generation market.<sup>10</sup> This is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the costs of generating electricity.”<sup>11</sup> Thus, a fundamental policy underlying the Code is that competition is more effective than economic regulation in controlling the costs of generating electricity.<sup>12</sup>

## II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

### A. Summary of Briefing Party’s Position

RESA recommends the following changes to PECO’s proposed default service procurement plan:

#### Residential Procurement Portfolio

- Eliminate the long-term, 53-month contracts
- Phase out reliance on longer term, 18 and 24-month contracts by introducing 3-month contracts into the portfolio and transitioning to a greater percentage of 3-month contracts by the end of the DSP III period

#### Small Commercial Procurement Portfolio

- Revise to include 25 percent, 3-month, full requirements contracts
- Eventually transition to a larger percentage (75%) of 3-month, full requirements contracts by the end of the DSP period

#### Medium Commercial Class Procurement

- Replace six-month contracts with 100% quarterly full requirements products for customers without interval meters
- Move customers with interval meters into the Large Commercial procurement group which relies on hourly priced default service

<sup>9</sup> 66 Pa. C.S. §§ 2807(e)(3.1).

<sup>10</sup> 66 Pa. C.S. § 2802(3).

<sup>11</sup> 66 Pa. C.S. § 2802(5). *See Green Mountain Energy Company, et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

<sup>12</sup> 66 Pa. C.S. § 2802(5).

## Extension of Supply Contracts

- Eliminate the 53-month contracts and the 12 and 24-month contracts extending past May 2017

### **B. Residential Class Procurement**

#### **1. Term Length And Type Of Supply Contracts**

PECO proposes to continue the overall product make-up from its current DSP II plan with a portfolio that would consist of slightly less than 40% one-year products and slightly less than 60% two-year products, with a total of 96% of the supply consisting of fixed price, full requirements products. The remaining 4% will consist of a mix of long-term products and spot market purchases. Specifically, PECO will replace its current long-term block suppliers with a new long-term, 53-month full requirements contract (consisting of 2 tranches of load) to be procured in September 2015.<sup>13</sup>

Section 2807(e)(3.2) requires that the electric power procured pursuant to Section 2807(e)(3.1) shall include a prudent mix of:

- (i) Spot market purchases.
- (ii) Short-term contracts.
- (iii) Long-term purchase contracts. . .

Section 2807(e)(3.4) requires that the “prudent mix” of contracts shall be designed to ensure: (i) adequate and reliable service; (ii) the least cost to customers over time; and, (iii) compliance with the competitive procurement requirements of Section 2807(e)(3.1).<sup>14</sup> Thus, the Competition Act requires that a “prudent mix” of spot, long-term, and short-term contracts is one which – when considered holistically – is the mix which is most reasonably likely to result in a sustainable, competitive retail market, which will ensure that all consumers receive the least cost generation over time.

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<sup>13</sup> PECO St. No. 2 at 10-11

<sup>14</sup> 66 Pa. C.S. § 2807(e)(3.1).

The best way to achieve these goals is by implementing a plan that promotes competition. Approving a plan that will promote retail competition empowers consumers to assess these risks for themselves and choose the product that best meets their individual needs and risk tolerance levels. To stimulate competition, the default service plan must produce default service rates that are market-responsive and include all costs incurred by the EDC in the provision of service. These characteristics are necessary for competitive retail suppliers to be able to compete on equal footing with the EDC's default service and offer customers truly competitive, consumer-driven alternatives to default service.<sup>15</sup> In sum, a default service rate that avoids a sustained divergence from underlying wholesale market prices is the best result to achieve the requirements of the Competition Act.

In interpreting the Competition Act, the Commission has entered various orders establishing its policies. Generally, all of these orders require EDCs to utilize a competitive procurement process designed to obtain a prudent mix of long-term, short-term and spot market supply contracts with the goal of providing the least cost to customers over time. While the Commission has indicated that there may be a benefit to default service customers of having a default service rate, the Commission has also made clear that such concerns need to be balanced with ensuring that the risk of the default service rate becoming "inconsistent with competitive rates over an extended period of time."<sup>16</sup> The Commission's most recent broad policy pronouncement regarding the structure of default service was issued on February 15, 2013 in its *End State Order*.<sup>17</sup> In the *End State Order*, the Commission addressed many issues related to default service procurement plans and clearly articulated its preferred policy approach on these issues.

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<sup>15</sup> RESA St. No. 1 at 9-10.

<sup>16</sup> *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-20122-2273650, P-20111-2273668, P-20111-2273669, P-20111-2273670, Opinion and Order entered August 16, 2012 at 25. ("FE DSP II Order").

<sup>17</sup> *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. 1-2011-2237952, Final Order entered February 15, 2013 ("End State Order").

RESA is concerned that PECO's proposed procurement mix will not result in default service prices that are sufficiently market reflective over time as required by the Competition Act and consistent with the Commission's directives in the *End State Order*. A sustainable market design for default service needs to ensure that a default service rate bears a rational relationship to the market price for energy. The more reliance the procurement plan places on contracts extending a year or longer, 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. Such a result would inhibit the development of a fully functional competitive retail market and is, therefore, inconsistent with the Competition Act.<sup>18</sup> Therefore, RESA recommends that PECO's proposal be revised to: (1) eliminate the long-term, 53-month contracts; and, (2) phase out reliance on longer term, 18 and 24-month contracts by introducing 3-month contracts into the portfolio and transitioning to a greater percentage of 3-month contracts by the end of the DSP III period.<sup>19</sup>

*a. Elimination of the 53-month product*

As set forth in RESA Witness Hudson's direct testimony, PECO's initial proposal to include 53-month products is contrary to the Commission's stated goals for default service is problematic for retail competition and could increase risk premiums in the default service bid prices.<sup>20</sup> Upon review of the testimony of RESA and OCA regarding elimination of the 53-month product from the residential portfolio, PECO stated that it was willing to replace the two tranches of 53-month product with two tranches of 24-month full requirement products.<sup>21</sup>

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<sup>18</sup> 66 Pa. C.S. §§ 2802(5).

<sup>19</sup> RESA St. 1 at 3-4; RESA Exhibit RJH-2.

<sup>20</sup> RESA St. No. 1 at 15; Elimination of the 53-month contracts would also address RESA's concern about entering into supply contracts that extend beyond May 31, 2017 as discussed in Section II.F.

<sup>21</sup> PECO St. No. 2-R at 6.

RESA supports eliminating the 53-month product but agrees with OCA that PECO should not utilize 24-month contracts as the replacement.<sup>22</sup> Rather, RESA can support OCA's proposal to rely upon spot market supplies. Alternatively, to eliminate the need for forward projections and true-ups of the spot marketing pricing component, RESA could support distributing the 4% of supply from the 53-month products across the other fixed price, full requirements contracts being procured.<sup>23</sup> Either way, the removal of the 53-month products is a positive step forward that would be diminished by PECO's revised proposal to replace the contracts with 24-month contracts because 24-month contracts still raise the concerns discussed in the Section I.A.1.b related to the over-reliance on longer term contracts. Consistent with this viewpoint, the Commission has acknowledged that including even a small portion of two-year full requirements contracts in the residential default service procurement:

. . . would result in a disconnect between the PTC and market prices. While the two-year procurements proposed by the OCA certainly would provide a measure of rate stability, we do not believe that this proposal would best balance the goal of price stability with the least cost over time requirement.<sup>24</sup>

For these reasons, RESA recommends that PECO's revision to remove the 53-month products be adopted but PECO's suggestion to replace them with 24-month contracts be rejected. Instead, the supply (approximately 4%) that would have been procured through the 53-month products should be distributed across the other fixed price, full requirements contracts being procured or procured from spot market supplies.

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<sup>22</sup> RESA St. No. 1-R at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Petition of Duquesne Light Company for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket No. P-2012-2301664, Opinion and Order entered January 25, 2013 at 38.

**b. Phase Out Reliance On Longer Term, 18 And 24-Month Contracts And Transition To A Greater Percentage Of 3-Month Contracts**

RESA recommends that 3-month contracts be introduced into the residential portfolio and that PECO transition to a greater percentage of 3-month contracts by the end of the DSP III period.<sup>25</sup> PECO, OCA, and OSBA all oppose RESA's proposal. According to PECO, introducing more short-term contracts into the residential commercial class will lead to: (1) exposing customers to substantial price volatility; and, (2) increased administrative costs as PECO will need to conduct four solicitations per year.<sup>26</sup> OCA and OSBA also claim that RESA's proposed changes are inconsistent with the Competition Act and/or cannot be approved without legislative changes.<sup>27</sup> None of these arguments provide valid justification for rejecting RESA's recommendations.

**i. Impact On Price Of Shorter Term Contracts**

The concerns over volatility are overreaching and place too much emphasis on just one component of pricing – its ability to change. Price volatility can be managed even with quarterly procurements as 3-months is longer than a typical "spike" event (such as the Polar Vortex). In fact, Chairman Powelson and Vice Chairman Coleman made clear at the time of the *End State Order* that they believed the 3-month default service product would "likely decrease the volatility felt by customers."<sup>28</sup> Quarterly reconciliation also helps to offset the impact of price variations and helps ensure that there is a market responsive default service product. As such, the addition of 3 month contract still results in a relatively stable platform for the PTC<sup>29</sup> and is still a "prudent mix" within the meaning of the statute.

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<sup>25</sup> RESA St. No. 1 at 11.

<sup>26</sup> PECO St. No. 2-R at 5-6

<sup>27</sup> OCA St. No. 1-R at 3-4; OSBA St. No. 1 at 4-5.

<sup>28</sup> PECO Cross Exam Exhibit No. 2 at 3 (emphasis original).

<sup>29</sup> The lack of reliance on 3 months contracts does nothing to mitigate the risk of adverse price impacts from purchases made in unfavorable market conditions but the over reliance on longer contracts does increase the risk premium imbedded in the bid price by the wholesale default supplier.

Nonetheless PECO claims that 3-month contracts would create too much price instability and rejects any attempt to incorporate such contracts into the portfolio.<sup>30</sup> Specifically, PECO Witness Fisher purports to show that residential customers would experience "increased rate instability" if PECO were to adopt a portfolio with product term lengths similar to RESA's recommendation.<sup>31</sup> Such testimony misses the point. It merely shows that RESA's proposal would permit the underlying commodity price to move up or down on a quarterly basis consistent with the market price.<sup>32</sup> In contrast, PECO's proposed reliance on 12-month and longer contracts would not permit the underlying commodity price to change quarterly consistent with the market price.<sup>33</sup> PECO's proposal would only permit the underlying changes in the commodity price to be reflected in the PTC nearly half as often as RESA's proposal to reflect prices that are market-responsive on a more real time basis. It follows, then, that PECO's proposal will do nothing more than insulate residential consumers from market conditions and rates that are market responsive – a result inconsistent with the expressed directives of the Commission. While RESA does not necessarily dispute that some customers may value price stability – even if that stable price is higher than the market price – the role of default service is not to provide that one particular product type. In fact Chairman Powelson and Vice Chairman Coleman specifically addressed concerns over price volatility resulting from the use of 3-month contracts and concluded:

. . . transition customers that remain on default service to a more market-based pricing will not harm those customers. Further, customers wanting price stability have every opportunity to purchase such a product from a competitive supplier in the form of a fixed-price product.<sup>34</sup>

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<sup>30</sup> PECO St. No. 2-R at 8-9.

<sup>31</sup> PECO St. No. 3-R at 7-11.

<sup>32</sup> Tr. 134-135.

<sup>33</sup> PECO St. No. 3-R at 2, 7.

<sup>34</sup> Chairman Powelson and Vice Chairman Coleman explicitly noted this in their Joint Statement to the *End State Order*. PECO Cross Exam Exhibit No. 2 at 4 ("Further, customers wanting price stability have every opportunity to purchase such a product from a competitive supplier in the form of a fixed-price contract.")

Rather than continuing to get mired in this already settled debate, the Commission should stay the course in ensuring that the default service plan is reasonably calculated to produce a market-responsive, market-reflective rate to encourage competitors to enter the market, prevent opportunities for “boom/bust” cycles and provide a variety of products and services (including a higher priced, but stable product). This will allow consumers to identify which product best meets his or her own desires.<sup>35</sup>

The fundamental policy question being raised by PECO is how “fixed” should the default service price be for residential customers. The Commission has answered this question.<sup>36</sup> The Commission has expressed on several occasions its concern with relying too heavily on longer term products. The Commission has recognized the negative impacts on the retail market when default service prices become divorced from current market prices, and the potential for such a situation to result in a “boom” or “bust” business cycle.<sup>37</sup> As such, the Commission has rightfully recommended a progression to a more market responsive default service product; namely, transition to 100% quarterly contracts.

Acceptance of PECO’s proposal would be a step backward from the stated policy direction of the Commission. PECO’s proposed procurement plan for DSP III makes no effort to transition to quarterly contracts as it does not contain any 3-month contracts for the residential class. PECO should find no safe haven in the Commission’s approval of FirstEnergy Companies’ current default service procurement plan (FE DSP II) or RESA’s recommended approach for that proceeding to utilize a mixture of 12 and 24 month contracts.<sup>38</sup> The Commission approved the FE DSP II plan on August 2, 2012<sup>39</sup> – six months prior to the Commission’s stated policy direction in the *End State Order*. In

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<sup>35</sup> RESA St. 1-SR at 7.

<sup>36</sup> *End State Order* at 23-24.

<sup>37</sup> *Id.* at 14-15.

<sup>38</sup> *FE DSP II Order* at 25-26; PECO Cross Exam Exhibit No. 1.

<sup>39</sup> The proposed default service plan was filed on November 17, 2011 – fifteen months prior to the *End State Order*.

addition, the competitive environment in PECO's service territory today is different than it was at the time of its last default service procurement proceeding and PECO is now in a different position than the FirstEnergy Companies in their last default service procurement proceeding. Notably, by approving the FirstEnergy DSP II plan, the Commission rejected the proposal by the FirstEnergy Companies to rely exclusively on 24-month contracts, and – instead – approved a mixture of 12 and 24 month contracts.<sup>40</sup> In contrast, PECO's current DSP II plan includes a mixture of 12 and 24 month contracts and the plan PECO proposes here for DSP III merely continues that mixture rather than providing for a natural progression towards more reliance on quarterly contracts consistent with the Commission's stated policy direction in the End State Order.

In further opposition to RESA's recommended changes, PECO takes the position that there is sufficient competition in PECO's territory, that this sufficient competition developed during the prior DSP periods relying on procurement contracts similar to what PECO is proposing so no further market progression in terms of shorter procurement contracts is not warranted.<sup>41</sup> This argument, however, is as shortsighted as it is unavailing. Only a minority of residential and small commercial customers (i.e. "mass market customers") are shopping.<sup>42</sup> As PECO Witness Fisher testified, the history of shopping for PECO generally shows that approximately 20% of PECO's mass market customers shopped with the removal of rate caps and, since that time, this number has increased by only another 15% meaning that approximately 65% of PECO's mass market customers continue to receive default service.<sup>43</sup> While Mr. Fisher would refused to concede that this level of shopping is less than ideal, a market where only one third of an EDC's mass market customers are shopping is not a fully functional competitive market and there is definitely room for improvement. This conclusion is consistent with

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<sup>40</sup> *FE DSP II Order* at 25-27.

<sup>41</sup> PECO St. No. 3-R at 11-13.

<sup>42</sup> RESA St. No. 1-SR at 9.

<sup>43</sup> Tr. at 100.

the Commission's pronouncements in the *End State Order* making clear that changes to the market structure are needed:

In launching this Investigation in April 2011, the Commission recognized the need to assess the current status of the retail electric market and explore changes that may be needed to allow customers to more fully realize the benefits of competition. Following a review of comments and testimony offered at the June 8, 2011 *en banc* hearing, the Commission reached the "inescapable conclusion that Pennsylvania's current retail market requires changes in order to bring about the robust competitive market envisioned by the General Assembly when it passed" the Competition Act. *July 28 Order*, page 7.

While shopping statistics alone are not indicative of the success of a competitive market, we note that, as of February 13, 2013, nearly two-thirds of Pennsylvania's electric customers still received electric generation supply from their EDCs. Despite a large number of EGSs in the market, many offers are only slightly below each EDC's PTC and few innovative product offerings have emerged to date that attract residential and small commercial customers into the competitive retail market.<sup>44</sup>

Notably, the shopping statistics for the large commercial and industrial customers are significantly more impressive than those for the mass market. For the large commercial and industrial customers, approximately 90% are receiving service from a competitive supplier. Mr. Fisher did acknowledge that one of the reasons for the significant different in shopping statistics for these customers versus the mass market customers is that the industrial customers receive a real time hourly product.<sup>45</sup> By adopting RESA's recommendations regarding the procurement plan for mass market customers, the Commission will be moving closer to establishing a more market responsive and market reflect default service rate which would encourage a more robust development of the competitive market.<sup>46</sup>

OCA Witness Hahn and OSBA Witness Kalcic also testify that RESA's proposed changes to the residential plan are inconsistent with the Competition Act and/or cannot be approved without

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<sup>44</sup> *End State Order* at 11-12 (footnote omitted).

<sup>45</sup> Tr. at 107.

<sup>46</sup> Mr. Fisher did concede that in studying the competitiveness of PECO's market, he did not take into account whether EGSs are offering innovative products beyond just energy supply. Tr. at 104.

legislative changes.<sup>47</sup> They also claim that the Commission, in its *End State Order*, conditioned this movement to shorter term contracts on receiving legislative changes. To be clear, 3-month contracts are not illegal or otherwise inconsistent with the Competition Act. Nothing in either the text or the spirit of the Competition Act precludes reliance on 3-month contracts. Reliance on 3-month contracts is entirely consistent with existing statutory default service standards. Two examples support this point.

First, for the large commercial and industrial class for every major Pennsylvania EDC, the Commission has found that hourly pricing (essentially a 100% spot market based portfolio) meets the prudent mix standard. Second, for Pike County Power & Light, the Commission has found a 100% spot market procurement plan to be consistent with the prudent mix standard.<sup>48</sup> That decision was upheld by the Appellate Courts. If the Commission did not have the statutory authority to implement such a plan, then it would not have survived appellate review. Also of significance is the fact that the appellate decision regarding Pike County Power & Light was issued on December 31, 2013 – approximately ten months after the Commission entered its *End State Order*. Therefore, even if at the time of the *End State Order* the Commission was viewing legislative changes as a necessary component (RESA does not concede this point), the Commonwealth Court’s approval of an exclusive spot market plan for Pike County Power & Light firmly resolved any such concerns. Simply put, if 100% spot market procurement plan is consistent with the existing statutory default service standards, then there is absolutely no basis to believe that the partial reliance on 3-month contracts, as proposed by RESA, is unlawful or otherwise inconsistent with the existing statutory default service standards. This same argument holds true for RESA’s procurement recommendations for the other customer

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<sup>47</sup> OCA St. No. 1-R at 3-4; OSBA St. No. 1 at 4-5.

<sup>48</sup> *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, 2012 Pa. PUC LEXIS 832 (Opinion and Order entered May 24, 2012), *aff’d Popowsky v. Pennsylvania Pub. Util. Comm’n*, 71A.3d1112 (Pa. Commw. Ct. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

classes, including 3-month contracts for the Small Commercial group and expanding hourly pricing for Medium Commercial customers above 100 kW as discussed further below.

For all these reasons, RESA's proposed procurement plan changes are consistent with the Competition Act, the Commission's clear directives in the *End State Order* and should be adopted.

ii. ***Administrative Costs***

PECO also objects to the use of 3-month contracts because they would require additional procurement events which may add some administrative costs.<sup>49</sup> PECO Witness McCawley has misunderstood RESA's proposal, which does not rely on holding four (4) procurement events per year. RESA's proposed procurement plan would hold three (3) solicitations per year. While this may increase administrative costs, RESA does not agree with PECO's claim that additional solicitations would result in doubling the costs.<sup>50</sup> As many of the administrative costs are legal fees, consulting fees and other one-time costs incurred through the DSP litigation process, these costs would not be impacted by additional solicitation events.<sup>51</sup>

2. **Procurement Schedule**

OCA recommends that PECO's proposed September solicitation for the 53-month product be eliminated and that PECO move the February 2015 and 2016 solicitations to March 2015 and 2016.<sup>52</sup> RESA agrees that the 53-month product solicitation should be eliminated consistent with the discussion above in Section I.A.1.a. RESA does not oppose OCA's proposal to delay the timing of the other solicitations to March as long as this delay does not delay PECO's process for calculating and posting the new PTC.

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<sup>49</sup> PECO St. No. 2R at 8-9

<sup>50</sup> RESA St. No. 1-SR at 8.

<sup>51</sup> *Id.*

<sup>52</sup> OCA St. No. 1 at 9-12.

### **C. Small Commercial Class Procurement**

For Small Commercial customers, PECO proposes no changes to the current procurement plan (DSP II) for these customers which relies on full requirements fixed price one-year products overlapping on a semi-annual basis that would be procured approximately two to four months prior to delivery.<sup>53</sup> Rather than maintain the current status quo into the DSP III period, RESA recommends that the procurement plan for Small Commercial customers be revised to include 25 percent, 3-month, full requirements contracts in the supply portfolio at the start of DSP III and eventually transitioning to a larger percentage (75%) by the end of the DSP period.<sup>54</sup> The reasons in support of this recommendation are set forth above in Section I.A.1.b.

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

For Medium Commercial customers, PECO: (1) proposes that all load would be supplied through half-year (6-month) fixed price full requirements products without overlap and would be procured approximately two to four months prior to delivery; and, (2) requests that the Commission grant it a waiver *End State Order* to maintain this proposed procurement approach for customers with interval meters and peak demands above 100 kW.<sup>55</sup>

RESA does not support PECO's proposals and recommends instead that: (1) for those Medium Commercial customers without interval meters, 100% quarterly full requirements products be procured instead of six-month contracts; and, (2) for those with interval meters, they be moved into the Large Commercial procurement group which relies on hourly priced default service (and those that have interval meters installed during the DSP III period would be moved at the start of the next 90-day

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<sup>53</sup> PECO St. No. 2 at 12

<sup>54</sup> RESA St. No. 1 at 16; RESA Exhibit No. RJH-2.

<sup>55</sup> PECO St. No. 2 at 7-8, 12.

contract period).<sup>56</sup> Both PECO and OSBA's opposition to RESA's recommendations should be rejected.

1. **Procuring 100% quarterly full requirement products for Medium Commercial customers without interval meters**

PECO seems to argue that the Medium Commercial group, consisting of fairly large and sophisticated business customers, should continue to have default service pricing that shields such customers from price volatility.<sup>57</sup> For the reasons explained above in Section I.A.1.b, procuring 100% quarterly full requirements products for Medium Commercial customers without interval meters is consistent with the Competition Act and the stated policy direction of the Commission set forth in the *End State Order*.<sup>58</sup> It is also a reasonable procurement plan pending these customers' transition to the hourly pricing default service model and addresses PECO's stated concerns about additional risk premiums as discussed further below in Section I.A.1.b. Rather than focus on the transitional procurement plan for these customers, focus should be on moving them to the hourly priced procurement class as soon as possible because doing so is a more appropriate default structure for them as they are more aligned with large commercial customers (who are significantly shopping now) than the mass market. As RESA Witness Hudson testified:

Hourly pricing is a more sustainable default service design because it avoids the "boom" or "bust" business cycle that can result in periods of time where retail competition is stifled because longer term fixed price, utility-provided default service fails to reflect current market conditions. Hourly pricing also benefits customers and achieves broader public policy goals by providing more accurate price signals that can better encourage energy conservation and demand response.<sup>59</sup>

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<sup>56</sup> RESA St. No. 1 at 4; RESA Exhibit RJH-2.

<sup>57</sup> PECO Statement 2R at 8-9.

<sup>58</sup> *End State Order* at 29-30.

<sup>59</sup> RESA St. No. 1 at 20-21.

2. **Moving Medium Commercial Customers At Or Above 100kw To The Large Commercial And Industrial Class Procurement Group**

In the *End State Order*, the Commission directed that “in the next round of default service plans that begin on June 1, 2015, we expect that EDCs will offer only hourly LMP to medium and large C&I customers with interval meters.”<sup>60</sup> The Commission also directed that EDCs continue to move these customers to the hourly pricing group “as interval meters are deployed.”<sup>61</sup> PECO seeks a waiver from this requirement.<sup>62</sup> PECO argues that it would be too complicated to effectuate this change during the DSP III period – even though interval meters for all customers in this group will be installed even prior to DSP III – due to the need to coordinate and test the information system infrastructure. PECO also argues that moving Medium Commercial customers with interval meters into the Large Commercial hourly priced procurement would increase risk premiums in the wholesale supply contracts.<sup>63</sup> OSBA appears to argue that RESA’s proposal for Medium Commercial customers with interval meters would “effectively implement the Commission’s End State Order” even though, according to OSBA Witness Kalcic, the Commission in that same order concluded that legislative changes were a necessary precondition to such result.<sup>64</sup>

a. ***Technical Deployment Issues***

The total number of customers in the 100 kW to 499 kW groups is 5,222. Of these customers, PECO has already installed interval capable meters to 974 and PECO Witness McCawley testified that the advanced meters for the remaining Medium Commercial customers will be installed by spring 2015.<sup>65</sup> Notwithstanding the current and planned installation of interval meters before the June 1, 2015 start date of DSP III, PECO claims that it cannot move these customers until after it has completed testing, implemented back office and other information, technology systems and integrated the meters

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<sup>60</sup> *End State Order* at 29.

<sup>61</sup> *Id.* at 31-32.

<sup>62</sup> PECO St. No. 2-R at 9.

<sup>63</sup> *Id.* at 10.

<sup>64</sup> OSBA St. No. 1 at 4-6.

<sup>65</sup> RESA Exhibit No. RJH-3; Tr. at 65.

with PECO's billing system.<sup>66</sup> Mr. McCawley does testify, though, that the information infrastructure would be available by about June 2016.<sup>67</sup> Notwithstanding this, PECO opposes moving Medium Commercial customers at or above 100 kW to the Large Commercial and Industrial Class procurement group during the DSP III period and makes no commitment about when this movement might occur beyond the DSP III period.

PECO's arguments to delay the implementation of hourly pricing for the over-100 kW Medium Commercial customers should be rejected. PECO should be directed to comply with the *End State Order* and implement hourly pricing for these customers by June 2015. PECO's concerns about needing additional time to develop the back office systems to support hourly pricing are not a sufficient reason to justify the requested delay. PECO has had sufficient notice about this issue to make the necessary preparations as part of its advance metering deployment plans. The Commission's *End State Order* directing EDCs to make this change was issued in February 2013. This order followed the Retail Markets Investigation process that began in 2011. If PECO had operated prudently, then it would have planned its schedule to accommodate the change effective June 1, 2015. PECO was the recipient of over \$200 million in federal stimulus grants for its advanced meter deployment plans. PECO has also been granted nearly \$400 million in ratepayer funding for the remaining costs.<sup>68</sup> Therefore, RESA supports directing PECO to implement this customer move effective June 1, 2015 without granting additional cost recovery beyond what was approved for PECO's AMI plan.

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<sup>66</sup> Tr. at 65.

<sup>67</sup> *Id.* at 68.

<sup>68</sup> See *Petition of PECO Energy Company for Approval of its Smart Meter Universal Deployment Plan*, Docket No. M-2009-2123944 (Petition filed January 18, 2013) (approved as modified by the Joint Petition for Settlement by Order entered August 15, 2013).

*b. Concerns Regarding Increased Risk Premiums*

RESA's proposal mitigates any concern regarding increased risk premiums for the Medium Commercial class, by relying on three-month contracts during the transition and by identifying the customers for the hourly pricing group before any solicitations take place for those customers. Because PECO's interval meter installation will take place before June 2015, all customers impacted by the transition to hourly pricing (those over 100 kW) can be identified as new hourly pricing customers before the first solicitations take place. This would effectively eliminate the need for PECO to conduct any fixed price, full requirements solicitations for Medium Commercial customers under the DSP III plan. Because such customers would be transitioned to the Large Commercial group at the beginning of the DSP III period any concerns over increased administrative costs for additional procurement events for this class also become moot. This is because all of the full requirements solicitations for the Medium Commercial group would be eliminated upon the transition.

However, if for some reason there will remain some Medium Commercial customers without interval metering capability, then, as new Medium Commercial customers receive interval meters, they would be moved into the hourly priced group on a quarterly basis and they would be transferred before the next three-month wholesale contract is solicited. This would eliminate any impact on existing wholesale contracts and mitigate any concerns over risk premiums.<sup>69</sup> This approach to move customers as the meters are deployed is consistent with the clear directives of the Commission in the *End State Order*.<sup>70</sup> Concerns about increased risk premiums can be completely eliminated in consideration of the current status of installed interval meters and the transition plan recommended by RESA.

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<sup>69</sup> RESA St. No. 1-SR at 11.

<sup>70</sup> *End State Order* at 32.

*c. Arguments Regarding Legislative Changes*

OSBA's claim that the Commission concluded in the *End State Order* that legislative changes were a necessary precondition to adopting 3-month contracts for Small Commercial customers and moving Medium Commercial customers into the hourly priced group is too narrowly focused. In the *End State Order*, the Commission makes clear its view that "spot market approaches in specific situations are appropriate" but that it would "prefer to pursue legislative amendments that clearly provide the authority."<sup>71</sup> Nothing in the *End State Order* prohibits the movement of medium commercial customers to the hourly priced procurement group or requires awaiting legislative changes. Notably, as discussed above in Section I.A.1.b.i, following the *End State Order*, the Commission's decision to rely on a 100% spot market procurement plan for Pike County Power & Light was upheld by the Commonwealth Court with the Supreme Court declining to review.<sup>72</sup> Thus, the Commission's authority pursuant to the Competition Act – as it is written – to move medium commercial customers to the hourly priced procurement class class (or to adopt 3-month contracts for smaller customers) is clear.

Additionally, even if one were to accept OSBA's legal argument, for the sake of argument, it should be noted that OSBA's preferred procurement plan for the Medium Commercial class would not survive the OSBA's own legal standard. The OSBA's legal argument is that the Commission requires legislative authority to move to quarterly contracts for smaller customers or to move to hourly pricing for over-100 kW customers. The only theoretical rationale to support this view, however, is that the existing statutory standards require a "prudent mix" of contracts notwithstanding the fact that OSBA's

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<sup>71</sup> *Id.* at 45 (emphasis added).

<sup>72</sup> *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, 2012 Pa. PUC LEXIS 832 (Opinion and Order entered May 24, 2012), *aff'd Popowsky v. Pennsylvania Pub. Util. Comm'n*, 71A.3d1112 (Pa. Commw. Ct. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

preferred procurement plan appears to be PECO's proposal for 100% six month contracts.<sup>73</sup> Similar to RESA's proposal, this OSBA preferred procurement plan uses 100% of a single product type. Consequently, the OSBA is attempting to have it both ways. If a procurement plan that relies 100% of six month contracts is consistent with statutory standard, then so too is a plan that relies on 100% quarterly contracts or 100% spot market supply. As explained previously, the Commission and the courts have already determined that this "prudent mix" standard need not include each and every type of contract (spot market, short term and long term). Accordingly, OSBA's legal arguments must be rejected.

**E. Large Commercial And Industrial Class Procurement (Including Potential Procurements Relating To Medium Commercial Customers)**

PECO proposes to maintain its current procurement approach for the Large Commercial and Industrial Class which provides 100% hourly priced full requirements service that is competitively bid out and ultimately supplied by the winning wholesale default service supplier.<sup>74</sup> RESA supports the continued provision of hourly priced default service to the larger commercial class (and to those Medium Commercial customers who have or receive interval meters during the DSP II plan period consistent with the discussion above in Section II.D.2).

Regarding the transition of Medium Commercial customers between 100 kW and 499 kW to the Large Commercial and Industrial procurement class, discussed above in Section I.A.1.a, PECO will have interval meters deployed for the entire over-100 kW group by early 2015. Thus, it appears possible that the Medium Commercial can be moved into the Large Commercial group before the start of the DSP III period, i.e. June 1, 2015. This would eliminate any need to transition customers into the Large Commercial group during the DSP III term and would eliminate the need to move to quarterly contracts for such hourly priced products. Therefore, if the Commission directs PECO to implement

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<sup>73</sup> OSBA St. No. 1 at 2-6.

<sup>74</sup> PECO St. No. 2 at 8-13.

this change by June 2015, none of the concerns over increased risk premiums or increased administrative costs raised by PECO as implicated by revising the Large Commercial contracts to 3-month products would materialize.

If, however, the Commission concludes that the Medium Commercial customers do need to be transitioned to the Large Commercial group during the DSP III period, then RESA does not have a policy preference regarding whether the hourly priced default service supply is bid out as 3-month or 12-month contracts because the underlying pricing mechanism is tied to the prevailing wholesale LMPs and, therefore, there is no advantage in terms of market responsiveness to shortening the contract duration for this product.<sup>75</sup> However, and in response to PECO's expressed concern about how transitioning Medium Commercial customers between 100 kW and 499 kW to the Large Commercial and Industrial procurement group during the DSP III period could impact the bid from wholesale default service suppliers, RESA suggested that the hourly priced contracts could be bid out as quarterly contracts instead of as 12-month contracts to address this issue.<sup>76</sup>

PECO raises objections to bidding out the hourly priced product as 3-month contracts instead of 12-month contracts claiming: (1) more frequent procurements would increase the costs for these customers; and, (2) such change could lead to failed procurements due to low bidder interest.<sup>77</sup> As Mr. Hudson testified, however, the chance of additional risk premiums for the Large Commercial, hourly priced product bid out as 3-month contracts is very low given the nature of the product. Because the hourly priced service is a pass through of prevailing spot market prices, a wholesale supplier serving hourly priced load would be able to accommodate new, incoming customers on the hourly priced

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<sup>75</sup> RESA St. No. 1 at 23.

<sup>76</sup> *Id.* at 21-23.

<sup>77</sup> PECO St. No. 2-R at 10.

service without having to enter into fixed price hedges to support the new load. This is a very different situation than modifying the procurement group for a fixed price product.<sup>78</sup>

Regarding a lack of bidder interest resulting in a failed procurement for this customer class due to the use of 3-month instead of 12-month contracts, such a hypothetical potential is not a sound basis upon which to dismiss this option. First, there are procedures in place to address a failed procurement if it were to occur. By way of example, when 7 of the 33 available hourly priced tranches for PECO's large commercial customers were unsubscribed in the fall of 2010 for PECO's first default supply period following the expiration of generation rate caps (January 1, 2011), PECO was directed to solicit bids in its next regularly scheduled the next RFP process.<sup>79</sup> PECO was able to do so with no reported issues.<sup>80</sup> Also of note regarding this solicitation from 2010 is that the large commercial customers' procurement contracts were for 17-month products, i.e. longer than PECO's proposal here for 12-month products.<sup>81</sup> Thus, this one example of a failed procurement for some of the hourly priced tranches that involved 17-month contracts procured just after the expiration of generation rate caps does not provide support for the view that shorter procurement contracts – 3-months – would similarly be unsubscribed.

Notwithstanding all of this, because RESA does not have a policy preference regarding whether the hourly priced default service supply is bid out as 3-month or 12-month contracts, if the Commission is persuaded by PECO, the Commission could maintain the 12-month contract terms proposed by PECO.<sup>82</sup>

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<sup>78</sup> RESA St. No. 1-SR at 12-13.

<sup>79</sup> PECO Cross Exam Exhibit No. 3.

<sup>80</sup> See Secretarial Letter dated May 4, 2011 at Docket No. P-2008-2062739 approving the bid results, *intra alia*, for Large Commercial and Industrial customers who receive default service from PECO during the period June 1, 2011 through December 31, 2012 including a Full Requirements Spot Price RFP process.

<sup>81</sup> See October 14, 2010 PECO Procurement; Fall 2010 Solicitation Results at 3, Table 3 available at: <http://www.pecoprocurement.com/index.cfm?s=background&p=archivesResults&archiveTypeId=4> The supply period for the Spot-Price product for Large Commercial customers was from January 1, 21011 to May 31, 2012.

<sup>82</sup> RESA St. No. 1-SR at 13.

## F. Extension Of Supply Contracts Beyond May 31, 2017

RESA does not support extending supply contracts beyond May 31, 2017 which is the end of the DSP III plan period and, therefore, recommends eliminating the 53-month contracts and the 12 and 24-month contracts extending past May 2017.<sup>83</sup> In opposition to this position, PECO claims that: (1) there is time available for possible adjustments to PECO's procurement plan if a different default service model is adopted; and, (2) a hard stop would increase rate instability and risks to customers.<sup>84</sup>

RESA does not support the use of any default service contracts, regardless of the term, that extend beyond the expiration date of the default service plan term because doing so would likely be a hindrance to the Commission's efforts to establish and implement a new default service structure.<sup>85</sup> In the *End State Order*, the Commission stated that "it is appropriate to establish June 1, 2015" as the implementation date for the new default service model described in the order.<sup>86</sup> Permitting contracts to extend beyond the DSP III period would threaten the Commission's ability to modify the default service structure, consistent with its stated intentions in the *End State Order*. While PECO claims that its proposed procurement plan could be altered to make necessary adjustments, the least complicated course of action would be to plan for such likelihood to ensure the most smooth process is available for all stakeholders. By adopting RESA's recommended modifications to the length and supply contracts and the timing of the solicitations, PECO would be better positioned to facilitate any future changes in default service policy that may occur during the DSP III period.<sup>87</sup> Therefore, adopting a forward-looking procurement plan that can easily accommodate future changes supports adopting RESA's recommended changes to the procurement plan proposed by PECO.

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<sup>83</sup> RESA St. No. 1 at 15; RESA St. No. 1-R at 10-11.

<sup>84</sup> PECO St. No. 2-R at 8; PECO St. No. 3-R at 15. OCA similarly takes the position that if, because of a hard stop, PECO is required to procure 100% of its residential default service power supplies at a time of high market prices, additional price volatility will occur. OCA St. No. 1-R at 3.

<sup>85</sup> RESA St. No. 1 at 11; RESA St. No. 1-SR at 2.

<sup>86</sup> *End State Order* at 48.

<sup>87</sup> RESA St. No. 1 at 15-16.

## **G. Contingency Plans**

OCA makes two recommendations regarding the contingency plan: (1) if an RFP solicitation fails to attract adequate supplier interest, then PECO and the Independent Evaluator should contact suppliers to determine the lack of supplier participation and PECO should then re-issue the RFP in an attempt to secure adequate supply; (2) if PECO is unable to find a supplier for the necessary supply, then OCA recommends that PECO use block and spot purchases (instead of 100% spot purchases) as a contingency plan.<sup>88</sup>

Regarding OCA's first recommendation, RESA believes it is reasonable for PECO and the Independent Evaluator to contact suppliers so that beneficial changes to the Supply Master Agreement ("SMA"), timing of solicitation or other aspect of the process may be made. RESA, however, does not support OCA's second recommendation that PECO utilize block and spot purchases as a contingency plan absent formal Commission approval of the contingency procurement plan.<sup>89</sup> RESA does not support the use of block and spot purchases because they act to further divorce the price of default service from the market price which, as explained further in Section I.A.1.b, is inconsistent with the Competition Act and the Commission's stated policy directives in the *End State Order*.

## **H. Uniform Supply Master Agreement**

As discussed further below in Section III.C, RESA recommends that PECO assume the responsibility for these PJM charges for all load, i.e. default service load and shopping load, and recover the costs of these obligations on a non-bypassable basis from all customers. Adoption of this recommendation would require changes to the provisions of the SMA that address the wholesale default supplier's cost obligation with respect to these charges.

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<sup>88</sup> OCA St. No. 1 at 17-18.

<sup>89</sup> RESA St. No. 1-R at 3.

**I. Other Procurement And Implementation Plan Requirements (E.G., Competitive Procurement Process, AEPS Compliance And Independent Evaluator)**

RESA has no position on these issues.

**III. RATE DESIGN AND COST RECOVERY**

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

RESA supports quarterly rate adjustments to account for the inclusion of new default service supplies in the PTC on a quarterly basis and recommends that PECO assume the responsibility for certain PJM charges for all load, i.e. default service load and shopping load, and recover the costs of these obligations on a non-bypassable basis from all customers.

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

Currently, PECO uses a quarterly reconciliation methodology for its default service rates as directed by the Commission in the *PECO DSP II Order*.<sup>90</sup> For DSP III, PECO proposes to reconcile the over/under collection component of the GSA known as the "E-Factor" for residential, small commercial and medium commercial customers on a semi-annual basis.<sup>91</sup> OCA recommends the following two changes to the cost recovery reconciliation mechanism: (1) align the reconciliation adjustment rate changes with the same dates that the default service rate changes due to the expiration/renewal of underlying supply contracts; and, (2) utilize a 12-month rolling average reconciliation period instead of the semi-annual reconciliation proposed by PECO.<sup>92</sup>

RESA does not support OCA's first proposal, as it would result in rate changes occurring on June 1<sup>st</sup> and December 1<sup>st</sup> of each year and would only work when combined with an underlying procurement schedule that has contracts expiring and renewing on those dates.<sup>93</sup> Rather, and

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<sup>90</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 at 56 ("*PECO DSP II Order*").

<sup>91</sup> PECO St. No. 5 at 6-7.

<sup>92</sup> OCA St. No. 1 at 16.

<sup>93</sup> RESA St. No. I-R at 4.

consistent with RESA's procurement recommendation to incorporate quarterly supply contracts into the supply mix, RESA supports quarterly rate adjustments to account for the inclusion of new default service supplies in the PTC on a quarterly basis.<sup>94</sup>

As to OCA's second proposal, RESA does not support utilizing a 12-month rolling average reconciliation because spreading the cost recovery over a 12-month period will further separate the PTC price signal from the time during which the costs were incurred.<sup>95</sup> As such, utilizing a 12-month rolling average reconciliation period would be inconsistent with the Commission's decision in the *End State Order* consistent discussion set forth above in Section I.A.1.b. In addition, customers would be given the misimpression that EDC's default service costs are fixed. Moreover, the Commission specifically rejected the use of an annual reconciliation mechanism in the *PECO DSP II Order*.<sup>96</sup>

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

There are two primary questions that need to be answered when addressing the issue of PJM Charges: (1) what entity will be required to assume the cost responsibility for the charge; and, (2) how will the costs be recovered from customers? In response to these two questions RESA's preferred recommendation is that: (1) PECO be required to acquire the costs of PJM charges for all load (which includes default service load served by wholesale default service suppliers and shopping load served by EGSs); and, (2) recover the cost through a non-bypassable surcharge that would be paid by all distribution customers.<sup>97</sup> In the alternative, RESA recommends that PECO should not be permitted to assume the cost responsibility for wholesale default service suppliers; and, instead, wholesale default service suppliers should be required to assume responsibility for these costs for default service

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 4-5.

<sup>96</sup> *PECO DSP II Order* at 48.

<sup>97</sup> RESA St. No. 1 at 24-28.

customers<sup>98</sup> and EGSs would assume responsibility for their shopping customers. Although the alternative approach is far inferior to RESA's preferred recommendation, it would be necessary to ensure parity between EGSs and default service for these cost components in the event that RESA's primary recommendation is not adopted.

### **1. General Overview Of The Specific Charges And Recommendations**

The PJM Charges at issue in this proceeding include:

- Transmission Enhancement and Expansion Cost Recovery Charges ("TEC/ECRC" sometimes also referred to a Regional Transmission Expansion Plan charges or "RTEP");
- Generation Deactivation Charges (also referred to as Reliability Must Run Unit charges or "RMR");
- Network Integration Transmission Services ("NITS");
- Unaccounted For Energy; and,
- Historical out of market tie line and retail customer meter adjustments.<sup>99</sup>

Relevant to the resolution of these issues, the Commission adopted an order on May 24, 2014 regarding FirstEnergy's DSP III plan which approved a settlement of many of these PJM Charges and issued a decision regarding the treatment of NITS (which the parties agreed to reserve for litigation as part of the Joint Petition for Settlement).<sup>100</sup> Also relevant to this issue is the rejoinder testimony provided by PECO Witness McCawley explaining how PECO would respond to the – then pending – Commission's decision in the FirstEnergy DSP III proceeding. Specifically, Mr. McCawley testified that:

If the Commission approves the settlement in the FirstEnergy EDC proceedings, PECO proposes to establish a non-bypassable transmission service charge for all distribution [customers]<sup>101</sup> which either includes or excludes NITS as directed by the Commission. PECO proposes that its non-bypassable charge will include

<sup>98</sup> To effectuate this recommendation, the SMA would need to be updated to reflect that the wholesale default service suppliers are required to assume the cost responsibility for the PJM Charges.

<sup>99</sup> RESA Exhibit RJH-10 sets forth the specific cost components included in these charges.

<sup>100</sup> *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-2013-2391368, P-2013-2391372, P-2013-2391375, P-2013-2391378, Opinion and Order entered July 24, 2014 ("FE DSP III Order").

<sup>101</sup> This is Mr. McCawley's subsequent correction.

other PJM transmission related charges collected by the FirstEnergy EDCs, but will exclude PJM charges for both unaccounted for energy or UFE and meter error correction, which are not transmission related charges.<sup>102</sup>

In consideration of the FE DSP III Order and Mr. McCawley’s rejoinder testimony, below is the current status of the proposals for each of the charges as well as RESA’s recommended outcome.

Charge/Pricing Component	Current Treatment for First Energy EDCs (DSP II)	Approved Treatment for First Energy EDCs (DSP III)	Current Treatment for PECO (DSP II)	PECO’s Proposed Treatment for DSP III	RESA’s Recommendations for PECO DSP III (Consistent with outcome in FE DSP III & PECO’s Rejoinder Testimony)
<b>Transmission Enhancement and Expansion Cost Recovery (TEC/ECRC)</b>	<u>Cost Responsibility:</u> EDC assumes for all load.  <u>Cost Recovery:</u> All distribution customers through non-bypassable surcharge	<u>Cost Responsibility:</u> EDC assumes for all load.  <u>Cost Recovery:</u> All distribution customers through non-bypassable surcharge	<u>Cost Responsibility:</u> PECO assumes for wholesale suppliers & EGSs assume for their load  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)	<u>Cost Responsibility:</u> PECO assumes for wholesale suppliers & EGSs assume for their load  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)	<u>Cost Responsibility:</u> PECO assumes responsibility for all load  <u>Cost Recovery:</u> All distribution customers through non-bypassable surcharge

<sup>102</sup>

Tr. at 39-40.

Charge/Pricing Component	Current Treatment for First Energy EDCs (DSP II)	Approved Treatment for First Energy EDCs (DSP III)	Current Treatment for PECO (DSP II)	PECO's Initially Proposed Treatment for DSP III	RESA's Recommendations for PECO DSP III (Consistent with outcome in FE DSP III & PECO's rejoinder testimony)
<b>Generation Deactivation Charges (Reliability Must Run Unit)</b>	<u>Cost Responsibility:</u> Wholesale Suppliers & EGSs are each responsible for their load  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)	<u>Cost Responsibility:</u> EDC will assume responsibility for all load for new charges, but EGSs and wholesale suppliers remain responsible for existing charges.  <u>Cost Recovery:</u> Will be recovered from all distribution customers through non-bypassable surcharge through for new RMR charges after effective date of Order.	<u>Cost Responsibility:</u> Wholesale Suppliers & EGSs are each responsible for their load  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)	<u>Cost Responsibility:</u> PECO assumes for wholesale suppliers & EGSs assume for their load  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)	<u>Cost Responsibility:</u> PECO assumes responsibility for all load for new charges, but EGSs and wholesale suppliers remain responsible for existing charges  <u>Cost Recovery:</u> Will be recovered from all distribution customers through non-bypassable surcharge for new RMR charges after effective date of Order

Charge/Pricing Component	Current Treatment for First Energy EDCs (DSP II)	Approved Treatment for First Energy EDCs (DSP III)	Current Treatment for PECO (DSP II)	PECO's Proposed Treatment for DSP III	RESA's Recommendations for PECO DSP III	
<b>Network Integration Transmission Service (NITS)</b>	<u>Cost Responsibility:</u> Wholesale Suppliers and EGSs are each responsible for their load  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)	<u>Cost Responsibility:</u> Wholesale Suppliers & EGSs are each responsible for their load  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)	<u>Cost Responsibility:</u> PECO assumes for wholesale suppliers & EGSs assume for their load  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)	<u>Cost Responsibility:</u> PECO assumes for wholesale suppliers & EGSs for their load  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)	<b>PREFERRED POSITION:</b>  <u>Cost Responsibility:</u> PECO assumes responsibility for all load.  <u>Cost Recovery:</u> All distribution customers through non-bypassable surcharge	<b>ALTERNATIVE POSITION (to be consistent with FE DSP III)</b>  <u>Cost Responsibility:</u> Wholesale suppliers and EGSs are each responsible.  <u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS)

Charge/Pricing Component	Current Treatment for First Energy EDCs (DSP II)	Approved Treatment for First Energy EDCs (DSP III)	Current Treatment for PECO (DSP II)	PECO's Proposed Treatment for DSP III	RESA's Recommendations for PECO DSP III (Consistent with outcome in FE DSP III but opposed by PECO in rejoinder testimony)
Unaccounted For Energy	<p><u>Cost Responsibility:</u> Wholesale Suppliers &amp; EGSs are each responsible for their load</p> <p><u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)</p>	<p><u>Cost Responsibility:</u> EDC assumes for all load.</p> <p><u>Cost Recovery:</u> All distribution customers through non-bypassable surcharge</p>	<p><u>Cost Responsibility:</u> Wholesale Suppliers &amp; EGSs are each responsible for their load</p> <p><u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)</p>	<p><u>Cost Responsibility:</u> Wholesale Suppliers &amp; EGSs are each responsible for their load</p> <p><u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)</p>	<p><u>Cost Responsibility:</u> PECO assumes responsibility for all load.</p> <p><u>Cost Recovery:</u> All distribution customers through non-bypassable surcharge</p>

Charge/Pricing Component	Current Treatment for First Energy EDCs (DSP II)	Approved Treatment for First Energy EDCs (DSP III)	Current Treatment for PECO (DSP II)	PECO's Proposed Treatment for DSP III	RESA's Recommendations for PECO DSP III (Consistent with outcome in FE DSP III but opposed by PECO in rejoinder testimony)
Historic out of market tie-line, generation and retail meter adjustments	<p><u>Cost Responsibility:</u> Wholesale Suppliers &amp; EGSs are each responsible for their load</p> <p><u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)</p>	<p><u>Cost Responsibility:</u> EDC assumes for all load.</p> <p><u>Cost Recovery:</u> All distribution customers through non-bypassable surcharge</p>	<p><u>Cost Responsibility:</u> Wholesale Suppliers &amp; EGSs are each responsible for their load</p> <p><u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)</p>	<p><u>Cost Responsibility:</u> Wholesale Suppliers &amp; EGSs are each responsible for their load</p> <p><u>Cost Recovery:</u> Default and Shopping Customers through retail supply price (PTC or EGS contract)</p>	<p>*While RESA did not advocate for a change in treatment of these costs, RESA would support the following as consistent with FE DSP III:</p> <p><u>Cost Responsibility:</u> EDC assumes for all load.</p> <p><u>Cost Recovery:</u> All distribution customers through non-bypassable surcharge</p>

As set forth in the tables above, PECO's rejoinder testimony aligns with the position of RESA for TEC/ECRC and Generation Deactivation Charges and is consistent with the *FE DSP III Order*. PECO's rejoinder testimony, however, made clear that PECO would not similarly align its position regarding Unaccounted for Energy and historic out of market tie-line and retail customer meter adjustments notwithstanding that doing so would be consistent with the *FE DSP III Order*. Finally, PECO's rejoinder testimony made clear that if the Commission did not direct the EDCs to acquire the cost responsibility for all load in the *FE DSP III Order*, then PECO would maintain the status quo in which PECO assumes the cost responsibility for wholesale suppliers.<sup>103</sup> As explained further below, PECO's status quo whereby PECO assumes the cost responsibility for wholesale suppliers for NITS is not consistent with FirstEnergy's status quo whereby wholesale suppliers are required to assume the cost responsibility and should be revised consistent with RESA's recommendations.

**2. RESA's Primary Position Is That PECO Should Be Directed To Assume The Cost Responsibility Of PJM Charges For All Load**

TEC/ECRC, Generation Deactivation/RMR, NITS and Unaccounted for Energy are all non-hedgeable wholesale cost obligations that all load serving entities are subject to in the wholesale market. These cost items are not market based because they are either fully regulated or quasi-regulated costs imposed at the wholesale level on all load serving entities. These costs are unpredictable and cannot be hedged by competitive retail suppliers or wholesale default service suppliers. As a practical matter, transmission charges can experience significant increases as regulated transmission owners deploy additional investments in transmission infrastructure.<sup>104</sup>

Generation Deactivation Charges, for example, are unpredictable and can change significantly as PJM and FERC declare new Reliability Must Run units. With increasingly stringent environmental regulations, there is a generally accepted market assumption that more generation units are likely to

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<sup>103</sup> Tr. at 57.

<sup>104</sup> RESA St. No. 1 at 25.

retire. As more units potentially decide to retire, there is an increased risk of more RMR unit declarations because PJM and FERC may decide that the retiring units are needed for reliability. Accordingly, there is a real risk of increasing Generation Deactivation Charges.<sup>105</sup>

Similarly, *Unaccounted for Energy* is the energy associated with losses, theft, inaccurate metering equipment and other factors that result in a quantity of MWh being unaccounted for via the normal load allocation process. This unaccounted for energy is allocated to all load serving entities based on each entity's load ratio share. Transferring these cost obligations to the EDC and recovering them through a non-bypassable tariff charge would be reasonable and efficient.<sup>106</sup>

Finally, NITS costs are essentially fully regulated cost-of-service rates that are imposed on all Load Serving Entities ("LSEs") based on each LSE's share of load served. Accordingly, all customer load on an EDC's system is allocated a share of transmission service costs based on the customer's Network Service Peak Load Contribution.<sup>107</sup> While the NITS cost for PECO has remained stable over the past several years, PECO is required to recalculate the appropriate rate on an annual basis and submit the NITS rate to FERC as part of PJM's Open Access Transmission Tariff.<sup>108</sup> Thus, there is a potential each year for unexpected changes. In fact, for 9 of the 19 other utilities within PJM, they experienced increases in June 2014 some as high as 29%.<sup>109</sup> The fact that there has not been any changes for some time for PECO increases the possibility of significant change in the future.

The unpredictability of these charges and the manner in which PECO or wholesale suppliers are able to recover the costs creates a competitive advantage for default service. This is because regardless of whether the PECO or the wholesale supplier is required to assume responsibility of the

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<sup>105</sup> *Id.* at 27.

<sup>106</sup> *Id.* at 24-25.

<sup>107</sup> *Id.*

<sup>108</sup> See PJM Open Access Transmission Tariff, Attachment H-7.

<sup>109</sup> See <http://www.pjm.com/markets-and-operations/market-settlements/network-integration.aspx> which sets forth the PJM transmission owners' annual network service revenue requirements and rates posted on the PJM website for July 2014, June 2014, January 2014, July 2013, June 2013 and January 2013.

PJM Charges for default service load, EGSs are then required to assume the cost responsibility for their shopping customers. EGSs – who do not enjoy a right to full and current cost recovery – have no choice but to account for the variability in these costs in their retail contract prices to customers.<sup>110</sup> By requiring PECO to assume the responsibility for the PJM Charges for all load, PECO can obtain full cost recovery for the charges thereby completely eliminating the need for either wholesale suppliers or EGSs to embed within their calculations future rate increases in the retail rates customers will be required to pay.<sup>111</sup> As such, the actual cost of these charges will be directly passed on to all customers. Since neither wholesale default service suppliers nor EGSs have any reasonable control or ability to predict these charges, all customers should benefit over the longer term by shifting the cost responsibility back to the EDC which will reduce the risk premiums associated with these charges that consumers would be required to pay. Moreover, by recovering the actual cost from all distribution customers, this approach fairly and equitably distributes the costs of the PJM Charges among all impacted parties – less any amount built in as a risk premium.

Adopting RESA’s proposal to require PECO to assume responsibility for all PJM Charges and to pass on their costs to all distribution customers 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.<sup>112</sup> Adopting RESA’s preferred recommendation would result in a change to the status quo for all of the PJM Charges.

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<sup>110</sup> RESA St. No. 1 at 26.

<sup>111</sup> *Id.* at 28.

<sup>112</sup> *Id.* at 26.

### 3. RESA's Recommended Approach Is Consistent With Precedent

Neither the Commission's *PECO DSP II Order* and *FE DSP III Order* preclude adoption of RESA's preferred approach for PECO. As explained above, PECO's rejoinder testimony aligns with the primary position of RESA for TEC/ECRC and Generation Deactivation Charges and is consistent with the *FE DSP III Order*. The *FE DSP III Order* makes clear that requiring PECO to assume the cost responsibility for PJM Charges for all load and recovering the costs through a non-bypassable charge would not violate the Competition Act, the Public Utility Code or the Commission's regulations.<sup>113</sup> While the Commission decided not to go in this direction for NITS, it did adopt the parties' settlement to require the EDCs to assume the cost responsibility for all load for Generation Deactivation Charges, Unaccounted For Energy, and historic out of market tie-line, generation and retail meter adjustments. As such, there is no legal bar to adopting RESA's preferred approach for all PJM Charges.

Additionally, in the *FE DSP III Order* the Commission noted that even though it was rejecting requiring the EDCs to assume the cost responsibility for all load consistent with its determination in the prior *FE DSP II Order*, it made clear that the *FE DSP III Order* was based on the record of the FirstEnergy DSP III proceeding and not because the Commission was constrained by the doctrine of issue preclusion.<sup>114</sup> In the *PECO DSP II Order*, the Commission rejected proposals to shift the cost responsibility for some PJM Charges<sup>115</sup> to PECO because the record did not: (1) "show how changing the existing cost assignment. . . to only PECO will lead to actual reductions in market prices;" or, (2) that price distortions would occur and supply costs will increase due to the risk premium add-ons.<sup>116</sup>

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<sup>113</sup> *FE DSP III Order* at 38.

<sup>114</sup> *Id.* at 53.

<sup>115</sup> At issue in *PECO DSP II* were Network Integration Transmission Services ("NITS"); Regional Transmission Expansion Plan costs ("RTEP"); Expansion costs; and, all charges that result from PJM's implementation of its revised Economic Load Response program in compliance with FERC Order No. 745 ("New ELR Charges").

<sup>116</sup> *PECO DSP II Order* at 60.

Since the *PECO DSP II Order*, however, the Commission has approved RESA's preferred cost assignment approach for all charges but for NITS in the *FE DSP III Order*.<sup>117</sup>

Further, the Commission recognized in its Guidelines for Use of Fixed Price Labels proceeding and its more recent rulemaking to revise EGS disclosure requirements concern about how EGSs attempt to recover these costs from customers.<sup>118</sup> Importantly, in the Commission's *Fixed Price Label Order*, the Commission prohibited suppliers from exercising regulatory change provisions in order to pass through certain wholesale cost changes to residential and small business customers on fixed price products which further exacerbates the ability of EGS's competitive supply to fairly compete with default service.<sup>119</sup> As explained by RESA Witness Hudson, requiring PECO to assume the cost responsibility for PJM Charges would have a direct impact on reducing the risk premiums embedded in EGS fixed price products and would reduce the likelihood of an EGS needing to trigger a regulatory change or cost pass through clause.<sup>120</sup> This would be a good result for consumers by removing these unpredictable and unhedgeable cost calculations from competitive supply products thus reducing the risk premiums embedded in EGS fixed price products and reducing the likelihood of an EGS needing to trigger a regulatory change or cost pass through clause. Such a result would be consistent with the Commission's goals as set forth in the *Fixed Price Label Order*, would benefit customers by removing risky cost components from the pricing calculations of EGSs and would be consistent with the Commission's *FE DSP III Order*.

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<sup>117</sup> Some of the PJM Charges for FirstEnergy were shifted during the FirstEnergy DSP II proceeding. *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, P-2011-2273668, P-2011-2273669, P-2011-2273670, Opinion and Order entered December 20, 2012 at 10-11.

<sup>118</sup> See, e.g., *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 Final Order entered November 14, 2013 ("*Fixed Price Label Order*"); *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Renewal or Changes in Terms*, Docket No. L-2014-2409385, Final Order entered April 3, 2014.

<sup>119</sup> *Fixed Price Label Order* at 26.

<sup>120</sup> RESA St. No. 1 at 28.

4. **RESA's Approach Resolves The Existing Inequitable Treatment Of The PJM Charges Between Default And Competitive Retail Supply**

RESA's preferred approach of assigning the PJM Charges to PECO for all load resolves the inequitable treatment of these charges that currently exist. For PECO's current DSP II plan and as PECO proposes for its DSP III plan, cost responsibility for the PJM Charges differ for wholesale suppliers (for whom PECO undertakes the cost responsibility) and the EGS (who takes on their own cost responsibility). It is important to note that this disparity does not exist in any of the FirstEnergy EDC territories (because FirstEnergy does not assume the responsibility for only wholesale suppliers for any of the PJM Charges). The difference between the two cost assignment approaches (i.e. PECO taking on the PJM Charges for wholesale default service suppliers only versus PECO assuming the responsibility for all load) has a direct impact on consumers and the ability of the competitive market to develop comparable pricing offers.

The difference is that allowing PECO to assume the cost responsibility for only wholesale default service suppliers (versus for all load) unfairly shifts a competitive advantage to PECO's default service because wholesale suppliers no longer need to factor in the risk of future price increases in the PJM Charges into the bids for default service supply because PECO will directly pass on those costs to default service customers at the currently applicable level. If this structure is allowed to persist, EGSs will continue to be required to embed the costs of PJM Charges in their competitive prices. Under this outcome, a clear disadvantage accrues to competitive supply given the need to manage the extreme uncertainty of future PJM Charges. In addition, EGS are not able to take advantage of a guaranteed right to cost recovery which PECO can take advantage of when assuming the cost responsibility for wholesale default service suppliers. Thus, the only fair and comparable approach is for PECO to assume these costs on behalf of wholesale default service suppliers and EGSs instead of the current inequitable approach where PECO only assumes the cost responsibility for the wholesale default

service suppliers. This approach would eliminate the need for either wholesale suppliers or EGSs to include risk premiums to account for the risk of future changes in these cost components.

As previously stated, not adopting RESA's approach for PECO will result in a situation that does not exist for the FirstEnergy EDCs because the EDCs do not assume the cost responsibility for only the wholesale default service suppliers for any PJM Charges. This is an important distinction when contemplating RESA's preferred approach to NITS for PECO and the outcome of the *FE DSP III Order*. Even though the Commission did not require the FirstEnergy EDCs to assume the cost responsibility for NITS for all load, it also did not result in a situation where NITS responsibility rested inequitably between default service and competitive service. If the Commission simply follows the *FE DSP III Order* here, then EGSs and their customers will remain disadvantaged in comparison to default service. More damaging would be a decision in which none of the PJM Charges were assigned to PECO for shopping load. In the latter case, EGSs and their customers would be disadvantaged for all the costs, and potential risk premiums associated with the costs for the PJM Charges.

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

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

RESA supports PECO's proposal to extend the Standard Offer Program ("SOP") for the DSP III period and recommends that the following changes be implemented prior to June 1, 2015: (1) the effective, discounted price (reflecting the 7% discount) for the SOP and the PTC be published at the same time and that PECO publish the effective, discounted price to the PECO supplier support website; (2) that the Commission direct PECO to remove the restriction that PECO has placed on suppliers that requires EGSs that want to participate in the SOP to accept both residential and small commercial customers; and, (3) PECO be directed to quarterly train customer service representatives about SOP. RESA does not support OCA's suggestion to require EGSs to enter into revised referral program participation agreements with PECO or to issue new contract terms and conditions to

customers. RESA supports the implementation of a detailed investigation into the costs claimed by PECO for the SOP and the denial of recovery of any costs found to be imprudent, excessively or inappropriately allocated to the SOP. Lastly, RESA recommends a stakeholder collaborative in January 2015 to review the success of the SOP and receive feedback from interested parties on ways to improve the program.

## **B. Operational Changes**

PECO proposes to extend the SOP for the two-year term of DSP III.<sup>121</sup> RESA supports continuation of the SOP. PECO also correctly acknowledges that the customer transfer rate for PECO's SOP is lower than the customer transfer rates of the other EDCs.<sup>122</sup> Approximately 20,000 successful enrollments have occurred for the PECO SOP over an 8-month period (which is only a small fraction of the over 1 million customers remaining on default service) in contrast with the 41,000 enrollments experienced by the FirstEnergy Companies during the first four-month period of its SOP.<sup>123</sup> Based on this, PECO Witness McCawley testified that:

PECO is looking into the whole program with an eye towards getting more transfers, both by changing our process and by retraining the folks who handle the customer call and who would be offering the transfer to Allconnect to hear about what we call PECO Smart Energy Choice.<sup>124</sup>

Consistent with this testimony and as discussed further below in Section IV.D, PECO is supportive of RESA's recommendation to convene a stakeholder collaborative in January 2015 to review the success of the program and receive feedback from interested parties on ways to improve the program.<sup>125</sup>

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<sup>121</sup> PECO St. No. 2 at 19.

<sup>122</sup> Tr. at 76 (According to PECO Witness McCawley, "PECO had been informed through our conversation with PUC staff who monitor this for all utilities that other utilities had been having. I'll call it, a higher sign-up rate for their programs.")

<sup>123</sup> RESA St. No. 1 at 32; RESA Exhibit RJH-6 and RJH-7.

<sup>124</sup> Tr. at 78.

<sup>125</sup> RESA St. No. 1 at 33.

OCA, however, does not support continuation of the SOP based on the viewpoint that the SOP has already accomplished its intended goal of introducing customers to shopping.<sup>126</sup> RESA does not agree that the SOP should be eliminated. While the SOP program has resulted in more customers shopping and becoming more familiar with the competitive market, as noted above the number of customers still not utilizing the competitive market nor taking advantage of SOP continues to be unacceptably high supporting a continued need for the SOP. Further evaluation of the program to investigate ways to make it more successful is appropriate and, therefore, the stakeholder collaborative as discussed in Section IV.D should be approved rather than a termination of the program as recommended by OCA.

Notwithstanding the stakeholder process, there are specific operational issues regarding the SOP that the Commission should direct PECO to address prior to the June 1, 2015 start date for DSP III. Doing so would be consistent with PECO Witness McCawley's testimony that PECO is in the process of looking at SOP practices "with the intent of making improvements, currently, not for DSP III, but for DSP II."<sup>127</sup> While PECO did not offer specific operational changes that it would implement to SOP prior to the start date for DSP III or offer any feedback to the specific operational recommendations of RESA,<sup>128</sup> RESA recommends that PECO be directed to implement each of RESA's recommended operational changes discussed below prior to the June 1, 2015 start date for DSP III. Doing so would result in more immediate positive improvements to the SOP; thereby, benefiting customers sooner.

1. **RESA Recommends That PECO Post The SOP Discounted Price To Supplier Website**

RESA recommends that the effective, discounted price (reflecting the 7% discount) for the SOP should be published at the same time that the Price-to-Compare ("PTC") is published and that PECO

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<sup>126</sup> OCA St. No. 2 at 4-5.

<sup>127</sup> Tr. at 74.

<sup>128</sup> PECO St. No. 2-R at 19.

post the effective, discounted price to the PECO supplier support website (referred to as "SUCCESS") at the time each quarterly PTC rate is published. As explained by RESA Witness Hudson:

This posted price would disclose the actual, effective CRP price for the upcoming period, including all available decimal place digits for the price. For accounting and planning purposes, EGSs need to know the full, effective CRP discounted price in sufficient time prior to the start of the applicable period to make business decisions regarding participation as well as testing, etc. Also, because PECO utilizes a bill-ready model, EGSs need this price in order to program their internal billing systems for the 7% discount.<sup>129</sup>

PECO did not offer any feedback regarding this proposal.<sup>130</sup> As this information is readily available to PECO and PECO already has an established supplier support website on which to provide it to EGSs on a real time basis and no evidence has been offered to support rejection of the proposal, RESA recommends that PECO be directed to implement this change immediately.

## **2. RESA Recommends That PECO Allow Egss To Participate On A Customer-Class Basis**

Currently, PECO requires EGSs that want to participate in SOP to accept both residential and small commercial customers without regard for what customer classes the EGS may serve outside the SOP.<sup>131</sup> This restriction is unique to PECO's SOP.<sup>132</sup> RESA recommends that this restriction be removed and EGSs be permitted to receive enrollments for SOP for one or both of these customer classes.<sup>133</sup> As explained by RESA Witness Hudson, the current restriction unnecessarily restricts EGS participation in the program and places EGSs who want to participate in SOP in the position of deciding whether to: (1) participate and accept enrollments for a customer class that they are not

<sup>129</sup> RESA St. No. 1 at 29.

<sup>130</sup> PECO St. No. 2-R at 19.

<sup>131</sup> RESA St. No. 1 at 30-31; Tr. at 69-73.

<sup>132</sup> See, e.g., *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074, Revised Retail Opt-In and Standard Offer Programs of PPL Electric Utilities Corporation, Attachment D, Standard Offer Program Process and Rules (filed March 11, 2013) (approved in Opinion and Order entered May 23, 2013). Article 1.4 specifically states: "A participating EGS, subject to the qualification requirements discussed in Article 4, will provide retail supply for eligible Residential and/or Small C&I customers who elect to participate in the Program and who are successfully enrolled into the Program as discussed in Article 5."

<sup>133</sup> RESA St. 1 at 30.

necessarily best-suited to serve; or, (2) not participate at all.<sup>134</sup> PECO Witness McCawley admitted that he was aware of one EGS that “seems to have an issue” with this restriction.<sup>135</sup> While Mr. McCawley also tried to make the point that this was only one “out of 70 something EGSs,” he acknowledged that he did not take a survey of all the EGSs about this issue and that PECO did not consult with any of the EGSs prior to implementing the restriction.<sup>136</sup> Since its inception, approximately 19 EGSs have participated in PECO’s SOP at varying times<sup>137</sup> and PECO did not present any credible evidence refuting Mr. Hudson’s testimony that EGSs may have chosen to forgo participation or to cease participation in the SOP based on the current class restriction. Consequently, the record supports directing PECO to remove this customer class restriction for EGSs to participate in the SOP.

As legal support for the restriction, PECO relies on Section 1.4 of its Standard Offer Program Request for Proposals and Program Rules (“SOP RFP and Program Rules”) which were approved by the Commission as part of PECO’s DSP II plan.<sup>138</sup> This Section states that:

. . . the Applicant agrees to offer all interested residential and small commercial customers a fixed price, in cents per kilowatt-hour, for which the supplier is prepared to provide electric generation service for customers for twelve monthly billing cycle periods. . . .<sup>139</sup>

This language clearly states that the EGS is required of offer service to customers for which the supplier is prepared to provide electric generation service. There is nothing else contained in the Commission approved SOP RFP and Program Rules which authorizes PECO to restrict EGS participation in SOP to serving both residential and small commercial customers. There are other examples of PECO designing its SOP in a way that was either not authorized by the Commission or, in

<sup>134</sup>

*Id.*

<sup>135</sup>

Tr. at 72.

<sup>136</sup>

*Id.* at 72, 75-76.

<sup>137</sup>

RESA Exhibit RJH-6.

<sup>138</sup>

*Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Order entered June 13, 2013 (“*PECO Final SOP Order*”).

<sup>139</sup>

See Exhibit RJH-4; Tr. at 70-71.

fact, directly contrary. For example, PECO acknowledged that it does not offer the SOP to customers after resolving customer payment or high bill issues even though the Commission clearly directed it to do so.<sup>140</sup> As these design decisions make clear, PECO has made unilateral decisions about the SOP notwithstanding the clear directives of the Commission and, unfortunately, these decisions have led to the less than stellar performance of PECO's SOP.

On cross examination, PECO Witness McCawley stated that PECO notified "someone" from the Office of Competitive Market Oversight ("OCMO") as to how it was administering the SOP and stated that based on that PECO's "process was affirmed."<sup>141</sup> Mr. McCawley testified that he did not have anything in writing to support his assertions. Commission Staff opinions, however, are not the equivalent of formal Commission approval. As set forth in 52 Pa. Code §1.96:

Statements contained in formal opinions of the Commission or in decisions of a presiding officer which are not necessary in resolving the case, and informal opinions, whether oral or written, expressed by Commissioners, presiding officers, legal counsel, employes or representatives of the Commission and reports drafted by Commission bureaus are only considered as aids to the public, do not have the force and effect of law or legal determinations, and are not binding upon the Commonwealth or the Commission.<sup>142</sup>

In this instance, PECO's SOP was approved after a lengthy litigated proceeding. PECO's ultimate design of its SOP, however, ignores the fact that there is no Commission order or directive or anything in the Commission approved SOP RFP and Program Rules which gives PECO the authority to restrict an EGS's participation in SOP to serving both customer classes just like PECO's SOP design ignores the fact that the Commission's Order made clear that that SOP was to be offered to customers after resolving customer payment or high bill issues. PECO's actions in this regard support the need for the Commission to direct PECO to immediately remove its current customer class restriction.

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<sup>140</sup> RESA Cross Exam Exh. No. 2, PECO Response to RESA Interrogatory Set VI, No. 4; Tr. at 73; RESA Cross Tr. at 72.

<sup>142</sup> 52 Pa. Code § 1.96.

Having designed this restriction into the program without any Commission authority and without consulting the impacted EGSSs, PECO now takes the position that wishes to maintain the restriction “for the sake of keeping costs down.”<sup>143</sup> Mr. McCawley did acknowledge that had the program been designed without the restriction in the first place, then these costs would not be an issue now. Mr. McCawley defends the failure to design the SOP without the program restriction as a lack of understanding – by PECO – that the Commission required small commercial customers to be permitted to participate in the SOP until the Commission’s February 14, 2013 Order.<sup>144</sup> However, this attempted deflection is unavailing.

As the Commission stated in its February 14, 2013 Order, its view regarding the inclusion of small commercial customers in the SOPs had evolved beginning with the FirstEnergy DSP II Order entered on August 16, 2012 and continuing through the subsequent orders entered regarding PPL and Duquesne’s SOPs.<sup>145</sup> The Commission also noted in its February 14, 2013 Order that while it acknowledged the issue of small customer eligibility for the SOP in its prior October 2012 Order regarding PECO’s DSP II and stated that it would address the issue “elsewhere in this Opinion and Order.” its failure to say anything more about the issue in the October 2012 Order was “simply an oversight.”<sup>146</sup> Thus, while the final Commission Order making absolutely clear that PECO was required to include small commercial customers was not entered until February 14, 2013, there was ample notice to PECO about this issue at the time it was designing the SOP which should have been factored into the program design. At the very least, PECO should have consulted with EGSSs – as both participants and part payers of the program – prior to embarking upon a restriction that has likely

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<sup>143</sup> Tr. at 74.

<sup>144</sup> Tr. at 75. See also *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Opinion and Order entered February 14, 2013 (“*PECO DSP II Order on Reconsideration*”) While February 2013 was approximately four months prior to the initial start date of June 1, 2013 for PECO’s SOP, the Commission subsequently granted PECO an extension until August 1, 2013 to implement the program. *PECO Final SOP Order* at 11. Therefore, sufficient time existed for PECO to design the SOP consistent with its Commission approved SOP RFP and Program Rules.

<sup>145</sup> *PECO DSP II Order on Reconsideration* at 13-14.

<sup>146</sup> *Id.* at 14.

contributed to the relatively small EGS and customer participation levels as compared to the SOPs of other EDCS.<sup>147</sup>

For all these reasons, RESA recommends that the Commission take action to rectify this situation now factoring into consideration PECO's action in designing the program. As further explained below in Section IV.C, RESA supports the implementation of a detailed investigation into the costs claimed by PECO for SOP and the denial of recovery of any costs found to be imprudent, excessively or inappropriately allocated to SOP.<sup>148</sup>

**3. RESA Recommends That PECO Be Directed To Quarterly Train SOP Customer Service Representatives**

RESA recommends that PECO be required to train its customer service representatives on a quarterly basis on the SOP to ensure that representatives are fully informed about the program.<sup>149</sup> Consistent with this recommendation, PECO Witness McCawley testified that PECO is currently assessing its processes with the goal of increasing customer participation.<sup>150</sup> Specifically Mr. McCawley referenced "retraining the folks who handle the customer call and who would be offering the transfer to AllConnect to hear about" the SOP and made clear that such processes improvements could be implemented currently rather than awaiting the June 1, 2015 DSP III implementation date.<sup>151</sup> Based on this, PECO should be directed to implement RESA's recommendation for quarterly training of customer service representatives immediately.

**4. RESA Does Not Support Requiring Eggs To Enter Into Revised SOP Agreements With PECO Or Issue New Contracts To Customers**

OCA recommends that the SOP be modified to require EGSs to conform their renewal offers, at the end of the 12-month initial term, with the requirements established in the Commission's recent

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<sup>147</sup> RESA St. No. 1-SR at 19-20.

<sup>148</sup> *Id.* at 22.

<sup>149</sup> RESA St. No. 1 at 31.

<sup>150</sup> Tr. at 78.

<sup>151</sup> Tr. at 74.

Final Omitted Rulemaking Order on notice requirements.<sup>152</sup> While RESA does not object to a clarification from the Commission on this matter, it does not believe that it is necessary or appropriate to require EGSs to enter into revised referral program participation agreements with PECO or to issue new contract terms and conditions to customers. RESA recommends that, to the extent that the revised regulations require changes to the contract terms and conditions, the EGSs may incorporate those changes in the Initial Notice (45 to 60 days prior) and Options Notice (30 days prior to expiration of a fixed price term). This would be a viable alternative to sending a revised disclosure statement immediately and later sending the Initial and Options Notices at the end of the term.<sup>153</sup>

### **C. Implementation Costs**

To recover the costs of the SOP: (1) EGSs are assessed a fee of the lesser of \$30/customer or actual costs per referred customer; with remaining costs recovered, (2) 50% from the Purchase of Receivables (“POR”) and 50% from residential and small commercial default service customers.<sup>154</sup> Both RESA and OCA raised concerns about PECO’s costs to implement the SOP.<sup>155</sup> Importantly, PECO has an obligation to implement the SOP in the most efficient manner possible and costs that are excessive or not appropriately charged for SOP should not be recovered. As explained further below, RESA is concerned about the cost of the SOP and recommends that the costs should be examined in the stakeholder process with the goal of seeking to find ways to reduce costs, and confirm that all costs claimed by PECO are reasonable.<sup>156</sup>

PECO has incurred a total of \$2,450,802.27 in SOP costs through May 31, 2014.<sup>157</sup> As of March 2014, PECO had collected \$520,320 from participating EGSs through the \$30 assessment.<sup>158</sup>

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<sup>152</sup> OCA St. No. 2 at 16-17.

<sup>153</sup> RESA St. 1-R at 8.

<sup>154</sup> *PECO Final SOP Order* at 9-10.

<sup>155</sup> OCA St. No. 2 at 12; RESA St. No. 1-R at 9; RESA St. No. 1-SR at 21-22.

<sup>156</sup> RESA St. 1-R at 9; RESA St. No. 1-SR at 21.

<sup>157</sup> RESA Exhibit No. RJH-9.

<sup>158</sup> OCA St. No. 1 at 12 citing PECO Response to OCA-II-2.

Notably, the administrative costs incurred by the FirstEnergy EDCs to implement SOP were less than \$200,000.<sup>159</sup> In reviewing the cost information presented by PECO, RESA has identified the following issues of concern.

PECO contracts exclusively with Allconnect, a private company, to handle the customer enrollment for SOP.<sup>160</sup> Allconnect is permitted to use the contact with the PECO referred customer to solicit the customer to sign up for additional home services, such as telephone and cable.<sup>161</sup> At the outset, the ability for Allconnect to “upsell” the customer must be reviewed to ensure that it does not negatively impact customer willingness to enroll in the CRP.<sup>162</sup> From an SOP cost perspective, though, PECO does not receive any type of payment or compensation associated with customers who may subscribe to or express interest in the additional home services pitched by Allconnect.<sup>163</sup> While PECO states that it currently receives no compensation or credit from Allconnect, PECO should receive compensation for allowing a vendor to use its customer contacts in this way and the receipt of this compensation should be used to offset the overall program costs of the SOP.<sup>164</sup> There may be other examples of cost reduction or revenue enhancement that should help make the program more cost efficient such as competitively bidding out the vendor contract on an annual basis.

Other specific costs claimed by PECO are concerning to RESA. Those costs include over \$260,000 of costs for the salaries and related expenses for the time its own employees have spent implementing the program (employee labor costs are assumed to be already included in PECO existing distribution rates). Similarly, PECO claims large amounts for outside contractor work associated with the SOP (\$1.3 million for Accenture and \$73,000 for Black & Veatch). As these amounts may be part

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<sup>159</sup> Joint OCA/RESA Hearing Exhibit No. 1, OCA Response to PECO I-10.

<sup>160</sup> PECO St. No. 2-R at 20; PECO St. No. 2-SR at 4.

<sup>161</sup> RESA Exhibit No. RJH-8, PECO Discovery Response to RESA-II-4.

<sup>162</sup> RESA St. No. 1-R at 9-10.

<sup>163</sup> RESA Exhibit No. RJH-8, PECO Discovery Response to RESA-II-4.

<sup>164</sup> RESA St. No. 1-R at 10.

of larger contracts with PECO and recovery of these amounts may result in a double recovery, RESA believes it is crucial for the Commission to conduct a detailed review of these costs.<sup>165</sup>

**D. Standard Offer Program Collaborative**

RESA proposes that PECO be required to convene a stakeholder collaborative in January 2015 to review the success of the program and receive feedback from interested parties on ways to improve the program with PECO providing interested parties key information about the SOP prior to the collaborative.<sup>166</sup> PECO supports RESA's recommended stakeholder collaborative proposal to evaluate and identify improvements to the CRP.<sup>167</sup> Therefore, this recommendation should be adopted.

**1. OCA's Recommendations Regarding Disclosures**

OCA recommends that PECO adopt the following additional customer disclosures: (1) the initial discount of 7% is based on the current PTC; (2) the PTC will change quarterly with the next change in \_\_\_; (3) the percent savings a customer will experience will vary as the PTC changes; and, (4) the SOP rate may be higher or lower than the next PTC.<sup>168</sup> RESA does not object to the inclusion of these disclosures – which are consistent with those recently approved by the Commission in the FirstEnergy DSP III proceeding<sup>169</sup> – as long as doing so does not increase costs for the program.<sup>170</sup>

**2. RESA Recommends That PECO Be Required To Provide Quarterly Communicate To Potential SOP Customers**

RESA also supports PECO communicating with customers on a quarterly basis so that consumers are aware of the benefits of the CRP.<sup>171</sup> Such communications could leverage any existing communications channels used by PECO (such as bill inserts, customer newsletters, etc.) to minimize any incremental implementation costs. Nonetheless, given OCA's expressed concerns about the

<sup>165</sup> RESA St. No. 1-SR at 21-22; RESA Exhibit No. RJH-8.

<sup>166</sup> RESA St. No. 1 at 33.

<sup>167</sup> PECO St. No. 2-R.

<sup>168</sup> OCA St. No. 2 at 15.

<sup>169</sup> *FE DSP III* at 15-16.

<sup>170</sup> RESA St. No. 1-R at 7.

<sup>171</sup> RESA St. No. 1 at 32.

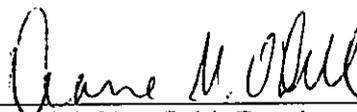
potential cost of these additional customer communications,<sup>172</sup> RESA now supports the inclusion of this issue with the issues to be considered in its recommended collaborative process.<sup>173</sup>

**V. OTHER ISSUES**

None.

**VI. CONCLUSION**

For all the reasons discussed above, RESA respectfully requests that the Administrative Law Judge modify the proposal of PECO consistent with the recommendations set forth herein.



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<sup>172</sup> OCA St. No. 2-R at 3.  
<sup>173</sup> RESA St. No. 1-SR at 20.

## CERTIFICATE OF SERVICE

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

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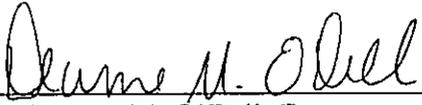
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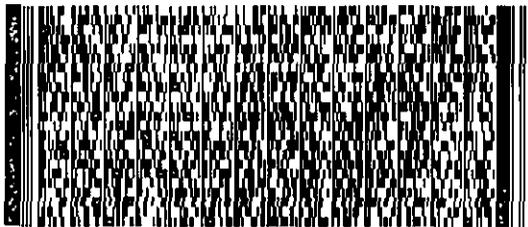


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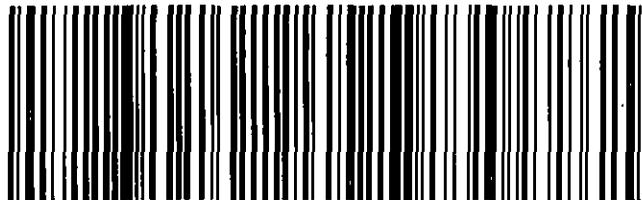
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