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September 4, 2014

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

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

Sincerely,

A handwritten signature in cursive script that reads "Deanne M. O'Dell".

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Cynthia Fordham, w/enc.

CERTIFICATE OF SERVICE

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

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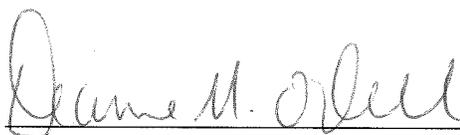
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Dated: September 4, 2014



Deanne M. O'Dell, Esq.

**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 :

**REPLY 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”). The litigation positions of the Retail Energy Supply Association (“RESA”)¹ on all issues are set forth in its Initial Brief filed on August 5, 2014. Following the filing of Initial Briefs, on August 28, 2014, all parties (with the exception of the Philadelphia Area Industrial Energy Users Group, “PAIEUG”) submitted a Joint Petition for Partial Settlement (“Partial Settlement”). The Partial Settlement recommends resolutions for all issues with the exception of the following which are reserved for litigation: (1) the issue of procurement of Medium Commercial default service supply including whether it should be priced on an hourly basis; and, (2) whether certain PJM charges should be recovered by PECO through a non-bypassable transmission service charge.² As set forth in RESA’s Statement In Support, RESA supports the Partial Settlement as a reasonable compromise of competing positions and a narrowing of the issues that need to be addressed by the Commission even though the Partial Settlement does not address all of the concerns stated by RESA in this proceeding and in the manner preferred by RESA.³

Regarding the two issues that need to be resolved by the Commission, RESA recommends that PECO be directed to: (1) transition Medium Commercial class customers to hourly priced default service consistent with the implementation plan set forth in the Partial Settlement;⁴ and, (2)

¹ 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.

² Partial Settlement at 8 and 16, ¶¶25 and 48.

³ Partial Settlement at Statement F.

⁴ Partial Settlement at 8-9, ¶¶25-28.

assume the cost responsibility for the following PJM Charges for all load (default service and shopping) and recover the costs from all customers through a non-bypassable charge:

- Transmission Enhancement charges (a/k/a Regional Transmission Expansion Plan “RTEP”) and Expansion Cost Recovery charges (collectively, “TEC/ECRC”);
- Generation Deactivation/Reliability Must Run (“RMR”) charges for which charges are set after the approval of PECO’s Revised DSP III by the Commission; and,
- Network Integration Transmission Services (“NITS”).

As explained further below, moving Medium Commercial customers to hourly priced default service is consistent with the Commission’s clear pronouncements in the *End State Order*.⁵ The Partial Settlement sets forth an implementation plan, as agreed to by PECO, to achieve this result and, therefore, there is no reason to deny these customers the benefits of full access to the competitive market.

Further, addressing the cost assignment and cost recovery issues related to PJM Charges is an important component of developing a functional competitive retail market because the result impacts how much risk premium a customer will be required to bear as well as the customer’s ability to accurately compare competitive prices to default service rates. Requiring the EDC to assume the cost responsibility for these charges for all load and recover the costs from all customers through a non-bypassable charge is the most reasonable way to ensure that: (1) customers pay only the actual costs of these charges rather than the cost of additional risk premiums; (2) a competitive advantage for default service is not created; and, (3) that EGSs have equal and nondiscriminatory access to the EDC’s own use of its system.

⁵ *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*”).

**II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS:
MEDIUM COMMERCIAL CLASS PROCUREMENT INCLUDING MOVING
CUSTOMERS AT OR ABOVE 100KW TO HOURLY PRICED DEFAULT SERVICE**

RESA and PECO both support the implementation of hourly priced default service for Medium Commercial customers consistent with the process set forth in the Partial Settlement.⁶ Only PAIEUG and Office of Small Business Advocate (“OSBA”) oppose this result. The objections raised by both parties have no merit and must be rejected for the following reasons.

PAIEUG relies on testimony presented by PECO Witness McCawley purporting to show that moving Medium Commercial customers to the Large Commercial and Industrial procurement group would increase the procurement costs for the Large Commercial and Industrial Customers.⁷ However, reliance on this testimony is both misplaced and moot. PAIEUG neglects to recognize that Mr. McCawley was responding to just one very narrow and specific recommendation of RESA regarding how to implement the transition. More specifically, RESA suggested that the hourly priced default service supply for Large Commercial and Industrial customers could be bid out as 3-month contracts to address concerns that wholesale default service suppliers would need to factor into their bids the risk of being required to provide service to an unknown increasing number of customers as Medium Commercial customers were moved into the Large Commercial and Industrial procurement group.⁸ As explained by RESA Witness Hudson, using 3-month contracts would provide more flexibility and certainty for the default service suppliers when submitting their bids and would likely reduce the chance of additional risk premiums. However, as Mr. Hudson also made clear, RESA does not have a policy preference regarding whether the hourly priced service supply is bid out as 3-month or 12-month contracts.⁹ Nonetheless, the Partial Settlement moots this concern because it recommends maintaining PECO’s current approach for bidding out the supply

⁶ Partial Settlement at 8-9, ¶¶25-28.

⁷ PAIEUG Main Brief at 4.

⁸ RESA Initial Brief at 23; RESA St. No. 1-SR at 12-13.

⁹ RESA Initial Brief at 24, RESA St. No. 1-SR at 13.

for Large Commercial and Industrial Customers as 12-month contracts.¹⁰ Therefore, PAIEUG's opposition to the transition of Medium Commercial customers to hourly priced service must be rejected.

OSBA's opposition to the transition of Medium Commercial customers to hourly priced service is based on its view that continuation of PECO's DSP II procurement plan (which relies on half-year fixed price full requirements products) "provides reasonable price stability. . . while still permitting default service rates to reasonably reflect current market prices."¹¹ In support of its view, OSBA cites to the Commission's *Act 129 Final Rulemaking Order*¹² which it claims rejected shorter term contracts. In addition, OSBA claims that the *End State Order*'s clear pronouncements "may be viewed as a kind of 'wish list' regarding what the Commission envisions for the future of default service"¹³ and that the move to hourly priced service for Medium Commercial customers is "misguided" since there has been no legislative changes to the Competition Act on this issue.¹⁴ OSBA also notes that: (1) "the number of EGSs licensed to serve customers in PECO's service territory and the number of EGSs actually serving customers has more than doubled over the DSP I and DSP II periods;" and, (2) 85% of the Medium Commercial load is being served by an EGS,¹⁵ as support of OSBA's view that no additional changes to the procurement plan are needed for DSP III. OSBA's arguments are incorrect, unpersuasive and must be rejected.

The purpose of the *Act 129 Final Rulemaking Order* – entered October 4, 2011 – was to update the Commission's regulations following the passage of the Act 129 amendments to the Competition Act. While the *Act 129 Final Rulemaking Order* also offered the Commission's view

¹⁰ Partial Settlement at Exhibit A.

¹¹ OSBA Main Brief at 4.

¹² *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604, Final Rulemaking Order Entered October 4, 2011) ("*Act 129 Final Rulemaking Order*").

¹³ OSBA Main Brief at 7.

¹⁴ OSBA Main Brief at 11.

¹⁵ OSBA Main Brief at 9-10.

on broader policy questions as raised by stakeholders during the comment period, the Commission made clear that the *Act 129 Final Rulemaking Order* was not intended to create any mandates for future default service plans or require (or reject) any specific contract mix:

In particular, the Commission wishes to make clear that the focus of this rulemaking is to bring our existing default service rules into compliance with Act 129 standards. Therefore, these final form regulations should not be construed to anticipate, pre-judge or otherwise foreclose our consideration of other default supply models or adjustments to the current default service model in the pending *Retail Electricity Markets Investigation* at Docket No. I-2011-2237952.¹⁶

Consistent with this clear pronouncement, the Commission specifically declined to establish specific percentages of default service load that should be served under various types of products¹⁷ and the Commission has subsequently approved procurement plans with a varying degree of contract types.¹⁸ As such, the *Act 129 Final Rulemaking Order* provides no basis upon which to reject the approach in the Partial Settlement to transition Medium Commercial customers to hourly priced service.

In contrast, the Commission's subsequent *End State Order* – entered February 15, 2013 – was the result of an extensive investigation into Pennsylvania's retail electricity market (initiated in April 2011) and set forth the Commission's "proposed model for default service."¹⁹ Specifically,

¹⁶ *Act 129 Final Rulemaking Order* at 9 (emphasis added). See *Id* at 32. ("We assure the parties that any future decisions to amend these regulations as a result of the comments received on the policy questions, the outcome of the current investigation into default service or development resulting from evaluation of future DSP plans will be subject to the full rulemaking processes.")

¹⁷ *Act 129 Final Rulemaking Order* at 66. See *Id.* at 60 ("... we will continue to review each plan on a 'case by case' basis that independently evaluates the merits of each default service plan where input from stakeholders is assured.")

¹⁸ *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 August 16, 2012; *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; *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; *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan*, Docket No. P-2011-2252042, Opinion and Order entered May 24, 2012.

¹⁹ *End State Order* at 3.

the Commission stated that it recommended “fundamentally changing the default service product so that it more closely resembles market conditions” and made clear that it was committed to effectuating these changes on June 1, 2015.²⁰ The Commission also made clear that it expected – effective June 1, 2015 – that EDCs would “offer only hourly LMP to medium and large C&I customers with interval meters.”²¹ OSBA’s position that PECO maintain the current exclusive reliance on 6-month contracts for Medium Commercial customers with no commitment to move the customers above 100 kW into the hourly pricing procurement group makes absolutely no effort to be consistent with the *End State Order* and, therefore, must be rejected.

OSBA’s concern about these customers continuing to have access to fixed price products fails recognize that a competitive market that offers many different products and services will better meet the individual needs and desires of consumers. When the Commission approves a default service plan that is reasonably calculated to produce a market reflective default service rate – which would occur here by moving these customers to hourly priced service – competitors will be encouraged to enter the market, resulting in a variety of products and services, which, in turn, enables each consumer to choose for him/herself which product best suits his/her own needs and desires. To the extent consumers desire a stable price, they will have the ability to select that option from the competitive market. OSBA’s sole reliance on the rate provided by the default service provider as the one and only way to achieve price stability is short-sighted, and, inconsistent with the Commission’s expressed direction for default service effective June 1, 2015. Instead of relying on the default service provider to fulfill all policy objectives – including price stability – approving the Partial Settlement will lead to a default service structure that promotes the development of a robust competitive retail market thereby enabling competitors to fulfill all appropriate policy objectives – including offering stable priced products to consumers.

²⁰ *End State Order* at 15-16.

²¹ *End State Order* at 29, 31.

Finally, OSBA's citation to the shopping statistics for the Medium Commercial customer class shows that these customers are comfortable with the competitive market (with 85% of the load shopping presently) and should be able to manage a more market responsive default service rate. In consideration of the specific history for these customers and the evolution of the market in PECO's service territory, utilizing the same DSP II procurement plan and not making any effort to move the Medium Commercial customers to the hourly priced procurement plan makes no sense. Adopting the Partial Settlement which creates a path forward to hourly priced service for commercial customers above 100 kW is consistent with the Commission's expressed intent in the *End State Order* (i.e. "the Commission's main goal in developing a revised default service product is to create a more market-based PTC"²²) and in the best interest of these customers as they will have an even better opportunity to participate in the competitive market. For these reasons, RESA supports moving Medium Commercial customers into hourly priced default service consistent with the implementation plan set forth in the Partial Settlement and recommends that the objections raised by PAIEUG and OSBA be rejected.

III. RATE DESIGN AND COST RECOVERY: RECOVERY OF CERTAIN PJM CHARGES

As detailed more fully in RESA's Initial Brief, addressing the issue of PJM Charges involves a two-step process. First, what entity (EDC, wholesale default service supplier, EGS) is required to assume the cost obligation for the specific PJM Charge ("cost responsibility")? Second, how will that entity recover the costs of assuming the cost responsibility ("cost recovery")? RESA recommends that PECO assume the cost responsibility for all load (default service and shopping) and recover the costs of that responsibility from all customers through a non-bypassable charge.²³

As set forth in the Partial Settlement, PECO has agreed to support RESA's recommended

²² *End State Order* at 24.

²³ RESA Initial Brief at 28-39.

approach for the following charges: Transmission Enhancement charges (a/k/a Regional Transmission Expansion Plan “RTEP”); Expansion Cost Recovery charges (“TEC/ECRC”); and, Generation Deactivation/Reliability Must Run (“RMR”) charges for which charges are set after the approval of PECO’s Revised DSP III by the Commission.²⁴ In contrast, the parties have agreed that PECO will maintain the status quo for Unaccounted for Energy and meter error correction charges which means that wholesale default service suppliers and EGSs will continue to assume the cost responsibility for their customers and recover the costs from their customers.²⁵ Finally, the Partial Settlement reserves all issues related to the treatment of NITS to be addressed by the Commission.²⁶

As explained further below, the objections raised by other parties to requiring PECO to assume the cost responsibility for RTEP/TEC/ECRC and RMR consistent with the Partial Settlement do not present sufficient or compelling reasons to reject the Partial Settlement. In addition, RESA recommends that the approach of the Partial Settlement be applied to NITS because of the unpredictability of future changes in NITS (notwithstanding past stability) and doing so would spread the costs NITS to all customers in a competitively fair manner without creating a competitive advantage for default service or denying EGSs equal access to the EDC’s facilities.

If, however, the Commission chooses to reject in whole or in part the Partial Settlement and RESA’s primary recommendation for NITS, then RESA’s alternative approach should be implemented. As explained further below, RESA’s alternative approach is that PECO should be prohibited from assuming the cost responsibility for just wholesale default service suppliers while

²⁴ Partial Settlement at ¶48.

²⁵ Partial Settlement at ¶50. Although RESA’s preferred approach is that PECO assume the cost responsibility for all PJM Charges and recover the costs from all customers through a non-bypassable charge, RESA supports the Partial Settlement’s recommendation for these two charges in the interest of achieving settlement and narrowing the issues for the Commission’s consideration. Also important is that pursuant to the status quo for these charges, default service wholesale suppliers are required to assume the cost responsibility for default service just as EGSs are required to assume the cost responsibility for their shopping customers. PECO does not assume the cost responsibility for the wholesale default service suppliers. This approach is consistent with RESA’s alternative recommendation as explained further in Section III.B.

²⁶ *Id.*

EGSs are required to assume their own cost responsibility. Instead, wholesale default service suppliers should be required to assume cost responsibility for default service customers just as EGSs would assume the cost responsibility for shopping customers.²⁷ Although this alternative option is far inferior to RESA's preferred approach (whereby the EDC assumes cost responsibility for the entire load), it is necessary to ensure parity between EGSs and default service for these cost components if RESA's primary position is not adopted and would also be more consistent with both the Competition Act and the *FE DSP III Order*²⁸ than the status quo.

A. RESA's Primary Recommendation That PECO Assume The Cost Responsibility For All PJM Charges For All Load And Recover Costs Through A Non-Bypassable Charge Should Be Adopted

In opposition to RESA's recommended treatment of PJM Charges, PAIEUG spends a great deal of time arguing that the proposal "violates the Competition Act and contravenes the Public Utility Code."²⁹ These recycled legal arguments, however, have been clearly adjudicated and rejected by the Commission in the *FE DSP III Order* where the Commission specifically stated:

. . . we disagree with IUG that the NITS Proposal [i.e. EDC would assume the cost responsibility for all load and recover from all customers through a non-bypassable charge] would violate the Competition Act, the Public Utility Code or our Regulations. We find that IUG's arguments on these points are without merit, as neither the Competition Act nor the Code preclude the implementation of the NITS proposal. . .³⁰

Thus, there is no legal bar to implementing RESA's primary recommendation that PECO be required to assume cost responsibility for all load (default service and shopping) and recover costs from all customers on a non-bypassable basis. Similarly, in the *FE DSP III Order*, the Commission

²⁷ 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.

²⁸ *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*").

²⁹ PAIEUG Main Brief at 15.

³⁰ *FE DSP III Order* at 38.

made clear that its prior decision on the issue from FirstEnergy's DSP II proceeding did not preclude it from reaching a different conclusion (which it did) in the *FE DSP III Order*.³¹ Therefore, the Commission's decision on these issues during PECO's prior DSP II proceeding do not preclude reaching a different outcome here and PAIEUG's arguments to the contrary must be rejected.³² Thus, RESA supports requiring PECO to assume the cost responsibility for the agreed-to charges set forth in the Partial Settlement (RTEP/TEC/ECRC and RMR) and recommends that PECO also be required to assume the cost responsibility for NITS with the costs to be recovered from all customers through a non-bypassable charge.

Regarding NITS, both PAIEUG and PECO oppose implementation of RESA's primary recommendation on the basis that NITS in the PECO service territory have not been "volatile" to date.³³ However, past performance is not indicative of future performance especially when the nature and purpose of NITS is taken into consideration. NITS costs are essentially fully regulated cost-of-service rates that are imposed on all Load Serving Entities ("LSEs") based on PECO's annual calculation of each customer's Network Service Peak Load Contribution that is approved by FERC as part of PJM's Open Access Transmission Tariff.³⁴ Thus, the precise timing and/or calculation impact of NITS for each EDC's service territory is unknown. Over the last few years, most utilities in the Northeast and mid-Atlantic have been expanding or strengthening their transmission systems thereby resulting in a general trend towards large annual transmission cost increases.³⁵ Therefore, given the nature of these charges, rejecting the proposal based on their historic stability is shortsighted.

³¹ *FE DSP III Order* at 53.

³² On the contrary, as explained further in Section III.B below, allowing PECO to assume the cost responsibility for wholesale default service suppliers but not for EGSs is inconsistent with the Competition Act which requires that an EDC provide equal access comparable to its own use of its system.

³³ PAIEUG Main Brief at 16, PECO Initial Brief at 40.

³⁴ RESA Initial Brief at 34; RESA St. No. 1 at 24-25.

³⁵ RESA Initial Brief at 34.

Importantly, RESA's primary approach reasonably and fairly spreads the costs NITS to all customers in a competitively fair manner without creating a competitive advantage for default service or denying EGSs equal access to the EDC's facilities. This approach also ensures that only the actual costs of the PJM Charges are paid by customers because it removes any need to include a risk premium in either the wholesale default service supplier bid prices or the EGS retail price to consumers. Requiring the EGSs to assume the cost responsibility for shopping customers (vs. requiring PECO to assume the responsibility for all load) results in the need for EGSs to embed risk premiums into retail pricing to account for the future unknown cost changes.³⁶ Thus, any other approach beyond requiring the EDC to assume the cost responsibility for all load, results in customers paying more than the actual costs for these charges. Such result is disruptive to creating a sustainable competitive market where customers are paying the actual cost of energy and EGSs are incented to develop competitive pricing based on actual market costs. Moreover, as explained further below in Section B.2, when the EDC is permitted to assume cost responsibility for only wholesale default service suppliers (and not EGSs too), the result is a competitive advantage for default service and unequal access of the EGSs to the utility's own use of its system in contravention of the Competition Act.

Finally, PAIEUG raises concerns about how a transition to recovering costs from all customers on a non-bypassable basis would impact specific customers.³⁷ Recommendations for addressing each of these concerns were offered by RESA Witness Hudson:

- Regarding cost allocation within the customer classes, Mr. Hudson explained by PECO would be able to allocate the PJM Charges on the basis of a customer-specific Network Service Peak Load ("NSPL") value;³⁸

³⁶ RESA St. No. 1-SR at 15-16. While the need to embed a risk premium in default service would depend on whether PECO assumes the cost responsibility on behalf of the wholesale default service supplier or the wholesale default service supplier assumes the cost responsibility on its own behalf, all customers would benefit in a situation where there is no need for any entity to embed risk premiums for these charges in retail pricing.

³⁷ PAIEUG Main Brief at 20-25.

- Regarding the need for Large Commercial customers to verify how EGSs are handling the PJM Charges, adopting RESA's primary approach on a uniform basis for each EDC would address this issue because there would be consistent treatment throughout the EDC service territories. Similarly, adopting RESA's alternative proposal would at least achieve consistency between the service territories of the FirstEnergy EDCs and PECO;
- Regarding transition issues or concerns about double recovery of the PJM Charges, PAIEUG Witness Haines noted that he is in the process of negotiating one³⁹ fixed price contract to cover the period June 1, 2015 through June 1, 2018. As a Commission Order is expected in this proceeding early December 2014, there would still be six months left to finalize the details of that contract. Alternatively, Mr. Haines could negotiate a provision that would allow renegotiation in price in the event of a regulatory change or agree to a credit in the event of a change ordered by the Commission.⁴⁰
- Regarding Large Commercial customers who may not be aware of a future change at the time of their contract negotiations, the change in cost recovery can be structured to address this. For example, consistent with the Partial Settlement, the shift for Generation Deactivation charges is limited to cost responsibility for future incremental RMR unit costs after the date of final order. RMR unit declarations prior to the final order would be remain status quo (this is similar to the outcome in the FE DSP III proceeding). Similarly NITS could be delayed until June 2016 to provide an extra year of transition time.⁴¹

In sum, RESA's preferred recommendation that the EDC assume cost responsibility for all load and recover the costs from all customers through a non-bypassable charge is consistent with the Competition Act, supported by the record in this proceeding and would result in more accurate pricing for consumers. Further, to the extent transition issues are of concern, there are appropriate ways that they can be addressed consistent with how they were handled for the FirstEnergy EDCs. For all these reasons, PECO should be directed to assume the cost responsibility for all load and recover the costs from all customers through a non-bypassable charge for the following charges:

³⁸ RESA St. No. 1-SR at 16.

³⁹ The other contract discussed by Mr. Haines in his testimony involved a pass through of charges, therefore, any changes would not impact this contract. See PAIEUG St. No. 1-R at 8.

⁴⁰ RESA St. No. 1-SR at 17-18.

⁴¹ Partial Settlement at ¶48; RESA St. No. 1-SR at 18.

- Transmission Enhancement charges (a/k/a Regional Transmission Expansion Plan “RTEP”) and Expansion Cost Recovery charges (collectively, “TEC/ECRC”);
- Generation Deactivation/Reliability Must Run (“RMR”) charges for which charges are set after the approval of PECO’s Revised DSP III by the Commission; and,
- Network Integration Transmission Services (“NITS”).

B. If The Settlement Agreement And RESA’s Primary Recommendation For NITS Is Rejected, Then RESA’s Alternative Recommendation That Wholesale Default Suppliers And EGSs Assume The Cost Responsibility For PJM Charges And Recover Costs From Their Respective Customers Should Be Adopted

If the Partial Settlement and RESA’s consistent recommendation regarding NITS is rejected, then PECO should be prohibited from assuming the cost responsibility on behalf of only the wholesale default service suppliers for RTEP/TEC/ECRC, RMR and NITS. Rather, PECO should be directed to revise its SMAs to ensure that the wholesale default service suppliers (not PECO on their behalf) are obligated to assume the cost responsibility for these charges just as they are required to do for Unaccounted for Energy and meter error correction charges. As explained further below, adopting this alternative approach focuses on addressing the assignment of cost responsibility as costs would not be recovered from customers through a non-bypassable charge. Prohibiting PECO from assuming the cost responsibility on behalf of wholesale default service suppliers only is necessary to avoid creating a competitive advantage for default service and ensuring that EGSs have equal access (if RESA’s primary recommendation is not adopted).

1. RESA’s alternative approach addresses the assignment of cost responsibility and not cost recovery

If the Partial Settlement and RESA’s recommendation regarding NITS (that PECO assume the cost responsibility for all load and recover costs from all customers through a non-bypassable surcharge) is not adopted, then the issue of cost responsibility still needs to be addressed. Assigning cost responsibility for the default service load to either PECO or wholesale default service suppliers does not implicate the issue of cost recovery. This is because regardless of whether PECO assumes the cost responsibility for the wholesale default service suppliers or the wholesale default service

suppliers assume the cost responsibility on their own, the EGSs in either scenario assume the cost responsibility for their shopping load. Thus, cost recovery is from default service customers for default service load and shopping customers for shopping load. This is a very important point to keep in mind when considering an alternative approach to RESA's preferred recommendation that the EDC would assume the cost responsibility for all load with cost recovery from all customers through a non-bypassable charge.

Generally, the parties opposing RESA's primary position – including RESA's most vociferous opponent, PAIEUG – focus on the cost recovery issue without an analysis or opinion about what entity should assume the cost responsibility of these charges for default service.⁴² The only party to raise a specific objection to RESA's alternative approach regarding the assignment of cost responsibility to wholesale default service suppliers is PECO. In addition to objecting to the characterization of NITS as unhedgeable because NITS charges have not changed in the past, PECO claims that permitting it to assume the cost responsibility for wholesale default service suppliers for all the PJM Charges would result in consistency for how PECO treats these charges.⁴³ However, as explained in Section III.A, the fact that the charges for NITS has not changed in the past does not change the fact that future changes are possible and unpredictable. Moreover, as explained further below, PECO's quest for consistency in assignment of cost responsibility whereby PECO assumes the cost responsibility for wholesale default service suppliers creates a competitive advantage for

⁴² PAIEUG Main Brief at 7 (“any proposal to implement a non-bypassable rider for the collection of transmission and/or transmission-related costs must be rejected by the PUC. . .”). Similarly, Noble “supports PECO’s proposal. . . which would continue to require LSEs, such as EGSs, to maintain responsibility for PJM charges assigned to LSEs.” Noble Initial Brief at 2. Noble does not provide any analysis or position regarding the cost assignment for the default service load (to EDC for wholesale supplier or wholesale supplier) when the EGSs are assigned costs for their load.

⁴³ PECO Initial Brief at 40. PECO does not consider Unaccounted For Energy and meter error correction charges to be related to the provision of transmission service. PECO Initial Brief at 39. Therefore, PECO does not see an inconsistency in continuing the current status quo for these two charges which requires the wholesale default service suppliers (not PECO on their behalf) to assume the cost responsibility.

default service and interferes with an EGS's right to equal access on comparable terms of the utility's own use of its system in contravention of the Competition Act.

2. **When PECO assumes the cost responsibility for default service wholesale suppliers, it creates a competitive advantage for default service and interferes with an EGSs right to equal access on comparable terms of the utility's own use of its system in contravention of the Competition Act**

As explained above, RESA's alternative approach regarding the assignment of cost responsibility to wholesale default service suppliers still requires the EGSs to recover the costs of these charges from their shopping customers – a result that addresses the Commission's previously expressed concerns related to cost recovery.⁴⁴ The wholesale default service suppliers are contractually and financially responsible for supplying the default service load, just like the EGSs are contractually and financially responsible for supplying the shopping load. Therefore, requiring the wholesale default service suppliers to assume the cost responsibility for default service customers is logical and reasonable if RESA's primary recommendation that PECO assume cost responsibility for all load is not adopted. This alternative approach is also consistent with requiring the EGSs to assume the cost responsibility for their customers. The contrary approach of allowing PECO or any EDC to assume the cost responsibility on behalf of the wholesale default suppliers but not for the EGSs is anticompetitive and discriminatory in direct contradiction to the Competition Act.⁴⁵ The Competition Act requires that customers be allowed "to choose among electric generation suppliers in a competitive generation market through direct access."⁴⁶ "Direct Access" is defined by the Competition Act as:

⁴⁴ The Commission stated in the *PECO DSP II Order*, that "now that EGSs are LSEs, these PJM costs and administrative expenses are properly allocated among all LSEs." *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 60 ("*PECO DSP II Order*").

⁴⁵ 66 Pa. C.S. § 2811(a)(The commission shall monitor the market for supply and distribution of electricity to retail customers and take steps as set forth in this section to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.)

⁴⁶ 66 Pa. C.S. § 2804(2).

The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies' own use of the system to transport electricity from any generator of electricity to any end-use customer.⁴⁷

Likewise, the Competition Act requires that:

A public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system.⁴⁸

As explained by RESA Witness Hudson, allowing PECO (vs. the wholesale default service supplier) to assume the cost responsibility for only wholesale default service suppliers (vs. for all load) unfairly shifts a competitive advantage to PECO's default service because wholesale default service 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.⁴⁹ Conversely, EGSs under either scenario (whether PECO assumes cost responsibility for wholesale suppliers or wholesale suppliers assume cost responsibility themselves) are required to embed the costs of PJM Charges in their competitive prices. However, they 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, when PECO or any EDC inserts itself into the process to assume the responsibility of PJM Charges only for wholesale default service suppliers but not for EGSs, the result is inconsistent with these provisions of the Competition Act because the EDC can leverage its ability to receive full cost recovery of PJM Charges to impact the default service rate. As such, PECO

⁴⁷ 66 Pa. C.S. § 2803(emphasis added).

⁴⁸ 66 Pa. C.S. § 2804(6)(emphasis added).

⁴⁹ RESA St. No. 1-SR at 15-16.

provides discriminatory and advantageous access to the wholesale default service suppliers that is not similarly made available to the EGSs. Thus, in lieu of requiring PECO to assume the cost responsibility for all load (which is the most fair, nondiscriminatory result), the Commission must prohibit PECO from assuming the responsibility for only the wholesale default service supplier.

Rather (again in lieu of RESA's primary recommendation that PECO assume cost responsibility for the entire load), the only alternative approach can be to require the wholesale default service suppliers (not PECO on their behalf) to assume the cost responsibility for the PJM Charges. When the wholesale default service suppliers assume the cost responsibility, they – like the EGSs – need to calculate the costs of the charges and build in a cost component for the risk of price increases into their default service bid pricing. Thus, when both the wholesale default service suppliers and the EGSs are required to factor in the same risk assessment into their pricing (whether for default service or shopping customers), there is at least a more apples-to-apples price comparison available to customers because the resulting default service rate and the resulting EGS contract price are required to take into consideration the same risk analysis regarding PJM Charges.⁵⁰

Again, though, the need to factor in risk premiums for PJM Charges would be completely eliminated with adoption of RESA's primary recommendation. Thus, directing PECO to assume these cost responsibilities on behalf of all load (in contrast to only assuming the cost for wholesale suppliers for some charges as it does now) is really the ideal approach. However, if RESA's primary recommendation is not adopted, the Commission should at a minimum, seek to ensure parity between the treatment of EGSs and wholesale default service suppliers by requiring modifications to the Supply Master Agreement that require wholesale suppliers to also assume the cost obligations for the PJM Charges. By doing this, there would be parity between the default

⁵⁰ RESA St. No. 1-SR at 15-16.

service rate and the competitive price because both the wholesale suppliers and EGSs would need to factor in the risk premium associated with unpredictable and unhedgeable PJM Charges. Adopting RESA's alternate recommendation would be a change in the current DSP II status quo for TEC/ECRC/RTEP and NITS. It would be consistent with the current DSP II status quo for Generation Deactivation though PECO's initial proposal for Generation Deactivation Charges was to permit it to assume the cost responsibility for wholesale default service suppliers. RESA's alternate recommendation would be consistent with the way PECO currently handles Unaccounted For Energy and historic out of market tie-line generation and retail meter adjustments.⁵¹

C. The Outcome Which Would Be Consistent With *FE DSP III Order* And Create Some Uniform Treatment Among EDCs

Regarding cost responsibility and cost recovery of the PJM Charges, RESA supports uniform statewide application across all EDCs. Such is not the case in Pennsylvania today. Each EDC treats the specific charges in their own manner without regard for how the same charges are treated by another EDC. Even within each EDC, the assignment of cost responsibility can vary with respect to each charge. For example, for PECO currently, PECO assumes the cost responsibility for TEC/ECRC/RTEP and NITS while wholesale default service suppliers assume the responsibility for RMR, Unaccounted For Energy and Meter Error corrections.⁵² The result of the varying treatment among EDCs and within each EDC creates difficulty for competitive suppliers in assessing each market and determining whether or not they can enter that market. While RESA maintains that all EDCs in Pennsylvania should assume the cost responsibility for all load and recover the costs from all customers through a non-bypassable charge for all PJM charges

⁵¹ See RESA Initial Brief at 30-32 setting forth each PJM Charge and showing how cost responsibility and cost recovery are handled by FirstEnergy EDCs (currently and as approved by *FE DSP III Order*), how PECO currently handles and proposes to handle each PJM Charge, and RESA's recommendations for PECO DSP III.

⁵² *Id.*

(consistent with the discussion above in Section III.A), at a minimum in this case the Commission should better align PECO with the outcome of the *FE DSP III* proceeding. To achieve that result:

- PECO should be directed to assume cost responsibility for all load for TEC/ECRC/RTEP and Generation Deactivation Charges (this is consistent with the Partial Settlement); and,
- Wholesale default service suppliers should be required to assume cost responsibility for NITS (PECO, in contrast, proposes to assume cost responsibility for wholesale default service suppliers).

While this outcome would still not provide consistency of treatment for all PJM Charges within PECO's service territory or among all the service territories of all the EDCs, it would be an improvement over the situation that currently exists for PECO and would better align PECO with how the charges are being treated in the FirstEnergy service territories.

IV. CONCLUSION

For all the reasons discussed above, RESA respectfully requests that the Administrative Law Judge approve the Partial Settlement as submitted and direct that:

- (1) the Medium Commercial customers be moved to hourly priced default service consistent with the process set forth in ¶¶ 26-28 of the Partial Settlement;
- (2) PECO assume cost responsibility for all load for RTEP, Expansion Cost Recovery Charges, Generation Deactivation/Reliability Must Run Charges and implement a non-bypassable surcharge to recover the costs consistent with the Partial Settlement (or, if the Partial Settlement is rejected, that PECO be prohibited from assuming the cost responsibility for these charges on behalf of wholesale default service suppliers); and,

(3) PECO assume the cost responsibility for NITS and recover the costs through a non-bypassable charge or, alternatively, that wholesale default service suppliers (not PECO on their behalf) and EGSs be required to assume the cost responsibility for NITS with each recovering the costs from either default service or shopping customers.



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