



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166  
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare  
Direct Dial: 717.237.5290  
Direct Fax: 717.260.1744  
abakare@mwn.com

September 4, 2014

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**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 filing with the Pennsylvania Public Utility Commission is the Reply Brief of the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By   
Adeolu A. Bakare

Counsel to the Philadelphia Area Industrial Energy Users Group

Enclosure

c: Administrative Law Judge Cynthia W. Fordham (via E-mail and First-Class Mail)  
Certificate of Service

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I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

### VIA E-MAIL AND FIRST CLASS MAIL

Thomas P. Gadsden, Esq.  
Kenneth M. Kulak, Esq.  
Brooke E. McGlinn, Esq.  
Morgan Lewis and Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[kkulak@morganlewis.com](mailto:kkulak@morganlewis.com)  
[bmcglinn@morganlewis.com](mailto:bmcglinn@morganlewis.com)

Anthony Gay, Esq.  
Romulo E. Diaz, Esq.  
W. Craig Williams, Esq.  
Exelon Business Services Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
[anthony.gay@exeloncorp.com](mailto:anthony.gay@exeloncorp.com)  
[romulo.diaz@exeloncorp.com](mailto:romulo.diaz@exeloncorp.com)

Christy Appleby, Esq.  
Lauren M. Burge, Esq.  
Candis A. Tunilo, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
[lburge@paoca.org](mailto:lburge@paoca.org)  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)

Johnnie E. Simms, Esq.  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[josimms@pa.gov](mailto:josimms@pa.gov)

Elizabeth Triscari, Esq.  
Office of Small Business Advocate  
Commerce Building, Suite 1102  
300 North Second Street  
Harrisburg, PA 17101  
[etriscari@pa.gov](mailto:etriscari@pa.gov)

Amy M. Klodowski, Esq.  
FirstEnergy Solutions Corp.  
800 Cabin Hill Drive  
Greensburg, PA 15601  
[aklodow@firstenergycorp.com](mailto:aklodow@firstenergycorp.com)

Michael A. Gruin, Esq.  
Stevens & Lee  
17 North Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
[mag@stevenslee.com](mailto:mag@stevenslee.com)

Deanne M. O'Dell, Esq.  
Daniel Clearfield, Esq.  
Sarah C. Stoner, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[sstoner@eckertseamans.com](mailto:sstoner@eckertseamans.com)

Todd S. Stewart, Esq.  
Judith D. Cassel, Esq.  
Thomas J. Sniscak, Esq.  
Hawke McKeon and Sniscak, LLP  
100 North 10<sup>th</sup> Street  
Harrisburg, PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)  
[jdcassel@hmslegal.com](mailto:jdcassel@hmslegal.com)  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

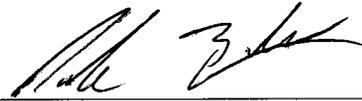
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David P. Zambito, Esq.  
Cozen O'Connor  
305 North Front Street, Suite 400  
Harrisburg, PA 17101  
[dzambito@cozen.com](mailto:dzambito@cozen.com)

Harry S. Geller, Esq.  
Patrick Cicero, Esq.  
PA Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[hgellerpulp@palegalaid.net](mailto:hgellerpulp@palegalaid.net)  
[pciceropulp@palegalaid.net](mailto:pciceropulp@palegalaid.net)

Charles E. Thomas, III, Esq.  
THOMAS, NIESEN & THOMAS, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101  
[cet3@tntlawfirm.com](mailto:cet3@tntlawfirm.com)

Becky Merola, Esq.  
Government Affairs East  
Noble Americas Energy Solutions LLC  
5325 Sheffield Avenue  
Powell, OH 43065  
[bmerola@noblesolutions.com](mailto:bmerola@noblesolutions.com)



---

Adeolu A. Bakare

Counsel to the Philadelphia Area Industrial  
Energy Users Group

Dated this 4<sup>th</sup> day of August, 2014, in Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY** :  
**FOR APPROVAL OF ITS DEFAULT** : **DOCKET NO. P-2014-2409362**  
**SERVICE PROGRAM** :

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**REPLY BRIEF OF THE  
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

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Air Liquide Industrial U.S. LP  
Boeing Company, The  
Building Owners & Managers Association  
of Philadelphia  
Drexel University  
GlaxoSmithKline  
Jefferson Health System

Kimberly-Clark Corporation  
Merck & Co., Inc.  
Philadelphia College of Osteopathic  
Medicine  
Saint Joseph's University  
Temple University  
Villanova University

Charis Mincavage (I.D. No. 82039)  
Adeolu A. Bakare (I.D. No. 208541)  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300  
cmincavage@mwn.com  
abakare@mwn.com

Counsel to the Philadelphia Area Industrial  
Energy Users Group

Dated: September 4, 2014

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## I. INTRODUCTION

On March 10, 2014, PECO Energy Company ("PECO" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of the Company's Third Default Service Program ("DSP III"). *Petition of PECO Energy Company for Approval of Its Default Service Program*; Docket No. P-2014-2409362 (Mar. 10, 2014) (hereinafter, "Petition").

Pursuant to the procedural schedule, on August 5, 2014, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed its Main Brief ("M.B.") and received Main Briefs from the following parties: PECO, the Retail Energy Supply Association ("RESA"), the Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Noble Americas Energy Solutions LLC ("Noble"), and NextEra Energy Power Marketing LLC ("NextEra").

On August 18, 2014, PECO advised Administrative Law Judge ("ALJ") Cynthia Fordham that the Company had reached an agreement-in-principle with certain parties to the proceeding and was in the process of preparing a petition to be submitted to the ALJ. PECO requested an extension of the original Reply Brief deadline to September 4, 2014. On August 28, 2014, PECO, along with the OCA, OSBA, CAUSE-PA, NextEra, and RESA ("Settling Parties") filed what was titled a "Joint Petition for Partial Settlement" ("Partial Settlement" or "Petition"). On August 29, 2014, PAIEUG filed a letter with the Commission indicating its opposition to the Partial Settlement.<sup>1</sup> Accordingly, PAIEUG hereby files this Reply Brief to

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<sup>1</sup> As noted in PAIEUG's August 29 Letter in Opposition, PAIEUG was not provided an opportunity to review the Partial Settlement prior to its filing with the PUC.

respond to the issues set forth in the parties' Main Briefs, as well as to more fully set forth the reasoning for PAIEUG's opposition to the Partial Settlement.<sup>2</sup>

First, PAIEUG responds to RESA's proposal to modify PECO's procurement plan by requiring the Company to offer hourly priced service to all Medium Commercial and Industrial ("C&I") customers. Specifically, RESA recommends immediate expansion of the provision of hourly priced service beyond the rate at which PECO can expand hourly priced service without exposing Large C&I customers to risks of unnecessary rate volatility. Because RESA's proposal could result in significant increases to the costs of Large C&I customers receiving default service from PECO, without providing any assured benefits to Medium C&I customers, the PUC should reject RESA's request.

Second, PAIEUG responds to issues raised by PECO and RESA regarding the proposed implementation of non-bypassable riders that would allow PECO to recover, from both shopping and non-shopping customers, all or some of the following "certain PJM charges:" Network Integration Transmission Services ("NITS"), Regional Transmission Enhancement Plan/Transmission Enhancement/Expansion Cost Recovery (collectively "RTEP/TEC"), Unaccounted for Energy ("UFE"), Reliability Must Run/Generation Deactivation ("RMR"), and

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<sup>2</sup> Because the Partial Settlement reserves the issues regarding Medium Commercial and Industrial Customer procurement for litigation, PAIEUG sets forth its position on this issue in Section II.D., *infra*. Because the Partial Settlement claims that the issues regarding a proposed non-bypassable rider are reserved for litigation, PAIEUG sets forth its position on these issues in Section III.C., *infra*. Section V, *infra*, sets forth more fully the reasons for PAIEUG's opposition to the provisions of the Partial Settlement regarding the proposed implementation of a non-bypassable rider. Finally, PAIEUG does not take a position with respect to the standard offer procurement issues set forth in the Partial Settlement.

historic out of market tie-line and retail meter adjustments ("Meter Error Correction" charges).<sup>3</sup> Although PECO and RESA filed Main Briefs proposing non-bypassable recovery of transmission or transmission-related costs,<sup>4</sup> as discussed more fully herein, neither PECO nor RESA have presented any evidence that would warrant implementation of the proposed non-bypassable riders charges.<sup>5</sup> As such, the PUC should reject these proposals, or, in the alternative, allow for a carve-out of any such non-bypassable rider for Large C&I customers.<sup>6</sup>

Finally, PAIEUG responds to the Partial Settlement filed by PECO after the close of the record in this proceeding. As set forth in more detail below, the Partial Settlement should be rejected by the Commission because, contrary to the claims of the Settling Parties, the Petition is not in the public interest. Initially, the Partial Settlement purports to meet the public interest requirement by limiting litigation costs, however, the Petition was filed after the submission of testimony, full evidentiary hearings, and the filing of Main Briefs. Similarly, because two of the three contested issues are reserved for litigation, the parties will still be submitting Reply Briefs

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<sup>3</sup> During the course of this proceeding, the term "certain PJM charges" has been applied to the costs sought by RESA to be collected through a non-bypassable rider. A clearer and more accurate description would be to recognize that NITS are "transmission costs," as a customer's transmission charge is effectively the customer's NITS charge. See *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company For Approval of Their Default Service Programs*, Opinion and Order, Docket Nos. P-2011-2273650, et al. (Aug. 16, 2012) ("FE DSP II Order"), p. 83 ("NITS costs are directly related to the transmission service offered to customers, generally referred to simply as 'transmission' costs."). Similarly, RTEP/TEC, UFE, RMR, and Meter Error Correction charges are "transmission-related costs." For purposes of PAIEUG's Reply Brief, PAIEUG will refer to NITS as either NITS or "transmission costs," and RTEP, UFE, RMR, and Meter Error Correction charges combined as "transmission-related costs." By way of further clarification RESA's Main Brief defines the term "RTEP" to include Transmission Enhancement and Expansion Cost Recovery Charges ("TEC/ECRC"), while PAIEUG's Reply Brief will refer to all three costs collectively as "RTEP/TEC." See RESA M.B., p. 29.

<sup>4</sup> Further, Noble filed a Main Brief opposing non-bypassable recovery of transmission or transmission-related costs.

<sup>5</sup> At the outset of this proceeding, RESA recommended that PECO implement a non-bypassable rider to recover RTEP/TEC, RMR, NITS, UFE, Meter Error Correction. RESA did not advocate for recovery of Meter Error Correction charges in testimony but indicated in its Main Brief that it would support inclusion of Meter Error Correction charges in any non-bypassable rider approved by the Commission in this proceeding. RESA M.B., p. 32. Accordingly, PAIEUG has included Meter Error Correction charges as a "transmission-related cost" for purposes of opposing non-bypassable recovery of such costs in this Reply Brief. Conversely, PECO supports a non-bypassable rider for recovery of RTEP/TEC and RMR costs. The changes in PECO and RESA's positions on the charges to be collected, as described in the Partial Settlement, are discussed more fully in Section V, *infra*.

<sup>6</sup> PAIEUG's Reply Brief will not respond to every argument contained in the parties' Main Briefs but only those issues necessitating additional response. PAIEUG'S decision not to respond to all arguments should not be construed as agreement with the positions of any party on any of the outstanding issues in this proceeding.

on these issues, the ALJ will still need to issue a Recommended Decision, with the possibility of parties filing Exceptions and/or Reply Exceptions, and the Commission will have to continue to expend resources on resolving the issues in this proceeding. Moreover, with regard to the issue of recovery of transmission and transmission-related costs, the Petition resolves none of the numerous and significant concerns raised by PAIEUG, but rather, only resolves issues of concern to PECO and RESA. As such, the purported "resolution" set forth in the Partial Settlement does not settle, much less even attend to, any of the Large C&I customers' concerns in the event that PECO is permitted to implement a non-bypassable rider. Accordingly, because the Partial Settlement fails to reflect the interests of Large C&I customers and fails to provide any benefits that would be in the public interest, the Commission should summarily ignore the Petition for purposes of this proceeding as it relates to any non-bypassable recovery of transmission or transmission-related costs. In addition, the Commission should reject any implementation of a non-bypassable rider for the collection of transmission and/or transmission related costs, or, as a secondary but viable alternative, allow for a carve-out of Large C&I customers from any such rider.

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

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

RESA's Main Brief offered no credible rebuttal to PECO's testimony indicating that RESA's proposal to transfer Medium C&I customers with a measured billing demand between 100 kW and 500 kW to the Large C&I procurement group would raise the cost of PECO's hourly priced service; therefore, PAIEUG continues to oppose RESA's proposal and recommends that the Commission preserve the current 500 kW demarcation between Medium C&I customers and Large C&I customers.

**B. Residential Class Procurement**

**1. Term Length of Supply Contracts**

PAIEUG has no position on this issue.

**2. Procurement Schedule**

PAIEUG has no position on this issue.

**C. Small Commercial Class Procurement**

PAIEUG has no position on this issue.

**D. Medium Commercial Class Procurement**

PECO's proposal to continue offering hourly priced service to customers with a peak demand of 500 kW or greater, pending deployment of its smart meter infrastructure, provides a reasonable progression towards expanding hourly priced service while minimizing rate fluctuations for Large C&I customers. RESA's proposal to immediately move Medium C&I customers, *i.e.* customers with peak demands between 100 kW and 500 kW, to hourly priced service conflicts with PECO's schedule for completing the necessary infrastructure installations and creates uncertainty that could be reflected in higher premiums for hourly priced service. Accordingly, RESA's proposal should be denied.

RESA's Main Brief supports immediate migration of Medium C&I customers to hourly priced service. RESA M.B. p. 18. RESA emphasizes that PECO will complete deployment of smart meters by June 1, 2015, and claims that the Company can seamlessly transfer all Medium C&I customers into the Large C&I procurement group by the time PECO implements its DSP III. *Id.* In the event that any Medium C&I customers do not have interval meters installed by June 1, 2015, RESA indicates that PECO could transition from annual hourly priced service procurements to quarterly procurements, thereby allowing the Company to add Medium C&I

customers to the Large C&I procurement group on a quarterly basis as interval meters become available after June 1, 2015. *See* RESA M.B., p. 20.

PECO intends to move Medium C&I customers into the Large C&I procurement group as part of its DSP IV because the Company will not have the necessary Advanced Meter Infrastructure ("AMI") and billing systems necessary to offer hourly priced service to Medium C&I customers until July 2016, (*i.e.*, approximately one year into the DSP III). PECO M.B., p. 19. PECO believes that attempting to add Medium C&I customers to the Large C&I class throughout DSP III would increase the risk premiums assessed by wholesale suppliers and expose customers to failed procurements. PECO contends that wholesale suppliers would increase risk premiums to combat load uncertainty arising from any quarterly migration of Medium C&I customers into the Large C&I procurement group. PECO M.B., p. 19. PECO also argues that quarterly procurements will risk failed procurements based on past difficulty obtaining supplier bids for large annual procurements. *See* PECO M.B., p. 20 *citing* Tr. 138.

By focusing on the availability of interval meters, RESA ignores PECO's clarification that the additional infrastructure and billing systems necessary to support hourly priced service for Medium C&I customers will not be installed until June 1, 2016. PECO M.B., p. 19; *contra* RESA M.B., p. 19. Rather than risk load uncertainty and higher prices for default service supply by adopting RESA's proposal to begin transferring Medium C&I customers to the Large C&I procurement group during PECO's DSP III, the Commission should approve PECO's recommendation to first complete all necessary infrastructural upgrades and conduct a less disruptive transition during PECO's DSP IV.

#### **E. Large Commercial and Industrial Class Procurement**

PAIEUG has no position on this issue.

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

PAIEUG has no position on this issue.

**G. Contingency Plan**

PAIEUG has no position on this issue.

**H. Uniform Supplier Master Agreement**

PAIEUG has no position on this issue.

**I. Other Procurement and Implementation Plan Requirements**

PAIEUG has no position on this issue.

**III. RATE DESIGN AND COST RECOVERY**

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

For reasons set forth in Section III.C, *infra*, PAIEUG opposes the proposals of RESA and PECO for implementation of a non-bypassable rider for the collection of transmission and/or transmission-related costs.

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

None.

**C. Recovery of Certain PJM Charges**

**1. Introduction**

The collection of transmission costs (*i.e.*, NITS costs) or transmission-related costs (*i.e.* RTEP/TEC, RMR, UFE, and/or Meter Error Correction charges) by PECO through a non-bypassable rider is unjust and unreasonable and must not be approved. The record in this proceeding contains no evidence supporting a modification to PECO's current methodology for the collection of transmission and transmission-related costs, which appropriately requires PECO to collect transmission and transmission-related costs from its non-shopping (*i.e.*, default) customers, while Electric Generation Suppliers ("EGSs") must collect transmission and

transmission-related costs from their shopping customers. Modifying the existing cost collection structure to implement a non-bypassable rider would hinder competitive market participation and, in many cases, have significant adverse effects on Large C&I customers.

First, both RESA and PECO failed to furnish evidence supporting their proposals for a non-bypassable rider. *See* Sections III.C.2-3., *infra*. RESA offers two irrelevant evidentiary claims purporting to establish a change in circumstances from PECO's DSP II Order, where the Commission rejected a similar proposal to recover transmission and transmission-related costs on a non-bypassable basis. Specifically, RESA cites to unpersuasive and inapplicable allegations of rate volatility and, alternatively, attempts to demonstrate a change in circumstances based upon the Commission's unrelated Fixed Price Order.<sup>7</sup> PECO relies entirely on inapplicable findings from a recent Commission Order disposing of the FirstEnergy ("FE") Companies' DSP III.<sup>8</sup> Second, the non-bypassable rider proposed by PECO and RESA would result in unacceptable limitations on customers' ability to negotiate for a variety of competitive products while unnecessarily creating the problem of double collection of transmission and/or transmission-related costs by both PECO and EGSs. *See* Section III.C.4., *infra*. Finally, because of the significant problems such a non-bypassable rider would raise for Large C&I customers, if the Commission were to approve either RESA or PECO's proposal for non-bypassable collection of transmission or transmission-related costs, the Commission must provide a carve-out for the Large C&I customer class to avoid the inherent problems of such a proposal. *See* Section III.C.5., *infra*.

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<sup>7</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 Order").

<sup>8</sup> The FirstEnergy Companies are the Electric Distribution Companies ("EDCs") of Metropolitan-Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, all of whom have the same parent company of FirstEnergy. *See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Commencing June 1, 2015 Through May 31, 2017*, Final Order, Docket Nos. P-2013-2391368, *et al.* (July 24, 2014) ("FE DSP III Order").

Accordingly, because neither PECO nor RESA has met its burden of proof, the need for a non-bypassable rider does not exist on PECO's system. Moreover, PECO and RESA have failed to recognize the competitive restrictions that such a rider would place on Large C&I customers, while also choosing to ignore the risks of double collection that would arise therein. For these reasons, the PUC should reject the implementation of a non-bypassable rider on PECO's system, or, in the alternative, allow for a carve-out for Large C&I customers.

**2. RESA Has Not Presented Evidence of Volatile Costs or Any Additional Change in Circumstances Warranting Implementation of a Non-bypassable Rider.**

While RESA's Main Brief recognizes that the Commission rejected non-bypassable recovery of transmission and transmission-related costs in PECO's DSP II, RESA nonetheless asks the Commission to revisit the matter in this DSP III proceeding based upon claims that circumstances have changed since PECO's DSP II. Specifically, RESA purports that a change in cost volatility, along with the Commission's recent Fixed Price Order, warrants a review by the Commission. *See* RESA M.B., pp. 34, 36. In actuality, RESA has been unable to provide any evidence of volatility in either transmission or transmission-related costs. Moreover, the Commission's Fixed Price Order, while having no application to the issues at hand, also provides a carve-out Large C&I customers, rendering this Order completely inapplicable. As such, RESA's proposal must be rejected as meritless.

With regard to transmission costs, RESA claims that volatile transmission costs warrant a change to the collection of transmission costs, but RESA offers no evidence of such volatility through either its testimony or via the evidentiary hearing.<sup>9</sup> *See* RESA M.B., p. 34. Moreover, any purported claims of volatility in RESA's testimony were rendered meritless during

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<sup>9</sup> Although RESA cites to its testimony as support for alleged volatility of transmission and transmission-related costs, RESA's testimony sets forth only averments of rate volatility, with no empirical data or analysis supporting the witness's claims.

evidentiary hearings when PECO's witness, John J. McCawley, responded to RESA's claims of volatility by noting that transmission costs are generally predictable and have not changed in PECO's service territory for several years. *See* PAIEUG M.B., pp. 18-19, *citing* Tr. 58-59. In response, RESA provided unpersuasive evidence of volatile NITS costs in certain PJM zones, most of which are located outside of Pennsylvania.<sup>10</sup> In fact, of the Pennsylvania EDCs, only PPL and UGI experienced increased NITS costs in June 2014, with PECO's NITS costs remaining unchanged from 2013.<sup>11</sup> Accordingly, RESA provides no evidence that the volatility of transmission costs in PECO's service territory warrants a change in the collection of these costs.

RESA offers even less evidence to support its claims of volatility for transmission-related costs. In fact, RESA sets forth only unsupported averments claiming that all transmission-related costs are "unpredictable." RESA M.B., p. 33. RESA discussed RMR costs in greater detail, but only to postulate a "generally accepted market assumption" of increased retirement of generating units within PJM as evidence of expected volatile RMR costs. *See id.* at 33-34. This speculative claim, based on the potential that PJM and the Federal Energy Regulatory Commission may decide that some units scheduled for retirement are necessary for reliability, was not supported by any data or objective facts and therefore fails to satisfy RESA's burden of proof. *See* PAIEUG M.B., p. 17; *contra* RESA M.B., p. 33. The Commission reviewed similar claims in PECO's DSP II proceeding and determined that RESA had not met its burden of proof at that time. *See* PAIEUG M.B., p. 17. As RESA offers no evidence herein warranting a

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<sup>10</sup> Further, because RESA provided this rate information only in its Main Brief and not in testimony, the information has not been subject to cross-examination and remains both unchecked and unclear. For example, PAIEUG cannot identify the NITS rate for Pennsylvania Power Company anywhere on the cited website.

<sup>11</sup> For Duquesne Light Company, NITS rates decreased between June 1, 2013 and June 1, 2014.

different result in PECO's DSP III proceeding, the Commission should deny RESA's proposal to transfer recovery of transmission-related costs to PECO via non-bypassable rider.

Moreover, even assuming that transmission or transmission-related costs fluctuate, EGSs are already equipped with the means to address such volatility without a non-bypassable rider. *Contra* RESA M.B., p. 35. Specifically, EGSs may continue to offer pass-through products if they are unwilling to hedge for the fluctuations associated with transmission and/or transmission related costs.<sup>12</sup> *See* PAIEUG M.B., p. 19. For example, Noble, an EGS and member of RESA, confirmed its preference for preserving PECO's originally proposed load-following recovery of transmission and transmission-related costs to facilitate continued customization of customer pricing. Noble M.B., p. 3; *see also* RESA M.B., p. 1 (identifying Noble as a RESA member). Specifically, Noble contends that, "a customer's ability to manage its NITS costs enables the customer and their supplier to effectively manage their load obligations and allows for further development of product and service offerings in the marketplace which provide a meaningful benefit to retail electric service customers regardless of size." Noble M.B., p. 3. Considering that EGSs currently offer fixed price products, including transmission and transmission-related costs, such competitive products should not be removed from competitive markets.

In addition, RESA's efforts to portray the Commission's Fixed Price Order as a change in circumstances also fail to justify the proposed non-bypassable rider. *See* PAIEUG M.B., pp. 18-19. RESA raised the same argument in the context of the FE DSP III proceeding, where the Commission found that nothing in the Fixed Price Order constitutes a "changed circumstance"

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<sup>12</sup> Because pass-through products are available to EGSs, EGSs are not at a competitive disadvantage to EDCs as default service providers. *Contra* RESA M.B., p. 35. In fact, EGSs are arguably at a competitive advantage because they have the ability to offer either fixed price or pass-through transmission products.

justifying non-bypassable recovery of transmission or transmission-related costs.<sup>13</sup> FE DSP III Order, p. 31. As observed by the Commission in the FE DSP III Order, the purpose of the Fixed Price Order is to provide transparency to the nomenclature regarding EGSs' fixed and pass-through products to customers. *See* FE DSP III Order, pp. 28-29, 31. At no point does this Fixed Price Order address components that should be included in EGS contracts.<sup>14</sup> *Id.* As a result, the Fixed Price Order provides no support for non-bypassable treatment of transmission or transmission-related costs.<sup>15</sup>

As indicated above, the record in this proceeding contains no evidence of a change in circumstances meriting any modification to the Commission's prior finding on the matter of non-bypassable recovery of transmission or transmission-related costs in PECO's service territory. RESA introduced no evidence of volatile transmission or transmission-related costs and relied on a misapplication of the Commission's Fixed Price Order. As RESA's recommendation lacks a basis in fact and law, the Commission should deny RESA's proposed non-bypassable rider.

### **3. PECO has not Presented Evidence Supporting its Proposed Non-Bypassable Rider.**

PECO proposes a non-bypassable rider for recovery of certain transmission-related costs based solely on the Commission's approval of recovery for limited transmission-related costs via a non-bypassable rider as a condition in the FE Settlement.<sup>16</sup> PECO's reliance on the FE DSP III

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<sup>13</sup> Although parties to the FE DSP III proceeding reached a non-precedential settlement on many issues ("FE Settlement"), RESA's proposal to recover transmission costs through a non-bypassable rider, including the applicability or inapplicability of the Fixed Price Order to the matter, was contested and reserved for litigation before the Commission. *See* FE DSP III Order, p. 23.

<sup>14</sup> It is somewhat ironic that RESA relies on the Commission's Fixed Price Order, which focuses on improving transparency of fixed price contracts, to justify a proposal that would create numerous transitional challenges for Large C&I customers under fixed price contracts.

<sup>15</sup> As discussed in PAIEUG's Main Brief and further addressed below, the Fixed Price Order also confirmed that the provisions therein shall not be applicable to Large C&I customers, thereby obviating any relevance with regard to collection of transmission and transmission-related costs from Large C&I customers. *See* PAIEUG M.B., p. 29.

<sup>16</sup> Despite offering different justifications for their proposed non-bypassable riders, RESA and PECO support similar non-bypassable riders, differing only in the components recovered on a non-bypassable basis. *See* RESA M.B., p. 29.

Order conflicts with language in the Order establishing the scope of the settlement achieved among the parties to the FE proceeding, as well as the Commission's longstanding policies establishing that negotiated settlement agreements are not precedential. In fact, granting PECO's proposed non-bypassable rider based upon the findings in the FE DSP III Order would disincentivize parties from entering into future settlement agreements by creating a risk of prejudicial treatment in subsequent litigation.<sup>17</sup>

In claiming that the FE DSP III Order supports its proposed non-bypassable rider, PECO overstates the scope of the Commission's disposition of the FE Settlement, which was explicitly limited to the customers within the FE Companies' service territory. *See* PECO M.B., p. 37; *contra* PAIEUG M.B., pp. 18-19. PECO observes that the FE DSP III Order approved the FE Settlement, which included non-bypassable recovery of UFE, RMR, and Meter Error Correction charges, and interprets the Order to mean that "the Commission concluded that non-bypassable treatment of these charges, as well as the RTEP charges and ECRCs previously approved for DSSR [non-bypassable] recovery in the FirstEnergy DSP II Order, was beneficial to customers." PECO M.B., pp. 38-39. Unfortunately, in making this claim, PECO unreasonably ignores the Commission's general clarification that the referenced customers benefitting are those located in the FE Companies' service territories. *See* FE DSP III Order, p. 18. While PECO appears to view the FE Settlement terms as tantamount to an Implementation Order or Commission rulemaking structured to benefit all ratepayers, the FE DSP III Order appropriately clarified that "[a] settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case." FE DSP III Order p. 18 (emphasis added).

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<sup>17</sup> To the extent that PECO's proposed non-bypassable rider is based on the non-bypassable recovery of RTEP/TEC costs approved in the FE DSP II proceeding, the proposal remains baseless as PECO failed produce any evidence warranting such a result in this proceeding. *See* PAIEUG M.B., p. 33.

Moreover, the impropriety of PECO's position is clearly evidenced by considering the inconsistency of the Company's proposal. PECO, on one hand, alleges that its proposed non-bypassable rider is a "response to the recent FirstEnergy DSP III Order." PECO M.B., p. 39. Yet, PECO proposes to exempt UFE and Meter Error Correction charges from its proposed non-bypassable rider despite the inclusion of these transmission-related charges in the non-bypassable rider approved by the Commission as part of the FE Settlement. PECO M.B., p. 39. PECO's proposal to modify the terms of the FE Settlement to address PECO-specific concerns illustrates the hypocrisy of treating a settlement limited to the facts presented in the FE DSP III proceeding as broadly applicable precedential authority.

Additionally, PECO's claim that the FE Settlement supports its selective incorporation of certain conditions of that Settlement into PECO's DSP III, without a modicum of evidence specific to PECO's circumstances, conflicts with the non-precedential nature of settlement agreements approved by the Commission. As restated by the Commission in the FE DSP III Order, "the Partial Settlement states that it does not constitute an admission against, or prejudice to any position which any of the Settling Parties might adopt during subsequent litigation of this case or any other case."<sup>18</sup> FE DSP III Order, p. 18.

Similarly, in approving a prior settlement of an application to transfer natural gas distribution company assets, which included non-prejudicial language similar to the terms in the FE Settlement, the Commission addressed precedential concerns raised by the sole non-settling party (OSBA) as follows:

The OSBA's concern that other natural gas distribution companies will cite to Commission approval of this transaction as authority for Commission approval of

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<sup>18</sup> Although PAIEUG was not a party to the FE DSP III, allowing PECO to use the FE Settlement to prejudice parties opposing non-bypassable recovery of transmission or transmission-related costs would discourage parties to prospective settlement discussions from agreeing to any divergence from their litigation positions, for fear that concessions could later be cited as precedent in future cases.

some other transfer of a rate-payer funded asset to an affiliated interest without having to prove that the transfer is at fair market value is misplaced. In any future transaction in which a utility proposes to transfer its assets to an affiliate, *we will evaluate the specific facts of that proceeding* as well as the terms of the affiliated interest agreement to determine if the affiliated interest agreement is "reasonable and consistent with the public interest" as we are required to do under Section 2102(b) of the Code.

*Application of UGI Penn Natural Gas, Inc. for approval of the Transfer by Sale of a 9.0 Mile Natural Gas Pipeline, Appurtenant Facilities and Right of Way located in Mehoopany, Pennsylvania. Affiliated Interest Filing of UGI Penn Natural Gas, Inc.*, 2011 WL 3550481 (Penn. P.U.C. 2011) (hereinafter "*UGI Penn Natural*") (Emphasis added). Here, the Commission recognized the importance of limiting the precedential effect of settlement agreements. Consistent with the express language in the FE Settlement and the Commission policy set forth in *UGI Penn Natural*, Commission approval of the FE Settlement is not precedential for purposes of PECO's DSP III.

Further, by attempting to extrapolate settlement provisions in a separate proceeding to its own DSP, PECO threatens to undermine the Commission's longstanding policy of encouraging settlements by relying on the FE Settlement as the sole source of support for its proposed non-bypassable rider.<sup>19</sup> PECO M.B., pp. 38-39. The Commission encourages parties to conserve public resources by entering into settlements. 52 Pa. Code § 5.231; *see also* FE DSP III Order, p. 18. Contrary to this general policy, approval of PECO's proposed non-bypassable rider would indicate that any settlement concession adopted in one proceeding could be used against the settling parties in future proceedings involving other public utilities. Such a result would chill parties' willingness to enter into settlements before the Commission, in stark contrast with the Commission's traditional encouragement of settlements.

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<sup>19</sup> As discussed more fully in Section V, *infra*, PECO and RESA attempt to use the Partial Settlement as further leverage to support their positions; however, the fact that the Petition is opposed by PAIEUG with respect to the implementation of a non-bypassable rider suggest that the a true "settlement" does not actually exist.

PECO's reliance on the FE Settlement ignores both the clear language in the FE DSP III Order, which approves the settlement based upon the benefits to customers solely in FE Companies' service territories, and the Commission's longstanding policies restricting parties from citing settlements for precedential value. Granting PECO's proposed non-bypassable rider would undercut future settlements by subjecting parties to prejudicial treatment based on prior settlement concessions. To prevent such an undesirable result, PECO's proposed non-bypassable rider must be denied.

**4. Non-bypassable Recovery of Transmission or Transmission-Related Costs Would Impose Permanent Restrictions on Customer Contract Negotiations and Transitional Risks of Double-Collection.**

In addition to failing to furnish evidence supporting their respective non-bypassable riders, both RESA and PECO fail to address significant customer concerns with non-bypassable recovery of transmission or transmission-related costs. To the contrary, PAIEUG offered evidence showing that the proposed non-bypassable riders would limit the scope of competitive products available through contract negotiations and raise transitional issues for customers. PAIEUG M.B., p. 21. Therefore, the Commission should deny the relief requested by RESA and PECO.

RESA and PECO furnished no evidence indicating that significant or unreasonable risk premiums are currently embedded in fixed-price arrangements for the collection of transmission and/or transmission related costs nor that EGS offers would be discounted to remove such premiums if transmission costs are extracted from competitive offers. To the contrary, RESA claims that its proposed non-bypassable rider would "be a good result for consumers." RESA M.B., p. 37. RESA's understanding of consumers' interests conflicts with evidence establishing that Large C&I customers may prefer to negotiate competitive products that include transmission and transmission-related charges, as well as the fact that Large C&I customers are willing to

remit risk premiums to ensure stable annual budgeting. *Id.* at 21-23. Further, one EGS (Noble) submitted a Main Brief affirming its desire to preserve flexible recovery of transmission and transmission-related costs, *i.e.* fixed-price or pass-through, to accommodate customer demand for such arrangements. Noble M.B., p. 3. Because customers value the ability to negotiate for competitive products that include transmission costs, even if a risk premium were included, this option should not be removed from the competitive market. *See* PAIEUG, M.B., p. 22.

In fact, Commission Statements made in support of the same FE DSP III Order relied upon by RESA acknowledge the importance of continuing to incentivize EGSs to offer innovative competitive fixed-price products. RESA M.B., p. 11. In the context of discussion of PECO's proposed procurement plan, RESA cited to a Joint Statement issued in support of the Commission's *End State Order*, where Chairman Robert F. Powelson and Vice Chairman John F. Coleman, Jr. observed that "customers wanting price stability have every opportunity to purchase such a product from a competitive supplier in the form of a fixed-price product." *See* RESA M.B., p. 10 *citing Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Joint Statement of Chairman Robert F. Powelson and Vice Chairman John F. Coleman (February 14, 2013). In contravention of this precedent cited by RESA, shifting recovery of transmission or transmission-related costs to PECO would eliminate customers' ability to structure competitive fixed-price arrangements for such costs. Thus, contrary to the position of RESA, at no point do the Commission's regulations or Commission precedent regulate what products an EGS may offer shopping customers. Innovative products that include transmission and transmission related costs should continue to be offered to customers to facilitate continued growth of and participation in the Pennsylvania retail electric market. RESA M.B., p. 20.

Further, while RESA attempts to minimize the significance of the transitional issues associated with its proposal, the non-bypassable collection of transmission and transmission-related costs would unquestionably lead to serious transitional concerns, including potential double collection of costs. As observed in the FE DSP III Order, double collection of transmission costs is not mere speculation. *See* FE DSP III Order, pp. 41-42. When the FE Companies began collecting RTEP/TEC costs via their non-bypassable riders at the start of their last DSPs, certain EGSs refused to remove these costs from shopping contracts or attempted to utilize the opportunity to "reopen" fixed price customers' contracts. *See* FE DSP III Order, p. 41. Nevertheless, RESA ignores the Commission's stated concerns with double collection occurring in the FE Companies' service territories following the Commission's approval of a limited non-bypassable rider in the FE DSP II proceeding. *See* FE DSP III Order, p. 42. In addressing concerns set forth through contested litigation, the Commission reviewed the evidence adduced on the record and found that "there is merit in the concerns expressed by [Industrials] with regard to a possible double-collection." As these observations arose from actual events addressed in a recently litigated proceeding, they are relevant to the Commission's consideration of the non-bypassable riders proposed by RESA and PECO.

Based on the experiences in the FE service territories, PAIEUG remains highly skeptical of RESA's unsubstantiated assurances that implementation of a non-bypassable rider will benefit consumers. *See* RESA M.B., p. 37. PECO's customers should not be subject to such unnecessary risks, particularly where no party has demonstrated volatile transmission or transmission-related costs to be an issue in PECO's service territory. *See* PAIEUG M.B., p. 24. Similarly, forcing Large C&I customers to face potential double collection, contract renegotiation, and additional confusion regarding the collection of transmission and/or

transmission-related costs must be avoided, especially when no evidence of any benefit resulting from a change in collection has been presented. Moreover, from a policy standpoint, EGSs should not be permitted to advocate for change at the Commission and then subsequently be unjustly enriched by the change.

Finally, RESA offers no feasible solutions to sufficiently minimize these transitional issues. The only transitional plan referenced in RESA's Main Brief was to bifurcate non-bypassable recovery of RMR charges such that only new RMR charges developed after the effective date of a Commission Order approving a proposed non-bypassable rider would be recovered through the rider.<sup>20</sup> In other words, RMR charges already in place before the effective date of such a Commission Order would be recovered consistent with PECO's current practice, while any new RMR charges occurring after the Commission Order would be collected through the rider.<sup>21</sup> This proposal fails to address the transitional risks for various reasons. First, the proposal would be inapplicable to non-bypassable recovery of NITS, because NITS charges are not billed on a cumulative basis as RMR and other transmission-related costs may be. Second, bifurcation still carries risks of double-collection for customers under long-term fixed-price

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<sup>20</sup> Although not specifically referenced in RESA's Main Brief, RESA previously testified that implementation of non-bypassable recovery of transmission costs should be delayed by one-year, from June 1, 2015 to June 1, 2016. See PAIEUG M.B., p. 24. As set forth in PAIEUG's Main Brief, this recommendation is also insufficient, as Large C&I supply contracts span periods as long as three years. See *id.*; see also Noble Main Brief, p. 3 (cautioning that implementing non-bypassable recovery of transmission or transmission-related costs could adversely impact existing contracts because "retail electric contracts, particularly contracts with large commercial and industrial customers, can often carry three (3) year terms").

<sup>21</sup> Moreover, RESA's proposal to bifurcate recovery of RMR costs based on the date of Commission approval of PECO's DSP III could complicate Large C&I customers' transition issues further. Under RESA's proposal, the current cost collection methodology (*i.e.*, EGSs collecting RMR costs from shopping customers) will remain in effect until the Commission arguably approves a non-bypassable rider mechanism. RESA is not clear, however, whether this bifurcation would occur as of a Commission Final Order in this proceeding or as of implementation of a non-bypassable rider. Most likely, the PUC will enter an Order prior to the end of 2014; however, assuming *arguendo* that a non-bypassable rider is permitted, implementation of that rider would occur on June 1, 2015. Accordingly, at least six to nine months could pass between the date of the PUC Order and the implementation of the rider, which would create additional confusion if RESA's bifurcation proposal is meant to begin upon entering of a Final PUC Order. Notwithstanding the fact that the bifurcation proposal fails to address transitional risks borne by customers, the more appropriate bifurcation date for RMR costs would be the effective date of DSP III, *i.e.* June 1, 2015.

contracts because the bifurcation date, *i.e.* date of the applicable Commission Order, would not be tied to the termination of customers' current contracts. Lastly, as evidenced by the efforts to reopen fixed price contracts referenced in the FE DSP III Order, the transitional risk imposed on customers could include overcharges resulting from EGS misunderstandings, errors, unanticipated interpretations of the Commission's Order, or even intentional reopening of fixed price contracts by EGSs. *See* FE DSP III Order, p. 41 Therefore, the proposed bifurcation of RMR charges fails to mitigate the transitional risks created by implementation of the proposed non-bypassable riders.<sup>22</sup>

RESA inappropriately attempts to minimize the significance of reducing competitive products available through contract negotiations and the transitional issues associated with a non-bypassable collection of transmission costs, while PECO ignores such issues altogether. In actuality, the contractual and transitional issues create unnecessary customer burdens, both in terms of long-term reductions in customers' freedom to contract for fixed-price recovery of transmission and transmission-related costs and short-term risks of double collection of costs, unnecessary contract renegotiation, and additional customer confusion. RESA and PECO provide no solutions for resolving these concerns. Accordingly, the proposed non-bypassable riders must be denied.

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<sup>22</sup> Although PAIEUG primarily submits that the proposed bifurcation of RMR charges is an inadequate remedy for the transitional risks identified above, if the Commission approves non-bypassable recovery of transmission and/or transmission related costs, any application of the bifurcation methodology for RMR costs should be approved and further modified to apply to RTEP/TEC costs, as well. To do otherwise could result in an extrapolation of transitional problems for Large C&I customers with respect to the determining the amount of each cost component to be collected by the various entities, as well as with respect to the timing of the collection of each cost component.

**5. Large C&I Customers Must Be "Carved-Out" of any Non-bypassable Rider Approved for Recovery of Transmission or Transmission-Related Costs.**

RESA and PECO fail to establish that a non-bypassable collection of transmission and/or transmission-related costs is just and reasonable. As discussed above, the non-bypassable collection of transmission and/or transmission-related costs creates serious customer choice and transitional concerns for Large C&I customers. *See* Section III.C.4, *supra*. While PAIEUG primarily submits that the arguments offered in support of the proposed non-bypassable riders are generally unpersuasive, the record further shows that such arguments are particularly irrelevant as applied to Large C&I customers. The uniquely negative impact of the proposed non-bypassable riders on Large C&I customers requires divergent treatment of Large C&I customers if the Commission approves a non-bypassable collection of any transmission or transmission-related costs. Therefore, in the event that the Commission approves non-bypassable recovery of any transmission or transmission-related costs in this proceeding, the Commission should approve a carve-out for Large C&I customers in order to allow them to continue to remit transmission and transmission-related costs to their EGSs, thereby avoiding the significant problems that would arise with a non-bypassable rider.

Unlike customers in smaller classes, Large C&I customers are more intimately involved in crafting their contract terms to include various pass-through and fixed price components based on their individual budgetary concerns. *See* PAIEUG M.B., p. 22, 27-28; *see also* Noble M.B., p. 3. Large C&I customers depend on this flexibility to derive pass-through and fixed price elements that best suit the individual needs of their businesses. *Id.*

The Commission's Fixed Price Order acknowledges Large C&I customers' differing participation in the competitive market and explicitly exempts Large C&I customers from the findings within the Order. PAIEUG M.B., pp. 28-29. Moreover, the risk of double collection of

transmission costs is increased for Large C&I customers who may remit higher transmission and/or transmission related costs at multiple accounts, creating additional financial harm and negotiation complexities that would not be experienced by customers in smaller classes. *See* PAIEUG M.B., p. 29.

The Commission further recognized the distinction between Large C&I customers and Residential and Small C&I customers in relation to non-bypassable recovery of transmission costs in the FE DSP III Order. *See* FE DSP Order, p. 45. Although the Commission ultimately found a carve-out to be moot in light of its denial of RESA's proposal to implement a non-bypassable rider for recovery of transmission costs, the Commission indicated conceptual support for carving-out Large C&I customers, saying that "if the Commission would have implemented this revised collection of NITS costs within FirstEnergy's [non-bypassable rider], there is merit in the concerns expressed by [Industrials]." *See id.*

Additionally, RESA's Main Brief highlights another factor supporting a carve-out for Large C&I customers. RESA claims that PECO should implement non-bypassable recovery of transmission and transmission-related costs because PECO currently assumes cost responsibility for transmission and transmission-related costs for wholesale suppliers but assigns cost responsibility on a load-following basis for EGSs. *See* RESA M.B., p. 38. While this rate design allows EGSs to structure more creative and varied competitive products, RESA alleges that the current rate design creates an inequity because only EGSs "will be required to embed the costs of PJM Charges in their competitive prices." *Id.* This is where RESA again overlooks important considerations unique to the Large C&I class. Unlike Residential or Small C&I customers, many Large C&I customers actively seek fixed-price products and are willing to remit the risk premiums necessary to obtain cost stability. *See* PAIEUG M.B., p. 22, 27-28; *see*

*also* Noble M.B., p. 3. Further, for any Large C&I customers unwilling to pay the necessary risk premium, EGSs can always reserve the option to recover transmission and transmission-related costs on a pass-through basis. *Id.*

As detailed in Sections III.C.2-4, *infra*, PAIEUG opposes the non-bypassable recovery of transmission or transmission-related costs. The non-bypassable riders proposed by RESA and PECO are not supported by record evidence. Additionally, the proposals would restrict customer choice and expose Large C&I customers to transitional risks of double cost collection. For these reasons, assuming, *arguendo*, the Commission approves non-bypassable collection of transmission or transmission-related costs, Large C&I customers should be carved out from any non-bypassable rider.

#### IV. STANDARD OFFER PROGRAM

None.

#### V. OTHER ISSUES

##### A. **PAIEUG Opposes the Partial Settlement Because It Fails to Comply With Commission Regulations, Does Not Meet the Public Interest Standard, and Ignores the Concerns of Large C&I Customers With Respect to Implementation of a Non-Bypassable Recovery Mechanism For Transmission and/or Transmission-Related Charges.**

As stated above, the Settling Parties entered into a Partial Settlement resolving limited issues in this proceeding. Importantly, the Partial Settlement fails on both a procedural and substantive basis, particularly as it relates to the proposed implementation of a non-bypassable rider and PAIEUG's position thereto. As discussed more fully herein, the Partial Settlement: (1) fails to comply with Commission regulations; (2) does not meet the public interest standard, especially as it applies to the proposed implementation of a non-bypassable rider, as it does not result in any meaningful litigation savings or otherwise further the public interest; and (3) neglects the issues of concerns raised by PAIEUG with respect to the transitional and double-

collection issues faced by Large C&I customers if a change in transmission and/or transmission-related costs were to occur. For these reasons, PAIEUG submits that the Partial Settlement, as it addresses the proposed implementation of a non-bypassable rider, must be rejected by the Commission.

The Partial Settlement addresses PECO's Standard Offer Program, procurement issues, and the proposals of the Company and RESA to implement non-bypassable cost recovery. *See* PECO Statement in Support, pp. 6-13. The Settling Parties reached a full resolution as to the Standard Offer Program, with PECO adopting modifications proposed by both OCA and RESA. PECO Statement in Support, pp. 8-10. As PAIEUG members are ineligible to participate in the Standard Offer Program, PAIEUG did not take a position on the matter.

With regard to procurement, the Petition fully resolves only Residential procurements. Partial Settlement, pp. 6-7. Under the Partial Settlement, PECO agrees that parties can litigate the transition of Medium C&I customers into the Large C&I procurement group, but further agrees that PECO will support hourly priced service for Medium C&I customers and, to that end, implement billing and systems tests to empirically determine whether Medium C&I customers could feasibly be transferred into the Large C&I procurement group on or before June 1, 2016. *See* Partial Settlement, pp. 8-9. This provision addresses issues raised by PECO, RESA, and OSBA, although, as abundantly clarified by the OSBA, the terms do not fully resolve the procurement issues. *See* OSBA Statement in Support, p. 4. As stated by the OSBA, the Partial Settlement merely establishes the "timing and logistics" for implementing hourly priced service if, following litigation on the issue, the Commission agrees with PECO and RESA that hourly priced service should be available for Medium C&I customers. *Id.*

PAIEUG agrees with OSBA that hourly priced service should be limited to Large C&I customers until PECO has completed installation of all systems necessary to simultaneously transition all Medium C&I customers into the Large C&I procurement group. However, as the Partial Settlement would require PECO to transfer Medium C&I customers only after running successful system tests, PAIEUG does not specifically oppose this provision of the Partial Settlement, but questions the public benefit derived from the "agreement" that PECO will not implement hourly priced service if its systems cannot logistically support the transition.

On the issue of recovery of transmission and transmission-related costs, PAIEUG fully opposes the Partial Settlement. Three parties to this proceeding, PAIEUG, PECO, and RESA, sponsored testimony addressing the proper recovery of transmission and transmission-related costs. None of the other Settling Parties took a position on the issue.<sup>23</sup> See Partial Settlement, p. 1. As discussed below and more fully set forth in Sections III.C.2-5, *supra*, PAIEUG opposes non-bypassable recovery of any transmission or transmission related costs due to a lack of legal and factual support, rate design uncertainties, adverse customer choice effects, and unreasonable risk of transitional double-charges. PECO and RESA both support non-bypassable recovery of transmission or transmission related costs, differing only in which specific costs should be included or excluded from the non-bypassable rider. See Sections III.C.2-3, *supra*. Unlike the resolution of the similarly disputed Medium C&I procurement issue, the Partial Settlement did not simply reserve this issue for litigation, but added substantive conditions establishing the transmission-related costs that would potentially be assigned to the non-bypassable rider if the Commission arguably determined that PECO should be granted authority to implement the rider.

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<sup>23</sup> Additionally, of the parties not opposing the settlement (*i.e.*, Direct Energy Services LLC, First Energy Solutions Corp., Interstate Gas Supply, Inc., PECO Energy Suppliers Group, and Noble), none of those parties submitted testimony on the issue of a non-bypassable rider for recovery of transmission or transmission-related costs. Further, Noble filed a Main Brief that supported retaining the status quo collection of these costs.

Partial Settlement, pp. 16-17. Unfortunately, these conditions reflect nothing more than a limited compromise between PECO and RESA, with no consideration of the concerns expressed by PAIEUG. Therefore, PAIEUG opposes this provision of the Partial Settlement.

On a procedural basis, the Partial Settlement ignores clear Commission directives to identify the specific position taken by each party to the proceeding. Section 5.232(b) of the Commission's Regulations establishes that:

(b) *Positions of the parties.* A settlement agreement must specifically identify the parties:

- (1) Supporting the settlement.
- (2) Opposing the settlement.
- (3) Taking no position on the settlement.
- (4) Denied an opportunity to enter into the settlement.

52 Pa. Code § 5.232(b). The Partial Settlement describes PAIEUG's position in less than clear terms, stating that PAIEUG "is the only party that has not joined this Joint Petition or indicated that it does not oppose the Settlement." Partial Settlement, p. 1 n. 1. While this statement could be understood to mean that PAIEUG simply had not contacted PECO to confirm its non-opposition, (even though PAIEUG had indicated to PECO that it opposed the terms of the Partial Settlement) in actuality, PAIEUG was not provided an opportunity to view the Petition prior to filing. As a result, PAIEUG had no ability to comment on the Petition's "description" of PAIEUG's position until, as set forth in the August 29 Letter filed with the Commission's Secretary, PAIEUG distinctly indicated its opposition to the Partial Settlement, and, as such, PAIEUG should have been identified in the filing as an opposing party.

Similarly, PAIEUG disputes the Partial Settlement's claim that the Petition will substantially reduce litigation and associated costs, especially as it relates to the issue of the proposed implementation of the non-bypassable rider. *See* Partial Settlement, p. 22. Parties to this proceeding submitted testimony, participated in evidentiary hearings, and filed Main Briefs

addressing all contested matters before the filing of the Partial Settlement occurred. Moreover, as stated above, two of the three broadly disputed issues remain subject to litigation, meaning that several parties will submit Reply Briefs and likely file Exceptions after receiving a Recommended Decision from ALJ Fordham. Further, because the Partial Settlement does not address the concerns of PAIEUG (*e.g.*, a carve-out for Large C&I customers for the non-bypassable rider), PAIEUG must expend further resources to explain its opposition to the Partial Settlement.

Moreover, PAIEUG opposes the Partial Settlement because the proposals therein fail to further the public interest with regard to recovery of transmission and/or transmission-related costs via a non-bypassable rider. *See* 52 Pa. Code § 5.232 (stating that the "presiding officer will determine if a settlement is in the public interest."). As stated above, parties to this proceeding broadly contested three components of PECO's proposed DSP III: (1) procurement for Medium and Large C&I customers;<sup>24</sup> (2) implementation of a non-bypassable rider for recovery of transmission and transmission-related costs; and (3) the Standard Offer Program. *See* PECO Statement in Support, pp. 6-13. Although purporting to save litigation expenses, the Partial Settlement fully resolves only one of the three broadly contested issues. *See id.* Specifically, the only contested issue fully addressed by the Partial Settlement is the Standard Offer Program, which benefits Residential and Small C&I customers, but is inapplicable to Large C&I customers. *See* Partial Settlement, p. 19. Because the matter of transitioning Medium C&I customers into the Large C&I procurement group remains subject to litigation, the procurement plans for both Medium C&I and Large C&I customers remain unresolved. *See id.* at 8, 10. Most importantly, on the issue of recovery of transmission and transmission-related costs, the Partial

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<sup>24</sup> Although some parties initially contested PECO's default procurement for Residential customers, that issue seems to be resolved via the Partial Settlement, and PAIEUG does not take a position with respect to Residential procurement.

Settlement fails to address any of the concerns raised by PAIEUG, despite that fact that PAIEUG was one of only three parties that submitted testimony on the issue. *See id.* at 16-17.

As set forth above, PAIEUG has submitted testimony, participated in evidentiary hearings, and filed a Main Brief opposing non-bypassable recovery of transmission and transmission-related costs based on a lack of legal or empirical support, uncertain rate design, adverse effects of customer choice and competitive contract negotiations, and unreasonable risks of double-charges to Large C&I customers. *See* PAIEUG, M.B., p. 7; *see also* Sections III.C.2-4, *supra*. As an alternative solution, PAIEUG recommended carving out Large C&I customers from any approved non-bypassable recovery of transmission or transmission-related costs. *See* PAIEUG M.B., pp. 7-8; *see* Section III.C.5, *supra*.

The Partial Settlement fails to address any of these concerns. On the issue of whether PECO should recover transmission or transmission-related costs through a non-bypassable rider, the Partial Settlement allows parties to litigate the issue, which provides no benefit to PAIEUG because the only other broadly contested issue relevant to Large C&I customers, *i.e.* Medium/Large C&I procurement, also remains subject to litigation. *See* Partial Settlement, pp. 8-10, 16. Moreover, the Partial Settlement also includes a stipulation as to which costs would be recovered through a non-bypassable rider if the Commission approves non-bypassable recovery of transmission or transmission-related costs. *Id.* at 16. This component also fails to offer any benefit to PAIEUG because the Partial Settlement simply restates PECO's litigation position by allowing recovery of all disputed transmission-related costs except the UFE and Meter Error Correction charges. *See id.* at 16-17.

Further, the Partial Settlement lacks any consideration of the fact that no party to this proceeding set forth any evidence of cost volatility justifying non-bypassable recovery of

transmission or transmission related costs. Similarly, the Partial Settlement offers no response to the demonstrated uniquely adverse impacts of non-bypassable recovery of transmission or transmission related costs upon Large C&I customers, including erosion of customer choice and risk of transitional double-charge. *See* Sections III.C.4, *supra*.<sup>25</sup>

On balance, the Partial Settlement offers no benefit to Large C&I customers and therefore fails to meet the Commission's public interest standard. PAIEUG opposes the Joint Petition in its current form and proposes that the Commission address the unresolved issues raised by Large C&I customers by denying non-bypassable recovery of transmission or transmission related charges. Alternatively, PAIEUG recommends that the Commission modify the Partial Settlement as necessary to implement the Large C&I carve-out set forth in Section III.C.5, *supra*.

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<sup>25</sup> The Partial Settlement also provides insufficient details as to cost collection, as PECO's existing Transmission Service Charge ("TSC") Rider, cited as the model for the non-bypassable rider, currently applies only to default service customers. Unfortunately neither during the course of litigation nor as part of the Partial Settlement did PECO provide any tariff pages indicating the proposed structure or tariff language for any non-bypassable rider. As such, the intended application of the TSC Rider to shopping customers (both in rate design and cost collection) remains unknown. Moreover, it remains unclear whether PECO would implement any unanticipated modifications to the TSC Rider, or other parts of the Company's Tariff, in order to implement a non-bypassable charge applicable to shopping customers.

**VI. CONCLUSION**

**WHEREFORE**, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Deny any proposal to implement a non-bypassable rider to collect any transmission and/or transmission-related costs from shopping customers;
- (2) Alternatively, approve a carve-out for Large C&I customers applicable to any non-bypassable rider for the recovery of any transmission and/or transmission-related costs;
- (3) Grant any additional relief deemed appropriate and consistent with the above recommendations.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Charis Mincavage (Pa. I.D. No. 82039)  
Adeolu A. Bakare (Pa. I.D. No. 208541)  
100 Pine Street  
P. O. Box 1166  
Harrisburg, PA 17108-1166  
Phone: (717) 232-8000  
Fax: (717) 237-5300  
cmincavage@mwn.com  
abakare@mwn.com

Counsel to the Philadelphia Area Industrial Energy  
Users Group

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