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September 4, 2014

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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**Re: Petition of PECO Energy Company for Approval of Its Default Service Program
From June 1, 2015 Through May 31, 2017
Docket No. P-2014-2409362**

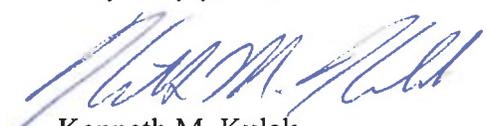
Dear Secretary Chiavetta:

Enclosed for filing is the **Reply Brief of PECO Energy Company (“Reply Brief”)** in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Reply Brief has been served upon Administrative Law Judge Cynthia Williams Fordham, and all parties of record.

Should you have any questions, please contact me directly at 215.963.5384. Thank you.

Very truly yours,


Kenneth M. Kulak

KMK/jm
Enclosures

c: Per Certificate of Service (w/encls.)

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*In association with Mohammed Buhashem Advocates & Legal Consultants

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL OF ITS DEFAULT :
SERVICE PROGRAM FOR THE PERIOD : Docket No. P-2014-2409362
FROM JUNE 1, 2015 THROUGH :
MAY 31, 2017 :**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the Reply Brief on behalf of PECO Energy Company on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL AND HAND-DELIVERY

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Date: September 4, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY 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
PECO ENERGY COMPANY**

**Before Administrative Law Judge
Cynthia W. Fordham**

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September 4, 2014

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I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) files this Reply Brief in response to the Main Briefs filed by the Office of Small Business Advocate (“OSBA”), Noble Americas Energy Solutions, LLC (“Noble”), the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) and the Retail Energy Supply Association (“RESA”) with respect to the two issues that were reserved for briefing in the Joint Petition for Partial Settlement (“Joint Petition”) filed on August 28, 2014 (“Settlement”).¹ The terms of the Settlement are set forth in the Joint Petition, which also contains the Joint Petitioners’ Statements in Support.²

As explained in the Joint Petition, the revised default service program for the period June 1, 2015 to May 31, 2017 (“DSP III”) set forth in the Settlement contains all of the elements required by the Pennsylvania Public Utility Commission’s (the “Commission’s”) default service regulations (52 Pa. Code §§ 54.181 – 54.189) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801 – 69.1817). In addition, the Settlement addresses the following key contested issues:

- **Residential Class Default Service Supply Portfolio.** Under the Settlement, the Joint Petitioners agree to PECO’s original proposal to continue to procure a mix of one-year and two-year fixed-price full requirements (“FPFR”) contracts and transition to a procurement design in which approximately 96% of the supply is in the form of

¹ The Office of Consumer Advocate (“OCA”) and NextEra Energy Power Marketing, LLC (“NEPM”) filed Main Briefs but did not take a position on the issues reserved for litigation in the Joint Petition. In addition, the following parties did not file Main Briefs: the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Direct Energy Services, LLC, FirstEnergy Solutions Corp., Interstate Gas Supply and PECO Energy Suppliers Group.

² All parties to this proceeding, except PAIEUG, either joined in the Settlement or have authorized the Joint Petitioners to represent that they do not oppose the Settlement. *See* Joint Petition, p. 1. PAIEUG opposes the Settlement in its entirety.

one-year and two-year FPFRR products, with six months spacing between the commencement of contract delivery periods. Joint Petition, ¶¶ 20-22. The remaining approximately 4% of Residential Class supply currently obtained through a five-year block product expiring on December 31, 2015 and associated spot market purchases will be replaced by 17-month FPFRR products (for approximately 3.2% of Residential default service load) and spot purchases directly from the energy markets operated by PJM Interconnection, L.L.C. (“PJM”) (for approximately 1% of Residential default service load). *Id.*, ¶ 20. The Settlement shortens the term length of the FPFRR products that will be procured during DSP III after expiration of PECO’s existing block energy contract from the 53-month FPFRR contracts originally proposed by PECO.

- **Procurement Schedule.** The Settlement provides that PECO’s default service supply procurements proposed for January/February of 2015 and 2016 will be moved to March 2015 and 2016. Joint Petition, ¶ 31 and Exh. A. In order to facilitate the selection and transfer of PJM Auction Revenue Rights (“ARRs”) to wholesale default service suppliers, PECO will be permitted to employ a consultant for ARR analysis and selection, with a limitation on the amount of associated costs that will be collected from Residential default service customers under the Company’s Generation Supply Adjustment (“GSA”). Joint Petition, ¶ 31.
- **Reconciliation of Default Service Costs and Revenues.** The Settlement adopts PECO’s original proposal to continue to project and adjust default service rates for the Residential, Small Commercial and Medium Commercial Classes on a quarterly basis but reconcile the over/under collection component of the GSA for those

customers on a semi-annual basis instead of a quarterly basis.³ Joint Petition, ¶¶ 43-44, 46.

- **Standard Offer Program (“SOP”).** The Settlement provides that PECO’s currently-effective SOP, including the cost recovery mechanisms approved by the Commission as part of DSP II, will continue until the earlier of: (1) six months following a Commission Order modifying a settlement reached through a stakeholder process outlined in the Settlement; (2) a Commission Order modifying the SOP as a result of a statewide investigation of standard offer customer referral programs; and (3) May 31, 2017. Joint Petition, ¶ 51. In addition, PECO will revise its SOP scripts, with review by the Commission’s Office of Competitive Market Oversight (“OCMO”), to incorporate four disclosures requested by the OCA and to implement various operational changes recommended by RESA. *Id.*, ¶¶ 52-56. PECO will convene a stakeholder process to review potential improvements to the SOP that may enhance the customer experience, increase electric generation supplier (“EGS”) participation, and/or reduce the ongoing costs of the program. *Id.*, ¶¶ 57-61.

As explained in the Joint Petition, the items reserved for litigation involve the procurement of default service supply for PECO’s Medium Commercial Class and whether the Company should assume certain PJM charges for all customer load and recover those costs on a non-bypassable basis. To a large extent, the arguments advanced by the opposing parties in their

³ In the event that interval meters are deployed to all Medium Commercial customers and the Commission directs that PECO implement and test billing and data management system changes necessary to implement hourly-priced default service for Medium Commercial customers in accordance with Paragraph 26 of the Joint Petition, default service rates established under the GSA for the Medium Commercial Class will be established in the same manner as the rates for the Large Commercial & Industrial Class and will include a monthly reconciliation component.

respective Main Briefs on these two issues were fully addressed in PECO's Initial Brief and extensive reanalysis is unnecessary. Accordingly, this Reply Brief will focus on PECO's positions on the reserved issues in light of the Settlement, key areas of disagreement, and new arguments presented by several opposing parties.

II. MEDIUM COMMERCIAL CLASS PROCUREMENT

PECO originally proposed to continue to procure default service for Medium Commercial customers through six-month FPFR contracts procured approximately two to four months prior to delivery, without overlap. In addition, PECO requested a waiver, to the extent necessary, of the Commission's direction in the *End State Order* that customers with interval meters and peak demands above 100 kW be moved to hourly-priced default service pricing during DSP III while PECO completes its advanced meter infrastructure ("AMI") deployment, including testing, implementation of back-office and other information technology systems and integration with PECO's billing system.⁴ PECO Initial Br., pp. 17-19.

Under the Settlement, PECO supports the implementation of hourly priced default service for Medium Commercial customers as outlined in the Joint Petition. Joint Petition, ¶ 25. Specifically, PECO will use commercially reasonable efforts to implement and test billing and data management system changes necessary to implement hourly priced default service for Medium Commercial customers ("Hourly Pricing Transition") as soon as reasonably possible and no later than June 1, 2016 (when all Medium Commercial customers are expected to have interval meters), subject to the following conditions:

⁴ See *Investigation of Pennsylvania's Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Order entered February 15, 2013) (the "*End State Order*"), pp. 31-32.

- a) No later than September 1, 2015, PECO will provide a status update to the parties on the implementation and testing of the system changes necessary to support hourly priced default service for Medium Commercial customers.
- b) If PECO determines that it can complete the implementation and testing of the necessary system changes on or before June 1, 2016, PECO will cancel the March 2016 FPCR product solicitation for Medium Commercial customers and will instead include all Medium Commercial customers in its Large Commercial and Industrial procurement group and solicit hourly priced default service supply for that procurement group for delivery commencing June 1, 2016.
- c) If PECO determines that it cannot complete the implementation and testing of necessary systems changes in order to implement the Hourly Pricing Transition by June 1, 2016, then PECO will confer with the parties to this proceeding and the OCMO. If OCMO agrees that the Hourly Pricing Transition cannot reasonably be completed by June 1, 2016, PECO will proceed with the scheduled March 2016 FPCR solicitation for Medium Commercial customers and file a report with OCMO on the status of the system changes. PECO will provide a copy of the report filed with OCMO to the parties at the time of filing.

Id., ¶ 26. Under the Settlement, PECO commits to deploy and test the necessary systems changes to support an effective date of implementation for hourly priced default service for the Medium Commercial class no later than December 1, 2016. *Id.*, ¶ 28.⁵

In its Main Brief, the OSBA opposes implementation of hourly pricing for Medium Commercial customers, primarily on the ground that the Commission has expressed the same reservations about the imposition of hourly pricing for “medium” customers in the absence of new legislation as it has expressed with respect to three-month contracts for Residential and Small Commercial customers. See OSBA Main Br., pp. 10-12. RESA argues that PECO should be directed to migrate all Medium Commercial customers with interval meters to hourly pricing by June 1, 2015, without recovery of any associated costs because PECO should have anticipated

⁵ If the Commission determines that Medium Commercial default service should be priced on an hourly basis, the default service rates for the Medium Commercial Class will be established in the same manner as the rates for the Large Commercial & Industrial Class and will include a monthly reconciliation component. To minimize the impact on the Price-to-Compare arising from the transition to a one-month reconciliation period, any over/undercollections associated with such transition may be refunded or recouped over several months. See Joint Petition for Settlement, p. 14, n. 5 & 6.

the Commission's directive in the *End State Order* in implementing AMI. RESA Main Br., pp. 19-22. PAIEUG, in turn, opposes RESA's proposal to transition Medium Commercial customers during DSP III based upon PECO's demonstration that RESA's related proposal for more frequent Large Commercial and Industrial ("C&I") Class procurements will result in higher prices for Large C&I customers. PAIEUG Main Br., pp. 3-4.

None of these arguments have merit. While PECO agrees with the OSBA that the Commission has expressed a preference for legislative amendments to implement hourly pricing generally for Medium Commercial customers, *see End State Order*, p. 45, PECO's proposed migration of Medium Commercial customers only after such customers have interval meters is in fact consistent with the *End State Order*. *See id.*

RESA's assertion that PECO had "sufficient notice" to prepare for the hourly pricing of Medium Commercial customers as part of its AMI plans and should therefore be denied recovery of any costs of associated technology upgrades is simply incorrect. RESA does not – and cannot – offer any evidence that PECO has been anything other than clear in communicating its AMI-deployment execution plans with the Commission, in accordance with Act 129, or that the Commission has indicated in any way that PECO has not fully complied with Commission orders regarding its AMI deployment. Nor has RESA offered any evidence to suggest that PECO has erred in its assessment that the necessary information technology upgrades cannot be completed before the commencement of DSP III. In fact, as PECO noted in its Initial Brief, the Commission addressed PECO's AMI plan and associated cost recovery issues in proceedings which began well before its Retail Markets Investigation, and RESA does not provide any citation to any Commission order suggesting that costs associated with modifications of PECO's systems to facilitate changes in default service procurement after 2015 should be recovered

through PECO's existing smart meter surcharge. *See* PECO Initial Br., p. 18 n. 16. Moreover, the Commission made clear in the *End State Order* that its directives regarding Medium Commercial customers and interval meters were not intended to accelerate smart meter deployment. *See End State Order*, p. 32.

RESA's alternative suggestion that PECO procure three-month contracts, in lieu of six-month contracts, for any Medium Commercial customers who are not transitioned to hourly pricing should similarly be rejected. Under the Settlement, all Medium Commercial customers will have interval meters before any Medium Commercial customer is transitioned to hourly pricing and, accordingly, there is no need to maintain a separate procurement plan for customers without interval meters. Should the Commission not adopt the Settlement's provisions regarding the transition of Medium Commercial customers to hourly pricing, the implementation of RESA's alternative proposal will unnecessarily add the expense of additional procurements to a class of customers in which the vast majority of customers (84%) are already shopping. PECO Initial Br., p. 18. As documented by PECO, each additional default service supply procurement costs approximately \$160,000 (Tr. 35). The adoption of RESA's proposal, therefore, would increase PECO's procurement costs for Medium Commercial default service customers during DSP III by at least \$640,000.

Finally, PAIEUG's concern regarding the migration of Medium Commercial customers with interval meters is misplaced in light of the Settlement. Specifically, the Joint Petitioners agreed to procure hourly-priced default supply annually for Large Commercial & Industrial customers as originally proposed by PECO, regardless of the adoption or rejection of the proposed implementation of hourly-priced default service for Medium Commercial customers. *See* Joint Petition, ¶ 30 & Exh. A. Accordingly, the Settlement eliminates the possibility of

failed procurements and higher costs for Large C&I customers associated with more frequent procurements of hourly-priced supply and thus provides no basis for rejecting PECO's proposal to transition Medium Commercial customers to hourly pricing as outlined in the Joint Petition.

III. RECOVERY OF CERTAIN PJM CHARGES

PECO initially proposed that load serving entities ("LSEs"), including EGSs, continue to be responsible for transmission costs that comprise various PJM charges, including Generation Deactivation/Reliability Must Run ("RMR") charges, Network Integration Transmission Service ("NITS") charges and Transmission Enhancement (a/k/a Regional Transmission Expansion Plan "RTEP") charges.⁶ However, in light of the FirstEnergy electric distribution companies' ("EDCs") proposal in their DSP III proceedings to collect certain PJM bill charges through a non-bypassable charge, PECO also made clear from the outset of this proceeding that it would monitor the FirstEnergy EDCs' proceedings and take into consideration any Commission direction to the FirstEnergy EDCs as it might apply to PECO's proposals for DSP III.⁷ PECO St. No. 2, p. 18 n.3; PECO St. No. 2-R, p. 17.

⁶ As part of DSP III, PECO proposed to allocate PJM meter error correction charges in the PECO PJM Zone during DSP III to all LSEs as permitted by the PJM tariff, instead of requiring default service suppliers to continue to cover such costs for the entire PECO PJM Zone. Because the allocation of meter error correction charges (PJM bill line item 1250) to all LSEs in PECO's service territory requires agreement among all LSEs, PECO also proposed an amendment to its EGS Coordination Tariff ("Supplier Tariff") to require EGSs to consent to the proposed allocation of those charges. See PECO St. No. 2, p. 17 & PECO Exhs. JJM-4 and JJM-5. The Joint Petitioners agreed to PECO's proposal, and meter error correction charges will not be included in any non-bypassable transmission service charge or litigated further in this proceeding. Joint Petition, ¶ 50.

⁷ Subsequent to PECO's filing of DSP III and accompanying direct testimony, Administrative Law Judge Susan D. Colwell issued her decision recommending approval of a joint petition for settlement ("FirstEnergy Settlement") that provides, among other things, that the FirstEnergy EDCs will recover generation deactivation charges, unaccounted for energy ("UFE") and PJM charges for tie line, generation and retail customer meter data errors discovered after financial settlement via their non-bypassable Default Service Support Riders ("DSSRs"). See *Secretarial Letter, Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of their Default Serv. Programs*, Docket Nos. P-2013-2391368 *et al.* (entered May 6, 2014) ("FirstEnergy Recommended Decision"). This would be in addition to DSSR recovery of RTEP and Expansion Cost Recovery charges ("ECRCs") approved in the FirstEnergy EDCs' DSP II proceeding. The FirstEnergy Settlement was approved by the Commission, without modification, on July 24, 2014.

In its Initial Brief, PECO described the changes proposed to the current cost assignment for Generation Deactivation/RMR charges (PJM bill line 1930), RTEP (PJM bill line 1108) and Expansion Cost Recovery charges (“ECRCs”) (PJM bill line 1730) (collectively, the “PJM Transmission Charges”) in PECO’s service territory. PECO Initial Br., pp. 37-40. In particular, PECO explained that it is proposing a non-bypassable transmission service charge in light of the Commission’s recent finding in the *FirstEnergy DSP III Order* (p. 22) that transferring responsibility for certain PJM costs from LSEs to EDCs was beneficial to customers. *Id.*, pp. 38-39.

Under the Settlement, PECO continues to support a non-bypassable transmission service charge which will recover the PJM Transmission Charges, provided that Generation Deactivation/RMR charges will continue to be the responsibility of DSP II wholesale default service suppliers until the terms of the applicable DSP II supply master agreements expire. All costs to implement such a proposal will be included in the non-bypassable transmission service charge and allocated to classes consistent with the methodology used in PECO’s current transmission service charge. In addition, PECO will amend its Supplier Tariff to include an appendix listing those PJM billing items that are the responsibility of EGSs. Joint Petition, ¶ 48. In the following sections, PECO addresses the specific objections raised by RESA and PAIEUG, none of which justify any revision to PECO’s proposed non-bypassable transmission service charge.⁸

⁸ Noble did not file testimony or participate in the evidentiary hearing in this proceeding, but did file a Main Brief in which it recommends that PECO maintain the “status quo” where LSEs continue to be responsible for NITS costs. *See* Noble Main Br., p. 3. Noble’s concern appears to be limited to NITS and PECO has proposed no change in the treatment of NITS costs.

A. Response To RESA's Proposal

RESA generally supports PECO's proposal, but continues to argue for inclusion of NITS costs in any non-bypassable transmission service charge on the grounds that those costs, like the PJM Transmission Charges, are unpredictable and result in higher-priced competitive retail electricity offers because EGSs cannot hedge those costs.⁹ See RESA Main Br., pp. 33-40. RESA also contends that the recovery of NITS charges associated with default service load by PECO through its default service transmission charge creates an unfair "competitive advantage" for wholesale suppliers and that PECO should be required to recover these costs for EGSs as well on a non-bypassable basis. RESA Main Br., pp. 34, 38-39. RESA's arguments for inclusion of NITS charges in a non-bypassable charge should be rejected for the reasons set forth in PECO's Initial Brief and for the additional reasons set forth below.

In support of its proposal, RESA asserts that recovery of NITS costs by PECO through a non-bypassable charge paid by both default service customers and customers served by EGSs will avoid risk premiums charged by EGSs arising from the alleged "unpredictability" of NITS. RESA Main Br., pp. 34-35. However, RESA concedes that NITS charges in PECO's service territory have remained "stable" over the past several years, and provides no evidence to support its contention that such recent stability "increases the possibility of a significant change in the future" in PECO's annual NITS calculation. RESA Main Br., p. 34. As Mr. McCawley explained in undisputed testimony, "[t]he PECO [NITS] rate has not changed for [several] years in terms of dollar[s] per kilowatt year...so that if someone were to buy and try to predict what

⁹ While RESA advocated for non-bypassable treatment of UFE charges in its Main Brief (p. 33), the Joint Petitioners agreed that UFE costs will not be included in any non-bypassable transmission service charge or litigated further in this proceeding. Joint Petition, ¶ 50.

their NITS cost would be for a particular customer, my bet is they could lock it in to the penny for a year.” Tr. 58-59. And, while RESA contends that other utilities within PJM have experienced increased NITS costs, the Commission determined in the *FirstEnergy DSP III Order* (p. 31) that an alleged incident of volatile NITS costs for a utility in another state did not warrant non-bypassable treatment of NITS costs in the FirstEnergy EDCs’ service areas where there was no evidence of significant changes in NITS costs for those Pennsylvania EDCs. In sum, the evidence shows that NITS charges in PECO’s service territory are very predictable and RESA’s assertion that EGSs charge a “risk premium” related to NITS is unsupported.

If the Commission rejects the inclusion of NITS in PECO’s non-bypassable transmission service charge, RESA proposes that wholesale default service suppliers assume responsibility for NITS under the supply master agreement used in PECO’s procurements.¹⁰ *See* RESA Main Br., pp. 28-29. Although RESA contends that PECO’s recovery of NITS charges on behalf of wholesale suppliers has a “direct impact on consumers and the ability of the competitive market to develop comparable pricing offers” (RESA Main Br., p. 38), RESA introduced no evidence of this alleged effect. This is particularly significant in light of the undisputed fact that NITS costs in PECO’s service territory have not changed for several years, and therefore cannot be contributing to any material risk premium in EGS offers. The Commission should therefore reject RESA’s alternative proposal.

¹⁰ RESA’s alternative proposal originally included Generation Deactivation/RMR charges in addition to NITS. Under the Settlement, however, RESA agreed that Generation Deactivation/RMR charges would not be litigated further in this proceeding. *See* Joint Petition, ¶ 50.

B. Response To PAIEUG's Objections To Any Non-Bypassable Transmission Service Charge

PAIEUG witness, Randolph Haines, opposed RESA's proposal that PECO recover PJM Transmission Charges, NITS, UFE, and meter error correction costs for all customers through a non-bypassable rider. *See* PAIEUG St. No. 1, pp. 5-9. Not surprisingly, in its Initial Brief, PAIEUG objected to the implementation of any non-bypassable transmission service charge, including PECO's more limited proposal. Each of the principal arguments offered by PAIEUG in opposition to PECO's proposal is without merit as explained below.

1. The Record Supports Implementation of PECO's Proposed Non-Bypassable Transmission Service Charge and PECO's Related Oral Rejoinder Testimony Should Be Considered By the Commission

According to PAIEUG, PECO did not meet its burden of demonstrating that PECO's proposed non-bypassable charge for recovery of PJM Transmission Charges is just and reasonable. PAIEUG Main Br., pp. 14-16. Moreover, PAIEUG contends that PECO improperly advanced its proposal in Mr. McCawley's oral rejoinder testimony in contravention of Section 5.243 of the Commission's regulations, which provides: "[a] party will not be permitted to introduce evidence during a rebuttal phase which...should have been included in the party's case-in-chief [or]...[s]ubstantially varies from the party's case-in-chief." 52 Pa. Code § 5.243(e); PAIEUG Initial Br., pp. 30-33. PAIEUG is wrong for several reasons.

As a threshold matter, Mr. McCawley's oral rejoinder testimony was entirely proper. As previously explained, from the very beginning of this proceeding, PECO made clear that it would monitor the FirstEnergy EDCs' DSP III proceedings (which were initiated before PECO's DSP III proceedings) and take into consideration any Commission direction to the FirstEnergy EDCs regarding recovery of various PJM charges. *See* PECO St. No. 2, p. 18 n.3. After issuance of a

Recommended Decision in the FirstEnergy EDCs' DSP III proceeding approving the FirstEnergy Settlement, PECO reiterated this point in its rebuttal testimony. PECO St. No. 2-R, p. 17. RESA, however, then argued in surrebuttal that PECO's response to the developments in the FirstEnergy EDCs' proceedings was "insufficient." RESA St. No. 1-SR, pp. 14-15. Accordingly, at the evidentiary hearing in this proceeding, Mr. McCawley explained that PECO would propose a non-bypassable surcharge to recover the PJM Transmission Charges if the Commission approved the FirstEnergy Settlement. Tr. 39-40.

The Commission has found that testimony, which is submitted in response to arguments made by opposing party witnesses, in no way violates the provisions of 52 Pa. Code § 5.243(e). *See, e.g., Pa. Public Util. Comm'n v. Western Utils., Inc.*, Docket No. R-00963856, 1998 WL 201481, at **8-9 (Order entered January 28, 1998) (granting water utility's exception to administrative law judge's refusal to consider expert testimony submitted in the rebuttal phase to respond to rate of return recommendations of Office of Trial Staff and OCA witnesses). Thus, contrary to PAIEUG's assertion, Mr. McCawley's oral rejoinder testimony does not run afoul of the Commission's regulations at 52 Pa. Code § 5.243(e) governing the presentation of evidence.

Second, PAIEUG's contention that PECO violated PAIEUG's due process rights (PAIEUG Initial Br., p. 33) is incorrect. Contrary to PAIEUG's representations, the issue of recovery of PJM charges has been extensively developed on the record in this proceeding and, indeed, was specifically addressed by Mr. Haines, PAIEUG's only witness. In its direct testimony, RESA proposed a more expansive non-bypassable rider that included the PJM Transmission Charges, as well as several additional PJM bill charges. *See* RESA St. No. 1, pp. 24-28. In rebuttal testimony, Mr. Haines opposed RESA's proposal and raised several concerns regarding any change to the current allocation of PJM charges in PECO's service territory. *See*

generally PAIEUG St. No. 1. Mr. McCawley was then cross-examined at the evidentiary hearing by PAIEUG's counsel (as well as counsel for RESA) regarding PECO's proposed non-bypassable transmission service charge. Tr. 83-89. In short, PAIEUG has suffered no prejudice and had the opportunity to present evidence opposing a non-bypassable transmission service charge.

Finally, PAIEUG's position is clearly at odds with the Commission's conclusion in the *FirstEnergy DSP III Order* (pp. 22-23) that recovery of the PJM Transmission Charges on a non-bypassable basis would be beneficial to customers. PECO's proposed recovery of PJM Transmission Charges on a non-bypassable basis will similarly benefit customers, and the Company's proposed exclusion of NITS costs (consistent with the *FirstEnergy DSP III Order*), as well as additional charges originally proposed by RESA which are not transmission-related, appropriately mitigates any remaining PAIEUG concerns. PECO's proposed non-bypassable transmission service charge should therefore be approved.¹¹

¹¹ The fact that the Company has not yet explained in detail how the PJM Transmission Charges would be collected from all distribution customers does not provide a basis for rejection of PECO's proposal, as PAIEUG erroneously alleges (PAIEUG Main Br., pp. 25-27). In the event the Commission determines that the PJM Transmission Charges should be recovered via a non-bypassable transmission service charge, PECO will file a tariff supplement consistent with the Commission's direction. In response to such compliance filing, PAIEUG will have the opportunity to raise issues regarding that tariff supplement, as large industrial customers have done in other default service proceedings. See, e.g., Comments of the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group and West Penn Power Industrial Intervenors On the Revised Default Service Compliance Filing, *Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (filed September 17, 2012), pp. 10-12 (asserting that the FirstEnergy EDCs DSSR tariff revisions failed to properly allocate transmission costs to customers based on the one coincident peak allocation methodology).

2. PECO's Proposal Is Consistent With the Competition Act and the Commission's Regulations

PAIEUG also contends that implementation of a non-bypassable transmission service charge contravenes the Electricity Generation Customer Choice and Competition Act ("Competition Act"). PAIEUG Main Br., pp. 15, 19-20. Specifically, PAIEUG asserts that PECO's proposal amounts to "re-bundling" of "transmission and distribution" in violation of Sections 2802(14) and 2804(3).¹² In doing so, PAIEUG overlooks the Commission's recent holding that neither the Competition Act nor any other provision of the Public Utility Code precludes recovery of PJM bill charges, such as NITS, on a non-bypassable basis. *FirstEnergy DSP III Order*, p. 38. In short, the Commission has already considered and rejected PAIEUG's argument.

3. PAIEUG Has Not Demonstrated That Customers Could Be "Double Charged"

Mr. Haines also argues that his employer, Thomas Jefferson University/Thomas Jefferson University Hospital, Inc. ("TJU/TJUH"), could be "double charged" and end up paying for PJM transmission-related costs in both PECO's distribution rates (pursuant to a non-bypassable transmission service charge) and as part of the price of generation purchased from its EGSs if PECO's proposal were adopted. PAIEUG St. No. 1, pp. 6-7. Not surprisingly, TJU/TJUH is the only customer that voiced such a concern.

First, as PAIEUG notes in its Main Brief (p. 10), some customers are billed transmission charges from their EGSs by means of a direct pass-through. Thus, if the EGS ceases to incur the

¹² At various points in its Main Brief, PAIEUG refers to "Section 2802(13)." However, Section 2802(13) provides, generally, a description of "current law and regulations" prior to enactment of the Competition Act. PECO assumes that PAIEUG meant to cite to Section 2802(14), which mirrors the language of Section 2804(3).

PJM Transmission Charges because PECO's proposal is implemented, the EGS would be contractually obligated to stop billing those costs to its customers. As a consequence, if TJU/TJUH has or were to negotiate such a provision in its EGS contracts, there would be no risk of "double collection" of the PJM Transmission Charges.

Second, even under fixed price arrangements, the concern expressed by Mr. Haines is unfounded because all of TJU/TJUH's current EGS contracts will expire before the changes proposed by PECO regarding the PJM Transmission Charges take effect. See PAIEUG St. No. 1, pp. 3 & 6. Accordingly, PAIEUG has merely identified a *theoretical* risk of "double collection" for a single customer, TJU/TJUH, and has presented no evidence of a customer actually being forced to choose between experiencing a "double collection" of the PJM Transmission Charges with respect to EGS contracts extending beyond June 1, 2015 or agreeing to retroactively unwind the fixed price in those contracts.

A final Commission order on PECO's DSP III is expected by early December 2014. Mr. Haines – an experienced negotiator of energy contracts – is clearly able to take into account the possibility of alternative resolutions of the recovery of PJM charges as part of TJU/TJUH's current negotiations with EGSs. To the extent any implementation issues exist, such issues will be TJU/TJUH-specific and, do not provide a basis for denying other customers the benefit of PECO's proposed non-bypassable transmission service charge.

4. The Commission Should Reject PAIEUG's Proposed Large Commercial and Industrial Customer "Carve-Out"

PAIEUG submits that the Commission should establish a "carve-out" for Large C&I customers in the event it approves a non-bypassable transmission service charge. PAIEUG argues that Large C&I customers are entitled to a special exception because non-bypassable

treatment of PJM transmission-related costs could have a “detrimental impact on Large C&I customers from a financial perspective.” PAIEUG Main Brief, pp. 29-30. However, there is no basis for such a carve-out, because PAIEUG did not present any evidence that those customers would be adversely affected in terms of either financial impact or limitations on competitive market opportunities if the PJM Transmission Charges were to be recovered on a non-bypassable basis. As such, the Commission should reject PAIEUG’s unsupported carve-out proposal.

For all the reasons set forth above, PAIEUG’s objections to PECO’s proposed non-bypassable transmission service charge are entirely without merit and should be rejected.

IV. CONCLUSION

For the reasons set forth above and in PECO's Initial Brief, the Commission should approve PECO's proposed procurement plan for the Medium Commercial Class and PECO's proposed non-bypassable transmission service charge, as modified by the Settlement.

Respectfully submitted,



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