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October 10, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd 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 are the Exceptions 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 
Charis Mincavage

Counsel to the Philadelphia Area Industrial Energy Users Group

Enclosure

c: Administrative Law Judge Cynthia W. Fordham (via E-mail and First-Class Mail)
Office of Special Assistants (ra-OSA@pa.gov)
Certificate of Service

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CERTIFICATE OF SERVICE

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).

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Dated this 10th day of October, 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 :

**EXCEPTIONS OF THE
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

Air Liquide Industrial U.S. LP	Kimberly-Clark Corporation
Boeing Company, The	Merck & Co., Inc.
Building Owners & Managers Association of Philadelphia	Philadelphia College of Osteopathic Medicine
Drexel University	Saint Joseph's University
GlaxoSmithKline	Temple University
Jefferson Health System	Villanova University

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Dated: October 10, 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"). On March 21, 2014, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed a Petition to Intervene and Answer to the Company's Petition.¹ A Prehearing Conference was held on April 10, 2014, before Administrative Law Judge ("ALJ") Cynthia A. Fordham.

PAIEUG received the Company's Direct Testimony on March 10, 2014. Pursuant to the procedural schedule, on June 5, 2014, PAIEUG received Direct Testimony from the following parties: the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Retail Energy Supply Association ("RESA"); and NextEra Power Marketing ("NextEra"). On June 26, 2014, PAIEUG submitted Rebuttal Testimony and received Rebuttal Testimony from the following parties: the Company; the OCA; the OSBA; and RESA. On May 17, 2012, PAIEUG received Surrebuttal Testimony from the Company, the OCA, the OSBA, and RESA. An evidentiary hearing was held in this proceeding on July 17, 2014, for the purposes of presenting testimony and performing cross-examination.

On August 18, 2014, PECO advised ALJ 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. On August 28, 2014, PECO, along with the OCA, OSBA, CAUSE-PA, NextEra, and RESA ("Settling Parties") submitted a Joint Petition for Partial

¹ PAIEUG's compilation is listed on the cover page of these Exceptions.

Settlement ("Partial Settlement" or "Petition"). PAIEUG submitted a letter indicating its opposition to the Partial Settlement on August 29, 2014.

According to the Partial Settlement, the following issues were reserved for litigation: (1) PECO and RESA's proposal to implement a non-bypassable rider applicable to all customers for recovery of some or all of the following PJM Interconnection, L.L.C. ("PJM") charges:² Network Integration Transmission Services ("NITS"), Regional Transmission Enhancement Plan/Transmission Enhancement/Expansion Cost Recovery (collectively "RTEP/TEC"), and Reliability Must Run/Generation Deactivation ("RMR");³ and (2) 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.

On September 19, 2014, ALJ Fordham issued a Recommended Decision ("R.D.") in this proceeding. In the R.D., ALJ Fordham addresses: (1) the Partial Settlement; (2) the non-bypassable rider; and (3) PECO's procurement plan for Medium C&I customers. R.D. at 1. Specifically, the R.D. recommends that the Partial Settlement be approved; however, the R.D. also finds that: (1) any non-bypassable rider should only collect RTEP/TEC and RMR costs; (2) any non-bypassable rider should include a carve-out for Large C&I customers; and (3) PECO's

² As part of its litigation position, RESA proposed to also collect Unaccounted for Energy ("UFE") and historical out of market tie-line and retail meter adjustments ("Meter Error Correction") costs through any proposed non-bypassable rider; however, those costs were removed from the Partial Settlement. Because the Recommended Decision does not include either Meter Error Collection or UFE in any recommendations, PAIEUG will not address these costs directly, however, the arguments set forth by PAIEUG in these Exceptions would also apply to any attempt to collect UFE and Meter Error Correction charges via a non-bypassable rider.

³ During the course of this proceeding, the term "certain PJM charges" has been applied to the costs sought by RESA and PECO 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 and RMR costs are "transmission-related costs." For purposes of PAIEUG's Exceptions, PAIEUG will refer to NITS as either NITS or "transmission costs," and RTEP/TEC and RMR charges combined as "transmission-related costs."

proposal to implement hourly-priced default service for Medium C&I customers as outlined in the Partial Settlement should be approved. R.D. at 55-56.

As discussed more fully herein, PAIEUG concurs with the R.D. regarding both the rejection of NITS and the need for a carve-out for Large C&I customers if a non-bypassable rider is implemented. On a fundamental basis; however, PAIEUG submits that R.D. misapplied the evidence presented in this proceeding from both PECO and RESA, and, in actuality, a non-bypassable rider on PECO's system for any customer class is unreasonable and unnecessary.⁴ See Exception No. 1, infra. In addition, PAIEUG submits that the R.D. erred in finding that the Partial Settlement's proposal for Medium C&I procurement should be adopted, as this proposed procurement could detrimentally effect Large C&I customers' default service costs. See Exception No. 2, infra.

II. EXCEPTIONS

1. **Exception No. 1. The Recommended Decision Erred in Concluding That The Evidence Presented Warrants Implementation of a Non-Bypassable Rider on PECO's system.**
 - a. **The R.D. erred in finding that PECO and RESA satisfied their burden to demonstrate that the implementation of a non-bypassable rider for the collection of transmission-related costs on PECO's system is just, reasonable, or necessary.**

As the R.D. correctly notes, the burden of proof rests with PECO to establish, by a preponderance of the evidence, that the relief the Company seeks is reasonable. The R.D. erred in concluding, however, that PECO has met this burden with respect to the non-bypassable rider proposed in the Petition. Moreover, none of the evidence presented by RESA, the other party in support of this rider, further assists PECO in meeting its burden. As such, because neither PECO

⁴ Assuming *arguendo* that the Commission adopts a non-bypassable rider for PECO's system, PAIEUG wholeheartedly concurs with the ALJ's correct finding that a carve-out for Large C&I customers is necessary due to the differences in Large C&I customers with respect to contract negotiation. R.D. at 51.

nor RESA set forth any evidence supporting their proposal for a non-bypassable rider, the R.D.'s recommendation must be rejected.

Currently, PECO recovers generation, transmission, transmission-related, and distribution costs from its non-shopping customers (i.e., those receiving default service from PECO). PAIEUG Main Brief ("M.B."), pp. 8-12. Conversely, PECO recovers only distribution costs from its shopping customers, as the remaining costs (i.e., generation, transmission, and transmission-related costs) are collected by these customers' Electric Generation Suppliers ("EGSs"). Id. As part of this proceeding, both PECO and RESA propose to implement a non-bypassable rider to transfer the collection of transmission-related costs from EGSs to PECO for all customers (i.e., both shopping and non-shopping).⁵ Unfortunately, neither PECO nor RESA presented any evidence that would warrant this change in status quo. See id., pp. 14-16; see also PAIEUG Reply Brief ("R.B."), pp. 7-17.

In the R.D., the ALJ correctly summarizes the positions of the parties with respect to the non-bypassable rider. R.D. at 45-51. The R.D. then finds that PECO presented evidence "showing that UFE costs and Meter Error Correction charges are incurred as part of PJM's financial settlement process for the energy market and, therefore, are in no way related to the provision of transmission service." Id. at 50. Moreover, the R.D. states that PECO's witness testified that "PJM has not yet developed an appropriate mechanism by which UFE...can be isolated only to PECO as an EDC." Id. For these reasons, the ALJ finds that PECO's request to exclude UFE and Meter Error Correction charges from any non-bypassable rider is reasonable. Id. With respect to the remaining charges that PECO and RESA seek to collect via the non-bypassable rider, however, the R.D. does not provide such clarity. Rather, the R.D. provides only that PAIEUG's objection to PECO's proposal based on lack of evidence has been adequately

⁵ The ALJ correctly rejected RESA's request to also transfer the collection of NITS costs via a non-bypassable rider.

refuted by PECO. *Id.* at 51. As discussed more fully herein, PAIEUG submits that neither PECO nor RESA have presented any evidence that would warrant implementation of a non-bypassable rider on PECO's system.⁶

In fact, PECO relies entirely on inapplicable findings from a recent Commission Order disposing of the FirstEnergy ("FE") Companies' DSP III⁷ as evidence in support of the proposed non-bypassable rider. PECO's reliance on the FE DSP III 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. PAIEUG M.B., pp. 13-16. While PECO appears to view the FE Settlement terms as tantamount to an Implementation Order or Commission rulemaking structured to benefit all ratepayers throughout the Commonwealth, the FE DSP III Order appropriately clarified that 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). In fact, granting PECO's proposed non-bypassable rider based upon the findings in the FE DSP III Order conflicts with the non-precedential nature of settlement agreements approved by the Commission and would discourage parties from

⁶ With respect to RESA, the R.D. finds that "RESA noted that the Commission rejected the argument that this type of proposal violated the Competition Act and the Public Utility Code in FE DSP III." R.D. at 51. While this statement may respond to arguments set forth by PAIEUG opposing a non-bypassable rider, this statement does not address whether RESA provided any evidence in the record that would support a change in status quo on PECO's system.

⁷ 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").

entering into future settlement agreements by creating a risk of prejudicial treatment in subsequent litigation.⁸

In addition to PECO failing to set forth any evidence in support of this proposal, RESA has only offered two irrelevant claims purporting to establish a change in circumstances from PECO's DSP II Order, where the Commission rejected a similar proposal to recover transmission-related costs on a non-bypassable basis. Petition of PECO Energy Company For Approval of its Default Service Program II, Order and Opinion (Sept. 27, 2012), p. 60 ("PECO DSP II Order"). Specifically, RESA can only set forth unsubstantiated claims of rate volatility while alternatively attempting to demonstrate a change in circumstances based upon the Commission's unrelated Fixed Price Order.⁹

With respect to volatility, RESA has been unable to provide any evidence of actual volatility in transmission-related costs with the sole basis for RESA's argument rely on nothing more than testimony claiming such costs are "unpredictable." RESA M.B., p. 33; contra PAIEUG R.B., pp. 9-11. RESA discussed RMR costs in slightly greater detail to postulate a "generally accepted market assumption" of increased retirement of generating units within PJM as evidence of expected volatile RMR costs. See RESA M.B., p. 33. This speculative claim, however, based on the potential that PJM and the Federal Energy Regulatory Commission may decide that some units scheduled for retirement are necessary for reliability, is not supported by any data or objective facts and therefore fails to satisfy any burden of proof. See PAIEUG M.B., p. 17; contra RESA M.B., p. 33. Moreover, as noted previously, the Commission reviewed

⁸ 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.

⁹ 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").

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.

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; see also PAIEUG R.B., pp. 11-12. 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" justifying non-bypassable recovery of transmission-related costs.¹⁰ 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 id. at 28-29, 31. At no point does this Fixed Price Order address components that should be included in EGS contracts. Id. As a result, the Fixed Price Order provides no support for non-bypassable treatment of transmission-related costs.

Accordingly, because both PECO and RESA are seeking a change in the status quo with respect to the collection of transmission-related costs on PECO's system, PECO and RESA carry the burden of proof in this proceeding. Because neither PECO nor RESA have provided any substantive or applicable evidence that would support such a change, the R.D.'s recommendation to implement a non-bypassable rider on PECO's system must be rejected.

b. The R.D. erroneously concludes that the Partial Settlement is consistent with the public interest.

Commission precedent requires that approval of a partial settlement be conditioned on a finding that the settlement promotes the public interest. R.D. at 20. Although the R.D.

¹⁰ 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.

acknowledges PAIEUG's position that the non-bypassable rider set forth in the Petition does not benefit Large C&I customers,¹¹ the R.D. nevertheless concludes that the Petition promotes the public interest because it "benefits the low-income, residential customers and small and medium commercial customers." Id. at 40. Large C&I customers, as members of the interested "public" for purposes of this proceeding, should not be subject to discriminatory treatment simply because the Petition includes provisions that "benefit" PECO's other customer classes.

For purposes of evaluating a settlement, the Commission has held that promotion of the public interest "reflects a compromise of the positions held by the parties of interest." See Pa. P.U.C. v. C S Water & Sewer Assocs., 74 Pa. P.U.C. 767 (1991). Although the R.D. is correct that the Partial Settlement includes several provisions that are beneficial to the majority of PECO's customer classes, the Partial Settlement's proposed non-bypassable rider can hardly be said to reflect a compromise of the parties' positions in the instant proceeding. R.D. at 40. As noted previously, PAIEUG filed a letter in opposition to Partial Settlement based, in large part, on the discriminatory impact of the proposed non-bypassable rider on Large C&I customers. See Petition of PECO Energy Co. for Approval of Its Default Service Program, Docket No. P-2014-2409362, Letter in Opposition to Partial Settlement (Aug. 29, 2014). Promotion of the public interest through settlement requires the compromise of all of the public, not merely a subset of the public. Said another way, the public interest cannot be adequately accounted for if the interests of one of PECO's major customer classes (i.e., Large C&I customers) are not adequately

¹¹ The R.D. recommends that the Partial Settlement be adopted without modification. R.D. at 55. As part of that Partial Settlement, PECO and RESA set forth a proposal regarding a non-bypassable rider, which does not include a carve-out for Large C&I customers. Id. at 15-16. The R.D. recognizes, however, that PAIEUG opposes the Partial Settlement, and the Partial Settlement indicates that this issue of a non-bypassable rider should be reserved for litigation. Id. at 15. As such, PAIEUG interprets the R.D. as allowing for approval of the Partial Settlement without modification as it applies to issues not reserved for litigation (i.e., the non-bypassable rider). In the event that the R.D.'s recommendation to approve the Partial Settlement without modification is interpreted as not allowing for a carve-out for Large C&I customers, PAIEUG submits the argument that the Partial Settlement is not in the public interest and must be rejected.

addressed. Accordingly, the R.D.'s finding that the Partial Settlement promotes the public interest should be rejected.

c. The R.D. erred in allowing PECO's oral rejoinder testimony into the record.

As part of this proceeding, the R.D. erred by admitting PECO's oral rejoinder testimony into the record and relying on this testimony for purposes of the R.D.'s findings, even though PECO's actions were contrary to PUC evidentiary regulations. PAIEUG M.B., p. 30. Specifically, PECO chose the oral rejoinder stage of this proceeding to propose adoption of a non-bypassable rider for all customers even though the Company had adequate opportunity to raise such a proposal as part of its case-in-chief or even via its Rebuttal Testimony. Although the R.D. finds that PECO's claim of providing notice to the parties via one line in the Company's Direct Testimony regarding PECO's monitoring of FE's DSP III proceeding was adequate notice, further review of the procedural circumstances surrounding PECO's oral rejoinder confirm that the R.D.'s findings are inconsistent with the Commission's regulations regarding the presentation of evidence. See id. at 32-33. Accordingly, PECO's oral rejoinder should be stricken from the record in this proceeding.¹²

Throughout the majority of this proceeding, PECO's only position with respect to a non-bypassable rider has been to suggest that the Company did not seek to implement a non-bypassable rider. See id. at 30. First, in PECO's case-in-chief Testimony submitted on March 10, 2014, PECO referenced the FE DSP III proceeding and indicated only that "[a]s in PECO's DSP II proceedings, PECO will continue to monitor the FirstEnergy EDCs' proceedings and will take into consideration any Commission direction to the FirstEnergy EDCs as may apply to

¹² PAIEUG raised its objections to PECO's oral rejoinder at the evidentiary hearings, at which time ALJ Fordham declined to strike PECO's oral rejoinder testimony; however, ALJ Fordham indicated that parties could address any issues at the briefing stage. PAIEUG M.B., p. 30. In light of the R.D.'s recommendation with respect to this issue, PAIEUG now excepts to these findings.

PECO." Id. Second, in Rebuttal Testimony submitted on June 26, 2014, PECO further acknowledged that the presiding ALJ in the FE DSP III proceeding issued a Recommended Decision on May 6, 2014 supporting recovery of certain transmission and transmission-related costs on a non-bypassable basis. Id. at 30-31. As a response, PECO reiterated that it would continue to monitor the FE DSP III proceeding, but additionally clarified that "[c]onsistent with [PECO's] DSP II, PECO believes that LSEs, including EGSs should be responsible for PJM charges assigned to LSEs." Id. at 31.

Despite continuing to effectively oppose the implementation of a non-bypassable rider, PECO abruptly reversed its position at the evidentiary hearings. Whereas the Company had previously represented that it believed that transmission and transmission-related charges should be recovered on a load-following basis but would take any Commission direction to the FE Companies into "consideration," PECO's oral rejoinder testimony added a more rigid proposition, stating that "[i]f the Commission approves the settlement in the first energy EDC proceedings, PECO proposes to establish a non-bypassable transmission service charge for all distribution [customers] which either includes or excludes NITS as directed by the Commission." Id. In other words, even though PECO had several opportunities to present this proposal, the Company chose to do so during the oral rejoinder phase of this proceeding, thereby allowing PAIEUG nothing more than a very limited opportunity to cross-examine PECO's witness.

Conversely, the R.D. finds that PECO's statement in its Direct and Rebuttal Testimony, that the Company would be monitoring FE's DSP III proposal, combined with RESA's proposal for a non-bypassable rider allowed PAIEUG "opportunity to respond prior to [PECO's] oral rejoinder testimony. R.D. at 47. PAIEUG respectfully submits that notice of an Electric Distribution Company ("EDC") monitoring another, unrelated EDC's DSP proceeding, combined

with another party's proposal for a non-bypassable rider, does not provide adequate due process for any party to respond much less litigate a proposal raised only during oral rejoinder.

Section 5.243 of the Commission's Regulations establishes procedures governing the presentation of evidence by parties. *See* 52 Pa. Code § 5.243. As relevant to this proceeding, Section 5.243(e) establishes that:

- (e) A party will not be permitted to introduce evidence during a rebuttal phase which:
 - (1) Is repetitive
 - (2) Should have been included in the party's case-in-chief
 - (3) Substantially varies from the parties case-in-chief

Id.

PECO failed to comply with Section 5.243 by submitting Direct and Rebuttal Testimony specifically stating that PECO had no interest in implementing non-bypassable recovery of transmission and transmission-related charges but then reversing its position in oral rejoinder testimony. See PAIEUG M.B., pp. 30-33. Such a change in position constitutes a "substantial variation" to which PAIEUG did not have the opportunity to adequately respond on the record. Moreover, considering that no change in circumstances occurred between the submission of the Company's case-in-chief and oral rejoinder (i.e., no order had yet been issued in the FE DSP III proceeding), PECO was not estopped from presenting any change in its position earlier in this proceeding. Id. As such, PECO's oral rejoinder testimony with respect to the proposed non-bypassable collection of transmission and transmission-related costs should not serve as any evidence to support approval of the Petition.

In addition, while RESA raised the issue of a non-bypassable rider in its Direct Testimony, no link between RESA's Direct Testimony and any position by PECO during oral rejoinder can be found. For PAIEUG to have assumed that PECO would eventually support a non-bypassable rider in the oral rejoinder stage and for PAIEUG to respond to such an

assumption in the testimony stage is not only impossible but also impractical under evidentiary rules.¹³ Moreover, merely because RESA proposed a non-bypassable rider in its Direct Testimony does not afford PAIEUG the due process necessary to respond to any proposal that PECO would have raised in oral rejoinder.¹⁴

Finally, because PECO chose to raise this issue only via oral rejoinder, PAIEUG's ability to flesh out PECO's proposal was limited at best. If PECO had raised this issue as part of its case-in-chief, or even via its Rebuttal Testimony, PAIEUG would have had adequate opportunity to engage in discovery, present testimony focused specifically on PECO's proposal, and address issues of concern for Large C&I customers based upon these findings.¹⁵ Because PECO chose to present a new proposal in the oral rejoinder phase of this proceeding, PAIEUG was estopped from fully litigating the issues.

Accordingly, PAIEUG's ability to fully and completely litigate this proceeding was hindered through PECO's decision to inappropriately wait until the oral rejoinder phase of the proceeding to present a proposal that should have been included in PECO's case-in-chief. Because PAIEUG's due process rights were denied, the Commission should reject the R.D.'s recommendation and strike PECO's oral rejoinder from the record in this proceeding.

¹³ Based upon PUC regulations, PAIEUG believes that if it had tried to "assume" a change in PECO's position and respond to that in Rebuttal or Surrebuttal Testimony, PAIEUG most likely would have been subject to a Motion to Strike.

¹⁴ In fact, RESA and PECO seemed to part ways with respect to whether NITS should be collected under a non-bypassable rider. For PAIEUG to assume that PECO's position with respect to this issue would not mimic RESA's position and then respond in the testimony phase, even though no concrete proposal had yet been presented by PECO, would have been an impossible feat.

¹⁵ For example, PECO has not presented any proposed tariff pages that would provide a better understanding of how a non-bypassable rider would be applied on the Company's system.

2. **Exception No. 2. The Recommended Decision Erred in Concluding that the Provisions Set Forth in the Partial Settlement Should Be Approved for Purposes of the Medium C&I Procurement.**

The other issue remaining for litigation purposes was the procurement of hourly default service for the Medium C&I customers. Although several parties, including PAIEUG and the OSBA, opposed any transitioning of this customer class to hourly-priced service during the DSP III period, the R.D. recommends approval of the Partial Settlement, which would allow for such transitioning during the DSP III period provided that PECO has implemented certain infrastructural upgrades. Unfortunately, because the uncertain timing of the infrastructural upgrades creates a likelihood for increased costs that would be faced by Large C&I customers due to the inclusion of Medium C&I customers into PECO's hourly procurement group, which is currently limited to Large C&I customers, the R.D.'s recommendation must be rejected.

In PECO's case-in-chief, PECO set forth a position allowing for waiver of any requirement to transition Medium C&I customers to hourly-priced service during the DSP III period in order to complete related infrastructural upgrades. See PECO M.B., p. 9. After the filing of Main Briefs, PECO submitted the aforementioned Partial Settlement, which would allow for the transitioning of Medium C&I customers via an implementation schedule establishing alternative June 1, 2016, or December 1, 2016, deadlines for completing the infrastructural upgrades and completing the transition.¹⁶ See R.D. at 9-10. Unfortunately, the terms of the Partial Settlement fail to address the rate-related concerns of Large C&I customers

¹⁶ The R.D. recounted the positions of parties, including finding that "PAIEUG supports PECO's [original] 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." Id. at 43. The R.D. also concludes, however, that "PECO, PAIEUG, and RESA agree that PECO's current proposal to implement hourly-priced default service for Medium Commercial customers as outlined in the Joint Petition should be approved." Id. at 44 (emphasis added). For purposes of clarification, PAIEUG submits that it concurred only with PECO's original proposal and remains opposed to any efforts to introduce hourly-priced service for Medium C&I customers during PECO's DSP III.

that would result from the transitioning of Medium C&I customers to hourly default service during the term of DSP III.

Specifically, PAIEUG opposed transitioning the Medium C&I customers to hourly-priced service due to projected increases to risk premiums assessed by wholesale suppliers for hourly-priced service. PAIEUG M.B., p. 4. Prior to the submission of the Partial Settlement, PECO also presented testimony and evidence opposing the transition for several reasons, including demonstrated successful shopping among the Medium C&I class, timing concerns regarding deployment of AMI infrastructure necessary to support hourly-priced service, and the same concerns expressed by PAIEUG regarding increased risk premiums. PECO M.B., pp. 17-18, 20. Lastly, OSBA also opposed the transition, adding that the Commission's End State Order raises questions regarding whether offering hourly-priced service for Medium C&I customers complies with the Competition Act. OSBA M.B., p. 12.

While the Partial Settlement adopts a less fragmented implementation process than RESA's original proposal, it still contemplates transitioning Medium C&I customers to hourly-priced service during PECO's DSP III, either on either June 1, 2016, or December 1, 2016. See R.D. at 8-9. As such, the concerns expressed in PAIEUG's Main Brief, that RESA's original proposal to transition Medium C&I customers to hourly-priced service on a rolling basis throughout the DSP III period will generate higher risk premiums for hourly-priced service, remain applicable to the Partial Settlement. See PAIEUG M.B., p. 4 citing PECO St. No. 2-R, p. 10; see also PECO M.B., p. 20. As set forth in PAIEUG's Main Brief, this risk would easily be avoided by permitting PECO to complete all necessary infrastructural upgrades during the DSP III period and revisiting the transition of Medium C&I customers to hourly-priced service during PECO's DSP IV proceeding. See id. This solution avoids the necessity for the wholesale

suppliers serving PECO's hourly-priced load to increase risk premiums as they would be assured that Medium C&I customers would not be transitioned to hourly-priced service during the DSP III period. See id.

Because the R.D. equates PAIEUG's support for PECO's original proposal with support for the modified proposal set forth in the Partial Settlement, the R.D. never addressed the impact that transferring Medium C&I customers to hourly-priced service at currently unknown dates could have on risk premiums for hourly-priced procurement. See R.D. at 43-45. The R.D. responds only to OSBA's claim that hourly-pricing is inappropriate for Medium C&I customers and cites to the Implementation Order's support for offering hourly-priced service to customers with interval meters. See id. at 44-45. PAIEUG does not believe that the Implementation Order anticipated arrangements that would interject uncertainty into the wholesale market by prescribing multiple benchmarks where Medium C&I load may or may not be transferred to hourly-priced service. More reasonably, if PECO cannot transition Medium C&I customers to hourly-priced service at the outset of the DSP III period, then the Commission should protect the Large C&I default service customers from potential risk premium increases by waiving the requirement and reassessing the possibility of offering hourly-priced service to Medium C&I customers in PECO's DSP IV. See PAIEUG M.B., p. 4.

To resolve the problems inherent with the Partial Settlement provisions regarding Medium C&I procurement, the Commission should deny the R.D.'s recommendation, clarify that PAIEUG opposes transferring Medium C&I customers to hourly-priced service during the DSP III period, and adopt PECO's original proposal to complete the necessary infrastructural upgrades for hourly-priced service during the DSP III period while postponing any consideration of transferring Medium C&I customers to hourly-priced service until PECO's DSP IV proceeding.

III. CONCLUSION

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

- (1) Deny the recommendation to implement a non-bypassable rider for PECO Energy Company;
- (2) Deny the recommendation to allow PECO Energy Company to procure hourly priced service for Medium Commercial and Industrial customers pursuant to the terms of the Partial Settlement; and
- (3) Take any other actions as deemed necessary and appropriate.

Respectfully submitted,

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By 

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