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October 10, 2014

**Via Electronic Filing**

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

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

Dear Secretary Chiavetta:

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

Sincerely,



Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Cynthia Fordham, w/enc.  
Office of Special Assisants via email only ([ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

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

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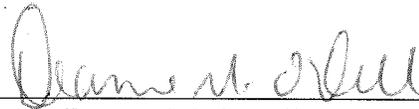
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Dated: October 10, 2014



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Deanne M. O'Dell, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :  
Approval of its Default Service Program for : Docket Nos. P-2014-2409362  
the Period from June 1, 2015 through May 31, :  
2017 :  
:

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**EXCEPTIONS OF  
RETAIL ENERGY SUPPLY ASSOCIATION**

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Date: October 10, 2014

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## I. INTRODUCTION

The Commission has an excellent opportunity in this proceeding to ensure that all customers pay only the actual costs – nothing more and nothing less – that all load serving entities (“LSEs”) are assessed in the wholesale market (referred to in this case as “PJM Charges”<sup>1</sup>). To do this, the Commission must direct PECO Energy Company (“PECO”) to assume the cost responsibility for all customers for all PJM Charges, including Network Integration Transmission Services (“NITS”). If so ordered, there would be no need for any LSE (wholesale default service supplier or electric generation supplier – “EGS”) to factor into its retail pricing any cost to cover the risk of future and unpredictable rate changes to the PJM Charges. Instead, all customers would receive the benefit available to PECO only, as an electric distribution company (“EDC”), to pass through just the actual cost of the PJM Charges to customers. All customers benefit in this situation because they are only paying actual costs for these non-market based wholesale cost obligations.

Importantly, requiring the EDC to assume the costs for all load is the only way to achieve this result. Any other scenario means that EGSs would be required to assume the cost responsibility for shopping load and, therefore, they would retain the need to decide how to factor into retail pricing the risk of future price changes to the PJM Charges. Thus, shopping customers would be paying something that may be higher or lower than the actual costs depending on the EGS’s risk calculations. While true some individual customers may get a “benefit” when the EGS’s calculations lead to a result where the EGS has to absorb the costs

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<sup>1</sup> These charges include: (1) Transmission Enhancement charges (a/k/a Regional Transmission Expansion Plan “RTEP”) and Expansion Cost Recovery charges (collectively, “TEC/ECRC”); (2) Generation Deactivation/Reliability Must Run (“RMR”) charges for which charges are set after the approval of PECO’s Revised DSP III by the Commission; and, (3) Network Integration Transmission Services (“NITS”).

because it did not factor in the correct risk premium into the retail price (or the EGS negotiated away the right to include one), the long-term impact to the market will be negative because EGSs will not be able to continue to take the risk of being forced to absorb these unpredictable rate increases and, over the long term, there is likely to be less competitive options offered by EGSs which ultimately harms customers.

In addition to the benefit to all customers of requiring the EDC to assume the cost responsibility for the PJM Charges, this approach also eliminates any issues regarding the requirements of the Electricity Generation Customer Choice and Competition Act (“Competition Act”) that the EDC allow nondiscriminatory and comparable access to its electric transmission and distribution system comparable to its own use of the system.<sup>2</sup> When an EDC assumes the cost responsibility for PJM Charges it can advantage its right to full cost recovery so that the LSE for which it is assuming the cost responsibility is not required to factor into its retail pricing the costs of potential rate changes to the PJM Charges. When the EDC does this for just one LSE and not the other, the result is that one LSE has the benefit of the EDC’s right to full recovery for the PJM Charges while the other one does not. Thus, by requiring the EDC to assume the cost responsibility for the PJM Charges for both wholesale default service suppliers and EGSs, the result is that all LSEs receive nondiscriminatory access to the EDC’s right of full cost recovery consistent with the requirements of the Competition Act.

While the Retail Energy Supply Association (“RESA”)<sup>3</sup> supports the majority of the recommendations in the September 19, 2014 Recommended Decision (“RD”) of Administrative

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<sup>2</sup> 66 Pa.C.S. §§ 2803; 2804(6).

<sup>3</sup> RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint

Law Judge (“ALJ”) Cynthia Williams Fordham, RESA urges the Commission to reject two of the ALJ’s flawed recommendations regarding the PJM Charges and, instead, direct that: (1) PECO be directed to assume the cost responsibility for NITS for all load; and, that (2) PECO’s assumption of cost responsibility for all the PJM Charges (including NITS) apply to all customer classes. By making these two changes to the recommendations of the ALJ while adopting her recommendations on all the other issues, the Commission will be taking pro-active steps to develop a more robust competitive market in which all customers are paying only the actual costs – nothing more and nothing less – that all LSEs are assessed in the wholesale market.

## II. EXCEPTIONS

RESA supports requiring PECO to assume the cost responsibility for all load (default service and shopping) for the PJM Charges, including NITS, because the nature of the charges make them non-hedgeable wholesale cost obligations that are not market based and are, therefore, unpredictable.<sup>4</sup> What this means is that there is no market-based, transparent way to reasonably calculate future rate increases to the PJM Charges and then accurately factor them into retail pricing. Thus, customers are likely to pay something other than the actual costs for these PJM Charges due to retail pricing that may be higher or lower than the actual charge as a result of additional risk premiums embedded in retail pricing intended to cover the future unpredictability of the PJM charges.<sup>5</sup>

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Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

<sup>4</sup> RESA Initial Brief at 33-35, RESA Reply Brief at 9-13; citing RESA St. No. 1 at 25. Even the witness for the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) acknowledged that there is “volatility associated with some of these costs.” PAIEUG St. No. 1-R at 5.

<sup>5</sup> RESA Initial Brief at 35, RESA Reply Brief at 11; RESA St. No. 1 at 24-26; RESA St. No. 1-SR at 15-16.

The most equitable way to address this and ensure that all customers pay only the actual costs of the PJM Charges is to require the EDC to assume the cost responsibility for the PJM Charges for all load (shopping and default) and recover these costs through a non-bypassable charge assessed on all customers.<sup>6</sup> Importantly, all customers pay for PJM Charges regardless of the what entity is required to assume the cost responsibility. The reason requiring the EDC to assume the cost responsibility for all load removes additional costs from the price customers will pay for the PJM Charges is because PECO, as an EDC, is permitted to recover on a full and current basis – pursuant to a reconcilable automatic adjustment clause – all reasonable costs incurred to provide default services to customers.<sup>7</sup> Therefore, when the EDC assumes the cost responsibility for all load (default and shopping), all customers get the benefit of the EDC’s right to full cost recovery of just the actual costs of the PJM Charges and there is no need for wholesale default suppliers (for default service load) or EGSs (for shopping load) to attempt to factor into the retail prices paid by customers the future price changes that may occur in the PJM Charges.<sup>8</sup> Any other approach (i.e. whether EDC assumes the cost responsibility for wholesale default service suppliers or wholesale default service suppliers assume their own cost responsibility) risks exposing shopping customers to paying something other than the actual cost of the PJM Charges because EGSs need to take into consideration the risk of future rate changes to the PJM Charges when calculating their retail pricing and then pass on those cost calculations to their shopping customers.

As set forth in the Partial Settlement, PECO agreed to support RESA’s recommended approach for the following charges: Transmission Enhancement charges (a/k/a Regional

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<sup>6</sup> RESA Initial Brief at 38-39.

<sup>7</sup> 66 Pa. C.S. § 2807(e)(3.9)

<sup>8</sup> RESA Initial Brief at 35; RESA St. No. 1 at 26.

Transmission Expansion Plan “RTEP”); Expansion Cost Recovery charges (“TEC/ECRC”); and, Generation Deactivation/Reliability Must Run (“RMR”) charges for which charges are set after the approval of PECO’s Revised DSP III by the Commission.<sup>9</sup> In contrast, as part of reaching a settlement on the other issues, the parties agreed that PECO will maintain the status quo for Unaccounted for Energy and meter error correction charges which means that wholesale default service suppliers and EGSs will each continue to assume the cost responsibility for their customers and recover the costs from their customers.<sup>10</sup> Finally, the Partial Settlement reserved all issues related to the treatment of NITS to be addressed by the Commission.<sup>11</sup>

In her RD, the ALJ recommends that the Commission adopt the approach of the Partial Settlement but create a carve out for Large Commercial and Industrial (“Large C&I”) customers.<sup>12</sup> Regarding NITS, the ALJ does not recommend any change to PECO’s current approach whereby it assumes the cost responsibility on behalf of wholesale default service suppliers only.<sup>13</sup> For the reasons that follow, both of these recommendations must be rejected.

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<sup>9</sup> Partial Settlement at ¶48.

<sup>10</sup> Partial Settlement at ¶50. Although RESA’s preferred approach is that PECO assume the cost responsibility for all PJM Charges and recover the costs from all customers through a non-bypassable charge, RESA supports the Partial Settlement’s recommendation for these two charges in the interest of achieving settlement and narrowing the issues for the Commission’s consideration. Also important is that pursuant to the status quo for these charges, default service wholesale suppliers are required to assume the cost responsibility for default service just as EGSs are required to assume the cost responsibility for their shopping customers. PECO does not assume the cost responsibility for the wholesale default service suppliers.

<sup>11</sup> *Id.*

<sup>12</sup> RD at 51.

<sup>13</sup> *Id.* at 50.

**A. Exception No. 1: The ALJ Erred In Rejecting RESA’s Proposal To Require PECO To Assume The Cost Responsibility For NITS For All Load And To Recover The Costs From All Customers (RD at 50; COL # 17; Ordering ¶¶ 8-9)**

The RD recommends excluding NITS from the treatment of the PJM Charges as set forth in the Partial Settlement stating that “PECO and PAIEUG have offered explanations for excluding these charges at this time.”<sup>14</sup> Further, the RD recommends rejecting RESA’s alternate proposal whereby wholesale default service suppliers (rather than PECO on their behalf) would assume the cost responsibility for NITS stating that “RESA has failed to explain how this would be implemented and how it is preferable to PECO’s proposal.”<sup>15</sup> The ALJ erred on this issue and RESA urges the Commission to direct PECO to assume the cost responsibility for NITS for all load (default and shopping) and recover the costs from all customers through a non-bypassable charge just as it would do with the other PJM Charges subject to the Partial Settlement.

As an initial matter, the ALJ erred in failing to recognize that the nature of NITS is the same as the other PJM Charges for which she correctly recommends that PECO assume the cost responsibility. NITS costs are essentially fully regulated cost-of-service rates that are imposed on all LSEs based on each LSE’s share of load served. Accordingly, all customer load on an EDC’s system is allocated a share of transmission service costs based on the customer’s Network Service Peak Load Contribution.<sup>16</sup> While the NITS cost for PECO has remained stable over the past several years, PECO is required to recalculate the appropriate rate on an annual basis and submit the NITS rate to FERC as part of PJM’s Open Access Transmission Tariff.<sup>17</sup> Thus, there is a potential each year for unexpected changes. In fact, for 9 of the 19 other utilities within

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

<sup>15</sup> *Id.*

<sup>16</sup> RESA Initial Brief at 34; RESA Reply Brief at 10; RESA St. No. 1 at 24-25.

<sup>17</sup> *See* PJM Open Access Transmission Tariff, Attachment H-7.

PJM, they experienced increases in June 2014 some as high as 29%.<sup>18</sup> In addition, because this is a FERC regulated rate, other rate changes may occur as a result of challenges to the charges.<sup>19</sup> The fact that there has not been any changes for some time for PECO increases the possibility of significant change in the future.

For the reasons explained above in the previous section and based on the nature of NITS, requiring PECO to assume the cost responsibility of NITS for all load means that all customers would receive the benefit of only being required to pay the actual costs of NITS. This is because when PECO, as the EDC, assumes the cost responsibility for all load only the actual costs of the PJM Charges are paid by customers as there is no need for wholesale default suppliers (for default service load) or EGSs (for shopping load) to attempt to factor into retail pricing the future rate changes that may occur in the PJM Charges.<sup>20</sup>

From a practical standpoint, requiring PECO to assume the cost responsibility for NITS for all load would be consistent with the Partial Settlement regarding the other PJM Charges (which the ALJ rightly recommends that the Commission approve). Therefore, PECO's implementation of this approach at this time for NITS does not present any special implementation problems and, in fact, would make sense in terms of providing consistent treatment for the PJM Charges.

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<sup>18</sup> See <http://www.pjm.com/markets-and-operations/market-settlements/network-integration.aspx> which sets forth the PJM transmission owners' annual network service revenue requirements and rates posted on the PJM website for July 2014, June 2014, January 2014, July 2013, June 2013 and January 2013.

<sup>19</sup> Recently, for example, FERC directed a wholly-owned subsidiary of FirstEnergy which owns and operates transmission facilities within the Penn Power service territory to create one NITS rate beginning January 1st 2015. The current practice differentiates NITS rates by transmission voltage levels using 138kv as a threshold (rate 1 - >138kv paid by all customers; rate 2 - <138kv paid only by customers using lower voltages). All LSEs – including EGSs who are required to assume the cost responsibility for Penn Power service territory, need to know the new rate (not posted). See FERC order on Docket Number EL11-54-002 available at: <http://www.ferc.gov/CalendarFiles/20140908122402-EL11-54-002.pdf>

<sup>20</sup> RESA Initial Brief at 35; RESA St. No. 1 at 26.

From a legal standpoint – as the Commission has already correctly concluded – there is no legal bar to requiring PECO to assume the cost responsibility for NITS for all load.<sup>21</sup> On the other hand, maintaining the status quo whereby PECO assumes the cost responsibility for NITS only for wholesale default suppliers is contrary to the Competition Act which requires:

- that EDCs permit EGS “to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system . . .”<sup>22</sup>
- the EDCs “shall provide transmission and distribution service to all . . . [EGSs]. . . on rates, terms of access and conditions that are comparable to the utilities own use of its system.”<sup>23</sup>

When an EDC assumes the cost responsibility for PJM Charges it can advantage its right to full cost recovery of those charges to ensure that customers only pay the actual costs of the PJM Charges.<sup>24</sup> By requiring the EDC to assume the cost responsibility for the PJM Charges for both wholesale default service suppliers and EGSs, the result is that all LSEs receive nondiscriminatory access to the EDC’s right of cost recovery and, therefore, the issue of including risk premiums into a retail price to account for PJM Charges is completely eliminated.<sup>25</sup> If, however, the EDC assumes the cost responsibility for just one of the two entities that have the contractual requirement to supply the power to the customer (i.e. wholesale default service supplier) and not the other (i.e. EGS), then only the one entity gets the benefit of the EDC’s right to full cost recovery for the PJM Charges. This is discriminatory access in

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<sup>21</sup> RESA Reply Brief at 9, citing *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375, P-2013-2391378, Opinion and Order entered July 24, 2014 (“*FE DSP III Order*”).

<sup>22</sup> 66 Pa. C.S. § 2803(emphasis added).

<sup>23</sup> 66 Pa. C.S. § 2804(6).

<sup>24</sup> 66 Pa. C.S. § 2807(e)(3.9).

<sup>25</sup> RESA Initial Brief at 35; RESA Reply Brief at 11; RESA St. No. 1-SR at 15-16.

violation of the Competition Act. Moreover, as explained previously, any scenario whereby the EGS is required to assume the cost responsibility means that risk premiums may be factored into the retail prices paid by shopping customers to account for these charges.

The best way to satisfy the requirements of the Competition Act regarding equal and nondiscriminatory access is to require the EDC to assume the cost responsibility for both the wholesale default service suppliers and the EGSs because then all LSEs are being treated equally by the EDC. In lieu of this, however, the Commission cannot permit the EDC to assume the cost responsibility for NITS on behalf of the wholesale default service supplier only.<sup>26</sup> Although this is the less preferable outcome for the customer in lieu of RESA's primary recommendation because it does not eliminate the issue of risk premiums for customers, at least it addresses the Competition Act's requirements for nondiscriminatory and equal access because neither the wholesale default service supplier nor the EGS are receiving the benefit of the EDC's right to cost recovery. Of course, though, this also means that the customers are not receiving this benefit either but because both the wholesale default service supplier and the EGSs are required to determine how to factor risk premiums into their retail pricing, the retail rates paid by default service customers and shopping customers are more of an apples-to-apples comparison.<sup>27</sup>

Finally, it must not be forgotten that while the Commission chose not to adopt RESA's preferred position for NITS for the FirstEnergy EDCs, maintaining the status quo here – as erroneously recommended by the ALJ – would treat NITS differently for PECO than it is treated for the FirstEnergy EDCs. This is because the FirstEnergy EDCs do not assume the cost

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<sup>26</sup> See RESA Reply Brief at 13-15.

<sup>27</sup> RESA St. No. 1-SR at 19.

responsibility for NITS for wholesale default service suppliers.<sup>28</sup> While RESA maintains that the preferred approach whereby PECO would assume the cost responsibility for NITS for all load can and should be adopted as the best approach both practically and legally, in lieu of that, the Commission should at least issue a decision consistent with how NITS are treated by the FirstEnergy companies.<sup>29</sup> To achieve this result, the Commission would need to direct PECO to require wholesale default service suppliers to assume the cost responsibility for NITS (again, though, the Commission should do this only if it chooses to reject RESA’s preferred approach which is by far the more superior result for customers.)

**B. The ALJ Erred In Recommending That PECO Should Not Be Required To Assume The Cost Responsibility For Large Commercial Customers (RD at 51; Ordering ¶ 10)**

According to the RD, PAIEUG “made a viable argument about the differences in Large C&I customers and other customers in negotiating contracts for service;” and, therefore, she erroneously recommends that Large C&I customers be allowed “to continue to remit transmission-related charges to their EGSs.”<sup>30</sup> In context, the ALJ is recommending that PECO will assume the cost responsibility of all the PJM Charges (except for NITS) for all non-Large C&I customers and recover the costs from those customers through a non-bypassable charge. However, for Large C&I customers, the status quo will remain so PECO will assume the cost responsibility for wholesale default suppliers only and EGSs will be required to assume it for

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<sup>28</sup> See Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company Default Service Supplier Master Agreement at Appendix D, available at: [http://www.fepaauction.com/Portals/0/Documents/SupplierDocuments/FEPA\\_DSPIII\\_SMA.pdf](http://www.fepaauction.com/Portals/0/Documents/SupplierDocuments/FEPA_DSPIII_SMA.pdf).

<sup>29</sup> RESA Initial Brief a 38; RESA Reply Brief at 18-19.

<sup>30</sup> RD at 51.

Large C&I customers.<sup>31</sup> Cost recovery will still be from all customers but, under this flawed recommended approach, it will be recovered from Large C&I default service customers through the default service rate and from shopping Large C&I customers through their contract price. There are several problems with this recommended approach and RESA urges the Commission to reject it.

As an initial matter, all customers pay for the PJM Charges regardless of what entity assumes the cost responsibility. This fact does not change if PECO assumes the cost responsibility for shopping customers. Only the mechanism by which the costs are collected (a non-bypassable charge v. the retail price) changes.<sup>32</sup> While the fact that PJM Charges are still recovered from all customers remains the same, shifting the responsibility to the EDC to assume the cost responsibility for all load positively impacts customers because it means that customers would not be paying something other than the actual costs for these PJM Charges. As explained previously, when the EDC assumes the cost responsibility for all load, it removes any need for either the wholesale default service suppliers or EGSs to consider including additional risk premiums in retail pricing intended to cover the future unpredictability of the PJM charges. Moreover, as also explained previously, requiring the EDC to assume the cost responsibility for all load is consistent with the Competition Act's requirements of nondiscriminatory and equal access.

The ALJ appears to have been persuaded by arguments that Large C&I customers have more significant negotiating power with EGSs and, therefore, can negotiate contracts to address

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<sup>31</sup> See RESA Initial Brief at 30-32 which identifies each of the PJM Charges and compares the pre and post *FE DSP III Order* treatment for the FirstEnergy Companies as well as the current and recommended treatment in this case for PECO.

<sup>32</sup> RESA Reply Brief at 13-14.

the PJM Charges thereby potentially resulting in more favorable contracts for the Large C&I customer.<sup>33</sup> This argument is flawed and appears to not recognize the difference between the market-based energy commodity and the non-market based PJM Charges. Preserving the ability of Large C&I customers – or any customer – to negotiate contracts regarding the market-based energy commodity cost is not the same as negotiating the nature of the non-market PJM Charges. In fact, allowing customers – any customers – the ability to negotiate the energy commodity price with EGSs (or compare the prices offered by different EGSs) is an important part of the competitive market which would not be impacted by adopting RESA’s proposal here.

There are two significant differences between the market-based energy commodity and the non-market based PJM Charges.<sup>34</sup> First, the market-based commodity price that is offered to customers is based on each EGS’s analysis of transparent energy markets. In contrast, the non-market based nature of the PJM Charges means that there is no market-based, transparent way for EGSs to reasonably calculate future rate increases and then reasonably factor them into contract prices. For example, transmission charges can experience significant increases as regulated transmission owners deploy additional investments in transmission infrastructure.<sup>35</sup> Second, EGSs can manage the risk associated with offering fixed-price commodity service precisely because hedging and other risk management tools are available through the market itself. However, there are no tools available to EGSs for mitigating the risk associated with the non-market based PJM charges. These very significant differences between the market-based

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<sup>33</sup> RD at 51.

<sup>34</sup> RESA Initial Brief at 33-35; RESA St. No. 1 at 25.

<sup>35</sup> *Id.*

energy commodity and the non-market based PJM Charges explain why all LSEs have difficulty accurately calculating future rate changes and factoring them into retail pricing.<sup>36</sup>

While some individual customers may get a “benefit” when the EGS’ calculations lead to a result where the EGS has to absorb the costs of the non-market based PJM Charges because it did not factor in the correct risk premium into the retail price (or the EGS negotiated away the right to include one),<sup>37</sup> the long-term impact to the market will be negative. Suppliers will not be able to continue to take the risk of being forced to absorb these unpredictable rate increases – whether by design or through negotiation – and, over the long term, there is likely to be less competitive options offered by suppliers.<sup>38</sup> Where not prohibited through regulatory rules, the trend in the industry has been for EGSs to address these cost components through pass through provisions, regulatory change clauses, and other contractual mechanisms.<sup>39</sup> Therefore, any short term appeal to preserving the ability of Large C&I customers to negotiate contracts whereby EGSs are required to absorb the costs of increased PJM Charges is not a reasonable way to

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<sup>36</sup> RESA Initial Brief at 35; RESA St. No. 1 at 26.

<sup>37</sup> PAIEUG Witness Haines plainly acknowledges that his company “currently remits a risk premium to its EGS in order to avoid the market volatility associated with some of these costs and have them included in an all-in, fixed price.” PAIEUG St. No. 1-R at 5.

<sup>38</sup> RESA Initial Brief at 35; RESA St. No. 1 at 26.

<sup>39</sup> In Pennsylvania, the Commission has addressed this issue in its *Fixed Price Label Order*. See *Guidelines for Use of Fixed Price Labels for Products With a Pass-through Clause*, Docket No. M-2011-2362961, Final Order entered November 14, 2013 (“*Fixed Price Label Order*”). For mass market customers, there is only one way for an EGS to guarantee its ability to recover from customers the future, unpredictable rate changes in PJM Charges and that is to offer a variable priced product. Pursuant to the *Fixed Price Label Order*, an EGS offering a fixed price product cannot adjust the contract during the term to recover the costs from customers for unpredictable rate changes to the PJM Charges – regardless of whether or not such right is reserved in the contract. *Id.* at 24 (*Fixed Price Label Order* at 24 (“a ‘fixed price’ product must not change in price during the term of the agreement”). EGSs also cannot rely on a “regulatory out” clause in the contract to recover the cost from the fixed price customer because the *Fixed Price Label Order* requires an EGS dealing with an unpredicted rate increase in NMB Charges (that it did not already factor into the fixed price product) to provide the customer prior notice of the EGS’s intent to pass on the charge to the customer. If the customer does not affirmatively agree to the price increase, then the EGS must cancel the contract. *Id.* at 26 The likely outcome of this action is for the EGS to lose the customer.

design a functioning competitive retail market that will be sustainable over the long term and the ALJ's recommendation to create a carve out for Large C&I must be rejected on this basis.

Finally, and most importantly, PAIEUG did not offer its alternative carve out solution during the testimony phase of this proceeding and, therefore, no record was developed regarding how (and whether) such approach could even be implemented. Because this proposal was not properly presented in the record, the EGSs participating in the proceeding had no opportunity to respond on the record to present factual evidence explaining why this customer class bifurcation approach is not feasible.<sup>40</sup> As such, PAIEUG has not met its required burden of proof as the proponent of this proposal and it must be rejected on this basis.

Nonetheless, if the Commission were to consider the ALJ's recommendation here (which it should not), it would be difficult if not impossible for EGSs to assume the cost responsibility for non-market based PJM Charges for one group of customers and not others, as the ALJ's recommendation would require. An EGS's pricing protocols, systems and algorithms may not allow for this type of bifurcation on the basis of customer size. EGSs also often group customer accounts together on the same product and contract. For example, an EGS may serve a group of Wal-Mart stores in the PECO service territory where some stores are above 500 kW and others are below 500 kW. If the ALJ recommendation were to be adopted, the EGS could not group these stores together for pricing and contracting purposes, even if it were possible for the EGS's pricing systems to account for non-market based PJM Charges for one size of customers versus another.

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<sup>40</sup> In contrast, PAIEUG testimony focused on various concerns about how transitioning the cost recovery mechanism would impact Large C&I customers. In response, RESA Witness Hudson offered detailed solutions to address these record concerns. See RESA Reply Brief at 11-12 which specifically details each of the concerns raised by PAIEUG on the record and how they could be addressed as discussed in RESA St. No. 1-SR at 15-16.

In addition, this bifurcation also presents the problem of what to do when a customer's demand level exceeds the 500 kW threshold during the middle of a contract. If a customer is below the 500 kW level (and, therefore, the EGS would not be responsible for the non-market based PJM Charges for this customer) at the time of initial contract execution, what happens if the customer's demand increases and it becomes an over-500 kW customer three months into the contract? The EGS would not have built an assumption to address the non-market based PJM Charges when it originally priced the customer, but it would become responsible for these cost components mid-stream into the contract. This is a recipe for substantial customer confusion.

Given these risks and operational complexities the likely reality is that if the ALJ recommendation is adopted, EGSs will likely continue to embed some level of risk premium for non-market based charges even for those customers below 500 kW. Ironically, PAIEUG's customer bifurcation proposal could result in exactly the type of "double cost recovery" that it was concerned about under RESA's proposal to simply have the EDC assume these charges for all load. It should also be noted that no other EDC currently operates with the situation that the ALJ erroneously recommends here whereby the entity that is required to assume the cost responsibility for the PJM Charges as well as the mechanism through which the costs would be recovered would be solely dependent on the customer class.

For all these reasons, RESA urges the Commission to reject the ALJ's recommendation to implement a Large C&I carve out whereby EGSs would be required to assume the cost responsibility of the PJM Charges for Large C&I customers only and recover the costs through EGS prices while the EDC would assume the cost responsibility for all other customers and recover the costs through a non-bypassable charge. PAIEUG did not properly present this proposal in the record and, moreover, such an outcome would be inconsistent with current

practices in Pennsylvania today, would violate the Competition's Act requirement of equal access and would result in customers not paying the actual costs of the PJM Charges which would stymie the development of a sustainable retail market over the long term.

### III. CONCLUSION

For the reasons set forth above, RESA respectfully requests that the Commission grant these exceptions and direct that: (1) PECO assume the cost responsibility for NITS for all load; and that, (2) PECO's assumption of cost responsibility for all the PJM Charges (including NITS) applies to all customer classes. All other recommendations set forth in the RD should be approved.

Respectfully submitted,



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