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October 17, 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 Reply 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 
Adeolu A. Bakare

Counsel to the Philadelphia Area Industrial Energy Users Group

Enclosure

c: Administrative Law Judge Cynthia W. Fordham (via E-mail and First-Class Mail)
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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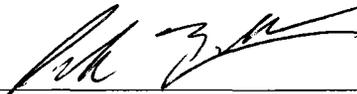
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Dated this 17th day of October, 2014, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY 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 17, 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.

On September 19, 2014, ALJ Fordham issued a Recommended Decision ("R.D.") in this proceeding. In the R.D., ALJ Fordham addressed, among other issues, (1) whether PECO should implement a non-bypassable rider for the collection of certain transmission and transmission-related charges; and (2) how PECO should procure default service for Medium Commercial and Industrial ("C&I") customers. R.D. at 1. While the R.D. misapplied the evidence set forth in this proceeding and inappropriately recommended implementation of a non-bypassable rider, the R.D. correctly found that, any non-bypassable rider: (1) should only collect Regional Transmission Enhancement Plan/Transmission Enhancement/Expansion Cost Recovery (collectively, "RTEP/TEC") and Reliability Must Run/Generation Deactivation ("RMR") costs;²

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

² As part of its litigation position, the Retail Energy Supply Association ("RESA") proposed to collect certain "transmission" and "transmission-related" costs via non-bypassable rider. The transmission-related costs originally at issue in this proceeding included RTEP/TEC, RMR, Unaccounted for Energy ("UFE") and historical out of market tie-line and retail meter adjustments ("Meter Error Correction"). By contrast, Network Integration Transmission Costs ("NITS"), as discussed in Section II, *infra*, are inherently different "transmission" costs. Because the R.D. does not include either Meter Error Correction or UFE in any recommendations, and no party excepts to the exclusion of Meter Error Correction or UFE charges, PAIEUG will not address these costs in its Reply Exceptions. As such, any references in PAIEUG's Reply Exceptions to "transmission costs" would include only NITS, while any references herein to "transmission-related costs" would include only RTEP/TEC and RMR costs.

and (2) should include a carve-out for Large C&I customers. See R.D. at 51. In addition, the R.D. recommended approval of PECO's proposal to implement hourly-priced default service for Medium C&I customers, although the R.D. failed to address the impact on Large C&I customers due to this proposed procurement. R.D. at 45.

PAIEUG whole-heartedly supports the ALJ's appropriate recommendations that: (1) NITS should not be collected via any non-bypassable rider; and (2) a carve-out for Large C&I customers must be applied if a non-bypassable rider is implemented on PECO's system. On a fundamental basis, however, PAIEUG excepted to the R.D.'s conclusion that the parties seeking implementation of a non-bypassable rider met their burden of proof in light of the lack of evidence presented herein. See PAIEUG Exceptions (hereinafter "Exc."), pp. 3-12. In addition, PAIEUG submitted that the R.D. erred in finding that PECO's revised proposal for Medium C&I procurement should be adopted, as none of the benefits presented in this proceeding outweigh the evidence that this proposed procurement could detrimentally effect Large C&I customers' default service costs. See id. at 13-16.

On October 10, 2014, PAIEUG received Exceptions from PECO Energy Company ("PECO"), Office of Small Business Advocate and RESA. PAIEUG files these Replies to the Exceptions of PECO and RESA in order to specifically respond to: (1) RESA's unjust and unreasonable claim that NITS should be collected via a non-bypassable rider; and (2) PECO and RESA's unfounded claim that Large C&I customers should not be carved-out of any non-bypassable rider, assuming arguendo that a non-bypassable rider is implemented on PECO's system. Each of PAIEUG's Reply Exceptions is set forth more fully below.

II. REPLIES TO EXCEPTIONS

1. Reply to RESA Exception No. 1: The Administrative Law Judge Appropriately Determined that Network Integration Transmission Services Charges Should Not be Collected Via Any Non-Bypassable Rider.

In the R.D., the ALJ correctly concludes that NITS costs should not be collected via a non-bypassable rider. R.D. at 55-56. Unfortunately, RESA's Exceptions disregard the ALJ's findings with respect to NITS and reassert RESA's unsupported position that, assuming arguendo a non-bypassable rider is implemented on the Company's system, PECO should assume responsibility for PJM transmission and transmission-related costs for both default service and shopping customers.³ RESA Exc., p. 3. Importantly, RESA's arguments with respect to the collection of NITS via a non-bypassable charge are wholly unsupported by the record formed in this proceeding and distort the exclusion of these costs from the Partial Settlement filed in this proceeding.⁴ As PAIEUG has repeatedly demonstrated, RESA has failed to satisfy its burden to show that NITS are a volatile cost warranting collection via a non-bypassable rider, as recognized by the adverse Commission precedent associated with a similar proposal by RESA

³ As an initial matter, PECO does not currently recover NITS charges from any customers, as retail suppliers collect these charges from shopping customers, while wholesale suppliers collect these charges as part of their default service bid. RESA's Exceptions raise two distinct issues regarding the collection of NITS: (1) whether NITS should be recovered from all customers via a non-bypassable charge; (2) whether PECO should collect NITS for default service customers. RESA Exc., pp. 6-9. In what appears to be an attempt to distort the issues, RESA's Exceptions fail to recognize the distinction between these issues and raise the same arguments in support of both positions, many of which are not relevant to the issues of NITS recovery via non-bypassable rider. See, e.g., id. at 7 (arguing that requiring PECO to assume the cost responsibility for NITS would allow suppliers to be more competitive because suppliers cannot pass-through the costs of NITS to customers. While wholesale suppliers cannot pass these costs through to default customers, retail suppliers certainly maintain the ability to implement pass-through provisions in retail contracts.). PAIEUG takes no position with respect to whether PECO or wholesale suppliers should assume responsibility for the collection of NITS costs for default service customers, however, PAIEUG urges the Commission to ensure that its analysis recognizes the distinction between these issues and addresses them accordingly.

⁴ After parties filed Main Briefs, certain parties submitted a Joint Petition for Partial Settlement ("Partial Settlement" or "Petition") to the Commission. See R.D., p. 5. The Partial Settlement, inter alia, included provisions setting forth the settling parties' positions regarding the charges to be collected through a non-bypassable rider, but reserved for litigation the issue of whether NITS should be collected via the rider. See R.D., pp. 15-16. As explained in PAIEUG's Reply Brief and Exceptions, PAIEUG opposed the Partial Settlement on grounds that the Petition would not substantially reduce litigation costs and failed to meet the public interest by providing no benefits to the Large C&I customer class. See PAIEUG R.B., pp. 3-4, 24, 26-27.

presented to and rejected by the PUC only months ago. PAIEUG Main Brief ("M.B."), pp. 13-14; PAIEUG Reply Brief ("R.B."), pp. 13-16. Moreover, the proposed non-bypassable rider would restrict retail customers' freedom of contract and imposes the potential for double collection on Large C&I customers. PAIEUG M.B., pp. 20-27. For these reasons, the Commission should therefore approve the ALJ's finding in the R.D. with respect to this issue and exclude NITS from recovery by any non-bypassable rider.

As an initial matter, RESA's suggestion that NITS should be collected via non-bypassable rider in light of their "volatility" is wholly inconsistent with recent Commission precedent. Recently, the PUC denied RESA's similar proposal to require the collection of NITS via non-bypassable rider on the basis of volatility in the FirstEnergy ("FE") Companies' recent DSP III proceeding. 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"). The Commission made the following specific findings with respect to the alleged volatility of NITS charges:

We find that neither our *Fixed Price Order*, entered in November of 2013, nor the single, alleged incident of volatile NITS costs in a neighboring jurisdiction amount to "changed circumstances" which would warrant the requested non-bypassable collection of NITS costs as proposed by FES et al. We further conclude that the FES et al. arguments as to the volatility issue are simply unconvincing as only one, single instance was offered as evidence. We do not agree that this one instance of volatility would lead to the inference that all NITS costs are now unpredictable and should be collected via the EDCs' non-bypassable DSSR.

Id. at 31-32 (emphasis added).

Importantly, RESA has not presented any evidence of a single instance of volatility in PECO's jurisdiction, let alone evidence sufficient to constitute a "changed circumstance," warranting the collection of NITS costs via non-bypassable rider. See RESA Exc., pp. 6-8. As PAIEUG has repeatedly demonstrated throughout this proceeding, NITS costs are "transmission" costs, which are generally predictable and have not changed in PECO's service territory for several years. See PAIEUG M.B., pp. 18-19, citing Tr. 58-59. PAIEUG's Main Brief referenced testimony from a PECO Witness responding to RESA's volatility claim with the following clarification:

Your premise is that NITS is something that is unpredictable, but from PECO's, my experience is that NITS is extremely predictable year to year. The PECO network rate has not changed for several, several years in terms of dollar per kilowatt year, and the cost determinant is network service load number, which is established in advance of the calendar year so that if someone were to buy and try to predict what their NITS cost would be for a particular customer, my bet is they could lock it into the penny for a year.

See PAIEUG M.B., p. 18; citing Tr. 58-59. PAIEUG also rebutted RESA's claim that cost data on the PJM website evidences volatile NITS charges. See PAIEUG R.B., p. 10. As observed in PAIEUG Reply Brief, the data relied upon by RESA measures NITS charges primarily from EDCs located outside of Pennsylvania. See id. With regard to the Pennsylvania EDCs, the data cited by PECO shows that only PPL and UGI experienced increased NITS costs in June 2014, with PECO's NITS costs remaining unchanged from 2013. See id. Given RESA's failure to present any evidence of volatility with respect to NITS costs, the Commission should reject RESA's proposal as unsupported and inconsistent with Commission precedent.

Moreover, RESA further misrepresents the nature of the parties' exclusion of Unaccounted for Energy ("UFE") and historical out of market tie-line and retail meter adjustments ("Meter Error Correction") from the Partial Settlement in an attempt to paint its

NITS recovery proposal as consistent with the parties' position on certain transmission-related costs. See RESA Exc., pp. 5, 7. As part of its litigation position, RESA proposed to collect UFE and Meter Error Correction costs through any proposed non-bypassable rider. See PAIEUG Exc., p. 2, n. 2. To the contrary, PECO determined that it could not collect these costs via a non-bypassable rider; and as such, maintaining the status quo for UFE and Meter Error Correction charges was appropriate. See R.D., p. 46. As accurately recounted by RESA, the Partial Settlement adopted PECO's proposal and excluded UFE and Meter Error Correction costs from the proposed non-bypassable rider. See RESA Exc., p. 5. RESA's attempt to characterize the exclusion of NITS from the proposed non-bypassable rider as consistent with the parties' position regarding these transmission-related costs distorts the parties' agreement as set forth in the Partial Settlement and draws an incorrect parallel between NITS costs and the inherently different nature of transmission-related UFE and Meter Error Correction charges. Moreover, referencing the treatment of transmission-related UFE and Meter Error Correction charges in the Partial Settlement as support for the non-bypassable recovery of NITS is inherently inconsistent with the Partial Settlement provision reserving cost recovery of NITS for litigation. See R.D., p. 46.

In addition, RESA incorrectly claims that NITS must be collected via a non-bypassable charge to allow Electric Generation Suppliers ("EGSs") "non-discriminatory access to an EDC's right of recovery." RESA Exc., pp. 8-9. In support of this argument, RESA claims that collection of NITS via a non-bypassable rider benefits all customers by eliminating the need to include risk premiums for PJM charges in retail prices. See id. at 8. RESA fails to recognize, however, that customers' contractual freedom is greatly benefited through the opportunity to consider and negotiate various contractual products, including the desire to include a risk premium in order to provide an all-in, fixed-priced product for customers seeking budget

stability. PAIEUG R.B., pp. 17-18. As demonstrated by the evidence offered in this proceeding, Large C&I customers prefer to have the ability to negotiate competitive products that include transmission and transmission-related charges, including NITS. See id. Moreover, Large C&I customers are often willing to remit risk premiums to ensure stable annual budgeting. See id. Because customers value the ability to negotiate for competitive products that include transmission costs, even if a risk premium were included, this option should not be removed from the competitive market. See PAIEUG M.B., p. 22. Accordingly, RESA's proposal harms customers' contractual freedom in the competitive retail electric market and should be rejected.

The Commission should deny RESA's Exception calling for collection of NITS charges via a non-bypassable rider. RESA's proposal is unsupported by any evidence of volatility in NITS charges and is wholly inconsistent with the Commission's findings in the FE DSP III Order. Additionally, RESA's proposal mischaracterizes the basis for exclusion of UFE and Meter Error Correction charges from the Partial Settlement in an effort to align NITS - a transmission cost – with the treatment of transmission-related costs. Finally, RESA's proposal harms the competitive retail electric market by certain competitively priced products, thereby placing unnecessary limits on a customer's freedom of contract. For all of these reasons, the Commission should deny RESA's Exception and exclude NITS from any non-bypassable rider adopted in this proceeding

2. Reply to Reply to RESA Exception No. 2 and PECO's Exception No. 1: The Administrative Law Judge Correctly Found that the Unique Contractual Issues Facing Large Commercial and Industrial Customers Warrants a Carve-Out For These Customers From the Implementation of Any Non-Bypassable Rider.

The ALJ reasonably finds that the distinction between Large C&I customers and other customers (i.e., Residential and Small Commercial customers) in negotiating for contracts for service warrants a carve-out for Large C&I customers with respect to the implementation of any

non-bypassable rider. PECO and RESA both except to the ALJ's finding; however, contrary to the arguments now adduced by PECO and RESA, the ALJ's findings rely on record evidence used to reach the well-reasoned conclusion that Large C&I customers would be significantly and uniquely disadvantaged by any imposition of a non-bypassable recovery for transmission-related costs.⁵ Accordingly, if the Commission adopts the R.D.'s recommendation to approve a non-bypassable rider or otherwise approves any mechanism permitting non-bypassable recovery of transmission or transmission-related charges, the Commission should adopt the R.D.'s finding that Large C&I customers should be exempt from non-bypassable recovery of transmission or transmission related charges.

A. PECO's Exception Regarding the ALJ's Recommended Large C&I Carve-out Is Inconsistent with the R.D's Relied-Upon Evidence.

Throughout this proceeding, PECO has claimed that FE's DSP III proceeding has been the guiding light with respect to both PECO's procedural and substantive decisions.⁶ Unfortunately, PECO chooses to ignore this fact with respect to one singular issue – a carve-out of Large C&I customers from any non-bypassable rider. Specifically, PECO submits that the ALJ's appropriate recommendation to allow for a carve-out of Large C&I customers is not based upon record evidence, conflicts with the Commission's recent FE DSP III Order, and lacks any findings as to technical feasibility. See PECO Exceptions, pp. 3-5. As discussed below, each of PECO's arguments were previously addressed through parties' briefs and properly considered by the ALJ. As such, PECO's exception must be rejected, and the ALJ's recommendation should be approved.

⁵ Because the R.D. recommends only collection of transmission-related costs, PAIEUG's Reply Exceptions will refer only to a carve-out for these costs; however, a Large C&I carve-out should apply to any and all costs collected through a non-bypassable rider. R.D., p. 51.

⁶ 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 FE DSP III Order.

Initially, PECO alleges that the ALJ's finding does not cite to any evidence establishing a meaningful difference between Large C&I customers and other customer classes that would justify a carve-out. See PECO Exc., p. 4. To the contrary, the ALJ set forth a detailed review of the relevant record evidence referenced to support her decision. See R.D. at 51. Specifically, the R.D. referenced the evidence set forth by PAIEUG in support of the carve-out as follows:

PAIEUG contends that Large C&I customers are more intimately involved in negotiating their contract terms to include various pass-through and fixed price components based on their individual budgetary concerns. See PAIEUG MB at 22, 27-28, PAIEUG RB at 21, Noble MB at 3. Therefore, if the Commission approves a non-bypassable recovery of any transmission or transmission-related charges, PAIEUG requests that the Commission approve a carve out for Large C&I customers to allow them to continue to remit transmission and transmission-related charges to their EGSs. PAIEUG RB at 21.

See R.D., p. 51; but cf. PECO Exc., p. 4. While the R.D. itself did not quote or cite directly to testimony, the referenced sections of briefs filed by PAIEUG and Noble Americas Energy Solutions LLC ("Noble") (and cited by the ALJ) include direct citations to both written testimony and the transcript.

For example, the referenced pages from PAIEUG's Main Brief include citations to testimony from PAIEUG Witness Randolph Haines evidencing that Large C&I customers may prefer fixed-price recovery of transmission and transmission-related costs, as some customers would prefer to remit a risk premium to an EGS in order to obtain an all-in, fixed price for budgeting purposes. See PAIEUG M.B., p. 10. Similarly, testimony from RESA shows that 93% of Large C&I customers are supplied by EGSs, thereby suggesting that Large C&I customers prefer to have the flexibility to negotiate specific competitive products with their EGSs that will allow the resulting energy procurement to meet their companies' needs. See R.D., p. 51 citing PAIEUG M.B., p. 22, 27. Additionally, another section of PAIEUG's Main Brief

referenced in the R.D. included a direct citation to testimony from a PECO Witness stating that "Industrials and Residentials have different understandings of competitive markets." See PAIEUG, M.B., p. 28. In other words, PECO's claim of lack of citation to record evidence is nothing more than a poor attempt to divert the Commission's attention away from the true issue at hand – that Large C&I customers would not benefit, but rather be detrimentally impacted, by implementation of a non-bypassable rider.

In addition to misreading the ALJ's citation of the evidence, PECO also attempts to discredit PAIEUG Witness Haines by presenting a distorted view of Mr. Haines' position. See PECO Exc., p. 5. PECO states that "[t]he central reason for opposition to non-bypassable recovery of PJM Transmission Charges by PAIEUG's witness...is that his employer Thomas Jefferson University/Thomas Jefferson University Hospital ("TJU/TJUH"), would be forced to remove transmission-related PJM billing charges from fixed-priced EGS contracts for each of its accounts." See PECO Exc., p. 5. PECO further claims the Mr. Haines failed to demonstrate harm from PECO's proposed non-bypassable rider or benefits from preserving the current bypassable recovery of various transmission-related costs. See id. Full review of Mr. Haines' testimony therefore discredits PECO's claims.

Contrary to PECO's assertions, Mr. Haines' testimony included extensive recitations of his anticipated harms that would result from non-bypassable recovery as compared to the benefits of PECO's current use of load following recovery for transmission and transmission-related costs. See PAIEUG M.B., pp. 22, 24, 26-28. Specifically, Mr. Haines described how TJU/TJUH negotiated a competitive supply product including fixed-price recovery of various transmission-related costs "in order to avoid the market volatility associated with some of these costs and have them included in an all-in, fixed price." See PAIEUG Stmt. No. 1, p. 5; see also

PAIEUG M.B., p. 19. Mr. Haines further discussed how products allowing for fixed-price recovery of transmission or transmission-related charges would no longer be available if PECO were to recover transmission-related costs on behalf of Large C&I customers, a statement that no party to this proceeding disputes. See PAIEUG Stmt. No. 1, p. 6; see also RESA M.B., p. 35 (stating that "all customers will be paying the 'pass-through' costs of transmission" under a non-bypassable rider).

Mr. Haines also testified to the likelihood of double-collection from Large C&I customers due to non-bypassable recovery of transmission or transmission-related charges. See PAIEUG MB, p. 23. On the issue of double-collection, PECO unpersuasively portrays Mr. Haines' concerns as overstated. First, PECO claims that Mr. Haines' current supply contracts expire before the onset of PECO's DSP III and would therefore not be implicated by an approved non-bypassable rider. PECO also argues that Mr. Haines could avoid any double-collection charges by negotiating a pass-through of transmission-related costs. PECO's claims are without merit. Mr. Haines' testimony clarified that the initial term of his contract expires on May 31, 2015, but also disclosed that the TJU/TJUH had already begun negotiations to extend the contract term through May 31, 2018. See PAIEUG M.B., p. 24. Further, as evidenced by the FE DSP III Order, the risk of double collection discussed by Mr. Haines is hardly theoretical and cannot be eliminated by a pass-through due to the possibility for EGS errors or intentional overcharges. See PAIEUG M.B., pp. 23-24. Moreover, the fact that PECO would simply recommend that Large C&I customers use pass-through provisions to mitigate the effects of non-bypassable recovery of transmission costs completely ignores the fact that a primary concern justifying the carve-out was the preservation of Large C&I customers' ability to negotiate fixed-price arrangements for transmission-related costs. See PAIEUG M.B., p. 21.

PECO attempts to further marginalize Mr. Haines' testimony by suggesting that his experiences as a Large C&I customer in PECO's territory and a member of PAIEUG cannot be attributable to other similarly situated customers. See PECO Exc., p. 5. PECO argues that "PAIEUG has simply identified a theoretical risk of "double collection" and purported logistical challenges for a single customer." See id. As stated above, the risk of double collection is not theoretical.⁷ Additionally, Mr. Haines offered testimony on behalf of PAIEUG, not TJU/TJUH. PECO did not challenge Mr. Haines' qualifications to testify on behalf of PAIEUG at the evidentiary hearings and to do so at this point is unconscionable. Notwithstanding the inappropriate challenge to Mr. Haines' qualifications to testify on behalf of all PAIEUG members, PAIEUG submits that Mr. Haines has 17 years of experience as an energy manager, 37 total years of experience in the energy industry, and currently serves as President of the National Association of Energy Engineers. See PAIEUG M.B., p. 2, Exhibit_(RH-1). Accordingly, while Mr. Haines referenced TJU/TJUH's specific energy contracts as an example, his testimony repeatedly referenced and applies the adverse effects that non-bypassable recovery of transmission and transmission-related costs would have upon both TJU/TJUH and other similarly situated customers. See PAIEUG St. No. 1, pp. 7-8.

PECO also alleges that the FE DSP III Order offers no support for the ALJ's recommended carve-out but bases this claim on a legally unsound and factually inaccurate reading of the FE Order. As stated in its Exceptions, PECO improperly bases its entire proposal to implement non-bypassable recovery of transmission-related costs on the Commission's FE DSP III Order, which approved a non-precedential settlement authorizing recovery of

⁷Additionally, PECO's off-handed dismissal of potential double-collection and loss of competitive products for Large C&I customers as "logistical challenges" highlights the Companies' lack of concern for its own customers. See PECO Exc., p. 6.

transmission-related costs.⁸ See PECO Exc., p. 3; see also PAIEUG RB, pp. 12-13. Moreover, PECO inappropriately attempts to perpetuate its misapplication of the FE Order by arguing that a Commission finding on one of the few issues actually resolved through litigation in the FE proceeding should be disregarded. See PECO Exc., p. 6. This reasoning becomes particularly egregious after considering that the Commission did not base its recommendation on any facts specific to recovery of NITS, which was the issue reserved for litigation in the FE DSP III proceeding, but rather responded to the same general customer choice concerns raised by PAIEUG in this proceeding. See FE DSP III Order, p. 42.

Lastly, PECO continues its ironic observations by alleging that the parties did not develop an evidentiary record regarding the potential administrative challenges of implementing a carve-out because PAIEUG failed to propose a carve-out prior to filing its Main Brief. As discussed at length in PAIEUG's Main Brief, however, PECO did not propose a non-bypassable rider until oral rejoinder testimony, which was presented during the evidentiary hearings. See PAIEUG M.B., pp. 30-34. Had PECO presented its intention to implement such a proposal at an earlier point in this proceeding (i.e., PECO's case-in-chief), PAIEUG would have had ample opportunity to more fully flesh-out the issues, including performing discovery and presenting testimony, addressing specific feasibility issues, such as cost.⁹ Under the circumstances presented, PAIEUG responded to PECO's proposed non-bypassable rider at the earliest possible opportunity by cross-examining a PECO Witness to confirm that PECO possessed the technical capability to carve-out Large C&I customers from non-bypassable recovery of transmission-

⁸ PECO's reliance, during the Oral Rejoinder stage of this proceeding, on the FE DSP III Order as the basis for proposing a non-bypassable rider on PECO's system is especially inappropriate because the FE Companies had non-bypassable riders previously reviewed and approved during their DSP II proceedings. See PAIEUG M.B., p. 12.

⁹ PECO asks the Commission to clarify that costs to implement the carve-out will be recovered from all Large C&I customers. There is no evidence to support recovering such costs from Large C&I customers. Any costs incurred to carve-out Large C&I customers should be considered a cost of implementing the non-bypassable rider, since a Large C&I customer carve-out would preserve the status quo. See R.D., p. 16 (observing that the Settlement Parties agree that costs to implement the non-bypassable TSC will be recovered through the non-bypassable TSC).

related charges. See PAIEUG M.B., p. 29 citing Tr. 89. Moreover, in light of the fact that PECO's Witness specifically indicated that a carve-out could be achieved on PECO's system, PECO's current claims regarding implementation must be rendered moot.

PECO's opposition to the R.D.'s recommended carve-out for Large C&I customers is wholly inconsistent with the evidence PECO relies upon in support of this position. Contrary to PECO's claims, the R.D.'s recommendation incorporates portions of PAIEUG's and Noble's Main Briefs that directly cite to both written and transcript evidence. Additionally, PECO's Exception distorts the testimony offered by PAIEUG's witness in an attempt to discredit PAIEUG's position regarding non-bypassable recovery for transmission and transmission-related costs, as well as Large C&I customers' concerns with respect to double-collection. Finally, PECO erroneously alleges that the FE DSP III Order and fully developed evidentiary record do not support the ALJ's recommendation for a Large C&I carve-out for PECO customers. The Commission should therefore reject PECO's Exception as inconsistent with evidence presented in this proceeding and affirm the ALJ's recommended carve-out for Large C&I customers.

B. RESA's Arguments Opposing a Carve-Out for Large C&I Customers Are Irrelevant and Unsubstantiated.

Similar to PECO, RESA offers arguments opposing the R.D.'s recommendation to implement a carve-out for Large C&I customers from non-bypassable recovery of transmission or transmission-related costs. Also similar to PECO, the arguments set forth by RESA either ignore the evidence presented herein or set forth unsubstantiated claims not raised in this proceeding to date. Because RESA fails to present any arguments that would require modification of the ALJ's reasonable and appropriate recommendation, RESA's Exception must be denied.

In opposing the R.D.'s recommended carve-out, RESA continues to argue that non-bypassable recovery of transmission and transmission-related charges benefits all customers; however, RESA's arguments conveniently fail to recognize the specific detriments that would be faced by Large C&I customers. See RESA Exc., p. 11. For example, RESA argues that non-bypassable recovery removes any need for wholesale suppliers or EGSs to add risk premiums to cover retail pricing risks; however, RESA ignores extensive testimony and arguments set forth by PAIEUG showing that Large C&I customers value fixed-price recovery of transmission and transmission-related costs as a means of mitigating rate volatility, even at the expense of paying an additional risk premium. See PAIEUG M.B., p. 19.

RESA also offers unsupported claims regarding the methodologies utilized by EGSs to price and assess risk for market-based energy commodity costs and non-market based charges. See RESA Exc., p. 12. RESA continues to argue that non-market based costs are non-hedgeable and claims that EGSs have no risk management tools available to address the pricing risk of non-market based charges. See id. As stated by Noble, managing risk of both market-based and non-market based costs is simply a cost of doing business as an EGS and an opportunity for the individual EGSs to innovate and develop appropriate products. See PAIEUG R.B., p. 11 citing Noble MB, p. 3. Further, EGSs have always reserved the right to structure pass-through arrangements for recovery of transmission or transmission-related charges.

RESA also makes unsupported claims regarding the long-term implications of the proposed carve-out. RESA Exc., p. 13. Without reference to any record evidence, RESA claims that if EGSs are forced to continue recovering transmission and transmission-related costs from customers, that "there is likely to be less competitive options offered by suppliers." Id. As

support for this statement, RESA cites to page 26 of its Direct Testimony, which states only that EGSs must account for transmission costs. See RESA St. No. 1, p. 26.

Moreover, RESA continues to ignore the fact that EGSs already possess the tools to avoid risk associated with transmission and transmission-related costs by structuring pass-through arrangements. See PAIEUG M.B., p. 11. For example, RESA cites to the Commission's recent Fixed Price Order as an impediment to utilizing a pass-through clause, but fails to mention that this argument actually supports a carve-out for Large C&I customers because the Commission's Fixed Price Order recognized the distinctive position of Large C&I customers and limited the scope of the Order to Residential and Small C&I customer classes.¹⁰ See RESA Exc., p. 13; but cf. PAIEUG M.B., pp. 18-19. Therefore, any claimed impact by RESA on pass-through mechanisms resulting from the Fixed Price Order would be entirely inapplicable to Large C&I customers, thereby supporting approval of the R.D.'s recommended carve-out. See PAIEUG M.B., pp. 18-19.

Similar to PECO, RESA argues that PAIEUG did not propose the carve-out during the testimony phase of the proceeding. As discussed in response to PECO's Exception, RESA was the party bearing the burden of proof as to any implementation of non-bypassable recovery of transmission or transmission related costs up until the evidentiary hearing at which time PECO proposed to implement a non-bypassable rider for recovery of transmission-related costs. See Tr. 39. Prior to the evidentiary hearings, RESA alone bore the burden of proving every aspect of its proposed non-bypassable rider, including whether the rider would be just and reasonable for Large C&I customers. As soon as PECO joined RESA in supporting non-bypassable recovery of transmission-related costs, PAIEUG conducted cross-examination of a PECO Witness to address

¹⁰ Further, even for Residential and Small C&I customers, the Fixed Price Order only addressed the nomenclature to be used by EGSs in contracts; it did not prohibit EGSs from offering pass-through contracts. See PAIEUG, Exc., p. 7.

the feasibility of carving-out Large C&I customers. See Tr. 89. PAIEUG then properly proposed the carve-out in its Main Brief, based on the adverse effects of RESA's proposal set forth in PAIEUG's Direct Testimony and the response of PECO's Witness confirming PECO's possesses the technical capabilities to implement the carve-out. See PAIEUG M.B., p. 27.

Finally, RESA alleges that "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." See PECO Exc., p. 14. This exaggerated statement should be disregarded entirely due to RESA's failure to offer any semblance of an evidentiary foundation. See id. RESA attempts to support this statement with conjecture, much of which is illogical. For example, RESA claims that EGSs could become responsible for customer's contracts if a customer's demand level changes three months into a contract by either falling below or rising above 500 kW. See id. Such concerns are grossly overstated as development of the appropriate method for qualifying customers for the carve-out would be no more complex than PECO's existing duty to classify customer by customer class based on demand levels. Additionally, this point underscores RESA's perverse disregard for the welfare of its Large C&I customers. Implementation of a non-bypassable rider would place Large C&I customers at risk of double-collection for contracts expiring after implementation of the non-bypassable rider. See PAIEUG M.B., pp. 23-24. As RESA is the party seeking to change the existing model, Large C&I customers should not be burdened with the associated costs and risk. Therefore, the carve-out should be approved, any attendant costs should be recovered through the non-bypassable rider and any remaining implementation matter should be addressed through a compliance filing.

The Commission should dismiss RESA's opposition to the ALJ's recommended Large C&I carve-out as irrelevant and unsubstantiated. RESA's Exception ignores the extensive testimony presented in this proceeding demonstrating that Large C&I customers are uniquely and adversely impacted by non-bypassable recovery of transmission and transmission-related costs. RESA further offers unsubstantiated claims regarding risk management and the long-term implications of the proposed carve-out. Finally, RESA's erroneous allegation, that the recommended Large C&I carve-out would be "impossible" for EGSs to implement, must be disregarded entirely as unfounded. The Commission should therefore dismiss RESA's objections and uphold the R.D.'s recommended carve-out.

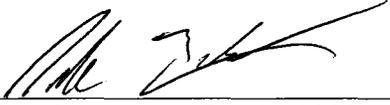
III. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission adopt the well-reasoned recommendations set forth in the Recommended Decision of Administrative Law Judge Fordham regarding denial for the collection of Network Integration Transmission Service costs and approval of a carve-out for Large Commercial and Industrial customers if a non-bypassable rider is implemented on PECO's system.

Respectfully submitted,

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