



September 8, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Buildings
400 North Street
Harrisburg, PA 17120

Re: Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2021 through May 31, 2025 (Docket No. P-2020-3019290)

Dear Secretary Chiavetta,

Enclosed for filing in the above-referenced proceeding, please find the Reply Brief of the Environmental Stakeholders. As evidenced by the attached Certificate of Service, all parties to this proceeding are being served with a copy of this document. Should you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for : Docket No. P-2020-3019290
Approval of Its Default Service Program :
for the Period from June 1, 2021 through :
May 31, 2025 :
: :
:

REPLY BRIEF OF THE ENVIRONMENTAL STAKEHOLDERS

September 8, 2020

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I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.501, Sierra Club, Pennsylvania Chapter, Clean Air Council, and the Philadelphia Solar Energy Association (the “Environmental Stakeholders”) respectfully submit this Reply Brief in support of their positions in the above-captioned proceeding (“Proceeding”) of the Pennsylvania Public Utility Commission (the “Commission”) regarding the proposed default service program (“DSP”) of PECO Energy Company (“PECO”) for the period between June 1, 2021 and May 31, 2025 (“DSP V”).

Since many of the contentions contained in PECO’s Main Brief are addressed in detail in the Environmental Stakeholders’ Main Brief, this Reply Brief will focus on distilling and resolving key areas of disagreement, which fall into three categories. The first concerns the role of long-term contracts in DSP V. The Environmental Stakeholders have argued that it would be prudent to include long-term contracts in the procurement plan for DSP V because doing so would help ensure adequate and reliable service at least cost over time.¹ PECO has argued in opposition that no specific quantity of long-term contracts is required by law and that it has adequately considered long-term contracts.²

In this Reply Brief, the Environmental Stakeholders respond that although no specific quantity is required, the incorporation of long-term contracts would be prudent, consistent with Commission policy, and consistent with stakeholder preferences. Moreover, PECO has not adequately considered long-term contracts, because although it has identified potential risks, it has not conducted an evaluation of actual long-term contract opportunities in order to understand and weigh their benefits and costs. To fill this gap, PECO should be required to conduct a study

¹ *Main Brief of the Environmental Stakeholders*, at 12, Docket No. P-2020-3019290 (Aug. 20, 2020) (“Environmental Stakeholders Main Brief”).

² *Initial Brief of PECO*, at 10, Docket No. P-2020-3019290 (Aug. 20, 2020) (“PECO Main Brief”).

of current market opportunities and the advantages and disadvantages of incorporating different levels of long-term contracts into its default service portfolio.

The second area of disagreement relates to whether DSP V as proposed adequately considers and ensures reliability of service. The Environmental Stakeholders have argued that PECO should evaluate the reliability characteristics of different generation supply sources, and incorporate prudent proportions of utility-scale and distributed renewable resources to help ensure reliability.³ PECO has argued in opposition that it need not do so, because it has already shown that its plan will adequately ensure reliability and because any consideration of procurement from distributed generation would be out of scope.⁴ The Environmental Stakeholders reply herein that procurement from renewable resources, including distributed resources, would be a prudent way of mitigating reliability risks from outages and emergencies that are not fully addressed by PECO’s plan. Moreover, the reliability contributions of procurement from distributed resources are in scope given the statutory mandate to design procurement to ensure reliability.

The third area of disagreement relates to whether or not PECO should perform cost-benefit analyses to develop improved time-of-use (“TOU”) rates. The Environmental Stakeholders have argued that PECO should be so required, both in order to improve the TOU rate proposed for DSP V and to develop pilots for TOU rates to support heavy electric vehicle (“EV”) fleets and building electrification.⁵ PECO has contended that it need not, because doing so is not expressly required by the statute and the Environmental Stakeholders have not shown that the proposed TOU rate will not benefit heavy EV fleets and building electrification.⁶ In this

³ Environmental Stakeholders Main Brief, at 17.

⁴ PECO Main Brief, at 17.

⁵ Environmental Stakeholders Main Brief, at 33–38.

⁶ PECO Main Brief, at 22–27.

brief, the Environmental Stakeholders reply that the Public Utility Code and Commission policy require the prudent and cost-effective use of ratepayer dollars, and that although PECO's proposed TOU rate may produce some benefits, better results could be obtained through the development and piloting of additional TOU rates tailored to support heavy EV fleets and building electrification.

A unifying theme of the Environmental Stakeholders' contentions in this Proceeding is that PECO can and should do more to ensure that the dollars ratepayers spend on default service return the most value possible. Energy markets have changed significantly in recent years, as renewable energy prices have fallen dramatically and EV and building electrification technologies have proliferated, but PECO's default service procurement plan has remained essentially the same for almost ten years.⁷ Moreover, stakeholders presented approximately six hours of testimony at the Public Input Hearing in this Proceeding in favor of finding ways to support increased levels of renewable energy in the default service supply mix.⁸ In light of Commission policy, market trends, and stakeholder preferences, it would be in the public interest to require PECO to improve its procurement plan in the ways recommended by the Environmental Stakeholders.

II. ARGUMENT

A. PECO Should Incorporate Long-Term Contracts Into Its Default Service Procurement Plan

Incorporating long-term contracts into the default service supply mix would be a prudent way of ensuring adequate and reliable service at least cost over time, and the first step towards doing so is completing a comprehensive evaluation of current market opportunities for long-term

⁷ Environmental Stakeholders Main Brief, at 12, 14.

⁸ *Id.* at 23.

contracts.⁹ In its Main Brief, PECO argues in opposition that (1) the Commission does not require any minimum quantity of long-term contracts in a default service supply portfolio; and (2) PECO has already appropriately considered the risks and benefits of long-term supply contracts.¹⁰ For the reasons explained below, these contentions are unavailing.

1. The Incorporation of Long-Term Contracts Would Be Prudent

PECO notes in its Main Brief that the Commission has declined to mandate that a specific “minimum quantity” of long-term contracts be included in a default service procurement plan in order to provide “flexibility” in the design of the plan.¹¹ This is accurate, but incomplete, because the inclusion of long-term contracts where appropriate is both prudent and fully consistent with Commission policy. The Commission has emphasized that default service providers have an “affirmative obligation” to examine different product mixes, including long-term contracts, and to design default service procurement in a manner consistent with the characteristics of their service territory, including stakeholder preferences.¹² As such, although there is no mandatory minimum level of long-term contracts, the incorporation of long-term contracts as part of a prudent and balanced mix of products, particularly where supported by stakeholders,¹³ is fully consistent with Commission policy.

The first Commission proceeding that PECO discusses is the Commission’s rulemaking to update the Commission’s default service regulations following the passage of Act 129, which changed the statutory framework for default service in numerous significant ways.¹⁴ Notably, Act

⁹ *Id.* at 31.

¹⁰ PECO Main Brief, at 10–17.

¹¹ *Id.* at 11–13.

¹² Environmental Stakeholders Main Brief, at 13–14, 22–23; *In Re Implementation of Act 129 of Oct. 15, 2008*, at 39 and 44, Docket No. L-2009-2095604 (Sept. 22, 2011) (“Second Default Service Rulemaking Order”).

¹³ Environmental Stakeholders Main Brief, at 23.

¹⁴ PECO Main Brief, at 10–13; *Public Utility Code (66 Pa.C.S.) – Omnibus Amendments Act of Oct. 15, 2008*, P.L. 1592, No. 129 (H.B. 2200), as passed (“Act 129”).

129 added a requirement that providers include in their default service procurement plan a “prudent mix” of contracts that would ensure delivery of service at “least cost to customers over time,” which replaced the prior standard under the Competition Act of providing default service at “prevailing market prices.”¹⁵ As such, Act 129 did not define the specific types of contracts a procurement plan must include, but did require that the overall mix be shown to be “prudent.”¹⁶

One of the major interpretive questions in the Commission’s rulemaking following the passage of Act 129 was how to define the “prudent mix” requirement.¹⁷ The Commission decided not to adopt any minimum proportion of either short-term or long-term contracts as part of its definition of a “prudent mix,” in order to allow default service providers flexibility in designing their plan.¹⁸

However, the Commission did provide instructions as to how providers are to make use of that flexibility in meeting the objectives of Act 129.¹⁹ First, the Commission found that the adoption of the “least cost to customers over time” standard by Act 129 “necessitates the changing of the [default service provider’s] role from a passive purchaser of default supplies at market prices and places on the [default service provider] an affirmative obligation to assess which products will produce the lowest cost to customers.”²⁰ The Commission clarified that this does not mean that providers must seek out the lowest price, because price stability and other benefits should also be considered.²¹

Additionally, the Commission declined to endorse a “managed portfolio” approach that would require providers to take on unreasonable level of responsibility for actively managing a

¹⁵ Act 129; Second Default Service Rulemaking Order, at 4–5.

¹⁶ 66 Pa.C.S. § 2807(e)(3.4).

¹⁷ Second Default Service Rulemaking Order, at 57.

¹⁸ *Id.* at 60.

¹⁹ *Id.*

²⁰ *Id.* at 39.

²¹ *Id.* at 40–41.

portfolio of contracts.²² However, the Commission did not find that incorporating long-term contracts into the default service supply mix would require a “managed portfolio” approach. Instead, as testified by Mr. Karl Rábago for the Environmental Stakeholders, the incorporation of long-term contracts would require only evaluating current market conditions, identifying a prudent proportion of load to service with long-term contracts, and executing a prudent mix of other contract tenors for the balance of the load.²³ That such an approach is consistent with Commission policy is clear from the Commission’s finding that providers have an “affirmative obligation”²⁴ to assess different mixes of products available on the market, and as will be discussed further below, from the Commission’s recent instruction to providers that “long-term contracts need to be carefully considered[.]”²⁵

Second, the Commission also underlined the importance of providers using the flexibility in design they have been granted to ensure “least cost to customers over time” in a manner consistent with stakeholder preferences. As the Commission noted, providers “should be permitted the flexibility and latitude to accomplish the goal of achieving the ‘least cost’ standard in a manner that meets the need of their customers and service territories.”²⁶ A provider’s procurement plan must fit the “character of the customer base and the service territory,” which the Commission will review on a “case by case basis.”²⁷ This “case by case” review, the Commission has explained, is one in which consideration of “input from stakeholders is assured.”²⁸

²² *Id.* at 56.

²³ *Surrebuttal Test. of Karl R. Rábago on Behalf of Environmental Stakeholders*, at 7:1–8:20, Docket No. P-2020-3019290 (July 23, 2020) (“Rábago Surrebuttal”).

²⁴ Second Default Service Rulemaking Order, at 39.

²⁵ Secretarial Letter, *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 at 7 (Jan. 23, 2020) (“January 2020 Secretarial Letter”).

²⁶ *Id.* at 38.

²⁷ *Id.* at 44.

²⁸ *Id.* at 60.

As such, the flexibility accorded to providers in designing a default service procurement plan is not unbounded, and the discretion represented by such flexibility must be prudently exercised. Specifically, providers remain accountable for fulfilling their “affirmative obligation” to assess the products available on the market and ensure that their default service procurement plan ensures least cost over time and is consistent with stakeholder preferences.²⁹ The incorporation of long-term contracts into the default service supply mix, particularly long-term renewable energy contracts, would be a prudent way meet these obligations, because such contracts are well-suited to providing a hedge against rising prices, contributing to price stability, and supporting reliability of service.³⁰

Long-term contracts are especially suitable for default service supply in light of the strong stakeholder support for renewable energy in PECO’s service territory.³¹ Although certain stakeholders have found PECO’s current procurement approach acceptable or at least have not opposed it, the Public Input Hearing in this Proceeding featured approximately six hours of public testimony in favor of increased renewable energy.³² Yet a procurement design that excludes all long-term supply contracts functions as a *de facto* discriminatory barrier to renewable energy, because renewable energy its highest value over longer contract tenors.³³ Removing that barrier would be a prudent way of better aligning PECO’s default service procurement with the preferences of its stakeholders.³⁴

PECO also discusses in its Main Brief a more recent Commission proceeding, the Commission’s *Investigation into Default Service and PJM Interconnection, LLC Settlement*

²⁹ *Id.* at 39, 44.

³⁰ Environmental Stakeholders Main Brief, at 12, 17, 31.

³¹ *Id.* at 23.

³² *Id.*

³³ *Id.* at 29.

³⁴ *Id.* at 31.

Reforms (“Default Service Investigation”) that concluded in January of this year.³⁵ PECO characterizes this proceeding as one in which the Commission considered “the possibility of requiring EDCs to enter into long-term energy contracts,” but “ended its investigation and directed that EDCs instead explain in upcoming DSP proceedings how their procurement plan complies with the Public Utility Code and case law.”³⁶ However, as with the Second Default Service Rulemaking Order, PECO here too paints an incomplete picture.

To start, the Default Service Investigation was initiated based on an observation by the Commission that “the advancement of renewable wind and solar technologies have driven down the costs of clean energy resources, which raises the issue as to whether or not EDC default service plans should have a stronger long-term contract component.”³⁷ Specifically, the Commission noted that “recent contracts for energy below \$25 per megawatt-hour may offer prudent hedges which could contribute to a portion of our default service portfolio.”³⁸ Accordingly, the Commission invited comments on the “prudence of long-term contracts in today’s evolving marketplace.”³⁹

After receiving comments on this topic, the Commission determined not to require the use of long-term contracts for default service procurement, noting that most commenters raised concerns about potential risks from long-term contracts.⁴⁰ However, the Commission did conclude that, “[c]oncerning procurement and long-term contracts, the Commission agrees that long-term contacts need to be carefully considered and that we need to consider this topic further

³⁵ PECO Main Brief, at 12 (citing January 2020 Secretarial Letter).

³⁶ *Id.*

³⁷ Order, *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, at 7, Docket No. M-2019-3007101 (Feb. 26, 2019) (“February 2019 Order”).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ January 2020 Secretarial Letter, at 7.

in upcoming DSP proceedings.”⁴¹ As the Environmental Stakeholders have argued, PECO’s service territory offers an ideal lens through which to examine the role of long-term contracts in default service procurement, particularly given its highly engaged stakeholder community, which provided approximately six hours of testimony regarding PECO’s proposed procurement plan.⁴² Yet as discussed below, PECO has failed to “carefully consider[]”⁴³ long-term contracts—it has failed to conduct any evaluation of current market opportunities for long-term contracts at all.⁴⁴

2. PECO Has Not, But Should, Conduct an Evaluation of Current Market Opportunities for Long-Term Contracts

PECO contends in its Main Brief that it “considered the appropriate role of long-term contracts” in DSP V, and was informed in doing so by Commission policy and PECO’s prior experience with default service procurement.⁴⁵ PECO also notes that long-term contracts may be subject to certain kinds of risks.⁴⁶ However, as noted above, Commission policy imposes an “affirmative obligation” to examine currently available products on the market, and to design a product mix that ensures least cost over time in a manner consistent with stakeholder preferences.⁴⁷ As explained in further detail below, PECO has failed to meet this requirement.

PECO cites its experience with its “first four default service programs” as support for its contention that it has appropriately considered the role of long-term contracts for DSP V, but with the exception of contracts to purchase AECs, PECO’s procurement plan for DSP IV consisted exclusively of 1–2 year contracts and spot market contracts.⁴⁸ This is consistent with the design of DSPs I-III, which similarly relied overwhelmingly on short-term and spot market

⁴¹ *Id.* at 8.

⁴² Environmental Stakeholders Main Brief, at 23.

⁴³ January 2020 Secretarial Letter, at 8.

⁴⁴ See *infra* at Section II.A.2.

⁴⁵ PECO Main Brief, at 6, 10.

⁴⁶ *Id.* at 14.

⁴⁷ Second Default Service Rulemaking Order, at 44.

⁴⁸ PECO Main Brief, at 10–11; Environmental Stakeholders Main Brief, at 12.

contracts.⁴⁹ Accordingly, PECO’s experience administering those prior default service programs cannot lend support for PECO’s claim that it has appropriately considered long-term contracts for DSP V, because they PECO has provided no evidence that it considered long-term contracts in the past either. More broadly, because Commission policy imposes an “affirmative obligation” to assess current market opportunities, even if PECO had incorporated long-term contracts into its prior DSPs, PECO would still need to evaluate opportunities for long-term contracts under current market conditions.⁵⁰ PECO provided no such analysis in the record of this Proceeding.⁵¹

PECO’s recitation of potential risks from long-term contracts is similarly not a substitute for examining current market opportunities for long-term contracts. The principal risk that PECO identifies is that a long-term contract with a fixed-price may “lock in” a price that is above the market price for energy during some or all of the contract’s tenor, which may be in tension with the requirement to provide service at “least cost [to customers] over time.”⁵² PECO additionally argues that if a long-term contract does end up being above-market in its price, and PECO’s default service enrollment drops, it may be forced to either sell excess supply at a loss or raise default service rates on remaining enrollees.⁵³

As a threshold matter, this analysis is insufficient because PECO identifies only hypothetical risks, and does not actually examine current opportunities for long-term contracts to weigh their balance of benefits and risks. Such an examination is a necessary precondition for meeting PECO’s “affirmative obligation” to assess the benefits of different product mixes for its ratepayers.⁵⁴ Benefits cannot be weighed against risks in a prudent fashion by confining

⁴⁹ Environmental Stakeholders Main Brief, at 12.

⁵⁰ Second Default Service Rulemaking Order, at 39.

⁵¹ Environmental Stakeholders Main Brief, at 17; Rábago Surrebuttal at 9:1–14.

⁵² PECO Main Brief, at 14–15.

⁵³ *Id.*

⁵⁴ Second Default Service Rulemaking Order, at 39.

consideration to the hypothetical. PECO’s failure to examine current market opportunities for long-term contracts is also inconsistent with the Commission’s finding in its Default Service Investigation that “long-term contracts need to be carefully considered[.]”⁵⁵

Additionally, PECO’s characterization of the risks of long-term contracts is overstated. A long-term contract with a fixed price can lock in either a below-market or an above-market price, and either way, a fixed price adds price stability to the supply mix, which has its own independent value.⁵⁶ As the Commission has explained, “least cost” is not simply least price, and providers must also incorporate due consideration of price stability.⁵⁷ Additionally, PECO’s default service load over the past ten years has been quite stable.⁵⁸ Consequently, it is unlikely that there will be future fluctuations in load so great as to support ruling out the incorporation of long-term contracts from the default service supply portfolio.⁵⁹ More broadly, as Mr. Rábago testified, the risks of long-term contracts that PECO identifies can be mitigated by including long-term contracts in a balanced and prudent mix of other contract tenors.⁶⁰ As Mr. Rábago noted, no procurement strategy is without some risk, but a supply portfolio that contains both short and long-term contracts would be a prudent way of balancing different risks and ensuring least cost to customers over time.⁶¹

PECO’s failure to examine current market conditions for long-term contracts represents an important analytic gap, and it should be filled with a comprehensive study evaluating actual long-term contract opportunities and weighing their benefits and costs.⁶² The Commission should

⁵⁵ January 2020 Secretarial Letter, at 8.

⁵⁶ Environmental Stakeholders Main Brief, at 14, 16–17.

⁵⁷ Second Default Service Rulemaking Order, at 40.

⁵⁸ Environmental Stakeholders Main Brief, at 15–16.

⁵⁹ *Id.* at 16.

⁶⁰ *Id.* at 17; Rábago Surrebuttal, at 17:4–18:5.

⁶¹ Environmental Stakeholders Main Brief, at 17; Rábago Surrebuttal, at 17:4–18:5.

⁶² Environmental Stakeholders Main Brief, at 31.

require that this study should be informed by a robust stakeholder process, and that it should be filed with the Commission by a date certain.⁶³ Such a study would help improve PECO’s default service procurement but could also provide statewide benefits by providing market information useful to other default service providers and the Commission. As noted above, the Commission has found that “long-term contracts need to be carefully considered and that we need to consider this topic further in upcoming DSP proceedings.”⁶⁴ Given the high level of engagement with default service procurement issues shown by PECO’s stakeholders, and the interest of the Commission in examining the issue of long-term contracts through the lens of particular default service programs, a study of the type recommended herein is well-suited to advance the Commission’s goals.

B. PECO Should Evaluate the Reliability Characteristics of Generation Supply, and Incorporate More Renewable Energy and Distributed Generation to Help Ensure Reliability

The Environmental Stakeholders have argued that PECO should evaluate the reliability characteristics of generation supply sources, and that it would be prudent to incorporate more renewable energy, both from utility-scale and distributed projects, to help ensure reliability.⁶⁵ PECO contends that its proposed DSP V adequately addresses reliability because (1) PECO has identified terms in its proposed procurement contracts that are designed to ensure reliability; (2) PECO need not consider distributed generation as a procurement supply source because it is unsuitable for contributing to reliability and is out of scope for this Proceeding; and (3) PECO’s

⁶³ *Id.* at 39.

⁶⁴ January 2020 Secretarial Letter, at 8.

⁶⁵ Environmental Stakeholders Main Brief, at 20–22.

DSP V is the same as its DSP IV, which was approved by the Commission in 2016.⁶⁶ For the reasons detailed below, these arguments are unavailing.

The Public Utility Code requires that a default service provider design its procurement plan to include a prudent mix of contracts that ensures adequate and reliable service.⁶⁷ Reliability is defined to include “the provision of sufficient generation, transmission and distribution capacity so as to supply the aggregate electric power and energy requirements of consumers, taking into account scheduled and unscheduled outages of system facilities” as well as “designing, maintaining and operating a system so that it can handle emergencies safely while continuing to operate.”⁶⁸ The statute recognizes the roles of transmission and distribution planning in helping ensure reliability, but nevertheless expressly requires that default service providers design their procurement plans to also help ensure reliability.⁶⁹

PECO argues that its procurement contracts contain requirements designed to support reliability, including a requirement that suppliers be members of PJM Interconnection, L.L.C. (“PJM”).⁷⁰ PECO contends that this ensures reliability because PJM has various mechanisms in place to support the reliable supply of electricity.⁷¹ PECO also notes that PECO itself can procure supply from PJM if needed in the event that contracted suppliers fail to deliver.⁷²

However, these protections do not go far enough in protecting ratepayers, and it would be prudent for PECO to evaluate, and to factor into its procurement plan design, the reliability characteristics of different generation supply choices.⁷³ As noted above, the statute requires that

⁶⁶ PECO Main Brief, at 17–19.

⁶⁷ Environmental Stakeholders Main Brief, at 18 (citing 66 Pa.C.S. § 2807(e)(3.4)(i)).

⁶⁸ *Id.* at 18 (citing 66 Pa.C.S. § 2803).

⁶⁹ *Id.*

⁷⁰ PECO Main Brief, at 18.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Environmental Stakeholders Main Brief, at 21–22.

default service providers make procurement choices informed by a responsibility to help avoid interruptions to service from unplanned outages and emergencies.⁷⁴ While contractual terms can provide for damages in the event of a breach of a supply contract, such a retroactive remedy does not prevent an interruption in service from an outage or emergency. Moreover, PECO’s claim that if its procurement plan fails to ensure reliability due to a breach in contract by a supplier, PECO will itself attempt to procure supply from PJM is not responsive to the statutory requirement that the procurement plan itself must be designed to ensure reliability and does not help mitigate reliability risks from transmission and distribution outages.⁷⁵

A prudent way to address reliability risks associated with outages and emergencies would be to include in the procurement plan a mix of contracts sourced from renewable energy providers, including both utility-scale and distributed generation resources.⁷⁶ As Mr. Rábago testified, renewable energy resources tend to offer high reliability, because they are less subject to breakdown and maintenance downtime than fossil fuel resources.⁷⁷ Additionally, renewable resources do not rely on fuel supply chains that may be subject to disruption from extreme weather events or other emergencies.⁷⁸

Furthermore, renewable distributed generation resources can also help with addressing reliability risks from outages and emergencies because they can be configured to provide continuing service to customers even if distribution or transmission infrastructure is down.⁷⁹ PECO notes that distributed generation resources are not always sited in suitable locations, and

⁷⁴ *Id.* at 18 (citing 66 Pa.C.S. § 2803).

⁷⁵ 66 Pa.C.S. § 2807(e)(3.4).

⁷⁶ Environmental Stakeholders Main Brief, at 20–22. As discussed in Environmental Stakeholders Main Brief, long-term contracts with renewable providers typically offer the most advantageous terms. *Id.* at 14–15, 20–21.

⁷⁷ *Id.* at 20–21 (citing *Direct Test. of Karl R. Rábago on Behalf of Environmental Stakeholders*, at 24:1–17, Docket No. P-2020-3019290 (June 16, 2020) (“Rábago Direct”)).

⁷⁸ *Id.*

⁷⁹ *Id.*

are not always configured in such a way as to enable operation if the transmission or distribution grid is impaired.⁸⁰ However, as PECO’s witness Mr. John J. McCawley conceded on cross-examination, distributed generation resources that are appropriately sited and configured, such as microgrids, can continue to provide service despite distribution or transmission system outages.⁸¹ As such, to say that some distributed generation resources may not be suitable (a statement which is true of any category of supply resource) is not a reason to wholly exclude evaluation of procurement from distribution generation as a prudent means of helping ensure reliability.

PECO further contends that it need not evaluate procurement from distributed generation as a means of helping ensure reliability because “[d]istribution planning considerations” are out of scope for this Proceeding.⁸² PECO’s argument is unavailing because this Proceeding concerns the prudence of PECO’s procurement plan, and the issue at stake is whether procurement from distributed generation sources should be part of a prudent mix of contracts designed to ensure reliability of service to ratepayers.⁸³ Accordingly, the evaluation of procurement from distributed generation sources is squarely within the scope of this Proceeding.

Next, PECO contends that it need not evaluate procurement from distributed generation for DSP V because its proposed procurement plan for DSP V is the same as the DSP IV procurement plan approved by the Commission in 2016.⁸⁴ PECO claims that this is “*prima facie*” evidence that fulfills PECO’s burden to show that its DSP V procurement plan will ensure adequate and reliable service, thus shifting the burden to the Environmental Stakeholders to

⁸⁰ PECO Main Brief, at 20.

⁸¹ *Call In Evidentiary Hr’g Transcript*, Docket No. P-2020-3019290, McCawley Cross, at 55:12–56:1 (July 30, 2020).

⁸² PECO Main Brief, at 18.

⁸³ Rábago Surrebuttal at 6:2–12.

⁸⁴ PECO Main Brief, at 18–19.

provide evidence to support “an alternative approach.”⁸⁵ PECO then argues that Environmental Stakeholders have presented insufficient evidence to do so.⁸⁶

These contentions are flawed for several reasons. To start, PECO has not established a *prima facie* case that fulfills its evidentiary burden and shifts the burden to the Environmental Stakeholders. Under Commission precedent, in order to establish a *prima facie* case, a litigant must submit enough evidence to satisfy its burden of proof.⁸⁷ Under the Public Utility Code, PECO, as the proponent of an order approving its proposed DSP V, bears the burden of proving that DSP V meets statutory standards for default service programs.⁸⁸ PECO may not satisfy its burden of showing that its proposed procurement plan ensures adequate and reliable service under current market conditions by simply pointing to the fact the Commission approved the same procurement plan in 2016. The procurement plan may be the same as in 2016, but PECO has not shown and cannot show that market conditions are identical.⁸⁹ Moreover, the prior approval of DSP IV does not indicate that the procurement plan contained it in remains prudent not only in the context of a different market but also in the context of changes to other aspects of PECO’s proposed default service program for DSP V.

PECO also offers no authority or precedent for its novel theory that Commission approval of a procurement plan during an earlier default service period counts as *prima facie* evidence that carries PECO’s burden of proof of showing that the same procurement plan is currently prudent. PECO’s theory directly contradicts the Public Utility Code, by removing

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See, e.g., *Evelyn Warner v. PECO Energy Co.*, No. C-2013-2384536, 2014 WL 1494932, at *2 (Mar. 21, 2014) (“Upon the presentation by a complainant of a *prima facie* case, i.e., evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to the respondent”); *Pierre Alexandre v. Philadelphia Gas Works*, No. C-2012-2337351, 2013 WL 3971555, at *3 (July 10, 2013); *Vivian v. PECO Energy Co.*, No. Z-01196261, 2003 WL 22922195 (Nov. 4, 2003).

⁸⁸ 66 Pa.C.S. § 332(a).

⁸⁹ 66 Pa.C.S. § 2807(e)(3.4); Environmental Stakeholders Main Brief, at 14; Rábago Direct at 10:5–12:7.

PECO's statutory burden to show that a proposed procurement plan is currently a prudent means of ensuring adequate and reliable service, not simply that it once was.⁹⁰

Finally, PECO is wrong to contend that the Environmental Stakeholders have submitted inadequate evidence to show that PECO should evaluate the reliability characteristics of generation supply sources and that it would be prudent for PECO to incorporate more renewable energy, both utility-scale and distributed, into its default service supply mix. Mr. Rábago provided detailed testimony showing how the reliability characteristics of different generation supply sources should be assessed and explaining why it would be protective of ratepayers to do so.⁹¹ Mr. Rábago also explained the reliability advantages offered by renewable energy resources at both the utility and distributed generation scales.⁹² In light of this evidence, PECO should evaluate the potential reliability benefits of procurement from renewable energy and distributed resources, and incorporate a prudent proportion of them into its default service supply mix.⁹³

C. PECO Should Improve its TOU Rates Using Cost-Benefit Analysis

The Environmental Stakeholders have contended that PECO should conduct a cost-benefit analysis to further refine and enhance the cost-effectiveness of its proposed TOU rate and conduct further cost-benefit analyses to develop pilots for TOU rates to support deployment of heavy electric vehicle fleets and building electrification.⁹⁴ PECO argues in opposition that (1) the conduct of a cost-benefit analysis for a TOU rate is not required by the Public Utility Code; and (2) the Environmental Stakeholders have not demonstrated that PECO's proposed TOU rate will

⁹⁰ 66 Pa.C.S. § 2807(e)(3.4).

⁹¹ Rábago Direct at 24:1–17.

⁹² *Id.*

⁹³ Such an evaluation could be integrated with the broader market study of the potential advantages and disadvantages of long-term contracts that the Environmental Stakeholders have recommended. See Environmental Stakeholders Main Brief, at 38.

⁹⁴ *Id.* at 33–34.

not be beneficial for heavy electric vehicles and building electrification.⁹⁵ As explained below, these contentions are unavailing.

To start, although it is true that the Public Utility Code does not expressly require the use of cost-benefit analysis in the design of a TOU rate, such an analysis is consistent with legislative objectives as well as Commission policy. As the General Assembly articulated in the preamble to Act 129, the objectives of Act 129 include a clear emphasis on both ensuring affordability and helping expand the use of alternative energy technologies.⁹⁶ Additionally, the Commission has emphasized that TOU rates should be designed to provide “rational pricing signals to minimize long term costs”⁹⁷ and to help accommodate “EV usage and distributed energy deployment increase[s] in the coming decades.”⁹⁸ As such, cost-benefit analysis would be a prudent way to align the design of PECO’s proposed TOU rate with the policy objective of supporting alternative energy technologies in a cost-effective fashion. PECO notes that Act 129 requires utilities to offer TOU rates whether they are cost-effective or not, which is true, but is not a license to neglect opportunities to ensure ratepayer dollars are used in as cost-effective a fashion as possible.⁹⁹

Furthermore, the conduct of additional cost-benefit analyses to develop pilot TOU rates tailored to supporting heavy EV fleets and building electrification would also be consistent with the above-discussed policy objectives. The Commission has specifically found that “TOU rates, especially in the context of EV expansion, need[] to be explored further, especially whether the

⁹⁵ PECO Main Brief, at 26–27.

⁹⁶ Act 129, Preamble, at 1 (“The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time and the impact on the environment...It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.”).

⁹⁷ February 2019 Order, at 4.

⁹⁸ January 2020 Secretarial Letter, at 6.

⁹⁹ PECO Main Brief, 26.

lack of TOU rate offerings for operators of EVs presents a barrier to EV adoption.”¹⁰⁰ This further consideration of EVs should include heavy EV fleets, such as delivery trucks, garbage trucks, and school buses, because supporting electrification of these transportation applications can provide substantial co-benefits, such as air quality improvements in low-income neighborhoods.¹⁰¹ Although the Commission specifically noted the need to develop TOU rates for EVs, the development of cost-effective TOU rates to support building electrification is also consistent with the Commission’s finding that TOU rates in general “need[] to be explored further,” and is consistent with Act 129’s objectives of promoting alternative energy technologies while protecting affordability.¹⁰²

Finally, PECO’s objection that the Environmental Stakeholders have not proven that its proposed TOU rate will not benefit heavy EV fleets and building electrification misses the mark. The Environmental Stakeholders have not argued that it will provide no benefit, but rather that tailored TOU rates could provide more benefits at lower ratepayer cost if developed with the support of cost-benefit analyses.¹⁰³ Doing so would, as noted above, be consistent with the objectives of Act 129 and the policy goals of the Commission.

III. CONCLUSION

Simply put, PECO can do better by its ratepayers, and it should. The Environmental Stakeholders have identified three key areas in which PECO could improve its proposals to better align them with Commission policy, market conditions, and stakeholder preferences. First, PECO should perform a comprehensive evaluation of current market opportunities for long-term contracts (which should include robust stakeholder engagement) and incorporate a prudent

¹⁰⁰ January 2020 Secretarial Letter, at 6.

¹⁰¹ Rábago Direct, at 35:7–17.

¹⁰² January 2020 Secretarial Letter, at 6; Act 129, Preamble, at 1.

¹⁰³ Environmental Stakeholders Main Brief, at 37.

proportion of long-term contracts into its default service supply mix. Second, PECO should also evaluate the reliability characteristics of different generation supply sources and incorporate increased procurement from utility-scale and distributed renewable resources to improve reliability protection from outages and emergencies. Third, PECO should conduct cost-benefit analyses to improve its proposed TOU rate and to develop TOU rate pilots tailored to support heavy EV fleets and building electrification, which will help support emerging technologies while protecting affordability.

PECO has consistently served over one million Philadelphia area ratepayers through its default service programs over the past decade.¹⁰⁴ Yet despite Commission policy supporting careful consideration of long-term contracts, substantial energy market changes, and the overwhelming stakeholder preference for increased renewable energy expressed at the Public Input Hearing in this Proceeding, PECO has not meaningfully changed its nearly-exclusively short-term contract-based procurement approach in almost ten years or conducted any evaluation of current long-term contract opportunities. Accordingly, re-examining its default service program in the ways the Environmental Stakeholders have recommended would be timely, prudent, and in the public interest.

September 8, 2020

Respectfully submitted,

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¹⁰⁴ *Id.* at 15–16.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of this electronically-filed document upon the parties, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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