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July 17, 2024

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 Plan for the Period from June 1, 2025 Through May 31, 2029; Docket No. P-2024-3046008**

Dear Secretary Chiavetta:

Attached for filing with the Pennsylvania Public Utility Commission is the Main Brief 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 filing. If you have any questions regarding the document, please contact the undersigned. Thank you.

Sincerely,

A handwritten signature in black ink that reads 'Charis Mincavage'.

Charis Mincavage  
MCNEES WALLACE & NURICK LLC

Counsel to the Philadelphia Area Industrial Energy Users Group

c: Administrative Law Judge Eranda Vero (via e-mail)  
Administrative Law Judge Arlene Ashton (via e-mail)  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Dated this 17<sup>th</sup> day of July, 2024, in Harrisburg, Pennsylvania

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :  
Approval of Its Default Service Program for : Docket No. P-2024-3046008  
the Period From June 1, 2025 Through :  
May 31, 2029 :

**MAIN BRIEF OF THE  
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

Airgas USA, LLC, an Air Liquide Company  
The Boeing Company  
Cleveland-Cliffs  
Drexel University  
GlaxoSmithKline  
Kimberly-Clark Corporation  
Main Line Health  
Merck & Co., Inc.

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Dated: July 17, 2024

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## **I. INTRODUCTION**

### **A. Procedural History**

On February 2, 2024, PECO Energy Company ("PECO" or the "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of the Company's Sixth Default Service Program ("DSP VI") for the Period from June 1, 2025 through May 31, 2029, Docket No. P-2024-3046008 (Feb. 2, 2024) (hereinafter, "Petition"). On February 21, 2024, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed a Petition to Intervene to the Company's Petition. A Prehearing Conference was held on March 8, 2024, before Administrative Law Judges ("ALJs") Eranda Vero and Arlene Ashton.

PAIEUG received the Company's Direct Testimony on February 2, 2024. Pursuant to the procedural schedule, on April 24, 2024, PAIEUG received Direct Testimony from the following parties: the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); Retail Energy Supply Association ("RESA"); Tenant Union Representative Network and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("TURN/CAUSE-PA"); and the Energy Justice Advocates ("EJA").

On May 15, 2024, PAIEUG received Rebuttal Testimony from the following parties: PECO; OCA; OSBA; RESA; and TURN/CAUSE-PA. On May 29, 2024, PAIEUG received Surrebuttal Testimony from the Company; OCA; RESA; TURN/CAUSE-PA; and EJA.

An evidentiary hearing was held in this proceeding on June 5, 2024, at which time the parties entered their testimony and exhibits into the record. As discussed more fully in Section I.B., the parties were able to achieve a non-unanimous settlement, which, in turn, modified the procedural schedule in this proceeding. Pursuant to the revised procedural schedule, PAIEUG submits this Main Brief.

## **B. Non-Unanimous Settlement**

On July 10, 2024, PECO filed a Joint Petition for Non-Unanimous Settlement ("Settlement"). The Settlement agrees to a revised default service program consistent with PECO's DSP VI Petition ("Revised DSP VI"). As noted in the Joint Petition, PAIEUG does not oppose the Settlement. This Main Brief responds to arguments set forth by RESA and not resolved in the Joint Petition.

## **C. Legal Standards**

Section 332(a) of the Public Utility Code,<sup>1</sup> provides that the proponent of a rule or order has the burden of proof. Under Section 315, "[i]n any proceeding... involving any proposed or existing rate of any public utility... the burden of proof to show that the rate involved is just and reasonable shall be upon the utility."<sup>2</sup> As the proponent of a changes to the way in which PECO is procuring its Alternative Energy Credits ("AECs"), RESA bears the burden of proof in this proceeding and, therefore, the duty to establish facts by a "preponderance of the evidence."<sup>3</sup> Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.<sup>4</sup> More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>5</sup>

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<sup>1</sup> 66 Pa. C.S. § 332(a).

<sup>2</sup> *Id.* § 315(a).

<sup>3</sup> *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P. U. C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).

<sup>4</sup> 2 Pa. C.S. § 704; *Mill v. Pa. P. U. C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993).

<sup>5</sup> *Norfolk and Western Ry. v. Pa. P. U. C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## **II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS**

### **A. Capacity Proxy Price**

PAIEUG does not have a position on this issue.

### **B. AEPS Compliance**

As part of the Alternative Energy Portfolio Standards ("AEPS") Act, Electric Distribution Companies ("EDCs") must procure a set amount of solar Alternative Energy Credits ("AECs") for default ratepayers (*i.e.*, non-shopping customers) while Electric Generation Suppliers ("EGSs") are tasked with procurement of solar AECs for their customers (*i.e.*, shopping customers). Throughout PECO's various DSP proceedings, PECO has procured solar AECs for its default customers while EGSs have been responsible for procuring solar AECs for their shopping customers. As part of PECO's DSP VI proceeding, PECO is planning to maintain the status quo; however,<sup>6</sup> RESA is proposing a modification that would result in PECO obtaining solar AECs for both its shopping and non-shopping customers with the Company collecting the resulting costs from all customers through a non-bypassable charge.<sup>7</sup>

RESA advocates for this modification based upon "competitive market concerns" including a claim that EGSs do not have the same ability as EDCs to enter into long-term solar contracts on a risk-free basis.<sup>8</sup> PAIEUG agrees with PECO that RESA has not provided any evidence demonstrating that this alleged problem is actually occurring.<sup>9</sup>

Moreover, as support for its proposal, RESA notes that, effective January 1, 2011, both Metropolitan Edison Company ("Met-Ed") and Pennsylvania Electric Company ("Penelec") were

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<sup>6</sup> PECO Statement No. 3-R, *Rebuttal Testimony of Scott G. Fisher* ("PECO Statement No. 3R"), p. 5.

<sup>7</sup> RESA Statement No. 1, *Direct Testimony of Frank Caliva III* ("RESA Statement No. 1"), p. 34.

<sup>8</sup> See RESA Statement No. 1, p. 33-34.

<sup>9</sup> PECO Statement No. 1-R, *Rebuttal Testimony of Sulma Dalessio* ("PECO Statement No.1-R"), p. 13.

authorized to acquire solar AECs for both shopping and non-shopping customers with costs recovered through a non-bypassable charge.<sup>10</sup> RESA fails to indicate, however, that as part of Met-Ed and Penelec's most recent default service proceeding, Met-Ed and Penelec proposed, on a going forward basis, to obtain solar AECs only for non-shopping customers, thereby eliminating the need for the non-bypassable surcharge.<sup>11</sup>

Assuming *arguendo*, however, that the Commission were to accept RESA's proposed change to PECO's solar AEC procurement, then the Commission should also approve OCA's proposed modification that would apply a lag of two to three years for implementation of this proposal after any Commission adoption in this proceeding.<sup>12</sup> As correctly recognized by the OCA, shopping customers may currently be under multi-year fixed-price contracts with their EGSs. If so, these customers are already remitting the costs of procuring solar AECs through their EGS contracts. If these customers are still under the terms of their EGS contracts when a non-bypassable charge is enacted, these customers will be forced to pay twice for solar AECs – once through their fixed price EGS contract and once through PECO's non-bypassable charge.<sup>13</sup> Thus, allowing for a two to three year lag may allow at least such customers an opportunity to avoid being double-charged by negotiating a new EGS contract that would not include costs related to the procurement of solar AECs by the EGS.

In conclusion, RESA has not provided substantive evidence requiring a change in PECO's procurement of solar AECs. If, however, the PUC should allow for such a modification, the PUC

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<sup>10</sup> RESA Statement No. 1, p. 35.

<sup>11</sup> Petition of Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company, and Penn Power Company for Approval of Their Default Service Plans for the Period From June 1, 2023 through May 31, 2023; Docket Nos. P-2021-3030012, P-2021-3030013, P-2021-3030014, and P-2021-3030021, Order (Aug. 4, 2022).

<sup>12</sup> OCA Statement No. 1R, *Rebuttal Testimony of Serhan Ogur* ("OCA Statement No. 1R"), p. 6.

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

should also apply the OCA's request for lag time for implementation so that shopping customers have an opportunity to address this issue as part of their EGS contracts rather than potentially being required to remit these charges twice.

**III. RATE DESIGN AND COST RECOVERY**

**A. Adjustment and Default Service Rates**

PAIEUG does not have a position on this issue.

**B. Time-of-Use Rates**

PAIEUG does not have a position on this issue.

**IV. STANDARD OFFER PROGRAM**

PAIEUG does not have a position on this issue.

**V. OTHER ISSUES**

**A. RESA's Request for a Statewide Commission Investigation of Default Service Messaging**

As part of this proceeding, RESA also recommends that the Commission address what RESA claims are "current competitive market deficiencies" through a statewide investigation regarding default service messaging. While PAIEUG does not take a position on default service messaging, PAIEUG does have concerns regarding implementation of a statewide investigation through a single EDC's default service proceeding. Rather, if RESA seeks a statewide investigation on issues involving all Pennsylvania EDCs, RESA should make this request to the PUC via a separate Petition rather than through a single EDC's DSP proceeding.

**B. PECO's Proposed Residential Customer Bill Format Changes**

PAIEUG does not have a position on this issue.

**C. Supplier Issues During PECO's Customer Information System Upgrade**

PAIEUG does not have a position on this issue.

**VI. CONCLUSION**

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

- (1) Reject RESA's proposal to have PECO to procure solar alternative energy credits for both shopping and non-shopping customers; or
- (2) In the alternative, do not permit PECO to implement a non-bypassable charge for the procurement of solar renewable energy credits until at least three years after a final order in this proceeding; and
- (3) Reject RESA's proposal to implement a statewide investigation of default service messaging as part of this proceeding.

Respectfully submitted,

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Dated: July 17, 2024

## APPENDIX A

### PROPOSED FINDINGS OF FACT

1. Under PECO's current DSP, PECO procures solar alternative energy credits on behalf of only its default service customers<sup>14</sup> with EGSs procuring solar alternative energy credits on behalf of their shopping customers.<sup>15</sup>
2. Because RESA's proposal would require PECO to procure solar alternative energy credits on behalf of all customers and collect costs through a non-bypassable charge,<sup>16</sup> customers currently remitting the costs of solar AECs through their EGS may be charged twice if PECO's non-bypassable charge is implemented while these fixed price contracts are in place.<sup>17</sup>

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<sup>14</sup> See PECO Statement No.1-R, p. 4.

<sup>15</sup> RESA Statement No. 1, p. 7.

<sup>16</sup> RESA Statement No. 1, p. 34.

<sup>17</sup> OCA Statement No. 1R, p. 6.

**APPENDIX B**

**PROPOSED CONCLUSIONS OF LAW**

1. Because RESA's proposal could unjustly and unreasonably result in PECO's shopping customers paying twice for solar alternative energy credits (i.e., through both current EGS fixed price contracts and a non-bypassable charge), RESA's proposal must be rejected, or in the alternative, not implemented until at least three years after any final order in this proceeding. 66 Pa. C. S. Section 1301.