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July 17, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for filing is the **Initial Brief of PECO Energy Company** (“Initial Brief”) in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Initial Brief has been served upon Administrative Law Judges Arlene Ashton and Eranda Vero, and all parties of record.

Should you have any questions, please contact me directly at 215.963.5384.

Very truly yours,



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c: Per Certificate of Service (w/encls.)

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**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 :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of **Initial Brief of PECO Energy Company** on the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: July 17, 2024

Counsel for PECO Energy Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS : DOCKET NO. P-2024-3046008
DEFAULT SERVICE PROGRAM FOR :
THE PERIOD FROM JUNE 1, 2025 :
THROUGH MAY 31, 2029 :**

**INITIAL BRIEF OF
PECO ENERGY COMPANY**

**Before Administrative Law Judges
Eranda Vero and Arlene Ashton**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION AND PROCEDURAL HISTORY.....	1
A. Procedural History	4
B. Non-Unanimous Settlement.....	5
C. Legal Standards.....	9
1. Standards Applicable to Default Service	9
2. Legal Standards Relative to Settlements.....	9
II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS.....	10
A. Capacity Proxy Price.....	10
B. AEPS Compliance	13
III. RATE DESIGN AND COST RECOVERY	14
A. Adjustment of Default Service Rates.....	14
B. Time-of-Use Rates	15
IV. STANDARD OFFER PROGRAM.....	17
V. OTHER ISSUES.....	19
A. RESA’s Request for a Statewide Commission Investigation of Default Service Messaging	19
B. PECO’s Proposed Residential Customer Bill Format Changes.....	20
C. Supplier Issues During PECO’s Customer Information System Upgrade.....	22
VI. CONCLUSION.....	24

TABLE OF AUTHORITIES

	Page(s)
Court Cases	
<i>Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.</i> , 123 A.3d 1124 (Pa. Commw. Ct. 2015)	15
Administrative Decisions	
<i>Petition of Duquesne Light Co. for Approval to Modify its Supplier Master Agreement</i> , Docket No. P-2020-3023149 (Order entered Jan. 14, 2021)	12
<i>Pa. P.U.C. v. CS Water & Sewer Ass'n</i> , 74 Pa. P.U.C. 767 (1991)	9
<i>Pa. P.U.C. v. Phila. Elec. Co.</i> , 60 Pa. P.U.C. 1 (1985)	9, 12
<i>Petition of PECO Energy Co. for Approval of Its Default Serv. Program</i> , Docket No. P-2012-2283641 (Order entered Oct. 12, 2012).....	18
<i>Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2021 through May 31, 2025</i> , Docket No. P-2020-3019290 (Opinion and Order entered Dec. 3, 2020)	1, 18
<i>Petition of PPL Elec Utils. Corp. for Approval of a Default Service Program for the Period June 1, 2025 through May 31, 2017</i> , Docket No. P-2014-2417907 (Opinion and Order entered Jan 15, 2015)	15
<i>Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program</i> , Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017).....	15
<i>PJM Interconnection, L.L.C.</i> , 183 FERC ¶ 61,172, Docket No. ER21-1609 (June 9, 2023)	11
<i>PJM Interconnection, L.L.C.</i> , Capacity Market Reforms to Accommodate the Energy Transition While Maintaining Resource Adequacy, Docket No. ER24- 99 (filed Oct. 13, 2023).....	11
<i>PJM Interconnection, L.L.C.</i> , Proposed Enhancements to PJM’s Capacity Market Rules - Market Seller Offer Cap, Performance Payment Eligibility, and Forward Energy and Ancillary Service Revenues, Docket No. ER24-98 (filed Oct. 13, 2023)	11

Statutes and Regulations

66 Pa.C.S.

§ 2807(e)	1
§ 2807(e)(3.2)	9, 15
§ 2807(e)(3.4)	9
§ 2807(e)(3.7)	9, 23
§ 2807(f)(5).....	9, 15, 16

12 C.F.R.

§§ 47.1-8	10
§§ 252.2.....	10
§ 252.81-88	10
§§ 382.1-7	10

52 Pa. Code

§ 5.231.....	9
§§ 54.181 – 54.190.....	5, 9
§ 54.185(c)	4
§ 54.185(e)(6)	10
§ 69.401.....	9
§§ 69.1801-1817	5, 9

I. INTRODUCTION AND PROCEDURAL HISTORY

This proceeding was initiated on February 2, 2024, when PECO Energy Company (“PECO” or the “Company”) filed a Petition (“DSP VI Petition”) pursuant to Section 2807(e) of the Pennsylvania Public Utility Code (the “Public Utility Code” or “Code”), 66 Pa.C.S. § 2807(e), requesting that the Pennsylvania Public Utility Commission (the “Commission” or “PUC”) approve PECO’s Default Service Program for the period from June 1, 2025 to May 31, 2029 (“DSP VI”). DSP VI is PECO’s sixth default service program and is designed to ensure that PECO’s distribution customers who do not shop for electricity with an electric generation supplier (“EGS”) or whose EGS does not provide service continue to have access to an adequate and reliable electric generation supply at the least cost over time in accordance with the requirements of the Code.

In the DSP VI Petition, PECO requested that the Commission approve DSP VI, including procurement, implementation and contingency plans, a rate design plan and associated tariff pages, and copies of the agreements and forms to be used in the procurement of default service supply. For DSP VI, PECO proposed to continue most of the existing features approved by the Commission as part of PECO’s current default service program (“DSP V”),¹ with four principal changes. First, PECO proposed to conduct a procurement of up to 20 megawatts (“MW”) of long-term contracts for energy, capacity, and alternative energy credits (“AECs”) from one or more solar facilities in Pennsylvania to offset a portion of the default service energy and capacity that PECO currently procures from the spot market operated by PJM Interconnection, L.L.C.

¹ See Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2021 through May 31, 2025, Docket No. P-2020-3019290 (Opinion and Order entered Dec. 3, 2020) (“DSP V Order”).

(“PJM”).² Second, PECO proposed to incorporate a Capacity Proxy Price (“CPP”) mechanism into the Company’s Supplier Master Agreement (“SMA”). The CPP will be used for default service solicitations in DSP VI to establish a capacity cost when PJM does not conduct its Base Residual Auction (“BRA”) for capacity in time for default service suppliers to incorporate the auction results into their bids. Third, PECO proposed to implement a reserve price for the residential fixed-price full requirements (“FPFR”) contracts procured by PECO to help protect customers from paying high prices for FPFR products that could be considered outside of a reasonable market range. Finally, PECO proposed to increase the limit on the amount of default supply that a bidder can offer and win for the Consolidated Large Commercial and Industrial (“C&I”) procurement class.

As described in the Joint Petition for Non-Unanimous Settlement filed on July 10, 2024 (the “Joint Petition”), and summarized below, nearly all of the parties to this proceeding (the “Settling Parties”) reached a settlement (the “Settlement”) of all issues presented by the DSP VI Petition. In the Settlement, the Settling Parties request that the Commission approve DSP VI as proposed by PECO, with certain modifications to the Generation Supply Agreement (“GSA”) projection periods and PECO’s “Standard Offer” retail market program, the addition of a new long-term solar energy procurement, and commitments related to the Company’s time-of-use (“TOU”) rate options and enrollment process for its Customer Assistance Program (“CAP”).

Only one party that submitted testimony in this proceeding – the Retail Energy Supply Association (“RESA”) – did not join the Settlement.³ RESA challenges the long-standing

² Tr. 455-56, 458-61. This procurement would be in place of the doubling of the amount of solar AECs procured through long-term (10-year) contracts that PECO originally proposed in the DSP VI Petition. See PECO St. 1, pp. 8-9.

³ NRG Energy, Inc. (“NRG”) also opposes the Settlement but did not present any record evidence in this case.

default service framework in Pennsylvania and proposes a statewide investigation to revisit decades-long messaging of the default service rate as the Price-to-Compare (“PTC”) as an initial “structural reform” to address the purported “stagnant” state of the retail market. RESA also opposes the use of a CPP mechanism in PECO’s solicitations and allocating solar AECs from the Company’s separate contracts to wholesale suppliers during DSP VI on the ground that those proposals are anticompetitive. Finally, RESA raises concerns about PECO’s proposed residential bill format changes and supplier issues experienced during PECO’s customer information system (“CIS”) upgrade.

As the evidence in this case demonstrates, RESA’s claims that the competitive retail market has stagnated largely due to the presence of an EDC default provider are entirely without merit. As RESA’s own witness admits, the number of PECO customers purchasing electric generation supply from EGSs is not indicative of the status of retail competition. Customer decisions to purchase supply from an EGS, switch from one EGS to another, remain on or return to default service are based on many factors, including price. And more than half of electric load in PECO’s service area is served by an EGS with over 100 active EGSs competing to serve PECO customers. In short, the number of default service customers in Pennsylvania and PECO’s service area does not support RESA’s proposed investigation and related objections to the Company’s proposed residential bill improvements adopted by the Settlement or RESA’s assertions that structural changes in the default service model are needed to allow the competitive market to function effectively.

As PECO’s witnesses explained, EGSs can manage risk associated with unknown PJM capacity prices in the products they choose to offer in the competitive market. RESA also did not establish any basis for PECO to procure solar AECs for competitive retail suppliers, as solar

AECs are readily available from the solar facilities installed throughout the Commonwealth. PECO also opposes RESA’s recommended processes related to the Company’s CIS upgrade, as the new CIS will have been in place for almost nine months and the technical issues discussed by RESA witness Frank Caliva III were resolved in March 2024. Accordingly, the Commission should approve DSP VI, as modified by the Settlement.

A. Procedural History

Copies of the DSP VI Petition filed by PECO on February 2, 2024, were served on other organizations and entities as required by 52 Pa. Code § 54.185(c). Subsequently, on February 17, 2024, the *Pennsylvania Bulletin* published the Commission’s Notice setting a deadline for filing protests, complaints, or petitions to intervene by March 4, 2024 and scheduling a Prehearing Conference for May 5, 2020, before Administrative Law Judges (“ALJs”) Eranda Vero and Arlene Ashton. Thereafter, the following entities were afforded active party status in this case:

Office of Consumer Advocate	(“OCA”)
Office of Small Business Advocate	(“OSBA”)
Calpine Retail Holdings, LLC	(“Calpine”)
Constellation Energy Generation, LLC and Constellation NewEnergy Inc.	(“Constellation”)
Energy Justice Advocates ⁴	(“EJA”)
NRG	
Philadelphia Area Industrial Energy Users Group	(“PAIEUG”)
RESA	
Tenant Union Representative Network and Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania	(“TURN/CAUSE-PA”)

⁴ EJA consists of POWER Interfaith, Vote Solar, Clean Air Council, Sierra Club, Physicians for Social Responsibility Pennsylvania, and Penn Environment.

At the telephonic Prehearing Conference, a schedule was established for submitting written testimony, holding evidentiary hearings, and filing briefs. *See* Prehearing Order #2 (April 2, 2024). Written direct, rebuttal and surrebuttal testimony were submitted by various parties on the dates established for each submission. Public input hearings were scheduled and held on April 16 and 18, 2024.

The parties to this case also engaged in extensive discovery. PECO responded to 274 interrogatories, and other parties collectively responded to 26 interrogatories from PECO, with many containing multiple subparts.

The parties discussed the possibility of resolving some or all of the issues by settlement during the course of the proceeding. At the June 5, 2024 telephonic evidentiary hearing, PECO witnesses Sulma Dalessio, Scott G. Fisher, and Katie Orlandi offered oral rejoinder testimony and the pre-served written testimony and exhibits of all parties were admitted into evidence. The Joint Petitioners notified the ALJs of the Settlement on June 17, 2024. Thereafter, the ALJs deferred the filing of Initial and Reply Briefs to July 17, 2024 and July 31, 2024, respectively, after the filing of the Joint Petition.

B. Non-Unanimous Settlement

The terms of the Settlement are set forth in the Joint Petition, which also contains the Settling Parties' Statements in Support. All parties to this proceeding, except RESA and NRG, either joined in the Settlement or have authorized the Joint Petitioners to represent that they do not oppose the Settlement. *See* Joint Petition, p. 1.

As explained in the Joint Petition, the revised DSP VI set forth in the Settlement contains all of the elements required by the Code, the Commission's default service regulations (52 Pa. Code §§ 54.181 – 54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801 – 69.1817). In addition, the Settlement addresses the following key contested issues:

- **Residential Class Default Service Supply Portfolio.** Under the Settlement, the Joint Petitioners agree to PECO’s original proposal to continue to procure a mix of FPFRR products, of which approximately 99% of the supply is in the form of one-year and two-year FPFRR products, with six-month spacing between the commencement of contract delivery periods. Joint Petition at ¶¶ 18-20. The remaining approximately 1% of Residential default service load will continue to be procured through spot purchases directly from the energy, capacity and ancillary services markets operated by PJM. *Id.* at ¶ 18. Under the Settlement, PECO will also procure – through 10-year, fixed-price power purchase agreements (“PPAs”) – the energy, capacity, and solar AECs generated by one or more new in-state solar photovoltaic projects with total capacity of up to 25 MW. The winning project(s) will be selected through a competitive procurement process. The energy generated by the selected project(s) will be used to offset the spot purchases for the residential customer class as proposed under DSP VI and the AECs from the project will be used to meet the AEPS requirements associated with the default service residential customer load served directly by PECO. This solar energy procurement would be in place of the doubling of the amount of solar AECs procured through long-term (10-year) contracts proposed in PECO’s initial filing. The Joint Petitioners have agreed that PECO shall submit a form solar PPA and a related request for proposals (“Solar RFP”) to the Commission for approval within forty-five (45) days of a Commission order approving the Settlement after conferring in good faith with the Joint Petitioners regarding the terms of the Solar RFP and PPA, which shall be substantially similar to

the solar RFP and PPA approved by the Commission for FirstEnergy Pennsylvania Electric Company (“FE-PA”) in Docket No. P-2021-3030012. *Id.* at ¶¶ 21-25.⁵

- **Compliance with Pennsylvania’s Alternative Energy Portfolio Standards (“AEPS”) Act.** The Settlement adopts PECO’s proposal to meet its AEPS Act obligations primarily through a combination of full requirements products, existing solar AEC contracts, and new long-term solar PPAs. Consistent with DSP V, PECO will continue to satisfy its AEPS obligations with respect to sales to default service customers by requiring each full requirements default service supplier to transfer Tier I and Tier II AECs to PECO corresponding to the Company’s AEPS obligations associated with the amount of default service load served by that supplier. In addition, PECO will continue to allocate AECs obtained through its separate solar procurements to wholesale suppliers in accordance with the percentage of load served by each supplier and use those AECs to meet AEPS obligations not met by wholesale suppliers (e.g., the spot portion of residential load served by PECO). Joint Petition at ¶ 36.
- **Rate Design and Cost Recovery.** The Settlement will continue PECO’s PUC-approved default service rate design with one modification to change from a three-month to a six-month GSA projection period for the Residential and Small Commercial Classes to align with the Company’s semi-annual procurements for FPPR contracts with delivery periods starting June 1 and December 1. Joint Petition

⁵ The Commission has permitted the subsequent development and approval of pro forma solar power purchase agreements used for default service supply after approval of a default service program. *See Petition of Duquesne Light Co. for Approval of its Default Serv. Plan for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019522 (Opinion and Order entered Jan. 14, 2021), p. 82.

- at ¶¶ 40-45. The Settlement adopts PECO’s original proposed TOU rate design with differentiated pricing across three usage periods (peak, off-peak and super off-peak) throughout the year based on price multipliers designed to motivate customers to adjust the time of day they use electricity. *Id.* at ¶¶ 46, 48-57, 60-62. In addition, under the Settlement, the Joint Petitioners agreed to an evaluation of TOU rate structures in future proceedings, disclosures on PECO’s TOU webpage, and outreach to confirmed-low income TOU participants. *Id.* at ¶¶ 47, 58-59.
- **Standard Offer Program (“SOP”).** The Settlement provides that PECO’s currently effective SOP, including the cost recovery mechanisms last approved by the Commission as part of DSP V, will continue until May 31, 2029 unless the Commission orders the program to be terminated sooner. Joint Petition at ¶ 63. PECO’s EGS Coordination Tariff (“Supplier Tariff”) will also include a new rule for all SOP contracts executed after June 1, 2025 requiring EGSs to automatically transfer SOP customers to default service upon the expiration of the SOP contract unless the customer affirmatively elects to remain with the SOP supplier. *Id.* at ¶ 64.
 - **Residential Bill Improvements and Access to PECO’s Customer Assistance Program.** The Settlement also resolves issues related to residential bill improvements and the CAP enrollment process. During the first two years of the DSP VI term, PECO will implement its original proposed bill format change with one change to remove the third column of a new graphic display of price information. Joint Petition at ¶¶ 65-66. By June 1, 2025, PECO will also take several actions to assist customers who are transitioning to PECO’s CAP and are therefore no longer eligible for EGS supply. *Id.* at ¶ 68-69. In addition, the Company’s Supplier Tariff

will include a new rule prohibiting EGSs from charging early cancellation, termination, or other fees to any shopping customer transitioning to PECO's CAP.

Id. at ¶ 67.

RESA and NRG did not join the Settlement and oppose PECO's DSP VI, as described above.

C. Legal Standards

1. Standards Applicable to Default Service

Pennsylvania's Electricity Generation Customer Choice and Competition Act ("Competition Act"), as amended by Act 129 of 2008 ("Act 129"), requires PECO to obtain, through competitive procurement processes, a "prudent mix" of default service supply contracts designed to ensure "adequate and reliable service" at the "least cost to customers over time."⁶ Act 129 provides that EDCs "shall offer" a TOU rate option to all default service customers with a smart meter. 66 Pa.C.S. § 2807(f)(5). In addition to the foregoing statutory requirements, the Commission has enacted regulations, 52 Pa. Code §§ 54.181 to 54.190, and a Policy Statement, 52 Pa. Code §§ 69.1801 to 69.1817, addressing default service programs.

2. Legal Standards Relative to Settlements

In order to approve a settlement, the Commission must determine that the proposed terms and conditions, viewed in the context of the settlement as a whole, are in the public interest.⁷ The Commission's policy and precedent embodied in its regulation at 52 Pa. Code § 5.231 and its Policy Statement on Settlements at 52 Pa. Code § 69.401 encourage parties to resolve contested proceedings by settlement. In its Policy Statement, the Commission stated that "the

⁶ 66 Pa.C.S. § 2807(e)(3.2), (3.4) and (3.7).

⁷ *See* Pa. P.U.C. v. CS Water & Sewer Ass'n, 74 Pa. P.U.C. 767, 771 (1991); Pa. P.U.C. v. Phila. Elec. Co., 60 Pa. P.U.C. 1, 22 (1985).

results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate *are often preferable to those achieved at the conclusion of a fully litigated proceeding*” (emphasis added).

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Capacity Proxy Price

In accordance with the Commission’s default service regulations at 52 Pa. Code § 54.185(e)(6), PECO submitted a form of SMA that the Company will execute with wholesale suppliers that are successful bidders in PECO’s default service supply procurements. The SMA includes detailed provisions that address billing and payments, credit requirements, procedures for energy scheduling, default and termination, calculation of damages, and other obligations between PECO and a wholesale supplier. During its third default service program for the period June 1, 2015 through June 1, 2017 (“DSP III”), PECO utilized a new SMA developed through the uniform SMA stakeholder process envisioned by the Commission in the End State Order⁸ in order to realize efficiencies and reduce expenses. That SMA was used again in DSP IV and DSP V, with minor changes to facilitate competition, bidder participation, and the provision of better information for the Company’s annual report on default service. Under the Settlement, for DSP VI, PECO will use the same form of SMA used in DSP V with modifications that would allow PECO to use a CPP for those portions of FPFR products that would extend into an unpriced capacity period.⁹ *See* Joint Petition at ¶¶ 30-32; PECO St. 1, pp. 19-20; PECO Ex. SD-2.

⁸ *Investigation of Pennsylvania’s Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Order entered Feb. 15, 2013) (“End State Order”), pp. 34-35.

⁹ On February 1, 2024, the Commission approved a modification to PECO’s DSP V SMA to add a new Appendix I that would enable market participants subject to the regulations issued by the Board of Governors of the Federal Reserve System (12 C.F.R. §§ 252.2, 252.81-88), the Federal Deposit Insurance Corporation (12 C.F.R. §§ 382.1-7) and the Office of the Comptroller of the Currency (12 C.F.R. §§ 47.1-8) (“US Stay Regulations”) to participate in the Company’s default service solicitations. *See Petition of PECO Energy Co. for Approval to*

PJM generally conducts a BRA three years in advance of a delivery year to procure resource commitments sufficient to meet reliability requirements in the PJM region under the Reliability Pricing Model (“RPM”). However, on June 9, 2023, the Federal Energy Regulatory Commission (“FERC”) approved PJM’s request to delay the upcoming BRA schedule for the 2025/2026 through 2028/2029 delivery years.¹⁰ PJM also recently proposed a broad set of capacity market reforms before the FERC at Docket Nos. ER24-98 and ER24-99 that could result in changes to the PJM BRA schedule for future delivery periods.¹¹ PECO St. 1, p. 21.

As described by Ms. Dalessio, PECO is proposing a CPP and true-up mechanism to address potential delays in capacity auctions held under PJM’s RPM during the DSP VI term. The CPP would be calculated as the average of the most recent results under PJM’s RPM from the two most recent delivery years for which PJM has held a capacity auction. Commencing at the start of the delivery year for which the BRA results were not known, winning suppliers will be debited or credited (as applicable) any differences between the CPP and the actual PJM capacity price. This certainty eliminates the need for bidders to add premiums into their bids and may also lead to increased participation and competition in PECO’s solicitations to the benefit of default service customers. *See* PECO St. 1, pp. 21-22; PECO St. 4, pp. 18-19, PECO St. 4-R, pp.

Modify its Default Service Supplier Master Agreement, Docket No. P-2023-3045119 (Order entered Feb. 1, 2024). The U.S. Stay Regulations impose certain requirements on the terms of swaps, repurchase agreements and other qualified financial contracts for global systemically important banking organizations and their subsidiaries and affiliates (“GSIBs”). Appendix I incorporates the 2018 International Swaps and Derivatives Association, Inc. U.S. Resolution Stay Protocol (“ISDA Protocol”) into the SMA, which is a covered agreement under the US Stay Regulations. Under Appendix I, both PECO and the default supplier confirm adherence to the ISDA Protocol to ensure compliance with the US Stay Regulations and allow GSIBs to participate in default service solicitations. The Company proposed to include Appendix I in the SMA for DSP VI. *See* PECO St. 1, pp. 20-21; PECO Ex. SD-1.

¹⁰ *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,172, Docket No. ER21-1609 (June 9, 2023).

¹¹ *See PJM Interconnection, L.L.C.*, Proposed Enhancements to PJM’s Capacity Market Rules - Market Seller Offer Cap, Performance Payment Eligibility, and Forward Energy and Ancillary Service Revenues, Docket No. ER24-98 (filed Oct. 13, 2023); *PJM Interconnection, L.L.C.*, Capacity Market Reforms to Accommodate the Energy Transition While Maintaining Resource Adequacy, Docket No. ER24-99 (filed Oct. 13, 2023).

18-19, 23-24. Notably, the Commission has approved the use of a CPP in default service procurements for FE-PA)¹² and Duquesne Light Company (“DLC”), finding that such approach would maintain diversity of supply products while also mitigating risk premiums.¹³

RESA is the only party that opposes PECO’s CPP proposal, asserting that allowing a CPP mechanism in default service solicitations is anti-competitive because delays in PJM’s BRA affect both EGSs and wholesale suppliers. RESA St. 1, pp. 30-31; RESA St. 1-SR, pp. 11-12. Contrary to RESA’s contention, the use of a CPP in default service solicitations would not lead to a distortion in retail markets. Default service suppliers must serve customers under the terms of the SMA. PECO procures its FPFR default supply in two solicitations each year, and the delivery periods under the SMA are for 12-month or 24-month supply terms. In contrast, EGSs are free to offer products, including contract term lengths and pricing, that align with their costs and profit expectations. For example, EGSs may make offers with six- or 12- month contract terms that cover delivery periods with completed PJM BRA auctions. In short, unlike default service suppliers, EGSs have flexibility to formulate their products to entirely avoid any business risk stemming from unknown PJM BRA clearing prices. PECO St. 1-R, p. 20; PECO St. 4-R, pp. 20-21.

Moreover, the capacity price resulting from PJM’s RPM is not solely a “price signal” as RESA witness Caliva suggests. PECO presented unrefuted testimony that all load serving

¹² See Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval to Modify their Supplier Master Agreement, Docket Nos. P-2020-3021424, P-2020-3021425, P-2020-3021426, and P-2020-3021427 (Order entered Oct. 13, 2020), p. 9; Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval of their Default Service Plan for the Period from June 1, 2023 through May 31, 2027, Docket Nos. P-2021-3030012 et al. (Recommended Decision issued June 29, 2022) (“FE-PA DSP VI Recommended Decision”), pp. 59-60. The FE-PA DSP VI Recommended Decision was adopted without modification by the Commission in its Order entered August 4, 2022 at Docket Nos. P-2021-3030012 et al.

¹³ See Petition of Duquesne Light Co. for Approval to Modify its Supplier Master Agreement, Docket No. P-2020-3023149 (Order entered Jan. 14, 2021), p. 4.

entities (“LSEs”), including default service suppliers, must pay the price established in PJM’s auctions for their capacity obligation, regardless of capacity products available to default service suppliers in a secondary market. Thus, suppliers cannot simply incorporate into to their bids the price from an agreement entered in a secondary market to buy capacity. PECO St. 4-R, pp. 21-22.

In sum, the CPP is a reasonable mechanism to address potential delays in PJM BRAs during the DSP VI term that eliminates the need for bidders to add risk premiums if a portion of a FPCR product would extend into an unpriced capacity period. The Commission should therefore approve the SMA as proposed by PECO and adopted under the Settlement without modification.

B. AEPS Compliance

As discussed above, under the Settlement, PECO will continue to use the AECs it has procured (and will procure under the 25 MW solar PPA(s)) to meet AEPS requirements associated with its default service load, with any excess AECs provided to FPCR suppliers. Alone among the parties, RESA opposes any long-term procurement of solar AECs because PECO would allocate the delivered solar AECs to default service suppliers but not EGSs. RESA St. 1, pp. 33-35; RESA St. 1-SR, p. 13. However, RESA has not provided any evidence or even alleged that the Company’s long-term solar AEC procurement will lead to an inadequate supply of solar AECs generated in the Commonwealth. In fact, solar AECs are readily available from the over 600 MW of installed solar electric capacity in Pennsylvania as of the end of 2022.¹⁴

¹⁴ See 2022 Annual AEPS Report, (Mar. 2023), p. 35, available at <https://www.puc.pa.gov/media/2332/aeps-2022-report-final-032223-dm.pdf>.

Therefore, EGSs have the ability to hedge their position, and it is reasonable for EGSs to procure their own solar AECs. PECO St. 1-R, p. 18.

III. RATE DESIGN AND COST RECOVERY

A. Adjustment of Default Service Rates

As discussed in Section I.B. above, under the Settlement, PECO will adjust default service rates on a semi-annual instead of quarterly basis for Residential and Small Commercial customers to reflect changes in supply costs. PECO also will continue reconciling prior period over/under collections for those customers on a semi-annual basis. As Ms. McDevitt testified, billing cycle lag results in a timing difference between revenue and expense that can produce significant fluctuations in the PTC that are not directly related to the underlying cost of default service supply. By using a semi-annual rather than a quarterly or monthly schedule for the reconciliation of over/under collections for the Residential and Small Commercial Classes and Consolidated Large C&I Class, respectively, fluctuations in default service prices will be smoothed out and result in clearer price signals for both customers and EGSs. While the Commission's regulations do not prescribe a time period for reconciliation adjustments, PECO believes that semi-annual reconciliation appropriately balances the Company's goal of mitigating volatility with the Commission's concern about maintaining the PTC as a price signal for customers and EGSs. PECO St. 2, pp. 6-7.

RESA witness Caliva recommends that PECO continue quarterly adjustment of GSA rates for residential and small commercial default service customers on the ground that less frequent adjustments of the PTC is "a step backwards in terms of market responsiveness" and may discourage some EGSs from entering the market. RESA St. 1-R, p. 13. However, as the record in this case demonstrates, moving to semi-annual GSA rate changes on June 1 and December 1 of each year aligns with PECO's semi-annual procurement schedule for the

Residential and Small Commercial Classes, appropriately balances responsiveness of the PTC to current market conditions and provides price stability benefits to customers. *See* OCA St. 1, pp. 28-29; OCA St. 1-SR, pp. 2-4; PECO Ex. SD-1. Notably, the Commission has approved semi-annual PTC rate changes for Duquesne Light Company, FE-PA, and PPL Electric Utilities Corp.¹⁵

B. Time-of-Use Rates

In addition to procurement of a “prudent mix” of default service supply contracts at the “least cost to customers over time,”¹⁶ Act 129 requires EDCs to offer a TOU rate option to all default service customers with a smart meter.¹⁷ Based on these statutory requirements under Act 129, PECO introduced new TOU rate offerings in DSP V for the Residential and Small Commercial Classes. More than 1,900 customers have enrolled in PECO’s TOU rates since September 2021. Most customers who enrolled in PECO’s TOU rates during that period took action to shift consumption away from peak hours and saved money as a result, with monthly bill savings ranging from \$3 to \$23.¹⁸ PECO St. 2, p. 10.

For DSP VI, under the Settlement PECO will continue its current TOU rates consistent with Commission guidance on TOU rate design and Act 129 requirements.¹⁹ PECO’s existing

¹⁵ *See* FE-PA DSP VI Recommended Decision, pp. 68-69, 104; Petition of Duquesne Light Co. for Approval of its Default Service Plan for the Period from June 1, 2021 through May 31, 2025 (Opinion and Order entered Jan. 14, 2021), pp. 15-16; Petition of PPL Elec Utils. Corp. for Approval of a Default Service Program for the Period June 1, 2025 through May 31, 2017, Docket No. P-2014-2417907 (Opinion and Order entered Jan 15, 2015), pp. 7-8, 28-29.

¹⁶ 66 Pa.C.S. §§ 2807(e)(3.1)-(3.2), (3.4) and (3.7).

¹⁷ 66 Pa.C.S. § 2807(f)(5).

¹⁸ *See* PECO Energy Company’s 2022-2023 Default Service Program Time-of-Use Annual Report, Docket No. P-2020-3019290 (filed Oct. 20, 2023); PECO Energy Company’s 2021-2022 Default Service Program Time-of-Use Annual Report, Docket No. P-2020-3019290 (filed Oct. 21, 2022).

¹⁹ *See Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa. Commw. Ct. 2015) (“DCIDA”) (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs); *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-*

TOU rates differentiate prices across three periods (peak, off-peak and super off-peak) that remain constant year-round based on price multipliers for each procurement class that are updated on an annual basis and are designed to motivate customers to shift usage to lower-cost, off-peak hours. The time-differentiated usage periods reasonably encompass the Company's expected system peak usage times and take into account the need for simplicity to provide eligible customers with a reasonable opportunity to shift usage to lower-priced (off-peak) hours. As Ms. McDevitt testified, PECO selected the same year-round peak period – 2 p.m. to 6 p.m. on non-holiday weekdays – employed in DSP V because participating customers successfully responded to the TOU price signals to shift usage and achieve bill savings. PECO also designed its proposed TOU Rates in the context of EV expansion in the Commonwealth.²⁰ Specifically, PECO's proposed TOU rate design includes a super off-peak pricing period from 12 a.m. to 6 a.m. to provide cost savings opportunities to customers who charge their EVs during overnight, low-priced energy hours. *See* PECO St. 2, pp. 10-15.

Under the Settlement, PECO agreed to perform additional analyses and report its findings in its next default service case regarding alternative price multipliers that allocate all capacity costs to the summer peak period and TOU pricing periods that incorporate seasonal variation. PECO also agreed to consider incentive-based time-varying rate structures in future proceedings as recommended by the OCA. RESA opposes the OCA's proposed TOU rate analyses incorporated into the Settlement, and instead claims that the Commission should rely on the competitive market to develop innovative TOU products. RESA St. 1-R, p. 14.

of-Use Program, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) (“April 2017 Secretarial Letter”) (proposing a TOU design for PPL in accordance with the *DCIDA* decision and noting that the proposed TOU design “may provide future guidance to all EDCs” for incorporation into their own TOU proposals in their individual default service proceedings).

²⁰ *See Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) (“January 2020 Secretarial Letter”), p. 7.

As Mr. Caliva acknowledges, PECO and other EDCs have an unconditional, statutory obligation to offer TOU rate options to eligible default service customers under Section 2807(f)(5) of the Public Utility Code. Mr. Caliva has not presented any evidence that the additional analyses of PECO's TOU rates under the Settlement will impact TOU rate products available in the competitive market or preclude EGSs from offering alternative price offerings that may be more closely tailored to individual customer needs. In contrast, the record evidence shows that the TOU rates under the Settlement satisfy Act 129 requirements, incorporate the Commission's recommended guidelines on TOU rate design, and balance a variety of important objectives, including development of a TOU rate structure that is actionable. PECO St. 2, pp. 10-16; PECO St. 2-R, pp. 7-8.

IV. STANDARD OFFER PROGRAM

On April 29, 2011, the Commission initiated its extensive Investigation of Pennsylvania's Retail Electricity Market at Docket No. I-2011-2237952 (the "Retail Markets Investigation"), which ultimately led to the Commission proposing that PECO and other default service providers undertake a variety of retail market enhancements, which the Commission then approved as part of PECO's second default service proceeding ("DSP II"). In its final order in the Retail Markets Investigation, the Commission issued its proposed model for the "End State of Default Service" and observed that standard offer customer referral programs will "improve the overall operation of the competitive market in the near term."²¹ Consistent with the Commission's directives in the Retail Markets Investigation, during DSP II, PECO implemented its SOP under which residential and small commercial default service customers contacting PECO's customer service center are presented with an opportunity to select among a group of EGSs who have voluntarily

²¹ End State Order, pp. 12-13.

chosen to offer customers a twelve-month contract priced at least 7% below PECO's applicable PTC at the time of the offer. In PECO's DSP II proceeding, the Commission approved recovery of SOP costs through an EGS participant fee of \$30 per enrolled customer, with any remaining costs recovered in the following manner: (1) 50% from EGSs through a 0.2% Purchase of Receivables discount; and (2) 50% from residential and small commercial default service customers via the GSA.²² PECO St. 1, pp. 29-30. In the DSP V Order (p. 31), the Commission approved continuation of the Standard Offer Program, including the cost recovery mechanisms approved in the DSP II Orders, as "beneficial" to all customers.

As previously noted, PECO will extend the SOP during DSP VI in the same format as in DSP V with one change that requires affirmative consent of the SOP customers to remain with the SOP supplier after the initial 12-month term. RESA claims this program change is unnecessary and defeats the core purpose of shopping where customers make their own decisions. RESA St. 1-R, p. 11.

The changes to PECO's current SOP agreed to as part of the Settlement carefully balance the interests of customers, participating EGSs, and the Commission's guidelines in prior default service proceedings regarding standard offer customer referral programs. The Settlement preserves the original purpose of the SOP by introducing customers to the competitive market, while addressing concerns raised by the OCA and TURN/CAUSE-PA that a customer's inaction upon expiration of the SOP contract leads to that customer rolling over to a new contract with the

²² See *Petition of PECO Energy Co. for Approval of Its Default Serv. Program*, Docket No. P-2012-2283641 (Order entered Oct. 12, 2012) ("October 12 Order"). In the October 12 Order, the Commission approved PECO's DSP II with certain modifications and also directed PECO to submit new proposals for various elements of its proposed retail market enhancements. In response, PECO made a series of compliance filings (December 11, 2012; February 28, 2013; and April 15, 2013), which were approved by a Secretarial Letter issued January 25, 2013, an Order entered February 14, 2013, and an Order entered June 13, 2013, respectively (collectively, the "DSP II Orders").

SOP supplier at a higher rate than the PTC. *See* PECO St. 1, pp. 29-30, OCA St. 2, pp. 9-16; OCA St. 2SR, pp. 4-8; TURN/CAUSE-PA St. 1, pp. 5-18; TURN/CAUSE-PA St. 1-SR, pp. 2-6.

V. OTHER ISSUES

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

In this case, RESA requests that the Commission initiate a statewide investigation to revisit messaging of default service using the PTC as a “first step” to address “structural barriers” that RESA witness Caliva largely blames on the presence of an EDC default service provider. According to Mr. Caliva, the retail market has “stagnated” in light of the declining percentage of customers served by EGSs, which he attributes to the “dominance” of EDC-provided default service and years of consumer education to compare competitive offers relative to the PTC. *See* RESA St. 1, pp. 10-18; RESA St. 1-SR, pp. 2-4. The concerns voiced by RESA about the long-standing default service model in Pennsylvania do not justify any Commission investigation to revisit the default service messaging that has been in place for 15 years in the Commonwealth.

RESA's assertion that the competitive market has become stagnant due to the presence of an EDC default service product is flawed in several respects. First, Mr. Caliva's reliance on switching rates as of March 2024 to support alleged market stagnation is misleading. Those statistics do not include all the customers who have considered switching to EGS service but decided against it, or the customers who have switched in the past but who are now back on default service. PECO St. 3-R, pp. 58-59. Second, as Mr. Caliva concedes, “shopping alone is not indicative of the status of competition.” RESA St. 1, p. 12. In fact, there are nearly 100 EGSs competing to serve PECO's customers, and EGSs currently serve 52% of the Company's total electric load. PECO St. 3, p. 31; PECO St. 3-R, pp. 57-58. Finally, many factors contribute

to a customer’s decision not to receive supply from an EGS – not just competitive market design issues as Mr. Caliva implies. For example, in recent years, some EGSs have been charging significantly more than PECO’s default service rates. PECO St. 3-R, p. 59; *see also* OCA St. 2, pp. 12-13; TURN/CAUSE-PA St. 1, pp. 3-9. The potential cost savings or other benefits associated with EGS offers may also be insufficient for customers to devote additional time to making and managing choices in the retail electricity market. PECO St. 3-R, pp. 59-60.

Mr. Caliva also presents no evidence to support his claim that changing the messaging of the default service product would allow EGSs to “develop more innovative and a greater variety of competitive products.”²³ PECO has served as the default service provider in its service area and customers have been making shopping decisions based on the PTC since 2011, without any Commission finding that such framework sends a message to customers that default service is somehow “superior” to competitive offerings. *See* PECO St. 1-R, p. 24.

B. PECO’s Proposed Residential Customer Bill Format Changes

PECO’s PTC in cents per kilowatt-hour (“kWh”) for the applicable billing period that customers may use to evaluate competitive generation service offerings by EGSs is currently printed in the Message Center on the residential customer bill. However, under its “bill-ready” billing platform, PECO does not receive sufficient information from EGSs that would allow PECO to automatically print EGS pricing in cents per kWh on the customer’s bill. PECO St. 1, p. 29. Therefore, PECO proposes revisions to its bill format for DSP VI to ensure that shopping information is clear and transparent to residential customers. The Settlement adopts PECO’s original proposal to add a graphic to the first page of the residential customer bill that compares the customer’s total supplier charges for the billing period with what the dollar amount of the

²³ RESA St. 1, p. 18.

charges would be under PECO's applicable PTC based on the customer's usage during the billing period. *See* Joint Petition at ¶¶ 65-66; Ex. H.

RESA opposes the bill disclosure adopted in the Settlement, asserting that the new price comparison is misleading because it does not reflect the nature of the EGS product (e.g., flat rates, time-varying rates, and green power), the length of the EGS contract, and other reasons that EGS charges could be higher than the PTC for reasons unrelated to generation service. Alternatively, Mr. Caliva recommends development of disclosures through a collaborative process alleging PECO's lack of knowledge of the characteristics of the EGS price and the nature of PECO's default service rate. In conjunction with that recommendation, Mr. Caliva argues that PECO should consider adding more space on the utility consolidated bill to accommodate EGS customer-specific messaging about the supplier product. RESA St. 1, pp. 19-23; RESA St. 1-SR, pp 8-9.

The objections voiced by RESA do not justify rejection of the new bill disclosure providing a dollars and cents comparison of the customer's total supplier charges for the billing period and what the charges would have been under PECO's PTC for several reasons. First, as Ms. Dalessio testified, the new bill disclosure outlined in the Settlement was thoughtfully developed based on the Company's stakeholder collaborative held in January 2021, and several EGSs participated in those discussions. Moreover, PECO's consolidated billing option provides ample space for EGSs to describe their products and pricing. Specifically, providing up to four lines with 80 characters per line which is approximately double the amount of space that EGSs, including several RESA members, currently use to describe their offers on PaPowerSwitch.com. As such, there is no need to provide additional space to EGSs on the utility consolidated bill to accommodate Mr. Caliva's recommended disclosures on the nature of PECO's default service

procurement approach and EGS products and services. PECO St. 1, p. 29; PECO St. 1-R, pp. 26-27.

In sum, the new bill disclosure agreed to by the Joint Petitioners will enhance the presentation of shopping information and permit active customer review of the rates they are paying for competitive generation service. Therefore, the Commission should approve PECO's residential bill format improvements outlined in the Settlement.

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

RESA witness Caliva raises concerns regarding the transition to a new Choice ID and customer account number with the same number of digits in connection with PECO's new CIS launched on February 20, 2024. He asserts that suppliers did not know that they needed to ensure that the PECO customer provides them with a Choice ID and not a new account number to process the enrollment. Mr. Caliva also expresses concerns about rejection of certain supplier invoices due to PECO's new customer account numbers. Based on those concerns, Mr. Caliva recommends that PECO: (1) provide daily updates to competitive suppliers and weekly updates to Commission staff for at least the first 90 days of any system upgrade and (2) assign each EGS a consistent point of contact for addressing issues related to the CIS upgrade. RESA St. 1, p. 27.

RESA's proposals are unwarranted and should not be adopted. By the time of the Commission's Final Order in this proceeding, PECO's new CIS will have been in place for almost eight months – well beyond the 90 days of reporting recommended by Mr. Caliva. Prior to going live, PECO held webinars and issued several supplier bulletins regarding the CIS upgrade, including a webinar in June 2023 and in December 2023 attended by 26 and 60 RESA members, respectively, where the transition to new Choice IDs was discussed in detail. And, as Mr. Caliva acknowledged in his surrebuttal testimony (RESA St. 1-SR, p. 11), PECO resolved

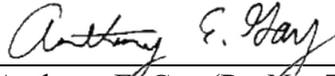
the technical issues that caused rejection of some EGS invoices mentioned in his direct testimony. PECO St. 1-R, p. 29.

Moreover, providing a direct point of contact for each of the 98 EGSs registered in PECO's service area is not feasible because the Energy Acquisition team responsible for handling EGS-related inquiries consists of four employees. As Ms. Dalessio testified, that team collectively responded to approximately 1,600 supplier inquiries regarding the CIS upgrade in the last three months. *Id.*

VI. CONCLUSION

For the reasons set forth above, the Commission should approve DSP VI, as modified by the Settlement, and reject RESA's request to initiate a statewide investigation of default service messaging and recommendations related to PECO's CIS upgrade. In addition, the Commission should: (1) make the findings required by 66 Pa.C.S § 2807(e)(3.7); (2) grant the waivers requested in the Joint Petition; and (3) grant such other approvals as may be needed to fully implement PECO's DSP VI.

Respectfully submitted,



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Dated: July 17, 2024

Counsel for PECO Energy Company

APPENDIX A

PECO ENERGY COMPANY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

PROPOSED FINDINGS OF FACT

I. BACKGROUND

1. PECO Energy Company (“PECO” or the “Company”) is an electric distribution company (“EDC”) and a default service provider as defined in the Pennsylvania Public Utility Code (“Public Utility Code” or “Code”), 66 Pa.C.S. § 2803.

2. As a default service provider, PECO provides electric generation service to those customers who do not select an electric generation supplier (“EGS”) or who return to default service after being served by an EGS that becomes unable or unwilling to serve them.¹

3. PECO’s current default service program (“DSP V”) expires on May 31, 2025.²

4. This proceeding was initiated on February 2, 2024, when PECO filed a Petition (the “DSP VI Petition”) requesting that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) approve PECO’s proposed sixth default service program (“DSP VI” or “Program”) for the period June 1, 2025 through May 31, 2029 in accordance with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801 et seq. (the “Competition Act”), as amended by Act 129 of 2008 (“Act 129”).

5. As described in the DSP VI Petition, PECO proposed to continue most of the existing programs as approved by the Commission as part of DSP VI, with four principal changes. PECO proposed to conduct a procurement for long-term contracts for energy, capacity, and alternative energy credits (“AECs”) from one or more solar facilities to offset a portion of the default service energy and capacity that PECO currently procures from the spot market

¹ 66 Pa.C.S. § 2807(e).

² See *Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019290 (Opinion and Order entered Dec. 3, 2020) (“DSP V Order”).

operated by PJM Interconnection, L.L.C. (“PJM”).³ Second, PECO proposed to incorporate a Capacity Proxy Price (“CPP”) mechanism into the Company’s Supplier Master Agreement (“SMA”). The CPP will be used for default service solicitations in DSP VI to establish a capacity cost when PJM does not conduct its Base Residual Auction (“BRA”) for capacity in time for default service suppliers to incorporate the auction results into their bids. Third, PECO proposed to implement a reserve price for the residential fixed-price full requirements (“FPFR”) contracts procured by PECO to help protect customers from paying high prices for FPFR products that could be considered outside of a reasonable market range. Finally, PECO proposed to increase the limit on the amount of default supply that a bidder can offer and win for the Large C&I procurement class.

6. Copies of the DSP VI Petition filed by PECO on April 2, 2024, were served on other organizations and entities as required by 52 Pa. Code § 54.185(c).

7. The following entities were afforded active party status in this case:

Office of Consumer Advocate	(“OCA”)
Office of Small Business Advocate	(“OSBA”)
Calpine Retail Holdings, LLC	(“Calpine”)
Constellation Energy Generation, LLC and Constellation NewEnergy Inc.	(“Constellation”)
Energy Justice Advocates ⁴	(“EJA”)
NRG Energy, Inc.	(“NRG”)
Philadelphia Area Industrial Energy Users Group	(“PAIEUG”)
Retail Energy Supply Association	(“RESA”)
The Tenant Union Representative Network and Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania and	(“TURN/CAUSE-PA”)

³ Tr. 455-56, 458-61. This procurement would be in place of the doubling of the amount of solar AECs procured through long-term (10-year) contracts that PECO originally proposed in the DSP VI Petition. *See* PECO St. 1, pp. 8-9.

⁴ EJA consists of POWER Interfaith, Vote Solar, Clean Air Council, Sierra Club, Physicians for Social Responsibility Pennsylvania, and Penn Environment.

8. A litigation schedule was established at the telephonic Prehearing Conference held on March 8, 2024 before Administrative Law Judge (“ALJ”) Eranda Vero. The parties submitted written direct, rebuttal and surrebuttal testimony and accompanying exhibits in accordance with that schedule.

9. Public input hearings were scheduled and held on April 16 and 18, 2024.

10. At the June 5, 2024 telephonic evidentiary hearing, PECO witnesses Sulma Dalessio, Scott G. Fisher, and Katie Orlandi offered oral rejoinder testimony and the pre-served written testimony and exhibits of all parties were admitted into evidence.

11. On June 17, 2024, the parties notified the ALJs that all of the parties to this proceeding (the “Settling Parties”), except for RESA and NRG, reached a settlement (the “Settlement”) of all issues presented by the DSP VI Petition.

12. In the Joint Petition for Non-Unanimous Settlement filed on July 10, 2024 (“Joint Petition”), the Settling Parties requested that the Commission approve DSP VI as proposed by PECO, with the addition of a new long term procurement of energy, capacity and solar AECs generated by one or more new in-state solar projects, a change to semi-annual adjustment of Residential and Small Commercial default service rates, certain modifications PECO’s “Standard Offer” customer referral program, enhancements to the enrollment process for PECO’s Customer Assistance Program (“CAP”), and commitments related to the Company’s time-of-use (“TOU”) rates. *See* Joint Petition at ¶¶ 13-69.

II. THE EVIDENCE SUPPORTS THE FOLLOWING FINDINGS OF FACT

A. PECO's Default Service Procurement and Implementation Plans

1. Procurement Classes, Program Term and Supply Portfolio

1. PECO's DSP VI shall be in effect for a period of four years, from June 1, 2025 through May 31, 2029. Joint Petition at ¶ 13; PECO St. 1, p. 7.

2. PECO's default service customers shall be divided into the same three classes for purposes of default service procurement as those established in DSP V: the Residential Class, the Small Commercial Class, and the Consolidated Large Commercial and Industrial ("C&I") Class. Joint Petition at ¶¶ 14-17; PECO St. 1, pp. 10-11.

3. The Residential Class includes all residential customers currently receiving service under PECO rate schedules R and RH. Joint Petition at ¶ 15; PECO St. 1, pp. 10-11.

4. The Small Commercial Class includes customers with annual peak demands of up to and including 100 kW served under rate schedules GS, PD, and HT plus lighting customers on rate schedules AL, POL, SLE, SLS, SLC, and TLCL. Joint Petition at ¶ 16; PECO St. 1, pp. 10-11.

5. The Consolidated Large C&I Class includes customers with annual peak demands greater than 100 kW on rate schedules GS, HT, PD, and EP. Joint Petition at ¶ 17; PECO St. 1, p. 11.

6. During the DSP VI term, except for the new long-term solar procurement, PECO will maintain the procurement strategy established in prior default service programs, which utilizes full requirements, load-following products, as well as short time periods between the solicitation and delivery of supply products. A full requirements, load-following contract requires a supplier to provide energy, capacity, ancillary services, and all other services or

products necessary to serve a specified percentage of default service load continuously over the term of the contract. Joint Petition at ¶¶ 18-19; PECO St. 1, pp. 14-16.

7. For the Residential Class, PECO will continue to procure a mix of one-year (approximately 38%) and two-year (approximately 61%) fixed-price full requirements (“FPFR”) contracts, with six months spacing between the commencement of contract delivery periods. During the DSP VI period, the remaining approximately 1% of Residential Class load will be supplied directly by PJM’s spot energy, capacity, and ancillary services markets. Joint Petition at ¶ 18; PECO St. 1, p. 16.

8. Under the Settlement, the Company will also procure – through ten-year, fixed-price power purchase agreements (“PPAs”) – the energy, capacity, and solar AECs generated by one or more new in-state solar photovoltaic projects with total capacity of up to 25 MW to meet the default service requirements of residential customers. The winning project(s) will be selected through a competitive procurement process. The energy generated by the selected project(s) will be used to offset the spot purchases for the Residential Class as proposed under DSP VI and the AECs from the project will be used to meet the AEPS requirements associated with the default service residential customer load served directly by PECO. This solar energy procurement would be in place of the Company’s proposed increase in its solar AEC procurement via long-term contracts. Joint Petition at ¶¶ 21-24.

9. PECO will submit a form solar PPA and a related request for proposals (“Solar RFP”) to the Commission for approval within forty-five (45) days of a Commission order approving the Settlement after conferring in good faith with the Joint Petitioners regarding the terms of the Solar RFP and PPA, which shall be substantially similar to the solar RFP and PPA approved by the Commission in Docket No. P-2021-3030012. The parties to this proceeding

shall have the right to file comments on PECO's proposed Solar RFP and PPA within thirty (30) days after PECO's filing of the Solar RFP and PPA with the Commission. *Id.* at ¶ 25.

10. The Small Commercial Class load will continue to be supplied by equal shares of one-year and two-year FPCR products. Joint Petition at ¶ 26; PECO St. 1, pp. 16-17.

11. For its Consolidated Large C&I customers, PECO will continue to solicit twelve-month hourly-priced full requirements products, without overlap, for all default service supply. Joint Petition at ¶ 28; PECO St. 1, p. 18.

12. The procurement terms and schedule for the three procurement classes are set forth in PECO Exhibit No. SD-1. Joint Petition at ¶¶ 20, 27, 29.

13. DSP VI includes some Residential and Small Commercial class supply products with delivery periods that extend beyond May 31, 2025 (the end of the DSP VI period). The laddering of contract delivery periods (extending beyond May 31, 2025) will better ensure that customers are not fully exposed to the potential wholesale price volatility associated with replacing a large portion of default service supply in a short period. PECO St. 1, p. 19; PECO Ex. SD-1.

2. Competitive Bid Solicitation Process and Independent Evaluator

14. Consistent with DSP V, all bids for default service supply will be obtained through a fair, non-discriminatory, and competitive request for proposals ("RFP") process conducted by an independent third-party evaluator. Joint Petition at ¶ 34; PECO St. 1, p. 23.

15. The RFP rules and protocol set forth in Exhibits B and C to the Settlement are revised versions of PECO Exhibit Nos. KO-1 and KO-2, respectively to reflect withdrawal of PECO's reserve price proposal under the Settlement. Joint Petition at ¶¶ 33-34.

16. PECO will retain NERA Economic Consulting (“NERA”) as the Independent Evaluator role for DSP VI, in addition to the third-party independent evaluator for the long-term solar procurement. Joint Petition at ¶ 35; PECO St. 1, p. 22; Tr. 459 (Dalessio).

17. PECO will employ a 50% load cap for Residential and Small Commercial Class product solicitations and a 75% load cap for Consolidated Large C&I product solicitations. Joint Petition at ¶ 28; PECO St. 4, pp. 6-8.

18. PECO will execute a form of the Supplier Master Agreement (“SMA”), set forth in PECO Exhibit No. SD-2, with wholesale suppliers that are successful bidders in PECO’s default service supply procurements. Joint Petition at ¶ 30; PECO St. 1, pp. 19-20.

19. PECO will continue to use the DSP V form of SMA, with modifications to allow a CPP mechanism in PECO’s default service solicitations to address potential delays in PJM auctions under its Reliability Pricing Model (“RPM”) during the DSP VI term. Joint Petition at ¶ 31-32; PECO St. 1, pp. 19-22.

20. The CPP is the average of the most recent results under PJM’s RPM from the two most recent delivery years for which PJM has held a capacity auction. Commencing at the start of the delivery year for which the BRA results were not known, winning suppliers will be debited or credited (as applicable) any differences between the CPP and the actual PJM capacity price. This certainty eliminates the need for bidders to add premiums into their bids and may also lead to increased participation and competition in PECO’s solicitations to the benefit of default service customers. *See* PECO St. 1, pp. 21-22; PECO St. 4, pp. 18-19, PECO St. 4-R, pp. 18-19, 23-24.

21. RESA is the only party that opposes PECO’s CPP proposal, asserting that allowing a CPP mechanism in default service solicitations is anti-competitive because delays in

PJM's BRA affect both EGSs and wholesale suppliers. RESA St. 1, pp. 30-31; RESA St. 1-SR, pp. 11-12.

22. Default service suppliers must serve customers under the terms of the SMA. PECO procures its FPFR default supply in two solicitations each year, and the delivery periods under the SMA are for 12-month or 24-month supply terms. In contrast, EGSs have flexibility to formulate their products to entirely avoid any business risk stemming from unknown PJM BRA clearing prices. PECO St. 1-R, p. 20; PECO St. 4-R, pp. 20-21.

23. All load serving entities ("LSEs"), including default service suppliers, must pay the price established in PJM's auctions for their capacity obligation, regardless of capacity products available to default service suppliers in a secondary market. Thus, suppliers cannot simply incorporate the price from an agreement entered in a secondary market to buy capacity into to their bids as RESA witness Frank Caliva III suggests. PECO St. 4-R, pp. 21-22.

3. AEPS Compliance

24. PECO will meet its Alternative Energy Portfolio Standards ("AEPS") Act, 73 P.S. § 1648.1 et seq., obligations primarily through a combination of full requirements products, existing long-term solar AEC agreements, and a new long-term solar procurement. Joint Petition at ¶ 36; PECO St. 1, pp. 25-27.

25. Consistent with DSP V, PECO will require each full requirements default service supplier to transfer Tier I (including solar) and Tier II AECs to PECO corresponding to PECO's AEPS obligations associated with the amount of default service load served by that supplier. A default service supplier's solar AEC obligation would be reduced by solar AECs procured directly by PECO and allocated to the supplier. Joint Petition at ¶ 36; PECO St. 1, pp. 28-29.

26. RESA opposes any long-term procurement of solar AECs because PECO would allocate the delivered solar AECs to default service suppliers but not EGSs. RESA St. 1, pp. 33-35; RESA St. 1-SR, p. 13.

27. It is reasonable for EGSs to procure their own solar AECs because they are readily available from the over 600 MW of installed solar electric capacity in Pennsylvania as of the end of 2022.⁵ PECO St. 1-R, p. 18.

4. Contingency Plans

28. Under the Settlement, PECO will continue utilizing the contingency plans approved in prior default service programs. Specifically, in the event PECO fails to obtain sufficient approved bids for all offered tranches for a product in a solicitation, the unfilled tranches will be included in PECO's next default supply solicitation for that product. PECO will supply any unserved portion of its default service load from the PJM-administered markets for energy, capacity and ancillary services. Joint Petition at ¶ 37; PECO St. 1, p. 24.

29. If a supplier default occurs within a reasonable time before a scheduled procurement, the load served by the defaulting supplier will be incorporated into that next procurement. Otherwise, PECO will file a plan with the Commission proposing alternative procurement options and a request for approval on an expedited basis. Joint Petition at ¶ 38; PECO St. 1, p. 24.

30. If PECO's solar procurement in 2025 does not result in a total contracted capacity of 25 MW (DC), PECO will conduct a second procurement within six to twelve months of the first procurement; provided, however, that if the capacity that was not contracted is less than 10

⁵ See 2022 Annual AEPS Report, (Mar. 2023), p. 35, available at <https://www.puc.pa.gov/media/2332/aeps-2022-report-final-032223-dm.pdf>.

MW (DC), PECO shall have sole discretion whether to conduct a second procurement for that capacity. In the event these procurements are not successful, there will be no shortfall in AECs necessary in light of the obligation of full requirements suppliers to deliver AECs and PECO's existing 10-year solar AEC contracts. Joint Petition at ¶ 39.

B. Rate Design and Cost Recovery

1. Generation Supply Adjustment (“GSA”)

31. PECO will continue to recover the cost of default service from default service customers through the GSA and Transmission Service Charge (“TSC”) consistent with DSP IV. Joint Petition at ¶ 40; PECO St. 2, pp. 2-4.

32. The GSA and TSC form the basis of the Price-to-Compare (“PTC”) that customers may use to evaluate competitive generation service offerings. Joint Petition at ¶ 40; PECO St. 2, p. 4.

33. For each customer class, default service rates established pursuant to the GSA and TSC will continue to recover: (1) generation costs, certain transmission costs and ancillary service costs established through PECO's competitive procurements; (2) supply management, administrative costs (including costs incurred to implement Commission-approved retail enhancement programs) and working capital, as provided in 52 Pa. Code § 69.1808; and (3) applicable taxes. Joint Petition at ¶ 40; PECO St. 2, pp. 3-4.

34. Under the Settlement, PECO will adjust default service rates for the Residential and Small Commercial Class established pursuant to the GSA on a semi-annual basis and continue to reconcile the over/under collection component of the GSA (known as the “E-Factor”) on a semi-annual basis. Joint Petition at ¶ 40.

35. The default service rates for the Consolidated Large Commercial and Industrial (“C&I”) Class will continue to be based upon the price paid to winning suppliers in PECO’s hourly-priced default service procurements, which includes the PJM day-ahead hourly locational marginal price for the PJM PECO Zone, plus associated costs, such as capacity, ancillary services, PJM administrative expenses and AEPS compliance costs (“Hourly Pricing Adder”). Joint Petition at ¶ 41; PECO St. 2, pp. 5-6.

36. The default service rates for the Large C&I Class also include a reconciliation component to refund or recoup GSA over/under collections from prior periods. Under the Settlement, over/under collections of default service costs for the Consolidated Large C&I Class will continue to be reconciled on a semi-annual basis instead of a monthly basis. Joint Petition at ¶ 42; PECO St. 2, pp. 6-7.

37. PECO will continue to file the Hourly Pricing Adder on a quarterly instead of a monthly basis. Joint Petition at ¶ 41; PECO St. 2, p. 6.

38. Billing cycle lag results in a timing difference between revenue and expense that can produce significant fluctuations in the PTC that are not directly related to the underlying cost of default service supply. PECO St. No. 2, pp. 6-7

39. By using a semi-annual rather than a quarterly or monthly schedule for the reconciliation of over/under collections for the Residential and Small Commercial Classes and Consolidated Large C&I Class, respectively, fluctuations in default service prices will be smoothed out and result in clearer price signals for both customers and EGSs. *See id.*

40. RESA witness Caliva recommends that PECO continue quarterly adjustment of GSA rates for residential and small commercial default service customers on the ground that less

frequent adjustments of the PTC is “a step backwards in terms of market responsiveness” and may discourage some EGSs from entering the market. RESA St. 1-R, p. 13.

41. Moving to semi-annual rate adjustments under the GSA on June 1 and December 1 of each year aligns with PECO’s semi-annual procurement schedule for the Residential and Small Commercial Classes, appropriately balances the responsiveness of the PTC to current market conditions and provides price stability benefits to customers. *See* OCA St. 1, pp. 28-29, OCA St. 1-SR, pp. 2-4; PECO Ex. SD-1.

2. Recovery of PJM Transmission-Related Charges

42. During PECO’s first two default service programs, load-serving entities (“LSEs”) including EGSs, were responsible for PJM transmission-related costs, including Network Integration Transmission Service costs (“NITS”, Generation Deactivation/Reliability Must Run (“RMR”) charges, Expansion Cost Recovery charges and Transmission Enhancement (a/k/a Regional Transmission Expansion Plan or “RTEP”) charges. In approving PECO’s third default service program (“DSP III”), the Commission concluded that certain PJM transmission-related charges should be recovered from customers on a non-bypassable basis.⁶ PECO St. No. 1, p. 15.

43. Consistent with that finding, on June 1, 2015, PECO implemented its Non-Bypassable Transmission Charge (“NBT”) to recover the following PJM charges (collectively, the “PJM Transmission Charges”) from all distribution customers in PECO’s service territory:

- Generation Deactivation/RMR charges (PJM bill line 1930) set after December 4, 2014;
- RTEP charges (PJM bill lines 1108 and 1115); and

⁶ *See* *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Final Order entered Dec. 4, 2014), p. 46.

- Expansion Cost Recovery charges (PJM bill line 1730).

Currently, PECO is responsible for acquiring PJM charges for NITS and Non-Firm Point-to-Point Transmission on behalf of default service customers and recovers the associated PJM charges through its unbundled, bypassable TSC. PECO St. No. 1, p. 15.

44. During DSP VI, wholesale suppliers will continue to be responsible for those PJM bill line items specified in the SMA. Joint Petition at ¶ 44.

45. During DSP VI, PECO will continue to be responsible for and recover the following PJM charges from all distribution customers in PECO's service area through its NBT: Generation Deactivation/RMR charges (PJM bill line 1930) set after December 4, 2014; RTEP charges (PJM bill line 1108); and Expansion Cost Recovery charges (PJM bill line 1730). Joint Petition at ¶ 45.

3. TOU Default Service Rate Options

46. Based on the statutory requirements set forth in the Conclusions of Law, *infra*, PECO introduced new TOU rate offerings in DSP V for the Residential and Small Commercial Classes. More than 1,900 customers have enrolled in PECO's TOU rates since September 2021. Most customers who enrolled in PECO's TOU rates during that period took action to shift consumption away from peak hours and saved money as a result, with monthly bill savings ranging from \$3 to \$23.⁷ PECO St. 2, p. 10.

47. PECO's existing TOU rates differentiate prices across three periods (peak, off-peak and super off-peak) that remain constant year-round based on price multipliers for each procurement class that are updated on an annual basis and are designed to motivate customers to

⁷ See PECO Energy Company's 2022-2023 Default Service Program Time-of-Use Annual Report, Docket No. P-2020-3019290 (filed Oct. 20, 2023); PECO Energy Company's 2021-2022 Default Service Program Time-of-Use Annual Report, Docket No. P-2020-3019290 (filed Oct. 21, 2022).

shift usage to lower-cost, off-peak hours. The time-differentiated usage periods reasonably encompass the Company's expected system peak usage times and take into account the need for simplicity to provide eligible customers with a reasonable opportunity to shift usage to lower-priced (off-peak) hours. PECO selected the same year-round peak period – 2 p.m. to 6 p.m. on non-holiday weekdays – employed in DSP V because participating customers successfully responded to the TOU price signals to shift usage and achieve bill savings. PECO also designed its proposed TOU rates in the context of electric vehicle expansion in the Commonwealth.⁸ Specifically, PECO's proposed TOU rate design includes a super off-peak pricing period from 12 a.m. to 6 a.m. to provide cost savings opportunities to customers who charge their EVs during overnight, low-priced energy hours. *See* PECO St. 2, pp. 10-15.

48. Under the Settlement, PECO agreed to perform additional analyses and report its findings in its next default service case regarding alternative price multipliers that allocate all capacity costs to the summer peak period and TOU pricing periods that incorporate seasonal variation. PECO also agreed to consider incentive-based time-varying rate structures in future proceedings as recommended by the OCA. Joint Petition at ¶ 47.

49. RESA opposes the additional TOU rate analyses recommended by the OCA and incorporated into the Settlement, and instead claims that the Commission should rely on the competitive market to develop innovative TOU products. RESA St. 1-R, p. 14.

50. RESA did not present any evidence that the additional analyses of PECO's TOU rates under the Settlement will impact TOU rate products available in the competitive market or

⁸ *See Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) ("January 2020 Secretarial Letter"), p. 7.

preclude EGSs from offering alternative price offerings that may be more closely tailored to individual customer needs. See OCA St. 1-SR, p. 15.

a. Customer Eligibility

51. The April 2017 Secretarial Letter (p. 3) provides that EDC TOU rates should be available to all default service customers who are not eligible for “spot only” default service and should incorporate existing consumer protections for CAP customers. In accordance with the Commission’s guidance, as originally proposed, PECO’s TOU rates under the Settlement will be available to non-CAP residential and small commercial default service customers with smart meters configured to measure energy consumption in watt-hours. The Settlement adopts PECO’s original proposal to exclude CAP customers from the residential TOU rate to avoid potential adverse impacts on CAP benefits. See Joint Petition at ¶¶ 54-55; PECO St. 2, pp. 11-12.

52. TURN/CAUSE-PA witness Elizabeth R. Marx supported the ineligibility of CAP customers but proposed additional protections for all low-income customers. Specifically, Ms. Marx proposed that PECO conduct affirmative outreach to confirmed low-income (“CLI”) customers enrolled in TOU rates whose generation costs are exceeding the applicable PTC. As part of such outreach, Ms. Marx recommended that PECO encourage those households to return to standard, non-time varying default service and enroll in available universal service programs. TURN/CAUSE-PA St. 1, pp. 23-26; TURN/CAUSE-PA St. 1-SR, pp. 12-13.

53. To address the concerns raised by Ms. Marx, the Company agreed to add the following disclosure to PECO’s TOU webpage in the “Is Time-of-Use Pricing right for me?” section:

If you are having trouble affording your electricity bill, PECO offers programs and services to help those in need. Contact PECO at 1-800-494-4000 for more information and to apply.

Joint Petition at ¶ 58. PECO will also attempt personal contact with CLI TOU participants every six months to encourage those households to enroll in CAP. *Id.* at ¶ 59.

54. The Settlement also includes restrictions on re-enrollment if a customer leaves the TOU rates for any reason. This provision is designed to reduce “free riders” who enroll in a TOU rate only for times of the year when they do not have to shift usage to save money. Joint Petition at ¶ 56; PECO St. 2, pp. 9-10.

b. TOU Product Structure and Rate Design

55. The Settlement adopts PECO’s original proposal to continue its current TOU rate design consistent with Commission guidance on TOU rate design and Act 129 requirements.⁹ Joint Petition at ¶¶ 46-53.

56. Under the Settlement, PECO will continue updating the TOU pricing multipliers on an annual basis in the same manner as DSP V, and the updated multipliers for the first year of DSP VI will be reflected in PECO’s GSA filing 45 days before June 1, 2025. *See id.* at ¶ 50.

57. The TOU price multipliers for each procurement class shown in Table 2 of the Joint Petition are designed to motivate shifting of usage from the higher-cost peak period to lower-cost off-peak periods consistent with the Commission’s guidance in the April 2017

⁹ *See Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa. Commw. Ct. 2015) (“DCIDA”) (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs); *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) (“April 2017 Secretarial Letter”) (proposing a TOU design for PPL in accordance with the DCIDA decision and noting that the proposed TOU design “may provide future guidance to all EDCs” for incorporation into their own TOU proposals in their individual default service proceedings).

Secretarial Letter (p. 3). These multipliers reflect the ratios calculated from average PJM PECO Zone spot market prices as well as the cost of capacity during peak and off-peak hours. *See* Joint Petition at ¶ 49; PECO St. 2, pp. 12-14

58. Allocation of the cost of capacity to peak and off-peak hours only under the Settlement will send cost-based price signals and create larger price differentials that are more likely to motivate customers to adjust the time of day they use electricity. PECO St. 2, pp. 13-14.

59. Under the Settlement, PECO will continue to source both the standard and TOU default service for residential and small commercial customers from the same supply portfolio for each procurement class. PECO will calculate the TOU rates on a semi-annual basis, synchronized with the GSA adjustment periods for the Residential and Small Commercial Classes, using the standard default service GSA as the reference price for PECO's TOU rate calculations. Joint Petition at ¶¶ 52-53; PECO St. 2, pp. 14-15; PECO Ex. MAM-4.

60. TOU customer kWh sales and costs will be included in the semi-annual reconciliation of the over/undercollection component of the GSA for the entire procurement class (i.e., Residential or Small Commercial). This reconciliation process, using a single E-Factor for each procurement class, will help mitigate potential large swings in GSA over/undercollections that could arise if customers switch between PECO's standard default service rate and TOU default service rate. Joint Petition at ¶ 53; PECO St. No. 2, pp. 15-16.

d. Implementation Plan and Cost Recovery

61. The Settlement adopts PECO's current communications plan to inform customers about PECO's TOU rates and update enrolled TOU customers about the opportunity for bill savings. This plan includes a webpage dedicated to the TOU rates consistent with the April 2017

Secretarial Letter (p. 3), a variety of other customer education materials, and monthly e-mail communications to enrolled TOU customers. Joint Petition at ¶ 57; PECO St. 2, p. 16.

62. PECO will continue to track TOU customers' income and demographic information and evaluate the impacts of the Company's TOU rates on CLI customers. Joint Petition at ¶¶ 60-61.

63. PECO will recover the costs it incurs to implement its TOU rates through the administrative cost factor of the GSA for the Residential and Small Commercial procurement classes. Joint Petition at ¶ 62; PECO St. No. 2, p. 3 n.1.

C. Standard Offer Program ("SOP")

64. Consistent with the Commission's directives in the Retail Markets Investigation, during DSP II, PECO implemented its SOP under which residential and small commercial default service customers contacting PECO's customer service center are presented with an opportunity to select among a group of EGSs who have voluntarily chosen to offer customers a twelve-month contract priced at least 7% below PECO's applicable PTC at the time of the offer. PECO St. 1, pp. 29-30.

65. PECO's currently effective SOP, including the cost recovery mechanisms last approved by the Commission as part of DSP V, will continue until May 31, 2029 unless terminated earlier by the Commission. Joint Petition at ¶ 63.

66. For all SOP contracts executed after June 1, 2025, EGSs must automatically transfer SOP customers to default service upon the expiration of the SOP contract unless the customer affirmatively elects to remain with the SOP supplier. Id. at ¶ 64, Exs. F and G.

67. RESA claims that requiring affirmative consent of the SOP customer to remain with the SOP supplier after the initial 12-month term is unnecessary and defeats the core purpose of shopping where customers make their own decisions. RESA St. 1-R, p. 11.

68. The change to PECO's current SOP agreed to as part of the Settlement preserves the original purpose of the SOP by introducing customers to the competitive market, while addressing concerns raised by the OCA and TURN/CAUSE-PA that a customer's inaction upon expiration of the SOP contract leads to that customer rolling over to a new contract with the SOP supplier at a higher rate than the PTC. *See* PECO St. 1, pp. 29-30, OCA St. 2, pp. 9-16; OCA St. 2SR, pp. 4-8; TURN/CAUSE-PA St. 1, pp. 5-18; TURN/CAUSE-PA St. 1-SR, pp. 2-6.

D. Residential Customer Bill Improvements

69. PECO's PTC in cents per kilowatt-hour ("kWh") for the applicable billing period that customers may use to evaluate competitive generation service offerings by EGSs is currently printed in the Message Center on the residential customer bill. However, under its "bill-ready" billing platform, PECO does not receive sufficient information from EGSs that would allow PECO to automatically print EGS pricing in cents per kWh on the customer's bill. PECO St. 1, p. 29.

70. The Settlement adopts PECO's proposal to add a new disclosure to the first page of the residential customer bill that compares the customer's total supplier charges for the billing period with what the dollar amount of the charges would be under PECO's applicable PTC based on the customer's usage during the billing period. Under the Settlement, PECO agreed to remove the third column of the new chart shown on PECO Exhibit SD-6 titled "Electric Supplier Savings" presenting the variance between the two dollar amount figures as recommended by the OCA to avoid potential customer confusion. *See* Joint Petition, ¶¶ 65-66, Ex. H.

71. RESA opposes the bill disclosure adopted in the Settlement, asserting that the new price comparison is misleading because it does not reflect the nature of the EGS product (e.g., flat rates, time-varying rates, green power, etc.), the length of the EGS contract, and other reasons supplier charges could be higher than the PTC for reasons unrelated to generation service. Alternatively, RESA recommends development of disclosures through a collaborative process regarding PECO's lack of knowledge of the characteristics of the EGS price and the nature of PECO's default service rate. In conjunction with that recommendation, RESA argues that PECO should consider adding more space on the utility consolidated bill to accommodate EGS customer-specific messaging about the supplier product. RESA St. 1, pp. 19-23; RESA St. 1-SR, pp 8-9.

72. The bill format changes adopted by the Settlement are based on PECO's stakeholder collaborative held in January 2021 and will enhance the presentation of shopping information and permit active customer review of the rates they are paying for competitive generation service. *See* PECO St. 1, p. 29; PECO St. 1-R, pp. 26-27; OCA St. 2R, pp. 4-6; TURN/CAUSE-PA St. 1-R, pp. 2-10.

73. PECO's consolidated billing option provides ample space for EGSs to describe their products and pricing, and there is no need to provide additional space to EGSs to accommodate RESA's recommended disclosures on the nature of PECO's default service procurement approach and EGS products and services. PECO St. 1-R, pp. 26-27.

E. Access to PECO's CAP for Applicants with EGS Supply

74. TURN/CAUSE-PA witness Marx examined historical data regarding the EGS prices that PECO's residential customers have paid over the past six years and concluded that the aggregate EGS charges during that period exceeded PECO's applicable PTC by more than \$800

million and that shopping CLI customers had been subject to the highest-priced EGS products. TURN/CAUSE-PA St. 1, pp. 8-18.

75. Based on that conclusion, Ms. Marx requested that PECO improve access to CAP for applicants with EGS supply by (1) including a clear statement on its CAP application informing customers that, by submitting the application, they consent to returning to default service at the time of CAP enrollment and (2) prohibiting suppliers from charging early cancellation or termination fees to any shopping customer who enrolls in PECO's CAP. *Id.*, pp. 20-21.

76. Under the Settlement, the Joint Petitioners agreed to a new Supplier Tariff rule to ensure that low-income customers with pre-existing EGS contracts will be able to access CAP without facing fees as recommended by TURN/CAUSE-PA. By June 1, 2025, PECO also committed to implement the practices outlined in Paragraphs 68 and 69 of the Joint Petition to assist shopping customers transitioning to CAP (and are ineligible to receive EGS supply) with removal of EGS supply and inform new CAP enrollees that generation suppliers are prohibited from charging them cancellation or termination fees as set forth in Paragraph 67.

77. The Settlement provisions related to PECO's CAP application policies and procedures strike a reasonable balance among the Commission's policies of further developing Pennsylvania's competitive retail market, ensuring affordability of service for the Company's low-income customers, and containing costs for all residential customers that pay for CAP. *See* TURN/CAUSE-P St. 1, pp. 19-22; TURN/CAUSE-PA St. 1-SR, pp. 8-11.

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

78. RESA requests that the Commission initiate a statewide investigation to revisit messaging of default service using the PTC that has been in place for 15 years as a "first step" to

address “structural barriers” that RESA witness Caliva largely blames on the presence of an EDC default service provider. According to Mr. Caliva, the retail market has “stagnated” in light of the declining percentage of customers served by EGSs, which he attributes to the “dominance” of EDC-provided default service and years of consumer education to compare competitive offers relative to the PTC. *See* RESA St. 1, pp. 10-18; RESA St. 1-SR, pp. 2-4.

79. Mr. Caliva’s reliance on switching rates as of March 2024 to support alleged market stagnation is misleading. Those statistics do not include all the customers who have considered switching to EGS service but decided against it, or the customers who have switched in the past but who are now back on default service. There are nearly 100 EGSs competing to serve PECO’s customers, and EGSs currently serve 52% of the Company’s total electric load. PECO St. 3, p. 31; PECO St. 3-R, pp. 57-58.

80. Many factors contribute to a customer’s decision not to receive supply from an EGS – not just competitive market design issues as Mr. Caliva implies. For example, the record shows that in recent years some EGSs have been charging significantly more than PECO’s default service rates. PECO St. 3-R, p. 59; *see also* OCA St. 2, pp. 12-13; TURN/CAUSE-PA St. 1, pp. 3-9.

81. PECO has served as the default service provider in its service area and customers have been making shopping decisions based on the PTC since 2011, without any Commission finding that such framework sends a message to customers that default service is somehow “superior” to competitive offerings. *See* PECO St. 1-R, p. 24.

G. Supplier Issues During PECO’s Customer Information System (“CIS”) Upgrade

82. RESA witness Caliva raises concerns regarding the transition to a new Choice ID and customer account number with the same number of digits in connection with PECO’s new

CIS launched on February 20, 2024. Mr. Caliva also expresses concerns about rejection of certain supplier invoices due to PECO's new customer account numbers. Based on those concerns, Mr. Caliva recommends that PECO: (1) provide daily updates to competitive suppliers and weekly updates to Commission staff for at least the first 90 days of any system upgrade; and (2) assign each EGS a consistent point of contact for addressing issues related to the CIS upgrade. RESA St. 1, p. 27.

83. By the time of the Commission's Final Order in this proceeding, PECO's new CIS will have been in place for almost eight months – well beyond the 90 days of reporting recommended by Mr. Caliva. Prior to going live, PECO held webinars and issued several supplier bulletins regarding the CIS upgrade, including a webinar in June 2023 and in December 2023 attended by 26 and 60 RESA members, respectively, where the transition to new Choice IDs was discussed in detail. And, as Mr. Caliva acknowledged in his surrebuttal testimony (RESA St. 1-SR, p. 11), PECO resolved the technical issues that caused rejection of some EGS invoices mentioned in his direct testimony. PECO St. 1-R, p. 29.

84. Providing a direct point of contact for each of the 98 EGSs registered in PECO's service area is not feasible because the Energy Acquisition team responsible for handling EGS-related inquiries consists of four employees. As Ms. Dalessio testified, that team collectively responded to approximately 1,600 supplier inquiries regarding the CIS upgrade in the last three months. *Id*

PROPOSED CONCLUSIONS OF LAW

I. BURDEN OF PROOF

1. The party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa.C.S. § 332(a).

2. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence. *See Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

3. When a utility has made a proposal and presented evidence sufficient to establish a prima facie case, the burden shifts to an opposing party to present "some evidence" to support an alternative approach. *NRG Energy, Inc. v. Pa. P.U.C.*, 233 A.3d 936, 950 (Pa. Commw. Ct. 2020).

4. The Commonwealth Court has explained that if an opposing party "does not bear a burden to present something to support its methodology, it would be difficult, if not impossible, for [the utility] to respond with evidence explaining why the alternative should not be accepted." *Id.*

II. STANDARDS APPLICABLE TO DEFAULT SERVICE

A. Default Service Supply Procurement and Implementation Plan

5. As a Pennsylvania EDC, PECO serves as default service provider to retail electric customers within its service territory in accordance with its obligations under Section 2807(e) of the Code (66 Pa.C.S. § 2807(e)).

6. Under Sections 2807(e) (3.1)-(3.2) and (3.4) of the Competition Act, PECO is required to obtain, through competitive procurement processes, a "prudent mix" of default

service supply contracts designed to ensure “adequate and reliable service” at the “least cost to customers over time.” 66 Pa.C.S. § 2807(e)(3.7).

7. PECO’s DSP VI, as modified by the Settlement, contains all of the elements required by the Commission’s default service regulations (52 Pa. Code §§ 54.181-54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801-69.1817), including a procurement plan, an implementation plan, contingency plans, a default service rate design plan, and associated tariff pages.

8. PECO’s DSP VI, as modified by the Settlement and approved herein, is in compliance with 66. Pa.C.S. § 2807(e)(3.7) in that: (1) it includes prudent steps necessary to negotiate favorable generation supply contracts; (2) it includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis; and (3) neither PECO nor its affiliated interests have withheld from the market any generation supply in a manner that violates Federal law.

9. PECO’s DSP VI, as modified by the Settlement, is in compliance with 66. Pa.C.S. § 2807(e) (3.7) in that it includes a prudent mix of default service supply contracts designed to ensure adequate and reliable service at the least cost to customers over time.

10. The record evidence does not support a finding that RESA has established that the use of a CPP in PECO’s default service solicitations is anti-competitive.

B. AEPS Compliance

11. The AEPS Act requires default service providers like PECO to obtain specified percentages of electricity sold to retail customers from alternative energy sources as measured by AECs and defined by the AEPS Act. The AEPS Act also includes a “set-aside” that requires

some of those AECs to be derived from solar photovoltaic (“PV”) facilities. 73 P.S. § 1648.3(b)(2).

12. Under Act 40 of 2017 (“Act 40”), PECO must meet its future solar AEPS requirements using Solar AECs generated from solar energy facilities in the Commonwealth of Pennsylvania. 71 P.S. § 714.

13. During DSP VI, PECO’s solar AEPS requirement will be 0.5% of its total default service load. 73 P.S. § 1648.3(b)(2)(xv).

14. The Companies proposed procurement of Solar AECs and other Tier I and Tier II AECs is consistent with the AEPS Act, Act 40, and the Commission’s regulations.

15. The record evidence does not support a finding that RESA has established a valid basis to require PECO to allocate solar AECs procured through long-term contracts to EGSs.

C. Rate Design and Cost Recovery

16. The Company’s proposed rate design, including the GSA, TSC and NBT, are consistent with the applicable provisions of the Public Utility Code (66 Pa.C.S. §§ 2804(3) and 2807(e)(7)), the Commission’s default service regulations (52 Pa. Code §§ 54.185(e)(3) and 54.187) and Policy Statement on Default Service (52 Pa. Code §§ 69.1808-69.1810).

17. The Commission has approved semi-annual PTC rate changes for Duquesne Light Company, FirstEnergy Pennsylvania Electric Company, and PPL Electric Utilities Corp.¹⁰

¹⁰ See *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval to Modify their Supplier Master Agreement*, Docket Nos. P-2020-3021424, P-2020-3021425, P-2020-3021426, and P-2020-3021427 (Order entered Oct. 13, 2020), p. 9; *Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval of their Default Service Plan for the Period from June 1, 2023 through May 31, 2027*, Docket Nos. P-2021-3030012 et al. (Recommended Decision issued June 29, 2022) (“FE-PA DSP VI Recommended Decision”), pp. 68-69, 104; *Petition of Duquesne Light Co. for Approval of its Default Service Plan for the Period from June 1, 2021 through May 31, 2025* (Opinion and Order entered Jan. 14, 2021), pp. 15-16; *Petition of PPL Elec Utils. Corp. for Approval of a Default Service Program for the Period June 1, 2025 Through May 31, 2017*, Docket No. P-2014-2417907 (Opinion and Order

18. In addition to procurement of a “prudent mix” of default service supply contracts at the “least cost to customers over time,”¹¹ Act 129 provides that EDCs “shall offer” a TOU rate option to all default service customers with a smart meter. 66 Pa.C.S. § 2807(f)(5).

19. PECO and other EDCs have an unconditional, statutory obligation to offer TOU rate options to eligible default service customers under Section 2807(f)(5) of the Public Utility Code.

20. As the Commission has recognized, Act 129 makes clear that an EDC’s TOU program should be optional for default service customers. *See* January 2020 Secretarial Letter, p. 6; 66 Pa.C.S. § 2807(f)(5) (“[r]esidential or commercial customers *may* elect to participate in time-of-use rates or real-time pricing” (emphasis added)).

21. The Commission has previously authorized other EDCs to recover TOU over/undercollection amounts from all default service customers based on its finding that the TOU rates mandated by Act 129 are a “form of default service”. *See Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2011-2264771 (Opinion and Order entered Aug. 30, 2012), pp. 22-23.

22. The record evidence in this case supports a finding that the Company’s current and proposed TOU rates satisfy Act 129 requirements, incorporate the PUC’s guidelines on TOU rate design, and balance a variety of important objectives.

D. Retail Market Enhancements

23. In its *Investigation of Pennsylvania’s Retail Electricity Market* at Docket I-2011-2237952, the Commission directed PECO and other default service providers to undertake a

entered Jan 15, 2015), pp. 7-8, 28-29. The FE-PA DSP VI Recommended Decision was adopted without modification by the Commission in its Order entered August 4, 2022 at Docket Nos. P-2021-3030012 et al.

¹¹ 66 Pa.C.S. §§ 2807(e)(3.1)-(3.2), (3.4) and (3.7).

variety of retail market enhancements and issued its proposed end state model for default service. *See generally Investigation of Pennsylvania's Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered Mar. 2, 2012); *Investigation of Pennsylvania's Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Order entered Feb. 15, 2013).

24. In the DSP V Order (p. 31), the Commission approved continuation of PECO's Standard Offer Program, including the current cost recovery mechanisms, as "beneficial" to all customers.

25. PECO's DSP VI, as amended by the Settlement, incorporates retail market enhancements that are reasonable and consistent with the original purpose of the Standard Offer Program.

Other Issues

26. The record evidence does not support a finding that the competitive retail market has stagnated or that the statewide investigation requested by RESA is needed or appropriate to address alleged structural barriers to competition.

27. The record evidence does not support a finding that the new residential bill disclosure adopted under the settlement is misleading or that the bill changes should be rejected based on RESA's objections.

28. The record evidence does not support a finding that RESA established a basis for its recommendations related to PECO's new CIS.

E. Legal Standards Regarding Settlements

29. In order to approve a settlement, the Commission must determine that the proposed terms and conditions, viewed in the context of the settlement as a whole, are in the

public interest. *See Pa. P.U.C. v. CS Water & Sewer Ass'n*, 74 Pa. P.U.C. 767, 771 (1991); *Pa. P.U.C. v. Phila. Elec. Co.*, 60 Pa. P.U.C. 1, 22 (1985).

30. The Commission's policy and precedent embodied in its regulation at 52 Pa. Code § 5.231 and its Policy Statement on Settlements at 52 Pa. Code § 69.401 encourage parties to resolve contested proceedings by settlement.

31. In its Policy Statement, the Commission stated that "the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate *are often preferable to those achieved at the conclusion of a fully litigated proceeding*" (emphasis added).

32. *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-2010-2161575 (Recommended Decision issued November 2, 2010), p. 12, which was approved and adopted by the Commission in its Final Order entered December 21, 2010, summarized the benefits of resolving contested cases by settlement:

Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

33. The terms and conditions of the Joint Petition satisfy all of the Commission's criteria for approval of a settlement.

PROPOSED ORDERING PARAGRAPHS

1. The Joint Petition is granted and the Settlement is approved, without modification.
2. RESA's request for a statewide investigation of default service messaging is denied.
3. RESA's claims and recommendations regarding PECO's new CIS are dismissed.
4. NERA Economic Consulting is approved as the independent third-party evaluator for PECO's default service procurements and long-term solar procurement.
5. PECO's request for a waiver of the Commission's regulation at 52 Pa. Code § 54.187 is granted to the extent that is necessary to permit the Company to continue: (1) to procure generation for three procurement classes; (2) quarterly filing of hourly-priced default service rates; and (3) semi-annual reconciliation of the over/under collection component of the GSA for all default service customers as set forth in PECO's DSP VI, as revised by the Settlement.
6. PECO's currently-effective Standard Offer Program, including the associated cost recovery mechanisms approved in PECO's prior default service proceedings, is permitted to continue, subject to the applicable provisions set forth in the Joint Petition.
7. The proposed default service program for the period June 1, 2025 through May 31, 2029 is approved, as modified by the Settlement, except as set forth in the ordering paragraphs above.
8. PECO shall file a tariff supplement as set forth in the Joint Petition.
9. This proceeding shall be marked closed.