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July 17, 2024

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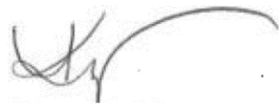
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

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

Sincerely



Karen O. Moury

KOM/jls
Enclosure

cc: Hon. Eranda Vero w/enc.
Hon. Arlene Ashton w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Retail Energy Supply Association's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF
RETAIL ENERGY SUPPLY ASSOCIATION**

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I. INTRODUCTION

The Retail Energy Supply Association (“RESA”)¹ submits this Main Brief to detail its opposition to the Joint Petition for Non-Unanimous Settlement filed on July 10, 2024 (“Non-Unanimous Settlement”). RESA urges the Administrative Law Judges (“ALJs”) to reject the Non-Unanimous Settlement as it contains unlawful provisions and is not in the public interest. Adoption of RESA’s proposals in this proceeding will serve the public interest by establishing a pathway to address existing concerns about the functioning of the current competitive market. In addition, adopting RESA’s position will result in the rejection of anticompetitive proposals that threaten to further entrench Electric Distribution Company (“EDC”) provided default service in the minds of consumers. The further entrenchment of EDC provided default service has a negative impact on the ability of Electric Generation Suppliers (“EGSs”) to develop and offer consumers the benefit of a myriad of competitive products and services consistent with the intention of the Electricity Generation Customer Choice and Competition Act (“Competition Act”).²

RESA is a trade association of power marketers, independent power producers, and a broad range of companies within the Mid-Atlantic marketplace, each of whom supports the electric services industry and seeks to develop a more competitive power industry. RESA

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² 66 Pa. C.S. §§ 2801 *et seq.*

members are EGSs licensed to sell electric energy in the markets of Pennsylvania's major EDCs, including in the service territory of PECO Energy Company ("PECO" or the "Company").

Through RESA's participation in this PECO Default Service proceeding, the association has focused on how the fundamental structure of the default service product and the utility's current role of administering that product and also carrying out functions that impact the competitive supply market impact the current state of competition for residential customers and sought to offer reasonable suggestions to improve the landscape for consumers to increase the competitive offerings available in the market. Although there are some significant structural issues in the current market design of EDC provided default service, RESA's proposals in this proceeding were narrowly tailored to better support the ability of EGSs to invest their own dollars to develop products and services tailored to meet the individual needs of customers.

Against this backdrop, RESA formulated a proactive recommendation for the Pennsylvania Public Utility Commission ("PUC" or "Commission") to initiate a statewide investigation about the messaging of EDC provided default service as the Price-to-Compare ("PTC") and offered a pathway to better address supplier issues during the upgrade of PECO's Customer Information System ("CIS"). RESA also offered recommendations and feedback to address the competitive concerns of RESA regarding other proposals. Notably, adopting RESA's position on these issues would largely leave intact PECO's original proposals by only: (i) adding the recommendation for a statewide investigation; (ii) creating a pathway to address supplier concerns as PECO continues its CIS upgrade; (iii) rejecting two issues related to procurement; and (iv) reasonably addressing the anti-competitive proposal to add a price comparison chart to residential bills. Unfortunately, none of RESA's proposals were accepted by any other party in this proceeding, as reflected in the Joint Petition for Non-Unanimous

Settlement (“Non-Unanimous Settlement”) filed on July 10, 2024. As such, RESA opposes adoption of the Non-Unanimous Settlement and urges the Administrative Law Judges (“ALJs”) to recommend that the Commission approve RESA’s proposals in this proceeding.

As EGSs, RESA members actively participate in PECO’s service territory and are keenly aware of the challenges faced by EGSs in developing and marketing competitive supply products for consumers. From the outset, the availability of default service from PECO provides a security blanket to customers, enabling them to do nothing yet continue to receive electricity. Coupled with the consumer inertia that results from the ease of obtaining electricity without making an affirmative choice, Commission approved messaging has focused on price comparisons between the utility’s default service rate and the supply prices charged in the retail market by EGSs. This focus on price - to the exclusion of almost every other benefit a customer can obtain in the competitive market – has endured without adequate explanation of how default service rates are different than prices found in the competitive market, how the utilities recover their costs, or the inherent advantages the regulated monopoly EDCs enjoy as the PUC approved default service providers.

After 25+ years of relying on a flawed default service pricing method, which affects virtually every evaluation of the retail market by the Commission and interested parties, it is time for the PUC to undertake a statewide investigation to investigate its approved messaging of default service as the “Price-to-Compare.” This investigation should include discontinuing the use of the term “Price-to-Compare” by replacing it with “default service rate,” as well a discussion of how the messaging can be improved to support the ability of customers to make more informed decisions when they evaluate competitive offers.

Equally important is avoiding new decisions that further entrench in the minds of consumers that the default service rate is the appropriate benchmark against which all EGS prices should be compared, regardless of all other benefits a given product may offer – be that long term price certainty, elevated renewable energy content, or a whole host of other benefits a customer may be considering that may reasonably result in a competitive supply price that is expensive than the default service rate. Unfortunately, PECO has made such a proposal in this proceeding which is accepted as part of the Non-Unanimous Settlement. That proposal is to highlight such price comparisons by adding a chart to shopping residential customers’ bills, which the Company purports will show what the customer would have paid had they been on default service with the total EGS supply charges and the phantom EDC supply charges showed side by side. Permitting the utility to present this misleading “bill” comparison on residential bills reinforces the wrong message to customers that they should be judging all competitive offers against the default service rate and must be rejected.

RESA also sought to address the very real and significant customer confusion that resulted during PECO’s ongoing CIS upgrade by developing a process to work collaboratively with competitive suppliers to ensure that suppliers are able to continue providing service and making offers to customers during any future CIS upgrades. PECO’s response is that all these issues are in the past now and the Commission need not do anything. This is a shortsighted view and does a disservice to all customers – including shopping customers who are also customers of PECO’s distribution services. The CIS implementation is an on-going process and the need to better deal with suppliers so that customers are reasonably served is not an issue that will go away. PECO’s unwillingness to offer any process or suggestions on how to more adequately deal with these issues in the future should be seen as further support for the need for Commission

action to redress the strengthening dominance of EDC provided default service in the retail competitive market.

For all these reasons and as supported further by the arguments in this Main Brief, RESA recommends that the ALJs issue a Recommended Decision which rejects the Non-Unanimous Settlement, adopts PECO's initial proposal as filed and recommends:

- Institution by the PUC of a statewide investigation to consider revisions to its approved messaging of default service as the "Price-to-Compare" to include discontinuing use of that term by replacing it with "default service rate;"
- Rejection of PECO's proposal to add a comparison chart to residential customers' bills showing what the customer would have paid if they had been on default service (i.e., phantom EDC charges) alongside actual EGS supply charges;
- Directive to PECO to include specific processes to work collaboratively with competitive suppliers during the implementation period for its new Customer Information System to ensure that suppliers are able to continue providing service and making offers to customers;
- Rejection of PECO's proposal to include a Capacity Proxy Price as part of its wholesale default service supply procurement process; and
- To the extent PECO's proposal to double the amount of its solar AEC procurement for default service is recommended for approval, require PECO to allocate any solar AECs acquired through its long-term contract procurement process to the supply load for all distribution customers, not only to default service customers.

A. Procedural History

On February 2, 2024, PECO filed a petition with the Commission proposing to establish the terms and conditions under which it will procure default service supplies, provide default service to non-shopping customers, satisfy requirements imposed by the Alternative Energy Portfolio Standards Act ("AEPS Act") and recover all associated costs on a full and current basis for the period from June 1, 2025 through May 31, 2029 ("DSP Petition"). By public notice published in the *Pennsylvania Bulletin* on February 17, 2024, the Commission established a deadline of March 4, 2024 for formal protests, petitions to intervene and answers. RESA filed a

timely Petition to Intervene which was subsequently granted pursuant to Prehearing Order #2 dated April 2, 2024.

On July 10, 2024, the parties submitted a Joint Stipulation for Admission of Testimony and Exhibits, through which the following evidence was stipulated into the record on behalf of RESA: (1) RESA St. No. 1, the Direct Testimony of Frank Caliva III, including RESA Exhibits FC-1 through FC-5; (2) RESA St. No. 1-R, the Rebuttal Testimony of Frank Caliva III, including RESA Exhibits FC-6 through FC-9; and (3) RESA St. No. 1-SR, the Surrebuttal Testimony of Frank Caliva III.

B. Non-Unanimous Settlement

On July 10, 2024, a Joint Petition for Non-Unanimous Settlement was filed. Parties to the Non-Unanimous Settlement are PECO, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Tenant Union Representative Network and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (together, “TURN/CAUSE-PA”), and the Energy Justice Advocates (“EJA”) (collectively, the “Joint Petitioners”). Parties not opposing the settlement are Calpine Retail Holdings, Inc. (“Calpine”), Constellation Energy Generation, LLC and Constellation NewEnergy Inc. (“Constellation”), and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”). RESA and NRG oppose the Non-Unanimous Settlement.³

RESA urges the ALJ to recommend rejection of the Non-Unanimous Settlement. Reasons why individual terms are objectionable and/or in violation of the Commission rules and regulations are set forth below. As the Non-Unanimous Settlement seeks approval without

³ Non-Unanimous Settlement at 1.

modification,⁴ rejection of any of these terms supports rejection of the entire Non-Unanimous Settlement.

Also, and viewed in its entirety, adoption of the Non-Unanimous Settlement is not in the public interest nor is it supported by substantial evidence. If approved as filed, the Non-Unanimous Settlement is a disservice to consumers because it does nothing to address the inability of competition to flourish in the retail market as was intended by the Competition Act. Rather, the Non-Unanimous Settlement includes provisions that further entrench the presence of EDC-provided default service by: (1) allowing PECO to include a misleading bill comparison of the default service rate to a customer's shopping price on every single residential bill; (2) allowing PECO to implement a previously rejected and illegal process to automatically return EGS customers to default service at expiration of their Standard Offer Program ("SOP") contracts; and, (3) not including any provision to support a statewide investigation of current messaging of default service as the "Price-to-Compare" or to assure current and future shopping customers that poor communications with suppliers will not impact their service as PECO continues implementation of its new Customer Information System.

Make no mistake, these provisions harm consumers by proposing further measures to thwart the intent and purpose of the Competition Act to give consumers access to innovative competitive products. RESA Witness Frank Caliva testified at length about how the current status of the competitive market is stalled and residential customers are being denied the option to avail themselves of a fully functioning competitive market because of the entrenchment of EDC provided default service.⁵ The signatories to the Non-Unanimous Settlement did not

⁴ Non-Unanimous Settlement at 21.

⁵ RESA St. No. 1 at 6-18.

directly refute this testimony but instead deflected it by focusing on spurious price comparisons between the default service rate and EGS pricing and offering anti-competitive “solutions” to basically keep customers with default service. If adopted, the Non-Unanimous Settlement could very likely achieve that result by effectively ending the SOP and raising significant concerns to all EGSs about the Commission’s willingness to stand by its own precedent⁶ and current regulations permitting EGSs to automatically renew customers so long as the legally required notices are provided.⁷ Such result is not in the public interest nor does the Commission have the legal authority to approve it.

Importantly, RESA recognizes that structural issues regarding the current competitive market are complex and appreciates the years devoted by the Commission and stakeholders to get to this point. To the extent there is disagreement about where to go from here, the solution cannot be to make potentially market altering decisions in this one EDC default service proceeding without broader consideration and the opportunity for all affected stakeholders to be involved. Ironically, parties in this proceeding criticized RESA’s recommendation for a statewide investigation using similar arguments⁸ but then agreed with a Non-Unanimous Settlement that suffers from the very same concerns, i.e. proposing to significantly revise a

⁶ *Petition of PPL Electric Utilities Corporation for Approval of its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Order entered Dec. 17, 2020 at 2, 44-45, 92 and 98) (“*PPL DSP 5 Order*”)(rejecting PPL’s proposal to implement process of automatically returning EGS customers to default service upon expiration of the SOP contract).

⁷ 52 Pa. Code § 54.10(3) (“When a customer fails to respond to either notice, the following apply: (i) A fixed duration contract shall be converted to one of the following: (A) A month-to-month contract, either at the same terms and conditions or at revised terms and conditions, as long as the contract does not contain cancellation fees. (B) Another fixed duration contract, as long as the new contract includes a customer-initiated cancellation provision that allows the customer to cancel at any time, for any reason, and does not contain cancellation fees.”)

⁸ TURN/CAUSE-PA St. No. 1-R at 7.

program feature (what happens upon SOP contract expiration) established through a statewide process.

For all these reasons and as discussed further below, approval of the Non-Unanimous Settlement is not in the public interest and must be rejected.

C. Legal Standards

1. Competition Act

As a creation of the Legislature, the Commission has only the powers and authority granted to it by the Legislature and contained in the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*⁹ A part of the Public Utility Code, the Electricity Generation Customer Choice and Competition Act (“Competition Act”) addresses the requirements that PECO, as the default service provider, must meet.¹⁰ The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a “prudent mix”¹¹ of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.¹²

⁹ See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Order entered May 28, 2008.

¹⁰ See 66 Pa. C.S. § 2807(e).

¹¹ 66 Pa. C.S. § 2807(e)(3.2); “In interpreting the term ‘prudent mix,’ the PUC must exercise some balance and discretion under the circumstances of the case in order for the ‘mix’ in question to be ‘prudent.’” *Popowsky v. Pennsylvania Pub. Util. Comm’n*, 71 A.3d 1112, 1117 (Pa. Cmwlth. 2013) (Petition for Allowance of Appeal Denied Dec. 31, 2013, Docket No. 641 MAL 2013).

¹² 66 Pa. C.S. § 2807(e)(3.1).

The “overarching goal of the [Competition] Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers.”¹³ Therefore, the Competition Act also directs the Commission to create a competitive market for the generation of electricity through a separation of the distribution and generation services that had been previously provided exclusively by the EDCs on a monopoly basis.¹⁴ The purpose of this restructuring is to ensure that “all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers [“EGSs”].”¹⁵

Recognizing the then-existing monopoly market structure in place and the need to create a pathway for EGSs to be able to offer competitive generation services (which had been previously offered by the EDCs), the Competition Act sets forth specific directives regarding interactions between the EDCs and EGSs. More specifically, the Competition Act requires that EDCs provide EGSs nondiscriminatory access to the EDC’s transmission and distribution system on “rates, terms of access and conditions that are comparable to the utilities own use of its system.”¹⁶ The Competition Act also empowers the Commission to take steps to prevent

¹³ *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d at 1101 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016). (“*CAUSE-PA CAP Shopping Order*”) (emphasis added); 66 Pa. C.S. § 2802(13).

¹⁴ 66 Pa. C.S. §§ 2801-2812.

¹⁵ 66 Pa. C.S. § 2806(a).

¹⁶ 66 Pa. C.S. § 2803 (Direct Access is defined as “The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system to transport electricity from any generator of electricity to any end-use customer.”)(emphasis added); 66 Pa. C.S. § 2804(6) (“A public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system.”) (emphasis added).

anticompetitive or discriminatory conduct and to investigate “the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity.”¹⁷ Thus – as required by the Competition Act – when an EDC proposes to undertake an action that will impact ability of consumers to choose a competitive option, the Commission must consider whether the proposal is anticompetitive or discriminatory and whether or not it will have a negative impact on competition.

2. Burden of Proof

PECO has the ultimate burden of proof in this proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable. Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.¹⁸ It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”¹⁹ A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.²⁰ Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence.²¹ More

¹⁷ 66 Pa. C.S. §§ 2811(a) and (b).

¹⁸ 66 Pa. C.S. § 332(a).

¹⁹ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

²⁰ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

²¹ *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993).

information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.²²

3. Standard of Review for Settlements

Although the Commission generally encourages settlements,²³ it must still review any proposed settlement to determine whether its terms are in the public interest in order to be adopted.²⁴ The Commission has stated that “the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest.”²⁵ In determining whether this standard has been met and whether a partial settlement should be approved, all objections to the settlement must be considered.²⁶ Further, proposed settlements (including partial settlements) must also be supported by substantial evidence.²⁷

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Capacity Proxy Price

PECO proposed, and parties to the Non-Unanimous Settlement support,²⁸ the introduction of a Capacity Proxy Price (“CPP”) and true-up mechanism when PJM does not

²² *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. Ct. 1960); *Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

²³ 52 Pa. Code § 5.231.

²⁴ *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered Jan. 7, 2004); see also *Pa. PUC Bureau of Investigation and Enforcement v. PPL Electric Utilities Corp.*, Docket No. M-2023-3038060 (Order entered May 16, 2024).

²⁵ *Pa. PUC et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011), citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered Apr. 1, 1996); *Pa. PUC v. CS Water and Sewer Associates*, 74 PA PUC 767 (1991).

²⁶ *Pa. PUC et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011).

²⁷ *Joint Application of West Penn Power Co. d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Co. and Trans-Allegheny Interstate Line Co.*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered Mar. 8, 2011), at 17.

²⁸ Non-Unanimous Settlement at 9, ¶ 32.

conduct its Base Residual Auction (“BRA”) under the Reliability Pricing Model (“RPM”) in time for wholesale default service supply bidders to formulate their bids for the default service supply auctions. Pursuant to PECO’s proposal as proffered in the Non-Unanimous Settlement, wholesale default service suppliers will be able to use the CPP if the capacity price is not known for all months of the delivery period for a product offered at least five business days prior to the bid date. Then, when PJM sets the capacity price, winning wholesale default service suppliers would be made whole for the difference between the calculated CPP and the actual capacity price paid to PJM.²⁹ Importantly, the payments to the wholesale default service suppliers for the true-up will be collected from default service customers through the PTC in a future period.³⁰ RESA recommends that this proposal be rejected because of the end user supply price distortions which result from making this option available only to one type of generation supplier, the default service supplier, while all other competitive suppliers are relegated to other options in the market. The Non-Unanimous Settlement offers no revisions to PECO’s initial proposal to address these concerns.

As RESA Witness Caliva explained, the lack of a BRA negatively impacts all Load Serving Entities (“LSEs”) which include the wholesale default service suppliers as well as EGSs but PECO’s proposal only insulates the wholesale default service suppliers from the risks which will lead to unnecessary distortions in the pricing of generation services offered to all customers.³¹ All LSEs rely on the forward capacity auction price signals to develop their pricing for generation services. For wholesale default service suppliers bidding in one of PECO’s

²⁹ PECO St. No. 4 at 18-19.

³⁰ PECO St. No. 4-R at 19.

³¹ RESA St. No. 1 at 29-30.

auctions, the forward capacity auction price signals are used to develop the bids submitted in PECO's default service bidding process. For competitive EGSs, the forward capacity auction price signals are factored into the development of competitive prices that are offered to potential customers.³² PECO's proposal insulates wholesale default service suppliers from the risks of not having the forward capacity auction price signals at the time bids are submitted to PECO for default service supply by allowing them to use the CPP calculated by PECO and then, when the price becomes known, PECO will make the wholesale default service suppliers whole for the difference.³³

No such options exist for EGSs offering competitive generation supply service to customers. Rather, the lack of forward capacity auction price signals requires EGSs to decide whether to: (1) cease developing competitive products and services due to the uncertainty; or, (2) offer retail contracts that may be under or overpriced once the capacity costs are known. As RESA Witness Caliva explained, both of these choices are negative for customers because an EGS cannot sustain providing underpriced service for a significant period of time and "overpriced" service can damage the reputation of the EGS as well as result in customer loss especially given the fact that PECO proposes to compare all EGS prices to the PTC.³⁴ While PECO takes the view that "EGSs have a wide range of flexibility in how they formulate their contracts with customers and this flexibility allows them to fashion a solution to mitigate their risk from an uncertain capacity price,"³⁵ for residential and small business customers, EGSs are

³² RESA St. No. 1 at 29.

³³ PECO St. No. 4 at 18-19.

³⁴ RESA St. No. 1 at 30.

³⁵ PECO St. No. 4R at 21.

not permitted to change the pricing of the fixed price contract without first notifying the customer and receiving affirmative consent to change the price.³⁶

The result of PECO's proposal of insulating the risks and making whole one type of LSE (default service supplier) and not the other is negative for all end use generation customers. This is because the default service PTC will include a true-up mechanism in a future period for the true up once the forward capacity price is known. However, the EGS competitive pricing during that same time period will reflect the result of an EGS's forecasting without the benefit of the forward capacity price with no realistic opportunity for the EGS to true-up the actual costs once the BRA is held.³⁷ The resulting divergence between the PTC, with the true-up, and the market prices of EGSs at the same time is confusing for customers who have been educated to compare the PTC to EGS pricing.³⁸

The Competition Act requires that public utilities provide EGSs nondiscriminatory access to the public utility's transmission and distribution system on "rates, terms of access and conditions that are comparable to the utilities own use of its system."³⁹ As PECO Witness Orlandi explained, the capacity auctions held by PJM establish the capacity price that all LSEs are required to pay for the capacity obligations and is a charge that cannot be avoided.⁴⁰ Thus, while a suppliers have the same payment obligation and bear the same risks of factoring that

³⁶ *Fixed Price Label Order. Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961, Final Order entered Nov. 14, 2013, at 26.

³⁷ For residential and small business customers, EGSs are not permitted to change the pricing of the fixed price contract without first notifying the customer and receiving affirmative consent to change the price pursuant to the Commission's *Fixed Price Label Order. Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961, Final Order entered Nov. 14, 2013, at 26.

³⁸ RESA St. No. 1 at 30.

³⁹ 66 Pa. C.S. § 2803.

⁴⁰ PECO St. No. 4-R at 22.

payment obligation into pricing when the amount is unknown, PECO's CPP proposal ensures that only the default service supplier recovers all the costs from ratepayers when the amount of the final payment obligation is known. This provides default service an unfair competitive advantage and creates an unlevel playing field for default service over competitive service in violation of the Competition Act. As such, the Commission must reject PECO's proposal.

As RESA Witness Caliva explained, even when the PJM capacity auction clearing prices may not be known, physical generation resources are in fact selling capacity to LSEs for delivery years that are not known. As such, other avenues exist for wholesale default service suppliers to bid a fixed-rate product for time periods when PJM has not established capacity prices. This functional secondary market for capacity is also available to EGSs when developing pricing for their products. By rejecting PECO's proposal as set forth in the Non-Unanimous Settlement and requiring all LSEs to rely on the secondary market for capacity, an equal playing field is created whereby both types of generation suppliers (default and competitive) are utilizing the same resources and information available to develop pricing and taking the same risks of the results of these calculations. Most importantly, however, default service customers are not expected to pay for the results of an inaccurately forecasted CPP via a true up cost embedded in a future PTC. For all these reasons, PECO's initial proposal which is included as part of the Non-Unanimous Settlement must be rejected.

B. AEPS Compliance (Solar Alternative Energy Credit Proposal)

Consistent with the Alternative Energy Portfolio Standards ("AEPS") Act, EDCs and EGSs must acquire and retire alternative energy credits ("AECs") in quantities equal to a percentage of their total retail sales of electricity to all of their retail electric end-user customers

for each reporting period.⁴¹ AECs are categorized into two “tiers.”⁴² Tier I includes solar photovoltaic shares (i.e. Solar AECs) which have their own specific percentage requirements.⁴³

RESA opposed PECO’s original proposal to procure an additional 16,000 Solar AECs through a ten-year fixed priced contract that would be in addition to the 16,000 already procured in the last default service proceeding.⁴⁴ As RESA Witness Caliva explained, the 10-year pricing scheme determined at the formation of the contract may or may not accurately reflect the actual market price in the next ten years which distorts accurate comparisons between the default service rate and EGS pricing. To address RESA’s concerns, Mr. Caliva recommended that the Commission consider competitively neutral structures to ensure that the procurement of long-term contracts does not adversely impact the development of retail competition.⁴⁵

In response to Mr. Caliva’s Direct Testimony, OCA Witness Ogur testified that OCA would not object to PECO assuming the responsibility for the entire Solar AEC obligation for its entire distribution load and recovering the costs via a non-bypassable charge so long as it was phased in to address contract timing concerns. Although RESA was agreeable to OCA’s approach, the Non-Unanimous Settlement does not incorporate this proposal. Although different from PECO’s initial proposal, the Non-Unanimous Settlement proposes that PECO will procure, through ten-year, fixed-price power purchase agreements, the energy, capacity and Solar AECs generated by one or more new Pennsylvania solar photovoltaic projects with a total capacity of

⁴¹ 52 Pa. Code § 75.61. If they fail to comply with this requirement, then they will be required to make an Alternative Compliance Payment (“ACP”) in lieu of retiring AECs. 73 P.S. § 1648.3(f).

⁴² 73 P.S. § 1648.3(b) and (c).

⁴³ 72 P.S. § 1648.3(b); 71 P.S. § 714.

⁴⁴ RESA St. No. 1 at 33-35.

⁴⁵ RESA St. No. 1 at 34.

up to 25 MW to meet the default service requirements of residential customers.⁴⁶ The Non-Uniform Settlement does not make any revisions to address the concerns raised by RESA (or consistent with OCA's concession) so the resulting Solar AECs would still be procured pursuant to a long-term contract to be used exclusively for the requirements of the default service load. Because it fails to address the competitively neutral concerns identified by RESA and continuing to completely ignore how this proposal impacts the resulting default service rate in the overall retail competitive market structure, the Non-Uniform Settlement proposal must be rejected.

III. RATE DESIGN AND COST RECOVERY

A. Adjustment of Default Service Rates

In its filing, PECO did not propose to change the frequency with which it changes default service rates, which is quarterly. However, in the Direct Testimony of OCA Witness Ogur, he recommended that the default service rate be adjusted semi-annually.⁴⁷ The purpose advanced by Mr. Ogur was to enhance rate stability and reduce volatility. The Non-Uniform Settlement provides that PECO will change the frequency for adjusting default service rates from quarterly to semi-annually.⁴⁸

In response, RESA Witness Caliva opposed OCA's proposal, testifying as follows:⁴⁹

The ability of the EDC, as the default service provider, to modify its rate for default service in order to reconcile for prior period over and under collections creates a fundamental inequity in the marketplace vis-à-vis default service and competitive offers from EGSs. Although RESA recognizes that the EDC is statutorily guaranteed cost recovery for default service related expenses, the automatic reconciliation process creates an unfair competitive advantage for the EDC and generates customer confusion.

⁴⁶ Non-Uniform Settlement at 6, ¶ 21.

⁴⁷ OCA St. No. 1 at 27-28.

⁴⁸ Non-Uniform Settlement at 11, ¶ 40.

⁴⁹ RESA St. No. 1-R at 12.

Mr. Ogur's proposal to shift to semi-annual adjustments should be rejected. In addition to Mr. Caliva's testimony above, it is important that default service rates be as market responsive and market reflective as possible to better track the market price of electricity. Several factors influence the ultimate level of market responsiveness of default service rates. These include the frequency of changes to the default service rate, the frequency of any reconciliation adjustment, the length of underlying fixed price wholesale contracts, the procurement lead time embedded in underlying fixed price contracts and the amount of spot market supply that is factored into the procurement portfolio.⁵⁰

RESA believes that a less frequent default service rate adjustment or reconciliation schedule is a step backwards in terms of market responsiveness. Less frequent rate adjustment schedules delay the time when the rate could be adjusted to reflect changes in the spot market pricing component, the expiration or renewal of underlying fixed price contracts, or to account for any variance in projected costs versus actual costs through the reconciliation process. A less frequent default service rate adjustment means that consumers are not seeing the true cost of their default service which leads to a default service rate that bears less of a relationship to the market. Without some rational relationship to the market embedded in the default service rate, EGSs have difficulty establishing competing offers and may not enter that market. For these reasons, revising the default service rate on a more frequent basis, as PECO does now, is a better approach to ensuring accuracy and providing a real time analysis of the costs incurred.⁵¹

⁵⁰ RESA St. No. 1-R at 13.

⁵¹ RESA St. No. 1-R at 13.

B. Time-of-Use Rates

In its filing, PECO proposed to maintain the design of its Time-of-Use (“TOU”) rate program, including the existing eligibility rules, price-differentiated usage periods, and communications with customers.⁵² OCA Witnesses Serhan Ogur and Barbara Alexander argued that PECO’s TOU rate program had insufficient customer participation and recommended various improvements.⁵³ To address TOU issues, the Non-Unanimous Settlement provides that PECO will continue its TOU, and will also perform a one-time evaluation of the TOU rate including an assessment of enrollment rates and customer characteristics through a voluntary email survey of participating TOU customers, to be presented in its next default service filing.⁵⁴

RESA does not agree with OCA’s recommendations for improvements to PECO’s TOU rate program and submits that the one-time evaluation that parties agreed to in the Non-Unanimous Settlement is unnecessary to the extent it is intended to “improve” PECO’s TOU or increase enrollment. Rather than enhancing PECO’s TOU offering, customers should instead rely on EGSs in the competitive market to develop competitive and innovate products, including TOU offerings to meet these customer needs.⁵⁵

As RESA Witness Caliva explained, “although RESA understands the statutory requirement for the EDC to offer a TOU rate, that does not mean the EDC should expend ratepayer money on creating products that can more appropriately and effectively be delivered by the competitive market.”⁵⁶ EGSs are best positioned to provide enhanced features and

⁵² PECO St. No. 2 at 9-16.

⁵³ OCA St. No. 1 at 32-36; OCA St. No. 2 at 16-20.

⁵⁴ Non-Unanimous Settlement at 13-17, ¶¶ 46-62.

⁵⁵ RESA St. No. 1-R at 14.

⁵⁶ *Id.*

solutions as part of TOU rates that are attractive to customers and meet their needs. These offerings are available to customers in the competitive market and should be accessed there rather than pushing the EDC to spend ratepayer dollars developing such programs. This is consistent with the Competition Act, which specifically envisioned this type of product being provided by EGSs in the competitive market.⁵⁷ Further, the Commission has also recognized the role EGSs play in offering this product to consumers.⁵⁸ Therefore, RESA submits that OCA's recommendations and the Non-Unanimous Settlement provisions regarding TOU rates should be rejected.

IV. STANDARD OFFER PROGRAM

A. PECO's Initial Proposal, Response to Other Parties' Positions and RESA's Position

PECO did not propose any revisions to the customer referral Standard Offer Program ("SOP"). PECO Witness Dalessio explained that it enhanced the operation of the SOP and conducted a customer satisfaction survey of participants in which over 80% of the respondents reported a positive experience with PECO's SOP.⁵⁹ PECO remained unpersuaded by direct testimony from OCA and CAUSE-PA to retreat from its initial position to either terminate the SOP or revise it so that SOP participants are automatically returned to default service upon SOP contract expiration unless they affirmatively make another choice.⁶⁰

⁵⁷ 66 Pa. C.S. § 2804(2).

⁵⁸ *Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Tentative Order entered Oct. 14, 2011), at 7.

⁵⁹ PECO St. No. 1 at 29-30.

⁶⁰ PECO St. No. 1-R at 21-23.

RESA supported PECO's position not to terminate or revise the SOP for a number of reasons in addition to the ones set forth by PECO in Rebuttal Testimony.⁶¹ Given the overwhelming support in PECO's customer satisfaction survey and the fact that customers who enter into the SOP do so knowingly and willingly after being educated about the program, it is inappropriate to make changes to this program on the basis of an improper price comparison to the default service rate. First, as explained at length by RESA Witness Caliva, price comparisons between the default service rate and EGS prices are spurious because: (1) the way in which an EDC develops the default service rate and the EGS develops retail pricing is not directly comparable;⁶² (2) comparisons at a particular point in time do not reflect current market conditions, the ability of EDCs to fully reconcile their default service rates at a later time or the other factors that may be at play regarding the EGSs' pricing.⁶³ Notwithstanding this fundamental disagreement with the attempted price comparisons offered by OCA and CAUSE-PA, the record includes RESA Market Savings Reports which show that numerous offers are available in the Pennsylvania retail market that are below the utilities' default service rate.⁶⁴

Second, Mr. Caliva made clear that the "SOP remains as one of the last programs in Pennsylvania that is at least providing an opportunity for customers to become familiar with

⁶¹ These reasons include the fact that the Commission has approved continuation of the SOP on several prior occasions regardless of whether SOP customers pay a price for competitive generation supply above or below the PTC and recently rejected PPL's proposal to automatically return EGS customers participating in SOP to the default service provider upon expiration of the SOP contract. PECO St. No. 1-R at 21-23.

⁶² RESA St. No. 1 at 8-9; RESA St. No. 1-R at 3-4.

⁶³ RESA St. No. 1-R. EGS prices may include many different variables which impact the pricing such as flat and time-varying rates, fixed-term contract lengths, curtailable contracts and green power contracts. RESA St. No. 1 at 20-21; RESA Exh. FC-2 at 21.

⁶⁴ RESA St. No. 1-R at 6-7, referencing RESA Exh. FC-7 through FC-9 showing the potential one-month price savings for January 2024, February 2024 and March 2024 were \$175 million, \$154 million, and \$154 million, respectively.

EGSs and shopping” and reevaluation of SOP is not warranted until significant numbers of residential customers are shopping.⁶⁵

Finally, regarding the proposal to automatically return EGS customers to default service at the end of the SOP contract, Mr. Caliva noted that such proposal is unnecessary given the regulatory requirements EGSs must follow to ensure that their customers are made aware of the upcoming contract expiration and resulting options.⁶⁶

In conclusion, Mr. Caliva testified that “rather than focus on tearing down the one program that continues to encourage customer to shop, [RESA] urges the Commission to consider [its] recommendation. . . to open a statewide investigation regarding consumer education about shopping and discontinuing the use of the term ‘Price-to-Compare’. . . [which] would be a good start to more accurately set customer expectations about shopping.”⁶⁷

B. Non-Unanimous Settlement

Despite the initial opposition of PECO and RESA to the proposals of OCA to revise the SOP, the Non-Unanimous Settlement recommends the Commission reform the SOP so that EGSs entering into SOP contracts with customers executed after June 1, 2025 “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.”⁶⁸ The Non-Unanimous Settlement includes no other provisions to address any of RESA’s recommendations to include RESA’s proposal for a statewide investigation of messaging regarding the default service rate and its proposal to reject PECO’s anti-competitive bill presentation. As the Non-

⁶⁵ RESA St. No. 1-R at 11.

⁶⁶ RESA St. No. 1-R at 11.

⁶⁷ RESA St. No. 1-R at 11.

⁶⁸ Non-Unanimous Settlement at 17, ¶ 64.

Unanimous Settlement will likely result in the end the SOP and offers no other affirmative steps to address the competitive market concerns addressed by RESA, RESA strongly opposes its adoption.

1. Returning Shopping Customers To Default Service Violates The Competition Act And The Commission's Long Established Rule Permitting EGSs To Automatically Convert Existing Contracts With Proper Customer Notice

The General Assembly “found and declared” that “the Commonwealth must begin the transition from regulation to greater competition in the electricity generation market” and “competitive market forces are more effective than economic regulation in controlling the costs of energy.”⁶⁹ As part of the transition to competition, the Competition Act defines “direct access,” in part, as the right of EGSs to have nondiscriminatory access comparable to the EDC’s own use of its system.⁷⁰ The Competition Act also empowers the Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate “the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity.”⁷¹

In furtherance of these statutory provisions, the Commission has a long history of approving and implementing policies designed to create a fair and level playing field in

⁶⁹ 66 Pa. C.S. § 2802(5) and (7).

⁷⁰ 66 Pa. C.S. § 2803 (Direct Access is defined as “The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system to transport electricity from any generator of electricity to any end-use customer.”)(emphasis added); 66 Pa. C.S. § 2804(6) (“A public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system.”).

⁷¹ 66 Pa. C.S. §§ 2811(a) and (b).

Pennsylvania's retail electricity market. The SOP is one such program, the value of which was recognized by the Commission as early as 2007 as codified in 52 Pa. Code § 69.1815.⁷²

After a three-year process which involved stakeholder collaboratives and numerous comment opportunities, the Commission resolved all issues regarding the structure for SOP including the ones below which are relevant to this proceeding:⁷³

- The Standard Offer Customer Referral Program should be voluntary for customers, i.e., “opt-in”, as well as for participating EGSs.
- Customers may choose to be assigned to an EGS of their choice or may choose a random assignment. The process by which an EGS is assigned either randomly or by customer choice, at the customer's discretion, will be specifically detailed in each EDC's plan proposal to ensure fairness and impartiality.
- Once a customer enrolls in the Standard Offer Customer Referral Program, the enrollment will be forwarded to the EGS for EDI processing.
- All existing customer notification requirements apply, including notices and the timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship.
- **At the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a different EGS or the customer's return to default service, the customer will remain with the EGS on a month-to-month basis, and shall not be subject to any termination penalty or fee. However, this should not deter an EGS from offering longer, fixed-term prices.**

The decision of the Commission to permit the customer who does not take action to the contrary to remain with the EGS was in direct response to the position of the OCA that “affirmative consent should be required both to enroll in the program and to continue beyond the

⁷² *Default Service and Retail Electric Markets*, Docket No. M-00072009, Final Policy Statement entered Feb. 9, 2007 states: “The public interest would be served by consideration of customer referral programs in which retail customers are referred to EGSs.”

⁷³ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered March 2, 2012, at 31-32 (“*RMI Intermediate Work Plan Final Order*”) (emphasis added).

initial introductory period.”⁷⁴ However, it was wholly consistent with the Commission’s long-standing decision to permit customers to remain with an EGS upon contract expiration so long as the required regulatory notices are provided. In fact, as part of the update of its customer disclosure regulations in 2014, the Commission stated:

Because the intent of the competitive market is to encourage customers to shop for their retail electricity supply, we do not believe it is appropriate for a customer to be reverted to default service should that customer fail to respond to either of the two EGS-provided notices.⁷⁵

Consistent with this, the regulations require all EGSs to send customers two contract expiration notices prior to expiration of a fixed duration contract or prior to a change in contract terms, pursuant to the Commission’s regulations at 52 Pa. Code § 54.10. The first is an “Initial Notice” that the EGS is required to send to the customer between 45 and 60 days before the expiration date of the contract. The second is an “Options Notice” that the EGS must send to the customer at least 30 days prior to the expiration of the fixed duration contract. The Commission’s regulations are very detailed as to what must be contained in those notices. For example, the Options Notice is required to advise the customer of the specific changes being proposed by the EGS and inform the customer of how to exercise the customer’s options, including the customer’s ability to accept the proposed change, to choose another product offering from the customer’s existing EGS, to select another EGS or to return to default service.⁷⁶ If a customer fails to respond to either of these notices, the Commission’s regulations

⁷⁴ See *RMI Intermediate Work Plan Tentative Order* at 12 (emphasis added).

⁷⁵ See, e.g., *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered Apr. 3, 2014, at 38.

⁷⁶ 52 Pa. Code § 54.10(2)(i).

permit an EGS to convert the contract to either a month-to-month contract or another fixed duration contract so long as certain requirements are met.⁷⁷ In addition, the Commission's 2014 revision of its customer disclosure regulations requires EGSs to provide notice of a subsequent change in pricing at least 30 days in advance when a customer does not respond to the contract expiration notices and is moved to a month-to-month pricing.⁷⁸

The Commission has not modified this SOP program feature, and, in December 2020, it soundly rejected the proposal of PPL to implement the exact same provision of automatically returning EGS customers to default service upon SOP contract expiration.⁷⁹

2. Adopting The Proposal Of The Non-Unanimous Settlement Would Be To Permit Slamming

To accept the proposal of the Non-Unanimous Settlement, the Commission has to agree that a lack of action on the part of the SOP customer is not an affirmative choice to accept the renewal terms offered by the EGS. Accepting this premise would be contrary to the Commission's well-established precedent and is not supported by the facts in this record.

SOP customers who choose to stay with their supplier made an affirmative choice when they enrolled in the SOP, were informed about the program details of the SOP, and understood the process for renewal that would occur consistent with the Commission's regulations. In the competitive market, there are endless reasons why a consumer may elect to remain with the SOP EGS – even at a rate higher than previously charged.⁸⁰ Moreover, the Commission has

⁷⁷ 52 Pa. Code § 54.10(3).

⁷⁸ 52 Pa. Code § 54.10(2)(ii)(A)(I).

⁷⁹ *PPL DSP 5 Order* at 2, 44-45, 92 and 98.

⁸⁰ This truism is easily seen in other markets. For example, a consumer may choose to pay a premium for a dozen of eggs because they are pasture-raised. Another consumer may elect to purchase a product on-line even though the product would cost less in a retail store due to the convenience of having it delivered.

steadfastly maintained that: (1) providing proper notice to their customers prior to the end of the contract; and, (2) not imposing any cancellation fees for a contract that automatically renews are the ways to ensure that a lack of action evidences an EGS customer's affirmative intention to remain with the EGS.⁸¹ Given that the goal of the SOP is to introduce consumers to the competitive market, requirements making it more difficult for consumers to remain in the competitive market upon SOP contract expiration undercut the very purpose for which the SOP was created.

Since the Commission has well-established that EGSs are legally permitted to convert an existing SOP contract consistent with the terms of its contract renewal notices and without the customer taking affirmative action to the contrary,⁸² any proposal to ignore this and switch the SOP customer to default service would constitute illegal "slamming." Slamming occurs when a customer's EGS is switched without authorization.⁸³ In May 1998, the Commission adopted a final rulemaking to establish anti-slamming regulations designed to ensure customer consent to a

⁸¹ See, e.g., *Final Rulemaking Order Establishing Customer Information Disclosure Requirements for Electricity Providers*, 52 Pa. Code, Chapter 54, Docket No. L-00970126, Final Order entered April 30, 1998 ("our regulations do allow for a renewal clause in a fixed term agreement, provided that the renewal occurs with proper customer notice and the new agreement is open-ended."); *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286, Order entered Sept. 23, 2010, at 24 ("customers who fail to respond to a renewal notice from their current supplier [will be provided] the opportunity to cancel, without penalty, any resulting agreement with that supplier.").

⁸² The Commission has specifically stated that this process of relying on a customer's inaction as affirmative consent to continue with the EGS is not slamming. *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286, Order entered Sept. 23, 2010, at 23.

⁸³ 66 Pa. C.S. § 2807(d) requires the Commission to establish regulations to ensure that an EDC does not change a customer's electricity supplier without consent.

change of EGS.⁸⁴ In adopting the anti-slamming regulations in 1998, the Commission announced a “zero-tolerance” policy on slamming, stating as follows:

Today, we set in place the “rules of the road” by which customers’ requests to switch electric generation supplier will be processed. We have observed other industries in which unauthorized customer switching, known as “slamming,” has occurred. We wish to state now, up front and for the record: this Commission will have zero tolerance for slamming by any means and in any form.⁸⁵

For the past two decades, the Commission has been steadfast in its resolve to prohibit and prevent slamming in any means and any form. It has repeatedly reiterated its long-standing “zero-tolerance” policy on slamming.⁸⁶ As promised in 1998, the Commission has levied maximum civil penalties on EGSs who have slammed customers.⁸⁷

To adopt the Non-Unanimous Settlement proposal here would be to permit slamming because the customer who has affirmatively selected the SOP and chosen not to take any action during the renewal period to select a different product or supplier will be automatically returned to default service. This would occur notwithstanding the Commission’s clear historical decisions that inaction during the renewal period constitutes customer consent to remain with the EGS. Thus, adoption of the Non-Unanimous Settlement would be changing the SOP customer’s

⁸⁴ 28 Pa.B. 5770; 52 Pa. Code §§ 57.171-180.

⁸⁵ Statement of Chairman Quain, Vice Chairman Bloom, Commissioner Hanger, Commissioner Rolka and Commissioner Brownell, Docket No. L-00970121 (May 21, 1998) (emphasis added), quoted in *Standards for Changing a Customer’s Electricity Generation Supplier*, 44 Pa.B. 3539 (June 14, 2014).

⁸⁶ See, e.g., *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered Apr. 3, 2014.

⁸⁷ See *PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861, Order entered Dec. 5, 2013, at 9, quoting *PUC v. Total Gas & Electric Inc.*, Docket No. M-0011529, Order entered Sept. 26, 2001, at 5 (the Commission stressed that it does not trivialize slamming allegations and seeks to deter such conduct by instituting firm retaliatory measures).

electricity supplier without consent and in violation of Section 2807(d) of the Competition Act and must be rejected.

3. The Commission Has Already Soundly Rejected The Same Illegal SOP Proposal For PPL

In its default service plan filed in 2020, PPL included a proposal to implement automatically return EGS customers to default service upon expiration of the SOP contract unless the customer took affirmative action to the contrary. The Commission rejected the proposal. The Commission reconfirmed that the purpose of the SOP “is to enhance choice and facilitate the development of retail markets through increased participation of residential and small commercial customers in the retail electricity market.”⁸⁸ Regarding the roles of the EDC and the EGS in the context of an SOP enrollment, the Commission emphasized that it is the EGS, not PPL as the EDC, that has a relationship with the customer regarding their electric supply. According to the Commission, once the customer expresses an interest in the SOP product and is transferred is enrolled, “the EDC – PPL Electric – has no further role in administering the SOP.”⁸⁹ The Commission found “no difference between SOP and non-SOP customers [to] justify[] differential treatment between SOP and non-SOP shopping customers” and stated that “it is well-established that the lack of action on the part of the customer results in the customer being automatically renewed with the same EGS.”⁹⁰ No signatory of the Non-Uniform Settlement presented evidence in support of upending these prior determinations or showing that the Commission made them in error that needs to be corrected now.

⁸⁸ *PPL DSP 5 Order* at 92-93.

⁸⁹ *PPL DSP 5 Order* at 93 (emphasis added).

⁹⁰ *PPL DSP 5 Order* at 94 and n. 29.

Regarding the specific proposal of PPL, which is the same as contained in the Non-
Unanimous Settlement, the Commission viewed it as a modification of the existing SOP
“inconsistent with the Section 54.10 and the final guidelines in the *RMI IWP Final Order*” and
went on to analyze whether the proposed restriction on competition was supported by substantial
evidence of record.⁹¹ Ultimately, the Commission found no harm to redress despite record
evidence that more than 90% of EGS customers post SOP contract expiration paid prices above
PPL’s default service rate.⁹² The Commission stated that customers paying more upon
expiration of the SOP contract was not indicative of “overpaying” and the record evidence did
not show any increase in customer complaints overtaxing the ability of EDC customer service
representatives or an increase in collection activities for these post SOP shopping customers.⁹³
On the contrary, the Commission noted that nearly 80% of the shopping customers enrolled via
SOP elected a different plan by the fourth month after the end of that year.⁹⁴ Though not stated
directly by the Commission, the fact that customers were exercising affirmative action within
four months after SOP contract expiration appears to have been persuasive evidence that the
program is in fact working as intended.

4. The Record Does Not Support Reversing Prior Commission Decisions To Reject Automatically Returning EGS Customers To Default Service Upon SOP Contract Expiration

Turning to this proceeding, information specific to prices paid by EGS customers
following SOP expiration was not available or presented by PECO. To support its initial proposal
to continue the SOP, PECO presented evidence that more than 28,200 customers have been

⁹¹ *PPL DSP 5 Order* at 95-96.

⁹² *PPL DSP 5 Order* at 96-98.

⁹³ *PPL DSP 5 Order* at 97.

⁹⁴ *PPL DSP 5 Order* at 98.

referred to EGSs under the SOP with 10,000 residential customers and 258 small business customers enrolled since June 1, 2021.⁹⁵ PECO also presented the results of a customer satisfaction survey of customers who participate in SOP between June 1, 2021 and June 30, 2023. These results show that 80% of respondents reported a positive experience with PECO's SOP based on the ease of signing-up and bill savings. At the end of the initial 12-month contract, 51.1% of the survey respondents selected a new EGS, 20.2% returned to default service and 20.2% remained with the EGS who had provided the SOP product.⁹⁶

With no record evidence to support the view that post SOP contract pricing is somehow “hurting” customers to warrant a revision of this long-standing program feature, OCA Witness Alexander tried to support the recommendation with her view that “the original purpose” of SOP has been accomplished, that customer participation in SOP has “levelled off” and PECO should not “function as the marketing and enrollment arm for the EGSs.”⁹⁷ OCA's conclusions, not supported by substantial evidence, are broader than the issue of PECO's SOP program. Given the illegality of the proposal in the Non-Unanimous Settlement, as discussed above, and the fact that in this EDC specific proceeding it would upend the Commission's decision on this program feature which resulted after a statewide process and be contrary to existing Commission customer disclosure regulations, RESA urges the ALJs to recommend that the Commission reject it.

Moreover, while OCA may have retreated from overtly taking the view that this proposal is necessary for reasons other than attempting to “protect” customers from pricing post SOP

⁹⁵ PECO St. No. 1 at 29-30.

⁹⁶ PECO St. No. 1 at 30.

⁹⁷ OCA St. No. 2 at 14.

contract expiration, it must be noted that nothing in the Competition Act confers jurisdiction, either explicitly or implicitly, to the Commission to regulate EGS prices or to dictate the prices that are charged. To the contrary, the Legislature made clear that the price of generation supply is exempt from regulation, noting that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”⁹⁸ Further, as stated in Section 2806(a), “[t]he generation of electricity shall no longer be regulated as a public utility service.”⁹⁹ The Commission’s statutory authority for determining whether rates are “just and reasonable” is limited to public utilities, which does not include EGSs.¹⁰⁰

The Commission has long recognized its lack of jurisdiction to regulate prices charged by EGSs. For instance, the Commission’s regulations require bills for customers who have chosen electric generation services from an EGS to include a statement noting that “[g]eneration prices and charges are set by the electric generation supplier you have chosen.”¹⁰¹ The Commission’s regulations also require EGS disclosure statements to contain this language.¹⁰² The Commission has also declared that “[t]he rates consumers pay in the retail electric market are governed by the terms of their contract with their supplier.”¹⁰³ Similarly, the Commission has confirmed its lack of statutory authority to regulate the prices charged by EGSs in the context of litigated

⁹⁸ 66 Pa.C.S. §2802(5).

⁹⁹ 66 Pa.C.S. § 2806(a).

¹⁰⁰ 66 Pa.C.S. §1301. *See Delmarva Power & Light Co. v. PUC*, 870 A.2d 901 (Pa. 2005) (EGSs are not public utilities except for very limited and inapplicable purposes). The Commonwealth Court has repeatedly confirmed the Commission’s lack of statutory authority to regulate EGS prices and concluded that the Commission does not have jurisdiction to determine whether such prices are just and reasonable. *CAUSE-PA CAP Shopping Order* at 1101; *See also HIKO Energy, LLC v. Pennsylvania Pub. Util. Comm’n*, 163 A.3d 1079, 1082, n. 1 (Pa. Commw. Ct. 2017).

¹⁰¹ 52 Pa. Code §54.4(b)(10)(i).

¹⁰² 52 Pa. Code §54.5(f)(1).

¹⁰³ *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134, Order entered March 4, 2014, at 3

proceedings noting that it is “well-settled that the Commission does not have traditional ratemaking authority over competitive suppliers and cannot regulate competitive supply rates.”¹⁰⁴ Therefore, adopting the Non-Unanimous Settlement proposal in an effort to regulate the price to be paid by EGS customers post SOP contract expiration would be a violation of the Competition Act and cannot be approved.

V. OTHER ISSUES

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

RESA formulated a proactive recommendation for the Commission to initiate a statewide investigation about the messaging of EDC provided default service, including the continued use of the PTC. In numerous contexts, particularly those evaluating the success of the retail electric market, numerous entities including the PUC and EDCs hold the PTC up as the basis against which all EGS pricing offers should be judged. For instance, consumer and low income consumer advocates use the PTC to gauge the reasonableness (in their view) of EGS offers.¹⁰⁵ Likewise, many PUC initial decisions and orders inexplicably focus on the difference between the default service rate and the supply prices in the market.¹⁰⁶ Indeed, the name of the term itself as a “Price to Compare” implies that it is the standard by which other offers should be evaluated.

Despite the frequent and ongoing comparisons that are made between default service rates and supply prices in the market, RESA’s Witness Caliva explained that this is a misleading and inaccurate comparison for a whole host of reasons and is an inappropriate data point to use

¹⁰⁴ *CRH Catering Company, Inc. v. Blue Pilot Energy, LLC*, Docket No. P-2014-2451865, Order entered February 24, 2015 at 15-16.

¹⁰⁵ RESA St. No. 1 at 13.

¹⁰⁶ RESA St. No. 1-R at 3-7.

in evaluating EGS offers and the success of the retail market. As Mr. Caliva testified, a statewide investigation that is focused on the messaging of default service would be a beneficial path for the PUC to pursue at this time so that interested stakeholders have a say in that message. Simply put, EGSs are reluctant to make longer term investments in the market so long as the messaging reinforces the purported superiority of the default service rate. Rather, EGSs will continue to be primarily focused on short-term arrangements that undercut the DSP. This hampers the ability of EGSs to develop more innovative and a greater variety of competitive products and services for consumers. This is a disappointing result for consumers which, based on the information Mr. Caliva reviewed in his Direct Testimony shows no hope of reversing without decisive Commission action in this proceeding.¹⁰⁷

The reasons for the shortcomings between these comparisons are many and include: (i) the differences in the manner in which default service rates are established (through a regulated process) and in which supply prices in the market are developed (based on the supplier's business models and various factors, such as wholesale market conditions: (ii) the time gap between the procurement of energy for default service and that used for supply service in the market, particularly due to the uncertainty as to the volume of electricity that will be procured; (iii) the EDCs' reconciliation of default service rate, which is not available to EGSs; and (iv) the variations in the way in which costs to provide default service vs. to provide supply service in the market are recovered, especially when EDCs have the ability to use revenues from the distribution side of the business to subsidize default service rates.¹⁰⁸

¹⁰⁷ RESA St. No. 1 at 17-18.

¹⁰⁸ See RESA St. No. 1 at 8-9, 20-22.

The PUC has long recognized that differences exist between these two services.¹⁰⁹ After over 25 years, it is time for the Commission to initiate a statewide investigation that examines all the factors that make these two business models inappropriate for comparisons or any expectations that they be comparable. The cost data is generally available in base rate cases, although PECO did acknowledge here that several Company overhead cost categories are allocated solely to distribution service. Yet, the time that is available in base rate cases may not lend itself to the full analysis of this issue that is warranted. However, a statewide investigation would enable the PUC to issue data requests and take the time that is needed to consider all issues.

However, without a willingness to revisit the underlying use of the “PTC” as the rate by which all other prices should be gauged will ensure that the market continues to remain stagnant. When EGSs that are not on a level playing field with the EDC’s default service and cannot trust the regulatory landscape to support their investment of dollars for the benefit of consumers, it is not realistic to expect the market to develop and function. Perhaps after a statewide investigation, the PUC would conclude that PTC remains the most accurate and acceptable term; however, that does not mean that an investigation should not be launched. To the contrary, when participation in the market is steadily on a downward trend, the PUC would not be fulfilling its statutory obligations if it fails to consider all possible sources. Clearly, the testimony of RESA Witness Caliva demonstrates that while other structural issues exist, the continued use of the

¹⁰⁹ *Investigation of Pennsylvania’s Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Order entered Feb. 15, 2013), at 12 (*End State Final Order*) (“[D]ue to reconciliation and the mix of contracts that EDCs use to establish the PTC, EGSs must compete with a PTC that often is not correlated to wholesale energy markets and may move in directions opposite that of wholesale energy markets trends. This can inhibit consumers’ ability to make informed decisions due to the receipt of false or misleading price signals.”).

term PTC and messaging around default service is an area that warrants further investigation due to its significant impact on the market.

B. PECO's Proposed Residential Customer Bill Format Changes

In its filing, PECO proposed to add a chart to the first page of shopping residential customers' bills which the Company purports will compare the customer's total supplier charges for the billing period with what they would have paid if they were on default service.¹¹⁰ While PECO claims this proposal will be informative and provide transparency for customers, in fact this proposal violates the Competition Act, is overly simplistic, and will be misleading and confusing to customers. Therefore, this proposal should be rejected.

The Competition Act clearly states that it is "...in the public interest to permit retail customers to obtain direct access to a competitive generation market..."¹¹¹ and directed that "all customers...shall have the opportunity to purchase electricity from their choice of EGS. The ultimate choice of the EGS is to rest with the consumer."¹¹² Further, customers "should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources..."¹¹³ PECO's proposal to add a comparison chart to the customer's bill is problematic because it inherently judges the customer's choice of EGS and retail product in relation to default service, and perpetuates the idea that default service is superior based only on an oversimplified price comparison. This runs afoul of the Competition Act, which specifically gives customers direct access to shop for competitive generation supply, as well as the option to

¹¹⁰ PECO St. No. 1 at 29; PECO Exh. SD-6.

¹¹¹ 66 Pa. C.S. § 2802(3).

¹¹² 66 Pa. C.S. § 2806(a).

¹¹³ 66 Pa. C.S. § 2804(2).

choose between a variety of products and services.¹¹⁴ The Competition Act also does not anticipate any input or judgement from the EDC on the customer's shopping choices being included on the customer's bill. Rather, the Competition Act only anticipated that customer bills would include sufficient information to determine the basis for the charges reflected on the bill,¹¹⁵ and not any comparison to the default service rate.

In addition to violating the Competition Act, the default service product and an EGS's retail product are priced differently, such that this overly simplified comparison would be misleading and would not provide a true "apples-to-apples" comparison.¹¹⁶ Including a visual graph to display the difference between the supplier price and the default service rate in effect at a particular point in time does not account for the nature of the contract, the length of the contract, or other variables that may result in the price being higher than the PTC in a particular month. For example, the customer may have selected a product that includes renewable energy, provides for long-term price stability, or other benefits that may result in a price that is higher than the PTC at a particular point in time.¹¹⁷ The snapshot that PECO proposes to provide would not account for the added value provided by these types of products. Additionally, by displaying charges that are lower than the PTC in green and higher than the PTC in red, the chart would implicitly suggest a judgement of the customer's shopping choices, even if they may have specifically chosen a renewable product, for example, that may have a higher price in that particular month.¹¹⁸ The competitive market gives customers the option to choose from a variety

¹¹⁴ *Id.*

¹¹⁵ 66 Pa. C.S. § 2807(c).

¹¹⁶ RESA St. No. 1 at 19.

¹¹⁷ RESA St. No. 1 at 20-21.

¹¹⁸ *Id.* at 19.

of products based on their needs,¹¹⁹ but PECO's proposal ignores the important distinctions between the default service rate and the competitive supply product and presents the information in a way that is impermissibly biased in favor of default service.

Additionally, the default service rate and the EGS's price are developed in entirely different ways. PECO's default service rate is the result of a highly regulated procurement process requiring PUC approval of the utility's default service plan, while competitive retail supply products are based on the current market and reflect retail costs and an associated risk premium to account for future changes in the costs to serve customers.¹²⁰ PECO's proposed comparison chart implies that these products are developed in similar way and are therefore comparable, which they are not.¹²¹ As discussed above, the Competition Act specifically anticipates customers shopping for a wide variety of products and services, and does not contemplate the customer bill including anything beyond the information necessary to determine the basis for the charges displayed on the bill.¹²² Thus, the proposed chart would run afoul of the Competition Act, present misleading information, and fail to achieve PECO's stated goal of providing useful information to customers.

For these reasons, PECO's proposed residential bill comparison chart should be rejected. The proposal is anti-competitive in that it would include information on the customer bill that was not anticipated by the Competition Act,¹²³ discourages shopping by presenting information

¹¹⁹ 66 Pa. C.S. § 2804(2).

¹²⁰ RESA St. No. 1 at 22.

¹²¹ *Id.*

¹²² 66 Pa. C.S. § 2807(c).

¹²³ 66 Pa. C.S. § 2807(c).

in a way that perpetuates the idea that default service is superior based only on price,¹²⁴ and is generally contrary to the goal of increasing competition, which the General Assembly has found to be in the public interest.¹²⁵ While the proposal included in the Joint Petition to remove the third column of the proposed chart in PECO Exhibit SD-6 showing the variance between the two charges is an improvement,¹²⁶ it is not enough. RESA strongly encourages the Commission to reject PECO's proposal in its entirety, as this is the only option that promotes competition consistent with the goals and requirements of the Competition Act.

Alternatively, if the Commission does not outright reject this proposal (which RESA strongly views as the only outcome that supports competitive markets), the Commission should instead direct that PECO must include specific disclosures about the price comparison on any bill redesign, which will be developed through a collaborative process and submitted to the Commission for approval prior to implementation.¹²⁷ At a minimum, these disclosures should include statements on the nature of PECO's default service rate, and disclosures about PECO's lack of knowledge about specific characteristics of the EGS's products or prices.¹²⁸ There is adequate time for a collaborative process to develop such disclosures, since the Company is not proposing to implement these bill changes until two (2) years after the start of this default service plan.¹²⁹ In addition, PECO should also be directed to consider providing more space on the

¹²⁴ RESA St. No. 1 at 22.

¹²⁵ 66 Pa. C.S. § 2802(3).

¹²⁶ Non-Unanimous Settlement at 18, ¶ 66.

¹²⁷ RESA St. No. 1 at 23.

¹²⁸ *Id.*

¹²⁹ *Id.*

consolidated utility bill for suppliers to do customer-specific messaging and otherwise explain how the supplier product is different from the default service rate.¹³⁰

While RESA believes in the strongest terms that PECO's proposal must be rejected because it violates the Competition Act and is anti-competitive and misleading, this alternative proposal is necessary to protect competition and more fully inform customer of the limitation of this information in the event that the PUC adopts PECO's proposal.

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

Suppliers have experienced significant issues during PECO's ongoing Customer Information System ("CIS") upgrade that have frustrated suppliers' ability to serve customers, and customers' ability to successfully shop for competitive supply services. To address these issues and any additional issues that may arise in the future, RESA submits that PECO should be directed to include specific processes to work collaboratively with competitive suppliers during the implementation period for its new CIS. These measures will help ensure that suppliers are able to continue providing service and making offers to customers.

Under the Competition Act, PECO is obligated to work with EGSs to ensure that customers are able to shop for their electric generation supply. The Competition Act requires that EDCs "provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth,"¹³¹ and that customers must be allowed to "choose among EGSs in a competitive generation market through direct access..."¹³² "Direct access" is defined as:

¹³⁰ *Id.*

¹³¹ 66 Pa. C.S. § 2802(14).

¹³² 66 Pa. C.S. § 2804(2).

The right of electric generation suppliers and end use-customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies' own use of the system to transport electricity from any generator of electricity to any end-use customer.¹³³

When implementing its new CIS, PECO completely ignored the needs of suppliers to efficiently access PECO's system or to communicate with PECO regarding customer enrollments. This violated the rights of both the EGSs and shopping customers under the Competition Act, by inhibiting direct access to PECO's system that is essential for EGSs to enroll customers and supply electric generation service to those customers, and which is required by the Competition Act.¹³⁴

RESA Witness Caliva highlighted a number of problems that have affected suppliers and customers during PECO's CIS transition. For example, PECO has assigned customers a "Choice ID" to be used instead of an account number to change their supplier. However, the Choice ID number contains the same number of digits as the utility account number so the numbers are easily confused.¹³⁵ Further, customers had not received any bills with the new Choice ID on them, and the Eligible Customer List ("ECL") also had not been updated to include the new Choice IDs, so neither customers nor suppliers had the ability to access the Choice ID which is an essential piece of information needed to change suppliers.¹³⁶ When customers called PECO asking for their Choice IDs, they were instead given their new account numbers, and their enrollments were later rejected because the correct Choice ID was not provided. PECO

¹³³ 66 Pa. C.S. § 2803.

¹³⁴ 66 Pa. C.S. §§ 2802(14), 2804(2).

¹³⁵ RESA St. No. 1 at 25.

¹³⁶ *Id.*

subsequently refused to work with the suppliers to match the account number to the Choice ID, resulting in many customers being unable to enroll as requested.¹³⁷

RESA members also experienced issues with the rejection of invoices for supplier customer accounts that have been closed by PECO. PECO advised suppliers to issue separate bills, or dual bill customers for these charges while the Company worked to resolve the issue. However, this was neither possible nor legal under PECO's tariff provisions governing its Purchase of Receivables ("POR") program and the Commission's regulations, which require suppliers to honor the billing method chosen by the customer.¹³⁸

To correct these issues and any additional issues that may arise, RESA Witness Caliva recommended that, going forward, PECO be directed to include specific processes to work collaboratively with competitive suppliers to provide reasonable support their ability to provide service and enroll customers.¹³⁹ Specifically, PECO should be directed to: (1) provide daily updates to competitive suppliers and weekly updates to PUC staff for at least the first 90 days of any system upgrade, including reporting on the number of issues identified by suppliers, the number of customers impacted, an explanation of efforts to resolve those issues without placing an undue burden on suppliers, and the estimated timeline for resolution; (2) assign each competitive supplier a consistent point of contact for addressing CIS upgrade issues experienced by that suppliers; and (3) exercise flexibility when troubleshooting supplier issues with the goal

¹³⁷ *Id.* at 25-26.

¹³⁸ *Id.* at 26-27; *see* 52 Pa. Code § 54.4(b)(8) and (9).

¹³⁹ RESA St. No. 1 at 27.

of offering realistic solutions that do not unduly burden the supplier and ensure the best possible customer experience.¹⁴⁰

PECO Witness Dalessio opposed these proposals, arguing that they are moot because the new CIS has been launched and issues with the electronic data interchange (“EDI”), which is the interface through which EGSs large interact with the Company, have been resolved.¹⁴¹ In fact, these issues are not moot and remain needed to address any future issues that may arise. Having the new system in place does not obviate the need to improve communication in the future and address any bugs that may continue to arise with the new system that may negatively affect suppliers and shopping customers.¹⁴² Further, PECO only addressed the issues *after* causing significant confusion for customers and distress for EGSs,¹⁴³ and violating basic tenets of the Competition Act. RESA’s proposals will help prevent such an outcome when future challenges arise. As such, RESA’s recommendations for these collaborative processes are still necessary, and the Commission should direct PECO to implement these processes to improve communication and ensure that customers continue to have access to competitive supply consistent with the goals of the Competition Act.

VI. CONCLUSION

For the foregoing reasons, RESA strongly urges the ALJs to issue a Recommended Decision which rejects the Non-Unanimous Settlement, adopts PECO’s initial proposal as filed and recommend:

¹⁴⁰ *Id.*

¹⁴¹ PECO St. No. 1-R at 29.

¹⁴² RESA St. No. 1-SR at 11.

¹⁴³ *Id.*

- That the commission institute a statewide investigation to investigate its approved messaging of default service as the “Price-to-Compare” to include discontinuing use of that term by replacing it with “default service rate;”
- Rejection of PECO’s proposal to add a comparison chart to residential customers’ bills showing what the customer would have paid if they had been on default service as well as a comparison of the two charges;
- Direct PECO to include specific processes to work collaboratively with competitive suppliers during the implementation period for its new Customer Information System to ensure that suppliers are able to continue providing service and making offers to customers;
- Reject PECO’s proposal to include a Capacity Proxy Price as part of its wholesale default service supply procurement process;
- To the extent PECO’s proposal to double the amount of its solar AEC procurement for default service is recommended for approval, require PECO to allocate any solar AECs acquired through its long-term contract procurement process to the supply load for all distribution customers, not only to default service customers.

Respectfully submitted,

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Appendix A

Proposed Findings of Fact

APPENDIX A – PROPOSED FINDINGS OF FACT

1. The Retail Energy Supply Association (“RESA”) is a trade association of power marketers, independent power producers, and a broad range of companies within the Mid-Atlantic marketplace, each of whom support the electric services industry and seek to develop a more competitive power industry.
2. RESA members are licensed to sell electric energy in the markets of Pennsylvania’s major electric distribution companies (“EDCs”), including in the service territory of PECO Energy Company (“PECO” or the “Company”).
3. Parties to the Non-Unanimous Settlement are PECO, OCA, OSBA, the Tenant Union Representative Network and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (together, “TURN/CAUSE-PA”), and the Energy Justice Advocates (“EJA”) (collectively, the “Joint Petitioners”). Non-Unanimous Settlement at 1.
4. Parties not opposing the settlement are Calpine Retail Holdings, Inc. (“Calpine”), Constellation Energy Generation, LLC and Constellation NewEnergy Inc. (“Constellation”), and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”). Non-Unanimous Settlement at 1.
5. RESA and NRG oppose the Non-Unanimous Settlement. Non-Unanimous Settlement at 1.
6. The current status of the competitive market is stalled and residential customers are being denied the benefits of competition because of the entrenchment of EDC provided default service. RESA St. No. 1 at 6-18.

Capacity Proxy Price

7. PECO proposed to introduce the use of a Capacity Proxy Price (“CPP”) and true-up mechanism when PJM does not conduct its Base Residual Auction (“BRA”) under the Reliability Pricing Model (“RPM”) in time for wholesale default service supply bidders to formulate their bids for the default service supply auctions. PECO St. No. 4 at 18-19.
8. Pursuant to PECO’s proposal, wholesale default service suppliers will be able to use the CPP if the capacity price is not known for all months of the delivery period for a product offered at least five business days prior to the bid date. Then, when PJM sets the capacity price, winning wholesale default service suppliers would be made whole for the difference between the calculated CPP and the actual capacity price paid to PJM. PECO St. No. 4 at 18-19.
9. The payments to the wholesale default service suppliers for the true-up will be collected from default service customers through the PTC in a future period. PECO St. No. 4-R at 19.
10. The lack of a BRA negatively impacts all Load Serving Entities (“LSEs”) which include the wholesale default service suppliers as well as EGSs. RESA St. No. 1 at 29-30.

11. PECO's proposal only insulates the wholesale default service suppliers from the risks which will lead to unnecessary distortions in the pricing of generation services offered to all customers. RESA St. No. 1 at 29-30.
12. All LSEs rely on the forward capacity auction price signals to develop their pricing for generation services. RESA St. No. 1 at 29.
13. For wholesale default service suppliers bidding in one of PECO's auctions, the forward capacity auction price signals are used to develop the bids submitted in PECO's default service bidding process. RESA St. No. 1 at 29.
14. For competitive EGSs, the forward capacity auction price signals are factored into the development of competitive prices that are offered to potential customers. RESA St. No. 1 at 29.
15. PECO's proposal insulates wholesale default service suppliers from the risks of not having the forward capacity auction price signals at the time bids are submitted to PECO for default service supply by allowing them to use the CPP calculated by PECO and then, when the price becomes known, PECO will make the wholesale default service suppliers whole for the difference. PECO St. No. 4 at 18-19.
16. The lack of forward capacity auction price signals require EGSs to decide whether to: (1) cease developing competitive products and services due to the uncertainty; or, (2) offer retail contracts that may be under or overpriced once the capacity costs are known. Both of these choices are negative for customers because an EGS cannot sustain providing underpriced service for a significant period of time and "overpriced" service can damage the reputation of the EGS as well as result in customer loss especially given the fact that PECO proposes to compare all EGS prices to the PTC. RESA St. No. 1 at 30.
17. The default service Price-to-Compare ("PTC") will include a true-up mechanism in a future period for the true up once the forward capacity price is known. However, the EGS competitive pricing during that same time period will reflect the result of an EGS's forecasting without the benefit of the forward capacity price with no realistic opportunity for the EGS to true-up the actual costs once the BRA is held. The resulting divergence between the PTC, with the true-up, and the market prices of EGSs at the same time is confusing for customers who have been educated to compare the PTC to EGS pricing. RESA St. No. 1 at 30.
18. The capacity auctions held by PJM establish the capacity price that all LSEs are required to pay for the capacity obligations and is a charge that cannot be avoided. PECO St. No. 4-R at 22.

AEPS Compliance (Solar Alternative Energy Credit Proposal)

19. RESA opposed PECO's original proposal to procure an additional 16,000 Solar AECs through a ten-year fixed priced contract that would be in addition to the 16,000 already procured in the last default service proceeding. RESA St. No. 1 at 33-35.
20. The 10-year pricing scheme determined at the formation of the contract may or may not accurately reflect the actual market price in the next ten years which distorts accurate comparisons between the default service rate and EGS pricing. RESA St. No. 1 at 34.

21. The Non-Unanimous Settlement proposes that PECO will procure, through ten-year, fixed-price power purchase agreements, the energy, capacity and Solar AECs generated by one or more new Pennsylvania solar photovoltaic projects with a total capacity of up to 25 MS to meet the default service requirements of residential customers. Non-Unanimous Settlement at 6, ¶ 21.
22. The Non-Unanimous Settlement does not make any revisions to address the concerns raised by RESA so the resulting Solar AECs would still be procured pursuant to a long-term contract to be used exclusively for the requirements of the default service load. Unanimous Settlement at 6, ¶ 21.
23. The Non-Unanimous Settlement fails to address the competitively neutral concerns identified by RESA and completely ignores how this proposal impacts the resulting default service rate in the overall retail competitive market structure. Unanimous Settlement at 6, ¶ 21.

Adjustment of Default Service Rates

24. In its filing, PECO did not propose to change the frequency with which it changes default service rates, which is quarterly. OCA Witness Ogur recommended that the default service rate be adjusted semi-annually. OCA St. No. 1 at 27-28.
25. The Joint Petition for Settlement provides that PECO will change the frequency for adjusting default service rates from quarterly to semi-annually. Non-Unanimous Settlement at 11, ¶ 40.
26. The ability of the EDC, as the default service provider, to modify its rate for default service in order to reconcile for prior period over and under collections creates a fundamental inequity in the marketplace vis-à-vis default service and competitive offers from EGSs. Although the EDC is statutorily guaranteed cost recovery for default service related expenses, the automatic reconciliation process creates an unfair competitive advantage for the EDC and generates customer confusion. RESA St. No. 1-R at 12.
27. Several factors influence the ultimate level of market responsiveness of default service rates, including the frequency of changes to the default service rate, the frequency of any reconciliation adjustment, the length of underlying fixed price wholesale contracts, the procurement lead time embedded in underlying fixed price contracts and the amount of spot market supply that is factored into the procurement portfolio. RESA St. No. 1-R at 13.
28. Without some rational relationship to the market embedded in the default service rate, EGSs have difficulty establishing competing offers and may not enter that market. Revising the default service rate on a more frequent basis, as PECO does now, is a better approach to ensuring accuracy and providing a real time analysis of the costs incurred. RESA St. No. 1-R at 13.

Time-of-Use Rates

29. Customers should rely on EGSs in the competitive market to develop competitive and innovate products, including TOU offerings to meet these customer needs. RESA St. No. 1-R at 14.

30. Although RESA there is a statutory requirement for the EDC to offer a TOU rate, that does not mean the EDC should expend ratepayer money on creating products that can more appropriately and effectively be delivered by the competitive market. RESA St. No. 1-R at 14.
31. EGSs are best positioned to provide enhanced features and solutions as part of TOU rates that are attractive to customers and meet their needs.
32. TOU offerings are available to customers in the competitive market, and should be accessed there rather than pushing the EDC to spend ratepayer dollars developing such programs.
33. The Commission has also recognized the role EGSs play in offering this product to consumers. Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans, Docket No. I-2011-2237952 (Tentative Order entered Oct. 14, 2011) at 7.

Standard Offer Program

34. PECO did not propose any revisions to the customer referral Standard Offer Program ("SOP"). PECO Witness Dalessio explained that it enhanced the operation of the SOP and conducted a customer satisfaction survey of participants in which over 80% of the respondents reported a positive experience with PECO's SOP. PECO St. No. 1 at 29-30.
35. Price comparisons between the default service rate and EGS prices are spurious because: (1) the way in which an EDC develops the default service rate and the EGS develops retail pricing is not directly comparable; (RESA St. No. 1 at 8-9, RESA St. No. 1-R at 3-4); and (2) comparisons at a particular point in time do not reflect current market conditions, the ability of EDCs to fully reconcile their default service rates at a later time or the other factors that may be at play regarding the EGSs' pricing. RESA St. No. 1-R.
36. EGS prices may include many different variables which impact the pricing such as flat and time-varying rates, fixed-term contract lengths, curtailable contracts and green power contracts. RESA St. No. 1 at 20-21; RESA Exh. FC-2 at 21.
37. RESA Market Savings Reports which show that numerous offers are available in the Pennsylvania retail market that are below the utilities' default service rate. RESA St. No. 1-R at 6-7; RESA Exh. FC-7 through FC-9.
38. SOP remains as one of the last programs in Pennsylvania that is providing an opportunity for customers to become familiar with EGSs and shopping, and reevaluation of SOP is not warranted until significant numbers of residential customers are shopping. RESA St. No. 1-R at 11.
39. Automatically returning EGS customers to default service at the end of the SOP contract is unnecessary given the regulatory requirements EGSs must follow to ensure that their customers are made aware of the upcoming contract expiration and resulting options. RESA St. No. 1-R at 11.
40. SOP customers who choose to stay with their supplier make an affirmative choice when they enrolled in the SOP, were informed about the program details of the SOP, and

understood the process for renewal that would occur consistent with the Commission's regulations.

41. In the competitive market, there are endless reasons why a consumer may elect to remain with the SOP EGS – even at a rate higher than previously charged.
42. More than 282,00 customers have been referred to EGSs under the SOP with 10,000 residential customers and 258 small business customers enrolled since June 1, 2021. PECO St. No. 1 at 29-30.
43. PECO also presented the results of a customer satisfaction survey of customers who participate in SOP between June 1, 2021 and June 30, 2023. These results show that 80% of respondents reported a positive experience with PECO's SOP based on the ease of signing-up and bill savings. At the end of the initial 12-month contract, 51.1% of the survey respondents selected a new EGS, 20.2% returned to default service and 20.2% remained with the EGS who had provided the SOP product. PECO St. No. 1 at 30.

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

44. In numerous contexts, particularly those evaluating the success of the retail electric market, numerous entities including the PUC hold the PTC up as the basis against which all EGS pricing offers should be judged. RESA St. No. 1 at 13; RESA St. No. 1-R at 3-7.
45. The comparison of default service rates and supply prices in the market is a misleading and inaccurate comparison and is an inappropriate data point to use in evaluating EGS offers and the success of the retail market. The reasons for the shortcomings in these comparisons include: (i) the differences in the manner in which default service rates are established (through a regulated process) and in which supply prices in the market are developed (based on the supplier's business models and various factors, such as wholesale market conditions); (ii) the time gap between the procurement of energy for default service and that used for supply service in the market, particularly due to the uncertainty as to the volume of electricity that will be procured; (iii) the EDCs' reconciliation of default service rate, which is not available to EGSs; and (iv) the variations in the way in which costs to provide default service vs. to provide supply service in the market are recovered, especially when EDCs have the ability to use revenues from the distribution side of the business to subsidize default service rates. See RESA St. No. 1 at 8-9, 20-22.

PECO's Proposed Residential Customer Bill Format Changes

46. PECO's proposal to add a comparison chart to the customer's bill is problematic because it inherently judges the customer's choice of EGS and retail product in relation to default service and perpetuates the idea that default service is superior based only on an oversimplified price comparison. RESA St. No. 1 at 19.
47. The default service product and an EGS's retail product are priced differently, such that this overly simplified comparison would be misleading and would not provide a true "apples-to-apples" comparison. RESA St. No. 1 at 19.
48. Including a visual graph to display the difference between the supplier price and the default service rate in effect at a particular point in time does not account for the nature of

the contract, the length of the contract, or other variables that may result in the price being higher than the Price to Compare in a particular month. For example, the customer may have selected a product that includes renewable energy, provides for long-term price stability, or other benefits that may result in a price that is higher than the PTC at a particular point in time. RESA St. No. 1 at 20-21.

49. By displaying charges that are lower than the PTC in green and higher than the PTC in red, the chart would implicitly suggest a judgement of the customer's shopping choices, even if they may have specifically chosen a renewable product, for example, that may have a higher price in that particular month. RESA St. No. 1 at 19.
50. The default service rate and the EGS's price are developed in entirely different ways. PECO's default service rate is the result of a highly regulated procurement process requiring PUC approval of the utility's default service plan, while competitive retail supply products are based on the current market and reflect retail costs and an associated risk premium to account for future changes in the costs to serve customers. PECO's proposed comparison chart implies that these products are developed in similar way and are therefore comparable, which they are not. RESA St. No. 1 at 22.

Supplier Issues During PECO's Customer Information System Upgrade

51. Suppliers have experienced significant issues during PECO's ongoing Customer Information System ("CIS") upgrade that have frustrated suppliers' ability to serve customers, and customers' ability to successfully shop for competitive supply services. RESA St. No. 1 at 25.
52. When implementing its new CIS, PECO ignored the needs of suppliers to efficiently access PECO's system or to communicate with PECO regarding customer enrollments. RESA St. No. 1 at 25.
53. During PECO's CIS transition, PECO assigned customers a "Choice ID" to be used instead of an account number to change their supplier. RESA St. No. 1 at 25.
54. The Choice ID number contains the name number of digits as the utility account number so the numbers are easily confused. RESA St. No. 1 at 25.
55. Customers had not received any bills with the new Choice ID on them, and the Eligible Customer List ("ECL") also had not been updated to include the new Choice IDs, so neither customers nor suppliers had the ability to access the Choice ID which is an essential piece of information needed to change suppliers. RESA St. No. 1 at 25.
56. When customers called PECO asking for their Choice IDs, they were instead given their new account numbers, and their enrollments were later rejected because the correct Choice ID was not provided. PECO subsequently refused to work with the suppliers to match the account number to the Choice ID, resulting in many customers being unable to enroll as requested. RESA St. No. 1 at 25-26.
57. RESA members also experienced issues with the rejection of invoices for supplier customer accounts that have been closed by PECO. PECO advised suppliers to issue separate bills, or dual bill customers for these charges while the Company worked to resolve the issue. RESA St. No. 1 at 26-27.

58. Having the new CIS in place does not obviate the need to improve communication in the future and address any bugs that may continue to arise with the new system that may negatively affect suppliers and shopping customers. RESA St. No. 1-SR at 11.
59. PECO only addressed CIS implementation issues affecting EGSs after causing significant confusion for customers and distress for EGSs. RESA St. No. 1-SR at 11.

APPENDIX B

Proposed Conclusions of Law

APPENDIX B – PROPOSED CONCLUSIONS OF LAW

1. Current regulations permit EGSs to automatically renew customers so long as the legally required notices are provided. 52 Pa. Code §54.10(3) (“When a customer fails to respond to either notice, the following apply: (i) A fixed duration contract shall be converted to one of the following: (A) A month-to-month contract, either at the same terms and conditions or at revised terms and conditions, as long as the contract does not contain cancellation fees. (B) Another fixed duration contract, as long as the new contract includes a customer-initiated cancellation provision that allows the customer to cancel at any time, for any reason, and does not contain cancellation fees.”)
2. As a creation of the Legislature, the Commission has only the powers and authority granted to it by the Legislature and contained in the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.* See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Order entered May 28, 2008.
3. A part of the Public Utility Code, the Electricity Generation Customer Choice and Competition Act (“Competition Act”) addresses the requirements that PECO, as the default service provider, must meet. See 66 Pa. C.S. § 2807(e).
4. The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a “prudent mix” of resources. 66 Pa. C.S. § 2807(e)(3.2); *Popowsky v. Pennsylvania Pub. Util. Comm’n*, 71 A.3d 1112, 1117 (Pa. Cmwlth. 2013) (Petition for Allowance of Appeal Denied Dec. 31, 2013, Docket No. 641 MAL 2013).
5. The prudent mix of resources must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. § 2807(e)(3.1).
6. The “overarching goal of the [Competition] Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers.” *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d at 1101 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016). (“*CAUSE-PA CAP Shopping Order*”); 66 Pa. C.S. § 2802(13).
7. The Competition Act also directs the Commission to create a competitive market for the generation of electricity through a separation of the distribution and generation services that had been previously provided exclusively by the EDCs on a monopoly basis. 66 Pa. C.S. §§ 2801-2812.
8. The purpose of this restructuring is to ensure that “all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers [“EGSs”].” 66 Pa. C.S. § 2806(a).
9. The Competition Act requires that EDCs provide EGSs nondiscriminatory access to the EDC’s transmission and distribution system on “rates, terms of access and conditions that

are comparable to the utilities own use of its system.” 66 Pa. C.S. § 2803; 66 Pa. C.S. § 2804(6).

10. The Competition Act also empowers the Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate “the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity.” 66 Pa. C.S. §§ 2811(a) and (b).
11. PECO has the ultimate burden of proof in this proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable. Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a).
12. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).
13. A preponderance of the evidence means evidence, which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).
14. Any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993).
15. More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. Ct. 1960); *Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).
16. Although the Commission generally encourages settlements (52 Pa. Code § 5.231), it must still review any proposed settlement to determine whether its terms are in the public interest in order to be adopted. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered Jan. 7, 2004); *see also Pa. PUC Bureau of Investigation and Enforcement v. PPL Electric Utilities Corp.*, Docket No. M-2023-3038060 (Order entered May 16, 2024).
17. The Commission has stated that “the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest.” *Pa. PUC et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011), *citing Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered Apr. 1, 1996); *Pa. PUC v. CS Water and Sewer Associates*, 74 PA PUC 767 (1991).
18. In determining whether the standard has been met and a partial settlement should be approved, all objections to the settlement must be considered. *Pa. PUC et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011).

19. Proposed settlements (including partial settlements) must also be supported by substantial evidence. Joint Application of West Penn Power Co. d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Co. and Trans-Allegheny Interstate Line Co., Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered Mar. 8, 2011), at 17.
20. EGSs are not permitted to change the pricing of the fixed price contract without first notifying the customer and receiving affirmative consent to change the price. *Fixed Price Label Order. Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 Final Order entered November 14, 2013, at 26.
21. The Competition Act requires that public utilities provide EGSs nondiscriminatory access to the public utility's transmission and distribution system on "rates, terms of access and conditions that are comparable to the utilities own use of its system." 66 Pa. C.S. § 2803.
22. Consistent with the Alternative Energy Portfolio Standards ("AEPS") Act, EDCs and EGSs must acquire and retire alternative energy credits ("AECs") in quantities equal to a percentage of their total retail sales of electricity to all of their retail electric end-user customers for each reporting period. 52 Pa. Code § 75.61. If they fail to comply with this requirement, then they will be required to make an Alternative Compliance Payment ("ACP") in lieu of retiring AECs. 73 P.S. § 1648.3(f).
23. AECs are categorized into two "tiers." Tier I includes solar photovoltaic shares (i.e. Solar AECs) which have their own specific percentage requirements. 72 P.S. § 1648.3(b) and (c); 71 P.S. § 714.
24. The Competition Act specifically envisioned a variety of products such as TOU products being provided by EGSs in the competitive market. 66 Pa. C.S. § 2804(2).
25. The Commission has also recognized the role EGSs play in offering TOU products to consumers. *Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Tentative Order entered Oct. 14, 2011) at 7.
26. The General Assembly "found and declared" that "the Commonwealth must begin the transition from regulation to greater competition in the electricity generation market" and "competitive market forces are more effective than economic regulation in controlling the costs of energy." 66 Pa. C.S. § 2802(5) and (7).
27. As part of the transition to competition, the Competition Act defines "direct access," in part, as the right of EGSs to have nondiscriminatory access comparable to the EDC's own use of its system. 66 Pa. C.S. § 2803; 66 Pa. C.S. § 2804(6).
28. The Competition Act empowers the Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate "the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity." 66 Pa. C.S. §§ 2811(a) and (b).
29. The value of the SOP was recognized by the Commission as early as 2007 as codified in 52 Pa. Code §69.1815. *Default Service and Retail Electric Markets*, Docket No. M-00072009, Final Policy Statement entered Feb. 9, 2007 (stating that "[t]he public interest

would be served by consideration of customer referral programs in which retail customers are referred to EGSs.”)

30. The Commission has resolved all issues regarding the structure for SOP. *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered Mar. 2, 2012, at 31-32 (“*RMI Intermediate Work Plan Final Order*”).
31. The Commission has found that the Standard Offer Customer Referral Program should be voluntary for customers, i.e., “opt-in”, as well as for participating EGSs. *RMI Intermediate Work Plan Final Order* at 31-32.
32. The Commission has found that as part of SOP, customers may choose to be assigned to an EGS of their choice or may choose a random assignment. The process by which an EGS is assigned either randomly or by customer choice, at the customer’s discretion, will be specifically detailed in each EDC’s plan proposal to ensure fairness and impartiality. Once a customer enrolls in the Standard Offer Customer Referral Program, the enrollment will be forwarded to the EGS for EDI processing. *RMI Intermediate Work Plan Final Order* at 31-32.
33. The Commission has found that all existing customer notification requirements apply to the SOP, including notices and the timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship. *RMI Intermediate Work Plan Final Order* at 31-32.
34. The Commission has found that, at the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer’s enrollment with a different EGS or the customer’s return to default service, the customer will remain with the EGS on a month-to-month basis and shall not be subject to any termination penalty or fee. However, this should not deter an EGS from offering longer, fixed-term prices. *RMI Intermediate Work Plan Final Order* at 31-32.
35. As part of the update of its customer disclosure regulations in 2014, the Commission stated: “Because the intent of the competitive market is to encourage customers to shop for their retail electricity supply, we do not believe it is appropriate for a customer to be reverted to default service should that customer fail to respond to either of the two EGS-provided notices.” See, e.g., *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered Apr. 3, 2014, at 38.
36. The regulations require all EGSs to send customers two contract expiration notices prior to expiration of a fixed duration contract or prior to a change in contract terms. The first is an “Initial Notice” that the EGS is required to send to the customer between 45 and 60 days before the expiration date of the contract. The second is an “Options Notice” that the EGS must send to the customer at least 30 days prior the expiration of the fixed duration contract. 52 Pa. Code § 54.10.

37. The Options Notice is required to advise the customer of the specific changes being proposed by the EGS and inform the customer of how to exercise the customer's options, including the customer's ability to accept the proposed change, to choose another product offering from the customer's existing EGS, to select another EGS or to return to default service. 52 Pa. Code § 54.10(2)(i).
38. If a customer fails to respond to either of these notices, the Commission's regulations permit an EGS to convert the contract to either a month-to-month contract or another fixed duration contract so long as certain requirements are met. 52 Pa. Code § 54.10(3).
39. The Commission has not revised this SOP program feature and, in December 2020, it soundly rejected the proposal of PPL to implement the exact same provision of automatically returning EGS customers to default service upon SOP contract expiration. *Petition of PPL Electric Utilities Corporation for Approval of its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356, Order entered Dec. 17, 2020, at 2, 44-45, 92 and 98 ("PPL DSP 5 Order").
40. The Commission has steadfastly maintained that: (1) providing proper notice to their customers prior to the end of the contract; and, (2) not imposing any cancellation fees for a contract that automatically renews are the ways to ensure that a lack of action evidences an EGS customer's affirmative intention to remain with the EGS. *See, e.g., Final Rulemaking Order Establishing Customer Information Disclosure Requirements for Electricity Providers*, 52 Pa. Code, Chapter 54, Docket No. L-00970126, Final Order entered Apr. 30, 1998 ("our regulations do allow for a renewal clause in a fixed term agreement, provided that the renewal occurs with proper customer notice and the new agreement is open-ended."); *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286, Order entered Sept. 23, 2010, at 24 ("customers who fail to respond to a renewal notice from their current supplier [will be provided] the opportunity to cancel, without penalty, any resulting agreement with that supplier.").
41. The Commission has specifically stated that the process of relying on a customer's inaction as affirmative consent to continue with the EGS is not slamming. *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286, Order entered Sept. 23, 2010, at 23.
42. Slamming occurs when a customer's EGS is switched without authorization. 66 Pa. C.S. § 2807(d).
43. In May 1998, the Commission adopted a final rulemaking to establish anti-slamming regulations designed to ensure customer consent to a change of EGS. 28 Pa.B. 5770; 52 Pa. Code §§ 57.171-180.
44. In adopting the anti-slamming regulations in 1998, the Commission announced a "zero-tolerance" policy on slamming, stating that "[t]oday, we set in place the 'rules of the road' by which customers' requests to switch electric generation supplier will be processed. We have observed other industries in which unauthorized customer

switching, known as ‘slamming,’ has occurred. We wish to state now, up front and for the record: this Commission will have zero tolerance for slamming by any means and in any form.” Statement of Chairman Quain, Vice Chairman Bloom, Commissioner Hanger, Commissioner Rolka and Commissioner Brownell, Docket No. L-00970121 (May 21, 1998) (emphasis added), quoted in *Standards for Changing a Customer’s Electricity Generation Supplier*, 44 Pa.B. 3539 (June 14, 2014).

45. The Commission has repeatedly reiterated its long-standing “zero-tolerance” policy on slamming. See, e.g., Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered Apr. 3, 2014.
46. The Commission has levied maximum civil penalties on EGSs who have slammed customers. See *PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861, Order entered Dec. 5, 2013, at 9, quoting *PUC v. Total Gas & Electric Inc.*, Docket No. M-0011529, Order entered Sept. 26, 2001, at 5.
47. Adoption of the Non-Unanimous Settlement would be changing the SOP customer’s electricity supplier without consent and in violation of Section 2807(d) of the Competition Act, 66 Pa. C.S. § 2807(d).
48. In 2020 the Commission rejected PPL’s proposal to automatically return EGS customers to default service upon expiration of the SOP contract unless the customer took affirmative action to the contrary. *PPL DSP V Order*.
49. The Commission reconfirmed that the purpose of the SOP “is to enhance choice and facilitate the development of retail markets through increased participation of residential and small commercial customers in the retail electricity market.” *PPL DSP 5 Order* at 95-96.
50. Once the customer expresses an interest in the SOP product and is enrolled, “the EDC . . . has no further role in administering the SOP.” *PPL DSP 5 Order* at 93.
51. The Commission found “no difference between SOP and non-SOP customers [to] justify[] differential treatment between SOP and non-SOP shopping customers” and stated that “it is well-established that the lack of action on the part of the customer results in the customer being automatically renewed with the same EGS.” *PPL DSP 5 Order* at 94 and n. 29.
52. Regarding the specific proposal of PPL which is now contained in the *Non-Unanimous Settlement*, the Commission viewed it as a modification of the existing SOP “inconsistent with the Section 54.10 and the final guidelines in the *RMI IWP Final Order*”. *PPL DSP 5 Order* at 95-96.
53. The Competition Act clearly states that it is “...in the public interest to permit retail customers to obtain direct access to a competitive generation market...” (66 Pa. C.S. § 2802(3)) and directed that “all customers...shall have the opportunity to purchase electricity from their choice of EGS. The ultimate choice of the EGS is to rest with the consumer.” 66 Pa. C.S. § 2806(a).

54. The Competition Act states that customers “should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources...” 66 Pa. C.S. § 2804(2).
55. The Competition Act only anticipated that customer bills would include sufficient information to determine the basis for the charges reflected on the bill, and not any comparison to the default service rate. 66 Pa. C.S. § 2807(c).
56. The Competition Act requires that EDCs “provide open access over their transmission and distribution systems to allow competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth,” (66 Pa. C.S. § 2802(14)) and that customers must be allowed to “choose among EGSs in a competitive generation market through direct access...” 66 Pa. C.S. § 2804(2).
57. Under the Competition Act, “direct access” is defined as “[t]he right of electric generation suppliers and end use-customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system to transport electricity from any generator of electricity to any end-use customer.” 66 Pa. C.S. § 2803.
58. Direct access to the EDC’s billing system that is essential for EGSs to enroll customers and supply electric generation service to those customers and is required by the Competition Act. 66 Pa. C.S. §§ 2802(14), 2804(2).
59. The Commission’s regulations require suppliers to honor the billing method chosen by the customer. *See* 52 Pa. Code § 54.4(b)(8) and (9).

APPENDIX C

Proposed Ordering Paragraphs

APPENDIX C – PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. The Non-Unanimous Settlement is rejected.
2. PECO's initial proposal is adopted as modified herein.
3. The Commission shall institute a statewide investigation to investigate its approved messaging of default service as the "Price-to-Compare" to include discontinuing use of that term by replacing it with "default service rate."
4. PECO's proposal to add a comparison chart to residential customers' bills showing what the customer would have paid if they had been on default service as well as a comparison of the two charges is rejected.
5. PECO is directed to include specific processes to work collaboratively with competitive suppliers during the implementation period for its new Customer Information System to ensure that suppliers are able to continue providing service and making offers to customers.
6. PECO's proposal to include a Capacity Proxy Price as part of its wholesale default service supply procurement process is rejected.
7. To the extent applicable, PECO is directed to allocate any solar AECs acquired through its long-term contract procurement process to the supply load for all distribution customers, not only to default service customers.