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July 17, 2024

**Via Electronic Filing**

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 NRG Energy Inc.'s ("NRG") 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*  
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 NRG Energy, Inc.'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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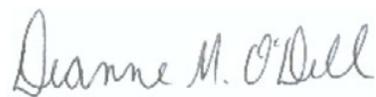
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Date: July 17, 2024



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Deanne M. O'Dell, Esq.

**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 :

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**MAIN BRIEF OF  
NRG ENERGY, INC.**

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## I. INTRODUCTION

NRG Energy, Inc. through a dynamic multi-brand retail strategy using many subsidiaries<sup>1</sup> (collectively “NRG”) sells electric energy in the markets of Pennsylvania’s major electric distribution companies (“EDCs”), including sales to retail customers in PECO Energy Company’s (“PECO” or the “Company”) service territory.<sup>2</sup>

NRG opposes the Joint Petition For Non-Unanimous Settlement<sup>3</sup> (“Joint Petition” or “Non-Unanimous Settlement”) because Paragraph 64 of the Non-Unanimous Settlement — which will automatically transfer Standard Offer Program (“Standard Offer Program” or “SOP”) customers to default service upon the expiration of their SOP contracts (executed after June 1, 2025) — is inconsistent with the Commission's Regulations, the Commission’s prior determinations and is not supported by the record. While the inclusion of this one proposal alone is enough to reject adoption of the entire Non-Unanimous Settlement, taken as a whole the Non-Unanimous Settlement fails to address any of the competitive market concerns as addressed by the Retail Energy Supply Association (“RESA”) and includes PECO’s proposal to include a misleading price comparison graphic on residential bills. NRG opposes these important aspects of the Non-Unanimous Settlement consistent with the advocacy offered by RESA but is limiting this Main Brief to NRG’s opposition of the SOP proposal.

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<sup>1</sup> As electric generation suppliers (“EGSs” in Pennsylvania, NRG subsidiaries hold licenses as follows: Direct Energy Business, LLC, Docket No. A-11025; Direct Energy Business Marketing, LLC, Docket No. A-2013-2368464; Direct Energy Services, LLC, Docket No. A-110164; Energy Plus Holdings LLC, Docket No. A-2009-2139745; Gateway Energy Services Corporation, Docket No. A-2009-2137275; Independence Energy Group LLC d/b/a Cirro Energy, Docket No. A-2011-2262337; Reliant Energy Northeast LLC d/b/a NRG Home/NRG Business/NRG Retail Solutions, Docket No. A-2010-2192350; Green Mountain Energy Company, Docket No. A-2009-2139745; Stream Energy Pennsylvania, LLC, Docket No. A-2010-2181867; and XOOM Energy Pennsylvania, LLC, Docket No. A-2012-2283821.

<sup>2</sup> NRG Petition to Intervene, at ¶ 3; NRG Pre-Hearing Memorandum, at § I.

<sup>3</sup> The Non-Unanimous Settlement is described in Section I.B of this brief and NRG’s position is set forth in Section IV of this brief.

**A. Procedural History**

NRG adopts the procedural history set forth in RESA’s brief. NRG also adopts the Findings of Fact as set forth in RESA’s brief.

**B. Non-Unanimous Settlement**

The Non-Unanimous Settlement is dated July 10, 2024.<sup>4</sup> The Non-Unanimous Settlement states, in part, as follows:

63. The currently-effective Standard Offer Program (“SOP”), including the cost recovery mechanisms last approved by the Commission in PECO’s DSP V proceeding, will continue as modified by this Settlement until May 31, 2029, unless ordered by the Commission to be terminated sooner.

64. The Joint Petitioners agree that for all SOP contracts executed after June 1, 2025, EGSs must automatically transfer SOP customers to default service upon the expiration of the SOP contract unless the customer affirmatively elects to remain with the SOP supplier. PECO’s Electric Generation Supplier Coordination Tariff (“Supplier Tariff”) set forth in Exhibits F and G hereto has been updated to reflect this requirement. PECO will change its SOP scripting to inform all customers who enroll after June 1, 2025, that enrollment in an SOP contract under those terms will operate as consent to return to default service absent an affirmative decision to remain with the SOP supplier at the end of the term.

**C. Legal Standards**

NRG adopts the legal standards set forth in the RESA brief.

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<sup>4</sup> Parties to the Non-Unanimous Settlement are: PECO Energy Company (“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”). Joint Petition, at p. 1. EJA consists of POWER Interfaith, Vote Solar, Clean Air Council, Sierra Club, Physicians for Social Responsibility Pennsylvania, and Penn Environment. *Id.* at fn. 2. Calpine Retail Holdings, Inc. (“Calpine”), Constellation Energy Generation, LLC and Constellation NewEnergy Inc. (“Constellation”), and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), which are parties to this proceeding, have authorized the Joint Petitioners to represent that they do not oppose the Settlement. *Id.* The Retail Energy Supply Association (“RESA”) and NRG have not joined the Non-Unanimous Settlement and have indicated that they oppose the Non-Unanimous Settlement. *Id.*

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

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

NRG takes no position on this issue.

### **B. AEPS Compliance (Solar Alternative Energy Credit Proposal)**

NRG supports RESA's position on this issue.

## **III. RATE DESIGN AND COST RECOVERY**

### **A. Adjustment of Default Service Rates**

NRG takes no position on this issue.

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

NRG takes no position on this issue.

## **IV. STANDARD OFFER PROGRAM**

NRG supports the continuation of PECO's Standard Offer Program without any modifications. NRG agrees with RESA's testimony<sup>5</sup> as to why either termination of or revising PECO's Standard Offer Program would be unreasonable in the current competitive market. Simply put, Standard Offer Programs are an opportunity to introduce customers to shopping for electricity.<sup>6</sup> The core purpose of shopping is for customers to make their own decisions.<sup>7</sup> That is happening. PECO's statistics show that, upon expiration of their SOP contracts, 71.3% of SOP customers are making an affirmative choice other than remaining with their SOP supplier.<sup>8</sup>

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<sup>5</sup> RESA St. 1-R, 1-SR.

<sup>6</sup> RESA St. 1 at 11.

<sup>7</sup> RESA St. 1 at 11.

<sup>8</sup> PECO St. 1 at 30 ("PECO conducted a customer satisfaction survey of customers who participated in the SOP between June 1, 2021 and June 30, 2023. Over 80% of survey 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 SOP supplier."). 51.1% (select a new EGS) plus 20.2% (return to default service) equals 71.3%.

NRG opposes Paragraph 64 of the Non-Unanimous Settlement which proposes to modify PECO's Standard Offer Program in a manner that is inconsistent with the Commission's Regulations, the Commission's prior determinations and is not supported by the record.

Paragraph 64 of the Non-Unanimous Settlement presents the issue of whether SOP customers should be returned to default service or remain with their supplier absent an affirmative choice by the SOP customer at the expiration of their SOP contract.

The Commission's regulations provide that all customers remain with their EGS until the customers make an affirmative choice.<sup>9</sup> Specifically, the Commission's ten year-old regulation provides the options available to every customer upon the expiration of their EGS contract:<sup>10</sup> return to default service (by affirmative choice), select a new EGS (by affirmative choice) or remain with their SOP supplier (either by affirmative choice or by taking no action). That regulation applies to all customers, including SOP customers. Paragraph 64 of the Non-Unanimous Settlement conflicts with those choices. Paragraph 64 provides that all SOP customers 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. This means that, as written, the option for SOP customers to choose another supplier is eliminated. No reasons are given for the elimination of the SOP customers' ability to decide to select another

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<sup>9</sup> 52 Pa. Code § 54.10. The provisions of this § 54.10 adopted June 13, 2014, effective June 14, 2014, 44 Pa.B. 3522; amended July 31, 2020, effective in 60 days, 50 Pa.B. 3861.

<sup>10</sup> 52 Pa. Code § 54.10.

supplier.<sup>11</sup> That is unreasonable and not in the public interest, since almost three quarters of the SOP customers are choosing not to remain with their SOP supplier.<sup>12</sup>

The Commission has consistently held that SOP customers remain with their supplier absent affirmative choice to return to default service or to select a new supplier. In 2012, the Commission specified 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.”<sup>13</sup> In 2020, the Commission rejected a proposal to return SOP customers to default service – if they have not made an affirmative choice to either remain with their existing SOP EGS or to switch to a different EGS.<sup>14</sup>

In that 2020 proceeding, the Commission rejected a proposal to modify the SOP of PPL Electric Utilities Corporation (“PPL”) so that customers would automatically return to default service at the end of the initial 12-month term instead of rolling onto a month-to-month contract with their SOP supplier with no cancellation fees.<sup>15</sup> In that case, about 20% of the SOP

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<sup>11</sup> In a footnote, OCA’s statement in support states that nothing in the Non-Unanimous Settlement prevents a customer from choosing to shop at any time. However, the wording used in the Non-Unanimous Settlement does not reflect that statement. Nothing in the Settlement suggests that SOP customers can choose to enroll with another EGS upon the expiration of their SOP contract. The lack of the explicit conclusion should not be overlooked, since the modification rejected in 2020 explicitly provided for return only if the SOP customer did not make an affirmative election of a new contract with the existing EGS or a new EGS.

<sup>12</sup> See footnote 8.

<sup>13</sup> *Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Order entered March 2, 2012 (“RMI IWP Final Order”) at 31-32. The RMI IWP Final Order is where the Commission issued final guidelines for program structure of SOPs in the Commission's Investigation of Pennsylvania's electricity market (retail market investigation or RMI).

<sup>14</sup> *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 December 17, 2020.

<sup>15</sup> *Id.* See also PECO St. 1-R at 23.

customers were on “roll over contracts” following the expiration of their SOP contracts.<sup>16</sup> The Commission found that statistics on PPL’s “roll over contracts” did not demonstrate harm to SOP customers from the existing SOP design necessary to implement the new program rule proposed by PPL.<sup>17</sup>

NRG supports the above-described standard from the Commission’s regulation and prior determinations. The record does not present different circumstances and/or sufficient evidence to justify distinguishing or overruling the Commission’s precedent that suppliers cannot switch a customer back to the utility absent their affirmative consent to do so. No reasons are given to support granting a waiver<sup>18</sup> of the Commission’s notice regulation<sup>19</sup> for SOP customers. Stated otherwise, the Joint Petitioners have not demonstrated harm to SOP customers from the existing SOP design necessary to implement the new program rule being proposed by the Non-Unanimous Settlement. Thus, NRG urges rejection of the Non-Unanimous Settlement.

## **V. OTHER ISSUES**

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

NRG Supports RESA’s position on this issue and, as noted previously, the lack of anything accommodating this proposal in the Non-Unanimous Settlement makes approval of the Non-Unanimous Settlement even more unpalatable from a competitive market standpoint.

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<sup>16</sup> *Id.* Statistics in the PPL case showed that 93% of SOP participants that rolled onto a new contract after the expiration of the SOP contract paid non-SOP rates higher than the default service rate or PTC in the first month.

<sup>17</sup> PECO St. 1-R at 21-23.

<sup>18</sup> See 52 Pa Code § 1.91.

<sup>19</sup> 52 Pa. Code § 54.10.

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

NRG strongly supports RESA’s position on this issue. PECO’s proposal creates misleading comparisons of very different pricing structures without any context or useful information for consumers to understand. EGSs wishing to serve residential customers already have no real choice but to have their charges included on the EDC consolidated bill since they must participate in the Purchase of Receivables program to have indirect access to the Commissions termination rules for non-payment. No other utility has a similar price comparison chart and, again for all the reasons explained in the testimony of RESA Witness Frank Caliva, PECO’s proposal is “anti-competitive, misleading and serving no significant purpose beyond further entrenching the view that default service supply is the superior supply product for customers based solely on price.”<sup>20</sup>

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

NRG Supports RESA’s position on this issue.

**VI. CONCLUSION**

For the foregoing reasons, NRG strongly urges the ALJs to issue a Recommended Decision which rejects the Non-Unanimous Settlement.

Respectfully submitted,

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Date: July 17, 2024

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<sup>20</sup> RESA St. No. 1 at 18-22.

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