

July 31, 2024

E-FILE

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

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

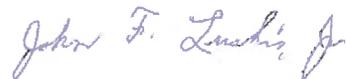
Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Reply Brief on behalf of Calpine Retail Holdings, LLC in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document.

Thank you.

Very truly yours



John F. Lushis, Jr.

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



CERTIFICATE OF SERVICE

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

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**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	:	

REPLY BRIEF OF CALPINE RETAIL HOLDINGS, LLC

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July 31, 2024

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I. INTRODUCTION

This reply brief is filed on behalf of Calpine Retail Holdings, LLC (“Calpine Retail”) to address two parties’ positions regarding the recovery of certain costs relating to the procurement of solar Alternative Energy Credits (“AECs”) acquired by PECO through its long-term contract procurement process. Specifically, in this Reply Brief, Calpine Retail addresses the proposal and the arguments in support thereof by Retail Energy Supplier Association (“RESA”) that in connection with the procurement by PECO of proposed long term contracts for solar AECs, the acquired solar AECs be assigned to all load serving entities on a load ratio share basis and that PECO recover the costs of the long term procurements from all customers, not just default service customers, through a non-bypassable charge (the “RESA Proposal”).¹

Under the Alternative Energy Portfolio Standards (“AEPS”) Act, Electric Distribution Companies (“EDCs”) must procure a certain amount of solar Alternative Energy Credits (“AECs”) for default service customers while Electric Generation Suppliers (“EGSs”) are tasked with procurement of solar AECs for their customers. To meet its requirements under the AEPS, PECO proposes in this DSP VI proceeding to continue to have delivered solar AECs allocated to default service suppliers, but not ESGs, and recover the costs of the long-term procurement of AECs from default service suppliers only. The foregoing is consistent with prior DSP proceedings including DSP V.² Calpine Retail supports PECO’s proposal.

RESA’s Proposal to replace reliance on ESGs to handle their own AEC procurement costs with a shifting of their costs to all customers (i) would remove competitive discipline and reward the underperformers in the marketplace and (ii) simultaneously punish those that hold themselves

¹ RESA Statement No. 1, *Direct Testimony of Frank Caliva III*, at p. 34; RESA Main Brief at p. 17

² PECO Statement No.1, *Direct Testimony of Sulma Dalessio*, at pp. 26-27; PECO Initial Brief at pp. 7,13

accountable for their own business decisions, and who create innovative products and solutions to manage their load and associated risks for their customers.

The Office of Consumer Advocate (“OCA”), another intervenor, has opposed any change in recovery of costs of long-term procurement of solar AECs,³ and Calpine Retail supports OCA in this regard. OCA, however, has raised, but has not recommended, the possible adoption of an alternative to the RESA Proposal. Under this alternative, if the Commission were to accept RESA’s proposed change to PECO’s solar AEC procurement, then the Commission would also apply a lag of two or three years for implementation of RESA’s proposal after a Commission order adopting it (the “Alternative Proposal”).⁴ OCA has subsequently made clear that OCA has not recommended the Alternative Proposal.⁵ Further, while RESA is apparently agreeable to the Alternative Proposal,⁶ OCA has made clear also made clear that RESA’s support for a “supposed OCA ‘alternative proposal’ is not consistent” with the fact that OCA has not recommended the implementation of the Alternative Proposal.⁷

Philadelphia Area Industrial energy Users Group, (“PAIEUG”), another intervenor, also has opposed any change in recovery of costs of long-term procurement of solar AECs but also supports OCA’s “supposed” Alternative Proposal.⁸ Calpine Retail believes that the RESA Proposal should be fully rejected by the Commission and that the Alternative Proposal would simply delay the onset of the problems associated with the RESA Proposal. Accordingly, Calpine Retail does not support the Alternative Proposal.

³ OCA Statement No. 1R, *Rebuttal Testimony of Serhan Ogur* (“OCA Statement No. 1R”) at pp. 4-5.

⁴ OCA Statement No. 1R, at p. 6.

⁵ OCA Initial Brief, at pp. 10-11.

⁶ RESA Main Brief, at p.17.

⁷ OCA Main Brief, at p.11.

⁸ “PAIEUG Main Brief, at pp. 3-5.”

II. REPLY ARGUMENT

A. The RESA Proposal on the Recovery of the Costs of AEC Procurement Should Be Rejected

As the basis for the RESA Proposal, the RESA Brief argues that “competitively neutral structures” are needed to ensure that the procurement of long-term contracts does not adversely impact the development of retail competition.⁹ As set forth by PAIEUG, RESA advocates for the RESA Proposal based upon “competitive market concerns”. These concerns include a claim that EGSs do not have the same ability as EDCs to enter into long-term solar contracts on a risk-free basis as the EDCs because EGSs do not have the default service customer base nor do EGSs have a statutory guarantee of cost recovery.¹⁰ PAIEUG also points out that as support for the RESA Proposal, RESA has noted that effective January 1, 2011, both Metropolitan Edison Company (“Met-Ed”) and Pennsylvania Electric Company (“Penelec”) were authorized to acquire solar AECs for both shopping and non-shopping customers with costs recovered through a non-bypassable charge. But as noted by PAIEUG, RESA has failed to indicate that as part of Met-Ed and Penelec’s most recent default service proceeding, Met-Ed and Penelec proposed, on a going forward basis, to obtain solar AECs only for non-shopping customers, thereby eliminating the need for the non-bypassable surcharge.¹¹

Calpine Retail agrees with PECO and PAIEUG that RESA has not provided any evidence demonstrating that PECO’s proposal with respect to the long-term procurement AECs and the recovery of the costs thereof has stifled competition or resulted in any problems e.g., an inadequate supply of solar AECs generated in the Commonwealth.¹²

⁹ RESA Main Brief, at p.17.

¹⁰ PAIEUG Main Brief, at page 3; RESA St. No. 1, at page 34.

¹¹ PAIEUG Main Brief, at pp.3-4.

¹² PECO Initial Brief, at p. 13; PAIEUG Main Brief at page 3.

The arguments made by RESA are unpersuasive and are not supported except by some general allegations about concerns relating to PECO's position. Moreover, the recommendation for a non-bypassable charge is anti-competitive and would hurt ESGs. As noted above, under the AEPS, EDCs and EGSs must acquire AECs. The ESGs are in the best position to manage the procurement of AECs and the recovery of the costs thereof. As PECO has pointed out, EGSs have the ability to hedge their positions, and it is reasonable for EGSs to procure their own solar AECs.¹³ The better the ESGs can manage their procurement of AECs, the better they will be able to create efficiencies and compete in the marketplace. Yet, the RESA Proposal clearly suggests that RESA has difficulty managing its procurement of AECs, and that it wants relief with respect to its own business decisions and shortcomings.

RESA's solution is to excuse EGS's from the obligation to manage their procurement of AECs and the costs thereof and to treat everyone as if their procurement needs are just like everyone else's, thereby resulting in the remove competition and associated products and services from the marketplace. Those that are better at managing their AEC procurement needs would no longer be able to offer products and services.

Competitive solutions to handle costs and risks should not be stifled because RESA is facing competitive discipline resulting from the need to perform in a marketplace and face accountability for its own business and operational management decisions. There must be market consequences and accountability for lack of performance in a market.

In recommending the RESA Proposal, which seeks to overturn established precedent regarding PECO's assignment of solar AEC's and the recovery of the costs thereof, RESA has the

¹³ PECO Initial Brief, at page 14.

burden of proving that the RESA Proposal is warranted.¹⁴ RESA has failed to present “some evidence” or analysis that meets this burden of proof.¹⁵ In fact, as noted above, RESA cited the default service proceedings of Met-Ed and Penelec to support the RESA Proposal even though those proceedings resulted in the imposition of a bypassable charge as opposed to a non-bypassable charge to all customers.

B. The Alternative Proposal Should Be Rejected

While PAIEUG devotes a portion of its brief to a persuasive critique of the RESA Proposal, PAIEUG also argues in its brief for the approval of the Alternative Proposal.¹⁶ Specifically, PAIEUG argues (i) that shopping customers may currently be under multi-year fixed-price contracts with their EGSs and remitting the costs of procuring solar AECs through their EGS contracts; (ii) if these customers are still under the terms of their EGS contracts when a non-bypassable charge is enacted, these customers will be forced to pay twice for solar AECs, namely, once through their fixed price EGS contract and once through PECO’s non-bypassable charge; and (iii) allowing for a two to three year lag may allow at least such customers an opportunity to avoid being double-charged by negotiating a new EGS contract that would not include costs related to the procurement of solar AECs by the EGS.¹⁷

In its Main Brief, PAIEUG refers to the Alternative Proposal as “OCA’s proposed modification” to the RESA Proposal. But as noted above, PECO has made clear that it has not recommended the Alternative Proposal. Further, the Alternative Proposal would simply delay and not address the anti-competitive aspects of the RESA Proposal and would ultimately not prevent the adverse consequences to the ESGs as identified in Section A. above. Moreover, PAIEUG’s

¹⁴ 66 Pa.C.S. § 332(a).

¹⁵ See *NRG Energy, Inc. v. Pa. P.U.C.*, 233 A.3d 936, 950 (Pa. Commw. Ct. 2020).

¹⁶ PAIEUG Main Brief, at page 4.

¹⁷ PAIEUG Main Brief, at page 4.

concerns that if a non-bypassable charge is approved customers may be forced to pay twice can be ameliorated by the Commission by simply rejecting the RESA Proposal.

III. CONCLUSION

For the foregoing reasons, the RESA Proposal should be rejected and the Alternative Proposal supported by PAIEUG as an alternative to maintaining the status quo should also be rejected. There should be no change to the way costs relating to the procurement of solar energy AECs are recovered by PECO.

Respectfully submitted,

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