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July 31, 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 Retail Energy Supply Association's ("RESA") Reply Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww
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 Reply 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 :

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I. INTRODUCTION

In its Main Brief, the Retail Energy Supply Association¹ (“RESA”) explained why it urges the Administrative Law Judges (“ALJs”) to reject the Non-Unanimous Settlement as it contains unlawful provisions and is not in the public interest. Most notably, the Commission has already soundly rejected prior proposals to revise the Customer Referral Standard Offer Program (“SOP”) to automatically return the shopping customer back to default service and the record does not support deviation here.² Adopting RESA’s proposals in this proceeding will largely leave intact PECO Energy Company’s (“PECO’s”) original proposals modifying them only to: (i) approve the recommendation for a statewide investigation; (ii) create a pathway to address supplier concerns as PECO continues its Customer Information System (“CIS”) upgrade; (iii) reject two issues related to procurement; and (iv) reasonably address the anti-competitive proposal to add a price comparison chart to residential bills.

RESA anticipated and fully addressed many of the arguments in support of the Non-Unanimous Settlement in its Main Brief and incorporates those argument herein. This Reply Brief is narrowly focused on responding to the following specific issues. First, Section II discusses the shortsightedness and continuing harm to consumers by denying them the full potential of a competitive market which will result if the Commission rejects RESA’s recommendation for a statewide investigation regarding messaging about the electric distribution

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 RESA Main Brief (“M.B.”) at 21-34.

company (“EDC”) default service rate. Opposing parties take the view “that it’s always been this way” or this is not the appropriate proceeding to make such recommendation even while also acknowledging that not all costs of providing default service are included in the default service rate. This opposition to RESA’s recommendation or to doing anything, ignores the fact that 75% of Pennsylvania’s residential consumers are not currently shopping.³ The record evidence presented by RESA addressed all the issues in play in today’s competitive market in great detail and proposed the small step of taking a serious look at current messaging about the EDC provided default service rate. RESA strongly urges the Administrative Law Judges (“ALJs”) to not lose sight of the Commission’s statutory obligations to foster the development of a “properly functioning and workable competitive retail electricity market”⁴ and how the parties strong opposition to RESA’s customer education related recommendation both in testimony and by not including any alternate version of it as part of the Non-Unanimous Settlement are not in furtherance of this statutory obligation.

Second, Section III addresses how the blatant unwillingness of other parties to collaborate with RESA and competitive suppliers on real issues that impact consumers should be taken into consideration when evaluating RESA’s proposals in this proceeding. More specifically, adopting RESA’s proposals regarding the CIS upgrade and the residential bill design will make clear that the Commission values true and reasonable collaboration among competing viewpoints to, in the end, benefit consumers.

³ As of March 2024, approximately 4 million of Pennsylvania’s 5.3 million residential customers and approximately 440,000 of its 733,000 customers are **not** shopping for their electricity. *See* RESA Exh. FC-3 PA PowerSwitch Monthly Update as of March 2024.

⁴ 66 Pa. Code § 2811(e)(2) (Requires Commission to take action if it finds that “anticompetitive or discriminatory conduct. . . is preventing the retail electricity customers. . . for obtaining the benefits of a properly functioning and workable competitive retail electricity market.”)

II. RESA'S RECOMMENDATION FOR A STATEWIDE INVESTIGATION

A fundamental flaw in Pennsylvania's competitive retail electric market is the ongoing and persistent reliance by various stakeholders on the price to compare ("PTC") charged for default service provided by electric distribution companies ("EDCs") as the benchmark against which all other supply prices are judged. Due to the different ways in which default service rates and market supply prices are developed, these comparisons provide inadequate and misleading information to consumers and other entities. This focus is problematic because a snapshot of a given point in time does not reflect current market conditions or the ability of EDCs to fully reconcile their prices at a later time. Thus, the default service rate may look "lower" at one point in time but, because of the ability to fully recover costs granted to the EDC, the default service rate may be higher at a future point in time. Specifically, comparing default service rates charged by EDCs with supply prices charged by electric generation suppliers ("EGSs") in the retail market overlooks: (a) the fact that the default service product is procured through a regulated process, as contrasted with supply prices that are developed based on suppliers' models and various factors, including wholesale market conditions; (b) subsequent, automatic reconciliation of the default service rates so that EDCs fully recover the costs they have identified for the procurement of default service; (c) the time lag between the procurement of default service and the purchase of energy to fulfill energy supply contracts in the market, which divorces the default service rate from wholesale market conditions; (d) the value of other products and services that consumers purchase from EGSs, such as long-term price stability, renewable products, cash rewards and charitable contributions; and (e) the failure to include

costs incurred by EDCs to provide default service rates in the so-called PTC, thereby using distribution system rates to subsidize default service rates.⁵

In numerous contexts, particularly those evaluating the success of the retail electric market, 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.⁶ Likewise, many PUC initial decisions and orders inexplicably focus on the difference between the default service rate and the supply prices in the market.⁷ 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 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, messaging that reinforces the purported superiority of the EDC provided default service rate hampers more widespread investment and product offerings in the competitive market. Rather, EGSs need to remain primarily focused on short-term arrangements that undercut the EDC provided default service rate. This lessens the ability to develop more innovative and a greater variety of competitive products and services for consumers. This is a

⁵ RESA St. No 1 at 12-13, 15-17, 20-21; RESA St. No. 1-R at 3-5; RESA Exh. JC-6; and RESA St. No. 1-SR at 2, 7-8.

⁶ RESA St. No. 1 at 13.

⁷ RESA St. No. 1-R at 3-7.

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.⁸

To address these concerns which demonstrate the inappropriateness of continuing the use of the EDC provided default service rate for comparison and evaluation purposes, RESA has proposed that the Commission launch a statewide investigation to consider improvements to messaging regarding default service pricing and the discontinuance of the term “PTC” from these messages. Ignoring the record evidence presented by RESA, which shows the flaws in default service pricing and the resulting harms to consumers and the competitive market, PECO opposes RESA’s recommendation for a statewide investigation. This opposition is based primarily upon the view that the PTC concept has been in use for many years.⁹ The Office of Consumer Advocate (“OCA”) likewise opposes this proposal, based on a similar rationale, even though it agrees that the PECO’s overhead and indirect costs incurred as a business are not

⁸ RESA St. No. 1 at 17-18.

⁹ PECO Initial Brief (“I.B”) at 19-20. The Philadelphia Area Industrial Energy Users Group (“PAIEUG”) expresses concern about adopting RESA’s recommendation to implement a statewide investigation through a single EDC’s default service proceeding. PAIEUG Main Brief (“M.B.”) at 5. However, there are numerous examples of the Commission being persuaded by the record in a litigated proceeding to open a statewide investigation to consider issues of broad applicability. For example, the Retail Markets Investigation was initiated in response to the record developed during the FirstEnergy merger case of 2010. *Joint Application of West Penn Power Company 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 Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011), at 46. Similarly, the Commission elected to open an informal review of the non-market based charges imposed on load serving entities by PJM Interconnection, LLC as those issues were recurring in the various default service proceedings of the EDCs. See Secretarial Letter dated May 1, 2015 and addressed to All Jurisdictional Electric Distribution Companies. Similarly, the Commission has approved settlement agreements which recommended addressing issues raised in the context of the litigated proceeding through a statewide proceeding. PECO itself has supported a statewide investigation regarding issues of broad concern raised in the context of its Smart Meter proceedings. See *Petition of PECO Energy Company for Approval of its Smart Meter Universal Deployment Plan*, Docket No. M-2009-2123944, Recommended Decision dated July 12, 2013, at 9.

recovered through default service rates.¹⁰ In effect, PECO and OCA urge the Commission to “leave well enough alone” even though they do not (and cannot) point to any evidence in the record to validate the continued use of the default service rate as the benchmark rate upon which to judge all competitive EGS offerings.

While at the outset of electric choice, the PTC concept may have been a simple and appealing way to describe the default service rate, so that customers could easily see the amount of money they would not pay the EDC if they selected an EGS. However, what has occurred is that the current market structure incentivizes suppliers to focus their efforts on attracting customers away from the monopoly utility that is offering a highly regulated default service product that, while rooted in market-based dynamics, does not reflect all of the risks and costs associated with providing competitive retail supply service. In short, referring to the EDC provided default service as the “Price to Compare” against all EGS prices represent an entirely unlevel playing field that deprives consumers of the opportunity to avail themselves of a “properly functioning and workable competitive retail electricity market.”¹¹ In addition, the EDC provided default service product lacks product features provided by competitive market suppliers like fixed prices that do not fluctuate throughout the year or renewable content above the state required minimums.¹²

As the term PTC has evolved and is used today to refer to the EDC provided default service rate, it is not an effective tool to help consumers educate the differences between the

¹⁰ OCA Initial Brief (“I.B.”) at 24-26; OCA St. No. 2 at 14, footnote 14.

¹¹ 66 Pa. Code § 2811(e)(2) (Requires Commission to take action if it finds that “anticompetitive or discriminatory conduct. . . is preventing the retail electricity customers. . . for obtaining the benefits of a property functioning and workable competitive retail electricity market.”)

¹² RESA St. No. 1 at 12-13.

default service rate and products in the competitive market. Rather, after 25+ years of relying on a flawed default service pricing method messaged as the PTC, 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 EDC provided default service. 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.¹³ 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 EDC provided default service rates are different than prices found in the competitive market. Therefore, RESA's proposed 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.¹⁴

¹³ RESA St. No. 1-R at 7-8.

¹⁴ The PUC has long recognized that differences exist between the way default service and competitive supply are procured and priced, noting that "due 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." *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*). Examining all the factors that make these two business models inappropriate for comparisons or any expectations that they be comparable is long overdue. 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.

Yet, if the positions of PECO and OCA are adopted and there is no effort to revisit even the use of the term “PTC” as the rate by which all other prices should be gauged, then market development will continue to not reach its full potential for the benefit of consumers. 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 full market development as envisioned by the Competitive Act. Notably, RESA’s recommendation was a review of the term PTC and it is entirely possible that after a statewide investigation, the PUC would conclude that PTC remains the most accurate and acceptable term. The opposition to a discussion this many years later is not reasonable in consideration of the undisputed record evidence supporting the proposal. Importantly, there is no dispute about the stagnation of shopping in the residential market and the fact that 75% of residential customers are not shopping. Under these conditions, the Commission has a statutory obligation to consider all possible sources and redress them if possible. Clearly, the testimony of RESA Witness Caliva demonstrates that while other structural issues exist, the continued use of the term PTC and messaging around default service is an area that warrants further investigation due to its significant impact on the market. The failure of PECO and OCA to recognize the value of a statewide investigation of this one particular issue with the goal of improving the shopping experience for customers is unreasonable and RESA urges the ALJs to recommend that the Commission adopt RESA’s proposal.

III. LACK OF TRUE COLLABORATION IS NOT IN THE PUBLIC INTEREST

Apart from the unwillingness of other parties in this proceeding to consider supporting the statewide investigation proposal of RESA, PECO and OCA have demonstrated an unwillingness to collaborate with RESA and competitive suppliers on issues for the benefit of consumers. As discussed further below, these issues include the PECO proposed bill

presentation and addressing going forward issues regarding the CIS upgrade. RESA urges the ALJs to view with concern this lack of willingness to collaborate on these important issues when considering the proposals of the Non-Unanimous Settlement and their likely negative impact on the competitive market.

A. BILL PRESENTATION

For the reasons discussed in its Main Brief and testimony, RESA recommends rejection of PECO's proposal to add a bill comparison chart to residential bills.¹⁵ Alternatively, RESA recommends PECO be directed to undertake a collaborative process to develop language to be approved by the Commission about PECO's lack of knowledge of the EGS contract in addition to permitting EGSs to offer customer-specific messaging on the utility consolidated bill.¹⁶ As PECO is not planning to implement the proposed comparison chart until two years after the start of the default service plan period and it would be the first EDC to include something like this on every residential customer's bill, there would be sufficient time to collaboratively craft appropriate PECO disclosure language for the Commission's consideration and final approval.¹⁷

Both PECO and OCA reiterated their opposition to RESA's proposals in their Initial Briefs. PECO takes the view that because there was a collaborative three years ago in which "several EGSs participated," PECO's chosen design is the right one and should not be changed. At no point in this proceeding did PECO explain or address how it incorporated considerations raised by EGSs during that collaborative, nor did it explain how many EGSs participated or what feedback was provided. Moreover, when faced with RESA's opposition to the proposed bill

¹⁵ RESA M.B. at 37-41.

¹⁶ RESA M.B. at 40 referencing RESA St. No. 1 at 23.

¹⁷ RESA St. No. 1 at 23.

presentation and the reasons why, PECO merely pointed to the fact that there was a collaborative and that EGSs have the ability to add their own explanations on the back page of the bill which allots four lines dedicated for EGS use.¹⁸ Similarly, OCA mischaracterizes RESA’s position as advocating for “less information available to consumers.”¹⁹ OCA also mischaracterizes RESA’s alternate proposal as a request for EGSs to have “more messaging space” on residential bills.²⁰

By pointing to the fact that a collaborative was already held three years ago and misstating RESA’s suggested alternate proposal, both PECO and OCA are doing a disservice to customers. Neither party addressed the fact that RESA’s focus for developing disclaimer language is on what PECO needs to disclaim and not just on EGS messaging. EGS messaging cannot include information about what PECO knows or does not know or about the purpose of the chart on the first page of the bill. Focusing on EGS messaging alone is meaningless in the context of redressing the issues with PECO’s bill presentation proposal.

Importantly, PECO is proposing to present its comparison on the bills of every single EGS residential customer – shopping and not. In Pennsylvania today, EGSs must use PECO’s EDC consolidated bill to invoice residential customers EGSs’ charges.²¹ This messaging will

¹⁸ PECO St. No. 1-R at 26-27.

¹⁹ OCA I.B. at 28.

²⁰ OCA I.B. at 27.

²¹ PECO requires EGSs wishing to participate in the Purchase of Receivables (“POR”) program to utilize EDC consolidated billing for all EGS residential customers. POR leverages the ratepayer funded termination systems of the utility to reduce the amount of uncollectible charges from all customers. Since EGSs are not permitted by the Commission to terminate a customer for nonpayment, the POR program allows termination for non-payment to be pursued by the utility with payment to the EGS for the services rendered. The payments to EGSs from the utility for the shopping customer charges are provided at a discount to reflect the collection risk remaining with the utility. By approving the POR program, the Commission determined it was a necessary tool to encourage EGSs to offer competitive products to residential customers while leveraging the ratepayer funded collections tool of the utility. However, current tariff provisions require that EGSs wanting to utilize the POR program for any residential customer, must have all of their residential customers billed through the utility bill. See, PECO Supplier Tariff Page 96, Billing Service Options, Section 19.

appear on every single residential customer's bill and it is inherently anticompetitive and misleading.²² As such, if such proposal is seriously considered, the core concern is what PECO says and discloses and not what EGSs are allowed to say or disclose. Efforts of PECO and OCA to try to shift focus on EGS messaging is a mere subterfuge. Short of outright rejection of the presentation proposal, RESA strongly urges that PECO be directed to collaborate and receive approval for specific disclaimer language located near the presentation which explains that PECO does not know the specific EGS contract terms. That neither PECO nor OCA give any credence to this concern nor indicate any willingness – even as part of a settlement – to engage in a discussion about it should not be taken lightly when evaluating whether PECO's proposal should be adopted.

In sum, RESA respectfully requests that the ALJs consider the full context of RESA's opposition to the bill presentation proposal, its proposed alternative and the complete unwillingness of the parties to agree to discuss disclaimer language for PECO even though two years will lapse before the final display is available to customers and recommend that the Commission adopt RESA's position.

B. IGNORING NEGATIVE IMPACTS OF CIS UPGRADES TO FUTURE AND CURRENT SHOPPING CUSTOMERS

As explained in its Main Brief and in the record, customers wishing to shop and already shopping faced significant issues as a result of PECO's CIS upgrade in that they were forced to make multiple contacts to PECO to get information required to complete transitions with EGSs and PECO directed suppliers to issue confusing additional billings to customers for supplier

²² RESA M.B. at 37-40.

charges that had been rejected by PECO's system.²³ PECO does not deny the negative impacts to future and current shopping customers as a result of its CIS upgrade; rather, PECO takes the view that it resolved the issues and nothing else will happen as the system will be in place by the start of this default service plan period.²⁴ PECO also focuses on communications with suppliers before the upgrade and before the problems occurred to shield itself for its failures after the upgrade.²⁵

Consistent with the discussion in the previous section, the unwillingness of PECO to agree – even as part of a settlement – to work collaboratively with suppliers to set up processes to better address failures in the future related to CIS upgrades should be given serious consideration in evaluating the proposals offered in this proceeding. The types of difficulties experienced by customers as a direct result of PECO's interactions with suppliers and which are not disputed in this proceeding should be matters of great concern for the Commission given its statutory obligations under the Competition Act. RESA's proposals in this proceeding were not unreasonable and are clearly in the interest of the public since consumers are the ones negatively impacted when the utility systems fail to properly facilitate the ability of EGSs to serve them. Thus, for these reasons, RESA urges the ALJs to recommend that the Commission require PECO to include specific processes to work collaboratively with competitive suppliers to provide reasonable support for their ability to provide service and enroll customers.²⁶

²³ RESA M.B. at 41-42, referencing RESA St. No. 1 at 25-26.

²⁴ PECO I.B. at 22-23.

²⁵ PECO I.B. at 22.

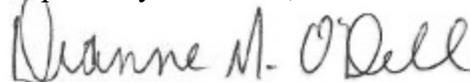
²⁶ RESA St. No. 1 at 27.

IV. 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:

- 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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