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July 31, 2024

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

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

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

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

Very truly yours,



Kenneth M. Kulak

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

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

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Dated: July 31, 2024

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF OF
PECO ENERGY COMPANY**

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

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I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) files this Reply Brief in response to the Main Briefs filed by the Retail Energy Supply Association (“RESA”) and NRG Energy Inc. (“NRG”) and the amicus brief filed by American Power & Gas of Pennsylvania (“AP&G”).¹ In PECO’s Initial Brief, the Company described the non-unanimous settlement agreed to by PECO and all parties other than RESA and NRG, as set forth in the Joint Petition for Non-Unanimous Settlement (the “Settlement”) filed in this proceeding on July 17, 2024. The Settlement requested that the Pennsylvania Public Utility Commission (“Commission”) approve PECO’s sixth default service program for the period June 1, 2025 through May 31, 2029 (“DSP VI”) as proposed by PECO, with the addition of a new long-term solar energy procurement, a Capacity Proxy Price (“CPP”) mechanism and modifications to PECO’s Generation Supply Agreement (“GSA”) projection periods consistent with other electric distribution companies (“EDCs”), modifications to PECO’s “Standard Offer” retail market program (the “SOP”), a one-time analysis of the Company’s time-of-use (“TOU”) rate options and various changes to the enrollment process in PECO’s Customer Assistance Program (“CAP”).

In its brief, RESA opposes the Settlement’s provisions relating to the CPP, the GSA, the SOP, and PECO’s TOU rates, as well as PECO’s proposal to continue its long-standing allocation of alternative energy credits (“AECs”) from its separate procurements to wholesale default service suppliers. In addition, RESA contends that the Settlement is not in the public interest because it fails to include its recommended statewide investigation into how default

¹ The Office of Consumer Advocate (“OCA”) submitted a Main Brief supporting the Joint Petition for Non-Unanimous Settlement (“Settlement”) and generally opposing RESA’s proposals in this default service proceeding. The Philadelphia Area Industrial Users Group (“PAIEUG”) filed a Main Brief opposing RESA’s proposals in this proceeding for reallocation of the alternative energy credits (“AECs”) that PECO obtains through separate Commission-approved procurements to both wholesale default service suppliers and EGSs as well as RESA’s statewide proceeding to investigate default service messaging.

service pricing is “messed” to customers and does not require PECO to provide extensive additional updates on PECO’s customer information system (“CIS”) upgrade and assign support staff to individual electric generation suppliers (“EGSs”). NRG joins RESA in opposing the Settlement’s SOP revisions and joins RESA’s arguments for a statewide default service messaging investigation. NRG also joins RESA in opposing the new bill disclosure under the Settlement, and supports RESA’s recommendations related to PECO’s new CIS. For its part, AP&G addresses only the Settlement’s provisions that would require SOP customers to make an affirmative decision at the end of the 12-month SOP contract to either stay with their SOP EGS supplier or select a new EGS.

To a large extent, the principal reasons for rejecting the arguments of RESA, NRG and AP&G in this proceeding were addressed in PECO’s Initial Brief and therefore this Reply Brief will only revisit the key areas of disagreement. As PECO’s Initial Brief made clear, the Settlement’s provisions addressing various retail market matters are reasonable, supported by substantial evidence and in the public interest, while RESA’s proposals to change PECO’s AEC allocation, initiate a new statewide investigation and impose new EGS-related obligations on PECO are entirely unnecessary and improper. For the reasons set forth in PECO’s Initial Brief and this Reply Brief, the Commission should approve the Settlement without modification.²

² PECO notes that RESA’s contention that the Settlement must be rejected in its entirety if the Commission were to reject any portion of the Settlement (RESA Main Brief, p. 7) is incorrect. The provision of the Settlement cited by RESA provides only that a settling party may choose to withdraw from the Settlement if a modification is made. If no party objects to any revisions by the Commission, the Settlement remains in effect. *See* Settlement, ¶ 77.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Capacity Proxy Price

As explained in PECO's Initial Brief (pp. 11-14), the Settlement adopts PECO's originally proposed Capacity Proxy Price ("CPP") and true-up mechanism to address potential delays in PJM Interconnection, L.L.C. ("PJM") capacity auctions under PJM's Reliability Pricing Model during the DSP VI term. RESA is the only party that voiced concerns about introducing a CPP mechanism in PECO's default service solicitations. In its Main Brief (pp. 13-16), RESA opposes the CPP on the principal ground that the lack of PJM forward capacity prices at any given time affects all load serving entities, including EGSs and default service suppliers. RESA also contends that the recovery of any differences between the CPP and actual capacity prices through the Price-to-Compare ("PTC") creates an unfair "competitive advantage" for default service. RESA's arguments against the CPP should be rejected for the reasons set forth in PECO's Initial Brief and the additional reasons set forth below.

First, RESA's argument that the CPP and true-up mechanism should be rejected simply because it will be available to wholesale default service suppliers but not EGSs erroneously assumes that both types of suppliers face the same risks in managing their wholesale cost obligations and load. As explained in PECO's Initial Brief (p. 12), EGSs can fully account for unpriced capacity periods in the products and services they choose to offer in the competitive retail market, including contract terms of any length. However, wholesale suppliers can only bid on 12-month and 24-month contracts in PECO's default service solicitations held in March and September each year. Moreover, as explained by OCA witness Serhan Ogur, wholesale suppliers must serve the hourly load profile of an unknown number of customers at a fixed price, while EGSs do not face this risk. *See* OCA St. 1R, p. 3. In short, RESA's argument is undercut by the differences between the business models and contractual obligations of EGSs and

wholesale default service suppliers and EGSs' flexibility to formulate and adjust competitive offers to address issues arising from delays in PJM capacity auctions.

In addition, RESA's position is clearly at odds with the Commission's approval of the use of a CPP in Pennsylvania default service procurements on several prior occasions. In those decisions, the Commission concluded that a CPP and true-up mechanism would maintain diversity of supply products while also mitigating risk premiums if a portion of a fixed-price full requirements would extend into an unpriced capacity period.³ The Commission should approve PECO's CPP proposal adopted in the Settlement for the same reasons.

B. AEPS Compliance

In this case, RESA contends that continuing PECO's long-standing practice of allocating solar AECs delivered under PECO's separate procurements to default service suppliers is not "competitively neutral" and adversely impacts development of the retail market since the price for such AECs under the long-term contracts may not reflect current market pricing over time. RESA Main Br., pp. 17-18. PECO has been allocating AECs in this manner since its first solar procurement,⁴ and RESA has provided no basis for any change to this methodology. Both the OCA and PAIEUG agree. OCA Initial Br., pp. 10-11; PAIEUG Main Br., pp. 3-5. As the Company noted in its Initial Brief (pp. 13-14), EGSs can hedge their positions to procure AECs as they wish in light of the undisputed availability of solar AECs in the Commonwealth.

³ See *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval to Modify their Supplier Master Agreement*, Docket Nos. P-2020-3021424, P-2020-3021425, P-2020-3021426, and P-2020-3021427 (Order entered Oct. 13, 2020), p. 9; *Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval of their Default Service Plan for the Period from June 1, 2023 through May 31, 2027*, Docket Nos. P-2021-3030012 et al. (Recommended Decision issued June 29, 2022) ("FE-PA DSP VI Recommended Decision"), pp. 59-60; *Petition of Duquesne Light Co. for Approval to Modify its Supplier Master Agreement*, Docket No. P-2020-3023149 (Order entered Jan. 14, 2021), p. 4. The FE-PA DSP VI Recommended Decision was adopted without modification by the Commission in its Order entered August 4, 2022 at Docket Nos. P-2021-3030012 et al.

⁴ See *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641 (Opinion and Order entered Oct. 12, 2012), pp. 41-42.

III. RATE DESIGN AND COST RECOVERY

A. Adjustment of Default Service Rates

The Commission has approved semi-annual PTC rate changes for Duquesne Light Company, FirstEnergy Pennsylvania Electric Company, and PPL Electric Utilities Corp. (“PPL”).⁵ Under the Settlement, PECO agreed to move from quarterly to semi-annual GSA rate changes for the Residential and Small Commercial Classes, which is consistent with the frequency of default service rate adjustments for all other major EDCs in Pennsylvania.

In its Main Brief (p. 19), RESA repeats the contention of its witness Frank Caliva III that less frequent GSA rate adjustments would result in less market reflective default service rates. However, as explained in PECO’s Initial Brief (pp. 14-15), changing default service rates for the Residential and Small Commercial Classes every six months aligns with PECO’s procurement schedule for those customers and balances responsiveness of the PTC to current market conditions and price stability benefits to customers. Accordingly, moving to semi-annual GSA rate changes on June 1 and December 1 of each year as provided in the Settlement is reasonable and in the public interest.

B. Time-of-Use Rates

During DSP VI, PECO proposes to continue its current TOU rate options for the Residential and Small Commercial procurement classes that differentiate pricing across three usage periods (peak, off-peak and super off-peak) throughout the year and are designed to motivate customers to adjust the time of day they use electricity. As shown by the undisputed

⁵ See FE-PA DSP VI Recommended Decision, pp. 68-69, 104; *Petition of Duquesne Light Co. for Approval of its Default Service Plan for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019522 (Opinion and Order entered Jan. 14, 2021), pp. 15-16; *Petition of PPL Elec Utils. Corp. for Approval of a Default Service Program for the Period June 1, 2015 through May 31, 2017*, Docket No. P-2014-2417907 (Opinion and Order entered Jan 15, 2015), pp. 7-8, 28-29.

testimony explained in PECO's Initial Brief (pp. 16-17), the TOU rates agreed to by all parties (except RESA and NRG) under the Settlement satisfy PECO's statutory obligation under Act 129 of 2008 to offer an optional TOU rate to all default service customers with smart meters. Moreover, as PECO further explained, the TOU rates outlined in the Settlement incorporate the PUC's guidance on EDC TOU rate design and balance a variety of important objectives, including a TOU rate structure that is actionable and provides incentives for electric vehicle adoption.

In its Main Brief (pp. 20-21), RESA rehashes contentions advanced in Mr. Caliva's testimony against the OCA's recommended TOU rate analyses that PECO agreed to in the Settlement. Mr. Caliva claims that PECO should not perform any evaluations to improve its TOU rates and that customers should instead rely on EGSs to develop competitive TOU offerings tailored to individual customer needs. RESA St. 1-R, p. 14. As discussed in PECO's Initial Brief (p. 17), PECO and other EDCs have an unconditional, statutory obligation to offer TOU rate options to eligible default service customers under Section 2807(f)(5) of the Public Utility Code. RESA has also not explained how the one-time evaluation described in Paragraph 47 of the Settlement will impact, let alone impede, the ability of EGSs to offer competitive time-varying products.

In light of these reasons set forth in PECO's Initial Brief, the Commission should approve the Company's TOU rates outlined in the Settlement without modification.

IV. STANDARD OFFER PROGRAM

As described in PECO's Initial Brief (pp. 18-19), the Settlement modifies PECO's current SOP to require EGSs to return SOP customers to default service if they do not make an affirmative decision to either stay with their SOP supplier or select a new EGS at the end of the 12-month contract. The Settlement preserves the original purpose of the SOP by introducing

customers to the competitive market, while addressing concerns raised by the OCA and the Tenant Union Representative Network and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (together, “TURN/CAUSE-PA”) about customers passively rolling over onto high-priced contracts with the SOP supplier at expiration of the contract. PECO Initial Br., pp. 18-19; OCA Initial Br., pp. 16-24; *see also* TURN/CAUSE-PA St. 1, pp. 5-18; TURN/CAUSE-PA St. 1-SR, pp. 2-6.

In their respective briefs, RESA, NRG, and AP&G oppose the change to PECO’s SOP agreed to by the settling parties. Their discussion on this issue boils down to three basic arguments: (1) returning SOP customers to default service is anticompetitive and contrary to Commission regulations allowing EGSs to automatically convert existing contracts with proper customer notice; (2) adopting the change to PECO’s SOP outlined in the Settlement would constitute illegal “slamming”; and (3) requiring affirmative consent to remain with an EGS after expiration of the SOP contract term unlawfully regulates EGS pricing. *See* RESA Main Br., pp. 23-34; NRG Main Br., pp. 3-6; AP&G Amicus Br., pp. 4-6. None of those arguments is valid.

While RESA, NRG and AP&G assert that changing any parameters of PECO’s current SOP would be anticompetitive and discriminatory, “standard offer” customer referral programs are not mandated by the Electricity Generation Customer Choice and Competition Act, and the design of such programs recommended by the Commission in its Retail Markets Investigation is not prescribed by regulation. As such, the Commission has the power to change the SOP design at any time, including what occurs at the end of the 12-month SOP term.

PECO acknowledges that the Commission previously rejected the SOP change set forth in the Settlement in the PPL's 2020 default service proceeding.⁶ However, requiring affirmative action by the SOP customer to remain with their EGS at the end of the 12-month contract will encourage active customer choice while addressing record evidence presented by the OCA and TURN/CAUSE-PA witnesses regarding aggregate EGS charges over the last six years that exceeded PECO's applicable PTC by more than \$800 million. *See* OCA St. 2, pp. 9-16; TURN/CAUSE-PA St. 1, pp. 8-18. Revising the rules that apply at the end of the SOP contract term also does not prevent a customer from making their own shopping decisions as RESA, NRG and AP&G suggest. *See* RESA Main Br., pp. 22-23; NRG Main Br., p. 4; AP&G Amicus Br., p. 5. SOP customers remain entirely free to choose another EGS during or at the end of the 12-month introductory period or affirmatively choose to remain with their SOP supplier in response to the notices required by the Commission's regulations at 52 Pa. Code § 54.10. Notably, as RESA and NRG point out in their Main Briefs, more than 50% of PECO SOP survey respondents selected a new EGS at the end of the SOP contract term. In short, it is in the public interest for the Commission to modify its SOP guidelines established more than twelve years ago⁷ to encourage active customer shopping and address concerns expressed by several parties in this case regarding SOP customers unknowingly rolling over onto contracts with their SOP EGS at prices above the PTC.

Returning SOP customers that take no action at the end of the SOP term also is not "slamming," as RESA argues in its Main Brief (pp. 27-28). Customers will be advised at the

⁶ *See* RESA Main Br., pp. 30-31 (citing *Petition of PPL Elec. Utils. Corp. for Approval of Its Default Serv. Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Opinion and Order entered Dec. 17, 2020), pp. 92-102); NRG Main Br., pp. 5-6 (same); AP&G Amicus Br., pp. 2, 4-5 (same).

⁷ *See Investigation of Pennsylvania's Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered Mar. 2, 2012), p. 31.

time they enter into SOP contracts after June 1, 2025 that they will be returned to default service unless they make an affirmative election to continue to shop with their SOP supplier or another EGS at the end of the 12-month SOP contract term. *See* Joint Petition, ¶ 64.

Finally, contrary to RESA’s contention in its Main Brief (pp. 33-34), changing the end of SOP contract options as provided in the Settlement does not regulate EGS prices. The SOP is voluntary and EGSs may offer any contract price they desire to shopping customers at the end of a fixed-price SOP contract term. In addition, outside of the SOP, EGSs may continue to convert contracts for shopping customers that do not respond to the required regulatory notices. EGS notices at the end of the SOP contract may also continue to offer any price relative to the PTC. The only difference from today is that if SOP customers do not make an affirmative decision to remain with their SOP EGS in response to those notices, they will be returned to default service and they will be informed of that arrangement before executing an SOP contract.

In sum, RESA has not established any compelling reason for the Commission to reject the SOP modification adopted in the Settlement.

V. OTHER ISSUES

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

As explained in PECO’s Initial Brief (pp. 19-20), RESA has requested that the Commission initiate a statewide investigation to revisit messaging of default service using the PTC as a “first step” to address “structural barriers” that RESA witness Caliva largely blames on the presence of an EDC default service provider. In its Main Brief (pp. 34-35), RESA contends that comparisons of EGS offers to the PTC is “misleading” and forces EGSs to focus on short-term arrangements to “undercut” default service pricing. RESA notes that the Commission has “long recognized that differences exist” between default service and EGS supply, and contends

that it is time for the Commission to undertake this investigation to “revisit” the underlying use of the PTC as a comparison. RESA Main Br., p. 36. NRG joins RESA in support of its proposed investigation (NRG Main Brief, p. 6), while PECO and the OCA oppose RESA’s request on various grounds, including the fact that RESA had failed to demonstrate that competition is purportedly “stagnant.” PECO Initial Br., pp. 19-20; OCA Initial Br., pp. 24-25. PAIEUG also objects to RESA’s proposal on the ground that RESA should separately petition the Commission for any such investigation and not make such a proposal in a single EDC’s default service proceeding. PAIEUG Main Br., p. 5.

The Commission should reject RESA’s proposal. As PECO noted in its Initial Brief, RESA did not present any evidence to support its claim that changing the messaging of the default service product would allow EGSs to “develop more innovative and a greater variety of competitive products.”⁸ Moreover, PECO fully agrees with PAIEUG that any such statewide investigation should be initiated through a separate petition to permit all stakeholders to comment and not initiated through a single EDC’s default service proceeding.

B. PECO’s Proposed Residential Customer Bill Format Changes

As explained in PECO’s Initial Brief (pp. 20-22), the Settlement adopts PECO’s proposal to add a graphic to the first page of the residential customer bill comparing the customer’s total supplier charges for the billing period with what the dollar amount charges would be under PECO’s applicable PTC. *See* Settlement, ¶¶ 65-66; Ex. H. RESA is the only party that submitted testimony opposing PECO’s proposed bill format change, although the OCA proposed that PECO delete the third column from the graphic titled “Electric Supplier Savings”. RESA St. 1, pp. 18-23; OCA St. 1, pp. 8, 15. Under the Settlement, PECO agreed to remove the “Electric

⁸ RESA St. 1, p. 18.

Supplier Savings” column presenting the variance between the two dollar amount figures as recommended by the OCA to avoid potential customer confusion. Settlement, ¶ 66; *compare* Settlement Ex. H *and* PECO Ex. SD-6. Both RESA and NRG oppose the bill format change as modified by the Settlement and argue that displaying EGS charges and the charges the customer would have paid on default service will mislead customers and is anti-competitive, with RESA asserting that display of the information would violate the Competition Act. RESA Main Br., pp. 37-41; NRG Main Br., p. 7. As an alternative, RESA proposes that the Commission direct PECO to include disclosures about the price comparison to be developed in another collaborative and also add additional space for EGSs to include customer-specific messaging on residential bills. RESA Main Br., pp. 40-41.

In its Initial Brief (pp. 21-22) and in testimony by its witness Sulma Dalessio, PECO explained that the proposed addition to PECO’s bill was developed in response to a stakeholder collaborative to discuss residential bill improvements compatible with PECO’s “bill ready” billing platform. PECO’s bill already provides ample on-bill space for EGSs to explain any differences in their product pricing to their customers, and there is no need for yet another collaborative on “disclosures about the price comparison” as RESA requests in its Main Brief (p. 40). RESA and NRG’s arguments that PECO’s billing format proposal is anti-competitive or somehow violates the Competition Act are similarly without merit. PECO’s proposed change to the bill format does not inhibit or prohibit a customer from shopping with their chosen EGS in any way, nor does it preclude an EGS from conveying the value of its product through on-bill messaging or any other communications the EGS wants to make with its customers. There is no “inherent” or “implicit” judgment in showing the EGS price a customer is paying for generation service and the additional benefits an EGS provides and default service charges for the

equivalent amount of generation, nor is the billing format precluded in any way by the statutory language of Section 2807(c) of the Code, as RESA contends. Accordingly, RESA's argument that PECO's bill format change is in violation of the Competition Act should be rejected.

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

RESA also raises concerns regarding PECO's transition to a new Choice ID and customer account number with the same number of digits in connection with PECO's new CIS launched on February 20, 2024. RESA contends that suppliers did not know that they needed to ensure that the PECO customer provides them with a Choice ID instead of a new account number to process the enrollment. Additionally, RESA states that certain supplier invoices were rejected due to PECO's new customer account numbers. Based on those concerns, RESA recommends that PECO (1) provide daily updates to competitive suppliers and weekly updates to Commission staff for at least the first 90 days of any system upgrade; (2) assign each EGS a consistent point of contact for addressing issues related to the CIS upgrade, and (3) "exercise flexibility" in troubleshooting so that suppliers are not "unduly burdened." RESA Main Br., pp. 41-44.

These recommendations were fully addressed and refuted in PECO's Initial Brief (pp. 22-23). Suppliers had numerous opportunities to understand PECO's billing transition, and RESA witness Caliva acknowledged that the technical issues he had identified had been resolved. He now wants his changes in order to address "any future issues that may arise" or "any bugs that may continue to arise." RESA Main Br., p. 44. Mr. Caliva's speculation about future problems provides no grounds to implement and incur the costs of a new regime of daily and weekly updates for 98 EGSs, new staff assignments to individual EGSs, and a new standard of not

“unduly burdening” EGSs. For these reasons, RESA’s CIS-related recommendations should be rejected.

VI. CONCLUSION

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

Respectfully submitted,



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