

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for	:	
Approval of Its Default Service Program for	:	P-2024-3046008
the Period From June 1, 2025, Through	:	
May 31, 2029	:	

RECOMMENDED DECISION

Before
Eranda Vero
Administrative Law Judge

and

Arlene Ashton
Administrative Law Judge

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I. INTRODUCTION

This Recommended Decision addresses the Petition of PECO Energy Company for Approval of Its Default Service Program. A Joint Petition for Non-Unanimous Settlement (Joint Petition or Settlement) was submitted and signed by PECO Energy Company (PECO or the Company), 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), the Energy Justice Advocates (EJA) (collectively the Joint Petitioners). The Joint Petition is not opposed by intervenors Calpine Retail Holdings, Inc. (Calpine), Constellation Energy Generation, LLC and Constellation NewEnergy Inc. (collectively Constellation), and Philadelphia Area Industrial Energy Users Group (PAIEUG).

The Settlement is opposed by the Retail Energy Supply Association (RESA) and NRG Energy Inc. (NRG). In particular, RESA opposes the Settlement's provisions relating to the Capacity Proxy Price (CPP), the Generation Supply Adjustment (GSA), the Standard Offer Program (SOP), and PECO's Time-of-Use (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 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.

We recommend that RESA's and NRG's objections be denied because they fail to identify any record evidence or legal argument why these Settlement provisions should not be

part of the final PECO DSP VI plan. RESA has not provided evidence that PECO's initial DSP Plan VI is the better blueprint or that its suggested modifications should be adopted.

After reviewing the evidence in this case, the Joint Petition, the Statements in Support, RESA and NRG's objections, and the Briefs, we recommend that the Joint Petition be approved without modification. With respect to RESA's proposals that: 1) 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;" 2) the Commission reject 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; 3) the Commission 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; 4) the Commission reject PECO's proposal to include a Capacity Proxy Price as part of its wholesale default service supply procurement process; and 5) to the extent PECO's proposal to double the amount of its solar AEC procurement for default service is recommended for approval, the Commission 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, we recommend that the proposals be denied.

The Commission is required by statute under Section 2807(e)(3.6) of the Pennsylvania Public Utility Code ("Code") to issue a final Order regarding the proposed default service plan by November 18, 2024. 66 Pa.C.S § 2807(e)(3.6).

II. HISTORY OF THE PROCEEDING

On February 2, 2024, PECO Energy Company (PECO or the Company) filed a Petition with the Pennsylvania Public Utility Commission (Commission) requesting that the Commission approve its sixth Default Service Program (DSP VI or Program). PECO noted that this Petition was filed in accordance with its responsibilities as the default service provider for its

certificated service territory for the period from June 1, 2025 through May 31, 2029, following the expiration of its current default service program, DSP V.¹ Concurrently, PECO filed the supporting data required by 52 Pa. Code § 53.52, as well as the prepared direct testimony and accompanying exhibits of Sulma Dallessio, Megan A. McDevitt, Scott G. Fisher and Kati Orlandi.

Notice of PECO's Petition and Prehearing Conference was published in the *Pennsylvania Bulletin* on February 17, 2024, 54 Pa.B. 881 (Feb. 17, 2024). A deadline of March 4, 2024, was established for the filing of formal protests, petitions to intervene and answers. The prehearing conference was set for March 8, 2024.

The Philadelphia Area Industrial Energy Users Group, through its counsel, filed a Petition to Intervene on February 21, 2024.

The Office of Consumer Advocate, through its counsel, filed an Answer to PECO's Petition on March 1, 2024.

Calpine Retail Holdings, LLC, through its counsel, filed a Petition to Intervene on March 1, 2024.

The Office of Small Business Advocate, through its counsel, filed a Notice of Appearance, Notice of Intervention, Public Statement and Answer to PECO's Petition on March 4, 2024.

A Prehearing Conference Notice was issued on March 4, 2024, scheduling the Pre-hearing Conference in this matter for March 8, 2024.

¹ *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2021, through May 31, 2025*, Docket No. P-2020-3019290 (Opinion and Order entered Dec. 3, 2020) ("PECO DSP V").

A Prehearing Conference Order was issued on March 4, 2024, advising the parties of the date and time of the scheduled conference, informing them of the procedures applicable to the proceeding, and directing the submission of prehearing memoranda prior to the conference.

On March 4, 2024, each of the following entities, through its counsel, filed a Petition to Intervene: POWER Interfaith (POWER), Vote Solar, Clean Air Council, Sierra Club, Physicians for Social Responsibility Pennsylvania, and PennEnvironment (collectively, the Energy Justice Advocates or EJA), NRG Energy, Inc., Retail Energy Supply Association, the Tenant Union Representative Network and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania.

Constellation NewEnergy, Inc. and Constellation Energy Generation LLC, through its counsel, filed a Petition to Intervene on March 6, 2024.

Prior to the prehearing conference, the following parties filed Prehearing Memoranda: PECO, OCA, OSBA, Calpine, TURN/CAUSE-PA, Constellation, Energy Justice Advocates, NRG, PAIEUG and RESA.

The Prehearing Conference was held as scheduled on Friday, March 8, 2024. Counsel for the following parties participated: PECO, OCA, OSBA, Calpine, TURN/ CAUSE-PA, Constellation, Energy Justice Advocates, NRG, PAIEUG and RESA.

Since there were no objections to the Petitions to Intervene, the petitions filed by the following entities were granted: Calpine, TURN/CAUSE-PA, Constellation, Energy Justice Advocates, NRG, PAIEUG and RESA.

On March 14, 2024, we granted the Protective Order proposed by PECO.

On March 26, 2024, Notice of Public Input Hearings was published. A corrected Notice of Public Input Hearings was published on April 2, 2024.

On April 2, 2024, we issued a Prehearing Order memorializing the actions from the prehearing conference such as granting the Petitions to Intervene, granting two Petitions for admission *pro hac vice*, modifications to discovery rules, and establishing a procedural schedule.

On April 26, 2024, an Order was issued on a Motion to Dismiss Objection and Compel PECO to Answer Interrogatories filed by OCA on April 15, 2024.

On April 29, 2024, an Order was issued on a Motion to Dismiss Objection and Compel PECO to Answer Interrogatories filed by Energy Justice on April 15, 2024.

On May 21, 2024, a Notice of Evidentiary Hearings was issued informing the parties that evidentiary hearings had been scheduled in this matter for June 4, 2024, and June 5, 2024.

On June 3, 2024, a Hearing Cancellation Notice was issued informing the parties that evidentiary hearings scheduled in this matter for June 4, 2024, and June 5, 2024, had been cancelled.

On June 5, 2024, the parties filed a Joint Stipulation for Admission of Testimony and Exhibits (Joint Stipulation) stipulating that the Statements and Exhibits listed therein should be admitted into the record in this proceeding and that each of them waived cross-examination of the witnesses whose testimony was included therein.

On June 17, 2024, a Briefing Order was issued directing the parties to prepare and deliver briefs in the format and manner described therein.

On June 19, 2024, the presiding officers were notified that PECO, and a majority of the parties had reached a settlement of all issues and wished to proceed by filing a Joint Petition for Non-Unanimous Settlement, with accompanying Statements of Support. The parties also proposed that the litigations schedule be revised to provide for filing of Main Briefs on

July 12, 2024, and Reply Briefs on July 26, 2024. In addition, PECO advised that it would agree to an extension of the statutory deadline from November 2, 2024, to November 18, 2024.

On June 20, 2024, we conveyed our acceptance of the modifications to the litigation schedule and instructed counsel for PECO to file a letter with the Secretary's Bureau advising the Commission of its voluntary extension of the statutory deadline.

On June 26, 2024, PECO filed a letter with the Commission requesting an extension of the statutory deadline from November 2, 2024, to November 18, 2024.

On July 10, 2024, PECO, OCA, OSBA, TURN/CAUSE-PA and EJA (collectively, the Joint Petitioners or Settling Parties) filed a Joint Petition for Non-Unanimous Settlement (Joint Petition or Settlement) with the Commission pursuant to which the Settling Parties agreed to a default service program consistent with PECO's DSP VI Petition, as modified (Revised DSP VI). The Joint Petition was executed by counsel for PECO, OCA, OSBA, TURN/CAUSE-PA and EJA, and the Settling Parties filed Statements in Support of the Joint Petition. In the Joint Petition, the Joint Petitioners explained that Calpine, Constellation and PAIEUG had each authorized the Joint Portioners to represent that they do not oppose the Settlement. In addition, the Settling Parties indicated that RESA and NRG were the only parties to the proceeding that indicated they oppose the Settlement.

On July 17, PECO, OCA, PAIEUG, RESA and NRG filed Main Briefs. In addition, on July 17, 2024, American Power & Gas of Pennsylvania, LLC (AP&G) filed an *Amicus Curiae* Brief to the Commission.

On July 31, 2024, PECO, OCA, RESA, TURN/CAUSE-PA, and Calpine filed Reply Briefs.

The record consists of a 487-page transcript; the Joint Stipulations with attachments; the statements and exhibits of the parties; the Joint Petition with attachments; the

Main Briefs filed by PECO, OCA, PAIEUG, RESA and NRG, the *Amicus Curiae* Brief filed by AP&G; and the Reply Briefs filed by PECO, OCA, RESA, TURN/CAUSE-PA, and Calpine.

The record closed on July 31, 2024.

III. PUBLIC INPUT HEARINGS

Public Input Hearings (PI hearings) in this proceeding were held via teleconference on April 16, 2024, and in person on April 18, 2024. Eighty witnesses provided approximately seven-and-one-half hours of testimony during the PI hearings.

Nearly all of the witnesses identified the “climate crisis” and/or the need to address the impact of climate change as the primary motivation for appearing at the PI hearings. The testimony presented by witnesses at the PI hearings was consistently critical of PECO’s proposed DSP and overwhelmingly supportive of increasing the amount of electricity generated by PECO from renewable energy sources and through long-term contracts for renewable energy. The witnesses argued that including such measures in the DSP would result in more affordable electric service for the vast majority of PECO customers. In addition, they argued that those measures would begin to address the negative impacts of climate change affecting all PECO customers and the community at large. These and other comments are discussed in more detail below.²

² All but one witness testified in favor of changes to PECO’s proposed default service procurement plan to incorporate more renewable energy or in support of such testimony by others. *See, e.g.*, Tr. 89-91, 98-99, 100-102, 104-105, 117-120, 158-160, 265-267 and 274-276. The sole remaining witness did not provide any testimony regarding the role of renewable energy in PECO’s default service plan; rather, in her testimony she discussed PECO’s efforts to serve as a “community partner” supporting efforts to improve outcomes for Philadelphia youth through philanthropy and other activities.

The DSP is a “linchpin” to Cleaner, More Affordable Electricity

Virtually all of the witnesses at the Public Input Hearings saw the DSP as a critical component or “the linchpin” of a substantial shift to clean affordable energy.³ Numerous witnesses pointed to PECO consumers’ reliance on the DSP as the primary rationale for their comments on the DSP procurement and implementation plan, observing that the vast majority of PECO’s customers do not shop for their EGS and thus, obtain service under the DSP.⁴

A number of witnesses specifically noted that affordability and sustainability are linked and underscored the value of using the DSP to address these issues simultaneously and equitably for all consumers, regardless of financial ability. The following comments of Emily Abendroth reflect this theme,

I and others around me want and need our energy to be affordable, but we also want it to be responsible, meaning that we want and need PECO, our utility company, to be responsive to the necessity to move away from fossil fuel reliance We know that clean, renewable energy is the response [sic] way to address both affordability and sustainability together. And it is a way to do this that will equitably impact the most people, not through individual consumer choice options or programs, but through the default service plan which serves about 75 to 80 percent of PECO customers.^[5]

Several witnesses commented that although they had made personal choices and investments designed to reduce their own reliance on fossil fuels, individual action is not a choice available or affordable for all consumers.⁶ They stressed that due to the scope of the problem, individual actions cannot and will not reduce the impact of climate change in any meaningful way.⁷

³ See, e.g., testimony of Robert Routh, an attorney. Tr. 168.

⁴ Witnesses provided varying estimates of the percentage of PECO customers who obtain service under the DSP. The estimates ranged from 70% to 80%. Tr. 81, 118, 142, 376.

⁵ Tr. 377.

⁶ Tr. 99, 123, 153, 390-391.

⁷ See Tr. 89, 95, 173-174, 282-283, 399.

Several state and local officials appeared at the PI hearings; their testimony echoed the comments of other witnesses. The officials expressed support for the modification of PECO's proposed DSP to reduce reliance on fossil fuels, increase reliance on renewable energy sources, invest in affordable alternative energy sources and address pressing climate change issues.⁸ The officials and individual witnesses also highlighted the prominent role of PECO DSP's in achieving federal, state and local environmental goals.⁹

Common Issues and Concerns

A number of more specific points of concern or criticism arose during PI hearings. The issues that were most frequently cited by witnesses at the hearings are identified below.

A. People and Businesses are Suffering Due to Climate Change

Many witnesses highlighted the urgent need to take measures to combat negative impacts of climate change such as higher air temperatures, worsening air quality and severe and volatile weather. They described the direct impact and suffering experienced by themselves,¹⁰ their businesses¹¹ and their communities¹² asserting that these effects are attributable to climate change. In addition, many witnesses highlighted that while the young, the old and the poor may be at highest risk, the negative impact of climate change affect everyone.

⁸ See, Testimony of Councilman Mark Squilla Tr. 65-66, Councilman Nicholas O'Rourke Tr. 70-37, Senator Nikil Saval Tr. 243-245, and Representative Christopher Rabb Tr. 250-252. Walter Tsou, a former Health Commissioner for the City of Philadelphia also provided testimony. Tr. 358-360.

⁹ See e.g., Tr. 66, 118, 164, 177, 252. 308, 359.

¹⁰ See e.g., Tr. 133, 172,

¹¹ See e.g., the testimony of Kylee Ray-Riek. Tr. 154-156.

¹² The negative impacts most commonly cited by witnesses were health and respiratory issues and flooding. See e.g., Tr. 93, 130, 136, 138, 153, 171, 190, 273, 295, 288, 300, 360.

More than one witnesses specifically referred to fossil fuel fired power plants as a source of concern.¹³

B. Alternative Energy Can Reduce the High Cost of PECO Service

Another prominent theme voiced repeatedly at the hearings was the high cost of PECO service, the burden of PECO service on consumers with limited resources, and the opportunity to lower service costs by increasing the use of alternative energy generation sources for electricity generation.¹⁴

Regarding the cost of PECO service, David Clowney observed that “PECO’s rates are . . . 15 percent higher than the national average.”¹⁵

Addressing the issue of service costs and alternative energy supplies, another observed that “[s]tates that have held prices lower have credited it to having a more diverse supply mix. . . . adding longer term [alternative] energy contracts would be a prudent mix of resources.”¹⁶

Witnesses urged the Commission to have PECO take more advantage of the low, stable, and predictable costs of long term solar contracts in the DSP.¹⁷ Richard Postmontier posited that “the DSP needs to strike a balance between renewable energy and fossil fuels.”¹⁸ Further, he noted that “renewable energy doesn't suffer from the wild price swings we've seen in

¹³ See e.g., Tr. 136, 296.

¹⁴ See, e.g., Tr. 120, 126, 171, 300, 321-322, 340.

¹⁵ Tr. 310.

¹⁶ Tr. 120. Witness Ellie Kerns observed that “Wind and solar have very stable costs and are across the board cheaper than burning fossil fuels. Long-term renewable energy contracts will provide [PECO] customers with consistent and affordable electricity.” Tr. 300.

¹⁷ This witness suggested 5-year contracts for alternative energy. *Id.* Witness Kenneth Beiser advocated that PECO follow the example of other utilities and enter into 10-year to 20-year contracts for renewable energy supplies. Tr. 145

¹⁸ Tr. 325.

natural gas the past couple of years.”¹⁹ Mr. Postmontier summarized the argument in favor of using long-term of alternative energy contracts to reduce service costs as follows:

With long-term contracts, solar and wind are cheaper than burning fossil fuels. PECO's insistence on short-term contracts creates a market that artificially favors fossil fuels. PECO needs to end this artificial barrier to affordable energy and affordable renewable energy and fix the mix. Renewable energy is not only safer for the planet and Pennsylvania residents, but it's more affordable as well.^[20]

Witness Ellie Kerns echoed the comments regarding the stability of prices for wind and solar powered energy and argued that they “are across the board cheaper than burning fossil fuels.”²¹ She stated that long term renewable energy contracts would enable PECO to provide customers with “consistent and affordable electricity.”²²

C. PECO Has Not Responded to Consumer Demand for a Shift toward Alternative Energy Generation

A number of witnesses harshly critiqued PECO for failing to respond to consumer demand for a shift away from fossil fuel sources and toward alternative energy sources in its DSP filing.²³ One witness noted that he and others had been “working for nine years on [climate change demands] and PECO hasn’t moved.”²⁴ Susan Shipley commented that “It is about time for PECO to step up to the plate, as most of the nation's energy providers are doing.”²⁵

¹⁹ *Id.*

²⁰ Tr. 325.

²¹ Tr. 300

²² *Id.*

²³ *See, e.g.*, Tr. 340. Mitch Chanin noted that big businesses and institutions in Philadelphia and Pennsylvania have already begun buying renewable energy through long-term contracts. Tr. 332.

²⁴ Tr. 380.

²⁵ Tr. 132.

Another witness commented that “the current default service plan is really, it's business as usual, very similar to the default service plan that PECO offered and was accepted by the PUC four years ago.”²⁶ He found PECO’s claims regarding the doubling of renewable energy credits absurd. Commenting on PECO's proposal to double the purchase of solar renewable energy credits, he stated that “doubling almost nothing is still almost nothing.”²⁷

Wendy Greenspan also specifically addressed PECO’s proposed doubling of energy credits.

PECO has stated that this DSP will double the use of long-term contracts to buy solar alternative energy credits. This, however, is not a meaningful change. PECO is simply doubling the use of one method for purchasing the same amount, the same 0.5 percent of solar energy credits. Instead, we need PECO to make a meaningful change in how it powers our homes. PECO must substantially increase the amount of solar energy that it purchases in this proposed DSP. PECO must go well beyond 0.5 percent. With this DSP, PECO has an extraordinary opportunity to make a real difference in the lives of its 1.6 million customers. Don't waste this opportunity.^[28]

Witness Robert Routh noted that the Commonwealth’s Alternative Energy Portfolio Standards Act was adopted 20 years ago. According to Mr. Routh, the key to a cleaner, more affordable economy is “decarbonizing our electricity sector while transitioning from burning fossil fuels to electrifying our buildings, transportation sources, and industrial applications.”²⁹ He also argued that “to equitably address the climate crisis we must accelerate deployment of abundant, reliable supplies of renewable energy while mitigating the energy burdens faced by residents in Philadelphia and wider Delaware Valley.”³⁰

²⁶ Tr. 368.

²⁷ *Id.*

²⁸ Tr. 271.

²⁹ Tr. 168.

³⁰ *Id.*

At least two witnesses pointed to New York and Texas as states where utilities had made more progress than Pennsylvania towards reducing reliance on fossil fuels to generate electricity.³¹

D. Consumers are Disappointed and Frustrated by the Consumer Choice Program

The Commonwealth's Customer Choice program was the subject of extensive testimony, virtually all of it negative. The testimony of Phyllis Blumberg was typical of those witnesses who addressed the problem in general terms or commented on systemic issues.³²

Most people do not even know that it's possible to buy clean renewable energy and assume that they can only get it from PECO. [Purchasing] energy from a third-party source . . . is not a viable or understood option for many people[.] Individuals who are getting assistance, get assistance do not have the option of paying for a cheaper clean energy, and they are the ones who need it the most.^[33]

Other witnesses made more specific comments regarding the process for selecting an alternative energy supplier. One witness critiqued what they described as “bait and switch pricing” by alternative energy suppliers.³⁴ Another witness described the process of choosing an alternative energy supplier as “confusing and time consuming.”³⁵ Norman Janes observed that it is particularly difficult for the elderly and the poor to use the Customer Choice system to obtain electricity from an alternative energy supplier.³⁶

³¹ See e.g., the testimony of Phyllis Blumberg and Jason Massey. Tr. 262, 327.

³² See Tr. 64, 69, 93 and 117. Phyllis Blumberg commented that “purchasing clean renewable energy is confusing. It is not a viable or understood option for many people including those who need it most such as those on assistance. Tr. 260-261.

³³ Tr. 263.

³⁴ Tr. 142.

³⁵ Tr. 105. See also Tr. 81, 163, 355, 401. Yet another witness stated simply that the “choice program has failed for small customers.” Tr. 163.

³⁶ Tr. 281.

The testimony of witness Liz Robinson is emblematic of the type of comments received at the PI hearings; she stated, in part:

data on the Electric Choice Program shows that customers, very large industrial and large commercial customers, do use Electric Choice because they have enough market power to get what they want in the marketplace. But small residential customers have been declining rapidly as a share of the total customer base that is shopping. . . . [T]he Electric Choice Program, frankly, is about 20 years old or longer and is now failing, has failed for small customers. So the solution to customers who want renewable energy is not the Electric Choice Program. It is the default service supply.^[37]

E. The Commission Must Balance the Interests of PECO and its Consumers

Several witnesses critiqued the Commission’s review of previous PECO DSP filings and urged the Commission to take a more active approach in this proceeding. John Magee commented that “PECO, with the help of the PUC, has effectively shut out competition from renewable energy by consistently purchasing fuels on short term contracts.”³⁸ In addition, he commented that:

according to the PA Constitution, the PUC, as trustees, must consider damage to our environment, our life support resulting from energy procurement and distribution. I ask that the PUC take the long view, consider the real and increasingly visible costs of the current way that PECO does business, and require PECO to move to a DSP that moves as quickly as possible toward renewable energy, both because it will lead to lower bills and because it will prevent environmental damage, which is priceless.^[39]

A number of witnesses urged the Commission to exert its authority over this proceeding to require PECO to embrace and accelerate a shift away from fossil fuel to alternative

³⁷ Tr. 163-164.

³⁸ Tr. 90.

³⁹ Tr. 91.

energy sources for electricity generation. Abigail Weber asserted that the Commission was in a position to address the negative impacts of climate change in Pennsylvania, commenting,

I am a PECO ratepayer and I am a person who cares about the future of this Commonwealth. I support the maximum amount of renewable energy in the default service plan. . . . [M]y individual actions don't really do anything, but I'm here today to remind this Commission that it has enormous power, more than any individual. The PUC can change the way Pennsylvania powers itself. Only through its bold action to turn our Commonwealth towards renewable energy.⁴⁰

Similarly, Bruce Birchard addressed his comments directly to the PUC, stating he was “[a]sking the PUC to require that PECO revise their DSP to affect a more rapid transition to clean solar and wind energy to generate the electric power that PECO distributes. This is urgently needed; people are suffering now from the effects of a rapidly warming planet.”⁴¹

Several witnesses referred to the Environmental Rights Amendment to the Commonwealth’s Constitution during their testimony and suggested that the Commission be mindful of and heed the provisions of the Amendment when ruling on PECO’s DSP proposal.⁴²

Witness Avi Winokur commented that “[t]he welfare of PECO customers must be the first priority in every decision the PUC makes. PUC decisions today impact the health and/or degradation of the environment for generations.”⁴³

⁴⁰ Tr. 374.

⁴¹ Tr. 186; *See also* Tr. 372.

⁴² *See* Tr. 90, 101, 130, 113; 154, 158.

⁴³ Tr 253; *See also* Tr. 324, 339.

IV. DESCRIPTION AND TERMS OF THE JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT

The Joint Petition is a 25-page document signed by five of the active parties. Exhibit A is reserved. Exhibit B is the Revised PECO Energy Company Default Service Program Request for Proposals. Exhibit C is the Revised Request for Proposal (RFP) Protocol. Exhibit D is the Revised Electric Service Tariff (Relevant Pages). Exhibit E is the Revised Electric Service Tariff (Redline). Exhibit F is the Electric Generation Supplier Coordination Tariff (Relevant Pages). Exhibit G is the Electric Generation Supplier Coordination Tariff (Redline). Exhibit H is the Revised Residential Bill Format Change. Statement A is the Statement in Support of Joint Petition for Non-Unanimous Settlement of PECO Energy Company. Statement B is the Statement in Support of Joint Petition for Non-Unanimous Settlement of the Office of Consumer Advocate. Statement C is the Statement in Support of Joint Petition for Non-Unanimous Settlement of the Office of Small Business Advocate. Statement D is the Statement in Support of Joint Petition for Non-Unanimous Settlement of the Energy Justice Advocates. Statement E is the Statement in Support of Joint Petition for Non-Unanimous Settlement of the Tenant Union Representative Network and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania.

The essential terms of the Joint Petition for Partial Settlement are set forth on pages 4-20 in paragraphs numbered 12-71 in the Settlement. These terms are stated below *verbatim* and for ease of reference, retain the same numbers and headings as they appear in the Settlement.

TERMS AND CONDITIONS OF SETTLEMENT

12. The Settlement consists of the following terms and conditions:

Procurement Plan

13. The Joint Petitioners agree that the DSP VI Program shall be in effect for a period of four years, from June 1, 2025 through May 31, 2029.

14. PECO's default service customers shall be divided into the same three classes for purposes of default service procurement as those established in DSP V: the Residential Class, the Small Commercial Class, and the Consolidated Large Commercial and Industrial ("C&I") Class.

15. The Residential Class includes all residential customers currently receiving service under PECO rate schedules R and RH.

16. The Small Commercial Class includes customers with annual peak demands of up to and including 100 kW served under rate schedules GS, PD, and HT plus lighting customers on schedules AL, POL, SLE, SLS, SLC, and TLCL.

17. The Consolidated Large C&I Class includes customers with annual peak demands greater than 100 kW on rate schedules GS, HT, PD, and EP.

Residential Class

18. For the Residential Class, PECO will continue to procure a mix of one-year (approximately 38%) and two-year (approximately 61%) fixed-price full requirements ("FPFR") contracts, with six months spacing between the commencement of contract delivery periods. During the Revised DSP VI period, the remaining approximately 1% of Residential Class load will be supplied directly by PJM's spot energy, capacity and ancillary services markets offset by the long-term solar procurement discussed in Paragraphs 20-25 below.

19. Suppliers will bid in a competitive, sealed-bid request for proposals ("RFP") process on "tranches" corresponding to a percentage of the actual Residential default service customer load. Winning suppliers will be obligated to supply full requirements load-following service, which includes energy, capacity, ancillary services, and all other services or products necessary to serve a specified percentage of PECO's default service load in all hours during the supply product's delivery period.^[44] The full requirements product requires the supplier to provide PECO all necessary AECs described in Paragraph 36, *infra*, for compliance with Pennsylvania's Alternative Energy Portfolio Standards ("AEPS") Act, 73 P.S. § 1648.1 et seq. Each of the contracts will be procured approximately two months prior to the beginning of the applicable contract delivery period. As in DSP V, PECO will continue to nominate PJM Auction Revenue Rights ("ARRs") for the default service load. To facilitate selection and transfer of

⁴⁴ PECO remains responsible for all distribution services to its default service customers. The assignment of responsibility for PJM transmission-related costs is discussed in Section II.E., *infra*.

ARRs to wholesale default service suppliers, PECO will continue to employ a consultant for ARR analysis and selection.

20. The Joint Petitioners agree to the procurement terms and schedule for the Residential Class FPF contracts set forth in PECO Exhibit No. SD-1.

21. During the DSP VI Term, PECO will also procure, through ten-year, fixed-price power purchase agreements (“Solar PPAs”), the energy, capacity and solar photovoltaic alternative energy credits (“AECs”) generated by one or more new Pennsylvania solar photovoltaic projects with total capacity of up to 25 MW (DC) to meet the default service requirements of residential customers. The winning project(s) will be selected through a competitive procurement process in which PECO will seek 25 MW (DC) of solar capacity but will have flexibility to enter into agreements with multiple projects totaling 25 MW (DC) with a minimum project size of 5 MW (DC).

22. PECO will issue a request for proposals (“Solar RFP”) by the second quarter of 2025 in order to conduct the procurement in the third quarter of 2025. A proposed project will be considered to be “new” for purposes of PECO’s procurement if the project has not commenced the delivery of electric generation to any entity and its construction has not been completed as of the date project proposals are due under the RFP.

23. If the procurement does not result in a total contracted capacity of 25 MW (DC), PECO will conduct a second procurement within six to 12 months of the first procurement; provided, however, that if the capacity that was not contracted is less than 10 MW (DC), PECO shall have sole discretion whether to conduct a second procurement for that capacity. All costs of the first and (if necessary) the second procurement shall be considered a cost of generation supply for the default service residential class. PECO will publish the winning price (\$/MWh) and capacity (MW) of the executed PPA (or if more than one PPA is executed, the capacity of each PPA (MW) and the weighted average winning price (\$/MWh)) that is approved by the Commission. NERA Economic Consulting (“NERA”) will serve as the Independent Evaluator for PECO’s solar procurement.

24. The energy generated by the selected project(s) will be used to offset the spot purchases for the residential customer class as proposed under DSP VI and the AECs from the project will be used to meet residential class AEPS requirements. This solar energy procurement would be in place of the Company’s proposed increase in solar alternative energy credit procurement via long-term contracts.

25. PECO shall submit the Solar RFP and PPA to the Commission for approval within forty-five (45) days of a Commission order approving the Settlement after conferring in good faith with the Joint Petitioners regarding the terms of the Solar RFP and PPA, which shall be substantially similar to the solar request for proposals and power purchase agreement approved by the Commission in Docket No. P-2021-3030012. The parties to this proceeding shall have the right to file comments on PECO's proposed Solar RFP and PPA within thirty (30) days after PECO's filing of the Solar RFP and PPA with the Commission.

Small Commercial Class

26. The Small Commercial Class load will continue to be supplied by equal shares of one-year and two-year FPFRR products. Each of the contracts for the Small Commercial Class will be procured through a competitive sealed-bid process in the same manner as FPFRR products for the Residential Class approximately two months prior to delivery of energy under the contract.

27. The Joint Petitioners agree to the procurement terms and schedule for the Small Commercial Class FPFRR contracts set forth in PECO Exhibit No. SD-1.

Consolidated Large Commercial and Industrial Class

28. For its Consolidated Large C&I Class, PECO will continue to solicit twelve-month hourly-priced full requirements products, without overlap, for all default service supply. In order to improve participation and the number of bids competing to serve this customer class, the load cap will be increased from 50% to 75%.

29. PECO will procure default service supply for the Consolidated Large C&I Class annually as shown on PECO Exhibit No. SD-1.

Default Service Implementation Plan and Independent Evaluator

30. The Joint Petitioners agree to the form of the Supplier Master Agreement ("SMA") that PECO will execute with wholesale suppliers that are successful bidders in PECO's default service supply procurements set forth in PECO Exhibit No. SD-2.

31. The Joint Petitioners agree to the following changes to SMA approved by the Commission in the DSP V proceeding: (1) inclusion of new Appendix I that enables market participants subject to the regulations issued by the Board of Governors of the Federal Reserve System (12 C.F.R. §§ 252.2, 252.81-88), the Federal Deposit Insurance Corporation (12 C.F.R. §§ 382.1-7) and

the Office of the Comptroller of the Currency (12 C.F.R. §§ 47.1-8) to participate in the Company’s default service solicitations; (2) revisions to introduce a capacity proxy price (“CPP”) and true-up discussed in Paragraph 32 below.

32. Effective June 1, 2025, the Joint Petitioners agree that if PJM does not conduct its Base Residual Auction (“BRA”) for capacity in time for default service suppliers to incorporate the auction results into their bids, the CPP will be the average of the most recent results under PJM’s Reliability Pricing Model (“RPM”) from the two most recent delivery years for which PJM has held a capacity auction. Commencing at the start of the delivery year for which the BRA results were not known, winning suppliers will be debited or credited (as applicable) any differences between the CPP and the actual PJM capacity price.

33. PECO agrees to withdraw its reserve price proposal. This withdrawal is made without prejudice to propose this price stability protection in future default service proceedings.

34. The Joint Petitioners agree to the Requests for Proposals (“RFP”) for PECO’s competitive sealed-bid solicitations and the RFP protocol set forth in Exhibits B and C hereto. Exhibits B and C are revised versions of PECO Exhibit Nos. KO-1 and KO-2, respectively, to reflect withdrawal of PECO’s reserve price proposal under the Settlement.

35. PECO will again appoint NERA as the third-party independent evaluator for PECO’s default service procurements, in addition to the new solar procurement.

Alternative Energy Portfolio Standards (“AEPS”) Act Compliance

36. Under the SMA, as in DSP V, PECO will continue to require each full requirements default service supplier to transfer Tier I (including solar photovoltaic) and Tier II AECs to PECO corresponding to PECO’s AEPS obligations associated with the amount of default service load served by that supplier. In addition, PECO will continue to allocate AECs obtained through its separate solar procurements to suppliers in accordance with the percentage of load served by each supplier. PECO will retain any portion of its AEC inventory to meet AEPS obligations not provided for by fixed-price full requirements suppliers, and procure any additional required AECs through PECO’s Tier I and Tier II “balancing” procurements previously authorized by the Commission. As described above, the AECs from the Solar PPAs will be used to meet the AEPS requirements associated with the spot portion of residential default service load served by PECO.

Contingency Plans

(1) Full Requirements

37. PECO will continue utilizing the contingency plans approved in prior default service programs. Specifically, in the event PECO fails to obtain sufficient approved bids for all offered tranches for a product in a solicitation, the unfilled tranches will be included in PECO's next default supply solicitation for that product. PECO will supply any unserved portion of its default service load from the PJM-administered markets for energy, capacity and ancillary services.

38. If a supplier default occurs within a reasonable time before a scheduled procurement, the load served by the defaulting supplier will be incorporated into that next procurement. Otherwise, PECO will file a plan with the Commission proposing alternative procurement options and a request for approval on an expedited basis.

(2) AEPS Requirements

39. PECO will issue the Solar RFP by the second quarter of 2025 in order to conduct the procurement in the third quarter of 2025. As described in paragraph 23, if this procurement does not result in a total contracted capacity of 25 MW (DC), PECO will conduct a second procurement within six to twelve months of the first procurement; provided, however, that if the capacity that was not contracted is less than 10 MW (DC), PECO shall have sole discretion whether to conduct a second procurement for that capacity. In the event these procurements are not successful, there will be no shortfall in AECs necessary in light of the obligation of full requirements suppliers to deliver AECs and PECO's existing authority to obtain any additional required AECs through PECO's Tier I and Tier II "balancing" procurements previously authorized by the Commission.

Rate Design And Cost Recovery

(1) Generation Supply Adjustment

40. PECO will continue to recover the cost of default service from default service customers through the Generation Supply Adjustment ("GSA") and Transmission Service Charge ("TSC") consistent with DSP V. For the Residential and Small Commercial customer classes, default service rates established pursuant to the GSA will change semi-annually instead of quarterly and over/undercollections of default service costs will continue to be reconciled on a semi-annual basis. Such rates will continue to recover: (1) generation costs, certain transmission costs and ancillary service costs established through PECO's

competitive procurements; (2) supply management, administrative costs (including costs incurred to implement Commission-approved retail enhancement programs) and working capital, as provided in 52 Pa. Code § 69.1808; and (3) applicable taxes. The projected GSA will be filed by PECO on June 1 and December 1 of each year. The GSA and TSC form the basis of the Price-to-Compare (“PTC”) that customers may use to evaluate competitive generation service offerings.

41. PECO’s default service rates for the Consolidated Large C&I will also continue to be charged through the GSA. For those customers, default service rates will continue to be based upon the price paid to winning suppliers in PECO’s hourly-priced service procurements, which includes the PJM day-ahead hourly locational marginal price (“LMP”) for the PJM PECO Zone, plus associated costs, such as capacity, ancillary services, PJM administrative expenses and costs to comply with AEPS requirements that are incurred to provide hourly-priced service. The Joint Petitioners agree that PECO will continue to file the Hourly Pricing Adder on a quarterly basis.

42. The default service rates for the Large Commercial and Industrial Class also include a reconciliation component to refund or recoup GSA over/under collections from prior periods. The Joint Petitioners agree that over/under collections of default service costs for the Consolidated Large C&I Class will continue to be reconciled on a semi-annual basis instead of a monthly basis.

43. PECO shall be permitted to file the GSA and Reconciliation tariff pages set forth in Exhibits D and E to the Joint Petition to become effective as of June 1, 2025. Exhibits D and E are revised versions of PECO Exhibit Nos. MAM-1 and MAM-2, respectively, to reflect the tariff changes set forth in this Settlement.

(2) Recovery of Certain PJM Charges

44. Wholesale suppliers will continue to be responsible for those PJM bill line items specified in the SMA.

45. PECO will continue to be responsible for and recover the following PJM charges from all distribution customers in PECO’s service area through its Non-Bypassable Transmission Charge: Generation Deactivation/RMR charges (PJM bill line 1930) set after December 4, 2014; RTEP charges (PJM bill line 1108); and Expansion Cost Recovery charges (PJM bill line 1730).

(3) Time-of Use Rates

46. During DSP VI, PECO will continue its current Commission-approved TOU default service rate options for eligible customers in PECO’s Residential and Small Commercial procurement classes to comply with PECO’s obligation under Act 129 of 2008 (“Act 129”) to offer TOU and real-time rates to all default service customers with smart meters.^[45]

47. PECO will perform a one-time evaluation of the Company’s current TOU rate structure and present the results in its next default service filing. PECO’s evaluation will include an assessment of enrollment rates and customer characteristics conducted through a voluntary email survey of all participating TOU customers (e.g., income, air conditioning, rooftop solar and electric vehicles ownership, etc.). The survey will include questions regarding whether customers would prefer an incentive-based program which PECO will use to inform the Company on whether to consider proposing incentive-based time varying rates in future proceedings. Additionally, PECO’s evaluation will include an analysis of seasonal variation in the calculation of the TOU multipliers.

TOU Product Structure and Rate Design

48. PECO’s TOU rates will differentiate prices across three usage periods that are constant throughout the year as shown in Table 1 below.

Table 1

<u>TOU Pricing Period</u>	<u>Year-Round Days/Hours Included</u>
Peak	2 p.m. – 6 p.m. Monday Through Friday, excluding PJM holidays
Super Off-Peak	Midnight (12 a.m.) – 6 a.m. Every day
Off-Peak	All other hours

⁴⁵ 66 Pa.C.S. § 2807(f)(5). The hourly-priced default service rate for the Consolidated Large C&I Class already meets Act 129 requirements.

These TOU pricing periods will be identical for the Residential and Small Commercial Classes.

49. PECO’s TOU price multipliers will continue to reflect the ratios calculated from average PJM PECO zone spot market prices as well as allocation of the cost of capacity to peak and off-peak hours only.

50. PECO will continue to review its TOU multipliers on an annual basis, using a rolling five years of historical PJM Day-Ahead Spot Market Pricing energy data and Reliability Pricing Model capacity pricing data for the PECO Zone. PECO will only update the applicable TOU pricing multipliers if the use of such data would result in no more than a 10% change from the prior-year’s TOU pricing multipliers. If the price multiplier change would exceed 10%, the applicable pricing multipliers will be changed by exactly 10%.

51. PECO’s TOU pricing multipliers effective June 1, 2023 through May 31, 2024 are shown in Table 2 below. The updated multipliers for the first year of DSP VI will be reflected in PECO’s GSA filing 45 days before June 1, 2025.

Table 2

<u>TOU Pricing Period</u>	<u>GSA-1 TOU Pricing Multipliers*</u>	<u>GSA-2 TOU Pricing Multipliers*</u>
Peak	7.21	5.56
Super Off-Peak	1	1
Off-Peak	1.46	1.55

*Ratio to Super Off-Peak TOU price

52. PECO will source both the standard and TOU default service for residential and small commercial customers from the same supply portfolio for each procurement class. PECO will use the standard default service GSA as the reference price for PECO’s TOU rate calculations.

53. PECO will calculate the TOU rates on a semi-annual basis, synchronized with the GSA adjustment periods as agreed to in this Settlement for the Residential and Small Commercial Classes, using the pricing methodology set forth in PECO Exhibit No. MAM-5. TOU customer kWh sales and costs will be included in the semi-annual reconciliation of the over/undercollection component of the GSA for the entire procurement class (i.e., Residential or Small Commercial).

Customer Eligibility

54. PECO's TOU rates will be available to residential and small commercial default service customers with smart meters configured to measure energy consumption in watt-hours. However, customers enrolled in the Company's Customer Assistance Program ("CAP") will not be eligible for the residential TOU rate during the Revised DSP VI term to avoid potential adverse impacts on CAP benefits.

55. Eligible default service customers may enroll in PECO's TOU Rates online or through the Company's care center. Participating customers will remain on the TOU rate until they affirmatively elect to return to PECO's standard default service rate, switch to an EGS or otherwise become ineligible.

56. Customers who select the TOU rate may leave at any time without incurring related penalties or fees. However, if those customers subsequently leave the TOU Rate for any reason, they may not re-enroll for twelve billing months after switching off the TOU Rate.

Implementation Plan and Cost Recovery

57. PECO will continue to use the communications plan approved in the DSP V proceeding to inform customers about TOU rates and update enrolled TOU customers about the opportunity for bill savings. This plan includes a webpage dedicated to the TOU Rates, a variety of other customer education materials, and monthly e-mail communications to enrolled TOU customers.

58. PECO agrees to add the following disclosure to PECO's TOU webpage in the section titled, "Is Time-of-Use Pricing right for me?":

(a) "If you are having trouble affording your electricity bill, PECO offers programs and services to help those in need. Contact PECO at 1-800-494-4000 for more information and to apply."

59. PECO agrees to, no less frequently than every six (6) months, attempt personal contact with confirmed low-income TOU customers to encourage those customers to enroll in PECO's CAP.

60. PECO agrees to continue to evaluate the impacts of the Company's TOU rates on confirmed low-income customers as part of the annual report required by Act 129.

61. To assist in the preparation of the annual report, PECO will continue to track TOU customers' income and demographic

information (e.g., age, race, ethnicity and disability status). However, eligible customers who refuse to disclose this information will not be precluded from enrolling in PECO's TOU rates.

62. PECO will recover the costs to implement the new TOU rates from customers in the eligible procurement classes (i.e., the Residential and Small Commercial Classes) through the administrative cost factor of the GSA.

Standard Offer Program

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.

Residential Customer Bill Improvements

65. The Joint Petitioners agree to adopt PECO's proposed Residential bill format change as modified by this Settlement, originally set forth in PECO Exhibit SD-6, adding a graphic to the first page of the residential customer bill that compares the customer's total supplier charges for the billing period with what the dollar amount of the charges would be under PECO's applicable PTC based on the customer's usage during the billing period.

66. The Joint Petitioners agree PECO should not include the third column of the new chart titled "Electric Supplier Savings" presenting the variance between the two-dollar amount figures as shown in Exhibit H hereto. Exhibit H is a revised version of PECO Exhibit No. SD-6, to reflect the Residential bill format changes set forth in this Settlement.

Access to PECO's CAP for Applicants with EGS Supply

67. Commencing with all EGS contracts with Residential customers executed after June 1, 2025, EGSs will not be permitted to charge early cancellation, termination, or other fees to any shopping customer that is transitioning into PECO's CAP. PECO's Supplier Tariff set forth in Exhibits F and G has been updated to reflect this restriction.

68. PECO agrees that by June 1, 2025, the Company will implement the following:

(a) PECO will add the following bullet point language to the CAP Follow-up Letter:⁴⁶

- To enroll in CAP, you must return to default service and drop your generation supplier. Please call 1-800-774-7040 for assistance with this process.

(b) Upon contact from a CAP applicant who is enrolled with a generation supplier, PECO will assist the CAP applicant with removal of the generation supplier in order to return to default service once the Company has confirmed that the applicant qualifies for CAP. PECO will update its call center scripts to reflect this customer service practice.

(c) PECO will convene a stakeholder process to discuss modifications to its CAP application to inform CAP applicants that, upon submission of a CAP application, PECO is authorized to return the applicant to default service upon enrollment in CAP. PECO will include its modified CAP application with its filing in the next default service proceeding and support such proposed application becoming effective concurrent therewith.

(d) PECO will track and report to its Universal Service Advisory Committee at least every six months the number of CAP applicants who were issued a "Customer Refuse to Drop Supplier" letter.^[47]

69. Effective June 1, 2025, PECO will amend its CAP Welcome Letter to inform new CAP enrollees that generation suppliers are prohibited from charging them cancellation or termination fees, as well as providing instructions on how to file

⁴⁶ See TURN/CAUSE-PA St. 1, Appendix B.

⁴⁷ See TURN/CAUSE-PA St. 1, Appendix B.

an informal complaint with the Commission if the supplier assesses such a fee.

Request For Waivers

70. The Commission’s regulations (52 Pa. Code § 54.187) and Policy Statement (52 Pa. Code § 69.1805) provide that default service providers should design procurement classes based upon peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may propose to depart from these specific ranges, including to “preserve existing customer classes.” If necessary, the Joint Petitioners respectfully request that the Commission grant PECO a waiver of 52 Pa. Code § 54.187 to allow PECO’s procurement classes to be as delineated in Section II.A, *supra*.

71. To the extent necessary, the Joint Petitioners also respectfully request that the Commission grant PECO a waiver of 52 Pa. Code §§ 54.187(i) and (j) to allow PECO to continue quarterly filing of hourly-priced default service rates and semi-annual reconciliation of the over/under collection component of the GSA for all default service customers as explained in Section

V. DISCUSSION

A. BURDEN OF PROOF

Pursuant to Section 332(a) of the Public Utility Code, the Company has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking.⁴⁸ The Company must establish its case by a preponderance of the evidence.⁴⁹ To meet its burden of proof, the Company must present evidence more convincing, by even the smallest amount, than that presented by any opposing party.⁵⁰

The policy of the Commission is to encourage settlements. The Commission has stated that settlement results are often preferable to those achieved at the conclusion of a fully

⁴⁸ 66 Pa.C.S. § 332(a).

⁴⁹ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

⁵⁰ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

litigated proceeding.⁵¹ A full settlement of all the issues in a proceeding eliminates the time, effort and expense that would have been used to litigate the proceeding. A partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement benefits not only the named parties directly, but, indirectly, all of the customers of the public utility involved in the case.

To determine whether the parties' settlement should be approved, one must decide whether the settlement promotes the public interest.⁵²

B. JOINT PETITION FOR PARTIAL SETTLEMENT

1. PARTIES' POSITIONS REGARDING INDIVIDUAL SECTIONS OF THE JOINT PETITION

Under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801–2815 (the “Competition Act”), PECO, as a Pennsylvania electric distribution company (“EDC”) and default service supplier, has a fundamental obligation to provide competitively procured, reliable electric generation service to default service customers at least cost over time.⁵³ PECO stated that its Revised DSP VI, its sixth default service program, contains all of the elements required by the Commission’s default service regulations (52 Pa. Code §§ 54.181–54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801–69.1817), including implementation plans, procurement plans, contingency plans, rate design plans, and associated tariff pages.⁵⁴

As described in the Settlement and in PECO’s Statement in Support, PECO’s Revised DSP VI is designed to obtain a competitively procured “prudent mix” of contracts as required by the Public Utility Code. As in prior default service programs, PECO will use FPFR

⁵¹ 52 Pa. Code § 5.231; *see generally*, 52 Pa. Code § 69.401.

⁵² *See Pa. Pub. Util. Comm’n. v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm’n. v. C.S. Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm’n. v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

⁵³ 66 Pa.C.S. § 2807(e)(3.4).

⁵⁴ PECO St. in Supp. at 6-7.

contracts to obtain default service generation supply in light of the numerous benefits of FPF contracts for customers.⁵⁵ PECO's Revised DSP VI default service portfolios, which build on the success of PECO's prior default service programs, will continue to support the competitive retail market while providing customers with significant protection against changing market conditions and an appropriate degree of rate stability consistent with the objectives of the Competition Act.⁵⁶ PECO explained that its Revised DSP VI fully satisfies each of the requirements of the Competition Act and the applicable Commission regulations on default service and should be approved.⁵⁷

PECO's Procurement Classes

The Commission's regulations (52 Pa. Code § 54.187) and Policy Statement (52 Pa. Code § 69.1805) provide that default service providers should design procurement classes based upon peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may propose to depart from these specific ranges, including to "preserve existing customer classes."⁵⁸ In the Settlement, the Joint Petitioners agreed to PECO's proposed DSP VI procurement classes: the Residential Class, the Small Commercial Class, and the Consolidated Large Commercial and Industrial Class.⁵⁹

Each procurement class is comprised of established rate schedules under PECO's tariff and reflects differences between the classes with respect to customer usage and shopping patterns. PECO explains that the separation of the Residential and Small Commercial procurement classes reflects the different characteristics of those classes and reduces the potential that changes in shopping trends in one customer group will result in a higher default service price for the other customer group.⁶⁰ In addition, the consolidation of all customers receiving hourly-priced default service into a single procurement group – the Consolidated Large

⁵⁵ See PECO St. 3 at 10-11, 16-18, 29-32.

⁵⁶ See PECO St. 3 at 10-11, 36-44; PECO St. 3-R at 15-18.

⁵⁷ PECO St. in Supp. at 7.

⁵⁸ See 52 Pa. Code § 69.1805.

⁵⁹ Joint Petition ¶¶ 14-17.

⁶⁰ PECO St. No. 1 at 10-11.

Commercial and Industrial Class – reflects similarities in shopping trends, streamlines the Company’s competitive solicitation process, and simplifies the reconciliation of over/undercollection of default service costs.⁶¹

In order to implement the procurement classes under the Settlement, the Joint Petitioners have requested that, if necessary, the Commission grant PECO a waiver of the specific peak load class criteria in 52 Pa. Code § 54.187.⁶²

The Length of the Revised DSP VI Procurement Plan

The Commission’s regulations provide that the term of a default service program subsequent to the initial program will be determined by the Commission.⁶³ In the Settlement, the Joint Petitioners agreed to PECO’s original proposal for a four-year DSP VI term.⁶⁴ In its Statement in Support PECO avers that Revised DSP VI term is reasonable because, as the Commission noted in the DSP V Order, a longer program would minimize future litigation expenses and reduce administrative costs.⁶⁵

The Procurement Plan For the Residential Customer Class

In its Original DSP VI Proposal, PECO proposed to continue the procurement design established in DSP V with 99% of the total portfolio comprised of a mix of one-year (38%) and two-year (61%) FPCR products with delivery periods that overlap on a semi-annual basis. Under the Original DSP VI Proposal, PECO proposed to continue to procure the remaining approximately 1% of Residential Class supply directly from the wholesale energy markets operated by PJM.⁶⁶

⁶¹ PECO St. in Supp. at 8.

⁶² Joint Petition ¶ 70; PECO St. in Supp. at 8.

⁶³ See 52 Pa. Code § 54.182(d).

⁶⁴ See Joint Petition ¶ 13.

⁶⁵ PECO St. in Supp. at 8; PECO DSP V at 30-31.

⁶⁶ PECO St. 1 at 15-16.

The OCA supported PECO's proposal to procure one- and two-year FPFR products for residential default service customers.⁶⁷ EJA objected to PECO's proposed residential procurement plan, contending that PECO should instead undertake a new, multi-year "Renewable Energy Procurement" Program or "RESP" during DSP VI to serve residential default service load using long-term contracts for the energy and AECs from over 500 MW of "zero emission" energy facilities.⁶⁸ In response to the OCA's rebuttal testimony, EJA modified its RESP proposal, recommending that PECO use the energy under EJA's proposed contracts to first replace the 0.8% of load that the Company serves through spot energy purchases and thereafter require PECO to reduce the number of tranches served by FPFR suppliers in future procurements under DSP VI as more long-term contracts were executed.⁶⁹ PECO would also be responsible for managing the differences between the intermittent energy supply delivered under EJA's proposed contracts and actual default service customer loads through spot market purchases and sales.⁷⁰

In response, PECO agreed to solicit up to 20 MW of energy and AECs from solar facilities in Pennsylvania and use that output to offset the amount of spot energy PECO now procures to serve 0.8% of residential default service customer load.⁷¹ However, PECO continues to oppose the remainder of EJA's proposal in light of the costs and risks of moving to a portfolio with 7% long-term zero-emission contracts, including the likelihood of locking in higher costs and pricing volatility for default service customers.⁷²

In addition, under the Settlement, PECO will use the energy and capacity purchased under 10-year solar PPAs to offset the spot purchases for the Residential Class during

⁶⁷ OCA St. 1 at 10-11.

⁶⁸ *See generally* EJA St. 1.

⁶⁹ EJA St. 1-SR at 6-8.

⁷⁰ *Id.*

⁷¹ Tr. 455-461.

⁷² *Id.*; *see also* PECO St. 3-R at 43-51; PECO St. 3-SR at 1-11.

DSP VI.⁷³ The Joint Petitioners also agree to PECO’s original proposed Residential Class portfolio, including PECO’s original proposal to procure all FPFR contracts approximately two months prior to delivery of the energy in March or September of each year of the Revised DSP VI procurement plan.⁷⁴ In order to facilitate selection and transfer of PJM ARR to wholesale default service suppliers, the Joint Petitioners also agree that PECO will continue to employ a consultant for ARR analysis and selection.⁷⁵

The Settlement continues PECO’s basic DSP VI procurement strategy that has attracted robust, competitive participation in PECO’s procurements, resulted in reasonable prices, provided price stability benefits for residential customers, and supported the competitive retail electricity market in PECO’s service area.⁷⁶ The use of one- and two-year FPFR products will continue to provide an appropriate level of price stability, which the Commission is required to consider under the Competition Act.⁷⁷ The Residential Class procurement plan thus fully complies with the Competition Act’s requirement to competitively procure a “prudent mix” of supply resources designed to ensure “adequate and reliable service” at the “least cost to customers over time.”⁷⁸ In addition, the Settlement resolves differences between PECO and EJA regarding the long-term procurement of residential default supply from “zero emission” energy sources.

The Procurement Plan for the Small Commercial Customer Class

Consistent with the Original DSP VI Proposal, PECO will continue the DSP V mix consisting of equal shares of one-year and two-year FPFR products, with six-month spacing

⁷³ See Joint Petition ¶¶ 21-25.

⁷⁴ See Joint Petition ¶¶ 18-19; PECO Ex. SD-1.

⁷⁵ See Joint Petition ¶ 19.

⁷⁶ See PECO St. 3 at 10-33.

⁷⁷ See *Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. L-2009-2095604, at 40 (Final Order entered Oct. 4, 2011).

⁷⁸ See 66 Pa.C.S. §§ 2807(e)(3.1), (3.2), (3.4).

between the commencement of contract delivery periods.⁷⁹ In addition, PECO will procure the FPFRR products for Small Commercial customers in the same manner as the Residential Class.⁸⁰

The Joint Petitioners agree that the portfolio of FPFRR products for Small Commercial customers constitutes a “prudent mix” of supply resources as required by the Competition Act. The use of one- and two-year FPFRR products for the Small Commercial Class under the Settlement provides price stability benefits for all small non-residential customers.⁸¹

The Procurement Plan for the Consolidated Large Commercial and Industrial Customer Class

The Settlement adopts PECO’s original proposal to continue to procure hourly-priced full requirements products annually, in March, for all default service supply for the Consolidated Large C&I Class.⁸² Similar to the Residential and Small Commercial Class procurement plans, the Settlement’s procurement plan for these customers complies with the Competition Act’s requirements.⁸³

Competitive Procurement Process

The Commission’s regulations require that a default service plan include copies of agreements to be used in the procurement of electric generation supply for default service customers, including SMAs and RFPs.⁸⁴ In the Original DSP VI proposal, PECO proposed that all procurements would continue to be administered by NERA using a competitive, sealed-bid RFP process.⁸⁵

⁷⁹ Joint Petition ¶¶ 26-27.

⁸⁰ See PECO Ex. SD-1.

⁸¹ See PECO St. in Supp. at 11; OSBA St. 1 at 2-3.

⁸² See Joint Petition ¶¶ 28-29; PECO St. 3 at 8; PECO Exhibit SD-1.

⁸³ See PECO St. in Supp. at 11.

⁸⁴ 52 Pa. Code § 54.185(e)(6).

⁸⁵ See PECO St. 1 at 22.

In the Settlement, the Joint Petitioners agreed to PECO’s original proposal for a competitive, sealed-bid RFP process and the form SMA that suppliers will be required to execute set forth in PECO Exhibit SD-2.⁸⁶ Consistent with Section 54.185(e)(4) of the Commission’s regulations, suppliers will bid on “tranches” corresponding to a percentage of the actual default service customer load. Winning suppliers will be obligated to supply full requirements load-following service, which includes energy, capacity, ancillary services, and all other services or products necessary to serve a specified percentage of PECO’s default service load in all hours during the supply product’s delivery period.⁸⁷

In addition, the Settlement adopts PECO’s CPP and true-up mechanism to address potential delays in capacity auctions held under PJM’s RPM during the DSP VI term. The CPP would be calculated as the average of the most recent results under PJM’s RPM from the two most recent delivery years for which PJM has held a capacity auction. Commencing at the start of the delivery year for which the BRA results were not known, winning suppliers will be debited or credited (as applicable) any differences between the CPP and the actual PJM capacity price. This certainty eliminates the need for bidders to add premiums into their bids and may also lead to increased participation and competition in PECO’s solicitations to the benefit of default service customers.⁸⁸ Notably, the Commission has approved the use of a CPP in default service procurements for FE-PA⁸⁹ and Duquesne Light Company, finding that such approach would maintain diversity of supply products while also mitigating risk premiums.⁹⁰

⁸⁶ Joint Petition ¶¶ 30-35.

⁸⁷ See PECO St. 1 at 12-13; PECO Exhibit SD-2.

⁸⁸ See PECO St. 1 at 21-22; PECO St. 4 at 18-19; PECO St. 4-R at 18-19, 23-24.

⁸⁹ See *Joint Petition of Metro. Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., and West Penn Power Co. for Approval to Modify their Supplier Master Agreement*, Docket No. P-2020-3021424, p. 9 (Order entered Oct. 13, 2020); *Petition of Metro. Edison Co., Pennsylvania Electric Co., Pennsylvania 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 No. P-2021-3030012, pp. 59-60 (Recommended Decision issued June 29, 2022) (“FE-PA DSP VI Recommended Decision”). The FE-PA DSP VI Recommended Decision was adopted without modification by the Commission in its Order entered August 4, 2022, at Docket No. P-2021-3030012.

⁹⁰ See *Petition of Duquesne Light Co. for Approval to Modify its Supplier Master Agreement*, Docket No. P-2020-3023149, p. 4 (Order entered Jan. 14, 2021); PECO St. 1 at 23; PECO St. 3 at 33-34; PECO St. 4 at 14-15.

For DSP VI, PECO originally proposed to include a reserve price for each residential FPFR product in the post-solicitation report provided to the Commission by the Independent Evaluator.⁹¹ The OCA objected to PECO's proposal without additional information on how the reserve price would be determined and recommended associated changes to PECO's contingency plan if the Commission approved such an element in PECO's competitive bid process.⁹² To address the OCA's concern, PECO agreed to withdraw its reserve price proposal under the Settlement.⁹³

The RFP documents set forth in Exhibit Nos. B and C to the Joint Petition are based on the DSP V RFP documents that have yielded competitive outcomes, with modifications to reduce uncertainty for bidders and conduct solicitations more efficiently.⁹⁴ Accordingly, the comprehensive RFP documents agreed to by the Joint Petitioners satisfy the Competition Act's requirements of a competitive procurement process, with prudent steps to negotiate favorable generation supply contracts and obtain contracts at least cost.⁹⁵ The Joint Petitioners also agreed on a process for submitting the form solar RFP and PPA for Commission approval.⁹⁶

Other Procurement and Implementation Plan Requirements

The Settlement also includes agreement among the Joint Petitioners regarding other procurement and implementation plan components.

AEPS Compliance. Both the Competition Act and the AEPS Act require default service providers, such as PECO, to obtain an increasing percentage of electricity sold to retail

⁹¹ PECO St. 1 at 23; PECO St. 3 at 33-34; PECO St. 4 at 14-15.

⁹² OCA St. 1 at 22-26.

⁹³ See Joint Petition ¶ 33; Exhibits B and C.

⁹⁴ See PECO St. 4 at 13-18.

⁹⁵ 66 Pa.C.S. § 2807(e)(3.7); PECO St. in Supp. at 13.

⁹⁶ The Commission has permitted the subsequent development and approval of pro forma solar power purchase agreements used for default service supply after approval of a default service program. See *Petition of Duquesne Light Co. for Approval of its Default Serv. Plan for the Period from June 1, 2021, through May 31, 2025*, Docket No. P-2020-3019522, p. 82 (Opinion and Order entered Jan. 14, 2021).

customers from alternative energy sources as measured by AECs.⁹⁷ The AEPS Act also includes a “set-aside” that requires some of those AECs to be derived from solar photovoltaic (PV) facilities. Under Act 40 of 2017 (Act 40), PECO must meet its future solar AEPS requirements using solar AECs generated from solar energy facilities in the Commonwealth. During DSP VI, PECO’s solar AEPS requirement will be 0.5% of its total default service load.⁹⁸

The Settlement provides that PECO will continue to meet its AEPS Act obligations primarily through a combination of full requirements products and existing long-term contracts for solar AECs, with new solar AECs to meet the requirements of the residential default service customer class procured through new long-term agreements for solar energy, capacity, and AECs. Consistent with DSP V, PECO will require each full requirements default service supplier to transfer Tier I (including solar PV) and Tier II AECs to PECO corresponding to PECO’s AEPS obligations associated with the amount of default service load served by that supplier. A default service supplier’s solar AEC obligation would be reduced by solar AECs procured directly by PECO and allocated to the supplier.⁹⁹ By adopting a new additional RFP process for 25 MW of solar energy, capacity and AECs, the Settlement resolves issues between PECO and EJA regarding the Company’s plan to meet its AEPS obligations associated with residential default service load during DSP VI.¹⁰⁰

Contingency Plans. In accordance with the Commission’s regulations at 52 Pa. Code § 54.185(e)(5), the Settlement appropriately provides for continuation of PECO’s contingency plans approved by the Commission in PECO’s prior default service programs.¹⁰¹ This provision of the Settlement represents a compromise between PECO and the OCA, which had recommended adding block energy purchases to PECO’s contingency plan to minimize the

⁹⁷ See 66 Pa.C.S. § 2807(e)(3.6); 73 P.S. §§ 1648.1 *et seq.*

⁹⁸ 73 P.S. § 1648.3(b)(2)(xv).

⁹⁹ See Joint Petition ¶¶ 36; PECO St. 1 at 14.

¹⁰⁰ See PECO St. in Supp. at 14-15; *see generally* PECO St. 3-R; EJA St. 1-SR; Tr. 453-61, 465-73.

¹⁰¹ Joint Petition ¶¶ 37-38.

amount of time that residential default service customers are supplied by spot market purchases.¹⁰²

Under the terms of the Settlement, if PECO does not procure a contracted capacity of 25 MW via their Solar RFP, PECO will conduct a second procurement within six to twelve months of the first procurement.¹⁰³ However, if the capacity contracted was not less than 10 MW, PECO has the discretion of whether to conduct a second procurement for that capacity.¹⁰⁴ If the Solar procurements fall short, there will be no shortfall in AEC's necessary due to the obligations of full requirements suppliers to deliver AECs and PECO's ability to obtain additional AECs through Tier I and Tier II balancing as previously authorized by the Commission.¹⁰⁵ The OCA supports this proposed contingency for AEPS compliance arguing that it is a reasonable plan and in the public interest.¹⁰⁶

Load Cap. In the DSP V Order, the Commission approved a limit of 50% on the amount of default service supply that any single supplier could provide to a procurement class.¹⁰⁷ As in DSP V, all suppliers will be subject to a 50% load cap for the Residential and Small Commercial Classes. In PECO's DSP VI, PECO proposed a 75% load cap for the Consolidated Large C&I Class. According to PECO, an increase in the load cap for this customer class may improve participation and lead to an increase in the number of bids competing for available tranches because bidders typically bid up to the load cap.¹⁰⁸

Independent Evaluator. The Commission's default service regulations provide that the competitive bid solicitation process shall be subject to monitoring by the Commission or an independent third party selected by a default service provider in consultation with the

¹⁰² See PECO St. in Supp. at 15; OCA St. in Supp. at 6.

¹⁰³ Joint Petition ¶ 39.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ OCA St. in Supp. at 6-7.

¹⁰⁷ PECO DSP V at 14.

¹⁰⁸ Joint Petition ¶ 28; Exhibit B; PECO St. in Supp. at 15.

Commission.¹⁰⁹ The Joint Petitioners agree to the appointment of NERA to continue as independent evaluator for PECO’s default service procurements, in addition to the new solar procurement.¹¹⁰

Absence of Withholding of Generation. In considering the approval of a default service program, the Public Utility Code requires the Commission to find that neither the default service provider nor any affiliated interest has withheld from the market any generation supply in a manner that violates federal law.¹¹¹ PECO avers that it does not own and has not withheld any generation supply in violation of federal law.¹¹²

Rate Design and Cost Recovery

In its Original DSP VI Proposal, PECO proposed to maintain its current rate design. The rate design set forth in the Settlement fully complies with the Commission’s default service regulations and the Public Utility Code, whereby PECO recovers default service costs from default service customers through the GSA and TSC. Consistent with the Public Utility Code and the Commission’s default service regulations, PECO proposed to continue to project and adjust default service rates for the Residential and Small Commercial Classes established pursuant to the GSA on a quarterly basis and to reconcile the over/undercollection component of the GSA (known as the “E-Factor”) on a semi-annual basis.¹¹³

The default service rates for the Consolidated Large C&I Class will continue to be based upon the price paid to winning suppliers in PECO’s hourly-priced default service procurements, which includes the PJM day-ahead hourly locational marginal price for the PJM PECO Zone, plus associated costs, such as capacity, ancillary services, PJM administrative expenses and AEPS compliance costs (Hourly Pricing Adder). To align the filing schedule for

¹⁰⁹ See 52 Pa. Code § 54.186(c)(3).

¹¹⁰ Joint Petition ¶ 35.

¹¹¹ See 66 Pa.C.S. § 2807(e)(3.7)(iii).

¹¹² PECO St. in Supp. at 16.

¹¹³ PECO St. 2 at 3-5.

the Consolidated Large C&I default service rates with PECO's other procurement classes, PECO proposed to continue to file the Hourly Pricing Adder and to reconcile the E-Factor on a quarterly and semi-annual basis, respectively, instead of a monthly basis.¹¹⁴ In addition, PECO proposed to continue to be responsible for and recover the same categories of PJM charges approved by the Commission in the Company's DSP V proceeding for recovery through its NBT and TSC.¹¹⁵

The OCA supported semi-annual reconciliation of the E-Factor, but recommended reducing the overall frequency of residential default service rate changes from quarterly adjustments to semi-annual adjustments on June 1 and December 1 of each year. The OCA also proposed semi-annual E-Factor reconciliation using a twelve-month refund or recovery period.¹¹⁶

The Settlement adopts PECO's original proposed rate design, with one modification to change from a three-month to six-month GSA projection period for the Residential and Small Commercial Classes to align with the Company's semi-annual procurements for FPCR contracts with delivery periods starting June 1 and December 1.¹¹⁷ Under the Settlement, the Joint Petitioners agree that PECO shall be permitted to file the GSA and Reconciliation tariff pages set forth in Exhibits D and E to the Joint Petition to become effective June 1, 2025.¹¹⁸

This rate design resolves the differences between PECO and the OCA on adjustment and reconciliation of PECO's default service rates. Billing cycle lag results in a timing difference between revenue and expense that can produce significant fluctuations in the PTC that are not directly related to the underlying cost of default service supply. By using a semi-annual rather than a quarterly or monthly schedule for the reconciliation of over/under collections for the Residential and Small Commercial Classes and Consolidated Large C&I

¹¹⁴ *Id.* at 5-6.

¹¹⁵ *See* PECO St. 1 at 13-14.

¹¹⁶ *See* OCA St. 1 at 30-31; OCA St. 1-SR at 3-6.

¹¹⁷ Joint Petition ¶ 40.

¹¹⁸ Joint Petition ¶ 43.

Class, respectively, fluctuations in default service prices will be smoothed out and result in clearer price signals for both customers and EGSs.¹¹⁹ While the Commission’s regulations do not prescribe a time period for reconciliation adjustments, PECO believes that semi-annual reconciliation appropriately balances the Company’s goal of mitigating volatility with the Commission’s concern about maintaining the PTC as a price signal for customers and EGSs.¹²⁰ In order to continue quarterly filing of hourly-price default service rates and semi-annual reconciliation of the E-Factor for all default service customers under the Settlement, the Joint Petitioners have requested that, if necessary, the Commission grant PECO a waiver of the rate design provisions in 52 Pa. Code § 54.187.¹²¹

PECO’s Revised DSP VI Includes Time-of-Use Rates

Act 129 requires EDCs to offer a TOU rate option to all default service customers with a smart meter.¹²² Based on these statutory requirements, PECO introduced new TOU rate offerings in DSP V for the Residential and Small Commercial Classes. More than 1,900 customers have enrolled in PECO’s TOU rates since September 2021 and achieved bill savings, ranging from \$3 to \$23 per month.¹²³

TOU Product Structure and Rate Design. For DSP VI, PECO proposed to continue its current TOU rates consistent with Commission guidance on TOU rate design and Act 129 requirements.¹²⁴ PECO’s existing TOU rates differentiate prices across three periods (peak, off-peak and super off-peak) that remain constant year-round based on price multipliers

¹¹⁹ PECO St. 2 at 6-7

¹²⁰ *Id.*

¹²¹ Joint Petition ¶ 71.

¹²² 66 Pa.C.S. § 2807(f)(5).

¹²³ PECO St. 2 at 10.

¹²⁴ *See Dauphin Cty. Indus. Dev. Auth. v. Pa. Pub. Util. Comm’n*, 123 A.3d 1124, 1136 (Pa. Cmwlth. 2015) (“*DCIDA*”) (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs); *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (Secretarial Letter issued Apr. 6, 2017) (“April 2017 Secretarial Letter”) (proposing a TOU design for PPL in accordance with the *DCIDA* decision and noting that the proposed TOU design “may provide future guidance to all EDCs” for incorporation into their own TOU proposals in their individual default service proceedings).

for each procurement class that are updated on an annual basis and are designed to motivate customers to shift usage to lower-cost, off-peak hours. The time-differentiated usage periods reasonably encompass the Company's expected system peak usage times and take into account the need for simplicity to provide eligible customers with a reasonable opportunity to shift usage to lower-priced (off-peak) hours. PECO selected the same year-round peak period – 2 p.m. to 6 p.m. on non-holiday weekdays – employed in DSP V because participating customers successfully responded to the TOU price signals to shift usage and achieve bill savings. PECO also designed its proposed TOU rates in the context of electric vehicle expansion in the Commonwealth.¹²⁵ Specifically, PECO's proposed TOU rate design includes a super off-peak pricing period from 12 a.m. to 6 a.m. to provide cost savings opportunities to customers who charge their EVs during overnight, low-priced energy hours.¹²⁶

The OCA did not propose any changes to PECO's TOU rates in this case, but recommended that PECO evaluate and propose alternative approaches in the Company's next default service proceeding (DSP VII).¹²⁷ The OCA also recommended that PECO perform additional analyses and report its findings in the DSP VII filing regarding alternative price multipliers that allocate all capacity costs to the summer peak period and TOU pricing periods that incorporate seasonal variation.¹²⁸

The Settlement adopts PECO's original proposed TOU product structure and rate design, and PECO agrees to perform the additional analyses recommended by the OCA described in Paragraph 47 of the Joint Petition. The TOU price multipliers for each procurement class shown in Table 2 of the Joint Petition are designed to motivate shifting of usage from the higher-cost peak period to lower-cost off-peak periods consistent with the Commission's guidance in the April 2017 Secretarial Letter (p. 3). These multipliers reflect the ratios calculated from average PJM PECO Zone spot market prices as well as the cost of capacity

¹²⁵ See *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) ("January 2020 Secretarial Letter"), p. 7.

¹²⁶ See PECO St. 2 at 10-15.

¹²⁷ See OCA St. 2 at 16-20; OCA St. 2-SR at 3-4.

¹²⁸ See OCA St. 1 at 34-36; OCA St. 1-SR at 16.

during peak and off-peak hours. Under the Settlement, PECO will continue updating the TOU pricing multipliers on an annual basis in the same manner as DSP V, and the updated multipliers for the first year of DSP VI will be reflected in PECO's GSA filing 45 days before June 1, 2025.¹²⁹ Allocation of the cost of capacity to peak and off-peak hours only under the Settlement will send cost-based price signals and create larger price differentials that are more likely to motivate customers to adjust the time of day they use electricity.¹³⁰

The Settlement also documents agreement among the Joint Petitioners regarding PECO's TOU rate calculations. Under the Settlement, PECO will source both the standard and TOU default service for residential and small commercial customers from the same supply portfolio for each procurement class. The Joint Petitioners further agreed to the pricing methodology for PECO's TOU rate calculations set forth in PECO Exhibit Nos. MAM-4 and MAM-5.¹³¹

Under the Settlement's rate design, eligible default service customers will pay a discounted rate for off-peak usage and a higher rate for peak usage relative to PECO's standard fixed-price GSA. In addition, TOU customer kWh sales and costs will be included in the semi-annual reconciliation of the over/undercollection component of the GSA for the entire procurement class (i.e., Residential or Small Commercial).¹³² This reconciliation process using a single E-Factor for each procurement class will help mitigate potential large swings in GSA over/undercollections that could arise if customers switch between PECO's standard default service rate and TOU default service rate.¹³³ Notably, the Commission has previously authorized other EDCs to recover TOU over/undercollection amounts from all default service customers based on its finding that the TOU rates mandated by Act 129 are a "form of default service."¹³⁴

¹²⁹ See Joint Petition ¶¶ 46-51.

¹³⁰ PECO St. in Supp. at 20; OSBA St. in Supp. at 2-3.

¹³¹ PECO St. in Supp. at 20; OSBA St. in Supp. at 2-3.

¹³² Joint Petition ¶ 53.

¹³³ PECO St. 2 at 14-16.

¹³⁴ See *Pa. Pub. Util. Comm'n. v. PPL Elec. Utils. Corp.*, Docket No. R-2011-2264771, pp. 22-23 (Opinion and Order entered Aug. 30, 2012).

Customer Eligibility. As the Commission has recognized, Act 129 makes clear that an EDC’s TOU program should be optional for default service customers.¹³⁵ The April 2017 Secretarial Letter (p. 3) further provides that EDC TOU rates should be available to all default service customers who are not eligible for “spot only” default service and should incorporate existing consumer protections for CAP customers. In accordance with the Commission’s guidance, PECO’s TOU rates under the Settlement will be available to residential and small commercial default service customers with smart meters configured to measure energy consumption in watt-hours.¹³⁶ The Settlement also includes restrictions on re-enrollment if a customer leaves the TOU for any reason.¹³⁷ This provision is in the public interest because it will reduce “free riders” who enroll in a TOU rate only for times of the year when they do not have to shift usage to save money.¹³⁸

The Settlement also adopts PECO’s original proposal to exclude CAP customers from the residential TOU Rate to avoid potential adverse impacts on CAP benefits.¹³⁹ TURN/CAUSE-PA witness Elizabeth R. Marx supported the ineligibility of CAP customers but proposed additional protections for all low-income customers. Specifically, Ms. Marx proposed that PECO conduct affirmative outreach to confirmed low-income (CLI) customers enrolled in TOU rates whose generation costs are exceeding the applicable PTC. As part of such outreach, Ms. Marx recommended that PECO encourage those households to return to standard, non-time varying default service and enroll in available universal service programs.¹⁴⁰ To address the

¹³⁵ See *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020), p. 6. Act 129 provides that “[r]esidential or commercial customers *may* elect to participate in time-of-use rates or real-time pricing.” 66 Pa.C.S. § 2807(f)(5) (emphasis added).

¹³⁶ Joint Petition ¶ 54.

¹³⁷ *Id.* ¶ 56.

¹³⁸ PECO St. 2 at 10.

¹³⁹ Joint Petition ¶ 54.

¹⁴⁰ TURN/CAUSE-PA St. 1 at 23-26; TURN/CAUSE-PA St. 1-SR at 12-13.

concerns raised by Ms. Marx, the Company agreed to add the following disclosure to PECO's TOU webpage in the "Is Time-of-Use Pricing right for me?" section:

If you are having trouble affording your electricity bill, PECO offers programs and services to help those in need. Contact PECO at 1-800-494-4000 for more information and to apply.^[141]

PECO will also attempt personal contact with CLI TOU participants every six months to encourage those households to enroll in CAP.¹⁴²

Overall, the TOU rates under the Settlement satisfy Act 129 requirements, incorporate the PUC's recommended guidelines on TOU rate design, and balance a variety of important objectives, including development of a TOU rate structure that is actionable for customers.

Continuation of PECO's Standard Offer Program with the Conditions Agreed to by the Joint Petitioners

On April 29, 2011, the Commission initiated its extensive Investigation of Pennsylvania's Retail Electricity Market at Docket I-2011-2237952 (the "Retail Markets Investigation"), which ultimately led to the Commission proposing that PECO and other default service providers undertake a variety of retail market enhancements, which the Commission then approved as part of PECO's second default service program proceeding ("DSP II"). In its final order in the Retail Markets Investigation, the Commission issued its proposed model for the "End State of Default Service" and observed that standard offer customer referral programs will "improve the overall operation of the competitive market in the near term."¹⁴³ Consistent with the Commission's directives in the Retail Markets Investigation, during DSP II, PECO implemented its Standard Offer Program under which Residential and Small Commercial default service customers contacting PECO's customer service center are presented with an opportunity

¹⁴¹ Joint Petition ¶ 58.

¹⁴² *Id.* ¶ 59.

¹⁴³ See *Investigation of Pennsylvania's Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 at 12-13 (Final Order entered Feb. 15, 2013) (the "End State Order").

to select among a group of EGSs who have voluntarily chosen to offer customers a twelve-month contract priced at least 7% below PECO's applicable PTC at the time of the offer. In PECO's DSP II proceeding, the Commission approved recovery of Standard Offer Program costs through an EGS participant fee of \$30 per enrolled customer, with any remaining costs recovered in the following manner: (1) fifty percent from EGSs through a 0.2% Purchase of Receivables ("POR") discount; and (2) fifty percent from residential and small commercial default service customers via the GSA.¹⁴⁴

In the PECO DSP V Order, the Commission approved continuation of the Standard Offer Program, including the cost recovery mechanisms approved in the DSP II Orders, as "beneficial" to all customers.¹⁴⁵ Accordingly, PECO proposed to extend the SOP during DSP VI in the same format as in DSP V. The OCA witness Barbara R. Alexander recommended termination of the SOP on May 31, 2025 because, in her view, the program has accomplished its "purpose of exposing customers to the retail generation market" and PECO should no longer operate as the "marketing and enrollment arm" of EGSs that have a long history of charging residential shopping customers more than the PTC. If the SOP continues during DSP VI, Ms. Alexander recommended that PECO 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.¹⁴⁶ In her rebuttal testimony, TURN/CAUSE-PA witness Marx agreed with Ms. Alexander's SOP recommendations.¹⁴⁷

Under the Settlement, PECO will continue its currently effective SOP (including the cost recovery mechanisms last approved by the Commission in the DSP V Order) until May

¹⁴⁴. See *Petition of PECO Energy Co. for Approval of Its Default Serv. Program*, Docket No. P-2012-2283641 (Opinion and Order entered Oct. 12, 2012) ("October 12 Order"). In the October 12 Order, the Commission approved PECO's DSP II with certain modifications and also directed PECO to submit new proposals for various elements of its proposed retail market enhancements. In response, PECO made a series of compliance filings (December 11, 2012; February 28, 2013; and April 15, 2013), which were approved by a Secretarial Letter issued January 25, 2013, an Order entered February 14, 2013, and an Order entered June 13, 2013, respectively (collectively, the "DSP II Orders").

¹⁴⁵ PECO DSP V at 31.

¹⁴⁶ OCA St. 2 at 9-16.

¹⁴⁷ TURN/CAUSE-PA St. 1-R at 10-11.

31, 2029, unless ordered by the Commission to be terminated sooner.¹⁴⁸ To address the OCA’s and TURN/CAUSE-PA’s concerns regarding the prices that SOP customers pay for competitive generation service, the Joint Petitioners agreed to a new Supplier Tariff provision that requires EGSs to 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.¹⁴⁹

The changes to PECO’s current SOP agreed to as part of the Settlement carefully balance the interests of customers, participating EGSs, and the Commission’s guidelines in prior default service proceedings regarding standard offer customer referral programs. Accordingly, continuation of the SOP under the Settlement is beneficial to customers and in the public interest.

Residential Customer Bill Improvements

The Settlement adopts PECO’s original proposal to add a new disclosure to the first page of the residential customer bill that compares the customer’s total supplier charges for the billing period with what the dollar amount of the charges would be under PECO’s applicable PTC based on the customer’s usage during the billing period. Under the Settlement, PECO agreed to remove the third column of the new chart shown on PECO Exhibit SD-6 titled “Electric Supplier Savings” presenting the variance between the two-dollar amount figures as recommended by the OCA to avoid potential customer confusion.¹⁵⁰

PECO’s PTC in cents per kilowatt-hour (“kWh”) for the applicable billing period that customers may use to evaluate competitive generation service offerings by EGSs is currently printed in the Message Center on the residential customer bill. However, under its “bill-ready” billing platform, PECO does not receive sufficient information from EGSs that would allow PECO to automatically print EGS pricing in cents per kWh on the customer’s bill.¹⁵¹ The bill

¹⁴⁸ Joint Petition ¶ 63.

¹⁴⁹ See Joint Petition ¶ 64; PECO St. in Supp. at 24; OCA St. in Supp. at 11-13; TURN/CAUSE-PA St. in Supp. at 2.

¹⁵⁰ See Joint Petition ¶¶ 65-66, Ex. H; PECO St. in Supp. at 24; OCA St. in Supp. at 13-14.

¹⁵¹ PECO St. 1 at 29.

format changes adopted by the Settlement are based on PECO's stakeholder collaborative held in January 2021 and will enhance the presentation of shopping information and permit active customer review of the rates they are paying for competitive generation service.¹⁵²

PECO's Commitments to Enhance the CAP Enrollment Process

In her direct testimony, TURN/CAUSE-PA witness Marx examined historical data regarding the EGS prices that PECO's residential customers have paid over the past six years and concluded that the aggregate EGS charges during that period exceeded PECO's applicable PTC by more than \$800 million and that shopping confirmed low-income customers had been subject to the highest-priced EGS products.¹⁵³ Based on that conclusion, Ms. Marx requested that PECO improve access to CAP for applicants with EGS supply. To that end, Ms. Marx recommended that PECO (1) include a clear statement on its CAP application informing customers that, by submitting the application, they consent to returning to default service at the time of CAP enrollment and (2) prohibit suppliers from charging early cancellation or termination fees to any shopping customer who enrolls in PECO's CAP.¹⁵⁴

Under the Settlement, the Joint Petitioners agreed to a new Supplier Tariff rule to ensure that low-income customers with pre-existing EGS contracts will be able to access CAP without facing fees as recommended by TURN/CAUSE-PA. By June 1, 2025, PECO also committed to implement the practices outlined in Paragraphs 68 and 69 of the Joint Petition to assist shopping customers transitioning to CAP (and are ineligible to receive EGS supply) with removal of EGS supply and inform new CAP enrollees that generation suppliers are prohibited from charging them cancellation or termination fees as set forth in Paragraph 67.

PECO believes the Settlement provisions related to its CAP application policies and procedures strike a reasonable balance among the Commission's policies of further developing Pennsylvania's competitive retail market, ensuring affordability of service for the

¹⁵² PECO St. in Supp. at 25.

¹⁵³ TURN/CAUSE-PA St. 1 at 8-18.

¹⁵⁴ *Id.* at 20-21.

Company's low-income customers, and containing costs for all residential customers that pay for CAP.¹⁵⁵

2. PARTIES' RESPONSES REGARDING THE APPROVAL OF THE ENTIRE NON-UNANIMOUS SETTLEMENT

PECO

PECO avers that its Revised DSP VI embodied in the Settlement builds on the successful products and programs approved by the Commission in DSP V, which will allow PECO to continue to meet its default service obligations and to further enhance the retail electric market. Moreover, the Settlement terms have been carefully designed to resolve, in a reasonable fashion, the issues and concerns that were raised by the testimony in this case without the need for additional costly litigation.¹⁵⁶

OCA

The OCA submits that the Settlement as a whole is in the public interest for the reasons outlined in Paragraph 73 of the Petition.¹⁵⁷ This Settlement represents a balance of the signatory parties and provides crucial protections and benefits for consumers. Without this Settlement, the parties would be forced to continue costly and burdensome litigation, where results are unpredictable and benefits less certain. The Settlement ensures that PECO will meet its statutory responsibilities to procure a default service portfolio that is designed to ensure service at least cost over time, it meaningfully increases the amount of renewable energy that will be a part of this portfolio, it seeks to protect consumers from the known harms caused by competition through changes to the SOP and seeks to ensure that low-income customers can access the benefits of CAP with needed administrative changes. In its whole, all of these

¹⁵⁵ PECO St. in Supp. at 25-26; *see also* TURN/CAUSE-PA St. in Supp. at 5-6.

¹⁵⁶ PECO St. in Supp. at 26.

¹⁵⁷ OCA St. in Supp. at 15.

benefits, especially when weighed against the risks and costs of litigation, demonstrate that this proposed Settlement is in the public interest.¹⁵⁸

OSBA

In its Statement in Support, OSBA notes that, under the proposed Settlement, the increment of additional solar supply that PECO proposes to procure is now to be procured for the residential class through 10-year fixed price power purchase agreements (rather than AECs) that are explicitly linked to in-state solar photovoltaic projects. OSBA notes that it has been hesitant to support such initiatives for the small business classes because a large portion of those customers shop (and they can procure higher levels of renewable supply if they so choose). It argues that long-term contracts for supply can be problematic for higher shopping classes. If the long-term price ends up well above market prices, more customers will shop, leaving non-shopping customers “holding the bag” for those higher prices. Nevertheless, OSBA acknowledges that this represents a worthwhile experiment to support renewable investment in the Commonwealth.

Next, OSBA supports the Joint Petition’s provision for small businesses to move the now quarterly generation and price to compare adjustments to a semi-annual adjustment. OSBA considers this provision to be consistent with a trend among other DSPs, aimed to reduce the complexity and price change frequency for customers.¹⁵⁹

OSBA also supports the Joint Petition’s proposal of a relatively comprehensive evaluation of PECO’s TOU program and rate structure. OSBA notes that currently small business participation in this program is almost non-existent, but supports a thorough review as worthwhile, including consideration of seasonal variation in rate incentives, incentive-based time varying rates, and better communication with customers regarding the program and its potential benefits.¹⁶⁰

¹⁵⁸ OCA St. in Supp. at 16.

¹⁵⁹ OSBA St. in Supp. at 2-3.

¹⁶⁰ OSBA St. in Supp. at 3.

Lastly, OSBA supports the Joint Petition’s adjustment of PECO’s current SOP which requires EGSs to automatically transfer SOP customers back to default service upon the expiration of the SOP contract, unless the customer affirmatively elects to remain with the SOP supplier. OSBA explains that the issue addressed by this change is the that marketers provide “teaser” rates to get customers to shop, then raise the price above the default rates thereafter. OSBA supports this adjustment as a matter of basic consumer protection.¹⁶¹

EJA

EJA supports the Joint Petition because it represents a carefully crafted package of agreements reached among the parties after extensive good faith negotiation. The Joint Petition avoids protracted litigation and enables the parties to avoid expending the substantial resources that would be required to fully litigate the proceeding.¹⁶²

EJA argues that approval of the Joint Petition without modification is in the public interest because it provides for the procurement, through a long-term PPAs, the energy, capacity, and solar photovoltaic alternative energy credits generated by one or more new Pennsylvania solar photovoltaic projects with a total capacity of 25 MW (DC). This procurement is in the public interest because PECO will use the solar energy, capacity, and alternative energy credits so procured to help support affordable and reliable default service as part of a prudent mix of supply contracts. According to EJA, this procurement is also in the public interest because it will support the development of new solar photovoltaic projects in Pennsylvania, which will increase the amount of zero emission renewable energy generation in Pennsylvania; provide economic development benefits, including green jobs; and provide environmental benefits, including climate and local air quality benefits.¹⁶³

¹⁶¹ *Id.*

¹⁶² EJA St. in Supp. at 3.

¹⁶³ EJA St. in Supp. at 2-3.

Additionally, EJA supports the Joint Petition's numerous measures to improve access to PECO's CAP for applicants being served by retail electric suppliers, which are in the public interest because they will help support customers obtaining the benefit of affordability assistance they have a right to use.¹⁶⁴

TURN/CAUSE-PA

According to TURN/CAUSE-PA, the Joint Petition reflects concerted efforts by the Joint Petitioners to find common ground and reasonable compromise. Each term and condition set forth in the Joint Petition is material to TURN/CAUSE-PA's entry into the proposed Settlement and is supported by them for being in the public interest. The Joint Petition addresses the majority of concerns raised by the Joint Petitioners and its approval provides the additional benefits of avoiding cost and burden of litigation. Furthermore, TURN/CAUSE-PA submit that approval of the Joint Petition is consistent with Commission policy in encouraging negotiated settlements.¹⁶⁵

TURN/CAUSE-PA submit that the program modifications and customer service enhancements associated with the Joint Petition's TOU provisions are appropriate measures, at this time, to provide protections to vulnerable customers as PECO continues to offer TOU rates. Accordingly, TURN/CAUSE-PA support the TOU terms and conditions set forth in the Joint Petition.¹⁶⁶

TURN/CAUSE-PA submit that the Joint Petition commits PECO to providing meaningful additional protections for CAP customers, promoting access to CAP and avoidance of unnecessary fees and charges. Implementing these protections, and incorporating them into customer service practices, is of vital importance to the low-income PECO customers who require CAP to maintain essential utility services. Additionally, the Joint Petition establishes a process to further streamline access to CAP in the future, consistent with TURN/CAUSE-PA's

¹⁶⁴ EJA St. in Supp. at 3.

¹⁶⁵ TURN/CAUSE-PA St. in Supp. at 6.

¹⁶⁶ TURN/CAUSE-PA St. in Supp. at 4.

witness testimony. TURN/CAUSE-PA support the CAP provisions set forth in the Joint Petition.¹⁶⁷

Disposition

RESA and NRG are the only parties that objected to the Joint Petition. These objections are denied as discussed in Section V (C), *infra*. The Joint Petitioners have shown that the provisions in the Joint Petition are reasonable compromises. The Joint Petition reduced litigation expenses because it resolves a number of important and contentious issues amicably and expeditiously. The administrative burden and costs to litigate these matters to conclusion would have been substantial. The Joint Petitioners arrived at the Settlement terms after conducting extensive discovery and engaging in in-depth discussions over several weeks. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements and is supported by a substantial record.¹⁶⁸

After considering the Joint Petition for Non-Unanimous Settlement, including the compromises on procurement and implementation plans, the proposals for capacity proxy price and AEPS compliance, the adjustments to default service rates and time-of-use rate, the modification of PECO's Standard Offer Program and the savings achieved by not litigating the case fully, we conclude that the Settlement is fair, just, reasonable and in the public interest. Accordingly, we recommend that the Joint Petition be approved without modification.

¹⁶⁷ TURN/CAUSE-PA St. in Supp. at 4-5.

¹⁶⁸ See 52 Pa. Code §§ 5.231, 69.391, 69.401.

C. RESA AND NRG's OBJECTIONS TO THE NON-UNANIMOUS SETTLEMENT

1. Default Service Procurement and Implementation Plans

a. Capacity Proxy Price

RESA

PECO proposed, and parties to the Joint Petition support,¹⁶⁹ the introduction 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. Pursuant to the Joint Petition, 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.¹⁷⁰ 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.¹⁷¹

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. According to RESA, 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

¹⁶⁹ Joint Petition ¶ 32.

¹⁷⁰ RESA M.B. at 13; PECO St. No. 4 at 18-19.

¹⁷¹ RESA M.B. at 13; PECO St. No. 4-R at 19.

customers.¹⁷² RESA explains that 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 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.¹⁷³ PECO's proposal and the Joint Petition insulate 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.¹⁷⁴

RESA points out that no such options exist for EGSs offering competitive generation supply service to customers. According to RESA, 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. In RESA's view, 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.¹⁷⁵ This, RESA submits, is especially true given PECO's proposal to compare all EGS prices to the PTC.¹⁷⁶

In its Main Brief, RESA views the result of PECO's proposal of a true-up mechanism as negative for all end use generation customers.¹⁷⁷ 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

¹⁷² RESA M.B. at 13; RESA St. No. 1 at 29-30.

¹⁷³ RESA M.B. at 14; RESA St. No. 1 at 29.

¹⁷⁴ RESA M.B. at 14; PECO St. No. 4 at 18-19.

¹⁷⁵ RESA M.B. at 14.

¹⁷⁶ RESA St. No. 1 at 30.

¹⁷⁷ RESA M.B. at 15.

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.¹⁷⁸ 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.¹⁷⁹

RESA notes that 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."¹⁸⁰ RESA argues that PECO's CPP proposal ensures that only the default service suppliers recover all the capacity obligation 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.¹⁸¹

In support of its opposition to PECO's proposed CPP and true-up mechanism, RESA argues that, even when the PJM capacity auction clearing prices is not known, physical generation resources are still selling capacity to LSEs for delivery years that are not known.¹⁸² As such, RESA explains that 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. RESA recommends that the Commission reject PECO's proposal as set forth in the Joint Petition and require all LSEs to rely on the secondary market for capacity, in order to create an equal playing field whereby both types of generation suppliers (default and competitive) are utilizing the same resources and information available to develop pricing and

¹⁷⁸ 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, at 26 (Final Order entered Nov. 14, 2013).

¹⁷⁹ RESA M.B. at 15; RESA St. No. 1 at 30.

¹⁸⁰ RESA M.B. at 15; 66 Pa.C.S. § 2803.

¹⁸¹ RESA M.B. at 16.

¹⁸² *Id.*

taking the same risks of the results of these calculations.¹⁸³ According to RESA, this approach does not require default service customers to pay for the results of an inaccurately forecasted CPP via a true up cost embedded in a future PTC.¹⁸⁴

PECO

In its Main Brief, PECO points out that RESA is the only party that opposes PECO's CPP proposal and views it as anti-competitive.¹⁸⁵ PECO rejects RESA's contention that the use of a CPP in default service solicitations would lead to a distortion in retail markets by highlighting the difference between default service suppliers and EGSs. PECO explains that default service suppliers must serve customers under the terms of the SMA. PECO procures its FPF default supply in two solicitations each year, and the delivery periods under the SMA are for 12-month or 24-month supply terms. In contrast, EGSs are free to offer products, including contract term lengths and pricing, that align with their costs and profit expectations. For example, EGSs may make offers with six- or 12- month contract terms that cover delivery periods with completed PJM BRA auctions. Because of this difference, PECO argues that EGSs have flexibility to formulate their products to entirely avoid any business risk stemming from unknown PJM BRA clearing prices, which default service supplier lack.¹⁸⁶

Moreover, PECO refutes RESA's suggestion that the capacity price resulting from PJM's RPM is solely a "price signal." Instead, PECO maintains that all LSEs, including default service suppliers, must pay the price established in PJM's auctions for their capacity obligation, regardless of capacity products available to default service suppliers in a secondary market. Thus, suppliers cannot simply incorporate into to their bids the price from an agreement entered in a secondary market to buy capacity.¹⁸⁷

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ PECO M.B. at 12.

¹⁸⁶ PECO M.B. at 12; *see also* PECO St. 1-R at 20; PECO St. 4-R at 20-21.

¹⁸⁷ PECO M.B. at 12-13; *see also* PECO St. 4-R at 21-22.

OCA

In its Main Brief, the OCA agrees with PECO in support of the Joint Petition and against RESA's position with regard to PECO's CPP proposal. First, the OCA submits that wholesale FPCR suppliers and EGSs face different risks and opportunities in their respective business models. According to the OCA, isolating one aspect of business risk/opportunity and one pricing element and trying to level the playing field in that area ignores this basic fact.¹⁸⁸ The OCA draws attention to the differences and flexibility afforded EGSs to offer contracts of any term and so avoid business risk stemming from the lack of a PJM capacity market price signal.¹⁸⁹ Second, the OCA views the proposed CPP as an improvement to PECO's default service procurement process that is likely to improve price stability for default service customers and urges the Commission to focus on the improvement to default service, regardless of whether a similar accommodation is possible or practical for EGS service.¹⁹⁰

The OCA adds that the Commission approved the addition of a CPP to the First Energy Companies' Default Service Programs for the period June 1, 2023 to May 31, 2027, as a tool to address the same uncertainty of when PJM will conduct a BRA for capacity.¹⁹¹ The OCA maintains that RESA's policy arguments against PECO's implementation of this tool to improve its ability to acquire default service supply on reasonable terms does not acknowledge nor distinguish *the First Energy DSPs* order from the present matter, and submits that Commission approval of the provisions of Paragraph 32 of Joint Petition will benefit default service customers and advance the goal of retail competition.¹⁹²

¹⁸⁸ OCA M.B. at 9; *see also* OCA St. 1R at 3.

¹⁸⁹ OCA St. 1R at 3.

¹⁹⁰ OCA M.M.B at 9; *see also* OCA St. 1R at 3-4.

¹⁹¹ *Joint Petition of Metropolitan Edison, et al for Approval to Modify their Default Service Program*, Docket No. P-2021-3030012, (Order entered Aug. 4, 2022) (*First Energy DSPs*); *see also* *Petition of Duquesne Light Co. for Approval to Modify its Supplier Master Agreement*, Docket No. P-2020-3023149, at 4 (Order entered Jan. 14, 2021) (*Duquesne Light*).

¹⁹² OCA M. B. at 9-10.

Capacity Proxy Price Disposition

The Commission has already approved the use of a CPP in default service procurements in *First Energy DSPs* and *Duquesne Light* as beneficial and in the public interest. 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 requirement would extend into an unpriced capacity period. Allowing PECO to use a CPP will create predictability and is more likely to improve price stability than not using a CPP, given that it is likely that the capacity price will not be known ahead of several of PECO's upcoming default service supply solicitations.

We disagree with RESA's position that the CPP proposal is competitively unfair to EGSs. We find that RESA's argument is undercut by the differences between the business models and contractual obligations of EGSs and wholesale default service suppliers, as well as EGSs flexibility to formulate and adjust competitive offers to address issues arising from delays in PJM capacity auctions. Consequently, we recommend that the Commission approve the Joint Petition inclusive of PECO's CCP proposal as the record, public interest, and prior Commission orders support approval.

b. AEPS Compliance

RESA

Although different from PECO's initial proposal, the Joint Petition 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 MW to meet the default service requirements of residential customers.¹⁹³ In its Main Brief, RESA notes that the Joint Petition does not address RESA's concerns that the 10-year pricing scheme determined at the formation of the contract may or may

¹⁹³ Joint Petition ¶ 21; *see also* OCA St. 2R at 2-4.

not accurately reflect the actual market price in the next ten years which, in turn, distorts accurate comparisons between the default service rate and EGS pricing. The Solar AECs would still be procured pursuant to a long-term contract to be used exclusively for the requirements of the default service load.¹⁹⁴ Because it fails to address the competitively neutral concerns identified by RESA and ignores how this proposal impacts the resulting default service rate in the overall retail competitive market structure, RESA argues that the Joint Petition proposal should be rejected.¹⁹⁵

NRG

NRG supports RESA's position on this issue.¹⁹⁶

PECO

In its Main Brief, PECO notes that RESA is the only party that opposes any long-term procurement of solar AECs because PECO would allocate the delivered solar AECs to default service suppliers but not EGSs. However, PECO maintains that RESA has not provided any evidence or even alleged that the Company's long-term solar AEC procurement will lead to an inadequate supply of solar AECs generated in the Commonwealth. Per PECO, solar AECs are readily available from the over 600 MW of installed solar electric capacity in Pennsylvania as of the end of 2022.¹⁹⁷ Therefore, EGSs have the ability to hedge their position, and it is reasonable for EGSs to procure their own solar AECs.¹⁹⁸

OCA

The OCA opposes the adoption of RESA's position with regard to PECO's AEPS compliance. The OCA's witness, Dr. Ogur determined that under RESA's proposal "some

¹⁹⁴ RESA M.B. at 17; RESA St. No. 1 at 34.

¹⁹⁵ RESA M.B. at 17.

¹⁹⁶ NRG M.B. at 3.

¹⁹⁷ PECO M.B. at 13; *see also* 2022 Annual AEPS Report, (Mar. 2023) at 35, available at https://www.puc.pa.gov/media/2332/aeaps-2022-report-final-032223-_dm.pdf.

¹⁹⁸ PECO M.B. at 13; PECO St. 1-R at 18.

shopping customers could pay twice for the same solar AECs which are acquired and allocated to all load-service entities,” related to RESA’s non-bypassable charge concept.¹⁹⁹ The OCA submits that, while Dr. Ogur identified flaws and timing issues associated with RESA’s non-bypassable charge concept, he did not recommend adoption of a modified version of the RESA proposal in this case.²⁰⁰ According to the OCA, the record does not support adoption of RESA’s flawed recommendation.²⁰¹

PAIEUG

In its Main Brief, PAIEUG submits that RESA has not provided substantive evidence requiring a change in PECO's procurement of solar AECs.²⁰² PAUEIG notes that RESA bases its proposal on "competitive market concerns" including a claim that EGSs do not have the same ability as EDCs to enter into long-term solar contracts on a risk-free basis.²⁰³ It agrees with PECO that RESA has not provided any evidence demonstrating that this alleged problem is actually occurring.²⁰⁴

Moreover, as support for its proposal, RESA notes 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.²⁰⁵ However, PAIEUG discredits RESA argument by pointing out that, as part of Met-Ed and Penelec's most recent default service proceeding,

¹⁹⁹ OCA M.B. at 10-11; *see also* OCA St. 1R at 6.

²⁰⁰ OCA M.B. at 11; *see also* OCA St. 1R at 6; RESA St. 1SR at 2.

²⁰¹ OCA M.B. at 11.

²⁰² PAIEUG M.B. at 4-5.

²⁰³ PAIEUG M.B. at 3; *see also* RESA St. No. 1 at 33-34.

²⁰⁴ PECO St. No. 1-R at 13.

²⁰⁵ RESA St. No. 1 at 35.

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.²⁰⁶

Assuming *arguendo*, however, that the Commission were to accept RESA's proposed change to PECO's solar AEC procurement, PAIEUG recommends the Commission also approve OCA's proposed modification that would apply a lag of two to three years for implementation of this proposal after any Commission adoption in this proceeding.²⁰⁷ PAIEUG notes that shopping customers may currently be under multi-year fixed-price contracts with their EGSs. If so, these customers are already remitting the costs of procuring solar AECs through their EGS contracts. 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 – once through their fixed price EGS contract and once through PECO's non-bypassable charge.²⁰⁸ Thus, PAIEUG argues that 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.²⁰⁹

Calpine

In its Reply Brief, Calpine takes issue with RESA's proposal on the recovery of the costs of AEC and advocates for its rejection. According to Calpine, 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 accountable for

²⁰⁶ PAIEUG M.B. at 3; *Petition of Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company, and Penn Power Company for Approval of Their Default Service Plans for the Period From June 1, 2023, through May 31, 2023*; Docket No. P-2021-3030012 (Order entered Aug. 4, 2022).

²⁰⁷ OCA St. No. 1R at 6.

²⁰⁸ PAIEUG M.B. at 4.

²⁰⁹ *Id.*

their own business decisions, and who create innovative products and solutions to manage their load and associated risks for their customers.²¹⁰

Calpine 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.²¹¹ It finds the arguments made by RESA on this topic to be unpersuasive and not supported except by some general allegations about concerns relating to PECO's position.²¹²

Moreover, Calpine argues that, although under the AEPS, both EDCs and EGSs must acquire AECs, the EGSs are in the best position to manage the procurement of AECs and the recovery of the costs thereof. Calpine agrees with PECO that EGSs have the ability to hedge their positions, and it is reasonable for EGSs to procure their own solar AECs.²¹³ The better the EGSs can manage their procurement of AECs, the better they will be able to create efficiencies and compete in the marketplace. Consequently, Calpine sees in RESA's proposal evidence that RESA has difficulty managing its procurement of AECs, and that it wants relief with respect to its own business decisions and shortcomings. It argues that the recommendation for a non-bypassable charge is anti-competitive and would hurt EGSs.²¹⁴

Calpine sees in RESA's proposal a way to excuse EGSs 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 removal of the competition and associated products and services from the marketplace. Taking RESA's

²¹⁰ Calpine R.B. at 2.

²¹¹ Calpine R.B. at 4; PECO M.B. at 13; PAIEUG M.B. 3.

²¹² Calpine R.B. at 4.

²¹³ Calpine R.B. at 4; PECO M. B. at 14.

²¹⁴ Calpine R.B. at 4.

proposal a step further, Calpine predicts that those that are better at managing their AEC procurement needs would no longer be able to offer products and services.²¹⁵

Calpine submits that 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. It calls for market consequences and accountability for lack of performance in a market.²¹⁶

AEPS Compliance Disposition

In this DSP proceeding, PECO is continuing its long-standing practice of allocating solar AECs delivered under PECO's separate procurements to default service suppliers. In fact, PECO has been allocating AECs in this manner since its first solar procurement, and RESA has provided no basis, either legal or factual, for any change to this methodology. It has failed to show how the practice is not "competitively neutral" or how it adversely impacts development of the retail market. Because EGSs can hedge their positions to procure AECs as they wish, we agree with Calpine that RESA's proposal aims to replace reliance on EGSs to handle their own AEC procurement costs with a shifting of their costs to all customers. The resulting environment would eradicate competitive discipline, reward the underperformers in the marketplace, and disincentivize EGSs from creating innovative products and solutions to manage their load and associated risks for their customers. Consequently, we recommend that the Commission reject RESA's proposal and approve PECO's plan for compliance with the AEPS, as modified in the negotiated Settlement, as reasonable, supported by the record, and in the public interest.

²¹⁵ *Id.*

²¹⁶ *Id.*

2. Rate Design and Cost Recovery

a. Adjustment of Default Service Rates

RESA

The Joint Petition provides that PECO will change the frequency for adjusting default service rates from quarterly to semi-annually to reflect changes in supply costs.²¹⁷ According to RESA, “[t]he 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.”²¹⁸ RESA adds that it is important that default service rates be as market responsive and market reflective as possible to better track the market price of electricity. In its view, 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. This, in turn, leads to EGSs experiencing difficulty establishing competing offers and entering a market. For these reasons, RESA supports PECO’s original approach for ensuring accuracy and providing a real time analysis of the costs incurred, but not the provisions of Paragraph 40 of the Joint Petition.²¹⁹

PECO

However, PECO avers that the record in this case supports moving to semi-annual GSA rate changes on June 1 and December 1 of each year because it aligns with PECO’s semi-

²¹⁷ Joint Petition ¶ 40.

²¹⁸ RESA M.B. at 18; RESA St. No. 1-R at 12.

²¹⁹ RESA M.B. at 19; RESA St. No. 1-R at 13.

annual procurement schedule for the Residential and Small Commercial Classes, appropriately balances responsiveness of the PTC to current market conditions and provides price stability benefits to customers.²²⁰ In its Main Brief, PECO points out that the Commission has approved semi-annual PTC rate changes for Duquesne Light Company, FE-PA, and PPL Electric Utilities Corp.²²¹

OCA

Contrary to RESA's position, the OCA contends that the change to semi-annual adjustment of residential default service rates as set forth in the Settlement is supported by the record and in the public interest. In doing so, the OCA relies on its witness testimony that semi-annual adjustment of residential default service rates "would provide greater rate stability and certainty for residential default service customers, reduce PECO's administrative cost and burden associated with GSA-1 and E-Factor rate adjustments, and align PECO with the rest of Pennsylvania electric distribution companies ('EDCs') in terms of residential generation rate and PTC adjustment frequency."²²² The OCA emphasizes that PECO's original default service portfolio proposal would include 99% of residential default service supplies in the form of 12-month and 24-month FPFR contracts.²²³ In fact, the OCA argues that RESA's concern for timely reflection of spot prices failed to acknowledge the miniscule proportion of PECO's planned spot purchases and so the lack of a compelling reason to require the March 1 and September 1 quarterly adjustments.²²⁴

Moreover, as part of the Settlement, PECO has agreed to procure through ten-year, fixed price purchase power agreements more solar energy, capacity, and solar AECs than in the PECO's original DSP VI plan. Joint Petition ¶¶ 21-25. The energy generated by the selected

²²⁰ PECO M.B. at 14-15; *see also* OCA St. 1 at 28-29; OCA St. 1-SR at 2-4; PECO Ex. SD-1.

²²¹ PECO M.B. at 15, referring to *FE-PA DSP VI Recommended Decision* at 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 at 15-16 (Opinion and Order entered Jan. 14, 2021); *Petition of PPL Elec Utils. Corp. for Approval of a Default Service Program for the Period June 1, 2025, through May 31, 2017*, Docket No. P-2014-2417907 at 7-8, 28-29 (Opinion and Order entered Jan 15, 2015).

²²² OCA M.B. at 13; OCA St. 1SR at 2.

²²³ OCA St. 1SR at 2.

²²⁴ OCA M.B. at 13; OCA St. 1SR at 2-3.

solar project(s) “will be used *to offset the spot purchases* for the residential customer class[.]” Joint Petition ¶ 24 (emphasis added). Effectively, the OCA points out that under the Revised DSP proposed by the Settlement, even more than 99% of default supply for residential customers will be purchased under long term contracts.

Adjustment of Default Service Rates Disposition

We agree with PECO and OCA that RESA’s concern for timely reflection of market prices does not recognize the reality of PECO’s purchasing of default supply. Ninety-nine percent of the Company’s residential default service supplies will be procured through FPRP contracts, that would terminate on May 31 or November 30 each year. Since the contracts will change semi-annually, there is no reason to adjust rates quarterly. PECO will rely upon the spot market for up to 1% of supply. As OCA pointed out, PECO’s agreement to procure more solar energy, capacity and solar AECs through ten-year, fixed price purchase agreements may result in an offset against the spot purchases for the residential class.

Moreover, the Commission has approved semi-annual PTC rate changes for Duquesne Light Company, FE-PA, and PPL Electric Utilities Corp.²²⁵ Therefore, PECO’s moving from quarterly to semi-annual GSA rate changes for Residential and Small Commercial Classes is consistent with the frequency of default service rate adjustments of all other major EDCs in Pennsylvania.

In view of the above, we recommend that the Commission adopt this Joint Petition term as supported by the record and in the public interest and deny RESA’s objections to it.

²²⁵ PECO M.B. at 15, referring to *FE-PA DSP VI* Recommended Decision at 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 at 15-16 (Opinion and Order entered Jan. 14, 2021); *Petition of PPL Elec Utils. Corp. for Approval of a Default Service Program for the Period June 1, 2025, through May 31, 2017*, Docket No. P-2014-2417907 at 7-8, 28-29 (Opinion and Order entered Jan 15, 2015).

b. Time-of-Use Rates

RESA

The Joint Petition provides that PECO will continue its TOU rate 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.²²⁶

RESA submits that the one-time evaluation that parties agreed to in the Joint Petition is unnecessary to the extent it is intended to “improve” PECO’s TOU or increase enrollment. According to RESA, “rather than enhancing PECO’s TOU offering, customers should instead rely on EGSs in the competitive market to develop competitive and innovative products, including TOU offerings to meet these customer needs.”²²⁷

RESA submits that the statutory requirement for the EDC to offer a TOU rate does not mean the EDC should expend ratepayer money on creating products that can more appropriately and effectively be delivered by the competitive market.”²²⁸ It argues that EGSs are best positioned to provide enhanced features and solutions as part of TOU rates that are attractive to customers and meet their needs. Per RESA, 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.²²⁹

PECO

In response, PECO points out that all EDCs have an unconditional, statutory obligation to offer TOU rate options to eligible default service customers under Section

²²⁶ Joint Petition ¶¶ 46-62.

²²⁷ RESA M.B. at 20; RESA St. No. 1-R at 14.

²²⁸ RESA M.B. at 20.

²²⁹ RESA M.B. at 21.

2807(f)(5) of the Public Utility Code.²³⁰ PECO argues that RESA has not presented any evidence that the additional analyses of PECO's TOU rates under the Settlement will impact TOU rate products available in the competitive market or preclude EGSs from offering alternative price offerings that may be more closely tailored to individual customer needs. On the contrary, PECO submits that the record evidence shows that the TOU rates under the Settlement satisfy Act 129 requirements, incorporate the Commission's recommended guidelines on TOU rate design, and balance a variety of important objectives, including development of a TOU rate structure that is actionable.²³¹

OCA

In its Main Brief, the OCA recommends that the Commission reject RESA's broadly stated opposition to the OCA's direct case. According to the OCA, RESA failed to explain how PECO could fulfill its statutory obligation to offer a TOU rate without the expenditure of ratepayer money.²³² Nor did RESA identify what kinds of products that PECO could create that could not be delivered by the competitive market.²³³ Instead, based upon the \$5 million investment of ratepayer funds already expended to establish PECO's TOU rate offering, the OCA recommends that that investment be leveraged to its fullest extent to meet the Commission's TOU rate program goals.²³⁴

Time-of-Use Rates Disposition

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.²³⁵ RESA has not shown how PECO could fulfill its statutory obligation to offer a TOU

²³⁰ PECO M.B. at 17.

²³¹ PECO M.B. at 17; *see also* PECO St. 2 at 10-16; PECO St. 2-R at 7-8.

²³² OCA M.B. at 15.

²³³ *Id.*

²³⁴ OCA M.B. at 15; *see also* OCA St. 1SR at 15.

²³⁵ 66 Pa.C.S. §2807(f)(5).

rate without the expenditure of ratepayer money. On the contrary, we find that the terms of the Joint Petition governing PECO's TOU rate offering present a reasonable first step to leverage the \$5 million of ratepayer funds already expended to establish PECO's TOU rate program. In addition, RESA has failed to explain how the one-time evaluation described in Paragraph 47 of the Joint Petition will impact or impede the ability of EGSs to offer competitive time-varying products.

For these reasons, we recommend that the Commission approve PECO's TOU rates outlined in the Joint Petition without modification.

3. Standard Offer Program

RESA

The Joint Petition 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.”²³⁶ RESA believes that the Joint Petition will likely result in the end the SOP and strongly opposes its adoption as it offers no other affirmative steps to address the competitive market concerns addressed by RESA.²³⁷

To that end, first RESA argues that 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. RESA explains that 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.”²³⁸ RESA notes that as part of the transition to competition, the Competition Act

²³⁶ RESA M.B. at 23 (citing Joint Petition ¶ 64).

²³⁷ RESA M.B. at 23-24.

²³⁸ RESA M.B. at 24 (citing 66 Pa. C.S. § 2802(5) and (7)).

defines “direct access,” in part, as the right of EGSs to have nondiscriminatory access comparable to the EDC’s own use of its system.²³⁹ 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.”²⁴⁰

RESA acknowledges that the Commission has a long history of approving and implementing policies designed to create a fair and level playing field in Pennsylvania’s retail electricity market.²⁴¹ 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 § 69.1815.²⁴² 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:²⁴³

- 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.

²³⁹ RESA M.B. at 24; *see also* 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.”).

²⁴⁰ RESA M.B. at 24 (citing 66 Pa.C.S. §§ 2811(a) and (b)).

²⁴¹ RESA M.B. at 24-25.

²⁴² RESA M.B. at 25; *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.”

²⁴³ *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, at 31-32 (Final Order entered Mar. 2, 2012) (“*RMI Intermediate Work Plan Final Order*”) (emphasis added).

- 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.

RESA explains that 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 initial introductory period.”²⁴⁴ According to RESA, this decision was 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.²⁴⁵ 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.^[246]

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

²⁴⁴ RESA M.B. at 25; *see also* RMI Intermediate Work Plan Tentative Order at 12.

²⁴⁵ RESA M.B. at 26.

²⁴⁶ *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.

the customer at least 30 days prior to the expiration of the fixed duration contract. 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.²⁴⁷ 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.²⁴⁸ 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.²⁴⁹ RESA points out that 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.²⁵⁰

The second point that RESA makes in its briefs is that adopting the proposal of the Joint Petition is tantamount to permitting slamming. More specifically, because the Commission has 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, RESA maintains that, any proposal to ignore this and switch the SOP customer to default service would constitute illegal "slamming."²⁵¹ RESA explains that slamming occurs when a customer's EGS is switched without authorization²⁵² and such practice

²⁴⁷ 52 Pa. Code § 54.10(2)(i).

²⁴⁸ RESA M.B. at 26-27; 52 Pa. Code § 54.10(3).

²⁴⁹ 52 Pa. Code § 54.10(2)(ii)(A)(I).

²⁵⁰ RESA M.B. at 27; *PPL DSP V Order* at 2, 44-45, 92, 98.

²⁵¹ RESA M.B. at 28, referring to *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) for the proposition that 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.

²⁵² 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.

violates the Commission’s anti-slamming regulations designed to ensure customer consent to a change of EGS.²⁵³

According to RESA, the adoption of Joint Petition proposal 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, RESA concludes that the adoption of the Joint Petition would be changing the SOP customer’s electricity supplier without consent and in violation of Section 2807(d) of the Competition Act and must be rejected by the Commission.²⁵⁴

The third point that RESA makes in support of its position is that the Commission has already considered and rejected an SOP proposal similar to PECO’s. RESA explains that in its default service plan filed in 2020, PPL included a proposal to 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 confirming 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.”²⁵⁵ 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 enrolled, “the EDC – PPL Electric – has no further role in administering the SOP.”²⁵⁶ The Commission 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.”²⁵⁷

²⁵³ RESA M.B. at 28-29, referring to 28 Pa.B. 5770; 52 Pa. Code §§ 57.171-180.

²⁵⁴ 66 Pa.C.S. § 2807(d).

²⁵⁵ RESA M.B. at 30 (referring to *PPL DSP V Order* at 92-93).

²⁵⁶ RESA M.B. at 30 (referring to *PPL DSP V Order* at 93).

²⁵⁷ RESA M.B. at 30 (referring to *PPL DSP V Order* at 94, n. 29).

RESA further explained that, the Commission viewed the proposal of PPL as a modification of the existing SOP that was “inconsistent with the Section 54.10 and the final guidelines in the *RMI [Intermediate Work Plan] Final Order*” and went on to analyze whether the proposed restriction on competition was supported by substantial evidence of record.²⁵⁸ 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.²⁵⁹ 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.²⁶⁰ 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.²⁶¹ Though not stated directly by the Commission, RESA opines that the fact that customers were exercising affirmative action within four months after SOP contract expiration must have been persuasive evidence that the program is in fact working as intended.²⁶²

Turning to this proceeding, RESA makes its final point against the provisions of the Joint Petition which propose to modify PECO’s current SOP. According to RESA, the record in the present matter does not support reversing prior Commission decisions to reject automatically returning EGS customers to default service upon SOP contract expiration. In particular, RESA points out that PECO did not present any information specific to prices paid by EGS customers following SOP expiration. However, in support of its initial proposal to continue the SOP, PECO presented evidence that more than 28,200 customers have been referred to EGSs under the SOP with 10,000 residential customers and 258 small business customers enrolled

²⁵⁸ RESA M.B. at 31 (referring to *PPL DSP V Order* at 95-96).

²⁵⁹ RESA M.B. at 31 (referring to *PPL DSP V Order* at 96-98).

²⁶⁰ RESA M.B. at 31 (referring to *PPL DSP V Order* at 97).

²⁶¹ RESA M.B. at 31 (referring to *PPL DSP V Order* at 98).

²⁶² RESA M.B. at 31.

since June 1, 2021.²⁶³ 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.²⁶⁴

According to RESA, without record evidence to support the view that post SOP contract pricing is somehow “hurting” customers, the OCA tries to argue 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.”²⁶⁵ RESA rejects these conclusions as being broader than the issue of PECO's SOP program and views the Joint Petition's proposal on the automatic return of the customers to the EDS upon SOP contract expiration as a covert action on the part of the signatories to regulate the price to be paid by EGS customers.²⁶⁶ RESA notes 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 and argues that adopting the Joint Petition proposal would be a violation of the Competition Act and should not be approved.²⁶⁷

NRG

NRG opposes Paragraph 64 of the Joint Petition which proposes to modify PECO's Standard Offer Program in a manner which NRG deems to be inconsistent with the Commission's Regulations, the Commission's prior determinations and is not supported by the

²⁶³ RESA M.B. 31-32; *see also* PECO St. No. 1 at 29-30.

²⁶⁴ RESA M.B. at 32; *see also* PECO St. No. 1 at 30.

²⁶⁵ RESA M.B. at 32; OCA St. No. 2 at 14.

²⁶⁶ RESA M.B. at 32-33.

²⁶⁷ *Id.* at 33.

record.²⁶⁸ NRG supports the continuation of PECO’s Standard Offer Program without any modifications.²⁶⁹

NRG agrees with RESA’s testimony²⁷⁰ as to why either termination of or revising PECO’s Standard Offer Program would be unreasonable in the current competitive market. It argues that Standard Offer Programs are an opportunity to introduce customers to shopping for electricity with the main goal of having customers make their own decisions.²⁷¹ NRG argues that PECO’s statistics show that customers in PECO’s service territory are doing exactly that – upon expiration of their SOP contracts, 71.3% of SOP customers are making an affirmative choice other than remaining with their SOP supplier.²⁷²

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. According to NRG, the language of Paragraph 64 eliminates altogether the option for SOP customers to choose another supplier. It finds nothing in the Joint Petition to suggest that SOP customers can choose to enroll with another EGS upon the expiration of their SOP contract, and no reasons given by the Joint Petitioners for the elimination of the SOP customers’ ability to decide to select another supplier. 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.²⁷³

²⁶⁸ NRG M.B. at 4

²⁶⁹ *Id.* at 3.

²⁷⁰ NRG M.B. at 3; RESA St. 1-R, 1-SR.

²⁷¹ RESA St. 1 at 11.

²⁷² NRG M.B. at 3 (referencing 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%.

²⁷³ *See Id.*

Additionally, NRG argues that 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 waiver²⁷⁴ of the Commission's notice regulation²⁷⁵ for SOP customers. In NRG's view, 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 Joint Petition. Thus, NRG urges rejection of the Joint Petition.

AP&G

In its Amicus Brief, AP&G contends that the proposed modifications to PECO's SOP are contrary to the express requirements imposed by the Commission in its prior orders and in a recent PPL Default Service matter (*PPL DSP V*) where the Commission unambiguously rejected an effort by the same parties to inject a similar requirement into PPL's SOP program. AP&G submits that the proposed changes – to require that SOP customers affirmatively consent to remain on a renewable contract despite receiving the same notices as other customers – would differ from the treatment of all other customers and is neither warranted nor wise.²⁷⁶

According to AP&G, the law requires that customers have the choice of a wide variety of products, but it does not mandate that all customers pay the same rate or that customers not be offered rates that are higher or lower than other rates, regardless of who is offering those other rates.²⁷⁷ It explains that requiring affirmative consent to continue with the SOP provider would make it less likely that SOP customers would remain with their SOP supplier and would disincentivize suppliers from participating in the program because they would be less likely to retain the customers regardless of the rate they would propose. AP&G avers that such a requirement would be the polar opposite of how contracts are renewed now, where customers can be required to take action to avoid a contract from automatically renewing.

²⁷⁴ NRG M.B. at 6; *see* 52 Pa. Code § 1.91.

²⁷⁵ NRG M.B. at 6; *see* 52 Pa. Code § 54.10.

²⁷⁶ AP&G A.C.B. at 2.

²⁷⁷ AP&G A.C.B. at 5; 66 Pa.C.S. § 2802(13).

It submits that neither the Joint Petition, nor the record of this matter provide any actual evidence that would justify such a radical departure and urges the rejection of the Joint Petition's proposal to modify the SOP as not serving the public interest and as being contrary to the law and longstanding Commission precedent.²⁷⁸

PECO

For its part, PECO rejects RESA's claim that the proposed change in SOP is unnecessary or that it defeats the core purpose of shopping where customers make their own decisions.²⁷⁹ According to PECO, the changes to its current SOP agreed to as part of the Settlement carefully balance the interests of customers, participating EGSs, and the Commission's guidelines in prior default service proceedings regarding standard offer customer referral programs. Additionally, PECO argues that the Joint Petition preserves the original purpose of the SOP by introducing customers to the competitive market, while addressing concerns raised by the OCA and TURN/CAUSE-PA that a customer's inaction upon expiration of the SOP contract leads to that customer rolling over to a new contract with the SOP supplier at a higher rate than the PTC.²⁸⁰

OCA

In its Main Brief, the OCA addresses the balance between the Choice Act's promotion of competition in supply and the Commission's authority to approve SOPs that are in the public interest by pointing out that the Commonwealth Court has on two separate occasions referenced a Commission-approved SOP as an example of how the Commission has exercised authority to approve or implement program rules that restrict competition.²⁸¹ The OCA also

²⁷⁸ AP&G A.C.B. at 6.

²⁷⁹ PECO M.B. at 18; *see also* RESA St. 1-R at 11.

²⁸⁰ PECO M.B. at 18-19; *see also* PECO St. 1 at 29-30, OCA St. 2 at 9-16; OCA St. 2SR at 4-8; TURN/CAUSE-PA St. 1 at 5-18; TURN/CAUSE-PA St. 1-SR at 2-6.

²⁸¹ OCA M.B. at 20 (referring to *Retail Energy Supply Ass'n v. Pa. Pub. Util. Comm'n*, 185 A.3d 1206, 1221 (Pa. Cmwlth. 2018) (*RESA*); *Coalition for Affordable Util. Servs. & Energy Efficiency in PA. et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1093, 1103 (Pa. Cmwlth. 2015) (*CAUSE-PA*)).

acknowledges that in the *PPL DSP V* case, the Commission rejected PPL’s proposed modification to its SOP due to “our inability to determine from this record that harm is occurring as a result of the existing SOP program.”²⁸² However, the OCA distinguishes the present case from *PPL DSP V* arguing that the record in this case is abundantly clear that shopping harms customers in aggregate month in and month out. To support this argument, the OCA emphasizes the fact that PECO customers who shopped have paid an excess of \$800 million more dollars in six years to suppliers than they would have paid under the default service rate.²⁸³ In the OCA’s view, the data shows that the SOP, and its negative option renewal, have produced harms to shopping customers and other ratepayers that are undeniably detrimental to consumers and the Commission has the ability to ensure that its market enhancement program approved in 2012 does not exacerbate this harm. According to the OCA, an example of this harm is the increased termination rates for confirmed low-income shopping customers.²⁸⁴ These higher termination rates drive higher collection costs and uncollectible expenses which are borne by other ratepayers.²⁸⁵ Given this reality, and in light of the fact that the SOP is itself a limitation on competition because of the price offering, the OCA sees in the provisions of Paragraph 64 of the Joint Petition a reasonable means by which the Commission can “bend” competition to ensure that customers remain protected.²⁸⁶

Next, the OCA defends its own evaluations, as well as those of TURN/CAUSE-PA, of the benefits of shopping versus default supply, on a revenue basis, over several years against RESA’s characterization as “spurious,” false or of a deceitful nature.²⁸⁷ In particular, the OCA defends its analysis as directly based upon billing data from PECO which RESA witness

²⁸² OCA M.B. at 20 (citing *Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan for the Period June 1, 2021, Through May 31, 2024*, 2020 Pa.P.U.C. LEXIS 636, *47-48 (Order Dec. 17, 2020) (*PPL DSP V*)).

²⁸³ OCA M.B. at 20; *see also* OCA St. 2 at 12-13.

²⁸⁴ OCA M.B. at 20; *see also* TURN/CAUSE PA St. 1 at 18; OCA St. 2R at 3-4.

²⁸⁵ OCA M.B. at 20; TURN/CAUSE PA St. 1 at 18.

²⁸⁶ In *CAUSE-PA*, the Commonwealth Court held that the General Assembly has reserved within the Commission the authority to “bend” competition to further other important aspects of the Code, including the Choice Act, where the Commission provides substantial reasons why the restriction on competition is necessary (i.e., there are no reasonable alternatives). *CAUSE-PA*, 120 A.3d at 1103-1104, 1106.

²⁸⁷ OCA M.B. at 23; *see also* RESA St. 1R at 3; OCA St. 2 at 12-13; OCA St. 1SR at 4-5.

Caliva did not contest or dispute.²⁸⁸ It adds that the comparison of revenues billed by suppliers to shopping customers with the prices that PECO would have charged those customers for default service is reasonable and not misleading. On the contrary, the historic comparison of competitive supply billed rates and default service rates is “evidence of higher prices charged by EGSs and the resulting impact on higher collection costs imposed on PECO ratepayers.”²⁸⁹ Per the OCA, this evaluation directly supports the narrow, focused program rule change to the SOP agreed to by the Joint Petitioners. In the context of the SOP, the relationship between the supplier price at a 7% discount from the then effective PTC highlights the importance of cost or pricing, regardless of other features included in competitive supply products outside of the SOP.²⁹⁰

Furthermore, the OCA argues that, pursuant to the terms of the settlement, the proposed change in PECO’s SOP will only be prospective – for contracts after June 1, 2025, thereby not interfering with any existing SOP agreements. The change will only occur after PECO informs customers that as a condition of enrollment in the SOP that they will be returned to default service at the end of the term unless they make an affirmative choice to remain with their SOP supplier.²⁹¹ Thus, the OCA argues that it does not impair existing contracts and would be done with the informed consent of the customer entering the program.²⁹²

The OCA submits that the Joint Petition lays down reasonable conditions that protect current supplier contracts while ensuring that the clear harms to consumers demonstrated in this proceeding concerning shopping are no longer exacerbated by a Commission-designed, utility-promoted program. The OCA emphasizes that nothing in the Settlement terms prevents a customer from choosing to shop at any time. They can enroll with another EGS while being served on SOP, they can choose another EGS at the end of their SOP-contract, they can choose to remain with their SOP-supplier by affirmatively electing to remain. In every way, a

²⁸⁸ OCA M.B. at 23; OCA St. 1SR at 4-5, Exhibit BA-4.

²⁸⁹ OCA M.B. at 23 (citing OCA St. 1SR at 5).

²⁹⁰ OCA M.B. at 23.

²⁹¹ Joint Petition ¶¶ 63-64.

²⁹² OCA M.B. at 21.

customer's direct access to the retail market is maintained by the terms of this settlement. Thus, the requirement that for all SOP enrollments after June 1, 2025, customers be returned to default service at the end of the contract term unless they make an affirmative decision to remain with the SOP supplier is in the public interest and should be adopted.²⁹³

To draw attention to its argument that the proposed change to PECO's SOP program is not anti-competitive, the OCA notes that the SOP has been in place for 10 years, providing consumers with the opportunity to learn and decide whether and when to shop for competitive supply. OCA St. 2 at 3, 14. Additionally, although PECO has scripting and webpages to provide consumers with information about the SOP and manage the enrollment process, individual EGSs decide whether or not to participate. In recent periods covered by PECO DSP V, the number of EGSs participating in the SOP have varied from zero to 16. OCA St. 2 at 11-12. OCA Statement 2, Exhibit BA-2 includes a PECO discovery reply that provides data for June 2021 through December 2023, identifying the number of calls received by PECO's SOP enrollment vendor and the number of resulting enrollments for each month, by residential or small commercial classes. Even if there are zero EGSs participating in the SOP for a period, consumers who contact PECO are still exposed to the SOP concept and shopping for supply as shown in Exhibit BA-2.

RESA's general opposition to the "price to compare" label and the concept of measuring the value of a competitive supply offer against the PTC does not diminish the reasonableness and public benefit of the Joint Petition proposed program rule change to the SOP. More generally, the OCA avers that RESA's testimony does not provide probative reasons why the Commission should not approve the Joint Petition terms regarding PECO's SOP effective for the DSP VI period.

²⁹³ *Id.*

TURN/CAUSE PA

TURN/CAUSE-PA disagree with RESA's argument that the proposed program rule, which would return customers to default service upon expiration of the 12-month SOP program period, would violate the Choice Act.²⁹⁴ In particular, TURN/CAUSE-PA take issue with RESA's apparent belief that the structure of any EDC SOP has been permanently established and that the Commission is prohibited from implementing the proposed modification to PECO's SOP, citing to the Commission's *Investigation of Pennsylvania's Retail Electricity Market and Intermediate Work Plan Order* adopted in March 2012.²⁹⁵ They argue that RESA failed to provide support for why the provisions of the *Intermediate Work Plan Order*, which required PECO to implement an SOP in its second default service program proceeding (DSP II, taking effect in 2013), now prohibit the Commission from approving modifications to the SOP. In fact, TURN/CAUSE-PA submit that the *Intermediate Work Plan* order only applied, by its terms, to PECO's DSP II.²⁹⁶ As a result, TURN/CAUSE-PA conclude that RESA's premise that SOP terms and conditions have been firmly established and cannot be modified is unsupported and without basis in law.²⁹⁷

Next, TURN/CAUSE-PA disagree with RESA interpretation of the results of a customer satisfaction survey conducted by PECO.²⁹⁸ Specifically, they challenge RESA's conclusion that the majority of those who responded reported a positive experience with the SOP²⁹⁹ by pointing out that the survey represents only 447 responses out of a total pool of 7,454

²⁹⁴ RESA M.B. at 23-24.

²⁹⁵ RESA M.B. at 25 (citing *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) at 31-32 ("*Intermediate Work Plan Order*").

²⁹⁶ TURN/CAUSE-PA R.B. at 7-8; *Intermediate Work Plan Order* Ordering ¶ 9 ("Electric Distribution Companies shall implement a Standard Offer Customer Referral Program consistent with the guidance provided in this Final Order. The company should include a proposal for a Standard Offer Customer Referral Program *in its upcoming default service plan filing* or should amend a plan that is currently pending Commission review to include such a proposal.") (emphasis added).

²⁹⁷ TURN/CAUSE-PA R.B. at 7-8.

²⁹⁸ TURN/CAUSE-PA R.B. at 8.

²⁹⁹ TURN/CAUSE-PA R.B. at 9; *see also* RESA M.B. at 31-32 (citing PECO St. 1 at 29-30).

customers who were enrolled through the referral program.³⁰⁰ Instead, TURN/CAUSE-PA agree with the explanation provided by OCA witness Alexander that, “[t]he survey confirms that a substantial number of the surveyed customers that PECO and its agent personally enrolled with an EGS did not recall enrolling with this program.”³⁰¹ OCA’s witness concluded that the sample size was too small to be relied upon and that the survey failed to capture any meaningful data regarding customer experience post-SOP.³⁰²

TURN/CAUSE-PA also disagree with RESA’s assertion that the proposed program rule is anticompetitive and/or discriminatory.³⁰³ They point out that the Commonwealth Court has been abundantly clear that competition may permissibly “bend” and that, “under certain circumstances, unbridled competition may have to give way to other important concerns.”³⁰⁴ According to TURN/CAUSE-PA, the record evidence in this proceeding demonstrates that residential customers, and CLI customers in particular, consistently experience EGS prices in excess of the PTC, resulting in millions of dollars of higher bill charges and associated financial risk.³⁰⁵

In support of its position, TURN/CAUSE-PA point to the testimony of their witness Marx which demonstrates that residential shopping customers were charged, on average, between 32% and 81% more per month than residential default service customers.³⁰⁶ TURN/CAUSE-PA note that these average figures take into account all SOP participants who receive a 7% discount on the PTC at the time of enrollment. Accordingly, non-SOP participants’ average shopping bills are marginally higher, indicating that customers who have remained on

³⁰⁰ TURN/CAUSE-PA R.B. at 9; OCA St. 2 at 10.

³⁰¹ TURN/CAUSE-PA R.B. at 9; OCA R.B. at 17-18; OCA St. 2 at 10.

³⁰² TURN/CAUSE-PA R.B. at 9; OCA St. 2 at 10-11.

³⁰³ TURN/CAUSE-PA R.B. at 8; OCA R.B. at 17-18; RESA M.B. at 24.

³⁰⁴ TURN/CAUSE-PA R.B. at 8 (citing *Coalition for Affordable Util. Servs. & Energy Efficiency in PA. v. Pa. Pub. Util. Comm’n*, 120 A.3d 1087, 1093, 1103 (Pa. Cmwlth. 2015)).

³⁰⁵ TURN/CAUSE-PA R.B. at 8.

³⁰⁶ TURN/CAUSE-PA R.B. at 9-10; TURN/CAUSE-PA St. 1 at 7.

EGS supply after the expiration of the SOP terms have experienced excessive monthly charges.³⁰⁷

The testimony of TURN/CAUSE-PA’s witness Marx also demonstrates that residential customers have not, on average, achieved savings in any single month between January 2018 through December 2023, and have collectively been charged more than \$800 million by EGSs in excess of what they would be billed using PECO’s PTC.³⁰⁸ Ultimately, the unrebutted evidence demonstrates that CLI customers face, on average, the highest EGS charges in the market, exceeding the average EGS charges for non-CLI residential customers in every month between February 2019 and December 2023.³⁰⁹ Those PECO CLI customers who can least afford to pay excessive charges, and who may be inclined to enroll in the voluntary SOP given its savings opportunity, are thus exposed to the significant risk of higher priced EGS supply under the existing framework. According to TURN/CAUSE-PA, the consequence of such higher priced EGS supply is the increased likelihood of loss of essential electricity service. CLI customers experience significantly higher rates of termination when served by an EGS compared to those CLI customers who remain on default service.³¹⁰

TURN/CAUSE-PA find additional support for their position on this matter in the testimony of OCA’s witness Alexander, who likewise recognizes that EGSs serving PECO customers have imposed “startling sums” in excess of PECO’s PTC.³¹¹ She confirms that it is reasonable to assume that SOP participants, following their participation in the program, “ended up with an EGS contract that was more expensive than the PTC due to the negative option renewal process or by the selection of another EGS.”³¹² TURN/CAUSE-PA draw attention to a fundamental difference between the SOP participant, who has entered the EGS market via a phone call to PECO, and a customer who seeks out EGS supply independently. They agree with

³⁰⁷ TURN/CAUSE-PA R.B. at 10.

³⁰⁸ TURN/CAUSE-PA R.B. at 10; TURN/CAUSE-PA St. 1 at 7.

³⁰⁹ TURN/CAUSE-PA R.B. at 10; TURN/CAUSE-PA St. 1 at 12-13.

³¹⁰ TURN/CAUSE-PA R.B. at 10; TURN/CAUSE-PA St. 1 at 15-18.

³¹¹ TURN/CAUSE-PA R.B. at 11 (citing OCA St. 2 at 12).

³¹² TURN/CAUSE-PA R.B. at 11 (citing OCA St. 2 at 13).

Ms. Alexander’s explanation that “it is likely that customers who have enrolled by way of a phone call to PECO that was not intended to seek information about retail choice and who agreed to enroll based on ‘savings,’ may not understand that suppliers can change their pricing terms with some notices that arrive 10-12 months after the phone call with PECO.”³¹³

TURN/CAUSE-PA also agree with Ms. Alexander’s finding that SOP messaging is confusing and contradictory, and that it transfers risk of price volatility to customers.³¹⁴ Ms. Alexander expresses particular concern regarding the expiration of the SOP term, when the supplier is permitted to use a “negative option renewal” to change the price and/or to convert to a variable rate contract, noting Vice Chair Barrow’s recent statement concerning the high variable rate experienced by a PECO customer following expiration of the SOP.³¹⁵ As expressed by Vice Chair Barrow regarding a PECO customer’s complaint:

[W]hile the Commission’s Regulations permit an EGS to convert a non-responsive customer to a month-to-month or fixed-duration contract, I caution the EGS industry to exercise good faith and reasonableness when offering the new contract terms and prices. I am concerned with the fact pattern often seen in shopping complaints. Customers complain that any savings experienced during the initial term are more than wiped out once they are moved to a month-to-month or new fixed-duration contract.^[316]

Next, TURN/CAUSE-PA challenge RESA’s and NRG’s argument that the existing notification requirements, set forth in 52 Pa. Code § 54.10, govern and provide the exclusive options for a customer upon expiration of a contract with an EGS.³¹⁷ In TURN/CAUSE-PA’s view, this argument fails to recognize that the SOP is a voluntary, EDC operated program, governed not only by the Commission’s regulations, but also by the Commission’s determination in the EDC’s DSP proceeding. TURN/CAUSE-PA submit that

³¹³ TURN/CAUSE-PA R.B. at 11 (citing OCA St. 2 at 14-15).

³¹⁴ TURN/CAUSE-PA R.B. at 11 (citing OCA St. 2 at 7).

³¹⁵ TURN/CAUSE-PA R.B. at 11-12 (citing OCA St. 2R at 3-4, Exhibit BA-3).

³¹⁶ TURN/CAUSE-PA R.B. at 12 (citing OCA St. 2R, Exhibit BA-3).

³¹⁷ TURN/CAUSE-PA R.B. at 13; *see also* NRG M.B. at 4; RESA M.B. at 27.

RESA and NRG’s reading of Section 54.10 elevates form over substance. They maintain that the purpose of the regulation is to enable customers to make informed choices by requiring EGSs to provide certain notifications.³¹⁸ According to TURN/CAUSE-PA, the regulation doesn’t prohibit terms and conditions of an EDC’s SOP which promote informed choices by customers who are introduced to the competitive market via their EDC’s voluntary program. Indeed, informing the customer that they will be returned to default service upon expiration of the initial contract, unless they affirmatively elect otherwise, is specifically intended to promote informed decision-making instead of passive conversion to a month-to-month product.³¹⁹

Finally, TURN/CAUSE-PA submit that, as a voluntary program term of which the customer is informed from the outset, the proposed modification to PECO’s SOP does not constitute “slamming” as suggested by RESA.³²⁰ In TURN/CAUSE-PA’s view, the circumstance presented is directly analogous to the approved SOP terms applicable to Customer Assistance Program (CAP) participants in *PPL’s DSP IV*, which were affirmed by the Commonwealth Court.³²¹ As in that case, the SOP customer retains the ultimate choice to select another EGS or be returned to default service. As the Commonwealth Court has ruled, by retaining that choice, the voluntary program rule does not constitute slamming.³²²

Standard Offer Program Disposition

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

³¹⁸ TURN/CAUSE-PA R.B. at 13; *see also* 44 Pa.B. 3522 (June 14, 2014) (“With this Final-Omitted Rulemaking Order, the Commission enhances these rules to guarantee ample customer protections are in place and that customers are provided with the necessary information to make informed decisions when shopping in Pennsylvania’s competitive retail electricity market.”).

³¹⁹ TURN/CAUSE-PA R.B. at 13.

³²⁰ TURN/CAUSE-PA R.B. at 14 (citing RESA M.B. at 28).

³²¹ *See Retail Energy Supply Ass’n v. Pa. Pub. Util. Comm’n*, 185 A.3d 1206, 1224-1225 (Pa. Cmwlth. 2018).

³²² *See Id.*

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. We do not find these arguments persuasive.

We note that "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, we agree with PECO, OCA and TURN/CAUSE-PA that the Commission has the power to change the SOP design at any time.

In *PPL DSP V*, the Commission indeed rejected the EDC's proposed modification to its SOP due to the "inability to determine from this record that harm is occurring as a result of the existing SOP program."³²³ However, the Commission's approach in *PPL DSP V* does not ensure that no harm is occurring as a result of an EDC's existing SOP program. On the contrary, it allows for the revision of an EDC's existing SOP if evidence of harm to the customers is established. The evidence collected in the present matter leads us to find that 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. We find that this approach will serve the public interest by encouraging active customer shopping and addressing the 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.

We disagree with RESA, NRG and AP&G's suggestion that revising the rules that apply at the end of the SOP contract term prevent a customer from making their own shopping decisions. Under the terms of the Joint Settlement, SOP customers remain entirely free to choose another EGS during or at the end of the 12-month introductory period or affirmatively

³²³ *PPL DSP V*, 2020 Pa.P.U.C. LEXIS 636, *47-48 (Order Dec. 17, 2020).

choose to remain with their SOP supplier in response to the notices required by the Commission’s regulations at 52 Pa. Code § 54.10.

In addition, we disagree with RESA’s contention that changing the end of SOP contract options as provided in the Joint Petition regulates 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. 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.

Finally, we do not find that returning SOP customers that take no action at the end of the SOP term back to PECO constitutes “slamming” as suggested by RESA. Customers will be advised at the 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.³²⁴

In sum, we find that the Joint Petition’s modification to the SOP is a reasonable, and limited, program term and recommend that the Commission approve it.

4. Other Issues

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

RESA

In its testimony and Main Brief, RESA points out that, when evaluating the success of the retail electric market, the Commission and EDCs hold the PTC up as the basis against which all EGS pricing offers should be judged. For instance, consumer and low-income

³²⁴ See Joint Petition, ¶ 64.

consumer advocates use the PTC to gauge the reasonableness (in their view) of EGS offers.³²⁵ Per RESA, the name of the term itself as a “Price to Compare” implies that it is the standard by which other offers should be evaluated.³²⁶

RESA further avers that comparisons that are made between default service rates and supply prices in the market are misleading and inaccurate and the PTC is an inappropriate data point to use in evaluating EGS offers and the success of the retail market.³²⁷ Instead, RESA suggests that the Commission pursue a statewide investigation focused on the messaging of default service and allowing interested stakeholders to have a say in that message. RESA relays that 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. In RESA’s view, this hampers the ability of EGSs to develop more innovative and a greater variety of competitive products and services for consumers and is a disappointing result for consumers which shows no hope of reversing without decisive Commission action in this proceeding.³²⁸

RESA lists the following reasons for the shortcomings between these comparisons: (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 versus costs 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.³²⁹

³²⁵ RESA M.B. at 34; RESA St. No. 1 at 13.

³²⁶ RESA M.B. at 34.

³²⁷ RESA M.B. at 34-35.

³²⁸ RESA M.B. at 35; RESA St. No. 1 at 17-18.

³²⁹ RESA M.B. at 35; *see also* RESA St. No. 1 at 8-9, 20-22.

However, RESA opines that, without a willingness to revisit the underlying use of the “PTC” as the rate by which all other prices should be gauged the market will continue to remain stagnant.³³⁰ It argues that 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.³³¹ RESA insists that the time has come for the Commission to initiate a statewide investigation that examines all the factors that make these two business models inappropriate for comparisons and maintains that a statewide investigation would enable the PUC to issue data requests and take the time that is needed to consider all issues.³³²

NRG

NRG supports RESA’s position on this issue.³³³

PECO

PECO disagrees with RESA’s assertion that the competitive market has become stagnant due to the presence of an EDC default service product. First, PECO argues that RESA’s reliance on switching rates as of March 2024 to support alleged market stagnation is misleading because those statistics do not include all the customers who have considered switching to EGS service but decided against it, or the customers who have switched in the past but who are now back on default service.³³⁴ Second, PECO argues that shopping alone is not indicative of the status of competition and points out that there are nearly 100 EGSs competing to serve PECO’s customers, and EGSs currently serve 52% of the Company’s total electric load.³³⁵ Finally,

³³⁰ RESA M.B. at 36.

³³¹ *Id.*

³³² *Id.*

³³³ NRG M.B. at 6.

³³⁴ PECO M. B. at 19; *see also* PECO St. 3-R at 58-59.

³³⁵ PECO M.B. at 19; *see also* RESA St. 1 at 12; PECO St. 3 at 31; PECO St. 3-R at 57-58.

PECO contends that many factors contribute to a customer’s decision not to receive supply from an EGS – not just competitive market design issues as RESA implies. By way of example, PECO avers that in recent years, some EGSs have been charging significantly more than PECO’s default service rates.³³⁶ According to PECO, the potential cost savings or other benefits associated with EGS offers may also be insufficient for customers to devote additional time to making and managing choices in the retail electricity market.³³⁷

In PECO’s view, RESA has presented no 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.”³³⁸ PECO has served as the default service provider in its service area and customers have been making shopping decisions based on the PTC since 2011, without any Commission finding that such framework sends a message to customers that default service is somehow “superior” to competitive offerings.³³⁹

OCA

The OCA is opposed to the RESA request that the Commission open a statewide investigation to result in elimination of the price to compare term as part of the messaging about consumer choices between default service or offerings by EGSs. According to the OCA, RESA’s premise that the state of the competitive market is stagnant is unsound and ignores important provisions of the Public Utility Code which require the procurement of default supply through competitive processes, inclusive of a prudent mix of contracts of varying durations. The OCA next highlights the futility of RESA request by pointing out that RESA’s suggested new label would not alter how the price to compare rate is developed.³⁴⁰

³³⁶ PECO M.B. at 19-20; *see also* PECO St. 3-R at 59; *see also* OCA St. 2 at 12-13; TURN/CAUSE-PA St. 1 at 3-9.

³³⁷ PECO M.B. at 20; *see also* PECO St. 3-R at 59-60.

³³⁸ PECO M.B. at 20; *see* RESA St. 1 at 18.

³³⁹ PECO M.B. at 20; *see* PECO St. 1-R at 24.

³⁴⁰ OCA M.B. at 25.

The OCA also disputes RESA’s position that EGSs have innovative services and favorably priced products that they would have marketed, but for barriers including default service and the price to compare concept.³⁴¹ It deems RESA’s request that the Commission eliminate the use of price to compare in messaging unreasonable, given the costs incurred, the years of consumer education that would be wiped away and the resulting customer confusion about how to shop and compare.³⁴² Lastly, the OCA notes that RESA’s professed concern that ratepayers should be spared from more expense – regarding PECO’s TOU rate offering – does not carryover to RESA’s request for a statewide investigation to result in RESA’s specific affirmative relief.³⁴³ In view of these, the OCA submits that the grant of the RESA request is not necessary and is not in the public interest.

TURN/CAUSE-PA

TURN/CAUSE-PA disagree with RESA’s contention that use of the PTC undermines consumers’ ability to understand other non-cost-based characteristics of EGS offers and so impedes development of a “truly competitive market.”³⁴⁴ They opine that at the heart of RESA’s position is dissatisfaction with the number of residential customers choosing EGS supply.³⁴⁵ According to TURN/CAUSE-PA, RESA is seeking to open a statewide investigation in order to pursue policy changes that lead more residential customers to choose EGS products, and to undermine consumer comparisons of EGS products with EDC’s PTC. TURN/CAUSE-PA urge the Commission to reject RESA’s proposal, as it is not factually supported nor legally founded.³⁴⁶

³⁴¹ OCA M.B. at 25; OCA St. 2R at 2-4.

³⁴² OCA M.B. at 25; OCA St. 2R at 4.

³⁴³ OCA M.B. at 25-26; *see also* RESA St. 1R at 14-15.

³⁴⁴ RESA St. 1 at 9.

³⁴⁵ TURN/CAUSE-PA R.B. at 15 (citing RESA St. 1 at 4; RESA St. 1-SR at 3-4).

³⁴⁶ TURN/CAUSE-PA R.B. at 15-16.

TURN/CAUSE-PA explain that the Choice Act was intended to encourage competition for the purpose of benefitting consumers with lower costs.³⁴⁷ As the Choice Act recognizes the central importance of electricity costs, TURN/CAUSE-PA argue that RESA's position against consumer comparisons of EGS products with EDC's PTCs is fundamentally flawed.³⁴⁸ They maintain that a consumer's ability to compare EGS offers to default service based on price is precisely what the General Assembly intended in establishing the competitive market for electricity, and point to Commonwealth Court's explanation that,

The purpose of the Competition Act is clear: to relinquish the local utilities' monopoly control over the generation of electricity and to invite competition in an effort to lower electric generation rates for the citizens of this Commonwealth.^[349]

Based on the above, TURN/CAUSE-PA conclude that RESA's efforts are inconsistent with this legislative purpose and clearly intended to achieve an opposite goal: to distort or obfuscate price comparisons in order to charge higher generation rates to residential customers.

Next, TURN/CAUSE-PA contend that the Commission should not undermine efforts to educate consumers in order that they can make meaningful price comparisons. They join the OCA in its opposition of RESA proposed statewide investigation and efforts to challenge the terminology, Price to Compare or PTC adopted by Commission regulation.³⁵⁰

The use of the term Price to Compare permeates the Commission's educational messaging about the retail energy market, appears on all EDC customer bills, and is the basis for comparing offers among suppliers and with default service on the Commission's shopping web portal. The suggestion that the costs incurred, and years of customer education should be wiped

³⁴⁷ TURN/CAUSE-PA R.B. at 16 (citing 66 Pa.C.S § 3802(4)-(6)) ("Rates for electricity in this Commonwealth are on average higher than the national average.... Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity. The cost of electricity is an important factor....") (paragraph numbering omitted).

³⁴⁸ TURN/CAUSE-PA R.B. at 16.

³⁴⁹ TURN/CAUSE-PA R.B. at 16 (citing *Indianapolis Power & Light Co. v. Pa. Pub. Util. Comm'n*, 711 A.2d 1071, 1078 (Pa. Cmwlth. 1998)).

³⁵⁰ TURN/CAUSE-PA R.B. at 17; *see also* 52 Pa. Code § 54.182.

away in favor of a different term for the same service and to promote customer confusion about how to shop and compare is not reasonable.³⁵¹

To the OCA's position, TURN/CAUSE-PA adds the testimony of its own witness Marx, which showed that, for the six-year period from January 2018 through December 2023:

- Residential customers choosing to shop for EGS supply were charged between 32% and 81% more per month than residential default service customers.³⁵²
- Residential shopping customers were charged, on average, 57% more than residential default service customers.³⁵³
- In total, residential shopping customers were charged \$801,873,392.57 more than they would have been charged at PECO's PTC.³⁵⁴
- EGS billed residential revenues were nearly 150% of the revenues that would have been billed at PECO's PTC.³⁵⁵
- Residential customers choosing to shop for EGS supply were charged, on average, \$0.0328 per kWh more than residential customers choosing to remain on default service.³⁵⁶
- The average per kWh charges imposed by EGSs in excess of the default service price ranged from \$0.023 to \$0.055.³⁵⁷
- CLI customers choosing to shop face, on average, the highest EGS charges in the market, exceeding the average EGS

³⁵¹ TURN/CAUSE-PA R.B. at 17.

³⁵² TURN/CAUSE-PA R.B. at 17; *see also* TURN/CAUSE-PA St. 1 at 7.

³⁵³ TURN/CAUSE-PA R.B. at 17; *see also* TURN/CAUSE-PA St. 1 at 7.

³⁵⁴ TURN/CAUSE-PA R.B. at 17; *see also* TURN/CAUSE-PA St. 1 at 7.

³⁵⁵ TURN/CAUSE-PA R.B. at 18; *see also* TURN/CAUSE-PA St. 1 at 11.

³⁵⁶ TURN/CAUSE-PA R.B. at 18; *see also* TURN/CAUSE-PA St. 1 at 10.

³⁵⁷ TURN/CAUSE-PA R.B. at 18; *see also* TURN/CAUSE-PA St. 1 at 10.

charges for non-CLI residential customers in every month between February 2019 and December 2023.³⁵⁸

According to TURN/CAUSE-PA, these figures demonstrate conclusively that residential customers who choose to shop with an EGS experience higher prices, on average, than those who choose default service. In them, TURN/CAUSE-PA see the very basis for continuing to empower customers to make informed choices about the price they pay for energy based on the PTC.³⁵⁹

As a consequence of their experience with EGS supply, and the concomitant higher monthly charges billed, TURN/CAUSE-PA contend that residential customers are increasingly choosing default service because it offers “a stable option for energy services that provides the least cost over time and is not subject to frequent, even daily, adjustments based on market forces.”³⁶⁰ More importantly, TURN/CAUSE-PA submit that residential customers are increasingly choosing to remain with or return to default service because they are experiencing higher costs when they choose to shop for EGS supply.³⁶¹ They point to the declining rate of residential shopping, starting at 33% in January 2018, and ending at 21% in December 2023³⁶² to substantiate their averment. And they submit that the reason residential customers are choosing default service in increasing number can be found in the price information summarized in Ms. Marx’ testimony above. Indeed, residential customers did not, on average, save money by shopping for EGS supply in any month in the 72-month period from January 2018 through December 2023. “Declining rates of residential shopping clearly correspond to the growing knowledge among the customer base that EGS offers very rarely present opportunities for significant savings.”³⁶³

³⁵⁸ TURN/CAUSE-PA R.B. at 18; *see also* TURN/CAUSE-PA St. 1 at 12-13.

³⁵⁹ TURN/CAUSE-PA R.B. at 18.

³⁶⁰ TURN/CAUSE-PA R.B. at 18 (citing TURN/CAUSE-PA St. 1-R at 3-4).

³⁶¹ TURN/CAUSE-PA R.B. at 18; *see also* TURN/CAUSE-PA St. 1-SR at 3.

³⁶² TURN/CAUSE-PA R.B. at 18; *see also* TURN/CAUSE-PA St. 1 at 13-14.

³⁶³ TURN/CAUSE-PA R.B. at 18-19 (citing TURN/CAUSE-PA St. 1-R at 5).

In their Reply Brief, TURN/CAUSE-PA debunk RESA’s claim that residential customers have available to them “lower priced” products in the competitive market, but are being misled by the PTC.³⁶⁴ On the contrary, TURN/CAUSE-PA argue that it is RESA’s identification of supposed “lower priced” products that is “misleading and incomplete.” They explain that RESA’s Energy Market Savings Reports,³⁶⁵ purporting to compare EGS offers with EDC PTCs, only utilize the per kWh charges associated with the various EGS offers.³⁶⁶ Accordingly, RESA’s supposed “lower priced” products completely disregard other charges imposed by EGSs such as monthly fees and customer charges. As Ms. Marx explains, comparing the lowest cost per kWh EGS offer available on May 18, 2024 (SFE Energy, \$0.0469 per kWh) to PECO’s PTC of \$0.0943 on the same date would inaccurately lead to a conclusion that one could obtain substantial savings by enrolling in this product. This conclusion would be incorrect, however, because low priced offers like the illustrative example provided by SFE Energy typically impose other fees.³⁶⁷ Indeed, because SFE Energy’s product includes a \$20.99 monthly service fee as well as a daily commodity fee of \$0.69, a typical residential customer using 700 kWh of electricity would pay more than \$8, or roughly 13%, more for electricity if it selected this, supposedly “lower priced” offer.³⁶⁸ In TURN/CAUSE-PA’s view, this demonstrates that RESA’s contention regarding “lower priced” offers is not based upon actual supplier charges.³⁶⁹

Lastly, TURN/CAUSE-PA submit that RESA’s premise that the market is stagnant is erroneous. They point to PECO’s testimony that there are nearly 100 EGSs competing to serve PECO customers and EGSs currently serve 52% of total electric load in PECO’s service territory.³⁷⁰ Also, they aver that RESA failed to demonstrate that a statewide investigation would benefit residential customers seeking to obtain savings consistent with the

³⁶⁴ TURN/CAUSE-PA R.B. at 19; *see also* RESA M.B. at 22; RESA St. 1-R at 8.

³⁶⁵ TURN/CAUSE-PA R.B. at 19; *see also* RESA St. 1-R at Exhibit FC-7, FC-8.

³⁶⁶ TURN/CAUSE-PA R.B. at 19; *see also* TURN/CAUSE-PA St. 1-SR at 3.

³⁶⁷ TURN/CAUSE-PA R.B. at 19; *see also* TURN/CAUSE-PA St. 1-SR at 4.

³⁶⁸ TURN/CAUSE-PA R.B. at 19; *see also* TURN/CAUSE-PA St. 1-SR at 4-6.

³⁶⁹ TURN/CAUSE-PA R.B. at 19-20; *see also* TURN/CAUSE-PA St. 1-SR at 3-4

³⁷⁰ TURN/CAUSE-PA R.B. at 20; *see also* PECO M.B. at 19; PECO St. 3-R at 57-58.

purposes of the Choice Act. The evidence shows that EGSs consistently seek to charge residential customers more than PECO's PTC. Based on the above, TURN/CAUSE-PA recommend that the Commission reject RESA's proposed statewide investigation because the purposes it intends to serve are inconsistent with Pennsylvania law.³⁷¹

Statewide Commission Investigation of Default Service Messaging Disposition

RESA requests that the Commission open a statewide investigation of default service messaging. As the proponent of an order in this proceeding, the burden lies with RESA to establish that it is entitled to the relief it is seeking.³⁷² After considering the record evidence on this matter, we find that RESA did not carry its burden of proving that changing the messaging of the default service product would allow EGSs to “develop more innovative and a greater variety of competitive products” and ultimately fulfill the legislative purpose behind the Competition Act – the lowering of the electric generation rates for the citizens of the Commonwealth.³⁷³ Moreover, we agree 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.³⁷⁴

We recommend that the Commission reject RESA's proposed statewide investigation into default service and use of the PTC to evaluate EGS offers.

³⁷¹ TURN/CAUSE-PA R.B. at 20.

³⁷² 66 Pa.C.S. §332(a).

³⁷³ *Indianapolis Power & Light Co. v. Pa. Pub. Util. Comm'n*, 711 A.2d 1071, 1078 (Pa. Cmwlth. 1998).

³⁷⁴ PAIEUG M.B. at 5.

b. PECO's Proposed Residential Customer Bill Format Changes

RESA

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.³⁷⁵ While PECO claims this proposal will be informative and provide transparency for customers, RESA opposes this proposal as violating the Competition Act, being overly simplistic, and having the potential for misleading and confusing to customers.

More specifically, RESA argues that 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.³⁷⁶ This, according to RESA, runs afoul of the Competition Act, which specifically gives customers direct access to shop for competitive generation supply, as well as the option to choose between a variety of products and services.³⁷⁷ RESA submits that 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,³⁷⁸ and not any comparison to the default service rate.³⁷⁹

In addition to violating the Competition Act, RESA avers that the default service product and an EGS's retail product are priced differently, such that PECO's overly simplified

³⁷⁵ PECO St. No. 1 at 29; PECO Exh. SD-6.

³⁷⁶ RESA M.B. at 37.

³⁷⁷ *Id.* at 37-38.

³⁷⁸ 66 Pa.C.S. § 2807(c).

³⁷⁹ RESA M.B. at 38.

comparison would be misleading and would not provide a true “apples-to-apples” comparison.³⁸⁰ 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.³⁸¹ 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.³⁸² The competitive market gives customers the option to choose from a variety of products based on their needs,³⁸³ but RESA opines that PECO’s proposal ignores the 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, RESA notes that the default service rate and the EGS’s price are developed in entirely different ways.³⁸⁴ 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.³⁸⁵ According to RESA, PECO’s proposed comparison chart improperly implies that these products are developed in similar way and are therefore comparable.³⁸⁶

³⁸⁰ RESA M.B. at 38; RESA St. No. 1 at 19.

³⁸¹ RESA M.B. at 38; RESA St. No. 1 at 20-21.

³⁸² RESA St. No. at 19.

³⁸³ RESA M.B. at 38-39; 66 Pa.C.S. § 2804(2).

³⁸⁴ RESA M.B at 39.

³⁸⁵ RESA St. No. 1 at 22.

³⁸⁶ RESA M.B. at 39.

RESA opposes not only PECO's original proposal but also the version included in the Joint Petition which removes the third column of the proposed chart in PECO Exhibit SD-6 showing the variance between the two charges.³⁸⁷ It declares it an insufficient improvement over the original and 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.³⁸⁸

Alternatively, if the Commission does not outright reject this proposal, RESA recommends that the Commission direct PECO to include specific disclosures about the price comparison on any bill redesign, to be developed through a collaborative process and submitted to the Commission for approval prior to implementation.³⁸⁹ RESA believes that 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.³⁹⁰ It points out that 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 years after the start of this default service plan.³⁹¹ Lastly, RESA proposes that the Commission direct PECO to consider providing more space on the consolidated utility bill for suppliers to do customer-specific messaging and otherwise explain how the supplier product is different from the default service rate.³⁹²

³⁸⁷ RESA M.B. at 40 (referring to Joint Petition ¶ 66).

³⁸⁸ RESA M.B. at 40.

³⁸⁹ RESA M.B. at 40; RESA St. No. 1 at 23.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

NRG

NRG strongly supports RESA in its opposition to PECO’s proposal for residential customer bill format changes.³⁹³ It argues that the proposal creates misleading comparisons of very different pricing structures without any context or useful information for consumers to understand. NRG notes that no other utility has a similar price comparison chart and agrees with RESA that 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.”³⁹⁴

PECO

In its Main Brief, PECO lists several reasons why the objections voiced by RESA do not justify rejection of the new bill disclosure providing a dollars and cents comparison of the customer’s total supplier charges for the billing period and what the charges would have been under PECO’s PTC. First, PECO argues that the new bill disclosure outlined in the Settlement was thoughtfully developed based on the Company’s stakeholder collaborative held in January 2021, and several EGSs participated in those discussions. Moreover, PECO’s consolidated billing option provides ample space for EGSs to describe their products and pricing. Specifically, providing up to four lines with 80 characters per line which is approximately double the amount of space that EGSs, including several RESA members, currently use to describe their offers on PaPowerSwitch.com. As such, PECO maintains that there is no need to provide additional space to EGSs on the utility consolidated bill to accommodate RESA’s recommended disclosures on the nature of PECO’s default service procurement approach and EGS products and services.³⁹⁵

³⁹³ NRG M.B. at 7.

³⁹⁴ NRG M.B. at 7 (citing RESA St. No. 1 at 23).

³⁹⁵ PECO M.B. at 21-22; *see also* PECO St. 1 at 29; PECO St. 1-R at 26-27.

OCA

Initially, the OCA recommended that PECO not require Commission approval through the DSP proceeding to implement the residential bill format modification. The OCA witness Alexander determined that residential customers participating in the SOP would benefit from the monthly presentation of the supplier charge and usage at the PTC.³⁹⁶ However, the OCA avers that by including the proposal as part its DSP Petition, PECO has provided notice of the planned change and the resulting Joint Petition terms are supported by the record and will benefit the public.³⁹⁷

In its Main Brief, the OCA takes issue with RESA's position that less information available to consumers is better for the competitive market, finding the position to be unfounded and no ground for the rejection of these Joint Petition provisions. According to the OCA, RESA's suggestion that the Commission deny PECO's proposal so that the concept of consumer messaging might be reviewed in a future statewide investigation is not reasonable nor productive. Additionally, RESA's alternative request that the Commission order PECO to provide more messaging space on the residential bill is also unnecessary, as EGSs have multiple channels to communicate with the public and their customers regarding the products and services offered.³⁹⁸

TURN/CAUSE-PA

TURN/CAUSE-PA disagree with RESA's argument that the bill format change proposed by PECO 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."³⁹⁹ According to TURN/CAUSE-PA, this assertion is incorrect because PECO's bill format change simply performs the

³⁹⁶ OCA M.B. at 28; *see also* OCA St. 2 at 2, 4.

³⁹⁷ OCA M.B. at 28.

³⁹⁸ OCA M.B. at 28; OCA St. 2SR at 8.

³⁹⁹ RESA M.B. at 37.

mathematical task of calculating EGS charges on a per kWh basis. This task involves no judgment and in no way places the PTC in a superior position relative to EGS charges.⁴⁰⁰

TURN/CAUSE-PA repeats its observation that many EGS offers include pricing data that is not readily comparable to the per kWh PTC on PECO's bills and the Commission's papowerswitch.com website.⁴⁰¹ Using the example of SFE Energy's offer, TURN/CAUSE-PA illustrates how the Commission's website inaccurately reports an estimated monthly cost of \$32.83, based solely on the per kWh charges and omitting the monthly and daily charges embedded in this offer.⁴⁰² According to TURN/CAUSE-PA, this example, and the challenges associated with determining what the actual costs may be of choosing EGS supply, more than justify the inclusion of the comparison of charges on the PECO bill.

Next, TURN/CAUSE-PA disagree with RESA's arguments that default service and EGS prices are developed in different ways;⁴⁰³ that the depiction of EGS charges alongside the PTC "does not provide clear and transparent information to residential customers" and fails to explain how pricing is determined;⁴⁰⁴ or that price information, alone, fails to take into consideration the nature of the contract, its length, or "any other reason why the price in a particular month may be higher."⁴⁰⁵

In their response, TURN/CAUSE-PA maintain that RESA's position disregards the substantial evidence that customers do, in fact, take into account non-price considerations when selecting EGS supply. They explain that highlighting the cost of EGS supply versus PECO's PTC on the bill does not "devalue" other non-cost considerations.⁴⁰⁶ Indeed, consumers who choose to pay more for other services should be empowered to make an affirmative choice

⁴⁰⁰ TURN/CAUSE-PA R.B. at 21.

⁴⁰¹ TURN/CAUSE-PA R.B. at 22.

⁴⁰² TURN/CAUSE-PA R.B. at 22; *see also* TURN/CAUSE-PA St. 1-SR at 6, Exh. IX at 1.

⁴⁰³ TURN/CAUSE-PA R.B. at 22, *see also* RESA M.B. at 38-39.

⁴⁰⁴ TURN/CAUSE-PA R.B. at 22 (citing RESA St. 1 at 19).

⁴⁰⁵ TURN/CAUSE-PA R.B. at 22 (citing RESA St. 1 at 20).

⁴⁰⁶ TURN/CAUSE-PA R.B. at 23.

to do so.⁴⁰⁷ Given that customers may affirmatively select EGS offers with the knowledge that their bills will be higher (for example, to procure green energy products), or will offer long-term savings at risk of short-term higher pricing, TURN/CAUSE-PA conclude that RESA’s concerns about PECO’s proposal are unfounded.

Moreover, TURN/CAUSE-PA attacks the new argument first introduced by RESA in its Main Brief, that Section 2807(c) of the Choice Act only permits EDC bills to include “sufficient information to determine the basis for the charges” and prohibits “any input or judgement [sic] from the EDC on the customer’s shopping choices.”⁴⁰⁸ TURN/CAUSE-PA reiterate their explanation that PECO’s bill format change simply performs a mathematical calculation to depict EGS charges on a per kWh basis to enable a transparent comparison of overall cost, a function that entails no judgment or value consideration. They disagree with RESA’s selective reading of Section 2807(c), which ignores the requirement that customer bills “contain *unbundled charges* sufficient to enable the customer to determine the basis for those charges.”⁴⁰⁹ TURN/CAUSE-PA clarify that PECO’s proposed bill format does not “bundle” charges at all and, if anything, provides even more information to assist the customer in understanding the bill.⁴¹⁰ They decry RESA’s contention that Section 2807(c) imposes a ceiling on what can be included on a PECO bill when in fact it merely sets a floor.

In addition, TURN/CAUSE-PA dispute RESA’s alternative proposal that the Commission require PECO to make additional disclosures “regarding PECO’s lack of knowledge about specific characteristics of the EGS’s products or prices”⁴¹¹ and provide “more space on the consolidated utility bill for suppliers to do customer-specific messaging and otherwise explain how the supplier product is different from the default service rate.”⁴¹² TURN/CAUSE-PA consider these proposals inappropriate and unnecessary. They maintain that

⁴⁰⁷ TURN/CAUSE-PA R.B. at 23; *see also* TURN/CAUSE-PA St. 1-R at 8.

⁴⁰⁸ TURN/CAUSE-PA R.B. at 23-24 (citing RESA M.B. at 38).

⁴⁰⁹ TURN/CAUSE-PA R.B. at 24 (citing 66 Pa.C.S. § 2807(c)(1)) (emphasis added).

⁴¹⁰ TURN/CAUSE-PA R.B. at 24; *see also* 66 Pa.C.S. § 2807(c).

⁴¹¹ TURN/CAUSE-PA R.B. at 24 (citing RESA M.B. at 40); RESA St. 1 at 23; RESA St. 1-SR at 8.

⁴¹² TURN/CAUSE-PA R.B. at 24-25 (citing RESA M.B. at 40-41).

PECO bills are not the appropriate context for customer-specific marketing sought by RESA.⁴¹³ “EGSs are heavily engaged in marketing outside of the billing context and can continue to communicate with their customers on a direct basis without the need to add clutter to PECO bills.”⁴¹⁴ Also, narrative communication from PECO regarding EGS charges should be limited in the billing context so as to not suggest endorsement of EGS supply or affiliation with EGS suppliers. Accordingly, because this proceeding will not limit EGSs’ ability to explain the purported value of their products directly to consumers, TURN/CAUSE-PA conclude that there is no reasonable basis to require PECO to provide additional messaging on its customers’ bills.⁴¹⁵

PECO’s Proposed Residential Customer Bill Format Changes Disposition

Upon consideration of the record in this matter and the parties’ respective arguments, we find RESA and NRG’s arguments that PECO’s billing format proposal is anti-competitive or somehow violates the Competition Act to be without merit. We find that 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. On the contrary, PECO’s proposed bill presentment changes are vital to helping customers understand and evaluate, on an ongoing basis, whether their EGS prices are consistent with their expectations. Accordingly, we recommend that the Commission reject RESA’s argument that PECO’s proposed bill format change is in violation of the Competition Act and approve the Joint Petition without modification for being in the public interest and supported by the record.

⁴¹³ TURN/CAUSE-PA R.B. at 25.

⁴¹⁴ TURN/CAUSE-PA St. 1-R at 9.

⁴¹⁵ TURN/CAUSE-PA R.B. at 25-26.

c. Supplier Issues During PECO’s Customer Information System Upgrade

RESA

In its Main Brief, RESA avers that when implementing its Customer Information System (“CIS”) upgrade, PECO completely ignored the needs of suppliers to efficiently access PECO’s system or to communicate with PECO regarding customer enrollments. RESA submits that PECO’s actions 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.⁴¹⁶

RESA highlighted a number of problems that have affected suppliers and customers during PECO’s CIS transition.⁴¹⁷ 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.⁴¹⁸ 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.⁴¹⁹ 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.⁴²⁰

⁴¹⁶ RESA M.B. at 42; *see also* 66 Pa.C.S. §§ 2802(14), 2804(2).

⁴¹⁷ RESA M.B. at 42.

⁴¹⁸ RESA St. No. 1 at 25.

⁴¹⁹ *Id.*

⁴²⁰ *Id.* at 25-26.

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, RESA points out that 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.⁴²¹

To correct these issues and any additional issues that may arise, RESA recommends that, going forward, PECO be directed to include specific processes to work collaboratively with competitive suppliers to provide reasonable support to their ability to provide service and enroll customers.⁴²² Specifically, RESA recommends that PECO be directed to: (1) provide daily updates to competitive suppliers and weekly updates to Commission 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 supplier; and (3) exercise flexibility when troubleshooting supplier issues with the goal of offering realistic solutions that do not unduly burden the supplier and ensure the best possible customer experience.⁴²³ RESA posits that its proposals will help prevent a similar outcome when future challenges arise and requests that the Commission 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.

NRG

NRG supports RESA's position on this issue.⁴²⁴

⁴²¹ RESA M.B. at 43; *see* 52 Pa. Code § 54.4(b)(8), (9).

⁴²² RESA M.B. at 43; RESA St. No. 1 at 27.

⁴²³ RESA M.B. at 43; RESA St. No. 1 at 27.

⁴²⁴ NRG M.B. at 7.

PECO

PECO rejects RESA’s proposals as unwarranted. It points out that, by the time of the Commission’s Final Order in this proceeding, PECO’s new CIS will have been in place for almost eight months – well beyond the 90 days of reporting recommended by RESA. PECO explains that prior to going live, PECO held webinars and issued several supplier bulletins regarding the CIS upgrade, including a webinar in June 2023 and in December 2023 attended by 26 and 60 RESA members, respectively, where the transition to new Choice IDs was discussed in detail. Once the new CIS was put in place, PECO resolved the technical issues that caused rejection of some EGS invoices mentioned in direct testimony.⁴²⁵ Moreover, providing a direct point of contact for each of the 98 EGSs registered in PECO’s service area is not feasible because the Energy Acquisition team responsible for handling EGS-related inquiries consists of four employees. That team collectively responded to approximately 1,600 supplier inquiries regarding the CIS upgrade in the last three months.⁴²⁶

Supplier Issues During PECO’s Customer Information System Upgrade Disposition

The record in this proceeding indicates that the technical issues identified by RESA have long been resolved. RESA is now proposing changes to address “any future issues that may arise” or “any bugs that may continue to arise.”⁴²⁷ However, RESA’s speculation about future problems provides no grounds for PECO to implement and incur the costs of a new regime of daily and weekly updates for all the EGSs in its service territory, new staff assignments to individual EGSs, and a new standard for interacting with the EGSs. For these reasons, we recommend that the Commission reject RESA’s CIS-related recommendations and approve the Joint Petition without modifications.

⁴²⁵ PECO M.B. at 22; PECO St. 1-R at 29.

⁴²⁶ PECO M.B. at 23.

⁴²⁷ RESA M.B. at 44.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. §§ 2801–2815; 52 Pa. Code §§ 54.181-54.189.

2. The party seeking to enforce a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa.C.S. § 332(a).

3. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

4. The policy of the Commission is to encourage settlements. 52 Pa. Code § 5.231.

5. To determine whether the parties' settlement should be approved, one must decide whether the settlement promotes the public interest. *See Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

6. Under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801–2815, PECO Energy Company, as a Pennsylvania electric distribution company and default service supplier, has a fundamental obligation to provide competitively procured, reliable electric generation service to default service customers at least cost over time. 66 Pa.C.S. § 2807(e)(3.4).

7. The Commission's regulations and Policy Statement provide that default service providers should design procurement classes based upon peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may propose to depart from these

specific ranges, including to “preserve existing customer classes.” 52 Pa. Code § 54.187; 52 Pa. Code § 69.1805.

8. Both the Competition Act and the AEPS Act require default service providers obtain an increasing percentage of electricity sold to retail customers from alternative energy sources as measured by AECs. *See* 66 Pa.C.S. § 2807(e)(3.6); 73 P.S. §§ 1648.1–1648.8.

9. The AEPS Act also includes a “set-aside” that requires some of those AECs to be derived from solar photovoltaic facilities. Under Act 40 of 2017, PECO must meet its future solar AEPS requirements using solar AECs generated from solar energy facilities in the Commonwealth. During DSP VI, PECO’s solar AEPS requirement will be 0.5% of its total default service load. 73 P.S. § 1648.3(b)(2)(xv).

10. The Commission’s default service regulations provide that the competitive bid solicitation process shall be subject to monitoring by the Commission or an independent third party selected by a default service provider in consultation with the Commission. *See* 52 Pa. Code § 54.186(c)(3).

11. In considering the approval of a default service program, the Public Utility Code requires the Commission to find that neither the default service provider nor any affiliated interest has withheld from the market any generation supply in a manner that violates federal law. *See* 66 Pa.C.S. § 2807(e)(3.7)(iii).

12. Act 129 requires EDCs to offer a TOU rate option to all default service customers with a smart meter. 66 Pa.C.S. § 2807(f)(5).

13. The Commission has recognized that Act 129 makes clear that an EDC’s TOU program should be optional for default service customers. *See Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101, p. 6 (Secretarial Letter issued Jan. 23, 2020).

14. Act 129 provides that residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. 66 Pa.C.S. § 2807(f)(5).

15. The Commission’s regulations provide that the term of a default service program subsequent to the initial program will be determined by the Commission. *See* 52 Pa. Code § 54.182(d).

16. The Commission has the clear authority to “bend” competition where necessary. *See Retail Energy Supply Ass’n v. Pa. Pub. Util. Comm’n*, 185 A.3d 1206, 1221 (Pa. Cmwlth. 2018); *Coalition for Affordable Util. Servs. & Energy Efficiency in PA. et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d 1087, 1093, 1103 (Pa. Cmwlth. 2015); 66 Pa.C.S. §§ 2801–2815.

17. The Commonwealth Court stated that the Customer Choice Act “does not demand absolute and unbridled competition.” *Coalition for Affordable Util. Servs. & Energy Efficiency in PA. v. Pa. Pub. Util. Comm’n*, 120 A.3d 1087, 1093, 1103 (Pa. Cmwlth. 2015).

18. The Commonwealth Court stated that “under certain circumstances, unbridled competition may have to give way to other important concerns.” *Coalition for Affordable Util. Servs. & Energy Efficiency in PA. v. Pa. Pub. Util. Comm’n*, 120 A.3d 1087, 1103 (Pa. Cmwlth. 2015).

19. The Commission was clear that the SOP for an individual EDC would be shaped by facts and circumstances specific to the EDC, as reviewed during the EDC’s subsequent DSP proceedings. *See Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2337952 (Final Order entered Mar. 1, 2012)

20. The Commission has approved requests by the First Energy Companies and Duquesne Light to include a CPP as part of those EDCs process for procurement of default supply, to address the uncertainty of when PJM will conduct a BRA for capacity. *Joint Petition of Metropolitan Edison, et al for Approval to Modify their Default Service Program*, Docket No. P-2021-3030012 (Order entered Aug. 4, 2022); *Petition of Duquesne Light Co. for Approval to*

Modify its Supplier Master Agreement, Docket No. P-2020-3023149 (Order entered Jan. 14, 2021).

21. PECO has sustained its burden of proving that approval of its default service program DSP VI is in the public interest. 66 Pa.C.S. § 332(a).

22. RESA and NRG have failed to sustain their burden of proof regarding their claims. 66 Pa.C.S. § 332(a).

VII. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Non-Unanimous Settlement filed July 10, 2024 be granted and the Settlement be approved without modification.

2. That PECO Energy Company's currently-effective Standard Offer Program, including the associated cost recovery mechanisms approved in PECO Energy Company's prior default service proceedings, be permitted to continue, subject to the applicable provisions set forth in the Joint Petition and as discussed herein.

3. That the proposed default service program for the period June 1, 2025 through May 31, 2029 be approved, as modified by the Settlement, and the Parties be directed to comply with the terms of the Joint Petition for Non-Unanimous Settlement as though each term and condition stated therein had been the subject of an individual ordering paragraph.

4. That NERA Economic Consulting be approved as the independent third-party evaluator for PECO Energy Company's default service procurements and long-term solar procurement.

5. That PECO Energy Company be permitted to file a tariff supplement as set forth in the Joint Petition to become effective upon at least one day's notice after entry of the Commission's final order in this matter.

6. That PECO Energy Company's request for a waiver of the Commission's regulation at 52 Pa. Code § 54.187 be granted to the extent that is necessary to permit the Company to continue: (1) to procure generation for three procurement classes; (2) quarterly filing of hourly-priced default service rates; and (3) semi-annual reconciliation of the over/under collection component of the GSA for all default service customers as set forth in PECO Energy Company's Default Service Program VI, as revised by the Settlement and as discussed herein.

7. That the Retail Energy Supplier Association's request for a statewide investigation of default service messaging be denied.

8. That the Retail Energy Supplier Association claims and recommendations regarding PECO Energy Company's new customer information system be dismissed.

9. That the proceeding at Docket No. P-2024-3046008 be terminated and that the case be marked closed.

Date: September 3, 2024

/s/
Eranda Vero
Administrative Law Judge

/s/
Arlene Ashton
Administrative Law Judge