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September 10, 2024

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the NRG Energy Inc.'s ("NRG") Exceptions to the Recommended Decision dated September 8, 2024, with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Karen O. Moury*  
Karen O. Moury

KOM/lww  
Enclosure

cc: Hon. Eranda Vero w/enc.  
Hon. Arlene Ashton w/enc.  
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## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the NRG Energy's Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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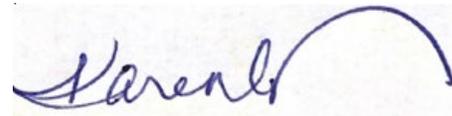
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**EXCEPTIONS OF  
NRG ENERGY, INC.**

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Dated: September 10, 2024

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## I. INTRODUCTION

NRG Energy, Inc. through a dynamic multi-brand retail strategy using many subsidiaries<sup>1</sup> (collectively “NRG”) files these Exceptions to the Recommended Decision (“RD”)<sup>2</sup> of Administrative Law Judges (“ALJs”) Eranda Vero and Arlene Ashton dated September 3, 2024 to respectfully request that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) deny the recommendation to adopt the Joint Petition for Non-Unanimous Settlement (“Non-Unanimous Settlement”) filed on July 10, 2024 without modification.

More specifically, the RD errs by recommending that the Commission permit an Electric Distribution Company (“EDC”), for the first time, to add a misleading comparison chart to the first page of every single customer’s bill. The chart presents a calculated dollar amount of the EGS customer’s supply charges with a calculated dollar amount of what that customer would have paid if he or she had received default service for the period. The chart, prominently displayed on page one of the EDC bill, violates the Competition Act by creating a misleading comparison of very different pricing structures due to its singular focus on the resulting “charges” without information about any other contract term or other costs embedded into the default service rate, its calculation of a per kWh rate into a dollar charge, and the complete absence of any context or useful information for consumers to understand beyond one price is higher than the other.

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

<sup>2</sup> In these Exceptions, (1) Findings of Fact are referenced as “FOF”; (2) Conclusions of Law are referenced as “COL”; and, and (3) Ordering Paragraphs are referenced as “Ordering Paragraphs.”

In addition, the RD errs by recommending the Commission adopt the proposed modifications to PECO's Standard Offer Program ("SOP") because there is no evidentiary record to support the modifications. Moreover, adoption of the revisions to the SOP it would be in violation of the law, the Commission's regulations and sound prior Commission precedent rejected the exact same proposal just two years ago.

Finally, the RD errs by denying RESA's proposals (1) to initiate a statewide investigation; and (2) to create a pathway to address supplier concerns as PECO continues its Customer Information System ("CIS") upgrade. Adoption of these proposals serves the public interest by taking proactive action to address the current stagnation of the competitive market and to ensure that future technological changes by PECO do not result in the same kind of customer confusion and shopping difficulty recently experienced.

## II. EXCEPTIONS

### A. COMPARISON BILLING CHART

1. **EXCEPTION NO. 1 – The RD Errs By Approving PECO's Proposal To Place A Comparison Chart On The First Page Of Shopping Customer Bills Because That Proposal Violates The Competition And Is Anti-Competitive. (RD At 47-48, 99-106; COL 16, 17, 21, 22; Ordering Paragraphs 1, 2, 3 And 5).**

NRG urges the Commission to reject the recommendation of the RD to approve Paragraphs 65 and 66 of the Non-Unanimous Settlement which would authorize PECO to add a chart, to the first page of utility consolidated bills, comparing the total generation charges from their EGS versus the total amount of generation charges the customer would have paid under PECO's price-to-compare ("PTC").<sup>3</sup>

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<sup>3</sup> RD at 26, 106.

The RD states that “PECO claims this proposal will be informative and provide transparency for customers.”<sup>4</sup> However, the need for “transparency” has not been convincingly established. The Competition Act anticipates that customer bills include sufficient information to determine the basis for the charges reflected on the bill.<sup>5</sup> There is no question that the current bills are satisfying this requirement since each utility consolidated bill already provides information to shopping customers to compare prices between their EGS and PECO’s PTC. The Commission’s regulations require that generation charges for shopping customers are shown on utility consolidated bills<sup>6</sup> and that PTC be provided.<sup>7</sup> PECO’s PTC is printed in the Message Center on bills.<sup>8</sup> There is no need to expand upon all this information that is already stated on the bills in a different fashion as proposed by the Non-Unanimous Settlement.

Rather, approval of Paragraphs 65 and 66 of the Non-Unanimous Settlement will result in a misleading and anticompetitive expansion of information already provided without any context or useful information for consumers to understand.<sup>9</sup> If approved, the result will be to create a “dollars and cents comparison”<sup>10</sup> for shopping customers that hypothetically compares the actual generation charges (from the EGS) with what PECO would have charged for the prior billing period. The result is to reinforce the current prevailing, and misleading messaging, that paying less than the default service rate is the goal of shopping. And this message would be reinforced

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<sup>4</sup> RD at 99.

<sup>5</sup> 66 Pa. C.S. § 2807(c).

<sup>6</sup> 52 Pa. Code § 54.4.

<sup>7</sup> 52 Pa. Code § 54.182 (definitions), 54.187.

<sup>8</sup> RD at 47.

<sup>9</sup> NRG MB at 7.

<sup>10</sup> Calculating the “dollars and cents” of generation charges is a mathematical task, according to TURN/CAUSE. RD at 103-104, 105.

on the bill for every single EGS customer since EGSs have no choice but to have their charges included on the EDC consolidated bill.<sup>11</sup>

The comparison chart, and the “implied messaging” that goes along with it, violates 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.<sup>12</sup> 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,<sup>13</sup> and not any comparison to the default service rate.

The comparison chart is anticompetitive because it is an unlawful exercise of market power by PECO. No other utility has a similar price comparison chart and, again for all the reasons explained in the testimony of RESA Witness Frank Caliva, PECO’s proposal is “anti-competitive, misleading and serving no significant purpose beyond further entrenching the view that default service supply is the superior supply product for customers based solely on price.”<sup>14</sup> Simply put, the comparison chart is a communication to shopping customers (as opposed to all customers) that promotes or “markets” default service over service from an EGS. The chart discourages shopping by presenting information in a way that perpetuates the idea that default service is superior based only on price,<sup>15</sup> and is generally contrary to the goal of increasing competition, which the General Assembly has found to be in the public interest.<sup>16</sup>

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<sup>11</sup> NRG MB at 7.

<sup>12</sup> *Id.*

<sup>13</sup> 66 Pa. C.S. § 2807(c).

<sup>14</sup> RESA St. No. 1 at 18-22.

<sup>15</sup> RESA St. No. 1 at 22.

<sup>16</sup> 66 Pa. C.S. § 2802(3).

For all these reasons, NRG urges the Commission to reject the recommendation of the RD to adopt Paragraphs 65 and 66 of the Non-Unanimous Settlement and reject the proposal that it be implemented.

## **B. STANDARD OFFER PROGRAM**

### **2. EXCEPTION NO. 2 – The RD Errs By Approving The Revisions To PECO’s Standard Offer Program Because Automatically Transferring Sop Customers To Default Service Violates The Competition Act, Constitutes Slamming And Conflicts With Commission Precedent. (RD at 45-47, 70-89; COL 16, 17, 21, 22; Ordering Paragraphs 1, 2, 3 And 5).**

NRG recommends that the Commission reject the recommendation of the RD to approve of Paragraph 64 of the Non-Unanimous Settlement. That Paragraph authorizes the reform of PECO’s SOP so that SOP customers (with contracts 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.”<sup>17</sup>

Approving Paragraph 64 would create a fundamental change to PECO’s SOP. Pennsylvania’s competitive market encourages customers to shop for their retail electricity supply. SOP is an opportunity to introduce customers to shopping for electricity.<sup>18</sup> The core purpose of shopping is for customers to make their own decisions.<sup>19</sup> That is happening. PECO’s survey shows that 71.4% of survey respondents either choose a new EGS or choose to return to default service.<sup>20</sup> Only 20.2% remained with the EGS who had provided the SOP product. The survey does not indicate if those customers opted into a new contract or were “rolled” into a

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<sup>17</sup> Non-Unanimous Settlement at 17, ¶ 64.

<sup>18</sup> NRG MB at 3; RESA St. 1 at 11.

<sup>19</sup> RESA St. 1 at 11.

<sup>20</sup> NRG MB at 3. 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. PECO St. No. 1 at 30.

contract (due to the customer’s failure to make another choice). That being said, there is no reason to change the “default,” since almost three quarters of the SOP customers are already making an affirmance choice.

Paragraph 64 presents the issue of whether SOP customers should be returned to default service or remain with their supplier absent an affirmative choice by the SOP customer at the expiration of their SOP contract.<sup>21</sup> The Commission’s ten year-old regulation provides the options available to every customer upon the expiration of their EGS contract.<sup>22</sup> The options are: (1) selects another product offering from the existing EGS; (2) enroll with another EGS; or (3) return to the default service provider.<sup>23</sup> Each of those options apply to SOP customers.<sup>24</sup> Paragraph 64 eliminates the second option (enrolling with an another EGS),<sup>25</sup> since it plainly states that “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.” That language does not allow SOP customers to choose to enroll with another EGS. No reasons are given for the elimination of the SOP customers’ ability to decide to select another supplier.<sup>26</sup> That is unreasonable and not in the public interest, since almost three quarters of the SOP customers are choosing not to remain with their SOP supplier.<sup>27</sup>

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<sup>21</sup> NRG MB at 4.

<sup>22</sup> 52 Pa. Code § 54.10. NRG MB at 4.

<sup>23</sup> 52 Pa. Code § 54.10.

<sup>24</sup> NRG MB at 4.

<sup>25</sup> NRG MB at 4.

<sup>26</sup> NRG MB at 4.

<sup>27</sup> NRG MB at 4.

The Commission has consistently held that SOP customers remain with their supplier absent affirmative choice to return to default service or to select a new supplier.<sup>28</sup> In 2012, the Commission specified that “at the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a different EGS or the customer's return to default service, the customer will remain with the EGS on a month-to-month basis.”<sup>29</sup> In 2020, the Commission rejected a proposal to return SOP customers to default service – if they have not made an affirmative choice to either remain with their existing SOP EGS or to switch to a different EGS.<sup>30</sup>

The RD’s approval of Paragraph 64 conflicts with prior Commission decisions that reject the automatic return to default service upon SOP contract expiration. The RD states that *PECO DSP V* is distinguishable because that proceeding did have evidence showing “harm is occurring as a result of” PPL’s SOP program.<sup>31</sup> That is not a legitimate distinction. The record in PPL DSP V contained statistical evidence showing that “20% of the SOP customers are on roll over contracts and are paying non-SOP rates at 10% or more above the applicable default service rate or PTC.”<sup>32</sup> The Commission found that statistics on PPL’s “roll over contracts” did *not* demonstrate harm to SOP customers from the existing SOP design necessary to implement the

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<sup>28</sup> NRG MB at 5.

<sup>29</sup> *Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Order entered March 2, 2012 (“RMI IWP Final Order”) at 31-32. The RMI IWP Final Order is where the Commission issued final guidelines for program structure of SOPs in the Commission's Investigation of Pennsylvania's electricity market (retail market investigation or RMI).

<sup>30</sup> Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan For the Period June 1, 2021 Through May 31, 2025, Docket No. P-2020-3019356, Order entered December 17, 2020.

<sup>31</sup> RD at 88; NRG MB at 6.

<sup>32</sup> PECO DSP V at 46, 96-97. NRG MB at 5-6.

new program rule proposed by PPL.<sup>33</sup> Here, the “evidence”<sup>34</sup> does not directly relate to PECO’s SOP. The evidence relates to all shopping customers. It is not limited to SOP customers who were “rolled” into a contract (due to the customer’s failure to make another choice). That evidence, therefore, fails to prove that harm is occurring and provides zero information about customers participating in PECO’s SOP program.

NRG supports the existing standards and the existing SOP design,<sup>35</sup> since the fundamental change created under Paragraph 64 conflicts with standards under the Competition Act and the Commission’s regulations.<sup>36</sup> The Joint Petitioners have not demonstrated harm to SOP customers from the existing SOP design to justify changing PECO’s SOP to automatically return shopping customers to default service. 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.<sup>37</sup> No reasons are given to support granting a waiver<sup>38</sup> of the Commission’s notice regulation<sup>39</sup> for SOP customers.

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<sup>33</sup> PECO St. 1-R at 21-23.

<sup>34</sup> The “evidence” is based on data supplied by PECO. TURN/CAUSE St. 1 at 11; OCA St. 1-R at 12.

<sup>35</sup> NRG MB at 6.

<sup>36</sup> RESA MB at 21-34

<sup>37</sup> NRG MB at 6.

<sup>38</sup> See 52 Pa Code § 1.91.

<sup>39</sup> 52 Pa. Code § 54.10.

### C. IMPROVEMENTS TO THE COMPETITIVE MARKET

NRG supports RESA's two proactive proposals<sup>40</sup> in this proceeding.<sup>41</sup> Adopting these proposals serves the public interest by establishing a pathway to address concerns about the functioning of the current competitive market in PECO's service territory.<sup>42</sup>

#### **3. EXCEPTION NO. 3 – The RD Errs By Failing To Adopt Resa's Proposal For A Statewide Investigation Because The Record Supports Resa Proposal And The Commission Initiate A Statewide Proceeding As Part Of This Decision In This Proceeding. (RD At 89-98; COL 16, 17, 21, 22; Ordering Paragraph 7).**

NRG supports<sup>43</sup> RESA's proposal<sup>44</sup> that the Commission institute a statewide investigation to investigate its approved messaging of default service as the PTC to include discontinuing use of that term by replacing it with "default service rate" and urges the Commission to reject the recommendation of the RD to not adopt it.

The RD (wrongly) concludes that RESA did not meet its burden to support the proposal. RESA explained that, in numerous contexts, numerous entities message the default service rate as the basis for judging EGS pricing offers.<sup>45</sup> That should be obvious, since the RD and witnesses in this proceeding are judging EGS pricing offers (as discussed above). RESA further explained that problems created by judging EGS pricing offers.<sup>46</sup> RESA's proposal seeks a statewide investigation to consider whether alternative messaging regarding the value of shopping and how the rates of the default service provider are determined would better serve

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<sup>40</sup> See, e.g., RESA MB at 5, 44-45.

<sup>41</sup> NRG MB at 6-7.

<sup>42</sup> See RESA MB at 1-3, 34-37, 41-44.

<sup>43</sup> NRG MB at 6.

<sup>44</sup> RESA MB at 34-37.

<sup>45</sup> RESA MB at 34-37.

<sup>46</sup> RESA MB at 34-37.

customers. Such investigation would provide interested parties that are not involved in this proceeding with an opportunity to respond.

In addition, the RD erred by agreeing with PAIEUG's position that a statewide investigation should be initiated through separate petition to the Commission.<sup>47</sup> Neither the RD nor PAIEUG identified a procedural reason and/or a substantive reason to require consideration of RESA's request only through a separate petition. Concerns about how consumers are educated to view the default service rate are intricately tied to the default service design and the Commission has made clear that suppliers with issues regarding default service design must participate in the default service proceedings. Denying a request to further investigate an issue of very serious concern and generally applicable on the procedural basis that a different method of making the request should have been used is patently unreasonable and unjustified. Based on the record developed in this proceeding, the Commission has more than enough evidence to conclude that further investigation is warranted and that such investigation has statewide applicability.

For all these reasons, NRG urges the Commission to reject the RD's recommendation to deny RESA's request that the Commission institute a statewide investigation to investigate its approved messaging of default service as the PTC to include discontinuing use of that term by replacing it with "default service rate."

<sup>47</sup>

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RD at 98.

**4. EXCEPTION NO. 4 – The RD Errs By Failing To Adopt RESA’s Proposal For PECO To Work Collaboratively With Competitive Suppliers During The Implementation Period For PECO’s New Customer Information System Because The Ongoing And Future Technical Issues Have Not Been Resolved. (RD At 107-109; COL 16, 17, 21, 22; Ordering Paragraph 8).**

RESA proposed<sup>48</sup> that the Commission direct PECO to include specific processes to work collaboratively with competitive suppliers during the implementation period for its new CIS to ensure that suppliers are able to continue providing service and making offers to customers. This proposal is intended to deal with ongoing and future technical issues.<sup>49</sup> The need for collaboration arose as suppliers have experienced significant issues during PECO’s ongoing CIS upgrade that have frustrated suppliers’ ability to serve customers, and customers’ ability to successfully shop for competitive supply services. NRG supports RESA’s proposal<sup>50</sup> and urges the Commission to reject the RD’s denial of the proposal.

The RD incorrectly concluded that the issues cited by RESA have been resolved. The ongoing and future technical issues are not speculative because the types of difficulties experienced by customers as a direct result of PECO’s interactions with suppliers and which are not disputed in this proceeding should be matters of great concern for the Commission given its statutory obligations under the Competition Act.<sup>51</sup> RESA’s proposals in this proceeding are not unreasonable and are clearly in the interest of the public since consumers are the ones negatively impacted when the utility systems fail to properly facilitate the ability of EGSs to serve them.

In the interest of the consumers receiving competitive service or desiring to do so, the Commission should direct PECO to develop specific processes to work collaboratively with

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<sup>48</sup> RESA MB at 41-44.

<sup>49</sup> RESA MD at 44.

<sup>50</sup> NRG MB at 7.

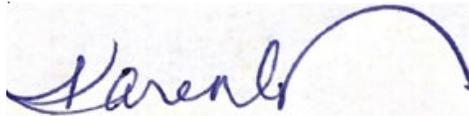
<sup>51</sup> RESA RB at 11-12.

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.

### III. CONCLUSION

For all the foregoing reasons, NRG respectfully requests that the Commission grant the above Exceptions and adopt the Recommended Decision/Non-Unanimous Settlement with the modifications described herein.

Respectfully submitted,



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