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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 Retail Energy Supply Association's ("RESA") 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,



Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Eranda Vero w/enc.  
Hon. Arlene Ashton w/enc.  
Cert. of Service w/enc.  
[Ra-osa@pa.gov](mailto:Ra-osa@pa.gov) w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Retail Energy Supply Association'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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**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  
RETAIL ENERGY SUPPLY ASSOCIATION**

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## I. INTRODUCTION

The Retail Energy Association (“RESA”)<sup>1</sup> excepts to all of the recommendations of the Recommended Decision of Administrative Law Judges Eranda Vero and Arlene Ashton dated September 3, 2024 (“RD”). In sum, the RD rejects each and every one of RESA’s recommendations tailored to address the competitive retail market issues implicated by the default service plan proposed by PECO Energy Company (“PECO”) to become effective June 1, 2024 through May 31, 2029. The RD does this by recommending that the Commission adopt, without modification, the Non-Unanimous Settlement filed on July 10, 2024. The Non-Unanimous Settlement is either supported by or not opposed by all the other parties in this proceeding<sup>2</sup> except for RESA and NRG Energy.<sup>3</sup>

RESA is a trade association of energy companies who have invested significant resources in bringing competitive and innovative generation service to consumers across the United States and in Pennsylvania. RESA members have been firmly committed to successful market development in Pennsylvania individually as licensed electric generation suppliers (“EGS”) and collectively through RESA’s active participation in many Commission proceedings over the past

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (“RESA”) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> Parties to the Non-Unanimous Settlement are PECO, 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”), and the Energy Justice Advocates (“EJA”) (collectively, the “Joint Petitioners”). Parties not opposing the settlement are Calpine Retail Holdings, Inc. (“Calpine”), Constellation Energy Generation, LLC and Constellation NewEnergy Inc. (“Constellation”), and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”).

<sup>3</sup> American Power & Gas of Pennsylvania, LLC (“AP&G”) filed an *Amicus Curiae* Brief opposing the Non-Unanimous Settlement on July 17, 2024.

28 years. The singular goal of RESA throughout its involvement in Commission proceedings has been to assist with the development of “a properly functioning and workable competitive retail electricity market” as the Commission is required to implement pursuant to the Electricity Generation Customer Choice and Competition Act (“Competition Act”) of 1996.<sup>4</sup>

RESA’s view of its role in this proceeding is no different. Through the substantial testimony offered by RESA Witness Frank Caliva, III, the history of the competitive market in Pennsylvania was detailed.<sup>5</sup> Mr. Caliva also explained the various roles of the electric distribution companies (“EDCs”) and EGSs in the competitive market and the important role of the Commission in ensuring that a full and fair opportunity for EGSs to provide competitive products is created so that consumers are offered the benefit of a wide variety of products and services tailored to meet their needs. Finally, Mr. Caliva presented RESA’s view of the current status of retail competition to ultimately conclude that the persistent dominance of EDC provided default service and the Commission approved messaging of it as the price to compare all competitive offerings unreasonably suppresses the development of a greater variety of innovative competitive products for mass market customers.<sup>6</sup> With this in mind, Mr. Caliva explained that RESA’s primary recommendation, that the Commission initiate a statewide investigation regarding the messaging of default service, was intended to provide a path forward to consider how to address some of the existing barriers faced by EGSs.<sup>7</sup> RESA’s objections to various other proposals regarding PECO’s default service plan were similarly offered to avoid structural

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<sup>4</sup> 66 Pa. C.S. §§ 2801-2815.

<sup>5</sup> RESA St. No. 1 at 6-9.

<sup>6</sup> RESA St. No. 1 at 10-15.

<sup>7</sup> RESA St. No. 1 at 17-18.

revisions of the design of the default service product that would further exacerbate the already inherent advantages enjoyed by the EDC provided default service product.<sup>8</sup>

Disappointingly, PECO and the advocates were unwilling to consider any of RESA's viewpoints. In fact, many terms of the Non-Unanimous Settlement make the current competitive market situation worse. These include: (1) the proposal to include a new chart on every customer's bill providing a calculated dollar comparison of what the EGS charged versus what they would have paid pursuant to PECO's default rate; (2) no commitment to develop better processes to coordinate with EGSs when future and unanticipated system implementation issues occur to frustrate the service provided to EGS customers; (3) shifting from a quarterly changing default service rate to a semiannual changing default service rate; (4) inclusion of a long-term contract to procure Solar Alternative Energy Credits for default service customers only; and, (5) revising the Customer Referral Standard Offer Program ("SOP") to automatically return customers to default service upon expiration of the SOP contract. The inclusion of these terms, along with the outright rejection of RESA's recommendation that the Commission initiate a statewide investigation to evaluate the messaging of the default service rate, must not be endorsed by the Commission. To do so would ignore the statutory obligation to ensure that "retail electricity customers in this Commonwealth" are "obtaining the benefits of a properly functioning and workable competitive retail electricity market."<sup>9</sup> RESA submits that adoption of the RD without modification does not achieve this goal and, to the contrary, shifts the Commonwealth further away from successfully achieving it. For all these reasons, RESA urges the Commission to grant these Exceptions and adopt RESA's recommendations.

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<sup>8</sup> RESA St. No. 1 at 16.

<sup>9</sup> 66 Pa. C.S. § 2811(d).

## II. EXCEPTIONS

### A. The RD Errs By Failing To Adopt RESA’s Two Recommendations Regarding Retail Competition Issues

#### 1. EXCEPTION NO. 1: The RD Errs By Rejecting RESA’s Proposed Statewide Price To Compare Investigation Because This Investigation Is Necessary To Ensure Default Service Messaging Is Not Causing Stagnation In Competitive Markets. RD at 89-98; Ordering ¶ 7.

In this proceeding, RESA recommended that the Commission initiate a statewide investigation about the messaging surrounding EDC provided default service, including the continued use of the term “Price to Compare” (“PTC”).<sup>10</sup> The RD rejected RESA’s proposal claiming 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.”<sup>11</sup> The RD also concluded that “any statewide investigation should be initiated through a separate petition. . . and not initiated through a single EDC’s default service proceeding.”<sup>12</sup> The RD’s findings are in error, as RESA has clearly shown that this statewide investigation is necessary and that this recommendation is properly made in this proceeding. For the reasons discussed below and in RESA’s testimony and briefs, the Commissions should reject the RD’s recommendation and instead initiate a statewide investigation regarding default service messaging.

Consistent with Commission direction, the default service rate is held out as the one upon which all EGS pricing offers are to be judged.<sup>13</sup> No clearer is this shown than in the context of PECO’s proposed bill presentation chart which, if adopted over RESA’s objection, would show a

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<sup>10</sup> RESA St. No. 1 at 16-18; RESA MB at 34-37.

<sup>11</sup> RD at 98.

<sup>12</sup> RD at 98.

<sup>13</sup> *See* RESA St. No. 1 at 13; RESA St. No. 1-R at 3-7.

bill comparison of the default service rate the customer would have paid and the EGS price the customer was charged. No other information is provided and no other comparison about the default service rate versus the EGS contract price is proposed to be included in the presentation. This chart is being proposed in addition to existing bill information which already provides the default service rate as the “PTC” in per kWh format and requires a similar format to be shown for the EGS price. As the current language on the EDC bill and the chart proposed in this proceeding clearly show, consumers are educated to compare pricing and only pricing. Even the reference to the default service rate as the “Price to Compare” implies that the default rate is the standard by which competitive offers should be evaluated. The fact that consumers are educated to evaluate their EGS competitive offers based on the default service rate is a fact that is not in dispute.

Also undisputed by any party in the record is that the default service rate is calculated and developed differently from the way EGSs calculate and develop competitive prices.<sup>14</sup> Additionally, the default service rate is offered only by the EDC which enjoys inherent advantages given name recognition due to its long-standing historical relationship with every single customer in its service territory and the fact that the EDC has the exclusive right to bill

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<sup>14</sup> There are numerous reasons that the PTC is not an accurate comparison, including: (i) differences between the manner in which default service rates are established (through a regulated process) and the way in which supply prices in the market are developed (based on the supplier’s business models and various other factors, such as wholesale market conditions); (ii) the time gap between the procurement of energy for default service and procurement for supply service in the market, particularly due to uncertainty as to the volume of electricity that will be procured; (iii) the EDCs’ reconciliation of the default service rate, which is not available to EGSs; and (iv) variations in the way in which costs to provide default service versus the 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. *See* RESA St. No. 1 at 8-9, 20-22.

residential customers for all energy charges. And, finally, no party disputed the fact that the overwhelming majority of residential customers are remaining on default service.<sup>15</sup>

The real dispute among the parties was whether – in the context of these undisputed facts – the Commission should reevaluate its current approved messaging of the default service rate as the Price to Compare. Recognizing that it was proposing a statewide investigation whereby any interested stakeholder would be able to present its views and the final outcome of the Commission’s process was unknown, RESA Witness Caliva explained, how – from the view of EGSs – the marketing of the default service rate as the PTC hampers their ability to offer even more innovative and a greater variety of competitive products and services for consumers. Neither PECO nor the advocates share any concerns about the current state of the market or the disappointing trend of customers remaining on default service and, therefore, opposed supporting any effort of the Commission to reevaluate its current messaging about the competitive market.

By rejecting RESA’s recommendation for an investigation of current messaging on the basis that RESA did not prove in this proceeding that a change of the messaging would solve all the problems of the current market structure, the RD blows past the fundamental issues raised by RESA about how the current messaging of default service is hurting customers. As RESA Witness Caliva explained:

These structural barriers, which further entrench and continue the dominance of EDC provided default service, inhibit the full development of innovation and efficiencies which can be provided by EGSs. With the EDC default service supply dominating the market and consumers being educated to judge all competitive offers based on the price of the EDC provided default service, suppliers will have less incentive and ability to effectively offer innovative services, such as carbon free products or electric supply bundled with distributed energy or demand response, innovative billing and/or payment options, as well as

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<sup>15</sup> See RESA St. No. 1 at 10-12, referencing RESA Exh. FC-3 PA PowerSwitch Monthly Update as of March 2024. (“Residential shopping peaked in April 2014 when 1,863,828 residential customers were served by an EGS.” As of March 2024, 1,279,573 or 24.2% of all residential customers are shopping.)

a host of other innovations that have been shown to be available in other states or countries where suppliers have been able to compete without these barriers and which have benefitted customers by resulting in enhanced services, and in some cases, lower prices than they otherwise would have experienced.<sup>16</sup>

Given the passage of time, the experience developed by the Commission and stakeholders with the competitive market, the undisputed facts regarding how the competitive market is currently structured, the lack of customers on competitive supply and the testimony by EGSs of how the current market is impacting their ability to offer competitive service, the value of a statewide investigation focused on the how to best educate consumers in the current state of the retail market has been shown. As such the RD's recommendation to reject RESA's proposal that the Commission initiate a statewide investigation must be rejected.

Furthermore, taking the view that the default service proceeding, in which the default rate structure is considered, is an inappropriate place to raise this proposal is nothing more than an effort to ensure that the issue is not resurrected due to the time and costs competitive suppliers would have to invest in such litigation and their lack of captive ratepayers to fund these expenses. Moreover, there are numerous examples of the Commission being persuaded by the record in a litigated proceeding to open a statewide investigation to consider issues of broad applicability.<sup>17</sup> Finally, the Commission and appellate courts have clearly determined that a

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<sup>16</sup> RESA St. No. 1 at 19.

<sup>17</sup> For example, the Retail Markets Investigation was initiated in response to the record developed during the FirstEnergy merger case of 2010. *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011), at 46. Similarly, the Commission elected to open an informal review of the non-market based charges imposed on load serving entities by PJM Interconnection, LLC as those issues were recurring in the various default service proceedings of the EDCs. See Secretarial Letter dated May 1, 2015 and addressed to All Jurisdictional Electric Distribution Companies. Similarly, the Commission has approved settlement agreements which recommended addressing issues raised in the context of the litigated proceeding through a statewide proceeding. PECO itself has supported a statewide investigation regarding issues of broad concern raised in the context of its Smart Meter proceedings. See

default service proceeding is the opportunity for competitive suppliers to raise issues related to the EDC's proposed default structure and other mechanisms which have a direct impact on the ability of competitive suppliers to operate.<sup>18</sup>

In sum, RESA's testimony and briefs clearly establish that the continued use of the term "PTC" and the messaging around default service is an area that warrants further investigation due to its negative impact on the ability of consumers to access a greater variety of competitive products and services. The RD mischaracterizes RESA's testimony as promising a specific outcome of the investigation and ignores the reality that a default service process is the proceeding in which EGSs have been directed by the Commission and the Courts to raise these types of concerns. As such, RESA urges the Commission to reject the RD's conclusion and move forward with initiating a statewide investigation to address the current messaging of the default service rate as the Price to Compare.

**2. EXCEPTION NO. 2: 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 These Measures Remain Necessary To Address Any Future Issues And Ensure EGS Access Consistent With The Competition Act. RD at 107-109; Ordering ¶ 8.**

The RD errs by failing to adopt RESA's proposal for PECO to work collaboratively with competitive suppliers to provide reasonable support for their ability to provide service and enroll customers. The RD concludes that the technical issues RESA identified have been previously resolved, so no further action is necessary.<sup>19</sup> The RD dismisses concerns about future problems

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*Petition of PECO Energy Company for Approval of its Smart Meter Universal Deployment Plan, Docket No. M-2009-2123944, Recommended Decision dated July 12, 2013, at 9.*

<sup>18</sup> See *Respond Power, LLC v. Pa. Public Utility Commission*, 250 A.3d 547 (Pa. Cmwlth. 2021).

<sup>19</sup> RD at 109.

as “speculative” and characterizes RESA’s recommendations as a costly “new regime of daily and weekly updates. . . new staff assignments. . . and a new standard for interacting with EGSs.”<sup>20</sup> The RD’s indifference about this issue must be redressed by the Commission for the benefit of consumers.

RESA Witness Caliva detailed the significant inconvenience and difficult experienced when PECO was ill prepared to assist customers and EGSs with the transition to a new Choice ID number in order to effectuate a change in service which impacted thousands of customers who were denied the ability to enroll with their chose supplier.<sup>21</sup> Mr. Caliva also explained problems resulting from the rejection of invoices for supplier customer accounts that had been closed by PECO and PECO’s advice that suppliers dual bill customers for the charges.<sup>22</sup> PECO never denied these difficulties occurred. Rather, PECO took the view that “it’s over and let’s move on” which is the same view espoused by the RD. Even though RESA offered proposed suggestions to set up future processes to avoid inconveniencing customers as had already happened, PECO never seriously considered addressing the concerns and, along with the other parties, remained unwilling to agree – even as part of a settlement – to work collaboratively with suppliers to set up processes to better address failures in the future related to CIS upgrades.<sup>23</sup> Therefore, by denying that anything needed to be done because the situation was over, no other going forward processes were offered on the record and, instead, PECO simply chastised

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<sup>20</sup> RD at 109.

<sup>21</sup> RESA St. No. 1 at 26.

<sup>22</sup> RESA St. No. 1 at 26.

<sup>23</sup> RESA RB at 11-12.

RESA's original recommendations as too costly and troublesome with the RD parroting these claims.

It must not be forgotten, however, that PECO only addressed the issues set forth in the record *after* causing significant confusion for customers and distress for EGSs and their existing and future customers,<sup>24</sup> and violating basic tenets of the Competition Act which is why RESA sought to have going forward processes implemented as part of this proceeding. Even with all of PECO's purported work before implementation, the reality of what occurred makes clear that future process improvements are needed to address situations as they arise and in the most reasonable way possible for consumers. Customers looking to receive EGS service should not have been given misinformation by PECO's customer service representatives and, when concerns about what was happening were brought by suppliers to PECO, PECO should have had better systems in place to deal with the issues. These issues had real impacts on customers and these customers would absolutely benefit from Commission direction to PECO to have systems in place to avoid a repeat.

As such, RESA's recommendations to set up processes between PECO and EGSs to avoid future operational transition issues are still necessary. The Commission should reject the RD's findings and instead adopt RESA's recommendations to require PECO to include specific processes to work collaboratively with competitive suppliers to provide reasonable support for their ability to provide service and enroll customers.<sup>25</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> RESA St. No. 1 at 27.

**B. The RD Errs By Recommending Adoption Of Two Anti-Competitive and Misleading Proposals Regarding Shopping Customers**

**1. EXCEPTION NO. 3: The RD Errs By Approving PECO’s Plan To Place A Bill Comparison Chart On The First Page Of Shopping Customer Bills Because This Chart Is Anti-Competitive And Misleading To Customers. RD at 99-106; Ordering ¶¶ 1, 3.**

The RD recommends approval of Non-Unanimous Settlement’s term that would add a comparison chart to the first page of PECO’s shopping residential customers’ bills. According to the RD, adding the comparison chart does not inhibit or prohibit customer shopping and does not “preclude an EGS from conveying the value of its product through on-billing messaging.”

Rather, according to the RD, the proposed present is “vital” to helping customers “understand and evaluate, on an ongoing basis, whether their prices are consistent with their expectations.”<sup>26</sup>

The RD is incorrect on all of these points and PECO’s proposed bill presentation must be rejected.

First, the RD is incorrect that EGSs have the ability to “convey the value of its product through on-bill messaging.” PECO is proposing to add the chart to the first page of the customer’s bill and EGSs must use PECO’s EDC consolidated bill to invoice residential customers EGSs’ charges.<sup>27</sup> There is no opportunity for EGSs to include any EGS specific

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

<sup>27</sup> PECO requires EGSs wishing to participate in the Purchase of Receivables (“POR”) program to utilize EDC consolidated billing for all EGS residential customers. POR leverages the ratepayer funded termination systems of the utility to reduce the amount of uncollectible charges from all customers. Since EGSs are not permitted by the Commission to terminate a customer for nonpayment, the POR program allows termination for non-payment to be pursued by the utility with payment to the EGS for the services rendered. The payments to EGSs from the utility for the shopping customer charges are provided at a discount to reflect the collection risk remaining with the utility. By approving the POR program, the Commission determined it was a necessary tool to encourage EGSs to offer competitive products to residential customers while leveraging the ratepayer funded collections tool of the utility. However, current tariff provisions require that EGSs wanting to utilize the POR program for any residential customer, must have all of their residential customers billed through the utility bill. See, PECO Supplier Tariff Page 96, Billing Service Options, Section 19.

messaging on that page. Rather, EGSs are relegated to the last page of the PECO bill, given limited messaging space, and unable to provide customer specific messaging.<sup>28</sup> Thus, claims that EGSs can blunt the anticompetitive and misleading impacts of the proposed bill chart are incorrect.

Second and contrary to the RD's claims the proposal is "vital" to help customers understand and evaluate their EGS contracts, nothing about PECO's proposal offers to provide any information about what PECO knows (or more importantly does not know) about a specific EGS contract. As the issuer of the bills and the provider of default service and the historical monopoly provider of service, the addition of this chart on the bill without any disclaimer information about the differences between PECO's default service rate and the EGS contract price adds confusion. The chart only compares a bill calculation of what was charged under the EGS contract vs. what would have been billed on default service rate. This invites just one comparison, a calculated bill comparison. The proposed chart provides no information about the specifics of the EGS contract and gives the customer no other information about the EGS contract. The proposed chart also fails to make clear that PECO does not have information about the EGS contract or that the pricing of default service and an EGS price are different. There is no language offered to even suggest to the customer to consider all EGS contract terms when attempting to put into context the overall importance to him or her of the rate difference. Importantly, EDCs are prohibited from failing to present adequate information to enable consumers to make an informed choice about the purchase of services.<sup>29</sup> Thus, and contrary to the view of the RD, the addition of this bill comparison chart without any other context or

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<sup>28</sup> RESA St. No. 1-SR at 8-9.

<sup>29</sup> See *The Mid-Atlantic Power Supply Ass'n v. PaPUC*, 755 A.2d at 723-26 (Pa. Commw. Ct. 2000).

disclaiming information from PECO on the same page of the chart creates more confusion and runs afoul of PECO's legal obligations regarding marketing.

Third, the RD's conclusion that "there is no inherent or implicit judgment" of pricing is simply wrong. The presentation of a calculation of existing EGS bill charges with what PECO would have billed if the customer were on default service 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. The proposed chart cannot be viewed in a vacuum. Rather, it is being proposed in a current market structure where customers have been educated to view the default service rate as the "Price to Compare" and other information on the bill presents the per kWh of the default service rate as well as the per kWh of the EGS. The information is proposed to be presented without any type of clarifying information or explanation from PECO about what it is intended to convey. And, there is no way for EGSs to present any type of explanatory language on the same page as the proposed chart. For all these reasons, the proposed chart serves no purpose but to reinforce seriously flawed pricing comparisons sending the implicit message that a higher EGS bill is inherently bad. As explained in RESA's Main Brief, this violates the Competition Act and must be rejected.<sup>30</sup> The proposed bill chart is anti-competitive in that it would include information on the customer bill that was not anticipated by the Competition Act,<sup>31</sup> discourages shopping by presenting information in a way that perpetuates the idea that default service is superior based

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<sup>30</sup> *Id.*

<sup>31</sup> 66 Pa. C.S. § 2807(c).

only on price,<sup>32</sup> and is generally contrary to the goal of increasing competition, which the General Assembly has found to be in the public interest.<sup>33</sup>

Finally, the RD never takes into consideration the fact that PECO does not even plan to implement the bill chart until two years after the start of the default service plan period or the fact that the proposed chart would be the first time any EDC in Pennsylvania included one on its bills. As such, there is more than sufficient time for the Commission to consider and determine how to address the concerns raised by RESA regarding the impacts of the proposal.

**2. EXCEPTION NO. 4: The RD Errs By Approving Unlawful Revisions to the Standard Offer Program (“SOP”) Without Any Valid Record Evidence Of The Need To Implement Such Changes. RD at 87-89; Ordering ¶ 2.**

While PECO did not initially propose any revisions to its Customer Referral Standard Offer Program (“SOP”), the Non-Unanimous Settlement 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.”<sup>34</sup> The RD recommends that the Commission approve this revision notwithstanding the objections of RESA, NRG and AP&G.<sup>35</sup> For the reasons discussed below, the RD’s recommendation must be rejected as it lacks evidentiary support and, if implemented, will fail to achieve the stated goals of the revisions and will very likely lead to the end of the SOP.

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<sup>32</sup> RESA St. No. 1 at 22.

<sup>33</sup> 66 Pa. C.S. § 2802(3).

<sup>34</sup> Non-Unanimous Settlement at 17, ¶ 64.

<sup>35</sup> RD at 88-89.

**(a) Aggregate, service territory-wide EGS prices do not support the proposed revisions to SOP which, if implemented, amount to an illegal regulation of generation pricing**

The RD concludes that an EDC’s existing SOP may be revised “if evidence of harm to the customers is established.”<sup>36</sup> The RD then cites the testimony presented by 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” to conclude that the SOP revisions proposed by the Non-Unanimous Settlement will “address” these “harms.”<sup>37</sup> No further explanation or analysis is presented as to how this “fact” alone is a “harm” or how the prices paid by all EGS customers over a six year period are “addressed” by revisions to a very specific program in which only certain customers have participated. Moreover, though absolutely relying on the prices paid by EGS customers over the past six years and attempting to “help” customers regarding prices of EGSs, the RD disagrees that the proposed SOP revisions regulate EGS prices.<sup>38</sup> The RD is incorrect on all of these points and, therefore, RESA urges the Commission to reject the proposed revisions to the SOP as set forth in the Non-Unanimous Settlement.

First, without any discussion or explanation, the RD simply concludes that customers paying more than the default service rate over a six year period is a “harm” which must be redressed through revisions to the SOP.<sup>39</sup> As the Commission recognized in rejecting a similar proposal offered by PPL, customers paying more than the default service rate alone is not

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<sup>36</sup> RD at 88.

<sup>37</sup> RD at 88.

<sup>38</sup> RD at 89.

<sup>39</sup> RD at 88.

indicative of “overpaying.”<sup>40</sup> In this proceeding, RESA Witness Caliva discussed at great length why a comparison of EGS pricing to the default service rate does not offer any true insight into whether a customer is being “harmed” by a higher EGS price.<sup>41</sup> Importantly, a customer’s decision to enter into a contract with an EGS may be for reasons that have nothing to do with price but rather the nature of the product offered or the length of the contract.<sup>42</sup> Mr. Caliva also presented evidence that, to the extent customers are seeking EGS prices lower than the default service rate, numerous offers were available in the Pennsylvania retail market between January 2024 and March 2024.<sup>43</sup> Thus, the fact that an EGS customer is paying more than the default service rate alone does not prove that a harm is occurring. As the RD fails to explain or show why prices higher than the default service rate should be considered “harmful,” its proposed solution – to revise the SOP – must be rejected as nothing more than a solution in search of a problem.

Second, PECO does not have data about the pricing experiences of SOP customers specifically. Thus, the RD relies on the data point that all shopping customers paid more than the default service rate over a six year period as evidence of harm to customers to justify revisions to the SOP program.<sup>44</sup> However, using the data of all customers in an effort to justify revisions to a program in which only a smaller subset of customers participate is an unreasonable basis upon which to make changes that suffer from so many other legal and practical problems.

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<sup>40</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 Dec. 17, 2020, at 97 (“PPL DSP 5 Order”).

<sup>41</sup> RESA St. No. 1-R at 3-9.

<sup>42</sup> RESA St. No. 1-R at 5.

<sup>43</sup> RESA St. No. 1-R at 6-7, referencing RESA Exhs. FC-7-9.

<sup>44</sup> RD at 88.

Even though the Commission had specific data about pricing for SOP participants in the PPL matter, it concluded that alone was not enough to justify making the same revisions as proposed here. Notably, in the PPL case, the Commission pointed out that the record lacked evidence of an increase in customer complaints from SOP participants overtaxing the ability of EDC customer service representatives or an increase in collection activities for post SOP shopping customers.<sup>45</sup> In sum, the evidence of SOP specific pricing is non-existent in this record and, where it did exist in the PPL case, it alone was not enough to persuade the Commission to adopt the revisions being offered here. While RESA does not disagree with the RD that Commission precedent does permit it to consider revisions to the SOP if a showing of harm is made, no such showing has been made here. As such, RESA urges the Commission to reject the RD's recommendation to revise the SOP as set forth in the Non-Unanimous Settlement.

Third, the actual record evidence that exists in this proceeding about the experiences of SOP participants does not support the proposed revisions. According to a customer satisfaction survey of customers who participated in SOP between June 1, 2021 and June 30, 2023, 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.<sup>46</sup> The RD offers no explanation or analysis about why this specific SOP data should be discounted. As such, the recommendation to revise the SOP must be rejected.

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<sup>45</sup> PPL DSP 5 Order at 97.

<sup>46</sup> PECO St. No. 1 at 30.

Finally, as the reason for recommending adopting the SOP revisions is to “address record evidence” about aggregate EGS charges over the last six years, the entire purpose of recommending approval of the SOP revisions is rooted in a concern about EGS pricing. The RD attempts to sidestep this by focusing on the voluntary nature of the SOP for EGS participation and the ability of EGSs, outside of the SOP, to offer any price they desire.<sup>47</sup> However, automatically returning EGS customers to default service upon SOP contract expiration is necessarily intended to influence an EGS’s pricing decisions going forward since the whole point of the revision is to “protect” customers from EGS pricing higher than the default service rate. Ironically, even while attempting to influence EGS behavior, the proposal offers no price savings for the returned customer who will have their supply rate automatically increased by 7% upon the return to default service. In sum, the RD erroneously supports the proposed revision of the SOP on the basis that it is needed to protect customers from EGS pricing but then attempts to disavow this reasoning to claim that the proposed revision is not an illegal regulation of EGS pricing. RESA urges the Commission to see through these flawed reasons and reject the recommendation of the RD to revise the SOP.

**(b) The proposed revisions will not “encourage active customer choice” but will more likely result in the end of the SOP as EGSs decide not to participate**

The RD states that adopting the proposed revision to the SOP to automatically return EGS customers to default service upon SOP contract expiration “will encourage active customer choice.”<sup>48</sup> The RD provides no explanation about how this result would be achieved or why, in

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<sup>47</sup> RD at 89.

<sup>48</sup> RD at 88.

the context of this particular program, the Commission’s long-standing contract expiration regulations must be altered.<sup>49</sup> To the extent the RD is implying that a return to default service is some type of incentive for customers to take action to avoid returning to the EDC, such is not supported by the current state of the retail market in Pennsylvania. As explained by RESA Witness Caliva, Commission messaging encouraging customers to view the default service rate as the “Price to Compare” and the dominant role of EDC provided default service in Pennsylvania have resulted in default service being viewed as the “first resort” and better product in the minds of consumers.<sup>50</sup> Therefore, “threatening” to return to customers to default service upon SOP contract expiration will not lead to “encouraging active customer choice” as customers have already been well educated to trust the EDC default service product as the superior product in the market. Thus, how the proposed SOP revisions would “encourage active customer choice” has not been shown.

Rather, the likely result is that most, if not all, of the SOP participants will be returned to default service upon SOP contract expiration if the proposed revisions of the Non-Unanimous Settlement are adopted. As correctly noted by the RD, EGSs volunteer to participate in the SOP and accept certain conditions as a part of that participation. These conditions include offering the SOP participant a rate that is initially 7% off the default service rate, maintaining that rate for one year, not imposing any early cancellation fee if the customer elects to leave the SOP, and paying a fee to the EDC for each customer referred. In exchange, the current design of the SOP permits the EGS to automatically retain the customer upon SOP contract expiration so long as

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<sup>49</sup> See RESA MB at 24-27, discussing the Commission’s EGS notice regulations and the history of the decision to permit a customer who takes no action to remain with the EGS upon contract expiration.

<sup>50</sup> RESA St. No. 1-R at 3-9.

the EGS has provided the required regulatory notices.<sup>51</sup> By removing the potential of retaining the EGS customer upon SOP contract expiration so long as Commission processes are followed, the proposed revisions to the SOP undermine a key element that EGSs likely find attractive in deciding whether to participate in the SOP. If the SOP revisions as supported by the RD are adopted, it is very likely that no EGSs will participate in the SOP and it will be discontinued. While RESA vehemently disagrees that the revisions to the SOP supported by the RD are necessary or reasonable, given that their implementation would likely end the SOP anyway. RESA would much prefer the Commission discontinue the SOP entirely rather than adopt the anticompetitive and troubling revisions as set forth in the Non-Unanimous Settlement.<sup>52</sup>

**C. The RD Errs By Rejecting RESA’s Recommended Changes To PECO’s Procurement Plan**

**1. EXCEPTION NO. 5: The RD Errs By Approving PECO’s Capacity Proxy Price Proposal Because The Proposal Is Anti-Competitive And Will Result In Price Distortions, Harming Both EGSs And End Use Customers. RD at 54-59; Ordering ¶¶ 1, 3.**

The RD errs in recommending that the Commission approve PECO’s proposal, as reflected in the Non-Unanimous Settlement,<sup>53</sup> to introduce 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. The RD concludes that the CPP proposal does not create any competitively unfair conditions for EGSs, based on EGSs’ business

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<sup>51</sup> See RESA MB at 25 discussing the Commission approved structure for the SOP which remains in effect today.

<sup>52</sup> This position is consistent with RESA’s support of the Joint Petition for Settlement filed on August 27, 2024 in PPL’s currently pending default service proceeding at Docket No. P-2024-3047290 which recommends discontinuing the SOP for PPL’s service territory.

<sup>53</sup> Non-Unanimous Settlement at 9, ¶ 32.

models and their “flexibility” to adjust their offerings to address delays in PJM capacity auctions.<sup>54</sup> The RD misunderstands the significant impact this proposal will have on EGSs’ ability to offer competitive products. As explained below and in RESA’s Main Brief, PECO’s CPP proposal should be rejected because it will result in end user supply price distortions resulting from making this option available only to the default service supplier, while all other competitive suppliers are relegated to other options in the market. This provides default service an unfair competitive advantage and creates an uneven playing field for default service over competitive service in violation of the Competition Act.

As RESA Witness Caliva explained, the lack of a BRA negatively impacts all Load Serving Entities (“LSEs”) which include the wholesale default service suppliers as well as EGSs.<sup>55</sup> However, the proposal in the Non-Unanimous Settlement only insulates the wholesale default service suppliers from the associated risks. This will lead to unnecessary distortions in the pricing of generation services offered to all customers.<sup>56</sup> 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.<sup>57</sup> PECO’s proposal insulates wholesale default service suppliers from the risks of not having the forward capacity auction

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<sup>54</sup> RD at 59.

<sup>55</sup> RESA MB at 13-14.

<sup>56</sup> RESA St. No. 1 at 29-30.

<sup>57</sup> RESA St. No. 1 at 29.

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.<sup>58</sup>

The RD fails to acknowledge that no such options exist for EGSs. 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.<sup>59</sup> As RESA Witness Caliva explained, 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 especially given the fact that PECO proposes to compare all EGS prices to the PTC.<sup>60</sup> The RD appears to adopt PECO’s view, stating that EGSs have “flexibility to formulate and adjust competitive offers to address issues arising from delays in PJM capacity auctions.”<sup>61</sup> However, 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.<sup>62</sup>

The outcome of PECO’s proposal will both violate the Competition Act and result in negative outcomes for all end use customers. The Competition Act requires that public utilities provide EGSs nondiscriminatory access to the public utility’s transmission and distribution

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<sup>58</sup> PECO St. No. 4 at 18-19.

<sup>59</sup> RESA MB at 14-15.

<sup>60</sup> RESA St. No. 1 at 30.

<sup>61</sup> RD at 59.

<sup>62</sup> Fixed Price Label Order. Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause, Docket No. M-2013-2362961, Final Order entered Nov. 14, 2013, at 26.

system on “rates, terms of access and conditions that are comparable to the utilities own use of its system.”<sup>63</sup> PECO’s CPP proposal ensures that only the default service supplier recovers all the costs from ratepayers when the amount of the final payment obligation is known. This provides default service an unfair competitive advantage and creates an uneven playing field for default service over competitive service in violation of the Competition Act.

PECO’s proposal will also be negative for all end use generation customers. While the default service PTC will include a true-up mechanism in a future period once the forward capacity price is known, EGSs’ competitive pricing during that same time period will reflect the result of an EGS’s forecasting without the benefit of the forward capacity price and with no realistic opportunity for the EGS to true-up the actual costs once the BRA is held.<sup>64</sup> 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.<sup>65</sup>

On the other hand, if the Commission rejects PECO’s CPP proposal as set forth in the Non-Unanimous Settlement, this will result in all LSEs being required to rely on the secondary market for capacity. This will maintain an equal playing field in which both default service suppliers and competitive generation suppliers are utilizing the same resources and information available to develop pricing and taking the same risks of the results of these calculations. This

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<sup>63</sup> 66 Pa. C.S. § 2803.

<sup>64</sup> 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, Final Order entered Nov. 14, 2013, at 26.

<sup>65</sup> RESA St. No. 1 at 30.

approach is consistent with the Competition Act, and further, default service customers will not be expected to pay for the results of an inaccurately forecasted CPP via a true up cost embedded in a future PTC.

For these reasons and those discussed in detail in RESA's Main Brief,<sup>66</sup> PECO's initial proposal which is included in the Non-Unanimous Settlement must be rejected.

**2. EXCEPTION NO. 6: The RD Errs By Approving The Procurement Plan For Solar Alternative Energy Credits Because The Proposal Will Prevent Accurate Comparisons Between The Default Service Rate And EGS Pricing. RD at 59-64; Ordering ¶¶ 1, 3.**

The RD errs in recommending approval of the Non-Unanimous Settlement term providing for PECO to 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. Although the proposal in the Non-Unanimous Settlement is different from PECO's initial proposal, it fails to address the negative impact of this proposal on the competitive market.

As RESA Witness Caliva explained, the 10-year pricing scheme determined at the formation of the contract may or may not accurately reflect the actual market price in the next ten years. This, in turn, distorts prices and prevents accurate comparisons between the default service rate and competitive EGS pricing. To address RESA's concerns, Mr. Caliva recommended that the Commission consider competitively neutral structures to ensure that the

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<sup>66</sup> RESA MB at 12-16.

procurement of long-term contracts does not adversely impact the development of retail competition.<sup>67</sup>

It should be noted that RESA was agreeable to the alternative approach proposed by OCA Witness Ogur, in which PECO would assume responsibility for the entire Solar AEC obligation for its entire distribution load and recover the costs via a non-bypassable charge so long as it was phased in to address contract timing concerns. Unfortunately, the Non-Unanimous Settlement does not incorporate this proposal. In fact, the Non-Unanimous Settlement does not make any revisions to address the concerns raised by RESA. As a result, Solar AECs would still be procured pursuant to a long-term contract to be used exclusively for the requirements of the default service load.

In recommending that this proposal be adopted, the RD fails to address RESA's concerns to ensure the proposal is competitively neutral and ignores how this proposal impacts the resulting default service rate in the overall retail competitive market structure. For these reasons and those discussed in RESA's Main Brief, the proposal in the Non-Unanimous Settlement should be rejected.

**3. EXCEPTION NO. 7: The RD Errs By Approving The Non-Unanimous Settlement's Proposal To Adjust Default Service Rates Semi-Annually Because Doing So Divorces The Default Rate From The Then-Current Market Rate Negatively Impacting The Ability To Price Competitive Supply Options. RD at 65-67; Ordering ¶¶ 1, 3.**

The RD errs by recommending approval the Non-Unanimous Settlement's term providing that PECO will adjust default service rates semi-annually, as opposed to the Company's current practice of adjusting default service rates quarterly. This proposal was

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<sup>67</sup> RESA St. No. 1 at 34.

originally advanced by OCA Witness Ogur, who claimed this would enhance rate stability and reduce volatility.<sup>68</sup> In fact, this change is a step backward that will make default service rates less market responsive and less market reflective, and thus less conducive to a well-functioning competitive market.

As RESA Witness Caliva explained:<sup>69</sup>

The 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. Although RESA recognizes that the EDC is statutorily guaranteed cost recovery for default service-related expenses, the automatic reconciliation process creates an unfair competitive advantage for the EDC and generates customer confusion.

Further, it is important that default service rates be as market responsive and market reflective as possible to better track the market price of electricity.<sup>70</sup> Less frequent adjustment or reconciliation of the default service rate decreases the market responsiveness of the default rate, due to delays in 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 also 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. Without some rational relationship to the market embedded in the default service rate, EGSs have difficulty establishing competing offers and may not enter that market. For these reasons, revising the default service rate on a more frequent basis, as PECO does now, is a better

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<sup>68</sup> OCA St. No. 1 at 27-28.

<sup>69</sup> RESA St. No. 1-R at 12.

<sup>70</sup> RESA St. No. 1-R at 13.

approach to ensuring accuracy and providing a real time analysis of the costs incurred,<sup>71</sup> and the Non-Unanimous Settlement term should be rejected.

**4. EXCEPTION NO. 8: The RD Errs By Approving PECO’s Plan To Conduct An Evaluation Of Its TOU Rate Program To Increase Enrollment Because This Evaluation Is An Unnecessary Use Of Ratepayer Funds Regarding Products That Are Better Provided By Competitive Suppliers. RD AT 68-70; Ordering ¶¶ 1, 3.**

The RD errs by recommending approval of the Non-Unanimous Settlement term providing that PECO will conduct a one-time evaluation of its TOU rate including an assessment of enrollment rates and customer characteristics, to be presented in its next default service filing.<sup>72</sup> As explained in RESA’s Main Brief, the one-time evaluation that parties agreed to in the Non-Unanimous Settlement is unnecessary to the extent it is intended to “improve” PECO’s TOU or increase enrollment. Rather than enhancing PECO’s TOU offering, customers should instead rely on EGSs in the competitive market to develop competitive and innovate products, including TOU offerings to meet these customer needs.<sup>73</sup>

As RESA Witness Caliva explained, “although RESA understands the statutory requirement for the EDC to offer a TOU rate, that does not mean the EDC should expend ratepayer money on creating products that can more appropriately and effectively be delivered by the competitive market.”<sup>74</sup> EGSs are best positioned to provide enhanced features and solutions as part of TOU rates that are attractive to customers and meet their needs. These offerings are available to customers in the competitive market and should be accessed there

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<sup>71</sup> RESA St. No. 1-R at 13.

<sup>72</sup> Non-Unanimous Settlement at 13-17, ¶¶ 46-62.

<sup>73</sup> RESA St. No. 1-R at 14.

<sup>74</sup> *Id.*

rather than pushing the EDC to spend ratepayer dollars developing such programs. This is consistent with the Competition Act, which specifically envisioned this type of product being provided by EGSs in the competitive market.<sup>75</sup> Further, the Commission has also recognized the role EGSs play in offering this product to consumers.<sup>76</sup> Therefore, RESA submits that Non-Unanimous Settlement provisions regarding TOU rates should be rejected.

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<sup>75</sup> 66 Pa. C.S. § 2804(2).

<sup>76</sup> Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans, Docket No. I-2011-2237952 (Tentative Order entered Oct. 14, 2011), at 7.

### III. CONCLUSION

For the reasons discussed above, RESA urges the Commission to reject the Non-Unanimous Settlement and adopt RESA's recommendations to institute a statewide investigation of the use of the term "Price to Compare" and directs PECO to implement processes to address future supplier issues related to operational changes. RESA also urges the Commission to: (1) reject the use of a Capacity Proxy Price; (2) reject PECO's proposed procurement plan for Solar Alternative Energy Credits; (3) reject the change from quarterly to semi-annual default service rate adjustments; and, (4) reject the implementation of costly evaluations of PECO's proposed TOU Rate Program.

Respectfully submitted,



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Date: September 10, 2024

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