

COMMONWEALTH OF PENNSYLVANIA



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September 16, 2024

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceeding.

Copies of this letter are being served on parties of record per the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Eranda Vero (email only)  
The Honorable Arlene Ashton (email only)  
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Certificate of Service

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 16th day of September, 2024.

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Dated: September 16, 2024

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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REPLY EXCEPTIONS  
OF THE OFFICE OF CONSUMER ADVOCATE

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DATED: September 16, 2024

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## I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits these Replies to the Exceptions of Retail Energy Supply Association (RESA), as well as the Exceptions of NRG Energy, Inc. (NRG). The Recommended Decision (RD) of Administrative Law Judges (ALJs) Eranda Vero and Arlene Ashton should be adopted. The ALJs recommend approval by the Commission of the Non-Unanimous Joint Petition for Settlement which set forth a Revised PECO Energy Default Service Program (DSP VI) for the Period from June 1, 2025, through May 31, 2029, as consistent with applicable law and public policy and in the public interest. RD at 1-2, 49-53. These OCA Reply Exceptions support denial of the RESA and NRG Exceptions, as set forth below.

As an initial matter, the OCA notes that nothing in RESA or NRG's exceptions is new. The arguments are the same or substantially similar to all of the arguments that they made in their briefs and in this proceeding. RESA and NRG simply disagree with the ALJs acceptance of the Settlement, but what they do not do – because they cannot – is point to any specific errors of law or record evidence that was overlooked. There is no credible or substantial evidence supporting the claims made by RESA or NRG in this proceeding. The OCA submits that the record does not support the granting of any of RESA's or NRG's exceptions and they should be denied in their entirety.

## II. REPLY EXCEPTIONS

A. Reply to RESA Exception No. 1, NRG Exception No. 3: The ALJs properly rejected RESA's request for a statewide investigation. RESA Exc. at 2, 4-8; NRG Exc. 3 at 2, 9-10; RD at 1-2, 89-98; OCA M.B. at 3-4, 24-26; OCA R.B. at 23-25.

RESA, supported by NRG, request that the Commission order a statewide investigation to improve retail competition. *See*, RESA Exc. at 2, 4; NRG Exc. at 9-10. The ALJs recommended denial of RESA's request. RD at 98. The OCA opposes the RESA and NRG exceptions. The RD

is based upon a careful review of RESA's proposal and the record developed. RESA bears the burden of proof, as the proponent of a rule or order. RD at 98, citing 66 Pa.C.S. § 332(a), *see* OCA MB at 3, 26. RESA and NRG concede this, contending that the evidence supports grant of RESA's request. RESA Exc. at 4; NRG Exc. at 9. The ALJs did not err in denying RESA's request, on the grounds that RESA did not carry its burden of proof. RD at 98. The exceptions of RESA and NRG should be denied, based upon the record and the ALJs consideration of law and policy.

The ALJs evaluated RESA's request for a statewide investigation of default service messaging, as raised in RESA testimony. RD at 89-98. According to RESA, the Commission and EDCs use the price to compare (PTC) as the basis against which all other EGS pricing offers should be judged. RD at 89. RESA expressed concern that how the stakeholders in this proceeding – including how the OCA and low income advocates – use the PTC as a basis of comparison is, in RESA's view, inappropriate. RESA and NRG then assert that this somehow justifies the need for a Commission investigation to result in changes to messaging about the PTC. RD at 90.

The RD acknowledged RESA's position that comparisons of default prices to EGS offerings are made, comparisons that RESA considered misleading and improper. RD at 90. RESA's arguments in this regard are misplaced and were properly rejected by the ALJs. RD at 98. The RESA and NRG claim that RESA met its burden of proof are incorrect. RD at 98; RESA Exc. at 4-8; NRG Exc. at 9-10. The OCA, PECO, and TURN/CAUSE-PA separately rebutted RESA's position that a statewide investigation is needed to improve the competitive market. OCA MB at 24-25; OCA RB at 23-25. There is no credible evidence in the record to suggest that the reforms suggested by RESA are in any way necessary. The ALJs evaluated the arguments and evidence put forth by PECO, OCA, and TURN/CAUSE-PA disputing RESA's claim that retail competition is stagnant and that a change in messaging of the default service product would unleash new EGS

products. RD at 91-98. The OCA and TURN/CAUSE-PA opposed RESA's apparent end goal of curbing how the PTC or default service rate is used by consumer or low-income advocates and others. OCA MB at 23; RD at 90, 93-98. The OCA and TURN/CAUSE-PA also opposed RESA's request as it could lead to an unreasonable waste of the costs and decades spent on consumer education about how to shop. OCA MB at 23; RD at 93-95.

The Commission should adopt the ALJs' well-reasoned recommendation and deny the exceptions of RESA and NRG. RD at 1-2, 98. After considering the record evidence, the ALJs concluded:

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 electric generation rates for the citizens of the Commonwealth.

RD at 98 [citation omitted]. Instead, the ALJs correctly concluded that consideration of the cost of generation supply to consumers *is* integral to the Competition Act. The RD is soundly based upon the record, law, and public policy. The RESA and NRG exceptions should be denied.

For its part, NRG takes issue with the ALJs' sound conclusion that if RESA is concerned about the issues that it raised that it could or "should" file a stand-alone petition to request such a statewide investigation. NRG Exc. at 10; *see* RD at 98; PAIEUG MB at 5. There is no basis to except to this conclusion and NRG's exception should be denied. RESA's request for a statewide investigation, as initiated through a single EDC's default service proceeding, is flawed. Simply, put, this issue is not limited to only PECO or its messaging, but is an issue of statewide significance and, as the ALJs noted there is an issue as to notice to stakeholders. RD at 98. The ALJs did not err in rejecting the request for a statewide evaluation where RESA presented no substantial evidence that warrants such an investigation and NRG's exception does not alter the outcome here,

that RESA did not meet its burden of proof to merit grant of RESA's request as part of the Commission's order in this PECO DSP VI proceeding.

B. Reply to RESA Exception No. 3, NRG Exc. No. 1: The Joint Petition's proposed modification of the PECO residential bill format is supported by the record, is in the public interest, and should be approved. RESA Exc. at 4-8; NRG Exc. at 1-5; RD at 1-2, 26, 47-55, 89-98; OCA M.B. at 26-28; OCA R.B. at 25-27.

RESA and NRG except to the ALJs' recommended approval of the Joint Petition, including the change to PECO's residential bill format. RESA Exc. at 4-8, NRG Exc. at 1-5. The Joint Petition provides that PECO may include on residential customer bills "a graphic that compares the customer's total supplier charges for the billing period with the dollar amount of the charges that would be used under PECO's applicable PTC based upon the customer's usage during the billing period." RD at 26, Settlement ¶ 64. The ALJs evaluated the Joint Petition terms regarding the residential bill change and recommended approval of the Joint Petition as in the public interest, notwithstanding the opposition of RESA and NRG. RD at 47-48, 49-53, 99-106.

RESA and NRG dispute elements of the ALJs' determination that the PECO residential bill change is reasonable, will provide vital information to shopping customers, and that EGSs may convey the value of its product through on-bill messaging. RESA Exc. at 11. NRG states that graphic will compare price information without context as to the competitive supply contract terms and may imply judgment by the EDC, contrary to the Competition Act. NRG Exc. at 2-6.

The exceptions of RESA and NRG should be denied. The record shows that the bill graphic concept was the product of a PECO stakeholder collaborative, that included EGSs. RD at 102, PECO MB at 21-22. PECO and RESA presented competing views as the sufficiency of EGS messaging space on the PECO bill. RD at 102; PECO MB at 21-22; OCA MB at 103. OCA and TURN/CAUSE-PA disputed RESA's concern that consumers would be confused and rely solely

on the bill graphic information, noting the ability of EGSs to message multiple ways, including through their own outreach and direct messaging to consumers about non-price features of their product, such as green energy. RD at 103-106; OCA MB at 26-28, OCA RB at 25-27; TURN/CAUSE-PA RB at 21-25.

The ALJs considered the record and positions of the parties. The ALJs found the RESA and NRG arguments that PECO's billing format proposal is anti-competitive or violates the Competition Act "to be without merit." RD at 106. The ALJs similarly dismissed RESA's and NRG's other competition and policy arguments in opposition to the Settlement provision. RD at 106. The RESA and NRG exceptions should be denied. The ALJs' conclusion that "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" is well-supported. RD at 106. The Commission should adopt the ALJs' recommendation and approve the Joint Petition is in the public interest, including the terms regarding PECO's residential bill presentment change. RD at 106.

C. Reply to RESA Exception No. 4, Reply to NRG Exception No. 1: The ALJs correctly recommend approval of the Joint Petition's limited revision to PECO's Standard Offer Program to apply for the PECO DSP VI period, as supported by record evidence, consistent with law and policy, and in the public interest. RESA Exc. at 3, 14-18; NRG Exc. at 2, 5-8; RD at 1-2, 26, 45-47, 49-53, 87-89; OCA M.B. at 3-6, 16-24; OCA R.B. at 25-27.

1. The RESA and NRG Exceptions collectively do not provide cause to reject the ALJs' recommended approval of the Joint Petition revision to the SOP.

Both RESA and NRG are the only parties that oppose the ALJs' recommendation that the Commission approve the Joint Petition's Paragraph 64 provisions regarding PECO's Standard Offer Program for the PECO DSP VI period. RESA Exc. at 14-18; NRG Exc. at 5-8; *see* RD at 1-2, 47, 53, 89. RESA and NRG oppose the Joint Petitioners' agreement that "for all SOP contracts

executed after June 1, 2025, EGSs must automatically transfer SOP customers to default service upon expiration of the SOP contract unless the customer affirmatively elects to remain with the SOP supplier.” RESA Exc. at 14; NRG at 5.

This Joint Petition revision to the SOP is part of a compromise in this proceeding, based on the evidence in the record demonstrating that when customers switch to a competitive supplier, in aggregate, they end up paying significantly more than they would have paid had they remained on default service. While RESA and NRG take great pains to try to disparage the default service price and the price to compare as a relevant benchmark – ignoring the almost 30 year statutory and regulatory framework surrounding these concepts – the simple facts of this case demonstrate more than \$800 million in economic harm to customers as a result of switching to a competitive supplier, some of which has been caused by the SOP encouraged and endorsed by the Commission. OCA MB at 16-24; OCA RB at 15-23; RD at 1-2, 45-47, 79-89. In this case, considering that harm, all of the parties except RESA and NRG agreed to retain the good of the SOP – a 7% discount off the price to compare at the time of enrollment – but require that customers make an affirmative choice to remain with their SOP supplier at the end of their SOP contract or be returned to default service. In so doing, the Joint Petitioners correctly note that customers always retain direct access to the retail market. RD at 45-47, 88-89; OCA MB at 21; OCA RB at 19. Under the settlement, customers can elect to participate in the SOP. Customers can elect to switch suppliers during their SOP contract. OCA MB at 21. Customers can elect to return to default service during their SOP contract. *Id.* Customers can elect to remain with their supplier at the end of the SOP contract or switch to a different competitive offer. *Id.* If they do nothing, they will be returned to default service where all of those choices remain available. *Id.*

Despite all of this, RESA asserts in its fourth exception that the prospective change to the SOP – changes that all suppliers and all customers would be informed of – are somehow unlawful. RESA Exc. at 14. RESA provides no citation to any case, statute, or other legal authority to support its claim other than a passing reference to the Commission’s decision in *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 V Order*”). Furthermore, RESA states that the ALJs’ recommendation should be rejected as it lacks evidentiary support. RESA Exc. at 14. RESA opines that if implemented, it would fail to achieve the stated goals of the revisions. *Id.* RESA predicts that approval of the Paragraph 64 SOP revision “will likely lead to the end of the SOP.” *Id.*

NRG objects to such a fundamental change to PECO’s SOP. NRG relies on PECO survey results as evidence. NRG Exc. at 5-6. NRG states that the change to PECO’s SOP conflicts with the Commission’s 12-year old *Retail Market: Intermediate Work Plan Order* and notice requirements set by regulation that apply to EGSs. NRG Exc. at 7, citing *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2337952, Order (Mar. 1, 2012) (*Retail Market Intermediate Work Plan Order*). NRG further contends that the 2020 *PPL DSP V* order is “precedent” and not distinguishable. NRG Exc. at 7-8.

The exceptions of RESA and NRG should be denied and the revision to PECO’s SOP agreed to by the Joint Petitioners should be approved, as recommended by the ALJs. RD at 1-2, 26, 45-47, 49-53, 87-89. NRG’s exceptions repeat NRG’s position as briefed, positions reviewed and rejected by the RD. RD at 1-2, 53, 87-89. RESA’s exceptions ask the Commission to hold to a very narrow standard for evidence of harm – suggesting that only if there is harm that is discrete to the SOP can the Commission modify the SOP – that might be sufficient to support approval of

the change to the SOP agreed to by PECO, OCA, TURN/CAUSE-PA, and other Joint Petitioners. RESA Exc. at 16-18, citing *PPL DSP V*. The ALJs did not err in recommending approval of the revised PECO SOP, as part of the Revised PECO DSP VI, based upon the full record in this proceeding.

The OCA responds further to the particulars of the RESA exception and NRG exception below.

2. The ALJs Correctly Determined that the Paragraph 64 Revision to the SOP is Proper and Within the Commission's Authority.

The OCA submits that NRG's exception based upon the regulatory framework for the SOP and regulations governing EGS obligations to provide notice should be denied. NRG Exc. at 5-8; *but see*, OCA MB at 6, 19-21; OCA RB at 15-21. NRG disagrees with the ALJs recommendation but does identify specific errors of law or fact. The RD addresses development of the PECO SOP, following the Commission's Retail Market Investigation (RD at 46-47), as well as RESA's and NRG's perspective on the interplay between default service and promotion of retail competition (RD at 70-78), and the view of the individual Joint Petitioners (RD at 79-87). *See also*, RD at 46-47, 70-72. The ALJs correctly rejected NRG's and RESA's position that the proposed SOP change is anticompetitive and contrary to Commission regulations or would result in slamming. RD at 1-2, 86-88. Instead, the ALJs noted:

that the 'standard offer' customer referral program is not mandated by the Electricity Generation Customer Choice and Competition Act, and the design of each programs recommended by the Commission in the 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.

RD at 88.

The ALJs determination that approval of the Joint Petition revision to the SOP is within the Commission's authority is supported by the OCA briefs. OCA MB at 6, 19-21; OCA RB at 18-19. Under the Public Utility Code, in particular the Electric Generation Customer Choice and Competition Act (Customer Choice Act), the Commission has the clear authority to "bend" competition where necessary. See, *Retail Energy Supply Ass'n v. Pa. PUC*, 185 A.3d 1206, 1221 (Pa. Cmwlth. Ct. 2018) (*RESA*) and *Coalition for Affordable Util. Servs. & Energy Efficiency in PA. et al. v. Pa. PUC*, 120 A.3d 1087, 1093, 1103 (Pa. Cmwlth. 2015), app. den., 136 A. 3d 982 (Pa. 2016) (*CAUSE-PA*); 66 Pa.C.S. §2801, et seq. In *CAUSE-PA*, the Commonwealth Court stated that the Customer Choice Act "does not demand absolute and unbridled competition." *CAUSE-PA* at 1101. The Commonwealth Court stated that "under certain circumstances, unbridled competition may have to give way to other important concerns." *CAUSE-PA* at 1103. The Joint Petition agreement to require customers to be returned to default service at the conclusion of their SOP contract absent an affirmative choice to remain with their supplier meets the threshold needed for the Commission to bend competition. OCA MB at 6.

Furthermore, the Commission has authority to approve this settlement term and the revised PECO Electric Generation Supplier Coordination Tariff which would give all EGSs notice of the operative SOP provisions, before the EGS decides whether to participate in the SOP during the DSP VI period. RD at 88; Settlement ¶ 64. As discussed in the OCA Main Brief, in 2012, the Commission set forth general guidelines for an EDC Standard Offer Program. OCA MB at 19-20; see, *Retail Market: Intermediate Work Plan Order* at 32. The PUC 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 such as this one. *Id.* at 31-32. The Commission's standards for changing a customer's EGS are clear that a customer is not required to contact their

supplier to initiate a switch “when a Commission-approved program requires the EDC to initiate a change in EGS service.” 52 Pa. Code §57.172(a). As to 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, 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. *See RESA, 185 A.3d at 1221*; and *CAUSE, 120 A.3d at 1093, 1103*.

NRG’s exception alleging the RD is contrary to policy and law is unsound and should be denied.

3. The Joint Petition revision of the PECO SOP for the DSP VI period is supported by the evidentiary record.

The RESA and NRG position that the RD is not supported by record evidence should also be denied. RESA Exc. at 14-18; NRG Exc. at 5-8. The ALJs carefully evaluated the record evidence and properly concluded that the Joint Petition SOP revision should be approved and the objections of RESA and NRG denied. RD at 1-2, 45-47, 49-53, 87-89.

The ALJs did not err in concluding that the record evidence and public interest supports revision of the PECO SOP, even if there are differences between the record in this case and the *PPL DSP V* Order. RD at 88. In *PPL DSP V*, the Commission cited its inability to determine from the record in that case that harm is occurring as result of the existing SOP program. RD at 88, citing *PPL DSP V*. As the ALJs recognized, the supposed standard of proof required by the *PPL DSP V* decision “does not ensure that no harm is occurring as a result of an EDCs existing SOP program.” RD at 88; see, OCA RB at 19.

The ALJs did not err is affording weight to OCA and TURN/CAUSE-PA’s evaluation of the PECO’s SOP program as a source of harm to both SOP participants and to PECO ratepayers,

including confirmed low-income consumers (CLI). RD at 53, 79-80, 83-85. The RD recommendation that the Joint Petition revision to the PECO SOP is supported by the record, reasonable, and in the public interest. RD at 53.

In discovery, PECO provided a chart showing what PECO residential customer paid to suppliers compared to what would have been charged had the customers remained with default service for each month in 2018 through 2023. OCA MB at 18, citing OCA St. 2 at 12; OCA RB at 19-21. In every year residential PECO customers paid more to supplier than compared to the price to compare, *amounting to an excess of \$800 million more than they would have if they remained on default service*. OCA MB at 18 (emphasis in original). The information presented and evaluated by OCA and TURN/CAUSE-PA is not “spurious” or deceitful, misleading, or anti-competitive as alleged by RESA. OCA MB at 22-23; RD at 80-82. Rather, the OCA and TURN/CAUSE-PA acknowledged that the information is not limited to SOP customers. OCA MB at 20. However, OCA explained that the information can and should be used by the Commission to ensure that its market enhancement program approved in 2012 – the SOP – does not exacerbate this harm to customers participating in an SOP with a negative option renewal. OCA MB at 20; OCA RB at 20; OCA St. 2R at 3-4. TURN/CAUSE-PA explained that higher payments for energy is related to higher termination rates that drive higher collection costs and uncollectible expenses which are borne by ratepayers, another example of harm. OCA MB at 20. TURN/CAUSE-PA also linked higher energy payments to an increase in termination rates for confirmed low-income shopping customers. OCA MB at 20; OCA RB at 20; TURN/CAUSE-PA St. 1 at 18; OCA St. 2R at 3-4.

RESA and NRG ask the Commission to disregard the more than \$800 million paid by PECO shopping customers, above what they would have paid at default service rates. RESA Exc. at 15-18; NRG Exc. at 5-8. Yet the OCA explained that the information is compelling and relevant

since the SOP concept is built on the enticement of an initial savings of 7% in exchange for consumer's agreement to receive supply from an EGS. OCA MB at 17-18; OCA RB at 20-21. The ALJs did not err in considering the economic impact on the SOP enrolled consumer at the end of a contract period, in the ALJs determination that the Joint Petition Paragraph 64 revision to the SOP is reasonable, supported by the record, and in the public interest. RD at 1-2, 53, 89; see, OCA RB at 20-21.

Finally, the ALJs correctly accorded no weight to RESA and NRG reliance on the results of a PECO customer satisfaction survey of customers who participated in the SOP between June 1, 2021 and June 30, 2023. RESA and NRG continue to characterize the customer satisfaction results as evidence that no change to the PECO SOP is appropriate. RESA Exc. at 17; NRG Exc. at 5-6; but see, OCA RB at 17-18. For example, NRG's statement that "almost three quarters of the SOP customers are choosing not to remain with their SOP suppliers" is incorrect. NRG Exc. at 6; OCA MB at 17-18; RD at 77, fn. 272. NRG's reference is rounded up from a sum of a percentage of *survey respondents*, not all SOP customers. See, NRG MB at 5, fn 20. RESA similarly cites the report of a satisfactory experience by "80% of respondents" with some aspects of the PECO SOP as probative. RESA Exc. at 17. Importantly, the PECO survey represented only 447 responses out of a total pool of 7,454 customers who were enrolled through the referral program during the two-year period, a sample size way too small to be relied upon. RD at 83-84; OCA RB at 17-18; OCA St. 2 at 10; TURN/CAUSE-PA RB at 9. Counter to the RESA and NRG narrative, the same PECO survey results showed a substantial number of surveyed customers enrolled though PECO and its third-party agent did not even recall enrolling with the program. OCA MB at 17-18, see OCA St. 1 at 12. The ALJs did not err in failing to accept the RESA and NRG position that no revision to the SOP is appropriate.

4. Summary

In summary, the exceptions of RESA and NRG should be denied. The Commission should adopt the ALJs' determination that:

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 program customer referral programs. Accordingly, the SOP under the Settlement is beneficial to customers and the public interest.

RD at 47. The ALJs noted the Joint Petition revision to the SOP as part of the RD recommendation that the Commission approve the Joint Petition as "fair, just, reasonable, and in the public interest."

RD at 53.

D. Reply to RESA Exception No. 5: The RD correctly recommends approval of PECO's new Capacity Proxy Price (CPP) and true-up mechanism as reasonable, in the public interest, and approved by the Commission for use by other EDCs. RESA Exc. at 20-24; RD at 1-2, 20, 34-36, 49-53, 54-59; OCA M.B. at 6-10; OCA R.B. at 6-9.

The Joint Petitioners agree in Paragraphs 31 and 32 to the adopt PECO's proposed capacity proxy price (CPP) and true-up provision as a revision to PECO's DSP V Supplier Master Agreement (SMA). RD at 19-20; Settlement ¶¶ 31-32. The RD recommends approval of the Joint Petition without modification, including the CPP provisions, as in the public interest. RD at 53. The ALJs evaluated RESA's detailed opposition to approval of the CPP on grounds that end user supply price distortions would result, that Load Serving Entities (LSEs) are also affected negatively by the lack of a PJM Base Residual Auction (BRA), and RESA's expectations of harms to the competitive market if the playing field is not levelized. RD at 55-57. The OCA opposed the RESA position, supported by the testimony of OCA witness Dr. Serhan Ogur. RD at 58; OCA MB at 6-10; OCA St. 1R at 3-4. PECO also contested RESA's position. RD at 57; PECO MB at 12-13.

The ALJs disagreed with RESA's individual arguments that the CPP proposal is competitively unfair to EGS. RD at 2, 59.

RESA's exception repeats some of the same arguments presented in RESA's briefs. Compare, RESA Exc. 20-24, RD at 54-57 (summary of RESA objections). RESA's position that if EGSs cannot share the CPP protections, then PECO's default service plan should not include it is unsound. *See*, RESA Exc. at 22-24. The record does not support grant of RESA's exceptions, for the same reasons set forth in the RD. RD at 1-2, 57-59. In addition to rejecting RESA's position that the CPP proposal is competitively unfair, the ALJs also took note that the "Commission has already approved the use of a CPP in default service procurements" for the default service plans of other EDCs, to account for this external uncertainty of the timing of PJM BRAs. RD at 58-59; OCA MB at 8-10; OCA RB at 6-9, citing *Joint Petition of Metropolitan Edison, et al for Approval to Modify their Default Service Program*, Docket No. P-2021-3030012, Order (Aug. 2, 2022); *Petition of Duquesne Light Co. for Approval to Modify its Supplier Master Agreement*, Docket No. P-2020-3023149, Order at 4 (Jan. 14, 2021). The RESA Exceptions do not acknowledge, much less distinguish, these pertinent Commission orders. The RD correctly recommends that RESA's objection be denied. RD at 1-2.

The Commission should adopt the RD on this issue and approve the Joint Petition, including the CPP provision, as supported by the record and in the public interest.

E. Reply to RESA Exception No. 6: The RD correctly determines that PECO's agreement to purchase additional Solar Alternative Energy Credits through long-term contracts is consistent with PECO's obligations under the Alternative Energy Standards Portfolio Act, supported by the record, and in the public interest. RESA Exc. at 24-25; RD at 1-2, 21, 31-38, 49-53, 59-64; OCA M.B. at 10-11; OCA R.B. at 9-12.

RESA is not a party to the Joint Petition. RESA opposed the Joint Petition's provisions regarding procurement of default supply and compliance with the Alternative Energy Standards

Portfolio Act (AEPS), specifically the Joint Petition's agreement that PECO will acquire additional solar energy, capacity and alternative energy credits through 10-year, fixed price purchase power agreements to meet the default service requirements of residential customers. RD at 59-60; RESA MB at 17. RESA excepts to the RD on the grounds that the ALJs should not have recommended approval of these Joint Petition provisions without modification, due to the potential negative impact of the proposal on the competitive market. RESA Exc. at 24-25.

RESA's exception should be denied. The ALJs evaluated the record created by the parties before the Joint Petition as well as the terms and merits of the Joint Petition provisions regarding PECO's commitment to acquire more solar supply including AECs. The composition of PECO's default service portfolio for DSP VI was a contested issue, between PECO and the Earth Justice Advocates (EJA), with input from consumers and interested parties during in the public input hearings. RD at 7-13 (themes of public input hearing testimonies), 33-36. As the ALJs observed, the Settlement reflects an agreement between PECO, EJA, and other parties that includes a commitment by PECO to acquire additional solar energy, capacity and alternative energy credits (AECs) for the residential class as part the Revised DSP VI. RD at 18-19 (Settlement ¶¶ 21-25, 36, 39), 31-33, 37. The additional solar contracts and AECs will also help PECO comply with obligations under the Competition Act and Alternative Energy Portfolio Standards Act. RD at 36-38. The ALJs singled out the express support of PECO, EJA, OCA, and OSBA for the solar commitments as evidence of the parties' compromises on procurement and implementation plans and AEPS compliance and support for approval of the Settlement as in the public interest. RD at 49-53.

The ALJs also examined RESA's opposition to the Joint Petition, including PECO's commitment to use 10-year term PPAs to acquire additional solar supply and AECs. RD at 59-64.

PECO, the OCA, PAIEUG, and Calpine each critiqued and opposed RESA's position that Revised PECO DSP VI procurement plans in the Joint Petition should be modified to address competitive market concerns. RD at 60-64. The ALJs observed that "PECO is continuing its long-standing practice of allocating solar AECs delivered under PECO's separate procurements to default suppliers... [a]nd RESA has provided no basis, either legal or factual, for any change in this methodology." RD at 64. The ALJs accepted Calpine's assessment that "RESA's proposal aims to replace reliance on EGSs to handle their own AEC procurement costs, with a shifting of costs to all customers." RD at 63-64; Calpine RB at 4; PECO MB at 13, 14.

RESA's exception faults the RD for failing "to address RESA's concerns" that modifications are necessary. RESA Exc. at 25. Contrary to RESA's exception, the ALJs properly concluded that RESA's opposition to these Joint Petition provisions are not supported and should be rejected. RD at 1-2, 53, 64.

F. Reply to RESA Exception No. 7: PECO's agreement to change from quarterly to semi-annual adjustment of default service rates for Residential and Small Commercial class customers is reasonable and properly approved by the ALJs. RESA Exc. at 25-27; RD at 1-2, 21-22, 39-41, 49-53, 65-67; OCA M.B. at 10-11; OCA R.B. at 9-12.

The Joint Petitioners agree in Paragraphs 40 that PECO's recovery of the cost of default service from default service customers will continue consistent with PECO DSP V, with one change. RD at 21; Settlement ¶ 40. "For the Residential and Small Commercial customer classes, default service rates established pursuant to the [Generation Supply Adjustment] will change semi-annually instead of quarterly and over/undercollections of default service costs will continue to be reconciled on a semi-annual basis." Settlement ¶ 40. RESA excepts to the ALJs' approval of this change and the Settlement. RESA Exc. at 25-27; RD at 39-41, 53, 65-67.

RESA's Exception repeats the points made by RESA's witness and considered by the ALJs. RESA Exc. at 26-27, citing RESA St. No. 1-R at 12, 13; compare RD at 65 (summary of RESA position, citing RESA MB and RESA St. No. 1-R at 12, 13). Importantly, RESA's generalized theory the default service rate should be aligned with spot market rates, as support of more frequent adjustment, does not account for the particulars of PECO's Revised DSP procurement plans. OCA witness Dr. Ogur recommended to change to semi-annual adjustment to provided greater rate stability for residential default service customers, as a benefit to PECO administratively, and to align PECO with the practice of other EDCs that use semi-annual adjustment for residential default service prices. OCA MB at 11-12; RD at 38-39, 66-67. PECO agreed to the change as part of the Joint Petition, acknowledging that other EDCs already adjust similar default service rates semi-annually. In response to RESA's abstract price signal concern, OCA emphasized that PECO's default service portfolio was proposed to include no more than 1 percent of spot purchase, an amount that would be lowered under the Settlement and PECO's agreement to purchase more solar AECs as an offset to that spot market slice. OCA MB at 12-13.

Contrary to RESA's exceptions, the RD is supported by the record and in the public interest. The ALJs correctly "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." RD at 67. In addition, the ALJs took note of the Commission's approval of semi-annual PTC rate changes for Duquesne Light Company, the First Energy Companies, and PPL Electric Utilities Corp. RD at 67 (citations omitted). RESA's exceptions should be denied. The ALJs recommended approval of the Joint Petition provision is supported by the record, in the public interest, and should be adopted. RD at 53, 67.

G. Reply to RESA Exception No. 8. The RD’s approval of the Joint Petition terms regarding PECO’s Time of Use rate offerings and commitment to conduct an evaluation is consistent with PECO’s obligations and the public interest. RESA Exc. at 27-28; RD at 1-2, 23-24, 41-44, 49-53, 68-70; OCA MB at 13-15; OCA RB at 13-15.

The RD properly determined that the Settlement Petition provisions regarding PECO’s offering of Time of Use (TOU) rates during the DSP VI period and PECO’s related commitments are consistent with PECO’s legal obligations under Act 129, supported by the record and in the public interest. RD at 1-2, 23-24, 41-44, 49-53; *see* Settlement ¶¶ 46-62. RESA’s position that PECO’s commitment to conduct an evaluation of its TOU offerings, as implemented during the DSP VI period, is unreasonable and anti-competitive was properly examined by the ALJs and rejected. RD at 1-2, 68-70. RESA’s exception to the RD focuses on the planned evaluation, yet RESA more broadly requests “that Non-Unanimous Settlement provisions regarding TOU rates should be rejected.” RESA Exc. at 27-28.

The ALJs did not err in recommending approval of the Joint Petition provisions regarding TOU rates and related terms, as part of PECO’s Revised DSP VI. The Settlement provides a detailed review of PECO’s provision, rate structure, rate design, and communications plan to offer TOU rates pursuant to the Settlement. R.D. at 23-26 (quoting Settlement ¶¶ 46-62), 41-45. Settlement Paragraph 47 provides that PECO will perform a one-time evaluation of the Company’s current TOU rate structure and will present the results in its next default service filing, with details regarding the scope of PECO’s evaluation. R.D. at 23, Settlement ¶ 23. The ALJs took note of PECO’s original proposed modifications to its TOU offerings. The ALJs further noted:

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). The OCA also recommended that PECO perform additional analyses and report its findings in the DSP VII filing ....

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.

R.D. at 42, citing OCA St. 2 at 16-20, OCA St. 2-SR at 2-4; OCA St. 1 at 34-36; OCA St. 1-SR at 16 (testimonies of OCA witnesses Dr. Serhan Ogur and Barbara Alexander). The determination of the ALJs that the TOU provisions of the Settlement are in the public interest is soundly based upon the record. R.D. at 49-53.

The OCA briefs support approval of the Settlement TOU provisions including PECO's agreement to conduct the evaluation. OCA MB at 13-15; OCA RB at 13-15. The OCA addressed and recommended denial of RESA's opposition to PECO's agreement to conduct an evaluation. The ALJs reviewed RESA's opposition to the Joint Petition agreement that PECO conduct a one-time evaluation as unnecessary, interfering with the competitive market, and an improper use of ratepayer funds. RD at 1, 68-70. The RD summarizes both the OCA and PECO replies to the RESA arguments. RD at 68-69.

The ALJs concluded based upon the record:

PECO and other EDCs have an unconditional, statutory obligation to offer TOU rate option to eligible default service customers under Section 2807(f)(5) of the Public Utility Code. RESA has not shown how PECO could fulfill its statutory obligation to offer a TOU 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.

RD at 69-71, citing 66 Pa.C.S. § 2807(f)(5).

The ALJs' recommendation that the Commission approve the TOU provisions of the Joint Petition without modification is supported as a matter of law and the record. RESA's exception, as based upon its testimony and arguments already reviewed and rejected, should be denied.

### III. CONCLUSION

The Office of Consumer Advocate recommends that the Public Utility Commission adopt the Recommended Decision of ALJs Vero and Ashton and deny the Exceptions of RESA and NRG. Approval by the Commission of the Joint Petition for Non-Unanimous Settlement without modification, as recommended by the ALJs is in the public interest, supported by the record, and consistent with law and policy.

Respectfully submitted,

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