

COMMONWEALTH OF PENNSYLVANIA



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November 22, 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 Petition for Reconsideration and/or Clarification in the referenced proceeding.

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

Respectfully submitted,

/s/ Emily A. Farren

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Enclosures

cc: The Honorable Eranda Vero (email only)
The Honorable Arlene Ashton (email only)
Office of Special Assistants (ra-OSA@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Petition of PECO Energy Company for Approval :
of its Default Service Program for the Period of : Docket No. P-2024-3046008
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 Petition for Reconsideration and Clarification, 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 22nd day of November 2024.

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Dated: November 22, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PETITION OF THE
OFFICE OF CONSUMER ADVOCATE
FOR RECONSIDERATION AND/OR CLARIFICATION

The Office of Consumer Advocate (OCA) hereby submits this Petition for Reconsideration and/or Clarification pursuant to Sections 5.41 and 5.572 of the Public Utility Commission’s (Commission) regulations. 52 Pa. Code §§ 5.41, 5.572. The OCA requests that the Commission reconsider its Order entered November 7, 2024 (*PECO Order*), in this docket and allow for full implementation of the settlement without modification, including the proposed changes to PECO Energy Company’s (PECO) Standard Offer Program (SOP) as delineated in the Joint Petition for Approval of Non-Unanimous Settlement (Joint Petition). In the alternative, the OCA requests that the Commission clarify that the scope of its order is limited narrowly to PECO’s SOP and does not more broadly apply to the clear, uncontested, and unequivocal harms present in the competitive market as outlined by the evidence in this proceeding.

I. INTRODUCTION

This proceeding concerns PECO’s Petition for Approval of Its Default Service Program for the Period from June 1, 2025, through May 31, 2029 (PECO DSP VI). The OCA’s Initial Brief sets forth the procedural history of this case through the OCA’s signing and support for the Joint Petition for Non-Unanimous Settlement (Joint Petition). PECO, the OCA, the Office of Small

Business Advocate (OSBA), the Tenant Union Representative Network and Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (together TURN/CAUSE-PA), the Energy Justice Advocates (EJA) filed the Joint Petition. Retail Energy Supply Association (RESA) and NRG opposed the Joint Petition.

On September 3, 2024, ALJs Vero and Ashton issued the Recommended Decision (RD), recommending that, among other things, the Joint Petition be granted, and the Non-Unanimous Settlement be approved, without modification. As to the matter at issue in this Petition for Reconsideration, the ALJs described the SOP proposal and RESA's opposition:

The Joint Petition recommends the Commission reform the SOP so that EGSs entering into SOP contracts with customers executed after June 1, 2025 “must automatically transfer SOP customers to default service upon the expiration of the SOP contract unless the customer affirmatively elects to remain with the SOP supplier.” RESA believes that the Joint Petition will likely result in the end the SOP and strongly opposes its adoption as it offers no other affirmative steps to address the competitive market concerns addressed by RESA.

RD at 70 (internal citations omitted).

After analyzing the evidence presented, the ALJs concluded that the Joint Petition's modification to the SOP was appropriate, was not a restraint on competition, and was within the Commission's authority to modify:

In their respective briefs, RESA, NRG, and AP&G oppose the change to PECO's SOP agreed to by the settling parties. Their discussion on this issue boils down to three basic arguments: (1) returning SOP customers to default service is anticompetitive and contrary to Commission regulations allowing EGSs to automatically convert existing contracts with proper customer notice; (2) adopting the change to PECO's SOP outlined in the Settlement would constitute illegal “slamming”; and (3) requiring affirmative consent to remain with an EGS after expiration of the SOP contract term unlawfully regulates EGS pricing. We do not find these arguments persuasive. We note that “standard offer” customer referral programs are not mandated by the Electricity Generation Customer Choice and Competition Act, and the design of such programs recommended by the Commission in its Retail Markets Investigation is not prescribed by regulation. As such, we agree with PECO, OCA and TURN/CAUSE-PA that the Commission has the power to change the SOP design at any time.

RD at 87-88 (internal citations omitted).

On November 7, 2024, the Commission entered the *PECO Order*, on a 3-2 vote with Commissioners Zerfuss and Barrow dissenting, that accepted the ALJs' recommendations except in that it modified the Joint Petitioners' agreement to change what occurs at the end of the SOP contract term ordering that:

PECO Energy Company shall continue its Standard Offer Program in accordance with 52 Pa. Code § 54.10 and the *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order entered March 2, 2012), by providing that at the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, enroll with a different EGS, or return to default service, the customer shall remain with the EGS on a month-to-month basis, and not be subject to any termination penalty or fee.

PECO Order at ¶ 6.

In the dissenting Oral Statement of Vice Chair Kimberly Barrow, joined by Commissioner Kathryn L. Zerfuss, the Vice Chair raised concerns regarding the majority's interpretation of Section 54.10 of the Commission's regulations, 52 Pa. Code § 54.10. In particular, Vice Chair Barrow stated:

Section 54.10 does not prohibit giving customers the option, at the beginning of the contract, to make the choice to return to default service when that contract ends. I don't believe the regulation was intended to prohibit the flexibility of a contract to not automatically renew . . . with the same EGS.

Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2025, Through May 31, 2029, Docket No. P-2024-3046008, Oral Statement of Vice Chair Kimberly Barrow, joined by Commissioner Kathryn L. Zerfuss Nov. 7, 2024) (*Oral Statement of Vice Chair Barrow*).¹

¹ Vice Chair Barrow's Oral Statement available at <https://www.puc.pa.gov/about-the-puc/public-meetings-hearings/> beginning at 5:25.

II. STANDARD OF REVIEW

As set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1985), the standards for granting a petition for reconsideration are as follows:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad case, wherein it stated that “[p]arties...cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issues was either unwise or in error.

Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. at 599, (quoting *Pennsylvania R.R. Co. v. Pa. P.U.C.*, 118 Pa. Super. 180 (1935)).

In this Petition, the OCA raises points that the Commission did not fully consider and which the Commission may have overlooked. The OCA submits that the Commission did not fully consider: (1) the inconsistency of the *PECO Order* compared to the Commission’s Order and Opinion *In Re: Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period from June 1, 2025 through May 31, 2029*, Docket No. P-2024-3047290, Order at 1-2 (Nov. 7, 2024) (*2024 PPL DSP Order*); (2) the Standard Offer Program (SOP) is a retail market enhancement that is not required by law; and, (3) the weight of clear evidence proffered by the parties to the Joint Petition.

III. RECONSIDERATION

A. The Commission Appears to Have Overlooked its Recent Decision Regarding the Elimination of PPL Electric’s Standard Offer Program.

Pursuant to the *Duick* standard, the Commission should grant reconsideration and resolve the apparent conflict and inconsistency between the Commission’s order in this proceeding and resolution of the PPL DSP VI petition. In this proceeding, the Commission justified rejection of the Joint Petition’s proposed modification to PECO’s SOP for the DSP VI period as, among other things, “maintain[ing] consistency among SOP programs across the Commonwealth...,” *PECO Order* at 80. Yet on the same day, the Commission approved the elimination of the SOP in the service territory of a different EDC, PPL Electric. *See 2024 PPL DSP Order* at 1-2 (Order adopting Recommended Decision to approve the Joint Petition for Approval of Settlement without modification); *see 2024 PPL DSP Order RD* at 8, 27-29. (The RD recommended approval of elimination of the PPL SOP for the DSP VI period as in the public interest.)²

Clearly, based upon the Commission’s rulings in this proceeding and the *2024 PPL DSP Order*, for the DSP periods beginning June 1, 2025, for these two EDCs, there will be no consistency among SOP programs. Thus, consistency cannot be the basis of rejecting this program modification. In this case, the Commission rejected a single, prospective modification to the current PECO DSP V version of its SOP program, a change which PECO, OCA, TURN/CAUSE-PA and other parties to the Joint Petition supported and RESA and NRG opposed. Yet, as a result of the Commission’s *2024 PPL DSP Order*, there will be no SOP in effect during the PPL DSP period beginning June 1, 2025. Accordingly, PPL default service customers will not bear the costs of supporting an SOP and EGSs will market their services independently, without the option or

² The Joint Petition for Settlement of the PPL DSP VI Petition, Paragraph 21 states “The proposal of OCA and CAUSE-PA to end the Standard Offer Program for the DSP VI period is accepted. All parties reserve the right to make proposals regarding a standard offer program in a future default service proceeding.” *2024 PPL DSP RD* at 8.

obligations imposed by such a retail enhancement program. Whereas pursuant to the *PECO Order*, customers will bear the costs of supporting the SOP without the benefit of any enhancements to this Commission-imposed program that would protect consumers at the end of the term. *See*, OCA MB at 16-24; OCA RB at 15; Joint Petition ¶ 63 (Cost recovery and SOP modification). Importantly, the restrictions that were agreed to in the Joint Petition settlement would have only applied to contracts entered prospectively under the SOP. Joint Petition ¶¶ 63, 64. All suppliers in PECO's service territory would be free to market their services independently from the SOP without any such restrictions. The agreed to restrictions that the Commission rejected in the *PECO Order* – even assuming they had the potential of effectively ending the SOP because suppliers choose not to participate – would at worst, put PECO customers on the same playing field as PPL's customers beginning June 1, 2025. If suppliers do choose to participate in the SOP under the Joint Petition's terms, PECO customers would have access to SOP-contracts that protect them from being charged after the end of the SOP term more than the default service price and would still retain access to the full panoply of supplier contracts that exist outside the SOP.

The OCA submits that the Commission should grant reconsideration and approve the PECO Joint Petition Paragraph 63 and 64 provisions regarding PECO's SOP for the DSP VI period. The Commission's interest in uniformity of SOPs across all EDC service territories does not justify rejection of the Joint Petition's proposed modification to PECO's SOP for the DSP VI period as no such uniformity is possible given the inconsistency between the PECO and PPL proceedings.

B. The Commission Did Not Fully Consider that the Standard Offer Program is a Retail Market Enhancement Not Required by Law.

Pursuant to the *Duick* standard, the OCA submits that reconsideration is appropriate given the Commission's standard of review of the Joint Petition's proposed modification of the PECO

SOP for the DSP VI period, in contrast to the Commission’s approval of the termination of PPL’s SOP for the PPL DSP VI period. There is no reasonable basis to conclude that the Commission has the authority to end the SOP in one service territory – PPL – but that it does not have the authority to modify the SOP in other service territory – PECO. The Commission’s order fails to acknowledge that the SOP is a Commission-imposed market enhancement program and – as recognized by the ALJs – “‘standard offer’ customer referral programs are not mandated by the Electricity Generation Customer Choice and Competition Act, and the design of such programs recommended by the Commission in its Retail Markets Investigation is not prescribed by regulation. As such . . . the Commission has the power to change the SOP design at any time.” RD at 88.

In the *PECO Order*, the Commission references the 2012 “final guidelines for program structure of SOPs in the Commission’s *RMI IWP Final Order*.” *PECO Order* at 74, citing *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2337952, Final Order at 31-32 (Mar. 1, 2012) (*IWP Order*). The Commission acknowledged that following the *IWP Order*, the details regarding implementation and logistical elements of an EDC’s SOP would be determined in the EDC’s future DSP proceedings. *PECO Order* at 74. In denying the Joint Petition’s proposed modification to the PECO SOP for the DSP VI period, the Commission elevates the guidelines into rigid requirements. Although the SOP is meant as an enhancement to retail competition, the Commission has rejected the Joint Petition’s proposal as amounting to a restriction on competition and so subject to certain evidentiary standards, based upon the 2020 PPL DSP proceeding. *PECO Order* at 78-79, citing *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, (Dec. 17, 2020) (*2020 PPL DSP Order*).³ Respectfully, the Commission’s decision in the prior PPL case, *2020 PPL DSP Order*, should not control the outcome in this case and the Commission should grant reconsideration and reverse its decision to deny the Joint Petition’s modification to the PECO SOP for the DSP VI period. Significantly, ALJs Vero and Ashton reviewed the record and pleadings and recommended that the Commission approve the Joint Petition’s modification of the SOP, over the opposition of RESA and NRG. RD at 87-88; OCA MB at 16-24; OCA RB at 15-22; OCA Reply Exc. at 5-14. The Commission’s *2024 PPL DSP Order* – issued the same day as the order in this case – stands in contrast with the Commission’s position in this case that PECO’s SOP must continue without modification. Here, the Commission appears to needlessly draw a bright line that its *IWP Order* requires an EDC to have an SOP, inclusive of a term that at the end of the SOP contract, the customer continues with the EGS. *PECO DSP VI Order* at 9, 74-81, ¶ 6. The Commission should reconsider its elevation of the *IWP Order* as somehow creating a binding standard for this case where clearly the *IWP Order* guidelines have not precluded the Commission from approving – some 12 years later – a DSP for PPL that will not include the retail enhancement of an SOP.

As outlined in more detail below, the necessity of an SOP – inclusive of a term specifying that at the end of the SOP contract, the customer remains with the EGS – as a retail market enhancement is no longer a given. For the reasons set forth below and in the OCA briefs and reply exceptions, as well as those of PECO, TURN/CAUSE-PA, and other Joint Petitioners on this issue, the Commission should reconsider and approve the Joint Petition’s modification of the PECO SOP. OCA MB at 6, 16-24; OCA RB at 15-22; OCA R.Exc. at 5-13; PECO MB at 17-19; PECO RB at 7-9; TURN/CAUSE-PA RB at 6-14.

³ This *2020 PPL DSP Order* is alternately referred to in pleadings, the RD, and *PECO Order* as “*PPL DSP V*.”

C. The Commission's Reliance on Section 54.10, Without Distinguishing Section 57.172(a), Supports Reconsideration.

The Commission denied the Joint Petition's proposed modification of the PECO SOP based in part of the role of Section 54.10(a) as governing the notice obligations of an EGS serving a customer enrolled through an SOP. *PECO Order* at 76, 91, Ordering ¶ 6, citing 52 Pa. Code § 54.10. According to the Commission, the role of Section 54.10 is tied to the Commission's proposed SOP framework, resulting from the *IWP Order*. As addressed above, the OCA contends that the Commission has overlooked or failed to consider alternatives to such strict adherence to the *IWP Order* guidelines. As demonstrated by the Commission's approval of the termination of the SOP for PPL's DSP period beginning June 1, 2025, the Commission should be open to changes in the SOP as a Commission-approved program meant to enhance retail competition. Contrary to the Commission's decision, Section 54.10 should not be viewed as a barrier to approval of the Joint Petition's modification of the PECO SOP. In her Oral Statement at Public Meeting, Vice Chair Kimberly Barrow agreed, stating:

Section 54.10 does not prohibit giving customers the option, at the beginning of the contract, to make the choice to return to default service when that contract ends. I don't believe the regulation was intended to prohibit the flexibility of a contract to not automatically renew . . . with the same EGS.

Oral Statement of Vice Chair Barrow.

As the OCA briefed, the PECO SOP proposed by the Joint Petition would be implemented through revisions to the PECO Supplier Tariff and changes to the script to introduce customers to the SOP concept, during the DSP VI period. OCA MB at 20-21; OCA RB at 15, 18, 21-22; *see also*, PECO MB at 17-19. Because the SOP is a Commission-approved program, the OCA explained that Section 57.172(a) provides that the customer would not be required to contact their

supplier, for the customer to be switched back to PECO as the EDC, under the SOP terms proposed by the Joint Petition. OCA MB at 19, *citing* 52 Pa. Code § 57.172(a)⁴; OCA RB at 19, 22.

Reconsideration and reversal of the Commission’s denial of the Joint Petition’s proposed modification of the PECO SOP for the DSP VI period is appropriate, given the Commission’s approval of PPL’s prospective termination of its SOP. Importantly, whether and under what terms an EDC’s SOP will operate is specific to that EDC’s SOP, as noticed by the EDC’s Supplier Tariff. The Commission’s concern that the Joint Petition modification of the PECO SOP would conflict with standard EGS notice obligations, does not properly account for the SOP as a Commission-approved program to enhance customer awareness of retail competition. Customer awareness of the SOP offer and terms of participation commences through a contact with PECO as the EDC, rather than through solicitation by an EGS and acceptance by a customer. OCA MB at 17. The Commission’s elevation of the requirements of Section 54.10 of the regulations – rooted in a decade’s old implementation order on these retail market enhancements – fails to account for the fact that customers entering the SOP do so through an introduction by the EDC, not because they are looking for suppliers or because of a supplier solicitation. OCA MB at 17; TURN/CAUSE-PA RB at 11, 13.

D. The Commission Overlooked Clear Evidence Proffered by the Parties to the Joint Petition.

Pursuant to the *Duick* standard, the OCA submits that the Commission also overlooked clear evidence proffered by the parties to the Joint Petition in several key areas and gave undue

⁴ Section 57.172. Customer contacts the EDC. (a) When a customer or a person authorized to act on the customer’s behalf contacts the EDC to request a change from the current EGS or default service provider to a selected EGS, the EDC shall notify the customer that the selected EGS shall be contacted directly by the customer to initiate the change. This notification requirement does not apply when a Commission-approved program requires the EDC to initiate a change in EGS service.

weight to RESA's speculative statements and reliance on the results of a limited and not statistically significant survey by PECO of past SOP customers.

First, OCA witness Barbara Alexander provided extensive testimony regarding the risks to customers under PECO's current SOP design and recommended that PECO eliminate its SOP because of these risks. OCA MB at 16-21; OCA RB at 15-20; TURN/CAUSE-PA RB at 9-12; *see* OCA St. No. 2 at 5-15; OCA St. No. 2-R at 2-3, 5-6, OCA St. No. 2-SR at 1-2, 4-6. Second, TURN/CAUSE-PA witness Elizabeth R. Marx also provided extensive testimony regarding the significant risks that higher priced electricity presents to low-income PECO customers. *See* TURN/CAUSE-PA St. No. 1 at 5-18; TURN/CAUSE-PA St. No. 1-R at 2-6, 10; OCA MB at 20; OCA St. 2R at 3-4. In total, the OCA and TURN/CAUSE-PA presented evidence demonstrating the economic harm customers experience because, in part, of the current PECO SOP end of contract result: subjection to month-to-month unregulated EGS pricing. OCA MB at 16-21; OCA RB at 15-20.

The Commission misplaced reliance on RESA's speculative statements suggests economic harm – in an amount of over \$800 million – is not enough harm to support the modification to the SOP as set forth in the Joint Petition when it stated:

Similar to the Commission's determination in [2020 PPL DSP Order], we find that the record does not support that a harm has occurred as a result of the SOP. We also agree with RESA that customers paying more for EGS service than the [Price to Compare] does not necessarily prove that a harm is occurring, because customers *could be* making shopping decisions based on factors other than price, such as the specific product offered or the length of the contract. Further, we note that the Joint Petitioners did not demonstrate that no reasonable alternative exists to the proposed modifications to the SOP.

PECO Order at 80 (emphasis added).

In reaching this conclusion, the Commission elevated speculation – RESA's assertion that customers *could be* making shopping decisions based on something other than price – over the

facts that customers were collectively paying in total \$800 million more than they otherwise could pay on default service. This conclusion cannot hold based on the evidence in the record. There was no record evidence suggesting that a significant number of customers were choosing to pay more than the PTC for reasons other than price,⁵ or that the value of any such decision outweighs the economic harm totaling \$800 million.⁶ The Commission should not substitute speculation for evidence in support of its conclusion. *See Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990) (substantial evidence that is legally credible cannot be mere ‘suspicion’ or a ‘scintilla’ of evidence). Instead, the Commission should reconsider its rejection of the settlement term and adopt it as a reasonable alternative. The OCA submits that the modification to PECO’s current SOP, as delineated in the Joint Petition – to return customers to default service when customers did not affirmatively choose to stay with an EGS at contract-end – is a reasonable alternative.⁷

⁵ The OCA acknowledges that some customers at the public input hearings testified that they were or would pay more for renewable energy but submits that this is alone is an insufficient basis for the Commission’s conclusion that \$800 million in costs above the PTC does not constitute harm. Indeed, the PIH testimony noted the higher cost renewable energy from suppliers raised affordability concerns. *See*, RD at 7-8,12-13 (summary of PIH testimony).

⁶ RESA labelled the OCA and TURN/CAUSE-PA evaluation of the PECO billing data as “spurious,” *i.e.* false or deceitful. OCA MB at 20. But RESA’s witness did not contest or dispute the PECO billing data. OCA MB at 23; OCA St. 2 at 12-13, OCA St. SR at 4-5. Thus, there was no evidence in contrast to this economic harm.

⁷ Another reasonable alternative to the Commission’s modification of the Joint Petition is the elimination of PECO’s SOP. The OCA developed a record in support of that outcome – and it would be consistent with the outcome the Commission approved in *2024 PPL DSP Order*. However, as a party to the Joint Petition, the OCA compromised and joined in support of the SOP provisions in Paragraphs 63 of the 64 of the Joint Petition. The OCA still requests through this Petition that the Commission grant reconsideration and approve the Joint Petition Paragraphs 63 and 64 regarding PECO’s future SOP. Nonetheless, if the Commission does not want to accept the Joint Petition-proposed solution, based upon the record in this proceeding and developments in other EDC DSP proceedings, there is support for a different modification by the Commission of the Joint Petition: elimination of the SOP in PECO service territory. Briefly, (1) termination of the PECO DSP SOP was the primary recommendation of OCA witness Alexander in her extensive testimony; (2) the *2024 PPL DSP Order* affirmed prospective termination of the PPL SOP; and (3) termination of the SOP is contemplated for another EDC, as set forth in the Recommended Decision (*2024 DLC DSP RD*) to approve without modification, the Joint Petition for Approval of Settlement of All Issues in the Duquesne Light Company (DLC) DSP X proceeding. *See* OCA St. No. 2 at 5-15; OCA St. No. 2-R at 2-3, 5-6, OCA St. No. 2-SR at 1-2, 4-6; *see also*, *2024 PPL DSP Order* at 1-2; *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period June 1, 2025 Through May 31, 2029*, Docket No. P-2024-3048592 (RD at 28) (*2024 DLC DSP Petition*). While the *2024 DLC DSP Petition* case is not yet final, the OCA notes that no party has filed exceptions to the RD issued on October 31, 2024.

The OCA submits that the Commission also incorrectly gave weight to a PECO customer satisfaction survey that was superficial and insufficient, while the Commission overlooked record support for approval of the Joint Petition Paragraph 63 and 64 provisions. The Commission accepted RESA’s reference to “a customer satisfaction survey of SOP participants between June 2021 and June 2023 showing that eighty-percent of respondents reported a positive experience with PECO’s SOP” as support for the Commission’s rejection of the Joint Petition’s SOP modification. *PECO Order* at 79, *citing* RESA Exc. at 17. Yet, the Commission does not acknowledge or overlooked the full record discussion of the PECO survey, particularly the testimony of OCA witness Barbara Alexander. As the OCA briefed, “RESA’s touting of ‘80% satisfaction’ should not be viewed as probative, given the small number of respondents to the survey.” OCA RB at 17-18; OCA R.Exc. 12; *see also* TURN/CAUSE-PA RB at 8.

Turning to the Company’s survey results, OCA witness Alexander provided the following testimony:

Q. HAS PECO UNDERTAKEN ANY ANALYSIS OF WHETHER CUSTOMERS UNDERSTAND THE MATERIAL TERMS AND CONDITIONS FOR THIS PROGRAM OR THEIR ENROLLMENT STATUS AT THE END OF THE SOP CONTRACT?

A. As a result of the prior DSP settlement, PECO did conduct a survey of its Standard Offer customers.⁸ Of the 7,454 customers enrolled in Referral Program, 447 customers responded to this email survey (that was the only way the survey was conducted). PECO reported the following summary of this survey results:

- a. 28% of those who enrolled in the SOP and was billed by an EGS did not recall signing up or enrolling while 71.8% recalled signing up;
- b. 51% selected a “new” EGS after 12-month contract; 20% returned to default; 20% remained with EGS; 8.4% withdrew during the 12-month term;
- c. 81% reported a positive experience—savings were emphasized as well as ease of enrolling; **18.7% had negative response—not clear process after the 12-month period; lack of sufficient communication;**

⁸ PECO Response to TURN/CAUSE I-10.

- d. Several comments reflected the customers experience in making the enrollment and change of supplier easier.

Q. DO YOU HAVE ANY COMMENTS ON THIS SURVEY AND ITS RESULTS?

- A. Yes. The survey confirms that a substantial number of the surveyed customers that PECO and its agent personally enrolled with an EGS **did not recall enrolling with this program**. Furthermore, the fact that the survey did not capture sufficient demographic data to determine the statistical representation of those enrolled is a serious defect in terms of relying on these results. I acknowledge that customers who recently enrolled in this program have seen the savings of 7% or more since the PTC has gradually increased in the last two years during the 12-month SOP contract. **However, this survey does not capture what customers actually paid after the 12-month contract or allow for any understanding of the customer's experience with the EGS renewal process.**

OCA St No. 2 at 10 (emphasis added).

In sum, the Commission's reliance on RESA's "80% satisfaction" measure as justification for denial of the Joint Petition SOP terms, affords undue weight to the opinions of roughly 80% of 447 respondents to the PECO e-mail survey of SOP customers enrolled during just two years out of the four-year PECO DSP V period. Respectfully, PECO's survey is indicative of very little. As OCA witness Alexander explained, the survey is limited in scope and quality of demographic information, a defect which weighs against reliance on the results. OCA St. No. 2 at 10.

The ALJs acknowledged the OCA's concern that the evidentiary standard set forth in *PPL DSP V*, as a predicate for future revision to an SOP, did not guard against harms occurring during the SOP then in effect. RD at 88; *see* OCA RB at 19. The Commission should grant reconsideration and review the record evidence overlooked that weighs in support of approval of the Joint Petition Paragraph 63 and 64 SOP provisions.

IV. CLARIFICATION

If the Commission denies the instant Petition and reaffirms its decision to modify the Joint Petition as set forth in Ordering Paragraph 6, the OCA seeks clarification of the Commission's *PECO Order*, insomuch that any precedential value of the *PECO Order* is limited only to SOP related proceedings and cannot be extrapolated or interpreted in future, non-SOP Commission proceedings.

Specifically, the OCA requests the Commission clarify that its statements concerning \$800 million of harm "does not necessarily prove that harm is occurring" is limited to the Commission's interpretation of the facts of this case and that its conclusion that evidence of harm, *i.e.* "this alleged harm appears to be a conclusion resulting from customers generally shopping with EGSs rather than a harm, specific to SOP customers, associated with PECO's existing SOP" is the limit of its analysis in this case. *PECO Order* at 80. That is, that the Commission concluded that there was an insufficient nexus between the demonstrated \$800 million in bills above the PTC and the SOP, not that a showing of \$800 million above the PTC would not constitute evidence of harm to consumers.

V. CONCLUSION

For these reasons, the OCA respectfully requests that the Commission grant reconsideration of the *PECO Order* and reverse Ordering Paragraph 6 which modified the Joint Petition's SOP provisions, as set forth above, or, in the alternative, clarify that the Commission's language regarding "economic harm" contained in the *PECO Order* is limited to Standard Offer Program proceedings.

Respectfully submitted,

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