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December 2, 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") and NRG Energy Inc.'s (NRG) Answer in Opposition to Petitions for Reconsideration of the Commission's Opinion and Order entered November 7, 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.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the RESA and NRG Energy's Answer in Opposition to Petitions for Reconsideration upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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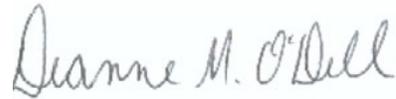
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Date: December 2, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Of PECO Energy Company For :  
Approval Of Its Default Service Program : Docket No. P-2024-3046008  
For The Period From June 1, 2-025 Through :  
May 31, 2029 :  
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**ANSWER OF THE RETAIL ENERGY SUPPLY ASSOCIATION AND NRG  
ENERGY, INC IN OPPOSITION TO PETITIONS FOR RECONSIDERATION**

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**I. INTRODUCTION**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> and NRG Energy, Inc. strongly oppose reconsideration or clarification of the Commission’s Opinion and Order entered November 7, 2024 (“*Order*”) which rejected just one of a multitude of proposals included in the Joint Petition for Approval of Non-Unanimous Settlement (“Non-Unanimous Settlement”) submitted by PECO Energy Company (“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 (collectively, “TURN/CAUSE-PA”), and the Energy Justice Advocates (“EJA”) (collectively, “Settling Parties”) in this matter. More specifically, the Commission soundly rejected the proposal that customers enrolled with electric generation suppliers (“EGSs”) through PECO’s customer referral Standard Offer Program (“SOP”) be automatically returned to PECO’s default service upon expiration of the SOP contract unless they take affirmative action to the contrary. In its

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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 twenty 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).

*Order*, the Commission rightly acknowledged that this program feature was well debated and discussed at the time it finalized the Commission approved design features for SOP and that the record in this proceeding did not include any evidence of harm resulting from PECO's SOP to warrant a change in this program feature.

While the Commission gave Settling Parties the option to withdraw from the Non-Unanimous Settlement if they could not support the revision, none of the Settling Parties filed such notification with the Commission. Rather, OCA and TURN/CAUSE-PA filed Petitions for Reconsideration and/or Clarification asking the Commission to reconsider its position and adopt the automatic return to default service SOP revision proposed in the Non-Unanimous Settlement. Both of these Petitions must be denied.

As explained more fully in Section II below, the Commission's decision to approve discontinuance of the SOP in the service territory of PPL Electric Utilities ("PPL") on the same day it voted to adopt the *Order* here is not some new or novel piece of information to support granting reconsideration. Likewise, attempts by the parties to ignore the fundamental basis for the *Order* while overinflating the value of other supporting statements in the *Order* are unavailing and do not rise to the level of supporting a grant of reconsideration.

Rather, as explained more fully in Section III below, the Commission fully and fairly considered all the record evidence presented to conclude that the proposed SOP restrictions were not warranted. As they have done throughout this proceeding, OCA and TURN/CAUSE-PA reargue selective parts of the record and package it with their judgments about what it means to justify their Petitions seeking reversal. The Commission, however, correctly took a more holistic view of all the record evidence and reached a sound decision. As such the Petitions for Reconsideration must be denied and the *Order* affirmed without modification.

## II. THERE IS NO SUPPORT FOR RECONSIDERATION

Requests 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 the Public Utility Code to rescind or amend a prior order in whole or in part.<sup>2</sup> Parties cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them. What the Commission expects in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission. Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.<sup>3</sup>

### A. **Termination of SOP as Part of PPL DSP 6 Settlement does not Support Reconsideration**

Both OCA and TURN/CAUSE-PA point to the Commission’s decision – at the same public meeting it adopted this *Order* – to approve a unanimous settlement proposal to end the SOP for the PPL Electric Utilities, Inc. (“PPL”) service territory<sup>4</sup> as creating a new fact that was overlooked by the Commission in rejecting the Nonunanimous Settlement’s proposal to revise the existing SOP for PECO’s service territory. However, these arguments lack merit and do not support the grant of reconsideration.

OCA appears to take the view that maintaining “consistency” among the SOPs across the Commonwealth was the core reason why the Commission rejected the proposed PECO SOP

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<sup>2</sup> *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553 (1982).

<sup>3</sup> *Id.*

<sup>4</sup> *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 entered November 7, 2024 (“PPL DSP VI Order”).

modifications and then argues that the decision to end the PPL SOP creates inconsistency with the continuation of the SOP in other service territories and, therefore, the Commission wrongly refused to adopt the proposed revisions to the PECO SOP on the basis of wanting SOPs to be consistent.<sup>5</sup> This view, however, fails to acknowledge that maintaining program design consistency was not the core reason for rejecting the proposed revisions. Rather, as discussed further in the next section, the Commission considered all the available evidence as well as all the parties' advocacy to conclude that "the record does not support that a harm has occurred as a result of the SOP."<sup>6</sup> The fact that rejecting the proposal was consistent with the program design of existing SOPs was simply noted by the Commission which is different from being relied on as the reason for the result. Setting this aside, however, the end of the SOP in one service territory is not analogous to revising the statewide developed rules that exist in all existing SOPs in just one SOP. Thus, the decision to adopt the proposal to end PPL's SOP has no bearing on the Commission's evaluation of the program revisions offered by the Nonunanimous Settlement for PECO's SOP.

TURN/CAUSE-PA frame the Commission's decision to end the PPL SOP as "developments unavailable to Petitioners during the instant proceeding" which "strongly support reconsideration and/or clarification of the Commission's Order, as they call into question the legal and evidentiary basis upon which the Commission relies."<sup>7</sup> It is untrue to make the claim that cessation of PECO's SOP was not considered during the course of the proceeding as it was

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<sup>5</sup> OCA Petition at 5.

<sup>6</sup> *Order* at 80.

<sup>7</sup> TURN/CAUSE-PA Petition at 2.

specifically recommended by OCA<sup>8</sup> and subsequently supported by TURN/CAUSE-PA.<sup>9</sup> As such OCA and TURN/CAUSE-PA were free to argue for the end of the PECO SOP during settlement negotiations in lieu of settling on the proposed revisions to the SOP. The fact that these same parties were able to successfully negotiate a settlement with RESA to discontinue the PPL SOP<sup>10</sup> simply has no bearing on the Commission's analysis of the proposed revisions for PECO's SOP and is not an appropriate basis upon which the Commission can grant reconsideration.

Moreover, and apart from the fact that the decision of the Commission to approve discontinuance of the PPL SOP has no bearing on its decision regarding the PECO DSP, the bottom line is that the Commission considered both PECO and PPL's default service proceedings at the very same public meeting. Thus, there is no basis upon which to support a claim that the decision of the PPL proceeding presents some type of new evidence or fact that was overlooked by the Commission.

In sum, the Commission's decision to approve the settlement of the PPL default service proceeding is not some new consideration overlooked by the Commission and does not support granting reconsideration in this proceeding.

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<sup>8</sup> OCA St. No. 2 at 4-7.

<sup>9</sup> TURN/CAUSE-PA St. No. 1-R at 10.

<sup>10</sup> TURN/CAUSE-PA's view that the record in the PPL DSP 6 proceeding did not support discontinuance of PPL's SOP is simply not correct. As explained in RESA's Statement in Support of the PPL Settlement, a number of factors existed in the PPL proceeding that were not present in the PECO proceeding. These include addressing PPL's communications with EGS customers, removing future opportunities for PPL to use SOP as a reason to send misleading communications to EGS customers and recognition that, based on the data available regarding PPL SOP participant shopping experiences, the Commission might be open to modifying the SOP program design. *See* Joint Petition for Approval of Settlement, Docket No. P-2024-3047290, filed August 27, 2024, at Attachment Q, RESA Statement in Support at 8-9.

**B. No Support for Claim That Commission Overlooked Its Authority Regarding SOP**

While there is no dispute that Commission precedent permits it to consider revisions to the SOP if a showing of harm is made, OCA claims that reconsideration is appropriate because the Commission “overlooked or failed to consider alternatives to strict adherence” to the previously established SOP program guidelines and/or Section 54.10 of the Commission’s regulations.<sup>11</sup> However, nothing in the *Order* supports the view that the Commission’s decision was based on strict reliance to either the pre-existing program design or Section 54.10 of the regulations. While the history of the development of the current SOP program design was explained by the Commission and a discussion of how the existing program design is consistent with the Commission’s regulations is included in the *Order*, the Commission clearly states that it rejected the proposed PECO SOP revisions due to insufficient and inconclusive evidence. As discussed further in the next section, nothing presented in OCA’s Petition supports a reconsideration or reversal of the Commission’s decision based on the Commission’s consideration of existing program structure and regulations.

Similarly, TURN/CAUSE-PA argue that the Commission imposed the wrong “legal standard to a voluntary market enhancement program” by finding that the Settling Parties did not demonstrate that no reasonable alternative exists.<sup>12</sup> Just as OCA tries to do regarding its “strict reliance” theory, TURN/CAUSE-PA overemphasizes one statement in the *Order* and ignores the Commission’s clear conclusion that the proposed revisions were rejected due to insufficient and inconclusive evidence. Nothing presented in TURN/CAUSE-PA’s Petition supports a

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<sup>11</sup> OCA Petition at 9.

<sup>12</sup> TURN/CAUSE-PA Petition at 13-15.

reconsideration or reversal of the Commission's decision based on the failure of the Settling Parties to demonstrate that no reasonable alternative existed.

### **III. COMMISSION PROPERLY CONSIDERED THE ENTIRE RECORD AND REJECTED THE PROPOSED SOP REVISION TO AUTOMATICALLY RETURN TO DEFAULT SERVICE**

Both OCA and TURN/CAUSE-PA restate their already considered and rejected myopic views of the record testimony to try to convince the Commission that it somehow overlooked or missed something meriting a reversal. Consistent with their advocacy throughout this proceeding, the two parties start from the premise that residential EGS customers are paying higher prices than the default service rate. The data used to support this claim compares residential EGS pricing to EDC provided default service over a six year period and finds that residential EGS customers paid in excess of \$800 million more than they would have paid if they had been receiving PECO's default service.<sup>13</sup> What OCA and TURN/CAUSE-PA fail to address, though, is the expert testimony of RESA Witness Caliva, III which explained the spurious nature of this attempted point-in-time pricing comparison. More specifically, Mr. Caliva testified "[a]t the most fundamental level, a comparison of 'price' for these two very different supply products is complicated and not a simply matter of looking at offerings made at a particular point in time."<sup>14</sup> Throughout his Direct and Rebuttal Testimonies, Mr. Caliva well explained the reasons apple-to-apples price comparisons of EDC provided default service and competitive EGS products is fraught with challenges. He explained that the default service rate is developed through regulatory processes rather than market forces meaning that at the time it is charged to customers it does not reflect the then-market price.<sup>15</sup> In addition, Mr. Caliva testified

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<sup>13</sup> OCA Petition at 11-12; TURN/CAUSE-PA Petition at 7-8.

<sup>14</sup> RESA St. No. 1-R at 3.

<sup>15</sup> RESA St. No. 1-R at 4.

about the ability of the electric distribution company (“EDC”) to fully recover their costs through later in time reconciliations which further degrades accurate point-in-time comparisons between the market price (charged by EGSs) and the default service rate charged by the EDC.<sup>16</sup> Finally, and consistent with the Commission’s recognition in its *Order*, Mr. Caliva explained how the nature of the contracts offered by EGSs impede meaningful direct point in time comparisons because of the nature of the contract.<sup>17</sup> All of this record testimony fully supports the Commission’s conclusion that “customers paying more for the EGS service than the PTC does not necessarily prove that a harm is occurring.”<sup>18</sup>

Nonetheless, both OCA and TURN/CAUSE-PA argue that the Commission ignored or did not consider the alleged evidence they claim support their view that the pricing data demonstrates a “harm” that needs to be redressed by the Commission. While acknowledging that actual customers during the public input hearing testified that they would pay more for renewable energy, OCA states “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.”<sup>19</sup> TURN/CAUSE-PA cite to the stagnation of residential shopping as proof that EGS pricing is harming customers. However, both of these claims ignore the RESA Market Savings Reports which enumerate many offers available in the Pennsylvania retail market that are below the utilities’ default service rate.<sup>20</sup> With proof of price savings available in the retail market, one

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<sup>16</sup> RESA St. No. 1-R at 4-5.

<sup>17</sup> RESA St. No. 1 at 20-21; RESA St. No. 1-R at 5. *Order* at 80.

<sup>18</sup> *Order* at 80.

<sup>19</sup> OCA Petition at 12, referencing RD at 7-8, 12-13.

<sup>20</sup> RESA St. No. 1-R at 6-7. *See* RESA Exh. FC-7 is the Retail Market Savings Report for January 2024, which was compiled using data from [www.powerswitch.com](http://www.powerswitch.com) and shows that customers as a group had the potential **to save over \$175 million in one month** by choosing an EGS for their supply. *See* RESA Exh. FC-8 is the Retail Market Savings Report for February 2024, which shows that customers had the potential **to save more than \$154 million** by purchasing from an EGS. *See* RESA Exh. FC-9 is the Retail Market

cannot reasonably draw the conclusion which OCA reaches that customers shopping are unknowingly paying more than the EDC provided default service rate. Moreover, the stagnation of residential shopping in Pennsylvania today was discussed at length by RESA Witness Caliva who explained that EDCs continue to be the providers of “first resort” default service with widespread brand recognition and elevation of their supply product as the PTC giving default service an inherent competitive advantage over all competitive EGSs collectively.<sup>21</sup> Thus, a more complete and full review of the record developed in this proceeding makes clear that the Commission correctly concluded that paying higher prices does not alone prove harm.

Notwithstanding the availability of lower priced products in the market and structural issues depressing residential shopping, TURN/CAUSE-PA claim the SOP is doing a disservice to customers “who are searching for lower prices who have not yet had negative experiences with the competitive market for EGS supply.”<sup>22</sup> While OCA and TURN/CAUSE-PA deride the concept of residential customers ever paying more than the EDC provided default service, revising the one program wherein consumers are guaranteed an SOP price that is 7% below the then-existing PTC for a period of time does nothing to ensure customers will never pay above the EDC provided default service rate. On the contrary, automatically returning EGS customers to PECO’s default service rate upon SOP contract expiration guarantees the customer will pay more as the 7% discount ends.

Finally, TURN/CAUSE-PA challenge the Commission’s sound conclusion that the data about all shopping customers over a six year period does not provide any evidence about how the

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Savings Report for March 2024, which shows that customers had the potential **to save nearly \$154 million in one month.**

<sup>21</sup> RESA St. No. 1 at 12-15.

<sup>22</sup> TURN/CAUSE-PA Petition at 7.

SOP specifically is allegedly creating “harm” to justify revisions of the existing SOP program<sup>23</sup> by pointing out that the data includes SOP participants.<sup>24</sup> Notwithstanding this, however, the point still fails to show how the SOP is causing a harm that the Commission should redress. As the Commission has already rightly concluded, showing that customers paid more than the EDC provided default service rate, does not in and of itself demonstrate any “harm” for the reasons discussed. Moreover, as the Commission already rightly concluded, the billing experiences of SOP participants fails to show a harm that can/should be redressed by revisions to the SOP.<sup>25</sup> And, as discussed previously, there are significant disclosures to the customer both by the EDC and the EGSs about the purpose and scope of the SOP including what will occur upon SOP contract expiration. Moreover, as the Commission well explained in its *Order*, the SOP contract expiration notice requirements are consistent with those required by every other competitive product and give consumers sufficient opportunity to make a decision about the going forward price they want to pay after the SOP expires.<sup>26</sup> The only record evidence about consumer’s actual expectations and their positive experience with PECO’s SOP was presented in the customer satisfaction survey conducted between June 2021 and June 2023. The Commission fully considered this survey in light of all the evidence presented in the record to rightly reject

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<sup>23</sup> *Order* at 79.

<sup>24</sup> TURN/CAUSE-PA Petition at 6-8. This argument was previously raised by TURN/CAUSE-PA and, therefore, was already considered and rejected by the Commission in. *See, e.g.,* TURN/CAUSE-PA Reply Exceptions at 4-5.

<sup>25</sup> The Commission in its prior Order on this exact same proposal in the PPL DSP V proceeding provided specific examples of “harms” relating to the SOP that it might consider warranting changes to the SOP program. *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*”). TURN/CAUSE-PA’s claims that these five “examples” create some kind of exhaustive evidentiary criteria to support future modifications to the SOP is a red herring. *TURN/CAUSE-PA* Petition at 11-12. Nowhere in the *Order* or the prior Order did the Commission make this statement. The fact is that on the record presented in this proceeding, the Commission rightly concluded that the proponents of the SOP changes failed to support their burden.

<sup>26</sup> *Order* at 77-78.

the proposed revisions to the SOP. In sum, all of these arguments have already been considered and soundly rejected by the Commission and nothing new or novel has been presented in either Petition to justify reconsideration or reversal.

#### IV. CONCLUSION

The Petitions for Reconsideration of OCA and TURN/CAUSE-PA should be rejected as they fail to meet the standards for reconsideration. Neither the Commission's decision to approval cessation of PPL's SOP nor the rehashing of the record and previously made arguments support either reconsideration or a reversal of the Commission's sound *Order*. Thus, and as explained more fully above, RESA and NRG respectfully request that the Commission deny the Petitions for Reconsideration of OCA and TURN/CAUSE-PA and affirm the decisions already made in its November 7, 2024 *Order*.

Respectfully submitted,



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Dated: December 2, 2024

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