

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held December 4, 2014

Commissioners Present:

Robert F. Powelson, Chairman  
John F. Coleman, Jr., Vice Chairman  
James H. Cawley  
Pamela A. Witmer  
Gladys M. Brown, Statement

Petition of PECO Energy Company  
for Approval of its Default Service Program  
for the period from June 1, 2015 through  
May 31, 2017

P-2014-2409362

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of PECO Energy Company (PECO or the Company), the Retail Energy Supply Association (RESA), the Office of Small Business Advocate (OSBA), and the Philadelphia Area Industrial Energy Users Group (PAIEUG) filed on October 10, 2014, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Cynthia Williams Fordham, issued on September 30,

2014, relative to the above-captioned proceeding. Replies to Exceptions were filed by PECO, RESA and PAIEUG on October 17, 2014.

## I. History of the Proceeding

On March 10, 2014, PECO filed a Petition for Approval of its Default Service Program (DSP III) for the Period from June 1, 2015 through May 31, 2017, with the Commission. PECO noted that this Petition was filed for the period following the expiration of its current default service program (DSP II), in accordance with the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 *et seq.* (Competition Act). The Program set forth in PECO's DSP III Petition is designed to satisfy its obligation to furnish adequate and reliable service to default service customers at the least cost over time by procuring a prudent mix of long-term, short-term and spot market generation supplies. As explained in the DSP III Petition, PECO proposed to continue most of the existing programs in DSP II as approved by the Commission.<sup>1</sup>

On March 22, 2014, notice of the Petition was published in the *Pennsylvania Bulletin* setting a deadline for filing protests, complaints or petitions to intervene by April 1, 2014, and scheduling a Prehearing Conference for April 12, 2014, before ALJ Fordham.

Petitions to Intervene were filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Direct Energy Services,

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<sup>1</sup> On October 12, 2012, the Commission approved PECO's DSP II with certain modifications and also directed PECO to submit new proposals for various elements of its proposed retail market enhancements. *See Petition of PECO Energy Co. for Approval of Its Default Service Program II*, Docket No. P-2012-2283641 (Order entered October 12, 2012). In response, PECO made a series of compliance filings (December 11, 2012; February 28, 2013; and April 15, 2013), which were approved by a Secretarial Letter issued January 25, 2013, an Order entered February 14, 2013, and an Order entered June 13, 2013, respectively (collectively, the DSP II Orders).

LLC (Direct Energy), First Energy Solutions Corp (FES), Interstate Gas Supply (IGS), Next Era Energy Power Marketing, LLC, (NEPM), Noble Americas Energy Solutions, LLC (Noble), the PECO Energy Suppliers Group (PESG), PAIEUG, and RESA. The Office of Consumer Advocate (OCA) filed a Notice of Intervention, Public Statement and Answer. The OSBA filed a Notice of Intervention, Answer, Verification, Public Statement and Notice of Appearance. CAUSE-PA and PAIEUG also filed Answers to the DSP III Petition.

A scheduling order was issued on April 14, 2014, which set forth a procedural schedule, granted the Protective Order proposed by PECO and granted the Petitions to Intervene.

The evidentiary hearings scheduled for July 15, 16, and 18, 2014, were cancelled at the request of the Parties. An evidentiary hearing was held in the Commission's Philadelphia Regional Office on July 17, 2014. At the hearing, PECO witnesses John J. McCawley and Alan B. Cohn provided oral rejoinder testimony and were cross-examined; PECO witness Scott Fisher was cross-examined; and RESA witness Richard J. Hudson, Jr. was cross-examined. The Parties submitted direct, rebuttal and surrebuttal testimony, along with various exhibits, all of which were admitted into the record.

Main Briefs were filed by PECO, the OCA, the OSBA, NEPM, PAIEUG and RESA on August 5, 2014.

After the submission of written testimony, the Parties engaged in discussions to try to achieve a settlement of some or all of the issues in this case. Eventually, as a result of those negotiations, a Joint Petition for Partial Settlement (Joint Petition) was submitted by PECO, the OCA, the OSBA, CAUSE-PA, NEPM and RESA (the Joint Petitioners) on August 28, 2014. Statements in Support of the Joint Petition

were filed by the signatory parties. Within the Partial Settlement, the Joint Petitioners agreed to a revised default service program consistent with PECO's DSP III Petition (Revised DSP III). The Joint Petitioners notified the ALJ of the Partial Settlement on August 18, 2014. By Order dated August 19, 2014, the ALJ revised the procedural schedule to defer the filing of Reply Briefs to address the two issues reserved for litigation until September 4, 2014.

PAIEUG filed a letter of opposition to the Joint Petition. Noble and FES submitted letters of non-opposition to the Joint Petition. In Noble's letter it offered points to confirm its understanding of the Joint Petition and clarify its position on certain limited matters.

Reply Briefs were filed on September 4, 2014, by PECO, the OSBA, PAIEUG and RESA.

The record consists of a 153-page transcript, PECO's Petition with attachments, the statements and exhibits of the Parties, the Joint Petition For Partial Settlement with attachments, the Main Briefs filed by PECO, the OCA, the OSBA, Noble, NEPM, PAIEUG and RESA, PAIEUG's letter opposing the settlement, letters from Noble and FES indicating that they did not oppose the settlement, and the Reply Briefs filed by PECO, the OSBA, PAIEUG and RESA. The record closed on September 4, 2014.

In a Recommended Decision issued on September 30, 2014, ALJ Fordham recommended, *inter alia*, approval of the Joint Petition without modification, approval of PECO's proposed procurement plan for the Company's Medium Commercial Class, approval of PECO's proposal regarding recovery of certain PJM Interconnection, L.L.C. (PJM) charges and approval of PAIEUG's request to allow Large Commercial and

Industrial (Large C&I) customers to continue to remit transmission and transmission-related charges to their Electric Generation Suppliers (EGSs). R.D. at 1.

As noted, Exceptions were filed by PECO, RESA, the OSBA and PAIEUG on October 10, 2014. On October 17, 2014, PECO, RESA and PAIEUG filed Replies to Exceptions.

## **II. The Partial Settlement**

### **A. Terms and Conditions of the Partial Settlement**

The Joint Petitioners agreed to the Partial Settlement covering all issues except for two: medium commercial class procurement and the recovery of certain PJM charges. Within the Partial Settlement, the Joint Petitioners were able to agree to revised default service programs consistent with the Company's DSP III Petition.

The Partial Settlement consists of the Joint Petition containing the terms and conditions of the Partial Settlement, numerous Exhibits and the Statements in Support of the Joint Petition. Exhibit A is the Procurement Schedule. Exhibit B is the Uniform Supply Master Agreement. Exhibit C is PECO's Default Service Program Request for Proposals. Statements A through F represent the Statements in Support filed by PECO, the OCA, the OSBA, CAUSE-PA, NEPM and RESA, respectively.

The essential terms of the Partial Settlement are set forth in ¶¶ 11-63. The Joint Petitioners agreed to the following terms and conditions:

**A. Procurement Plan**

12. PECO's Revised DSP III shall have a term of two years, beginning June 1, 2015 and ending May 31, 2017.

13. In the event of the passage of legislation by the Pennsylvania General Assembly which has the effect of fundamentally changing the provision of default service in Pennsylvania (or the responsibilities of electric distribution companies ("EDCs") with respect to such service) in a manner that materially impacts the remainder of PECO's Revised DSP III, PECO will, within thirty business days of such legislation becoming law, confer with the Joint Petitioners.

14. After obtaining the Joint Petitioners' input, PECO will, if necessary to comply with such law, petition the Commission for authorization to suspend or modify any procurement solicitation events scheduled, but not yet conducted, under the Revised DSP III, or seek such other declaratory guidance as deemed appropriate by PECO, in order to implement the law. In such event, PECO will seek input and approval from the Commission on the provision of default service for the remainder of the Revised DSP III term. Nothing within this paragraph creates any additional rights in Joint Petitioners to petition to modify or terminate contracts that have been executed prior to such legislation becoming law.

15. PECO's default service customers shall be divided into four classes as in DSP I and DSP II for purposes of default service procurement: the Residential Class, the Small Commercial Class, the Medium Commercial Class and the Large Commercial and Industrial Class.

16. The Residential Class includes all residential customers' currently receiving service under PECO rate schedules R and RH.

17. The Small Commercial Class includes customers with annual peak demand of less than 100 kW served under rate

schedules GS, PD and HT plus lighting customers on schedules AL, POL, SLE, SLS and TLCL.

18. The Medium Commercial Class includes customers with annual peak demand equal to greater than 100 kW, but less than or equal to 500 kW on schedules GS, PD and HT.

19. The Large Commercial and Industrial Class includes customers with annual peak demand greater than 500 kW on schedules GS, HT, PD and EP.

### **(1) Residential Class**

20. For the Residential Class, PECO will continue to procure a mix of one-year and two-year fixed-price full requirements (“FPFR”) contracts and transition to a procurement design in which approximately 96% of the supply is in the form of one-year and two-year FPFR products, with six months spacing between the commencement of contract delivery periods. During the Revised DSP III period, the remaining approximately 4% of the Residential Class supply currently obtained through a five-year block product (and associated spot-market purchases) expiring on December 31, 2015, will be replaced with 17-month FPFR products (approximately 3.2% of residential default service load) and spot purchases (approximately 1%) directly from the energy markets operated by PJM. PECO will procure no other block energy products after expiration of its existing block energy contract.

21. Suppliers will bid in a competitive, sealed-bid request for proposals (“RFP”) process on “tranches” corresponding to a percentage of the actual Residential default service customer load. Winning suppliers will be obligated to supply full requirements load-following service, which includes energy, capacity, ancillary services, and all other services or products necessary to serve a specified percentage of PECO’s default service load in all hours during the supply product’s delivery period.<sup>4</sup> PECO remains responsible for all distribution services to its default service customers. The assignment of responsibility for PJM transmission-related costs is reserved for litigation as discussed in Section II.E, *infra*. In addition, the full requirements product requires the

supplier to provide PECO all necessary alternative energy credits described in Paragraph 41, *infra*, for compliance with Pennsylvania’s Alternative Energy Portfolio Standards (“AEPS”) Act. 73 P.S. § 1648.1 *et seq.* Each of the contracts will be procured approximately two months prior to the beginning of the applicable contract delivery period.

22. The procurement terms and schedule for the Residential Class FPFR contracts are set forth in Exhibit A.

### **(2) Small Commercial Class**

23. The Small Commercial Class load will continue to be supplied by one-year FPFR products, each laddered with six-month spacing between the commencement of contract delivery periods. Each of the contracts for the Small Commercial Class will be procured through a competitive sealed-bid process in the same manner as FPFR products for the Residential Class approximately two months prior to delivery of energy under the contract.

24. The procurement terms and schedule for the Small Commercial Class portfolio are set forth in Exhibit A.

### **(3) Medium Commercial Class**

25. The issue of procurement of Medium Commercial default service supply, including but not limited to whether Medium Commercial default service should be priced on an hourly basis, is reserved for litigation. Nothing in this Joint Petition shall prejudice the parties with respect to their litigation position in opposition to or support of hourly pricing for Medium Commercial customers, provided, however, that PECO shall support the implementation of hourly priced default service for Medium Commercial customers in such litigation in accordance with the following paragraphs.

26. PECO will use commercially reasonable efforts to implement and test billing and data management system changes necessary to implement hourly priced default service for Medium Commercial customers (“Hourly Pricing



Transition”) as soon as reasonably possible and in no event later than June 1, 2016, subject to the following conditions:

- a) No later than September 1, 2015, PECO will provide a status update to the parties on the implementation and testing on the system changes necessary to support hourly priced default service for Medium Commercial customers.
- b) If PECO determines that it can complete the implementation and testing of the necessary system changes on or before June 1, 2016, PECO will cancel the March 2016 FPFR product solicitation for Medium Commercial customers and will instead include all Medium Commercial customers in its Large Commercial and Industrial procurement group and solicit hourly priced default service supply for that procurement group for delivery commencing June 1, 2016.
- c) If PECO determines that it cannot complete the implementation and testing of necessary systems changes in order to implement the Hourly Pricing Transition by June 1, 2016, then PECO will confer with the parties to this proceeding and the Office of Competitive Market Oversight (“OCMO”). If OCMO agrees that the Hourly Pricing Transition cannot reasonably be completed by June 1, 2016, PECO will proceed with the scheduled March 2016 FPFR solicitation for Medium Commercial customers and file a report with OCMO on the status of the system changes. PECO will provide a copy of the report filed by OCMO to the parties at the time of filing.
- d) If PECO proceeds with the FPFR solicitation under Paragraph 29(b), the term of the FPFR contracts solicited for Medium Commercial customers will end on November 30, 2016.

27. Should the Commission determine that default service for Medium Commercial customers should be priced on an hourly basis, the parties agree to PECO's implementation of the Hourly Pricing Transition as described in Paragraph 26.

28. PECO commits to deploy and test the necessary systems changes to support an effective date of implementation for hourly priced default service for the Medium Commercial class no later than December 1, 2016.

**(4) Large Commercial and Industrial Class**

29. For its Large Commercial and Industrial customers, PECO will continue to solicit hourly-priced default service contracts for full requirements products for all default service supply.

30. PECO will procure default service supply for the Large Commercial and Industrial Class annually as shown on Exhibit A.

**(5) Procurement Schedule**

31. Default service supply procurements scheduled in January/February of 2015 and 2016 will be moved to March 2015 and 2016. In order to facilitate selection and transfer of PJM Auction Revenue Rights ("ARRs") to wholesale default service suppliers, the Joint Petitioners agree that PECO shall be permitted to employ a consultant for ARR analysis and selection. The costs of the consultant and any associated financial outcome from PECO's ARR selection (whether positive or negative) will be passed through PECO's Generation Supply Adjustment ("GSA") charge to default service customers in each class consistent with the ARRs assigned to suppliers, provided that the portion of consultant costs allocated to Residential customers shall not exceed \$25,000 per year.

32. The 17-month FPFR contracts for the Residential Class will be procured in the scheduled September 2015 procurements.

## **B. Contingency Plan**

33. PECO will continue utilizing the contingency plans approved in the DSP II Orders. Specifically, in the event PECO fails to obtain sufficient approved bids for all offered tranches for a product in a solicitation, the tranches will be included in PECO's next default supply solicitation for that product. If necessary, PECO will supply any unserved portion of its default service load from the PJM-administered markets for energy, capacity and ancillary services and procure sufficient AECs at market prices to satisfy any near-term obligations under the AEPS Act.

34. In the event that bids for six or more tranches of FPRF products solicited in a default service procurement for the Residential Class are not approved by the Commission (and, as a result, PECO expects to serve the portion of its Residential default service load associated with such tranches through PJM spot market purchases), PECO shall file a plan with the Commission within fourteen business days of the rejection of bid results by the Commission which offers alternative options for procurement of the equivalent amount of default service supply from wholesale default service suppliers.

35. In the event of a supplier default and the immediate need to obtain supply for default service, PECO will initially rely on filling that supplier's portion of PECO's default service load through the PJM-administered markets for energy, capacity, and ancillary services. If the default occurs within a reasonable time before a scheduled procurement, the load served by the defaulting supplier will be incorporated into that next procurement. Otherwise, PECO will file a plan with the Commission for an alternative procurement.

## **C. Default Service Implementation Plan and Independent Evaluator**

36. Attached as Exhibit B to the Joint Petition is the form of the Supplier Master Agreement ("SMA") that PECO will execute with wholesale suppliers that are successful bidders in PECO's default service supply procurements.

37. Section 6.7 of PECO's SMA (Exhibit B) will permit suppliers to use standby irrevocable letters of credit ("LOCs") acceptable to PECO in its sole discretion issued by a bank or other financial institution with a minimum "A-" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from Standard and Poor's and "A3" from Moody's.

38. The Joint Petitioners agree to the request for proposals ("RFP") for PECO's competitive sealed-bid solicitations attached to the Joint Petition as Exhibit C. Exhibit C is a revised version of PECO Exhibit CL-2 to reflect the procurement plan and products set forth in this Settlement. The Joint Petitioners also agree to the RFP protocol set forth in PECO Exhibit CL-3.

39. PECO will appoint NERA Economic Consulting, Inc. ("NERA") as the independent third-party evaluator for PECO's default service procurements.

40. The Commission has previously approved PECO's SMA as an affiliated interest agreement so that PECO's affiliates may participate in default service supply procurements, and PECO is maintaining the same protocols and other protections in its Revised DSP III to be administered by the Independent Evaluator. In the event that an affiliate of PECO is a winning bidder in a default supply procurement, it will need to execute the SMA in the same manner and time period as other bidders. PECO therefore requests advance approval of the SMA (Exhibit B) by the Commission as an affiliated interest agreement.

#### **D. Alternative Energy Portfolio Standards Act Compliance**

41. Under the SMA, as in DSP II, PECO will continue to require each full requirements default service supplier to transfer Tier I solar, Tier I non-solar, and Tier II AECs to PECO corresponding to PECO's AEPS obligations associated with the amount of default service load served by that supplier.

42. In addition, PECO will continue to allocate AECs obtained through its prior Commission-approved Tier I solar, Tier I non-solar, and Tier II procurements towards suppliers'

AEPS obligations in accordance with each customer class and the percentage of load served by each supplier. PECO will retain a percentage of its AECs to meet the AEPS requirements associated with any default service customer load not supplied by full requirements contracts. PECO will also buy and sell AECs as required to meet AEPS requirements and manage its inventory of AECs obtained in prior procurements as previously authorized by the Commission.

## **E. Rate Design and Cost Recovery**

### **(1) Generation Supply Adjustment**

43. PECO will continue to recover the cost of default service from default service customers through a GSA charge. For each customer class with peak loads up to 500 kW- i.e., the Residential, Small Commercial and Medium Commercial Classes-default service rates established pursuant to the GSA will continue to change quarterly.<sup>5</sup> In the event that interval meters are deployed to all Medium Commercial customers and the Commission directs that PECO implement the Hourly Pricing Transition in accordance with Paragraph 26 of this Joint Petition, default service rates established under the GSA for the Medium Commercial class will be established in the same manner as the rates for the Large Commercial & Industrial Class. Such rates will continue to recover: (1) generation costs, certain transmission costs and ancillary service costs established through PECO's competitive procurements; (2) supply management, administrative costs (including costs incurred by PECO to implement Commission-approved retail market enhancement programs) and working capital, as provided in 52 Pa.Code § 69.1808; and (3) applicable taxes. The projected GSA for each quarter, which forms the basis of the Price-to-Compare ("PTC"), will be filed by PECO 45 days before the start of each quarter.

44. The Joint Petitioners agree that over/under collections of default service charges for the Residential, Small Commercial and Medium Commercial Classes will be reconciled on a semi-annual basis instead of a quarterly basis.<sup>6</sup> If the Commission determines that Medium Commercial default service should be priced on an hourly basis, the default service rates for the Medium Commercial

Class will include a monthly reconciliation component. To minimize the impact on the Price-to-Compare arising from the transition to a one-month (instead of six-month) reconciliation period, any over/under collections associated with such transition may be rendered or recouped over several months.

45. PECO's default service rates for the Large Commercial and Industrial Class will also continue to be charged through the GSA. For those customers, default service rates will continue to be based upon the price paid to winning suppliers in PECO's hourly-priced service procurements, which includes the PJM day-ahead hourly locational marginal price ("LMP") for the PJM PECO Zone, plus associated costs, such as capacity, ancillary services, PJM administrative expenses and costs to comply with AEPS requirements that are incurred to provide hourly-priced service. PECO will continue to file a monthly projection of the AEPS and ancillary service costs at least 45 days prior to the start of each month for customers and EGSs to use. The default service rates for Large Commercial and Industrial Class also include a monthly reconciliation component to refund or regroup GSA over/under collections from prior periods. To mitigate wide swings in the PTC from month-to-month, PECO will continue to combine any two months with large over/under collections for the Large Commercial and Industrial Class.

46. PECO shall be permitted to file the GSA and Reconciliation tariff pages set forth in PECO Exhibits ABC-2 and ABC-3 to become effective June 1, 2015, subject to resolution of the issues related to the Hourly Pricing Transition and recovery of PJM charges.

## **(2) Other Tariff Changes**

47. Effective June 1, 2015, PECO shall be permitted to implement tariff changes set forth in PECO Exhibits ABC-2, ABC-3, ABC-6 and ABC-7 related to the recovery of costs incurred to implement any additional retail market enhancements directed by the Commission during DSP III, as well as costs associated with the retail opt-in program suspended during DSP II, subject to resolution of the issues

related to Hourly Pricing Transition and recovery of PJM charges.

### **(3) Recovery of Certain PJM Charges**

48. The issue of whether certain PJM charges should be recovered by PECO through a non-bypassable transmission service charge is reserved for litigation.<sup>7</sup> The electric service tariff pages and supplier tariff provisions referenced in the Joint Petition do not change the current assignment of responsibility for PJM charges to load-serving entities (except for meter error correction charges which will now be allocated to all load-serving entities as permitted by the PJM tariff instead of requiring default service suppliers to cover all such costs). PECO will address any Commission determinations regarding collection of PJM charges through a non-bypassable transmission charge in a subsequent compliance filing. Nothing in this Joint Petition shall prejudice the parties with respect to their litigation position in opposition to or support of a non-bypassable transmission service charge, provided, however, that PECO shall support a non-bypassable transmission service charge in accordance with the following paragraphs.

- a) The non-bypassable transmission service charge shall recover the following PJM charges from all distribution customers on a class basis: (1) Transmission Enhancement charges (a/k/a Regional Transmission expansion Plan (“RTEP”) (PJM bill line 1108); (2) Expansion Cost Recovery charges (PJM bill line 1730); and (3) Generation Deactivation/ Reliability Must Run (“RMR”) charges (PJM bill line 1930) for which charges are set after the approval of PECO’s Revised DSP III by the Commission.
- (b) Generation Deactivation/RMR charges will continue to be the responsibility of DSP II wholesale default service suppliers until the terms of the applicable DSP II supply master agreements expire.
- (c) Costs to implement this non-bypassable transmission service charge will be included in

the non-bypassable transmission service charge and allocated to classes consistent with the methodology used in PECO's current transmission service charge.

- (d) PECO will amend its Electric Generation Supplier Coordination Tariff to include an appendix listing those PJM billing items that are the responsibility of EGSs.

49. Should the Commission approve a non-bypassable transmission service charge for PECO distribution customers, Joint Petitioners agree to PECO's implementation of the non-bypassable transmission charge as described in Paragraph 48.

50. Joint Petitioners further agree that the charges listed in Paragraph 48 are the only charges that shall be included in a non-bypassable transmission service charge if such charge is approved by the Commission for PECO's service territory. Unaccounted for Energy, meter error correction charges and any other PJM charges shall not be included in any PECO non-bypassable transmission service charge or litigated in this proceeding (provided, however, that all issues with respect to Network Integration Transmission Service ("NITS") may be litigated in this proceeding).

## **F. Standard Offer Program**

### **(1) Program Administration**

51. PECO's currently-effective EGS Standard Offer Program ("Standard Offer Program" or "SOP"), including the cost recovery mechanisms approved by the Commission in the DSP II Orders, will continue until the earlier of: (1) six months following a Commission Order modifying the SOP as a result of a settlement reached through the stakeholder process outlined in Paragraphs 57-61 below; (2) a Commission Order modifying the SOP as a result of a statewide investigation of standard offer customer referral programs; or (3) May 31, 2017.

52. PECO will post the discounted SOP prices to its "SUCCESS" EGS website at the time each quarterly PTC is published.



53. Within ninety days of the Commission's approval of the Settlement, PECO will revise its SOP scripts, with review by the OCMO, to incorporate the following OCA-requested disclosures ("OCA Script Changes"):

- The initial discount of 7% is based on the current PTC;
- The PTC will change quarterly with the next change in [month];
- The percentage savings a customer will experience will vary as the PTC changes; and
- The SOP rate may be higher or lower than the next PTC.

54. PECO agrees that there will be no additional costs to EGSs or customers for the OCA Script Changes.

55. At the same time that it implements the OCA Script Changes, PECO will revise its SOP request for proposals and rules to allow EGSs to participate on a per class basis. PECO will endeavor to minimize implementation costs of this revision. Any costs associated with making this modification shall only be considered for recovery in PECO's next distribution rate case, provided, however, that any fees received from any third-party servicer under contract to PECO shall be used to reduce the implementation costs of this revision prior to reducing other SOP implementation or operating costs. To the extent that these costs are deemed recoverable, Joint Petitioners agree that PECO shall recover the costs through the SOP cost-recovery mechanism.

56. PECO will conduct quarterly briefings of PECO customer service representatives about providing information regarding the SOP during customer contacts with PECO's call center. There will be no additional cost to EGSs or customers for these quarterly briefings.

## (2) Stakeholder Process

57. Following the Commission's expected Order regarding PECO's Revised DSP III, PECO will convene a stakeholder process and will hold at least three stakeholder meetings during the period January 2015 through March 2015 (with at least one meeting in person) to discuss the Standard Offer Program.

58. To facilitate discussion at the stakeholder meetings, PECO will provide participants the following information: (1) SOP scripts; (2) customer enrollment figures by supplier with supplier names redacted and SOP prices for the period August 1, 2013 to July 31, 2014; (3) statistics regarding EGS participation in the SOP from inception through the enrollment period beginning December 1, 2014; (4) a report of all informal or formal complaints related to the SOP filed with the Commission during the period August 1, 2013 through November 30, 2014; and (5) detailed historical and projected implementation and ongoing cost data.

59. The stakeholder meetings will address, at a minimum, the following issues:

- Recommendations by EGSs and other parties that would improve administration of the SOP and increase participation levels;
- EGS proposed changes to the SOP product composition that might improve the customer experience as well as increase EGS participation;
- The OCA's recommended changes to the SOP scripts, administrative process and product composition that might improve the customer experience as well as increase EGS participation; and
- Steps to reduce the costs of the program, including administrative cost savings measures.

60 The stakeholder meetings will not address any proposals to recover SOP costs from Medium Commercial or Large Commercial and Industrial customers or change to mechanisms for recovery of SOP costs from non-participating EGSs.

61. Any changes or modifications agreed upon by all parties at the stakeholder meetings will be presented to the Commission by PECO in a petition to modify the SOP, and PECO shall implement the modifications contained therein within six months of final approval of such petition by the Commission.

### **G. Request for Waivers**

62. The Commission's regulations (52 Pa.Code § 54.187) and Policy Statement (52 Pa.Code § 69.1805) provide that default service providers should design procurement classes based upon peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may propose to depart from these specific ranges, including to "preserve existing customer classes." If necessary, the Joint Petitioners respectfully request that the Commission grant PECO a waiver of 52 Pa.Code § 54.187 to allow PECO's procurement classes to be as delineated in Section II.A, *supra*.

63. To the extent necessary, the Joint Petitioners also respectfully request that the Commission grant PECO a waiver of 52 Pa.Code §§ 54.187(i) and (j) to allow PECO to implement semi-annual reconciliation of the over/under collection component of the GSA for the Residential, Small Commercial and Medium Commercial Classes as explained in Section II.E, *supra*.

In addition to the specific terms to which the Joint Petitioners have agreed, the Partial Settlement contains certain general, miscellaneous terms. The Partial Settlement is conditioned upon the Commission's approval of the terms and conditions without modification. The Partial Settlement establishes the procedure by which any of

the Joint Petitioners may withdraw from the Partial Settlement and proceed to litigate this case, if the Commission should act to modify the Partial Settlement. Partial Settlement ¶ 68 at 23. In addition, the Partial Settlement states that it does not constitute an admission against, or prejudice to, any position which any of the Joint Petitioners might adopt during subsequent litigation of this case or any other case. Partial Settlement ¶ 67 at 23.

Further, the Partial Settlement provides that approval of the Partial Settlement does not preclude the Joint Petitioners from filing Exceptions with respect to any modifications to the terms and conditions of this Partial Settlement, or any additional matters proposed by the ALJ, including the separately briefed issues concerning the Medium Commercial Class procurement plan and collection of various PJM charges. Partial Settlement ¶ 69 at 23-24.

The Joint Petitioners respectfully requested that the ALJ and the Commission approve the Partial Settlement and PECO's Revised DSP III, without modification, subject to the resolution of the two issues reserved for briefing. Partial Settlement at 24.

## **B. Legal Standards**

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Regulatory proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

The Company has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a). The Company must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992) To meet its burden of proof, the Company must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). In this case, the Company requests that the Commission approve the filing establishing the proposed DSP. The Joint Petitioners have reached an accord on many of the issues and claims that arose in this proceeding and submitted the Partial Settlement. The Joint Petitioners have the burden to prove that the Partial Settlement is in the public interest.

### C. Standards for Default Service

The requirements of a default service plan appear in Section 2807(e) of the Public Utility Code (Code),<sup>2</sup> 66 Pa. C.S. § 2807(e). The requirements include that the default service provider follow a Commission-approved competitive procurement plan, that the competitive procurement plan include auctions, requests for proposal, and/or bilateral agreements, that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time, and shall offer a time-of-use program for customers who have smart meter technology. 66 Pa. C.S. §§ 2807(e), 2807(f).

The Competition Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa.C.S. § 2802(3). This mandate is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa.Cmwlth. 2002). Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. 66 Pa. C.S. § 2802(5).

*Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670, at 7-8 (Order entered August 16, 2012).

Also applicable are the Commission’s default service Regulations, 52 Pa. Code §§ 54.181-54.189, and a Policy Statement addressing default service plans, 52 Pa.

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<sup>2</sup> *Competition Act*

Code §§ 69.1802-69.1817. The Commission has directed that EDCs consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market. *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011), and *Intermediate Work Plan* (Final Order entered March 2, 2012) (*IWP Order*).

#### **D. ALJ's Recommendation**

The ALJ found that the proposed Partial Settlement was in the public interest and recommended that it be approved without modification. According to the ALJ, PAIEUG was the only Party that objected to the Partial Settlement of this proceeding. The ALJ stated that the Joint Petitioners have shown that the provisions in the Partial Settlement are reasonable compromises and reduced litigation expenses because only four Parties filed reply briefs to address the two litigated issues. As a result, the ALJ concluded that the Partial Settlement was fair, just, reasonable, and in the public interest since it benefits the low-income, residential and the small and medium commercial customers. R.D. at 1, 6 and 40.

#### **E. Exceptions and Replies**

PAIEUG is the only Party that objects to the Partial Settlement and filed Exceptions to the ALJ's recommendation to approve the Partial settlement. In its Exceptions, PAIEUG asserts that the ALJ erroneously concluded that the Partial Settlement is consistent with the public interest. PAIEUG notes that although the ALJ acknowledged its position that the non-bypassable rider set forth in the Joint Petition does not benefit Large C&I customers, she nevertheless concludes that the Joint Petition promotes the public interest because it "benefits the low-income, residential customers and small and medium commercial customers." PAIEUG opines that Large C&I

customers, as members of the interested “public” for purposes of this proceeding, should not be subject to discriminatory treatment simply because the Joint Petition includes provisions that “benefit” PECO’s other customer classes. According to PAIEUG, although the ALJ is correct that the Partial Settlement includes several provisions that are beneficial to the majority of PECO’s customer classes, the Partial Settlement’s proposed non-bypassable rider can hardly be said to reflect a compromise of the Parties’ positions in the instant proceeding. PAIEUG explains that it filed a letter in opposition to the Partial Settlement based, in large part, on the discriminatory impact of the proposed non-bypassable rider on Large C&I customers. PAIEUG opines that promotion of the public interest through settlement requires the compromise of all of the public, not merely a subset of the public. PAIEUG further opines that the public interest cannot be adequately accounted for if the interests of one of PECO’s major customer classes are not adequately addressed. Accordingly, PAIEUG requests that the ALJ’s finding that the Partial Settlement promotes the public interest should be rejected. PAIEUG Exc. at 7-9.

In its Replies to Exceptions, PECO states that PAIEUG’s Exception merely repeats its general objections to the Partial Settlement that the ALJ found unavailing. PECO notes that the ALJ concluded that the Partial Settlement was in the public interest because it reflects reasonable compromises on several disputed issues and also provides benefits to low-income, residential, small commercial and medium commercial customers. PECO also notes that the ALJ concluded that the Partial Settlement reduced litigation expenses because only four Parties filed reply briefs to address the two litigated issues. PECO explains that the issue of whether certain PJM Charges should be recovered by PECO through a non-bypassable TSC was entirely reserved for litigation in the Partial Settlement, and there is no basis for PAIEUG’s claim that a lack of benefit to Large C&I customers in a partial settlement dictates rejection of the ALJ’s finding that the Partial Settlement is in the public interest. PECO R. Exc. at 8-9.



## **F. Disposition of the Partial Settlement**

As noted above, a Partial Settlement in principle of the majority of issues was reached prior to the hearing dates, thereby negating the need for the scheduled evidentiary hearings on the settled issues. Cross-examination of nearly all of the witnesses was waived. However, an evidentiary hearing was held for purposes of allowing cross-examination by the Parties with respect to the two issues that were reserved for litigation that concerned the Medium Commercial Class procurement plan and collection of various PJM charges. As such, during the hearings, the Parties' respective testimonies and exhibits were admitted into the record. The Partial Settlement was not signed by all the Parties, but it was also unopposed by any Party with the exception of PAIEUG.

Based on our review of the Partial Settlement, the Exceptions and Replies thereto, we are in agreement with the Company that there is no reason to reject the Partial Settlement based upon the PAIEUG Exception that the Partial Settlement does not satisfy the public interest because the issue PAIEUG refers to in its Exceptions was specifically excluded from the Partial Settlement for litigation among the Parties. Instead, we find that there are a number of settled issues within the Partial Settlement that are beneficial to all customers. Among those provisions are: (1) the avoidance of substantial litigation and associated costs; (2) the inclusion of a Revised DSP consistent with the Company's original proposal and existing DSP II; (3) the provision of flexibility to address new default service structures in the future; (4) the protection of Residential and Small Commercial customers from risks associated with the procurement of a large amount of default service supply during a short time period; (5) the replacement of PECO's proposed 53-month FPFR product with two 17-month FPFR contracts and spot purchases for the Residential procurement; (6) the adjustment in the Spring procurement dates from January/February to March of each year; (7) the agreement on procedures for the acquisition and use of alternative energy credits (AECs); (8) the agreement on

contingency plans in the event of failure to fully subscribe the default service load for any class, or for Commission rejection of the bid results for any procurement, or supplier default; (9) the appointment of NERA Economic Consulting, Inc. as the independent third-party evaluator of the Companies' default service procurements; (10) the agreement upon tariff and rate design changes to implement the Revised DSP including a switch from quarterly to semi-annual reconciliations of the E-factor for the Residential, Small Commercial and Medium Commercial Classes; (11) the continuance of the Company's Commission-approved existing SOP as well as the incorporation of certain revisions to the SOP call center scripts to clarify the nature of the SOP's discounted price and revisions to the operation of the SOP program itself; and (12) the agreement to convene a stakeholder process to review potential improvements to the administration of the SOP that may enhance the customer experience and/or increase EGS participation.

We find that these many beneficial aspects within the Partial Settlement all support a finding that the Joint Petition for Partial Settlement is in the public interest. The Partial Settlement resolves the majority of the issues impacting residential consumers, small business customers, large business customers and the public interest at large. The benefits of the Partial Settlement are numerous and will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings. For the reasons stated herein and in the Joint Petitioners' Statements in Support, we agree with the ALJ's conclusion that the Joint Petition for Partial Settlement is in the public interest. As such, we shall deny PAIEUG's Exception, which maintains that the Partial Settlement is not in the public interest. Accordingly, we shall adopt the ALJ's recommendation to grant the Joint Petition for Partial Settlement and approve the Partial Settlement without modification.

### III. Contested Issues

#### A. Medium Commercial Class Procurement

The issue concerning procurement of Medium Commercial default service supply, including, but not limited to, whether Medium Commercial default service should be priced on an hourly basis, was specifically reserved for litigation within the Partial Settlement. Joint Petition ¶ 25 at 8.

##### 1. Positions of the Parties

PECO originally proposed to continue to procure default service supply for Medium Commercial customers through six-month FPFR contracts procured approximately two to four months prior to delivery, without overlap. PECO St. 2 at 12. In addition, to the extent necessary, PECO requested a waiver of the Commission's direction in the *Investigation of Pennsylvania's Retail Electricity Market; End State of Default Service*, Docket No. I-2011-2237952 (Order entered February 15, 2013) (*End State Order*) that customers with interval meters and peak demands above 100 kW be moved to hourly-priced default service pricing during DSP III while PECO completes its advanced meter infrastructure (AMI) deployment, including testing, implementation of back-office and other information technology systems and integration with PECO's billing system. PECO M.B. at 17-19; PECO R.B. at 4.

Under the Settlement, PECO supported the implementation of hourly-priced default service for Medium Commercial customers as outlined in the Joint Petition. Joint Petition ¶ 25. PECO will use commercially reasonable efforts to implement and test billing and data management system changes necessary to implement the Hourly Pricing Transition for default service for Medium Commercial customers as soon as reasonably possible and no later than June 1, 2016, when all Medium

Commercial customers are expected to have interval meters. If PECO determines that it cannot complete the implementation and testing of necessary systems changes in order to implement the Hourly Pricing Transition by June 1, 2016, then PECO will confer with the Parties to this proceeding and the Commission's OCMO. If OCMO agrees that the Hourly Pricing Transition cannot reasonably be completed by June 1, 2016, PECO will proceed with the scheduled March 2016 FPFR solicitation for Medium Commercial customers and file a report with OCMO on the status of the system changes. PECO will provide a copy of the report filed with OCMO to the Parties at the time of filing. Joint Petition ¶ 26; PECO R.B. at 4-5. In accordance with the Partial Settlement, PECO commits to deploy and test the necessary systems changes to support an effective date of implementation for hourly-priced default service for the Medium Commercial class no later than December 1, 2016. Joint Petition ¶ 28; PECO R.B. at 5.

While PECO agreed with the OSBA that the Commission has expressed a preference for legislative amendments to implement hourly pricing generally for Medium Commercial customers, PECO's proposed migration of Medium Commercial customers only after such customers have interval meters is in fact consistent with the *End State Order*. See *End State Order* at 45.

RESA supported the implementation of hourly-priced default service for Medium Commercial customers consistent with the process set forth in the Partial Settlement. RESA R.B. at 3-7.

The OSBA recommended approval of PECO's original proposal to procure default service supply for the Medium Commercial Class customers through six-month FPFR contracts procured approximately two to four months prior to delivery, without overlap. OSBA R.B. at 3, 13.

The OSBA explained its position in the following manner:

Paragraph 25 of the Joint Petition explicitly reserves for litigation the issue of Medium Commercial procurement. The OSBA unwaveringly maintains that PECO's original proposal to procure Medium Commercial default service supply through 6-month, fixed-price full requirements ("FPFR"), load following contracts without overlap should be approved. The OSBA's support of the partial settlement should in no way imply agreement with or adoption of RESA's proposal with respect to Medium Commercial class procurement (i.e., 3-month FPFR contracts for customers without interval meters with a transition to 100% hourly pricing as interval meters are installed).

Paragraphs 26 through 28 of the Joint Petition merely outline the timing and logistics agreed upon by the parties for implementation of hourly pricing if, and only if, the Commission directs that hourly pricing for Medium Commercial customers be implemented. However, Paragraphs 26 through 28 are rendered obsolete if the Commission agrees with the OSBA and determines that hourly pricing for Medium Commercial customers is contrary to the statutory default service standard and prior Commission orders.

Although the OSBA strongly objects to hourly pricing for Medium Commercial customers, if the Commission directs hourly pricing to be implemented, the OSBA has agreed that it should be done in a feasible manner. However, 3-month products and a transition to hourly pricing for Medium Commercial customers should in no way be considered to be a foregone conclusion. The OSBA's agreement on timing and logistics in the case of a hypothetical outcome it does not support should in no way prejudice its position with respect to Medium Commercial procurement.

OSBA Statement in Support at 4; OSBA R.B. at 3-4.

The OSBA denied that hourly pricing is a more appropriate default structure for Medium Commercial customers because they are more aligned with Large Commercial customers. The OSBA suggested that there was no evidence in this proceeding to support of the “alignment” of Medium Commercial and Large Commercial customers with respect to their level of shopping sophistication, economic interests, load profiles, numbers of attractive EGS offers received, etc. OSBA R.B. at 11. The OSBA’s position is that legislative changes are a necessary precondition for the *End State Order*’s recommendations to comply with the Competition Act. OSBA R.B. at 12.

PAIEUG supported PECO’s proposal to continue offering hourly-priced service to customers with a peak demand of 500 kW or greater, pending deployment of its smart meter infrastructure. PAIEUG agreed that this is a reasonable progression towards expanding hourly price service while minimizing rate fluctuations for Large C&I customers. PAIEUG R.B. at 5. PAIEUG posited that RESA’s proposal to move Medium C&I customers to hourly-priced service conflicts with PECO’s schedule for completing the necessary infrastructure installations and creates uncertainty that could be reflected in higher premiums for hourly-priced service. PAIEUG suggested that the Commission approve PECO’s recommendation to complete necessary infrastructure upgrades prior to transferring Medium C&I customers to the Large C&I procurement group. PAIEUG R.B. at 6.

## **2. ALJ’s Recommendation**

In her Recommended Decision, the ALJ recommended that PECO be allowed to implement hourly-priced default service for Medium Commercial customers as outlined in the Joint Petition. The ALJ referred to her review of certain specific Commission pronouncements within the *End State Order* as guidance. She noted that the Commission found as follows:

As was noted in our *Tentative Order* and many of the comments, hourly LMP is already offered to large C&I customers, and medium C&I customers are equally well-equipped and educated to manage their commodity costs in an hourly LMP default service environment. Therefore, in the next round of default service plans that begin on June 1, 2015, we expect that EDCs will offer only hourly LMP to medium and large C&I customers with interval meters, subject to the several conditions discussed herein. Generally, this LMP product will be offered on a quarterly basis, with auctions for the entire LMP default service load in each EDC territory held in unison with auctions for residential and small C&I customers, as described in subsequent sections of this Order.

*End State Order at 29.*

With respect to the use of load profiles to bill hourly LMP to customers who do not have interval meters, the Commission is persuaded by the parties opposing the use of this approach. While the Commission desires to expand the pool of large and medium C&I customers who receive hourly LMP services from the EDCs, the Commission understands the need to limit these services to those customers who have interval meters.

*End State Order at 31.*

According to the ALJ, these quotes indicated that the Commission was concerned about requiring Medium Commercial customers without interval meters to receive LMP hourly services. The ALJ found that the procedure outlined in the Partial Settlement addresses this situation as PECO plans to implement and test billing and data management system changes before the transition is implemented. In light of the language in the *End State Order* and the Partial Settlement, the ALJ concluded that the OSBA's concerns have been identified and addressed. R.D. at 44-45.

### 3. Exceptions and Replies

In its Exception No. 1, the OSBA states that the ALJ erred by failing to provide any legal analysis in support of her recommendation to implement hourly-priced default service for Medium Commercial customers. Instead, the OSBA avers that the ALJ merely quoted the Commission's *End State Order* without any discussion of the OSBA's valid legal argument that hourly pricing for Medium Commercial customers is contrary to the statutory default service standard as well as prior Commission Orders. The OSBA further claims that the ALJ does not accurately reference the OSBA's legal support for its position on this issue and instead quotes its position on and support of the Joint Petition, which the OSBA states is irrelevant since the Joint Petition explicitly reserves the issue of Medium Commercial procurement for litigation. OSBA Exc. at 3-4.

The OSBA asserts that in lieu of any legal analysis of the relevant statutes, Commission orders and Commonwealth Court decisions cited in its briefs, the ALJ appears to rely on the fact that the other Parties agree with PECO's proposed method for implementing hourly-priced default service for Medium Commercial customers while claiming that the OSBA is the only party to disagree, as if Medium Commercial procurement should be resolved by vote of the Parties. However, according to the OSBA, the poll taken by the ALJ is not even accurate as PAIEUG unambiguously objected to implementation of hourly-priced default service for Medium Commercial customers and submitted a letter in opposition to the Joint Petition. OSBA Exc. at 4.

In its Exception No. 2, the OSBA maintains that the ALJ erred by not recommending approval of PECO's initial proposal to use six-month, fixed price, full requirements, load following contracts without overlap to acquire default service supply for Medium Commercial default service customers. The OSBA avers that PECO's initial proposal will provide reasonable price stability for the Medium Commercial customers, while still promoting EGS participation in the market. The OSBA notes that this



proposal is the same as that approved for Medium Commercial procurement in DSP II, which as of May 2014 has resulted in approximately eighty percent of Medium Commercial customers and eighty-five percent of the Medium Commercial load being served by an EGS. As a result, the OSBA opines that EGS participation in the competitive market is extensive for this class and has not been hindered by PECO's use of the six-month full requirements contracts to procure default service supply. OSBA Exc. at 5.

The OSBA claims that the ALJ's recommendation to implement hourly pricing as interval meters are installed will subject this customer class to unreasonable and unnecessary market price volatility. The OSBA asserts that hourly pricing will only serve to create rate volatility in contravention of the Commission's explicit acknowledgment that rate stability must be a concern when implementing default service standards. The OSBA further asserts that hourly pricing for these customers is not consistent with Act 129's default service standard of a prudent mix designed to provide the least cost to customers over time. According to the OSBA, RESA first proposed hourly pricing in this proceeding because it is in pursuit of a more market-reflective and market-responsive default service rate to promote retail competition. However, the OSBA claims that the Commission has explicitly rejected RESA's argument that the "least cost" standard of Act 129 mandates that default service prices be "market-reflective" and "market-responsive" and has explicitly recognized that price stability should remain an important consideration when designing a default service procurement plan, citing to the Commission's Order in *Default Service and Retail Electric Markets*, Docket No. L-2009-2095604, Order entered October 4, 2011 (*Final Default Service Rulemaking Order*) at 39-40. OSBA Exc. at 5-7.

Next, the OSBA claims that the Medium Commercial customers that remain on default service still value price stability and as such, there is no rational reason to subject the small minority of these customers who have chosen not to switch to an

EGS to the unreasonable rate volatility that would result from adopting hourly pricing. According to the OSBA, the ALJ's reliance on the Commission's *End State Order* as support for Medium Commercial hourly-priced service is misguided. The OSBA asserts that while the Commission has recommended a progression towards a more market responsive default service product, it disagrees that this recommendation is entirely consistent with the current statute or relevant case law. The OSBA opines that the *End State Order* may be viewed as a kind of "wish list" regarding what the Commission envisions for the future of default service, but that its recommendations are not consistent with Act 129 and the Order, therefore, cannot be treated as a mandate to be implemented in the current round of default service proceedings. The OSBA cites to page 45 of the *End State Order* wherein the Commission indicates that it "would prefer to pursue legislative amendments that clearly provide the authority to approve default service plans containing products that more closely resemble current market conditions at the time of delivery..." such as an hourly LMP product for Medium C&I customers. According to the OSBA, no such legislative changes have been effectuated. OSBA Exc. at 8-9.

The OSBA avers that the ALJ did not cite to any testimony or brief in this proceeding that provides evidence or analysis of why the increased volatility of hourly pricing is prudent for PECO's Medium Commercial customers or that this product is designed to provide the least cost to customers over time. The OSBA maintains that this is so because RESA, the party that proposed hourly pricing, rests its entire argument on the *End State Order's* focus on market-responsiveness, a factor the legislature affirmatively removed from the statute when it replaced "prevailing market prices" with the current standard. The OSBA notes that although RESA did allege that hourly pricing is a more appropriate default structure for Medium Commercial customers because they are more aligned with Large C&I customers, it presented no evidence of any "alignment" with respect to their level of shopping sophistication, economic interests, load profiles, numbers of attractive EGS offers received, etc. The OSBA denies that such alignment exists. According to the OSBA, the *End State Order's* focus on the market-

responsiveness of default service rates rather than a prudent mix of sources designed to provide the least cost to customers over time is simply inconsistent with the plain language of Act 129 and is clearly not what the legislature intended. OSBA Exc. at 13-14.

In its Exception No. 2, PAIEUG asserts that the ALJ erred in concluding that the provisions set forth in the Partial Settlement should be approved for purposes of the Medium C&I procurement. PAIEUG asserts that the uncertain timing of the infrastructural upgrades PECO is performing creates a likelihood for increased costs that would be faced by Large C&I customers due to the inclusion of Medium C&I customers into PECO's hourly procurement group, which is currently limited to Large C&I customers. PAIEUG avers that the terms of the Partial Settlement fail to address the rate-related concerns of Large C&I customers that would result from the transitioning of Medium C&I customers to hourly default service during the term of DSP III. Specifically, PAIEUG states that it opposed transitioning these medium-sized customers to hourly-priced service due to projected increases to risk premiums assessed by wholesale suppliers for hourly-priced service. PAIEUG notes that prior to the submission of the Partial Settlement, PECO itself opposed the transition for several reasons, including demonstrated successful shopping among the Medium C&I class, timing concerns regarding deployment of AMI infrastructure necessary to support hourly-priced service, and the same concerns it has expressed regarding increased risk premiums. PAIEUG Exc. at 13-14.

According to PAIEUG, while the Partial Settlement adopts a less fragmented implementation process than RESA's original proposal, it still contemplates transitioning Medium C&I customers to hourly-priced service during PECO's DSP III, either on June 1, 2016, or December 1, 2016. As such, PAIEUG maintains that its concerns remain applicable to the Partial Settlement. PAIEUG opines that its risk concerns would easily be avoided by permitting PECO to complete all necessary

infrastructural upgrades during the DSP III period and revisiting the transitioning of Medium C&I customers to hourly-priced service during PECO's DSP IV proceeding. PAIEUG claims that this solution avoids the necessity for the wholesale suppliers serving PECO's hourly-priced load to increase risk premiums as they would be assured that Medium C&I customers would not be transitioned to hourly-priced service during the DSP III Period. PAIEUG Exc. at 14-15.

PAIEUG avers that the ALJ never addressed the impact that transferring Medium C&I customers to hourly-priced service at currently unknown dates could have on risk premiums for hourly-priced procurement. PAIEUG opines that it does not believe that the Commission's Implementation Order anticipated arrangements that would interject uncertainty into the wholesale market by prescribing multiple benchmarks where Medium C&I load may or may not be transferred to hourly-priced service. PAIEUG avers it would be more reasonable if PECO cannot transition Medium C&I customers to hourly-priced service at the outset of the DSP III period, then the Commission should protect the Large C&I default service customers from potential risk premium increases by waiving the requirement and reassessing the possibility of offering hourly-priced service to Medium C&I customers in PECO's DSP IV. PAIEUG Exc. at 15.

In reply, PECO states that under the Partial Settlement, it agreed to support hourly-priced default service for Medium Commercial customers with interval meters and to use commercially reasonable efforts to implement the Hourly Pricing Transition as soon as reasonably possible and no later than June 1, 2016, subject to certain conditions. PECO further notes that under the Partial Settlement, PECO committed to deploy and test the necessary systems changes to support an effective date of implementation for hourly-priced default service for the Medium Commercial class no later than December 1, 2016. PECO asserts that, contrary to the OSBA's assertions, the ALJ clearly considered the OSBA's contention that Medium Commercial customers should not be treated the same as Large C&I customers, as well as the OSBA's view that legislative amendments to the

Public Utility Code were required for approval of the Settlement and its support for six-month FPCR default service supply contracts for Medium Commercial customers instead of hourly-priced supply. According to PECO, the ALJ was also correct in rejecting the OSBA's arguments by quoting from the *End State Order*. PECO avers that in the excerpt of that Order relied upon by the ALJ, the Commission plainly gave consideration to the characteristics of Medium Commercial customers in its determination to require EDCs to provide hourly-priced default service to Medium Commercial customers with interval meters. PECO opines that the Commission, therefore, should reject the OSBA's Exceptions. PECO R. Exc. at 2-4.

In reply to PAIEUG's concerns, PECO asserts that PAIEUG appears to misconstrue the Partial Settlement and PECO's procurement schedule as the procurement of hourly-priced default service supply for both Large C&I customers and Medium Commercial customers will not take place until March of 2016, well after the September 2015 deadline when PECO must provide notice of the time when Medium Commercial customers will have interval meters and receive hourly-priced default service. In short, PECO states that the basis for the higher risk premiums alleged by PAIEUG does not exist. As a result, PECO urges the Commission to reject PAIEUG's Exceptions and adopt the ALJ's recommendation regarding the Hourly-priced Transition for Medium Commercial customers. PECO R. Exc. at 4-5.

In its Replies to Exceptions, RESA states that the OSBA is wrong to claim either that the Commission lacks the legal authority to issue a decision here consistent with the *End State Order* or that the record would not support such a decision. RESA claims that the Commission's *End State Order* and the Partial Settlement's plan to transition Medium Commercial customers to hourly-priced service are both consistent with the Competition Act. RESA notes that prior to, and following, the *End State Order*, the Commission consistently approved default service plans based on hourly-priced service as the most appropriate default service design for Large C&I customers.

Regarding Medium Commercial customers, RESA explains that the Commission concluded in the *End State Order* that they “are equally well-equipped and educated to manage their commodity costs in an hourly LMP default service environment” and, therefore, they too could benefit from a more market-based default service rate based on hourly LMP. RESA opines that the Commission’s *End State Order* has not been appealed and it continues to be the most on-point and recent precedent of the Commission regarding the transition of Medium Commercial customers to hourly-priced default service. RESA R. Exc. at 3-5.

Next, in reply to the OSBA’s concerns over increased volatility of hourly pricing, RESA states that the record shows that hourly-priced service is a more sustainable default service design for developing a functioning competitive market which benefits customers by giving them access to a competitive market that offers many different products and services that will better meet the individual needs and desires of customers while also achieving broader public policy goals such as encouraging energy conservation and demand response. In addition, RESA asserts that the shopping statistics for the Medium Commercial class supports the Commission’s determination in the *End State Order* that these customers are comfortable with the competitive market and are capable of managing a more market-based default service rate. RESA avers that concerns about volatile pricing are overreaching and place too much emphasis on just one component of pricing, its ability to change. While RESA does not necessarily dispute that some customers may value price stability, even if that stable price is higher than the market price, the role of default service is not to provide that one particular product type. RESA R. Exc. at 5-10.

In reply to the Exceptions of PAIEUG on this issue, RESA states that the Partial Settlement’s transition plan for Medium Commercial customers to hourly-priced service does not create a potential for increased risk premiums in the wholesale bids for hourly-priced service. RESA asserts that the Partial Settlement fully resolves PAIEUG’s

concerns because it would maintain PECO's current approach for bidding out the supply for Large C&I customers as twelve-month contracts. According to RESA, this, coupled with the timeline established in the Partial Settlement, means that wholesale default service suppliers for the Large C&I customers will know prior to the submission of their bids whether additional customers from the Medium Commercial customer class are to be included in the procurement. RESA avers that because of this approach, there is no need for the wholesale default service suppliers to factor into their bids an additional amount as a risk premium to cover a future possibility of being required to serve more customers than anticipated because there is no such risk. RESA R. Exc. at 10-12.

#### **4. Disposition**

Upon our consideration of the evidence of record and the Partial Settlement, as well as the Exceptions and Replies thereto, we are persuaded by the arguments proffered by PECO and RESA, that the procedures included within the Partial Settlement provides a reasonable transition plan for the conversion of the remaining Medium Commercial customers on default service supply to hourly pricing. We conclude that these agreed-upon procedures provide the necessary safeguards to insure that PECO's deployment of interval meters for these customers will be completed before the Hourly Pricing Transition is implemented. We note that within the Partial Settlement, PECO has agreed to deploy and test the necessary systems to support an effective date of implementation for hourly-priced default service for the Medium Commercial class beginning in the second half of 2016. Furthermore, if PECO determines that it cannot complete the necessary systems changes in time, a process has been set out in the Partial Settlement that would involve consultation with the affected Parties and retention of the currently existing default service supply procurements for this customer class. As such, we are in agreement with the ALJ that the concerns expressed by the OSBA have been addressed within the Partial Settlement and that the Partial Settlement is consistent with the Commission pronouncements within the *End State Order*.

In regard to the Exceptions of PAIEUG, we are in agreement with PECO that PAIEUG misconstrues the Partial Settlement and PECO's proposed procurement schedule and that the basis for the potential higher risk premiums alleged by PAIEUG in the wholesale bids for hourly-priced service should not be a concern. The timing of the proposed Hourly Pricing Transition within the Partial Settlement is such that wholesale default suppliers would not need to factor in the risk premiums as alleged by PAIEUG. Accordingly, for all of the reasons above, we shall adopt the recommendation of the ALJ that PECO be allowed to implement hourly-priced default service for Medium Commercial customers who are properly outfitted with interval meters as outlined in the Joint Petition. Therefore, we shall deny the Exceptions filed by the OSBA and PAIEUG on this issue.

## **B. Recovery of Certain PJM Charges**

### **1. Use of a Non-Bypassable Rider**

#### **a. Positions of the Parties**

PECO initially proposed that load serving entities (LSEs), including EGSs, continue to be responsible for transmission costs that comprise various PJM charges, including Generation Deactivation/RMR charges, NITS charges and RTEP charges. However, in light of the FirstEnergy EDCs' proposal in their DSP III proceedings to collect certain PJM bill charges through a non-bypassable charge, PECO indicated from the beginning of this proceeding that it would monitor the FirstEnergy EDCs' proceedings and take into consideration any Commission direction to the FirstEnergy EDCs as it might apply to PECO's proposals for DSP III. PECO St. No. 2 at 18, n.3; PECO St. No. 2-R at 17; PECO R.B. at 8.



Thereafter, in response to the recent *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375 and P-2013-2391378 (Order entered July 24, 2014) (*FirstEnergy DSP III Order*), PECO proposed a non-bypassable transmission service charge for all distribution customers, which includes RTEP charges, Expansion Cost Recovery charges (ECRCs) and generation deactivation charges attributable to PJM designations qualifying for such payments after Commission approval of DSP III, but excludes NITS as directed by the Commission. Tr. at 39-40. PECO also proposed to exclude PJM charges for both unaccounted for energy (UFE) and meter error correction charges from a non-bypassable transmission service charge. *Id.*

RESA recommended that PECO assume the cost responsibility for all PJM charges, including NITS, for all load, including default service and shopping load, and recover the costs of that responsibility from all customers through a non-bypassable charge. RESA M.B. at 28-39. RESA R.B. at 7-13.

PAIEUG objected to PECO's reliance on the *FirstEnergy DSP III Order* as justification for its recommendation concerning PJM charges. PAIEUG R.B. at 8. PAIEUG contended that since there was a settlement in the FirstEnergy proceeding, the Order only applies to the FirstEnergy territory. PAIEUG asserted that settlement agreements that are approved by the Commission do not have precedential effect. PAIEUG R.B. at 13-14.

**b. ALJ's Recommendation**

The ALJ recommended that PECO's proposal be adopted. The ALJ stated that PECO's proposal for a non-bypassable transmission service charge for all distribution customers includes RTEP; TEC/ECRC; and RMR charges and excludes

NITS, UFE and meter error correction charges from a non-bypassable transmission service charge. R.D. at 50-51.

**c. Exceptions and Replies**

In its Exception No. 1, PAIEUG states that the ALJ misapplied the evidence presented in this proceeding from both PECO and RESA and, in actuality, a non-bypassable rider on PECO's system for any customer class is unreasonable and unnecessary. PAIEUG explains that currently, PECO recovers generation, transmission, transmission-related and distribution costs from its default service customers, but recovers only distribution costs from its shopping customers, as the remaining costs are collected by these customers' EGSs. PAIEUG notes that in this proceeding, both PECO and RESA propose to implement a non-bypassable rider to transfer the collection of transmission-related costs from EGSs to PECO for all customers, shopping and non-shopping. PAIEUG claims that neither PECO nor RESA presented any evidence that would warrant this change in *status quo*. PAIEUG Exc. at 3-4.

PAIEUG states that PECO relies entirely on inapplicable findings from a recent Commission Order disposing of the FirstEnergy Companies' DSP III as evidence in support of the proposed non-bypassable rider. PAIEUG avers that PECO's reliance on this Order conflicts with language in the Order establishing the scope of the settlement achieved among the parties to the FirstEnergy proceeding as well as the Commission's longstanding policies establishing that negotiated settlement agreements are not precedential. PAIEUG asserts that granting PECO's proposed non-bypassable rider based upon the findings in the *FirstEnergy DSP III Order* conflicts with the non-precedential nature of settlement agreements approved by the Commission and would discourage parties from entering into future settlement agreements by creating a risk of prejudicial treatment in subsequent litigation. PAIEUG Exc. at 5-6.

Additionally, PAIEUG avers that RESA has only offered two irrelevant claims purporting to establish a change in circumstances from PECO's DSP II Order, where the Commission rejected a similar proposal to recover transmission-related costs on a non-bypassable basis. PAIEUG explains that RESA can only set forth unsubstantiated claims of rate volatility while alternatively attempting to demonstrate a change in circumstances based upon the Commission's unrelated *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Docket No. M-2013-2362961 (Order entered November 14, 2013) (*Fixed Price Order*). However, PAIEUG claims that RESA has been unable to provide any evidence of actual volatility in transmission-related costs with the sole basis for RESA's argument rely on nothing more than testimony claiming such costs are "unpredictable." PAIEUG asserts that RESA's claims are speculative and not supported by any data or objective facts and, therefore, fail to satisfy any burden of proof. Additionally, PAIEUG claims that RESA's efforts to portray the Commission's *Fixed Price Order* as a "change in circumstances" also fails to justify the proposed non-bypassable rider. PAIEUG notes that RESA raised the same argument in the FirstEnergy DSP III proceeding, where the Commission found that nothing in the *Fixed Price Order* constitutes a "changed circumstance" justifying non-bypassable recovery of transmission-related costs. PAIEUG opines that the ALJ's recommendation to implement a non-bypassable rider on PECO's system must be rejected. PAIEUG Exc. at 6-7.

PAIEUG also avers that the ALJ erred in allowing PECO's oral rejoinder testimony into the record. According to PAIEUG, PECO chose the oral rejoinder stage of this proceeding to propose adoption of a non-bypassable rider for all customers even though the Company had adequate opportunity to raise such a proposal as part of its case-in-chief or even in rebuttal testimony. PAIEUG states that although the ALJ finds that PECO's claim of providing notice to the parties via one line in the Company's Direct Testimony regarding PECO's monitoring of *FirstEnergy's DSP III* proceeding was adequate notice, review of the procedural circumstances surrounding PECO's oral

rejoinder confirm that the ALJ's findings are inconsistent with the Commission's regulations regarding the presentation of evidence. PAIEUG opines that PECO's oral rejoinder should be stricken from the record in this proceeding. PAIEUG Exc. at 9. PAIEUG submits that notice of an EDC monitoring another, unrelated EDC's DSP proceeding, combined with another party's proposal for a non-bypassable rider, does not provide adequate due process for any party to respond much less litigate a proposal raised only during oral rejoinder. *Id.* at 10-12.

In its Replies to Exceptions, PECO first responds to PAIEUG's Exception that a non-bypassable charge is unreasonable, stating that it is inconsistent with the Commission's conclusion on pages 22-23 of the *FirstEnergy DSP III Order* that the recovery of PJM Transmission Charges on a non-bypassable basis would be beneficial to customers. While PECO agrees with PAIEUG that settlements are not generally precedential, PECO avers that PAIEUG never explains why the Commission's conclusion in approving the FirstEnergy Settlement that FirstEnergy customers will receive a benefit from the non-bypassable recovery of transmission charges does not apply to customers in PECO's service territory. PECO opines that its proposed exclusion of NITS costs, as well as additional charges originally proposed by RESA which are not transmission-related, appropriately mitigates any PAIEUG concerns that a non-bypassable TSC creates insurmountable problems for Large C&I customers in the negotiation of contracts with EGSs. As a result, PECO maintains that the ALJ correctly found the record supports its proposal and provides no basis for PAIEUG's objections. PECO R. Exc. at 7-8.

Next, in reply to PAIEUG's assertions with regard to PECO's oral rejoinder testimony, PECO submits that the Commission previously found that testimony submitted in response to arguments made by opposing party witnesses, as is the case here, in no way violates the Commission's regulations regarding the presentation of evidence (52 Pa. Code ¶ 5.243). *See, Pa.PUC v. Western Utils., Inc., Docket No.*

*R-00963856, 1998 WL 201481, at 8-9 (Pa.P.U.C. Jan. 28, 1998)*. According to PECO, the Company explained PECO's proposed non-bypassable TSC at the evidentiary hearing in response to RESA's surrebuttal testimony that PECO's response to the developments in the FirstEnergy EDCs' proceedings in the Company's rebuttal testimony was "insufficient." Moreover, PECO asserts that the issue of recovery of PJM Charges has been extensively developed on the record in this proceeding. PECO maintains that, as the ALJ correctly determined, PAIEUG had the opportunity to present evidence opposing a non-bypassable TSC prior to PECO's rejoinder testimony. PECO R. Exc. at 8.

RESA also filed Replies to the Exception of PAIEUG with regard to the recovery of PJM Charges. RESA avers that PAIEUG is patently wrong on all of its points and, therefore, the Commission should enter an order that would require PECO to assume the cost responsibility for all PJM Charges, including NITS, and recover the costs from all customers through a non-bypassable charge. According to RESA, when costs are allocated based on regulatory action or control, those costs are not market-based costs, are subject to change, and are volatile. RESA maintains that the non-market-based nature of all the PJM Charges makes them non-hedgeable wholesale cost obligations that are unpredictable. As such, RESA asserts there is no market-based, transparent way to reasonably calculate future rate increases to the PJM Charges and then accurately factor them into retail pricing. This results in customers paying something other than the actual costs of the PJM Charges unless the EDC assumes the cost responsibility for the PJM Charges for all load and leverages its right to full and current cost recovery, claims RESA. RESA opines that this outcome, which would result from adopting the Partial Settlement, as modified by its Exceptions, would treat all customers fairly and equally. RESA R. Exc. at 12-14.

RESA further argues that Commission's *Fixed Price Order* places practical constraints on the ability of EGSs to recover the costs of future rate increases in non-market-based charges because under the present process, there is only one way for an

EGS to guarantee its ability to recover from customers the future, unpredictable rate changes in PJM Charges and that is to offer a variable-priced product. RESA avers that the practical impact of the *Fixed Price Order* for the competitive market is that EGSs assessing how to deal with unpredictable future rate changes in PJM Charges need to determine whether to rely exclusively on variable contracts to recover these costs or take the risk of offering fixed-price contracts knowing that the contracts will likely be cancelled if the EGS attempts to recover the costs from the customer. According to RESA, neither result is good for customers because each limits the variety of potential competitive products and competitive pricing that could be offered. RESA opines that requiring PECO to assume the cost responsibility for all load would lead to significant positive impacts for customers given the practical effect of the *Fixed Price Order*. RESA R. Exc. at 14-16.

**d. Disposition**

Based upon the evidence of record, we are in agreement with the ALJ's recommendation that the transmission cost recovery proposed in the Partial Settlement by the Joint Petitioners is reasonable and should be approved. We are in agreement with PAIEUG that settlements are not precedential. We find, however, that our determination in this proceeding is consistent with our recent determination in the FirstEnergy DSP III proceeding that the non-bypassable recovery of certain PJM transmission charges is beneficial to customers. We also conclude that PAIEUG has failed to demonstrate in this proceeding that these costs are better recovered in some manner other than the procedure the Parties agreed to within the FirstEnergy DSP III case. We further conclude that PAIEUG's assertions with regard to PECO's oral rejoinder testimony in this proceeding was properly rejected by the ALJ as PECO clearly indicated early in the process that it was monitoring the FirstEnergy proceeding and would reconsider its original proposal herein concerning transmission cost recovery. Accordingly, we shall deny the Exceptions of PAIEUG on this issue and adopt the ALJ's recommendation.

## 2. Treatment of Network Integration Transmission Service Charges

### a. Positions of the Parties

As stated, *supra*, in response to the recent *FirstEnergy DSP III Order*, PECO proposed a non-bypassable transmission service charge for all distribution customers, which includes RTEP charges, ECRC charges and generation deactivation charges attributable to PJM designations qualifying for such payments after Commission approval of DSP III, but excluded NITS as directed by the Commission. Tr. at 39-40. PECO also proposed to exclude PJM charges for both UFE and meter error correction charges from a non-bypassable transmission service charge. *Id.* PECO stated that UFE costs and meter error correction charges are incurred as part of PJM's financial settlement process for the energy market and therefore are in no way related to the provision of transmission service. Tr. at 48. According to PECO, UFE is the hour-by-hour difference (+ or -) between the metered PECO Zone load and the sum of the calculated wholesale energy responsibilities of all load-serving entities in the PECO Zone. Similarly, in PECO's Zone, the Company noted that meter error correction costs are associated with adjustments to generation and tie-line metered energy values in the PJM financial settlement process. *Id.* In addition, PECO noted that PJM has not yet developed an appropriate mechanism by which UFE, which is associated with every LSE in PECO's Zone, can be isolated and allocated only to PECO as an EDC. *Id.* Consequently, PECO requested that UFE and meter error correction costs be excluded from any non-bypassable transition service charge established to recover PJM charges collected by PECO. PECO M.B. at 39-40, PECO R.B. at 9.

Although RESA agreed with PECO's proposal for a nonbypassable transmission service charge for all distribution customers, RESA argued for inclusion of NITS costs in any non-bypassable transmission service charge on the grounds that those

costs, like the PJM Transmission Charges, are unpredictable and result in higher-priced competitive retail electricity offers because EGSs cannot hedge those costs. RESA M.B. at 33-40. RESA also contended that the recovery of NITS charges associated with default service load by PECO through its default service transmission charge creates an unfair “competitive advantage” for wholesale suppliers and that PECO should be required to recover these costs for EGSs as well on a non-bypassable basis. RESA M.B. at 34, 38-39.

PECO and PAIEUG urged the Commission to reject RESA’s arguments for inclusion of NITS charges in a non-bypassable charge. PECO explained that NITS costs in PECO’s service territory do not need to be hedged because the costs are extremely predictable year-to-year. PECO M.B. at 40.

In the Partial Settlement, PECO agreed to support RESA’s recommended approach for the following charges: RTEP; ECRC; and, RMR charges for which charges are set after the approval of PECO’s Revised DSP III by the Commission. Joint Petition ¶ 48 at 16-17. Nevertheless, the Parties have agreed that PECO will maintain the *status quo* for UFE and meter error correction charges. This means that wholesale default service suppliers and EGSs will continue to assume the cost responsibility for their customers and recover the costs from their customers. Joint Petition ¶ 50 at 17. Finally, the Partial Settlement reserved all issues related to the treatment of NITS to be addressed by the Commission. *Id.*

RESA recommended that the approach of the Partial Settlement be applied to NITS because of the unpredictability of future changes in NITS. Further, RESA stated that doing so would spread the NITS costs to all customers in a competitively fair manner without creating a competitive advantage for default service or denying EGSs equal access to the EDC’s facilities. RESA R.B. at 7-8.



RESA asserted that PAIEUG's argument that this proposal concerning PJM charges violates the Competition Act and contravenes the Public Utility Code has been rejected by the Commission in the *FirstEnergy DSP III Order*. In that Order, the Commission stated that neither the Competition Act nor the Code preclude the implementation of the NITS proposal. *FirstEnergy DSP III Order* at 38.

RESA stated that in the event that the Commission chooses to reject in whole or in part the Partial Settlement and RESA's primary recommendation for NITS, then RESA's alternative approach should be implemented. RESA's alternative approach is that PECO should be prohibited from assuming the cost responsibility for just wholesale default service suppliers while EGSs are required to assume their own cost responsibility. Instead, wholesale default service suppliers should be required to assume cost responsibility for default service customers just as EGSs would assume the cost responsibility for shopping customers. Although this alternative is inferior to RESA's preferred approach, it is necessary to ensure parity between EGSs and default service providers for these cost components if RESA's primary position is not adopted and would also be more consistent with the Competition Act and the *FirstEnergy DSP III Order* than the status quo. RESA R.B. at 8-9.

PAIEUG contended that collection of transmission costs (NITS costs) or transmission-related costs (RTEP/TEC, RMR, UFE, and Meter Error Correction charges) by PECO through a non-bypassable rider is unjust and unreasonable. Moreover, PAIEUG argued that this proposal violates the Competition Act and contravenes the Code. According to PAIEUG, the record is devoid of evidence supporting a modification to PECO's current methodology for the collection of transmission and transmission-related costs. PAIEUG R.B. at 7.

**b. ALJ's Recommendation**

The ALJ found that PECO presented evidence to show that UFE costs and meter error correction charges are incurred as part of PJM's financial settlement process for the energy market and, therefore, are in no way related to the provision of transmission service. In addition, the ALJ was persuaded by PECO that PJM has not yet developed an appropriate mechanism by which UFE can be isolated and allocated only to PECO as an EDC. Therefore, the ALJ concluded that PECO's request that UFE and meter error correction costs be excluded from any non-bypassable transition service charge established to recover PJM charges collected by PECO was reasonable. R.D. at 50.

The ALJ further concluded that PECO and PAIEUG offered reasonable explanations for excluding NITS, UFE and meter error correction charges at this time. The ALJ noted that in the event that RESA's proposal was not approved, RESA proposed an alternative approach. According to the ALJ, RESA stated that PECO should be prohibited from assuming the cost responsibility for just wholesale default service suppliers while EGSs are required to assume their own cost responsibility. Instead, wholesale default service suppliers should be required to assume cost responsibility for default service customers just as EGSs would assume the cost responsibility for shopping customers. The ALJ concluded that since RESA failed to explain how this would be implemented and how it is preferable to PECO's proposal, it should not be implemented. R.D. at 50.

**c. Exceptions and Replies**

In its Exceptions, RESA states that it supports requiring PECO to assume the cost responsibility for all load for the PJM Charges, including NITS, because the nature of the charges make them non-hedgeable wholesale cost obligations that are not

market-based and are, therefore, unpredictable. RESA asserts that the most equitable way to address this issue and ensure that all customers pay only the actual costs of the PJM Charges is to require the EDC to assume the cost responsibility and recover these costs through a non-bypassable charge assessed on all customers. RESA notes that as set forth in the Partial Settlement, PECO agreed to support RESA's recommended approach for the following charges: RTEP; TEC/ECRC and RMR charges for which charges are set after the approval of PECO's Revised DSP III by the Commission. RESA explains that the Partial Settlement reserved all issues related to the treatment of NITS to be addressed by the Commission. RESA Exc. at 3-5.

In its Exception No. 1, RESA asserts that the ALJ erred in failing to recognize that the nature of NITS is the same as the other PJM Charges for which she correctly recommends that PECO assume the cost responsibility. According to RESA, NITS costs are essentially fully regulated cost-of-service rates that are imposed on all LSEs based on each LSE's share of load served. RESA explains that while the NITS cost for PECO has remained stable over the past several years, PECO is required to recalculate the appropriate rate on an annual basis and submit the NITS rate to FERC as part of PJM's Open Access Transmission Tariff. Therefore, RESA asserts that there is a potential each year for unexpected changes, claiming that nine of the nineteen other utilities within PJM experienced increases in June 2014 as high as twenty-nine percent. RESA opines that the fact that there has not been any changes for some time for PECO increases the possibility of significant change in the future. RESA Exc. at 6-7.

RESA states that from a practical standpoint, requiring PECO to assume the cost responsibility for NITS for all load would be consistent with the Partial Settlement regarding the other PJM Charges. As a result, RESA notes that PECO's implementation of this approach at this time for NITS does not present any special implementation problems and, in fact, would make sense in terms of providing consistent treatment for the PJM Charges. RESA avers that by requiring the EDC to assume the cost

responsibility for the PJM Charges for both wholesale default service suppliers and EGSs, the result is that all LSEs receive nondiscriminatory access to the EDC's right of cost recovery and, therefore, the issue of including risk premiums into a retail price to account for PJM Charges is completely eliminated. RESA Exc. at 7-9.

Lastly, RESA asserts that while the Commission chose not to adopt RESA's preferred position for NITS for the FirstEnergy EDCs, maintaining the status quo here, as recommended by the ALJ, would treat NITS differently for PECO than these charges are treated for the FirstEnergy EDCs. RESA maintains that this is because the FirstEnergy EDCs do not assume the cost responsibility for NITS for wholesale default service suppliers. While RESA maintains that the preferred approach whereby PECO would assume the cost responsibility for NITS for all load can and should be adopted as the best approach both practically and legally, in lieu of that, the Commission should at least issue a decision consistent with how NITS are treated by the FirstEnergy companies. RESA opines that to achieve this result, the Commission would need to direct PECO to require wholesale default service suppliers to assume the cost responsibility for NITS. According to RESA, the Commission should do this only if it chooses to reject RESA's preferred approach which is by far the more superior result for customers. RESA Exc. at 9-10.

In its Replies to the Exceptions of RESA, PECO states that the ALJ properly rejected RESA's proposed changes to the allocation of responsibility for NITS costs. PECO avers that leaving aside RESA's improper presentation of factual material in its briefs after the close of the record in this proceeding and in its Exceptions, the NITS rate increases in other utility jurisdictions are simply not relevant where the evidence shows that NITS charges in PECO's service territory are very predictable. PECO explains that as a result, NITS costs in its service territory do not need to be hedged as they are extremely predictable year-to-year. PECO further avers that RESA provided no factual basis to support its claim that the lack of change in NITS costs "increases the

possibility of significant change in the future.” Additionally, PECO notes that RESA’s concern regarding the alleged advantage of default service over EGSs as a result of the current allocation of NITS costs is simply misplaced. PECO explains that EGSs are fully capable of factoring these costs into their competitive prices, particularly in light of the unrefuted evidence that NITS costs in PECO’s service territory have not changed for several years, and therefore cannot be contributing to any material risk premium in EGS offers. PECO R. Exc. at 9-11.

In its Replies to Exceptions, PAIEUG first states that the ALJ appropriately determined that NITS charges should not be collected via any non-bypassable rider. PAIEUG asserts that RESA’s arguments with respect to the collection of NITS are wholly unsupported by the record and distort the exclusion of these costs from the Partial Settlement filed in this proceeding. PAIEUG claims that RESA has failed to satisfy its burden to show that NITS are a volatile cost warranting collection via a non-bypassable rider, as recognized by the adverse Commission precedent associated with a similar proposal by RESA presented to and rejected by the Commission only months ago in the FirstEnergy DSP proceeding. Additionally, PAIEUG maintains that the proposed non-bypassable rider would restrict retail customers’ freedom of contract and impose the potential for double collection on Large C&I customers. PAIEUG opines that NITS costs are “transmission” costs, which are generally predictable and have not changed in PECO’s service territory for several years. PAIEUG R. Exc. at 3-7.

**d. Disposition**

Upon our consideration of the record evidence, as well as the Exceptions and the Replies thereto, we are persuaded by the arguments proffered by PECO and PAIEUG that, consistent with our recent determination in the DSP III proceeding of the FirstEnergy Companies, NITS related costs should not be collected within the Company’s non-bypassable rider mechanism. We conclude that RESA has failed to

provide sufficient evidence that PECO's NITS costs are of such a volatile nature in PECO's service territory that it would render them unpredictable and difficult for the EGSs to hedge. Additionally, we are in agreement with the ALJ that RESA has failed to explain how its alternative approach would be implemented or how it would be preferable to PECO's proposal. As such, we shall deny the Exceptions of RESA and adopt the ALJ's recommendation that NITS charges be excluded from PECO's non-bypassable rider.

### **3. Large C&I Customer Carve-Out**

#### **a. Positions of the Parties**

PAIEUG objected to PECO's and RESA's proposed non-bypassable transmission service charge because it could lead to a double collection of costs. PAIEUG R.B. at 18. PAIEUG contended that Large C&I customers are more intimately involved in negotiating their contract terms to include various pass-through and fixed price components based on their individual budgetary concerns. PAIEUG M.B. at 22, 27-28, PAIEUG R.B. at 21, Noble M.B. at 3. Therefore, if the Commission approves a non-bypassable recovery of any transmission or transmission-related charges, PAIEUG requested that the Commission approve a carve-out for Large C&I customers to allow them to continue to remit transmission and transmission-related charges to their EGSs. PAIEUG R.B. at 21.

#### **b. ALJ's Recommendation**

The ALJ found that PAIEUG made a viable argument about the differences between Large C&I customers and other customers in negotiating contracts for service. Therefore, the ALJ recommended that the Commission approve a carve-out for Large

C&I customers to allow them to continue to remit transmission and transmission-related charges to their EGSs. R.D. at 51.

**c. Exceptions and Replies**

In its Exceptions, PECO objected to the ALJ's recommendation that the Commission should carve out Large C&I customers from PECO's non-bypassable TSC. PECO avers that Large C&I customers should not be exempt from the proposed non-bypassable TSC as such a carve-out will lead to the incurrence of additional, unquantified administrative costs for billing system changes. PECO further states that PAIEUG has not demonstrated that the alleged differences in characteristics between customer classes provide a basis for special treatment for Large C&I customers with respect to the allocation of PJM Transmission Charges. According to PECO, PAIEUG's contention that Large C&I customers will face a risk of "double collection" of PJM transmission charges, once by PECO through the proposed TSC and again by EGSs under their contracts with Large C&I customers, does not support the ALJ's recommendation. PECO claims that PAIEUG did not present any evidence of a PECO Large C&I customer actually facing the dilemma of a double collection of the PJM Transmission Charges under EGS contracts extending beyond June 1, 2015. PECO Exc. at 3-5.

Next, PECO asserts that contrary to PAIEUG's assertions, the *FirstEnergy DSP III Order* does not support adoption of a Large C&I customer carve out. According to PECO, in that order the Commission recognized that there was "some merit" in the alleged concerns of industrial customers if the Commission approved a revised cost collection methodology for PJM charges. However, the Commission's observation was limited to the treatment of NITS costs, which are specifically excluded under the Partial Settlement from any non-bypassable TSC implemented by PECO at the direction of the Commission. PECO Exc. at 6.

PECO further states that the Company's current billing systems do not have the capability to exempt the Large C&I procurement class from the Commission-approved non-bypassable TSC without the substantial reprogramming of those systems. PECO opines that because PAIEUG first proposed its Large C&I customers carve-out in its Main Brief, there is no record of the administrative complexity and costs that such a carve-out would entail. However, PECO notes that should the Commission approve PAIEUG's proposal, the Commission should clarify that the costs to implement the carve-out will be recovered from all Large C&I customers. PECO Exc. at 6.

In its Exception No. 2, RESA claims that the ALJ erred in recommending that PECO should not be required to assume the cost responsibility for Large C&I customers. In context, RESA states that the ALJ is recommending that PECO will assume the cost responsibility of all the PJM Charges, except NITS, for all non-Large C&I customers and recover the costs from those customers through a non-bypassable charge. However, RESA explains that for Large C&I customers, the status quo will remain so PECO will assume the cost responsibility for wholesale default suppliers only and EGSs will be required to assume it for Large C&I customers. RESA avers that there are several problems with this recommended approach and urges the Commission to reject it. RESA Exc. at 10-11.

RESA asserts that all customers pay for the PJM Charges regardless of what entity assumes the cost responsibility and this does not change if PECO assumes the cost responsibility for shopping customers. According to RESA, only the mechanism by which the costs are collected changes, either via a non-bypassable charge or via the retail price. RESA opines that shifting the responsibility to the EDC to assume the cost responsibility for all load positively impacts customers because it means that customers would not be paying something other than the actual costs for these PJM Charges. RESA states that the ALJ appears to have been persuaded by arguments that Large C&I customers have more significant negotiating power with EGSs and, therefore, can



negotiate contracts to address the PJM Charges thereby potentially resulting in more favorable contracts for the Large C&I customer. RESA avers that this argument is flawed as it does not recognize the difference between the market-based energy commodity and the non-market based PJM Charges. RESA claims that preserving the ability of Large C&I customers to negotiate contracts regarding the market-based energy commodity cost is not the same as negotiating the nature of the non-market PJM Charges. RESA notes that allowing customers the ability to negotiate the energy commodity price with EGSs is an important part of the competitive market which would not be impacted by adopting RESA's proposal in this proceeding. RESA Exc. at 11-12.

Lastly, RESA asserts that PAIEUG did not offer its alternative carve out solution during the testimony phase of this proceeding and, therefore, no record was developed regarding how and whether such approach could even be implemented. RESA states that because this proposal was not properly presented in the record, the EGSs had no opportunity to respond on the record to present factual evidence explaining why this customer class bifurcation approach is not feasible. As a result, RESA claims that PAIEUG has not met its required burden of proof as the proponent of this proposal. RESA states that it would be difficult if not impossible for EGSs to assume the cost responsibility for non-market based PJM Charges for one group of customers and not others, as the ALJ's recommendation would require. RESA asserts that an EGS's pricing protocols, systems and algorithms may not allow for this type of bifurcation on the basis of customer size. RESA claims that given the risks and operational complexities the likely reality is that if the ALJ recommendation is adopted, EGSs will likely continue to embed some level of risk premium for non-market based charges even for those customers below 500 kW. According to RESA, ironically, PAIEUG's customer bifurcation proposal could result in exactly the type of "double cost recovery" that it was concerned about under RESA's proposal to simply have the EDC assume these charges for all load. RESA further claims that no other EDC currently operates with the situation that the ALJ has recommended in this proceeding. RESA urges the Commission to reject

the ALJ's recommendation to implement a Large C&I carve-out whereby EGSs would be required to assume the cost responsibility of the PJM Charges for Large C&I customers only and recover the costs through EGS prices while the EDC would assume the cost responsibility for all other customers and recover the costs through a non-bypassable charge. RESA Exc. at 14-15.

In its Replies to Exceptions, PAIEUG states that the ALJ correctly found that the unique contractual issues facing Large C&I customers warrants a carve-out for these customers from the implementation of any non-bypassable rider. PAIEUG claims that PECO's opposition to the ALJ's recommended carve-out is wholly inconsistent with the evidence PECO relies upon in support of its position. Contrary to PECO's claims, PAIEUG states that the ALJ incorporates portions of its and Noble's Main Briefs that directly cite to both written testimony and the transcript to support the carve-out. Additionally, PAIEUG claims that PECO's Exception distorts the testimony offered by PAIEUG in an attempt to discredit the PAIEUG position regarding non-bypassable recovery for transmission and transmission-related costs, as well as Large C&I customers' concerns with respect to double-collection. Finally, PAIEUG asserts that PECO erroneously alleges that the *FirstEnergy DSP III Order* does not support the ALJ's recommendation for a Large C&I carve-out for PECO customers. PAIEUG requests that the Commission affirm the ALJ's recommended carve-out for Large C&I customers. PAIEUG R. Exc. at 8-14.

In reply to RESA's Exceptions on this issue, PAIEUG states that the arguments set forth by RESA either ignores the evidence presented herein or set forth unsubstantiated claims not raised in this proceeding to date. PAIEUG claims that RESA ignored the extensive testimony presented in this proceeding demonstrating that Large C&I customers are uniquely and adversely impacted by non-bypassable recovery of transmission and transmission-related costs. Also, PAIEUG notes that RESA offered unsubstantiated claims regarding risk management and the long-term implications of the

proposed carve-out. PAIEUG further asserts that RESA's erroneous allegation that the recommended Large C&I carve-out would be "impossible" for EGSs to implement, must be disregarded entirely as unfounded. PAIEUG R. Exc. at 14-18.

**d. Disposition**

Upon our consideration of the evidence of record, we are in agreement with the positions expressed by PECO and RESA within their Exceptions that PAIEUG has not demonstrated that it was necessary to carve-out the Large C&I customers from the non-bypassable rider recovery mechanism proposed in this proceeding. We are not persuaded that PAIEUG's alleged concern over the "double collection" of PJM transmission charges justifies special treatment for Large C&I customers. Additionally, both PECO and RESA point out that exempting such customers from the proposed non-bypassable recovery mechanism could result in additional, unquantified administrative costs that have not been properly identified within the record of this proceeding. As such, we shall grant the Exceptions filed by PECO and RESA on this issue and reject the ALJ's recommendation that a Large C&I customer carve-out is necessary.

**IV. Conclusion**

Based on our review, evaluation and analysis of the record evidence, we shall grant the Exceptions filed by PECO, grant the Exceptions filed by RESA, in part, and deny the Exceptions of the OSBA and PAIEUG, consistent with the discussion contained in the body of this Opinion and Order. We shall adopt the ALJ's Recommended Decision to approve the Joint Petition for Partial Settlement, adopt the ALJ's Recommended Decision with regard to the Hourly-Priced Transition for Medium Commercial customers and the recovery of certain PJM Charges via a non-bypassable mechanism, but reject the ALJ's recommendation to provide for a carve-out for Large

Commercial and Industrial customers, consistent with our discussion, *supra*;

**THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by PECO Energy Company to the Recommended Decision of Administrative Law Judge Cynthia Williams Fordham are granted, consistent with this Opinion and Order.

2. That the Exceptions filed by the Retail Energy Supply Association to the Recommended Decision of Administrative Law Judge Cynthia Williams Fordham are granted, in part, and denied, in part, consistent with this Opinion and Order.

3. That the Exceptions filed by the Office of Small Business Advocate and the Philadelphia Area Industrial Energy Users Group to the Recommended Decision of Administrative Law Judge Cynthia Williams Fordham are denied, consistent with this Opinion and Order.

4. That the Recommended Decision of Administrative Law Judge Cynthia Williams Fordham, issued on September 30, 2014, is adopted, in part, consistent with this Opinion and Order.

5. That the Joint Petition for Partial Settlement filed in the matter captioned as “Petition of PECO Energy Company for Approval of its Default Service Programs for the Period of June 1, 2015 through May 31, 2017” at Docket Number P-2014-2409362, is approved without modification.

6. That to the extent that is necessary to permit PECO Energy Company to procure generation for procurement classes as set forth in the Default

Service Plan as revised by the Partial Settlement, the Commission's regulation at 52 Pa. Code § 54.187 is waived.

7. That NERA Economic Consulting, Inc. is approved as the independent third-party evaluator for PECO's default service procurements.

8. That the form Supply Master Agreement attached to the Joint Petition as an affiliated interest agreement is approved pursuant to 66 Pa. C.S. § 2102.

9. That to the extent that it is necessary to permit PECO Energy Company to implement semi-annual reconciliations of the over/under collection component of the GSA for the Residential, Small Commercial and Medium Commercial Classes as set forth in the Default Service Plan, as revised by the Partial Settlement, the Commission's regulations at 52 Pa. Code §§ 54.187(i) and (j) are waived.

10. That the electric service tariff riders and new supplier tariff appendices attached to the Joint Petition shall become effective as of June 1, 2015.

11. That PECO Energy Company's proposal to implement hourly price default service for Medium Commercial customers as outlined in the Joint Petition is granted.

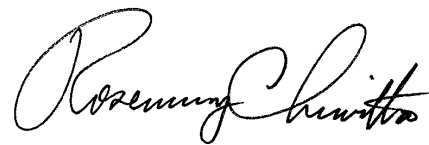
12. That PECO Energy Company's proposal for a non-bypassable Transmission Service Charge for distribution customers including the Regional Transmission Expansion Plan charges, Expansion Cost Recovery charges and Generation Deactivation/Reliability Must Run charges is approved.

13. That the proposal to include Network Integration Transmission Services in the Company's Transmission Service Charge as a non-bypassable charge is denied.

14. That PAIEUG's proposal to carve out an exception to the non-bypassable charge for Large C&I customers and allow them to continue to remit transmission and transmission-related charges to their Electric Generation Suppliers is denied.

15. That the investigation at Docket No. P-2014-2409362 be terminated and the record be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: December 4, 2014

ORDER ENTERED: December 4, 2014