

W. Craig Williams  
Assistant General Counsel  
2301 Market Street / S23-1  
Philadelphia, PA 19103

Direct Dial: 215-841-5974  
Email: [Craig.Williams@exeloncorp.com](mailto:Craig.Williams@exeloncorp.com)

August 20, 2020

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

**Re: Petition of PECO Energy Company for Approval of Its Default Service  
Program for the Period from June 1, 2021 through May 31, 2025  
Docket No. P-2020-3019290**

---

Dear Secretary Chiavetta:

Enclosed for filing is the **Initial Brief of PECO Energy Company** (“Initial Brief”) in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Initial Brief has been served upon Administrative Law Judge Eranda Vero, and all parties of record.

Should you have any questions, please contact me directly at 215.841.5974. Thank you.

Very truly yours,



W. Craig Williams

c: Per Certificate of Service (w/encls.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY** :  
**COMPANY FOR APPROVAL OF ITS** :  
**DEFAULT SERVICE PROGRAM FOR** : **Docket No. P-2020-3019290**  
**THE PERIOD FROM JUNE 1, 2021** :  
**THROUGH MAY 31, 2025** :

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the **Initial Brief of PECO Energy Company** on the persons below in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL**

The Honorable Eranda Vero  
Philadelphia Administrative Law Judge  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
801 Market Street  
Philadelphia, PA 19107  
[evero@pa.gov](mailto:evero@pa.gov)

Aron J. Beatty  
David T. Evrard  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[abeatty@paoca.org](mailto:abeatty@paoca.org)  
[devrard@paoca.org](mailto:devrard@paoca.org)

Daniel G. Asmus  
Erin K. Fure  
Pennsylvania Office of Small Business  
Advocate  
555 Walnut Street, First Floor  
Harrisburg, PA 17101  
[dasmus@pa.gov](mailto:dasmus@pa.gov)  
[efure@pa.gov](mailto:efure@pa.gov)

Richard Kanaskie  
Director & Chief Prosecutor  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commerce Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17105-3265  
[rkanaskie@pa.gov](mailto:rkanaskie@pa.gov)

Elizabeth R. Marx  
John Sweet  
Ria Pereira  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[emarxpulp@palegalaid.net](mailto:emarxpulp@palegalaid.net)  
[jsweetpulp@palegalaid.net](mailto:jsweetpulp@palegalaid.net)  
[rpereirapulp@palegalaid.net](mailto:rpereirapulp@palegalaid.net)  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)  
*Counsel for CAUSE-PA*

Robert W. Ballenger  
Josie B. H. Pickens  
Joline R. Price  
Kintéshia Scott  
Community Legal Services  
1424 Chestnut Street  
Philadelphia, PA 19102  
[rballenger@clsphila.org](mailto:rballenger@clsphila.org)  
[jpickens@clsphila.org](mailto:jpickens@clsphila.org)  
[jprice@clsphila.org](mailto:jprice@clsphila.org)  
[kscott@clsphila.org](mailto:kscott@clsphila.org)  
*Counsel for TURN and Action Alliance  
Community Legal Services, Inc.*

Charis Mincavage  
Adeolu A. Bakare  
Jo-Anne Thompson  
McNees, Wallace & Nurick LLC  
100 Pine Street  
Harrisburg, PA 17108-1166  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[abakare@mcneeslaw.com](mailto:abakare@mcneeslaw.com)  
[jthompson@mcneeslaw.com](mailto:jthompson@mcneeslaw.com)  
*Counsel for PAIEUG*

John F. Lushis, Jr.  
Norris McLaughlin, P.A.  
515 West Hamilton Street – Suite 502  
Allentown, PA 18101  
[jlushis@norris-law.com](mailto:jlushis@norris-law.com)  
*Counsel for Calpine Retail Holdings, LLC*

James H. Laskey  
Becky Merola  
Norris McLaughlin, P.A.  
P.O. Box 5933  
400 Crossing Boulevard, 8th Floor  
Bridgewater, NJ 08807-5933  
[jlasky@norris-law.com](mailto:jlasky@norris-law.com)  
[becky.merola@calpinesolutions.com](mailto:becky.merola@calpinesolutions.com)  
*Counsel for Calpine Retail Holdings, LLC*

Gregory L. Peterson  
Phillips Lytle LLP  
201 West Third Street, Suite 205  
Jamestown, NY 14701-4907  
[gpeterson@phillipslytle.com](mailto:gpeterson@phillipslytle.com)  
*Counsel for StateWise Energy Pennsylvania  
LLC and SFE Energy Pennsylvania, Inc.*

Kevin C. Blake  
Thomas F. Puchner  
Phillips Lytle LLP  
One Canalside  
125 Main Street  
Buffalo, NY 14203-2887  
[kblake@phillipslytle.com](mailto:kblake@phillipslytle.com)  
[tpuchner@phillipslytle.com](mailto:tpuchner@phillipslytle.com)  
*Counsel for StateWise Energy  
Pennsylvania LLC and SFE Energy  
Pennsylvania, Inc.*

Karen O. Moury  
Deanne M. O'Dell  
Eckert Seamans Cherin & Mellott, LLC  
P.O. Box 1248  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)  
[dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
*Counsel for Electric Supplier Coalition*

Brian Kalcic  
Excel Consulting  
225 South Meramec Avenue, Suite 720  
St. Louis, MO 63105  
[excel.consulting@sbcglobal.net](mailto:excel.consulting@sbcglobal.net)  
*Consultant for OSBA*

Joseph Otis Minott  
Ernest Logan Welde,  
Clean Air Council  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
[joe\\_minott@cleanair.org](mailto:joe_minott@cleanair.org)  
[lwelde@cleanair.org](mailto:lwelde@cleanair.org)  
*Counsel for Clean Air Council*

Joseph Otis Minott  
Ernest Logan Welde,  
Clean Air Council  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
[joe\\_minott@cleanair.org](mailto:joe_minott@cleanair.org)  
[lwelde@cleanair.org](mailto:lwelde@cleanair.org)  
*Counsel for Environmental Stakeholders*

Devin McDougall  
Earth Justice  
476 Clinton Avenue, Apt. 6F  
Brooklyn, NY 11238  
[d874164@gmail.com](mailto:d874164@gmail.com)  
*Counsel for Environmental Stakeholders*

Devin McDougall  
Rebecca Barker  
Clean Energy Program  
Philadelphia Office  
1617 John F. Kennedy Blvd., Suite 1130  
Philadelphia, PA 19103  
[dmcdougall@earthjustice.org](mailto:dmcdougall@earthjustice.org)  
[rbarker@earthjustice.org](mailto:rbarker@earthjustice.org)  
*Counsel for Environmental Stakeholders*



---

Kenneth M. Kulak (Pa. No. 75509)  
Brooke E. McGlenn (Pa. No. 204918)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5384 (bus)  
215.963.5001 (fax)  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
[brooke.mcglenn@morganlewis.com](mailto:brooke.mcglenn@morganlewis.com)

Dated: August 20, 2020

*Counsel for PECO Energy Company*



## TABLE OF CONTENTS

	<b>Page</b>
I. INTRODUCTION .....	1
A. Procedural History .....	5
B. The Partial Settlement.....	6
II. ARGUMENT .....	10
A. PECO’s Plan Represents A Prudent Mix Of Contracts Designed To Provide Adequate And Reliable Service At Least Cost Over Time .....	10
1. PECO Appropriately Considered The Risks And Benefits Of Long-Term Contracts When Developing Its Procurement Plan .....	10
2. PECO’s Default Service Plan Was Not Required To Include An Evaluation Of The Potential Benefits Of Distributed Generation Relating To Adequacy And Reliability.....	17
3. The Commission Should Reject The Environmental Stakeholders’ Proposal For A New Default Service Plan Process .....	21
B. PECO’s TOU Default Service Rate Options Outlined In The Settlement Satisfy Act 129 Requirements And Are In The Public Interest.....	22
C. PECO Supports The Methodology Recommended By OSBA For Assigning And Allocating PECO’s TOU Implementation Costs To Eligible Procurement Classes .....	27
D. ESC Has Not Established A Reasonable Basis That Would Justify Its Proposed Changes To PECO’s Current Commission-Approved Cost Assignment For NITS Charges.....	29
III. CONCLUSION.....	32
APPENDIX A           Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs	

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
 <b>Court Cases</b>	
<i>Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.</i> , 123 A.3d 1124 (Pa. Cmwlth. 2015) .....	23, 26
<i>NRG Energy, Inc. v. Pa. P.U.C.</i> , 2020 WL 284348810 (Pa. Cmwlth. 2020) .....	19
 <b>Commission Cases</b>	
<i>Elec. Distribution Co. Default Serv. Plans – Customer Assistance Program Shopping</i> , Docket No. M-2018-300658 (Order entered Feb. 28, 2019) .....	2
<i>Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.</i> , Docket No. L-2009-2095604 (Order entered Oct. 4, 2011) .....	11-13
<i>Investigation of Pennsylvania’s Retail Elec. Mkt.: End State of Default Serv.</i> , Docket No. I-2011-2237952 (Order entered Feb. 15, 2013) .....	11, 13
<i>Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program</i> , Docket No. P-2013-2389572 (Order entered Sept. 11, 2014) .....	23
<i>Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2015 through May 31, 2017</i> , Docket No. P-2014-2409362 (Final Order entered Dec. 4, 2014) .....	29
<i>Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2017 through May 31, 2021</i> , Docket No. P-2016-2534980 (Opinion and Order entered Dec. 8, 2016) .....	1, 19
<i>Petition of PECO Energy Co. for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan</i> , Docket No. M-2009-2123944 (Order entered Apr. 15, 2011) .....	22
<i>Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement</i> , Docket No. P-2012-2297304 (Opinion and Order entered Sept. 26, 2012) .....	22, 23

**Statutes, Regulations & Other Authorities**

73 P.S. §§ 1643.1 *et seq.*.....7

73 P.S. §§ 1648.3(a)(3).....16

73 P.S. §§ 1648.3(b)(3).....16

66 Pa.C.S. § 315.....19

66 Pa.C.S. § 2807(e) .....1, 3

66 Pa.C.S. §§ 2807(e)(3.1)-(3.2), (3.4) and (3.7) .....22

66 Pa.C.S. § 2807(e)(3.6).....22

66 Pa.C.S. § 2807(f)(5) .....2, 22, 24, 26

52 Pa. Code §§ 54.181 – 54.190 .....7

52 Pa. Code § 54.185(c).....5

52 Pa. Code §§ 69.1801 – 69.1817 .....7

*Investigation into Default Serv. and PJM Interconnection, LLC  
Settlement Reforms,  
Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) .....2, 13, 24, 25*

*Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot  
Time-of-Use Program,  
Docket Nos. P-2013-2389572 and M-2016-2578051  
(Secretarial Letter issued Apr. 6, 2017) .....23, 24*



## I. INTRODUCTION

This proceeding was initiated on March 13, 2020, when PECO Energy Company (“PECO” or the “Company”) filed a Petition (“DSP V Petition”) pursuant to Section 2807(e) of the Pennsylvania Public Utility Code (the “Public Utility Code” or “Code”), 66 Pa.C.S. § 2807(e), requesting that the Pennsylvania Public Utility Commission (the “Commission” or “PUC”) approve PECO’s Default Service Program for the period from June 1, 2021 to May 31, 2025 (“DSP V”). DSP V is PECO’s fifth default service program and is designed to ensure that PECO’s distribution customers who do not shop for electricity with an electric generation supplier (“EGS”) or whose EGS does not provide service continue to have access to an adequate and reliable electric generation supply at the least cost over time.

In the DSP V Petition, PECO requested that the Commission approve DSP V, including procurement, implementation and contingency plans, a rate design plan and associated tariff pages, and copies of the agreements and forms to be used in the procurement of default service supply. PECO also proposed to continue most of the existing programs as approved by the Commission as part of PECO’s current default service program (“DSP IV”),<sup>1</sup> with three principal changes. First, PECO proposed to procure new ten-year solar alternative energy credit (“Solar AEC”) contracts to replace PECO’s existing ten-year Solar AEC contracts, previously approved by the Commission, which will have expired by the end of DSP IV. Second, PECO proposed to introduce new time-of-use (“TOU”) default service rate options for eligible customers in PECO’s Residential and Small Commercial procurement classes (the “TOU Rates”) to comply with PECO’s obligation under Act 129 of 2008 (“Act 129”) to offer TOU and real-time rates to all

---

<sup>1</sup> See *Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Opinion and Order entered Dec. 8, 2016) (“DSP IV Order”).

default service customers with smart meters.<sup>2</sup> Finally, PECO proposed to permit low-income customers enrolled in the Company’s Customer Assistance Program (“CAP”) to shop for generation service in accordance with the Commission’s proposed Policy Statement on Electric Customer Assistance Program Participant Shopping.<sup>3</sup>

As described in the Joint Petition for Partial Settlement filed on August 13, 2020 (the “Joint Petition”), and summarized below, nearly all of the parties to this proceeding (the “Settling Parties”) reached a settlement (the “Settlement”) of the issues presented by the DSP V Petition. In the Settlement, the Settling Parties request that the Commission approve DSP V as proposed by PECO, with certain modifications to the TOU Rates and PECO’s “Standard Offer” retail market program, the addition of a new collaborative on customer bill improvements, and a deferral of CAP customer shopping to accommodate PECO’s pending proposal to replace its CAP program fixed credit option with a percent of income payment plan. The Settling Parties reserved two issues for written briefing: how the costs of PECO’s implementation of the TOU Rates should be allocated between the Residential and Small Commercial customer classes, and whether certain transmission charges imposed by PJM Interconnection, L.L.C. (“PJM”) should be recovered by PECO from all distribution customers.

---

<sup>2</sup> 66 Pa.C.S. § 2807(f)(5). The hourly priced default service rate for the Consolidated Large Commercial and Industrial (“C&I”) Class already meets Act 129 requirements.

<sup>3</sup> *Elec. Distribution Company Default Serv. Plans – Customer Assistance Program Shopping*, Docket No. M-2018-300658 (Proposed Policy Statement Order entered Feb. 28, 2019) (“*Proposed Policy Statement Order*”). By Secretarial Letter issued January 23, 2020, the Commission acknowledged that its proposed CAP shopping policy statement was “unlikely to be final and effective in time for some upcoming DSP proceedings.” *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) (“January 2020 Secretarial Letter”), p. 9. The Commission therefore directed all electric distribution companies (“EDCs”) to consider the Commission’s prior guidance in the *Proposed Policy Statement Order* and recent decisions in previous default service proceedings in developing CAP proposals for upcoming DSP filings. *Id.*, pp. 9-10.

Three parties who operated collectively in this proceeding – the Sierra Club/PA Chapter, the Clean Air Council, and the Philadelphia Solar Energy Association (together, the “Environmental Stakeholders”) – did not join the Settlement. The Environmental Stakeholders oppose PECO’s DSP V on the grounds that it is a “short-term procurement plan” that they assert does not “comport with Pennsylvania law and regulation” and meet “least cost over time” requirements for default service plans under Section 2807(e) of the Code. The Environmental Stakeholders did not offer any alternative procurement, implementation and contingency default service plans to DSP V. Instead, they argued that the Commission should not approve DSP V because they believed PECO did not adequately evaluate the possible inclusion of long-term renewable energy contracts and procurement from distributed energy resources, and should be required to develop and implement a new “planning process” and “rebuild its default service program from the ground up.” The Environmental Stakeholders did not oppose PECO’s TOU Rates, but proposed that the Commission should require PECO to conduct a “benefit-cost analysis” as a condition for approval of the TOU Rates.

As the evidence in this proceeding demonstrated, the Environmental Stakeholders’ claims that PECO’s DSP V does not meet the requirements of the Public Utility Code are entirely without merit. PECO’s DSP V procurement, implementation and contingency plans are identical to the procurement, implementation and contingency plans approved by the Commission in DSP IV, with the addition of new long-term contracts to procure alternative energy credits from local solar facilities in Pennsylvania and PECO’s service area to meet the requirements of Pennsylvania’s Alternative Energy Portfolio Standards Act. DSP V is designed to obtain a “prudent mix” consisting largely of “full requirements” default service supply products that the

Commission has repeatedly recognized will provide adequate and reliable service to default service customers at least cost over time.

As PECO's witnesses explained, DSP V suppliers are incentivized to seek out low-cost supply options, including increasing amounts of renewable energy supply as the costs of renewable energy decline, without requiring PECO to separately procure long-term energy contracts that could "lock in" out-of-market contract prices that increase the cost of default service over time. The Environmental Stakeholders' assertions regarding the benefits of distributed generation were also flawed, as the Environmental Stakeholders never explained how DSP V and its reliance on PJM and wholesale suppliers in PJM would fail to provide adequate and reliable service at least cost over time and emphasized benefits (such as distribution system resiliency) that are outside the scope of a default service proceeding.

The new Solar AEC contract proposal in PECO's DSP V includes solicitations for AECs from local solar PV systems, including solar PV systems that are or will be directly connected to PECO's distribution system or connected to PECO's distribution system pursuant to applicable net metering requirements. Uncontested testimony at the evidentiary hearing also established that PECO had fully considered an alternative proposal, offered by several witnesses at the public input hearing, regarding the procurement of default service supply in the form of distributed solar systems, and rejected that proposal on the basis of both physical constraints and cost impacts.

With respect to the remaining issues reserved for litigation in the Settlement, PECO supports the recommendation of the Office of Small Business Advocate ("OSBA") to allocate implementation costs based on the number of customers in PECO's procurement classes eligible for the TOU Rates instead of default service sales, as the implementation costs are customer

count-related. PECO also opposes the Electric Supplier Coalition’s (“ESC’s”)<sup>4</sup> proposal that PECO acquire Network Integration Transmission Service (“NITS”) for all customer load and recover the associated PJM charges on a non-bypassable basis, as ESC did not establish any basis to change the existing Commission-approved assignment of responsibility for NITS to all load-serving entities (“LSEs”), including EGSs. With resolution of those reserved issues, the Commission should approve DSP V, as modified by the Settlement.

**A. Procedural History**

Copies of the DSP V Petition filed by PECO on March 13, 2020, were served on other organizations and entities as required by 52 Pa. Code § 54.185(c). Subsequently, on April 18, 2020, the *Pennsylvania Bulletin* published the Commission’s Notice setting a deadline for filing protests, complaints or petitions to intervene by May 1, 2020, and scheduling a Prehearing Conference for May 5, 2020, before Administrative Law Judge (“ALJ”) Eranda Vero. By letter dated April 29, 2020, an interfaith group POWER requested that the Commission hold a public input hearing in PECO’s DSP V proceeding and expressed its interest in seeing PECO include more solar energy in its default service supply portfolio as part of this proceeding. Thereafter, the following entities were afforded active party status in this case:

Office of Consumer Advocate	(“OCA”)
OSBA	
Calpine Retail Holdings, LLC	(“Calpine”)
Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania	(“CAUSE-PA”)
Electric Supplier Coalition	
Environmental Stakeholders	

---

<sup>4</sup> ESC’s members are NRG Energy, Inc.; Direct Energy Services LLC; Interstate Gas Supply Inc., d/b/a IGS Energy; Vistra Energy Corp.; Shipley Choice LLC; ENGIE Resources LLC; and WGL Energy Services, Inc.

Philadelphia Area Industrial Energy Users Group (“PAIEUG”)  
StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (“StateWise”)  
The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN et al.”)

At the telephonic Prehearing Conference, a schedule was established for submitting written testimony, holding evidentiary hearings and filing briefs.<sup>5</sup> *See* Prehearing Order (May 8, 2020). Written direct, rebuttal and surrebuttal testimony were submitted by various parties on the dates established for each submission. A virtual public input hearing was scheduled and held on June 9, 2020. *See* Videoconference Public Input Hearing Notice (May 19, 2020).

The parties to this case also engaged in extensive discovery. PECO responded to 249 interrogatories, and other parties collectively responded to 69 interrogatories, with many containing multiple subparts.

The parties discussed the possibility of resolving some or all of the issues by settlement during the course of the proceeding. At the July 30, 2020 telephonic evidentiary hearing, the parties notified the ALJ that the Settlement had been achieved.<sup>6</sup> In addition, PECO witnesses John J. McCawley, Joseph A. Bisti and Scott G. Fisher were cross-examined and the pre-served written testimony and exhibits of all parties were admitted into evidence.

## **B. The Partial Settlement**

The terms of the Settlement are set forth in the Joint Petition, which also contains the Settling Parties’ Statements in Support. All parties to this proceeding, except the Environmental

---

<sup>5</sup> In their respective Prehearing Conference Memoranda filed on May 4, 2020, the OCA supported the use of “smart” public input hearings and the Environmental Stakeholders, in turn, requested at least two public input hearings to provide a forum for customer input in this proceeding on the types of energy procured by PECO during DSP V, including the amount of renewable energy and distributed solar generation.

<sup>6</sup> At the request of the parties, the ALJ canceled the hearing scheduled for July 29, 2020.

Stakeholders, either joined in the Settlement or have authorized the Joint Petitioners to represent that they do not oppose the Settlement. *See* Joint Petition, p. 1.

As explained in the Joint Petition, the revised DSP V set forth in the Settlement contains all of the elements required by the Code, the Commission’s default service regulations (52 Pa. Code §§ 54.181 – 54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801 – 69.1817). In addition, the Settlement addresses the following key contested issues:

- **Residential Class Default Service Supply Portfolio.** Under the Settlement, the Joint Petitioners agree to PECO’s original proposal to continue to procure a mix of fixed-price full requirements (“FPFR”) products, of which approximately 99% 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. Joint Petition at ¶¶ 19-21. The remaining approximately 1% of Residential default service load will continue to be procured through spot purchases directly from the energy, capacity and ancillary services markets operated by PJM. *Id.* at ¶ 17. Continuation of the spot energy component of the Residential Class portfolio under the Settlement allows PECO to maintain the “tranche” size (i.e., 1.6% of default service load for each customer class) established under the Company’s first default service program.
- **Compliance with Pennsylvania’s Alternative Energy Portfolio Standards (“AEPS”) Act.**<sup>7</sup> The Settlement adopts PECO’s proposal to meet its AEPS Act obligations primarily through a combination of full requirements products and innovative solar procurements to support solar energy facilities within the Company’s service area. Consistent with DSP IV, PECO will continue to satisfy its AEPS

---

<sup>7</sup> 73 P.S. §§ 1643.1 et seq.

obligations with respect to sales to default service customers by requiring each full requirements default service supplier to transfer Tier I and Tier II AECs to PECO corresponding to the Company's AEPS obligations associated with the amount of default service load served by that supplier. Joint Petition at ¶ 30. As originally proposed, PECO will also satisfy approximately 25% of PECO's solar AEPS requirements during DSP V by procuring new ten-year Solar AEC contracts through two solicitations each year, in both 2021 and 2022, for delivery of a total of 16,000 Solar AECs annually (i.e., 4,000 Solar AECs in each of four solicitations). *Id.* at ¶¶ 31-33. Under the Settlement, PECO will also procure up to half of each year's Solar AEC amount from solar generating facilities located within the Company's service area. *Id.* at ¶ 31.

- **Rate Design and Cost Recovery.** The Settlement will continue PECO's PUC-approved default service rate design with the addition of new, optional TOU Rates for eligible residential and small commercial customers. Joint Petition at ¶¶ 37-43. The Settlement adopts PECO's original proposed TOU rate design with differentiated pricing across three usage periods (peak, off-peak and super off-peak) throughout the year based on price multipliers designed to motivate customers to adjust the time of day they use electricity. *Id.* at ¶¶ 44-54, 59-61. In addition, under the Settlement, the Joint Petitioners agreed to limited conditions related to annual updates to the TOU pricing multipliers and PECO's communications plan to inform customers about the new TOU Rates and update enrolled TOU customers about the opportunity for bill savings. *Id.* at ¶¶ 46, 55-58.



- **Standard Offer Program (“SOP”).** The Settlement provides that PECO’s currently effective SOP, including the cost recovery mechanisms last approved by the Commission as part of DSP IV, will continue until May 31, 2025. Joint Petition at ¶ 62. In addition, PECO will change the brand name for the SOP, provide additional information about the SOP on its website, and allow customers to enroll in the program through its website. *Id.* at ¶¶ 63, 67-68. PECO will also perform additional training and evaluation of its third-party SOP administrator, Kandela, recommended by the OCA. *Id.* at ¶¶ 64-65. Finally, PECO will conduct a customer satisfaction survey of SOP customers prior to the filing of the Company’s next default service program. *Id.* at ¶ 66.
- **CAP Shopping Plan and Residential Bill Improvements.** The Settlement also resolves issues related to the design of a CAP shopping platform in PECO’s service territory and residential bill improvements. After PECO’s initial filing in this proceeding, which included the Company’s proposal for CAP shopping (“CAP Shopping Plan”), PECO filed a request for PUC approval at Docket Nos. M-2018-3005795 and P-2020-3020727 (“CAP Design Proceeding”) to change its CAP design to provide a percentage of income-based benefit to CAP customers instead of a fixed credit. To accommodate coordination of PECO’s CAP shopping platform design with the future Commission-approved CAP design, PECO will submit a CAP shopping proposal following the Commission’s final Order in the CAP Design Proceeding instead of implementing the CAP Shopping Plan described in the testimony and exhibits of PECO witness Carol Reilly. See Joint Petition at ¶ 70. With respect to residential bill improvements, PECO will convene a stakeholder

process to discuss mechanisms to collect EGS pricing information compatible with the Company’s “bill-ready” system and recommendations to improve the presentation of shopping information on residential customer bills. *Id.* at ¶ 69.

As explained in the Joint Petition, the items reserved for litigation by the Settlement involve (1) how PECO’s TOU-related implementation costs should be allocated to the eligible procurement classes and (2) whether PECO should acquire NITS for all customer load and recover the associated PJM charges from all distribution customers through its Non-Bypassable Transmission Charge (“NBT”). Joint Petition at ¶¶ 42, 60. The Environmental Stakeholders did not join the Settlement and oppose PECO’s DSP V, as described above.

## **II. ARGUMENT**

### **A. PECO’s Plan Represents A Prudent Mix Of Contracts Designed To Provide Adequate And Reliable Service At Least Cost Over Time**

#### **1. PECO Appropriately Considered The Risks And Benefits Of Long-Term Contracts When Developing Its Procurement Plan**

The Environmental Stakeholders contend that PECO failed to ensure adequate and reliable service at least cost over time because, allegedly, the Company did not evaluate the inclusion of long-term contracts for default service supply other than AECs. *See, e.g.*, Environmental Stakeholders St. No. 1-SR, pp. 9, 11. While they declined to recommend any specific (or minimum) quantity of long-term contracts for PECO’s portfolio, the Environmental Stakeholders generally argued that long-term contracts bring “price stability” and are “well-suited” for renewable energy sources. *See* Environmental Stakeholders St. No. 1-SR, p. 11 (no recommended quantity of long-term contracts); Environmental Stakeholders St. No. 1, p. 17 (describing the benefits of long-term contracts).

The record in this case demonstrates that PECO considered the appropriate role of long-term contracts in light of prior Commission findings and the Company’s own experience with

PECO's first four default service programs. The Company's proposal to utilize staggered 12- and 24-month full requirements contracts for the Residential and Small Commercial classes, spot primarily for the Consolidated Large Commercial and Industrial ("C&I") class, and long-term contracts to satisfy a portion of its AEPS Act obligations, is consistent with the "prudent mix" of contracts approved by the Commission in DSP IV and will continue to appropriately manage price volatility.

As explained by Mr. McCawley and Mr. Fisher, this proceeding follows a comprehensive default service rulemaking by the Commission,<sup>8</sup> an extensive retail markets investigation,<sup>9</sup> and other Commission proceedings in which the Commission and interested stakeholders have considered the use and EDC management of long-term contracts. *See* PECO St. No. 1-R, pp. 5-8; PECO St. No. 4-R, pp. 25-28. The Commission has never mandated that EDCs procure or manage a minimum quantity of long-term energy supply contracts, and instead it has emphasized the value of flexibility:

We agree with the majority of parties that the "prudent mix" of contracts be interpreted in a flexible fashion which allows the DSPs to design their own combination of products that meets the various obligations to achieve "least cost to customers over time," ensure price stability, and maintain adequate and reliable service.<sup>10</sup>

We do reject the positions of those parties that "prudent mix" be defined to always require a specific mix or percentage of types of contract components in each default service plan or a minimum of two types of products.<sup>11</sup>

---

<sup>8</sup> *Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. (Final Rulemaking Order entered Oct. 4, 2011) ("*Final Rulemaking Order*").

<sup>9</sup> *Investigation of Pennsylvania's Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Final Order entered Feb. 15, 2013) ("*Retail Markets Investigation*").

<sup>10</sup> Final Rulemaking Order, p. 60.

<sup>11</sup> *Id.*

Furthermore, in the default service rulemaking proceeding, the Commission considered, and declined to endorse, a “managed portfolio” approach instead of relying upon full requirements contracts with wholesale suppliers:

On balance, we are not persuaded that the [managed portfolio] approach is superior to the [full requirements] approach in achieving the “least cost to customers” while also achieving the other objectives of “prudent mix” of products and price stability.<sup>12</sup>

[W]e will not require nor do we specifically endorse the use of the [managed portfolio] approach at this time. We do express a preference for continued reliance by DSPs on the [full requirements] approach to the extent this method best suits the DSP’s particular procurement needs.

We are also mindful of the fact that the current default supply process, with the EDC acting as the default supplier and distribution entity purchasing its supply from electric suppliers knowledgeable about the workings of the wholesale electric market, is a product of the Competition Act, which created the market structure we now operate within. **Requiring DSPs to adopt the role of electric market portfolio manager may be inconsistent with our charge under the Competition Act.**<sup>13</sup>

Earlier this year, after initiating another investigation into the possibility of requiring EDCs to enter into long-term energy contracts, the Commission ended its investigation and directed that EDCs instead explain in upcoming DSP proceedings how their procurement plan complies with the Public Utility Code and case law. The Commission summarized the stakeholder input on long-term contracts as follows:

Most commenters did not support or cautioned against the use of long term contracts. Some commenters stated that extending the contract term beyond the PJM three-year forward capacity market would increase risks and cause higher financial collateral requirements. Commenters noted that, as with TOU rates, EGSs are

---

<sup>12</sup> Final Rulemaking Order, p. 55.

<sup>13</sup> *Id.*, p. 56 (emphasis added).

free to serve customers who are seeking long-term contracts. **Other than that, most commenters agreed that contracting long-term poses a risk of locking in above market prices that may cause customers to leave default service.**<sup>14</sup>

The Commission has also considered the use of long-term contracts to satisfy AEPS Act requirements on several occasions. In the default service rulemaking, the Commission found that it would be appropriate for “DSPs to acquire AECs through a variety of methods, including [full requirements] purchases, as well as long-term, short-term and spot purchases.”<sup>15</sup> The Commission further cautioned that “undue reliance” on a particular product was not advisable “given the relatively recent development of the AEC market and the pricing of certain renewable products such as solar, which may not reflect the market price of power.”<sup>16</sup>

Two years later, in the *Retail Markets Investigation*, the Commission reviewed extensive comments from more than twenty stakeholders in response to an inquiry as to whether EDCs should be required to enter into long-term renewable energy contracts (including the Sierra Club, one of the Environmental Stakeholders). The Commission concluded:

Given the multitude of comments in opposition, the Commission, at this time, will not adopt a prescriptive AEC procurement methodology. Rather, we believe that this subject would be more appropriately addressed by the Legislature, if they so desire.<sup>17</sup>

PECO’s current Commission-approved DSP IV “prudent mix” of contracts includes staggered 12- and 24-month full requirements contracts, some spot, and some long-term contracts for Solar AECs to meet a portion of its AEPS Act obligations. The Company has found that laddering its full requirements contracts has been effective in addressing price

---

<sup>14</sup> January 2020 Secretarial Letter, pp. 7-8 (emphasis added).

<sup>15</sup> Final Rulemaking Order, p. 77.

<sup>16</sup> *Id.*

<sup>17</sup> Retail Markets Investigation, p. 100.

volatility. *See* PECO St. No. 4, pp. 19-20; Hearing Tr. at 60-61, 90. In DSP V, PECO proposed a very similar mix of contracts, and has also proposed to double the amount of solar AECs that will be obtained through long-term contracts. *See* PECO St. No. 1, pp. 15-21, 29-30.

To support the Company's DSP V proposal, both Mr. McCawley and Mr. Fisher provided evidence about the complexities of long-term contracts and explained why they can produce unnecessary risks for customers. Notably, while the Environmental Stakeholders complained that PECO failed to evaluate long-term contracts, it also dedicated several pages of testimony to criticize the Company's assessment of long-term contracts. *See* Environmental Stakeholders St. No. 1-SR, pp. 9, 11, 17-19.

At the hearing, Mr. McCawley explained that long-term contracts for wholesale energy supply come in many forms and do not necessarily provide customers with price stability. *See* Hearing Tr. at 57-59 ("You can't make a generalization about a long-term contract."). Such specialized contracts can have a wide range of pricing terms (e.g., fixed, fixed with an escalator, or variable) and purchase obligations (e.g., a fixed amount or the entire facility output). *Id.* If a long-term contract is fixed in price, there are several potential risks for customers. For example, Mr. Fisher explained that customers would bear the risk that the product price of a long-term contract is ultimately above future market prices. As there is no certainty regarding the amount of default service load that PECO must supply in the future, the portion of the supply portfolio consisting of above-market contracts could increase and/or PECO could be forced to sell above-market supply at a loss if more distribution customers select generation supply from an EGS. Customers remaining on default service would need to pay for above-market costs through higher default service rates. *See* PECO St. No. 4-R, pp. 28-30. Finally, long-term contracts could impair the Company's future ability to provide default service at "least cost over time" by

limiting PECO's ability to adapt to changes in market and regulatory conditions, including the continuing decline in the costs of renewable generation that the Environmental Stakeholders predict. *Id.* at 23, 30-31.

Contrary to the claims of the Environmental Stakeholders, PECO's reliance on 12- and 24-month full requirements supply products does not "discriminate" against renewable energy or "ignore" the market changes that facilitate increased renewable generation. Through the procurement of full requirements supply products, PECO's plan is designed to ensure the least cost to customers because bidders compete on the basis of the lowest price to satisfy all aspects of the default service customers' load requirements, including the portfolio management function. *See* Statement No. 4-R, pp. 11-12 (explaining that the full requirements approach is "especially conducive" to innovation and competition with respect to all aspects of the electricity supply obligation). It does not include any limitation on the amount of renewable energy that a supplier may procure to provide default service supply. As Mr. Fisher explained:

Suppliers of the full requirements products that PECO has proposed to solicit are free to procure the products and follow the procurement strategies that they believe will result in the least-cost full requirements supply, and they have the economic incentives to consider any supply opportunity that would allow them to offer a lower-priced bid and to satisfy their default service supply obligation at the lowest cost. This includes utilizing increased amounts of renewable generation if the renewable generation cost reductions that [Environmental Stakeholders witness] Mr. Rábago references in his testimony make increasing renewable generation utilization the lowest cost option for default service suppliers.

PECO St. No. 4-R, pp. 11-12. At the same time, under PECO's DSP V, default service suppliers remain obligated to comply with all evolving legal requirements that will create a cleaner mix of energy generation. Such requirements would include a 900% increase in solar AEPS requirements (i.e., from 0.5% to 5.0 %) under legislation that is now pending in the Pennsylvania

General Assembly and supported by PECO, as well as emerging policies that will limit carbon dioxide from fossil-fuel-fired electric power generators.<sup>18</sup> Public Input Hearing Tr. at 130; PECO St. 1-R, p. 11; PECO St. 4-R, pp. 14-15.

To the extent that the Environmental Stakeholders believe that PECO should impose a default service requirement for renewable energy supply above that currently required by the AEPS Act, such a mandate could result in default service that is no longer “least cost” and create fairness issues that could adversely impact customers. PECO St. No. 4-R, pp. 17-20.<sup>19</sup>

Uncontested testimony at the evidentiary hearing also established that PECO had fully considered an alternative proposal, offered by several speakers at the public input hearing, to procure twenty percent of PECO service area generation supply from distributed solar systems installed in the City of Philadelphia by 2025, and concluded that the proposal was “not based in reality.” As Mr. McCawley explained, assuming a 7 kW solar system for each installation (a typical size for a residential solar system), the proposal would require more than 800,000 rooftops – exceeding the 689,000 existing residential rooftops in Philadelphia. If an alternative approach with larger, “utility-scale” systems was used, the estimated land requirement of 40,000 acres would exceed the acreage of Center City Philadelphia by 30 times. PECO also calculated that the cost of the proposal would be \$15 billion and result in a \$1,300 increase in the average residential customer bill annually; if PECO was required to pay the cost (as the proposal’s

---

<sup>18</sup> At the public input hearing, several speakers noted PECO’s support for clean energy goals and increases in AEPS requirements, but also requested that PECO exceed the requirements enacted by the General Assembly. *See, e.g.*, Hearing Tr. at 130-34. As noted by Mr. McCawley in his testimony, the AEPS Act envisions the Commission recommending additional compliance goals to the General Assembly but does not appear to envision the Commission imposing new requirements on its own. *See* PECO St. No. 1-R, pp. 12-13; 73 P.S. § 1648.3(b)(3); *see also* 73 P.S. § 1648.3(a)(3) (providing for full cost recovery of AEPS compliance costs by electric distribution companies).

<sup>19</sup> Market data and recent PJM filings suggest that new Pennsylvania solar and wind generation require a higher price than some other types of generation in Pennsylvania. *See* PECO St. No. 4-R, pp. 19-20.



proponents recommend), it would result in a net annual loss of \$750 million to PECO for 25 years. Hearing Tr. at 74-75.

In contrast, DSP V includes an innovative and realistic proposal, supported by the Settling Parties, to double the amount of Solar AECs that PECO will procure directly from in-state solar generation facilities and distributed solar energy systems in its service area. Using a two-stage request for proposals, PECO will enter into new ten-year contracts for solar AECs and facilitate participation by smaller solar facilities. PECO St. No. 1, pp. 28-35. As Mr. McCawley explained, this proposal was developed in response to the interest of stakeholders in more local solar in PECO's service area. PECO St. No. 1, pp. 28-29; Hearing Tr. at 65.

**2. PECO's Default Service Plan Was Not Required To Include An Evaluation Of The Potential Benefits Of Distributed Generation Relating To Adequacy And Reliability**

The Environmental Stakeholders assert that PECO has not met its statutory duty to ensure adequate and reliable service to customers because it failed to "evaluate the availability and reliability characteristics of different types of generation supply." Environmental Stakeholders St. No. 1-SR, p. 4. Specifically, the Environmental Stakeholders argue that the attributes of distributed generation should have been considered because such generation offers "numerous potential benefits relating to adequacy and reliability, including increased resiliency and decreased reliance on transmission and distribution infrastructure." *Id.* at 6.

Contrary to the claims of the Environmental Stakeholders, PECO has provided ample evidence in this proceeding that the Company's plan will ensure adequate and reliable service to customers. First, as explained by Mr. McCawley, the default service supply contracts contain adequacy and reliability protections. Suppliers must satisfy certain requirements, such as being a member in good standing of PJM, that help ensure that they are able to perform their supply

obligations. *See* PECO St. No. 1-R, pp. 9-10. These requirements and expectations are applied uniformly, regardless of the type of generation supply.

Reliable and adequate service is further ensured because all of the load served under the contracts will be supplied through PJM, regardless of whether the winning default service supply bidders own or control generation. PJM is a FERC-approved regional transmission organization with a central responsibility to ensure the reliability of its regional electricity grid of which PECO is a part, and PJM has numerous mechanisms in place to meet this responsibility. If a default service supplier defaults on its contract, or if a default service RFP conducted by PECO fails to receive sufficient bids, or if the Commission rejects the RFP results for any reason, PECO can procure the physical supply necessary to ensure adequate and reliable service to satisfy its default service obligations from PJM. *See* PECO St. No. 1-R, p. 10.

While it is clear that the Environmental Stakeholders would prefer to have distributed generation be a focus of this proceeding, there is no statutory or Commission requirement to analyze the adequacy and reliability attributes of different sources of generation supply as part of the procurement of default service. Distribution planning considerations, including issues of resiliency, are separate and distinct from the Company's default service obligation to purchase generation supply for customers at least cost over time. *See* PECO St. No. 1-R, pp. 10-11.

Moreover, the Environmental Stakeholders' contention that DSP V does not comport with Pennsylvania law because PECO did not undertake the analysis of distributed generation that the Environmental Stakeholders seek misunderstands the obligations of the Environmental Stakeholders to submit credible evidence sufficient to counter-balance the prima facie case that PECO actually presented in this proceeding. In DSP IV, the Commission determined that PECO's procurement, implementation and contingency plans provided adequate and reliable

service at least cost over time; as PECO’s proposed DSP V employs the exact same procurement, implementation and contingency plans for default service supply, PECO has presented *prima facie* evidence that DSP V includes prudent steps to acquire generation supply at least cost over time, as required by the Public Utility Code.<sup>20</sup> In contrast, the Environmental Stakeholders did not present any evidence, apart from unsupported conclusory statements, that PECO’s approach is deficient and, more importantly, they did not offer any concrete alternative for consideration in this case. When a utility has made a proposal and presented evidence sufficient to establish a *prima facie* case, as PECO did here, the burden shifts to an opposing party to present “some evidence”<sup>21</sup> to support an alternative approach. The Environmental Stakeholders did not carry that burden in this case. As the Commonwealth Court recently explained, if an opposing party “does not bear a burden to present something to support its methodology, it would be difficult, if not impossible, for PECO to respond with evidence explaining why the alternative should not be accepted.”<sup>22</sup> As the Commonwealth Court also concluded in that case, forcing a utility to bear the burden of rebutting an opposing party’s position under such circumstances raises significant due process “notice” issues.<sup>23</sup>

While PECO established a *prima facie* case that was un rebutted by the Environmental Stakeholders, additional evidence presented by PECO at the evidentiary hearing added to the substantiality of the evidence supporting the reasonableness of the Company’s position. In response to questioning by the Environmental Stakeholders at the evidentiary hearing, PECO

---

<sup>20</sup> 66 Pa.C.S. § 315; *see* DSP IV Order, p. 66 (finding that PECO’s proposed DSP V, as modified by a settlement, “includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis”).

<sup>21</sup> *NRG Energy, Inc. v. Pa. P.U.C.*, 2020 WL 2843488 at \*10 (Pa. Cmwlth. June 2, 2020).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

provided evidence that the general reliability benefits of distributed generation touted by the Environmental Stakeholders are not clear cut. First, the proximity of distributed generation to customers is very fact-specific and, therefore, it is wrong to assume that distributed generation does not require use of the distribution system. As Mr. McCawley explained, the proximity of generation to customers will depend upon the type of generation (e.g., wind or solar), size, local regulations and customer preferences. *See* Hearing Tr. at 48-51. Second, even if distributed generation is sited on a customer's premises, the interconnection is typically configured to prevent power flowing to the customer if the transmission or distribution system is not operating. *See* Hearing Tr. at 55 ("if you want a general rule, when the - when the bulk [p]ower system goes down, whether it's transmission or the distribution system, the [distributed energy resource] is also - is also down as well"). This prohibition is based on safety considerations and prevents the backflow of electricity to energize lines that could, for example, have fallen and be lying in a customer's backyard. *Id.* at 54-55.

Notwithstanding these reliability issues, PECO has taken numerous actions to support the growth of renewable generation, including distributed renewable generation, outside of the default service context. The Company has, for example, supported legislation to increase solar requirements under the AEPS Act and to support the development of community solar projects, microgrids, and battery storage in Pennsylvania. The Company has also developed tools to assist solar developers and customers interested in solar or other distributed generation. And PECO continues to engage in a dialogue with stakeholders, including environmental groups, about solar-related issues through the Company's Solar Collaborative. *See* PECO St. No. 1-R, pp. 11-13; Environmental Stakeholders Hearing Exhibit No. 5 (PECO ES II-4(a)).

### **3. The Commission Should Reject The Environmental Stakeholders' Proposal For A New Default Service Plan Process**

In lieu of presenting an alternative default service plan, the Environmental Stakeholders propose that the Commission direct PECO to “rebuild” its default service program by developing and implementing a new “planning process” to construct its default service portfolio that “actively engages stakeholders,” with various additional requirements that include evaluation of “the full range of cost and benefits associated with supply options over time,” “incorporating more renewable energy and distributed energy resources,” and various other actions to “correct” a “neglect” and “focus” that “discriminates” against renewable energy. Environmental Stakeholders St. No. 1-R, p. 12.

The Commission should reject the Environmental Stakeholders’ proposal for several reasons. First, as Mr. McCawley explained, the Environmental Stakeholders’ proposal fails to explain how the Commission has erred in developing the principles and precedents on which PECO’s DSP V program rests, and ignores the active and extensive participation by many parties in the Commission’s default service proceedings to date. PECO St. No. 1-R, p. 8. If the Environmental Stakeholders believe the Commission’s guidance supports an alternative procurement approach, their obligation was to come forward in this proceeding with specific alternatives to elements of PECO’s DSP V plan, which they failed to do.

Second, as noted by Mr. Fisher, PECO’s DSP V strikes a reasonable balance between competing perspectives and incorporates stakeholder input from evidentiary proceedings, prior Commission approvals, and the results of default service supply solicitations. PECO St. No. 4-R, pp. 5-6. As reflected in the Settlement, the Settling Parties – including statutory advocates, EGSs, customer groups, and low-income representatives – have all concluded that PECO’s DSP

V is consistent with the Public Utility Code, the Commission’s requirements, and the public interest.

Finally, in advocating for their entirely new process, the Environmental Stakeholders failed to offer any proposal as to how PECO would procure default service supply during the time required to “rebuild” PECO’s default service program, and also had no estimate of the time or cost that its proposal would take to implement. *See* PECO Exhibit SG-1. The Public Utility Code establishes a nine-month deadline for approval of default service plans, and the first procurement in DSP V is scheduled for March 2021. *See* 66 Pa.C.S. § 2807(e)(3.6); PECO Exhibit JJM-3. Without a new default service plan in place, PECO will be unable to proceed with new procurements before the expiration of DSP IV on May 31, 2021, creating uncertainty as to the future provision of default service in PECO’s service area.

**B. PECO’s TOU Default Service Rate Options Outlined In The Settlement Satisfy Act 129 Requirements And Are In The Public Interest**

In addition to procurement of a “prudent mix” of default service supply contracts at the “least cost to customers over time,”<sup>24</sup> Act 129 requires EDCs to offer a TOU rate option to all default service customers with a smart meter.<sup>25</sup> Based on these statutory requirements under Act 129, PECO previously offered a TOU generation rate through a PUC-approved, one-year pilot program known as the “PECO Smart Time Pricing Pilot” (“Pilot”) to gauge customer interest in TOU rates and the impact of those rates on electricity consumption patterns.<sup>26</sup> As explained by

---

<sup>24</sup> 66 Pa.C.S. §§ 2807(e)(3.1)-(3.2), (3.4) and (3.7).

<sup>25</sup> 66 Pa.C.S. § 2807(f)(5).

<sup>26</sup> *Petition of PECO Energy Co. for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944 (Order entered Apr. 15, 2011) (“Dynamic Pricing Order”); *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered Sept. 26, 2012) (approving modifications to the commodity supply, dynamic rate structure, size and term of the pilot approved in the Dynamic Pricing Order to enable an EGS to provide TOU supply in lieu of PECO).

PECO witness Joseph A. Bisti, the Pilot’s two-part TOU rate structure offered eligible residential and small commercial customers a higher rate during non-holiday weekend afternoons from 2 p.m. to 6 p.m. and a reduced rate for all other hours of the year. An EGS selected through a competitive procurement process served as the TOU commodity supplier and implementation vendor for the Pilot.<sup>27</sup> PECO St. No. 2, pp. 10-12.

Since the conclusion of the Pilot in 2014, the scope of an EDC’s statutory obligation to offer TOU rates to default service customers was the subject of litigation before the Commission and Commonwealth Court.<sup>28</sup> In the DSP V Petition, PECO proposed to introduce new TOU Rates for the Residential and Small Commercial Classes consistent with Commission guidance on EDC TOU rate design to satisfy Act 129 requirements and to build on lessons learned from PECO’s Pilot. As explained by Mr. Bisti, PECO’s proposed TOU Rates also reflect a balance of the following objectives: (1) simplicity and the value proposition for customer enrollment; (2) cost-causation principles to connect the TOU pricing structure to wholesale markets and PECO’s standard, non-time varying Generation Supply Adjustment (“GSA”); and (3) incentives for customer electric vehicle (“EV”) adoption. PECO St. No. 2, pp. 12-14.

---

<sup>27</sup> *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered Sept. 26, 2012) (approving modifications to the commodity supply, dynamic rate structure, size and term of the pilot approved in the Dynamic Pricing Order to enable an EGS to provide TOU supply in lieu of PECO).

<sup>28</sup> *See Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (Order entered Sept. 11, 2014) (holding that Act 129 did not require PPL Electric Utilities Corp. (“PPL”) to offer TOU rates directly to customer-generators); *Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa. Cmwlth. 2015) (“DCIDA”) (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs); *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) (“April 2017 Secretarial Letter”) (proposing a TOU rate structure for PPL in accordance with the DCIDA decision and noting that the proposed TOU design “may provide future guidance to all EDCs” for incorporation into their own TOU proposals in their individual default service proceedings).

As the Commission has recognized, Act 129 makes clear that an EDC’s TOU program should be optional for default service customers.<sup>29</sup> The April 2017 Secretarial Letter (p. 3) further provides that EDC TOU rates should be available to all default service customers who are not eligible for “spot only” default service and should incorporate existing consumer protections for CAP customers. In accordance with the Commission’s guidance, as originally proposed, PECO’s voluntary TOU Rates under the Settlement will be available to non-CAP residential and small commercial default service customers with smart meters configured to measure energy consumption in watt-hours. *See* PECO St. No. 2, pp. 15-16, 21; Joint Petition at ¶¶ 49-50. In addition, the Commission recommended that EDCs offer all customers eligible for the TOU Rates “generation-weighted net metering”.<sup>30</sup> Consistent with that guideline, customer-generators will be eligible for the TOU Rates under the Settlement and PECO will calculate the value of excess generation created by TOU net metering customers based on the period in which it was generated. *See* PECO St. No. 2, pp. 21-22; PECO Exhibit No. JAB-5; Joint Petition at ¶¶ 52-53.

The Settlement further adopts PECO’s original proposed TOU product structure and rate design with one revision – to review the TOU price multipliers annually based on updated PJM energy and capacity market pricing data – as recommended by the OCA. *See* Joint Petition at ¶¶ 43-48. The time-differentiated usage periods delineated in Paragraph No. 44 of the Joint Petition reasonably encompass the Company’s expected system peak usage times and take into account the need for simplicity to provide eligible customers with a reasonable opportunity to shift usage to lower-priced (off-peak) hours. As Mr. Bisti testified, PECO selected the same year-round

---

<sup>29</sup> *See Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020), p. 6. Act 129 provides that “[r]esidential or commercial customers *may* elect to participate in time-of-use rates or real-time pricing.” 66 Pa.C.S. § 2807(f)(5) (emphasis added).

<sup>30</sup> April 2017 Secretarial Letter, p. 4.



peak period – 2 p.m. to 6 p.m. on non-holiday weekdays – employed in the Pilot in which participating customers successfully responded to the TOU price signals to shift usage and achieve bill savings. PECO St. No. 2, pp. 16-17. Indeed, participants indicated that bill savings was the primary driver of both their enrollment in and satisfaction with the Pilot. *Id.*, pp. 11-12. Consistent with the January 2020 Secretarial Letter (p. 7), PECO also designed its proposed TOU Rates in the context of EV expansion in the Commonwealth. Specifically, PECO’s proposed TOU rate design includes a super off-peak pricing period from 12 a.m. to 6 a.m. to provide cost savings opportunities to customers who charge their EVs during overnight, low-priced energy hours. *Id.*, p. 17.

In addition, the Settlement adopts PECO’s original proposed TOU pricing multipliers to establish a rate premium above PECO’s standard, fixed-price default service rate for usage during the peak period and rate discounts from this baseline price for usage during the off-peak and super-off peak periods. Joint Petition at ¶¶ 45-48. As explained by Mr. Bisti, these multipliers reflect the ratios calculated from average PJM PECO Zone spot market prices, along with the cost of capacity during peak and off-peak hours, and create material price differentials designed to motivate customers to shift usage from peak to off-peak periods consistent with the Commission’s guidance.<sup>31</sup> *See* PECO St. No. 2, pp. 17-20; PECO Exhibit Nos. JAB-3 and JAB-4.

The Environmental Stakeholders, the only party that did not join the Settlement, generally support PECO offering a voluntary TOU rate, but assert that the PUC should condition approval of the Company’s proposed TOU Rates upon a “benefit-cost analysis” from the “utility and societal perspectives.” Environmental Stakeholders St. No. 1, p. 36. According to

---

<sup>31</sup> *See id.*, p. 3.

Environmental Stakeholders witness Rábago, this analysis should evaluate how PECO's TOU Rates perform against other alternatives for reducing peak demand-related system costs.

Environmental Stakeholders St. Nos. 1, pp. 31-34, & 1-SR, pp. 20-21. He also recommends that the PUC direct PECO to use a benefit-cost analysis framework to develop TOU rate pilots for building and transportation electrification technologies. Environmental Stakeholders St. Nos. 1, pp. 34-36, & 1-SR, pp. 20-21.

The Commission should reject Mr. Rábago's recommendations for several reasons. First, while Mr. Rábago believes a "cost-benefit analysis" is necessary to support a "well-designed" TOU rate, PECO and other EDCs have an unconditional, statutory obligation to offer TOU rate options to eligible default service customers under Section 2807(f)(5) of the Public Utility Code. Stated simply, Act 129 does not authorize a default service provider to satisfy its obligation only if its TOU rates are cost-effective in comparison to other programs for reducing peak demand-related system costs. Notably, Mr. Rábago failed to identify any electric utilities that have performed a benefit-cost analysis *before* implementing opt-in TOU generation rates to support his proposal. *See* PECO St. No. 2-R, p. 19; PECO Exhibit No. JAB-3R (Environmental Stakeholders Response to PECO-ES-I-12). In fact, Mr. Rábago's opinion is inconsistent with the Commission's recent approval of PPL's TOU program pursuant to Act 129 without requiring such a pre-implementation benefit-cost analysis.<sup>32</sup>

Mr. Rábago also provides no basis for PECO to undertake a benefit-cost analysis to develop pilots and tailored TOU rates to support electrification opportunities. As Mr. Bisti

---

<sup>32</sup> *Proceeding Initiated to Comply with Directives Arising from the Commonwealth Court Order in DCIDA v. PUC, 123 A.3d 1124 (Pa. Cmwlth 2015) Reversing and Remanding the Order of the Comm'n Entered Sept. 22, 2014 at Docket Number P-2013-2389572 in which the Comm'n had Approved PPL's Time of Use Plan, Docket Nos. M-2016-2578051 et al. (Recommended Decision issued Apr. 2, 2018) ("PPL TOU Recommended Decision"), pp. 17-18, 21-25. The Commission adopted the PPL TOU Recommended Decision without modification by Order entered on May 17, 2018.*

observed, PECO's TOU Rates will accommodate the technologies that Mr. Rábago identifies as the "best examples" of building electrification opportunities (e.g., distributed generation and behind-the-meter energy storage systems). Similarly, he does not offer any alternative rate design to support his suggestion that PECO's TOU Rates will not be beneficial for increased electrification of larger vehicle fleets. In addition, PECO anticipates investigating a variety of additional rate structures as part of its efforts in support of House Bill 1446 to develop a comprehensive transportation electrification plan for its service territory to support a public access EV charging network and increased electrification of public transit, school bus, port, freight, rail and airport infrastructure. PECO St. No. 2-R, pp. 20-21.

In summary, while the Environmental Stakeholders have suggested that PECO's proposed TOU Rates are deficient because PECO did not perform the cost-benefit analysis Mr. Rábago recommends or develop tailored rate designs for technologies he believes support electrification, the Environmental Stakeholders submitted no evidence to support those claims. In contrast, as described above, PECO presented extensive evidence – unrefuted by the Environmental Stakeholders – that the Company's proposed TOU Rates satisfy Act 129 requirements, incorporate the PUC's recommended guidelines on TOU rate design, and balance a variety of important objectives, including development of a TOU rate structure that is actionable for customers. The Commission should therefore approve PECO's proposed TOU Rates outlined in the Settlement without modification.

**C. PECO Supports The Methodology Recommended By OSBA For Assigning And Allocating PECO's TOU Implementation Costs To Eligible Procurement Classes**

PECO has estimated the expenditures to implement its proposed TOU Rates total approximately \$3.8 million. PECO St. No. 2, p. 23; PECO Exhibit No. JAB-6. These expenditures include costs related to customer communications and costs associated with system

changes necessary to support TOU enrollment, billing, and meter data management. PECO St. No. 2, pp. 23-24. Under the Settlement, PECO will recover the costs it incurs to implement its new TOU Rates through the administrative cost factor of the GSA for the Residential and Small Commercial procurement classes. Joint Petition at ¶ 60.

PECO originally proposed to allocate its TOU-related implementation costs to the eligible procurement classes based on default service sales (i.e., kWh) as it does for all other administrative costs recovered through the GSA. *See* PECO St. No. 2, p. 24; OSBA Exhibit No. BK-1 (PECO's Response to OSBA-I-3(b) & (d)). OSBA witness Kalcic recommends that PECO allocate those costs based on number of customers instead of on a kWh basis consistent with cost causation principles. OSBA St. Nos. 1, pp. 6-7, & 1-S, pp. 2-3. PECO supports Mr. Kalcic's recommendation. *See* PECO St. No. 2-R, p. 23. The OCA, however, advocates for PECO's original cost allocation proposal, asserting that TOU-related costs are no different than other administrative costs PECO incurs as a default service provider (e.g., the costs associated with default service proceedings, the independent evaluator and default service forecasting). *See* OCA St. No. 1R, p. 14.

As Mr. Bisti testified, PECO agrees with OSBA witness Kalcic that the costs the Company incurs to implement its TOU Rates are customer-related and do not vary based on default service sales volume. PECO St. No. 2-R, p. 23. Contrary to the OCA's assertion, unlike other administrative costs that PECO incurs in the course of procuring default service supply (i.e., kWh sales), TOU implementation costs are associated with a billing function, as PECO is not proposing a separate procurement process for TOU default service supply. *See* PECO St. Nos. 1, pp. 18-20; PECO St. No. 2, pp. 19, 23-24; OSBA St. Nos. 1, p. 7, & 1-S, pp. 2-3.

Accordingly, the Commission should adopt OSBA's recommended allocation of TOU implementation costs between the Residential and Small Commercial Classes.

**D. ESC Has Not Established A Reasonable Basis That Would Justify Its Proposed Changes To PECO's Current Commission-Approved Cost Assignment For NITS Charges**

During PECO's first two default service programs, LSEs including EGSs, were responsible for PJM transmission-related costs, including NITS, Generation Deactivation/Reliability Must Run ("RMR") charges, Expansion Cost Recovery charges and Transmission Enhancement (a/k/a Regional Transmission Expansion Plan or "RTEP") charges. In approving PECO's third default service program ("DSP III"), the Commission concluded that certain PJM transmission-related charges should be recovered from customers on a non-bypassable basis.<sup>33</sup> Consistent with that finding, on June 1, 2015, PECO implemented its NBT to recover the following PJM charges (collectively, the "PJM Transmission Charges") from all distribution customers in PECO's service territory:

- Generation Deactivation/RMR charges (PJM bill line 1930) set after December 4, 2014;
- RTEP charges (PJM bill lines 1108 and 1115); and
- Expansion Cost Recovery charges (PJM bill line 1730).

Currently, PJM charges for NITS are included in PECO's Price to Compare ("PTC") for default service. EGSs providing generation supply to PECO distribution customers are responsible for the NITS charges that they incur as LSEs. During DSP V, PECO proposed to continue to implement the NBT consistent with prior Commission Orders in the Company's DSP III and

---

<sup>33</sup> See *Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Final Order entered Dec. 4, 2014), p. 46.

DSP IV proceedings. PECO also proposed to continue to be responsible for and recover NITS and Non-Firm Point-to-Point Transmission costs through its unbundled, bypassable Transmission Service Charge (“TSC”). PECO St. No. 1, p. 15.

ESC witness Kavulla recommends that PECO include NITS charges in its existing NBT on the ground that those costs, like the PJM Transmission Charges, are unpredictable and not market based. ESC St. Nos. 1, pp. 31-32, 35-39, & 1-S, pp. 23, 25. He also contends that it is inequitable for EGSs to have to pay NITS costs while PECO assumes these charges for default service customer load and fully recovers its actual expense through the TSC. ESC St. Nos. 1, pp. 33-34, 40, & 1-S, pp. 22-23, 26-27. The objections voiced by ESC witness Kavulla do not justify any change to the current PUC-approved treatment of NITS costs in PECO’s service territory for several reasons.

First, the alleged “unpredictability” of NITS costs in PECO’s service territory does not warrant non-bypassable treatment because EGSs have flexibility to offer products with pricing terms that align with their costs and profit expectations. For example, EGSs may make offers with terms that allocate risks between the EGS and the customer as they choose, including a direct pass-through of NITS costs to minimize the EGS’s risk of cost under-recovery. *See* PAIEUG St. No. 1, p. 9. Notably, ESC’s position is directly at odds with another EGS that intervened in this proceeding. Ms. Merola, on behalf of Calpine, asserts that ESC’s attempt to shift “market risk” related to a single component of EGS service (NITS) from LSEs to EDCs would limit customer choice:

The members of the Electric Supplier Coalition, which represent a subset of the marketplace, are looking for ways to not take responsibility for their own business decision, level of risk management expertise and associated management decisions, valuation of risk, and products they choose to offer. In brief, they are trying to shed and shift market risk associated with their own

demand-driven costs. Rather than using expertise to manage these costs and associated risk, they are asking for PECO's DSP customers to bail them out. As a result, one of the principal benefits of moving to retail competition would be eliminated, by removing products and services and any competitive discipline for a specific demand based cost in the market place.

Calpine Retail St. No. 1, pp. 3-4. In short, ESC did not establish that EGSs cannot financially manage and account for NITS costs in the products and services they choose to offer in the competitive market to support non-bypassable recovery of these costs.

In addition, ESC's proposed treatment of NITS would create unnecessary transition problems for customers with existing EGS contracts. As PECO witness McCawley and PAIEUG witness Pollock explained in undisputed testimony, shopping customers could be "double-charged" and end up paying for NITS costs in both PECO's distribution rates (pursuant to the NBT) and as part of the price of generation purchased from their EGSs. PECO St. No. 1-R, pp. 17-18; PAIEUG St. No. 1, pp. 5-6. Mr. Kavulla acknowledged these concerns in his surrebuttal testimony, but claimed that the problem would not be an "insurmountable barrier" if the Commission were to adopt a transition mechanism. ESC St. No. 1-S, p. 24.

PAIEUG submits that the Commission should establish a "carve-out" for Large C&I customers in the event the PUC accepts ESC's proposal to maintain the "status quo" for Large C&I customers that already have arrangements with EGSs. *See* PAIEUG St. No. 1, pp. 9-10. However, PAIEUG witness Pollock did not present any evidence that Large C&I customers would experience different transition issues than other shopping customers with existing EGS contracts that would justify a special exception for those customers. Rather, Mr. Pollock's concerns further demonstrate that ESC's proposal should not be adopted for *any* rate class. In addition, as Mr. McCawley explained, to implement PAIEUG's proposed Large C&I customer carve-out, PECO would need to reconfigure its billing system to recover the same category of

costs (NITS) through two different retail rate mechanisms, which would increase the administrative costs recovered from all other distribution customers through the NBT. PECO St. No 1-SR, pp. 4-5.

In light of the Commission's prior decisions in DSP III and DSP IV, as well as the evidence that EGSs are able to manage NITS costs and any change would create substantial transition issues that may require increased administrative expense for all customers, PECO opposes ESC's proposal to recover NITS costs on a non-bypassable basis.

### **III. CONCLUSION**

For the reasons set forth above, the Commission should approve DSP V, as modified by the Settlement, with OSBA's recommended cost allocation methodology for PECO's TOU-



related implementation costs and continued recovery of PJM NITS charges for default service customer load through PECO's bypassable Transmission Service Charge.

Respectfully submitted,



---

Anthony E. Gay (Pa. No. 74624)  
Jack R. Garfinkle (Pa. No. 81892)  
W. Craig Williams (Pa. No. 306405)  
PECO Energy Company  
2301 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
Phone: 215.841.5974  
Fax: 215.568.3389  
E-mail: [Craig.Williams@Exeloncorp.com](mailto:Craig.Williams@Exeloncorp.com)

Kenneth M. Kulak (Pa. No. 75509)  
Brooke E. McGlinn (Pa. No. 204918)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Phone: 215.963.5384  
Fax: 215.963.5001  
E-mail: [ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)

Dated: August 20, 2020

*Counsel For PECO Energy Company*

## **APPENDIX A**

### **PECO ENERGY COMPANY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS**

## PROPOSED FINDINGS OF FACT

### I. BACKGROUND

1. PECO Energy Company (“PECO” or the “Company”) is an electric distribution company (“EDC”) and a default service provider as defined in the Pennsylvania Public Utility Code (“Public Utility Code” or “Code”), 66 Pa.C.S. § 2803.

2. As a default service provider, PECO provides electric generation service to those customers who do not select an electric generation supplier (“EGS”) or who return to default service after being served by an EGS that becomes unable or unwilling to serve them.<sup>1</sup>

3. PECO’s current default service program (“DSP IV”) expires on May 31, 2021.<sup>2</sup>

4. This proceeding was initiated on March 13, 2020, when PECO filed a Petition (the “DSP V Petition”) requesting that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) approve PECO’s proposed fifth default service program (“DSP V” or “Program”) for the period June 1, 2021 through May 31, 2025 in accordance with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801 et seq. (the “Competition Act”), as amended by Act 129 of 2008 (“Act 129”).

5. As described in the DSP V Petition, PECO proposed to continue most of the existing programs as approved by the Commission as part of DSP IV, with three principal changes. First, PECO proposed to procure new ten-year solar alternative energy credit (“Solar AEC”) contracts to replace PECO’s existing ten-year Solar AEC contracts, previously approved by the Commission, which will have expired by the end of DSP IV. Second, PECO proposed to introduce new time-of-use (“TOU”) default service rate options for eligible customers in PECO’s

---

<sup>1</sup> 66 Pa.C.S. § 2807(e).

<sup>2</sup> See *Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Order entered Dec. 8, 2016) (“DSP IV Order”).

Residential and Small Commercial procurement classes (the “TOU Rates”). Finally, PECO proposed to permit low-income customers enrolled in the Company’s Customer Assistance Program (“CAP”) to shop for generation service in accordance with the Commission’s proposed Policy Statement on Electric Customer Assistance Program Participant Shopping.<sup>3</sup>

6. Copies of the DSP V Petition filed by PECO on March 13, 2020, were served on other organizations and entities as required by 52 Pa. Code § 54.185(c).

7. The following entities were afforded active party status in this case:

Office of Consumer Advocate	(“OCA”)
Office of Small Business Advocate	(“OSBA”)
Calpine Retail Holdings, LLC	(“Calpine”)
Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania	(“CAUSE-PA”)
Electric Supplier Coalition <sup>4</sup>	(“ESC”)
Clean Air Council, Sierra Club/PA Chapter and Philadelphia Solar Energy Association	(“Environmental Stakeholders”)
Philadelphia Area Industrial Energy Users Group	(“PAIEUG”)
StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc.	(“StateWise”)
The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia	(“TURN et al.”)

8. A litigation schedule was established at the telephonic Prehearing Conference held on May 5, 2020 before Administrative Law Judge (“ALJ”) Eranda Vero. The parties

---

<sup>3</sup> *Elec. Distribution Company Default Serv. Plans – Customer Assistance Program Shopping*, Docket No. M-2018-300658 (Proposed Policy Statement Order entered Feb. 28, 2019) (“*Proposed Policy Statement Order*”). By Secretarial Letter issued January 23, 2020, the Commission acknowledged that its proposed CAP shopping policy statement was “unlikely to be final and effective in time for some upcoming DSP proceedings.” *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) (“January 2020 Secretarial Letter”), p. 9. The Commission therefore directed all EDCs to consider the Commission’s prior guidance in the *Proposed Policy Statement Order* and recent decisions in previous default service proceedings in developing CAP proposals for upcoming DSP filings. *Id.* at 9-10.

<sup>4</sup> ESC’s members are NRG Energy, Inc.; Direct Energy Services LLC; Interstate Gas Supply Inc., d/b/a IGS Energy; Vistra Energy Corp.; Shipley Choice LLC; ENGIE Resources LLC; and WGL Energy Services, Inc.

submitted written direct, rebuttal and surrebuttal testimony and accompanying exhibits in accordance with that schedule.

9. A virtual public input hearing was scheduled and held on June 9, 2020.

10. At the July 30, 2020 telephonic evidentiary hearing, the parties notified the ALJ that all of the parties to this proceeding (the “Settling Parties”), except for the Environmental Stakeholders, reached a settlement (the “Settlement”) of all but two issues presented by the DSP V Petition, which were reserved for briefing.<sup>5</sup> In addition, PECO witnesses John J. McCawley, Joseph A. Bisti and Scott G. Fisher were cross-examined and the pre-served written testimony and exhibits of all parties were admitted into evidence.

11. In the Joint Petition for Partial Settlement filed on August 13, 2020 (“Joint Petition”), the Settling Parties requested that the Commission approve DSP V as proposed by PECO, with certain modifications to the TOU Rates and PECO’s “Standard Offer” customer referral program, the addition of a new collaborative on residential customer bill improvements, and a deferral of CAP customer shopping to accommodate PECO’s pending proposal to change the underlying design of its CAP program. *See* Joint Petition at ¶¶ 14-70.

12. The two issues reserved for briefing in the Joint Petition involve: (1) how the costs PECO incurs to implement its new TOU Rates should be allocated between the eligible procurement classes and (2) whether certain transmission charges imposed by PJM Interconnection, L.L.C. (“PJM”) should be recovered by PECO from all distribution customers. *Id.* at ¶¶ 42 and 60.

---

<sup>5</sup> At the request of the parties, the ALJ canceled the hearing scheduled for July 29, 2020.

## **II. THE EVIDENCE SUPPORTS THE FOLLOWING FINDINGS OF FACT**

### **A. PECO's Default Service Procurement and Implementation Plans**

#### **1. Procurement Classes, Program Term and Supply Portfolio**

1. PECO's DSP V shall be in effect for a period of four years, from June 1, 2021 through May 31, 2025. Joint Petition at ¶ 14; PECO St. No. 1, p. 9.

2. PECO's default service customers shall be divided into the same three classes for purposes of default service procurement as those established in DSP IV: the Residential Class, the Small Commercial Class, and the Consolidated Large Commercial and Industrial Class. Joint Petition at ¶ 15; PECO St. No. 1, p. 11.

3. The Residential Class includes all residential customers currently receiving service under PECO rate schedules R and RH. Joint Petition at ¶ 16; PECO St. No. 1, p. 11.

4. The Small Commercial Class includes customers with annual peak demands of up to and including 100 kW served under rate schedules GS, PD, and HT plus lighting customers on schedules AL, POL, SLE, SLS, SLC, and TLCL. Joint Petition at ¶ 17; PECO St. No. 1, p. 11.

5. The Consolidated Large Commercial and Industrial Class includes customers with annual peak demands greater than 100 kW on rate schedules GS, HT, PD, and EP. Joint Petition at ¶ 18; PECO St. No. 1, p. 12.

6. Under the Settlement, PECO will maintain the procurement strategy established in prior default service programs, which utilizes full requirements, load-following products, as well as short time periods between the solicitation and delivery of supply products. A full requirements, load-following contract requires a supplier to provide energy, capacity, ancillary services, and all other services or products necessary to serve a specified percentage of default

service load continuously over the term of the contract. Joint Petition at ¶¶ 19-25; PECO St. No. 1, p. 14.

7. For the Residential Class, PECO will continue to procure a mix of one-year (approximately 38%) and two-year (approximately 61%) fixed-price full requirements (“FPFR”) contracts, with six months spacing between the commencement of contract delivery periods. During the DSP V period, the remaining approximately 1% of Residential Class load will be supplied directly by PJM’s spot energy, capacity and ancillary services markets. Joint Petition at ¶ 19; PECO St. No. 1, p. 17.

8. The Small Commercial Class load will continue to be supplied by equal shares of one-year and two-year FPFR products. Joint Petition at ¶ 22; PECO St. No. 1, p. 18.

9. For its Consolidated Large Commercial and Industrial customers, PECO will continue to solicit twelve-month hourly-priced full requirements products, without overlap, for all default service supply. Joint Petition at ¶ 24; PECO St. No. 1, p. 19.

10. The procurement terms and schedule for the three procurement classes are set forth in PECO Exhibit No. JJM-3. Joint Petition at ¶¶ 21, 23, 25.

11. DSP V includes some Residential and Small Commercial class supply products with delivery periods that extend beyond May 31, 2021 (the end of the DSP V period). The laddering of contract delivery periods (extending beyond May 31, 2021) will better ensure that customers are not fully exposed to the potential wholesale price volatility associated with replacing a large portion of default service supply in a short period. PECO St. No. 1, p. 21; PECO St. No. 4, pp. 19-20; Hearing Tr. at 60-61, 90.

12. The default service supply contracts contain adequacy and reliability protections. Suppliers must satisfy certain requirements, such as being a member in good standing of PJM,

that help ensure that they are able to perform their supply obligations. *See* PECO St. No. 1-R, pp. 9-10; PECO Exhibit No. 4.

13. Reliable and adequate service is further ensured because all of the load served under the contracts will be supplied through PJM, regardless of whether the winning default service supply bidders own or control generation. PJM is a FERC-approved regional transmission organization with a central responsibility to ensure the reliability of its regional electricity grid of which PECO is a part, and PJM has numerous mechanisms in place to meet this responsibility. PECO St. No. 1-R, p. 10; PECO Exhibit No. 4.

14. The Environmental Stakeholders argued that PECO did not evaluate the inclusion of long-term contracts for default service supply other than AECs, but declined to recommend any specific (or minimum) quantity of long-term contracts for PECO's portfolio. Environmental Stakeholders St. No. 1-SR, pp. 9, 11.

15. PECO considered the appropriate role of long-term contracts in light of prior Commission findings and the Company's own experience with PECO's first four default service programs. PECO St. No. 1-R, pp. 5-8; PECO St. No. 4-R, pp. 25-28.

16. Long-term contracts for wholesale energy supply come in many forms and do not necessarily provide customers with price stability. *See* Hearing Tr. at 57-59.

17. If a long-term contract is fixed in price, there are several potential risks for customers. For example, PECO witness Mr. Fisher explained that customers would bear the risk that the product price of a long-term contract is ultimately above future market prices. As there is no certainty regarding the amount of default service load that PECO must supply in the future, the portion of the supply portfolio consisting of above-market contracts could increase and/or PECO could be forced to sell above-market supply at a loss if more distribution customers select



generation supply from an EGS. Customers remaining on default service would need to pay for above-market costs through higher default service rates. *See* PECO St. No. 4-R, pp. 28-30.

Finally, long-term contracts could impair the Company's future ability to provide default service at "least cost over time" by limiting PECO's ability to adapt to changes in market and regulatory conditions, including the continuing decline in the costs of renewable generation that the Environmental Stakeholders predict. *Id.* at 23, 30-31.

18. PECO has also fully considered an alternative procurement proposal, offered by several witnesses at the public input hearing, to procure twenty percent of PECO service area generation supply from distributed solar systems installed in the City of Philadelphia by 2025, and concluded that the proposal was "not based in reality." As PECO witness Mr. McCawley explained, assuming a 7 kW solar system for each installation (a typical size for a residential solar system), the proposal would require more than 800,000 rooftops – exceeding the 689,000 existing residential rooftops in Philadelphia. If an alternative approach with larger, "utility-scale" systems was used, the estimated land requirement of 40,000 acres would exceed the acreage of Center City Philadelphia by 30 times. PECO also calculated that the cost of the proposal would be \$15 billion and result in a \$1,300 increase in the average residential customer bill annually; if PECO was required to pay the cost (as the proposal's proponents recommend), it would result in a net annual loss of \$750 million to PECO for 25 years. Hearing Tr. at 74-75.

19. The Environmental Stakeholders argued that the attributes of distributed generation should have been considered by PECO in developing its procurement plan because such generation offers "numerous potential benefits relating to adequacy and reliability, including increased resiliency and decreased reliance on transmission and distribution infrastructure." Environmental Stakeholders St. No. 1-SR, p. 6.

20. The record evidence shows that the general reliability benefits of distributed generation are not clear cut. First, the proximity of distributed generation to customers is very fact-specific and, therefore, it is wrong to assume that distributed generation does not require use of the distribution system. As Mr. McCawley explained, the proximity of generation to customers will depend upon the type of generation (e.g., wind or solar), size, local regulations and customer preferences. *See* Hearing Tr. at 48-51. Second, even if distributed generation is sited on a customer's premises, the interconnection is typically configured to prevent power flowing to the customer if the transmission or distribution system is down. *See* Hearing Tr. at 55. This prohibition is based on safety considerations and prevents the backflow of electricity to energize lines that could, for example, have fallen and be lying in a customer's backyard. *Id.* at 54-55.

21. Finally, the Environmental Stakeholders proposed that the Commission direct PECO to "rebuild" its default service program by developing and implementing a new "planning process" to construct its default service portfolio. Environmental Stakeholders St. No. 1-R, p. 12. In advocating for their entirely new process, the Environmental Stakeholders: (1) ignored prior Commission findings and the active and extensive participation by many parties in the Commission's default service proceedings to date; (2) failed to offer any proposal as to how PECO would procure default service supply during the time required to "rebuild" PECO's default service program; and (3) failed to provide an estimate of the time or cost that its proposal would take to implement. PECO St. No. 1-R, p. 8; PECO Exhibit SG-1.

## **2. Competitive Bid Solicitation Process and Independent Evaluator**

22. Consistent with DSP IV, all bids for default service supply will be obtained through a fair, non-discriminatory, and competitive request for proposals ("RFP") process

conducted by an independent third-party evaluator. Joint Petition at ¶ 27; PECO St. No. 1, pp. 23-25.

23. PECO will retain NERA Economic Consulting, Inc. (“NERA”) as the Independent Evaluator role for DSP V. Joint Petition at ¶ 28; PECO St. No. 1, p. 23.

24. PECO will execute a form of the Supplier Master Agreement (“SMA”), set forth in PECO Exhibit No. JJM-4, with wholesale suppliers that are successful bidders in PECO’s default service supply procurements. Joint Petition at ¶ 26; PECO St. No. 1, pp. 21-23.

25. 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. PECO will maintain the same protocols to ensure that PECO’s wholesale generation affiliates do not receive an advantage in the bidding process or any other aspect of PECO’s default service implementation plan. Joint Petition at ¶ 29; PECO St. No. 1, p. 26.

26. The only PECO affiliate that owns generation supply is Exelon Generation. Under applicable codes of conduct of the Federal Energy Regulatory Commission, PECO does not discuss generation market-related issues with Exelon Generation. However, PECO can affirmatively state that there has been no determination by a court or regulatory agency of competent jurisdiction that Exelon Generation has withheld from the wholesale energy market any generation supply in a manner that violates federal law. PECO St. No. 1, p. 36.

### **3. AEPS Compliance**

27. Under the Settlement, PECO will meet its Alternative Energy Portfolio Standards (“AEPS”) Act, 73 P.S. § 1648.1 et seq., obligations primarily through a combination of full requirements products and innovative solar procurements to support solar energy facilities within the Company’s service area. Joint Petition at ¶¶ 30-33; PECO St. No. 1, pp. 27-29.

28. Consistent with DSP IV, PECO will require each full requirements default service supplier to transfer Tier I (including solar PV) and Tier II AECs to PECO corresponding to PECO's AEPS obligations associated with the amount of default service load served by that supplier. A default service supplier's Solar AEC obligation would be reduced by Solar AECs procured directly by PECO and allocated to the supplier. Joint Petition at ¶ 30; PECO St. No. 1, pp. 27-28, 34.

29. PECO will double the amount of Solar AECs that will be obtained through long-term contracts as compared to DSP IV. The Company will conduct two solicitations in both 2021 and 2022 for ten-year Solar AEC contracts to deliver a total of 16,000 Solar AECs annually (i.e., 4,000 Solar AECs in each of four solicitations). PECO will procure up to half of each year's Solar AEC amount from solar generating facilities located within its service area. Joint Petition at ¶ 31; PECO St. No. 1, pp. 29-31.

30. The first stage of each annual RFP will consist of a competitive procurement where the winning bidders will be determined by lowest Solar AEC prices offered. The second stage will be a Standard Offer to Purchase Solar AECs at the quantity-weighted average of the winning competitive prices determined by the first stage RFP, with the requirement that the Solar AECs from stage two bidders come from solar generation resources located in the PECO service area. Joint Petition at ¶ 32; PECO St. No. 1, pp. 30-33.

31. PECO will execute a form of the Solar Alternative Energy Credit Purchase and Sale Agreement (either the Project Version and the Aggregator Version), set forth in PECO Exhibit JJM-10, with each winning bidder. Joint Petition at ¶ 33; PECO St. No. 1, pp. 30.

32. PECO's proposed solar RFP and related documents are consistent with procedures previously approved by the Commission and successfully used by PECO in its 2010

Solar AEC procurement, as well as terms and conditions that are typical of solar renewable energy credit arrangements. PECO St. No. 1, pp. 30-33.

33. Under PECO's DSP V, default service suppliers remain obligated to comply with all evolving legal requirements that will create a cleaner mix of energy generation. Such requirements would include a 900% increase in solar AEPS requirements (i.e., from 0.5% to 5.0%) under legislation that is now pending in the Pennsylvania General Assembly and supported by PECO, as well as emerging policies that will limit carbon dioxide from fossil-fuel-fired electric power generators. Public Input Hearing Tr. at 130; PECO St. 1-R, p. 11; PECO St. 4-R, pp. 14-15.

#### **4. Contingency Plans**

34. PECO will continue utilizing the contingency plans approved in prior default service programs. Specifically, in the event PECO fails to obtain sufficient approved bids for all offered tranches for a product in a solicitation, the unfilled tranches will be included in PECO's next default supply solicitation for that product. PECO will supply any unserved portion of its default service load from the PJM-administered markets for energy, capacity and ancillary services. Joint Petition at ¶ 34; PECO St. No. 1, pp. 26-27.

35. If a supplier 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 proposing alternative procurement options and a request for approval on an expedited basis. Joint Petition at ¶ 35; PECO St. No. 1, pp. 26-27.

36. In the event that PECO's 2021 RFP for Solar AECs is unsuccessful or there is insufficient participant interest, the amount of solar AECs not under contract will be added to the

amount procured in the 2022 procurement process. If PECO is unable to obtain its full 16,000 Solar AECs after completing the 2021 and the 2022 procurements, any shortfall will be met by wholesale suppliers who are obligated to transfer enough Solar AECs to meet AEPS requirements for the percentage of default service load that they supply under the SMA. Joint Petition at ¶ 36; PECO St. No. 1, pp. 34-35.

**B. Rate Design and Cost Recovery**

**1. Generation Supply Adjustment**

37. The Settlement will continue PECO's PUC-approved default service rate design with the addition of new, optional TOU Rates for eligible residential and small commercial customers. *See* Joint Petition at ¶¶ 37-43; PECO Exhibit Nos. JAB-7 and JAB-8.

38. PECO will continue to recover the cost of default service from default service customers through the Generation Supply Adjustment ("GSA") and Transmission Service Charge ("TSC") consistent with DSP IV. Joint Petition at ¶ 37.

39. The GSA and TSC form the basis of the Price-to-Compare ("PTC") that customers may use to evaluate competitive generation service offerings. *Id.*

40. For each customer class, default service rates established pursuant to the GSA and TSC 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 to implement Commission-approved retail enhancement programs) and working capital, as provided in 52 Pa. Code § 69.1808; and (3) applicable taxes. *Id.*; *see also* PECO St. No. 2, pp. 4-5.

41. Under the Settlement, PECO will continue to project and adjust default service rates for the Residential and Small Commercial Classes established pursuant to the GSA on a

quarterly basis and to reconcile the over/under collection component of the GSA (known as the “E-Factor”) on a semi-annual basis. Joint Petition at ¶ 37; PECO St. No. 2, pp. 5-6.

42. The default service rates for the Consolidated Large Commercial and Industrial (“C&I”) Class will continue to be based upon the price paid to winning suppliers in PECO’s hourly-priced default service procurements, which includes the PJM day-ahead hourly locational marginal price for the PJM PECO Zone, plus associated costs, such as capacity, ancillary services, PJM administrative expenses and AEPS compliance costs (“Hourly Pricing Adder”). Joint Petition at ¶ 38; PECO St. No. 2, p. 7.

43. The default service rates for the Large C&I Class also include a reconciliation component to refund or recoup GSA over/under collections from prior periods. Under the Settlement, over/under collections of default service costs for the Consolidated Large C&I Class will continue to be reconciled on a semi-annual basis instead of a monthly basis. Joint Petition at ¶ 39; PECO St. No. 2, p. 7.

44. To align the filing schedule for the Consolidated Large C&I default service rates with PECO’s other procurement classes, PECO will continue to file the Hourly Pricing Adder on a quarterly instead of a monthly basis. PECO St. No. 2, pp. 7, 10.

45. Billing cycle lag results in a timing difference between revenue and expense that can produce significant fluctuations in the PTC that are not directly related to the underlying cost of default service supply. PECO St. No. 2, p. 8.

46. By using a semi-annual rather than a quarterly or monthly schedule for the reconciliation of over/under collections for the Residential and Small Commercial Classes and Consolidated Large C&I Class, respectively, fluctuations in default service prices will be

smoothed out and result in clearer price signals for both customers and EGSs. *See id.* at 8, 27-28.

## **2. Recovery of PJM Transmission-Related Charges**

47. During PECO's first two default service programs, load-serving entities ("LSEs") including EGSs, were responsible for PJM transmission-related costs, including Network Integration Transmission Service costs ("NITS", Generation Deactivation/Reliability Must Run ("RMR") charges, Expansion Cost Recovery charges and Transmission Enhancement (a/k/a Regional Transmission Expansion Plan or "RTEP") charges. In approving PECO's third default service program ("DSP III"), the Commission concluded that certain PJM transmission-related charges should be recovered from customers on a non-bypassable basis.<sup>6</sup> PECO St. No. 1, p. 15.

48. Consistent with that finding, on June 1, 2015, PECO implemented its Non-Bypassable Transmission Charge ("NBT") to recover the following PJM charges (collectively, the "PJM Transmission Charges") from all distribution customers in PECO's service territory:

- Generation Deactivation/RMR charges (PJM bill line 1930) set after December 4, 2014;
- RTEP charges (PJM bill lines 1108 and 1115); and
- Expansion Cost Recovery charges (PJM bill line 1730).

Currently, PECO is responsible for acquiring PJM charges for NITS and Non-Firm Point-to-Point Transmission on behalf of default service customers and recovers the associated PJM charges through its unbundled, bypassable TSC. PECO St. No. 1, p. 15.

---

<sup>6</sup> *See Petition of PECO Energy Co. for Approval of its Default Serv. Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Final Order entered Dec. 4, 2014), p. 46.



49. ESC witness Kavulla recommended that PECO include NITS charges in its existing NBT on the ground that those costs, like the PJM Transmission Charges, are unpredictable and not market based. ESC also contended that it is inequitable for EGSs to have to pay NITS costs while PECO assumes these charges for default service customer load and fully recovers its actual expense through the TSC ESC St. Nos. 1, pp. 31-40, & 1-S, pp. 22-23, 25-27.

50. ESC did not establish that EGSs cannot financially manage and account for NITS costs in the products and services they choose to offer in the competitive market to support non-bypassable recovery of these costs. *See* PECO St. No. 1-R, p. 17.

51. The alleged “unpredictability” of NITS costs in PECO’s service territory does not warrant non-bypassable treatment because EGSs have flexibility to offer products with pricing terms that align with their costs and profit expectations, including a direct pass-through of NITS costs to minimize the EGS’s risk of cost under-recovery. *See* PAIEUG St. No. 1, p. 9.

52. The witness for another EGS that intervened in this proceeding, Calpine, testified that ESC’s attempt to shift “market risk” related to a single component of EGS service (NITS) from LSEs to EDCs would limit customer choice:

The members of the Electric Supplier Coalition, which represent a subset of the marketplace, are looking for ways to not take responsibility for their own business decision, level of risk management expertise and associated management decisions, valuation of risk, and products they choose to offer. In brief, they are trying to shed and shift market risk associated with their own demand-driven costs. Rather than using expertise to manage these costs and associated risk, they are asking for PECO’s DSP customers to bail them out. As a result, one of the principal benefits of moving to retail competition would be eliminated, by removing products and services and any competitive discipline for a specific demand based cost in the market place.

Calpine Retail St. No. 1, pp. 3-4.

53. ESC's proposed non-bypassable treatment of NITS would also create unnecessary transition problems for customers with existing EGS contracts. For example, shopping customers could be "double-charged" and end up paying for NITS costs in both PECO's distribution rates (pursuant to the NBT) and as part of the price of generation purchased from their EGSs. PECO St. No. 1-R, pp. 17-18; PAIEUG St. No. 1, pp. 5-6.

54. PAIEUG contended that the Commission should establish a "carve-out" for large commercial and industrial ("Large C&I") customers in the event the PUC accepts ESC's proposal, to maintain the "status quo" for Large C&I customers that already have arrangements with EGSs. *See* PAIEUG St. No. 1, pp. 9-10. However, PAIEUG witness Pollock did not present any evidence that Large C&I customers would experience different transition issues than other shopping customers with existing EGS contracts that would justify a special exception for those customers. In addition, to implement such a Large C&I customer "carve-out," PECO would need to reconfigure its billing system to recover the same category of costs (NITS) through two different retail rate mechanisms, which would increase the administrative costs recovered from all other distribution customers through the NBT. PECO St. No 1-SR, pp. 4-5.

### **3. Time-of-Use Default Service Rate Options**

#### **a. Background and Objectives Underlying PECO's TOU Rates**

55. Based on the statutory requirements set forth in the Conclusions of Law, *infra*, PECO previously offered a TOU generation rate through a PUC-approved, one-year pilot program known as the "PECO Smart Time Pricing Pilot" ("Pilot") to gauge customer interest in TOU rates and the impact of those rates on electricity consumption patterns.<sup>7</sup> The Pilot's two-

---

<sup>7</sup> *Petition of PECO Energy Co. for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944 (Order entered Apr. 15, 2011) ("Dynamic Pricing Order"); *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket

part TOU rate structure offered eligible residential and small commercial customers a higher rate during non-holiday weekend afternoons from 2 p.m. to 6 p.m. and a reduced rate for all other hours of the year. An EGS selected through a competitive procurement process served as the TOU commodity supplier and implementation vendor for the Pilot.<sup>8</sup> PECO St. No. 2, pp. 10-12.

56. Since the conclusion of the Pilot in 2014, the scope of an EDC's statutory obligation to offer TOU rates to default service customers was the subject of litigation before the Commission and Commonwealth Court.<sup>9</sup> Following this litigation, the Commission proposed a new TOU structure for PPL to satisfy Act 129 requirements.<sup>10</sup> The Commission noted that the proposed TOU design for PPL "may provide future guidance to all EDCs" for incorporation into their own TOU proposals in their individual default service proceedings.<sup>11</sup> PECO St. No. 2, p. 12.

57. In the DSP V Petition, PECO proposed to introduce new TOU Rates for the Residential and Small Commercial Classes consistent with Commission guidance on EDC TOU rate design to satisfy Act 129 requirements and to build on lessons learned from PECO's Pilot. PECO's proposed TOU Rates also reflect a balance of the following objectives: (1) simplicity

---

No. P-2012-2297304 (Opinion and Order entered Sept. 26, 2012) (approving modifications to the commodity supply, dynamic rate structure, size and term of the pilot approved in the Dynamic Pricing Order to enable an EGS to provide TOU supply in lieu of PECO).

<sup>8</sup> *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered Sept. 26, 2012) (approving modifications to the commodity supply, dynamic rate structure, size and term of the pilot approved in the Dynamic Pricing Order to enable an EGS to provide TOU supply in lieu of PECO).

<sup>9</sup> *See Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (Order entered Sept. 11, 2014) (holding that Act 129 did not require PPL Electric Utilities Corp. ("PPL") to offer TOU rates directly to customer-generators); *Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa. Cmwlth. 2015) ("*DCIDA*") (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs).

<sup>10</sup> *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) ("April 2017 Secretarial Letter").

<sup>11</sup> *Id.* at 4.

and the value proposition for customer enrollment; (2) cost-causation principles to connect the TOU pricing structure to wholesale markets and PECO's standard, non-time varying GSA; and (3) incentives for customer electric vehicle ("EV") adoption. *See* PECO St. No. 2, pp. 12-14.

**b. Customer Eligibility**

58. The April 2017 Secretarial Letter (p. 3) provides that EDC TOU rates should be available to all default service customers who are not eligible for "spot only" default service and should incorporate existing consumer protections for CAP customers. In accordance with the Commission's guidance, as originally proposed, PECO's voluntary TOU Rates under the Settlement will be available to non-CAP residential and small commercial default service customers with smart meters configured to measure energy consumption in watt-hours. The Settlement adopts PECO's original proposal to exclude CAP customers from the residential TOU Rate to avoid potential adverse impacts on CAP benefits. *See* Joint Petition at ¶¶ 49-50; PECO St. Nos. 2, pp. 15-16, 21, & 2-R, p. 16.

59. In addition, the Commission recommended that EDCs offer all customers eligible for the TOU Rates "generation-weighted net metering".<sup>12</sup> Consistent with that guideline, customer-generators will be eligible for the TOU Rates under the Settlement, and PECO will calculate the value of excess generation created by TOU net metering customers based on the period in which it was generated. *See* Joint Petition at ¶¶ 52-53; PECO St. No. 2, pp. 21-22; PECO Exhibit No. JAB-5.

60. The Settlement also includes restrictions on re-enrollment if a customer leaves the TOU Rates for any reason. This provision is designed to reduce "free riders" who enroll in a

---

<sup>12</sup> April 2017 Secretarial Letter, p. 4.

TOU rate only for times of the year when they do not have to shift usage to save money. Joint Petition at ¶ 51; PECO St. No. 2, p. 22.

**c. TOU Product Structure and Rate Design**

61. The Settlement further adopts PECO's original proposed TOU rate design with one revision – to review the TOU price multipliers annually based on updated PJM energy and capacity market pricing data – as recommended by the OCA. *See* Joint Petition at ¶¶ 43-48.

62. The time-differentiated usage periods delineated in Paragraph No. 44 of the Joint Petition reasonably encompass the Company's expected system peak usage times and take into account the need for simplicity to provide eligible customers with a reasonable opportunity to shift usage to lower-priced (off-peak) hours. PECO selected the same year-round peak period – 2 p.m. to 6 p.m. on non-holiday weekdays – employed in the Pilot in which participating customers successfully responded to the TOU price signals to shift usage and achieve bill savings. PECO St. No. 2, pp. 11-12, 16-17; PECO Exhibit No. JAB-1.

63. Consistent with the January 2020 Secretarial Letter (p. 7), PECO also designed its proposed TOU Rates in the context of EV expansion in the Commonwealth. Specifically, PECO's proposed TOU rate design includes a super off-peak pricing period from 12 a.m. to 6 a.m. to provide cost savings opportunities to customers who charge their EVs during overnight, low-priced energy hours. PECO St. No. 2, pp. 17, 28.

64. In addition, the Settlement adopts PECO's original proposed TOU pricing multipliers to establish a rate premium above PECO's standard, fixed-price default service rate for usage during the peak period and rate discounts from this baseline price for usage during the off-peak and super-off peak periods. These multipliers reflect the ratios calculated from average PJM PECO Zone spot market prices, along with the cost of capacity during peak and off-peak

hours, and create material price differentials designed to motivate customers to shift usage from peak to off-peak periods consistent with the Commission’s guidance.<sup>13</sup> See Joint Petition at ¶¶ 45-48; PECO St. No. 2, pp. 17-20; PECO Exhibit Nos. JAB-2 and JAB-3.

65. Under the Settlement, PECO will source both the standard and TOU default service for residential and small commercial customers from the same supply portfolio for each procurement class. PECO will calculate the TOU Rates on a quarterly basis, synchronized with the GSA adjustment periods for the Residential and Small Commercial Classes, using the standard default service GSA as the reference price for PECO’s TOU rate calculations. Joint Petition at ¶¶ 47-48; PECO St. No. 2, pp. 19-20; PECO Exhibit No. JAB-4.

66. TOU customer kWh sales and costs will be included in the semi-annual reconciliation of the over/undercollection component of the GSA for the entire procurement class (i.e., Residential or Small Commercial). This reconciliation process, using a single E-Factor for each procurement class, will help mitigate potential large swings in GSA over/undercollections that could arise if customers switch between PECO’s standard default service rate and TOU default service rate. Joint Petition at ¶ 48; PECO St. No. 2, pp. 20-21.

67. The Environmental Stakeholders did not oppose PECO’s TOU Rates, but proposed that the Commission should require PECO to conduct a “benefit-cost analysis” as a condition for approval of the TOU Rates. Environmental Stakeholders witness Rábago also recommends that the PUC direct PECO to use a benefit-cost analysis framework to develop TOU rate pilots for building and transportation electrification technologies. Environmental Stakeholders St. Nos. 1, pp. 31-36, & 1-SR, pp. 20-21.

---

<sup>13</sup> See *id.* at 3.

68. While Environmental Stakeholders witness Rábago believes a “cost-benefit analysis” is necessary to support a “well-designed” TOU rate, he failed to identify any electric utilities that have performed a benefit-cost analysis *before* implementing opt-in TOU generation rates to support his proposal. In fact, Mr. Rábago’s opinion is inconsistent with the Commission’s recent approval of PPL’s TOU program pursuant to Act 129 without requiring such a pre-implementation benefit-cost analysis.<sup>14</sup> See PECO St. No. 2-R, p. 19; PECO Exhibit No. JAB-3R (Environmental Stakeholders Response to PECO-ES-I-12).

69. The Environmental Stakeholders have also not established that TOU Rates are deficient because PECO did not develop tailored rate designs for technologies Mr. Rábago asserts support electrification. PECO’s TOU Rates will accommodate the technologies that Mr. Rábago identifies as the “best examples” of building electrification opportunities (e.g., distributed generation and behind-the-meter energy storage systems). He also does not offer any alternative rate design to support his suggestion that PECO’s TOU Rates will not be beneficial for increased electrification of larger vehicle fleets. In addition, PECO anticipates investigating a variety of additional rate structures as part of its efforts in support of House Bill 1446 to develop a comprehensive transportation electrification plan for its service territory to support a public access EV charging network and increased electrification of public transit, school bus, port, freight, rail and airport infrastructure. PECO St. No. 2-R, pp. 20-21.

---

<sup>14</sup> *Proceeding Initiated to Comply with Directives Arising from the Commonwealth Court Order in DCIDA v. PUC, 123 A.3d 1124 (Pa. Cmwlth 2015) Reversing and Remanding the Order of the Comm’n Entered Sept. 22, 2014 at Docket Number P-2013-2389572 in which the Comm’n had Approved PPL’s Time of Use Plan, Docket Nos. M-2016-2578051 et al. (Recommended Decision issued Apr. 2, 2018) (“PPL TOU Recommended Decision”), pp. 17-18, 21-25. The Commission adopted the PPL TOU Recommended Decision without modification by Order entered on May 17, 2018.*

**d. Implementation Plan and Cost Recovery**

70. The Settlement adopts PECO's original proposed communications plan to inform customers about PECO's new TOU Rates and update enrolled TOU customers about the opportunity for bill savings. This plan includes a webpage dedicated to the TOU Rates consistent with the April 2017 Secretarial Letter (p. 3), a variety of other customer education materials, and monthly e-mail communications to enrolled TOU customers. Joint Petition at ¶ 54; PECO St. No. 2, pp. 22-23;

71. Under the Settlement, the Company will incorporate specific disclosures recommended by CAUSE-PA in all TOU outreach and educational materials. *See* Joint Petition at ¶ 55.

72. The Settlement also provides stakeholders (including interested EGSs) with the opportunity to review and provide feedback before those materials are finalized. *See* Joint Petition at ¶ 56.

73. Finally, PECO will track TOU customers' income and demographic information and evaluate the impacts of the Company's TOU rates on confirmed low-income customers as recommended by CAUSE-PA. *See id.* at ¶¶ 57-58.

74. PECO has estimated the expenditures to implement its proposed TOU Rates total approximately \$3.8 million. These expenditures include costs related to customer communications and costs associated with system changes necessary to support TOU enrollment, billing, and meter data management. PECO St. No. 2, pp. 23-24; PECO Exhibit No. JAB-6.

75. PECO will recover the costs it incurs to implement its new TOU Rates through the administrative cost factor of the GSA for the Residential and Small Commercial procurement classes. Joint Petition at ¶ 60; PECO St. No. 2, p. 23.



76. PECO originally proposed to allocate its TOU-related implementation costs to the eligible procurement classes based on default service sales (i.e., kWh) as it does for all other administrative costs recovered through the GSA. *See* PECO St. No. 2, p. 24; OSBA Exhibit No. BK-1 (PECO’s Response to OSBA-I-3(b) & (d)).

77. OSBA witness Kalcic recommended that PECO allocate those costs based on number of customers instead of on a kWh basis consistent with cost causation principles. OSBA St. Nos. 1, pp. 6-7, & 1-S, pp. 2-3.

78. PECO supports Mr. Kalcic’s recommendation. *See* PECO St. No. 2-R, p. 23.

79. The OCA, however, advocates for PECO’s original cost allocation proposal, asserting that TOU-related costs are no different than other administrative costs PECO incurs as a default service provider (e.g., the costs associated with default service proceedings, the independent evaluator and default service forecasting). *See* OCA St. No. 1R, p. 14.

80. The costs the Company incurs to implement its TOU Rates are customer-related and do not vary based on default service sales volume. Contrary to the OCA’s assertion, unlike other administrative costs that PECO incurs in the course of procuring default service supply (i.e., kWh sales), TOU implementation costs are associated with a billing function, as PECO is not proposing a separate procurement process for TOU default service supply. *See* PECO St. Nos. 1, pp. 18-20; PECO St. No. 2, pp. 19, 23-24; OSBA St. Nos. 1, p. 7, & 1-S, pp. 2-3.

**C. Standard Offer Program (“SOP”)**

81. PECO’s currently effective SOP, including the cost recovery mechanisms last approved by the Commission as part of DSP IV, will continue until May 31, 2025. Joint Petition at ¶ 62; PECO St. No. 3, pp. 16-17.

82. In addition, PECO will change the brand name for the SOP, provide additional information about the SOP on its website, and allow customers to enroll in the program through its website. Joint Petition at ¶¶ 63, 67-68.

83. PECO will also perform additional training and evaluation of its third-party SOP administrator, Kandela, recommended by the OCA. *Id.* at ¶¶ 64-65.

84. Finally, PECO will conduct a customer satisfaction survey of SOP customers prior to the filing of the Company's next default service program. *Id.* at ¶ 66.

**D. CAP Shopping Plan and Residential Bill Improvements**

85. PECO's CAP is a special rate rider for customers with an annual household gross income level at or below 150% of the poverty level established under federal law. Under PECO's current program design, CAP customers receive a fixed bill credit each year for the utility service they receive based on their ability to pay regardless of the actual amount of their utility bill. PECO calculates the CAP credit amount using a twelve-month look-back period. PECO's CAP customers are not currently eligible to purchase electric generation supply from an EGS. PECO St. No. 3, pp. 3-4.

86. PECO's initial filing in this proceeding included the CAP shopping Plan in accordance with the Commission's direction in its *Proposed Policy Statement Order*.<sup>15</sup> PECO St. Nos. 3, pp. 5-14, & 3-R, pp. 4-8.

87. Thereafter, on July 8, 2020, PECO filed a request for PUC approval at Docket Nos. M-2018-3005795 and P-2020-3020727 ("CAP Design Proceeding") to change its CAP

---

<sup>15</sup> The CAP shopping requirements outlined in the *Proposed Policy Statement Order* (pp. 5, 9-10) include (1) a CAP shopping product rate at or below the EDC's PTC for the duration of the contract; (2) a prohibition in EGS-CAP customer contracts against fees unrelated to the provision of electric generation service, including early termination and cancellation fees; and (3) the following options for CAP customers upon expiration of the current contract period: enter into another contract with their existing EGS with the same CAP protections, switch to another supplier offering a contract with the same CAP protections, or return to default service.

design to provide a percentage of income-based benefit to CAP customers instead of a fixed credit.

88. Under the Settlement, PECO will submit a CAP shopping proposal following the Commission's final Order in the CAP Design Proceeding instead of implementing the CAP Shopping Plan described in the testimony and exhibits of PECO witness Carol Reilly. Joint Petition at ¶ 70.

89. PECO will also convene a stakeholder process to explore mechanisms to collect EGS pricing information compatible with the Company's "bill-ready" system and recommendations to improve the presentation of shopping information on residential customer bills. *Id.* at ¶ 69.

90. Coordination of PECO's CAP shopping platform design with the future Commission-approved CAP design will allow the parties and the Commission to efficiently consider all issues related to PECO CAP customer shopping fully informed by currently available data. *See* Joint Petition at ¶ 70.

## PROPOSED CONCLUSIONS OF LAW

### I. BURDEN OF PROOF

1. The party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa.C.S. § 332(a).

2. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

3. When a utility has made a proposal and presented evidence sufficient to establish a prima facie case, the burden shifts to an opposing party to present "some evidence" to support an alternative approach. *NRG Energy, Inc. v. Pa. P.U.C.*, 2020 WL 2843488 (June 2, 2020) at \*10.

4. The Commonwealth Court has explained that if an opposing party "does not bear a burden to present something to support its methodology, it would be difficult, if not impossible, for [the utility] to respond with evidence explaining why the alternative should not be accepted." *Id.*

### II. STANDARDS APPLICABLE TO DEFAULT SERVICE

#### A. Default Service Supply Procurement and Implementation Plan

5. As a Pennsylvania EDC, PECO serves as default service provider to retail electric customers within its service territory in accordance with its obligations under Section 2807(e) of the Code (66 Pa.C.S. § 2807(e)).

6. Under Sections 2807(e) (3.1)-(3.2) and (3.4) of the Competition Act, PECO is required to obtain, through competitive procurement processes, a "prudent mix" of default

service supply contracts designed to ensure “adequate and reliable service” at the “least cost to customers over time.” 66 Pa.C.S. § 2807(e)(3.7).

7. PECO’s DSP V, as modified by the Settlement, contains all of the elements required by the Commission’s default service regulations (52 Pa. Code §§ 54.181-54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801-69.1817), including a procurement plan, an implementation plan, contingency plans, a default service rate design plan, and associated tariff pages.

8. PECO’s DSP V, as modified by the Settlement and approved herein, is in compliance with 66. Pa.C.S. § 2807(e)(3.7) in that: (1) it includes prudent steps necessary to negotiate favorable generation supply contracts; (2) it includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis; and (3) neither PECO Energy Company nor its affiliated interests have withheld from the market any generation supply in a manner that violates Federal law.

9. PECO’s DSP V, as modified by the Settlement, is in compliance with 66. Pa.C.S. § 2807(e) (3.7) in that it includes a prudent mix of default service supply contracts designed to ensure adequate and reliable service at the least cost to customers over time.

10. The record evidence does not support a finding that the Environmental Stakeholders have established a valid basis to require PECO to evaluate the availability and reliability characteristics of different types of generation supply as part of its default service obligations.

11. The record evidence does not support a finding that the Environmental Stakeholders have established a valid basis to require PECO to “rebuild its default service program from the ground up.”

**B. AEPS Compliance**

12. The AEPS Act requires default service providers like PECO to obtain specified percentages of electricity sold to retail customers from alternative energy sources as measured by AECs and defined by the AEPS Act. The AEPS Act also includes a “set-aside” that requires some of those AECs to be derived from solar photovoltaic (“PV”) facilities. 73 P.S. § 1648.3(b)(2).

13. Under Act 40 of 2017 (“Act 40”), PECO must meet its future solar AEPS requirements using Solar AECs generated from solar energy facilities in the Commonwealth of Pennsylvania. 71 P.S. § 714.

14. During DSP V, PECO’s solar AEPS requirement will be 0.5% of its total default service load. 73 P.S. § 1648.3(b)(2)(xv).

15. The Companies proposed procurement of Solar AECs and other Tier I and Tier II AECs is consistent with the AEPS Act, Act 40 and the Commission’s regulations.

**C. Rate Design and Cost Recovery**

16. The Company’s proposed rate design, including the GSA, TSC and NBT, are consistent with the applicable provisions of the Public Utility Code (66 Pa.C.S. §§ 2804(3) and 2807(e)(7)), the Commission’s default service regulations (52 Pa. Code §§ 54.185(e)(3) and 54.187) and Policy Statement on Default Service (52 Pa. Code §§ 69.1808-69.1810).

17. PECO’s proposal to continue to acquire NITS for its default service customer load and recover the associated PJM charges through its TSC is consistent with, and supported by, the Commission’s Orders in the Company’s second and third default service proceedings. *See Petition of PECO Energy Co. for Approval of Its Default Serv. Program*, Docket No. P-2012-2283641 (Order entered Oct. 12, 2012) (“DSP II Order”), pp. 55-60; DSP III Order, pp. 47-54.

18. The objections voiced by ESC witness Kavulla regarding the alleged unpredictability of NITS costs in PECO's service territory do not justify any changes to the current PUC-approved assignment of cost responsibility for PJM NITS charges to load-serving entities (e.g., PECO as the default service provider and EGSs).

19. In addition to procurement of a "prudent mix" of default service supply contracts at the "least cost to customers over time,"<sup>16</sup> Act 129 provides that EDCs "shall offer" a TOU rate option to all default service customers with a smart meter. 66 Pa.C.S. § 2807(f)(5).

20. PECO and other EDCs have an unconditional, statutory obligation to offer TOU rate options to eligible default service customers under Section 2807(f)(5) of the Public Utility Code. Accordingly, Act 129 does not authorize a default service provider to satisfy its obligation only if its TOU rates are cost-effective in comparison to other programs for reducing peak demand-related system costs.

21. As the Commission has recognized, Act 129 makes clear that an EDC's TOU program should be optional for default service customers. *See* January 2020 Secretarial Letter, p. 6; 66 Pa.C.S. § 2807(f)(5) ("[r]esidential or commercial customers *may* elect to participate in time-of-use rates or real-time pricing" (emphasis added)).

22. The Commission has previously authorized other EDCs to recover TOU over/undercollection amounts from all default service customers based on its finding that the TOU rates mandated by Act 129 are a "form of default service". *See Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2011-2264771 (Opinion and Order entered Aug. 30, 2012), pp. 22-23.

---

<sup>16</sup> 66 Pa.C.S. §§ 2807(e)(3.1)-(3.2), (3.4) and (3.7).

23. The record evidence in this case supports a finding that the Company's proposed TOU Rates satisfy Act 129 requirements, incorporate the PUC's recommended guidelines on TOU rate design, and balance a variety of important objectives.

24. OSBA has demonstrated by a preponderance of evidence that TOU-related implementation costs should be allocated to the eligible procurement classes based on the number of customers in each class.

**D. Retail Market Enhancements**

25. In its *Investigation of Pennsylvania's Retail Electricity Market* at Docket I-2011-2237952, the Commission directed PECO and other default service providers to undertake a variety of retail market enhancements and issued its proposed end state model for default service. *See generally Investigation of Pennsylvania's Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered Mar. 2, 2012); *Investigation of Pennsylvania's Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Order entered Feb. 15, 2013).

26. In the DSP IV Order (p. 35), the Commission approved continuation of PECO's Standard Offer Program, including the current cost recovery mechanisms, as "beneficial" to all customers.

27. PECO's DSP V, as amended by the Settlement, incorporates retail market enhancements consistent with the Commission's guidance in its Retail Market Investigation and PECO's prior default service proceedings.

**E. Legal Standards Regarding Settlements**

28. In order to approve a settlement, the Commission must determine that the proposed terms and conditions, viewed in the context of the settlement as a whole, are in the



public interest. *See Pa. P.U.C. v. CS Water & Sewer Ass'n*, 74 Pa. P.U.C. 767, 771 (1991); *Pa. P.U.C. v. Phila. Elec. Co.*, 60 Pa. P.U.C. 1, 22 (1985).

29. The Commission's policy and precedent embodied in its regulation at 52 Pa. Code § 5.231 and its Policy Statement on Settlements at 52 Pa. Code § 69.401 encourage parties to resolve contested proceedings by settlement.

30. In its Policy Statement, the Commission stated that "the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate *are often preferable to those achieved at the conclusion of a fully litigated proceeding*" (emphasis added).

31. *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-2010-2161575 (Recommended Decision issued November 2, 2010), p. 12, which was approved and adopted by the Commission in its Final Order entered December 21, 2010, summarized the benefits of resolving contested cases by settlement:

Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows 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 reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

32. The terms and conditions of the Joint Petition satisfy all of the Commission's criteria for approval of a settlement.

## **PROPOSED ORDERING PARAGRAPHS**

1. The Joint Petition is granted and the Settlement is approved, without modification.
2. PECO shall allocate any costs it incurs to implement the TOU Rates as set forth in the Settlement based on the number of customers in the Residential and Small Commercial procurement classes.
3. The Electric Supplier Coalition's proposal to include PJM charges for Network Integrated Transmission Service in PECO's Non-Bypassable Transmission Charge is denied.
4. NERA Economic Consulting, Inc., is approved to continue as the independent third-party evaluator for PECO's default service procurements.
5. PECO's request for a waiver of the Commission's regulation at 52 Pa. Code § 54.187 is granted to the extent that is necessary to permit the Company to continue: (1) to procure generation for three procurement classes; (2) quarterly filing of hourly-priced default service rates; and (3) semi-annual reconciliation of the over/under collection component of the GSA for all default service customers as set forth in PECO's DSP V, as revised by the Settlement.
6. The form Supply Master Agreement set forth in PECO Exhibit No. JJM-4 and both forms of the Solar AEC Purchase and Sale Agreement set forth in PECO Exhibit No. JJM-10 are approved as affiliated interest agreements pursuant to 66 Pa.C.S. § 2102.
7. PECO's currently-effective Standard Offer Program, including the associated cost recovery mechanisms approved in PECO's prior default service proceedings, is permitted to continue, subject to the applicable provisions set forth in the Joint Petition.

8. The proposed default service program for the period June 1, 2021 through May 31, 2025 is approved, except as set forth in the ordering paragraphs above.
9. PECO shall file a tariff supplement as set forth in the Joint Petition.
10. This proceeding shall be marked closed.