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August 20, 2020

**E-FILE**

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 with the Pennsylvania Public Utility Commission is the Main Brief on behalf of Calpine Retail Holdings, LLC in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this document.

Thank you.

Sincerely,

NORRIS McLAUGHLIN, P.A.

*/s/ John F. Lushis, Jr.*

John F. Lushis, Jr.

c: Administrative Law Judge Eranda Vero  
Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**MAIN BRIEF OF CALPINE RETAIL HOLDINGS, LLC**

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## I. INTRODUCTION

This brief is filed on behalf of Calpine Retail Holdings, LLC (“Calpine Retail”) to address a single issue explicitly reserved for litigation in the Partial Settlement in this docket: namely, whether the Commission should reverse many years of consistent pro-competition rulings regarding the recovery of certain costs incurred by competitive Electric Generation Suppliers, or EGS’s. These costs are known as Network Integration Transmission Services, or “NITS.” Seven EGS companies comprising a small subset of the market and calling themselves the Electric Supplier Coalition (the “ESC” or “Coalition”) have sponsored testimony to argue that NITS, which are currently assessed on each EGS based on their own unique demand, should be shifted into a one size fits all charge for Non-Bypassable Transmission, or “NBT” costs.<sup>1</sup> The effect of this shift would be to shift risk to the PA consumer and force the spreading of these costs among all PECO customers, both those taking service under PECO’s Default Service Plan and also those who are served by EGS’s.

The effect of such a shift would be that EGS’s who are currently supplying and managing their customers’ loads would no longer be able to offer NITS-associated products and services in the marketplace and provide those benefits to customers in Pennsylvania. This one size fits all bailout of NITS costs at the request of this subset of suppliers would remove an important incentive that exists in today’s competitive marketplace to pursue load management strategies and apply operational and management expertise that encourages efficient use of the transmission grid.

This proposal is not new. It has been considered by the Commission on numerous occasions, and consistently rejected. Yet certain market participants, the members of the

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<sup>1</sup> See ESC Statement No. 1, Direct Testimony of Travis Kavulla (hereafter “Kavulla Testimony”).

Coalition, keep trying to seek protection for their own business and management decisions. Calpine Retail urges the Commission to make it clear that the members of the Coalition need to stop coming to the Commission for a bailout , and instead need to figure out how to compete more efficiently.

## **II. STATEMENT OF FACTS**

Calpine Retail is an independent, national provider of retail electric service across twenty states. Through its subsidiaries it operates as a licensed Electric Generation Supplier (EGS) in Pennsylvania. Calpine Retail is also a Load Serving Entity (LSE) and member of PJM Interconnection LLC. Calpine Retail is actively serving and soliciting customers throughout Pennsylvania, including in PECO's territory. Calpine Retail currently offers a wide variety of demand-related and energy-related products and services beyond simple energy procurement, including load and risk management as well as renewable energy and sustainability solutions. Its products and services are designed to meet the individualized needs and demands of Calpine Retail's customers and capture the benefits of the competitive wholesale energy environment and bring those benefits forward into to Pennsylvania's competitive retail electric market.<sup>2</sup>

NITS costs are billed by PJM on every Load Serving Entity, including Calpine Retail and this subset of market participants that are members of the Coalition, pursuant to tariffs that are filed with the Federal Energy Regulatory Commission, or FERC. These rates are subject to annual adjustment according to a formula. There is a regulatory process in place at FERC for determining those rates as well as the ability to challenge those rates.<sup>3</sup>

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<sup>2</sup> See Calpine Retail Statement No. 1, Rebuttal Testimony of Becky Merola (hereafter "Merola Testimony"), at 2.

<sup>3</sup> Merola Testimony at 3.

### III. ARGUMENT

Both Calpine Retail and the members of the Coalition incur NITS costs. Calpine Retail has been able to manage these costs and still offer products and services that its customers desire. As explained by Ms. Merola, Calpine Retail does this by managing their customers loads served by Calpine Retail.<sup>4</sup> Apparently, members of the Coalition have not been as successful in this regard. Subsequently, their collective response has been not to improve their expertise at load management, but instead to try to shed retail business risk and move it from the competitive retail market to all customers of the utility, regardless of existing market, contracts and products and services. When it comes to servicing customers who do not take default service, but who instead rely on EGS's such as Calpine Retail, such cost shifting would simultaneously limit existing and potential customers' product and service choices. Not only would this harm the competitive retail market, it would remove any incentive and opportunity to create customized products and services that are, or potentially might be formulated, to assist EGS customers in addressing these costs.<sup>5</sup> This is nothing more than a bailout and predatory attempt to remove a competitors products and services from the market.

ESC witness Kavulla grudgingly acknowledges that the argument he is making has been considered and rejected before.<sup>6</sup> However, he glosses over the extent to which this argument has been considered and rejected. As Mr. McCawley notes on behalf of PECO, this issue was resolved after extensive litigation not only in PECO's DSP III proceeding cited by Mr. Kavulla

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<sup>4</sup> Merola Testimony at 3.

<sup>5</sup> Many of these observations are echoed in the Rebuttal Testimony of Jeffrey Pollock on behalf of the industrial users group PAIEUG. See PAIEUG Statement No. 1 (hereafter "Pollock Testimony"), at pp. 8-9.

<sup>6</sup> Kavulla Testimony at 35, citing *Petition of PECO Energy Company for Approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Opinion and Order entered at December 4, 2014), at 53-54.

but also the subsequent DSP IV proceeding.<sup>7</sup> And indeed it was also considered in the DSP II proceeding.<sup>8</sup>

Mr. Kavulla tries to overcome this mountain of precedent by arguing that circumstances have changed in terms of how NITS are set.<sup>9</sup> As explained by Ms. Merola, however, and as echoed by Mr. Pollock and Mr. McCawley, the formulas now used by FERC are still subject to a ratemaking process at FERC. There is a regulatory process in place at FERC for determining those rates as well as the ability to challenge those rates. This process at FERC does not negate the ability of EGS companies to manage their loads and manage their NITS costs.<sup>10</sup>

In sum, Calpine Retail submits that 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 decisions, 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 risks, 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 LSE demand based cost in the marketplace.<sup>11</sup>

Furthermore comparing retail electric market products and services to a fully regulated default service is an apples to oranges comparison. The default service is based on a uniform master supply agreement with no individually negotiated terms of service. It is essentially one

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<sup>7</sup> PECO Statement No. 1-R, Rebuttal Testimony of John J. McCawley PE (hereafter "McCawley Testimony"), 16-17.

<sup>8</sup> *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641 Opinion and Order (Opinion and Order entered at October 12, 2012), at 60.

<sup>9</sup> Kavulla Testimony at 35.

<sup>10</sup> Merola Testimony at 3.

<sup>11</sup> Merola Testimony at 3-4.



size fits all. In contrast, Pennsylvania has afforded its competitive Electric Generation Suppliers a market that has worked in the past and is working today. EGS's have the freedom to choose the products and services they offer into the marketplace. Each EGS has the freedom to build, establish and promote innovative products and services to meet its individual customers' needs, as well as the structure and timing of those services based on the EGS's own business and management decisions.<sup>12</sup>

#### IV. CONCLUSION

For the foregoing reasons, the proposal of the Electric Supplier Coalition to change the way NITS costs are recovered by PECO from EGS Load Serving Entities should be rejected.

Respectfully submitted,

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<sup>12</sup> Merola Testimony at 4.

## APPENDIX A

### PROPOSED FINDINGS OF FACT

1. “NITS” costs are the costs of Network Integration Transmission Services.<sup>13</sup>
2. Calpine Retail and members of the so-called Electric Supplier Coalition provide competitive service in Pennsylvania as Electric Generation Suppliers, or EGS’s.<sup>14</sup>
3. Calpine Retail and members of the so-called Electric Supplier Coalition are Load Serving Entities under PJM rules.<sup>15</sup>
4. Under current practice, PECO recovers NITS costs for default service customers, and not for customers who are served by EGS’s.<sup>16</sup>
5. The charges assessed on EGS’s for NITS are subject to a rate-setting process at the Federal Energy Regulatory Commission (FERC).<sup>17</sup>
6. The current practice was approved by the Commission in prior PECO cases after extensive litigation.<sup>18</sup>
7. The current practice creates competitive opportunities for EGS’s that are able to help their customers manage their loads.<sup>19</sup>
8. The proposal by the Electric Supplier Coalition to shift NITS costs into a non-bypassable transmission charge would remove this competitive opportunity.<sup>20</sup>
9. The proposal by the Electric Supplier Coalition is opposed by PECO, Calpine Retail and the industrial users group PAIEUG.<sup>21</sup>
10. No other party has supported the proposal by the Electric Supplier Coalition.

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<sup>13</sup> Calpine Retail Statement No. 1, at 3.

<sup>14</sup> Calpine Retail Statement No. 1, at 2; ESC Statement No. 1, at 2.

<sup>15</sup> Calpine Retail Statement No. 1, at 2-3.

<sup>16</sup> Calpine Retail Statement No. 1, at 2-3; PECO Statement No. 1-R, at 16-17.

<sup>17</sup> Calpine Retail Statement No. 1, at 3.

<sup>18</sup> Calpine Retail Statement No. 1, at 2-3; PECO Statement No. 1-R, at 16-17.

<sup>19</sup> Calpine Retail Statement No. 1, at 3-4.

<sup>20</sup> *Id.*

<sup>21</sup> Calpine Retail Statement No. 1, at 2-4; PECO Statement No. 1-R, at 16-17; PAIEUG Statement No. 1, at 8-9.

## APPENDIX B

### PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Electric Supplier Coalition bears the burden of proof as to its proposal.<sup>22</sup>
2. Changing existing Commission policy requires a strong showing.<sup>23</sup>
3. The Electric Supplier Coalition has not met its burden to change the Commission's existing policy regarding NITS costs.

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<sup>22</sup> 66 Pa.C.S. § 332(a).

<sup>23</sup> *Shenango Township Board of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910, 914 (Pa. Commw. Ct. 1996).

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing Main Brief of Calpine Retail Holdings, LLC upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Dated this 20<sup>th</sup> day of August, 2020, in Allentown, Pennsylvania.