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September 8, 2020

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Electric Supplier Coalition's Reply Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Karen O. Moury
Karen O. Moury

KOM/lww
Enclosure

cc: Hon. Eranda Vero w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the ESC's Reply Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: September 8, 2020

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF ELECTRIC SUPPLIER COALITION

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

In its Main Brief, the Electric Supplier Coalition ("Coalition" or "ESC")[1] explained the importance of modifying the method by which PECO Energy Company ("PECO") recovers Network Integration Transmission Service ("NITS") costs. Notably, none of the parties opposing the Coalition's proposal dispute the inherent inequities of treating shopping and non-shopping customers differently in the recovery of NITS costs. The Commission itself has recognized that the recovery of NITS costs presents a problem as evidenced by the Secretarial Letter issued on May 1, 2015 referencing a staff investigation on these issues. The purpose of that investigation was "to determine if there is a need to address these non-market based wholesale market charges in a more uniform and comprehensive way that would facilitate and enhance the retail electric market during future proceedings." [2] It is time to finally resolve this long-standing problem, especially due to the recent approval by the Federal Energy Regulatory Commission ("FERC") for the use of formula rates by transmission owners, which has made NITS charges become even more uncertain and volatile than in the past. As a result, the inequities inherent in PECO's proposed recovery method – which varies depending upon whether the NITS costs were incurred by load-serving entities ("LSEs") on behalf of shopping or non-shopping customers – have been exacerbated.

The Coalition has presented a simple solution to remedy this unfairness, by proposing that PECO recover all NITS costs from all customers through its reconcilable Non-Bypassable Transmission ("NBT") Charge. Adoption of the Coalition's proposal would ensure that both

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[1] The Electric Supplier Coalition's members are NRG Energy, Inc., Direct Energy Services LLC, Interstate Gas Supply Inc., d/b/a IGS Energy, Vistra Corp., Shipley Choice LLC, ENGIE Resources LLC and WGL Energy Services, Inc.

[2] ESC Statement No. 1 at 32.The May 1, 2015 Secretarial Letter is included with the April 21, 2017 CHARGE Call Recap available on the Commission's website at http://www.puc.pa.gov/Electric/docs/OCMO/CHARGE_Recap042117.docx.

shopping customers and non-shopping customers are paying no more than the actual NITS costs incurred by LSEs on their behalf. It would also rectify the inherently unlevel playing field that is created by the current scenario whereby PECO's default service has a competitive advantage in terms of pricing that is not made available to electric generation suppliers ("EGSs") so that they can adjust their competitive retail pricing accordingly.

Because of PECO's different treatment of shopping and non-shopping customers in the recovery of NITS costs, only default service customers are paying their actual NITS costs. Customers of EGSs have no such assurance since they may be paying more than their actual NITS costs due to the inclusion of risk premiums in competitive supply prices. To the extent EGSs are not including risk premiums in their prices to reflect the uncertainty and volatility of NITS costs, the competitive market is in jeopardy since suppliers cannot sustain long-term losses from failing to fully recover the actual costs of NITS. Either outcome is harmful to customers - whether they are paying more than the actual costs or having less access to competitive offerings because suppliers cannot sustain long-term losses from failing to fully recover the actual costs of NITS.

The Coalition's proposed solution to recover all NITS costs through the NBT Charge is not novel. Rather, it is consistent with the manner in which PECO currently recovers other similar transmission costs. Notably, this is the approach that PECO already uses for the recovery of other Non-Market Based ("NMB") charges assessed by PJM Interconnection L.L.C. ("PJM"), including Generation Deactivation/Reliability Must Run charges; Regional Transmission Expansion Plan charges; and, Expansion Cost Recovery charges (collectively, "Other PJM Charges"). The Other PJM Charges, like the NITS charge, are wholesale cost obligations that all LSEs are required to pay. All of these costs share a common theme in that they are not a function of market fundamentals and, therefore, can be subject to very significant changes over what can reasonably be anticipated. Thus, the most equitable way to treat the recovery of these costs is to be consistent and recover all NMB charges from all customers.

By this Reply Brief, the Coalition is addressing arguments that were raised in the Main Briefs ("M.B.") of PECO, the Philadelphia Industrial Energy Users Group ("PAIEUG") and Calpine Retail Holdings, LLC ("Calpine"). While opponents of the Coalition's proposal claim that EGSs can avoid concerns about unpredictability of these costs by including a direct pass-through clause in their contracts, this argument overlooks prior Commission directives prohibiting the use of such mechanisms in fixed price contracts with residential and small business customers. Moreover, much of the opposition is presented from the perspective of large commercial and industrial customers who are more sophisticated than mass market customers in entering into contracts that include a direct pass-through of NITS costs. As to concerns raised about the impact of a change on existing contracts, the Coalition has explained that these transition issues can easily be addressed through the timing of implementing a modification such that they should not interfere with rectifying the existing situation in which only default service customers are assured that they are paying the actual NITS costs, while shopping customers may receive no such assurance.

The recovery of all NITS costs through the NBT Charge would mean that <u>all</u> customers would be paying <u>no more than</u> their actual NITS costs. Adoption of the Coalition's approach would eliminate the inequities created by the current practice of default service customers paying their actual NITS costs while customers of EGSs may also have to pay a risk premium included in their supply prices that may or may not reflect their actual NITS costs. It would also place PECO as the default service provider and EGSs selling electric supply in the competitive retail market on a level playing field with respect to the way that NITS costs are recovered and reflected in pricing.

II. ARGUMENT

PJM assesses NITS costs on all LSEs, including EGSs supplying electricity to customers in the retail market and wholesale suppliers providing electricity for PECO's default service program. LSEs then allocate a share of transmission service costs to all customer load on an EDC's system.[3] Under PECO's proposal, it would continue to recover the NITS costs incurred by its wholesale suppliers from its default service customers but would leave the EGSs to recover these costs from their shopping customers.

The recent changes approved by FERC in the way PECO establishes NITS charges has created more challenges in the forecasting of NITS costs. Notably, formula rates result in annual changes to the NITS charges, while retail supply contracts often cover multiple years. PECO passes on the actual NITS costs to default service customers through its reconcilable processes. However, EGSs need to make predictions about the future cost of NITS and determine how to incorporate those forecasts into retail pricing. Moreover, EGSs do not have any "after the fact" way of reconciling their predictions with actual costs, meaning that customers may pay more for NITS or EGSs are forced to absorb the losses, which is not a sustainable long-term business model.[4]

A. Circumstances have significantly changed since the Commission's prior orders on these issues, which warrant modifications to the way in which NITS cost are recovered

Opponents of the Coalition's proposal contend that because the Commission previously approved the recovery by PECO of other NMB Charges (which are listed above and do not

[3] ESC Statement No. 1 at 31.
[4] ESC Statement No. 1 at 33-36.

include NITS costs) through its NBT Charge, the Coalition has not justified a change that would result in NITS costs also being recovered by PECO in that manner.[5] In its Order on the *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2015 through May 31, 2017* ("*DSP III Order*"), the Commission approved changing the cost recovery mechanism for other NMB Charges by PECO but declined to require PECO to recover NITS costs.[6] PAIEUG suggests that in reaching this decision, the Commission found that the nature of NITS costs is significantly different than other NMB costs, which resulted in the Commission's different approach to their collection.[7] A review of the *DSP III Order*, however, reveals that the Commission offered no such rationale – the Commission's sole reason for rejecting a proposal to have these costs recovered through the NBT Charge related to the insufficiency of evidence showing that the NITS costs are of such a volatile nature as to "render them unpredictable and difficult for the EGSs to hedge."[8]

In the present proceeding, the Coalition has described significant changes that have occurred since the *DSP III Ord*er was adopted six years ago and that have made NITS costs far more unpredictable than in the past. Since Commission adoption of the *DSP III Order*, PECO has received FERC approval to implement a formula rate starting December 1, 2017, which allows PECO to receive current recovery of its costs.[9] PECO files its transmission formula rate update as part of an annual process to reconcile the prior year's rate to reflect any over- or under-recovery and to set the current year's rate based on projected costs. PECO filed its 2020

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[5] PECO M.B. at 29-30; Calpine M.B. at 3-4.

[6] *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 (Final Order entered December 4, 2014), at 46, 54.

[7] PAIEUG M.B. at 7.

[8] *DSP III Order* at 53-54.

[9] ESC Statement No. 1 at 36; *FERC Order Accepting and Suspending Filing, Subject to Refund, Establishing Hearing and Settlement Judge Procedures*, FERC Docket No. ER17-1519 dated June 27, 2017 available at: https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14623778

Formula Rate Annual Update on May 29, 2020.[10] Due to FERC's approval of "formula" rates for NITS charges, predicting NITS costs has become even more challenging for LSEs. Because of the inputs used to establish formula rates, the NITS costs are in part driven by the transmission owner's managerial decisions on investments and accounting, which are not visible to EGSs.[11] Also, formula rates allow transmission owners like PECO to change the rates more frequently and more suddenly than occurred through the traditional ratemaking process.[12]

In his Direct Testimony on behalf of the Coalition, witness Travis Kavulla provided concrete and compelling examples of the actual impacts on LSEs of NITS rate increases implemented through the formula rate. In one example, the Public Service Electric and Gas Company filed an update on December 5, 2019, which resulted in a 30.7% increase in the NITS rate over the prior year – and LSEs received approximately 25-days' notice of the change.[13] Additionally, the Coalition presented other data showing similar trends. Therefore, while PECO's NITS rates may not have yet unexpectedly spiked under the formula,[14] the evidence in the record establishes both the uncertainty and the volatility associated with these costs. As Mr. Kavulla explained, it is not increases that are the concern as much as the unpredictability of NITS rates.[15]

B. Differences in cost recovery methods lead to inequities

It is the unpredictability of these costs and the difference in how they are factored into the supply prices, depending on whether the customer receives default service or purchases electricity in the competitive market, which warrant a change in the recovery method. Besides

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10 ESC Statement No. 1 at 36.
11 ESC Statement No. 1 at 34.
12 ESC Statement No. 1 at 35.
13 ESC Statement No. 1 at 37.
14 PAIEUG M.B. at 7.
15 ESC Statement No. 1 at 39.

the uncertainty associated with NITS rates, the EGSs have no control because the costs are driven by PECO's decisions on transmission spending. With the inputs the transmission owners make to the formula rate, they have even more control over these charges than they once did.[16] For these reasons, the Coalition advanced a proposal that would result in all customers, whether they are shopping for supply or not, paying only their actual NITS costs.

The Coalition did not offer its proposal because EGSs are unable to "financially manage and account for NITS costs in the products and services" they offer, as suggested by PECO.[17] PAIEUG, in making a similar suggestion, purports to quote Coalition witness Kavulla as testifying that PECO's formula rates have created "volatility that EGSs cannot manage."[18] Mr. Kavulla makes no such statement. In the testimony cited by PAIEUG, Mr. Kavulla explained that the move from traditional ratemaking to formula rates "makes it harder for EGSs to estimate likely NITS costs over the term of the offers they make to the market."[19] Importantly, he did not suggest that EGSs cannot manage the volatility or unpredictability of formula rates but rather noted how this factor needs to be considered by EGSs in setting supply prices.[20]

Since PECO recovers the actual NITS costs incurred by its wholesale default suppliers from non-shopping customers, the wholesale suppliers bear no risk associated with NITS charges and the prices they bid to provide default service need not include any risk premiums. To the contrary, EGSs must bear the risk of estimating NITS charges and may need to include risk premiums in the supply price. Therefore, depending on how much is factored into the supply

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[16] ESC Statement No. 1 at 39-40.
[17] PECO M.B. at 31. Calpine and PAIEUG makes similar assertions. Calpine M.B. at 3; PAIEUG M.B. at 8.
[18] PAIEUG M.B. at 10, quoting ESC Statement No. 1 at 35.
[19] ESC Statement No. 1 at 35.
[20] ESC Statement No. 1 at 39.

price to reflect this risk, shopping customers are potentially paying more than their actual NITS costs.

This scenario creates an inherently unlevel playing field between PECO as the default service provider and EGSs selling electric supply in the competitive retail market. The inequities are exacerbated by the unpredictable nature and volatility of the actual NITS costs assessed on all LSEs.[21] Especially with the uncertainty of these rates, PECO should not be permitted to protect itself (and auction winners) against the risk of those price fluctuations, while EGSs must absorb that risk in the prices they offer to retail customers in the competitive market.[22] Rather, it is appropriate to establish a level playing field and include NITS costs associated with both non-shopping and shopping customers in PECO's existing NBT charge.

Calpine refers to the Coalition's proposal as a "bailout" and suggests that the Coalition is trying to "shed retail business risk and move it from the competitive retail market to all customers of the utility."[23] PAIEUG makes similar arguments.[24] Calpine also contends that rather than using expertise to manage these costs and associated risks, the Coalition is asking "PECO's DSP customers to bail them out."[25]

In no way does the Coalition's proposal amount to a request for a bailout by PECO's default service customers. Default service customers currently pay their NITS costs, dollar for dollar, with neither PECO nor its wholesale suppliers bearing any business risk. That would not change under the Coalition's proposal. All the Coalition is seeking to do is have the actual amount of both shopping customers' NITS costs and non-shopping customers' NITS costs

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21 ESC Statement No. 1 at 33-34.
22 ESC Statement No. 1 at 40.
23 Calpine M.B. at 3.
24 PAIEUG M.B. at 11-12.
25 Calpine M.B. at 4.

recovered from both shopping and non-shopping customers. Certainly, EGSs can guard against the risks of volatile NITS pricing by including premiums in their supply prices. However, when they do that, the outcome may be that customers are paying more than their actual NITS costs or the EGSs are absorbing a loss. Neither result is consistent with promoting the development of a competitive market.

C. <u>The use of pass-through mechanisms by EGSs for the recovery of NITS costs is contrary to the Commission's directives concerning fixed prices</u>

While not disputing the unpredictability of NITS costs or the inherent inequities its cost recovery method produces, PECO argues that the costs do not "warrant non-bypassable treatment because EGSs have flexibility to offer products with pricing terms that align with their costs and profit expectations."[26] While this may be true in the large commercial and industrial market, it is certainly not the case in serving the mass market consisting of residential and small business customers. In its Order on *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, the Commission was responding to scenarios in which EGSs were offering fixed-rate products to residential customers but including in their disclosure statement provisions that allowed the EGS to change the rate based on a government agency, PJM or other entity imposing increased or new costs on the supplier.[27] Notably, the types of costs that were triggering price increases include PJM's other NMB charges and NITS costs.[28]

In discussing pass-through mechanisms for these costs, the Commission noted that it is "unrealistic to expect the average residential consumer to understand electric markets to this level of granularity, with many of them still struggling with the basic distinctions of generation,

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[26] PECO M.B. at 30.
[27] *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Docket No. M-2013-2362961 (Order entered November 14, 2013) ("*Fixed Means Fixed Order*"), at 2-3.
[28] *Fixed Means Fixed Order* at 22.

transmission and distribution."[29] The Commission determined that the *Fixed Means Fixed Order* applies to small business customers because they share many of the characteristics of residential consumers – likely to be small users with limited market power. In addition, they are often lacking in-depth knowledge of power markets when compared to the larger commercial and industrial customers. They are likely to be unfamiliar with terms like capacity, NITS, and NMBs.[30]

After considering different solutions, the Commission determined that a fixed-price product for residential and small business customers must not change in price during the term of the agreement.[31] Having declared that "fixed means fixed," the Commission went on to consider "whether any product with a pass-through mechanism is appropriate for the residential and small commercial market" and if so, how it should be labeled. One option under review was to add a third label so that in addition to fixed or variable products, EGSs could offer a "Price With Pass-Through Clause" for those products with a pricing component that could change during the term of the contract. However, the Commission did not move forward with this new pricing label because it found comments persuasive that pointed out it would simply be an iteration of a variable-priced contract.[32] Thus, the *Fixed Means Fixed Order* left EGSs – serving residential and small business customers – with no option to protect themselves against PJM-related cost spikes except by charging variable prices, despite the preferences of many customers and regulators for fixed-price products.

Given its conclusion that "fixed is fixed and everything else is variable," the Commission acknowledged that this could result in EGSs limiting the variety of products in the market and

29 *Fixed Means Fixed Order* at 23.
30 *Fixed Means Fixed Order* at 30.
31 *Fixed Means Fixed Order* at 20-24.
32 *Fixed Means Fixed Order* at 25.

lessen competitive activity. The Commission further recognized that if EGSs are not able to recover costs that are imposed upon them, "they may indeed limit the variety of long-term fixed price offers they make available" and "that such offers may have to include a substantial risk-premium that would increase customer costs."[33] The Commission opined that mechanisms may be available to help address these concerns, such as a "regulatory out" clause. As described by the Commission, however, such a clause would not operate as a pass-through mechanism because it would involve an EGS proposing new contract terms to which the customer would need to affirmatively consent.[34]

A more effective solution is to have these non-hedgeable wholesale costs recovered by the electric distribution company ("EDC") through a non-bypassable transmission charge. Indeed, as a result of the *DSP III Order*, adopted about a year after the *Fixed Means Fixed Order*, many of those costs are now being recovered in this manner by PECO. By expanding PECO's use of the NBT Charge to also recover NITS costs, the Commission can ensure that these costs are also recovered from all customers. Just as suppliers were trying to do in the *Fixed Means Fixed Order* proceeding of placing "themselves on equal footing with EDCs which may protect their businesses by obtaining Commission approval to pass along unexpected uncontrollable costs to customers,"[35] this solution would level the playing field between PECO and EGSs. It would also mean that both PECO's wholesale suppliers for default service and EGSs serving customers in the competitive market would have their actual NITS costs recovered from customers – no more, no less.

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[33] *Fixed Means Fixed Order* at 25-26.
[34] *Fixed Means Fixed Order* at 26.
[35] *Fixed Means Fixed Order* at 16.

D. Transition issues raised by PECO and PAIUEG do not warrant the continuation of the unlawful and inequitable treatment in the recovery of NITS costs depending on whether a customer is purchasing supply from an EGS or receive default service from PECO

Under the Electricity Generation Customer Choice and Competition Act ("Competition Act"),[36] the Commission is obligated to require a public utility that owns or operates jurisdictional transmission and distribution facilities to provide transmission and distribution service to all retail electric customers and EGSs "on rates, terms of access and conditions that are comparable to the utility's own use of its system."[37] As PECO is using a different cost recovery method in providing transmission service to EGSs' customers than it is employing for its own default service customers, a modification is warranted to ensure compliance with Section 2804(6). By assuming the cost recovery responsibility for only the customers of wholesale default service suppliers, PECO unfairly places a competitive advantage on its default service because wholesale default service suppliers do not need to factor in the risk of future increases in NITS costs. The only way to ensure equal access to the transmission facilities and also ensure that all customers pay only the true costs of NITS is to adopt the Coalition's proposal for PECO to assume NITS cost recovery responsibility for all of the load on its system.

Despite these directives in the Competition Act, PECO argues that ESC's proposed treatment of NITS costs would create unnecessary transition problems for customers with existing EGS contracts. The concern is that shopping customers could end up paying for NITS costs in both PECO's distribution rates, through the non-bypassable transmission charge, and as part of the price of generation purchased from their EGSs.[38] PAIEUG also sets forth this argument.[39]

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36 66 Pa.C.S. §§2801-2815.
37 66 Pa.C.S. §2804(6).
38 PECO M.B. at 31-32.
39 PAIEUG M.B. at 12-14.

As explained by ESC's witness, this concern is not a barrier to implementing the Coalition's proposed NITS cost recovery approach but rather represents transition issues. A reasonable transition mechanism could easily address concerns related to existing contracts with shopping customers. Mr. Kavulla noted that just as PECO did when it first created the NBT Charge, the change in cost responsibility can be limited to only new charges associated with NITS occurring after the Commission's final order in this proceeding. By limiting the change in cost responsibility to new charges, there is no concern over "double recovery" or a need for "unbundling" of customers' existing EGS contracts. Alternatively, the change in cost responsibility could be deferred to a later date, such as June 2022, to provide a transition period during which many EGS contracts would expire and renew. The new renewal rates offered would reflect removal of the cost obligations from EGSs and address any concerns about existing contracts. In sum, a variety of transition mechanisms can be considered such that the Coalition's proposed method can smoothly be implemented without any adverse consequences.[40] Moreover, PAIEUG's reliance on the Order in *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs,*[41] to support its argument about the possibility of double collection should be disregarded since the Commission declined to rule on that issue.[42]

Particularly given the inequities of the current approach and the Commission's obligations under the Competition Act, manageable transition issues should not preclude the appropriate remedies from being implemented. Similarly, if the Commission would decide to

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40 ESC Statement No. 1-S at 24.

41 *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs,* Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375 and P-2013-2391378 (Order entered July 24, 2014) ("*FE DSP III Order*").

42 *FE DSP III Order* at 42.

carve out large C&I customers from a change in the NITS cost recovery method as proposed by PAIEUG,[43] changes that PECO may have to make to its billing system should not get in the way of leveling the playing field for EGSs competing against PECO's default service product.[44]

E. PAIEUG's arguments regarding the Competition Act are incorrect and should be rejected

The Commission has previously determined that the recovery of NITS costs by the EDC complies with the Competition Act and the Commission's regulations.[45] Notwithstanding this prior ruling, PAIEUG argues that the Coalition's proposal is not consistent with the Competition Act, which provided for an unbundling of generation, transmission and distribution services.[46] In setting forth its rebundling argument, which has already been rejected by the Commission, PAIEUG reads language into the Competition Act and the Commission's regulations that is simply not there.

PAIEUG is wrong when it suggests that the "framers of the Competition Act understood that benefits could accrue to customers if they have the right to negotiate with their EGSs on the terms and conditions under which they receive transmission service."[47] To the contrary, the framers of the Competition Act viewed transmission service as continuing to be a monopoly function. The General Assembly declared only that generation is a competitive service. This is shown by a review of Section 2802(16), which PAIEUG inappropriately relies on to contend that customers could negotiate with EGSs for generation and transmission service, while customers would continue to receive distribution service from the EDC.[48] Section 2802(16) does not say that at all. To the contrary, it states that "[i]t is in the public interest for the transmission and

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43 PAIEUG M.B. at 18-19.
44 PECO Statement No. 1-SR at 3.
45 FE DSP III Order at 38.
46 PAIEUG M.B. at 4-5.
47 PAIEUG M.B. at 5.
48 66 Pa.C.S. §2802(16).

distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the commission."[49] Moreover, Section 2802(13) provides that the Competition Act will give retail customers access only to "a competitive market for the generation and sale or purchase of electricity."[50] Similarly, Section 2802(14) specifies that unbundling was designed to give competitive suppliers open access to the EDCs' transmission and distribution systems to allow them "to generate and sell electricity directly to consumers."[51]

With respect to PAIEUG's claims that the Coalition's proposal would "rebundle" transmission and distribution service,[52] the costs of transmission service would not be rebundled with distribution service. Rather, NITS costs would be recovered through the same NBT Charge that PECO uses for the recovery of other transmission costs. Three different services must be furnished to customers – distribution, transmission and generation. The transmission costs for shopping customers need to be recovered either by the EDC providing distribution service or the EGS supplying generation service. Placing cost recovery responsibility on the EDC rather than the EGS does not amount to rebundling of transmission service with distribution, in the same way PECO's current approach does not rebundle transmission and generation service. Nothing is being rebundled – the only change is that NITS charges would be recovered through a different avenue than they currently are.

Moreover, the regulations cited by PAIEUG do not, as it suggests, "assign responsibility for generation and transmission service to the same entity."[53] Further, they do not state that "the entity providing a customer's generation service must also take responsibility for the provision of

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49 *Id.*
50 66 Pa.C.S. §2802(13).
51 66 Pa.C.S. §2802(14).
52 PAIEUG M.B. at 5.
53 52 Pa. Code §§54.182, 54.187(d). It appears that PAIEUG intended to refer to 52 Pa. Code §54.187(e), rather than (d).

transmission services and collection of the associated costs."[54] Rather, those regulations merely define default service and specify the costs that should be recovered from default service customers. PAIEUG appears to be conflating responsibility for providing the transmission service with responsibility for recovering the costs of that service. The entity providing the transmission service is not what is at issue here. Providing the service is a different issue than cost recovery. In fact, as LSEs, the Coalition's members do provide transmission service and incur NITS costs on behalf of their customers. However, nothing in the Competition Act or the Commission's regulations requires an EGS to recover transmission costs, including NITS costs, from customers. Indeed, transmission costs that are designated as NMB Charges are already recovered by PECO through the NBT Charge although the services are provided by EGSs.

The Coalition further notes that PAEUIG's reliance on the Commission's decision in *Petition of Duquesne Light Company For Approval of Default Service Plan For The Period of June 1, 2013 Through May 31, 2015*[55] to support its rebundling argument is misplaced. At that time, the Commission was considering a proposal that would have resulted in all transmission costs, including other NMB Charges and NITS costs, being recovered by the EDC. Although the Commission rejected that proposal in 2013 due to a concern about "rebundling," the Commission subsequently approved the recovery of transmission charges other than NITS costs by the EDC in 2014.

In the *PECO DSP III* proceeding, the parties reached a partial settlement providing for the recovery of other transmission costs by PECO and reserved issues related to the treatment of NITS costs for litigation. Over PAIEUG's objection, the Commission approved the non-

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[54] PAIEUG M.B at 5.

[55] *Petition of Duquesne Light Company For Approval of Default Service Plan For The Period of June 1, 2013 Through May 31, 2015*, Docket No. P-2012-2301664 (Order entered January 25, 2013). PAIEUG M.B. at 14.

bypassable recovery of certain PJM transmission charges, noting that is "beneficial to customers."[56] Although the Commission decided at that time not to expand this recovery method to include NITS costs, it based its determination on the lack of sufficient evidence as to their volatility and did not rely its prior rebundling concerns. Therefore, the reasoning relied upon by the Commission in 2013 is no longer valid and should not be used to reject the Coalition's proposal in this proceeding. Now that other transmission charges incurred by EGSs on behalf of their customers are being recovered by the EDC, to the extent this is considered "rebundling," it has already occurred. To complete this process that has been evolving over a series of default service plan proceedings, the Commission should include NITS costs among the transmission charges recovered by EDCs from all customers.

PAIEUG similarly argues that the Coalition's proposal would sever the link between cost recovery and cost causation and again relies on its rebundling theory.[57] Referring to large C&I customers' contracts, which often contain a pass-through mechanism for NITS costs, PAIEUG contends that each individual customer's NITS costs reflect the customer's responsibility for network transmission costs.[58] This argument overlooks the fact that PECO's current approach of recovering NITS costs incurred by their wholesale suppliers from default service customers does not take into consideration each individual customer's NITS costs. All the Coalition is advocating for in this proceeding is that PECO treat shopping and non-shopping customers in the same way with respect to the recovery of NITS costs.

Calpine and PAIEUG contend that adoption of the Coalition's proposal would remove the ability of customers to negotiate the NITS cost component in their supply prices.[59] This

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56 *DSP III Order* at 15-16, 40, 46.
57 PAIEUG M.B. at 16-18.
58 PAIEUG M.B. at 16.
59 PAIEUG M.B. at 5-6; Calpine M.B. at 3.

argument rings hollow for mass market consumers who – as the Commission has previously observed – generally do not engage in these types of negotiations.[60] Importantly, for those customers who actively negotiate contract terms with EGSs, the Coalition's proposal would not affect their ability to continue to do so with respect to the price for generation – the only competitive service created by the Competition Act. However, as long as EGSs are obligated to recover the transmission owners' unpredictable NITS charges from their customers, they will face one of two choices, neither of which will have a positive long-term impact on the market. They will either need to factor substantial risk premiums into supply prices, which may result in shopping customers paying more than their actual NITS costs, or absorb some or all of the risks.[61] Supply prices that are too high will make it difficult to compete and attract customers, while supply prices that are too low and cause suppliers to sustain significant losses may result in diminished supplier participation in the market. Ultimately, under either scenario, it is customers who are harmed. Without a well-functioning competitive retail market, customers will be deprived of access to the wide array of product and service offerings that were made possible by the Competition Act.

F. The Commission should adopt the Coalition's proposed approach for the recovery of NITS costs

By adopting the approach proposed by the Coalition for the recovery of NITS costs, the Commission can create a level playing field and ensure that both shopping customers and non-shopping customers are paying no more than the actual NITS costs incurred by LSEs on their behalf. All LSEs, including both EGSs and wholesale default service providers, incur NITS

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[60] *Fixed Means Fixed Order* at 23, 29.

[61] ESC Statement No. 1 at 32-34.

costs in the wholesale market. All customer load, including that of shopping and non-shopping customers, on an EDC's system is allocated a share of transmission service costs.

Under the Coalition's proposal, PECO would recover actual NITS costs from all customers through a reconcilable non-bypassable charge in distribution rates. Recovery of all NITS costs through a non-bypassable charge would mean that customers would be paying their actual NITS costs. Adoption of the Coalition's approach would eliminate the inequities created by the current practice of default service customers paying their actual NITS costs while customers of EGSs are paying a risk premium included in their supply prices that may or may not reflect their actual NITS costs. It would also place PECO as the default service provider and EGSs selling electric supply in the competitive retail market on equal footing with respect to the way that NITS costs are recovered and reflected in pricing.

III. <u>CONCLUSION</u>

For all the foregoing reasons, the Electric Supplier Coalition respectfully requests that the Commission (1) reject the proposal in PECO Energy Company's DSP V Petition to continue its existing approach for the recovery of NITS costs; (2) direct PECO to revise its cost recovery method to reflect the approach proposed by the Coalition of recovering all NITS costs through the Non-Bypassable Transmission charge; and (3) grant such other relief as may be appropriate.

Respectfully submitted,

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