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September 8, 2020

**VIA eFILING**

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 please find the **Reply Brief of PECO Energy Company** (the “Reply Brief”), in the above-captioned proceeding. As evidenced by the attached Certificate of Service, copies of the Reply Brief are being served upon Administrative Law Judge Eranda Vero, and all parties of record.

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

Very truly yours



W. Craig Williams

Enclosures

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 **Reply 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**

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Dated: September 8, 2020



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## I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) files this Reply Brief in response to the Main Briefs filed by the Electric Supplier Coalition (“ESC”),<sup>1</sup> the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), Calpine Retail Holdings, LLC (“Calpine”), and the Sierra Club/PA Chapter, the Clean Air Council, and the Philadelphia Solar Energy Association (together, the “Environmental Stakeholders”). The Main Briefs of ESC, PAIEUG and Calpine address ESC’s proposal for PECO to assume responsibility for transmission charges imposed by PJM Interconnection, L.L.C. (“PJM”) for Network Integration Transmission Service (“NITS”) on behalf of both default service customers and electric generation supplier (“EGS”) customers in the PECO PJM load zone. This issue was reserved for briefing by the Joint Petition for Partial Settlement filed on August 13, 2020 (the “Joint Petition”) which detailed a settlement (the “Settlement”) reached by nearly all of the parties to this proceeding (the “Settling Parties”).<sup>2</sup>

As explained in PECO’s Initial Brief, because ESC failed to provide any valid reasons to support a change in the collection mechanism for NITS costs previously approved by the Commission, ESC’s proposal should be denied. In their Main Briefs, Calpine and PAIEUG support PECO’s original proposal to continue the existing Commission-approved assignment of responsibility for NITS to all load-serving entities (“LSEs”), including EGSs.

The Environmental Stakeholders, the only parties opposing the Settlement, filed a Main Brief opposing PECO’s Default Service Program for the period from June 1, 2021 to May 31, 2025 (“DSP V”) on the grounds that the Company failed to properly analyze and incorporate

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<sup>1</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.

<sup>2</sup> The parties joining the Settlement are: PECO, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Calpine, ESC, PAIEUG, and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (together, “TURN et al.”).



long-term renewable energy supply contracts which, they allege, are “perfectly aligned” with PECO’s statutory requirement to supply adequate and reliable service at least cost over time. The Environmental Stakeholders also argued that the Company’s proposed DSP V time-of-use rates (the “TOU Rates”) are deficient because PECO did not perform the “benefit-cost analysis” they recommend or develop tailored rate designs for technologies the Environmental Stakeholders believe support electrification.

PECO’s Initial Brief explained in detail how the Company considered the appropriate role of long-term contracts and designed DSP V 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. The Environmental Stakeholders did not propose any specific amount of long-term contracts for PECO’s DSP V, and they did not demonstrate that additional long-term contracts are necessary to meet statutory default service requirements. The Environmental Stakeholders also did not introduce evidence to support their TOU Rate claims or refute the extensive record evidence demonstrating that PECO’s proposed TOU Rates satisfy PECO’s statutory obligation to offer TOU rates to all default service customers with smart meters and are in the public interest.

To a large extent, the principal reasons for rejecting the arguments of the Environmental Stakeholders and ESC in this proceeding were addressed in PECO’s Initial Brief and therefore this Reply Brief will only revisit the key areas of disagreement.<sup>3</sup>

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<sup>3</sup> In its Initial Brief (pp. 27-29), PECO supported OSBA’s position regarding TOU cost allocation. Following the filing of Main Briefs, OSBA and the OCA reached an agreement on this issue that had been reserved for litigation in the Settlement (the “Stipulation”). Under the Stipulation, PECO will allocate seventy percent of the costs incurred to implement the TOU Rates based on the total number of customers in the Residential and Small Commercial classes. The remaining costs (30%) will be allocated based on default service sales. PECO supports the Stipulation, which resolves the dispute between OSBA and the OCA regarding the appropriate allocation of implementation costs between procurement classes eligible for the Company’s TOU Rates.

## II. ARGUMENT

### A. **The Commission Should Reject The Environmental Stakeholder’s Proposal For A New Default Service Analysis Because PECO’s Plan Includes A Prudent Mix Of Contracts Designed To Provide Adequate And Reliable Service At Least Cost Over Time**

In their Main Brief, the Environmental Stakeholders advocate for a “redesign” of the Company’s DSP V without presenting any actual alternative procurement plan. Environmental Stakeholders Main Br., p. 1. Instead, unhappy with the procurement plan proposed by PECO and supported by the Settling Parties, the Environmental Stakeholders argue that PECO should be required to perform an entirely new “study” of long-term contracts that includes “robust stakeholder participation.” *Id.*, p. 2. The Commission should reject the Environmental Stakeholders’ proposal because the record evidence shows that (1) PECO considered the appropriate role of long-term contracts in its DSP V portfolio; (2) the Environmental Stakeholders have overstated the potential cost and reliability benefits associated with long-term contracts; and (3) DSP V appropriately reflects stakeholder input. *See generally* PECO Initial Br., pp. 10-22.

#### 1. **The Evidence Demonstrates That PECO Considered The Appropriate Role Of Long Term Contracts In Its Prudent Mix**

The Environmental Stakeholders contend that PECO has failed to engage in “a fact-based evaluation” of long-term contracts, and, as a consequence, DSP V lacks the “protection against rising prices and price volatility over time” that could be provided by adding long-term contracts. Environmental Stakeholders Main Br., pp. 15, 17. Although they failed to make any specific recommendation about the quantity of long-term contracts that should be included in DSP V, the Environmental Stakeholders generally assert that such contracts are necessary to ensure that PECO meets its obligation to provide default service supply at “least cost to customers over time.” *Id.*, pp. 14-18.

PECO's Initial Brief provides a detailed discussion of how 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. Moreover, the Environmental Stakeholders' construction of Act 129's "prudent mix" and "least cost over time" as a "legislative intention" consistent with their proposal for PECO to manage a portfolio of long-term contracts (Environmental Stakeholders Br., p. 13) is flawed, as the Commission has repeatedly considered the proper role of long-term contracts in default service plans and has not required the use of long-term generation supply contracts to achieve Act 129's goal of "capturing the benefits of the competitive wholesale market and reflect[ing] the lowest rates to customers over the term of the plan and beyond."<sup>4</sup> Such contracts do not necessarily provide price stability but can produce unnecessary risks for customers, lock in above-market prices, and limit the Company's ability to adapt to changes in the market or regulatory conditions. PECO Initial Br., pp. 10-17.

As described by PECO witness Mr. Fisher, the development of the DSP V portfolio was appropriately focused on the inclusion of a prudent mix of contracts designed to ensure the least cost to customers over time, taking into account the benefits of price stability, and including prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis, as required by Section 2807(e)(3.4) and Section 2807(e)(3.7) of the Public Utility Code ("Code"). PECO St. No. 4, pp. 23-27. The mix of products selected for the proposed portfolio, which includes long-term contracts for solar alternative energy credits ("Solar AECs"), is designed to satisfy the requirements of Act 129 of 2008 ("Act 129"),

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<sup>4</sup> Final Rulemaking Order, *Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. L-2009-2095604 (Order entered Oct. 4, 2011) ("*Final Rulemaking Order*"), p. 39; *see also id.*, p. 56 ("We do express a preference for the [full requirements approach instead of the market portfolio approach] approach to the extent this method best suits the DSP's particular procurement needs.").

considering price, price stability and other factors. PECO St. No. 4-R, pp. 9-10; PECO St. No. 4, pp. 23-27.

Notably, PECO is proposing to continue the basic procurement strategy that was established in DSP IV and approved by the Commission. PECO Initial Br., pp. 13-14. The Company provided evidence, including quantitative analysis of previous DSP solicitations, that its DSP V will result in reasonable contract prices. PECO St. No. 4-R, p. 11; PECO St. No. 4, pp. 11-18. PECO also proposed to continue laddering its full requirements contracts because such laddering has previously been effective in addressing price volatility. *See* PECO St. No. 4, p. 28; Hearing Tr. at 60-61.

The Environmental Stakeholders argue that long-term contracts for supply from renewable energy resources specifically will better ensure “least cost” because “prices for renewable energy have plummeted.” Environmental Stakeholders Main Br., p. 14. However, PECO reviewed market data and recent PJM filings which suggest that new Pennsylvania solar and wind generation require a higher price than some other types of generation in Pennsylvania. PECO St. No. 4-R, pp. 19-20. If, as the Environmental Stakeholders contend, increased renewable generation utilization is the lowest cost option for default service suppliers, then the wholesale suppliers who compete to provide default service load will have the economic incentive to take advantage of this option when formulating the lowest price bids possible in PECO’s default service supply solicitations and when satisfying their default service supply obligations. PECO Initial Br., p. 15; PECO St. No. 4-R, pp. 12, 16.<sup>5</sup>

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<sup>5</sup> The Environmental Stakeholders cite the *Final Rulemaking Order* (p. 39) to support their argument that PECO is required to make a “fact-based evaluation about the benefits and costs of different proportions of long-term contracts in its ‘mix of sources’ for default supply.” Environmental Stakeholders Br., p. 17. The testimony in this proceeding contains substantial and quantitative evidence as to exactly how PECO’s DSP IV plan has performed as a basis of DSP V’s design, as well as data on the higher cost of renewable energy, and notes that

To the extent the Environmental Stakeholders are advocating for restrictions on the types of generation in a default service supply portfolio beyond those established in Pennsylvania law, such restrictions could result in increased customer rates and cause significant fairness issues and therefore would not be consistent with PECO's "least cost" obligations. PECO Initial Br., p. 16; PECO St. No. 4-R, pp. 17-19.

As PECO's witnesses explained – and as the Commission summarized the views of most commenters in response to the Commission's recent investigation into default service and PJM settlement reforms – "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>6</sup> PECO Initial Br., p. 13; *see also* PECO Initial Br., p. 14-15 (describing risks of increasing portion of a supply portfolio at above-market prices). And while the Environmental Stakeholders assert that the number of distribution customers receiving default service has been "stable" over several default service plans, they do not – and cannot – refute the fact that each PECO distribution customer is always free to shop, just as nearly one hundred percent of PECO's large commercial and industrial customers do today. PECO St. No. 4, p. 7 (explaining that 94% of PECO's Large Commercial and Industrial customers receive electric generation supply service from EGSs) & pp. 20-21 (describing continued growth in number of EGSs licensed to compete to serve in PECO's service territory).<sup>7</sup>

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PECO's full requirements approach is consistent with utility procurements in many other states in PJM. PECO St. No. 4, pp. 11-20 & 25 and PECO St. No. 4-R, pp. 19-20. Contrary to the Environmental Stakeholders' claims, neither Act 129 nor the *Final Rulemaking Order* require that default service suppliers undertake a cost-benefit analysis of different proportions of long-term contracts in proposed supply portfolios. *See Final Rulemaking Order*, p. 39.

<sup>6</sup> *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*"), pp. 7-8.

<sup>7</sup> The Environmental Stakeholders' suggestion that PECO's DSP V could be amended during its term to incorporate longer-term contracts (Environmental Stakeholders Br, p. 32), should also be rejected by the

## 2. Additional Long-Term Contracts Are Not Required To Ensure Adequate And Reliable Service

The Environmental Stakeholders contend that PECO must also assess the “reliability characteristics of different potential sources of generation supply” in order to meet the Company’s obligation to provide “adequate and reliable” default service supply. They further assert that renewable energy resources have reliability during “outages” and “emergencies,” and therefore long-term contracts for such resources should be part of PECO’s portfolio. Environmental Stakeholders Main Br., pp. 18-22.

The Environmental Stakeholders both misunderstand the Company’s statutory default service obligations and overstate the potential reliability benefits of renewable energy during outages and emergencies. Despite the Environmental Stakeholders’ best efforts to string together the definitions of certain terms and language from Act 129, 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. As explained in PECO’s Initial Brief (pp. 17-18), consistent with prior default service plans determined to provide “adequate and reliable service” by the Commission, PECO’s DSP V contracts with wholesale suppliers operating in PJM’s energy markets and contains adequacy and reliability protections requirements that apply to all types of generation supply. The Company also has contingency plans in place 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. *Id.* at 18. While the Environmental Stakeholders clearly prefer the use of

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Commission. The Settling Parties all support a term of four years for DSP V and the Environmental Stakeholders simply assume that such contracts could be added without any analysis of potential effects on PECO’s laddered contract strategy, which is designed to provide price stability. *See* Hearing Tr., 60-61.

renewable energy sources, they do not explain how the Company's plans would fail to provide the adequate and reliable service required by Act 129.

Should the Commission decide to consider the reliability attributes of potential sources of distributed generation as advocated by the Environmental Stakeholders, the evidence showed that the reliability value of distributed renewable energy resource can be quite limited during outages and emergencies. While the Main Brief (and testimony) of the Environmental Stakeholders generally cite to the "high reliability" of renewable resources, they admit in a single sentence that distributed energy resources must be "*configured as microgrids*" in order to "offer reliable supply through emergencies and extreme weather events." Environmental Stakeholders Main Br., p. 21 (emphasis added). This concession is unavoidable in light of the uncontested testimony of Mr. McCawley that it is wrong to assume that distributed generation does not require use of the distribution system, and, 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. PECO Initial Br., p. 20; Hearing Tr. at 48-51.

### **3. The Environmental Stakeholders Ignore Participation By Other Stakeholders**

The Environmental Stakeholders dedicated a significant portion of their Main Brief to summarizing comments from the public input hearing and arguing that PECO and DSP V are not appropriately responsive to stakeholder input. Environmental Stakeholders Main Br., pp. 22-31. The Environmental Stakeholders fail to acknowledge the active stakeholder participation in prior Commission proceedings, which often considered the appropriate role of long-term contracts, and how stakeholders have contributed to the DSP V procurement plan that is before the Commission in this proceeding,

This is PECO’s fifth default service program, and 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 stakeholders have already been “robustly engaged” with each other and with the Commission in the consideration of the extent to which PECO and other electric distribution companies (“EDCs”) should enter into long-term contracts for the output of renewable resources. *See* PECO St. No. 1-R, pp. 5-8; PECO St. No. 4-R, pp. 25-28. The Commission has repeatedly emphasized the value of flexibility and has never mandated that EDCs procure or manage a minimum quantity of long-term energy supply contracts. PECO Initial Br., pp. 11-13. As noted above, the Commission again recently considered the role of long-term contracts, and again did not establish any mandate for such contracts after observing that most commenters did not support or cautioned against such contracts.<sup>10</sup>

PECO’s DSP V is not only consistent with Commission directives from those prior proceedings, it also reflects a compromise achieved among multiple parties in this proceeding. The Settlement filed August 13, 2020 was reached after an extensive investigation by the parties of PECO’s original DSP V proposal and represents a consensus developed among almost all parties to the proceeding: PECO, OCA, OSBA, CAUSE-PA, Calpine, ESC, PAIEUG, and TURN et al. These parties represent a diversity of interests – including residential customers, low-income customers, small businesses, large commercial and industrial (“C&I”) customers and electric suppliers – that have all concluded that PECO’s DSP V is consistent with the Code, the

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<sup>8</sup> *See generally* Final Rulemaking Order.

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

<sup>10</sup> *See January 2020 Secretarial Letter*, p. 7.



Commission's requirements, and the public interest. The Environmental Stakeholders simply cannot claim that PECO's DSP V does not adequately reflect stakeholder interests.

In designing DSP V, PECO did consider the growing interest in its service area in increasing PECO's procurement of renewable energy. PECO St. No. 1, pp. 28-29; Hearing Tr. at 65. Based on that interest, PECO's DSP V includes an innovative and realistic proposal to support local solar. Specifically, the Plan doubles the amount of Solar AECs that PECO will procure directly through long-term contracts and includes a two-stage request for proposals to obtain up to half of those Solar AECs from distributed solar energy systems in the Company's service area. PECO St. No. 1, pp. 28-35.

As the Environmental Stakeholders note in their Main Brief, several participants at the Public Input Hearing specifically recommended that 20% of PECO's default generation supply come from local solar. *See* Environmental Stakeholder Main Br., Attach. 1. PECO evaluated that recommendation and determined that it was unrealistic due to physical constraints for rooftop solar or utility scale solar and overall cost (\$15 billion). Hearing Tr. at 74-75. Outside of the default service context, however, PECO is aligned with many of Public Input Hearing participants in supporting the growth of renewable generation. The Company's actions, which include supporting legislation to increase Pennsylvania's solar AEPS requirement by 900% over the next decade, are described in detail by PECO witness Mr. McCawley. *See* PECO St. No. 1-R, pp. 11-13; *see also* Environmental Stakeholders Hearing Exhibit No. 5 (PECO ES II-4(a)) (describing PECO support for community solar, energy storage, microgrids, and electric vehicles).

In sum, the record evidence shows that DSP V, as set forth in the Settlement and supported by the Settling Parties, is consistent with default service requirements, including the

use of a prudent mix of contracts to provide adequate and reliable service at least cost to customers over time. PECO appropriately considered the use of long-term contracts and stakeholder preferences when developing DSP V and refuted the overly broad statements made by the Environmental Stakeholders about the benefits of long-term contracts for renewable supply. For all these reasons, the Environmental Stakeholders' proposal that PECO undertake a new default service analysis should be rejected.

**B. The Commission Should Approve PECO's TOU Default Service Rates Outlined In The Settlement To Satisfy Act 129 Requirements**

As described in PECO's Initial Brief (p. 8), during DSP V, PECO proposed to introduce new TOU rate options for the Residential and Small Commercial procurement classes that will differentiate pricing across three usage periods (peak, off-peak and super off-peak) throughout the year and are designed to motivate customers to adjust the time of day they use electricity. As shown by the undisputed testimony explained in PECO's Initial Brief (pp. 22-25), the TOU Rates agreed to by all parties except the Environmental Stakeholders under the Settlement, satisfy PECO's statutory obligation under Act 129 to offer a TOU rate option to all default service customers with smart meters. Moreover, the TOU Rates outlined in the Settlement incorporate the PUC's guidance on EDC TOU rate design and balance a variety of important objectives, including the value proposition for customer enrollment and incentives for electric vehicle ("EV") adoption.

In their Main Brief (pp. 34-38), the Environmental Stakeholders rehash contentions advanced in Mr. Rábago's testimony against PECO's original proposed TOU rate design that was agreed to under the Settlement by all other parties to this proceeding. Mr. Rábago claimed that PECO's TOU Rates do not satisfy Act 129 requirements because the Company did not incorporate any cost-benefit analysis into its TOU rate design compared to other programs for

reducing peak demand-related system costs. While Mr. Rábago recognized that PECO's TOU Rates include some tailoring towards personal EV adoption, he also argued that PECO failed to consider potential rate designs to advance adoption of medium- and heavy-duty EV fleets and to incentivize building electrification technologies. *See* Environmental Stakeholders St. Nos. 1, pp. 31-36, & 1-SR, pp. 20-21.

These arguments were fully addressed, and refuted, in PECO's Initial Brief (pp. 26-27). First, the Environmental Stakeholders do not cite any authority for their claim that the Commission should condition approval of PECO's TOU Rates upon a commitment to conduct a "robust cost-benefit analysis" and better tailor the rate design to support transportation and building electrification that the Environmental Stakeholders believe will achieve Act 129's objectives related to energy efficiency and conservation. As discussed in PECO's Initial Brief (p. 26), 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. The Environmental Stakeholders position is further undercut by the Commission's recent approval of another EDC's TOU rate design pursuant to Act 129 that did not incorporate the type of analysis Mr. Rábago recommends in this case. The Environmental Stakeholders also have not provided any examples of electric utilities that have performed such a cost-benefit analysis before implementation of opt-in TOU generation rates.

PECO's Initial Brief (pp. 26-27) also explained that the Company's TOU Rates will accommodate the technologies that the Environmental Stakeholders assert support building electrification. Likewise, the Environmental Stakeholders did not offer any alternative rate designs to support Mr. Rábago's contention that PECO's TOU Rates are not tailored to the needs of medium- and heavy-duty EV fleets. Indeed, as explained by PECO witness Bisti, PECO plans

to explore 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, among other things, increased electrification of larger vehicle fleets. *See* PECO Initial Br., p. 27; PECO St. No. 2-R, pp. 20-21.

In light of these reasons set forth in PECO's Initial Brief, the Commission should approve PECO's TOU Rates outlined in the Settlement, without modification.

**C. The Commission Should Reject ESC's Proposal to Shift Responsibility for PJM-Imposed NITS Costs from All Load-Serving Entities to PECO**

In this case, ESC concedes that the Commission previously considered and rejected a proposal to shift the cost responsibility for NITS from LSEs, including EGSs, to the EDC in PECO's third default service proceeding.<sup>11</sup> ESC Main Br., p. 6. Nonetheless, ESC continues to argue for inclusion of NITS costs in PECO's Non-Bypassable Transmission Charge on the principal ground that those costs are unpredictable. *See id.*, pp. 4-10 According to ESC, PECO should also assume the cost responsibility for all customer load to create a "level playing field" between EGSs and PECO because the Company employs a reconcilable rate mechanism to recover its NITS costs for default service load whereas EGSs must account for future cost increases in their competitive offers. *See id.*, pp. 5-6, 10-14.

Calpine and PAIEUG both strongly oppose ESC's proposal for PECO to assume responsibility on behalf of EGSs for NITS costs incurred to serve shopping customers.<sup>12</sup> Calpine

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<sup>11</sup> *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) ("DSP III Order"), pp. 51-54; *see also* *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"), pp. 33-35 (approving PECO's continued recovery of NITS costs for default service customer load through its bypassable Transmission Service Charge under the DSP IV settlement consistent with the DSP III Order).

<sup>12</sup> PAIEUG contends that large C&I customers are entitled to a special exception if the Commission adopts ESC's proposal. This issue was fully addressed in PECO's Initial Brief (pp. 31-32) and the Company only notes that it

Main Br., pp. 3-5; PAIEUG Main Br., pp. 3-18. ESC's arguments for non-bypassable treatment of NITS charges should be rejected for the reasons set forth in PECO's Initial Brief and the additional reasons set forth below.

First, ESC erroneously argues that PECO should be responsible for NITS costs incurred by EGSs to provide generation service to their customers in the Company's service territory simply because those costs may be unpredictable. As explained in PECO's Initial Brief (pp. 30-31), ESC did not establish that EGSs cannot account for NITS costs in the products and services they choose to offer in the competitive retail market. Moreover, the record evidence presented by another EGS confirms that LSEs are able to manage NITS costs. As Calpine witness Becky Merola testified, ESC's proposal would remove an important incentive in the competitive retail market for EGSs to cost-effectively manage their wholesale cost obligations and load. *See* Calpine St. No. 1, pp. 3-4. Accordingly, the Commission should continue to require LSEs, including EGSs, to maintain responsibility for NITS for the customers they serve consistent with the DSP III and DSP IV Orders.

ESC's related contention that the Commission should revisit the Company's current allocation of NITS cost responsibility in light of the Federal Energy Regulatory Commission's ("FERC's") approval of PECO's implementation of a formula-based wholesale transmission rate effective December 1, 2017 is also without merit. In support of its claim of unmanageable volatility of NITS charges arising from PECO's formula rates, ESC points to other utilities within PJM that have recently experienced increased NITS costs. ESC Main Br., pp. 7-9. However, the Commission determined in the DSP III Order (pp. 53-54) that alleged incidence of

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agrees with PAIEUG (Main Br., p. 19) that ESC's members should be responsible for any costs to implement ESC's proposal, including a "carve-out" for large C&I customers.

volatile NITS costs for utilities other than PECO did not justify non-bypassable treatment of NITS costs in PECO's service area. Significantly, ESC did not present any evidence of material changes in NITS costs for PECO since it transitioned from a fixed/stated rate to a formula rate for FERC-jurisdictional wholesale transmission service. *See* PAIEUG St. No. 1, pp. 7-8.

Finally, ESC's argument that non-bypassable treatment of NITS costs is the only way to ensure "equal access" to PECO's transmission facilities and ensure that all customers pay actual NITS costs is incorrect. Specifically, ESC asserts that Section 2804(6) of the Code mandates that EGSs receive nondiscriminatory access to the Company's right to full cost recovery of NITS costs related to delivery of generation to PECO's PJM load zone. ESC Main Br., pp. 11-12. In doing so, ESC overlooks prior Commission precedent that belies its position. The Commission has already determined that another EDC's recovery of PJM transmission-related costs, including NITS, for only default service load does not amount to discriminatory access in violation of Section 2804(6) of the Code:

Under the current approach, both PPL [Electric Utilities Corp. ("PPL")] and the EGSs are responsible for paying [non-market based] charges to PJM relating to the respective loads they serve. While the methods used to recover these charges from customers differ between PPL and the EGSs, there is no evidence of record to indicate that the "rates, terms of access and conditions" under which EGSs incur these charges are not comparable to those under which PPL incurs them.<sup>13</sup>

In short, the Commission has already considered and rejected ESC's argument.

The record evidence in this proceeding shows that circumstances have not changed in PECO's service territory over the DSP III or DSP IV terms with respect to EGSs' ability to account for changes in NITS costs in the prices they charge to customers. Therefore, the

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<sup>13</sup> *Petition of PPL Elec. Utils Corp. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017*, Docket No. P-2014-2417907 (Opinion and Order entered Jan. 15, 2015), p. 65.

Commission should reject ESC's unsupported proposal to require PECO to assume responsibility for NITS for both default service and shopping customer load and recover the associated PJM charges from all distribution customers.

### III. CONCLUSION

For the reasons set forth above and in the Company's Initial Brief, the Commission should approve DSP V, as modified by the Settlement and the Stipulation, with continued recovery of PJM NITS charges for default service customer load through PECO's bypassable Transmission Service Charge.

Respectfully submitted,



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