McNees Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Charis Mincavage
Direct Dial: 717.237.5437
cmincavage@mcneeslaw.com

September 8, 2020

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

VIA ELECTRONIC FILING

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:

Attached please find for filing with the Pennsylvania Public Utility Commission the Reply Brief of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to these proceedings are being duly served via email only due to the current COVID-19 pandemic. Upon lifting of the aforementioned Emergency Order, we can provide parties with a hard copy.

Sincerely,

McNEES WALLACE & NURICK LLC

By Charis Mincavage
Charis Mincavage

Counsel to the Philadelphia Area Industrial Energy Users Group

Enclosure
c: Administrative Law Judge Eranda Vero (via E-mail)
Certificate of Service

CERTIFICATE OF SERVICE

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

VIA E-MAIL

Kenneth M. Kulak, Esq.
Brooke E. McGlinn, Esq.
Morgan, Lewis and Bockius LLP
1701 Market Street
Philadelphia, PA 19103
ken.kulak@morganlewis.com
brooke.mcglinn@morganlewis.com

W. Craig Williams, Esq.
Anthony Gay, Esq.
Jack Garfinkle, Esq.
Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
craig.williams@exeloncorp.com
anthony.gay@exeloncorp.com
jack.garfinkle@exeloncorp.com

Aron J. Beatty, Esq.
David Evrard, Esq.
Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101
abeatty@paoca.org
devrard@paoca.org

Richard Kanaskie, Esq.
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265
rkanaskie@pa.gov

Erin Fure, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
efure@pa.gov

Deanne M. O'Dell, Esq.
Karen O'Moury, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
kmoury@eckertseamans.com

Elizabeth R. Marx, Esq.
John Sweet, Esq.
Ria Pereira, Esq.
PA Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Christopher O'Hara, Esq.
PJM Interconnection
2750 Monroe Boulevard
Audubon, PA 19403-2497
christopher.ohara@pjm.com

Robert W. Ballenger, Esq.
Josie B. H. Pickens, Esq.
Joline Price, Esq.
Kintéshia Scott, Esq.
Community Legal Services Inc.
1424 Chestnut Street
Philadelphia, PA 19102
rballenger@clsphila.org
jpickens@clsphila.org
jprice@clsphila.org
kscott@clsphila.org

John F. Lushis, Jr., Esq.
Norris McLaughlin P.A.
515 West Hamilton Street, Suite 502
Allentown, PA 18101
jlushis@norris-law.com

Logan Welde, Esq.
Joseph Minott, Esq.
Clean Air Council
135 S. 19th Street, Suite 300
Philadelphia, PA 19103
lwelde@cleanair.org
joe_minott@cleanair.org

Devin McDougall, Esq.
Rebecca Barker, Esq.
Earth Justice
476 Clinton Avenue, Apt. 6F
Brooklyn, NY 11238
dmcdougall@earthjustice.org
rbarker@earthjustice.org

James Laskey, Esq.
Becky Merola, Esq.
Norris McLaughlin
400 Crossing Boulevard, 8th Floor
Bridgewater, NJ 08807
jlaskey@norris-law.com
becky.merola@calpinesolutions.com

Kevin C. Blake, Esq.
Thomas F. Puchner, Esq.
Gregory Peterson, Esq.
Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, NY 14701
kblake@phillipslytle.com
tpuchner@phillipslytle.com
gpeterson@phillipslytle.com

Charis Mincavage

Charis Mincavage

Counsel to the Philadelphia Area Industrial Energy Users Group

Dated this 8th day of September, 2020, in Harrisburg, Pennsylvania

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 THE PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP

Airgas USA, LLC, an Air Liquide Company
The Boeing Company
Drexel University
Einstein Healthcare Network
GlaxoSmithKline
Kimberly-Clark Corporation
Main Line Health
Merck & Co., Inc.
Philadelphia College of Osteopathic Medicine
Saint Joseph's University
Temple University
Thomas Jefferson University
Villanova University

Charis Mincavage (I.D. No. 82039)
Adeolu A. Bakare (I.D. No. 208541)
Jo-Anne S. Thompson (I.D. No. 325956)
McNEES WALLACE & NURICK LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (p)
717.237.5300 (f)

Counsel to Philadelphia Area Industrial Energy Users Group

Dated: September 8, 2020

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I. INTRODUCTION

On March 13, 2020, PECO Energy Company ("PECO" or the "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of the Company's Fifth Default Service Program ("DSP V"). *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 (Mar. 13, 2020) (hereinafter, "Petition"). On August 13, 2020, a Joint Petition for Partial Settlement ("Joint Petition") was filed in this proceeding, providing, among other things, that the following issue was reserved for litigation: whether changes to the current assignment of responsibility for PJM Interconnection, LLC ("PJM") charges for Network Integration Transmission Service ("NITS") is appropriate.

Pursuant to the procedural schedule, on August 20, 2020, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed its Main Brief ("M.B.") and received Main Briefs from the following parties: PECO; Calpine Retail Holdings, LLC ("Calpine"); the Sierra Club, Clean Air Council and Philadelphia Solar Energy Association (collectively, the "Environmental Stakeholders"); and 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. (collectively, the "Electric Supplier Coalition" or "ESC").

PAIEUG's Main Brief fully discusses the significant concerns related to ESC's proposal to change the status quo with respect to the collection of NITS on PECO's system for shopping customers. Accordingly, PAIEUG is filing this Reply Brief to respond to specific arguments raised in ESC's Main Brief. In particular, this Reply Brief focuses on the fact that ESC presents an inaccurate comparison of NITS cost collection between shopping and non-shopping customers. *See* ESC M.B., pp. 5-6. In addition, ESC fails to provide any evidence whatsoever regarding the supposed volatility and unpredictability of PECO's NITS costs, while also neglecting to recognize the steps that can be taken by load-serving entities to control such unpredictability should it arise. *See id*. at 6-10. Finally, in an attempt to respond to the concerns raised by various parties regarding the detrimental impact that ESC's proposal would have on shopping customers, the Electric Supplier Coalition's purported "solutions" indicate a fundamental misunderstanding of both the competitive marketplace and the contractual processes of customers. *See id*. at 12-13.

As discussed more fully herein, as well as in PAIEUG's Main Brief, ESC has failed to meet its burden of proof with respect to showing that a change in collection of NITS on PECO's system would be appropriate at this time. PAEIUG M.B., pp. 3-4; 8-11. Rather, because ESC's proposal contravenes the terms of the Electricity Generation Customer Choice and Competition Act ("Competition Act"), as well as creates the potential for significant and substantive harm to shopping customers as a result of the proposed change in the status quo, ESC's proposal must be rejected by the Commission. *Id*. at 4-8; 11-15.

II. ARGUMENT

A. ESC Presents an Inaccurate Comparison of NITS Cost Collection Between Shopping and Non-Shopping Customers.

ESC continues to submit that the status quo must change because PECO's current NITS cost recovery process treats shopping and non-shopping customers differently; however, ESC fails to recognize that comparing shopping and non-shopping customers is an apples to oranges comparison. Once the underlying differences between these classes of customers are correctly recognized, the reasons for the difference in NITS collection on PECO's system remains just and reasonable.

On PECO's system, non-shopping customers have their NITS collected through PECO's Transmission Service Charge ("TSC") while shopping customers have their NITS collected by their Electric Generation Supplier ("EGS"). ESC M.B., p. 5. ESC incorrectly claims that the difference between these two methods results in EGSs having to bear the risk associated with NITS charges, while the default suppliers do not need to include any risk premium. *Id*. at 5-6. Upon reviewing the differences between shopping and non-shopping customers more carefully, it becomes apparent that EGSs have the ability to avoid any risk premium while also providing customers with numerous products and services expected to be available in the competitive marketplace. Requiring all shopping and non-shopping customers to have their NITS costs collected through a non-bypassable mechanism, as proposed by ESC, would do nothing more than create a plain vanilla marketplace that would place constraints on both the EGSs and their customers. Calpine M.B., pp. 4-5.

As correctly noted by Calpine, another EGS on PECO's system, default service for non-shopping customers is based upon a uniform master supply agreement with no individually negotiated terms of service. Calpine M.B., p. 4. In other words, default service is a "one-size fits all" approach, while EGSs have the freedom to choose the products and services they offer in the marketplace. *Id*. at 4-5. Specifically, each EGS has the freedom to build, establish, and promote innovative products and service to meet individual customer's needs, while also structuring those services based upon the EGS's own business and management decisions. *Id*. at 5.

Moreover, customers utilize these innovative products and services to meet their individual needs. Since the inception of the Competition Act, Large Commercial and Industrial ("C&I") customers have been able to make business decisions tailored to the terms and conditions under which they seek to purchase transmission service by negotiating with their EGSs. PAIEUG M.B., pp. 5-6. With respect to NITS, a customer can structure a pass-through arrangement under which its EGS passes through the costs of NITS based upon the customer's own transmission obligation. *Id*. at 10. This process benefits Large C&I customers in particular who may be willing to assume additional risk in order to retain a number of pricing components that may be negotiated with the EGS, while also eliminating the risk that the EGS would over (or under) recover actual NITS costs. *Id*. at 6, 10-11. Conversely, some customers may prefer the option of requesting a fixed price contract that would include generation and NITS charges but may also include an additional risk premium to compensate the EGS for any risk associated with potentially increasing costs. *Id*. at 6, 12-13. Under the current competitive marketplace, customers, especially Large C&I customers, have the ability to negotiate products and services with their EGSs to meet their individual needs. Unfortunately, ESC's proposal would eliminate such ability to the detriment of customers, EGSs, and the competitive marketplace.

Moreover, the intent of the Competition Act was to allow EGSs to offer a range of products to attract customers. PAIEUG M.B., p. 5. For those reasons, the Competition Act unbundled generation, transmission, and distribution costs, as unbundling was meant to stimulate increased retail competition among the component parts of electric service with the goal of spurring innovation and efficiencies. *Id.* at 4-5. Regrettably, ESC's proposal would result in a rebundling of transmission and distribution costs in contravention of the Competition Act and in harm to the competitive marketplace.

Accordingly, ESC's argument that the status quo must change to provide for a unilateral treatment of shopping and non-shopping customers fails to recognize that the differences between shopping and non-shopping customers reflect the intent of the Competition Act, which is to provide shopping customers and EGSs with the ability to negotiate and create innovative products that meet both parties' needs. ESC's proposal would eliminate that ability while effectively rebundling distribution and transmission in contradiction to the terms of the Competition Act.

B. Because ESC Fails to Provide Any Evidence Showing Volatility or Unpredictability in NITS Costs on PECO's System, ESC's Claim Must Be Rejected.

ESC erroneously argues that, in approving formula NITS rates for PECO, the Federal Energy Regulatory Commission ("FERC") increased the volatility and unpredictability of NITS costs on the Company's system. While the Electric Supplier Coalition has made this claim throughout the entirety of this proceeding, ESC has failed to provide any evidence at any point in this proceeding showing such volatility or unpredictability. Rather, ESC has presented only the NITS rates of other transmission owners as evidence of these claims. Because the NITS rates on other utilities' systems are irrelevant to PECO's system, ESC's arguments must be rejected.

While ESC correctly recognizes that the PUC previously rejected proposals that would have required PECO to collect NITS costs for all customers, ESC erroneously claims that circumstances have "significantly" changed as a result of FERC's approval of a formula rate for PECO's NITS calculation. ESC M.B., p. 6. ESC argues that the use of a formula rate has resulted in fluctuations in PECO's NITS rates. According to ESC, because EGSs cannot predict the change in NITS, EGSs must add a risk premium to these charges. *Id.* at 6-10. Importantly, evidence shows that PECO's NITS costs have not become volatile since implementation of a formula rate. PAIEUG M.B., p. 10. Moreover, even if such supposed volatility had occurred, EGSs have the ability to manage NITS costs by utilizing a pass-through method, thereby allowing EGSs to avoid having to add a risk premium. *Id.*

Throughout the course of this proceeding, ESC has provided the NITS charges for various transmission owners, as well as calculated how these charges have changed over time. ESC M.B., p. 9. Interestingly, ESC has provided several charts and tables to show the increases of other utilities' NITS costs, but PECO's NITS charges are not included anywhere in ESC's lists. *Id.* Most likely the reason for this lack of evidence stems from the fact that, since the implementation of formula-based NITS rates on PECO's system, PECO's NITS rates have not become volatile. PAIEUG M.B., p. 10. Perhaps just as importantly, PECO's NITS rates have, in fact, decreased since implementation of a formula rate. *Id*.

Although ESC claims that NITS costs are more difficult to predict under the formula rate process, as discussed more fully in PAIEUG's Main Brief, even if NITS rates on PECO's system were to become volatile, the formula rate process periodically sets a transmission provider's wholesale transmission rate using a cost-of-service formula to determine the resulting NITS charges. PAIEUG M.B., p. 9. The formula uses FERC Form 1 data, which is detailed and well-documented. *Id*. In addition, a true-up reconciles the forward-looking rate with the actual costs incurred to provide NITS, and the accompanying protocols specify when rates are to be reset. *Id*. For PECO, new NITS rates are implemented on June 1 of each calendar year. *Id*.

While ESC does not agree that FERC Form 1 data allows EGSs to anticipate changes, Calpine, another EGS on PECO's system, notes that the FERC process does not negate the ability of EGSs to manage their loads and NITS costs. ESC M.B., p. 10; Calpine M.B., p. 4. Moreover, ESC did not provide any evidence establishing that EGSs cannot financially manage and account for NITS costs in the products and services they choose to offer. PECO M.B., p. 31. Instead, a change in the status quo as requested by ESC does nothing more than allow EGSs to shirk responsibility for their own business decisions and level of risk management expertise. Calpine M.B., p. 4. Further, EGSs do not need to take on such risk, especially with Large C&I customers, as most customers procure generation from EGSs under contracts in which NITS costs are a direct pass-through based on each customer's Network Service Peak Load ("NSPL"). PAIEUG M.B., p. 10. Thus, the use of the pass-through eliminates the risk that EGSs would over or under recover actual NITS costs allocated to customers. *Id*.

Accordingly, ESC has failed to present any evidence showing that NITS rates are difficult to predict, cannot be managed, or are volatile. As a result of this lack of evidence. ESC's proposal should be rejected, and the status quo should remain on PECO's system for purposes of NITS collection.

C. ESC's Proposals to Address Double Collection and Contractual Issues Fail to Provide Any Relief and Must Be Rejected.

Throughout the course of this proceeding, parties have raised concerns that ESC's proposal would penalize customers by requiring them to renegotiate contracts with their EGSs, the result of which could create the potential for double collection if such renegotiation is not possible. Although ESC has set forth two options that ESC believes would resolve these problems, upon closer inspection, ESC's "resolutions" do not reflect the current competitive marketplace. Accordingly, ESC's proposal must be rejected out of hand.

As discussed more fully in PAEIUG's Main Brief, implementation of a non-bypassable rider can create inherent problems, especially for Large C&I customers. PAIEUG M.B., pp. 11-15; *see also* PECO M.B., p. 31. While most Large C&I customers utilize a pass-through for NITS rates, some Large C&I customers prefer the option of requesting a fixed price contract that would include NITS charges. For those customers, shifting cost collection could have the perverse impact of recovering NITS charges twice. PAIEUG M.B., pp. 12-13. Specifically, if PECO begins collection of NITS costs from all customers through a non-bypassable charge, but certain customers have a fixed price EGS contract that extends beyond that date, the contract would still reflect the NITS price. If a customer pays the NITS charge via the fixed price to its EGS and also remits the NITS charge to PECO via the non-bypassable rider, the customer would pay for NITS twice. *Id*. at 13.

Unfortunately, neither of ESC's proposed "solutions" to this issue are feasible, as ESC does not seem to have a complete understanding of the competitive marketplace. First, with respect to the double-collection problem, ESC proposes that NITS cost collection could "transition" by changing cost responsibility only for "new" charges associated with NITS occurring after the PUC's final order in this proceeding. ESC M.B., p. 13. Unfortunately, ESC does not seem to understand that NITS costs are a single charge updated once a year for all customer. PAIEUG M.B., p. 15. Thus, ESC's transitional proposal not only misunderstands the nature of NITS costs, but also provides no relief to protect customers from double collection. *Id*.

Similarly, ESC proposes that the change in cost responsibility could be deferred to a later date to provide a "transition" period during which ESC claims that EGS contracts would expire and renew. ESC M.B., p. 13. In fact, ESC seems to randomly choose June 2022 as such a date without providing any evidence regarding any EGS contracts on PECO's system or the expiration dates thereto. *Id*. In actuality, some customers may be currently negotiating contracts or have just finished negotiating contracts that do not necessarily track with the timing of PECO's DSP proceedings, much less a random date chosen by ESC. PAIEUG M.B., p. 14.

In addition to failing to provide any substantive solutions that would address customers' concerns, ESC also fails to recognize that a change in the status quo would sever the link between cost causation and cost recovery for NITS. PAIEUG M.B., pp. 16-18. As discussed more fully in PAIEUG's Main Brief, under a direct pass-through, Large C&I customers' NITS are collected based upon an individual customer's NSPL. *Id*. at 16. Conversely, PECO's non-shopping customers remit their NITS through the Company's TSC Rider, which is based upon billed demand. *Id*. at 17. Even if NITS were billed through PECO's Non-Bypassable Transmission ("NBT") rider, NITS would be collected based upon a customer's Peak Load Contribution ("PLC") rather than a customer's NSPL. In other words, under either of these scenarios, NITS collection from customers would be severed from cost causation, which is contrary to PUC precedent. *Id*. Unfortunately, ESC has failed to recognize this problem, much less provide any solution that would ensure that cost causation, the PUC's polestar of ratemaking, remains intact.

Accordingly, ESC's proposed "solutions" to the aforementioned problems do not provide any relief to customers. Rather, ESC simply ignores the reality of the competitive marketplace in an attempt to justify its need to shift risk from EGSs to customers. ESC's proposal is especially egregious in light of the fact that at least one other EGSs on PECO's system (*i.e.*, Calpine) opposes a change in the status quo due to the problems such a change would create for EGSs and their customers. Because ESC has not provided any evidence warranting a change in PUC precedent, ESC's proposal to change the status quo for NITS collection on PECO's system must be rejected.

III. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission:

(1) Retain the status quo with respect to the collection of Network Integration Transmission Service charges on PECO's system;

(2) Deny the Electric Supplier Coalition's proposal to require PECO to recover NITS from shopping customers via a non-bypassable charge;

(3) Alternatively, approve a carve-out for Large C&I customers applicable to any non-bypassable rider for the recovery of NITS costs;

(4) Grant any additional relief deemed appropriate and consistent with the above recommendations.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By: Charis Mincavage

Charis Mincavage (I.D. No. 82039)
Adeolu A. Bakare (I.D. No. 208541)
Jo-Anne S. Thompson (I.D. No. 325956
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
jthompson@mcneeslaw.com

Counsel to the Philadelphia Area Industrial Energy Users Group

Dated: September 8, 2020