

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for	:	
Approval of Its Default Service Program for	:	P-2020-3019290
the Period from June 1, 2021 through	:	
May 31, 2025	:	

RECOMMENDED DECISION

Before
Eranda Vero
Administrative Law Judge

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I. INTRODUCTION

This Recommended Decision addresses the Petition of PECO Energy Company (“PECO” or “Company”) for Approval of its fifth Default Service Program (“DSP V” or “Program.”). A Joint Petition for Partial Settlement (“Joint Petition,” “Partial Settlement” or “Settlement”) was submitted and signed by PECO, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN *et al.*”), the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Calpine Retail Holdings, LLC (“Calpine”), 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”, “Coalition” or “ESC”).

The Joint Petitioners reserved two items for briefing, which involve (1) the allocation of the costs PECO incurs to implement new time-of-use (“TOU”) default service rate options, and (2) changes to the current assignment of responsibility for PJM Interconnection, L.L.C. (“PJM”) charges for Network Integration Transmission Service (“NITS”) from all load-serving entities to PECO (as proposed by the Electric Supplier Coalition). Later, the OCA and OSBA filed a Partial Settlement of Time of Use Cost Allocation (“TOU Settlement”) essentially replacing the language of Paragraph 60 in the Joint Petition.

In addition, Clean Air Council, Sierra Club/PA Chapter, and Philadelphia Solar Energy Association, (collectively the “Environmental Stakeholders”) objected to the Partial Settlement on the grounds that: 1) PECO failed to properly analyze and incorporate 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; and 2) PECO’s proposed DSP V time-of-use rates (“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. I recommend that

the Environmental Stakeholders' objections be denied because the record in this case does not support their contention that PECO failed to properly analyze and incorporate long-term renewable energy supply contracts in preparation of its DSP V, and because they failed to cite any authority for their claim that the Pennsylvania Public Utility Commission (Commission) should condition approval of PECO's TOU Rates upon a commitment to conduct a cost-benefit analysis.

After reviewing the evidence in this case, the Joint Petition, the TOU Settlement, the Statements in Support, the Environmental Stakeholders' objection, and the briefs, I recommend that the Joint Petition, along with the TOU Settlement, be approved without modification because the terms of the Joint Petition and TOU Settlement meet the requirements of the Public Utility Code and the Commission regulations, are supported by substantial evidence and are in the public interest. With respect to the Electric Supplier Coalition's proposal for changes to the current assignment of charges for NITS from all load-serving entities to PECO, I recommend that the proposal be denied.

The Commission is under a statutory requirement under Section 2807(e)(3.6) of the Pennsylvania Public Utility Code ("Code") to issue a final Order regarding the proposed default service plan by December 17, 2020. 66 Pa.C.S § 2807(e)(3.6).

II. HISTORY OF THE PROCEEDING

On March 13, 2020, PECO filed a Petition requesting that the Commission approve its fifth Default Service Program. PECO noted that this Petition was filed in accordance with its responsibilities as the default service provider for its certificated service territory for the period from June 1, 2021 through May 31, 2025, following the expiration of its current default service program ("DSP IV")¹. Concurrently, PECO filed the supporting data required by 52 Pa.

¹ *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Opinion and Order entered December 8, 2016) ("PECO DSP IV").

Code § 53.52, as well as the prepared direct testimony and accompanying exhibits of John J. McCawley, Joseph A. Bisti, Carol Reilly, and Scott G. Fisher.

The PAIEUG, through its counsel, filed a Petition to Intervene on April 1, 2020.

The CAUSE-PA, through its counsel, filed a Petition to Intervene on April 1, 2020.

The OSBA, through its counsel, filed a Notice of Appearance, Notice of Intervention, Public Statement and Answer to PECO's Petition on April 2, 2020.

The OCA, through its counsel, filed a Notice of Intervention, Public Statement, and Answer to PECO's Petition on April 3, 2020.

The TURN *et al.*, through its counsel, filed a Petition to Intervene on April 10, 2020.

The Calpine, through its counsel, filed a Petition to Intervene on April 14, 2020.

Notice of PECO's Petition and Prehearing Conference was published in the *Pennsylvania Bulletin* on April 18, 2020, 50 Pa.B. 2164. A deadline of May 1, 2020 was established for the filing of formal protests, petitions to intervene and answers.

A Prehearing Conference Notice was issued on April 20, 2020 scheduling the prehearing conference in this matter for May 5, 2020.

A Prehearing Conference Order was issued on April 21, 2020, advising the parties of the date and time of the scheduled conference, informing them of the procedures applicable to the proceeding, and directing the submission of prehearing memoranda prior to the conference.

StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (collectively “StateWise”) through its counsel, filed a Petition to Intervene on April 30, 2020.

The “Environmental Stakeholders, through its counsel, filed a Petition to Intervene on May 1, 2020.

The Electric Supplier Coalition, through its counsel, filed a Petition to Intervene on May 1, 2020.

Prior to the prehearing conference, the following parties filed Prehearing Memoranda: PECO, OCA, OSBA, CAUSE-PA, PAIEUG, the Electric Supplier Coalition Calpine, TURN *et al.*, and the Environmental Stakeholders.

The prehearing conference was held as scheduled on Friday, May 5, 2020, at 10:00 a.m. Counsel for the following parties participated: PECO, OCA, OSBA, CAUSE-PA, PAIEUG, the Electric Supplier Coalition, Calpine, TURN *et al.*, the Environmental Stakeholders, and StateWise.

Since there were no objections to the Petitions to Intervene, the petitions filed by the following entities were granted: Calpine, PAIEUG; CAUSE-PA, TURN *et al.*, the Environmental Stakeholders, the Electric Supplier Coalition and StateWise.

On May 7, 2020, I granted the Protective Order proposed by PECO.

On May 8, 2020, I issued a Prehearing Order memorializing the actions from the prehearing conference such as granting the Petitions to Intervene, granting three Petitions for admission *pro hac vice*, and establishing the following procedural schedule:

Public Input Hearing(s)	June 9, 2020
Direct testimony of other parties	June 16, 2020
Rebuttal testimony	July 9, 2020
Surrebuttal testimony	July 23, 2020

Evidentiary hearing (with oral rejoinder)	July 29-30, 2020
Main Briefs	August 20, 2020
Reply Briefs	September 8, 2020

On June 1, 2020, PECO filed a Petition for extension of the statutory deadline for approval of its DSP V from December 13, 2020 to December 17, 2020.² In support of its request, PECO references its proposed procedural schedule, which took into consideration the effects of COVID-19 related closures and operational issues. PECO Petition for Extension at 4.

By Order dated June 2, 2020, Chief Administrative Law Judge Charles Rainey granted PECO's Petition for a four-day extension of the statutory deadline set by 66 Pa.C.S. § 2807(e)(3.6).

The public input hearing was held via videoconference on June 9, 2020. In total, 35 individuals appeared and testified. *See* Section III, *infra* and Attachment 1 to this Recommended Decision.

On June 16, 2020, the OCA, OSBA, CAUSE-PA, the Electric Supplier Coalition, the Environmental Stakeholders, and TURN *et al.* submitted a total of seven written statements and accompanying exhibits. On July 9, 2020, PECO, OCA, OSBA, Calpine, CAUSE-PA, PAIEUG, and TURN *et al.* submitted eleven statements constituting their rebuttal testimony in this case. On July 23, 2020, PECO, OCA, OSBA, the Electric Supplier Coalition, the Environmental Stakeholders and TURN *et al.* submitted seven surrebuttal statements.

After the submission of written testimony, the parties engaged in discussions to try to achieve a settlement of some or all of the issues in this case. As a result of those negotiations, PECO, OCA, OSBA, CAUSE-PA, Calpine, PAIEUG, TURN *et al.* and the Electric Supplier Coalition (collectively, the "Joint Petitioners" or "Settling Parties") were able to reach a

² By Emergency Order dated March 20, 2020, in response to the COVID-19 pandemic, the Commission authorized the Chief Administrative Law Judge to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding Administrative Law Judge (ALJ). *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 2.

Partial Settlement and agree to a revised default service program consistent with PECO's DSP V Petition, as modified ("Revised DSP V").

The evidentiary hearing was held telephonically on July 30, 2020, as scheduled.³

During the evidentiary hearing, three witnesses were subject to cross-examination. Cross-examination of all other witnesses was waived and the following pre-served Direct, Rebuttal, and Surrebuttal Testimony of the parties was admitted into the record:

PECO Energy Company

PECO Statement No. 1 – Direct testimony of John J. McCawley with Exhibits JJM 1 – JJM 10, Highly Confidential Exhibits JJM 11 – JJM 12, and Exhibit JJM 13.

PECO Statement No. 2 – Direct testimony of Joseph A. Bisti with Exhibits JAB 1 – JAB 10

PECO Statement No. 3 – Direct testimony of Carol Reilly with Exhibits CR 1 – CR 4

PECO Statement No. 4 – Direct testimony of Scott G. Fisher with Exhibits SGF 1 – SGF 2

PECO Statement No. 1-R – Rebuttal testimony of John J. McCawley

PECO Statement No. 2-R – Rebuttal testimony of Joseph A. Bisti with Exhibits JAB 1-R – JAB 4-R

PECO Statement No. 3-R – Rebuttal testimony of Carol Reilly

PECO Statement No. 4-R – Rebuttal testimony of Scott G. Fisher

PECO Statement No. 1-SR – Surrebuttal testimony of John J. McCawley

Office of Consumer Advocate

OCA Statement No. 1 – Direct Testimony of Steven L. Estomin with Exhibits SLE-1,2 and 3 and Appendix A

OCA Statement No. 2 – Direct Testimony of Barbara R. Alexander with Exhibits BA-1, 2 and 3.

OCA Statement No. 1R – Rebuttal Testimony of Steven L. Estomin

OCA Statement No. 2R – Rebuttal Testimony of Barbara R. Alexander

OCA Statement No. 1S – Surrebuttal Testimony of Steven L. Estomin

OCA Statement No. 2S – Surrebuttal Testimony of Barbara R. Alexander

Office of Small Business Advocate

OSBA Statement No. 1 – Direct Testimony of Brian Kalcic with Exhibit BK-1 and Appendix

OSBA Statement No. 1-R – Rebuttal Testimony of Brian Kalcic

OSBA Statement No. 1-S – Surrebuttal Testimony of Brian Kalcic with Exhibit BK-1S

CAUSE-PA

CAUSE-PA Statement 1 – Direct Testimony of Harry Geller with Exhibits 1, 2, 3 and Appendices A and B

CAUSE-PA Statement 1-R – Rebuttal Testimony of Harry Geller with Appendices A and B

³ The evidentiary hearing scheduled for July 29, 2020, was cancelled at the request of the parties.

PAIEUG

PAIEUG Statement No. 1 - Rebuttal Testimony of Jeffry Pollock with Exhibits JP-1 and JP-2

Electric Supplier Coalition

ESC Statement No. 1 – Direct Testimony of Travis Kavulla with Exhibits TK-1 through TK-19

ESC Statement No. 1-S – Surrebuttal Testimony of Travis Kavulla

Environmental Stakeholders

ES Statement No. 1 - Direct Testimony of Karl R. Rábago with Exhibits KRR 1 – KRR 10

ES Statement No. 1-SR – Surrebuttal Testimony of Karl R. Rábago with Exhibit KRR-SR1

TURN *et al.*

TURN *et al.* Statement No. 1: Testimony of Philip A. Bertocci with Exhibits PAB-1 and PAB-2

TURN *et al.* Statement No. 1-R: Rebuttal Testimony of Philip A. Bertocci with Exhibits
A, B and C

TURN *et al.* Statement No. 1-SR: Surrebuttal Testimony of Philip A. Bertocci

Calpine

Calpine Retail Statement No. 1 – Merola Rebuttal Testimony

The Joint Petition for Partial Settlement (“Joint Petition”) was filed on August 13, 2020. It was executed by counsel for PECO, OCA, OSBA, CAUSE-PA, Calpine, PAIEUG, TURN *et al.* and the Electric Supplier Coalition, and the signatory parties filed Statements in Support of the Joint Petition for Partial Settlement. The Joint Petitioners explained that they had reserved two issues for briefing, which involve (1) the allocation of the costs PECO incurs to implement new time-of-use (“TOU”) default service rate options, and (2) changes to the current assignment of responsibility for PJM Interconnection, L.L.C. (“PJM”) charges for Network Integration Transmission Service (“NITS”) from all load-serving entities to PECO (as proposed by the Electric Supplier Coalition).

On August 14, 2020, StateWise submitted a letter of non-opposition to the Joint Petition for Partial Settlement.

By e-mail dated August 20, 2020, counsel for OCA informed me that PECO, OCA and OSBA had resolved the issue of how the costs PECO incurs to implement its new TOU rates should be allocated to Residential and Small Commercial procurement classes.

PECO, OCA and OSBA were the only parties litigating this issue and they expected to file an unopposed settlement of Time of Use cost allocation by September 8, 2020.

Also, on August 20, 2020, PECO, PAIEUG, Calpine, the Electric Supplier Coalition, and the Environmental Stakeholders filed Main Briefs. TURN *et al.* filed a letter stating it was not filing a Main Brief.

On September 8, 2020, OCA and OSBA filed the Partial Settlement of Time of Use Cost Allocation (“TOU Settlement”) essentially replacing the language of Paragraph 60 in the Joint Petition. TOU Settlement indicates that neither PECO nor any other party in the proceeding has objections to the new language of Paragraph 60 in the Joint Settlement.

The following parties filed Reply Briefs on September 8, 2020: PECO, PAIEUG, Calpine, the Electric Supplier Coalition, and the Environmental Stakeholders. TURN *et al.*, and CAUSE-PA filed letters stating that they were not filing Reply Briefs.

The record consists of a 470-page transcript; PECO’s Petition with attachments; the statements and exhibits of the parties; the Joint Petition For Partial Settlement with attachments; the Partial Settlement of Time of Use Cost Allocation; the Main Briefs filed by PECO, PAIEUG, Calpine, the Electric Supplier Coalition, and the Environmental Stakeholders; the letter from StateWise indicating that it did not oppose the Partial Settlement; and the Reply Briefs filed by PECO, PAIEUG, Calpine, the Electric Supplier Coalition, and the Environmental Stakeholders. The record closed on September 8, 2020.

III. PUBLIC INPUT HEARING

At the Public Input Hearing in this Proceeding, held via videoconference on June 9, 2020, PECO customers testified overwhelmingly in favor of changes to PECO’s default service procurement plan that would facilitate the inclusion of increased amounts of renewable energy. At the hearing, 35 witnesses provided approximately six hours of testimony. Thirty-four out of 35 of the witnesses testified in favor of changes to PECO’s proposed default service

procurement plan to incorporate more renewable energy, and the sole remaining witness testified that she did not feel qualified to assess the role of renewable energy in PECO's default service plan.

In their Main Brief, the Environmental Stakeholders provide an index table listing all 35 testifying witnesses and summarizing their comments. For convenience of review, I have adopted the table and included it as Attachment 1 to this Recommended Decision.

IV. DESCRIPTION AND TERMS OF THE JOINT PETITION FOR PARTIAL SETTLEMENT – AS AMENDED BY THE PARTIAL SETTLEMENT OF TIME OF USE COST ALLOCATION

The Joint Petition is a 24-page document signed by eight of the parties. Exhibit A is the Revised Electric Service Tariff (Relevant Pages). Exhibit B is Revised Electric Service Tariff (Redline). Statement A is the Statement in Support of Joint Petition for Partial Settlement of PECO Energy Company. Statement B is the Statement in Support of Joint Petition for Partial Settlement of the Office of Consumer Advocate. Statement C is the Statement in Support of Joint Petition for Partial Settlement of the Office of Small Business Advocate. Statement D is the Statement in Support of Joint Petition for Partial Settlement of Calpine Retail Holdings, LLC. Statement E is the Statement in Support of Joint Petition for Partial Settlement of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania. Statement F is the Statement in Support of Joint Petition for Partial Settlement of the Electric Supplier Coalition. Statement G is the Statement in Support of Joint Petition for Partial Settlement of the Philadelphia Area Industrial Energy Users Group. Statement H is the Statement in Support of Joint Petition for Partial Settlement of the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia.

The essential terms of the Joint Petition for Partial Settlement are set forth on pages 5-20 in paragraphs numbered 13-72 in the Settlement. These terms are stated below *verbatim* and for ease of reference, retain the same numbers and headings as they appear in the Settlement. The original Paragraph 60 of the Joint Petition has been replaced with the new language from the TOU Settlement.

TERMS AND CONDITIONS OF SETTLEMENT

13. The Settlement consists of the following terms and conditions:

A. Procurement Plan

14. The Joint Petitioners agree that the DSP V Program shall be in effect for a period of four years, from June 1, 2021 through May 31, 2025.

15. PECO's default service customers shall be divided into the same three classes for purposes of default service procurement as those established in DSP IV: the Residential Class, the Small Commercial Class, and the Consolidated Large Commercial and Industrial Class.

16. The Residential Class includes all residential customers currently receiving service under PECO rate schedules R and RH.

17. The Small Commercial Class includes customers with annual peak demands of up to and including 100 kW served under rate schedules GS, PD, and HT plus lighting customers on schedules AL, POL, SLE, SLS, SLC, and TLCL.

18. The Consolidated Large Commercial and Industrial Class includes customers with annual peak demands greater than 100 kW on rate schedules GS, HT, PD, and EP.

(1) Residential Class

19. For the Residential Class, PECO will continue to procure a mix of one-year (approximately 38%) and two-year (approximately 61%) fixed-price full requirements ("FPFR") contracts, with six months spacing between the commencement of contract delivery periods. During the Revised DSP V period, the remaining approximately 1% of Residential Class load will be supplied directly by PJM's spot energy, capacity and ancillary services markets.

20. Suppliers will bid in a competitive, sealed-bid request for proposals ("RFP") process on "tranches" corresponding to a percentage of the actual Residential default service customer load. Winning suppliers will be obligated to supply full requirements load-following service, which includes energy,

capacity, ancillary services, and all other services or products necessary to serve a specified percentage of PECO's default service load in all hours during the supply product's delivery period.⁴ The full requirements product requires the supplier to provide PECO all necessary AECs described in Paragraph 30, *infra*, for compliance with Pennsylvania's Alternative Energy Portfolio Standards ("AEPS") Act, 73 P.S. § 1648.1 et seq. Each of the contracts will be procured approximately two months prior to the beginning of the applicable contract delivery period. As in DSP IV, PECO will continue to nominate PJM Auction Revenue Rights ("ARRs") for the default service load. To facilitate selection and transfer of ARRs to wholesale default service suppliers, PECO will continue to employ a consultant for ARR analysis and selection.

21. The Joint Petitioners agree to the procurement terms and schedule for the Residential Class FPCR contracts set forth in PECO Exhibit No. JJM-3.

(2) Small Commercial Class

22. The Small Commercial Class load will continue to be supplied by equal shares of one-year and two-year FPCR products. Each of the contracts for the Small Commercial Class will be procured through a competitive sealed-bid process in the same manner as FPCR products for the Residential Class approximately two months prior to delivery of energy under the contract.

23. The Joint Petitioners agree to the procurement terms and schedule for the Small Commercial Class FPCR contracts set forth in PECO Exhibit No. JJM-3.

(3) Consolidated Large Commercial and Industrial Class

24. For its Consolidated Large Commercial and Industrial customers, PECO will continue to solicit twelve-month hourly-priced full requirements products, without overlap, for all default service supply.

⁴ PECO remains responsible for all distribution services to its default service customers. The assignment of responsibility for PJM transmission-related costs is discussed in Section II.E., *infra*.

25. PECO will procure default service supply for the Consolidated Large Commercial and Industrial Class annually as shown on PECO Exhibit No. JJM-3.

B. Default Service Implementation Plan and Independent Evaluator

26. The Joint Petitioners agree to the form of the Supplier Master Agreement (“SMA”) that PECO will execute with wholesale suppliers that are successful bidders in PECO’s default service supply procurements set forth in PECO Exhibit No. JJM-4.

27. The Joint Petitioners agree to the Requests for Proposals (“RFP”) for PECO’s competitive sealed-bid solicitations and the RFP protocol set forth in PECO Exhibit Nos. JJM-6 and JJM-7, respectively.

28. PECO will again appoint NERA Economic Consulting, Inc. (“NERA”) as the third-party independent evaluator for PECO’s default service procurements.

29. The Commission has previously approved PECO’s SMA as an affiliated interest agreement so that PECO’s affiliates may participate in default service supply procurements, and PECO is maintaining the same protocols and other protections in its Revised DSP V to be administered by the Independent Evaluator. In the event that an affiliate of PECO is a winning bidder in a default supply procurement, it will need to execute the SMA in the same manner and time period as other bidders. The Joint Petitioners support PECO’s request for advance approval of the SMA (PECO Exhibit JJM-4) by the Commission as an affiliated interest agreement.

C. Alternative Energy Portfolio Standards (“AEPS”) Act Compliance

30. Under the SMA, as in DSP IV, PECO will continue to require each full requirements default service supplier to transfer Tier I (including solar photovoltaic) and Tier II alternative energy credits (“AECs”) to PECO corresponding to PECO’s AEPS obligations associated with the amount of default service load served by that supplier. In addition, PECO will continue to allocate AECs obtained through its separate AEC procurements to suppliers in accordance with the percentage of load served by each supplier. PECO will retain any portion of its AEC inventory to meet AEPS obligations not provided for by fixed-price full

requirements suppliers and procure any additional required AECs through PECO's Tier I and Tier II "balancing" procurements previously authorized by the Commission.

31. PECO will also conduct two solicitations in both 2021 and 2022 for ten-year Solar AEC contracts to deliver a total of 16,000 Solar AECs annually (i.e., 4,000 Solar AECs in each of four solicitations). PECO will procure up to half of each year's Solar AEC amount from solar generating facilities located within its service area.

32. The first stage of each annual RFP will consist of a competitive procurement where the winning bidders will be determined by lowest Solar AEC prices offered. The second stage will be a Standard Offer to Purchase Solar AECs at the quantity-weighted average of the winning competitive prices determined by the first stage RFP, with the requirement that the Solar AECs from stage two bidders come from solar generation resources located in the PECO service area.

33. The Joint Petitioners agree to the use of the RFP rules for Solar AEC procurements and both forms of the Solar Alternative Energy Credit Purchase and Sale Agreement (a Project Version and an Aggregator Version), which each winning bidder will be required to execute, set forth in PECO Exhibit No. JJM-10.

D. Contingency Plans

(1) Full Requirements

34. PECO will continue utilizing the contingency plans approved in prior default service programs. Specifically, in the event PECO fails to obtain sufficient approved bids for all offered tranches for a product in a solicitation, the unfilled tranches will be included in PECO's next default supply solicitation for that product. PECO will supply any unserved portion of its default service load from the PJM-administered markets for energy, capacity and ancillary services.

35. If a supplier default occurs within a reasonable time before a scheduled procurement, the load served by the defaulting supplier will be incorporated into that next procurement. Otherwise, PECO will file a plan with the Commission proposing alternative procurement options and a request for approval on an expedited basis.

(2) AEPS Requirements

36. In the event that PECO's 2021 RFP for Solar AECs is unsuccessful or there is insufficient participant interest, the amount of solar AECs not under contract will be added to the amount procured in the 2022 procurement process. If PECO is unable to obtain its full 16,000 Solar AECs after completing the 2021 and the 2022 procurements, any shortfall will be met by wholesale suppliers who are obligated to transfer enough Solar AECs to meet AEPS requirements for the percentage of default service load that they supply under the SMA.

E. Rate Design And Cost Recovery

(1) Generation Supply Adjustment

37. PECO will continue to recover the cost of default service from default service customers through the Generation Supply Adjustment ("GSA") and Transmission Service Charge ("TSC") consistent with DSP IV. For each customer class, default service rates established pursuant to the GSA will continue to change quarterly and over/undercollections of default service costs will continue to be reconciled on a semi-annual basis. Such rates will continue to recover: (1) generation costs, certain transmission costs and ancillary service costs established through PECO's competitive procurements; (2) supply management, administrative costs (including costs incurred to implement Commission-approved retail enhancement programs) and working capital, as provided in 52 Pa. Code § 69.1808; and (3) applicable taxes. The projected GSA for each quarter will continue to be filed by PECO 45 days before the start of each quarter. The GSA and TSC form the basis of the Price-to-Compare ("PTC") that customers may use to evaluate competitive generation service offerings.

38. PECO's default service rates for the Consolidated Large Commercial and Industrial Class will also continue to be charged through the GSA. For those customers, default service rates will continue to be based upon the price paid to winning suppliers in PECO's hourly-priced service procurements, which includes the PJM day-ahead hourly locational marginal price ("LMP") for the PJM PECO Zone, plus associated costs, such as capacity, ancillary services, PJM administrative expenses and costs to comply with AEPS requirements that are incurred to provide hourly-priced service. To align the filing schedule for Consolidated Large Commercial and Industrial Class default service rates with PECO's other procurement classes, the Joint

Petitioners agree that PECO will continue to file the Hourly Pricing Adder on a quarterly, instead of monthly, basis.

39. The default service rates for the Large Commercial and Industrial Class also include a reconciliation component to refund or recoup GSA over/under collections from prior periods. The Joint Petitioners agree that over/under collections of default service costs for the Consolidated Large Commercial and Industrial Class will continue to be reconciled on a semi-annual basis instead of a monthly basis.

40. PECO shall be permitted to file the GSA and Reconciliation tariff pages set forth in Exhibits A and B to the Joint Petition to become effective as of June 1, 2021, subject to resolution of the issues related to TOU cost allocation and recovery of NITS charges. Exhibits A and B are revised versions of PECO Exhibit Nos. JAB-7 and JAB-8, respectively, to reflect the tariff changes set forth in this Settlement.

(2) Recovery of Certain PJM Charges

41. Wholesale suppliers will continue to be responsible for those PJM bill line items specified in the SMA.

42. PECO will continue to be responsible for and recover the following PJM charges from all distribution customers in PECO's service area through its Non-Bypassable Transmission Charge ("NBT"): Generation Deactivation/RMR charges (PJM bill line 1930) set after December 4, 2014; RTEP charges (PJM bill line 1108); and Expansion Cost Recovery charges (PJM bill line 1730). The issue of whether PJM charges for NITS should be recovered by PECO from all distribution customers through the NBT on a class basis is reserved for litigation.⁵

(3) Time-of Use Rates

43. During DSP V, PECO will introduce new, TOU default service rate options for eligible customers in PECO's Residential and Small Commercial procurement classes (the "TOU Rates") to comply with PECO's obligation under Act 129 of 2008

⁵ The electric service tariff pages referenced in this Joint Petition do not change the Company's current assignment of cost responsibility for PJM NITS charges to load-serving entities (e.g., PECO as the default service provider and EGSs). PECO currently acquires NITS for its default service customer load and recovers the associated PJM charges through the Company's bypassable TSC. PECO will address any Commission determinations regarding NITS in a subsequent compliance filing.

(“Act 129”) to offer TOU and real-time rates to all default service customers with smart meters.⁶

(i) TOU Product Structure and Rate Design

44. PECO’s TOU Rates will differentiate prices across three usage periods that are constant throughout the year as shown in Table 1 below.

Table 1

<u>TOU Pricing Period</u>	<u>Year-Round Days/Hours Included</u>
Peak	2 p.m. – 6 p.m. Monday Through Friday, excluding PJM holidays
Super Off-Peak	Midnight (12 a.m.) – 6 a.m. Every day
Off-Peak	All other hours

These TOU pricing periods will be identical for the Residential and Small Commercial Classes.

45. The Joint Petitioners agree to the TOU price multipliers for each procurement class shown in Table 2 below. These multipliers reflect the ratios calculated from average PJM PECO zone spot market prices as well as allocation of the cost of capacity to peak and off-peak hours only.

Table 2

<u>TOU Pricing Period</u>	<u>GSA-1 TOU Pricing Multipliers*</u>	<u>GSA-2 TOU Pricing Multipliers*</u>
Peak	6.5	5.1
Super Off-Peak	1	1
Off-Peak	1.5	1.7

*Ratio to Super Off-Peak TOU price

⁶ 66 Pa.C.S. § 2807(f)(5). The hourly-priced default service rate for the Consolidated Large Commercial and Industrial Class already meets Act 129 requirements.

46. Commencing with the GSA and TOU rates effective June 1, 2022, PECO agrees to review the TOU pricing multipliers set forth in Table 2, on an annual basis, using a rolling five years of historical PJM Day-Ahead Spot Market Pricing energy data and Reliability Pricing Model capacity pricing data for the PECO Zone. PECO will only update the applicable TOU pricing multipliers if the use of such data would result in no more than a 10% change from the prior-year's TOU pricing multipliers. If the price multiplier change would exceed 10%, the applicable pricing multipliers will be changed by exactly 10%.

47. PECO will source both the standard and TOU default service for residential and small commercial customers from the same supply portfolio for each procurement class. PECO will use the standard default service GSA as the reference price for PECO's TOU rate calculations.

48. PECO will calculate the TOU Rates on a quarterly basis, synchronized with the GSA adjustment periods for the Residential and Small Commercial Classes, using the pricing methodology set forth in PECO Exhibit Nos. JAB-3 and JAB-4. TOU customer kWh sales and costs will be included in the semi-annual reconciliation of the over/under collection component of the GSA for the entire procurement class (i.e., Residential or Small Commercial).

(ii) Customer Eligibility

49. PECO's TOU Rates will be available to residential and small commercial default service customers with smart meters configured to measure energy consumption in watt-hours. However, customers enrolled in the Company's Customer Assistance Program ("CAP") will not be eligible for the residential TOU Rate during the Revised DSP V term to avoid potential adverse impacts on CAP benefits.

50. Eligible default service customers may enroll in PECO's TOU Rates online or through the Company's care center. Participating customers will remain on the TOU Rate until they affirmatively elect to return to PECO's standard default service rate, switch to an EGS or otherwise become ineligible.

51. Customers who select the TOU Rate may leave at any time without incurring related penalties or fees. However, if those customers subsequently leave the TOU Rate for any reason,

they may not re-enroll for twelve billing months after switching off the TOU Rate.

(iii) Net Metering Customers

52. Customer-generators, with the exception of virtual net metering customers, will be eligible for the Company's TOU Rates.

53. PECO will separately track net excess generation created by TOU net metering customers within the TOU peak, off-peak and super off-peak periods. Such excess generation will be "banked" for use by the customer in subsequent billing periods. As illustrated on PECO Exhibit No. JAB-5, during any month when a TOU net metering customer consumes more power than it generates, the banked excess generation in the applicable TOU rate period will be used to reduce or offset the customer's bill at the full retail rate, including the current TOU prices for generation. At the end of the PJM planning period on May 31 of each year, PECO will compensate TOU net metering customers for accumulated excess generation based on the applicable TOU rate and TSC in effect at the time the excess electricity was generated.

(iv) Implementation Plan and Cost Recovery

54. The Joint Petitioners agree to adopt PECO's communications plan proposed in the DSP V Petition to inform customers about the new TOU Rates and update enrolled TOU customers about the opportunity for bill savings. This plan includes a webpage dedicated to the TOU Rates, a variety of other customer education materials, and monthly e-mail communications to enrolled TOU customers.

55. All TOU outreach and education materials will include, at a minimum, the following statements, with the title: Important Information About Time of Use Rates:

(a) "Time of Use rates may not be appropriate for customers that cannot change the time of day that they rely on electricity, such as those with medical devices that require electricity or customers who are home during peak hours."

(b) "If you are a low-income customer, other programs and rate assistance may be available to help you to afford your bill. Contact PECO at _____ for more information and to apply."

56. PECO agrees to conduct a collaborative meeting at least 120 days before launching its TOU rate to provide an

overview of PECO's TOU outreach and education plans and materials. PECO will provide stakeholders with an opportunity to review and comment on outreach and education materials before such materials are finalized.

57. PECO agrees to evaluate the impacts of the Company's TOU rates on confirmed low-income customers as part of the annual report required by Act 129.

58. To assist in the preparation of the annual report, PECO will track TOU customers' income and demographic information (e.g., age, race, ethnicity and disability status). However, eligible customers who refuse to disclose this information will not be precluded from enrolling in PECO's TOU rates.

59. PECO estimates that it will require at least twelve months to implement the final TOU rate design approved by the Commission in this proceeding.

60. *PECO will allocate 70% of the costs incurred to implement its new TOU default service rate options based on the total number of default service customers in the Residential and Small Commercial procurement classes, and 30% of the costs on the number of default service kWh consumed by the Residential and Small Commercial procurement classes.

61. Effective June 1, 2021, PECO shall be permitted to implement the tariff changes set forth in Exhibit Nos. A and B related to the Company's TOU Rates, subject to resolution of the issues related to TOU cost allocation and recovery of NITS charges.

F. Standard Offer Program

62. The currently-effective Standard Offer Program ("SOP"), including the cost recovery mechanisms last approved by the Commission in PECO's DSP IV proceeding, will continue until May 31, 2025.

63. Within sixty days of the entry of a final, non-appealable Opinion and Order in this proceeding, PECO will change the brand name for the SOP from "PECO Smart Energy Choice" to "Customer Referral Program".

64. The Joint Petitioners agree that prior to obtaining customer approval to participate in the SOP, the customer service representative for PECO's third-party SOP administrator, currently Kandela, will ask the customer's authorization to enroll with a named supplier.

65. PECO will conduct a monthly evaluation of customer service representatives of Kandela or its successor about presentation of the customer disclosures consistent with the current-SOP related scripts and training materials and take such steps as necessary to train those customer service representatives to provide the correct and approved information about the SOP.

66. Prior to filing its next default service program, PECO agrees to conduct a customer satisfaction survey of customers who withdrew from the SOP before the conclusion of the twelve month program, those who selected a new EGS at the conclusion of the SOP, those who returned to default service at the conclusion of the SOP, and those remained with their SOP supplier at the conclusion of the program.

67. In the portion of PECO's website where shopping information is provided, PECO will provide information about SOP and how customers may enroll.

68. PECO agrees to allow customers to enroll in the SOP through its website and will waive the SOP referral fee for web-enrollments. The website presentment will contain the same information and disclaimers about the program as currently provided in PECO's SOP-related scripts. All implementation costs to enable SOP web-enrollment will be recovered over the Revised DSP V period through a Purchase of Receivables discount. PECO will present a good-faith estimate of implementation costs to the Joint Petitioners by the end of March 2021. If the Joint Petitioners approve those costs, PECO will proceed with implementation by March 2022. SOP suppliers must accept referrals from both PECO's website and call center.

G. Residential Customer Bill Improvements

69. Within sixty days of the entry of a final, non-appealable Opinion and Order in this proceeding, PECO will convene a stakeholder process to discuss mechanisms to collect EGS pricing information compatible with PECO's "bill-ready" billing system and to develop bill improvements to ensure that shopping information is clear and transparent to residential

customers. This process will also address EGS recommendations to improve the presentation of shopping information on residential customer bills.

H. CAP Shopping Plan

70. PECO has proposed, in Docket No. M-2018-3005795 (PECO Energy Company's 2019-2024 Universal Service and Energy Conservation Plan), to redesign its CAP from its existing Fixed Credit Option ("FCO") design to a Percent of Income Payment Plan ("PIPP"). To accommodate coordination of PECO's proposed plan to facilitate shopping by low-income customers enrolled in the Company's CAP ("CAP Shopping Plan") with its proposal to move from a FCO design to a PIPP:

(a) PECO will not implement its CAP Shopping Plan as described in the DSP V Petition and the Company's witness statements in the instant docket;

(b) Within ninety days of obtaining a final, non-appealable Opinion and Order in Docket No. M-2018-3005795 that approves, modifies, or rejects PECO's proposal to move to a PIPP, PECO will make a filing with the Commission in which it will make a proposal regarding CAP shopping that is consistent with the CAP design approved in such final, non-appealable Opinion and Order, and which is informed by all available information and data;

(c) In its transmittal letter for the PECO filing referred to above, PECO shall request that its proposal regarding CAP shopping be assigned a new docket number;

(d) The Settlement does not limit any parties' right to take litigation positions in that new docket with respect to whether, when, or in what form PECO should proceed with CAP shopping under the future Commission-approved CAP design;

(e) Upon receipt of a final, non-appealable Opinion and Order in the new docket, PECO will proceed to implement CAP shopping in the manner and time frame if and as approved by the Commission therein.

I. Request For Waivers

71. The Commission's regulations (52 Pa. Code § 54.187) and Policy Statement (52 Pa. Code § 69.1805) provide that default service providers should design procurement classes based

upon peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may propose to depart from these specific ranges, including to “preserve existing customer classes.” If necessary, the Joint Petitioners respectfully request that the Commission grant PECO a waiver of 52 Pa. Code § 54.187 to allow PECO’s procurement classes to be as delineated in Section II.A, *supra*.

72. To the extent necessary, the Joint Petitioners also respectfully request that the Commission grant PECO a waiver of 52 Pa. Code §§ 54.187(i) and (j) to allow PECO to continue quarterly filing of hourly-priced default service rates and semi-annual reconciliation of the over/undercollection component of the GSA for all default service customers as explained in Section II.E., *supra*.

V. DISCUSSION

A. BURDEN OF PROOF

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the Company has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa.C.S. § 332(a). The Company must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). To meet its burden of proof, the Company must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

The policy of the Commission is to encourage settlements. The Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that would have been used to litigate the proceeding. A partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement benefits not only the named parties directly, but, indirectly, all of the customers of the public utility involved in the case.

To determine whether the parties' settlement should be approved, one must decide whether the settlement promotes the public interest. *See Pa. Pub. Util. Comm'n. v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n. v. C.S. Water and Sewer Assocs.*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n. v. Philadelphia Elec. Co.*, 60 Pa. PUC 1 (1985).

B. JOINT PETITION FOR PARTIAL SETTLEMENT

1. PARTIES' POSITIONS REGARDING INDIVIDUAL SECTIONS OF THE JOINT PETITION

The requirements of the Competition Act and the Commission's default service regulations.

Under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 *et seq.* (the "Competition Act"), PECO, as a Pennsylvania electric distribution company ("EDC") and default service supplier, has a fundamental obligation to provide competitively procured, reliable electric generation service to default service customers at least cost over time. 66 Pa.C.S. § 2807(e)(3.4). PECO stated that its Revised DSP V, its fifth default service program, contains all of the elements required by the Commission's default service regulations (52 Pa.Code §§ 54.181 – 54.189) and its Policy Statement on Default Service (52 Pa.Code §§ 69.1801- 69.1817), including implementation plans, procurement plans, contingency plans, rate design plans, and associated tariff pages. PECO Statement in Support at 7.

As described in the Settlement and in PECO's Statement in Support, PECO's Revised DSP V is designed to obtain a competitively procured "prudent mix" of contracts as required by the Public Utility Code. The type of fixed-price full requirements ("FPFR") contracts that PECO will procure for default service customer supply has already been approved by the Commission and is well-tested in the marketplace. *See* PECO Statement No. 4 at 9-11, 25-26. PECO's Revised DSP V default service portfolios, which builds on the success of PECO's prior default service programs, will continue to support the competitive retail market while providing customers with significant protection against changing market conditions and an

appropriate degree of rate stability consistent with the objectives of the Competition Act. *See* PECO Statement Nos. 4 at 22-31; and 4-R at 10-13, 21-37, 44-45. PECO explained that its Revised DSP V fully satisfies each of the requirements of the Competition Act and the applicable Commission regulations on default service and should be approved. PECO Statement in Support at 7.

PECO's Procurement Classes

The Commission's regulations (52 Pa.Code § 54.187) and Policy Statement (52 Pa.Code § 69.1805) provide that default service providers should design procurement classes based upon peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may propose to depart from these specific ranges, including to "preserve existing customer classes." *See* 52 Pa.Code § 69.1805. In the Settlement, the Joint Petitioners agreed to PECO's proposed DSP V procurement classes: the Residential Class, the Small Commercial Class, and the Consolidated Large Commercial and Industrial Class. Joint Petition ¶¶ 15-18; PECO Statement in Support at 8.

Each procurement class is comprised of established rate schedules under PECO's tariff and reflects differences between the classes with respect to customer usage and shopping patterns. The separation of the Residential and Small Commercial procurement classes reflects the different characteristics of those classes and reduces the potential that continuing increases in shopping in one customer group will result in a higher default service price for the other customer group. PECO Statement No. 1, at 11-12. The consolidation of all customers receiving hourly-priced default service into a single procurement group – the Consolidated Large Commercial and Industrial Class – reflects similarities in shopping trends, streamlines the Company's competitive solicitation process, and simplifies the reconciliation of over/undercollection of default service costs. *Id.*, at 12; PECO Statement in Support at 8.

In order to implement the procurement classes under the Settlement, the Joint Petitioners have requested that, if necessary, the Commission grant PECO a waiver of the

specific peak load class criteria in 52 Pa.Code § 54.187. Joint Petition ¶ 71; PECO Statement in Support at 8.

The Length of the Revised DSP V Procurement Plan

The Commission's regulations provide that the term of a default service program subsequent to the initial program will be determined by the Commission. *See* 52 Pa.Code § 54.182(d). In the Settlement, the Joint Petitioners agreed to PECO's original proposal for a four-year DSP V term. *See* Joint Petition, ¶ 14. The Revised DSP V term is reasonable because, as the Commission noted in the DSP IV Order (p. 35) a longer program would minimize future litigation expenses and reduce administrative costs. PECO Statement No. 1 at 9.

The Procurement Plan for the Residential Customer Class

In its Original DSP V Proposal, PECO proposed to continue the procurement design established in DSP IV with 99% of the total portfolio comprised of a mix of one-year (38%) and two-year (61%) FPFR products with delivery periods that overlap on a semi-annual basis. Under the Original DSP V Proposal, PECO proposed to continue to procure the remaining approximately 1% of Residential Class supply directly from the wholesale energy markets operated by PJM. PECO Statement No. 1, at 15-17. Continuation of the spot energy component of the Residential Class portfolio, which is procured automatically as part of PJM's energy settlement process without additional administrative expense, allows the Company to maintain the "tranche" size (i.e., 1.6% of default service load for each customer class) established under PECO's first default service program. PECO Statement No. 1-R, at 20-21.

The OCA supported PECO's proposal to procure one- and two-year FPFR products for Residential customers. OCA Statement in Support at 3; OCA Statement No. 1, p. 8. However, the OCA recommended elimination of the spot energy component of the procurement plan for the Residential Class, asserting that 1% of spot market supply "serves no practical purpose" and may impose additional administrative costs. OCA Statement in Support at 3-4; OCA Statement No. 1, at 11-12.

In its Rebuttal Testimony, the Company explained that eliminating the spot purchase would result in significant costs for default service customers due to having to employ two tranche sizes -- the traditional size used in prior DSPs and another reflecting the additional purchases necessary to replace the spot purchase. In addition, there would be added information technology expenses to accommodate moving to two tranche sizes. PECO Statement No. 1-R at 21. In view of these complications and potentially significant additional costs, the OCA agrees that it is in the best interest of residential customers to retain the 1% spot purchase within the residential procurement portfolio. OCA Statement in Support at 4, PECO Statement in Support at 10.

The Joint Petitioners agree to PECO's original proposed Residential Class portfolio, including PECO's original proposal to procure all FPFR contracts approximately two months prior to delivery of the energy in March or September of each year of the Revised DSP V procurement plan. *See* Joint Petition, ¶¶ 19, 21; PECO Exhibit No. JJM-3. In order to facilitate selection and transfer of PJM ARRs to wholesale default service suppliers, the Joint Petitioners also agree that PECO will continue to employ a consultant for ARR analysis and selection. *See id.*, ¶ 19.

The Settlement continues PECO's basic DSP IV procurement strategy that has attracted robust, competitive participation in PECO's procurements, resulted in reasonable prices, provided price stability benefits for residential customers, and supported the competitive retail electricity market in PECO's service area. *See* PECO Statement No. 4, at 22-31. The use of one- and two-year FPFR products will continue to provide an appropriate level of price stability, which the Commission is required to consider under the Competition Act.⁷ Therefore, the Residential Class procurement plan fully complies with the Competition Act's requirement to competitively procure a "prudent mix" of supply resources designed to ensure "adequate and reliable service" at the "least cost to customers over time." *See* 66 Pa.C.S. §§ 2807(e)(3.1), (3.2), (3.4).

⁷ *See* Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts., Docket No. L-20092095604 (Final Order entered Oct. 4, 2011), p. 40.

The Procurement Plan For The Small Commercial Customer Class

Consistent with the Original DSP V Proposal, PECO will continue the DSP IV mix consisting of equal shares of one-year and two-year FPFR products, with six-month spacing between the commencement of contract delivery periods. Joint Petition, ¶¶ 22-23.

Under Paragraph 23 the Partial Settlement, PECO will procure the FPFR products for Small Commercial customers in the same manner as the Residential Class. *See* PECO Exhibit No. JJM-3. The signatories to the Partial Settlement agreed to the procurement terms and schedule for the Small Commercial Class FPFR contracts as set forth in PECO Exhibit No. JJM-3. For the Small Commercial Class, PECO Exhibit JJM-3 details that the procurement products will be a fixed-price with terms lengths of 12 months and 24 months.

The Joint Petitioners agree that the portfolio of FPFR products for Small Commercial customers constitutes a “prudent mix” of supply resources as required by the Competition Act. The use of one- and two-year FPFR products for the Small Commercial Class under the Settlement provides price stability benefits for all small non-residential customers who may not have the knowledge or resources to elect a competitive EGS offering that provides the price stability they seek. *See* PECO Statement in Support at 10-11; OCA Statement in Support at 4.

The Procurement Plan For The Consolidated Large Commercial and Industrial Customer Class

The Settlement adopts PECO’s original proposal to continue to procure hourly-priced full requirements products annually, in March, for all default service supply for the Consolidated Large Commercial and Industrial (“C&I”) Class. *See* Joint Petition, ¶¶ 24-25; PECO Exhibit No. JJM-3. Similar to the Residential and Small Commercial Class procurement plans, the Settlement’s procurement plan for these customers complies with the Competition Act’s requirements. *See* PECO Statement in Support at 11.

Competitive Procurement Process

The Commission’s regulations require that a default service plan include copies of agreements to be used in the procurement of electric generation supply for default service customers, including Supplier Master Agreements (“SMAs”) and RFPs. 52 Pa. Code § 54.185(e)(6). In the Original DSP V proposal, PECO proposed that all procurements would continue to be administered by NERA Economic Consulting, Inc. (“NERA”) using a competitive, sealed-bid RFP process. *See* PECO Statement No. 1, p. 23.

In the Settlement, the Joint Petitioners agreed to PECO’s original proposal for a competitive, sealed-bid RFP process and the form SMA that suppliers will be required to execute set forth in PECO Exhibit JJM-4. Joint Petition, ¶¶ 26-27. Consistent with Section 54.185(e)(4) of the Commission’s regulations, suppliers will bid on “tranches” corresponding to a percentage of the actual default service customer load. Winning suppliers will be obligated to supply full requirements load-following service, which includes energy, capacity, ancillary services, and all other services or products necessary to serve a specified percentage of PECO’s default service load in all hours during the supply product’s delivery period. *Id.* The RFP documents set forth in PECO Exhibit Nos. JJM-6 and JJM-7 are based on the DSP IV RFP documents that have produced competitive outcomes. *See* PECO Statement No. 1, at 23-24. Accordingly, the comprehensive RFP documents agreed to by the Joint Petitioners satisfy the Competition Act’s requirements of a competitive procurement process, with prudent steps to negotiate favorable generation supply contracts and obtain contracts at least cost. 66 Pa.C.S. § 2807(e)(3.7).

AEPS Compliance

Both the Competition Act and the AEPS Act require default service providers, such as PECO, to obtain an increasing percentage of electricity sold to retail customers from alternative energy sources as measured by AECs. *See* 66 Pa.C.S. § 2807(e)(3.6); 73 P.S. § 1648.1 *et seq.* The AEPS Act also includes a “set-aside” that requires some of those AECs to be derived from solar photovoltaic (“PV”) facilities. Under Act 40 of 2017 (“Act 40”), PECO must meet its future solar AEPS requirements using solar AECs generated from solar energy

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

The Settlement adopts PECO's proposal to meet its AEPS Act obligations primarily through a combination of full requirements products and innovative solar procurements to support solar energy facilities within the Company's service area. Consistent with DSP IV, PECO proposed to require each full requirements default service supplier to transfer Tier I (including solar PV) and Tier II AECs to PECO corresponding to PECO's AEPS obligations associated with the amount of default service load served by that supplier. Joint Petition, ¶ 30.

Specifically, the Company proposed to satisfy approximately 25% of PECO's solar AEPS requirements during DSP V by procuring new ten-year solar AEC contracts through two solicitations during both 2021 and 2022 for delivery of a total of 16,000 solar AECs annually (i.e., 4,000 solar AECs in each of the four solicitations). PECO also proposed to procure up to half of each year's amount of solar AECs from solar generating facilities located within its service area. Joint Petition, ¶ 31. As Solar AECs have exhibited prices that can rise significantly in response to tight market conditions, the use of long-term contracts for the provision of Solar AECs can help stabilize prices for what would otherwise be a volatile component of the overall portfolio. OCA Statement in Support at 4; OCA Statement No. 1 at 13.

Pursuant to the terms of the Settlement, the first stage of each annual RFP will consist of a competitive procurement where the winning bidders will be determined by the lowest solar AEC prices offered. The second stage will be a Standard Offer to Purchase solar AECs at the quantity-weighted average of the winning competitive prices determined by the first stage RFP, with the requirement that the solar AECs from stage two bidders come from solar generation resources located in the PECO service area. Joint Petition, ¶ 32. PECO's two-stage design for the procurement of a portion of its solar AEC obligations is both innovative and responsive to stakeholder preferences for increasing the amount of solar energy being produced locally. *See, e.g.*, Tr. at 382-386, 387; PECO Statement in Support at 13-14.

Furthermore, the Joint Petitioners agree that the Company's proposed solar RFP process is designed to obtain competitive, fixed-price supply contracts at least cost and will utilize form Solar AEC Purchase and Sale Agreements (tailored either for a project or an aggregator) and an independent third-party RFP monitor. *See* Joint Petition, ¶ 33; PECO Exhibit No. JJM-10. By adopting the Company's proposed solar RFP process, the Settlement creates new opportunities for local solar generation and also ensures that solar AECs are purchased at competitively-determined prices. PECO Statement in Support at 13-14.

Other Procurement And Implementation Plan Requirements

The Settlement also includes agreement among the Joint Petitioners regarding other procurement and implementation plan components which were uncontested.

Contingency Plans. In accordance with the Commission's regulations at 52 Pa. Code § 54.185(e)(5), the Settlement appropriately provides for continuation of PECO's contingency plans approved by the Commission in PECO's prior default service programs. Joint Petition, ¶¶ 34-35; PECO Statement in Support at 14.

Independent Evaluator. The Commission's default service regulations provide that the competitive bid solicitation process shall be subject to monitoring by the Commission or an independent third party selected by a default service provider in consultation with the Commission. *See* 52 Pa. Code § 54.186(c)(3). The Joint Petitioners agree to the appointment of NERA to continue as independent evaluator for PECO's default service procurements. Joint Petition, ¶ 28.

Affiliate Relations. Under the Commission's default service regulations, affiliates of PECO are permitted to participate in the Company's competitive procurements for default service supply, *see* 52 Pa. Code § 54.186(b)(6), provided that appropriate protocols are in place to ensure that such affiliates do not receive an advantage in the competitive procurement and the competitive process complies with the Commission's codes of conduct. The Commission has previously approved PECO's SMA as an affiliated interest agreement and

PECO is maintaining the same protocols and other protections in the Revised DSP V to be administered by the Independent Evaluator. *See* PECO Exhibit Nos. JJM-6 and JJM-7; PECO Statement No. 1, at 23-26. Thus, pursuant to Section 2807(e)(3.1)(iii)(B) of the Competition Act, the Joint Petitioners support PECO's request for the Commission to approve the form SMA set forth in PECO Exhibit JJM-4 as an affiliated interest agreement as required under 66 Pa.C.S. § 2102. Joint Petition, ¶ 29.

The Settlement Continues PECO's Commission-Approved Rate Design With The Addition Of Optional Time-of-Use Default Service Rates for Eligible Residential And Small Commercial Customers

In its Original DSP V Proposal, PECO proposed to maintain its current rate design with the addition of new TOU rates for the Residential and Small Commercial Classes. The rate design set forth in the Settlement fully complies with the Commission's default service regulations and the Public Utility Code, whereby PECO recovers default service costs from default service customers through a Generation Supply Adjustment ("GSA") charge and TSC. Consistent with the Public Utility Code and the Commission's default service regulations, PECO proposed to continue to project and adjust default service rates for the Residential and Small Commercial Classes established pursuant to the GSA on a quarterly basis and to reconcile the over/under collection component of the GSA (known as the "E-Factor") on a semi-annual basis. PECO Statement No. 2, at 5-6. PECO proposed to recover implementation costs associated with its new TOU rates through the administrative cost factor of the GSA from the eligible procurement classes (i.e., the Residential and Small Commercial Classes). *Id.*, p. 24.

The default service rates for the Consolidated Large C&I Class will continue to be based upon the price paid to winning suppliers in PECO's hourly-priced default service procurements, which includes the PJM day-ahead hourly locational marginal price for the PJM PECO Zone, plus associated costs, such as capacity, ancillary services, PJM administrative expenses and AEPS compliance costs ("Hourly Pricing Adder"). To align the filing schedule for the Consolidated Large C&I default service rates with PECO's other procurement classes, PECO proposed to continue to file the Hourly Pricing Adder and to reconcile the E-Factor on a quarterly and semi-annual basis, respectively, instead of monthly basis. *Id.*, at 7-8. In addition,

PECO proposed to continue to be responsible for and recover the same categories of PJM charges approved by the Commission in the Company's DSP IV proceeding for recovery through its NBT and TSC. *See* PECO Statement No. 1, p. 15.

The OCA proposed semi-annual E-Factor reconciliation using a twelve-month refund or recovery period. OCA Statement Nos. 1, at 18-29 and 1S, at 3-4. OSBA recommended that PECO allocate TOU implementation costs recovered through the GSA to the eligible procurement classes based on the number of customers instead of on a kWh basis. OSBA Statement Nos. 1, at 6-7 and 1-S, at 2-3. Based on its view that the Company improperly excludes certain administrative and overhead costs from the Price-to-Compare ("PTC") and instead recovers them through distribution rates, the Electric Supplier Coalition recommended that the Commission require PECO to modify its default service rate design, through a subsequent compliance filing, to recover a "reasonable" portion of its overhead costs through the PTC. ESC Statement No. 1, at 44-51, and 1-S, at 27-33. With respect to the collection of PJM billing charges, the Electric Supplier Coalition recommended that PECO acquire NITS for all customer load and recover the associated costs from all distribution customers through the Company's NBT. ESC Statement Nos. 1, at 32-40, and 1-S, at 21-26.

Subject to resolution of the reserved issues relating to the recovery of PJM charges for NITS and TOU implementation cost allocation, the Settlement adopts PECO's original proposed rate design. Joint Petition, ¶¶ 37-39. Under the Settlement, the Joint Petitioners agree that PECO shall be permitted to file the GSA and Reconciliation tariff pages set forth in Exhibits A and B to the Joint Petition to become effective June 1, 2021.⁸ Joint Petition, ¶ 40.

This rate design also resolves the differences between PECO and OCA on reconciliation of PECO's default service rates. PECO Statement in Support at 17; OCA Statement in Support at 4-5. Billing cycle lag results in a timing difference between revenue and expense that can produce significant fluctuations in the PTC that are not directly related to the

⁸ PECO will address any Commission determinations regarding the collection of PJM bill charges for NITS and TOU cost allocation in a subsequent compliance filing.

underlying cost of default service supply. By using a semi-annual rather than a quarterly or monthly schedule for the reconciliation of over/under collections for the Residential and Small Commercial Classes and Consolidated Large C&I Class, respectively, fluctuations in default service prices will be smoothed out and result in clearer price signals for both customers and EGSs. *Id.*; PECO Statement No. 2, at 7-8. While the Commission’s regulations do not prescribe a time period for reconciliation adjustments, PECO believes that semi-annual reconciliation appropriately balances the Company’s goal of mitigating volatility with the Commission’s concern about maintaining the PTC as a price signal for customers and EGSs. PECO Statement in Support at 17; OCA Statement in Support at 4-5; PECO Statement No. 2 at 27-28. In order to continue quarterly filing of hourly-price default service rates and semi-annual reconciliation of the E-Factor for all default service customers under the Settlement, the Joint Petitioners have requested that, if necessary, the Commission grant PECO a waiver of the rate design provisions in 52 Pa. Code § 54.187. Joint Petition, ¶ 72.

PECO’s Revised DSP V Will Introduce Time-of-Use Rates

In 2014, PECO offered a TOU generation rate through a PUC-approved one-year pilot program known as the “PECO Smart Time Pricing Pilot” (“Pilot”) described by PECO witness Joseph A. Bisti in Statement No. 2.⁹ In the Original DSP V Proposal, PECO proposed new TOU Rates for the Residential and Small Commercial Classes consistent with Commission guidance on TOU rate design and Act 129 requirements.¹⁰ The Company’s original proposed

⁹ *Petition of PECO Energy Co. for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944 (Order entered Apr. 15, 2011) (“Dynamic Pricing Order”); *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered Sept. 26, 2012) (approving modifications to the commodity supply, dynamic rate structure, size and term of the pilot approved in the Dynamic Pricing Order to enable an EGS to provide TOU supply in lieu of PECO).

¹⁰ Since the conclusion of the Pilot, the scope of an EDC’s obligation to offer TOU rates to default service customers was the subject of litigation before the Commission and Commonwealth Court. *See Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (Order entered Sept. 11, 2014) (holding that Act 129 did not require PPL Electric Utilities Corp. to offer TOU rates directly to customer-generators); *Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa.Cmwlt. 2015) (“DCIDA”) (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs); *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) (“April 2017 Secretarial Letter”) (proposing a TOU design for PPL in accordance with the DCIDA decision and

TOU Rates reflect a balance of the following objectives: (1) simplicity and the value proposition for customer enrollment; (2) cost-causation principles to connect the TOU pricing structure to wholesale markets and PECO's standard, non-time varying GSA; and (3) incentives for customer electric vehicle ("EV") adoption. PECO Statement No. 2, at 13-14. As set forth in the Settlement, the Joint Petitioners have reached agreements regarding the rate design, customer eligibility, treatment of net metering customers, and the implementation plan for PECO's new TOU Rates, as described below.

TOU Product Structure and Rate Design. In the Settlement, the Joint Petitioners agree to PECO's original proposed TOU rate design with differentiated pricing across three usage periods (peak, off-peak and super off-peak) throughout the year based on price multipliers, with one revision to review those multipliers annually as recommended by the OCA. *See* Joint Petition, ¶¶ 44-48; OCA Statement in Support at 5-6; PECO Statement in Support at 8-10. The peak and off-peak usage periods shown in Table 1 of the Joint Petition reasonably encompass the Company's expected system peak usage times and take into account the need for simplicity to encourage customer enrollment. PECO selected the same year-round peak period – 2 p.m. to 6 p.m. on non-holiday weekdays – employed in the Pilot in which participating customers successfully responded to the TOU price signals to shift usage and achieve bill savings. PECO Statement No. 2, at 16-17. Consistent with the January 2020 Secretarial Letter¹¹ (p. 7), the Settlement's TOU Rates include a super off-peak pricing period from 12 a.m. to 6 a.m. each day to encourage EV charging during overnight low-priced energy hours based on PECO's system load patterns. *Id.*, p. 17. PECO believes that these price-differentiated usage periods will provide eligible customers with a reasonable opportunity to shift usage and are therefore in the public interest.

The TOU price multipliers for each procurement class shown in Table 2 of the Joint Petition are designed to motivate shifting of usage from the higher-cost peak period to

noting that the proposed TOU design "may provide future guidance to all EDCs" for incorporation into their own TOU proposals in their individual default service proceedings).

¹¹ *See Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued January 23, 2020) ("January 2020 Secretarial Letter").

lower-cost off-peak periods consistent with the Commission’s guidance in the April 2017 Secretarial Letter¹² (p. 3). These multipliers reflect the ratios calculated from average PJM PECO Zone spot market prices as well as the cost of capacity during peak and off-peak hours. Allocation of the cost of capacity to peak and off-peak hours only under the Settlement will send cost-based price signals and create larger price differentials that are more likely to motivate customers to adjust the time of day they use electricity. PECO Statement No. 2, at 18.

Under the Original DSP V Proposal, the TOU multipliers for each procurement class would remain constant for the entire four-year DSP V term. However, the OCA recommended that PECO recalculate the TOU price multipliers annually after the first year of DSP V using an updated five-year rolling average of PJM Day-Ahead Spot Market data for the PECO Zone to reflect current market conditions. OCA Statement Nos. 1, at 15-17, and 1S, at 5-6.

Paragraph 46 of the Partial Settlement addresses OCA’s concerns and adopts a modified form of the OCA’s proposal. There, PECO agrees to review the multipliers on an annual basis using a rolling five years of PJM Day-Ahead Market Pricing data for energy prices and capacity market pricing applicable to the PECO zone. Additional details on the threshold for updating the applicable TOU pricing multipliers for each procurement class are provided in Paragraph 46. The Settlement provides that the Company will only update the multipliers if it results in no more than a 10% change from the prior year’s multipliers. If the change would exceed 10%, the change in the multipliers will be limited to 10%. *See* Joint Petition, ¶ 46. Accordingly, the Settlement resolves the differences between PECO and the OCA regarding the TOU pricing multipliers. OCA Statement in Support at 5-6; PECO Statement in Support at 18-20.

The Settlement also documents agreement among the Joint Petitioners regarding PECO’s TOU rate calculations. Under the Settlement, PECO will source both the standard and TOU default service for residential and small commercial customers from the same supply

¹² *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued April 6, 2017) (“April 2017 Secretarial Letter”).

portfolio for each procurement class. Joint Petition, ¶ 47. The Joint Petitioners further agreed to the pricing methodology for PECO's quarterly TOU rate calculations set forth in PECO Exhibit Nos. JAB-3 and JAB-4. PECO Statement in Support at 20; OSBA Statement in Support at 5-6.

Under the Settlement's rate design, eligible default service customers will pay a discounted rate for off-peak usage and a higher rate for peak usage relative to PECO's standard fixed-price GSA. In addition, TOU customer kWh sales and costs will be included in the semi-annual reconciliation of the over/undercollection component of the GSA for the entire procurement class (i.e., Residential or Small Commercial). Joint Petition, ¶ 48. This reconciliation process using a single E-Factor for each procurement class will help mitigate potential large swings in GSA over/undercollections that could arise if customers switch between PECO's standard default service rate and TOU default service rate. PECO Statement in Support at 20; PECO Statement No. 2, at 20-21; OSBA Statement in Support at 5-6. Notably, the Commission has previously authorized other EDCs to recover TOU over/undercollection amounts from all default service customers based on its finding that the TOU rates mandated by Act 129 are a "form of default service".¹³

Customer Eligibility. As the Commission has recognized, Act 129 makes clear that an EDC's TOU program should be optional for default service customers.¹⁴ The April 2017 Secretarial Letter (p. 3) further provides that EDC TOU rates should be available to all default service customers who are not eligible for "spot only" default service and should incorporate existing consumer protections for CAP customers. In accordance with the Commission's guidance, PECO's voluntary TOU Rates under the Settlement will be available to residential and small commercial default service customers with smart meters configured to measure energy consumption in watt-hours. Joint Petition, ¶¶ 49-50.

¹³ See *Pa. Pub. Util. Comm'n v. PPL Elec. Utils. Corp.*, Docket No. R-2011-2264771 (Opinion and Order entered Aug. 30, 2012), pp. 22-23.

¹⁴ See *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued January 23, 2020), p. 6. Act 129 provides that "[r]esidential or commercial customers *may* elect to participate in time-of-use rates or real-time pricing". 66 Pa.C.S. § 2807(f)(5) (emphasis added).

The Settlement adopts PECO’s original proposal to exclude CAP customers from the residential TOU Rate to avoid potential adverse impacts on CAP benefits. Joint Petition, ¶ 49. In light of the impact of pending changes to PECO’s underlying CAP design on the CAP customer’s evaluation of the potential value proposition of a TOU rate option, the Joint Petitioners agree that it is appropriate to exclude CAP customers from the TOU Rates at this time. PECO Statement in Support at 21; CAUSE-PA Statement in Support at 5; TURN *et al.* at 3.

In addition, the Commission found that the recent settlement regarding PPL Electric Utilities Corporation’s TOU program implemented pursuant to Act 129 was in the public interest because, among other things, the eligibility exclusion of CAP customers “protects low-income customers” by ensuring that vulnerable customers are not exposed to “potential rate volatility” associated with TOU rates.¹⁵ PECO Statement in Support at 21. The Settlement represents a compromise between PECO and the Electric Supplier Coalition, which had objected to the “opt-in nature” of PECO’s TOU Rates, and the ineligibility of CAP customers. *See* ESC Statement Nos. 1, at 16-17, 23-24, and 1-S, at 13-15.¹⁶

The Settlement also allows TOU rate participants to leave at any time without incurring any penalties or fees, thus ensuring that households can return to standard service without delay if the consumer finds the rate is not beneficial. Joint Petition, ¶ 51; CAUSE-PA Statement in Support at 5. Paragraph 51 also includes a twelve-month ban on re-enrollment if a customer leaves the TOU for any reason. *Id.*, ¶ 51. This provision is in the public interest because it will reduce “free riders” who enroll in a TOU rate only for times of the year when they do not have to shift usage to save money. PECO Statement in Support at 21.

¹⁵ *Proceeding Initiated to Comply with Directives Arising from the Commonwealth Court Order in DCIDA v. PUC, 123 A3d 1124 (Pa. Cmwlth 2015) Reversing and Remanding the Order of the Comm’n Entered Sept. 22, 2014 at Docket Number P-2013-2389572 in which the Comm’n had Approved PPL’s Time of Use Plan, Docket Nos. M-2016-2578051 et al.* (Recommended Decision issued Apr. 2, 2018) (“PPL TOU Recommended Decision”), p. 25. The Commission adopted the PPL TOU Recommended Decision without modification by Order entered on May 17, 2018.

¹⁶ As part of the Settlement, the Electric Supplier Coalition is no longer pursuing its claims that the Commission should require PECO to implement supplier consolidated billing and offer a real-time price plan in conjunction with the TOU Rates. *See* ESC Statement Nos. 1 at 16-20, 23-24; and 1-S at 8-12, 14-15.

Net Metering Customers. The Settlement includes agreement among the Joint Petitioners regarding the participation of residential and small commercial customer-generators who employ net metering in PECO's TOU Rates, which was uncontested. Joint Petition, ¶¶ 52-53. In the April 2017 Secretarial Letter (p. 4), the Commission recommended that EDCs offer all customers eligible for TOU rates "generation-weighted net metering". Consistent with that guideline, customer-generators will be eligible for the TOU Rates under the Settlement. In light of the administrative complexity associated with offering TOU rates to virtual net metering customers (*see* PECO Statement No. 2, p. 21), the Joint Petitioners agreed to PECO's original proposal to exclude those customers. Joint Petition, ¶ 52.

The Settlement also adopts PECO's original proposed monthly accounting and cash-out process for excess generation created by TOU net metering customers. During any month when a TOU net metering customer consumes more power than it generates, any "banked" excess generation created in the applicable TOU rate period will be used to reduce or offset the customer's bill at the full retail rate, including the current TOU prices for generation. At the end of the PJM planning period on May 31 of each year, PECO will compensate TOU net metering customers for accumulated excess generation based on the applicable TOU rate and TSC in effect at the time the excess electricity was generated. Joint Petition, ¶ 53. Accordingly, the Settlement is consistent with the Commission's guideline in the April 2017 Secretarial Letter (p. 4) that EDCs calculate the value of excess generation based on the period in which it was generated.

Implementation Plan. The Original DSP V Proposal included a communications plan to inform customers about PECO's new TOU Rates and update enrolled TOU customers about the opportunity for bill savings. This plan includes a webpage dedicated to the TOU Rates consistent with the April 2017 Secretarial Letter (p. 3), a variety of other customer education materials, and monthly e-mail communications to enrolled TOU customers. PECO Statement No. 2, at 22-23.

The Electric Supplier Coalition contended that PECO should develop a more "robust" communications plan and "realistic" implementation timeframe for the TOU Rates. *See*

ESC Statement Nos. 1, at 21-22, and 1-S, p. 15. CAUSE-PA recommended that PECO conduct targeted and personalized outreach to vulnerable households seeking to enroll in PECO's TOU Rates about available universal service programs prior to enrollment. CAUSE-PA Statement No. 1, at 21-24. As part of such outreach, CAUSE-PA proposed that PECO provide a customized bill impact assessment based on the household's actual usage patterns over the prior year to inform the customer's decision to voluntarily enroll in the Company's TOU Rates. *Id.*, p. 25. In addition, CAUSE-PA recommended that PECO track TOU customers' demographic information (e.g., age, race, ethnicity and disability status) and assess the impact of PECO's TOU Rates on low-income and other vulnerable customers. *Id.*, at 25-26.

Under the Settlement, PECO will implement the communications plan described in the Original DSP V Proposal. To address CAUSE-PA's recommendation for additional consumer protections for non-CAP low-income customers and other vulnerable customers in PECO's communication plan, the Company will incorporate the specific disclosures outlined in Paragraph No. 55 of the Joint Petition in all TOU outreach and educational materials. In particular, Paragraphs 55 provides that all materials will include an explicit notice to customers regarding the availability of assistance programs and cautioning vulnerable consumers that the rate option may not be right for them; whereas Paragraph 56 provides stakeholders (including interested EGSs) with the opportunity to review and provide feedback before those materials are finalized. *See* Joint Petition, ¶¶ 55-56. PECO agrees to host a collaborative meeting 120 days before launching its TOU rate to provide an overview of PECO's outreach and education materials and to allow stakeholders to comment on those materials. Joint Petition, ¶ 56. These provisions will help ensure that PECO's TOU education and outreach materials are properly designed to better inform consumers of both the benefits and the risks of TOU rates to protect vulnerable consumers from potential harm. CAUSA-PA Statement in Support at 5; PECO Statement in Support at 22-23; TURN et al, at 3. Additionally, they will ensure that the OCA and other consumer-oriented interests will have the opportunity to make recommendations as they deem necessary. OCA Statement in Support at 7. Finally, PECO will track TOU customers' income and demographic information and evaluate the impacts of the Company's TOU rates on confirmed low-income customers as recommended by CAUSE-PA. *See* Joint Petition, ¶¶ 57-58.

In sum, the TOU Rates under the Settlement build on lessons learned from PECO's Pilot, appropriately integrate the Commission's guidance on EDC rate structures to satisfy Act 129 requirements, and balance a variety of important objectives, including customer protections. Accordingly, implementation of the tariff changes set forth in Exhibits A and B to the Joint Petition related to PECO's new TOU Rates is in the public interest.

Time of Use Cost Allocation – TOU Settlement

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

In the Joint Settlement, Paragraph 60 stated that, "The issue of how the costs PECO incurs to implement its new TOU Rates should be allocated to the Residential and Small Commercial procurement classes is reserved for litigation." In order to resolve this issue, the OCA and OSBA reached the following unopposed compromise for the allocation of TOU implementation costs: PECO will allocate 70% of the costs incurred to implement its new TOU default service rate options based on the total number of default service customers in the Residential and Small Commercial procurement classes, and 30% of the costs on the number of default service kWh consumed by the Residential and Small Commercial procurement classes. TOU Settlement at 1-2.

OCA and OSBA presented that neither PECO nor any other party in the proceeding has objections to the TOU Settlement. TOU Settlement at 2.

The TOU Settlement represents a compromise of the position of the OSBA, as presented in the testimony of Brian Kalcic, and the position of the OCA, as presented in the testimony of Steven Estomin. TOU Settlement at 2. OSBA witness Kalcic testified that TOU implementation costs are more appropriately deemed customer- rather than kWh-related costs,

and as such, should be allocated based on the number of customers in those classes that will have the TOU rate option. *See* OSBA Statement No. 1 at 7. In response, OCA witness Estomin testified that TOU implementation costs are incurred in order to facilitate residential and small commercial kWh being purchased under the TOU rate option and should be allocated on a kWh basis. *See* OCA Statement No. 1R at 14. The TOU Settlement reaches a compromise position between these two allocation proposals. OCA and OSBA submit that the above resolution of the TOU cost allocation issue is in the public interest as it represents a compromise between the two litigated positions. The TOU Settlement amicably resolves a contentious issue and is consistent with Commission policies promoting negotiated settlements. TOU Settlement at 2

PECO's Revised DSP V Will Continue The Standard Offer Program

On April 29, 2011, the Commission initiated its extensive Investigation of Pennsylvania's Retail Electricity Market at Docket I-2011-2237952 (the "Retail Markets Investigation"), which ultimately led to the Commission proposing that PECO and other default service providers undertake a variety of retail market enhancements, which the Commission then approved as part of PECO's second default service program proceeding ("DSP II"). In its final order in the Retail Markets Investigation, the Commission issued its proposed model for the "End State of Default Service" and observed that standard offer customer referral programs will "improve the overall operation of the competitive market in the near term."¹⁷ Consistent with the Commission's directives in the Retail Markets Investigation, during DSP II, PECO implemented its Standard Offer Program ("SOP") under which Residential and Small Commercial default service customers contacting PECO's customer service center are presented with an opportunity to select among a group of EGSs who have voluntarily chosen to offer customers a twelve-month contract priced at least 7% below PECO's applicable PTC at the time of the offer. In PECO's DSP II proceeding, the Commission approved recovery of Standard Offer Program costs through an EGS participant fee of \$30 per enrolled customer, with any remaining costs recovered in the following manner: (1) fifty percent from EGSs through a 0.2% Purchase of Receivables ("POR") discount; and (2) fifty percent from residential and small commercial default service

¹⁷ *See Investigation of Pennsylvania's Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Order entered Feb. 15, 2013) (the "End State Order"), pp. 12-13.

customers via the GSA.¹⁸ In the DSP IV Order (p. 35), the Commission approved continuation of the SOP including the cost recovery mechanisms approved in the DSP II Orders, as “beneficial” to all customers. During DSP IV, PECO revised its SOP training materials and scripts to incorporate specific disclosures to address the OCA’s concerns regarding the presentation and marketing of the SOP to customers. PECO Statement No. 3, at 16-17. In its Original DSP V Proposal, PECO proposed to extend the SOP during DSP V in the same format as in DSP IV. *Id.*

OCA proposed several changes to the Company’s existing SOP, including revisions to the training materials and scripts for the third-party administrator of PECO’s SOP, Kandela, discontinuance of the use of PECO’s “Smart Energy Choice” brand name for the SOP, and new requirements for participating EGSs to provide their SOP customer rates to PECO in cents per kWh. OCA Statement Nos. 2, at 10-17, and 2S, at 2-3. OCA also proposed that PECO perform a study of the price that SOP customers pay for competitive generation service after the end of the twelve-month contract term. OCA Statement Nos. 2, p. 14, and 2S, at 3-4.

The Electric Supplier Coalition also opposed the use of PECO’s “Smart Energy Choice” brand name and proposed other revisions to the SOP scripts that it believes would increase the attractiveness of the program. In addition, the Electric Supplier Coalition recommended several operational and design changes to the SOP. *See* ESC Statement Nos. 1, at 54-58, and 1-S, at 34-39.

CAUSE-PA, in turn, proposed that PECO amend its SOP to return customers to default service if they do not make an affirmative decision to either stay with their current EGS or select a new EGS at the end of the twelve-month contract. CAUSE-PA also recommended additional outreach to SOP customers about their shopping decisions throughout the duration of

¹⁸ *See Petition of PECO Energy Co. for Approval of Its Default Serv. Program*, Docket No. P-2012-2283641 (Order entered Oct. 12, 2012) (“October 12 Order”). In the October 12 Order, the Commission approved PECO’s DSP II with certain modifications and also directed PECO to submit new proposals for various elements of its proposed retail market enhancements. In response, PECO made a series of compliance filings (December 11, 2012; February 28, 2013; and April 15, 2013), which were approved by a Secretarial Letter issued January 25, 2013, an Order entered February 14, 2013, and an Order entered June 13, 2013, respectively (collectively, the “DSP II Orders”).

the SOP contract to educate them on how to compare offers. CAUSE-PA Statement No. 1, at 27-31.

Under the Settlement, PECO will continue its currently effective SOP, including the cost recovery mechanisms last approved by the Commission in the DSP IV Order, until May 31, 2025. Joint Petition, ¶ 62. To address OCA's and the Electric Supplier Coalition's concerns regarding the current name of the SOP program ("PECO Smart Energy Choice Program"), paragraph 63 of the Settlement provides that within 60 days of the Commission's Order in this proceeding, PECO will change the name of the program to the more neutral "Customer Referral Program." Joint Petition, ¶ 63; ESC Statement in Support at 3-4; OCA Statement in Support at 7; PECO Statement in Support at 26. In addition, in order to address OCA's concerns regarding Kandela's presentation of the SOP to customers, prior to obtaining customer approval to participate in the SOP, customer service representatives will ask for the customer's authorization to enroll with a named supplier. Joint Petition, ¶ 64, OCA Statement in Support at 7; PECO Statement in Support at 26.

PECO will also perform a monthly evaluation of the SOP's third-party administrator's presentation of the SOP and provide any additional training that is necessary to ensure compliance with the Commission-approved customer disclosures. Joint Petition, ¶ 65. This provision also satisfies, in part, another of OCA's recommendations, i.e., that PECO should monitor its own and Kandela's call recordings to ensure that all aspects of the program are being properly explained to customers. OCA Statement in Support at 7-8; OCA Statement No. 2 at 4. Although PECO ultimately rejected OCA's proposal for a study of the price that SOP customers pay for competitive generation service after the end of the twelve-month contract term, the Settlement addresses those concerns in paragraph 66. PECO Statement in Support at 26; OCA Statement in Support at 8-9; OCA Statement Nos. 2 at 14, and 2S, at 3-4. In particular PECO will address OCA's and CAUSE-PA's concerns regarding the prices SOP customers pay for competitive generation service by conducting a customer satisfaction survey of SOP customers prior to filing its next default service program and will convene a collaborative to explore mechanisms to collect EGS pricing information. *See* Joint Petition, ¶ 66; PECO Statement in

Support at 26; CAUSE-PA Statement in Support 5-6; OCA Statement in Support at 8-9; OCA Statement Nos. 2 at 14, and 2S, at 3-4.

The Settlement also adopts certain operational and design changes recommended by the Electric Supplier Coalition. To that end, PECO will provide information about the SOP and how customers may enroll on its website. Joint Petition, ¶ 67. The Company will also allow customers to enroll in the SOP through its website by March 2022, subject to the Joint Petitioners' approval of recovery of the costs associated with system changes necessary to implement web enrollments through a POR discount. See Joint Petition, ¶ 68. The Coalition submitted this proposal as a way of spurring enrollments in SOP, noting that consumers today are increasingly dependent on electronic enrollments or registrations for many products and services. An added benefit of website enrollments is that since no live agent is required, the SOP fee paid by the EGS is not necessary. See ESC Statement in Support at 10; ESC Statement No. 1 at 55. PECO's agreement to permit online enrollments in SOP eases the process for customers and should result in an increase in SOP referrals. ESC Statement in Support at 10

The changes to PECO's current SOP agreed to as part of the Settlement carefully balance the interests of customers and participating EGSs. Accordingly, continuation of the SOP under the Settlement is beneficial to customers and in the public interest.

Residential Customer Bill Improvements

In his direct testimony, CAUSE-PA witness Geller examined historical data regarding the EGS prices that PECO's residential customers have paid over the past five years and concluded that the aggregate EGS charges during that period exceeded PECO's applicable PTC by more than \$733 million. CAUSE-PA Statement No. 1, at 8-16. Based on that conclusion, Mr. Geller requested that PECO redesign the residential customer bill to improve the presentation of shopping information and permit active customer review of the rates they are paying for competitive generation service. *Id.*, at 9, 53. To that end, Mr. Geller proposed various modifications to PECO's residential customer bill, including a stand-alone box on the front of the bill displaying the EGS rate in cents per kWh and the applicable PTC. *Id.*, at 53-54.

To address CAUSE-PA's concern regarding the transparency of shopping information on the residential customer bill, under the Settlement, PECO will convene a stakeholder process to discuss mechanisms to collect EGS pricing information compatible with PECO's "bill ready" system and to develop residential bill improvements. This process will also address EGS recommendations to enhance the presentation of shopping information on residential customer bills.¹⁹ Joint Petition, ¶ 69; PECO Statement in Support at 30-31; ECS Statement in Support at 5; CAUSE-PA Statement in Support at 6. Ensuring that the price a customer pays for electric supply is displayed on the bill is a basic yet critically important step toward ensuring consumers can fairly assess the price they are paying for electric service and make a more informed decision related thereto. CAUSE-PA Statement in Support at 6. As such, this provision of the Settlement is squarely in the public interest.

CAP Shopping

In accordance with the universal service obligations set forth in the Public Utility Code, PECO's Customer Assistance Program ("CAP") assists low-income customers in PECO's service territory through discounted energy bills. PECO's CAP is a special rate rider for customers with an annual household gross income level at or below 150% of the poverty level established under federal law. Under PECO's current Fixed Credit Option program design, CAP customers receive a fixed bill credit each year for the utility service they receive based on their ability to pay regardless of the actual amount of their utility bill. PECO calculates the CAP credit amount using a twelve-month look-back period. PECO's CAP customers are not currently eligible to purchase electric generation supply from an EGS. PECO Statement No. 3, at 3-4.

¹⁹ In testimony presented in this proceeding, the Electric Supplier Coalition proposed a collaborative or series of workshops to consider changes to the default service structure, including steps to transition PECO out of its role as default service provider. *See* ESC Statement No. 1 at 12-14. In support of its proposal, the Electric Supplier Coalition's witness argued that the retail market was "stagnating" and the EGS market was "destined to primarily consist of shorter-run arrangements that undercut the DSP." ESC Statement No. 1 at 6-9. PECO opposed these proposals. *See* PECO Statement Nos. 1-R at 15-16; and 4-R and 32-46. The scope of the stakeholder process agreed to in Paragraph No. 69 of the Joint Petition does not include the possible default service structural changes proposed by the Electric Supplier Coalition.

In accordance with the Commission’s direction in its *Proposed Policy Statement Order*,²⁰ PECO’s Original DSP V Proposal included the CAP Shopping Plan. Thereafter, on July 8, 2020, PECO proposed to change its current CAP to provide a percentage of income-based benefit to CAP customers instead of a fixed credit.

Under the Original DSP V Proposal, an EGS serving residential customers in PECO’s service territory would have the opportunity to enroll CAP customers and provide them with electric generation service, subject to the following key CAP Shopping Plan requirements:

- **Restrictions on CAP Rates and Limitations on EGS-CAP Customer Contracts.** First, consistent with the *Proposed Policy Statement Order*, PECO proposed that a participating EGS (a “CAP Supplier”) must charge CAP customers a rate for generation service that is at or below the PECO PTC for residential customers during the entire contract term. Under PECO’s original proposed Plan, EGSs serving CAP customers also may not enter into contracts that impose early cancellation and termination fees or other fees unrelated to generation service. This prohibition incorporates the Commission’s guidance in the *Proposed Policy Statement Order* and ensures that the overall rate charged to a CAP customer does not exceed PECO’s PTC. PECO Statement Nos. 3, at 5-6, and 3-R, p. 4.
- **Other Obligations for EGSs Who Choose to Serve CAP Customers.** PECO proposed that EGSs must electronically submit a notice of intent to participate or discontinue participation as a CAP Supplier (a “CAP Notice”), at least ten days before the start of the calendar month. Under PECO’s original proposal, EGSs that execute a CAP Notice must agree to comply with all Plan requirements, including pricing limitations for CAP customers. PECO’s proposed Plan included several other requirements for CAP

²⁰ *Elec. Distribution Company Default Serv. Plans – Customer Assistance Program Shopping*, Docket No. M-2018-300658 (Proposed Policy Statement Order entered Feb. 28, 2019) (“*Proposed Policy Statement Order*”). The CAP shopping requirements outlined in the *Proposed Policy Statement Order* (pp. 5, 9-10) include (1) a CAP shopping product rate at or below the EDC’s PTC for the duration of the contract; (2) a prohibition in EGS-CAP customer contracts against fees unrelated to the provision of electric generation service, including early termination and cancellation fees; and (3) the following options for CAP customers upon expiration of the current contract period: enter into another contract with their existing EGS with the same CAP protections, switch to another supplier offering a contract with the same CAP protections, or return to default service.

Suppliers, including use of PECO's "bill-ready" EDC consolidated billing for all shopping CAP customers and publication of their CAP rates on PAPowerSwitch.com. PECO Statement Nos. 3, at 7-9, and 3-R, p. 5.

- **Contract Expiration and Change Notice Procedures.** In accordance with the *Proposed Policy Statement Order*, PECO proposed the following options for CAP customers at the end of the contract term: renew the contract with their existing EGS at a new Plan-compliant CAP rate, switch to another supplier offering a Plan-compliant CAP rate, or return to default service. PECO Statement No. 3 at 9-10.

PECO proposed to begin Plan implementation following the receipt of at least five CAP Notices to ensure verifiable supplier interest in serving CAP customers in PECO's service territory. PECO Statement Nos. 3 at 13-14; and 3-R at 4-5. PECO would not be responsible for monitoring and enforcing the Plan's limitations on EGS contracts. PECO Statement Nos. 3 at 11; and 3-R at 6-8.

CAUSE-PA and TURN *et al.* opposed the implementation of a CAP shopping platform in PECO's service territory and presented data showing that PECO's residential customers, including non-CAP confirmed low-income customers, have paid generation service rates greater than PECO's PTC since 2015. While they recognize that PECO's proposed Plan is consistent with the *Proposed Policy Statement Order*, CAUSE-PA and TURN *et al.* contended that PECO's Plan is deficient because, in their view, it does not include adequate monitoring and enforcement mechanisms for EGS compliance with the Plan's pricing restrictions to ensure full universal service protections and affordability of service. If CAP shopping is implemented in PECO's service territory as part of DSP V, CAUSE-PA and TURN *et al.* recommended that the Commission require PECO to actively monitor EGS CAP rates, automatically reject CAP customer enrollment requests for noncompliant offers and return all CAP customers with noncompliant offers to default service during or at the end of the contract term. *See* CAUSE-PA Statement No. 1, at 10-20, 40-53; TURN *et al.* Statement Nos. 1, at 5-14, and 1-SR, at 2-5.

The Electric Supplier Coalition expressed concerns with PECO's proposed implementation timeline for the Plan and the requirement for EGSs to post their CAP rates on

PaPowerSwitch.com. The Electric Supplier Coalition also opposed the Company's proposal to require the receipt of five nonbinding CAP notices from EGSs before Plan implementation. ESC Statement No. 1, at 60-61, and 1-S at 40-42. In turn, OCA urged that stakeholders be given the opportunity to review the Company's CAP shopping customer education materials prior to implementation of the program. OCA Statement No. 2 at 4-5.

The Settlement represents a compromise developed by the Joint Petitioners concerning the design of a CAP shopping platform in PECO's service territory. On July 8, 2020, PECO filed a proposal with the Commission to change its CAP design. Under the Settlement, PECO will submit a CAP shopping proposal following the Commission's final Order in the CAP Design Proceeding instead of implementing the Plan as described in the Original DSP V Proposal. *See* Joint Petition, ¶ 70. Coordination of PECO's CAP shopping platform design with the future Commission-approved CAP design will allow the parties and the Commission to efficiently consider all issues related to PECO CAP customer shopping fully informed by currently available data. PECO Statement in Support at 30; CAUSE-PA Statement in Support at 7; TURN *et al.* Statement in Support at 4.

2. PARTIES' RESPONSES REGARDING THE APPROVAL OF
THE ENTIRE PARTIAL SETTLEMENT

PECO

PECO avers that its revised DSP V embodied in the Settlement builds on the successful products and programs approved by the Commission in DSP IV and will allow PECO to continue to meet its default service obligations and to further enhance the retail electric market. Moreover, the Settlement terms have been carefully designed to resolve, in a reasonable fashion, the issues and concerns that were raised by the testimony in this case without the need for additional costly litigation. Accordingly, PECO asserts that the Settlement is in the public interest and should be approved without modification. PECO Statement in Support at 31-32.

OCA

The OCA submits that the Joint Petition for Partial Settlement represents a reasonable resolution to the Company's DSP V filing. It provides for use of a proven approach and methods for procurement of the default supply portfolio for residential customers. Through its solicitation for ten-year contracts for solar AECs, it proposes to mitigate a potentially price-volatile component of the default service portfolio. It allows for a Time of Use rate structure that will more accurately reflect recent price history and provides protection for vulnerable customers for whom Time of Use rates may not be appropriate. It builds important protections into the Standard Offer Program designed to ensure that customers will have a better understanding of the program from which to make their decision whether to enroll. Finally, it provides for stakeholders to engage in a process to make PECO's customer bill more informative and provide shopping information that is clear and transparent to customers. In view of these beneficial provisions, the OCA submits that the proposed Partial Settlement is in the public interest and in the best interest of the Company's ratepayers and should be approved by the Commission.

OCA Statement in Support at 10.

OSBA

The OSBA is a signatory to the Partial Settlement and urges the Commission to approve it without modification. OSBA Statement in Support at 3. The Partial Settlement details the terms of the agreed upon procurement plan in Paragraphs 14 through 25. These terms were evaluated by OSBA and were found to be reasonable and to offer sufficient protections to the Small Commercial Class. Additionally, the OSBA determined that the procurement terms and schedule for the Small Commercial Class FPRP contracts will provide price stability benefits and customer protection to the Small Commercial Class. OSBA Statement in Support at 4. Finally, OSBA agrees with PECO's rate design for Small Commercial Customers as detailed in Paragraphs 37 through 61 of the Partial Settlement. OSBA Statement in Support at 5. Thus, the OSBA determines that the Partial Settlement is in the best interests of PECO's Small Commercial default service customers.

PAIEUG

PAIEUG states that the Partial Settlement serves the public interest by resolving claims against PECO's DSP V through settlement which is more cost effective than pursuing all of these issues further through litigation. In addition, some uncertainties regarding further expenses associated with possible appeals from the Final Order of the Commission are avoided as a result of the partial Settlement. The Settlement results in terms and provisions that present a just and reasonable resolution of the large majority of issues set forth in PECO's proposed DSP V. PAIEUG notes that the Partial Settlement reflects compromises on all sides presented without prejudice to any position a party may advance in future proceedings involving PECO. 52 Pa.Code § 69.391; see also 52 Pa.Code § 5.231; PAIEUG Statement in Support at 3.

Electric Supplier Coalition

In supporting the Partial Settlement on the remaining issues, the Electric Supplier Coalition notes that it does not resolve all of the Coalition's issues and concerns described in the Coalition's testimony. However, ESC submits that the Partial Settlement represents improvements on some aspects of PECO's DSP V filing. ESC Statement in Support at 2-3. According to the Coalition, the most significant improvements contained in the Partial Settlement are related to PECO's Standard Offer Program as PECO has agreed to change the brand name for the SOP from "PECO Smart Energy Choice" to "Customer Referral Program and to allow customers to enroll in the SOP through its website, while waiving the SOP referral fee for web-enrollments. ESC Statement in Support at 3-4. The Coalition also supports PECO's willingness to convene with stakeholders to discuss residential customer bill improvements to ensure that shopping information is clear and transparent. *Id.* at 4-5. In addition, the Partial Settlement reduces the administrative burden and costs to resolve the numerous issues that were raised during the proceeding. For these reasons, the Coalition concludes that the Partial Settlement is in the public interest and should be adopted. Thus, the Coalition respectfully requests that the Partial Settlement be approved without modification. *Id.* at 2-3.

TURN *et al*

According to TURN *et al.*, the Partial Settlement reflects concerted efforts by all parties to find common ground and reasonable compromise. It includes important protections for low-income customers, stakeholder processes to address matters of concern in the near future and maintains PECO's role in billing and providing default service. All of these provisions are in the public interest and should be approved. Moreover, the Joint Petition addresses the majority of concerns raised by all parties, with the exception of two issues reserved for briefing, reflecting the shared views the parties have found regarding PECO's DSP V program. TURN *et al.* submit that approval of the Joint Petition provides the additional benefits of avoiding the time, cost and burden of litigation. Furthermore, approval of the Joint Petition is consistent with Commission policy in encouraging negotiated settlements. TURN *et al.* Statement in Support at 5-6.

CAUSE-PA

CAUSE-PA submits that the Settlement, which was achieved by the Joint Petitioners after an extensive investigation of the Company's filing, is in the public interest and should be approved. Acceptance of the Settlement avoids the necessity of further administrative and possibly appellate proceedings regarding the settled issues at what would have been a substantial cost to the Joint Petitioners and the Companies' customers. Accordingly, CAUSE-PA requests that the Commission approve the Settlement without modification. CAUSE-PA Statement in Support at 8.

Calpine

Calpine states that it is concerned with issues that affect competitive markets in Pennsylvania, including the structure of the default service, utility affiliate participation, long term contracting of renewables and programs that could potentially harm or become a disincentive to create customized and innovative competitive retail electric products and services for its current and prospective customers. Calpine supports the Partial Settlement because, from its perspective, it does not do any harm to the competition issues that Calpine is interested in. Calpine Statement in Support at 1-2.

C. DISPOSITION

Environmental Stakeholders is the only party that objected to the Joint Petition. This objection is denied as discussed in Section VI, *infra*. The Joint Petitioners have shown that the provisions in the Joint Petition are reasonable compromises. The Joint Petition reduced litigation expenses because only one issue, allocation of NITS charges, was reserved for briefing. The OCA stated that the terms of the Joint Petition benefit the residential customers. The OSBA indicated that the terms of the Joint Petition benefit the small and medium commercial customers. Turn *et al.* stated that the Joint Petition offers important protections for low-income customers, stakeholder processes to address matters of concern in the near future and maintains PECO's role in billing and providing default service. PAIEUG and CAUSE-PA submits that the Settlement was achieved after an extensive investigation of the Company's filing and is in the public interest. In addition, Calpine supports the Joint Petition because it is not damaging to its interests, and finally, ESC submits that the Partial Settlement represents improvements on SOP and customer billing information.

After considering the Joint Petition for Partial Settlement, including the compromises on procurement plans, the consolidation Large Commercial and Industrial Class into a single procurement group, the TOU product structure and rate design, the allocation of TOU implementation costs, the additional SOP disclosures and stakeholder meetings, the continuation of programs approved during the DSP IV proceeding, and the savings achieved by not litigating the case fully, I conclude that the Partial Settlement, and the TOU Settlement, are fair, just, reasonable and in the public interest. Accordingly, I recommend that the Joint Petition for Partial Settlement, inclusive of the TOU Settlement, be approved without modification.

VI. ENVIRONMENTAL STAKEHOLDERS' OBJECTION TO THE PARTIAL SETTLEMENT

The Environmental Stakeholders filed a Main Brief opposing PECO's DSP V on the grounds that: 1) the Company failed to properly analyze and incorporate 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; and 2) the Company's proposed DSP V 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 was the only party who addressed the Environmental Stakeholders' objection in its Briefs. Their respective positions are presented below:

A. ENVIRONMENTAL STAKEHOLDERS' OBJECTIONS

1) Environmental Stakeholders' Proposal For A New Default Service Analysis

It is the Environmental Stakeholders' position in this proceeding that the Company failed to properly analyze and incorporate long-term renewable energy supply contracts in its preparation of the DSP V plan. According to them, such contracts are "perfectly aligned" with PECO's statutory requirement to supply adequate and reliable service at least cost over time to its default service customers.

In particular, the Environmental Stakeholders take issue with PECO's plan to procure supply for DSP V exclusively through short-term contracts and spot market purchases. ES Statement No. 1, at 15; Tr. 319. They acknowledge that PECO proposes to use long-term contracts for the procurement of a portion of the solar alternative energy credits ("SAECs") that PECO is required to obtain under the AEPS Act. More specifically, PECO proposes to procure new ten-year SAEC contracts for DSP V to replace existing ten-year SAEC contracts that will be expiring by the end of DSP IV. Petition at 6. However, the Environmental Stakeholders point out PECO's proposed procurement plan does not include any use of long-term contracts to supply customer load, 100% of which is met through a combination of short-term contracts and spot market purchases. ES Statement No. 1 at 21; ES Main Brief at 11-12.

Further, they argue that PECO's reliance on short-term contracts reflects a continuation of a pattern that has characterized PECO's default service procurement approach for

over a decade. ES Statement No. 1 at 17. Similar to the proposed DSP V, the designs of DSP I-IV, which cover the period from June 1, 2011 to May 31, 2021, relied exclusively on short-term contracts and spot market purchases to meet load needs. ES Main Brief at 12.

The Environmental Stakeholders maintain that incorporating long-term contracts for supply would be a prudent means of ensuring least cost over time to customers. They argue that Act 129 reflects a legislative intention to move away from default service procurements that track the short-term movements of the market, and towards an approach in which default service procurements ensure least cost over a longer span of time. In addition, they acknowledge that Act 129 did not define “least cost” but maintain that the concept of “least cost” cannot be reduced simply to “least price.” Instead, they claim that the preamble to Act 129 supports their argument that the concept of “least cost” should be understood to incorporate consideration not only of price, but also price stability.²¹; ES Main Brief at 13.

According to the Environmental Stakeholders, when long term-contracts can be obtained at a favorable price, they offer an ideal means of locking in both price and price stability benefits for customers over a long-term time period. In particular, they argue that long-term contracts for supply from renewable energy resources offer a prudent means of ensuring the statutory mandates of Act 129 are met. ES Main Brief at 14.

The Environmental Stakeholders explain that prices for renewable energy have plummeted in the last ten years. ES Statement No. 1 at 10. Additionally, due to the low and stable marginal operating costs of renewable energy resources such as solar and wind, these resources can offer fixed price (or known variable) long-term contracts on more attractive terms than fossil fuel resources. *Id.* at 18. As a result of these attributes, the Environmental Stakeholders conclude that long-term contracts for renewable supply can offer a prudent and cost-effective hedge against rising prices and price volatility over time. ES Main Brief at 14.

²¹ *Final Rulemaking Order, In Re Implementation of Act 129 of Oct. 15, 2008, Default Serv. And Retail Elec. Mkts, Docket No. L-2009-2095604*, (Order entered September 22, 2011) (“Second Default Service Rulemaking Order”) at 60.

The Environmental Stakeholders argue that, while PECO’s design of blending and overlapping one- or two-year contracts can mitigate some short-term price volatility, it does not ensure protection against rising prices and price volatility over time. Therefore, adding long-term contracts into the supply mix would be a prudent means of ensuring against those risks. *Id.* at 18. They draw attention to the Commission’s Second Default Service Rulemaking where it noted that: “We do not endorse, at this time, the position of those parties that recommend solely a mix of just short and intermediate term contracts and spot purchases as that unduly limits the range of supply products available.” ES Statement No. 1 at 18; ES Main Brief at 14-15.

Next, the Environmental Stakeholders reject PECO’s argument that “the number of default service customers constantly fluctuates,” and the “uncertainty about default service load levels” are the reasons why the Company is not incorporating long-term contracts into the default service supply mix. ES Statement No. 1 at 18; Second Default Service Rulemaking Order at 38. They point out that the number of default service customers in PECO’s service territory has been remarkably stable over the past decade:

DSP	Time Period	Average Number of PECO Customers on Default Service	Average Percentage of PECO Customers on Default Service
DSP I	01/01/11-05/31/13	1,236,830	75.15%
DSP II	06/01/13 - 05/31/15	1,054,861	66.18%
DSP III	06/01/15 - 05/31/17	1,040,558	64.4%
DSP IV	06/01/17 - Present	1,117,044	67.68%

Exhibit KRR-SR1; ES Main Brief at 15.

Given the stability of default service enrollment, the Environmental Stakeholders find it difficult to imagine a fluctuation of a magnitude large enough to rule out any incorporation of long-term contracts at all for fear of insufficient load to meet them. Furthermore, they maintain that a practical means of addressing PECO’s concern about fluctuations in the number of default service customers over time would be a prudent mix of both

short-term and long-term contracts and not the total exclusion of any long-term contracts. ES Main Brief at 16.

In addressing PECO's fear of locking in a long-term contract whose price "is ultimately above market levels" as a reason not to incorporate long-term contracts, the Environmental Stakeholders point out that the Commission has recognized that price stability has its own value as a component of least cost over time. Thus, even if a long-term contract may start out above market levels or may from time to time be above the prevailing market price, it can still be a prudent means of adding price stability to the supply mix. ES Statement No. 1 at 17. They maintain that a prudent mix should contain both short-term and long-term contracts as a hedge against the future. ES Main Brief at 17.

In addition, the Environmental Stakeholders maintain that the Commission has instructed that the "least cost over time" standard creates "an affirmative obligation to assess which products will produce the lowest cost to customers." Second Default Service Rulemaking Order at 39. In their view, this "affirmative obligation" means that PECO may not simply speculate that long-term contracts might have a higher price than the prevailing market price, but must make a fact-based evaluation about the benefits and costs of different proportions of long-term contracts in its "mix of resources" for default supply. Second Default Service Rulemaking Order at 35; ES Main Brief at 17.

The Environmental Stakeholders advance their argument in favor of long-term contracts for supply from renewable energy resources being incorporated in PECO'S DSP V by arguing that this would be a prudent means of ensuring adequacy and reliability of service. They state that a default service provider's "prudent mix" of contracts must be "designed to ensure...adequate and reliable service." 66 P. C.S. § 2807(e)(3.4)(i). According to them, reliability is a key concept of default service that means ensuring the provision of electricity needed by customers despite outages and emergencies. They further explain that the requirement that a default service provider design its default service plan to ensure adequate and reliable service is also tied into the legislative objectives of Act 129. Act 129's preamble states that "[i]t is in the public interest...to implement energy procurement requirements designed to

ensure...affordable and *available* electric service to all residents.” Act 129 (emphasis added). As such, the Environmental Stakeholders maintain that default service procurement plans be designed to ensure reliable, affordable, and available electricity to all Pennsylvania residents was a central concern for the General Assembly. ES Main Brief at 17-19.

According to them, it makes sense that the statute requires default service providers to consider how their procurement choices can help ensure reliability because default service providers function as a “reliable safety net.” *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, 233 A.3d 936, 952 (Pa. Cmwlth. 2020). The Environmental Stakeholders explain that, if a customer contracts with an EGS, and the EGS does not provide service, a customer has the right to receive default service from the default service provider. 66 Pa. C.S. § 2807(e)(3.1). If the default service provider fails to deliver, there is no further mandatory backstop; a customer may look to the market to see if an EGS can provide more attractive terms, but a customer has no right to service from an EGS. Consequently, default service providers are the providers of last resort for customers, which is why they must take their responsibilities to design their procurement in a way that ensures reliability seriously. ES Main Brief at 19.

The Environmental Stakeholders advocate for the need to examine the reliability characteristics of different potential sources of generation supply in order to evaluate the prudence of a procurement design with respect to reliability. ES Statement No. 1 at 24. They explain that there are numerous ways in which the reliability characteristics of different sources of generation supply can be assessed. *Id.* at 24. First, resources can be assessed in terms of their availability, which refers to the percentage of time that the resource is operational as projected. *Id.* As part of assessing availability, the vulnerability of the resource to fuel supply disruptions, as may occur in emergencies and extreme weather events, should be evaluated. *Id.* Second, the reliance of the resource on transmission infrastructure, which can also be disrupted by emergencies and extreme weather events, can be evaluated as part of a reliability assessment. *Id.* at 26. Such an approach to assessing the reliability characteristics of supply resources aligns closely with the statutory definition of reliability, which requires attention to how procurement choices can help maintain service despite “scheduled and unscheduled outages of system facilities” and “emergencies.” 66 Pa. C.S. § 2803; ES Main Brief at 20.

The Environmental Stakeholders claim that, when assessed by these metrics, renewable energy resources tend to provide high reliability. They explain that renewable resources tend to have high availability because they are mechanically simple in design and less subject to breakdown and maintenance downtime as compared to fossil fuel resources. ES Statement No. 1 at 24. Renewable resources also do not rely on fuel supplies as fossil fuel resources do and thus offer advantages in maintaining reliability despite fossil fuel supply disruptions. *Id.* Finally, the Environmental Stakeholders explain that distributed renewable resources configured as microgrids can offer reliable supply through emergencies and extreme weather events that may impair transmission infrastructure, since they can be situated close to load and thus do not need to rely on transmission. ES Statement No. 1 at 26; Tr. at 375. Accordingly, incorporating some long-term contracts into the default service supply mix is a prudent means of allowing customers to obtain the reliability benefits of renewable energy on favorable pricing terms. In their opinion, such reliability benefits are significant in a changing climate with increased extreme weather events. ES Main Brief at 20-21.

Despite these benefits, the Environmental Stakeholders aver that PECO has not evaluated the potential reliability benefits of long-term supply contracts. ES Statement No. 1 at 24; ES Statement 1-S at 9. Instead they claim that PECO relies solely on supply contract terms and conditions as means of ensuring reliability for customers. ES Statement No. 1-S at 5. According to the Environmental Stakeholders, such measures do not necessarily shield customers from outages and emergencies affecting generation, transmission, or distribution infrastructure. *Id.* Therefore, incorporating long-term contracts with utility-scale and distributed renewable energy resources would be a prudent way of meeting Act 129's requirement to ensure against such risks to adequacy and reliability of service. ES Main Brief at 21-22.

Additionally, the Environmental Stakeholders argue that the Commission has held that a prudent mix of contracts should be tailored to the character of a service territory's customer base. They note that a continuing theme in the Commission's guidance on default service procurement is the need for flexibility in interpreting the "prudent mix" standard in order to accommodate the character of a service territory's customer base. As the Commission emphasized in its Second Default Service Rulemaking Order, default service providers need to

“design a procurement plan that best fits the character of the customer base and the service territory,” which the Commission will review on a “case by case basis.” Second Default Service Rulemaking Order at 44. This “case by case” review, the Commission has explained, is one in which consideration of “input from stakeholders is assured.” Second Default Service Rulemaking Order at 60; ES Main Brief at 22-23.

To that end, the Environmental Stakeholders claim that the stakeholders in PECO’s service territory have expressed strong preferences for increased renewable energy in the default service supply mix. They note that at the June 9, 2020 Public Input Hearing in this proceeding, PECO customers testified overwhelmingly in favor of changes to PECO’s default service procurement plan that would facilitate the inclusion of increased amounts of renewable energy. At the hearing, 35 witnesses provided approximately six hours of testimony. Thirty-four out of 35 of the witnesses testified in favor of changes to PECO’s proposed default service procurement plan to incorporate more renewable energy, and the sole remaining witness testified that she did not feel qualified to assess the role of renewable energy in PECO’s default service plan. ES Main Brief at 23-28, and Attachment 1 to ES Main Brief.

The Environmental Stakeholders claim that, given these stakeholder preferences for increased amounts of renewable energy in PECO’s default service supply mix, a prudent way to respond to those preferences would be including more long-term contracts in the procurement plan, which would facilitate the procurement of renewable energy. They note that one of the key competitive advantages of renewable energy resources like solar and wind is that they have very low and stable marginal operating costs, as they are not reliant on fuel in the way that fossil fuel resources are. ES Statement No. 1 at 17; ES Main Brief at 28.

However, the Environmental Stakeholders point out that these price advantages of renewable energy resources emerge most fully over the term of a long-term contract (i.e., longer than four years). ES Statement No. 1-S at 15. As a result, PECO’s proposed procurement plan, which requires bidders to bid based exclusively on prices for 1 or 2 year periods, functions as a discriminatory barrier to renewable energy resources that could offer significant price and price stability advantages over a longer period. *Id.* at 15. According to them, the fact that PECO has

never once received a bid submission that reflected 50% or more renewable energy content, given the explosive growth in renewable energy development in the last four years, likely reflects discriminatory barriers resulting from a procurement process based exclusively on short-term contracts. ES Statement No. 1 at 13; ES Main Brief at 29.

Moreover, the long-term supply contracts for renewable energy have the additional benefit of lowering overall costs of renewable energy in the market and supporting the financing of additional development, which is also aligned with stakeholder preferences. ES Statement No. 1 at 30; Tr. at 244. In fact, the Environmental Stakeholders aver that, “if the Company procured supply from renewable energy and distributed renewable energy facilities, the market for those resources would grow.” ES Statement No. 1 at 30. By providing revenue certainty, long-term contracts can decrease financing risk and enable developers to finance renewable energy generation at lower interest rates. *Id.* at 10. Since renewable energy costs are largely driven by capital, rather than fuel costs, the interest rates of project financing are paramount to the cost of energy. ES Statement No. 1 at 17; Tr. 206; ES Main Brief at 29.

The Environmental Stakeholders posit that the market impacts of PECO’s default service supply choices can be significant, as PECO has consistently supplied about 2/3 of its customers with default service over the past ten years, which represents a large procurement. *See supra* (the chart of DSP average numbers); ES Statement No. 1 at 13. As such, they argue that modifications to incorporate long-term contracts could have a substantial effect in helping develop the market for renewable energy supply in accordance with stakeholder preferences. ES Main Brief at 30.

The Environmental Stakeholders argue that this would also be in alignment with the policies of municipalities in PECO’s service territory and Commonwealth policies, which support decarbonization and increased renewable energy deployment, and which, as public policies, also represent stakeholder preferences and the public interest. ES Statement No. 1 at 7; Tr. 288. At the municipal level, this includes resolutions committing to achieve 100% renewable

electricity by the City of Philadelphia and over 20 municipalities in Philadelphia’s suburbs.²² Tr. 288; ES Main Brief at 30.

At the Commonwealth level, this includes Executive Order 2019-01, committing the Commonwealth to an 80% reduction in greenhouse gas emissions by 2050 and Executive Order 2019-07, directing the Commonwealth to begin the process of joining the Regional Greenhouse Gas Initiative. ES Statement No. 1 at 7. The Environmental Stakeholders also note that the General Assembly, in the preamble to Act 129, declared that “the health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and *environmentally sustainable* electric service at the least cost, taking into account any benefits of price stability over time and the *impact on the environment.*” Act 129 (emphasis added). As such, identifying prudent means of removing barriers to fair competition by renewable energy resources in winning default service supply contracts is well-aligned with stakeholder preferences and the public interest as reflected in public policies. ES Main Brief at 30-31.

In light of the above considerations, the Environmental Stakeholders propose that PECO be required to study the potential benefits to customers of long-term contracts for supply. They point out that markets have changed significantly over the past ten years, but PECO’s short-term contracting approach has not. ES Statement No. 1 at 10. They argue that, while PECO has cited potential risks of long-term contracts, it has not actually engaged in a study of costs and benefits of long-term contracts under current market conditions. ES Statement No. 1 at 17; ES Main Brief at 31.

According to the Environmental Stakeholders, a study that could correct this information gap should include a comprehensive and objective analysis of current market opportunities for supply and a rigorous fact-based assessment of the full range of advantages and disadvantages offered by long-term contracts in light of cost over time, reliability, price stability, stakeholder preferences, policy trends, and other factors as appropriate. ES Statement No. 1 at

²² City of Philadelphia Resolution No. 190728.

37. This study should be informed by an active stakeholder process with formal mechanisms for soliciting information from stakeholders, such as a request for information and the solicitation of comments. *Id.* In turn, this stakeholder process should include measures designed to facilitate participation by environmental justice communities within PECO's service territory, including educational outreach, translation/interpretation as needed, and accessible locations and times of meetings. ES Main Brief at 31-32.

Such a study could inform amendments to PECO's proposed DSP V procurement plan, and PECO should be required to phase in modifications to its procurement plan that are warranted by the study as soon as practicable after the completion of the study. ES Statement No. 1 at 28. Given the 1-2-year tenors of the contracts that PECO intends to rely upon for procurement in DSP V, the Environmental Stakeholders propose that this be accomplished by midway through the DSP V period. ES Statement No. 1 at 28; ES Main Brief at 32.

Importantly, the Environmental Stakeholders claim that such a study could also serve as a means of providing valuable data to the Commission to inform the further development of its default service program guidance. One of the issues considered by the Commission in its recent *Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms* was "the prudence of long-term contracts in today's evolving marketplace." January 2020 Secretarial Letter at 7. After collecting comments reflecting different positions, the Commission concluded that "long-term contracts need to be carefully considered and that we need to consider this topic further in upcoming DSP proceedings." *Id.* at 8. Accordingly, a study on long-term contracts of the type proposed here is an ideal means of meeting this need and is precisely aligned with the Commission's interest in further examining the prudence of long-term contracts through the lens of a particular default service provider. ES Main Brief at 32.

The Environmental Stakeholders argue that, while such a study could help investigate matters of particular interest to PECO's stakeholders, the process of doing so could help illuminate questions of statewide concern. Notably, the study could provide a basis for

initiating a statewide proceeding that could lead to further developed guidance on default service procurement practices. ES Main Brief at 33.

Moreover, the Environmental Stakeholders claim that the present is the perfect time to start such a study. Doing so would provide sufficient time to complete the study and incorporate its findings into the procurement plan that is proposed for DSP VI. According to them, waiting until the start of the litigation period for DSP VI to address such concerns would be waiting too long, for several reasons. First, the litigation period for a DSP is too short for the full development, including stakeholder participation, of a study of the type required. Second, as noted by many commenters at the Public Input Hearing, climate change is an urgent matter for Pennsylvanians, and it is not prudent to wait to study potential means of addressing stakeholder preferences for more renewables in their default service supply mix. ES Main Brief at 33.

2) TOU Default Service Rate Options

The Environmental Stakeholders request that PECO be required to improve its TOU rates by performing a cost-benefit analysis and by further tailoring them to support heavy electric vehicles and building electrification. They explain that under the Public Utility Code, default service providers with 100,000 or more customers are required to offer TOU rates to all customers that have been provided with smart meter technology. 66 Pa.C. S. § 2807(f)(5). As the Commission recently noted, “[t]he Commonwealth of Pennsylvania has invested a significant amount of customer funded utility resources in smart meter technology.”²³ Well-designed TOU rates can help provide value for this investment by “rewarding customers in a timely manner for positive behaviors.”²⁴ ES Main Brief at 33-34.

The Commission has issued guidance on TOU rate designs and development, including an example TOU rate design from which EDCs are granted broad flexibility to deviate,

²³ *Investigations into Default Service and PJM Interconnection, LLC. Settlement Reforms*, Docket No. M-2019 3007101 (Order entered January 17, 2019), at 2.

²⁴ *Id.* at 3.

provided such modifications comply with applicable law and are “supported by facts.”²⁵ Additionally, the Commission’s January 23, 2020 Secretarial Letter noted that “TOU rates, especially in the context of EV expansion, need to be explored further,” and urged “all parties participating in the upcoming DSP proceedings to consider how EV specific TOU rate offerings could be made available to consumers.” January 2020 Secretarial Letter at 6; ES Main Brief at 34.

However, the Environmental Stakeholders maintain that PECO’s proposed TOU rate for DSP V fails to meet these requirements. In their view, PECO has omitted any cost-benefit analysis from its TOU rate development, making it impossible to determine whether the rate actually has any potential to advance the purposes for which it is required. ES Statement No. 1 at 32; ES Statement No. 1-S at 20; Tr. 410. They also point out that even the Smart Time Pricing Pilot, which served as learning experience for PECO with regard to its TOU rate design, ran for only two months, seven years ago, and did not contain any cost-benefit analysis. ES Main Brief at 34.

According to the Environmental Stakeholders, a well-designed TOU rate should operate “as an incentive mechanism” to achieve the legislative goals of energy efficiency, energy conservation, and advancement of alternative energy sources mandated by Act 129. ES Statement No. 1 at 31. They maintain that a robust cost-benefit analysis is necessary to inform incentive levels, and to determine and encourage program participation and results worth the program’s expense. ES Statement No. 1-S at 20. However, in the Environmental Stakeholders’ view PECO has failed to meet the mandate of Act 129, its general statutory duty to provide default service at the least cost to customers over time, and the Commission’s subsequent TOU rate guidance by failing to incorporate any meaningful cost-benefit analysis into its TOU rate development. ES Main Brief at 34-35.

According to the Environmental Stakeholders, PECO also failed to analyze the TOU rate’s potential to advance adoption of medium- and heavy-duty EV fleets considering their

²⁵ *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Apr. 6, 2017) (“April 2017 Secretarial Letter”).

different needs. ES Statement No. 1 at 35; Tr. 410, 412. They argue that the introduction of a TOU rate incentivizing EVs presents “a significant opportunity to secure direct and co-benefits from electrification medium- and heavy-duty vehicles like buses, garbage trucks, delivery and shuttle vans, and other fleet vehicles in the Company’s service territory.” ES Statement No. 1 at 35; ES Main Brief at 35.

To drive home the importance of these new technologies, the Environmental Stakeholders explain that electrification of these types of diesel-fueled fleets can provide significant air quality and public health benefits to the communities in which they operate and the individuals who spend the most time in or around the vehicles (e.g., drivers of buses and garbage trucks, bus commuters, etc.). ES Statement No. 1 at 35; Exhibit KRR-10. The Environmental Stakeholders state that a TOU rate design tailored to the needs of these fleet vehicles would incorporate “a thorough understanding of duties cycles, charging infrastructure, and other factors,” which are more complex and offer different potential benefits than those of individual passenger EVs. ES Statement No. 1 at 35. According to them, a robust cost-benefit analysis is crucial both in meeting the requirements of Act 129 underlying the mandate to offer a TOU rate, while also meeting the requirement of the Competition Act to provide default service at the least cost to customers over time. ES Main Brief at 35-36.

Additionally, in service of the legislative purposes of Act 129, the Environmental Stakeholders propose that PECO explore offering a TOU rate tailored to incentivize adoption of electric end-use technologies that would replace gas appliances for space and water heating and indoor cooking. ES Statement No. 1 at 34. According to the Environmental Stakeholders, adoption of building electrification measures such as distributed generation, heat pump water heaters, and behind-the-meter battery storage systems “can effectively reduce peak consumption or shift building consumption off-peak with minimal disruption to lifestyle,” and provide a means of energy conservation, while providing reductions in both indoor and outdoor air pollution and reducing societal reliance on fossil fuels. ES Statement No. 1 at 34-34; Exhibit KKR-10; Tr. 116, 121, 122. Therefore, tailoring of the TOU rate to gain the most efficient energy conservation benefits, including potentially through adoption of building electrification measures, should be an integral part of TOU rate development. ES Main Brief at 36-37.

In view of the above, the Environmental Stakeholders request that the Commission condition its approval of the proposed TOU rate upon PECO's commitment to performing a detailed and comprehensive evaluation of the results and impacts of the rate. Additionally, the Environmental Stakeholders request that the Commission direct PECO to develop, informed by a cost-benefit analysis, proposals for additional TOU rate pilots directed at the electrification of medium- and heavy-duty EVs, including fleets, and at beneficial electrification of buildings, including direct thermal loads currently served by gas. ES Main Brief at 37.

B. PECO'S POSITION

1) **The Environmental Stakeholders' Proposal For A New Default Service Analysis**

PECO argues that its proposal to utilize staggered 12- and 24-month full requirements contracts for the Residential and Small Commercial classes, spot contracts primarily for the Consolidated Large Commercial and Industrial ("C&I") class, and long-term contracts to satisfy a portion of its AEPS Act obligations, is consistent with the "prudent mix" of contracts approved by the Commission in DSP IV and will continue to appropriately manage price volatility. PECO Main Brief at 11. PECO maintains that its plan represents a prudent mix of contracts designed to provide adequate and reliable service at least cost over time. To that end, the Company explains that it considered the risks and benefits of long-term contracts when developing its procurement plan, especially in light of prior Commission findings and the Company's own experience with PECO's first four default service programs. *Id.*

According to PECO, this proceeding follows a comprehensive default service rulemaking by the Commission,²⁶ an extensive retail markets investigation,²⁷ and other

²⁶ *Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. L-2009-2095604 (Final Rulemaking Order entered Oct. 4, 2011) ("*Final Rulemaking Order*").

²⁷ *Investigation of Pennsylvania's Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Final Order entered Feb. 15, 2013) ("*Retail Markets Investigation*").

Commission proceedings in which the Commission and interested stakeholders have considered the use and EDC management of long-term contracts. *See* PECO Main Brief at 11; PECO Statement No. 1-R at 5-8; PECO Statement No. 4-R at 25-28. In its argument, PECO points out that the Commission has never mandated that EDCs procure or manage a minimum quantity of long-term energy supply contracts, choosing instead to emphasize the value of flexibility. *See* PECO Main Brief at 11; Final Rulemaking Order at 60. Furthermore, in the default service rulemaking proceeding, the Commission considered, and declined to endorse, a “managed portfolio” approach instead of relying upon full requirements contracts with wholesale suppliers. Final Rulemaking Order at 55-56. PECO explains that earlier this year, after initiating another investigation into the possibility of requiring EDCs to enter into long-term energy contracts, the Commission ended its investigation and directed that EDCs instead explain in upcoming DSP proceedings how their procurement plan complies with the Public Utility Code and case law. PECO Main Brief at 12; January 2020 Secretarial Letter at 7-8.

PECO further adds that the Commission has also considered the use of long-term contracts to satisfy AEPS Act requirements on several occasions. PECO Main Brief at 13. In the default service rulemaking, the Commission found that it would be appropriate for DSPs to acquire AECs through a variety of methods, including [full requirements] purchases, as well as long-term, short-term and spot purchases, and cautioned that undue reliance on a particular product was not advisable at this time. Final Rulemaking Order at 77. Later, in the *Retail Markets Investigation*, the Commission concluded that it will not adopt a prescriptive AEC procurement methodology, leaving the subject to be addressed by the Legislature. *See* Retail Markets Investigation at 100.

PECO maintains that its current Commission-approved DSP IV “prudent mix” of contracts includes staggered 12- and 24-month full requirements contracts, some spot, and some long-term contracts for Solar AECs to meet a portion of its AEPS Act obligations. PECO Main Brief at 13. The Company has found that laddering its full requirements contracts has been effective in addressing price volatility. *See* PECO Statement No. 4 at 19-20; Tr. at 381-82, 421-22. In DSP V, PECO proposed a very similar mix of contracts, and has also proposed to double

the amount of solar AECs that will be obtained through long-term contracts. *See* PECO Main Brief at 14; PECO Statement No. 1 at 15-21, 29-30.

At the evidentiary hearing, PECO's witness explained that long-term contracts for wholesale energy supply come in many forms and do not necessarily provide customers with price stability. *See* Tr. at 377-379. Such specialized contracts can have a wide range of pricing terms (e.g., fixed, fixed with an escalator, or variable) and purchase obligations (e.g., a fixed amount or the entire facility output). *Id.* According to PECO, if a long-term contract is fixed in price, there are several potential risks for customers. PECO Main Brief at 14. For example, the customers would bear the risk that the product price of a long-term contract is ultimately above future market prices. *Id.* Additionally, as there is no certainty regarding the amount of default service load that PECO must supply in the future, the portion of the supply portfolio consisting of above-market contracts could increase and/or PECO could be forced to sell above-market supply at a loss if more distribution customers select generation supply from an EGS. *Id.* Customers remaining on default service would need to pay for above-market costs through higher default service rates. *See* PECO Main Brief at 14; PECO Statement No. 4-R at 28-30. Finally, PECO argues that long-term contracts could impair the Company's future ability to provide default service at "least cost over time" by limiting PECO's ability to adapt to changes in market and regulatory conditions, including the continuing decline in the costs of renewable generation that the Environmental Stakeholders predict. PECO Main Brief at 14-15; PECO Statement No. 4-R at 23, 30-31.

PECO rejects Environmental Stakeholders' claim that the Company's reliance on 12- and 24-month full requirements supply products "discriminate" against renewable energy or "ignore" the market changes that facilitate increased renewable generation. PECO Main Brief at 15. PECO counters that, through the procurement of full requirements supply products, its plan is designed to ensure the least cost to customers because bidders compete on the basis of the lowest price to satisfy all aspects of the default service customers' load requirements, including the portfolio management function. *See* PECO Main Brief at 15; PECO Statement No. 4-R at 11-12 (explaining that the full requirements approach is "especially conducive" to innovation and competition with respect to all aspects of the electricity supply obligation). The plan itself

does not include any limitation on the amount of renewable energy that a supplier may procure to provide default service supply. PECO further explains that:

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

PECO Statement No. 4-R at 11-12.

At the evidentiary hearing, PECO brought forth testimony showing that the Company had considered an alternative proposal, offered by several speakers at the public input hearing, to procure 20% of PECO service area generation supply from distributed solar systems installed in the City of Philadelphia by 2025, and concluded that the proposal was “not based in reality.” PECO Main Brief at 16. PECO explained that, assuming a 7 kW solar system for each installation (a typical size for a residential solar system), the proposal would require more than 800,000 rooftops – exceeding the 689,000 existing residential rooftops in Philadelphia. If an alternative approach with larger, “utility-scale” systems was used, the estimated land requirement of 40,000 acres would exceed the acreage of Center City Philadelphia by 30 times. PECO also calculated that the cost of the proposal would be \$15 billion and result in a \$1,300 increase in the average residential customer bill annually; if PECO was required to pay the cost (as the proposal’s proponents recommend), it would result in a net annual loss of \$750 million to PECO for 25 years. Tr. at 395-96; PECO Main Brief at 16-17.

In contrast, PECO maintains that its DSP V includes an innovative and realistic proposal, supported by the Settling Parties, to double the amount of Solar AECs that PECO will procure directly from in-state solar generation facilities and distributed solar energy systems in its service area. PECO Main Brief at 17. Using a two-stage request for proposals, PECO will

enter into new ten-year contracts for solar AECs and facilitate participation by smaller solar facilities. PECO Main Brief at 17; PECO Statement No. 1 at 28-35; *see also*, Joint Petition ¶¶ 30-33. PECO states that this proposal was developed in response to the interest of stakeholders in more local solar in PECO's service area. PECO Statement No. 1 at 28-29; Tr. at 386.

Contrary to the claims of the Environmental Stakeholders, PECO argues that it has provided ample evidence that the Company's plan will ensure adequate and reliable service to customers. The Company explains that the default service supply contracts contain adequacy and reliability protections. Suppliers must satisfy certain requirements, such as being a member in good standing of PJM, that help ensure that they are able to perform their supply obligations. *See* PECO Statement No. 1-R at 9-10. These requirements and expectations are applied uniformly, regardless of the type of generation supply. PECO Main Brief at 17-18.

Reliable and adequate service is further ensured because all of the load served under the contracts will be supplied through PJM, regardless of whether the winning default service supply bidders own or control generation. PJM is a FERC-approved regional transmission organization with a central responsibility to ensure the reliability of its regional electricity grid of which PECO is a part, and PJM has numerous mechanisms in place to meet this responsibility. If a default service supplier defaults on its contract, or if a default service RFP conducted by PECO fails to receive sufficient bids, or if the Commission rejects the RFP results for any reason, PECO can procure the physical supply necessary to ensure adequate and reliable service to satisfy its default service obligations from PJM. *See* PECO Main Brief at 18; PECO Statement No. 1-R at 10.

According to PECO, distribution planning considerations, including issues of resiliency, are separate and distinct from the Company's default service obligation to purchase generation supply for customers at least cost over time. *See* PECO Statement No. 1-R at 10-11. 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. PECO Main Brief at 18.

Moreover, PECO explains that in DSP IV, the Commission determined that PECO's procurement, implementation and contingency plans provided adequate and reliable service at least cost over time. As PECO's proposed DSP V employs the exact same procurement, implementation and contingency plans for default service supply, PECO has presented *prima facie* evidence that DSP V includes prudent steps to acquire generation supply at least cost over time, as required by the Public Utility Code. 66 Pa.C.S. § 315; *see* DSP IV Order, p. 66 (finding that PECO's proposed DSP V, as modified by a settlement, "includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis"). When a utility has made a proposal and presented evidence sufficient to establish a *prima facie* case, the burden shifts to an opposing party to present "some evidence" to support an alternative approach. *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, 233 A.3d 936, 947 (Pa. Cmwlth. 2020). The Company argues that the Environmental Stakeholders presented unsupported conclusory statements devoid of credible evidence sufficient to counterbalance the *prima facie* case that PECO presented in this proceeding. Apart from claiming that PECO's approach is deficient, the Environmental Stakeholders also failed to offer any concrete alternative for consideration in this case. PECO Main Brief at 19.

PECO further avers that, in addition to establishing an unrebutted *prima facie* case, the Company provided evidence at the hearing that the general reliability benefits of distributed generation touted by the Environmental Stakeholders are not clear cut. First, the proximity of distributed generation to customers is very fact-specific and, therefore, it is wrong to assume that distributed generation does not require use of the distribution system. As PECO witness McCawley explained, the proximity of generation to customers will depend upon the type of generation (e.g., wind or solar), size, local regulations and customer preferences. *See* Tr. at 368-71. Second, even if distributed generation is sited on a customer's premises, the interconnection is typically configured to prevent power flowing to the customer if the transmission or distribution system is not operating. *See* Tr. at 375. In particular, Mr. McCawley testified that "if you want a general rule, when the - when the bulk [p]ower system goes down, whether it's transmission or the distribution system, the [distributed energy resource] is also - is also down as well." *Id.* This prohibition is based on safety considerations and

prevents the backflow of electricity to energize lines that could, for example, have fallen and be lying in a customer's backyard. *See* Tr. at 374-75; PECO Main Brief at 19-20.

PECO explains that, notwithstanding these reliability issues, the Company has taken numerous actions to support the growth of renewable generation, including distributed renewable generation, outside of the default service context. The Company has, for example, supported legislation to increase solar requirements under the AEPS Act and to support the development of community solar projects, microgrids, and battery storage in Pennsylvania. The Company has also developed tools to assist solar developers and customers interested in solar or other distributed generation. And PECO continues to engage in a dialogue with stakeholders, including environmental groups, about solar-related issues through the Company's Solar Collaborative. *See* PECO Main Brief at 20; PECO Statement No 1-R at 11-13; Environmental Stakeholders Exhibit KKR-5.

In PECO's view, the Commission should reject the Environmental Stakeholders' proposal for a new default service plan process for several reasons. First, the Environmental Stakeholders' proposal fails to explain how the Commission has erred in developing the principles and precedents on which PECO's DSP V program rests, and ignores the active and extensive participation by many parties in the Commission's default service proceedings to date. PECO Statement No. 1-R at 8. If the Environmental Stakeholders believe the Commission's guidance supports an alternative procurement approach, their obligation was to come forward in this proceeding with specific alternatives to elements of PECO's DSP V plan, which they failed to do. PECO Main Brief at 21.

Second, PECO maintains that its DSP V strikes a reasonable balance between competing perspectives and incorporates stakeholder input from evidentiary proceedings, prior Commission approvals, and the results of default service supply solicitations. PECO Statement No. 4-R at 5-6. As reflected in the Settlement, the Settling Parties – including statutory advocates, EGSs, customer groups, and low-income representatives – have all concluded that PECO's DSP V is consistent with the Public Utility Code, the Commission's requirements, and the public interest. PECO Main Brief at 21.

Finally, in advocating for their entirely new process, the Environmental Stakeholders failed to offer any proposal as to how PECO would procure default service supply during the time required to “rebuild” PECO’s default service program, and failed to provide an estimate of the time or cost that its proposal would take to implement. *See* PECO Main Brief at 22; PECO Exhibit SG-1. PECO points out that the Public Utility Code establishes a nine-month deadline for approval of default service plans, and the first procurement in DSP V is scheduled for March 2021. *See* 66 Pa.C.S. § 2807(e)(3.6); PECO Exhibit JJM-3. Without a new default service plan in place, PECO will be unable to proceed with new procurements before the expiration of DSP IV on May 31, 2021, creating uncertainty as to the future provision of default service in PECO’s service area. PECO Main Brief at 22.

2) TOU Default Service Rate Options

PECO explains that Act 129 requires EDCs to offer a TOU rate option to all default service customers with a smart meter. 66 Pa.C.S. § 2807(f)(5). Based on these statutory requirements, PECO previously offered a TOU generation rate through a PUC-approved, one-year pilot program known as the “PECO Smart Time Pricing Pilot” (“Pilot”) to gauge customer interest in TOU rates and the impact of those rates on electricity consumption patterns.²⁸ PECO clarifies that the Pilot’s two-part TOU rate structure offered eligible residential and small commercial customers a higher rate during non-holiday weekend afternoons from 2 p.m. to 6 p.m. and a reduced rate for all other hours of the year. An EGS selected through a competitive procurement process served as the TOU commodity supplier and implementation vendor for the Pilot.²⁹ PECO Main Brief at 22-23; PECO Statement No. 2 at 10-12.

²⁸ *Petition of PECO Energy Co. for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944 (Order entered Apr. 15, 2011) (“Dynamic Pricing Order”); *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered Sept. 26, 2012) (approving modifications to the commodity supply, dynamic rate structure, size and term of the pilot approved in the Dynamic Pricing Order to enable an EGS to provide TOU supply in lieu of PECO).

²⁹ *Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Opinion and Order entered Sept. 26, 2012) (approving modifications to the commodity supply, dynamic rate structure, size and term of the pilot approved in the Dynamic Pricing Order to enable an EGS to provide TOU supply in lieu of PECO).

PECO notes that, since the conclusion of the Pilot in 2014, the scope of an EDC's statutory obligation to offer TOU rates to default service customers was the subject of litigation before the Commission and the Commonwealth Court.³⁰ In the DSP V Petition, PECO proposed to introduce new TOU Rates for the Residential and Small Commercial Classes consistent with Commission guidance on EDC TOU rate design to satisfy Act 129 requirements and to build on lessons learned from PECO's Pilot. PECO further explains that its proposed TOU Rates also reflect a balance of the following objectives: (1) simplicity and the value proposition for customer enrollment; (2) cost-causation principles to connect the TOU pricing structure to wholesale markets and PECO's standard, non-time varying Generation Supply Adjustment ("GSA"); and (3) incentives for customer electric vehicle ("EV") adoption. PECO Statement No. 2 at 12-14; PECO Main Brief at 23.

PECO explains that Act 129 makes clear that an EDC's TOU program should be optional for default service customers.³¹ The Commission's April 2017 Secretarial Letter (p. 3) further provides that EDC TOU rates should be available to all default service customers who are not eligible for "spot only" default service and should incorporate existing consumer protections for CAP customers. In accordance with the Commission's guidance, as originally proposed, PECO's voluntary TOU Rates under the Settlement will be available to non-CAP residential and small commercial default service customers with smart meters configured to measure energy consumption in watt-hours. *See* PECO Main Brief at 24; PECO Statement No. 2 at 15-16, 21; Joint Petition at ¶¶ 49-50. In addition, the Commission recommended that EDCs offer all customers eligible for the TOU Rates "generation-weighted net metering." April 2017

³⁰ *See Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (Order entered Sept. 11, 2014) (holding that Act 129 did not require PPL Electric Utilities Corp. ("PPL") to offer TOU rates directly to customer-generators); *Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa. Cmwlth. 2015) ("*DCIDA*") (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs); *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) ("April 2017 Secretarial Letter") (proposing a TOU rate structure for PPL in accordance with the *DCIDA* decision and noting that the proposed TOU design "may provide future guidance to all EDCs" for incorporation into their own TOU proposals in their individual default service proceedings).

³¹ *See Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued January 23, 2020), p. 6. Act 129 provides that "[r]esidential or commercial customers *may* elect to participate in time-of-use rates or real-time pricing." 66 Pa.C.S. § 2807(f)(5) (emphasis added).

Secretarial Letter at 4. Consistent with that guideline, customer-generators will be eligible for the TOU Rates under the Settlement and PECO will calculate the value of excess generation created by TOU net metering customers based on the period in which it was generated. *See* PECO Main Brief at 24; PECO Statement No. 2 at 21-22; PECO Exhibit No. JAB-5; Joint Petition at ¶¶ 52-53.

The Settlement further adopts PECO's original proposed TOU product structure and rate design with one revision – to review the TOU price multipliers annually based on updated PJM energy and capacity market pricing data – as recommended by the OCA. *See* PECO Main Brief at 24; Joint Petition at ¶¶ 43-48. The time-differentiated usage periods delineated in Paragraph No. 44 of the Joint Petition reasonably encompass the Company's expected system peak usage times and take into account the need for simplicity to provide eligible customers with a reasonable opportunity to shift usage to lower-priced (off-peak) hours. PECO explains that it selected the same year-round peak period – 2 p.m. to 6 p.m. on non-holiday weekdays – employed in the Pilot in which participating customers successfully responded to the TOU price signals to shift usage and achieve bill savings. PECO Main Brief at 24; PECO Statement No. 2 at 16-17. According to PECO, participants indicated that bill savings was the primary driver of both their enrollment in and satisfaction with the Pilot. PECO Statement No. 2 at 11-12. Consistent with the January 2020 Secretarial Letter (p. 7), PECO also designed its proposed TOU Rates in the context of EV expansion in the Commonwealth. Specifically, PECO's proposed TOU rate design includes a super off-peak pricing period from 12 a.m. to 6 a.m. to provide cost savings opportunities to customers who charge their EVs during overnight, low-priced energy hours. *Id.* at 17.

In addition, the Settlement adopts PECO's original proposed TOU pricing multipliers to establish a rate premium above PECO's standard, fixed-price default service rate for usage during the peak period and rate discounts from this baseline price for usage during the off-peak and super-off-peak periods. PECO Main Brief at 25; Joint Petition at ¶¶ 45-48. PECO explains that these multipliers reflect the ratios calculated from average PJM PECO Zone spot market prices, along with the cost of capacity during peak and off-peak hours, and create material price differentials designed to motivate customers to shift usage from peak to off-peak

periods consistent with the Commission’s guidance. *See* April 2017 Secretarial Letter at 3; PECO Statement No. 2 at 17-20; PECO Exhibit Nos. JAB-3 and JAB-4.

PECO notes that the Environmental Stakeholders generally support the Company’s offering of a voluntary TOU rate, but takes issue with their assertion that the Commission should condition approval of the Company’s proposed TOU Rates upon a “benefit-cost analysis” from the “utility and societal perspectives.” PECO Main Brief at 25; Environmental Stakeholders Statement No. 1 at 36. PECO explains that, while the Environmental Stakeholders believe that a “cost-benefit analysis” is necessary to support a “well-designed” TOU rate, PECO and other EDCs have an unconditional, statutory obligation to offer TOU rate options to eligible default service customers under Section 2807(f)(5) of the Public Utility Code. Stated simply, Act 129 does not authorize a default service provider to satisfy its obligation only if its TOU rates are cost-effective in comparison to other programs for reducing peak demand-related system costs. PECO Main Brief at 26.

In support of its argument, PECO notes that the Environmental Stakeholders fail to identify any electric utilities that have performed a benefit-cost analysis *before* implementing opt-in TOU generation rates to support his proposal. *See* PECO Statement No. 2-R at 19; PECO Exhibit No. JAB-3R (Environmental Stakeholders Response to PECO-ES-I-12). PECO further argues that the Environmental Stakeholders’ opinion is inconsistent with the Commission’s recent approval of PPL’s TOU program pursuant to Act 129 without requiring such a pre-implementation benefit-cost analysis.³² PECO Main Brief at 26.

According to PECO, the Environmental Stakeholders also provide no basis for PECO to undertake a benefit-cost analysis to develop pilots and tailored TOU rates to support electrification opportunities. PECO avers that its TOU Rates will accommodate the technologies that the Environmental Stakeholders identify as the “best examples” of building electrification

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

opportunities (e.g., distributed generation and behind-the-meter energy storage systems). PECO Main Brief at 27. Similarly, the Environmental Stakeholders do not offer any alternative rate design to support their suggestion that PECO's TOU Rates will not be beneficial for increased electrification of larger vehicle fleets. In addition, PECO anticipates investigating a variety of additional rate structures as part of its efforts in support of House Bill 1446 to develop a comprehensive transportation electrification plan for its service territory to support a public access EV charging network and increased electrification of public transit, school bus, port, freight, rail and airport infrastructure. PECO Main Brief at 27; PECO Statement No. 2-R at 20-21.

C. DISPOSITION

1) The Environmental Stakeholders' Proposal For A New Default Service Analysis

It is undisputed that PECO plans to procure supply for DSP V exclusively through short-term contracts and spot market purchases. For the Residential Class, approximately 61% will be met by 2-year FPFRR contracts, approximately 38% of load will be met by 1-year FPFRR contracts, and approximately 1% of load will be met by spot market purchases. Joint Petition ¶ 19. For the Small Commercial Class, approximately 50% of load will be met by 1-year FPFRR contracts and 50% of load will be met by 2-year FPFRR contracts. Joint Petition ¶ 22. For the Consolidated Large Commercial and Industrial Class, 100% of load will be met with spot-priced full-requirements contracts with 1-year delivery periods. Joint Petition ¶ 24. The only long-term contracts included in DSP V are the new ten-year Solar AEC contracts that will replace the existing ten-year Solar AEC contracts that will be expiring by the end of DSP IV. Joint Petition ¶ 31. These long-term contracts, however, are not part of the customer load supply, 100% of which is met through a combination of short-term contracts and spot market purchases.

It is also undisputed that the designs of PECO's DSP I-IV also relied exclusively on short-term contracts and spot market purchases to meet load needs. However, there is no evidence on the record that PECO's default service provider plans have performed poorly in the last decade or that the Commission has ever mandated that EDCs procure or manage a minimum

quantity of long-term energy supply contracts. On the contrary, the Commission has emphasized the value of flexibility in the design of DSP plans:

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

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

Final Rulemaking Order at 60. In the same proceeding, the Commission considered, and declined to endorse, a “managed portfolio” approach. The Commission “express[ed] a preference for continued reliance by DSPs on the [full requirements] approach to the extent this method best suits the DSPs particular procurement needs.” The Commission found that, “*Requiring DSPs to adopt the role of electric market portfolio manager may be inconsistent with our charge under the Competition Act.*” Final Rulemaking Order at 55-56 (emphasis added).

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

Most commenters did not support or cautioned against the use of long-term contracts. Some commenters stated that extending the contract term beyond the PJM three-year forward capacity market would increase risks and cause higher financial collateral requirements. Commenters noted that, as with TOU rates, EGSs are free to serve customers who are seeking long-term contracts. **Other than that, most commenters agreed that contracting long-term poses a risk of locking in above market prices that may cause customers to leave default service.**

January 2020 Secretarial Letter at 7-8 (emphasis added).

The Commission has also considered the use of long-term contracts to satisfy AEPS Act requirements on several occasions. In the default service rulemaking, the Commission found that it would be appropriate for “DSPs to acquire AECs through a variety of methods, including [full requirements] purchases, as well as long-term, short-term and spot purchases.” Final Rulemaking Order at 77. The Commission further cautioned that “undue reliance” on a particular product was not advisable “given the relatively recent development of the AEC market and the pricing of certain renewable products such as solar, which may not reflect the market price of power.” *Id.*

Later, in the *Retail Markets Investigation*, the Commission reviewed extensive comments from more than twenty stakeholders in response to an inquiry as to whether EDCs should be required to enter into long-term renewable energy contracts (including the Sierra Club, one of the Environmental Stakeholders). The Commission concluded: “Given the multitude of comments in opposition, the Commission, at this time, will not adopt a prescriptive AEC procurement methodology. Rather, we believe that this subject would be more appropriately addressed by the Legislature, if they so desire.” *Retail Markets Investigation* at 100.

In the present case, PECO showed that laddering one year and two year full requirements contracts, along with some spot and some long-term contracts for Solar AECs to meet a portion of AEPS Act obligations, has been effective in addressing price volatility for its default service customers. Due to this assessment of the attributes of PECO’s Commission-approved DSP IV, the Company is following the same approach in DSP V. *See* PECO Statement No. 4-R at 11; PECO Statement No. 4 at 11-18. In addition, PECO’s plan ensures the least cost to customers through the procurement of full requirements supply products because bidders compete on the basis of the lowest price to satisfy all aspects of the default service customers’ load requirements, including the portfolio management function.

The Company considered and rejected long-term contracts for wholesale energy supply service rates as limiting the Company’s ability to adapt to changes in the market and regulatory conditions. However, PECO’s DSP V does not include any limitation on the amount

of renewable energy that **a supplier** may procure to provide default service supply. In fact, suppliers of the full requirements products that PECO has proposed to solicit in DSP V are free to procure increased amounts of renewable generation if the product represents the lowest cost option for them. PECO Statement No. 4-R at 11-12.

The evidence presented by the parties does not support the Environmental Stakeholders' claim that the incorporation of long-term contracts for supply from renewable energy resources in PECO'S proposed DSP would improve the adequacy and reliability of service in PECO's service territory. First, 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.

Second, the evidence shows that the reliability value of distributed renewable energy resource can be quite limited during outages and emergencies. While the Environmental Stakeholders generally refer to the "high reliability" of renewable resources, they admit in their Main Brief that distributed energy resources must be "*configured as microgrids*" in order to "offer reliable supply through emergencies and extreme weather events." ES Main Brief at 21 (emphasis added). As PECO explained through the testimony of Mr. McCawley, 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. Tr. at 374-75.

Next, the Environmental Stakeholders claim that PECO's proposed DSP plan is not responsive to the preferences of the stakeholders in PECO's service territory is also unsupported by the record in this case. The participation of numerous stakeholders in the Public Input Hearing of June 9, 2020, was very important in informing the Company and the Commission of their readiness and willingness to take over increased renewable energy in

PECO's default service supply mix. *See* Section III, *supra*. However, the Environmental Stakeholders' claim that PECO's plan is not responsive to stakeholders' preferences disregards the other stakeholders that participated as active parties in this proceeding. OCA, OSBA, CAUSE-PA, Calpine, ESC, PAIEUG, and TURN *et al.* represent a diversity of interests, including residential customers, low-income customers, small businesses, large commercial and industrial customers and electric suppliers. In the present proceeding, they have all concluded that PECO's DSP V is consistent with the Code, the Commission's requirements, and the public interest. *See* Section V.2, *supra*.

Under the AEPS Act, PECO must obtain solar alternative energy credits SAECs proportional to 0.5% of its total default service load. In the DSP V plan, PECO proposes to satisfy these requirements but not to exceed them. Joint Petition ¶ 30. Instead, the design of DSP V responds to PECO's customer base's growing interest in the procurement of renewable energy by doubling the amount of Solar AECs that PECO will procure directly through long-term contracts and including 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. Joint Petition ¶ 31.

Despite their criticism of PECO's DSP V proposal and their advocacy in favor of inclusion of increased renewable energy in PECO's default service supply mix, the Environmental Stakeholders did not offer any alternative procurement, implementation and contingency default service plans to DSP V. They did, however, note in their Main Brief that several participants at the Public Input Hearing specifically recommended that 20% of PECO's default generation supply come from local solar. *See* ES Main Brief, Attachment 1. In response, 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). Tr. at 395-96.

The record evidence shows that DSP V, as set forth in the Settlement and supported by the Settling Parties, includes a prudent mix of contracts designed to provide adequate and reliable service at least cost to customers over time. The plan takes into account the benefits of price stability and includes 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. In addition, the mix of products selected for the proposed portfolio, which includes long-term contracts for solar alternative energy credits (“Solar AECs” or “SAECs”), is designed to satisfy the requirements of Act 129 of 2008. 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, I recommend that the Commission reject the Environmental Stakeholders’ proposal that PECO undertake a new default service analysis.

2) TOU Default Service Rate Options

The Environmental Stakeholders claim 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 they recognize that PECO’s TOU Rates include some tailoring towards personal EV adoption, they 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 Statement Nos. 1 at 31-36, and 1-S at 20-21.

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 fail to cite any authority to support 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. In addition, they have not provided any examples of electric utilities that have performed such a cost-benefit analysis before implementation of opt-in TOU generation rates. On the contrary, the Environmental Stakeholders’ position is 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 they recommend in

this case. *See* PPL TOU Recommended Decision (Order entered May 17, 2018). Likewise, the Environmental Stakeholders did not offer any alternative rate designs to support their contention that PECO's TOU Rates are not tailored to the needs of medium- and heavy-duty EV fleets.

In DSP V, PECO is proposing 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. The TOU Rates agreed to by the Settling Parties 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 Commission'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 adoption. The record in this case supports a finding that the Company's TOU Rates will accommodate the technologies that the Environmental Stakeholders assert support building electrification. In addition, 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 Statement No. 2-R at 20-21.

In view of the above, I recommend that the Commission approve PECO's TOU Rates outlined in the Settlement, without modification.

VII. ALLOCATION OF NETWORK INTEGRATION TRANSMISSION SERVICE
("NITS") CHARGES

During PECO's first two default service programs, load-serving entities ("LSEs") including EGSs, were responsible for PJM transmission-related costs, including NITS, Generation Deactivation/Reliability Must Run ("RMR") charges, Expansion Cost Recovery charges and Transmission Enhancement (a/k/a Regional Transmission Expansion Plan or

“RTEP”) charges. In approving PECO’s third default service program (“DSP III”)³³, the Commission concluded that certain PJM transmission-related charges should be recovered from customers on a non-bypassable basis. Consistent with that finding, on June 1, 2015, PECO implemented its Non-Bypassable Transmission, or “NBT” charge to recover the following PJM charges (collectively, the “PJM Transmission Charges”) from all distribution customers in PECO’s service territory:

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

Currently, PJM charges for NITS are included in PECO’s Price to Compare for default service. EGSs providing generation supply to PECO distribution customers are responsible for the NITS charges that they incur as LSEs. During DSP V, PECO proposed to continue to implement the NBT consistent with prior Commission Orders in the Company’s DSP III and DSP IV proceedings. PECO also proposed to continue to be responsible for and recover NITS and Non-Firm Point-to-Point Transmission costs through its unbundled, bypassable Transmission Service Charge (“TSC”). PECO Statement No. 1 at 15.

A. ELECTRIC SUPPLIER COALITION’S POSITION

ESC objects to PECO’s DSP V proposal to continue the Company’s existing approach for the recovery of NITS costs. That approach is two-fold: 1) for NITS costs associated with the default service load, PECO recovers the NITS costs for default service customers through its bypassable TSC, which is a component of its price to compare for default service; 2) for NITS costs associated with shopping customers, EGSs must recover these costs through their supply prices. PECO Statement No. 1 at 15; ESC Statement No. 1 at 33.

³³ *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362, (Opinion and Order entered December 4, 2014) (“PECO DSP III Order”).

ESC explains that the difference between these two methods lies in how the LSEs have to factor in the NITS costs into their prices. ESC Main Brief at 5. According to ESC, EGSs must bear the risk of estimating NITS charges and may need to include risk premiums in the supply price, whereas PECO's wholesale default suppliers bear no such risk and the prices they bid to provide default service need not include any risk premiums. As a result of the different methods of factoring the NITS cost into the LSEs' prices, shopping customers are paying potentially widely differing amounts for NITS costs, depending on how much risk premium their EGSs factor into the supply price, which may or may not reflect their actual NITS costs. By contrast, non-shopping customers are paying only their actual NITS costs. Per ESC, 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. ESC Main Brief at 6.

Next, ESC argues that the inequities described above are exacerbated by the unpredictable nature and volatility of the actual NITS costs assessed on all LSEs. *Id.* In particular, the Coalition acknowledges that in the past, the Commission has rejected proposals that would have required EDCs to be responsible for the recovery of NITS costs for all LSEs, citing a lack of evidence that the cost of NITS is volatile and unpredictable. *See, e.g., 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 (Order entered December 4, 2014) at 53-54. However, the Coalition maintains that, since the Commission last rejected such proposals, circumstances have significantly changed due to FERC's approval of "formula" rates for NITS charges. According to ESC, predicting NITS costs has become even more challenging for LSEs under this new rate-setting approach. ESC Main Brief at 6.

The Coalition explains that traditionally, utilities had to file a rate case with FERC showing their alleged cost of service in order to justify significant rate increases. FERC-approved rates are "stated" rates, which are not subject to substantial change without rather involved regulatory proceedings. The length of those proceedings gave transmission customers like EGSs time to plan and forecast likely rate changes. ESC Statement No. 1 at 36. More recently, through approval of formula rates, FERC has allowed transmission owners to change the rates more frequently and more quickly. ESC Main Brief at 7.

ESC explains that most transmission owners in PJM now charge formula rates whose inputs include: (i) the capital investments a transmission owner *expects to make* next year; (ii) the operating expenses it expects to have to pay; and (iii) a return on the existing investments in its system. These rates are then trued up annually. ESC Main Brief at 7. As a result, if a transmission owner spent more or spent less than it initially projected, the rate can swing up and down in line with the under- or over-recovery. *Id.*; ESC Statement No. 1 at 36. Because NITS costs are in part driven by the transmission owner’s managerial decisions on investments and accounting, which are not visible to EGSs, ESC believes that it is even more difficult for EGSs to estimate likely NITS costs over the term of the offers they make to consumers in the market. ESC Main Brief at 7; ESC Statement No. 1 at 35.

Relevant to the present proceeding, the Coalition points out that on June 27, 2017, PECO received FERC approval to implement a formula rate starting December 1, 2017, which allows PECO to receive current recovery of its costs.³⁴ 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 Formula Rate Annual Update on May 29, 2020.³⁵ ESC Main Brief at 8.

ESC insists that the use of formula rate has resulted in significant fluctuations in NITS charges. *Id.* According to ESC, under the formula rate, each LSE’s NITS charge is calculated by determining its daily Network Service Peak Load (“NSPL”) and dividing its NSPL by the annual revenue requirement of the transmission owner’s projected cost of service. NSPLs are updated annually based on the prior year’s peak load, which can drive significant rate fluctuations. When NSPL changes unexpectedly due to load increases or decreases the rate charged to LSEs is affected. *Id.*; ESC Statement No. 1 at 36-37.

³⁴ 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>.

³⁵ ESC Statement No. 1 at 36; PECO Energy Company Informational Filing of 2020 Formula Rate Annual Update, FERC Docket No. ER17-1519 dated May 29, 2020 available at: <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=15548295>.

By way of example of the impacts on LSEs of NITS rate increases implemented through the formula rate, ESC pointed to the Public Service Electric and Gas Company (“PSEG”). ESC Main Brief at 8. PSEG filed an update on December 5, 2019, which resulted in a 30.7% increase in the NITS rate over the prior year, with the LSEs receive approximately 25-days’ notice of the change.³⁶ Additional examples of similar increases can be found with the FirstEnergy Companies.³⁷

NITS Rates	Current NITS Rate	Current NITS Rate Effective Dates	Future NITS Rate	Future NITS Rate Effective Date
ATSI Zone	\$55,074.34/MW/Year	Since January 1, 2019	\$57,340.35/MW/Year	January 1, 2020
Allegheny Power Zone	\$15,396.00/MW/Year	Since March 1, 2002	\$15,396.00/MW/Year	March 1, 2002
MAIT Rates for ME and PN Zones	\$28,796.22/MW/Year	Since January 1, 2019	\$37,083.18/MW/Year	January 1, 2020

ESC Main Brief at 9. Per the Coalition, the table below presents evidence showing that the actual costs of NITS have recently been increasing:³⁸

³⁶ ESC Statement No. 1 at 37; Public Service Electric and Gas Company Informational Filing of 2020 Formula Rate Annual Update (Second Revision) FERC Docket No. ER09-1257 dated January 17, 2020 and available at: <https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15073350>. The original filing for the 2020 Formula Rate Annual Update was October 15, 2019 and is available at: <https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15073350>. PSEG filed several revisions to the original filing.

³⁷ ESC Statement No. 1 at 38; https://www.firstenergycorp.com/supplierservices/pa/me_pn/NITSRateInformation.html.

³⁸ ESC Statement No. 1 at 39; Information from <https://www.pjm.com/markets-and-operations/billing-settlements-and-credit.aspx> under the heading “Network Integration Transmission Service Revenue Requirements & Rates.”

NITS Rates (\$/MW-Y)	Jan-20	Jan-19	% Increase Jan 2019 - Jan 2020
MAIT	\$37,083.18	\$28,796.22	28.8
PPL	\$68,031	\$58,865	15.6
PSEG	\$156,503.24	\$119,735.80	30.7

ESC Main Brief at 9.

The core issue in ESC’s opinion is that NITS rates are unpredictable and difficult to track because one must know or estimate a number of factors related to transmission projects. ESC Main Brief at 9-10. ESC explains that, while PJM provides data related to each transmission owner’s rates, that data must be verified against actual sources of new project information filings and updates. *Id.* at 10. Since the rates are not final until approved by FERC, and are subject to adjustment during those proceedings, the available updates are not always timed in a way that allows an EGS to accurately estimate what NITS costs will be during the relevant contract period with its customers. ESC Main Brief at 10; ESC Statement No. 1 at 38. ESC rejects PAIEUG’s claim that it is possible to anticipate changes in NITS costs because the formula rate uses FERC Form 1 data. *See* PAIEUG Statement No. 1 at 6-7. ESC explains that the FERC Form 1 filings are made on a lagging basis, while formula rates are made on a forward basis. Also, they do not reflect the NSPL fluctuations or the volatility associated with forecasts of the roll-in to rates of large capital projects. ESC Main Brief at 10; ESC Statement No. 1-S at 25.

ESC argues that, due to the unpredictability of the rates, EGSs need to forecast them, while PECO as the default service provider does not. ESC Main Brief at 10. In ESC’s opinion, forecasting will likely result in a risk premium being added to EGS pricing. ESC Statement No. 1 at 39. Besides 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, which warrants a change in PECO’s approach for recovering these costs. ESC Main Brief at 10; ESC Statement No. 1 at 39-40.

To address these inequities, the Coalition proposes that PECO include all NITS costs – those incurred by both wholesale default suppliers and EGSs – in its NBT charge, which is recovered from both shopping and non-shopping customers. ESC Main Brief at 10-11. ESC points out that this is the approach that PECO already uses for the recovery of other Non-Market Based (“NMB”) charges, 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 assessed by PJM that all LSEs are required to pay. ESC Statement No. 1 at 31, 33. According to the Coalition, all of these costs share a common theme in that they are not a function of market fundamentals and, therefore, can be subject to significant changes over what can reasonably be anticipated. ESC Statement No. 1 at 32. Thus, the most equitable way to treat the recovery of these costs is to be consistent and recover all NMB charges from all customers. ESC Main Brief at 11.

Addressing the Commission’s prior rejection of the proposal advanced by the Coalition in this proceeding, ESC points out that the Commission has found that nothing in the Public Utility Code precludes the implementation of the approach for NITS recovery that the Coalition is proposing here. ESC Main Brief at 11; *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, P-2013-2391378 (Order entered July 24, 2014), at 38 (“*FE DSP III Order*”). Also, the Commission has been open to other alternatives to level the playing field for recovering NITS costs, which is shown through its approval of an approach that requires the wholesale supplier to include the costs of NITS as part of their bids to provide default service. *FE DSP III Order* at 31-32.

Moreover, ESC argues that adoption of the Coalition’s proposal would address the Commission’s obligation in Section 2804(6) of the Competition Act. ESC Main Brief at 11. Under Section 2804(6), 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." 66 Pa.C.S. § 2804(6). As PECO is using a different cost recovery method in providing transmission service to EGS customers than it is employing for its own default service customers, ESC believes that a modification is warranted to level the playing field and ensure compliance with Section 2804(6). According to the Coalition, 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. ESC Main Brief at 12. In ESC's view, the adoption of its proposal for PECO to assume NITS cost recovery responsibility for all of the load on its system is the only way to ensure equal access to the transmission facilities and also ensure that all customers pay only the true costs of NITS. *Id.*

Finally, ESC addresses PECO's concerns about two possible transition issues if the Coalition's proposal is adopted. ESC Main Brief at 12. PECO's first concern is that a shopping customer would pay twice for NITS, which he calls the "double-charge" problem. PECO explains that when the EDC begins to charge NITS costs to all customers on a non-bypassable basis, some shopping customers may have contracts with EGSs that extend beyond that date and still reflect NITS costs. These customers could end up paying twice for NITS service. *Id.* Its second concern is associated with fairly unbundling bundled generation price agreements, which he refers to as the "unbundling" problem. *Id.*; PECO Statement No. 1-R at 17-18. PECO describes the "unbundling" problem as occurring when the EGS has structured its retail pricing in a way that combines generation and NITS into a single supply price. According to the Company, even if the EGS agrees to credit the NITS component to the customer when the NITS charge becomes non-bypassable, the amount of the credit owed will not be clear and may require negotiation. ESC Main Brief at 13.

Both concerns raised by Mr. McCawley concern the impact on existing customers' contracts. However, ESC maintains that neither concern is a barrier to implementing the Coalition's proposed NITS cost recovery approach, but rather represents transition issues. According to the Coalition, a reasonable transition mechanism could easily address concerns related to existing contracts with shopping customers. ESC Main Brief at 13. Just as PECO did

when it first created the NBT, 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. ESC Main Brief at 13; ESC Statement No. 1-S at 24.

B. PECO’S POSITION

According to PECO, the objections voiced by ESC do not justify any change to the current Commission-approved treatment of NITS costs in PECO’s service territory for several reasons. PECO Main Brief at 29-31.

First, PECO argues that the alleged “unpredictability” of NITS costs in PECO’s service territory does not warrant non-bypassable treatment because EGSs have flexibility to offer products with pricing terms that align with their costs and profit expectations. PECO Main Brief at 30. For example, EGSs may make offers with terms that allocate risks between the EGS and the customer as they choose, including a direct pass-through of NITS costs to minimize the EGS’s risk of cost under-recovery. *See* PAIEUG Statement No. 1 at 9. PECO points out that ESC’s position is directly at odds with that of Calpine. PECO Main Brief at 30. In particular, Calpine asserts that ESC’s attempt to shift “market risk” related to a single component of EGS service (NITS) from LSEs to EDCs would limit customer choice. PECO Main Brief at 30-31; *see also* Calpine Statement. No. 1 at 3-4.

Supported by Calpine’s testimony, PECO maintains that ESC did not establish that EGSs cannot financially manage and account for NITS costs in the products and services they choose to offer in the competitive market to support non-bypassable recovery of these costs. PECO Main Brief at 31.

In addition, PECO maintains that ESC's proposed treatment of NITS would create unnecessary transition problems for customers with existing EGS contracts. PECO and PAIEUG both believe that shopping customers could be "double-charged" and end up paying for NITS costs in both PECO's distribution rates (pursuant to the NBT) and as part of the price of generation purchased from their EGSs. PECO Main Brief at 31, PECO Statement No. 1-R at 17-18; PAIEUG Statement No. 1 at 5-6.

Next, PECO addresses PAIEUG's request that the Commission establish a "carve-out" for Large C&I customers in the event the Commission accepts ESC's proposal to maintain the "status quo" for Large C&I customers that already have arrangements with EGSs. *See* PAIEUG Statement. No. 1 at 9-10. PECO objects to this request noting that PAIEUG did not present any evidence that Large C&I customers would experience different transition issues than other shopping customers with existing EGS contracts that would justify a special exception for those customers. PECO Main Brief at 31. Rather, PECO believes that PAIEUG's concerns further demonstrate that ESC's proposal should not be adopted for any rate class. According to PECO, in order to implement PAIEUG's proposed Large C&I customer carve-out, the Company would need to reconfigure its billing system to recover the same category of costs (NITS) through two different retail rate mechanisms, which would increase the administrative costs recovered from all other distribution customers through the NBT. PECO Main Brief at 31-32 PECO Statement. No 1-SR at 4-5.

In light of the Commission's prior decisions in PECO's DSP III and DSP IV, as well as the evidence that EGSs are able to manage NITS costs and any change would create substantial transition issues that may require increased administrative expense for all customers, PECO opposes ESC's proposal to recover NITS costs on a non-bypassable basis. PECO Main Brief at 32.

C. CALPINE'S POSITION

Calpine describes itself as an independent, national provider of retail electric service across twenty states. Calpine is also a Load Serving Entity (LSE) and member of PJM

Interconnection LLC. Through its subsidiaries it operates as a licensed Electric Generation Supplier (EGS) in Pennsylvania. As such, it is actively serving and soliciting customers throughout Pennsylvania, including in PECO's territory. Calpine Main Brief at 2.

Calpine explains that it currently offers a wide variety of demand-related and energy-related products and services beyond simple energy procurement, including load and risk management as well as renewable energy and sustainability solutions. *Id.* Its products and services are designed to meet the individualized needs and demands of Calpine's customers and capture the benefits of the competitive wholesale energy environment and bring those benefits forward into Pennsylvania's competitive retail electric market. *See* Calpine Statement No. 1 at 2.

Both Calpine and the members of the Coalition incur NITS costs, which are billed by PJM on every Load Serving Entity pursuant to tariffs that are filed with the FERC. These rates are subject to annual adjustment according to a formula. There is a regulatory process in place at FERC for determining those rates as well as the ability to challenge those rates. Calpine Statement No. 1 at 3. Calpine challenges the Coalition's argument that NITS, which are currently assessed on each EGS based on their own unique demand, should be shifted into a one size fits all charge for NBT costs. *See* ESC Statement No. 1.

Calpine states that it has been able to manage NITS costs and still offer products and services that its customers desire. Calpine Main Brief at 3. It has achieved this by managing the customers loads served by Calpine. *Id.*; *see also*, Calpine Statement No. 1 at 3. However, from ESC's proposal in this proceeding, Calpine opines that the members of the Coalition have not been as successful in this regard.

The members of the Electric Supplier Coalition, which represent a subset of the marketplace, are looking for ways to not take responsibility for their own business decision, level of risk management expertise and associated management decisions, valuation of risk, and products they choose to offer. In brief, they are trying to shed and shift market risk associated with their own demand-driven costs. Rather than using expertise to manage these costs and associated risk, they are asking for PECO's DSP customers to bail them out. As a result, one of the principal

benefits of moving to retail competition would be eliminated, by removing products and services and any competitive discipline for a specific demand-based cost in the market place.

Calpine Statement No. 1 at 3-4.

When it comes to servicing customers who do not take default service, but who instead rely on EGS's such as Calpine, such cost shifting would simultaneously limit existing and potential customers' product and service choices. Not only would this harm the competitive retail market, it would remove any incentive and opportunity to create customized products and services that are, or potentially might be formulated, to assist EGS customers in addressing these costs. Calpine Main Brief at 3, citing PAIEUG Statement No. 1 at 8-9. This is nothing more than a bailout and predatory attempt to remove a competitor's products and services from the market. Calpine Main Brief at 3.

Calpine points out that ESC's proposal is not new. It has been considered by the Commission on numerous occasions, and consistently rejected. More specifically, Calpine states that this issue was resolved after extensive litigation not only in PECO's DSP III proceeding, but also the subsequent DSP IV proceeding. Calpine Main Brief at 3-4, citing PECO Statement No. 1-R at 16-17. Indeed, it was also considered in the DSP II proceeding. *See Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641 Opinion and Order (Opinion and Order entered on October 12, 2012) at 60. Calpine rejects ESC's attempts to overcome this mountain of precedent by arguing that circumstances have changed in terms of how NITS are set. Calpine Main Brief at 4, referring to ESC Statement No. 1 at 35. Instead, Calpine argues the formulas now used by FERC are still subject to a ratemaking process at FERC. There is a regulatory process in place at FERC for determining those rates as well as the ability to challenge those rates. This process at FERC does not negate the ability of EGS companies to manage their loads and manage their NITS costs. Calpine Statement No. 1 at 3.

Furthermore, Calpine argues that comparing retail electric market products and services to a fully regulated default service is an apples to oranges comparison. Calpine Main

Brief at 4-5. The default service is based on a uniform master supply agreement with no individually negotiated terms of service. It is essentially one size fits all. *Id.* In contrast, Pennsylvania has afforded its competitive Electric Generation Suppliers a market that has worked in the past and is working today. EGS's have the freedom to choose the products and services they offer into the marketplace. *Id.* at 5. Each EGS has the freedom to build, establish and promote innovative products and services to meet its individual customers' needs, as well as the structure and timing of those services based on the EGS's own business and management decisions. Calpine Statement No. 1 at 4.

Ultimately, Calpine sees ESC's proposal as an attempt by the members of the Coalition to seek protection for their own business and management decisions. In view of the above, Calpine urges the Commission to make it clear that the members of the Coalition need to stop coming to the Commission for a bailout, and instead need to figure out how to compete more efficiently. Calpine Main Brief at 1-2.

D. PAIEUG'S POSITION

PAIEUG is another party that opposes ESC's proposal regarding the NITS costs.

In particular, PAIEUG argues that the Competition Act, Commission precedent, and Commission regulations mandate that EGSs collect NITS costs from shopping customers. PAIEUG Main Brief at 4-8.

In support of its argument, PAIEUG explains that in 1996, Pennsylvania adopted the Competition Act to encourage more affordable, safe, and reliable electric service, as well as promote business and industry throughout the Commonwealth. *See generally*, 66 Pa.C.S. § 2802; PAIEUG Main Brief at 4. In order to allow EGSs to sell electricity directly to customers in the Commonwealth, the Competition Act provided for an unbundling of generation, transmission, and distribution services, which had previously been offered as a bundled product by EDCs. *Id.*; *see also*, 66 Pa. C.S. § 2804(3). As a result of this unbundling, customers could negotiate with competitive retail suppliers (*i.e.*, EGSs) who would provide such "shopping"

customers with both generation and transmission service, while customers would continue to receive distribution service from the EDC. Conversely, "non-shopping" customers, who chose to remain with the EDC, would receive generation, transmission, and distribution service under the EDC's "provider of last resort" default service. *See* PAIEUG Main Brief 4-5, referring to 66 Pa.C.S. § 2802(16).

Moreover, the Commission adopted regulations, consistent with the Competition Act, that assign responsibility for generation and transmission service to the same entity, *i.e.*, the EDC must provide generation and transmission service for non-shopping customers, and the EGS must provide generation and transmission service for shopping customers. PAIEUG Main Brief at 5, referring to 52 Pa. Code §§ 54.182, 54.187(d). Stated another way, Commission regulations designate transmission service as a load-following expense, meaning that the entity providing a customer's generation service must also take responsibility for the provision of transmission services and collection of the associated costs.

PAIEUG states that unbundling was meant to stimulate increased retail competition among the component parts of electric service, with the goal of spurring innovation and efficiencies. *See* PAIEUG Main Brief at 5, referring generally to 66 Pa.C.S. § 2802. With the unbundling of generation and transmission costs, EGSs may offer a range of products to attract Large C&I customers, as well as customers in smaller customer classes. By contrast, having EDCs collect NITS costs constitutes re-bundling of transmission and distribution service for certain groups of customers in clear contravention of the Competition Act. Consequently, ESC's proposal to shift collection of NITS to PECO is contrary to the plain language of the Competition Act. PAIEUG Main Brief at 5.

Similarly, PAIEUG argues that removal of NITS costs from products in the competitive market is contrary to the intent of the Competition Act. *Id.* According to PAIEUG, 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. PAIEUG explains that, since the inception of the retail electric market in Pennsylvania, Large C&I customers have been able to make business decisions to tailor the

terms and conditions under which they purchase transmission service by negotiating with an EGS. With respect to NITS costs, a customer can structure a pass-through arrangement under which its EGS passes through the cost of NITS based on the customer's own transmission obligation. PAIEUG Main Brief at 6; PAIEUG Statement No. 1 at 5. In PAIEUG's view, this approach 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 EGSs. PAIEUG Main Brief at 6. Alternately, an EGS may offer a fixed price for electric service, including both generation and NITS costs, that does not vary, but which may also include an additional risk premium to compensate the EGS for any risk associated with potentially increasing costs. *See id.* PAIEUG concludes that ESC's proposal runs afoul of the Competition Act because Large C&I customers would no longer have the option to elect a pricing methodology that meets their energy purchasing objectives. *Id.*

PAIEUG notes that Commission precedent has also held that the collection of NITS for shopping customers should remain with the customer's EGS. PAIEUG Main Brief at 6. PAIEUG joins Calpine and PECO in pointing out that in PECO's DSP III, the Commission rejected a similar request by the Retail Energy Supply Association ("RESA"), which asserted that the unpredictability of NITS costs lends itself to collection by PECO instead of EGSs. *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, (Dec. 4, 2014) ("PECO DSP III Order"), at 51. Among the grounds for RESA's proposal in that proceeding was the fact that utilities (other than PECO) within PJM experienced large increases in NITS costs. *Id.* The Commission, however, rejected RESA's basis for its proposal, finding that RESA "failed to provide sufficient evidence that PECO's NITS costs are of such a volatile nature in PECO's service territory that it would render them unpredictable and difficult for the EGSs to hedge." *Id.* at 53-54. The Commission concluded that "NITS related costs should not be collected within [PECO's] non-bypassable rider mechanism." *Id.* at 53.

PAIEUG argues that, similar to PECO's DSP III proceeding, the ESC provides no evidence in the current proceeding that NITS costs in PECO's service territory are so volatile that they cannot be predicted. PAIEUG Main Brief at 7. Moreover, PAIEUG maintains that the data

set forth by the ESC does not demonstrate that "annual rate changes are in fact a significant burden for EGSs in light of the other costs that EGSs must consider in competing to provide electric generation supply." *Id.*, citing PECO Statement No. 1-R at 16-19. PAIEUG stresses the absence of PECO data from ESC's testimony on NITS rate volatility. It points out that the ESC can only cite to changes in the NITS rates of other transmission owners, which are irrelevant because changes in NITS charges experienced by other transmission owners has no bearing on customers taking competitive supply service behind PECO. PAIEUG Statement No. 1 at 7-8. According to PAIEUG, the reason for the absence of PECO data is that, not only have PECO NITS costs not been volatile, but, they have actually decreased over the past two years. *Id.*

Next, PAIEUG challenges ESC's claim that the Commission's decision to maintain the status quo for NITS, while allowing PECO to collect Non-Market Based Transmission ("NMBT") costs from all customers, presents two very different approaches for transmission costs. PAIEUG Main Brief at 7, referencing ESC Statement No. 1 at 33. In particular, PAIEUG disagrees with ESC's suggestion that NITS and NMBT costs are grouped together as a single entity. *Id.* It explains that in PECO's DSP III, the Commission found that the nature of NITS costs are significantly different than those of NMBT costs, resulting in the Commission's correct and differing approach to such collection. *PECO DSP III Order* at 53-54. In PAIEUG's view, to suggest that NITS must be collected in the same manner as NMBT costs ignores the Commission's understanding of the differences between these costs. PAIEUG Main Brief at 7.

Addressing ESC's argument concerning FERC's approval of "formula" rates for NITS charges, PAIEUG explains that PECO's NITS are based upon such a formula rate, which periodically sets a transmission provider's wholesale transmission rate using a cost-of-service formula, rather than separate rate cases, to determine the resulting NITS charge. *See* PAIEUG Main Brief at 9; PAIEUG Statement No. 1 at 6. The formula emulates how transmission rates are set using a standard revenue requirement calculation and the applicable load. The formula uses FERC Form 1 data, and the formula are detailed and well-documented. Further, even though a formula rate may be forward-looking, there is a true-up that reconciles the forward-looking rate with the actual costs incurred to provide NITS, as published in each utility's FERC

Form 1. *Id.* In addition, the protocols that accompany a formula transmission rate specify when rates are to be reset. For PECO, new NITS rates are implemented on June 1 of each calendar year. *Id.*

PAIEUG argues that as a result of the process described above no question exists regarding when periodic changes in NITS rates will become effective and EGSs can anticipate changes in NITS rates. NITS rates are based on a standard cost-of-service calculation using the same type of information typically found in an EDC's FERC Form 1. Thus, the primary drivers of the NITS rates are transmission investment, transmission-related operating expenses, cost of capital, applicable income tax rates, and peak demand. Further, because the formula rate includes a true-up provision, a utility is allowed to recover only its actually incurred costs as reported in FERC Form 1. *Id.* Finally, as recognized by Calpine, an EGS on PECO's system, the regulatory process in place at FERC does not negate the ability of EGSs to manage their loads and NITS costs. Calpine Statement No. 1 at 3. Furthermore, ESC does not provide any evidence of volatility for PECO's NITS rates. Consequently, PAIEUG argues that ESC's argument to change the status quo based upon a claim of volatility for PECO NITS rates must fail.

Similarly, PAIEUG disagrees with ESC's conclusion that EGSs must take on the risk of such volatility. PAIEUG Main Brief at 10. PAIEUG explains that even if such volatility existed, EGSs do not have to take on such risk, especially with respect to Large C&I customers, as most Large C&I 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"). *Id.*, referencing PAIEUG Statement No. 1 at 3. Thus, the use of the pass-through eliminates the risk that EGSs would over (or under) recover actual NITS costs allocated to a Large C&I customer. PAIEUG Main Brief at 11. Moreover, as noted by Calpine, the ESC proposal is nothing more than an attempt to shrug responsibility for certain EGS's business decisions, level of risk management expertise, and valuation of risk. PAIEUG Main Brief at 11, referencing Calpine Statement No. 1 at 3. In PAIEUG's view, the ESC proposal is nothing more than an attempt to shed and shift market risk associated with these EGSs' demand driven costs. PAIEUG Main Brief at 11.

ESC contends that shifting collection responsibility for shopping customers' NITS costs to PECO through non-bypassable means would benefit EGSs because those entities would no longer have to forecast NITS rates and, therefore, would have no need to place a risk premium into customers' contracts. ESC Statement No. 1 at 39. PAIEUG disagrees and argues that ESC's position ignores the fact that the ability of Large C&I customers to continue to utilize pass-through options for NITS rates would be eliminated. PAIEUG Main Brief at 12, *see also* PAIEUG Statement No. 1 at 9. In fact, as noted by Calpine, one of the principle benefits of moving to retail competition would be eliminated, as ESC's proposal would remove products and services from the marketplace. PAIEUG Main Brief at 12; Calpine Statement No. 1 at 4.

PAIEUG notes that PECO's default service is based on a uniform master supply agreement with no individually negotiated terms of service. In other words, PECO's default service is one size fits all. PAIEUG Main Brief at 12. In contrast, the Competition Act provides EGSs with a market that continues to work so that EGSs have the freedom to choose the products and services they offer into the marketplace. Moreover, each EGS has the freedom to build, establish, and promote innovative products and services to meet its individual customer's needs, as well as the structure and timing of those services based on the EGS's own business and management decisions. *Id.* PAIEUG argues that ESC's proposal does not benefit the EGSs. On the contrary, by implementing ESC's proposal, EGSs would lose the opportunity to offer certain products into the marketplace, while customers would lose the ability to purchase products that meet their individual needs. *Id.*

In addition, PAIEUG rejects ESC's proposal as failing to recognize the gravity of the resulting problems that will occur for customers, especially Large C&I customers, that have entered into long-term fixed price contracts with EGSs. PAIEUG Main Brief at 12. PAIEUG explains that, while most Large C&I customers seek to utilize a pass-through for NITS rates, some Large C&I customers prefer the option of requesting a fixed price contract that would include generation and NITS charges. PAIEUG Statement No. 1 at 5. For those customers, shifting costs collection responsibility for NITS to PECO could have the perverse impact of recovering NITS charges twice. *Id.* at 6. Specifically, if PECO begins collection of NITS costs from all customers through a non-bypassable charge, but certain customers have fixed price EGS

contracts that extend 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. PAIEUG Main Brief at 13; PECO Statement No. 1-R at 17-18.

In such an example, the EGS may have structured its retail pricing in a way that combines the provision of generation and NITS into a single price for the product bundle, which the customer has agreed to pay. Because the fixed price would not have included a breakdown as to the NITS component, even if the EGS agrees to credit the NITS component upon the implementation of a non-bypassable rider, the resulting credit may not be clear to the customer. *Id.* According to PAIEUG, the burden remains with the customer to petition for the extraction of the NITS charge from the fixed price, recognizing that requesting renegotiation of the EGS contract could open the contract up to other issues that may also be detrimental to the customer, especially if such negotiation were to occur at the beginning or mid-way through the term of the contract. Further, because NITS costs are larger than other NMBT costs that were previously moved to a non-bypassable rider, this double collection could have an even greater negative impact on customers.³⁹ PAIEUG Main Brief at 13.

In support of its arguments, PAIEUG points out that the Commission has previously recognized the inherent problems that can be faced, especially by Large C&I customers, due to non-bypassable riders. PAIEUG Main Brief at 14. In PPL Electric Utility Corporation's second DSP proceeding, the Commission opposed non-bypassable transmission cost collection, noting the forced renegotiation of shopping contracts and increased likelihood of double cost collection by EDCs and EGSs. *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 (Jan. 24, 2013) at 85. Similarly, in Duquesne Light Company's 2012 DSP proceeding, the Commission held that the current collection of transmission costs by EGSs is "consistent with the Commonwealth's continued migration to a more competitive retail market, and that RESA's

³⁹ See 2020 Quarterly State of the Market Report for PJM, 14, Table 1-8, accessible at https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2020/2020q1-som-pjm.pdf (last visited August 20, 2020).

proposal would be a step backward because it would result in the rebundling of transmission costs with distribution rates." *Petition of Duquesne Light Company For Approval of Default Service Plan For The Period of June 1, 2013 Through May 31, 2015*, Opinion and Order, Docket No. P-2012-2301664 (Jan. 25, 2013) at 222.

In the present proceeding, ESC proposes to delay the collection of transmission costs by EGSs until one year after PECO's DSP V goes into effect—*i.e.*, June 1, 2022—as a solution to what the Coalition views as a transitional issue. See ESC Statement No. 1-S at 24. PAIEUG rejects the Coalition's proposal arguing that it fails to acknowledge that 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. PAIEUG Main Brief at 14.

PAIEUG brings forth the FirstEnergy Companies' third DSP proceeding before the Commission as a real-life example of the scenario described above. PAIEUG Main Brief at 14-15, *see Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Commencing June 1, 2015 Through May 31, 2017*, Final Order, Docket Nos. P-2013-2391368, et al. (July 24, 2014) ("FE DSP III Order"). In FE DSP III Order, the Commission recognized that the FirstEnergy Companies were permitted to collect RTEP and TEC costs as part of their DSP III proceeding; however, the removal of these costs from EGSs led to disputes between customers and EGSs. *Id.* at 42 (stating that "there is merit in the concerns expressed by [the Industrial Users Group] with regard to a possible double-collection.").

ESC further proposes limiting "change in cost responsibility to new charges associated with NITS occurring after the Commission's final order." ESC Statement No. 1-S at 24. According to PAIEUG, ESC fails to understand that NITS costs are a single charge updated once a year for all customers, very much unlike NMBT charges that contain numerous components—*i.e.*, Regional Transmission Expansion Plan charges, Expansion Cost Recovery charges, and Generation Deactivation/Reliability Must Run charges. PAIEUG Main Brief at 15;

PAIEUG Statement No. 1 at 3, 6. In PAIEUG's view, ESC's transitional proposal not only indicates a fundamental misunderstanding of the nature of NITS costs but also provides no relief to protect customers from double-collection. PAIEUG Main Brief at 15.

Additionally, PAIEUG argues that ESC's proposal should be rejected because it severs the link between cost recovery and cost causation. PAIEUG Main Brief at 16. ESC claims that no legal requirement exists mandating that the assessment of wholesale FERC approved charges billed by PJM to LSEs must match the recovery by the LSEs from their customers. ESC Statement No. 1-S at 26. According to PAIEUG, this claim ignores the fact that the Commonwealth Court of Pennsylvania previously indicated that the principle of cost causation is the polestar for ratemaking purposes. PAIEUG Main Brief at 16; *see also Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010, 1016 (Pa. Cmwlth. 2006). ESC's proposal requests the rebundling of NITS charges with distribution rates for collection by the EDC. Per PAIEUG, in reviewing this proposal, the Commission must still ensure that cost causation principles are being followed. PAIEUG Main Brief at 16.

PAIEUG explains that most Large C&I shopping customers currently procure generation from EGSs through contracts under which NITS costs are a direct pass-through. *Id.*; PAIEUG Statement No. 1 at 3. Under this type of contract, a customer's NITS costs are a direct pass through based on the individual customer's NSPL. *See id.* The individual customer's NSPL is based on a customer's contribution to the annual system peak. Thus, each customer pays for NITS in a manner that reflects the customer's responsibility for network transmission costs. If a customer reduces its energy consumption during the transmission peak or manages its energy consumption to minimize its contribution to the peak during the hours in which the NSPL is determined, the customer would directly benefit, as this lower contribution would correspondingly decrease the customer's cost responsibility. *Id.*

Conversely, non-shopping customers on PECO's system remit their NITS costs through the Company's TSC Rider, which is based upon billed demand. PAIEUG Main Brief at 17; PAIEUG Statement No. 1 at 3. Billed demand is the same as the billing demand under the delivery service rates applicable to Large C&I customers. PAIEUG Statement No. 1 at 3-4.

Under the TSC, rather than paying NITS costs based on an individual customer's NSPL, a Large C&I customer would pay NITS charges based on the customer's highest demand during a 30-minute time interval in a billing period. This measured demand could occur at any time during the month, not just the peak hours. PAIEUG Main Brief at 17.

According to PAIEUG, having NITS billed through the TSC would sever the link between cost recovery and cost causation. *Id.* Instead of being directly billed for NITS costs based on the customer's NSPL, recovery through the TSC would bill the customer for its highest measured demand, irrespective of when such demand occurred. Thus, this process would be contrary to the Commission's long-standing policy of setting rates based upon cost-causation principles. Moreover, this process would thwart efforts by individual customers to properly manage their loads around the annual system peak, which, in turn, could increase congestion while causing EDCs to invest in additional transmission capacity in the long run. *Id.*

In addition, PAIEUG explains that PECO's NBT Rider collects NMBT charges on the basis of each Large C&I customer's Peak Load Contribution ("PLC"). The PLC is defined as a customer's contribution to the five highest daily peaks of the summer months or 5-CP. *Id.* at 5. Collection of NITS costs through the NBT Rider presents similar problems for Large C&I customers because, rather than charging customers on a 1-CP basis, the NBT Rider charges customers based on a customer's 5-CP basis. In other words, use of the NBT Rider for collection of NITS costs would not be a true reflection of the cost causation of NITS costs. PAIEUG Main Brief at 17-18.

Accordingly, when shopping customers are charged for NITS rates by their EGS, such customers are assured that the cost causation of NITS are correctly reflected in their resulting bill. However, PAIEUG argues that any of the collection processes that would be implemented under ESC's proposal would sever the connection between cost causation and cost collection. Consequently, PAIEUG argues that ESC's proposal must be rejected for severing the link between cost recovery and cost causation. PAIEUG Main Brief at 18.

Finally, PAIEUG submits that, if the Commission accepts ESC's proposal, the Commission should approve a carve-out for Large C&I customers. PAIEUG Statement No. 1 at 9. PAIEUG explains that Large C&I customers are currently able to request a direct pass-through of NITS costs by their EGS. *See* PAIEUG Statement No. 1 at 5. Through this process, Large C&I customers are able to remit their specific NITS costs to the EGS. *Id.* Moreover, because NITS costs are established on an annual basis, Large C&I customers with a direct pass through are able to budget these costs on a monthly basis. PAIEUG Main Brief at 18-19.

PAIEUG further explains that, for those Large C&I customers utilizing a direct pass through of NITS costs with their EGS, these NITS costs are based upon a customer's individual NSPL. PAIEUG Statement No. 1 at 5. The NSPL is based upon a customer's individual contribution to the zonal (in this instance, PECO) peak hour load. *Id.* As a result, Large C&I customers with a direct pass through can ensure that the efforts they undertake to lower their NSPL are directly reflected in their NITS costs. In other words, Large C&I customers do have unique circumstances warranting a carve-out of NITS collection should ESC's proposal be adopted. PAIEUG Main Brief at 19.

PAIEUG acknowledges PECO's concern that such a carve-out would require the reconfiguration of the Company's billing system, which could result in increased administrative costs. PAIEUG Main Brief at 19; *see also* PECO Statement No. 1-SR at 3. PAIEUG submits that Large C&I customers should not be penalized for the implementation of a proposal that would actually harm such customers, and that the positions of PECO, PAIEUG, and Calpine, all of which seek to retain the status quo for NITS collection for all customers, should be adopted by the Commission. In the alternative, PAIEUG submits that a carve-out should be implemented for Large C&I customers, the administrative costs of which should be covered by those EGSs seeking to implement this change in the status quo. PAIEUG Main Brief at 19.

E. DISPOSITION

In its proposal, ESC recommends that PECO include NITS charges in its existing NBT on the grounds that those costs, like the PJM Transmission Charges, are unpredictable and

not market based. ESC Statement Nos. 1, at 31-32, 35-39, and 1-S at 23, 25. The Coalition also contends that it is inequitable for EGSs to have to pay NITS costs while PECO assumes these charges for default service customer load and fully recovers its actual expense through the TSC. ESC Statement Nos. 1 at 33-34, 40, and 1-S at 22-23, 26-27.

In this proceeding, ESC has failed to show that the NITS costs in PECO's service territory are so volatile that they cannot be predicted. As explained *supra*, a FERC-approved formula rate periodically sets a transmission provider's wholesale transmission rate using a cost-of-service formula, rather than separate rate cases, to determine the resulting NITS charge. See PAIEUG Main Brief at 9, referencing PAIEUG Statement No. 1 at 6. The formula emulates how transmission rates are set using a standard revenue requirement calculation and the applicable load. The formula uses FERC Form 1 data, and the formula are detailed and well-documented. As a result of the process no question exists regarding when periodic changes in NITS rates will become effective and EGSs can anticipate changes in NITS rates. The protocols that accompany a formula transmission rate specify when rates are to be reset – for PECO, new NITS rates are implemented on June 1 of each calendar year. Even though a formula rate may be forward-looking, there is a true-up that reconciles the forward-looking rate with the actual costs incurred to provide NITS, as published in each utility's FERC Form 1. Because the formula rate includes a true-up provision, a utility is allowed to recover only its actually incurred costs as reported in FERC Form 1.

In addition, NITS rates are based on a standard cost-of-service calculation using the same type of information typically found in an EDC's FERC Form 1. Thus, the primary drivers of the NITS rates are transmission investment, transmission-related operating expenses, cost of capital, applicable income tax rates, and peak demand. Ultimately, the regulatory process in place at FERC does not negate the ability of EGSs to manage their loads and NITS costs. Calpine Statement No. 1 at 3.

Furthermore, ESC does not provide any evidence of volatility for PECO's NITS rates. None of the examples of NITS rates volatility brought forth by the Coalition in this proceeding pertain to PECO. Instead, they involve other transmission owners. Contrary, to

ESC's claims of volatility, PAIEUG has shown that, since implementation of a formula rate, PECO's NITS rates have been stable and have decreased over the past two years. *See* PAIEUG Statement No. 1 at 7.

As PAIEUG has pointed out, even if such volatility existed, EGSs do not have to take on such risk, especially with respect to Large C&I customers, as most Large C&I customers procure generation from EGSs under contracts in which NITS costs are a direct pass-through based on each customer's NSPL. *See* PAIEUG Statement No. 1 at 3. Thus, the use of the pass-through eliminates the risk that EGSs would over (or under) recover actual NITS costs allocated to a Large C&I customer. PAIEUG Main Brief at 11.

Currently, Commission precedent holds that the collection of NITS for shopping customers should remain with the customer's EGS. In PECO DSP III, the Commission rejected the argument that the unpredictability of NITS costs lends itself to collection by PECO instead of EGSs. Finding no evidence that PECO's NITS costs were of such a volatile nature in PECO's service territory that it would render them unpredictable and difficult for the EGSs to hedge" the Commission concluded that "NITS related costs should not be collected within [PECO's] non-bypassable rider mechanism. PECO DSP III Order, at 53-54. Because the Coalition has failed to show that PECO's NITS costs are volatile and unpredictable in nature, its argument for changing the status quo based upon a claim of volatility of PECO NITS rates is simply unconvincing.

I find that Calpine presents the strongest counterargument to ESC's position in this proceeding. Just like the members of the Coalition, Calpine incurs NITS costs; however, it has been able to manage NITS costs and still offer products and services that its customers desire. Calpine Main Brief at 3. It has achieved this by managing the customers loads served by Calpine. *Id.*; *see also* Calpine Statement No. 1 at 3. Unlike ECS, Calpine defends the allocation of NITS costs on EGSs as an aspect of a competitive retail market, and sees the cost shifting proposed by ECS as simultaneously limiting existing and potential customers' product and service choices. Calpine paints a grim picture of the competitive retail market if ECS's proposal is adopted. The cost shifting proposed by ECS would not only harm the retail market, but it

would also remove any incentive and opportunity to create customized products and services that are, or potentially might be formulated, to assist EGS customers in addressing these costs. Calpine Main Brief at 3, *citing* PAIEUG Statement No. 1 at 8-9. Tellingly, Calpine, PAIEUG and PECO consider ESC’s proposal an attempt on the part of its members to shed and shift market risk associated with their own demand-driven costs.

More importantly, having EDCs collect NITS costs, as proposed by ESC, constitutes rebundling of transmission and distribution service for certain groups of customers in clear contravention of the Competition Act. Also, Commission regulations designate transmission service as a load-following expense, meaning that the entity providing a customer's generation service must also take responsibility for the provision of transmission services and collection of the associated costs. *See* 52 Pa. Code §§ 54.182, 54.187(d). Consequently, the removal of NITS costs from products in the competitive market is contrary to the intent of the Competition Act and Commission regulation.

In view of the above, I recommend that ESC’s proposal that PECO acquire NITS for all customer load and recover the associated PJM charges on a non-bypassable basis be denied as ESC did not establish any basis to change the existing Commission-approved assignment of responsibility for NITS to all LSEs, including EGSs. Because I recommend that ESC’s proposal regarding the allocation of NITS charges be denied, I will not address PECO’s “double-charge” and “unbundling” concerns as these transition issues would arise only if the Coalition’s proposal were adopted. Moreover, this recommendation renders moot PAIEUG’s request for the implementation of a carve-out for Large C&I customers.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 2801 *et seq.*; 52 Pa.Code §§ 54.181-54.189.

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

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

4. The policy of the Commission is to encourage settlements. 52 Pa.Code §§ 5.231, 69.401.

5. To determine whether the parties' settlement should be approved, one must decide whether the settlement promotes the public interest. *See Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Associates*, 74 Pa. PUC 767 (1991); *Pa. Pub. Util. Comm'n v. Philadelphia Elec. Co.*, 60 Pa. PUC 1 (1985).

6. Under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 *et seq.*, PECO Energy Company, as a Pennsylvania electric distribution company and default service supplier, has a fundamental obligation to provide competitively procured, reliable electric generation service to default service customers at least cost over time. 66 Pa.C.S. § 2807(e)(3.4).

7. The Commission's regulations provide that the term of a default service program subsequent to the initial program will be determined by the Commission. 52 Pa.Code § 54.182(d).

8. The Commission's regulations require that a default service plan include copies of agreements to be used in the procurement of electric generation supply for default service customers, including SMAs and RFPs. 52 Pa. Code § 54.185(e)(6).

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

10. Under Act 40 of 2017, PECO Energy Company must meet its future solar AEPS requirements using Solar AECs generated from solar energy facilities in the Commonwealth of Pennsylvania. 71 P.S. § 714.

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

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

13. In accordance with the Commission’s regulations at 52 Pa. Code § 54.185(e)(5), the Settlement appropriately provides for continuation of PECO’s contingency plans approved by the Commission in PECO’s prior default service programs.

14. The Commission’s default service regulations provide that the competitive bid solicitation process shall be subject to monitoring by the Commission or an independent third party selected by a default service provider in consultation with the Commission. *See* 52 Pa. Code § 54.186(c)(3).

15. Under the Commission’s default service regulations, affiliates of PECO Energy Company are permitted to participate in the Company’s competitive procurements for default service supply, provided that appropriate protocols are in place to ensure that such affiliates do not receive an advantage in the competitive procurement and the competitive process complies with the Commission’s codes of conduct. 52 Pa. Code § 54.186(b)(6).

16. Under the Public Utility Code, default service providers with 100,000 or more customers are required to offer TOU rates to all customers that have been provided with smart meter technology. 66 Pa.C.S. § 2807(f)(5).

17. The Commission has never mandated that electric distribution companies procure or manage a minimum quantity of long-term energy supply contracts, choosing instead to emphasize the value of flexibility. *Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. L-2009-2095604 (Final Rulemaking Order entered Oct. 4, 2011), at 60.

18. Requiring default service providers to adopt the role of electric market portfolio manager may be inconsistent with the Commission’s charge under the Competition Act. *Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. (Final Rulemaking Order entered Oct. 4, 2011), at 55-56.

19. It is appropriate for a default service provider to acquire AECs through a variety of methods, including full requirements purchases, as well as long-term, short-term and spot purchases.” *Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. L-2009-2095604 (Final Rulemaking Order entered Oct. 4, 2011), at 77.

20. When a utility has made a proposal and presented evidence sufficient to establish a *prima facie* case, the burden shifts to an opposing party to present “some evidence” to support an alternative approach. *NRG Energy, Inc. v. Pa. Pub. Util. Comm’n*, 233 A.3d 936, 947 (Pa. Cmwlth. 2020).

21. Act 129 requires electric distribution companies to offer a TOU rate option to all default service customers with a smart meter. 66 Pa.C.S. § 2807(f)(5).

22. Act 129 makes clear that an electric distribution company’s TOU program should be optional for default service customers. 66 Pa.C.S. § 2807(f)(5).

23. Electric distribution companies 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. 66 Pa.C.S. § 2807(f)(5).

24. The Commission's regulations assign responsibility for generation and transmission service to the same entity. See 52 Pa. Code §§ 54.182, 54.187(d).

25. NITS-related costs should not be collected within PECO's non-bypassable rider mechanism. *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362, (Opinion and Order entered December 4, 2014) at 53.

26. The Default Service Plan of PECO Energy Company, as amended by the Joint Petition for Partial Settlement, contains all of the elements required by the Commission's default service regulations (52 Pa. Code §§ 54.181-54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801-69.1817), including a procurement plan, an implementation plan, contingency plans, a default service rate design plan, and associated tariff pages.

27. The Default Service Plan of PECO Energy Company, as amended by the Joint Petition for Partial Settlement, is in compliance with 66 Pa.C.S. § 2807(e)(3.7) in that: (1) it includes prudent steps necessary to negotiate favorable generation supply contracts; (2) it includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis; and (3) neither PECO Energy Company nor its affiliated interests have withheld from the market any generation supply in a manner that violates Federal law.

IX. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Partial Settlement is granted, and the Partial Settlement is approved without modification.
2. That the Environmental Stakeholders' objections to the Partial Settlement are denied.
3. That the Partial Settlement on Time of Use Cost Allocation is adopted without modification.
4. That PECO Energy Company shall allocate 70% of the costs incurred to implement its new TOU default service rate options based on the total number of default service customers in the Residential and Small Commercial procurement classes, and 30% of the costs on the number of default service kWh consumed by the Residential and Small Commercial procurement classes.
5. That the Electric Supplier Coalition's proposal to include PJM charges for Network Integrated Transmission Service in PECO's Non-Bypassable Transmission Charge is denied.
6. That NERA Economic Consulting, Inc., is approved to continue as the independent third-party evaluator for PECO Energy Company's default service procurements.
7. That, to the extent that it is necessary to permit PECO Energy Company to procure generation for three procurement classes, quarterly filing of hourly-priced default service rates and semi-annual reconciliation of the over/under collection component of the GSA for all

default service customers as set forth in PECO Energy Company’s Revised Default Service Program V, the Commission’s regulation at 52 Pa.Code § 54.187 is waived.

8. That the form Supply Master Agreement set forth in PECO Exhibit No. JJM-4 and both forms of the Solar AEC Purchase and Sale Agreement set forth in PECO Exhibit No. JJM-10 are approved as affiliated interest agreements pursuant to 66 Pa.C.S. § 2102.

9. That PECO Energy Company’s Standard Offer Program currently in effect, including the associated cost recovery mechanisms approved in PECO Energy Company’s prior default service proceedings, is permitted to continue, subject to the applicable provisions set forth in the Partial Settlement.

10. That the issues involved in PECO Energy Company’s Customer Assistance Program Shopping Program will not be addressed in this proceeding.

11. That the proposed default service program for the period June 1, 2021 through May 31, 2025 is approved, except as set forth in the ordering paragraphs above.

12. That the proceeding at Docket No. P-2020-3019290 be terminated and that the case be marked closed.

Date: October 20, 2020

/s/
Eranda Vero
Administrative Law Judge

Attachment 1. Public Input Hearing Testimony Index Table

Number	Transcript Citation	Witness Name	Affiliation Information	Summary of Main Points
1	83:13–86:6	Representative Carolyn Comitta	General Assembly – 156 th District	<ul style="list-style-type: none"> • Representative Comitta’s constituents support actions combatting climate change, protecting the environment, access to clean energy, and renewable energy jobs. • She has sponsored legislation supporting clean energy advances in the Commonwealth.
2	88:4–90:12	Martin Miller	President of West Norriton Township Board of Commissioners	<ul style="list-style-type: none"> • Commissioner Miller’s township has passed a Ready for 100 Resolution, committing to switching to 100% renewable energy by 2035. • Residents are enthusiastic about renewables. • A higher mix of renewables in the DSP would help their community be safer and cleaner and would create local jobs.
3	97:9–99:9	Mayor Philip Dague	Mayor of Borough of Downingtown	<ul style="list-style-type: none"> • A greater percentage of renewable energy on the grid will help make electric vehicles a truly green option. • Many people trust PECO to responsibly provide default service, and if PECO adopted a default supply mix with more renewables, the change would be impactful and positive.
4	106:15–108:21	Josh Maxwell	Chester County Commissioner	<ul style="list-style-type: none"> • Chester County has taken several steps to promote clean energy. • Mr. Maxwell’s constituents want to make solar a priority. • PECO should increase its solar commitments in the DSP.
5	113:24–117:23	Mayor Dianne Herrin	Mayor of West Chester; VP of Practical Energy Solutions	<ul style="list-style-type: none"> • Demand for clean, renewable energy is on the rise. • Climate change is a crisis that has negative economic, social, and environmental impacts. • West Chester Borough has passed a Ready for 100 Resolution. • PECO should create a clear plan to put utility-scale renewables on the grid. • Support for the renewable energy market will promote the local economy and generate jobs.
6	125:18–130:9	Representative Stephen McCarter	General Assembly – 154 th District	<ul style="list-style-type: none"> • PECO should rethink its plan to mirror the changing realities of the energy market and to address climate change. • The climate crisis has tangible impacts in Pennsylvania and beyond.

				<ul style="list-style-type: none"> • Racial injustice is a critical component of addressing the climate crisis. • PECO is a subsidiary of the largest electric parent company by revenue in the United States, and as such, its plans must address the deeply embedded social inequities in our energy system. • PECO should add more renewable energy to its DSP mix.
7	143:5–155:9 (including substantial cross-examination testimony)	Representative Christopher M. Rabb	General Assembly – 200 th District	<ul style="list-style-type: none"> • Renewable energy is what is best for the Commonwealth. • Pennsylvania is one of only two states in the nation with environmental stewardship expressly mandated by the State Constitution. • The social externalities of fossil fuel dependence fall disproportionately on African American communities, and the public health costs of air pollution are severe. • PECO’s support for ambitious bills in the state legislature is not relevant to whether PECO could be taking steps toward clean energy on its own.
8	161:4–162:19	Mark Pinsley	Controller of Lehigh County	<ul style="list-style-type: none"> • Externalities of PECO’s procurement choices affect more than just the residents of its service territory. • Climate change is an urgent crisis.
9	167:11–169:14	Linnea Bond	Member of Earth Quaker Action Team (“EQAT”)	<ul style="list-style-type: none"> • Climate change is an urgent crisis with disastrous consequences. • PECO expects customers to bear the costs of climate change as it fails to address the crisis in its planning. • The costs of climate-related externalities borne by PECO’s customers and the next generation far outweigh any cost savings of reliance on fossil fuel in the near term.
10	179:3–181:18	Rabbi Julie Greenberg	Director of POWER’s Multifaith Work for Racial and Economic Justice on a Livable Planet	<ul style="list-style-type: none"> • PECO has not meaningfully incorporated stakeholder input into its planning processes. • Climate change is an urgent crisis, the burdens of which fall disproportionately on Black, Brown, and low-income communities. • PECO’s unrelated philanthropic activities do not excuse it from addressing the climate crisis directly in its planning processes. • PECO should add more clean energy to its default service supply mix.
11	190:11–191:23	Russell Hicks	Member of POWER	<ul style="list-style-type: none"> • PECO should include more renewable energy in its supply mix, including solar, wind, and hydro. • Future generations are depending on our generation addressing climate change. • Microgrids can add reliability and resilience to the local energy system.

				<ul style="list-style-type: none"> • PECO should work with communities to support economic growth through renewable energy and jobs.
12	195:23–196:10	Nora Elmarzouky	POWER	<ul style="list-style-type: none"> • PECO should strongly consider procuring locally generated energy in its DSP. • PECO should procure at least 20% renewable energy in its DSP.
13	198:22–200:3	Wendy Greenspan	Temple University Employee	<ul style="list-style-type: none"> • PECO outwardly states that its goals include providing clean energy, but largely sources its energy from nuclear, coal, and natural gas. • Natural gas is not a renewable or clean energy source. • Methane is a significant contributor to climate change. • PECO should provide its communities with clean energy, 20% solar by 2025.
14	202:19–204:7	Linda Clark	Physician	<ul style="list-style-type: none"> • Solar and wind prices are low and utilities across the rest of the country are taking advantage of that – PECO is falling behind. • Climate change has effects both on the environment and in the form of rapidly evolving climate-related policy and regulations. • Adopting renewable energy avoids investing in stranded assets when climate-related policies advance. • Renewable energy is prudent because it provides price stability. • PECO should procure 20% local solar.
15	205:9–208:14	Christina Gosnell	Data Analyst for Catalyst Cooperative	<ul style="list-style-type: none"> • PECO’s strategy for default service procurement through FPCR contracts outsources its responsibility for the prudence of its plan. • Solar and other renewable resources depend on long-term contracts to finance their projects and enter the market. • The playing field is not level under PECO’s existing plan, and including long-term contracts would level the field for renewable energy sources to compete, which will bring their prices down even further. • Climate change is an urgent crisis with disastrous consequences.
16	212:11–214:12	Dana Robinson	Lansdowne Borough Environmental Advisory Councilmember	<ul style="list-style-type: none"> • Lansdowne Borough has passed a Ready for 100 Resolution. • PECO’s reliance on fossil fuels rather than renewable energy sources is excessive. • PECO should include long-term contracts in its DSP supply mix to allow solar developers to enter the market. • PECO should include more renewable energy in its default service supply mix.
17	216:4–218:20	Bruce Birchard	N/A	<ul style="list-style-type: none"> • PECO should support the growth of the renewable energy market in Pennsylvania to provide local jobs.

				<ul style="list-style-type: none"> • Solar job training programs are successful, but trainees often have to leave the state after training in Pennsylvania because the solar market in-state is lacking. • PECO should commit to at least 5% solar in its DSP by 2025, ideally generated in-state.
18	223:13–225:14	Nancy Boxer	Managing Director, Association for Climate Health	<ul style="list-style-type: none"> • PECO’s plan is not prudent because it includes too little renewable energy. • Solar is cost-effective. • Climate change is an urgent crisis and fossil fuel dependence exacerbates it. • Solar and wind power have different risk profiles than fossil fuels and can provide reliability benefits.
19	227:6–228:19	John Magee	Warminster Township Environmental Advisory Councilmember, EQAT member	<ul style="list-style-type: none"> • Climate change is an urgent crisis. • PECO should include more long-term contracts in its supply mix in the DSP. • PECO should include more solar power in its supply mix.
20	233:1–234:23	Steven Greenspan	Research scientist	<ul style="list-style-type: none"> • Climate change and air pollution are urgent issues, the impacts of which are felt disproportionately by Black and Brown communities. • PECO should include more local solar in its DSP supply mix.
21	242:8–246:4	Ron Celentano	Pennsylvania Solar Energy Industries Association	<ul style="list-style-type: none"> • PECO should purchase more SRECs. • Pennsylvania is lagging behind other states in installed solar capacity and capacity per capita, and is behind on solar jobs as well compared to other states. • Long-term contracts can support the solar industry in Pennsylvania.
22	260:21–262:16	Marc Brier	PECO customer and Exelon shareholder	<ul style="list-style-type: none"> • –PECO should include more solar in its default supply mix. • Black, Brown, and low-income communities are disproportionately affected by pollution caused by fossil fuels. • The most affected stakeholders in energy issues often have less access to the stakeholder processes for input. • Many people have default service for a variety of reasons not necessarily reflective of their pure customer preferences in the market.
23	265:4–267:8	Liz Brunton	Institutional Review Specialist, U.S. Department of Education	<ul style="list-style-type: none"> • Climate change is an urgent crisis. • Many community members’ voices who are most affected by PECO’s decisions are not heard.

				<ul style="list-style-type: none"> • Many EGSs on the competitive market are greenwashed, and a lot of people stay on default service because they view it as a safe option. CAP customers cannot opt for renewable energy. Default service customers deserve to have clean energy too. • PECO should include more local solar in its DSP supply mix.
24	269:7–271:4	Gregory Holt	EQAT	<ul style="list-style-type: none"> • Renewable energy sources are abundant and predictable in the long run. • PECO should take advantage of these attributes by soliciting long-term contracts for renewable supply. • Climate change has severe financial costs on Pennsylvania taxpayers and disparate externalities on different communities.
25	273:14–274:18	Reverend Angela Brown-Vann	Minister, St. Mark A and E Zion Church; community organizer with POWER	<ul style="list-style-type: none"> • Many members of Rev. Brown-Vann’s congregation suffer from respiratory illnesses as a result of air pollution. • PECO’s continued reliance on fossil fuels carries public health impacts and costs. • PECO should include more solar in its DSP supply mix.
26	276:15–277:18	Carolyn McCoy	N/A	<ul style="list-style-type: none"> • We should apply the lessons learned from the COVID-19 crisis, and the failure of our nation’s slow and patchy response, to the climate crisis, and take the threat seriously before it is too late. • PECO should include more local solar in its DSP supply mix. • If PECO is serious about supporting a clean energy economy, it should take responsibility regardless of legislative action.
27	279:3–280:4	Joan Broadfield	N/A	<ul style="list-style-type: none"> • Ms. Broadfield agrees with earlier testimony from Ms. Clark, Rabbi Greenberg, Ms. Brunton, and Mr. Holt. • PECO should include more solar in its DSP supply mix. • PECO must take its corporate responsibilities to its communities seriously.
28	283:3–283:23	David Richards	N/A	<ul style="list-style-type: none"> • Mr. Richards supports the previous testimony of Ms. McCoy, Ms. Broadfield, Ms. Bond, and the legislators. • PECO’s insistence on discrediting its customers’ earnest attempts to engage in the public input process is disappointing.
29	284:25–285:12	Nancy Sleator	N/A	<ul style="list-style-type: none"> • Climate change is an urgent crisis. • In light of the severity of the climate crisis and the high unemployment rates in the community, the DSP should be rewritten with meaningful clean energy goals.

				<ul style="list-style-type: none"> • PECO should include more than 0.5% solar in its DSP supply mix.
30	288:11–290:11	Bill Sabey	Member, Plymouth Township Environmental Board	<ul style="list-style-type: none"> • Plymouth Township is a Ready for 100 Community. • The total population of all the Ready for 100 Communities in PECO’s service territory represents over 50% of the population. • PECO should include more renewable energy in its DSP supply mix. • If PECO incorporated more renewable energy into its DSP solicitations, it would help the renewable energy market develop in Pennsylvania, further lowering costs.
31	291:22–293:25	Lauren Brunsdale	Associate Developer, Community Energy	<ul style="list-style-type: none"> • Community Energy, a utility and community scale solar developer, has had a positive working relationship with PECO. • Community Energy has offered feedback to PECO on its AEC procurement process that PECO incorporated into its AEC procurement proposal. • High volumes of clean energy procurements are necessary to meaningfully reduce Pennsylvania’s carbon footprint. • Community Energy supports an increase in the AEPS to require 5% solar by 2025 and 10% solar by 2030.
32	298:25–302:3	Jonathon Ogle	N/A	<ul style="list-style-type: none"> • A default service program is not a neutral plan, because it represents PECO’s choices for the future of the region, who will profit, and who will bear the burdens. • Black, Brown, and low-income communities disproportionately bear the burdens of fossil fuel dependence in terms of climate change impacts, pollution, public health burdens, and unemployment. • PECO’s role in apportioning that burden is not incidental. • PECO’s plan should serve the public health, climate health, social health, and economic health of its communities. • PECO is granted monopoly status as a distributor in return for serving the public, and the public wants and needs cleaner energy sources. • PECO should procure 20% solar by 2025. • PECO’s shareholders should bear the costs of the transition to clean energy.
33	304:11–305:21	Joy Bergey	Director of Environmental Justice Center of	<ul style="list-style-type: none"> • A legacy of redlining and racist banking and real estate practices put African American communities on the front lines of dirty, fossil fuel-burning power plants, putting these communities at significantly higher risk of respiratory diseases and cancer due to the air pollution.

			Chestnut Hill United Church	<ul style="list-style-type: none"> • PECO can address this inequity by transitioning its default service procurement away from fossil fuel generation. • PECO should procure 20% local solar by 2025.
34	307:9-309:13	Kelly Herrenkohl	VP of Communications and Engagement, Natural Lands	<ul style="list-style-type: none"> • Natural Lands has successfully worked with PECO to maintain a network of 43 nature preserves and one public garden. • PECO has made major financial contributions through the PECO Green Region Program to support green initiatives in Southeastern Pennsylvania. • PECO and Exelon fund an outdoor education program for children to learn about environmental responsibility, nature, and science. • Did not feel qualified to assess the role of renewable energy in the DSP supply mix
35	314:8-317:21	Margaret Joan Urban	N/A	<ul style="list-style-type: none"> • PECO should include more solar in its DSP supply mix. • PECO should use long-term contracts to procure renewable energy. • PECO must make renewable energy accessible to low-income customers. • PECO shareholders must bear the cost of the transition. • Climate change is an urgent crisis that is not solvable by individual action.