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November 3, 2020

**E-FILE**

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

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

Dear Secretary Chiavetta:

Enclosed please find Reply Exceptions on behalf of Calpine Retail Holdings, LLC in support of the Recommended Decision issued on October 20, 2020, in the above-referenced proceeding.

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

Thank you.

Sincerely,

NORRIS McLAUGHLIN, P.A.

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

John F. Lushis, Jr.

c: Administrative Law Judge Eranda Vero  
Certificate of Service

## CERTIFICATE OF SERVICE

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

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

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John F. Lushis, Jr.  
Counsel to Calpine Energy Solutions, LLC

Dated this 3rd day of November, 2020, in Allentown, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY EXCEPTIONS ON BEHALF OF CALPINE RETAIL HOLDINGS, LLC**

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November 3, 2020

## TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. REPLY TO ESC EXCEPTIONS	2
<u>A. The ESC's First Exception Confuses the Issues</u>	2
<u>B. The ESC's Second Exception Would Eliminate an Important Element of Competition Among Electric Generation Suppliers as Load Serving Entities</u>	3
III. THE REQUEST FOR A STATEWIDE REVIEW IS NOT AN APPROPRIATE EXCEPTION	4
IV. CONCLUSION	5

## I. INTRODUCTION

These Reply Exceptions are filed on behalf of Calpine Retail Holdings, LLC (“Calpine Retail”) to address the Exceptions of the so-called Electric Supplier Coalition (the “ESC” or “Coalition”)’ to Administrative Law Judge Vero’s Recommended Decision regarding the recovery of certain costs, known as Network Integration Transmission Services, or “NITS,” that are incurred by competitive Electric Generation Suppliers, or EGS’s. Calpine Retail supports the Recommended Decision on this issue, which is consistent with the prior DSP proceedings in which this issue has been addressed. In filing Exceptions to the Recommended Decision, the Coalition seeks to overturn this well-established precedent. The Coalition’s position rests on a false apples-to-oranges comparison between PECO’s Default Service offering on the one hand, and products and services offered by EGS’s in an open retail market on the other hand. By definition and design, Default Service is fundamentally a one-size-fits-all service incurred with respect to all customers not taking competitive offers from the marketplace. Services offered by EGS’s are competitive services, in which a supplier’s ability to manage its customers’ loads can give the supplier a competitive advantage. The Coalition’s proposal to replace reliance on competition as the way for EGS’s to handle their own individual NITS costs with a shifting of EGS’s NITS costs to all customers would remove competitive discipline and reward the underperformers in the marketplace, while simultaneously punishing those who hold themselves accountable for their own business decisions, and who create innovative products and solutions to manage their load and associated risks.

The Coalition’s invitation to remove this source of competition would reward poor performance and create a bailout for those who are unable to compete effectively. It would pick winners and losers, discourage innovative products and services, and remove competitive discipline. Therefore, the recovery of NITS costs from Pennsylvania Electric Generation

Suppliers as Load Serving Entities should continue as it has been implemented for the last ten years.

## **II. REPLY TO ESC EXCEPTIONS**

### **A. The ESC's First Exception Confuses the Issues**

The ESC Exception No. 1 argues an irrelevant point by claiming that the Commission has the authority to change the status quo. The point is irrelevant because the Coalition was given ample opportunity through testimony and briefing to argue for such a change. Its efforts failed, not because it was precluded from making its arguments, but because its arguments are unpersuasive. The parties opposing the proposal by this subset of suppliers, not only Calpine Retail but also PECO and the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), collectively demonstrated the substantial precedent in favor the status quo, established over multiple proceedings involving both PECO and other Default Service providers. These parties demonstrated how the Coalition's proposal would in effect roll back the clock, shift risk and replace competition with a one-size-fits-all approach to the recovery of NITS costs.

The Recommended Decision thoroughly considered the Coalition's proposal and the various arguments against it. The conclusion reached by Judge Vero was not that she lacked the power to recommend a change to the status quo. Rather, she was persuaded that the status quo is working, because it imposes competitive discipline on EGS's. Therefore, the Coalition's first Exception should be rejected.

**B. The ESC's Second Exception Would Eliminate an Important Element of Competition Among Electric Generation Suppliers as Load Serving Entities**

The ESC Exception No. 2 argues that the status quo treats Default Service customers and those who use an EGS differently, and that somehow this is “unfair.” In reality, however, this is the very essence of the distinction between Default Service and service from third party EGS’s. Default Service is intended to be a one-size-fits-all program. Default Service is implemented through a very prescriptive standardized master service agreement. All terms and conditions, including timing, amount of load, and risk of load migration, are based on these predetermined terms. In contrast, Pennsylvania has afforded the competitive retail market great flexibility and freedom as market participants relative to timing, products, services, terms and conditions and the ability to innovate to meet customers individual needs without shifting the risk to all customers through a one size fits all approach.

EGS suppliers are not under any default service set of mandated requirements. They are, and should be, able to customize offerings based upon their own businesses, management decisions load and demands, and build their own efficiencies accordingly. They should be responsible and accountable for their own business decisions. They are not the default service provider. The Coalition’s proposal is the antithesis of a competitive market and would remove an important element of how EGS’s compete with each other. The fallacy underlying the Coalition’s proposal is that all EGS’s would be presumed to face the exact same load and demand, even though that is not the case in reality. Simply put, all EGS’s have not only their own load and demand, but they also do not have the same expertise, operational capability or same management or decision making.

The Coalition continues to complain about the variability of NITS costs. Rates for recovery of NITS costs are set by the Federal Energy Regulatory Commission (“FERC”). If the



members of the Coalition object to those rates, they have a forum to raise those objections at FERC. If those efforts are unsuccessful (and the record is silent as to whether the members of the Coalition even tried to challenge these rates at FERC), it is still unjust and reasonable to ask this Commission for a bail-out for a subset of EGS providers who find it too difficult to deal with these costs.

### **III. THE REQUEST FOR A STATEWIDE REVIEW IS NOT AN APPROPRIATE EXCEPTION**

The Coalition devotes several pages of its Exceptions to a request for a new statewide review of the issue it has sought to raise. This is an inappropriate request to be included in a party's exceptions, which should be limited to a critique of the Recommended Exception.

As the Coalition concedes, the Commission has on at least two occasions, in 2015 and in 2017, agreed to consider the issue generically. The clear inference from the lack of subsequent action is that there is no need for such a consideration. The issue has come up repeatedly in multiple DSP proceedings, and the result has been consistently the same. It may not be a result that the Coalition likes, but its refusal to accept the result is simply an illustration of the Coalition's stubbornness, not anything that the Commission needs to be concerned about.<sup>1</sup>

If the Coalition wants to file yet another petition on this issue, it can certainly do so. But to try to bootstrap into a new generic proceeding at the 11<sup>th</sup> hour the DSP proposal of a single

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<sup>1</sup> The Coalition points to a 2014 order involving First Energy companies that it claims represents an exception to the Commission's consistent policy. *Joint Petition of Metropolitan Edison Company et al. for Approval of Their Default Service Programs*, Docket No. P-2013-2391368, et al., Opinion and Order dated July 24, 2014, at 38. Apart from the fact that this was not argued before the ALJ, the more recent decision on First Energy companies represents a resolution of the issue fully consistent with what PECO has proposed here. NITS costs are recovered separately from Default Service customers and Load Serving Entities, as is completely appropriate. *Petition of Metropolitan Edison Company et al. for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket No. P-2017-2637855 et al., Opinion and Order dated September 4, 2018, at 9, 11.

utility is obviously inappropriate, and simply a last-gasp effort to snatch something that the members of the Coalition might regard as a small victory. It is not the responsibility of the Commission, however, to throw a party a bone just because it has been persistent - and persistently wrong - on an issue. Rather, the Commission should use this opportunity to make it clear that recovery of NITS costs is not a proper subject for repeated litigation and re-litigation.

#### **IV. CONCLUSION**

For the foregoing reasons, the exceptions of the Electric Supplier Coalition to the Recommended Decision should be rejected. There should be no change to the way NITS costs are recovered by PECO from EGS Load Serving Entities.

Respectfully submitted,

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