

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held December 3, 2020

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement
David W. Sweet, Vice Chairman
John F. Coleman, Jr.
Ralph V. Yanora

Petition of PECO Energy Company for
Approval of its Default Service Program
for the Period from June 1, 2021 through
May 31, 2025

P-2020-3019290

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of NRG Energy, Inc. (NRG Energy) and the following Commission-licensed Electric Generation Suppliers (EGSs): Direct Energy Services LLC, Interstate Gas Supply, Inc. d/b/a IGS Energy, Vistra Energy Corp., Shipley Choice LLC, ENGIE Resources LLC and WGL Energy Services, Inc. (collectively, the Electric Supplier Coalition or ESC), filed on October 29, 2020, to the Recommended Decision (Recommended Decision or R.D.) of Administrative Law Judge (ALJ) Eranda Vero, served on October 20, 2020, in the above-captioned proceeding. PECO Energy Company (PECO or the Company) and the Philadelphia Area Industrial Energy Users Group (PAIEUG) filed Replies to Exceptions on November 3, 2020, and Calpine Retail Holdings, LLC (Calpine) filed Replies to Exceptions on November 4, 2020.¹

I. Background

PECO is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office in Philadelphia, Pennsylvania. PECO provides electric delivery service to approximately 1.6 million customers. PECO is a public utility as that term is defined in Section 102 of the Public Utility Code (Code), 66 Pa. C.S. § 102, and serves as an electric distribution company (EDC) and a default service provider (DSP) as those terms are defined in Section 2803 of the Code, 66 Pa. C.S. § 2803.

¹ Calpine's Replies to Exceptions were filed with the Commission after 4:30 p.m. on November 3, 2020, and were therefore deemed filed on November 4, 2020. Although received slightly after the November 3, 2020 deadline, we shall consider Calpine's Replies to Exceptions in order to secure a just, speedy, and inexpensive determination in this proceeding. *See* 52 Pa. Code § 1.2(a).

II. History of the Proceeding

On March 13, 2020, PECO filed the Petition of PECO Energy Company for Approval of its Default Service Program (DSP V) for the Period from June 1, 2021 through May 31, 2025 (Petition), following the expiration of its current default service program (DSP IV).² The Petition was filed pursuant to 66 Pa. C.S. § 2807, the Commission's Default Service Regulations at 52 Pa. Code §§ 54.181-190, and the Commission's Policy Statement on Default Service at 52 Pa. Code §§ 69.1801-1817. Petition at 1. The applicable statute requires that the Commission issue its decision on this matter no later than nine months after the filing date of the proposed DSP, or in this case on or before December 17, 2020. 66 Pa. C.S. § 2807(e)(3.6).³

In its Petition, PECO requested that the Commission: (1) approve its DSP V, including its procurement plan, implementation plan, contingency plan, and associated procurement documents and agreements for default service supply for all PECO customers who do not take generation service from an alternative EGS or who contract for energy with an EGS that is not delivered; (2) approve PECO's proposal to solicit new ten-year contracts for Solar Alternative Energy Credits (Solar AECs) to satisfy the requirements of Pennsylvania's Electricity Generation Customer Choice and Competition Act (Competition Act), as amended by Act 129 of 2008 (Act 129), and the Alternative Energy Portfolio Standards Act, 73 P.C. § 1643.1, *et. seq.* (AEPS Act); (3)

² *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 (Order entered December 8, 2016) (*PECO DSP IV*).

³ 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. In support of its request, PECO referenced 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).

approve NERA Economic Consulting, Inc. (NERA) to continue as the independent third-party evaluator for PECO's default supply procurements; (4) approve PECO's proposed default service rate design and affirm PECO's right to recover all of its default service costs in accordance with 66 Pa. C.S. § 2807(e)(3.9); (5) grant a waiver of the rate design provisions of 52 Pa. Code § 54.187, to the extent necessary; (6) find that the DSP V includes prudent steps necessary to negotiate favorable generation supply contracts; (7) find that the DSP V includes prudent steps necessary to obtain least-cost generation supply on a long-term, short-term, and spot market basis; (8) find that neither PECO nor its affiliates have withheld from the market any generation supply in a manner that violates federal law; (9) approve continuation of PECO's existing EGS Standard Offer Program, including the associated cost recovery mechanism approved in PECO's prior default service proceedings; (10) approve PECO's proposed plan to facilitate shopping by low income customers enrolled in the Company's Customer Assistance Program (CAP) (the CAP Shopping Plan or Plan); and (11) approve PECO's proposed revised uniform Supply Master Agreement (SMA) and both forms of the proposed Solar AEC Purchase and Sale Agreement as affiliated interest agreements under 66 Pa. C.S. § 2102. Petition at 1-2.

The Office of Small Business Advocate (OSBA) filed a Notice of Appearance, Notice of Intervention, Public Statement and Answer to PECO's Petition on April 2, 2020.

The Office of Consumer Advocate (OCA) filed a Notice of Intervention, Public Statement, and Answer to PECO's Petition on April 3, 2020.

The following Parties filed Petitions to Intervene: PAIEUG on April 1, 2020; The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) on April 1, 2020; The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) on

April 10, 2020; Calpine on April 14, 2020; StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (StateWise) on April 30, 2020; Clean Air Council, Sierra Club/PA Chapter, and Philadelphia Solar Energy Association (the Environmental Stakeholders or ES) on May 1, 2020; and the Electric Supplier Coalition or ESC on May 1, 2020. These Petitions were unopposed, and the ALJ granted the Petitions by Prehearing Order dated May 8, 2020.

A public input hearing was held by videoconference on June 9, 2020. Thirty-five individuals appeared and testified. For a detailed discussion of the public input hearing, *see* Section III and Attachment 1 to the Recommended Decision.

On June 16, 2020, the OCA, the 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, the OCA, the OSBA, Calpine, CAUSE-PA, PAIEUG, and TURN *et al.* submitted eleven statements constituting their rebuttal testimony. On July 23, 2020, PECO, the OCA, the 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 settlement negotiations. As a result of those negotiations, PECO, the OCA, the OSBA, CAUSE-PA, Calpine, PAIEUG, TURN *et al.*, and the Electric Supplier Coalition (collectively, the Joint Petitioners) reached a Partial Settlement and agreed to a revised default service program consistent with PECO's DSP V Petition, as modified (Revised DSP V).

An evidentiary hearing was held telephonically on July 30, 2020. During the evidentiary hearing, three witnesses were subject to cross-examination. Cross-examination of all other witnesses was waived. The pre-served Direct, Rebuttal, and Surrebuttal Testimony of the Parties was admitted into the record.

The Joint Petitioners filed the Joint Petition for Partial Settlement (Joint Petition or Partial Settlement) on August 13, 2020. The Joint Petition was executed by counsel for PECO, the OCA, the OSBA, CAUSE-PA, Calpine, PAIEUG, TURN *et al.*, and the Electric Supplier Coalition. The Joint Petitioners each filed Statements in Support of the Joint Petition. The Joint Petitioners explained that they had reserved two issues for briefing, which involved the following: (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 the Electric Supplier Coalition proposed.

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

By e-mail dated August 20, 2020, counsel for the OCA informed the ALJ that PECO, the OCA, and the 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, the OCA and the OSBA were the only parties litigating this issue, and they expected to file an unopposed settlement of TOU cost allocation by September 8, 2020. R.D. at 7-8.

Also on August 20, 2020, PECO, PAIEUG, Calpine, the Electric Supplier Coalition, and the Environmental Stakeholders filed Main Briefs.

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

Also on September 8, 2020, PECO, PAIEUG, Calpine, the Electric Supplier Coalition, and the Environmental Stakeholders filed 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 and Reply Briefs; and the letter from StateWise indicating that it did not oppose the Joint Petition. The record closed on September 8, 2020.

In the Recommended Decision, served on October 20, 2020, the ALJ, *inter alia*, approved the Joint Petition, as amended by the TOU Settlement, without modification. The ALJ also denied the Electric Supplier Coalition's proposal to include PJM charges for NITS in PECO's Non-Bypassable Transmission Charge.

As previously indicated, the Electric Supplier Coalition filed Exceptions and PECO, PAIEUG, and Calpine filed Replies to Exceptions.

III. Legal Standards

A. Burden of Proof

In this proceeding, the Company seeks approval of its plan to procure default service supply and, as such, has the burden of proving that its proposed DSP V complies with the legal requirements. The proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa. C.S. § 332(a), and therefore, the Company has the burden of proving its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Company's evidence must be more

convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 49 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties. If the evidence presented by the other parties is of co-equal value or "weight," the burden of proof has not been satisfied. The Company now has to provide some additional evidence to rebut that of the other parties. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001). However, a party that offers a proposal in addition to what is sought by the original filing bears the burden of proof for such a proposal. *Pa. PUC, et al., v. Metropolitan Edison Co. (Metropolitan Edison Co.)*, Docket No. R- 00061366C0001 (Order entered January 11, 2007); *Joint Default Service Plan for Citizens' Electric Co. of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013 (Citizens' Electric Co.)*, Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010).

B. Standards Applicable to Default Service

The Competition Act requires that default service providers acquire electric energy through a “prudent mix” of resources that are designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results through competitive processes that include auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. §§ 2807(e)(3.1) and 2807(e)(3.4).

The Competition Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa. C.S. § 2802(3). This mandate is based on the legislative finding that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. 66 Pa. C.S. § 2802(5).

In addition to the foregoing statutory guidelines, the Commission has enacted default service Regulations, 52 Pa. Code §§ 54.181 to 54.190, and a policy statement, 52 Pa. Code §§ 69.1801 to 69.1817, addressing DSPs. The Regulations first became effective in 2007, and were amended in 2011 to incorporate the Act 129 amendments to the Competition Act. *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L 2009-2095604 (Final Rulemaking Order entered October 4, 2011) (*Act 129 Final Rulemaking Order*). The Commission has directed that EDCs consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market. *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered

December 16, 2011), and *Intermediate Work Plan* (Final Order entered March 2, 2012) (*IWP Order*).

C. Legal Standards Relative to Settlements

This Commission has a policy of encouraging settlements. *See* 52 Pa. Code § 5.231(a); *see also* 52 Pa. Code §§ 69.401, *et seq.*, relating to settlement guidelines for major rate cases, and our Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq.* This Commission has stated that results achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991). The Joint Petitioners have reached an accord on many of the issues and claims that arose in this proceeding and submitted the Partial Settlement. The Joint Petitioners have the burden to prove that the Partial Settlement is in the public interest.

IV. The Partial Settlement

A. Terms and Conditions of the Partial Settlement

The Joint Petitioners have agreed to the Partial Settlement, which resolves all issues among the settling Parties with the exception of two issues reserved for litigation: (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 charges for NITS from all load serving entities to PECO. The OCA and the OSBA filed a Partial Settlement of Time of Use Cost Allocation (TOU Settlement) which replaced the language of Paragraph 60 of the Joint Petition, leaving only one issue for litigation: the assignment of responsibility for PJM charges for NITS. The TOU Settlement indicated that the proposed changes to Paragraph 60 were unopposed. R.D. at 7-8.

The Partial Settlement consists of the Joint Petition containing the terms and conditions of the Settlement, Exhibit A, which is the revised Electric Service Tariff, and Exhibit B, which is the revised Electric Service Tariff (redline). Statements in Support of the Partial Settlement were submitted by the Joint Petitioners and were denoted as follows:

Statement in Support of Joint Petition for Partial Settlement	Joint Petitioner
Statement A	PECO Energy Company
Statement B	Office of Consumer Advocate
Statement C	Office of Small Business Advocate
Statement D	Calpine Retail Holdings, LLC
Statement E	Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania
Statement F	Electric Supplier Coalition
Statement G	Philadelphia Area Industrial Energy Users Group
Statement H	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 in Section II of the Joint Petition, in Paragraphs 13 through 72. *See* Settlement ¶¶ 13-72, at 5-20. As explained above, the original Paragraph 60 of the Joint Petition has been replaced with the new language from the TOU Settlement. The essential terms and conditions of the Joint Petition are set forth below, with the original paragraph numbers maintained, and with the replacement language for Paragraph 60 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

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*.

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 ARR 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 FPFR 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 FPFR products. Each of the contracts for the Small Commercial Class will be procured through a competitive sealed-bid process in the same manner as FPFR 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 FPFR 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.

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 (“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

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 determination regarding NITS in a subsequent compliance filing.

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.

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

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.⁷

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".

⁷ As noted above, the language in Paragraph 60 replaces the language of the original Partial Settlement with the new Paragraph 60 from the TOU Settlement.

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*.

Partial Settlement ¶¶ 13-72 at 5-20; TOU Settlement at ¶ 60.

In addition to the specific essential terms to which the Joint Petitioners have agreed, as set forth above, the Partial Settlement contains certain additional general terms. The Joint Petitioners state that the Partial Settlement is in the public interest and will provide substantial affirmative public benefits. Partial Settlement ¶¶ 73-74 at 20-21. In addition, the Partial Settlement states that the Settlement does not constitute an admission against, or prejudice to, any position which any of the Joint Petitioners might adopt during subsequent litigation of this case or any other case. Partial Settlement ¶ 76 at 21-22. The Partial Settlement states that it is conditioned upon the Commission's approval of the terms and conditions without modification and establishes a procedure by which any of the Settling Parties may withdraw from the Partial Settlement and proceed to litigate this case, if the Commission should act to modify the Settlement. Partial Settlement ¶ 77 at 22.

The Joint Petitioners respectfully request that the ALJ and the Commission approve the proposed Partial Settlement and TOU Settlement without modification, and approve the proposals set forth in PECO's Revised DSP V Program. Partial Settlement at 23; TOU Settlement at 2.

C. ALJ's Recommendation

In her Recommended Decision, the ALJ reached twenty-seven Conclusions of Law. R.D. at 108-112. The Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In her Recommended Decision, the ALJ acknowledged that only one Party, the Environmental Stakeholders, objected to the Partial Settlement on the following grounds: (1) PECO failed to properly analyze and incorporate long-term renewable energy supply contracts into the DSP V; and (2) PECO's proposed DSP V TOU rates are

deficient because PECO neither performed the cost-benefit analysis recommended by the Environmental Stakeholders nor developed rate designs tailored to technologies that support electrification of heavy duty vehicles, such as buses, or building sources, such as appliances currently using natural gas. R.D. at 52-53.

However, the ALJ stated that the Joint Petitioners have shown that the provisions in the Joint Petition are reasonable compromises and that the Joint Petition reduces litigation expenses because only one issue, allocation of NITS charges, was reserved for briefing. Furthermore, the ALJ noted that the OCA and the OSBA asserted, respectively, that the terms of the Joint Petition benefit residential customers and small and medium commercial customers. Furthermore, the ALJ noted that TURN, *et al.* stated that the Joint Petition offers important protections for low-income customers, offers stakeholder processes to address matters of concern in the near future, and maintains PECO's role in billing and providing default service. The ALJ provided that PAIEUG and CAUSE-PA stated that the Settlement was achieved after an extensive investigation of the Company's filing and is in the public interest. The ALJ also noted that Calpine supported the Joint Petition because it is not damaging to its interests, and the ESC stated that the Partial Settlement represents improvements on SOP and customer billing information. R.D. at 52.

After considering the Joint Petition, including the compromises on procurement plans, the consolidation of the 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 fully litigating the case, the ALJ found that the Partial Settlement and the TOU Settlement are fair, just, reasonable, and in the public interest. Accordingly, the ALJ recommended that the Partial Settlement, as modified by the TOU Settlement, be approved without modification. R.D. at 52.

With regard to the Environmental Stakeholders' objection to the Partial Settlement, the ALJ noted that the Environmental Stakeholders filed a Main Brief opposing PECO's DSP V proposing that PECO perform a new default service analysis focusing on the use of long term renewable energy contracts and offering additional TOU service rate options. As noted above, the Environmental Stakeholders argued that PECO failed to properly analyze and incorporate long-term (greater than four years in length) renewable energy supply contracts in its preparation of the DSP V plan. R.D. at 53, 59. The Environmental Stakeholders claimed that PECO's proposed procurement plan, which requires bids for one- or two-year periods, functions as a discriminatory barrier to renewable energy resources. R.D. at 59. The Environmental Stakeholders proposed that PECO be required to study the potential benefits to customers of long-term contracts for supply. R.D. at 61.

The ALJ pointed out that 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 PECO's DSP V proposal. The ALJ noted that the Environmental Stakeholders provided in their Main Brief that several participants at the Public Input Hearing specifically recommended that 20% of PECO's default generation supply should come from solar. R.D. at 81 (citing ES M.B., Attachment 1). The ALJ also noted that, in response, PECO evaluated that recommendation and determined that it was unrealistic due to physical constraints for rooftop solar or utility-scale solar and the overall cost of \$15 billion related to this option. R.D. at 81 (citing Tr. at 395-396).

According to the ALJ, PECO showed in the current case, 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. R.D. at 79. The

ALJ explained that the record evidence shows that DSP V, as set forth in the Partial Settlement and supported by the Joint Petitioners, includes a prudent mix of contracts designed to provide adequate and reliable service at least cost to customers over time. *See* 66 Pa. C.S. § 2807(e)(3.4). The ALJ reasoned further that 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. R.D. at 82. Accordingly, the ALJ recommended that the Commission reject the Environmental Stakeholders' proposal that PECO undertake a new default service analysis. R.D. at 82.

The ALJ explained that the Environmental Stakeholders requested that PECO be required to improve its TOU rates by performing a cost-benefit analysis and by further tailoring the rate design to support heavy electric vehicles (EVs) and building electrification. The Environmental Stakeholders averred that 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. R.D. at 63, 64. The ALJ provided that the Environmental Stakeholders requested 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. The Environmental Stakeholders requested 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. R.D. at 66.

The ALJ found that 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. The ALJ reasoned that the

record in this case supports a finding that PECO's TOU rates will accommodate the technologies that support building electrification. The ALJ further noted that 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. R.D. at 83 (citing PECO St. 2-R at 20-21). Accordingly, the ALJ recommended that the Commission approve PECO's TOU rates set forth in the Partial Settlement, without modification. R.D. at 83.

D. Disposition of the Partial Settlement and the TOU Settlement

Upon our review of the Partial Settlement and the TOU Settlement, we find they are reasonable and in the public interest and, therefore, we shall approve them without modification. We agree with the ALJ that the provisions within the Partial Settlement represent reasonable compromises and that the Settlement has served to reduce the litigation expenses of all involved Parties. We also find that the terms of the Partial Settlement will benefit residential customers, small and medium commercial customers, and large commercial and industrial customers, as well as provide important protections for low-income customers.

The benefits of the Partial Settlement are numerous. The Partial Settlement results in savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings and possible appellate court proceedings. In addition to the avoidance of litigation and associated costs, the beneficial aspects of the Partial Settlement include: (1) the inclusion of a Revised DSP, consistent with the Company's original proposal and existing DSP IV; (2) the consolidation of all customers receiving hourly-priced default service into a single procurement group – the Consolidated Large Commercial and Industrial Class; (3) a four-year DSP V term to

minimize future litigation expenses and reduce administrative costs; (4) the use of one- and two-year FPFRR products which will continue to provide an appropriate level of price stability for the Residential Class; (5) the portfolio of FPFRR products for Small Commercial customers which constitutes of a “prudent mix” of supply resources; (6) a proposal to continue to procure hourly-priced full requirements annually for all default service supply for the Consolidated Large Commercial and Industrial Class; (7) the agreement on the Supplier Master Agreements and Request for Proposals; (8) the agreement on procedures for the acquisition and use of AECs; (9) the agreement on contingency plans in the event of failure to fully subscribe the default service load for any class, or for Commission rejection of the bid results for any procurement, or supplier default; (10) the appointment of NERA as the independent third-party evaluator of the Companies’ default service procurements; (11) the agreement to support PECO’s request for the Commission to approve the form SMA found in PECO Exhibit JJM-4 as an affiliated interest agreement; (12) the agreement 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; (13) agreements regarding the rate design, customer eligibility, treatment of net metering customers and the implementation plan for PECO’s new TOU rates; (14) the continuance of the Company’s Commission-approved existing SOP; (15) residential customer bill improvements; and (16) the agreement that PECO will submit a CAP shopping proposal following the Commission’s final Order in the CAP Design Proceeding.

For the reasons stated herein and in the Joint Petitioners’ Statements in Support, we agree with the ALJ’s conclusion that the Partial Settlement, and the TOU Settlement, are in the public interest. PECO’s proposed generation supply procurement plan, as set forth in its DSP V program and modified by the terms of the Partial Settlement and the TOU Settlement, encompasses a prudent mix of supply methods, which is anticipated to result in adequate, reasonable and reliable service to customers, as

well as service that is provided at the least cost over time. In addition, AECs are provided for in a competitive fashion, and a contingency plan is properly established.

Accordingly, we shall adopt the ALJ's recommendation to grant the Joint Petition for Partial Settlement and approve the Partial Settlement, inclusive of the TOU Settlement, without modification.

V. Contested Issue – Allocation of NITS Charges

A. Background

The remaining contested issue in this proceeding centers on the allocation of Network Integration Transmission Service (NITS) Charges. NITS charges reflect a load serving entity's (LSE's) share of the EDC's approved transmission service rate for a given transmission owner's zone. LSEs include both EGSs and wholesale default service providers. Accordingly, all customer load (including shopping and non-shopping customers) on an EDC's system is allocated a share of transmission service costs. PAIEUG St. 1 at 2. During PECO's first two DSPs, 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 its third DSP, PECO proposed to recover certain PJM transmission charges through an NBT for all distribution customers. Additionally, PECO proposed to exclude NITS and certain other charges from its NBT. The Commission approved PECO's proposal, finding that such non-bypassable recovery is beneficial to customers. At the same time, the Commission specified, *inter alia*, that NITS will be excluded from PECO's NBT. See *Petition of PECO Energy Co. 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) (*PECO DSP III*), at 40-46. In its

fourth DSP, the Commission approved PECO's proposal to continue this approach. *See PECO DSP IV.*

Pursuant to its Tariff Electric – Pa. PUC No. 6, Fourth Revised Page No. 43, PECO currently recovers NITS charges from its default service customers as part of its PTC. On the other hand, EGSs providing generation supply to PECO's distribution customers are currently responsible for collecting NITS charges from these shopping customers. In its DSP V, PECO proposed to continue to recover NITS through a bypassable charge applicable only to customers receiving default service from PECO, consistent with *PECO DSP III* and *PECO DSP IV*. PECO M.B. at 29-30; PECO St. 1-R at 16-17. As will be discussed in more detail below, the ESC has challenged PECO's proposal and argues that PECO's NITS costs should be recovered by PECO through a non-bypassable charge to all PECO distribution customers regardless of whether such customers receive default service from PECO or competitive generation supply service from an EGS.

B. Positions of the Parties

1. ESC

The ESC claimed that PECO's NITS cost recovery proposal should be denied because it treats shopping customers differently than default service customers. In this regard, the ESC argued that EGSs must bear the risk of estimating NITS charges and may need to include risk premiums in the supply price. The ESC reasoned that because PECO's wholesale default suppliers bear no risk associated with NITS charges, the prices they bid to provide default service do not need to include risk premiums. Therefore, the ESC submitted that while default service customers are paying only their actual NITS costs, shopping customers are paying potentially widely differing amounts for NITS costs, depending on how much risk premium the EGSs must factor into the supply price.

According to the ESC, this creates an unlevel playing field between PECO and the EGSs selling electric supply in PECO's territory. The ESC asserted that this result is an inequality that is compounded by the unpredictable, non-market-based nature and volatile nature of the actual NITS costs assessed on all LSEs. ESC M.B. at 5-6.

The ESC recognized that in past proceedings, including in *PECO DSP III*, the Commission has rejected proposals that would have required EDCs to be responsible for the recovery of NITS costs for all LSEs. ESC M.B. at 5-6 (citing *PECO DSP III* at 53-54). However, the ESC submitted that although the Commission, in rejecting these proposals cited to a lack of evidence that the cost of NITS is volatile and unpredictable, circumstances have significantly changed since the issuance of *PECO DSP III*. Namely, the ESC proffered that recent changes approved by the Federal Energy Regulatory Commission (FERC) on June 27, 2017, and implemented by PECO on December 1, 2017, have altered the way in which PECO establishes NITS charges. According to the ESC, these changes have increased the volatility and unpredictability of NITS costs. ESC M.B. at 6, 8.

The ESC explained that under FERC's approved changes, most transmission owners now charge formula rates in lieu of rates established through a traditional transmission ratemaking process. The ESC asserted that FERC-approved, annual formula rates for transmission services promote more frequent and sudden changes in NITS costs, which makes it increasingly difficult for EGSs to estimate likely NITS costs over the term of the offers they make to consumers in the retail market. More specifically, the ESC stated that the inputs to the formula rates include: (1) the capital investments a transmission owner expects to make next year; (2) the operating expenses it expects to have to pay; and (3) a return on the existing investments in its system. The ESC continued that because these rates are reconciled annually, the rate can swing up or down corresponding with the transmission owner's under or over recovery based on the difference between the transmission owner's previously projected costs and actual costs

incurred. Accordingly, the ESC argued that NITS costs are driven, in part, by the transmission owner's managerial decisions on investments and accounting, which are not visible to EGSs. ESC M.B. at 7

The ESC cited to the testimony of its witness Mr. Travis Kavulla in support of its assertion that the use of FERC formula rates has resulted in significant fluctuations in NITS charges. The ESC stated that Mr. Kavulla provided examples of the actual impacts on several LSEs of NITS rate increases implemented through the FERC formula rate, highlighting significant increases in the NITS rate year over year. ESC M.B. at 8-9 (citing ESC St. 1 at 36-39). The ESC further claimed that NITS costs are difficult to predict. The ESC stated 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. According to the ESC, because 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 EGSs to accurately estimate NITS costs during the relevant contract period with its customers. The ESC alleged that given the unpredictability of formula rates, EGSs need to forecast them, while PECO as the default service provider does not, resulting in the need for the EGSs to add risk premiums, as discussed above. ESC M.B. at 7-10.

Accordingly, the ESC submitted that a change is warranted in PECO's approach for recovering NITS costs. Therefore, the ESC proposed that PECO be directed to include all NITS costs incurred by both wholesale default suppliers and EGSs in its NBT charge. The ESC claimed that this revised cost recovery proposal treats shopping customers and non-shopping customers in the same manner. Further, the ESC averred that its proposal is consistent with Section 2804(6) of the Competition Act, 66 Pa. C.S. § 2804(6), which charges the Commission with requiring a public utility that owns or operates jurisdictional transmission and distribution facilities to provide transmission and distribution service to all electric customers and EGSs "on rates, terms of access and

conditions that are comparable to the utility's use of its own system." ESC M.B. at 10-13.

Finally, the ESC acknowledged PECO's concerns, *infra*, with the impact that implementing such a proposal could have on existing customers' contracts. However, the ESC posited that to address such concerns, a reasonable transition mechanism could be created, similar to the method that PECO employed when it first created the NBT. The ESC suggested that the change in cost responsibility can be limited to only new charges associated with NITS occurring after the Commission's final order is entered in this proceeding. Alternatively, the ESC proposed that the change in cost responsibility could be deferred to a later date to provide a transition period during which many EGS contracts expire and renew. ESC M.B. at 13.

2. PECO

PECO countered that the ESC's proposed changes to PECO's current Commission-approved cost assignment for NITS charges should be rejected. PECO took the position that the 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 such that these costs must be recovered through an NBT. According to PECO, EGSs have the flexibility to offer products with pricing terms that align with their costs and profit expectations. PECO posited that EGSs may make offers with terms that allocate risks between the EGS and its customer, including a direct pass-through of NITS costs, which will minimize the EGS's risk of cost-under recovery. Further, PECO pointed to evidence presented by Calpine, *infra*, that LSEs are able to successfully manage NITS costs. PECO M.B. at 30-31.

PECO also refuted the ESC's arguments that the Company should be required to alter its cost recovery for NITS in light of recent changes at FERC. PECO

noted that in *PECO DSP III*, the Commission ruled that alleged incidence of volatile NITS costs for utilities other than PECO did not justify non-bypassable treatment of NITS costs in PECO's service area. PECO R.B. at 14-15 (citing *PECO DSP III* at 53-54). PECO stressed its position that ESC did not present any evidence of material changes in NITS costs for PECO since it transitioned from a fixed/stated rate to a formula rate for FERC-jurisdictional wholesale transmission service. PECO R.B. at 15.

Further, PECO contended that the ESC's proposed treatment of NITS would create unnecessary transition problems for customers with existing EGS contracts. First, PECO contended that shopping customers could be "double-charged" and end up paying for NITS costs in both: (1) PECO's distribution rates (pursuant to the NBT); and (2) as part of the price of generation purchased from their EGSs. PECO M.B. at 31; PECO St. 1-R at 17-18. Second, PECO argued that the ESC's proposal would create an unbundling problem that occurs when an EGS has 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. According to PECO, because the customer entered into the agreement without knowing whether or how the price could be deconstructed into NITS and other parts, it will be unclear how much to credit the customer even if the EGS agrees to credit the NITS component to the customer when the NITS charge becomes non-bypassable. PECO St. 1-R at 18.

Finally, PECO refuted PAIEUG's assertion that in the event the Commission adopts ESC's proposal, it should establish a "carve out" to maintain the "status quo" for Large Commercial and Industrial (Large C&I) customers that already have arrangements with EGSs. PECO argued 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. According to PECO, PAIEUG's concerns further demonstrate that ESC's proposal should not be adopted for *any* rate class. In addition, PECO claims that

implementing PAIEUG's proposal would require the Company to reconfigure its billing system to recover the same category of costs (*i.e.*, NITS) through two different retail rate mechanisms, which would increase the administrative costs recovered from all other distribution customers through the NBT. PECO M.B. at 31-32.

3. Calpine

Calpine opposed the ESC's proposed allocation of NITS charges. Calpine explained that like the specific EGSs that comprise the ESC as a Party in this proceeding, it is a Commission-licensed EGS serving customers in Pennsylvania, including customers in PECO's service territory, and is also an LSE and a member of PJM. As such, Calpine stated that like the EGSs that form the ESC, it incurs NITS costs. According to Calpine, it has been able to successfully manage NITS costs and its customers' loads while still offering products and services that its customers desire. Calpine surmised that the EGSs in the ESC, in contrast, have not been successful in this regard and are, therefore, attempting to shed their individual retail business risks by moving the NITS costs from the competitive retail market to all customers of PECO, regardless of the existing market, contracts, products, and services. According to Calpine, such cost shifting would harm the retail competitive market and remove any incentive and opportunity to create customized products and services that are, or may potentially be, formulated to assist EGS customers in addressing these costs. Calpine M.B. at 2.

Calpine argued that although the ESC has recognized that the Commission previously considered and rejected proposals similar to the one ESC has proposed in this proceeding, the ESC has failed to acknowledge the extent to which such proposals have been considered and rejected. Namely, Calpine noted that in addition to explicitly considering this proposal in *PECO DSP III* and, by extension in *PECO DSP IV*, the Commission also considered and rejected this type of proposal in PECO's second DSP proceeding at *Petition of PECO Energy Company for Approval of its Default Service*

Program II, Docket No. P-2012-2283641 (Order entered October 12, 2012). Calpine submitted that the ESC's arguments regarding the changes at FERC are without merit because the formulas now used by FERC are still subject to a ratemaking process overseen and approved by FERC. Calpine M.B. at 3-4.

Additionally, Calpine characterized the ESC's attempt to compare retail electric market products and services to a fully regulated default service as an "apples to oranges comparison." Calpine reasoned that default service is a one-size-fits-all service based on a uniform master supply agreement with no individually negotiated terms of service. Conversely, Calpine submitted that EGSs have the freedom to build, establish and promote innovative products and services to meet their individual customers' needs, as well as the structure and timing of those services based on the EGS's own business and management decisions. Calpine M.B. at 4-5.

4. PAIEUG

PAIEUG echoed the arguments of PECO and Calpine that the ESC's proposal should not be adopted. PAIEUG submitted that the Competition Act, Commission precedent, and Commission Regulations mandate that EGSs collect NITS costs from shopping customers. PAIEUG noted that under the unbundling provisions of the Competition Act, shopping customers negotiate with EGSs which provide such customers with both generation and transmission services, while these customers continue to receive distribution service from their EDC. On the other hand, PAIEUG stated customers who choose not to shop continue to receive generation, transmission, and distribution service under the EDC's "provider of last resort" service or default service. PAIEUG M.B. at 4-5 (citing 66 Pa. C.S. § 2802(16)). Additionally, PAIEUG noted that the Commission's Regulations designate transmission service as a load-following expense, given 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 M.B. at 5 (citing 52 Pa. Code § 54.187(d)). Therefore, PAIEUG claimed that ESC's proposal to shift the collection of NITS costs solely to PECO and its distribution customers runs contrary to both the Competition Act and Commission Regulations. PAIEUG M.B. at 5-6.

PAIEUG argued that the ESC was unable to provide evidence that NITS costs in PECO's service territory are so volatile that they cannot be predicted or managed. Instead, PAIEUG submitted that the ESC only cited to changes in the NITS rates of other transmission owners, which are irrelevant to customers taking competitive generation supply in PECO's service territory. PAIEUG further noted that in PECO's service territory, NITS costs have actually decreased over the past two years. PAIEUG argued that even if such volatility existed, EGSs do not have to take on such risk, especially with respect to Large C&I customers. In this regard, PAIEUG explained that 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). Therefore, PAIEUG echoed Calpine's assertion that the ESC's proposal is nothing more than an attempt to shed and shift market risk associated with its demand-driven costs. In PAIEUG's view, the ESC is inappropriately seeking a bail-out from PECO's distribution customers rather than using its expertise to manage these costs and the associated risks. PAIEUG M.B. at 7-8, 10-11.

Like Calpine, PAIEUG took the position that the ESC's proposal would be harmful to competition because it would remove products and services from the retail market. PAIEUG highlighted Calpine's argument that PECO's default service is one-size-fits-all, while EGSs have the freedom to choose the products and services they offer into the retail marketplace. Therefore, PAIEUG submitted that the ESC's proposal effectively re-bundles transmission and distribution, contrary to the terms of the Competition Act. PAIEUG M.B. at 12.

Additionally, PAIEUG claimed that the ESC's proposal would pose specific harm to Large C&I customers that have entered into long-term fixed price contracts with EGSs. According to PAIEUG, although 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. Therefore, PAIEUG argued that for such customers, shifting cost collection responsibility for NITS to PECO could result in double recovery of NITS charges: (1) once through PECO's NBT; and (2) once through fixed price EGS contracts that extend beyond the date ESC's proposal is implemented. PAIEUG asserted that the ESC's transitional proposal to limit the change in cost responsibility to new charges associated with NITS occurring after a final Commission order is entered in this proceeding would provide no relief because NITS costs are a single charge updated once a year for all customers. PAIEUG M.B. at 13-15.

PAIEUG further submitted that the ESC's proposal would sever the link between cost recovery and cost causation. In PAIEUG's view, this runs contrary to the Commonwealth Court's Decision in *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1016 (Pa. Cmwlth. 2006), in which the Commonwealth Court determined that the principle of cost causation is the polestar of ratemaking. Using Large C&I customers as an example, PAIEUG explained that most Large C&I shopping customers procure generation from EGSs through contracts under which NITS costs are a direct pass-through. PAIEUG continued that this pass through is based on the individual customer's NSPL, which is based in turn on the customer's contribution to the annual system peak. Thus, PAIEUG noted that each customer pays for NITS in a manner that reflects the customer's responsibility for network transmission costs. PAIEUG contended that if the ESC's proposal is adopted, NITS recovery through the TSC would bill the customer for its highest measured demand, rather than its NSPL, irrespective of when such demand occurred. PAIEUG M.B. at 16-17.

Finally, PAIEUG asserted that if the Commission adopts the ESC's proposal, it should approve a carve-out for Large C&I customers so that the status quo remains for this customer class. PAIEUG reasoned that Large C&I customers have specific issues of concern warranting a carve-out. In response to PECO's concern that it would need to reconfigure its billing system to accommodate a carve out, PAIEUG posited that the associated administrative costs could be recovered by EGSs seeking to implement the ESC's proposal. PAIEUG M.B. at 18-19.

C. ALJ's Recommendation

The ALJ recommended that the ESC's proposal that PECO acquire NITS for all customer load and recover the associated PJM charges on a non-bypassable basis be denied, finding that the ESC did not establish any basis to change the existing Commission-approved assignment of responsibility for NITS to all LSEs, including EGSs. R.D. at 108. The ALJ determined that the ESC failed to demonstrate that the NITS costs in PECO's service territory are so volatile that they cannot be predicted. R.D. at 106. The ALJ noted that 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. *Id.* (citing PAIEUG M.B. at 9, PAIEUG St. 1 at 6). The ALJ explained that 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 is detailed and well-documented. The ALJ concluded that as a result of the process, there is no question concerning when periodic changes in NITS rates will become effective, and EGSs can anticipate changes in NITS rates. The ALJ reasoned that the protocols that accompany a formula transmission rate specify when rates are to be reset and that for PECO, new NITS rates are implemented on June 1 of each calendar year. The ALJ continued that 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. R.D. at 106.

The ALJ additionally explained that 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. Accordingly, the primary drivers of the NITS rates are transmission investment, transmission-related operating expenses, cost of capital, applicable income tax rates, and peak demand. The ALJ cited to the testimony of Becky Merola, Director, Government and Regulatory Affairs of Calpine, in finding that the regulatory process in place at FERC does not negate the ability of EGSs to manage their loads and NITS costs. *Id.* (citing Calpine St. 1 at 3).

Furthermore, the ALJ decided that the ESC did not provide any evidence of volatility for PECO's NITS rates, reasoning that none of the examples of NITS rates' volatility that the ESC presented in this proceeding pertained to PECO, but, instead, pertained to other transmission owners. R.D. at 106. The ALJ observed that contrary to the ESC's claims of volatility, PAIEUG presented evidence showing that since implementation of a formula rate, PECO's NITS rates have been stable and have decreased over the past two years. *Id.* at 106-107 (citing PAIEUG St. 1 at 7). The ALJ also noted that as PAIEUG pointed out, even if such volatility existed, EGSs do not have to take on such risk, particularly with respect to Large C&I customers, because most Large C&I customers procure generation from EGSs under contracts pursuant to which NITS costs are a direct pass-through based on each customer's NSPL. R.D. at 107 (citing PAIEUG St. 1 at 3). Therefore, the ALJ reasoned that 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. R.D. at 107 (citing PAIEUG M.B. at 11).

The ALJ relied on current Commission decisions that maintain that the collection of NITS for shopping customers should remain with the customer's EGS. The ALJ cited to *PECO DSP III*, in which the Commission rejected the argument that the unpredictability of NITS costs lended itself to collection by PECO instead of EGSs. R.D. at 107 (citing *PECO DSP III Order*, at 53-54). The ALJ found that since the Electric Supplier Coalition failed to show that PECO's NITS costs are volatile and unpredictable in nature, its argument for changing the status quo based on a claim of volatility of PECO NITS rates was unconvincing. R.D. at 107.

The ALJ emphasized Calpine's strong counterargument to the ESC's position. The ALJ noted that like the Electric Supplier Coalition members, Calpine incurs NITS costs, yet Calpine has been able to manage NITS costs and continue to offer products and services that its customers desire. The ALJ also noted that Calpine has achieved this by managing the customer loads it served. *Id.* (citing Calpine M.B. at 3; Calpine St. 1 at 3). The ALJ explained that Calpine defends the allocation of NITS costs on EGSs as an aspect of a competitive retail market and views the cost shifting the ESC proposes as simultaneously limiting existing and potential customers' product and service choices. R.D. at 107. Calpine's position is that the cost shifting the ESC proposed 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. *Id.* at 107-108 (citing Calpine M.B. at 3; PAIEUG St. 1 at 8-9).

Moreover, the ALJ found that having EDCs collect NITS costs would constitute rebundling of transmission and distribution service for certain groups of customers in contravention of the Competition Act. R.D. at 108. The ALJ reasoned that the removal of NITS costs from products in the competitive market is contrary to the intent of the Competition Act and the Commission's Regulations, because the Commission's Regulations designate transmission service as a load-following expense,

meaning that the entity providing a customer's generation service is also responsible for providing transmission services and collecting the associated costs. *Id.* (citing 52 Pa. Code §§ 54.182, 54.187(d)).

As the ALJ recommended that the ESC's proposal be denied, the ALJ did not address PECO's "double-charge" and "unbundling" concerns, finding that those transition issues would arise only if the Electric Supplier Coalition's proposal were adopted. Additionally, the ALJ determined that her recommendation rendered moot PAIEUG's request for the implementation of a carve-out for Large C&I customers. R.D. at 108.

D. ESC Exception No. 1, Replies, and Disposition

1. ESC Exception No. 1

In its first Exception, the ESC avers that the ALJ erred in finding that the Commission lacks the requisite legal authority to change the status quo for how NITS are handled. Specifically, the ESC takes issue with the ALJ's conclusions that: (1) "Commission precedent holds that collection of NITS for shopping customers should remain with the customer's EGS;" (2) "having EDCs collect NITS costs. . . constitutes rebundling. . . in clear contravention of the Competition Act;" and, (3) "removal of NITS costs from products in the competitive markets is contrary to the intent of the Competition Act and Commission Regulation." ESC Exc. at 3-4 (citing R.D. at 107-108). The ESC argues that the Commission previously made clear that adopting a proposal where an EDC is directed to recover the NITS costs from all customers "would not violate the Competition Act, the Public Utility Code or [Commission] Regulations." ESC Exc. at 4 (citing *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs (FE DSP III)*, Docket No. P-2013-2391368

(Order entered July 24, 2014), at 38). The ESC believes its proposal is consistent with one previously deemed legal by the Commission, and, as such, there is no basis upon which to conclude that adoption of its proposal violates the law. ESC Exc. at 4. ESC states that the Commission has been open to other alternatives to level the playing field for recovering NITS costs based on the Commission's approval of an approach that requires the wholesale supplier to include NITS costs as part of their bids to provide default service. *Id.* (citing *FE DSP III* at 31-32).

The ESC continues that the ALJ's reliance on the Competition Act and the Commission's Default Service Regulations as a basis to reject its proposal is incorrect, because nothing in the Competition Act or the Commission's Regulations requires or justifies a continuation of the status quo where PECO handles NITS cost recovery differently for shopping and non-shopping customers. ESC Exc. at 4. Rather, according to the ESC, Section 2804(6) of the Competition Act obligates the Commission to ensure that a public utility owning and operating jurisdictional transmission and distribution facilities provides 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." *Id.* at 4-5 (citing 66 Pa. C.S. § 2804(6)). The ESC contends that because PECO is using a different cost recovery method in providing transmission service to EGSs' customers than it is using for its own default service customers, a modification is warranted to level the playing field and ensure compliance with Section 2804(6). ESC Exc. at 5.

Additionally, the ESC argues that the ALJ's characterization of its proposal as resulting in the rebundling of transmission and distribution service is incorrect. *Id.* (citing *PECO DSP III*). The ESC avers that the only service the Competition Act declared as competitive is generation service. The ESC points to Section 2802(13), 66 Pa. C.S. § 2802(13), which provides that the Competition Act will give retail customers access only to "a competitive market for the generation and sale or purchase of

electricity” and Section 2802(14), 66 Pa. C.S. § 2802(14), which specifies that unbundling was designed to give competitive suppliers open access to the EDCs’ transmission and distribution systems to allow them “to generate and sell electricity directly to consumers.” ESC Exc. at 5. The ESC also avers that the law states that “[i]t is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the commission.” *Id.* (citing 66 Pa. C.S. §2802(16)).

The ESC explains that transmission costs for shopping customers need to be recovered either by the EDC providing distribution service or the EGS supplying generation service, and, today, different components of transmission costs are recovered through the EDC in some circumstances and through the EGS in others. ESC Exc. at 5. However, according to the ESC, placing cost recovery responsibility on the EDC rather than the EGS does not amount to rebundling of transmission service with distribution, in the same way PECO’s current approach does not rebundle transmission and generation service. *Id.* at 5-6. The ESC avers that nothing is being rebundled, rather, the only change under the Electric Supplier Coalition’s proposal is that the NITS charges would be recovered in the same way other transmission charges are. *Id.* at 6.

To illustrate this point, the ESC states that PECO currently recovers costs for the following charges for all customers: (1) Generation Deactivation/Reliability Must Run (RMR) charges; (2) Regional Transmission Expansion Plan charges; and (3) Expansion Cost Recovery charges (collectively, “Other PJM Charges”). *Id.* (citing ESC St. 1 at 31, 33). According to the ESC, PECO recovers the costs of the Other PJM Charges via the Non-Bypassable Transmission NBT Charge (NBT Charge). Accordingly, the ESC’s proposal is that NITS costs be included with the NBT Charge. ESC Exc. at 6 (citing ESC St. 1 at 33). The ESC argues that because the NBT Charge is a Commission approved cost recovery mechanism for Other PJM Charges, there is no legal reason why NITS, a similar wholesale charge, cannot be included as well. The ESC

also argues that, on the other hand, if the Commission adopts the ALJ's reasoning that the Electric Supplier Coalition's proposal would constitute unlawful rebundling, it cannot sustain the NBT Charge as it presently exists. ESC Exc. at 6.

Further, the ESC disagrees with the ALJ's reliance on the Commission's Regulations in support of the conclusion in the Recommended Decision. The ESC avers that these Regulations do not state that the entity providing a customer's generation service must take responsibility for the provision of transmission services and collection of the associated costs. *Id.* Rather, the ESC contends, that these Regulations merely define default service and specify the costs that should be recovered from default service customers. *Id.* at 6-7.

Finally, the ESC does not believe that Commission precedent is determinative of this issue because the Commission has made clear that it is not prevented from considering proposals to require a different outcome. *Id.* at 7 (citing *FE DSP III* at 53). The ESC avers that when the Commission reached its decision in *FE DSP III*, it was not convinced NITS charges were unpredictable, but since then, FERC has approved the use of a formula rate for PECO that has resulted in significant fluctuations in NITS costs and increased their unpredictability. ESC Exc. at 7 (citing ESC M.B. at 7-10; ESC St. 1 at 34-40). The ESC asserts that it presented compelling evidence through the Direct and Surrebuttal Testimony of Mr. Kavulla, Vice President of Regulatory Affairs for NRG Energy, that NITS costs are unpredictable and that EGSs have no control over these costs because they are driven by PECO's decisions on transmission spending. ESC Exc. at 7 (citing ESC St. 1 at 37-40; ESC St. 1-S at 22-23; ESC M.B. at 9-10).

2. Replies

a. PECO

PECO notes that in its first Exception, the ESC contends that the ALJ erred in concluding that ESC's proposal would contravene the Competition Act and the Commission's Regulations. PECO avers that it is unnecessary to address this legal issue in this proceeding. PECO R. Exc. at 5.

b. PAIEUG

PAIEUG avers that the ALJ correctly rejected the ESC's request to modify the status quo regarding the collection of NITS costs because the ESC failed to meet the burden of proving such a change was appropriate. PAIEUG states that in its Exceptions, the ESC claims that the Recommended Decision must be rejected based on a single paragraph discussing the provisions of the Competition Act. PAIEUG also states that a further review of the Recommended Decision reveals that while the ALJ agrees with several Parties' positions on the Competition Act interpretation, the reasoning behind the ALJ's recommendation to maintain the status quo was based on the ESC's failure to meet its burden of proof. PAIEUG R. Exc. at 3.

PAIEUG continues that the ALJ correctly determined that the ESC failed to show that the NITS costs in PECO's service territory are so volatile they cannot be predicted and correctly noted that the ESC did not provide any evidence showing the volatility of PECO's NITS rates. PAIEUG also states that the ALJ properly relied on Commission precedent holding that the collection of NITS for shopping customers should remain with the customer's EGS. *Id.*

PAIEUG avers that while the ALJ provided a strong and substantive basis for rejecting the ESC's position, the ESC's Exceptions focus mainly on one paragraph in the Recommended Decision that agrees with PAIEUG's position regarding the possibility that rebundling of transmission and distribution services could result from the ESC's proposal in contravention of the Competition Act. *Id.* PAIEUG notes that in support of its argument, the ESC pointed to the Commission's decision in *FE DSP III*, but that this Order actually supports the ALJ's findings because the ESC failed to prove any volatility in NITS costs warranting a change in the status quo. *Id.* at 3-4.

PAIEUG states that in *FE DSP III*, the Commission does find that an EGS' proposal to modify the NITS collection was not precluded by the Competition Act or the Commission's Regulations. *Id.* at 4 (citing *FE DSP III* at 38). PAIEUG believes this finding, however, is irrelevant to the Commission's overarching determination that the EGS failed to meet its burden of proof in that proceeding. PAIEUG R. Exc. at 4 (citing *FE DSP III* at 38). PAIEUG avers that in this case, the ALJ also correctly finds that the ESC failed to present evidence to show that NITS costs in PECO's service territory are so volatile they cannot be predicted, and the ALJ cited to Commission precedent upholding the status quo regarding NITS collection. According to PAIEUG, even if the Commission were to determine that the Competition Act did not hinder the ESC's proposal, that determination is irrelevant due to Commission precedent and lack of evidence in this proceeding. *Id.*

c. Calpine

In response to the ESC's first Exception, Calpine asserts that the ESC makes an irrelevant argument by claiming that the Commission has authority to change the status quo. Calpine states that the ESC was given ample opportunity through testimony and briefing to support such a change, but it failed to meet its burden of proof. Calpine avers that the Parties opposing the ESC's proposal collectively demonstrated

substantial precedent in favor of the status quo that was established over multiple proceedings involving PECO and other default service providers. According to Calpine, the ALJ did not reach the conclusion that the Commission lacked power to recommend a change to the status quo, but, rather, the ALJ was persuaded that the status quo is working because it imposes competitive discipline on EGSs. Calpine R. Exc. at 2.

3. Disposition

Upon review, we will deny, in part, and grant, in part, the ESC's first Exception. As the party proposing that PECO include NITS charges in its existing NBT, the ESC bears the burden of proof for this proposal. *Metropolitan Edison Co.; Citizens' Electric Co.* In reaching her conclusion on the ESC's proposal, ALJ Vero correctly determined, based on the evidence in this proceeding, that the ESC did not satisfy its burden of proof and, particularly, did not show that NITS costs in PECO's service territory are so volatile that they cannot be predicted. R.D. at 106, 107, and 108.

Additionally, the ALJ properly referenced our prior decisions in default service proceedings, including PECO's, and employed reasoning consistent with those decisions, in which we found that an EGS or other party did not meet its burden of proving that the EDC should assume responsibility for NITS charges. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs (FE DSP II)*, Docket No. P-2011-2273650 (Order on Reconsideration entered October 11, 2012), at 10 ("Consistent with the Commonwealth's continued migration to a more competitive retail market, we believe that these supply-related costs should remain with the EGSs; *FE DSP III* at 31-32 (rejecting the EGS' arguments regarding volatility of NITS costs and finding the evidence the EGS presented was insufficient to meet its burden of proving the Commission should alter our decision in *FE DSP II* that NITS costs should not be collected through the utilities' Default Service Supply Rider

mechanism)); *PECO DSP III Order* at 53-54 (NITS related costs should not be collected within the Company's non-bypassable rider mechanism because the Retail Energy Supply Association failed to present sufficient evidence that PECO's NITS costs were unpredictable and difficult for the EGSs to hedge).

Our prior DSP decisions, however, do not reach any conclusions that a NITS proposal like that of the ESC's in this case would be contrary to the Competition Act or the Commission's Regulations. In *FE DSP III*, we specifically addressed whether shifting the collection of NITS from EGSs to EDCs would violate the Competition Act, the Code, or the Commission's Regulations. In that case, we explained that although we found the EGS did not meet its burden of proof regarding its NITS proposal, such a proposal would not violate the Competition Act, the Code, or our Regulations. We stated that "neither the Competition Act nor the Code preclude the implementation of the NITS proposal, if we had determined that changed circumstances caused us to reconsider our prior decisions on this issue." *FE DSP III* at 38.

We find no reason in this proceeding to reach a different conclusion. Therefore, to the extent that the ALJ's language in the Recommended Decision which the ESC finds objectionable can be read as a legal conclusion that the ESC's NITS proposal, if implemented, would be inconsistent with the Competition Act or our Regulations, we

will not adopt herein the ALJ's language discussing this issue.⁸ We will adopt the remainder of the Recommended Decision addressing this matter because, as we previously concluded, the ALJ's decision on the ESC's NITS proposal is sound, supported by the record, and consistent with our prior decisions. Accordingly, we are granting the ESC's first Exception to the extent that we are not adopting the ALJ's discussion concerning the Competition Act and the Commission's Regulations.

E. ESC Exception No. 2, Replies, and Disposition

1. ESC's Exception No. 2

In its second Exception, the ESC remains of the opinion that permitting PECO to continue its current method for recovering NITS costs will perpetuate an unlevel playing field and create an unfair competitive advantage for default service. The ESC submits that the ALJ erred in reaching her conclusion that EGSs can manage NITS risk without any need to alter PECO's current cost recovery method. The ESC clarifies that its position is not that EGSs cannot manage risk, but, rather, that maintaining the status quo creates an unlevel playing field. Namely, the ESC claims that the ALJ

⁸ The ALJ's discussion of this issue is as follows:

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.

erroneously overlooked the evidence it provided regarding: (1) the underlying inequity in the market caused by PECO's recovery of NITS costs for default service customers only; (2) the reality of the unlevel playing field and differences that exist based on customer class; and (3) why action needs to be taken to correct the current status quo. ESC Exc. at 8, 10.

The ESC restates its argument that under PECO's current NITS allocation, EGSs bear the risk of estimating and pricing likely NITS charges, while PECO's wholesale default service suppliers, and PECO itself, pass that risk along to default service customers, who have their rates increased after the fact for any increase in NITS charges. The ESC claims that this is unjust because PECO is a transmission owner whose planning and investment decisions ultimately drive NITS rate changes. The ESC stresses its argument that PECO's NITS rates are a function of FERC's formula ratemaking methodology, which results in transmission rates that change more frequently, are based on forward-looking revenue requirements that are less forecastable, and which have resulted in volatility in the NITS rate. According to the ESC, when NITS costs change unpredictably, the impact on shopping customers will be very different depending on how their EGS has elected to manage the risk and also based on the customer class. In contrast, the ESC submits that none of these difficulties occur for default service customers because PECO can simply recover the NITS costs via a true-up and reconciliation of the default service price. ESC Exc. at 8-9, 10.

The ESC also finds fault with the ALJ's finding that since the implementation of the FERC formula rate, PECO's NITS rates have been stable. According to the ESC, in making this finding, the ALJ clearly misinterpreted the effect of the only evidence in this proceeding related to PECO's NITS rates. Namely, the ESC contends that the ALJ failed to acknowledge that between June 1, 2019 and June 1, 2020, PECO's NITS rates changed by eighteen percent. The ESC argues that although this

represented an eighteen percent *decrease*, overlooking this change is not a reasonable basis for fact finding on whether the rate is volatile. ESC Exc. at 9, n.29.

The ESC further objects to the ALJ's finding that even if such volatility existed, EGSs do not have to take on such risk because they can write automatic pass-through provisions for NITS rate changes into contracts. The ESC contends that given the Commission's Order on *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Docket No. M-2013-2362962 (Order entered November 14, 2013) (*Fixed Price Order*), this is not a feasible approach for residential and small business customers. ESC Exc. at 9. The ESC argues that in the *Fixed Price Order*, the Commission noted that it is "unrealistic to expect the average residential consumer to understand electric markets to this level of granularity, with many of them still struggling with the basic distinctions of generation, transmission and distribution." The ESC also notes that the Commission concluded that a fixed-price product for residential and small business customers must not change in price during the term of the agreement. *Id.* (citing *Fixed Price Order* at 20-24, 30). Therefore, the ESC claims that the ability of some EGSs to pass-through NITSs charges directly to large commercial customers is not an option that exists in the same way for residential and small business customers. ESC Exc. at 9-10.

In view of the above, the ESC submits that its proposal should be adopted because it would address the current market disparity. Namely, the ESC asserts that its proposal would: (1) align NITS cost recovery with PECO's current recovery method for other wholesale costs; (2) level the playing field so that PECO and all EGSs have access to the same cost recovery mechanism; and, (3) ensure that all customers are paying only the actual costs of NITS. Exc. at 2.

2. Replies

a. PECO

In its Replies to Exceptions, PECO submits that the ALJ properly considered each of the ESC's arguments and explained, in detail, why she was rejecting them. According to PECO, the ALJ outlined detailed findings that the ESC had failed to show that NITS costs are unpredictable even if an EDC recovers transmission costs through a FERC-approved formula rate. PECO highlights the ALJ's findings that none of the ESC's examples of NITS rate volatility pertained to PECO, and that PECO's NITS rates have been stable since it implemented a transmission formula rate. In PECO's view, the ALJ fully considered the ESC's proposal to shift responsibility for NITS costs in PECO's service territory and correctly concluded that nothing had changed since the Commission's decisions in earlier PECO default service proceedings that now merit a change in NITS cost recovery. Therefore, PECO contends that the ESC's second Exception should be denied. PECO R. Exc. at 5, 7.

b. Calpine

In its Replies to Exceptions, Calpine refutes the ESC's assertion that PECO's current method is unfair because it treats default service customers differently from shopping customers. Calpine contends that this represents the very distinction between default service and service from an EGS. Calpine restates that default service is intended to be a "one size fits all program" implemented through a very prescriptive standardized master service agreement in which all terms and conditions, including timing, amount of load, and risk of load migration, are based on these predetermined terms. In contrast, Calpine explains that EGSs are not under any default service set of mandated requirements, but are instead able to customize offerings based upon their own business model, management decisions, load and demands. As such, Calpine submits that EGSs should be responsible and accountable for their own business decisions.

Calpine opines that the ESC's proposal erroneously assumes that all EGSs would be presumed to face the exact same load and demand, when this is not the case in reality. Rather, Calpine points out that each EGS has its own demand load and level of expertise, operational capability, and management and decision making. Therefore, Calpine submits that the ESC's second Exception, if granted, would eliminate an important element of competition among EGSs as LSEs. Calpine R. Exc. at 3.

c. PAIEUG

In its Replies to Exceptions, PAIEUG submits that in arguing in its Exceptions that the ALJ did not interpret the evidence correctly because she failed to create a level playing field for EDCs and EGSs, the ESC disregards that EDCs and EGSs are different and must be treated as such. Like Calpine, *supra*, PAIEUG explains the difference between service from an EGS and service from an EDC. In PAIEUG's view, the ESC cannot pick and choose those provisions of a regulated EDC that it would prefer would apply to EGSs while still retaining those portions of the competitive marketplace that benefit the ESC's members. PAIEUG R. Exc. at 5-6.

PAIEUG also contends that a review of the ESC's Exceptions indicates that it can provide no evidence that PECO's NITS charges are volatile. PAIEUG notes the ALJ's finding that "[n]one of the examples of NITS rates volatility brought forth by the Coalition in this proceeding pertain to PECO. Instead, they involve other transmission owners." PAIEUG R. Exc. at 6 (citing RD at 106). PAIEUG downplays the ESC's assertion that the only evidence in this proceeding related to PECO's NITS rates shows a rate change of eighteen percent in a single year. PAIEUG argues that its own witness Mr. Jeffry Pollock, Energy Advisor and President of J. Pollock, Incorporated, provided this information in response to the ESC's failure to include PECO's NITS rates in any of its evidence comparing NITS costs among transmission owners. Therefore, PAIEUG submits that the ALJ appropriately found that the ESC failed to provide any evidence

regarding the volatility of NITS rates in PECO's service territory. PAIEUG R. Exc. at 6-7.

3. Disposition

We shall deny the ESC's second Exception. As discussed under our disposition of the ESC's Exception Number 1, *supra*, we have determined that the ESC has failed to meet its burden of proving that PECO's NITS are so volatile that they cannot be predicted or managed. For this reason, we find no merit in the ESC's argument in its second Exception that the FERC formula-based rate has resulted in NITS rates for PECO that are less forecastable and more volatile.

Rather, we agree with the position of PAIEUG, as endorsed by the ALJ, that the 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, and which emulates how transmission rates are set using a standard revenue requirement calculation and the applicable loads. Although a formula rate may be forward-looking, there is an annual true-up which reconciles the forward-looking rate with the actual costs incurred as published in each utility's FERC Form 1. 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 1st of each calendar year. Thus, there is a definitive date when periodic changes in NITS rates will become effective. Moreover, PAIEUG highlighted that PJM has a Transmission Cost Information Center to help stakeholders understand current transmission costs and estimate future costs. *See* <https://www.pjm.com/planning/project-construction.aspx>. R.D. at 106; PAIEUG St. 1 at 6-7. Therefore, this formula rate process at FERC does not negate the ability of EGS companies to manage their loads and manage their NITS costs. In our view, given that the rates for the recovery of NITS costs are set by FERC, ESC must raise objections to

those rates at the FERC level, rather than seek to have PECO alter its NITS allocation method in this proceeding.

Similarly, we are not persuaded by the ESC's argument that in finding that PECO's NITS rates have been stable since the implementation of the FERC formula rate, the ALJ misinterpreted the effect of the only evidence in this proceeding related to PECO's NITS rates. Rather, we find PAIEUG's counter argument in its Replies to Exceptions to be particularly compelling. Namely, as PAIEUG notes, it was PAIEUG, and not the ESC that provided specific evidence regarding the NITS rates in PECO's territory. PAIEUG Exc. at 7; *see also* PAIEUG St. 1 at 7. As previously noted, as the party proposing that PECO include NITS charges in its existing NBT, the ESC bears the burden of proof for this proposal. This includes having the burden to produce specific evidence regarding the volatility of NITS rates in PECO's service territory. As the ESC only provided evidence regarding NITS volatility in other service territories, but not PECO's service territory, it has not met this burden.

We likewise find that the ESC has failed to meet its burden of proving that the fact that PECO recovers NITS costs only from its default service customers demonstrates that inequalities exist in the market. As Calpine and PAIEUG each point out in their Replies to the ESC's second Exception, PECO's Default Service and the products and services offered by EGSs in an open retail market possess inherently different characteristics. Therefore, comparing retail electric market products and services to a fully regulated default service is an "apples to oranges comparison." We echo the ALJ that Calpine has proffered testimony that is particularly convincing on this point. Namely, we concur with Calpine's position that requiring all shopping and non-shopping customers to have their NITS costs collected through an NBT, as the ESC envisions, would simultaneously limit existing and potential customers' product and service choices. As a result, this would not only harm the competitive 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 EGSs in addressing these specific costs. *See* Calpine St. 1 at 3. Further, as Calpine and the ALJ each point out, Calpine, like the EGSs that comprise ESC, is an EGS that incurs NITS costs. However, Calpine has been able to successfully manage these costs by managing its customers' loads. *See* Calpine M.B. at 4; R.D. at 107.

Consistent with the forgoing, we shall deny the ESC's second Exception and shall adopt the ALJ's recommendation to deny ESC's proposed allocation of NITS charges. Accordingly, we shall approve PECO's proposal to continue in its DSP V its present allocation of NITS charges such that it will collect NITS charges only from its default service customers, while the EGSs operating in PECO's service territory will continue to collect NITS charges from shopping customers.

F. ESC's Proposal Regarding a Commission-Ordered Statewide Review Addressing NITS Costs Recovery to Enhance the Retail Electric Market, Responses Thereto, and Disposition

1. ESC's Proposal

The ESC proposes that instead of continuing the current unlevel market by rejecting the ESC's position in this case, the Commission should institute a statewide review of whether there is a need to address NITS cost recovery in a more uniform and comprehensive way that would facilitate and enhance the retail electric market. ESC Exc. at 12. The ESC refers to Mr. Kavulla's testimony in which he discussed the Commission's May 1, 2015 Secretarial Letter initiating an informal investigation "to determine if there is a need to address these non-market based wholesale market charges in a more uniform and comprehensive way that would facilitate and enhance the retail electric market during future proceedings." The ESC also referenced Mr. Kavulla's testimony in which he noted that neither the information provided by the EDCs in

response to the May 1, 2015 letter nor any other result of the Staff's informal investigation was shared publicly. *Id.* The ESC states that in response to discovery in this proceeding, PECO indicated that "after a reasonable search . . . it was unable to locate the written informal comments" shared with Commission Staff. *Id.* (citing Exh. TK-14). The ESC notes that in April 2017, Commission Staff indicated it would reopen the informal investigation and requested that interested stakeholders submit informal comments by July 2017. ESC Exc. at 12. The ESC avers that like the earlier investigation, none of the informal information received in July 2017 nor any other result of Staff's restarted investigation was publicly shared. The ESC also avers that no further action has occurred as a result of this investigation. *Id.* at 12-13 (citing ESC St. 1 at 31-32).

The ESC states that the ALJ does not consider in this proceeding how an EGS's recovery of NITS may vary depending on customer class but, rather, relies on testimony that Large C&I customers pay NITS costs on a direct pass-through basis. The ESC avers that decisions on these issues that may make sense for Large C&I customers do not necessarily make sense for residential and/or small commercial customers. *Id.* at 13. The ESC believes that a statewide review, with input and deliberation from interested stakeholders, is a reasonable resolution given the debate on the record in this proceeding, the ESC's assertion that an unlevel playing field will continue to exist as long as the Commission maintains the status quo, and the apparent importance of this issue to other EGSs as they continue to raise it in default service proceedings. *Id.* at 13-14. The ESC explains that while its proposal would address the market inequities, the statewide investigation could also deal with differences necessitated by differing customer classes as well as transition issues. *Id.* at 14 (citing ESC M.B. at 12-13; ESC St. 1-S at 24).

2. Responses

a. PECO

PECO argues that the Commission should reject the ESC's proposal. PECO states that the ALJ did not have the opportunity to consider this proposal, because the ESC did not make its recommendations in briefing the issue reserved for litigation. PECO avers that as the ESC concedes, an investigation of non-market based PJM charges is already underway at the Commission. PECO R. Exc. at 8. PECO asserts that while the ESC may consider that investigation "stalled," the ESC's belief that the Commission should move more quickly is no basis to start another investigation while an existing statewide investigation remains open. *Id.* at 8-9. PECO also believes that based on the repeated failure of both the Retail Energy Supply Association and the ESC to demonstrate any need to revisit the allocation of NITS costs in several default service proceedings, it is unnecessary for the Commission to expand its consideration of these issues at this time. *Id.* at 9.

b. PAIEUG

PAIEUG argues that the ESC's proposal should be rejected and this section of the ESC's Exceptions should be stricken, because this proposal is beyond the scope of Exceptions and the ALJ's Recommended Decision. PAIEUG states that as part of its testimony, the ESC noted that it would welcome statewide review of this issue. However, PAIEUG notes that the ESC did not elaborate on this issue in its Main Brief, but now attempts to have a "second bite at the apple" by raising this issue in its Exceptions. PAIEUG R. Exc. at 7. PAIEUG additionally avers that the ESC's argument seeks a statewide review as part of a specific EDC's DSP proceeding, and other entities not involved in this proceeding (*e.g.*, other EDCs) might have a position on whether such an investigation is appropriate. *Id.* at 7-8. PAIEUG states that if the ESC believes a

statewide investigation is warranted, then the ESC should file a Petition with the Commission requesting an investigation. PAIEUG asserts that such a Petition would ensure appropriate due process, because all interested parties would have the ability to respond accordingly. *Id.* at 8.

c. Calpine

Calpine avers that the ESC's proposal is an inappropriate request to include in Exceptions, which should be limited to addressing the Recommended Decision. Calpine states that as the Electric Supplier Coalition concedes, the Commission has agreed to consider the issue generically. Calpine believes that the lack of subsequent action is due to the fact that there is no need for such action. Calpine argues that this issue has been raised in multiple DSP proceedings, and the result has been consistently the same. Calpine R. Exc. at 4. Calpine submits that it would be more appropriate for the ESC to file a Petition on this issue, rather than to raise this issue in the context of a DSP proposal of a single utility. *Id.* at 4-5.

3. Disposition

Initially, we conclude that the ESC cannot properly frame this NITS investigation proposal as an Exception under 52 Pa. Code § 5.533(b), because it was not a contested issue to be briefed, and the ALJ did not address it in the Recommended Decision. Upon review, we decline to open an investigation into the allocation of NITS costs in the context of this DSP proceeding for both this procedural reason and substantive reasons, as discussed below.

As the ESC correctly indicates, the Commission directed its Office of Competitive Market Oversight (OCMO) to perform an informal review of the non-market-based charges, including NITS, PJM imposed on LSEs. The intent of the

informal investigation was to determine if there was a need to address these non-market-based wholesale market charges in a more uniform and comprehensive manner. *May 1, 2015 Secretarial Letter Sent to all EDCs Re: Informal Review of PJM Non-Market Based Charges*. OCMO placed the review on hold during the litigation of several DSPs. OCMO then resumed its informal review and broadened the review beyond EDCs by inviting any interested party to submit informal comments on the issues in the May 2015 Secretarial Letter by July 31, 2017. OCMO Charge Call Summary dated April 21, 2017.

The Commission then decided to start a formal investigation to address many of the issues that were reviewed in the informal investigation and specifically sought input on how smart meter technology could be used to design default service rates in a way that better aligned associated wholesale cost allocation with retail cost allocation. *See Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Order entered February 26, 2019). Various stakeholders, including the ESC, filed Comments and Reply Comments in the formal investigation. The Commission ultimately decided that the matters it investigated, including the recovery of NITS costs, should continue to be addressed on a case-by-case basis within individual DSP proceedings based on the evidence presented in each case. By Secretarial Letter issued January 23, 2020, the Commission closed the formal investigation and offered guidance to the EDCs as they prepared for the next round of DSPs.

As we have recently reviewed various DSP-related issues in the context of the informal and formal investigations discussed above and provided informed guidance to EDCs for future DSP proceedings, we do not believe it would be beneficial to open a new investigation or to reopen the prior formal investigation at this time, particularly in the context of this individual DSP proceeding. The individual EGSs that comprise the ESC had the opportunity to participate and file comments in the prior investigation, either separately or as part of a coalition. If the ESC believes a new investigation into the

recovery of NITS costs is warranted, ESC may file a petition outside of this proceeding requesting such an investigation. A petition would properly provide interested parties that are not involved in this proceeding with an opportunity to respond to the ESC's request.

VI. Conclusion

Based on the foregoing, we shall deny, in part, and grant, in limited part, the Exceptions filed by the ESC and adopt the ALJ's Recommended Decision, as modified, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by 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, on October 29, 2020, are denied, in part, and granted, in limited part.

2. That the Proposal Regarding a Commission-Ordered Statewide Review Addressing Network Integration Transmission Service Costs Recovery to Enhance the Retail Electric Market of 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, is denied, consistent with this Opinion and Order.

3. That the Recommended Decision of Administrative Law Judge Eranda Vero, served on October 20, 2020, is adopted as modified, consistent with this Opinion and Order.

4. That the Joint Petition for Partial Settlement is granted, and the Partial Settlement is approved without modification.

5. That the Clean Air Council, Sierra Club/PA Chapter, and Philadelphia Solar Energy Association's objections to the Partial Settlement are denied.

6. That the Partial Settlement on Time of Use Cost Allocation is approved without modification.

7. That PECO Energy Company shall allocate seventy percent of the costs incurred to implement its new Time of Use default service rate options based on the total number of default service customers in the Residential and Small Commercial procurement classes, and thirty percent of the costs on the number of default service kilowatt-hour consumed by the Residential and Small Commercial procurement classes.

8. That NERA Economic Consulting, Inc., is approved to continue as the independent third-party evaluator for PECO Energy Company's default service procurements.

9. 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 Generation Supply Adjustment 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.

10. That the form Supply Master Agreement set forth in PECO Exhibit No. JJM-4 and both forms of the Solar Alternative Energy Credits 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.

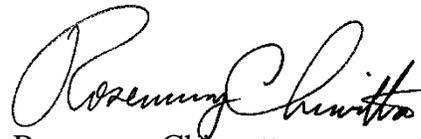
11. That PECO Energy Company's Standard Offer Program currently in effect, including the associated cost recovery mechanisms approved in PECO Energy Company's prior default service proceedings, is permitted to continue, subject to the applicable provisions set forth in the Joint Petition for Partial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

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

13. 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.

14. That the proceeding at Docket No. P-2020-3019290 be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 3, 2020

ORDER ENTERED: December 3, 2020