**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105**

Public Meeting held September 27, 2012

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer, Statement

Petition of PECO Energy Company for P-2012-2283641

Approval of its Default Service Program II

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission or PUC) for consideration and disposition are the Exceptions of PECO Energy Company (PECO or Company); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); the Retail Energy Supply Association (RESA); PPL Energy Plus, LLC (PPL); FirstEnergy Solutions Corporation (FES); Dominion Retail, Inc. and Interstate Gas Supply Inc. (collectively, Dominion); Green Mountain Energy Company (Green Mountain or GMEC); and the Joint Suppliers Group[[1]](#footnote-1) (Joint Suppliers) filed on September 10, 2012, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Dennis J. Buckley, that was issued on August 29, 2012. Replies to Exceptions were filed on September 17, 2012, by PECO, the OCA, the OSBA, the Bureau of Investigation and Enforcement (I&E), RESA, PPL, FES, Dominion, Green Mountain, the Philadelphia Area Industrial Energy Users Group (PAIEUG), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA). On September 13, 2012, the OSBA filed two Motions. These Motions request that certain portions of the Joint Suppliers’ Exceptions regarding extra-record evidence and proposals, and certain parts of RESA’s Exceptions, regarding extra-record evidence, be stricken. The Joint Suppliers filed an Answer to the Motion on September 26, 2012.

# I. HISTORY OF THE PROCEEDING

On January 13, 2012, PECO filed a Petition (Petition)requesting that the Commission approve its Default Service Plan (DSP II) for the period from June 1, 2013 to May 31, 2015, and find that its DSP II satisfies the criteria set forth at 66 Pa. C.S.  § 2807(e)(3.7). The Commission has a statutory requirement under 66 Pa. C.S. §  2807(e)(3.6) to issue a decision regarding this proposed default service plan within nine months of the date that the plan was filed. PECO stated that its DSP II is designed to provide its default service customers access to an adequate, reliable generation supply at the least cost over time and to enable the Company to recover its costs of furnishing that service in accordance with the Commission’s Regulations governing default service (52 Pa. Code §§ 54.181 – 54.189) and its Policy Statement on Default Service and Retail Electric Markets (52 Pa. Code §§ 69.1801- 69.1817). In addition, PECO contended that its DSP II contains certain competitive market enhancements in accordance with the Commission’s recent Final Order in the  *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order entered March 2, 2012) (*IWPF Order*). As its name implies, this is PECO's second proposed program for default service under Pennsylvania's Electricity Generation Customer Choice and Competition Act, Act 138 of 1996, as amended by Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. §§ 2801-2812 (Competition Act).

Copies of the Petition were served in accordance with 52 Pa. Code § 54.185(b). Additionally, on January 28, 2012, the *Pennsylvania Bulletin* published the Commission’s notice setting a deadline for the filing of protests, complaints or petitions to intervene on or before February 13, 2012, and scheduling a prehearing conference for March 13, 2012.

An evidentiary hearing was held in Harrisburg on May 22, 2012. At the hearing, the testimony and related exhibits offered by the Parties to this proceeding were received into evidence, and two witnesses were cross-examined. A hearing transcript of 134 pages was produced in this proceeding and filed on May 30, 2012. Subsequent to the evidentiary hearing, Briefs and Reply Briefs were timely filed by the Parties, and the record closed on July 9, 2012.

The ALJ’s Recommended Decision was issued on August 29, 2012. The ALJ made seventeen Findings of Fact and reached seven Conclusions of Law. *See* R.D. at 4-7; 88-89. The Findings of Fact and 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.

Exceptions and Reply Exceptions were filed as noted, *supra*. Before we address the merits of the Exceptions to the Recommended Decision, we note, as a preliminary matter, that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also*, *generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

# II. STANDARDS APPLICABLE TO DEFAULT SERVICE

## A. Generally Applicable Standards

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

The Competition Act requires that default service providers acquire electric energy through a “prudent mix” of resources that is designed: (1) to provide adequate and reliable service; (2) to provide the least cost to customers over time; and (3) 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 does not, however, require a specific default service rate design methodology.

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

In addition to the foregoing statutory provisions, the Commission has promulgated Regulations, 52 Pa. Code §§ 54.181 - 54.189, and a Policy Statement on Default Service and Retail Electric Markets, 52 Pa. Code §§ 69.1801 - 69.1817. The Regulations first became effective in 2007, and the Commission has approved amendments 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*).

## B. Act 129 Standards

The burden of proof is upon the Company to demonstrate that its proposed default service plan is in compliance with Act 129. The General Assembly established the policy goals of Act 129 in its Preamble. There, in declaring the purpose of Act 129, the General Assembly found that price stability was a key concern that needed to be addressed. The General Assembly stated in pertinent part:

The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:

(1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, *taking into account any benefits of price stability over time* and the impact on the environment.

(2) It is in the public interest to adopt energy efficiency and conservation measures and to implement energy procurement requirements designed to *ensure that electricity obtained reduces the possibility of electric price instability*, promotes economic growth and ensures affordable and available electric service to all residents.

(3) It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.

*See* Preamble to Act 129 (emphasis added).

As the highlighted portions above demonstrate, the General Assembly required that default service providers work to ensure price stability. In addition to price stability, the Competition Act implies that default service should be designed to be adequate, reliable, affordable, efficient, and available to all residents. The General Assembly established a series of policy objectives that each Electric Distribution Company (EDC) must work to achieve through its default service plan.

The legal framework for default service is further defined in Act 129 and the Commission’s Regulations, and is set forth in detail in Section 2807(e), *Obligation to serve*. *See* 66 Pa. C.S. § 2807(e). Under Section 2807, the EDCs are required to provide electric generation supply service to all of their default service customers through Commission-approved competitive procurement plans. *See* 66 Pa. C.S. § 2807(e)(3.1). Under Act 129, generation is to be procured through competitive procurement processes, and shall include one or more of the following: auctions, requests for proposals, and bilateral agreements. *Id.*

Regarding this issue, Act 129 requires a prudent mix of contracts including the following:

1. Spot market purchases.
2. Short-term contracts.
3. Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years.

66 Pa. C.S. § 2807(e)(3.2).

Act 129 also requires that the prudent mix of contracts be designed to achieve certain goals, as follows:

The prudent mix of contracts entered into pursuant to paragraphs (3.2) and (3.3) shall be designed to ensure:

1. Adequate and reliable service.
2. The least cost to customers over time.
3. Compliance with the requirements of paragraph (3.1).

66 Pa. C.S. § 2807(e)(3.4).

Act 129 further requires that the Commission evaluate whether the default supplier’s plan meets the requirements of the Act. The Commission must take several factors into consideration, and must make specific findings that the default supplier’s plan meets the requirements of Act 129, as follows:

(3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider’s plan obtains generation supply at the least cost, the commission shall consider the default service provider’s obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis and shall make specific findings which shall include the following:

1. The default service provider’s plan includes prudent steps necessary to negotiate favorable generation supply contracts.
2. The default service provider’s plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.
3. Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

66 Pa. C.S. § 2807(e)(3.7).

The Commission recently has interpreted the prudent mix standard and held that a DSP can, in some unique cases, have only one product but still meet the prudent mix standard if that product is the least cost over time. *Petition of Pike County Light & Power Company for Approval of its Default Service Implementation Plan,* Docket No. P‑2011-2252042 (Order entered May 24, 2012) (*Pike County DSP Order*). The Commission found that requiring Pike County to include a hedge with its spot purchases did not appear to comply with least cost procurement, and thus found that requiring Pike County Light & Power Company (Pike County) to obtain a hedge would produce an unreasonable result. *Id.* at 30*.* The Commission held that a prudent mix of spot market purchases and short and long term contracts should be designed in a flexible manner to permit default service providers to design their own combination of products to meet the requirements of the statute. *Id.* In the *Act 129 Final Rulemaking Order*, the Commission declined to predetermine an appropriate mix of default service load that should be provided by various products. *Id.* at 66.

The Commission is charged with taking measures to develop a competitive retail market so that the market can function to drive the price of electricity down as low as possible for the benefit of consumers. 66 Pa. C.S. § 2802(3), (5).

In the *Act 129 Final Rulemaking Order*, the Commission considered the statutory standards and the intent of the General Assembly when developing the final Regulations. In particular, when considering the “least cost over time” standard in Act 129, the Commission concluded as follows:

…that the Legislature, in utilizing the language “least cost over time” did not provide a clear-cut definition of the term. As such, we must be guided by the comments received as well as our own experience and sound discretion in implementing both the Competition Act and Act 129 consistent with the plain language and, where ambiguous, *the legislative intent*.

*Act 129 Final Rulemaking Order* at 37 (emphasis added).

In interpreting Act 129, the Commission has found rate stability to be an important goal when developing a prudent mix of supplies for default service. The Commission recognized the benefits of rate stability as it relates to the “least cost over time” standard, as follows:

In our view, a default service plan that meets the “least cost over time” standard should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan time frame but rather a cost for power that is both *relatively stable* and also economical relative to other options.

*Act 129 Final Rulemaking Order* at 40-41 (emphasis added).

The Commission further elaborated on the importance of price stability, noting that Act 129 requires a prudent mix of a variety of products. The Commission continued:

Price stability benefits are very important to some customer groups, so an interpretation of “least cost” that mandates subjecting all default service customers to significant price volatility through general reliance on short term pricing is inconsistent with Act 129’s objectives. This is especially true given that the statute specifically enumerates short-term (up to 4 years) and long-term (over 4 to 20 years) contracts as part of the “prudent mix” of contracts that should be included in a default service plan. 66 Pa. C.S. § 2807(e)(3.2).

*Act 129 Final Rulemaking Order* at 41 (emphasis added).

# III. DISCUSSION

## A. OSBA’s Motions to Strike

**1. Positions of the Parties**

According to RESA, “the ALJ erred in rejecting RESA’s proposal to shift responsibility for the recovery of Generation Deactivation and other PJM charges from EGSs to PECO.” RESA Exc. No. 5. On September 13, 2012, the OSBA moved to strike part of RESA’s Exceptions on the ground that RESA improperly cited and relied upon extra-record evidence to support its argument. *See* Motion of the Office of Small Business Advocate to Strike Certain Portions of the Exceptions of the Retail Energy Supply Association at 2. This evidence includes recent Federal Energy Regulatory Commission (FERC) filings by generation owners as well as practices of FirstEnergy Ohio utilities. According to the OSBA, due process requires that the Commission not consider this evidence without reopening the record so other parties may respond to it. *Id*. at 3.

On October 3, 2012, RESA filed its Answer to the OSBA’s Motion. RESA argued that the OSBA’s Motion should be denied because: (a) it is moot, (b) RESA did not submit any new evidence, (c) the Commission may take administrative notice of public records, and (d) the OSBA was not prejudiced by the inclusion of the material in question. Answer of RESA at 1, 4-7.

Similarly, the OSBA filed a Motion to Strike Certain Portions of the Exceptions of the Joint Suppliers Group. The OSBA argued that the Joint Suppliers’ Exceptions cited to and relied upon extra-record evidence. The OSBA further argued that the Joint Suppliers’ Exceptions inappropriately offered two new proposals that were not previously offered in this proceeding. OSBA Motion to Strike Portions of the Joint Suppliers’ Exceptions at 2. The OSBA contended that this is procedurally inappropriate and violates due process.

On September 26, 2012, the Joint Suppliers responded to the OSBA’s Motion. In their Answer, the Joint Suppliers concede that they cited evidence not in the record, but they contend that the evidence merely updates evidence already in the record regarding the potential impacts of Generation Deactivation charges. Joint Suppliers’ Answer to OSBA’s Motion at 2. They further contend that the evidence came to light after the close of the record in this proceeding. Finally, they argue that the evidence was presented during Reconsideration of the *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650 *et al*. (Order entered August 16, 2012) (*FE DSP Order*); *FE DSP Order (Order on Reconsideration* entered September 27, 2012; *Amended Order on Reconsideration* entered October 11, 2012) (together *FE DSP Reconsideration Orders)* and the Commission should consider it here so that the Commission’s decisions are consistent.

**2. Disposition**

Based on our review of the challenged portions of RESA’s Exceptions and the Exceptions of the Joint Suppliers, we will deny the OSBA’s Motions. We see nothing in the Exceptions that warrants striking. Instead, we will give the legal and factual arguments therein the weight that they deserve, based on the evidence that is in the record. We note, in particular, that RESA cites a July 30, 2012 decision of FERC, which we find appropriate because the decision is a matter of public record. In addition, we find RESA’s assertions regarding the practices of FirstEnergy Ohio utilities irrelevant to the present proceedings. Finally, we note that the OSBA had an opportunity, in its Reply Exceptions, to address the proposals in the Joint Suppliers’ Exceptions.

## B. Default Service Procurement and Implementation Plans

### 1. Residential Class Procurement

#### a. Term Length of Supply Contracts and Continuation of Block and Spot Supply

**i. Positions of the Parties**

Under PECO’s currently approved DSP (DSP I), twenty-five percent of the Residential Class portfolio (the “PECO Share”) are required to be served by PECO through a mix of forward purchases of energy blocks, and purchases (net of sales) of energy in the PJM-administered spot market. The forward block purchases were targeted to correspond to eighty percent of the PECO Share, with the remainder of the PECO Share served through spot market purchases (net of sales). PECO St. No. 2 at 11; PECO Main Brief (M.B.) at 10-11.

In DSP II, PECO proposed to phase out the PECO Share and the associated block and spot purchases, by offering this default service load to Electric Generation Suppliers (EGSs), which is intended to reduce price and volume risk to residential default service customers, especially in light of increasing customer migration to EGSs within PECO’s service territory. PECO St. No. 3 at 30; R.D. at 19.

In explaining its DSP II strategy, PECO stated that, under the DSP I block-and-spot procurement approach, there was no fixed-price guarantee for load-following supply, and deviations from forecasted quantities of load, due to changes in usage, weather, customer switching, economic growth, or other events, required the default service provider to take corrective action to rebalance its supply portfolio or to rely on spot energy markets to either purchase supply when needed or sell excess supply when such supply was not needed. PECO St. No. 3 at 31; PECO M.B. at 11; R.D. at 19-20.

Since block products involve fixed-cost commitments that do not vary with the load obligation, in the event that customers were to exercise their option to switch to an EGS when wholesale market prices decline, PECO argued that it could be left with excess supply that it would be forced to sell at a loss that would be recovered from increasingly fewer default service customers, or the default service customers would find that an unexpectedly high portion of their default service supply portfolio is composed of above-market contracts, resulting in higher default service rates. Similarly, if market prices were to increase and customers switched back to default service, PECO would need to make supply purchases in a now high-priced market in order to meet load requirements, and this would also increase default service rates. PECO St. No. 3 at 31-32; PECO M.B. at 12; R.D. at 20.

PECO further contended that the continued use of block and spot procurement would create a risk of potentially large deferred cost recovery balances that could distort the default service rates against which EGSs will compete. These balances arise from the fact that under a block and spot approach, default service rates must be set based on the anticipated cost of default service supply, which inevitably will differ from the actual cost of supply. Because the actual costs must be recovered from customers in the future, the balances can cause default service rates to diverge from contemporaneous market prices and may also lead to overall higher costs of providing default service that must be passed on to customers. PECO St. No. 3-R at 23-24; PECO M.B. at 13; R.D. at 21.

Under the Fixed Price Full Requirements (FPFR) procurement approach that PECO has proposed, the seller of an FPFR product is responsible for assuming, managing, and covering the financial costs and risks associated with electricity supply, while customers receive price stability benefits that protect against adverse market and/or generation cost outcomes as well as customer switching, changes in law, and other supply risks. Sellers of FPFR products must satisfy their default supply obligations regardless of how much market prices or generation costs may increase during the delivery period and regardless of the default service load level; customers, in turn, retain their right to switch to a lower-cost EGS at any time. PECO St. No. 3 at 22-23; PECO M.B. at 12; R.D. at 20. PECO concluded that, because of these benefits, the Commission has expressed a preference for FPFR procurement over managed portfolios of block and spot supply. *See* *Act 129 Final Rulemaking Order*; PECO St. No. 3 at. 22-23; R.D. at 20.

The OCA opposed PECO’s phase out of block and spot supply, and asserted that the cost of supplying the PECO Share was 6% less expensive, or approximately $4.31 per megawatt-hour, than FPFR contracts during 2011. OCA St. 1 at 7. The OCA asserted that the phase out of block and spot supply may cause PECO’s portfolio for residential customers to no longer satisfy least cost requirements under the Public Utility Code (Code), 66 Pa. C.S. §§ 101, *et seq*. OCA St. No. 1 at 7; R.D. at 19.

The OCA’s analysis relied upon actual data from PECO’s DSP I. The OCA also conceded that, under certain market conditions, the block and spot purchases might have cost more than the full requirements portion of PECO’s default supply. OCA St. 1 at 8. However, the OCA did not consider other possible market conditions and how its proposed approach may perform in the future. *Id*.

In response to the OCA’s comparison of supply costs under a single market scenario, PECO conducted an analysis of more than 1,000 different but equally likely market scenarios to compare the potential consequences of an FPFR products approach for the Residential Class, as proposed by PECO, and a portfolio with a renewed block-and-spot component, as proposed by the OCA. PECO’s analysis demonstrated that the OCA’s preferred approach would expose customers to considerably more risk with regard to rate shock and supply cost uncertainty than PECO’s FPFR approach. PECO St. No. 3-R at 16-25; PECO M.B. at 13; R.D. at 21.

PECO also contended that the OCA ignored market timing issues and other market characteristics in its single market scenario. PECO argued that the OCA’s comparison of the costs of block and spot procurement and FPFR contracts is flawed because it does not address key factors that distort the results. PECO M.B. at 14. Specifically, PECO pointed out that the FPFR contracts for the period that the OCA studied were generally procured much earlier than the times in which the block and spot purchases were made. PECO asserted that almost 80% of the block and spot purchases were made after the underlying wholesale cost of energy dropped significantly (by up to 30%). PECO claimed that eliminating timing differences reduces the alleged cost disparity between procurement methodologies from 6% to approximately 1% over the time period studied. PECO St. No. 3-R at 7-10; PECO M.B. at 14. PECO faulted the OCA’s calculation, contending that it excludes a significant portion (over 40%) of the Residential Class DSP I FPFR supply tranches actually procured by PECO. PECO also contended that the residual compensation required by suppliers in their bid prices, to cover less easily quantifiable costs and risks, were the lowest of any of the Residential Class product solicitations held to date. PECO St. No. 3-R at 11-12. PECO concluded that the OCA witness did not present an apples-to-apples analysis in his testimony, and overlooked the fact that the FPFR and block contracts have different delivery periods that extend beyond the time period studied by the OCA. PECO M.B. at 14; R.D. at 21-22.

The OCA also offered an alternative proposal for procurement of additional seasonal on-peak block energy during the phase-out of existing block supply procured in DSP I. OCA St. No. 1 at 9. PECO stated that it considered this proposal in its design of DSP II, but concluded that it presented additional risks (*e.g.*, low bidder participation and increased administrative costs). PECO therefore incorporated an additional tranche of FPFR supply in the Residential Class portfolio in order to mitigate any incremental spot purchases that might otherwise be required due to not procuring any additional seasonal on-peak energy blocks. PECO St. No. 2-R at 6; PECO M.B. at 16, *fn.* 10; R.D. at 23.

##### ii. ALJ’s Recommendation

The ALJ agreed with PECO that the OCA’s analysis did not address the real differences, benefits, and risks between FPFR contracts and block and spot procurements, or the particular circumstances of energy markets during the initial DSP I period for which the OCA endeavored to compare the cost of different procurement approaches. Further, the ALJ found that the OCA did not demonstrate that PECO’s proposal to phase out block and spot procurement purchases would in any way render PECO’s portfolio noncompliant with the provisions of Act 129. The ALJ also found that the OCA disregarded the value that default service customers receive from the fixed-price, load-following protections of FPFR contracts. *See* R.D. at 23.

With respect to the OCA’s alternative proposal for procurement of additional seasonal on-peak block energy during the phase-out of existing block supply procured in DSP I, the ALJ supported PECO’s position. PECO stated that it had considered the OCA’s alternative proposal in its design of DSP II, but concluded that it presented additional risks (*e.g.*, low bidder participation and increased administrative costs). PECO therefore incorporated an additional tranche of FPFR supply in the Residential Class portfolio in order to mitigate any incremental spot purchases that might otherwise be required due to not procuring any additional seasonal on-peak energy blocks. PECO St. No. 2-R at 6; PECO M.B. at 16, fn. 10. Therefore, the ALJ recommended that the OCA’s alternative block and spot proposal be rejected and that PECO’s proposal to phase out block and spot purchases from DSP II should be adopted by the Commission. R.D. at 23-24.

##### iii. Exceptions

No Exceptions filed on this issue.

**iv. Disposition**

We agree with the ALJ’s rationale and recommendation to adopt PECO’s proposal on this issue. The OCA’s analysis did not take into consideration several important factors that significantly reduce the validity of its proposal. For example, the OCA conceded that, under certain market conditions, the block and spot purchases might have cost more than the full requirements portion of PECO’s default supply. We believe that PECO’s FPFR procurement approach is preferable to the procurement approach utilized by PECO in its DSP I and the OCA’s proposal here, because it better shields customers from price variations by placing all risk onto the seller of the FPFR product.

#### b. RESA’s Proposal to Include 10% Spot Purchases for Residential Customers

**i. Positions of the Parties**

RESA proposed that PECO procure spot market power for 10% of its residential customer load. RESA St. No. 1 at 10-11; RESA R.B. at 3. RESA did not, however, provide any specific guidance as to how the spot market purchases would be procured, but contended that inclusion of spot market purchases is an important element to prevent default service prices from diverging from the underlying wholesale market. RESA R.B. at 4.

PECO explained that residential customers cannot be billed on the basis of actual hourly spot market costs because (1) they lack real-time meters (*See* PECO St. No. 3-R at 30), and (2) PECO is required to establish a default service rate that does not change more frequently than quarterly for these customers. 66 Pa. C.S. § 2807(e)(7). As a result, inclusion of spot market purchases in the Residential Class portfolio would require PECO to project spot market prices for an upcoming quarter for inclusion in the price-to-compare (PTC), reconcile the actual costs incurred and billed revenue under the projected PTC, and then recover those costs from customers in subsequent periods. PECO St. No. 3-R at 30-31. Because of the uncertainty about spot market prices, this deferred cost recovery can be significant and magnify the volatility already associated with spot market pricing. PECO St. No. 3-R at 32; PECO Exh. SGF-2R; PECO M.B. at 9.

Further, PECO argued that inclusion of spot purchases as proposed by RESA is likely to result in more volatile default service rates. Because it is very possible that these unnecessarily volatile rates would be less reflective of contemporaneous market prices, the Commission should reject RESA’s proposal. PECO St. No. 2-R at 6; PECO M.B. at 9.

**ii. ALJ’s Recommendation**

The ALJ found that RESA’s proposal, which was based on historical switching of non-residential customers in Maryland, does not support inclusion of 10% spot market power in PECO’s proposed DSP II for its residential customers. Further, according to the ALJ, RESA offered no credible evidence to support its conclusion that adoption of its proposal would enhance retail competition. Accordingly, the ALJ adopted PECO’s proposal and recommended that the Commission reject RESA’s proposal. R.D. at 18.

**iii. Exceptions**

RESA excepted to the ALJ’s rejection of its proposal to include 10% spot market purchases within PECO’s procurement for the residential class. RESA believes that PECO’s proposal is inconsistent with the Competition Act because it would not ensure that the default service rate bears a rational relationship to the market price for energy, and it would inhibit development of the competitive retail market. 66 Pa. C. S. §§ 2502(5); RESA Exc. at 3-4. Lastly, RESA states that the Commission adopted this recommendation in the recent *FE DSP Order[[2]](#footnote-2)* and required inclusion of spot market supply for 10% of the residential class load priced at the hourly PJM real-time zonal locational price for the FirstEnergy companies. RESA Exc. at 4.

**iv. Disposition**

We agree with PECO on this issue, and shall adopt the ALJ’s recommendation that RESA’s proposal should be rejected. We believe that RESA’s reliance on our decision in the *FE DSP Order* is misplaced because it was FirstEnergy’s proposal to incorporate spot market purchases into its procurement process and none of the other parties to that proceeding opposed FirstEnergy’s proposal. Further, until the expiration of block energy purchases, which were acquired during PECO’s DSP I and that run well into the DSP II time frame, the residential class will be exposed to the potential price fluctuation occurring within the spot market. In our *Act 129 Final Rulemaking Order*, we stated that:

We agree with the majority of parties that the “prudent mix” of contracts be interpreted in a flexible fashion which allows the DSPs to design their own combination of products that meets the various obligations to achieve “least cost to customers over time,” ensure price stability, and maintain adequate and reliable service. As we have done on other aspects of the plan review process, we will continue to review each plan on a “case by case” basis that independently evaluates the merits of each default service plan where input from stakeholders is assured.

\* \* \* \*

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

*Act 129 Final Rulemaking Order* at 60.

Accordingly, based upon the above discussion, we shall deny the Exception of RESA on this issue and adopt PECO’s proposal for procurement of default service supply for its residential class.

### 2. Small Commercial Class Procurement

**i. Positions of the Parties**

RESA objected to PECO’s proposed use of one-year, laddered FPFR contracts for the Small Commercial Class. RESA asserted that a portion of the scheduled procurements – specifically, the one-year contracts to be procured in September 2014 – should be reduced to six-month contracts to avoid any “overhang” of supply contracts beyond May 31, 2015. RESA St. No. 1 at 12; RESA R.B. at 6.

**ii. ALJ’s Recommendation**

The ALJ rejected RESA’s position and found that PECO limited the default service supply contracts that extend beyond May 31, 2015, to be consistent with the *Act 129 Final Rulemaking Order*, and the Commission therefore should approve PECO’s proposed procurement for the Small Commercial Class without modification. R.D. at 24.

**iii. Disposition**

This issue is discussed in detail below at Section B, Issue 5 (Extension of Supply Contracts Beyond May 31, 2015).

### 3. Medium Commercial Class Procurement

**i. Positions of the Parties**

PECO proposed to replace the current mix of 85% one-year FPFR contracts and 15% spot-priced full requirements contracts under DSP I for the Medium Commercial Class with six-month FPFR contracts in light of the significant shopping by medium commercial customers. PECO M.B. at 17.[[3]](#footnote-3)

The OSBA objected to PECO’s proposal, and asserted that PECO is effectively pursuing a current market price standard instead of adhering to the “least cost over time” standard. Accordingly, the OSBA argued that PECO should maintain the same level of price stability provided to medium commercial customers in DSP I. OSBA St. Nos. 1 at 6 & 1-R at 1-2; OSBA R.B. at 3-4; R.D. at 24-25.

In response, PECO argued that the OSBA provided no justification for its objection and failed to address the fact that the majority of medium commercial customers are now shopping, and have a diminished need for the same level of price stability offered during the period immediately following the end of generation rate caps. PECO St. Nos. 2 at 5-6; 2-R at 7; 3 at 25-26; PECO M.B. at 17; R.D. at 25. PECO argued further that, while six-month contracts could result in less price stability for these customers, the use of such contracts does not reflect a current market price standard but simply consideration of the appropriate level of price stability in light of the developing commercial opportunities for these customers. PECO M.B. at 17; R.D. at 25.

**ii. ALJ’s Recommendation**

The ALJ found the OSBA’s position to be without merit and recommended adoption of PECO’s proposal. The ALJ stated that the OSBA provided no justification for its objection to PECO’s proposal. The ALJ further noted that the OSBA failed to address the magnitude of medium-sized commercial customers that shop and their diminished need for the same level of price stability offered during DSP I. R.D. at 25.

**iii. Exceptions**

In its Exception, the OSBA stated that the ALJ erred by not modifying PECO’s proposal to ensure reasonable price stability for those medium commercial customers remaining on default service. OSBA Exc. at 3. The OSBA asserts that PECO’s proposal to use non-laddered six-month spot market contracts for fifteen percent of the medium commercial default service load results in a one-hundred percent turnover of supply every six months, which creates a significant risk of unreasonable price volatility. OSBA Exc. at 3. Further, the OSBA states that customers remaining on default service should not be saddled with an unnecessarily and unreasonably volatile rate. OSBA Exc. at 4-5.

The OSBA also states that at the expense of reasonable price stability, PECO instead has emphasized market reflective rates in crafting its Medium Commercial procurement plan. OSBA Exc. at 6. The OSBA asserts that PECO’s plan is inconsistent with the Commission’s *Act 129 Final Rulemaking Order*, which states that Act 129 explicitly repealed the prevailing market price standard and declared instead that the EDCs’ generation purchases must be designed to ensure “adequate and reliable service” at the “least cost to customers over time.”[[4]](#footnote-4) *Id.*

Lastly, the OSBA requests that the Commission modify PECO’s proposed medium commercial procurement to provide for a more stable price throughout the DSP II timeframe in accordance with the OSBA recommendations. OSBA Exc. at 7.

In Reply, PECO states that its proposal does not reflect a prevailing market price standard, but simply reflects consideration of the appropriate level of price stability in light of the developing commercial opportunities for this customer class. PECO R.Exc. at 5. Further, by moving to six-month contracts, PECO has eliminated the spot-market component of the Medium Commercial Class supply mix. *Id.*

**iv. Disposition**

We agree with the ALJ’s recommendation to adopt PECO’s Medium Commercial Class procurement proposal. While we can theoretically agree with the OSBA that customers remaining on default service should not be saddled with unnecessarily and unreasonably volatile rates, the OSBA has only offered its opinion on this issue with no justification. Importantly, the OSBA did not provide any evidence or analysis to suggest that, with the elimination of spot-market purchases for this customer class along with utilization of six-month non-laddered contracts, DSP II rates would be any more or less volatile than those experienced in DSP I. Furthermore, in our Act 129 *Final Rulemaking Order*, we declined to set fixed quantities for portfolio requirements, and stated that we would allow EDCs maximum flexibility to design their default service plans with a minimum of restrictions, while retaining our ability to review and evaluate plans on a case-by case-basis. *Act 129 Final Rulemaking Order* at 66.

We also disagree with the OSBA’s position that PECO’s proposal reflects a prevailing market price standard. Again, the OSBA provided no record evidence to support this contention. Based upon the discussion above, we shall deny the OSBA’s Exception on this issue.

### 4. Large Commercial and Industrial Class Procurement

**i. Positions of the Parties**

In DSP II, PECO has proposed to eliminate its current spot-priced full requirements contracts, and instead to procure all default service supply for the Large Commercial and Industrial (C&I) Class directly from PJM Interconnection, LLC (PJM). PECO St. Nos. 2 at 13; 3 at 24; PECO M.B. at 18; R.D. at 25. Through this procurement method, PECO will eliminate the risk of additional costs that could arise as a result of conducting a Request for Proposal (RFP) that is not successful due to insufficient supplier participation. PECO St. No. 2-R at 9-10; PECO M.B. at 18; R.D. at 25. Further, PECO’s tariff describes in detail the administrative costs that are to be recovered in default service supply charges and included in PECO’s Generation Supply Adjustment (GSA) filings, and the Commission retains full authority to review these costs. PECO Exh. ABC-2 (Generation Supply Adjustment for Procurement Class 4 – Loads Greater than 500 kW); R.D. at 26.

RESA objected to PECO’s proposal, asserting that this procurement methodology creates the potential for PECO to misallocate administrative costs such that the default service price does not accurately reflect the costs of providing default service. RESA R.B. at 8; R.D. at 26. However, RESA conceded that it has no evidence that PECO has misallocated any such costs in the past, including during a period of contingency procurements of default service supply by PECO from PJM following an unsuccessful RFP, or that PECO will misallocate costs in the future. RESA St. No. 1-R at 8; R.D. at 26. RESA further contended that purchasing spot-priced supply from PJM is not a competitive procurement process or sufficiently transparent. RESA St. Nos. 1 at 13; 1-SR at 8; RESA R.B. at 8; R.D. at 26.

**ii. ALJ’s Recommendation**

The ALJ found that RESA’s position is not supported by record evidence. Accordingly, the ALJ recommended Commission approval of PECO’s proposed procurement of default service supply from the PJM market for its Large C&I Customer Class. R.D. at 26.

**iii. Exceptions**

RESA asserts that the ALJ erred in adopting PECO’s proposal to acquire default service supply for this customer class directly from the PJM energy markets and thus abandon its current spot-priced full requirements methodology. RESA Exc. at 4. RESA also asserts that PECO has not presented any compelling reason to justify a departure from its current transparent, competitive process. *Id.* at 6. Further, according to RESA, the potential harm to the development of the competitive market and to customers that may result from the change supports rejection of PECO’s proposal. *Id.* at 6-7.

In Reply, PECO states that approximately 96% of its Large C&I load is provided by EGSs. PECO R.Exc. at 5. PECO also states that its proposal will eliminate the risk of additional cost assignment from unsuccessful procurements for the remaining default service customers in this class. *Id.* PECO refers to the *Pike County DSP Order*, *supra*, and states that the Commission found that the procurement of spot-priced default service by an EDC directly from wholesale markets is permissible under the Code. *Id.* at 5-6. Lastly, PECO states that RESA did not offer any evidence that the prices PECO will obtain from PJM will not be competitive. *Id*. at 6.

**iv. Disposition**

In the *Pike County DSP Order*, the Commission permitted procurement of default service supply directly from the wholesale market. Our finding in that proceeding, however, is not germane here. Our *Pike County DSP Order* states:

Pike has proposed to continue its acquisition of default service supply entirely through NYISO spot market purchases. Pike also has proposed to continue the default service rate design that currently is in place.

Pike explained that it is unique among Pennsylvania EDCs in that it serves only 4,700 customers with a peak demand of 18 MW and an annual electric requirement of approximately 79,000 MWh. With approximately seventy-three percent of its customers receiving service from EGSs, Pike needs only to acquire default service energy for approximately 1,300 customers. Further, according to Pike, it cannot obtain a mix of long and short term default service supply contracts due to its small default service load requirement. In Pike County, the totality of default service load, to serve approximately 1,300 customers, will be procured from the New York Independent System Operator (NYISO).

*Pike County DSP Order* at 7-8 (citations omitted).

Thus the difference between the Pike County default service load and customers and PECO’s Large C&I default service load and customers provides a sufficient basis on which to establish a distinction between the two scenarios. Additionally, in Pike County, the proposal was to continue the procurement methodology from the prior DSP period, not to change to a different procurement methodology.

PECO asserted that the cost of a failed RFP would be passed along to the Large C&I customers receiving default service. However, PECO failed to quantify that cost. Further, PECO did not present any comparison of that cost to any new administrative expenses it would incur to procure default service supply from the PJM market for these Large C&I customers. We must conclude that, since the record does not support PECO’s contention that the costs of a failed RFP would be greater than any incremental costs incurred to administer its proposed procurement methodology, PECO did not carry its burden of proof on this issue. Additionally, if the RFP for this customer class is not successful, PECO will be obligated to acquire the needed default service supply directly from the PJM energy market.

Based upon the above discussion we shall grant the Exception of RESA on this issue and direct PECO to continue to use the procurement methodology approved in its DSP I for this customer class.

### 5. Extension of Supply Contracts Beyond May 31, 2015

**i. Positions of the Parties**

PECO stated that in the *Act 129 Final Rulemaking Order*, the Commission provided two guidelines to EDCs regarding the duration of default service supply contracts in upcoming default service plans. First, the Commission recommended that EDCs file plans limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming default service plan time period (May 31, 2015). Second, the Commission recommended that EDCs limit the proportion of long-term contracts that comprise their default service plan energy portfolios, and consider using already existing long-term contracts from previous or presently effective default service plans. *See* *Act 129 Final Rulemaking Order* at 19. In making these recommendations, the Commission emphasized that it was not mandating a prescriptive portfolio of contract lengths, but rather was maintaining flexibility for EDCs to develop procurement portfolios that meet the requirements of Act 129 and the least cost over time standard. *Id*. at19-20; PECO M.B. at 19; R.D. at 26-27.

PECO stated that DSP II is consistent with the Commission’s recommendations as noted above. PECO has limited the over-hang of contracts in accordance with its laddering strategy to mitigate rate volatility associated with replacing a large portion of default service supply in a short period of time, and will not execute any contract that will extend beyond May 31, 2015 until early 2014. PECO St. No. 2-R at 7-8; PECO M.B. at 20; R.D. at 27. In the event that legal developments result in PECO no longer serving as the default service provider for its service territory after May 31, 2015, there will be ample time to adjust (or eliminate) PECO’s solicitations that extend beyond May 31, 2015. PECO St. No. 1 at 12; PECO M.B. at 20; R.D. at 27.

RESA does not support any supply procurement contract, regardless of the term, that extends beyond May 31, 2015. RESA St. No. 2-SR at 2. RESA’s position is that the presence of these contracts is likely to be a hindrance to the Commission’s efforts to establish and implement a new default service structure beginning in June 2015. *Id.* at 3. RESA, referring to PECO Exhibit JJM-3, notes that twelve small commercial tranches extend to November 2015; seven residential tranches extend to May 2016; and another seven residential tranches extend to November 2016. *Id.* at fn. 3.

RESA opposed PECO’s laddering of contracts achieved through the later procurements, and asserted that it will be easier to add contracts extending past May 31, 2015, instead of removing scheduled procurements at a later date. RESA St. No. 1-SR at 2‑4; R.D. at 27. PECO, however, argued that the Commission explicitly recognized that some EDCs may choose to include laddered contracts in their portfolios to mitigate the risks of adverse impacts that could arise from a hard stop of default service supply contracts on May 31, 2015. PECO M.B. at 20, citing *Act 129 Final Rulemaking Order* at 20; 52 Pa. Code § 69.1805(1) (stating that default supply contracts “should be laddered to minimize risk” for residential and small commercial customers). R.D. at 27.

**ii. ALJ’s Recommendation**

The ALJ found that RESA offered no explanation for why it believes that it will be easier to address these risks through a new procurement plan at some future date instead of removing a limited number of previously scheduled solicitations from PECO’s plan if and when the need arises. Therefore, the Commission should reject RESA’s proposal to eliminate PECO’s scheduled 2014 procurements. R.D. at 27.

**iii. Exceptions**

In its Exceptions, RESA states that the ALJ erred in concluding that PECO’s proposal, under which PECO will not execute any contract that will extend beyond May 31, 2015, until early 2014, limits enough contracts to satisfy the Commission’s requirements as noted above. RESA Exc. at 8. RESA states that the Commission already addressed and dismissed PECO’s argument that permitting a portion of default service procurements to extend beyond May 2015, may avoid rate shock. RESA Exc. at 8; *FE DSP Order* at 26-27. In the *FE DSP Order*, the Commission stated that a default service procurement plan that utilizes shorter, more frequent, procurements should ensure a smoother transition into the next procurement period without requiring that procurements extend beyond May 2015. RESA Exc. at 8; *FE DSP Order* at 26-27. Further, RESA states that PECO’s claim that its laddering proposal provides rate stability is without merit and should not be relied upon to override the Commission’s direction in the *FE DSP Order*. RESA Exc. at 8.

RESA also asserts that PECO’s effort to determine what level of stability customers desire is a fruitless exercise because customers have their own individual tolerance levels, and the DSP should not attempt to estimate the level of price stability that an individual customer desires. RESA Exc. at 8, 9.

In Reply, PECO states that RESA’s Exception is without merit because RESA has not offered a procurement alternative other than a hard stop at the end of the DSP II period. Also, PECO asserts that, since it has presented a plan to reduce potential rate volatility while also retaining flexibility to eliminate future procurements depending upon the outcome of the ongoing Retail Markets Investigation (RMI) at Docket No.

I-2011-2237952, the *FE DSP Order* is not dispositive here. PECO R.Exc. at 7. Lastly, PECO asserts that RESA’s argument that customers should rely upon the competitive market to obtain the benefits of rate stability is flawed as a matter of law as the Commission has repeatedly made clear that default service plans must be designed to achieve an appropriate level of rate stability. PECO R.Exc. at 7; *FE DSP Order* at 25.

In its Reply, the OCA states that PECO has established a contingency plan in the event that there are major changes that would alter their responsibility for default service procurement at the end of the DSP II period. The OCA supports PECO’s use of laddered contracts that could extend beyond May 2015, because these procurements are not scheduled to occur until January 2014 or later, and therefore there is time to adjust the procurement schedule as needed. OCA R.Exc. at 1, 2. The OCA believes that the laddering of contracts, as proposed by PECO, is a good contingency plan that mitigates rate volatility associated with replacing a large portion of supply in a short period of time. OCA R.Exc. at 2. The OCA also contends that RESA’s reliance on the *FE DSP Order* is misplaced because in that proceeding, the Companies proposed to use twenty-four month full requirements contracts for default supply. Here, PECO has proposed a laddering of contracts in a contingency plan that can be eliminated should changes to default service be adopted. OCA R.Exc. at 3. The OCA submits that PECO’s proposal should be adopted.

**iv. Disposition**

We shall adopt PECO’s procurement plan as recommended by the ALJ. We believe that PECO’s use of laddered contracts of various durations creates a viable contingency plan that can be redesigned if changes in PECO’s default service responsibility do arise. Further, with several of the procurements scheduled for 2014, we believe there is adequate time to address the continued use of contract terms longer than twelve or twenty-four months for default service. We also adopt the rationale of PECO and the OCA as support for the implementation of PECO’s proposal. Accordingly, we shall deny RESA’s Exception on this issue.

### 6. Procurement Schedule

#### a. OCA’s Proposal to Reallocate Tranches Between Solicitations

1. **Positions of the Parties**

PECO has proposed to conduct a solicitation for the Residential Class in November 2012 for twenty-seven tranches of full requirements contracts with terms of six, twelve, and eighteen months with delivery to commence on June 1, 2013. PECO St. No. 2 at 5; PECO Exh. JJM-1,[[5]](#footnote-5) R.D. at 28. A second solicitation for an additional seven tranches with a twenty-four month term will be conducted in January 2013.

The OCA has recommended that PECO revise these solicitations to divide the total tranches equally between each procurement (*i.e.*, seventeen tranches each in November 2012 and January 2013) to increase layering and laddering of the resulting contracts. OCA St. No. 1 at 8; R.D. at 28.

PECO noted that the OCA has acknowledged that the thirty-four tranches of residential default service via new full requirements contracts will complement the fourteen tranches already procured during DSP I. Seven of the thirty-four tranches will be procured by a solicitation scheduled for January 2013 and twenty-seven will be procured in a solicitation scheduled for November 2012. PECO M.B. at 21; OCA St. No. 1 at 8-9; OCA Exh. RSH-3; R.D. at 12 and 28. Further, PECO asserted that, because the fourteen existing tranches comprise a relatively small volume (approximately 30%) of the fixed-priced supply for DSP II, residential customers are exposed to a large change in default service rates starting June 1, 2013. PECO St. No. 2-R at 8; PECO M.B. at 21-22; R.D. at 28. PECO explained that the longer it waits to procure the bulk of its supply for June 1, 2013, there will be greater exposure to market uncertainty for default service customers. PECO M.B. at 21.

##### ii. ALJ’s Recommendation

The ALJ agreed with PECO’s position that the longer PECO waits to procure the bulk of its supply for June 1, 2013, the more residential customers will be exposed to market price uncertainty with regard to their default service rates. R.D. at 28. Further, by procuring most of the currently unhedged supply earlier as proposed (*i.e.*, November 2012), PECO can reduce this rate uncertainty for residential customers. PECO St. No. 2‑R at 8; R.D. at 28. Accordingly, the ALJ recommended that the Commission approve PECO’s proposed solicitation schedule and reject the OCA’s recommendation to realign procurement of supply. R.D. at 28-29.

**iii. Exceptions**

No Exceptions were filed on this issue.

**iv. Disposition**

We shall adopt the ALJ’s rationale and recommendation on this issue.

#### b. OCA’s Proposed “Hold Back” for Opt-In Program

**i. Positions of the Parties**

The OCA expressed concern that the Opt-In Program may have a significant upward effect on EGS bid prices for supply products. OCA St. No. 1 at 10-13,[[6]](#footnote-6) R.D. at 29.

The OCA has submitted two alternatives to PECO’s proposal. The OCA’s first alternative provides that, following the Opt-In Program, the percentage of load associated with each residential supply tranche would be adjusted to equal the anticipated amount of power expected to be supplied in the absence of the Opt-In Program, with any remaining supply tranches filled either through spot market purchases or additional solicitations. Under the OCA’s second alternative, the tranche size would not be adjusted but a number of tranches corresponding to the OCA’s revised customer participation cap of 20% of residential customer load would be held back, with unfilled supply tranches remaining after the Opt-In Program filled through block and spot purchases. OCA St. No. 1 at 12-13; OCA Exh. RSH-6; RSH-7; OCA R.B. at 15-17; R.D. at 29.

PECO argued that the OCA failed to provide any credible evidence to support its theory that the Opt-In Program may have a significant effect on supply product bid prices. For example, in January 2012, after the Commission already had proposed the Opt-In Program, PECO conducted a procurement for default service supply that would extend into the DSP II period. Notably, the compensation that suppliers incorporated into their bid prices for customer migration and other risks was the lowest of any of the DSP I solicitations to date. PECO St. No. 3-R at 35; PECO M.B. at 23; R.D. at 29-30.

PECO contended that, if the risk suggested by the OCA were assumed, there are numerous flaws and unresolved issues associated with the OCA’s proposals that could seriously harm default service customers. As explained by PECO, in the event that the Opt-In Program does not result in substantial customer switching to EGSs, under the OCA’s Scenario B, PECO would be forced to immediately procure sufficient default service supply to meet all residential customer requirements as of June 1, 2013, at a time when market prices could be high. However, because the PTC for default service after June 1, 2013 will have been established through PECO’s earlier procurements, PECO could face a substantial shortfall in revenues to pay for this additional supply. Any such shortfall could create the potential for an additional deferred cost recovery balance that would need to be recovered from customers, leading to both an unnecessary rate increase and greater divergence between default service rates and contemporaneous market prices. PECO St. No. 3-R at 37-38. Furthermore, the OCA does not explain how the proposed adjustments to tranche size based on the Opt-In Program would interact with the tranche sizes of the supply contracts procured by PECO in DSP I that extend into DSP II. PECO St. No. 3-R at 38; PECO M.B. at 23; R.D. at 30.

Regarding the OCA’s Scenario C, PECO reiterates its objection, contending that because the OCA does not propose to adjust the tranche size in this scenario, default service suppliers will continue to be required to supply a set percentage of default service load, just as under PECO’s proposal, and will face the same asserted volumetric risk that the OCA seeks to address. What is different is that an increased portion of the residential supply portfolio – the amount of supply “held back” – would be served through block and spot purchases, with the same volumetric and price risk to default service customers that has led PECO to propose the elimination of block and spot procurement in DSP II. PECO St. No. 3-R at 39-40; PECO M.B. at 24; R.D. at 30.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO that the OCA has failed to provide evidence that the Opt-In Program will cause wholesale suppliers to include excessive premiums in their bids to provide default service during DSP II, and the solutions offered by the OCA to address this asserted risk pose additional risks for residential default service customers. R.D. at 31. Accordingly, the ALJ found that the Commission should reject both of the OCA’s hold back proposals.

**iii. Exceptions**

No Exceptions were filed on this issue.

**iv. Disposition**

We shall adopt the ALJ’s rationale and recommendation on this issue.

### 7. Load Cap

**i. Positions of the Parties**

In 2010, the Commission authorized a temporary increase in PECO’s small commercial class load cap from 65% to 67% for a procurement of default service supply, in an effort to encourage greater supplier participation.[[7]](#footnote-7) R.D. at 31-32.

Consistent with the Commission’s 2010 ruling, PECO has proposed a 67% load cap for all customer classes in DSP II. As explained by Dr. LaCasse of NERA Economic Consulting, Inc. (NERA), the Independent Evaluator of PECO’s current procurements and proposed evaluator for DSP II procurements, the use of 67% instead of 65% will increase supplier participation when there is a small number of tranches for a class in a particular solicitation. PECO St. No. 4 at 18. In addition, PECO has proposed to simplify administration of the load cap by applying the 67% limit to the total amount of supply won by a supplier instead of the amount of supply that can be won in each procurement. PECO M.B. at 25; R.D. at 32.

Both the OCA and RESA opposed PECO’s proposed 67% load cap and instead argued for a 50% limit. RESA R.B. at 13. The OCA alleged that a 67% load cap allows for a highly concentrated market with too large of a risk of a supplier bankruptcy. OCA St. Nos. 1 at 19; 1-SR, at 7-8; OCA R.B. at 18-19; R.D. at 32. Similarly, RESA contended that a 67% load cap creates a high replacement cost if a supplier fails to meet its obligations, and notes that New Jersey has achieved competitive results in its default supply procurements with a load cap of approximately 33%. RESA R.B. at 14-15; R.D. at 32.

In response, PECO argued that the Commission previously has rejected a 50% load cap recommended by RESA for two other Pennsylvania EDCs and determined that a higher load cap than that proposed by PECO – 75% – represented an appropriate balance between the goals of achieving supplier diversity and obtaining lower prices from suppliers seeking economies associated with larger supply opportunities. As the Commission explained:

The level at which the load cap is set must balance supplier diversity and achieving the lowest price in the supply auctions. All other things being equal, supplier diversity would mitigate the impact on customers of a supplier’s default. However, a load cap would also limit the amount of default generation supply that the lowest cost bidder can provide, which would necessarily increase the total average cost to serve default load.

*Joint Petition of Metropolitan Edison Co. and Pennsylvania Electric Co. for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053 and P-2009-2093054, 2009 WL 3778375 (Order entered Nov. 6, 2009), at 16 and 18 (concluding that a 75% load cap appropriately balanced the interests of supplier diversity and obtaining the lowest cost bid for purposes of “least cost over time”). PECO M.B. at 25-26.

PECO argued further that the concerns of the OCA and RESA regarding supplier bankruptcy and high replacement cost are misplaced. As PECO witness McCawley explained, the credit mechanisms in Article 14 of the Supply Master Agreement (SMA) approved by the Commission in DSP I and proposed for retention in DSP II provide adequate protections for default service customers from supplier default. In particular, the SMA grants unsecured credit to sellers for their aggregate transactions with PECO for all default supply across all procurement groups based on the credit rating of each seller or, where a guaranty is provided, by its parent. No unsecured credit is granted to a seller whose credit rating is at, or falls below, investment grade. In addition, PECO performs a calculation of aggregate exposure under its SMAs every business day and requires the posting of collateral whenever a buyer’s aggregate exposure exceeds the unsecured credit limit. PECO St. No. 2-R at 10-11. Notably, the OCA conceded that the SMA requirements are standard, and while it suggests that the provisions do not guarantee that collateral will be timely received (OCA St. No. 1-SR at 8), neither the OCA nor RESA offered testimony in support of different security requirements in the event the Commission does not adopt a lower load cap. PECO M.B. at 26-27; R.D. at 33.

PECO argued that the OCA’s assertion that the load cap is consistent with a highly concentrated market is erroneous. PECO asserted that market concentration is not measured by the amount of supply that each chosen supplier is allowed to provide, but instead is related to the universe of parties who are able to provide supply, and participation in PECO’s procurements to date has been substantial. PECO St. Nos. 3-R at 4 fn. 3; 4-R at 3; PECO M.B. at 27; R.D. at 33.

Finally, PECO explained that RESA’s reference to the 33 1/3% load cap used in the New Jersey basic generation service (BGS) auctions does not support a lower load cap for PECO’s procurements. Dr. LaCasse, who also administers the New Jersey BGS[[8]](#footnote-8) auctions, detailed a number of differences between the BGS auctions and PECO’s procurements to explain that reducing the PECO load cap will not necessarily increase supplier participation. These differences include a much larger amount of supply available to bidders, with New Jersey offering approximately 5,400 MW of projected fixed-price supply to bidders in contrast to a maximum amount offered to date by PECO of 850 MW. PECO St. No. 4-R at 4-5. A reduction in PECO’s load cap to 50% may, in fact, lead to less participation by suppliers and resulting higher prices for customers. PECO M.B. at 27; R.D. at 34.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO that, consistent with the Commission’s prior rulings, PECO’s proposed 67% load cap is acceptable; however the ALJ did not go so far as to adopt PECO’s proposal. In this regard, the ALJ noted the Commission’s recent decision in the *FE DSP Order* which stated:

We share RESA’s concerns that there needs to be a viable competitive market for default supplies and will direct the Companies to lower the load cap to fifty percent. By ensuring that there is a healthy level of supplier diversity, we believe that the competitive auctions will result in the lowest supply prices over the long run. Accordingly, RESA’s Exceptions on the supplier load cap are granted to the extent that the load cap shall be reduced to fifty percent.

*FE DSP Order* at 33-34.

While the argument can be made that the EDCs in these separate proceedings are so operationally and structurally distinct that PECO’s proposed load cap should be adopted, the ALJ characterized the Commission’s pronouncement in its *FE DSP Order* as guidance for DSPs, generally. Accordingly, to maintain consistency, the ALJ recommended that PECO’s DSP II load cap be set at 50%. R.D. at 34.

**iii. Exceptions**

In its Exception, FES argues that the ALJ’s conclusion, that the Commission’s *FE DSP Order* controls PECO’s case, is erroneous as a matter of law and not supported by the record evidence. FES Exc. at 2.

In support of its Exception FES submits that, in the *FE DSP Order*, the Commission accepted the questionable propositions that, as a result of the 2011 merger, the FirstEnergy EDCs’ market power had increased, and that allowing one or a few suppliers to dominate the FirstEnergy wholesale auctions could result in controlling pricing such that other competitors are eventually driven out of this market. *FE DSP Order* at 31-32. Thus, FES argues that the Commission’s rationale in the *FE DSP Order* was based upon perceived circumstances specific to those particular EDCs. Accordingly, FES asserts that the *FE DSP Order* is not applicable here. FES Exc. at 3.

FES also contends that, absent the *FES DSP Order*, the Recommended Decision correctly concluded that PECO had met its evidentiary burden in opposition to any reduction of its default supply load cap. FES Exc. at 3. FES also believes that PECO presented evidence that participation in its procurements has been substantial, and that its proposed procurement plans already include numerous protections against supplier default, including credit provisions and a contingency plan. *Id.* Accordingly, it is FES’s position that the Recommended Decision’s conclusion should be reversed, and the recommendation to reduce PECO’s default supply load caps should be rejected. *Id.*

**iv. Disposition**

As noted, the ALJ recommended that the load cap for PECO’s next default service plan be set at fifty percent. We agree. In the *FE DSP Order* part of our rationale was to limit potential market power by increasing the possible number of EGSs that take part in the procurement RFPs. A policy that encourages the participation of additional suppliers, especially in our large EDC service territories, through providing the opportunity to develop a customer base, is consistent with our desire to continue to foster a robust competitive energy market. Accordingly, the Exceptions of FES on this issue are denied and the ALJ’s recommendation to establish a load cap of fifty percent is adopted.

### 8. Other Procurement and Implementation Plan Requirements

In accordance with the requirements of the Code and the Commission’s default service regulations, DSP II includes a number of other components, proposed factual findings, and requests for approval described in PECO’s Petition and the testimony of Company witnesses to which no party has objected. These uncontested issues are briefly summarized below.

#### a. AEPS Compliance

The Alternative Energy Portfolio Standards (AEPS) Act requires default service providers like PECO to obtain an increasing percentage of electricity sold to retail customers from alternative energy sources. 73 Pa. C.S. § 1648.1 *et seq.*; 66 Pa. C.S. §  2807(e)(3.6). As in DSP I, PECO will continue to require each full requirements default service supplier to transfer Tier I solar, Tier I non-solar, 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. PECO St. No. 2 at 18; PECO M.B. at 28.

In addition, PECO will continue to allocate AECs obtained through its prior Commission-approved Tier I solar, Tier I non-solar, and Tier II procurements towards suppliers’ AEPS obligations under the Supply Master Agreement (SMA) in accordance with the percentage of load served by each supplier.[[9]](#footnote-9) PECO will retain a percentage of its AECs to meet the AEPS requirements associated with any industrial default service customers and any load associated with the remaining portion of the PECO Share of residential customer load. PECO also will buy and sell AECs as required to meet AEPS requirements and manage its inventory of AECs obtained in prior procurements as previously authorized by the Commission. PECO M.B. at 28-29.

#### b. Contingency Plans

Under DSP I, in accordance with Section 54.185(d) of the Commission’s default service regulations, 52 Pa. Code § 54.185(d), PECO employs a contingency plan in case it fails to obtain sufficient approved bids for all tranches of supply offered in a procurement or a supplier enters into a supply agreement and subsequently defaults on its obligations. In the event PECO fails to obtain sufficient approved bids for all offered tranches in a solicitation, the tranches will be included in PECO’s next default supply solicitation. If necessary, PECO will supply any unserved portion of its default service load from the PJM-administered markets for energy, capacity and ancillary services, and procure sufficient AECs at market prices to satisfy any near-term obligations under the AEPS Act. PECO St. No. 2 at 15.

In the event of a supplier default and the immediate need to obtain supply for default service, PECO initially will rely on filling that supplier’s portion of PECO’s default service load through the PJM-administered markets for energy, capacity, and ancillary services. If the 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 for an alternative procurement. PECO St. No. 2 at 15.

In DSP II, PECO will continue to procure default service supply from PJM-administered markets for energy, capacity, and ancillary services and obtain sufficient AECs at market prices to satisfy any near-term obligations under the AEPS Act where necessary to supply unfilled tranches or after a supplier default. However, in light of PECO’s schedule of procurements, the unfilled tranches for products with supply periods of six months or more will be included in PECO’s next scheduled procurement with a shortened supply period so that the product delivery will end on the same end date as in the original procurement. PECO St. No. 2 at 15-16; PECO M.B. at 29-30.

#### c. Independent Evaluator

The Commission’s regulations provide that a default service provider’s procurements shall be subject to monitoring by an independent third party evaluator selected by the provider and subject to approval by the Commission. 52 Pa. Code §  54.186(c)(3). NERA, which has significant experience in the administration of procurements of energy and related products, has served as the Independent Evaluator in DSP I and PECO has selected NERA to continue in this role for DSP II upon Commission approval. PECO St. Nos. 2, at 4; 4 at 2-4, 7; PECO M.B. at 30.

#### d. Competitive Procurement Documents

The Commission’s regulations also require that a default service plan include copies of agreements to be used in the procurement of electric generation supply for default service customers, including SMAs and requests for proposals (RFPs).52 Pa. Code § 54.185(d)(6). For DSP II, PECO has proposed to use the same form of SMA used in DSP I, with improvements for administration of the agreements, revisions to conform to new PJM requirements, and other changes described in the testimony of Mr. McCawley. PECO St. No. 2, at 19-20; 2-R at 26; PECO Exh. JJM-2; JJM-1R. Similarly, the RFP documents to be used in default service supply solicitations and administered by the Independent Evaluator are based on DSP I RFP documents, with minor improvements to conduct solicitations more efficiently, reduce administrative costs, and further encourage supplier participation. PECO St. No. 4 at 6-11; PECO Exh. CL-2, CL-3. In DSP II, a redacted copy of the Independent Evaluator’s report to the Commission on each solicitation will be provided to PECO to assist in developing future improvements and implementing any contingency procurement, with an additional copy provided to the OCA. PECO St. No. 4 at 19-20; PECO St. No. 4-S at 2-3; PECO M.B. at 30.

#### PJM Requirements

In order to comply with the Commission’s requirement that a default service plan be consistent with legal and technical requirements of the regional transmission organization in which the default service provider is located, PECO’s SMA requires a supplier to undertake all scheduling and other actions necessary to deliver full requirements service to PECO in accordance with both the terms of the SMA and PJM’s rules and agreements. Each supplier must be a member in good standing with PJM and maintain such status during the term of the SMA, as well as all other regulatory approvals, including approvals required by the Federal Energy Regulatory Commission (FERC) necessary to perform its obligations. PECO St. No. 2 at 21; PECO M.B. at 31.

#### Absence of Withholding of Generation

In considering the approval of a default service plan, the Code requires the Commission to find that neither the default service provider nor any affiliated interest has withheld from the market any generation supply in a manner that violates federal law. 66 Pa. C.S. § 2807(e)(3.7)(iii). PECO does not own and has not withheld any generation supply in violation of federal law. PECO St. No. 2 at 31; N.T. at 51. The PECO affiliates that own generation supply are Exelon Generation Company, LLC (Exelon Generation) and its subsidiaries, which now include the Constellation Energy Group, Inc. (Constellation) subsidiary since the close of the merger of Exelon Corporation and Constellation on March 12, 2012. N.T. at 51. Under the FERC’s applicable codes of conduct, PECO does not discuss generation market related issues with those affiliates but can state that there has been no determination by a court or regulatory agency of competent jurisdiction that Exelon Generation or its subsidiaries have withheld from the wholesale energy market any generation supply in any manner that violates federal law. PECO M.B. at 31.

## C. Rate Design and Cost Recovery

### Summary of PECO’s Position

Under PECO’s DSP I default service rate design, PECO recovers default service costs from default service customers through the Generation Supply Adjustment GSA charge. For each customer class with peak loads up to 500 kW – *i.e*., the Residential, Small Commercial and Medium Commercial Classes – default service rates established pursuant to the GSA change quarterly. These rates currently recover: (1) generation costs and certain transmission costs and ancillary service costs; (2) supply management, administrative costs and working capital, as provided in 52 Pa. Code § 69.1808; and (3) applicable taxes. PECO St. No. 5 at 6; PECO M.B. at 32. The projected GSA for each quarter – filed by PECO forty-five days before the start of each quarter – forms the basis of the PTC which customers can use to evaluate competitive generation service offerings by EGSs. PECO St. No. 5 at 4, 6. The projected GSAs for Residential, Small Commercial and Medium Commercial Classes also include a quarterly reconciliation component, or “E factor,” to recoup or refund, as applicable, under or over-collections of actual costs in comparison to billed revenue from prior periods. PECO St. No. 5 at 4-5; PECO M.B. at 32.

PECO’s default service rates for the Large C&I Class are also collected through a GSA. For those customers, default service rates are based upon 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, as well as administrative costs and working capital. PECO St. No. 5 at 5. PECO files a monthly projection of the AEPS and ancillary service costs at least forty-five days prior to the start of each month for customers and suppliers to use. The default service rates for the Large C&I Class also include a monthly reconciliation component to refund or recoup over/under collections from prior periods. PECO M.B. at 32-33.

PECO has proposed to maintain this general rate design in DSP II, with several adjustments to the GSA to simplify and improve recovery of default service costs. These adjustments, which are reflected in the proposed GSA and Reconciliation tariff pages set forth in PECO Exhibits ABC-2 and ABC-3, consist of the following:

a. In order to align PECO’s default service rates with PJM’s planning year (which begins on June 1 of each year), the three-month periods used as the basis for projecting and adjusting default service rates for the Residential, Small Commercial and Medium Commercial Classes are being shifted from the three months ending March 31, June 30, September 30 and December 31, to the three months ending August 31, November 30, February 28 (or February 29 during a leap year) and May 31. PECO will establish an interim projection period for the two-month period of April and May of 2012 that will include any over/under collections experienced during the months of October and November of 2012. PECO St. No. 5 at 6-7.

b. Any over/under collections of default service charges for the Residential, Small Commercial and Medium Commercial Classes will be reconciled on an annual basis instead of a quarterly basis.

c. Any two months with large over/under collections for the Large Commercial and Industrial Class will be combined to mitigate wide swings in the PTC from month-to-month. PECO St. No. 5 at 11-12.

d. PECO’s currently separate AEPS Surcharge will be incorporated into the GSA charge along with other default service charges.

e. The following rate provisions will be eliminated from PECO’s tariff: declining block prices for all tariff rates and the Wind Energy Service Rider in connection with the elimination of the PECO Wind program in favor of new customer referral programs. PECO St. No. 5 at 14.

f. Half of any net cost or credit associated with PECO’s exercise of Auction Revenue Rights (“ARRs”) will be included in the GSA “C” factor[[10]](#footnote-10) for the Residential, Small Commercial and Medium Commercial Classes and the ancillary services factor for the Large Commercial and Industrial Class.

g. The GSA’s definition of administrative cost is being clarified to specifically reference two additional categories of costs. First, the cost of the pricing forecast necessary to project rates on a quarterly basis for the Residential, Small Commercial and Medium Commercial Classes will be included in the GSA as an administrative cost. PECO St. No. 5, p. 16. Second, the GSA will recover any costs incurred due to retail market enhancements to the extent the costs are not recovered directly from EGSs or in other surcharges approved by the Commission.

PECO M.B. at 33-34.

PECO contended that the current design of the GSA rates for the Residential, Small Commercial and Medium Commercial Classes is consistent with the Commission’s default service regulations and the Code and will remain so with the above adjustments. *See* 66 Pa. C.S. § 2807(e)(7) (providing that default service rates for residential and small business customers may not change more frequently than on a quarterly basis).[[11]](#footnote-11) PECO maintains that, in addition, the Commission’s regulations at 52 Pa. Code § 54.187(c) state that default service rates may not use a declining block structure. PECO asserted that its proposed rate design complies with these requirements because rates will continue to change quarterly for the Residential, Small Commercial and Medium Commercial Classes and declining block prices will be eliminated. PECO St. No. 5 at 4, 14; PECO M.B. at 34.

With respect to the Large C&I Class, the Commission’s regulations at 52 Pa. Code § 54.187(j) require that default service rates for those customers be adjusted on at least a monthly basis. PECO’s proposed hourly-priced default service product for the Large C&I Class complies with this requirement because rates will continue to change monthly. PECO St. No. 5 at 5; PECO M.B. at 34-35.

### 2. Reconciliation of Default Service Costs and Revenues

##### a. Positions of the Parties

For PECO’s Residential and Small and Medium Commercial Classes, billed revenues and actual costs are compared on a quarterly basis to calculate a reconciliation charge in the GSA for the subsequent quarter to refund or recover, as appropriate, the net over or under-collection per customer class on a per-kWh basis. PECO St. No. 5 at 5-6. The reconciliation charge includes carrying charges, which are calculated at the interest rates specified in the Commission’s regulations at 52 Pa. Code § 54.187(f). PECO M.B. at 35.

In DSP II, PECO is proposing to continue to adjust default service rates on a quarterly basis for Residential, Small Commercial and Medium Commercial customers to reflect changes in supply costs. However, PECO has recommended that prior period over/under collections be reconciled for those customers on an annual basis rather than on a quarterly basis. PECO St. No. 5 at 6. As PECO witness Cohn testified, because PECO bills customers at different times throughout a month, the revenue billed and received for a prior month may diverge significantly from the actual default service expenses incurred in the current month. PECO St. No. 5 at 8-9. This monthly billing lag can result in significant fluctuations in the quarterly PTC which are unrelated to the actual costs of default service supply. There is also a cyclical effect whereby the increase in one quarter’s reconciliation component due to seasonal changes in energy prices is then offset in a subsequent quarter. PECO M.B. at 35.

PECO asserted that the Commission’s regulations do not prescribe a time period for reconciliation adjustments. The Commission has, however, recognized that more extended periods for over/under collection reconciliation may result in more market-reflective default service rates. *See* *Investigation of Pennsylvania’s Retail Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No.

I-2011-2237952 (Order entered December 16, 2011), at 54-55. To that end, the Commission has recommended that EDCs contemplate the incorporation of quarterly, semi-annual and/or annual over/under collection reconciliations in default service plans commencing June 1, 2013. By using an annual rather than quarterly schedule for the reconciliation of over/under collections, fluctuations in default service prices will be smoothed out and result in clearer price signals for both customers and EGSs. PECO St. No. 5 at 10; PECO M.B. at 35-36.[[12]](#footnote-12)

Both RESA and Dominion opposed PECO’s annual reconciliation proposal on the ground that quarterly reconciliation would purportedly result in more market-reflective default service rates. RESA St. No. 1 at 15-16; RESA R.B. at 15; Dominion St. No. 1 at 6; Dominion R.B. at 4-5. RESA contended that annual reconciliation would further divorce default service rates from underlying wholesale costs and would create intermittent opportunities for EGSs. RESA R.B. at 15-16. Dominion similarly asserted that annual reconciliation will create a boom or bust cycle where suppliers are able to compete, or not, for long periods of time. Dominion explained that, apart from potentially increasing the amount of interest that customers may be asked to pay, the annual reconciliation proposal creates the potential that any miscalculation or market anomaly, when recovered over a year could impact the PTC in a way that could artificially keep suppliers in a bad market position relative to the PTC for an extended period of time. Dominion M.B. at 8-9.

The OCA agreed with a twelve-month reconciliation process, but recommended that over/under collections continue to be reconciled quarterly with reconciliation charges recovered or refunded using a twelve-month rolling average. OCA St. No. 1 at 17.

PECO argued that the Commission should reject each of these proposals and approve PECO’s proposed annual reconciliation for several reasons. First, PECO contended that RESA’s assertion that annual reconciliation will be further divorcing default service rates from the underlying wholesale supply costs is not supported by any analysis or formal study. Despite RESA’s contention to the contrary, annual reconciliation is likely to result in clearer price signals to customers and EGSs in DSP II in light of PECO’s proposed increased use of full requirements contracts and elimination of residential class block and spot supply. PECO St. No. 5-R at 3-4. PECO also argued that annual reconciliation will result in less volatile rates: the annual reconciliation of over/under collections for the twelve months ending March 31, 2012 resulted in a single reconciliation surcharge of only 0.43%. PECO Exh. ABC-1R. On the other hand, employing a quarterly reconciliation schedule for the same data produces quarterly fluctuations in the PTC ranging from a surcharge of 6.37% to a credit of 7.74%. PECO M.B. at 36-37.

PECO stated that Dominion also failed to demonstrate that annual reconciliation results in default service rates that diverge from underlying market prices. According to PECO, procurement strategy for the natural gas industry is different from PECO’s DSP II procurement strategy. PECO St. No. 5-R at 5. Notably, purchased gas procurement may not rely on FPFR contracts and accordingly may experience more significant price fluctuation due to weather and other changes in market conditions. *Id.* PECO also contended that Dominion witness Barkas’ assertion regarding the potential for “boom or bust” cycles resulting from annual reconciliation is also unavailing. As demonstrated by PECO witness Cohn’s analysis, there is less likelihood of significant swings in default service pricing associated with annual reconciliation than with quarterly pricing, and the actual amount of annual reconciliation is likely to be relatively small. PECO St. No. 5-R at 6;[[13]](#footnote-13) PECO M.B. at 37.

PECO argued that the OCA’s proposal to continue to reconcile on a quarterly basis but collect or refund the net balance of each quarter’s reconciliation using an average over a prospective twelve-month period does not adequately address PECO’s concern due to two major flaws in the hypothetical example presented by OCA witness Hahn. First, Mr. Hahn compared estimated revenue to billed revenue to calculate the over/under collection balances in his hypothetical. As Mr. Cohn observed, however, the appropriate calculation is to compare billed revenue to actual costs. PECO St. No. 5-R at 6. As shown on PECO Exh. ABC-1R, correction of this error reduces the magnitude of the over/under collection balances calculated by Mr. Hahn. PECO further argued that, even without correction of this error, Mr. Hahn’s hypothetical actually demonstrated the price volatility that can be experienced with quarterly reconciliation, producing a price variance in the amount of $140.82 compared to $16.11 with annual reconciliation. PECO St. No. 5-R at 7; OCA Exh. RSH-8. PECO concluded that, according to both Mr. Hahn’s hypothetical example and PECO Exh. ABC-1R, an annual rolling average reconciliation would result in more price fluctuation than PECO’s proposed annual reconciliation. PECO St. No. 5-R at 7; PECO M.B. at 37-38.

PECO argued that Mr. Hahn’s hypothetical did not provide an apples-to-apples comparison of the various reconciliation schedules because it assumed significant price variation from the underlying supply contracts. Under DSP II, however, PECO does not face substantial price and quantity risk because most of its default service supply will be procured through FPFR contracts. PECO St. No. 5-R at 7. Lastly, PECO asserted that Mr. Hahn conceded that his hypothetical suggested a higher level of variability and reconciliation than that which customers will actually experience. OCA St. No. 1 at 17; PECO M.B. at 38.

##### b. ALJ’s Recommendation

The ALJ recommended that the Commission approve PECO’s proposed annual reconciliation for the Residential, Small and Medium Commercial Classes and reject the proposals of RESA, Dominion and the OCA to continue with quarterly reconciliation. Because PECO bills customers at different times throughout a month, the revenue billed and received for a prior month may diverge significantly from the actual default service expenses incurred in the current month. This monthly billing lag can result in significant fluctuations in the quarterly PTC that are unrelated to the actual costs of default service supply. While quarterly reconciliation might appear more reflective of wholesale supply costs, annual reconciliation means that fluctuations in default service prices will be smoothed out and result in clearer price signals for both customers and EGSs. R.D. at 43-44.

**c. Exceptions**

The OCA argues that the ALJ should not have rejected its proposal to reconcile PECO’s default service costs and revenues using a twelve-month rolling average, which the OCA asserts will result in the best combined lower price variance and lower over- and under-collections. The OCA states that its proposal was not similar to RESA’s and Dominion’s proposals to continue with quarterly reconciliation, on the contrary, the OCA’s proposal was very similar to PECO’s. Both the OCA and PECO propose that PECO continue to update its ‘C Factor’ (latest procurements) on a quarterly basis but to use a 12-month period for reconciliation of over- and under-collections. OCA Exc. at 5. The two proposals differ with respect to the method for reconciling the “E Factor” for over- and under-collections of the GSA. The OCA recommended that PECO modify its proposal by using a 12-month reconciliation of the GSA in order to keep the PTC more current. *Id.* at 6. Although the OCA agrees with the ALJ’s statement that annual reconciliation will smooth out fluctuations in default service prices and result in clearer price signals, the OCA submits that its proposal will go a step further by creating a more stable, up-to-date and predictable PTC. *Id*. at 7.

In its Exception, RESA states that the ALJ erroneously agreed with PECO’s annual reconciliation proposal. RESA R.Exc. at 9. RESA argues that a quarterly reconciliation of the PTC results in more market-reflective default service rates. RESA R.Exc. at 10. RESA describes PECO’s proposal as divorcing default service rates from the underlying wholesale costs, and asserts that an annual reconciliation will not pass this cost on to customers in a timely fashion. *Id.* RESA also states that if default rates do not fully and timely reflect all of the costs of providing generation service, then EGSs are at a competitive disadvantage. *Id.*

In its Exception, Dominion states that, while the ALJ admits that quarterly reconciliation allows for a PTC that better reflects the costs of wholesale energy, which is the basis of competitive markets, it nonetheless adopts PECO’s proposed methodology as better because it will smooth out the PTC. Dominion Exc. at 2. Further, it is not clear to Dominion how the smoothed out PTC will create the clear price signals that the R.D. projects. *Id.* Dominion asserts that customers do not benefit when they are sheltered from the market forces that are the basis of the prices they will eventually pay. *Id.*

In Reply, PECO asserts that the OCA’s rolling twelve-month average methodology should be rejected as well as the quarterly reconciliations suggested by RESA and Dominion. PECO R.Exc. at 8, 9. PECO states that the OCA’s methodology would result in more fluctuation than PECO’s proposal. PECO R.Exc. at 9. Regarding the RESA and Dominion positions that annual reconciliation will cause default service rates to diverge from underlying market prices in a way that could adversely affect competition, PECO states that its analysis showing wide changes in default service prices resulting from billing lag or the minimal impact of annual reconciliation on prices were refuted. PECO R.Exc. at 8.

In its Reply, the OSBA aligns with the OCA and states that a quarterly update using a rolling twelve-month reconciliation will retain rate stability along with a market reflective PTC. Further, the OSBA advocates either PECO’s proposal, or in the alternative, the OCA’s methodology. OSBA R.Exc. at 4-5. The OCA, in its Reply, states that the ALJ was correct to recommend that the RESA and Dominion proposals be rejected. The OCA also is generally supportive of PECO’s annual reconciliation proposal because this methodology will smooth out fluctuations in the PTC and result in clearer price signals for both customers and EGSs. OCA R.Exc. at 14.

Dominion states in its Reply that the ALJ was correct to reject the OSA’s rolling twelve-month reconciliation process. However, Dominion believes that the ALJ also should have rejected PECO’s annual reconciliation proposal as well. Dominion R.Exc. at 2. Dominion believes it is inappropriate at this juncture to approve a switch to annual reconciliation while the Commission presently is considering that very question in a generic process. *Id.* Dominion further explains that, whether on a straight annual basis or on a twelve-month rolling average basis, annual reconciliation leads to disassociation of market prices from rates, eliminates price signals to customers, and erroneously educates customers that the cost of default service is flat and continuous over time. *Id.* at 2, 3. Dominion therefore believes that the OCA’s Exception should be denied, and that the ALJ’s recommendation to adopt an annual reconciliation process without the twelve-month rolling average also should be rejected in favor of maintaining PECO’s current quarterly reconciliation methodology. *Id.* at 3.

In its Reply, RESA states that the OCA’s position that its twelve-month rolling average reconciliation approach will create a more stable, up to date and predictable PTC, is incorrect as a matter of law. RESA R. Exc. at 3. RESA explains that, while the Preamble to Act 129 is cited by the OCA in support of its view that price stability must be achieved, the Commission already has rejected this view in the *Pike County DSP Order.*

**d. Disposition**

On this issue we shall adopt the position of Dominion and RESA, and direct that PECO continue its DSP I quarterly reconciliation methodology for its default service rates during the term of DSP II. We agree with Dominion that it is not clear how a smoothed out PTC will create clear price signals, and that customers do not benefit when they are sheltered from the market forces that are the basis of the prices they will eventually pay. In addition, we agree with RESA on this issue that an annual reconciliation will separate the PTC from underlying wholesale costs thus masking the current cost of retail energy. Accordingly, the Exceptions of the OCA and RESA are denied.

### 3. EDC Recovery of Additional PJM Charges

**a. Positions of the Parties**

PECO’s shopping customers currently remit generation and transmission costs to their EGSs who are their load serving entities (LSEs), while non-shopping customers are charged both generation and transmission costs under PECO’s default service rates. Such transmission costs include certain PJM charges known as “generation deactivation” charges that are paid by all LSEs in the PJM PECO Zone. Generation deactivation charges are established under PJM’s Open Access Transmission Tariff for payments to an owner of a generating facility that PJM has determined must be maintained in operation for reliability reasons pending completion of necessary transmission upgrades, even though the owner has sought to deactivate the facility. PECO St. No. 2-R at 24; PECO M.B. at 39.

PPL proposed to depart from the existing cost assignment and to transfer responsibility for generation deactivation charges from LSEs to PECO. PPL St. No. 1 at 3-4; 1-SR at 3; PPL R.B. at 3-4. Under this recommendation, PECO would collect generation deactivation charges via a non-bypassable, non-market based rider (NMB Rider) from both shopping and default service customers. RESA also supported recovery of generation deactivation charges through a non-bypassable NMB Rider from all customers. RESA St. No. 1 at 17-18. In addition, RESA proposed that PECO recover other PJM transmission charges in the same manner, including Network Integration Transmission Service (NITS) charges, costs associated with transmission upgrades, and new PJM charges for Economic Load Response (ELR) program payments. RESA St. No. 1 at 17-18; RESA R.B. at 17-18. PPL asserted that because the future amount of PJM generation deactivation charges is unknown and suppliers cannot hedge the risk of potential significant costs, wholesale suppliers and EGSs may charge customers a premium that is much higher than the actual costs. PPL St. No. 1 at 5-6. RESA agreed, and extended this concern to other PJM charges that RESA seeks to require PECO to recover from customers. RESA also asserted that it is inequitable for EGSs to have to pay these costs while PECO assumes these charges for wholesale suppliers providing default service and recovers the expense through the PTC. RESA St. No. 1 at 20. PPL and RESA submitted that shifting these unknown costs from LSEs to PECO will reduce market prices and make generation deactivation charges more transparent to customers. R.D. at 45-46.

PECO argued that PPL and RESA have not shown how changing the existing cost assignment of generation deactivation charges and other PJM charges will lead to actual reductions in market prices. As both PPL and RESA have acknowledged, EGSs are able to pass through the actual costs associated with each of these PJM charges to their customers without any risk premium. PPL St. No. 1-SR at 7; RESA St. No. 1-SR at 16 (minimizing any “double-counting” issue because “many commercial customers already have these charges passed through as part of their existing commercial contracts”). While PPL suggested that such pass-through charges can cause customer confusion and frustration because they are not within the control of an EGS, it failed to explain why the responsibility for addressing any such confusion and frustration should be shifted from EGSs to PECO. PECO M.B. at 40, citing PPL St. No. 1-SR at 3; PPL R.B. at 5-10; R.D. at 46.

PECO argued further that inclusion by EGSs of actual PJM charges in future EGS customer contracts on a pass-through basis would eliminate any risk premium issues and fully address any concerns regarding transparency and equity, as well as avoid any transition issues that could arise from the imposition of a new non-bypassable charge for those EGSs and customers who already have contracts that extend into the DSP II period. PECO M.B. at 40-41; R.D. at 46.

**b. ALJ’s Recommendation**

The ALJ agreed with PECO’s argument that PPL and RESA have not shown how changing the existing cost assignment of generation deactivation charges and other PJM charges will lead to actual reductions in market prices. The ALJ found that PPL’s testimony in this regard to be highly speculative. The ALJ also agreed with PAIEUG that the Competition Act requires that transition matters be addressed in a manner fair to all customers, and that the Commission must deny PPL's proposed Generation Deactivation Rider for failing to implement transitional protections. PAIEUG R.B. at 22; 66 Pa. C.S. § 2802(8). The ALJ concluded that the Commission should reject the proposals of both PPL and RESA to shift responsibility for the recovery of generation deactivation and other PJM charges from EGSs to PECO. R.D. at 46-47.

**c. Exceptions**

PPL states in its Exception that the ALJ erred in recommending rejection of PPL’s and RESA’s proposal to shift responsibility for recovery of the generation deactivation charges and other PJM charges from EGSs to PECO. PPL Exc. at 2. PPL also states that shifting an administrative cost currently collected from all customers by individual LSEs to PECO does not represent a significant alteration to the competitive market. *Id*. at 7. PPL further asserts in its Exception that creating a competitively neutral mechanism to collect the Generation Deactivation Charge is beneficial to competition because it creates pricing transparency and reduces EGS risk and customer confusion. *Id.* at 7, 8.

RESA’s Exception on this issue states that the ALJ erred by rejecting the implementation of an NMB Rider. RESA asserts that, without an NMB Rider, price distortions will occur and supply costs will increase due to risk premium add-ons. RESA R.Exc. at 11,18. RESA also states that it supports the position of PPL regarding the assignment of these costs to the EDCs. RESA R.Exc. at 8-9.

In Reply, the OSBA states that it does not object to shifting the responsibility of collecting Generation Deactivation Charges from EGSs to PECO, provided double-billing of such charges is avoided. OSBA R.Exc. at 11. Further, the OSBA states that it does object to RESA’s proposal whereby PECO would collect all transmission related costs through the proposed NMB Rider. *Id.* The OSBA submits that the Commission should adopt the ALJ’s recommendation and reject RESA’s proposal to include other PJM charges in an NMB Rider. *Id.* at 12.

In its Reply Exceptions, Dominion states that these charges could cause negative market impacts on all market participants if not recovered on an equitable basis from all customers. Dominion R.Exc. at 5-6.

PAIEUG states that the ALJ correctly and appropriately disposed of the NMB Rider, recognizing that the EGSs have not provided evidence to show the Rider will reduce market prices for customers; that the proposals by RESA and PPL failed to protect customers; and the ALJ appropriately weighed the record evidence, and correctly applied the Code. PAIEUG submits that the ALJ’s recommendation should be adopted by the Commission. PAIEUG R.Exc. at 6.

**d. Disposition**

We agree with the ALJ’s recommendation on this issue. The record does not show how changing the existing cost assignment of generation deactivation charges and other PJM charges from all LSEs to only PECO will lead to actual reductions in market prices. We believe that the current cost assignment and recovery from both the EGSs and the EDC is reasonable because not all transmission costs or generation deactivation charges apply only to an EDC. Now that EGSs are LSEs, these PJM costs and administrative expenses are properly allocated among all LSEs. We also find that RESA’s contention that, absent a NMB Rider, price distortions will occur and that supply costs will increase due to risk premium add-ons is not supported by record evidence. Accordingly, based upon the discussion above, the Exceptions of PPL, RESA and Dominion are denied and PECO’s position on this issue is adopted.

### 4. Costs Included in the Generation Supply Adjustment Charge

**a. Positions of the Parties**

PECO’s proposed GSA tariff includes an administrative cost factor in addition to the “C factor” and “E factor.” Administrative costs will be allocated to each customer class based on default service supply sales unless a direct assignment is required. PECO St. No. 5 at 6. PECO asserted that, consistent with the Commission’s Policy Statement at 69 Pa. Code § 69.1808(a)(4), the costs incurred to implement DSP II will be recovered through the administrative cost factor in the GSA. Administrative costs also include those related to information technology (IT) changes, which will be amortized over the two-year DSP II term if expensed, or a five-year life if booked as capital for accounting purposes. PECO St. No. 5 at 17-18. PECO currently recovers IT capital costs associated with the implementation of DSP I through the GSA. PECO St. No. 5-R at 8; R.D. at 47; PECO M.B. at 41.

The OCA opposed PECO’s proposal to include capitalized IT costs in the GSA, asserting that inclusion of capital costs is not allowed in a surcharge. OCA St. No. 1 at 18. In support of this contention, the OCA cited a Pennsylvania Commonwealth Court decision (*Popowsky v. Pa. PUC*, 869 A.2d 1144, 1155-58 (Pa. Cmwlth. 2005)) (*Popowsky*) holding that a water utility could not use a surcharge to fund infrastructure improvements to wastewater treatment collection systems. In that decision, the Court determined that the use of a surcharge is limited to the recovery of non-capital costs unless specifically permitted by law. OCA R.B. at 23-25, citing *Popowsky* at 1155-56; R.D. at 47.

PECO did not agree with the OCA’s position and contended that the Commission does not need to examine the validity of its conclusion because the facts are different in this case. Unlike the water utility in *Popowsky*, PECO is not seeking to recover capital expenditures relating to improvements to physical distribution facilities under the GSA. Rather, PECO is seeking to include IT capital costs incurred in connection with its obligation as default service provider in its service territory for which cost recovery is explicitly allowed. Under the Code, default service providers have the right to recover all reasonable costs incurred pursuant to a Commission-approved competitive procurement plan on a full and current basis, pursuant to a surcharge under Section 1307 of the Public Utility Code. 66 Pa. C.S. § 1307. 66 Pa. C.S. § 2807(e)(3.9); 52 Pa. Code § 54.187(a) (providing that a default service rate schedule “shall be designed to recover fully all reasonable costs incurred by the [default service provider]…”). The plain language of Section 2807(e)(3.9) does not limit such costs to non-capital items. In addition, the Commission’s Policy Statement specifically identifies IT as a default service cost element to be included in the PTC. 52 Pa. Code § 69.1808(d). Notably, the Commission has approved inclusion of capital costs in other PECO surcharges. See *Petition of PECO Energy Co. for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215, 2009 WL 3637663 (Order entered Oct. 28, 2009), at 90 (approving recovery of capital costs under Energy Efficiency and Conservation Program Costs surcharge). PECO M.B. at 42; R.D. at 47-48.

**b. ALJ’s Recommendation**

The ALJ found that PECO’s proposal to include capital costs incurred for IT upgrades required to implement DSP II in the GSA is reasonable and should be adopted in this proceeding. The ALJ further determined that the OCA’s reliance on the *Popowsky* case is misplaced because PECO is not seeking to recover capital expenditures relating to improvements to physical distribution facilities under the GSA. Here, PECO is seeking to include IT capital costs incurred in connection with its obligation as default service provider in its service territory for which cost recovery is explicitly allowed. R.D. at 48.

**c. Exceptions**

In its Exception, the OCA states that the ALJ erred in treating PECO’s IT costs as a capital item, and that the ALJ incorrectly applied the law regarding the recovery of capital costs in a surcharge. OCA Exc. at 7.

The OCA states the law is clear that capital items are not recoverable in a surcharge unless specifically identified in a statute. OCA Exc. at 8. Moreover, by allowing PECO a return on equity through the surcharge, PECO will be profiting on its default service rates which the OCA submits is improper. *Id.* The OCA argues that the ALJ misread the case law on this issue. According to the OCA, the relevant court decisions are not limited to the recovery of improvements to physical facilities as the ALJ has stated. *Pennsylvania Industrial Energy Coalition v. Pa. PUC*, 653 A.2d 1336 (Pa. Cmwlth. 1995) (*PIEC*); *Popowsky*. The OCA asserts that these cases have firmly established a policy that, in the absence of specific statutory authority, capital costs can be recovered only through base rates, not in a surcharge. OCA Exc. at 8. The OCA explains that the *PIEC* case involved the recovery of costs for a demand side management surcharge, and like the instant case, the statute permitted the recovery of all costs that are prudent and reasonable. *PIEC* at 1347; OCA Exc. at 8. Further, in *PIEC*, the Commonwealth Court held that Section 1315 of the Code requires that capital costs, such as costs for physical facilities, be recovered in a base rate case only, not through a surcharge mechanism. *PIEC* at 1347; OCA Exc. at 8. The OCA states that the Court reaffirmed this principle in the *Popowsky* case, stating that the used and useful principle in 66 Pa. C.S. § 1315 prevents the inclusion of capital improvements in a surcharge. *Popowsky* at 1155; OCA Exc. at 9.

In Reply, PECO states that, unlike the costs at issue in the cases cited by the OCA, PECO is not seeking recovery of capital expenditures related to improvements to physical distribution plant. PECO R.Exc. at 10. PECO also states that the ALJ correctly concluded that the OCA’s reliance on these cases was misplaced because the language of Section 2807(e)(3.9) is sufficient to permit recovery of default service-related capital expenditures. *Id.*

**d. Disposition**

Based upon our review of the record, the discussion above, Commission regulations and the Code, we conclude that PECO may recover the IT costs at issue through its GSA, over a two-year period. The language of Section 2807(e)(3.9) permits PECO to recover all reasonable costs incurred pursuant to a Commission approved competitive procurement plan. 66 Pa. C.S. § 2807(e)(3.9). There has been no argument from any Party challenging the reasonableness of the IT costs PECO desires to recover in this proceeding. Also, as noted above, PECO has presented two recovery scenarios: first, as a capital expense recoverable over five years along with a rate of return; and second, as an operating expense recoverable over a two-year period, similar to certain expense recovery in its DSP I Commission-approved rate.

Section 2807(e)(3.9) permits recovery of all reasonable costs on a full and current basis. We find the IT costs at issue here are reasonable, and that it is appropriate for PECO to recover the IT costs as an expense over the two-year DSP II period, and not over a five-year period as a capitalized item plus a return. This satisfies the Code’s requirement to permit full and current recovery of these costs. Accordingly, we clarify the ALJ’s recommendation and shall permit recovery of the IT costs at issue as an expense over a two-year period concomitant with the term of PECO’s DSP II. Further, PECO’s alternative proposal to capitalize the IT costs is denied. This disposition renders the OCA’s Exceptions moot.

### 5. Ratemaking Treatment of Auction Revenue Rights

**a. Positions of the Parties**

Auction revenue rights, or ARRs, are financial products that are allocated annually by PJM to firm transmission service customers. In PJM’s allocation system, PECO receives an allocation based on generation resources that historically served PECO’s customer load. ARRs entitle the holder to receive an allocation of the revenues from financial hedges of congestion risk known as financial transmission rights (FTRs), which are auctioned by PJM each year. Firm transmission holders can use ARRs to select transmission paths in the FTR auction. The auction collects revenue from the sale of FTRs, and the revenue is distributed to the ARR holders based upon their selection of transmission paths. PECO St. No. 5 at 39; PECO M.B. at 43; R.D. at 48-49.

The GSA currently does not specifically address the costs or credits associated with PECO’s exercise of ARRs. As PECO witness Cohn explained, PECO can receive value when it selects a transmission path with congestion because, in such cases, the holder of the FTR will avoid congestion charges. PECO St. No. 5 at 15-16. On the other hand, PECO runs the risk of choosing the wrong transmission path in exercising its ARR rights and thereby incurring a loss.To minimize the risk of loss to customers and provide an incentive to PECO to select financially beneficial transmission paths, PECO is proposing to replace its practice of “passing through” all ARR costs and benefits to customers with an equal (50%) sharing of ARR costs and benefits between PECO and default service customers. Under PECO’s proposal, half of any net cost or benefit will flow through the GSA for the corresponding customer class to which the ARRs were allocated. PECO M.B. at 43; R.D. at 49.

Both RESA and the OCA opposed PECO’s proposed ARR sharing and recommend that PECO continue its current practice. RESA R.B. at 21-22; OCA R.B. at 25-27. PECO contended that RESA’s general assertion that ARR sharing could skew default service prices and negatively impact the competitive retail market (RESA St. No. 1 at 17) is without merit. According to PECO, the scope of load for which PECO could exercise ARRs is limited only to the portion of the residential customer load that will continue to be served by block-and-spot energy products (which PECO has proposed to eliminate in DSP II) and the load of the relatively few customers remaining in PECO’s Large C&I Class. PECO asserted that the impact, if any, on the PTC for both the Residential and Large C&I Classes from ARR sharing will be minimal. PECO M.B. at 44; R.D. at 49.

In response, PECO argued that the OCA’s rationale to continue PECO’s pass-through practice is also flawed. In concluding that PECO does not face a significant risk of loss in exercising ARRs (and will thereby always benefit from any sharing), the OCA assumed that congestion patterns of ARRs do not change absent major new transmission construction projects, which typically span longer than the one-year ARR nomination period. OCA St. No. 1 at 15. However, PECO asserted that a number of other factors such as generator or transmission line outages or generation retirements can cause congestion. PECO St. No. 5-R at 9. Thus, according to PECO, the OCA has failed to recognize that the actual value of ARRs is determined based on the FTR auction results, which are based on the perceived value of the paths and cannot be known in advance. PECO concluded that because PECO’s proposed sharing mechanism strikes the proper balance between mitigating loss exposure for customers and providing an incentive to PECO to select profitable ARRs, it should be adopted. PECO M.B. at 44; R.D. at 49-50.

**b. ALJ’s Recommendation**

The ALJ found that PECO’s proposal will minimize the risk of loss to customers and provide an incentive to PECO to select financially beneficial transmission paths. PECO’s proposal to replace its practice of passing through all ARR costs and benefits to customers with an equal (50%) sharing of ARR costs and benefits between PECO and default service customers means that half of any net cost *or benefit* will flow through the GSA for the corresponding customer class to which the ARRs were allocated. The ALJ recommended that PECO’s sharing proposal be approved by the Commission. R.D. at 50.

**c. Exceptions**

In its Exception, the OCA states that PECO’s proposal simply will provide additional profits to shareholders without doing anything above and beyond what the Code already requires. OCA Exc. at 12. As OCA witness Hahn testified, there is no serious risk to PECO of a potential loss in nominating ARRs. OCA St. No. 1-S at 10; OCA Exc. at 12. Even if PECO incurred a net loss from ARRs, that loss would be collected from customers through the GSA. OCA St. No. 1 at 15-16; OCA Exc. at 12.

Although PECO asserted that a risk of loss does exist with regard to ARRs, the OCA submits that such risk is negligible. OCA witness Hahn testified that there is little risk of PECO choosing wrong transmission paths, so very little risk of loss exists for PECO. OCA Exc. at 12. The OCA further submits that appropriately managing ARRs is part of PECO’s responsibilities as an EDC, akin to maintaining poles and wires. OCA Exc. at 13.

The OCA further states that no other Pennsylvania EDC employs such a sharing mechanism for ARRs, and PECO has not provided adequate reasons for changing the status quo in this regard. OCA Exc. at 13. The OCA submits that there is no need to provide additional incentive to the Company to do what is already required under the Code, and therefore, PECO’s proposal to share benefits and costs of ARRs should be rejected. OCA Exc. at 13.

In its Exception, RESA states that the ALJ erroneously concluded that PECO’s proposal will minimize the risk of loss to customers and provide an incentive to PECO to select financially beneficial transmission paths. R.D. at 50; RESA Exc. at 19. RESA states that the only support for the ALJ’s recommendation is PECO’s claim that the impact of the change to ARR sharing on the PTC will be minimal. PECO St. No. 5-R; RESA Exc. at 19. It is RESA’s position that all costs of default service must be passed onto default customers; otherwise, the development of the competitive retail market will be hindered. RESA Exc. at 20. RESA also states that permitting PECO to profit from default service, without any corresponding benefit to competitive market development, is inconsistent with the goal of moving customers from default service and transitioning EDCs from the role of default service provider. *Id.* Accordingly, RESA argues that the ALJ’s recommendation should be reversed.

In Reply, PECO states that both the OCA and RESA are incorrect. PECO explains that its core business is to provide safe and reliable service to customers, not hedge transmission congestion risk. PECO R.Exc. at 11. Lastly, PECO states that RESA’s concerns are misplaced because the impact on the Residential or Large Commercial Class would be minimal. Further, there is no basis for RESA’s claim that any benefit to PECO from increasing value to default service customers must be accompanied by a corresponding benefit to competition. *Id.*

**d. Disposition**

We agree with the OCA’s and RESA’s positions that all costs of default service must be passed onto default customers; otherwise, the development of the competitive retail market will be hindered. There is little risk to PECO regarding transmission congestion charges. While PECO has asserted that its core business does not include hedging transmission congestion risk, we disagree. PECO is required to provide safe and reliable service, at just and reasonable rates, to its default service customers, and should not seek a reward for performing this task as required. PECO explained that the load to be served with an ARR attribute is the residential customer load that will continue to be served by block-and-spot energy products (which PECO has proposed to eliminate in DSP II) and the load of the relatively few customers remaining in PECO’s Large C&I Class. PECO asserted that the impact, if any, on the PTC for both the Residential and Large C&I Classes from ARR sharing will be minimal. With the ARR attribute being phased out over the DSP II two year term, we see no reason to change PECO’s current practice of “passing through” all ARR costs and benefits to customers.

Accordingly, based upon the record developed herein, the ALJ’s recommendation and the Exceptions and Reply Exceptions, we shall adopt the position of the OCA and RESA and reject the ALJ’s recommendation.

### 6. Elimination of Alternative Energy Portfolio Standards Surcharge

**a. Positions of the Parties**

The AEPS Act requires PECO to obtain an increasing percentage of electricity sold to default service customers from certain alternative energy sources, such as wind, solar energy and biomass. PECO currently recovers the costs of compliance with its AEPS obligations through two separate mechanisms. First, the cost of FPFR contracts, which includes the transfer of Tier I and Tier II AECs to PECO to satisfy the AEPS obligations associated with the amount of default service load served by the FPFR supplier, is recovered through the GSA. PECO St. No. 5 at 12. Second, PECO recovers the costs incurred for AECs obtained through its separate AEPS procurements under the separate AEPS Surcharge Rider. *Id.* Those AECs are allocated, in part, to FPFR suppliers in accordance with the percentage of load served by each supplier and used to meet AEPS requirements associated with industrial load and the remaining block and spot portion of the residential load. PECO St. No. 2 at 18; PECO M.B. at 44-45; R.D. at 51.

In this proceeding, PECO has proposed to eliminate the AEPS Surcharge from its tariff and to incorporate all of its AEPS compliance costs into a single cost recovery mechanism – the GSA. To that end, PECO has developed tariff provisions to transition from the use of two separate cost recovery mechanisms to exclusive use of the GSA to recover AEPS compliance costs. PECO St. No. 5 at 13. PECO stated that this modification will assure that all AEPS compliance costs that are directly related to default service supply are reflected in the GSA. *Id.*

The OCA agreed with PECO’s proposal but stated that PECO must provide sufficient detailed information to assess individual costs of DSP and AEPS compliance. OCA St. No. 1 at 17. However, the OCA did not provide any testimony regarding what additional information it believes may be necessary to conduct this assessment beyond the information already provided by PECO under its tariff regarding DSP and AEPS costs. *See* PECO Exh. ABC-2 at 7-8 (Generation Supply Adjustment for Procurement Classes 1, 2, 3 Loads Up To 500 KW and Generation Supply Adjustment for Procurement Class 4 Loads Greater Than 500 KW). R.D. at 56-57.

**b. ALJ’s Recommendation**

No party contested PECO’s proposed inclusion of the AEPS Surcharge costs in the GSA or its recommended transition plan. PECO M.B. at 45; R.D. at 51. The ALJ recommended adoption of PECO’s proposal.

**c. Exceptions**

In its Exception, the OCA submits that the ALJ misunderstood the information the OCA was requesting be provided in the GSA surcharge. OCA Exc. at 13. The OCA requested that PECO provide sufficient detail in its GSA reconciliation filings to be able to assess the appropriateness of the individual costs of the DSP and AEPS compliance. OCA St. 1 at 17; OCA Exc. at 14. Specifically, the OCA requests that PECO provide the itemized cost details presented in the categories of information described in the tariff pages at Exhibits ABC-2 and ABC-3 in its GSA reconciliation filings. Nowhere in its filing does PECO state that it will provide the specific itemized cost details about how the GSA, and the individual DSP and AEPS compliance cost components, are actually calculated in its GSA reconciliation filings. PECO only states that it will use those categories of information to calculate the GSA. The OCA is requesting that this detailed information be included and itemized in its GSA reconciliation filings. OCA Exc. at 14.

The OCA requests that the Commission clarify in its decision that PECO will provide, in its GSA reconciliation filings, the itemized cost details for the categories presented in the tariff pages of Exhibit ABC-2 and ABC-3. *Id.*

In Reply, PECO states that it will continue to provide itemized detail of the costs of alternative energy credits directly procured by PECO for AEPS compliance. PECO R.Exc. at 12. However, since EGSs provide AECs as part of a fixed price for meeting all full requirements obligations under PECO’s SMA, PECO will not be providing detailed information about AECs provided by EGSs. PECO R.Exc. at 12.

**d. Disposition**

We support PECO’s proposal to discontinue use of a separate AEPS surcharge and to recover all AEPS costs through its GSA Rider. We understand the OCA’s concern about the amount of detail PECO will provide with the GSA Rider and any subsequent reconciliation. PECO stated that it will continue to provide an itemized detail of its cost to procure alternative energy credits. It is our opinion that PECO’s response to the OCA’s Exception on this issue provides adequate assurance that sufficient detail will be provided by PECO regarding future filings of its GSA Rider. Accordingly, the OCA’s Exception for clarification on this issue is granted.

### 7. RESA’s Proposal for A $0.005/kWh Adder to the PTC

**a. Positions of the Parties**

RESA proposed to add a $0.005 per kWh charge (the PTC Adder) to the cost of default service supply to recover two categories of costs: (1) default service costs that are inadequately reflected in the GSA; and (2) the cost of implementing PECO’s proposed retail market enhancement (RME) programs. RESA St. No. 2 at 33-34; RESA R.B. at 22-23. Revenues collected under RESA’s proposed PTC Adder would be applied first to pay any verifiable costs incurred to provide default service that have not otherwise been collected by PECO under the GSA and then to pay RME program costs, with any remaining balance refunded to all PECO distribution customers. *Id.* As an incentive to continue retail market development, RESA recommends allowing PECO to retain up to ten percent of this balance if it satisfies benchmarks for increased migration of default service customers to EGSs. RESA St. No. 2 at 34-35; RESA R.B. at 27. RESA, however, does not quantify the level of migration required to trigger that sharing mechanism. R.D. at 51.

PECO argued that the Commission should reject RESA’s proposal for several reasons. First, according to PECO, RESA provided no support for the assertions that PECO is at risk of failing to recover all costs associated with providing default service or that such costs are not properly allocated to default service customers. The costs allegedly at risk of not being collected include unforeseen fluctuations in uncollectible costs for default service and costs arising from wholesale supplier default. RESA St. No. 2 at 33. RESA identified these costs, but submitted no cost data and did not indicate whether such costs have ever been incurred by PECO or not recovered under the GSA. Rather, RESA simply listed certain hypothetical expenses that may not have been charged to default service customers to date. Such hypothetical expenses cannot form the basis for cost recovery. *See*, *e.g.*, *Barasch v. Pa. PUC*, 493 A.2d 653, 655 (Pa. 1985) (holding that the Commission may not include hypothetical expenses, not actually incurred, in rates). RESA’s assertion that the PTC Adder is necessary to reallocate other costs paid by distribution customers to default service customers (e.g., the costs of PECO’s call center, *see* RESA St. No. 2-SR at 24), is also unsupported, as RESA has not provided a basis to change the Commission’s determination of distribution charges approved by the Commission in PECO’s most recent base rate proceeding.[[14]](#footnote-14) PECO M.B. at 46-47; R.D. at 57-58.

Second, PECO contended that the amount of the PTC Adder – $0.005 per kWh – does not align in any way with the administrative costs of providing default service or PECO’s proposed RME programs. PECO testified that the PTC Adder would collect, on average, approximately $50 million per year from residential default service customers. PECO St. No. 5-R at 12. As shown on PECO Exh. ABC-4R, the totalestimated cost to implement DSP II and PECO’s proposed RME programs is $4.5 million and $5.2 million, respectively, and PECO will be recovering the administrative costs to implement DSP II from default service customers through the GSA. Accordingly, the revenue generated from RESA’s proposed PTC Adder would far exceed the costs it purports to recover. Such a large and artificial increase in the PTC would send inaccurate price signals to customers and could lead to an increase in prices that EGSs offer. PECO St. No. 5-R at 12; PECO M.B. at 46-47; R.D. at 58.

PECO also argued that RESA’s recommended disbursement of any excess proceeds from the PTC Adder is inequitable and violates the Commission’s policy against cross-subsidization. Although the PTC Adder will apply only to default service customers under RESA’s proposal, any remaining balance after payment of RME program costs and uncollected default service costs would be refunded to a much larger, different group of customers – distribution customers, including those shopping with an EGS. PECO St. No. 5-R at 12. Thus, according to PECO, the PTC Adder would result in cross-subsidization of PECO’s shopping customers by its default service customers contrary to the Commission’s policy. PECO M.B. at 47-48; R.D. at 53.

In rebuttal, Dominion suggested that RESA’s proposed PTC Adder is appropriate for PECO on the ground that it is necessary to overcome the substantial and persistent bias that results from all customers starting on default service. Dominion St. No. 1-R at 10. PECO pointed out, however, that Dominion has not provided any support for its belief that such bias, if any, is likely to be overcome as a result of imposition of the PTC Adder. PECO asserted that it has experienced a significant level of shopping in each of its rate classes following the expiration of rate caps on January 1, 2011, without any artificial price increase. PECO St. No. 5-SR at 3; PECO M.B. at 48; R.D., at 53.

The OCA objected to an adder, arguing that RESA’s 0.005¢ per kWh adder to the PTC is wholly unjustified and in conflict with the Code and well-established case law. The OCA contended that, if implemented, the adder would create a substantial profit on default service for PECO and require default service customers to unfairly subsidize shopping customers. OCA R.B. at 27; R.D. at 53.

**b. ALJ’s Recommendation**

The ALJ agreed with PECO and the OCA that the end-result of the proposed PTC Adder would be the artificial inflation of the PTC with corresponding inaccurate price signals and cross-subsidization of PECO’s shopping customers by default service customers. No public benefit would be conveyed by the adoption of a measure for which no need has been shown and which would only serve to distort price signals. The ALJ concluded that the PTC Adder proposed by RESA and supported by Dominion should be rejected by the Commission. R.D. at 54.

**c. Exceptions**

In its Exception, RESA states that the ALJ erroneously concluded that the end result of RESA’s proposed Default Service Cost Recovery Charge (DSCRC) would be the artificial inflation of the PTC with corresponding inaccurate price signals and cross-subsidization of PECO’s shopping customers by default service customers. RESA Exc. at 20-21. RESA also contends that the ALJ’s conclusion that no public benefit would be conveyed by the adoption of the DSCRC is wrong and should be reversed. RESA Exc. at 21. RESA also states that without the imposition of the DSCRC or full unbundling, all customers will continue to pay for some default service costs in their distribution rates. *Id.*

In Reply, PECO notes that in the *FE DSP* *Order* the Commission rejected a similar RESA proposal because it lacked empirical support. PECO R.Exc. at 12. PECO states that RESA’s current proposal contains similar flaws. *Id.* Lastly, PECO emphasizes that as the ALJ found, no need has been shown to recover any default service costs and RESA has demonstrated no public benefit to its DSCRC proposal.

In its Reply, the OSBA states that RESA’s preferred method of cost recovery is a $0.005 per kWh charge added to the PTC which it has termed a Default Service Cost Recovery Charge. OSBA R.Exc. at 6. The OSBA asserts that this name is misleading. This charge cannot genuinely be intended to recover costs of providing default service (such costs are already recovered in the GSA), but rather is intended to (i) cover the costs of proposed retail market enhancements, and (ii) encourage PECO’s customers to shop (by arbitrarily raising the price of default service). *Id.* According to the OSBA, even if PECO has incurred costs that are not otherwise recovered, the DSCRC is inequitable because although it is collected from *only* default service customers, any remaining proceeds would be credited back to default service *and shopping* customers. *Id.* Accordingly, the OSBA supports the ALJ’s recommendation to reject RESA’s proposed DSCRC.

In its Reply, PAIEUG states that the ALJ rightly recommended that the Commission reject RESA’s proposed DSCRC. PAIEUG R.Exc. at 17. Further, since RESA’s Exceptions do not provide any reasoning that would overturn the ALJ’s findings, PAIEUG asserts that RESA’s Exception must be denied. *Id.*

The OCA states that the ALJ correctly held that RESA’s DSCRC would artificially inflate the PTC. OCA R.Exc. at 6. The OCA also states that the ALJ correctly found that there is no legal basis for the DSCRC because PECO is already authorized to recover all default service plan costs, on a dollar-for-dollar basis. *Id.* In addition, the OCA supports the findings and conclusions of the ALJ regarding improper subsidization and that the DSCRC lacks any public benefit. OCA R.Exc. at 9-12.

**d. Disposition**

Based upon our review of the record evidence, the ALJ’s R.D., the Exceptions and Replies thereto, we shall adopt the ALJ’s recommendation. We believe that the record is clear that RESA’s proposal to implement a DSCRC lacks record support, would improperly cause cross subsidization, would not convey a public benefit and would unlawfully create a profit through the recovery of hypothetical costs. Accordingly, the Exceptions of RESA are denied.

## D. Retail Market Enhancements

### Summary of PECO’s Position

During DSP I, PECO undertook a variety of retail market enhancements to promote retail shopping, including implementation of a comprehensive EGS purchase of receivables program, extensive information technology and internet-based upgrades for both EGSs and customers, and a variety of outreach programs to educate customers about shopping and increase the number of customers who release usage information and other data on PECO’s eligible customer list for EGSs. PECO St. No. 1 at 6-7. PECO is also an active participant in the Commission’s Retail Market Investigation, and anticipates undertaking additional initiatives to support and enhance retail competition as that investigation proceeds. PECO St. No. 2 at 22; R.D. at 54.

PECO’s DSP II Petition included a number of additional retail market enhancements, including an EGS Opt-In Competitive Offer Program and a Standard Offer Customer Referral Program. Following the Commission’s issuance of the *IWPF Order* on March 2, 2012, PECO filed supplemental testimony in this proceeding to address the Commission’s final recommendations for the Opt-In Competitive Offer and Standard Offer Customer Referral Programs. *See generally* PECO St. No. 1-S and 2-S. PECO requested that the retail market enhancements proposed by PECO, as revised by its supplemental testimony, be approved without modification. PECO M.B. at 48-49; R.D. at 54.

### 2. EGS Opt-In Competitive Offer Program

#### Summary

Under PECO’s proposed Opt-In Competitive Offer Program (Opt-In Program), EGSs would bid in response to a one-time RFP, conducted during the first quarter of 2013, to provide competitive retail service to up to 50% of PECO’s residential default service customers at a fixed-price that is at least 5% below the applicable PTC for the quarterly period beginning June 1, 2013. PECO St. Nos. 2 at 23-24 & 2-S at 3. The EGS offer to customers will include a $50 bonus payment that will be paid by the EGS after the customer completes three complete billing cycles with the selected EGS. PECO St. No. 2-S at 3; PECO M.B. at 49; R.D. at 55.

In its *IWPF Order*, the Commission recommended that EDCs conduct an opt-in auction prior to customer enrollment on the grounds that enrollment before the product price is known will create customer confusion and could lead to a “worst-case” scenario where customers have enrolled but an insufficient number of EGSs then subscribe to the auction. *See* *IWPF Order* at 55.In accordance with this recommendation, PECO’s Opt-In Program RFP would be conducted before customer enrollment to ensure that customers know the price of the product being offered. PECO St. No 2-R at 13; PECO M.B. at 50; R.D. at 55.

The bidding process will be supervised by an independent monitor who will tabulate bids in ascending order, with the price associated with the bid that results in the cumulative number of customers equaling or exceeding 100% of PECO’s non-shopping customers (excluding Customer Assistance Program (CAP) customers) establishing a final clearing price. PECO St. No. 2 at 23; PECO Exh. JJM-4S at ¶¶ 1.4 & 5.1; R.D. at 55-56. Upon approval of the RFP results by the Commission, one or more tranches of eligible customers will be randomly allocated to winning bidders (each an “Opt-In Supplier”) in accordance with the number of customers contained in their respective winning bids, and customers will be notified of the winning offer. Opt-In Suppliers will provide service to those customers who accept the offer for a term of six monthly billing cycles beginning with the customer’s next meter read date on or after June 1, 2013. PECO Exh. JJM-4S at ¶ 4.3. In addition, Opt-In Suppliers will be required to accept shopping customers who contact PECO to request an opt-in offer. PECO St. No. 2-S at 3; PECO M.B. at 50.

Opt-In Suppliers will provide offers to their allocated customers through an offer package mailed by PECO on behalf of the EGS, which includes an offer letter with the clearing price, a description of the Opt-In Program’s standard terms and conditions and the procedure by which the customer can accept the offer during the thirty-day opt-in period. PECO St. No. 2 at 23; PECO Exh. JJM-4S at ¶ 6.3; N.T. 62-64. Customers who accept the offer by response postcard, through the Opt-In Supplier’s website or by telephone, will be enrolled by the Opt-In Supplier via a switching request and Electronic Data Interchange transaction in accordance with PECO’s current Electric Supplier Coordination Tariff (Supplier Tariff) and Electric Data Exchange Working Group (EDEWG) protocols. PECO M.B. at 51.

The Commission’s guidelines recommend that customers be able to exit a retail opt-in program at any time without paying a termination or cancellation fee. *IWPF Order* at 50. PECO contends that its Opt-In Program conforms to this guideline. At any time during the six-month term of retail opt-in service, a participating customer may leave the Opt-In Program either by converting to another product from the Opt-In Supplier, contracting with a different EGS, or electing to return to default service. PECO St. No. 2 at 24. Under those circumstances, the Opt-In Supplier will not be permitted to charge the customer an early termination fee or other penalties. PECO M.B. at 51.

Prior to the end of the program term, the Opt-In Supplier must provide the notices required by the Commission's regulations, PECO’s Supplier Tariff and the “options” notices required under the *IWPF Order*. After receiving the required notices, the customer may choose to continue with its Opt-In Supplier. If the customer takes no action, the customer will remain on a month-to-month contract with the Opt-In Supplier. In either case, the obligations of the Opt-In Supplier to offer the clearing price and comply with other terms of the program will no longer apply. PECO St. Nos. 2 at 24 & 2-R at 19; PECO M.B. at 51-52.

PECO stated that its Opt-In Program is consistent with the Commission’s guidelines for opt-in auction programs as set forth in the *IWPF Order*. PECO M.B. at 52. However, the OCA, RESA and FES proposed revisions to PECO’s proposed Opt-In Program. R.D. at 57.

Dominion stated that the $50 bonus is too generous and may cause suppliers not to participate due to the large expense. Dominion requested that the Commission consider the impact of the bonus on the overall per-customer cost and compare that to typical customer acquisition costs before imposing the costs and the bonus on suppliers. Dominion R.B. at 7; R.D. at 55, fn. 17.

RESA proposed to reverse the sequence of the Opt-In Program’s auction process relative to the customer enrollment period so that EGSs will know the total number of participating customers when they submit bids. According to RESA, in light of what it characterizes as relatively low shopping levels for residential customers in PECO’s service territory, adopting the structure proposed by PECO and recommended by the Commission would tend to decrease EGS participation and make EGSs more conservative in a price-only bid, which could negatively influence the success of the Opt-In Program. RESA St. Nos. 2 at 14-16 & 2-SR at 4. In the *IWPF Order*, however, the Commission acknowledged RESA’s concern regarding EGS uncertainty that may arise from holding the auction first but nonetheless rejected RESA’s arguments. R.D. at 55 fn. 18.

#### b. Customer Eligibility – Small Business and Shopping Customers

**i. Positions of the Parties**

The only Party to object to PECO’s proposed eligibility rules for the Opt-In Program was RESA, which asserted that small business customers (*i.e.*, those with loads of up to 25 kW) should be allowed to participate. RESA St. No. 2 at 19-20; RESA R.B. at 28, 30-32. PECO argued that RESA’s recommendation should not be adopted for two reasons. First, the small commercial customer base that RESA proposes to include is far less homogenous than PECO’s residential customer base because small commercial customers are served under different tariff rates, each with different line loss factors. PECO St. No. 2-R at 15-16. Consequently, extending the Opt-In Program to these customers would add complexity because different offers with different prices would have to be designed, solicited and marketed to different subsets of customers. PECO M.B. at 52; R.D. at 56.

Second, PECO contended that RESA’s argument, that small business customers should be included in the Opt-In Program because their shopping level is only slightly higher than the level of residential customer shopping (RESA St. No. 2-SR at 7), is simply wrong. R.D. at 57-58.

Contrary to RESA’s assertion, PECO stated that shopping among small business customers is significantly higher than that of residential customers in PECO’s service territory – 39% versus 25%. PECO St. No. 2-R at 16; RESA Exh. CHK-2 at 1-2 (PECO Responses to RESA-I-4 and RESA-I-5). In addition, PECO stated that the Commission considered and rejected RESA’s rationale relating to improving small business shopping levels when it concluded that opt-in programs should not include small commercial customers at this time. PECO M.B. at 52-53, citing *IWPF Order* at 42; R.D. at 58.

RESA also proposed to preclude customers who already are shopping from participating in the Opt-In Program on the ground that EGSs should not face the risk of losing market share as a result of the Opt-In Program. RESA St. Nos. 2 at 18-19 & 2-SR at 13; RESA R.B. at 28-29, 32; R.D. at 58. PECO explained that PECO’s marketing and customer education efforts would be targeted at non-shopping, non-CAP residential customers, but all residential customers would be eligible to participate in the Opt-In Program in accordance with the Commission’s guideline in the *IWPF Order*. PECO St. No. 2-R at 15. PECO contended that the Commission specifically recognized that the intent of retail opt-in programs is to encourage shopping by default service customers instead of customers who are already shopping, as suggested by RESA, before issuing its guidance that opt-in programs should be open to all residential customers. PECO M.B. at 53; *IWPF Order* at 42; R.D. at 58.

The OSBA’s position is consistent with that of PECO. The OSBA stated in its Reply Brief that, if the Commission intended that the inclusion of small business customers be determined on a case-by-case basis in each EDCs default service plan, it would have so indicated. Rather, the Commission weighed the arguments for and against, and concluded clearly and unambiguously that small business customers be excluded from opt-in auctions at this time. Thus, the OSBA concludes that small business customers should not be eligible to participate in PECO's Opt-In Program. OSBA R.B. at 10-11.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO and the OSBA that the small commercial customers that RESA proposed to include are far less homogenous than PECO’s residential customer base. Therefore, extending the Opt-In Program to these customers would add complexity because different offers with different prices would have to be designed, solicited and marketed to different subsets of customers.  *See* OSBA R.B. at 9‑11; R.D. at 58. The ALJ concluded that the small commercial class should not be included within the Opt-In Program in accordance with the Commission’s guideline in the *IWPF Order*. R.D. at 59.

Conversely, the ALJ concluded that RESA’s proposal to preclude customers who already are shopping from participating in the Opt-In Program on the ground that EGSs should not face the risk of losing market share as a result of the Opt-In Program would be unduly restrictive. *Id*.

**iii. Exceptions**

RESA excepts to the ALJ’s conclusions regarding customer eligibility for the Opt-In Program. RESA argues that the ALJ erred in (1) excluding small commercial customers, and (2) including shopping customers in the Opt-In Program.[[15]](#footnote-15) RESA Exc. at 23-25.

With regard to small commercial customers, RESA argues that the ALJ’s recommendation is inconsistent with the *FE DSP Order*, where the Commission included small commercial customers in Market Enhancement Programs to further the objectives of the Competition Act by inducing more customers to shop. RESA argues that less than half (39%) of small commercial customers are shopping, and that more needs to be done to improve this statistic. RESA also disputes the ALJ’s assertion that including small commercial customers would add complexity to the Opt-In Program, and asserts that the customers with loads below 25 kW constitute a discrete subset of the commercial class that is relatively small and manageable. According to RESA, the relatively small number of customers involved and the need to increase the shopping statistics for small commercial customers should persuade the Commission to reject the ALJ’s recommendation. *Id.* at 23-24

With regard to the ALJ’s recommendation to allow customers who already are shopping to participate in the Opt-In Program, RESA contends that the ALJ’s rejection of RESA’s proposal ignores record evidence “demonstrating the potential negative impact to EGSs that are already serving these customers and the negative impact to customers who may have agreed to early cancellation fees.” *Id.* at 25. RESA does not provide any citations to record evidence, but refers instead to its Main Brief at 57-58. RESA avers that “this is particularly true in the PECO territory” and justifies a different conclusion than that reached by the Commission in the *FE DSP Order*. Finally, RESA suggests a “compromise solution” whereby the promotional materials would state that the Opt-In Program is limited to default service customers, but that any customer who enrolls would be included. RESA states that this would be better than creating the “risk of cannibalizing the existing shopping program.” *Id.*

In Reply, PECO states that RESA has not refuted the ALJ’s conclusion that including small commercial customers in the Opt-In Program would add complexity because different offers with different prices would have to be designed, solicited and marketed to different subsets of customers, which are not homogenous. PECO argues that the number of small commercial customers that are receiving service from an EGS has increased during DSP I and currently stands at 39%. PECO disputes RESA’s characterization of this level of shopping as “dismal.” With regard to shopping customers, PECO argues that its proposal to target marketing to default service customers, while allowing shopping customers to participate in the Opt-In Program, conforms to the Commission’s *IWPF Order*, which the Commission affirmed in the *FE DSP Order*. PECO submits that RESA’s Exception should be denied. PECO R.Exc. at 13-14.

The OSBA argues in its Reply Exceptions that the Commission’s *FE DSP Order* is not controlling. Rather, in the *IWPF Order* the Commission gave some discretion to EDCs to tailor their retail market enhancement programs to their individual situations. In addition, the OSBA states that the *FE DSP Order* was a complete departure from the *IWPF Order* on the issue of small commercial customer participation in Retail Opt-In (ROI) Auctions. In the *IWPF Order*, the Commission concluded that small commercial customers should not be eligible to participate in ROI Auctions because there is no consistency in the definition of “small commercial” across EDCs, and it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load. However, in the *FE DSP Order*, the OSBA asserts that the Commission turned 180 degrees on this issue, on the basis that over half of the customers with loads under 25 kW were not shopping. “This new basis for its decision was something that had already been noted and considered, but dismissed by the Commission in the [*IWPF Order*].” OSBA R.Exc. at 15. The OSBA submits that the Commission changed its rationale for including/excluding small commercial customers, without any explanation, reasoning or analysis to support its change in position. The OSBA notes that the Commission’s rationale in the *IWPF Order* was not even mentioned in the *FE DSP Order*. “Therefore, the [*FE DSP Order*] should not be considered when determining whether small business customers should be eligible to participate in PECO’s ROI Auction.” *Id*. at 16.

In its Reply Exceptions, the OCA submits that shopping customers should be eligible for the Opt-In Program, consistent with the ALJ’s Recommended Decision.[[16]](#footnote-16) The OCA argues that PECO’s proposal to market the program to non-shopping customers, but to accept shopping customers who enroll in the program, is consistent with the Commission’s *IWPF Order* and *FE DSP Order*. OCA R.Exc. at 15-16. In response to RESA’s argument that the ALJ ignored record evidence regarding the impacts to EGSs and possible cancellation fees to customers, the OCA submits that RESA failed to provide substantial record evidence to justify a departure from the Commission’s prior ruling on this issue. The OCA submits that barring customers from participating in a Commission-sponsored program would raise the issue of legal, or at least perceived, discrimination, and could damage the public’s perception of such programs. Accordingly, the OCA submits that the ALJ’s recommendation on this issue is in accordance with the law and the evidence of record, and should be upheld. *Id.* at 17.

**iv. Disposition**

On review, we shall grant RESA’s Exception with respect to the inclusion of small commercial customers in the Opt-In Program. We agree with RESA that the relatively small number of customers involved, and the need to increase the shopping statistics for small commercial customers, support the inclusion of small commercial customers less than 25 kW. This conclusion is consistent with the decision that we reached in the *FE DSP Order*. Although we acknowledge that the inclusion of small commercial customers will add some complexity to administration of the Opt-In Program, we are not persuaded that the added complexity is insurmountable, or that it should outweigh the benefits that will flow to this discrete group of customers though inclusion in the Program. We agree with RESA’s observation that customers with loads below 25 kW constitute a discrete subset of the commercial class that is relatively small and manageable.

With regard to the eligibility of customers who already are shopping to participate in the Opt-In Program, we shall deny RESA’s Exception. RESA’s concern, that allowing shopping customers to participate in the Opt-In Program would amount to “cannibalizing” the existing shopping program, appears to be exaggerated and does not appear to be supported by any record evidence. We believe that PECO’s proposal to target marketing to default service customers, while allowing shopping customers to participate in the Opt-In Program, is reasonable. We agree with the OCA’s observation that RESA has not presented any evidence or argument that justifies a departure from our prior rulings on this issue in the *IWPF Order* and the *FE DSP Order*. We also concur with the OCA’s concern that barring customers from participating in the Opt-In Program could raise discrimination issues and could damage the public’s perception of the competitive market.

#### c. Composition of Product Offer

**i. Position of the Parties**

PECO initially proposed a twelve-month contract term for service under the Opt-In Program. In the *IWPF Order*, however, the Commission recommended a term of six billing cycles. In response, PECO revised its Opt-In Program term to conform to the Commission’s guideline. PECO M.B. at 53; R.D. at 59.

The OCA and FES both recommended a term of twelve months for the Opt-In Program. OCA Sts. Nos. 1 at 13 & 2 at 11; FES St. No. 1 at 7-8. The Commission previously considered and rejected a twelve-month term requirement on the grounds that a shorter-term opt-in auction product would minimize the risk of market unpredictability, may reduce risk premiums that suppliers incorporate into their prices, and might entice more suppliers to participate. PECO argues that its proposed contract length is consistent with that guidance. PECO St. No. 2-R at 13; PECO M.B. at 54; R.D. at 59.

With respect to price, the Commission considered proposals for both a product with a fixed price over the term of the retail opt-program, like the one PECO proposed, and a “percentage off” product, and it recommended a fixed-price product. *IWPF Order* at 70. The OCA was the sole Party to oppose PECO’s proposed fixed-price product and instead advocated for a product with a guaranteed savings off the PTC. OCA St. No. 2 at 11; R.D. at 59.

Although PECO believed a guaranteed savings approach offers advantages and disadvantages, the OCA’s recommendation is inconsistent with the Commission’s guidelines. PECO St. No. 2-R at 14. For its part, the Commission balanced the attractiveness of a guaranteed savings price for customers with the difficulty of predicting market prices for EGSs before concluding that the fixed-price product is the “most reasonable monthly pricing option.” *IWPF Order* at 70. Accordingly, PECO incorporated a fixed-price product into its proposed Opt-In Program. PECO M.B. at 54; R.D. at 59-60.

Consistent with the Commission’s guidance in the *IWPF Order*, the Opt-In Program also requires each Opt-In Supplier to mail a $50 bonus check to customers within five days after the customer completes three full billing cycles on the program. PECO St. No. 2-S at 3; PECO Exh. JJM-4S at ¶ 7.5. No party opposed the inclusion of a mandatory bonus payment in the opt-in offer, although as noted above, Dominion feels that the $50 bonus is too generous and asks that the Commission consider the impact of the bonus on the overall per-customer cost compared to typical customer acquisition costs before imposing the costs of the bonus on suppliers.

##### ii. ALJ’s Recommendation

The Commission previously considered and rejected a twelve-month term on the grounds that a shorter-term opt-in auction product would minimize the risk of market unpredictability, may reduce risk premiums that suppliers incorporate into their prices, and might entice more suppliers to participate. The ALJ agreed with PECO that its proposed contract length is consistent with that guidance. Similarly, PECO’s fixed-price product in its proposed Opt-In Program is the most reasonable monthly pricing option consistent with the *IWPF Order.* Lastly, the ALJ found that, absent evidence to the contrary, the proposed $50 bonus is not too generous or likely to discourage suppliers from participating in the program. R.D. at 60.

**iii. Exceptions**

No Party filed Exceptions regarding the fixed-price product feature of PECO’s proposed Opt-In Program, or the proposed $50 bonus to participating customers. Dominion, however, objects to the ALJ’s recommendation to adopt the six-month product that PECO proposed for the Opt-In Program. Dominion avers that the basis of the ALJ’s recommendation appears to be the Commission’s rejection of a twelve-month product in the *IWPF Order*. Dominion further avers that the Commission apparently has reconsidered its view in light of the recent *FE DSP Order*. There, the Commission ordered FirstEnergy to provide a two-part product for its ROI program, consisting of a four-month product priced at 5% below the PTC, followed by an eight-month product with as yet undetermined pricing. According to Dominion, a number of Parties have petitioned the Commission for reconsideration[[17]](#footnote-17) of this portion of the *FE DSP Order*; however, none have suggested that the twelve-month total term of the opt-in product was inappropriate. Dominion argues that, given the *FE DSP Order*, the ALJ’s reliance on the *IWPF Order* as the basis for establishing a six-month product was misplaced. Dominion Exc. at 4.

In reply, PECO argues that Dominion did not offer any evidentiary basis for departing from the Commission’s conclusion in the *IWPF Order* that a shorter term would “would minimize the risk of market unpredictability, may reduce risk premiums that suppliers incorporate in their prices and might entice more suppliers to participate.” PECO R.Exc. at 14, citing the *IWPF Order* at 70. PECO submits that, unlike the ROI aggregation program addressed in the *FE DSP Order*, PECO’s proposed Opt-In Program includes a competitive bidding process. *Id*.

**iv. Disposition**

As proposed, the product for PECO’s Opt-In Program would be established for six billing cycles at fixed price equal to a discount of at least 5% from the PTC applicable to the quarterly period beginning June 1, 2013, with a $50 bonus to be paid to customers after three complete billing cycles. Because this general pricing scheme was supported or unopposed by the majority of the Parties, the ALJ recommended adoption of PECO’s proposal. Notably, however, PECO originally had proposed a twelve-month product, and both the OCA and FES recommended a twelve-month term for the Opt-In Program. R.D. at 59. PECO modified its original proposal for a twelve-month term in an effort to conform to the Commission’s *IWPF Order*, which recommended that customers receive supply service under an opt-in program for a period of six billing cycles. *IWPF Order* at 50.

Upon further review of our directives in the *IWPF Order*, as well as the ALJ’s Recommended Decision and the Exceptions and Reply Exceptions that have been filed in this proceeding, we shall modify the ALJ’s recommendation. Rather than accept PECO’s proposal, we shall adopt the following modified proposal for PECO’s Opt-In Program:

A twelve-month product, comprised of a fixed price for four months equal to a discount of at least 5% off the PTC at the time of enrollment, and an EGS-provided fixed-price product for the remaining eight months;[[18]](#footnote-18)

The payment of a $50 bonus to customers; however, because the Opt-In Program duration and product have been modified, customers must remain in the Opt-In Program for at least the initial four-month period to receive the bonus;

In order to allow the Commission to effectively evaluate the terms of the Opt-In Program, participating EGSs shall provide the terms and conditions of the eight-month fixed-price offering for the Commission to review.

With these improvements, we believe that this product offering will be sufficiently attractive to garner EGS support and, more importantly, customer participation in the Opt-In Program.

However, because this product offering differs from that proposed by the Company, provisions governing the role of the independent monitor, as well as the selection of winning EGSs and associated customer assignment will have to be modified. Therefore, within sixty (60) days of the date of entry of this Opinion and Order, in addition to providing updated proposals on EGS payment for the market enhancement programs as explained below, PECO, EGSs and other interested Parties also will be required to file an updated proposal for the role of independent monitor, Opt-In Program EGS selection and Opt-In Program customer assignment that aligns with the revised Opt-In Program design.

#### d. Customer Participation Cap

**i. Positions of the Parties**

The Commission has recommended limiting participation in opt-in programs to 50% of an EDC’s residential default service customer base. *IWPF Order* at 59-60. PECO proposed limiting the number of customers each Opt-In Supplier can enroll to 50% of the customers allocated to that EGS during the RFP process consistent with the Commission’s directive. PECO St. No. 2-R at 16-17; N.T. at 55-56; PECO M.B. at 55. PECO’s proposed 50% customer participation cap is affirmatively supported by RESA[[19]](#footnote-19) (RESA St. No. 2-SR at 5; RESA R.B. at 35) and Dominion (Dominion St. No. 1-SR at 4). R.D. at 60-61.

The OCA was the only Party that opposed the 50% customer participation cap. Instead, the OCA favored a 20% cap. OCA St. No. 2 at 10; OCA M.B. at 66-67; OCA R.B. at 40-41. PECO was amenable to either a 20% or 50% customer participation cap and therefore did not object to lowering the customer participation cap as proposed by the OCA. PECO St. No. 2-R at 17. However, PECO did not agree with the OCA’s contentions that a 50% cap carries significant risks or could lead to the program being publicly viewed as a failure. PECO M.B. at 55; R.D. at 61.

**ii. ALJ’s Recommendation**

The ALJ found that the OCA’s concern regarding the enforcement of the customer participation cap is misplaced. Although the OCA opposed PECO’s proposal to have the Opt-In Suppliers implement the customer participation cap by limiting enrollments, it did not offer an alternative implementation strategy. The ALJ concluded that EGS implementation of the cap, with Commission oversight, is the most cost-effective mechanism for enforcing the customer participation cap for the Opt-In Program and should be approved without modification. R.D. at 61.

Accordingly, the ALJ recommended that the number of customers each Opt-In Supplier can enroll be limited to 50% of the customers allocated to that EGS during the RFP process consistent with the Commission’s directive in the *IWPF Order*. *Id*.

**iii. Exceptions**

In its Exceptions, the OCA argues that the ALJ erred by not recommending adoption of the OCA’s 20% customer participation cap for the Opt-In Program. The OCA submits that a 20% cap would mitigate the increased volumetric risk (and potentially higher cost) in providing default service. OCA Exc. at 14-15. To clarify, the OCA states that its position is that *all* non-CAP residential default service customers should be solicited for the Opt-In Program; however, the maximum number of customers who should be permitted to enroll should be limited to 20% of eligible customers.

The OCA’s concern is that a larger pool of potential enrollees in the Opt-In Program “will directly contribute to uncertainty for Fixed Price Full Requirements (FPFR) suppliers bidding into PECO’s residential default service auctions that will take place prior to commencement of the Opt-In Program.” *Id*. at 15. According to the OCA, the uncertainty associated with increased volumetric risk likely will increase the level of risk premiums that the suppliers will include in their bids, thus increasing the price of default service. In addition, the OCA argues that its proposed 20% cap would reduce the risk that the Opt-In Program could be viewed as a failure if enrollment is low. The OCA submits that, if the 20% cap is reached, EGSs could make similar offers to the additional customers outside of the Opt-In Program. According to the OCA, this outcome would stimulate even more EGS offers to those customers. *Id.*

In its Reply Exceptions, PECO states that, because the OCA’s arguments previously were rejected by the Commission in the *IWPF Order* and the *FE DSP Order*, the OCA’s Exception should be denied. PECO R.Exc. at 14-15.

Dominion submits that the purpose of the Opt-In Program is to encourage mass switching, and that the Opt-In Program will add risk that likely will be priced into the wholesale prices of suppliers in PECO’s next default service auction. However, Dominion argues that, although migration risk is a cost of default service, the OCA has not provided evidence regarding the magnitude of that risk. Dominion, on the other hand, presented testimony that the additional risk would be negligible. Accordingly, Dominion argues that the OCA’s fears appear to be overstated. In addition, “it appears that the Commission has made the choice that, despite the risk, the benefits are worth it.” Dominion R.Exc. at 4. Accordingly, Dominion submits that the OCA’s arguments should be rejected in favor of the 50% customer participation cap recommended by the ALJ.

RESA argues that the OCA has not articulated a compelling reason why the Commission should diverge from the 50% standard it adopted in the *IWPF Order*, where it stated that it did not wish to impose a lower cap that could lead to the rejection of customers that wanted to participate. RESA asserts that the OCA’s concern that wholesale suppliers may add a material risk premium to their bids to supply default service is not a valid basis on which to structure “market-opening policies” such as an opt-in program. RESA R.Exc. at 5-6. RESA submits that the OCA’s proposal is inconsistent with the policies of the Commonwealth. “It would be antithetical to the goal of developing robustly competitive retail markets to limit the ability of customers to participate in the competitive market – through the Opt-in Auction or otherwise.” *Id*. at 6.

FES states that, while it does not support any caps on customer participation, it recognizes that the ALJ’s recommendation is consistent with the Commission’s *IWPF Order*. FES argues that the OCA’s proposal reflects its interest in maintaining a viable default service structure at the expense of the Opt-In Program. FES submits that, because a low customer participation cap would discourage EGSs from participating in the Opt-In Program, the OCA’s Exception should be denied. FES R.Exc. at 4-5.

**iv. Disposition**

We shall deny the OCA’s Exception on this issue and adopt the recommendation of the ALJ to approve PECO’s proposed 50% customer participation cap. We previously have considered and rejected the OCA’s arguments and, in our view, the OCA has not presented any new evidence or argument that would persuade us to depart from our prior resolution of this issue. We agree with Dominion that, although the Opt-In Program may raise the migration risk associated with default supply, the OCA has not presented any evidence of the magnitude of the risk associated with a 50% customer participation cap. Accordingly, we are not persuaded that we should depart from the 50% standard that we adopted in the *IWPF Order*.

#### e. Supplier Participation Load Cap

**i. Positions of the Parties**

After balancing the need for supplier diversity with obtaining the lowest price possible for customers, the Commission recommended that no EGS should be able to serve more than 50% of the participating customers in a retail opt-in program. *IWPF Order* at 63. Consistent with the Commission’s guidelines, under PECO’s proposed Opt-In Program, no EGS would be able to win more than 50% of the available tranches in the RFP process. PECO St. No. 2‑R at 18; N.T. at 57-58; PECO M.B. at 56. In light of the competing factors balanced by the Commission, PECO submits that the supplier participation cap should be no lower than 50%, but could be conducted with a higher cap or no cap at all. *Id.* Therefore, PECO does not oppose FES’ proposal (FES St. No. 1 at 11-13) to eliminate the supplier participation cap from the Opt-In Program. PECO M.B. at 56; R.D. at 62.

RESA recommended that the Opt-In Program include a requirement that there be at least four winning bidders. According to RESA, this requirement would help EGSs that otherwise might not be able to participate in the market by providing winning bidders with a critical mass of customers. RESA St. No. 2-SR at 14; RESA R.B. at 36. PECO argued that RESA’s recommendation should not be adopted for two reasons. First, PECO stated that RESA has not provided any evidence that a four-bidder minimum would increase supplier participation in the one-time Opt-In Program RFP. Second, a good outcome for customers can be obtained even if fewer than four bidders participate in the Opt-In Program. As RESA testified, the 50% supplier participation cap will require a minimum of two winning suppliers and the price will be at least 5% below the applicable PECO PTC. PECO St. No. 2-R at 18; PECO M.B. at 56; R.D. at 70-71.

**ii. ALJ’s Recommendation**

Consistent with the Commission’s guidelines, the ALJ recommended approval of PECO’s proposal that no EGS should be able to win more than 50% of the available tranches in the Opt-In Program RFP. The ALJ stated that this outcome is reflected in the *FE DSP Order*, wherein the Commission stated: “We continue to believe that a fifty percent cap strikes the appropriate balance between diversity of EGS participation and competitive supply pricing.” *FE DSP Order* at 114; R.D. at 62-63. With regard to RESA’s recommendation that the Opt-In Program include a requirement of at least four winning bidders, the ALJ recommended that a four-bidder minimum be rejected by the Commission as unsupported and unnecessary. The Commission rejected RESA’s proposed four-winning-bidder minimum in the *FE DSP Order*.

**iii. Exceptions**

No Party filed an Exception to the ALJ’s recommendation to adopt a 50% supplier load cap. RESA, however, argues that supplier diversity would be improved with its proposed requirement that there be a minimum of four winning bidders. RESA asserts that its proposal would allow EGSs that otherwise may not be able to participate the opportunity to do so. “For an EGS, having a critical mass of customers in a service territory is important because it provides them with the necessary economies of scale to permit them to participate in that market for the long term.” RESA Exc. at 26. RESA argues that, because the Commission directed that the issue of the minimum number of bidders be determined in individual default service proceedings, the ALJ should not have relied on the *FE DSP Order* for precedent. RESA asserts that the purpose of opt-in programs is to jump-start competition, and without a four-winning-bidder requirement, PECO’s Opt-In Program will not create the diverse competitive market that the Commission is seeking. *Id.* at 27.

In reply, PECO states that RESA did not present any evidence that its proposed four-bidder minimum would generate increased supplier participation. PECO argues that, because a good outcome can be obtained for customers even if fewer than four bidders participate, RESA’s Exception should be denied. PECO R.Exc. at 15.

FES argues that RESA’s proposal would not be in the best interests of customers, lacks factual support and is merely speculative. FES submits that RESA’s proposed requirement would create one more reason why the auction might fail, in the event that there are fewer suppliers than the minimum required. FES also points out that, since there are twenty tranches in PECO’s proposed RFP, under RESA’s four-winning-bidder minimum, two bidders conceivably could end up serving eighteen of the twenty tranches, with the remaining two bidders serving one tranche each, or only 5% of the participating customers. FES argues that this potential result undermines RESA’s argument that its proposal would allow EGSs to obtain a “critical mass of customers.” FES R.Exc. at 8-9.

**iv. Disposition**

We shall reject RESA’s proposal to adopt a minimum four winning bidder requirement. We agree with FES that such a requirement could create a reason for the Opt-In Program to fail, and that the record does not support the need for such a requirement. Although we anticipate that numerous EGSs will participate in PECO’s Opt-In program, we do not believe that we should establish a mandate that there be a minimum of four winning bidders. By creating opt-in programs, we have taken a major step to encourage the participation of both customers and suppliers in an effort to increase shopping levels. We do not believe that artificial rules, such as a four-bidder minimum, would be consistent with the development of a truly competitive market. We view our proper role to be that of removing, rather than creating, barriers to competition. Given that winning bidders will be required to offer a discount from PECO’s PTC, there is no reason to require a minimum number of winning bids.

#### f. Customer Options on Product Expiration and Notice Requirements

**i. Positions of the Parties**

The only Party that opposed PECO’s proposed customer options upon expiration of their opt-in contract and the notices they will be provided was the OCA, which proposed an additional ninety-day notice to customers. OCA St. No. 2 at 12-13; OCA R.B. at 45-46. PECO maintained that the OCA’s proposal for another notice is unwarranted because PECO’s Opt-In Program already contains sufficient customer protections. EGSs participating in PECO’s program must comply with the Commission’s renewal notice guidelines. In accordance with these guidelines, each customer will receive an initial notice fifty-two to ninety days before the end of the program, followed by a more detailed “options notice” at least forty-five days before the program ends. *IWPF Order* at 73-75. The options notice will provide any new terms and conditions, pricing, other options being offered to the customer by the EGS at the end of the opt-in contract and a date by which the customer must take action to accept the offer. PECO St. No. 2-R at 19. If the customer does not take action, the customer will remain on a month-to-month contract with his or her then-current EGS without any termination penalties or fees. PECO M.B. at 57; R.D. at 63.

PECO also contended that the OCA’s proposed modification should be rejected because of operational constraints. PECO will not know whether a participating customer subsequently enrolled with the EGS on terms that are different from the original Opt-In offer. If the customer did so, the OCA’s proposed notice would be confusing. PECO St. No. 2-R, at 19. Moreover, as the Commission discussed in its guidance on retail opt-in programs, a customer affirmatively selects its EGS in the opt-in process and there is no reason for treating such a customer differently from any other customer whose contract with an EGS is about to expire. *IWPF Order* at 73-75. PECO maintained that this affirmative action by the customer renders an additional “options” notice unnecessary. PECO St. No. 2-R at 19; PECO M.B. at 57; R.D. at 63.

The OCA also proposed that, at the end of the Opt-In period, EGSs be required to serve customers on a fixed price month-to-month contract. OCA St. No. 2 at 14; OCA M.B. at 70-72; OCA R.B. at 44. PECO contended that its Opt-In Program contains significant consumer protections and customer communications. Given these protections and communications, the OCA has failed to demonstrate that requiring EGSs to offer a fixed-price to all customers who do not make an affirmative election at the end of the opt-in service period is warranted. PECO St. No. 2-R at 20; PECO M.B. at 58; R.D. at 64.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO that the OCA’s proposal for another notice is unwarranted because PECO’s Opt-In Program already contains sufficient customer protections. The ALJ found that there is no reason for treating an Opt-In customer differently from any other customer whose contract with an EGS is about to expire. The ALJ also concluded that requiring EGSs to offer a fixed-price to all customers who do not make an affirmative election at the end of the opt-in period would be unwarranted. Accordingly, the ALJ recommends that the Commission adopt PECO’s proposed customer options as submitted. R.D. at 64.

**iii. Exceptions**

No Party filed Exceptions to the ALJ’s recommendations to: (1) approve PECO’s proposed customer options and notice requirements that apply at the expiration of opt-in contracts; and (2) reject the OCA’s proposed requirement that EGSs offer a fixed price to customers who do not make an affirmative election at the end of the opt-in contract.

**iv. Disposition**

We find the ALJ’s recommendations to be reasonable and shall adopt them. We agree with the ALJ that there is no reason for treating an Opt-In customer differently from any other customer whose contract with an EGS is about to expire.

#### g. Structure of the Retail Opt-In Auction – Sealed Bid Format versus Descending Price Clock Auction

**i. Positions of the Parties**

PECO proposed to conduct the Retail Opt-In auction using a sealed-bid RFP process similar to the one used to procure default service supply. PECO M.B. at 58. The only Party opposing this proposed bidding format was FES, which asserted that a descending price clock auction (DCA) would result in lower prices for participating customers, by allowing participating suppliers to see indicative price information and adjust their bids accordingly in real time. FES St. No. 1 at 4, 14. FES also claimed that a DCA would promote supplier diversity. FES St. No. 1 at 16; R.D. at 64.

PECO contended that FES’ proposal to employ a DCA for PECO’s one-time Opt-In Program should not be adopted for several reasons. First, PECO stated that FES’ conclusion that the DCA would result in a lower price than a sealed-bid RFP is not supported. PECO submitted evidence that auction literature does not offer simple answers as to which auction format yields the best price, much less support a conclusion that a DCA will always produce a lower price for opt-in auctions. PECO St. No. 4-R at 6; N.T. at 86. PECO also contended that FES did not explain why an EGS participating in a sealed-bid process, knowing full well that it has a single opportunity to submit a bid, would not be inclined to submit its best offer. PECO St. No. 4-R at 6; N.T. at 88; PECO M.B. at 59; R.D. at 64-65.

PECO maintained that DCAs are best suited for situations that are not applicable to PECO’s Opt-In Program. In cases with multiple products, a DCA’s multiple round format allows bidders to adjust their offers across products in response to relative prices, helping to achieve an efficient allocation of supply responsibilities. PECO St. No. 4-R at 6. In contrast, PECO will procure only one product for the Opt-In Program. PECO also pointed out that DCAs are well suited to situations where bidder valuations may be uncertain because a DCA would typically feature a high starting price to attract bidder interest and then would provide indicative price information from round-to-round. PECO St. No. 4-R at 7; N.T. at 87. In contrast, the starting price for the Opt-In Program is certain and will not be high. *Id.* Thus, a DCA is unlikely to result in multiple rounds that would inform bidders’ valuations. In fact, if there is just enough supplier interest (or if interest is short of the tranches available), a DCA would close at 5% less than the prevailing PTC, while a sealed-bid process would be expected to yield a better result because bidders would not know the level of supplier interest at the time of bid submission. PECO M.B. at 59; R.D. at 65.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO that the Commission did not prescribe an auction structure for opt-in programs, but rather observed that either a sealed bid process or a DCA would work well to provide a single clearing price. *IWPF Order* at 77. PECO stated that it selected the sealed bid format because it will be less complex and less expensive to implement, and because PECO has existing procedures in place to enable it to conduct a sealed bid RFP process and has successfully used this process in a number of procurements. PECO St. Nos. 2-R at 14 & 4-R at 7; N.T. at 90. The ALJ concluded that PECO’s use of a sealed-bid RFP for the Opt-In Program should be approved. R.D. at 65‑66.

**iii. Exceptions**

No Party filed Exceptions to the ALJ’s recommendation to approve a sealed-bid RFP for the Opt-In Program.

**iv. Disposition**

We agree with the ALJ’s recommendation to approve a sealed-bid RFP, which is consistent with the *IWPF Order*. Accordingly, finding the ALJ’s recommendation to be reasonable and supported by the record, it is adopted.

#### PECO’s Proposed Application Process and EGS Terms and Conditions (Opt-In Competitive Offer Program)

**i.** **Positions of the Parties**

Under PECO’s proposed Opt-In Program, EGSs would be required to qualify to bid by submitting an application to PECO demonstrating that the EGS has a current EGS license issued by the Commission, the ability to comply with PECO’s Supplier Tariff, and the financial resources to make a $50 bonus payment to all customers who enroll and remain with the program for three complete billing cycles. PECO Exh. JJM-4S at ¶¶ 1.3, 3.2; N.T. at 60-61. In addition, qualifying bidders would be required to execute an Opt-In Supplier Agreement, in the form set forth in PECO Exhibit JJM-4S, in which they would commit to offer standard terms and conditions and comply with the RFP provisions. PECO Exh. JJM-4S, Art. 7; N.T. at 64-66; PECO M.B. at 60; R.D. at 66.

RESA objected to a number of provisions in these documents, and proposed that: (1) EGSs should not be required to execute a separate agreement with PECO as a condition of participating in the Opt-In auction; (2) PECO’s proposed documents governing the Opt-In Auction should be rejected, and PECO should re-file the documents in compliance with the Commission’s final Order in this proceeding; and (3) the Parties should be directed to negotiate the development of governing documents in a stakeholder collaborative involving Commission staff. RESA M.B. at 69-70; RESA R.B. at 40; R.D. at 66.

In its Reply Brief, PECO responded as follows:

At pages 76 and 77 of its Main Brief, RESA engages in a lengthy discussion of why numerous provisions in the Standard Offer Program governing documents (i.e., PECO Ex. JJM-5S) are “questionable” and proposes modifications to those documents, which are identified in Appendix B attached to its brief. None of this is in the record either as testimony or any other form of evidence even though RESA had full opportunity to raise its concerns in these proceedings. For those reasons, as explained above, the arguments advanced on pages 76 through 78 and Appendix B of RESA’s Main Brief should be stricken and disregarded.

In the event the Commission nevertheless considers RESA’s arguments with respect to PECO’s proposed EGS Standard Offer Program RFP and Program Rules (“Standard Offer Rules”), PECO notes that RESA simply reiterates the same unfounded objections it made to the Opt-In Rules for the following provisions: (1) technical conference; (2) supplier qualifications; (3) Standard Offer Supplier Agreement; (4) PECO’s right to request additional information to evaluate an application; (5) qualification will be determined in PECO’s sole discretion; (6) restrictions against EGS discontinuance of service to customers that have accepted the standard offer; (7) limitations on the use of the PECO mark; (8) publicity and (9) release and indemnification. Accordingly, those objections should be rejected . . . .

PECO R.B. at 45.

**ii. ALJ’s Recommendation**

The ALJ found that RESA was untimely in raising these issues at the briefing stage in this proceeding, and that the lack of any sound evidentiary basis to which PECO could have responded reduces RESA’s requests to a list of unsupported wants. Further, and if the Commission should consider and grant any of RESA’s requests, the ALJ recommended against a staff collaborative for the negotiation of governing documents. The Office of Administrative Law Judge has a Mediation Staff that could assist in such negotiations if the Commission so directs or the Parties request. However, without a basis in the record to do otherwise, the form of Bidder Application and Opt-In Supplier Agreement as proposed by PECO should be approved for use in the Opt-In Program. R.D. at 67.

**iii. Exceptions**

RESA argues in its Exceptions that, contrary to the ALJ’s statement, it did not raise these issues for the first time in the briefing stage of this proceeding. According to RESA, these issues were discussed extensively in the cross-examination of PECO witness McCawley. RESA argues that the testimony of PECO’s witness provides record support for RESA’s position that PECO’s proposed governing documents are unnecessary and unreasonable. RESA Exc. at 27-28. RESA also argues that, because PECO had the opportunity to conduct redirect examination of its own witness, PECO had the opportunity to respond to the evidence of record that supports RESA’s position, i.e., the testimony provided by PECO’s witness on cross-examination. In the alternative, RESA argues that record evidence on issues related to the proposed documents is not needed, because the RFP rules and supplier agreements are legal documents, and “a decision as to whether these documents are unnecessary or unreasonable is a matter of law.” *Id*. at *29*.

RESA states that it did not propose specific edits to PECO’s proposed documents, but instead advocated a process to deal with issues raised by the Parties or the Commission *after* the issuance of a final Opinion and Order in this proceeding. Finally, RESA argues that the ALJ’s recommendation on this issue is at odds with the *FE DSP* *Order*, in which the Commission concluded that EGSs should not be forced to sign new documents with new and burdensome requirements. *Id.*

In reply, PECO states that it proposed that EGSs participating in the Opt-In Program must qualify to bid by submitting an application demonstrating minimum requirements, including the financial resources needed to make a $50 bonus payment to customers. In addition, qualifying bidders would be required to execute a form agreement under which they would commit to offer standard terms and conditions, and comply with the RFP provisions. PECO argues that no Party other than PECO presented any testimony regarding the qualifications set forth in the form application or the standard terms and conditions in the form agreement. Nonetheless, after the close of the record, RESA objected to PECO’s form documents, and attached new versions with comments to its Main Brief, and proposed a Commission-led collaborative to negotiate the terms of the documents. PECO R.Exc. at 15-16.

PECO disputes RESA’s contention that its cross-examination of PECO’s witness McCawley provides evidentiary support for RESA’s proposals. PECO argues that, contrary to RESA’s assertions, “Mr. McCawley’s cross-examination consisted almost entirely of questions clarifying certain program details, and RESA simply failed to take advantage of the opportunity at the hearing to provide any evidentiary basis for the concerns it identifies for the first time in its Main Brief.” *Id*. at 16. PECO submits that, for this reason alone, RESA’s Exception should be denied. In addition, PECO argues that there simply is no reason to delay the process of approving the form agreements for its Opt-In Program bidding process, which is scheduled to commence in early 2013.

**iv. Disposition**

We shall grant RESA’s Exception to the extent that RESA has proposed a collaborative among the Parties to this proceeding to review the terms and conditions of PECO’s proposed EGS application and form agreement. In our view, it is appropriate to conduct such a collaborative to ensure that the proposed application and form agreement do not impose unreasonable or unnecessary requirements on EGSs as a condition for their participation in the Opt-In Program. However, we are sensitive to PECO’s concern that this collaborative not interfere with the Opt-In Program schedule. Accordingly, we shall require that the Parties participating in this collaborative complete their review and submit any recommended revisions to the Commission within thirty days of the entry of this Opinion and Order. We strongly encourage the Parties to settle their differences, and submit a joint proposal to the Commission for its consideration.

We shall reopen the record of this proceeding to accommodate the filing of recommendation(s) from the participating Parties on or before the end of the thirty-day period following the date of entry of this Opinion and Order. Following the submission of recommendation(s) from the participating Parties, the Commission will issue a further Opinion and Order addressing the filings. Because time is of the essence, we will not entertain pleadings other than the submission of such recommendation(s), which are to be limited to the terms and conditions of PECO’s proposed application and form agreement. In our view, these issues could have been pursued more thoroughly in the proceeding before the ALJ, and we do not intend to start a “mini-proceeding” with attendant briefing, the issuance of a recommended decision, and the filing of exceptions and reply exceptions. We reiterate that we strongly encourage the participating Parties to settle any differences of opinion that they may have in a timely fashion so as to allow the Opt-In Program to proceed as scheduled. If the Parties are unable to settle their differences, we will decide this issue based on the record in this proceeding and the recommendation(s) that have been submitted by the Parties.

We shall assign the matter of the collaborative to the Office of Administrative Law Judge solely for the purpose of supplying administration support. We shall deny RESA's request that Commission staff oversee the collaborative, since this remains a contested issue in a contested proceeding.

### 3. EGS Standard Offer Program

#### a. Summary

Under the EGS Standard Offer Customer Referral Program (Standard Offer Program) that PECO originally proposed, PECO would have conducted a monthly solicitation to select the lowest 12-month fixed-price offer from EGSs that agreed to participate in the program. PECO St. No. 2 at 26-27. PECO then would have featured the winning EGS as the “Supplier of the Month” on its website, which would have been updated monthly. *Id*. Residential customers, excluding CAP customers, could have enrolled with the EGS through PECO’s website or by telephone. PECO M.B. at 60-61; R.D. at 67-68.

After the filing of PECO’s Petition, the Commission issued the *IWPF Order*, which recommended that standard offer programs include certain provisions, as follows: (1) that a standard offer should be provided for a minimum of four months and a maximum of one year; (2) that a standard offer should constitute a 7% reduction from the EDC’s effective PTC at the time of the offer; (3) that a standard offer should target residential default service customers, but residential shopping customers should not be excluded if they specifically request to participate; (4) that customers should be able to choose to be assigned to an EGS of their choice or choose a random assignment; (5) that a standard offer customer referral program should be presented during customer contacts to the EDC call centers, other than calls for emergencies, terminations and the like; (6) that at the time of the first contact between an EGS and a customer, the customer should be reminded of the terms and conditions of the standard offer, including the date by which the customer must take action to exercise his or her options at the end of the term; and (7) that, at the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, enroll with a different EGS, or return to default service, the customer should remain with the EGS on a month-to-month basis, and should not be subject to any termination penalty or fee. PECO M.B. at 61; R.D. at 68.

In light of the Commission’s directives in the *IWPF Order*, PECO replaced its proposed “Supplier of the Month” program with a program consistent with the Commission’s guidelines. PECO St. No. 2-S at 5-6; PECO M.B. at 61-62; R.D. at 68.

Several Parties recommended revisions to PECO’s proposed Standard Offer Program. These proposed revisions and other issues are discussed below. R.D. at 68.

#### Customer Eligibility

As recommended in the *IWPF Order*, PECO’s proposed Standard Offer Program would target residential default service customers, but would be open to shopping customers as well. CAP customers, however, would be excluded. PECO M.B. at 62. The only Party to propose a change in customer eligibility was RESA, which proposed that CAP customers be permitted to participate. This issue is addressed below (Participation by Low Income Customers in Proposed Retail Market Enhancements. *See* Section D(4))*.* R.D. at 69.

#### Composition of Product Offer

1. **Positions of the Parties**

Consistent with the guidance in the *IWPF Order*, PECO proposed that EGSs participating in the Standard Offer Program be required to offer generation service on a month-to-month basis for twelve complete billing cycles at a fixed price equal to 7% below the PTC at the time of customer enrollment. Similar to the Opt-In Program, at any time during the twelve-month term, a participating customer would be able to select a different offer from the Standard Offer Supplier, switch to a different EGS, or elect to return to default service. PECO St. No. 2 at 27. Under those circumstances, the Standard Offer Supplier would not be permitted to charge the customer an early termination fee or other penalties. PECO M.B. at 62; R.D. at 69.

Two parties – the OCA and RESA – sought changes in PECO’s Standard Offer product. The OCA proposed that the product term be shortened to four months in order to avoid the risk that a twelve-month contract could end up costing participating customers more than if they had remained on default service. OCA St. No. 1 at 16; OCA M.B. at 79-80; OCA R.B. at 48-50. PECO responded by stating that, even assuming the pricing suggested by the OCA, its concern was unwarranted because under PECO’s proposed Standard Offer Program, a customer would be free to return to default service. PECO St. No. 2-S; PECO Exh. JJM-5S, ¶ 5.3; PECO M.B. at 62-63; R.D. at 69.

While RESA supported a twelve-month term as proposed by PECO, RESA contended that the Commission intended the Standard Offer Program discount to be guaranteed for only four months. RESA St. No. 2 at 25; RESA R.B. at 41-43. PECO responded that the Commission’s guidance plainly provides that the discount is not limited to a four month period. *IWPF Order* at 31 (explaining that the “standard offer” is a 7% reduction from the PTC, and “[t]he standard offer should be provided for a minimum of four months, but should not exceed 1 year.”). PECO M.B. at 63; R.D. at 70.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO that the OCA’s concern that a twelve-month contract could end up costing participating customers more than default service is without merit, given that participating customers are free to return to default service at any time. According to the ALJ, RESA’s contention that the Commission intended the Standard Offer Program discount to last only four months is not correct. The *IWPF Order* explained that the “standard offer” is a 7% reduction from the PTC, and “[t]he standard offer should be provided for a minimum of four months, but should not exceed 1 year.” R.D. at 70.

**iii. Exceptions**

RESA argues in its Exceptions that the ALJ’s recommendation that participating EGSs be required to offer a 7% discount from the PTC for twelve months is in error. RESA argues that EGSs should be required to offer the 7% discount for only four months, after which “the price offered by the EGS should revert to one that is disclosed to the customer in a mailing from the EGS.” RESA Exc. at 31.

RESA submits that, by requiring the discounted rate to be adjusted when PECO’s PTC changes, the ALJ failed to address that the PTC changes every quarter. RESA also submits that the *IWPF Order* recommended a 7% reduction from the *PTC* *effective on the date that the standard offer is made*. RESA states that the Commission clearly intended that the discounted price would be constant, and established by reference to the PTC in effect when the standard offer is made. According to RESA, the Commission clearly did not intent that the 7% discounted rate would change quarterly when the PTC changes.

RESA also submits that the ALJ’s recommendation is inconsistent with the *FE DSP Order*, where the Commission adopted an opt-in aggregation program with a 5% discount from the existing PTC for the first four months, and with pricing for the remaining eight months to be determined by the EGS. RESA also notes that the FE opt-in aggregation program includes a $50 bonus, and that PECO’s proposed Standard Offer Program does not include a bonus. RESA argues that the Commission should ensure that programs offered by all EDCs include similar or equal terms. According to RESA, such uniformity “would lead to more effective overall programs.” RESA Exc. at 33. RESA concludes by stating that, “if the Commission is going to direct an opt-in aggregation program for PECO, then the Commission should modify the standard offer terms to be consistent with the opt-in aggregation (*sic*) (with the exception that no bonus should be included in the standard offer).”

In reply, PECO submits that RESA’s contention that the Commission intended a standard offer program discount to last for only four months is wrong. PECO also submits that RESA’s contention that the ALJ’s recommendation is inconsistent with the *FE DSP Order* is incorrect. “In that proceeding, the Commission concluded that the standard offer customer referral price should be based on a 7% discount from the PTC at the time the offer is made and that such price should remain in effect for a one-year service term.” PECO R.Exc. at 17.

The OCA states in reply that, although it had recommended that the Standard Offer Program be established for a four-month period, after which customers would return to default service in the absence of an affirmative election otherwise, the OCA determined not to file Exceptions on this issue. The OCA states that, under PECO’s proposal, customers will receive a 7% discount from the PTC in effect at the time of enrollment, and this discounted fixed price will remain in effect for twelve months. The OCA notes that, with quarterly changes to the PTC, customers are not guaranteed savings after four months because the PTC could drop below the 7% discounted fixed price over the course of the year. However, at least customers would receive a fixed price for twelve months, and would never pay more than 7% less than the PTC in effect at the time of enrollment. OCA R.Exc. at 19-20.

The OCA opposes RESA’s proposal because it does not guarantee a reasonable rate after four months. “Under RESA’s proposal, the customer will have enrolled in the program based upon the four-month ‘introductory’ rate, and the customer will later find out the rate for the remaining eight months.” *Id*. at 20. Because the EGS could charge whatever price it wants to after the introductory four-month period, the OCA submits that this could cause significant customer confusion, and there would not be any limits or protections on what a customer could be charged. The OCA argues that RESA’s proposal would run counter to the purpose of the Standard Offer Program, which is to introduce customers to the retail market without significant risk. *Id*. Because RESA’s proposal has the potential to harm customers, the OCA recommends that RESA’s Exception be denied.

In its Reply Exceptions, FES states that RESA incorrectly interprets the ALJ’s recommendation as requiring that the discounted price change quarterly with the PTC. FES states that the ALJ clearly stated that, consistent with the *IWPF Order*, the price would be fixed at 7% below the PTC in effect *at the time of customer enrollment*. Similarly, the *IWPF Order* provides for a constant price during the term of the standard offer, based on a 7% reduction from the PTC effective on the date that the standard offer is made.

FES characterizes RESA’s proposal as a four-month contract with a “teaser rate” that is disguised as a longer-term contract. Because EGSs likely would increase the rates after the introductory period, FES submits that RESA’s proposal would lead to customer frustration with the shopping experience. “These customers, most of whom will be in the Referral Program because they contacted PECO for some reason other than shopping, should not be forced to make another shopping decision after only a few months.” FES R.Exc. at 11.

FES also opposes RESA’s suggestion, raised for the first time in its Exceptions, that the Commission convert the Opt-In Program into an “opt-in aggregation program” similar to that created in the *FE DSP Order*, and “coordinate” the Standard Offer Program with the opt-in aggregation program to ensure that they are providing similar or equal terms. FES argues that there is no basis for abandoning the Standard Offer Program design developed by stakeholders over the course of a year and half, and adopting a new proposal improperly raised by a Party months after the record has closed. *Id.*

For all of these reasons, FES urges the Commission to deny RESA’s Exception.

**iv. Disposition**

We agree with the ALJ’s adoption of PECO’s proposal. EGSs participating in the Standard Offer Program will be required to offer a fixed price equal to 7% below the PTC in effect at the time of customer enrollment. While the discounted rate is fixed for twelve complete billing cycles, we realize that the PTC may be adjusted upward or downward on a quarterly basis which may impact the customers benefit to enrolling in the Program. However, enrolled customers are free to return to default service, should the PTC fall below the discounted rate, or may switch to a different alternate provider. Further, we agree with the OCA and FES that RESA’s proposal would lead to customer confusion, would not provide any limits or protections on what a customer could be charged, and would run counter to the purpose of the Standard Offer Program, which is to introduce customers to the retail market without significant risk. We shall deny RESA’s Exception on this issue and adopt the ALJ’s recommendation.

#### Customer Options Upon Product Expiration

**i. Positions of the Parties**

Under PECO’s proposal, at the time of first contact between a Standard Offer Supplier and a customer, the customer will be reminded of the terms and conditions of the Standard Offer, including the date by which the customer must take action to exercise his or her options at the end of the term. PECO St. No. 2-S at 6. At the end of the program term, the Standard Offer Supplier must provide the notices required by the Commission's regulations at 52 Pa. Code § 54.5(g)(1) and PECO’s Supplier Tariff. PECO St. No. 2 at 28. Similar to the Opt-In Program, and consistent with the Commission’s guidance, if a customer does not affirmatively choose to receive service from a different EGS or elect default service after receiving the required notices, the customer will remain with the Standard Offer Supplier on a month-to-month contract. PECO St. No. 2-R at 21; PECO M.B. at 63; *IWPF Order* at 21; R.D. at 70.

The OCA proposed that customers should not be retained absent an affirmative agreement to continue to be served by the Standard Offer Supplier at the end of the Standard Offer Program. OCA St. No. 1 at 17; OCA M.B.at 80-82. The OCA argued that these customers have not entered the retail market in the same way as other shopping customers, and are different from other shopping customers. OCA R.B. at 48-49. PECO responded that, under its Standard Offer program, a customer will have chosen to enroll in the program and will have been served by the Standard Offer Supplier for nearly a year, during which time the customer was free to return to default service or select another EGS. In these circumstances, there is no reason to treat these customers differently than other shopping customers. PECO contends that, consistent with the *IWPF Order*, the OCA’s proposal should be rejected. PECO M.B. at 63-64; R.D. at 70‑71.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO’s position that no persuasive reason has been shown to justify treating Standard Offer Program customers differently than other shopping customers given the protections built into the program consistent with the *IWPF Order*. The ALJ also concluded that the OCA approach actually could result in customer confusion, whereas PECO’s proposal is at least intuitively consistent. R.D. at 71.

**iii. Exceptions**

No Party filed an Exception to the ALJ’s recommendation on this issue.

**iv. Disposition**

We will adopt the ALJ’s recommendation to approve PECO’s proposals pertaining to customer options at the end of the Standard Offer Program. Similar to our conclusion regarding similar issues raised with regard to the Opt-In Program, we agree with the ALJ that there is no reason to treat a customer in the Standard Offer Program differently from other shopping customers.

#### Types of Customer Calls Eligible for Presentation of Referral Program

**i. Positions of the Parties**

PECO stated that under the Commission’s guidance, the Standard Offer Program should be presented during customer contacts to the EDC call centers, including high bill calls, but excluding calls for emergencies, terminations and the like. PECO M.B. at 64, citing *IWPF Order* at 31. The OCA, however, proposed that calls eligible for referral be limited to those from new and moving customers, or calls in which a customer specifically requests an explanation of the Standard Offer Program. OCA St. No. 1 at 16; OCA M.B. at 82-84. PECO did not agree with the limitation proposed by the OCA, but acknowledged that the Commission’s list of calls during which the Standard Offer Program should not be presented is not exhaustive. For example, calls related to outages are not an appropriate forum for presentation of the Standard Offer Program. PECO St. No. 2-R at 22; PECO M.B. at 64; R.D. at 71-72.

**ii. ALJ’s Recommendation**

The ALJ found that PECO’s proposal is consistent with the Commission’s guidance and should be adopted. Further, the ALJ concluded that the OCA’s proposal is unsupported and would be unduly limiting. R.D. at 72.

**iii. Exceptions**

In its Exceptions, the OCA argues that the ALJ erred in recommending that customers calling with high bill complaints be among the group solicited for the customer referral program. The OCA disputes the ALJ’s conclusion that the OCA’s proposal is unsupported and unduly limiting. The OCA submits that OCA witness Alexander testified regarding potential problems that could arise if customers other than those who are moving or requesting new service are solicited for the Standard Offer Program. The OCA submits that customers calling about high bill complaints, billing and usage questions, payment difficulties or payment plan options, collection, service quality and outages, and appointments for utility service, should not be solicited. The OCA argues that the focus of these calls should be limited to resolving the customer’s specific concerns without delay. OCA Exc. at 17. OCA witness Alexander testified that including these types of call in the referral program could result in a degradation of essential consumer protections, and could jeopardize quality of service in contravention of Section 2807(d) of the Code, 66 Pa. C.S. § 2807(d).

Although PECO has stated that it will resolve the reason for a customer’s call before offering the customer the Standard Offer Program, the OCA submits that customer satisfaction with the resolution of a high bill problem can be ambiguous. Unlike a call to request new service or the transfer of service to a new address, a high bill complaint may not be resolved with a single customer contact, and may escalate through supervisors or field work, even to the point of filing an informal or formal complaint with the Commission. PECO has not addressed the issue of the point at which the customer’s call will be deemed to have been satisfied. *Id*. at 18. The OCA submits that the Standard Offer Program should be offered only to new customers, customers moving within PECO’s service territory, and customers who specifically inquire about customer choice or the Standard Offer Program.

In reply, PECO submits that its proposal is consistent with the *IWPF Order*, which provides that a standard offer should be presented during all customer contacts with EDC call centers, “other than calls for emergencies, terminations and the like.” PECO R.Exc. at 18. PECO states that the OCA fails to show how offering the Standard Offer Program to customers after resolution of the reason for a high bill call would jeopardize customer satisfaction or quality of service. As a result, PECO asserts that the ALJ’s conclusion that the OCA’s proposal is unsupported and unduly limiting was correct. *Id*.

RESA argues that the OCA’s proposal is not consistent with the *IWPF Order*, where the Commission concluded that high bill calls to an EDC are appropriate contacts during which the EDC can inform customers of a standard offer program. The Commission directed that referral programs can be discussed “only and explicitly after the customer’s [high bill] concerns [are] satisfied.” *IWPF Order* at 32. RESA submits that the OCA has submitted nothing to justify a departure from this directive. RESA further submits that customers calling with high bill complaints likely are those customers who could most benefit from being informed about competitive offers. RESA R.Exc. at 7.

**iv. Disposition**

We shall deny the OCA’s Exception on this issue. We agree with RESA that the OCA has not presented any new evidence or argument that convinces us to alter the conclusions that we reached in the *IWPF Order*. That being said, we expect PECO to adhere to its commitment to resolve the issue about which a customer is calling before referring the customer to the Standard Offer Program.

Accordingly, we adopt the recommendation of the ALJ to approve PECO’s proposal, finding it otherwise reasonable and supported by the evidentiary record herein.

#### f. Commencement Date of the EGS Standard Offer Program

**i. Positions of the Parties**

Under PECO’s proposal, the Standard Offer Program would commence on June 1, 2013, approximately one month after enrollment for the Opt-In Program is completed. PECO’s position is that a month between completion of Opt-In enrollment and the beginning of the Standard Offer Program is sufficient. PECO St. No. 2-R at 21 (noting that further delay could frustrate planning and synergies associated with implementation of retail market enhancements); PECO M.B. at 64; R.D. at 72.

The OCA recommended that the EGS Standard Offer Program be implemented only after the conclusion of the Opt-In Program, arguing that overlapping programs could create customer confusion and the potential for adverse comparisons to the prices and terms of service associated with the various options, thus threatening the overall intent to stimulate interest in retail choice. OCA M.B. at 84-85. RESA recommended that the Opt-In Program and the Standard Offer Program commence at the same time. RESA M.B. at 75-76. CAUSE-PA agreed with the OCA that there is no need to run duplicative programs if they will cause customer confusion as to applicable terms. CAUSE-PA M.B. at 16; R.D. at 72.

PECO argued that, while the OCA recommended that the Standard Offer Program generally be delayed until after evaluation of the Opt-In Program and other retail marketing activities and a showing of a documented need for the program, the OCA failed to present any specific evidence to support a delay, which, PECO argues, is plainly inconsistent with the Commission’s directives in the *IWPF Order*. Moreover, PECO asserted that it must have a date certain on which a new program is to start in order to plan, design and implement the necessary changes to its systems and business practices. PECO M.B. at 64-65; R.D. at 72-73.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO’s position that there is a notable absence of evidence to support any modification of PECO’s proposal, and PECO needs a date certain for planning and implementation. Accordingly, the ALJ recommended that the Commission approve PECO’s proposal. R.D. at 73.

**iii. Exceptions**

In its Exceptions, the OCA argues that, contrary to the ALJ’s statement regarding the lack of evidence to support a delay, the OCA presented evidence of potential customer confusion regarding the overlapping programs. The OCA submits that, in concluding that a month between the completion of the Opt-In enrollment and the beginning of the Standard Offer Program is sufficient, the ALJ missed the central problem. “The problem is that these two programs will be on-going at the same time, resulting in customer confusion and possible negative comparisons of the price and terms.” OCA Exc. at 19. Because the underlying purpose of both programs is to incent customers who have not shopped to enter the marketplace and have a positive shopping experience, the OCA argues that both programs should not be in effect at the same time. *Id*. at 20.

In reply, PECO argues that the OCA’s Exception should be denied because the OCA did not present any specific evidence to support a delay and PECO needs a date certain for planning and implementation. In addition, PECO notes that the Commission rejected a similar proposal by the OCA in the *FE DSP Order*. PECO R.Exc. at 19.

FES argues that the OCA’s Exception should be denied because the OCA’s proposal is contrary to the preponderance of the evidence. FES submits that solicitation for and enrollment in the Opt-In Program will be completed by June 1, 2013, and that the solicitation for enrollment in the Standard Offer Program will not begin until after that date. FES argues that there will be very little overlap between the two programs. In addition, because the Standard Offer Program will target only default service customers, customers who have enrolled in the Opt-In Program will not be solicited. FES asserts that it supports a coordinated approach, but delaying the Standard Offer Program as proposed by the OCA is unnecessary and lacks evidentiary support. FES R.Exc. at 6.

**iv. Disposition**

We shall deny the OCA’s Exception and approve the implementation date for the Standard Offer Program as proposed by PECO. Marketing and enrollment for the Opt-In Program will have been completed before marketing and enrollment for the Standard Offer Program begins. Accordingly, we agree with FES that there will be little overlap between these key periods of the two programs. We are not persuaded that having the two programs in effect at the same time is a concern. We also agree with FES’ observation that, because the Standard Offer Program will be marketed only to default service customers and not to customers who have enrolled in the Opt-In Program, the potential for customer confusion is diminished. Accordingly, we will adopt the ALJ’s recommendation on this issue.

#### g. PECO’s Proposed Application Process and EGS Terms and Conditions (Standard Offer Customer Referral Program)

**i. Positions of the Parties**

Under PECO’s proposed Standard Offer Program, an EGS seeking to become a Standard Offer Supplier would be required to submit an application to PECO demonstrating that it complies with certain minimum qualifications, including a current EGS license issued by the Commission and the ability to comply with PECO’s Supplier Tariff. PECO Exh. JJM-5S, Exh. 1. As part of the qualifying process, an EGS would be required to enter into a Standard Offer Supplier Agreement (Attachment A to Exhibit 1). R.D. at 73.

RESA objected to the terms and conditions set forth in the Standard Offer Supplier Application and Standard Offer Supplier Agreement. RESA M.B. at 78-80; RESA R.B. at 43-44; R.D. at 73. In its Reply Brief, PECO stated as follows:

Under the Standard Offer Rules, each Standard Offer Supplier must send a sales agreement to the customer within one business day after sending an EDI 814 enrollment transaction. PECO Ex. JJM-5S, ¶ 4.4. RESA contends that PECO should confirm with EGSs that one business day turnaround time for sending the sales agreement to customers after the enrollment transaction is feasible. RESA App. B, p. 5. Notably, several other EGSs who are parties to this proceeding reviewed the Standard Offer Rules and expressed no objection to the proposed turnaround time or any other provision. Moreover, RESA has not proposed an alternative that it believes would be more feasible. Under the Standard Offer Rules, PECO is also required to submit two confidential reports to the Commission and the OCA annually. PECO Ex. JJM-5S, ¶ 4.5. RESA submits that information in the reports should be made available to other interested parties with relevant confidential information (e.g., EGS name) redacted. RESA App. B, p. 5. While PECO does not generally oppose providing the redacted report to other parties, the specific “relevant confidential information” alluded to by RESA has not been identified.

In sum, RESA’s objections to PECO’s proposed application process and standard terms and conditions set forth in PECO Exhibit JJM-4S should be rejected and RESA’s non-record factual assertions, including those raised in Appendix B, should be disregarded.

PECO R.B. at 45-46.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO’s position that RESA was untimely in raising these issues at the briefing stage in this proceeding. Without a basis in the record to do otherwise, the ALJ recommended that the form of the Standard Offer Supplier Application and the Standard Offer Supplier Agreement as proposed by PECO should be approved for use in the Standard Offer Program. R.D. at 74.

**iii. Exceptions**

RESA filed a combined Exception that pertains to the proposed governing documents for both the Opt-In Program and the Standard Offer Program. That Exception is summarized, *supra*. In reply to RESA’s Exception pertaining to the proposed governing documents for the Standard Offer Program, PECO incorporates its Reply Exception pertaining to the Opt-In Program documents, *supra*. In addition, PECO argues that none of RESA’ objections to the governing documents are supported by record evidence, although RESA had the opportunity to raise its concerns during the evidentiary phase of this proceeding. PECO R.Exc. at 19.

**iv. Disposition**

Given the uniformity of the issues, arguments and record evidence pertaining to the proposed governing documents for both the Opt-In and Standard Offer Programs, we shall refer both sets of documents to the collaborative that we are establishing, as explained and described, *supra*.

### 4. Participation by Low Income Customers in Proposed Retail Market Enhancements

**a. Positions of the Parties**

In its *IWPF Order*, the Commission concluded that the eligibility of CAP customers to participate in retail opt-in programs should be determined in each EDC’s default service proceeding, and should be permitted only if those customers would not be subject to harm, *i.e*., loss of benefits. *IWPF Order* at 43. At the same time, the Commission determined that CAP customers should not be allowed to participate in customer referral programs until further review of the issue. The Commission referred the issue to the Universal Service subgroup of the Office of Competitive Market Oversight (OCMO) to examine “the needs and interests of low-income customers as we move to a more robust competitive market.” *IWPF Order* at 17, 31. Consistent with these guidelines, PECO proposed to exclude CAP customers from participating in both the Opt-In Program and the Standard Offer Program. PECO M.B. 66; R.D. at 74-75.

Both RESA and Dominion objected to PECO’s proposed exclusion of CAP customers. RESA asserted that CAP customers should be included in both the Opt-In Program and the Standard Offer Program because, in its view, these customers could be adequately protected by making their CAP benefits portable. RESA St. Nos. 2 at 21, 2-R at 15; RESA R.B. at 44-45. Dominion contended that it is incongruent from a policy perspective to move toward full competition while excluding some customers from participation. Dominion St. No. 1-R at 5. Dominion contended that, as a matter of principle, all customers should be able to participate in retail market enhancements and that PECO should address any technical reasons which may prevent such participation at the moment. Dominion M.B. at 17; R.D. at 75.

PECO testified that complex, unresolved issues remain with respect to CAP portability. These issues include: (1) how to protect CAP customers from commodity volatility; (2) how to seamlessly integrate the Low Income Home Energy Assistance Program and CAP portability; (3) the need to allow PECO’s recent CAP tier changes and in-program arrearage forgiveness programs time to mature before making other major changes to its CAP program; (4) integration with PECO’s Rate RH phase-out; and (5) how to implement a discount on the customer’s bill, especially given that the discount would, in many cases, be larger than the customer’s distribution charges. In addition, the risk of higher costs for all customers associated with greater uncollectible expense needs to be considered and addressed. PECO St. No. 6-R at 5-6. In light of these unresolved issues, the Commission, PECO, and other parties will be able to make a better determination of whether CAP customer participation in the Opt-In Program can be accomplished without subjecting those customers to harm after the completion of the OCMO Universal Service subgroup’s analysis. PECO St. Nos. 2-R at 16 & 6-R at 7; PECO M.B. at 66; R.D. at 75.

PECO asserted that Dominion’s concern regarding the role of CAP customers in a robust competitive market also will be addressed more effectively after the OCMO review of the provision of universal service within default service. PECO St. No. 6-SR at 5; PECO M.B. 66-67; R.D. at 76.

CAUSE-PA agreed with PECO’s proposal to exclude CAP customers from the Opt-In and Standard Offer Programs. CAUSE-PA M.B.at 16-23. CAUSE-PA states as follows:

[T]he reality is that default service is designed to produce stable prices that are projected to be least cost over the timeframe of the default service plan. This model better addresses the rate stability that CAP households need than market forces operating on their own. Retail suppliers design their own mix of contracts based on their own judgments about customer preferences and then sell those products to whomever wants to buy them. No retail supplier is obligated to pursue price stability and least cost over time. PECO, as default supplier, is obligated to do both. When left with these two choices, CAUSE-PA asserts that the Act 129 default procurement requirements are significantly more compatible with the goals of the CAP program than procurement practices based upon the market judgments of EGSs which are not subject to regulatory oversight.

CAUSE-PA R.B. at 11-12 (footnotes omitted).

In addition, CAUSE-PA would expand the exclusion to certain non-CAP, confirmed low-income customers. CAUSE-PA St. No. 1 at 20-22. Specifically, CAUSE-PA recommended that PECO screen low-income customers for CAP eligibility and inform them of the program prior to enrollment in the Opt-In Program. Further, CAUSE-PA proposed that confirmed low-income customers who call PECO with high bill complaints be informed of CAP and enrolled, if eligible, prior to their inclusion in the Standard Offer Program. CAUSE-PA St. Nos. 1 at 20 & 1-SR at 2; R.D. at 76-77.

The OCA supported the proposal of PECO and CAUSE-PA and recommended that this question be considered as part of the Commission’s RMI Universal Service subgroup. OCA R.B. at 52; R.D. at 77.

PECO responded that CAUSE-PA’s proposal for additional screening of non-CAP, verified low-income households is unwarranted. According to PECO, its non-CAP, verified low income customer population is limited (only approximately 4,700 customers) and PECO already has performed regular outreach, which has resulted in actual contact with approximately 25% of those customers. In PECO’s experience, an even smaller subset of the customers contacted through targeted outreach is likely to elect the CAP rate. As such, CAUSE-PA’s proposed screening process would not materially increase the number of customers on CAP, but would create additional costs for PECO and the potential for customer confusion. PECO St. No. 6-R at 10-11.[[20]](#footnote-20) Further, CAUSE-PA’s screening proposal is unnecessary because PECO already seeks to address high bill complaints through the avenues proposed by CAUSE-PA, including enrollment in CAP and referral to other available low-income programs. PECO M.B. at 68; R.D. at 77.

**b. ALJ’s Recommendation**

The ALJ found RESA’s assertion that CAP customers could be adequately protected from harm by making their CAP benefits portable to be incorrect. As PECO discussed in its Main Brief, complex unresolved issues remain with respect to CAP portability. Therefore, the determination of whether CAP customer participation in RME programs can be accomplished without subjecting those customers to harm should not be made until after the completion of the OCMO Universal Service subgroup’s analysis. Moreover, according to the ALJ, RESA has not shown how a portable subsidy would be implemented to mitigate the risks of harm to PECO’s CAP customers arising from the potential for increases in commodity charges. R.D. at 77-78.

The ALJ concluded that Dominion’s concern regarding the role of CAP customers in a robust competitive market can be addressed more effectively after the OCMO review of the provision of universal service within default service. R.D. at 78. Accordingly, the ALJ concluded that the Commission should adopt PECO’s proposal to await the work of the Universal Services subgroup before including CAP customers in the Opt-In Program and other referral programs. R.D. at 78.

**c. Exceptions**

In its Exceptions, RESA argues that the ALJ’s recommendation should be rejected for several reasons. First, the recommendation is inconsistent with the *FE DSP Order*. Second, RESA asserts that “low-income customers should have the same opportunity to participate in the competitive market as anyone else.” RESA Exc. at 30. Third, RESA asserts that implementing a portable CAP benefit would be easier for PECO than for other EDCs because PECO offers CAP customers a discount off the bill, as opposed to a payment based on percentage of income. Finally, RESA argues that there is no reason to assume that default service is preferable for CAP customers than EGS pricing. RESA Exc. at 30-31.

In reply, PECO argues that RESA erroneously assumes that CAP customer bills automatically will be lower under the RME programs compared to default service. PECO also argues that RESA fails to show how its proposal to include CAP customers in the RME programs mitigates the risks of harm to CAP customers arising from increased commodity charges and increased uncollectible expenses. PECO R.Exc. at 20. PECO further notes that the *FE DSP Order* does not support RESA’s position, because the Commission based its decision on the fact, unlike PECO, that FE’s CAP customers already are permitted to shop.

The OCA argues that PECO and CAUSE-PA raised significant, complex issues that have to be addressed prior to the inclusion of CAP customers in RME programs, and that RESA has not addressed these issues, which include: (1) protecting CAP customers from commodity volatility; (2) integrating the LIHEAP program and CAP portability; (3) allowing the recent changes to PECO’s CAP tiers and arrearage forgiveness programs time to mature before making other major changes to the CAP program; (4) integrating the Rate RH phase-out with the CAP program; and (5) implementing a customer bill discount when the discount in many cases would be larger than the customer’s distribution charges. To this list the OCA would add the impact on non-CAP residential customers who pay for the cost of CAP shortfalls. For these reasons, the OCA supports the positions of PECO and CAUSE-PA, and recommends that

the issue of including CAP customers in the RME programs be considered as part of the RMI Universal Service subgroup. OCA R.Exc. at 18.

CAUSE-PA argues strenuously in its Reply Exceptions that, as the ALJ concluded, no Party has demonstrated how a portable subsidy would be implemented to mitigate the risks of harm to PECO’s CAP customers arising from the potential for increases in commodity charges and increased uncollectible expense. CAUSE-PA responds to the three arguments advanced by RESA as follows. First, CAUSE-PA argues that RESA’s reliance on the *FE DSP Order* is misplaced because that Order was not intended to establish precedent for this case. CAUSE-PA submits that the issue of CAP customer participation in RME programs is not the same for every EDC; rather, it is a fact-intensive inquiry, as intended by the *IWPF Order*. In addition, CAUSE-PA points out that numerous petitions for reconsideration of the *FE DSP Order* have been filed; therefore that Order has not yet been settled and should not be relied upon as precedent.

Second, CAUSE-PA argues that RESA’s attempt to discredit CAUSE-PA’s evidence that low-income households struggle economically, by characterizing such evidence as “vague,” “tenuous,” or “unsupported,” is without merit. CAUSE-PA introduced ample evidence that PECO’s low-income households are more vulnerable economically than residential households as a whole. In 2010, the termination rate for PECO’s confirmed low-income customers was 12.04% compared to 5.50% for all residential customers. CAUSE-PA disputes RESA’s assertion that CAP customers should be treated like all other residential customers. “They are not like other residential customers. CAP customers are the most economically vulnerable customers of PECO and, as such, they are intended by the Choice Act to receive special consideration and protection by the Commission. CAP customers are enrolled in CAP precisely because they cannot afford their full consumption bills.” CAUSE-PA Exc. at 5 (emphasis in the original). CAUSE-PA argues that neither they, nor other residential customers who pay for the CAP program, should be put in a position where CAP customers are paying more than they would under default service.

CAUSE-PA reiterates that default service is designed to produce stable prices that are projected to be least cost over the timeframe of a default service program. Default service, therefore, will provide the rate stability that CAP customers need. In contrast, EGSs are not obligated to pursue price stability or least cost over time, and make market decisions that are not subject to regulatory oversight. *Id*. at 6.

CAUSE-PA argues RESA’s assertion that CAP customers would receive a discount during the term of the Opt-In and Standard Offer Programs is disingenuous. CAUSE-PA asserts that, by focusing solely on the price-controlled term of the Programs, RESA seeks to hide the fact that CAP customers likely will face *higher* prices at the conclusion of the programs. Any increase in the commodity portion of their bills will be passed onto CAP customers in two ways: (1) CAP customers will see an increase because PECO’s CAP customers pay a percentage of their bills, not a percentage of their income; and (2) CAP customers will pay more for usage in excess of 650 kWh, which generally is the usage limit for CAP rate discounts. CAUSE-PA submits that, while the 650 kWh limit may be rational when a CAP customer is on default service, it is irrational when CAP customers are served by an EGS. *Id*. at 6-7.

Finally, CAUSE-PA argues that, contrary to RESA’s argument, the issue is not whether CAP customers are less capable of making informed decisions than other residential customers. RESA’s argument misses the point, according to CAUSE-PA, which is that low-income households cannot afford to make a bad choice when it comes to their electricity and other utility bills. The General Assembly recognized in the Choice Act that the Commission must ensure the affordability of electricity for low-income households. “Given the choice between managing CAP and its benefits within the framework of a regulated default service product or the competitive market, the evidence in this proceeding suggests that default service is better suited to the task.” *Id*. at 7.

In conclusion, CAUSE-PA submits that low-income households have no budget elasticity, and cannot afford to pay even marginally more for electricity for a short period of time. CAUSE-PA submits that, since no one has advanced a way to ensure that CAP customers would not be harmed by RME programs, including CAP customers in these programs represents an unacceptable risk. CAUSE-PA submits that the best way to protect CAP customers is to maintain the CAP program in the safe harbor of default service. *Id*. at 8.

**d. Disposition**

For the reasons stated below, we shall deny RESA’s Exception; however, we reject the ALJ’s recommendation to refer this issue to the Commission’s RMI Universal Service subgroup. The Commission is committed to ensuring that all customers, including CAP customers, are eligible to participate in the competitive retail electricity market. Accordingly, while we are supportive of RESA’s position on this issue, especially with regard to the portability of CAP credits, we acknowledge that PECO currently does not allow its CAP customers to shop, and that there are a number of issues that must be addressed in order to change this policy.

Rather than delay the inclusion of CAP customers within PECO’s RME Programs, we shall direct PECO to develop a plan that will allow its CAP customers to purchase their generation supply from EGSs by January 1, 2014. Toward this end, we shall direct OCMO to work with PECO to: (1) ensure that, to the extent possible, the Opt-In and Standard Offer Programs are available to CAP customers; and (2) provide a path that allows both CAP credits and LIHEAP funds to be used by customers that choose an EGS to supply their generation service. Beyond allowing CAP customers to participate in PECO’s DSP II RME Programs, this will ensure that all customers have the ability to avail themselves of the full benefits of retail electric competition. This is consistent with the proposal released on September 27, 2012, related to the *Investigation of PA’s Retail Electric Market* at Docket No. I-2011-2237952.

### 5. Additional Proposed Retail Market Enhancements

#### Time-Of-Use Offering

**i. Positions of the Parties**

PECO supported EGS participation in its TOU program.[[21]](#footnote-21) PECO St. No. 1 at 18. PECO already has conducted an auction and selected vendors to provide TOU commodity service and to implement and administer PECO’s TOU pilot.[[22]](#footnote-22) PECO St. No. 5-R at 10. On April 2, 2012, PECO filed a petition seeking expedited approval of, *inter alia*, the selected vendors as part of its smart meter program.[[23]](#footnote-23) PECO M.B. at 68-69; R.D. at 78.

RESA agreed that soliciting EGS participation to provide the commodity service associated with PECO’s TOU pilot is reasonable. RESA St. No. 2 at 30. Nevertheless, RESA proposed that PECO satisfy its TOU obligation by certifying that one or more EGSs have agreed to offer a TOU rate and submit an annual report to the Commission on the number of EGSs actually providing TOU service rather than conducting an auction. RESA St. No. 2 at 31-32. PECO argues that RESA’s proposal should not be adopted because PECO already has conducted the auction and the results are under Commission review. In addition, rulings in two separate proceedings could cause confusion or inconsistent recommendations regarding the same program. PECO St. No. 5-R at 10; PECO M.B. at 69; R.D. at 78-79.

PECO argued that RESA’s contention that the design of PECO’s TOU pilot should be addressed in this proceeding should be rejected because the Commission is already reviewing PECO’s proposed Dynamic Pricing Plan Supplement at a separate docket, which includes modifications to enable an EGS to provide TOU supply. PECO St. No. 5-SR at 3. PECO also argued that adopting RESA’s approach would undermine the Commission’s pending review and potentially delay the launch of PECO’s TOU pilot beyond the first quarter of 2013. PECO St. No. 5-SR at 4; PECO M.B. at 69; R.D. at 79.

**ii. ALJ’s Recommendation**

While the ALJ did not find that the RESA approach would undermine the Commission’s pending review, he concluded that such an approach is unnecessary and would complicate this matter to no beneficial purpose. Further, the ALJ found that PECO should not be required to certify that one or more EGSs have agreed to offer a TOU rate and to submit an annual report to the Commission on the number of EGSs actually providing TOU service rather than conducting an auction. R.D. at 79.

**iii. Exceptions**

In its Exceptions, RESA argues that the ALJ’s recommendation to reject RESA’s proposal appears to be based on a misunderstanding. RESA states that its proposal is not intended to supplant or interfere with any existing contract between PECO and an EGS for the provision of supply associated with PECO’s TOU pilot. Rather, RESA’s proposal would become effective upon the expiration of any such agreement. RESA submits that its proposal would not complicate matters, and that the certification and reporting that it recommends would be simpler than the approach that PECO has adopted. RESA Exc. at 33-34.

RESA also submits that its proposal is consistent with the Commission’s objective of promoting choice and competition. Finally, RESA argues that the Commission should not force customers who do not make an affirmative choice at the end of the TOU term to be returned to default service, because this “unauthorized switch” would be contrary to the Commission’s existing rules, and inconsistent with the treatment of customers participating in other RME programs. *Id*. at 34.

In reply, PECO states that on September 13, 2012, the Commission adopted a motion approving PECO’s revised dynamic pricing program (Dynamic Pricing Motion). PECO’s program includes a request for proposals from interested suppliers. PECO states that the Commission’s Dynamic Pricing Motion directly addresses RESA’s concern about the transfer of customers back to default service to the end of the TOU pilot program. Accordingly, PECO submits that the ALJ’s recommendation should be adopted. PECO R.Exc. at 20-21.

The OCA submits that the ALJ correctly determined that addressing the TOU program in this proceeding is unnecessary because it is being addressed at a separate docket. Because additional proposals at this time could undermine and further delay the TOU programs, the OCA submits that RESA’s Exception should be denied. OCA R.Exc. at 24.

**iv. Disposition**

We shall deny RESA’s Exception on this issue. We agree with the OCA, which noted that the TOU program is being addressed at a separate docket, and argued that additional proposals at this time could undermine and further delay the TOU program. We note that, by an Order entered on September 26, 2012, we approved a revised Dynamic Pricing Plan for PECO that includes the selection of an EGS as a vendor to provide TOU service under a pilot program that will launch in the first quarter of 2013, run for a one-year period, and involve the solicitation of up to 140,000 default service customers. *See Petition of PECO Energy Co. for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (Order entered September 26, 2012).

#### New/Moving Customer Referral Program

**i. Position of the Parties**

PECO originally proposed a New/Moving Customer Referral Program for residential customers, with revised and enhanced call center scripts promoting shopping, PAPowerSwitch.com and an updated “New/Mover” kit with expanded information on shopping, including a list of current supplier offers and contact information. PECO St. No. 2 at 28. In the *IWPF Order*, the Commission directed the OCMO to establish a working group comprised of EDCs and other interested parties to develop appropriate call center scripts for residential and small business customers by the second quarter of 2012, with implementation targeted for no later than the fourth quarter of 2012. *IWPF Order* at 18-20. PECO indicated its intention to participate in the new working group. PECO St. No. 2-S at 7; PECO M.B. at 70; R.D. at 79-80.

RESA, however, contended that PECO, EGSs, and other parties should concentrate on implementing the Opt-In Program and Standard Offer Program in lieu of the New/Moving Customer Referral program. RESA St. No. 2 at 26-27. In addition, RESA proposed that PECO should devise a means to allow new and moving customers who already know the EGS they want to select to begin service with that EGS, without the need for a transfer away from the utility Customer Service Representative to the customer’s selected EGS. *Id.* In order to be on an equal footing with bundled utility service, an EGS’s service must be available immediately for new and moving customers who identify the EGS they would like to select. *Id.*; R.D. at 80.

PECO responded that implementation of RESA’s proposal is not possible due to current operational constraints. PECO stated that the proposal likely would require the full deployment of advanced metering infrastructure to enable establishment of the customer’s service while simultaneously processing an EGS enrollment. PECO St. No. 2-R at 22-23. PECO concluded that RESA has not proposed an alternative method of offering immediate EGS service, without transfer to the EGS, and accordingly, RESA’s proposal should be rejected. PECO M.B. at 70; R.D. at 80.

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO’s position on this issue that, given operational constraints, RESA’s proposal is not practicable and should be rejected by the Commission. R.D. at 80.

**iii. Exceptions**

RESA objects to the ALJ’s recommendation, and argues that the Commission should direct PECO to implement a “switch on connect” capability, which would allow customers to enroll with an EGS through PECO. According to RESA, this would facilitate the “hot transfers” that the Commission has discussed as part of its Retail Markets Investigation. RESA argues that the ALJ erred in accepting PECO’s “excuses” that operational constraints prevent implementation of a “switch on connect” function. RESA asserts that this capability should have been in place long ago, and the only reason that it is not is that PECO has unnecessarily delayed the process and dragged its feet. RESA Exc. at 34-35.

In reply, PECO states that RESA’s averment that a “switch on connect  
function “should have been in place long ago” is unsupported, and fails to account for the significant overhauls of PECO’s metering and billing systems that would be required to accommodate RESA’s request. PECO states that, as the ALJ correctly found, RESA’s proposal is impractical and should be rejected.

**iv. Disposition**

We shall deny RESA’s Exception on this issue. We agree with the ALJ’s conclusion that, given operational constraints, RESA’s proposal is not practicable and should be rejected. RESA appears to assume that the operational constraints raised by PECO are not legitimate, but RESA has not provided any evidence to that effect.

#### c. Referral of PECO Wind Customers

**i. Positions of the Parties**

As the PECO Wind Program is eliminated, PECO will refer current PECO Wind customers to interested EGSs that can offer these customers a green energy product. PECO M.B. at 71; PECO St. Nos. 1 at 19; 2 at 30. Prior to the cessation of service under the PECO Wind Program, PECO will make a one-time referral mailing to PECO’s Wind Program customers. PECO St. No. 2-R at 23. This mailing, *inter alia*, would describe the customer’s option to continue to purchase green energy by shopping with a renewable EGS and list all interested EGSs along with their contact information. GMEC St. No. 1 at 4-5. In addition, the mailing would direct customers to visit the PA Power Switch website. PECO M.B. at 71; R.D. at 80-81*.*

No Party provided testimony objecting to the elimination of the PECO Wind Program, however, several witnesses proposed modifications to the PECO Wind referral mailing. RESA proposed requiring PECO to: (1) include EGS promotional material in PECO mailings; and (2) share drafts of the referral mailing with EGSs prior to distribution to PECO Wind customers. RESA St. No. 2 at 30. GMEC proposed: (1) that an additional mailing made just a few weeks prior to termination of the PECO Wind Program in December 2012; (2) that PECO allow GMEC and other eligible EGSs to insert marketing materials in the mailing; and (3) that PECO identify GMEC and other eligible EGSs in the referral mailing. GMEC St. No. 1 at 6. ChoosePA Wind requested that its website be included as well as any other website that offers similar renewable products in the referral mailing. ChoosePAWind St. No. 1 at 6; R.D. at 81.

PECO argued that the foregoing proposals are unnecessary because registered EGSs will have the opportunity to respond to PECO’s request for information and be identified in the referral mailing. PECO also asserted that while ChoosePAWind is not a registered supplier, any members of ChoosePAWind who are eligible may respond to PECO’s request. PECO St. No. 2-R at 23. Further, PECO stated that accepting GMEC’s recommendation to allow eligible EGSs to insert materials in the mailing would be unwieldy and would increase administrative and mailing costs. PECO M.B. at 71-72; R.D. at 81*.*

**ii. ALJ’s Recommendation**

The ALJ agreed with PECO that allowing EGSs to insert materials into the referral mailing would be unwieldy and would increase administrative and mailing costs. The ALJ determined that neither RESA nor GMEC has shown that current PECO Wind customers will be unable to make a shopping decision upon expiration of the program if furnished the EGS contact information provided in the mailing, coupled with the information on renewable energy products provided on the Commission-maintained PAPowerSwitch.com website. R.D. at 81-82.

The ALJ also concluded that the proposals of ChoosePAWind and GMEC to expand the mailing to include an unlimited number of other websites that are not maintained by the Commission and references to entities that are not licensed by the Commission (such as non-EGS suppliers of other renewable-related products) should not be adopted. R.D. at 82. As with the insertion of EGS materials, the ALJ found that requiring PECO to list websites and entities that have not been subject to any review or approval by the Commission clearly would result in increased administrative costs for PECO. R.D. at 82. For the foregoing reasons, the ALJ recommended that PECO’s proposal for a one-time referral mailing to PECO Wind customers should be adopted without modification. R.D. at 82.

**iii. Exceptions**

GMEC excepted to the ALJ’s recommendation which adopts PECO’s proposal without modification. GMEC states that the central flaw in the ALJ’s brief discussion is that there would, in fact, be no additional costs, either to PECO or to customers if GMEC’s proposal is adopted. GMEC Exc. at 3-4. This is because the GMEC proposal contemplates that every participating EGS would share equitably in the incremental costs to implement its proposal. *Id.* However, GMEC states that, if cost is a concern for the Commission, GMEC believes that one mailing (with the inclusion of EGS marketing materials) would be an acceptable alternative. *Id.*

GMEC further states that PECO’s and the ALJ’s characterization of the process as unwieldy seems to be a label applied to create grounds for denial rather than an accurate description of the process itself. *Id.* GMEC further states that, although PECO asserted that the process would be unwieldy, it provided no basis to support such a characterization. *Id.* According to GMEC, the number of EGSs who may participate in such mailings would be limited and PECO’s role would be little more than ensuring that the correct inserts went into the envelope, which is a mechanically automated process. *Id.* PECO would have no responsibility to print, write or organize the mailer inserts. *Id.* GMEC also agreed to provide any EGS marketing documents to the Commission for review. *Id.*

Lastly, GMEC asserts that the ALJ faulted GMEC and RESA for not showing that PECO’s Wind customers would be unable to make a shopping decision absent the adoption of GMEC’s proposal. *Id.* GMEC asserts that the goal should be to provide customers with enough information to facilitate and improve their decision making process. *Id.*

RESA also excepts to the ALJ’s decision on this issue, and supports GMEC’s position, as noted above. RESA Exc. at 35-37.

In Reply, PECO states that the ALJ properly concluded that neither RESA nor GMEC has shown that PECO Wind customers will be unable to make a shopping decision upon expiration of the Wind program with reliance on PECO’s information alone. PECO R.Exc. at 22. Further, PECO states that RESA and GMEC did not provide any evidence that their proposals would allow PECO Wind customers to make better shopping decisions. *Id.* Accordingly, PECO asserts that the Exceptions of RESA and GMEC on this issue should be denied. *Id.*

**iv. Disposition**

We agree with the ALJ and shall adopt PECO’s proposal without modification. The ALJ’s rationale is accurate regarding the ability of current Wind customers to make an alternative choice when the Wind Program ends. The renewable energy products provided on the Commission-maintained PAPowerSwitch.com website are offered by licensed EGSs and the website is available to all customers who wish to shop for renewable power. We further believe that non-EGS suppliers of other renewable-related products should never be included in customer mailings from licensed EGSs or from the incumbent EDC. An EDC should include only references to PUC-licensed entities within mailings to customers. Accordingly, we shall deny the Exceptions of RESA and GMEC.

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#### d. Seamless Moves

PECO proposed to initiate a collaborative with interested EGSs to develop technical requirements and cost estimates for system changes required to permit residential and commercial customers to change their address of service and maintain EGS service. PECO St. Nos. 1 at 19; 2 at 30; PECO M.B. at 72, 76. No party opposed PECO’s proposed seamless moves collaborative.

### 6. Recovery of Program Costs for Proposed Retail Market Enhancements

PECO proposed to recover the costs of its RME programs, the EGS Opt-In Program and the Standard Offer Program, from the EGSs that benefit from those programs, primarily through a 0.3% discount on purchased EGS accounts receivable (Purchase of Receivables or POR). PECO M.B. at 72. PECO Exh. ABC‑4R. Several parties – the OCA, I&E and CAUSE-PA – support PECO’s recommendation. OCA St. No. 2-R at 12-13; I&E St. No. 1-R at 5-6; CAUSE-PA St. No. 1 at 22-23. RESA and Dominion strongly oppose the POR proposal, recommending, instead, a PTC adder or a non-bypassable charge. These proposed modifications and other issues are discussed, below.

#### EGS Opt-In Competitive Offer Program and

#### EGS Standard Offer Program

**i. Positions of the Parties**

PECO proposed that the cost of the Opt-In Program be recovered directly from the winning EGSs, in proportion to the number of customers allocated to each EGS. PECO M.B. at 72; PECO St. Nos. 2 at 25; 5 at 19. In the event that the RFP process does not produce any winning EGSs, the costs of the program would be recovered by PECO through a 0.3% POR discount until such costs are fully recovered. *Id.* PECO’s proposed cost recovery mechanism for the Opt-In Program is consistent with the following Commission guidance: “[H]aving the participating EGSs pay for the auction implementation is a prudent way to recover the auction costs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction.” PECO M.B. at 73, citing *IWPF Order* at 78.

PECO’s proposal was opposed by RESA, FES and Dominion. RESA and FES recommended that the cost of PECO’s proposed retail market enhancements, be recovered through the PTC Adder. RESA St. No. 2-R at 16; FES St. No. 1 at 9. In the alternative, they contended that the costs of the Programs should be recovered through a non-bypassable charge assessed on all customers who purportedly will benefit from a robust competitive market with a larger group of EGSs.[[24]](#footnote-24) FES and RESA further asserted that recovery of the Programs costs from winning EGSs could diminish the appeal of the program and discourage EGS participation. FES St. No. 1 at 11-12; RESA St. No. 2-R at 17; R.D. at 83.

PECO argued that RESA and FES have not demonstrated that there is good cause to deviate from the Commission’s recommendation to recover the costs of the Programs from participating EGSs. PECO asserted that, like marketing and customer education efforts, the goal of PECO’s proposed RME programs is to encourage increased customer shopping. PECO St. No. 5-R at 13. PECO contended that, while the opposing Parties asserted that all customers generally will benefit from the RME Programs, no Party has demonstrated that the alleged benefit justifies charging customers for what amounts to an EGS marketing expense. *Id.*  Notably, FES admitted that its opinion regarding PECO’s proposed cost recovery mechanism was not based on any cost-benefit analyses and that FES had not determined whether PECO’s proposal would affect FES’ participation in the RME Programs. PECO M.B. at 73-74, citing PECO Cross (Banks) Exh. 3 (FES Response to PECO Set II, No. I); R.D. at 83-84.

Opponents to PECO’s proposal contended that the POR discount, which would be triggered in the event that the Opt-In Program did not yield any winning suppliers, is inappropriate because it would require EGSs with a greater market share earned outside of RME programs to pay more. FES St. No. 1 at 10; Dominion St. No. 1-R at 4; RESA St. No. 2-R at 17. PECO responded that its proposed POR discount is consistent with the Commission’s directive that EGSs be responsible for these program costs; notably, the Commission specifically found that PECO’s proposal to recover RME costs through the POR discount appears to be acceptable. *IWPF Order* at 32. In addition, all EGSs have the opportunity to participate in the Opt-In Program. PECO St. No. 5-R at 13. PECO contended that no witness has presented evidence that EGSs with larger market shares would not participate in the Opt-In Program if costs are recovered through the POR program in the event that there are no participating suppliers. PECO asserted that FES – despite its objection – may still participate in the Opt-In Program. PECO M.B. at 74; R.D. at 84.

FES also asserted that use of a POR discount to recover costs unrelated to the POR program does not follow cost causation and therefore will encourage EGSs to discontinue participation in that voluntary program. FES St. No. 1 at 9-10. PECO responded that FES has not presented any evidence that use of a POR discount would actually deter EGSs from competing in PECO’s service territory. PECO M.B. at 75; R.D. at 84.

**ii. ALJ’s Recommendation**

The ALJ characterized the end-result of RESA’s proposed PTC Adder as the artificial inflation of the PTC with corresponding inaccurate price signals and cross-subsidization of PECO’s shopping customers by default service customers. Further, the ALJ found no public benefit that would be conveyed by the adoption of a measure for which no need has been shown and which would only serve to distort price signals. Accordingly, the ALJ recommended that the PTC Adder proposed by RESA and supported by Dominion should be rejected by the Commission. R.D. at 84-85.

With respect to the argument that the costs of the Opt-In Program should be recovered through a non-bypassable charge assessed on all customers who would purportedly benefit from a robust competitive market with a larger group of EGSs, RESA and FES have not demonstrated that there is good cause to deviate from the Commission’s recommendation to recover the costs of the Opt-In Program from participating EGSs. Thus, the ALJ recommended that these options be rejected. R.D. at 85.

The ALJ concluded by stating that he agreed with PECO that its proposed POR discount is consistent with the Commission’s directive in the *IWPF Order,* and that EGSs should be responsible for these RME Program costs. R.D. at 84.

**iii. Exceptions**

RESA, Dominion and FES each excepted to the ALJ’s recommendation on this issue. RESA argues that the ALJ erred and the recovery of these costs through a POR discount should not be approved. RESA Exc. at 37. RESA states that PECO’s POR proposal violates the principle of cost recovery following cost causation. *Id.* Also, according to RESA, utilizing a POR discount for recovery of costs would exempt those EGSs who do their own billing and could encourage other EGSs to no longer participate in PECO’s POR program, which in RESA’s opinion is not in the public interest. RESA Exc. at 37-38. Lastly, RESA asserts that any POR-based assessment would unfairly and disproportionately assess EGSs based on market share. *Id.* In the alternative, RESA supports adoption of Dominion’s proposal to implement a per-customer charge based upon the relevant program costs. *Id.*

FES states that the ALJ’s recommendation is unsupported by credible and substantial evidence. FES Exc. at 5. FES also believes that a POR program will discourage new EGSs from entering the market or encourage EGSs that currently participate to drop out of PECO’s POR program. FES Exc. at 6. FES also states that PECO’s proposal would result in an unfair allocation of costs among EGSs and would violate the fundamental principle that cost recovery should follow cost causation. *Id.* Regarding the Opt-In Program, FES states that recovery of these costs should be based upon the number of customers enrolled by each EGS; the establishment of a cap on these expenses should be known by all EGSs before the bidding process begins; and that any undercollection of the program expenses should be recovered from all customers eligible to participate in the program. *Id.* For the Standard Offer Program, FES’s proposal is the same as for the Opt-In Program with the exception that the proposed initial costs would be recovered from all EGSs who are licensed to serve the customers eligible for the program. *Id.* In Reply, Dominion supports the FES proposal and recommends its adoption. Dominion R.Exc. at 5. RESA, in its Reply, also supports the position of FES and Dominion. RESA R.Exc. at 9.

Dominion also excepts to the ALJ’s adoption of PECO’s POR proposal. Dominion Exc. at 5. Dominion states that the POR proposal would cause EGSs that already have customers to subsidize the program, even if they did not participate and further, the larger the customer base an EGS has today, the larger its subsidy to other suppliers. Dominion Exc. at 6. Dominion believes that PECO’s POR proposal should be rejected, and that a per-customer fee should be implemented. *Id.*

In Reply, I&E states that the ALJ’s recommendation is correct and relies upon what the Commission already has determined, which is that the EGSs pay the costs associated with these programs. I&E R.Exc. at 3. Further, while recommending adoption of the POR Program, the ALJ has rejected the non-bypassable surcharge proposed by RESA and FES. I&E R.Exc. at 4. Accordingly, I&E’s position is that PECO’s POR Program be approved for recovery of these program costs. *Id.*

In Reply, the OCA states that it supports the ALJ’s recommendation, which adopted PECO’s proposal, and the Commission’s finding that the cost of these programs be recovered from EGSs, given that EGSs are the entities reaping the customer acquisition benefits resulting from the program. OCA R.Exc. at 22.

The OSBA states in its Reply that FES and Dominion propose that default service customers and shopping customers share in the cost of retail market enhancements. OSBA R.Exc. at 7. FES and Dominion argue that retail market enhancements benefit all customers and therefore all customers, including default service customers, should pay for them through a non-bypassable charge. *Id.* But, as the OSBA explained in its Main Brief, PECO’s default service procurement also benefits all customers by offering a viable option to EGS offers. OSBA Main Brief at 18; OSBA R.Exc. at 7. It is the OSBA’s opinion that if default service customers are to share in the cost of PECO’s retail market enhancements, then it is equally appropriate for shopping customers to contribute toward the cost of PECO’s default service program. OSBA R.Exc. at 7. On the other hand, the OSBA avers that, if PECO’s RFP-related costs are to remain the sole responsibility of default service customers, then the costs of retail market enhancements should remain the sole responsibility of shopping customers (or their EGSs). *Id.* Cost sharing should be a two-way street to avoid cross-subsidization.

Therefore, the Commission should reject FES’ and Dominion’s Exceptions to the extent that they propose that default service customers share in the cost of retail market enhancements. *Id.* at 7-8.

In its Reply, PECO states that despite their concerns that recovery of retail market enhancement costs through the POR discount may have an adverse effect on EGS interest in PECO’s service territory, RESA, Dominion and FES have not offered any evidence that specific EGSs would choose not to enter or would leave PECO’s territory. PECO R.Exc. at 23. Further, the opposing Parties failed to present any evidence that EGSs with larger market shares would not participate in these enhancement programs if costs are recovered through the POR program. PECO R.Exc. at 23-24.

**iv. Disposition**

Regarding recovery of program costs for proposed retail market enhancements, the ALJ recommended adoption of PECO’s proposed 0.3% POR discount, which complies with the Commission’s directive in the *IWPF Order* that EGSs be responsible for these program costs. We agree with the ALJ that our position articulated in the *IWPF Order* was and continues to be that EGSs should be responsible for these costs. However, at this juncture we do not believe we have sufficient information to adopt PECO’s proposal.

Upon review of the EGS’ positions in this proceeding, the Commission has significant concerns that the POR discount method of allocating costs may be a significant barrier to EGS participation. Accordingly, PECO, EGSs and interested parties are directed to resubmit a plan or proposal within sixty (60) days of the date of entry of this Opinion and Order, for Commission review and approval, addressing how participating EGSs or customers will pay for the costs of market enhancements approved in this DSP proceeding.

We firmly believe that the resolution of these issues is particularly important, as they are the cornerstone to the success of these programs. The thrust of the *IWPF Order* was to suggest programs that would be implemented during this round of DSPs in order to bolster customer participation in the retail electric market; however, these steps can jumpstart the market only if they are carried out. We urge the EGSs and PECO to come to an agreement on how these costs will be allocated in order to carry out these programs and bring more retail customers to Pennsylvania’s retail energy market.

Accordingly, this issue shall be held in abeyance pending the outcome of the negotiations among the Parties.

#### Other Enhancements

**i. Positions of the Parties**

PECO has proposed using the POR discount to recover the costs of the remaining retail market enhancements, including: (1) costs associated with referral of PECO Wind customers to EGSs who can offer customers a green energy product; (2) additional customer call center requirements for new/moving calls; and (3) costs associated with the analysis, design, testing and implementation of seamless moves. PECO St. No. 5 at 18-19; GMEC Exh. JH-1 at 10; PECO M.B. at 76; R.D. at 86.

RESA contended that recovery of RME program costs through a POR discount is inappropriate because such costs are unrelated to the uncollectible accounts and administrative costs of PECO’s POR program. Instead RESA advocated for a non-bypassable charge or PTC Adder. RESA St. No. 2 at 28. With respect to seamless moves, RESA contended that it is inappropriate for EGSs to pay any costs associated with switch on connect because PECO should have built this functionality into its system thirteen years ago, at the beginning of retail choice in Pennsylvania. FES agreed. RESA St. No. 2 at 29; RESA M.B. at 88-89; FES M.B. at 33-34. PECO opposed the recovery of the seamless moves costs from all customers, and explained that RESA’s assertion regarding an earlier obligation to install seamless moves functionality was unsubstantiated in the record. PECO M.B. at 76.

**ii. ALJ’s Recommendation**

The ALJ recommended that PECO’s proposal to use the POR discount to recover the costs of the remaining retail market enhancements should be approved by the Commission. The ALJ recommended that the use of a non-bypassable charge or PTC Adder be rejected. The ALJ also stated that PECO was obligated to construct the functionality associated with seamless moves thirteen years ago. R.D. at 86-87.

**iii. Exceptions**

PECO’s sole Exception on this issue pertains to the ALJ’s statement that “PECO was obligated to construct the functionality associated with seamless moves thirteen years ago.” R.D. at 80. PECO suggests that, in light of the ALJ’s recommendation to approve the collaborative and recover the costs of that program and other retail market enhancements through a POR discount, this statement may have been a typographical error. In any event, PECO asserts that this statement is unsupported on the record, and no Party has provided a citation to any Commission Order or directive imposing such an obligation on PECO thirteen years ago. PECO requests that the Commission clarify that RESA failed to demonstrate that PECO was under any obligation to construct seamless moves functionality in the past. PECO Exc. at 2-3.

**iv. Disposition**

The recovery of any incremental costs associated with the analysis, design, testing and implementation of seamless moves functionality shall be addressed in the seamless moves collaborative. Further, we find that RESA’s contention that PECO had an obligation to or at least should have built this functionality into its system, is without merit. Accordingly, we shall grant PECO’s exception on this issue and reject the ALJ’s finding that PECO was obligated to create the ability to implement seamless moves for customers from PECO to an EGS at the onset of electric competition.

## E. Other Issues

1. **Positions of the Parties**

Under the Commission’s Default Service Regulations, affiliates of default service providers are permitted to participate in competitive procurement for default service supply, provided that appropriate protocols are in place to ensure that such affiliates do not receive an advantage in the competitive procurement and the competitive process complies with the Commission’s Codes of Conduct. 52 Pa. Code § 54.186(5). The Commission previously has approved PECO’s SMA as an affiliated interest agreement so that PECO’s affiliates may participate in default service supply procurements, and PECO avers that it is maintaining the same protocols and other protections in DSP II to be administered by the Independent Evaluator. PECO M.B. at 77; PECO St. No. 4 at 7; PECO Ex. CL-3. In the event that an affiliate of PECO is a winning bidder in a default supply procurement, it will be required to execute the SMA in the same manner and time period as other bidders. PECO M.B. at 77; R.D. at 87.

In addition, PECO requested that the Commission provide advance approval under 66 Pa. C.S. § 2102 for the form agreements proposed by PECO for use in the Opt-In Program (Exhibit 1 to PECO Ex. JJM-4S) and in the Standard Offer Program (Exhibit 1 to PECO Exh. JJM-5S). PECO M.B. at 77. Affiliates of PECO may also seek to participate in these retail market programs, and advance approval is appropriate since these affiliates will be subject to the same timelines and program requirements as other bidders. Both PECO and its affiliates will remain subject to the Commission’s codes of conduct in all aspects of these programs, and the Opt-In Program includes an independent monitor to manage the competitive bidding process. PECO M.B. at 77; R.D. at 87-88.

1. **ALJ’s Recommendation**

The ALJ recommended that PECO’s request that the Commission provide advance approval under 66 Pa. C.S. § 2102 for the form agreements proposed by PECO for use in the Opt-In Program (Exhibit 1 to PECO Exh. JJM-4S) and in the Standard Offer Program (Exhibit 1 to PECO Exh. JJM-5S) should be granted.

1. **Exceptions**

No Exceptions were filed on this issue.

1. **Disposition**

Based upon our prior disposition regarding PECO’s proposed application process and EGS terms and conditions wherein we established a collaborative to address the information requested by PECO in their proposed form agreements, we shall deny PECO’s request for advance approval.

# IV. Conclusion

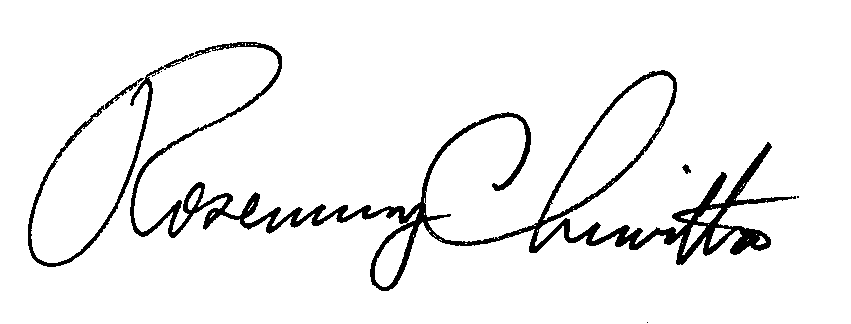
PECO’s DSP II contains all of the elements of a default service plan required by the Code, the Commission’s default service regulations (52 Pa. Code §§ 54.181 – 54.189), and the Commission’s Policy Statement on Default Service (52 Pa. Code §§ 69.1801- 69.1817), including procurement, implementation, and contingency plans, a rate design plan, and copies of the agreements and forms to be used in procurement of default service supply.

PECO’s Petition for Approval of Its Default Service Program is in compliance with 66 Pa. C.S. §2807(e)(3.7) in that it includes prudent steps necessary: (1) to negotiate favorable generation supply contracts; (2) to obtain least cost generation supply contracts; and (3) because neither the Default Service Providers nor their affiliated interests have withheld from the market any generation supply in a manner that violates federal law.

Based on the foregoing discussion, we shall: (1) grant, in part, and deny, in part, the Exceptions to the Recommended Decision, consistent with this Opinion and Order; (2) adopt the Recommended Decision, as modified by this Opinion and Order; (3) approve, in part, and deny, in part, the Petition, as set forth in this Opinion and Order; (4) direct PECO to file a revised DSP, as set forth in this Opinion and Order; (5) direct PECO, in collaboration with interested EGSs, to submit a proposal to the Commission on how EGSs pay for the costs of the Opt-In Competitive Offer Program and the Standard Offer Referral Program; (6) direct the EGSs, licensed by the Commission, that elect to participate in the Opt-In Competitive Offer Program, to submit for Commission review and approval the terms and conditions of their eight-month Opt-In Competitive Program offering; and (7) direct PECO to begin the New/Moving Customer Program as soon as possible, but no later than sixty days following the entry date of this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exception filed by PECO Energy Company to the Recommended Decision of Administrative Law Judge Dennis J. Buckley is granted, consistent with this Opinion and Order.
2. That the Exceptions filed by the Office of Consumer Advocate to the Recommended Decision of Administrative Law Judge Dennis J. Buckley are granted in part and denied in part, consistent with this Opinion and Order.
3. That the Exception filed by the Office of Small Business Advocate to the Recommended Decision of Administrative Law Judge Dennis J. Buckley is denied, consistent with this Opinion and Order.
4. That the Exceptions filed by the Retail Energy Supply Association to the Recommended Decision of Administrative Law Judge Dennis J. Buckley are granted in part and denied in part, consistent with this Opinion and Order.
5. That the Exceptions filed by Dominion Retail, Inc. and Interstate Gas Supply, Inc. to the Recommended Decision of Administrative Law Judge Dennis J. Buckley are granted in part and denied in part, consistent with this Opinion and Order.
6. That the Exceptions filed by FirstEnergy Solutions Corporation to the Recommended Decision of Administrative Law Judge Dennis J. Buckley are granted in part and denied in part, consistent with this Opinion and Order.
7. That the Exception filed by the Green Mountain Energy Company to the Recommended Decision of Administrative Law Judge Dennis J. Buckley is denied, consistent with this Opinion and Order.
8. That the Exceptions filed by PPL EnergyPlus, LLC to the Recommended Decision of Administrative Law Judge Dennis J. Buckley are denied, consistent with this Opinion and Order.
9. That the Exceptions filed by the Joint Suppliers Group to the Recommended Decision of Administrative Law Judge Dennis J. Buckley are denied, consistent with this Opinion and Order.
10. That the Recommended Decision of Administrative Law Judge Dennis J. Buckley, issued on August 29, 2012, is adopted as modified by this Opinion and Order.
11. That PECO’s DSP II contain all of the elements of a default service plan required by the Code, the Commission’s default service regulations (52 Pa. Code §§ 54.181 - 54.189), and the Commission’s Policy Statement on Default Service (52 Pa. Code §§ 69.1801 - 69.1817), including procurement, implementation, and contingency plans, a rate design plan, and copies of the agreements and forms to be used in procurement of default service supply.
12. That PECO’s Petition for Approval of Its Default Service Program is in compliance with 66 Pa. C.S. §2807(e)(3.7) in that it includes prudent steps necessary: (1) to negotiate favorable generation supply contracts; (2) to obtain least cost generation supply contracts; and (3) because neither the Default Service Providers nor their affiliated interests have withheld from the market any generation supply in a manner that violates federal law.
13. That the Petition of PECO Energy Company for approval of its Default Service Program, filed on January 23, 2012, is granted in part and denied in part, consistent with this Opinion and Order.
14. That PECO Energy Company, in collaboration with interested electric generation suppliers, are directed to submit a proposal to the Commission on how electric generation suppliers will pay for the costs of the Retail Market Enhancement Programs as modified by this Opinion and Order. This proposal shall be submitted as part of the revised Default Service Plan to be filed pursuant to Ordering Paragraph No. 18, *infra.*
15. That licensed electric generation suppliers that elect to participate in the EGS Opt-In Competitive Offer Program shall submit for Commission review and approval the terms and conditions of their eight-month Opt-In Program offering. These filings shall be submitted to the Commission no later than forty-five days before offers are extended to potential customers.
16. That PECO Energy Company is directed to begin the New/Moving Customer Program as soon as possible, but no later than sixty days following the entry date of this Opinion and Order. This Program shall be initiated while anticipating refinement of the call center scripts by the working group established in the Commission’s Final Order in the case of *Investigation of Pennsylvania’s Retail Electricity Market: IWPF*, I-2011-2237952, (Final Order entered March 2, 2012).
17. That within thirty days of Order entry, PECO Energy Company together with other interested Parties shall submit a join proposal for Commission consideration regarding the resolution of PECO’s proposed application and form requirements for electric generation suppliers who participate in PECO Energy Company’s Opt-In Program and Standard Offer Program.
18. That PECO Energy Company is directed to develop a plan that will allow its CAP customers to purchase their generation supply from EGSs by January 1, 2014. Toward this end, we shall direct OCMO to work with PECO to: (1) ensure that, to the extent possible, the Opt-In and Standard Offer Programs are available to CAP customers; and (2) provide a path that allows both CAP credits and LIHEAP funds to be used by customers that choose an EGS to supply their generation service.
19. That the Default Service Supply Riders of PECO Electric Company shall be revised consistent with this Opinion and Order. The revised Default Service Supply Riders shall not include: the costs of the Retail Opt-In Aggregation Program or the Standard Offer Customer Referral Program, unaccounted-for energy costs, generation deactivation charges or network integration transmission service costs.
20. That PECO Electric Company shall file a revised Default Service Plan, including associated tariff supplements, which reflect *all* of the revisions set forth in this Opinion and Order. This revised Default Service Plan shall be filed within sixty days of the entry of this Opinion and Order and shall be served on the active Parties to this proceeding.
21. That any directive, requirement, disposition, or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.



**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 27, 2012

ORDER ENTERED: October 12, 2012

1. The Joint Suppliers Group consists of Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Exelon Generation Company, LLC, Exelon Company, NextEra Energy Services Pennsylvania, LLC, and NextEra Energy Power Marketing LLC. [↑](#footnote-ref-1)
2. While a similar RESA proposal was adopted in the *FE DSP Order,* we note that FirstEnergy’s initial proposal included 10% spot market purchases. By adopting RESA’s position on this issue in that proceeding, the term of one-half of the fixed price contracts was reduced from two years as proposed by FirstEnergy to one year as proposed by RESA. *See FE DSP Order* at 17, 21 and 25. [↑](#footnote-ref-2)
3. PECO noted that approximately 82% of customers that would be included in the Medium Commercial Class were shopping as of April 2012. *See* PECO St. No. 2-R at 7. [↑](#footnote-ref-3)
4. *Act 129 Final Rulemaking Order* at 4. [↑](#footnote-ref-4)
5. Under a full requirements contract, a tranche refers to a specified percentage of default service load for which a full requirements supplier is obligated to provide load-following service, including energy, capacity, ancillary services, and other services. *See* PECO St. No. 2 at 9-10; PECO Exh. JJM-2 at 12. [↑](#footnote-ref-5)
6. The OCA’s alternative proposals each presume that the Opt-In Program participation load cap – *i.e*., the number of customers who can enroll with a participating Opt-In EGS – would be reduced from 50% of eligible default service customers, as proposed by PECO, to 20%, as proposed by the OCA. OCA St. No. 1 at 12. The OCA’s proposal to reduce the participation load cap is addressed below. [↑](#footnote-ref-6)
7. *Petition of PECO Energy Co. for Expedited Approval to Increase the Load Cap for the Small Commercial Customer Class in its Spring 2010 Default Service Procurement*, Docket No. P-2008-2062739, 2010 WL 1975379 (Order entered May 11, 2010) at 6 (approving 67% load cap). [↑](#footnote-ref-7)
8. Basic Generation Service (BGS): Pursuant to the New Jersey Electric Discount and Energy Competition Act of 1999 (Act), the local electric distribution companies (EDCs or Utilities) are obligated to provide basic generation service (BGS) until the Board determines that it is no longer necessary. BGS refers to the EDCs’ obligation to obtain and provide the supply of electricity for customers who do not switch to an alternative retail supplier known as a Third Party Supplier (TPS). The Act requires that power procured for BGS by a Utility be purchased at prices consistent with market conditions. The charges assessed to customers for BGS are regulated by the New Jersey Board of Public Utilities. [↑](#footnote-ref-8)
9. See *Petition of PECO Energy Co. for Approval to Procure Tier II Alternative Energy Credits and Additional Tier I and Solar Alternative Energy Credits*, Docket No. P-2010-2210975, 2011 WL 1210938 (Order entered Feb. 14, 2011); *Petition of PECO Energy Co. for Approval to Procure Solar Alternative Energy Credits*, Docket No. P-2009-2094494, 104 Pa. PUC 358, 2009 WL 2836781 (2009); *Petition of PECO Energy Co. for Approval of (1) A Process to Procure Alternative Energy Credits during the AEPS Banking Period and (2) A Section 1307 Surcharge and Tariff to Recover AEPS Costs*, Docket No. P-00072260, 2007 WL 7232899 (Order entered Dec. 26, 2007). [↑](#footnote-ref-9)
10. The “C-factor” is the sum of any costs paid to full requirements suppliers, costs of spot-market purchases and costs for any other energy acquired through short- or long-term contracts for the period the rate is in effect. [↑](#footnote-ref-10)
11. See also *Act 129 Final Rulemaking Order* at 27 (amending the Commission’s regulations at 52 Pa. Code § 54.187 consistent with 66 Pa. C.S. § 2807(e)(7) to provide that default service rates for customers with peak loads up to 500 kW should not be changed more frequently than on a quarterly basis). [↑](#footnote-ref-11)
12. To the extent necessary, PECO has requested a waiver of the Commission’s regulations at 52 Pa. Code §§ 54.187(h) and (i) to implement this annual reconciliation of the over/under collection component of the GSA for Residential, Small Commercial and Medium Commercial customers. PECO St. No. 5 at 11. Because default service costs for Large C&I customers are reconciled on a monthly basis rather than on a quarterly basis, and therefore do not experience the same type of billing lag, PECO is not proposing any change in reconciliation for the Large C&I class. [↑](#footnote-ref-12)
13. PECO argued that Mr. Barkas’ suggestion that billing lag is a result of PECO’s lack of familiarity with the issue or an inability to match its revenues with expenses (Dominion St. Nos. 1 at 5 & 1-SR at 7) was also misplaced, and Dominion offered no testimony regarding alternatives to reconciliation to address the billing lag issues identified by Mr. Cohn. Nor did Dominion explain why default service customers will believe PECO is offering a one-year, fixed-rate product when the PTC will continue to change quarterly, or are better off experiencing quarterly swings unrelated to default service costs instead of a much smaller annual adjustment. [↑](#footnote-ref-13)
14. See *Pa. PUC v. PECO Energy Co. – Electric Division*, Docket No.

    R-2010-2161575, 2010 WL 5651175 (Order entered Dec. 21, 2010), at 30-31. [↑](#footnote-ref-14)
15. RESA’s Exception No. 8 also argues that small commercial customers should be included in the Customer Referral Program. That aspect of RESA’s Exception will be addressed elsewhere in this Opinion and Order. [↑](#footnote-ref-15)
16. The OCA notes that RESA’s Exception No. 9 is directed exclusively to the Opt-In Program. To the extent that RESA’s Exception extends to the Standard Offer Program, the OCA states that its Reply Exception applies as well. [↑](#footnote-ref-16)
17. *See FE DSP Reconsideration Orders* [↑](#footnote-ref-17)
18. This proposal mirrors the Commission’s decision in the *FE DSP Order*. [↑](#footnote-ref-18)
19. RESA qualified its support, stating that RESA remains concerned that PECO use the appropriate number of customers in its calculations; that is, including CAP customers even if the Commission decides to exclude CAP customers from the Opt-In Program. RESA R.B. at 35. [↑](#footnote-ref-19)
20. CAUSE-PA conceded that the logistics for screening low-income customers prior to eligibility for the Opt-In Program may be difficult. CAUSE-PA St. No. 1-SR at 3. [↑](#footnote-ref-20)
21. See *Petition of PECO Energy Co. for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, 2011 WL 2113416, 289 P.U.R. 4th 193 (2011) (“*Dynamic Pricing Order*”). [↑](#footnote-ref-21)
22. If the service is not provided by an EGS, PECO will provide the commodity service in accordance with the tariff approved by the Commission in the *Dynamic Pricing Order*, effective on June 1, 2012. (PECO St. No. 5, p. 20). [↑](#footnote-ref-22)
23. See *Petition of PECO Energy Co. for Expedited Approval of its Initial Dynamic Pricing Plan Vendor Selection & Dynamic Pricing Plan Supplement*, Docket No. P-2012-2297304 (filed April 2, 2012). [↑](#footnote-ref-23)
24. Dominion prefers a non-bypassable surcharge, however, Dominion also agrees that if Opt-In Program costs are recovered from EGSs, participating EGSs should pay on a proportional basis according to the number of customers acquired through the program. Dominion St. Nos. 1-R at 4; 1-SR at 6; *see also* N.T. at 108. [↑](#footnote-ref-24)