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January 28, 2011

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

VIA HAND DELIVERY

RE: Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan – Petition for Approval of PECO Energy Company's Initial Dynamic Pricing and Customer Acceptance Plan; Docket No. M-2009-2123944

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and nine (9) copies of the Main Brief of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Main Brief, and kindly return them to our messenger for our filing purposes.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Carl J. Zwick

Counsel to the Philadelphia Area Industrial Users Group

CJZ/sds

Enclosures

c: Administrative Law Judge Marlane R. Chestnut (via E-mail and First-Class Mail)
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company :
for Approval of its Smart Meter :
Technology Procurement and : Docket No. M-2009-2123944
Installation Plan – Petition for Approval :
of PECO Energy Company's Initial Dynamic :
Pricing and Customer Acceptance Plan :

**MAIN BRIEF OF THE
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

Air Liquide Industrial U.S. LP
Boeing Company, The
Building Owners & Managers Association of Philadelphia
Drexel University
Franklin Mills Associates Limited Partnership
GlaxoSmithKline
Jefferson Health System
Kimberly-Clark Corporation
Merck & Co., Inc.
Saint Joseph's University
Sanofi-Aventis
Temple University
Villanova University

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Dated: January 28, 2011

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I. INTRODUCTION

On October 15, 2008, Governor Edward G. Rendell signed into law House Bill 2200, or Act 129 of 2008 ("Act 129" or "Act"). Among other things, Act 129 expands the Pennsylvania Public Utility Commission's ("PUC" or "Commission") oversight responsibilities and sets forth new requirements on Electric Distribution Companies ("EDCs")¹ for energy conservation, default service procurements, and the expansion of alternative energy sources.

Pursuant to Act 129, each EDC, acting as a Default Service Provider ("DSP"), "shall offer [a] time-of-use ["TOU"] rates and real-time price plan to all customers that have been provided with smart meter technology"² To satisfy the requirements of Act 129, residential and commercial customers may elect to participate in either TOU rates or real-time pricing.³

On October 28, 2010, in compliance with Act 129, PECO Energy Company ("PECO" or "Company") submitted a Petition for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan ("Dynamic Pricing Plan" or "Plan"). As explained by PECO in its Petition, the Dynamic Pricing Plan continues the Company's implementation of its Smart Meter Technology Procurement and Installation Plan ("Smart Meter Plan").⁴

Through the Company's Plan, it proposes to offer two different rates options: critical peak pricing ("CPP") and TOU pricing. These rate options, as proposed, will be available to residential customers (i.e., PECO Default Service Procurement Class 1) and small and medium commercial and industrial ("C&I") customers (i.e., PECO Default Service Procurement Classes 2 and 3).⁵ The Company's Plan will not be available to large C&I customers (i.e., PECO Default

¹ As articulated in the Act, only EDCs with at least 100,000 customers are required to submit energy efficiency and conservation programs. See 66 Pa. C.S. § 2806.1, et seq.

² See id. at § 2807(f)(5).

³ Id.

⁴ See Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2009-2123944 (Order entered May 6, 2010).

⁵ See Petition for Approval of Initial Dynamic Pricing and Customer Acceptance Plan ("Petition"), at ¶¶ 10-11.

Service Procurement Class 4) because, pursuant to PECO's approved Default Service Plan, these customers will already be offered a dynamic rate structure starting January 1, 2011.⁶

On November 29, 2010, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed a Petition to Intervene in this proceeding in order to protect its members' interests.⁷ PAIEUG's Petition to Intervene was granted by Administrative Law Judge ("ALJ") Chestnut in her December 9, 2010, Prehearing Conference Order. Other active parties involved in this proceeding include: the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Office of Trial Staff ("OTS"); and Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, "Direct Energy").

On January 28, 2011, PECO filed a Joint Petition for Partial Settlement ("Joint Petition" or "Partial Settlement"), which proposes a settlement of all issues not related to the Company's recovery of development and implementation costs associated with the Dynamic Pricing Plan. PAIEUG did not join the Partial Settlement; rather, pursuant to Footnote 1 of the Joint Petition, PAIEUG does not oppose the proposed Partial Settlement.

II. OVERVIEW OF SETTLEMENT AND ISSUES RESERVED FOR BRIEFING

As noted above, the Joint Petition submitted by PECO addresses all issues related to the Company's Dynamic Pricing Plan outside of specific matters that could not be resolved with respect to the collection of development and implementation costs of the Plan. Specifically, the question reserved for litigation is whether the development and implementation costs of PECO's Dynamic Pricing Plan, which will be allocated to Default Service Procurement Classes 1, 2 and 3, should be collected from both shopping and non-shopping customers within these Procurement Classes.

⁶ See *id.* at 12.

⁷ The current composition of PAIEUG is listed on the cover of this Main Brief.

Accordingly, PAIEUG hereby submits this Main Brief to address the issue of recovery of development and implementation costs of PECO's Dynamic Pricing Plan. As discussed more fully herein, PAIEUG supports the Company's and OSBA's proposed recovery methodology as just, reasonable, and in accordance with the Commission's precedent on this issue.

III. ARGUMENT

The Commission should approve PECO's proposed cost collection methodology,⁸ which is supported by the OSBA,⁹ and reject the OCA's flawed cost recovery proposal,¹⁰ as the Company's and OSBA's analyses of how these costs should be collected from customers appropriately acknowledges the Commission's precedent addressing this issue. Specifically, PECO proposes to collect the development and implementation costs associated with the Company's Dynamic Pricing Plan from customers that are able to participate in the rate options offered under the Plan – non-shopping, default service customers in Default Service Procurement Classes 1, 2 and 3.¹¹

Conversely, the OCA's recommended modification to the Company's proposed cost recovery approach – to recover the costs of PECO's Plan from non-shopping customers and shopping customers in Default Service Procurement Classes 1, 2 and 3¹² – would result in unjust and unreasonable rates for shopping customers and should be rejected. By attempting to collect these costs from all residential and small and medium C&I customers, the OCA proposes to socialize these costs over a broad base of customers. In an attempt to justify the socialization of these costs, the OCA argues that shopping customers will benefit as much as default service

⁸ See PECO Statement No. 4, Direct Testimony of Mr. William J. Patterer (hereinafter, "PECO St. 4"), p. 9; PECO Statement No. 4-R, Rebuttal Testimony of Mr. William J. Patterer (hereinafter, "PECO St. 4-R"), p. 6.

⁹ See OSBA Statement No. 1, Rebuttal Testimony of Mr. Robert D. Knecht (hereinafter, "OSBA St. 1"), pp. 3-5.

¹⁰ See OCA Statement No. 1, Direct Testimony of Mr. J. Richard Hornby (hereinafter, "OCA St. 1"), p. 20; OCA Statement No. 1-S, Surrebuttal Testimony of Mr. J. Richard Hornby (hereinafter, "OCA St. 1-S"), pp. 11-12.

¹¹ See PECO St. 4, pp. 9-11.

¹² See OCA St. 1, p. 20.

customers from the Company's Plan.¹³ For example, the OCA asserts, without providing substantive evidence, that electricity generation suppliers ("EGSs") will draw upon the results of the Plan, which will help EGSs attract and retain shopping customers.¹⁴ In addition, the OCA argues that, because there is no prohibition in the Company's Dynamic Pricing Plan that would preclude a shopping customer from returning to default service and taking service under the CPP or TOU rates, shopping customers will somehow derive a tangible benefit from the Plan, even while taking competitive supply from an EGS.¹⁵ These unfounded conclusions lead the OCA to recommend a cost recovery approach that contravenes the Commission's express ruling on this issue.

In the PUC's Order, in PPL Electric Utilities Corporation's ("PPL") TOU plan proceeding,¹⁶ the Commission ruled that PPL may not recover its program-related costs from customers that do not participate in PPL's TOU plan.¹⁷ In so ruling, the Commission recognized that PPL was proposing to socialize the costs associated with its TOU plan, as PPL requested to recover these costs from all customers, regardless of whether they participate in the plan.¹⁸ Simply put, the Commission determined that "[t]his is inequitable."¹⁹ As such, the PUC directed PPL "to collect its TOU plan costs . . . through its charges . . . to default service customers only."²⁰

In proposing to collect the costs of the Company's Dynamic Pricing Plan from non-shopping, default service customers only, PECO recognizes and adheres to the direction

¹³ See OCA St. 1-S, p. 12.

¹⁴ Id.

¹⁵ Id.

¹⁶ See Pa. Pub. Util. Comm'n v. PPL Elec. Utilities Corp., Docket No. R-2009-2122718 (Order entered Mar. 9, 2010).

¹⁷ See id. at 18.

¹⁸ See id. at 17.

¹⁹ Id.

²⁰ Id.

provided by the Commission in the PPL TOU proceeding.²¹ Moreover, in opposing the OCA's recommendation to contravene the Commission's prior guidance on this issue, the OSBA aptly points out that the OCA's proposal will "require shopping customers to pay for a program in which they cannot participate."²² The OSBA further recognizes that, "[t]o the extent that those shopping customers are already paying for the administrative costs incurred by their own EGSs related to dynamic pricing or other alternative rates, the shopping customers will end up paying twice."²³ This outcome simply would be inequitable and would inhibit competition in PECO's service territory.

Accordingly, PECO's proposal to recover these development and implementation costs only from default service customers adheres to the PUC's precedent and, therefore, should be approved by the Commission. PAIEUG firmly believes that collecting the costs of the Plan solely from non-shopping, default service customers is the only reasonable method for recovering these costs, as any other methodology would produce unjust and discriminatory rates for shopping customers.

²¹ See PECO St. 4-R, p. 6 ("Mr. Hornby's proposal is contrary to the Commission's decision in its March 9, 2010 Order in PPL's TOU proceeding. In that case the OCA advanced essentially the same arguments Mr. Hornby has made in support of his proposal, and they were rejected by the Commission, which ruled that implementation costs associated with PPL's TOU programs should be recovered through its default service surcharge mechanism.")

²² OSBA St. 1, p. 3.

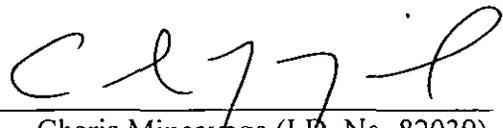
²³ Id.

IV. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission approve PECO Energy Company's proposal to collect development and implementation costs of PECO's Dynamic Pricing Plan from non-shopping, default service customers only.

Respectfully submitted,

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Dated: January 28, 2011

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CERTIFICATE OF SERVICE

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

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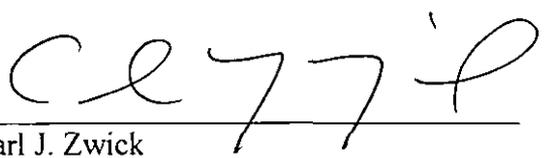
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Dated this 28th day of January, 2011, in Harrisburg, Pennsylvania.