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March 14, 2011

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

**VIA ELECTRONIC FILING**

**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 Reply Exceptions 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 Reply Exceptions, 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/lmc

Enclosures

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

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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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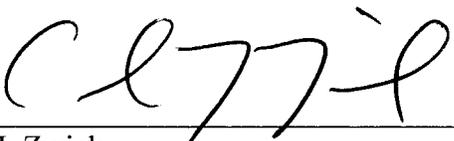
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Counsel to the Philadelphia Area Industrial Energy  
Users Group

Dated this 14<sup>th</sup> day of March, 2011, in Harrisburg, Pennsylvania.

**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 :

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**REPLY EXCEPTION OF THE  
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

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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  
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Dated: March 14, 2011

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION .....	1
II. REPLY EXCEPTION.....	3
A. Reply to OCA Exception: The OCA's Argument That the Implementation Costs of the Dynamic Pricing Plan Should Be Collected From Shopping and Non-Shopping Customers in Procurement Classes 1, 2, and 3 Is Not Based on Traditional Cost of Service Principles and Contravenes PUC Precedent.....	3
III. CONCLUSION.....	8

## 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")<sup>1</sup> 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 . . . ."<sup>2</sup> To satisfy the requirements of Act 129, residential and commercial customers may elect to participate in either TOU rates or real-time pricing.<sup>3</sup>

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").<sup>4</sup>

Through the Company's Dynamic Pricing Plan, it proposes to offer two different rate 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

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<sup>1</sup> 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.

<sup>2</sup> See id. at § 2807(f)(5).

<sup>3</sup> Id.

<sup>4</sup> 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).

Procurement Classes 2 and 3).<sup>5</sup> The Company's Plan will not be available to large C&I customers (i.e., PECO Default Service Procurement Class 4) because, pursuant to PECO's approved Default Service Plan, these customers are already offered a dynamic rate structure starting January 1, 2011.<sup>6</sup>

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.<sup>7</sup> 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 Partial Settlement.

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,

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<sup>5</sup> See Petition for Approval of PECO Energy Company's Initial Dynamic Pricing and Customer Acceptance Plan ("Petition"), at ¶¶ 10-11.

<sup>6</sup> See *id.* at 12.

<sup>7</sup> The current composition of PAIEUG is listed on the cover of this Reply Exception.

and 3, should be collected from both shopping and non-shopping customers within these Procurement Classes.

Main Briefs were due on January 28, 2011. Main Briefs were filed by PECO, PAIEUG, the OSBA, and the OCA. Reply Briefs were due on February 3, 2011. Reply Briefs were filed by PECO, the OSBA, the OCA, and Direct Energy. All parties, except the OCA, supported PECO's proposal to recover development and implementation costs associated with the Company's Dynamic Pricing Plan from only shopping customers in Procurement Classes 1, 2, and 3. The OCA was the only party to argue that these costs should be collected from both shopping and non-shopping customers.

On February 16, 2011, the Commission issued ALJ Chestnut's Recommended Decision ("R.D."), which recommended that the PUC approve the Partial Settlement, as filed, and require that the costs to implement the Dynamic Pricing Plan be collected from non-shopping, default service customers only.

Exceptions to the ALJ's R.D. were due on March 7, 2011, with Reply Exceptions due March 14, 2011. The OCA was the only party to submit Exceptions, in which the OCA argued that the ALJ erred in her ruling regarding the collection of the Plan's implementation costs. In response and opposition to the OCA's Exceptions, PAIEUG files this Reply Exception.

## **II. REPLY EXCEPTION**

### **A. Reply to OCA Exception: The OCA's Argument That the Implementation Costs of the Dynamic Pricing Plan Should Be Collected From Shopping and Non-Shopping Customers in Procurement Classes 1, 2, and 3 Is Not Based on Traditional Cost of Service Principles and Contravenes PUC Precedent.**

The OCA takes exception to the R.D.'s finding that PECO's proposal to collect the Dynamic Pricing Plan's development and implementation costs from only non-shopping, default

service customers is the appropriate method to recover these costs.<sup>8</sup> According to the OCA, "to recover the administrative costs of [the] Plan only from default service customers is not consistent with the principles of cost causation and is not equitable."<sup>9</sup> As noted repeatedly by PAIEUG, PECO, the OSBA, and Direct Energy during the course of this proceeding, the OCA's argument is fundamentally flawed and contravenes the Commission's precedent addressing this issue. As such, the OCA's Exception should be denied.

The R.D. correctly determined that, because the Company's Plan will be offered only to default service customers in Procurement Classes 1, 2, and 3, the principles of cost causation require that the costs of the Plan be recovered only from these default service customers.<sup>10</sup> By taking exception to the ALJ's recommendation on this cost recovery issue, the OCA proposes to socialize the implementation costs of the Plan over a broad base of customers (*i.e.*, default service customers and shopping customers), in contravention of PUC policy and precedent.

The OCA acknowledges that the Commission's Orders in the PPL Electric Utilities Corporation ("PPL") TOU proceeding and Duquesne Light Company ("Duquesne") TOU proceeding are adverse to the OCA's position.<sup>11</sup> The OCA argues, however, that what it asks the Commission to decide in this case is distinguishable from what the Commission already decided in the PPL TOU proceeding and Duquesne TOU proceeding.<sup>12</sup> Specifically, the OCA asserts that in the PPL TOU proceeding, "no evidence was presented regarding the benefits of the PPL TOU rate to all customers."<sup>13</sup> According to the OCA, this led the PUC to rule that the implementation costs of PPL's TOU rate program must be collected from default service

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<sup>8</sup> See generally OCA Exceptions, pp. 3-7.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> R.D. at 20.

<sup>11</sup> See OCA Exceptions, pp. 6-7; see also *Pa. P.U.C. v. PPL Elec. Util. Corp.*, Docket No. P-2009-2122718 (Order entered March 9, 2010); and *Petition of Duquesne Light Co. for Approval of Time-of-Use Plan*, Docket No. P-2009-2149807 (Order entered June 23, 2010).

<sup>12</sup> See OCA Exceptions, p. 6.

<sup>13</sup> *Id.*

customers only.<sup>14</sup> The OCA further claims, because PECO's Plan is a "pilot" program, it will provide research, measurement, and evaluation data that will benefit all customers by educating the Company and Electric Generation Suppliers ("EGSs") on the Company's dynamic pricing offerings.<sup>15</sup> The pilot nature of PECO's Plan is the basis for the OCA's recommendation that the implementation costs of the Plan should be collected from both default service and shopping customers.

In addressing this issue in her R.D., the ALJ recognized, "one of the reasons that PECO adopted the 'test and learn' approach . . . was to generate information about customer behavior and dynamic rate pricing."<sup>16</sup> In disposing of this issue, however, the ALJ appropriately found:

this generalized benefit is speculative and unquantifiable and unsupported by the record in this proceeding. What is undeniable – and has been recognized by the Commission in the other proceedings referenced above [the PPL TOU proceeding and Duquesne TOU proceeding] – is that to accept the OCA's proposal would require shopping customers to pay for a program in which they cannot participate.<sup>17</sup>

In other words, the ALJ ruled that, contrary to the OCA's assertion, the Commission's decision in the PPL TOU proceeding is directly applicable to this case and requires that the costs of PECO's Plan be recovered only from customers eligible to participate in the program – default service customers.

The ALJ also found the PUC's decision in the Duquesne TOU proceeding authoritative in this case.<sup>18</sup> In reaching this conclusion, the ALJ correctly noted that the dynamic pricing

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<sup>14</sup> The Company aptly noted in its Reply Brief ("R.B.") that "[i]t is questionable whether the differences between PECO's Plan and PPL's TOU program that the OCA purports to identify actually exist and, if they do, whether they are material to the reserved issue." PECO R.B., p. 2. PECO then correctly argued that those questions need not be addressed because the Commission's Order approving Duquesne's TOU program firmly establishes that the costs of PECO's Plan must be recovered from default service customers only. Id.

<sup>15</sup> Id.

<sup>16</sup> R.D., p. 19.

<sup>17</sup> Id.

<sup>18</sup> Id. at 20, n. 4.

program at issue in the Duquesne TOU proceeding was a pilot program that will produce publicly available information during the course of the program's development.<sup>19</sup> Notwithstanding these facts, the Commission required the costs associated with Duquesne's dynamic pricing program to be recovered from default service customers only. The PUC's decision in the Duquesne TOU proceeding, therefore, establishes that neither pilot status nor the potential to produce publicly available information about a program substantiates the recovery of program-related costs from customers who cannot participate in the program.<sup>20</sup> Thus, the PUC's decisions in both the PPL TOU proceeding and Duquesne TOU proceeding support PECO's proposal and the ALJ's recommendation to recover the implementation costs of the Plan from non-shopping, default service customers only.

The OCA also argues that, because there is no restriction 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.<sup>21</sup> As the ALJ correctly found:

[w]hile . . . there will be some movement of customers who may change their supply sources, so that they may be default service or shopping customers at any point in time, the fact remains that the Dynamic Pricing Plan was developed for the purpose of offering dynamic pricing options to default service customers only.<sup>22</sup>

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<sup>19</sup> Id. at 20, n. 4.

<sup>20</sup> Id. (citing PECO R.B., pp. 2-3).

<sup>21</sup> See OCA Exceptions, pp. 5-6.

<sup>22</sup> R.D., p. 19.

The ALJ concluded, noting that "the legislature intended – and the Commission recognized – that the dynamic pricing options were to be an element of default service" and, as such, the associated costs are properly recovered from default service customers only.<sup>23</sup>

The R.D. appropriately acknowledged the correct legal and factual basis for approving PECO's cost recovery approach and rejecting the OCA's unsupportable argument. As the R.D. explained about the OCA's cost recovery argument: "[t]his argument . . . does not change the character of the rates being offered. They will be rate options offered to default service customers and, by virtue of the principle of cost causation, the costs should be recovered from those customers who will be eligible for them."<sup>24</sup> The ALJ's sound determination should not be reversed.

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<sup>23</sup> Id. at 20.

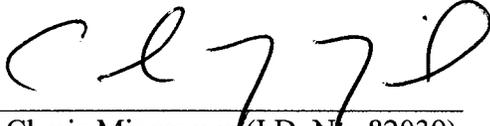
<sup>24</sup> Id.

### III. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission: (1) reject the OCA's unfounded and erroneous argument for recovery of the implementation costs of PECO Energy Company's Dynamic Pricing Plan from both default service customers and shopping customers; and (2) adopt, without modification, the Recommended Decision issued by ALJ Chestnut in this proceeding.

Respectfully submitted,

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