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September 10, 2012

VIA E-FILING

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

Re: *Petition of PECO Energy Company for Approval of its Default Service Program,*
Docket No. P-2012-2283641

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Exceptions of First Energy Solutions Corp.* Copies of this document have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe
For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Dennis J. Buckley (via Email and First Class Mail)
Office of Special Assistants (via Email: ra-OSA@pa.gov)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company For : Docket No. P-2012-2283641
Approval of Its Default Service Program :

**EXCEPTIONS OF
FIRSTENERGY SOLUTIONS CORP.**

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TABLE OF CONTENTS

I. INTRODUCTION1

II. EXCEPTIONS2

 Exception No. 1: The R.D.’s Conclusion That The Commission’s August 16, 2012 Order In The ME/PN/PP/WP Default Service Case Controls PECO’s Case With Regard To Wholesale Load Caps Is Erroneous As A Matter Of Law And Not Supported By The Evidence Of Record. R.D. at 342

 Exception No. 2: The R.D.’s Conclusion That PECO Should Recover The Costs Of The Opt-In EGS Offer Program, If There Are No Winning EGSs, And The Costs Of The Referral Program, Through A Discount On Purchased Receivables Is Erroneous And Unsupported By Credible And Substantial Evidence. R.D. at 85, 864

 A. The IWP Order’s Observations That PECO’s Proposal In This DSP Proceeding To Recover Costs Through A POR Discount “Appears To Be Acceptable” And “Should Be Considered” Do Not Amount To An IWP Order Guideline Or Directive4

 B. The R.D.’s Recommendation To Approve PECO’s Use Of A POR Discount Is Unsupported By Credible And Substantial Evidence5

 C. The R.D. Does Not Address Evidence Of FES’s Alternative Cost Recovery Methodology6

III. CONCLUSION9

FirstEnergy Solutions Corp. ("FES"), by its attorneys, files the following Exceptions to the Recommended Decision ("R.D.") of Administrative Law Judge Dennis J. Buckley issued August 29, 2012 with respect to the default service program filed by PECO Energy Company ("PECO").

I. INTRODUCTION

FES takes exception to two conclusions of the R.D. FES's first Exception relates to the R.D.'s conclusion that the Commission's recent decision in the matter of *Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Order entered August 16, 2012) (the "August 16 Order") is guidance for all electric distribution companies' ("EDCs") default service programs, with regard to the specific issue of default supply load caps. The R.D. found that PECO had met its burden of proving its proposed 67% load cap was appropriate, but nonetheless recommended reducing the load cap to 50% based on the August 16 Order. As explained below, the August 16 Order's conclusion regarding default supply load caps was based on perceptions and beliefs (with which FES disagrees), which were specific to the four affiliated EDCs in that proceeding.¹ The circumstances of the August 16 Order have no applicability to PECO, and therefore the R.D.'s recommendation to reduce PECO's default supply load cap to 50% is erroneous and not supported by the evidence of record and should be reversed.

FES's second Exception relates to the R.D.'s conclusions that PECO should recover from electric generation suppliers ("EGSs") the costs of its Opt-In Program (if there are no winning

¹ Metropolitan Edison Company ("Met Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn;" collectively, "ME/PN/PP/WP").

bidders), and the costs of its Standard Offer Referral Program, through a discount on EGS receivables which PECO purchases through its purchase of receivables (“POR”) program. As explained below, the R.D. gives undue weight to the IWP Order² on this particular subject, lacks credible and substantial evidence supporting the recovery of costs through a POR discount, and does not address record evidence of alternative proposals offered by FES which would recover costs of retail market enhancement programs from EGSs without harming the development of retail electric competition in PECO’s service territory.

For reasons explained further below, FES respectfully requests that its Exceptions be granted and that the referenced portions of the R.D. be reversed and modified consistent with these Exceptions.

II. EXCEPTIONS

Exception No. 1: The R.D.’s Conclusion That The Commission’s August 16, 2012 Order In The ME/PN/PP/WP Default Service Case Controls PECO’s Case With Regard To Wholesale Load Caps Is Erroneous As A Matter Of Law And Not Supported By The Evidence Of Record. R.D. at 34.

FES takes exception to the R.D.’s recommendation to reduce the level of PECO’s default supply load cap to 50%. Although the R.D. agreed with PECO that its proposed 67% load cap is acceptable, the R.D. took note of the Commission’s August 16 Order, which reduced the ME/PN/PP/WP load cap to 50%. While the R.D. acknowledged that PECO is arguably operationally and structurally distinct from the four EDCs in the ME/PN/PP/WP proceeding, the R.D. nonetheless concluded that the Commission’s pronouncement in its August 16, 2012 Order is “guidance for DSPs, generally.” Therefore, the R.D. recommended a 50% load cap to

²*Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) (“IWP Order”).

maintain consistency. R.D. at 34. Notably, the R.D. does not find that the August 16 Order is guidance for DSPs, generally, with respect to any other issue, such as the term length of PECO's default supply contracts.

FES respectfully submits that the R.D.'s application of the August 16 Order to PECO's DSP II proceeding was an error of law. In the August 16 Order, the Commission accepted the questionable propositions that as a result of the 2011 merger of West Penn with Met Ed, Penelec and Penn Power, these 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." August 16 Order, slip op. at 31-32. Thus, the August 16 Order based the decision to reduce the ME/PN/PP/WP load caps to 50% on perceived circumstances specific to those particular EDCs. The August 16 Order has no applicability to PECO.

Absent the August 16 Order, the R.D. correctly concluded that PECO had met its evidentiary burden in opposition to any reduction of its default supply load cap. 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. Accordingly, the R.D.'s conclusion should be reversed, and its recommendation to reduce PECO's default supply load caps should be rejected.

Exception No. 2: The R.D.’s Conclusion That PECO Should Recover The Costs Of The Opt-In EGS Offer Program, If There Are No Winning EGSs, And The Costs Of The Referral Program, Through A Discount On Purchased Receivables Is Erroneous And Unsupported By Credible And Substantial Evidence. R.D. at 85, 86.

FES takes exception to the R.D.’s recommendation that PECO recover from EGSs the costs of its Opt-In Program (in the event there are no winning EGSs), as well as the costs of its Referral Program, through a discount on purchased EGS receivables under its POR program. R.D. at 85, 86. According to the R.D., use of a POR discount is consistent with the Commission’s “directive” and guidelines in its IWP Order. R.D. at 85, 86. As explained below, the R.D.’s approval of a POR discount as a means of cost recovery was an error of law and unsupported by substantial evidence, and did not address FES’s alternative proposals that are much less harmful to the development of retail competition in PECO’s service territory.

A. The IWP Order’s Observations That PECO’s Proposal In This DSP Proceeding To Recover Costs Through A POR Discount “Appears To Be Acceptable” And “Should Be Considered” Do Not Amount To An IWP Order Guideline Or Directive.

The R.D., like PECO, finds support for the use of a POR discount in the IWP Order’s observation that recovery of Opt-In Program costs through a POR discount “should be considered,” and that recovery of Referral Program costs through a POR discount “appears to be acceptable.” R.D. at 85, 86; see IWP Order at 32, 85. However, the Commission’s cursory observations in the IWP Order were based on PECO’s Comments to the Tentative Order in that docket, in which it stated:

The Company believes that it is appropriate to recover these costs directly from EGSs and, in *PECO DSP II*, has proposed to use a discount on its existing Purchase of Receivables mechanism to do so.

Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Comments of PECO Energy Company filed January 17, 2012, at 9.

FES submits that the R.D. misinterpreted the IWP Order's observations regarding PECO's comments. The above-mentioned statements in the IWP Order simply addressed PECO's statement of its intention to include the POR discount cost recovery as a proposal in this proceeding. It was in this default service proceeding that PECO had to satisfy the evidentiary requirements of an on-the-record proceeding for its proposal to be accepted. The statements in the IWP Order were only an acknowledgment of the possible validity of PECO's future plan, not a determination on the merits of its proposal in this case. The cost recovery issue was never fully vetted in the Retail Markets Investigation proceeding, and FES cautioned strongly in this proceeding against undue reliance on the IWP Order's statements regarding the use of POR discounts as a valid cost recovery mechanism. See FES M.B. at 38. A cursory observation in the IWP Order about a proposal pending at a separate docket cannot be considered binding precedent or a directive on the issue, and the R.D.'s finding to the contrary was in error.

B. The R.D.'s Recommendation To Approve PECO's Use Of A POR Discount Is Unsupported By Credible And Substantial Evidence.

The R.D.'s recommendation that PECO use a POR discount to recover costs of its Opt-In Program in the event there are no winning bidders, and its finding that the record lacks "evidence to justify departure from the Commission's guidelines on the issue" with respect to PECO's use of a POR discount to recover costs of its Referral Program, R.D. at 85, 86, also lack the support of credible and substantial evidence. No parties other than PECO support this method of recovering costs. Several parties, including FES, strongly oppose it. As FES explained in its

briefs, the implementation of a POR discount will discourage new EGSs from entering the territory or encourage EGSs that currently participate to drop out of the POR program.³ FES M.B. at 38. In addition, recovery of costs through an EDC's POR program violates the fundamental principle that cost recovery should follow cost causation, since the discount in PECO's POR program was intended to recover the costs of implementing the POR program. FES M.B. at 39.

In addition, use of a POR discount would result in an unfair allocation of costs among EGSs. An EGS may participate in PECO's POR but not in the Referral Program; such an EGS would pay costs of the Referral Program although it did not participate in it. Also, use of a POR discount will allow suppliers that do their own billing to escape responsibility for costs, because participation in PECO's POR program is voluntary. Since POR programs were implemented for the purpose of attracting increased EGS activity in EDC service territories where they might otherwise not participate, it is important to avoid making POR programs unattractive to EGSs. Further, cost recovery through a POR discount unfairly and disproportionately allocates costs based on an EGS's market share. Unfair and disproportionately allocated cost recovery will be harmful to the success of retail competition in an EDC's service territory if it discourages EGSs from participating in the territory. FES M.B. at 39-40, 41-42.

C. The R.D. Does Not Address Evidence Of FES's Alternative Cost Recovery Methodology.

While the R.D. mentions and rejects one proposed alternative method of recovering the costs of PECO's Referral Program, it does not mention FES's proposed alternatives for PECO to

³ If the Opt-In Program fails, there will have been no increase in shopping in the PECO service territory. In that case, PECO's proposed use of a POR discount in connection with its Opt-in Program may have an effect that is the opposite of what PECO intended when designing its Opt-In Program.

recover the costs of both programs from EGSs. PECO entered FES's proposals into the record. See PECO (Banks) Cross Ex. 4. These proposals recognize the need for EGSs to be certain of the level of program expenses they will incur in order for a program to succeed.

With respect to the Opt-In Program, FES proposed that if costs are to be recovered from EGSs, the costs should be allocated based on the number of customers actually enrolled by each EGS, rather than the number of customers allocated to the EGS, to better match costs with revenue opportunity. Also, there should be a cap on the amount charged to EGSs for each customer enrolled, and all costs should be made known to all qualified bidders prior to the bid proposal due date. Any under-collection of program costs as a result of the supplier cost cap should be recovered from all customers in the classes of customers eligible to participate in the program. PECO (Banks) Cross Ex. 4; see FES R.B. at 27.

If costs of the Referral Program are to be borne by EGSs, FES proposed that the initial costs be divided equally among all EGSs licensed to serve customers eligible for the programs in the PECO service territory. However, EGSs should be given the option to sign a waiver stating they will not participate in the program prior to June 1, 2015 in order to avoid being allocated these initial costs. Ongoing costs should be collected from EGSs through a per customer fee from each participating supplier based on actual enrollments. To give suppliers the requisite certainty to maximize their participation in the Referral Program, a cap should be imposed on the initial and ongoing charges. At the end of the default service plan period, any under-collection should be recovered from all customers in any class eligible to participate in the Referral Program. PECO (Banks) Cross Ex. 4; see FES R.B. at 29.

This method of cost recovery described by FES witness Banks would provide for a limited sharing of costs between EGSs and the customers who benefit from the programs, and

would give EGSs the certainty they need to determine whether to participate in the program. A capped charge per enrolled customer, with any undercollection of costs recovered from all customers eligible to participate in the programs, would place primary responsibility for costs with EGSs. See FES M.B. at 27. FES's proposal better reflects the flow of benefits to customers, consistent with the IWP Order, which does not direct that EGSs must bear 100% of the costs of the Referral program, nor state that all costs of the Opt-In Program must be recovered from participating suppliers. IWP Order at 32, 84.

As mentioned earlier, the R.D. rejected another alternative proposal to recover costs of the Referral Program from EGSs, based on PECO's suggestion that recovering Referral Program costs through any mechanism other than a POR discount is unnecessarily complex. R.D. at 86. FES submits that any added complexity is outweighed by the need for the Referral Program to be successful, and by the need to avoid discouraging even non-participating EGSs from becoming or remaining licensed to serve Residential customers in the PECO service territory. See FES R.B. at 28.

For all of these reasons, the R.D.'s conclusion should be reversed, and if costs associated with the Opt-In Program and Referral Program are to be recovered from EGSs, they should be recovered not through a POR discount, but rather through the alternative methodology proposed by FES.

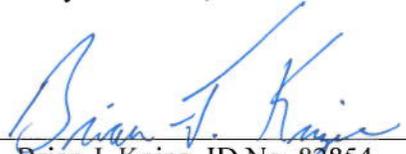
III. CONCLUSION

For the reasons set forth above, FirstEnergy Solutions Corp. respectfully requests that the Pennsylvania Public Utility Commission modify the Recommended Decision as requested in these Exceptions.

Respectfully submitted,

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Dated: September 10, 2012

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for : Docket No. P-2012-2283641
Approval of its Default Service Program :

CERTIFICATE OF SERVICE

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

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