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VIA E-FILING

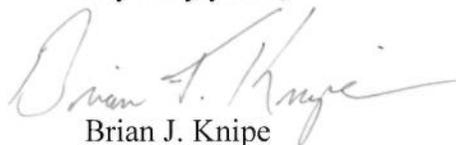
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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 *Replies of FirstEnergy Solutions Corp. to the Exceptions of Other Parties*. 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 :

**REPLIES OF FIRSTENERGY SOLUTIONS CORP.
TO THE EXCEPTIONS OF OTHER PARTIES**

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Dated: September 17, 2012

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FirstEnergy Solutions Corp. ("FES"), by its attorneys, and in accordance with 52 Pa. Code § 5.535, submits these Replies to the Exceptions filed by the Office of Consumer Advocate ("OCA"), Dominion Retail, Inc. d/b/a Dominion Energy Solutions and Interstate Gas Supply, Inc. (collectively, "DES/IGS"), PECO Energy Company ("PECO") and the Retail Energy Supply Association ("RESA") to the Recommended Decision ("R.D.") of Administrative Law Judge Dennis J. Buckley issued August 27, 2012 with respect to PECO's proposed default service program.

I. INTRODUCTION

FES's Replies to Exceptions address the following specific issues raised by the OCA, DES/IGS, PECO and RESA in their Exceptions to the R.D. that cannot withstand analysis and should be disregarded by the Commission:

- The Retail Opt-In Offer Program Should Include A Bidding Competition. While FES supports DES/IGS's arguments that electric generation suppliers ("EGSs") should not bear 100% of the costs of PECO's retail market enhancement programs, FES disagrees with DES/IGS's suggestion that if EGSs are required to pay all of the costs of PECO's Retail Opt-In Offer Program ("ROI"), the Commission should direct various "cost-cutting" measures, particularly the elimination of an auction process, to make the program "as cost efficient as possible." DES/IGS Exceptions at 5. As explained below, the benefits to competition and customers that will result from a bidding competition among EGSs outweigh the detriments of requiring EGSs to bear the costs of the program.
- Customer Participation In The ROI Should Not Be Capped At 20%. The Commission should reject the OCA's claim that the R.D. erred in not adopting its recommendation

that the customer participation cap in the ROI be limited to 20%. OCA Exceptions at 14. The OCA's proposal is not in customers' interests, contrary to the IWP Order,¹ and unsupported by any evidence that default suppliers will not be able to fully consider any risks associated with the ROI and make appropriate hedging decisions.

- The Standard Offer Program Should Not Be Deferred. The Commission should reject the OCA's claim that the R.D. erred in not adopting its recommendation that there be a longer period of time between the end of the ROI and the commencement of the Standard Offer Customer Referral Program ("Standard Offer Program"). OCA Exceptions at 19. As FES explains below, there is very little overlap between the two programs, and customers will find comparing prices and terms of service in the two programs to be no different than comparing any two limited time offers in the competitive marketplace.
- PECO Was Obligated To Construct Seamless Moves Functionality At The Outset Of Electric Choice. The Commission should reject PECO's overreaching claim that the R.D. erred in suggesting — in the middle of a discussion ruling in PECO's favor — that PECO was obligated to construct the functionality associated with seamless moves thirteen years ago at the commencement of retail electric choice. PECO Exceptions at 3.
- There Is No Legal Or Factual Basis To Require A Minimum Number Of Winning Bidders In The ROI. The Commission should reject RESA's claim that the R.D. erred in not accepting its recommendation that there be at least four winning bidders in the ROI. RESA Exceptions at 25. PECO correctly rejected this proposal, which is based on speculation and fails to consider such aspects of the ROI as PECO's proposed tranche structure.

¹ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*").

- The 7% Discount Off The Price-To-Compare At The Time Of Enrollment Should Last For The Entire 12-Month Term Of The Standard Offer. The Commission should reject RESA’s claim that the R.D. erred in rejecting RESA’s recommendation that EGSs participating in the Standard Offer Program offer 7% off the Price-to-Compare (“PTC”) for only 4 months of the 12-month term, and that each EGS offer a price for the subsequent 8 months which is disclosed to the customer only following enrollment. RESA Exceptions at 31. RESA’s Exception ignores the plain language of the *IWP Order*. Moreover, RESA’s belated recommendation that the Commission fundamentally alter the design of the retail market enhancement programs by converting the ROI into a retail opt-in “aggregation” program, and making the Standard Offer Program nearly identical to the aggregation program, lacks any legal basis in the *IWP Order* or due process, as well as any support in the evidentiary record.

For the reasons explained herein and in the R.D., as well as in FES’s Main Brief (“FES M.B.” and Reply Brief (“FES R.B.”), the arguments of the OCA, DES/IGS, PECO and RESA to which FES responds below should be rejected, the referenced Exceptions of the OCA, PECO and RESA should be denied, and the referenced Exception of DES/IGS should be denied in part.

II. REPLIES TO EXCEPTIONS

A. Replies To Exceptions Of DES/IGS

1. **While FES Supports DES/IGS’s Primary Argument Regarding Cost Responsibility, The Commission Should Not Eliminate Competitive Bidding From The ROI As A “Cost Cutting” Measure. (DES/IGS Exception No. 3).**

As part of its Third Exception, which challenges the R.D.’s finding that it is appropriate to recover all costs of the ROI from participating EGSs, DES/IGS urges the Commission, if all

costs of the ROI are to be imposed on EGSs, to engage in cost-cutting, including the elimination of competitive bidding. DES/IGS Exceptions at 5. While FES supports DES/IGS's argument that EGSs should not bear 100% of the costs of retail market enhancement programs, FES disagrees with the elimination of competitive bidding from the ROI, even if EGSs must bear the costs. A bidding competition ensures that the resulting price to participating customers will provide maximum savings, and deliver some benefits of actual retail competition. In addition, absent some form of competitive bidding, there is no clear methodology for allocating customers among participating suppliers. The benefits of a bidding competition clearly outweigh any potential administrative costs to EGSs.

There is no basis in the record for eliminating this significant driver of customer savings in the ROI program, for EGSs to realize savings or for any other reason. Accordingly, DES/IGS's recommendation on eliminating competitive bidding in the ROI must be rejected.

B. Replies To Exceptions Of The OCA

1. The R.D. Correctly Rejected The OCA's Recommendation That The Customer Participation Cap In The ROI Be Limited To 20%. (OCA Exception No. 5).

The R.D. properly notes that PECO proposed to include a 50% customer participation cap in the ROI consistent with the Commission's directive in the *IWP Order*. R.D. at 60. The R.D. rejected the OCA's recommendation to reduce the customer participation cap to 20%, finding that PECO's proposal is consistent with the *IWP Order*. R.D. at 61.

While FES does not support any participation caps in the Commission's retail enhancement programs, believing that every customer is entitled to shop for electricity supply without arbitrary limitations or restrictions, FES recognizes that PECO's proposal is consistent with the *IWP Order* guideline.

The OCA's Fifth Exception maintains that its proposed 20% cap is designed to curb the risk of increased default service prices. OCA Exceptions at 16. According to the OCA, its proposal will prevent a substantial reduction in the amount of load on which wholesale suppliers will bid in the default service auction, while allowing sufficient customer participation in the ROI for the program to be viewed as a success. OCA Exceptions at 15-16. However, the OCA's witness never explained why wholesale suppliers choosing to bid into PECO's procurements with complete knowledge of the details of the upcoming ROI will not be able to consider fully the risks associated with the ROI and make the appropriate hedging decisions prior to delivery. FES submits that the OCA's proposal reflects its interest in maintaining what it perceives as the viability of the current default service structure at the expense of the ROI. The OCA's proposal would artificially limit customer participation in the ROI in favor of maintaining the current default service paradigm for non-shopping Residential customers. However, imposing such a low customer participation cap will discourage EGSs from participating in the ROI.

The OCA's proposal is not in customers' interests, is contrary to the Commission's intent as expressed throughout the Retail Markets Investigation ("RMI") and in the *IWP Order*, and is not supported by a preponderance of the evidence. There is no need for the Commission to depart from the R.D. on this issue and, accordingly, the OCA's Exception should be denied.

2. The R.D. Correctly Rejected The OCA's Recommendation That There Be A Longer Period Of Time Between The End Of The ROI And The Commencement Of The Standard Offer Program. (OCA Exception No. 7).

The OCA's Seventh Exception challenges the R.D.'s rejection of the OCA recommendation that PECO implement the Standard Offer Program only after the conclusion of the ROI. The R.D. found no evidence to support any modification to PECO's proposal that a

month is a sufficient interval between the completion of the ROI enrollment and the beginning of the Standard Offer Program. R.D. at 73.

Like its earlier testimony, the OCA's Exception reasserts that if the ROI and Standard Offer Program begin at the same time, the overlap will create significant customer confusion and the potential for adverse comparisons of the prices and terms of service associated with these two programs. OCA Exceptions at 19-20. However, the assertion that any overlap between the two programs will create customer confusion is not actual *evidence* of such confusion. The OCA's recommendation is contrary to the preponderance of the evidence. The record shows that non-shopping customers will have been solicited for the ROI in the second quarter of 2013, PECO St. No. 2 at 22-24, and participants will be enrolled in the one-time ROI by June 1, 2013. Only after customers have been enrolled in the ROI will the Standard Offer Program, which is an on-going program, commence with incoming customer calls. The timelines of each program provide for very little overlap, and there is no credible evidence in the record that they are likely to cause customer confusion. Further, PECO's Standard Offer Program is targeting only Residential default service customers, PECO St. No. 2 at 22, which means that the only time a customer participating in the ROI will be participating in the Standard Offer Program is when the customer specifically requests to participate. Comparing prices and terms of service in the two programs is no different than comparing any two limited time offers available in the competitive retail market.

While FES supports a well-coordinated approach, the delay of the Standard Offer Program proposed by the OCA is unnecessary and lacks any evidentiary support. Accordingly, the R.D. properly rejected the OCA's recommendation to delay the Standard Offer Program.

C. Replies To Exceptions Of PECO

1. The R.D. Correctly Observed That PECO Was Obligated To Construct The Functionality Associated With Seamless Moves Thirteen Years Ago At The Commencement Of Retail Choice. (PECO Exception No. 1).

PECO's only Exception takes issue with a single sentence of the R.D. The R.D., in the course of recommending that the Commission adopt PECO's proposal to use the discount in its purchase of receivables ("POR") program to recover the cost of retail market enhancements — a cost recovery methodology with which FES disagrees, as expressed in its own Exceptions to the R.D. — observes that "PECO was obligated to construct the functionality associated with seamless moves thirteen years ago." R.D. at 87. Because the R.D. recommended approval of PECO's proposal to recover the costs of this functionality from EGSs through a discount on purchased receivables, PECO contends that this statement is either a typographical error, or a conclusion that is legally unsupportable and unsupported by any evidence. PECO Exceptions at 3. FES submits that PECO's Exception is overreaching, and that Seamless Moves are in fact a correction to a design flaw in PECO's systems that should have been built into the systems at the outset of electric choice, and if the systems had been built correctly all customers would have paid for that functionality. FES M.B. at 33-34. As FES maintains in its Exceptions to the R.D., a POR discount should not be used to recover the costs of any retail market enhancement programs, and it specifically should not be used to recover the costs for PECO to correct this design flaw. Therefore, this Exception should be denied.

D. Replies To Exceptions Of RESA

1. The R.D. Correctly Rejected RESA's Recommendation That There Be At Least Four Winning Bidders In The ROI. (RESA Exception No. 10).

The R.D. rejected RESA's recommendation that there be at least four winning bidders in the ROI. Finding this recommendation to be "unsupported and unnecessary," the R.D. referenced two reasons raised by PECO: (i) that RESA did not provide any evidence that a four-bidder minimum would increase supplier participation in the one-time ROI, and (ii) that a good outcome for customers could result even if fewer than four bidders participate in the ROI. R.D. at 62.

In its Tenth Exception, RESA contends that the *IWP Order* "specifically directed that the issue of minimum number of bidders be *determined* in the individual default service proceeding." RESA Exceptions at 26 (emphasis added). To the contrary, the *IWP Order* states that the EDCs may *consider* this issue in the context of their DSPs. *IWP Order* at 64 (emphasis added). FES submits that PECO did in fact consider the idea of a minimum number of winning bidders, and correctly rejected it. FES R.B. at 15. RESA's proposal is not supported by the *IWP Order*.

In addition, RESA's proposal would not be in the best interests of customers and lacks any factual support. As FES argued during the course of this proceeding, any artificial limit on the number of customers that a supplier may serve interferes with the natural operation of the competitive market, and ensures that customers do not receive the lowest price. The most important consideration in designing programs to further promote retail electric competition should be to give customers the lowest available pricing. This is best accomplished by assuring that there is a robust competitive process that includes multiple bidding suppliers, rather than by

limiting the number of customers a supplier may win in that competitive process. RESA's perceived need for at least four winning bidders is not based on any formal study, but is speculative and based merely on unspecified observations of competitive dynamics. See FES M.B. at 21-22.

RESA also argues that its proposed requirement of a minimum of four winning suppliers would allow additional EGSs to obtain a "critical mass of customers" sufficient to provide these EGSs with "the necessary economies of scale." RESA Exceptions at 26. However, given PECO's proposed ROI structure which includes twenty (20) tranches, RESA's proposal for a minimum of four winning suppliers may result in two suppliers serving 50% and 40% of participating customers. FES R.B. at 13-14. There is no demonstrated relationship between RESA's proposed additional arbitrary limitation on competition and its promised result of giving four suppliers a "critical mass of customers" which provides "the necessary economies of scale." Further, if the Commission were to adopt RESA's proposal to enroll customers before conducting the auction, RESA's proposed requirement of a minimum number of winning suppliers would create one more reason the auction might fail, in the event there are fewer suppliers than the minimum requirement, to the disappointment of the customers who enrolled. FES R.B. at 15-16.

Accordingly, RESA's Exception seeking to impose a requirement of a minimum of four winning bidders in the ROI should be denied.

2. The R.D. Correctly Rejected RESA's Claim That The R.D. Erred In Recommending That EGSs Participating In The Standard Offer Program Offer 7% Off The Price-To-Compare For An Entire Year. (RESA Exception No. 13).

In its Thirteenth Exception, RESA urges that the 7% discount off the PTC last for only the first four months of a one-year service contract, and thereafter the price offered by the EGS

should revert to one that is noticed to customers by the applicable EGS. RESA Exceptions at 31. The R.D. correctly rejected RESA's argument that the Commission in the *IWP Order* intended the Standard Offer Program discount to last for only four months, clarifying that the Commission stated that such discount should be provided for a "minimum" of four months. R.D. at 70.

RESA's Exceptions incorrectly suggest that the R.D. recommended that the 7% discount is required to change quarterly with the PTC. RESA Exceptions at 31-32. This contention ignores the plain language of the R.D., which recognizes at the outset of its discussion that "[c]onsistent with the Commission's guidance, EGSs participating in the Standard Offer Program will be required to offer generation service on a month-by-month basis for twelve complete billing cycles at a fixed price of 7% below the PTC *at the time of customer enrollment.*" R.D. at 69 (emphasis added).

As FES explained in its briefs, RESA's proposal is also flatly contradicted by the plain language of the *IWP Order*, which did not adopt every aspect of the New York-style referral program, most notably New York's emphasis on short-term introductory rates, and expressly provided for a Standard Offer term of up to 12 months, and its reference to the 7% off product as a "constant price" during the term of the standard offer:

- The standard offer should be comprised of a 7% reduction from the EDC's effective DS PTC. *The 7% reduction is a constant price established against the PTC effective on the date the standard offer is made.*
- The standard offer should be provided for a minimum of four months, but should not exceed 1 year. The standard offer and its term should be uniform within an EDC's service territory.

IWP Order at 31 (emphasis added). There is no indication that the length of the discount should be any less than the length of the contract. See FES M.B. at 28-31; FES R.B. at 18-21.

FES further explained that RESA’s proposal would transform the Commission-sponsored 12-month Standard Offer into a four month contract disguised as longer-term. Short-term “introductory” or “teaser” rates would likely lead to offers that increase the price after the introductory period expires, leading 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. RESA's recommendation would require participating customers, who have little or no experience with shopping and are less than four (4) months removed from utility default service, to understand that their price will change after four (4) months in the Standard Offer Program. FES believes these customers should be free to leave the Referral Program at any time, but not compelled to leave it after only four (4) months. FES M.B. at 28-29.

Moreover, FES disagrees with RESA’s suggestion — raised for the first time in its Exceptions — that the Commission convert the ROI into an “opt-in aggregation” program similar to that created in the August 16, 2012 *ME/PN/PP/WP Order*,² and “coordinate” the Standard Offer Program with the opt-in aggregation program by “ensuring that they are providing similar or equal terms” RESA Exceptions at 33. Indeed, the *ME/PN/PP/WP Order* supported the same structure of Standard Offer Program that the R.D. recommends approving for PECO. *ME/PN/PP/WP Order* at 146. Further, there is no legal or logical basis, nor any procedure consistent with due process, for abandoning the Standard Offer Program design developed by stakeholders over the course of a year and a half, and adopting a new proposal improperly raised by a party months after the record has closed, and purportedly based

² Joint Petition Of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company And West Penn Power Company For Approval Of Their Default Service Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Opinion and Order entered August 16, 2012) (“*ME/PN/PP/WP Order*”).

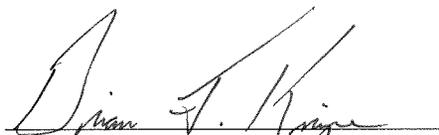
upon the Commission's disposition of a separate and different program in an Order entered in a different proceeding. Nor is there any support in the evidentiary record for this proposal.

For the reasons specified above, RESA's Exception urging that the 7% discount off the PTC in the Standard Offer Program be for only the first four months of a one-year service contract should be denied, as well as its belated proposal to adopt a new design of nearly identical "opt-in aggregation and Standard Offer Programs.

III. CONCLUSION

For the foregoing reasons, the portions of the Recommended Decision of Administrative Law Judge Dennis J. Buckley discussed in these Replies to other parties' Exceptions should be adopted without modification. The referenced Exceptions of the Office of Consumer Advocate, PECO Energy Company and the Retail Energy Supply Association to which FirstEnergy Solutions Corp. responds in these Replies to Exceptions should be denied, and the referenced Exceptions of Dominion Retail, Inc./Interstate Gas Supply, Inc. should be denied in part.

Respectfully submitted,

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Dated: September 17, 2012

Attorneys for FirstEnergy Solutions Corp.

**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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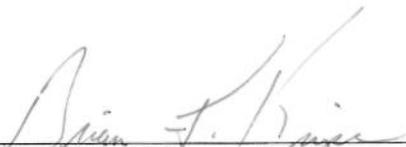
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Dated this 17th day of September, 2012.



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