

September 26, 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, Commission Docket No. P-2012-2283641; Joint Suppliers' Reply to Office of Small Business Advocate Motion to Strike Certain Portions of the Exceptions of the Joint Suppliers Group**

Dear Secretary Chiavetta:

On January 13, 2012, PECO Energy Company ("PECO") filed with the Pennsylvania Public Utility Commission ("Commission") a Petition for approval of its Default Service Program ("DSP").<sup>1</sup> The Honorable Administrative Law Judge ("ALJ") Dennis J. Buckley issued his Recommended Decision with respect to the DSP on August 27, 2012.<sup>2</sup> On September 10, 2012, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., and Exelon Generation Company, LLC and Exelon Energy Company ("Constellation/Exelon"),<sup>3</sup> along with NextEra Energy Services Pennsylvania, LLC and NextEra Energy Power Marketing, LLC ("NextEra") (collectively, the "Joint Suppliers") submitted their Exceptions to the Recommended Decision.<sup>4</sup> In response, on September 13, 2012, the Office of Small Business Advocate ("OSBA") filed a Motion to Strike Certain Portions of the Exceptions of the Joint Suppliers Group.<sup>5</sup>

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<sup>1</sup> *Petition of PECO Energy Company For Approval of Its Default Service Program*, Commission Docket No. P-2012-2283641 (Jan. 13, 2012) ("DSP Petition").

<sup>2</sup> *Recommended Decision in Re: Petition of PECO Energy Company for Approval of Its Default Service Program*, Commission Docket No. P-2012-2283641, (dated August 27, 2012) ("Recommended Decision").

<sup>3</sup> When this proceeding was initiated, the Constellation and Exelon entities were separate companies. On March 12, 2012, the parties consummated a merger and are now part of the same corporate family. Accordingly, though the entities have participated separately throughout this proceeding, for administrative efficiency, they now file a joint petition.

<sup>4</sup> *Exceptions of the Joint Suppliers Group*, Commission Docket No. P-2012-2283641 (filed Sept. 10, 2012) ("Joint Suppliers' Exceptions" or "Exceptions").

<sup>5</sup> *Motion of the Office of Small Business Advocate to Strike Certain Portions of the Exceptions of the Joint Suppliers Group*, Commission Docket No. P-2012-2283641 (filed Sept. 13, 2012) ("OSBA Motion").

The Joint Suppliers respect the concerns OSBA expresses about Commission consideration of post-record evidence and proposals not specifically advanced before the ALJ. The Joint Suppliers submit, though, that the additional evidence presented in the Joint Suppliers' Exceptions supplements evidence already in the record regarding the potential impacts from PJM-imposed Generation Deactivation (or "reliability must run" – "RMR") charges and will provide more up-to-date and fulsome information. Further, this additional information will assist the Commission in making a consistent decision regarding, and adopt a consistent process to address, Generation Deactivation charges across Pennsylvania's utilities.

With respect to the evidence questioned by the OSBA, the Joint Suppliers point out that the additional evidence – reflecting the scope of specific Generation Deactivation charges proposed to be recovered and other states' cost-recovery treatment of such charges – came to light on July 10<sup>th</sup>, July 18<sup>th</sup>, July 20<sup>th</sup>, July 30<sup>th</sup>, August 16<sup>th</sup> and August 28<sup>th</sup>, *after* the **July 9, 2012** close of the record in the instant proceeding. As to the specific compromise proposals that the Joint Suppliers lay out in their Exceptions, they grow out of the broader proposals set forth before the ALJ, and, as such, can be properly considered by the Commission.

In addition, the Joint Suppliers note that Constellation/Exelon presented the very same additional evidence and proposals in its *Petition for Rehearing and Reconsideration*<sup>6</sup> ("Constellation FirstEnergy-PA Reconsideration") in the Commission's proceeding regarding the default service program filed by FirstEnergy Corp.'s Pennsylvania utilities,<sup>7</sup> and that the Joint Suppliers' Exceptions here ask that the Commission take judicial notice of the Constellation FirstEnergy-PA Reconsideration, which is largely compiled from official, publicly-available decisions from the Federal Energy Regulatory Commission and certain state regulatory bodies.<sup>8</sup> Allowing the Commission to consider the same evidence and proposals in the instant proceeding regarding PECO's DSP will better allow for the result in this proceeding to respect the Commission's final decision regarding the FirstEnergy-PA DSP, providing for a consistent decision on Generation Deactivation charges, to the extent possible, across the Commonwealth.

If, however, the Commission grants the OSBA Motion and refrains from considering the additional evidence presented in the Joint Suppliers' Exceptions, the Joint Suppliers aver that sufficient evidence nevertheless exists in the record to revise the ALJ's Recommended Decision regarding Generation Deactivation charges, in order to tailor the scope of the decision more narrowly to address the interests affected, as explained more fully in the Joint Suppliers' Exceptions.

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<sup>6</sup> See *Petition for Rehearing and Reconsideration of Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Exelon Generation Company, LLC and Exelon Energy Company*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (filed Aug. 31, 2012) ("Constellation FirstEnergy-PA Reconsideration").

<sup>7</sup> See *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 ("FirstEnergy-PA DSP").

<sup>8</sup> See 52 Pa. Code §§ 5.408 and 1005.148 ("Official notice or judicial notice of facts may be taken by the Commission or the presiding officer."); see also *Gleeson v. State Board of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006) (in which the Board of Medicine properly took judicial notice of its own records).

Respectfully Submitted,

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/s/

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