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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

April 1, 2010

**VIA FEDERAL EXPRESS**

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Petition of PECO Energy Company For Approval of Its Revised Electric  
Purchase of Receivables Program, Docket No. P-2009-2143607**

Dear Secretary McNulty:

Enclosed for filing are an original and nine (9) copies of the **Reply Brief of PECO Energy Company (Reply Brief)** in the above referenced matter. Also enclosed is a disk containing the Reply Brief in a searchable PDF format.

*As evidenced by the attached Certificate of Service, a copy of the Reply Brief has been served upon Administrative Law Judge Cynthia Williams Fordham and all parties. Pursuant to 52 Pa. Code §1.11(2), the enclosed Reply Brief shall be deemed filed on the date shown on the express delivery receipt attached to the delivery envelope. Kindly time stamp the extra copy of the Reply Brief we have enclosed and return it to us in the postage-paid, return addressed envelope provided.*

Should you have any questions, please contact me directly at 215.963.5384. Thank you.

Very truly yours,



Kenneth M. Kulak

KMK/ap

Enclosures

c: Certificate of Service (w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS :  
REVISED ELECTRIC PURCHASE OF : DOCKET NO. P-2009-2143607  
RECEIVABLES PROGRAM :**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**REPLY BRIEF OF  
PECO ENERGY COMPANY**

**Before Administrative Law Judge  
Cynthia Williams Fordham**

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**April 1, 2010**

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## I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) files this Reply Brief in response to the Main Briefs filed by the Office of Trial Staff (“OTS”), the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) with respect to: (1) the issue that was reserved for briefing in the Joint Petition for Partial Settlement (“Joint Petition”) filed on March 22, 2010; and (2) the issue raised by the OTS, which is not a party to the Joint Petition. As explained in the Company’s Main Brief filed on March 22, 2010, those issues involve: (1) whether PECO should be permitted to terminate service to customers after January 1, 2011, for the non-payment of charges for electric generation supplier (“EGS”) service furnished before that date; and (2) how generation-related uncollectible accounts expense should be recovered after January 1, 2011. As to the first issue, only the OCA and OSBA oppose the Company’s proposal. As to the second issue, only the OTS disagrees with the procedure set forth in the Joint Petition, which all of the settling parties have determined is just, reasonable, lawful and non-discriminatory and, therefore, should be approved.

The OCA and OSBA filed Main Briefs in which they contend that termination of service by PECO for pre-2011 EGS arrearages should not be permitted as part of the revised purchase of receivables program proposed in the Company’s Petition filed on November 20, 2009 (“Revised Electric POR Program” or the “Program”). The OTS filed a Main Brief supporting its position that generation-related uncollectible accounts expense should be “unbundled” by (1) discounting the price paid to EGSs as PECO’s means of recovering uncollectible accounts expense related to purchased EGS receivables; and (2) removing uncollectible accounts expense related to default supply service from the Company’s distribution charges and recovering it in a new automatic adjustment clause that would apply only to default service customers. The Retail Energy Supply

Association (“RESA”) and Direct Energy Services, LLC (“Direct Energy”) jointly filed a Main Brief supporting the settlement, including the Company’s proposal that it be permitted to terminate service for pre-2011 EGS arrearages, and opposing the OTS’ proposed unbundling of uncollectible accounts expense. Dominion Retail, Inc. (“Dominion”) filed a Main Brief in which it also supported the settlement and opposed the OTS’ unbundling proposal.<sup>1</sup>

To a very large extent, the arguments advanced by the OTS, the OCA and the OSBA in their respective briefs were fully addressed in the Company’s Main Brief, and an extensive reanalysis is, therefore, not necessary. However, as an aid to the Administrative Law Judge (“ALJ”), this Reply Brief will revisit certain key areas of disagreement.

## II. ARGUMENT

### A. **PECO’s Authority To Terminate Service For Un-Paid EGS Charges That Accrued Prior to January 1, 2011 Was Contemplated By the Default Service Settlement, Is Consistent With The Terms Of The 1998 Restructuring Settlement And Should Be Affirmed By The Commission**

Under PECO’s Revised Electric POR Program, beginning on January 1, 2011, PECO will purchase EGS accounts receivable and, in a departure from its existing purchase-of-receivables program, will not stop purchasing the accounts receivable of customers that accrue unpaid EGS balances which are outstanding for more than 90 days. Additionally, and as an adjunct to the previously described change, the Revised Electric POR Program provides that, starting January 1, 2011, PECO may terminate electric distribution service to customers for their failure to pay EGS charges for basic electric supply whenever that service was furnished (*i.e.*, including service furnished by an EGS prior to January 1, 2011). As PECO explained in its Main Brief (p. 4), having the authority to terminate service for all accounts receivable that it acquires under the

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<sup>1</sup> Constellation NewEnergy, Inc. (“Constellation”) is a party to the Joint Petition, but did not file a Main Brief.

Program will avoid complicated system modifications that would add significant complexity and costs (approximately \$500,000) to the implementation of the Revised Electric POR Program.

The termination of service provision in the Revised Electric POR Program is consistent with the terms of the Commission-approved settlement of PECO's default service filing ("Default Service Settlement"),<sup>2</sup> which set forth specified minimum requirements for a revised purchase-of-receivables program. In fact, the Default Service Settlement contemplates that PECO's ability to terminate service for unpaid EGS charges should be co-extensive with its existing authority to terminate service for non-payment of electric distribution company ("EDC") charges, which does not distinguish between charges incurred before or after January 1, 2011:

PECO will have the ability to terminate service to a customer for the customer's non-payment of supplier charges *in the same manner and to the same extent that PECO could terminate service to such a customer for non-payment of EDC charges*, subject to appropriate consumer protections to be developed in consultation with the parties to this Settlement.

Default Service Settlement, ¶ 66 (emphasis added).

All of the parties to the Joint Petition agree, generally, that PECO should be permitted to terminate the electric distribution service of customers who do not pay EGS receivables that PECO purchases under the Program. However, the OCA and OSBA contend that PECO's termination authority should be exercised only as to customers with unpaid arrearages arising from EGS service furnished **after** January 1, 2011. Thus, under the OCA/OSBA approach, PECO would be obligated to purchase accounts receivable that already exist at January 1, 2011 and, therefore, necessarily arise from service furnished before that date, but would be denied termination authority if those receivables are not paid. There is nothing in the Default Service

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<sup>2</sup> *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (June 2, 2009).

Settlement to suggest that the parties intended to impose, or PECO agreed to assume, such an asymmetrical allocation of rights and obligations. To the contrary, a more reasonable construction of Paragraph 66 of the Default Service Settlement – and the one supported by the plain language of that provision – is that the constraint on the exercise of PECO’s authority to terminate service for non-payment of EGS charges, which the Restructuring Settlement imposed, expires as of December 31, 2010.

In their respective Main Briefs, the OCA and OSBA ignore the Default Service Settlement and, instead, rely upon two sentences from Paragraph 22 of the Joint Petition for Full Settlement of PECO’s Restructuring Plan (“Restructuring Settlement”)<sup>3</sup>, which state: “Only PECO can physically disconnect or reconnect a customer’s distribution service. Physical termination of service may only be permitted for failure to pay for EDC or PLR service.” However, the provision upon which they rely: (1) terminates on December 31, 2010<sup>4</sup>; and (2) neither expressly nor by implication limits PECO’s post-2010 termination authority in the way the OCA and OSBA contend. In short, the OCA and OSBA would extend both the duration and the scope of Paragraph 22 of the Restructuring Settlement beyond the terms agreed to, and authorized in, that settlement.

The OCA also contends that authorizing PECO to terminate service for pre-2011 EGS arrearages would “conflict with the expectations of current shopping customers” (OCA Main Brief, p. 9). However, this argument simply repackages the OCA’s principal contention because the OCA points to the Restructuring Settlement – and, specifically, its construction of Paragraph

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<sup>3</sup> *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket Nos. R-000973953 and P-00971265 (May 14, 1998).

<sup>4</sup> Restructuring Settlement, ¶ 43: “This settlement, including all of the terms and conditions set forth above, shall expire on December 31, 2010.”

22 – as the purported genesis of customers’ “expectations” about their “terms of service.” In short, the OCA’s argument is circular. The Restructuring Settlement does not impose a restriction on termination for pre-2011 EGS arrearages as the OCA contends, and the OCA cannot get around that fact by couching its argument in terms of customer “expectations.”

Additionally, in its Main Brief, the OCA advanced for the first time the argument that that termination for pre-2011 EGS arrearages is inconsistent with the Revised Electric POR Program because (1) the Program permits termination only for unpaid EGS charges for “basic electricity service”; and (2) it is not clear that pre-2011 arrearages would be limited to those that arise only from “basic” service. Of course, this is fundamentally a factual issue, and it was not appropriate for the OCA to raise it for the first time in its Main brief.<sup>5</sup> Nonetheless, the OCA is simply wrong. Under the terms of PECO’s Electricity Generation Supplier Coordination Tariff (Original Page 91), PECO provides consolidated EDC billing only for “customers’ basic charges” imposed by an EGS. Because consolidated EDC billing is a condition precedent to the creation of EGS receivables that are eligible for purchase, the existing safeguards provide reasonable assurance that pre-2011 arrearages consist only of “basic charges.”

In its Main Brief, the OSBA argues that termination for pre-2011 EGS arrearages could result in “unwarranted double recovery” because PECO is allegedly recovering in its distribution rates a level of uncollectible accounts expense predicated on the unavailability of termination rights for pre-2011 EGS arrearages. There are several flaws in the OSBA’s argument. First, and most fundamentally, it is based on factual contentions made for the first time in OSBA’s Brief. As a result, the argument is improper and should be rejected for that reason alone. Second, there

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<sup>5</sup> *Pa. P.U.C. v. UGI Corp.*, 58 Pa. P.U.C. 155, 205 (1984); *Pa. P.U.C. v. Pennsylvania Power & Light Co.*, 57 Pa. P.U.C. 559, 696-97 (1983).

is no basis for assuming that PECO's right to terminate for pre-2011 EGS arrearages will significantly reduce its overall uncollectible accounts expense. Third, for ratemaking purposes uncollectible accounts expense is typically based on a multi-year average of accounts receivable written off less actual recoveries.<sup>6</sup> Thus, if PECO's recoveries were to increase as a result of the termination authority it proposes for pre-2011 arrearages, that change would be reflected in future base rate cases and would eliminate the potential for any alleged "double recovery."

Finally, the OSBA contends that granting PECO termination authority for pre-2011 arrearages would conflict with 52 Pa. Code §56.35, which imposes a statute of limitations on a utility's authority to require a residential customer to pay a bill that is more than four years old (OSBA Main Brief, p. 11). This argument has no validity because PECO has not asked for authority to terminate service for pre-2011 arrearages in a manner that would contravene existing customer-protection provisions of the Public Utility Code or the Commission's regulations. To the contrary, PECO has previously stated, and reaffirms, that its exercise of termination authority will adhere to all applicable customer protections, including the statute of limitations cited by the OSBA.

For all of the foregoing reasons, the OCA's and OSBA's objections to granting PECO authority to terminate service for pre-2011 arrearages lack merit and should be rejected.

**B. The OTS Proposal For Full Unbundling Of Uncollectible Accounts Expense In This Case Should Be Rejected**

Under the Revised Electric POR Program, PECO proposes to purchase EGS accounts receivable at an initial, temporary discount of 0.2%. That discount is the means by which the

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<sup>6</sup> See *Pa. P.U.C. v. Philadelphia Suburban Water Co.*, Docket No. R-00016750, 2002 Pa. PUC LEXIS 55, \*87 (August 1, 2002); *Pa. P.U.C. v. West Penn Power Company*, Docket Nos. R-00942986 et al, 1994 Pa. PUC LEXIS 144, \*101 (December 29, 1994).

Company will recover the costs it incurs to implement the Program. After PECO recovers its implementation costs, it will purchase EGS accounts receivable at their face amount.

Some portion of the purchased accounts will not be paid by customers and will, therefore, become uncollectible. PECO proposes to recover all of its uncollectible accounts expense, including that which arises from receivables purchased from EGSs under the Program, through its distribution rates. PECO's existing distribution rates contain an allowance for uncollectible accounts expense that was established prior to the 1998 Restructuring Settlement, which separated PECO's rates by function as required by the Electricity Generation Customer Choice and Competition Act. PECO is not proposing any change in its distribution rates in this case to reflect the Revised Electric POR Program. Rather, its uncollectible accounts expense will be adjusted in future distribution base rate cases based on the Company's overall uncollectible accounts experience.

Under the Company's proposal, all customers, whether they shop or take default supply service, will pay uncollectible accounts expense through their distribution rates at a level that reflects the Company's average uncollectible accounts expense for each class of customers. This approach assures that uncollectible accounts expense is fairly apportioned among all customers and recovered on a non-bypassable basis. The OTS is the only party that disagrees with the Company's approach.

As previously explained, the OTS contends that PECO should be required to fully "unbundle" all generation-related uncollectible accounts expense from its distribution rates in this proceeding. To implement this approach, the OTS proposes that the Company (1) attempt to separately identify, and quantify, the uncollectible accounts expense related to charges for default supply service and the uncollectible accounts expense it anticipates will arise from

accounts receivable acquired from EGSs under the Revised Electric POR Program; (2) remove the default service uncollectible accounts expense from its distribution rates and recover that cost under a new Section 1307 adjustment clause that would apply only to default service customers; and (3) recover uncollectible accounts expense related to EGS accounts receivable by discounting the price paid to EGSs to reflect the anticipated level of such expense. As should be evident, the OTS' approach is considerably more complicated than the Company's proposal. Additionally, it requires changes in rates that more appropriately should be considered in a base rate proceeding, which this case is not.

The OTS contends that its proposal should be adopted to avoid “an improper shifting of non-jurisdictional generation expenses from the EGS to the jurisdictional distribution ratepayers” because “PECO proposes that distribution customers pay for the portion of the EGS generation related bills that are not collected” (OTS Main Brief, pp. 9-10). The contentions made in the OTS' Main Brief are not supported by the evidence. In fact, OTS' own witness conceded that its “unbundling” approach would “achieve the same result” as PECO's proposal. *See* OTS St. 1-SR, p. 3. This is because the OTS' witness also conceded that the uncollectible rate (uncollectible accounts expressed as a percent of revenue) would be the same “for both shopping and non-shopping customers.” OTS St. 1-SR, p. 4. Thus, under PECO's proposal or the OTS' recommended approach, all customers within the same class, whether they “shop” or not, would pay the same level of uncollectible accounts expense expressed on a kWh basis. Because the rate would be the same for all customers under either approach, there is no risk of “improper shifting” of costs from “non-jurisdictional” to “jurisdictional” customers, nor any potential for improper “subsidization” of EGS customers by default service customers.

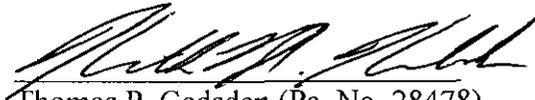
Because the PECO and OTS proposals “achieve the same result,” the relevant inquiry is which proposal will recover costs in a more efficient and appropriate manner. PECO’s proposal clearly achieves that result. The OTS’ proposal, on the other hand, would require PECO to: (1) identify and quantify costs embedded in its base rates and adjust its base rates outside of a base rate proceeding; (2) develop and obtain Commission approval for a new surcharge to recover default service-related uncollectible expense from default service customers; and (3) make annual filings with the Commission under that adjustment clause. That effort is unwarranted at this time, since the Revised Electric POR Program has yet to be implemented and there are no data from the operation of the Program on which to base the kinds of calculations the OTS’ proposal requires.

For all of the foregoing reasons, the OTS’ recommended “unbundling” approach should not be adopted in this case, and Joint Petition for Partial Settlement should be approved without modification.

### III. CONCLUSION

For the reasons set forth above, PECO's proposals concerning cost recovery and the ability to terminate service for unpaid EGS charges incurred before January 1, 2011 should be adopted and the Joint Petition for Settlement filed on March 22, 2010 should be approved.

Respectfully submitted,



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April 1, 2010

*Counsel for PECO Energy Company*

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**PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS :  
REVISED ELECTRIC PURCHASE OF : DOCKET NO. P-2009-2143607  
RECEIVABLES PROGRAM :**

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the Reply Brief of PECO Energy Company on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Date: April 1, 2010

