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May 19, 2010

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VIA FEDERAL EXPRESS

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Secretary Chiavetta:

Enclosed for filing are an original and nine (9) copies of the Exception of PECO Energy Company to the Recommended Decision issued April 29, 2010 in the above-referenced proceeding. Also enclosed is a disk containing the Exception in PDF form. Pursuant to 52 Pa. Code § 1.11(a)(2), the enclosed Exception shall be deemed filed on May 19, 2010, which is the date it was deposited with Federal Express as shown on the Federal Express delivery receipt.

Copies of the enclosed Exception have been served upon the Administrative Law Judge and all parties as evidenced by the enclosed Certificate of Service. Also enclosed is an additional copy of this letter and of the Exception, which we request be date-stamped as evidence of filing and returned to us in the stamped, pre-addressed envelope provided.

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

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosures

**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 :

EXCEPTION OF PECO ENERGY COMPANY

**To The Recommended Decision of Administrative Law Judge
Cynthia Williams Fordham**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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May 19, 2010

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I. INTRODUCTION

This proceeding was initiated on November 20, 2009, when PECO Energy Company (“PECO” or the “Company”) petitioned the Pennsylvania Public Utility Commission (the “Commission”) to approve revisions to PECO’s current electric purchase of receivables program (the “Revised Electric POR Program” or “Program”). In its Petition, PECO requested that the Commission approve the Revised POR Program to permit PECO to: (i) purchase the customer receivables of electric generation suppliers (“EGSs”) participating in PECO’s consolidated billing option for basic retail electricity supply services in PECO’s service territory, without recourse by PECO to those suppliers for receivables that PECO cannot collect; (ii) discount the purchase price for those receivables only so long as necessary to recover the initial implementation costs for the Revised POR Program; and (iii) conduct collection activities with respect to all purchased EGS receivables and, if necessary, terminate electric service to any customer whose account (including the EGS receivable purchased by PECO) remains unpaid, with all such collection and termination activity to be conducted in accordance with Chapter 14 of the Pennsylvania Public Utility Code and Chapter 56 of the Commission’s regulations (52 Pa. Code §§ 56 et seq.). As part of its Petition, PECO also requested the Commission to approve related supplements to PECO’s current Electric Generation Supplier Coordination Tariff and the Electric Service Tariff which the Commission has approved for use beginning January 1, 2011.¹

PECO proposed the Revised Electric POR Program in accordance with the Commission-approved settlement of PECO’s default service program for the provision of electric service after December 31, 2010, when PECO’s transition period under Pennsylvania’s Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 et seq. (the “Competition Act”) and

¹ See *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009) (“Default Service Settlement”).

current capped rates for electric generation will end.² The Commission assigned the matter to Administrative Law Judge Cynthia Williams Fordham (the “ALJ”).

A detailed history of this proceeding is set forth in the Company’s Main Brief, dated March 22, 2010. On the same date that Main Briefs were filed, a Joint Petition for Partial Settlement (“Joint Petition”) was filed by PECO, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Constellation NewEnergy, Inc. (“Constellation”), the Retail Energy Supply Association (“RESA”), Direct Energy Services, LLC (“Direct Energy”), and Dominion Retail, Inc. (“Dominion”). The Settlement addressed all but two issues in the proceeding.³

On April 1, 2010, PECO filed a Reply Brief in response to the Main Briefs filed by the Commission’s Office of Trial Staff (“OTS”), the OCA, and the OSBA with respect to the two unresolved issues: (1) whether PECO should be permitted to terminate service to customers after January 1, 2011, for the non-payment of charges for 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 opposed the Company’s proposal. As to the second issue, only the OTS disagreed with the procedure set forth in the Joint Petition.⁴

On April 29, 2010, the ALJ issued her decision (“Recommended Decision” or “R.D.”) recommending: (1) approval of the Joint Petition; (2) approval of the Company’s proposal concerning generation-related uncollectible accounts expense; and (3) rejection of the

² *Id.*

³ The Philadelphia Area Industrial Energy Users Group (“PAIEUG”), which is also a party to this case, authorized the Joint Petitioners to represent that it did not oppose the Settlement.

⁴ RESA and 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 filed a Main Brief in which it also supported the Settlement and opposed the OTS’ unbundling proposal. Constellation and PAIEUG did not file Main Briefs.

Company's proposal that it be permitted to terminate service to customers after January 1, 2011, for the non-payment of charges for EGS service furnished before that date. Accordingly, the following Exception is narrowly limited to the pre-2011 arrearage issue.

II. EXCEPTION

The Company respectfully takes Exception to the ALJ's finding that PECO's ability to terminate for unpaid EGS charges should apply only to those EGS charges for services incurred on or after PECO's Revised Electric POR Program is implemented. R.D., pp. 35-36. As explained herein, PECO's authority to terminate service for unpaid EGS charges incurred prior to January 1, 2011 is consistent with the terms of PECO's 1998 Restructuring Settlement⁵ and the Default Service Settlement.

III. ARGUMENT

Under PECO's Revised Electric POR Program, beginning on January 1, 2011, PECO will purchase EGS accounts receivable and will have the authority to terminate electric distribution service to customers for their failure to pay EGS charges for basic electric supply. PECO proposed that the Company should have the authority to terminate service for all accounts receivable that it acquires under the Program, including those receivables for service furnished prior to January 1, 2011. As PECO explained in its Main Brief (p. 4), having this authority will avoid complicated system modifications that would add significant complexity and costs (approximately \$500,000) to the implementation of the Revised Electric POR Program.

⁵ On April 1, 1997, PECO submitted a comprehensive restructuring plan in accordance with the Competition Act. Subsequently, after extensive litigation and settlement proceedings before the Commission and in state and federal courts, PECO and other parties submitted a joint petition for settlement (the "Restructuring Settlement") which resolved all issues regarding PECO's restructuring plan. The Commission approved the Restructuring Settlement on May 14, 1998. *See Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.*, Docket Nos. R-000973953 and P-00971265.

The ALJ rejected the Company's proposal with respect to pre-2011 arrearages because she concluded that termination for those arrearages was not authorized by the Restructuring Settlement or the Default Service Settlement. In particular, the ALJ determined the proposal would violate termination protections that were established in the Restructuring Settlement and maintained in the Default Service Settlement. R.D., p. 35.

The ALJ's interpretation of the Restructuring Settlement and the Default Service Settlement should be rejected for several reasons. First, the ALJ improperly extends the duration and scope of the termination restriction in the Restructuring Settlement. PECO does not dispute that, under the Restructuring Settlement, the Company is precluded from terminating electric service to a customer who is delinquent on payment of EGS charges until after December 31, 2010. *See* Restructuring Settlement, ¶ 22 ("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."). This restriction, however: (1) terminates on December 31, 2010 ; and (2) neither expressly nor by implication limits PECO's post-2010 termination authority. Simply put, the termination restriction does not apply to termination activity taken by PECO after December 31, 2010, and the ALJ seeks to extend the duration and the scope of the Restructuring Settlement beyond the terms agreed to, and authorized in, that settlement.

Second, PECO's termination proposal is consistent with the terms of the Default Service Settlement, 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).

Under the ALJ's 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 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.

Finally, in the Recommended Decision, the ALJ expresses concern about whether pre-2011 arrearages would be limited to those that arise only from "basic" service. As PECO noted in its Reply Brief (p. 5), 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."

IV. CONCLUSION

For the foregoing reasons, the Commission should grant PECO Energy Company's Exception and adopt the Recommended Decision with the modifications described herein.

Respectfully submitted,



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For PECO Energy Company

Dated: May 19, 2010

**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 :
:

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the Exception of PECO Energy Company to the Recommended Decision of Administrative Law Judge Cynthia Williams Fordham on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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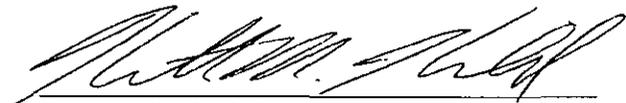
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