

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Thomas P. Gadsden
Partner
215.963.5234
tgadsden@MorganLewis.com

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September 20, 2010

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

VIA FEDERAL EXPRESS

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

**Re: Pennsylvania Public Utility Commission v. PECO Energy Company,
Electric Division - Docket No. R-2010-2161575**

Dear Secretary Chiavetta:

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 Judges Marlane R. Chestnut and Christopher P. Pell 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 215.963.5234. Thank you.

Sincerely,



Thomas P. Gadsden

TPG/ap
Enclosures
c: Certificate of Service (w/encls.)

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Thomas P. Gadsden
Partner
215.963.5234
tgadsden@MorganLewis.com

September 20, 2010.

VIA HAND DELIVERY

Honorable Marlane R. Chestnut
Administrative Law Judge
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
801 Market Street, Suite 4063
Philadelphia, PA 19107

Honorable Christopher Pell
Administrative Law Judge
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
801 Market Street, Suite 4063
Philadelphia, PA 19107

**Re: Pennsylvania Public Utility Commission v. PECO Energy Company,
Electric Division - Docket No. R-2010-2161575**

Dear Judge Chestnut and Judge Pell:

Enclosed please find copies of the Reply Brief of PECO Energy Company in the above-referenced proceeding. A copy of the Reply Brief in Word format has been provided by e-mail. As evidenced by the attached Certificate of Service, copies of the Reply Brief have been served on all parties in this proceeding.

Sincerely,



Thomas P. Gadsden

TPG/tp
Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**PECO ENERGY COMPANY -
ELECTRIC DIVISION**

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DOCKET NO. R-2010-2161575

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SEP 20 2010

**REPLY BRIEF OF
PECO ENERGY COMPANY**

**Before Administrative Law Judges
Marlane R. Chestnut and Christopher P. Pell**

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Anthony E. Gay
(Pa. No. 74624)
Jack R. Garfinkle
(Pa. No. 81892)
Exelon Business Services Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

Thomas P. Gadsden
(Pa. No. 28478)
Anthony C. DeCusatis
(Pa. No. 25700)
Catherine G. Vasudevan
(Pa. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

September 20, 2010

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I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) files this Reply Brief in response to the Main Brief filed by the Office of Trial Staff (“OTS”) with respect to the issue that was reserved for briefing in the Joint Petition for Partial Settlement of Rate Investigation (“Joint Petition”) filed on August 31, 2010. The item reserved for litigation involves the OTS proposal that PECO unbundle the generation-related uncollectible accounts expense from its distribution rates for collection from residential and small commercial default service customers through a Merchant Function Charge (“MFC”) and also purchase electric generation supplier (“EGS”) receivables at a discount which includes a component based on PECO’s corresponding uncollectible accounts expense rate. PECO’s recovery of all generation-related uncollectible accounts expense *in distribution rates* was recently approved by the Pennsylvania Public Utility Commission (the “Commission”), and PECO did not propose any changes to that approved method in this proceeding. The OTS is the only party seeking to change the way the Company recovers its uncollectible accounts expense.

II. SUMMARY OF ARGUMENT

Only three months ago, the Commission approved PECO’s proposal to include the entirety of uncollectible accounts expense within its distribution rates. *See Petition of PECO Energy Company For Approval Of Its Revised Electric Purchase of Receivables Program*, Docket No. P-2009-2143607 (Order entered June 18, 2010) (“POR Order”). In that proceeding, which approved the Company’s revised electric purchase of receivables program (“Revised Electric POR Program” or “Program”), the Commission considered and rejected the very same unbundling proposal made by the OTS in this case. Because the OTS has not provided any new

evidence in this proceeding to suggest that a different approach for recovery of uncollectible accounts expense is appropriate and in the public interest, its proposal should be rejected.

III. THE OTS PROPOSAL FOR UNBUNDLING OF GENERATION-RELATED UNCOLLECTIBLE ACCOUNTS EXPENSE SHOULD BE REJECTED

PECO's recovery of all generation-related uncollectible accounts expense in distribution rates was recently approved by the Commission in the Revised Electric POR Program Proceeding. *See* POR Order, p. 48. In that case, the Company proposed: (1) to continue to recover the uncollectible accounts expense of default service customers through distribution rates; and (2) to purchase accounts receivable from EGSs at face value (without a discount for uncollectible accounts) and recover the uncollectible accounts expense associated with the purchased receivables through distribution rates. *See* PECO Main Brief, pp. 4-5; PECO St. No. 9-R, pp. 5-6. In that proceeding, the OTS advocated precisely the same position it is advancing in this proceeding, namely, "unbundling" default service generation uncollectible accounts expense and recovering it in a separate, by-passable charge. All parties, including several EGSs, opposed the OTS' proposal, and, notably, no EGSs supported the proposal. The Commission ultimately rejected the OTS' position and approved PECO's proposal.¹ In this proceeding, PECO has not proposed any changes to the recovery method approved in the POR Order.

The OTS resurrects its arguments in this proceeding and contends in its Main Brief that: (1) PECO has the burden of proof with regard to its approved recovery method for uncollectible accounts expense; (2) the OTS proposal does not conflict with the POR Order; (3) PECO's approved recovery method conflicts with the "unbundling policy" adopted in the Company's

¹ The OTS suggests in its Main Brief that the voluntary nature of the Revised Electric POR Program was dispositive in the Commission's rejection of its arguments. *See* OTS Main Brief, pp. 21-23. However, the POR Order does not rely upon the alleged "voluntary" nature of the Program to support the Commission's decision. The OTS is attempting to distinguish the POR Order based on factors that played no part in the outcome of that case.

1997 Restructuring Order²; (4) the competitive benefits of PECO's approved recovery method are "overstated"; and, finally (5) the Commission should unbundle uncollectible accounts expense before the expiration of the Company's rate caps.

First and foremost, PECO does not bear the burden of proof with regard to its recovery method for uncollectible accounts expense. PECO did not propose any changes in this proceeding to the method of recovery already approved by the Commission in the POR Order. Pursuant to 66 Pa. C.S. § 316, Commission orders are "prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review." In the POR Order, the Commission found that it was just, reasonable and in the public interest to "adopt PECO's proposal to include the entirety of uncollectible accounts expense within its distribution service base rates." POR Order, p. 48. In short, the unbundling question has been asked and answered and it is the OTS' burden to show why a different outcome is appropriate in this proceeding.

Second, the OTS proposal directly conflicts with the POR Order because it seeks to impose a recovery method different from the one specifically approved by the Commission in that Order. The OTS is correct that the POR Order acknowledged that parties who did not sign the Joint Petition for Partial Settlement could argue in favor of further unbundling in other proceedings. However, that acknowledgment does not make the OTS proposal compatible with the Revised Electric POR Program itself or the Commission's approval of the recovery of "the entirety of uncollectible account expense" in PECO's distribution rates.³

² *Re PECO Energy Company*, 181 PUR4th 517 (Order entered December 23, 1997) as modified by *Re PECO Energy Company*, 186 PUR4th 105 (Order entered May 14, 1998) ("Restructuring Order").

³ The OTS' argument (Main Brief, p. 22) that the Commission "had no authority to act upon unbundling in a POR proceeding" is belied by the fact that OTS itself argued for such unbundling in the POR proceeding.

Third, the Commission's 1997 Restructuring Order and its discussion of uncollectible accounts expense is not relevant in this case. In the Restructuring Order, the Commission considered the appropriate treatment of uncollectible accounts expense in the absence of a purchase of receivables program. While the Commission did identify Universal Service program funding as a consideration in keeping PECO's uncollectible accounts expense in distribution rates, it did not make any findings regarding the appropriate recovery method for those expenses if a purchase of receivables program was in place. In any event, the Commission specifically considered the appropriateness of recovering uncollectible accounts expense in distribution rates in the POR Order issued in June, and did not find that the Restructuring Order constrained its ability to find that recovery in distribution rates was just, reasonable and in the public interest.

Fourth, the "benefits" of the Revised Electric POR Program have been recognized by the Commission in approving the Program and finding it to be in the public interest. *See* POR Order, p. 48. As PECO witness Alan Cohn explained in this proceeding, the Revised Electric POR Program creates a level playing field for EGSs and PECO. Because PECO will bear all uncollectible accounts expense and recover that expense in its distribution rates, both EGSs' prices for generation and PECO's price to compare will be set forth on a comparable basis, which excludes the cost of uncollectible accounts expense. *See* PECO St. No. 9-R, pp. 5-6. The OTS alleges that PECO's proposal will increase an EGS's profit margin because an EGS will price its products as if it were bearing uncollectible accounts expense. *See* OTS Main Brief, pp. 18-20. As discussed in PECO's Main Brief, EGSs are looking to meet or beat their competitors' prices in order to serve customers, and there is simply no evidence that an EGS would include a premium in its prices for an uncollectible accounts expense which it was not incurring. It is

important to note that the OTS proposal does not bring any unique “competitive benefits”⁴, but would undoubtedly require additional time and expense both to determine the appropriate expense to unbundle and to determine how the recently approved Revised Electric Purchase of Receivables would have to be modified. *See* PECO St. No. 9-R, pp. 7-8. Indeed, the OTS proposal is largely a conceptual one, and the OTS offers no specific tariff language, no details on how a Merchant Function Charge would be calculated or allocated and applied to customers, and no specific purchase of receivable discount (or formula for calculating such a discount) to be imposed on suppliers.

Finally, the Company does not agree that unbundling must occur “immediately to provide customers with a stable competitive market structure”. *See* OTS Main Brief, p. 24. Parties representing a wide variety of interests (consumers, small businesses and suppliers) have been active participants in both the Revised Electric POR Program proceeding and this proceeding, and no party other than OTS has opposed the Company’s continued collection of uncollectible accounts expense in distribution rates. The Company believes that this Commission-approved recovery method is in the public interest, and that the OTS has failed to provide any evidence to suggest that the Commission should reconsider its findings in the POR Order.

⁴ In surrebuttal, the OTS stated that “the unbundling of uncollectibles does not appear to have an effect on competition.” *See* OTS St. No. 2-SR, p. 4.

IV. CONCLUSION

For the reasons set forth above, PECO's proposal to continue to recover generation-related uncollectible accounts expense in its distribution rates and implement its Revised Electric POR Program consistent with the Commission's final Order at Docket No. P-2009-2143607 should be approved.

Respectfully submitted,

Dated: September 20, 2010



Thomas P. Gadsden (Pa. No. 28478)
Anthony C. DeCusatis (Pa. No. 25700)
Catherine G. Vasudevan (Pa. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: 215.963.5234
Fax: 215.963.5001
tgadsden@morganlewis.com

Anthony E. Gay (Pa. No. 74624)
Jack R. Garfinkle (Pa. No. 81892)
Exelon Business Services Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
Phone: 215.841.4635
Fax: 215.568.3389
anthony.gay@exeloncorp.com
jack.garfinkle@exeloncorp.com
Counsel for PECO Energy Company

Johnnie E. Simms
Adelou A. Bakare
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
josimms@state.pa.us
abakare@state.pa.us

Todd S. Stewart
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105-1778
tsstewart@hmslegal.com
Counsel for Dominion Retail, Inc.

Gary A. Jeffries
Assistant General Counsel
Dominion Retail, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
Gary.A.Jeffries@dom.com
Counsel for Dominion Retail, Inc.

Charles T. Joyce
Spear Wilderman, P.C.
230 South Broad Street, Suite 1400
Philadelphia, PA 19102
ctjoyce@spearwilderman.com
*Counsel for International Brotherhood of
Electrical Workers Local 614, AFL-CIO*

Charis Mincavage
Vasiliki Karandrikas
Carl J. Zwick
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
cmincavage@mwn.com
vkandrikas@mwn.com
czwick@mwn.com
Counsel for PAIEUG

J. Barry Davis
Chief Deputy City Solicitor
Scott J. Schwarz
Senior Attorney, Regulatory Affairs Unit
City of Philadelphia Law Department
One Parkway Building
1515 Arch Street, 16th Floor
Philadelphia, PA 19102-1595
j.barry.davis@phila.gov
scott.schwarz@phila.gov
Counsel for City of Philadelphia

Thu B. Tran, Esquire
Philip A. Bertocci, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505
ttran@clsphila.org
pbertocci@clsphila.org
Counsel for TURN, et al.

C. Stanley Stubbe
1438 Shaner Drive
Pottstown, PA 19465
csstubbe@cs.com

Charles McPhedran
Law Staff Chair
John Baillie, Senior Attorney
PennFuture
1500 Walnut Street, Suite 502
Philadelphia, PA 19102
mcphe dran@pennfuture.org
baillie@pennfuture.org
Counsel for PennFuture

Roger D. Colton
Fisher, Sheehan and Colton
34 Warwick Road
Belmont, MA 02478
rcolton.fsc@comcast.net

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue, Suite 720-T
St. Louis, MO 63105
excel.consulting@sbcglobal.net

Richard Baudino
J. Kennedy & Associates, Inc.
570 Colonial Park Drive, Suite 305
Roswell, GA 30075
rbaudino@jkenn.com

Stephen J. Barron
J. Kennedy & Associates, Inc.
570 Colonial Park Drive, Suite 305
Roswell, GA 30075
sbaron@jkenn.com

Arthur Z. Schwartz, Esquire
Advocates for Justice and Reform Now, P.C.
c/o Schwartz, Lichten & Bright
275 Seventh Avenue, Suite 1760
New York, NY 10001
districtleader@msn.com
Counsel for PCOC

Philip L. Hinerman
Jill A. Guldin
Fox Rothschild LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103-3222
phinerman@foxrothschild.com
jguldin@foxrothschild.com
Counsel for Philadelphia Housing Authority

Clarence L. Johnson
CJEnergy Consulting
3707 Robinson Avenue
Austin, TX 78722
cjenergy@grandecom.net

Holly Rachel Smith
Holly Rachel Smith, PLLC
Hitt Business Center
3803 Rectortown Road
Marshall, VA 20115
holly@raysmithlaw.com
Counsel for the Commercial Group

David C. Parcell
Technical Associates, Inc.
1051 East Cary Street
James Center III, Suite 601
Richmond, VA 23219
david.parcell@tai-econ.com

James T. Selecky
Brubaker & Associates, Inc.
P.O. Box 41200
St. Louis, MO 63141-2000
jtselcky@consultbai.com

VIA FIRST CLASS MAIL ONLY

Cynthia Gallagher
1130 Fanshawe Street
Philadelphia, PA 19111

Ryan Miller
9912 Medway Road
Philadelphia, PA 19115

Rita Griggs
202 East Sharpnack Street
Philadelphia, PA 19119-2261

VIA ELECTRONIC MAIL ONLY

James J. Schneider
Kimberly-Clark Corp.
1400 Holcomb Bridge Road
Roswell, GA 30076
james.schneider@kcc.com

Date: September 20, 2010



Thomas P. Gadsden (Pa. No. 28478)
Anthony C. DeCusatis (Pa. No. 25700)
Catherine G. Vasudevan (Pa. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: 215.963.5234
Fax: 215.963.5001
E-mail: tgadsden@morganlewis.com

Anthony E. Gay (Pa. No. 74624)
Jack R. Garfinkle (Pa. No. 81892)
Exelon Business Services Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
Phone: 215.841.4635
Fax: 215.568.3389
E-mail: anthony.gay@exeloncorp.com

Counsel for PECO Energy Company

ORIGIN ID: REDA (215) 963-5317
MAIL ROOM
MORGAN LEWIS & BOCKIUS LLP
701 MARKET STREET

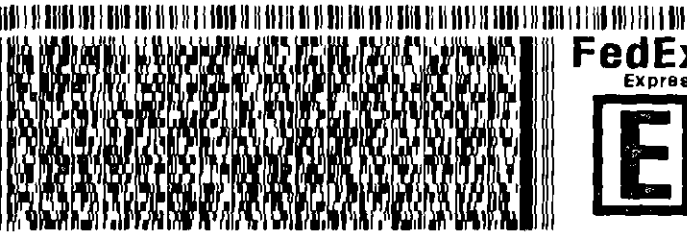
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PHILADELPHIA, PA 19103
UNITED STATES US

BILL SENDER

ROSEMARY CHIAVETTA, SECRETARY
PA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG PA 17120

REF: 00705 - 001515 - 0003

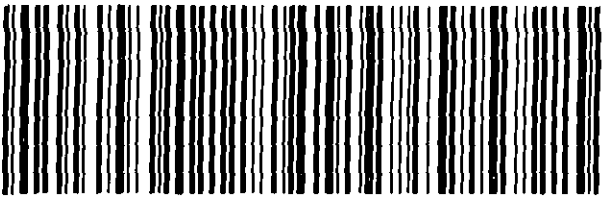


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TO: CHIAVETTA, R. PUC (CHIAVETTA)
Agency: PUC
Floor:
External Carrier: FedEx

3627
09.21

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

1701 Market Street
Philadelphia, PA 19103-2921

Morgan Lewis
C O U N S E L O R S A T L A W

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