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March 14, 2011

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

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Re: Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan – Petition for Approval of PECO Energy Company's Initial Dynamic Pricing and Customer Acceptance Plan
Docket No. M-2009-2123944

Dear Secretary Chiavetta:

Enclosed for filing are an original and nine copies of the **Reply of PECO Energy Company to the Exception of the Office of Consumer Advocate** in the above-referenced proceeding. Copies of the enclosed Reply have been served upon the Administrative Law Judge and all parties as evidenced by the enclosed Certificate of Service. In addition, a copy of the Reply has been provided to the Office of Special Assistants along with a disk containing the Reply in Word format.

Very truly yours,

Catherine G. Vasudevan
mmw

Catherine G. Vasudevan

CGV/tp
Enclosures

c: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
SMART METER TECHNOLOGY :
PROCUREMENT AND INSTALLATION : DOCKET NO. M-2009-2123944
PLAN – PETITION FOR APPROVAL OF :
PECO ENERGY COMPANY’S INITIAL :
DYNAMIC PRICING AND CUSTOMER :
ACCEPTANCE PLAN :**

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**REPLY OF PECO ENERGY COMPANY TO
THE EXCEPTION OF THE OFFICE OF CONSUMER ADVOCATE**

**To The Recommended Decision Of Administrative Law Judge
Marlane R. Chestnut**

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March 14, 2011

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I. INTRODUCTION AND OVERVIEW

On February 16, 2011, Administrative Law Judge Marlane R. Chestnut (the “ALJ”) issued her decision (“Recommended Decision” or “R.D.”) in the above-captioned matter recommending that the Pennsylvania Public Utility Commission (the “Commission”): (1) approve the Joint Petition for Partial Settlement¹, which resolves all issues pertaining to the Initial Dynamic Pricing and Customer Acceptance Plan (“Dynamic Pricing Plan” or “Plan”) of PECO Energy Company (“PECO” or the “Company”) except for one issue reserved for briefing and decision; and (2) adopt the Company’s position on the reserved issue.

The item reserved for litigation involves whether the development and implementation costs of PECO’s Plan that are assigned or allocated to Default Service Procurement Classes 1, 2, and 3 should be recovered from both shopping and default service customers or from default service customers only. *See* Joint Petition, p. 1. The Company proposed to recover its Dynamic Pricing Plan costs from default service customers only. *See* PECO St. No. 4, pp. 9-11. The OSBA and PAIEUG support the Company’s proposal. The OCA is the only party that opposes the Company’s proposal, arguing that costs (other than direct incentives to Plan participants) should be recovered from both shopping and default service customers.

On March 7, 2011, the OCA filed an Exception addressing the ALJ’s recommendation to approve the Company’s cost recovery proposal. PECO herein replies to the Exception.

¹ PECO, the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) are signatories to the Joint Petition. The Office of Trial Staff (“OTS”), Direct Energy Services, LLC, Direct Energy Business, LLC, and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) do not oppose the Joint Petition.

II. ARGUMENT

A. The ALJ Properly Rejected The OCA Proposal To Recover Plan Costs From Both Shopping and Default Service Customers

In the past year, the Commission has considered how to appropriately recover the costs of dynamic pricing programs proposed by Duquesne Light Company and PPL Electric Utilities Corp. On each occasion, the Commission has concluded that program development and implementation costs should be recovered from default service customers only.

Duquesne filed a Petition seeking approval of several time-of-use (“TOU”) pilots, as well as permission to recover associated development and implementation costs through its existing Consumer Education Surcharge (assessed to all customers served under its electric tariff). *Petition of Duquesne Light Company for Approval of a Time-of-Use Plan*, Docket No. P-2009-2149807 (Order entered June 23, 2010) (“*Duquesne Order*”). The OCA argued that many of the TOU plan development and implementation costs should be recovered through base rates because “the costs associated with developing and testing new rate designs are typical costs incurred in the normal course of business for a public utility.” *Id.* at 9. The Commission rejected both the Duquesne and OCA cost recovery proposals, concluding that TOU plan development and implementation costs should be recovered through default service rates:

With regard to the issue of cost recovery, the Commission does not view Duquesne’s Consumer Education Surcharge as an appropriate mechanism for the recovery of market research, development, and implementation costs specific to an EDC’s default service rate options, including TOU pilots. Further, the Commission disagrees with the OCA that such TOU costs should be recovered within a base rate proceeding. Base rate proceedings address costs related to distribution service, not default service. The Commission believes that costs incurred strictly to facilitate an EDC’s default service rates should be collected within default service rates themselves. Therefore, the Commission will permit Duquesne to

recover market research, development, and implementation costs of its TOU plan through its default service rates.

Id. at 11-12. The Commission also established deadlines by which Duquesne must file and serve summaries of the pilot results. *Id.* at pp. 10-11.

The Commission made similar findings in orders related to PPL's TOU programs. When PPL first proposed optional time-of-use programs, cost recovery was a heavily contested issue. The Commission ultimately directed PPL "to collect its TOU plan costs, and to credit the benefits, though its charges/credits to default service customers only." *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order entered March 9, 2010). In a later proceeding, PPL sought approval of new TOU rate options and permission to recover incremental costs associated with notification, enrollment and customer education. *PPL Electric Utilities Corporation Supplement No. 94 To Tariff Electric – Pa. P.U.C. No. 201- Time-of-Use Rates*, Docket No. R-2010-2201138 (Order entered December 2, 2010). The Commission concluded that the incremental costs should be recovered from default service customers within the appropriate generation supply classes, reasoning that such recovery would "create a more level playing field for potential Electric Generation Supplier (EGS) offers." *Id.* at 12.

Consistent with the recent Commission precedent, the ALJ in this proceeding recommended approval of the Company's proposal to recover Dynamic Pricing Plan costs from default service customers because the Plan was "developed for the purpose of offering dynamic pricing options to default service customers only." *See R.D.*, pp. 19-20. The OCA takes exception to the ALJ's recommendation, arguing that Plan costs (other than direct incentives to Plan participants) should be recovered from all PECO customers because all customers will benefit from the information gained through Plan implementation. *See OCA Exception*, pp. 3-7; *OCA St. No. 1*, p. 20. The OCA further contends that the prior Commission Orders regarding

dynamic pricing plan cost recovery are distinguishable and, therefore, should not inform the Commission's consideration of cost recovery for PECO's Plan.

In particular, the OCA argues the PPL Order is distinguishable because: (1) unlike PPL's TOU program, PECO's Plan is a "pilot"; and (2) PECO intends to share publicly the lessons learned from its Plan, thereby generating benefits for electric generation suppliers ("EGSs") and their customers, while, in PPL's case, "no evidence was presented regarding the benefits of the PPL TOU rate to all customers." *See* OCA Exception, pp. 6-7. Setting aside whether or not these purported differences exist or are material, the *Duquesne Order* establishes that neither "pilot" status nor the potential to create benefits for all customers distinguishes PECO's Plan from the Commission's earlier determination that the development and implementation costs of dynamic pricing programs should be recovered from default service customers only. As described *supra*, the programs approved in the *Duquesne Order* were pilots and Duquesne was required to submit reports on pilot results. Those reports will clearly be in the public domain and, therefore, will be available to help EGSs and their customers.

As a final effort to avoid Commission precedent, the OCA argues that even the *Duquesne Order* is distinguishable because: (1) "Duquesne already had a TOU plan in place as part of its current Default Service Plan"; and (2) Duquesne's cost recovery proposal was "completely different" from what is being considered in this proceeding. *See* OCA Exception, p. 6. No explanation or analysis is provided to indicate *why* these are distinguishing factors. In fact, just like Duquesne, PECO already has a dynamic rate in place as part of its current default service plan. *See* PECO St. No. 1, p. 11 (noting that hourly pricing is being offered to large commercial and industrial customers starting January 1, 2011). Finally, the fact that *both* Duquesne and OCA originally proposed to recover dynamic pricing costs from all customers (Duquesne

through an education surcharge and OCA through base rates), if anything, adds additional weight to the Commission's conclusion that dynamic pricing plan costs should be recovered from dynamic pricing customers only.

In light of these recent Orders addressing dynamic pricing program cost recovery, the ALJ's recommendation that PECO's Plan costs be recovered from default service customers only is well supported. PECO does not believe this issue should be revisited. However, and as noted by the ALJ in her Recommended Decision, if the Commission determines that such costs are to be recovered from both "shopping" and default service customers, then an appropriate rate *mechanism must be approved to recover from shopping customers, on a full and current basis,* the costs that are apportioned to them.

III. CONCLUSION

For the reasons set forth above, the Commission should reject the Exception filed by the Office of Consumer Advocate and adopted the Recommended Decision without modification.

Respectfully submitted,

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ACCEPTANCE PLAN :**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Reply of PECO Energy Company to the Exception of the Office of Consumer Advocate** upon the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Respectfully submitted,

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