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April 25, 2011

Via Electronic Filing

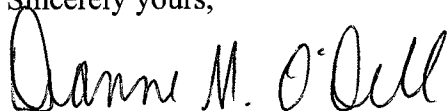
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for Expedited Approval of its Default Service Program and Rate Mitigation Plan – Petition for Expedited Approval of Revisions to the Generation Supply Adjustment Reconciliation Process for Default Service Procurement Class 1, Docket No. P-2008-2062739

Dear Secretary Chiavetta:

On behalf of Direct Energy Services, LLC enclosed for filing please find the original of its Answer in Opposition to the Petition of PECO Energy Company For Expedited Approval of Revisions to the Generation Supply Adjustment Reconciliation Process For Default Service Procurement Class 1 along with the electronic filing confirmation page with regard to the above-referenced matter. Hard copies to be served in accordance with the attached Certificate of Service.

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/lww
Enclosure

cc: Hon. Marlane R. Chestnut, w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Direct Energy's Answer in Opposition to the Petition of PECO Energy Company For Expedited Approval of Revisions to the Generation Supply Adjustment Reconciliation Process For Default Service Procurement Class 1 upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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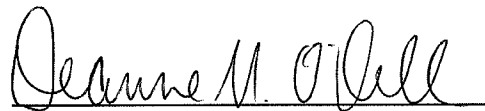
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Deanne M. O'Dell, Esq.

Date: April 25, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition Of PECO Energy Company For :
Expedited Approval Of Its Default Service :
Program And Rate Mitigation Plan – : Docket No. P-2008-2062739
Petition For Expedited Approval Of :
Revisions To The Generation Supply :
Adjustment Reconciliation Process For :
Default Service Procurement Class 1 :

**DIRECT ENERGY'S
ANSWER IN OPPOSITION TO THE
PETITION OF PECO ENERGY COMPANY FOR EXPEDITED
APPROVAL OF REVISIONS TO THE GENERATION SUPPLY
ADJUSTMENT RECONCILIATION PROCESS FOR DEFAULT
SERVICE PROCUREMENT CLASS 1**

Pursuant to 52 Pa. Code § 5.61, Direct Energy Services, LLC (“Direct Energy”) submits this answer in opposition to the PECO Energy Company’s (“PECO”) Petition for expedited approval of revisions to the Generation Supply Adjustment (“GSA”) reconciliation process for Default Service Procurement Class 1 (“Petition”). PECO requests approval to amend the previously approved and currently effective default service procurement plan to change the reconciliation mechanism for the residential class from quarterly to annually beginning with the second quarter of 2011 (April-June). As explained further below, Direct Energy opposes this request. First, PECO has offered nothing to justify its requested departure from a settlement agreement to which it has committed and which has been approved by the Commission. Second, PECO’s proposal will send inaccurate price signals to customers. Third, Direct Energy opposes PECO’s migration provision and is concerned that adopting its petition here may lead PECO to impose what could be viewed as “exit fees” on customers choosing a competitive alternative supplier. For these reasons, Direct Energy requests that PECO’s petition be denied and that PECO be required to remove the migration provision from its tariff.

INTRODUCTION

In its April 5, 2011 Petition, PECO seeks approval of an amendment of the Commission approved Settlement of PECO's Default Service Program and Rate Mitigation Plan at P-2008-2062739 which is currently in effect. Direct Energy participated in the proceeding leading to the final approved default service plan and is a signatory of the Settlement. Direct Energy is an electric generation supplier ("EGS") licensed by the Pennsylvania Public Utility Commission ("Commission") at A-110164 to provide electricity and related services to retail customers throughout Pennsylvania. As discussed in greater detail herein, the proposed amendment raises serious competitive concerns for residential customers and is not supported by the record. Therefore, PECO's petition should be denied and PECO should be directed to remove the migration provision from its tariff.

ANSWER

I. Background

1. **Admitted.**

2 to 4. **Admitted in part, denied in part.** It is admitted that, on September 10, 2008, PECO filed with the Commission a Petition ("DSP Petition") requesting that the Commission approve PECO's Default Service Program and Rate Mitigation Plan to establish rates, terms and conditions for the provision of default service for the period January 1, 2011, through May 31, 2014, for those customers who do not take service from an EGS or whose contracted generation is not delivered.

It is admitted that the Petitions to Intervene of Direct Energy and others were granted, and that Direct Energy joined the Joint Petition for Settlement ("Settlement"), which was approved by the Opinion and Order adopted on April 16, 2009 and entered on June 2, 2009 ("Default Service Order").

To the extent that Paragraphs 2 to 4 of the Petition contain a description of matters claimed to be set forth in the DSP Petition, the Settlement or the Default Service Order (or some combination thereof) those documents speak for themselves, and any allegation of the Petition that is contrary to and/or not corroborated by those documents are specifically denied. Any remaining allegations in Paragraphs 2 to 4 of the Petition are denied.

II. PECO's Request To Credit/Collect GSA Over/Under Recoveries On Annual Basis

5 to 9. **Admitted in part, denied in part.** It is admitted that Paragraphs 5 to 9 set forth PECO's request to credit/collect GSA over/under recoveries on annual basis (as opposed to a quarterly basis). It is further admitted that proposed tariff revisions to implement PECO's proposal were attached to Exhibit 1 to the Petition.

After a reasonable investigation, Direct Energy is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraphs 5 to 9 of the Petition and, therefore, these allegations are denied. For the reasons set forth below, Direct Energy recommends that the Commission deny PECO's petition.

First, PECO is asking the Commission to relieve it of an obligation to which it agreed (and in fact proposed) in the Settlement of the DSP Proceeding. However, PECO has providing no information or evidence to show that there has been a change in material circumstances or facts to justify this unilateral – and strongly opposed – requested change. Before granting West Penn Power Company d/b/a Allegheny Power (“Allegheny Power”) approval to accelerate its competitive procurement plan solicitations, the Commission made clear that it was doing so on the basis that it had previously authorized the Company to seek adjustments (either advancements or delays) in any pre-set procurement date or dates, based on unforeseen changes

in the marketplace and that the Commission had “no difficulty concluding that the recent precipitous decline in the market prices for generation products is an unforeseen market circumstance justifying adjustments in the Company’s pre-set procurement dates.”¹ PECO has offered no such showing here in support of its unilateral request to modify the Settlement. In fact, the record for the Settlement and the Default Service Order support the use of quarterly reconciliation of the GSA for class 1, the residential class.

The reconciliation mechanism currently in place which PECO seeks to amend was initially proposed by PECO in its default service case.² Pursuant to the current mechanism, PECO will recover the reconciliation from the first quarter of 2011 over twelve months while the reconciliation for all subsequent quarters is to be recovered on a quarterly basis with a one quarter lag. There is no record evidence from the DSP Proceeding to support PECO’s requested revision.³ While PECO claims in its petition that “customer shopping and weather seasonality can create large swings in GSA over/under recoveries from quarter to quarter. . . [which] generally off-set each other over a twelve-month period,” PECO has presented nothing to support this claim. PECO has not proffered any tangible facts to show how its proposed mechanism would be better for customers. PECO has not shown, as Allegheny Power was required to show, that there are any unforeseen reasons or other material changes justifying its requested departure from an agreed-to and approved default service plan. As the record in the default service case supports PECO’s current mechanism and PECO has not presented any

¹ *Petition of West Penn Power Company d/b/a Allegheny Power for Acceleration of its Competitive Procurement Plan and Request for Expedited Consideration*, Docket No. P-00072342, Opinion and Order entered March 20, 2009 at 14.

² DSP Petition, at ¶ 37; PECO St. 6 at 23-24.

³ *Id.* See also Settlement, at ¶ 47.

evidentiary basis justifying a revision of the Commission's prior order, PECO's petition should be rejected.

Second, Direct Energy strongly opposes PECO's proposal because it will not provide clear price signals to customers which will lead to customer confusion and a disruption in the marketplace. PECO states that the GSA rates will continue to be filed quarterly "in order to reflect the projected market price of generation supply." This statement, however, fails to reflect the underlying source of energy supply for the residential class in which seventy-five percent (75%) of the load will be served through competitively procured contracts for load-following, "full requirements" default supply service while the other twenty-five percent (25%) of the Residential class load will be competitively procured by PECO using forward purchases of energy blocks.⁴ This means that for 25% of the residential default rate, PECO must estimate the costs of providing service and recover the difference through the reconciliation mechanism. By spreading out the effect of the reconciliation over a twelve-month period, then, PECO's proposal divorces the price paid by the end user customer from the true market price of energy. The lack of regular "price signals" to both suppliers and residential consumers will contribute to a slow response to changed market conditions. This will (a) lead to less efficient resource allocation likely to occur in a competitive framework with clear price signals; and, (b) depart from the Commission's default service regulations regarding seasonal and quarterly rate adjustments.⁵ Notably, PECO never proposed in the DSP Proceeding to continue recovery of its reconciliation mechanism on a yearly basis thus depriving the parties of the opportunity to address it during

⁴ *Petition of PECO Energy Company for Expedited Approval of Its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739, Opinion and Order entered June 2, 2009 at 6-7.

⁵ See 52 Pa. Code §§ 54.187(h), (i) and (j).

that proceeding. If PECO's current proposal had been presented during the DSP Proceeding, Direct Energy expects that it would have opposed it.

Finally, adoption of PECO's proposal has the potential to create a significant barrier to competition as the effect of implementing it may be to impose potentially significant additional costs on customers wishing to leave default service. As proposed, PECO's Tariff would continue to provide that: "Customers taking default service during the reconciliation period that leave default service prior to the assessment of the collection of the over/under adjustment shall still pay or receive credit for the over/under adjustment through the migration provision."⁶ If the result of holding off recovery of the reconciliation for a twelve-month period is a significant payment owed to PECO, PECO may then be incentivized to implement its tariff to impose these costs on customers leaving default service which could be viewed by the customer as an "exit fee." Such fees are prohibited by the Commission's regulations at 52 Pa. Code 54.189(e). While PECO is required to "notify the Commission and parties to the Default Service Settlement 15 days in advance of the quarterly or monthly filing if the Migration Provision will be implemented in the filing," this advance notice is not enough to prevent harm to the competitive markets which may reasonably result from implementation of PECO's proposal. PECO's petition fails to address this significant issue which could result in a barrier a competition. For all these reasons, PECO's petition must be denied.

III. PECO's Request for Expedited Approval

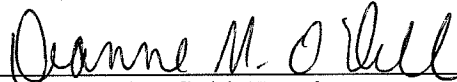
10 to 12. **Admitted in part, denied in part.** It is admitted that, prior the filing of the subject Petition, PECO has shared its proposed amendments with the parties to the Settlement. It is admitted that PECO has requested relief on the merits no later than the public meeting of June

⁶ Petition, Exhibit 1, at Third Revised Page No. 34.

9, 2011. It is denied that the parties have had sufficient time to study the potential impacts of PECO's request to credit/collect GSA over/under recoveries on annual basis. Direct Energy's responses to Paragraphs 5 to 9 of the Petition are incorporated herein by reference. Any remaining allegations in Paragraphs 10 to 12 of the Petition are denied.

WHEREFORE, Direct Energy respectfully requests that the Commission deny PECO's Petition and grant any other relief deemed to be reasonable and appropriate under the circumstances.

Respectfully submitted,



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Date: April 25, 2011

Attorneys for Direct Energy Services, LLC

VERIFICATION

I, Ronald Cerniglia hereby state that I am the Director of National Advocacy Government and Regulatory Affairs for the Direct Energy Services, LLC. and am authorized to make this verification on its behalf, and that the facts set forth in the in the attached **Answer** are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 4/25/11



Ronald Cerniglia
Director – National Advocacy
Government and Regulatory Affairs
Direct Energy Services, LLC.