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April 25, 2011

Via Electronic Filing

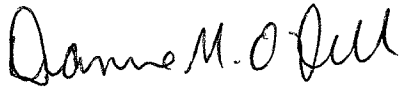
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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 the Retail Energy Supply Association (“RESA”) enclosed for filing please find the original of its Answer in Opposition to the Petition of PECO Energy Company 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 RESA's Answer in Opposition to the Petition of PECO Energy Company 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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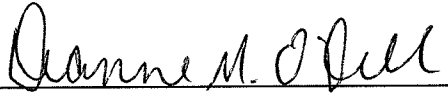
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Deanne M. O'Dell, Esq.

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 :

**ANSWER OF THE RETAIL ENERGY SUPPLY ASSOCIATION
IN OPPOSITION TO
THE PETITION OF PECO ENERGY COMPANY**

I. INTRODUCTION AND SUMMARY OF ANSWER

On April 5, 2011, PECO Energy Company (“PECO”) filed its petition, pursuant to 66 Pa. C.S. § 703(g) and 52 Pa. Code § 5.41, to amend the settlement of PECO’s currently effective default service program (the “Settlement”) which was approved by the Commission on June 2, 2009. *See 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. (“*Default Service Order*”). Specifically, PECO is seeking approval to alter one of the terms of the Settlement – to implement an annual, rather than quarterly, reconciliation mechanism for the residential class beginning with the second quarter of 2011 (April-June).

The Retail Energy Supply Association (“RESA”)¹ is a signatory of the Settlement and opposes PECO’s request. PECO has not provided any evidence of changed circumstances or

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. The comments expressed in this filing

other facts to justify its request to depart from the terms of the previously-agreed to settlement. Moreover, implementation of PECO's request will result in rates for the residential class that fail to timely and accurately reflect the costs of providing default service to residential customers. This distortion between the market price of energy and the retail rates that customers experience will send improper price signals regarding the true cost of generation. These distorted default service rates stymie continued competitive market development because competitive suppliers will be forced to compete against default rates that do not accurately reflect market prices and costs.

Further exacerbating this issue is the fact that PECO's current tariff permits it to assess the recovery of the reconciliation charge on customers who leave default service through the "migration provision." RESA opposes the imposition of this migration provision. Such an assessment can cause customer confusion and may be viewed by customers as a penalty for choosing a competitive supplier which would be contrary to the one of the main purposes of the Electricity Generation Customer Choice and Competition Act ("Choice Act") to "create direct access by retail customers to the competitive market for generation of electricity" and the Commission's regulations. 66 Pa. C.S. § 2802(12); 52 Pa. Code 54.189(e). For these reasons, RESA opposes PECO's petition and recommends that the Commission deny it.

A. Inaccurate Price Signals

PECO's current reconciliation mechanism was approved by the Commission in the *Default Service Order*. The current reconciliation was proposed by PECO and ultimately included in the Settlement. As explained in testimony supporting its proposal in the default service proceeding ("DSP Proceeding"), the purpose of PECO's reconciliation mechanism is to

represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

recover the changing cost of default service from quarter to quarter as well as the differences resulting from estimated and actual costs, differences in customer usage and billing lag. *See* Direct Testimony of Alan B. Cohn, PECO St. No. 6 at 23 (dated September 10, 2008). Because PECO projected that it would “unavoidably have a significant under-collection for its first reconciliation period” due to the imposition of higher generation rates upon removal of the generation rate cap, PECO proposed that this under-collection for its first reconciliation period “be amortized over a twelve-month period beginning July 1, 2011.” *Id.* at 24. However, PECO did not propose this same type of annual amortization for subsequent quarters instead proposing that subsequent recovery occur on a quarterly basis with a one quarter lag. *Id.* *See* PECO Exhibit ABC-4. RESA was the only party to oppose PECO’s proposed annual amortization for the first quarter. Specifically, RESA Witness Hudson testified:

By making the reconciliation adjustment period longer than the initial price application period where the over/under recovery occurred, PECO will be divorcing the actual default service rates from costs. As I have testified, default rates need to reflect costs on a current basis to ensure that a functioning competitive retail market can develop. PECO's proposal should be modified to ensure that any reconciliation adjustments are reflected in the GSA on a current basis over a quarterly period instead of an annual period.

Surrebuttal Testimony of Richard J. Hudson, Jr., RESA St. No. SR-1 at 27 (dated February 18, 2009).

Ultimately, RESA agreed to accept PECO’s proposed reconciliation mechanism as part of the Settlement that was approved by the Commission. As explained in the Joint Statement in Support of Joint Petition for Settlement submitted by RESA and Direct Energy Services, LLC, the Settlement made significant improvements over the initially proposed default service plan in terms of the procurement term, procurement structure, allocation of default service costs, and retail market issues. *See* Statement E attached to the Joint Petition for Settlement dated March 10, 2009. While the Settlement did not completely address all of RESA’s concerns, the package

of compromises it did include lead RESA to ultimately support it. Notably, the Settlement included only one annual reconciliation for only one quarter of costs with the longer term reconciliation to occur on a quarterly basis. On balance, RESA concluded this was a reasonable resolution.

With this Petition, PECO is asking the Commission to depart from the terms of the previously agreed-to settlement. As explained above, RESA did not support PECO's initial proposal but ultimately agreed to accept it as part of a package of compromises. While PECO now seeks to revise the agreement on this one issue, it offers no showing of changed circumstances or facts to justify the request. In the DSP Proceeding, PECO appeared to believe that after the first quarter of an expected under-collection, a "steady state" would be reached which could be addressed through a quarterly reconciliation going forward. *See* Direct Testimony of Alan B. Cohn, PECO St. No. 6 at 23 (dated September 10, 2008). PECO presents nothing new now to explain why this initial assessment is no longer reasonable. Instead, PECO references a "variation in sales caused by factors such as customer shopping and weather seasonality" as potentially causing "large swings in GSA over/under recoveries from quarter to quarter" and claims that these shifts are "not reflective of the market price of generation supply and generally offset each other over a twelve-month period." Petition at ¶ 5. However, PECO does not explain why these factors are a departure from what was anticipated at the time of the settlement or why PECO's initially approved proposal will no longer address these concerns. These statements, further, do not take into account the fact that the purpose of the reconciliation mechanism is to recover the changing cost of default service from quarter to quarter as well as the differences resulting from estimated and actual costs, differences in customer usage and billing lag. *See* Direct Testimony of Alan B. Cohn, PECO St. No. 6 at 23 (dated September 10,

2008). While PECO will continue to recalculate the default service rate on a quarterly basis, the actual default service “cost” will not be passed on to consumers in a timely way under PECO’s proposal here because it will be amortized over a year. Therefore, customers will not be seeing the true cost of energy on a real-time (or near real-time) basis thus distorting their perception of the market price of energy. As explained by RESA Witness Hudson in testimony submitted in the DSP proceeding:

Default service rates must be market-responsive and must reflect all of the relevant costs incurred by the EDC in providing default service. Both of these factors are required so that competitive suppliers can compete on equal footing with the EDC’s default service rates. If default service rates do not accurately track changes in market prices over time, then the default service rate will become out-of-market. This creates at best, intermittent opportunities for competitive suppliers to attract customers. Such a market design is not sustainable and presents too much risk for retail suppliers to enter the market. Similarly, if default rates do not fully reflect all of the costs of providing generation service (for example due to misallocated costs and cross-subsidization) then EGSs are at an unfair competitive disadvantage compared to the EDC’s default service rate.

Direct Testimony of Richard J. Hudson, Jr., RESA St. No. 1 at 10 (dated January 9, 2008).

Consistent with this testimony, the Commission has been clear that EDCs are required to use quarterly or shorter true-ups so that any deferrals can be minimized to the point of being negligible. *See Rulemaking Re Electric Distribution Companies’ Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. § 2807(e)(2)*, Docket No. L-00040149, Final Rulemaking Order entered May 19, 2007 at 37-39. PECO’s request here to revise a carefully crafted and agreed-to Commission-approved settlement to implement an annual true-up will not foster the development of a functioning competitive retail market, is not consistent with the Commission’s own pronouncements on this issue and lacks any

evidentiary support or basis upon which to grant the requested relief. For these reasons, PECO's petition must be denied.

B. Recovery from Customers Leaving Default Service

PECO's current tariff provides:

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.

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

Pursuant to this provision, PECO could attempt to bill shopping customers for some residual default service costs after switching service to a competitive provider although 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." *Id.* While not overtly a customer fee for leaving default service, the imposition of these charges on customers could be perceived as such by the customer. RESA does not support this migration provision and recommends that it be removed from PECO's tariff for all customer classes. The imposition of a retroactive charge on shopping customers in the form of a charge for recovery of a year's worth of reconciliations will distort and confuse customers about the consequences of their decision to leave default service. It will also lead to confusion in the marketplace because the bottom-line amount paid by customers will be based, at least in part, on a year's worth of reconciliation data rather than the current price of energy.

Moreover, PECO does not address how the migration provision may be implicated if its proposed change to the Settlement is approved. Instead, PECO seems to imply that – even if the migration provision is implemented – the ultimate annual reconciliation will be "bearable" to the customer as a way to "smooth out the impact of quarterly sales variation" without any evidence

to support the claim. The opposite scenario, however, is just as likely – that PECO might seek to collect on a one-time basis a significant under-recovery and then attempt to demand payment from customers who have already left default service or have plans to do so. For these reasons, even if the Commission is inclined to approve PECO’s petition (which it should not), the Commission must direct PECO to remove the migration rider from its tariff.

RESPONSE TO PECO’S NUMBERED PARAGRAPHS

A. 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 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 RESA and others were granted and that RESA is a signatory of the Settlement, which was approved by the Commission’s *Default Service Order*. The contents of these documents are self-explanatory. All other averments in these paragraphs are denied.

B. 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. It is denied that PECO’s petition should be

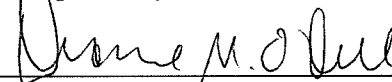
granted. Section I is incorporated herein by reference in support of RESA's position that PECO's petition must be denied.

C. 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 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. Any remaining allegations in Paragraphs 10 to 12 of the Petition are denied.

WHEREFORE, RESA respectfully requests that the Commission (a) deny PECO's Petition, (b) direct PECO to remove the Migration Provision from its tariff; and, (c) grant any other relief deemed to be reasonable and appropriate under the circumstances.

Respectfully submitted,



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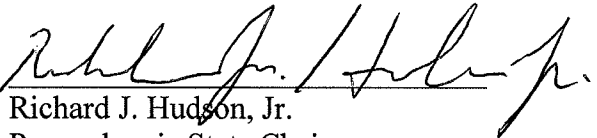
Date: April 25, 2011

Attorneys for Retail Energy Supply Association.

VERIFICATION

I, Richard J. Hudson, Jr. hereby state that I am the Pennsylvania State Chairman for the Retail Energy Supply Association 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


Richard J. Hudson, Jr.
Pennsylvania State Chairman
Retail Energy Supply Association