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May 17, 2012

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 Dynamic Pricing Plan
Vendor Selection and Dynamic Pricing Plan Supplement, Docket No. P-2012-2297304

Dear Secretary Chiavetta:

On behalf of Reliant Energy Northeast LLC ("Reliant") enclosed please find the original of its Petition to Intervene and Opposition along with the electronic filing confirmation with regard to the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely,



Carl R. Shultz

CRS/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Reliant Energy's Petition to Intervene upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

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Carl R. Shultz, Esq.

Dated: May 17, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :
Expedited Approval of its Dynamic Pricing : Docket No. P-2012-2297304
Plan Vendor Selection and Dynamic :
Pricing Plan Supplement :

**PETITION TO INTERVENE
AND OPPOSITION OF
RELIANT ENERGY NORTHEAST LLC**

Pursuant to 52 Pa. Code §§ 5.72-5.75, Reliant Energy Northeast LLC (“Reliant”) hereby petitions to intervene in the Petition of PECO Energy Company (“PECO” or “Company”) for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement Default Service Program (“Vendor Petition”).

The Vendor Petition presents an exciting opportunity that will bring an electric generation supplier (“EGS”) into the process of offering the Act 129 of 2008 (“Act 129”) required time-of-use (“TOU”) service. Reliant, as the company PECO selected to be the initial EGS to provide TOU service under its Dynamic Pricing Plan, appreciates PECO’s efforts in this very important endeavor and looks forward to cooperatively working with PECO and all interested stakeholders in making this program a success for customers and in enhancing the competitive market.

While Reliant commends PECO for championing this initiative, Reliant believes that three of the terms and conditions in the proposed Dynamic Pricing Plan Supplement (“Plan”), which is attached to the Vendor Petition as Attachment 1, have the potential to reduce the benefits to customers and the retail competitive market. Specifically, 1) PECO’s proposal to exclude from the customer bill Reliant’s name as the EGS providing TOU pricing and instead

include PECO's program name and the program call center telephone number may result in unnecessary customer confusion and appears to be inconsistent with regulations requiring an EGS to place its name and phone number on bills; 2) PECO's proposal that customers who do not affirmatively respond to contract renewal notices from Reliant be returned to default service appears inconsistent with the current rules regarding the consequences of customer non-action at the end of the term of an EGS contract; and 3) the apparent lack of safeguards to protect Reliant from potential regulatory compliance problems caused by having a separate vendor selected by PECO provide services for the TOU program (including, but not limited to, enrollment channels, marketing materials, and customer care services).

Unless PECO files a revised Petition and Plan removing the offending terms and requirements Reliant opposes the Vendor Petition (and the related Plan) and urges that they be referred to the Office of Administrative Law Judge for hearings to develop a factual record on these issues. In support of its intervention and opposition, Reliant states as follows:

Background

1. Among other things, Act 129 requires electric distribution companies ("EDCs"), with 100,000 or more customers (including PECO) to file smart meter technology procurement and implementation plans (smart meter plans) which include TOU rates and real-time price plans. 66 Pa. C.S. § 2807(f).

2. By Order entered May 6, 2010,¹ the Commission approved PECO's initial Smart Meter Technology Procurement and Installation Plan ("Smart Meter Plan"). On October 28, 2010, PECO filed its Petition for Approval of its Initial Dynamic Pricing and Customer

¹ *Petition of PECO Energy Company for Approval of its Smart Meter Technology and Procurement Plan*, Docket No. M-2009-2123944 (Order entered May 6, 2010). <http://www.puc.state.pa.us/pcdocs/1077321.docx>.

Acceptance Plan (“Dynamic Pricing Plan”), which is the next step in PECO’s Smart Meter Plan. In particular, the Dynamic Pricing Plan sought Commission approval to test two initial dynamic rate options (Critical Peak Pricing (“CPP”) and TOU Pricing) to determine effective combinations of rate design, technology, marketing and educational strategies for customers. PECO’s Dynamic Pricing Plan, as amended by a Joint Petition for Partial Settlement, was approved on April 15, 2011.²

3. In January 2012, PECO published a Request for Proposal (“RFP”) to select an EGS vendor to provide TOU service and become the supplier of record for customers who enroll for TOU service under the Dynamic Pricing Plan. The RFP also sought a vendor to market, solicit and enroll customers and provide call center support to customers who enrolled for TOU service under the Dynamic Pricing Plan. The RFP allowed bidders to submit proposals to provide all or a portion of these services. *See* Vendor Petition at ¶¶ 13-14, 17. By letter dated March 8, 2012,³ PECO informed the Commission that it had completed the vendor selection process for TOU service.

4. On or about March 7, 2012, PECO notified Reliant that it had been selected to be the “TOU Supply Vendor.” *See* Vendor Petition at ¶ 18. PECO also informed Reliant that Freeman, Sullivan & Company was selected to market, solicit and enroll customers and provide call center support (the “Program Management Vendor”). *Id.*

² *Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944 (Order entered April 15, 2011). <http://www.puc.state.pa.us/pcdocs/1128426.docx>.

³ <http://www.puc.state.pa.us/pcdocs/1168216.pdf>.

5. PECO filed the Vendor Petition on April 2, 2012 seeking approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement Default Service Program. But, as discussed below, Reliant was not served with a copy of the Petition.

Petition to Intervene

6. Reliant is named in the Vendor Petition, but was not served with a copy of the Vendor Petition.⁴ PECO served the Vendor Petition on the Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, the Commission's Bureau of Investigation and Enforcement, and the parties to the Company's Dynamic Pricing Plan proceeding. *See* Vendor Petition at ¶ 35; Vendor Petition, Certificate of Service. Reliant was not party to the proceeding at Docket No. M-2009-2123944, and only just became aware of this filing and PECO's request for expedited approval, and has acted promptly to intervene in this proceeding.

7. Reliant is an EGS licensed by the Commission at A-2010-2192350 to provide electricity and related services to retail customers throughout Pennsylvania, including PECO's service territory.

8. Reliant's attorneys in this matter are:

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Christopher O'Hara
General Counsel

⁴ A copy of the Vendor Petition was served on the undersigned counsel as the attorneys for the Retail Energy Supply Association, Direct Energy Services, LLC and Direct Energy Business, LLC. The undersigned was not counsel to Reliant at that time, and a copy of the Vendor Petition was not directly served on Reliant or Reliant's counsel.

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Reliant agrees to accept electronic service to all attorneys listed above to be followed up with one hard copy of the documents served.

9. The Commission's regulations allow intervention where a person has an interest in the proceeding which may be directly affected and which is not adequately represented by existing parties, and as to which the person may be bound by the action of the Commission in the proceeding. 52 Pa. Code § 5.72(a)(2). Intervention is also permitted where participation of the person may be in the public interest. 52 Pa. Code § 5.72(a)(3). A "person" includes a corporation and an association. 52 Pa. Code § 1.8.

10. Reliant meets the standards for intervention set forth in 52 Pa. Code § 5.72(a). As the EGS selected by PECO to be the TOU Supply Vendor, Reliant satisfies the standard for intervention because Reliant plainly possesses an "interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding." 52 Pa. Code § 5.72(a)(1).

11. Reliant's interests in this proceeding are unique from and not adequately represented by other parties that may seek to intervene, including individual EGSs or other organizations interested in electric competition in Pennsylvania in general and in PECO's service territory in particular. Reliant has a special and unique interest in the outcome of this proceeding. It also has an interest as a representative of EGSs that could be harmed if the

Commission approves some of the provisions that PECO is seeking to have included in its TOU program.

12. PECO's Vendor Petition seeks approval of the Plan, which is Attachment 1 to the Vendor Petition. The Plan details how PECO will administer its program, and how customers will receive service from the two separate vendors selected by PECO. That Plan will, therefore, have a material effect on the provision of TOU service in PECO's service territory. Reliant will be bound by the Commission's action in this proceeding, which will determine the terms and conditions for the provision of TOU service by the TOU Supply Vendor in PECO's service territory.

13. Reliant's intervention is in the public interest. *See* 52 Pa. Code § 5.72(a)(3).

Opposition

14. Reliant opposes several important aspects of the Plan because, as currently outlined, they appear to be inconsistent with Commission regulations regarding EGS practices including but not limited to billing, contract renewals and confidentiality of customer data. Reliant recognizes that all of these issues are of paramount concern to both the Commission and the Company because they directly relate to customer safeguards and the development of a fully competitive market as required by the Electric Competition Act.⁵ Consequently, Reliant remains confident that these issues can be remedied harmoniously among the parties in this proceeding.⁶

15. 52 Pa. Code § 54.4(b)(7) requires that the EGS name, address and telephone number be included on the customer bill. Reliant will be the EGS of record for these TOU

⁵ Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801 to 2812.

⁶ Reliant and PECO did try to resolve these issues informally and Reliant continues to be willing to work with PECO toward a successful resolution.

customers, and thus is obligated to comply with all of the Commissions regulations. Unfortunately, PECO's Plan, proposes a billing format that contravenes 52 Pa. Code § 54.4(b)(7). Instead of including Reliant's name and contact information on the customer bill, PECO proposes to include the name of the program and the PECO program call center telephone number. PECO's proposal would require Reliant to be noncompliant with applicable billing regulations and may lead to customer confusion. Moreover, PECO's proposal will make it appear that PECO, in its "EDC" or default service role, is providing the TOU service which is contrary to the goal of making the provision of electric service by the EDC "plain vanilla."⁷ Indeed, in its October 14, 2011 Tentative Order regarding the upcoming Default Service Plans, the Commission recognized the challenges of EDC provided TOU service.⁸ In an effort to alleviate those challenges, the Commission provided clear guidance to the EDCs that they contemplate contracting with EGSs to provide TOU service.⁹

16. Reliant will be the EGS of record for customers who enroll in PECO's TOU program and as such Reliant must ensure that all regulations applicable to its role as EGS are met. PECO's Plan for branding its TOU product appears contrary to the Commission's consumer protection regulations that require total transparency to the customer about their

⁷ See *PPL Electric, Generation Supply Charge-1*, PUC Docket No. M-2011-2258733, Statement of Chairman Robert F. Powelson, August 12, 2011 (PPL's TOU plan "is an example of why utility default service should be a 'plain vanilla' offering designed only to be a backstop service.").

⁸ *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Tentative Order, I-2011-2237952, October 14, 2011, at 7.

⁹ *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Final Order, I-2011-2237952, December 15, 2011 at 47. The Commission specifically stated in its Final Order that: "the flexibility that Exelon seeks should be requested in conjunction within specific EDC default service filings, to the extent that such filings propose new TOU formats and designs." *Id.* at 48.

electric generation supply service and service provider. This portion of the Plan also creates the possibility that customers will assume that the TOU service is coming from the EDC, rather than the EGS (Reliant) and this misunderstanding could result in customer confusion. Instead of educating customers about the choices available to them in the competitive marketplace – a key Commission goal – these TOU customers could be inadvertently misinformed about their source of supply.

17. Moreover, PECO's Plan proposes an EGS contract renewal process that is contrary to the Commission's *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Contractual Changes Affecting Customer Service*¹⁰ as adopted by Order date September 23, 2010. The Plan proposes that customers who do not affirmatively respond to contract renewal notices from Reliant be returned to default service.¹¹ This proposal is contrary both to the Commission's *Interim Guidelines*, and to the clear direction provided in the Commission's *Intermediate Work Plan Final Order*¹² as it relates to supplier referral programs and opt-in aggregation programs. Reliant will be the EGS of record for these TOU customers and has an obligation to comply with all Commission regulations. PECO's proposal appears to impair Reliant's ability to comply with these guidelines and requirements. Under the standard rules, a customer who has chosen the TOU product will receive two notices before the end of the term providing them with the option of: returning to default service; subscribing to another EGS; or continuing with a Reliant product. Under those rules, if the customer does nothing, he or she

¹⁰ 66 Pa. C.S. § 703(g).

¹¹ Vendor Petition at ¶ 21. *See also* Vendor Petition, Attachment 1 (Plan) at § 3.8 (“If the customer takes no action, they will automatically revert to PECO default service beginning with the relative month immediately following the pilot close.”).

¹² *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012), Order at 32.

will continue with Reliant on a month to month rate, with no termination or cancellation fees. In contrast, PECO's proposal to transfer the customer back to default service if he or she takes no action is contrary to guidance the Commission has provided in similar circumstances.

18. Finally, Reliant, as a Commission licensed EGS, has the ultimate responsibility to comply with all Commission regulations related to marketing, solicitation, enrollment, and customer service. PECO awarded the provision of the enrollment and customer service functions services to a separate vendor. This separate vendor will perform the functions for which Reliant is ultimately responsible under the Commission's regulations. While Reliant takes no position on the number of vendors to which PECO may choose to outsource these functions, it is imperative that a coordinated and transparent process exist between Reliant and the separate vendor because the separate vendor will be involved either directly or indirectly in functions that support fulfilling EGS obligations which are performed under Reliant's EGS license. This is crucially necessary so that Reliant - and the Commission - can ensure compliance with all PUC rules and regulations concerning advertising, marketing and billing. As proposed by PECO, sufficient safeguards are not in place to ensure there is no harm to Reliant, and ultimately to consumers, related to the vendor roles and coordination processes.

19. Reliant respectfully submits that, because of the above described proposed provisions, PECO's TOU proposal as initially filed, may be harmful to the development of the competitive market and could inadvertently cause customer confusion.¹³ Accordingly the Petition as submitted cannot be granted. Unless PECO modifies its Plan, the Commission should

¹³ Reliant feels that it is imperative to make this filing to maintain its procedural and legal rights. At this time, Reliant continues to evaluate its position on the PECO's Plan and will refine its position based on further study of the Plan, review of discovery and additional input from other parties. Therefore, Reliant reserves the right to add to the above list of issues.

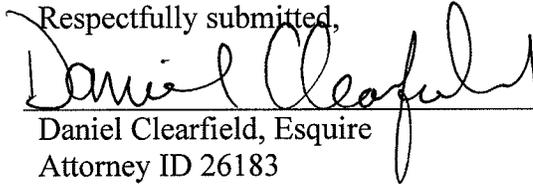
refer the petition to the Office of Administrative Law Judge and direct that hearings be held and a full factual record developed before any of these provisions are implemented. Alternatively, the Commission could direct that PECO's Petition be granted on the condition that PECO withdraw the offending provisions and file revisions that are consistent with the development of a retail competitive market and Reliant's comments.

Conclusion

WHEREFORE, Reliant respectfully requests that the Commission:

- (1) Grant its Petition to Intervene;
- (2) Direct PECO to either amend the Plan to conform to the requirements of the Public Utility Code and this Commission's policies and regulations by making the following modifications: a) include Reliant's name and contact information on the customer bill; b) follow the Commission's existing contract renewal notifications and procedures at the end of the program period; and c) require a process that enables Reliant to ensure adequate coordination when working with other PECO vendor(s) regarding implementation of this program and that Reliant is not subject to liability if PECO's other vendor(s) violate PUC regulations or requirements; or
- (3) Assign the Vendor Petition (and the related Plan) to the Office of Administrative Law Judge for hearings to develop a factual record; and
- (4) Grant any relief deemed to be in the public interest.

Respectfully submitted,



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Date: May 17, 2012

Attorneys for Reliant Energy Northeast LLC

VERIFICATION

I, **Aundrea Williams**, state that I am the Vice President, Retail Regulatory Strategy & Policy for NRG, and that as such I am authorized to make this verification on behalf of **Reliant Energy Northeast LLC ("Reliant")**, which is part of the NRG family of companies. I hereby state that the facts contained herein are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. 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: May 17, 2012



Aundrea Williams
Vice President, Retail Regulatory Strategy & Policy
NRG