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June 26, 2012

Via Hand Delivery

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 enclosed for filing please find the original and three copies of its Reply to New Matter of PECO Energy Company with regard to the above-referenced matter. Hard copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Carl Shultz

DC/lww

cc: Certificate of Service w/enc.

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**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 :

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**REPLY OF
RELIANT ENERGY NORTHEAST LLC
TO THE NEW MATTER OF PECO ENERGY COMPANY**

Reliant Energy Northeast LLC (“Reliant”) hereby replies to the New Matter in the Answer and New Matter of PECO Energy Company (“PECO Answer”) to Reliant’s Petition to Intervene and Opposition (“Reliant’s Petition”). Reliant sought to intervene in, and opposed, PECO’s Petition for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement (“Vendor Petition”). PECO’s Answer opposes Reliant’s Petition to Intervene, and suggests that if the Commission finds in favor of Reliant and modifies PECO’s proposed Plan Supplement (“Plan”)¹ that PECO will either rebid the entire project or revert to its previous plan and provide the time of use (“TOU”) service directly.²

Below, Reliant addresses PECO’s arguments in detail. In brief, PECO is wrong both in opposing intervention and in its defense of the underlying Vendor Petition.

As to intervention by Reliant, PECO contends that Reliant cannot intervene in a proceeding brought by PECO to determine the terms and conditions of the relationship between Reliant and PECO. It is hard to imagine a more appropriate circumstance for intervention.

¹ PECO’s Plan Supplement is Attachment 1 to the Vendor Petition.

² PECO’s Answer, at ¶ 28.

As to the merits in its New Matter, PECO raises four central points, each of which conflicts with the facts, with Commission pronouncements, or both.

First, PECO contends that its proposed plan to satisfy its Act 129 obligations by arranging for an electric generation supplier (“EGS”) to provide the TOU service is really a default service product. It is not. Rather, it is, instead, a “competitive service.” The Commission’s Order in the *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952, confirms that point. The Commission’s goal was to utilize the Act 129 obligation to provide a TOU rate as an opportunity to advance the competitive retail market. Not only does PECO’s proposal thwart that objective, it also conflicts with portions of PECO’s request for proposals (“RFP”).

Second, PECO contends that in any event, Reliant knew all material terms and conditions that PECO sought to impose (and that Reliant has here raised as issues) before it bid, and effectively agreed to them by bidding. That contention is demonstrably false., particularly with regard to several key terms. Among those is the provision that a Reliant TOU customer who takes no action at the end of the term would be switched back to default service. PECO’s proposal is inconsistent with the general rule and the Commission’s treatment of analogous situation in the *Pike County Aggregation Proceeding*.³ PECO also has presented no materials supporting its contention - that the “Statement of Work” (which is also referred to as the RFP)⁴ had informed bidders that it intended to impose such a rule. Indeed, the attached verified statement of Reliant’s representative in all of the interactions with PECO during the bid process

³ The Commission’s recent decision in the *Pike County* case is instructive. See footnotes 20 to 21, *infra*, and the accompanying text.

⁴ The RFP is Attachment 1 to PECO’s Answer.

establishes that this “term” was never communicated to Reliant before he learned that Reliant was the successful bidder.

Third, PECO contends that because the TOU program is a “one-time pilot”, the normal rules and regulations governing EGS service should not apply. No Commission rule, regulation, statute, or order provides such a rule. Instead, it should be beyond argument that PECO’s Plan and the EGS selected to supply a TOU product must comply with the applicable laws and regulations. Nothing gives PECO discretion to unilaterally dictate terms of the service that conflict with these rules. The plain fact is that PECO’s Plan contains provisions that are inconsistent with Commission regulations regarding EGS practices, including but not limited to: (1) billing (Reliant’s name and number on the bill); (2) EGS contract renewals (consequences at end of the EGS contract term for a customer who takes no action); and (3) consumer protections designed to ensure customers are fully informed about their supplier and that their data is protected (interaction with the Program Management Vendor). Those provisions in PECO’s Plan either have to be altered to comply with the Commission’s regulations or the Commission must waive the applicable rules and regulations, if good cause is shown to do so.⁵

Fourth, there is no basis for PECO to deny Reliant’s interest in this proceeding or to threaten to “withdraw” its filing and either revert back to its prior Dynamic Pricing Plan⁶ or issue a new RFP. Indeed, having filed the Vendor Petition, PECO cannot legally unilaterally withdraw it, nor can it cancel the award of the contract to Reliant. PECO may only withdraw its Vendor Petition upon a Commission determination that such a withdrawal is in the public

⁵ The Vendor Petition does not contain any requests for a waiver of the key rules.

⁶ See *Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123944, Order entered May 6, 2010.

interest.⁷ Any attempt to withdraw its proposal would be unreasonable and contrary to the public interest and should be denied. A public utility should not be permitted to dictate terms to its regulator.

Nor is there any basis for rebidding the contract. Neither Reliant nor any other bidder was formally informed prior to bidding on February 15, 2012 of the various special proposed contract terms that conflict with established Commission guidelines; therefore, there is no basis to suggest that the project's pre-bid terms have changed such that a new RFP would be appropriate.

In the final analysis, the crucial question is whether the Commission is going to follow through with its commendable prior decision to find ways to benefit the competitive retail market while meeting the default service provider's Act 129 obligation to provide a TOU rate to customers. If it wishes to do so, the Commission must structure the TOU Plan in a manner designed to achieve that goal. Authorizing an EGS – such as Reliant – to offer a competitively priced TOU product to customers, but then altering operational rules concerning billing, dealing with agents, and end of EGS contract procedures will eviscerate the benefits to the competitive market and to customers that the Commission was trying to achieve and instead establishes a negative precedent that could harm future efforts to stimulate the competitive market. Accordingly, Reliant respectfully requests that Reliant's Petition to Intervene and Opposition be granted, and PECO's TOU Pilot Program be approved subject to the changes requested by Reliant in its Petition and Opposition.

⁷ See footnote 33, *infra*, and the accompanying text.

Reply

Reliant responds as follows to the major points raised in PECO's New Matter, ¶¶ 20-30.

The headings below correspond to the three major headings in PECO's New Matter:

A. (¶¶ 20-23) PECO's Proposed TOU Service Is Fundamentally A Competitively Provided EGS Product Offering And As Described By PECO Is Inconsistent With Commission Guidance

PECO contests Reliant position that the service it has been selected to provide – the TOU service PECO is required to provide by Act 129 – is a “competitive service.” PECO asserts instead that the service is a “default service” that Reliant is providing as service akin to a wholesale vendor for PECO. (See PECO's Answer, ¶¶ 14-17, 20-23). PECO is wrong.

PECO's assertion is based entirely on the Commission's April 14, 2011 order approving PECO's previous Dynamic Pricing Plan.⁸ However, PECO conveniently fails to acknowledge that the April, 2011 order pre-dates the Commission's seminal order in the *Retail Markets Investigation*.⁹ The Commission there adopted the recommendations of various EGSs and other pro-market commentators¹⁰ that the Commission utilize the Act 129 obligation to provide a TOU rate as an opportunity to advance the competitive retail market. The Commission agreed, ruling that electric distribution companies (“EDCs”) should consider fulfilling their Act 129 obligations by having an EGS provide the service as a competitive retail offering rather than having the EDC

⁸ See footnote 6, *supra*.

⁹ *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952, Final Order entered December 16, 2011, at 44.

¹⁰ *Id.* (“OCA, Citizens Power, The First Energy Companies, Duquesne, RESA, NEM, UGIES, Dominion Retail and IGS agree with the Commission's recommendation to have EDCs contemplate contracting with a retail EGS in order to satisfy the statutory requirement that a default service provider offer TOU rates.”).

provide the service via an extension of default service.¹¹ Having EDCs satisfy their Act 129 TOU service obligation in this way is a “win-win” because it would satisfy statutory requirements while introducing more customers to the competitive retail market, a policy goal that the Commission has emphatically endorsed.¹² Adopting PECO’s interpretation of the Commission’s action – that an EGS provides the service as the EDC’s wholesale “vendor” – is inconsistent with the Commission’s oft-stated policy goal of transitioning customers from default service to the competitive retail market. PECO’s interpretation also conflicts with another Commission goal – to insure that default service be “plain vanilla” and that the service is not to be structured in a way that it becomes a service of first resort.¹³

PECO’s claim that the TOU service is a “default service” is also belied by the way in PECO originally proposed in the RFP - that the customer would receive TOU service from the EGS, just as any other EGS service is provided. The customer will receive the energy commodity from the EGS, and PECO will receive price and billing information from the EGS.¹⁴ PECO is requiring that the winning EGS submit enrollment and billing transactions to PECO

¹¹ *Id.* at 47. Act 129 does not require that a default service provider actually provide the TOU service. It only requires the submission of TOU rates or pricing plans to the Commission for “approval.” *See* 66 Pa. C.S. § 2807(f)(5).

¹² The Commission directed the EDCs to submit for its approval a proposal detailing how they would bid out TOU service to an EGS as part of their upcoming Default Service Procurement cases. *Id.* at 47-48. That process allows all stakeholders to comment on those proposals and gives the Commission the ability to consider all input and determine the best path forward for the provision of EGS TOU product. PECO chose to bypass that public stakeholder process and issued its RFP soliciting an EGS to provide TOU service.

¹³ *See PPL Electric, Generation Supply Charge-1*, 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.”).

¹⁴ *See* Plan at 27. In addition, PECO Communication Bulletin E-313 was specifically addressed to PA Registered EGSs indicating an intent that this was a retail bid.

using the existing EDI process.¹⁵ The customer account will be transferred to the EGS – just like any other customer switch to an EGS – and the EGS will be the supplier of record for that customer. Simply stated, the TOU service to be provided to PECO distribution customers is a competitively provided EGS service. It is also precisely what the Commission intended when it recommended that the EDCs contemplate allowing competitive retail suppliers, who are more experienced and knowledgeable about providing such services, to provide that service.¹⁶ Stated plainly, PECO may have assumed that deciding to use an EGS to provide the TOU service did not change the fundamental nature of the service to be provided – but there is clear evidence that the Commission did not share that assumption.

Why is this important? Because by failing to recognize that Reliant would be providing a retail electric product to customers, and treating the service to be provided by Reliant as just another wholesale service, PECO failed to recognize that many of the operational rules it was proposing are not consistent with the Commission’s order and regulations related to the provision of retail service to a customer.¹⁷ Specifically:

- Absent Appropriate Contractual Provisions Consistent with Commission Rules and Precedent, TOU Customers Must Remain Reliant Customers Upon Non-Action at End of Contract Term. Of most concern to Reliant is PECO’s demand that customers who sign up for the TOU program will, after receiving required notices, actually be transferred *back* to default service if they take no action. This is, of course, exactly opposite of the rule that applies for all other competitive retail service, where a customer who takes no action at the end of the term, remains on the EGS service on a month-to-month, no-early

¹⁵ See RFP at 10. There is no doubt that PECO clearly intended the EGS to become the supplier of record otherwise it would not have required potential bidders to be certified to serve PECO customers and to be approved to exchange data via the EDI processes for the duration of the program.

¹⁶ See footnote 9, *supra*.

¹⁷ 52 Pa. Code § 54.43. Contrary to PECO’s characterization, Reliant did not assert that PECO’s TOU program is a “supplier referral” or “retail opt-in auction” program. Reliant has asserted, correctly, that it is the supplier of record for customers in the TOU program. As the supplier of record, Reliant must comply with the applicable laws and regulations.

termination fee basis.¹⁸ Again, this PECO proposal is not only inconsistent with Commission rules¹⁹ but would do serious harm to the competitive retail market that the EGS bid-out approach would otherwise promote. As the Commission is well aware, some customers take no action at the end of a program term, preferring to simply stay with their serving EGS. This is fair since the customer, now in the competitive retail market, is aware of the other options and can switch without penalty at any time. Moreover, PECO's proposal has the potential to cause a great deal of customer confusion. Unlike all other EGS provided products supplied in the market, these TOU customers would be forced back to default service at the end of the contract term absent affirmative action to remain with Reliant. Customers who later decide to shop with another supplier will be surprised to learn that rather than returning to their EDC at the end of their contract term, they will remain with an EGS absent affirmative steps. This result creates a much more confusing situation for customers new to shopping in the retail competitive market. Customers should be provided with the most positive and consistent shopping experience possible. Allowing different rules to apply to PECO's TOU program will only confuse customers and ultimately harm the retail competitive market.

Importantly, in a similar situation, the Commission rejected any notion that a customer could be transferred back from a competitive retail product to default service, without their affirmative consent. In *Pike County*,²⁰ this Commission held that customers who were assigned to an aggregation program on an opt-out basis, and remained on that program for three years without making an alternative choice during that time, were deemed to have made an affirmative choice to remain with the aggregation program EGS. The Commission stated that if those customers were automatically returned to the EDC's default service without an affirmative action by the customer, that action would fail to give effect to their initial choice, contrary to Section 2807(d)(1) of the Public Utility Code, 66 Pa. C.S. § 2807(d)(1). So, the Commission made clear that established operational rules should continue to apply at the end of the recent Pike County Aggregation Program,, and most tellingly, mandated that customers who took no contrary

¹⁸ The Commission has made clear in an analogous situation – the Standard Offer Program and Retail Opt-In Auction Programs – that the standard, end of term rules apply. *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012), Order at 32. See also *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Contractual Changes Affecting Customer Service*, Docket No. M-2010-2195286, Order entered September 23, 2010, 2010 Pa. PUC LEXIS 1429.

¹⁹ PECO claims that the automatic contract renewal guidelines apply only to fixed-price/fixed-term contracts. Reliant submits that this claim is inaccurate. But, even if it was accurate, it would not apply to Reliant's TOU product, which is indeed a fixed-price/fixed-term offer. No other jurisdiction is given in the Vendor Petition or PECO's Answer for the return of customers to default service.

²⁰ *Petition for Pike County Light & Power Company for Expedited Approval of Its Default Service Implementation Plan*, Docket No. P-2008-2044561, Opinion and Order entered July 26, 2010.

affirmative action would continue to be served by that EGS on a month-to-month, no termination penalty basis. The *Pike County* decision is important because it shows the Commission's intent to uphold standard competition rules when possible and to take action that continues to advance – rather than frustrate – the competitive retail market. It is very disappointing that a company that professes to be pro-competition would advance a proposal²¹ that so clearly would frustrate any benefit to the competitive retail market that the TOU bid-out might achieve.

- Reliant Name and Phone Number Should Appear on Customer's Bill. PECO is willing to place Reliant's name on the bill. (PECO's Answer, ¶ 15). But, contrary to Commission regulations, PECO continues to oppose including Reliant's phone number on the bill, despite the fact that, as explained above, the TOU customer will be a Reliant customer. See 52 Pa. Code § 54.4(b)(7). PECO will only allow its call center number to appear on the bill.²² If their call center number is used, customers would reach the Program Management Vendor – not Reliant. And, given that the call center is being managed by the Program Management Vendor, it appears that Reliant would not have control over the call center scripts or access in real time to all customer contact records. This would make it difficult, if not impossible, for Reliant to ensure compliance with the Commission's regulations. It also highlights, as discussed in greater detail below, Reliant's concerns regarding the use of separate Program Management Vendor, and the fact that PECO's Vendor Petition fails to address the interrelationship between Reliant and the separate Program Management Vendor.²³
- Use of Program Management Vendor Imposes Compliance Risk on Reliant. Reliant does not object to the use of a separate marketing vendor. In fact, this is the one point that PECO did reveal during the bidding process.²⁴ However, it is imperative that a coordinated and transparent process exist between Reliant and the Program Management Vendor selected by PECO so that Reliant can be assured that this separate vendor will not cause Reliant to violate applicable Commission rules and regulations.²⁵ Moreover,

²¹ The nature of PECO's proposal as a pilot program of limited duration is not relevant. See footnote 19, *supra*. Just like the option-in auction program and the aggregation program, the automatic return of these customers to the EDC's default service would fail to give effect to their initial choice of service from an EGS.

²² Page 20 of the RFP states: "EGS Role:...Inclusion of program name and call center number on monthly bill." Because it is under the heading of "EGS Role" this is a reference to Reliant's call center under Task 1, not to the call center being operated by Program Management Vendor under Task 2.

²³ See Reliant's Petition, at ¶ 18.

²⁴ PECO's Answer focuses on the bifurcation of the vendor functions between the "TOU Supply Vendor" and the "Program Management Vendor." But, as Reliant stated in its Petition, Reliant takes no position on the number of vendors to which PECO may choose to outsource these functions. See Reliant Petition at ¶ 18.

²⁵ Reliant Petition at ¶ 18.

Reliant has concerns about sharing its intellectual property with another vendor that Reliant considers to be a direct competitor in the marketplace. Despite these concerns, PECO's selected Program Management Vendor so far refused to enter into any binding agreement with Reliant that would allow Reliant to protect itself adequately. Absent a reasonable solution, Reliant has no way to protect its brand, reputation, or license against possible Commission action if any compliance issues related to the services provided by the Program Management Vendor arise while Reliant serves these TOU customers. Moreover, the lack of a reasonable solution will potentially leave customers with an unsatisfactory experience with the competitive retail market, which, in turn, harms the competitive retail market in general.

PECO's fundamental misconception about the nature of the service to be provided by Reliant is really at the heart of this disagreement. If the service provided by Reliant is viewed properly as a retail service that it will provide, on PECO behalf, in fulfillment of PECO Act 129 obligation, then the rules changes proposed by PECO would appear not to be justified. Nonetheless, and in the interest of compromise, Reliant is willing to work with PECO to modify some of the operational rules and billing requirements (as discussed above) in recognition of the fact that Reliant's service will be provided in conjunction with PECO. But such modifications cannot go so far as to frustrate the competitive retail market enhancements that the Commission sought to achieve by recommending this course in the first place.

B. (¶¶ 24-27, 29) Prior To PECO's Petition, Reliant Was Not Aware That PECO Intended To Propose Significant Changes To The Standard Service And Billing Rules And Reliant Is Not Now Precluded From Challenging The Terms Of PECO's TOU Program

PECO alleges that it advised Reliant of all material aspects of the proposed revisions to the Plan before Reliant bid. (See PECO's Answer, ¶¶ 5-6, 15, 18, 24-27, 29). Based on that unsubstantiated allegation, PECO asserts that Reliant is "estopped" from challenging the revisions to the Plan. *Id.*

PECO is simply and demonstrably wrong that Reliant was informed “pre-bid” that PECO intended to require EGSs to provide service under terms that are materially different than those that ordinarily would apply to an EGS service offering. Reliant was not advised of most material aspects of the proposed revisions to the Plan before the bid or before the Vendor Petition was filed with this Commission. PECO has provided no evidence to support the claim that PECO timely advised Reliant of the dispute aspects of the subject Plan.

One of the most important aspects of the revisions is the way TOU customers will be treated at the end of the program.²⁶ PECO contends that the bid documents “speak” for themselves and they do²⁷ — they are completely mute on this point. *Nothing* in the RFP, nor in any of the other pre-bid documents reviewed by Reliant states that customers will be returned to default service at the conclusion of the program.²⁸ Nothing suggested that the normal rule, which is quite to the contrary, would not be followed. Reliant submits as Attachment 1 the verified statement of its principal business lead, who was the primary point of contact with PECO during the bid process. That Affidavit affirms that PECO provided no such communications to Reliant.²⁹

With respect to the other areas in dispute, the verified statement confirms that:

- Reliant was made aware that there could be a separate marketing vendor chosen for the project. But there was no discussion of the relationship between the separate vendor and the winning EGS chosen to provide the TOU service.

²⁶ See footnotes 24 and 25, *supra*, and the accompanying text.

²⁷ See PECO’s Answer, at ¶¶ 3, 12.

²⁸ Reliant notes that the Plan is dated April 2012, Reliance submitted its bid on February 15, 2012, and PECO notified Reliant that it was the successful bidder on or about mid-March 2012.

²⁹ Reliant is aware of a single document as to which PECO sought comments from Reliant. That document outlined the Vendor Selection process. Reliant provided minor edits to more accurately describe Reliant. Nowhere does in this document outline the issues of concern raised in Reliant’s Petition. (See Attachment 1 to this Reply).

- Reliant was not aware that its name would not be included in the communications presented to customers about the TOU program. Pages 19 and 20 of the RFP do not state that winning supplier would be concealed from the customer. Instead, they provide that “all language used in all communications and touch points will be developed and approved by PECO Communications **in conjunction** with PECO Marketing.”

Simply put, the record shows that Reliant was not advised of all material aspects of PECO’s proposed revisions to the Plan. There is no estoppel. And there is no unambiguous proof of Reliant’s prior knowledge and acquiescence to the other PECO proposals that Reliant’s has set forth herein and in Reliant’s Petition.

C. (¶¶ 28-30) PECO Does Not Have The Discretion To Unilaterally Structure The TOU Bid-Out Program And May Not, Without Commission Approval, Withdraw Its Present Plan

PECO claims that Reliant’s requested relief would cause PECO to incur additional expenses, cause additional delay in approval of the revisions to PECO’s Plan, and could jeopardize PECO’s stimulus grant funding. (See PECO’s Answer, at ¶¶ 28-30). PECO goes on to suggest that if the Commission does not approve its Plan as filed, PECO “would have to seriously consider withdrawing its ... filing proceeding with its previously approved Dynamic Pricing Plan”³⁰ and that it “has no statutory obligation” to partner with EGSs in the provision of TOU service.”³¹ In the alternative, if it does not withdraw its Plan, PECO threatens to issue a new RFP “and give all potentially interested parties an opportunity to bid on the revised Plan, i.e., one containing PECO’s preferred terms”³²

To be clear, PECO voluntarily chose to follow the Commission recommendation that EDCs meet their Act 129 TOU requirements by bidding out the provision of TOU service to an

³⁰ PECO’s Answer, at ¶ 28.

³¹ *Id.*, at footnote 13.

³² *Id.*

EGS. Having filed the Vendor Petition taking this course, PECO may not now withdraw its pleading without Commission approval. The Commission's procedural rules state plainly that:

a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 20 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.³³

Indeed, permitting PECO to dictate the terms of how it will implement this competitive retail market enhancement is plainly inconsistent with the public interest. PECO's insistence on terms and conditions that threaten to undermine the fundamental benefit to the competitive retail market derived from that bidding out the TOU program to an EGS highlights the importance of having the Commission – and not an EDC – make the final decision on competitive retail market enhancements that have the potential to deliver the benefits of retail competition to customers.

As the first EDC to propose that an EGS provide TOU service to meet its Act 129 requirements, PECO's Plan will likely set a precedent for subsequent EDC TOU proposals. As explained in Reliant's Petition, PECO's proposal will impair Reliant's ability to comply with Commission regulations and will harm the competitive retail market. These compliance and policy issues remain whether Reliant or another supplier provides TOU service to PECO distribution customers. Additionally, that PECO's TOU program is purported to be a "one-time pilot" is irrelevant.

The supplier community shares Reliant's concerns. Both RESA and IGS have filed responses to PECO's Vendor Petition that support Reliant's assertion. Reliant urges the

³³ 52 Pa. Code § 5.94(a) (withdrawal of pleadings in a contested proceeding). *See also* 52 Pa. Code § 1.82(a) (withdrawal or termination) ("If upon review the presiding officer or the Commission determines that the public interest requires continuation of the proceedings, the petition will be denied and the staff may be directed to participate.").

Commission to avoid establishing the “precedent” here that EDCs will be allowed to establish ersatz competitive retail market enhancement plans on their own terms, and to ignore the legitimate concerns of other stakeholders or the Commission.

This Commission has the power and the duty to enforce the requirements of the Public Utility Code against a public utility³⁴ and to oversee the development of the competitive retail electric market.³⁵ PECO decided on its own what the Commission meant when it encouraged EDCs to solicit an EGS to satisfy its Act 129 TOU rate requirement and unfortunately they overlooked significant policy issues. Reliant tried unsuccessfully to amicably resolve its differences with PECO over the contract provisions.

The Commission has the power and the authority to *order* PECO to move forward with this Plan, with appropriate modifications needed to eliminate anti-competitive and unreasonable provisions. Reliant respectfully urges the Commission to do so and send a clear signal that it will not tolerate steps to maintain the electric company’s hegemony over electric generation service in its service territory.

[Signature appears on next page]

³⁴ 66 Pa. C.S. § 501(a).

³⁵ 66 Pa. C.S. §§ 2801, *et seq.* See also footnote 5, *supra*.

Conclusion

WHEREFORE, Reliant respectfully requests that the Commission grant the relief requested by Reliant in Reliant's Petition and any other relief deemed to be in the public interest.

Respectfully submitted,



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Attorneys for Reliant Energy Northeast LLC

Attachment 1

**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 :

**VERIFIED STATEMENT OF
SAURABH BANSAL**

Saurabh Bansal, being duly sworn, states as follows:

1. I, Saurabh Bansal, am the Director, Customer Operations & Project Management for NRG Energy, Inc., the parent company of Reliant Energy Northeast LLC (“Reliant”). I was and am Reliant’s principal business lead, and the primary point of contact between Reliant and PECO Energy Company (“PECO”), for PECO’s request for proposal (“RFP”) to select an EGS to provide time of use (“TOU”) service for customers who enroll for TOU service under PECO’s Dynamic Pricing Plan.

2. In this capacity, I had responsibility for overseeing the development of Reliant’s RFP response to, and project management of, PECO’s Dynamic Pricing Plan initiative. Also, in my role as business lead for the PECO TOU project, I reviewed all bid documents, circulated those documents to the project team for their input, and reviewed and approved Reliant’s response to PECO’s RFP. I also coordinated and participated in calls between PECO, Freeman, Sullivan & Company (“FSC”), who acted as PECO’s consultant in formulating the Plan, and Reliant teams to discuss implementation issues.

3. This verified statement is based on my personal knowledge, information and belief and is submitted in support of Reliant’s Reply to PECO’s Answer and New Matter that PECO submitted in response to Reliant’s Petition to Intervene and Opposition (“Petition”) in the

above-captioned matter. Reliant sought intervention in, and opposed, PECO's Petition for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing Plan Supplement ("Vendor Petition") on three narrow issues.

4. In January 2012, PECO sought potential bidders on the RFP. PECO issued Communication Bulletin #E-313 ("EGS interest in Participating with PECO to offer Dynamic Pricing to Smart Meter-Enabled Customers") to all electric generation suppliers ("EGSs") on January 10, 2012. PECO also issued a "Statement of Work" on January 24, 2012, which is Attachment 1 to PECO's Answer.

5. Reliant submitted a bid in response to the RFP on February 15, 2012. PECO notified Reliant that it had been selected to be the "TOU Supply Vendor" (Task 1) in Mid-March and that another vendor was selected to market, solicit and enroll customers and provide call center support (the "Program Management Vendor") (Task 2).

6. Prior to submitting its bid, neither I nor, to the best of my knowledge, anyone employed by Reliant, was aware that PECO contemplated that at the end of the contract term between Reliant and its customers who enroll for its time-of-use product, those customers would be returned to default service, absent their affirmative consent to remain with Reliant. Nowhere in the Statement of Work, the associated bid documents, or the pre-bid conference materials did PECO disclose that contemplated term. I learned of PECO's intention to propose this treatment during conversations with the PECO team in mid-April 2012, after Reliant was awarded Task 1.

7. Prior to submitting its bid, neither I nor, to the best of my knowledge, anyone employed by Reliant, was aware that PECO contemplated that Reliant's name and phone number would **not** appear on the bill or other communications presented to customers about the TOU program. Nowhere in the Statement of Work, the associated bid documents, or the pre-bid

conference materials did PECO disclose that contemplated term. Instead, I concluded from my review of the Statement of Work that both the PECO program name/phone number **and** Reliant's name/phone number would appear on the bill. I learned that PECO was not planning to include Reliant's name/number on the bill during calls with PECO beginning in mid-April through early May 2012.

8. Prior to submitting its bid, Reliant was aware of the fact that there could be a separate marketing vendor chosen for the TOU project. Nowhere in the Statement of Work, the associated bid documents, or the pre-bid conference materials did PECO discuss or contemplate how the Task 1 and Task 2 vendors – should the same vendor not win both tasks – would coordinate to ensure regulatory compliance.

9. Reliant started to become concerned about its ability to comply with the Commission regulations during discussions with PECO and FSC that occurred on May 7, 2012 at Reliant's premises in Houston, Texas. Reliant raised these concerns and sought to enter into an agreement with FSC.

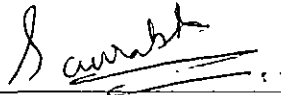
10. On May 10, 2012, Michael Sullivan of FSC, notified Reliant that FSC was unwilling to enter into an agreement with Reliant that, in Reliant's view, would allow Reliant to protect itself against liability should FSC fail to comply with the Commission's regulations.

11. Between Reliant's selection as the TOU Supply Vendor (on or about March 7, 2012) and the filing of the Vendor Petition by PECO (April 2, 2012), PECO sought comments from Reliant on a document that outlined the Vendor Selection process. Reliant provided minor edits to that document to more accurately describe Reliant.

12. PECO's revisions to the Dynamic Pricing Plan are Attachment 1 to the Vendor Petition. Neither the Petition nor the Attachment, dated April, 2012, were received, reviewed or

edited by Reliant prior to its submission to the Commission. Reliant became aware of the contents of the Vendor Petition and the revised Plan on or about May 9, 2012.

13. I hereby state that the facts and representations set forth above are true and correct to the best of my knowledge and information. I understand that the statements made herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities).



Dated : June 26, 2012

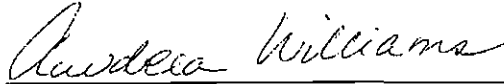
Saurabh Bansal
Director, Customer Operations & Project Management
NRG Energy, Inc.

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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: June 26, 2012



Aundrea Williams
Vice President, Retail Regulatory Strategy & Policy
NRG

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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Reliant Energy's Reply to New Matter 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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Carl Shultz, Esq.

Dated: June 26, 2012

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