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September 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 Approval of  
Its Default Service Program; Docket No. P-2012-2283641

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed for electronic filing please find the its Reply Exceptions with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely yours,



Edward G. Lanza, Esq.

EGL/jls  
Enclosure

cc: Hon. Dennis Buckley, ALJ w/enc.  
Cheryl Walker Davis, OSA w/enc. (via email only)  
Certificate of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of RESA's Exceptions upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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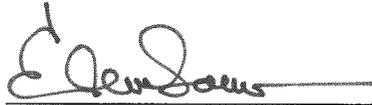
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Date: September 17, 2012

A handwritten signature in black ink, appearing to read "Edward G. Lanza", written over a horizontal line.

Edward G. Lanza, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for : Docket Nos. P-2012-2283641  
Approval of Its Default Service Program :  
:

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**REPLY EXCEPTIONS OF  
RETAIL ENERGY SUPPLY ASSOCIATION**

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**TABLE OF CONTENTS**

- I. INTRODUCTION.....1**
- II. REPLY TO THE EXCEPTION OF PECO .....2**
- III. REPLY TO THE EXCEPTIONS OF OCA .....3**
  - A. OCA’s Exception Number 1 Regarding the Proposed Use of a 12-Month Rolling Average Reconciliation Should Be Rejected.....3
  - B. OCA’s Exception Number 5 Regarding the Proposal to Adopt a 20% Customer Participation Cap for the Opt-In Auction Program Should Be Rejected.....5
  - C. OCA’s Exception Number 6 Claiming That Customers Calling With A High Bill Complaint Should Be Excluded From Receiving Information About The Customer Referral Program Should Be Rejected .....7
- IV. REPLY TO THE EXCEPTIONS OF EGS PARTIES.....8**
  - A. RESA Supports the Positions of the Joint Suppliers Group and PPL EnergyPlus Regarding the Collection of Generation Deactivation Charges .....8
  - B. RESA Supports the Positions of Dominion and FES Regarding the Impropriety of Using a POR Discount to Recover Retail Market Enhancement Costs.....9
- V. CONCLUSION .....10**

## I. INTRODUCTION

The Retail Energy Supply Association (“RESA”)<sup>1</sup> submits these Reply Exceptions to respond to several issues raised by PECO Energy Company (“PECO”) and the Office of Consumer Advocate (“OCA”) in their Exceptions and to express support for the positions of other electric generation suppliers (“EGSs”) who have submitted Exceptions in this proceeding. As explained more fully in RESA’s Exceptions, the proposed default service procurement plan and competitive retail market enhancements offered by PECO must be modified, consistent with RESA’s recommendations, to be compliant with the Electricity Generation Customer Choice and Competition Act (“Competition Act”)<sup>2</sup> and to have a reasonable chance of successfully accomplishing its intended goal of creating a more robust competitive market. The contrary views of other parties, as set forth in their exceptions, must be rejected for all the reasons already addressed by RESA in its Main Brief, Reply Brief, and Exceptions – all of which are incorporated herein by reference.

As explained further below, RESA recommends that the Commission reject OCA’s recommended proposed changes to the default service procurement plans for PECO as such modifications will not result in default service plans that meet the requirements of the Competition Act. Moreover, RESA recommends that the Commission reject many of the modifications OCA proposes for the competitive retail market enhancement initiatives because

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<sup>1</sup> 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; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

<sup>2</sup> 66 Pa. C.S. § 2801, et. seq.

these proposals will degrade the likelihood that these initiatives will successfully achieve their goal of moving default service customers to the competitive retail market. Finally, RESA recommends that the Commission reject the one exception filed by PECO asking that the Commission find that the Company had no obligation to establish “seamless move” functionality in the time since the enactment of the Competition Act. In addition, RESA submits that the Commission should reject the ALJ’s recommendations regarding cost recovery for default service and retail market enhancements consistent with the position of EGS parties in this matter.

## **II. REPLY TO THE EXCEPTION OF PECO**

In the only Exception filed by PECO, the Company asks the Commission to clarify that RESA failed to demonstrate that PECO was obligated to construct “seamless moves” functionality thirteen years ago at the commencement of retail choice.<sup>3</sup> This is a meaningless Exception that should be rejected by the Commission; PECO’s proposed plan was recommended for adoption by the ALJ in virtually every respect, and it is telling that this is the only issue that PECO finds objectionable in the R.D.

It is important to note that RESA did not argue that PECO had an *obligation* to implement seamless move or “switch-on-connect” functionality. RESA made the point that it was a mistake to impose every penny of costs on EGSs for a program that could cost less if PECO had exercised some foresight. RESA maintains that the types of costs associated with “seamless moves” should be borne by all customers because the functionality necessary to facilitate new and moving customers to continue with his supplier at a new premises should have been built into PECO’s systems at the initiation of choice.<sup>4</sup> PECO’s failure to anticipate the need

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<sup>3</sup> PECO Exceptions at 2.

<sup>4</sup> RESA Main Brief at 88-89.

for this system upgrade should not result in EGSs having to pay the costs of these improvements. So, this is an argument about the imposition and sharing of costs, and not about any “obligation” that PECO may have had to install “switch-on-connect” functionality thirteen years ago. PECO’s misplaced Exception should be rejected.

### III. REPLY TO THE EXCEPTIONS OF OCA

#### A. OCA’s Exception Number 1 Regarding the Proposed Use of a 12-Month Rolling Average Reconciliation Should Be Rejected

In Exception Number 1, OCA claims that the ALJ erred in rejecting its proposal for PECO to reconcile default service costs and revenues using a 12-month rolling average reconciliation.<sup>5</sup> The OCA believes that a 12-month rolling average reconciliation would “go a step further and promote a better atmosphere for shopping, as it will create a more stable, up to date and predictable” Price-to-Compare (“PTC”).<sup>6</sup> RESA strongly disagrees with this position and the Commission must reject it for the reasons set forth below.

First, as a legal matter, creating a “stable, up to date and predictable PTC” is not a statutory requirement set forth in the Competition Act. Rather, as discussed more thoroughly in RESA’s Main and Reply Briefs, the Competition Act requires the Companies, as default service providers, to acquire electric energy through a “prudent mix”<sup>7</sup> of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.<sup>8</sup> While the Preamble to Act 129 is

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<sup>5</sup> OCA Exceptions at 5.

<sup>6</sup> OCA Exceptions at 7.

<sup>7</sup> 66 Pa. C.S. § 2807(e)(3.2).

<sup>8</sup> 66 Pa. C.S. §§ 2807(e)(3.1).

cited by OCA in support of its flawed view that price stability must be achieved, the Commission has already correctly rejected this view when it approved the default service procurement plan proposed by Pike Count Light & Power Company (“PCL&P”).<sup>9</sup> Therefore, OCA’s claim that the quest for “rate stability” requires changing PECO’s current reconciliation mechanism from quarterly to annually is legally incorrect.

Second, OCA’s conclusion that an annual reconciliation mechanism would promote a “better atmosphere for shopping” is directly contrary to the evidence in the record making clear that OCA’s proposal will send inaccurate price signals to customers and may distort customer shopping decisions because the actual default service “cost” will not be passed on to consumers in a timely way.<sup>10</sup> Customers will not be seeing the true cost of energy on a contemporaneous basis, thus distorting their perception of the market price of energy. Rather, the bottom-line amount paid by customers will be based, at least in part, on a year’s worth of reconciliation data (which includes interest payments on carrying costs and/or unrealized credits to customers) rather than the current price of energy. Thus, contrary to OCA’s position, the end result of adopting the OCA’s proposal will be to stymie competitive retail market development. By making the reconciliation adjustment period longer than quarterly, as OCA suggests, PECO will be further divorcing the actual default service rates from the initial period where the over/under recovery occurred. Default rates need to reflect costs on a current basis to ensure that a functioning competitive retail market can develop. The Commission recognized this by

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<sup>9</sup> *Petition of Pike County Light & Power Company for Approval of Its Default Service Implementation Plan*, Docket No. P-2011-2252042, Opinion and Order entered May 24, 2012 (“*PCL&P 2012 Default Service Order*”). On June 22, 2012, OCA filed an appeal of this order to the Commonwealth Court. *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, Case No. 1179 C.D. 2012.

<sup>10</sup> RESA Reply Brief (“RB”) at 6-8.

requiring all of the costs incurred for providing default service to be recovered through a default service rate schedule.<sup>11</sup>

In sum, if default service rates do not accurately track changes in market prices over time and include all the costs of providing default service, then the default service rate will become out-of-market. This creates at best, intermittent opportunities for competitive suppliers to attract customers. Such a “boom-bust” market design is not sustainable as it denies customers the ability to access the myriad value-added products and services, renewable options, and savings opportunities that are present when there are many competitive suppliers participating in a robust competitive retail market. The contrary result is in direct contravention of the purposes of the Competition Act and cannot be accepted.

**OCA’s Exception Number 5 Regarding the Proposal to Adopt a 20% Customer Participation Cap for the Opt-In Auction Program Should Be Rejected**

In its Exception No. 5, the OCA claims that the ALJ erred by not adopting OCA’s recommended 20% participation cap for the opt-in auction program. The OCA maintains that a 20% customer participation cap would provide a better lever of load certainty for suppliers and reduce the risk of increased default service prices.<sup>12</sup>

RESA submits that the imposition of a 20% customer participation cap for the retail opt-in auction is inconsistent with the Commission’s *Intermediate Work Plan Final Order*. In its Order, the Commission determined that no more than 50% of an EDC’s default service customer base may participate in the retail opt-in auction.<sup>13</sup> OCA has not articulated any compelling

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<sup>11</sup> 52 Pa. Code § 54.187(a).

<sup>12</sup> OCA Exceptions at 16.

<sup>13</sup> *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Tentative Order entered March 2, 2012 (“*Intermediate Work Plan Final Order*”) at 60.

reason to diverge from the Commission’s 50% standard.<sup>14</sup> In choosing a 50% total participation cap, the Commission stated that it does not wish to impose a lower cap that “may lead to the rejection of customers wishing to participate.”<sup>15</sup> OCA’s position focuses almost exclusively on making sure the opt-in auction is not too successful in getting customers into the competitive market for fear that wholesale suppliers will perceive a market where most customers are shopping as “more risky” and, therefore, include a material risk premium.<sup>16</sup> This, however, is not a valid basis on which to structure these market-opening policies.<sup>17</sup> Indeed, default service is just that – an option of last resort if customers, for whatever reason, do not shop. Limiting the number of customers who could participate in the opt-in auction in favor of “preserving” default service is no different than imposing an arbitrary cap on the amount of shopping that will be permitted or imposing limits on any other steps that would reduce customer load. Any of those steps is plainly inconsistent with the policies of the Commonwealth, and so is OCA’s proposal here. It would be antithetical to the goal of developing robustly competitive retail markets to limit the ability of customers to participate in the competitive market – through the Opt-In Auction or otherwise. For these reasons OCA’s arguments in favor of a 20% customer participation cap must be rejected and the ALJ’s recommendation of 50% customer participation cap should be adopted.

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<sup>14</sup> RESA Main Brief at 21.

<sup>15</sup> *Intermediate Work Plan Final Order* at 59.

<sup>16</sup> OCA St. No. 1 at 12-13.

<sup>17</sup> RESA St. No. 2-R at 3-4.

C. **OCA’s Exception Number 6 Claiming That Customers Calling With A High Bill Complaint Should Be Excluded From Receiving Information About The Customer Referral Program Should Be Rejected**

In Exception Number 6, OCA mistakenly claims that the ALJ erred by not limiting the customer referral program to “new customers, those customers moving within the EDC service territory, or those who specifically inquire about customer choice or the Standard Offer Program.”<sup>18</sup> According to OCA’s theory, such limitations are appropriate to prevent the “degradation of essential consumer protections.”<sup>19</sup> As OCA’s proposed limitations are not consistent with the *Intermediate Work Plan Final Order* and nothing in the record supports their adoption, the ALJ was correct to not recommend implementation of this proposal.

The Commission already concluded in the *Intermediate Work Plan Final Order* that calls to the EDC for high bill issues are appropriate contacts for which EDCs can inform customers about the customer referral program. The Commission also preemptively addressed any concerns with including these callers in the program by directing that the referral program can be discussed “only and explicitly after the customer’s [high bill] concerns [are] satisfied.”<sup>20</sup> OCA has presented nothing to justify a deviation from this directive. OCA’s apparent claim is that permitting high bill customers to be informed about the customer referral program detracts from the EDC’s focus on resolving the customer’s immediate high bill concerns expeditiously. This argument makes little sense. Customers calling with high bill complaints are likely those customers who can most directly benefit from becoming informed about competitive offers and choosing to participate in the customer referral program. Customers with high bill complaints should have information about the option to choose a supplier that may offer a better deal. To

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<sup>18</sup> OCA Exceptions at 18.

<sup>19</sup> OCA Exceptions at 17.

<sup>20</sup> *Intermediate Work Plan Final Order* at 32 (emphasis added).

exclude these customers from participation in this program is illogical. The ALJ rightly rejected OCA's attempt to limit the customer referral program and, therefore, OCA's Exception Number 6 should be denied.

#### IV. REPLY TO THE EXCEPTIONS OF EGS PARTIES

##### A. RESA Supports the Positions of the Joint Suppliers Group<sup>21</sup> and PPL EnergyPlus Regarding the Collection of Generation Deactivation Charges

In their Exceptions, the Joint Suppliers Group and PPL EnergyPlus have objected to the ALJ's ruling rejecting the proposals of a number of EGSs to shift the responsibility for the collection of Generation Deactivation Charges from wholesale default service suppliers.<sup>22</sup> RESA supports this change as a rational step to eliminate the risk and increased costs associated with these unknown and unpredictable charges. The ALJ's RD, if left unchanged, would perpetuate the situation where PECO requires wholesale default service suppliers to factor unpredictable and difficult-to-quantify costs into their bids to provide default service supply. The end result of this situation is that the ultimate default service rate paid by customers is driven higher to account for this risk.<sup>23</sup>

To ameliorate this problem, RESA has recommended that PECO assume responsibility for these generation deactivation charges for all customers and recover the costs through a competitively-neutral, non-bypassable charge to assure a level playing field for all suppliers and provide appropriate price signals for customers. This could be accomplished through the

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<sup>21</sup> The Joint Suppliers Group is composed of Constellation NewEnergy, Inc., Exelon Generation Company, LLC, Exelon Energy Company and NextEra Energy Services Pennsylvania, LLC. Exceptions of Joint Suppliers Group at 1.

<sup>22</sup> See, generally, Exceptions of Joint Supplier Group and PPL EnergyPlus.

<sup>23</sup> RESA St. No. 1-SR at 15.

creation of a non-market based charges rider (“NMB Rider”).<sup>24</sup> While RESA recognizes that a transitional period may be appropriate to ensure that customers are not subject to a “double counting,” RESA does not agree that potential one-time transitional issues that may arise should be used to reject its proposal especially since such a situation (to the extent it even exists) could be easily addressed on a case-by-case basis.<sup>25</sup> If the RESA proposal for an NMB Rider is implemented, these charges will be passed through to customers and there will be no need for EGSs to add a risk premium to its prices to account for these unpredictable costs.<sup>26</sup> For these reasons, the ALJ’s recommendation on the issue of the collection of Generation Deactivation Charges should be rejected.

**B. RESA Supports the Positions of Dominion and FES Regarding the Impropriety of Using a POR Discount to Recover Retail Market Enhancement Costs**

First Energy Solutions Corp. and Dominion Retail/IGS have filed Exceptions to the ALJ’s recommendation that costs related to PECO’s proposed Retail Market Enhancements be recovered through a discount on Purchase of Receivables (“POR”). Consistent with RESA’ Exception No. 17, RESA supports these Exceptions and requests that the Commission reject the ALJ’s recommendation that a POR discount be used to recover RME costs.

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<sup>24</sup> RESA St. No. 1 at 23.

<sup>25</sup> RESA St. No. 1-SR at 16.

<sup>26</sup> RESA Reply Brief at 18.

**V. CONCLUSION**

For the reasons set forth above, RESA respectfully requests that the Commission grant its exceptions and issue a consistent decision which substantially rejects the ALJ's August 27, 2012 Recommended Decision.

Respectfully submitted,



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