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VIA E-FILING

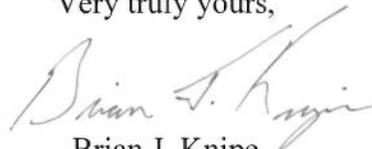
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: *Petition of PECO Energy Company for Approval of its Default Service Program,*
Docket No. P-2012-2283641

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Answer of FirstEnergy Solutions Corp. to Petition for Clarification and Reconsideration*. Copies of this document have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Dennis J. Buckley (via Email and First Class Mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company For : Docket No. P-2012-2283641
Approval of Its Default Service Program :

**ANSWER OF FIRSTENERGY SOLUTIONS CORP.
TO PETITION FOR CLARIFICATION AND RECONSIDERATION**

FirstEnergy Solutions Corp. ("FES"), by its attorneys, and in accordance with 52 Pa. Code § 5.572, submits this Answer to the *Petition for Clarification and Reconsideration of the Commission's Order Entered October 12, 2012* filed and served by PECO Energy Company ("PECO") on October 31, 2012.

I. INTRODUCTION

FES specifically responds to PECO's request that the Commission clarify its October 12, 2012 Order ("October 12 Order") to state that the costs of PECO's retail market enhancement programs, including its Retail Opt-In Offer Program ("ROI") and Standard Offer Customer Referral Program ("Standard Offer Program"), are to be recovered solely from electric generation suppliers ("EGSs") and not customers. This clarification should be rejected. As explained below, if the programs are to succeed, it is critical that the costs recovered from EGSs be subject to a cap and made known to EGSs prior to their decision whether to participate. PECO's suggested interpretation of the October 12 Order would foreclose the possibility of even limited cost sharing in the event actual costs exceed the capped amount. Such cost sharing is consistent with the Commission's pronouncements in its October 12 Order, as well as its *IWP*

Order,¹ and essential for the retail market enhancement programs to succeed, and therefore PECO's requested clarification should be rejected.

In addition, FES responds to PECO's request that the Commission clarify the timing for the Commission's review of participating EGSs' 8-month ROI offerings. As explained below, customers must know the price of the 8-month portion of the ROI prior to deciding whether to participate in the program. Therefore, participating EGSs must submit their 8-month offerings to the Commission for review 45 days before the mailing of the initial customer offer letter. PECO's alternative interpretation, that EGSs submit the terms and conditions of their 8-month offerings to the Commission for review after the customer has enrolled in the ROI and is receiving service from an EGS during the 4-month introductory portion of the ROI, creates risk of customer confusion and frustration and bad impressions of retail electric competition.

II. ANSWER

A. **PECO's Requested Clarification That It Recover All Costs of Its Retail Market Enhancement Programs Exclusively From EGSs Should Be Rejected.**

PECO requests clarification that the Commission intended in its October 12 Order for PECO to recover the costs of its retail market enhancement programs exclusively from EGSs and not customers. Petition ¶ 14. PECO suggests that recovering costs from EGSs only is consistent with the Commission's position in the *IWP Order*. Petition ¶ 14.

However, the plain language of the Commission's October 12 Order contradicts PECO's interpretation:

¹ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*").

Accordingly, PECO, EGSs and interested parties are directed to resubmit a plan or proposal within sixty (60) days of the date of entry of this Opinion and Order, for Commission review and approval, addressing how *participating EGSs or customers* will pay for the costs of market enhancements approved in this DSP proceeding.

October 12 Order, slip op. at 148 (emphasis added). The phrase “EGSs or customers” is no accident; it also appears in the Motion of Commissioner Pamela A. Witmer, which the Commission adopted at its Public Meeting of September 27, 2012. That Motion likewise directed PECO, EGSs and interested parties “to resubmit a plan or proposals within 60 days for Commission review and approval addressing how participating EGSs *or customers* will pay for the Market Enhancements approved in this DSP proceeding.” *Petition of PECO Energy Company For Approval of Its Default Service Program*, Docket No. P-2012-2283641, Motion of Commissioner Pamela A. Witmer, adopted at Public Meeting of September 27, 2012, at 4 (emphasis added).

PECO contends that by using the phrase “or customers” the Commission has “provided conflicting guidance,” in light of the Commission’s statement in its October 12 Order that “our position articulated in the *IWPF Order* was and continues to be that EGSs should be responsible for these costs,” October 12 Order, slip op. at 148, and the Commission’s directive in Ordering Paragraph 14 that PECO, in collaboration with interested EGSs, “submit a proposal to the Commission on how electric generation suppliers will pay for the costs of the Retail Market Enhancement Programs” Petition ¶ 14.

Contrary to PECO’s suggestion, there is no difficulty in reconciling the October 12 Order’s pronouncements on cost recovery, which place primary responsibility for program costs with EGSs but also permit limited sharing of costs with customers to ensure the programs succeed. While FES has expressed a preference that all customers, in any class eligible to

participate, bear the costs of these programs, FES recognizes that the October 12 Order clearly expressed the Commission's preference for EGSs to bear program costs. However, the Commission also expressed its firm belief that the resolution of the cost allocation issue is "the cornerstone to the success of these programs," since the programs "can jumpstart the market only if they are carried out." October 12 Order, slip op. at 148-49. For the programs to be carried out, it is critical for EGSs to be certain of the level of program expenses they will incur. As FES explained in briefs, unless an EGS's cost per customer is a known, capped amount, it is unreasonable to expect significant EGS participation. FES R.B. at 27-29.

The October 12 Order recognizes that a mechanism which includes limited sharing of costs with customers would leave primary responsibility for costs with EGSs, while giving EGSs the certainty they need to determine whether to participate in the program. This is consistent with the *IWP Order* which, contrary to PECO's argument, does not direct that EGSs must bear all of the costs of the Standard Offer Program, nor state that all costs of the ROI must be recovered from participating suppliers. *IWP Order* at 32, 84. The *IWP Order* recognized the possibility of cost sharing between EGSs and customers. With respect to Standard Offer programs, the *IWP Order*'s guideline was that "the *bulk* of the costs, including the costs of maintaining the referral programs once they are put into place, should be the responsibility of the participating EGSs." *IWP Order*, slip op. at 32 (emphasis added). Similarly, with respect to Opt-In Auction Programs, the *IWP Order*'s guidelines state that "in general, most, if not all, of these costs should be recovered from participating suppliers." *IWP Order*, slip op. at 84. PECO's proposal to clarify the October 12 Order to foreclose cost sharing will ensure the programs do not succeed, and therefore must be rejected.

FES also disagrees with PECO's argument that if the Commission does not grant PECO's requested clarification and impose all costs exclusively on EGSs, "discussions with other stakeholders regarding cost recovery will be unnecessarily complicated and PECO will be unlikely to reach full agreement on any cost recovery proposal." Petition ¶ 14. As an initial matter, this argument is speculative, since PECO, to FES's knowledge, has not yet initiated discussions with stakeholders. Further, this argument is reminiscent of PECO's argument against another alternative cost recovery proposal for the Standard Offer Program, on the grounds that recovering Standard Offer Program costs through any mechanism other than a purchase of receivables ("POR") discount would add administrative complexity. PECO Initial Brief at 75-76. While the Recommended Decision ("R.D.") accepted this criticism and recommended recovery of costs through a POR discount, R.D. at 86, the Commission did not, and the October 12 Order strongly indicates that the need for a cost recovery methodology that allows these programs to succeed outweighs PECO's concerns with complexity in administration or, in the present case, the need to attempt potentially challenging negotiations.

Because PECO's requested clarification would foreclose the possibility of the limited cost sharing that is essential for the retail market enhancement programs to succeed, it should be rejected.

B. An EGS Participating in the ROI Should Submit the Terms and Conditions of Its 8-Month Offering to the Commission Prior to the Mailing of the Initial Customer Offer Letter.

PECO requests clarification regarding the timing of an EGS's submission of the terms and conditions governing its 8-month ROI offering for Commission review and approval. Specifically, PECO seeks guidance on whether an EGS should submit the terms and conditions

of its 8-month offering, including the price, to the Commission prior to the mailing of the initial customer offer letter, or 45 days before the expiration of the initial 4-month price that is at least 5% below the PTC. Petition ¶ 22.

FES strongly supports the first interpretation, i.e., that an EGS should submit the terms and conditions of its 8-month offering to the Commission prior to the mailing of the initial customer offer letter. This timing is necessary to ensure that the EGS-provided 8-month fixed price is established and made known to customers before they decide whether to participate in the ROI, not in the middle of the 4-month introductory portion of the ROI. A customer must know the price of the product they are asked to purchase.

In addition, the October 12 Order requires a participating EGS to submit its 8-month price to the Commission at least 45 days before offers are extended to *potential* customers. October 12 Order, Ordering Paragraph 15. The only time the customer will be a “potential” customer is prior to enrollment. After enrollment the customer is an existing customer of the EGS.

The Commission should reject the second possible interpretation raised by PECO, i.e., that the 8-month fixed-price product be submitted to the Commission 45 days before the expiration of the initial 4-month price that is at least 5% below the PTC.² This interpretation of

² While PECO’s requested clarification amounts to whether an EGS participating in the ROI should disclose its 8-month fixed price to the customer before or after enrollment in the ROI, FES disagrees with PECO’s suggestion that an EGS could submit its 8-month price to the Commission only 45 days before the 4-month introductory price ends. Practically, even if an EGS were allowed to submit its 8-month price to the Commission after customers are enrolled in the ROI, an interpretation FES opposes, an EGS could not submit its 8-month price to the Commission later than 3 months before the expiration of the initial 4-month rate and still provide customers with the notices mandated in the Commission’s renewal notice guidelines. *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service; Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286 (Order entered September 23, 2010). An 8-month price not disclosed to the customer prior to enrollment would amount to a change in terms of service. The guidelines provide that each customer will receive two notices of a change in terms of service: an initial notice 52-90 days before a change in terms of service, followed by a more detailed “options notice” at least 45 days before the change in terms. The options notice is to provide new terms and conditions, pricing, other options and a date by which the customer must take action. Under PECO’s alternative interpretation where the 8-month price is not disclosed to the customer

the October 12 Order would allow EGSs to avoid disclosing the 8-month price prior to the customer's decision whether to enroll in the ROI. Rather, the price for the last 8 months would be disclosed to the customer only after the customer is enrolled, in the middle of the initial 4-month period. Such late disclosure would force customers participating in the ROI, who have little or no experience with shopping and are less than four (4) months removed from utility default service, to comprehend that their price will change after four (4) months in the program and that they must make another shopping decision after only a few months. This approach creates risk of customer confusion and frustration and bad impressions of retail electric competition, contrary to a purpose of the retail market enhancement programs which is to introduce customers to the retail market without significant risk. October 12 Order, slip op. at 114. Therefore, this interpretation should be rejected, and the October 12 Order should be clarified to require EGSs to submit the terms and conditions of their 8-month ROI offering 45 days prior to the mailing of the initial customer offer letter.

III. CONCLUSION

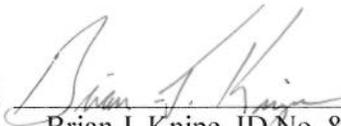
For the foregoing reasons, FirstEnergy Solutions Corp. requests that the Commission (i) reject PECO Energy Company's request for a clarification that the October 12 Order requires PECO Energy Company to recover the costs of its retail market enhancement programs only from EGSs and not customers; (ii) further clarify that EGSs participating in the ROI should submit the terms and conditions of their 8-month product offerings to the Commission for review

prior to enrollment, the options notice is the latest date when the 8-month pricing offer could be extended. Therefore, if an EGS were allowed to disclose its 8-month fixed price to the customer only after enrollment, then in order to submit the 8-month price for Commission review no later than 45 days before offers are extended, see October 12 Order, Ordering Paragraph 15, EGSs would have to submit their 8-month prices to the Commission at least 3 months before the expiration of the initial 4-month rate.

45 days prior to the mailing of the initial customer offer letter; and (iii) grant such further relief as the Commission deems appropriate.

Respectfully submitted,

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Dated: November 13, 2012

Attorneys for FirstEnergy Solutions Corp.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for : Docket No. P-2012-2283641
Approval of its Default Service Program :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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Dated this 13th day of November, 2012.



Brian J. Knipe, Esquire