



Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL 717 237 6000  
FAX 717 237 6019  
www.eckertseamans.com

Edward G. Lanza  
717.237.7162  
elanza@eckertseamans.com

December 14, 2012

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P. O. 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:

Enclosed please find the Petition of the Retail Energy Supply Association (RESA) for Reconsideration *Nunc Pro Tunc* or for Amendment of the Commission's Opinion and Order of October 12, 2012, in the above-referenced matter.

The parties in the proceeding have been served in accordance with the Commission's regulations as evidence by the attached Certificate of Service.

If you have any questions, do not hesitate to call the undersigned.

Sincerely,

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

Edward G. Lanza

EGL/imk  
Enclosure

c: Parties on Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for  
Approval of its Default Service Program

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Docket No. P-2012-2283641

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**PETITION OF THE RETAIL ENERGY SUPPLY ASSOCIATION  
FOR RECONSIDERATION *NUNC PRO TUNC* OR  
FOR AMENDMENT OF THE COMMISSION'S  
OPINION AND ORDER OF OCTOBER 12, 2012**

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Daniel Clearfield, Esquire  
Attorney ID #26183  
Deanne M. O'Dell, Esquire  
Attorney ID #81064  
Edward G. Lanza, Esquire  
Attorney ID # 81081  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)

Date: December 14, 2012

Attorneys for Retail Energy Supply Association

**PETITION OF RESA FOR  
RECONSIDERATION *NUNC PRO TUNC* OR  
FOR AMENDMENT OF  
THE COMMISSION'S OCTOBER 12, 2012 ORDER**

**I. INTRODUCTION**

Pursuant to Section 703(g) of the Public Utility Code, 66 Pa.C.S. §703(g), and Section 5.572 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code §5.572, the Retail Energy Supply Association ("RESA")<sup>1</sup> submits this Petition Reconsideration *Nunc Pro Tunc* or for Amendment of the Opinion and Order of the Commission entered October, 2012, in the above-captioned proceeding ("*PECO Default Service Order*"). The scope of this Petition is limited to seeking reconsideration or amendment of the *PECO Default Service Order* to clarify that small commercial and industrial customers with loads of 25 kw and below ("Small Business Customers") are to be included in the customer referral programs (both the New/Moving Customer Program and the Standard Offer Program) of PECO Energy Company ("PECO") and consistent with the Commission's determinations on this issue for other electric distribution companies ("EDCs") as well as its clearly expressed conclusion that Small Business Customers can benefit from participation in all of the Retail Market Enhancement ("RME") programs that are to be implemented in Pennsylvania.

Granting this Petition as expeditiously as possible is important. Even though RESA interpreted the Commission's Order as accepting RESA's position that Small Business

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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.

Customers should be eligible to participate in the customer referral programs of PECO (consistent with the Commission's determination that these customers should be permitted to participate in the retail opt-in aggregation program), RESA only recently learned that there is a difference of opinion among stakeholders regarding the intent of the Order. Importantly, in the Revised Default Service Plan filed on December 11, 2012 by PECO, PECO is not proposing to include Small Business Customers in the customer referral programs. Commission clarification on this issue is therefore necessary to ensure that all stakeholders work together to effectuate the intent of the Commission to enable Small Business Customers to receive the benefits of participating in all the RME programs.

In order to provide this clarification, RESA respectfully requests that the Commission waive the regulatory requirement that parties file petitions for reconsideration or clarification within fifteen (15) days of the issuance of the Commission Order.<sup>2</sup> In the alternative, RESA requests that the Commission deem this filing a Petition to Amend under 66 Pa. C.S. § 703(g), which can be filed at any time pursuant to 52 Pa. Code § 5.572(d). In any event, the Commission should act expeditiously to resolve this issue. As discussed in more detail below, no additional hearings are necessary as there is ample evidence on the record to support the clarification or amendment sought by RESA.<sup>3</sup>

As explained herein, RESA firmly believes that the Commission intended to grant its exception on this issue and direct that Small Business Customers be eligible to participate in the customer referral program. As such, RESA submits that this petition meets the standard for

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<sup>2</sup> 52 Pa. Code § 1.2(c) provides that the Commission may waive a requirement of its regulations when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.

<sup>3</sup> If the Commission decides to act pursuant to section 703(g) it should issue its determination as a tentative order so that all parties have notice of its intent to amend its order and an opportunity to comment once they have been so notified.

granting a petition for reconsideration or amendment, is within the Commission's ample discretion to clarify or amend its own orders, and that reconsideration or amendment is important to permit all parties to move forward in successfully implementing the directives of the Commission for the benefit of all consumers.

In support of this Petition, RESA sets forth the following:

## II. BACKGROUND

1. The *PECO Default Service Order* decided the parties' exceptions to the Recommended Decision ("RD") of Administrative Law Judge ("ALJ") Dennis J. Buckley issued on August 29, 2012. The Order addressed the default service plan filed by PECO Energy Company ("PECO") on January 13, 2012.

2. The Order covers a variety of topics related to default service procurement issues as well as RME initiatives. The RME initiatives have been the subject of the Commission's current and on-going Retail Markets Investigation ("RMI") which was opened on April 29, 2011 with the goal "of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state."<sup>4</sup>

3. Guidance regarding the RME initiatives that the Commission directed EDCs like PECO to include in their default service petitions were set forth in the *Intermediate Work Plan Final Order*.<sup>5</sup>

4. RESA was an active participant in the PECO DSP proceeding. RESA filed direct, rebuttal and surrebuttal testimony of two witnesses as well as a main brief, reply brief, exceptions and reply exceptions.

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<sup>4</sup> *Investigation of Pennsylvania's Retail Electricity Market*, I-2011-2237952, Order entered April 29, 2011 at 2 ("*April 29 RMI Order*") at 2.

<sup>5</sup> *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered March 2, 2012 ("*Intermediate Work Plan Final Order*").

5. RESA was also an active participant in the RMI process, participating in the various *en banc* hearings as the various technical conferences. RESA has also provided numerous discussion documents for use by stakeholders in the RMI process. In addition, RESA has submitted numerous formal and informal comments in the RMI process as requested by the Commission.

6. In its filings in this proceeding and in the RMI process, RESA has consistently advocated for the inclusion of Small Business Customers in all the proposed RME programs that PECO and other EDCs have submitted for Commission approval.

7. In the *PECO Default Service Order*, the Commission specifically adopted RESA's position and ordered that PECO include Small Business Customers in the Company's Opt-In Program. The Commission reasoned that "the relatively small number of customers involved, and the need to increase the shopping statistics for small commercial customers, support the inclusion of small commercial customers less than 25 kW."<sup>6</sup>

8. In addition to supporting the inclusion of Small Business Customers in PECO's Opt-In Program, RESA advocated for the inclusion of these customers in PECO's Customer Referral Program.<sup>7</sup>

9. While the Commission Order stated that the issue of including Small Business Customers in the Customer Referral Program "will be addressed elsewhere in this Opinion and Order"<sup>8</sup>, the Order did not provide any further discussion of the issue.<sup>9</sup>

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<sup>6</sup> *PECO Default Service Order* at 86.

<sup>7</sup> RESA RB at 30-32, RESA Exceptions at 23-24.

<sup>8</sup> *PECO Default Service Order* at 83, n. 15.

<sup>9</sup> *See, PECO Default Service Order* at 109.

10. Since the Commission's order was so clear with respect to inclusion of Small Business Customers in the Opt-In Program, and since the Commission has made a general policy pronouncement in the FE DSP proceeding that Small Business Customers should be included in the Retail Market Enhancements, RESA read the Commission's Order as extending the Customer Referral Program to Small Business Customers, and assumed that all other parties would make this rational conclusion as well.

11. During the ongoing collaborative conducted by PECO to address cost recovery and certain other issues regarding implementation of the RME programs, RESA became aware that some parties, including PECO, were interpreting the Commission's Order as *rejecting* RESA's request that the Customer Referral Program be made available to Small Business Customers. Indeed, PECO is not proposing to include Small Business Customers in the customer referral programs set forth in its December 11, 2012 Revised Default Service Plan.<sup>10</sup>

12. Accordingly, RESA respectfully requests that the Commission clarify its *PECO Default Service Order* to reflect the Commission's stated position that Small Business Customers should be included in EDCs' RME initiatives, including customer referral programs like PECO's Standard Offer Program and New/Moving Customer Referral Program.

### **III. BASIS FOR PETITION**

13. As set forth above, RESA believes that that the Commission's intention in this regard is clear and this request for clarification only became necessary upon learning that PECO, and other parties, have a differing interpretation of the Commission's Order. As such, granting reconsideration, *Nuc Pro Tunc*, is appropriate and will enable the Commission to quickly address this issue so that valuable time in implementing the PECO customer referral program is not lost.

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<sup>10</sup> Revised Default Service Plan, Exhibit E at 1 limits the standard offer customer referral program to residential customers.

Although 52 Pa. Code § 5.572 requires petitions for reconsideration, rehearing, reargument, clarification, or supersedeas to be filed within fifteen (15) days after the Commission order involved is entered or otherwise becomes final, RESA respectfully submits that good cause exists here to waive this requirement and the waiver will not adversely affect a substantive right of a party.<sup>11</sup>

14. All parties have had an opportunity to advocate their respective positions throughout the course of this proceeding and, as noted above, RESA only recently became aware of the contrary interpretation of PECO and other parties.

15. Granting RESA's Petition would be consistent with the Commission's decision in this proceeding that Small Business Customers should be included in another one of PECO's RME programs, the Opt-In Auction Program, to encourage more shopping in PECO's small business customer segment.

16. In this case, the Commission found that a relatively low number of Small Business Customers were taking advantage of the opportunity to shop for electric supply, and that customers with loads of up to 25 kW should be encouraged to shop by including these customers in the Opt-In Auction Program.<sup>12</sup> The same rationale applies relative to Small Business Customers in connection with PECO's Customer Referral Programs.

17. In addition, granting this Petition would align the *PECO Default Service Order* with the Commission's pronouncement on the issue in the Default Service Proceeding for the FirstEnergy Companies. In that case, the Commission's concluded that "adopting RESA's proposals to include small commercial customers in the Market Enhancement Programs will

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<sup>11</sup> 52 Pa. Code § 1.2(c).

<sup>12</sup> *PECO Default Service Order* at 86.

further the objectives of the Competition Act by inducing more customers to shop and ultimately reduce the costs of electric generation.”<sup>13</sup> When asked to reconsider the decision to include Small Business Customers in the retail opt-in program, the Commission stated “we continue to find that including small commercial customers in the market enhancement programs will further the objectives of the Choice Act by inducing more customers to shop and ultimately reduce the costs of electric generation.”<sup>14</sup> The same logic applies to PECO’s service territory. Granting this Petition also would be consistent with the Commission’s determination in the *Intermediate Work Plan Final Order* that Small Business Customers should be included in new and moving customer referral programs.<sup>15</sup>

18. Permitting Small Business Customers to participate in all of the RME programs of each EDC should be less confusing for these customers as they will not need to determine on a territory-by-territory, RME program-by-RME program basis whether or not they are eligible to participate.

19. Furthermore, allowing Small Business Customers in PECO territory to take advantage of the Customer Referral Programs, in addition to participating in the Opt-In Auction Program, will advance the Commission’s policy to encourage shopping among all customer classes. Small Business Customer participation in all RME initiatives is more likely to lead to

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<sup>13</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Program*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (Opinion and Order issued Aug. 16, 2012) (“*FE Default Service Order*”) at 103-104.

<sup>14</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Program*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (Opinion and Order issued Aug. 16, 2012) (Amended Opinion and Order issued September 27, 2012) at 13 (emphasis added).

<sup>15</sup> *Intermediate Work Plan Final Order* at 18.

greater levels of shopping within this customer segment than if these customers can participate in the Opt-In Auction Program only.

20. Alternatively, the Commission may choose to treat this request as a Petition for Amendment which may be filed at any time.<sup>16</sup> However, if the Commission chooses this alternative, no further hearings are necessary in this proceeding as there is ample evidence on the record regarding the need to include Small Business Customers in retail market enhancements in order to encourage greater levels of shopping.<sup>17</sup>

21. If the Commission chooses to treat this as a Petition for Amendment, then it should issue a Tentative Order noticing all parties of its intent to amend the prior order and give all parties the opportunity to comment using the record in the proceeding. After giving all parties notice and an opportunity to be heard, the Commission should issue a final order directing that the Customer Referral Program should be extended to Small Business Customers on a schedule proposed by PECO and reflecting the comments of all parties.<sup>18</sup>

22. A petition under Subsection 703(g) is appropriate to clarify considerations which appear to have been overlooked or not addressed.<sup>19</sup>

23. The scope of this Petition is narrowly limited to asking the Commission to correct an apparent oversight. The issue here presented is a classic example of an oversight that the

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<sup>16</sup> 66 Pa. C.S. § 703(g); 52 Pa. Code § 5.572(d).

<sup>17</sup> RESA offered the expert testimony of Mr. Chris Kallaher who testified that only 39% of PECO's small commercial customers are shopping. The records shows that, according to PECO, 74,826 customers with a monthly peak load of 25kW or below took generation service from PECO, while 47,552 took generation service from an EGS as of February 29, 2012. This evidence militates strongly for the inclusion of Small Business Customers in PECO's RME initiatives, including the company's customer referral programs.

<sup>18</sup> In light of the passage of time that has occurred, it would be reasonable, for example, for PECO to implement the Customer Referral Program for Small Business Customers after the program is implemented for residential customers.

<sup>19</sup> *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982).

Commission should rectify by issuing an amended order. More specifically, in the *PECO Default Service Order* issued on October 12, 2012, the Commission expressly stated that it was addressing RESA's proposal to include Small Business Customers in PECO's Customer Referral Programs but failed to include any text in the order explaining its disposition of the issue.<sup>20</sup> This issue is not an issue that the Commission has not specifically addressed and, therefore, denied.<sup>21</sup> This is simply an issue that the Commission clearly intended to address, but did not address due to an apparent oversight.

24. RESA is not asking the Commission to reverse its decision on all issues that were decided against RESA's advocacy in the case. Rather, the issue identified here is limited to clarifying that Small Business Customers should be included both in the Opt-In Program as well as in PECO's Customer Referral Programs consistent with the Commission's determination in other proceedings. As explained further below, clarity regarding this limited issue is appropriate and, therefore, RESA respectfully requests that the Commission grant this Petition.

25. RESA respectfully submits that the Commission should act expeditiously to amend its *PECO Default Service Order*. Targeting customer referral programs to those customers who can receive the most benefit from participating – such as Small Business Customers – is the best way to ensure the success of these programs. Moreover, establishing uniform rules for these programs among the various EDCs will help to minimize EGS costs to participate. As it appears plain that the Commission intended to extend the RMEs to both residential and small commercial customers on a state-wide basis, correcting this oversight for PECO will serve to minimize EGSs participation costs and confusion.

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<sup>20</sup> See, *PECO Default Service Order* at 83, fn. 15.

<sup>21</sup> See, *PECO Default Service Order* at 3.

26. In consideration of the fact that PECO has recently filed its Revised Default Service Plan Compliance filing and is seeking a January 24, 2013 date for the Commission's final action on how these programs are to be structured, RESA respectfully urges the Commission to act quickly to amend the *PECO Default Service Order* to ensure that the parties follow the Commission's directives regarding the inclusion of Small Business Customers in PECO's retail market enhancements.

27. For these reasons, RESA submits that this Petition meets the applicable standards and, therefore, should be granted. Further, upon review of the answers to this Petition, RESA recommends that the Commission issue an Order making clear its intention that Small Business Customers must be eligible to participate in PECO's customer referral programs. PECO should also be directed to submit an implementation plan that would take into account its efforts to implement the Customer Referral Plan for Small Business Customers.

**IV. CONCLUSION**

WHEREFORE, RESA respectfully requests that the Commission:

- (a) waive any applicable regulation requiring that Petitions for Reconsideration or Clarification be filed within 15 days of the issuance of the PECO Default Service Order;
- (b) grant this Petition to Clarify or Amend the *PECO Default Service Order* to include Small Business Customers in the Customer Referral Programs proposed by PECO in this proceeding; and
- (d) grant any other relief that it deems appropriate under the circumstances.

Respectfully submitted,



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Daniel Clearfield, Esquire  
Attorney ID #26183  
Deanne M. O'Dell, Esquire  
Attorney ID #81064  
Edward G. Lanza, Esquire  
Attorney ID # 81081  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
(717) 237-6000 (phone)  
(717) 237-6019 (fax)

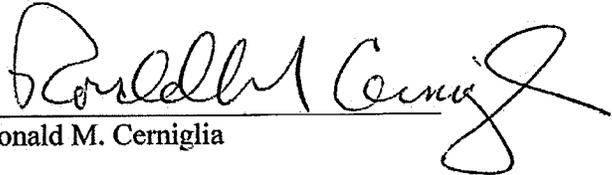
Date: December 14, 2012

Attorneys for Retail Energy Supply Association

**VERIFICATION**

I, Ronald M. Cerniglia, hereby state that I am Pennsylvania State Chairman of the Retail Energy Supply Association and am authorized to make this verification on its behalf, and that the facts above set forth in the attached Petition are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 12/14/12

  
Ronald M. Cerniglia

## CERTIFICATE OF SERVICE

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

### VIA EMAIL AND FIRST CLASS MAIL

Johnnie E. Simms  
Chief Prosecutor  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120  
[josimms@pa.gov](mailto:josimms@pa.gov)

Anthony E. Gay, Esquire  
Jeanne J. Dworetzky, Esquire  
PECO Energy Company  
2304 Market Street  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
[Jeanne.Dworetzky@exeloncorp.com](mailto:Jeanne.Dworetzky@exeloncorp.com)  
[Anthony.gay@exeloncorp.com](mailto:Anthony.gay@exeloncorp.com)

Tanya J. McCloskey, Esquire  
Candis Tunilo, Esq.  
Christy M. Appleby, Esq.  
Office of Consumer Advocate  
555 Walnut Street, 5<sup>th</sup> Fl.  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[ctunilo@paoca.org](mailto:ctunilo@paoca.org)  
[cappleby@paoca.org](mailto:cappleby@paoca.org)

Thomas P. Gadsden, Esquire  
Kenneth M. Kulak, Esquire  
Brooke E. Leach, Esquire  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)  
[kkulak@morganlewis.com](mailto:kkulak@morganlewis.com)  
[bleach@morganlewis.com](mailto:bleach@morganlewis.com)

Carrie Wright, Esq.  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[carwright@pa.gov](mailto:carwright@pa.gov)

Elizabeth Rose Triscari, Esquire  
Office of Small Business Advocate  
300 North Second Street, Suite 1102  
Harrisburg, PA 17101  
[ETriscari@pa.gov](mailto:ETriscari@pa.gov)

Todd S. Stewart, Esquire  
Hawke, McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

Melanie J. Elatieh, Esq.  
UGI Corporation  
460 North Gluph Road  
King of Prussia, PA 194-6  
[elatiehm@ugicorp.com](mailto:elatiehm@ugicorp.com)

Tori L. Giesler, Esq.  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Scott DeBroff, Esq.  
Rhoads & Sinon LLP  
One South Market Square  
PO Box 1146  
Harrisburg, PA 17101  
[sdebroff@rhoads-sinon.com](mailto:sdebroff@rhoads-sinon.com)

Patrick M. Cicero, Esq.  
Harry S. Geller, Esq.  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)  
[HGellerPULP@palegalaid.net](mailto:HGellerPULP@palegalaid.net)

Divesh Gupta, Esq.  
Constellation Energy  
111 Market Place, Suite 500  
Baltimore, MD 21202  
[Divesh.gupta@constellation.com](mailto:Divesh.gupta@constellation.com)

Brian J. Knipe, Esq.  
Buchanan Ingersoll and Rooney, PC  
17 North Second St., 15<sup>th</sup> Fl.  
Harrisburg, PA 17101  
[Brian.knipe@bipc.com](mailto:Brian.knipe@bipc.com)

Adeolu A. Bakare, Esq.  
Charis Mincavage, Esq.  
McNees Wallace & Nurick  
100 Pine St.  
PO Box 1166  
Harrisburg, PA 17108  
[abakare@mwn.com](mailto:abakare@mwn.com)  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)

Stephen L. Huntoon, Esq.  
Senior Attorney  
NextEra Energy Resources, LLC  
801 Pennsylvania Ave., NW, Suite 220  
Washington, DC 20001  
[shuntoon@nexteraenergy.com](mailto:shuntoon@nexteraenergy.com)

Thu B. Tran, Esq.  
Robert W. Ballenger, Esq.  
George D. Gould, Esq.  
Community Legal Services, Inc.  
1424 Chestnut Street  
Philadelphia, PA 19102  
[ttran@clsphila.org](mailto:ttran@clsphila.org)  
[rballenger@clsphila.org](mailto:rballenger@clsphila.org)  
[ggould@clsphila.org](mailto:ggould@clsphila.org)

Thomas McCann Mullooly, Esq.  
Trevor D. Stiles, Esq.  
Foley & Lardner LLP  
777 East Wisconsin Ave.  
Milwaukee, WI 53202  
[tmullooly@foley.com](mailto:tmullooly@foley.com)  
[tstiles@foley.com](mailto:tstiles@foley.com)

Amy M. Klodowski, Esq.  
FirstEnergy Solutions Corp.  
800 Cabin Hill Dr.  
Greensburg, PA 15601  
[aklodow@firstenergycorp.com](mailto:aklodow@firstenergycorp.com)

Charles E. Thomas III, Esq.  
Thomas Long Niesen & Kennard  
212 Locust St., Suite 500  
PO Box 9500  
Harrisburg, PA 17108-9500  
[Cet3@thomaslonglaw.com](mailto:Cet3@thomaslonglaw.com)

Andrew S. Tubbs, Esq.  
Post & Schell  
17 North Second St., 12<sup>th</sup> Fl.  
Harrisburg, PA 17101-1601  
[atubbs@postschell.com](mailto:atubbs@postschell.com)

Jeffrey J. Norton, Esquire  
Carl R. Shultz, Esquire  
Eckert Seamans Cherrin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Fl.  
Harrisburg, PA 17101  
jnorton@eckertseamans.com  
cshultz@eckertseamans.com

Date: December 14, 2012

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

Edward G. Lanza, Esquire