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January 7, 2013

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:

Enclosed for electronic filing please find the Retail Energy Supply Association's Reply Comments to Revised Default Service Plan Compliance Filing Dated December 11, 2012, with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/lww
Enclosure

cc: Hon. Dennis Buckley, ALJ w/enc.
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of RESA Reply Comments to Revised Default Service Plan Compliance Filing Dated December 11, 2012 upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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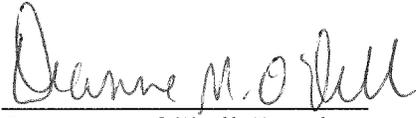
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Date: January 7, 2013


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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**RETAIL ENERGY SUPPLY ASSOCIATION
REPLY COMMENTS
TO REVISED DEFAULT SERVICE PLAN
COMPLIANCE FILING DATED DECEMBER 11, 2012**

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I. INTRODUCTION

The Retail Energy Supply Association (“RESA”)¹ submits these Reply Comments in response to comments filed by the Office of Small Business Advocate (“OSBA”) and by the Office of the Consumer Advocate (“OCA”) regarding the Revised Default Service Plan Compliance Filing dated December 11, 2012 (“Revised Default Service Plan”) submitted by PECO Energy Company (“PECO” or the “Company”).

Contrary to RESA’s position (and contrary, RESA believes, to the Commission’s intent), OSBA does not support permitting small commercial and industrial customers (“C&I”) (under 25 kW) to participate in PECO’s Standard Offer Customer Referral Program. As explained further in Section II, OSBA’s position that the Commission clarify its intention regarding this important issue consistent with its stated intention to do so in the *PECO DSP II Order* should be summarily rejected.² RESA maintains that the Commission intended that PECO include small C&I customers in all its retail market enhancement (“RME”) programs. The contradictory interpretations of other parties need to be resolved so that the Commission can determine whether the Revised Default Service Plan complies with the *PECO DSP II Order*.

OCA’s comments recommend that electric generation suppliers (“EGSs”) participating in the RME programs be required to implement reporting requirements in addition to the onerous

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; 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; NRG, Inc.; PPL EnergyPlus, LLC; 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.

² *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P-2012-2283641, Opinion and Order entered October 12, 2012, as amended (upon reconsideration) by Opinion and Order entered November 21, 2012.

ones already recommended by PECO in its Revised Default Service Plan and which RESA does not support. Specifically, OCA wants each participating EGS to track each customer on a month-to-month basis for the duration of the opt-in program. As explained further in Section III, this additional reporting requirement is unnecessary and burdensome. Requiring EGSs to implement burdensome reporting requirements as a condition of participating in the RME programs will only serve to increase the overall cost of EGS participation such that an EGS may choose not to participate. Such a result would lead to unsuccessful implementation of the RME programs, an undesirable outcome for all stakeholders and consumers.

II. SMALL C&I CUSTOMERS MUST BE ELIGIBLE TO PARTICIPATE IN THE STANDARD OFFER CUSTOMER REFERRAL PROGRAM

In the *PECO DSP II Order*, the Commission noted that the issue of including small C&I customers in the standard offer customer referral program “will be addressed elsewhere in this Opinion and Order.”³ However, and obviously by inadvertence, the Commission never addressed the issue further in the Order and this has led parties to reach divergent interpretations of the *PECO DSP II Order*. On one hand, OSBA reads between the lines of the *PECO DSP II Order* and speculates that the Commission intended to exclude small C&I customers from the standard offer customer referral program.⁴ RESA, on the other hand, reads the plain language of the *PECO DSP II Order* as a harmonious whole and reasonably concludes that the *PECO DSP II*

³ PECO DSP II at 83, n. 15.

⁴ OSBA Comments at 3; *See also OSBA Answer to RESA for Reconsideration Nunc Pro Tunc*, Docket No. P-2012-2283641 (Filed December 27, 2012). *See also PECO Answer to RESA for Reconsideration Nunc Pro Tunc*, Docket No. P-2012-2283641 (Filed December 27, 2012).

Order fully supports the inclusion of small C&I customers in that program.⁵ Because of this difference of opinion, clarity from the Commission on what it intended is warranted.

OSBA attempts to raise due process arguments in support of its position that the Commission cannot provide this clarity.⁶ These arguments are without foundation. At its core, OSBA claims that it did not have (in its opinion) a full evidentiary hearing on this issue and, therefore, the Commission is precluded from determining that small C&I customers can be included in the standard offer customer referral program. But, that is not (and never has been) the legal standard. Pennsylvania's procedural due process requires notice, an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before the tribunal.⁷

Here, OSBA (and other interested parties) clearly had both notice and an opportunity to be heard on this issue. RESA raised this specific issue at the ALJ level,⁸ and then, when the ALJ recommended that the Commission deny RESA's position, in its Exceptions.⁹ If OSBA had a legitimate concern with RESA's position it could have and should have raised its concerns at an earlier stage. Moreover, in the *PECO DSP II Order*, the Commission clearly stated its intention to affirmatively decide this issue. Now, given the fact that some parties are taking a viewpoint that RESA does not believe the Commission intended, the Commission has two separate (but related) procedural vehicle available to clarify what it intended in the *PECO DSP II Order*. In

⁵ RESA Comments at 14-15; *See also* *Petition of RESA for Reconsideration Nunc Pro Tunc or for Amendment of the Commission's October 12, 2012 Order*, Docket No. P-2012-2283641 (filed December 14, 2012)

⁶ OSBA Comments at 4; OSBA Answer at 1, 4, 8.

⁷ *See, e.g., Conestoga National Bank v. Patterson*, 275 A.2d 6, 8 (Pa. 1971).

⁸ *See* RESA RB at 30-32.

⁹ *See* RESA Exceptions at 23-24.

this proceeding, the Revised Default Service Plan proposes to exclude small C&I customers from the standard offer customer referral program contrary to RESA's view of the *PECO DSP II Order*. Because compliance of the Revised Default Service Plan is measured against the *PECO DSP II Order* and the parties have a different view about the Commission's intention on this policy issue, that issue needs to be resolved before the Commission can determine if PECO's Revised Default Service Plan is reasonable and in compliance with the *PECO DSP II Order*. While OSBA may interpret the *PECO DSP II Order* differently than RESA, due process arguments should never be used (as OSBA suggests) to prohibit the Commission from clarifying its intention about an issue it specifically stated it would address but did not.

In sum, OSBA had adequate notice of, and has directly responded to, RESA's efforts asking the Commission to clarify its intent given the fact that other parties appear to believe such clarification is necessary.¹⁰ Thus, clarification from the Commission on this issue would not result in a denial of due process as all parties have been given ample opportunity to set forth their positions on the issue. In fact, such clarification is analogous to the Commission's policy determination to direct that PECO implement an opt-in aggregation program rather than the opt-in auction program it originally proposed – a decision no party has challenged on due process grounds.

Importantly, the record in this proceeding (as relied upon by the Commission) plainly supports the inclusion of small C&I customers in the standard offer customer referral program. In the *PECO DSP II Order*, the Commission found that there are a relatively small number of small C&I customers who would be eligible and that there is “the need to increase the shopping

¹⁰ See OSBA Comments and the OSBA Answer.

statistics for small commercial customers.”¹¹ The Commission further concluded that that “customers with loads below 25 kW constitute a discrete subset of the commercial class that is relatively small and manageable.”¹² While the Commission made these findings regarding the opt-in program, they are equally applicable to the standard offer customer referral program and, contrary to OSBA’s allegations,¹³ such factors clearly support a Commission decision permitting small C&I customers to avail themselves of the benefits of the standard offer customer referral program.

Moreover, OSBA’s opposition to the inclusion of small C&I customers has been previously rejected by the Commission. In the FirstEnergy default service proceeding, the FirstEnergy Companies proposed to exclude small commercial customers from the market enhancement programs. RESA recommended that small business customers (either those with loads of up to 25 kW or, alternatively, customers in the smallest commercial rate class) should also be eligible to participate in the market enhancement programs. The Commission adopted RESA’s recommendation to include small C&I customers in the market enhancement programs, and OSBA sought reconsideration of that issue. In rejecting OSBA’s request to reverse its determination, the Commission concluded 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.”¹⁴

¹¹ PECO DSP II Order at 86.

¹² PECO DSP II Order at 86.

¹³ OSBA Comments at 4; *OSBA Answer* at 1, 3, 5-6, 8, 9. See also PECO Answer at 5-6.

¹⁴ *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).

III. ADDITIONAL EGS REPORTING IS UNNECESSARY FOR THE OPT-IN PROGRAM

PECO's Revised Default Service Plan creates reporting requirements for EGSs participating in the opt-in program. For the opt-in program, PECO proposed that EGSs submit a confidential report to PECO with specific program statistics including number of customers sent offers, number of customers accepted, and form of acceptance.¹⁵ In its comments, RESA explained that PECO's proposed reporting requirements were unnecessary and burdensome.¹⁶ The same is true of the additional reporting requirements offered by OCA, which seeks (in addition to PECO's proposed reporting requirements) to have EGSs track each customer's participation in the opt-in program – on a month-to-month basis – for the duration of the program.

OCA's requested reporting requirement would create an onerous requirement on EGSs. Tracking each customer for the duration of the program will increase EGS costs. Higher costs to participate in the opt-in program reduces the chances that EGSs will choose to participate in that program.¹⁷ In turn, this reduces the likelihood that opt-in program will be successfully implemented.¹⁸ As such, RESA does not support OCA's recommendations.

In addition, the collection of the data as requested by OCA is not necessary to evaluate the performance of the opt-in program. Tracking continued participation may show that customers left the opt-in program to pursue other opportunities. But, it will not reveal the reasons for their departure. So, contrary to the OCA's claim, tracking continued participation by

¹⁵ Revised Default Service Plan, Exhibit D at 8.

¹⁶ RESA Comments at 17.

¹⁷ RESA Comments at 2-3.

¹⁸ RESA Comments at 2-3.

the EGSs will not reveal which program elements were valuable to customers.¹⁹ Customers are either willing to participate in that structure or they are not. Continued participation in the one-time opt-in program does not provide any insight into how to educate consumers about the benefits of shopping. Nor does it provide any insight into how EGSs can develop products for customers. As developed by the Commission, the initial period of the opt-in program closely resembles products that have already been, or are being, marketed by EGSs. So, the mandated structure of the opt-in program will not result in significant insights into product development.

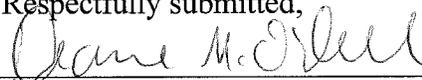
If the Commission is interested in accumulating data about the RME programs it should quickly meet with the stakeholders and seek to identify the relevant and necessary information that could be provided with the minimum of cost and inconvenience, keeping in mind that increased administrative burdens could result in few EGSs participating and, in turn, program failure.

¹⁹ OCA Comments at 3.

IV. CONCLUSION

For all the reasons discussed above, RESA respectfully requests that the Commission reject the positions advocated by OSBA and OCA to the Revised Default Service Filing of PECO consistent with the discussion herein.

Respectfully submitted,



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