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January 4, 2013

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

Re: Mari Jensen v. PECO Energy Company
PUC Docket No. F-2011-2270675

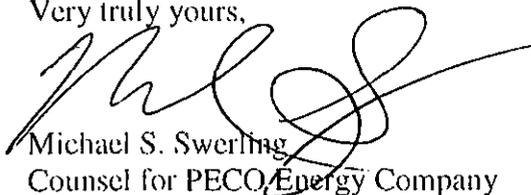
Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

_____	Answer (1 original)
_____	Answer & New Matter (1 original)
<u> X </u>	Petition for Reconsideration (1 original)
_____	Motion for Judgment on the Pleadings (1 original)
_____	Preliminary Objection (1 original)
_____	Exceptions (1 original)
_____	Reply Exceptions (1 original)
_____	Brief (1 original)
_____	Reply Brief (1 original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,


Michael S. Swerling
Counsel for PECO Energy Company

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JAN 4 - 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARI JENSEN

Complainant

v.

Docket No. F-2011-2270675

PECO ENERGY COMPANY

Respondent

NOTICE TO PLEAD

To: *Mari Jensen*

Pursuant to 52 Pa. Code § 5.572 (e), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Petition for Reconsideration within 10 days from service of this notice, the facts set forth by PECO Energy Company may be deemed to be true, thereby requiring no other proof. All pleadings, such as an Answer to Petition for Reconsideration, must be filed with the Secretary of the Pennsylvania Public Utility Commission ("Commission"), with a copy served to counsel for PECO Energy Company, Michael S. Swerling, and where applicable, the Administrative Law Judge presiding over the issue.

Please serve any response to this Petition at the following address:

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

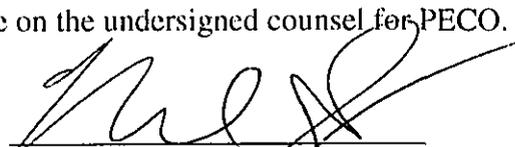
You must also serve a copy of your response on the undersigned counsel for PECO.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DATE: January 4, 2012


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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mari Jo Jensen
Complainant

v.

PECO Energy Company
Respondent

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DOCKET NO. F-2011-2270675

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**PETITION FOR RECONSIDERATION
OF PECO ENERGY COMPANY**

JAN 4 - 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code § 5.572, PECO Energy Company (“PECO” or the “Company”) petitions the Pennsylvania Public Utility Commission (the “Commission”) to reconsider its Opinion and Order entered December 20, 2012 in the above-captioned proceeding (“December 20 Order”). As a threshold matter, PECO believes that the fundamental issue in this case was properly decided by the Administrative Law Judge (“ALJ”), who issued an Initial Decision on May 31, 2012 granting PECO’s Motion for Judgment on the Pleadings, dismissing the Complaint of Mari Jo Jensen and holding that the method PECO has employed to compensate customer generators¹ for excess generation conformed fully to the Commission’s regulation at 52 Pa. Code § 75.12. The ALJ conducted the appropriate legal analysis and properly interpreted the Commission’s regulation in conformity with its plain language, as the rules of textual interpretation require. *See* 1 Pa.C.S. § 1903. Accordingly, PECO respectfully requests that the Commission revisit and amend its December 20 Order to reinstate the ALJ’s Initial Decision.

¹ “Customer-generator,” as the term is used herein, has the same meaning as set forth in the Commission’s regulations at 52 Pa. Code § 75.1.

Notwithstanding its belief that the Initial Decision should be adopted without modification by the Commission, PECO recognizes that Commission has ordered otherwise. Consequently, PECO is also presenting herein new or novel arguments, not previously considered, in support of its request that the Commission reconsider and amend the December 20 Order to grant PECO the following:

- 1) Additional time to comply with the Commission's directive to recalculate the compensation payable to customer-generators for excess generation they have delivered to PECO and "apply appropriate refunds." December 20 Order, p. 9.; and
- 2) Recovery of Information Technology ("IT") costs necessary for upgrades to PECO's billing system - so that future compensation payable to customer-generators can be automatically rendered according to the Commission's December 20 Order - through its 1307(a) Generation Supply Adjustment ("GSA") cost recovery mechanism.

As explained hereafter, PECO requires at least six months to recalculate the compensation payable to customer-generators using the "weighted average PTC [price to compare]" method described by the Commission in the December 20 Order (pp. 7-8) because the calculations are highly labor intensive and time intensive. If this request is approved, PECO will be able to complete all refunds before the end of this net metering year (May 31, 2013).

PECO believes that customers will not be prejudiced by granting the additional time requested because the refund amounts due to each customer will be small and include applicable interest from the date the Final Omitted Rulemaking Order was issued to the date the refunds are completed (by May 31, 2013).

PECO also plans to implement upgrades to its billing system so that future end of year reimbursements can be calculated automatically pursuant to the December 20 Order. PECO currently estimates that the IT upgrades will cost approximately \$500,000. However, once

PECO determines the actual costs, it plans to seek recovery through the GSA cost recovery mechanism.

Reconsideration of these important issues is proper and necessary because, at the time the December 20 Order was issued, the Commission did not have before it any indication of the work involved and the time required to recalculate compensation to PECO's customer-generators using the method prescribed in that Order. Indeed, given the procedural posture at the time this case was decided - upon Complainant's Exceptions to the ALJ's Initial Decision granting PECO's Motion for Judgment on the Pleadings - there was no reason to address these issues. Accordingly, this Petition satisfies the criteria traditionally applied by the Commission for granting reconsideration. *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1985) (Commission will grant reconsideration to address matters "which appear to have been overlooked or not addressed by the Commission.").

Because the thirty-day compliance period specified in the December 20 Order will expire on January 19, 2013, PECO requests that the Commission expedite its consideration of this Petition and grant reconsideration no later than its public meeting scheduled for January 10, 2013.

I. INTRODUCTION AND BACKGROUND

1. This proceeding was initiated on October 21, 2011 by a Complaint filed by Mari Jo Jensen, a customer-generator, which alleged, in relevant part, that “PECO is not using the correct method per PA Code to calculate the end of year reimbursement or ‘cash-out’ . . . for customer-generators with unused accumulated kilowatt-hours.” Complaint, ¶ 4. Specifically, Ms. Jensen averred, as follows:

The Final Omitted Rulemaking Order dated May 22, 2008, Docket L-00050174, page 20, amends 52 PA Code Subchapter B, Sec. 75.13 such that, for any unused kilowatt-hours accumulated at the end of the annualized period, compensation to the customer-generator shall be calculated by using the weighted average generation and transmission rates (PTC) [price to compare], with the weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to the EDC. PECO is using an average, not a weighted average.

2. On November 23, 2011, in response to Ms. Jensen’s Complaint, PECO filed an Answer and New Matter in which it averred: (1) that PECO did, in fact, use its average PTC and not an average that was weighted based on the PTCs in effect when monthly excess generation was delivered; and (2) that, contrary to Ms. Jensen’s allegation, PECO’s calculation properly and accurately conformed to the actual language of the Commission’s regulation at 52 Pa. Code § 75.13.

3. The Complainant did not file a timely response to PECO’s New Matter and, therefore, on February 28, 2012, PECO filed a Motion for Judgment on the Pleadings seeking dismissal of the Complaint on the grounds that there were no genuine issues of material fact and PECO was entitled to judgment in its favor as a matter of law because its method of calculating

compensation to customer-generators for excess generation followed the actual language of 52 Pa. Code § 75.13.

4. On April 2, 2012, the Complainant filed an untimely response to both PECO's New Matter and its Motion for Judgment on the Pleadings.

5. On May 31, 2012, the presiding ALJ issued an Initial Decision granting PECO's Motion, entered judgment in favor of PECO and dismissed Ms. Jensen's Complaint. In his Initial Decision, the ALJ expressly held that the method of calculating compensation to customer-generators for excess generation that PECO employed conformed fully with 52 Pa. Code § 75.13:

Although the Commission Order [Final Omitted Rulemaking Order dated May 22, 2008, Docket L-00050174] discussed using a weighted average generation and transmission rate to calculate a customer-generator's year-end compensation for excess generation, the regulation as approved by the Commission makes no mention of using a weighted average. It simply provides that the EDC will compensate the customer-generator utilizing the EDC's price-to-compare. That is precisely what PECO did. While I understand the complainant's argument, no relief can be granted to the complainant in this case as *it is clear that PECO followed the Commission's regulations and therefore is entitled to judgment as a matter of law.*

Initial Decision, pp. 7-8 (emphasis added).

6. On June 15, 2012, the Complainant filed a document that the Commission accepted as Exceptions to the Initial Decision. On August 8, 2012, PECO filed Replies to the Complainant's Exceptions. By the December 20 Order, the Commission reversed the Initial Decision and held, in pertinent part, as follows:

It is clear, based upon the language in our *Final Omitted Rulemaking Order*, that the proper interpretation of Section 75.13(d) is to use the weighted average PTC, with the weighting based on the rates in effect when the monthly excess generation actually was delivered by the customer-generator to the EDC when

calculating compensation to net metering customers. Accordingly, we shall modify the Initial Decision on this issue and direct that PECO recalculate the compensation due to the Complainant using the methodology set forth in our *Final Omitted Rulemaking Order*.³ Further, we shall direct that PECO perform this recomputation and refund any monies due to the Complainant within thirty days of the date of entry of this Opinion and Order. Accordingly, the Complainant's Exceptions are granted only to the extent that they address PECO's calculation of the Complainant's end-of-year excess energy compensation.

³ We shall also direct that PECO apply this recalculation to the extent it is applicable to all other similarly situated customers to whom it may apply within thirty day[s] after the date of entry of this Opinion and Order.

7. Additionally, consistent with footnote 3, quoted above, Ordering Paragraph 5 of the December 20 Order set forth the following directive:

IT IS ORDERED: . . .

5. That within thirty (30) days from the date of entry of this Opinion and Order, PECO Energy Company shall apply appropriate refunds to the extent it is applicable to all other similarly situated customers pursuant to our *Final Omitted Rulemaking Order* at Docket No. L-00050174, which was entered on July 2, 2008.

II. LEGAL STANDARD FOR RECONSIDERATION

8. In *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1985), the Commission furnished the following guidance on the criteria it would consider in deciding requests for reconsideration:

A petition for reconsideration, under the provisions of 66 Pa C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties . . ., cannot be

permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

III. REQUEST FOR RECONSIDERATION

9. In addition to asking the Commission to adopt the ALJ’s Initial Decision as its own action in this case, this Petition presents for the Commission’s consideration a new issue, namely, the feasibility of complying with Ordering Paragraph 5 of the December 20 Order within the thirty-day period specified by the Commission. As to that issue, new information, not previously available to, or considered by, the Commission, is being offered by PECO. Accordingly, reconsideration is necessary and appropriate, and should be granted, because, as matters now stand, it is not feasible for PECO to comply with the Commission’s directive within a period as short as thirty days.

10. Over the past four years, PECO has had the following number of customer-generator accounts that have received excess generation compensation:

2011-2012 net metering year – 927 accounts
2010-2011 net metering year – 590 accounts
2009-2010 net metering year – 199 accounts
2008-2009 net metering year – 42 accounts

Total: 1,758 accounts

11. Under the terms of the December 20 Order, PECO must recalculate the compensation payable to all of these customer-generators for each year from and after July 2,

2008, which is the effective date of the Final Omitted Rulemaking Order.² While PECO will issue Ms. Jensen's refund with applicable interest within the thirty-day period, the remaining refunds cannot be performed simply by running a computer program and will take more time to complete. PECO billing representatives must review and analyze the monthly billing data for each of the 1,758 accounts over the past four years to determine the months in which excess generation was delivered to PECO. Thereafter, the appropriate refund amounts have to be manually calculated considering the rates in effect during the relevant period. Finally, manual refunds will have to be posted to each of the 1,758 accounts and letters explaining the refunds will issue to all customers impacted. Consequently, the calculations are highly labor intensive and time intensive and, in fact, PECO estimates that six months will be needed to perform the calculations and process the refunds to customer-generators based on those calculations.

12. PECO has been working to upgrade to its billing system so that future end of year payments can be calculated automatically.³ Based on the December 20 Order, PECO currently estimates that the upgrades will cost approximately \$500,000. However, once PECO determines the actual costs for these upgrades, it shall seek recovery through its GSA cost recovery mechanism – the Commission-approved mechanism for recovering all default service generation costs (including year-end payments for net metering excess generation credits).

13. As previously noted, PECO is asking that the Commission grant reconsideration for the limited purposes of extending the thirty-day period specified in footnote 3 and Ordering Paragraph 5 of the December 20 Order and providing approval for PECO to seek recovery of

² The refund period is within the limitation period imposed by 66 Pa.C.S. § 1312, which authorizes the Commission to require refunds only for "four years prior to the date of the filing of [a] complaint."

³ As part of this effort, PECO also is revising its bill format to improve the quality and clarity of the relevant billing data for each net metering customer.

system upgrade costs. For the reasons set forth above, PECO requests that the Commission amend its directive in order to permit PECO to perform the necessary recalculations and grant appropriate refunds within a period not to exceed May 31, 2013.

14. Although this period is longer than the thirty days specified in the December 20 Order, it is not so long as to have a material adverse effect on those customer-generators to whom it is determined refunds are due, particularly because applicable interest will be provided during this period. Moreover, PECO will issue Ms. Jensen's refund with applicable interest within the thirty-day period. The Commission's directive should be further amended to affirm that PECO may seek recovery of the IT costs necessary to upgrade its billing system through its GSA.

IV. REQUEST FOR EXPEDITED CONSIDERATION

15. The thirty-day compliance period specified in the December 20 Order will expire on January 19, 2013.⁴ Consequently, PECO requests that the Commission expedite its consideration of this Petition and grant reconsideration no later than its public meeting scheduled for January 10, 2013.

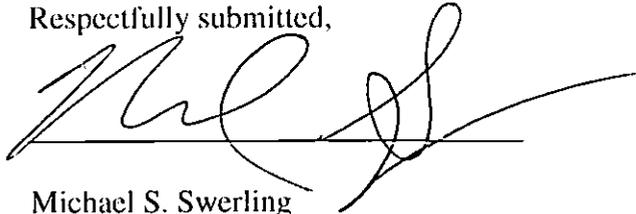
V. CONCLUSION

For the reasons set forth above, PECO requests that if the Commission does not reconsider its December 20 Order in order to adopt the Initial Decision as its action in this case, then it should expressly grant reconsideration of the December 20 Order on or before January 10,

⁴ January 19, 2013 is also the last day for PECO to file a Petition for Review of the December 20 Order with the Commonwealth Court of Pennsylvania. *See* Pa.R.A.P. 1512(a). Absent Commission action granting reconsideration prior to that date, it may be necessary for PECO to appeal the December 20 Order to protect its rights in light of the insufficient time available to comply with Ordering Paragraph 5, as explained previously.

2013 in order to (1) amend the December 20 Order to provide that PECO shall have until May 31, 2013 to recalculate the compensation due to customer-generators for excess generation delivered to the Company since the effective date of the Final Omitted Rulemaking Order and to process the appropriate refunds; and (2) permit PECO to recover its IT costs necessary to upgrade PECO's billing system through its GSA so that future compensation payable to customer-generators can be rendered automatically consistent with the Commission's December 20 Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael S. Swerling', is written over a horizontal line. The signature is stylized and cursive.

Michael S. Swerling
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Counsel for PECO Energy Company

Dated: January 4, 2013

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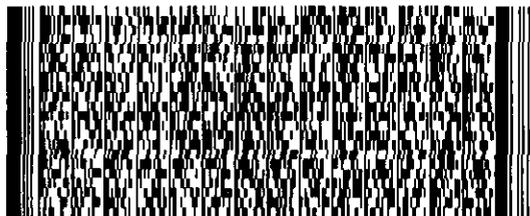
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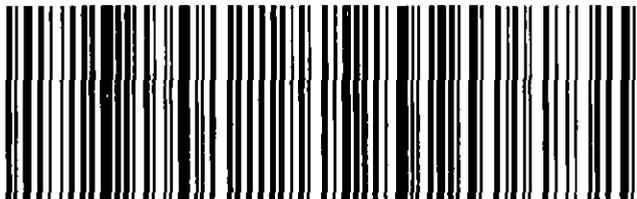
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