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February 27, 2013

VIA E-FILING

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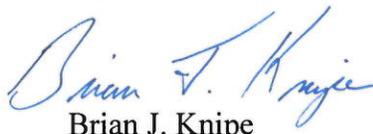
Re: *Petition of PECO Energy Company for Approval of its Default Service Program,*
Docket No. P-2012-2283641

PECO Energy Company Universal Service and Energy Conservation Plan for
2013-2015; Docket No. M-2012-2290911

Dear Secretary Chiavetta:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Brief of FirstEnergy Solutions Corp.* 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 Cynthia Williams Fordham (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 :

PECO Energy Company Universal Service : Docket No. M-2012-2290911
and Energy Conservation Plan for 2013-2015 :

BRIEF OF FIRSTENERGY SOLUTIONS CORP.

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DATED: February 27, 2013

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Through this proceeding, the Commission will determine the future design of the PECO Energy Company (“PECO”) Customer Assistance Program (“CAP”). Currently, PECO estimates its total recoverable 2013 costs related to the Universal Services Fund Charge (“USFC”) which funds its CAP at \$98.7 million. The USFC is recovered from PECO’s non-CAP Residential customers. It could be reduced if CAP customers received generation service from electric generation suppliers (“EGSs”) at a price below PECO’s price-to-compare (“PTC”). FirstEnergy Solutions Corp. (“FES”)¹ supports the ability of CAP customers to purchase electric generation supply from an EGS, and has participated in these proceedings to ensure the design of PECO’s CAP program will have no adverse impact on CAP customers’ ability to shop, or on EGSs’ ability to serve them.

The Coalition for Affordable Utility Service & Energy Efficiency in Pennsylvania (“CAUSE-PA”), through the Direct Testimony of its witness Mitchell Miller, suggested that the Commission order a collaborative on a CAP customer aggregation program, in which CAP customers would shop as a group and EGSs would bid to serve the aggregated CAP customer group for a fixed period of time. The program, as described by CAUSE-PA, would incorporate several customer protections to ensure bill affordability. As explained below, such a program could employ retail electric competition to benefit not only CAP customers, but also PECO’s non-CAP Residential customers, as well as EGSs, and it deserves serious and immediate consideration.

¹ FES, a provider of wholesale and retail energy and related products to customers located primarily in the Mid-Atlantic and Midwest regions, is a licensed EGS, having been authorized at Docket No. A-110078 to serve all categories of retail customers throughout Pennsylvania, and participates in competitive wholesale power procurements conducted by EDCs to serve their default service customers.

Further, CAUSE-PA's CAP aggregation program would work regardless of the underlying CAP program design, and CAUSE-PA's suggested program can be implemented immediately. While the Commission has directed PECO to work exclusively with the Commission's Office of Competitive Market Oversight ("OCMO") in developing a plan that allows individual CAP customers to shop for generation supply ("Shopping Plan"), FES submits CAUSE-PA's idea for moving CAP customers as a group off default service could be implemented in a manner which will benefit all interested stakeholders and deserves consideration in a collaborative, even while PECO and the OCMO develop a plan for individual CAP customer shopping. Therefore FES respectfully requests that the Commission direct a collaborative among PECO and other parties to explore CAUSE-PA's customer aggregation program proposal for implementation as soon as practicable.

II. STATEMENT OF THE CASE

On February 28, 2012, PECO filed its Universal Service and Energy Conservation Plan ("USECP") at Docket No. M-2012-2290911, and on October 25, 2012 PECO filed an Amended USECP. On November 8, 2012, the Commission issued a Tentative Order seeking comments on specific aspects of PECO's USECP. In addition, the Commission, in its Order entered October 12, 2012 in *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket No. P-2012-2283641 ("DSP II"), ordered that PECO and the OCMO develop a plan to allow PECO's CAP customers to purchase their generation supply from EGSs by January 1, 2014 ("Shopping Plan").

On January 3, 2013, the Commission issued a Secretarial Letter at Docket Nos. M-2012-2290911 and P-2012-2283641, to coordinate the USECP and DSP II proceedings and ensure that

critical decisions about the structure of PECO's CAP program are made before PECO has to file the Shopping Plan. The Secretarial Letter indicated PECO's intent to file its Shopping Plan by February 1, 2013 to allow sufficient time for review, approval and implementation by January 1, 2014. However, the Secretarial Letter announced the Commission's plan to adopt a Final Order on PECO's CAP program by April 4, 2013. Therefore, the Secretarial Letter extended the deadline by which PECO CAP customers must have the ability to shop to April 1, 2014, allowing PECO until May 1, 2013 to file its Shopping Plan. The Secretarial Letter further assigned the proceedings to the Office of Administrative Law Judge for evidentiary hearings and briefing, and certification of the record to the Commission by March 1, 2013.

On January 9, 2013, Administrative Law Judge Cynthia Williams Fordham ("ALJ") issued a Prehearing Order at Docket Nos. M-2012-2290911 and P-2012-2283641, setting a deadline of January 14, 2013 for prehearing conference memoranda. Prehearing Conference Memoranda were filed by PECO, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the Tenant Union Representative Network ("TURN") and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "TURN, et. al"), CAUSE-PA, the Pennsylvania Coalition Against Domestic Violence ("PCADV"), Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("DES") and Interstate Gas Supply ("IGS;" collectively, "DES/IGS"), the Retail Energy Supply Association ("RESA") and Direct Energy Services, LLC ("Direct Energy"), and FES. In addition, CAUSE-PA and PCADV filed Petitions to Intervene.

On January 15, 2013, the parties participated in a prehearing conference before the ALJ. At the prehearing conference, the ALJ granted all requests for intervention, adopted the official service list and litigation schedule for these proceedings, and adopted modifications of the

Commission's regulations regarding discovery. The parties took discovery and served written direct and rebuttal testimony. Evidentiary hearings were held on February 15 and 19, 2013, during which certain witnesses presented oral rejoinder testimony, and various witnesses were subjected to cross-examination in connection with their written and oral testimony and exhibits.

Pursuant to the ALJ's Prehearing Order #2 issued January 18, 2013, FES hereby submits this Brief.

III. ARGUMENT

A. CAUSE-PA's CAP Customer Shopping Proposal Would Benefit Several Parties

PECO refers to the aggregate dollar amount of rate discount benefits given to its CAP customers each year as its "CAP shortfall." PECO St. No. 1 at 15; PECO St. No. 2 at 2. PECO's analysis of a data set in this proceeding showed a CAP shortfall of \$77.9 million per year. PECO St. No. 1 at 16. PECO's CAP shortfall is recovered on an ongoing basis, with annual reconciliations, from PECO's non-CAP Residential customers through PECO's USFC. PECO St. No. 1 at 15-16. PECO's 2013 USFC rates were based upon PECO's estimate of \$98.7 million in total recoverable 2013 USFC related costs, including its projected 2013 CAP shortfall. PECO St. No. 2 at 3. If CAP customers could shop and receive electric generation service from an EGS at a price below PECO's PTC, PECO's non-CAP residential customers would benefit from reduced USFC rates, and PECO's CAP customers would benefit as well.

CAUSE-PA's witness Mr. Miller emphasized that no matter what CAP program design model the Commission chooses, CAP shopping must not compromise bill affordability for CAP customers. To that end, CAUSE-PA has suggested that a CAP customer aggregation program, in which CAP customers would shop as a group and EGSs would bid to serve the aggregated CAP

customer group “for a fixed period of time,” CAUSE-PA St. No. 1 at 10-11, would provide an efficient and safe manner for CAP customers to enter the competitive electricity market. The program as proposed by CAUSE-PA would incorporate several customer protections, including a requirement that the competitive price charged to CAP customers be set at or below the price the price of default service. CAUSE-PA St. No. 1 at 11. CAUSE-PA suggests that the terms of such a CAP customer aggregation program “could be developed through negotiation or a collaborative of the parties.” CAUSE-PA St. No. 1 at 10.

FES supports CAUSE-PA’s proposal, which would benefit both CAP and non-CAP customers and further the development of retail electric competition in PECO’s service territory. The record evidence shows that CAUSE-PA’s proposed aggregation program would retain CAP customer benefits and consumer protections, since it “largely works independently of the underlying CAP program design.” PECO St. No. 1-R at 9. Also, CAUSE-PA’s proposal could reduce the significant CAP shortfall that PECO must recover from its non-CAP Residential customers through its Universal Services Fund Charge. Indeed, it is wasteful to increase PECO’s CAP shortfall through higher default service generation prices when lower competitive prices are available. In addition, the aggregation of CAP customers with generation supply provided through EGS bidding will further the Commission’s goal of moving customers off of default service.

Further, it is reasonable to believe EGSs would be interested in participating in a CAP shopping program such as CAUSE-PA proposes. Direct Energy, for instance, submitted testimony supporting the concept of CAP customer aggregation. Direct Energy St. No. 1 at 8. Indeed, there are numerous EGSs extending offers to PECO Residential customers, and it is reasonable to believe a number of these EGSs would be interested in making offers that meet

CAUSE-PA's criterion that the competitive price charged to CAP customers be set at or below PECO's default service price.² CAUSE-PA St. No. 1 at 11.

Direct Energy expresses concern that CAUSE-PA's proposal that the competitive price charged to CAP customers is always at or below the price the price of default service may violate the Competition Act by "requiring Commission regulation of the price for competitive supply." Direct Energy St. No. 1-R at 9. FES disagrees with this interpretation of CAUSE-PA's proposal. In the CAP aggregation proposal the Commission would not be "perpetually"³ regulating the price for competitive supply. Rather, the Commission would set the conditions for EGS participation in PECO's CAP customer aggregation program. The Commission's role in the CAP aggregation program would be analogous to conditions set by the Commission for EGS participation in PECO's Retail Market Enhancement Programs where EGSs must serve customers for a set period of time at a discount to PECO's PTC. *Petition of PECO Energy Company for Approval of Its Default Service Program*, Docket No. P-2012-2283641 (Opinion and Order entered October 12, 2012). Therefore, CAUSE-PA's recommendation³ that a CAP customer aggregation program include consumer pricing protections is no obstacle to consideration of its proposal.

B. The Record Evidence Supports the Immediate Exploration of CAUSE-PA's CAP Customer Aggregation Proposal Through a Collaborative

The record evidence supports consideration of CAUSE-PA's CAP customer aggregation program without delay. Because the development of a successful CAP aggregation program that benefits all stakeholders will require the input of several stakeholders and take more time than is

² For instance, FES is currently offering PECO Residential customers guaranteed savings through a percent-off product which is 15% off PECO's PTC through September 2014.
<https://www.fes.com/content/fes/home/offers/residential/customer-choice-peco.html>.

³ See Direct Energy St. No. 1-R at 8.

available in these expedited proceedings on PECO's CAP Program design, FES recommends a collaborative approach to developing PECO'S CAP aggregation pilot. The collaborative could discuss subjects including, but not limited to, the term of the aggregation program, pricing, CAP customer protections, EGS participation and bidding.

While the Commission has rejected the use of a collaborative in connection with PECO's development of its CAP Shopping Plan, *Petition of PECO Energy Company For Approval of Its Default Service Program*, Docket No. P-2012-2283641 (Order entered November 21, 2012 at 23), CAUSE-PA's proposal could, and should, be explored as an initiative separate and apart from PECO's CAP Shopping Plan. TURN, et. al's witness testified that "PECO could first work to implement CAP shopping aggregation even under its current CAP program structure and then work to implement any changes in its CAP structure that may result from this proceeding." TURN, et al. St. No. 1-R at 12. CAUSE-PA witness Mr. Miller testified that PECO could conduct a CAP customer aggregation now, even while changes to CAP program design are underway. PECO St. No. 1-R at 4. Also, PECO's witness Ms. Feldhake testified that a CAP customer aggregation program can operate independently of the underlying CAP program design. PECO St. No. 1-R at 9.

Accordingly, FES respectfully requests that the Commission direct PECO to engage in a collaborative with interested parties to develop a CAP shopping program, to be taken prior to, and independent of, implementation of PECO's final CAP Shopping Plan. FES requests that the Commission further direct PECO and the OCMO to consider CAUSE-PA's CAP customer aggregation proposal in their development of PECO's permanent CAP customer Shopping Plan.

IV. CONCLUSION

For the foregoing reasons, FirstEnergy Solutions Corp. requests that the Pennsylvania Public Utility Commission direct PECO Energy Company and interested Parties to engage in a collaborative to develop a proposed CAP customer aggregation program as recommended by CAUSE-PA, and direct PECO and the OCMO to consider a CAP customer aggregation program in their development of PECO's CAP Shopping Plan.

Respectfully submitted,

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Dated: February 27, 2013

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Petition of PECO Energy Company for : Docket No. P-2012-2283641
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PECO Energy Company Universal Service and :
Energy Conservation Plan for 2013-2015 : Docket No. M-2012-2290911

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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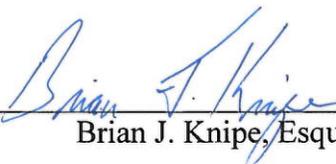
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