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March 1, 2013

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**RE: Petition of PECO Energy Company for Approval of Its Default Service Program;  
Docket No. P-2012-2283641**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Petition for Clarification and/or Reconsideration of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document.

Sincerely,

McNEES WALLACE & NURICK LLC

By   
Adeolu A. Bakare

Counsel to the Philadelphia Area Industrial Energy Users Group

/lmc

Enclosures

c: Administrative Law Judge Dennis J. Buckley (via E-mail and First Class Mail)  
Certificate of Service

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## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Adeolu A. Bakare

Dated this 1<sup>st</sup> day of March, 2013, in Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY            :**  
**FOR APPROVAL OF ITS DEFAULT                 :** **DOCKET NO. P-2012-2283641**  
**SERVICE PROGRAM                                 :**

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**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF THE  
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

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Pursuant to Sections 703(f) and (g) of the Pennsylvania Public Utility Code, and Section 5.572 of the Pennsylvania Public Utility Commission's ("PUC" or Commission") regulations, the Philadelphia Area Industrial Energy Users Group ("PAIEUG") files this Petition for Clarification and/or Reconsideration of the Opinion and Order of the Commission entered February 14, 2013, in the above-captioned proceeding ("Revised DSP Order"). 66 Pa. C.S. § 703(f), (g); 52 Pa. Code § 5.572.

**I.        INTRODUCTION**

1.       On January 13, 2012, PECO Energy Company ("PECO" or "Company") filed with the Commission a Petition for Approval of the Company's Second Default Service Program ("DSP II"). *Petition of PECO Energy Company for Approval of Its Default Service Program*; Docket No. P-2012-2283641 (Jan. 13, 2012) (hereinafter, "Petition"). PAIEUG filed a Petition to Intervene on February 13, 2012, and PAIEUG actively participated in this proceeding, which included evidentiary hearings and the filing of briefs.

2.       On October 12, 2012, the Commission issued an Opinion and Order approving parts of PECO's DSP II (hereinafter "Original DSP Order"), but directing the parties to convene a collaborative to, *inter alia*, develop a proposal "regarding how EGSs will pay for the costs of

the [RME] Programs as modified by this Opinion and Order." *Petition of PECO Energy Company for Approval of its Default Service Program II*; Docket No. P-2012-2283641 (Opinion and Order entered Oct. 12, 2012). Petitions for Clarification and/or Reconsideration were filed in response to the Original DSP Order, and the Commission issued an Opinion and Order on November 21, 2012 (hereinafter, "PECO Reconsideration Order"), clarifying that the Original DSP Order also directed parties to consider "the possibility" that customers "may" be responsible for some RME program costs in the collaborative process. *Petition of PECO Energy Company for Approval of its Default Service Program II*; Docket No. P-2012-2283641 (Opinion and Order entered Nov. 21, 2012).

3. Following several collaborative meetings among stakeholders related to RME cost recovery and program design, PECO submitted its revised DSP to the Commission on December 11, 2012 ("Revised DSP"). In response to the Revised DSP, the Retail Energy Supply Association ("RESA"); Interstate Gas Supply, Inc., and Dominion Retail, Inc. (collectively, "EGS Parties"); First Energy Solutions Corp. ("FES"); the Office of Consumer Advocate ("OCA"); and the Office of Small Business Advocate ("OSBA") filed Comments. Shortly afterwards, PAIEUG filed Reply Comments in response to the requests of RESA, FES, and the EGS Parties to impose equal cost sharing for RME programs between EGSs and "customers."<sup>1</sup> PAIEUG's Reply Comments supported the Revised DSP's proposal to allocate all RME program costs to EGSs or, alternatively, proposed that any collection of RME program costs from customers must exclude customers ineligible to participate in such programs, specifically Large Commercial and Industrial ("C&I") customers. PAIEUG Reply Comments, pp. 4-5.

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<sup>1</sup> Reply Comments of the Philadelphia Area Industrial Energy Users Group (Jan. 7, 2013) (hereinafter "PAIEUG Reply Comments"); *see also* Retail Electric Supply Association Comments to Revised Default Service Plan Compliance Filing Dated December 11, 2012 (Dec. 27, 2012), p. 4 (hereinafter "RESA Comments"); Comments of Interstate Gas Supply, Inc., and Dominion Retail, Inc. to Compliance Filing (Dec. 27, 2012), p. 2 (hereinafter "EGS Parties Comments"); Comments of FirstEnergy Solutions Corp. on PECO Energy Company's Revised Default Service Plan Compliance Filing & Exhibits (Dec. 27, 2012), p. 6 (hereinafter "FES Comments").

4. On February 14, 2013, the Commission issued the Revised DSP Order approving PECO's Revised DSP with certain modifications. With regards to cost recovery for PECO's RME programs, the Commission denied PECO's original proposal and determined that a "reasonable accommodation of all the party's positions should be incorporated into this resolution." Revised DSP Order, p. 13. To that end, the Commission developed the following cost recovery methodologies for PECO's Opt-In Offer ("Opt-In") and Standard Offer programs:

As to the Retail Opt-in program, we agree with RESA that a fee of the lesser of \$1 per assigned customer or actual program costs to EGS participants is appropriate. Any remaining costs should be recovered in either one of two ways – through a non-by-passable surcharge, as proposed by RESA, or shared with 50% from the POR discount and 50% from residential and small commercial default service customers.

As to the SOP, we agree with RESA that a fee of the lesser of \$30/customer or actual costs per referred customer is appropriate. Any remaining costs should be recovered in either one of two ways – through a non-by-passable surcharge, as proposed by RESA, or shared with 50% from the POR discount and 50% from residential and small commercial default service customers.

Revised DSP Order, p. 13. The Commission's resolution bifurcates RME program cost recovery into two phases. The first phase allows PECO to recover a fixed fee from EGSs, while the second phase provides options for recovering additional RME program costs. The second phase authorizes PECO to split recovery of RME program costs in excess of the applicable fixed fee, with 50% allocated to EGSs and 50% allocated to residential and small commercial customers. *Id.* Alternatively, the second phase also allows PECO to choose a "non-bypassable surcharge, as proposed by RESA" for recovery of RME program costs over the applicable fixed fee. *Id.*

5. PAIEUG is concerned that the language authorizing PECO to implement a non-bypassable surcharge based on RESA's proposals in this proceeding may be unclear and could lead to the recovery of these costs from Large C&I customers. Although the record in this

proceeding indicates that RESA proposed a non-bypassable surcharge applicable only to customers eligible to participate in PECO's RME programs, the Commission's reference to RESA's proposals fails to explicitly acknowledge this limitation. Without a clear determination as to the applicability of the non-bypassable surcharge, the Revised DSP Order may result in RME program charges to customers that are ineligible to participate in the programs, such as Large C&I customers.<sup>2</sup>

6. Because of the issues noted above, and for reasons discussed more fully herein, PAIEUG respectfully submits this Petition for Clarification and/or Reconsideration of the Revised DSP Order.

## **II. LEGAL STANDARDS**

7. Section 703(g) of the Public Utility Code authorizes the Commission to reopen the record in a proceeding to clarify or reconsider a prior Order. *See* 66 Pa. C.S. § 703(g). Similarly, Section 5.572 of the Commission's Regulations sets for the procedures for petitioning for clarification or reconsideration of a Commission Order.

8. The Commission further enumerated its standard for clarifying or reconsidering orders in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982). In pertinent part, the Commission stated that 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," and that the Commission "expect[s] to see raised in such petitions... new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not

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<sup>2</sup> On February 28, 2013, PECO filed a Second Revised Default Service Compliance Plan Filing indicating that RME program costs will be recovered from EGSs through fixed fee allowances, with any excess expenses allocated 50% towards a POR discount and 50% towards residential and small commercial customers. While PECO's filing appropriately exempts Large C&I customers from payment of RME program costs, PAIEUG submits that this Petition for Clarification and/or Reconsideration should be addressed to preserve the accuracy of the record and the Revised DSP Order.

addressed by the Commission." *Duick*, 56 Pa. P.U.C. at 559. Although *Duick* addressed a petition for reconsideration, the Commission subsequently held that "a petition for clarification must meet the same standard as a petition for reconsideration." *Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program (Office of Small Business Advocate Petition for Clarification of 06/18/10 Commission Order)*; Opinion and Order, Docket No. P-2009-2143607, 2010 WL 3418419 (Pa.P.U.C. Aug. 24, 2010).

9. In this instance, the Revised DSP Order does not explicitly state whether the authorized "non-bypassable" charge should apply to Large C&I customers. Moreover, if the Commission does intend for this non-bypassable charge to apply Large C&I customers, the Revised DSP Order fails to address why Large C&I customers should remit costs for programs in which they are unable to participate. In other words, the aforementioned concerns may have been inadvertently overlooked by the Commission, and this Petition seeks amendment of the Revised DSP Order by the PUC in order to address and clarify this argument. Therefore, PAIEUG submit that the standards of *Duick* have been satisfied, as applicable to petitions for clarification and petitions for reconsideration.

10. As such, PAIEUG respectfully requests that the Commission exercise its discretion to grant this Petition for Clarification and/or Reconsideration and amend the Revised DSP Order as necessary to: (1) clarify that the Revised DSP Order authorizes recovery of RME program costs, including costs recovered through a non-bypassable surcharge, only from customers eligible to participate in the programs; or (2) reconsider the Revised DSP Order to ensure that RME program costs, including costs recovered through a non-bypassable surcharge, are recovered only from the residential and small commercial customers eligible to participate in

the RME programs. PAIEUG also reserves the right to pursue an appeal of any and all issues previously raised in its briefs, regardless of whether those items are discussed herein.

### III. ARGUMENT

#### A. **The Commission Should Clarify Its Revised DSP Order to Confirm that Any Recovery of RME Program Costs from Customers Must Be Limited to Only Those Customers That Are Eligible to Participate in the RME Programs.**

11. The language of the Revised DSP Order could raise questions with respect to the PUC's intent as it pertains to cost recovery of PECO's RME programs. As described more fully in Paragraphs 4 and 5, *supra*, the Commission developed a two-phase methodology for recovering RME program costs reflecting elements of proposals from various parties. Revised DSP Order, p. 13. The first phase authorizes PECO to recover a maximum per customer charge from EGSs. *Id.* For the Opt-In program, PECO may charge EGSs participating in the program up to \$1/customer. For the Standard Offer program, PECO may charge EGSs up to \$30/customer. *Id.*

12. For the second phase, the Commission adopts the same methodology for both programs. If PECO's costs exceed the applicable maximum per customer fee, PECO may recover additional costs through either: (1) a non-bypassable surcharge; or (2) a 50% shared allocation between a Purchase of Receivable ("POR") Discount and residential and small commercial customers. *Id.*

13. Of concern to PAIEUG, the Commission's proposed cost recovery method includes potential for recovery of RME program costs through a non-bypassable surcharge, but fails to explicitly limit application of the surcharge to residential and small commercial

customers.<sup>3</sup> Rather, the Revised DSP Order notes only that the non-bypassable surcharge should be approved "as proposed by RESA." Revised DSP Order, p. 13. Importantly, the record in this proceeding demonstrates that the non-bypassable surcharge proposed by RESA was not intended to be applied to Large C&I customers because these customers are ineligible to participate in the RME programs and have achieved significant shopping levels. In order to ensure, however, that these costs are collected correctly, PAIEUG submits that the PUC must clarify this language to note that the "non-bypassable" charge is non-bypassable only as applicable to shopping and non-shopping residential and small commercial customers.

14. While parties have expressed various opinions regarding the appropriate structure for recovery of PECO's RME program costs, no party, including RESA, disputes that Large C&I customers cannot participate in PECO's RME programs and therefore should not pay costs associated with such programs. PAIEUG M.B., p. 37. As referenced in PAIEUG's Main Brief, FES, the EGS Parties, and RESA each submitted testimony acknowledging that Large C&I customers are ineligible to participate in PECO's RME programs and should be excluded from any cost recovery of such programs. *Id.* Specifically, RESA's witness recommended that "the costs of the auction and other retail market enhancements should be recovered through a non-bypassable charge applied to *all customer classes eligible for those enhancements.*" Surrebuttal Testimony of Christopher Kallaher, RESA Statement No. 2-SR (hereinafter, "RESA St. No. 2-SR"), p. 26. (emphasis added).

15. Despite the un rebutted and uncontested record evidence establishing that Large C&I customers are ineligible for PECO's RME programs and appropriately excluded from any

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<sup>3</sup> Although this Petition for Clarification and/or Reconsideration addresses the Revised DSP Order's failure to exclude Large C&I customers from recovery of RME program costs, PAIEUG continues to concur with the OCA's assessment that all RME program costs are appropriately recovered from EGSs. See PAIEUG M.B., p. 36; see also PAIEUG Reply Comments, p. 3.

recovery of such costs, the Revised DSP Order does not clearly exclude Large C&I customers from the non-bypassable charge authorized therein, but rather, simply provides only that PECO may opt to recover certain RME program costs through a non-bypassable charge, as proposed by RESA.<sup>4</sup>

16. Because the Revised DSP Order does not specifically exempt Large C&I customers from the non-bypassable surcharge, RME program costs could be unjustly and unreasonably allocated to Large C&I customers, who would not receive any of the accompanying benefits of the programs. As observed above, RESA has indicated that the non-bypassable rider should be applied only to customers eligible to participate in the RME programs. RESA St. No 2-SR, p. 26. By adopting the non-bypassable surcharge as proposed by RESA, the Revised DSP Order appears to implicitly exempt Large C&I customers from the surcharge; however, to avoid unjust and unreasonable charges to Large C&I customers, the Commission should explicitly confirm that RME program costs should not be recovered from Large C&I customers.

17. Therefore, PAIEUG respectfully requests that the Commission clarify its Revised DSP Order to clearly note that the non-bypassable surcharge component does not apply to Large C&I customers for purposes of any recovery of RME program costs.

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<sup>4</sup> Notably, the Original DSP and PECO Reconsideration Order directed parties to commence collaborative discussions on RME program cost recovery, but declined to specifically address the exclusion of Large C&I customers from recovery of RME program costs. PECO Reconsideration Order, p. 17. Following submission of PECO's Revised DSP Plan, PAIEUG submitted Reply Comments regarding RESA's proposed non-bypassable surcharge, asserting that "this surcharge should be applied only to those customers eligible for the RME programs. PAIEUG Reply Comments, p. 5.

**B. Alternatively, the Commission Should Reconsider Its February 14 Order and Modify the Findings As Necessary to Ensure that RME Program Costs Are Not Recovered From Large Commercial and Industrial Customers Who are Ineligible to Participate In the RME Programs.**

18. As indicated above, the applicability of the non-bypassable surcharge authorized by the Revised DSP Order appears to require only clarification to confirm the apparent exemption of Large C&I customers. In the event, however, that the Commission did not intend to apply RESA's proposal in full (*i.e.*, by eliminating Large C&I customers from any non-bypassable collection), PAIEUG respectfully requests that the Commission reconsider its decision and prohibit recovery of RME program costs from Large C&I ratepayers who are ineligible to participate in the RME programs.

19. As the record established throughout this proceeding confirms, Large C&I customers are ineligible to participate in PECO's Opt-In or Standard Offer programs. PAIEUG M.B., p. 37. Moreover, the Large C&I retail market is substantially developed, obviating any need for such programs as relates to Large C&I customers. PAIEUG M.B., pp. 37-38; PAIEUG Reply Comments, p. 5. Therefore, any recovery of RME program costs from Large C&I customers would constitute unjust and unreasonable rates, particularly with regards to the significant majority of Large C&I customers that are already taking competitive supply from EGSs.

20. Allowing PECO to recover RME program costs from Large C&I customers contradicts the fundamental purpose of the programs. As stated in the Revised DSP Order, "these programs have the potential to benefit all residential and small commercial customers who avail themselves of the myriad of EGS offers." Revised DSP Order, p. 14. Because the RME programs target residential and small commercial customers, Large C&I customers are appropriately excluded from participation. PAIEUG M.B., p. 37. Significantly, no party to this

proceeding, including PECO and each EGS addressing RME program cost recovery issues, has argued that Large C&I customers should be ineligible to participate in PECO's RME programs. PAIEUG M.B., p. 37, *see supra*, Section III.A. Because Large C&I customers are excluded from participation in the RME programs, cost causation principles demand that the Commission also exempt Large C&I customers from paying the costs of such programs.

21. Aside from eligibility issues, Large C&I customers would not benefit from the purpose behind RME programs because shopping has already fully penetrated PECO's Large C&I retail market. Although the Revised DSP Order references general benefits resulting from robust competitive retail markets, the record evidence suggests that such benefits are limited to residential and small commercial customers. Revised DSP Order, p. 14; *but cf.* PAIEUG, M.B., p. 38. The record in this proceeding shows that 96% of the Large C&I class load is already served by competitive supply. PAIEUG M.B., p. 38. The prevalence of retail shopping demonstrates that the Large C&I retail market in PECO's service territory is highly developed and sophisticated, rendering the underlying objectives of RME programs moot. Therefore, with regards to Large C&I customers, "participation in RME programs would not contribute to the development of robust competitive markets envisioned by the Commission." PAIEUG Comments, p. 5.

22. More specifically, there are no practical benefits related to RME programs to be gained from Large C&I class. With 96% of the Large C&I load currently procured through competitive supply, it cannot reasonably be suggested that Large C&I customers lack knowledge or understanding of competitive options. *See* PAIEUG M.B., p. 37. More likely, the 4% of Large C&I load remaining on default service does so for specific business reasons. *See id.* Regardless of the reason for nominal Large C&I load remaining on default service, allocating

RME program costs to all Large C&I customers to stimulate shopping among the remaining 4% of Large C&I customer load remaining on default service would upend cost causation principles.

23. For the reasons expressed above, the Commission should recognize the circumstances of Large C&I customers with regards to RME programs and modify the Revised DSP Order to reflect the ineligibility of Large C&I customers to participate in PECO's RME programs and/or the robust and developed Large C&I retail market in PECO's service territory. Applying a non-bypassable surcharge for recovery of RME program costs would unreasonably require all Large C&I customers to subsidize programs benefitting only residential and small commercial customers. Further, the goals of PECO's RME programs are already realized within the robust Large C&I retail market. Additionally, applying the non-bypassable charge to the vast majority of Large C&I customers that are already active and engaged retail market participants similarly violates cost causation principles and fails to meaningfully contribute to the further development of competitive markets.

24. To ensure that the Commission's resolution for recovering RME program costs complies with cost causation principles and the Commission's obligation to approve just and reasonable rates, PAIEUG respectfully requests that the Commission reconsider its decision to authorize a non-bypassable surcharge for recovery of RME programs costs from Large C&I customers.

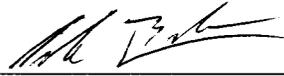
#### **IV. CONCLUSION**

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission: (1) clarify that its Opinion and Order issued on February 14, 2013, in the above-captioned proceeding is not intended to have PECO Energy Company recover costs associated with its Retail Market Op-In Program or Standard

Offer Program from Large Commercial and Industrial Customers through any means, including, but not limited to, a non-bypassable surcharge; or (2) reconsider and modify the Opinion and Order to specifically preclude PECO Energy Company from recovering costs associated with its Retail Market Op-In Program or Standard Offer Program from Large Commercial and Industrial Customers through any means, including, but not limited to, a non-bypassable surcharge.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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Counsel to the Philadelphia Area Industrial Energy  
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Dated: March 1, 2013