

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Kenneth M. Kulak
Partner
215.963.5384
kkulak@MorganLewis.com

March 22, 2013

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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 for filing are the **Reply Comments of PECO Energy Company Regarding Its Second Revised Default Service Plan Compliance Filing** in the above-captioned proceeding (the "Reply Comments").

As indicated on the attached Certificate of Service, copies of the Reply Comments are being served on the Administrative Law Judge and all parties of record.

Very truly yours,



Kenneth M. Kulak

KMK/t
Enclosures

c: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Reply Comments of PECO Energy Company Regarding Its Second Revised Default Service Plan Compliance Filing** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54.

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Honorable Dennis J. Buckley
Administrative Law Judge
Office of Administrative Law Judge
400 North Street
P.O. Box 3265
Harrisburg, PA 17105
debuckley@pa.gov

Tanya J. McCloskey
Senior Assistant Consumer Advocate
Candis A. Tunilo
Christy M. Appleby
Assistant Consumer Advocates
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
tmccloskey@paoca.org
ctunilo@paoca.org
cappleby@paoca.org
cshoen@paoca.org

Elizabeth Rose Triscari
Assistant Small Business Advocate
Office of Small Business Advocate
300 North Second Street
Suite 1102
Harrisburg, PA 17101
etriscari@pa.gov

Carrie B. Wright
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Commerce Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265
carwright@pa.gov

Daniel Clearfield
Deanne M. O'Dell
Edward Lanza
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
elanza@eckertseamans.com
*Counsel for the Retail Energy Supply Association
and Direct Energy Services, LLC*

Thu B. Tran
Robert W. Ballenger
George D. Gould
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
ttran@clsphila.org
rballenger@clsphila.org
ggould@clsphila.org
Counsel for TURN et al.

Brian J. Knipe
Buchanan Ingersoll & Rooney, PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503
brian.knipe@bipc.com
Counsel for FirstEnergy Solutions Corp., LLC

Todd S. Stewart
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 N. Tenth Street
Harrisburg, PA 17105-1778
tsstewart@hmslegal.com
*Counsel for Dominion Retail, Inc. and
Interstate Gas Supply, Inc.*

Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
*Counsel for Metropolitan Edison Company,
Pennsylvania Electric Company,
Pennsylvania Power Company, and West
Penn Power Company*

Jeffrey J. Norton
Carl R. Shultz
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
P.O. Box 1248
Harrisburg, PA 17101
jnorton@eckertseamans.com
cshultz@eckertseamans.com
*Counsel for Green Mountain Energy
Company and ChoosePAWind*

Divesh Gupta
Managing Counsel - Regulatory
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202
divesh.gupta@constellation.com
Counsel for Constellation Energy

Charis Mincavage
Adeolu A. Bakare
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
abakare@mwn.com
lcharlet@mwn.com
lhuff@mwn.com
*Counsel for the Philadelphia Area Industrial
Energy Users Group*

Amy M. Klodowski
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com
Counsel for FirstEnergy Solutions Corp.

Charles E. Thomas, III
Thomas, Long, Niesen & Kennard
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
cet3@thomaslonglaw.com
bmerola@noblesolutions.com
Counsel for Noble Americas Energy Solutions LLC

Patrick M. Cicero
Harry S. Geller
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net
*Coalition for Affordable Utility Services
and Energy Efficiency in Pennsylvania*

Stephen L. Huntoon
David Applebaum
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W., Suite 220
Washington, D.C. 20001
shuntoon@nexteraenergy.com
david.applebaum@nexteraenergy.com
Counsel for NextEra Energy Resources

Scott H. DeBroff
Alicia R. Duke
Rhoads & Sinon, LLP
One South Market Square, 12th Floor
P.O. Box 1146
Harrisburg, PA 17108-1146
sdebroff@rhoads-sinon.com
aduke@rhoads-sinon.com
*Counsel for Washington Gas Energy
Services, Inc.*

Jodi S. Larison
Senior Manager, Business Development
UGI Energy Services, Inc.
One Meridian Boulevard, Suite 2C01
Wyomissing, PA 19610
jlarrison@ugies.com
Counsel for UGI Energy Services, Inc.

David I. Fein
Vice President, Energy Policy
Director of Retail Energy Policy
Constellation Energy
550 W. Washington Boulevard, Suite 300
Chicago, IL 60661
david.fein@constellation.com
Counsel for Constellation Energy

Amy E. Hamilton
Director, Public Policy
Exelon Generation Company
300 Exelon Way
Kennett Square, PA 19348
amy.hamilton@exeloncorp.com
*Counsel for Exelon Generation Co., LLC
and Exelon Energy Company*

Melanie J. Elatieh
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
elatiehm@ugicorp.com
Counsel for UGI Energy Services, Inc.

Telemac N. Chryssikos
Washington Gas Energy Services, Inc
101 Constitution Avenue, N.W., Room 319
Washington, D.C. 20080
tchryssikos@washgas.com
*Counsel for Washington Gas Energy
Services, Inc.*

Thomas McCann Mullooly
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
tmullooly@foley.com
sdzieminski@foley.com
*Counsel for Exelon Generation Co., LLC
and Exelon Energy Company*

Melanie Santiago-Mosier
Washington Gas Energy Services, Inc
13865 Sunrise Valley Drive, Suite 200
Herndon, VA 20171
mmosier@wges.com
*Counsel for Washington Gas Energy
Services, Inc.*

Andrew S. Tubbs
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
atubbs@postschell.com
Counsel for PPL Energy Plus, LLC

Jesse A. Dillon
PPL Services Corporation
Office of General Counsel
Two North Ninth Street
Allentown, PA 18106
jadillon@pplweb.com
Counsel for PPL Energy Plus, LLC

Richard Hahn
Douglas Smith
Dan Koehler
La Capra Associates
One Washington Mall, 9th Floor
Boston, MA 02108
rhahn@lacapra.com
dkoehler@lacapra.com
das@lacapra.com

Brian Kalcic
Excel Consulting
Suite 702-T
225 S. Meramec Avenue
St. Louis, MO 63105
excel.consulting@sbcglobal.net

Barbara Alexander
Consumer Affairs Consultant
83 Wedgewood Drive
Winthrop, ME 04364
barbalex@ctel.net



Anthony E. Gay, Esquire (Pa. No. 74624)
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699
Phone: 215.841.4635
Fax: 215.568.3389
E-mail: anthony.gay@Exeloncorp.com

Thomas P. Gadsden, Esquire (Pa. No. 28478)
Kenneth M. Kulak, Esquire (Pa. No. 75509)
Brooke E. McGlinn, Esquire (Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: 215.963.5234
Fax: 215.963.5001
E-mail: tgadsden@morganlewis.com

Counsel For PECO Energy Company

Dated: March 22, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF PECO ENERGY COMPANY
REGARDING ITS SECOND REVISED DEFAULT SERVICE PLAN
COMPLIANCE FILING**

On February 28, 2013, PECO Energy Company (“PECO”) filed its Second Revised Default Service Plan (“Second Revised Plan”) for procurement of default service supply during the June 1, 2013 – May 31, 2015 period and implementation of several new retail market enhancement programs. The Second Revised Plan incorporated revisions to PECO’s previously-filed Revised Default Service Plan as directed by the Pennsylvania Public Utility Commission (the “Commission”) in its Opinion and Order dated February 14, 2012 in this proceeding (the “February 2013 Order”). The revisions included the addition of a Commission-approved mechanism to recover the costs of PECO’s Standard Offer Program and Opt-In Program (the “RME Programs”) from both electric generation suppliers (“EGSs”) and default service customers if those costs are not directly recovered from EGSs participating in the RME Programs.¹

In accordance with the February 2013 Order, the Second Revised Plan provides that PECO will recover Opt-In and Standard Offer Program costs from participating EGSs, subject to

¹ The Commission originally approved PECO’s default service program for the June 1, 2013 – May 31, 2015 period in an Opinion and Order entered on October 20, 2012 in these proceedings (the “October 2012 Order”). The October 2012 Order directed PECO to file a revised plan reflecting specific changes directed by the Commission and also to submit proposals in collaboration with EGSs (particularly with respect to recovery of RME Program costs). Following collaboratives with EGSs and other interested parties, PECO submitted its Revised Default Service Plan on December 11, 2012. In accordance with the Commission’s March 14, 2013 Tentative Order entered in this proceeding, PECO has suspended its efforts to implement the Opt-In Program. *See* Tentative Order On Reconsideration, Docket Nos. P-2012-2283641, P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670, P-2012-2302074, P-2012-2301664.

a \$1.00 per allocated customer cap in the Opt-In Program and a \$30.00 per enrolled customer cap in the Standard Offer Program. The Second Revised Plan also provides, in accordance with the February 2013 Order, that any remaining program costs that are not recovered from participating EGSs would be shared with 50% recovered from residential and commercial default service customers and 50% from all EGSs participating in PECO's Purchase of Receivables ("POR") program through a discount to EGS receivables purchased by PECO. *See* Second Revised Plan, pp. 2-6.

Subsequently, the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") each filed Comments on PECO's Second Revised Plan.² In their Comments, both the OCA and the OSBA asserted that PECO's recovery of RME Program costs remaining after recovery from participating EGSs through the use of the POR discount and a charge to residential and small commercial default service customers was preferable to the option of a non-bypassable charge to both default service and shopping customers, which the Commission had also endorsed. OCA Comments, p. 4; OSBA Comments, p. 3. However, the OCA and OSBA contend that the Opt-In Program and Standard Offer Program should now be redesigned so that the per-customer costs of each Program do not exceed the participating EGS cost cap adopted by the Commission (i.e., so that no RME Program costs are recovered from default service customers). *Id.*

The OCA and OSBA also contend that neither the Opt-In Program nor the Standard Offer Program should be approved until the precise amounts that default service customers could be obligated to pay is known and determined to be both reasonable and consistent with the benefits those programs provide to eligible customers. *Id.* In addition, the OSBA asserts that there is no

² *See* Office of Consumer Advocate, *Comments to the Second Revised Default Service Plan Compliance Filing of February 28, 2013* (filed March 11, 2013) ("OCA Comments") and Office of Small Business Advocate, *Comments on the Second Revised Default Service Plan Filing* (filed March 13, 2013) ("OSBA Comments").

record to support the reasonableness of the EGS cost caps proposed by the Commission. OSBA Comments, p. 4.

In large part, the comments of both the OCA and the OSBA are an effort to relitigate issues and arguments which the Commission has considered extensively in its *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, and in these proceedings. While implementation of the Opt-In Program is currently suspended, the Commission has clearly determined that the Standard Offer Program will provide benefits to resident and small commercial default service customers.³

To the extent the OCA and OSBA object to the Standard Offer Program being implemented and continuing without determination of a “final” cost, PECO notes that the estimated cost of the Standard Offer Program was addressed in detail in the evidentiary phase of this proceeding. *See* PECO St. No. 5-R, p. 2; PECO Exhibit ABC-4. In its rebuttal testimony, PECO estimated more than \$2 million in start-up costs for information technology changes necessary for Standard Offer Program implementation. In addition, PECO’s testimony made clear that it expects to incur another \$900,000 per year of ongoing operational costs for call center support. *Id.* The OCA and the OSBA had ample opportunity to raise factual issues about those cost estimates during the evidentiary phase of this case, but did not present any evidence demonstrating that the costs of the Standard Offer Program were unreasonable. *See, e.g.*, OCA St. 1-R, pp. 6-7 (acknowledging the RME Program costs estimates provided by PECO, but declining to oppose the level of costs); OSBA St. No. 3, pp. 3-4 (addressing cost recovery of

³ *See, e.g.*, Final Order, *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (entered March 1, 2012), p. 30 (finding that participating parties were generally in favor of customer referral program); Opinion and Order, Docket No. P-2012-2283641 (entered February 14, 2013), p. 16 (concluding that small commercial customers should also receive the benefit of PECO’s Standard Offer Program).

retail market enhancements but offering no challenge to the updated level of costs proposed by PECO).

The Commission's imposition of a monetary cap on the portion of total Standard Offer Program costs for which EGSs are solely responsible does not in any way suggest that the Commission intended for PECO to redesign the program so that default service customers pay no program costs whatsoever, as the OCA and OSBA contend. *See* OCA Comments, p. 3 n.1; OSBA Comments, p. 3. Indeed, the February 2013 Order is quite clear that the Commission envisioned that costs may exceed the amounts borne solely by participating EGSs; half of any such remaining costs (which are not capped) will be paid by all EGSs participating in PECO's POR program, with residential and small commercial default service customers responsible only for the other half. As with other programs for both EGSs and customers, PECO will endeavor to ensure that the actual program costs incurred are reasonable.⁴

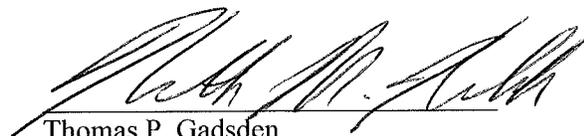
The OSBA also errs in asserting that there is no record evidence to support the \$30.00 cost cap selected by the Commission. OSBA Comments, p. 3. In fact, that amount is within the range of the "customer acquisition fee" of \$25.00 to \$50.00 recommended by Dominion Retail, Inc. and Interstate Gas Supply, Inc. ("Dominion/IGS") in the evidentiary phase of this proceeding. *See* PECO St. No. 5-R, pp. 11-12; PECO Exhibit ABC-3R (Dominion/IGS Responses to PECO Set I-1 and I-2).

In sum, PECO's Second Revised Plan and its cost recovery provisions are consistent with the Commission's February 2013 Order and the record in this proceeding and the plan should be approved by the Commission.

⁴ In its Comments, the OCA requests that PECO "confirm" that the Opt-In Program will cost \$1.00 or less per assigned customer. While the Opt-In Program is currently suspended, PECO reiterates that its estimate of \$1.00 or less per assigned customer remains accurate; however, that estimate should not be used as a cap on PECO's ability to recover fully all actual program costs as provided by the Commission.

WHEREFORE, PECO respectfully requests that the Commission enter a final Order approving the Second Revised Plan as filed on February 28, 2013.

Respectfully submitted,



Thomas P. Gadsden
(Pa. No. 28478)
Kenneth M. Kulak
(Pa. No. 75509)
Brooke E. McGlenn
(Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

Romulo L. Diaz, Jr.
(Pa. No. 88795)
Anthony E. Gay
(Pa. No. 74624)
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101-8699

Counsel for PECO Energy Company

Dated: March 22, 2013