



An Exelon Company

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April 30, 2013

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Via Federal Express

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – P.O. Box 3265
Harrisburg, Pennsylvania 17120

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Strict Liability Tariff Filing

Dear Secretary Chiavetta:

Recently, in *State Farm v. PECO*, 54 A.3d 921 (Pa. Super. 2012), the Superior Court of Pennsylvania ("Superior Court") determined that PECO Energy Company's ("PECO's" or the "Company's") Electric Service Tariff ("tariff") did not adequately disclaim or limit liability for strict liability complaints. Therefore, PECO is proposing to affirmatively limit such liability by revising Rule 12.1 of its tariff in accordance with the Superior Court's decision. Accordingly, PECO submits for filing:

- Attachment 1 – Supplement No. 75 to its Company Electric Tariff Pa P.U.C. No. 4 - Revised Electric Tariff Rule 12.1 – Service Continuity – Limitation on Liability For Service Interruptions and Variations; and
- Attachment 2 – Q&A Information furnished under 52 Pa. Code, Section 53.52(a)

Thank you for your assistance in this matter and please direct any questions regarding the above to Richard Schlesinger, Manager, Retail Rates (215) 841-5771.

Sincerely,

Copies to: C. Walker-Davis, Director, Office of Special Assistants
P. Diskin, Director, Bureau of Technical Utility Services
M. C. Lesney, Director, Bureau of Audits
J. E. Simms, Director, Bureau of Investigation & Enforcement
Office of Consumer Advocate
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**PA PUBLIC UTILITY COMMISSION
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ATTACHMENT 1

PECO Energy Company

Electric Service Tariff

COMPANY OFFICE LOCATION

2301 Market Street
Philadelphia, Pennsylvania 19101

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

For List of Communities Served, See Page 4.

Issued April 30, 2013

Effective June 30, 2013

**ISSUED BY: C. L. Adams – President & CEO
PECO Energy Distribution Company
2301 MARKET STREET
PHILADELPHIA, PA. 19101**

NOTICE.

LIST OF CHANGES MADE BY THIS SUPPLEMENT

Rules & Regulations 12 Service Continuity– 1st Revised Page No. 20

Incorporating language to limit strict products liability in accordance with the PA Superior Court decision (State Farm v. PECO 54 A 3d 921 (Pa. Super. 2012)).

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12. SERVICE CONTINUITY

12.1 LIMITATION ON LIABILITY FOR SERVICE INTERRUPTIONS AND VARIATIONS. *The Company does not guarantee continuous, regular and uninterrupted supply of service. The Company may, without liability, interrupt or limit the supply of service for the purpose of making repairs, changes, or improvements in any part of its system for the general good of the service or the safety of the public or for the purpose of preventing or limiting any actual or threatened instability or disturbance of the system. The Company is also not liable for any damages due to accident, strike, storm, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control.*

In all other circumstances, the liability of the Company to customers or other persons for damages, direct or consequential, including damage to computers and other electronic equipment and appliances, loss of business, or loss of production caused by any interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity shall in no event, unless caused by the willful and/or wanton misconduct of the Company, exceed an amount in liquidated damages equivalent to the greater of \$500 or two times the charge to the customer for the service affected during the period in which such interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity occurs. In addition no charge will be made to the customer for the affected service during the period in which such interruption, reversal, spike, surge or variation in supply or voltage, transient voltage, or any other failure in the supply of electricity occurs. A variety of protective devices and alternate power supplies that may prevent or limit such damage are available for purchase by the customer from third parties.

In the case of strict products liability, the Company's liability shall be limited, as described in the foregoing paragraph, for all allegations involving and including, but not limited to, claims in which the electricity was expected to and did reach the Customer without substantial change in the condition in which it was sold or any claims involving electricity possessing a defective condition that is unreasonably dangerous. (C)

12.2 ADDITIONAL LIMITATIONS ON LIABILITY IN CONNECTION WITH DIRECT ACCESS. Other than its duty to deliver electric energy and capacity, the Company shall have no duty or liability to a customer receiving Competitive Energy Supply arising out of or related to a contract or other relationship between such a customer and an EGS.

The Company shall implement customer selection of an EGS consistent with applicable rules of the Commission and shall have no liability to a customer receiving Competitive Energy Supply arising out of or related to switching EGSs, unless the Company is negligent in switching or failing to switch a customer.

The Company shall have no duty or liability with respect to electric energy before it is delivered by an EGS to a point of delivery on the PECO Energy distribution system. After its receipt of electric energy and capacity at the point of delivery, the Company shall have the same duty and liability for distribution service to customers receiving Competitive Energy Supply as to those receiving electric energy and capacity from the Company.

12.3 EMERGENCY LOAD CONTROL. Pursuant to order of Pennsylvania Public Utility Commission, the following provision is incorporated in this Tariff:

Whenever the demands for power on all or part of the Company's system exceed or threaten to exceed the capacity than actually and lawfully available to supply such demands, or whenever system instability or cascading outages could result from actual or expected transmission overloads or other contingencies, or whenever such conditions exist in the system of another public utility or power pool with which the Company's system is interconnected and cause a reduction in the capacity available to the Company from that source or threaten the integrity of the Company's system, a load emergency situation exists. In such case, the Company shall take such reasonable steps as the time available permits to bring the demands within the then-available capacity or otherwise control load. Such steps shall include but shall not be limited to reduction or interruption of service to one or more customers, in accordance with the Company's procedures for controlling load.

The Company shall establish procedures for controlling load including schedules of load shedding priorities to be followed in compliance with the foregoing paragraph, may revise such procedures from time to time, and shall revise them if so required by Pennsylvania Public Utility Commission. A copy of such procedures or of the revision thereof currently in effect shall be kept available for public inspection at the Company's Principle Office, and another such copy shall be kept on file with the Pennsylvania Public Utility Commission.

12.4 EMERGENCY ENERGY CONSERVATION. Pursuant to order of the Pennsylvania Public Utility Commission, the following provision is incorporated in this Tariff:

Whenever events occur which are actually resulting, or in the judgment of the Company threaten to result, in a restriction of the fuel supplies available to the Company or its energy suppliers, such that the amount of electric energy which the Company is able to supply is or will be adversely affected, an emergency energy situation exists.

In the event of an emergency energy conservation situation, the Company shall take such reasonable measures as it believes necessary and proper to conserve available fuel supplies. Such measures may include, but shall not be limited to reduction, interruption, or suspension of service to one or more of its customers or classes of customers in accordance with the Company's procedure for emergency energy conservation.

The Company shall establish procedures for emergency energy conservation, including, if it deems necessary, schedules of service interruption and suspension priorities to be followed as prescribed by the foregoing paragraph.

The Company may revise such procedure from time to time, and shall revise them if so required by the Pennsylvania Public Utility Commission. A copy of such procedures or of the revision thereof currently in effect shall be kept available for public inspection at each office at which the Company maintains a copy of its Tariff for public inspection, and another such copy shall be kept on file with the Pennsylvania Public Utility Commission.

12.5 NOTICE OF TROUBLE. The customer must immediately notify the Company if service is interrupted or is otherwise unsatisfactory due to defects, trouble, or accident, affecting the supply of service.

(C) Denotes Change

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ATTACHMENT 2

**Proposed Changes to PECO Energy Company's Electric Service Tariff No. 4
Supplement No. 75**

Information furnished with the filing of rate changes under 52 Pa. Code § 53.52(a).

(a)(1) The specific reason for each change.

Disclaimer of Strict Liability

Recently, in *State Farm v. PECO*, 54 A.3d 921 (Pa. Super. 2012), the Superior Court of Pennsylvania ("Superior Court") determined that PECO Energy Company's ("PECO's" or the "Company's") Electric Service Tariff ("tariff") did not adequately disclaim or limit liability for strict liability complaints. Therefore, PECO is proposing to reinstate its right to affirmatively limit such liability by revising Rule 12.1 of its tariff.

Prior to the *State Farm* decision, Rule 12.1 limited PECO's liability for claims sounding in negligence and circumstances beyond the Company's control. The rule also contained a general limitation for damages caused in "all other circumstances...unless caused by the willful and/or wanton misconduct of the Company". [Citation omitted].¹ Among other things, PECO intended and understood this language to limit its liability for strict liability complaints. However, in contrast, *State Farm* held that the Company's disclaimer had to specifically name the type of liability being limited (in this case – strict liability).

It should be noted that the Superior Court in *Schriner v. Pa. Power & Light Co.*, 501 A.2d 1128 (Pa. Super. 1985) determined that electricity can be a product for purposes of strict products liability damage claims. The Superior Court applied the doctrine of strict liability (Restatement (Second) of Torts § 402A) to electricity that is being provided by a public utility company to a customer. Accordingly, if the following elements exist, strict product liability can be found against the public utility:

- 1) the electricity was "in a defective condition, unreasonably dangerous" to customers;
- 2) the electricity passed through the customer meter into the stream of commerce causing physical harm to the customer or property;
- 3) the public utility was "engaged in the business of selling such a product," and
- 4) the product "was expected to and did reach the customer without substantial change in the condition in which it was sold.

Schriner v. Pa. Power & Light Co. at 184-186.

Although strict liability complaints may be brought against utilities, the Pennsylvania Public Utility Commission ("Commission") allows utilities to include limitation of liability rules in their tariffs. Specifically, 52 Pa.Code § 69.87 states:

¹ See Attachment A to this filing, which contains the existing Rule 12.1 language as well as the newly proposed language, which appear in blackline format.

The Commission, after review of applicable State law, and on consideration of the various policy considerations relative to the inclusion in tariffs of provisions which limit the liability of utilities for injury or damages as a result of negligence or intentional torts, finds that State law permits utilities to limit their liability for interruption or cessation of service. If a utility seeks to place the language in its tariff, a tariff filing should be made under section 1308 of the code (relating to voluntary changes in rates), and should include a company-specific dollar amount for the proposed limitation and work papers to substantiate the dollar amount.

Citation omitted.

And it was for this reason that PECO had a general limitation in its tariff – to limit liability for claims such as strict liability.

While the general limitation in Rule 12.1 intended to reduce PECO's liability for strict liability claims, the Superior Court in *State Farm* rendered it ineffective. According to the *State Farm* decision:

The court is constrained to determine whether PECO's tariff expressly disclaims "strict liability" or in some fashion articulates a disclaimer addressing our holding in *Schriner*...

For PECO's tariff to disclaim strict liability, Rule 12.1 must include some language purporting to disclaim liability for electricity which "[was] expected to and [did] reach the user or consumer without substantial change in the condition in which it was sold" and for electricity which possessed "a defective condition, unreasonably dangerous."

State Farm quoting *Schriner* at 16-17. [Citation omitted].

Therefore, PECO is proposing to incorporate the Superior Court's disclaimer language into Rule 12.1. PECO's proposal also is supported by similar limitations contained in the Commission-approved tariffs of the distribution companies mentioned in section 8(a) below.

(a)(2) The total number of customers served by the utility.

As of March 31, 2013, PECO served 1,584,854 electric customers.

(a)(3) A calculation of the number of customers, by tariff subdivision, whose bills will be affected by the change.

No customer bills will be impacted by the change.

(a)(4) The effect of the change on the utility's customers.

PECO's proposed change will limit the amount of damages that customers may recover under strict products liability claims caused by electric service interruptions or variations.

(a)(5) The effect, whether direct or indirect, of the proposed change on the utility's revenue and expenses.

PECO's proposed change will reduce the amount of damages that the Company would have to pay under strict products liability claims.

(a)(6) The effect of the change on the service rendered by the utility.

This change will not impact services rendered by the Company.

(a)(7) A list of factors considered by the utility.

PECO has considered a number of factors in its decision to update Rule 12.1, including:

- 1.) The *State Farm* decision (see supra; § (a)(1)), which allows tariffs to disclaim or limit strict liability claims.
- 2.) The reduction of monetary risk to the Company associated with the proposed change.

(a)(8) Studies undertaken by the utility in order to draft its proposed change.

The Company reviewed the tariffs of all other distribution companies in the Commonwealth and determined that three (Equitable Gas, Metropolitan Edison and Penelec) had Commission-approved tariff rules that specifically limited strict liability claims.

(a)(9) Customer polls taken and other documents, which indicate customer acceptance and desire for the proposed change.

The Company did not conduct any polls in drafting the proposed change. The change is being proposed to comply with existing law.

(a)(10) Plans the utility has for introducing or implementing the changes with respect to its customers.

PECO currently has no plans for introducing the change to its customers. However, PECO is not opposed to notifying its customers of these changes through a bill insert or some other acceptable method to the Commission.

(a)(11) F.C.C., or FERC or Commission orders or rulings applicable to the filings.

The following Superior Court decisions are applicable to PECO's proposed change stated in section (a)(1) above, regarding limitations of strict liability:

- 1.) *Schriner v. Pa. Power & Light Co.*, 501 A.2d 1128 (Pa. Super. 1985)
- 2.) *State Farm v. PECO*, 54 A.3d 921 (Pa. Super. 2012)

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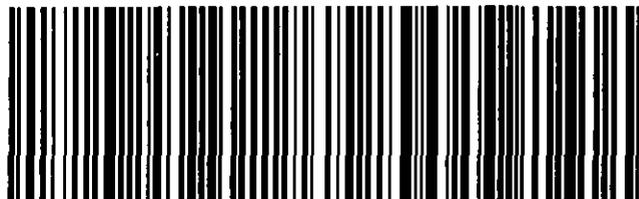
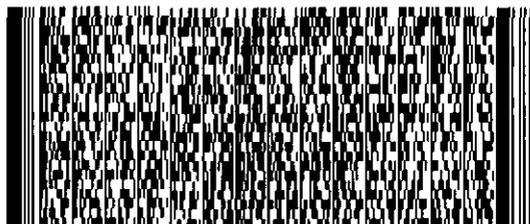
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