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May 6, 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 Third Revised Default Service Plan Compliance Filing** (the "Reply Comments") in the above-captioned proceeding.

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.

Sincerely,



Thomas P. Gadsden

TPG/tp
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 Third 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

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May 6, 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 THIRD REVISED DEFAULT SERVICE PLAN
COMPLIANCE FILING**

On April 15, 2013, PECO Energy Company (“PECO”) filed its Third Revised Default Service Plan (“Third 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 (“RME Programs”).¹ The Third Revised Plan addresses additional obligations under the Commission’s February 14 Orders in this proceeding as well as the Commission’s April 4, 2013 Order regarding implementation of Retail Opt-In Programs (the “ROI Suspension Order”). In particular, the Third Revised Plan: (1) expands PECO’s Standard Offer Program to include small commercial customers with peak demands equal to or below 100 kW; (2) establishes a mid-August start date for that Program for both residential and small commercial customers; and (3) suspends PECO’s Retail Opt-In Program as directed by the Commission.

Consistent with the February 14 DSP Order, the Third Revised Plan provides that PECO will recover Program costs from participating EGSs, subject to a \$30.00 per enrolled customer

¹ The Pennsylvania Public Utility Commission (the “Commission”) 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 (the “October 2012 Order”), but ordered PECO to file a revised plan reflecting several changes directed by the Commission. The Commission also ordered PECO to submit proposals in collaboration with EGSs and other interested parties for recovery of RME Program costs. Following the collaboratives, PECO submitted its First Revised Plan on December 11, 2012. On February 14, 2013, the Commission issued an Opinion and Order (the “February 14 DSP Order”) approving the First Revised Plan with additional changes to the RME Programs, as well as a separate Opinion and Order (the “February 14 Amendment Order”; collectively, the “February 14 Orders”) directing PECO to include small commercial customers in its Standard Offer Program (the “Program”). In order to implement the February 14 DSP Order while developing plans to include small commercial customers in the Program as required by the February 14 Amendment Order, PECO filed a Second Revised Plan on February 28, 2013, which remains pending before the Commission.

cap (the “Participating EGS Cost Cap”), with half of any remaining costs to be paid by all EGSs participating in PECO’s purchase of receivables (“POR”) program and half by residential and small commercial default service customers. *See* Third Revised Plan, pp. 5-7. This is the same proposal for recovery of the costs of RME Programs approved by the Commission in the February 14 DSP Order and included in PECO’s Second Revised Plan. *See* February 14 DSP Order, pp. 13-14; Second Revised Plan, pp. 4-5.

In response to the Third Revised Plan, the Office of Consumer Advocate (“OCA”) filed comments in which the OCA reiterates arguments made in response to the cost recovery provisions of PECO’s Second Revised Plan and again asserts that PECO should redesign the Program to keep costs within the Participating EGS Cost Cap.² *See* Comments to the Third Revised Default Service Plan Compliance Filing of April 15, 2013 (filed April 25, 2013) (the “OCA Comments”). The OCA also contends that the Program should not be approved until the “precise amounts” that default service customers could be obligated to pay are known and determined to be reasonable. OCA Comments, pp. 6-7. The OCA complains that the Company has not provided any “final cost estimates” for the Program and also cites the proposed Standard Offer Programs of PPL Electric Utilities Corporation (“PPL Electric”) and Duquesne Light Company (“Duquesne”) as evidence that Programs can be implemented below the Participating EGS Cost Cap.³ *Id.*

² After the Second Revised Plan was filed, the OCA and the Office of Small Business Advocate (“OSBA”) each filed comments contending, among other things, that the Program should be redesigned so that the per-customer costs of the Program do not exceed the Participating EGS Cost Cap adopted by the Commission (i.e., so that no Program costs are recovered from default service customers). *See* Comments to the Second Revised Default Service Plan Compliance Filing of February 28, 2013 (filed by the OCA on March 11, 2013) and Comments on the Second Revised Default Service Plan Filing (filed by the OSBA March 13, 2013).

³ The remainder of the OCA’s comments express the OCA’s agreement with PECO’s proposals to suspend the Retail Opt-In Program and defer the start date of its Standard Offer Program. *See* OCA Comments, pp. 4-6. The OSBA also filed comments on April 24, 2013 in response to the Third Revised Plan. Those comments do not address PECO’s proposed cost recovery mechanism, but do support PECO’s inclusion of small commercial

As PECO stated in Reply Comments regarding its Second Revised Plan, the design and benefits of Standard Offer Programs have already been considered extensively in the *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, and in this proceeding, and the Commission has concluded that such Programs will provide benefits to residential and small commercial default service customers.⁴ The Commission has also been clear that Program costs may exceed the Participating EGS Cost Cap, and, in that circumstance, it is appropriate for half of any remaining costs to be paid by all EGSs participating in PECO's POR program with residential and small commercial default service customers responsible for the other half in light of the benefits those customers are expected to receive. *See* February 14 DSP Order, p. 13. In fact, the OCA acknowledges the Commission's prior determination that default service customers may bear some Program costs. *See* OCA Comments, p. 6, n. 2. ("The OCA respectfully disagrees with the Commission's conclusion that default service customers should be asked to fund [Standard Offer Programs] to any degree . . ."). In sum, there is simply no basis for the OCA's proposal that PECO redesign the Program to ensure that no costs will be borne by default service customers.⁵

Regarding OCA's demand for "final cost estimates", PECO notes that the estimated cost of the Standard Offer Program was addressed in detail in the evidentiary phase of this

customers with up to 100 kW demand in the Program. *See* OSBA Comments, pp. 4-7. Because the OSBA supports PECO's proposals regarding inclusion of small commercial customers in the Program and PECO fully addressed the OSBA's prior comments on cost recovery issues in its Reply Comments supporting the Second Revised Plan, PECO does not address herein the OSBA's comments on PECO's Third Revised Plan.

⁴ *See, e.g., 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 programs); February 14 Amendment Order, pp. 14-16 (concluding that small commercial customers should also receive the benefits of PECO's Standard Offer Program).

⁵ Notably, the OCA did not appeal the Commission's final disposition of RME Program cost recovery issues in the February 14 DSP Order, nor did it seek reconsideration of either cost recovery mechanism approved by the Commission.

proceeding. *See* PECO St. No. 5-R, p. 14; PECO Exhibit ABC-4R. PECO estimated more than \$2 million in start-up costs for information technology changes necessary for Standard Offer Program implementation as well as another \$900,000 per year of ongoing operational costs for call center support. *Id.* The OCA had ample opportunity to challenge those cost estimates, but did not present any evidence demonstrating that they 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).

Finally, the OCA's discussion of the PPL Electric and Duquesne Standard Offer Programs is based on facts which are not in the evidentiary record in this proceeding and, therefore, cannot be relied upon by the Commission.⁶ But even if the Commission were to consider the OCA's discussion of these other Standard Offer Programs, the OCA's assertion that customers will not pay for costs under these Programs is, at best, incomplete. First, although PPL Electric expects that recovery of its *non-capital* Program costs will not cause it to exceed the Participating EGS Cost Cap, it has also requested to recover over \$522,000 in related capital costs from customers in its next base rate proceeding.⁷ Similarly, while Duquesne estimates that it may implement its Program within the Participating EGS Cost Cap, the OCA does not mention that Duquesne's estimate is based upon a new plan for transferring customer calls directly to EGSs so that Duquesne can begin its Program by August 1, 2013, and avoid information technology upgrades that Duquesne acknowledges would otherwise be required to implement the

⁶ Section 504 of Pennsylvania's Administrative Agency Law, 2 Pa.C.S. § 504, provides that an agency's adjudication is not valid unless the adjudication is based on a record created after the parties have been given reasonable notice and the opportunity to be heard. Reliance on non-record evidence is also precluded by the Commission's own regulations, which provide: "After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." 52 Pa. Code § 5.431(b).

⁷ Reply Comments of PPL Electric Utilities Corporation Regarding The Revised Retail Opt-In And Standard Offer Programs, Docket No. P-2012-2302074 (filed March 26, 2013), pp. 7-9.

Standard Offer Program as it originally proposed.⁸ Should actual implementation costs for either PPL Electric or Duquesne not conform to estimates and exceed the Participating EGS Cost Cap, both companies make clear that those costs will be recovered from their customers in accordance with the cost recovery mechanisms previously approved by the Commission.⁹

In sum, PECO's Third Revised Plan, including its previously-proposed cost recovery provisions, are consistent with the Commission's February 14 Orders and the ROI Suspension Order and should be approved by the Commission.

WHEREFORE, PECO respectfully requests that the Commission enter a final Order approving the Third Revised Plan as filed on April 15, 2013.

Respectfully submitted,



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Dated: May 6, 2013

Counsel for PECO Energy Company

⁸ Duquesne Light Company's Revised Retail Market Enhancement Program Design And Cost-Recovery Proposal, Docket No. P-2012-2301664 (filed March 11, 2013) ("Duquesne Proposal"), ¶ 49.

⁹ Reply Comments of PPL Electric, p. 7 (remaining costs will be recovered in PPL Electric's Competitive Enhancement Rider); Duquesne Proposal, ¶ 59 (excess costs under the revised plan will be recovered from customers through a non-bypassable charge) & ¶ 63 (excess costs incurred if the Commission modifies the revised plan will be recovered from EGSs and default service customers).