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July 26, 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 Main Brief 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 26<sup>th</sup> day of July, 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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**MAIN BRIEF OF THE  
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

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Air Liquide Industrial U.S. LP  
Boeing Company, The  
Building Owners and Managers Association  
of Philadelphia  
Drexel University  
GlaxoSmithKline  
Jefferson Health System

Kimberly-Clark Corporation  
Merck & Co., Inc.  
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Dated: July 26, 2013

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## I. INTRODUCTION

### A. **Background**

On January 13, 2012, PECO Energy Company ("PECO" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of the Company's Second Default Service Program ("DSP"), including Retail Market Enhancement ("RME") programs designed to promote competitive shopping among residential and small commercial customers.<sup>1</sup> The Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed a Petition to Intervene on February 13, 2012.

On October 12, 2012, the Commission issued an Opinion and Order partially approving PECO's DSP, subject to conditional directives.<sup>2</sup> First, the Commission directed the parties to convene a collaborative to, *inter alia*, develop cost recovery proposals for PECO's RME programs. Second, the Commission directed PECO to develop a Shopping Plan to allow its Customer Assistance Program ("CAP") customers to purchase competitive generation supply by January 1, 2014.

Following entry of the October 12 Order ("Original DSP Order"), PAIEUG participated in extensive collaborative discussions with other parties to discuss and resolve the PUC's first directive regarding developing cost recovery proposals for PECO's RME programs. As part of that collaborative, PAIEUG filed Comments stating that RME program costs should be recovered only from customers eligible to participate in the programs. Because Large Commercial and Industrial ("C&I") customers would not be eligible to participate in the

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<sup>1</sup> *Petition of PECO Energy Company for Approval of Its Default Service Program*; Docket No. P-2012-2283641 (Jan. 13, 2012).

<sup>2</sup> *Petition of PECO Energy Company for Approval of its Default Service Program II*; Opinion and Order, Docket No. P-2012-2283641 (Oct. 12, 2012); *see also* *Petition of PECO Energy Company for Approval of its Default Service Program II*; Opinion and Order, Docket No. P-2012-2283641 (Nov. 21, 2012).

programs, PAIEUG's comments noted that recovery of any costs should not occur with respect to these customers.

On February 14, 2013, the Commission issued an Order proposing cost recovery mechanisms that would allow PECO to recover a portion of its RME programs costs through a non-bypassable surcharge.<sup>3</sup> On March 1, 2013, PAIEUG filed a Petition for Clarification and/or Reconsideration ("Clarification Petition") reiterating that any non-bypassable surcharge recovering RME program costs should be applied only to customers eligible to participate in the RME programs.<sup>4</sup> On April 4, 2013, the Commission entered an Order confirming that RME program costs charged to customers must be recovered only from customers eligible for the underlying program ("Clarification Order").<sup>5</sup>

Pursuant to the second directive from the Original DSP Order, PECO filed a Petition for Approval of its CAP Shopping Plan on May 1, 2013, ("CAP Shopping Petition").<sup>6</sup> Consistent with the Commission's prior finding that only customers eligible for the RME programs should pay any attendant costs, PECO's proposal limited customer cost recovery for the CAP Shopping Plan to residential customers.

On May 7, 2013, Administrative Law Judge ("ALJ") Cynthia Fordham informally notified parties of a tentative prehearing conference to be held on May 28, 2013, regarding PECO's CAP Shopping Petition. Based on the cost recovery guidelines established by the Clarification Order, PAIEUG informally notified the ALJ of its intention to not participate in the Prehearing Conference and have limited participation, if any, in the proceeding. Specifically,

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<sup>3</sup> *Petition of PECO Energy Company for Approval of its Default Service Program II*; Opinion and Order, Docket No. P-2012-2283641 (Feb. 14, 2013).

<sup>4</sup> *Petition of PECO Energy Company for Approval of Its Default Service Program*; Petition for Reconsideration and Clarification, Docket No. P-2012-2283641 (Mar. 1, 2013).

<sup>5</sup> *Petition of PECO Energy Company for Approval of Its Default Service Program*; Order on Reconsideration, Docket No. P-2012-2283641 (Apr. 4, 2013).

<sup>6</sup> *Petition of PECO Energy Company for Approval of Its Default Service Program*; Petition for Approval of its Customer Assistance Program Shopping Plan, Docket No. P-2012-2283641 (May 1, 2013).

because cost recovery issues regarding RME programs had already been resolved by the Commission, and in light of the fact that Large C&I customers are not eligible for CAP programs, PAIEUG submitted that it did not believe it had any issues to address during the course of the proceeding. To that end, PAIEUG did not attend the May 28, 2013, prehearing conference and did not participate in discovery, submit testimony, or attend the evidentiary hearings held on July 10-11, 2013.

Conversely, several parties, including the Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), and Direct Energy Services, LLC ("Direct Energy") submitted testimony in this phase of PECO's DSP proceeding.<sup>7</sup> In monitoring this proceeding, PAIEUG learned that the issue of cost recovery had been raised. Moreover, at least one party to this proceeding has suggested that the precedent set by the Commission only three months ago (*i.e.*, that customers who do not benefit from RME programs should not pay for such programs) should be modified to require all customers to remit the costs of these programs.

Accordingly, while PAIEUG had previously indicated, via informal notice, its intention to have limited activity in this phase of PECO's DSP proceeding,<sup>8</sup> subsequent testimony indicating that at least one party seeks to relitigate the cost recovery issues previously disposed of by the Commission requires PAIEUG to weigh in on these issues. To that end, PAIEUG files this limited Main Brief to address Direct Energy's proposal to implement a non-bypassable surcharge to recover expenses of PECO's CAP Shopping Plan from all customers. As discussed more fully herein, PAIEUG submits that the Commission has already held that customers who

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<sup>7</sup> Parties participating in the proceeding, but not submitting testimony, include Interstate Gas Supply, First Energy Solutions Corp., Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania.

<sup>8</sup> As noted previously, PAIEUG has intervenor status in this proceeding, and thus, PAIEUG remains an active intervenor in this docket with full party rights. *See* 52 Pa. Code § 1.24 (defining formal notice of withdrawal as notice to the Commission's Secretary).

receive no benefits from RME programs should not be required to remit the costs of these programs. Moreover, the Commission also declared, several years ago, that Large C&I customers should not be required to remit any costs related to CAP programs, as Large C&I customers are not eligible to participate in such programs. In light of the fact that Direct Energy has not presented any evidence to indicate that that Large C&I customers would benefit from these programs, or be eligible to participate in these programs, Direct Energy's cost allocation proposal must be summarily rejected.

## II. ARGUMENT

### A. **Direct Energy's Proposal to Recover CAP Shopping Plan Costs Through a Non-Bypassable Surcharge Contradicts the Commission's Clarification Order and Must Be Rejected.**

The Commission must reject Direct Energy's proposal to undermine the cost recovery directives previously developed through extensive review of parties' positions as part of PECO's original DSP proceeding. The Commission's Clarification Order unambiguously determined that PECO's RME program costs, to the extent recovered from customers at all, should be recovered only from customers eligible to participate in such programs.<sup>9</sup> As Large C&I customers are not eligible to participate in PECO's CAP Shopping Plan, the principles underlying the Commission's disposition of PECO's previously approved RME programs are directly applicable to the CAP Shopping Plan and must be preserved.

As noted above, PECO appropriately proposed to recover costs incurred in implementing its CAP Shopping Plan consistent with the Commission's prior directives limiting RME program

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<sup>9</sup> Clarification Order, p. 8.

cost recovery to customers eligible to participate in the programs.<sup>10</sup> Direct Energy acknowledges that the CAP Shopping Plan is an RME Plan,<sup>11</sup> yet, Direct Energy retreads the same arguments rejected by the Commission in addressing cost recovery for other RME programs, alleging that costs should be recovered through a non-bypassable rider, without regard for whether customers benefit or are even eligible to benefit from these programs.<sup>12</sup>

Direct Energy's arguments are contrary to the record established in PECO's original DSP proceeding and the Commission's Clarification Order. As noted in PAIEUG's Clarification Petition, EGSs had previously agreed that RME program costs should be limited to customers eligible to participate in the programs.<sup>13</sup> Most importantly, in the Clarification Order, the Commission stated that "we find that, if any costs to administer the [Standard Offer Program] are allocated to customers, the recovery of those costs should be limited to those customer classes that are eligible to participate in this program."<sup>14</sup>

As no party disputes that Large C&I customers are not eligible for PECO's CAP Shopping Plan, there is no justifiable reason to modify the Commission's prior ruling.<sup>15</sup>

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<sup>10</sup> CAP Shopping Petition, p. 11. PECO projects to recover a total of \$4.6 million in CAP Shopping Plan costs. Of the \$4.6 million, PECO proposes to recover \$300,000 in consumer education costs through its Customer Education Surcharge ("CES"), with the remaining implementation costs allocated on a 50% basis between Electric Generating Suppliers ("EGSs"), via a Purchase or Receivables ("POR") discount, and residential customers, via the Universal Service Fund Charge. *Id.* Although Large C&I customers are subject to the CES, PECO has appropriately stated that the education costs recovered through the CES would be allocated solely to residential customers. *Id.* As such, PAIEUG does not oppose PECO's as-filed proposal to recover its CAP Shopping Plan costs.

<sup>11</sup> As recognized by Direct Energy in its Direct Testimony, "[o]pening up competition to CAP customers is another market enhancement...." Direct Energy, St. 1, p. 10.

<sup>12</sup> *Id.* at 11; Ironically, Direct Energy further opposes recovering costs of PECO's CAP Shopping Plan from EGSs on the grounds that "using the POR program this way violates fundamental principles of cost recovery, which is meant to follow cost causation." *Id.* at 10.

<sup>13</sup> Clarification Petition, p. 7; Specifically, Christopher Kallaher, who also sponsored Direct Energy's testimony on PECO's CAP Shopping Plan, previously submitted testimony on behalf of the Retail Energy Supply Association asserting 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." RESA St. No. 2-SR, p. 26. (emphasis added).

<sup>14</sup> Clarification Order, p. 8.

<sup>15</sup> Testimony submitted by OSBA Witness Brian Kalcic observes that commercial and industrial customers are wholly ineligible for PECO's CAP Shopping Plan, while all residential customers are at least potentially eligible to participate in the CAP Shopping Plan. OSBA St. No. 4, p. 2.

Therefore, consistent with the Commission's Clarification Order, the Commission must reject any proposal to recover PECO's CAP Shopping Plan costs from customers ineligible to participate in the program.<sup>16</sup> Because Direct Energy proposes a non-bypassable rider that would allocate the costs of these CAP-based RME program costs to ineligible Large C&I customers, Direct Energy's proposal must be rejected out of hand.

**B. Longstanding Commission Precedent, Which Establishes that CAP Costs Can Only Be Recovered from Residential Customers, also Requires that Direct Energy's Cost Allocation Proposal Be Rejected.**

Aside from violating the Commission's recent directive on RME program cost recovery, Direct Energy's proposal to recover PECO's CAP Shopping Plan costs through a non-bypassable surcharge fails to comply with the Commission's firmly established policies limiting recovery of CAP-based costs to residential customers.

Contrary to Direct Energy's proposal to recover CAP Shopping Plan costs through a non-bypassable surcharge, the Commission has consistently reinforced the necessity to assess CAP-related costs only to residential customers. In 2006, the Commission completed a statewide investigation into CAP program funding, generating widespread participation from utilities, customer representatives and other stakeholders.<sup>17</sup> Specifically on the issue of expanding CAP cost responsibility to Large C&I and small commercial customers, the Commission determined that "[a]fter careful consideration of the comments and the arguments presented, the Commission will continue its current policy of allocating CAP costs to the only customer class whose members are eligible for the program - residential customers."<sup>18</sup> As such, Large C&I customers

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<sup>16</sup> As noted by OSBA Witness Kalcic, both Large C&I and small commercial customers are properly exempted from any recovery of PECO's CAP Shopping Plan costs. *Id.*

<sup>17</sup> *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, slip op., 2006 WL 6610966 (Pa. P.U.C. Dec. 18, 2006).

<sup>18</sup> *Id.*

cannot be allocated the costs of CAP programs, as Large C&I customers are not eligible to participate in these programs.

In this instance, even if the programs herein are not deemed to be "RME" programs, these programs are still CAP-based in nature.<sup>19</sup> Consistent with the Commission's prior findings, because only residential customers are eligible to participate in PECO's CAP programs, only residential customers can be allocated any costs associated with these programs.<sup>20</sup> Because Direct Energy's proposal to allocate these costs via a non-bypassable rider to all customers would directly contradict PUC precedent, Direct Energy's proposal must be rejected.

### **III. CONCLUSION**

As extensively addressed by PAIEUG throughout the course of PECO's DSP proceeding, PECO's RME programs, including the CAP Shopping Plan, are not available to Large C&I customers and therefore cannot be justifiably charged to Large C&I customers. The Commission has already recognized the validity of PAIEUG's cost recovery arguments in its Clarification Order and in prior proceedings addressing recovery of general CAP-related costs. To preserve the consistency of its well-reasoned precedents, the Commission must reject Direct Energy's proposal to recover CAP Shopping Plan costs from all customers through a non-bypassable surcharge.

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<sup>19</sup> PAIEUG has not taken a position in this proceeding regarding whether the programs at issue are RME-type programs.


<sup>20</sup> PAIEUG has not taken a position in this proceeding on any proposals to allocate the costs of all of these programs to EGSs.

**WHEREFORE**, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Deny Direct Energy's proposal to recover of PECO's CAP Shopping Plan from all customers through a non-bypassable surcharge;
- (2) Deny any proposal that would result in any recovery of PECO's CAP Shopping Plan costs from customers that are ineligible to participate in the program; and
- (3) Provide any other relief deemed necessary and reasonable.

Respectfully submitted,

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