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August 9, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd 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 Reply 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 Cynthia W. Fordham (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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Dated this 9th day of August, 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 :

**REPLY BRIEF OF THE
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

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

Kimberly-Clark Corporation
Merck & Co., Inc.
Philadelphia College of Osteopathic
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Dated: August 9, 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.¹ The Philadelphia Area Industrial Energy Users Group ("PAIEUG") filed a Petition to Intervene on February 13, 2012.

On July 26, 2013, consistent with the litigation schedule approved at the May 28, 2013, Prehearing Conference, PAIEUG filed a Main Brief ("M.B.") addressing limited issues related to Direct Energy Services, LLC's ("Direct Energy") recommendation that PECO recover costs of its CAP Shopping Plan through a non-bypassable charge to all customers. On the same date, PECO, the Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), and Direct Energy filed Main Briefs in the proceeding.² PAIEUG hereby files this Reply Brief in order to respond to the cost recovery issues raised by other parties.³

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

² As reflected by filings either received by PAIEUG or published through the Commission's online docket, parties participating in this proceeding, but not submitting Main Briefs, include Interstate Gas Supply, First Energy Solutions Corp., and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia.

³ PAIEUG will not respond to every argument contained in all of the parties' Main Briefs, but only those issues necessitating additional response. PAIEUG's decision not to respond to all arguments should not be construed as agreement with the positions of any party on any of the outstanding issues in this proceeding.

II. ARGUMENT

A. **The Commission Has Previously Addressed and Denied Direct Energy's Recommendation to Allocate RME Costs to All Customers Through a Non-Bypassable Surcharge.**

In its Main Brief, Direct Energy recommends that PECO recover all costs of implementing the Customer Assistance Program ("CAP") Shopping Plan from customers through a non-bypassable surcharge. Direct Energy claims that both societal and direct customer benefits justify recovering costs of the CAP Shopping Plan from all customers. Contrary to Direct Energy's claims, however, the Commission previously entered an Order on April 4, 2013 ("Clarification Order"), determining that the costs of RME programs should be recovered only from customers eligible to participate in such programs.⁴ In addition, despite Direct Energy's attempts to depict PECO's CAP Shopping Plan as a universally available safety net, the record evidence shows that commercial and industrial customers, including Large Commercial and Industrial ("Large C&I") customers, are ineligible to participate in the CAP Shopping Plan. As a result, Direct Energy has not alleged any changed circumstances justifying departure from the Clarification Order issued only four months ago in this DSP proceeding.⁵ Because the rationale behind the Commission's prior decision on cost recovery for PECO's initial RME programs remains applicable to PECO'S CAP Shopping Plan, Direct Energy's proposed non-bypassable rider must be rejected.

In an effort to support its proposed non-bypassable rider, Direct Energy emphasizes the societal benefits derived from RME programs but omits any attempt to reconcile its proposal with the Commission's prior finding that such potential benefits are insufficient justification for

⁴ *Petition of PECO Energy Company for Approval of Its Default Service Program*; Order on Reconsideration, Docket No. P-2012-2283641 (Apr. 4, 2013). The Clarification Order unambiguously concluded 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. Clarification Order, p. 8.

⁵ Direct Energy M.B., pp. 13-15.

recovering costs from customers not eligible to participate in the RME programs.⁶ Direct Energy claims that PECO should recover \$4.3 million in information technology and business readiness costs through a non-bypassable surcharge because "[a]ll customers benefit from the varied products and services offered by an increasing participation of suppliers wanting to play in a vibrant and growing marketplace."⁷ Contrary to Direct Energy's claims, however, the Commission previously considered a proposal to recover costs of PECO's initial RME programs via a non-bypassable rider and concluded that:

While all customer classes may ultimately benefit from the more robust competitive environment that will result from the implementation of RME programs, at this juncture 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.* (Emphasis added).⁸

As noted in PAIEUG's Main Brief, the Commission disposed of this cost recovery issue after reviewing a record developed through a year of discovery, testimony, hearings, briefs, collaborative negotiations, and multiple rounds of comments and pleadings from parties.⁹ Direct Energy's attempt to discard the Commission's well-reasoned prior findings should be dismissed.

In an apparent effort to distinguish PECO's CAP Shopping Plan from the previously approved RME programs, Direct Energy actually underscores the necessity to uphold the Commission's finding that customers ineligible for RME programs should be excluded from cost recovery. Direct Energy suggests that CAP programs are universally available regardless of customer class, stating that:

⁶ *Id.*

⁷ *Id.* at 13.

⁸ Clarification Order, p. 8. Rather than recognize the Commission's recent directive in the Clarification Order, Direct Energy cites to cost recovery proposals applied to costs of PECO's Restructuring in the 1990s. Direct Energy M.B., p. 14. As noted in PECO's Main Brief, the Commission has already provided cost recovery guidelines applicable to RME programs in this docket, making Direct Energy's reference to historical methods unfounded and irrelevant. PECO M.B., p. 21 n.17.

⁹ PAIEUG M.B., pp. 1, 5.

Because the CAP program is available to anyone who qualifies, and the group of customers who at some point qualify is likely far broader than the group currently eligible for the program, it is best viewed as a societal safety net program that should be funded by *all customers, any one of who could find himself or herself* eligible for its benefits at some point. (Emphasis added).¹⁰

This statement is grossly misguided. In stark contrast to Direct Energy's assessment that all customers could be eligible for PECO's CAP program, *only* residential customers can participate.¹¹ PECO's commercial and industrial customers, regardless of financial hardship, are not eligible to enroll in the CAP Shopping Plan or the traditional CAP program.¹² Moreover, in its attempt to focus on the argument that all customers will benefit from the CAP Shopping Plan, Direct Energy chooses to ignore the direct benefits that it, along with other Electric Generation Suppliers ("EGSs"), may receive through additional customers that will now be eligible to shop. Essentially, the commercial and industrial customers in PECO's service territory are the only intervenors in this proceeding with no expectation of realizing any benefits whatsoever from increased retail shopping resulting from the CAP Shopping Plan. Therefore, consistent with the Commission's prior Order, PECO's commercial and industrial customers should not pay any CAP Shopping Plan costs.

By proposing recovery of PECO's CAP Shopping Plan costs through a non-bypassable rider, Direct Energy attempts to circumvent the Commission's prior Order. The Clarification Order established that customers ineligible for PECO's RME programs should not pay the costs of such programs. Therefore, as commercial and industrial customers are ineligible for PECO's CAP Shopping Plan, Direct Energy's proposal to recover CAP Shopping Plan costs from all customers, including Large C&I customers, must be rejected.

¹⁰ Direct Energy M.B., p. 13.

¹¹ Supplement No. 81 to Tariff-Electric PA. P.U.C. No. 4, p. 69. PECO's tariff states that the CAP program is available to "payment-troubled customers who are currently served under or otherwise qualify for Rate R [Residential], or RH [Residential Heating]." *Id.*

¹² PAIEUG M.B., p. 5 n.15.

B. Any Cost Recovery Proposal Adopted By the Commission in this Proceeding Should Preserve the Validity of the Commission's Prior Orders.

Parties to this proceeding have presented various cost recovery proposals in addition to Direct Energy's proposed non-bypassable rider. In particular, PECO and OCA have proposed cost recovery methodologies with varying impacts upon customers.¹³ PAIEUG does not take a position on which proposal or combination of proposals should be implemented for recovery of PECO's CAP Shopping Plan costs other than requesting that the Commission deny approval of any cost recovery methodology that would contravene the PUC's requirements that only customers eligible to participate in RME programs should remit the costs of these programs.

While Direct Energy's proposed non-bypassable rider clearly fails to comply with the Clarification Order, PECO and OCA have identified additional issues generating uncertainty as to the methodology to be approved for recovery of PECO's CAP Shopping Plan costs. Both PECO and OCA agree that PECO should recover its projected \$300,000 in educational costs through its Consumer Education Surcharge.¹⁴ PECO, however, proposes to amortize the remaining \$4.3 million in implementation costs over one year and recover 50% from EGSs through a Purchase of Receivables ("POR") discount and 50% from residential customers through the Universal Service Fund Surcharge ("USFC").¹⁵ OCA recommends that PECO amortize costs over a 3-5 year period and recover such costs only from EGSs.¹⁶ Further, OCA directly opposes recovery of costs from customers through the USFC, but does not propose an alternative rider or other structure for recovering costs from residential customers in the event that the Commission approves only partial recovery of costs from EGSs.¹⁷

¹³ PECO M.B., p. 20; OCA M.B., pp. 39-45.

¹⁴ *Id.*

¹⁵ PECO M.B., p. 20.

¹⁶ OCA M.B., pp. 40, 42.

¹⁷ *Id.* at 44.

The Commission should carefully consider the principles established by the Clarification Order prior to approving any proposals for recovery of PECO's CAP Shopping Plan costs. As discussed above and further summarized in PAIEUG's Main Brief, Direct Energy's proposed non-bypassable rider would unreasonably compel PECO's commercial and industrial customers to remit costs for a CAP Shopping Plan in which they are ineligible to participate.¹⁸ Equally important, however, is the need to ensure that any directives intended to resolve the cost recovery matters disputed by PECO and OCA also comply with the Clarification Order's prohibition on recovering RME costs from customers ineligible to participate in the programs.¹⁹ Therefore, PECO's commercial and industrial customers, including Large C&I customers, must be expressly excluded from cost recovery provisions associated with PECO's CAP Shopping Plan.

As indicated above, this Reply Brief addresses the cost recovery recommendations of PECO and OCA only for the limited purpose of ensuring compliance with the Commission's Clarification Order. Although otherwise taking no position on the contested cost recovery issues, PAIEUG requests that the Commission confirm that any approved cost recovery method exclude customers that are ineligible to participate in PECO's CAP Shopping Plan.

¹⁸ As additionally addressed in PAIEUG's Main Brief, Direct Energy's proposed non-bypassable rider would violate the Commission's longstanding directive that CAP-related costs be recovered only from residential customers. PAIEUG M.B, pp. 6-7.

¹⁹ Clarification Order, p. 8; *see also* PAIEUG M.B., p. 5.

III. **CONCLUSION**

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

- (1) Deny Direct Energy's proposal to recover PECO's CAP Shopping Plan costs 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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