

February 18, 2014

VIA E-FILE

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

**Re: Petition of PECO Energy Company for Approval of its Default Service Program (Customer Assistance Program Shopping Plan);
Docket No. P-2012-2283641**

Dear Secretary Chiavetta:

Please find enclosed the Answer of FirstEnergy Solutions Corp. ("FES") in the above-captioned matter.

If you have any questions regarding this matter, please contact the undersigned. Copies of this letter are being served on the parties in accordance with the attached Certificate of Service.

Very truly yours,



Amy M. Klodowski
Attorney for FirstEnergy Solutions Corp.

cc: Honorable Cynthia Williams Fordham
Certificate of Service
Office of Special Assistants (by email only to ra-OSA@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company For :
Approval of Its Default Service Program : Docket No. P-2012-2283641
(Customer Assistance Program Shopping :
Plan) :

**ANSWER OF FIRSTENERGY SOLUTIONS CORP.
TO PETITIONS FOR CLARIFICATION AND RECONSIDERATION**

FirstEnergy Solutions Corp. ("FES"), by its attorneys, and in accordance with 52 Pa. Code § 5.572, submits this Answer to the *Petition for Reconsideration and Clarification of the Commission's Order Entered January 24, 2014* filed by PECO Energy Company ("PECO"), the *Petition of the Office of Consumer Advocate for Reconsideration and Clarification*, and the *Joint Petition for Reconsideration and/or Clarification and Stay of the Opinion and Order Entered January 24, 2014* filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia ("TURN" and collectively with CAUSE-PA, "CAUSA-PA/TURN"). PECO, the Office of Consumer Advocate ("OCA") and CAUSE-PA/TURN (collectively, "Petitioners") filed and served their Petitions on February 10, 2014.

I. INTRODUCTION

FES's Answer will focus on the Petitioners' requests for reconsideration of the Pennsylvania Public Utility Commission's ("Commission") rejection of PECO's proposal to require licensed electric generation suppliers ("EGSs") serving customers in PECO's customer assistance program ("CAP") to offer CAP customers rates for generation service that are equal to or lower than PECO's price-to-compare ("PTC") for the duration of the customers' generation service contracts. Because PECO's PTC changes quarterly, this proposal will largely restrict EGSs to offering variable priced products to CAP customers or dropping CAP customers on

fixed-price contracts to default service when the PTC falls below the contract price. Such a limit will prevent retail competition from reaching CAP customers, eliminating savings that EGSs can provide which result in reductions to PECO's CAP shortfall and Universal Service Fund Charge ("USFC"). The Commission correctly rejected this proposed price ceiling on the grounds that it lacks jurisdiction to regulate EGS pricing.

The Petitioners ask the Commission to reconsider this ruling, contending that without exercising jurisdiction over the prices EGSs offer to CAP customers, the Commission cannot meet its obligations under various statutes to ensure that public utilities provide all customers with rates that are just and reasonable, or to continue to provide low-income customers with the same level of protections that preceded electric competition. None of these statutes, however, authorizes the Commission to exercise jurisdiction over EGS prices. If there are legitimate concerns with how an increase (or decrease) in PECO's CAP shortfall affects the USFC PECO charges to its non-CAP residential customers, PECO must address these concerns through further adjustments to its CAP program, not through further interference with retail electric competition.

The Petitioners also attempt to justify the proposed EGS price ceiling by likening it to limitations the Commission has previously imposed on EGS pricing in the context of Commission-sponsored retail market enhancement programs such as PECO's Standard Offer Program. To the contrary, PECO's proposal to allow CAP customer shopping is not a special Commission-designed and sponsored program intended to "enhance" retail competition by providing EGSs with an additional way to enroll CAP customers. Nor is it part of PECO's CAP Program. Rather, PECO is merely removing a longstanding barrier to CAP customers' direct access to competitive generation markets, a barrier for which PECO itself is responsible.

PECO's proposed removal of this barrier would not create an additional avenue for EGSs to serve CAP customers; rather, it would establish the only way for EGSs to serve CAP customers.

PECO's Petition, in particular, reflects astonishment with the Commission's rejection of an EGS price ceiling, and confusion as to how to do something other Pennsylvania electric distribution companies ("EDCs") have done for years, i.e., letting CAP customers shop while ensuring Commission-regulated public utility rates remain just and reasonable. PECO seems to have difficulty accepting the significance of the Commission's October 12, 2012 Opinion and Order in this proceeding, which is that PECO must stop allowing the design of its CAP program to obstruct its CAP customers' direct access to retail electric competition. Thus, PECO's Petition complains that "[w]ithout the pricing limitation, there is no distinction between the products EGSs are making available to CAP customers and those that they will make available to non-CAP customers, which appears to be the intent of the Commission." PECO Petition ¶ 25. FES respectfully submits that giving CAP customers the same direct access to retail electric competition, and the same opportunities for savings, that non-CAP customers enjoy is indeed what the Commission's October 12, 2012 Opinion and Order intended, and what the General Assembly intended. Accordingly, the Commission should deny the Petitioners' requests for reconsideration of the Commission's rejection of the EGS price ceiling.

II. ANSWER

PECO's Proposal to Impose a Ceiling on the Price of Competitive Generation Service to CAP Customers Is Inappropriate and Exceeds the Commission's Authority

The Electricity Generation Customer Choice and Competition Act ("Competition Act") provides that the generation of electricity is no longer regulated as a public utility service or function. 66 Pa. C.S. § 2806(a). Consistent with the Competition Act, the Commission has

recognized that “[p]rices for competitive generation service offered by EGSs are not regulated and are instead set by the EGS.” *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 (Final Order entered November 14, 2013) at 5 n.3. Indeed, PECO’s Petition recognizes that the Competition Act does not permit the Commission to generally regulate the rates of EGSs or the price of generation as a utility service. PECO Petition ¶ 18.

Instead of identifying language from the Competition Act conferring jurisdiction over EGS prices, the Petitioners cobble together various sections of the Public Utility Code (“Code”) regarding the Commission’s regulation of public utilities, and rely upon the design of PECO’s Standard Offer Program, to argue that the Commission has jurisdiction over EGS prices. As explained below, the statutes upon which the Petitioners rely, alone or in combination, do not give the Commission authority over EGS prices. Further, the Commission’s development of retail market enhancement programs did not amount to an exercise of jurisdiction over EGS pricing.

A. The Petitioners’ Concerns About PECO’s Ability to Meet Its Statutory Obligations as a Public Utility Are Appropriately Addressed By Revisiting PECO’s CAP Program, Not By Regulating EGS Pricing

The Petitioners assert that if EGS prices at times exceed PECO’s PTC, PECO’s CAP shortfall will increase over what it would have been without CAP shopping. As a result, the Petitioners argue that various sections of the Code dealing with public utility obligations give the Commission the authority and responsibility to regulate EGS prices. These sections allegedly include the Code’s requirement that every public utility rate (including an increased USFC) be just and reasonable (66 Pa. C.S. § 1301), the Commonwealth’s policy that universal service and energy conservation policies, protections and services be continued (66 Pa. C.S. § 2802(17)), and

the requirement that “least cost” default service is available to customers (66 Pa. C.S. § 2807(e)(3.4)(ii)). PECO contends that these provisions combine to authorize the Commission to regulate EGS pricing to ensure CAP costs are not unlimited. PECO Petition ¶ 20; see also OCA Petition at 2, 5-6. In addition, the OCA invokes the Commonwealth’s policy to ensure the continuation of protections, policies and services that assist low-income customers to afford electric service (66 Pa. C.S. § 2802(10)), and the requirements that the Commission ensure EDCs fully recover the costs of universal service and energy conservation programs and that these programs are adequately funded (66 Pa. C.S. §§ 2804(8), (9)). OCA Petition at 2, 5, 8-9; see also CAUSE-PA/TURN Petition at 7-8. Further, CAUSE-PA/TURN, without citing a supporting section of the Competition Act, declares that “[a]t the core of the [Competition] Act’s Universal Service provisions is the ability of the Commission to set the terms whereby an EGS who voluntarily chooses to serve CAP customers, must comply with reasonably developed rate ceilings.” CAUSE-PA/TURN Petition at 8.

Contrary to these arguments, while a CAP program implicates various statutory obligations of a regulated public utility, and while allowing CAP customers direct access to retail electric competition may affect the level of PECO’s CAP shortfall and USFC (by increasing them or decreasing them), it does not logically follow that eliminating barriers to CAP customer shopping gives the Commission jurisdiction over EGS pricing. EGSs serving CAP customers neither provide nor participate in a CAP program or universal service and energy conservation program. Direct access to the competitive market has no impact on CAP customers’ ability to “maintain” electric service. None of the statutes the Petitioners cite even relate to EGSs.

PECO further argues that nothing in the Competition Act undermines Section 1301’s “bedrock principle” that the Commission has the authority and responsibility to make certain that

every utility rate paid by customers – including PECO’s USFC – is just and reasonable. PECO Petition ¶ 18. However, the converse is equally true: the Commission’s obligations under Section 1301 in no way undermined the Competition Act’s bedrock principle that the generation of electricity is no longer regulated as a public utility service or function. 66 Pa. C.S. § 2806(a). While the Commission can address PECO’s USFC as it deems necessary, it lacks authority to impose a ceiling on EGS prices as the Petitioners request.

For this reason, it does not follow that in order to ensure the rates of non-CAP residential customers remain just and reasonable, it is “necessary” for the Commission to attempt to exercise authority over licensed EGSs’ prices, as PECO suggests. PECO Petition at 1-2. PECO has correctly identified an appropriate objective (just and reasonable rates), but the incorrect means to the end (regulation of EGS prices). If PECO has legitimate concerns with how PECO’s CAP shortfall affects the USFC PECO charges to its non-CAP residential customers, PECO must address these concerns through adjustments to its CAP program, not through impermissible interference with retail supplier prices.

PECO complains that the Commission’s January 24, 2014 Order did not consider PECO’s example of the potential effects of EGS pricing on residential customers absent an EGS price ceiling. PECO Petition ¶ 19. However, consideration of PECO’s example is unnecessary because the Commission correctly found that it has no jurisdiction over EGS pricing. PECO’s Petition also invokes increases in the wholesale price of electricity as a result of recent cold temperatures and high demand. PECO argues that these increases may result in increased retail charges through the USFC, charges which may not be just and reasonable and therefore allegedly require a cap on EGS prices to CAP customers. PECO Petition at 12 n.9. The wholesale power market developments to which PECO refers are developments outside the Commission’s control

and cannot be taken lightly. Competitive suppliers must contend with forces such as these, and need to do so without the added unlawful burden of the Petitioners' recommended price ceilings.

B. The Petitioners Make Flawed Comparisons of CAP Customer Direct Access to the Standard Offer Programs

The Petitioners liken PECO's proposed ceiling on EGS pricing for CAP customers to limitations the Commission has imposed on EGS pricing in the context of Commission-sponsored retail market enhancement programs like PECO's Standard Offer Program. PECO Petition ¶ 22; OCA Petition at 2, 5, 6-7; CAUSE-PA/TURN Petition at 9. The Petitioners mischaracterize CAP customers' long overdue direct access to competitive generation markets as another PECO "program" in which EGSs can voluntarily choose to participate. PECO Petition ¶22; OCA Petition at 2, 9-10; CAUSE-PA/TURN Petition at 10-11. PECO argues that the Commission's January 24, 2014 Order provided no basis to distinguish between an EGS enrolling a CAP customer through normal channels and an EGS enrolling a CAP customer through the Standard Offer Program. PECO Petition ¶ 22.

Contrary to PECO's suggestion, the Commission's January 24, 2014 Order did in fact recognize the distinction between PECO's proposed price limitation and PECO's Standard Offer Program. On page 10 of the January 24, 2014 Order, the Commission recognized the distinction drawn by FES. FES disagrees with Petitioners' characterization of shopping for PECO's CAP customers as a "retail market enhancement" or Commission-sponsored program in which EGSs serving residential customers in the PECO service territory can choose to participate. In the Standard Offer Program, the Commission is providing an additional avenue for EGSs to enroll customers who already have direct access to competition, and whom EGSs can already enroll through other channels. In the Standard Offer Program, the Commission requires an EDC to take steps to facilitate enrollment that the EDC would not otherwise take. An EGS may market

and enroll customers outside of the Standard Offer Program. However, if an EGS chooses to avail itself of the Standard Offer Program, it must agree to serve customers it enrolls through the program at a price 7% below the EDC's PTC at the time of enrollment.

In the case of PECO's CAP customers, however, PECO is not creating a new channel for EGSs to enroll CAP customers who can already shop. Rather, PECO is finally eliminating a longstanding *barrier* to CAP customer choice and competition, a barrier for which PECO is responsible. Other Pennsylvania EDCs have allowed CAP customers to shop for years, without limits on EGS pricing. The removal of this barrier will result in normal, everyday shopping by individual CAP customers, no different than shopping by other residential customers. To the extent an EGS wishes to avail itself of PECO's Standard Offer Program as an additional means of enrolling CAP customers, in that limited context an EGS would need to agree to offer the 7% discount. Otherwise, there are no lawful limits on an EGS's prices.¹

Accordingly, PECO's proposed restriction on EGS pricing of offers to CAP customers should be rejected. PECO's CAP customers should be permitted to choose among EGS offers like other residential customers.

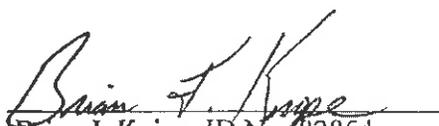
¹ The OCA similarly cites the Commission's Retail Opt-In Auctions, OCA Petition at 7, but this comparison is flawed for the same reasons as the comparison to the Standard Offer Programs. The OCA further cites to the Commission's approval of EDCs' voluntary time-of-use ("TOU") programs in which EGSs provide TOU service at a tariffed rate. OCA Petition at 8 n.3. However, the OCA omits to mention the critical distinguishing facts that the EGS is contracting with the EDC to provide TOU service on the EDC's behalf, and that this arrangement fulfills the statutory duty of the EDC, as default service provider, to provide TOU service. 66 Pa. C.S. § 2807(f)(5). An EGS's provision of TOU service on behalf of the default service provider is in no way comparable to an EGS's provision of competitive retail service.

III. CONCLUSION

For the reasons explained above, FirstEnergy Solutions Corp. respectfully requests that the Commission deny the requests of PECO Energy Company, the OCA and CAUSE-PA/TURN for reconsideration of the Commission's rejection of PECO's proposed limit on EGS pricing.

Respectfully submitted,

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Dated: February 18, 2014

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party), via email and first-class mail.

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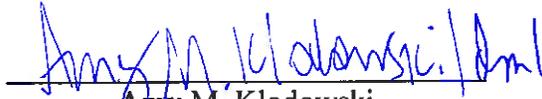
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