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February 18, 2014

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for Approval of its Default Service Plan
Docket No. P-2012-2283641

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Direct Energy Services, LLC's Answer to PECO Energy Company's Application for Stay with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Deanne M. O'Dell". The signature is written in a cursive, flowing style.

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Cynthia Fordham, w/enc.
Cert. of Service w/enc.
Ra-OSA@pa.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of Direct Energy's Answer to PECO's Application for Stay upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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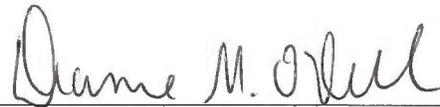
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Date: February 18, 2014



Deanne M. O'Dell, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for : Docket No. P-2012-2283641
Approval of its Default Service Plan :

**DIRECT ENERGY SERVICES, LLC's ANSWER
TO PECO ENERGY COMPANY APPLICATION FOR STAY**

Pursuant to 52 Pa. Code §§ 5.61(a) and 5.572(3), Direct Energy Services, LLC (“Direct Energy”) submits this Answer in response to the Application for Stay of PECO Energy Company (“PECO” or “Company”). As demonstrated below, PECO has not met its burden for a stay of the Commission’s January 24, 2014 Opinion and Order regarding PECO’s proposed customer Choice program for customer assistance plan (“CAP”) customers.¹ The Commission should deny PECO’s Application for Stay inasmuch as it would deny CAP customers their ability to fully realize the benefits of retail electric competition that so many other PECO customers realize today. The Commission should uphold its Opinion and Order.

I. PROCEDURAL HISTORY

On January 24, 2014 the Commission issued its Opinion and Order in this case, providing CAP customers the shopping experience guaranteed them by the Commission’s October 12, 2012 Order in this same docket – the ability to avail themselves of the full benefits of retail electric competition.² On February 10, 2014, Petitions for Reconsideration were filed by PECO and the Office of Consumer Advocate (“OCA”). Additionally, The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) and The

¹ Direct Energy will refer to all the petitions together as “Petitioners” when two or more of the petitions raise the same or similar issues.

² *Petition of PECO Energy Company for Approval of its Default Service Plan II*, Docket Number P-2012-2283641, Opinion and Order at 131-132 (October 12, 2012).

Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN”) (together hereinafter referred to as “CAUSE-PA/TURN”) filed a Joint Petition for Reconsideration and/or Clarification and Stay. Finally, PECO filed a separate Application for Stay as well on February 10, 2014.

On February 12, 2014, the Secretary of the Commission filed two separate secretarial letters condensing the ordinary response time and requiring that Answers to each of the Petitions be filed by close of business on February 18, 2014. In the first Secretarial Letter, the Secretary explained that the Commission is required to act on the Petition of OCA and the Joint Petition of CAUSE-PA/TURN on or before February 24, 2014, or otherwise lose jurisdiction to do so if an appeal is timely filed. The only scheduled Public Meeting before that date will be held on February 20, 2014.³ Therefore, in order to permit the Commission to consider the Petition of OCA and the Joint Petition of CAUSE-PA/TURN at the Public Meeting scheduled for February 20, 2014, the Commission had to abbreviate the time period for filing Answers to the two Petitions.⁴ At the time the Secretary was not aware of PECO’s Petition for Reconsideration or PECO’s Petition for Stay. In the second Secretarial Letter, the Secretary noted PECO’s Petition for Reconsideration and its Petition for Stay and again noted that the Commission required Answers to all of the Petitions by close of business February 18, 2014 so that the Commission could consider all of the Petitions at the February 20, 2014 meeting.

³ First Secretarial Letter (February 12, 2014).

⁴ First Secretarial Letter (February 12, 2014).

II. ARGUMENT

A. PECO's Petition for Stay is Moot

PECO indicates its Application for Stay is needed to avoid harm and customer confusion in case the Commission grants its Petition for Reconsideration.⁵ PECO cites to various dates in which tasks must be completed under the Commission's Opinion and Order as well as explains mechanical and timing constraints related to CAP customer education. All of the concerns are premised on a Commission Order on Reconsideration and speculative changes that might occur on reconsideration.

The Commission should reject PECO's Application for Stay outright inasmuch as it is moot. The Commission compressed the ordinary dates for responses to the Petitions for Reconsideration as well as the instant Application for Stay for the express purpose of acting on the Petitions for Reconsideration and the Application for Stay before the Commission loses jurisdiction. PECO's Application for Stay is therefore unneeded and will be moot when the Commission acts on PECO's Petition for Reconsideration at the February 20, 2014 meeting.

B. PECO Has Failed to Meet its Burden for the Commission to Grant a Stay of Its Order Affording CAP Customers the Same Shopping Opportunities as non-CAP customers

Should the Commission not substantively act on PECO's Petition for Reconsideration at its February 20, 2014 meeting, the Commission should deny the Motion for Stay as PECO failed to meet its burden for the Commission to grant a stay. The Commission should not fall for PECO's thinly veiled attempt to delay and impede the Commission's Opinion and Order in this case. PECO attempts to hide behind mechanical and timing constraints related to CAP customer

⁵ Application for Stay at 5-8.

education and possible confusion if the Commission reverses itself on rehearing, but the Petition for Reconsideration of PECO makes it clear that PECO continues to oppose the substance of the Commission's January 24, 2014 Opinion and Order. This Application for Stay is just another tool for PECO to attempt to slow down providing benefits to CAP customers of shopping in hopes that it will be successful (on rehearing or otherwise) in somehow reversing the Commission's determination and implementing its own proposed CAP customer shopping plan, which clearly is the preferred option of OCA and CAUSE-PA/TURN as well. But all of those arguments were considered – and previously rejected by the Commission. Simply put, PECO knows it cannot sustain its burden for a stay of the Opinion and Order on substantive grounds so it is attempting to obtain a stay through the back door; by claiming a stay of the entire Opinion and Order is needed due to mechanical issues related to customer education and computer system issues. If PECO only needs time to deal with mechanical and timing constraints related to CAP customer education and computer systems then PECO would have filed a limited Petition for Rehearing and a more narrow Application for Stay of the timing requirements in the Commission's Opinion and Order rather than a broad Application for Stay of the Commission's entire order.

In order for the Commission to grant a stay, the applicant must prove: (1) a strong showing it is likely to prevail on the merits; (2) it will suffer irreparable injury without the requested relief; (3) issuance of the stay will not substantially harm other interested parties; and, (4) issuance of the stay will not adversely affect the public interest.⁶ The Commission has held that the first criterion, to demonstrate a strong likelihood to prevail on the merits, is not

⁶ Application at 4-5, citing *Pa. P.U.C. v. Process Gas Consumers Grp.*, 502 Pa. 545, 467 A.2d 805 (Pa. 1983).

applicable in Commission cases. However, the party making the request for stay must prove a “strong showing” under all of the remaining criteria in order to justify the issuance of a stay.⁷

PECO fails to make a strong showing and fails to meet any of the criteria for the Commission to issue a Stay.

1. PECO will not suffer irreparable harm without a stay

PECO supports its Application with concerns about confusion for customers if the Commission modifies its Opinion and Order and any materials or other customer education initiatives developed relying on the Opinion and Order are wrong.⁸ PECO also avers that its Standard Offer Program (“SOP”) may not perform properly by April 15, 2014, electric generation suppliers (“EGS”) will also suffer from uncertainty as to the conditions under which they will be able to serve CAP customers, and EGSs will offer less products because of this uncertainty. PECO further asserts the Commission should first consider the likelihood of injury to CAP customers and not PECO. Finally, PECO claims it will lose customer “good will” without a Stay.

As a legal matter, the only entity the Commission may consider as it relates to irreparable harm is PECO. PECO’s only claim to irreparable harm is speculation about customer confusion and a loss of good will from customers. The Commission should reject both of these rationales.

The heart of PECO’s claim of irreparable harm is the claim of “possible customer confusion.” But the possible confusion that PECO describes is just that – possible but very unlikely. As pointed out by Direct Energy in its Answer to the Petitions for Reconsideration, most of the issues raised in all the Petitions for Reconsideration contain matters already raised

⁷ *Pa. P.U.C. v. Process Gas Consumers Grp.*, 502 Pa. 545, 467 A.2d 805, 809 (Pa. 1983) (citing *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 ((D.C.Cir. 1977))).

⁸ Application at 6.

and duly considered by the Commission. The relatively small amount of new material brought to the Commission's attention is easily distinguishable. This case was fully litigated and the Commission did not issue its Opinion and Order until six (6) months after the record was certified to the Commission. The Commission did not come to a hasty conclusion that it is likely to overturn. The odds of the Commission reversing itself are very small and these very small chances of the Commission reversing itself are not a "strong showing" of irreparable harm.

PECO presents a speculative "could happen" scenario that does not rise to the level of justifying a stay. Irreparable harm has been characterized as non-speculative harm that cannot be compensated by monetary damages.⁹ If the Commission granted PECO's Application on the grounds that it might change its mind and there might be confusion, then virtually every order from the Commission that directly or indirectly affects customers would be a ripe candidate for a stay. Here PECO provides no compelling reason to believe the Commission will change its mind and speculation about "confusion" hardly rises to the level of irreparable harm.

Moreover, the good will that PECO frets about is not quantified or otherwise compared to any particular benchmark of PECO's own current good will. PECO fails to explain, because it cannot, how the harm is irreparable. Even if the Commission were to change a part of its Opinion and Order that affects the design of the CAP shopping program, any changes would be caused by the Commission and PECO would not lose "good will" inasmuch as customers could not reasonably fault PECO for following the Commission's orders.

Finally, PECO's supposed concerns about customers should also be met with skepticism by the Commission. Rather than preventing irreparable harm, customers will actually suffer

⁹ See e.g., *Re Service Electric Telephone Company, LLC*, P-2013-2349801 at 15 (Opinion and Order entered April 4, 2013); *Core Communications, LLC v. Verizon Pennsylvania, Inc. & Verizon North LLC*, Docket No. P-2011-2253650 (Opinion and Order entered September 23, 2011); *Americus Centre, Inc. v. PPL Electric Utilities Corporation City of Allentown*, Docket No. C-20077427 (Opinion and Order entered May 15, 2007).

irreparable harm with the requested relief. Granting the Application would delay and therefore further deny CAP customers their ability to fully realize the benefits of retail electric competition, which has been the Commission's goal all along in this docket. These delays are time that customers would otherwise enjoy the benefits of retail electric competition that they will not be able to recoup if the Stay is granted.

The Commission should find that PECO failed to sustain its burden to make a strong showing under this criterion and therefore deny the Application for Stay.

2. Issuance of a Stay will Substantially Harm Other Interested Parties

PECO avers a Stay will simply preserve the status quo and that any EGS profits or customer savings lost from the Stay are likely to be "relatively insignificant" and "speculative" given the anticipated short period of time for consideration of PECO's Petition for Rehearing.¹⁰

PECO's arguments in this regard are dead wrong. First, issuance of the stay substantially harms customers inasmuch as it would deny CAP customers their ability to fully realize the benefits of retail electric competition. PECO as well as others supporting PECO's proposed CAP customer shopping price cap emphasized the inelasticity of CAP customer budgets. The stay requested by PECO will delay customer opportunities to save on their bills and even one month's lost savings could be significant for a CAP customer. Further, the arguments that PECO makes about EGS profits or customer benefits are in fact "speculative" themselves. PECO provides no quantification or other benchmark to substantiate its claims that any lost benefits would be "relatively insignificant." To the contrary, Direct Energy believes these lost opportunities for both customers and EGS are substantial inasmuch as any delays would interrupt

¹⁰ Application at 8.

customers' opportunities to take control of their electric bills and save money as well as prevents EGSs from earning additional customers.

The Commission should find PECO has not made a strong showing and that the proposed Stay will substantially harm other parties. The Commission should deny the Application for Stay.

3. Issuance of a Stay will Adversely Affect the Public Interest

PECO here claims that a stay will not adversely affect the public interest inasmuch as the public interest is closely tied to the interests and possible harm to PECO, low-income customers, and EGSs if a stay is not granted.¹¹ PECO also observes that the Commission will be able to establish sufficient time for implementation of its Opinion and Order once the Petitions for Rehearing have been ruled upon by the Commission.

As described above, a stay would have several substantial negative consequences and therefore would adversely affect the public interest. First, a Stay would deny CAP customers their ability to fully realize the benefits of retail electric competition, the primary purpose of this docket. Additionally, as recognized by PECO, the proposed stay will delay any possible savings for customers or profits by EGSs. Finally, a stay would adversely affect all PECO customers. Adding additional customers who are eligible to shop is a factor in encouraging EGSs to offer products to all customers in PECO's territory. Any delay in affording CAP customers this opportunity will further lengthen the time in which more EGSs may come to the market and provide more competition and better products and services to all PECO customers. Therefore all PECO customers are adversely affected by the proposed stay.

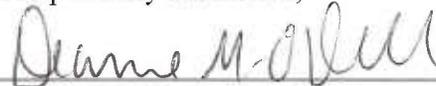
¹¹ Application at 9.

PECO fails to make a strong showing under this criterion and the Commission should deny PECO's Application for Stay.

III. CONCLUSION

Direct Energy respectfully requests that the Commission deny PECO's Application for Stay for the reasons described above.

Respectfully submitted,



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