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October 10, 2014

VIA E-FILING

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
 For the Period from June 1, 2015 through May 31, 2017
 Docket No. P-2014-2409362**

Dear Secretary Chiavetta:

Enclosed is the **Exception of PECO Energy Company (“Exception”) to the Recommended Decision of Administrative Law Judge Cynthia W. Fordham issued on September 30, 2014** in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Exception has been served upon Administrative Law Judge Cynthia W. Fordham and all parties. In addition, a courtesy copy has been e-mailed to the Commission’s Office of Special Assistants.

Should you have any questions, please contact me directly at 215.963.5384. Thank you.

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosure

c: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL OF ITS DEFAULT :
SERVICE PROGRAM FOR THE PERIOD : Docket No. P-2014-2409362
FROM JUNE 1, 2015 THROUGH :
MAY 31, 2017 :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Exception of PECO Energy Company** to the **Recommended Decision of Administrative Law Judge Cynthia W. Fordham** issued on **September 30, 2014** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL AND HAND-DELIVERY

Honorable Cynthia Williams Fordham
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
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cfordham@pa.gov

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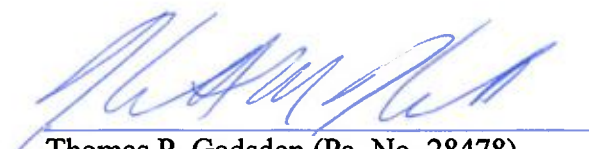
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Counsel for PECO Energy Company

Date: October 10, 2014

I. INTRODUCTION

This proceeding was initiated on March 10, 2014, when PECO Energy Company (“PECO”) filed a Petition (“Petition”) pursuant to Section 2807(e) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 2807(e), requesting that the Pennsylvania Public Utility Commission (the “Commission”) approve PECO’s Default Service Program for the period from June 1, 2015 to May 31, 2017 (“DSP III”).

DSP III is PECO’s third default service program and is designed to ensure that PECO’s default service customers continue to have access to adequate, reliable electric generation supply at the least cost over time and to enable PECO to recover its costs of furnishing that service. PECO’s Petition also proposed continuation of the Company’s Electric Generation Supplier (“EGS”) Standard Offer Program, including the associated cost recovery mechanism approved by the Commission as part of PECO’s current default service program (“DSP II”).¹

The Commission assigned PECO’s Petition to Administrative Law Judge Cynthia W. Fordham (“ALJ”) and the subsequent history of this proceeding is described in PECO’s Initial Brief, dated August 5, 2014. Following the submission of Initial Briefs, on August 28, 2014, a Joint Petition for Partial Settlement (“Settlement”) of all but two issues was filed by PECO, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), NextEra Power Marketing, LLC (“NEPM”), and the Retail Energy Supply Association

¹ See *Petition of PECO Energy Co. for Approval of Its Default Serv. Program II*, Docket No. P-2012-2283641 (Order entered October 12, 2012) (“*October 2012 Order*”). In the *October 2012 Order*, the Commission approved PECO’s DSP II with certain modifications and also directed PECO to submit new proposals for various elements of its proposed retail market enhancements. In response, PECO made a series of compliance filings (December 11, 2012; February 28, 2013; and April 15, 2013), which were approved by a Secretarial Letter issued January 25, 2013, an Order entered February 14, 2013 and an Order entered June 13, 2013, respectively.

(“RESA”) (collectively, the “Joint Petitioners”). The two issues reserved for litigation by the Settlement were: (1) the procurement of default service supply for PECO’s Medium Commercial Class; and (2) whether PECO should establish a non-bypassable transmission service charge (“TSC”) to recover the following PJM billing charges: (i) Generation Deactivation/Reliability Must Run (“RMR”) charges set after the approval of DSP III by the Commission; (ii) Transmission Enhancement (a/k/a Regional Transmission Expansion Plan “RTEP”) charges; and (iii) Expansion Cost Recovery charges (“ECRCs”) (collectively, the “PJM Transmission Charges”). The Philadelphia Industrial Energy Users Group (“PAIEUG”) opposed the Settlement in its entirety.²

On September 4, 2014, PECO, RESA, OSBA and PAIEUG filed Reply Briefs. As to the first issue reserved for litigation, the OSBA disagreed with the implementation of hourly-priced default service for the Medium Commercial Class, as outlined in the Settlement, following PECO’s deployment and testing of billing and data management system changes necessary to transition Medium Commercial customers with interval meters to hourly pricing (“Hourly Pricing Transition”). *See* OSBA Reply Br., pp. 11-12. In its Reply Brief, PAIEUG generally opposed the Settlement and specifically objected to PECO’s proposed non-bypassable TSC. *See* PAIEUG Reply Br., pp. 9-29. PAIEUG also offered an alternative proposal under which Large Commercial and Industrial (“C&I”) customers would be “carved out” from PECO’s non-bypassable TSC if the Commission otherwise approved PECO’s proposal. *Id.*, pp. 21-23.

On September 30, 2014, the ALJ issued a Recommended Decision (“RD”) in which she recommended that the Commission approve the Settlement, without modification. R.D., p. 40.

² Direct Energy Services LLC (“Direct Energy”), FirstEnergy Solutions Corp. (“FES”), Interstate Gas Supply, Inc. (“IGS”), PECO Energy Suppliers Group (“PESG”) and Noble Americas Energy Solutions LLC (“Noble”), which are parties to this proceeding, authorized the Joint Petitioners to represent that they did not oppose the Settlement.

After consideration of the record in this proceeding and analysis of the issues reserved for litigation, the ALJ also recommended approval of the Hourly Pricing Transition and PECO's proposed non-bypassable TSC as set forth in the Settlement. *Id.*, pp. 44-45, 50-51. Finally, the ALJ recommended that the Commission approve PAIEUG's alternative proposal and carve out a special exception for Large C&I customers from non-bypassable recovery of the PJM Transmission Charges under PECO's TSC. *Id.*, p. 51. The following Exception is narrowly limited to the ALJ's recommendation that the Commission adopt PAIEUG's proposed carve-out.

II. EXCEPTION

PECO respectfully takes Exception to the ALJ's finding that the Commission should carve out Large C&I customers from PECO's non-bypassable TSC. R.D., p. 51. As explained below, the ALJ's proposed treatment of Large C&I customers is not supported by substantial record evidence. Furthermore, adoption of such a carve-out will lead to the incurrence of additional, unquantified administrative costs for billing system changes.

III. ARGUMENT

In DSP III, PECO initially proposed that load serving entities ("LSEs"), including EGSs, continue to be responsible for transmission costs that comprise various PJM charges, including Generation Deactivation/RMR charges, Network Integration Transmission Service ("NITS") charges and RTEP charges. However, in light of the FirstEnergy electric distribution companies' ("EDCs") proposal in their default service proceedings to collect certain PJM bill charges through a non-bypassable charge, PECO also made clear from the outset of this proceeding that it would monitor the FirstEnergy EDCs' proceedings and take into consideration any Commission direction to the FirstEnergy EDCs as it might apply to PECO's proposals for DSP III. *See* PECO St. No. 2, p. 18 n.3 & 2-R, p. 17. As explained in PECO's Initial Brief (pp. 38-

39), PECO subsequently proposed a non-bypassable TSC in light of the Commission’s finding in the FirstEnergy EDCs’ proceeding that transferring responsibility for certain PJM costs from LSEs to EDCs would benefit customers.³ Under the Settlement, PECO continued to support a non-bypassable TSC which will recover the PJM Transmission Charges, with Generation Deactivation/RMR charges remaining the responsibility of DSP II wholesale default service suppliers until the terms of the applicable DSP II supply master agreements expire. PECO Reply Br., p. 9.

The ALJ found that PECO’s proposed non-bypassable TSC was reasonable and supported by the record in this proceeding. R.D., pp. 50-51. In reaching this conclusion, the ALJ considered and properly rejected PAIEUG’s contention that PECO’s proposal is contrary to law and agreed with PECO (and RESA) that neither the Electricity Generation Customer Choice and Competition Act nor any other provision of the Public Utility Code precludes recovery of PJM bill charges on a non-bypassable basis. *See id.*, p. 51 (citing *FirstEnergy DSP III Order*, p. 38). Despite the foregoing findings, the ALJ recommended – without citation to specific evidence – that the Commission approve PAIEUG’s carve-out proposal based on her view that PAIEUG raised a “viable” argument regarding the differences between Large C&I customers and other customers with respect to negotiation of EGS contracts. *Id.*

Contrary to the ALJ’s conclusion, Large C&I customers should not be exempt from PECO’s proposed non-bypassable TSC for several reasons. First, PAIEUG has not demonstrated that the alleged differences in “characteristics” between customer classes provide a basis for special treatment for Large C&I customers with respect to the allocation of PJM Transmission

³ See Opinion and Order, *Joint Petition of Metropolitan Edison Co., Pennsylvania Elec. Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375 and P-2013-2391378 (entered July 24, 2014) (“*FirstEnergy DSP III Order*”).

Charges. The central reason for opposition to non-bypassable recovery of PJM Transmission Charges by PAIEUG's witness, Randolph Haines, is that his employer, Thomas Jefferson University/Thomas Jefferson University Hospital, Inc. ("TJU/TJUH"), would be forced to remove transmission-related PJM billing charges from fixed price EGS contracts for each of its accounts. *See* PAIEUG St. No. 1, pp. 4-8. However, Mr. Haines did not demonstrate how TJU/TJUH would actually be harmed if it paid PJM Transmission Charges to PECO through a non-bypassable TSC instead of continuing to remit PJM Transmission Charges to its EGSs. Nor did Mr. Haines explain how TJU/TJUH and other Large C&I customers would actually benefit in negotiating Generation Deactivation/RMR charges, RTEP and ECRCs as individual components within EGS contracts.

Second, PAIEUG's contention that Large C&I customers will face a risk of "double collection" of PJM transmission charges – once by PECO through the proposed TSC and again by EGSs under their contracts with Large C&I customers – does not support the ALJ's recommendation. As explained in PECO's Reply Brief (p. 16), TJU/TJUH's current EGS contracts will expire **before** the changes proposed by PECO regarding the recovery of PJM Transmission Charges take effect. Notably, PAIEUG did not present any evidence of a PECO Large C&I customer actually facing the dilemma of a double collection of the PJM Transmission Charges under EGS contracts extending beyond June 1, 2015. At best, PAIEUG has simply identified a theoretical risk of "double collection" and purported logistical challenges for a single Large C&I customer. Furthermore, if TJU/TJUH were to negotiate a direct pass-through of PJM Transmission Charges in its EGS contracts, as PAIEUG emphasizes customers are permitted to

do under the Commission's revised customer information regulations (PAIEUG Reply Br., p. 21),⁴ TJU/TJUH would face no risk of "double collection" of those charges.

In addition, and contrary to PAIEUG's assertions, the *FirstEnergy DSP III Order* does not support adoption of a Large C&I customer carve-out. In the FirstEnergy EDCs' DSP III proceedings, the Commission recognized that there was "some merit" in the alleged concerns of industrial customers if the Commission approved a revised cost collection methodology for PJM charges. See *FirstEnergy DSP III Order*, pp. 44-45. However, the Commission's observation was limited to the treatment of NITS costs, which are specifically excluded under the Settlement from any non-bypassable TSC implemented by PECO at the direction of the Commission.

Finally, the Company's current billing systems do not have the capability to exempt the Large C&I procurement class – all customers with annual peak demand greater than 500 kW on schedules GS, HT, PD and EP – from the Commission-approved non-bypassable TSC without the substantial reprogramming of those systems. See Tr. 88-89. Because PAIEUG first proposed its Large C&I customers carve-out in its Main Brief, there is no record of the administrative complexity and costs that such a carve-out would entail. The Commission should therefore reject the ALJ's recommendation to approve PAIEUG's proposal to carve out Large C&I customers from PECO's proposed TSC.⁵

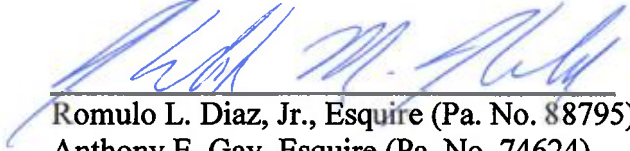
⁴ See also Final Order, *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*; Docket No. M-2013-2362961 (entered November 14, 2013) ("*Fixed Price Order*"), pp. 29-30 (clarifying that the Commission's guidance regarding the use of a "fixed price" label for competitive generation products with a pass through clause applies only to residential customers and small business customers with a registered peak load of less than 25 kW). Significantly, the *Fixed Price Order* does not address, let alone prohibit, non-bypassable treatment of transmission-related PJM billing charges from any customer class.

⁵ Should the Commission approve PAIEUG's proposal, the Commission should clarify that the costs to implement the carve-out will be recovered from all Large C&I customers.

IV. CONCLUSION

For the reasons set forth above and in PECO's Reply Brief, the Commission should grant PECO's Exception and adopt the Recommended Decision with the modification requested herein.

Respectfully submitted,



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