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October 17, 2014

VIA eFILING

Rosemary Chiavetta, Secretary
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**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 Reply of PECO Energy Company to Exceptions (“Reply Exceptions”) to the Recommended Decision of Administrative Law Judge Cynthia W. Fordham in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Reply Exceptions 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 **Reply of PECO Energy Company to Exceptions to the Recommended Decision of Administrative Law Judge Cynthia W. Fordham** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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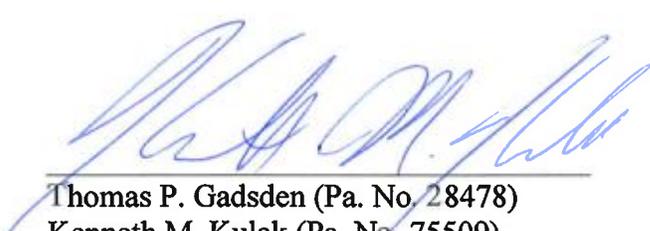
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I. INTRODUCTION

On September 30, 2014, Administrative Law Judge Cynthia W. Fordham (“ALJ”) issued her Recommended Decision (“R.D.”) in this proceeding in which she recommended that the Pennsylvania Public Utility Commission (“Commission”) approve the Default Service Program for the period from June 1, 2015 through May 31, 2017 (“DSP III”) proposed by PECO Energy Company (“PECO” or “the Company”), as modified by the Joint Petition for Partial Settlement (“Settlement”) filed on August 28, 2014.¹ The ALJ also made recommendations with respect to two issues reserved for litigation, namely: (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”).

In particular, the ALJ recommended that the Commission approve PECO’s proposal to use commercially reasonable efforts to implement and test billing and data management system changes necessary to support hourly-priced default service for Medium Commercial customers with interval meters (“Hourly Pricing Transition”) by June 1, 2016. The ALJ also recommended that the Commission approve PECO’s proposed TSC, but with a “carve out” proposed by

¹ The Settlement 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 (“RESA”) (collectively, “Joint Petitioners”). 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. The Philadelphia Area Industrial Energy Users Group (“PAIEUG”) opposed the Settlement in its entirety.

PAIEUG during briefing which would exempt Large Commercial and Industrial (“C&I”) customers from the TSC’s non-bypassable recovery of PJM Transmission Charges. On October 10, 2014, PECO filed a single Exception to the ALJ’s recommended adoption of PAIEUG’s carve out for Large C&I customers.² Exceptions were also filed by the OSBA, PAIEUG and RESA.

For the most part, the Exceptions of the other parties revisit arguments that were considered by the ALJ in her Recommended Decision and addressed in PECO’s Reply Brief, which the Commission is urged to review. To the extent the other parties’ Exceptions assert that the Recommended Decision must be modified because the ALJ erred or failed to consider their particular issues, the Commission should reject their efforts for the reasons set forth below and approve the Recommended Decision with the single modification proposed in PECO’s Exception.

II. REPLY TO EXCEPTIONS

A. Exceptions To Medium Commercial Class Procurement (OSBA Exc. 1-2; PAIEUG Exc. 2)

For default service customers in PECO’s Medium Commercial Class (non-residential customers with peak demand equal to or greater than 100 kW but less than or equal to 500 kW), PECO initially proposed to continue to rely upon six-month fixed price full requirements (“FPFR”) products, without overlap, procured approximately two to four months prior to delivery. In addition, PECO requested a waiver, to the extent necessary, of the Commission’s direction in the *End State Order* that customers with interval meters and peak demands above

² RESA also excepted to the ALJ’s recommendation for approval of PAIEUG’s carve-out proposal on the grounds that PAIEUG’s alternative proposal was unsupported and implementation of PAIEUG’s approach was not developed on the record. *See* RESA Exc., pp. 11-14.

100 kW be moved to hourly-priced default service pricing during DSP III while PECO completes its advanced meter infrastructure (“AMI”) deployment, including testing, implementation of back-office and other information technology systems and integration with PECO’s billing system.³ PECO Initial Br., pp. 17-19.

Under the Settlement, PECO agreed to support hourly priced default service for Medium Commercial customers with interval meters and to use commercially reasonable efforts to implement the Hourly Pricing Transition as soon as reasonably possible and no later than June 1, 2016, subject to the following conditions:

- a) No later than September 1, 2015, PECO will provide a status update to the parties on the implementation and testing of the system changes necessary to support hourly priced default service for Medium Commercial customers.
- b) If PECO determines that it can complete the implementation and testing of the necessary system changes on or before June 1, 2016, PECO will cancel the March 2016 FPFR product solicitation for Medium Commercial customers and will instead include all Medium Commercial customers in its Large Commercial and Industrial procurement group and solicit hourly priced default service supply for that procurement group for delivery commencing June 1, 2016.
- c) If PECO determines that it cannot complete the implementation and testing of necessary systems changes in order to implement the Hourly Pricing Transition by June 1, 2016, then PECO will confer with the parties to this proceeding and the [Commission’s Office of Competitive Market Oversight (“OCMO”)]. If OCMO agrees that the Hourly Pricing Transition cannot reasonably be completed by June 1, 2016, PECO will proceed with the scheduled March 2016 FPFR solicitation for Medium Commercial customers and file a report with OCMO on the status of the system changes. PECO will provide a copy of the report filed with OCMO to the parties at the time of filing.

PECO Reply Br., pp. 4-5. Under the Settlement, PECO committed to deploy and test the necessary systems changes to support an effective date of implementation for hourly priced default service for the Medium Commercial class no later than December 1, 2016. *Id.* The ALJ

³ See *Investigation of Pennsylvania’s Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Order entered February 15, 2013) (the “*End State Order*”), pp. 31-32.

recommended approval of PECO's proposal and concluded that the Hourly Pricing Transition outlined in the Settlement addresses the Commission's concern in the *End State Order* (p. 32) about requiring "medium C&I" customers without interval meters to receive hourly priced default service. *See* R.D., pp. 44-45.

The OSBA excepts to the ALJ's decision, asserting that the ALJ did not sufficiently recognize or address the OSBA's arguments against hourly priced default service for Medium Commercial customers and reiterating its view that reliance on the Commission's direction in the *End State Order* is "misguided." *See* OSBA Exc., pp. 4 & 8. Contrary to the OSBA's assertions, the ALJ clearly considered the OSBA's contention that Medium Commercial customers should not be treated the same as Large C&I customers, as well as the OSBA's view that legislative amendments to the Public Utility Code were required for approval of the Settlement and its "unwavering[]" support for six-month FPFR default service supply contracts for Medium Commercial customers instead of hourly priced supply. *See* R.D., pp. 42-44. Nor did the ALJ err in rejecting the OSBA's arguments by quoting extensively from the *End State Order*: in the excerpt of the *End State Order* relied upon by the ALJ, the Commission plainly gives consideration to the characteristics of Medium Commercial customers in its determination to require electric distribution companies ("EDCs") to provide hourly priced default service to Medium Commercial customers with interval meters. R.D., pp. 44-45. The Commission should therefore reject the OSBA's Exceptions.

PAIEUG excepted to the ALJ's approval of the Hourly Pricing Transition during DSP III on different grounds, contending that uncertainty as to whether Medium Commercial customers would be transitioned to hourly-priced default service on June 1, 2016 or December 1, 2016 will create higher "risk premiums" in hourly-priced service for Large C&I customers. PAIEUG Exc.,

pp. 14-15. However, PAIEUG appears to misconstrue the Settlement and PECO's procurement schedule: procurement of hourly priced default service supply for both Large C&I customers and Medium Commercial customers will not take place until March 2016, well after the September 2015 deadline when PECO must provide notice of the time when Medium Commercial customers will have interval meters and receive hourly priced default service. *See* Settlement Exhibit C, p. 9. In short, the basis for the higher risk premiums alleged by PAIEUG does not exist. The Commission should therefore reject PAIEUG's Exception and adopt the ALJ's recommendation regarding the Hourly Pricing Transition for Medium Commercial customers.

B. Exceptions To Recovery Of Certain PJM Charges Through A Non-Bypassable Transmission Service Charge

For 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 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. 17.⁴

⁴ Subsequent to PECO's filing of DSP III and accompanying direct testimony, Administrative Law Judge Susan D. Colwell issued her decision recommending approval of a joint petition for settlement ("FirstEnergy Settlement") that provides, among other things, that the FirstEnergy EDCs will recover generation deactivation charges, unaccounted for energy ("UFE") and PJM charges for tie line, generation and retail customer meter data errors discovered after financial settlement via their non-bypassable Default Service Support Riders ("DSSRs"). *See Secretarial Letter, Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of their Default Serv. Programs*, Docket Nos. P-2013-2391368 *et al.* (entered May 6, 2014) ("FirstEnergy Recommended Decision"). This would be in addition to DSSR recovery of RTEP and ECRCs approved in the FirstEnergy EDCs' DSP II proceeding. The FirstEnergy Settlement was approved by the Commission, without modification, on July 24, 2014.

RESA, in turn, proposed a non-bypassable rider that included the PJM Transmission Charges, as well as several additional PJM bill charges. *See* RESA St. No. 1, pp. 24-28.

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.⁵ 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 recommended approval of PECO's proposed non-bypassable TSC, but PAIEUG excepts on the ground that a change in the current cost assignment for transmission-related charges imposed by PJM is purportedly not supported by the record in this case. PAIEUG Exc., pp. 3-7, 9-12. In addition, PAIEUG contends that the Settlement provision regarding non-bypassable recovery of the PJM Transmission Charges, which explicitly reserves the issue for litigation, is not consistent with the public interest. *Id.*, pp. 7-8. RESA generally supports PECO's proposal, but asserts that NITS should be included in any non-bypassable TSC approved by the Commission. RESA Exc., pp. 9-13. Alternatively, if the Commission rejects non-bypassable recovery of NITS, RESA argues that PECO's supply master agreement ("SMA") should be revised to require wholesale default suppliers to be responsible for NITS costs associated with PECO's default service load instead of PECO. RESA Exc., pp. 13-19. The

⁵ *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*").

Commission should dismiss each of these Exceptions for the reasons discussed in the sections below.

1. The ALJ Correctly Concluded that the Record in This Proceeding Supports Adoption of a Non-Bypassable TSC Which Recovers The PJM Transmission Charges (PAIEUG Exc. 1)

In her Recommended Decision, the ALJ rejected PAIEUG's contention that PECO and RESA did not meet their burden of demonstrating that a change to the method of recovering PJM Transmission Charges would be reasonable. R.D., p. 51. In its first Exception, PAIEUG objects to the ALJ's resolution of this issue. This Exception is meritless and should be rejected for several reasons.

First, PAIEUG's position that PECO's proposal is unsupported (PAIEUG Exc., pp. 3-7) is inconsistent with the Commission's conclusion in the *FirstEnergy DSP III Order* (pp. 22-23) that recovery of PJM Transmission Charges on a non-bypassable basis would be beneficial to customers. While PECO agrees with PAIEUG that settlements are not generally precedential, PAIEUG never explains why the Commission's conclusion in approving the FirstEnergy Settlement that FirstEnergy customers will receive a benefit from the non-bypassable recovery of transmission charges does not apply to customers in PECO's service territory. Furthermore, PECO's proposed exclusion of NITS costs, as well as additional charges originally proposed by RESA which are not transmission-related,⁶ appropriately mitigates any PAIEUG concerns that a non-bypassable TSC creates insurmountable problems for Large C&I customers in the negotiation of contracts with electric generation suppliers ("EGSs"). Consequently, the ALJ

⁶ While RESA advocated for non-bypassable treatment of UFE charges in its Main Brief (p. 33), the Joint Petitioners agreed that UFE and meter error correction costs will not be included in any non-bypassable transmission service charge or litigated further in this proceeding. *See* R.D., p. 50.

correctly found the record supports PECO's proposal and provides no basis for PAIEUG's objections. *See* R.D., p. 51.

PAIEUG also contends that PECO improperly advanced its proposal for a non-bypassable TSC in oral rejoinder testimony. PAIEUG Exc., pp. 9-13. As fully explained in PECO's Reply Brief, the Commission has found that testimony submitted in response to arguments made by opposing party witnesses, as is the case here, in no way violates the Commission's regulations regarding the presentation of evidence (52 Pa. Code § 5.243). *See, e.g., Pa. Public Util. Comm'n v. Western Utils., Inc.*, Docket No. R-00963856, 1998 WL 201481, at **8-9 (Pa. P.U.C. Jan. 28, 1998). Mr. McCawley explained PECO's proposed non-bypassable TSC at the evidentiary hearing in response to RESA witness Hudson's surrebuttal testimony (RESA St. No. 1-SR, pp. 14-15) that PECO's response to the developments in the FirstEnergy EDCs' proceedings in the Company's rebuttal testimony was "insufficient." PECO Reply Br., pp. 12-13. Moreover, and notwithstanding PAIEUG's claims to the contrary, the issue of recovery of PJM charges has been extensively developed on the record in this proceeding and, indeed, was specifically addressed by Mr. Haines, PAIEUG's only witness. *See generally* PAIEUG St. No. 1 (raising several concerns regarding any change to the current allocation of PJM charges in PECO's service territory). Stated simply, as the ALJ correctly determined, PAIEUG had the opportunity to present evidence opposing a non-bypassable TSC prior to Mr. McCawley's rejoinder testimony. *See* R.D., p. 47.

Finally, PAIEUG's assertion that the ALJ erred in finding that the Settlement is consistent with the public interest must also be rejected. PAIEUG's Exception merely repeats its general objections to the Settlement, which the ALJ found unavailing. In particular, the ALJ concluded that Settlement is in the public interest because it reflects reasonable compromises on

several disputed issues (e.g., Residential Class procurement and the continuation of the Company's Standard Offer Program) and also provides benefits to low-income, residential, small commercial and medium commercial customers. *See* R.D., pp. 20-37, 40. The ALJ further concluded that the Settlement reduces litigation expenses because only four parties filed reply briefs to address two issues. *Id.*, p. 40. As previously explained, the issue of whether certain PJM charges should be recovered by PECO through a non-bypassable TSC was entirely reserved for litigation in the Settlement, and there is no basis for PAIEUG's claim that a lack of benefit to Large C&I customers in a partial settlement dictates rejection of the ALJ's finding that the Settlement is in the public interest. The Commission should therefore dismiss PAIEUG's Exception relating to PECO's non-bypassable TSC in its entirety.

2. The ALJ Properly Rejected RESA's Proposed Changes to the Allocation of Responsibility for NITS Costs (RESA Exc. No. 1)

In its Exceptions, RESA takes issue with the ALJ's rejection of its proposal for PECO to assume responsibility for NITS costs for several reasons, none of which have merit.

First, RESA tries to support its claim that inclusion of NITS in PECO's non-bypassable TSC is appropriate by citing examples of other utilities within PJM that have experienced increased NITS costs. *See* RESA Exc., pp. 6-7. Leaving aside RESA's improper presentation of factual material in its briefs after the close of the record in this proceeding and in its Exceptions, the NITS rate increases in other utility jurisdictions are simply not relevant where the evidence shows that NITS charges in PECO's service territory are very predictable. Indeed, the Commission determined in the *FirstEnergy DSP III Order* (p. 31) that NITS costs for another utility did not warrant non-bypassable treatment of NITS costs in the FirstEnergy EDCs' service areas where there was no evidence of significant changes in NITS costs for Pennsylvania EDCs, and the same conclusion should apply here.

Second, RESA contends that customers will benefit if PECO assumes responsibility for NITS costs because there will be no need for EGSs (or wholesale suppliers) to consider future changes in NITS in their prices. RESA Exc. p. 7. PECO addressed these same arguments before the ALJ and explained that NITS costs in PECO's service territory do not need to be hedged because those costs are extremely predictable year-to-year. PECO Reply Br., pp. 10-11; *see also* Tr. 58-50 (“[t]he PECO [NITS] rate has not changed for [several] years in terms of dollar[s] per kilowatt year...so that if someone were to buy and try to predict what their NITS cost would be for a particular customer, my bet is they could lock it in to the penny for a year.”). And while RESA contends that the lack of change in NITS costs “increases the possibility of significant change in the future,” *see* RESA Exc. p. 7, RESA provided no factual basis to support this claim.

Third, RESA continues to assert that the Commission should require PECO to assume responsibility for NITS costs because EGSs have a legal right to “nondiscriminatory access to the EDC's right of full cost recovery” under the Electricity Generation Customer Choice and Competition Act (“Competition Act”). RESA Exc. pp. 8-9. However, the provision of the Public Utility Code governing an EDC's “right to full cost recovery” addresses costs incurred under Commission-approved default service plans, and the separate provisions upon which RESA relies simply define the term “direct access” and require EDCs to provide transmission and distribution service on a nondiscriminatory basis and on “on rates, terms of access and conditions that are comparable to the utility's own use of its system.” *See* 66 Pa. C.S. §§ 2807(e)(3.9), 2803 & 2804(6). The Competition Act's direct access provisions were promulgated based on the General Assembly's concern that EDCs would directly or indirectly favor affiliated EGSs. *See* Proposed Rulemaking Order, *Revisions to Code of Conduct at 52 Pa. Code § 54.22*, Docket No. L-2010-2160942 (entered August 25, 2011), p. 2. Such provisions

cannot reasonably be interpreted to require all EDCs to collect PJM charges which EGSs incur on behalf of EGS customers as costs of a default service plan, and RESA cites no authority to suggest otherwise.

Finally, RESA also renews its alternative proposal whereby wholesale default service suppliers would assume responsibility for NITS under the supply master agreement used in PECO's procurements if the Commission rejects the inclusion of NITS in PECO's non-bypassable TSC.⁷ *See* RESA Exc. pp. 9-10. RESA's concern regarding the alleged advantage of default service over EGSs as a result of the current allocation of NITS costs is simply misplaced. As PECO explained, EGSs are fully capable of factoring these costs into their competitive prices, particularly in light of the unrefuted evidence that NITS costs in PECO's service territory have not changed for several years, and therefore cannot be contributing to any material risk premium in EGS offers. PECO Reply Br., p. 11.

⁷ RESA's alternative proposal originally included Generation Deactivation/RMR charges in addition to NITS. Under the Settlement, however, RESA agreed that Generation Deactivation/RMR charges would not be litigated further in this proceeding. *See* R.D, p. 16.

III. CONCLUSION

For the reasons set forth above, the Recommended Decision issued by Administrative Law Judge Fordham on September 30, 2014, should be adopted with the modification described in PECO's Exception filed on October 10, 2014.

Respectfully submitted,



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